

DOCKETED

NOV 21 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 JUAN FRANCISCO CORRAL,)
 also known as "Orco";)
 RAPHAEL PENA,)
 also known as "Flaco";)
 JOSE AGUIRRE,)
 also known as "Mono";)
 ABRAHAM ESTREMER,)
 also known as "A-Town";)
 JOSE OLIVA,)
 also known as "Lil Pepe,")
 "Shortneck," and "Neck";)
 ALVARO CHAVEZ,)
 JOSE X. HERNANDEZ,)
 also known as "Fang";)
 STEVE LISCANO,)
 also known as "Trig";)
 DAVID BUSTAMANTE,)
 also known as "Demon";)
 MIGUEL BUSTAMANTE, and)
 JOHN GONZALEZ,)
 also known as "Johnny O")
)

JUDGE HOLDERMAN
 No. 02 CR 719
 Violations: Title 21, United States
 Code, Sections 841(a)(1), 843(b), and
 846; Title 18, United States Code,
 Sections 922(g) and 924(c) and 2

MAGISTRATE JUDGE SIDNEY I. SCHENKIER

FILED
 NOV 20 2002
 NOV 20 2002
 MICHAEL W. DOBBINS
 CLERK, U. S. DISTRICT COURT

COUNT ONE

The SPECIAL SEPTEMBER 2002 GRAND JURY charges:

1. Beginning on a date unknown to the Grand Jury but not later than in or about June of 2000, and continuing until on or about October 23, 2002, at Aurora, in the Northern District of Illinois, Eastern Division, and elsewhere:

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JUAN FRANCISCO CORRAL,
also known as "Orco";
RAPHAEL PENA,
also known as "Flaco";
JOSE AGUIRRE,
also known as "Mono";
ABRAHAM ESTREMERERA,
also known as "A-Town";
JOSE OLIVA,
also known as "Lil Pepe," "Shortneck," and "Neck";
ALVARO CHAVEZ;
JOSE X. HERNANDEZ,
also known as "Fang";
STEVE LISCANO,
also known as "Trig";
DAVID BUSTAMANTE,
also known as "Demon";
MIGUEL BUSTAMANTE, and
JOHN GONZALEZ,
also known as "Johnny O"

defendants herein, did conspire and agree with each other, and with unindicted co-conspirators Robert Ranjel and Jose Martinez, and others known and unknown to the Grand Jury, to knowingly and intentionally possess with intent to distribute and to distribute controlled substances, namely, in excess of 5 kilograms of mixtures and substances containing cocaine, a Schedule II Narcotic Drug Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. It was part of the conspiracy that defendant JUAN FRANCISCO CORRAL supplied cocaine to members of the AURORA LATIN KINGS STREET GANG who sold cocaine to customers in various parts of Aurora, Illinois, and elsewhere.

3. It was further part of the conspiracy that all named defendants in this Indictment used their membership in, and affiliation with, the AURORA LATIN KINGS STREET GANG to obtain and distribute cocaine in Aurora.

4. It was further part of the conspiracy that defendants conspired to store, package and distribute the cocaine. AURORA LATIN KINGS STREET GANG members also collected, counted and stored the cash proceeds of the drug trafficking at various locations in and around Aurora.

5. It was further part of the conspiracy that on numerous occasions, defendant JUAN CORRAL obtained amounts of cocaine from others, including defendant ALVARO CHAVEZ.

6. It was further part of the conspiracy that defendants, including defendants JUAN CORRAL, RAPHAEL PENA, ABRAHAMESTREMER, JOSE X. HERNANDEZ, JOSE OLIVA, and MIGUEL BUSTAMANTE kept firearms for purposes of protection during drug dealing activities as well as protection of the storage of narcotics and proceeds of narcotics distribution.

7. It was further part of the conspiracy that on numerous occasions, all named defendants and co-conspirators called to or from cellular telephones and land-line telephones, to facilitate their drug transactions.

8. It was further part of the conspiracy that the named defendants and other co-conspirators would and did conceal and hide, and cause to be concealed and hidden, the purposes of the acts done in furtherance of the conspiracy, and would and did use coded language, surveillance and counter-surveillance techniques, and other means to avoid detection and apprehension by law enforcement authorities and otherwise to provide security to the members of the conspiracy;

All in violation of Title 21, United States Code, Section 846 and Title 18, United States Code, Section 2.

COUNT TWO

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

In or about April, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

JOSE OLIVA,
also known as "Lil Pepe," "Shortneck," and "Neck,"

defendant herein, did knowingly and intentionally possess with intent to distribute a controlled substance, namely mixtures and substances containing cocaine, a Schedule II Narcotic Drug
Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

In or about April, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

DAVID BUSTAMANTE,
also known as "Demon,"

defendant herein, did knowingly and intentionally possess with intent to distribute a controlled substance, namely mixtures and substances containing cocaine, a Schedule II Narcotic Drug Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT FOUR

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about May 9, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

JOHN GONZALEZ,
also known as "Johnny O,"

defendant herein, did knowingly and intentionally possess with intent to distribute a controlled substance, namely mixtures and substances containing cocaine, a Schedule II Narcotic Drug Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT FIVE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about June 19, 2002, at Chicago, in the Northern District of Illinois, Eastern Division,

JUAN CORRAL,
also known as "Orco" and
ALVARO CHAVEZ,

defendants herein, knowingly and intentionally used and caused to be used a communication facility, namely, a telephone, in committing and in causing and facilitating the commission of a felony violation of Title 21, United States Code, Section 841(a)(1), possession with intent to distribute and to distribute a controlled substance, namely mixtures and substances containing cocaine; that is, defendant JUAN CORRAL and defendant ALVARO CHAVEZ used a telephone to discuss a deal in which CHAVEZ would act as a middleman for the sale of 50 kilograms of cocaine to CORRAL to be supplied by an unnamed individual;

In violation of Title 21, United States Code, Section 843(b), and Title 18, United States Code, Section 2.

COUNT SIX

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about June 23, 2002, at Chicago, in the Northern District of Illinois, Eastern Division,

JUAN CORRAL,
also known as "Orco" and
ALVARO CHAVEZ,

defendants herein, knowingly and intentionally used and caused to be used a communication facility, namely, a telephone, in committing and in causing and facilitating the commission of a felony violation of Title 21, United States Code, Section 841(a)(1), possession with intent to distribute and to distribute a controlled substance, namely mixtures and substances containing cocaine; that is, defendant JUAN CORRAL and defendant ALVARO CHAVEZ used a telephone to discuss obtaining 50 kilograms of cocaine from an unnamed individual;

In violation of Title 21, United States Code, Section 843(b), and Title 18, United States Code, Section 2.

COUNT SEVEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about June 24, 2002, at Chicago, in the Northern District of Illinois, Eastern Division,

JUAN CORRAL,
also known as "Orco" and
ALVARO CHAVEZ,

defendants herein, knowingly and intentionally used and caused to be used a communication facility, namely, a telephone, in committing and in causing and facilitating the commission of a felony violation of Title 21, United States Code, Section 841(a)(1), possession with intent to distribute and to distribute a controlled substance, namely mixtures and substances containing cocaine; that is, defendant JUAN CORRAL and defendant ALVARO CHAVEZ used a telephone to discuss counting the 50 kilograms of cocaine that CORRAL and CHAVEZ had just picked up from an unnamed individual;

In violation of Title 21, United States Code, Section 843(b), and Title 18, United States Code, Section 2.

COUNT EIGHT

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

In or about June, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

JUAN FRANCISCO CORRAL,
also known as "Orco,"

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one Glock Model M-19, 9mm semi-automatic pistol, bearing serial number SX086;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT NINE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about July 24, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

JOSE X. HERNANDEZ,
also known as "Fang,"

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one Glock, Model 22, .40 caliber semi-automatic pistol, bearing serial number CPT592US;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT TEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about July 24, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

JOSE OLIVA,
also known as "Lil Pepe," "Shortneck," and "Neck,"

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one Ruger, Model P95DC, 9 mm semi-automatic pistol, bearing serial number 313-13535;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT ELEVEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about July 24, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

ABRAHAM ESTREMER,
also known as "A-Town,"

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one H&K Model B/S .45 caliber semi-automatic pistol bearing serial number 29-021620 and one Marlin .30-30 caliber rifle, bearing serial number 07032936;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT TWELVE

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about July 24, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

RAPHAEL PENA,
also known as "Flaco,"

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one Beretta Model 92F, 9 mm semi-automatic pistol, bearing serial number BER004094;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT THIRTEEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about October 23, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

MIGUEL BUSTAMANTE,

defendant herein, did knowingly and intentionally possess with intent to distribute a controlled substance, namely, mixtures and substances containing cocaine, a Schedule II Narcotic Drug Controlled Substance;

In violation of Title 21, United States Code, Section 841(a)(1).

COUNT FOURTEEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about October 23, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

MIGUEL BUSTAMANTE,

defendant herein, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in that the firearm had traveled in interstate commerce prior to defendant's possession of the firearm, namely one Smith & Wesson Model 910, 9 mm semi-automatic pistol, bearing serial number VJN0060;

In violation of Title 18, United States Code, Section 922(g)(1).

COUNT FIFTEEN

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

On or about October 23, 2002, at Aurora, in the Northern District of Illinois, Eastern Division,

MIGUEL BUSTAMANTE,

defendant herein, during and in relation to the commission of a drug trafficking crime, which crime may be prosecuted in a court of the United States, namely possession of cocaine with the intent to distribute, in violation of Title 21, United States Code, Section 841(a)(1), as more fully described in Count Thirteen of this Indictment, used and carried a firearm, and possessed a firearm in furtherance of the drug trafficking crime;

In violation of Title 18, United States Code, Section 924(c)(1)(A).

FORFEITURE ALLEGATION

The SPECIAL SEPTEMBER 2002 GRAND JURY further charges:

1. The allegations of Counts One through Count Fifteen of this Indictment are realleged and incorporated herein by reference for the purpose of alleging that certain property is subject to forfeiture to the United States, pursuant to the provisions of Title 21, United States Code, Section 853.

2. As a result of their violations of Title 21, United States Code, Sections 841 and 846, as alleged in the foregoing Indictment,

JUAN FRANCISCO CORRAL,
also known as "Orco";
RAPHAEL PENA,
also known as "Flaco";
JOSE AGUIRRE,
also known as "Mono";
ABRAHAM ESTREMER, A,
also known as "A-Town";
JOSE OLIVA,
also known as "Lil Pepe," "Shortneck," and "Neck";
ALVARO CHAVEZ;
JOSE X. HERNANDEZ,
also known as "Fang";
STEVE LISCANO,
also known as "Trig";
DAVID BUSTAMANTE,
also known as "Demon";
MIGUEL BUSTAMANTE, and
JOHN GONZALEZ,
also known as "Johnny O"

defendants herein, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853(a)(1) and (2): (1) any and all property constituting or derived from, any proceeds they obtained, directly or indirectly, as a result of the violations; and (2) any and all of property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the violations.

3. The interests of the defendants, jointly and severally, subject to forfeiture to the United States pursuant to Title 21, United States Code, Section 853, include, but are not limited to: approximately \$ 1,500,000 ; miscellaneous jewelry; and various firearms.

4. If any of the property described above as being subject to forfeiture pursuant to Title 21, United States Code, Section 853(a), as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, sold to, or deposited with a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value;
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States to seek forfeiture of substitute property belonging to defendants under the provisions of Title 21, United States Code, Section 853(p).

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL:


FOREPERSON


UNITED STATES ATTORNEY

No. 02 CR 719

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JUAN FRANCISCO CORRAL, also known as "Orco";
RAPHAEL PENA, also known as "Flaco";
JOSE AGUIRRE, also known as "Mono";
ABRAHAM ESTREMER, also known as "A-Town";
JOSE OLIVA, also known as "Lil Pepe," "Shortneck,"
and "Neck";
ALVARO CHAVEZ;
JOSE X. HERNANDEZ, also known as "Fang";
STEVE LISCANO, also known as "Trig";
DAVID BUSTAMANTE, also known as "Demon";
MIGUEL BUSTAMANTE and
JOHN GONZALEZ, also known as "Johnny O"

I N D I C T M E N T

VIOLATIONS: Title 21, United States Code,
Sections 841(a)(1), 843(b) and 846;
Title 18, United States Code,
Sections 922(g) and 924(c) and 2

A true bill,

David C. Stephens
Foreman

Filed in open court this 20th day of November, A.D. 2002

David C. Stephens
Michael W. Robbins
Clerk

Bail, \$ _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)

v.)

STEVE LISCANO)

DOCKETED
MAY 22 2003

No. 02 CR 719-16
Judge James F. Holderman

FILED
MAY 21 2003
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

INFORMATION AND NOTICE OF PRIOR CONVICTIONS

The United States of America, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, hereby gives notice of its intention to seek and defendant's eligibility for an enhancement of sentence in this cause pursuant to Title 21, United States Code, Section 851. The United States submits that the defendant shall be sentenced to increased punishment by reason of the following prior convictions:

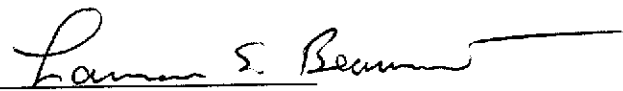
1. The defendant was convicted of Possession of a Controlled Substance in the Kane County Circuit Court on or about July 31, 1995 and sentenced to two years imprisonment;
2. The defendant was convicted of Possession of Cannabis in the Kane County Circuit Court on or about September 15, 1995 and sentenced to fines and costs.
3. The defendant was convicted of Possession of a Controlled Substance in the Kane County Circuit Court on or about June 20, 2001 and was sentenced to eighteen months

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imprisonment.

Respectfully submitted,

Patrick J. Fitzgerald
United States Attorney

By 

Lawrence S. Beaumont
Assistant United States Attorney
219 South Dearborn Street
Room 500
Chicago, Illinois 60604
(312) 353-4280

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF MAILING

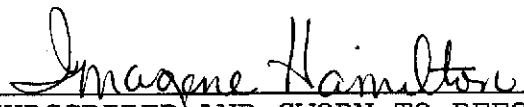
Imagene Hamilton, being first duly sworn on oath, deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois, that on the 21st day of May, 2003, she placed a copy of:

INFORMATION AND NOTICE OF PRIOR CONVICTIONS

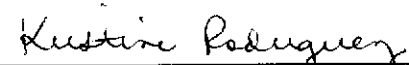
in a Government franked envelope addressed to the following named individual(s), and deposited envelope(s) in the United States mail chute, located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 3:30 p.m.

**ROBERT A. LOEB
221 North LaSalle Street
Suite 1938
Chicago, IL 60601**

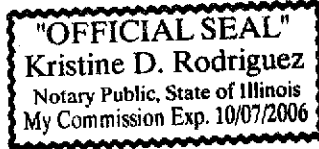
VIA FAX NO. (312) 606-9133 and CERTIFIED MAIL



SUBSCRIBED AND SWORN TO BEFORE ME
this 21st of May, 2003.



NOTARY PUBLIC



**United States District Court
Northern District of Illinois**

UNITED STATES OF AMERICA)
)
 v.)
)
Steve Liscano)

Case Number: 02-CR-719-16
Judge: James F. Holderman

Robert A. Loeb, Defendant's Attorney
Lawrence Beaumont, AUSA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

THERE WAS A:

jury verdict of guilty as to count 1 of the indictment.

THE DEFENDANT IS CONVICTED OF THE OFFENSES(S) OF:

<u>Title & Section</u>	<u>Description of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. §846	Conspiracy to possess with intent to distribute cocaine	October 23, 2002	1

The defendant is sentenced as provided in the following pages of this judgment.

Steve Liscano
02 CR 719-16

Page 2 of 6

IMPRISONMENT

IT IS THE JUDGMENT OF THIS COURT THAT:

the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **life**.

The Court recommends that the defendant be incarcerated at the closest prison facility to Chicago that is closest to his designation.

SUPERVISED RELEASE

The life term does not allow for supervised release, but in the event that the defendant is allowed to be released, the period of supervised release will be for five (5) years on Count 1.

If released, the defendant shall report immediately to the probation office in the district in which the defendant is to be supervised, but no later than seventy-two hours after sentencing. In addition, see the attached page(s) defining the mandatory, standard and discretionary conditions of probation that apply in this case.

Steve Liscano
02 CR 719-16

Page 3 of 6

MANDATORY CONDITIONS OF SUPERVISED RELEASE
(As set forth in 18 U.S.C. § 3583 and U.S.S.G. § 5D1.3)

- 1) For any offense, the defendant shall not commit another federal, state or local crime;
- 2) for any offense, the defendant shall not unlawfully possess a controlled substance;
- 3) for offenses committed on or after September 13, 1994, the defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter for use of a controlled substance as determined by the court;
- 4) for a domestic violence crime committed on or after September 13, 1994, as defined in 18 U.S.C. § 3561(b) by a defendant convicted of such an offense for the first time, the defendant shall attend a rehabilitation program in accordance with 18 U.S.C. § 3583(d);
- 5) for a defendant classified as a sex offender pursuant to 18 U.S.C. § 4042(c)(4), the defendant shall comply with the reporting and registration requirements set forth in 18 U.S.C. § 3583(d);
- 6) the defendant shall cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 and the Justice for All Act of 2004; and
- 7) The defendant shall pay any balance on the special assessment, restitution and/or fine imposed against the defendant.

STANDARD CONDITIONS OF SUPERVISED RELEASE

- 1) For any felony or other offense, the defendant shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer (travel outside the continental United States requires court authorization);
- 3) the defendant shall report to the probation officer as directed by the court or the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall provide to the probation officer access to any requested financial information including, but not limited to, tax returns, bank statements, credit card statements, credit applications, etc.;
- 6) the defendant shall support his or her dependents and meet other family responsibilities;
- 7) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 8) the defendant shall notify the probation officer ten (10) days prior to any change in residence or employment;
- 9) the defendant shall refrain from excessive use of alcohol;
- 10) the defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as requested by the probation officer to determine the use of any controlled substance;
- 11) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 12) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted

Steve Liscano
02 CR 719-16

Page 4 of 6

of a felony unless granted permission to do so by the probation officer;

- 13) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 14) the defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- 15) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 16) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 17) if this judgment imposes a special assessment, restitution or a fine, it shall be a condition of probation or supervised release that the defendant pay any such special assessment, restitution or fine in accordance with the court's order set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall participate in a drug aftercare program approved by the probation officer, which may include residential program for treatment of a narcotic addiction or drug or alcohol dependency and/or testing for detection of substance use or abuse.

Steve Liscano
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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the "Schedule of Payments." Unless waived, the defendant shall pay interest on any restitution and/or fine of more than \$2,500, unless the restitution and/or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). The payment options may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

<u>Total Assessment(s)</u>	Total Fine	Restitution	<u>Mandatory Costs of Prosecution</u>
\$100.00	\$25,000	Not applicable	\$

The defendant shall notify the United States Attorney's Office having jurisdiction over the defendant within thirty days of any change of name, residence or mailing address until all special assessments, restitution, fines, and costs imposed by this judgment are fully paid.

The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the fine.

SCHEDULE OF PAYMENTS

- Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs. If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment.
- All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate financial Responsibility Program, are to be by money order or certified check payable to the Clerk of the Court, U.S. District Court, unless otherwise directed by the Court.
- Unless waived, the defendant shall pay interest on any fine and/or restitution of more than \$2,500, unless the same is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). Payment options included herein may be subject to penalties of default and delinquency pursuant to 18 U.S.C. § 3612(g).
- Pursuant to 18 U.S.C. §§ 3613(b) and ©) and 3664(m), restitution and/or fine obligations extend for twenty years after release from imprisonment, or from the date of entry of judgment if not sentenced to a period of imprisonment.

Payment of the total criminal monetary penalties shall be due as follows:

The special assessment amount of \$100.00 is due immediately and shall be paid in full.

With regard to the fine amount of \$25,000.00, the defendant shall pay \$500.00 per year from the funds received by participation in the Inmate Financial Responsibility Program allowed at the Bureau of Prisons facilities.

Pursuant to 18 U.S.C. § 3664(k) the defendant must notify the court of any material changes in the defendant's economic circumstances. Upon such notice, the court may adjust the installment payment schedule.

Pursuant to 18 U.S.C. § 3664(n), if a person is obligated to provide restitution, or pay a fine, received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

Steve Liscano
02 CR 719-16

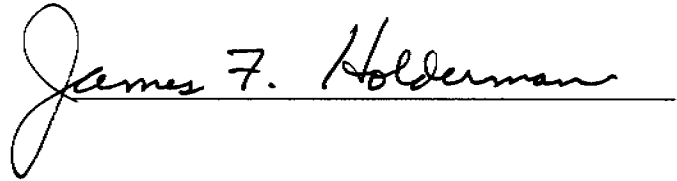
Page 6 of 6

FORFEITURE

Forfeiture is ordered as provided in the attached preliminary order of forfeiture.

The defendant is immediately remanded to the custody of the United States Marshal.

Date of Imposition of Judgment/Sentencing: November 29, 2005

A handwritten signature in cursive script that reads "James F. Holderman". The signature is written in black ink and is positioned above a horizontal line.

JAMES F. HOLDERMAN
UNITED STATES DISTRICT JUDGE

Dated at Chicago, Illinois this 28th day of December, 2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 02 CR 719-16
)	
STEVE LISCANO)	Judge James F. Holderman

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 21, United States Code, Section 853(a)(1) and (2), and Fed. R. Crim. P. 32.2, and the Court being fully informed hereby finds as follows:

(a) On November 20, 2002, an indictment was returned charging defendant STEVE LISCANO ("LISCANO"), and others with violations of the Controlled Substances Act pursuant to the provisions of 21 U.S.C. §§ 841 and 846, among other violations;

(b) The indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 853(a)(1) and (2);

(c) Beginning on June 6, 2003, a jury trial was held before this Court;

(d) On June 17, 2003, a verdict of guilty was returned against defendant LISCANO on several counts of the indictment, including Count One, thereby making certain property subject to forfeiture pursuant to 21 U.S.C. § 853;

(e) Furthermore, on June 17, 2002, upon consideration of the forfeiture allegations in the indictment, the jury returned a special forfeiture verdict finding funds in the amount of \$13,738.25 and \$1,737.00 subject to forfeiture pursuant to the provisions of 21 U.S.C. § 853(a)(1) and (2),

which funds represent proceeds that defendant LISCANO obtained, directly or indirectly, as a result of his violations of narcotics activities and funds further represents property used or intended to be used, in any manner, to facilitate the commission of his narcotics activities;

(f) Accordingly, the United States seeks forfeiture of all right, title, and interest that defendant LISCANO may have in funds in the amount of \$13,738.25 and \$1,737.00, so that the funds may be disposed of according to law;

(g) The United States requests that terms and conditions of the preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant LISCANO and included in any judgment and commitment order entered in this case against him;

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. That, pursuant to the provisions of 21 U.S.C. § 853(a)(1) and (2) and Fed. R. Crim. P. 32.2, all right, title and interest of defendant LISCANO in funds in the amounts of \$13,738.25 and \$1,737.00 are hereby forfeited to the United States of America for disposition according to law;

2. That, pursuant to the provisions of 21 U.S.C. § 853(g), upon entry of this preliminary order of forfeiture, the United States Marshal shall seize and take custody of the property for disposition as the Attorney General may direct;

3. That, pursuant to the provisions of 21 U.S.C. § 853(n)(1), upon entry of this preliminary order of forfeiture, the United States shall publish notice of this order and of its intent to dispose of the property according to law. The government may also, to the extent practicable, pursuant to statute, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the preliminary order of forfeiture as a substitute for published notice as to those persons so notified. The government is unaware, at this time, of anyone who

qualifies for such notice;

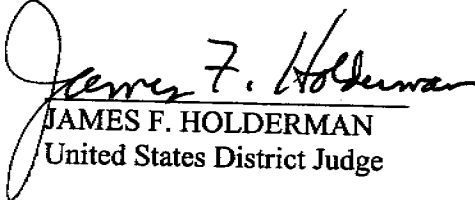
4. That, pursuant to the provisions of 21 U.S.C. § 853(n)(2), any person other than the defendant, asserting a legal claim in the property which has been ordered forfeited to the United States may, within thirty days of the final publication of notice or this receipt of notice under paragraph three (3) whichever is earlier, petition this Court for a hearing to adjudicate the validity of this alleged interest in the property. The hearing shall be held before the Court alone, without a jury;

5. That, following the Court's disposition of all third party interests, the Court shall, if appropriate, enter a final order of forfeiture as to the property which is the subject of this preliminary order of forfeiture, which shall vest clear title in the United States of America;

6. That, terms and conditions of this preliminary order of forfeiture are part of the sentence imposed against defendant LISCANO and shall be made part of any judgment and commitment order entered in this case against him;

7. That, this Court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.

DATED: 11/30/05


JAMES F. HOLDERMAN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3	UNITED STATES OF AMERICA,)	
4	vs)	Docket No. 02 CR 719-11
)	02 CR 719-16
5	ABRAHAM ESTREMER and)	Chicago, Illinois
6	STEVE LISCANO,)	October 28, 2003
)	2:30 p.m.
7	Defendants)	
8)	

TRANSCRIPT OF PROCEEDINGS - SENTENCING
BEFORE THE HONORABLE JAMES F. HOLDERMAN

PRESENT:

For the Government: LAWRENCE S. BEAUMONT
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

For Defendant Estremera: DONALD V. YOUNG
Donald V. Young & Associates
20 North Clark Street
Suite 1725
Chicago, Illinois 60602

For Defendant Liscano: ROBERT A. LOEB
190 South LaSalle Street
Suite 520
Chicago, Illinois 60603-3410

Court Reporter: Lois A. LaCorte
219 South Dearborn
Chicago, Illinois 60604
(312) 435-5558

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1 THE CLERK: 02 CR 719, United States v Estremera and
2 Liscano.

3 MR. BEAUMONT: Larry Beaumont on behalf of the United
4 States.

5 MR. YOUNG: Good afternoon, your Honor, Donald Young
6 for Abraham Estremera, who is present.

7 THE COURT: Feels like the afternoon, but it still is
8 morning. Good morning.

9 MR. LOEB: Good morning, Judge, I'm Robert Loeb on
10 behalf of Steve Liscano, who likewise is present.

11 MS. BROWN: Good morning, your Honor, Danielle Brown on
12 behalf of Probation.

13 MR. FRIES: Good morning, Judge, Zachary Fries with
14 Probation.

15 THE COURT: Good morning to all of you. Let me just
16 ask -- Mr. Liscano, good morning.

17 DEFENDANT LISCANO: Good morning, your Honor.

18 THE COURT: And Mr. Estremera, good morning.

19 DEFENDANT ESTREMERERA: Good morning, your Honor.

20 THE COURT: Now -- well, let me ask Mr. Estremera and
21 Mr. Liscano, have you had an opportunity to review the
22 presentence investigation report? Mr. Estremera?

23 DEFENDANT ESTREMERERA: Your Honor, I have had a chance
24 to review it and there are still some things on there that I
25 object to.

1 THE COURT: We are going to get to your objections. My
2 question is have you had a chance to review it?

3 DEFENDANT ESTREMER: Yes, yes, I have.

4 THE COURT: Mr. Liscano, have you had an opportunity to
5 review your presentence report?

6 DEFENDANT LISCANO: Yes, your Honor, but not quite the
7 way that I expected to nor wanted to.

8 THE COURT: why is that?

9 DEFENDANT LISCANO: well, there are several things on
10 there that I'm hoping would be brought up, but I'm not sure
11 whether or not they are planned to.

12 THE COURT: Okay. well, let me ask you, have you had a
13 chance, sufficient chance to review the presentence investigation
14 report such that you can tell your lawyer -- tell your lawyer the
15 things that you think ought to be changed?

16 DEFENDANT LISCANO: Your Honor, I have written them on
17 paper for a motion for you if I could please give it to you if
18 possible.

19 THE COURT: Okay. Do you have a copy?

20 DEFENDANT LISCANO: Yes, sir.

21 THE COURT: why don't you give it to me. But before you
22 do that, why don't you -- you can get it and show it to your
23 lawyer.

24 Mr. Estremera, you said you had had a chance to review
25 your presentence investigation report, but there were some things

1 you thought ought to be changed or modified, and that was my next
2 question, what items should be changed or modified.

3 DEFENDANT ESTREMER: Mr. Young said he was going to
4 come visit me so I could advise him of what it was, but he didn't
5 make it so I'm assuming I can tell him right now and he will go
6 about it and do it in the proper manner.

7 MR. YOUNG: Well, your Honor, we met on Friday, which
8 was not the first time we have reviewed it, so...

9 THE COURT: Okay. Well, if you need some more time to
10 review it, you need some more time to review it and talk to your
11 lawyer. I'll allow you to do that.

12 How much time do you need, Mr. Estremera?

13 DEFENDANT ESTREMER: I already have it written down,
14 your Honor, so all he has to really do is look at the other
15 issues that I was talking about.

16 THE COURT: That wasn't my question. My question
17 wasn't what are you going to be doing when you talk with your
18 lawyer, my question is how much time do you need? I'm asking you
19 to estimate the amount of time you think it's going to take.

20 DEFENDANT ESTREMER: I would say about half an hour.

21 THE COURT: All right. And Mr. Loeb, you have now had a
22 chance to receive from Mr. Liscano whatever the written thing was
23 that Mr. Liscano prepared for you, is that correct?

24 MR. LOEB: Yes, I have had a chance to look at it.

25 THE COURT: All right. How much time do you need to

1 talk to Mr. Liscano about these items?

2 MR. LOEB: I can tell you that I need about ten
3 minutes. I'm not sure how much time he needs.

4 THE COURT: well, let's give Mr. Liscano the same half
5 an hour.

6 well, no, Mr. Liscano, what do you think, how much time
7 do you need to talk to Mr. Loeb about those items?

8 DEFENDANT LISCANO: I was hoping that I would have more
9 time than ten minutes to look over it.

10 THE COURT: That wasn't my question. My question
11 wasn't how much time --

12 DEFENDANT LISCANO: The same amount of time.

13 THE COURT: -- were you hoping you'd have more than,
14 how much time do you need?

15 DEFENDANT LISCANO: The same amount of time as
16 Estremera, 30 minutes.

17 THE COURT: 30 minutes, okay, fine. We will stand in
18 recess until -- I'll give you 32 minutes, until 10 minutes to 12.
19 Thank you.

20 MR. YOUNG: May we consult here?

21 THE COURT: Let me ask the Marshal's Service. We will
22 do it the way the Marshals Service wants to do it because they're
23 in charge of security.

24 (Recess)

25 THE CLERK: 02 CR 719, United States v Estremera and

1 Liscano.

2 MR. BEAUMONT: Larry Beaumont again on behalf of the
3 United States.

4 MR. YOUNG: Good morning, your Honor, Donald Young for
5 Abraham Estremera.

6 MR. LOEB: Robert Loeb on behalf of Steve Liscano.

7 MR. FRIES: Judge, Zachary Fries with the Probation
8 Office.

9 MS. BROWN: Danielle Brown on behalf of Probation.

10 THE COURT: Good morning to all of you. Good morning
11 again, Mr. Liscano.

12 DEFENDANT LISCANO: Good morning, your Honor.

13 THE COURT: And Mr. Estremera. Good morning, sir.

14 DEFENDANT ESTREMERERA: Good morning, your Honor.

15 THE COURT: It is still morning. It's now five minutes
16 to 12. Mr. Estremera, have you had sufficient time to talk with
17 your lawyer about the things you wanted to talk with him about?

18 DEFENDANT ESTREMERERA: Yes, your Honor.

19 THE COURT: Mr. Liscano, have you had sufficient time
20 to talk with your lawyer about the things you wanted to talk with
21 him about?

22 DEFENDANT LISCANO: Yes, your Honor.

23 THE COURT: All right. Before we proceed further with
24 regard to the presentence investigation report, I think there is
25 probably one item that we need to address first, and it may be

1 included in the objections to the presentence report and that is
2 the defendants' responses to the government's notice of prior
3 convictions and the government's statement that it will prove
4 those denied convictions beyond a reasonable doubt.

5 But actually, before we address that point, I do want to
6 address the additional point raised by both defendants as to the
7 adequacy of the notice given to them regarding the enhancement
8 that the government is seeking based upon the prior convictions.

9 So we first have to look at the issue of the adequacy of
10 the notice, then we have to look at the prior convictions that
11 the defendants deny, and we have to evaluate those circumstances
12 as part of the sentencing proceeding before I proceed to
13 sentencing.

14 Now, with regard to the adequacy of the notice, on May
15 21, 2003 the government filed a document with regard to each of
16 these defendants, Mr. Estremera and Mr. Liscano, entitled
17 Information and Notice of Prior Convictions. Those documents are
18 in the record and are attached as Exhibit 1 to the Joint Motion
19 and Memorandum of Defendants Steve Liscano and Abraham Estremera
20 in Opposition to the Application of Title 21, United States Code,
21 Section 841 and 851.

22 I understand, Mr. Loeb, I guess you were the signatory
23 on that document, I understand it's your position that among
24 other items -- well, both Mr. Loeb and Mr. Young were
25 signatories, but I understand -- either one of you can respond to

1 this -- I understand it's your position that among other items
2 you considered the notice that was served as to your client to be
3 inadequate because it failed to include the government's position
4 as to what enhancement the government would be seeking such as
5 the mandatory life sentence that the government is now seeking,
6 is that correct?

7 MR. LOEB: That's correct.

8 MR. YOUNG: That's correct, Judge.

9 THE COURT: All right. It's the government's position,
10 is it not, Mr. Beaumont, that the statute doesn't require the
11 government to state that?

12 MR. BEAUMONT: The statute and the case law, it is our
13 position does not require that, Judge.

14 THE COURT: All right. I'll hear further from the
15 defense.

16 MR. YOUNG: Judge, an additional point on that issue is
17 the fact that the government has filed 851s where they do specify
18 exactly the penalty that they're going to be seeking and --

19 THE COURT: You mean in other cases?

20 MR. YOUNG: Correct.

21 THE COURT: As to other defendants? Did they file any
22 in this case as to other defendants?

23 MR. YOUNG: Not to our knowledge -- or not to my
24 knowledge.

25 MR. LOEB: Nor to mine.

1 THE COURT: And you, of course, attached some of the
2 other filings in other cases to your memorandum as Exhibit 5.

3 MR. YOUNG: Correct.

4 THE COURT: So the fact that the government voluntarily
5 provided additional information in other enhancement notices has
6 what relevance here?

7 MR. YOUNG: It's only relevant to show that there is a
8 pattern in some cases of providing what the penalty is going to
9 be and in others there is not, and it's our position they should
10 be consistent.

11 MR. LOEB: Further, Judge, we believe that the notice
12 on its face is vague and if we move beyond just the face of the
13 document and deal with the practices within the district, the
14 practices also render this particular notice vague vis-a-vis the
15 other notices that we attached in Exhibit 5.

16 THE COURT: All right. well, we will have to -- you
17 will have to apprise me what those practices are because in none
18 of the attachments on Exhibit 5 was I the judge.

19 MR. LOEB: That's certainly correct, yes.

20 THE COURT: And I don't make it a habit of delving into
21 other judges' cases or what's filed in other judges' cases, and
22 so you're going to have to educate me as to the practice
23 apparently before other judges by other Assistant U.S. Attorneys
24 that you are relying on for your position.

25 MR. LOEB: well, by "practices" we are referring to the

1 documents that make up Exhibit 5 and specifically in those --

2 MR. YOUNG: The very last information on Judge Kocoras'
3 case, court number --

4 THE COURT: Which case is that again?

5 MR. YOUNG: It's the very last attachment to Exhibit 5.
6 It's U.S. v Turner, 02 CR 635.

7 THE COURT: When was this filed?

8 MR. YOUNG: I don't know if we have a file date on
9 this, Judge.

10 THE COURT: Were either of you lawyers in that case?

11 MR. YOUNG: No.

12 MR. LOEB: Not that one. I was a lawyer -- I am one of
13 the lawyers in the case of United States of America v Troy
14 Lawrence, Clarence Irons, some of the others that were filed in
15 front of Judge Andersen.

16 THE COURT: All right. Those, according to at least
17 the first page of the first document in Exhibit 5, were received
18 by the court on June 25, 2003.

19 MR. LOEB: That's correct, and they were filed, Judge,
20 in the aggregate. There aren't different stamps for each
21 defendant. They were filed simultaneously.

22 THE COURT: Okay. And your position is that what, you
23 relied upon the practice that you had observed was followed with
24 regard to other defendants in other cases here in believing that
25 these defendants would not be subject to the mandatory life?

1 MR. YOUNG: No, Judge, we are not claiming we relied on
2 these for that purpose.

3 THE COURT: Okay.

4 MR. YOUNG: We are pointing out the inconsistency in
5 terms of other cases as opposed to this case, but we are not
6 claiming we somehow relied on the filings in other cases to
7 affect anything in this case.

8 THE COURT: Is that your position as well, Mr. Loeb, on
9 behalf of Mr. Liscano?

10 MR. LOEB: I would agree. We filed these to show that
11 in other cases the same U.S. Attorney's office is specifying the
12 particular enhancement that they are seeking.

13 THE COURT: Okay. Well, let me ask, if you didn't rely
14 upon the practice and you only received this document, what is
15 your objection to this document, and by "this document" I'm
16 referring to the information and notice of prior convictions
17 filed with regard to each of your respective clients in this case
18 on May 21, 2003.

19 MR. YOUNG: Well --

20 THE COURT: Is it that they're inconsistent?

21 MR. YOUNG: That's really the hub of it, yes.

22 MR. LOEB: And that the failure to specify the
23 particular enhancement renders it vague and not in compliance
24 with the merger of 851 and 841.

25 THE COURT: Okay. Well, let's explore that point.

1 what is it that is set forth in Section 851 and Section 841 that
2 requires the government to specify the enhancement it will be
3 seeking?

4 In each of these instances the government stated in the
5 last sentence right above the enumerated list of convictions:
6 "The United States submits that the defendant shall be sentenced
7 to increased punishment by reason of the following prior
8 convictions," and then the prior convictions are listed, and I'm
9 quoting from both of the notices.

10 So what's not sufficient about that?

11 MR. YOUNG: We are not claiming there is any deficiency
12 resulting from the language of the statute. What our position is
13 that if in these other cases where the U.S. Attorney files a
14 notice of enhancement, if they had filed an enhancement similar
15 to the ones that our clients received where they say nothing, we
16 would not have an issue. But by in some cases picking and
17 choosing and specifying and not doing in others, that is the
18 issue that we are concerned with.

19 THE COURT: All right. What is that issue? If you
20 didn't rely upon those others, what is the issue?

21 MR. YOUNG: That all defendants should be treated the
22 same whether they go to trial or not and there must be -- well,
23 we don't know of any valid reason why they can file an 851 in one
24 case and tell a defendant we are going to be seeking life, in
25 another case say nothing. We think there has got to be a

1 uniformity. We are looking at life sentences here.

2 THE COURT: I know, that's why I'm allowing these
3 defendants every opportunity to take a recess or talk to their
4 lawyers or file something they want to file. They're facing life
5 sentences.

6 And is it -- I'm just trying to get to the heart of
7 this. Is it that the government didn't state "And applying these
8 convictions your client is facing a life sentence and we are
9 going to seek it" as they did in the cases or the defendants in
10 the case before Judge Andersen and the case before Judge Kocoras,
11 the notices of which you have attached to Exhibit 5?.

12 MR. YOUNG: Yes.

13 THE COURT: Well, as lawyers, did you not believe that
14 applying the law, that these convictions if upheld would result
15 in your clients being sentenced to life in prison if convicted of
16 the offenses of which they were charged?

17 MR. YOUNG: No, we were aware of that.

18 MR. LOEB: Judge, I think you said "would result" and I
19 would amend it that --

20 THE COURT: Or could.

21 MR. LOEB: -- I knew that it could, exactly.

22 THE COURT: Okay. If you as lawyers, experienced
23 lawyers in this district, knew that other Assistant U.S.
24 Attorneys spelled it out in the notice, that they would --
25 because some of them spell out that they would seek life -- well,

1 maybe they don't. Let me -- I'll use the word "could," could
2 result in a life sentence while in this case Mr. Beaumont did not
3 spell that out, then what is the prejudice to your client
4 resulting from the notice that you did receive?

5 MR. YOUNG: I don't know that we can phrase it in terms
6 of prejudice other than to say that our clients' position is that
7 they're entitled to the same notice as a similarly situated
8 defendant in another case in this same courthouse, and that's
9 essentially what we are arguing, Judge.

10 MR. LOEB: And to the extent that this constitutes
11 prejudice, Judge, I think a fair way of saying it is that when we
12 received these notices in May, we were on notice that the
13 government may seek upon conviction a life sentence or may seek a
14 20 year minimum, that being the other enhancement, so a fair way
15 of saying is that we were on notice that they may seek either of
16 those, we were not on notice that they would seek either of those
17 enhancements.

18 THE COURT: Well, the government used the word "shall"
19 in the sentence that I read.

20 MR. LOEB: Shall seek enhancements, but --

21 THE COURT: Actually, with a sentence -- and I'll read
22 it again.

23 MR. LOEB: Increased penalties.

24 THE COURT: "The United States submits that the
25 defendant shall be sentenced to increased punishment by reason of

1 the following convictions."

2 So the government was submitting that the defendant
3 shall be sentenced to increased punishment by reason of the
4 following convictions. "shall" is usually a mandatory term.

5 MR. LOEB: Mandatory -- we would say that they would be
6 seeking enhancements, but "shall" does not apply to the
7 particularized enhancement, the 20 year minimum or life
8 imprisonment. They're seeking one of the two in effect is what
9 I'm saying. They shall seek one of the two.

10 THE COURT: They stated they submit that the defendant
11 shall be sentenced. Actually, they were submitting that the
12 defendant shall be sentenced, I guess, realizing they weren't the
13 one doing the sentencing, I am.

