

1 (In open court)

2

3 THE COURTROOM ASSISTANT: Everyone rise, please,
4 and face the flag.

5 In the presence of the flag of the United
6 States, emblem of the Constitution and of freedom and
7 justice for all, Department 324 of the Superior Court of
8 the State of California, for the County of Los Angeles,
9 is now in session. The Honorable Victoria Chaney, Judge,
10 presiding.

11 Please be seated and come to order.

12 THE COURT: Good morning, everybody.

13 COURTROOM RESPONSE: Good morning, your Honor.

14 THE COURT: All right. In the matters of Mejia
15 versus Dole, BC340049, and Rivera versus Dole, BC379820.

16 The record should reflect that present in
17 court for plaintiffs are Michael Axline and Daniel Boone;
18 for Dole are Scott Edelman and Andrea Neuman; present
19 on behalf of Dole as the representative, Michael Carter;
20 present on behalf of Dow are Michael Brem and Richard
21 Poulson; Dow's representative present in court is Scott
22 Scarpelli; present on behalf of Amvac is Robert Crow.

23 We also have a Spanish interpreter, Jesus
24 Rivera, who has an oath on file.

25 And I look forward to working with you, sir.

26 THE INTERPRETER: Thank you.

27 THE COURT: Just remember to keep your voice up nice
28 and loud because you don't have a microphone and the

1 acoustics in this court aren't very good. Okay?

2 THE INTERPRETER: Will do.

3 THE COURT: Yesterday, Ladies and Gentlemen
4 who were not here, we had a closed session, this court
5 took considerable testimony and saw quite a bit of evidence.
6 Once the transcripts are complete I have tasked the
7 attorneys with going through the transcripts with me and
8 we're going to figure out what can become public. I do
9 not think that that will happen in the next day or two,
10 probably it will take a couple of weeks, but I did want
11 you to know that.

12 Also, there are about eight volumes of various
13 types of evidence that I have read from both plaintiffs
14 and defendants in preparation for this OSC proceeding. I
15 do consider that as part of the evidence, it was part of the
16 submissions by the various parties, and I have also tasked
17 the counsel for the various parties to begin the task of
18 going through these volumes and vetting them for what can be
19 made public.

20 Again, I have grave concerns about the
21 safety of witnesses in Nicaragua who will remain there
22 and I want to make sure that the names of those individuals
23 are redacted, and anything that would identify these
24 individuals and that may inadvertently mark them for harm
25 has to be removed and redacted from these documents.

26 But these documents basically should be public
27 with that exception, and counsel and I over the next two
28 or three weeks will work on that.

1 But just so you also understand, the evidence
2 that I am considering is not just what you've seen here on
3 Tuesday, what I saw yesterday, and what you will see today,
4 but is, as I said, eight volumes plus another couple of
5 inches worth of documents and information, deposition
6 transcripts, State Department documents, fake work
7 certificates, a whole group of things that I have reviewed.

8 All right. With that, who's on today? That's
9 you; hmmm?

10 MS. NEUMAN: Yes your Honor.

11 THE COURT: All right. And it's going to be the
12 same? Mr. Axline, you're going to be the lead for
13 plaintiffs?

14 MR. AXLINE: That's correct, your Honor.

15 THE COURT: Ms. Neuman, how are you two dividing it?

16 MS. NEUMAN: I'm going to be putting on Mr. Madrigal
17 and Mr. Valadez, and then Mr. Edelman will be putting on
18 Dr. Soto and giving Dole's closing.

19 THE COURT: All right. Mr. Brem, you're still the
20 lead?

21 MR. BREM: I am, your Honor.

22 THE COURT: And Mr. Crow, I keep saying I'm a
23 one-woman show, I know you're the one-man show for the Amvac
24 group; right?

25 MR. CROW: Yes, your Honor. Thank you.

26 THE COURT: All right. I'm all ears.

27 MS. NEUMAN: Your Honor, Dole would call Luis
28 Madrigal to the stand.

1 THE CLERK: Clerk, please raise your right hand to
2 be sworn

3

4 LUIS ANGEL MADRIGAL GUEVARA,
5 called as a witness by the Defendants,
6 having been first duly sworn, was examined
7 and testified through the interpreter as follows:

8

9 THE CLERK: Thank you. You can be seated at the
10 witness stand.

11 Sir, please state and spell your name for the
12 record.

13 THE WITNESS: Luis Angel Madrigal Guevara.

14 THE INTERPRETER: Interpreter's spelling, your Honor?

15

16 THE COURT: Yes. Thank you.

17 THE INTERPETER: Luis, L-u-i-s, Angel, A-n-g-e-l,
18 Madrigal, M-a-d-r-i-g-a-l, Guevara, G-u-e-v-a-r-a.

19 THE CLERK: Thank you.

20

21 DIRECT_EXAMINATION

22 BY MS. NEUMAN:

23 Q. Good morning, Mr. Madrigal.

24 A. Good morning.

25 Q. Would you tell us where you were born, sir?

26 A. In San Jose, Costa Rica.

27 Q. What is your date of birth?

28 A. September 3rd, 1967.

1 Q. Did you attend elementary and secondary schools
2 in Costa Rica?

3 A. Yes. Correct.

4 Q. Did you complete secondary school?

5 A. Yes.

6 Q. After completing secondary school did you have
7 any additional formal education in Costa Rica?

8 A. Correct.

9 Q. Can you describe the education you had beyond
10 secondary school, please.

11 A. Well, first it was three years and I earned a
12 technical degree in criminalistics, and after that I earned
13 a Bachelor's degree in criminal sciences.

14 Q. In what year did you earn your degree in
15 criminalistics?

16 A. 1987.

17 Q. And what year did you earn your Bachelor's
18 degree in chemical sciences -- I'm sorry, in criminal
19 sciences?

20 A. 1993 or '94, more or less.

21 Q. In addition to your formal education and these
22 degrees that you've described to us, have you received
23 any other formal training in investigative methods?

24 A. Correct.

25 Q. What additional training have you received in
26 investigative methods?

27 A. I received courses in criminal investigations
28 with the FBI in Costa Rica, and also courses taught by the

1 judiciary, also in Costa Rica, and another course with the
2 criminal justice for the United States in the United States,
3 also in criminal investigations.

4 Q. The two courses that you took in Costa Rica
5 that the FBI participated in, what was your job at the time
6 you took those courses?

7 A. I was an investigator with the investigative
8 unit of the judiciary.

9 Q. Of the Costa Rican judiciary?

10 A. Correct.

11 Q. How many investigators participated in the two
12 FBI courses that you took in Costa Rica while you were with
13 the Costa Rican judiciary?

14 A. 80, approximately.

15 Q. You mentioned that you also took a course in
16 the United States; is that correct?

17 A. Correct.

18 Q. Where was that course?

19 A. In Texas.

20 Q. And what United States agencies put that course
21 on?

22 A. It was the Department of Justice of the United
23 States, in association with a program called ICITAP.

24 THE COURT: Can you spell it?

25 THE WITNESS: I don't recall what the initials stand
26 for. It's ICITAP.

27 Q. BY MS. NEUMAN: Would that be the International
28 Criminal Investigative Training Assistance Program?

1 A. Correct.

2 Q. Of the Costa Rican investigators with the
3 judiciary who attended the two courses in Costa Rica, how
4 many of those also attended the course in the United States
5 that you went to?

6 A. Only I did. Only one.

7 Q. And were you chosen from among the 80
8 investigators with the Costa Rican judiciary to be the one
9 to receive the further training in the United States?

10 A. Correct. I was the chosen one.

11 Q. What was your first job after obtaining your
12 degree in criminal forensics in 1987?

13 A. As an investigator with the judicial police.

14 Q. Is that the Costa Rican judicial police?

15 A. Correct.

16 Q. Did you get any promotions during the time that
17 you worked with the judicial police?

18 A. Yes.

19 Q. Can you describe for us the positions that you
20 held with the judicial police in Costa Rica, please?

21 A. Well, first I started as an investigator's
22 assistant level one, and during the time I was there I was
23 promoted twice until reaching investigative assistant level
24 three. In total there are nine levels, but I reached only
25 three, level three.

26 Q. As a level three investigator for the judicial
27 police in Costa Rica, did you oversee investigators?

28 A. Correct.

1 Q. Who did you go to work for after you resigned
2 from the Costa Rican judicial police in 1993?

3 A. I started working for Investigative Research,
4 Inc.

5 Q. Where is Investigative Research, Inc. based?

6 A. In Brownsville, Texas.

7 Q. Who was your immediate supervisor at
8 Investigative Research, Inc.?

9 A. Mr. Douglas Beard.

10 Q. What is Mr. Beard's background in
11 investigations?

12 A. I know Mr. Beard worked for the Secret Service
13 in the United States as an investigator for the Postal
14 Office.

