

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

THE UNITED STATES OF AMERICA,
Plaintiff,

Docket No. 94CR1009MMP
Gainesville, Florida
May 23, 2000
9:00 a.m.

vs.

JOHN KNOCK and
ALBERT MADRID,

Defendants.

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GAINESVILLE, FLA.

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VOLUME 13

TRANSCRIPT OF TWELFTH DAY OF JURY TRIAL
WHEN HEARD BEFORE THE HONORABLE SENIOR UNITED STATES
DISTRICT COURT JUDGE MAURICE M. PAUL, AND A JURY.

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EXHIBITS

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(NONE THIS VOLUME.)

1 THE COURT: Be seated, folks. Good morning.

2 And my clerk said you all wished to see me without
3 the jury.

4 MR. KENNEDY: I made that request, Your Honor. May I
5 hand up to you Government Exhibits 165 and 176 -- 175 and 176.

6 THE COURT: Yes, sir.

7 MR. KENNEDY: Thank you, Your Honor.

8 Now, 176, we have had a lot of litigation on, not
9 only with the motion with my recusal, but also litigation that
10 you carried on just before Ms. Knock's testimony. But 175
11 slipped through. 175 is actually a fax sheet and a
12 confidential attorney-client letter from Naomi Knock to me. I
13 had thought that 175 and 176 was the Naomi Knock letter to John
14 Knock and Mike Lee's typed version of it, which was also handed
15 over to us by the government.

16 The fact of the matter is, we never litigated 175
17 because I did not know it was going in. Now, 175 being, unlike
18 176, when the attorney/client privilege was raised with 176,
19 Your Honor said, and we disagree with your ruling but obviously
20 we respect it, that in that case there is no attorney-client
21 privilege, Mr. Kennedy is sort of acting like the post office.

22 But, with reference to 175, that is a clear
23 attorney/client privilege from Naomi Knock to me. And it's not
24 a privilege that I can even waive, Your Honor. It would have
25 to be waived by her if by anyone. Therefore I ask that 175 be

1 stricken. It's also irrelevant and highly prejudicial.

2 Thank you.

3 THE COURT: Government.

4 MR. HANKINSON: Judge, I think that we've extensively
5 litigated about this issue. I don't think we need to get back
6 into that at this point. I mean, one of the things that
7 Ms. Knock is doing in this letter is setting up a -- a meeting
8 in Brussels, Belgium, which I think is relevant. I don't think
9 we need to relitigate what this court has already considered
10 and ruled on.

11 THE COURT: Mr. Kennedy, any further?

12 MR. KENNEDY: Nothing further, Your Honor.

13 THE COURT: The motion is denied. Are we ready to
14 proceed?

15 MR. HANKINSON: Yes, sir. Your Honor, and I
16 apologize for my calculations of time, calculations yesterday
17 being so far off.

18 THE COURT: That is all right.

19 What does it look like today?

20 MR. HANKINSON: Agent Lilley is our last witness.

21 THE COURT: Okay. Then, you all will be prepared to
22 do something?

23 MR. KENNEDY: Yes, Your Honor.

24 MR. DAAR: Yes, Your Honor.

25 THE COURT: Are you going to cross Agent Lilley?

1 MR. DAAR: I'm sorry?

2 THE COURT: The thing is not on. Are you going to
3 cross-examine Agent Lilley?

4 MR. DAAR: I was going to cross Agent Lilley.

5 THE COURT: Sure. Then we'll bring the jury in.

6 (Jury in.)

7 THE COURT: Good morning, folks. Be seated, please.

8 We are ready for you. So Agent Lilley, you are still
9 under oath, sir. And you may cross-examine, Mr. Daar.

10 CROSS-EXAMINATION

11 BY MR. DAAR:

12 Q. Good morning, Agent Lilley.

13 A. Good morning, sir.

14 Q. You were the case agent with respect to the Gainesville,
15 offload if you will; is that correct?

16 A. Yes.

17 Q. And you began the role as case agent in the summer of 93?

18 A. Yes, sir.

19 Q. And when did you complete your assignment as the case
20 agent?

21 A. December of 1995. Special agent Mike Lee assumed the
22 role as case agent.

23 Q. But you remained on board during the transition period
24 and attended interviews and so forth subsequent to December of
25 '95, correct?

1 A. I attended a limited number of them. Yes, sir.

2 Q. And you were helping to transfer the case to Mr. Lee?

3 A. Yes, sir.

4 Q. Now, Sonia Vacca was arrested in October, correct?

5 A. Yes, sir.

6 Q. And at some point she decided to enter a guilty plea and
7 cooperate with the government, correct?

8 A. Yes, sir, she did.

9 Q. When did that occur?

10 A. I believe sometime in December of '93 or early January of
11 '94.

12 Q. Okay.

13 A. Just prior to the trial.

14 Q. Okay. And once she makes that decision to plea, she
15 makes herself available for what the government agents call a
16 DEA briefing, correct?

17 A. Yes, sir.

18 Q. And at that debriefing, you try to obtain as much
19 information as you can that you feel is relevant in the case,
20 correct?

21 A. Yes, sir.

22 Q. Now, at the time that you debriefed Sonia Vacca, you
23 already had access to the various travel records that were
24 seized in the search warrant executed on her house in October
25 of '93, correct?

1 A. Yes.

2 Q. And one of your purposes in interviewing her was to
3 determine how many trips were made outside of the United States
4 for what purpose, where they were starting from and where they
5 wound up?

6 A. Yes, sir.

7 Q. And you prepared for this jury several charts which we've
8 described in various travels, either through passport entry,
9 airline tickets or hotel records, correct?

10 A. Yes, sir.

11 Q. And when you interviewed Sonia Vacca, you used the
12 documentary evidence that you have to check her credibility and
13 ask other questions where she went; is that correct?

14 A. Yes, sir.

15 Q. Now, in looking at the trips, it appears that in May of
16 1993, Sonia Vacca made her last trip from Vancouver to
17 Singapore, correct?

18 A. If that is what is documented, I would agree with you.

19 Q. Well, do you have any information that it's not correct?

20 A. Well, I would have to look it up. She did so many trips,
21 I don't remember each one.

22 Q. Okay. Now, let me see if I can refer you to the easiest
23 place here.

24 A. Her passport.

25 Q. Well, the passport doesn't quite work, because it's not

1 always stamped when she goes into Canada, correct?

2 A. Well, for her Singapore trips, they would typically be
3 stamped.

4 Q. But you wouldn't know from looking at the passport
5 whether the origin of the trip was Vancouver or the United
6 States, you would only know that the destination was Singapore?

7 A. That's correct.

8 Q. But, if you look at the hotel records, you would see that
9 the last time she stayed in Vancouver was in May of 1993. That
10 is in Exhibit 14.

11 A. Are you referring to May 2nd -- May 1st, 1993, through
12 the 3rd?

13 Q. Yes.

14 A. Okay. I agree.

15 Q. Okay. And you know from your investigation that,
16 according to her testimony, her last trip was this May trip,
17 her last trip from Vancouver, correct?

18 A. Quite possible. Yes, sir.

19 Q. Okay. Are you saying quite possible because you are not
20 sure, but you have no reason to doubt what I'm saying?

21 A. None at all.

22 Q. Now, you did determine that in August of '93, and in
23 September of '93, unlike any of the previous trips taken by
24 Sonia Vacca, she left from San Francisco, correct?

25 A. Correct.

1 Q. And from San Francisco she flew to Singapore and then
2 returned to San Francisco?

3 A. Correct.

4 Q. That was completely different than any other trip she had
5 taken, to your knowledge?

6 A. Yes, it was.

7 Q. It was different because she left from San Francisco,
8 number 1; is that true?

9 A. Yes.

10 Q. It was also different because she received the money in
11 the United States of America, correct?

12 A. Yes, sir.

13 Q. And it's also different because she received the United
14 States dollars, correct?

15 A. I wouldn't say that. No, sir. She had been receiving
16 United States dollars for almost all of those trips.

17 Q. Your testimony is that Sonia Vacca -- when she picked up
18 money from Vancouver -- was receiving United States dollars?

19 A. No. No. Generically speaking when she was paid for the
20 trip, the money came back to her as U.S. dollars.

21 Q. Okay. I'm not concerned with what she got paid.

22 A. I'm sorry.

23 Q. What I'm concerned with is what she carried from one
24 place to another.

25 A. Two trips of carrying U.S. dollars outside of the United

1 States by Sonia Vacca in 1993.

2 Q. And those two trips are the two trips from San Francisco,
3 correct?

4 A. Yes, sir.

5 Q. And those are the two trips that are in the indictment,
6 in fact, as overt acts in Count III, correct?

7 A. In the indictment, we didn't spell out the overt acts.

8 Q. Well, do you have a copy of the indictment?

9 A. No, I don't.

10 MR. HANKINSON: That would be Government Exhibit 240.

11 Q. I'm going to show you Government Exhibit 240. I would
12 ask you to look at Count III. I direct your attention to
13 numbers where 1, 2, 3 4, appear. Do you see that, Agent
14 Lilley?

15 A. Yes, I do.

16 Q. And does that not in fact reflect that there -- that as
17 to Count III, the two overt acts alleged are Ms. Vacca's trip
18 from San Francisco to Singapore with U.S. dollars?

19 A. Yes, it does.

20 Q. Okay.

21 Now, when did Ken Cowles first agree to provide
22 information to the United States government?

23 A. I'm not exactly certain. I would have to refer to a
24 report.

25 Q. Okay.

1 A. That was written on the interview.

2 Q. Do you have the report available to you?

3 A. It's available to me. I don't have it up here.

4 Q. Is there someone that can assist you in getting that
5 report?

6 A. Possibly Agent Lee could get the DEA-6 written by agent
7 Steve Conner.

8 Q. Do you have an approximate date? The year?

9 A. I'm may be a little off on my year. I think it was
10 sometime in '97. And again that -- I'm not certain on that.

11 Q. Okay. Were you involved in that debriefing?

12 A. I participated in it.

13 Q. And that is two years after you left the case as the case
14 agent, correct?

15 A. Yes.

16 Q. Now, what about the Vance brothers, the two Vance boys,
17 Gary Vance's sons. When were they first questioned by the
18 government?

19 A. You would have to check with Agent Lee on that.

20 Q. You weren't involved in that?

21 A. No, sir.

22 Q. Now, Julie Roberts first came into the Government's
23 presence in February of '96, correct?

24 A. Yes, sir.

25 Q. And at the time she came into the government presence,

1 she had an arrest warrant pending, correct?

2 A. Yes, she did.

3 Q. And the arrest pending was not pending from Gainesville,
4 but it was pending from the Northern District of California,
5 correct?