14 But what I'm trying to figure out is so there is a
15 difference. Other Assistant U.S. Attorneys provide this
16 information that spells out in the notice the ramifications of
17 the court finding the prior convictions if disputed to be valid
18 or the ramifications of the defendant admitting the prior
19 convictions are valid, and that's spelled out by other Assistant
20 U.S. Attorneys, but this Assistant U.S. Attorney in this case did
21 not do that, but you as experienced lawyers understood it, the
22 ramifications, and I'm assuming explained it to your clients.
23 I'm assuming that because you don't have to tell me that, but --
24 yes, Mr. Liscano?

25 DEFENDANT LISCANO: Your Honor, I had seen a draft and

1 nowhere in the draft did it say that my minimum would be life.
2 It said, as I calculated it, it said that it would be twelve
3 years and seven months and from there I figured that the worst I
4 would be looking at if they gave me enhancement would be 20
5 years, not a minimum of life.

6 THE COURT: Okay. The draft you're referring to is the
7 proposed plea agreement that was provided you, is that correct?

8 DEFENDANT LISCANO: Yes, I believe so.

9 THE COURT: Which you did not accept.

10 DEFENDANT LISCANO: No.

11 THE COURT: The defense argument is that the notice is
12 vague, it's vague under the law, and your argument too is that
13 apparently as applied to this notice that the statute is
14 unconstitutional as it is applied to these defendants because of
15 this notice -- I'm paraphrasing your argument on page 4 of the
16 memorandum at the bottom of the page -- the statute is void for
17 vagueness as it is applied because a notice in the form that was
18 used in this case does not put the defendant on notice as to
19 whether the 20 year minimum or the mandatory life penalty is
20 being sought when the notice is viewed particularly in the light
21 of the proposed plea agreement, which is silent on the issue of
22 any enhanced penalties.

23 I'm not sure that last sentence is a full sentence, but
24 in any event --

25 MR. LOEB: I'm not sure either, Judge.

1 THE COURT: In any event, it's your argument that the
2 lack of specificity in the 851 notice creates a vagueness in its
3 lack of clarity and failure to state what penalty the government
4 would seek upon conviction.

5 So it's your position in addition to the inconsistency
6 that the failure of the government to provide this notice of what
7 the enhanced penalty will be sought makes the notice vague and
8 makes the statute as applied to these defendants
9 unconstitutional.

10 MR. LOEB: You have accurately stated my position, yes.

11 THE COURT: All right, Mr. Young, do you want to add
12 anything before I turn it over to Mr. Beaumont for his further
13 comment?

14 MR. YOUNG: No, I agree with Mr. Loeb, Judge.

15 THE COURT: All right. Mr. Beaumont.

16 MR. BEAUMONT: Judge, the notice that I filed in this
17 case complies exactly with the express language in the statute.
18 The language in the statute requires merely notice of our
19 intention to seek an enhanced penalty and to provide the prior
20 convictions that we intend to rely upon.

21 In United States v Tringali, T-r-i-n-g-a-l-i, 71 F.3d
22 1375 at page 1382, Seventh Circuit --

23 THE COURT: Did you provide me a memorandum that cites
24 that case?

25 MR. BEAUMONT: I did, Judge.

1 THE COURT: I'm looking for it now.

2 MR. BEAUMONT: It's in my Government's Response to
3 Captioned Defendant's Objections to the Presentence Report and
4 Section 851 notice.

5 THE COURT: Let me talk to my clerk.

6 MR. BEAUMONT: I can give you my copy.

7 THE COURT: I don't want your copy. I want you to keep
8 your copy.

9 MR. BEAUMONT: But at any rate, that case and basically
10 all the cases say that the purpose of the notice simply is to
11 give reasonable notice to the defendant of the government's
12 intention to seek an enhanced penalty and to provide the
13 defendant with an opportunity to be heard about the prior
14 convictions, which we have done in this case.

15 The statute itself expressly says that the only thing
16 required in this notice is our intention to seek an enhanced
17 penalty, that comes right out of the statute, and the prior
18 convictions we intend to rely upon, and the statute goes on
19 further to say that anything in addition to that is not
20 sufficient to make the notice invalid.

21 So I don't know what had been filed in other cases.
22 This is a notice that I filed in several cases, not in this
23 district but in another district. That's where I got the notice
24 from. But regardless, I don't think it's relevant what was filed
25 in another case.

1 The important question is did I comply with the statute
2 in this case, which I did, and I don't know that there is any
3 argument to argue that I didn't comply with the statute in this
4 case.

5 THE COURT: Does the defense argue that Mr. Beaumont's
6 notice as to these defendants in this case does not comply with
7 the statute?

8 MR. YOUNG: No.

9 MR. LOEB: No. When he uses the phrase "increased
10 sentences," that's equivalent to enhanced penalties. It's clear
11 that the statute uses the phrase "enhanced penalties." However,
12 when Mr. Beaumont merely relies on the language of the statute,
13 and the statute does not particularize the penalty to be sought,
14 that actually plays into our argument that the statute is vague
15 as applies to these facts because the phrase "enhanced
16 penalties" is not sufficiently specific as applied to this case.

17 THE COURT: The statute actually uses the phrase
18 "increased punishment" at the outset of the statute. It's
19 talking about the requirement of increasing the punishment by
20 reason of one or more prior convictions. It states: "No person
21 who stands convicted of an offense under this part shall be
22 sentenced to increased punishment by reason of one or more prior
23 convictions unless before trial or before entry of a plea of
24 guilty the United States Attorney files an information with the
25 court (and serves a copy of such information on the person or

1 counsel for the person) stating in writing the previous
2 convictions to be relied upon."

3 Let me put that issue on hold for a moment and turn to
4 another subsection of Section 851, and that's 851(e), the statute
5 of limitations, which states: "No person who stands convicted of
6 an offense under this part may challenge the validity of any
7 prior conviction alleged under this section which occurred more
8 than five years before the date of the information alleging such
9 prior conviction."

10 what does that mean?

11 MR. BEAUMONT: I think that means -- if the court is
12 asking me, I believe --

13 THE COURT: I'm turning to the government.

14 MR. BEAUMONT: I believe that means if the conviction
15 itself was more than five years old they can't go into the
16 validity of the conviction itself and argue that, you know, they
17 pled guilty without a lawyer or those types of arguments. I
18 think that's what that means.

19 THE COURT: All right.

20 MR. BEAUMONT: And I don't think there is any opposition
21 to the validity in this case of the prior convictions, and I'm
22 not sure they're agreeing whether the prior convictions exist
23 themselves, but I don't think there has been any, certainly
24 nothing filed as to the validity of the prior convictions if in
25 fact they exist.

1 MR. LOEB: well, I think we should make the record
2 clear. The government served notice of three convictions on Mr.
3 Liscano. I think that the Probation office, and perhaps the
4 government agrees, that one of those three is not an qualifying
5 conviction. It still leaves us with two.

6 Have I accurately stated that?

7 MR. BEAUMONT: Yes, and we acknowledge in our filing
8 that the one was indeed a misdemeanor and would not be a
9 qualifying conviction.

10 MR. LOEB: And Judge --

11 THE COURT: which one is not appropriate then?

12 MR. BEAUMONT: It's the one -- I'll tell you in a
13 second, Judge.

14 THE COURT: I have got the notices in front of me.

15 MR. BEAUMONT: It's No. 2, I believe. Yes, it's No. 2
16 and for Mr. Liscano, defendant was convicted of possession of
17 cannabis in Kane County Circuit Court on or about September 15,
18 1995 and sentenced to fines and costs. Counsel filed his paper
19 in response to that, I looked at it, and indeed it is a
20 misdemeanor case so it would not qualify, but counsel is correct,
21 there are two other felony charges that we do allege on that same
22 notice.

23 THE COURT: And does Mr. Liscano accept the
24 government's representation that those other two convictions
25 alleged in the information are convictions that he sustained on

1 the dates stated?

2 MR. BEAUMONT: I think he does because I haven't seen
3 anything to say he doesn't, but I can't speak for him.

4 MR. LOEB: Yes, we discussed how they're not for
5 delivery or possession with intent, but they are him and they are
6 drug possessions.

7 THE COURT: All right. And do you affirm that, Mr.
8 Liscano?

9 DEFENDANT LISCANO: No, your Honor. One of them I
10 believe was for a mere scale. It was not no drugs. It says on
11 there that it's up to like 15 grams. However, I believe it was a
12 scale.

13 THE COURT: Which one of them are you referring to?
14 Which one of them in the notice are you referring to?

15 DEFENDANT LISCANO: The 2001.

16 THE COURT: You're saying that the underlying facts of
17 the conviction in 2001 for which you were sentenced to 18 months
18 was for possession of a scale, not a controlled substance?

19 DEFENDANT LISCANO: I believe it was a scale, your
20 Honor, but since it had residue they charged it as a controlled
21 substance. I do not believe it was drugs. It was a scale with
22 residue.

23 THE COURT: A scale with drug residue, is that what
24 you're saying?

25 DEFENDANT LISCANO: Yes, your Honor.

1 THE COURT: So you were charged with a felony offense
2 of possession of a controlled substance and the underlying facts
3 were that you possessed a scale with drug residue on it?

4 DEFENDANT LISCANO: I believe that therefore that's why
5 they said it was a controlled substance, because of the residue.

6 THE COURT: But you're affirming that you were
7 convicted for that, but you're saying that the underlying facts
8 were as you have stated them?

9 DEFENDANT LISCANO: Yes.

10 THE COURT: Is that a challenge to the prior
11 conviction, Mr. Loeb?

12 MR. LOEB: I'm not going to say no, it's not. The
13 charge was possession of controlled substance. He did plead
14 guilty to that, he was sentenced on that charge, but what he says
15 is accurate. It was residue obtained from a scale and less than
16 one-tenth of a gram or less than one gram of residue.

17 THE COURT: Okay. So you pleaded guilty to that
18 offense, though, Mr. Liscano?

19 DEFENDANT LISCANO: Yes, your Honor.

20 THE COURT: And you pleaded guilty knowing that it was
21 a charge of possession of a controlled substance and that the
22 underlying facts were that the controlled substance was residue
23 of illegal drugs, less than one gram of residue of illegal drugs
24 on a scale?

25 DEFENDANT LISCANO: Yes, your Honor. I didn't know that

1 it could be taken so serious seeing that it was simply residue.

2 THE COURT: Well, you knew it was serious when the
3 judge gave you 18 months, right?

4 DEFENDANT LISCANO: Yes, your Honor.

5 THE COURT: And you knew it was a felony at the time
6 that you pleaded guilty?

7 DEFENDANT LISCANO: Yes, your Honor.

8 THE COURT: Okay.

9 And do you affirm, Mr. Liscano, that you were convicted
10 of possession of a controlled substance in Kane County Circuit
11 Court on July 31, 1995 and sentenced to two years imprisonment on
12 that offense?

13 DEFENDANT LISCANO: I believe that may be a different
14 offense, your Honor. I'm not sure.

15 THE COURT: Well, that is a different offense, yes,
16 there was the 2001 offense with the scale residue, or scale with
17 the drug residue, but now I'm talking about the other offense
18 that's in the notice that the government provided you in May of
19 2001 that we are considering, and that is that you were convicted
20 of possession of a controlled substance in Kane County circuit
21 court on or about July 31, 1995 and sentenced to two years in
22 prison.

23 DEFENDANT LISCANO: Yes, your Honor.

24 THE COURT: Do you affirm that?

25 DEFENDANT LISCANO: Yes, your Honor.

1 THE COURT: That did happen?

2 DEFENDANT LISCANO: Yes, your Honor.

3 THE COURT: And it's the government's position that
4 based upon those two convictions the government is seeking in
5 this case a life sentence?

6 MR. BEAUMONT: That's correct, Judge, we are.

7 THE COURT: And it's the government's position that the
8 life sentence is mandatory.

9 MR. BEAUMONT: It is our position it is mandatory,
10 Judge.

11 THE COURT: When you gave that notice, Mr. Beaumont,
12 did you at that time intend to seek a mandatory life sentence
13 against Mr. Liscano if he denied the allegations in the
14 indictment in this case and went to trial?

15 MR. BEAUMONT: Absolutely.

16 THE COURT: Is there a reason you didn't tell in your
17 notice or otherwise the defense counsel, Mr. Loeb, of Mr. Liscano
18 of your intention?

19 MR. BEAUMONT: Well, I had conversations with both
20 defense counsel and I can't -- we had several conversations, but
21 I believe I did say that they were both going to be facing life
22 imprisonment based on their prior conviction if they go to trial.

23 The reason, though, that I filed the notice that I filed
24 is because that's the exact same notice that I filed in many,
25 many other drug cases. In fact, what I had, I had my former

1 secretary e-mail me a previous notice that I filed and I merely
2 filled in the blanks in this case.

3 THE COURT: And you filed those notices in the Central
4 District of Illinois?

5 MR. BEAUMONT: That's correct.

6 THE COURT: Have they ever been attacked in the Central
7 District of Illinois as vague or inadequate?

8 MR. BEAUMONT: No.

9 THE COURT: All right. Turning then to --

10 MR. LOEB: Judge, if I may in response to that, two
11 things. First of all, I can -- I will confirm that Mr. Beaumont
12 told me in the pretrial setting, and I don't remember dates, that
13 my client would be facing life. I do not have a recollection
14 that it was facing life based on 851 as opposed to facing life
15 based on Guideline calculations. I'm not saying that he is
16 wrong, I'm saying I don't have that recollection.

17 Number two, you asked concerning Mr. Beaumont's intent
18 when he filed the notice, and I'm not sure if or how this changes
19 things, but I should point out that his intent at the time he
20 filed the notice was based on a belief that we now know was
21 partially erroneous, that Mr. Liscano had three convictions.
22 When it was filed, he had that belief.

23 THE COURT: Okay.

24 MR. LOEB: Your Honor is being meticulous in viewing
25 this, so I felt the need to raise that.

1 THE COURT: These defendants are facing life.

2 MR. LOEB: Exactly.

3 THE COURT: We all agree that that's a substantial
4 possibility in this case. So I think that it's time to be very
5 meticulous.

6 MR. BEAUMONT: Just to be exact, Judge, my intent was to
7 seek life imprisonment because he had at least two prior felony
8 convictions, which is what the statute requires.

9 THE COURT: All right. Let me turn to Mr. Estremera's
10 denial of his conviction of possession of a controlled substance
11 in Kane County on or about July 3rd, and that is the second
12 conviction that the government provided in its notice of prior
13 convictions filed May 21, 2003 as to Mr. Estremera.

14 what's the government's position with regard to that
15 conviction?

16 MR. BEAUMONT: The actual conviction date is July 9,
17 1993 for that particular conviction, and our position is, and we
18 state so in our response, that in United States v Bellanger --

19 THE COURT: Mr. Beaumont, let me just take a short
20 recess. I have got to review something.

21 (Recess)

22 THE COURT: It seems to me that since I'm going to have
23 to review that document that was apparently filed by the
24 government and I have to have it printed out, we might as well
25 break for lunch. And so we will resume again with these two

1 defendants at 2:00, and I apologize for the delay, but --

2 MR. LOEB: No apology is necessary, Judge. I am on
3 trial before Judge Andersen, lots of defendants. My absence is
4 doable, absence from there is doable, but I do want to let them
5 know how long we might be, though. It is one of those times
6 where my client is not going to be the subject of testimony.

7 THE COURT: well, it could go the rest of the
8 afternoon.

9 MR. LOEB: If your schedule allows for that, then that's
10 what I will tell them.

11 MR. YOUNG: I don't want to further complicate things,
12 but I do have a 3:30 detention hearing.

13 THE COURT: Do you? well, let's say we'll go until 3:30
14 and then we'll break. If we are not done, we'll come back on
15 another day.

16 MR. YOUNG: I appreciate that. Thank you.

17 (Recess)

18 THE CLERK: 02 CR 719, United States v Estremera and
19 Liscano.

20 MR. BEAUMONT: Larry Beaumont again on behalf of the
21 United States.

22 MR. YOUNG: Good afternoon again, your Honor, Donald
23 Young. I guess the defendants are on their way.

24 MR. LOEB: And Robert Loeb.

25 THE COURT: Yes, they had to take Mr. Pena back. The

1 Marshals Service is assisting us by retrieving Mr. Liscano and
2 Mr. Estremera. We will wait until they arrive.

3 MR. LOEB: Thank you.

4 MR. YOUNG: For the record, your Honor, Mr. Estremera
5 and Mr. Liscano are now present.

6 THE COURT: Yes, good afternoon. Good afternoon, Mr.
7 Estremera.

8 DEFENDANT ESTREMER: Good afternoon, your Honor.

9 THE COURT: Good afternoon, Mr. Liscano.

10 DEFENDANT LISCANO: Good afternoon, your Honor.

11 THE COURT: We are ready to proceed with further
12 points. Where were we when we broke?

13 MR. YOUNG: You were about to address, I believe, the
14 enhancement on Mr. Estremera.

15 MR. BEAUMONT: I was going to tell the court on the
16 enhancement that I filed, the 851 notice I filed I listed that
17 Mr. Estremera was convicted on July 3rd.

18 THE COURT: Right. You corrected that it's July 9th.

19 MR. BEAUMONT: It's actually July 9th. Now, in United
20 States v Belanger -- and I'll give you the cite in a second.

21 THE COURT: And that is the conviction that Mr.
22 Estremera denies?

23 MR. BEAUMONT: Well, he said "I was not convicted on
24 July 3rd of that year" I think in his response.

25 THE COURT: And his actual words were: "Defendant

1 Abraham Estremera denies that he was convicted of possession of a
2 controlled substance in Kane County Circuit Court on or about
3 July 3, 1993."

4 MR. BEAUMONT: Correct. In United States v Belanger --

5 THE COURT: would you spell that name for my court
6 reporter.

7 MR. BEAUMONT: I will. B-e-l-a-n-g-e-r, 970 F.2d 416,
8 page 418, Seventh Circuit, 1992 case. The issue in Belanger was
9 the sufficiency of the 851 notice, and the facts in Belanger was
10 that the government filed, first they filed a document that says
11 Notice of Government's Intent to Seek Enhanced Conviction without
12 anything else, no prior, no prior cases they intended to rely
13 upon.

14 In addition in that case the government filed a separate
15 notice pertaining to its intent to use prior convictions for
16 another reason not connected basically with the 851 notice, and
17 the issue became was that the two combined, the notice of intent
18 to seek enhanced penalty alone along with a separate filing for a
19 different purpose of the case of prior convictions was that --
20 could those two documents be connected to be sufficient to
21 provide the proper notice under the statute, under 851. And the
22 court in that case held that they could be, that that was
23 permissible, that that gave adequate notice to the defendant and
24 gave him an opportunity to be heard.

25 In this -- the July 9th -- the July 3rd date on my

1 notice is incorrect. It should be July 9th, and I have a
2 certified copy of that conviction.

3 we filed in this case on May 29, 2003, our notice of
4 intent to use defendant's prior convictions on cross-examination
5 and under Mr. Estremera's --

6 THE COURT: What date was that again?

7 MR. BEAUMONT: May 29, 2003 is when my file copy is
8 stamped. And it's titled Notice of Intent to Use Defendant's
9 Prior Convictions on Cross-examination.

10 THE COURT: All right. That's Document No. 289.

11 MR. BEAUMONT: In there we state the correct date for
12 that conviction under Mr. -- under his name, under paragraph 3,
13 "Defendant was convicted on July 9, 1993 of unauthorized
14 possession of controlled substance in Kane County Circuit Court
15 and was sentenced to twelve months imprisonment. This is a
16 felony conviction."

17 So the point I'm trying to make to the court is that
18 it's an identical situation -- well, it's less -- it's less
19 significant than it was in the Belanger case because in Belanger
20 the government didn't even file any proper convictions with their
21 notice of intent to seek enhanced sentence. Here I filed them,
22 but there was a mistake on the date of one of them. I put on or
23 about July 3rd on my notice, in fact it's July 9th, but
24 nevertheless, we covered it, is what I'm arguing, in this second
25 filing.

1 And I think that case that I cite, Belanger, suggests
2 that that is sufficient or was sufficient in that case, the
3 Seventh Circuit said that was fine.

4 THE COURT: well, let me ask Mr. Estremera's counsel,
5 though you deny on behalf of your client and did deny in your
6 response to the government's notice of prior convictions that Mr.
7 Estremera was convicted of possession of a controlled substance
8 in Kane County Circuit Court on or about July 3, 1993, do you
9 deny that he was convicted of possession of a controlled
10 substance in Kane County Circuit Court on or about July 9, 1993?

11 MR. YOUNG: Yes, your Honor.

12 THE COURT: You deny that as well?

13 MR. YOUNG: Yes.

14 THE COURT: So the date is really not significant.

15 MR. YOUNG: well, I mean, in light of what we are
16 considering here, I think that the date should be strictly
17 construed, but to answer your question, yes, putting the date
18 aside we still object to it.

19 And I will say I have not had a chance to read the
20 Belanger case, I will read that tonight, but in terms of the
21 government's argument that they can also superimpose this notice
22 regarding cross-examination, I mean, I strenuously object to
23 that. There is no way that we should in any sense construe that
24 and somehow mesh it into the 851, so I just -- again, I haven't
25 read the case.

1 THE COURT: Do you want to take time to read the case
2 now? I'll give you time because I have to address some things
3 involving Mr. Liscano and Mr. Beaumont. Do you have a copy of
4 that case?

5 MR. BEAUMONT: I just cited it in my response, Judge. I
6 don't typically bring copies of cases.

7 MR. YOUNG: I'll run down to the library, Judge. It's
8 not a problem.

9 THE COURT: Why don't we recess Mr. Estremera's matter
10 while you retrieve that. We won't have any further proceedings
11 with regard to Mr. Estremera, and we will address other items
12 with regard to Mr. Liscano.

13 MR. YOUNG: Thank you, Judge.

14 THE COURT: All right.

15 (Defendant Estremera left the courtroom)

16 THE COURT: Back on Mr. Liscano's case then, is there
17 anything further that you want to say with regard to the
18 defendant's opposition to the application of 21 USC sections 841
19 and 851?

20 MR. LOEB: No, I think we have covered it.

21 DEFENDANT LISCANO: Your Honor --

22 THE COURT: Mr. Liscano, is there anything you want to
23 say?

24 DEFENDANT LISCANO: while at MCC I remember getting some
25 of the discovery inside a gray box that we get with the discovery

1 in it and I remember going over several people's criminal history
2 and I remember seeing that Aguirre, Oliva, Hernandez, and Corral
3 all had several cases for controlled substance with intent to
4 deliver for large amounts of quantities of drugs. However, I
5 feel as if I'm being picked on because I went to trial and none
6 of them have gotten 851 enhancement except for me and Estremera,
7 and furthermore, they have somehow gotten out of it. I don't
8 know how, I don't know why. But somehow I'm getting stuck with
9 the 851 and my drug amounts are way less than anywhere near
10 comparisons to what they have been convicted of. And my cases
11 are simply possession, simple possession. Theirs are intent to
12 deliver with intent to distribute. Mine was nowhere near as
13 serious as theirs were.

14 THE COURT: Okay. And your position on that is what,
15 it's not fair?

16 DEFENDANT LISCANO: I don't feel as if it's fair just
17 because I went to trial.

18 THE COURT: The circumstances are, as I understand it,
19 those folks cooperated with the government, is that correct, Mr.
20 Beaumont?

21 MR. BEAUMONT: That's correct.

22 THE COURT: And since the U.S. Attorney's office makes
23 the determination as to whether there is going to be an
24 enhancement sought, it's an Executive branch of the government
25 decision and although the government cannot punish you for

1 asserting your constitutional rights, the government can provide
2 benefits to those who do not put the government to its burden
3 with regard to their prosecutions. And my understanding is
4 that's what Aguirre, Oliva, Hernandez, and Corral did. So that
5 is the answer to your question.

6 DEFENDANT LISCANO: Your Honor, I have also read in some
7 cases that it is -- it can be left up to you, and in the Seventh
8 Circuit it says that it can be left up to the district court, I
9 believe meaning you, whether or not you choose or whether or not
10 you can depart from the 851 enhancement or whether or not you can
11 depart from a life sentence.

12 THE COURT: Well, that's true, I can, if there is a
13 reason to depart. There has to be a reason to depart, and it has
14 to be based upon facts that appropriately demonstrate that
15 departure is the appropriate sentence in the case, although I
16 don't know that I can depart if there is a mandatory life
17 sentence that's imposed under the requirements of Section 851.
18 In fact, I don't believe I can. Maybe Mr. Loeb can help me out
19 on that.

20 MR. LOEB: I have not found authority for that. I
21 should explain that Mr. Liscano was headed in the direction of
22 pointing out the belief that the criminal history category, which
23 would be Level VI under the PSI's calculation, based on the more
24 minor nature of his charges overstates the seriousness of his
25 criminal history, which would be or which could be a grounds for

1 a departure, and he is analogizing the nature of his two
2 underlying or predicate offenses for the 851 in the same manner
3 that overstates the seriousness of his underlying convictions
4 such that the application of 851 and 841 would not be just in
5 this case.

6 THE COURT: Is that your position, Mr. Liscano?

7 DEFENDANT LISCANO: Yes, your Honor.

8 THE COURT: All right. We will address that in a
9 moment. The issue that is before me is the issue of whether the
10 government's notice was sufficient under -- my clerk interrupted
11 me -- whether the notice that the government provided you was
12 sufficient under Section 851 and whether as applied to you,
13 whether it's constitutional to apply it given that notice, since
14 the notice provided you was different in the detail as to the
15 government's position with regard to your sentence than notices
16 given in other cases involving other defendants. Those other
17 cases involving other defendants had notices which were
18 substantially more detailed as to the government's intention.

19 Just so we can be clear on this, it was the government's
20 position that if Mr. Liscano did not put the government to its
21 proof, the government was not going to seek a Section 851
22 enhancement since it was not mentioned in the draft plea
23 agreement provided to Mr. Liscano?

24 MR. BEAUMONT: when those draft plea agreements were
25 sent out, the 851 enhancements were not discussed in my office.

1 After the fact when we narrowed down the defendants and we were
2 deciding people going to trial, that's when we began discussing
3 the 851 notices and at that point we made a decision that if
4 people were to go to trial if they had the appropriate prior
5 convictions, we would file the notices.

6 THE COURT: So you didn't consider an 851 enhancement
7 as to any defendant until after it became clear that some
8 defendants would go to trial and others would plead guilty?

9 MR. BEAUMONT: Correct, I mean yes. We ultimately made
10 a decision that if defendants were going to go to trial and they
11 had the appropriate prior felony convictions that we then would
12 file the 851 notice.

13 THE COURT: Whereas if a defendant did not go to trial,
14 then you wouldn't file the 851 enhancement?

15 MR. BEAUMONT: If they pled guilty, correct, yes, that's
16 correct.

17 THE COURT: Isn't it really the other way around, that
18 you would not consider the 851 enhancement as to any defendant
19 who did not put the government to its burden, but as to all
20 defendants you would consider the 851 enhancement unless the
21 defendant did not put the government to its burden?

22 MR. BEAUMONT: Yes.

23 THE COURT: Anything further, Mr. Loeb?

24 MR. LOEB: No, Judge.

25 THE COURT: I believe the notice provided to Mr.

1 Liscano was sufficient under the statute, although I agree that
2 the better practice is to provide more information of the
3 government's intention so that the defendant and his counsel will
4 better understand the government's position, but in this
5 instance, Mr. Liscano with experienced highly competent counsel
6 such as Mr. Loeb was not in any way at a disadvantage given the
7 notice that was provided simply because Mr. Loeb understood the
8 ramifications of that and I'm assuming explained those to Mr.
9 Liscano.

10 with regard to the constitutional issue as to the
11 vagueness, I don't believe the notice makes the application of
12 the statute unconstitutionally vague to Mr. Liscano because the
13 notice was sufficient under the statute. Although as I said, a
14 better practice might be to further provide more information, it
15 is not required by the law and it is not required by the
16 Constitution, and so I'm going to deny the request that's set
17 forth in the joint motion and memorandum of Defendant Steve
18 Liscano in opposition to the application of Sections 841 and 851,
19 Mr. Liscano having affirmed the two convictions albeit explaining
20 the circumstances, and although they were both felony
21 convictions, they are not what I would consider to be extremely
22 aggravated offenses of involvement with controlled substances.
23 Unfortunately, that is not the criterion.

24 But setting that aside for the moment since I have now
25 determined that the 851 notice was sufficient, we can turn our

1 attention back to the presentence investigation report and
2 correcting any of the errors or modifications. I will note that
3 there was a revised report prepared by the probation office, and
4 that revision is dated October 14, 2003.

5 Turning to the Defendant Liscano's objections to his
6 presentence investigation report, having addressed the first
7 paragraph of that objection, we are moving then to the remaining
8 paragraphs on page 1 of the defendant's objections, and the next
9 objection deals with lines 81 through 90 of the presentence
10 investigation report, which are found on page 3.

11 Starting at line 81, and reading through line 90, the
12 presentence investigation report states: "Liscano participated
13 in the above described conspiracy from approximately June 2000
14 until approximately October 23, 2002. Specifically, Liscano was
15 a cocaine customer of Corral. According to testimony from
16 Corral, between September 2001 and June 2002, Liscano purchased
17 from Corral approximately 13 kilograms of powder cocaine, which
18 Liscano then distributed to customers. More specifically,
19 Liscano purchased approximately a full kilogram of cocaine from
20 Corral approximately every three weeks. Corral fronted the
21 cocaine he sold to the defendant, meaning that Corral gave the
22 defendant cocaine on credit for later payment.

23 "Liscano kept drugs and proceeds from drug sales at his
24 residence on Oliver Street. Liscano participated in telephone
25 conversations with Corral in May and June of 2002, discussing,

1 among other topics, Liscano's cocaine purchases from Corral.

2 All right, the objection is that "Mr. Liscano denies
3 that he purchased a full kilogram of cocaine from Corral
4 approximately every three weeks and denies that Corral fronted
5 him cocaine. Mr. Liscano also denies, and there was no evidence,
6 that he kept drugs and drug sales at his residence on Oliver
7 Street."

8 That's the objection of the defendant to the section
9 that I just read. Mr. Liscano, are you desirous of providing
10 evidence to dispute the government's position?

11 DEFENDANT LISCANO: Your Honor, there was a tape I
12 believe on May 13th that I wanted to bring into evidence.
13 However, it was not allowed during trial.

14 THE COURT: All right. The May 13, 2002 tape?

15 DEFENDANT LISCANO: Yes.

16 THE COURT: Do you want me to consider that tape?

17 DEFENDANT LISCANO: Yes.

18 THE COURT: Does the government have that tape?

19 MR. BEAUMONT: Not here, Judge, no.

20 THE COURT: Is there a way we could have that tape
21 presented so I can consider it?

22 MR. BEAUMONT: Not quickly.

23 THE COURT: Okay.

24 MR. BEAUMONT: I could get it, but I would have to find
25 the equipment and get -- I mean, it would take some time to do,

1 Judge.

2 THE COURT: I would like to review that tape and any
3 transcript that the government has of that tape before I impose
4 sentence on Mr. Liscano.

5 So what is it about that tape that you want to present
6 with regard to your denial that you obtained a full kilogram of
7 cocaine from Corral approximately every three weeks and your
8 denial that you purchased 13 kilograms of cocaine from Corral?

9 DEFENDANT LISCANO: During that phone call Corral said
10 that he, and he testified saying that he had sold me half a
11 kilogram of cocaine, sold me. However, during that day there are
12 several phone calls and several people that are calling
13 throughout that day and he is telling everyone that he does not
14 have drugs, that he is dead, there are no drugs for him to sell.

15 Your Honor, I'm saying that I did not receive no drugs
16 on that day as he says that he did in his testimony, he said that
17 I went over to talk to him at first. Then he said another thing.
18 He said I went over there and I took him money and then he said
19 after that that I purchased it, I bought a half a kilogram of
20 cocaine.

21 THE COURT: Do you wish to testify to this?

22 DEFENDANT LISCANO: If needed, your Honor.

23 THE COURT: All right, consult with your attorney
24 because you have a right to testify, and you have a right to not
25 testify, but if you do testify you could be subject to a

1 prosecution for perjury if it is determined that your testimony
2 is intentionally false. Do you understand that?

3 DEFENDANT LISCANO: Yes, your Honor.

4 THE COURT: Do you want to consult with your attorney
5 on this point?

6 DEFENDANT LISCANO: Is there any way that I could look
7 over the transcripts for that day? I have got the transcripts
8 here.

9 THE COURT: Do you have the transcripts here?

10 DEFENDANT LISCANO: Yes.

11 THE COURT: Oh, all right. Do you want to take time to
12 look over those transcripts?

13 DEFENDANT LISCANO: If I may, your Honor.

14 THE COURT: Okay.

15 DEFENDANT LISCANO: With my attorney, your Honor?

16 THE COURT: All right, why don't you take time to look
17 over your transcripts with your attorney. I see that Mr. Young
18 has returned and maybe we can go back to Mr. Estremera.

19 MR. LOEB: Judge, one housekeeping matter. I supplied
20 everybody with copies and yourself a courtesy copy of Mr.
21 Liscano's own motion for objections, addendum and a letter. May
22 I formally file that now?

23 THE COURT: Yes, you may place it, and it will be a
24 part of the presentence investigation report. I have reviewed
25 the copies.

1 I do want to state for the record and ask my clerk to
2 make a note in the minute order that I have reviewed -- can we
3 bring Mr. Estremera out and leave Mr. Liscano here. We will ask
4 Mr. Young to step forward. We will ask Mr. Loeb to remain for a
5 moment.

6 (Pause)

7 THE COURT: All right, Mr. Estremera is back in the
8 courtroom along with Mr. Liscano and their respective counsel. I
9 want to state, and I'll ask my clerk to reflect it in the minute
10 order from today, that I have reviewed the Defendant Abraham
11 Estremera's and Defendant Steven Liscano's post-trial motion, and
12 I have also allowed Defendant Pena to join in that motion, and
13 having reviewed the motion and the government's response thereto,
14 there is no basis for the granting of that motion and so
15 consequently, that post-trial motion is denied. I'll ask my
16 clerk to consult with me for just a moment.

17 (Pause)

18 THE COURT: Now, you have got those transcripts, Mr.
19 Liscano, that you want to review with your lawyer?

20 DEFENDANT LISCANO: Yes.

21 THE COURT: All right, you may do so.

22 Turning back to Mr. Estremera, Mr. Young, have you had
23 an opportunity to review the Belanger case?

24 MR. YOUNG: I have, your Honor, and thank you for
25 giving me that opportunity, and I do agree with counsel that the

1 notice regarding cross-examination according to the Seventh
2 Circuit can be used in conjunction with the 851 to notify the
3 defendant of the convictions.

4 THE COURT: What was the citation for that case?

5 MR. YOUNG: 970 F.2d 416.

6 MR. BEAUMONT: It's actually on 418 is the holding.

7 MR. YOUNG: I ran off a copy, Judge. It's not real
8 clear.

9 THE COURT: That's all right. My clerk pulled the book
10 off our shelves. It seems that that case is on point, and
11 consequently, the objection, and frankly, it wasn't a strenuous
12 one, but the objection that the government's notice of Mr.
13 Estremera's prior convictions filed and served upon Mr.
14 Estremera's counsel with regard to the Section 851 enhancement
15 should be denied to that extent, that there was the error in the
16 date of the conviction, the error being the date of July 3rd, the
17 correct date being the date of July 9th, which was correctly
18 stated in the government's notice with regard to prior
19 convictions on which the government intended to cross-examine the
20 defendant.

21 But that wasn't really the thrust of your argument
22 anyway, although we have addressed that point. It is the
23 defendant's position that even though the conviction was on July
24 9, he denies that he was convicted of that offense.

25 MR. YOUNG: Well, actually, his position is as follows.

1 He was charged with that offense in 1991. He was convicted of
2 that offense in 1992. And in July of 1993, his probation was
3 violated. And that's what the July '93 conviction was, was a
4 violation of probation and not a drug conviction that occurred in
5 '92.

6 THE COURT: All right. Does the government have a
7 documentary record of the convictions of Mr. Estremera?

8 MR. BEAUMONT: I have a certified copy of that
9 particular conviction.

10 THE COURT: All right. Have you made copies?

11 MR. BEAUMONT: I'm getting it, Judge.

12 THE COURT: My question, Mr. Beaumont, is have you made
13 copies?

14 MR. BEAUMONT: I believe we have, Judge.

15 THE COURT: Excellent.

16 MR. BEAUMONT: I don't want to say it too quickly, but
17 I'm told we did.

18 THE COURT: Do you have legible copies you can provide
19 opposing counsel and me?

20 MR. BEAUMONT: He has a copy. He got a copy, and I do,
21 Judge.

22 THE COURT: All right, good. This is a certified copy.

23 MR. BEAUMONT: Of a conviction. It's dated -- it's 91
24 CF 1571. It's dated -- it's stamped at the top "Clerk of the
25 Court July 9, 1993 filed, People of Illinois, Plaintiff, v

1 Abraham Estremera," Judge Peterson, I think, and it says
2 "Judgment Order, Illinois Department of Corrections, Crime for
3 which Defendant Convicted, UPC Substance," which would suggest
4 unlawful possession of controlled substance, Chapter and Section
5 Illinois 56-1/2 1402, which indeed is unlawful possession of
6 controlled substance chapter, section under the Illinois statute.

7 He was sentenced on that date to twelve months
8 imprisonment. And the judgment order states that: "Defendant
9 named herein is guilty of the crime set forth in this case and
10 further order defendant be given for time served and adjudged,
11 defendant sentenced to the Illinois Department of Corrections."

12 So my position is this, that -- and let me just proffer
13 to the court, I also have evidence, fingerprint evidence that the
14 defendant actually went to prison, the Department of Corrections
15 based on this judgment order, and we compared the fingerprints of
16 the person that went to prison based on this judgment order with
17 the fingerprint card of the defendant that we obtained from him
18 in the arrest in this case, and we have an expert who will
19 testify that they are one and the same person.

20 My position is this, that the -- that we have a
21 certified copy of a conviction for him for a July 9, 1993
22 possession of controlled substance.

23 MR. YOUNG: And, your Honor, Mr. Estremera is not
24 disputing that he is the person who was involved in the July 9
25 '93 court order. However, if you take a look at the other

1 documents which I believe counsel handed up --

2 THE COURT: Right, none of which have been marked as
3 exhibits, so perhaps we should mark them.

4 MR. BEAUMONT: I will, Judge. I'll mark them Government
5 Exhibit No. 1.

6 THE COURT: Here, let me hand you back the copies.

7 MR. BEAUMONT: I'll give you the original, Judge. It's
8 marked Government Exhibit No. 1.

9 THE COURT: Oh, okay. So they're all together as
10 Government Exhibit No. 1?.

11 MR. BEAUMONT: Yes, sir.

12 THE COURT: All right, why don't you hand me the
13 originals and I'll hand you back the copy then.

14 In Government Exhibit No. 1, the judgment order that you
15 referred to is the last document of those several documents, is
16 that correct, Mr. Beaumont?

17 MR. BEAUMONT: Yes.

18 THE COURT: And, Mr. Young, you're desiring to bring to
19 my attention the third from the last document of that Government
20 Exhibit No. 1, which is a complaint for a preliminary hearing in
21 the same numbered case, 91 CF 1571.

22 MR. YOUNG: That is the same case, your Honor.

23 MR. BEAUMONT: Judge, if I could make one point.

24 THE COURT: All right.

25 MR. BEAUMONT: I just want to bring up one matter. It

1 seems to me under 21 USC Section 851(d) that defendant can't
2 challenge the validity of a prior conviction if it's more than
3 five years prior to the filing of my notice.

4 THE COURT: I thought we had earlier dealt with that
5 when I raised that point, but it's your position that the
6 defendant is now challenging the validity of the conviction that
7 was set forth in your notice?

8 MR. BEAUMONT: He is challenging the validity, yes, sir,
9 of this conviction that we are talking about now and I don't
10 think he can do it.

11 THE COURT: No, we are talking about -- assuming that
12 the notice said July 9, because I have ruled that July 3rd and
13 July 9 were equivalent because of your subsequent filing setting
14 forth the date of July 9, so the notice that you provided was the
15 notice of a conviction of an offense of possession of a
16 controlled substance on July 9, conviction on July 9. It's the
17 defense position that the conviction on July 9 was not for the
18 unlawful possession of a controlled substance but for a probation
19 violation, was it, Mr. Young? Mr. Estremera, you have your hand
20 up.

21 DEFENDANT ESTREMERERA: I could just clear the record,
22 your Honor.

23 THE COURT: If you would, that would be helpful.

24 DEFENDANT ESTREMERERA: I caught the case in November
25 of -- I caught the case in '91.

1 THE COURT: Okay.

2 DEFENDANT ESTREMER: During the course that I was on
3 violation, I violated the probation, so in 1993, July 9th, since
4 I violated the probation, the judge gave me twelve months
5 imprisonment for the violation of probation, is what happened on
6 that case.

7 THE COURT: Okay.

8 DEFENDANT ESTREMER: I caught the case in 1991, but I
9 violated it in 1993. That's when I went to prison.

10 THE COURT: You used the phrase "caught the case."
11 That's when you were first charged with it, right?

12 DEFENDANT ESTREMER: Yes.

13 THE COURT: Okay. But at some point before the
14 probation violation you were convicted of that offense and you
15 were placed on probation, is that right?

16 DEFENDANT ESTREMER: Excuse me, could you say it again,
17 please?

18 THE COURT: Yes. In order to be on probation you had to
19 be convicted of the offense and placed on probation.

20 DEFENDANT ESTREMER: Yes, and I was convicted of that
21 sometime in '91 -- February 28, 1992.

22 THE COURT: Okay. And that's the second document in
23 Government Exhibit 1, the judgment order of your conviction on
24 February 28, 1992 for the offense with which you were charged or
25 the offense that you caught in '91?

1 DEFENDANT ESTREMER: Yes, I received probation.

2 THE COURT: And that document, the second document of
3 Government Exhibit 1, and I appreciate that the government has
4 obtained all of these documents so we could have a full
5 understanding of the record, is in the same case number, 91CF
6 1571.