15 Q. And how did you obtain your position with
16 Investigative Research?

17 A. When I came to the course in Texas I met other
18 people within the police and within the FBI, and through
19 these individuals they put me in contact with Mr. Beard.
20 One of these friends of mine from the police recommended me
21 to Mr. Beard, and Mr. Beard got in touch with me in Costa
22 Rica and offered me employment.

23 Q. And what was your first position with
24 Investigative Research?

25 A. Given my experience and my studies, from
26 the beginning I was given a position of being in charge
27 of the investigations, especially in Latin America.

28 Q. So you were a lead investigator with

1 Investigative Research from the time you started there?

2 A. Correct.

3 Q. Are you still employed with Investigative
4 Research?

5 A. Correct.

6 Q. In the approximately 15 years that you've
7 been a lead investigator with Investigative Research, what
8 countries have you done investigations in, Mr. Madrigal?

9 A. Well, Argentina, Peru, Colombia, Panama, Costa
10 Rica, Nicaragua, Honduras and Mexico.

11 Q. And how many investigators do you ordinarily
12 supervise on a given investigation?

13 A. Approximately four or five investigators.

14 Q. Can you tell us the names of American companies
15 for whom you have done investigations?

16 A. Ford Motor Company, Chrysler, Teledyne, Johnson
17 Controls, Toyota, Honda, Michelin, and others that I don't
18 recall right now.

19 Q. Have you ever done investigative research
20 for --

21 A. And Dole, as well.

22 Q. All right.

23 As part of your Investigative Research that
24 you've done for the Dole Food Company, did that include
25 Investigative Research on the Mejia matter?

26 A. Yes.

27 Q. Are you the lead investigator on the Mejia
28 investigation for the Dole Food Company?

1 A. Correct.

2 Q. Prior to starting the Mejia investigation, how
3 long had you been conducting investigations in Nicaragua?

4 A. Five years.

5 Q. During the time that you spent in Nicaragua,
6 did you come to know a Nicaraguan by the name of Antonio
7 Hernandez Ordenana?

8 A. Yes.

9 Q. Who is he?

10 A. He's a Nicaraguan attorney.

11 Q. And what community does Mr. Ordenana, Hernandez
12 Ordenana practice law to your understanding?

13 A. Chinandega.

14 Q. What is Mr. Ordenana's reputation in the
15 Chinandega community?

16 A. From what I have investigated, from what I
17 know, he's a violent person, a person who in the area of
18 the law, his area, he likes to make up crimes that other
19 people have committed.

20 Q. What do you mean when you say Mr. Ordenana
21 likes to make up crimes that other people have committed?

22 A. When this individual doesn't like somebody,
23 doesn't get along with somebody, what I'm told is that this
24 individual likes to give false accusations in court about
25 somebody else.

26 Q. When you say "this individual," are you
27 referring to Mr. Hernandez Ordenana?

28 A. Correct. That's the information I've received

1 about him and his reputation.

2 Q. Does Mr. Hernandez Ordenana -- you
3 mentioned that he was violent. Does he have a reputation
4 for retaliatory violence for people that he dislikes
5 or people that he feels have crossed him in any way?

6 A. Yes.

7 Q. I would just note for the record, your Honor,
8 that it's been stipulated that Mr. Hernandez Ordenana is
9 Nicaraguan counsel for the Mejia and Rivera plaintiffs, that
10 the Court previously ordered his deposition and those of his
11 employees, but in Exhibit 140 that has been admitted into
12 evidence, Mr. Ordenana refused to have his deposition taken
13 in this case, and referred to being deposed in this case, he
14 said that would cause him to be like a chained donkey with a
15 loose tiger.

16 THE COURT: I think there's one other part of
17 that that needs to be put in there, and that is that this
18 court had previously made a finding, I believe in December
19 2008, that the crime-fraud exception applied to vitiate
20 the attorney-client privilege, therefore opening up the
21 potential for deposing both Mr. Ordenana and his office
22 personnel, and I had made a finding in December that it
23 was appropriate to depose both Mr. Ordenana, counsel for
24 the plaintiffs in Mejia and Rivera, and his office personnel
25 based on the crime-fraud exception, and that was based on
26 credible evidence presented to me before that time.

27 MS. NEUMAN: That's correct, your Honor. Thank you
28 for that clarification. And it was after that finding that

1 Mr. Ordenana declined to participate in the U.S. process.

2 Q. Mr. Madrigal, in whose office in Chinandega
3 does Mr. Ordenana work?

4 A. From what I know, this law firm is his, but
5 he is associated with an attorney named Juan Jose Dominguez,
6 an American attorney.

7 Q. Is Mr. Ordenana Mr. Dominguez's subordinate in
8 any way, to your knowledge, or are they just associated?

9 MR. AXLINE: Your Honor, before we get the answer
10 to that question, I'm just going to state a continuing
11 objection for the record as to lack of foundation and lack
12 of personal knowledge.

13 I understand that we're not in front of a jury
14 and that it's the Court's --

15 THE COURT: No, that's a valid objection. I'm going
16 to sustain it whether or not we were before the jury.

17 Ms. Neuman, you need to lay a proper foundation
18 as to how this individual has come by whatever information
19 he believes he should impart, including the relationship
20 between Mr. Dominguez and Mr. Ordenana, although some of
21 that you may have per stipulation previously.

22 MS. NEUMAN: Thank you, your Honor.

23 Q. Mr. Madrigal, as the lead investigator, what
24 was your view of the goals or objectives of Dole's Mejia
25 investigation?

26 A. Well, our first objective in the investigation
27 was to determine if a plaintiff had worked or not at a
28 banana farm; second, to see if a plaintiff had children

1 or not based on the information that we had; and third,
2 if the first two objectives were not correct, it would
3 determine that the plaintiff did not meet the first two aims
4 if he was lying, and then the third objective was to
5 determine why or how this plaintiff got into this suit if
6 the first two elements were not you true.

7 Q. When you say the first two elements, you mean
8 if it wasn't true that the plaintiff worked on a banana farm
9 and/or if it wasn't true that the plaintiff did not have
10 children after having worked on the farm; is that right?

11 A. Correct.

12 Q. So to understand your process, you first
13 investigated whether or not the plaintiff had children or
14 not and worked on a farm or not, and if you found out that
15 they didn't work on the farm or that they did have children,
16 then you investigated why it is they were nonetheless suing.

17

18 A. Correct.

19 Q. In carrying out this three-part investigation,
20 did you inter view people in Nicaragua?

21 A. Yes. Correct.

22 Q. In what geographic areas of Nicaragua did you
23 interview people in connection with the Mejia investigation?

24

25 A. Mainly in the department of Chinandega and
26 Esteli.

27 Q. When you say "department," is that the same
28 way we would use the word "city" or "town"?

1 A. It would be like saying "state."

2 Q. Thank you.

3 In the five years that you have been in
4 Nicaragua, how many people would you say that you have
5 interviewed there, approximately?

6 A. In five years, more than 200 witnesses, people.

7

8 Q. In conducting your investigation, were you
9 able to build trust with the witnesses you interviewed?

10 A. Yes.

11 Q. Do you believe the witnesses that you
12 interviewed were giving you reliable information?

13 A. Yes.

14 Q. In doing your interviews, would the first of
15 your interviews be informal or formal, where you'd ask for
16 a written statement at the end?

17 A. My first interview was informal.

18 Q. Were most people willing to participate in
19 informal interviews with you?

20 A. Yes, I would say so.

21 Q. In doing these informal interviews, did you
22 find witnesses who had information about whether or not
23 the Mejia plaintiffs, for example, worked on the farms?

24 A. Correct.

25 Q. Were all of the witnesses who had information
26 about whether or not the Mejia plaintiffs worked on the
27 farms willing to give you a formal statement, a formal
28 written statement?

1 A. No, not all of them because the procedure was
2 to first have an informal interview with these people and
3 we would explain our procedures, and we would tell these
4 witnesses that quite possibly further ahead we would need
5 from them a formal written statement or a statement where
6 attorneys from both sides would be present, so it would be
7 formalized. But the majority of the witnesses would say no.
8 No, no, no.

9 Q. They would say no to providing a formal
10 statement?

11 A. Yes. Initially they would say no, we're
12 afraid.

13 Q. Did the witnesses who had information about
14 the Mejia plaintiffs but were afraid to give a formal
15 statement tell you why they were afraid?

16 A. Yes, they did tell me.

17 Q. What did they tell you?

18 A. Well, first of all, they were afraid of --
19 they said that the plaintiffs were very aware and keeping
20 track and being aware of who was talking in this case;
21 also the witnesses would tell me that through the radio,
22 attorneys Hernandez Ordenana and Jose Dominguez were
23 saying -- telling people not to give information to the
24 investigators. And some of the witnesses who knew Hernandez
25 Ordenana would tell me this is a very violent man, he can
26 order that something be done to us.

