

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 324

HON. VICTORIA G. CHANEY, JUDGE

- - -

RODOLFO MEJIA, et al.,)
)
 Plaintiffs,)
)
 vs.) Case No. BC340049
)
 DOLE FOOD COMPANY, INC., et al.,)
)
 Defendants.)
)
 AND ALL RELATED CASES.)
)
 (RIVERA vs. DOLE FOOD COMPANY, INC.)) Case No. BC379820
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, APRIL 21, 2009

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1 CASE NUMBER: BC340049/BC379820
2 CASE NAME: MEJIA/RIVERA vs. DOLE, et al.
3 LOS ANGELES, CA TUESDAY, APRIL 21, 2009
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 TIME: 8:50 A.M.
6 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
7 APPEARANCES: (AS HERETOFORE NOTED)

8 * * *

9
10 (The proceedings commenced in open court, as follows:)

11
12 THE COURTROOM ASSISTANT: Everyone rise, please,
13 and face the flag.

14 In the presence of the flag of the United
15 States, emblem of the Constitution and of freedom and
16 justice for all, Department 324 of the Superior Court of
17 the State of California, for the County of Los Angeles,
18 is now in session. The Honorable Victoria Chaney, Judge,
19 presiding.

20 Please be seated and come to order.

21 THE COURT: Good morning everybody.

22 COURTROOM RESPONSE: Good morning, your Honor.

23 THE COURT: We're here on the matters of Mejia
24 versus Dole, BC340049, and Rivera versus Dole, BC379820.

25 The record should reflect that the following
26 persons are present: For plaintiff, Michael Axline and
27 Daniel Boone; for Dole, as attorneys, Scott Edelman and
28 Andrea Neuman; Michael Carter, the Dole representative,

1 is present in court; Michael Brem and Richard Poulson for
2 Dow; Scott Scarpelli, the Dow representative, is present
3 in court; and also present in court is Robert Crow for
4 Amvac.

5 We're here today for an Order To Show Cause
6 Re Terminating Sanctions in both of these cases.

7 I have a couple of business things before we
8 actually start. All right. First, as I indicated before,
9 this is an Order to Show Cause. Briefly, how did we get
10 here? Just so that we have this in context, a few years
11 ago the matters of Mejia_versus_Dole and Rivera_versus
12 Dole were filed in this court. Also a companion case was
13 Tellez_versus_Dole, a case that was tried for about four
14 and a half months in 2007 with the verdicts in November
15 2007.

16 Shortly after the Tellez case was finished,
17 a person emerged who was referred to as Witness X, who
18 alleged that there was fraud afoot in the Tellez trial.
19 Witness X -- I never saw Witness X, and a motion for a
20 new trial in Tellez based upon fraud was brought before
21 me. But because the information contained in the motion
22 for new trial was brought through an attorney declaration,
23 I disregarded the information based on hearsay objections
24 and denied the motion for a new trial based on fraud.

25 However, in January of 2008 when the counsel
26 and I began the trek towards a trial in the Mejia matter,
27 and I had staged the trials, we first started with Tellez,
28 then Mejia and then Rivera, I asked counsel to be on the the

1 look-out for any alleged fraudulent activity.

2 Fraud is a very serious allegation. If it
3 exists or existed, it would have cost the parties and the
4 court time, effort and money. I estimate that the trial
5 in Tellez, which lasted about four and a half months, cost
6 the parties collectively several million dollars. Four
7 and a half months of almost daily trials during the week
8 for the court was an extreme burden on the court, and if
9 there was fraud and if -- and I'm looking at actually at
10 Mejia and Rivera, but if the potential of fraud exists
11 in Mejia and Rivera, the parties, if they are found to be
12 liable, may be wrongfully accused, and although I strongly
13 believe that defendants who are liable should pay the
14 consequences of any injuries that they may cause, that the
15 defendant may cause because of their liability, they should
16 not pay for damages and injuries that they did not cause.

17 Because of the extreme burden on the court,
18 the extreme cost to the parties, and the effect on the court
19 system and our legal system in California and in the United
20 States generally, I had asked counsel to keep an eye out
21 for any fraud. And this was all counsel, by the way.

22 On September 30th of 2008 I was presented
23 with about ten declarations, I believe eight of the ten
24 were under seal, by Dole suggesting that there was fraud
25 in Nicaragua that was impacting discovery and impacting
26 the course of the Mejia case.

27 One other thing. One of the reasons why
28 these cases were staged is because the Tellez case involved

1 fieldworkers on the banana plantations who worked generally
2 in the field, the Mejia case involved individuals who were
3 known as applicators who worked in irrigation and who were
4 responsible for applying the DBCP to the plantations once
5 or twice a year, and Rivera I believe had different
6 injuries.

7 Is that right, Mr. Brem? Is Rivera different
8 injuries?

9 MR. BREM: At least in part, your Honor.

10 THE COURT: Okay. Because there are several thousand
11 DBCP cases pending in this court not involving Nicaragua
12 but involving other countries, I wanted to try a, you
13 should pardon the expression, pure farmworker case and a
14 pure irrigator case so that we would have the information
15 available to us as to what potentially the settlement values
16 would be for cases should settlement ever be discussed in
17 the future for any of these cases and so that I would work
18 out all the kinks with counsel in terms of trying the cases
19 and not have any overlap. So the cases were phased or
20 staged.

21 On September 30th this information was brought
22 to me in an ex-parte format. I was uncomfortable with the
23 format and gave an initial protective order saying that this
24 information was contained in the declarations that was only
25 available to plaintiffs' counsel the Miller Axline office,
26 who is here today.

27 At that time there was another United States
28 resident counsel, a Juan Dominguez. For various reasons

1 that do not need to be gone into at this juncture, I
2 determined that at least until the hearing, which was the
3 following Monday on October 4th, Mr. Dominguez would not
4 be privy to the information contained in the declarations.

5 On October 4th there was a lengthy hearing in
6 this court and I made an oral order on that day, followed
7 up by a written order on October 6th, doing the following:
8 One, the remaining merits discovery in Mejia would be
9 stayed. Basically at that point the discovery to be gone
10 into in Mejia was expert-driven discovery, it's very costly
11 and time-consuming, but the plaintiffs had been deposed in
12 Mejia and the basic non-expert discovery had been completed.

13 I determined at that point that we would have
14 a trial in 2009, and I'm sorry, I think the initial date
15 was around May and it got continued to September, I think,
16 for what I started calling the fraud trial, and the goal was
17 to, initially anyway, sever out the issue as to whether or
18 not the plaintiffs in Mejia had ever actually worked on a
19 banana plantation.

20 I thought that would take two, maybe two and a
21 half weeks to try, and if it turned out that the plaintiffs
22 had not worked -- if a jury had found that the plaintiffs
23 had not actually worked on a banana plantation, then we,
24 the parties and the Court, would be spared four months
25 or so of a long, very costly, very involved trial.

26 At that juncture I then set up a procedure
27 to conduct discovery on fraud issues. My goal was to, one,
28 have a jury determine whether or not these individuals

1 had actually worked on a banana plantation and, two, to
2 determine whether or not any fraud actually -- or allow a
3 jury to determine whether any fraud had actually occurred.

4 Because I wanted the individuals to feel
5 free to come forward and to avoid chaos and confusion
6 in terms of setting depositions, I phased or staged the
7 discovery. First was to be about three months or so of
8 discovery regarding whether or not any fraud had occurred.

9 Also on the September 30th hearing, and later
10 again on October 4th, and somewhat in the hearing following
11 the Tellez trial, the specter of potential bribery by Dole
12 or other defendants in Nicaragua was raised. So, after
13 the fraud discovery, which would last about three or four
14 months was to occur, we were then set to undergo or to
15 conduct what I then called bribery discovery, and both
16 the issues of alleged fraud and the issues of any alleged
17 bribery -- because I felt bribery went to the determination
18 by the trier of fact of the truthfulness of witnesses, the
19 veracity of witnesses, that the issue of bribery and fraud
20 would be then presented in the February trial.

21 As to Mr. Dominguez, because I understood
22 the unusual nature of preventing one of plaintiffs' counsel
23 to not have access to certain information while other
24 plaintiffs' counsel did, I set up a procedure where his
25 status would be reviewed on a regular basis, about every
26 four months or so, and also after certain depositions had
27 been taken.

28 After the first three depositions were taken

1 I determined that Mr. Dominguez at that time, based on
2 those depositions, did not appear to be implicated and
3 he was given the information contained in the depositions.
4 As future depositions were taken he was implicated and
5 I declined at that point to include Mr. Dominguez in the
6 circle of those individuals who had knowledge of the fraud
7 witnesses, who were called John Doe witnesses, and they
8 had a number after them, like John Doe 1, 2, 3 and 4, and
9 we proceeded in that manner.

10 In December 2008, upon request from Dole, I
11 considered whether or not the crime-fraud exception to the
12 attorney-client privilege would apply to the Ordenana law
13 firm -- the Ordenana law firm represents DBCP plaintiffs
14 in this courtroom but is based in Nicaragua, not in the
15 United States -- and found that the crime-fraud exception
16 did apply, which vitiated the attorney-client privilege as
17 it related to the Ordenana firm, and agreed that discovery
18 could take place that dealt with evidence that would
19 ordinarily be prohibited from discovery because of the
20 attorney-client privilege.

21 In either late January or early February I
22 made a similar determination that the crime-fraud exception
23 applied to the Dominguez law firm and found that discovery
24 could take place as to the Dominguez law firm.

25 Concomitant with the findings of the
26 crime-fraud exception, an interesting thing began occurring.
27 I began getting reports of threats to witnesses, and
28 investigators were -- had criminal charges brought against

1 them. Dole investigators had criminal charges brought
2 against them in Nicaragua. The activity against the
3 investigators, potentially against the attorneys, and
4 witnesses increased between December and beginning of
5 March to kind of a fever pitch.

6 I never knew what I was going to open in
7 an e-mail, because I would receive e-mails from various
8 attorneys, this was an e-mail chain that was sent out
9 to all counsel and myself, usually on a weekend somebody
10 would send me a long e-mail setting forth alleged events
11 that had taken place in Nicaragua in the last day or
12 two before that, and all counsel, plaintiffs' counsel
13 and defense counsel, and I became very friendly on e-mails
14 and in frequent hearings. The hearings were closed to
15 the public because of what I believed, and found, and still
16 believe and find, to be very real threats to the health
17 and safety of witnesses and investigators and to their
18 families.

19 Because of the increasing concern that I
20 had for the safety of witnesses, in March, I think around
21 March 6th, again in an open hearing, and on March 11th in
22 a written order, I made a determination that the original
23 plan of having a fraud trial in September was no longer
24 viable and, on my own motion, set the Order to Show Cause
25 Re Terminating Sanctions for today through Thursday.

26 I had the following concerns, which I
27 expressed to all counsel at that time, and I expect
28 counsel to address during these proceedings: One, I had

1 very real -- and this is not in order of importance, it's
2 simply the way I'm remembering it. I had very real concerns
3 for the safety, continuing safety of witnesses and personnel
4 on the ground in Nicaragua attempting to investigate the
5 issues raised during the fraud investigation, and I was
6 concerned that to continue would endanger lives; I was
7 concerned for the safety of all attorneys from the United
8 States to be able to go freely into Nicaragua and to conduct
9 investigations on their own or with the assistance of an
10 interpreter without fear of threats to their person or harm,
11 actual harm coming to them; I had concerns about the written
12 evidence out of Nicaragua presented to me.

13 I had learned in the Tellez matter that
14 between 1979 and 1981 when the Sandinista Revolution was in
15 full force that all, much or all of the paperwork showing
16 work histories of individual plaintiffs who were coming
17 to this court and information regarding the running of the
18 various plantations in Nicaragua had been destroyed during
19 the revolution. I don't know whether it was accidentally
20 destroyed, destroyed on purpose, I don't know, but the
21 bottom line is it no longer existed.

22 Because of that, there was an inability by
23 all parties -- and by the way, this affects the plaintiffs
24 as much as it does the defendants, there was an inability
25 by all parties to go back and locate historical documents
26 showing either the employment by individuals, maybe medical
27 histories, early medical histories of the individuals, and
28 some of the plantation or farm records that would have

1 existed in Nicaragua but not be held in this country.

2 There was evidence presented to me that
3 the proof of employment and medical evidence presented
4 to me that came out of Nicaragua was manufactured, and
5 not honestly so, by certain individuals in Nicaragua.
6 Therefore, I began to have grave concerns about the
7 reliability of all documentary evidence from Nicaragua
8 brought into or presented in this court or used by the
9 parties during discovery.

10 This was not a concern of one or two documents
11 that could easily be dealt with in a trial and presented
12 to a jury, but I had real issues with authenticity and
13 foundation and reliability of all documentary evidence
14 that was being used in this case. Or these cases.

15 Based on information that was presented to
16 me during the deposition process -- and, oh, by the way,
17 I read every one of the depositions that occurred during
18 this six-month-or-so period of discovery, of fraud
19 discovery. I started doing it because I wanted very much
20 to clear Mr. Dominguez's name and to have him be able to
21 actively participate in the fraud discovery. It did not
22 turn out as I had hoped.

23 But the reason that I took the unusual step
24 of reading every deposition was in order for me to do what
25 I had promised to Mr. Dominguez: to monitor the discovery
26 and to try and permit him to have access to the discovery,
27 and also to better allow me to monitor the progress of
28 discovery and assist the parties better in the discovery

1 process in this very unusual procedure that we had set
2 forth. I have never read about, seen, or heard of any
3 similar types of facts that have occurred in other cases
4 or any other procedural steps that I felt necessary to put
5 in place here. And I recognize that this case is unique
6 in many ways.

7 In addition to the documentary issues and
8 the reliability of the documentary evidence, I began
9 having grave concerns about the bone fides of the various
10 plaintiffs in these cases, since information was produced
11 during the deposition process that made me wonder, seriously
12 wonder, about whether or not the plaintiffs actually ever
13 worked on a banana plantation and the surrounding supporting
14 evidence that is normally used as a check to determine the
15 veracity of a plaintiff. So I wanted to explore that. And
16 I do want to explore that.

17 Next, I had serious concerns about activities
18 involving obstruction of justice, both obstruction of
19 justice in this country, from California's standpoint,
20 and from -- is there any reason that Mr. McKnight can't
21 come in, folks? I don't see any reason.

22 Mr. McKnight, you're more than welcome to
23 sit over here.

24

25 (Loud noise interruption in proceedings)

26

27 MR. BREM: I noticed that sound, your Honor, when
28 Mr. McKnight came in.

1 THE COURT: We do not have a witness exclusion order
2 and I do not think it's applicable here at this time. I
3 would consider one.

4 All right. So I was listing the things that
5 needed to be explored during the OSC and how we got to
6 this OSC procedure.

7 So, in addition to the reliability of the
8 evidence, in addition to the bone fides of the plaintiffs
9 and the evidence surrounding the plaintiffs, in addition
10 to the very real concern that I have for the safety of
11 witnesses coming forward, the safety of investigators
12 and the safety of attorneys from this country traveling
13 to Nicaragua, I had very real concerns about the issue
14 of obstruction of justice. There began to be information
15 that came forward to me regarding interference, active
16 interference with the investigation and threats to
17 individuals.

18 Finally, I have real concerns, and had real
19 concerns, about due process to all of the parties here.
20 There is no compulsory discovery process available in
21 Nicaragua, and no comity between California in particular,
22 the United States in general, and Nicaragua as it relates
23 to compulsory discovery. Therefore, it is impossible for
24 me to make an order here to have a deposition and have it
25 carried out as I can in a sister state.

26 For example, one can go to Texas or New York
27 and take my order for a deposition and get a commission to
28 take a deposition in another state. There is no convention,

1 such as the Hague or Pan-American Convention, which allows
2 mutual discovery between -- or a way to obtain discovery,
3 compulsory discovery in another country as there is --
4 for example, under the Hague Convention I could do that
5 in England or France. It's cumbersome, but it can be done.
6 There is no such way to obtain discovery in Nicaragua.

7 The importance of this is that people had
8 to come forth voluntarily, either travel to this country,
9 have their depositions taken in Nicaragua voluntarily or
10 somewhere else. I cannot -- nobody can issue a subpoena
11 from here down there, and I cannot contact a court down
12 there to ask the court to issue a subpoena to obtain certain
13 information.

14 Therefore, the guarantee of due process to the
15 parties, especially with the obstruction of justice issues
16 that are attendant, make it very problematic as to whether
17 we're going to be able to continue.

18 Because of the potential for active
19 involvement in fraud, fraudulent activity by certain
20 attorneys in Nicaragua and in this country, because of
21 the potential for fraud by the parties, because of the
22 strong potential regarding the unreliability of the
23 documents, because of the what appears to be a training
24 program to train people how to be plaintiffs, which I know
25 will be gone more into, or I assume will be gone more into
26 during the evidence, because of the safety concerns for
27 attorneys, investigative personnel and witnesses, the
28 obstruction of justice and due process issues, I set this

1 OSC.

2 That's how we got here. I expect counsel to
3 address these issues.

4 Because the defendants are the ones who benefit
5 from this OSC, the burden is on defendants to go forward,
6 and plaintiffs are free to put on a defense if necessary.

7 One other thing. The bribery issues. We
8 did have an attempt at a deposition of a bribery witness
9 which, for various reasons that I need not go into now,
10 came to naught.

11 I invited plaintiffs in my OSC order, orally
12 given and certainly in writing, that if there is any
13 evidence of bribery that they wanted to explore, let me
14 know now before the hearing -- or this was back in the
15 beginning of March, and that I would see to it that that
16 discovery would go forward. Nobody has asked for any
17 discovery regarding bribery, and no real evidence has
18 been brought to me, no admissible, viable evidence has
19 been brought to me of bribery.

20 This procedure, the OSC procedure, I recognize
21 Dole has taken the laboring oar, but I understand that there
22 has been a joinder by Dow and a joinder in the proceeding
23 by Amvac, so I have given counsel on a previous date time
24 limits for various things, and I promise we'll get to it,
25 but I wanted to set the scene and I wanted counsel to know
26 what I expected of them.

27 A couple of other things. Hold on for one
28 second. In preparation for today I have read and reviewed

1 all documents, all pleadings, and any supporting evidence
2 presented to me by defense, mainly Dole, and by plaintiffs.
3 Based on that, this court finds that Dole has met its prima
4 facie burden to show that there was a conspiracy afoot to
5 commit a crime or fraud on this court.

6 The Court further finds that the purpose of
7 this conspiracy was to present fraudulent evidence before
8 courts in the United States and Nicaragua by presenting
9 fraudulent evidence to these courts, including this
10 court, in particular in the Mejia and Rivera cases.

11 By presenting fraudulent evidence, the
12 co-conspirators' goal was to obtain large monetary
13 judgments from DBCP manufacturers, such as Dow and Amvac
14 here, and banana growers such as Dole, another defendant
15 in this matter.

16 Prima facie evidence exists to demonstrate
17 that in order to present this fraudulent evidence the
18 co-conspirators planned to and did suborn perjury and
19 falsified documents. Suborning perjury is a crime as
20 I understand it in Nicaragua, California, Texas, Florida,
21 and the federal system, the United States federal system.

22 I don't have the cites on me right now, I'm
23 sorry, I misplaced a piece of paper. I had them all down
24 and researched them. Can I find them now? No, of course
25 not. But I will get them later.

26 Prima facie evidence of such a conspiracy
27 is contained in Dole's submissions to this court from the
28 deposition transcripts of John Doe Witnesses 1 through 17.

1 Evidence of this conspiracy indicates its formation in
2 approximately 2001. Therefore, Evidence Code section
3 1223 will be applied and all statements in furtherance
4 of a conspiracy which would otherwise be or constitute
5 inadmissible hearsay will be admitted.

6 Evidence Code section 1223 states as
7 follows:

8 "Evidence of a statement offered
9 against a party is not made inadmissible
10 by the hearsay rule if:

11 (a) The statement was made by the
12 declarant while participating in a conspiracy
13 to commit a crime or civil wrong and in
14 furtherance of the objective of that conspiracy;

15 (b) The statement was made prior to or
16 during the time that the party was participating
17 in that conspiracy; and

18 (c) The evidence is offered either after
19 admission of evidence sufficient to sustain a
20 finding of the facts specified in subdivisions
21 (a) and (b) or, in the court's discretion as to
22 the order of proof, subject to the admission of
23 such evidence."

24 As I indicated before, this will be Dole's
25 burden of proof.

26 This court has previously set forth time
27 limits for the parties. On April 6th this court, through
28 the Public Information Office -- am I right so far,

1 Mr. Parachini?

2 PUBLIC INFORMATION OFFICER PARACHINI: Yes, your
3 Honor.

4 THE COURT: And we have the Public Information
5 Officer present in court right now, this court notified
6 the press of this court's intent to close hearings. On
7 April 16th, at I think 9:00 in the morning -- or was it
8 11:00? -- at 11:00 in the morning a hearing was held
9 regarding this issue. No members of the press attended
10 and no objectors to closing portions of this hearing came
11 forth.

12 At the time of the hearing this court
13 determined, with the input from counsel, that the
14 scheduling of the hearing could be done to close only
15 one day of the three days of the proceedings of these
16 hearings. This court determined that there is a significant
17 and substantial risk to the health and safety of various
18 witnesses, described as John Doe witnesses, and to their
19 families, which strongly outweighs the public's right to
20 open hearings for the entire proceeding.

21 This court had considered closing all of
22 the proceedings and I thought that that was not warranted,
23 but this court has not been able to find any other viable
24 alternative other than closing one day of the hearings.

25 So, with counsel's help we have scheduled
26 Wednesday to be a closed proceeding where evidence will
27 be taken where it is not possible to mask the identity of
28 the witnesses because of the nature of the testimony to

1 be presented. However, I had asked counsel to work with
2 me to -- is the word "pixelate out," my friend?

3 TECHNICIAN SCHLAIFER: That's correct.

4 THE COURT: To pixelate out the faces of the John
5 Doe witnesses who will be presented today. You will see
6 them on the screen. These depositions were taken either
7 in Nicaragua or surrounding countries.

8 I believe, that's right.

9 MR. EDELMAN: Yeah.

10 MS. NEUMAN: Yes, your Honor.

11 THE COURT: Okay. And I've asked that their voices
12 be altered. I am told that strong burly men now speak with
13 little-girl voices, and I haven't really heard this yet but
14 I'm looking forward to it.

15 The public will be seeing and all monitors
16 available I think for counsel will be seeing the pixelated
17 faces. However, I have been given headphones and a monitor,
18 and my monitor will show a non-pixelated face and my
19 earphones will not have an altered voice.

20 The reason is because I am sitting, in part,
21 as a trier of fact to make a determination whether the
22 OSC Re Terminating Sanctions is warranted, and in order
23 to do that I want to be able to judge credibility, and to
24 do that I would like to be able to see expressions and I
25 would like to be able to hear the voices to determine the
26 timbre of the voices, any hesitation, any trembling of
27 the voice or anything else that might be a giveaway as
28 to the veracity or the lack thereof of the individuals.

1 I will be making all the calls that I have
2 based not on only the documentary evidence but on any
3 witnesses and on the nonverbal cues that the witnesses
4 show during their testimony.

5 I'm sorry that you folks will not have
6 the benefit of the voice in the real world, I know that
7 pixelated faces and altered voices can be annoying, but
8 there has been no other way to do this.

9 I want to thank Dole for working with me
10 and expending the money, I know it was a great deal of
11 money, so expending the money to allow this proceeding to
12 take place in open court. And I want to thank plaintiffs'
13 counsel also for working with them and agreeing to
14 this procedure, which I believe protects the individual
15 witnesses, protects their safety and their health and
16 that of their families and yet allows an open proceeding.

17 All right. I think I've done all the damage
18 I can do for the time being.

19 Mr. Edelman, I need to know who's doing
20 opening and closing statements from you folks and then
21 who would be presenting any evidence if any is presented.

22 And same question, Mr. Axline.

23 Same question, Mr. Brem.

24 Mr. Crow, I know it's all you. So, I got that.

25 All right, Mr. Edelman, who's doing what from
26 Dole so I know who to look to?

27 MR. EDELMAN: Your Honor, I will be doing the opening
28 and closings, and Ms. Neuman and I will be dividing up the

1 presentation of the witnesses.

2 THE COURT: All right. You're going to tell me who's
3 going to take which witness?

4 MR. EDELMAN: Yes, we'll tell you each time.

5 THE COURT: And Mr. Axline, same question?

6 MR. AXLINE: I will be doing the opening and
7 the closing, your Honor, and to the extent that there
8 is evidence to be presented, I'll do that, as well.

9 THE COURT: Thank you.

10 Same question, Mr. Brem?

11 MR. BREM: I will be doing the opening and the
12 closing, your Honor. We will tell you before each witness
13 who will handle that.

14 THE COURT: Okay. Mr. Brem is the only one who
15 was with me in the Tellez trial, but I have a rule, and
16 that is: I don't get double-teamed. So, that means that
17 if an attorney assumes responsibilities for one duty, I
18 don't want the co-attorney popping up and adding objections
19 or wanting to add some questions or wanting to add a little
20 bit of argument or opening statements or whatever else.

21 So Mr. Axline, Mr. Edelman, Ms. Neuman and
22 Mr. Brem, if you take responsibility for something, it's
23 all yours and you don't get a helper.

24 Okay? Ground rules all understood?

25 COUNSEL RESPONSE: Yes, your Honor.

26 THE COURT: Okay. You're on, Mr. Edelman.

27 MR. EDELMAN: Thank you, your Honor.

28 THE COURT: And speak loudly so those folks can hear

1 you, too.

2 MR. EDELMAN: I will. And I actually plan to move
3 to the corner, but I did want to indicate, your Honor, with
4 reference to a discussion that we were having off the record
5 before we started today, that we have reached a stipulation
6 with respect to certain documents that your Honor had
7 reviewed in camera as to what they say, which we'd like
8 to put on the record, with the Court's permission.

9 THE COURT: Okay.

10 MR. EDELMAN: The stipulation with respect to the
11 joint venture document is as follows: Attorneys Barnard
12 Zavala, Adolfo Picado, Jacinto Blanco, Juan Dominguez,
13 and Antonio Ordenana acted as local counsel in Nicaragua
14 for the plaintiffs in the Mejia and Rivera actions.

15 THE COURT: Okay. I also understand that
16 Mr. Ordenana sometimes is known as Antonio Hernandez
17 Ordenana, and occasionally people have referred to him
18 as Mr. Hernandez; is that right?

19 MR. EDELMAN: Yes, that's correct, your Honor.

20 THE COURT: You agree, Mr. Axline?

21 MR. AXLINE: Yes.

22 THE COURT: All right.

23 Do you so stipulate, Mr. Axline?

24 MR. AXLINE: We do so stipulate, your Honor.

25 THE COURT: Mr. Brem?

26 MR. BREM: Yes, your Honor.

27 THE COURT: Mr. Crow?

28 MR. CROW: Yes, your Honor.

1 THE COURT: Thank you.

2 All right, Mr. Edelman, I'm all ears.

3 MR. EDELMAN: Thank you, your Honor.

4 Your Honor, first allow me to express the
5 appreciation of my client, The Dole Food Company, for the
6 time and effort that you have devoted to figuring out the
7 very important issues that we're presented with here today.

8 Your Honor, we are here today because for
9 six months you have read, heard and considered evidence
10 of a legal nightmare, a legal nightmare that threatens the
11 underpinnings of our system of justice, a system which is
12 based on legitimate advocacy and the pursuit of truth.
13 We have been exposed to overwhelming evidence of fraud
14 by plaintiffs and their counsel unlike anything, I would
15 venture to say, that any of us has ever seen before.

16 We are here on what is a make-believe case
17 with make-believe plaintiffs, make-believe evidence, and
18 make-believe damages. Unfortunately this make-believe case
19 has been brought by real lawyers, and the costs of that
20 fraud on the court and on the parties has been all too real.

21 You will hear abundant evidence of that fraud,
22 which I will highlight in my opening and which we will
23 discuss over the next three days. It is this fraud which
24 prompted you on March 11th to issue a written Order to Show
25 Cause Regarding Terminating Sanctions and just last week to
26 include possible contempt sanctions against the lawyers for
27 perpetuating the fraud. You even read one of the lawyers
28 his Miranda rights in open court.

1 THE COURT: Not last week. That was several months
2 ago.

3 MR. EDELMAN: Correct, your Honor.

4 In response to your Order to Show Cause,
5 however, we know from the prehearing submissions that
6 no plaintiff is going to come into this courtroom and
7 testify that he did not commit fraud. Mr. Dominguez and
8 Mr. Ordenana are not going to come into this courtroom
9 and deny the accusations against them.

10 Plaintiffs and their counsel have abandoned
11 any pretense that the plaintiffs worked as DBCP applicators
12 on banana farms or that they suffered the damages that
13 they once so boldly asserted.

14 In fact, if we go to the first slide and look
15 at the timeline, and I will go through this part rather
16 quickly because you covered a lot of it, I wanted to start
17 with the deposition of plaintiff Quinonez. You remember
18 this gentleman. His testimony was taken shortly before
19 we began the fraud discovery which culminates in these
20 proceedings.

21 Prior to Mr. Quinonez's deposition we had
22 learned from various plaintiffs in hints, little pieces
23 of testimony, that they were watching videos, that they
24 were learning things, but we never had really nailed
25 it until Mr. Quinonez came forward and admitted under
26 cross-examination that everything he knew about being
27 a banana worker he learned by studying -- in fact, he
28 said studying like a parrot, because he learned to repeat

1 what he had been taught for his deposition -- studying
2 like a parrot in the Law Offices of Mr. Dominguez and
3 Mr. Ordenana in Chinandega, Nicaragua.

4 It was stunning testimony, it was a total
5 admission, and it was from that deposition --

6 THE COURT: Excuse me for one minute.

7

8 (Pause in proceedings)

9

10 THE COURT: I'm sorry. Go ahead.

11 MR. EDELMAN: It was from that deposition and
12 the subsequent declarations that we presented to your
13 Honor that you issued a protective order in October of
14 2008, as you previously indicated, and you authorized
15 John Doe depositions.