6 A. Yes.

7 Q. And that particular case against Julie Roberts in the
8 Northern District of California involved the 1993 load into San
9 Francisco, which the government here says is part of this
10 conspiracy, correct?

11 A. Julie Robert's indictment was in San Francisco for the
12 1993 load.

13 Q. Correct. Which is the same load that this jury has been
14 hearing about, correct, in this case?

15 A. Yes, they have.

16 Q. Okay. Now, was Julie Roberts arrested pursuant to this
17 warrant when she came in?

18 A. I'm not certain of that.

19 Q. Isn't it a fact that she was not actually arrested and
20 given over to the marshals until June of '96?

21 MR. HANKINSON: I'm going to object, as outside the
22 scope of direct, Your Honor.

23 THE COURT: Well, I think he said he didn't know.

24 MR. HANKINSON: Okay. Also hearsay.

25 MR. DAAR: Okay. I'll move on.

1 Q. Now, when you attended a series of debriefings with Julie
2 Roberts in February, March of '96?

3 A. I believe February is a correct time frame in 1996, yes.

4 Q. Okay. And these were quite extensive, those interviews
5 in terms of duration?

6 A. No, sir, they weren't.

7 Q. How long were they?

8 A. Not more than a couple of hours each day.

9 Q. Okay. How many days?

10 A. Maybe three.

11 Q. Okay. You were there. Was Agent Lee there?

12 A. Yes, he was.

13 Q. And there are other agents involved in the San Francisco
14 investigation?

15 A. Correct. Yes, sir.

16 Q. Greg Small was there?

17 A. Greg Small was there.

18 Q. Now, did you tell Julie Roberts that if she came up with
19 solid information about bank accounts that the government did
20 not already know about, there would be a finder's fee of ten
21 percent of the amount recovered?

22 A. No, sir.

23 Q. Were you aware that on June 15th, 1998, Julie Roberts
24 wrote a letter to Steven Corrigan -- Do you know who Steven
25 Corrigan is?

1 MR. HANKINSON: Objection as hearsay.

2 THE COURT: He can just ask about if he's aware of
3 the letter. You can ask that.

4 A. I've heard of that. Yes, sir.

5 Q. You have seen the letter, haven't you?

6 A. Yes, I have.

7 Q. And you are aware of the letter?

8 MR. HANKINSON: I'm going to object to contents of
9 the letter.

10 THE COURT: Sustained.

11 Q. Did Julie Roberts ever receive any finders fee?

12 A. Not from the Drug Enforcement Administration.

13 Q. Did she receive a finder's fee from somebody else?

14 A. I don't know.

15 Q. Now, it was sometime thereafter that you went to
16 Singapore and Hong-Kong to collect money that the government
17 believed was illegal proceeds from these various importations,
18 correct?

19 A. No, sir. I have never been to Singapore.

20 Q. It's Hong-Kong?

21 A. I was in Hong-Kong.

22 Q. When were you in Hong-Kong?

23 A. I was there twice. Once in June, and a week later I went
24 back in July of 1996.

25 Q. Okay. Who did you go with?

1 A. I went three from Denver and Ms. Callaruso from
2 Washington, DC.

3 Q. Now, prior to going, did you have a discussion with
4 Ms. Roberts that you were going to Hong-Kong and that you were
5 going to be collecting the various moneys?

6 A. I don't believe so.

7 Q. Did she inform you of the existence of the account from
8 which you authorized the transfer?

9 A. I was aware of that account already.

10 Q. Okay. And had you discussed with the agents in San
11 Francisco what was going to happen to the money that you were
12 going to transfer from this Hong-Kong bank account into Julie
13 Robert's personal account?

14 MR. HANKINSON: I'm going to object. It assumes
15 facts not in evidence, Your Honor.

16 THE COURT: Well, he can ask the question.

17 A. Well, one, I don't agree with your statement that I was
18 going to transfer money to anybody, because I didn't have that
19 authority to do that. So I didn't do the transfer, if that is
20 your question.

21 Secondly, I discussed it with Special Agent Heng, and
22 Special Agent Small from the United States Customs Service. I
23 did not discuss it with the Julie Roberts.

24 Q. Okay. So you didn't transfer the money, but you allowed
25 the money to be transferred pursuant to Ms. Robert's request.

1 A. No. That is not correct either.

2 Q. Okay. The money was in the bank account connected to a
3 corporation, correct?

4 A. Yes, sir, it was.

5 Q. The money was gotten out of that bank, correct?

6 A. That's correct.

7 Q. Who got the money out of the bank?

8 A. I would take it that Ms. Roberts did.

9 Q. Okay. So Ms. Roberts got the money somehow out of the
10 bank?

11 A. Yes. The way it works over there is a secretarial firm
12 that she was with, all gone wee and you make the request either
13 by phone or by fax, they have power of attorney to send the
14 money wherever you want it to go.

15 Q. Okay. So after Julie Roberts began cooperating with the
16 government, she made arrangements to transfer money out of her
17 bank in Hong-Kong to her personal account, correct?

18 A. While I was in Hong-Kong, she made those arrangements.
19 Through -- I communicated with Agent Small while I was in
20 Hong-Kong.

21 And evidently he communicated with Ms. Roberts.

22 Q. But you were aware, at least as far as Greg Small was
23 concerned, that it was okay for her to transfer about \$370,000
24 from this bank account, which is one of the ones you
25 potentially could have selected to her personal account?

1 A. Well, one, I couldn't be collecting bank accounts in
2 Hong-Kong. As I stated before, I was trying to facilitate the
3 surrender of that account in the United States which the
4 Hong-Kong officials allowed to take place.

5 Q. Okay. So you facilitated Ms. Roberts getting the money
6 from the bank in Hong-Kong to a personal account?

7 A. Yes.

8 Q. Okay. Now, your intent in doing so, you testified to on
9 direct, was that you intended for that money to be forfeited
10 to -- was to it Hong-Kong or Denver?

11 A. No, sir. My intent was to facilitate the transfer so
12 that it would be surrendered to the government in San Francisco
13 and a sharing request was then returned and a percentage of
14 that money went back to Hong-Kong.

15 Q. Okay. So Hong-Kong got a -- your intent was to get it
16 surrendered to the government, and then have a portion of it go
17 to Hong-Kong?

18 A. Yes, sir.

19 Q. And how much of this 370,000 was actually surrendered?

20 A. I'm not sure of the exact figure. But it was in -- it's
21 in her plea agreement which is here in evidence.

22 Q. Okay. About 60 or 70,000?

23 A. Yes, sir.

24 Q. Now, out of that remaining \$300,000, do you have any
25 information as to where that money wound up?

1 A. No, sir.

2 Q. To your knowledge, the government didn't receive it, the
3 United States government never received it, did they?

4 A. No, they did not.

5 Q. Denver never got any, did they?

6 A. No.

7 Q. And Hong-Kong never got any?

8 A. No.

9 Q. As far as you know, Ms. Roberts spent it?

10 A. That is what I have been told.

11 Q. Actually, though, there was a Camaro that you purchased
12 for Greg Small out of that money, correct?

13 MR. HANKINSON: Objection. Hearsay, Your Honor.

14 Q. That is a question.

15 THE COURT: If he knows.

16 A. I learned of that some months ago.

17 Q. You learned that Roberts purchased a black Camaro for
18 Agent Small out of the 300,000?

19 MR. HANKINSON: Objection, hearsay.

20 THE COURT: Sustained. It has already been answered
21 anyway. He just answered it.

22 Q. Now, from an agent's point of view, after you put
23 together what you think is a case and you arrest someone, the
24 best possible outcome is the person agrees to plead guilty,
25 agrees to cooperate with the government and agrees to disgorge

1 all of their assets; is that fair?

2 A. Yes, sir, that is fair.

3 Q. And that was your hope when you indicted Mr. Knock and
4 Mr. Duboc, correct?

5 A. Certainly. That is one of the angles that is being
6 looked at.

7 Q. Well, so the best case scenario?

8 A. Yes, the best case scenario.

9 Q. Okay. Now, Mr. Duboc was arrested in March, correct?

10 A. On March 25th, 1994.

11 Q. And he agreed to cooperate, correct?

12 A. Yes, sir.

13 Q. And he disgorged a substantial amount of assets?

14 A. Yes, sir.

15 Q. But he didn't tell you the whole truth, did he?

16 MR. HANKINSON: Objection, Your Honor.

17 THE COURT: He can ask.

18 A. No, he did not.

19 Q. In fact, it's true from Roberts that you learned, in
20 part, that Vacca had not been completely honest?

21 A. In part, yes, sir. She was not the first individual to
22 give us information that she was not being truthful.

23 Q. Duboc gave you some of that information also?

24 A. Well, Vacca and records that we obtained.

25 Julian Rodriguez was certainly one.

1 Q. Now, Marshal Way was arrested in October also, correct?

2 A. Yes, sir, he was.

3 Q. Now, Marshal Way also decided to cooperate with the
4 government, correct?

5 A. Yes, sir.

6 Q. When did that occur, approximately?

7 A. I wasn't part of that, Mr. Daar. Maybe in the early
8 months of 1994.

9 Q. Okay. But, you had access to the information since you
10 were sharing information with the other agencies involved,
11 correct?

12 A. I was never given full information on what Mr. Way was
13 providing.

14 Q. Did the San Francisco agents withhold any relevant
15 information Mr. Way provided about your investigation from you?

16 A. I won't say they withheld it. I learned of relevant
17 information as the year progressed. I never received a written
18 report on his debriefing.

19 Q. Okay. Well, Paul Naudeau shared his debriefing of Way
20 with you, that is the Canadian investigator.

21 A. I'm sure he did.

22 Q. Okay. Now, Knock, Duboc, and Darmon were indicted in
23 February of '94, correct?

24 A. March.

25 Q. March. I'm sorry.

1 A. Yes, sir.

2 Q. And Mr. Madrid, my client, was not on that indictment,
3 was he?

4 A. No, sir, he was not.

5 Q. And then Madrid and Knock were arrested in May of '96,
6 correct?

7 A. I believe Mr. Knock was arrested in April.

8 Q. Okay.

9 A. It may have been May.

10 Q. April May of '96.

11 A. Sure.

12 Q. Mr. Knock was arrested in France, correct?

13 A. Yes, sir.

14 Q. And Mr. Madrid in Mexico, correct?

15 A. Yes, sir.

16 Q. Now, according to your information are you aware that
17 Mr. Madrid waived extradition, was eventually brought back to
18 Canada and sentenced to prison?

19 A. Yes, sir.

20 Q. Now, Mr. Madrid to date has not agreed to cooperate with
21 your investigation, correct?

22 A. No, sir.

23 Q. Now, Mr. Knock was in France until January of 1999,
24 correct?

25 A. Yes, sir.

1 Q. Now, Mr. knock to date, has not cooperated in your
2 investigation either?

3 A. No, sir.

4 Q. And it is after Mr. Knock being brought to Gainesville in
5 January of 1999, in February of 1999, Mr. Madrid is first
6 indicted in this case, correct?