27 Q. That something be done to the witnesses?

28 A. Correct. Yes.

1 For example, there was a man whom I talked to
2 who always told me that "The doors to my house are always
3 open to you. I will gladly give you information or a
4 verification, but a formal statement, never. My family
5 runs a risk. I'm at risk. This is a small town, everybody
6 can find out that I gave you information. I can talk
7 to you about everything, but not a formal statement."

8 Q. Were there witnesses who had information that
9 the Mejia plaintiffs did not work on the banana farms --
10 not that all of them didn't work, but were there witnesses
11 that had information that particular Mejia plaintiffs did
12 not work on the banana farms that you interviewed that
13 were unwilling to give formal statements to that effect?

14 A. Correct.

15 Q. Were there witnesses who had specific
16 information that specific Mejia plaintiffs had children
17 that were not willing to give formal statements?

18 A. Yes.

19 Q. And were there witnesses who knew things about
20 the Mejia plaintiffs, like where they had worked in reality
21 at the times they were claiming to have worked on the farms,
22 that were unwilling to give formal written statements out
23 of fear?

24 A. Yes.

25 Q. Now, you mentioned earlier that the plaintiffs
26 were very aware of who was talking. Did you mean who was
27 talking to the Dole's investigators, or something else?

28 A. I didn't understand that question.

1 Q. In an earlier answer when you were explaining
2 why people were afraid to give formal written statements you
3 said that some of them told you plaintiffs were very aware
4 of who was talking, and I was just trying to make sure
5 I knew who the plaintiffs were aware that the witnesses
6 were talking to. Was it the investigators?

7 A. With investigators.

8 Q. Did you interview witnesses who provided
9 information that Mr. Hernandez Ordenana was training false
10 plaintiffs to pretend that they had been banana workers?

11 THE INTERPRETER: I'm sorry, what was the last part
12 of your question?

13

14 (The record was read by the Court as follows:)

15

16 "Did you interview witnesses who provided
17 information that Mr. Hernandez Ordenana was
18 training false plaintiffs to pretend that they
19 had been banana workers?"

20

21 THE INTERPRETER: Thank you your Honor.

22 THE WITNESS: Yes.

23 Q. BY MS. NEUMAN: Did some of those witnesses
24 refuse to give formal written statements or depositions out
25 of fear?

26 A. Some, yes.

27 Q. Did you interview witnesses who conveyed to you
28 that Mr. Dominguez, Juan Dominguez of the United States, was

1 involved in training plaintiffs to pretend falsely that they
2 had been banana workers?

3 A. Yes.

4 Q. Were some of those witnesses that had
5 information regarding Mr. Dominguez afraid to come forward
6 out of fear?

7 A. Correct.

8 Q. The witnesses you interviewed who were too
9 afraid to come forward and participate in the formal process
10 but nonetheless disclosed the fraud to you, is it your
11 opinion that they were providing reliable information?

12 A. Yes.

13 Q. Were you able to corroborate the information
14 that these scared witnesses were providing you, at least
15 parts of it?

16 A. Yes.

17 Q. Were there other parts of the information that
18 the frightened witnesses were providing you that was unique,
19 that you couldn't get from another witness, that was willing
20 to come forward?

21 A. Correct.

22 Q. Would it be possible, Mr. Madrigal, for you
23 to give us an example, without revealing the name, of
24 someone who had information that was important to the Mejia
25 investigation that would not come forward and give a formal
26 written statement?

27 THE COURT: Well, I assume would not come forward
28 because of fear of reprisal.

1 MS. NEUMAN: Exactly, your Honor.

2 THE WITNESS: Yes. Yes, I can. I mean, there is an
3 individual, I will not mention the place, who was quite
4 involved in the handling of the lawsuit, and how can I say
5 this, this is an individual who has a career in the future
6 and is very afraid that this career may be cut or shortened
7 for talking out about this issue, and aside from the career
8 issue there's a fear of a physical attack. That's it.

9 Q. And you say that this person who is afraid to
10 come forward, afraid because they believe it will end their
11 career and subject themselves to possible physical attacks,
12 has detailed knowledge about the handling of DBCP cases in
13 Nicaragua?

14 A. Correct.

15 Q. The information that this individual you're
16 talking about, is some of the information that he or she has
17 unique?

18 A. Completely.

19 Q. And does the information that this individual,
20 who is unwilling to come forward due to fear of retribution
21 and loss of opportunity, confirm that there are fraudulent
22 DBCP cases being brought in Nicaragua and elsewhere?

23 A. Of course, yes.

24 Q. Do the people who are afraid to come forward
25 include former supervisors on the banana farms who would
26 know who did and did not work on those farms?

27 A. That's true.

28 Q. In your experience from conducting these

1 hundreds of interviews in Nicaragua, do the real former
2 banana workers, the supervisory personnel, tend to have good
3 recollections about the people who did and did not work for
4 them?

5 A. Yes, especially when dealing with a plaintiff
6 who had said that he worked several years at a specific
7 farm.

8 Q. Did you find the supervisors were fairly
9 competent in identifying the people who had worked for
10 them for several years on the farms?

11 A. Yes.

12 Q. I want to talk for a minute, Mr. Madrigal,
13 about the witnesses who have come forward under the
14 protective order.

15 A. Okay.

16 Q. Have you been personally involved with the
17 witnesses who have come forward in the Mejia matter as
18 John Doe witnesses under the Court's protective order?

19 A. Yes.

20 Q. These are witnesses that are personally known
21 to you?

22 A. Yes. Correct.

23 Q. And most of these are witnesses that you asked
24 if they would come forward and give a formal statement under
25 the protective order?

26 A. I asked all of them.

27 Q. In your conversations with the John Doe
28 witnesses, the discussions about coming forward or not

1 coming forward under the protective order, how many of the
2 witnesses expressed concerns about their safety to you?

3 A. The majority. All of them.

4 Q. What types of concerns for their safety did
5 they express to you?

6 A. Well, first, for their own lives; second, for
7 their families. The fear was to being attacked, beaten or
8 even killed.

9 Q. Based on your experience investigating these
10 DBCP matters in Nicaragua, do you think the John Doe
11 witnesses' concerns that they would be beaten, attacked
12 or killed if it was known that they came forward are
13 legitimate?

14 A. Yes.

15 Q. Why do you believe that?

16 A. I've spent five years in Nicaragua, and
17 especially in rural areas when people are manipulated
18 individually or in a group, they tend to be violent. It's
19 a matter of somebody giving an order to beat somebody up,
20 and it happens.

21 Q. Do you believe the DBCP plaintiffs in Nicaragua
22 are being manipulated?

23 A. I didn't understand.

24 Q. You said that you think the John Doe witnesses'
25 fears about beaten, attacked and killed are valid because
26 that when people are being manipulated, either individually
27 or as a group, they can be caused to harm others; is that
28 right?

1 A. Correct.

2 Q. Do you have any examples of the DBCP plaintiffs
3 in Nicaragua being encouraged to do violence to potential
4 witnesses?

5 A. The clearest example we have is the marches
6 that took place recently, or last month, in Chinandega.

7 Q. And what was that march in connection with?

8 A. That march had to do with a lawsuit, an
9 accusation filed by attorney Hernandez Ordenana against
10 investigator Francisco Valadez.

11 Q. And were there DBCP plaintiffs who appeared and
12 participated in that march?

13 A. Yeah. As a matter of fact, it was a march by
14 the plaintiffs.

15 Q. And in this march do you feel the plaintiffs
16 were being encouraged or encouraging one another to
17 violence?

18 A. Correct.

19 Q. The John Doe witnesses who have told you that
20 they have fear of being attacked, beaten or killed, what is
21 your understanding of who it is they fear will attack, beat
22 or kill them?

23 A. The attorney, Hernandez Ordenana.

24 Q. Anyone else?

25 A. People who work with him.

26 Q. "Him" being Hernandez Ordenana?

27 A. Correct.

28 Q. Anyone else?

1 A. I don't recall right now, but there are other
2 people, other attorneys who work in Chinandega, and I've
3 received unofficial information, I'll just leave that, that
4 they could attack or have other people beaten if they speak
5 out against the attorneys.

6 Q. Have any of the John Doe witnesses indicated
7 they're afraid of the plaintiffs themselves?

8 A. Yes.

9 Q. Are you aware of any efforts by Mr. Hernandez
10 Ordenana to discover the specific names of the John Doe
11 witnesses who have come forward and testified in Mejia?

12 A. Yes.

13 Q. What have you learned about that?

14 A. That they, the attorney Hernandez Ordenana and
15 the attorney Juan Jose Dominguez, together they are offering
16 \$20,000 to find out, to get this list.