16 Why John Doe? Because the evidence that
17 we presented to you made a very strong showing that
18 there had been pressure put on witnesses in Nicaragua by
19 Mr. Dominguez, by Mr. Ordenana, by other Nicaraguan lawyers,
20 not to come forward and speak to Dole, not to speak to
21 the investigators, there was enormous political pressure,
22 and the concern was that if the names of these deponents
23 were available in advance, they would be pressured and they
24 wouldn't testify. So there we adopted the John Doe method.

25 And then, of course, as you previously
26 indicated, in October of 2008 Mr. Dominguez was excluded
27 from access to the John Doe testimony because of the
28 evidence that was emerging in the declarations of his

1 direct involvement, indeed, spearheading of the fraudulent
2 activities.

3 I mentioned earlier that you gave
4 Mr. Dominguez his Miranda rights in court on October
5 31st, 2008; you set the trial for May of 2009 in November
6 of 2008; in January of '09 you approved plaintiffs' proposed
7 retention of an investigator. Plaintiffs' counsel wanted
8 to go into Nicaragua, they said to investigate the alleged
9 fraud, you had previously authorized them and suggested that
10 they hire an investigator, and we see earlier on --

11 THE COURT: At least one or two months before.

12 MR. EDELMAN: That's right. And I forgot to
13 cover it, but that was in October, October 24th of 2008.

14 In March of 2009 we received a curious
15 document. Mr. Dominguez was supposedly terminated by the
16 plaintiffs. How was he terminated? He was terminated in
17 a Notice of Discharge that was written by Mr. Ordenana,
18 his law partner, and his partner in other business ventures,
19 as well, in Nicaragua.

20 THE COURT: If I remember correctly, it was written
21 on the letterhead of Mr. Ordenana.

22 MR. EDELMAN: It was written on the letterhead of
23 Mr. Ordenana, and Mr. Ordenana was purporting to terminate
24 his partner from representing the plaintiffs.

25 Mr. Dominguez purports to be terminated,
26 your Honor issues an Order To Show Cause Regarding
27 Terminating Sanctions orally on March 6th; on March 20th
28 the Miller Axline firm, previously co-counsel with

1 Mr. Dominguez, refiles a Motion to Withdraw from this case,
2 citing the ethical rules of professional responsibility;
3 and then in April, early April, April 7th, they sought to
4 dismiss this case without prejudice so as to prevent this
5 hearing from going forward.

6 Your Honor denied the motions to withdraw,
7 your Honor refused to countenance the efforts to dismiss
8 the case in the midst of these proceedings, and that's
9 where we are today, starting with Mr. Quinonez in September
10 admitting coaching, to the OSC proceedings, and six months
11 of what can only be described as crazy discovery in between.

12 THE COURT: By the way, before I forget, I would
13 like to mark as Court's 1, Defendants' slides used in
14 opening statement.

15 Mr. Axline, do you have any slides for opening
16 statement?

17 MR. AXLINE: No, your Honor.

18 THE COURT: All right. And I will be marking
19 as Court's exhibits all slides used before the Court,
20 just to keep record of it. It's not going to come into
21 evidence, but I would like to keep track of it. Okay?

22 MR. EDELMAN: Very well your Honor.

23

24 (Court's Exhibit No. 1 was marked for identification)

25

26 MR. EDELMAN: Your Honor, this is the overview of
27 what I'm going to cover in my opening. I'm going to talk
28 about why we called DBCP litigation a fraudulent enterprise.

1 What makes this litigation possible in Nicaragua? A corrupt
2 judiciary, special laws that have been passed to facilitate
3 cases like this, and law firms who are knee deep in the
4 fraud.

5 I'm going to talk about the witnesses who,
6 with the tremendous support of this court's protective
7 order, were willing to come forward and testify, at great
8 peril to themselves and without any gain, as to what has
9 been going on.

10 In the open session I'm going to be,
11 unfortunately, but necessarily, guarded in what I can say
12 about this, but the specifics will be covered tomorrow.
13 I'm going to talk about the operation of this fraudulent
14 enterprise, how it worked, what it was that plaintiffs
15 and their counsel did, and then I'm going to show you,
16 with reference to the plaintiffs' testimony themselves,
17 which you haven't actually had the opportunity to review
18 with all the depositions we've been hitting you with from
19 the John Doe witnesses, but when you see the plaintiffs'
20 deposition testimony you will understand that these
21 plaintiffs are an obvious product of this fraudulent
22 enterprise, and you will feel even more strongly why
23 terminating sanctions are necessary.

24 And then I'm going to talk about what
25 plaintiffs' response has been to this large volume of
26 evidence that we have amassed. It's not a substantive
27 response, it doesn't meet the evidence on the merits,
28 but it is a response nonetheless.

1 So, let me start with my first point:
2 Nicaraguan DBCP litigation as a fraudulent enterprise.

3 You mentioned this, your Honor, in your initial
4 remarks. What made this fraud possible is the fact that
5 after the Sandinista Revolution, Dole had to leave Nicaragua
6 and had to do so quickly. It left in 1982, it left all of
7 its employment records behind, and it created an opportunity
8 for enterprising plaintiffs' lawyers and very impoverished
9 plaintiffs to come together and to fabricate evidence about
10 their work, the plaintiffs' work on banana farms, that Dole
11 had no way to disprove by reference to any documentary
12 evidence.

13 I mentioned a moment ago government corruption
14 in Nicaragua. This is well documented. Unfortunately,
15 the institutions in Nicaragua are not what they are in
16 the United States. A 2008 United States Department of
17 State Report talks about the lack of respect for the rule
18 of law and widespread corruption and politicization of
19 the judiciary, the Supreme Electoral Council, and other
20 government organs.

21 You've also heard during this case about a
22 special law that was passed in 2001 in Nicaragua called
23 Nicaraguan Special Law 364, a law that was specifically
24 designed to target companies like Dole and Dow, to
25 facilitate litigation like this, and to facilitate it by
26 doing things like presuming that any plaintiff who comes
27 forward with two state-certified lab reports is sterile,
28 that if a plaintiff claims exposure to DBCP, DBCP is

1 conclusively presumed to have caused that injury, and
2 requiring any defendant that wants to defend itself in
3 Nicaragua to deposit 300 million cordobas, which under
4 current exchange rates is about \$15 million.

5 THE COURT: One five or five zero?

6 MR. EDELMAN: One five, in a special bank account
7 before even being allowed to defend itself.

8 And as you will hear from John Doe witness
9 testimony, lab reports in these cases were doctored so that
10 each plaintiff could provide verification of his sterility,
11 even if that plaintiff never produced a sperm sample for
12 testing. Law 364 has spawned 12 Nicaraguan judgments worth
13 \$2 billion.

14 You will hear in this case from a Nicaraguan
15 law expert, a lawyer who is held in high esteem, who used
16 to be a judge in Nicaragua, Dr. Soto. Dr. Soto will testify
17 on the third day of this proceeding about the intense
18 political pressures that are brought to bear on judges
19 in Nicaragua in DBCP cases, and that judges cede to those
20 pressures and disregard the law in doing so.

21 Who are the law firms that drive this fraud
22 in Nicaragua? There are four primary law firms: There's
23 the Dominguez law office in Chinandega, run by Mr. Dominguez
24 and his associate Antonio Ordenana;

25 There is the Provost Umphrey firm. You heard
26 a moment ago a stipulation that Barnard Zavala acted as
27 local counsel for the plaintiffs in this case, in these two
28 cases in Nicaragua. Mr. Zavala is from the Provost Umphrey

1 firm in Chinandega;

2 There is Ojeda Gutierrez & Espinoza, a law firm
3 that is affiliated with two American law firms, Engstrom,
4 Lipscomb & Lack, and Girardi and Keese, who have prosecuted
5 and are prosecuting other DBCP cases;

6 And the Law Offices of Carlos Gomez.

7 And what these law firms have done, in
8 conjunction with laws like 364 and a corrupt judiciary
9 and a highly politicized environment, is they proceeded
10 in two ways: One, they have brought fraudulent claims
11 into the United States. That's what these two cases are
12 that are before your Honor. The other thing they have
13 done is they have obtained fraudulent judgments in
14 Nicaragua and then come into the United States and sought
15 to have those judgments enforced by United States courts.

16 An example of that is the Osorio case which
17 is pending in Florida, where the plaintiffs in that case
18 are seeking to have a \$98 million judgment enforced that
19 they obtained from a judge in Nicaragua.

20 So, let me now spend a moment and talk about
21 the witnesses who have agreed to come forward and testify.
22 The witnesses who have testified in this case consist of
23 banana farm personnel, witnesses to the law firm fraud,
24 and former plaintiffs and other percipient witnesses.
25 And I'm being general here out of concern for the identity
26 of the witnesses.

27 There were 12 declarations we initially
28 submitted; eight witnesses from those 12 declarations

1 who have testified, given depositions in this case; we
2 had another nine who then came forward and testified, for
3 a total of 17 John Doe depositions attended by all the
4 parties, including plaintiffs and their counsel in this
5 case.

6 As you alluded to earlier, there came a
7 point in this case where further discovery just became
8 too dangerous. There were threats to witnesses, there were
9 threats to investigators, there was concern, as you pointed
10 out, that it had become no longer safe for lawyers to travel
11 to Nicaragua to take depositions in that environment, at
12 which point, and with the stipulation from the plaintiffs'
13 counsel, we obtained ten declarations in lieu of depositions
14 from people whom we could not depose and in some cases who
15 were too scared to be deposed.

16 All of these witnesses, and you've heard
17 abundant evidence of that throughout this proceeding, fear
18 retribution. They are afraid of being retaliated against.
19 They are afraid that the mob, the group of thousands of
20 plaintiffs -- it has truly become a political movement in
21 Nicaragua -- will come after them. They're afraid of being
22 lynched, they're afraid of having their tongues cut out,
23 they are afraid of being killed. And it's, frankly, amazing
24 that they have been willing to come forward and testify
25 to the fraud that pervades this case.

26 So, how did this fraudulent enterprise work?
27 What did the plaintiffs do? Well, the first thing they
28 did is the plaintiffs' lawyers hired captains. I guess

1 in American law we call them cappers. It's illegal
2 here, or at least it's against the rules of professional
3 responsibility, but they hired captains to go out and to
4 recruit thousands of Nicaraguan men to pose as former
5 banana workers.

6 THE COURT: Actually it's Business & Professions
7 Code section 6152 which prevents cappers in California.

8 MR. EDELMAN: Thank you, your Honor.

9 How were they able to do this? They were
10 able to do this by exploiting the poverty of this country,
11 a country where the per capita income is slightly over a
12 thousand dollars per annum, it's the second poorest country
13 in the western hemisphere, and they took advantage of people
14 who were desperate by telling them that if they participated
15 in this scheme they would one day be rich.

16 And by the way, they charged them along the
17 way. They charged them on a monthly basis to participate
18 in the meetings, to attend the training seminars which I'll
19 talk about in a moment. So they were exploiting their own
20 clients along the way, and told them that if they didn't
21 pay each month they would fall out and lose their standing.

22 Once they found plaintiffs, they trained them
23 to lie convincingly, to lie convincingly about being the
24 banana workers at one time that they never were.

25 How did they do that? They did it by preparing
26 training manuals, literally booklets, which we'll see in
27 a moment, explaining what life on a banana plantation was
28 like, what banana workers did to ply their trade; for whom

1 they worked, they gave them the lists of the supervisors so
2 that when they were asked in deposition who your supervisor
3 was, they would have a name; they were given names of
4 co-workers; they were given the name of the cook so that
5 they could provide details; they were provided with the
6 physical attributes of the trainers, of the recruiters,
7 so that they could describe them in a convincing fashion
8 in their depositions.

9 Seminars were held in the plaintiffs' lawyers'
10 offices. In the Law Offices of Mr. Dominguez, hundreds of
11 plaintiffs would show up for their instruction sessions.

12 Next thing they did was they falsified the
13 work history and they offered fake evidence.

14 Your Honor alluded to concerns about the
15 documentary evidence in this case. They made up work
16 certificates. They paid -- the plaintiffs' lawyers paid
17 former supervisors to sign blank certificates which later
18 got filled in after the signature was obtained, nothing
19 else was on the document at the time, to try to attest to
20 a plaintiff having worked on a farm during a given period
21 of time.

22 Then having established the work history,
23 they needed to establish the sterility of the plaintiffs.
24 How did you they do that? They did that by coaching the
25 plaintiffs to lie, to hide their children, to deny the
26 existence of their offspring, and by creating bogus lab
27 results, laboratories that were on the take, being paid by
28 the plaintiffs' lawyers to come up with reports that showed

1 the plaintiffs to be sterile when in fact they were not.

2 And the final step was to take this phony
3 evidence and to present it in this court, to present it
4 in other United States courts, as part of this conspiracy
5 to obtain massive United States judgments.

6 So I mentioned this, but who are the lawyers
7 who are behind this? Central and foremost in this case
8 is the office of Juan Dominguez; Mr. Ordenana, who runs
9 the Chinandega branch of his office, which Mr. Dominguez
10 himself funds; Roberto Rosales, Mr. Dominguez's United
11 States paralegal and legal assistant; and then other
12 Nicaraguan lawyers.

13 In fact, Jacinto Blanco was another name
14 I mentioned earlier in the stipulation today as one of the
15 local Nicaraguan lawyer -- I'm sorry, as one of the lawyers
16 who had served as local Nicaraguan counsel to the plaintiffs
17 in this case.

18 There's the office staff, you've heard many
19 of these names before from the depositions you've read,
20 and then several of the recruiting captains are listed
21 below. We will see their names throughout the testimony.
22 We'll see the name of Francisco Palacios in a document
23 in just a moment.

24 I mentioned the training manuals. This is
25 just an example of one page of a manual where the importance
26 is explained of removing the sucker from a plant so that the
27 main plant can thrive. If you're a banana worker, you need
28 to know that one of the things you do is you remove suckers.

1 THE COURT: Those are the little plants that
2 grow up, the little shoots that come out of the ground
3 immediately adjacent to the banana plant; yes?

4 MR. EDELMAN: Right.

5 The next page is an excerpt --

6 THE COURT: Keep your voice up.

7 MR. EDELMAN: -- an excerpt from another training
8 manual that describes in the fashion I mentioned earlier
9 the foremen and the spraying captains who worked at the
10 farm where the plaintiffs were supposedly employed, so
11 that they would be able to describe --

12 THE COURT: Keep your voice up, please. You have
13 to yell over that background noise. I'm sorry.

14 MR. EDELMAN: That's all right. So that they would
15 be able to describe, if asked, for example, what Mr. Paz
16 looks like: Average height, pale brown skin, straight black
17 hair, brown eyes, round face.

18 I'm getting ahead of myself there. I'm getting
19 way ahead of myself.

20 MS. NEUMAN: You're going forward.

21 THE COURT: I think you're going forward and you need
22 to go back.

23 MR. EDELMAN: Thank you.

24 Ah, there we are. Thank you.

25 Mr. Reyes: Tall, white skinned, dark eyes,
26 black hair, thin, with one foot, disabled.

27 So now let me tell you why it is so obvious
28 that the plaintiffs in this case are a product of this

1 fraudulent enterprise. The next slide is all the plaintiffs
2 at issue in this proceeding. There are 11 plaintiffs total,
3 and we've grouped them, your Honor, by farm. There are 11
4 total. One, Mr. Zelaya, on the second line on the right,
5 is the plaintiff, the only plaintiff in the Rivera matter,
6 The rest of the plaintiffs are from the Mejia case, and two
7 plaintiffs in the bottom right-hand corner are plaintiffs
8 who were dismissed when the evidence became very
9 incriminating and plaintiffs' counsel rushed out to dismiss
10 them before Dole could get motions on file. In the case
11 of Mr. Flores, one day before we could get our motion on
12 file. In the case of Mr. Peralta, they cut his deposition
13 after the first day, wouldn't let us continue with the
14 second day of the deposition, and dismissed him based on
15 incriminating statements. We'll hear more about that in
16 a moment.

17 But you will hear at least excerpts, because
18 they're not being presented live, but you will hear excerpts
19 of the testimony, and relating to the dismissal point I
20 just mentioned, in the Tellez case, the case that was tried
21 before this matter, a full 76 percent of the plaintiffs
22 were dismissed by their counsel before the matter went to
23 trial. In this case, in the Mejia case, 62 percent of the
24 plaintiffs have already been dismissed from this case at
25 this juncture, and I'm confident that more would have been
26 dismissed at this point but for the optics of doing so in
27 the middle of this fraud proceeding.

28 You issued the Order to Show Cause without

1 seeing specific plaintiffs' testimony, but when you see
2 it you will be stunned because it is obvious, when you look
3 at it, that these plaintiffs were coached, trained to lie,
4 and are suborning perjury.

5 The documents are fake. You have in front of
6 you the plaintiff's so-called work certificate, and you
7 ask the plaintiff who is that gentleman that you know has
8 signed, and the plaintiff says: I've never heard that name
9 before. They can't even identify their own supervisor who
10 supposedly signed their work certificate.

11 These plaintiffs are unable to testify to basic
12 farm facts. You ask them to describe how DBCP application
13 works and you hear them fumble. They cannot provide you
14 with any details. One witness 29 times said "I don't
15 remember" when you asked him simple questions like how the
16 pipes were hooked up together, how the DBCP was applied,
17 what time was it done. He couldn't answer any of these
18 questions because he just hadn't studied hard enough.

19 We will present you John Doe testimony of
20 people who really do know how that worked, and you will
21 be able to compare and contrast what it's like to hear
22 from somebody who understands and actually worked on a
23 farm versus somebody who's faking it, and you'll also
24 see a striking inability of the plaintiffs to name their
25 co-workers, including the people who signed their work
26 certificates.

27 The one farm that I -- well, you saw all the
28 farms, but there were four plaintiffs from Candelaria, and

1 a DBCP crew was supposed to be comprised of eight people,
2 so these four plaintiffs by their own testimony were all
3 on the same DBCP crew in 1976, yet each had never heard
4 of the other three.

5 So finally, in the face of this overwhelming
6 evidence, what has the response been from the plaintiffs?
7 It has been one of intimidation and obstruction of justice.
8 Plaintiffs and their counsel, in connection with this
9 proceeding, have not designated the deposition testimony
10 of a single Mejia plaintiff claiming to have worked on a
11 banana farm, presumably because their counsel cannot do
12 so consistent with ethical rules that prevent a lawyer
13 from presenting false testimony to a court.

14 The only testimony they designated was six
15 lines from Rivera plaintiff Miguel Zelaya, and when you
16 hear his testimony you will say to yourself it is absolutely
17 clear that Mr. Zelaya never worked on a banana farm.

18 Plaintiffs' real response, and, again, you
19 mentioned this earlier, has been to accuse Dole of bribery,
20 to say the only way Dole could be developing this evidence
21 and obtaining these depositions is by bribing these
22 witnesses, and we see as late as the very end of January
23 Mr. Miller, counsel for the plaintiffs, talking about what
24 he believes to be very serious, very troubling evidence,
25 not from one or a few, but many people, who say there
26 is something going on involving bribery down there.

27 Plaintiffs' counsel, Mr. Dominguez, even went
28 so far as to accuse me and my partner, Andrea Neuman, of

1 going down to Nicaragua and bribing witnesses. That was
2 quickly put aside when your Honor was provided with our
3 passports which showed that during the time when we were
4 alleged to have done this we were not in the place in
5 question.

6 THE COURT: Passports and testimony under oath by
7 both you and Ms. Neuman.

8 MR. EDELMAN: We were put on the stand to testify
9 to those facts, as well. Correct, your Honor.

10 And now we find ourselves with plaintiffs,
11 having had an opportunity to come forward with the bribery
12 evidence that they've been talking about, not presenting
13 any evidence at all in connection with this proceeding.

14 I should say not presenting any evidence
15 here in this court, because the allegations continue to fly
16 by Mr. Dominguez's office, Mr. Ordenana, Mr. Palacios, his
17 recruiting captain, and others in Nicaragua. They continue
18 to hurl these allegations in the Nicaraguan press.

19 What you're looking at right now is from
20 El Nuevo Diario, this is in March of this year, March 9th,
21 2009, where foreigners are accused of having offered up to
22 \$50,000, an American visa for affected individuals, housing
23 in the United States, and there's even a reference to a
24 gag order from --

25 THE COURT: I'm sorry, to the what? I didn't hear
26 you. There's a reference to? Say it louder.

27 MR. EDELMAN: A reference to a gag order from an
28 American judge so that nobody learns the identity of the

1 witnesses.

2 "In exchange for juicy offers, they ask
3 them to sign and place their fingerprint on a
4 document the banana workers do not know, and
5 to testify that Antonio Hernandez Ordenana
6 does not represent true banana workers in
7 lawsuits."

8 This in the Nicaraguan press.

9 And of course, your Honor, the 27 deponents
10 who have come forward in this case, each has been asked in
11 cross-examination, at least as to the 17 that were deposed,
12 whether they got any money, any promises, any hint that
13 anything would be forthcoming from Dole or any of the other
14 defendants, and they all said absolutely not. And indeed,
15 in a country where the average person makes about a thousand
16 dollars, you can imagine what a \$50,000 bribe would mean.

17 It's absurd. If you're going to bribe
18 somebody, you don't offer \$50,000. \$50,000 wouldn't be
19 necessary. 50 times 27 is over a million dollars. That
20 would be quite a stimulus package for the economy of
21 Chinandega had it taken place.

22 Plaintiffs also distribute press releases
23 containing the same accusations. This is another press
24 release from March 29th of this year, and you can see on
25 the bottom this is from Mr. Palacios, one of Mr. Dominguez's
26 and Mr. Ordenana's captains, and he talks about --

27 THE COURT: And part of the Gang of 8?

28 MR. EDELMAN: The Dominguez law firm is part of the

1 Gang of 8. And, yes, I believe Mr. Palacios is one of the
2 representatives.

3 THE COURT: Okay.

4 MR. EDELMAN: Again, this press release is a
5 reference to this litigation before your Honor. They
6 talk about "traitors who we have already identified, and
7 we know who they are"; another is a very thinly-veiled
8 threat: "Have given their testimony in Costa Rica, and
9 others in the City of Managua, others in the Hotel Los
10 Volcanos" -- that's where some of the depositions, as
11 your Honor knows, were taken in this case -- "in the
12 City of Chinandega, and in this manner destroy our law
13 firm, and thus the battle we thousands and thousands of
14 farmworkers have waged for a number of years," and they
15 accuse the traitors of using bribery.

16 So, what else have they done? Well, they've
17 intimidated potential witnesses. They have told witnesses
18 not to speak with the foreigners, not to speak with what
19 they call the transnationals. Mr. Dominguez has done so
20 in radio broadcasts. He and Mr. Ordenana have done so
21 by paying personal visits to witnesses. They have done
22 so with threats of physical harm. They have done so with
23 actual death threats.

24 And they have threatened Dole's investigators.
25 The evidence will show that they have urged people,
26 plaintiffs and their captains, to find Luis Madrigal,
27 to find Francisco Palacios, and to beat them --

28 THE COURT: You don't mean Francisco Palacios.

1 MR. EDELMAN: I mean Francisco Valadez. Thank you,
2 your Honor.

3 THE COURT: Okay.

4 MR. EDELMAN: To beat them, to club them, to drag
5 them, and to lynch them. They have created a climate of
6 fear and intimidation in Chinandega, in Esteli, and the
7 surrounding regions.

8 They even, as you alluded, recently brought --
9 Mr. Ordenana himself brought a criminal case, a criminal
10 case of insult, which requires nothing more than proving
11 that the recipient or the victim or the target was insulted
12 for a crime to have established. They brought that in
13 court. They've had hundreds of people, I think more than
14 300 people, who marched on the first day of Mr. Valadez's
15 hearing.

16 This is a picture of a big sign that they held
17 up at this march, 300 people in front of the courthouse
18 chanting, and that's a picture Mr. Madrigal, Dole's
19 investigator, chanting: "Out with the foreigners! Out
20 with Valadez! Out with Cascante? Out with Luis Madrigal!"

21 And you will hear from Mr. Madrigal and
22 Mr. Valadez about what they've been through, what they're
23 going through, and what impact it has had on their ability
24 to investigate this case. It's not safe for them to be
25 in Chinandega anymore.

26 So your Honor, that is an overview of the
27 evidence that we will present.

28 Today in our open hearing we will provide,

1 as you mentioned, testimony which has been pixelated and
2 the voices have been modulated so that we can provide you
3 with a sampling from those witnesses whose testimony we
4 thought we could do that to, and there are others that we
5 just thought the content was such that we couldn't, and so
6 that will be played tomorrow.

7 THE COURT: In a non-pixelated, non-voice modulated
8 manner.

9 MR. EDELMAN: Right.

10 THE COURT: Okay.

11 MR. EDELMAN: And we will also hear from a live
12 witness today, Mr. McKnight. We will then look at videos
13 of plaintiff and spouse depositions, which will reveal
14 the extensive fraud and how they are a product of that
15 fraud.

16 On day two, the closed session, we will play
17 John Doe witness testimony. You will hear from a number
18 of observers about how this fraudulent enterprise works.
19 You will hear from actual banana workers who controvert
20 the fake plaintiffs' testimony. And then we will have a
21 closed-hearing closing argument on the closed testimony,
22 so that during day three we can go back into an open hearing
23 where you will hear directly from Dole's investigators,
24 from Dr. Soto, and then we will present you with our
25 open-hearing closing argument.

26 Your Honor, at the close of this evidence,
27 much of which was obtained from witnesses at great peril
28 to themselves, you will conclude that you have seen

1 something that you would never expect to have seen in your
2 career; that, at most, you would expect to read on vacation
3 in a John Grisham novel, but not in your own courtroom.
4 It is shocking, it is outrageous, and it is an affront
5 to our system of justice.

6 Thank you.

7 THE COURT: Thank you, Mr. Edelman.

8 MR. AXLINE: Your Honor, I will be much more brief
9 than Mr. Edelman.

10 THE COURT: I think Mr. Brem gets to go next.

11 MR. AXLINE: Oh, I'm sorry.

12 MR. BREM: That's all right.

13 Your Honor, on behalf of The Dow Chemical
14 Company, I adopt Mr. Edelman's opening statement verbatim
15 as my own and decline further comment.

16 THE COURT: Thank you, Mr. Brem.

17 Mr. Crow?

18 MR. CROW: Your Honor, Amvac also appreciates
19 your consideration and time in this proceeding for this
20 OSC hearing, and Mr. Edelman has well covered the opening
21 issues and we'll waive any further comments.

22 THE COURT: Thank you.

23 Mr. Axline, your turn now.

24 MR. AXLINE: Thank you. Sorry for jumping the gun,
25 your Honor.

26 THE COURT: You need to speak loud enough so they can
27 hear you in the back. Okay?

28 MR. AXLINE: Yes, your Honor.

1 Your Honor, as attorneys, Miller, Axline &
2 Sawyer recognizes that we have dual roles: As officers
3 of the court, and as advocates for our clients. As officers
4 of the court, we are shocked and saddened at the allegations
5 regarding the conduct of third parties in this case,
6 including our former co-counsel Mr. Dominguez. These
7 allegations, if true, involve conduct that interferes not
8 only with the administration of justice but also with
9 the valid claims of individuals who may have been injured
10 through exposure to DBCP.

11 As attorneys for plaintiffs, we urge the Court
12 in reviewing the evidence that will be presented over the
13 next three days to distinguish between evidence involving
14 conduct by third parties in Nicaragua, including our former
15 co-counsel, and evidence that is specific to the plaintiffs
16 in this case. Thank you.

17 THE COURT: Thank you.

18 Mr. Axline, are you done with your opening
19 statement? Because there's something I want to talk to
20 you about.

21 MR. AXLINE: I am.

22 THE COURT: Okay. Mr. Axline, in plaintiffs' brief,
23 you talked about the Schlesinger case and the Del_Junco
24 case, and then I think you quoted from Weil_&_Brown. I
25 have some concerns about this so I want you to think about
26 it while we go through the OSC proceedings.

27 I am mindful of your position, which is
28 basically that plaintiffs themselves must be the ones

1 that conducted fraud and not simply their counsel or agents
2 that conducted fraud, and I read the Schlesinger case and
3 the Del_Junco cases differently than you, and so I'd like
4 to bring this up now so that you won't be, pardon the
5 expression, sandbagged at a later time. All right?

6 MR. AXLINE: Yes.

7 THE COURT: In the matter of Stephen_Schlesinger
8 vs._Walt_Disney, 2007 155 Cal.App.4th 736, the individual
9 accused of wrongdoing was Terry Lee Sands, a private
10 investigator. Sands was hired by plaintiff's attorney
11 to assist in the Stephen Schlesinger, Inc. lawsuit, in
12 its lawsuit. And that was on Page 742 of that case.

13 Sands worked directly with plaintiff's sole
14 shareholder's husband and attorney. Quote, his assignment
15 was to help SSI prosecute its lawsuit by surreptitiously
16 obtaining Disney documents, close quote. That's also on
17 Page 742.

18 Sands wrongfully procured documents that it
19 handed over to plaintiff. Plaintiff turned the documents
20 over to its attorney. The appellate court held that, quote,
21 a litigant is vicariously liable for its investigator's
22 intentional misconduct committed within the course and
23 scope of employment, close quote. And that's at Page 769.

24 The court also found that the plaintiff
25 itself, through its principals, committed several acts
26 of wrongdoing. The court reasoned that, quote, it may
27 be inferred that SSI knew of Sands' illegal conduct or,
28 at the very least, acted with deliberate indifference

1 to whether it was legal, close quote. Also at Page 769.

2 The importance of that is that Sands was not
3 the plaintiff, the actual party, but an agent. All right?

4 In the matter of Del_Junco, D-e-l, new word,
5 J-u-n-c-o, vs. Hufnagel, H-u-f-n-a-g-e-l, a 2007 case found
6 at 150 Cal.App.4th 789, a vexatious plaintiff committed
7 several acts of wrongdoing. She then hired an attorney,
8 but the acts did not cease, the wrongful acts continued.