7 So it's not -- Mr. Beaumont, my understanding is it's
8 not the defendant's position that he is attacking the validity of
9 the offense, he is attacking the characterization of the offense
10 as a conviction for the unlawful possession of a controlled
11 substance in July of 1993 when in fact he was convicted of it in
12 February of 1992.

13 MR. BEAUMONT: I understand he says that.

14 THE COURT: Okay.

15 MR. BEAUMONT: But I have a certified document that
16 doesn't say he is convicted of a probation violation.

17 THE COURT: No, it doesn't.

18 MR. BEAUMONT: It says he is convicted of UPCS Chapter
19 and Section 56-1/2 1402-2, and that's dated July 9, 1993 and
20 that's -- and then he reported to prison based on that
21 conviction.

22 So I'm saying that the evidence before the court, that
23 the only evidence that the court can consider is the certified
24 document, certified record of conviction for that date.

25 THE COURT: why do you say it's the only thing I can --

1 that's prima facie evidence, but it could be refuted, couldn't
2 it?

3 MR. BEAUMONT: See, that's the point -- the point I'm
4 trying to make, I don't think he can refute it. From my reading
5 of the statute --

6 THE COURT: Which statute are you referring to now?

7 MR. BEAUMONT: The section that says the statute of
8 limitations -- and maybe I'm reading it wrong, but my reading of
9 the statute says he can't challenge the validity of the prior
10 conviction.

11 THE COURT: Oh, I see, you're saying because the --
12 because the judgment order reflects what it reflects, which is a
13 conviction of the unlawful possession of a controlled substance,
14 that to claim now that that was a conviction for probation
15 violation is attacking the validity of the conviction.

16 MR. BEAUMONT: Yes, sir, that's my position.

17 THE COURT: Okay.

18 MR. YOUNG: Judge, could I just respond to that?

19 THE COURT: Sure.

20 MR. YOUNG: You raised that earlier and I was thinking
21 about subsection (e) over lunch in terms of the
22 constitutionality, and essentially, what that section of the
23 statute says is that if a defendant was subject to two
24 convictions, both of those convictions were void, and both of
25 those convictions were more than five years old, he could still

1 be enhanced and spend the rest of his life in jail as a result of
2 two void convictions.

3 THE COURT: Right, because he didn't challenge the
4 validity within the time -- because he wasn't charged --

5 MR. YOUNG: He couldn't. According to the statute he
6 is barred from doing that, and I'm not a constitutional expert,
7 but there has got to be a due process problem when a void
8 conviction cannot be challenged and still can be used to enhance
9 a person for life.

10 THE COURT: Using the hypothetical, he caught a
11 conviction seven years ago, he caught another conviction six
12 years ago, he is charged this year with the offense, so the
13 statute of limitations -- with the offense in the federal court,
14 and so the statute of limitations under section 851(e) has run at
15 the time that he is charged with the federal offense, those
16 convictions are shown to be void but cannot be considered because
17 the defendant can't challenge the validity of those.

18 MR. YOUNG: Exactly.

19 THE COURT: Under section 851.

20 MR. YOUNG: Exactly.

21 THE COURT: And he would then have a mandatory life
22 sentence.

23 MR. YOUNG: Correct.

24 THE COURT: As a result of two void convictions that
25 are unchallengeable because of section 851(e).

1 MR. YOUNG: Exactly.

2 THE COURT: That's the hypothetical.

3 MR. YOUNG: That is the hypothetical.

4 THE COURT: Okay.

5 MR. YOUNG: And I also disagree with Mr. Beaumont that
6 subparagraph (e) bars Mr. Estremera from opposing the 851
7 enhancement because under that interpretation any time the
8 government filed any conviction seeking to enhance a person to
9 life and that conviction was more than five years, a defendant
10 has to object to it, but if he is not entitled to show why it's
11 not accurate -- maybe it's a different person with the same
12 name -- according to Mr. Beaumont he would be barred from even
13 showing it wasn't him, it was someone with the same name.

14 MR. BEAUMONT: That's not what I'm saying, Judge. I'm
15 saying he can only say that wasn't me and we would have to prove
16 then -- under the statute the burden shifts to us to prove beyond
17 a reasonable doubt that yes, that indeed is him.

18 THE COURT: He can't say "I wasn't convicted of that
19 offense" because your position is he can't say that because if
20 you present a certified copy of the conviction, any argument that
21 he makes that he was the one that went to prison under that
22 judgment order but he wasn't convicted of that, he was convicted
23 of probation violation, right?

24 MR. BEAUMONT: And I don't want you to think that I'm an
25 expert on this statute because I'm not, but my sense is --

1 THE COURT: I don't know that anybody is an expert on
2 the statute.

3 MR. BEAUMONT: My sense is the reason for the statute is
4 to avoid what we are doing right now and that is looking at cases
5 that are five, six, seven, eight, nine years old and deciding
6 indeed are they valid or not. So I think Congress, basically I
7 have to prove beyond a reasonable doubt that he was convicted on
8 a certain day of a felony drug conviction. He can say "I wasn't"
9 and I think that's where it's left and I either prove that beyond
10 a reasonable doubt or I don't, and I think that's the only thing
11 that we can have in a hearing.

12 THE COURT: So it's your position that I cannot
13 consider the second page of Government Exhibit 1 this afternoon,
14 the second page being the judgment order in which on February 28,
15 1992, Judge Peterson, if I can read his handwriting, entered a
16 finding of guilty against Mr. Estremera for the unlawful
17 possession of a controlled substance in this same case, 91 CF
18 1571, and entered that judgment on a plea of guilty by the
19 defendant and sentenced him to 48 months probation, I cannot
20 consider that?

21 MR. BEAUMONT: I'm hesitant because I hate to say that.
22 I don't think you can, but I'm honestly not positive. Just from
23 a reading --

24 THE COURT: well, I would like to know what your
25 position is going to be in the Court of Appeals when I agree with

1 the defendant, if I do, and I allow you the expedited appeal
2 that's allowed under section 851. That's what I would like to
3 know.

4 MR. BEAUMONT: I didn't know there was an expedited
5 appeal.

6 THE COURT: Oh, yes, there is an expedited appeal.
7 It's interesting. It's under --

8 MR. BEAUMONT: Yes, it does.

9 THE COURT: Yes, I'm supposed to postpone sentencing
10 and allow you to appeal. So I would like to know what you're
11 going to tell the Court of Appeals. That's what I would like to
12 know.

13 MR. BEAUMONT: well, the truth of the matter is,
14 Judge --

15 THE COURT: Because that's what's going to persuade me,
16 not what you're going to tell me, but what you're going to tell
17 the Court of Appeals.

18 MR. BEAUMONT: The truth of the matter is, Judge, I
19 don't think we are going to appeal.

20 THE COURT: You can't make that decision, Mr. Beaumont.

21 MR. BEAUMONT: I know, but certainly my recommendation
22 is going to be, have a lot of weight, and under the circumstances
23 of this case, and I'll tell you, we still have the other prior
24 conviction, his sentencing guidelines are ultimately I believe
25 going to still come out to be 360 to life.

1 THE COURT: And it still will be the mandatory life.

2 MR. BEAUMONT: Correct. Under the circumstances of this
3 case I don't think it really would be an issue that we would want
4 to pursue on appeal, is the answer to the question.

5 THE COURT: Okay.

6 MR. BEAUMONT: And especially when I don't know
7 precisely the answer to the question.

8 THE COURT: I don't think there is -- well, I don't
9 know all the cases, but I would be surprised if there is a case
10 on point where the sentencing judge on a probation violation does
11 not consider the crime to be the probation violation, but
12 considers the crime to be the underlying offense on which the
13 defendant was previously convicted and sentenced to probation. I
14 mean, I can certainly understand why Judge Peterson put that or
15 Judge Peterson's clerk, whoever JBH is, because it looks like
16 it's that person's handwriting, Judge Peterson just signed the
17 document. But it seems to me that it's probably a clerical error
18 on the document that's the last page of Government Exhibit 1, and
19 it should have said the crime of which the defendant was
20 convicted, or maybe another form should have been used because
21 the offense that the defendant engaged in that caused him to go
22 to jail was the probation violation of the probation on which he
23 was sentenced in 1992, February 28 of 1992.

24 But in reality what you're telling me, Mr. Beaumont, is
25 even if I rule in favor of the defendant on this point, there

1 still is the additional, the additional conviction that was
2 placed in the government's notice.

3 MR. BEAUMONT: Correct, which would make, enhance the
4 penalty to 240 months, or 20 years, mandatory minimum of 20
5 years, but then his Guidelines, depending on how you rule on the
6 Guideline issues, may ultimately end up, his range is going to be
7 360 to life because he is going to be a level 40, he is going to
8 be a level 40 with a criminal history category that's going to
9 call for a range of 360 to life.

10 So if I could just make one other statement in regard to
11 that.

12 THE COURT: Sure.

13 MR. BEAUMONT: If that's the court's ruling, we are not
14 going to appeal, you know, I can't say that officially, but I'm
15 confident we are not going to appeal.

16 THE COURT: Okay.

17 MR. BEAUMONT: But I would ask the court to allow us
18 time, because we do have -- in that case we do have evidence of
19 aggravation that we would ask to provide.

20 THE COURT: Which case are you referring to now, this
21 July 9, 1993 conviction?

22 MR. BEAUMONT: No. If you disallow the, that
23 conviction, that July 9th --

24 THE COURT: The '93 conviction, we will call it the '93
25 conviction. I'll say that it actually was a '91 conviction, and

1 although we are going to give you six days from July 3rd to July
2 9 of '93, I'm not going to give you a year and a half, from
3 February '92 to July of '93.

4 MR. BEAUMONT: I understand.

5 THE COURT: Do you understand?

6 MR. BEAUMONT: Yes, sir, and I think that ruling is
7 correct. So my point being then that's going to send us back to
8 the Sentencing Guidelines in essence because his range is
9 ultimately going to -- depending on your rulings will likely end
10 up to be, his range will be 360 to life. We then would ask for
11 the opportunity to present evidence in aggravation because our
12 position is he should be sentenced at life. We have evidence
13 that connects him to two separate murders. Now, we didn't
14 anticipate using that evidence in this hearing because we were
15 looking at mandatory life and we saw no need to take up the
16 court's time with it. But in light of your ruling or the way I
17 expect you to rule, we would like to have an opportunity to
18 present that evidence and I need a couple of days to do it, I
19 mean a couple of days to get the witnesses here, but a couple of
20 hours for testimony.

21 THE COURT: Okay. Well, what is the defendant's
22 position with regard to what is paragraph No. 2 of the notice of
23 prior convictions, the July '93 conviction?

24 MR. YOUNG: That it is inaccurate, that the submission
25 that the government has tendered to the court which was

1 referenced as a certified copy, which I do not believe to be a
2 certified copy, references a probation violation, and counsel
3 made reference to proof beyond a reasonable doubt. If we were
4 going to utilize that standard, I guess we could get the court
5 transcript of that hearing. But to answer your question, Judge,
6 we stand on the objection to paragraph 2.

7 THE COURT: Well, the government did provide us with a
8 certified copy. I mean, there is a certification on the back
9 dated October 10, 2003 of the document that's in the Circuit
10 Court of Cook County.

11 MR. YOUNG: Okay, I stand corrected.

12 THE COURT: Dated July 9, 1993. I don't believe that
13 document accurately reflects the offense for which the defendant
14 served twelve months in prison. The offense for which he served
15 twelve months in prison was a probation violation on a probation
16 that was imposed on February 28, 1992, according to a certified
17 copy of that conviction when the defendant was placed on 48
18 months of probation. The defendant himself has articulated that
19 scenario and I believe that's the correct scenario, and so
20 consequently, to be fair to the defendant with regard to the
21 government's notice, although I certainly understand why the
22 government gave the notice that it gave because without reviewing
23 all of the documents in that case file, looking only at the July
24 9 '93 conviction, it certainly looks like the defendant was
25 convicted of possession of a controlled substance and sentenced

1 to twelve months on that date.

2 But I find that that was not the circumstances, even
3 though at first blush it looks like it was, from reviewing the
4 certified copies that the government has provided and the
5 government has not met its burden of proof on that point, and so
6 consequently, I will not consider that conviction, the July '93
7 conviction for purposes of evaluating the application of Section
8 851.

9 Given that then, Mr. Beaumont, you want time to evaluate
10 whether you want to appeal this ruling?

11 MR. BEAUMONT: Correct, although I'm confident, I'm sure
12 our position --

13 THE COURT: But you should be given time to evaluate
14 that. I think the government has ten days. It just says the
15 government can appeal. So all the regular appellate rules go
16 into effect. And you also need time to then gather your further
17 evidence with regard to the murders.

18 MR. BEAUMONT: Yes, sir, that we would intend to offer
19 in aggravation to help the court decide where to sentence him in
20 the range.

21 THE COURT: How long will it take you to put together
22 that, and have you -- first of all, have you provided Mr. Young
23 with information about those alleged murders?

24 MR. BEAUMONT: No, because until your ruling now they
25 weren't -- we had no intention of offering it. So I will provide

1 him with it.

2 THE COURT: All right. Provide as much information as
3 you would if you were to return an indictment in connection with
4 that, and provide the additional discovery that would be
5 necessary such as witnesses' statements, et cetera.

6 MR. BEAUMONT: We will.

7 THE COURT: How long will that take?

8 MR. BEAUMONT: Could I have two weeks?

9 THE COURT: Two weeks to provide it?

10 MR. BEAUMONT: No, set this in two weeks and I'll get it
11 provided right away. I'll get it by tomorrow.

12 THE COURT: How quickly can you provide it?

13 MR. BEAUMONT: Tomorrow.

14 THE COURT: Let me ask what your respective schedules
15 are for the morning of November 24th for further sentencing
16 proceedings.

17 MR. YOUNG: I'm scheduled to begin a trial before Judge
18 Grady that week. It's a little shaky as to whether or not it's
19 going to go, but in the prior week, 20th or 21st, if that's bad
20 for the court then I guess -- the 24th I think is Thanksgiving
21 week.

22 THE COURT: The 24th is Thanksgiving week. That's why
23 I don't have a trial set then. I do have other matters.

24 MR. YOUNG: Yes.

25 THE COURT: You would be available the 20th?

1 MR. YOUNG: Yes.

2 THE COURT: I have a trial starting on the 17th that
3 will go -- I don't know if it will be over by the 20th.

4 MR. YOUNG: Or the 21st.

5 THE COURT: Can I hold you from day to day starting on
6 the 20th?

7 MR. YOUNG: Sure.

8 THE COURT: Because what you will be doing is preparing
9 for that other trial anyway.

10 MR. YOUNG: Right, and if it doesn't go I'm available
11 that week.

12 THE COURT: I'm not sure at this point about the 21st.
13 And I don't know how long that other trial is going to take.
14 It's a defendant who has pleaded guilty and the issue is
15 forfeiture. But it's several million dollars worth of forfeiture
16 that the government is seeking.

17 So let's continue this sentencing then to -- let's make
18 it 10:00 on November 20th and keep in touch with my minute clerk.
19 The government is ordered to provide notice with regard to that
20 additional crime or crimes that the government is going to seek
21 to present. Mr. Beaumont, you think you can provide that no
22 later than 4:30 tomorrow?

23 MR. BEAUMONT: Yes, sir.

24 THE COURT: All right, then, 4:30 tomorrow, October
25 29th.

1 MR. YOUNG: Thank you, Judge.

2 THE COURT: All right. We will continue this matter.
3 Pause and take a note as to where we are in the sentencing
4 proceeding because this sentencing or these sentencings in this
5 case have not taken the typical path.

6 All right. So Mr. Estremera's sentencing proceeding is
7 continued to that date. Mr. Beaumont, I'm going to hand you back
8 Government Exhibit 1 in the Estremera matter.

9 MR. BEAUMONT: Thank you.

10 THE COURT: You may want to call it Government Exhibit
11 Estremera 1.

12 MR. BEAUMONT: I will.

13 THE COURT: Why don't we, and then it will make it
14 cleaner for your recordkeeping purposes.

15 Mr. Loeb has approached the podium, and Mr. Young is
16 going back to his detention -- or to the detention hearing and I
17 promised Mr. Loeb that he would be back before Judge Andersen
18 seven minutes from now.

19 MR. LOEB: We have already deferred one matter, that
20 being the tapes which Mr. Liscano is seeking. I should inform
21 the government I have met with Mr. Liscano. We have determined
22 the following. While we told you we had transcripts, we had
23 trial transcripts here, okay, not tape transcripts.

24 THE COURT: Oh. Okay.

25 MR. LOEB: And the conversations that Mr. Liscano is

1 desirous of playing for your Honor turns out these are tapes
2 which we never had transcripts of and were not played at trial,
3 but he heard in an audio -- he heard off the audio that was
4 supplied to the MCC. These conversations that I'm going to say
5 surrounded the May 13th incident that did go into trial.

6 Therefore, he is seeking tapes that go into May 12, 13 and 14.
7 I'm informing the government that that's what we are seeking.

8 THE COURT: These tapes were provided in discovery.
9 Mr. Liscano heard them. The government didn't transcribe them
10 because the government didn't intend to put them into evidence.
11 And Mr. Liscano didn't have them transcribed because they didn't
12 actually assist him in defending the conviction in the case.

13 MR. LOEB: Correct.

14 THE COURT: They merely went to sentencing or more so
15 went to sentencing.

16 MR. LOEB: Correct, correct.

17 THE COURT: Is that right, Mr. Liscano?

18 DEFENDANT LISCANO: Yes, your Honor.

19 MR. BEAUMONT: I'll get the tapes. We will play the
20 tape. I would make one point though. In light of your rulings
21 regarding the 851 notice, basically, we are down to a 5 kilo
22 threshold because if the court makes a finding that he is
23 responsible for 5 kilos or more, then it doesn't matter how much
24 cocaine we are talking about after that because it's mandatory
25 life.

1 MR. LOEB: I don't disagree with that. However, it
2 seems we are also dealing with the accuracy of the PSI that will
3 travel with him. I would invite Mr. Beaumont in light of your
4 Honor's ruling if there are objections that we have raised, in
5 light of your ruling that he is willing to eliminate from the
6 PSI, that might moot out some of these other discussions.

7 THE COURT: Why don't you two speak with one another,
8 and perhaps address that point, but Mr. Corral testified at trial
9 with regard to the sale of cocaine to Mr. Liscano, correct?

10 MR. LOEB: Correct.

11 THE COURT: I don't recall, and I haven't reviewed the
12 transcripts, of the amount of cocaine that Mr. Corral testified
13 he sold to Mr. Liscano.

14 MR. LOEB: He said 13 to 16 kilograms at trial. Now,
15 we have filed a written objection -- it's part of my objections
16 that we don't find that testimony persuasive, but I think we can
17 agree that is what he testified to at trial.

18 MR. BEAUMONT: Yes.

19 THE COURT: Okay. I don't understand how we can get
20 around not listening to those tapes that preceded May 13 then.

21 MR. BEAUMONT: That's fine, Judge.

22 THE COURT: I mean, if it's the government's position
23 that Mr. Corral was truthful when he testified 13 to 16
24 kilograms, and it's the defense position that Mr. Corral was not
25 truthful, I then have to make a determination whether the

1 government has proven it and I have to assess the credibility of
2 Mr. Corral and in order to do that, I have to listen to those
3 tapes.

4 MR. BEAUMONT: That's fine, Judge.

5 THE COURT: Okay.

6 MR. BEAUMONT: We will be happy to play them, Judge.

7 THE COURT: Is it possible for you to put those tapes
8 on a single cassette and identify on that cassette with counsel
9 or an agent identifying the date and the time of the tape to be
10 played and the speakers, just identifying as a preliminary to the
11 tape? This is just for my benefit, and we would call this
12 Government Exhibit Liscano Tape.

13 MR. BEAUMONT: Absolutely. We will do that. My only
14 request is that counsel talk to Mr. Liscano and try to tell me
15 which tapes we are talking about and I would be happy to produce
16 any tapes they want. But we have got to narrow down what tapes
17 they are. I'll give them any tapes they want. They just have to
18 tell me the tapes they want.

19 THE COURT: You can give them any tapes, but what you
20 have to do is prepare this.

21 MR. BEAUMONT: I will.

22 THE COURT: Let's call it Government Exhibit Liscano
23 sentencing cassette, how is that?

24 MR. BEAUMONT: That's fine.

25 MR. LOEB: It will be a cassette.

1 MR. BEAUMONT: It will be a CD.

2 THE COURT: So I have to play it on my computer.

3 MR. BEAUMONT: They tell me we can get it on cassettes
4 Judge.

5 THE COURT: Do you mind if it's on a cassette? Then I
6 can listen to it on more, in more locations other than where I
7 have a computer. What kind of a portable thing can you play a CD
8 on, MP3?

9 MR. BEAUMONT: There are portable CD players but I have
10 cassettes in my car.

11 THE COURT: I don't want to make the admission that's
12 when I would listen to it but I do have a cassette player in my
13 car. I don't have a computer in my car or a CD player in my car.

14 MR. BEAUMONT: We will be happy to put it on cassettes.

15 MR. LOEB: Judge, I kind of anticipated Mr. Beaumont's
16 request, and I don't know I can limit it much more than to say
17 discussions between Corral and others May 12, 13 and 14,
18 concerning the nonavailability of drugs.

19 THE COURT: Can we limit it to those three days and
20 before you answer that question can you consult with Mr. Liscano.

21 MR. LOEB: I kind of did.

22 THE COURT: So it's 12, 13 and 14.

23 MR. BEAUMONT: May I just have a second, Judge?

24 THE COURT: You may.

25 MR. BEAUMONT: The logistical problem we have is if we

1 want all the calls he was averaging a hundred and some odd calls
2 a day so we are talking about 300 calls so to put a preamble on
3 300 calls may some time.

4 THE COURT: To listen to 300 calls may take some time
5 as well. Here is, why don't we do this. Can you make those 300
6 calls available to Mr. Liscano.

7 MR. BEAUMONT: Yes.

8 THE COURT: Can we have Mr. Liscano then listen to
9 those calls and identify for us what calls he would point out to
10 me to be the calls I should consider in connection with this
11 position that he has that Mr. Corral didn't have drugs. Because
12 that's his position, right?

13 MR. BEAUMONT: Yes, I believe it is.

14 MR. LOEB: Yes, we can do that.

15 THE COURT: Therefore could not have sold Mr. Liscano
16 the 13 kilograms because he was telling people he didn't have
17 drugs, that's proof that Corral didn't have drugs.

18 MR. BEAUMONT: It was proof that he was telling people
19 he didn't have drugs, yes. I don't want to argue it doesn't mean
20 he didn't have drugs or wasn't intending to sell drugs to
21 Liscano.

22 THE COURT: Right, Mr. Corral may have been lying on
23 the telephone but what Mr. Liscano, the inference Mr. Liscano
24 wants me to draw is that Mr. Corral was being truthful on the
25 telephone when he told others Mr. Corral did not have drugs to

1 show that Mr. Corral didn't have drugs at that time to sell to
2 anyone and therefore could not have sold those drugs to Mr.
3 Liscano, and therefore, Mr. Corral was not truthful on the
4 witness stand when Mr. Corral testified he sold 13 kilograms to
5 Mr. Liscano at that period of time. You see that's the inference
6 he wants me to draw.

7 MR. BEAUMONT: I understand that, Judge.

8 THE COURT: You can certainly argue that Mr. Corral was
9 lying to the people on the phone, he was truthful under oath on
10 the witness stand. I mean that's an argument the government can
11 make.

12 MR. BEAUMONT: I understand.

13 THE COURT: But I want to consider Mr. Liscano's
14 evidence on that point.

15 MR. BEAUMONT: I will make all the calls available to
16 Mr. Liscano and he can listen to them all he wants, tell counsel
17 which calls he wants, they, if they can identify them for me in
18 some fashion I will put a header on them, so I'll turn them over
19 to the court and the court can listen to them.

20 MR. LOEB: As long as you're doing that is it different
21 to make me a duplicate?

22 THE COURT: You can make a duplicate of what you make
23 me, just dupe it. Once it's made for me just dupe it. Mr.
24 Liscano you raised your hand and approached the podium.

25 DEFENDANT LISCANO: Now, how things are done at the MCC,

1 they will not allow us to take a tape recorder to our cell to go
2 over the tapes as they did before, what reason I do not know, but
3 now you may only have one time per week and it may only be up to
4 an hour, and the last time I went to the discovery room I was
5 pulled out of the discovery room while going over my discovery
6 CDs and tapes so I don't know whether or not I'm going to be
7 hauled on out of there and shipped to the county.

8 MR. BEAUMONT: If you give me a second, I may have a
9 solution for that. Just give me one second.

10 THE COURT: Okay.

11 MR. LOEB: while he was checking and you're about to
12 consider dates, my trial is supposed to go through early
13 December.

14 THE COURT: Judge Andersen kind of off the record has
15 said that it may go longer than that, but do you think it's going
16 to go through December?

17 MR. LOEB: I gave you the average estimate. Some
18 estimates are a little earlier, some estimates are a little
19 later.

20 MR. BEAUMONT: what we will do is we will bring him,
21 assuming there is no objection, to our office, we will sit him
22 down with the CD player and we will play all calls for him and he
23 can say I want that one or I don't want that one.

24 DEFENDANT LISCANO: Your Honor, I would rather not go to
25 the office of. I would rather do it in my cell.

1 THE COURT: That's fine. We will see if we can make
2 arrangements to the extent you can. I don't want to in any way
3 impinge upon the decisions made at the MCC or by the Marshals
4 Service with regard to security at the MCC. And so what we will
5 do is we will set Mr. Liscano's case for further status on the
6 20th of November for status. That's almost a month. You can
7 start the process. Hopefully between now and then Mr. Liscano
8 will have a chance to listen to the tapes. But we will know on
9 the 20th what the situation is on his ability to listen to those
10 tapes and we will hopefully be in a better position to set a
11 further date to continue the sentencing at that time.

12 MR. LOEB: 1:30?

13 THE COURT: 10:00.

14 MR. LOEB: In light of that, might you be able to
15 indulge me with the 18th or 25th because we have Tuesdays off
16 from that trial.

17 THE COURT: Sure, let's do it on the 18th just for
18 status at 1:30.

19 MR. LOEB: Then I'm back in front of -- it's just
20 Tuesday mornings I have off. I think we are just reporting to
21 you, it will be pretty short.

22 MR. BEAUMONT: The morning of the 18th I'm hearing panel
23 chairperson at ARDC. I have a hearing that morning.

24 THE COURT: We could do it at 2:00 on the 20th but you
25 don't know what the situation is -- what days do you have off.

1 MR. LOEB: Tuesday mornings and Fridays.

2 THE COURT: Tuesday mornings and Fridays.

3 MR. LOEB: Yes.

4 THE COURT: why don't we make it -- when is your
5 hearing?

6 MR. BEAUMONT: 18th, just that day.

7 THE COURT: why don't we say the 25th then, 25th. It
8 will be the 25th at 9:00. we will call it first up and since
9 it's just a status -- let's make it 9:30 and we will have Mr.
10 Liscano here to give us his personal status report. Can
11 everybody make that?

12 MR. LOEB: Yes.

13 THE COURT: we will order Mr. Liscano for that day.
14 Mr. Liscano, do your best to get through those tapes that you
15 have listened to before that you want me to listen to to consider
16 your position with regard to Mr. Corral, okay? Anything else?

17 MR. BEAUMONT: No, sir.

18 THE COURT: Anything else, Mr. Loeb?

19 MR. LOEB: No, Judge, thank you.

20 * * *

21 I certify that the above is a true and correct
22 transcript of proceedings had in the above matter.

23 /s/ Lois A. LaCorte

24 _____
25 Lois A. LaCorte Date
Official Court Reporter

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1
FILED

FEB 28 2006

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ABRAHAM ESTREMER and
STEVE LISCANO,

Defendants.

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED

MAR 02 2006

No. 02 CR 719-11, -16

Chicago, Illinois
February 17, 2005
1:30 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

05-4798

For the Plaintiff:

U.S. CA - 7th Circuit
FILED
MAR 02 2006 SK
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Clerk's Copy

1 (Proceedings in open court.)

2 THE CLERK: 02 CR 719, U.S.A. versus Abraham
3 Estremera.

4 (Defendant Estremera in.)

5 THE CLERK: Judge, do you call both of them at the
6 same time?

7 THE COURT: Yes, please.

8 THE CLERK: 02 CR 719, U.S.A. versus Steve Liscano.

9 MR. BEAUMONT: Good afternoon, Your Honor.

10 Larry Beaumont on behalf of the United States.

11 THE COURT: Good afternoon.

12 MR. YOUNG: Good afternoon, Your Honor.

13 Donald Young for Abraham Estremera, who is present.

14 THE COURT: Good afternoon.

15 MR. LOEB: Robert Loeb, L-o-e-b, on behalf of Steve
16 Liscano, who is present.

17 THE COURT: All right. Good afternoon.

18 Mr. Liscano?

19 (Defendant Liscano in.)

20 MS. BROWN: Good afternoon, Your Honor.

21 Danielle Brown on behalf of Probation.

22 THE COURT: All right. Good afternoon.

23 Good afternoon, Mr. Estremera --

24 DEFENDANT ESTREMERERA: Good afternoon, Your Honor.

25 THE COURT: -- and Mr. Liscano.

1 DEFENDANT LISCANO: Good afternoon.

2 THE COURT: All right. What is the status today?

3 MR. BEAUMONT: That's a good question, Judge.

4 THE COURT: Okay.

5 MR. BEAUMONT: I don't think we were -- the parties
6 were exactly sure. We're still up for sentencing, pending
7 sentencing.

8 I think we presented all the evidence that the
9 government is going to present, and I am not sure if we're
10 still at the point of the defendants presenting any evidence.
11 I mean, I'm not sure what their status is right now.

12 What happened, you know, obviously the Court's
13 aware, is a motion was filed based on *Booker* and it hadn't
14 gotten to you now till today.

15 THE COURT: Right.

16 MR. LOEB: Let me do, if I might, a little bit of a
17 procedural review.

18 As of last May, we were at the stage where the
19 defendants were asking for transcripts and discovery
20 materials that have been provided, and we were about to go to
21 a hearing at which Mr. Corral, the government's chief
22 prosecuting -- or cooperating witness, was going to testify
23 on the request of the defendants.

24 That was scheduled, I believe, for, well, May and
25 June. Then in rather late June, *Blakey* came out on like, I

1 think, the 24th.

2 On the 29th, we appeared with a motion and response
3 thereto asking for various relief under *Blakeley*, and here
4 we're talking about legal relief, not evidentiary,
5 testimonial kinds of procedures.

6 We can stand at this point -- or at least let me
7 put it this way. That request for relief under *Blakeley*
8 remains live. It survives *Booker*.

9 In general -- I'm not going to argue the merits of
10 this, but just for -- just to elucidate to the issue, the
11 first request that we had was statutory as opposed to
12 guideline, that being that the holding in *Blakeley* required a
13 finding of reasonable foreseeability.

14 In order to implement 841, a statutory
15 consideration, not a guideline consideration, we would
16 maintain that's still a live issue and *Booker* didn't really
17 touch it, touch that.

18 At that point, we contemplated that the government
19 would file a response and then, as the *Blakeley* firestorm
20 proceeded and the U.S. Supreme Court granted *cert.* on *Booker*,
21 we basically stayed that briefing process or schedule.

22 The ball was in the government's court at that
23 point, and now we come back before Your Honor. So
24 procedurally, that's where we're at.

25 THE COURT: All right. I know that on July 8, at

1 least according to the docket sheet, there was a further
2 supplement filed by Mr. Estremera and Mr. Liscano regarding
3 the *Blakey v. Washington* case, and I guess what we have to
4 find out is does the government desire to present anything
5 further with regard to the *Blakey/Booker* issue?

6 MR. BEAUMONT: Well, yeah, I guess I do, yes.
7 Obviously, we'll have to.

8 I mean, I don't agree that the *Blakey/Booker* issue
9 applies at all to Mr. Liscano's situation, because I think
10 the jury did find that this involved a conspiracy of five
11 kilos or more, and that's the only threshold question that
12 the jury must find, and that's sufficient under *Blakey* and
13 *Booker*.

14 THE COURT: All right. Then you could tell me that
15 in your response.

16 MR. BEAUMONT: Exactly.

17 THE COURT: Okay. All right. What about Mr.
18 Estremera?

19 MR. BEAUMONT: And if he's raising the same issues,
20 I'd have to respond to those. I'd have to look at them.

21 THE COURT: He is raising the same issues, is he
22 not?

23 MR. YOUNG: Yes, he is, Judge.

24 THE COURT: Yes. All right.

25 MR. LOEB: Judge, before -- if you are headed

1 towards saying okay, why doesn't the government respond and
2 then we would rebut, I think I would be remiss if I didn't
3 tell you that we have an additional issue or two that --
4 while I'd love for the government to file first, I have to
5 admit it may be more appropriate to raise.

6 THE COURT: Okay.

7 MR. LOEB: Let me just tell you what it is. If you
8 then decide that it's more appropriate for us to go first,
9 you can decide such.

10 In addition to asking for and expecting relief
11 under *Blakey* on a -- on the statutory basis, what subsection
12 of 841 applies, I believe that on behalf of Mr. Liscano, I
13 will be making the following request, although not Mr. Young.

14 If I am correct as to the application of 841 and we
15 then move to the guidelines and applying them, I will be
16 making an argument that there is a remedy to defendants -- to
17 a defendant similar to an *ex post facto* application. *Ex post*
18 *facto* applies to statutes.

19 THE COURT: Right.

20 MR. LOEB: Under the due process clause of the
21 Fifth Amendment, in the case of *Buoy versus City of Columbia*,
22 that applies the *ex post facto* principle to judicial rulings
23 as well.

24 And if we prevail on the 841 issue, I'll be making
25 the request that Mr. Liscano be allowed to elect to be

1 sentenced under the mandatory sentencing scheme that existed
2 prior to *Booker*, and that the application of *Booker* would be
3 violative of the due process clause under an *ex post facto*
4 analogy.

5 I am not trying to argue and persuade you of that.
6 I am trying to show you the issue and ask do you want me to
7 go first?

8 MR. BEAUMONT: Well, I would hope so, Judge,
9 because I couldn't repeat what he just said.

10 THE COURT: Okay. Well, then you are in agreement.
11 Mr. Loeb, you get to go first.

12 MR. LOEB: Okay.

13 THE COURT: And I think, if it is possible, to just
14 reiterate the statutory 841 foreseeability issue, because it
15 ties in, that would be helpful.

16 MR. LOEB: I will.

17 THE COURT: How much time do you need to go first?

18 MR. LOEB: About three weeks.

19 THE COURT: All right. Three weeks from today
20 takes us to the 10th of March. Is that enough time?

21 MR. LOEB: I hope so, yes.

22 THE COURT: Well, I mean, I --

23 MR. LOEB: Yes.

24 THE COURT: -- can give you more. I can give you
25 four weeks.

1 MR. LOEB: I'll take four. Thank you.

2 THE COURT: All right. And then let me ask the
3 government.

4 MR. BEAUMONT: If I could have four weeks to reply,
5 that would be great, Judge.

6 THE COURT: All right. Four weeks from the 24th of
7 March is the 21st of April.

8 Is that all right, Mr. Beaumont?

9 MR. BEAUMONT: That's fine, Judge. That will be
10 perfect.

11 THE COURT: All right. How much time, then, for a
12 reply?

13 MR. LOEB: Two weeks.

14 THE COURT: All right. Two weeks would be the 5th
15 of May.

16 Have we had all the factual presentation?

17 MR. LOEB: Perhaps not.

18 THE COURT: Okay.

19 MR. BEAUMONT: I mean, we haven't on the
20 government's side, but --

21 THE COURT: Right.

22 MR. BEAUMONT: -- there's still this issue they may
23 want to call Mr. Corral.

24 THE COURT: Do you want to call Mr. Corral or do
25 you want to wait and review this issue first?

1 MR. LOEB: If we prevail on these legal issues,
2 there won't be a need.

3 THE COURT: Well, then perhaps I should decide the
4 legal issues first before we proceed further with further
5 factual information.

6 MR. LOEB: It makes sense.

7 THE COURT: Okay. All right. What I will do is I
8 will rule by mail, I will set a further date in the ruling,
9 and then we will see where we are and then hopefully get Mr.
10 Liscano's and Mr. Estremera's cases resolved sometime in the
11 relatively near future.

12 Let me just ask, Mr. Liscano, you are up in
13 Kenosha?

14 DEFENDANT LISCANO: I'm in DuPage County right now.

15 THE COURT: You are in DuPage County?

16 And, Mr. Estremera, where have they got you?

17 DEFENDANT ESTREMERERA: I'm at Dodge County
18 correctional facility.

19 THE COURT: All right.

20 DEFENDANT ESTREMERERA: Or detention facility.

21 THE COURT: I am sorry?

22 DEFENDANT ESTREMERERA: It's the Dodge County
23 detention facility.

24 THE COURT: All right. I will propose to counsel
25 if there is a further need to have Mr. Liscano or Mr.

1 Estremera brought closer at some point in time, you can let
2 me know. Notice up a status report, we will try to work that
3 out.

4 Right now, I would like them to stay where they are
5 because it is just easier for the MCC to deal with this
6 situation. But if there is a need, I will have them brought
7 for a period of time to assist their counsel.

8 MR. LOEB: Very good.

9 MR. YOUNG: Thank you, Judge.

10 THE COURT: Right now, it is legal issues that we
11 are dealing with.

12 MR. LOEB: Right.

13 THE COURT: So you can communicate with them from a
14 distance, I assume.

15 MR. LOEB: Yes.

16 THE COURT: All right. Mr. Young, do you agree?

17 MR. YOUNG: I agree, Judge. Thank you.

18 THE COURT: All right. All right. Is there
19 anything else we need to take up now?

20 MR. BEAUMONT: I don't believe so, Judge.

21 THE COURT: Okay.

22 MR. LOEB: At least throw out a thought. This has
23 nothing to do with me.

24 Are you expecting a remand on Mr. Pena? And if so,
25 you might want to join the dates down the road. I don't

1 know.

2 MR. BEAUMONT: Judge, I know we're reporting to the
3 Seventh Circuit. It's my understanding -- and I'm not
4 actually handling it. Christine's handling that part.

5 But my understanding is that case has been placed
6 on some kind of hold status, and we're reporting the status
7 of these two defendants, because I think they joined -- that
8 the Court wanted to join all three cases.

9 THE COURT: I did.

10 MR. BEAUMONT: Okay.

11 THE COURT: Is there a way we could get Mr. Pena
12 back?

13 MR. BEAUMONT: I have no idea. I mean, I have no
14 idea. I will find out.

15 THE COURT: I know on the civil side, there is
16 something the district judge can do to, I guess, voluntarily
17 accept a remand. I don't remember all of the details of
18 that. I don't know if there is a criminal equivalent of it.

19 But perhaps if the government is presenting to the
20 Court of Appeals a listing of cases that the government is
21 saying needs to be remanded for *Booker* issues, I assume you
22 will include Mr. Pena among them.

23 MR. BEAUMONT: And I'll find that out, Judge.

24 THE COURT: If you could. And I would like to have
25 Mr. Pena's issues resolved as well. They seem to be on all

1 fours with Mr. Estremera and Mr. Liscano. It is just that
2 the factual questions that needed to be resolved were
3 resolved more quickly for Mr. Pena than they were for these
4 folks and then the legal issues arose because of the Supreme
5 Court's activity.

6 So do what you can, if you would, Mr. Beaumont.

7 MR. BEAUMONT: I will, Judge.

8 THE COURT: Thank you. Anything else?

9 (Defendant Estremera raised his hand.)

10 THE COURT: Mr. Liscano raised his hand. Yes.

11 MR. YOUNG: It's Mr. Estremera.

12 THE COURT: I am sorry. Mr. Estremera raised his
13 hand. Mr. Liscano did not.

14 DEFENDANT ESTREMERERA: I just want to know if I
15 could just take a little bit of your time to ask you a couple
16 questions and just get some answers on some things that I got
17 on my mind.

18 THE COURT: All right. Maybe you ought to talk to
19 your lawyer first just to make sure.

20 DEFENDANT ESTREMERERA: Okay. Well, I already spoke
21 with him downstairs, and I told him that I was still going to
22 talk to you regarding this. He feels that I shouldn't, and I
23 feel that I should, so --

24 THE COURT: Okay. Well, have you explained it all
25 to him? I mean, you don't have to follow your lawyer's

1 advice. It is just always a good idea.

2 DEFENDANT ESTREMER: That's why I'm talking to
3 you, so that like then, you know, I can just get it out in
4 the open, stuff like that.

5 THE COURT: Okay.

6 DEFENDANT ESTREMER: You know, I don't have to
7 hold it in or think that I'm doing something that -- you know
8 --

9 THE COURT: Okay.

10 DEFENDANT ESTREMER: -- I don't want to just give
11 up on something when I feel that there's a right to it.

12 THE COURT: Okay. I understand. And if you have
13 talked with your lawyer and you want to go ahead and speak
14 with me, go ahead.

15 DEFENDANT ESTREMER: Okay. Can I get my legal
16 stuff?

17 THE COURT: Sure.

18 MS. REPORTER: Judge, I think there is also another
19 probation officer who didn't identify himself.

20 THE COURT: Okay. My court reporter noted there is
21 another probation officer who did not identify himself or
22 herself. I am not sure who it is.

23 MR. FREEZE: Judge, I'm Zakary Freeze, probation
24 officer in Mr. Liscano's case.

25 THE COURT: All right. Thank you, Mr. Freeze.

1 DEFENDANT ESTREMERA: I was asking Donald
2 downstairs that if we could raise the issue back up about the
3 matter of the jurisdiction, I believe it was, the motion that
4 we had filed, but at that time, you had just acknowledged it,
5 but denied it.

