

1 SEAN K. KENNEDY (No. 145632)  
Federal Public Defender  
2 (Email: Sean\_Kennedy@fd.org)  
CARLTON F. GUNN (No. 112344)  
3 Deputy Federal Public Defender  
(Email: Carlton\_Gunn@fd.org)  
4 321 East 2nd Street  
Los Angeles, California 90012-4202  
5 Telephone (213) 894-1700  
6 Facsimile (213) 894-0081

7 Attorneys for Defendant  
MELBA LEONADO CROSSAN

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION  
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 MELBA LEONADO CROSSAN,

17 Defendant.  
18  
19 \_\_\_\_\_

NO. CR 07-1077-GAF

NOTICE OF MOTION; MOTION  
FOR DISCOVERY;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

Hearing Date: December 22, 2008  
Hearing Time: 1:30 p.m.

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20 The entries below, although they look like citations, could not be fully  
21 processed, since they did not contain any reporters built into the Full  
22 Authority dictionary.

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1 SEAN K. KENNEDY (No. 145632)  
Federal Public Defender  
2 (Email: Sean\_Kennedy@fd.org)  
CARLTON F. GUNN (No. 112344)  
3 Deputy Federal Public Defender  
(Email: Carlton\_Gunn@fd.org)  
4 321 East 2nd Street  
Los Angeles, California 90012-4202  
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13 UNITED STATES OF AMERICA,	}	NO. CR 07-1077-GAF
14 Plaintiff,		NOTICE OF MOTION; MOTION
15 v.		FOR DISCOVERY;
16 MELBA LEONADO CROSSAN,		MEMORANDUM OF POINTS
17 Defendant.		AND AUTHORITIES
18	}	Hearing Date: December 22, 2008
19		Hearing Time: 1:30 p.m.

20 TO: UNITED STATES ATTORNEY THOMAS O'BRIEN, AND ASSISTANT  
21 UNITED STATES ATTORNEY DIANA PAULI:  
22


23 PLEASE TAKE NOTICE that on December 22, 2008, at 1:30 p.m., or as soon  
24 thereafter as counsel may be heard, in the courtroom of the Honorable Gary A. Feess,  
25 United States District Judge, defendant Melba Leonado Crossan will bring on for  
26 hearing the following motion:  
27  
28

MOTION

Defendant Melba Leonado Crossan through her counsel of record, Deputy Federal Public Defender Carlton F. Gunn, hereby moves this Honorable Court for an order (1) that the government provide "draft" transcripts of audiotapes of contacts between defendant and a cooperating codefendant without preconditions the government is attempting to place on the "draft" transcripts' use and (2) setting a deadline for production by the government of the final transcripts of audiotapes which it intends to use at trial in this matter. The motion is based upon the attached memorandum of points and authorities and exhibits, all files and records in this case, and such additional evidence and/or argument as may be presented to the Court at the hearing on the motion.

Respectfully submitted,  
SEAN K. KENNEDY  
Federal Public Defender

DATED: November 28, 2008

By   
CARLTON F. GUNN  
Deputy Federal Public Defender

## MEMORANDUM OF POINTS AND AUTHORITIES

## I.

INTRODUCTION

Melba Leonado Crossan and three codefendants were indicted on September 27, 2007. They are charged with health care fraud, conspiracy to commit health care fraud, and making false statements within the jurisdiction of the federal agency, in violation of 18 U.S.C. §§ 1001, 1347, and 1349. Ms. Crossan and one codefendant<sup>1</sup> were arraigned on the indictment on November 3, 2008. Trial was set to commence on January 6, 2009,<sup>2</sup> with a status conference scheduled for December 22, 2008.

After Ms. Crossan was arraigned, defense counsel sent out a request for discovery. *See* Exhibit A. It included a request for all discovery required by Rule 16 of the Federal Rules of Criminal Procedure, including discovery regarding statements of the defendant, documents subject to Rule 16, and discovery regarding experts. *See id.* Government counsel provided some discovery in response to the defense request, including a CD with over 6,000 pages of documents and two CDs with recordings of undercover conversations – largely in the Tagalog language – between Ms. Crossan and one of the codefendants who was apparently cooperating with the government at the time.

The latter two items of discovery – the recorded conversations – have given rise to the discovery dispute which is the subject of this motion. The government has

---

<sup>1</sup> As defense counsel understands it, the other codefendants have not yet been arrested and may be outside the country.

<sup>2</sup> The parties indicated at the time the trial date was set that a continuance would likely be necessary because of the volume of discovery in the case and the time that has passed since the alleged offense conduct. The defense will be engaging in discussions with the government about a more realistic trial date.

1 what it describes as “draft” transcripts and/or summaries of the tape recordings which  
2 government counsel has indicated she will provide to the defense only if the defense  
3 agrees that it “will not use such draft transcripts and/or summaries for purposes of  
4 impeachment or in any other way during the course of trial to question, contradict or  
5 impeach the integrity of the final transcripts.” Exhibit B, at 3. Second, the  
6 government has not yet prepared whenever “final” transcripts it will use at trial, and it  
7 is unclear how far ahead of trial those will be prepared.

8  
9 The defense brings this motion to resolve these discovery issues. First, the  
10 Court should order the government to provide the “draft” transcripts without  
11 requiring any agreement from defense counsel about their use at trial; their use at trial  
12 should be governed by whatever limitations are placed on their use by the Federal  
13 Rules of Evidence. Second, the Court should set a deadline for the disclosure of  
14 whatever “final” transcripts the government is actually going to use at trial, and that  
15 deadline should be at least 45 days prior to trial.

16  
17 II.

18 ARGUMENT

19  
20 A. THE “DRAFT” TRANSCRIPTS ARE DISCOVERABLE AND MUST BE  
21 PRODUCED IMMEDIATELY UNDER RULE 16 OF THE FEDERAL RULES OF  
22 CRIMINAL PROCEDURE.

23  
24 1. Discoverability Under Rule 16(a)(1)(B).

25  
26 Rule 16(a)(1)(B) of the Federal Rules of Criminal Procedure provides that the  
27 government must disclose to the defendant “any relevant written or recorded  
28 statement by the defendant” which is within the government’s possession, custody, or



1 control. A transcript is a “written or recorded statement” under this rule. *United*  
 2 *States v. Gee*, 695 F.2d 1165, 1170 (9th Cir. 1983) (Fletcher, J., concurring). *See also*  
 3 *United States v. Thomas*, 239 F.3d 163, 166 (2nd Cir. 2001).<sup>3</sup>

4  
 5 Whether so-called “draft” transcripts are subject to this rule has been addressed  
 6 in opinions by two district court judges. The first was Judge Rovner of the Northern  
 7 District of Illinois, who considered the question in *United States v. Finley*, No. 87 CR  
 8 364-3, 4 & 6, 1987 WL 17165 (N.D. Ill. Sept. 3, 1987) and *United States v. Shields*,  
 9 767 F. Supp. 163 (N.D. Ill. 1991). The government in those cases, like the  
 10 government here, argued it was not obliged to produce draft transcripts and offered to  
 11 produce them only if the defendants agreed not to use them at trial. *See Shields*, 767  
 12 F. Supp. at 165; *Finley*, at \*1.

13  
 14 Judge Rovner rejected this proposed limitation and ruled that the “draft”  
 15 transcripts must be produced unconditionally, as discoverable records of statements  
 16 under the clause of former Rule 16(a)(1)(A) which is now Rule 16(a)(1)(B), *see supra*  
 17 n.3. The judge explained in *Finley* why the transcripts were statements of the  
 18 defendant just as the tapes were.

19 The restrictive definition of “written or recorded statements  
 20 made by the defendant” proffered by the government is not  
 21 supported by the case law. As the Ninth Circuit has noted, “[a]  
 22 statement need not be actually written or typed by the defendant to  
 23 be defendant’s ‘written statement’; for example, a stenographer’s  
 24 transcription of a government interviewer’s relatively  
 25 contemporaneous writings may be considered written statements

26  
 27 <sup>3</sup> These cases refer to Rule 16(a)(1)(A) rather than Rule 16(a)(1)(B) because  
 28 what is now Rule 16(a)(1)(B) was formerly a clause within Rule 16(a)(1)(A). Rule  
 16 was restructured by amendments in 2002. *See* Fed. R. Crim. Pro. 16 advisory  
 committee note (2002 Amendments). The restructuring was a stylistic change which  
 was not intended to have any substantive effect. *See id.*

1 of the defendant.” *United States v. Walk*, 533 F.2d 417, 418 (9th  
2 Cir. 1975). Our own Court of Appeals, in addressing the question  
3 of the breadth of the term “written or recorded statement” in Rule  
4 16, has stated:

5 A defendant’s statement is discoverable when it  
6 or an account thereof is “written or recorded” (Rule  
7 16(a)(1)) promptly after the statement is made.  
8 Where a written record is contemplated when the  
9 statement is made and an account of the statement is  
10 eventually written down, the writing should be  
11 discoverable even if there was some delay.

12 *United States v. Feinberg*, 502 F.2d 1180, 1182-83 (7th Cir.  
13 1974), *cert. denied*, 420 U.S. 926 (1975). The Court notes that, in  
14 cases involving electronic surveillance, it is commonly within the  
15 contemplation of the government that some, if not all, of the  
16 conversations taped will be transcribed.

17 In accord with these observations, the reported cases, to this  
18 Court’s knowledge, uniformly hold that transcripts of tape  
19 recorded conversations involving a defendant constitute written or  
20 recorded statements of that defendant discoverable pursuant to  
21 Rule 16(a)(1)(A) or its predecessors. (Citations omitted.)

22 *Finley*, at \*1-2. *See also Shields*, 767 F. Supp. at 166 (“reaffirm[ing] . . . opinion in  
23 *Finley*”).

24  
25 Then, in *Shields*, Judge Rovner explained why no distinction can be drawn  
26 between “draft” transcripts and “final” transcripts.

27 [T]here is no legitimate basis for distinguishing between a draft  
28 transcript and a final transcript. Each is a reflection of what the

1 defendant purportedly said on the tape, and although the  
2 government may believe the final version to be more accurate than  
3 the draft, a defendant is entitled to see both versions. Suppose the  
4 defendant had made a post-arrest statement to two government  
5 agents, and the agents had summarized the statements somewhat  
6 differently in their subsequently written reports. Surely, the  
7 government could not contend that the defendant was only entitled  
8 to see whichever report it believed more accurate; the defendant  
9 would be entitled to have both produced. So it is here. . . .  
10 [T]here may well be disputes as to the accuracy of final transcripts,  
11 and the defendant is entitled to review without conditions not only  
12 the final versions but any and all prior drafts prepared by the  
13 government as well.

14 *Shields*, 767 F. Supp. at 166.

15  
16 The second judge to consider the discoverability of “draft” transcripts was  
17 Judge Williams of the Northern District of Illinois. She held that the “draft”  
18 transcripts in the case before her were not discoverable. *See United States v. Bailey*,  
19 689 F. Supp. 1463, 1469-70 (N.D. Ill. 1987). This was not because she believed they  
20 were not “statements,” however; she appeared to agree with Judge Rovner on that  
21 point. *See Bailey*, 689 F. Supp at 1468-69. Judge Williams found the “draft”  
22 transcripts not discoverable because the general rule, which applied in that case, is  
23 that it is not the transcripts which are the evidence, but the tapes, and so “draft”  
24 transcripts did not satisfy another requirement for discoverability under former Rule  
25 16(a)(1)(A) – that they be “relevant.” Judge Williams explained:

26 The rule also requires, however, that the written or recorded  
27 statement be “relevant.” . . .

28 The written statements on the transcripts will not constitute

1 the evidence in the case; the tapes will. The court will allow the  
 2 transcripts to be used as an aid to the jury's understanding of what  
 3 is in fact said on the tapes which the court did order disclosed.  
 4 *Id.* at 1469 (citing *United States v. Puerta Restrepo*, 814 F.2d 1236, 1242 (7th Cir.  
 5 1987) and *United States v. Allen*, 798 F.2d 985, 1002-03 (7th Cir. 1986)). *See also*  
 6 *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998) (tapes, not transcripts, are  
 7 the actual evidence when conversations are in English, and transcripts serve only as  
 8 aids to understanding tapes). *But cf. Shields*, 767 F. Supp. at 166 (disagreeing with  
 9 Bailey).

10  
 11 The reasoning in *Bailey* does not extend to the present case because the vast  
 12 bulk of the conversation on the recordings in the present case are in Tagalog. When  
 13 the tapes are in a foreign language, the general rule that it is the tapes which are the  
 14 evidence and that the transcripts are only aids to the jury's understanding does not  
 15 apply. Rather, it is the transcripts that are the admissible evidence. *See, e.g., United*  
 16 *States v. Armijo*, 5 F.3d 1229, 1234-35 (9th Cir. 1993). At least in these  
 17 circumstances, the "draft" transcripts as well as the "final" transcripts are relevant and  
 18 hence discoverable under Rule 16(a)(1)(B).<sup>4</sup>

19  
 20 2. Discoverability Under Rule 16(a)(1)(E).

21  
 22 The draft transcripts are also discoverable under Rule 16(a)(1)(E), because they

23  
 24 <sup>4</sup> In addition, *Bailey* conflicts with *Finley* and *Shields* and the later opinions  
 25 are the better reasoned ones. *Bailey's* focus on the fact that it is the tapes rather than  
 26 the transcripts that are the evidence in the case, *see supra*, ignores the fact that the  
 27 provision in Rule 16(a) for "written or recorded statements by the defendant" does  
 28 not depend on whether the government will use the statement at trial or whether the  
 writing or recording is admissible but on whether the statement is "relevant." And  
 relevance here must refer to the subject matter of the statement, not the admissibility  
 if it were to be offered by the defense. Most statements by a defendant are not  
 admissible if offered by the defense, since it is generally only admissions by a party-  
 opponent that are admissible under the Federal Rules of Evidence. *See Fed. R. Evid.*  
 801(d)(2).

1 are documents that are “material to preparing the defense,” Fed. R. Crim. Pro.  
2 16(a)(1)(E)(iii). Transcripts of recordings as well as the recordings themselves are  
3 discoverable under this rule. *United States v. Gee*, 695 F.2d 1165, 1170 (9th Cir.  
4 1983) (Fletcher, J., concurring). Indeed, as noted *supra*, it is the transcripts, not the  
5 recordings, which are admissible when the recorded conversations are in a foreign  
6 language. That makes the transcripts actually *more* material than the recordings.

7  
8 It is not just the “final” transcripts that the government chooses to offer which  
9 are material, moreover. “Draft” transcripts are material and *potentially* admissible for  
10 at least two reasons.

11  
12 First, the defense could seek to offer the “draft” transcripts as defense  
13 alternatives. The admissibility of transcripts of foreign language tapes offered by the  
14 government is contingent on the right of the defense to offer alternative transcripts  
15 that it believes are more accurate. *See United States v. Abonce-Barrera*, 257 F.3d  
16 959, 963 (9th Cir. 2001) (admissibility of transcripts of foreign language tapes  
17 contingent on right of defense to offer alternative transcripts); *United States v.*  
18 *Franco*, 136 F.3d 622, 626 (9th Cir. 1998) (same). If the “draft” transcripts were  
19 prepared by the same translator the government uses for the “final” transcripts, the  
20 “draft” transcripts could be used to directly impeach that translator. If the “draft”  
21 transcripts were prepared by a different translator, the defense could call the translator  
22 who prepared the “draft” transcripts and seek to offer those “draft” transcripts as the  
23 more accurate version. *Cf. United States v. Shields*, 767 F. Supp. at 166 (noting that  
24 there may be disputes about accuracy of transcripts and suggesting that government’s  
25 belief that final version is more accurate is not dispositive).