9 The court found both that the plaintiff
10 committed wrongful acts and that, quote, we agree with
11 plaintiff that some of the responsibility for the problems
12 fall at the feet of her counsel. However, the record
13 suggests that Attorney Daley's actions were part and
14 parcel of Hufnagel's strategy of delaying and throwing
15 darts at others rather than taking responsibility for
16 her own actions, close quote.

17 And that's at Page 800 in the Hufnagel case.

18 Now, I realize why you're arguing what you're
19 arguing, and it's probably Weil_&_Brown, except for the
20 problem is I disagree with Weil_&_Brown and, therefore, have
21 some problems with your position, as well, and I wanted to
22 give you fair warning. All right?

23 Weil_&_Brown states, quote: The court
24 has limited inherent discretionary power
25 to dismiss claims with prejudice in, quote,
26 extreme situations, close quote, such as
27 when the conduct was clear and deliberate,
28 where no lesser alternatives would remedy

1 the situation, where the fault lies with
2 the client and not the attorney, and when
3 the court issues a directive that the client
4 fails to obey.

5 If Weil & Brown intends each of these
6 elements to be necessary, then I believe that it misreads
7 both the Schlesinger and Del Junco cases, which, though
8 all elements were present, intimated Schlesinger clearly --
9 that it does not only need to intimate Schlesinger. In
10 other words, in Schlesinger it was an agent. Here I'm
11 waiting to see whether any of the parties actually committed
12 fraud.

13 But my concern is, Mr. Axline and Mr. Boone,
14 that from what has been presented to me, and what made
15 me go forward with the OSC, is a pervasive endemic fraud
16 in Nicaragua that has so contaminated the ability for
17 individual parties to go forward that it would make it
18 impossible to present a trial to a jury based on evidence
19 which, as the gatekeeper, I believe is even partially
20 reliable.

21 I told you before that I have grave questions
22 about the documentary evidence and supporting evidence,
23 the kind of thing you go to a friend and say: Hey, did you
24 work with Mr. Smith? Well, if Mr. Jones, who's the friend,
25 has been paid or has something to gain by testifying, and
26 there's no way to look below that, and given the fact we're
27 dealing with another country, with another language, with
28 a different political system and a different court system

1 than we have here, it's very hard to go below that. And
2 so I have that very real concern.

3 I don't know whether any of these plaintiffs,
4 or all of them, committed fraud themselves, but my concern
5 has been obstruction of justice, my apparent inability to
6 deliver due process because of the fraud to all parties,
7 including plaintiffs, and my concern about the reliability
8 of evidence coming to me which cannot be thoroughly tested.

9 And, you know, if you have good actors, they
10 might be able to fool a jury, and I have an obligation as
11 a judge, as a gatekeeper, to at least vett, for lack of
12 a better word, the reliability of documents, or allow the
13 parties to present to the jury the fact that there may be
14 a problem with specific evidence. But at this point I
15 have real concerns.

16 So number one, I guess there's the issue of
17 the plaintiffs themselves, did they act in a fraudulent
18 manner, or did they act in such a manner where they knew
19 or should have known and disregarded the rampant fraud,
20 allegedly, surrounding them, what is the effect of the
21 obstruction of justice, and what is the effect of my
22 inability to deliver what I believe I need to ensure,
23 which is due process to all parties.

24 And the Schlesinger case and the Del_Junco
25 case, cases, speak to that, but neither one of them dealt
26 with the situation that we have here, which has so many
27 ramifications, it isn't one specific act of dumpster
28 diving in the Schlesinger case or being difficult as in

1 the Del_Junco case, there are so many aspects to this case,
2 it's well off the charts, as we've talked about before.

3 But I wanted you to understand that I don't
4 think I totally agree with your interpretation. You can
5 address it now, you can address it later once you have
6 a chance to think about it and once the evidence is in,
7 whatever makes you happy.

8 MR. AXLINE: I'll address it in part now, your Honor,
9 and give it some additional thought. I do appreciate your
10 candid discussion of your take on where we are now, and I
11 have to say a couple of things.

12 First, Miller, Axline & Sawyer does appreciate
13 the trust that the Court has expressed in this firm in
14 asking us to remain in the case and allowing us access
15 to protected information so that what could be done to
16 represent the interests of the plaintiffs would be done.

17 Second, I agree with something Mr. Edelman
18 said, which is, that as this case has unfolded over the
19 last six months it has presented all parties with what
20 I would agree is a nightmare situation. All parties
21 and the Court. I think that's an accurate description.

22 Third, I do want to emphasize again what I
23 said in my opening statement, that we are in -- we, being
24 Miller, Axline & Sawyer, is in an extremely difficult
25 situation, caused in part by our former co-counsel and the
26 activities that are alleged to have occurred in Nicaragua.
27 In those circumstances, we are doing our best to both be
28 zealous advocates for our clients and to act as officers

1 of the court.

2 So, if there is -- and there's a fourth
3 thing I want to agree with the Court about, which is that
4 these circumstances are unprecedented as far as we can tell.

5 So, to the extent that relevant case law can
6 be raised to advocate for our clients, we do that. We
7 do and will do, as is our obligation in these proceedings,
8 everything that can ethically be done to represent the
9 interests of our clients. We also intend to act responsibly
10 as officers of the court over the next three days.

11 And I'll address the specifics of your
12 Weil_& Brown and your Schlesinger analysis with your
13 permission later in the proceedings.

14 THE COURT: All right. I wanted to give you fair
15 warning that I disagreed with Weil_& Brown, both in its
16 interpretation of the applicable cases that we know about,
17 and because Schlesinger and Del_Junco did not confront the
18 bizarre and unique circumstances that we are all grappling
19 with here, and I wanted you to be able to know my thoughts
20 now so that you and I have the air clear between us and
21 there's no surprise for you.

22 MR. AXLINE: Thank you, your Honor.

23 THE COURT: Okay? Thank you.

24 Okay. We're going to take a brief break,
25 and we'll see you back here at -- let's see, it is now
26 10:26, I'll see you back here at 10:41.

27

28

(Recess taken)

1 CASE NUMBER: BC340049/BC379820
2 CASE NAME: MEJIA/RIVERA vs. DOLE, et al.
3 LOS ANGELES, CA TUESDAY, APRIL 21, 2009
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 TIME: 10:46 A.M.
6 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
7 APPEARANCES: (AS HERETOFORE NOTED)

8 * * *

9
10 (The proceedings continued in open court, as follows:)

11
12 THE COURT: All right. Back in the matters of
13 Mejia versus Dole, BC340049, and Rivera versus Dole,
14 BC379820. All parties and counsel previously stated
15 are present.

16 All right. Mr. Edelman, your first witness?

17 MR. EDELMAN: Your Honor, before I call the first
18 witness I'd like to move into evidence our deposition
19 designations and our exhibits, none of which have been
20 objected to.

21 THE COURT: Any objection, Mr. Brem?

22 MR. BREM: No, your Honor.

23 THE COURT: Mr. Crow?

24 MR. CROW: No, your Honor.

25 THE COURT: Mr. Axline?

26 MR. AXLINE: The deposition designations and the
27 exhibits, no.

28 THE COURT: All right. Defendant Dole's deposition

1 designations and exhibits are received into evidence.

2

3 (Defendants' deposition designations
4 and exhibits were received in evidence)

5

6 THE COURT: I expect from you, Mr. Edelman, a listing
7 as to exactly what they are and what numbers they are, for
8 the clerk.

9 MR. EDELMAN: Very well, your Honor.

10 THE COURT: That's a very broad category, and
11 normally I call it out by number, but we're not going to
12 go through that process right now.

13 MR. EDELMAN: Okay.

14 THE COURT: All right?

15 MR. EDELMAN: Your Honor, the first video we'd like
16 to show in pixelated/modulated format --

17 THE COURT: So I get to put these headphones on;
18 hmmm?

19 MR. EDELMAN: You get to put that on, and the rest
20 of us will just see it altered. It is a montage that we've
21 put together of several witnesses' testimony, expressing
22 their safety concerns based on the threats and the
23 intimidation that exists in Nicaragua with respect to
24 this litigation.

25 THE COURT: Is there some sort of a written statement
26 as to what the montage consists of? In other words, who's
27 on the montage?

28 MR. EDELMAN: Yes, your Honor, it's in the binder

1 that we gave you, and it's --

2 THE COURT: Is this the "Who's Who List"? Which one
3 is it?

4 MR. EDELMAN: Your Honor, give me one moment so I
5 can make sure.

6

7 (Sotto voce discussion held between Dole's counsel)

8

9 MR. EDELMAN: Your Honor, I misspoke.

10 THE COURT: Now, I'm an old lady. You can't confuse
11 me.

12 MR. EDELMAN: I'm not doing it on purpose. I'm just
13 a little confused. Tim has --

14 THE COURT: Mr. McCoy?

15 MR. EDELMAN: Mr. McCoy has the actual testimony
16 that we're going to play, and what's going to happen is
17 there's going to be a slide prefacing each excerpt which
18 will indicate the John Doe number. You have a list so you
19 can tie the John Doe name to the number. And that's how
20 we intended to proceed with this.

21 THE COURT: All right. And Mr. McCoy, when you see
22 a John Doe number that's on the screen, if you could please
23 write it down in the transcript so that it's clear what
24 testimony we'll be listening to.

25 All right?

26 THE REPORTER: Yes, your Honor.

27 THE COURT: Okay. thank you.

28 MR. EDELMAN: I think I've got this now.

1 (Video presentation of John Doe Witness 14,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 "Q. Do you have any concerns about
6 Mr. Ordenana finding out about your testimony?

7 A. Oh, yes, he's very violent and he's
8 got a real wad of money and he can do who knows
9 what.

10 Q. Do you have any concerns about
11 Mr. Dominguez finding out about your testimony?

12 A. Gosh, well, this -- well, see --
13 well, let me see, how am I going to put this?
14 He's -- well, let me see. I don't want a problem
15 with either one of them."

16

17 (Video presentation of John Doe Witness 1,
18 testifying through a Spanish interpreter,
19 was played and was reported as follows:)

20

21 "Q. Is there anything that will keep
22 you from giving -- anything that would keep you
23 from giving accurate, truthful testimony today?

24 A. The only thing that would prevent
25 me giving my testimony would be someone doing
26 something to me.

27 Q. Are you concerned, sir, that the
28 law office in Chinandega of Juan Dominguez will

1 find out that you're testifying here today?

2 A. Yes, when he becomes aware of this,
3 not now.

4 Q. Has anyone said anything to you that
5 you interpreted as a threat?

6 A. Yes. In Villanueva they said that
7 'whomever testifies on behalf of the transnationals,
8 let them suffer the consequences.'

9 Q. Who said that?

10 A. The -- I was told that was over there
11 by the same people, the plaintiffs."

12

13 (Video presentation of John Doe Witness 8,
14 testifying through a Spanish interpreter,
15 was played and was reported as follows:)

16

17 "Q. Did you have any concerns about
18 testifying in the banana worker litigation?

19 A. This is the first time I'm doing
20 this. My fear is that they may take reprisals.
21 I -- I work in the fields and perhaps some
22 jackass could come along and -- and that's
23 my fear, that they will do something to me.
24 That's all.

25 Q. And who is 'they', that you're
26 worried about them doing something to you?

27 A. The ones who are -- the people who
28 are suing."

1 (Video presentation of John Doe Witness 12,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 "A. May I say something?

6 Q. But of course.

7 A. Well, if I may say something,
8 logically I'm here on my own will and volition.
9 There was no pressure applied to me, nor
10 anything like that. Nothing similar to that.
11 There was also something mentioned, something
12 mentioned also about the truth, and as a
13 Nicaraguan citizen I am here to tell the truth
14 and nothing but that. There was also mention
15 of God just awhile ago, and as a believer in
16 God, that is important that the truth be told.

17 And as I was telling Attorney Luis,
18 Luis Madrigal, is that I just want my identity
19 kept secret, safeguard that. I don't want that
20 to be known, my identity to be known, because
21 that may cause me some harm or my family."

22

23 (Video presentation of John Doe Witness 16,
24 testifying through a Spanish interpreter,
25 was played and was reported as follows:)

26

27 "Q. Have you ever heard anyone
28 threaten violence against anyone perceived

1 to be cooperating with the transnationals or
2 giving testimony in this case?

3 A. Of course. I'm one of them. My
4 life is in danger here if they become aware.

5 Q. What have you heard about that?

6 A. If these people become aware, I
7 don't know who could shoot me on the street.
8 Because their -- because their idea is that
9 if somebody talks as I'm talking to you here,
10 then they lose the money from the lawsuit.
11 That's the idea.

12 Q. Is it important to you that it
13 remain a secret that you came here to testify
14 today?

15 A. Exactly. Because it wouldn't be
16 good for me if they were aware. They would
17 even set fire to my house, even with my family
18 in there. These people just don't care.

19 Q. I don't know if this has been
20 explained to you before, but the judge in this
21 case has made an order that the people in this
22 room that know that you're here to testify not
23 disclose that fact to anyone other than our
24 colleagues back in the United States.

25 A. Well, I hope that's -- I hope it's
26 that way because this is a risk that I am taking
27 here. And with nothing -- for nothing. And
28 only -- only because of this, of few liars

1 there, you know, you can't stand it anymore.
2 And you know, the soup is spilled over, and
3 just like me, there are others who are afraid,
4 but they don't testify because they're afraid."

5

6 THE COURT: I have a question. I can hear clearly
7 what's going on. Mr. Axline, can you clearly understand
8 what's being said on the screen or when the witnesses are
9 testifying?

10 MR. AXLINE: Yes, I can, your Honor. I also have
11 a script, so I'm able to follow.

12 THE COURT: All right.

13 What about you, Ms. Deutch?

14 MS. DEUTCH: Yes, your Honor.

15 THE COURT: Ms. Fielding?

16 MS. FIELDING: I'm okay.

17 THE COURT: Mr. Parachini?

18 MR. PARACHINI: (Nodding head.)

19 THE COURT: So this is working, then. I just want
20 to make sure that this is working well enough that the
21 public does have true access and that we're not. . .

22 MS. DEUTCH: Thank you.

23 THE COURT: All right?

24 You can hear, too, the folks out there, as
25 well, and understand? Yes?

26 THE AUDIENCE: Yes.

27 THE COURT: All right. I'm sorry about the
28 theatrics, I really am, but I truly am concerned for

1 witnesses' safety, and I deemed it appropriate to do
2 this. If this doesn't work appropriately, then I'd
3 see what I could do with the time we have available
4 to try and improve the situation.

5 But if you can understand the questions
6 and the responses, then that's really what I'm interested
7 in.

8 All right. You're on, Ms. Neuman. And thank
9 you for your patience.

10 MS. NEUMAN: Thank you, your Honor.

11 Dole would next like to present the testimony
12 of two more John Doe witnesses that have been imaged and
13 voice altered for their protection, John Does 10 and 16.

14 John Doe 10 is an individual who captains
15 attempted but failed to recruit as a DBCP plaintiff despite
16 the fact that he had never worked on a banana farm. He'll
17 testify briefly about what was said to him, about not
18 needing to have worked, and the money he could get by
19 signing up as a plaintiff.

20 We'll then hear from John Doe 16, an individual
21 who did respond to recruiting efforts and signed up as a
22 DBCP plaintiff with Mr. Dominguez.

23 The portion of John Doe 16's testimony that
24 we're going to play, while only a fraction of his total
25 testimony about the fraud, provides a window into what
26 it is like once you've been recruited to be a DBCP plaintiff
27 in Nicaragua and start attending the training and other
28 meetings.

1 THE COURT: And do you know on what dates this
2 occurred?

3 MS. NEUMAN: The depositions?

4 THE COURT: The recruiting.

5 MS. NEUMAN: I don't recall for these two particular
6 witnesses, your Honor, but I can look that up.

7 THE COURT: If you would. As I indicated at the
8 beginning of the session today, I have made a determination
9 based on the submissions given to me earlier by Dole, that
10 are attachments to the Dole pleadings, that there was a
11 prima facie showing of a conspiracy, but it may help if
12 these are earlier, and for some reason I think some of these
13 may be as early as 2001 or 2002, it may help the people
14 listening.

15 MS. NEUMAN: And could we ask permission to
16 submit the specific dates of these witnesses' recruitment
17 confidentially?

18 THE COURT: I just am interested generally in the
19 years.

20 MS. NEUMAN: Confidentially? We didn't want them
21 to narrow it down by location and year of recruitment,
22 especially for the person that signed up.

23 THE COURT: Okay. Fine.

24 MS. NEUMAN: Thank you, your Honor.

25 All right. Can you play John Does 10 and 16,
26 please.

27

28 ///

1 (Video presentation of John Doe Witness 10,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 "Q. Where do you currently live, which
6 town?

7 A. Esteli.

8 Q. Have you ever worked on a banana
9 farm?

10 A. No.

11 Q. While you've been living in Esteli,
12 have you become aware that the people are filing
13 lawsuits related to work on banana farms?

14 A. Well, I had a proposal made for me
15 to join the program and that I would become a
16 member as a plaintiff against the banana farm.

17 Q. Could you describe the proposal that
18 they made to you when they visited you at your
19 work?

20 A. They told me, you know, to join up,
21 that I would fill out a form. They told me that
22 if I had resolve, to do that and to go to Leon
23 to attend a seminar, over there.

24 Q. Did they tell you what you would get,
25 if anything, if you signed up to join the lawsuit?

26 A. Yes. They specifically told me that
27 I would receive a -- a help of from 25- to \$30,000
28 if I joined up.

1 Q. Did you agree to sign up for the
2 lawsuit?

3 A. No.

4 Q. Why not?

5 A. It didn't seem legal to me, so then --
6 so I started to think that what these people were
7 doing was harming those who really needed help.

8 Q. Did the gentleman who made the first
9 proposal to you tell you you would have to say
10 you were a banana worker in order to get the
11 money?

12 A. Yes, that's what the seminar was for
13 that I was going to attend in Leon.

14 Q. And how did the seminar relate, as
15 you understood it, to pretending you were a banana
16 worker?

17 A. Well, that was at the seminary -- at
18 the seminar that was for a test for the help I was
19 going to receive. I mean, at the seminar they
20 were going to give me the answers that I was going
21 to give."

22

23 (Video presentation of John Doe Witness 16,
24 testifying through a Spanish interpreter,
25 was played and was reported as follows:)

26

27 "Q. Do you have any concerns about
28 Mr. Ordenana finding out about your testimony?"

1 THE COURT: We're having a little technical problem,
2 are we?

3 "Q. Do you have any concerns about
4 Mr. Ordenana" --

5 THE COURT: If this were a jury trial, at this
6 particular time I'd be reading an interesting origin of
7 a word or telling a story from a myth or talking about
8 the origin of chocolate or some other thing.

9 Mr. Brem is familiar with me doing that.

10 MR. BREM: I was just thinking how I miss that,
11 your Honor. Especially at this particular moment.

12 Do you have your book with you?

13 THE COURT: I do. I have several.

14 The jurors really get spoiled because
15 whenever there's a technical glitch, so that they will
16 not hold it against the side who's presenting at that time,
17 I grab a book and we talk about the origin of, I don't
18 know, bows and arrows, or the name Fletcher that actually
19 was responsible for shooting arrows; the origin of the word
20 "tantalize" from the myth regarding Tantalus and the fruits
21 just above his head and the water just out of reach, to the
22 origin of rubber and false teeth and all sorts of things.

23 All right. Are you ready to go now?

24 TECHNICIAN SCHLAIFER: Yes.

25 THE COURT: All right. But sorry, guys, if this
26 happens again I'll grab a book and we'll have a little fun.

27 Are we ready to go now? Almost.

28 Hopefully the third time is a charm.

1 (Video presentation of John Doe Witness 16,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 "DEPOSITION OFFICER: Raise your right
6 hand, please.

7

8 You do solemnly swear that the
9 testimony you will give in this matter will be
10 the truth, the whole truth, and nothing but the
11 truth?

12 THE WITNESS: Yes. The truth.

13 Q. Where does Mr. Meneses have an
14 office?

15 A. From the north side of the park
16 in Esteli, it's 20 varas to the north, on the
17 east corner.

18 Q. And what did Mr. Meneses say?

19 A. Among the same thing, if I wanted
20 money, as long as I get into the lawsuit. So
21 I told him yes, because he told me that this
22 is money that was already there.

23 Q. Now, you said that he -- I'm sorry,
24 you handed me from the bag that you a brought
25 with you to the deposition today a document, and
26 you said he sold this to you; is that right?

27 A. Exactly.

28 Q. Did he tell you why he was doing
that?

1 A. So that I would learn all this,
2 because I was going to be asked to testify at
3 the offices and then this.

4 Q. Did Mr. Meneses say who he worked
5 for?

6 A. He said he was working for the
7 Law Office of Juan Jose Dominguez.

8 Q. Of the 600 people in Arturo Meneses'
9 group, do you know how many people had actually
10 worked on a banana farm previously?

11 A. The ones that I know are few.

12 Q. Did you study the document in order
13 to memorize the information?

14 A. Yes.

15 Q. Did you do anything else to help you
16 learn the information in the document?

17 A. Yes.

18 Q. What else did you do?

19 A. After that, once we had learned this
20 document, this pamphlet, he called us over to a
21 meeting.

22 Q. Where did that meeting occur?

23 A. In Esteli.

24 Q. And the meeting that you referred
25 to earlier, did that occur before you went to
26 Chinandega for that interview?

27 A. Yes, it was a meeting to inform us,
28 to guide us and prepare us so that we would go

1 to Chinandega Sunday, and to get ready 200
2 cordobas for transportation.

3 Q. Let me hand you a group of photographs.
4 If you could take a look through there and tell
5 me if there's anyone you recognize.

6 And you're indicating the man on
7 Exhibit 1638; is that right?

8 A. Yes.

9 Q. Who is that man?

10 A. Luis Matilde Rodriguez.

11 Q. Do you have any reason to believe,
12 based on your interaction with Luis Matilde
13 Rodriguez, whether he did or did not work on
14 a banana farm?

15 A. I don't think he did.

16 Q. Other than him being from the north
17 of Esteli, do you have any other reason to believe
18 that he was not -- that Luis Matilde Rodriguez
19 is not a former banana worker?

20 A. Well, because those meetings are made
21 up only of lies, just to get money.

22 Q. And do you have an understanding as
23 to why he asked you whether you have children?

24 A. Because he said that at the time of
25 the interview, one should state only the number
26 of children one had before going to work at the
27 banana farms.

28 Q. Did you come to understand why

1 Mr. Meneses was telling you to admit only to
2 children born before that time?

3 A. He said that in the lawsuit that
4 was being filed, that only those who were
5 sterile would be compensated.

6 Q. Now, a moment ago you said that
7 the meetings you attended were all lies, all
8 about lies.

9 Why did you say that?

10 A. All the time there have been nothing
11 but liars and -- liars and crooks.

12 Q. When you say liars and crooks, who
13 specifically are you referring to?

14 A. Well, you know why? He and Ordenana,
15 they have used people only through lies, because
16 they promise things they don't have or that don't
17 exist.

18 Q. Did you go to Chinandega to give that
19 interview?

20 A. Yes, I did go.

21 Q. And did you have to pay for your
22 transportation to Chinandega?

23 A. Yes. It has been paid every time.
24 Even to enter the meetings, to attend you pay
25 20 cordobas.

26 Q. Now, did Mr. Meneses ever sell you
27 any other manuals like this one that I'm showing
28 you, that you gave to us earlier, to help you

1 learn about the work that you supposedly did
2 on the Candelaria farm?

3 A. Of course, yes.

4 Q. And it says 'Documento Especial De
5 Los Diferentes Fincas Bananeras Del Occidente
6 Del Pais'; correct?

7 A. Correct.

8 Q. And where did you obtain this
9 document?

10 A. At Arturo Meneses' office, they sold
11 them.

12 Q. And how much did you pay for this
13 document?

14 A. 40 cordobas.

15 Q. So you've handed me a document that
16 says 'Asociacion' -- maybe the translator could
17 read this better than me.

18 Could you read just this top line of
19 the title?

20 THE INTERPRETER: 'Asociacion De
21 Trabajadores Bananeros Y Exbananeros De Nicaragua,
22 ATBEN,' the initials, the acronym for what I just
23 read. 'Training and orientation document made by
24 the Esteli office, Esteli, October 6th, 2007 dash
25 10 dash 07.'

26 Q. Was this also a document that you
27 purchased from Arturo Meneses' office in Esteli?

28 A. Yes, correct.

1 Q. And do you remember what you paid for
2 this document?

3 A. That was the same. 40 cordobas.

4 Q. And what is that document?

5 A. It was so that we would learn the
6 salary that was being paid. So the salary was
7 9.20 daily, and it was from six in the morning
8 till two in the afternoon, and they would pay
9 every other week, every 14 days.

10 Q. So when you say 'to learn the
11 salary,' learn the salary for what?

12 A. The salary that supposedly you would
13 earn on the banana farm, because that's something
14 that one would be asked there at the interviews.

15 Q. Do you remember how much you paid for
16 that?

17 A. The same. 40 cordobas.

18 And then this here also, that we needed
19 to learn all this -- the warehouse, the kitchen and
20 all this -- that we'd look at these images because
21 they were going to ask us about this.

22 Q. And are you saying that you were given
23 this to learn what each of these buildings looked
24 like so that when asked about them you were able
25 to describe them accurately?

26 A. Exactly, yes.

27 Q. And how many times since you first
28 signed up for this with Arturo Meneses had you

1 been told that you were about to get money?

2 A. Whenever there's a meeting.

3 Q. It's a big scam, isn't it?

4 A. Exactly.

5 Q. As a captain, did Luis Matilde
6 Rodriguez Tercero address the group at meetings?

7 A. Exactly, yes. He would talk.

8 Q. And what do you -- the first time
9 you heard Luis Matilde Rodriguez Tercero address
10 the group at a meeting, do you remember what
11 he said?

12 A. Well, what he would say is he would
13 meet with Juan Jose Dominguez and Mr. Ordenana
14 in Chinandega, and they would give them
15 instructions regarding the meeting, that
16 everything was -- strike that -- regarding the
17 lawsuit, that everything was coming along fine,
18 that everything was working well, but from that,
19 to keep silent, that he shouldn't tell anything
20 to anyone, and should somebody have a question
21 to ask him, or if you go to the Chinandega
22 office to ask, but beyond that, that no one
23 should say anything outside the office or never
24 sign any paper outside the office that was not
25 Ordenana's office or anything.

26 Q. Did Luis Matilde Rodriguez Tercero
27 ever say that you should not talk to anyone
28 specifically?

1 A. Well, he would say it publicly. I
2 mean, not just me, but to all of us he would say
3 that.

4 Q. Did he ever tell you not to talk to
5 particular people and name those people?

6 A. Well, this has been going around
7 for quite sometime, sometime now, that there
8 were these investigators from the transnationals.

9 Q. Did Mr. Luis Matilde Rodriguez
10 Tercero tell you and others in your group not
11 to talk to these investigators from the
12 transnationals?

13 A. Yes. He said so in each and every
14 meeting. Every meeting.

15 Q. Have you ever heard anybody else say
16 the same thing?

17 A. Arturo, Geraldo, Domingo, and -- and
18 the other men, all those from the -- from the
19 leadership, and also the same plaintiffs you meet
20 on the street, you know, they tell you, they tell
21 you: Be careful, keep quiet, be careful; don't
22 do anything, say anything, don't sign any papers.
23 This is with Arturo at the office.

24 Q. Did you ever hear any of the leaders
25 at the meetings threaten violence against anybody
26 who spoke to Luis Madrigal or any representative
27 of the transnationals?

28 A. Yes.

1 Q. What have you heard?

2 A. They just inquired, yes, that if they
3 see him there, to drag him.

4 Q. So what did Arturo Meneses say when
5 somebody said if you see Luis Madrigal, to drag
6 him?

7 A. What he said, he said, 'I leave that
8 in your hands.'

9 Q. Is it your understanding that people
10 at the meeting were threatening violence against
11 Luis Madrigal, and then Arturo Meneses said, 'I
12 leave that in your hands'?

13 A. Yes.

14 Q. Have you ever heard anyone threaten
15 violence against anyone perceived to be cooperating
16 with the transnationals or giving testimony in
17 this case?

18 A. Of course. I'm one of them. My life
19 is in danger here if they become aware.

20 Q. What have you heard about that?

21 A. If these people become aware, I don't
22 know who could shoot me on the street. Because
23 there the idea is that if somebody talks like I'm
24 talking to you here, that they would lose the money
25 from the lawsuit. That's their idea.

26 Q. And do you know what purpose of those
27 bus trips were?

28 A. To go see the land, to see where the

1 wells have been or where the -- excuse me, to
2 see where the warehouses have been, the hacienda
3 compound where the water deposits were, where
4 the bananas were washed.

5 Q. And who organized those bus trips?

6 A. Well, Arturo Meneses and the
7 leadership and Ordenana on Ordenana's orders.

8 Q. And did the people who went on those
9 bus trips, did they have to pay for that?

10 A. Of course. 200 cordobas for
11 transportation.

12 Q. And did Arturo Meneses say that
13 these bus trips were part of the training that
14 people should go through to learn what the
15 farms actually looked like?

16 A. Well, that's why he'd take you
17 there. That's why they take you there, so
18 that when the time comes for, as I say, you
19 know, for the companies or the gringos asking
20 questions about it, that you won't fail, you
21 will not answer something else.

22 Q. And before you went to Chinandega
23 to do this sperm test, did Mr. Meneses tell
24 you why you he wanted you to masturbate and
25 put your semen in a bag before you left Esteli,
26 rather than giving your sample when you arrived
27 at the office in Chinandega?

28 A. Well, yes, those were his orders,

1 that we needed to do that.