17 Q. So Mr. Dominguez and Mr. Hernandez Ordenana are
18 basically offering a bounty to someone who can provide them
19 with the names of the John Doe witnesses who have testified
20 under the Court's protective order in Mejia. Is that right?

21

22 A. Correct.

23 Q. Did finding out about the bounty being put on
24 the protected witnesses' heads give you greater concern for
25 their safety?

26 A. Completely.

27 Q. In your view, are some of the John Doe
28 witnesses at greater risk than others?

1 A. I feel they all run the same risks. Well,
2 some more, I know, because they're close to the epicenter
3 or the center of this lawsuit in Nicaragua, but if the list
4 were to be revealed, they would all run the same risk.

5 Q. And what risk would that be?

6 A. Get beaten up or killed even.

7 Q. When you say "the epicenter of this lawsuit,"
8 what area are you talking about?

9 A. Chinandega and Esteli.

10 Q. Do you believe it's possible that a John Doe
11 witness could be killed if it was found out that they
12 testified in the Mejia matter?

13 A. Yes.

14 Q. Have you done your best to --

15 THE COURT: Can I back you up for one second?

16 MS. NEUMAN: Yes, your Honor.

17 THE COURT: How likely do you believe this violence
18 that the individuals may suffer if their names are revealed?

19

20 THE WITNESS: One hundred percent.

21 THE COURT: That's pretty certain. Okay.

22 MS. NEUMAN: We're going to move to a new topic. I
23 don't know when your Honor wanted to take the morning break.

24 THE COURT: Well, while you're not too far away on
25 your topic, I do have another question.

26 Mr. Madrigal, you indicated that Mr. Dominguez
27 and Mr. Ordenana had jointly offered a bounty or a reward of
28 \$20,000 for the name or names of those individuals who were

1 giving evidence in this case.

2 Do you remember that testimony?

3 THE WITNESS: Yes.

4 THE COURT: What other actions are you aware that
5 have been taken that involve Mr. Dominguez specifically
6 in ascertaining the names of the witnesses, if any?

7 THE WITNESS: I have no knowledge on other measures.

8 THE COURT: When did Mr. Dominguez withdraw? Was
9 that March 4th or something like that?

10 MS. NEUMAN: I believe was March 5th, your Honor.

11 THE COURT: Since the beginning of March,
12 specifically March 5th of this year, have you been
13 personally in Nicaragua?

14 THE WITNESS: Yes. Yes.

15 THE COURT: Have you seen Mr. Dominguez there while
16 you've been there personally?

17 THE WITNESS: No.

18 THE COURT: Have you heard, for you, credible reports
19 that he has been there since March 5th?

20 THE WITNESS: Correct.

21 THE COURT: Just to complete the evidence that this
22 court is taking into consideration that this court has been
23 present and presided over these cases since May of 2007.
24 Many of the court hearings have also included Mr. Juan
25 Dominguez, the American attorney. Mr. Dominguez has
26 made statements in open court on the record that he,
27 Mr. Dominguez, was partners with and/or closely associated
28 with Antonio Hernandez Ordenana, who has the law offices in

1 Chinandega.

2 Mr. Dominguez has also made reference to his
3 law offices in Chinandega, and I believe Esteli, as well,
4 and has made it clear that he, Mr. Dominguez, shares offices
5 with, runs offices, has joint office services with Antonio
6 Hernandez Ordenana.

7 This court is taking into consideration those
8 statements made by Mr. Dominguez to this court during the
9 last year and a half.

10 Also, this court is taking into consideration
11 the stipulation entered into between counsel I believe
12 on Tuesday, the 21st, regarding the association between
13 Mr. Hernandez Ordenana, Mr. Dominguez, and various other
14 counsel in Nicaragua.

15 Finally, this court will be considering and
16 has taken into account the various statements of witnesses
17 that this court finds to be credible, both John Doe
18 witnesses and some plaintiffs' witnesses, who have talked
19 about Mr. Dominguez's relationship with Mr. Ordenana,
20 and that, for plaintiffs, they see both Mr. Ordenana and
21 Mr. Dominguez as attorneys for those plaintiffs.

22 All right. We started a little late. How long
23 is your next area of questioning?

24 MS. NEUMAN: Probably about 20 minutes, your Honor.

25 THE COURT: Okay. Let's keep on rolling.

26 Q. BY MS. NEUMAN: Mr. Madrigal, have you
27 interviewed witnesses who are familiar with the operation
28 of the law offices in Chinandega that Mr. Ordenana works out

1 of?

2 A. Yes.

3 Q. What is the name of the law office on the sign
4 outside?

5 A. Legal offices, legal offices for banana workers
6 harmed by DBCP, something like that.

7 Q. That office space that has that sign above
8 it that says it's the legal offices for banana workers, is
9 that the same office space that Mr. Dominguez works out of
10 in Chinandega, based on your information?

11 A. Correct.

12 Q. So Mr. Hernandez Ordenana and Mr. Dominguez
13 share that office space in Chinandega.

14 A. Yes, that's correct.

15 Q. Based on your information, do Mr. Dominguez and
16 Mr. Hernandez Ordenana also share all the employees of that
17 office?

18 A. Correct.

19 Q. To your knowledge has Mr. Dominguez attended
20 meetings in that office related to these lawsuits?

21 A. Correct.

22 Q. Now, we talked about witness safety. I want to
23 talk a little bit about the safety of yourself and the other
24 investigators who have been working on this matter for The
25 Dole Food Company.

26 THE COURT: I need you to you keep your voice up a
27 bit. It's starting to drop a smidge.

28 MS. NEUMAN: Thank you, your Honor. I'll work on

1 that.

2 Q. Mr. Madrigal, have you had concerns for your
3 own safety while working in Nicaragua?

4 A. Yes.

5 Q. What types of concerns have you had for your
6 own safety?

7 A. Well, first, that they don't find me so they
8 won't kill me.

9 Q. Who is "they"?

10 A. Well, first is that attorney Hernandez Ordenana
11 and the people that work for him, because the information
12 that I have is that Hernandez Ordenana, attorney Hernandez
13 Ordenana wants to take revenge on me.

14 Q. Do you know why Mr. Hernandez Ordenana wants to
15 take revenge on you?

16 A. Because for him, and even for attorney
17 Dominguez, we are his enemies. That's how he's made it
18 known to the plaintiffs.

19 Q. Mr. Hernandez Ordenana and Mr. Dominguez
20 referred to you as their enemies when talking to the
21 plaintiffs?

22 A. Exactly, that I was an enemy; that I, because
23 I was part of the transnationals, I was an enemy.

24 Q. In Nicaragua, what does "transnationals" refer
25 to?

26 A. It's a term used by the plaintiffs and their
27 attorneys to refer to the companies that are being sued,
28 because it's not well understood, you know, the terms

1 "plaintiff and defendant," so they refer to the companies
2 as "the transnationals."

3 Q. When they refer to the transnationals, who are
4 they talking about?

5 A. The companies that have been sued.

6 Q. Such as Dole?

7 A. Correct.

8 Q. Does it include other companies in addition to
9 Dole, to your understanding?

10 A. Yes. When talking about transnationals, yes.

11 Q. Does it include all the companies that have
12 been sued in the DBCP cases, that phrase "transnationals"?

13 A. Yes.

14 Q. I want to show you a document that's been
15 admitted into evidence --

16 THE COURT: Are you moving to another subject? If
17 you are, that's fine, I just want to know because I have
18 a question if you're not going to be covering it.

19 MS. NEUMAN: I'm going to continue with this subject
20 of investigator intimidation, but not transnationals.

21 THE COURT: I meant investigator intimidation.

22 Okay. Go on.

23 MS. NEUMAN: This is a document that's been marked as
24 Defendants' Exhibit 1691.

25 THE COURT: 1691. What is it?

26 MS. NEUMAN: It is a flier.

27 THE COURT: Is this the park pamphlet or the park
28 flier?

1 MS. NEUMAN: Exactly, your Honor.

2 THE COURT: All right. The park flier showing a
3 photograph, 1691, will be marked for identification.

4 MS. NEUMAN: I believe it's already in evidence, your
5 Honor.

6 THE COURT: In evidence, Exhibit 1691.

7 MS. NEUMAN: May I approach the witness?

8 THE COURT: Yes.

9 Q. BY MS. NEUMAN: Mr. Madrigal, have you ever
10 seen Exhibit 1691 before?

11 A. Yes, I have seen it. Yes.

12 Q. Is that a very, very bad picture of you that
13 appears on Exhibit 1691?

14 A. I think so.

15 Q. Do you have any idea where that picture was
16 taken?

17 A. Yes.

18 Q. Where do you believe it was taken?

19 A. Well, obviously when I saw this I
20 investigated -- I tried to investigate where it was taken,
21 because it worried me, and from what I was able to find
22 out, this photograph came from a video.