26  
27 Second, the “draft” transcripts are material to the extent they are used as a  
28 working “base” for the “final” transcripts. The “draft” transcripts are presumably

1 viewed as “drafts” because they will be used as an initial working copy for the “final”  
2 transcripts and translations. Any translator who ends up testifying to the accuracy of  
3 the “final” transcripts and translations will be an expert witness whose testimony is  
4 opinion testimony that is admissible only under Rule 702 *et seq.* of the Federal Rules  
5 of Evidence. The “draft” transcripts and translations that serve as the starting point  
6 for the “final” transcripts and translations that the translator produces will be part of  
7 the “data” on which he or she relies, and, under Rule 705, the translator “may . . . be  
8 required to disclose the underlying facts or data on cross-examination,” Fed. R. Evid.  
9 705. This rule allows cross examination about underlying data even if the evidence  
10 otherwise would be inadmissible. 4 Jack Weinstein and Margaret A. Berger,  
11 *Weinstein's Federal Evidence* 705-10 (2006 McLaughlin ed.). *See, e.g., United States*  
12 *v. A & S Council Oil Co.*, 947 F.2d 1128, 1135 (4th Cir. 1991) (defense counsel  
13 should have been allowed to cross examine psychologist regarding polygraph  
14 psychologist reviewed because psychologist “must have necessarily discounted it to  
15 reach the opinion he stated in court” and this “may well have failed to infuse the jury  
16 with confidence in [the psychologist's opinion]”). An example of how “draft”  
17 transcripts were used in this way in another case is attached as Exhibit C.

18  
19 The “draft” transcripts and translations are discoverable regardless of whether  
20 they are ultimately admissible, moreover. Rule 16(a)(1)(E) requires disclosure of  
21 documents in the possession of the government whenever they are “material to  
22 *preparing* the defense.” Fed. R. Crim. Pro. 16(a)(1)(E)(iii) (emphasis added). At the  
23 very least, the “draft” transcripts are material to defense *preparation*. First, they will  
24 give the defense a much earlier start on evaluating how damaging the recorded  
25 conversations and letters are and/or whether they can be read consistent with some  
26 defense. Second, they will be useful to defense counsel in preparing to cross examine  
27 the government translator about the “final” transcripts and translations even if the  
28 “draft” transcripts and translations are not directly used in that cross examination.

1 In sum, the “draft” transcripts and translations are discoverable as “material”  
 2 documents under Rule 16(a)(1)(E) as well. The Court should order them disclosed  
 3 under that rule. The question of *admissibility* of the “draft” transcripts is a question  
 4 which can be decided at trial and is different from the question of *discoverability*.  
 5 The government is protected against inadmissible evidence by the Rules of Evidence  
 6 and is not entitled to additional protection in the form of a stipulation by the defense.<sup>5</sup>

7  
 8 B. THE COURT SHOULD SET A DEADLINE FOR DISCLOSURE OF THE  
 9 “FINAL” TRANSCRIPTS OF AT LEAST 45 DAYS BEFORE TRIAL.

10  
 11 Transcripts which transcribe and translate recordings of foreign language  
 12 conversations are discoverable under at least two paragraphs of Rule 16(a). First,  
 13 since translated transcripts of foreign language conversations may be admitted as  
 14 substantive evidence at trial, *see, e.g., United States v. Armijo*, 5 F.3d 1229, 1234-35  
 15 (9th Cir. 1993), they are discoverable under subparagraph (E) of Rule 16(a)(1), as  
 16 “documents . . . the government intends to use . . . in its case-in-chief at trial.”  
 17 Second, since such transcripts reflect what is in essence the report of an expert, *i.e.*, a  
 18 translator, they are discoverable under subparagraph (F) of Rule 16(a)(1), which  
 19 requires disclosure of expert reports.

20  
 21 Neither subparagraph (E) nor subparagraph (F), or any other provision of Rule  
 22 16, for that matter, sets a specific deadline for disclosure before trial. But a court has

23  
 24 <sup>5</sup> The government may argue the “draft” transcripts and translations are not  
 25 discoverable because they are “work product” which is protected by Rule 16(a)(2),  
 26 but this argument should be rejected for two reasons. First, it is debatable whether  
 27 “draft” transcripts and translations are prepared by the government for purposes of  
 28 “investigating or prosecuting the case,” Fed. R. Crim. Pro. 16(a)(2); what they were  
 more likely prepared for were use in preparing the “final” transcripts and translations.  
 Second, the protection of work product under Rule 16(a)(2) is limited. In particular,  
 it exists only “[e]xcept as Rule 16(a)(1) provides otherwise.” Fed. R. Crim. Pro.  
 16(a)(2). Here, both subparagraph (B) and subparagraph (E) of Rule 16(a)(1)  
 “provide otherwise.”



1 inherent power to make discovery orders which “effectuate, as far as possible, the  
 2 speedy and orderly administration of justice.” *United States v. Richter*, 488 F.2d 170,  
 3 173-74 (9th Cir. 1973). *See also United States v. Nobles*, 422 U.S. 225, 231 n.5  
 4 (1975); *State of Arizona v. Manypenny*, 672 F.2d 761, 765 (9th Cir. 1982). Early  
 5 disclosure of transcripts is necessary to the speedy and orderly administration of  
 6 justice for reasons explained in *United States v. Palermo*, No. 99 CR. 1199 (LMM),  
 7 2001 WL 185132 (S.D.N.Y. Feb. 26, 2001):

8 [T]he case of audio tapes (particularly when accompanied  
 9 by transcripts to be used as aids in listening to the tapes)  
 10 presents something of a special problem, as the government  
 11 appears to recognize. (Citation omitted.) When transcripts  
 12 of tapes are used, a defendant needs to have a reasonable  
 13 opportunity to compare draft transcripts with the tapes, and  
 14 if there are disagreements as to the transcripts, to prepare  
 15 alternate transcripts if the defendant chooses to do so.

16 *Id.* at \*1.

17  
 18 Consistent with these concerns, courts often set deadlines for the production of  
 19 transcripts. *See, e.g., United States v. Shields*, 767 F. Supp. 163, 166 (N.D. Ill. 1991);  
 20 *United States v. Bailey*, 689 F. Supp. 1463, 1467 (N.D. Ill. 1987). While the deadline  
 21 in the foregoing cases may have been less than the 45 days requested by the defense  
 22 here,<sup>6</sup> those cases appear to have involved English language transcripts. A more  
 23 lengthy period is reasonable in the case of foreign language conversations for which  
 24 use of an expert in the form of a translator will be necessary. *Cf. United States v.*  
 25 *Richmond*, 153 F.R.D. 7, 9 (D. Mass. 1994) (requiring government to provide

---

26  
 27 <sup>6</sup> Each of the two opinions cited sets a date by which the government is to  
 28 provide the transcripts to the defense and a date one week later by which the defense  
 must indicate its objections and/or proposed alternative transcripts, but neither  
 opinion indicates how far ahead of the trial date this was. *See Shields*, 767 F. Supp.  
 at 166; *Bailey*, 689 F. Supp. at 1467.



1 summary of expert testimony 45 days prior to trial); *United States v. Palermo*, 2001  
2 WL 185132, at \*5 (describing 45-day deadline set in *Richmond* as “not at all out of  
3 line with the purpose of [Rule 16(a)(1)(E)]”).

4  
5 III.

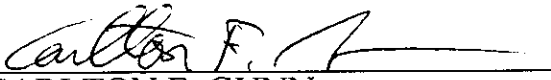
6 CONCLUSION

7  
8 The Court should order the government to provide the “draft” transcripts of the  
9 tape recordings without any limitations on their use other than those which already  
10 exist under the Federal Rules of Evidence. The Court should also set a deadline of at  
11 least 45 days in advance of trial for production of whatever transcripts the  
12 government may wish to use at trial.

13  
14 Respectfully submitted,

15 SEAN K. KENNEDY  
16 Federal Public Defender

17 DATED: November 28, 2008

18 By   
19 CARLTON F. GUNN  
20 Deputy Federal Public Defender  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

FILE COPY

**FEDERAL PUBLIC DEFENDER**  
CENTRAL DISTRICT OF CALIFORNIA  
321 EAST 2nd STREET  
LOS ANGELES, CALIFORNIA 90012-4202  
213-894-2854  
213-894-0081 FAX

**SEAN K. KENNEDY**  
*Acting Federal Public Defender*  
**DEAN R. GITS**  
*Chief Deputy*

**AMY H. KARLIN**  
*Acting Directing Attorney*  
*Santa Ana Office*  
**JESUS G. BERNAL**  
*Directing Attorney*  
*Riverside Office*

Direct Dial: 213-894-1700

November 6, 2008

Diana Pauli  
Assistant United States Attorney  
1100 United States Courthouse  
312 North Spring Street  
Los Angeles, Ca 90012

*re: United States v. Crossan*

Dear Ms. Pauli:

Through this letter, I am making a written request for discovery. The following are my specific requests:

1. Initially, I would request early disclosure of any *Jencks* material, so that I will not need to ask for appropriate recesses and continuances during trial.
2. Pursuant to Rule 16(a)(1)(A) and (B) of the Federal Rules of Criminal Procedure, I request the following discovery regarding statements made by the defendant:
  - a. All relevant written or recorded statements;
  - b. All written records containing the substance of any relevant oral statement made by the defendant in response to interrogation by a person defendant knew to be a government agent, including, but not limited to, (i) all law enforcement agency reports *and* (ii) all *notes* of law enforcement officers, whether or not used to prepare reports; and
  - c. The substance of any other relevant oral statement made by the defendant in response to interrogation by a person defendant knew to be a government agent, if the government intends to use that statement at trial.

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With respect to the latter subcategory, I specifically request, as I believe is your obligation, that you not simply assume that any summary which already exists reflects all significant aspects of any statement. Instead, please check this with whoever wrote the report and have him or her prepare a new summary if the one that exists is not complete.

3. I also request all arrest reports, notes and dispatch or any other tapes that relate to the circumstances surrounding the arrest or any questioning. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in which statements of the defendant or any other discoverable material is contained.
4. Pursuant to Rule 16(a)(1)(D), I request a complete copy of the defendant's prior criminal record, including both state and federal "rap sheets."
5. Pursuant to Rule 16(a)(1)(E), I request copies of all books, papers, documents, and photographs which the government intends to use as evidence in its case in chief at trial, which are material to the preparation of the defense, and/or which were obtained from or belong to the defendant. With respect to photographs, I request my own set of photographs or color photocopies, not ordinary photocopies. If you wish, you may provide me with the photographs or negatives, and I will make my own copies from those.
6. Pursuant to Rule 16(a)(1)(F), I request copies of all results or reports of any physical or mental examination and/or scientific tests or experiments which the government intends to use in its case in chief, or which are material to preparation of the defense. If you intend to call any expert witness, I would request reports already prepared by the witness, *and*, as provided for in Rule 16(a)(1)(G), a summary of the witness' testimony which describes his or her opinions, the bases and reasons for his or her opinions, and his or her qualifications.
7. Pursuant to Rule 404(b) of the Federal Rules of Evidence, I request reasonable notice of any evidence of other bad acts which the government intends to introduce at trial. It is my position that reasonable notice means notice no later than the deadline for filing motions in this case.
8. I request all information and material subject to disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).
9. I request the following information as to each government witness, on the ground that it is discoverable under *Giglio*:

November 6, 2008

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- a. Any prior criminal convictions and/or arrests and any evidence that the witness has committed or is suspected of committing a criminal act which did not result in an arrest or conviction.
  - b. Any payments made to the witness and the dates of such payments, whether in connection with this case *or any other case, state or federal*.
  - c. Any implicit or explicit promises of benefit which have been made by any government agent or agency, state or federal, regarding (i) non-prosecution for any offense, (ii) recommendations of leniency, or (iii) information to be provided at sentencing for any offense.
  - d. Any implicit or explicit promises of benefit which have been made to the witness, by any government agent or agency, in any other area, including, but not limited to, immigration status.
  - e. All known occasions on which the witness has made false statements to any person, including, but not limited to, law enforcement officers or any law enforcement agency or court, and specifically including, but not limited to, any aliases which the witness may have used.
  - f. Any false identification document which has ever been in the possession of and/or used by the witness, and each and every occasion on which the witness is known to have used said document.
  - g. Any evidence that any prospective government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his testimony.
  - h. Any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or any other controlled substance, or has ever been an alcoholic.
  - i. Any other information which adversely reflects on the credibility of the witness.
10. I request the name, address, and location of any informant or other person who was a percipient witness to a material event in the case, who was a substantial participant in the investigation of the case, or who may have information relevant and helpful to the defense.

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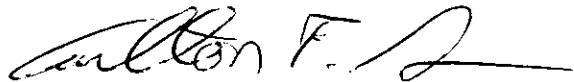
Page 4

11. I request the name of any witness who made an arguably favorable statement concerning the defendant. I also request disclosure of any statement that may be relevant to any possible defense or contention that the defendant might assert. This includes in particular any statements by percipient witnesses.
12. I request disclosure of any exculpatory witness statement, including negative exculpatory statements, *i.e.*, statements by informed witnesses that fail to mention the defendant.
13. I request that you review the personnel records of all law enforcement witnesses and disclose any *Brady* or *Giglio* material contained in those records, pursuant to *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

Many Assistant United States Attorneys commonly request notice of defenses beyond that required by the Federal Rules of Criminal Procedure. Please note that I will not provide notice of any defense beyond that required by Rules 12.1, 12.2, and 12.3 of the Federal Rules of Criminal Procedure. If such a request is included in any memorandum that you send me, you should not assume by my silence that we are limiting our defenses.

I appreciate your prompt provision of discovery so we may more quickly investigate this case and intelligently consider any plea offer you may make.

Sincerely,

A handwritten signature in black ink, appearing to read "Carlton F. Gunn", with a stylized flourish at the end.

CARLTON F. GUNN  
Deputy Federal Public Defender

CFG:dac

# EXHIBIT B



U. S. Department of Justice

*United States Attorney  
Central District of California*

*Diana L. Pauli  
Assistant United States Attorney  
Narcotics Section  
(213) 894-3899 Fax (213) 894-0142*

*1400 U.S. Courthouse  
312 North Spring Street  
Los Angeles, California 90012*

November 13, 2008

Carlton F. Gunn  
Deputy Federal Public Defender  
321 East Second Street  
Los Angeles, California 90012

Re: United States v. Melba Leonado Crossan et al.,  
CR 07-1077-GAF

Dear Counsel:

Pursuant to your request for discovery, enclosed please find a CD that contains the following documents. **Please note that this production is covered by the Protective Agreement entered into between the parties as some of the documents contain Confidential Health Information.**

- ▶ Bates Nos. 1-26: Indictment;
- ▶ Bates Nos. 27-89, 120-125, 167-171: Various Reports of Investigation ("ROIs") and Memorandum of Interviews ("MOIs");
- ▶ Bates Nos. 90 - 91: Melba Crossan DMV Photo;
- ▶ Bates Nos. 92 - 119: Bennette Rodella Manalang - ROI, Board of Registered Nursing documents and DMV Photo;
- ▶ Bates Nos. 126 - 146: Omar Agang-Ang Decendario - ROI, Board of Vocational Nursing and Psychiatric Technicians documents, and DMV Photo;
- ▶ Bates Nos 147-166: Lilia Carino Mariano - ROI, Board of Registered Nursing documents, and DMV Photo;
- ▶ bates Nos. 172 - 4744: Documents re: numerous beneficiaries, e.g. Comprehensive Adult Nursing Assessment form, Physician's Order, Plan of Care, Daily Route Sheets, Skilled Nursing Notes, etc.;



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- ▶ Bates Nos. 4745 - 4855: Sunrise Nursing Registry Wells Fargo Bank Account No. 331-3317047;
- ▶ Bates Nos. 4856 - 4911: Henry Carrasco dba Sunrise Nursing Registry Wells Fargo Account No. 700-0033436;
- ▶ Bates Nos. 4912 - 5220: Various Wells Fargo Bank Accounts copies of checks ;
- ▶ Bates Nos. 5221 - 5247: Melba Crossan Wells Fargo Bank Account Nos. 3211630728 and 322-6284077;
- ▶ Bates Nos. 5248 - 5551: Omar Agang Ang Decendario Washington Mutual Bank, Wells Fargo Bank, and Bank of America Accounts;
- ▶ Bates Nos 5552 - 5682: Annelite Ballocanag Washington Mutual Bank Accounts;
- ▶ Bates Nos. 5683 - 5756: Lilia Mariano Wells Fargo Bank Accounts;
- ▶ Bates Nos. 5757 - 5842: Bennette Manalang Washington Mutual Bank Accounts;
- ▶ Bates Nos. 5843 - 5849: MJ Nursing Registry Documents;
- ▶ Bates Nos. 5850 - 5857: Sunrise Nursing Registry Documents;
- ▶ Bates Nos. 5858 - 6243: Claims History for numerous beneficiaries;
- ▶ Bates Nos. 6244 - 6245: Picture of Lilia Mariano and Omar Decendario;
- ▶ Bates Nos. 6246 - 6250: Punch Detail for Lilia Mariano;
- ▶ Bates Nos. 6251 - 6278: Home Health Inquiries for various beneficiaries;
- ▶ Bates Nos. 6279 - 6280: Melba Photo;
- ▶ Bates Nos. 6281 - 6282: Bennette Manalang Photo Bates;
- ▶ Bates Nos. 6283 - 6284: Unidentified Photo;
- ▶ Bates Nos. 6285 - 6286: Lilia Mariano Photo;

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- ▶ Bates Nos. 6287 - 6471: 2003 Eligibility Verification Log;
- ▶ Bates Nos 6472 - 6646: Various Provident Faxes;
- ▶ Bates Nos. 6647 - 6662: Provident Skilled Nursing Notes Summary;
- ▶ Bates Nos 6663 - 6672: Provident Overlapping Resolution Log;
- ▶ Bates Nos. 6673 - 6676: Report On Daily Evals Submitted;
- ▶ Bates Nos. 6677 - 6682: Medical Records Dept-Daily Final Claim Report;
- ▶ Bates Nos. 6683 - 6793: Search Warrant Affidavit for various Provident Health Care related locations

Enclosed please also find two CDs that contain recorded conversations between Defendant Crossan and Defendant Manalang.