6 So I was asking him if it was possible for you to
7 reconsider it again. And he was asking me why. And so I was
8 thinking about it for a minute and then I figured that the
9 reason why I wanted you to -- would like for you to
10 reconsider it again is because the Seventh District Court has
11 advised the prosecutors on how to do the indictments, and
12 that was in 2000, in 2000. I don't know what month or
13 anything, but that was in 2000. We're in 2005. They still
14 haven't been doing it.

15 But then, you know, *Blakey* came along, and I feel
16 that *Blakey*, more or less, like, you know, gave like another
17 leg to *Apprendi* to help it out, you know. So I was thinking
18 that why wouldn't it be -- why would it be a bad idea to ask
19 you to reconsider it again, you know. 'Cause now with the
20 issue with *Blakey* that's up, that's arised now, and also
21 with *Apprendi*, you know, I mean, you could take it in
22 consideration on the motion.

23 THE COURT: If you want to raise that further in
24 light of the fact that *Blakey*, I believe when I dealt with
25 that, had not yet been handed down, and certainly now *Booker*

1 has been handed down, if you want me to address that, I will
2 address it again.

3 DEFENDANT ESTREMER: Yes, I would like that.

4 And --

5 THE COURT: But I can certainly understand why Mr.
6 Young wanted to know why you wanted to do that, because --

7 DEFENDANT ESTREMER: Well --

8 THE COURT: -- he wants to advise you appropriately
9 on that.

10 DEFENDANT ESTREMER: -- Honestly, I didn't have
11 the answer for him at that moment.

12 THE COURT: Okay.

13 DEFENDANT ESTREMER: He actually made me go back
14 and think about it for a minute, and that's what I came up
15 with, with what I just said right now.

16 THE COURT: Okay.

17 DEFENDANT ESTREMER: And at the same time, I filed
18 the motion pro se, and I'm not aware if you got it yet.

19 THE COURT: I don't recall.

20 DEFENDANT ESTREMER: So I was hoping that you
21 would receive it today, but you didn't, and so I'm asking you
22 to take that into consideration also.

23 THE COURT: Maybe what you ought to do -- have you
24 given a copy to Mr. Young?

25 DEFENDANT ESTREMER: I did give it to Mr. Young.

1 I asked him to file it for me, 'cause I wanted it filed for
2 today. He didn't do it. I've already knew that he wasn't
3 going to do it, so I just went on ahead and took it upon
4 myself to do it.

5 THE COURT: Okay. Since I haven't received it --
6 and it may just be it is in the process in the Clerk's
7 Office. But since I haven't received it, if you want to
8 present that, but you should certainly speak with Mr. Young
9 about that, you can present it within the time frame that we
10 have now just set for further issues that --

11 DEFENDANT ESTREMER: Your Honor, I do not in no
12 type of way want to disrespect Mr. Young, because he has done
13 what he's can for me, but Mr. Young and I in so many ways
14 have not been looking at each other eye to eye.

15 And, to be honest with you, ever since December of
16 2003, the only communication that I've really had with him is
17 when I write him. Otherwise, we don't communicate.

18 When I ask him to do things for me, you know, it's
19 like -- I feel like I do all this research, you know, and
20 study and study to try to help myself out, and every time
21 that I bring a solution or an ideal, it seems like it doesn't
22 have no merit, you know, and I'm just fed up with it already.

23 I mean, this is my life that I'm dealing with.
24 And this should have been over a long time ago, and for some
25 odd reason, it still keeps going on. You know, whether it's

1 a blessing or not, I'll find out at the end.

2 But I feel now that if I don't speak up and just
3 start saying what's on my mind or the little research that I
4 have done, then later on, I might pay for it, you know,
5 because the Appeal Court might say, "Well, you know what?
6 That was your fault because you didn't raise it," 'cause
7 that's what I have read in some of the appeal issues --

8 THE COURT: Well, here's what you --

9 DEFENDANT ESTREMER: -- and I just don't want to
10 go through that.

11 THE COURT: Okay. And I understand. Here's what
12 you can do.

13 If Mr. Young -- and I have a lot of respect for Mr.
14 Young. He has been around a long time, and he knows what he
15 is doing in the courtroom. I think that is clear. It is
16 certainly clear to me.

17 If you still want to present something and he
18 doesn't believe it is appropriate, you can go ahead and
19 present it. But I have to say that if he doesn't think it is
20 appropriate, more than likely, I may not. But you are really
21 thinking of a court beyond me anyway, and so if you want to
22 go ahead and present those additional items, go ahead, and
23 Mr. Young, I'm sure, would assist you in having your pro se
24 things presented.

25 And I understand that he is not putting his

1 imprimatur on them. He is just merely being a facilitator to
2 allow that to be presented.

3 The reason your cases have gone on as long as they
4 have is after the trial, we had these additional issues from
5 a factual standpoint and now we have these additional issues
6 from a legal standpoint.

7 So you will get credit for all the time that you
8 are doing now in whatever sentence you do receive.

9 Anything else?

10 DEFENDANT ESTREMER: I do understand what you
11 said, Your Honor, and I did have a letter that I was going to
12 read to the Court, but I had -- I changed my mind, 'cause I
13 don't want to read it 'cause -- you know, I'm not saying that
14 Mr. Young is a bad attorney, you know, and at the same time,
15 you know, on my thoughts, how -- what do I say? Well, I
16 don't want to say nothing to the courts because, you know --
17 I mean, you're saying that he's a good attorney, and I'm
18 saying that he's partial a good attorney, you know.

19 I feel that he hasn't demonstrated to the fullest
20 what he can do, you know, so -- I'm not going to read the
21 letter, you know. I'm just saying that we're not looking eye
22 to eye with each other.

23 I wish that me and him could look eye to eye and
24 communicate more better, and I wish that he would say, "Well,
25 you know what? The things that you are doing are good, and

1 we'll do something with it," and he's not, and that's what's
2 disappointing me right now.

3 And, Donald, it's nothing personal. You know, the
4 way I look at it, this is my life that I'm dealing with here
5 or that you're dealing with also, you know. Because it ain't
6 just about me. You got to help me out, too. This is your
7 job, too. This ain't nothing personal with you, it ain't.

8 MR. YOUNG: I understand.

9 DEFENDANT ESTREMER: I just need your -- I need
10 you to really help me out, you know, and I just feel that you
11 ain't giving me that.

12 And if I don't address it now, I'm just always
13 going to hold it against you, you know, and I'm going to have
14 an attitude about it, and that's not what I want.

15 I've come a long ways, you know, and I'm at peace
16 with myself, and I want to stay like that. Regardless of
17 what's going to happen here, I'm going to be at peace with
18 myself, you know, and I just want things to be right between
19 us and I want us to kick his butt, to put it in better words.

20 MR. BEAUMONT: Who, mine?

21 DEFENDANT ESTREMER: Yes.

22 THE COURT: Figuratively.

23 DEFENDANT ESTREMER: Excuse me for saying it like
24 that, but --

25 THE COURT: Figuratively. You mean --

1 DEFENDANT ESTREMER: Yes.

2 THE COURT: -- to win --

3 DEFENDANT ESTREMER: To win and, you know --

4 THE COURT: -- in connection with your case.

5 DEFENDANT ESTREMER: Yes, to do what we can to

6 leave out of here --

7 MR. BEAUMONT: I understood that.

8 THE COURT: That was not --

9 DEFENDANT ESTREMER: -- you know, being --

10 THE COURT: -- a physical threat --

11 DEFENDANT ESTREMER: -- being right, you know.

12 THE COURT: -- against Mr. Beaumont.

13 DEFENDANT ESTREMER: And it ain't nothing

14 personal. You have your job to do, and we have ours over

15 here to do, you know.

16 But I know that what's gone on here with our case
17 has been totally wrong, and you've been getting away with a
18 lot of things, and I just feel that it's wrong, and it's
19 something that really bothers me, you know.

20 And I don't know if I should say it, but I am just
21 going to anyways, is that, you know, I was asking Mr. Young
22 why if in our indictment the 50 kilos was not cited in our
23 indictment, why was it allowed in trial, because that was bad
24 against us, okay?

25 So I've -- that question hasn't been answered. But

1 what surprised me was is that someone stated to me that Mr.
2 Beaumont stated out of his mouth, "You don't want to go to
3 trial, because all I got to do is just bring in the 50 kilos,
4 and you're going to get found guilty."

5 You know, and I tell myself, "Well, is that what it
6 really took for you to find us, get us found guilty, was by
7 bringing those in here?"

8 You know, so that's another issue that, I mean, has
9 been on my mind.

10 So I want to ask you, I mean, was it right? Was he
11 allowed to bring those 50 kilos in, even though they were not
12 cited in our indictment?

13 THE COURT: The 50 kilograms were admissible in
14 evidence.

15 Now, Mr. Beaumont, I think, was trying to explain
16 to you that when the 50 kilograms were admitted in evidence,
17 that would be very damaging evidence against you at the
18 trial, but that wasn't the only thing he had to do to have
19 the jury find you guilty beyond a reasonable doubt. The jury
20 had to find each of the elements of the offense, and they
21 did.

22 The fact that it wasn't listed in the indictment
23 was not an error at the time that it occurred. It may have
24 an effect now with regard to *Booker*. But I haven't decided
25 that --

1 DEFENDANT ESTREMER: Okay.

2 THE COURT: -- at this point. But at the time, it
3 was permissible under the law and appropriate under the law,
4 and that evidence was admissible in the case.

5 DEFENDANT ESTREMER: And I'd like to ask another
6 question.

7 THE COURT: Okay.

8 DEFENDANT ESTREMER: When you say that the jury
9 found us guilty of the elements, are you saying every single
10 element that was listed on that conspiracy?

11 THE COURT: The jury had to find you guilty of each
12 of the elements of the crime of conspiracy beyond a
13 reasonable doubt.

14 The instructions articulated that the jury didn't
15 have to find every act of the conspiracy to find you guilty
16 of that conspiracy and didn't have to find every one of the
17 allegations beyond a reasonable doubt to find you guilty of
18 that conspiracy, but the jury had to find each of the
19 elements of the conspiracy, as stated in the jury
20 instructions.

21 DEFENDANT ESTREMER: Okay. See, I haven't read
22 that yet, so I would have to -- I'm going to ask Mr. Young if
23 I could receive that so I can know.

24 THE COURT: The jury instructions?

25 DEFENDANT ESTREMER: Yes. Is it possible for me

1 to receive that?

2 THE COURT: I suppose Mr. Young may have a copy.

3 MR. YOUNG: Yeah, I'll get him another copy, Judge.

4 DEFENDANT ESTREMERER: 'Cause --

5 MR. YOUNG: We had copies at trial, but I'll get
6 another one.

7 DEFENDANT ESTREMERER: That's the one -- one of the
8 things that I been wanting is the paperwork --

9 THE COURT: Okay. Yes. Well --

10 DEFENDANT ESTREMERER: -- that happened during our
11 trial.

12 THE COURT: -- I actually thought at the trial -- I
13 don't remember every trial, but I think in your trial, I
14 actually did make sure that each of you guys, the defendants,
15 had copies of the jury instructions.

16 DEFENDANT ESTREMERER: Well, Your Honor, I did have
17 it at that day --

18 THE COURT: It's possible --

19 DEFENDANT ESTREMERER: -- but after that, I don't
20 know where it went, so --

21 THE COURT: I understand, I understand. Your legal
22 stuff gets moved from here to there and -- no, I understand.

23 But Mr. Young is going to provide you that.

24 DEFENDANT ESTREMERER: All right. Well, and I just
25 want to say thanks for allowing me to talk, and I want to say

1 that even though I am a little bit nervous, I'm going to try
2 to make it an effort to always continue to talk in this
3 courtroom. And so that I just hope that I get that
4 opportunity every time that I raise my hand in here.

5 THE COURT: Well, I can't say I can always give you
6 the opportunity. I just have a little more time this
7 afternoon.

8 But you should talk with Mr. Young as well. And I
9 realize why Mr. Young hasn't been talking with you on a
10 continuous basis, because, frankly, there has been a lull in
11 your case while these legal wranglings go on in the Supreme
12 Court of the United States and other places.

13 But now we are moving forward with your case, and
14 we will get it resolved.

15 DEFENDANT ESTREMERA: Okay. Well --

16 THE COURT: Okay. Anything else? Mr. Liscano,
17 anything you want to say?

18 DEFENDANT LISCANO: No. Not today at least, no.

19 THE COURT: Okay. All right. You are okay with
20 Mr. Loeb?

21 DEFENDANT LISCANO: Yes.

22 THE COURT: Okay. Anything else?

23 MR. BEAUMONT: No, sir. Thank you.

24 MR. YOUNG: Thank you, Judge. Thank you for your
25 time.

1 DEFENDANT ESTREMER: And I'll try my best. Thank
2 you.

3 THE COURT: Thank you.

4 (Proceedings concluded.)

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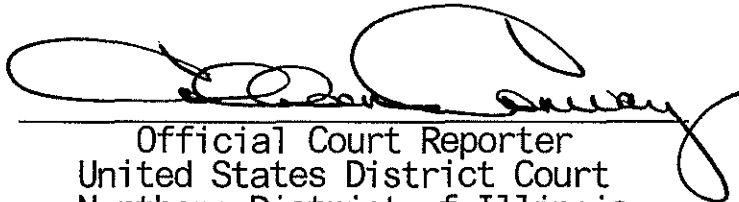
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C E R T I F I C A T E

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I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable JAMES F. HOLDERMAN, one of the judges of said Court, at Chicago, Illinois, on February 17, 2005.



Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

2/13/06
Date

FILED¹

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED STATES OF AMERICA,
Plaintiff,

vs.

ABRAHAM ESTREMER and
STEVE LISCANO,

Defendants.

DOCKETED
MAR 02 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

No. 02 CR 719-11, -16

Chicago, Illinois
November 29, 2005
10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - Sentencings
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

05-4798

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U.S. Probation:

Ms. Danielle Brown
Mr. Zakary Freeze

U.S.C.A. - 7th Circuit
FILED
MAR 02 2006 SK

Also Present:

FBI Agent Paul Book

GINO J. AGNELLO
CLERK

Clerk's Copy

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558.2

1 (Proceedings in open court. Defendants in.)

2 THE CLERK: 02 CR 719, United States of America
3 versus Estremera; 02 CR 719, U.S.A. versus Liscano.

4 MR. BEAUMONT: Good morning, Your Honor.

5 Larry Beaumont on behalf of the United States.

6 THE COURT: Good morning.

7 MR. LOEB: Good morning, Judge.

8 Robert Loeb, L-o-e-b, on behalf of Steve Liscano.

9 THE COURT: Good morning.

10 MS. BROWN: Good morning, Your Honor.

11 Danielle Brown on behalf of Probation.

12 THE COURT: Good morning.

13 MR. FREEZE: Good morning, Judge.

14 Zakary Freeze on behalf of Probation also.

15 THE COURT: Good morning.

16 MR. YOUNG: Good morning, Your Honor.

17 Donald Young for Mr. Abraham Estremera, who's
18 present.

19 THE COURT: Good morning.

20 Good morning, Mr. Estremera.

21 DEFENDANT ESTREMERERA: Good morning, Your Honor.

22 THE COURT: Good morning, Mr. Liscano.

23 DEFENDANT LISCANO: Good morning.

24 THE COURT: All right. I understand that there is
25 a desire to have Mr. Corral present evidence for the purposes

1 of the sentencings?

2 MR. BEAUMONT: Well, actually, Judge, I think
3 there's a desire on the part of the defendants to do that.
4 We're opposed to that. I have him here in case you rule that
5 you wanted to hear from him.

6 The reason we're opposed to it is I don't think
7 there's anything relevant he could testify to at this point
8 in time in light of your rulings at this point.

9 And I think the case law is clear if this
10 conspiracy involved five kilos or more of cocaine, which the
11 jury found that it did, then under the sentencing guidelines
12 for Mr. Estremera, he's a career offender, so the amount of
13 drugs specifically to him is not going to matter.

14 And under the statute, Mr. Liscano has a mandatory
15 minimum of life. The guidelines have nothing to do with his
16 sentence at all, so -- and Mr. Estremera has one prior
17 conviction, so I guess his mandatory minimum is 20 years.

18 So the bottom line, what I'm suggesting is that
19 there's no testimony that Mr. Corral could give that would be
20 relevant to the issues that are now before this Court.

21 THE COURT: I will hear from defense counsel.

22 MR. LOEB: Judge, under your rulings, which, of
23 course, the defense would still dispute, but they are your
24 rulings, you've established the statutory maximum of being
25 life imprisonment by virtue of the jury's finding that the

1 conspiracy did more than five kilos.

2 THE COURT: Yes.

3 MR. LOEB: However, the 841 penalties, and
4 specifically those that are enhanced by 851, don't kick in
5 until there has been a finding of five kilos reasonably
6 foreseeable -- or that's -- this is my position, reasonably
7 foreseeable -- to Mr. Liscano personally.

8 Now, the government may argue that the jury finding
9 is sufficient for that issue, but --

10 THE COURT: I thought I had previously ruled on
11 that point.

12 We have had a lot of hearings over the last months,
13 and some of them have been some time ago. But I thought I
14 already addressed that point. But if I did not, I can
15 address that.

16 MR. LOEB: Okay. Let me state it a little more
17 clearly.

18 THE COURT: Okay.

19 MR. LOEB: Because there are actually dual findings
20 that need to be made, okay?

21 Clearly, you have ruled that the statutory maximum
22 is life by virtue of that jury finding, more than five kilos
23 that the conspiracy was involved in. No dispute that you've
24 ruled such.

25 However -- and I should say parenthetically you

1 relied on Seventh Circuit case law to reach that conclusion,
2 and the Seventh Circuit case law clearly says at this stage
3 that the -- that that jury finding is sufficient to establish
4 maximum, that this line of cases doesn't deal with statutory
5 minimum, and a -- and it's my position that the minimum now
6 needs to be decided.

7 Further, it's my position that it hasn't been
8 decided. You haven't been really called upon to decide that.
9 I am saying that an independent finding of a statutory
10 minimum is needed.

11 Now, the government and some case law suggests that
12 that is still -- even though it's not a guideline issue, that
13 that's still traditionally been the province of the judge,
14 and that *Booker* doesn't change that, but -- here, the
15 converse of my position, Judge, would be to say that the
16 jury's finding of what the conspiracy was involved in is
17 sufficient to establish statutory minimum, and, therefore,
18 reasonable foreseeability to the individual defendant is not
19 even a factor. And if Your Honor is ruling that way, then I
20 guess I have preserved that issue for appeal, but I don't
21 think it's clearly been ruled upon.

22 THE COURT: All right.

23 MR. LOEB: Okay? And if it hasn't been ruled upon,
24 then Corral is relevant to that, getting back to the original
25 issue.

1 THE COURT: That is what I was going to say.

2 MR. LOEB: Yes.

3 THE COURT: The reason we started on this
4 discussion was Juan Corral.

5 MR. LOEB: Right.

6 THE COURT: Mr. Young, anything further?

7 MR. YOUNG: I have no questions for Mr. Corral,
8 Judge.

9 DEFENDANT ESTREMER: Excuse me, Your Honor.

10 I do have questions for Mr. Corral, and the reason
11 why I have --

12 THE COURT: Have you conferred with your lawyer on
13 that point?

14 DEFENDANT ESTREMER: Well, my lawyer told me in
15 our last conversation he didn't care what kind of questions I
16 asked Mr. Corral, so I've just ignored him ever since.

17 But I do have some questions --

18 THE COURT: Well, that's not --

19 DEFENDANT ESTREMER: -- for Mr. Corral.

20 THE COURT: -- very cooperative on your part. Why
21 don't you consult with your lawyer on this point.

22 Your lawyer doesn't believe that Mr. Corral's
23 testimony will assist you in connection with your sentencing.

24 Is that your position, Mr. Young?

25 MR. YOUNG: That's my position, in addition to

1 which Mr. Estremera has told me numerous times that he will
2 not tell me what questions he wants to ask.

3 The last conversation we had is he didn't have any,
4 so --

5 THE COURT: I have had the impression, and I have
6 reviewed the letters -- the letters you have sent, Mr.
7 Estremera -- and you need to, you need to, in order to have
8 your lawyer do the best he can do for you, you need to
9 cooperate with him.

10 So you need to tell him what the questions are that
11 you want to have Mr. Corral answer. I am not going to allow
12 you to question Mr. Corral when we have an attorney here to
13 speak on your behalf.

14 DEFENDANT ESTREMERERA: Your Honor, I have no problem
15 with him asking Mr. Corral the questions that I want to ask.

16 THE COURT: Okay. Good.

17 DEFENDANT ESTREMERERA: But, you know, we've always
18 had a misunderstanding with each other.

19 THE COURT: Why don't you confer with your lawyer
20 so that he will know what those questions are.

21 Frankly, Mr. Corral was the chief government
22 witness in this case --

23 DEFENDANT ESTREMERERA: Yeah, I understand that.

24 THE COURT: -- and Mr. Corral will be providing
25 whatever testimony is his best recollection of what occurred

1 in connection with this conspiracy.

2 It is a strategy decision as to whether, for
3 purposes of this sentencing, you want to bring out that
4 testimony that perhaps maybe wasn't brought out as fully
5 during the trial of the case, which was before *Booker*, and
6 was for the purpose of the government presenting its case at
7 the trial to the jury.

8 We are now in a different posture. I will be
9 making determinations on a different standard than proof
10 beyond a reasonable doubt.

11 So you talk with your lawyer and cooperate with
12 your lawyer.

13 I don't believe you -- at least I got the
14 impression, even before Mr. Young made that comment that he
15 made here, I got the impression that there is perhaps a
16 miscommunication or a misunderstanding on your part, Mr.
17 Estremera, of your obligation to work with your lawyer.

18 If you are going to try to somehow say that Mr.
19 Young has not been effective in assisting you, you have to be
20 effective in assisting him in order to make that claim, and I
21 have the impression that you have not been effective in
22 assisting Mr. Young to assist you, okay? So speak with him.

23 All right. Now, Mr. Loeb --

24 DEFENDANT ESTREMER: May I say something to that,
25 Your Honor?

1 THE COURT: What?

2 DEFENDANT ESTREMER: I mean, can I respond to the
3 statement that you made?

4 I mean, I disagree with it. And I'm not being rude
5 about it. I just disagree with it.

6 I believe that I've always tried to work with Mr.
7 Young, but it seems like every time I would always study or
8 do something and bring stuff to Mr. Young's attention,
9 whatever I was studying or whatever I brought to his
10 attention was not good enough for him, for him to at least
11 try to do something for me.

12 So that's where our problem has always been in.
13 It's not that I haven't tried. I've always have. And in any
14 letter that I've always written him, I've always told him,
15 you know, "This is nothing against you. But, I mean, I'm
16 sitting here studying, and every time you're telling me, 'Oh,
17 it has no merits. Oh, this is no good. This is no good.'"

18 Well, what am I studying for, then? If I'm
19 supposed to be studying and being able to communicate with
20 him, and every time I'm communicating with him, he's telling
21 me, "Oh, it's no good" -- that's where our communications has
22 been at, you know, our misunderstanding.

23 And it ain't even that. Every time I try to talk
24 to the man, whatever I'm saying is no good. So where does
25 my -- where do I get a relationship with him when that's --

1 you know, we can't see eye to eye with each other?

2 It's always been like that. Just like, you know,
3 in our last conversation, he actually said, "You're right, I
4 didn't ask Corral what you asked me to, but now ask him
5 whatever you want."

6 I mean, I wouldn't be going through this right now
7 if he would have did it during my trial.

8 THE COURT: Mr. Young made some strategy
9 decisions --

10 DEFENDANT ESTREMERERA: But he made it --

11 THE COURT: -- during the trial.

12 DEFENDANT ESTREMERERA: -- on his own, Your Honor.

13 THE COURT: Well, did you talk with him about what
14 you wanted to --

15 DEFENDANT ESTREMERERA: There's certain things I did
16 talk to him about, and it was still not good.

17 THE COURT: All right. Well, apparently, you
18 didn't fully understand what his strategy was. I am sure he
19 attempted to explain it to you, to the extent that he could,
20 so that you would understand it.

21 But if you are not willing to understand that some
22 of your arguments have no merit and you are offended by the
23 fact that Mr. Young tells you they have no merit, there is
24 nothing he can do to change your frame of mind.

25 But, Mr. Estremera, you know, if I was in your

1 position facing a life sentence, I would be doing exactly
2 what you are doing. I would be trying every possible way to
3 see if I could find something that would assist me in
4 avoiding this life sentence. I understand that.

5 DEFENDANT ESTREMERERA: Your Honor, I've always tried
6 to demonstrate that with the motions that I send in. You
7 know, that's the only way that I could do it.

8 THE COURT: I understand that, and that is why -- I
9 fully understand it. But you have to cooperate with your
10 lawyer. If you are going to try to make some ineffective
11 assistance of counsel argument, you can't say, "I'm not
12 cooperating with you," and then I'm going to say that, "You,
13 lawyer, you weren't good enough. You fell below the minimum
14 requirements of professional conduct in representing Mr.
15 Estremera."

16 Because I have known Mr. Young for a long time. I
17 have seen him on a lot of cases. I saw him on this trial.
18 He knows what he is doing, and he makes strategy decisions in
19 your best interest.

20 Perhaps one of the strategy decisions is maybe not
21 asking Mr. Corral any questions today, because information
22 can be brought out today that wasn't brought out at the
23 trial.

24 And as long as everybody understands that, you have
25 to cooperate with one another. And Mr. Young, I am sure, if

1 he can't convince you to not ask the questions, I am sure he
2 will go ahead and comply now with your request, okay?

3 DEFENDANT LISCANO: Your Honor, there is --

4 THE COURT: Yes. Mr. Liscano has raised his hand.
5 Yes, sir.

6 DEFENDANT LISCANO: Very brief, Your Honor.

7 THE COURT: Mr. Liscano, what would you like to
8 know?

9 DEFENDANT LISCANO: You had explained to me, had
10 told me that I would have the ability to question him.

11 I don't know whether you're going to --

12 THE COURT: No, sir, I am not going to let you
13 question him personally.

14 DEFENDANT LISCANO: I understand.

15 THE COURT: And Mr. Loeb is -- I have known Mr.
16 Loeb as long as I have known Mr. Young, maybe longer --

17 DEFENDANT LISCANO: I'm perfectly fine with him
18 asking.

19 THE COURT: -- since we even went to the same law
20 school, different times, but I think Mr. Loeb is certainly
21 fully capable of inquiring of Mr. Corral. But I don't know
22 if Mr. Loeb wants to ask Mr. Corral any questions either,
23 because I haven't had a chance to ask Mr. Loeb that.

24 But, no, sir, I am not going to let you personally
25 ask Mr. Corral any questions. You are represented by

1 effective counsel, in my opinion.

2 DEFENDANT LISCANO: I would just like for him to
3 ask the questions because my situation is very serious.

4 THE COURT: You cooperate with your lawyer and
5 advise him what questions you would like to have asked.

6 DEFENDANT LISCANO: Yes.

7 THE COURT: He will then make decisions that he
8 believes to be in your best interest, as I have observed him
9 do throughout this entire time that he has represented you in
10 this case.

11 So, Mr. Loeb, are you going to ask any questions of
12 Mr. Corral?

13 MR. LOEB: Yes, Judge.

14 THE COURT: Okay. And, Mr. Liscano, you need to
15 confer, all right?

16 Anything further with regard to whether we should
17 let Mr. Corral testify?

18 MR. YOUNG: No, Judge.

19 MR. LOEB: No.

20 MR. BEAUMONT: I just want to --

21 THE COURT: Anything further from the government?

22 MR. BEAUMONT: The only thing I would say, Judge,
23 is that the statute is pretty clear; that if the defendant,
24 in Mr. Liscano's position, is found guilty of a conspiracy
25 involving five kilos or more of cocaine, and he has two prior

1 convictions that were adequately noticed, as you ruled they
2 have been, that his mandatory minimum is life.

3 And I don't know that there needs to be a
4 reasonable finding as to him. You know, there's -- the case
5 law suggested to the Court that there need be, and I don't
6 think it's an issue. I think it's case closed, in all
7 honesty. If that conspiracy involved more than five kilos of
8 cocaine and he's found guilty of participation in that
9 conspiracy, his penalty shall be life.

10 THE COURT: The determination with regard to the
11 criminal convictions, of course, was not made by the jury,
12 and the case law emanating from the Supreme Court indicates
13 that it need not be made by the jury.

14 To the extent there is possible relevance of Mr.
15 Corral's testimony, I will allow him to be called by the
16 defendants.

17 I will allow the government to cross-examine Mr.
18 Corral to the extent that the cross-examination is within the
19 scope of the direct.

20 MR. BEAUMONT: Okay.

21 THE COURT: Mr. Corral is here somewhere?

22 MR. BEAUMONT: He is in the jury room, Judge. We
23 could bring him in --

24 THE COURT: All right. Well --

25 MR. BEAUMONT: -- or do you want to take a break?

1 THE COURT: -- you don't have to say where he was.
2 It is just he is here somewhere --

3 MR. BEAUMONT: He's here, he's here.

4 THE COURT: -- and we can have him brought into the
5 courtroom.

6 If counsel -- Mr. Loeb, are you going to be the
7 lead-off batter?

8 MR. LOEB: I think so.

9 THE COURT: Why don't we do this, though. Because
10 Mr. Young has not had a chance to talk to Mr. Estremera and
11 Mr. Estremera hasn't had a chance to talk to Mr. Young, and
12 maybe Mr. Liscano has some further questions he'd like you to
13 ask, Mr. Loeb, I am going to take a ten-minute recess, allow
14 you lawyers to confer with your respective clients.

15 Mr. Corral is still a government witness, and, Mr.
16 Beaumont, if you want to talk to Mr. Corral, you can go talk
17 to Mr. Corral.

18 MR. BEAUMONT: Okay.

19 THE COURT: All right? Thank you. Ten minutes.

20 (Recess from 10:39 a.m. until 10:56 a.m.)

21 (Witness enters courtroom. Defendants out.)

22 THE CLERK: 02 CR 719, United States of America
23 versus Abraham Estremera and Steven Liscano, sentencings.

24 MR. BEAUMONT: Larry Beaumont again on behalf of
25 the United States.

1 MR. YOUNG: Good morning again, Your Honor.
2 Donald Young for Mr. Estremera.

3 MR. LOEB: And Robert Loeb on behalf of Mr.
4 Liscano.

5 MR. FREEZE: Judge, Zakary Freeze from the
6 Probation Office.

7 MS. BROWN: Danielle Brown on behalf of Probation.

8 THE COURT: Good morning again to all of you.
9 And let's, of course, have Mr. Liscano and Mr.
10 Estremera come into the courtroom.

11 (Defendants in.)

12 THE COURT: Mr. Liscano, have you had a chance to
13 talk further with Mr. Loeb?

14 DEFENDANT LISCANO: Yes, sir.

15 THE COURT: Mr. Estremera, have you had a chance to
16 talk further with Mr. Young?

17 DEFENDANT ESTREMERERA: Yes, I have, Your Honor.

18 THE COURT: All right. The defense desires to call
19 a witness before we proceed further in this sentencing
20 hearing?

21 MR. LOEB: Yes, Judge, Juan Corral.

22 THE COURT: All right. Mr. Corral, step up here,
23 sir, stand to be sworn. Raise your right hand.

24 (Witness duly sworn.)

25 THE COURT: All right. Please be seated.

1 THE WITNESS: Thank you.

2 THE COURT: Get this out of your way.

3 All right. Direct examination, you may proceed.

4 MR. LOEB: Thank you, Judge.

5 THE COURT: Water.

6 THE WITNESS: Thank you.

7 JUAN CORRAL, DEFENDANTS' WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. LOEB:

10 Q. You're the same Juan Corral who testified in the trial
11 of Mr. Estremera and Mr. Liscano, right?

12 A. Yes, I am.

13 Q. Okay. And you testified during that trial that
14 beginning in approximately September or October of 2001, you
15 sold drugs to people, correct?

16 A. Yes, that's true.

17 Q. Now, beginning with September of 2001, I want to ask you
18 about the next ten months.

19 You were eventually arrested in July of 2002,
20 right?

21 A. June.

22 Q. June. Okay. Then the succeeding nine months.

23 From September of 2001 to June of 2002, you were on
24 parole?

25 A. Yes, I was.

1 Q. And did you have a parole violation during that period
2 of time?

3 A. Have I had one or --

4 Q. Did you have a violation between September of 2001 and
5 June of 2002?

6 A. No, I did not have one at that time.

7 Q. Did you -- were you incarcerated at all during that
8 period leading up to your arrest?

9 A. I was incarcerated in October of 2000.

10 Q. And you got out when?

11 A. January of 2001.

12 Q. Okay. Mr. Liscano was incarcerated in 2001, right?

13 A. Yes.

14 Q. Do you remember when he got out?

15 A. No, I don't.

16 Q. Do you remember when you started doing business with Mr.
17 Liscano?

18 A. September 2001.

19 Q. You're saying he was out at that time?

20 A. That's what I'm saying that I believe I started selling
21 to Mr. Liscano.

22 Q. Clearly, you were selling to others during that period
23 of time.

24 Do you have a memory that you were selling to Mr.
25 Liscano during September or October of 2001?

1 A. Yes.

2 Q. When Mr. Liscano made purchases from you, was there a
3 regular amount that he bought from you?

4 A. No, there wasn't a regular amount.

5 Q. Did he ever -- did he buy marijuana from you?

6 A. No, he did not.

7 Q. Okay. What was the largest amount of cocaine that you
8 recall, that you specifically recall ever selling to Mr.
9 Liscano at one time?

10 A. Maybe one or two kilos.

11 Q. Well, there's a big difference. Do you -- you don't
12 remember ever selling him two kilos at a time, do you?

13 A. To be exact, no.

14 Q. Okay. You don't remember ever selling him
15 one-and-a-half kilos at a time to be exact, do you?

16 A. To be clear, no.

17 Q. You don't remember actually selling a full kilogram at
18 one time to him, do you?

19 A. That I do.

20 Q. When was that?

21 A. That would be late 2001.

22 Q. What did he pay for it?

23 A. I believe it was 19,5, 19,500.

24 Q. Did he pay you for it up front?

25 A. No. It was fronted to him.

1 Q. When did he pay you for it?

2 A. Maybe a month later after I gave it to him.

3 Q. When you say "a month later," that's your best estimate,
4 right? You don't remember exactly?

5 A. That's correct.

6 Q. But it would take about a month before he'd have the
7 funds to pay you, right?

8 A. At times, yes.

9 Q. You remember that he bought quantities less than a
10 kilogram?

11 A. When I first started selling to him, yes.

12 Q. Well, this one kilo that you say you sold to him, that
13 was pretty much when you first started selling to him? That
14 was in 2001, right?

15 A. When I gave him the first kilo was after a few
16 transactions that I had done with him, from the time I
17 started having dealings with him.

18 Q. You testified at trial to a series of conversations and
19 an incident culminating on May 13th of '02 with Mr. Liscano.

20 Do you recall that?

21 A. No, I don't.

22 THE COURT: Was your question do you recall the
23 testimony or do you recall the event?

24 MR. LOEB: Okay.

25 BY MR. LOEB:

1 Q. First, do you recall testifying to dealings with Mr.
2 Liscano on May 13th of '02?

3 A. I can't recall that specific date.

4 Q. Okay. Do you recall that you testified to an incident
5 in which there were phone calls concerning half of a kilogram
6 and then conversation concerning a police officer named Memo
7 Trujillo?

8 A. Yes.

9 Q. Okay.

10 A. Yes, I do recall that.

11 Q. You remember now that incident?

12 A. Yes, I do.

13 Q. Okay? That's clear in your mind --

14 A. Yes.

15 Q. -- right? And you testified concerning that incident --

16 A. Yes, I did.

17 Q. -- right? Now, leading up to that incident, you had
18 conversations with Mr. Corral -- or with Mr. Liscano on both
19 the 12th and the 13th, right?

20 A. I can't recall if those are the dates or not.

21 Q. You recall that there were conversations leading up to
22 that transaction, right?

23 A. Yes, that's correct.

24 Q. Okay. And your phone, unbeknownst to you, was being
25 tapped at that point, right?

1 A. That's correct.

2 Q. And you've reviewed all of the conversations that you
3 had during this period of time that were, in fact,
4 wire-tapped, right?

5 A. Most of them.

6 Q. Okay. You had a lot of customers during this period of
7 time?

8 A. Yes, I did.

9 Q. You talked to these customers regularly?

10 A. Yes, I did.

11 Q. And you had a number of calls with a number of customers
12 leading up to this particular transaction, right?

13 A. I had people calling me that day.

14 Q. Okay. Specifically, during the two days before that,
15 you had conversations in which you told several people that
16 you were dead, correct?

17 A. I might have, yes.

18 Q. Okay. And when you used the word "dead," that means
19 that you were telling them that you didn't have any cocaine
20 to sell, right?

21 A. That's correct.

22 Q. You told a Jose Aguirre on the 12th of May that you were
23 dead, right?

24 A. I can't be exact if it was Jose Aguirre or anyone else
25 to be exact, but I have told people that before.

1 Q. Well, you had a conversation -- well, there was a
2 customer of yours named Hasini Ball, right?

3 A. Yes.

4 Q. You had conversations with him in which you told him
5 that you were dead, right?

6 A. I believe I've told him at times that I was dead.

7 Q. Did you have a customer named Roosevelt Ratliff?

8 A. Yes, I did.

9 Q. Robert Ranjel?

10 A. Yes, I did.

11 Q. Jose Oliva?

12 A. Yes, I did.

13 Q. And on May 12th, you told each of them that you were
14 dead, right?

15 MR. BEAUMONT: Well, Judge, I'm going to object.
16 He said he doesn't remember these dates.

17 If counsel wants to show him transcripts and
18 identify the calls, fine, but, you know, to --

19 THE COURT: Well --

20 MR. BEAUMONT: -- make suggestions -- I think the
21 question is improper.

22 THE COURT: I will overrule the objection. This is
23 adverse examination.

24 The witness has indicated he doesn't remember
25 specific dates, so it may be difficult for him to recall what

1 he said on a particular day with regard to that subject.

2 But you may continue to inquire, Mr. Loeb.

3 MR. LOEB: Thank you, Judge.

4 BY MR. LOEB:

5 Q. You had a customer named Melvain Poole?

6 A. Yes, I did.

7 Q. Do you recall having a conversation with Melvain Poole
8 in which you said that you're bare, b-a-r-e, right now and
9 that he, Poole, has to wait until his people, your people,
10 call you, and that you've been waiting all weekend?

11 A. The question is if I've had that conversation with him?

12 Q. Yes.

13 A. I remember I've told numerous customers that I had my
14 people waiting, I've been waiting on my people's call.

15 Q. Let me see if I can help you remember the specific time
16 frame.

17 This was Mother's Day weekend. Does that help you
18 fix the time in your mind?

19 THE COURT: What year is that again?

20 MR. LOEB: '02.

21 THE COURT: Okay.

22 BY THE WITNESS:

23 A. No, it doesn't.

24 BY MR. LOEB:

25 Q. You had a customer named Charles McGath?

1 A. Yes, I did.

2 Q. You also had a customer named Curtis Diggs, right?

3 A. Yes, I did.

4 Q. Curtis Diggs was your biggest customer, right?

5 A. One of them, he was.

6 Q. Certainly one of the three or four biggest?

7 A. Yes.

8 Q. If you had cocaine to sell, Curtis Diggs got priority,
9 right?

10 A. Yes, that's correct.

11 Q. Did Curtis Diggs pay cash for his cocaine?

12 A. Partially.

13 (Counsel conferring.)

14 MR. LOEB: Judge, may I approach the witness?

15 THE COURT: You may.

16 MR. LOEB: I'm doing so with what I have marked as
17 Defendant Liscano Group Exhibit Sentencing No. 1 and
18 Sentencing No. 2 and have shown to counsel.

19 THE COURT: All right.

20 BY MR. LOEB:

21 Q. Mr. Corral, in your pretrial preparation, did you have
22 an opportunity to view the logs that are contained in Liscano
23 Group Sentencing Exhibit No. 1?

24 A. Meaning?

25 Q. Did you have a -- did you ever see these forms during

1 your preparations to testify?

2 A. No, I didn't.

3 Q. You've never seen documents in these forms at all? Is
4 that what you're saying?

5 A. No, I can't remember them.

6 Q. Okay. Let me call your attention to Liscano Group
7 Sentencing Exhibit No. 2, specifically the date of 5/13/02,
8 call numbers 716 and 717.

9 Going to ask you to read what is written in the
10 conversation section and ask you if it refreshes your
11 recollection concerning having that conversation on that
12 date.

13 A. "Corral says he's bare right now. Has to wait till his
14 people call him. Corral says he's been waiting all weekend."

15 Q. Having read that, does it refresh your recollection as
16 to having that conversation with Melvain Poole on the day of
17 May 13th?

18 A. It still doesn't.

19 Q. Eventually, it is your testimony, that Steve Liscano
20 brought you cash on that date, right?

21 A. On the day of --

22 Q. Brought you cash?

23 A. On what day?

24 Q. On May 13th, the Memo Trujillo incident.

25 A. Yes, yes.

1 Q. Okay.

2 A. Yes, he did.

3 Q. All right.

4 MR. BEAUMONT: Well, I'm just going to object.
5 Just -- my only objection is the date as -- this witness has
6 never testified that he knows what date it happened. He
7 remembers the event.

8 I'm not opposed to the event he's talking about,
9 but saying, suggesting in the question "on the 13th," we
10 haven't established that.

11 THE COURT: Okay. All right. Well, since I am the
12 finder of fact, I understand the testimony that has been
13 presented and the extent of the witness' recollection.

14 You may proceed.

15 BY MR. LOEB:

16 Q. You do remember, though, that that event happened in
17 relation to the Memo Trujillo incident, right?

18 A. Yes.

19 Q. Okay. As to all those conversations that I asked you
20 about concerning phone calls from other customers, okay, you
21 said you didn't know any exact date --

22 A. That's correct.

23 Q. -- right? Do you remember, however, that you had those
24 conversations with those customers in the two days leading up
25 to the Memo Trujillo incident?