23 Q. What video?

24 A. This one time there was a meeting of
25 plaintiffs, and I was nearby and somebody was filming a
26 video of the demonstration -- not a demonstration, but
27 a meeting. And that's when this video was taken, and that
28 photograph came from that.

1 Q. What does the language at the bottom of Exhibit
2 1691 say?

3 THE COURT: Why don't we just have the interpreter
4 translate it, please. I think that would be better.
5 Because the document speaks for itself.

6 Mr. Interpreter, please do so for me.

7 THE INTERPRETER: "This is a private investigator for
8 Dole Food Company from Costa Rica named Luis Madrigal."

9 Q. BY MS. NEUMAN: Did you obtain a copy of
10 Exhibit 1691 at some point in time, Mr. Madrigal?

11 A. Yes.

12 Q. How did you obtain a copy?

13 A. One of my contacts in Chinandega gave it to me.

14

15 Q. Did the person who gave you Exhibit 1691 tell
16 you how they obtained it?

17 A. Yes. The contact told me that this,
18 specifically this was being given out at the park in
19 Chinandega.

20 Q. When you say "this," you mean the flier we've
21 marked as Exhibit 1691?

22 A. Correct.

23 Q. Did they indicate to you who was giving out the
24 flier?

25 A. Yes.

26 Q. Who was giving it out?

27 A. A woman named Carlota, who I understand
28 from all the information I've received that she works for

1 Hernandez Ordenana.

2 Q. She works in the Chinandega law office we were
3 discussing a minute ago?

4 A. Yes. She's a captain.

5 Q. Did your contact tell you what if anything
6 Carlota was saying when she was handing out this flier in
7 the park in Chinandega?

8 A. Not specifically. I mean, this photograph
9 was so that others would know who I was. I mean, not that
10 I -- I don't know if Carlota said that or not, but the
11 information that I have is that this photograph, the purpose
12 of it was so that the plaintiffs could recognize me, would
13 know who I was upon seeing me, and they could attack me if
14 they saw me on the street.

15 Q. Do you know whether or not Carlota was
16 encouraging people to whom she was handing out the flier
17 to attack you if they saw you on the street?

18 A. I don't know.

19 MS. NEUMAN: I'd like to mark for identification
20 Defendants' Exhibit 164.

21 THE COURT: 164 is marked for identification.

22 What is Exhibit 164, what's the description,
23 please?

24 MS. NEUMAN: It is another flier of Mr. Madrigal --

25 THE COURT: A much clearer picture.

26 MS. NEUMAN: -- that we received after we exchanged
27 exhibits in this matter. We've had the language at the
28 bottom translated, and the language at the bottom of Exhibit

1 164 reads as follows: "This is the foreigner Luis Madrigal,
2 who along with Francisco Valadez and Jose Luis Cascante is
3 the main ringleader responsible for bribing and blackmailing
4 humble agricultural workers affected by Nemagon. If you see
5 this person, report it to the National Police."

6 May I approach the witness, your Honor?

7 THE COURT: Yes.

8 THE COURT: I you assume you've seen it, Mr. Axline?

9 MR. AXLINE: No. We haven't seen this, your Honor.

10 THE COURT: Are there any other exhibits that this
11 gentleman has not seen? If so, give them to them
12 immediately.

13 MS. NEUMAN: No. No, your Honor.

14 THE COURT: Okay.

15 Q. BY MS. NEUMAN: Mr. Madrigal, have you seen
16 Exhibit 164 before?

17 A. Yes.

18 Q. Did you recently provide Exhibit 164 to me?

19 A. Yes.

20 Q. Where were you when you obtained Exhibit 164,
21 in what country?

22 A. In Nicaragua.

23 Q. Do you have any information as to who created
24 Exhibit 164?

25 A. I don't know who, but from where, it's from the
26 office of attorney Hernandez Ordenana.

27 Q. And where did you obtain your copy of Exhibit
28 164?

1 A. An individual gave it to me in Chinandega.

2 Q. Did the individual who gave you Exhibit 164
3 relate to you where they obtained it?

4 A. Yes. Precisely from the office of Hernandez
5 Ordenana.

6 Q. And did the individual who provided you with
7 Exhibit 164 tell you what was said to them at the office
8 of Hernandez Ordenana at the time they received this flier?

9 A. What this individual told me was that Hernandez
10 Ordenana, in his words he wants to -- he wants to finish me
11 off, and one of these ways is to reporting me or accusing me
12 of blackmailing or bribing, and here it says peasants. And
13 this is a way to make me feel fear that the police would do
14 something to me, because of this.

15 Q. Because of Mr. Hernandez Ordenana's accusations
16 that you are bribing and blackmailing humble agricultural
17 workers?

18 A. Yes.

19 Q. Is that a false accusation?

20 A. Correct. It's completely false.

21 Q. And you believe Mr. Hernandez Ordenana is
22 making this accusation so that you will fear police action
23 in Nicaragua; is that right?

24 THE INTERPRETER: I'm sorry, counsel?

25 Q. BY MS. NEUMAN: And you believe that
26 Mr. Hernandez Ordenana is making this false accusation
27 so that you, Mr. Madrigal, will fear police action in
28 Nicaragua; is that right?

1 A. Correct.

2 Q. Since the time that Mr. Ordenana has been
3 involved in distributing fliers and making false accusations
4 against you, have you on any occasions been visited by
5 people who represented themselves to be associated with
6 the Nicaraguan police?

7 A. Yes. Three officers of intelligence police --
8 three agents, three intelligence agents from the National
9 Police went to look for me at a hotel in Chinandega.

10 Q. Did they find you there?

11 A. No, I was not there at the time.

12 Q. What happened after the three intelligence
13 officers from the National Police went looking for you at
14 a hotel in Chinandega?

15 A. Well, my reaction, and then that of the other
16 investigators, was to move elsewhere, to be more careful,
17 just to be more aware in case they're following us, starting
18 with that, quite tense, because we don't know what could
19 happen. I mean, in this case the police are looking for us,
20 we don't know what could happen.

21 Q. After these people who came to your hotel
22 and identified themselves as intelligence officers of the
23 National Police, after they came and went, did you contact
24 the Nicaraguan police to follow up on this instance dented?

25 A. Correct.

26 Q. What did you do to follow up on this with the
27 police?

28 A. It's a very uncomfortable process even for

1 us, the investigators, because it's diverted our attention
2 towards our own the safety and not focus so much on the
3 case. We had to talk to the National Police, with
4 Immigration, with our consulates, to be safe, or at least
5 to avoid them making up some accusations about a crime
6 about us and they would throw us in jail.

7 Q. Based on what you told us earlier about
8 his reputation for making false allegations against
9 people so that they will be arrested, are you afraid that
10 Mr. Hernandez Ordenana will falsely accuse you of a crime
11 in order to have you arrested by the Nicaraguan police?

12 A. Well, this is a false accusation, and I know
13 that regarding these accusations he has gone to the Ministry
14 of the Interior in Nicaragua, he's gone to Immigration, and
15 also to the National District Attorney's Office with letters
16 stating that we are bribing, offering bribes.

17 Q. When you say "he," do you mean Mr. Hernandez
18 Ordenana?

19 A. Correct.

20 Q. And he's gone to the Minister of the Interior,
21 the Immigration Office, and a District Attorney in Nicaragua
22 to accuse you of bribing witnesses?

23 A. That's true.

24 Q. After the people who identified themselves as
25 police officers came looking for you at your hotel, did
26 you go talk to the Deputy Director of Police in Managua
27 to determine whether or not this was part of a valid
28 investigation?

1 A. I went to talk to the Deputy Director, Carlos
2 Palacios, to find out what was going on, and he promised to
3 investigate what had happened, because he had no knowledge
4 of this. But I've not had any further contact with him, so
5 I don't know what happened.

6 Q. So at the time you talked to the Deputy
7 Director of Police in Managua, he had no knowledge as
8 to why people identifying themselves as National Police
9 intelligence officers had come looking for you in your
10 hotel; is that right?

11 A. No, he had no knowledge.

12 Q. And have you received any information from
13 the Deputy Director of the Police in Managua since that
14 time that the visit you received at your hotel by people
15 identifying themselves as police officers was in fact part
16 of a legitimate investigation?

17 A. I've not yet received information.

18 Q. So he hasn't gotten back to you one way or the
19 other yet?

20 A. No, not yet.

21 Q. Do you have any suspicions that this visit was
22 not part of a legitimate investigation?

23 A. I do have my suspicions.

24 Q. And what's made you suspicious?

25 A. Because the way these agents behaved,
26 according from information that I have from other friends
27 in the National Police, it was not normal. Well, first
28 of all, three agents arrived. Usually the work is done

1 by one agent and it's done undercover. And this seemed to
2 be, to me, to be more like going to the hotel so that the
3 investigators, Luis Madrigal and the others, know that
4 they're here. It's a means to intimidate.