7 A. If you have that indictment, I would agree with you. I'm
8 not certain of the date.

9 Q. Okay. In the early part of 1993, you were concerned that
10 the DEA office here in Gainesville, there might be a decision
11 to close it down; is that correct?

12 A. When I was first questioned about that, I was given the
13 newspaper article with the handwritten notation on there that
14 it was 1993. And the questioning along those lines was for
15 1993.

16 And I have since found that the newspaper article was
17 1994. So my answer regarding 1993 was which concerned -- I was
18 not concerned in 1993.

19 Q. Okay. So when Mr. Kennedy said to you: Set that aside
20 reading from transcript page 8, lines 25, and page 9.

21 MR. HANKINSON: Objection. May we approach, Your
22 Honor?

23 THE COURT: Sure.

24 (At the bench).

25 MR. HANKINSON: Your Honor, I haven't had a chance to

1 pull out the local rule and read the exact reference of it.
2 But it was my understanding that the local rule provided that
3 the defense was not -- or anyone was not supposed to suggest to
4 the jury that the transcript of the trial was available.

5 And, like I say, I haven't gone back and read that
6 local rule. But I don't think it's appropriate to put before
7 the jury that there is a transcript.

8 The next thing we are going to get from the jury is
9 a request for the transcript of this trial, which is going
10 to be impossible for us to provide them with.

11 So that is the nature of my objection. I don't
12 object to him asking if he said something different or
13 contrary, but when he suggests there is a transcript available,
14 I think we are causing problems. I think it's contrary to the
15 local rule.

16 MR. DAAR: I can remedy that by referencing my notes.

17 THE COURT: Whatever you want to do. I don't have a
18 preference.

19 MR. DAAR: Do you want me to proceed with the
20 transcript?

21 THE COURT: I don't care what you do. He objects.

22 (Back in open court.)

23 Q. Mr. Kennedy had brought your attention to the article,
24 correct?

25 A. Yes, sir.

1 Q. And at the time the article first was presented to this
2 jury, the article that constituted the exhibit had a
3 handwritten date of January of 1993, correct?

4 A. Yes, sir.

5 Q. And you at least had no reason to believe that that
6 wasn't accurate, correct?

7 A. Correct.

8 Q. Okay. Now, when an objection came up as to the article,
9 Mr. Kennedy said to you: Set that aside, referring to the
10 article, if you don't mind, Agent Lilley.

11 Then says: So at around the early part of '93 you
12 are concerned, are you not as an agent, and the DEA office here
13 in Gainesville about this decision to close down the
14 Gainesville office. Is that fair?

15 And you say: Yes.

16 So that answer is not an accurate answer, is that
17 your testimony?

18 A. No, sir. That is not accurate as we were referring to
19 the January '93 time frame with the newspaper article. I
20 wasn't concerned in '93 that the office was closing down.

21 Q. So even though Mr. Kennedy said to you in the beginning
22 of the question to set the article aside, your answer to this
23 jury now is that you still considered the article?

24 A. Well, certainly that was the context of what we were -- I
25 was being questioned on was 1993.

1 Q. That is correct.

2 But Mr. Kennedy asked you to set aside the article
3 and asked you the question --

4 MR. HANKINSON: Objection, argumentative.

5 THE COURT: It is argumentative.

6 Q. So you did want Washington not to close the office,
7 correct?

8 A. Absolutely.

9 Q. You did believe that by increasing the productivity of
10 the office that that would be one way to prevent its closure?

11 A. That is one of the ways, certainly.

12 Q. And one way to increase productivity is to bring in cases
13 which represent arrests, forfeitures and so on, correct?

14 A. That's correct.

15 Q. One of the reasons the office was going to be closed was
16 because of low productivity?

17 A. According to the article but not according to my
18 testimony.

19 Q. Now, in terms of this big overall conspiracy charged in
20 this case, the 1982 to 1996, as charged by the government, the
21 largest most significant seizure of contraband within this
22 giant conspiracy as charged by the government occurred in San
23 Francisco in 1993, correct?

24 A. That would be the largest seizure would be 1988.

25 Q. No. No. I also said the largest most recent in time to

1 the indictment seizure occurred in San Francisco in July of
2 1993?

3 MR. HANKINSON: I would object. Compound question.

4 MR. DAAR: Okay. I'll break it down.

5 Q. If you go from the date of this indictment here, that
6 alleges this 1982 to 1996 conspiracy, if you go backward from
7 the date of the indictment, what is the first substantial
8 seizure of contraband you encounter in the United States?

9 A. The first one would be 1988.

10 Q. Here is the indictment.

11 THE COURT: Just ask him the last one. That is what
12 you want to know, the last seizure.

13 Prior to the indictment.

14 A. 1993 in San Francisco California.

15 Q. Okay. So in terms of this big overall conspiracy the
16 last seizure was in 1993. The other seizure you mentioned was
17 in 1988?

18 A. Yes, sir.

19 Q. And that was also in the Bay area, correct?

20 A. Yes, sir, it was.

21 Q. And then what happened in Gainesville is that you, using
22 C. J. Brown, lured Vacca, Martenyi -- well, I don't won't say
23 lured, call Vacca, and Martenyi and Grenhagen to come to
24 Gainesville to talk about the offload, correct?

25 A. Grenhagen and Martenyi voluntarily came to Florida here

1 in Gainesville.

2 Q. Well, they voluntarily came in response to a request?

3 A. A request. Yes

4 Q. Okay. I understand you didn't force them to come here
5 but you asked them to come here. That is what occurred here?

6 A. Yes.

7 MR. DAAR: That is all that I have.

8 THE COURT: Government.

9 REDIRECT EXAMINATION

10 BY MR. HANKINSON:

11 Q. Let me ask you about the last thing Mr. Darr was talking
12 about, the '93 seizure in San Francisco. How do you understand
13 that the '93 seizure fits into the conspiracy indictment in
14 this case?

15 MR. KENNEDY: Objection.

16 THE COURT: Sustained.

17 Q. Now, you were asked about some hotel records of Sonia
18 Vacca. And I think the -- there was discussion about May of
19 '93 was the last hotel records that you got from Sonia Vacca
20 relating to stays in Vancouver; is that correct?

21 A. Yes, sir.

22 Q. Okay. You do you necessarily know whether you got all of
23 Ms. Vacca's hotel records or not?

24 A. No, I don't.

25 Q. That is the last trip that you have records of?

1 A. Yes, sir.

2 Q. Okay. Now, you were asked about Ms. Vacca carrying U.S.
3 dollars. Do you know whether on occasion money she was
4 carrying in Canada was U.S. dollars?

5 A. Yes. There was some U.S. Dollars.

6 Q. Okay. The bulk of it would have been Canadian, but there
7 was U.S. money mixed in?

8 A. Yes, sir. There was.

9 Q. Now, you were asked some questions about Ms. Roberts.
10 Was there discussion in your presence with Ms. Roberts about
11 informants getting asset sharing?

12 A. Yes, there was.

13 Q. What was the nature of that discussion?

14 A. Ms. Roberts was requesting about identifying assets or
15 finding assets and how would she -- if she was eligible, to
16 receive payment for that.

17 And the first response is no. She was a defendant.
18 Now, upon conclusion of her prison time and probation time, if
19 she was working for the government, and not necessarily in this
20 case, but in other cases as a cooperating individual, we do
21 pay.

22 Now, in regards to there was no percentages
23 discussed, because DEA has a cap on every single seizure of up
24 to \$250,000, so no agent should be making any agreements, 10
25 percent, five percent or 25 percent, because we have no

1 authority to do that.

2 Q. You didn't do that?

3 A. No, I didn't do that.

4 Q. But there was discussion that DEA informants, on
5 occasion, can receive award payments?

6 A. Yes, there was.

7 Q. Now, I think you clarified this, but I want to make
8 clear. Did you go to Hong-Kong -- Hong-Kong to collect dollars
9 and bring it back to the United States?

10 A. No, I did not.

11 Q. -- can you do that? That is move drug proceeds from a
12 foreign country back to the United States?

13 A. Only in undercover operation that is approved by both
14 governments can you do that.

15 Q. Why is that? Why couldn't you just go over to
16 Ms. Roberts account and say, give me the money and bring it
17 back?

18 MR. KENNEDY: Objection.

19 THE COURT: Overruled.

20 A. The banking officials one would not allow me. Should not
21 allow me, and two the United States government certainly
22 wouldn't allow me. I don't have that authority nor does any
23 agent that I know of.

24 Q. But why did you talk to Agent Small about facilitating
25 moving this money back to the U.S. Getting, Ms. Roberts to do

1 that?

2 A. Once a defendant as Ms. Roberts enters into an agreement
3 to surrender their assets, the facilitation of having the
4 moneys declared forfeited by the Court is a quicker process,
5 and a smoother cleaner process to have it forfeited,
6 surrendered and the checks are cut from the United States
7 Marshal Service and then, sharing the request by other
8 requests, by other law enforcement agencies go out that way.

9 It is a quicker process. For it to have been seized
10 in Hong Kong, and processed through our international treaty
11 with Hong-Kong would have taken years.

12 Q. Have you ever successfully gotten money and forfeited out
13 of Hong-Kong through official channels?

14 A. Yes. On one occasion.

15 Q. Now, you were asked some other questions about
16 Ms. Robert's forfeitures. Were you responsible for
17 Ms. Robert's forfeitures?

18 A. No, sir, I was not.

19 Q. Did you have any direct involvement in those?

20 A. No, I did not.

21 Q. Okay. Whatever information you have, where does that
22 come from?

23 A. Agent Greg Small was the agent responsible for
24 Ms. Roberts?

25 Q. So whatever you know is just what people have told you?

1 A. Yes.

2 Q. Now, you were asked a question whether the best possible
3 outcome was for you, would be that people come in and plead
4 guilty and give up their assets. I believe you indicated that
5 is the best scenario, correct?

6 A. Yes.

7 Q. When you indicted someone, do you assume that that is
8 going to happen?

9 MR. KENNEDY: Objection.

10 THE COURT: You can ask. It's in redirect.

11 A. No, sir.

12 Q. Okay. What are you prepared to do when you prepare an
13 indictment to the U.S. Attorney's office?

14 A. Prepare to go to trial upon the arrest of that
15 individual.

16 Q. Now, you were asked some questions about Mr. Duboc. I
17 believe you indicated that Mr. Duboc had lied; is that correct?