2 Q. Did he tell you why those were his
3 orders to do that?

4 A. Because those are the orders of
5 Mr. Ordenana.

6 Q. After the trip to Chinandega for
7 this sperm test, when was the next time you
8 visited Chinandega?

9 A. The next trip -- yeah, I mean,
10 this is nothing but just getting money from
11 people. The next trip was to set up the
12 witnesses.

13 Q. What do you mean by 'to set up the
14 witnesses'?

15 A. Well, to set up that witnesses,
16 say, from the same farm that people worked.
17 You know, let's say myself and you and he,
18 the three of us, he helps me and you and I help
19 you and you him, and like that, the three of
20 us help each other. We have to be from the
21 same farm, that we should have worked on the
22 same and have known each other from the same
23 farm.

24 Q. And you heard Mr. Dominguez speak
25 at this gathering at the stadium; correct?

26 A. Yes, I did hear him.

27 Q. And what do you remember
28 Mr. Dominguez saying during that gathering at

1 the stadium in Chinandega about two years ago?

2 A. What he said was everything was
3 coming along well on the trials that were being
4 done, and for us to be very careful about not
5 talking to unknown people, if there were questions
6 asked, not to answer them, because if somebody
7 said something or opened his mouth, then
8 everything that had been won up to that moment
9 would be lost. And he was congratulating
10 Mr. Ordenana, Arturo Meneses, and the leadership
11 for the job they were doing for the job they had
12 done. That's correct.

13 Q. Do you recall when the most recent
14 time was that Mr. Ordenana attended one of the
15 meetings in Esteli that you attended?

16 A. I don't recall, but it seems to me
17 the last time was last year. Last year we spent
18 three days there.

19 Q. Do you recall anything Mr. Ordenana
20 said at the last meeting you remember him attending
21 in Esteli?

22 A. Well, what he said was we were going
23 to prepare those people, the irrigators; and
24 that's why he was staying there for three days,
25 to give them instructions.

26 Q. Did he say what kind of instructions
27 he was there to give the irrigators?

28 A. About that he said he was going to

1 meet the irrigators to explain to them how,
2 how the irrigation was done; well, it's in
3 the paper there, you know, what the pipes were
4 like, they were aluminum, all that, because
5 the irrigators had to know about that, when
6 they worked, if they were working at night,
7 and he said you know, in order to have them
8 well prepared, transportation, visas, hotel,
9 everything to go over there, to go there.

10 Q. So the last time Mr. Ordenana
11 attended a meeting in Esteli that you attended
12 sometime last year, he spoke about explaining
13 to irrigators how irrigation was done in
14 preparation for taking them to the United
15 States?

16 A. Yes, because he -- well, Arturo
17 called some who had worked in irrigation in
18 tobacco, they were already instructed because
19 that was their job.

20 Q. Did you ever hear Mr. Ordenana say
21 on the radio that people should not talk to
22 investigators or other representatives of the
23 transnationals?

24 A. Yes. He said that all the time.
25 They said that all the time.

26 Q. Did you ever hear Mr. Dominguez
27 say on the radio that people should not talk
28 to investigators or other representatives of

1 the transnationals?

2 A. Yes. He's the one that's giving
3 that instruction to Arturo and the others.

4 Q. Had you ever heard Mr. Dominguez
5 himself say that on the radio?

6 A. Personally, yes, of course.

7 May I speak?

8 Q. Yes.

9 A. Something else I was going to
10 tell you, is that Mr. Ordenana, when he has
11 come over to the meetings, when he has come
12 over to Esteli, he has said that if he finds
13 out, discovers that somebody has been talking
14 about this, about this case, that he will be
15 sued and tried in the courthouse in Chinandega
16 or wherever, and that he will -- they will pay
17 all the money that Juan Jose Dominguez has
18 given regarding that plaintiff, that claimant,
19 meaning like myself.

20 For example, myself, right now, I'm
21 testifying here, and if they come to find out,
22 if they become aware that I have done this,
23 they can try me and put me in prison and pay
24 all the money, the millions and millions of
25 the dollars from the lawsuit, from the workers.
26 And this is the reason why I have spoken
27 clearly and truthfully about everything and I
28 am worried about many things."

1 THE COURT: All right. I forgot to mention this,
2 folks, but for the people who are interested, there will
3 be redacted transcripts that will be made of tomorrow's
4 hearings, but it will probably take us a week or so or
5 two weeks to get it done.

6 But if you contact the court in a couple of
7 weeks, or maybe Mr. Parachini, there will be redacted
8 transcripts of tomorrow's proceedings. That was the other
9 thing we tried to do to make this accessible to the public.

10 MS. NEUMAN: Dole would now like to call, your
11 Honor, by playing a portion of his video-taped deposition,
12 plaintiff Francisco Donald Quinonez. Because this is only
13 an excerpt from a two-day deposition, I would like to give
14 a little context.

15 On September 17th, 2008, plaintiff Quinonez
16 testified from approximately nine a.m. in the morning
17 until four in the afternoon. He spent most of that time
18 describing in detail his work history, including work on
19 his cattle farm, learning to be a cobbler, continuing
20 that business out of his home. He gave a lot of detail.
21 He never once mentioned working on a banana farm. When
22 I asked him if he had jobs, any jobs that we hadn't
23 talked about that day, he said no, he didn't.

24 As you'll see, notwithstanding this clear
25 testimony on a full day of questioning, after Mr. Quinonez
26 confirmed under oath that he had never worked on a banana
27 farm, Mr. Dominguez, through a series of very leading
28 questions, and we've deleted all the objections for

1 the purposes of the video, elicits perjured testimony
2 from Mr. Quinonez about his supposed banana farm work.

3 When I start questioning him again,
4 Mr. Quinonez confesses that this banana farm testimony
5 was manufactured in the law offices in Chinandega where
6 he studied to learn the testimony that Mr. Dominguez would
7 later elicit from him when he failed to volunteer it.

8 Everyone in the conference room, your Honor,
9 was shocked at the end of this deposition, and I think
10 you will be, too.

11 Could we play Mr. Quinonez, please.

12

13 (Video presentation of Francisco Donald Quinonez,
14 testifying through a Spanish interpreter,
15 was played and was reported as follows:)

16

17 "Q. Good morning, Mr. Quinonez.

18 A. Good morning."

19

20 THE COURT: Can you turn it up, please?

21 Thank you.

22

23 "Q. How old are you?

24 A. I'm 45 years old.

25 Q. And prior to the time you were ten
26 were you having epileptic seizures?

27 A. Yes.

28 Q. So you would get dizzy and your

1 vision would blur or black out?

2 A. It would be blurry and blacked out
3 and then I would fall to the ground unaware
4 of everything.

5 Q. Then you would become unconscious?

6 A. Yes.

7 Q. What is your understanding of what
8 you expect to get out of this lawsuit?

9 A. A quick compensation.

10 Q. So you were working at the shoe
11 repair when the revolution began, and then the
12 revolution caused the shoe repair business to
13 shut down for awhile?

14 A. Yes.

15 Q. As a teenager, did you have any job
16 other than working in the shoe repair business
17 and then becoming a police volunteer when you
18 were 18?

19 A. Yes. As a teenager, yes, I worked
20 with the police as a teenager.

21 Q. And you worked in the shoe repair
22 business when you were a teenager; correct?

23 A. Yes.

24 Q. From the time you were 12 until
25 the time you were 20, did you have any jobs
26 other than working in shoe repair and then
27 with the police?

28 A. No.

1 Q. Who was your first girlfriend?

2 A. Her name was Carla.

3 Q. How many times would you say that
4 you and Carla had sex during this three-month
5 period?

6 A. About two or three times.

7 Q. Two or three times total?

8 A. Yes.

9 Q. Other than Carla, Carmen, and the
10 one other woman whose name you don't recall,
11 have you ever had sex with anyone?

12 A. No.

13 Q. And on how many occasions did you
14 have sex with the woman whose name you can't
15 remember?

16 A. I don't know her name, but I think
17 I had sexual relations with her only two times.

18 Q. During the three months that you
19 and Carmen were together, how many times would
20 you say that you and she had sexual relations?

21 A. About three times.

22 Q. Three times total?

23 A. Yes.

24 Q. Other than the two times you had sex
25 with the woman whose name you don't remember,
26 the three times you had sex with Carmen, and the
27 two to three times you had sex with Carla, have
28 you had any other sexual relations?

1 A. No.

2 Q. The banana worker offices in
3 Chinandega, have you been to those offices on
4 more than one occasion?

5 A. Yes.

6 Q. Who have you met at the banana
7 worker offices in Chinandega?

8 A. Carlota and Rolando.

9 Q. Does Carlota to your knowledge work
10 at the banana worker offices in Chinandega?

11 A. Yes, she works there.

12 Q. At the four meetings that you had
13 with Mr. Dominguez in the offices in Chinandega,
14 were the same people always present?

15 A. Different people.

16 Q. How many men and women were at the
17 first meeting you had with Mr. Dominguez at
18 the offices in Chinandega?

19 A. About 20 women and about 200 males,
20 more or less. About 200 men.

21 Q. The second time with you when you
22 met with Mr. Dominguez at the law offices
23 in Chinandega, how many people were at that
24 meeting?

25 A. There were few.

26 Q. Can you estimate how many?

27 A. About 50. That's the few people
28 who were there, about only 50 people.

1 Q. The third meeting that you had
2 with Mr. Dominguez at the law offices in
3 Chinandega, how many people were at that
4 meeting?

5 A. The third meeting lasted a little
6 bit longer.

7 Q. A little bit longer than an hour?

8 A. Yes, an hour and a half.

9 Q. And how many people were at that
10 meeting?

11 A. There were about two -- there were
12 about 200 people because people from Esteli
13 also showed up, people from Esteli, from
14 Matagalpa and Rivas.

15 Q. And then the fourth meeting that
16 you had with Mr. Dominguez, was that the one
17 you already described to us where everybody
18 who is with you here in the U.S. was present?

19 A. Yes.

20 Q. At the law offices in Chinandega,
21 without discussing the content, would anybody
22 read things to you during your meetings?

23 A. Just Carlota would tell us to study
24 the questions, to study the questions that
25 would be asked.

26 Q. Without telling us the content of
27 what anybody told you at the law offices, during
28 the meetings would anyone read things to you

1 out loud?

2 A. Yes.

3 Q. Without telling us the contents of
4 what might have been in the pictures, did anybody
5 show you pictures of things when you were at
6 the meetings in the law offices in Chinandega?

7 A. Yes.

8 Q. Have you had any types of jobs or
9 done any type of work that you haven't told us
10 about today?

11 A. No.

12 Q. Mr. Quinonez, I have some questions
13 for you.

14 You were asked earlier today about
15 jobs, certain jobs that you had in the past,
16 and I want to ask you whether or not you ever
17 worked in a banana plantation.

18 A. Yes.

19 Q. From what year to what year,
20 approximately, do you recall working at a banana
21 plantation?

22 A. From 1978 to 19 -- 19 -- I think 1970
23 is when I left, the other date.

24 Q. What plantation? Do you recall the
25 name of that plantation?

26 A. Maria Elsa.

27 Q. And what were your job duties there
28 at the plantation?

1 plants, to keep them -- so they would stay
2 dry. To keep them fresh.

3 Q. What types of liquids were you
4 involved in irrigating at the plantation?

5 A. Well, usually the irrigation was
6 done during the night. If there is was too
7 much wind, the irrigation wasn't done, it was
8 suspended.

9 Q. What type of liquids were you
10 involved irrigating?

11 A. With Nemagon.

12 Q. Was water also irrigated?

13 A. Yes, also with water injected.

14 Yes.

15 Q. What hours typically did you work
16 at the plantation?

17 A. Well, normally the poison irrigation
18 was done at midnight if there was no wind,
19 because if there was wind, then the wind would
20 blow away the poison and the poison wouldn't
21 work. The wind had to be calm. And when there
22 was no wind, then the irrigation was done for
23 a longer period of time.

24 Q. Just tell me the hours that you
25 typically worked when you worked at the
26 plantation.

27 A. The hours? The hours, it was from
28 five in the afternoon to twelve midnight.

1 Q. How many years were you involved
2 irrigating the chemical Nemagon?

3 A. I worked 12 years.

4 Q. Did you live on the plantation?

5 A. No.

6 Q. Do you recall who your irrigation
7 captain was?

8 A. I don't recall.

9 Q. Do you recall anyone else that --
10 at the banana plantation that worked with you
11 the years you worked there?

12 A. I don't recall.

13 Q. Do you recall what the Nemagon
14 smelled like?

15 A. Well, it smelled of ripe guava,
16 yes.

17 Q. Did you have occasions to smell
18 it the years that you worked there?

19 A. Yes, you could perceive the smell,
20 the poison.

21 Q. Did you smell it more than one time
22 while you worked there?

23 A. Yes.

24 Q. Will you tell us roughly how many
25 times you smelled it? How many different days
26 did you smell it?

27 A. About four, about four times. No
28 more than that. No. No.

1 Q. Is that four times the time that
2 you were there, or was it four times a day?
3 Can you give me an estimate of how often you
4 smelled it?

5 A. I smelled it, I smelled the poison
6 about three times, no more than that, because
7 my job was only carrying pipes.

8 Q. Can you tell us whether or not
9 the DBCP fell on you from the overhead guns at
10 any time you were working there?

11 A. Yes.

12 Q. On how many times?

13 A. Many times.

14 Q. You testified about three women
15 that you've had sexual relations in the past,
16 and you were asked about how frequent you
17 had sex with them.

18 Do you recall that?

19 A. Yes. Many times.

20 Q. Many times what?

21 A. I had sex with them many times,
22 yes.

23 Q. Okay. With Carmen, how often did
24 you have sex with --

25 A. Yes, with her I had sexual relations
26 many, many times.

27 Q. How long did you have a sexual
28 relation with Carmen?

1 A. With Carmen? About around ten
2 times, more or less.

3 Q. How often did you put your penis
4 in her vagina during the time that you were
5 with her?

6 A. About three or four times. That's
7 it. Yes.

8 Q. How often did you -- how long did
9 you have a sexual relationship with Carla?

10 A. About -- about ten times, yes.

11 Q. About ten times you had sex with
12 her, or ten times what? I don't understand.
13 What do you mean?

14 A. Yes, we had sexual relations ten
15 times. Yes.

16 Q. And there's another woman you
17 don't remember her name. Do you recall her,
18 the third woman's name?

19 A. No.

20 Q. And how long did you have sexual
21 relations with her?

22 A. Well, about three, three times.
23 No more than that.

24 Q. Do you understand that you've been
25 under oath today?

26 A. Yes.

27 Q. When Ms. Neuman was asking you
28 questions this morning and this afternoon,

1 were you answering truthfully?

2 A. Yes.

3 Q. Did you do your best effort and
4 best job to answer her questions truthfully?

5 A. Yes.

6 Q. And as you sit here right now
7 do you believe you answered her questions
8 truthfully?

9 A. Yes.

10 Q. Mr. Quinonez, the brain lesion that
11 you have that you've told us about today, does
12 that sometimes cause you to get confused?

13 A. Yes.

14 Q. Has your brain lesion ever caused
15 you to believe that you did something that
16 you really didn't do?

17 A. Yes.

18 Q. Now, when Mr. Dominguez was asking
19 you about working on Maria Elsa, you gave him
20 a lot of details about your work there.

21 Did you have to study before you
22 came to testify to remember all that detail?

23 A. Yes, I had to study.

24 Q. Where did you get the materials
25 about Maria Elsa that you studied from?

26 A. Well, I obtained them through
27 friends. A friend.

28 Q. And what's your friend's name?

1 A. I don't remember. I don't
2 remember. I honestly don't remember.

3 Q. That's okay.

4 Can you tell me what the materials
5 were that your friend gave you to study?

6 A. Simply just one sheet from a
7 notebook. That's all.

8 Q. Do you recall what the sheet said?

9 A. Yes. The date when I went to work
10 and the date when I left.

11 Q. The date when you went to work and
12 the date you left Maria Elsa?

13 A. Yes.

14 Q. What other information did the sheet
15 have on it?

16 A. Also the -- it said the date of --
17 well, not the date, but also the name of the
18 irrigation captain.

19 Q. The details that you told
20 Mr. Dominguez about working at Maria Elsa,
21 were all of those on this sheet?

22 A. Yes, it was a writing, it was a
23 writing that a friend of mine had done and
24 so that I would read the questions because I
25 didn't know anything about that.

26 Q. You didn't know anything about
27 what?

28 A. About the questions.

1 Q. About questions about banana farms?

2 A. Yes.

3 Q. Do you remember specifically
4 what else was on the sheet in addition to the
5 questions, the dates you worked at Maria Elsa,
6 and the name of the irrigation captain?

7 A. Yes, the name of the irrigation
8 captain, how the guns were set up. All that.

9 Q. I'm going to ask the court
10 reporter to mark the handwritten document
11 that Mr. Dominguez just handed me as Exhibit
12 1523 to Mr. Quinonez's deposition.

13 The handwriting on that document,
14 on the front, is that your handwriting?

15 A. Yes, all of this is my handwriting.
16 All of it is, this side and the other side.
17 It's just to remember.

18 Q. What's this first word up here
19 that starts with an M? Stay on this side.
20 This one.

21 A. Oh, women. The women and with
22 the names. Only these two I remember, and I
23 don't recall the other one because I forget.

24 Q. The word "mujeras," is that what
25 it means, simply women?

26 A. Yes. Yes, women.

27 Q. When you wrote down these names
28 when you were creating this document, did you

1 copy them off of something?

2 A. No, only these ones to memorize
3 them. I wanted to memorize them.

4 Q. Where were you when you wrote
5 these names down?

6 A. I was in Chinandega, Nicaragua.

7 Q. And were you at home or at work or
8 at the banana worker law offices? Where were
9 you when you made the list?

10 A. At the office. At the office.

11 Q. And by "at the office," you mean the
12 law offices in Chinandega that we talked about
13 yesterday?

14 A. Yes.

15 Q. And when you wrote this information
16 down when you were at the law offices in
17 Chinandega, were you talking to anybody at the
18 time that you made the list?

19 A. Well, this is a woman who I met.
20 She was only a co-worker.

21 Q. What was your co-worker's name?

22 A. Her name is Carlota.

23 Q. Did Carlota help you make the list
24 of women?

25 A. Yes, she only -- she only read it,
26 she was reading it and I was writing it down,
27 like a parrot they say. Like a parrot.

28 Q. So you wrote down what Carlota read

1 to you.

2 A. Yes.

3 Q. And that's how you made this list
4 of women on Exhibit 1523?

5 A. Yes."

6

7 MR. EDELMAN: Your Honor, I'm mindful of the
8 hour. What we had hoped to do before we broke for lunch
9 was to play a short excerpt from Mr. Peralta's deposition,
10 he's one of the plaintiffs who was dismissed, and then
11 put Mr. McKnight on the stand.

12 THE COURT: How short is short? How long?

13 MR. EDELMAN: Well, the excerpt is not more than
14 five or six minutes, it's one of the shorter ones, and
15 then I think I could get Mr. McKnight on and off -- we
16 would be done by 12:30.

17 THE COURT: And start again when?

18 MR. EDELMAN: Well, that would be at the Court's
19 discretion.

20 THE COURT: Mr. McCoy, as the one with the
21 greatest burden of work here, can you handle that, or
22 not?

23 THE REPORTER: Yes, your Honor.

24 THE COURT: That's yes?

25 You promise to have him eating and resting
26 his fingers by 12:30 now.

27 MR. EDELMAN: I promise to have him out of here
28 by 12:30. I don't know where he normally goes to eat,

1 your Honor, but. . .

2 THE COURT: All right. I didn't mean you were
3 supposed to feed him. That's not how I meant that.

4 All right. Let's go. Next up.

5 MR. EDELMAN: All right. Your Honor, we're going
6 to play, as I said, a short excerpt of the deposition
7 of Pablo Emilio Peralta. Mr. McKnight took day one of
8 Mr. Peralta's deposition on July 14th, 2008. Mr. McKnight
9 will testify as to his efforts to take day two and how
10 they were thwarted.

11 You will see in this excerpt that Mr. Peralta
12 is repeatedly caught lying about his relationships, the
13 pregnancy of his partners, and his two children. He admits
14 to previously signing a government form which indicates
15 that he has two children.

16 And I'll cut short my summary of it so we can
17 just get on with it.

18 THE COURT: Okay.

19

20 (Video presentation of Pablo Emilio Peralta,
21 testifying through a Spanish interpreter,
22 was played and was reported as follows:)

23

24 "Q. Good day, sir my name is Rick
25 McKnight.

26 A. Good morning. Pablo Emilio
27 Peralta.

28 Q. Did you have any sexual activity

1 with a woman in 1978?

2 A. Yes, I met a woman then.

3 Q. Do you remember her name?

4 A. Yes.

5 Q. What was her name?

6 A. Alba Luz is what I recall.

7 Q. Did you meet and have sexual
8 activity with Alba Luz after you left the
9 Cardon farm?

10 A. Yes. Yes.

11 Q. Did you have sexual activity with
12 Alba Luz for more than a year?

13 A. Yes. About five years I said.
14 Around four or five years.

15 Q. Let me show you what I'll have the
16 court reporter mark as Exhibit 1401. And do
17 you recall filling out this document as part
18 of your application for a government job?

19 A. Everything here is correct.

20 Q. Okay. And you prepared this and
21 wrote this correct information as part of your
22 seeking a job; correct?

23 A. I don't recall very well, but yeah,
24 my name is here and all that.

25 Q. And did you fill this out, this form
26 out?

27 A. Yes, I think so, because this is my
28 handwriting.

1 Q. And Item No. 10 they asked you to
2 identify your children, and you identified two
3 as your children; correct?

4 A. Yes.

5 Q. And in Item No. 11 they ask for the
6 identification of the father of the children,
7 and you put in your name; correct?

8 A. 11. 11. That's my name.

9 Q. And do you recall Jose de Carmen?

10 A. Jose de Carmen? No, I don't recall
11 right now Jose de Carmen.

12 Q. You know that Jose de Carmen was the
13 son that was born from your sexual activities
14 with Alba Luz. He was your son; correct?

15 A. No, I don't know.

16 Q. You know that Alba Luz got pregnant;
17 correct?

18 A. Well, honestly I was told, but I
19 don't know if -- I wasn't aware if it was mine
20 or -- I don't know.

21 Q. You were told that -- you knew that
22 Alba Luz was pregnant; correct?

23 A. Yes, I knew, but I didn't know if
24 he was mine or not. That I don't know.

25 Q. And you knew that Alba Luz said
26 that the baby was yours; correct?

27 A. Well, that's a different matter,
28 whatever she says.

1 Q. And you remember that you got
2 Nubia pregnant and she had a son Odin.

3 A. That, yes. But no, I mean, I knew
4 she was pregnant because -- because -- I don't
5 know. I wasn't living with her at the same
6 house, I mean, because she lived in a place in
7 Chinandega and I was living in El Viejo and I
8 would go there and would I see her when I was
9 there playing ball. But I do know that she
10 had a man.

11 Q. In 1977 or '78 you were having
12 sexual relationships at times with Nubia;
13 correct?

14 A. Around then. Every now and then.

15 Q. Yes. And you knew that at that
16 same time she got pregnant; correct?

17 A. No, I didn't know. I didn't find
18 out. I wasn't living with her. I mean, I was
19 not in her house or anything. I would go over
20 there sporadically.

21 Q. I understand you would go over
22 there sporadically, but you heard or saw that
23 she became pregnant soon after that; correct?

24 A. No, I don't know. I don't recall.

25 Q. You don't recall that she became
26 pregnant?

27 A. No, I wasn't aware.

28 Q. Did you become aware at any time

1 that Nubia became pregnant?

2 A. No. No. Later on, yes.

3 Q. When later on did you understand
4 she became pregnant?

5 A. Well, you know, with time when I
6 would go back, well, then I do recall that she
7 did tell me that the child was mine. That's
8 what she told me. But since she had her man,
9 well, then I didn't -- I wasn't sure so, I
10 didn't pay too much. . .

11 Q. At some point she became pregnant
12 after you had sex with her.

13 A. Well, as I said, I wasn't aware.
14 I wasn't aware.

15 Q. She told you that the baby was
16 yours, that you were the father; correct?

17 A. Yes, I do recall that she did tell
18 me, after some time she told me, but I didn't
19 believe her because she had her husband and
20 so I didn't take -- I mean, I never believed
21 that he was mine."

22

23 THE COURT: Is that all?

24 Mr. Edelman, I just want to know, I don't have
25 Exhibit 1401 under my nose right now, are the names --
26 should I assume that the names of the two children stated
27 in response to Question No. 10, Jose de Carmen, born of
28 Maria -- sorry, Alba Luz, and Odin born of Nubia?

1 MR. EDELMAN: That is my understanding, your Honor,
2 and I will confirm that during the lunch break.

3 THE COURT: Thank you.

4 MR. EDELMAN: Your Honor, we would call Mr. McKnight
5 to the stand at this point.

6 THE COURT: Mr. McKnight, I'd like you to take the
7 trek that you saw so many witnesses in the Tellez case
8 take. _____

9 Come on over here, stand in front of the
10 reporter, face the clerk -- you know the Boss over there --
11 and raise your right hand.

12 MR. MCKNIGHT: Hey, Boss, how are you?

13 Thank you, your Honor. I forget the protocol.
14 Can I bring this up to the stand?

15 THE COURT: Yes. Fine. You're right.

16 Is there a cup there?

17 Mr. Edelman's going to -- somebody's going
18 to hand you a cup after you get sworn in.

19 MR. MCKNIGHT: That would be great.

20

21 FREDERICK MCKNIGHT,
22 called as a witness by the defense, having been first
23 duly sworn, was examined and testified as follows:

24

25 THE CLERK: Thank you. Please be seated on the
26 witness stand.

27 THE COURT: Just pour that bottle of water into that
28 cup and don't take a swig from it.

1 THE WITNESS: I remembered that rule, but I didn't
2 see one up here.

3 MR. EDELMAN: I'll take your bottle.

4 THE COURT: We don't want you to be tempted.

5 THE CLERK: Sir, please state and spell your name for
6 the record.

7 THE WITNESS: Frederick McKnight.

8 THE CLERK: Can I have you spell it, please?

9 THE WITNESS: F-r-e-d-e-r-i-c-k, M-c capital
10 K-n-i-g-h-t.

11 THE CLERK: Thank you, sir.

12

13 DIRECT EXAMINATION

14 BY MR. EDELMAN:

15 Q. Good afternoon, Mr. McKnight.

16 A. Good afternoon.

17 Q. Could you describe your current employment,
18 please.

19 A. Yes. I'm a partner at Jones Day, a law firm
20 in Los Angeles.

21 Q. And were you at some point counsel of record
22 for Dole in the Mejia versus Dole matter?

23 A. That's correct.

24 Q. And can you describe your duties as counsel
25 for Dole in that matter?

26 A. I was lead counsel, and part of the function
27 there was to take some of the depositions of plaintiffs
28 who had brought claims against Dole.

1 Q. And in that capacity did there come a point
2 in time when you noticed the deposition of plaintiff
3 Pablo Emilio Peralta?

4 A. Yes. Our office noticed his deposition.

5 Q. And did you take Mr. Peralta's deposition in
6 July of 2008?

7 A. I did.

8 Q. And --

9 A. Or I took part of his deposition.

10 Q. And which part did you take?

11 A. Well, I took the first day of his deposition.
12 It had been noticed for and agreed upon for a two-day
13 deposition.

14 Q. Okay. And so what happened at the end of
15 the first day of the deposition with respect to whether
16 it would continue?

17 A. Well, at the end of the first day of the
18 deposition I confirmed with counsel, Mr. Boone, and
19 with the witness, that we would resume his deposition
20 the second day, at nine in the morning the following day.

21 THE COURT: For the record, Mr. Boone is the
22 gentleman sitting here in the courtroom?

23 THE WITNESS: That is correct.

24 Q. BY MR. EDELMAN: And that would have been
25 July 15th?

26 A. My recollection is it would have been July
27 15th, that's right.

28 Q. And did you in fact show up on July 15th

1 to take the deposition, the second day of Mr. Peralta's
2 deposition?

3 A. I fully expected to take his deposition the
4 second day. I was looking forward to it. There were many
5 items that I had left intentionally uncovered for the second
6 day.

7 Q. And where was the deposition taking place?

8 A. It was at the Law Offices of Juan Dominguez,
9 at the corner of Wilshire and Vermont.

10 Q. And who else showed up for what was supposed
11 to be the second day of Mr. Peralta's deposition?

12 A. Counsel for Amvac, counsel for Dow, the court
13 reporter, the videographer, Mr. Boone.

14 Q. Did the witness appear?

15 A. No.

16 THE COURT: Was there a translator there?

17 THE WITNESS: There was a translator. Thank you,
18 your Honor.

19 Q. BY MR. EDELMAN: And was an explanation given
20 for the witness's absence?

21 A. Mr. Boone off the record gave an explanation
22 to me that the witness was ill, couldn't eat, was at his
23 hotel. And I was both upset and highly skeptical.

24 Q. Did you ask any questions about Mr. Peralta's
25 medical condition?

26 A. Yes. I indicated to Mr. Boone that we needed
27 to put this on the record, and on the record I asked him --
28 I was skeptical that this gentleman was ill, and so I asked

1 the questions that you would common-sensically ask to find
2 out if someone was ill. I asked if he had a doctor that
3 was looking after him, to which the answer was no; I asked
4 if he was taking any medication, the answer was no; and I
5 asked for some description of what his condition was, and
6 I was told he couldn't eat, he was weary, and would be
7 resting in his hotel.

8 Q. And did Mr. Boone say anything about whether
9 Mr. Peralta planned to show up later in the day to continue
10 his deposition?

11 A. He held open that possibility that the witness
12 would -- could return in the afternoon.

13 Q. Did you request to be allowed to continue the
14 deposition at a later time?

15 A. Yes. I wanted -- I wanted the deposition.
16 As I said, I had -- there were several things I wanted to
17 do with the witness, there were areas that I wanted to cover
18 specifically on day two, I planned to do it in the afternoon
19 if they would make that possible, try to pack it in so that
20 it would all be completed that second day. If not, I asked
21 that the witness be made available at the next available
22 date for me and that we would pay any incremental cost to
23 keep the witness in Los Angeles in order to complete that
24 second day of his deposition.