I am in the process of having final transcripts prepared of the foreign language conversations the government intends to use in its case-in-chief and I will provide those finalized transcripts to you upon receipt. However, the government will produce draft transcripts and/or summaries of the recorded conversations upon your written request if you agree, in writing, that you will not use such draft transcripts and/or summaries for purposes of impeachment or in any other way during the course of trial to question, contradict or impeach the integrity of the final transcripts. I prefer that such agreement not be sent to me via e-mail.

The government also hereby gives notice that it may seek to introduce the other crimes, wrongs or acts committed by defendants which are referenced in the enclosed documents pursuant to Rule 404(b) of the Federal Rules of Evidence.

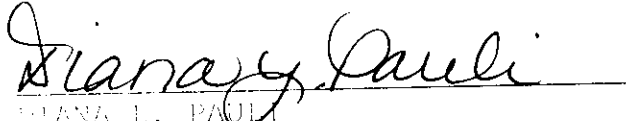
The enclosed materials and any future discovery provided to you which may exceed the scope of discovery mandated by the Federal Rules of Criminal Procedure, federal statute or relevant case law is provided voluntarily and solely as a matter of discretion. By producing such materials to you, the government does not waive its right to object to any future discovery requests beyond the ambit of its legal obligations.

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With this letter the government requests all reciprocal discovery to which it is entitled under Rules 16(b) and 26.2 of the Federal Rules of Criminal Procedure. The government also requests notice of any intention of your client to rely on an entrapment defense, or a defense involving mental condition or duress defense.

Very truly yours,

THOMAS P. O'BRIEN  
United States Attorney

  
DIANA L. PAULI  
Assistant United States Attorney  
Major Frauds Section

Enclosures



U. S. Department of Justice

*United States Attorney  
Central District of California*

*Diana L. Pauli  
Assistant United States Attorney  
Narcotics Section  
(213) 894-3899 Fax (213) 894-0142*

*1400 U.S. Courthouse  
312 North Spring Street  
Los Angeles, California 90012*

November 18, 2008

Cariton F. Gunn  
Deputy Federal Public Defender  
321 East Second Street  
Los Angeles, California 90012

Re: United States v. Melba Leonado Crossan et al.,  
CR 07-1077-GAF

Dear Counsel:

Enclosed please find a replacement CD that contains documents Bates Nos. 1 - 6793. **Please note that this production is covered by the Protective Agreement entered into between the parties as some of the documents contain Confidential Health Information.**

The government hereby gives notice that it may seek to introduce the other crimes, wrongs or acts committed by defendants which are referenced in the enclosed documents pursuant to Rule 404(b) of the Federal Rules of Evidence. The enclosed materials and any future discovery provided to you which may exceed the scope of discovery mandated by the Federal Rules of Criminal Procedure, federal statute or relevant case law is provided voluntarily and solely as a matter of discretion. By producing such materials to you, the government does not waive its right to object to any future discovery requests beyond the ambit of its legal obligations.


With this letter the government requests all reciprocal discovery to which it is entitled under Rules 16(b) and 26.2 of the Federal Rules of Criminal Procedure. The government also requests notice

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of any intention of your client to rely on an entrapment defense,  
or a defense involving mental condition or duress defense.

Very truly yours,

THOMAS P. O'BRIEN  
United States Attorney

A handwritten signature in black ink, appearing to read "Diana L. Paule", is written over a horizontal line.

DIANA L. PAULE  
Assistant United States Attorney  
Major Frauds Section

Enclosure

# EXHIBIT C

1 THE WITNESS: I do.

2 THE CLERK: Please be seated. Please state your  
3 full name and spell your last name for the record.

4 THE WITNESS: Michelle Bouchard, B-o-u-c-h-a-r-d.

5 MICHELLE BOUCHARD,

6 called as a witness by counsel for the Government,

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MCGAHAN:

10 Q. Good morning, Ms. Bouchard.

11 A. Good morning.

12 Q. What do you do for a living?

13 A. I'm an interpreter and translator.

14 Q. Who do you work for?

15 A. Language Liaisons.

16 Q. Is that your business?

17 A. Yes, it is.

18 Q. About how long have you had that business?

19 A. I've had it between 10 and 15 years approximately.

20 Q. And I'm not sure if I heard you. You said you're a  
21 transcriber/interpreter?

22 A. I'm an interpreter/translator/transcriber, yes.

23 Q. When you say "transcriber," could you describe what that  
24 means.

25 A. It means to listen to something, an audio, and put it in

1 writing verbatim.

2 Q. Okay. What languages do you speak, ma'am?

3 A. English and Spanish.

4 Q. And where were you born?

5 A. I was born in San Diego, California.

6 Q. Where did you grow up?

7 A. In Mexico.

8 Q. About how long did you live in Mexico?

9 A. Until I graduated from college. So 20-some years.

10 Q. Spanish is your native language?

11 A. Yes, it is.

12 Q. What is the highest level of education that you've  
13 received?

14 A. I have a degree in business.

15 Q. And have you received any specialized training to learn  
16 how to be an interpreter?

17 A. Besides the practical knowledge, yes. I graduated from  
18 the Southern California School of Interpretation.

19 Q. Do you provide interpretation services for any courts?

20 A. Yes, I do.

21 Q. Could you tell us which ones.

22 A. The immigration court.

23 Q. Okay. Any others?

24 A. Not at the moment, no.

25 Q. Are you certified by other courts, though, to provide



1 interpretation services?

2 A. No. I'm certified by the State.

3 Q. Okay. In the 15 years that you've owned Language  
4 Liaisons, have you been called to transcribe recorded  
5 conversations and then interpret those from Spanish into  
6 English?

7 A. Yes, I have.

8 Q. About how many occasions?

9 A. Thousands of tapes I have transcribed.

10 Q. Have you done that for the Drug Enforcement  
11 Administration?

12 A. Yes, I have.

13 Q. And were several of those -- were many of those tapes  
14 conversations of individuals engages in drug deals?

15 A. Yes.

16 MR. MCGAHAN: Your Honor, if the Court could place  
17 before the witness Government's Exhibit 5 and Government's  
18 Exhibit 6.

19 Your Honor, if Agent Wong could approach the  
20 witness and give the witness Government's Exhibit 6.

21 THE COURT: Yes, that's fine.

22 BY MR. MCGAHAN:

23 Q. Do you recognize Government's Exhibit 5?

24 A. Yes, I do.

25 Q. And what is Government's Exhibit 5?

1 A. It's a transcription of an audiotape.

2 Q. Okay. Of an audiotape, ma'am?

3 A. Yes.

4 Q. Okay. Could you look at Government's Exhibit Number 6.

5 Ma'am, I believe that's the package that Agent Wong  
6 just gave you.

7 A. Oh, I'm sorry. Yes. Yes.

8 Q. And do you recognize that?

9 A. Yes, I do.

10 Q. And what is Government's Exhibit Number 6?

11 A. It's an audio recording of exhibit -- it's the audio  
12 source of Exhibit 5.

13 Q. Okay. Could you explain to the ladies and gentlemen of  
14 the jury what you -- did you prepare Government's Exhibit  
15 Number 5?

16 A. No, I did not prepare it. I reviewed it.

17 Q. Okay. Could you tell us how that all came about. Did  
18 there come a time when you were asked to listen to certain  
19 audiotapes, your company, Language Liaisons, and then you  
20 prepared transcriptions?

21 A. Correct.

22 Q. Okay.

23 A. We are contacted by whatever agency, because we haven't  
24 just done it for the Drug Enforcement Administration. We  
25 have done it for other federal and local law enforcement

1 agencies as well. And we are notified to see of our  
2 availability to transcribe a certain amount of tapes, as we  
3 call them. And they will bring the tapes to us numbered with  
4 a case number and a tape number, and usually they were --  
5 they will identify the voices for us. Okay?

6 Q. Government's --

7 MR. GUNN: Your Honor, I'm sorry. May I consult  
8 with counsel. I want to make sure I understand what this  
9 exhibit is.

10 THE WITNESS: Certainly.

11 THE COURT: All right.

12 MR. GUNN: Thank you, Your Honor. Clarified.

13 BY MR. MCGAHAN:

14 Q. I'm sorry. Could you repeat your answer.

15 A. Certainly.

16 When we receive the tapes, usually the voices are  
17 identified for us, and that's why on all our transcriptions  
18 we put that we did not identify the voices, because we don't  
19 know who the participants are. And we listen to the tapes  
20 and transcribe them verbatim. What we hear, we put on there  
21 and include activities we might hear in the background.

22 Q. And if you can't hear something -- if you can't -- if  
23 you can't accurately transcribe what is being heard, how is  
24 that reflected on the transcript?

25 A. We put "unintelligible" or "inaudible." Only -- we only

1 transcribe if we can clearly hear what is being said.

2 Q. Okay. Did there come a time when you were asked to  
3 transcribe certain tapes in this case?

4 A. I'm sorry. I did not --

5 Q. Did there come a time when Language Liaisons was asked  
6 to provide transcription services for tapes in this case?

7 A. In 0194, yes.

8 Q. Okay. And if the Court could place before the witness  
9 Government's Exhibit Number 8, 10, 12, 14, and 16.

10 THE CLERK: Counsel, there is nothing in 16.

11 MR. McGAHAN: Did it fall out, Mr. Reddick?

12 THE CLERK: It fell out.

13 THE WITNESS: Yes.

14 BY MR. McGAHAN:

15 Q. Do you recognize those exhibits?

16 A. Yes, I do.

17 Q. And could you describe what they are.

18 A. These are audio recordings that we transcribed and  
19 translated.

20 Q. When you say "we," Ms. Bouchard, who else are you  
21 referring to?

22 A. To Ms. Nancy Delarosa.

23 Q. Is she an employee of yours?

24 A. Yes, she is.

25 Q. And did she prepare some of the original transcripts of

1 these recordings?

2 A. Yes, she did.

3 Q. Ms. Bouchard, at the time that you were originally asked  
4 to prepare transcripts, were you told that these transcripts  
5 would be the final trial certified transcripts?

6 A. No.

7 Q. Okay. Could you explain for us the difference  
8 between -- could you explain for us when you get tapes, what  
9 you do, and if you do anything else once you realize the  
10 transcripts are going to be used in a trial.

11 A. Okay. Depends on the amount of time we have. I don't  
12 recall very clearly, but I believe this was a rush request to  
13 get these tapes done. And usually what we do if it's a rush  
14 request is we prepare a draft and just submit it to our  
15 client, and when they are going to be used as exhibits in  
16 trials, they are again reviewed before they are submitted as  
17 exhibits.

18 Q. When that first set of transcripts was originally  
19 prepared, Ms. Bouchard, did you go back and review it at that  
20 time and compare it against the audio recordings? In other  
21 words, did you review Ms. Delarosa's work at that time?

22 A. No, I did not.

23 Q. Did there come a time when you went back and reviewed  
24 all of the transcripts?

25 A. Yes, I did.

1 Q. Okay. Did you go back and listen to the audio  
2 recordings?

3 A. Yes, I did.

4 Q. Now, ma'am, at the time that Ms. Delarosa prepared the  
5 original of Government's Exhibit Number 5, was that prepared  
6 from an audiotape?

7 A. Yes, it was.

8 Q. Okay. Did there come a time when you reviewed that  
9 exhibit and compared it against Government's Exhibit  
10 Number 6?

11 A. Yes.

12 Q. When you -- when you reviewed Government's Exhibit  
13 Number 5, were you able to hear things that Ms. Delarosa had  
14 originally not been able to hear?

15 A. Yes.

16 Q. And when you went back and reviewed Government's Exhibit  
17 Number 6, the compact disc, did you hear additional  
18 materials?

19 A. Yes, I did.

20 Q. These were materials that you originally could not hear?

21 A. Correct.

22 Q. Now, did you receive any input from anyone else in  
23 connection with the preparation of these transcripts?

24 A. I don't understand.

25 Q. Did you receive -- did you receive any paper or any

1 suggestions from others who might have been involved in  
2 those -- in the conversations as to what was being said and  
3 heard?

4 A. Well, I did receive some suggested changes on the pages.  
5 What I did at that time was again listened to the tape to see  
6 if, in fact, they might have heard something I did not. And  
7 in some instances they were correct, and in others I could  
8 not accept the changes.

9 MR. McGAHAN: Could the clerk place before the  
10 witness Government's Exhibit Number 66.

11 BY MR. McGAHAN:

12 Q. Do you recognize that, ma'am?

13 A. Yes, I do.

14 Q. And what is that?

15 A. A suggested change.

16 Q. Did you receive -- in addition to Government -- is that  
17 a fair and accurate -- when you say "suggested change," what  
18 do you mean by that? Could you explain that more fully.

19 A. Well, somebody obviously reviewed it and they thought  
20 that these were things that they were hearing that I did not.

21 Q. Okay. Did you receive -- is that a fair and accurate  
22 copy of the suggested changes to Government's Exhibit  
23 Number 5?

24 A. Yes.

25 MR. McGAHAN: Move to admit Government's Exhibit

1 66.

2 THE COURT: Any objection?

3 MR. GUNN: Your Honor, I do have an objection, if  
4 we could be heard at sidebar on this.

5 THE COURT: All right.

6 (The following was held at sidebar:)

7 MR. GUNN: Your Honor, these are changes -- well,  
8 these are alternative transcripts of portions that I sent to  
9 Mr. McGahan. I am concerned that the implication of the  
10 testimony that's brought out, which I think Mr. McGahan  
11 intends to try to bring out, is that we agree with everything  
12 else in the transcript, and that's not the case. I mean, all  
13 this shows is these are the things we chose to bring up.  
14 And --

15 THE COURT: What's your objection?

16 MR. GUNN: My objection is it's irrelevant, and the  
17 prejudicial effect and confusion under Rule 403 outweighs  
18 whatever little evidence it has, because it's going to create  
19 this implication that nothing else in the transcripts is  
20 disagreed with by the defense. Plus the fact that this is in  
21 response --

22 THE COURT: Keep your voice down.

23 MR. GUNN: Plus the fact that this is in response  
24 to the first version, not any of the later versions.

25 THE COURT: What is this being offered for?



1 MR. MCGAHAN: Your Honor, it's being offered to  
2 show that Ms. Bouchard considered many things when she was  
3 preparing these transcripts for trial certification, and if  
4 there's going to be a suggestion that somehow others were not  
5 able to make a contribution, I want to make a record --

6 THE COURT: A --

7 MR. MCGAHAN: Other parties who were participants  
8 in this conversation, I want to make a record that there was  
9 a full and free opportunity for the defense to make  
10 suggestions that would have been considered by Ms. Bouchard.