1 A. I've had them conversations before at the time, but to
2 be exact on them two days prior to that transaction, no, I
3 can't be clear.

4 Q. Mr. Corral, you testified that Mr. Liscano brought you
5 money relative to this particular incident, right?

6 A. That's correct.

7 Q. How much?

8 A. Ten thousand.

9 Q. Is it possible that he only brought you money, and that
10 on May 13th, you did not supply him with any drugs?

11 A. To the best of my knowledge, I gave him a half a kilo
12 that day for the ten thousand.

13 Q. I think we've kind of exhausted what you do remember and
14 don't remember about dates, but let me ask you this.

15 You didn't ever actually deliver cocaine, half a
16 kilo, to Steve Liscano on the same day or on the day after
17 you told all of those customers that you were dead, did you?

18 A. I could have still had cocaine even though I told other
19 people that I don't have none at the time.

20 Q. Even though you told many of your best customers that
21 you had -- that you were dead?

22 A. That's correct.

23 Q. But you don't have specific memory of dealing -- of
24 selling Mr. Corral half a kilo on that date?

25 MR. BEAUMONT: Mr. Liscano.

1 BY MR. LOEB:

2 Q. Mr. Liscano, excuse me. You don't have a specific
3 memory of selling half a kilo to Mr. Liscano then, do you?

4 A. For the ten thousand, I do.

5 THE COURT: I am sorry. I didn't hear that last
6 answer.

7 THE WITNESS: I said for the ten --

8 THE COURT: For the ten thousand, you do?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 BY MR. LOEB:

12 Q. Steve Liscano didn't ever work for you as like a
13 security man, did he?

14 A. No, he did not.

15 MR. BEAUMONT: I object. That's not relevant.
16 It's not relevant to any issue before this Court.

17 There's no issue is he a member of the conspiracy
18 or not. The only issue is, according to counsel, is the
19 foreseeability of the drugs, I suppose.

20 THE COURT: I understand your objection. I will
21 allow --

22 MR. LOEB: Judge, another question or two, I think
23 we'll tie it up.

24 THE COURT: I will allow the inquiry.

25 You may proceed.

1 BY MR. LOEB:

2 Q. You recall that there was a time that Steve Liscano gave
3 you a phone call and said there are some cops on your block?

4 A. Yes.

5 Q. Okay. When he made that call, he wasn't in the act of
6 assisting you on any drug deals, was he?

7 A. No, he wasn't.

8 Q. To your knowledge, he didn't know whether or not you
9 had -- you possessed any cocaine at your home?

10 A. No, he did not.

11 Q. A lot of your customers were individuals who were
12 unrelated to the Latin Kings street gang, right?

13 A. That's correct.

14 Q. By that time, Steve Liscano wasn't even active in the
15 Latin Kings anymore, right?

16 A. I can't say if he was or he wasn't.

17 Q. Okay. You knew him from the past being part of the
18 Latin Kings, right?

19 A. That's correct.

20 Q. But to your knowledge -- or you have no knowledge that
21 he was active in the Latin Kings at that point, right?

22 A. Not specific knowledge.

23 Q. Okay. And as to all of the customers that you had
24 outside the Latin Kings, they accounted for a majority, more
25 than half of all the cocaine that you sold, right?

1 A. That's correct.

2 Q. They were your biggest customers, the ones outside the
3 Latin Kings, right?

4 A. Yes.

5 Q. To your knowledge, Steve Liscano didn't know of where
6 you stored cocaine, correct?

7 MR. BEAUMONT: And, Judge, I object. I think all
8 these questions are irrelevant to any issue before this
9 Court.

10 THE COURT: I understand your position. I am going
11 to overrule the objection.

12 THE WITNESS: Do you want me to answer that?

13 THE COURT: You may answer the question.

14 BY THE WITNESS:

15 A. Could you repeat it, please.

16 THE COURT: Pose the question again, please.

17 MR. LOEB: Okay.

18 BY MR. LOEB:

19 Q. To your knowledge, Steve Liscano didn't know where you
20 kept your cocaine, right?

21 A. That's correct.

22 MR. LOEB: Judge, I have two questions that I want
23 to ask, but I have to run by co-counsel. Let me just show
24 them.

25 THE COURT: All right.

1 (Counsel conferring.)

2 BY MR. LOEB:

3 Q. You remember on June 4th and 5th, about three weeks
4 later, telling Mr. Liscano that you didn't have any cocaine
5 to sell him?

6 A. Not that date exact.

7 Q. Do you remember a time when you say you sold two kilos
8 to Abraham Estremera in early June?

9 A. Do I remember saying that I sold two kilos to him?

10 Q. (Nodding.)

11 A. I can't be exact if it was at that date --

12 Q. Okay. Do you --

13 A. -- or early June.

14 Q. More specifically, do you remember a time when Mr.
15 Estremera wanted to buy three kilos from you -- or let me
16 rephrase that.

17 Do you remember a time when Mr. Estremera only
18 wanted to buy one kilo, but you told him that you had two
19 kilos and you wanted him to buy both of them?

20 A. I remember there was a time where I told him there was
21 two kilos in one.

22 Q. Okay.

23 A. Wrapped up in one.

24 Q. And at that time -- and Mr. Estremera was asking for one
25 kilo, right?

1 A. I can't be exact if he was asking for one or two.

2 Q. Do you remember that when that took place, Mr. -- you
3 told Mr. Liscano that you didn't have any cocaine to sell
4 him?

5 A. I can't recall if I did or I didn't.

6 THE COURT: Just so I can understand this incident
7 you are referring to in connection with Mr. Estremera, you
8 were selling Mr. Estremera a quantity of cocaine, and you had
9 a package of cocaine that contained two kilograms in one
10 package?

11 THE WITNESS: That's correct, yes.

12 THE COURT: As opposed to the normal way it was
13 packaged?

14 THE WITNESS: A single.

15 THE COURT: A kilogram per package?

16 THE WITNESS: That's correct.

17 THE COURT: Okay.

18 MR. LOEB: Judge, may I pose a ground rule question
19 to the Court?

20 I'm assuming that for purposes of argument, I can
21 raise trial impeachment that was completed and I don't need
22 to repeat it here?

23 THE COURT: Only if you feel it will refresh my
24 recollection, you may repeat it.

25 MR. LOEB: I think I can argue it.

1 THE COURT: But if you don't repeat it, I will
2 trust you to properly refresh my recollection with your
3 argument.

4 MR. LOEB: Okay. Then --

5 THE COURT: So the answer to your question is
6 that's correct.

7 MR. LOEB: Okay. Let me just confer.

8 (Counsel conferring with Defendant Liscano.)

9 MR. LOEB: Okay. Just a couple of other questions.

10 THE COURT: All right.

11 BY MR. LOEB:

12 Q. You never told Mr. Liscano about other customers that
13 you had, right? You just had a relationship with him, right?

14 A. That's correct.

15 Q. And as far as you know, Mr. Liscano didn't have any
16 knowledge or wasn't aware where you were selling your other
17 drugs, right?

18 A. That's correct.

19 Q. You didn't have any agreement with him to help you with
20 your sales to other people, right?

21 MR. BEAUMONT: And, again, I object to that. I
22 just think all these questions are irrelevant.

23 THE COURT: I understand your position. Overruled.

24 BY THE WITNESS:

25 A. That's correct.

1 BY MR. LOEB:

2 Q. Okay. Nor did you have an agreement for him to help you
3 in the future selling cocaine, right?

4 A. That's correct.

5 Q. In fact, isn't it possible that the total amount of
6 drugs that you sold Mr. Liscano was less than five kilograms
7 of cocaine during this nine-month period?

8 A. I just gave the best estimate I could at the time I was
9 asked.

10 Q. That's just an estimate?

11 A. Yes.

12 Q. So it's possible that it was less than five keys?

13 A. Again, the best estimate was the one I gave.

14 Q. But it's possible that it was less than five keys, is --
15 you gave your best estimate. It's possible that, in reality,
16 it was less than five kilograms, right?

17 A. I estimated from 2001 to 2002, and that's the estimate I
18 had came up with.

19 Q. And I'm not arguing with your estimate.

20 A. Yes.

21 Q. I'm asking you isn't it possible that the total amount
22 was less than five kilograms?

23 A. Can't see how.

24 Q. But it is possible?

25 MR. BEAUMONT: Objection, I object.

1 THE COURT: Asked and answered. Well, you can
2 stand when you object, especially that vigorously, Mr.
3 Beaumont.

4 MR. BEAUMONT: I'm sorry, Judge, I'm sorry.

5 THE COURT: I think you really got an asked and
6 answered on this one.

7 MR. LOEB: I have nothing further.

8 THE COURT: All right. If you desire, Mr.
9 Beaumont, to cross-examine on what Mr. Loeb has presented,
10 you may do so, or you can wait until Mr. Young --

11 MR. BEAUMONT: I'd rather do it now quickly just so
12 I can keep track.

13 THE COURT: Okay. You may do so.

14 CROSS-EXAMINATION

15 BY MR. BEAUMONT:

16 Q. Mr. Corral, it's fair to say that with Mr. Liscano, you
17 did front drugs to him, correct?

18 A. Yes, I did.

19 Q. You knew he was going to go out and sell those drugs to
20 other people, correct?

21 A. To get my money back, I assumed it.

22 Q. Exactly. Okay. And that was part of your agreement,
23 was it not?

24 A. Yes.

25 Q. And the amount of drugs -- or strike that.

1 The cost of the drugs, those were all agreed upon?
2 You had a routine amount you sold him for, is that not true?

3 A. That's correct.

4 Q. Okay. And when he called you about the police being in
5 the area, he called you because he knew you were dealing
6 drugs and he was dealing drugs, and you guys -- it was
7 important to know where police were; isn't that true?

8 MR. LOEB: Objection, particularly to the form of
9 what Mr. Liscano knew.

10 THE COURT: Sustained as to what Mr. Liscano knew,
11 but you certainly may inquire as to the witness'
12 understanding.

13 BY MR. BEAUMONT:

14 Q. Okay. Your understanding of that conversation was it
15 was important for you to know where the police were, isn't
16 that true?

17 A. Yes.

18 Q. Okay. Because obviously you guys were doing unlawful
19 activities, isn't that true?

20 A. Yes.

21 Q. Okay. I mean, Mr. Liscano wasn't calling you just for
22 the heck of it to let you know that the police were in the
23 neighborhood, was he?

24 A. That's correct.

25 MR. LOEB: Same objection.

1 THE COURT: Sustained, calls for speculation.

2 BY MR. BEAUMONT:

3 Q. Okay. And would it be fair to say, sir, that you
4 sometimes told customers you were dry or, in your term, dead
5 when, in fact, you did have cocaine?

6 A. There was times.

7 Q. Okay. For whatever reason, you may want to deal to a
8 certain individual on a certain day or whatever?

9 A. That's correct.

10 Q. You had your own reasons, isn't that true?

11 A. Yes.

12 Q. But just because you may say to one person, "I'm dry,"
13 that does not necessarily -- or did not necessarily mean you
14 had no cocaine?

15 A. That's correct.

16 Q. And Mr. Estremera, on those conversations counsel asked
17 you about, the two for one, that cocaine was actually stored
18 in Mr. Estremera's garage, was it not?

19 A. Yes.

20 Q. Okay. Mr. Estremera stored cocaine for you, did he not?

21 A. Yes.

22 Q. And the total amount that you testified of Mr.
23 Liscano's -- sales to Mr. Liscano was, I think you testified
24 at trial, was between seven and nine kilos; isn't that true?

25 A. To Mr. Liscano?

1 Q. Mr. Liscano.

2 A. No.

3 Q. I'm sorry, I'm sorry. No, it was more than that. I'm
4 sorry. You're right. It was 11. It was 11 to -- hang on.
5 12 to 13 kilos is what you testified of Mr. Liscano?

6 A. Yes.

7 Q. And that's what you're saying is your best estimate over
8 that period of months, isn't it true?

9 A. Yes.

10 Q. Okay. So it may be ten kilos, that's a possibility, I
11 suppose; is that not true?

12 A. That's correct.

13 Q. But when you say -- when you were asked about five
14 kilos, I mean, that's a long stretch, isn't it? Isn't that
15 true?

16 A. Yes.

17 Q. There's no question in your mind that we're above five
18 kilos?

19 A. Yes.

20 MR. BEAUMONT: Okay. I have no further questions.
21 Thank you, sir.

22 MR. LOEB: Just two or three questions, Judge.

23 THE COURT: Yes, I think to make it easier, we will
24 go ahead and have the redirect --

25 MR. LOEB: Right.

1 THE COURT: -- and complete the presentation by Mr.
2 Liscano of Mr. Corral.

3 MS. REPORTER: Judge, I need to change paper real
4 quick.

5 THE COURT: Okay. We will just take a break, then.
6 Off the record.

7 (Discussion held off record.)

8 THE COURT: You may proceed.

9 MR. LOEB: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. LOEB:

12 Q. Some of the names that I read you, including Curtis
13 Diggs, Hasini Ball, and Melvain Poole, were your larger
14 customers, right?

15 A. Diggs was.

16 Q. In the grand scheme of all your customers, Steve Liscano
17 was one of your smaller customers, right?

18 A. Less important.

19 Q. Exactly. And so -- and, clearly, Steve Liscano was less
20 important than Curtis Diggs and those other names that I read
21 you, correct?

22 A. Compared to Diggs, he was.

23 Q. And you would -- if you were -- you wouldn't have told
24 the more important customers that you were dead in order to
25 sell to a less important customer when you had cocaine,

1 correct?

2 A. Depended.

3 Q. On what?

4 A. Depending if I had that less customer waiting for a long
5 time already.

6 Q. But if those larger customers were waiting for the same
7 period of time, you would have served your more important
8 customers, right?

9 A. That's correct.

10 MR. LOEB: Thank you, Mr. Corral.

11 THE COURT: Further examination by the government?

12 MR. BEAUMONT: No, sir. Thank you.

13 THE COURT: All right. All right. Mr. Young, you
14 previously had stated that you desired to ask no questions of
15 Mr. Corral.

16 You have now had a chance to confer further with
17 your client, and he conferred with you.

18 Do you desire to ask questions of Mr. Corral?

19 MR. YOUNG: I do, Judge.

20 THE COURT: All right. You may proceed.

21 MR. YOUNG: Thank you.

22 DIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q. Mr. Corral, has the government made any promises to you
25 depending upon the outcome of the hearing here today?

1 A. No.

2 Q. Did Mr. Estremera have knowledge of the other customers
3 that you sold cocaine to?

4 A. No.

5 Q. Did Mr. Estremera know about your storing cocaine at
6 various places?

7 A. No.

8 Q. Was Mr. Estremera going to receive any of the 50 kilos
9 of cocaine that you were arrested with?

10 A. No, he was not.

11 Q. Do you recall testifying at trial, when you were asked
12 questions about specific transactions of sales to Mr.
13 Estremera, and you indicated you recalled two such occasions?

14 A. I can't be exact if I did or I didn't.

15 Q. Okay. As you sit there now, how many specific occasions
16 of sales to Mr. Estremera do you recall?

17 A. A few.

18 Q. Okay. What --

19 A. Meaning more than two.

20 Q. All right. Why don't you tell us what those are, then.

21 A. I don't have it clear in my head exactly what dates or
22 what months.

23 Q. Okay. I'm not asking you for dates or months, but
24 you're saying you clearly recall these sales. I'm just
25 asking you where did they take place?

1 A. Most of the time, it took place right there on Woodlawn,
2 at the house on Woodlawn.

3 Q. All right. Sir, I understand that, but just so we're
4 clear, I'm asking you as you sit here right now, do you
5 specifically recall an instance or more than one when you
6 sold cocaine to Mr. Estremera?

7 A. Yes.

8 Q. Okay. Would you tell us when those were or where they
9 were. Whatever you do remember, tell us what you do
10 remember.

11 A. Just him calling me, me answering. He's asking me what
12 he needs, and I'm giving him the drugs in the garage on the
13 house on Woodlawn.

14 Q. Okay. And that's one occasion, then. Are there others?

15 A. To the best of my knowledge, that's basically where all
16 the transactions occurred.

17 THE COURT: So all the more-than-two transactions
18 occurred in the same manner?

19 THE WITNESS: Yes.

20 THE COURT: He called you?

21 THE WITNESS: Yes.

22 THE COURT: And then you provided him, delivered
23 the drugs to him at the house on Woodlawn?

24 THE WITNESS: If I didn't have them there at the
25 house on Woodlawn, yes, I would take it to him there.

1 THE COURT: Okay. Do you recall taking them to him
2 anywhere other than at the house on Woodlawn?

3 THE WITNESS: I can't recall if I did.

4 THE COURT: And when you say "at the house on
5 Woodlawn," that was his house?

6 THE WITNESS: His girlfriend's house.

7 THE COURT: His girlfriend's house?

8 THE WITNESS: Yes.

9 THE COURT: Did you deliver the drugs to him inside
10 the house?

11 THE WITNESS: No, inside the garage.

12 THE COURT: In the garage?

13 THE WITNESS: Yes.

14 THE COURT: And did you take the drugs from the
15 place where you had the drugs stored in the garage to give to
16 him?

17 THE WITNESS: Meaning the drugs I had stored in the
18 garage?

19 THE COURT: Yes.

20 THE WITNESS: If I had the drugs in the garage,
21 yes, I would.

22 THE COURT: Did he see where you had the drugs
23 stored?

24 THE WITNESS: He knew where I had the drugs stored,
25 but actually seeing me taking them out of there, no.

1 THE COURT: Of the drugs you stored at the garage,
2 you sold some of those drugs to other people other than just
3 him?

4 THE WITNESS: That's correct.

5 THE COURT: You may inquire.

6 MR. YOUNG: Thank you, Judge. If I could just have
7 a moment?

8 (Counsel conferring with Defendant Estremera.)

9 BY MR. YOUNG:

10 Q. Sir, do you know whether or not Mr. Estremera had
11 knowledge of the drugs you stored in the Woodlawn garage
12 other than drugs you sold to Mr. Estremera?

13 A. Meaning if he knew I stored drugs there?

14 Q. Right.

15 A. He knew I stored drugs there, but not as far as the
16 amount, no.

17 Q. Okay. And what is your -- excuse me. What is your best
18 recollection as to the total amount of drugs you sold to Mr.
19 Estremera?

20 A. My estimate was seven to nine.

21 MR. YOUNG: I have nothing further.

22 THE COURT: Seven to nine what?

23 THE WITNESS: Kilos.

24 THE COURT: Okay.

25 MR. YOUNG: Nothing further, Judge. Thank you.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. BEAUMONT:

4 Q. In fact, Mr. Estremera not only knew you were storing
5 drugs there, he allowed you to store the drugs in that
6 garage; isn't that true?

7 A. Yes.

8 Q. That was part of your agreement with him, isn't that
9 true?

10 A. Yes.

11 Q. And, in fact, there was -- during the trial, there was
12 testimony about the 20 kilos that turned out being bad kilos.
13 Do you remember that?

14 A. Yes, I do.

15 Q. Those kilos, the bad kilos, that turned out being bad
16 kilos, those were stored in the garage, were they not?

17 A. For that day, they were.

18 Q. Okay. In Mr. Estremera's garage?

19 A. Yes.

20 Q. He knew they were there?

21 A. Yes.

22 MR. BEAUMONT: Okay. Thank you. I have no further
23 questions.

24 THE COURT: You didn't sell those to Mr. Estremera?

25 THE WITNESS: No, I did not.

1 BY MR. BEAUMONT:

2 Q. But Mr. Estremera obviously knew you had other
3 customers, and they -- this cocaine was going out to other
4 people? He didn't know the names of the people necessarily,
5 but he knew you had plenty of other customers?

6 A. Yes.

7 MR. BEAUMONT: Thank you.

8 THE COURT: Let's finish with -- I know, Mr. Loeb,
9 you may have some further questions. Let's finish with Mr.
10 Young's questioning on behalf of Mr. Estremera.

11 MR. YOUNG: Nothing further, Judge.

12 THE COURT: All right. All right. Mr. Loeb --

13 MR. LOEB: Not questions.

14 THE COURT: Okay. Let me just make sure we can
15 make the record clear.

16 Mr. Estremera, were there any other questions you
17 wanted Mr. Young to ask Mr. Corral?

18 DEFENDANT ESTREMERERA: Your Honor, I gave them to
19 him on a piece of paper, and he went about it the way he did,
20 so -- I mean --

21 THE COURT: That wasn't my question, sir. My
22 question, sir, is were there any other questions you wanted
23 Mr. Young to ask Mr. Corral?

24 DEFENDANT ESTREMERERA: Yes, there was.

25 THE COURT: All right. Mr. Young, I am going to

1 ask you to ask those questions.

2 MR. YOUNG: Sure.

3 (Counsel conferring with defendants.)

4 THE COURT: Confer with Mr. Estremera and ask those
5 questions, even if you believe, Mr. Young, it is not a good
6 strategy decision to ask those questions.

7 And, Mr. Liscano, likewise I'm going to ask you the
8 same question I had asked Mr. Estremera, and we are going to
9 allow Mr. Loeb to ask further questions.

10 All right. Go ahead, Mr. Young. I appreciate your
11 strategy in connection with this matter, I understood your
12 strategy, and I want you to inquire to the extent your client
13 wants inquiry to be made.

14 MR. YOUNG: Thank you, Judge.

15 REDIRECT EXAMINATION

16 BY MR. YOUNG:

17 Q. Mr. Corral, at trial, you stated you only remembered two
18 sales with Mr. Estremera, although you have said you sold Mr.
19 Estremera somewhere around seven kilograms.

20 Is it possible the only kilograms Defendant
21 Estremera received are the two kilograms that you remembered
22 and not around seven kilograms?

23 A. My estimate came from the time I had first dealings with
24 him to the time I got arrested in June of 2004 -- 2002, I
25 mean.

1 Q. All right. So is it possible that you sold him less
2 than the seven kilograms?

3 A. That's the estimate I could come up with.

4 MR. YOUNG: Nothing further.

5 THE COURT: And your estimate was seven to nine
6 kilograms?

7 THE WITNESS: Yes.

8 THE COURT: That's your best recollection?

9 THE WITNESS: Yes.

10 THE COURT: All right. Mr. Liscano, has Mr. Young
11 now asked all the questions you wanted him to ask Mr. Corral?

12 MR. YOUNG: Mr. Estremera.

13 THE COURT: I am sorry. Mr. Estremera, has Mr.
14 Young asked all the questions that you wanted him to ask Mr.
15 Corral?

16 DEFENDANT ESTREMERERA: Yes, Your Honor.

17 THE COURT: Okay. All right. Mr. Liscano, you
18 have had a chance to confer further with Mr. Loeb.

19 Mr. Loeb, I am going to make the same directive to
20 you. I want you to ask the questions that Mr. Liscano wants
21 you to ask, even if you believe the strategy of asking those
22 questions is not necessarily in Mr. Liscano's best interest.

23 MR. LOEB: Thank you, Judge.

24 FURTHER REDIRECT EXAMINATION

25 BY MR. LOEB:

1 Q. Mr. Corral, had you not been arrested when you were,
2 could your drug-dealing operation have continued without
3 Defendant Liscano?

4 A. Yes.

5 Q. Would you have still been able to sell or get rid of
6 your cocaine without him?

7 A. Yes.

8 MR. LOEB: That's all, Judge.

9 THE COURT: Mr. Liscano, has Mr. Loeb now asked all
10 of the questions you wanted him to ask?

11 DEFENDANT LISCANO: Yes, Your Honor.

12 THE COURT: Okay. Government, further inquiry --

13 MR. BEAUMONT: No.

14 THE COURT: -- based upon the inquiries by defense
15 counsel?

16 MR. BEAUMONT: No, sir. Thank you.

17 THE COURT: Okay. All right. Mr. Corral, you may
18 step down.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you.

21 Mr. Loeb?

22 MR. LOEB: Thank you, Judge.

23 THE COURT: Mr. Corral is now relieved from the
24 writ, and he may be taken back to his place of incarceration.

25 MR. BEAUMONT: You can go through that door there.

1 THE COURT: Yes, why don't you go through the back
2 hallway. Thank you.

3 (Witness excused.)

4 MR. LOEB: Judge, by way of stipulation, there will
5 be a -- by way of prove-up, excuse me, there will be a
6 stipulation between the parties, the -- Steve Liscano,
7 through myself, and the government, through Mr. Beaumont,
8 that, in fact, Juan Corral had conversations on May 12th and
9 May 13th with the following individuals -- and I will give
10 Colleen the spelling right now when I'm through -- Curtis
11 Diggs, Melvain Poole, Hasini Ball, Charles McGath, Jose
12 Aguirre, Jose Oliva, and Jabari Walker, in which he, Mr.
13 Corral, indicated that he was dead or without drugs.

14 So stipulated?

15 MR. BEAUMONT: Correct. My understanding is that's
16 what the paperwork says, and I agree that whatever paperwork
17 we said he said, he said, that's what he said.

18 THE COURT: Okay. All right. And you can just
19 place the list of those spellings next to Colleen's station.

20 Okay. Thank you.

21 MR. LOEB: With that, we would rest.

22 THE COURT: All right. Anything further, Mr.
23 Young --

24 MR. YOUNG: No.

25 THE COURT: -- by way of stipulation? Okay. All

1 right. Are there any other sentencing witnesses that either
2 defendant desires to call?

3 MR. LOEB: No, Judge.

4 MR. YOUNG: No, Your Honor.

5 THE COURT: Okay. All right. Having completed
6 that, then let's proceed to the sentencing procedure.

7 Mr. Liscano and Mr. Estremera, if you could step up
8 to the podium.

9 Mr. Liscano, have you had a chance to review the
10 Presentence Investigation Report?

11 DEFENDANT LISCANO: Yes, Your Honor.

12 THE COURT: All right. Are there any changes or
13 modifications that need to be made in the factual statements
14 set forth in the report?

15 DEFENDANT LISCANO: Well, Your Honor, I have my own
16 here of which I will like to go over, Your Honor --

17 THE COURT: All right.

18 DEFENDANT LISCANO: -- as I brought up before.

19 THE COURT: All right. Go ahead.

20 Do we have a copy of the report that can be
21 available to Mr. Liscano so we can all be apprised of the
22 page and line that he is referring to?

23 MR. LOEB: Yes, Judge.

24 THE COURT: Okay. Thank you.

25 You may step over to the podium.

1 Actually, just looking at the number of pages Mr.
2 Liscano flipped over, maybe this might take time.

3 And so, Mr. Liscano, if you want to have a seat --
4 I am sorry. Mr. Liscano, you stay up. Mr. Estremera, you
5 have a seat.

6 Mr. Liscano, changes or modifications.

7 DEFENDANT LISCANO: I have some objections as far
8 as to page 2, lines 61 through 63, because Juan Corral
9 wasn't -- it says that, "Juan Corral was a ranking member."

10 Juan Corral wasn't a ranking member for the Latin
11 Kings. From pages -- page 3, line 73 contradicts this.

12 I have objections to page 3, lines 67 through 69,
13 because none of this was proven or allowed at trial.

14 This case was not to be treated as a gang
15 conspiracy, but only as a Juan Corral drug conspiracy, as was
16 said before opening of trial by the Court, Your Honor. So it
17 should not be allowed in my PSI.

18 On the same page, page 3, lines 69 and 70, never
19 was there any proof of this. This should be removed.

20 The same page, 3, lines 71 through 73, Corral is
21 considered to be the hub of the wheel, not me.

22 This -- in this conspiracy, why didn't my attorney
23 ask for multiple conspiracy jury instructions like I had
24 asked him to?

25 I also object to what Paul Bock claims you have to

1 do to become a member of the Latin Kings, because that has
2 nothing to do with this case, and I became a Latin King
3 because of the neighborhood I grew up in.

4 The same page, page 3, lines 73 and 74, Corral did
5 not have significant influence among the gang. As a matter
6 of fact, he testified that he didn't even trust the Kings
7 involved; in the trial transcripts, volume 3, page 854.

8 Lines 74 and 75, I object to this because it was
9 not proven that Corral was one of the main suppliers to the
10 Latin Kings.

11 There's only 13 total Latin Kings on this case,
12 which consists of 52 defendants, out of a membership that
13 numbers in the 80s, none of which ever proffered or testified
14 that they sold me nor I sold them cocaine.

15 Page 3, as far as to my criminal conduct, lines 81
16 and 82, I would like stricken because I did not allegedly
17 come into this conspiracy until September 2001.

18 Lines 83 through 85, I object to the 13 kilograms.
19 There is no corroborating evidence to verify this, or to
20 verify that I distributed to other customers or any of the
21 co-defendants.

22 Lines 85 and 86, the evidence at trial was that I
23 bought a half a kilo within a two-month period, but I've
24 proved to you, Your Honor, that Corral lied to you and to the
25 jury about the half-a-kilo sale, because he could not have

1 sold me half a kilo when he did not have any drugs for resale
2 that day, as I've had those transcripts given to you and
3 asked you to look at the phone transcripts of May 13th.

4 THE COURT: And I have read the materials you have
5 submitted.

6 DEFENDANT LISCANO: Okay, Your Honor.

7 THE COURT: And your counsel very ably pointed out
8 the various individuals that Mr. Corral told he did not have
9 drugs.

10 DEFENDANT LISCANO: I also have a proffer from Mr.
11 Corral that says he didn't have drugs November and December
12 of 2001.

13 Corral also testified that there were times he
14 couldn't supply drugs because he didn't have any.

15 His grand jury testimony is that he received one
16 shipment per month which he sold in approximately one week.
17 So that means I had to have received cocaine from him every
18 shipment.

19 But if you listen to the call, to the CD calls of
20 6-4-02 and 6-8-02 and the tapes of 5-14-02, it shows who
21 Corral distributed his drugs to, and I had no part of it.

22 So if the evidence shows I never received drugs
23 from him on those times he was supplied, how then can you
24 believe his perjured testimony about me receiving drugs in
25 the past? That was not corroborated by any evidence

1 whatsoever.

2 I told my lawyer to use this as my defense of
3 innocence, but he refused to, just like he told me that we
4 could not object to what the prosecutor said on certain
5 issues.

6 Mr. Young on behalf of Mr. Estremera did object,
7 but my lawyer didn't, and I heard Mr. Young comment why Mr.
8 Loeb and Mr. Alvarez were not objecting as he said as he was.

9 THE COURT: Let me clarify that point.

10 Any objection by any defense counsel inured to the
11 benefit of every other defendant unless it was disavowed. I
12 don't remember Mr. Loeb ever disavowing that point.

13 So that's yours. You still have that.

14 DEFENDANT LISCANO: Okay.

15 THE COURT: Mr. Loeb was following proper court
16 procedure when he did that.

17 DEFENDANT LISCANO: Okay. I have --

18 THE COURT: And your rights were not harmed in any
19 way. You may proceed.

20 DEFENDANT LISCANO: Page 3, lines 86 and 87.

21 THE COURT: You are still on page 3?

22 DEFENDANT LISCANO: Yes.

23 THE COURT: Okay.

24 DEFENDANT LISCANO: The testimony at trial was that
25 I bought the cocaine.

1 Page 3, lines 87 and 88, there's no proof of that
2 whatsoever, Your Honor.

3 And page 3, lines 89 and 90, I have proved that I
4 had no cause discussing drug purchases or drug -- or
5 transactions.

6 Page 3, lines 93 through 95, this phone
7 conversation had nothing to do with my involvement with drug
8 trafficking. I've always had warrants. So that's why I made
9 that comment, I hope it's not me. As in this PSI report, I
10 had warrants for a DUI.

11 On page 3, lines 95 through 99, these conversations
12 were never admitted into evidence during trial because they
13 did not involve cocaine.

14 Page 3, 99 through 104, I did not owe Corral any
15 money for drug debt.

16 He testified at trial that he talked to Aguirre
17 while he was in the county jail to collect a debt owed to him
18 by me, but this newly discovered evidence of the Kane County
19 booking calls shows he never talked to Aguirre on this
20 so-called debt.

21 If I would have had these calls, I could have used
22 them to impeach Corral, but the prosecutors kept them out of
23 my discovery until after I was found guilty.

24 I have the phone transcripts right here, along with
25 a memorandum that was given to Yvette Hernandez asking from

1 Ms. Schultz -- some Ms. Schultz asking her if I had posted
2 any bond towards Corral's bond or if I owed him any money,
3 and she said no to this attorney.

4 Page 4, lines 105 through 111, and page 6, lines
5 176 and 177, it says I didn't know that Corral sold to other
6 Latin Kings, so that totally contradicts what's being said on
7 these lines.

8 Corral's testimony was that he didn't even trust
9 the Latin Kings. Volume 3, page 854 of the trial
10 transcripts.

11 On page 3, line 74, it says Corral was one of the
12 main suppliers of the Latin Kings, not the main supplier.
13 But if he was the main supplier to the Latin Kings, why are
14 there only 13 Latin Kings on this case out of over 80
15 members?

16 Furthermore, there's no proof of my knowledge of
17 any of the players in this case.

18 Page 4, line 112, there's no proof of me being a
19 member of the Latin King council, so I object.

20 Page 4, 112, lines 112 through 115, Aguirre
21 disclosed to the government in a proffer that he, in fact,
22 shot a man on Illinois Avenue, but not that he killed him.

23 I have his proffer right here.

24 Page 5, lines 161 through 165, I object. There are
25 no facts to support that I participated in this conspiracy

1 from September 2001 to June 2002 or that I bought 13 kilos.

2 Page 5, lines 166 through 168, there's no proof
3 that I was closely associated or involved with any
4 co-conspirators, as on page 6, line 176 clearly indicates.

5 Page 5, lines 169 and 170, Brian Medina is not a
6 member of the Latin Kings or on this case.

7 Page 5 and 6, lines 170 through 175, I don't know.
8 Didn't I just object to this in page -- at page 3, Your
9 Honor? The same objection.

10 Page 6, lines 176 through 180, if there's no proof
11 or evidence that I knew, which I didn't, Your Honor, then how
12 can I be held responsible for other people's actions?

13 1B1.3, relevant conduct, states I cannot be held
14 accountable for other actions unless I participated in
15 activities with them.

16 Example, No. 6, page 276 of my handbook, which I
17 have right there on the desk there, Your Honor, explains
18 that.

19 Page 6, line --

20 THE COURT: And the handbook you're referring to is
21 the --

22 DEFENDANT LISCANO: Seventh Circuit.

23 THE COURT: The Seventh Circuit handbook?

24 DEFENDANT LISCANO: Yes, Your Honor.

25 THE COURT: All right. As opposed to the

1 sentencing guideline handbook? All right.

2 DEFENDANT LISCANO: Page 6, lines 181 through 187,
3 example 6 of relevant conduct says I could have known he sold
4 cocaine to people, but as long as I wasn't directly involved,
5 I can't be responsible for their actions.

6 Page 6, lines 191 and 192, I object to being
7 responsible for 13 kilos.

8 Page 6, lines 193 through 196, I object to Level
9 38. I was not able to foresee that the conspiracy involved
10 in excess of 150 kilos.

11 That is it, Your Honor. I have these things
12 somewhat to back up what I am speaking about.

13 THE COURT: All right. Why don't you hand me --

14 DEFENDANT LISCANO: I don't know whether or not --

15 THE COURT: Well, first, you should hand them to
16 Mr. Beaumont.

17 MR. BEAUMONT: Judge, I will -- I know the reports,
18 so --

19 THE COURT: Okay.

20 MR. BEAUMONT: -- you can hand them to the Court,
21 and I'll look up the reports later.

22 THE COURT: All right.

23 DEFENDANT LISCANO: Would you like them, Your
24 Honor?

25 THE COURT: I would.

1 And, Mr. Beaumont, do you have any responses you
2 would like to make?

3 (Document(s) tendered to Court.)

4 MR. BEAUMONT: No, other than I think based on all
5 the evidence that you have heard, both the trial evidence and
6 the various many, many hearings we've had in this case, I
7 think the position taken by the probation officer in the
8 Presentence Report is correct, the factual statements.

9 The -- I know I -- as I have been hearing him for
10 many, many times, I know a lot of his complaint is about the
11 times Mr. Corral said he was dead.

12 I think you heard testimony today that Mr. Corral
13 may have said he was dead, but that didn't mean he was
14 necessarily dry or did not have cocaine at the time; that he
15 would say that to some people and not others, and he had his
16 own reasons for doing that.

17 So that in and of itself, I think, does not do
18 anything to change the evidence in the case.

19 It's defendant's burden, I think, other than a mere
20 denial, to -- other than making -- it's his burden to produce
21 some evidence to suggest the Presentence Report is not
22 correct other than a mere denial, and I think we've heard all
23 these things before, and I think the Court 's ruled against
24 him, and I think the evidence is contrary to his arguments.

25 MR. LOEB: Judge, legalistically, I would take

1 issue that we have a burden of disproving the PSI, so -- for
2 the record, I mean, I'll state that.

3 MR. BEAUMONT: Well, Judge, I think the law is
4 clear that other than a mere denial, the defense -- the
5 defense can't just make a mere denial and say those facts are
6 not correct. The defense does have the burden to produce
7 some evidence to suggest that the factual basis in a
8 Presentence Report is incorrect.

9 That's the law, as I understand it, and I don't
10 think he's met that burden.

11 THE COURT: All right.

12 DEFENDANT LISCANO: And, Your Honor, may I proceed?
13 I have a few more things to say.

14 THE COURT: Well, I am going to give you an
15 opportunity to address me before I impose sentence. I want
16 to first resolve the issues that you have with the
17 Presentence Investigation Report. I want to get that
18 completed.

19 You told me that was it. I assumed you were done
20 with the Presentence Investigation --

21 DEFENDANT LISCANO: Yes.

22 THE COURT: -- Report, is that correct?

23 DEFENDANT LISCANO: For the Presentence, yes, Your
24 Honor.

25 THE COURT: Okay. All right. Well, I have

1 reviewed -- and, actually, this is not the first time that I
2 have reviewed 3500 material from this case, and I don't want
3 to take your 3500 material from you, Mr. Liscano, so I am
4 going to give this back to you.

5 I am going to ask my clerk to make a photocopy of
6 it so I will have your records in my file, but you will have
7 it back, too. All right?

8 DEFENDANT LISCANO: Yes.

9 THE COURT: So you will have it.

10 There are two things that I am going to sustain,
11 Mr. Liscano, in connection with your arguments.

12 On page 3, line 81, I believe the "June 2000"
13 should be "September 2001."

14 To accurately state it: "Liscano participated in
15 the above conspiracy from approximately September 2001 until
16 approximately October 23, 2002."

17 The conspiracy began in June of 2002, but the
18 evidence shows that you started in that conspiracy in
19 September 2001, as the two sentences after that establish.

20 So I am going to make that change. I am going to
21 ask the probation officer -- where is my probation officer?
22 There he is -- to make that change.

23 MR. FREEZE: Certainly, Your honor.

24 THE COURT: Also, with regard to the argument that
25 you have made in connection with page 4, where you say at

1 Line 112, "According to Agent Bock, Liscano was a member of
2 the Latin King council," we can strike the word "council" and
3 put the word "gang" in there, all right?

4 So it will say: "According to Agent Bock, Liscano
5 was a member of the Latin King gang." Is that all right?

6 DEFENDANT LISCANO: (Nodding.)

7 THE COURT: You are nodding in affirmance --

8 DEFENDANT LISCANO: Yes.

9 THE COURT: -- but you are not saying "yes."

10 DEFENDANT LISCANO: Yes.

11 THE COURT: Okay. Because other than that proffer
12 by Agent Bock, which Agent Bock probably never sat down at
13 any council meetings and took roll, so I am going to exclude
14 that.

15 And with regard to the Aguirre disclosure, about
16 you and he shooting these two men and killing one of them,
17 what's the government's evidence on that?

18 DEFENDANT LISCANO: None.

19 THE COURT: Well, that is Mr. Liscano's position.

20 Mr. Beaumont, what is the government's evidence on
21 that?

22 MR. BEAUMONT: Could I just have a second, Judge?

23 THE COURT: Yes. Because, frankly, here is the
24 situation. Agent Bock is relating what Co-Defendant Aguirre
25 disclosed.

1 MR. BEAUMONT: Our only evidence would be that's
2 what Aguirre disclosed to the agents.

3 THE COURT: Okay. All right. I think at this
4 point, I can't make an assessment that Aguirre is truthful by
5 a preponderance of the evidence, and so I am going to strike
6 the second sentence in that paragraph, the one that starts on
7 line 112 with the word "additionally" and continues through
8 line 115, because that is based on Aguirre.

9 And I have no question about Agent Bock's
10 credibility of accurately relating what Aguirre said, but I
11 have no basis at this point to believe Aguirre by a
12 preponderance of the evidence on that.

13 Other than those two, I believe that Mr. Beaumont
14 is correct that the information that has been provided to me,
15 and provided to me by way of evidence at the trial, proffers
16 set forth by the government, including statements by Agent
17 Bock, I believe that the evidence does preponderate to
18 establish the other items that are set forth in the
19 Presentence Investigation Report by a preponderance of the
20 evidence, and, therefore, no further striking need be made as
21 to that aspect of the Presentence Report.

22 MR. LOEB: Judge, I think you overlooked one that
23 everybody will agree with --

24 THE COURT: Did I miss one?

25 MR. LOEB: -- that Mr. Liscano raised. Page 3,

1 line 71.

2 THE COURT: Yes.

3 MR. LOEB: This, I think, is a transposition, typo
4 in word processing.

5 Where it says: "The defendant is the 'hub of the
6 wheel,'" that should be "Juan Corral was 'the hub.'"

7 THE COURT: No, you are absolutely correct on that.
8 That was one.

9 I believe Agent Bock was probably referring to
10 Corral when he was -- on line 71, the words starting with --
11 the sentence "According to Agent Bock," you can leave those
12 words, but the words "the defendant" are stricken and the
13 words "Juan Corral" are replaced in there.