25 Q. Do you remember saying anything on the record
26 in connection with this discussion about your concern that
27 plaintiffs or plaintiffs' counsel might drop Mr. Peralta
28 as a plaintiff?

1 A. On the record in the second day, again because
2 I was very skeptical of this witness's testimony on the
3 first day, and I -- my honest judgment was that this witness
4 was not telling the truth on various matters, and I was
5 concerned that he would be dropped and wouldn't show up the
6 second day, and I was concerned that he would be dropped as
7 a plaintiff and I would be denied the opportunity to examine
8 him further, and I put that on the record that even if
9 he was dismissed as a plaintiff, which was my fear, that
10 I still intended to go forward with his deposition even
11 as a third-party witness because there were many issues
12 that I wanted to explore with him.

13 Q. Had you had previous experience in connection
14 with the DBCP cases where you had seen plaintiffs being
15 dropped?

16 A. I had. That was a pattern I had seen in
17 all of the cases that I was aware of. I was aware of the
18 instance involving the Girardi and Walter Lack firms who
19 brought an enforcement action from a judgment in Nicaragua,
20 the Franco matter. They brought it in the United States
21 in the Central District, it was dismissed by the judge,
22 they appealed it to the Ninth Circuit, and approximately
23 a week before the appeal was to be heard before the Ninth
24 Circuit they dropped the appeal in the face of a sanctions
25 motion made by Dole and other defendants.

26 In another case in which our firm was involved
27 in, I was less directly involved, the Borja case --

28 THE COURT: B-o-r-j-a? _____

1 THE WITNESS: B-o-r-j-a, the Borja case, a case
2 in Texas, counsel there brought an action on behalf of
3 several hundred plaintiffs. By agreement, the number of
4 plaintiffs was narrowed to approximately nine, and those
5 were put in the final discovery phase in readiness for
6 trial, and half of those were dropped just prior to trial.
7 And then on the Friday before the trial was to begin on
8 Tuesday, the remaining four plaintiffs were dismissed
9 without prejudice.

10 THE COURT: Let me see if I have this. In Borja,
11 filed in Texas, there were originally several hundred
12 plaintiffs.

13 Am I right so far?

14 THE WITNESS: Correct.

15 THE COURT: Somehow between the filing of the
16 complaint and the beginning of discovery, several hundred
17 plaintiffs were dismissed and you were left with nine.

18 THE WITNESS: Several hundred plaintiffs were put
19 in a deferred category.

20 THE COURT: Suspense, sort of.

21 THE WITNESS: Yes.

22 THE COURT: All right. And then nine plaintiffs
23 were to go forward in discovery; is that right?

24 THE WITNESS: That's correct.

25 THE COURT: And then somewhere before discovery --
26 or sorry, before the -- somewhere along the way four were
27 dropped out of the discovery.

28 THE WITNESS: Yes.

1 THE COURT: And then the Friday before the Tuesday
2 trial, the remaining plaintiffs were dropped.

3 THE WITNESS: They were dropped, yes.

4 Q. BY MR. EDELMAN: What's that called in Texas?

5 A. In Texas, it's called a Texas dog fall. And
6 I remember after the first day of Mr. Peralta's deposition
7 coming back to the office and saying: I know we're going
8 to get a Texas dog fall on us. This guy Peralta is a liar
9 and he's not coming back.

10 THE COURT: So Mr. Brem, is that true?

11 MR. BREM: I've never heard that in my life. I hate
12 to disagree with Mr. McKnight, but. . .

13 I think it's something that Californians say
14 that Texans say, your Honor.

15 THE WITNESS: That's what Terry Murphy says.

16 THE COURT: All right. Just so we're clear, I'm
17 not really questioning you, Mr. McKnight, about the dog
18 fall --

19 THE WITNESS: Right.

20 THE COURT: -- but we've had a very loose, fun
21 association, the group of us, and Mr. Brem is always telling
22 me about Texas traditions, and a day without a Bremism,
23 a Texas tradition, you know, would not be a day of DBCP
24 cases.

25 MR. BREM: It's big day in Texas, your Honor. I'll
26 fill you in later.

27 MR. EDELMAN: Your Honor, while we're on this
28 subject, you had made comments this morning about Florida

1 and Texas and enforcing judgments in sister states, and
2 I just wanted the Court to know that we are not prepared
3 to stipulate that Texas is a sister state.

4 Q. Now, Mr. Brem -- I mean, Mr. McKnight, you
5 were talking about dismissals, and I don't think that you
6 had mentioned Tellez yet.

7 A. Right.

8 Q. Can we talk about what your experience had
9 been with respect to dismissals in Tellez?

10 THE COURT: You're asking about the attrition rate
11 in Tellez?

12 MR. EDELMAN: Yes, your Honor.

13 THE WITNESS: Well, I saw the slide that you put
14 up today. I wouldn't question the percentage of attrition
15 that you noted in that, but the experience we had in
16 Tellez was we had approximately four dozen or so plaintiffs
17 originally in that case, and as discovery proceeded,
18 investigations occurred, that number got winnowed down
19 to approximately 13 and then to 12.

20 THE COURT: In fairness, Mr. Edelman, I think the
21 Court on its own motion, or at the request of counsel,
22 transferred either three or four Tellez plaintiffs to
23 other cases.

24 Is that right, Mr. Brem? I just want to
25 correct my memory.

26 MR. BREM: The history gets a little more convoluted
27 than that, your Honor. There were some plaintiffs that
28 moved from Tellez to Mejia originally, and then Mr. Rivera

1 moved -- excuse me, Mr. Zelaya moved to the Rivera case.

2 THE COURT: The bottom line is that the Court
3 was responsible, of the 53 or 54 initial plaintiffs, for
4 removing three or four of them, or some portion thereof;
5 is that right?

6 THE WITNESS: That's my recollection.

7 THE COURT: Okay.

8 MR. BREM: And as of today, your Honor, only two
9 of those plaintiffs remain in any case.

10 THE COURT: All right. I understand.

11 And I'm not questioning you, Mr. McKnight, but
12 the Court needs to take responsibility for its contribution
13 to the attrition rate.

14 THE WITNESS: That's correct.

15 THE COURT: Okay.

16 Q. BY MR. EDELMAN: Mr. McKnight, what had
17 happened in day one of Mr. Peralta's deposition that you
18 thought was so unfavorable to him or to the plaintiffs
19 that you expected or worried that they might try to dismiss
20 him from the case?

21 A. In my judgment there were about three or four
22 or five areas, large areas, in which I thought his testimony
23 was -- well, I thought his testimony was incredible and
24 I thought his testimony was being made up.

25 I thought he was evasive and not forthcoming,
26 not truthful with respect to having sired children
27 naturally, some segments of which you put on that montage.
28 I was skeptical about his -- his sexual -- about his

1 sterility. He testified that he was sterile and had been
2 told that he was sterile. He had been examined, he had
3 had a sperm test the previous day I believe, and in that
4 examination he provided a mere drop of semen, which showed
5 zero sperm in that drop, but he then gave a urine sample
6 post-ejaculation, and the split that was provided to us
7 extrapolated indicated that he had more than 10 million
8 sperm. So I examined him on --

9 Q. In the urine.

10 A. In the urine.

11 THE COURT: So what you're saying is post-ejaculate
12 semen was found in a urine sample collected immediately
13 after the sample was given.

14 THE WITNESS: Exactly right.

15 And your Honor would probably know better than
16 I on what physically is possible in these circumstances,
17 but I did examine him as to how he gave his ejaculate, you
18 know, whether he tried to impede the flow of his ejaculate
19 so that it would only be one drop, and he gave me very
20 evasive answers on that that made me suspect how he was
21 providing his semen sample.

22 I was also skeptical about his relaying his
23 work experience. He -- it struck me that it may well have
24 been the case that he had been on a farm, but from his lack
25 of any detailed understanding it was beyond my belief that
26 he had worked on an irrigation crew, much less an irrigation
27 crew that would have been administering DBCP.

28 And he also was not forthcoming, not

1 truthful with respect to sexually-transmitted diseases.
2 As to standard questions he would give a negative answer
3 suggesting he had no sexually-transmitted diseases, but
4 on being pressed acknowledged that he had been using
5 amoxicillin since the seventies periodically when he
6 would get burning sensation in his penis.

7 So, I decided on day two that I would go
8 into detail on his work experience, really probing the
9 experience that he had on the farm, because I thought
10 that this was all fabricated testimony and I wanted to
11 get into that.

12 Q. BY MR. EDELMAN: Now, at some point after
13 telling Mr. Boone that you wanted to continue with
14 Mr. Peralta's deposition testimony when he was available,
15 did you go off the record?

16 A. We did go off the record.

17 Q. And what was the plan then with respect to what
18 you hoped might unfold that day?

19 A. Well, Mr. Boone kindly said that he would make
20 his cell phone available to us, we would call him to see if
21 the witness had recovered his health by noontime. I was --
22 as I said, I was skeptical about what was going on, and when
23 we left Mr. Dominguez's office after being told that the
24 deposition wasn't going forward because the witness was ill,
25 he couldn't eat, I asked my companion to walk around the
26 neighborhood with me to see if we couldn't find Mr. Peralta,
27 because I doubted that he had gone to his hotel room to
28 recover.

1 Q. Had you been told that that's what he had done:
2 Gone to his hotel to lie down and recover?

3 A. Yes.

4 Q. And do you remember the name of the associate
5 with whom you went looking for Mr. Peralta?

6 A. Yes. Rebecca Sterling. She's an associate
7 in our office.

8 Q. And so you started going around the
9 neighborhood to see if you could find Mr. Peralta.

10 Did you find him?

11 A. We did find him. Mr. Peralta was in a coffee
12 shop, he was in a coffee shop having it looked like a cup
13 of coffee and he was eating a bag of pork rinds.

14 THE COURT: Pork rinds?

15 THE WITNESS: Pork rinds. And he was sitting there
16 with the plaintiff --

17 THE COURT: You mean the fried pork rinds?

18 THE WITNESS: The fried pork rinds. And he was
19 sitting there in the coffee shop with the plaintiff who
20 was going to be testifying I think the next day, Medrano
21 Flores.

22 MR. AXLINE: Your Honor, may I approach the witness?

23 THE COURT: Of course.

24 If you're going to show him something, show it
25 to counsel first.

26 MR. AXLINE: I have a feeling I know what it is.

27 THE COURT: As long as it isn't the lab test results.

28 Q. BY MR. EDELMAN: Mr. McKnight, I'm handing you

1 a bag that you provided to me.

2 MR. AXLINE: I'm going to object to this as
3 unnecessary theater, your Honor.

4 THE COURT: Well, that's not a grounds for an
5 objection.

6 THE WITNESS: Yes, I can identify this. This is
7 a bag of pork rinds, pork skins, chicharrones, and it was
8 a bag such as this that he was eating the pork rinds.

9 THE COURT: So that's not the actual bag --

10 THE WITNESS: No.

11 THE COURT: -- but that's a bag that is meant to be
12 used as an exemplar only.

13 THE WITNESS: That's correct.

14 Q. BY MR. EDELMAN: And did you -- did you --

15 THE COURT: And by the way, it's not being marked for
16 identification or admitted into evidence. We're not keeping
17 used pork rinds here.

18 THE WITNESS: I walked up to --

19 Q. BY MR. EDELMAN: Let me ask a question about
20 the pork rinds.

21 A. Yeah.

22 Q. Did you purchase that bag?

23 A. I purchased this bag a week or so ago.

24 Q. And where did you purchase it?

25 A. From the coffee shop.

26 Q. The same coffee shop where you saw Mr. Peralta?

27 A. Yes.

28 Q. All right.

1 And you say that when you found him in the
2 coffee shop he was -- did you say he was drinking coffee?

3 A. He was -- it looked like he was drinking
4 coffee. He was sitting there with this other gentleman,
5 whom I believe was Medrano Flores, and I walked up to
6 Mr. Peralta and said good morning, and he was I thought
7 uncomfortable being -- having me find him, and so he got
8 up and left, walked over to the counter to apparently
9 get more food.

10 Q. Did Mr. Peralta appear ill to you?

11 A. No, he did not appear ill to me.

12 Q. After seeing him in the coffee shop,
13 did Mr. Boone or other counsel for the plaintiffs ever
14 notify you that Mr. Peralta was prepared to return for
15 the remainder of his deposition?

16 A. We were advised that he was unable to return
17 for his deposition.

18 I asked Mr. Boone to make the witness
19 available when he could resume his deposition, and if that
20 entailed his staying longer in Los Angeles and there being
21 an incurrence of extra food and hotel costs we would defray
22 that expense so that we could continue the deposition. And
23 I proposed that it be -- that it resume on the following
24 Monday, since I was going to be out of town on the Friday
25 before that.

26 Q. And did Mr. Peralta ever return to complete
27 his deposition?

28 A. He never did. I was told -- I was told in fact

1 that -- when I renewed my request for his deposition, I was
2 told that he had been sent back to Nicaragua I think on the
3 Saturday before the Monday that I sought his deposition.

4 Q. And did the plaintiffs subsequently dismiss him
5 from the case?

6 A. That's correct.

7 MR. EDELMAN: Your Honor, it's 12:30 and I have no
8 further questions of Mr. McKnight.

9 THE COURT: Do you have any questions, Mr. Brem?

10 MR. BREM: Your Honor, as many times as I have
11 dreamed of having Mr. McKnight under oath, I recognize
12 the hour and Mr. McCoy's fingers and I have no questions
13 for this witness.

14 THE COURT: So you're not asking questions in
15 recognition of and respect for Mr. McCoy.

16 MR. BREM: Yes, your Honor. Despite the fact that
17 I have long dreamed of this moment.

18 THE COURT: All right.

19 Mr. Crow, any questions?

20 MR. CROW: No questions, your Honor.

21 THE COURT: Mr. Axline?

22 MR. AXLINE: No questions, your Honor.

23 THE COURT: May this witness be excused, Mr. Edelman?

24 MR. EDELMAN: Yes, your Honor.

25 THE COURT: Mr. Brem?

26 MR. BREM: Yes, your Honor.

27 THE COURT: Mr. Crow?

28 MR. CROW: Yes, your Honor.

1 THE COURT: Mr. Axline?

2 MR. AXLINE: Yes, your Honor.

3 THE COURT: Thank you very much, Mr. McKnight.

4 It's nice seeing you again. You're excused.

5 You're more than welcome to stay and watch
6 the remainder of the proceedings should you wish to.

7 THE WITNESS: Thank you. I appreciate that.

8 THE COURT: And take those pork rinds with you.

9 THE WITNESS: No, I was going to leave these here.

10 THE COURT: Oh, no, no, no, no, no.

11 THE WITNESS: Boss, I'll let you dispose of them.

12 THE CLERK: Thank you.

13 THE COURT: All right. I'll see you folks back at
14 1:30. 1:30, everybody.

15 MR. EDELMAN: Thank you, your Honor.

16 THE COURT: Bye.

17 THE CLERK: What, no beer to go with them?

18

19 (At 12:35 p.m., the luncheon recess was taken)

20

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1 CASE NUMBER: BC340049/BC379820
2 CASE NAME: MEJIA/RIVERA vs. DOLE, et al.
3 LOS ANGELES, CA TUESDAY, APRIL 21, 2009
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 TIME: 1:35 P.M.
6 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
7 APPEARANCES: (AS HERETOFORE NOTED)

8 * * *

9
10 (The proceedings resumed in open court, as follows:)

11
12 THE COURT: All right. Back in the matters of the
13 cases of Mejia versus Dole, BC340049, and Rivera versus
14 Dole, BC379820.

15 The record should reflect that all counsel
16 and party representatives previously stated are present.
17 We almost missed one of them, but we're present now.

18 All right. When we broke we were hearing
19 from Dole. Who's next up?

20 MR. EDELMAN: Your Honor, this afternoon --

21 THE CORUT: Mr. Edelman.

22 MR. EDELMAN: Yes. Your Honor, this afternoon
23 we're going to be playing one, two, three, four, six
24 excerpts of plaintiff video deposition that I'm going to
25 be responsible for, and then the remaining depositions
26 Ms. Neuman is going to be introducing, and the first one
27 we're going to be playing is Bervis Zelaya, Miguel Angel
28 Bervis Zelaya, who is the one plaintiff in the Rivera

1 case, and you'll see from his testimony that he testified
2 clearly that he thought he was sterile before he adopted
3 his son Kevin in 1994, and that he thought that it was
4 because of DBCP.

5 THE COURT: So we have a statute of limitations
6 issue you're raising?

7 MR. EDELMAN: Yes.

8 But then after a break and conference with
9 counsel, he changed his testimony, and you'll see that,
10 in an attempt to avoid the statute of limitations period.

11 He does not recall or know anything about how
12 the farm worked or his supposed work on the farm, how much
13 he was paid, how often he was paid, how he was paid, who
14 he worked with, except of course for a couple of supervisors
15 which is what they were all trained to know; he doesn't
16 know where he lived while working on the farm, he does not
17 know whether there was employee housing, whether there was
18 an office, whether there was a warehouse on the farm, a
19 packing plant, how big the farm is, et cetera. He knows
20 nothing.

21 Can we play Mr. Zelaya, please.

22

23 (Video presentation of Miguel Angel Bervis Zelaya,
24 testifying through a Spanish interpreter,
25 was played and was reported as follows:)

26

27 "Q. Did you believe that you were
28 sterile because of your work on the banana

1 farm before you adopted your child, Kevin?

2 A. That's correct.

3 Q. And when was it that you adopted
4 Kevin?

5 A. He was four months old.

6 Q. Do you remember what ano?

7 A. I don't recall. Yeah.

8 Q. But you believe that you were
9 sterile because of your work on the banana
10 farms before you adopted him; is that correct?

11 A. Yes.

12 Q. Did you believe it was from contact
13 with DBCP at that time?

14 A. Yes.

15 MR. BOONE: Counsel, before you ask
16 further questions, Mr. Zelaya has a clarification
17 to his prior testimony.

18 Q. All right. Mr. Zelaya, did you -- go
19 ahead, translate.

20 A. Yes. Regarding when you asked me
21 that if, when I adopted a child, if by then I knew
22 that I was sterile, I wasn't aware yet. Until
23 I had the tests done. That's why I had the tests
24 done.

25 Q. Mr. Bervis Zelaya, did you believe
26 that you were sterile because of your work on
27 the farm, whether or not you had a test yet
28 or not?

1 A. No, I wasn't aware.

2 Q. You testified before you took the
3 break and met with your attorney that you believed
4 you were sterile before you ever adopted your son
5 Kevin, who's now 11, because you and your wife
6 never got pregnant and you'd been together for a
7 long time.

8 Do you remember that testimony?

9 A. Well, I mean, I wasn't sterile -- I
10 didn't know that I was sterile until I had the
11 tests done. 2004, 2002, that's when I became
12 aware.

13 Q. Who hired you to work on the San
14 Pablo farm?

15 A. I don't recall.

16 Q. When you were hired, did you fill out
17 any papers?

18 A. I don't recall.

19 Q. How did you get hired?

20 A. Well, I went there and I worked.

21 Q. Did you have to show them you had
22 particular skills in order to get the job?

23 A. I worked and I was willing to work.

24 Q. Had you worked on other farms before
25 this job?

26 A. No.

27 Q. Did the hiring person express any
28 concern that you had never worked on a farm before?

1 A. I don't recall.

2 Q. Did you have any training for the work
3 that you did on the farm?

4 A. No.

5 Q. How much were you paid?

6 A. I don't recall right now.

7 Q. Did you receive the same pay as the
8 adult workers?

9 A. No, I don't know.

10 Q. Did you receive a paycheck?

11 A. I don't recall.

12 Q. If you can describe for me what you
13 recall as the customary practice for receiving
14 your paycheck or your money.

15 Did you have to turn in a time sheet,
16 for example?

17 A. I don't recall.

18 Q. Who gave the money to you?

19 A. No, I don't have the -- I don't
20 recall that.

21 Q. Do you recall if you would pick up
22 your money at the office?

23 A. No. No, I don't recall.

24 Q. Who was your supervisor during the
25 five years you say you worked at San Pablo?

26 A. Antonio Severo, S-e-v-e-r-o.

27 Q. Any other supervisors?

28 A. There was another one named Julio Perez,

1 I think. The other one.

2 Q. Any other supervisors?

3 A. No, I don't recall. I don't recall.

4 Q. How often were you paid?

5 A. I think that -- well, I'm not able
6 to recall how they paid us, if it was weekly or
7 biweekly.

8 Q. Where do you think you were living
9 while you were working on the San Pablo farm?

10 A. I think that -- well, I don't recall
11 where I was living. With my mother.

12 Q. Was there employee housing on the
13 farm?

14 A. I think so. I don't recall.

15 Q. So some employees were given a place
16 to live on the farm; is that correct?

17 A. I don't recall that.

18 Q. How big was the San Pablo farm?

19 A. I don't know.

20 Q. Do you have any had idea how many
21 acres it was, or hectares?

22 A. No. I don't know. I don't recall.

23 Q. No idea whatsoever.

24 A. No.

25 Q. What was the shape of the San Pablo
26 farm?

27 A. I don't recall.

28 Q. Was the farm divided into any type

1 of smaller sections?

2 A. No, I don't recall.

3 Q. Were there any names for particular
4 sections on the farm?

5 A. No, I don't recall.

6 Q. What there with an office on the
7 San Pablo farm?

8 A. I don't recall.

9 Q. You don't know if there was one
10 office on the farm or two offices or three
11 offices.

12 A. No, I don't recall.

13 Q. You never saw any office on the
14 farm; is that correct?

15 A. No, I don't recall. I don't recall
16 at this moment.

17 Q. How about warehouses; were there any
18 warehouses on the farm?

19 A. No, I don't know. I don't recall.

20 Q. Were there any washing and packing
21 plants on the farm?

22 A. No, I don't recall that.

23 Q. What are the names of the people who
24 worked with you?

25 A. I don't recall right now.

26 Q. You cannot recall the name of any
27 person you worked with on this San Pablo farm
28 you say you worked on for five years?

1 A. No, I don't recall.

2 Q. What was the normal time that you
3 stopped working each day at San Pablo?

4 A. I don't recall.

5 Q. How many hours did you work a day
6 at San Pablo?

7 A. I don't recall regarding that."
8

9 MR. EDELMAN: So the next witness, your Honor,
10 is Faustino Escorcia Cruz. He doesn't know the man who
11 purportedly signed his work certificate, who was Lorencio
12 Altamirano Meza, you'll hear that name; he doesn't know
13 the name of anyone he worked with except the irrigation
14 captain, whose name appears in the training manual; he
15 doesn't know the most basic facts regarding the irrigation
16 process or where he supposedly lived on the farm; he can't
17 even say when he worked on the irrigation team or even
18 for how long. He has a child that he claims is not his,
19 but his mother was present at the birth of that child;
20 he is on the child's birth certificate as the father,
21 and he would not produce the child for genetic testing.

22 Can we play Faustino Escorcia Cruz, please.

23 THE COURT: And this is a current plaintiff in this
24 case?

25 MR. EDELMAN: Yes. Yes.
26
27

28 ///

1 (Video presentation of Faustino Escorcia Cruz,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 THE COURT: Can you turn it up, please?

6

7 "Q. How many times did you see these
8 barrels at the El Paraiso farm?

9 A. Only the times we were to do the
10 application.

11 Q. Approximately how many times was
12 that?

13 A. I don't remember how many times.

14 Q. Do you know if it was more or less
15 than five?

16 A. I don't remember.

17 Q. Do you know the names of any of the
18 pump persons or supervisors that you worked with
19 while you were at the El Paraiso farm?

20 A. Just the captains, that's it.

21 Q. Did you work on the irrigation team
22 at El Paraiso for more than one summer?

23 A. I don't remember.

24 Q. Do you know if you worked on the
25 irrigation team for the summer months that went
26 from November 1978 through April 1979?

27 A. I don't remember.

28 Q. Is it possible that you worked in

1 the summer months at the end of 1979 on the
2 irrigation team at El Paraiso?

3 A. I don't remember.

4 Q. When you first entered into your
5 sexual relationship with Candida in 1983, you
6 said that she was pregnant at the time; is that
7 correct?

8 A. That's not correct.

9 Q. Second time?

10 A. It was the second time when I went
11 back with her, she was already pregnant.

12 Q. Do you know who the father of that
13 child was?

14 A. I don't know his name, but he lives
15 in the same place where she lives.

16 Q. What was that child's name?

17 A. His name?

18 Q. Yes.

19 A. His name is Jose Luis.

20 Q. Is your name on Jose Luis's birth
21 certificate?

22 A. Yes. I gave him my last name.

23 Q. Was Jose Luis born in a hospital?

24 A. Yes, at Esteli Hospital.

25 Q. Were you there when he was born?

26 A. Not at the moment he was born. My
27 mother was with her.

28 Q. Do you know anybody by the name of

1 Lorencio Altamirano Meza?

2 A. No.

3 Q. Do you recall ever working with
4 anybody named Lorencio Altamirano Meza while at
5 El Paraiso farm?

6 A. I don't remember.

7 Q. How many times have you been to the
8 law office in Chinandega?

9 A. I don't remember how many.

10 Q. Is it more than five?

11 A. I don't remember how many.

12 Q. Could it be more than five?

13 A. I don't remember.

14 Q. Could it be more than ten?

15 A. I don't remember.

16 Q. Could it be more than 25 times?

17 A. I don't remember.

18 Q. I'm handing you a document that
19 contains the Bates number in the lower right-hand
20 corner. This document I'll represent to you
21 is a document that -- in which a man named,
22 I believe it's either Florencio or Lorencio
23 Justino Altamirano Meza, says that you worked
24 at El Paraiso farm.

25 A. Well, it's obvious there are people
26 who know you, and you might not know the person,
27 at least by name.

28 Q. So your testimony yesterday was that

1 you do not know Mr. Altamirano Meza; is that
2 correct?

3 A. As a matter of fact, many people
4 worked over there and we still didn't know each
5 other.

6 Q. So do you know a man named Florencio
7 Justino Altamirano Meza?

8 A. Florencio Justino? I don't remember.

9 Q. Do you know the origin of this
10 document?

11 A. No.

12 Q. Okay. And how long did it take for
13 the gun to go through one entire revolution?

14 A. I don't know. I don't know.

15 Q. Well, during the first 15 minutes
16 of pure water application, did the gun go all
17 the way around once?

18 A. I don't remember.

19 Q. Do you remember whether during the
20 15 minutes of water application the gun went
21 around more than once?

22 A. I don't know. Don't know.

23 Q. Is it possible that during the 15
24 minutes of water application the gun only went
25 around one full rotation?

26 A. No, I don't know. I don't know.

27 Q. So is it fair to say, then, that you
28 don't know how many times the gun would rotate

1 around during the 15 minutes of DBCP application
2 either?

3 A. I don't know. I don't know.

4 Q. Do you remember whether the gun was
5 moving very fast so that it came around every few
6 seconds?

7 A. I don't remember.

8 Q. So during the entire 90 minutes of
9 15 minutes water, 15 minutes of DBCP application,
10 and 60 minutes of water, can you give any estimate
11 of the number of times the gun would make a
12 complete revolution?

13 A. No.

14 Q. Could it have been less than five
15 times?

16 A. I don't know. I don't know.

17 Q. Do you know whether it could have
18 been more than 20 times?

19 A. I don't know.

20 Q. Okay.

21 A. I don't know.

22 Q. Is it fair to say you can't give
23 any estimate of how many times the gun went
24 around during the 90 minutes?

25 A. I wouldn't know --

26 Q. Okay.

27 A. -- to tell you how many.

28 Q. Can you describe the building where

1 you slept at night at El Paraiso?

2 A. I can't.

3 Q. How many men slept in that building?

4 A. I wouldn't be able to tell you how
5 many.

6 Q. Could it have been more than a
7 hundred people?

8 A. I wouldn't be able to tell you how
9 many.

10 Q. Could it have you been more than a
11 hundred people?

12 A. I couldn't tell you.

13 Q. Could it have been less than five
14 people?

15 A. I couldn't tell you.

16 Q. Are you able to give any estimate
17 at all about how many people slept there?

18 A. No.

19 Q. How many rooms were in this building?

20 A. I never found out.

21 Q. Were there a lot of rooms?

22 A. Well, I never became aware of how
23 many rooms there were.

24 Q. How many men slept in the room where
25 you slept?

26 A. Where I slept there were about four
27 of us sleeping there.

28 Q. Four including you?

1 A. Yes.

2 Q. How many people slept in that room
3 during the entire time you worked at El Paraiso?

4 A. I wouldn't know how many.

5 Q. Can you name any of those men?

6 A. I don't remember.

7 Q. And how far was the place where
8 you slept, the building where you slept, from
9 the Chinandega highway?

10 A. I don't understand the question.

11 Q. Well, was it located right next to
12 the Chinandega highway?

13 A. I don't understand the question.

14 Q. Well, how far would it -- how long
15 would it take you to walk from the Chinandega
16 highway to the building where you slept at
17 night?

18 A. I -- I don't understand the question.
19 I still don't understand it.

20 Q. Did you ever walk from the Chinandega
21 highway to where you sleep at night?

22 A. There was a road, it's just I just
23 don't know how to explain it.

24 Q. Okay. Other than the manager,
25 Irvin Castro, and the other two men whose
26 names you gave yesterday, can you remember
27 anybody else who lived or worked at El Paraiso
28 farm?

1 A. I don't remember."

2

3 MR. EDELMAN: The next plaintiff that we are going
4 to hear from is Rafael Hendy Diaz.

5 Your Honor will recall that in my opening I
6 presented a slide of all the plaintiffs, and there were four
7 from Candelaria, all of whom supposedly overlapped during
8 1976. Mr. Diaz is not able to identify any of the other
9 three plaintiffs in this case who were supposedly with
10 him on that team in 1976. He doesn't know them. The
11 only person he can identify is his I irrigation captain,
12 again whose name was in the training manual; he doesn't
13 even think that DBCP was in the irrigation water, and he
14 does not know how the system was hooked up; and he has
15 had venereal disease since 1979.