18 A. Yes, sir.

19 Q. Okay. And had Mr. Duboc given up any assets?

20 A. Yes, he had.

21 Q. Okay. And for a period of time Mr. Duboc cooperated with
22 you?

23 A. Yes, he did.

24 Q. Okay. Do you recall about how much he gave up in the way
25 of assets?

1 A. Initially there was 30 million dollars. Just at 30
2 million dollars that was surrendered through a course of three
3 key days of discussions in Tallahassee, Florida, with
4 Mr. Duboc.

5 Later in 1996, an additional about 19 million dollars
6 I believe was returned to the government. So it made the total
7 on the cash and real estate at about 50 million dollars.

8 Q. There were also, as you understand it, some forfeitures
9 in Canada?

10 A. Yes, sir, there was.

11 Q. And the -- the home that we've seen the photograph of, do
12 you know what the status of that is?

13 A. It's my understanding that it's in the possession of the
14 United States Marshals Service for sale and forfeiture.

15 Q. Eventually did you find out Mr. Duboc was not being
16 honest with you?

17 A. I found that out in the -- almost the first month.

18 Q. And there was a continuing series of problems with
19 Mr. Duboc?

20 A. Yes, there was.

21 Q. Okay. And did Ms. Roberts give you any information that
22 helped you in determining that Mr. Duboc was not being truthful
23 with you?

24 A. Yes, she did.

25 Q. And do you recall what the nature of the information was

1 that she gave you that led to problems with Mr. Duboc?

2 A. Yes.

3 MR. DAAR: Object.

4 THE COURT: It's in redirect.

5 A. Ms. Roberts was an integral part of the load into
6 Australia and was aware of the plannings and the load for
7 Amsterdam. She was aware of the money that was sent to Patrick
8 Faye in the Knightsbridge account in Spain on the kidnapping of
9 her daughter, which Mr. Duboc had denied.

10 He had also denied the Australian load, the Amsterdam
11 load, and the 1993 load to the Hells Angels with the
12 responsibility of being Dr. Mike.

13 Q. So Mr. Duboc had not admitted this 1993 load that
14 Dr. Mike was seized in Canada?

15 A. He had flatly denied it on a number of occasions.

16 Q. And based on your investigation, was information provided
17 by Ms. Roberts more accurate than the information you had
18 received from Mr. Duboc?

19 MR. KENNEDY: Objection.

20 THE COURT: Sustained.

21 Q. What was done with -- when you found out that Mr. Duboc
22 was being untruthful?

23 MR. DAAR: Objection.

24 THE COURT: He can tell.

25 A. The information was provided to the Assistant U.S.

1 Attorneys working on this case at the time, Mr. Greg Miller and
2 Tom Kirwin. And Mr. Duboc was confronted with his attorney, F.
3 Lee Bailey being present on a number of occasions.

4 Q. Eventually what happened to Mr. Duboc?

5 A. Mr. Duboc was sentenced to life imprisonment.

6 Q. That is his current status?

7 A. Yes, sir.

8 Q. Was this information presented to the court?

9 A. Yes, it was.

10 Q. You were asked about the purchase of the Kahala property,
11 relating to the Yip-Cheong Corporation. Do you recall those
12 questions?

13 A. Yes, sir, I do.

14 Q. Okay. And you had indicated that based on your
15 investigation Mr. Duboc had control of the Yip-Cheong
16 Corporation; is that correct?

17 A. Yes, sir.

18 Q. Okay. And in the -- in the -- we've placed in evidence I
19 believe some records that were obtained from AMS, the
20 secretarial firm that was handling Yip-Cheong; have we not?

21 A. Yes, sir.

22 Q. Okay. In those records that would be Government Exhibit
23 166, do you find any correspondence directly from Mr. Knock?

24 A. Yes. I believe you are referring to a letter or a fax
25 that Mr. Knock had sent to Ms. Lou, I believe, in Hong-Kong,

1 making comments about different aspects of the house.

2 Q. Okay.

3 MR. HANKINSON: I would ask to publish that item,
4 Your Honor.

5 THE COURT: Surely.

6 Q. Can you see the board from where you are, Agent Lilley?
7 If you can't please step down where you can see it better.

8 The document that we are looking at now, is this a
9 document that is in the AMS records that were presented by
10 Inspector Ho with the Hong-Kong police department?

11 A. Yes, sir, it is.

12 Q. Okay. And what did you understand this to be?

13 A. This appears to be the fax cover sheet from Dittos Copy
14 Center from Mr. Knock to Yip-Cheong Limited.

15 MR. HANKINSON: Scroll down, please.

16 If you would go to the next page.

17 Q. And is this the next page in that series from the records
18 of AMS?

19 A. Yes, sir, it is.

20 Q. Okay. And indicate to us who it indicates the sender of
21 this is?

22 A. John Knock in the top right-hand corner, from Honolulu,
23 Hawaii, with the telephone number.

24 Q. And read the first couple of paragraphs at least, Agent
25 Lilley?

1 A. The following is a special power of attorney. I will
2 need it for day-to-day operations of the property at 4442
3 Kahala Avenue, Honolulu, Hawaii.

4 All of the necessary paperwork for the property title
5 to be transferred to Yip-Cheong is being expressed to you by
6 Title Guarantee.

7 I just did the final walk-through to check on all
8 appliances and repair work. I found everything to be complete
9 and satisfactory.

10 Q. Okay. Go ahead.

11 A. Would you please give instructions to Title Guarantee to
12 release all funds in excess of closing costs to John Knock,
13 Naomi Phillips Knock, or their designee.

14 If there are any questions, you can reach me by fax
15 at Phyllis Murray's number (808) 735-0828, or at International
16 Investors' number (808) 942-8675.

17 Thank you for your help in this matter. John Knock.

18 Q. Okay. And attached to that is there a -- a proposed
19 power of attorney?

20 A. Yes, sir, there is.

21 Q. Thank you.

22 THE COURT: Tell me the date on that again.

23 THE WITNESS: June 1993.

24 MR. HANKINSON: It indicates received June 23, 1993,

25 Your Honor.

1 THE COURT: Thank you.

2 Q. All right. And let's go back one more time to this
3 question about the closing of the Gainesville office. Was
4 there any connection at all between the closing of the
5 Gainesville office and the case, this case?

6 MR. KENNEDY: Objection.

7 THE COURT: You can ask.

8 A. No, sir.

9 Q. All right. Now, you indicated that you were provided
10 with a newspaper article by the defense; were you not?

11 A. Yes, sir.

12 MR. HANKINSON: If I could have Defense Exhibit 1.

13 If I may publish this, Your Honor?

14 Q. Can you see the screen, Agent Lilley.

15 A. Yes, sir.

16 Q. Okay. Is this the -- the article that was handed to you
17 by the defense?

18 A. Yes, sir.

19 Q. Okay. And based on that, what did you assume the -- the
20 date of this article to be?

21 A. January of 1993.

22 Q. Okay. Do you now know that that is not correct?

23 A. That's correct.

24 Q. And I believe we have placed into evidence the actual
25 article; have we not?

1 A. Yes, sir.

2 Q. And when was that dated?

3 A. January of 1994.

4 Q. Agent Lilley, the suggestion has been made that you made
5 this case to save the office; is that correct?

6 MR. KENNEDY: Objection.

7 THE COURT: Overruled?

8 A. Yes, sir.

9 Q. Did you make this case to save the Gainesville office?

10 A. No, sir, I did not.

11 Q. Okay. What kind of cases do you normally work on?

12 MR. KENNEDY: Objection.

13 THE COURT: You can ask.

14 A. The larger type conspiracy cases, importations from other
15 countries and money laundering from other countries.

16 Q. And why do you work on those kind of cases normally?

17 MR. KENNEDY: Objection.

18 THE COURT: You can ask.

19 A. Those are the goals of DEA, to go to the highest level
20 violator that is possible.

21 Q. What do you mean by that?

22 A. To get the commonly referred to as the heads of the
23 organization. That is the goal of each and every DEA agent
24 when we take on an organization and begin an investigation.

25 We want to continue to go as high up in the

1 organization as we possible can using different investigative
2 techniques.

3 Q. And why is it more beneficial to try to get the heads of
4 organizations than the street-level dealers?

5 A. Well, you knock off the heads of the organization, then
6 you have a big gap between supply and distribution.

7 Q. What is your goal as a DEA agent?

8 A. My goal is to take down the entire organization and to
9 get to the highest level violator that I possibly can.

10 Q. And have you been through your career pretty successful
11 in this way?

12 MR. KENNEDY: Objection.

13 THE COURT: Sustained.

14 Q. Now, does that go into the highest level of the
15 organization, does that make it easy for you to work those
16 cases?

17 MR. KENNEDY: Objection.

18 THE COURT: Sustained.

19 Q. If you wanted to generate stats for the office, what kind
20 of cases would you go out and make?

21 A. The typically buy-bust with local police for
22 community-level street dealers and violators. You can wrap up
23 a number every Friday and Saturday night rather high.

24 Q. You were asked a question about the money going to
25 Mr. Burdin, whether it actually physically came into the United

1 States. Do you recall those questions?

2 A. Yes, I do.

3 Q. Okay. And I believe you had testified that there was
4 money from Arab Financial Services went through a bank in New
5 York and then went to Canada; is that correct?

6 MR. KENNEDY: Objection. That misstates the
7 evidence.

8 MR. HANKINSON: That is just a preliminary statement.

9 MR. KENNEDY: It still misstates the evidence.

10 THE COURT: Ask your question.

11 Q. Was that essentially your testimony, Agent Lilley?

12 A. Yes, sir.

13 Q. Okay. Now, I believe you indicated the money doesn't
14 physically move from Bahrain to New York; is that correct?

15 A. That's correct.

16 Q. Okay. Did the money physically move from Bahrain to
17 Canada?

18 A. No, sir, it did not.

19 Q. Okay. How does that type of financial transaction occur?

20 A. Through a wire transmission. In this particular set of
21 records, in the composite exhibit what you will find in there
22 is Arab Banking Corporation in New York will be on the far
23 right side of the debit sheet as the payments are going to
24 Hanover Trust in New York City, and then further on to Canadian
25 Imperial Bank.

1 Mr. Burdin, you will find the deposit on file for
2 Arab Banking is minus the moneys sent to Canadian Imperial Bank
3 for Mr. Burdin. So there is a debit sheet that makes it look
4 like there is actually money being subtracted, when in fact
5 it's just going through a telex, making a request, like -- what
6 we have, our teletype system. It is a typed-up request with
7 banking numbers. And it is further on to Canadian Imperial
8 Bank.