5 Q. So this visit in your view was an intimidation
6 tactic?

7 A. Yes. Correct. That's what I think. Because
8 had it been something different, they would have found us --
9 I mean, had there been a crime, they would have detained us.
10 Yes, they would have detained us from long before.

11 Q. Did you in fact find the fact that these three
12 intelligence officers of the National Police had visited
13 your hotel to be intimidating?

14 A. Correct. Completely.

15 Q. Have you stayed in Esteli for periods of the
16 time during your investigations in Nicaragua?

17 A. May I say something else before I answer this
18 question?

19 THE COURT: No. Only if it's in response to the last
20 question.

21 THE WITNESS: Yes, it is.

22 THE COURT: Then you can finish your answer.

23 THE WITNESS: And something else that makes me see
24 this as intimidation is that the agents never again came
25 looking for us or asking for us. And even when the officers
26 went to the hotel, they left their names and phone numbers
27 with the hotel's manager, and I called one of them, and I
28 told him: I'm Luis Madrigal, what do you want? You're

1 looking for me.

2 "No," he said. He answered, "No, we're
3 just checking information."

4 And so I told him, "Well, if you need
5 something, you can call me." I said, "I have an attorney
6 in Managua, you can call him." And so I gave him my phone
7 number, my attorney's number in Managua. And even my
8 own attorney called that same investigator and told the
9 investigator: I'm Mr. Madrigal's attorney, my office is
10 at such a place if you want to talk. But the investigators
11 never showed up again. So that seemed very odd to me.

12 Q. When you spoke to the investigator and he
13 said he was, quote, checking information, did you ask him
14 why he was visiting your hotel to check information?

15 A. I asked him and he said: No, no, we're just
16 checking information, that's all. He was very evasive.

17 Q. Did he provide you any more information than
18 just that vague answer that he showed up at your hotel
19 with two other officers to check information?

20 A. No.

21 Q. Have you stayed in Esteli for periods of time
22 during your investigation in Nicaragua?

23 A. Yes.

24 Q. Have you stayed in Chinandega for periods of
25 time during your investigation in Nicaragua?

26 A. Correct.

27 Q. Has it been important, to carry out your
28 investigation, that you be able to stay overnight in Esteli

1 and Chinandega?

2 A. Correct.

3 Q. Would you be able to estimate roughly how many
4 people in Chinandega are DBCP plaintiffs?

5 MR. AXLINE: Objection. Calls for speculation.

6 THE COURT: Sustained.

7 Well, actually overruled right now. The answer
8 to that question is simply yes or no. Then you're going to
9 go through how he'd be able to estimate it and we'll get to
10 whether he can give an estimate. Okay?

11 THE WITNESS: Yes.

12 Q. BY MS. NEUMAN: How would you be able to
13 estimate how many people roughly in Chinandega are DBCP
14 plaintiffs?

15 A. In Chinandega?

16 Q. Si.

17 A. Because I've had access to documents of the
18 local lawsuits that are handled in Nicaragua, and from what
19 I've seen of those lists I think it's 10,000 plaintiffs.

20 THE COURT: I'm going to allow the response to stand.
21 I think that he, as an investigator, has shown that there
22 is sufficient evidence on which to make an estimate. So his
23 answer of about 10,000 will stand.

24 Q. BY MS. NEUMAN: The 10,000, does that include
25 plaintiffs in both Chinandega and Esteli, or just one or the
26 other?

27 A. It doesn't include Esteli.

28 Q. Are there a significant number of plaintiffs in

1 Esteli, DBCP plaintiffs?

2 A. Yes.

3 Q. Based on your investigation of the DBCP
4 matters, could you estimate roughly what percentage of
5 the Esteli population are plaintiffs in the DBCP matters?

6 MR. AXLINE: Objection. Calls for speculation.

7 THE COURT: You're correct, but the answer to that
8 question is yes or no.

9 You're going to go through the same drill as
10 before. If he has an estimate, then on what is he basing
11 it, and then we'll go to what the estimate is, if it's
12 appropriate.

13 MR. AXLINE: And in aid of the objection, your Honor,
14 the question calls for a comparison of plaintiffs with the
15 general population as opposed to a number of plaintiffs.

16 THE COURT: Then you can also find out if he knows
17 what the general population is.

18 THE WITNESS: Yes.

19 Q. BY MS. NEUMAN: Can you estimate roughly how
20 many people live in Esteli, in total?

21 A. No. No. But from what I understand, knowledge
22 that I have, the majority are plaintiffs.

23 Q. On what do you base your statement that the
24 majority of the people in Esteli are plaintiffs?

25 A. Again, the same thing: I've had access to
26 documents related to the local lawsuits.

27 Q. In conducting your interviews in Esteli, have
28 you found that many of the people that you've interviewed

1 have identified themselves as plaintiffs in the DBCP
2 litigation?

3 A. Yes.

4 Q. Are there meetings of plaintiffs in the DBCP
5 litigation that are held in Esteli?

6 A. Yes.

7 Q. Do you have any information as to how many
8 people would attend those meetings in Esteli of the DBCP
9 plaintiffs?

10 A. Yes.

11 Q. How many people would go to those meetings as
12 plaintiffs?

13 A. To some of the big meetings that have taken
14 place, a thousand, between 500 and a thousand people.

15 Q. In Esteli.

16 A. In Esteli.

17 Q. Is Esteli a rural area?

18 A. Yes.

19 Q. Currently, would you feel safe staying
20 overnight in Esteli like you used to do in your
21 investigations?

22 A. No.

23 Q. Currently, would you feel safe staying
24 overnight in Chinandega as you used to do as part of your
25 investigation?

26 A. No.

27 Q. When, and by that I mean at what point in time,
28 would you say the conditions became such that you couldn't

1 safely stay overnight in Chinandega or Esteli?

2 A. Starting -- beginning with the time when the
3 John Doe witnesses started making formal statements.

4 Q. Why was it -- well, why do you say that about
5 the time that the John Doe witnesses started making formal
6 statements when you started feeling unsafe staying overnight
7 in Esteli or Chinandega?

8 A. Because I received information from my contacts
9 that Ordenana was starting to get uncomfortable towards
10 us, with us, with the investigators, and part of this
11 information is that he wanted to know where we were.

12 Q. He wanted to know where you were staying?

13 A. Where we were staying.

14 And that's when we started to notice that there
15 was movement on the part of Ordenana and his group above
16 else to try to find out who were the ones who were
17 testifying, and starting from that point on everything's
18 been different.

19 Q. So once the John Doe witnesses started coming
20 forward and giving formal statements, you became aware that
21 Mr. Antonio Hernandez Ordenana was trying to find out where
22 you were living and staying overnight? Is that right?

23 A. Correct.

24 Q. And why do you think he was trying to figure
25 out where you were sleeping at night?

26 A. I've always thought that what he wanted was
27 to harm me in some way, intimidate me, and then I became
28 aware because he was able to locate the address where my

1 colleague, Francisco Valadez, was staying, and that's how
2 they were able to summon him, to serve him for this lawsuit
3 that Hernandez Ordenana filed against Francisco Valadez.
4 And I think he wanted to locate me as well for the same
5 thing, maybe to make up some crime against me or to send
6 the police. His aim has always been to get us out of the
7 country.

8 Q. When you say "us," you mean yourself and the
9 other investigators working on Dole's behalf?

10 A. All the investigators.

11 Q. Why does he want to get you out of Nicaragua?
12 Mr. Ordenana?

13 A. Because he wanted to stop the testimony.

14 Q. From the John Doe witnesses?

15 A. Correct.

16 Q. And it's your understanding that Mr. Hernandez
17 Ordenana believed if he could get Dole investigators,
18 yourself and Mr. Valadez and others, expelled from
19 Nicaragua, that that would stop the witnesses from coming
20 forward to talk about the DBCP fraud?

21 A. I don't know if it would stop them, but it
22 would at least obstruct that procedure.

23 Q. Obstruct the witnesses from coming forward?

24 A. Correct.

25 Q. Prior to the time that this court entered a
26 protective order and you were able to assist in getting John
27 Doe witnesses to come forward and give formal statements
28 about the fraud in the DBCP litigation, are you aware of

1 any witnesses coming forward formally to expose the fraud?

2 A. Without the protective order?

3 THE COURT: After the issuance of the protective
4 order, had witnesses been willing to come forward?

5 THE WITNESS: Oh, of course.

6 Is that your question?

7 THE COURT: You answered it. Thank you.

8 Q. BY MS. NEUMAN: Prior to witnesses coming
9 forward in the Mejia matter to unveil the DBCP fraud, are
10 you aware of witnesses coming forward at any time prior to
11 the Mejia matter?