11 MR. GUNN: I don't think that's totally true,  
12 Your Honor. We got the first version. We had an  
13 opportunity -- we weren't asked to make comments on that. We  
14 were asked to propose alternative transcripts. I said,  
15 "These are the alternatives we might introduce." We never  
16 had an opportunity because we got them so late to respond to  
17 the second and third versions.

18 THE COURT: Listen. This is argument. Other than  
19 offering this in at this point, what are you going to ask  
20 her?

21 MR. MCGAHAN: Well, I'm -- I want to move the  
22 transcripts into evidence at this point. I'm just creating a  
23 record, Your Honor.

24 THE COURT: Okay. I'm going to overrule the  
25 objection subject to -- before you comment on it --

1 MR. MCGAHAN: Yes, sir.

2 THE COURT: -- where they came from and what --  
3 before you make any comment on this, I want to hear from  
4 counsel.

5 MR. MCGAHAN: Very well, Your Honor.

6 THE COURT: So provisionally I'm overruling the  
7 objection, but no inference is to be made of what  
8 significance there is to this particular transcript.

9 MR. MCGAHAN: Very well, Your Honor --

10 MR. GUNN: And, Your Honor, with respect to the  
11 transcripts being moved in, I'm sure Mr. McGahan is going to  
12 tie them in eventually with the agent and informant. For the  
13 record, can I reserve an objection in the event there's some  
14 problem with the tying in?

15 THE COURT: Well, I assume -- of course, yes.

16 MR. GUNN: Okay.

17 THE COURT: I assume -- well, the transcript --  
18 okay. You're going to move the transcripts in through her?

19 MR. MCGAHAN: Yes.

20 THE COURT: Okay. And then you're going to  
21 connect -- I assume at some point you're going to -- the  
22 tapes themselves, you're going to have them authenticated  
23 that's their voices on the tapes?

24 MR. MCGAHAN: Absolutely, Your Honor.

25 THE COURT: Okay.

1 MR. GUNN: Just as long as I have -- if there's  
2 some problem, I can reserve that.

3 THE COURT: Okay.

4 (The following was held in the presence of the jury:)

5 BY MR. MCGAHAN:

6 Q. Ms. Bouchard, drawing your attention back to  
7 Government's Exhibit Number 5, I believe you said it had been  
8 prepared originally by Nancy Delarosa.

9 A. Correct.

10 Q. And you reviewed that?

11 A. Yes, I did.

12 Q. Did you hear additional materials?

13 A. Yes, I did.

14 Q. Are those now reflected in Government's Exhibit  
15 Number 5?

16 A. Yes, they are.

17 Q. Is Government's Exhibit Number 5 an accurate reflection  
18 of what you heard from Government's Exhibit Number 6?

19 A. Yes, it is.

20 Q. And did you write down what you heard on Government's  
21 Exhibit Number 6 to Government's Exhibit Number 5? In other  
22 words, from the compact disc to the paper?

23 A. Yes.

24 Q. Did you then translate from Spanish into English?

25 A. Correct.

1 MR. McGAHAN: Your Honor, request permission to  
2 move into evidence Government's Exhibit Number 5.

3 MR. GUNN: Subject to the reservation I indicated  
4 at sidebar, Your Honor.

5 THE COURT: All right. It will be received.

6 (Exhibit 5 was received.)

7 MR. McGAHAN: And at this time could the clerk  
8 place before the witness Government's Exhibit Number 7, 9,  
9 11, 13, and 15.

10 THE WITNESS: Yes.

11 BY MR. McGAHAN:

12 Q. And can you go through each exhibit and identify what it  
13 is, starting with Government's Exhibit Number 7.

14 A. This is a transcription and translation of Tape Number 2  
15 in Case R103.

16 MR. GUNN: Your Honor, I'm sorry. I did not hear  
17 that answer.

18 THE COURT: You have to keep your voice up.

19 THE WITNESS: I'm sorry. It's transcription and  
20 translation of Tape Number N-2 in Case 0194.

21 BY MR. McGAHAN:

22 Q. And did you originally prepare Government's Exhibit  
23 Number 7?

24 A. Yes, I did.

25 Q. Okay. And what is Government's Exhibit Number 7? It's

1 a transcription of --

2 A. Translation of an audiotape.

3 Q. Is that both a transcription and interpretation?

4 A. And a translation, yes.

5 Q. From which language into which?

6 A. From Spanish into English.

7 Q. And Government's Exhibit Number 9, what is that?

8 A. Again, it's transcription of an audiotape, and it is  
9 from Spanish into English.

10 Q. Okay. Did you prepare that?

11 A. Yes, I did.

12 Q. By the way, I meant to ask you this before, but on  
13 Government's Exhibits Number 5 and 7, are your initials on  
14 those exhibits?

15 A. Yes, they are.

16 Q. Is Government's Exhibit Number -- excuse me. Could you  
17 identify Government's Exhibit Number 11.

18 A. Yes. Also a transcription and translation of an  
19 audiotape.

20 Q. Okay. Did you prepare that?

21 A. Yes, I did.

22 Q. Okay. Are your initials on Government's Exhibit Number  
23 11?

24 A. Yes.

25 Q. And Government's Exhibit Number 13. Could you identify

1 that.

2 A. Yes. Again, a transcription and translation of an  
3 audiotape.

4 Q. And did you prepare that?

5 A. No, I did not.

6 Q. Who originally prepared that?

7 A. Nancy Delarosa.

8 Q. In connection with preparing those transcripts for trial  
9 certification, did you review it?

10 A. Yes, I did.

11 Q. Did you make any -- did you make any changes to it,  
12 ma'am?

13 A. I do not recall.

14 Q. And Government's Exhibit Number 15, ma'am, if you could  
15 identify that.

16 A. Yes. Transcription and translation of an audiotape.

17 Q. Did you prepare that?

18 A. No, I did not.

19 Q. Who originally prepared that?

20 A. Nancy Delarosa.

21 Q. Did you review it?

22 A. Yes, I did.

23 Q. And, ma'am, when I'm asking you if you reviewed it, did  
24 you go back and listen to the original tape --

25 A. Correct.

1 Q. -- and then review the transcription?

2 A. Correct.

3 Q. And in certain circumstances you heard things that  
4 Ms. Delarosa didn't hear?

5 A. Correct.

6 Q. Okay. I'm not sure if I asked you about Government's  
7 Exhibit Number 13.

8 A. Yes.

9 Q. I did ask you?

10 A. Yes.

11 Q. Ma'am, all the transcripts that you prepared --  
12 Government's Exhibit 7, 9, 11, 13, and 15 -- are those fair  
13 and accurate reflections of what you heard on those  
14 audiotapes?

15 A. Yes.

16 Q. And is the translation from Spanish into English, is  
17 that a fair -- is that a fair translation from Spanish into  
18 English?

19 A. Yes.

20 MR. MCGAHAN: At this time, Your Honor, I'd move  
21 into evidence Government's Exhibit 7, 9, 11, 13, and 15.

22 MR. GUNN: No objection, Your Honor, subject to the  
23 reservation noted.

24 THE COURT: That's fine. They'll be received.

25 MR. MCGAHAN: No further questions at this time.

1 MR. GUNN: Can I have one minute, Your Honor.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. GUNN:

5 Q. Ms. Bouchard -- actually, strike that.

6 The transcripts you've testified about that were  
7 just introduced into evidence were not the first transcripts  
8 you've provided to the Government for these tapes; correct?

9 A. These are the same ones, but they have been reviewed,  
10 yes.

11 Q. Well, they haven't just been reviewed. They've been  
12 changed, have they not?

13 A. Yes.

14 Q. So these transcripts are different than the ones you  
15 originally provided to the Government; correct?

16 A. Yes.

17 Q. In particular, the ones you originally provided to the  
18 DEA; correct?

19 A. Yes.

20 Q. The transcripts you've testified about you provided just  
21 last week; correct?

22 A. I'm -- not all of them, I don't think so.

23 Q. Many of them you provided just last week; correct?

24 A. Correct.

25 Q. And you provided other transcripts, what I might refer



1 to as original transcripts, back in June, did you not?

2 A. Yes.

3 Q. And those transcripts were prepared by your business,  
4 Language Liaisons; correct?

5 A. Correct.

6 Q. They were prepared in accord with your business's  
7 ordinary business practice and procedure; correct?

8 A. Correct.

9 Q. They were prepared in accordance with your usual  
10 standards; correct?

11 A. For a draft, correct.

12 Q. Well, you testified at a previous hearing in this matter  
13 about drafts, did you not?

14 A. Yes.

15 Q. And you testified -- that was under oath; correct?

16 A. Correct.

17 Q. It was in a prior hearing in this matter; correct?

18 A. Correct.

19 Q. And you testified about -- you were asked questions  
20 about these transcripts, the original transcripts; correct?

21 A. Yes.

22 Q. And you were asked questions about whether -- for  
23 example, you were asked, "Is it fair to say that you don't  
24 put out transcripts from your organization unless you're  
25 convinced they rise to the level of completeness and accuracy

1 that you believe you demand from your product?"

2 You were asked that question; correct?

3 A. Yes.

4 Q. And you said, "In general, yes"; correct?

5 A. Yes.

6 Q. And then you were asked if that was true with the first  
7 set of transcripts in this case; correct?

8 A. Yes.

9 Q. And you testified that you can't recall if there was a  
10 rush; correct?

11 A. Correct.

12 Q. And then you were asked, "But even if there was a rush,  
13 you wouldn't put out something that didn't come up to your  
14 standards." Correct?

15 A. Correct.

16 Q. And you testified, "No. Usually those are delivered as  
17 drafts." Correct?

18 A. Correct.

19 Q. You said, "They are delivered as drafts if there's not  
20 enough time"; correct?

21 A. Correct.

22 Q. And you were asked, "If there is something on them that  
23 indicates 'Drafts.'" Correct?

24 A. Correct.

25 Q. And you said, "Usually that's correct"?

1 A. Yes.

2 Q. Then were you asked, "These weren't delivered as  
3 drafts," weren't you?

4 A. I believe so.

5 Q. And you said you didn't recall; correct?

6 A. Correct.

7 Q. So when you testified last week, you didn't recall  
8 whether these were delivered as drafts; correct?

9 A. Correct.

10 Q. And you testified that generally something that's  
11 delivered as a draft has "Draft" stamped on it; correct?

12 A. Correct.

13 MR. GUNN: Your Honor, could I have some exhibits  
14 marked.

15 THE COURT: Yeah, they'll be marked next in order.

16 MR. GUNN: Actually, I have them premarked,  
17 Your Honor.

18 THE COURT: I'm sure you do.

19 MR. GUNN: If I could step over and get my other  
20 file.

21 If I can hand a set to the Government, Your Honor.  
22 These are marked as 101, 102, and 103.

23 If I could approach the clerk.

24 THE COURT: You may approach the clerk.

25 BY MR. McGAHAN:

1 Q. Would you look at Government Exhibits 101, 102, and 103,  
2 Ms. Bouchard.

3 THE COURT: First of all, I don't think they're the  
4 Government's exhibits.

5 MR. GUNN: I'm sorry. I misspoke.

6 THE COURT: And, secondly, they're going to be  
7 marked next in order. So whatever your last exhibit number  
8 was, these will be marked consecutively in order.

9 MR. GUNN: All right. I'm sorry. Then I guess it  
10 would be 176, 177, and 178.

11 THE COURT: That's fine.

12 BY MR. GUNN:

13 Q. Would you cross out the numbers on those exhibit tags,  
14 Ms. Bouchard, and put 176, 177, and 178. I believe they each  
15 have an exhibit tag on the back.

16 THE COURT: That's all right. We'll take care of  
17 it.

18 MR. GUNN: Thank you, Your Honor.

19 THE WITNESS: Do you want me to do it?

20 THE COURT: That's all right. We'll take care of  
21 it.

22 BY MR. GUNN:

23 Q. I think the Judge has said they'll take care of it.

24 170 -- 101, Ms. Bouchard, is the original  
25 transcript you provided in June, or your office provided in

1 June, what is Government Exhibit 5. Correct?

2 A. Yes.

3 Q. And it's not stamped "Draft," is it?

4 A. No, it is not.

5 Q. Defense Exhibit 177, which on your copy is marked as  
6 102, is the original copy provided in June of what's marked  
7 as Government Exhibit 11; is that correct?

8 A. Yes.

9 Q. And it's not marked as "Draft," is it?

10 A. No, it is not.

11 Q. Defense Exhibit 178, which you have in front of you  
12 marked as Defense Exhibit 103, is the original transcript of  
13 what's marked as Government Exhibit 15; is that correct?

14 A. Correct.

15 Q. And it's also not stamped as "Draft," is it?

16 A. No.

17 MR. GUNN: Your Honor, I'd offer defense exhibits  
18 176, 177, and 178 into evidence.

19 MR. McGAHAN: Request a sidebar, Your Honor.

20 THE COURT: Do you have an objection?

21 MR. McGAHAN: Yes, Your Honor. I object.

22 THE COURT: What's the objection?

23 MR. McGAHAN: Prior notice, Your Honor.

24 MR. GUNN: Actually -- well, sorry.

25 THE COURT: We'll take it up outside the presence

1 of the jury; so we'll defer the ruling on these until the  
2 next recess.

3 BY MR. GUNN:

4 Q. Now, the transcripts in front of you, the original  
5 transcripts that are marked as Defense Exhibits 176, 177, and  
6 178, you used those as sort of a base when you prepared the  
7 modified transcripts that are marked as the Government  
8 exhibits; correct?

9 A. Correct.

10 Q. You basically followed along on these original  
11 transcripts as you listened to the tapes, sort of checked  
12 whether you thought they were still accurate, and made  
13 changes where you thought they were necessary.

14 A. Correct.

15 Q. So these weren't -- these original transcripts weren't  
16 the complete information you relied on, but they were part of  
17 the information you relied on in creating your final  
18 transcripts.

19 A. Yes.

20 Q. Now, did you testify on direct that the original  
21 transcripts were all prepared by Nancy Delarosa?

22 A. Not all of them, no.

23 Q. In fact, they weren't; isn't that correct?

24 A. Not all of them, no.

25 Q. In fact, one of these three original transcripts --

1 Defense Exhibits 176, 177, and 178, one of those was actually  
2 prepared by you back in June; correct?

3 A. Correct.

4 Q. And it's not stamped as "Draft," is it?

5 A. No, it is not.

6 Q. You consider Ms. Delarosa one of your best employees;  
7 correct?

8 A. Yes, I do.

9 Q. She's the one employee whose opinion you'll rely on when  
10 transcribing and translating yourself; correct?

11 A. Correct.

12 Q. Now, going back to Government's exhibits that you've  
13 testified about, the Government exhibit transcripts --

14 A. Yes.

15 Q. -- those have been modified or had changes made from the  
16 original transcripts; correct?

17 A. Correct.

18 Q. And you made those changes or at least a number of them  
19 in response to handwritten changes that were on copies of the  
20 original transcripts that the DEA sent back to you; isn't  
21 that correct?