9 Q. So whatever money is transferred, even from Bahrain to
10 Canada, is on paper wire transferred?

11 A. It's done by wire system.

12 Q. But, in fact, in Canada, there is money there to be
13 spent; is there not?

14 A. That's correct.

15 Q. And there would have been money to be spent in New York?

16 A. That's correct.

17 MR. KENNEDY: Objection.

18 THE COURT: Sustained.

19 MR. HANKINSON: That is all I have.

20 THE COURT: You may step down.

21 Next witness.

22 MR. HANKINSON: At this time, the government would
23 rest, Your Honor.

24 THE COURT: Good time for you folks to take a coffee
25 break.

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(Jury out.)

THE COURT: Any motions?

MR. KENNEDY: Yes, Your Honor. On behalf of Mr. Knock, pursuant to Federal Rules of Criminal Procedure number 29, we move for judgment of acquittal from the Court on the grounds that a reasonable jury of reasonable people could not, in fact, find one conspiracy or the one conspiracy in each of the three counts beyond a reasonable doubt.

They couldn't find one over-reaching conspiracy here because the government has taken a lot of time and a lot of trouble to prove in fact several separate and distinct conspiracies.

To be -- one, for example, is a Canada-only conspiracy. They have pointed out through their witnesses repeatedly that not only did people abandon and terminate conspiracies, but other people then would start up separate and distinct conspiracies.

As much as the government would like to have this jury believe and this Court believe this was one huge humongous conspiracy, the fact of the matter is that there were six, seven, eight possibly up to ten separate conspiracies.

Submit it, Your Honor.

MR. DAAR: Randall Daar on behalf of Albert Madrid. I would join Mr. Kennedy's motion. I would just mirror his comments.

1 THE COURT: Government wish to be heard?

2 MR. HANKINSON: No, sir, Your Honor.

3 THE COURT: The Court reserves on all of the motions.
4 Where are we going, Mr. Kennedy?

5 MR. KENNEDY: Well, Your Honor, I have one brief
6 witness. And I wanted to inform the Court about events -- it's
7 Mr. Knock's desire for me to call Mr. Randy Darr to the stand.
8 Mr. Randy Daar will say with reference to Defense Exhibit 1,
9 that he sent Defense Exhibit Number 1 to my office after he had
10 received it from a source here in Gainesville.

11 And that, in fact, at the time that he sent it, the
12 two January 14th, 1993 dates, one in the upper left-hand
13 corner, Your Honor, where it says 1/14/93, and above it,
14 written out January 14th, 1993, were already on that exhibit
15 when it was sent to me.

16 THE COURT: Government's position on that?

17 Well, I guess I will ask Mr. Darr. Do you want to
18 testify?

19 MR. DAAR: Yes, Your Honor. I'm prepared to do so,
20 since I did furnish the article as indicated. One correction I
21 would make is I believe I obtained it from either Vacca or
22 Martenyi's lawyers who obtained it from someone in this area.

23 MR. KENNEDY: I stand corrected, Your Honor.

24 THE COURT: Government have a position on this?

25 MR. DAVIES: Your Honor, we oppose that. This is the

1 first we've heard of it. There is case law -- this came up at
2 the Aaron Glasscock trial with Mr. Bernstein. A lawyer cannot
3 be a witness in a case. There is a very narrow exception when
4 this is in the strong interest of justice, it's excusable.
5 This certainly doesn't fall in that very narrow exception which
6 the case law sets out.

7 If Mr. Daar puts himself in this chain of getting
8 evidence instead of using an agent and he has Mr. Oman and
9 other people who work for him, it's highly prejudicial to the
10 government to have a lawyer testifying. I don't have the case
11 law at my fingertips, but I think the case law would support
12 that he is not allowed to testify in the situation that is
13 present in this case.

14 MR. DAAR: Your Honor, just briefly. With respect to
15 Mr. Oman was my intention to offer Mr. Oman to Mr. Kennedy to
16 avoid having a problem. However, I think that -- I don't know
17 if the Court is aware or not, but Mr. Oman is probably having a
18 baby with his wife as we speak. That is why he is not present.
19 That is the only reason he is not present.

20 THE COURT: Other than that witness, Mr. Kennedy, do
21 you have any other witnesses?

22 MR. KENNEDY: I do not, Your Honor.

23 THE COURT: Mr. Knock will not testify?

24 MR. KENNEDY: He will not.

25 MR. HANKINSON: Can I put that screen down, Your

1 Honor?

2 THE COURT: You come up, Mr. Knock.

3 Mr. Knock, you heard Mr. Kennedy state to this Court
4 that you will not be testifying in your own behalf at this
5 trial.

6 Certainly that is a right that you have, and is a
7 right that is personal to you.

8 If you do testify, then you would be subject to
9 cross-examination just like any other witness. If you do not
10 testify, the government cannot allude to that fact, nor can the
11 jury draw any adverse inference from the fact that you did not
12 testify, nor can they consider that in any way in arriving at
13 their verdict on the issue of guilt or innocence.

14 But, if it's your decision not to testify, you cannot
15 come back at some later date in the event the jury's verdict is
16 adverse to you, and present to this court or to any other court
17 any type of a motion or writ stating that you wanted to testify
18 but your lawyer wouldn't let you, and if you had testified the
19 results may have been different. This is your time to say yes
20 or no.

21 THE DEFENDANT: I understand, sir.

22 THE COURT: All right. And after being advised of
23 that, Mr. Knock, is it still your decision not to testify in
24 this proceeding?

25 THE DEFENDANT: That's correct.

1 THE COURT: Thank you, Mr. Knock. Appreciate it.

2 MR. KENNEDY: Thank you, Your Honor.

3 THE COURT: While we are still at a break, can we
4 understand where you are going, Mr. Daar?

5 MR. DAAR: I have a brief witness, Your Honor.

6 THE COURT: Do you have an opening?

7 MR. DAAR: No, Your Honor.

8 THE COURT: You are going to waive your opening?

9 MR. DAAR: Yes, Your Honor.

10 THE COURT: All right.

11 MR. DAAR: Just perhaps to speed the process, I could
12 indicate to the Court that Mr. Madrid is not going to be
13 testifying if the Court wants to voir dire Mr. Madrid.

14 THE COURT: Let me ask the same questions. Thank
15 you. I was going to wait until later. But this is just a good
16 a time.

17 MR. DAAR: I want to leave them waiting as long as
18 possible.

19 THE COURT: Mr. Madrid, you heard Mr. Daar state to
20 the Court that when it comes your time in this case to present
21 evidence, that it's your personal decision not to testify in
22 your own behalf. Is that true, sir?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And you heard me address Mr. Knock. The
25 decision to testify or not testify is one that is personal to a

1 defendant. It cannot be made by a lawyer or any other person.

2 Certainly a lawyer should -- your lawyer should be
3 consulted in arriving at your decision. But, in the end, it's
4 your decision and yours alone to make.

5 If you testify, you would be subject to
6 cross-examination by the government as any other witness. If
7 you elect not to testify, then that fact cannot be considered
8 by the jury in any manner in arriving at their decision as to
9 the issue of guilt or innocence, nor can your failure to
10 testify be alluded to by the government in any manner during
11 the closing arguments.

12 If it's your decision not to testify, and if the jury
13 verdict should be adverse to you, you cannot come back at some
14 later date and raise by motion or any type of a writ the fact
15 that you wanted to testify but you were precluded from doing so
16 because of advice from your lawyer, or he would not let you do
17 so.

18 So knowing that the decision is yours and yours
19 alone, and that if it's your decision not to testify, that can
20 never be a ground for any type of appeal to this or any other
21 court, that is, your failure to testify, do you still elect not
22 to testify in this proceeding?

23 THE DEFENDANT: Your Honor, I wish not to testify.

24 THE COURT: Thank you, Mr. Madrid. Appreciate it.

25 Let's take a little break.

1 THE COURT: I got the final draft of some of those
2 things yesterday. It's not in final form. So I'll need to
3 work on it. Get a draft to you all and then get together a
4 little later this afternoon.

5 MR. HANKINSON: Thank you, Your Honor.

6 THE COURT: Let's take about 15 minutes, folks.

7 (Recess taken.)

8 THE COURT: And be seated, please. Someone wanted to
9 meet.

10 MR. HANKINSON: Yes, sir, Your Honor. I had asked to
11 be heard. Mr. Daar indicates that the witness that is going to
12 be called is Ms. Madrid, the defendant's mother, as I
13 understand it.

14 I would request a proffer be taken of Ms. Madrid. I
15 think it's pretty understandable that -- I'm concerned that
16 it is simply being -- she is simply being called to create a
17 sympathetic figure.

18 Also, I have some concern -- I believe that
19 Ms. Madrid has been in the courtroom during the course of the
20 trial.

21 THE COURT: Mr. Daar.

22 MR. DAAR: Yes, Your Honor. Ms. Madrid was in the
23 courtroom during portions of the trial. I had no intentions of
24 calling her as a witness. However, during the course of the
25 trial, since I did not receive Jencks with respect to

1 Mr. Farina's statements about Ms. Madrid, there was no way that
2 I could have anticipated that he was going to make a claim that
3 Ms. Madrid was going to receive payment as part of this
4 conspiracy.

5 If you recall, Georgio Farina said that Albert Madrid
6 told him to get money from Buxton, deliver to it his mother.
7 And that came up I believe on Friday.

8 Once I realized that Ms. Madrid could be a witness, I
9 have asked her to remain outside of the courtroom which she has
10 done. The government has not proffered any testimony from any
11 of their witnesses. It does not seem fair that I should be
12 forced to do so.

13 THE COURT: Government.

14 MR. HANKINSON: I don't have anything further to
15 argue. If Mr. Daar is representing that is the sole testimony
16 that she would be offering, I don't have objection to those
17 particular questions.

18 I'm just concerned of getting into more simply a
19 testimonial situation or a sympathy situation.

20 THE COURT: All right. Then let's bring the jury in
21 and go to work.

22 MR. DAAR: He can object if he feels I'm trying to
23 elicit sympathy.

24 THE COURT: Well, I'm denying the proffer, because
25 you told me this is all you are going to ask her.

1 MR. DAAR: I did not tell you that, I don't believe.

2 THE COURT: Okay. Tell me what else you are going to
3 ask her.

4 MR. DAAR: That is fair. I just made the point --

5 THE COURT: Just tell me what you are going to ask
6 her.

7 MR. DAAR: The second area is with respect to payment
8 of attorney fees. And I'm going to elicit from her that she
9 hired me to represent her son. She did not receive any cash
10 from any member of the conspiracy to do so.

11 MR. HANKINSON: I object to the relevance of that.

12 Your Honor, what's good for the goose is good for the
13 gander. They've spread attorney fees and money all over this
14 courtroom as an overt act to the conspiracy. Now --

15 THE COURT: Well, then, we are going to find out how
16 much you were paid.

17 MR. DAAR: If he wants to.

18 THE COURT: Where is the source of her money to pay
19 that? And I think we are opening a box here that we don't want
20 to be opening.