12 A. Yes.

13 Q. When was that?

14 A. I don't recall when exactly, but it was
15 sometime before.

16 Q. Has your inability to stay in Esteli and
17 Chinandega and move around as you did before the John Doe
18 depositions began interfered with your investigation on
19 behalf of Dole?

20 A. Yes.

21 Q. And you said things started to get more
22 difficult once the John Does started coming forward; is that
23 right?

24 A. Correct.

25 Q. During the last six months as more and more
26 John Doe witnesses have been willing to come forward, have
27 things stayed the same or become more or less difficult
28 in terms of your safety and investigation in Nicaragua?

1 A. Have worsened.

2 Q. The conditions have worsened in terms of your
3 investigation?

4 A. Yes.

5 Q. And these allegations against you by
6 Mr. Hernandez Ordenana, these attempts to discover the
7 names of the witnesses who have testified under the
8 protective order and the other things you told us about,
9 have those things contributed to a decline in the
10 willingness of witnesses to cooperate with you in general
11 in your investigation?

12 A. Correct.

13 Q. Do you think without the protective order all
14 the John Doe witnesses would have nonetheless come forward?

15 A. No.

16 MS. NEUMAN: I was going to move to one last section
17 your Honor, if you had questions on intimidation.

18 THE COURT: I do. We're also going to take a very
19 brief break.

20 I think this has been covered somewhat,
21 Mr. Madrigal, but I wanted you to list for me exactly how
22 you believe that the actions that you've described which
23 have occurred in Nicaragua have affected your investigation.

24 And I'm including all of the actions that
25 you've spoken of this morning, from having your face
26 showed on the flier, to your concerns about the radio
27 announcements, to people not cooperating with you, to
28 the people who may or may not be government or police

1 investigators coming around, to the fear of individuals
2 that they may be beaten or attacked or killed, to people
3 asking for your whereabouts, and any other of the various
4 items that you listed this morning.

5 I want you to state for me how the confluence
6 of all of those activities has, if at all, interfered with
7 your ability to investigate and to carry out your mandate
8 given by Dole.

9 THE WITNESS: Well, first we have to take measures,
10 and by "we" I mean the investigators who work with me, to be
11 sure of where we are going to work. For example, regarding
12 the area of Chinandega, we have made the decision not to
13 go work there because we know that people there or the
14 plaintiffs have more access to this kind of information.
15 Now, that obstructs our investigation because we know in
16 that area there are many people who could help us collect
17 more information for this case.

18 Second, because this creates a lot of stress
19 to me and my investigators, in fact we've had to carry
20 out some tasks at night, we go to Chinandega or Esteli, we
21 talk to whomever we have to talk and we leave immediately.
22 Obviously this creates delays, we have to reassign our
23 resources as far as the availability of investigators, we
24 have to keep moving from one place to another, not to spend
25 too many nights in one place. And also the stress regarding
26 those witnesses who have testified, just to make sure that
27 nothing happens to them.

28 And for me personally, as far as this

1 photograph, this photograph is not only on this flier,
2 it's been in the press, as well.

3 THE COURT: All right. So basically you've told
4 me that the various actions and the various incidents and
5 the mood of the community has significantly interfered with
6 your ability to carry out an investigation on behalf of
7 the defendant Dole to do due diligence. Is that correct?

8 THE WITNESS: Correct.

9 THE COURT: And the ways you've been hindered include
10 the fact that you are forced often to stay away from
11 Chinandega; is that right?

12 THE WITNESS: Correct.

13 THE COURT: Your ability to investigate has been
14 obstructed because you cannot question people or obtain
15 information, much of which is in Chinandega.

16 THE WITNESS: Correct.

17 THE COURT: This has caused personal stress to you
18 and your investigators.

19 THE WITNESS: Correct.

20 THE COURT: You are forced to, I think you said,
21 investigate at night?

22 THE WITNESS: Correct.

23 THE COURT: Is that so you won't be seen?

24 THE WITNESS: So I won't be seen.

25 THE COURT: This has caused significant delays in
26 your investigation; is that correct?

27 THE WITNESS: That's true.

28 THE COURT: You've been forced to reassign resources

1 with your available investigators because of the unusual
2 nature of the threats that have been made.

3 THE WITNESS: Correct.

4 THE COURT: You've been forced to limit your time in
5 various locations because of concerns for your safety; is
6 that correct?

7 THE WITNESS: Correct.

8 THE COURT: You and your investigators are feeling
9 considerable stress because of the need to continue to
10 protect witnesses and to ensure their safety and their
11 families' safety after they have come forward as a John
12 Doe or protected witness.

13 THE WITNESS: Correct.

14 THE COURT: And personally you have considerable
15 fear because the photograph that we are looking at on
16 Exhibit No. --

17 MS. NEUMAN: 164, your Honor.

18 THE COURT: -- 164 has appeared in the press and is
19 to be used to identify you and report you; is that correct?

20 THE WITNESS: That's correct.

21 THE COURT: And finally, you have concerns about
22 reprisals against you through the police and immigration
23 departments.

24 THE WITNESS: That's correct.

25 THE COURT: And that would hinder your investigation.

26

27 THE WITNESS: Correct.

28 THE COURT: Is there anything else that you haven't

1 told us or listed that demonstrates how the activities in
2 Nicaragua, with its epicenter surrounding Mr. Ordenana and
3 Mr. Dominguez and then moving out from there, has impacted
4 your ability to carry out an investigation on behalf of
5 Dole in this matter?

6 THE WITNESS: I think that's all.

7 THE COURT: All right. Let's see. Counsel, can I
8 see you folks at side bar, just so we can finish planning
9 the day?

10 Just give us a minute, folks.

11 THE INTERPRETER: Your Honor, if I may just make
12 a correction on the record. I think I said District
13 Attorney's Office in an earlier answer, and it's the
14 Attorney General's Office that one of the letters was
15 taken to by Mr. Ordenana. It should be Attorney General
16 instead of District Attorney.

17 THE COURT: Thank you.

18 All right. I just want to talk about planning
19 and scheduling, so give me just half a second, folks, and
20 then we'll figure out what's happening for the day.

21

22 (Proceedings held at side bar, not reported)

23

24 THE COURT: All right. So that we can push
25 ahead, we're going to stay here for another few minutes.
26 Ms. Neuman has indicated that she has one more brief
27 area, the operative word is brief, for the questioning
28 of Mr. Madrigal, and then we're going to come back at 1:15.

1 We are trying to push this so that we get through today.

2 Unfortunately when one uses an interpreter,
3 necessary though they are, it really slows things down.

4 Mr. Rivera, can you do simultaneous
5 translation?

6 THE INTERPRETER: Yes, your Honor.

7 THE COURT: Please do it. So grab the microphone so
8 we don't hear the drone of somebody else. All right?

9 Well, keep the microphone near you when you're
10 answering and away from you when you're translating.

11 Okay. Remember, Ms. Neuman, the operative word
12 is "brief."

13 MS. NEUMAN: Yes, your Honor.

14 Q. Mr. Madrigal, you mentioned that you had
15 knowledge that Mr. Dominguez was in Nicaragua after
16 March 5th. Were you able to confirm that with any
17 government entity?

18 A. Yes.

19 Q. What entity did you confirm that with?

20 A. With Immigration.

21 Q. Thank you.

22 We talked earlier about the John Doe witnesses
23 and the fact that you're familiar with who they are.

24 Do you recall that?

25 A. Yes.

26 Q. Did any of the people who have come forward and
27 testified as John Doe witnesses ever ask you for any type of
28 compensation for testifying?

1 A. No.

2 Q. Did any John Doe witness ever ask to be paid to
3 provide information?

4 A. No.

5 Q. Have you ever paid anyone any money for any
6 information you've obtained in connection with your
7 investigation for Dole?

8 A. No.

9 Q. Have you ever given any witness anything of
10 value in exchange for information in your investigation for
11 Dole?

12 A. No. Never.

13 Q. Why have you not done that?

14 A. Because it's not our policy to get paid
15 information.

16 Q. What is your policy?

17 A. To get to the truth in an honest way, be that
18 information good or bad for our client.

19 MS. NEUMAN: All right. That's all I have, your
20 Honor.

21 THE COURT: I know you have some questions,
22 Mr. Axline.

23 Mr. Brem, do you have any questions?

24 MR. BREM: I do not, your Honor. Thank you.

25 THE COURT: Mr. Crow?

26 MR. CROW: No, your Honor.

27 THE COURT: All right. Mr. Axline?

28 MR. AXLINE: Is it permissible to conduct the

1 questioning from here, your Honor?