14 Yes, thank you. That was an oversight on my part.

15 All right. We have dealt with that. It is ten
16 after 12:00. Maybe we can -- and that is it with regard to
17 the Presentence Investigation Report, Mr. Liscano?

18 DEFENDANT LISCANO: For me. As far as for my
19 attorney, I have no idea.

20 THE COURT: Mr. Loeb, is there anything further?

21 MR. LOEB: I submitted everything in writing,
22 Judge.

23 THE COURT: Okay. All right. And I haven't gotten
24 to that yet.

25 MR. LOEB: And that goes primarily to guideline

1 calculations --

2 THE COURT: Right.

3 MR. LOEB: -- if you desire to deal with them.

4 THE COURT: Right. And we will address those.

5 The procedure that I follow -- and I'm sure Mr.
6 Loeb, Mr. Young, Mr. Beaumont are familiar with this -- is I
7 like to determine the factual statements set forth in the
8 Presentence Report, then I like to turn to the sentencing
9 guidelines range or the sentencing guideline calculations.
10 So we haven't gotten to that yet. We are going to move over
11 to Mr. Estremera at this point.

12 Mr. Estremera -- and I am going to ask my clerk to
13 make photocopies of this, these 3.02s that Mr. Liscano has
14 provided me.

15 Mr. Estremera, you can step up. Mr. Liscano, you
16 can have a seat.

17 Let me ask the marshals, if we are out of here by
18 12:30, can we get lunch for Mr. Estremera and Mr. Liscano --

19 A DEPUTY MARSHAL: Yes, sir.

20 THE COURT: -- or should we go earlier than that?

21 A DEPUTY MARSHAL: Actually, lunch is available at
22 any time, Your Honor.

23 THE COURT: Okay. All right.

24 All right. Mr. Liscano is now seated.

25 Mr. Estremera, you had submitted in writing

1 objections, and I have reviewed those objections.

2 I don't know that we need to go through them in
3 detail since they are set forth in your October 19th, 2005
4 writing, document docketed at document No. 492.

5 But with regard to your objections that you were
6 never charged with -- starting on page 1, or the first page
7 of the Presentence Report -- and, Ms. Brown, I guess we will
8 talk with you at this point -- that Mr. Estremera has never
9 been charged with 21 U.S.C. § 841(a)(1). The charge actually
10 was 846.

11 Let me just inquire, should we make that change on
12 the first page?

13 MS. BROWN: On the face sheet, Your Honor?

14 THE COURT: On the face sheet.

15 MS. BROWN: Yes, Judge.

16 THE COURT: Yes. All right. So strike § 841(a)(1)
17 and put 846, and that is sustaining that objection.

18 With regard to the objection at -- it is on -- the
19 pages aren't internally numbered, but it is at lines 65 to
20 67, your objection is that there was only one firearm, not
21 two firearms.

22 Let me ask the government what its position is on
23 that.

24 MR. BEAUMONT: My position is I don't think it
25 matters, so we'll --

1 THE COURT: Well, it does matter.

2 MR. BEAUMONT: -- take his word for it.

3 THE COURT: My recollection was it was only one
4 firearm --

5 MR. BEAUMONT: That could very well be, Judge. I
6 don't remember.

7 THE COURT: -- that was found, and so I am going
8 to, at line 66, strike the word "two" and insert the word
9 "one" and make "firearm" singular.

10 And then at the top of page 3, line 68, I believe
11 that there is some information there. The serial number
12 there is just a typographical error.

13 And the sentence that begins on line 68 ought to be
14 singular. "The firearm, which belonged to the defendant, was
15 kept for the protection during drug deals."

16 And I know, Mr. Estremera, you object to the
17 statement that, "The firearm was kept for protection during
18 drug deals," but, frankly, the evidence shows by a
19 preponderance of the evidence that that was one of the
20 reasons.

21 And you yourself even state that it was kept there
22 for the protection of your family.

23 So I have sustained that point.

24 Lines 108 to 110, starting with the sentence that
25 begins on line 108, "Special Agent Bock indicated that the

1 defendant participated in at least one homicide. It is noted
2 because this officer has no evidence to corroborate that
3 information, the defendant was not held accountable," let me
4 just ask, as I did in connection with Mr. Liscano's
5 involvement with Mr. Aguirre and Mr. Aguirre's information,
6 what is the source of Special Agent Bock's information on
7 that?

8 MR. BEAUMONT: Judge, on this particular point, we
9 presented evidence to you, you heard testimony from three
10 individuals, I believe, on the Montoya murders.

11 You heard from a Dennis Sorbel, S-o-r-b-e-l,
12 Eduardo Hernandez, H-e-r-n-a-n-d-e-z, and Mr. Jose Hernandez.

13 You heard that Eduardo Hernandez testified that
14 A-Town, which is Mr. Estremera's street name --

15 THE COURT: Right.

16 MR. BEAUMONT: -- had gone and dropped off these --
17 about the bodies or two murder victims in the Montoya murders
18 on Spencer and Downer.

19 You heard Jose X. Hernandez testify that Estremera
20 told him, Jose X. Hernandez, that he and Lefty Reyes, who's
21 somebody we're still investigating, and we have not yet,
22 although we plan on charging, but Mr. Estremera told Jose X.
23 Hernandez that he, Estremera, and Lefty Reyes were there for
24 Lefty to buy drugs, and then they set up where they -- as
25 soon as Montoya jumped in the van, he shot one of the Montoya

1 brothers, "he" being Mr. Estremera.

2 Jose Hernandez also testified that Mr. Estremera
3 told him he went back to the scene later and wiped out the
4 van.

5 And then you heard Mr. Sorbel, who was a non-gang
6 person, non-member of the criminal element, tell you that
7 Lefty Reyes told him that Estremera had, in fact, returned to
8 the scene and cleaned out the van.

9 So it was our position based on that, in
10 combination of those testimony -- and I know we also provided
11 you with calls.

12 Agent Bock testified that on some of the
13 transcripts -- and we presented them at the time -- and this
14 was a separate case -- but that he, Mr. Estremera, and Corral
15 were stalking a rival gang member.

16 And the only reason we proposed that, they clearly
17 talk about, "Oh, he's here now," and that they were going to
18 get a gun or something of that nature, is to show that he has
19 the intent and motive and type of thing to shoot other
20 people.

21 And then we presented the evidence of the three
22 specific individuals, about the statements that were made by
23 Mr. Estremera regarding this murder.

24 And the only reason we presented that evidence,
25 because it's our position, and we will argue ultimately, is

1 that he is going to have a guideline range, and we're going
2 to ask that you sentence him at the top of his applicable
3 range based, in part, on that evidence.

4 THE COURT: All right. Mr. Estremera, is there
5 anything further you want to say on this point?

6 DEFENDANT ESTREMERERA: Yeah, I sure do, Your Honor.

7 THE COURT: Go ahead.

8 DEFENDANT ESTREMERERA: I was going to ask Mr. Corral
9 while he was on the stand to make a statement because --

10 THE COURT: Well, why didn't you?

11 DEFENDANT ESTREMERERA: Well, because Mr. Young
12 said it'd be just best to speak about it right now.

13 THE COURT: You told me that you were done, that
14 Mr. Young had asked all the questions you wanted to have
15 asked.

16 DEFENDANT ESTREMERERA: Yeah. When I said that, he
17 answered them -- I mean, he asked them.

18 THE COURT: Okay.

19 DEFENDANT ESTREMERERA: So -- but, okay, I'll
20 rephrase it, then.

21 Mr. Corral made a statement about this alleged
22 crime that he's talking about, and in the proffer statement
23 that he made, he stated that this Lefty Reyes guy told him
24 the whole entire story.

25 I have the papers with me somewhere around here,

1 and I will get it for you, if you would like.

2 He told Mr. Corral the whole entire story, and it's
3 in a proffer statement.

4 The government asked Mr. Corral if Lefty Reyes
5 mentioned my name, and Mr. Corral said no.

6 I would also like to be sworn under oath and let it
7 be known for the record that I had nothing at all in the
8 participation of this alleged crime that Mr. Beaumont is
9 putting me in.

10 THE COURT: All right. Raise your right hand.

11 (Defendant Estremera duly sworn.)

12 THE COURT: All right. Tell me about any
13 involvement you had with the Montoya murder.

14 DEFENDANT ESTREMERERA: I didn't have no involvement
15 with it, Your Honor.

16 THE COURT: All right. Any cross-examination you
17 want to do of this testimony?

18 MR. BEAUMONT: No.

19 THE COURT: Okay. Anything further on this point?

20 DEFENDANT ESTREMERERA: No, Your Honor.

21 THE COURT: I recall witnesses testifying about
22 this, and especially the last witness that Mr. Beaumont
23 mentioned, and I find by a preponderance of the evidence that
24 this information can remain in the Presentence Investigation
25 Report.

1 The next objection is at line 115, where you object
2 to the scale being stated as next to the kitchen -- or
3 being -- I am sorry. The "pistol was located in the kitchen
4 next to the scale."

5 I recall the testimony of the witnesses, the agents
6 who testified on this point, and I think we should strike the
7 words "next to" and put the word "near."

8 MS. BROWN: Okay.

9 THE COURT: All right? I think it was a different
10 shelf. But the gun was near the scale, and the scale did
11 have residue, drug residue, on it.

12 All right. My clerk has returned with the 3500
13 material from Mr. Liscano.

14 Mr. Young, would you just grab that --

15 MR. YOUNG: Sure.

16 THE COURT: -- 3500 material from my clerk's
17 station and put it over next to Mr. Liscano at the counsel
18 table there.

19 MS. BROWN: Excuse me, Your Honor.

20 THE COURT: Uh-huh.

21 MS. BROWN: I believe line 155 should also be
22 changed, then, to be --

23 THE COURT: Yes, line 155 should also be changed as
24 well on that point. Thank you.

25 And I think we have just about covered it, but

1 there is one last one, I believe, at line 543 -- no, I
2 believe -- well, let me check.

3 The citation there at line 544, is that citation
4 correct? The minimum mandatory prison term --

5 MR. BEAUMONT: It's not. Well, based on Mr.
6 Estremera's prior convictions, his mandatory minimum is 20
7 years.

8 THE COURT: Okay. So that actually should say
9 "twenty years." Is the Probation Office --

10 MS. BROWN: Yeah, I believe so, based on the
11 filings, yes, that's correct.

12 THE COURT: But the citation is correct, is it not?

13 MS. BROWN: Yes. 846 refers back to 841.

14 THE COURT: Okay.

15 MS. BROWN: Excuse me, Your Honor.

16 There is one other correction, I believe, with
17 regard to the criminal history.

18 THE COURT: Okay. Thank you. Go ahead.

19 MS. BROWN: With -- on line 265, if the controlling
20 date for Mr. Estremera's involvement in the instant offense
21 is late February 2002, then that conviction located on line
22 265 would not receive criminal history points.

23 THE COURT: Okay. Well, let's back up a second,
24 because we've just had some testimony on that earlier today,
25 did we not?

1 (Probation officer conferring with AUSA Beaumont.)

2 MR. YOUNG: Well, Judge, I don't think the
3 testimony today referenced any dates, and I believe Probation
4 is correct, because initially this criminal history point was
5 based on the beginning date of the conspiracy and then you
6 changed it on our last meeting to February of '02 --

7 THE COURT: Yes.

8 MR. YOUNG: -- which would mean that this would be
9 outside ten years.

10 MR. BEAUMONT: And I think you did rule that in one
11 of the other hearings.

12 MR. YOUNG: That was my recollection, but I am not
13 positive.

14 THE COURT: Okay. But I just wanted to make sure
15 there wasn't any testimony today that contradicted that,
16 because the final ruling -- I mean, if I make a ruling in the
17 interim and then there is other testimony that is presented
18 later -- well, Mr. Beaumont, what is your recollection on
19 that?

20 MR. BEAUMONT: I think counsel is correct, Judge.
21 I think there was no testimony of Mr. Estremera's dates
22 today, and I think we did -- at one of the previous hearings,
23 you did rule that, because of the timeline, that that
24 particular -- when he joined the conspiracy based on the
25 evidence at that point, that conviction would not count in

1 his criminal history.

2 THE COURT: All right. And what line is that
3 again, Ms. Brown?

4 MR. YOUNG: 265, Judge.

5 MS. BROWN: It's --

6 THE COURT: Mr. Young, 265?

7 MR. YOUNG: Right.

8 THE COURT: All right. So, Ms. Brown, what is your
9 position on this?

10 MS. BROWN: That now his total criminal history
11 points would be 15 rather than 17 -- or 16.

12 THE COURT: I am sorry. Somebody was ripping paper
13 over here, and I didn't quite hear what you were saying.

14 His total criminal history points are 15, not 17?

15 MS. BROWN: Correct.

16 THE COURT: But he still falls within category VI?

17 MS. BROWN: That's correct, Judge.

18 THE COURT: Okay. All right. Thank you for
19 catching that.

20 I believe the evidence by way of proffer or actual
21 testimony establishes the other facts set forth in the
22 Presentence Investigation Report, and I believe as to both
23 defendants, it is clear, based upon the testimony of Mr.
24 Corral and the corroborating evidence supporting that, that
25 they both reasonably foresaw that more than five kilograms of

1 cocaine were a part of this conspiracy.

2 In fact, according to Mr. Corral, they both
3 individually participated in transactions involving more than
4 five kilograms of cocaine.

5 MR. LOEB: Judge, are you making that finding?

6 THE COURT: I am making that finding.

7 MR. LOEB: May I --

8 THE COURT: Do you want to address it before I do?

9 MR. LOEB: I just wanted to follow up by asking
10 what standard you are applying, and we would ask that it be
11 beyond a reasonable doubt.

12 THE COURT: Okay. I am not applying beyond a
13 reasonable doubt. I am applying preponderance of the
14 evidence.

15 Anything else on that point to preserve the record
16 on that point?

17 MR. LOEB: No.

18 THE COURT: All right. We are going to break for
19 lunch now. I have other matters this afternoon.

20 Let me ask my clerk to hand me my call sheet for
21 today. It is in her left hand, now her right hand.

22 (Court conferring with his staff.)

23 THE COURT: Let me ask you folks if you can be
24 available at 3:00 o'clock this afternoon to complete this?

25 MR. BEAUMONT: That's fine, Judge, for me.

1 MR. YOUNG: Yes, Judge.

2 MR. LOEB: Yes.

3 THE COURT: Okay. All right. Can the probation
4 officers, can you folks be here?

5 MS. BROWN: Yes, Judge.

6 MR. FREEZE: Yes, Judge.

7 THE COURT: All right. At 1:30 -- I am talking to
8 the marshals now -- at 1:30, I have a defendant in custody,
9 Keith Washington.

10 When Washington goes back, then you can bring these
11 guys down. But, frankly, you don't have to bring Mr. Liscano
12 and Mr. Estremera to the courtroom until 3:00 o'clock, okay?
13 And I am hoping to be done with Washington by then.

14 A DEPUTY MARSHAL: Thank you, sir.

15 THE COURT: But if 3:00 o'clock comes and I am not
16 done with Washington, don't bring Liscano and Estremera down.
17 You understand?

18 A DEPUTY MARSHAL: Yes, sir.

19 THE COURT: All right. Okay.

20 DEFENDANT ESTREMERERA: Excuse me, Your Honor.

21 THE COURT: Yes?

22 DEFENDANT ESTREMERERA: I still had a couple issues
23 with the objections. Is that okay to speak upon it when I
24 get back?

25 THE COURT: What further objections do you have

1 that were --

2 DEFENDANT ESTREMERERA: I had a --

3 THE COURT: -- not set forth in your written
4 materials?

5 DEFENDANT ESTREMERERA: I had an objection on line
6 104 through 108, where it's stated that -- where Paul Bock
7 indicated that I was an Enforcer of the Latin Kings street
8 gangs, and I -- my objection was to it that -- well, this is
9 what I put: Agent Paul Bock has shown the Court that he will
10 lie. Informant Jose Hernandez already verified for the Court
11 that Defendant Estremera had no Enforcer title from the late
12 1990s to 2001.

13 And since Agent Bock likes to verify things, then
14 verify for the Court that from April 1998 until 2001,
15 Defendant Estremera was in the Illinois Department of
16 Corrections, so Defendant Estremera cannot have the Enforcer
17 title.

18 Since Agent Bock is incorrect with his facts, line
19 104 through 108 should be stricken completely, because it's
20 prejudiced towards me.

21 THE COURT: I will hear from the government, then.

22 MR. BEAUMONT: Well, just the fact that he may have
23 been in the penitentiary does not make him a non-Enforcer.

24 I think Agent Bock had available to him numerous
25 sources who have identified --

1 THE COURT: Right. Who were those sources that
2 identified Mr. Estremera as having the title Enforcer?

3 MR. BEAUMONT: It was Hernandez and Aguirre, two
4 co-defendants.

5 THE COURT: You weren't just relying on Aguirre?
6 It was also Hernandez?

7 MR. BEAUMONT: Correct.

8 DEFENDANT ESTREMERERA: Excuse me. Is there a
9 proffer statement where Aguirre made that statement? Because
10 I never read it.

11 THE COURT: I don't know why gang members can't be
12 titled when they're incarcerated.

13 And Jose Hernandez was a person that the government
14 received information from that the government determined was
15 reliable?

16 MR. BEAUMONT: Correct, yes. And then we presented
17 his testimony, did we not, Hernandez?

18 AGENT BOCK: No, we did not.

19 MR. BEAUMONT: No, we didn't, we didn't.

20 THE COURT: I don't recall Hernandez testifying.
21 But did Mr. Hernandez provide other reliable information
22 other than this?

23 AGENT BOCK: Yes.

24 MR. BEAUMONT: Yes.

25 THE COURT: What types of other information?

1 MR. YOUNG: Didn't Hernandez testify?

2 DEFENDANT ESTREMERERA: Yeah, he testified right
3 here.

4 MR. BEAUMONT: Why don't you just tell us.

5 THE COURT: Did he testify, Mr. Estremera?

6 DEFENDANT ESTREMERERA: Yes, he did. He came in here
7 and said that I wasn't an Enforcer from the late 1990s, but
8 that I did have a position in the early '90s.

9 THE COURT: Okay.

10 MR. YOUNG: Judge, Mr. Hernandez was the witness, I
11 suspect you do recall, that testified that six different
12 individuals came to him and confessed to various murders. He
13 did not report any of those individuals to law enforcement,
14 but, subsequent to receiving a substantial sentence, decided
15 he wanted to come clean as to all of those individuals.

16 I think his credibility was highly suspect to put
17 him out.

18 DEFENDANT ESTREMERERA: And that's why I'm asking for
19 the allegations that Mr. Beaumont is making to be stricken.

20 THE COURT: All right. Well, what was your title
21 in the early '90s?

22 DEFENDANT ESTREMERERA: I don't know. I think he
23 said that --

24 THE COURT: No. What was it? If you want to tell
25 me. You don't have to tell me.

1 DEFENDANT ESTREMERERA: Well, I didn't have one, but
2 his statement was that -- I think he said I was an Inca at
3 the time or somewhere in that -- in the high-ranking
4 position. I'm not sure exactly what he said, though.

5 THE COURT: All right. Well, because of the
6 concerns that are raised here, we can strike the first
7 sentence of that paragraph, starting at line 104, and
8 concluding in the middle of line 105.

9 I am not striking any other part of that sentence.
10 We made the determination with regard to the Montoya murder.

11 DEFENDANT ESTREMERERA: So how far are we going to?

12 THE COURT: The first sentence.

13 DEFENDANT ESTREMERERA: The first sentence? And it
14 ends at "Enforcer"?

15 THE COURT: Yes, through the word "Enforcer."

16 MR. YOUNG: But, Judge, if you are striking that,
17 doesn't that second sentence then become irrelevant?

18 THE COURT: Well, isn't it true?

19 MR. YOUNG: I guess it is true. I'm --

20 THE COURT: Okay. But it just isn't referring
21 to -- there is no reference to Mr. Estremera.

22 MR. YOUNG: Right. Okay. I see what you're
23 saying.

24 THE COURT: All right. Anything else, Mr.
25 Estremera?

1 DEFENDANT ESTREMERERA: Yes. Could you give me a few
2 seconds, please?

3 THE COURT: Is that it?

4 DEFENDANT ESTREMERERA: Can you give me a few
5 seconds, please?

6 THE COURT: Sure.

7 DEFENDANT ESTREMERERA: On the first page, Your
8 Honor, when we changed the 21 U.S.C. 841(a)(1), does that go
9 throughout the whole PSI?

10 THE COURT: I believe Ms. Brown will make that
11 correction.

12 DEFENDANT ESTREMERERA: Okay.

13 THE COURT: I think she understands the
14 typographical error of that, yes.

15 Don't you, Ms. Brown?

16 MS. BROWN: Yes, except under the Penalties, that's
17 correct.

18 THE COURT: Under the Penalties section, there is
19 still a reference.

20 MS. BROWN: I can add 846, if the Court would like.

21 THE COURT: That may make Mr. Estremera feel more
22 comfortable, okay?

23 DEFENDANT ESTREMERERA: I'm not trying to get nobody
24 mad in here.

25 THE COURT: Anything else?

1 DEFENDANT ESTREMER: Yes, Your Honor, Judge
2 Holderman.

3 Can you consider line 51 -- I mean, line 159
4 through 162?

5 THE COURT: Well, I did look at that earlier. Let
6 me look at it again.

7 DEFENDANT ESTREMER: Actually, I think it's on a
8 different page.

9 Actually, it's line 125 through 133.

10 THE COURT: Okay. Let me go back to that, then.

11 Yes, I did look at that. What is it that you
12 believe you accepted responsibility for?

13 DEFENDANT ESTREMER: Well, I believe that since
14 from the beginning of this case, I was always willing to
15 accept my responsibility, but from my misunder -- from my
16 understanding, I was always just told that I couldn't unless
17 I provided information about other individuals. But I
18 thought accepting responsibility was accepting what I was
19 responsible for and being sentenced for that.

20 THE COURT: Well, according to the information, you
21 are responsible individually for seven to nine kilograms of
22 cocaine, and you reasonably foresaw a substantial additional
23 amount of cocaine. I don't remember your saying that that's
24 what you accepted early on.

25 DEFENDANT ESTREMER: No, I didn't. I just stated

1 that I wanted to accept responsibility.

2 I stated that in this open courtroom right here
3 when I tried to substitute Mr. Young, and you denied me that
4 substitution. I was already trying to accept responsibility.
5 I wasn't trying to go to trial. I was basically forced to go
6 to trial.

7 THE COURT: You weren't forced to go to trial. You
8 didn't admit your full involvement in the crime.

9 DEFENDANT ESTREMER: Well, Your Honor, when the
10 government did bring me a plea agreement, I wasn't even aware
11 at that time that I could deny anything that was on that plea
12 agreement. All I was just told was I had to sign it, 'cause
13 this is all they were going to give me.

14 So there's a difference between back then till now
15 that I have --

16 THE COURT: I don't believe you.

17 DEFENDANT ESTREMER: Why is that?

18 THE COURT: The reason I don't believe you is
19 because --

20 DEFENDANT ESTREMER: I have the two agreements
21 that they sent me.

22 THE COURT: You are a person who questions
23 everything. You are a person who would not just say, "Oh, I
24 have to sign it," without questioning it.

25 I don't believe you, I don't believe that statement

1 now, Mr. Estremera, because of all that I have observed about
2 you throughout the entire time that I have presided over your
3 case.

4 You are a person that goes through things in
5 detail. You are a person --

6 DEFENDANT ESTREMERERA: I do.

7 THE COURT: -- that asks questions about absolutely
8 everything. And for you to now stand up here and say to me,
9 "Gee, I didn't understand that I couldn't ask questions about
10 this point or try to negotiate further on this point," just
11 is not credible --

12 DEFENDANT ESTREMERERA: Your Honor --

13 THE COURT: -- and that is why not, Mr. Estremera.

14 DEFENDANT ESTREMERERA: But, Your Honor, at that
15 time, it was 2003. I still was not aware of these federal
16 laws like I am now.

17 THE COURT: Well, of course not.

18 DEFENDANT ESTREMERERA: Mr. Young didn't advise me.
19 Mr. Young didn't advise me that I could disagree with it.

20 THE COURT: But I don't believe you, sir --

21 DEFENDANT ESTREMERERA: But I'm telling you the
22 truth --

23 THE COURT: -- on that point.

24 DEFENDANT ESTREMERERA: -- so why should I have to be
25 lying?

1 THE COURT: Well, you asked me, "Why don't you
2 believe me," and I am telling you why I don't believe you,
3 sir.

4 DEFENDANT ESTREMERERA: See, it always comes to your
5 association with him, because you've --

6 THE COURT: No.

7 DEFENDANT ESTREMERERA: -- known him for 20 years.

8 THE COURT: There is no association with Mr. Young.

9 DEFENDANT ESTREMERERA: You're always defending him.
10 Even when I'm right, you're still defending him.

11 THE COURT: Well, let me tell you, Mr. Estremera,
12 Mr. Young has got nothing to do with this point.

13 DEFENDANT ESTREMERERA: He had a lot to do with that
14 at that time, 'cause if he would have --

15 THE COURT: Mr. Estremera --

16 DEFENDANT ESTREMERERA: -- advised me that I could
17 have disagreed with it, I could have signed the plea --

18 THE COURT: Are you done?

19 DEFENDANT ESTREMERERA: -- and maybe disagreed with
20 you --

21 THE COURT: When you are done --

22 DEFENDANT ESTREMERERA: -- on some of my issues.

23 THE COURT: -- you tell me you're done.

24 DEFENDANT ESTREMERERA: You know, I already know what
25 I'm going to receive today, so, yeah, I'm done.

1 I can't get nowhere. It doesn't matter what I try
2 to do. Even if I'm being truthful, you know, I'm a liar.
3 But he's telling you the truth, and it's okay. That's not
4 right.

5 Where's my constitutional rights? When can I
6 defend myself? When am I going to be listened to? It's
7 always about what they're saying.

8 They're right, they're always right, they're always
9 right. And this whole case is full of lies, but still
10 they're always right.

11 You know, and I got to sit here and accept what
12 you're going to sentence me to, and you're just telling me
13 I'm a liar. I just barely started learning how to really
14 defend myself and say to myself, "You know what? You got to
15 do things, because if you don't, every time this man's
16 telling you it's no good, he's misguiding you," you know.

17 And I've never said nothing from the get-go, even
18 after you said I couldn't substitute him. He always told me,
19 "If you don't like what I'm doing, substitute me." He knew I
20 couldn't do it because you already disagreed to it. And I
21 wasn't gonna get you mad over it, so I kept accepting and
22 accepting and accepting. But I'm still a liar.

23 THE COURT: Are you done?

24 DEFENDANT ESTREMER: I'm done.

25 THE COURT: You never accepted Mr. Young.

1 DEFENDANT ESTREMERERA: I did.

2 THE COURT: You never accepted Mr. Young.

3 And, Mr. Estremera, you are a person that I have
4 observed, separate and apart from any involvement as to who
5 represented you, you are a person that questions absolutely
6 everything. For you to stand here and tell me, oh, you
7 didn't question it --

8 DEFENDANT ESTREMERERA: I did question it, and he
9 said I couldn't do it.

10 THE COURT: -- is just not believable.

11 DEFENDANT ESTREMERERA: He said I had to sign it.
12 That's exactly what he said, Your Honor.

13 I did file an evidentiary proffer hearing for
14 ineffective assistant of counsel. Was that denied?

15 THE COURT: Is there anything else we need to take
16 up at this point?

17 DEFENDANT ESTREMERERA: Okay.

18 THE COURT: Are you done with the Presentence
19 Investigation Report, Mr. Estremera?

20 DEFENDANT ESTREMERERA: Yes, I am, Your Honor.

21 THE COURT: Are there any other points you want to
22 raise with regard to the Presentence Investigation Report?

23 DEFENDANT ESTREMERERA: Not right now. No.

24 THE COURT: You bring them up now --

25 DEFENDANT ESTREMERERA: The answer is no.

1 THE COURT: -- if you want to raise them.

2 DEFENDANT ESTREMER: The answer is no. The answer
3 is no.

4 THE COURT: All right. We will stand in recess.
5 3:00 o'clock.

6 (Recess from 12:43 p.m. until 3:07 p.m.)

7 THE CLERK: 02 CR 719, United States of America
8 versus Abraham Estremera and Steven Liscano, continuation of
9 sentencings.

10 (Defendants in.)

11 MR. BEAUMONT: Good afternoon, Your Honor.
12 Larry Beaumont again on behalf of the United
13 States.

14 MR. YOUNG: Good afternoon, Judge.
15 Donald Young for Abraham Estremera, who is present.

16 MR. LOEB: Robert Loeb, L-o-e-b, for Steve Liscano,
17 who is also present.

18 THE COURT: Good afternoon.

19 MS. BROWN: Good afternoon, Your Honor.
20 Danielle Brown on behalf of Probation.

21 THE COURT: Good afternoon.

22 MR. FREEZE: Good afternoon, Judge.
23 Zakary Freeze also from the Probation Office.

24 THE COURT: Good afternoon.

25 All right. Good afternoon, Mr. Estremera --

1 DEFENDANT ESTREMERER: Good afternoon.

2 THE COURT: -- and Mr. Liscano.

3 DEFENDANT LISCANO: Good afternoon.

4 THE COURT: Mr. Estremera, is there anything
5 further you want to present with regard to the Presentence
6 Investigation Report that we hadn't completed when we broke
7 this morning's session?

8 DEFENDANT ESTREMERER: May I go through it real
9 quick?

10 THE COURT: I am sorry?

11 DEFENDANT ESTREMERER: May I go through it real
12 quick? Look at it and start --

13 THE COURT: Sure.

14 (Defendant Estremera conferring with Mr. Young.)

15 MR. LOEB: Judge, while he's going through it, I
16 want to take this opportunity --

17 THE COURT: All right. Mr. Estremera is reviewing
18 his materials.

19 MR. LOEB: Oh, is he?

20 THE COURT: Is there something we could take up in
21 the interim, Mr. Loeb?

22 MR. LOEB: This is not even to take up. Judge, I
23 wanted to introduce you -- I'm joined at counsel table now by
24 Rachel Zebio who, during the course of the sentencing
25 process, has been my law clerk, is now newly admitted to the

1 Illinois bar, and an application to the District Court is now
2 pending.

3 THE COURT: All right. Well, welcome to the
4 proceedings this afternoon.

5 MS. ZEBIO: Thank you.

6 THE COURT: Thank you.

7 DEFENDANT ESTREMER: Your Honor, I wanted to raise
8 the criminal -- the career offender issue --

9 THE COURT: All right.

10 DEFENDANT ESTREMER: -- that I have facing me.

11 THE COURT: All right. That actually, yes, takes
12 us into the next phase.

13 DEFENDANT ESTREMER: Okay.

14 THE COURT: But is there anything about that you
15 want to raise?

16 DEFENDANT ESTREMER: The issue I was raising on
17 that was -- is that the case that I had on -- in the career
18 offender that they're using was unlawful possession of
19 cannabis, which is not a controlled substance in the State of
20 Illinois in their system. It falls under the Control
21 Cannabis Act.

22 So I feel that that case should not be used against
23 me as a controlled substance, because that's not what I was
24 convicted under, a controlled substance.

25 THE COURT: All right. What is the government's

1 position on that?

2 MR. BEAUMONT: However it may or may not be
3 categorized under state law, what counts is how it's
4 categorized under federal law. And under federal law, it is
5 a felony, and it qualifies, I believe, as a -- one of the
6 predicate offenses for the career offender guideline.

7 THE COURT: All right. I believe the government is
8 correct on that point.

9 DEFENDANT ESTREMERERA: All right. I could still
10 raise that with my appeal, though, right? On the appeal
11 issue, that? I'll deal with that when --

12 THE COURT: Mr. Estremera, you will have ten days
13 from today's date to file a notice of appeal.

14 You understand that, don't you?

15 DEFENDANT ESTREMERERA: Yes.

16 THE COURT: All right. And if you desire to file a
17 notice of appeal, you should file that with the District
18 Court Clerk within ten days of the date of sentencing.

19 You understand that?

20 DEFENDANT ESTREMERERA: Yes.

21 I had other objections here also to -- well, I
22 believe she said I had 17 criminal points, but I think when I
23 counted them, it was 13. So I don't know if I was right on
24 that or not.

25 THE COURT: I thought we'd come to the conclusion

1 it was 15 --

2 MR. BEAUMONT: We did.

3 THE COURT: -- after I ruled in your favor --

4 DEFENDANT ESTREMERERA: Yeah.

5 THE COURT: -- on the criminal history matter that
6 we discussed this morning.

7 DEFENDANT ESTREMERERA: Yeah. I was just thinking
8 about it. I'm just saying that I --

9 THE COURT: You think it is 13?

10 DEFENDANT ESTREMERERA: Yeah. I think it --

11 THE COURT: Well --

12 DEFENDANT ESTREMERERA: I think it falls down lower
13 now instead of --

14 THE COURT: You do?

15 DEFENDANT ESTREMERERA: Yeah.

16 THE COURT: Okay. How does it fall down lower?

17 DEFENDANT ESTREMERERA: I think when she added them
18 up on the PSI, it came out to a total of 13 points, not a
19 total of 17.

20 THE COURT: Let me just ask --

21 DEFENDANT ESTREMERERA: I might be wrong.

22 THE COURT: -- if it falls to a total of 13, what
23 is Mr. Estremera's criminal history category?

24 MS. BROWN: VI, Your Honor. But I will recount
25 them right now.

1 I come out to 15 points, Your Honor.

2 THE COURT: I come out to 15 points.

3 DEFENDANT ESTREMER: That's fine, okay. Then I --

4 THE COURT: How do you come out to 13 points?

5 DEFENDANT ESTREMER: I don't know. I was sort of
6 going through them in my mind, trying to remember the points.

7 THE COURT: Maybe going through them in your mind
8 is not a good thing.

9 DEFENDANT ESTREMER: Yeah.

10 THE COURT: Maybe you should sit down with a piece
11 of paper. Do you want to do that?

12 DEFENDANT ESTREMER: No, that's okay. She said
13 that's what she counted them as right now.

14 It just takes me down to 13. It still leaves me a
15 category VI.

16 And I wanted to raise the issue about -- on line
17 564 -- I mean, 546 and 547, as to my base offense level.

18 THE COURT: What do you want to raise about that?

19 DEFENDANT ESTREMER: Well, I just disagree with
20 their base offense level of -- what do you have me at, 40?

21 MS. BROWN: That's correct.

22 DEFENDANT ESTREMER: At a base offense level 40.

23 THE COURT: Okay. What do you want to raise about
24 that?

25 DEFENDANT ESTREMER: Well, what I'm trying to

1 raise is that Virginia Kendall made a statement to the jury
2 toward -- in the end about the drug amount, and she pointed
3 two kilos towards me when she stated, "Mr. Estremera, a
4 dukie." I believe she said, "Mr. Pena, four, three for his
5 customer, one for him."

6 So I feel that Virginia Kendall gave me a drug
7 amount. And by that being level 26, that's where I should be
8 at.

9 THE COURT: We are considering that, those two
10 kilograms, aren't we?

11 MR. BEAUMONT: Yes.

12 THE COURT: And then there is additional
13 information that Mr. Corral testified about even today.

14 MR. BEAUMONT: Correct.

15 THE COURT: Yes.

16 MR. BEAUMONT: And, in all honesty, Judge, just so
17 I could state for the record, because he's a career offender,
18 it doesn't -- as long as it's over five kilos, it doesn't
19 much matter. Because what the career offender guideline says
20 is that if it's a case that has a penalty of up to life,
21 which if it's more than five kilos, it does, then he's
22 automatically a level 37 based on the career offender. It
23 sends him to a level 37, criminal history category VI.

24 So then -- what I'm saying is the total amount of
25 cocaine really doesn't have a -- in his case, Mr. Estremera's

1 case, doesn't have a lot of significance, anything above five
2 kilos, if that makes sense.

3 THE COURT: My understanding, though, is Mr.
4 Estremera believes that he is only accountable for two
5 kilograms, the two kilograms Virginia Kendall mentioned in
6 the closing argument.

7 Is that your position, Mr. Estremera?

8 DEFENDANT ESTREMERERA: Yes, Your Honor.

9 THE COURT: All right. You are incorrect about
10 that.

11 DEFENDANT ESTREMERERA: I'm correct about it?

12 THE COURT: No. You are not correct about that.

13 DEFENDANT ESTREMERERA: I'm not correct about it?

14 THE COURT: No.

15 DEFENDANT ESTREMERERA: That that is not -- that that
16 shouldn't be my drug amount? Is that --

17 THE COURT: No.

18 DEFENDANT ESTREMERERA: Okay. Well, I mean, all my
19 issues are -- I guess they're all raisable on my appeal,
20 so -- just for the record, I'll appeal all the objections
21 that are made here today against me.

22 And I'd also like to raise the fact that the -- my
23 constitutional right to my Fifth Amendment states that I
24 should be found guilty beyond a reasonable doubt, and you
25 said by the preponderance of the evidence. So I'll raise

1 that also with my appeal issues.

2 THE COURT: Anything else about the Presentence
3 Investigation Report?

4 DEFENDANT ESTREMERERA: Yeah, there is. Let me just
5 look at this.

6 THE COURT: What is it, Mr. Estremera?

7 DEFENDANT ESTREMERERA: Right here, I had made an
8 objection to line 85 and 87.

9 And I just stated that: Defendant Estremera has
10 never been charged in any shooting in Aurora or elsewhere,
11 nor was the gun in Defendant Estremera's car related to any
12 shooting in Aurora or elsewhere.

13 THE COURT: What is the government's position on
14 that?

15 MR. BEAUMONT: Well, the government -- I think he's
16 correct, he hasn't been charged with a shooting in Aurora.
17 We can certainly add a sentence in there.

18 THE COURT: All right. Why don't we add it at line
19 89, "Estremera has never been charged with a shooting in
20 Aurora."

21 Does that take care of that, Mr. Estremera?

22 DEFENDANT ESTREMERERA: Yes. Thank you.

23 And then at line 90 through 92, I put: If
24 Informant Juan Corra1 is the hub of the wheel, then Attorney
25 Donald V. Young stated to me that there was a jury

1 instruction on multiple conspiracy, but I haven't read them,
2 and I would like to know if there was such an instruction
3 given to the jury.

4 THE COURT: The jury instructions were properly
5 given to the jury. I addressed all of them at the time, and
6 I believe this jury was properly instructed on all aspects of
7 the law.

8 DEFENDANT ESTREMERERA: Okay.

9 THE COURT: Anything else with regard to the
10 Presentence Investigation Report?

11 DEFENDANT ESTREMERERA: Yes. I still have another
12 issue with line 92 through 96, where I stated: Defendant
13 Estremera never had knowledge or was aware of the individuals
14 in which Informant Juan Corral conducted business with.

15 And Defendant Estremera's relationship with
16 Informant Juan Corral is from teenager friends in the same
17 neighborhood. Just because we belong to the same
18 organization does not mean we had knowledge or were aware of
19 how each other conducted business.

20 THE COURT: No change need be made on that point.

21 DEFENDANT ESTREMERERA: Okay. And then I got line
22 143 through 147, where I put: Defendant Estremera was found
23 guilty by a jury trial of 21 U.S.C. 846, conspiracy to
24 distribute or to possess with intent to distribute five
25 kilograms or more of cocaine, not of in excess of 150

1 kilograms.

2 Defendant Estremera's base offense level is 32,
3 which is subsection 2D1.1(c)(4), not subsection 2D1.1(c)(1)
4 that the Presentence Report states.

5 THE COURT: Let me ask the government to explain
6 that one more time, if you would.

7 MR. BEAUMONT: He was found guilty of --

8 THE COURT: Base offense level.

9 MR. BEAUMONT: His base offense level is a level 37
10 because he's a career offender, because it involves a
11 conspiracy that encompassed five kilograms or more;
12 therefore, his maximum penalty is life imprisonment.

13 And because his maximum penalty is life
14 imprisonment because of his prior criminal history, he is a
15 career offender. So the guidelines then list his base
16 offense level at a level 37, criminal history category VI.

17 THE COURT: Here at line 149, it is level 38. Let
18 me ask Ms. Brown what that explanation is.

19 MS. BROWN: That's eight kilograms or more of
20 cocaine --

21 THE COURT: Okay.

22 MS. BROWN: -- from the drug quantity table under
23 2D1.1(c)(1), from the drug quantity table.

24 THE COURT: All right. Should that be a level 37?

25 MR. BEAUMONT: Well, you would need to -- it would

1 be up to the Court to make a finding as to what the amount of
2 cocaine involved in the -- the overall amount of cocaine
3 involved --

4 THE COURT: The overall amount of cocaine involved
5 in the conspiracy was over 150 kilograms of cocaine. I think
6 I have made that finding before. I will make it now by a
7 preponderance of the evidence.

8 I think it was very easy for the jury to find it
9 was more than five kilograms beyond a reasonable doubt, as
10 the evidence preponderated that it was. The conspiracy
11 itself was more than 150 kilograms.

12 This particular defendant himself dealt with more
13 than five kilograms of cocaine personally as part of the
14 conspiracy that he engaged in.

15 MR. BEAUMONT: And with that finding, I think the
16 correct is 38, then.

17 THE COURT: I had made that finding on earlier
18 occasions, I am sure.

19 MR. BEAUMONT: I believe you did, Judge.

20 THE COURT: Anything else?

21 DEFENDANT ESTREMER: No, I would just like to say
22 that I will raise all the arguments in my Presentence Report
23 that are denied on my appeal. That's it.

24 THE COURT: Anything else with regard to the
25 Presentence Investigation Report?

1 DEFENDANT ESTREMERERA: No. I'm done, Your Honor.
2 Thank you.

3 Mr. Young, you got anything you want to say?

4 MR. YOUNG. No.

5 THE COURT: I think the record is clear that Mr.
6 Estremera is a person who examines things very carefully, and
7 always has, and has not shied away from raising points on his
8 own, contrary to whether his counsel agrees or disagrees with
9 his position. That has been clear since the beginning of
10 these proceedings when Mr. Estremera first sought to have his
11 first appointed counsel substituted, which was granted, and
12 then used exactly the same language to try to substitute Mr.
13 Young, which was denied.