22 A. It was prompted by those; that I go back and relisten.

23 Q. All right. The DEA sent copies of the transcripts back  
24 to you; right?

25 A. Yes.

1 Q. And they had little handwritten notes about things they  
2 thought should be changed; right?

3 A. Correct.

4 Q. And they wanted you to consider those changes; correct?

5 A. Yes, they wanted me to relisten to the tapes.

6 Q. Now, this isn't the first time you've done transcripts  
7 for the DEA, is it?

8 A. No, it is not.

9 Q. How long have you been doing transcripts for them?

10 A. For approximately ten years.

11 Q. And I assume they pay you for your work?

12 A. Yes, they do.

13 Q. What percentage of your transcribing business in, say,  
14 the last year is from the DEA?

15 A. In the last year, I would say 5 percent.

16 Q. And what income have you earned from your DEA work?

17 A. In the last year?

18 Q. Yes.

19 A. Maybe \$7,000.

20 Q. What about the last five years? What's the average been  
21 over the last five years?

22 A. Last five years, very little as well.

23 Q. Well, what's "very little"? Is \$7,000 very little?

24 A. For a whole year? Yes.

25 Q. You also have a DEA clearance, don't you?



1 A. Yes.

2 Q. You have what is called a, quote, "DEA," quote,  
3 "national security clearance"; correct?

4 A. Correct.

5 Q. That's significant enough to you that you actually list  
6 it in your resume, isn't it?

7 A. Yes.

8 Q. So when you got these changes from the DEA, you said you  
9 considered them; correct?

10 A. Yes, I did consider them.

11 Q. And you made many of the changes they requested, didn't  
12 you?

13 A. I made several.

14 Q. You made quite a few, didn't you?

15 A. I don't recall how many of them, but when I heard it and  
16 I agreed with it, I made it. If I did not hear it, I did not  
17 agree with it, I rejected it.

18 Q. And you made quite a few, did you not?

19 A. I don't know what you would quantify as "quite a few."

20 Q. All right. Some of them made the tapes arguably -- at  
21 least look significantly worse for Mr. Beltran, didn't they?

22 A. I have no idea.

23 Q. You have no idea whether any of the changes made the  
24 tapes look worse?

25 A. No, I don't.

1 Q. Well, a number of those changes inserted either indirect  
2 or direct references to drugs that weren't there before;  
3 isn't that correct?

4 A. A couple of them, I believe, did.

5 MR. GUNN: Your Honor, I am at a point in my  
6 cross-examination now where I'd be using the exhibits I've  
7 offered into evidence, 101 -- I'm sorry. 176, 177, and 178.

8 THE COURT: All right. Let me see counsel at  
9 sidebar.

10 As matter of fact, ladies and gentlemen, why don't  
11 we take our final break, and we'll come back here at 11:45.

12 (The following was held out the presence of the jury:)

13 THE COURT: You may step down.

14 MR. GUNN: Maybe that's implicit, but if the  
15 witness could be excused during our argument.

16 THE COURT: I'm not sure there's going to be much  
17 argument.

18 MR. GUNN: Well --

19 THE COURT: That's fine. Excuse me for one minute.  
20 All right.

21 MR. GUNN: Your Honor, what I was going to do at  
22 this point was proceed to cross-examine her about some of the  
23 specific changes she made. I think these transcripts are  
24 admissible for at least three reasons: First of all, I did  
25 indicate to Mr. McGahan when we spoke last week at some point

1 that I might offer -- that I would be offering the original  
2 transcripts, as I call them, into evidence. So as far as any  
3 notice issue, he has notice.

4 And I think the Government's not in any real  
5 strongly founded position, in light of the fact I'm getting a  
6 late-modified transcript even last weekend.

7 With respect to why they're admissible, they're  
8 admissible in light of Ms. Bouchard's testimony for at least  
9 three reasons: First of all, I believe they're admissible --  
10 Rule 705 of the Federal Rules of Evidence as data or  
11 information she relied on in creating her final opinion, the  
12 final transcript. She basically admitted that she went along  
13 with these, listening to the tape, and used them as a guide.

14 Second, Your Honor, I think they're admissible as  
15 prior inconsistent statements. She may claim there was a  
16 draft. I think there is at least evidence from which the  
17 jury could find that's not true, in light of her prior  
18 testimony and her normal procedure of putting "Draft" on  
19 them. Frankly, even if it is a draft, I think it's a prior  
20 inconsistent statement.

21 Third, Your Honor, I think they're admissible as  
22 substantive evidence under the case law on when and why  
23 foreign language transcripts can be admitted as opposed to  
24 just the tapes. The case law says that because jurors can't  
25 understand foreign language tapes, you don't put the tapes

1 in, and the Government is allowed to put in translated  
2 transcripts.

3 I think critical to that case law are two caveats:  
4 First, that the defense be able to cross-examine about the  
5 transcripts; and, second, that the defense be able to put in  
6 alternative transcripts.

7 All the alternative transcripts that are available  
8 to put in -- I think alternative transcripts that were  
9 originally prepared by the same transcriber are -- should be  
10 admitted.

11 THE COURT: Let me ask you something. Was there a  
12 date by which you were to provide notice to the Government if  
13 you were going to offer alternative transcripts?

14 MR. GUNN: There was never any date in any written  
15 order, but I orally --

16 THE COURT: My -- that's not exactly my question.

17 MR. GUNN: Well --

18 THE COURT: Was there a date that you and  
19 Mr. McGahan agreed upon by which you would provide him with  
20 notice if you intended to offer alternative transcripts?

21 MR. GUNN: There were two dates. First of all,  
22 there was a date of mid August, and that was where all he --  
23 and as of mid August, all we had were the original  
24 transcripts, and I was prepared to go with the original  
25 transcripts with respect to these few small changes I sent

1 him that are marked as Government Exhibit 66.

2 The second date, Your Honor, was by Friday of last  
3 week I was supposed to -- in response to his new transcripts,  
4 by Friday of last week I was supposed to tell him about any  
5 transcripts I was going to be proposing.

6 When I spoke with him on the phone on Thursday, I  
7 told him I might be -- I wasn't going to be producing any new  
8 transcripts of my own, but I would very possibly be putting  
9 in the original transcripts the Government had provided to  
10 me.

11 So those were the dates that were out there,  
12 Your Honor.

13 THE COURT: Okay. Do you have anything else?

14 MR. GUNN: No, Your Honor.

15 THE COURT: All right. Does the Government wish to  
16 be heard?

17 MR. GUNN: I --

18 THE COURT: Sorry. Did you finish?

19 MR. GUNN: With respect to that issue, yes. I was  
20 going into some additional exhibits I was going to be using,  
21 depending on the Court's ruling.

22 THE COURT: All right.

23 MR. McGAHAN: Your Honor, when I spoke with  
24 Mr. Gunn, obviously I misunderstood him, because it never  
25 was, in my mind, that these original transcripts would be

1 introduced as substantive evidence and would go back to the  
2 jury. I have been told repeatedly that alternative  
3 transcripts would not be prepared.

4 It's one thing to cross-examine a witness with a  
5 document. It's another thing to have it substantively  
6 introduced into evidence to go back with the jury.

7 I was assured on numerous occasions there would not  
8 be alternative transcripts, and that is exactly what is  
9 happening here. These are substantively admitted into  
10 evidence and go back with the jury.

11 How could they be anything else other than an  
12 alternative transcript? Cross-examination and impeachment is  
13 one thing. Having it go back as an alternative transcript is  
14 quite another. I never had sufficient notice that these  
15 would be used as substantive evidence, and I object to their  
16 introduction. He can cross-examine with them. I have no  
17 objection to that. But these going back to the jury, I  
18 strongly object to that.

19 THE COURT: Well, what I'm going to do is I'll  
20 allow you to cross-examine her with them, if that's what you  
21 want to do. And then as to what, if any, transcripts are  
22 going back with the jury, we'll rule on that before they go  
23 back.

24 MR. GUNN: That's fine, Your Honor.

25 THE COURT: Yes.

1 MR. GUNN: I'm going to be cross-examining her  
2 about particular changes she made in response to the DEA's  
3 suggestions.

4 THE COURT: Okay. Well, you know this other issue  
5 of 66, to the extent you want to cross-examine her about  
6 changes that the DEA gave her, I guess it seems to me that  
7 the Government ought to be able to cross-examine -- well, I  
8 guess to say that they also -- she also made changes that  
9 were given to her by the defense.

10 MR. GUNN: All right. As long as it's -- well, if  
11 they can establish that. But they'd also have to  
12 establish -- it would also need to be made clear that they  
13 were changes that were proposed only after the original  
14 transcripts. We never proposed changes after the new ones.

15 THE COURT: You can ask her whatever you want.

16 MR. GUNN: She doesn't have any personal knowledge  
17 of that, Your Honor. She just knows what she had gotten from  
18 Mr. McGahan. So she's not going to be able to say they're  
19 the defense.

20 THE COURT: Well, maybe not.

21 MR. GUNN: And I'd ask that Mr. McGahan be sure to  
22 establish -- I know she has no foundation of personal  
23 knowledge as to that, and I think Mr. McGahan should not be  
24 allowed to ask her, unless I'm wrong about that.

25 MR. McGAHAN: Your Honor, I was hoping that the

1 defense would stipulate to that, since it's a document that  
2 they gave us.

3 Now, I hope that the lawyers don't become witnesses  
4 in this case, but there is no question that that is a  
5 document that was furnished to the Government as proposed  
6 alternative transcripts or suggested changes.

7 MR. GUNN: Then the circumstances under which it  
8 was provided, when it was provided, what it was provided for,  
9 and in response to what would have to be brought out as well,  
10 Your Honor.

11 THE COURT: Well, you two can decide whatever you  
12 want to do, whatever you can stipulate to. If you can't  
13 stipulate, you know, that's up to you, and all I do is call  
14 them as I see them.

15 MR. GUNN: All right.

16 THE COURT: So that's up to you.

17 MR. GUNN: And, Your Honor, in asking her about  
18 changes she made, I will -- I have sets of pages for her to  
19 compare. So it's easier than her having to thumb through  
20 every transcript, and that's going to be my next set of  
21 exhibits. I just wanted -- I don't -- I guess the ruling  
22 about whether those are admitted into evidence would be  
23 related to the ruling about the originals, but I'll just use  
24 them -- for today I'll just use them to cross-examine her.

25 THE COURT: Well, listen. As I understand -- this



1 next round of exhibits that you want to use to cross-examine  
2 her with, as I understand it, those are part and parcel of  
3 the original exhibits -- of your other exhibits, and you are  
4 just doing this for her ease of reference.

5 MR. GUNN: Correct. There's a page from the new  
6 one, a page from the old one.

7 THE COURT: Okay. So to the extent that they're  
8 just being used for her ease of reference, I don't think  
9 they'll -- there is no need for those to go in, if, in fact,  
10 they're simply duplicates of what's in these exhibits. So  
11 you can mark them for identification, and they'll be used for  
12 ease of reference. But --

13 MR. GUNN: All right.

14 THE COURT: -- if they're already a duplicate,  
15 there's no point of putting those in, assuming that these  
16 come in.

17 MR. GUNN: All right.

18 THE COURT: All right. Anything else?

19 MR. McGAHAN: Nothing else, Your Honor. Thank you.

20 MR. GUNN: Just one thing, Your Honor.

21 THE COURT: Yes.

22 MR. GUNN: I had premarked these. I will renumber  
23 them, if the Court wants. I apologize. I had brought that  
24 up last week, and I thought it was okay to do that, just  
25 because there -- I thought it would be simpler to have them

1 premarked, but does the Court want me to change the numbers?

2 THE COURT: What have you given the clerk? Does he  
3 have a list of --

4 MR. GUNN: I just gave the clerk a list of those  
5 exhibits, and I had things premarked as 101 through --

6 THE COURT: When did you give the clerk those?

7 MR. GUNN: Just now, because they're impeachment  
8 exhibits, Your Honor.

9 THE COURT: Okay. Let me see what you have here.  
10 See, it works a lot easier if we get these things and I don't  
11 have surprises. I hate surprises.

12 MR. GUNN: I'm sorry, Your Honor. I just didn't  
13 want to signal my cross-examination before I did. I didn't  
14 know how to do it without --

15 THE COURT: Okay. That's fine.

16 MR. GUNN: I tried to --

17 THE COURT: Okay. So the way they are now, they  
18 are consecutively numbered?

19 MR. GUNN: Correct. "Consecutively" in terms of  
20 the order I'm going to use them in? Yes.

21 THE COURT: Well --

22 MR. GUNN: They are consecutively numbered.

23 THE COURT: All of your exhibits are consecutively  
24 numbered. In other words, you're not jumping around. You've  
25 got a series of 100, a series of 200, a series of 300.

1 MR. GUNN: Actually, I have some pretty good  
2 guesses about things I'm going to use to cross-examine the  
3 informant, and I can change the numbering on those, though,  
4 if I need to.

5 THE COURT: Okay. All right. If you want to use  
6 these numbers, that's fine. But whatever else you're going  
7 to use should follow these. In other words, if you stopped  
8 here at 124, whatever it is that is going to come next will  
9 be 125.

10 MR. GUNN: All right. All right.

11 THE COURT: Okay?

12 MR. GUNN: Then if I change things, I'm in -- does  
13 the Court want me to premark? I'm thinking it would be  
14 helpful to premark.

15 THE COURT: I don't think it really at this point  
16 saves us much time. If you can, that's fine.

17 MR. GUNN: But if I -- and if I premark some things  
18 I envision as 125 through whatever, then if before I get to  
19 those, if I'm examining a witness, like I do with  
20 Mr. Hinojosa about his report, then that will need to be a  
21 later number. That's all right?

22 THE COURT: If there is something that -- if there  
23 is something that comes up -- I think that's part of the  
24 problem with premarking.

25 MR. GUNN: That's correct. If you want the

1 number -- that's why I created a few gaps. But if the Court  
2 doesn't want me to do that, I just won't premark.

3 THE COURT: I'll let you work it out with the  
4 clerk. If you guys can't resolve it, then I'll resolve it.

5 MR. GUNN: All right, Your Honor.

6 THE COURT: Okay. Anything else?

7 MR. McGAHAN: No. No. I was standing up because  
8 you're leaving, Your Honor.

9 THE COURT: Okay.

10 (Recess taken.)

11 THE COURT: Let me just ask. When these  
12 transcripts were given to the Government by the defense, what  
13 did you tell the translator?

14 MR. GUNN: You mean the suggestions, Your Honor?

15 THE COURT: Yes.

16 MR. McGAHAN: You're referring to Government's  
17 Exhibit Number 66?

18 THE COURT: Yes.

19 MR. McGAHAN: May I confer with Agent Wong, since  
20 he had the direct communication?

21 THE COURT: Okay.

22 MR. McGAHAN: Your Honor, Agent Wong represented to  
23 the secretary at Language Liaisons that they came from the  
24 defense. However, Michelle Bouchard will testify, I believe,  
25 she didn't know where they came from. To this day, she does

1 not know exactly who suggested a particular change. The  
2 point I would like to make through Government's Exhibit 66 is  
3 to simply show that the defense had a full and fair  
4 opportunity to participate in the creation of these  
5 transcripts, and if they had problems with them --

6 THE COURT: How do you anticipate doing that?

7 MR. MCGAHAN: By subpoenaing the individual from  
8 the defense side who prepared them. I mean, if there's going  
9 to be an issue -- well, I would first establish it through  
10 Ms. Bouchard that she would have listened to any professional  
11 who had interest --

12 THE COURT: That's fine. We can take this up  
13 later.

14 Okay. Let's get the witness back in here and get  
15 the jury.

16 MR. GUNN: These are the rest of the defense  
17 exhibits for this witness, Your Honor. If I can approach.

18 THE COURT: That's fine.

19 MR. GUNN: And, Your Honor, for the record, are we  
20 going to -- I apologize for the numbering situation again.  
21 Are we going to leave the three that are identified as 103,  
22 104, and 105 or 176, 177, 178?