21 MR. DAAR: Well, Your Honor, I think -- in order to
22 defend Mr. Madrid, all of those allegations about attorneys and
23 money, I'm prepared to open that box. Mr. Madrid has nothing
24 to hide and I have nothing to hide. I mean, the jury is
25 entitled to know that.

1 MR. HANKINSON: We have not suggested or implied that
2 there was anything improper with Mr. Daar's representation
3 here.

4 And to try to rebut something that hasn't been
5 presented, I think is improper. I don't think it's relevant
6 testimony. And I think it just gets us into something that we
7 don't need to be into.

8 MR. DAAR: The whole issue in this case, Your Honor,
9 is about this over-reaching giant conspiracy. The government
10 has spent quite a bit of time showing how somebody paid
11 Martenyi's and Vacca's fees. They spent quite a bit of time
12 talking about how cash and the conspiracy paid Mr. Kennedy's
13 fees.

14 I think I'm entitled to rebut that. I think it is
15 affirmative evidence of my client's noninvolvement in the
16 conspiracy. If it goes one way, it has to go the other way.

17 THE COURT: Any further by the government?

18 MR. HANKINSON: No, sir.

19 THE COURT: We are not going into the attorney's
20 fees. It's not been made an issue here. The point that I'm
21 going to allow this to go, you know, before a jury, as to her
22 money, her source of her money, and how much she paid, what was
23 the deal, who understood it. That is just too far from the --

24 MR. DAAR: Can I make a further record as to what her
25 testimony would be?

1 THE COURT: Sure.

2 MR. DAAR: I will represent to the Court that if
3 Ms. Madrid were to be asked those questions, she would testify
4 that the attorney fees that I received came from a combination
5 of the twenty-five thousand dollars loan from her sister and
6 money in her pension retirement and savings account.

7 And I would just ask the Court to reconsider its
8 decision. I think that it's a critical bit of information. It
9 is an affirmative defense in existence of the conspiracy. And
10 the government has been allowed to introduce this, and all I'm
11 asking to do is rebut that. I think I'm entitled to do that,
12 Your Honor.

13 THE COURT: You have made your proffer. Denied.

14 MR. HANKINSON: Your Honor, just to avoid any further
15 confusion, since we did have -- any there other areas that you
16 are going to go into with Ms. Madrid?

17 MR. DAAR: No, Your Honor.

18 THE COURT: All right. Let's bring the jury in.
19 Bring Ms. Madrid in.

20 (Jury in.)

21 THE COURT: Be seated folks, please.

22 Mr. Kennedy.

23 MR. KENNEDY: The defense rests, Your Honor.

24 THE COURT: Mr. Daar, do you wish to make an opening
25 statement?

1 MR. DAAR: I do not, Your Honor.

2 THE COURT: Waive opening. Do you have testimony to
3 present?

4 MR. DAAR: I do.

5 THE COURT: Call your witness, please.

6 MR. DAAR: Thank you.

7 Your Honor the defense calls Mercedes Madrid.

8 (Witness sworn.)

9 THE CLERK: Please be seated.

10 And, ma'am, for the record state your full name and
11 spell your last name.

12 THE WITNESS: Mercedes Madrid. M-A-D-R-I-D.

13 DIRECT EXAMINATION

14 BY MR. DAAR:

15 Q. Good afternoon, Ms. Madrid.

16 A. Hello.

17 Q. Can you tell the ladies and gentlemen of the jury your
18 relationship to Albert Madrid?

19 A. He is my son.

20 Q. Do you have any other children?

21 A. Yes. Two more sons.

22 Q. Where do you live?

23 A. In the East Bay.

24 Q. Okay. That is where Albert was raised?

25 A. Yes.

1 Q. In the East Bay in the bay area of California?

2 A. Yes.

3 Q. Are you presently retired?

4 A. Yes.

5 Q. Where did you work before you were retired?

6 A. I worked for 43 years at U.S. Steel. I was hired during
7 the war time in '43, and I retired in 1985.

8 Q. Okay. Were you present in the courtroom when a witness,
9 Georgio Farina, the man with the Italian accent testified?

10 A. Yes.

11 Q. Did you hear him say that he had delivered an envelope of
12 cash -- with cash in it to you in 1993?

13 A. Yeah, I heard that.

14 Q. Did that happen?

15 A. No. I wish it had.

16 Q. Did Georgio Forina ever deliver any money to you at any
17 time?

18 A. No.

19 Q. Is this something you would remember if it happened?

20 A. Of course.

21 MR. DAAR: Thank you, Ms. Madrid. That is all I
22 have.

23 THE COURT: Mr. Kennedy.

24 MR. KENNEDY: No questions, Your Honor.

25 THE COURT: Government.

1 MR. HANKINSON: No questions, Your Honor.

2 THE COURT: Thank you, ma'am. You may step down.

3 If you would call your next witness, please.

4 MR. DAAR: Your Honor, on behalf of Albert Madrid,

5 the defense would rest.

6 THE COURT: Any rebuttal by the government?

7 MR. HANKINSON: No, sir.

8 THE COURT: Ladies and gentlemen, you have now heard
9 all testimony, received all evidence that will be received in
10 this case and based upon which we are going to ask you to
11 consider your verdicts.

12 Before we reach that stage of the proceedings, three
13 things have to first occur: First, I must meet with the
14 lawyers concerning the law on which you will be instructed as
15 being applicable to this case, and which law you must apply to
16 the facts as you find those facts from the evidence.

17 After that, the lawyers get the opportunity to
18 address you and to make their final or closing arguments.
19 Following the closing arguments of the lawyers, I must instruct
20 you -- I actually will read to you the law that is applicable
21 to this case. And again, it's the law that you must apply to
22 the facts as you find the facts from the evidence.

23 I tell you this for several reasons. Just to let you
24 know what is in store for you, and secondly, the lawyers and I
25 will be meeting within the next couple of hours. I have not

1 finalized the instructions that I'm going to present to them.
2 And what we do is I give them a proposed package -- I'll give
3 you some insight of what we do.

4 They give me what they want. We look at it. I make
5 decisions. We finalize them. And then they have a final set
6 of instructions that they know that I'm going to give to you on
7 the law, so that when it's time to argue they can argue those
8 instructions along with their argument on the facts.

9 That is a long way of telling you we are not going to
10 get to that part of the proceedings today, because I don't want
11 to start this and then break it up and send you home, and then
12 finish it tomorrow.

13 So you all are getting a holiday. We are going to
14 let you go home. We are going to start tomorrow morning
15 promptly at 9 o'clock with the closing arguments of the
16 lawyers.

17 It continues to be important that you not discuss
18 this case among yourselves or with anyone or permit them to
19 discuss it in your presence. You should not read, listen to or
20 watch any news accounts of this proceeding, if any there may
21 be, while you are serving on this jury.

22 Certainly you should not do any independent
23 investigation into the law or facts. So, folks, have a good
24 afternoon. I will see you at nine o'clock tomorrow morning.

25 Incidentally, I got the letter from you, or the note

1 from you. I passed it on to the clerk and that will be
2 resolved. There was one individual he may wish to contact
3 personally. I don't know that. But, it has been passed along
4 to the clerk. Thank you.

5 (Jury out.)

6 THE COURT: I would like to tell you, for the record
7 what the note was. We have been paying this jury on a weekly
8 basis. And they have just asked that rather than pay them in
9 person as we've been doing, that if they -- the government will
10 just mail the final check to them, although one of them did I
11 think still want it. So that was just administrative stuff
12 that I passed on to the clerk to handle.

13 So now I'll hear any renewed motions by the defense.

14 MR. KENNEDY: I renew the previously made Rule 29
15 motion for judgment of acquittal, Your Honor, based upon the
16 arguments and lack of evidence as previously suggested.

17 THE COURT: And Mr. Daar?

18 MR. DAAR: I would just renew the various hearsay,
19 co-conspirator exception objections we made at the beginning of
20 trial subject to the proof by the government during trial of
21 the conspiracy, and the fact the statements were in
22 furtherance. I know the Court has made excellent notes.

23 THE COURT: Sure.

24 MR. DAAR: I'll submit that, and I'll join
25 Mr. Kennedy's motion.

1 THE COURT: Thank you. Government wish to respond?

2 MR. HANKINSON: Your Honor, I think the separate
3 conspiracy issue is a jury question. I think it should be
4 submitted to the jury. I'm not sure what Mr. Daar is referring
5 to on the hearsay. I think whatever we offered has been tied
6 up sufficiently for the jury to consider it.

7 THE COURT: I'll take it to be a motion to strike the
8 testimony concerning those folks, and it's denied. The other
9 motions for judgments of acquittal, I continue to reserve on.

10 Anything else now? Okay. I don't have a final
11 packet here. It's 11:10. I've got a one o'clock matter.

12 By two o'clock, I will have the instructions prepared
13 for you. And we'll meet at three. So if you get here
14 somewhere where you can pick up those instructions around two
15 o'clock. Talk to Brian and, you know, and we'll get them to
16 you, maybe before, but at least by two you will have them.
17 Then we'll actually meet at three in chambers.

18 Thank you. You all have a good lunch.

19 You can leave the courtroom as it is. We'll clean it
20 up and I'll do my other stuff in another courtroom.

21 (Recess taken.)

22 (In-Chambers Charging Conference.)

23 THE COURT: Well, let's take it a page at a time here
24 and then we'll -- I know where we will be stopping. Page 1.
25 Any problem? Two? Three? Four? Five? Six? Seven? Eight?

1 Nine? Ten? Eleven?

2 MR. DAAR: I was just going to suggest to the Court
3 that since the indictment is so short that it actually be read.

4 THE COURT: I send it back.

5 MR. DAAR: Okay.

6 THE COURT: I send back copies of the indictment and
7 I send back the written instructions.

8 MR. DAAR: Excellent.

9 THE COURT: I send both of those back. Sorry I
10 didn't tell you all that.

11 MR. KENNEDY: That is fine, Judge.

12 THE COURT: Except I will redact the forfeiture from
13 the indictment. And Brian mentioned that forfeiture was in the
14 one you put in. We've got to take that out if we are going to
15 send it back as an exhibit.

16 MR. HANKINSON: Mr. Davies has typed up one with that
17 removed.

18 MR. KENNEDY: That is the original indictment.

19 THE COURT: Yeah, but it still had the forfeiture in
20 it.

21 MR. KENNEDY: So the original goes in and the
22 superseding is going in?

23 THE COURT: As the charging document?

24 MR. HANKINSON: But the forfeiture language has been
25 taken out of both?

1 MR. DAVIES: No. I have got to substitute the one.

2 MR. KENNEDY: Both of them.

3 THE COURT: We'll take it out of both of them. If
4 there is a conviction, then what we'll do is go back in on the
5 forfeiture part of the trial, and then we'll give them the
6 whole document.