14 Mr. Estremera, despite the fact that he had
15 counsel, filed pro se motions as early as September of 2002,
16 motions such as the one he filed at docket No. 103
17 challenging the subject matter jurisdiction of the Court,
18 filed it pro se.

19 He is not a person that is prone to take for
20 granted what his attorney tells him. He looks at it himself.
21 It is an admirable quality, but it is a quality that he
22 should not attempt to deny by saying that someone else was at
23 fault.

24 All right. We have now concluded the Presentence
25 Investigation Report, unless, Mr. Liscano, there is something

1 more that you want to raise regarding your report?

2 DEFENDANT LISCANO: I have some matters that may
3 pertain to my Presentence Report.

4 THE COURT: Sure. Step on over to the podium and
5 let me know what they are.

6 DEFENDANT LISCANO: Your Honor, Corral had
7 testified to the grand jury about his drug-dealing operation
8 and told the grand jury how he sold drugs and gave the
9 quantity of drugs he sold and bought every month. He told
10 them some months he didn't have drugs to sell.

11 His total amount of drugs from his suppliers that
12 he testified to was 250 kilos, but when he testified to the
13 grand jury about the amounts he sold to individuals, they
14 added up to well over 250 kilos.

15 He was pretty sure about the shipments he received
16 from his suppliers, which he says was one shipment per month,
17 that he sold in approximately one week.

18 During the time of his conspiracy, the amount would
19 be 250 kilos that Corral has pled out to.

20 When the FBI tapped his phone, he received three
21 shipments on 5/14/02, 6/4/02, and 6/8/02. On those dates are
22 the real evidence of how Corral's conspiracy operated.

23 And if you listen to the 6/4/02 conversations, you
24 will hear a call from me to him, and he tells me that he has
25 no drugs when, in fact, he did. He testified that he

1 received a shipment on 6/4, one hour after I talked to him.

2 So if the evidence that we have on the tapes and
3 CD-ROMs that I have mentioned to you do not show me receiving
4 or buying drugs from Corral, then how can you assume that the
5 months where there's no recordings and he only received one
6 shipment per month and sold his drugs in approximately one
7 week, how can I be responsible for those drugs?

8 The evidence shows he lied to you and the jury that
9 he sold me a half a kilo. The evidence I have provided to
10 you shows I could never have purchased a half a kilo because
11 he, in fact, did not have any drugs that day.

12 He not only lied about the half a kilo he says he
13 sold me on the 13th, he lied when he tried to bond out of the
14 Kane County jail through that judge as well about the amount.

15 Also, he lied about the amount he sold to everyone
16 else on other indictment cases, or he lied about the
17 shipments he received from his suppliers.

18 But if you add up the shipments he also -- he says
19 he received, it totals 250 kilos, but what he said he sold is
20 well over 400 kilos. So he's obviously got his stories
21 pretty mixed up, Your Honor.

22 Your Honor, I'm not sure, but I was wondering if
23 you could please let me know what exactly was the purpose of
24 Rob Loeb's motion to bifurcate argument and jury
25 deliberations on drug amounts, because there has been no

1 change in drug amounts, as I believe there was supposed to
2 have been.

3 The government is still trying to say that I'm
4 foreseeable for in excess of 150 kilograms of cocaine. I'd
5 like to know, did this motion force a drug amount on me? If
6 so, I would have never allowed my attorney to have made this
7 motion.

8 THE COURT: The motion did not force a drug amount
9 on you.

10 DEFENDANT LISCANO: Because, to my belief, I had an
11 assumption that that was gonna give each individual their
12 individual amount of drugs. Instead of a conspiracy, it was
13 gonna give an individual amount of finding.

14 THE COURT: That is not what the law requires. I
15 have answered your question.

16 DEFENDANT LISCANO: Okay. While we were discussing
17 the bifurcation motion and how to arrange new jury
18 instructions on this issue off the record at this table here
19 in court, Your Honor, you gave me and my co-defendants the
20 understanding that this motion was going to separate us from
21 each other's drug amounts and gun possessions. We would each
22 be only foreseeable for what we did individually.

23 You said that's how you ran your courtroom, and
24 that's why, Your Honor, you said I could not be foreseeable
25 for Estremera or Pena's possession, drug -- for Estremera or

1 Pena's gun possession or drugs, as I was not enhanced nor
2 found guilty of any gun possession.

3 Out of 40 drug dealers, all of which Corral has
4 either testified against or made grand jury proffered
5 statements against in court, not one can say that or has said
6 that I sold them cocaine or that they sold me cocaine.

7 In all these five separate indictments, the
8 defendants are fighting drug amount because the amount Corral
9 has attributed to them has been overexaggerated.

10 There's no proof of any of us, me and Pena or
11 Estremera, ever discussing anything to do with drug dealing
12 or making any drug transactions with one another.

13 It seems to me as if the government is trying to
14 say that Estremera, Pena, and myself, Steve Liscano, knew
15 about each other's business. That, in fact, is not true.

16 I did not get along with him or Pena. I never
17 cared to know anything about their business other than that
18 they were Latin Kings. We in no way conspired with one
19 another, and there's no proof of us doing so.

20 During the verdict decision on drug amount
21 argument, I believe, of Ms. Kendall, she said at the end to
22 the jurors that they should put a mark next to the third box
23 which said a conspiracy to distribute or to possess with
24 intent to distribute five kilograms or more of cocaine.

25 She further said that the jury should put a mark

1 next to number 3 because four for Pena and two kilograms for
2 Estremera made a total of six kilograms; therefore, box
3 number 3 is where they should mark next to.

4 However, for me, Steve Liscano, she nor the
5 government could come up with anything. My name wasn't even
6 mentioned, Your Honor, because I, in fact, shouldn't have a
7 drug amount.

8 And here go these transcripts of where she said
9 that.

10 THE COURT: Anything else?

11 DEFENDANT LISCANO: No, Your Honor.

12 THE COURT: Anything else with regard to the
13 Presentence Investigation Report?

14 DEFENDANT LISCANO: No, Your Honor.

15 THE COURT: It is clear that you foresaw a
16 substantial amount of drugs being distributed and that you
17 yourself distributed or at least were involved with ten to
18 thirteen kilograms. That has been shown by a preponderance
19 of the evidence.

20 DEFENDANT LISCANO: Why, when I didn't get caught
21 with not one gram? I didn't -- I did not get caught with a
22 gram, nothing, Your Honor. This is all off this man's
23 testimony. There's no actual evidence of me possessing any
24 drugs.

25 THE COURT: Anything else?

1 DEFENDANT LISCANO: No, Your Honor.

2 THE COURT: Anything else with regard to the
3 Presentence Investigation Report?

4 DEFENDANT LISCANO: No.

5 THE COURT: All right. Why don't we move to the
6 other items, then, that we have to address before we can
7 proceed further.

8 Mr. Loeb, I guess Mr. Liscano believes that it is
9 your motion that somehow prompted him to be found responsible
10 for the amount of drugs he's been found responsible for.

11 Can you comment on that or do you want to comment
12 on that?

13 MR. LOEB: The state of the law at the time of the
14 motion was relatively new at that time, that an *Apprendi*
15 amount -- I use that phrase in response to the *Apprendi*
16 case -- jurors were receiving -- they had an additional
17 charge that if they found somebody guilty, they also had to
18 find the amount of drugs involved by the conspiracy as a
19 whole.

20 The motion that we brought, which you granted, was
21 to separate the proceedings between guilt and innocence in
22 one section of the trial and then a separate argument and
23 deliberation on how much was involved so that the defense
24 would not be put in the position of arguing he was not in a
25 conspiracy, but if he was, here's what the amount would be,

1 because there's some inconsistency and weakness to that
2 argument.

3 *Blakeley* and *Booker* had not yet been decided, and
4 those raise other issues. But that's what the motion went to
5 at the time of trial.

6 THE COURT: Has Mr. Liscano asked you about this so
7 you could explain it to him as you've explained it now on the
8 record?

9 MR. LOEB: Yeah, but pretty much -- yes. I think
10 it was at the time that it was being brought. It was during
11 trial, and we discussed it then.

12 THE COURT: Okay. All right. Anything else with
13 regard to the motion to reconsider? This is --

14 MR. LOEB: No. The one new part to the motion to
15 reconsider, in particular, is that I have discovered since
16 then that the United States Supreme Court case in the case of
17 *Ewing versus California*, which is really the precedent for
18 the three strikes law, in other words, the constitutionality
19 of the 851 enhancement, involved the California statute, not
20 the federal law.

21 And in the California statute, the government -- or
22 the judge does have the discretion to disregard certain
23 convictions if he feels that fairness dictates that.

24 That's a different scheme than what we are
25 operating under. So I'm saying that *Ewing versus California*

1 is not particularly dispositive. And I wanted to raise and
2 preserve that argument, that it's really a different issue
3 from *Ewing*.

4 THE COURT: All right. That point is appropriately
5 preserved.

6 Anything else with regard to the motion to
7 reconsider?

8 MR. LOEB: Not the motion to reconsider.

9 THE COURT: All right. The motion to reconsider,
10 then, is denied.

11 I believe we have addressed these points
12 previously. I have looked at them again. I have received
13 the motion to reconsider and have again revisited them, and,
14 once again, the points are presented, preserved for appeal,
15 and denied.

16 Well, what is the next item that you would like to
17 take up?

18 MR. LOEB: We really haven't done the guideline
19 calculations as to Mr. Liscano.

20 I'm going to cut in before Mr. Beaumont mentions
21 it.

22 If Mr. Liscano is to be sentenced under 851, there
23 are statutory mandatory provisions, but that could preclude
24 the necessity of a guideline calculation, but perhaps, for
25 the record, we should move to that, in any event.

1 THE COURT: I agree that we should move to that.

2 MR. LOEB: Okay. I filed written objections.

3 Let me speak to the following. And do you want me
4 to then include *Booker* variances at this point or do you want
5 to do the strict numerical guideline calculation?

6 THE COURT: Why don't we just do the strict
7 numerical --

8 MR. LOEB: Okay.

9 THE COURT: -- guideline calculation. Even though,
10 according to the government's position, which I am reviewing,
11 the 851 statute, § 851(a)(1), may trump the guidelines, let's
12 go ahead and determine the appropriate sentencing guideline
13 range, even though it is only advisory.

14 MR. LOEB: Okay. There has been a factual finding
15 of ten to thirteen kilograms of Mr. Liscano, a legal finding
16 of more than five kilograms now.

17 THE COURT: I thought it was 12 to 13, but that's
18 all right.

19 MR. LOEB: Okay, okay. I'll accept that.

20 THE COURT: More than five, according to the jury.

21 MR. LOEB: That's correct.

22 And late this morning by you by a preponderance of
23 the evidence, for purposes of the 841 minimum sentence.

24 THE COURT: Yes.

25 MR. LOEB: Okay. Taking those as givens at this

1 point, Judge --

2 THE COURT: And my finding was that that amount was
3 reasonably foreseeable. Go ahead.

4 MR. LOEB: That was for statutory purposes, and the
5 remaining issue, I believe, is then your finding of an amount
6 higher than that, which we would oppose, but the amount, the
7 specific amount of cocaine reasonably foreseeable by Mr.
8 Liscano to plug into the guideline base offense level. I
9 will say that's really the one and only issue remaining.

10 We filed written objections to a couple of the
11 points contained in Mr. Liscano's criminal history. I need
12 not argue those at this point. For purposes of this
13 proceeding, he remains a category VI in either event.

14 He is also -- I think the government and Probation
15 will agree -- not a career offender despite his two
16 convictions. Each of those were for mere possession, and
17 mere possession of controlled substances do not trigger the
18 career offender treatment.

19 So he's a criminal history VI. We move to offense
20 level -- and it's only the offense level. There are no other
21 enhancements.

22 Judge, I would make a couple of points.

23 To go beyond the 12 to 13 kilograms would, one, be
24 speculative, imprecise, and not properly grounded in the
25 evidence.

1 Two, as I have pointed out in one of the previous
2 filings, that pretrial, about six weeks before the trial was
3 held, and in response to a motion that I had filed, the
4 government calculated what Mr. Liscano was facing under the
5 sentencing guidelines, independent of 851, and attributed to
6 him a base offense level of 32 based on at least five but
7 less than fifteen kilograms of cocaine. That was the
8 government's position at the time.

9 To go higher than level 32 for his offense level
10 would require findings above 15 kilograms for a level 34,
11 above 50 kilograms for a level 36, and above 150 kilograms
12 for a level 38.

13 And at this stage, given the rulings that you have
14 made, it is our position that level 32 is both supported by
15 the facts as the appropriate finding as well as -- Judge, I
16 can't tell you that it is legal estoppel that the
17 government's calculations pretrial were a level 32, but I can
18 tell you that logically they knew everything that they knew
19 at that time.

20 The guidelines provide for any changed
21 circumstances. By that, I mean the guidelines, if he didn't
22 go to trial, they provide for acceptance of responsibility on
23 a plea. To go higher than that would essentially be a trial
24 tax.

25 And so a level 32 is what would be appropriate for

1 a guideline sentence, and that completes my argument on the
2 guideline calculations.

3 THE COURT: What is the government's position?

4 MR. BEAUMONT: Well, first of all, I don't see how
5 there could be any type of suggestion that our -- the
6 government's pretrial proposed position, in return for the
7 defendant's plea, could be used against us ultimately in a
8 finding. No more than if the defendant considered our plea,
9 we could use that consideration as some acknowledgment of
10 guilt.

11 So I don't think the Court should be persuaded at
12 all by what we would suggest would be our position if, in
13 fact, the defendant pled guilty.

14 I think there's an argument that could be made, and
15 it's the argument that the probation officer accepted, is
16 that the defendant was aware of the full scope of the
17 conspiracy.

18 There was evidence that he -- you heard today again
19 about and at trial about the telephone calls, about the
20 police being in the area and so forth.

21 The defendant certainly knew that Corral was a
22 large scaler -- scale cocaine distributor. The defendant
23 assisted Corral in the sense of alerting him of the police,
24 and, plus, he was a member of this gang.

25 And I think there's enough by a preponderance of

1 the evidence, at any rate, to suggest that the full scope of
2 this conspiracy was known to the defendant.

3 Certainly, you know, he's not just getting a couple
4 grams of cocaine. He's specifically been found with the ten,
5 eleven kilos of cocaine, which, in and of itself, is a large
6 amount of cocaine.

7 So he is not just a minute customer or one-time
8 customer or a person that, you know, just acted randomly, but
9 he consistently transacted with Corral and consistently --
10 that consistency, therefore, I think made him a member of the
11 conspiracy and made the full size -- if he's getting 11
12 kilos, I think it would be easy for him to foresee that other
13 individuals in this conspiracy are likewise getting
14 consistent amounts of cocaine, and it doesn't take much, many
15 11 kilos to get over the 150-kilo range.

16 MR. LOEB: Judge, I have to respond to one
17 statement that Mr. Beaumont made, and that is that Mr.
18 Liscano was supposed to have foreseen the full scope of the
19 conspiracy.

20 Number one, the trial did not suggest that. There
21 was not evidence of that.

22 And, number two, when Mr. Corral testified this
23 morning, he specifically said that Mr. -- to his knowledge,
24 Mr. Liscano was unaware of a large number of the customers,
25 the larger customers that Mr. Corral supplied, and, in

1 particular, was unaware of those independent of the Latin
2 Kings.

3 And to attribute 150 kilograms to Mr. Liscano would
4 be really grabbing a number out of thin air. You have
5 certainly a more specific number with the 12 or 13, 13
6 kilograms for which there certainly is evidence. I'm not
7 conceding sufficient evidence, but at least there is some
8 evidence of that. Anything above that is really speculative
9 guesswork.

10 And in light of Mr. Corral's testimony about what
11 Mr. Liscano would not have been aware of, we would ask for
12 the level 32.

13 THE COURT: Anything further from the government on
14 this point?

15 MR. BEAUMONT: Just on the particular point of not
16 knowing who the specific customers are certainly doesn't
17 matter. It's the range of the conspiracy that counts. And I
18 suggest that based on his participation in the conspiracy,
19 you could infer that he had such knowledge that it
20 encompassed that large of a range.

21 THE COURT: I agree with the government that one
22 could infer that. The question is what has been proven by a
23 preponderance of the evidence.

24 There is no question that this conspiracy involved
25 more than 150 kilograms of cocaine.

1 There is also evidence that preponderates, that
2 supports the finding that Mr. Liscano knew that the
3 conspiracy was certainly beyond he and Mr. Corral.

4 The extent to which is where it starts to get a
5 little hazy.

6 Consequently, it seems to me that fairness dictates
7 that the amount of drugs, if not shown by a preponderance of
8 the evidence to be a greater amount, the amount of drugs that
9 Mr. Liscano reasonably foresaw to be distributed was 12 to 13
10 kilograms, which would take him to a level 32, which would
11 take his guideline calculations, since he falls within a
12 criminal history category of a VI, using either the
13 guidelines book that is in effect now -- or is there a new
14 one out than November 1, 2005?

15 MR. LOEB: I don't have such a book --

16 THE COURT: I was looking to the orange one.

17 MR. LOEB: -- but I'm not aware of a change. I
18 think it's consistently 210 to 262.

19 THE COURT: It is 210 to 262. So the guideline
20 range is 210 to 262.

21 The guidelines, however, are merely advisory. The
22 statute passed by Congress of 21 U.S.C. § 851(a)(1) is not
23 advisory.

24 All right. Anything else on that?

25 So I will just ask the Probation Department to make

1 whatever adjustments based upon the findings.

2 MR. FREEZE: Judge, if I could point something out
3 real quickly?

4 THE COURT: All right.

5 MR. FREEZE: Judge, earlier you ordered a
6 correction to the PSR, page 4, line 112, you asked me to
7 replace the word "council" with "gang."

8 THE COURT: I am sorry. Which one now?

9 MR. FREEZE: Page 4, line 112.

10 THE COURT: Yes.

11 MR. FREEZE: The matter was replacing the word
12 "council" -- the two words "council member" to "gang member."

13 THE COURT: Yes.

14 MR. FREEZE: I just want to point out for the Court
15 on page 6, line 178, the term "council member" is referenced
16 again.

17 THE COURT: Okay.

18 MR. FREEZE: If the Court would like me to replace
19 that with "gang member" --

20 THE COURT: That would be appropriate.

21 MR. FREEZE: Okay. Thank you.

22 THE COURT: Thank you.

23 All right. And then with regard to the adjusted
24 offense level and the offense level total, we have already
25 made that determination, 210 to 262.

1 Is there anything else we need to address with
2 regard to the guideline calculation? Mr. Loeb?

3 MR. LOEB: Not the calculation, Judge.

4 I would be asking -- I would be making the
5 argument, as I did in Defendant Liscano's sentencing
6 memorandum, that considering the nature, if not, the points,
7 of his criminal history, the extent of his involvement, that
8 that -- that even the range of 210 to 262 is more than what
9 is necessary to achieve the various goals of 3553(a) and
10 would be requesting a variance downward from that range.

11 My arguments for that are contained in the written
12 filing.

13 And, Judge, I referenced in that written filing six
14 or seven certificates that Mr. Liscano has obtained while
15 incarcerated during the pendency of this case, and --

16 THE COURT: Yes.

17 MR. LOEB: -- if there was a need, I have copies of
18 those certificates.

19 THE COURT: No, I accept your representations as
20 accurate and truthful.

21 MR. LOEB: Okay. Judge, we would merely suggest
22 that 210 to 262 months is more than a substantial sentence,
23 achieves all of the goals of 3553(a), and so, too, would a
24 lower sentence in the area -- well, so, too, would a sentence
25 lower than that range meet all of the objectives.

1 THE COURT: Okay.

2 MR. LOEB: And if not bound by the mandatory
3 statutory provisions, we would ask for such.

4 THE COURT: Okay. There will be a point in time
5 where we will get to the 3553(a) factors.

6 MR. LOEB: Okay.

7 THE COURT: All right. It remains the government's
8 position that none of these sentencing guideline calculations
9 are of any moment because the statute, 21 U.S.C. § 851(a)(1),
10 trumps that determination.

11 MR. BEAUMONT: Correct, that is our position, and I
12 think then the guideline becomes the statute, mandatory life
13 becomes the guideline, in essence.

14 THE COURT: Correct. I think the Probation
15 Department, from the standpoint of understanding the law on
16 that point as it exists at this point, agrees with you on
17 that.

18 All right. So we have now determined the
19 appropriate sentencing guideline range for Mr. Liscano. We
20 have also determined that under the statute, it is the
21 government's position that it trumps that guideline range.

22 Turning to Mr. Estremera.

23 Mr. Young, is there anything further you want to
24 present with regard to the guideline calculations?

25 MR. YOUNG: No. I think the calculations are

1 correct except that I take it that based on your
2 determination of foreseeability as to the total drug amount,
3 that but for the career offender determination, Your Honor
4 would find Mr. Estremera to be accountable for the seven to
5 nine kilos, which would also put him at a level 32?

6 THE COURT: That is correct.

7 MR. YOUNG: Okay.

8 MR. BEAUMONT: Well, can I make one comment on
9 that, Judge?

10 THE COURT: Okay. I guess I should hear from the
11 government before I agree with the defense.

12 MR. BEAUMONT: You heard this morning, today, in
13 addition to the seven to nine kilos, that Mr. Estremera was
14 actually storing cocaine for Mr. Corral.

15 THE COURT: You are correct on that point. And but
16 for the testimony from today that was presented, it appears
17 that Mr. Estremera may not have been as aware of the scope.

18 But today, the testimony was clear. Mr. Corral
19 testified that Mr. Estremera knew that Mr. Corral was selling
20 to others, knew that Mr. Corral stored the drugs at Mr.
21 Estremera's girlfriend's garage. Mr. Estremera purchased
22 drugs from Mr. Corral in that very location where Mr.
23 Estremera -- or near the house that Mr. Estremera kept a
24 scale and a gun nearby, and the scale had drug residue on it.

25 The drug conspiracy clearly involved greater than

1 150 kilograms. Mr. Estremera personally participated in
2 seven to nine, but certainly knew of others. That has been
3 established by a preponderance of the evidence from today's
4 testimony.

5 Mr. Estremera wanted his counsel to inquire into
6 those areas, and his counsel did inquire into those areas,
7 and that is what the evidence was.

8 So what is the government's position, then, as to
9 that?

10 MR. BEAUMONT: Well, in addition, I guess one other
11 fact I think was brought out, and that is on one of the
12 storage shipments, it was this 20 kilos of cocaine, turned
13 out to be bad, and I think -- I don't recall. Was there
14 testimony at trial about it? Was there testimony at trial
15 about it?

16 MR. YOUNG: I don't recall.

17 MR. BEAUMONT: I don't remember. But, bottom line,
18 there's another 20 kilos right there that was stored.

19 So I think by -- again, the inference could be
20 drawn that certainly he had knowledge of the full scope of
21 the conspiracy. I mean, on one event, they're storing 20
22 kilos of cocaine and the testimony that he was storing
23 cocaine there on a number of occasions.

24 So based on that, I think we've proved by a
25 preponderance that he would have knowledge that this

1 conspiracy encompassed at least 150 kilograms of cocaine.

2 MR. YOUNG: Well, I don't think there was any
3 testimony connecting the 20 kilos to Mr. Estremera.

4 THE COURT: I thought there was. I thought that --

5 MR. YOUNG: It's been a while.

6 THE COURT: -- Mr. Corral testified that Mr.
7 Estremera was aware of the 20 kilograms that was stored that
8 was not good cocaine. I guess it was not of good quality.

9 MR. BEAUMONT: Correct.

10 THE COURT: It was cocaine, but it was not of good
11 quality.

12 (Defendant Estremera conferring with Mr. Young.)

13 DEFENDANT ESTREMERERA: Excuse me, Your Honor. Your
14 Honor, could I speak for a minute, please?

15 THE COURT: If you want to.

16 DEFENDANT ESTREMERERA: I'd just like to bring to
17 your attention that in the trial, Corral stated that we'd had
18 a transaction at 1015 Front Street and one transaction that
19 occurred at the garage on Woodlawn. That was what his
20 testimony was.

21 So for him to sit here today and say that we did it
22 all at the Woodlawn address, he was lying right there.

23 The trial transcripts showed itself that he said
24 one transaction at 1015 Front Street and one transaction at
25 603 Woodlawn, and he never stated that I had knowledge of the

1 alleged cocaine you're saying he had in the garage.

2 THE COURT: So you are saying not only did you have
3 the transaction at Woodlawn, you also had the transaction at
4 Front Street?

5 DEFENDANT ESTREMERERA: One transaction on Front
6 Street; one transaction on Woodlawn, where he dropped it off
7 for me.

8 THE COURT: Is there anything else you want to say?
9 Any other locations you can think of?

10 DEFENDANT ESTREMERERA: No. That was it.

11 THE COURT: Well, it is clear that Mr. Estremera
12 was aware of more than his own individual transactions. The
13 further evidence regarding the residue on the scale in the
14 house establishes, certainly, that Mr. Estremera himself was
15 a dealer. He certainly hasn't accepted responsibility.

16 Let me just ask the government's position. The
17 evidence establishes that an individual personally engaged in
18 multiple drug transactions, as the evidence has established
19 for Mr. Estremera, was aware that other drug transactions
20 were taking place during the course and in furtherance of the
21 conspiracy.

22 Is it the government's position that that then
23 makes that person accountable for all of the drugs that were
24 a part of the conspiracy?

25 MR. BEAUMONT: It is, if they were reasonably

1 foreseeable.

2 And I think when you talk about the numbers being
3 stored and the numbers we're dealing with in this particular
4 case with Mr. Estremera himself, I think it now becomes
5 reasonably foreseeable that this conspiracy involves far more
6 cocaine than the cocaine Mr. Estremera himself put his hands
7 on.

8 THE COURT: Well, I agree with you on that point.

9 How much does the evidence establish was stored at
10 the Woodlawn address?

11 MR. BEAUMONT: Well, the testimony you heard about
12 was 20 kilos on the one occasion.

13 THE COURT: That is the bad 20.

14 MR. BEAUMONT: Correct. And then other times.

15 Now, I don't think there's a number, there's a
16 specific number on the other times.

17 But the point I'm making is that we know this
18 conspiracy involved -- well, the talk today was over
19 200-and-some-odd kilos of cocaine. So these other times --
20 it doesn't have to be a lot of other times to get over 150
21 kilos. And, clearly, he's storing it, he's part and parcel
22 of the operation --

23 DEFENDANT ESTREMERERA: I object to that.

24 MR. BEAUMONT: -- of storing cocaine as a necessary
25 part of the process. And he clearly -- I think it is

1 reasonable to infer that he knew the scope or had a better --
2 than maybe better than Mr. Liscano -- had a better sense of
3 the full scope of this particular conspiracy.

4 THE COURT: Well, the evidence is certainly
5 stronger that Mr. Estremera knew that Mr. Corra1 sold to
6 others.

7 I guess the question is if he knew Mr. Corra1 sold
8 to others and it is foreseeable, is Mr. Estremera then
9 accountable for the amount that the conspiracy engaged in?

10 Because since other amounts were foreseeable,
11 whatever would be a reasonable amount -- and 150 or more than
12 150 kilograms would not be an unreasonable amount; it would
13 be a reasonable amount. I mean, after all, the evidence
14 establishes his involvement, and he knew that Corra1 was
15 selling to others. It doesn't take too many more others to
16 reach 150 kilograms. That is your point.

17 MR. BEAUMONT: That's exactly my position, Judge.

18 THE COURT: Mr. Young, anything more on this?
19 Anything further on this?

20 MR. YOUNG: I would only respond to the
21 government's position that whether how many others it takes
22 to get to 150, the record is devoid of evidence other than
23 the seven to nine kilos and some unspecific amount that Mr.
24 Estremera was storing. I think to go beyond that, there just
25 isn't a record to establish anything in addition.

1 So the storage amount I don't believe was ever made
2 clear, and he would be accountable for that, plus the seven
3 to nine kilos. But that's it as far as I can see.

4 THE COURT: Well, we know that at least one storage
5 amount was the 20 kilograms of what was not-good-quality
6 cocaine.

7 Of course, since Mr. Estremera knew about the bad
8 20 and he knew that bad 20 wasn't what was being sold to
9 others, it was other amounts, unspecified -- you are right,
10 unspecified amounts -- but the conspiracy, I found, included
11 more than 150 kilograms. What amount of that 150 was
12 foreseeable to Mr. Estremera is the question.

13 The defense argues that Mr. Estremera is at a level
14 32. It is less than 15 kilograms.

15 What was the length of time that Mr. Corral
16 testified he stored cocaine -- I am asking the government --
17 stored cocaine at Mr. Estremera's girlfriend's garage?

18 MR. BEAUMONT: I don't think specifically we
19 presented any evidence of -- I don't -- really don't know.
20 But we do know it was during the course of the conspiracy.

21 And he did testify to how long he dealt with Mr.
22 Estremera, which was, what, about February?

23 MR. YOUNG: February to June '02.

24 MR. BEAUMONT: So --

25 THE COURT: So four months?

1 MR. BEAUMONT: Correct.

2 And I would just point out that that 20 kilos of
3 bad cocaine obviously had to be replaced with 20 kilos of
4 good cocaine.

5 THE COURT: Right.

6 MR. BEAUMONT: So that's 40. And then you got
7 seven to whatever of --

8 THE COURT: Seven to nine.

9 MR. BEAUMONT: Seven to nine. And that's -- but
10 the 20 kilos is one stored event. And if there's another
11 couple stored events, it's going to quickly go over that 150.

12 What's foreseeable. It's not what -- it doesn't
13 have to be stored in his garage. It's just that it needs to
14 be foreseeable that it would be more than 150 kilos.

15 And I think it doesn't -- in Mr. Estremera's case,
16 it's clearly reasonably -- reasonable to believe that it was
17 foreseeable that his -- that Corral's conspiracy would exceed
18 that 150 kilos. You know, we're just -- we're talking 20
19 kilos at a shot. It doesn't take many, it doesn't take much
20 to figure out how much this conspiracy is going to involve or
21 entail altogether.

22 MR. YOUNG: But I don't think the government can
23 argue that it doesn't take too many more 20 kilos to be
24 foreseeable, but the 20 kilos, in fact, were not stored
25 there. I mean, there has to be some basis, some occasions to

1 say that it was stored there; otherwise, it can't be
2 foreseeable to him if it, in fact, was stored somewhere else.
3 I mean --

4 MR. BEAUMONT: Well, that's not true, Judge.

5 MR. YOUNG: -- the testimony was that he had a
6 number of storage --

7 MR. BEAUMONT: That's not true. He could be held
8 accountable for all the cocaine in the conspiracy and never
9 be stored there. That's not the point. The point is because
10 this particular cocaine was stored there, it makes his
11 knowledge of this conspiracy greater --

12 THE COURT: Yes.

13 MR. BEAUMONT: -- and it makes what's foreseeable
14 higher.

15 THE COURT: Just turning a minute away from this
16 question so I can mull it over.

17 Is there any further argument with regard to the
18 career offender status?

19 MR. BEAUMONT: I don't think --

20 MR. YOUNG: I have nothing further.

21 MR. BEAUMONT: -- so, Judge.

22 THE COURT: And the career offender status, the
23 impact of the career offender status is what again?

24 MR. BEAUMONT: The career offender status is based
25 off of his 37.

1 MS. BROWN: That's correct, Your Honor.

2 MR. BEAUMONT: Criminal history category VI. So
3 his range then becomes 360 to life.

4 THE COURT: And the drug table doesn't have a level
5 37. It goes from 34 to 36.

6 MS. BROWN: 38.

7 THE COURT: 36 to 38.

8 MR. BEAUMONT: Oh, on the -- I see. On the -- I
9 see.

10 THE COURT: Yes. No, I am back on the offense. I
11 am sorry. I didn't mean --

12 MR. BEAUMONT: Okay.

13 THE COURT: -- to change gears without telling you.
14 I am back on the offense.

15 MR. BEAUMONT: It does go from 36 to 38.

16 THE COURT: I suppose one could extrapolate that
17 perhaps the high end of 36 one should be considering, at
18 least as far as an appropriate sentence to be imposed,
19 considering the advisory guidelines and then the 3553
20 factors, that perhaps one should go to the high end.

21 Mr. Estremera brought up this other transaction on
22 Front Street. One would think that if a transaction, another
23 transaction was taking place at Front Street, that was
24 involved in cocaine stored somewhere other than -- it would
25 be reasonable to infer that it was involving cocaine storage

1 somewhere other than Mr. Estremera's girlfriend's garage,
2 because the transactions involving the drugs stored at Mr.
3 Estremera's girlfriend's garage would just take place right
4 there.

5 MR. BEAUMONT: I would agree with that.

6 THE COURT: So Mr. Estremera knew more than the
7 storage at his girlfriend's garage. Mr. Estremera recalled
8 that transaction, recalled Mr. Corral's testimony about it
9 and wanted to bring it to my attention.

10 Was that the two-kilogram transaction or was that
11 another transaction?

12 MR. BEAUMONT: I'm not sure.

13 THE COURT: Does anyone know?

14 MR. BEAUMONT: I don't think we know, Judge.

15 DEFENDANT ESTREMERERA: It was the same transaction,
16 Your Honor, where he told me to go pick it up over there.

17 THE COURT: Go pick it up over where?

18 DEFENDANT ESTREMERERA: He told me to go pick it up
19 at the address on Woodlawn.

20 THE COURT: Yes, I think Mr. Estremera was aware of
21 the full scope of the conspiracy. I think Mr. Estremera
22 reasonably foresaw -- we just heard from Mr. Estremera that
23 he now was aware of the drugs at the garage, that he, Mr.
24 Estremera, had access to those drugs. Mr. Corral trusted Mr.
25 Estremera to pick up drugs outside Mr. Corral's presence.

1 I think it is reasonably foreseeable for Mr.
2 Estremera to know the full scope of the conspiracy beyond his
3 own involvement.

4 DEFENDANT ESTREMERERA: Excuse me, Your Honor.

5 I mean, if I had knowledge of the garage, why would
6 he have to tell me to go pick something up over there, you
7 know?

8 THE COURT: Because that's where the drugs that
9 were being involved in that particular transaction were
10 stored as opposed to some other place.

11 DEFENDANT ESTREMERERA: What was stored there? It
12 was stored -- he gave me -- left me a key. When I got done
13 with it, there was another one left. I told him to come pick
14 it up.

15 It's not like we're talking about anything else. I
16 didn't have knowledge that he was doing that. I would have
17 never tolerated that by him.

18 THE COURT: Yes, right.

19 DEFENDANT ESTREMERERA: I'm a liar again, right?

20 THE COURT: Mr. Estremera, you just keep talking.
21 You brought up the Front Street transaction.

22 DEFENDANT ESTREMERERA: I did because there was only
23 two transactions, and the man said that he only remembers the
24 damn two transactions. He remembers one on Front Street and
25 the one where the dukie ball was involved. That's all he

1 said. He didn't say nothing else.

2 THE COURT: Well, did the Front Street --

3 DEFENDANT ESTREMERERA: So he's alleging all this
4 other stuff, but that's not what was at trial.

5 THE COURT: Did the Front Street transaction, did
6 that involve the two kilograms or just one kilogram?

7 DEFENDANT ESTREMERERA: No, he said it was one.
8 That's all he said at trial. He remembered one --

9 THE COURT: What about the two-kilogram
10 transaction?

11 DEFENDANT ESTREMERERA: That's the one that happened
12 on Woodlawn, and that's where I'm telling him, "Hey, there
13 was two, but I don't want two, and so you can take one back."
14 That was it.

15 THE COURT: All right. I am going to take a recess
16 until tomorrow to make a final determination as to the
17 appropriate sentence.

18 I believe that Mr. Estremera, because of his
19 involvement and the trust that Mr. Corral, who obviously was
20 the hub of the conspiracy, placed in him shows that Mr.
21 Estremera reasonably foresaw that the conspiracy involved
22 other transactions, other amounts beyond the Woodlawn garage
23 transactions, and, consequently, it was foreseeable to him
24 the amount of the conspiracy, the full amount that the
25 conspiracy ultimately engaged in was more than 150 kilograms.

1 DEFENDANT ESTREMERERA: Your Honor, Mr. Corral never
2 testified that I went with him to take care of any of his
3 transactions. He never even mentioned anything about me
4 having to do anything with the transaction at all. So how
5 can I be responsible for any other transaction that he had?
6 But I didn't even know all the players that are in this
7 conspiracy.

8 Nobody in this conspiracy has made a statement
9 against me besides him, so how am I involved with the drugs
10 if he's the only one to make -- with everybody else's issues,
11 if he's the only one that made a statement against me?

12 It's there in the paperwork. Nobody else said,
13 "Hey, I sold him," or, "He sold to me," nobody.

14 THE COURT: Mr. Estremera --

15 DEFENDANT ESTREMERERA: Mr. Corral said he sold me
16 somewhere around seven kilograms. That was it. That was his
17 statement.

18 THE COURT: Mr. Estremera, you are making it
19 patently clear to me, because of your comments and your
20 statements here voluntarily, bringing up additional
21 information, bringing up additional knowledge, that you
22 reasonably foresaw greater amounts.

23 DEFENDANT ESTREMERERA: How is that? Can you explain
24 that to me for the record?

25 THE COURT: You just keep talking, and that's how

1 it happens.

2 DEFENDANT ESTREMER: I mean, everything's going
3 against me, so it don't make it any worse.

4 THE COURT: Well, you are making it worse by
5 keeping your --

6 DEFENDANT ESTREMER: How?

7 THE COURT: -- by keep talking. Go ahead.

8 DEFENDANT ESTREMER: Well, I got him. What is he
9 doing but sitting there?

10 THE COURT: He is trying to keep you from talking.
11 But if you want --

12 DEFENDANT ESTREMER: But he's not --

13 THE COURT: -- to keep talking, you go ahead

14 DEFENDANT ESTREMER: See, he's not doing nothing
15 for me.

16 THE COURT: You keep talking.

17 DEFENDANT ESTREMER: He's just standing there and
18 just minding his own business, you know.

19 I mean, he's already telling you seven to nine.
20 Corral made that statement here, but that's not his trial
21 testimony. His trial testimony was somewhere around seven.

22 And that question that I asked you to ask him,
23 that's what he said, somewhere around seven.

24 You go on ahead and start telling him seven to
25 nine. That's not what was in trial.

1 THE COURT: It is clear to me --

2 DEFENDANT ESTREMERERA: Okay?

3 THE COURT: -- that Mr. Estremera is a person
4 who --

5 DEFENDANT ESTREMERERA: Estremera is a person that
6 cares about his life, and he ain't trying to lose it over a
7 bunch of lies that this case has been involved in, with
8 people that have done worse things than I've ever done and
9 are getting away with it.

10 Because we chose to choose our constitutional
11 rights to go to trial, we're getting slammed, at least I feel
12 I am going to get slammed.

13 THE COURT: Is there anything else you want to say?

14 DEFENDANT ESTREMERERA: I guess obviously I'll have
15 some more tomorrow, then, when we come to court, if that's
16 when we're coming back. Or you could actually let me read my
17 final statement and you could sentence me today. Just allow
18 me to raise all issues on my appeal.

19 THE COURT: I don't really want to sentence you
20 today.

21 DEFENDANT ESTREMERERA: It just -- it's not fair.
22 You know, you're calling me a liar. I haven't sat here and
23 lied to you. I've been as honest with you as I can, and you
24 want to sit there and call me a liar.

25 I wouldn't call you a liar because I respect you as

1 the judge that you are. But you got to respect me, too, as a
2 person and let me say what I have to say without calling me a
3 liar. At least respect me my rights like I will respect you
4 as a person.

5 THE COURT: Mr. Estremera --

6 DEFENDANT ESTREMERERA: And you ain't doing nothing
7 for me.

8 THE COURT: -- it is clear to me that you did not
9 accept responsibility in this. And when you tried to
10 convince me that you had, that --

11 DEFENDANT ESTREMERERA: Your Honor --

12 THE COURT: -- went beyond what was credible.

13 DEFENDANT ESTREMERERA: Judge, he's right here, right
14 now. Why can't he just go on ahead and tell you, "You know
15 what, Your Honor? I didn't advise him"? Then he could argue
16 what was on the draft. Why can't he just go on ahead and
17 tell you the truth? Why do I got to say it and he just sits
18 back in the cut and doesn't say nothing? He's right here.
19 You can ask him. Why do I got to lie about it?

20 When he came to Stevenson County with the drafts,
21 he didn't say, "Hey, well, we could argue this and this and
22 that." He said, "No. You got to sign this, 'cause this is
23 what they're bringing you."

24 So, no, I wasn't going to sign it, because I wasn't
25 in agreement with the things that they were putting in the

1 draft. But he didn't say, "Well, let me go back and change
2 it and see what we can do then."

3 THE COURT: You are not entitled to acceptance of
4 responsibility.

5 DEFENDANT ESTREMER: Well, I mean, that's an issue
6 that I'll bring up at the appeal courts also, then.

7 But I think it's wrong that you constantly protect
8 this man because you've known him for 20 years, and you're
9 saying, "Well, the heck with your constitutional rights,
10 because I've known Donald Young for 20 years, and he's so
11 good." But he's so good and we got every motion denied.
12 That's how good he is.

13 I don't understand it, but that's cool, you know.

14 THE COURT: Mr. Estremera --

15 DEFENDANT ESTREMER: I guess I'll keep my mouth
16 shut and accept a life sentence when you give it to me.

17 THE COURT: You didn't get every motion denied. In
18 fact --

19 DEFENDANT ESTREMER: The majority of them. After
20 *Booker* and *Blakey*, what motion has been accepted?

21 You know, I filed that motion in 2002, Your Honor,
22 but I filed that motion before he became my attorney.
23 Because I asked the first attorney to file it for me, and he
24 didn't. So I filed it in 2002.