23 THE COURT: They've been marked 176, 177, and 178.

24 MR. GUNN: So we'll leave these that have been  
25 premarked, and those can be referred to as 104 through 124.

1 THE COURT: Uh-huh.

2 MR. GUNN: Thank you.

3 (The following was held in the presence of the jury:)

4 THE COURT: All right.

5 MR. GUNN: Thank you, Your Honor.

6 I've given the clerk Defense Exhibits 104 through  
7 124. If those can be handed to the witness.

8 BY MR. GUNN:

9 Q. Ms. Bouchard, I'm going to refer to those one by one.  
10 So if you can just sort of have them to your side there.

11 Before the break I was asking you about changes you  
12 made to the transcripts in response to the DEA suggestions.

13 Do you recall that?

14 A. I made some changes. I don't know the actual  
15 suggestion, but I made some changes.

16 Q. Well, wait a minute. You got copies of the original  
17 transcripts back with some handwritten changes --

18 A. Correct.

19 Q. -- sometime in late August or September; correct?

20 A. Correct.

21 Q. And you knew those came from the DEA; correct?

22 A. I received them from the DEA, but I do not know who made  
23 the changes.

24 Q. Your belief was that it was one of the agents or the  
25 informant, even though you didn't know that; correct?

1 A. No, I did not. As far as I'm concerned, it could have  
2 been another interpreter.

3 Q. Do you remember your prior testimony in this case?

4 A. I do not know who made the changes.

5 Q. That wasn't my question, Ms. Bouchard.

6 Do you remember your prior testimony in this case?

7 A. Yes.

8 Q. Do you remember me asking you whether you at least  
9 thought that the changes had been suggested or made by one of  
10 the agents or the informant?

11 Do you remember me asking you that?

12 A. Most likely the informant, not the agents.

13 Q. Do you remember me asking you that question?

14 A. Something to that effect.

15 THE COURT: Do you have a copy of the transcript?

16 MR. GUNN: Yes, I do, Your Honor.

17 THE COURT: Provide it to the witness, if you're  
18 going to ask her that.

19 MR. GUNN: Should we have this marked for  
20 identification as next in order, Your Honor?

21 THE COURT: Yes.

22 MR. GUNN: If I can have one minute, I have an  
23 exhibit tag, Your Honor. I believe that would be 179,  
24 Your Honor.

25 BY MR. GUNN:

1 Q. Do you have Defense Exhibit 179 in front of you,  
2 Ms. Bouchard?

3 A. Yes.

4 Q. Would you turn to Page 8.

5 A. Yes.

6 Q. And would you go to Line 20.

7 THE COURT: No, Counsel.

8 MR. GUNN: Oh.

9 THE COURT: Ask the question. If you want to ask  
10 her whether this refreshes her recollection, you may do that.  
11 And if it doesn't, we'll take it from there.

12 MR. GUNN: All right, Your Honor.

13 BY MR. GUNN:

14 Q. Actually, if you'd go over to Page 9, Lines 4 through 6.

15 Do you see that?

16 A. Yes.

17 Q. Does that refresh your recollection about whether,  
18 during your prior testimony, you were asked whether you  
19 thought it was probably either the informant or the agent who  
20 was involved in the conversation?

21 A. Yes.

22 Q. And you said that that was correct.

23 A. Yes. And now I recollect that I said that --

24 Q. You've answered my question.

25 Now, going back to those changes or suggested



1 changes that were sent to you and some of which you made, I'd  
2 like to ask you about a few of those.

3 Would you, first of all -- well, one thing you did  
4 was in at least two places, you inserted references to,  
5 quote, "the stuff," unquote, where there was either  
6 "unintelligible" or something else; right?

7 A. If I don't know where it is --

8 Q. All right.

9 A. I don't remember what changes I made, specifically.

10 Q. All right. Would you look at defense -- you don't  
11 remember whether you made that change somewhere?

12 A. I don't recall.

13 Q. Would you look at Defense Exhibit 104.

14 A. Very well.

15 Q. That's two pages from two different versions of the  
16 transcript for Tape Number N-4, which is Defense Exhibit 177  
17 and Government Exhibit 11; correct?

18 A. Yes.

19 Q. And the page on the bottom is the page from the original  
20 transcript, and the page on the top is the page from the new  
21 transcript; correct?

22 A. It appears that way, yes.

23 Q. And in the old transcript, the fifth entry from the  
24 bottom, reflects RB saying, "We have (unintelligible) in  
25 hand." Correct?

1 A. Yes.

2 Q. And in the new transcript, you change "unintelligible"  
3 to "the stuff"; correct?

4 A. Yes.

5 Q. Would you look at Defense Exhibit 105.

6 A. Yes.

7 Q. That's two pages from -- that's pages from, first, the  
8 original transcript; and, second, your modified transcript  
9 for Tape Number N-10; correct?

10 A. Yes.

11 Q. And in the original transcript, first entry at the top,  
12 you had, "In case of anything, he'll leave those guys  
13 automatically"; correct?

14 A. Yes.

15 Q. And you'll change the words "he'll leave" to "the  
16 stuff"; correct?

17 A. Correct.

18 Q. Would you look at Defense Exhibit 106.

19 A. Yes.

20 Q. Defense Exhibit 106 is also a page from the original  
21 transcript and a page from a new transcript; correct?

22 A. Yes.

23 Q. And that's for the transcripts for the tape that's  
24 numbered N-4; correct?

25 A. Yes.

1 Q. And in the sixth entry from the top, there's a place  
2 where RB is saying, "With a (unintelligible) to see it and  
3 that"; right?

4 A. Yes.

5 Q. And then CS is responding, "He first wanted to see  
6 a (unintelligible) and then"?

7 A. Yes.

8 Q. And you changed both "unintelligibles" there to "photo";  
9 correct?

10 A. Yes.

11 Q. And you know "photo" is something that agents claim is  
12 code language for drugs, don't you?

13 A. Yes.

14 Q. Would you look at Defense Exhibit 107.

15 A. Yes.

16 Q. Defense Exhibit 107 is also two pages of transcript, one  
17 from an original version and one from a new version; correct?

18 A. Yes.

19 Q. That's for the tape numbered N-10; correct?

20 A. Yes.

21 Q. And the third entry from the top on the original  
22 transcript reads, "I took out from the (unintelligible) in  
23 one piece what I have right now"; correct?

24 A. Yes.

25 Q. And in the new transcript you changed "unintelligible"

1 to "pound"; correct?

2 A. Yes.

3 Q. Would you look at Defense Exhibit 108. Do you see the  
4 bottom entry in Defense Exhibit -- well, strike that.

5 Defense Exhibit 108 is also an original page and a  
6 new page from the transcript for -- a page from the original  
7 transcript and a page from the new transcript for the tape  
8 numbered N-10; correct?

9 A. Yes.

10 Q. And in the original transcript, at the bottom Beltran  
11 says, quote, "I wasn't just going to come and bring the whole  
12 (unintelligible) for one," et cetera; right?

13 A. Uh-huh. Yes.

14 Q. And, again, you changed "unintelligible" to "pound,"  
15 didn't you?

16 A. Yes.

17 Q. Would you look at Defense Exhibit 109.

18 That's also a page from the original transcript and  
19 a page from the new transcript for the tape numbered N-10;  
20 correct?

21 A. Yes.

22 Q. And if you look at the third entry on the original  
23 transcript.

24 A. Yes.

25 Q. And that refers to the "whole (unintelligible)"; right?

1 A. Yes.

2 Q. And, again, you changed "unintelligible" to "pound,"  
3 didn't you?

4 A. Yes.

5 Q. Would you look at Defense Exhibit 110.

6 A. Yes.

7 Q. And Defense Exhibit 111.

8 A. Okay.

9 Q. These are transcripts where you changed "unintelligible"  
10 to "sample," didn't you?

11 A. Yes.

12 Q. And they're both original pages -- pages from the  
13 original transcript and pages from the new transcript for the  
14 tape numbered N-10?

15 A. Yes.

16 Q. By the way, that would be Defense Exhibit 178 and  
17 Government Exhibit 15; correct?

18 A. Government Exhibit 15.

19 Q. And Defense Exhibit 178 would be the original; correct?

20 A. I don't recall those numbers. I just have 10 --

21 Q. Do you have Defense Exhibit 178 in front of you?

22 A. I have 101, 102, and 103.

23 Q. The one that's marked 103, that got renumbered to 178;  
24 correct?

25 A. Yes.

1 Q. And you also made other changes that focused on  
2 Mr. Beltran; correct?

3 A. And whoever was speaking. I don't know specifically on  
4 which voices.

5 Q. All right. Would you look at Defense Exhibit 112.

6 A. Yes.

7 Q. That's, again, an original page -- a page from the  
8 original transcript of a tape and a page from the new  
9 transcript of the same tape; correct?

10 A. Yes.

11 Q. That's the tape numbered N-4; correct?

12 A. Yes.

13 Q. And you -- in the fourth entry from the bottom of the  
14 original transcript, you have Mr. Beltran saying, "I say  
15 those things," et cetera; correct?

16 A. Yes.

17 Q. And you changed, "I say those things," to, "I get those  
18 things"; correct?

19 A. Yes.

20 Q. Would you look at Defense Exhibit 113. And that's,  
21 again, for Tape N-4, a page from the original transcript and  
22 a page from the new transcript; correct?

23 A. I'm sorry. N-14?

24 Q. N-4. I'm sorry. Government Exhibit 113.

25 A. Okay. Thank you. Yes.

1 Q. That's a page from the original transcript and a page  
2 from the new transcript for Tape N-4; correct?

3 A. Yes.

4 Q. And in the middle of the page on the old transcript it  
5 says -- has RB saying, "We're just gonna (unintelligible.)"  
6 Correct?

7 A. Yes.

8 Q. And you change that to, "We're just gonna call him when  
9 it's ready so he can come over, tell him." Correct?

10 A. Yes.

11 Q. And would you look at Defense Exhibit 114.

12 A. Yes.

13 Q. That's, again, a page from the original transcript and a  
14 page from a new transcript; correct?

15 A. Correct.

16 Q. For the tape numbered N-10.

17 A. Correct.

18 Q. And there's not an entry in the original transcript that  
19 says "Cell phone ringing"; correct?

20 A. Yes.

21 Q. You changed that to "Beltran's cell phone ringing,"  
22 didn't you?

23 A. Obviously, yes.

24 Q. Now, you've never met Mr. Beltran, have you?

25 A. No, I have not.

1 Q. You've never been with him when his cell phone rang.

2 A. No, I have not.

3 Q. So you don't know what the ring of his cell phone sounds  
4 like, do you?

5 A. He's the one who answered it.

6 Q. You don't know what the ring of his cell phone sounds  
7 like, do you?

8 A. No, I do not, because I heard it on the tape, and he  
9 heard it on the phone.

10 Q. You didn't indicate that in the first version of the  
11 transcript, did you?

12 A. I don't believe I did this transcription.

13 Q. Ms. Delarosa --

14 A. When I reviewed it, I was able to identify. Because  
15 when the phone rang, it was Mr. Beltran who answered it.

16 Q. You didn't -- that's not indicated in the first version  
17 of the transcript; correct?

18 A. No, it's not.

19 Q. And Ms. Delarosa did that transcript; correct?

20 A. I believe so.

21 Q. And she's your best employee; correct?

22 A. Yes.

23 Q. She's the one employee you have whose opinion you rely  
24 on in transcribing and translating; correct?

25 A. Correct.



1 Q. Now, so far all the transcript modifications that I've  
2 asked you about have been changes in the transcripts for the  
3 tapes numbered N-4 and N-10; correct?

4 A. Yes.

5 Q. You also made changes in the transcript for the tape  
6 numbered N-1, didn't you?

7 A. Yes, I did.

8 Q. And that transcript you actually modified twice; isn't  
9 that correct?

10 A. Yes, I did.

11 Q. The first modification was in response to handwritten  
12 notations the DEA sent you, along with handwritten notations  
13 for the other transcripts like N-4 and N-10; correct?

14 A. Correct.

15 Q. Then you made a second modification when the prosecutor  
16 asked you to go over and listen to the original tape at the  
17 DEA office.

18 A. Yes.

19 Q. And that was after I had cross-examined you about the  
20 transcript at a hearing last week, was it not?

21 A. Yes.

22 Q. The bottom line, though, is that there are three  
23 transcripts for this tape; correct?

24 A. Yes.

25 Q. The first one is the one that's marked as Defense

1 Exhibit 101 that's been renumbered as 176; correct?

2 A. Yes.

3 Q. The third one is the one you testified about on direct  
4 examination, Government Exhibit 5.

5 A. Correct.

6 Q. And then there was a second one in between in response  
7 to the DEA's handwritten notations -- correct? -- before you  
8 went over and listened to the tape?

9 A. Yes.

10 Q. Would you look at Defense Exhibit 115.

11 A. Yes.

12 Q. Does that appear to be the second version of the  
13 transcript?

14 A. It appears to be.

15 Q. And that was prepared by you; correct?

16 A. It was reviewed by me, yes.

17 Q. Based on the original transcript and the DEA's  
18 handwritten notations.

19 A. Based on my listening to the tape to review it, yes.

20 Q. And having the original transcript in front of you;  
21 right?

22 A. Yes.

23 Q. And having the DEA's suggested changes in front of you;  
24 correct?

25 A. To verify them, yes.

1 Q. So you were considering all three of those things;  
2 correct?

3 A. I was not considering them. I was listening to the  
4 tape -- yeah, I guess I was considering to see if I could  
5 hear it, yes.

6 Q. Now, I'd like to go over these changes with you in two  
7 stages. First I'm going to ask you about some of the changes  
8 you made from the first version to the second version, and  
9 then I'm going to ask you about some of the changes you made  
10 from the second version to the third version. All right?

11 A. All right.

12 Q. Starting with the first set of changes from the first  
13 version to the second version, those were in response to  
14 handwritten notations on copies that DEA sent back to you;  
15 correct?

16 A. Some of them -- I had reviewed the tape, and some of the  
17 changes had already been made by me.

18 Q. Very few; right?

19 A. I can't remember how many.

20 Q. But the actual second transcript was produced in  
21 response to changes that the DEA -- was produced after the  
22 DEA sent you changes to consider.

23 A. Yes. Yes.

24 Q. And those changes didn't add references to drugs as  
25 much, did they?

1 A. I --

2 MR. McGAHAN: Objection.

3 THE WITNESS: -- don't recall. I don't recall.

4 BY MR. GUNN:

5 Q. They did add references to Mr. Beltran's brother and  
6 places in Mexico and the Midwest, didn't they?

7 A. The changes?

8 Q. Yes.

9 A. I don't recall what the changes were.

10 Q. All right. Well, would you look at Defense Exhibit 116.

11 Do you have that there?

12 A. Yes.

13 Q. And that, again, is a page from an original transcript  
14 and a page from the second version of the tape N-1; correct?

15 A. Yes.

16 Q. And in the original transcript, third entry down, you  
17 have Beltran saying, "It's been a while since  
18 (unintelligible)." Correct?

19 A. Yes.

20 Q. And you changed that to, "It's been a while since  
21 (unintelligible) my brother." Correct?

22 A. Yes.

23 Q. Would you look at Defense Exhibit 117.

24 A. Okay.

25 Q. That, again, is two pages, one from the original

1 transcript from the tape numbered N-1 and one for the second  
2 version of the transcript from the tape numbered N-1;  
3 correct?

4 A. Yes.

5 Q. And in the fourth entry down on the original transcript  
6 you had, "It belonged to my mother (unintelligible) my  
7 brother." Correct?

8 A. Yes.

9 Q. And you changed that to, "It belonged to my brother."  
10 Correct?

11 A. "(Unintelligible) it belonged to my brother," yes.

12 Q. The "unintelligible" at the end of the line was already  
13 there; right?

14 A. Yes.

15 Q. So the change you made was to delete "my mother  
16 (unintelligible)" and leave just "my brother."

17 A. Apparently so, yes.

18 Q. The change you made was to say whatever it was belonged  
19 to the brother instead of the mother?

20 A. Well, what I heard is that the mother wasn't even  
21 brought up. It wasn't --

22 Q. That wasn't my question.

23 THE COURT: Counsel. Excuse me, Counsel. If you  
24 have an objection to the answer, address it to the Court, not  
25 the witness.

1 MR. GUNN: I apologize, Your Honor.

2 THE COURT: All right. Go ahead.

3 BY MR. GUNN:

4 Q. The change you made was to change, quote, "My mother  
5 (unintelligible) my brother," unquote, to just, quote, "my  
6 brother," unquote. Correct?

7 A. Correct.

8 Q. Now, there were also several changes you made that  
9 inserted references to places in Mexico or the Midwest,  
10 weren't there?