16 THE COURT: Can I back you up for one second
17 regarding Mr. Cruz?

18 MR. EDELMAN: Yes.

19 THE COURT: Who is Lorenzo or Florencio Justino
20 Altamirano Meza, by way of an offer of proof, just so I
21 can put all this into context?

22 MR. EDELMAN: He's the person who signed the work
23 certificate, the supervisor that Mr. Cruz didn't know.

24 THE COURT: Okay. Thank you.

25 MR. EDELMAN: Sure.

26 Okay. So could we play Mr. Diaz, please.

27

28 ///

1 (Video presentation of Rafael Hendy Diaz,
2 testifying through a Spanish interpreter,
3 was played and was reported as follows:)

4

5 "Q. What work did you do at Candelaria
6 from 1976 to 1978?

7 A. I worked as an irrigator or waterer
8 and messenger.

9 Q. How many people worked in your
10 squad?

11 A. Eight.

12 Q. Do you remember their names?

13 A. No, it's been an awful long time.
14 I've forgotten that.

15 Q. Could you explain to me how the
16 water pistol was connected to the pump?

17 A. Well, first there was a large tube
18 connected, and then there was a smaller tube
19 connected to that tube, and -- and then there
20 was the tank.

21 Q. How was the tank connected to the
22 pistol, if it was?

23 A. I don't know.

24 Q. How did the poison get out of the
25 tank and into the water?

26 A. I don't understand that either.

27 Q. Is it do you not understand my
28 question or you don't know how the connection

1 was made?

2 A. I don't understand your question.

3 Q. Thank you.

4 Was the poison connected to the
5 irrigation water somehow?

6 A. No.

7 Q. And when were you in a relationship
8 with Rosa Coffin?

9 A. From '79 to '81.

10 Q. Did you have any problems having
11 sexual relations with Rosa Coffin?

12 A. How so?

13 Q. Did you have -- was it -- was it
14 difficult?

15 A. Yes.

16 Q. Why was it difficult?

17 A. After relations I would get a burning
18 down here.

19 Q. Did you have that same burning when
20 you urinated?

21 A. Yes.

22 Q. Did you ever go to a doctor for that
23 burning?

24 A. No, I just took pills for infections.

25 Q. What kind of infections?

26 A. These are some pills you can buy
27 in Nicaragua, I can't remember how you say
28 their name in Spanish, but anyway, they're like

1 capsules, and I would take them because I
2 would get burning after urinating and I --
3 I just had burning down there.

4 Q. How long, how many months did you
5 have this burning?

6 A. No, I would have it for two days,
7 then it would go away after I took those.

8 Q. And did it come back?

9 A. Yes, it would come back, which is
10 why I didn't touch it much and I would have to
11 tell her, 'Look, this hurts and so I have to stay
12 away from you.'

13 THE INTERPRETER: That would be 'from it.'
14 Correction.

15 Q. And because it was painful, you did
16 not have regular sexual relations with Rosa
17 Coffin?

18 A. Yes.

19 Q. At any time have you ever had sexual
20 relations with a woman other than Ms. Coffin,
21 Ms. Lopez or Ms. Moreno?

22 A. Yes. When I was in Bluefields and
23 I was alone there for some time I would get
24 involved with street women.

25 Q. Is that when the burning started?

26 A. Yes. I really felt lousy then.

27 Q. Did you pay the street lady?

28 A. Of course.

1 Q. You have not had sexual relations
2 in 20 years or so?

3 A. Well, here and there, like once or
4 twice a year. But I really don't like to because
5 it hurts when I do.

6 Q. Still have the burning?

7 A. Well, besides that, it doesn't work,
8 it doesn't get up.

9 Q. When did you first start having problems
10 having an erection?

11 A. After I stopped my relations with
12 Estebana, when she died, after that it stopped
13 working and I really lost interest in all of
14 this, and that's when that all started happening.

15 Q. In the times that you've had sexual
16 relations after Ms. Moreno died, has it been
17 painful?

18 A. Yes, it has, and that's why I quit
19 having sex.

20 Q. Same burning?

21 A. Yes.

22 Q. When you produced the sample, did
23 you have burning?

24 A. Yes. It hurt.

25 Q. How did it hurt?

26 A. After the semen came out, it burned
27 and it hurt.

28 Q. Did you talk about the types of

1 things you would be doing on the farm with
2 Filemon Herrera?

3 A. No.

4 Q. What did Filemon Herrera say you
5 would be doing at the banana farm?

6 A. He accepted me into the watering
7 squad and put me to work as a messenger.

8 Q. Did you know anyone else that was
9 working on the watering squad?

10 A. Not at first, no."

11

12 THE COURT: Can you stop this for one second?

13 Excuse me.

14

15 (Discussion held between the Court and Court Clerk)

16

17 THE COURT: I'm sorry. Go ahead.

18

19 "Q. Do you recall any of the names of
20 the people that worked on the watering squad
21 with you?

22 A. No, I don't remember.

23

24 Q. We've talked about Eloy Mora and
25 Filemon Herrera as individuals that worked on
the banana farm with you.

26

27 Do you recall any other names of
individuals that worked on the banana farm?

28

A. No, because I saw Eloy all the

1 time, we'd see each other all the time, and
2 so of course I remember Eloy. But the other
3 guys, I would not see them all the time, and
4 ever since we all left the farm I haven't seen
5 them again or spoken about them.

6 Q. Do you recall the names of any
7 other individuals that worked at the banana
8 farm?

9 A. I don't. Ever since leaving there,
10 we haven't seen each other again and I've
11 forgotten the names.

12 Q. Do you know a man named Jose Emilio
13 Barrera?

14 A. No.

15 Q. You don't working with Jose Emilio
16 Barrera at the banana farm between 1976 and
17 1978?

18 A. No, I don't.

19 Q. When you were working at the banana
20 farm, did you know a man named Roberto Noel
21 Martinez Ramirez?

22 A. I don't remember that either.

23 Q. When you were you working at the
24 banana farm, did you know a man named Rodolfo
25 Mejia?

26 A. No.

27 Q. We just went through a list of
28 names. Is that the first time you've heard

1 those individuals' names?

2 A. That's the first time.

3 Q. And you don't recall ever working
4 with any of them.

5 A. No."

6

7 MR. EDELMAN: The next plaintiff whose testimony
8 we'll hear is Rodolfo Mejia, and we will also play excerpts
9 from the testimony of his spouse, Pastora del Carmen Rugama
10 Centeno.

11 There is testimony from a John Doe witness
12 that Mr. Mejia worked on Candelaria, but in the field, not
13 in irrigation. He, like --

14 THE COURT: He, Mr. Mejia?

15 MR. EDELMAN: Yes. Did I say Diaz?

16 THE COURT: No, all you said was "he, like."

17 MR. EDELMAN: Yes, Mr. Mejia. And Mr. Mejia does
18 not know any of the other three Candelaria plaintiffs,
19 those were the three people that Mr. Manakides just asked
20 Mr. Diaz about, those being Mr. Barrera, Mr. Martinez, and
21 Mr. Diaz, even though they all claimed to have worked on
22 the eight-man irrigation team at the same time. Mr. Mejia
23 does not know the man who signed his work certificate, and
24 he never saw the work certificate before his deposition.

25 Mr. Mejia testifies to very frequent attendance
26 of meetings at the Nemagon law office, including meetings
27 with the other Mejia plaintiffs. He also has venereal
28 disease.

1 His spouse denies ever having seen a doctor,
2 but when she is confronted with medical records she admits
3 to several problems with her reproductive organs, including
4 the removal of a cervical polyp and conditions consistent
5 with inflammatory pelvic disease.

6 And his spouse testifies very clearly that
7 Mejia thought he was sterile in 1984, before he adopted his
8 daughter, and that he attributed his sterility to Nemagon
9 at that time.

10 THE COURT: In 1984?

11 MR. EDELMAN: 1984, your Honor.

12 So if we could please play the testimony.

13 THE COURT: And thank you for the offer of proof
14 before each thing. It makes it clearer.

15 MR. EDELMAN: Thank you, your Honor.

16

17 (Video presentation of Rodolfo Mejia,
18 testifying through a Spanish interpreter,
19 was played and was reported as follows:)

20

21 "Q. Without mentioning anything that
22 was talked about, who did you talk to at the
23 law offices in Chinandega?

24 A. I spoke to Mr. Hernandez, Antonio
25 Hernandez.

26 Q. Anyone else?

27 A. I received the necessary orientation
28 from him and. . .

1 Q. Since the first time that you went
2 to the law offices in Chinandega with your
3 brother and today, how many times have you been
4 to those law offices?

5 A. Many times. I don't recall.

6 Q. Can you estimate?

7 A. Well, I have to go there frequently
8 sometimes for meetings.

9 Q. When you say "frequently," do you
10 mean monthly or weekly, or some other frequency?

11 A. Well, sometimes twice per month.

12 Q. Have you gone to the law offices
13 in Chinandega approximately twice per month
14 each month this year in 2008?

15 A. More frequently.

16 Q. Do you have any sort of burning
17 sensation when you go to the restroom?

18 A. No.

19 Q. Have you ever had that?

20 A. Yeah, it feels -- but rarely.

21 Q. When's the first time you had that
22 happen?

23 A. I was suffering, but that was
24 quite sometime ago when I was at Muelle De
25 Los Bueyes because I was -- I had -- I took
26 some, some tablet because I had burning while
27 urinating. In Nicaragua they call it chistata,
28 or burning while urinating.

1 Q. How old were you when you got the
2 chistata?

3 A. I was around 24 years old perhaps.

4 Q. Did you know anyone named Elmer
5 Benavides Marengo while you were you at
6 Candelaria?

7 A. I don't recall.

8 Q. When you came to the U.S. for your
9 testimony, who did you travel with?

10 A. I mean, there were six of us.

11 Q. Did you know the other five
12 gentlemen?

13 A. Yes, we know each other just from
14 seeing each other.

15 Q. And where had you seen the other
16 five gentlemen before?

17 A. Well, at the office.

18 Q. At the law offices?

19 A. Yes.

20 Q. Had you attended meetings with
21 these gentlemen at the law offices?

22 A. Yes.

23 Q. On how many occasions had you
24 attended meetings at the law offices with
25 the five gentlemen you flew over with?

26 A. Well, we met on several occasions,
27 but -- but I don't recall specifically right
28 now to be able to tell you, you know, so many

1 times.

2 Q. Had you ever met any of the five
3 gentlemen you flew over with when you were
4 working at Candelaria?

5 A. Not that I can recall.

6 Q. Did you know Mr. Martinez at all
7 before you met him at the law offices?

8 A. No.

9 Q. Mr. Diaz, Rafael Hendy Diaz, who
10 you had difficulty understanding, had you met
11 him before you met him at the Chinandega law
12 offices?

13 A. No. No, I don't recall.

14 Q. Let me show the witness a document
15 bearing the Bates number Mejia 015.

16 Could the translator read this
17 document to the witness, please?

18 A. What is his name?

19 Q. Elmer Francisco Benavides Marengo.
20 Have you seen that document before,
21 Mr. Mejia?

22 A. No, no, I'm just now seeing it."

23

24 (Video presentation of Pastora Del Carmen
25 Rugama Centeno, testifying through a Spanish
26 interpreter, was played and was reported as follows:)

27

28 "Q. Where do you live currently?

1 A. In Pantasma.

2 Q. And who do you live with in Pantasma?

3 A. With my husband.

4 Q. What's his name?

5 A. My husband? Rodolfo Mejia.

6 Q. And how did you meet?

7 A. Look, he got there in '80, and I met
8 him that year.

9 Q. You met him in 1980?

10 A. Yes. Yes.

11 Q. And how soon after you met your
12 husband in 1980 did you and he start going out
13 or dating?

14 A. We got married in '82.

15 Q. When did you adopt your daughter?

16 A. She was three years old. We adopted
17 her in '84. I had been married for two years
18 when we adopted her.

19 Q. Did your husband ever tell you why
20 he thought you, the two of you, might not be
21 having a family?

22 A. He used to say: Could it be you?
23 Could it be me? That's what we asked ourselves.

24 Q. And did --

25 A. May I speak?

26 Q. Yes.

27 A. But since I -- but since I never
28 went to a doctor to have an exam done, and

1 neither did he, so we stayed like that.

2 Q. How come you didn't go to the
3 doctor to get an exam?

4 A. Laziness.

5 Q. This was produced to us as one of
6 your medical records from when you went to the
7 Pro-Wellness Association for the Nicaraguan
8 Family, and it says that you went in because
9 you had pelvic pain and weight sensation and
10 abdominal pain.

11 Do you recall that?

12 A. I remember being weighed, weighed
13 in ProFamilia.

14 Q. And do you remember going in for
15 pelvic and abdominal pain?

16 A. That's true, I remember that.

17 Q. Pastora, have you ever seen this
18 report from your ultrasound before?

19 A. If I have seen this?

20 Q. Yes.

21 A. Just a second, let me see it.

22 At this time, I was 40 years old
23 when this -- no, no, not before.

24 Q. The doctor didn't show you your
25 ultrasound report in writing before?

26 A. Well, he did give me some -- a
27 sheet of paper.

28 Q. But it didn't look like this?

1 A. I don't remember if it's the same.
2 He gave me a sheet.

3 Q. This ultrasound report says that
4 they found some inflammation --

5 A. Yes.

6 Q. -- that you had endometrium of
7 menstrual aspect, and the doctor concluded
8 that your symptoms were consistent with
9 inflammatory pelvic disease.

10 A. Yes, I remember that's what he
11 told me.

12 Q. At the top it says 'Pathology
13 Laboratory, Ministry of Health, Maternity
14 and Childrens Hospital, Chinandega, Nicaragua.'

15 Have you ever seen this document
16 before?

17 A. Yes, they gave me the results.

18 Q. And this document says that you
19 had a polyp removed by a Dr. Somarriba?

20 A. Yes. Yes.

21 Q. And this pathology report indicates
22 that they've diagnosed it as an endocervical
23 polyp with scaly metaplasia, both mature and
24 immature.

25 Do you see that?

26 A. This is exactly what the results
27 that they gave me. I remember these doctors,
28 but this one. . .

1 Q. You said your husband went to the
2 law offices of Nemagon more often than you
3 had been; right?

4 A. Oh, yes. Yes.

5 Q. Can you estimate how many times
6 your husband has gone to the law offices?

7 A. I can't really tell you that
8 because it's been for five years. But he's
9 gone several times, yes.

10 Q. And the first time he went was
11 five years ago?

12 A. Yes. Yes.

13 Q. At around the time you adopted
14 your daughter, when you and your husband were
15 having all these conversations about why you
16 could not have children, is that when your
17 husband mentioned Nemagon to you?

18 A. Yes. It was at that time, yes.

19 Q. So are you absolutely certain in
20 your mind that the first time you heard your
21 husband say the word 'Nemagon' was at the time
22 of the adoption of your daughter in 1984?

23 A. Yes. Yes.

24 Q. And what did your husband say when
25 he used the word 'Nemagon' in around 1984?

26 A. That he had worked over there he
27 told me.

28 Q. Did he tell you anything else

1 about Nemagon in 1984?

2 A. No, I don't remember.

3 Q. When you were adopting your
4 daughter in 1984, did your husband ever say
5 that he thought Nemagon was the reason that
6 you weren't having children?

7 A. He told me that it could have
8 been that that affected me, he said.

9 Q. Did he say that in 1984?

10 A. Yes.

11 Q. Did he say that he believed that
12 it was Nemagon that was the reason that you
13 weren't having children?

14 A. Yes, that's what he told me, that
15 it could have been there where he was affected.

16 Q. And he told you that in 1984?

17 A. Yes. Yes."

18

19 MR. EDELMAN: Your Honor, I want to make sure you're
20 aware, because we've hit you with a lot of notebooks --

21 THE COURT: Yes, eight, that I reviewed before we
22 started this morning.

23 MR. EDELMAN: Right. And then we gave you some more.

24 THE COURT: Plus the things that the plaintiffs gave
25 me.

26 MR. EDELMAN: And I think we gave you some more
27 today.

28 THE COURT: You did.

1 MR. EDELMAN: And one of them is entitled "Dole's
2 Presentation of Evidence."

3 THE COURT: Yes. "Day One."

4 MR. EDELMAN: Okay. "Day One."

5 And you will see that on the table of
6 contents --

7 THE COURT: Yes.

8 MR. EDELMAN: -- that we've organized this by
9 testimony.

10 THE COURT: In order of presentation today?

11 MR. EDELMAN: Correct.

12 And so, you have behind each tab the actual
13 excerpts of the testimony that are being played.

14 THE COURT: Okay.

15 MR. EDELMAN: And in each instance you will see
16 blue pieces of paper that divide the exhibits, and when
17 a witness is referring to an exhibit, an exhibit in his
18 or her examination, those exhibits are in this notebook.

19 THE COURT: So, for example, the work certificate
20 would be one of the ones that I would be looking at in
21 some of these?

22 MR. EDELMAN: Exactly.

23 THE COURT: All right. Thank you.

24 Or photographs of people?

25 MR. EDELMAN: Yes.

26 THE COURT: Thank you.

27 Anything else I need to know about this?

28 MR. EDELMAN: No.

1 Your Honor, the next excerpt that we will
2 offer is from Roberto Noel Martinez Ramirez.

3 THE COURT: Hold on for one minute. I need to get
4 the page turned.

5 I'm sorry, Roberto who?

6 MR. EDELMAN: Roberto Noel Martinez Ramirez.

7 THE COURT: He is a plaintiff, too?

8 MR. EDELMAN: He's a plaintiff. He is the fourth
9 of the four alleged Candelaria workers, none of whom know
10 each other even though they supposedly overlapped.

11 Like most plaintiffs, he can name only
12 those whose names appear in training manuals, such as an
13 irrigation captain, a supervisor, the owner, and two others.

14 He also had venereal disease, and you will
15 hear in this excerpt how, like many others, he goes to
16 absurd lengths to justify why he did not go to the law
17 offices sooner or earlier than he allegedly went.

18 If we could play Mr. Ramirez, please.

19

20 (Video presentation of Roberto Noel Martinez
21 Ramirez, testifying through a Spanish interpreter,
22 was played and was reported as follows:)

23

24 "Q. Do you recall the names of any
25 of the bosses that you had when you were a
26 fieldworker?

27 A. I'm not sure, but I think I kind
28 of remember one. They called him Esteban

1 Morales. I think he was a foreman of the
2 farm. I think that was his name.

3 Q. Do you know who owned Candelaria
4 when you worked there?

5 A. The owner of the land was Ramiro
6 Gurdian, yes.

7 Q. Was there anyone else that you
8 remember from the time that you worked
9 on Candelaria?

10 A. I don't recall anyone else.

11 Q. Mr. Martinez, was Filemon Herrera
12 your water irrigation captain and your chemical
13 irrigation captain, or just one or the other?

14 A. The chemical.

15 Q. Do you remember the name of your
16 water irrigation captain?

17 A. I knew it, but I've forgotten it.
18 I don't remember the name of the captain.

19 Q. You were at Candelaria for about
20 six years. In your experience, did people
21 tend to stay and work on the farm for a
22 number of years?

23 A. Most of them would stay.

24 Q. What caused you to go to Juan
25 Dominguez's law offices in Chinandega?

26 A. Well, more than anything it was
27 like a curiosity to find out what was going
28 on.

1 Q. What made you curious?

2 A. To find out if I was ill
3 because -- because from that time, from
4 '74 to '99, I wasn't able to have any more
5 children with women because I had two --
6 well, I lived with two, actually.

7 Q. So why didn't you go to the law
8 offices in 1999?

9 A. Because I didn't know anything.

10 Q. Why did you think Mr. Dominguez's
11 law offices in Chinandega would know anything
12 about why you couldn't have children?

13 A. Well, the thing is, specifically
14 they wouldn't know, but since they would send
15 me to a lab.

16 Q. But how did you know these lawyers
17 would send you to a lab?

18 A. No, I didn't know.

19 Q. Who traveled with you here?

20 A. Roman came over; Rodolfo; one named
21 Rafael; one named Noel; and the other two, I
22 don't recall the names of the other two.

23 Q. Roman, did you know him before
24 this trip, or did you meet him on this trip?

25 A. We would meet several times over
26 there at the offices by chance; I mean, he
27 would go there and I would go there.

28 Q. When you say "the offices," you

1 mean the law offices?

2 A. Yes, over there.

3 Q. Rodolfo, did you first meet him
4 at the law offices, or somewhere else?

5 A. Yes, actually there in Chinandega
6 we'd see each other. I would go there and he
7 would go there.

8 Q. Roman, Rodolfo, Rafael and Noel,
9 did you ever work with any of them?

10 A. Perhaps with Rafael, but I didn't
11 remember having seen him there.

12 Q. You don't remember having seen him
13 where?

14 A. Candelaria. I don't know if he
15 was there before or after I was there. I
16 don't know when.

17 Q. If you didn't see him at Candelaria,
18 what makes you think he worked there?

19 A. That's not something that I think.
20 He says that he worked there.

21 Q. But you didn't know him when you
22 worked there; is that right?

23 A. No. No. I mean, as far as I can
24 recall, no.

25 Q. The eight men that were on your
26 chemical irrigation crew, did those stay the
27 same for the whole two years you were on the
28 crew?

1 A. The same ones?

2 Q. The same ones for the full two years.

3 A. Yes.

4 Q. Have you been able to remember the
5 names of the other two people that put the
6 pipes together and took them apart with you
7 every night?

8 A. No. I don't recall.

9 Q. You indicated that you at one time
10 had a penis infection called purgacion.

11 Do you recall that?

12 THE INTERPRETER: What was the word, Counsel?

13 Q. P-u-r-g-a-c-i-o-n.

14 A. Yes.

15 Q. Well, you went to the doctor because
16 you thought something was wrong with your penis;
17 correct?

18 A. No, a friend, a young man told me
19 because I told him about it.

20 Q. What did you tell the young man
21 about?

22 A. That I had a swelling there; that
23 it had swelled and there was -- and pus was
24 coming out.

25 Q. So your penis had swelled and pus
26 was coming out of it?

27 A. Yes.

28 Q. And the doctor you went to see was

1 Jose Quezada; correct?

2 A. Exactly, yes.

3 Q. What happened when you went to see
4 Dr. Quezada?

5 A. Yes, he looked at me, he had me pull
6 my pants down and he looked at me, and he said,
7 yeah, that's what it is.

8 Q. The doctor said, yeah, that it was
9 purgacion?

10 A. Yes.

11 Q. And did you ask the doctor how you
12 got it?

13 A. Well, yes. I mean, I thought that
14 it had been a woman that I had had.

15 Q. Anything else that you've been to
16 the pharmacy to get medicine for?

17 A. For some things like chistata,
18 things like that, for a friend; or a friend
19 would say go buy me some tablets at the
20 pharmacy.

21 Q. What's chistata?

22 A. It's a burning in the penis when
23 you urinate. Sometimes it's from lack of water
24 because your bladder dries up inside and then
25 the heat and you have the chistata.

26 Q. And how old were you the first
27 time you got chistata?

28 A. Oh, I was young. I was about 16,

1 or 15, 16, 17, more or less.

2 Q. Could you estimate on how many
3 occasions you've had the chistata?

4 A. An estimate? No. But several
5 times.

6 Q. Other than going to the pharmacy,
7 have you ever been to a doctor or a clinic
8 to be treated for the chistata?

9 A. No."

10

11 MR. EDELMAN: The next witness is Jose Emilio
12 Barrera, who also contends that he was at the Candelaria
13 farm.

14 THE COURT: This is another plaintiff?

15 MR. EDELMAN: Another plaintiff, the fourth of the
16 four Candelaria plaintiffs. And you'll also hear from his
17 spouse, Rafaela Isabel Oporta Guzman.

18 And you will hear in this deposition a blatant
19 example of improper attorney conduct. At Page 63/Line 8 --

20 THE COURT: Of whose? Barrera's or Guzman's?

21 MR. EDELMAN: Yes, Barrera.

22 He admits, the witness, Mr. Barrera, admits
23 going to the Nemagon law office to start the lawsuit six
24 years ago in 2002. His counsel signals with a cough and
25 the witness steals a glance in his direction. After another
26 question, the witness abruptly leaves the deposition and in
27 response to the next question, when he returns, he answers
28 with a non sequitur: "In 2006, not 2002. In 2006 I went

1 to the law office. That was when or where I found out I
2 was sick." He admits --

3 THE COURT: And which attorney was present?

4 MR. EDELMAN: Mr. Dominguez.

5 THE COURT: Okay.

6 MR. EDELMAN: He admits to having a recruiting
7 captain, Dennis Mondragon; he is coy about his spouse's --
8 his long-time spouse's surgery and uterine cancer and
9 whether it affected her ability to bear children, but she
10 admits to having her uterus removed in 1983, and you'll
11 hear that testimony.

12 He can't -- he cannot name anyone else with
13 whom he allegedly worked on the Candelaria application team,
14 including the other plaintiffs who claim to have worked
15 on that team at the same time: Mejia, Martinez and Diaz.
16 As with most plaintiffs, he can only name a foreman and
17 supervisor from a farm, positions covered by the training
18 manuals. He could not remember how many times he was only
19 irrigating with water or how often he set up the pipes.

20 If we could hear the testimony from
21 Mr. Barrera, please, and his wife.

22

23 (Video presentation of Jose Emilio Barrera,
24 testifying through a Spanish interpreter,
25 was played and was reported as follows:)

26

27 "Q. Has Rafaela ever had surgery?

28 A. Yes.

1 Q. And what was that for?

2 A. I don't know. I don't know what
3 type of operation, but, yes, she had one.

4 Q. Do you know when she had surgery?

5 A. Approximately in 1983 or '84.
6 Sometime around then. I don't know exactly.

7 Q. Do you know why she had surgery?

8 A. I don't know. It was just the
9 doctors had said that she needed to get an
10 operation and she had an operation.

11 Q. Do you know what part of her body
12 they operated on?

13 A. I think it was the uterus.

14 Q. Do you recall that doctors removed
15 your wife's uterus in 1983 because of cancer?

16 A. I don't know. I don't know why.

17 Q. Is it your understanding that
18 doctors removed your wife's uterus in 1983?

19 A. Well, I don't know, I can't tell
20 you exactly what it was. I know that she was
21 operated on, but I don't know exactly what
22 they did.

23 Q. After your wife had this surgery
24 on her uterus, did anyone ever tell you that
25 you two would not be able to have children
26 together after that point?

27 A. No.

28 Q. Did you ever ask anyone if you

1 would you still be able to have children with
2 your wife after the surgery?

3 A. No.

4 Q. Did you ever talk to any of your
5 wife's doctors about the surgery?

6 A. No.

7 Q. Did you ever discuss with your
8 wife the possibility of having more children
9 after this surgery?

10 A. No.

11 Q. Prior to filing this lawsuit, did
12 you know any of the other plaintiffs in this
13 litigation?

14 A. Before I placed my lawsuit, or when?

15 Q. Correct.

16 A. Yes, I've known some.

17 Q. Which ones?

18 A. For example, Adolfo Tellez, who is
19 with me right now. For example, Rosendo Tercero.

20 Q. Any others?

21 A. William Leonardo Vaca Carbajal.

22 Q. Are there any others?

23 A. I do not remember any other right
24 now.

25 Q. How do you know Mr. Tellez?

26 A. Well, we are at the same law office.

27 Q. When you first started working at
28 the Candelaria banana plantation, what were

1 your job duties?

2 A. During the summer they sent me to
3 be part of the watering team. My job was to
4 carry tubes, which were like six inches by
5 maybe 20 feet in length, to the area, and I
6 would assemble them and disassemble those tubes.

7 Q. Was this the first job that you
8 had at the banana plantation?

9 A. Yes.

10 Q. Did you have a foreman at that time?

11 A. Yes.

12 Q. Who was that?

13 A. Anastasio Gomez. And the watering
14 team supervisor was Filemon Herrera.

15 Q. Other than Mr. Gomez and Mr. Herrera,
16 do you know any of the other people on any of
17 the other watering teams that you worked on?

18 A. No.

19 Q. When did you first hear of the term
20 DBCP?

21 A. When I arrived, when I arrived at
22 the law office to start the lawsuit.

23 Q. And when was that, approximately?

24 A. Approximately six years ago.
25 Approximately. I'm not sure.

26 Q. And why did you go to the law
27 office?

28 A. Because there were some signs that

1 I could be sick.

2 Q. What were those signs?

3 A. In the first place, I had not had
4 any more children.

5 Excuse me, I'm going to go out.

6 Q. Okay.

7 MR. DOMINGUEZ: Do you want to break for
8 lunch?

9 THE VIDEO OPERATOR: We're off the record.

10 Q. Why did you decide to go to the law
11 office on that day?

12 A. In 2006 I went to the law office.
13 That was when or where I found out that I was
14 sick.

15 Q. Why did you go to the law office
16 in the first place?

17 A. Because there were many co-workers
18 who would tell me to go there, as well.

19 Q. When in 2006 did you go to this
20 law office?

21 A. I don't remember.

22 Q. Okay. Who were the co-workers
23 that told you should go to this law office?

24 A. Right now I don't remember the
25 names exactly, but they were co-workers.

26 Q. When you say 'co-workers,' do you
27 mean that they worked with you at Candelaria?

28 A. We worked together, yes. I mean,

1 they had already presented their lawsuit.

2 Q. But do you believe that these
3 individuals that you're talking about who
4 told you to go to the law office also
5 worked at Candelaria?

6 A. Well, as far as knowing them,
7 I didn't exactly know them, but they said
8 they were banana workers, and they had their
9 lawsuit, according to them.

10 Q. Where did you meet these
11 individuals?

12 A. Well, just by chance we would
13 run into each other in the street, and
14 maybe somebody told them that I had worked
15 at the banana farm.