25 I wasn't even aware of the effect that that motion

1 had yet. I filed it because somebody at the MCC gave me
2 legal advice and said send it in, so I sent it in.

3 But look at the motions again. I never filed
4 another motion until a couple years later, because by then I
5 was already starting to learn a little something, so I
6 figured, hey, why not put it in. I had nothing to lose.

7 But it's not like from the beginning I was this
8 genius, where I was getting into the books and I knew all
9 this and all that. No, it wasn't like that. It took me a
10 while, and it still takes me a while, to understand some of
11 these legal procedures.

12 That's what I want you to understand. I'm not
13 no -- I'm not trying to pull no stunt. I'm not trying to act
14 like I'm good or nothing. I'm just saying, hey, I'm not
15 this -- that you're, you know, labeling me over there,
16 calling me a liar and all that. I'm not lying to you. I'm
17 telling you like it is, since it's been like that since I've
18 had him.

19 You know, but, hey, like I said, it's cool. He's
20 your friend. You get along with him. You don't get along
21 with me. You never knew me, anyway, so -- you just met me
22 through this case, so I got to accept it like that, 'cause I
23 ain't getting nowhere.

24 THE COURT: Well, one thing I do know about you
25 from getting this case is that you are a person who just

1 doesn't accept things. You look in to them. You examine
2 them. You are careful about what you participate in and what
3 your circumstances are. That further leads me to believe
4 that you were aware of this conspiracy and the full --

5 DEFENDANT ESTREMER: I was not aware of it, Your
6 Honor.

7 THE COURT: -- nature of this conspiracy.

8 DEFENDANT ESTREMER: I was not aware of it.

9 THE COURT: Just the very nature --

10 DEFENDANT ESTREMER: I didn't even know --

11 THE COURT: -- of this person you are.

12 DEFENDANT ESTREMER: -- who was in the conspiracy,
13 Your Honor. You know, that wasn't even my resident. My
14 resident was somewhere else, you know.

15 But did I spend the night there that night I got
16 arrested? Yes, I did. But that was not my residence, you
17 know. But, hey, who cares what we get.

18 THE COURT: Anything else you want to tell me about
19 to help me make this decision?

20 DEFENDANT ESTREMER: You know, I'm pretty sure you
21 already have it made.

22 THE COURT: I have not had it made.

23 DEFENDANT ESTREMER: You know --

24 THE COURT: If I had it made, I would sentence you
25 today. I am trying to make the determination that is

1 appropriate for you.

2 DEFENDANT ESTREMER: Well, I just hope, Your
3 Honor, that you can take into consideration what I've been
4 telling you and not keep going against me just 'cause Mr.
5 Beaumont or maybe 'cause I feel that my lawyer ain't doing
6 his job, you know. I'm trying to speak and help myself out
7 as best as I can.

8 THE COURT: I know, and you always have.

9 DEFENDANT ESTREMER: But if I don't, who else is
10 going to do it for me?

11 THE COURT: It tells me about you.

12 DEFENDANT ESTREMER: You know, I mean, do you --
13 do I want to go to prison for drugs I never got arrested for?
14 No. But do I have to? Yes. But do I have to lose my life
15 over it? No, I don't. Do I understand that I got to go to
16 prison? Yes, I do understand that, but I do not have to lose
17 my life over this.

18 And that's why he sits there and just tells you all
19 this garbage, you know, and I've just got to sit here and
20 accept it. I shouldn't have to accept it. I should be able
21 to speak up whenever I feel what he's saying is wrong.

22 THE COURT: And I have accorded you the opportunity
23 to speak up --

24 DEFENDANT ESTREMER: And I appreciate that.

25 THE COURT: -- than any other defendant I believe I

1 have ever had in the 20 years I have been on the bench. And
2 if you want to keep talking, you just go right ahead.

3 DEFENDANT ESTREMER: You have a good day, Your
4 Honor. Thank you.

5 THE COURT: Anything else from anyone tonight?

6 MR. BEAUMONT: No, sir. What time tomorrow?

7 THE COURT: I want to carefully mull this over.

8 Let me ask what your respective availabilities are
9 at 10:00 o'clock.

10 MR. LOEB: Can we do afternoon?

11 THE COURT: My courtroom deputy has informed me I
12 have another sentencing.

13 I wanted to complete it today, but I wanted to hear
14 fully from Mr. Liscano and Mr. Estremera, because despite
15 what Mr. Estremera thinks, I have done everything I can to
16 accord him his constitutional rights.

17 DEFENDANT ESTREMER: Thank you.

18 MR. BEAUMONT: Judge, I'm available at 10:00, but
19 my only problem is at 10:30, I've got two cases in front of
20 Judge Zage1 that I sort of had to blow off from today because
21 I was here, so --

22 THE COURT: Yes.

23 MR. BEAUMONT: So my only thing, if you think we'd
24 be done by 10:30, that's fine, but, otherwise, I don't want
25 to take a chance on calling him again and saying --

1 THE COURT: We won't be done by 10:30, I don't
2 believe. These men still have an opportunity to address me.

3 MR. BEAUMONT: Okay. Then I am not available at
4 10:00, Judge, because I just don't want to call there again
5 and --

6 THE COURT: Let me check with my clerk.

7 (Court conferring with his clerk.)

8 THE COURT: My clerk has informed me I have other
9 sentencings tomorrow afternoon, but perhaps I can conclude
10 those by 3:00 o'clock.

11 Are you folks available at 3:00?

12 MR. BEAUMONT: That's fine with me, Judge.

13 MR. LOEB: Yes, Judge.

14 MR. YOUNG: Yes, Your Honor.

15 MR. FREEZE: Judge, as far as I know, I am.

16 MS. BROWN: I have a 4:00 o'clock interview
17 scheduled, if I could try and move that. If not, Zak can
18 stand in for me.

19 MR. FREEZE: Judge, I could cover, I believe, at
20 this point.

21 THE COURT: I think so, yes. Why don't we -- if
22 you have to leave, Ms. Brown, you can go ahead, not to change
23 your schedule.

24 3:00 o'clock tomorrow.

25 MR. BEAUMONT: Thanks, Judge.

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MR. YOUNG: Thank you.

MR. LOEB: Thank you, Judge.

(Adjournment at 4:35 p.m. until 3:00 p.m., 11/30/05.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

ABRAHAM ESTREMER and
STEVE LISCANO,

Defendants.

FEB 28 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

No. 02 CR 719-11, -16

Chicago, Illinois
November 30, 2005
3:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - Continued Sentencings
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

05-4798

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U.S. Probation:

U.S.C.A. - 7th Circuit
FILED
MAR 02 2006
GINO J. AGNELLO
CLERK

Ms. Danielle Brown
Mr. Zakary Freeze

Also Present:

FBI Agent Paul Bock

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Clerk's Copy

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1 (Proceedings in open court.)

2 THE CLERK: 02 CR 719, United States of America
3 versus Abraham Estremera and Steve Liscano, continuation of
4 sentencings.

5 MR. BEAUMONT: Good afternoon, Your Honor.
6 Larry Beaumont again on behalf of the United
7 States.

8 MR. YOUNG: Good afternoon, Your Honor.
9 Donald Young for Abraham Estremera, who is present
10 for sentencing.

11 (Defendants in.)

12 MR. LOEB: Robert Loeb on behalf of Steve Liscano,
13 who likewise is present.

14 MR. FREEZE: Good afternoon, Judge.
15 Zakary Freeze from the Probation Office.

16 MS. BROWN: Good afternoon, Your Honor.
17 Danielle Brown on behalf of Probation.

18 THE COURT: Good afternoon.
19 Good afternoon, Mr. Liscano.

20 DEFENDANT LISCANO: Good afternoon.

21 THE COURT: Good afternoon, Mr. Estremera.

22 DEFENDANT ESTREMERERA: Good afternoon.

23 THE COURT: Let me just ask if anyone has anything
24 further they desire to say before I make any final
25 determinations regarding the reasonable foreseeability point?

1 Maybe I can inquire as to where counsel believe we
2 are on that point.

3 MR. BEAUMONT: I think we had suggested or argued
4 that at least 150 kilograms was reasonably foreseeable based
5 on the evidence of him storing the cocaine and so forth, and
6 I think we're at the point where you were going to make a
7 decision, a ruling on that, that issue, and we have -- I have
8 nothing further to say about it other than what we argued
9 already.

10 THE COURT: All right. And that is dealing with
11 Mr. Estremera's reasonable --

12 MR. BEAUMONT: Yes.

13 THE COURT: -- foreseeability?

14 MR. BEAUMONT: Yes.

15 THE COURT: All right. Mr. Young?

16 MR. YOUNG: I have nothing further, Judge.

17 THE COURT: Mr. Estremera, do you have anything
18 further to say on that point?

19 DEFENDANT ESTREMERERA: No, I don't, Your Honor.

20 THE COURT: The scope of the conspiracy was to
21 distribute in excess of 150 kilograms.

22 Mr. Estremera's knowledge with regard to the
23 storing of amounts of cocaine, his own personal distribution
24 of the amounts that he personally distributed, his knowledge
25 that he was not the only distributor leads to the conclusion

1 that he knew others were distributing.

2 Mr. Estremera knew that Mr. Corral trusted Mr.
3 Estremera in connection with the distribution of drugs in
4 multi-kilogram quantities.

5 Taking into account all of these factors, plus the
6 fact that Mr. Estremera really is a person who does inquire
7 into the facts that affect him, it seems to me that it is
8 reasonable for him to foresee the full scope of the
9 conspiracy. And so, consequently, I believe that he is
10 accountable for the 150 kilograms of cocaine that was
11 determined to be the full scope of the conspiracy.

12 All right. Having made that determination, then,
13 the total offense level is a level 40. He falls within a
14 criminal history category of a VI. He is a career offender.
15 His sentencing guideline range under either of those
16 scenarios is 360 months to life.

17 MR. BEAUMONT: Yes, Your Honor.

18 THE COURT: We made the determination yesterday
19 that Mr. Liscano's total offense level is a level 32. He
20 falls within the criminal history category of a VI. His
21 sentencing guideline range is 210 to 262 months.

22 However, 21 U.S.C. § 851(a)(1) requires, because of
23 his prior drug convictions, requires a sentence to a term of
24 life imprisonment without release. That is what the statute
25 requires.

1 MR. BEAUMONT: We agree, Judge.

2 THE COURT: Does any other counsel want to make a
3 comment on either of these determinations?

4 MR. YOUNG: No, Judge.

5 THE COURT: Mr. Loeb?

6 MR. LOEB: Just one or two sentences, Judge.

7 THE COURT: Go ahead.

8 MR. LOEB: I think it's probably manifestly clear
9 from various filings that we've made, but just for the record
10 that we feel that the mandatory life provision under these
11 circumstances violates the due process and proportionality
12 clauses of the United States Constitution. It is excessive,
13 cruel and unusual, and that it creates a discrepancy,
14 contrary to Congress' intent, in comparison to what his
15 sentencing guidelines would otherwise be; and that under this
16 application, therefore, it lacks a rational basis.

17 And that's what I have to add.

18 THE COURT: All right. All right. I will first
19 hear from Mr. Liscano.

20 DEFENDANT LISCANO: Your Honor, you know, I still
21 don't understand the situation that I'm in. I can -- I don't
22 think I'll ever be able to comprehend how it came to this.

23 But I'd like to apologize to Blanca for putting her
24 through so much, you know, for everything that you've done
25 to --

1 MS. REPORTER: I'm sorry. I can't hear you.

2 THE COURT: Mr. Liscano --

3 DEFENDANT LISCANO: You know, I'm sorry for having
4 you go through this.

5 THE COURT: -- has turned to someone in the
6 audience as he spoke.

7 You may do that, if you desire, Mr. Liscano, but
8 you will have to keep your voice up so my court reporter can
9 hear what you say.

10 DEFENDANT LISCANO: You know, I feel like it's a
11 shame that, you know, I got arrested at a hospital right
12 after my daughter's birth, and I've never really had the
13 opportunity to spend any time with her.

14 And I just wish that one day I'll be able to be a
15 father to her the way that I would like to be, and hopefully,
16 God willing, I will get this opportunity.

17 That's all I have to say.

18 THE COURT: All right. Mr. Liscano, is there
19 anything you desire to say?

20 MR. BEAUMONT: Mr. Estremera.

21 THE COURT: I am sorry. Mr. Estremera, is there
22 anything further you desire to say? You may step over to the
23 podium, if you desire.

24 DEFENDANT ESTREMERERA: Well, Your Honor, first, I
25 would like to say that I do object to the determination that

1 you made on the preponderance of the evidence, and I'm not
2 really going to go about arguing much today. I just want to
3 say it since Mr. Young didn't. And I'm just going to read
4 this to the Court, and I'll be done.

5 I wrote this on July 14, 2005, and it starts off by
6 saying: First of all, I'd like to give thanks to God for
7 always allowing me the strength to remain strong and have a
8 tremendous amount of faith through this case and all that has
9 happened this last three years and some.

10 Second, I will like for my five kids, Albert
11 Alexander, Anissa Raquel, Abraham, Jr., Michael Ray, and
12 Anthony Leon Estremera, to know that I truly love them a lot
13 and I miss them a lot, and hopefully sometime soon I will be
14 with them, which I know that's not going to happen right now.

15 I think of you five every day of my life. I have
16 lost you over many lies, and hopefully one day I can explain
17 that to you all without being in prison, but dad's life has
18 changed.

19 Third, I would like to apologize to my community
20 and the people of Aurora. Although I was a good person to my
21 neighbors, I never disrespected or stole from them.

22 I come to realize that even though Honorable Judge
23 Holderman said it's not illegal to be a Latin King, it is,
24 because that's why I'm being prosecuted so rough, as I see
25 it.

1 And I apologize to my community and the people of
2 Aurora for being a member of the Latin Kings, and I give my
3 word to my community and the people of Aurora that my
4 association with the Latin Kings are over, and I will show my
5 community and the people of Aurora that I am a better person
6 than the label I have received.

7 I love the City of Aurora. It has been my home
8 since birth, and I ask for your understanding.

9 Fourth, I would like to talk about Assistant United
10 States Attorney Lawrence Beaumont.

11 I would like to say that as a prosecutor, you have
12 been wrong in many ways, and you always seem to get away with
13 a lot of prosecutorial misconduct, and it's amazing what you
14 will try to have done to a person who doesn't cooperate and
15 uses his constitutional right to trial.

16 I just truly pray that now you will not be allowed
17 to have things your way, especially since the laws continue
18 to change. And when and if I do come out, I will show you
19 that I am not this bad person you have tried to label me.

20 As a prosecutor, I don't like your dirty
21 professional skills, but as a person outside of your
22 prosecutorial job, I believe you are a good person.

23 And I remember that before our trial started, you
24 went to an Asian country to adopt a kid, and I respect that,
25 and may the kid have the best, because I never had a father

1 growing up.

2 I thank you, because through all this, I have
3 grown, and I have grown and will never be the same.

4 Fifth, I would like to talk about FBI Agent Paul
5 Bock.

6 Mr. Bock, from the start, you have always been the
7 dirtiest person I know, and you will do whatever is
8 necessary, especially when it comes to lying. It's your job,
9 I guess, to do things the way you do.

10 In my PSI report, all you did was lie, but now that
11 should all be corrected and done right.

12 I do thank you for the experience, because my life
13 will never be the same, and you won't have to worry about me
14 messing up. I will be taking the right path in life.

15 Sixth, I would like to talk about my attorney,
16 Donald V. Young, whom I had no choice to accept because the
17 Honorable Judge Holderman denied my substitute counsel
18 motion.

19 And I can't even remember how many countless times
20 after Honorable Judge Holderman made that decision, you
21 stated to me if I didn't like you as counsel, to substitute
22 you when you already knew I couldn't, but I guess the
23 Honorable Judge Holderman isn't aware of that.

24 It has been a rough two years and some with you,
25 Mr. Young, and I'm now at the final stage if I'm reading this

1 letter.

2 I remember all the times you used to state, "You're
3 going to receive a life sentence," or, "I'm never" -- or,
4 "I've never taken a case like yours to trial." Always
5 everything negative.

6 And every single time, I will study and try to
7 discuss my legal studies with you. Your favorite words of
8 yours was, "That has no merit," or, "That's no good," this
9 and that.

10 To this day, I'm still shocked of all that has gone
11 on now, because you as my counsel had me convinced I was
12 going to receive a mandatory life sentence, which will
13 happen.

14 It's been a very long time you and I have had a
15 conversation. I don't regret it. It's -- let me see that
16 again.

17 It has been a very long time you and I have had a
18 conversation, and I don't regret it, because when a lawyer
19 tells his client that he wasn't the one to make me sell
20 drugs, that shows the loyalty of the lawyer and how he
21 carries himself as a professional.

22 I also get upset when I realize that when I was
23 trying to accept responsibility, you continued to tell me
24 that if I wouldn't admit to what was on the draft, I couldn't
25 get a plea, and now during this time that I have had to do

1 some more research, I have realized that I could have taken
2 the plea and allowed to disagree on anything, but you never
3 stated that to me.

4 I always realize that right now, if it hadn't been
5 for these new Supreme Court decisions, I would have been long
6 gone with a guaranteed life sentence.

7 I know that -- I know now that you are at least
8 trying to put a decent fight for me, which I feel can still
9 be better. And I really don't know or can't say if your
10 loyalty is really to the government, but I know that even
11 though I must do -- even though I must go to prison, even
12 though I must go to prison, we can still come out of this
13 right and not allow Mr. Beaumont to get away with the things
14 the way he has before.

15 So even though we have had our difference, let it
16 be our goal for me to receive the least time possible so I
17 can finish my time and return to my family.

18 I have said many times I never mean to disrespect
19 you, and if I owe you an apology, I will give it to you.

20 Seventh, I will like to address Attorney Mr. Robert
21 A. Loeb.

22 Mr. Loeb, I have always felt that there is a
23 possibility you look at me different because of what you may
24 have read in our discovery or what Mr. Beaumont has alleged
25 towards me, and all I can say is don't believe what you hear

1 or read unless you know the truth. Besides that, God bless
2 you.

3 And, finally, I can address myself to Honorable
4 Judge Holderman.

5 Honorable Judge Holderman, I feel that you have
6 always been an okay judge, even if there has been some
7 decision I may not have agreed with.

8 I'm at the final stage, and it's been a long time.
9 I remember when you -- I remember when I was trying to
10 substitute my attorney in 2003. You stated that it would be
11 you who would decide my sentence, not Mr. Beaumont.

12 After Mr. Pena was sentenced, I basically knew my
13 fate would be the same, especially when my attorney said it
14 would be possible.

15 Things have changed since that time and can be a
16 lot better now only if you make those decisions, which I pray
17 you will make.

18 I know that you stated that being a member of the
19 Latin King isn't illegal, but I disagree, and I just need you
20 to know that, and I promise never to be a part of that
21 association again.

22 I also know that it's wrong to be involved with
23 drugs.

24 I apologize to the Court, my children, my
25 community, and the City of Aurora.

1 I find it hard to beg you for mercy, because I have
2 been through so much with this case, and it helped me to be a
3 strong man, especially knowing I was going to receive a life
4 sentence.

5 I can only find myself asking for a chance from you
6 to allow me to receive my life back and become a better
7 person through this experience I have gone through, to be a
8 better person for my children, my family, and my community.

9 I wish not to spend so many years in prison, and I
10 ask that you consider the motions filed by my attorney and
11 myself.

12 Once upon a time, I asked the judge in Kane County
13 for a furlough to go on my -- to my grandmother's funeral,
14 and the judge stated he never had given anyone a furlough for
15 any reason. Why should he give it to me, when I may not
16 return? And I stated that it was the only person I
17 considered a mother to me, and I gave him my word that I
18 would return.

19 Judge McCarthy stated, "I'm going to give you this
20 opportunity because I believe in you, and please don't
21 disappoint me. I've never done this for anyone."

22 Well, I didn't disappoint him, and I turned myself
23 back to the county jail and made it to my next court
24 appearance, and Judge McCarthy was very pleased with me.

25 I state this to you, Honorable Judge Holderman. I

1 will change my life with this opportunity I ask of you, and I
2 ask you to allow it to me.

3 I would like to come back in front of you saying,
4 "Your Honor, Your Honorable Judge Holderman, I'm here, so you
5 can release me from supervised release, and thank you for the
6 chance you gave me in my life."

7 Thank you, Honorable Judge Holderman. I had this
8 notarized, and it's got the stamp on it.

9 I did some other things. I had a warrant that I
10 ended up having closed and taken off the record.

11 I have a paper that shows that I was in the GED
12 classes. I have a certificate for bible study, and I have a
13 certificate for completing the anger control training classes
14 and some of the statements that the classmates made during
15 that class and the teacher.

16 And I have another certificate for participating in
17 nine months' labor of the inmate labor program at the Dodge
18 County detention facility.

19 And I have brought four copies of this so that I
20 could file it with the courts, if that's okay.

21 THE COURT: Would you like me to review those
22 items?

23 DEFENDANT ESTREMER: Yes.

24 THE COURT: All right. I will ask you to hand up
25 one set of the copies and --

1 DEFENDANT ESTREMERERA: Here you go.

2 (Documents tendered to Court.)

3 THE COURT: If you want them filed in the record,
4 they can be filed in the record.

5 I will take a recess and review these items.

6 DEFENDANT ESTREMERERA: Thank you.

7 (Recess from 3:30 p.m. until 3:47 p.m.)

8 THE CLERK: 02 CR 719, United States of America
9 versus Abraham Estremera and Steve Liscano, continuation of
10 sentencings.

11 (Defendants in.)

12 THE COURT: Mr. Estremera, I have reviewed the
13 materials that you have provided me with the attachments to
14 those materials, and they will be -- if you desire, a copy of
15 those items will be filed in the record.

16 Is that your desire?

17 DEFENDANT ESTREMERERA: Yes.

18 THE COURT: All right.

19 DEFENDANT ESTREMERERA: Thank you.

20 THE COURT: They will be so filed.

21 I will hand that to my clerk for filing.

22 THE CLERK: Excuse me. Thank you.

23 THE COURT: Anything further from anyone? From the
24 government?

25 MR. BEAUMONT: Now, do we get brief argument, brief

1 recommendation, or are we at that --

2 THE COURT: If you want to make a further comment,
3 you may do so.

4 MR. BEAUMONT: Well, the only thing I want to say,
5 Judge -- first of all, with Mr. Liscano, in my opinion, I
6 think the statute is clear, and I think his sentence,
7 according to the statute, is life.

8 But with Mr. Estremera, I can tell the Court I've
9 been doing this job a long time, and I can only think of a
10 handful of cases that I care about sentencing.

11 I do firmly believe that sentencing should be up to
12 the judge. That's the court's prerogative and not my
13 prerogative as a prosecutor.

14 But on some people that I prosecuted that I do
15 believe are very dangerous, I -- those are exceptions to my
16 rule, and I do believe, I firmly believe that Mr. Estremera
17 is dangerous. That was the reason that I presented in the
18 sentencing hearings that we've had the testimony about the
19 Montoya murders.

20 The truth of the matter is, Judge, there are people
21 dying out in Aurora as a direct result of the cocaine
22 activity by the Latin Kings and the Ducas, was another gang,
23 that they're both at war with each other. People are dying
24 now. But many, many people have died until this day.

25 And I think --

1 DEFENDANT LISCANO: Well, you can't point that at
2 any of us, is that --

3 MR. BEAUMONT: Can I make --

4 DEFENDANT LISCANO: -- we're a result for that --

5 MR. BEAUMONT: -- my statement?

6 DEFENDANT LISCANO: -- that's for sure.

7 MR. BEAUMONT: And I think -- and I do point it at
8 them, Judge, I do point it at them, and I think it's very
9 important that the public see that this drug activity out
10 there will not be tolerated and this violence must stop.

11 So I recommend -- in Mr. Estremera's case, I
12 believe his guideline range is 360 to life. I recommend that
13 he be sentenced to life imprisonment.

14 THE COURT: All right. Anything further from
15 defense counsel -- or anything further from the government?

16 MR. BEAUMONT: No, sir.

17 THE COURT: Anything further from defense counsel?

18 MR. YOUNG: Yes, Your Honor. I have a few comments
19 I'd like to make --

20 THE COURT: All right.

21 MR. YOUNG: -- regarding Mr. Estremera.

22 First of all, with regard to his criminal history,
23 it's extensive.

24 I think in looking back at his life, it's pretty
25 clear that his Latin King affiliation had a lot to do with

1 getting him on the wrong path. And I don't mean to imply in
2 any way that anything or any misconduct resulted from that
3 activity, but it certainly created affiliations and
4 circumstances that unfortunately led to a lot of the offenses
5 that he did commit.

6 However, when you look at those offenses, the vast
7 majority of those are at an age between his late teens and
8 early 20s, I think 18 or 19 to age 24, and that's the bulk of
9 his criminal history.

10 He stands here before you more than a decade
11 removed from that period in his life. And I think even by
12 his comments this afternoon, it's very clear that at one
13 point in his life, this Latin King affiliation, this
14 brotherhood, this bond that he had he now realizes was so
15 illusory and tenuous.

16 And having seen the way things have played out, not
17 only in this courtroom, but in his affiliations with those
18 individuals, it's very clear to me that he realizes what a
19 mistake that has been, and I think his own words this
20 afternoon corroborated that.

21 With regard to his career offender status, I think
22 it's real important to take a look at the predicate offenses
23 that essentially jack him up into that career offender
24 category, and there are basically -- well, there are two.
25 There's a '98 conviction for marijuana distribution. I

1 believe it was five pounds of marijuana. The second offense
2 is a domestic battery for which he's accountable, he's
3 embarrassed.

4 But the point is when you lump together those two
5 offenses -- and not to demean the severity of those offenses.
6 But in the total scheme of things, the net result, to put him
7 in this much higher category, I think is something that I
8 would ask Your Honor to take a look at in determining the
9 appropriate sentence and whether or not the crimes of
10 violence and the drug offenses that Congress intended to put
11 someone in such a severe category should apply fully to his
12 situation.

13 With regard to government counsel's comments about
14 the murders, it's distressing to me, having been present for
15 that testimony. I'm not going to attempt to evaluate it,
16 because that's your job, and I would certainly defer to your
17 judgment, but I guess the thing that really jumps out at me
18 when I listen to the arguments that the government has made
19 regarding these offenses, the most serious of any possible
20 offense, if, in fact, the government or the state or any law
21 enforcement authority actually believes that Mr. Estremera in
22 any way was responsible for a murder, then let them bring a
23 charge, let them go to court, hear the evidence, and present
24 his defense.

25 That's the appropriate forum to punish him for what

1 has been talked about here in terms that personally I don't
2 believe was at all convincing.

3 With regard to Mr. Estremera's involvement in this
4 conspiracy, he takes responsibility for the transactions he
5 was involved in as well as his knowledge of the other
6 activities, the storage of cocaine, all of which Your Honor
7 has commented about. And I don't mean to diminish that in
8 any way.

9 However, I think in the scheme of players in this
10 conspiracy and in terms of what I have seen, I don't believe
11 that Mr. Estremera would be considered a major role.

12 Did he play a significant role? Yes, he did. But
13 I think in the total scheme of things, his role was certainly
14 less than the major players.

15 With regard to the sentence that Your Honor will
16 impose, I think the information that Mr. Estremera presented
17 this afternoon regarding his activities and bible studies and
18 anger management and GED, I mean, that's a clear indication
19 of an individual who's trying his best to do what he can to
20 improve his life.

21 He's a different person than the individual who was
22 involved in a good deal of criminal activity earlier on.

23 In terms of the government's request for a life
24 sentence, that's troubling for a variety of reasons, but most
25 of all, most importantly, a life sentence takes away any hope

1 that a person otherwise would have to continue to better
2 themselves, as he's obviously attempting to do.

3 And so I ask Your Honor to fashion a sentence that
4 will not diminish his involvement in this activity, but, by
5 the same token, will give him an opportunity to continue to
6 work, to be a better person, and to have a goal in mind, to
7 have some light at the end of the tunnel.

8 I mean, he has five children. He would like to be
9 the parent that he never had. He doesn't -- and I point that
10 out because I can't think of a stronger incentive for an
11 individual to have than children.

12 So for those reasons, Your Honor, I ask that you
13 consider giving Mr. Estremera a sentence that will give him
14 the opportunity to continue on the path that he is currently
15 on.

16 Thank you very much.

17 THE COURT: All right. Mr. Loeb, is there anything
18 further you desire to say?

19 MR. LOEB: No. I think, Judge, anything else would
20 be redundant. I have said what I needed to.

21 Thank you.

22 THE COURT: All right. Each defendant always has
23 the last word with regard to the determination that I am
24 going to make.

25 So, Mr. Liscano, is there anything further you want

1 to say?

2 DEFENDANT LISCANO: Yes, Your Honor.

3 Mr. Beaumont keeps bringing up all kinds of
4 assumptions. He's stating, like shifting the weight on -- I
5 feel as if it's on me, all right, for all kinds of -- as if I
6 had anything to do with being a problem around town, as if I
7 was doing things in town to cause violence or anything like
8 that.

9 I have never done anything violent in my town. I
10 have never done anything violent to anybody.

11 For you to even imply anything like this to me, and
12 it disturbs me,
13 because -- I don't mean to get emotional with you, but
14 there's just no reason for you to throw low blows like that.
15 There's no reason at all.

16 I'm sorry, Your Honor. I'll -- I'm done.

17 THE COURT: Mr. Estremera, anything further you
18 want to say?

19 DEFENDANT ESTREMERERA: Thank you.

20 (Defendant Estremera shook hands with Mr. Young.)

21 DEFENDANT ESTREMERERA: I'd like to say thank you for
22 Mr. Young. I did appreciate some of the things he just said
23 right now.

24 360 to life, Your Honor, I mean, for what? That's
25 what really bothers me a lot. But this is the way it's

1 falling, so -- like I said, I thank God for giving me the
2 strength to remain strong, you know, because I wasn't going
3 to accept the lies that the government was asking me to
4 accept on the drafts -- that was just the bottom line, you
5 know -- so I made my move by going to trial, and this is the
6 final stage of it.

7 Now, Mr. Beaumont knows that in those allegations
8 that he made towards me, there's other individuals that have
9 completely been accused of this, but he just focuses it on
10 me.

11 And I'm to a point where it just doesn't really
12 matter to me anymore, 'cause I know I had nothing to do with
13 that, Mr. Beaumont. So you could use it as you want.

14 And already the Judge denied me having that
15 stricken from my PSI, which I know is wrong, but he has that
16 decision.

17 But, Your Honor, there's a lot of evidence showing
18 to other individuals on that case. It's not just Abraham
19 Estremera.

20 And no matter what I have been through in my life,
21 I've always tried to be a strong person and remain positive,
22 you know, about everything.

23 I lost my parents at a young age and then I lost my
24 grandparents, and then that was just it. I didn't really get
25 a good grip about how I wanted to go in my life until I was

1 at least maybe 29, 30 years old.

2 And I was still doing bad things, yes, I was. I
3 was involved in drugs. I'm not going to deny that. I was,
4 and I apologize. But I'm not this bad person that the
5 government is making me look like.

6 And I'm just asking you, out of respect, you know,
7 please don't destroy my life. I plan on coming back on
8 appeal, and hopefully I do have good appeal issues to come
9 back, but I don't want my life destroyed. I want another
10 chance in life. Because this case has taught me a lot, you
11 know.

12 And another thing is, Your Honor, I'm not a liar.
13 I haven't lied to you. I've always kept things as
14 straightforward as I could with you.

15 And even though it ticked me off yesterday, I
16 wasn't disrespecting you in no type of way. I just felt that
17 if I don't speak up for myself, then whatever I wanted to say
18 and never brought out, it would just bother me, you know.

19 So thank you. That through everything yesterday,
20 you still let me speak my mind. Thanks.

21 THE COURT: I wish that at the time of the offenses
22 that defendants engage in, they had the same -- what appear
23 to be clear thought processes they have at the time they are
24 being sentenced.

25 I have often wondered how to get the message out to

1 people before they commit the crime of what it's going to
2 feel like when you are caught; if you are convicted, at the
3 time you are being sentenced.

4 If somehow we could convey that information to
5 young men like yourselves, I am sure it would change the
6 problems our society has with regard to crime.

7 The factors that I have to consider and am
8 considering and have considered in connection with each of
9 these sentences are set forth in 18 U.S.C. § 3553, primarily
10 in section (a) of that, and the purpose is to impose a
11 sentence that is sufficient but not greater than necessary to
12 comply with the requirements of the law.

13 I am to consider, number one, the nature and
14 circumstances of the offense and the history and
15 characteristics of the defendant.

16 I have considered that in each of these defendants'
17 situations. Each have substantial criminal histories, which
18 are taken into account by their category VI criminal history
19 scores.

20 The nature and circumstances of the offense. This
21 drug conspiracy that existed is a crime that has all types of
22 ramifications in our communities, in our society, and in the
23 world.

24 I am supposed to consider, and I do consider, the
25 need for the sentence imposed to reflect the seriousness of

1 the offense, and this offense is very serious.

2 To promote respect for the law and to provide a
3 just punishment for the offense, to afford adequate
4 deterrence to criminal conduct, and to protect the public
5 from further crimes of the defendant.

6 A further factor is to provide the defendant with
7 the needed education or vocational training in the most
8 effective manner.

9 I have often thought about that subsection (2)(D).
10 The most effective manner of educational and vocational
11 training is not, in my opinion, prison. However, I just
12 question whether Mr. Liscano or Mr. Estremera would have
13 engaged in these educational/training opportunities if they
14 weren't incarcerated.

15 I am to consider the kinds of sentences available,
16 the sentencing guideline range, the policy statements of the
17 Sentencing Commission, the need to avoid unwarranted sentence
18 disparities among defendants with similar records who have
19 been found guilty of similar conduct, and the need to provide
20 restitution to any victims of the offense.

21 I am not ordering any restitution with regard to
22 either of these defendants from a monetary standpoint. It
23 can't be quantified.

24 I have accorded each of these defendants the full
25 opportunity to present anything they desired to present, and

1 I have done that actually throughout these proceedings,
2 because I knew these were serious charges.

3 Mr. Liscano, pursuant to the Sentencing Reform Act
4 of 1984, it is the judgment of the Court that the defendant,
5 Steve Liscano, is hereby committed to the custody of the
6 Bureau of Prisons to be imprisoned for a term of life. The
7 sentence is imposed on Count 1.

8 Mr. Estremera, pursuant to the Sentencing Reform
9 Act of 1984, it is the judgment of the Court that the
10 defendant, Abraham Estremera, is hereby committed to the
11 custody of the Bureau of Prisons to be imprisoned for a term
12 of life on Count 1, 120 months on Count 11 to run
13 concurrently with the sentence on Count 1.

14 These life terms do not allow for supervised
15 release, but in the event that either of you are allowed to
16 be released, I will place you both on supervised release for
17 a term of five years on Count 1 and, Mr. Estremera, with
18 regard to Count 11, three years to run concurrently with
19 Count 1.

20 If you are released, within 72 hours of your
21 release from the custody of the Bureau of Prisons, you are to
22 report in person to the Probation Office in this district or
23 in the district in which you are released, but you must
24 report within the 72 hours.

25 I am going to order that each of you pay a fine of

1 \$25,000. That is due immediately. I am going to waive
2 interest on the fine.

3 You can obtain money to pay this fine by
4 participating in the Inmate Financial Responsibility Program
5 allowed at the Bureau of Prisons facilities.

6 As I said, the fines are due immediately.

7 Before any payment is made on the fine, there is a
8 special assessment of \$100 on each count.

9 Mr. Liscano is convicted on Count 1. That is \$100
10 that is due immediately.

11 Mr. Estremera is convicted on two counts. That is
12 \$200, 100 on each count, that is due immediately.

13 If you are released from custody and your
14 supervised release takes effect, you are to not participate
15 or commit in another federal, state, or local crime. You are
16 to comply with all the standard conditions.

17 You are to refrain from the unlawful possession and
18 use of any controlled substance.

19 You are to submit to one drug test within 15 days
20 of your release from imprisonment and random and periodic
21 drug tests thereafter up to a maximum of 104 drug tests per
22 year. That applies to both of you.

23 You are not to possess a firearm or any destructive
24 device. That applies to both of you.

25 You are to submit to the collection of a DNA sample

1 as required by the law at this point.

2 I will leave it to the Probation Office, if you are
3 released from custody, as to the extent of any drug aftercare
4 program, but I am going to order that you each participate in
5 the drug aftercare program which may include urine testing at
6 the direction of the Probation Office.

7 I wish, gentlemen, that at the time you were
8 beginning to engage in criminal conduct, you had the frame of
9 mind that you have now, because you would not have dealt with
10 it.

11 Let me just consult with my clerk on one item.

12 (Court conferring with his clerk.)

13 THE COURT: Back to this \$25,000 fine.

14 Although the amount of the fine is all due
15 immediately, because of your financial circumstances, I am
16 waiving any further costs of incarceration or supervision or
17 any restitution, which, as I said, can't be quantified.

18 I believe that the Inmate Financial Responsibility
19 Program has a maximum amount that can be contributed toward
20 any payment of a fine on an annual basis. And so the payment
21 schedule will be up to, but no more than the maximum amount
22 that can be contributed under the Inmate Financial
23 Responsibility Program on an annual basis toward the fine
24 until it is paid.

25 Mr. Liscano, Mr. Estremera, you each have a right

1 to appeal from the decisions I made at your trial. You each
2 have a right to appeal from the decisions I have made in
3 connection with your sentencings.

4 Do you understand that, Mr. Liscano?

5 DEFENDANT LISCANO: Yes, Your Honor, and I will
6 appeal.

7 THE COURT: And, Mr. Estremera, do you understand
8 that?

9 DEFENDANT ESTREMERERA: Yes, and I would like the
10 process to start.

11 THE COURT: All right. To start the process, you
12 file or ask your lawyer to file a notice of appeal with the
13 Clerk of the United States District Court.

14 DEFENDANT ESTREMERERA: Mr. Young, can you file that
15 for me, please?

16 MR. YOUNG: I will do so.

17 THE COURT: That has to be done within ten days of
18 today's date.

19 DEFENDANT ESTREMERERA: Well, I already knew what I
20 was going to receive.

21 THE COURT: I am sorry?

22 DEFENDANT ESTREMERERA: I said I already knew I was
23 going to receive a life sentence from you. It wasn't that
24 hard for me to figure it out.

25 THE COURT: Well --

1 DEFENDANT ESTREMER: That's the way --

2 THE COURT: -- I didn't know --

3 DEFENDANT ESTREMER: -- it's been proceeding.

4 THE COURT: -- I was going to give you a life
5 sentence until I sat here and decided that that was the
6 appropriate sentence, after receiving all of the information,
7 including reviewing the items that you wanted me to review.

8 DEFENDANT ESTREMER: Well, we all three went to
9 trial, and we all got life sentences for standing up for our
10 constitutional rights, and that's what we get out of it, life
11 sentences, for a case that's full of lies.

12 I don't even think none of you all know this case
13 like we do. We sat here and studied it all the time. You
14 guys can't even figure out what's on the trial transcripts.

15 MR. LOEB: Judge, may I interject with a request
16 that you make a recommendation on behalf of Mr. Liscano, that
17 he be incarcerated at Pekin or the closest prison to Chicago
18 consistent with his designation?

19 THE COURT: All right. I will accept the last part
20 of that. I am not sure what the availability of the Pekin
21 facility is, so I will just say at a prison facility, the
22 closest prison facility to Chicago that is consistent with
23 his designation.

24 I will do that on behalf of both defendants, if
25 that is desired, Mr. Young.

1 MR. YOUNG: Yes. Thank you, Judge.

2 THE COURT: All right.

3 MR. BEAUMONT: And, Judge, so -- we filed yesterday
4 two forfeiture orders that if I don't get signed, I'm going
5 to be in trouble upstairs.

6 THE COURT: Right. I will ask my clerk -- I am
7 sorry?

8 THE CLERK: I will go get them.

9 (Court conferring with his clerk.)

10 THE COURT: Okay. Those will be signed, and they
11 will be entered.

12 DEFENDANT ESTREMERERA: Excuse me. Mr. Beaumont,
13 there were some other things that were taken on the
14 forfeiture that you took from my house at the time.

15 Does Patti's mom have the right to come claim that?
16 And if she does, what's the process for it?

17 MR. BEAUMONT: You know, I haven't got a clue. I
18 don't know what's in the forfeiture.

19 If you talk to your lawyer or he'll contact my
20 office, and we'll deal with it.

21 DEFENDANT ESTREMERERA: Mr. Young, if you could do
22 that?

23 (Defendant Estremera conferring with Mr. Young.)

24 THE COURT: All right. Anything else?

25 MR. BEAUMONT: Not from the government, Your Honor.

1 Thank you.

2 THE COURT: Anything else, Mr. Loeb?

3 MR. LOEB: No, Judge.

4 THE COURT: On behalf of your client, anything
5 else, Mr. Young --

6 MR. YOUNG: No, Your Honor.

7 THE COURT: -- on behalf of your client? All
8 right. Thank you. We will stand in recess.

9 MR. YOUNG: Thank you.

10 MR. BEAUMONT: Thank you.

11 MR. LOEB: Thank you.

12 (Proceedings concluded.)

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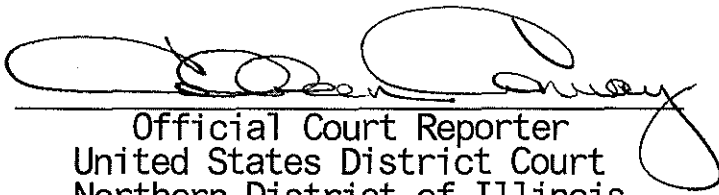
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I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the sentencing proceedings had in the above-entitled case before the Honorable JAMES F. HOLDERMAN, one of the judges of said Court, at Chicago, Illinois, on November 29 and 30, 2005.



Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

2/13/06
Date