

1 SANTA ANA, CALIFORNIA; THURSDAY, DECEMBER 15, 2005;

2 10:30 A.M.

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4 (THE FOLLOWING WERE HAD OUTSIDE THE PRESENCE OF  
5 THE JURY:)

6 THE COURT: RESUMING IN THE MATTER UNITED STATES  
7 VERSUS BENNETT.

8 WE HAVE DEFENDANT AND COUNSEL AS BEFORE. AND  
9 WE'RE PRESENTED WITH A DOCUMENT ENTITLED "TRIAL INDICTMENT,"  
10 AND THIS DOES DELETE COUNT ELEVEN AND THE FINANCIAL  
11 INSTITUTION DISCUSSED BEFORE IN PARAGRAPH 11.

12 SO, I TAKE IT THIS VERSION OF AN INDICTMENT FOR  
13 THE JURY'S USE IS ACCEPTABLE TO DEFENDANT, MR. MEZA?

14 MR. MEZA: ACTUALLY, NO, YOUR HONOR. I'M SORRY.  
15 I TOLD YOUR CLERK OTHERWISE, BUT I'M JUST REREADING THIS.  
16 AND SPECIFICALLY --

17 WELL, I BELIEVE THAT MAYBE THIS ISN'T THE PROPER  
18 PLACE TO BRING IT UP. BUT AS IT RELATES TO COUNT TWELVE --

19 THE COURT: HAS SOMETHING CHANGED?

20 MR. MEZA: NO. IT'S EXACTLY AS WAS INDICTED.  
21 MAYBE THIS ISN'T THE RIGHT POINT IN DISCUSSION TO BRING IT  
22 UP. BUT COUNT TWELVE AS STATED, IN MY VIEW, IS AN INCORRECT  
23 STATEMENT OF THE LAW OF 225.

24 MORE SPECIFICALLY AT LINE 11 INDICATES THAT --  
25 1011: COMMITTED CERTAIN VIOLATIONS OF TITLE 18, UNITED

1 GOVERNMENT'S ARGUMENT REGARDING COUNT TWELVE, THE THEORIES  
2 WE SHOULD BE PERMITTED TO ARGUE.

3 THE COURT: ALL RIGHT. LET'S TAKE A LOOK AT THIS  
4 VERDICT FORM THAT CAME BACK TO US THAT HAS THE COUNTS  
5 GROUPED ONE TO FOUR, FIVE TO TEN AND THEN COUNT TWELVE, THE  
6 GENERAL VERDICT, WHICH I KNOW DEFENDANT'S OBJECTION IS  
7 PRESERVED, TOO.

8 ANYTHING ELSE THAT THE PARTIES WANT TO ADD ABOUT  
9 THIS VERDICT?

10 I'M ABOUT TO PART WITH IT AND GIVE IT TO THE  
11 CLERK.

12 (PAUSE.)

13 THE COURT: THE CLERK SIMPLY POINTS OUT THAT YOU  
14 ARE REFERENCING A SECOND SUPERSEDING INDICTMENT THAT IS NOT  
15 GOING TO BE BEFORE THE JURY. I HAVE MODIFIED THE JURY  
16 INSTRUCTIONS TO MAKE IT CLEAR THAT WHEN WE REFERENCE THE  
17 SECOND -- WHEN WE SAY "INDICTMENT," WE ARE REFERENCING THE  
18 SECOND SUPERSEDING INDICTMENT, BUT THAT IS NOT WHAT IS  
19 ACTUALLY GOING TO BE IN FRONT OF THE JURY. I DON'T KNOW IF  
20 THAT'S A PROBLEM OR NOT. BUT OTHER THAN THAT, HOW ABOUT THE  
21 VERDICT FORM WITH DEFENDANT'S SIDE?

22 ANYTHING ELSE TO BE ADDED BY WAY OF OBJECTION TO  
23 THIS CURRENT VERSION?

24 MR. MEZA: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU.

1 MR. SAGEL, WAS THERE ANYTHING YOU WANTED TO ADD?

2 MR. SAGEL: NO. ACTUALLY, YOUR COURTROOM DEPUTY  
3 MAKES A GOOD POINT. I WOULD PROPOSE EVERYWHERE WHERE I HAD  
4 IT AS "SECOND SUPERSEDING INDICTMENT," I ADDED THE WORD  
5 "TRIAL."

6 THE COURT: NO, YOU ARE NOT GOING TO DO THAT. I'M  
7 NOT GOING TO HAVE A JURY RETURNING VERDICTS ON SOME  
8 NONEXISTENT DOCUMENT. THERE IS NO SUCH THING AS A TRIAL  
9 INDICTMENT. SO YOU CAN EITHER HAVE YOUR DEMONSTRATIVE TRIAL  
10 INDICTMENT. I'LL CALL IT A TRIAL EXHIBIT OF THE SECOND  
11 SUPERSEDING INDICTMENT. I DON'T CARE WHAT YOU WANT TO DO.

12 MR. SAGEL: THEN, I'M A LITTLE CONFUSED. ARE YOU  
13 IN YOUR INSTRUCTIONS -- AND I JUST SAW IT IN YOUR TENTATIVE.

14 ARE YOU USING THE WORD "SECOND SUPERSEDING  
15 INDICTMENT"?

16 THE COURT: ONLY ONCE.

17 MR. SAGEL: OKAY. I THOUGHT IT WAS SAYING YOU  
18 WERE REPLACING THAT ONE. IF THAT'S THE CASE, THEN I'M FINE  
19 WITH IT.

20 THE COURT: NO. IN THE FIFTH INSTRUCTION PROPOSED  
21 BY THE GOVERNMENT, I'M JUST MAKING IT CLEAR THAT THE SECOND  
22 SUPERSEDING INDICTMENT REFERRED TO AS "INDICTMENT IN THESE  
23 INSTRUCTIONS" -- AND THEN I DON'T HAVE TO GO THROUGH SECOND  
24 SUPERSEDING INDICTMENT EVERY TIME I SAY THE WORD  
25 "INDICTMENT" IN THE JURY INSTRUCTIONS.