16 Q. What did they tell you about
17 your work at the banana farm?

18 A. That I might be affected and
19 for me to go because there was a law office
20 that had a case regarding this.

21 Q. But what was it about your
22 working at the banana farm that they told
23 you could result in you being affected by
24 something?

25 A. No, I don't know it.

26 Q. When did you first meet these
27 individuals that told you you should go to
28 the law office?

1 A. I don't remember, but I know
2 it was in 2006. Well, a little bit before
3 2006 maybe, but I know they told me to go.

4 Q. And you don't remember any of
5 their names?

6 A. No, sir.

7 Q. How many times did you work on
8 the water team where you were just applying
9 water and there was no pesticide involved?

10 A. I don't remember.

11 Q. Do you recall how often you would
12 be involved in setting up the pipes for
13 spraying when it was only water?

14 A. I don't remember.

15 Q. How many times were you involved
16 in the setting up the pipes when there was
17 pesticide involved?

18 A. It's very difficult to remember.

19 Q. Mr. Barrera, the document
20 indicates that you were born August 14th,
21 1948. Is that correct?

22 A. Yes.

23 Q. That's your birthday.

24 A. That is my birthdate.

25 Q. At the bottom of the document
26 it indicates that the birth certificate
27 was issued August 5th, 2002.

28 Do you see that?

1 A. Yes.

2 Q. And it indicates that it was
3 issued at the request of an interested party.

4 Do you see that?

5 A. Yes.

6 Q. Why did you obtain your birth
7 certificate in 2002?

8 A. I don't remember what for.

9 Q. Do you recall obtaining your
10 birth certificate in 2002?

11 A. Yes.

12 Q. You just don't recall why.

13 A. I don't remember why.

14 Q. How many men were on your team?

15 A. Eight.

16 Q. Who were those men?

17 A. I don't remember exactly.

18 Q. Do you remember the names of any
19 of the men that you worked with?

20 A. I don't remember exactly
21 because. . .

22 Q. Mr. Barrera, you just said 'I
23 don't remember exactly because. . .'

24 Was there more to that
25 sentence?

26 A. Yes. I don't remember because
27 those people, I had just started to see them
28 there, we were just -- and those teams, yes.

1 Q. On the first day that you
2 worked at Candelaria, did you work with an
3 irrigation crew that was applying the pesticide
4 that day?

5 A. Yes.

6 Q. During the first summer that you
7 worked at Candelaria on the irrigation crew,
8 did your crew apply the pesticide every
9 night that you worked?

10 A. Yes.

11 Q. Were there people that you spoke
12 with before you went to the law office that
13 suggested you should go there?

14 A. Yes. Some of them would tell me.

15 Q. Did you understand them to be
16 people who work for the law office?

17 A. Yes. They were people that
18 already had their lawsuit.

19 Q. You understood that they were
20 captains?

21 A. Yes, there were some captains,
22 too.

23 Q. Who was your captain?

24 A. Dennis Mondragon.

25 Q. When did you first meet
26 Mr. Mondragon?

27 A. I don't remember exactly.

28 Q. Did you know him before he

1 contacted you about this lawsuit?

2 A. No.

3 Q. Where did you first meet him?

4 A. I met him at the law office.

5 When I presented my lawsuit, I was told:

6 This is going to be your captain.

7 Q. Had you met him before the first
8 time you went to the law office?

9 A. No.

10 Q. Were there other men in Dennis
11 Mondragon's group?

12 A. It's possible."

13

14 (Video presentation of Rafaela Isabel Oporta
15 Guzman, testifying through a Spanish interpreter,
16 was played and was reported as follows:)

17

18 "Q. Can you please state your full
19 name for the record.

20 A. Rafaela Isabel Oporta Guzman.

21 Q. Mrs. Guzman, are you married?

22 A. Yes.

23 Q. What's your husband's name?

24 A. Jose Emilio Barrera.

25 Q. When did you and Mr. Barrera get
26 married?

27 A. In 1971.

28 Q. Do you and Mr. Barrera have any

1 children?

2 A. Yes.

3 Q. How many children do you have?

4 A. One.

5 Q. What was the name of the
6 gynecologist that you saw at this San Vicente
7 Hospital?

8 A. His name was Dr. Hernandez.

9 Q. And did Dr. Hernandez examine you
10 at that time?

11 A. Yes, he examined me.

12 Q. Did he determine what was causing
13 your pain?

14 A. Yes.

15 Q. What was it?

16 A. He did a biopsy.

17 Q. What organ did he do a biopsy on?

18 A. My parts.

19 Q. Your female parts?

20 A. Yes. Yes.

21 Q. And what did he find when he did
22 the biopsy, Dr. Hernandez?

23 A. Well, he told me that I have a
24 lot of inflammation. The biopsy showed that
25 there was inflammation.

26 Q. Did it show anything else that
27 he told you about?

28 A. Yes. It turned out that I had

1 a cancerous ulcer.

2 Q. And was that cancer of the uterus?

3 A. The uterus is right here; right?

4 Vaginal, that is, inside.

5 Q. Did you have to have an operation
6 after you were diagnosed with the cancer?

7 A. Yes. Yes.

8 Q. And do you know what they did in
9 the operation, if they removed anything or
10 what they did?

11 A. Yes. It was removed.

12 Q. And are you unsure whether they
13 removed your cervix or your uterus?

14 A. My uterus was removed.

15 Q. Was that in 1983?

16 A. Well, it was approximately
17 between '83 and '86."

18

19 MR. EDELMAN: Your Honor, that is all we had planned
20 to do before the afternoon recess, if you would like to
21 take the recess now. We have another group of testimony
22 to introduce and we anticipate being done within a regular
23 recess before 4:30.

24 THE COURT: How many more witnesses?

25 MR. EDELMAN: There are five.

26 THE COURT: Can we squeeze one in in the next eight
27 minutes before 3:00?

28 MR. EDELMAN: Sure.

1 THE COURT: 20 minutes you said was the next one?

2 MS. NEUMAN: Yes, your Honor.

3 THE COURT: All right. Next witness.

4 Is this yours, Ms. Neuman?

5 MS. NEUMAN: Yes, your Honor.

6 THE COURT: Okay. Speak to me.

7 MS. NEUMAN: The next two witnesses are dismissed
8 plaintiff Medrano Sergio -- I'm sorry, Marcos Sergio
9 Medrano Flores and his spouse Claudia Alejandra Lopez.

10 Mr. Flores claimed that he was rendered
11 sterile from working at Maria Elsa between 1975 and 1980
12 when he filed his lawsuit. During the course of discovery
13 we determined through DNA testing that he had in fact
14 fathered a son, Sergio Antonio, in 1992, and twins in
15 1994, a long time after he allegedly left Maria Elsa
16 in 1980.

17 Those DNA results and the declarations
18 authenticating them came into evidence this morning
19 as Exhibits 3, 4 and 5, accompanied by the declarations
20 of Vincent Miller, Manuel Lomas and John Vogler.

21 We are playing Mr. Flores' testimony and
22 the testimony of his wife because they testified before
23 the DNA testing was done, before they knew we would be
24 able to prove he was the father of these children that
25 they were raising together, and as the Court will see
26 Mr. Flores tells one story about how it is that his
27 long-term wife is having multiple children fathered
28 by other men while she's married to him, and his wife

1 tells a very different and inconsistent story, if
2 fact, the stories cannot be reconciled, and we think it
3 should have been known when these people were originally
4 interviewed, let alone when they testified, that their
5 story did not hold up, as the DNA evidence ultimately
6 showed.

7 And like our other plaintiffs, Mr. Flores
8 could not name co-workers other than the supervisor, he
9 couldn't name the other plaintiffs that allegedly worked
10 at Maria Elsa, Quinonez or Mendez, even though they were
11 supposedly overlapping with him, as well.

12 Could we play those, please?

13

14 (Video presentation of Marcos Medrano Flores,
15 testifying through a Spanish interpreter,
16 was played and was reported as follows:)

17

18 "Q. And during that year did anyone
19 else live in the house with you?

20 A. My wife.

21 Q. And what was her name?

22 A. Claudia Alejandra Lopez.

23 Q. In what month -- or excuse me, what
24 year did Claudia Alejandra Lopez move into your
25 mother's house with you?

26 A. We're talking about '88, at the
27 end of '88.

28 Q. Do you know what month?

1 A. No.

2 Q. And she has lived with you ever
3 since the end of '88.

4 A. Yes.

5 Q. First in your mother's house and
6 then in the house you have today; correct?

7 A. Yes, first with my mother, then we
8 rented a house at Agrosa, and then now our
9 own home.

10 Q. And in that rented house in which
11 you lived with Claudia, who else lived there
12 with you?

13 A. Claudia Alejandra Lopez's children.

14 Q. And those children's names are?

15 A. The oldest one, Luis Enrique, and
16 he has my last name, Medrano Obando.

17 Q. Why do you think that you're not
18 the father of Luis Enrique?

19 A. Well, simply, more than anything
20 she was cheating on me. I thought it was normal.
21 She could tell me that the child was mine, and
22 I believed it, that it was like that. But I
23 started to let's say suspect something when
24 my family would tell me you've had other women
25 and they have not turned out pregnant and you've
26 had this woman and she has a child.

27 And then the second time when we
28 had the second child I suggested to her that

1 we sit down and talk truthfully, and that's
2 when she told me then that -- well, she
3 cleared up the truth for me that the child
4 was not mine.

5 Q. What is the next child?

6 A. Sergio Antonio Medrano Obando.

7 Q. Sergio Antonio Medrano Obando's
8 birth certificate identifies you as the father,
9 doesn't it?

10 A. Correct.

11 Q. Sergio Antonio Medrano Obando was
12 born in Leon.

13 A. That's correct.

14 Q. Claudia became pregnant with
15 Sergio Antonio Medrano Obando while living
16 with you in your mother's house in Leon,
17 didn't she?

18 A. Yes.

19 Q. She became pregnant during a time
20 when she was having regular sexual relations
21 with you; correct?

22 A. Yes.

23 Q. You were not using a condom, were
24 you?

25 A. No.

26 Q. Do you understand -- do you know
27 who Sergio Antonio's father is?

28 A. No.

1 Q. If we ask Claudia, can she tell us
2 who his father is?

3 A. No.

4 Q. She doesn't know who Sergio Antonio's
5 father is?

6 A. I don't know.

7 Q. Has she ever told you who Sergio
8 Antonio's father was?

9 A. No.

10 Q. Now, you told us a moment ago that
11 you spoke with Claudia after Sergio Antonio was
12 born. Tell me about that conversation, please.

13 A. I told her to tell me the truth,
14 to lay our cards on the table, because
15 specifically, you know, my family, people that
16 know us, have said they aren't sure if the kids,
17 the children are mine, and after struggling
18 with that so much she told me the truth, that
19 she had cheated on me and that the children
20 were not mine.

21 Q. The twins were born in November
22 of 1994, weren't they?

23 A. Yes. Yes.

24 Q. Was Claudia already pregnant with
25 the twins when you had this conversation with
26 her?

27 A. Correct.

28 Q. So Claudia was pregnant with the

1 twins and you confronted her about who the
2 father really was; is that right?

3 A. Correct.

4 Q. Who is the father of the twins?

5 A. She didn't say.

6 Q. What are the twins' names?

7 A. Elvis Jose Medrano Obando, and
8 Tania, T-a-n-i-a, Isabel Medrano Obando.

9 Q. The twins were born November 22nd,
10 1994, weren't they?

11 A. Correct.

12 Q. Did Claudia tell you that you
13 were not the father of the twins either?

14 A. Well, regarding that, because she
15 was pregnant with the twins, we were talking
16 and she told me that, how can I tell this, that
17 she -- and she was telling me the same thing,
18 that they were my children. But it turns out
19 that, no, that it also turns out that they
20 were not my children either, the twins.

21 Q. So in early 1994 you told Claudia
22 that you didn't think you were able to have
23 children and that someone else must be the
24 father of these children; is that correct?

25 A. We -- I talked to her to tell me
26 the truth if I was the father or not or if it
27 was somebody else. So then one day she said
28 that I wasn't, that I wasn't the father.

1 Q. When Claudia became pregnant with
2 the twins, you were sleeping with her every
3 night, weren't you?

4 A. Correct.

5 Q. You were having regular sexual
6 relations with Claudia during that time when
7 she became pregnant with the twins; correct?

8 A. Correct.

9 Q. When Claudia gave birth to the
10 twins in November 1994, she also had a tubal
11 ligation, didn't she?

12 A. Correct.

13 Q. It was part of the same surgery
14 during which she had the twins; correct?

15 A. Correct.

16 Q. So she could not have any more
17 children after that time; correct?

18 A. That's correct.

19 Q. Now let's talk about all of the
20 years that you worked on the application
21 crew: '77, '78, '79 and '80.

22 Other than Mr. Adrian Giron,
23 can you tell me the name of any other person
24 that you worked with during those three and
25 a half years on the application crew?

26 A. I had already answered. There's
27 nothing else for me to answer.

28 Q. I would only asked you about 1977

1 before. I'm now asking you about '77, '78,
2 '79 and '80.

3 A. Excuse me. Didn't you ask me a
4 name in 1977 or another year as far as the
5 name of a co-worker? And I answered what
6 was closest to memory.

7 Q. All right. The only one I remember
8 is Mr. Giron.

9 Do you know the complete name of
10 any other co-worker that worked with you on
11 the application crew in '77, '78, '79 or '80?

12 A. I will answer the same.

13 Q. What is your answer?

14 A. I will answer so that we can move
15 on to another subject because I don't recall
16 the names, it's been a long time, and I --
17 unless some -- you know, I'm burning my brain,
18 I cannot think more to analyze more names."

19

20 (Video presentation of Claudia Alejandra Lopez,
21 testifying through a Spanish interpreter,
22 was played and was reported as follows:)

23

24 "Q. For how long have you lived with
25 Mr. Medrano?

26 A. It's been 19 years.

27 Q. Do you have any children?

28 A. Yes.

1 Q. How many children do you have?

2 A. Four.

3 Q. And are each of these children your
4 naturally-born children?

5 A. Only mine.

6 Q. You carried them inside of you and
7 you gave birth to them; is that correct?

8 A. Yes.

9 Q. What did you mean when you said
10 'only mine'?

11 A. They're not Marcos Sergio's.

12 Q. You're saying Marcos is not the
13 father of the children.

14 A. No.

15 Q. And Marcos Sergio is Mr. Medrano.

16 A. Yes.

17 Q. Who is the father of these
18 children?

19 A. I won't answer that question.

20 Q. I'm sorry, but the --

21 A. That's confidential to me.

22 Q. After hearing that speech from
23 your lawyer, Ms. Lopez, do you refuse to
24 answer that question?

25 A. Yes.

26 Q. Okay.

27 Do you know whether your children
28 have one father or do they have different

1 fathers?

2 A. Yes. No, only one.

3 Q. Okay. But this is the man whose
4 name you do not want to disclose.

5 A. Yes.

6 Q. You've indicated that you -- you
7 moved in with Mr. Medrano at some point in
8 1989; is that correct?

9 A. Yes.

10 Q. And you were 16 years old at the
11 time.

12 A. Yes.

13 Q. And you were living with
14 Mr. Medrano at the time Luis was born.

15 A. Yes.

16 Q. And you were living with
17 Mr. Medrano nine months prior on to that
18 time, as well.

19 A. Yes.

20 Q. Does that refresh your recollection
21 that perhaps it was towards the end of 19 --

22 A. Well, that is, I first lived with
23 Sergio Medrano for four years. Once I saw that
24 we didn't have a baby, then I have to look for
25 another partner in order to have the babies.

26 Q. Do you recall how long you had been
27 living together when you had that conversation?

28 A. We were -- it was about to be five

1 years.

2 Q. And what, what did you -- who
3 started that conversation?

4 A. Me.

5 Q. Did you and Senor Medrano discuss
6 at that time that you would -- you would have
7 sex with someone else to see if you could get
8 pregnant?

9 A. Yes.

10 Q. What did Mr. Medrano say?

11 A. That, yes, in order to get
12 children.

13 Q. Did the two of you discuss that
14 you would attempt to get pregnant by having
15 sex with another man and then raise the child
16 together?

17 A. Yes.

18 Q. And this discussion occurred prior
19 to the birth of any of your children; is that
20 correct?

21 A. No -- yes, before having them.

22 Q. So before you were pregnant with
23 Luis.

24 A. Yes.

25 Q. Then after this conversation did
26 you then have sex with another man in order
27 to try to have a baby?

28 A. Yes.

1 Q. Okay. And then you became pregnant?

2 A. Yes.

3 Q. And you had sex with this other
4 man in order to get pregnant with the consent
5 of your husband, Mr. Medrano.

6 A. Yes.

7 Q. At some point did you decide you
8 wanted to have a second child?

9 A. Yes.

10 Q. And did you discuss that with
11 Mr. Medrano?

12 A. Yes.

13 Q. Did Mr. Medrano agree that he
14 would love to have -- he would like to have
15 another child, as well?

16 A. Yes, but I wanted to have it with
17 him, to have my baby with him, to try to see
18 if there was an error or what. But I just
19 wanted to have his baby.

20 Q. Okay. At some point did the two
21 of you decide together, you and Sergio, that
22 you would have sex with another man again
23 in order to get pregnant?

24 A. Yes, with Luis's father, and it
25 turned out -- and it turned out to be okay.

26 Q. What do you mean 'it turned out
27 to be okay'?

28 A. Because I got pregnant again from

1 Luis's father.

2 Q. Okay. At the time you decided
3 to have a second child, did you discuss it
4 with Mr. Medrano?

5 A. Yes.

6 Q. And did you agree that you would
7 make another baby with Luis's father?

8 A. Yes.

9 Q. Did you discuss with Mr. Medrano
10 having sex with any other men in order to
11 get pregnant?

12 A. Yes.

13 Q. What did you say in that regard?

14 A. That I was embarrassed, it
15 embarrassed me knowing that I couldn't have
16 it with him and I had to use another person
17 in order to have a child that was not his.

18 Q. And did Luis's father and Sergio's
19 father, did he know that you were having sex
20 with him -- did he know that you were having
21 sex with him just to get pregnant?

22 A. Of course.

23 Q. And he agreed to be the surrogate
24 father for these children.

25 A. Yes.

26 Q. And then did you -- your second
27 child is named Sergio Antonio?

28 A. Sergio Antonio.

1 Q. So, after Sergio Antonio was born,
2 did you have another conversation with Senor
3 Medrano about having more children?

4 A. Yes, because I always wanted a
5 girl.

6 Q. And when did that conversation
7 occur?

8 A. When we were sitting I asked him
9 to -- that we should try again, because we
10 were always trying to see if it would be
11 his. Then I saw that it couldn't be done at
12 all.

13 Q. So did you once again agree that
14 you would have sex with this other man in
15 order to get pregnant?

16 A. Yes.

17 Q. Okay. And did you then have sexual
18 relationships -- relations with this man again?

19 A. Yes, I looked him up.

20 Q. Okay. And did you do this again
21 with the consent of Mr. Medrano?

22 A. Yes.

23 Q. Okay. What I'm trying to
24 understand is whether he ever said I will not
25 raise these children, these are not my children,
26 I do not love them.

27 A. It was only once that we had that
28 conversation, but that's it, that's it, I

1 don't want to. . .

2 Q. When did that conversation occur?

3 A. Oh, Luis Enrique was a newborn.

4 Q. Okay. And did Mr. Medrano just
5 say that in anger?

6 A. He was very angry.

7 Q. Have the children ever met the
8 biological father?

9 A. He passed away.

10 Q. When did he pass away?

11 A. Four years ago.

12 Q. Did you consider having sex
13 with this other man to be unfaithful to
14 Senor Medrano?

15 A. Of course I did.

16 Q. Even though he knew that it was
17 happening.

18 A. Yes.

19 Q. Did you believe you were being
20 dishonest with Senor Medrano?

21 A. I feel dirty.

22 Q. At the time the twins were born,
23 did you have an operation so that you could
24 not have babies anymore?

25 A. Yes.

26 Q. Was that done on the same day the
27 twins were born?

28 A. No.

1 Q. When was it done?

2 A. When the babies were three years
3 old.

4 Q. Okay. Do you know the term
5 'tubal ligation'?

6 A. Yes.

7 Q. Is that the operation that you had?

8 A. Yes."

9

10 THE COURT: Is that it for the time being?

11 MS. NEUMAN: Yes.

12 THE COURT: Okay. Fine. It is now 3:15, I'll
13 see you folks back here at 3:30. Thank you.

14 Oh, I do have one question. Who were the
15 attorneys present during the deposition of Mr. Medrano,
16 and who were the attorneys present at the deposition of
17 Ms. Claudia Alejandro Lopez?

18 MS. NEUMAN: Do you want all of them, or just
19 plaintiffs' counsel?

20 THE COURT: Plaintiffs' counsel will do.

21 I know Mr. Brem did some of the questioning
22 of one of the folks.

23 Mr. Crimmins did some other people.

24 MS. NEUMAN: Mr. Boone I believe was present at both
25 depositions.

26 MR. BOONE: I believe that's correct, your Honor.

27 THE COURT: Okay. Any other plaintiffs' counsel
28 there?

1 MS. NEUMAN: Not that I'm aware of, your Honor.

2 THE COURT: Thank you.

3 All right. See you folks back at 3:30.

4

5 (Recess taken)

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1 CASE NUMBER: BC340049/BC379820
2 CASE NAME: MEJIA/RIVERA vs. DOLE, et al.
3 LOS ANGELES, CA TUESDAY, APRIL 21, 2009
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 TIME: 3:38 P.M.
6 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
7 APPEARANCES: (AS HERETOFORE NOTED)

8 * * *

9
10 (The proceedings recommenced in open court, as follows:)

11
12 THE COURT: Back in the matter of Mejia versus Dole,
13 BC340049, and Rivera versus Dole, BC379820. The record
14 should reflect that all attorneys and party representatives
15 previously stated are present.

16 I want to clear something up, folks, because
17 it's something that's come up in prior hearings before me
18 and came up again somewhat today.

19 Epilepsy does not equate with imbecile, and
20 epilepsy does not equate with inability to remember, except
21 for one exception: the time right following an epileptic
22 seizure and sometimes right before an epileptic seizure
23 the patient sometimes has some retrograde amnesia and
24 will not remember the events immediately before and/or
25 immediately after an epileptic attack.

26 The fact that somebody may not remember
27 something for a long period of time and happens to have
28 a diagnosis of epilepsy does not equate with difficulty

1 in memory for several years. We might be talking an
2 hour or two, but not several years. Okay?

3 There has been some suggestions or confusion
4 about the relationship of epilepsy and other issues, and
5 they generally do not equate. It doesn't mean you can't
6 have other issues, but the two don't go together.

7 All right. Ms. Neuman, is this still your
8 bailiwick?

9 MS. NEUMAN: Yes, your Honor.

10 THE COURT: All right. Talk to me.

11 MS. NEUMAN: Well, to make sure the record is clear,
12 it was after Mr. Medrano Flores and his wife gave those
13 wildly inconsistent stories we heard just before the break
14 about his not being the father of Sergio Antonio and the
15 twins that DNA testing proved otherwise, and Mr. Medrano
16 Flores was dismissed after defendants submitted that DNA
17 testing to the court.

18 THE COURT: And part of the exhibits includes the
19 DNA testing; is that correct?

20 MS. NEUMAN: Yes, your Honor, Exhibits 3 through 5
21 that came in this morning.

22 THE COURT: Okay.

23 MS. NEUMAN: Your Honor, the next plaintiff for
24 whom we will play a very short excerpt, about six minutes,
25 is Roman Pastor Mendez. You will hear more about this
26 plaintiff tomorrow during the closed session. Today we
27 will just show this short excerpt, which demonstrates that
28 as a young man Mr. Mendez had frequent sex with prostitutes

1 and never used a condom, and like many others he could only
2 name an irrigation captain and two alleged co-workers, no
3 one else, and your Honor will remember that John Doe 16
4 explained as part of the process of the law firm training,
5 to learn the names of two co-workers and your irrigation
6 captain or your other supervisor. And then you will see
7 him be evasive with regard to questions going to the law
8 office.

9 THE COURT: So the purpose of the earlier testimony
10 is to indicate that there was high-risk sex, sexual
11 encounters with others.

12 MS. NEUMAN: Yes, your Honor.

13 THE COURT: Okay.

14

15 (Video presentation of Roman Pastor Mendez,
16 testifying through a Spanish interpreter,
17 was played and was reported as follows:)

18

19 "Q. Did you have sexual relations with
20 any woman before you married Maria Antonia?

21 A. No. Women, but from the street.
22 I mean, they're women, but, you know, from the
23 street.

24 Q. Were these women prostitutes?

25 A. Yes, women like -- women from the
26 street; you know, women, you know, that like
27 men. You know, like that.

28 Q. Would you pay them to have sex with

1 you?

2 A. I would help them out, but, you
3 know, I wasn't like buying their love, it was
4 just like a help.

5 Q. In 1972 you were, let me see, 18
6 years old; is that correct?

7 A. Yes.

8 Q. When you were having sexual
9 relations with these women from the street,
10 were you trying to have children with them?

11 A. With these women?

12 Q. Yes.

13 A. No, not with these women. No, not
14 with these women.

15 Q. Did you do something to try to
16 avoid having children with them?

17 A. No, never.

18 Q. Did you use condoms?

19 A. No.

20 Q. When you went to Mr. Dominguez's
21 office in 2003, you went because you thought
22 you may have been harmed by Nemagon; is that
23 right?

24 A. No, I went this because others,
25 friends of mine, were there and they said,
26 you know, they're doing the tests here.

27 Q. Mr. Mendez, is it correct that
28 the first time you went to Mr. Dominguez's

1 office in Chinandega you went there because
2 you thought that you might have been affected
3 by Nemagon?

4 A. Look, I went there because other
5 friends told me that we're going there because
6 then you will come to know the reality, because
7 they told me you've had a bunch of women and
8 maybe this thing harmed you.

9 Q. So that's why you went to
10 Mr. Dominguez's office.

11 A. Yes. I went there when I had the
12 tests done.

13 Q. Okay. And you went to
14 Mr. Dominguez's office the first time about
15 a year after you saw the demonstration; is
16 that correct?

17 A. Yes. Longer. Longer. Longer,
18 longer. And then when I went to the office
19 I had the test done about 15 days later.
20 Quickly.

21 Q. How many irrigation captains were
22 there at Maria Elsa while you worked on the
23 irrigation team?

24 A. There were several, but I don't
25 recall very well. Yes, and then the other
26 one, Didolfo Reyes, those, yes, but. . .

27 Q. Do you recall any others?

28 A. No.

1 Q. In response to earlier questioning
2 during your deposition, have you told us
3 everyone you can remember who worked at
4 Maria Elsa?

5 A. That worked with -- who worked
6 with me?

7 Q. Or lived with you or worked with
8 you?

9 A. No, the ones that worked with me,
10 I recall two.

11 Q. Okay. Do you remember anybody
12 who maybe did not work with you but who
13 lived in the barracks with you?

14 A. No."

15

16 MS. NEUMAN: Next, your Honor, we would present
17 testimony from Jose Adolfo Tellez, who is a plaintiff who
18 gave his name to the Tellez case but was moved to the Mejia
19 case. _____

20 THE COURT: In care of me, I assume.

21 MS. NEUMAN: Yes, your Honor, in care of you. Just
22 to create more confusion.

23 So Mr. Tellez has been deposed more than most
24 plaintiffs. In his three different depositions he gives
25 inconsistent accounts of when --

26 THE COURT: You mean between each deposition.

27 MS. NEUMAN: If you compare one to the next, he
28 gives inconsistent accounts of when and in what capacity

1 he worked on the San Pablo farm; he gives wildly varying
2 accounts of when he worked on an irrigation crew; sometimes
3 he worked for three years, other times he never worked on an
4 irrigation crew; another time he worked every three months,
5 another time he's worked every eighth day.

6 THE COURT: Eighth day?

7 MS. NEUMAN: Eighth day.

8 He doesn't know whether DBCP was applied to
9 the irrigation system and, like many of the plaintiffs,
10 he suffered from gonorrhoea.

11 Would you play Mr. Tellez, please.

12

13 (Video presentation of Jose Adolfo Tellez,
14 testifying through a Spanish interpreter,
15 was played and was reported as follows:)

16

17 "Q. Did a particular event occur or
18 is there some reason that you believe you
19 began working January 3, 1972?

20 A. I remember that it was January 3rd.

21 Q. Was something else happening at the
22 same time that makes you remember that?

23 A. Yes.

24 Q. What?

25 A. An earthquake.

26 Q. The same day you started work at
27 the San Pablo farm?

28 A. It was '72.

1 Q. Was that your first day at work?

2 A. First few days of work.

3 Q. How long after the earthquake did
4 you begin work at the San Pablo banana farm?

5 A. When the earthquake happened I had
6 been at the banana farm for one year.

7 Q. Were you part of an irrigation team?

8 A. I was, from '76 on.

9 Q. How many people were on the
10 irrigation team?

11 A. There's only one pump man.

12 Q. How many people total were on the
13 team?

14 A. Three.

15 Q. Did each person have a different
16 duty?

17 A. Yes.

18 Q. What were the three -- the
19 different duties?

20 A. One pump man.

21 Q. Who else?

22 A. Pigotero is the one in charge of
23 irrigating the plants. That's the gun.

24 Q. And what was the other worker's
25 job?

26 A. That was me. I was the pipe
27 replacement.

28 Q. On the irrigation team, was it

1 always the same people who were on the team?

2 A. Yes.

3 Q. Who were the other two members
4 of the irrigation team that you worked with?

5 A. I didn't see those men again. I
6 never saw them again.

7 Q. Now, were there -- can you describe
8 for me how it was that the water was applied to
9 the plants, what equipment was involved to water
10 the plants?