7 MR. KENNEDY: Judge, on page 11, before you leave it,
8 on the AKAs, I do not believe the government proved Michael
9 Phillip Ryan, Mickey Ryan or John Richard Phillips. They
10 definitely proved Patrick Osborne and Charles Melia. So I move
11 to strike those.

12 THE COURT: Government?

13 MR. DAVIES: Are you saying what the indictment
14 charges? I think that is --

15 MR. KENNEDY: Then I move to strike it from the
16 indictment as well, Your Honor.

17 THE COURT: That is denied. 12?

18 MR. DAAR: Yes. I probably anticipated this one,
19 Your Honor. One, I don't know if there is a typo, but on the
20 third line you referred to crime of offense to another crime of
21 offense.

22 THE COURT: It should be -- I see it. Got that.

23 MR. DAAR: And then with respect to the second
24 sentence in the -- that first paragraph, it says so under the
25 law of conspiracy agreement.

1 Criminal purpose. And then the Court goes on to say
2 in which each member becomes the agent or partner of every
3 other member.

4 It didn't seem to me that this language, A, was
5 appropriate in this particular place. B, was not necessary in
6 this place. And, C, should be foreseeable acts, if that was
7 the case.

8 THE COURT: Government?

9 MR. DAVIES: Your Honor this charge is from the 11th
10 Circuit pattern jury instructions, instruction 75.

11 THE COURT: It's verbatim. But his objection is in
12 there.

13 MR. KENNEDY: I join in in reference to
14 foreseeability, if we go down to the next paragraph.

15 THE COURT: That is overruled.

16 MR. KENNEDY: Understood, Your Honor.

17 If we go down to the last sentence of the next
18 paragraph also because the essence of a conspiracy offense is
19 the making of the scheme itself.

20 THE COURT: Uh-huh.

21 MR. KENNEDY: I believe the essence of a conspiracy
22 is not the making of the scheme but is an agreement.

23 I think scheme is the inappropriate word; agreement
24 would be more appropriate.

25 THE COURT: Government?

1 MR. DAVIES: Your Honor, this is the pattern charge
2 number 75, that the 11th Circuit has approved and the Court
3 gives in every case.

4 THE COURT: Yes. Objection is overruled.

5 MR. DAAR: My turn?

6 THE COURT: That is right.

7 MR. DAAR: The third paragraph may also be part of
8 the pattern, but the second sentence of the third paragraph
9 states: So if a defendant has a general understanding of the
10 unlawful purpose of the plan and knowingly and willfully joins
11 in the plan, and then the words I had objected to was: On one
12 occasion.

13 Because I felt the sentence worked without that.
14 Then joins in the plan, that is the sufficient to convict. And
15 I wasn't sure what the "on one occasion" related to? Is that
16 part of the pattern also?

17 THE COURT: Yes.

18 MR. DAAR: Even if it's part of the pattern, I'm
19 having a little trouble, even as an attorney, understanding how
20 that interrelates to the rest of the instructions. Do you
21 understand my -- do you see that?

22 THE COURT: I hear what you are saying.

23 MR. DAAR: Okay.

24 It says if he generally understands the unlawful
25 purpose and willfully joins in, that is sufficient.

1 And so then why does it have to say on one occasion?
2 What -- what aspect of the law does that inform us about?

3 THE COURT: Government want to be heard?

4 MR. DAVIES: It's part of the pattern. There are
5 parts of the pattern that I don't like too, but it has been
6 approved by the 11th Circuit.

7 MR. KENNEDY: I would like to know what Mr. Davies
8 does not like about a pattern instruction, Your Honor.

9 MR. DAVIES: You can take out the last, it would be
10 okay with the government.

11 THE COURT: That is overruled. I deny that.

12 MR. KENNEDY: I join.

13 THE COURT: Surely.

14 MR. KENNEDY: For the record, Your Honor.

15 THE COURT: You can join in every one.

16 MR. DAAR: You deem it cross joined here.

17 MR. KENNEDY: Thank you, sir.

18 THE COURT: Uh-huh.

19 MR. KENNEDY: Judge, next. 14 I have no problem
20 with.

21 THE COURT: Nothing wrong with 13?

22 MR. KENNEDY: Nothing, sir.

23 THE COURT: 14.

24 MR. KENNEDY: On 14, I don't disagree that a
25 conspiracy can in fact be continued, way down at the bottom of

1 the page, Judge, when a defendant flees. But, my understanding
2 of the law is that the defendant has to know that he has, in
3 fact, been indicted or been charged and has fled to avoid that
4 prosecution. There is no reference of that with reference to
5 Mr. Knock at all in this case.

6 As a matter of fact, there is no evidence of flight,
7 let alone that he knowingly fled from an accusatory document.

8 MR. DAAR: With respect to Mr. Madrid, Your Honor, if
9 the Court will recall, the evidence states that Mr. -- I
10 believe that Mr. Madrid failed to appear in Canada in May of
11 '95, which is one year after the statute of limitations period
12 for Mr. Madrid. It's February of '94.

13 So there is no evidence that either Mr. Madrid or
14 Mr. Knock in the record fled during a relevant period of time.
15 And hence this particular part of -- I assume is the pattern
16 instruction, would mislead the jury because it's not relevant
17 to the facts before this jury.

18 There is no issue of extending the statute by flight
19 since there is no evidence of flight during the period of the
20 statute.

21 THE COURT: Government?

22 MR. DAVIES: Your Honor, this is a correct statement
23 of the law. It is not -- this page of the jury instructions is
24 not instructing the jury about extending the statute of
25 limitations, it's instructing the jury about the law as to

1 conspiracy.

2 And the Court's instructing the jury at the bottom of
3 page 14 that a conspiracy continues where a defendant flees the
4 United States and lives off his prior illegal drug proceeds.

5 I think that is a direct and correct statement of the
6 law. That's from the Arnold case that was cited in my memo.

7 MR. DAAR: The first paragraphs do seem to talk about
8 the statute of limitations.

9 THE COURT: Yes. We put the statute of limitations
10 in because that is what you all wanted. Brian came in, I guess
11 today, or maybe it was last night, and told me that he had
12 talked to one of you all and you wanted to add that statute in,
13 that instruction in there.

14 MR. DAAR: Well, Your Honor, if in fact the record is
15 that there is no flight during the period of the statute of
16 limitations, then why would this portion of the instruction be
17 necessary?

18 MR. DAVIES: Your Honor, there is evidence that both
19 defendants fled. And this sets forth that law correctly as to
20 the law of conspiracy at the bottom of page 14. It's a correct
21 statement of the law. The argument he is making is really a
22 jury argument. They can -- there is lots of facts that parties
23 dispute. There is times you will instruct them on money
24 laundering, and they can claim that they didn't launder. They
25 now can argue the evidence isn't there to support it. But, the

1 jury needs to understand what the law is to understand the
2 evidence.

3 THE COURT: I'm going to give it as we have it here.
4 15?

5 MR. KENNEDY: No problem with 15, Your Honor.

6 THE COURT: 16? Do you have a 16?

7 MR. KENNEDY: I'm missing 16.

8 THE COURT: There is one little paragraph.
9 We'll get you one.

10 MR. KENNEDY: No problem with 16, Judge. I guess I
11 just misplaced mine. May we go to 17?

12 THE COURT: 17?

13 MR. KENNEDY: The top sentence.

14 THE COURT: Yes.

15 MR. KENNEDY: With regard to an alleged conspiracy
16 offense, proof of several separate conspiracies may not be
17 proof of some -- the pattern instruction reads: Is not proof
18 of a single. I was wondering why the change was made from is
19 to may?

20 THE COURT: Is he right about that?

21 MR. DAVIES: Yes, sir. There is also a line
22 missing -- if you are done with your objection. There is a
23 line missing from the pattern instruction. The pattern says:
24 With regard to an alleged conspiracy offense, proof of several
25 separate conspiracies is not proof of the single overall

1 conspiracy charged in the indictment. And then it goes to the
2 pattern which is offense instruction 11.3.

3 THE COURT: Unless the one proven is the one charged.

4 MR. DAVIES: Yes, sir.

5 THE COURT: I was wondering where that was. Let's
6 add that in, take that out.

7 What I tried to do was just eliminate that last one
8 by saying: Is not saying, may not be. You know what I'm
9 trying to say? That if we go back and put in, is not proof of
10 a single overall, then we've got to put in the final part,
11 unless the one proved is a conspiracy. We'll add that back in.

12 MR. KENNEDY: Now that I understand what is occurring
13 there, no then may does make more sense to you.

14 THE COURT: We just dropped it out. The last one
15 said, unless the single one that is proved is the one that is
16 alleged in the indictment, or words to that effect. We dropped
17 that down.

18 MR. KENNEDY: I withdraw my objection.

19 THE COURT: It says unless one of the several
20 conspiracies proved is the single conspiracy which the
21 indictment charges. Here is the pattern on that.

22 MR. DAAR: That would be helpful. I'm sorry,
23 just having trouble.

24 THE COURT: All it did was drop that part and change
25 it to may not be proof of the single overall conspiracy.

1 But I can go by the pattern one.

2 MR. DAVIES: We would request the pattern.

3 THE COURT: We'll give the pattern.

4 What about the rest of that page, you all?

5 MR. DAAR: The rest is the pattern?

6 THE COURT: Yes. 18?

7 MR. KENNEDY: Yes, Your Honor. In the middle. I
8 further instruct you that it's illegal for a United States
9 citizen to conspire to possess marijuana to distribute if the
10 intent was to distribute marijuana solely in foreign country.

11 That is the concept of nationality, Your Honor, that
12 we addressed in our brief. I think that is an erroneous
13 statement of the law and we object to that.

14 THE COURT: And you join in, Mr. Daar?

15 MR. DAAR: So join.

16 THE COURT: Did you want to add anything?

17 MR. DAAR: No, Your Honor.

18 THE COURT: Government want to be heard?

19 MR. KENNEDY: Excuse me. This is by the way the very
20 section that the government withdrew from its brief.

21 THE COURT: I understand.

22 Government.

23 MR. HANKINSON: We have some concerns with -- the law
24 is so unclear in that area, we are a little --

25 THE COURT: Do you agree? You want that one out?

1 MR. HANKINSON: Yes, sir.

2 THE COURT: All right.

3 MR. KENNEDY: So, Your Honor, we'll strike beginning
4 with even if -- the whole sentence?

5 THE COURT: The whole sentence.

6 MR. DAAR: Further instruct through a foreign
7 country?

8 THE COURT: Yes. That whole last sentence of that
9 paragraph. Any other objection on that page?

10 MR. KENNEDY: No, sir.

11 THE COURT: Page 19?

12 MR. KENNEDY: No problem, Judge.

13 THE COURT: 20?

14 MR. KENNEDY: Yes, sir. It may not even be my turn.

15 THE COURT: It's your turn.

16 MR. KENNEDY: Count III on 20, where you begin the --
17 the second -- the third full sentence: Money laundering
18 occurs.