11 A. Yes.

12 Q. Would you look at Defense Exhibit 118.

13 A. Yes.

14 Q. And, again, that's actually two pages from an original  
15 transcript for N-1 and one page from the second version of  
16 the transcript for N-1; correct?

17 A. Correct.

18 Q. And at the bottom of the -- from the third entry from  
19 the bottom on the first page from the original transcript  
20 over onto the first entry on the next page, you have,  
21 "(Unintelligible,) (unintelligible,) (unintelligible,)  
22 (coughs,) what was I going to tell you," et cetera,  
23 et cetera." Correct?

24 A. Yes.

25 Q. And you changed the "unintelligibles" to have the CS

1 saying, "Jalisco" and Mr. Beltran saying "Jalisco." Correct?

2 A. Yes.

3 Q. And Jalisco, by the way, is a state in Mexico; correct?

4 A. That's where I'm from, yes.

5 Q. And would you look at Defense Exhibit 119. That, again,  
6 is an original page from the -- a page from the original  
7 version of the transcript for the tape N-1, and a page from  
8 the second version of the transcript for the tape for N-1;  
9 correct?

10 A. It appears to be that way.

11 Q. Do you need to check it against the original transcript,  
12 or do you have doubts?

13 A. It appears to be the same as the others.

14 Q. Okay. And in the original transcript, in the third  
15 entry from the top, you had "No. Over in the  
16 (unintelligible.)" Correct?

17 A. Yes.

18 Q. And you changed that to, "No. Over in the" --

19 MR. MCGAHAN: Objection. Facts not in evidence.

20 THE COURT: Referring to Defense Exhibit 119?

21 MR. GUNN: Yes.

22 THE COURT: Is the original -- well, let me see  
23 counsel at sidebar.

24 (The following was held at sidebar:)

25 THE COURT: Okay. Has the Government offered this

1 transcript in yet?

2 MR. McGAHAN: No, Your Honor.

3 MR. GUNN: These are -- I've offered them. This is  
4 Defense Exhibit --

5 THE COURT: I understand this is Exhibit 119, and  
6 this is supposed to reflect what?

7 MR. GUNN: This is a page from Defense Exhibit 176,  
8 and the second page is a page from Defense Exhibit 115, the  
9 second version of N-1. This is the first version of N-1 and  
10 the second version of N-1 that she identified.

11 THE COURT: And this is supposed to correspond to  
12 Government's exhibit what?

13 MR. McGAHAN: Five.

14 MR. GUNN: Right.

15 THE COURT: Okay. Five is in?

16 MR. McGAHAN: Yes, Your Honor.

17 THE COURT: Okay. And your objection is?

18 MR. McGAHAN: I objected, Your Honor, because  
19 Mr. Gunn was suggesting that she had prepared this document.  
20 She did not. It was Nancy Delarosa, and the form of  
21 Mr. Gunn's question suggested that first she wrote, "No.  
22 Over there" and the "unintelligible." She did not. It was  
23 another transcriber.

24 MR. GUNN: I'll rephrase the question.

25 THE COURT: All right.



1 (The following was held in the presence of the jury:)

2 BY MR. GUNN:

3 Q. Let me go back to Defense Exhibit 119. All right?

4 A. Yes.

5 Q. That's a page from an original transcript and the second  
6 version of the transcript from N-1; right?

7 A. Yes.

8 Q. And the original transcript, the third entry from the  
9 top has, quote, "No. Over in the (unintelligible)"  
10 et cetera." Correct?

11 A. Yes.

12 Q. And you changed that to, quote, "No. Over in Omaha."  
13 Correct?

14 A. Yes.

15 Q. Would you look at Defense Exhibit 120. That, again, is  
16 a page from the original transcript for N-1 and a page from  
17 the second version of the transcript for N-1; correct?

18 A. Yes.

19 Q. And in the -- the fourth entry from the bottom of the  
20 original transcript reads "unintelligible"; correct?

21 A. Yes.

22 Q. And you changed that to, "I was in Chicago"; correct?

23 A. Yes.

24 Q. There was also a place when you prepared this second  
25 version of N-1 where you inserted a vague reference to a,

1 quote, "contact," unquote, and the number, quote, "13,"  
2 unquote, wasn't there?

3 A. Is it on here?

4 Q. Well, okay. Would you look at Defense Exhibit 121.

5 A. Okay.

6 Q. That, again, is a page from the original transcript for  
7 N-1 and a page from the second version of the transcript for  
8 N-1; correct?

9 A. Yes.

10 Q. And the second part of the entry, in approximately the  
11 middle of the original page has a sentence at the end that  
12 says, "Um, (unintelligible) with him (unintelligible.) It  
13 will always be at (unintelligible.)" Correct?

14 A. Yes.

15 Q. And you changed that to, "Um, a contact that brings it  
16 here at 13," did you not?

17 A. Yes.

18 Q. Then you made additional changes to this transcript when  
19 you went -- went and listened to the original tape after my  
20 cross-examination last week; correct?

21 A. Correct.

22 Q. And those included -- again, you added a number of  
23 things; correct?

24 A. Correct.

25 Q. And that included several references you added about a

1 travel or trip somewhere, didn't they?

2 A. I can't remember what I added, but if you show them to  
3 me, yes, I can testify --

4 Q. Would you look at Defense Exhibit 122.

5 A. Yes.

6 Q. And that's, again -- that's a page from the second  
7 version of the transcript that you did for the Tape N-1 and a  
8 third version of the transcript you did; right?

9 A. Yes.

10 Q. And in the original transcript, the fourth entry from  
11 the bottom; and the new transcript, the first entry at the  
12 top, there's a discussion of Chicago; right?

13 A. Yes.

14 Q. There's a reference to Chicago?

15 A. Yes.

16 Q. And the original transcript, about the middle of that  
17 entry it says, "I was gonna tell you that if," et cetera,  
18 et cetera, and then, "Go to Chicago," and so on. Right?

19 A. Yes.

20 Q. You changed that to, "I was going to ask you"; correct?

21 A. Yes.

22 Q. Would you look at Defense Exhibit 123.

23 A. Yes.

24 Q. That, again, is a page from the second version of the  
25 transcript you did for the tape numbered N-1 with a page from

1 the third version of the transcript you did for that tape;  
2 correct?

3 A. Yes.

4 Q. And a little less than halfway down in the page from the  
5 original transcript you have CS saying, "Oh, you wanted us to  
6 go (unintelligible) today or what." Correct?

7 A. Yes.

8 Q. And you changed that to, "Oh, you wanted us to go on the  
9 trip today or what"?

10 A. Yes.

11 Q. Would you look at Defense Exhibit 124.

12 A. Yes.

13 Q. That is a page from the second version of the transcript  
14 you did for the tape numbered N-1, and two pages that overlap  
15 for the third version -- from the third version; correct?

16 A. Yes.

17 Q. From the fourth entry on -- going to the page from the  
18 original to the second version, the fourth entry through the  
19 seventh entry you have CS saying, "That's why  
20 (unintelligible,)" Beltran saying, "Why." CS saying,  
21 "(Unintelligible,)" and Beltran saying, (Unintelligible)  
22 because (unintelligible.)" Correct?

23 MR. McGAHAN: Same objection as before, Your Honor.

24 BY MR. GUNN:

25 Q. Actually, you prepared the second version of the

1 transcript for N-1; correct?

2 A. I reviewed it, yes.

3 MR. GUNN: May I proceed, Your Honor?

4 MR. McGAHAN: Withdraw the objection, Your Honor.

5 THE COURT: That's fine. Go ahead.

6 BY MR. GUNN:

7 Q. The change you made has the CS saying, "How much will  
8 you pay me for that?" Beltran saying, "For what?" And the  
9 CS saying, "For that trip"; correct?

10 A. Correct.

11 Q. All of the changes I've just questioned you about were  
12 made after you received the suggestions from the DEA about  
13 possible changes; correct?

14 A. No.

15 MR. GUNN: No further questions.

16 **REDIRECT EXAMINATION**

17 BY MR. McGAHAN:

18 Q. Ms. Bouchard, just to review. When the original  
19 transcripts were prepared earlier in the summer, did you  
20 understand that they were to be the transcripts that would be  
21 used at trial in this case?

22 A. No.

23 Q. When you received suggested changes, did you have any  
24 idea where they came from?

25 A. I had no idea.

1 Q. You did not know?

2 A. I know where they came from. It came from the special  
3 agent, but I did not know who had made the changes.

4 Q. You thought it might be the confidential source?

5 MR. GUNN: Objection, Your Honor. Leading.

6 THE COURT: Sustained.

7 THE WITNESS: I thought it could have been a number  
8 of people.

9 MR. GUNN: I believe there's an objection,  
10 Your Honor.

11 THE COURT: There was. The objection is sustained.  
12 So ask another question.

13 BY MR. MCGAHAN:

14 Q. Who did you think may have made those changes?

15 A. Either -- most likely a participant in the conversations  
16 or another interpreter. I have no idea.

17 Q. Now, ma'am, you're a professional transcriber and  
18 interpreter; correct?

19 A. Correct.

20 Q. What's your -- what is the most important factor for you  
21 in preparing a transcript?

22 A. That they are faithful to the original source and that  
23 the translation is faithful to the transcription.

24 Q. Are you certified to translate in federal immigration  
25 court?

1 A. Yes, I am.

2 Q. Are you certified to translate in the state courts?

3 A. Not in the state courts, no.

4 Q. What would happen if you were -- what would happen if  
5 you were ever to have been found to have been falsely  
6 transcribing something that wasn't there? In other words,  
7 writing down something that you, yourself, did not believe in  
8 good faith you heard?

9 A. I would be disqualified.

10 MR. GUNN: Objection, Your Honor. Calls for  
11 speculation. Move to strike.

12 THE COURT: Overruled.

13 BY MR. MCGAHAN:

14 Q. Now, when you received suggested changes from Special  
15 Agent Wong, did Special Agent Wong tell you what the case was  
16 about?

17 A. No.

18 Q. Did he provide you any information whatsoever as to what  
19 this case was about?

20 A. I had no idea.

21 Q. I'd like to turn your attention to Government's Exhibit  
22 Number 5 --

23 A. Yes.

24 Q. -- and specifically, ma'am, Page 7.

25 A. Yes.

1 Q. Did anybody ever tell you that this case had anything to  
2 do with Omaha, Nebraska, before you prepared this transcript?

3 A. No, not at all.

4 Q. And, in fact, were you the first person to hear the  
5 word "Omaha" on that tape?

6 A. Yes, I was.

7 Q. No one else ever suggested that the word "Omaha" should  
8 come into this tape, did they?

9 A. Never.

10 Q. Okay. Did anybody ever tell you that Chicago, Illinois,  
11 had anything to do with this case before you prepared these  
12 transcripts?

13 A. Not at all.

14 Q. Turning your attention -- bear with me.

15 Turning your attention to Page 5 of Government's  
16 Exhibit 5.

17 A. Yes.

18 Q. Okay. I'd like to draw your attention to the top of  
19 Government's Exhibit 5 under the entry Beltran. Could you  
20 read that into the record, ma'am.

21 A. The very top?

22 MR. GUNN: I'm sorry, Your Honor. Which page? I  
23 didn't catch the page --

24 MR. MCGAHAN: Page 5 of Government's Exhibit 5.

25 MR. GUNN: Okay.



1 THE COURT: Do have you it?

2 MR. GUNN: The whole page? All right.

3 BY MR. MCGAHAN:

4 Q. Could you read the first entry where it says "Beltran."

5 A. In English or in Spanish?

6 Q. In English.

7 A. "No. With -- I'm just beginning. They are gonna give  
8 me a lot. A contact here that brings it here at 13."

9 Q. Did anybody ever tell you that Mr. Beltran claimed he  
10 could obtain kilos of cocaine for \$13,000?

11 A. No.

12 Q. Was the word "13" ever mentioned to you by anyone before  
13 you translated this?

14 A. No.

15 Q. Now, Mr. Gunn brought out that there have been three  
16 versions of this transcript. I'd like to go through each and  
17 every one of those.

18 A. Certainly.

19 Q. Who created the first one, Ms. Bouchard?

20 A. Nancy Delarosa.

21 Q. Okay. And that was a tape-record -- that was an actual  
22 audio cassette?

23 A. Yes.

24 Q. And you, then, prepared another one when it became clear  
25 that these would be needed for trial?

1 A. Correct.

2 Q. Nancy Delarosa is a valued employee?

3 A. Yes, but we always review the work before it goes to  
4 trial.

5 Q. And, ma'am, without being too immodest, would you say  
6 you have better listening skills than Ms. Delarosa?

7 A. I have better listening skills than a lot of people,  
8 yes.

9 Q. Do you have more experience doing transcription work  
10 than Ms. Delarosa?

11 A. Yes.

12 Q. Now, you prepared -- now, at the time that you prepared  
13 the second version, you had not actually listened to the  
14 original compact disc --

15 A. No, I had --

16 Q. -- that was -- I'm sorry, Ms. Bouchard. Let me finish  
17 my question.

18 You had never listened to the original of the  
19 compact disc that recorded -- that recorded a conversation  
20 back in December, had you?

21 A. No, I had not.

22 Q. And you listened to that within the last week, didn't  
23 you?

24 A. Yes, I did.

25 Q. And you prepared a new transcript.

1 A. Yes, I did.

2 Q. And that was because you wanted to make sure that the  
3 transcript was as accurate as possible.

4 A. Correct.

5 MR. MCGAHAN: Your Honor, with the Court's  
6 permission, I'd like to put on the Senheiser device and have  
7 the jurors listen to Government's Exhibit Number 6.

8 THE COURT: Let's go to sidebar.

9 (The following was held at sidebar:)

10 THE COURT: Okay. You are wanting to play the  
11 entire --

12 MR. MCGAHAN: No, Your Honor, absolutely not. Just  
13 there are selected excerpts, the one that was brought up by  
14 Mr. Gunn wherein they have the transcript in front of them,  
15 and they can follow along. They will clearly hear the  
16 defendant inviting the confidential source to go to Omaha.  
17 They will clearly hear the defendant -- they're reading in  
18 Spanish. They'll be able to read what is being said. It's  
19 absolutely audible, as a suggestion has been created that  
20 these transcripts have been falsified, and I want the jury to  
21 hear for themselves what can be heard.

22 THE COURT: Okay. Go ahead.

23 (The following proceedings were held in open court:)

24 MR. MCGAHAN: Your Honor, with the Court's  
25 permission, if Agent Wong would begin handing out headphones,

1 and also to insert Exhibit Number 6. It may take us a couple  
2 minutes to set up the Senheiser device.

3 THE COURT: All right.

4 MR. MCGAHAN: Your Honor, with the Court's  
5 permission, I'd like to approach the bench and give  
6 Your Honor a set of headphones.

7 THE COURT: All right.

8 MR. MCGAHAN: And, Your Honor, with the Court's  
9 permission, if we could publish Government's Exhibit Number 5  
10 to each of the jurors as well so they can follow along in  
11 listening to Government's Exhibit Number 6.

12 Your Honor, does the Government have permission to  
13 publish Government's 5 to the jurors?

14 THE COURT: Yes. I -- yes, that's fine. I think  
15 I'm going to go ahead and give this instruction now that I've  
16 discussed with the parties.

17 MR. GUNN: Does the Court have the modified --

18 THE COURT: Yes.

19 Ladies and gentlemen, let me let you finish getting  
20 everything that's going to be given to you, and then I'm  
21 going to read an instruction to you.

22 All right. You are about to review an English  
23 translation of a transcript of a tape-recording in Spanish.  
24 Each of you has been given a transcript of a recording which  
25 has been admitted into evidence. The transcript is a

1 translation of the Spanish language tape-recording. Although  
2 some of you may know Spanish, it is important that all jurors  
3 consider the same evidence. This means you cannot use your  
4 own knowledge of Spanish in considering these transcripts or  
5 this transcript.

6 Now, there is disagreement between the parties  
7 about the accuracy of certain portions of the transcripts.  
8 You will hear testimony from persons who, because of  
9 education or experience, are permitted to state opinions as  
10 to the accuracy of the transcripts and the reasons for their  
11 opinions.