11 A. The pipes. They had two helpers,
12 one pump man.

13 Q. Did the pipes stay in the same place
14 all the time?

15 A. There were changes every hour.

16 Q. And are you saying you would move
17 the pipes every hour?

18 A. Correct, yes.

19 Q. Where would you move the pipes?

20 A. Let's say that we were in Zone 1,
21 then it goes to Zone 2. They say we're going
22 to irrigate Zone 2. It could be either two
23 or four or five. Eight changes were made.

24 Q. Eight changes were made in what
25 amount of time? Each day?

26 A. Those eight changes were done from
27 six to six in the morning.

28 Q. Was this irrigation done at night?

1 A. Yes.

2 Q. Were you applying water to the
3 plants?

4 A. Yes.

5 Q. Did you ever understand you were
6 applying DBCP to the plants?

7 A. No.

8 Q. How long did you work with these
9 men on the irrigation team?

10 A. From '76 to '79.

11 Q. They irrigated the farm two times
12 a year?

13 A. Yes. Mainly in December.

14 Q. So there was no water for any of
15 the banana plants all the rest of the year?

16 A. Of course they did. They're always
17 watered. You always watered.

18 Q. Okay. So if you're always
19 watering, what were you doing twice a year?

20 A. I was asked to remove flowers,
21 leaves, chopping with machete.

22 Q. Okay. So two times a year you
23 helped with irrigation.

24 A. Yes.

25 Q. Mostly in December.

26 A. Yes.

27 Q. Every eight days you were on the
28 farm from 4:00 p.m. in the afternoon until 4:00

1 in the morning.

2 Is that your testimony?

3 A. That's my testimony, yes.

4 Q. Okay. And this schedule of
5 being there every eight days from four in the
6 afternoon until four in the morning, did it
7 begin in 1976?

8 A. It was twice a year. Sometimes I
9 was sent to -- eight days later we were -- I
10 was called, but -- to irrigate again. Every
11 eight days.

12 Q. Okay. Every eight days you worked
13 a schedule of four in the afternoon until four
14 in the morning; is that correct?

15 A. Yes.

16 Q. Okay. How many workers on the
17 San Pablo farm were irrigation team workers
18 when you were an irrigation team worker?

19 A. We were a team of four.

20 Q. Sir, you began working as part
21 of the irrigation crew on the San Pablo farm
22 in about 1976; is that correct?

23 A. No.

24 Q. Sir, when did you begin working
25 as part of the irrigation crew on San Pablo?

26 A. I was not part of the irrigation
27 crew.

28 Q. Is it your testimony, sir, that

1 you have never worked as part of the
2 irrigation crew at any time on the San Pablo
3 farm?

4 A. No, just as an assistant.

5 Q. By that answer do you mean that
6 you assisted an irrigation crew on the San
7 Pablo farm?

8 A. When the foreman or captain needed
9 a man, when a co-worker or a worker on the
10 irrigation crew was ill, then I replaced him
11 for a period of three months. That's all.

12 Q. Just so that I'm clear, it's your
13 testimony, then, sir, that you assisted an
14 irrigation crew for only three months on the
15 San Pablo farm and at no other time; is that
16 correct?

17 A. Nothing else.

18 Q. Was my statement correct, sir?

19 A. Yes.

20 Q. By your testimony, sir, do you mean
21 that during a three-month period you worked
22 occasionally as an assistant to the irrigation
23 crew on San Pablo in 1976?

24 A. Yes.

25 Q. How many people worked on the
26 irrigation crew that you assisted?

27 A. Six.

28 Q. Do you believe that DBCP was

1 applied to the plants through the irrigation
2 water?

3 A. It's possible.

4 Q. Why is it possible?

5 A. I don't know.

6 Q. Why is it that you believe it is
7 possible DBCP was being applied to the plants
8 through the irrigation water?

9 A. I didn't know that until recently.

10 Q. When did you learn that?

11 A. February 11th of 2004.

12 Q. On February 11, 2004 someone told
13 you that DBCP was being applied to the plants
14 through the irrigation water?

15 A. I cannot answer that.

16 Q. Did the irrigation water that you
17 saw have any color to it other than regular
18 water?

19 A. I don't remember describing it.
20 I don't remember.

21 Q. Is your answer that you don't
22 remember what the water looked like?

23 A. I don't remember. I don't
24 remember, yes.

25 Q. You said in your interrogatories
26 you had gonorrhoea. Is that correct?

27 A. Yes.

28 Q. Why is it that you believe it

1 was gonorrhoea?

2 A. Because when I urinated it burned
3 a lot, so I injected myself, and on the second
4 day -- and I was fine the second day, it went
5 away."

6

7 MS. NEUMAN: Dole would next like to present
8 testimony from plaintiff Luis Matilde Rodriguez Tercero.

9 This gentleman clearly worked at the
10 San Antonio sugar mill when he claims to have been working
11 at San Pablo farm. His attempts to claim that he worked at
12 both places at the same time, which you'll see, strained
13 credulity. As we have come to expect, he does not know
14 the man who signed his work certificate and, as with most
15 of the others, he can name only his irrigation captain
16 and two co-workers, no other personnel on the farm.

17 He makes it very clear in his testimony that
18 he lived with his cousin while he worked at the San Pablo
19 farm, which he claims was from '78 to '79, but then he is
20 confronted with his interrogatory response that says he
21 lived with his cousin in '73 and '74. Mr. Tercero didn't
22 want to testify that if he worked at the farm it was in
23 '73 and '74 because he admits to fathering a son in 1978.

24 He also admits having being told by a doctor
25 that he was able to produce sperm but that it was blocked.

26 And finally Mr. Tercero admits that at
27 Ordenana's office he watched videos and saw pictures of what
28 it was like to work on a banana farm, and he admits to going

1 to the office many, many times, without any explanation for
2 what he does there.

3 Please play Mr. Tercero's testimony.

4

5 (Video presentation of Luis Rodriguez Tercero,
6 testifying through a Spanish interpreter,
7 was played and was reported as follows:)

8

9 "Q. Did you work on a banana farm, sir?

10 A. Yes.

11 Q. What banana farm?

12 A. The San Pablo farm.

13 Q. Approximately how long did you work
14 on that farm?

15 A. Approximately two years.

16 Q. When you worked for the San Pablo
17 farm, were you also working somewhere else?

18 A. I don't understand.

19 Q. When you worked on the San Pablo
20 farm, did you also -- were you also during
21 those same years working at a sugar refinery?

22 A. Yes. Approximately, yes.

23 Q. Okay. And what was the name of
24 the sugar refinery?

25 A. San Antonio.

26 Q. And then when you started working
27 at San Pablo, you did not work year-round at
28 San Pablo; correct?

1 A. Yes.

2 Q. You worked part time at San Pablo
3 when you worked at San Pablo for those two
4 years; correct?

5 A. Yes.

6 Q. And when you worked part time at
7 San Pablo for two years, do you know what
8 months of the year you worked?

9 A. I don't recall.

10 Q. You worked for two years part time
11 at San Pablo. I know you don't remember the
12 months that you worked part time at San Pablo,
13 but do you remember the season perhaps?

14 A. Yes. It was summertime.

15 Q. Summertime.

16 And approximately what months is
17 summertime in Nicaragua?

18 A. From November forward.

19 Q. I will ask it again.

20 At the sugar refinery is there a
21 time that the sugar refinery is busier and a
22 time that it's less busy during the year?

23 A. Correct.

24 Q. And what's the busy time of the year
25 for the sugar refinery?

26 A. Summertime.

27 Q. Did you work at the sugar refinery
28 during their busy time?

1 A. I did work.

2 Q. To your knowledge, have you ever
3 met Gregorio Flores?

4 A. I don't recall.

5 Q. So as far as you know, he -- he
6 has no knowledge of whether you worked on
7 the San Pablo farm or when you worked on the
8 San Pablo farm; is that correct?

9 A. No. No. I don't recall, no.

10 Q. Do you recall the names of the
11 supervisors at San Pablo farm when you started
12 to work there?

13 A. No, I don't recall.

14 Q. Do you recall the names of other
15 capataz at San Pablo when you started to work
16 there?

17 A. Not for the moment, no.

18 Q. You indicated that you worked part
19 time at San Pablo for two years. What year
20 did you leave San Pablo farm, stop work?

21 A. '79, approximately.

22 Q. When you were working part time
23 at the San Pablo farm, where were you living?

24 A. Chichigalpa.

25 Q. And who were you living with?

26 A. I lived there for a time with my
27 cousin.

28 Q. And who is your cousin?

1 A. Pablo Tercero.

2 Q. And the years that you worked part
3 time at the San Pablo farm were the years that
4 you lived with Pablo Tercero; correct?

5 A. Yes. Approximately, yes.

6 Q. And you lived with him for
7 approximately two years; correct?

8 A. Yes.

9 Q. In this case there were some
10 interrogatory answers, a legal document,
11 that was prepared for you, and in that legal
12 document, in the translation I have it says --
13 and for the record this is Paragraph 3 of
14 his Special Interrogatory No. 4 -- that:
15 'Approximately from 1973 to 1975 I lived next
16 to the distillery, Chichigalpa, my cousin
17 Pablo Tercero's house.'

18 Does that refresh your recollection
19 that you -- the time that you lived with Pablo
20 Tercero in the seventies was 1973 to 1975?

21 A. Yes.

22 Q. Okay.

23 So your best recollection is that
24 you lived with Pablo Tercero for approximately
25 two to three years, from 1973 to 1975; is that
26 correct?

27 A. Yes.

28 Q. And while you were living with

1 Pablo Tercero, that was the time that you
2 were working part time at the San Pablo farm;
3 correct?

4 A. I don't recall.

5 Q. But when you -- when you worked
6 at the San Pablo farm part time, you were
7 living with Pablo -- at Pablo Tercero's house;
8 correct? That's what you testified to.

9 A. Yes.

10 Q. Who is Martina Escalante?

11 A. Who was she?

12 Q. Yes.

13 A. She was my wife.

14 Q. And before you got married, did
15 you have sexual activity with other women?

16 A. Yes, with a mother of a son of
17 mine.

18 Q. And what was her name?

19 A. Emelisia Mejia.

20 Q. And when did you have sexual
21 activity with her?

22 A. Approximately in '77.

23 Q. And I would ask the interpreter --
24 well, first, without referring to Exhibit 1478,
25 do you remember the date of birth of your son
26 David Javier Rodriguez Mejia?

27 A. I don't recall very well right now.

28 Q. All right. Do you recall what

1 month your son was born in?

2 A. Yes.

3 Q. What month?

4 A. In February.

5 Q. And do you remember the year that
6 your son was born in?

7 A. '78.

8 Q. Is David Javier Rodriguez Mejia
9 your son?

10 A. Yes, he's my son.

11 Q. And is he your son as a result of
12 your getting Emelisia Mejia pregnant?

13 A. Yes.

14 Q. When you went to the office in
15 Chinandega and then went and got your sperm
16 tested, do you remember that?

17 A. Yes.

18 Q. Did any of the doctors or nurses
19 tell you that you were able to produce sperm
20 but it was being blocked?

21 A. Yes. After I had the tests done,
22 yes.

23 Q. Is there any person whose name you
24 know that you can tell me who saw you working
25 at the San Pablo farm?

26 A. Yes. Yes. The captain I had.

27 Q. And his name is?

28 A. Marcos Lopez.

1 Q. Anybody else who could say that
2 you worked at that farm?

3 A. The ones who -- well, the co-workers
4 who worked with me.

5 Q. Give me the names of those
6 co-workers.

7 A. Carmelo Espinoza.

8 Q. And what was his job?

9 A. The same I was doing.

10 Q. He -- he coupled and decoupled
11 pipes?

12 A. Yes.

13 Q. Did he do it in the daytime or at
14 nighttime?

15 A. The same time I was doing it.

16 Q. Did he do it at nighttime?

17 A. Yes.

18 Q. At Ordenana's office before you
19 took the tests, were you shown pictures of
20 banana farms or TV shows of banana farms?

21 A. Yes.

22 Q. Did you see pictures?

23 A. Yes.

24 Q. And what did the pictures show?

25 A. No, it just showed the men working
26 with the bananas, the way we used to do it in
27 the farm. That's what I saw.

28 Q. Have you listened to Juan Dominguez

1 on the radio shows?

2 A. No, I've not heard him.

3 Q. Are you aware that he has a radio
4 show?

5 A. Yes, now I'm aware.

6 Q. Do others tell you what
7 Mr. Dominguez says on the radio show?

8 A. Yes.

9 Q. And what are some of the things
10 that Mr. Dominguez says on his radio show?

11 A. I don't recall because I forget
12 everything that very instant.

13 Q. Right.

14 How many times would you go to
15 the -- to Ordenana's office?

16 A. Many, many times.

17 Q. About how frequently do you go?
18 Once a week?

19 A. Oh, no. Every two weeks.

20 Q. And when you go and visit
21 Ordenana's office in Chinandega every two
22 weeks, that's been over the past several
23 years; is that correct?

24 A. Yes.

25 Q. And when you stop by the office,
26 what do you do there?

27 A. Me?

28 Q. Yes.

1 A. Nothing."

2

3 MS. NEUMAN: Of course, we actually know from
4 John Doe 16's testimony this morning, your Honor, that
5 Mr. Tercero went to the office so often because he himself
6 was a captain running meetings with groups of plaintiffs,
7 meeting with Dominguez and Ordenana and telling people
8 to keep silent, not to speak to anyone.

9 The final two witnesses that Dole would call
10 today, your Honor, are plaintiff Julio Cesar Gonzales
11 Davila --

12 THE COURT: Wait a second. Julio Cesar?

13 MS. NEUMAN: Gonzales Davila.

14 THE COURT: Okay.

15 MS. NEUMAN: And his spouse, Gertrudis Mayorga Rayo.

16 In this excerpt from these two depositions,
17 we'll see plaintiff Davila dissemble about his first contact
18 with the Nemagon law office in an obvious attempt to avoid
19 the statute of limitations. He gives detailed testimony
20 about living at his former spouse's father's house from '80
21 to '85 and only after that time going to work on a banana
22 farm.

23 Later he realizes his mistake, tries to change
24 his testimony to make it seem consistent with his claim that
25 he worked on a farm from '78 to '82, rather than after '85.

26 At one point plaintiff Davila forgets what farm
27 he's supposed to have worked on, he says Candelaria and then
28 corrects himself and says Emma. He claims to have started

1 on the Nemagon application team the day he arrived on the
2 farm. That was his first job.

3 Per what's become the usual today, he can
4 name only the irrigation captains and two other workers.

5 From his description of the irrigation
6 application process, it is painfully obvious that he has
7 no idea what he's talking about. He doesn't know the man
8 who purportedly signed his work certificate, Florencio
9 Altamirano Meza.

10 And finally, his wife testifies that Gonzalez
11 Davila only remembered working on a banana farm after he
12 went by the Nemagon law office. He had never mentioned
13 it before.

14 And just so the record is clear, your Honor,
15 other testimony has shown that only experienced irrigators
16 were asked to irrigate with the Nemagon, not people who
17 had just showed up at the farm.

18

19 (Video presentation of Julio Cesar Gonzales Davila,
20 testifying through a Spanish interpreter,
21 was played and was reported as follows:)

22

23 "Q. Did you do anything to help
24 yourself remember about the events and facts
25 that are going to be at issue in this lawsuit?

26 A. Oh, yes. I was a worker at a
27 banana farm.

28 Q. And did you do anything who help

1 yourself recall events from when you were
2 a worker at the banana farm?

3 A. Yes. I was an irrigation worker
4 at the banana farm. I was a worker.

5 Q. And did you travel with anybody
6 from Nicaragua to get to the United States?

7 A. There was another man. We met on
8 the plane.

9 Q. You had never met him before?

10 A. Sometimes. But there was no
11 friendship. I had seen him.

12 Q. Had you ever spoken to him before?

13 A. No.

14 Q. Where had you seen him?

15 A. Well, many of them go to the office.

16 Q. What office?

17 A. The one we have in Chinandega.

18 Q. What is the one you have in
19 Chinandega?

20 A. For those harmed by Nemagon.

21 Q. When is the first time you visited
22 that office?

23 A. When I started having the tests
24 done.

25 Q. When was that?

26 A. Approximately around 2006.

27 Q. Is that the very first time you
28 had visited the office?

1 A. Yes.

2 Q. Had you seen the office before you
3 first visited it?

4 A. I -- I went by and I saw it.

5 Q. Did you know what it was when you
6 went by and you saw it?

7 A. I asked.

8 Q. What did you ask?

9 A. What that was about.

10 Q. When is the first time you went by
11 and saw it?

12 A. Well, the -- around the date when
13 I told you.

14 Q. The first time you ever went by
15 and saw it was in 2006?

16 A. More or less.

17 Q. Where's the office located?

18 A. In the center of Chinandega.

19 Q. Had you ever been to the center
20 of Chinandega before 2006?

21 A. I would go by there.

22 Q. Had you gone by the office in the
23 center of Chinandega prior to 2006?

24 A. Excuse me?

25 Q. Had you gone by the office
26 that you said was located in the center of
27 Chinandega prior to 2006?

28 A. Yes, because I go by there to --

1 to buy, to make purchases because -- for
2 the -- for the field, because I work in
3 the fields.

4 Q. You live nearby to where the
5 office is located?

6 A. No.

7 Q. But you had passed by the office
8 in the center of Chinandega prior to 2006;
9 correct?

10 A. I always go by there, and because
11 the office hasn't moved from there I always
12 see it.

13 Q. So you had seen it prior to 2006.

14 A. Of course.

15 Q. And did you know prior to 2006
16 that it was the law offices of your lawyer who
17 represents banana workers?

18 A. Yes.

19 Q. Let me break this down. Your
20 lawyer -- you've identified for me that your
21 lawyer's office is in the center of Chinandega;
22 correct?

23 A. Yes.

24 Q. And you knew prior to 2000 that
25 your lawyer represents banana workers like
26 yourself who have brought claims such as the
27 one you've brought; correct?

28 A. Yes.

1 Q. And you knew that prior to 2006;
2 correct?

3 A. Of course.

4 Q. When is the first time you heard
5 about anyone in Nicaragua bringing lawsuits
6 because they believed they were sterile due
7 to banana work?

8 A. The first time I heard that?

9 Q. Yes.

10 A. Almost -- well, in 2000, around
11 there I heard there were cases already.

12 Q. So -- and just so I understand what
13 you're saying, in around 2000 you heard that
14 there were cases of banana workers bringing
15 lawsuits because they believed they were
16 sterile due to you working on the banana farms?

17 A. Yes.

18 Q. How many times have you met with
19 any of your lawyers?

20 A. I don't recall.

21 Q. More than ten times?

22 A. Yes.

23 Q. Did it occur to you in 2000 that
24 your sterility could be due to the banana work?

25 A. Yes.

26 Q. Why did you wait till 2006 to go
27 visit your lawyer for the first time?

28 A. I didn't feel capable.

1 Q. Why?

2 A. I wasn't well informed.

3 Q. You were not well informed of what?

4 A. How to get there.

5 Q. Do you mean you didn't know the
6 directions to get to your lawyer's office?

7 A. Yes.

8 Q. And that was the reason why you
9 didn't go prior to 2006.

10 A. Yes.

11 Q. Okay.

12 When did you first meet Celia? That
13 is, at some point you never had seen her before
14 and then you -- then there came a time when you
15 actually met her.

16 When did you first meet Celia?

17 A. I met her in '78.

18 Q. Okay.

19 And then when did you begin to have
20 sexual relations with Celia?

21 A. '80.

22 Q. And when did you begin to live with
23 Celia?

24 A. Already by '80.

25 Q. Prior to '80?

26 A. '80, approximately.

27 Q. And in 1980 when you began to live
28 with Celia, where did you live?

1 A. There at her father's house.

2 Q. When did you move to her father's
3 house?

4 A. Yes, in '80 I recall.

5 Q. What were the dates that you had a
6 relationship with Celia?

7 A. Yes, approximately from '80 to '85
8 or '87. '85, approximately around there.

9 Q. So when you first met Celia you
10 were living in Alsacia?

11 A. Yes.

12 Q. And then after you lived in
13 Alsacia, you moved to her father's house;
14 is that correct?

15 A. Yes.

16 Q. And how long had you been living
17 in Alsacia when you met Celia?

18 A. About three years, approximately.

19 Q. So you began living in Alsacia
20 in 1975?

21 A. Yes.

22 Q. And then you lived in Alsacia until
23 you moved into Celia's father's house in 1980?

24 A. Yes. '78.

25 Q. You moved into Celia's father's
26 house in 1978?

27 A. In '80 -- well, I mean, around
28 there, approximately.

1 Q. And then after you lived with Celia
2 in her father's house, where did you move to?

3 A. I went to work at the Candelaria --
4 well, at the banana farm. Emma. E-m-a. It's
5 a banana farm.

6 Q. After you moved out of Celia's
7 father's house, you moved to the Emma banana
8 farm?

9 A. Yes.

10 Q. But you moved to the banana farm
11 in 1985 after you left Celia's father's house?

12 A. Well, after, from '78 to '82 I was
13 working at the banana farm, but I was always
14 traveling.

15 Q. Am I correct that you moved to the
16 banana farm to live in 1985 after you lived at
17 Celia's father's house?

18 A. '82 until -- until '82 I lived
19 there working at -- at the camp, also.

20 Q. When you first began working at
21 Emma, were you already living at Celia's
22 father's house?

23 A. I was visiting her in '78.

24 Q. And when you first began working
25 at the Emma banana farm, were you already
26 living at Celia's father's house?

27 A. Yes.

28 Q. How long after you arrived did you

1 do your first Nemagon application?

2 A. Well, there, the same date when I
3 arrived, we started working at night.

4 Q. I understand you began working the
5 day that you arrived, but when was your first
6 Nemagon application?

7 A. That same date.

8 Q. The day you walked into the farm
9 you were installing and moving pipes for a
10 Nemagon application?

11 A. Yes.

12 Q. The very first day?

13 A. Nighttime.

14 Q. The very first night that you
15 worked, you were installing and moving pipes
16 for a DBCP application?

17 A. Yes.

18 Q. You identified eight people as
19 being on the irrigation team that you worked
20 on for the first six months that you were at
21 Emma; correct?

22 A. Yes.

23 Q. Was it the same eight people that
24 you -- that were on the irrigation team for
25 the entirety of the first six months that you
26 worked there?

27 A. Yes.

28 Q. Can you name for me the people that

1 were on the irrigation team with you the first
2 six months that you worked at Emma?

3 A. The irrigation captain, Cesar
4 Garcia; Reynaldo de Jesus Franco -- no, it's
5 not Franco. It's Borda, not Franco.

6 Q. Reynaldo De Jesus Franco?

7 A. Reynaldo De Jesus Borda, not
8 Franco.

9 Q. Anyone else?

10 A. Reynaldo Aquile.

11 Q. Anyone else?

12 A. Only -- I recall only those names.
13 I don't recall the other ones.

14 Q. So you named for me the irrigation
15 captain as Cesar Garcia, Reynaldo De Jesus
16 Borda, and Reynaldo Aquile?

17 A. Yes.

18 Q. Are those the only names of people
19 that you recall being among the eight on your
20 irrigation team?

21 A. Yes.

22 Q. You've named three people,
23 Mr. Davila, that you remember working with you
24 on nighttime irrigation teams during the times
25 that you were at Emma between 1978 and 1982.

26 Do you recall any other persons
27 who worked with you on a nighttime irrigation
28 team any time between 1978 and '82 when you

1 worked at Emma?

2 A. I don't recall.

3 Q. During the entire time that you
4 were you at Emma, was it the same eight people
5 on your irrigation team?

6 A. Yes.

7 Q. Do you remember during how many
8 months DBCP was applied during the first six
9 months you were at Emma?

10 A. Yes, I think -- didn't I say that
11 we applied it? But you know, as far as me
12 saying dates and months, I don't know, but it
13 was applied.

14 Q. When the irrigation team was
15 irrigating the farm, you said there were two
16 guns running at a time; right?

17 A. Yes.

18 Q. And the irrigation took 90 minutes?

19 A. Yes.

20 Q. And that was both for water and
21 Nemagon; right?

22 A. I imagine so. I mean, it was a
23 90-minute irrigation. I don't know how much
24 it was water and how much was the poison. I
25 don't know.

26 Q. But sometimes you irrigated with
27 only water and not Nemagon; right?

28 A. I think so, or perhaps no. I don't

1 recall. I know we irrigated.

2 Q. There were some nights during which
3 DBCP was not applied when you irrigated; right?

4 A. Perhaps yes.

5 Q. Perhaps yes, or yes?

6 A. Perhaps yes, perhaps no.

7 Q. Did you -- every night that you
8 worked on an irrigation team did you apply
9 DBCP?

10 A. I imagine yes, but perhaps no.
11 But yes, we would work at night.

12 Q. You were working at night.

13 A. Yes.

14 Q. And you worked on an irrigation
15 team.

16 A. Yes.

17 Q. And the job of the irrigation team
18 was sometimes just to irrigate the farm with
19 water; right?

20 A. I don't know. I would do
21 irrigation.

22 Q. You've told me that you don't know
23 how many nights of irrigation it took to cover
24 the farm once; is that correct?

25 A. Yes.

26 Q. Can you approximate for me how many
27 nights of irrigation it took to cover the farm
28 once?

1 A. No, I don't recall.

2 Q. Can you approximate for me whether
3 it was more than ten nights of irrigation to
4 cover the farm once?

5 A. I don't recall.

6 Q. Do you recognize the name Florencio
7 Justino Altamirano Meza?

8 A. No.

9 Q. Never heard of him?

10 A. I don't know who that is."

11

12 (Video presentation of Gertrudis de la Concepcion

13 Mayorga Rayo, testifying through a Spanish

14 interpreter, was played and was reported as follows:)

15

16 "Q. Can you state your full name for
17 the record, please?

18 A. Gertrudis de la Concepcion Mayorga
19 Rayo.

20 Q. Do you know Julio Cesar Gonzales
21 Davila?

22 A. Yes.

23 Q. What is your relationship to him?

24 A. He's my partner.

25 Q. Do you live together in the same
26 home?

27 A. Yes.

28 Q. Did Julio Cesar ever talk to you

1 about working on a banana farm?

2 A. Once we heard the news about that,
3 he did mention to me that he had worked at a
4 banana farm.

5 Q. What do you mean when you say
6 'once we heard the news about that'?

7 A. Well, like I said before, once he
8 walked by the off -- by that office and he
9 heard, and then there was mention of people
10 who were affected, and then he commented and
11 that he remembered that he had worked at
12 a banana farm. And that's when we had the
13 conversation that he worked at that banana
14 plantation.

15 Q. After he walked by the law offices
16 for banana workers and remembered that he'd
17 worked on a banana farm.

18 A. Maybe that was always in his mind,
19 but I don't know, he never mentioned it to
20 me before. That's when he -- he decided to
21 go, and then we talked about it, and so he
22 went."

23

24 MS. NEUMAN: That would conclude Dole's presentation
25 for today, your Honor.

26 THE COURT: All right. Thank you.

27 Did we decide on 8:30 tomorrow morning, folks?

28 MR. AXLINE: We did.

1 THE COURT: All right.

2 Tomorrow is a closed session, ladies and
3 gentlemen. We will resume at 8:30 in the morning.

4 And I don't remember what time we agreed
5 for Thursday morning, so help me out, folks, for the open
6 session.

7 Was it 8:30 or 9:00, folks?

8 MR. EDELMAN: I think we don't change Thursday, so
9 it's still at 9:00.

10 THE COURT: All right, folks. 9:00 on Thursday.
11 In case there's something that comes up, you might want
12 to check with the court and make sure it still really is
13 9:00.

14 So closed session tomorrow, open session again
15 on Thursday. Tomorrow we'll be showing in a closed session
16 testimony from persons who are protected witnesses but the
17 nature of the testimony would reveal who they are, and this
18 court has previously determined that the John Doe witnesses
19 have reason to be in fear for their life and their safety
20 and that of their families. We will, however, be providing
21 at a later time transcripts, as much as we can, of the
22 closed-session testimony.

23 Is there anything else I can do for any
24 counsel? Mr. Axline?

25 MR. AXLINE: Not for plaintiffs, your Honor.

26 THE COURT: Mr. Boone, anything for you?

27 MR. BOONE: No, your Honor.

28 THE COURT: Mr. Edelman?

1 MR. EDELMAN: No thank you, your Honor.

2 THE COURT: Ms. Neuman?

3 MS. NEUMAN: No thank you, your Honor.

4 THE COURT: Mr. Brem?

5 MR. BREM: No, your Honor. Thank you.

6 THE COURT: Mr. Poulson?

7 MR. POULSON: No, your Honor.

8 THE COURT: Mr. Crow?

9 MR. POULSON: No, your Honor. Thank you.

10 THE COURT: All right. Mr. Edelman, Ms. Neuman,
11 one thing I would appreciate, if possible, is, of the
12 various plaintiffs' testimony that you've played today,
13 and if there's any other plaintiff's testimony you were
14 planning on playing, I would very much appreciate knowing
15 the names of the lawyers from the various offices present.

16 MS. NEUMAN: Yes, your Honor.

17 THE COURT: Thank you.

18 All right. Bye, everybody. I will see some
19 of you tomorrow, and the rest of you I will see Thursday
20 I assume. Thank you for coming.

21

22 (At 4:30 p.m., the proceedings were recessed, to
23 reconvene Wednesday, April 22, 2009, at 8:30 a.m.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 324

HON. VICTORIA G. CHANEY, JUDGE

- - -

RODOLFO MEJIA, et al.,)
)
 Plaintiffs,)
)
 vs.)
 DOLE FOOD COMPANY, INC., et al.,)
)
 _____ Defendants. _____)
 AND ALL RELATED CASES. _____)

Case No. BC340049

(RIVERA vs. DOLE FOOD COMPANY, INC.)) Case No. BC379820

I, TIMOTHY J. McCOY, CSR No. 4745, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 225, inclusive, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on Tuesday, April 21, 2009.

DATED THIS 7TH DAY OF MAY 2009.

TIMOTHY J. McCOY, CSR NO. 4745
OFFICIAL REPORTER