19 THE COURT: Uh-huh.

20 MR. KENNEDY: When someone knowingly, et cetera, from
21 or to a place outside of the United States to a place inside
22 the United States. That is actually a variance from the
23 language the grand jury found in the indictment, Your Honor.

24 Because there they say: Combine, conspire, et
25 cetera, with each other, with others, to transport funds from a

1 place in the United States to a place outside of the United
2 States, which activity was to be conducted with the intent to
3 promote --

4 THE COURT: Let's hear the government on that.

5 MR. HANKINSON: I think Mr. Kennedy is correct as to
6 what we've alleged. And I think that we are bound by what we
7 allege. We -- somehow it gets turned around a little bit, and
8 I need to sit down and sort it out, because they have it going
9 the opposite way.

10 But, it's from a place in the United States to a
11 place outside of the United States. So that should be the --
12 it should read, I guess, a monetary instrument to a place
13 outside of the United States from a place inside the United
14 States. Does that sound right?

15 MR. DAAR: So the whole thing will read: Money
16 laundering occurs when someone knowingly transfers or attempts
17 to transfer a monetary instrument from a place inside the
18 United States to a place outside of the United States?

19 MR. HANKINSON: We can just go with what they've got
20 here it will read: To transfer a monetary instrument to a
21 place outside of the United States from a place inside the
22 United States. It is flip-flopped in the indictment, but it's
23 the same meaning.

24 MR. KENNEDY: Would you mind going through that one
25 more time?

1 MR. HANKINSON: To a place outside of the United
2 States from a place within the United States. So basically I
3 have just struck out the first "from or" and then dropped out
4 the "to or" --

5 MR. KENNEDY: That is what I thought you did. Sure.

6 THE COURT: That is satisfactory? I had already
7 rewritten it. Money from a place --

8 MR. HANKINSON: Actually I think it's a little
9 clearer in the indictment, Judge. Where it just says from a
10 place in the United States to a place outside of the United
11 States.

12 MR. KENNEDY: Agree.

13 MR. DAAR: Me too.

14 THE COURT: Okay. We'll change that.

15 21?

16 MR. KENNEDY: 21 is okay, Judge. 22 is okay.

17 MR. DAAR: 22. The venue issue, which goes back to
18 our previous objection. It is all connected. We make the same
19 objection with respect to that. I don't know if in the pattern
20 it's cited automobile and airplane trips.

21 THE COURT: It does in the 11th Circuit.

22 MR. DAAR: Okay.

23 THE COURT: You know, if someone felt expansive one
24 day when they are writing trying to explain it, so everyone
25 picks it up after that.

1 Actually I had one case that was tried here. The
2 only venue was they put on testimony that the plane flew over
3 here. And they had to put in the route the plane flew.

4 MR. KENNEDY: I've had that. Yes, sir.

5 MR. DAAR: That is venue? How about if you are in
6 space?

7 THE COURT: It's just like the land you own. It goes
8 up forever, I guess.

9 Your objections -- unless you have got a more
10 specific objection on 22, I know you object for some reasons
11 and your objection is here and noted.

12 Government want to be heard and add anything more to
13 what we've argued and what we are saying in this instruction?

14 MR. DAVIES: No, sir.

15 MR. KENNEDY: Judge, if there is a pattern 11th
16 Circuit venue instruction, I missed it in my search.

17 THE COURT: This may not be the one. I don't know
18 that there is a pattern.

19 MR. HANKINSON: This is just the one that we've used
20 for many years, so it has essentially become the standard venue
21 instruction that we've given that has been in the 11th Circuit
22 and held on a couple of occasions.

23 THE COURT: Okay. We are to 23.

24 MR. DAAR: Same objection with respect to the first
25 paragraph.

1 THE COURT: Same ruling unless the government wants
2 to add anything further now. Just stand on what you've done
3 and arguments you all have already made to all of this stuff.

4 MR. KENNEDY: I'm sorry, Judge. I -- my associate
5 just gave me something else to read. Forgive me. I missed it.

6 THE COURT: Take your time. We've got plenty of
7 time.

8 MR. KENNEDY: We are on 23 at the top of the page?

9 THE COURT: The whole page, yes.

10 MR. KENNEDY: All right. The -- I do not believe
11 that the evidence supports the conspiracy occurring entirely or
12 almost entirely outside of the United States. Therefore, I
13 object to where the co-conspirators arrest -- now, that maybe
14 redundant to point already made, that I missed. If it is, I
15 just assert it again, Your Honor.

16 THE COURT: Well, the -- I know during opening that
17 is what brought all of a lot of this up.

18 MR. KENNEDY: Indeed.

19 THE COURT: During opening you made reference if they
20 did anything, it was all outside of the United States, nothing
21 inside. And they took great care -- those aren't your words,
22 but you took great care -- they took great care to make sure
23 that they didn't get caught in the United States, because they
24 didn't want to go to jail for life.

25 MR. KENNEDY: Yes. That is the point I make.

1 THE COURT: You all are still protected on all of
2 your arguments, both ways on those. You don't have to
3 reiterate unless the government wants it reiterated.

4 Everyone has written briefs on them. Everyone has
5 talked about them almost ad nauseam.

6 Government have anything now they want to say on 23?

7 MR. DAVIES: No.

8 THE COURT: Mr. Davies, looks a little perplexed.

9 MR. DAVIES: No, Your Honor.

10 THE COURT: 24?

11 MR. KENNEDY: No, sir.

12 THE COURT: 25? 26? Verdict form?

13 This verdict form was drawn -- it may not be the way
14 you all like it. I tried to give you a shot at venue on every
15 issue listed. Do we want to draft it in a more concise way?
16 That is fine. I don't care.

17 MR. KENNEDY: I have never done it that way. I say
18 that is actually --

19 THE COURT: It was actually to make them think about
20 it each time on each count.

21 MR. KENNEDY: I think it's fair. I have no
22 objection.

23 MR. DAAR: No objection, Your Honor.

24 THE COURT: We always give the defendant the first
25 line of being not guilty rather than guilty.

1 MR. DAAR: I have had -- this May -- it seems to
2 imply in May, Your Honor.

3 I don't know if we want to suggest that to them.
4 Perhaps that should be left blank. They might think they are
5 supposed to come back in May.

6 THE COURT: Sometime this year or this month.

7 MR. DAAR: This is 2000.

8 THE COURT: I hear you.

9 Any additional ones that you all are asking for that
10 we -- the ones you have given us, I got your latest one at
11 lunch time. But it had already been incorporated in this, in
12 some way. So it's in here, maybe not in the language that you
13 asked for, but I saw it in here. Any additional, Mr. Kennedy?

14 MR. KENNEDY: No Your Honor.

15 MR. DAAR: No, Your Honor.

16 THE COURT: Government?

17 MR. HANKINSON: No, sir, Your Honor.

18 THE COURT: What are we going to do about talking.

19 How long?

20 MR. HANKINSON: Try to finish before the jury does.
21 You try to finish before they finish.

22 I would like to have between -- my two arguments --
23 have three hours.

24 THE COURT: I figured that.

25 MR. HANKINSON: I hope to do a little shorter than

1 that. Two and one, or two and a half and a half.

2 THE COURT: What we'll probably -- how long do you
3 all think you will take?

4 MR. KENNEDY: Judge, I have --

5 THE COURT: You can have as much time as they have.
6 But --

7 MR. KENNEDY: I do not know the length of time. I
8 have never gone over an hour. If I did go 70 minutes, that is
9 I suppose possible but not likely. Most likely an hour.

10 MR. DAAR: I'm probably somewhere between an hour and
11 two.

12 THE COURT: Why don't we say three for the
13 government, two for each of you. Because they have two ends.
14 That is their total, three.

15 And if we all took all of that, we don't get to a
16 jury until Thursday, but that is all right, too.

17 MR. HANKINSON: I hope that I'll be quicker than
18 that. But I know Mr. Kirwin's last trial --

19 THE COURT: What we'll do tomorrow is somewhere
20 around the lunch hour we'll break for lunch. But I won't send
21 them to lunch. We'll just feed them here. So you all might
22 want to make plans to get you a sandwich brought in or I'll
23 try, if the government takes two hours, and you do an hour, an
24 hour and a half, that would be a good break point.

25 We'll just have to see how they are going. We don't

1 know how smoothly they run.

2 Anything else? All right. We'll start at nine. And
3 we'll just go from there. And if we can reasonably send it to
4 the jury tomorrow night or tomorrow afternoon, we will.

5 I have already started setting hearings for Thursday.
6 That is good. You all have a good evening.

7 MR. HANKINSON: I did want to just double check one
8 thing on the schedule. I know that we were planning to -- to
9 not meet Friday.

10 MR. KENNEDY: I have still got those doctor's
11 appointments. What if the jury is deliberating?

12 THE COURT: I would -- and I'm glad you brought that
13 up. Maybe someone could sit in for you if you -- I don't think
14 we'll still be here, but you never know.

15 MR. KENNEDY: You never know.

16 THE COURT: If you have to go.

17 MR. KENNEDY: Let me speak to -- I do have to go,
18 Your Honor.

19 THE COURT: Talk to Mr. Knock.

20 MR. KENNEDY: I'll speak to Mr. Knock about it and
21 see what we can accomplish.

22 THE COURT: That is good.

23 MR. DAAR: While we are waiting for the jury, do you
24 allow us to leave?

25 THE COURT: Sure. As long as you can get here in a

1 reasonable time.

2 MR. DAAR: As long as I don't go to church.

3 THE COURT: Have a good night. See you in the
4 morning.

5 (Court stood adjourned.)

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C E R T I F I C A T E

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3 STATE OF FLORIDA)
4 COUNTY OF ALACHUA)
5


6 I, Mark N. Stuart, RPR, United States Court Reporter
7 in Gainesville, Florida, do hereby certify as follows:

8 THAT I correctly reported in computer-aided machine
9 shorthand the foregoing transcript of proceedings at the time
10 and place stated in the caption thereof;

11 THAT I later reduced my shorthand notes to
12 computer-aided transcription, or under my supervision, and that
13 the foregoing pages numbered 1 through 80, both inclusive,
14 contain a full, true and correct transcript of the proceedings
15 on said occasion;

16 THAT I am neither of kin nor of counsel to any party
17 involved in this matter, nor in any manner interested in the
18 results thereof.

19 DATED THIS 1st DAY OF June, 2001.
20
21

22 
23 _____
24 Mark N. Stuart, RPR
25 United States Court Reporter