12 It is up to the jury to determine, based on the  
13 evidence presented to you, whether the translation is  
14 accurate. Opinion testimony should be judged just like any  
15 other testimony. You may accept it or reject it and give it  
16 as much weight as you think it deserves, considering the  
17 witness's education and experience, the reasons given for the  
18 opinion, and all other evidence in the case.

19 MR. McGAHAN: Your Honor, if I may, we're short one  
20 set of headphones. If I could borrow back the headphones  
21 from the Court.

22 Thank you, sir. May I approach.

23 If the ladies and gentlemen -- Your Honor, if the  
24 Court could direct the ladies and gentlemen of the jury to  
25 turn their headphones on, and if there's any juror whose

1 headphones are not working, I'd like to know that at this  
2 time.

3 THE COURT: Maybe you could tell them where the  
4 device is to turn it on.

5 MR. McGAHAN: There's a switch right here, and you  
6 should be hearing static coming from there.

7 MR. GUNN: May I inquire, Your Honor. I have my  
8 switch on Number 1. Do I need to --

9 MR. McGAHAN: One should be fine.

10 MR. GUNN: Thank you.

11 THE JUROR: No batteries.

12 MR. McGAHAN: Your Honor, can we take a brief  
13 recess to get a battery for juror -- I thought these all had  
14 batteries in them. I apologize, Your Honor.

15 THE COURT: That's fine. Why don't we take a --  
16 how long will it take? Ten minutes?

17 MR. McGAHAN: At most.

18 THE COURT: All right. Why don't we take a  
19 ten-minute recess.

20 Ladies and gentlemen, why don't you leave your  
21 headphones on your chairs, and we'll make sure that they've  
22 all got batteries and all working. So we'll come back here  
23 at five minutes to 1:00.

24 (The following was held out the presence of the jury:)

25 THE COURT: All right.

1 MR. McGAHAN: I apologize, Your Honor.

2 THE COURT: Five minutes to 1:00.

3 (Recess taken.)

4 THE COURT: All right. Are we --

5 MR. McGAHAN: The Government is ready, Your Honor.  
6 Thank you.

7 THE COURT: All right. Let's bring the jury back  
8 in.

9 (The following was held in the presence of the jury:)

10 THE COURT: All right. Everybody should have their  
11 headsets.

12 MR. McGAHAN: Your Honor, could you direct the  
13 ladies and gentlemen of the jury that when you put on the  
14 headset, this has got to be pointing towards that receiving  
15 device, and there may be some individual members of the jury  
16 who may need to move in, since line of sight to the reception  
17 gives -- line of sight to the transmitter gives the best  
18 reception.

19 THE COURT: All right.

20 MR. McGAHAN: And at this time, Your Honor, what  
21 I'd like to do is have Special Agent Wong play one excerpt so  
22 Ms. Bouchard can find out where we are in the transcript.  
23 I'd direct her attention to Page 5 of Government's Exhibit  
24 Number 5. And each of the jurors also has Government Exhibit  
25 5 before them and can follow along, reading in the Spanish.

1 THE COURT: Reading the English?

2 MR. McGAHAN: Well, it's actually going to be in  
3 Spanish, Your Honor. So it may make more sense for them to  
4 read along the best they can so they can pick out what is  
5 being said.

6 THE COURT: Okay.

7 MR. WONG: If I may, Your Honor, I just want to  
8 make sure that the members of the jury have the front pointed  
9 towards the receiver and then turn it on with this rotating  
10 switch on the bottom that also controls your volume as well.  
11 It should be on Channel 2.

12 MR. McGAHAN: Is everybody's receiver working?  
13 Okay.

14 Agent Wong, play about 10 seconds of it -- play  
15 about 10 to 15 seconds so Ms. Bouchard can find out where she  
16 is on Exhibit 5.

17 Go ahead and stop it, Agent Wong.

18 BY MR. McGAHAN:

19 Q. Ms. Bouchard, you don't have line of sight to a --

20 A. I can hear.

21 Q. Okay. Can you tell us on the transcript where we are.

22 A. We're right at "a contact here."

23 Q. Okay. This is at the top of Page 5?

24 A. Correct.

25 MR. McGAHAN: Agent Wong, if you could just -- so



1 in Spanish, that would be (in Spanish.)

2 THE WITNESS: I'm sorry.

3 BY MR. McGAHAN:

4 Q. So --

5 A. Yes. (In Spanish.)

6 MR. McGAHAN: Agent Wong, if you could back it up  
7 and replay it.

8 Okay. Agent Wong, if you could stop that.

9 BY MR. McGAHAN:

10 Q. Ma'am, what did you just hear?

11 A. Exactly what's written here.

12 Q. Is there any doubt in your mind that what you  
13 transcribed here is any different than what was just played  
14 on the Senheiser?

15 A. Not at all.

16 Q. Now, ma'am --

17 Agent Wong, if you could fast forward to about six  
18 minutes.

19 And I'm going to ask Agent Wong to play about five  
20 seconds so you can identify to the ladies and gentlemen of  
21 the jury where you are on the transcript of Exhibit 5.

22 MR. WONG: Ready?

23 MR. McGAHAN: Just play about five seconds.

24 THE WITNESS: Of what page? I'm sorry?

25 BY MR. McGAHAN:

1 Q. It should be -- we should be around Page -- around  
2 Pages -- low on Page 5, top of Page 6.

3 MR. WONG: Ready?

4 MR. McGAHAN: Go ahead.

5 Agent Wong, go ahead and stop it.

6 BY MR. McGAHAN:

7 Q. Ms. Bouchard, can you identify where we are on the  
8 transcript?

9 A. Yes. We are at the bottom of Page 5. It started with  
10 the (in Spanish.) Continuing on to the next page to where  
11 Mr. Beltran says (in Spanish) up to there we've heard.

12 MR. McGAHAN: Agent Wong, if you could go ahead and  
13 play the rest of it.

14 Agent Wong, could you stop it and back it up about  
15 20 seconds, and let's play it again. Stop it, back it up a  
16 little, and I want to play that -- play that once more.

17 And, Agent Wong, could you stop it, and let's just  
18 play it once more. I'd like to play it once more for the  
19 jury.

20 Agent Wong, if you could stop it. Go ahead and  
21 stop it.

22 BY MR. McGAHAN:

23 Q. Ma'am, I just want to stop you at this point.

24 When you translated on Page 5 of Government's  
25 Exhibit 5, that third entry under Beltran, "No, over in the

1 Omaha to help me drive. That's all," is that because you  
2 could hear it clearly coming on that compact disc?

3 A. Yes.

4 Q. And no one ever told you that the city of Omaha,  
5 Nebraska, had anything to do with this case?

6 A. Never.

7 Q. Okay. What I'd like to do is continue playing the tape.  
8 We're going to get to an entry later on in Government's  
9 Exhibit 5. I'm going to direct your attention to Page 18 of  
10 Government's Exhibit 5.

11 Agent Wong, if you could fast forward it a little,  
12 and then I'm going to ask the witness if she can identify  
13 where we are in the transcript.

14 MR. WONG: How much?

15 MR. McGAHAN: About 30, 40 seconds.

16 MR. WONG: Forward? Sorry.

17 BY MR. McGAHAN:

18 Q. Okay. Ms. Bouchard, can you tell the ladies and  
19 gentlemen of the jury where we are in this transcript, in  
20 relation to where we are on the compact disc.

21 A. We're on Page 18, fourth entry, where it says, "CS:  
22 (Unintelligible,) and I left you a message on the machine."

23 MR. McGAHAN: Could you back it up just a little,  
24 Agent Wong, before that passage.

25 Could you rewind that once more, Agent Wong.

1       Rewind -- yeah, just about 10, 15 seconds.

2               Okay. Let's go ahead and stop it.

3       BY MR. MCGAHAN:

4       Q.    Ma'am, what did you just hear?

5       A.    Exactly what is written here.

6       Q.    Okay. And before you had the entry, "Beltran: I was in  
7   Chicago" -- before that you had it, "UI." That's because you  
8   couldn't --

9               MR. GUNN: Objection, Your Honor. Leading the  
10   witness.

11              THE COURT: Sustained.

12       BY MR. MCGAHAN:

13       Q.    Why did you put the "UI" before the sentence, "I was in  
14   Chicago"?

15       A.    Because I could not understand what they were saying.

16       Q.    And when you reviewed Nancy Delarosa's draft, you  
17   heard -- did you hear "(In Spanish) in Chicago"?

18       A.    At some point I heard it, and I heard it again now.

19       Q.    Now, Mr. Gunn asked you a few other questions about some  
20   of the other things that -- some of the other revisions that  
21   were made. First of all, Ms. Bouchard, let me back up for a  
22   moment.

23              When you do the transcription and interpretation,  
24   tell us what machine you use to do that.

25       A.    I use a standard cassette transcriber that has a pedal

1 and has speed control; tone control; of course, volume  
2 control.

3 Q. Is it customary --

4 A. And a pedal. I'm sorry, yes.

5 Q. Is it customary for you when you do a transcription that  
6 you slow the speed down?

7 A. Sometimes.

8 Q. Does that aid in your ability to hear what is being  
9 said?

10 A. Yes, very much.

11 Q. And is it -- when you're preparing a transcription,  
12 Ms. Bouchard, do you frequently listen to the same passage  
13 again and again?

14 A. Absolutely.

15 Q. And did you do that when you reviewed Ms. Delarosa's  
16 work?

17 A. Yes, I did.

18 Q. Why did you do that?

19 A. To be certain. I'm going to be the one testifying, and  
20 I need to make sure that it's all 100 percent.

21 Q. You received handwritten suggestions from Agent -- did  
22 you receive handwritten suggestions from Agent Wong?

23 A. Yes, I did.

24 Q. And at some point you received Government's Exhibit  
25 Number 66?

1 A. I'm sorry. Which one is that?

2 Q. That's the paper with the interlineated changes. I  
3 believe it was introduced and admitted a little while ago.

4 A. With the handwritten changes?

5 Q. Yes.

6 A. I haven't seen that. Oh, yes. I'm sorry.

7 Q. Do you have that in front of you, ma'am?

8 A. Yes, I do.

9 Q. And did you consider those changes?

10 A. I considered them until I listened to the tape, yes, of  
11 course.

12 Q. Now, ma'am, as a professional, would you -- would you  
13 welcome consultation from anybody who had an interest in  
14 insuring the accuracy of those tapes?

15 A. Absolutely.

16 Q. And it doesn't matter what they would tell you. You  
17 would take it, and you would listen to it to see if their  
18 version accurately reflected what was on the tape?

19 A. Absolutely.

20 Q. And you received many -- did you receive many  
21 suggestions?

22 A. Yes. I received several, yes.

23 Q. Did you incorporate all of those suggestions?

24 A. No, I did not.

25 Q. Only those that you, yourself, could hear?

1 A. Absolutely.

2 Q. Just like you heard it today; correct?

3 A. Correct.

4 MR. GUNN: Objection, Your Honor. Leading the  
5 witness. Move to strike.

6 THE COURT: Overruled.

7 BY MR. MCGAHAN:

8 Q. Ma'am, Mr. Gunn asked you a few questions about your  
9 testimony, and directing your attention to Defense Exhibit  
10 179. Mr. Gunn directed your attention to Page 9, Line 4 of  
11 your testimony at a previous hearing on this matter.

12 Do you see that in front of you?

13 A. 179?

14 Q. Yes. It's a transcript.

15 A. Yes. Yes.

16 Q. And he asked you whether --

17 A. I'm sorry. On what page?

18 Q. Page 9, Line 4.

19 A. Yes.

20 Q. Now, you were asked about a question and answer that you  
21 gave that -- whether or not you thought it was probably the  
22 informant or the agent who was involved in the conversation.

23 Do you remember him asking you about that?

24 A. Yes.

25 Q. Directing your attention to Page 8 of Defense Exhibit

1 179, you were also asked a series of direct questions as to  
2 who put those changes to you; right? In other words, who  
3 gave you the suggested changes?

4 MR. GUNN: Objection, Your Honor. Leading.

5 THE COURT: He hasn't finished the question yet.

6 If you see him stand up, he's going to make an  
7 objection. So if you can just hold your answer until the  
8 Court's ruled on it.

9 THE WITNESS: Certainly.

10 THE COURT: So go ahead and finish the question.

11 MR. McGAHAN: I'll strike the last part and begin  
12 again, Your Honor.

13 THE COURT: All right.

14 BY MR. McGAHAN:

15 Q. Were you asked by Mr. Gunn in a previous hearing, "What  
16 was your understanding of who had suggested changes"?

17 A. That, I did not know.

18 Q. What was your exact answer?

19 A. I said, "I have no idea."

20 Q. Earlier Mr. Gunn asked you about your inclusion of the  
21 word "photo."

22 Did anybody ever tell you that there was drug slang  
23 used in this -- in these conversations prior to the time you  
24 prepared these transcripts?

25 A. No, I was not.



1 Q. Did anybody ever tell you to include the word "photo"?

2 A. No.

3 Q. If someone had said, "Put the word 'photo' in," but you  
4 didn't hear that, what would you have done?

5 A. Absolutely would not.

6 MR. McGAHAN: No further questions for this witness  
7 at this time.

8 THE COURT: All right.

9 RECROSS-EXAMINATION

10 BY MR. GUNN:

11 Q. Ms. Bouchard, just so we have the record completely  
12 clear about your prior testimony about who you thought had  
13 suggested these changes, do you have Defense Exhibit 179 in  
14 front of you?

15 A. Yes, I do.

16 Q. All right. Would you -- I want you to start on Page 8,  
17 Line 20. Look there to start, and we're going to go over  
18 onto Page 9, Line 6. All right?

19 A. Okay.

20 Q. You were first asked, "What was your understanding  
21 of" --

22 THE COURT: Excuse me, Counsel. You can ask her  
23 questions -- you can either do one of two things. If you  
24 want to -- I don't know what the purpose of this is, but you  
25 can either read the transcript, and that's it. Okay? So if

1 you want to ask her a question, if you want her to read that,  
2 refresh her recollection, that's fine. But we're not going  
3 to just simply confirm what's on this transcript.

4 MR. GUNN: So may I just read the transcript, then,  
5 Your Honor? That would be fine?

6 THE COURT: What page, and what's the line number?

7 MR. GUNN: Page 8, Line 20 through Page 9, Line 6.

8 THE COURT: Okay. Do you have any objection?

9 MR. McGAHAN: I don't see the relevance,  
10 Your Honor. I'd object on relevance grounds.

11 MR. GUNN: I think it completes -- well --

12 THE COURT: All right. You're reading from Page 8,  
13 Line?

14 MR. GUNN: 20, through Page 9, 6. And I offer it  
15 under the rule of completeness. I believe it is relevant.

16 THE COURT: All right. You may read it.

17 MR. GUNN: Thank you, Your Honor.

18 "QUESTION: What was your understanding of who had  
19 suggested these changes?

20 "ANSWER: I have no idea.

21 "QUESTION: Well, was it your understanding that it was  
22 people who are participants in the conversation?

23 "ANSWER: I have no idea who did it.

24 "QUESTION: Did you at least think it was people who were  
25 participants in the conversation?

1 "ANSWER: I thought so, yes.

2 "QUESTION: You thought it was probably either the  
3 informant or the agent who was involved in the conversation?

4 "ANSWER: Correct."

5 Thank you, Your Honor.

6 BY MR. GUNN:

7 Q. Just one other thing, Ms. Bouchard. You testified a  
8 little bit about -- in response to questions about whether  
9 you were certified in various courts; correct?

10 A. Correct.

11 Q. You're certified in federal immigration court?

12 A. Correct.

13 Q. You're not certified in state court --

14 A. No.

15 Q. -- you said.

16 You're also not certified in the federal district  
17 court that we're in now; correct?

18 A. Correct.

19 MR. GUNN: No further questions, Your Honor.

20 MR. McGAHAN: No further questions, Your Honor.

21 THE COURT: All right. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 All right, ladies and gentlemen. It's about 1:35;  
25 so we're going to break for the day. I want to remind you of