2 THE COURT: Wherever you're comfortable. I'm
3 interested in what you have to say, not from where you're
4 saying it from.

5 MR. AXLINE: Okay. Thank you.

6

7

CROSS-EXAMINATION

8 BY MR. AXLINE:

9 Q. Good morning, Mr. Madrigal. My name is Michael
10 Axline.

11 A. Good morning.

12 Q. I have a few questions for you.

13 You began your investigation on behalf of Dole
14 in Nicaragua in 2004?

15 A. Correct.

16 Q. As part of that investigation, did you ever
17 attempt to locate employment records for the banana
18 plantations?

19 A. Correct. Yes.

20 Q. And can you describe what the results of that
21 investigation were?

22 A. The documents had been destroyed when the
23 Sandinistas had come in. A lot of these documents were
24 destroyed at that time.

25 Q. Is your information that the documents were
26 destroyed or lost?

27 A. They were destroyed.

28 Q. Were you able to confirm that information?

1 A. No.

2 Q. As part of your investigation did you report
3 regularly to Dole?

4 A. Not directly with Dole. I would report to my
5 immediate supervisor.

6 Q. How often?

7 A. Almost every day.

8 Q. Do you know how often your supervisor reported
9 to Dole?

10 A. No.

11 Q. During your investigation did you encounter
12 individuals who had worked on banana plantations?

13 A. Yes.

14 Q. And did any witnesses you interviewed confirm
15 that any plaintiffs in United States cases had worked on
16 banana plantations?

17 THE COURT: Any? Just total, any?

18 MR. AXLINE: Any.

19 THE WITNESS: Yes.

20 Q. BY MR. AXLINE: Were any of the plaintiffs who
21 witnesses confirmed worked on banana plantations plaintiffs
22 in the Mejia case?

23 A. I don't understand. Once again?

24 Q. Yes. Did any of the witnesses that you
25 interviewed confirm that any Mejia plaintiffs worked on
26 banana plantations?

27 A. Yes.

28 Q. Which plaintiffs?

1 THE COURT: Which plaintiff, or plaintiffs?

2 THE WITNESS: Rodolfo Mejia.

3 MR. AXLINE: Those are all of my questions, your
4 Honor.

5 Thank you, Mr. Madrigal.

6 THE COURT: Ms. Neuman?

7 MS. NEUMAN: May I have one moment to consult with
8 Mr. Edelman?

9 THE COURT: Go ahead. Make it fast.

10

11 (Sotto voce discussion held between defense counsel)

12

13 REDIRECT_EXAMINATION

14 BY MS. NEUMAN:

15 Q. Mr. Madrigal, with regard to Mr. Mejia, did you
16 interview any witness who confirmed that Mr. Mejia did not
17 hold the particular job on a banana farm that he claims to
18 have held?

19 A. That's true.

20 MS. NEUMAN: I don't have anything further, your
21 Honor.

22 MR. AXLINE: Actually, I do have one further
23 question, if your Honor would --

24 THE COURT: Go for it. Let's move it.

25

26 RECROSS-EXAMINATION

27 BY MR. AXLINE:

28 Q. Are you able to identify the person who

1 informed you that the employment records had been destroyed?

2

3 MS. NEUMAN: Objection. Lacks foundation.

4 THE COURT: The question is can he tell the name
5 of the person who said that the -- it's overruled. He
6 either knows who told him that or he doesn't.

7 THE WITNESS: I know the name.

8 Q. BY MR. AXLINE: And what is the -- well, is the
9 name a protected witness?

10 A. I don't know. I don't know.

11 MS. NEUMAN: I can provide the witness with a list
12 of protected witness names.

13 MR. AXLINE: Do you have that list?

14 MS. NEUMAN: I do.

15 May I approach, your Honor?

16 THE COURT: Of course.

17 Sir, will you please look at those names and
18 tell me if the name of the person who has given you the
19 information concerning the destruction of the work records
20 is on that list.

21 THE WITNESS: Yes, it is.

22 MR. AXLINE: Thank you. No further questions.

23 THE COURT: Ms. Neuman?

24 MS. NEUMAN: I have nothing further, your Honor.

25 THE COURT: Mr. Brem?

26 MR. BREM: No, your Honor.

27 THE COURT: Mr. Crow?

28 MR. CROW: No, your Honor.

1 THE COURT: Mr. Madrigal, I have a question.

2 Were you ever served with legal process
3 regarding a subpoena to have you come to court to answer
4 for criminal conduct?

5 THE WITNESS: To come here? To come here?

6 THE COURT: No. Did you ever receive any legal
7 document that purported to charge you with a crime.

8 THE WITNESS: No.

9 THE COURT: Does anybody have a copy of that
10 subpoena?

11 MS. NEUMAN: We checked that, your Honor, and there
12 was not a subpoena for Mr. Madrigal.

13 THE COURT: Okay. Fine. I'll be quiet, then.

14 Mr. Madrigal, while you were sitting here,
15 did you think of any other ways that your investigation was
16 in any way hampered because of the conditions in Nicaragua
17 generally and the actions of Mr. Ordenana or Mr. Dominguez?

18 THE WITNESS: Not right now.

19 THE COURT: All right. Thank you, sir.

20 May this witness be excused?

21 MS. NEUMAN: Yes, your Honor.

22 MR. AXLINE: Yes, your Honor.

23 THE COURT: Mr. Brem?

24 MR. BREM: Yes, your Honor.

25 THE COURT: Mr. Crow?

26 MR. CROW: Yes, your Honor.

27 THE COURT: Thank you for coming. You are excused.

28 We will be in recess until 1:15, folks. We're

1 going to try to come back a little earlier.

2 Mr. Madrigal, thank you very much.

3

4 (Witness excused)

5

6 (At 12:00 noon, the luncheon recess was taken)

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1 THE COURT: Back in the mart of Mejia versus Dole,
2 BC340049, and Rivera versus Dole, BC379820.

3 The record should reflect that all counsel and
4 party representatives previously stated are present.

5 Ms. Neuman, is the next witness yours?

6 MS. NEUMAN: Yes, your Honor.

7 THE COURT: Will the next witness be assisted by
8 Mr. Rivera?

9 MS. NEUMAN: Yes, your Honor.

10 THE COURT: If you can continue simultaneous
11 translations as much as possible, Mr. Rivera, I would really
12 appreciate it.

13 THE INTERPRETER: Yes, your Honor.

14 THE COURT: And I have to say, I've been
15 eavesdropping, and Mr. Rivera is very accurate from what
16 I can the tell. And also, it's quite a skill to translate
17 generally but especially simultaneous translations.

18 So I really appreciate your hard work and
19 your skill.

20 THE INTERPRETER: Thank you, your Honor.

21 THE COURT: All right. Next witness?

22 MS. NEUMAN: Dole would call Francisco Valadez to the
23 stand, your Honor.

24 THE COURT: Mr. Valadez, please come over here,
25 stand next to the reporter and face the clerk.

26 This is the point where the bailiff would
27 formally jump on this gentleman for walking through the
28 well.

1 THE CLERK: Raise your right hand, please.

2

3 JOSE FRANCISCO VALADEZ VALADEZ,
4 called as a witness by the Defendants,
5 having been first duly sworn, was examined
6 and testified through the interpreter as follows:

7

8 THE CLERK: Thank you. You can be seated at the
9 witness stand.

10 Sir, please state and spell your name for the
11 record.

12 THE WITNESS: It's Jose Fran Valadez Valadez.
13 J-o-s-e, F-r-a-n-c-i-s-c-o, V-a-l-a-d-e-z, V-a-l-e-d-e-z.

14 THE CLERK: Thank you.

15 THE COURT: Before you begin, Ms. Neuman,
16 Mr. Valadez, I understand through counsel and various court
17 proceedings we've had that a very blessed event has recently
18 occurred in you your life. Is that correct? The birth of a
19 child?

20 THE WITNESS: Correct. That's true.

21 THE COURT: Is this your first?

22 THE WITNESS: Yes.

23 THE COURT: Congratulations.

24 THE WITNESS: Thank you.

25 THE COURT: All right. You can talk now.

26 MS. NEUMAN: Thank you, your Honor.

27

28 DIRECT_EXAMINATION

1 BY MS. NEUMAN:

2 Q. Good morning, Mr. Valadez.

3 A. Good morning.

4 Q. Where were you born?

5 A. In Monterrey Nueva Leon, Mexico.

6 Q. What's your date of birth?

7 A. March 30th of 19 -- March 30th.

8 Q. Did you receive your education in Mexico?

9 A. Correct.

10 Q. What year did you finish prep school?

11 A. Prep, '94, approximately.

12 Q. Did you attend college, Mr. Valadez?

13 A. Correct.

14 Q. Where did you attend college?

15 A. At the University Del Norte.

16 Q. Do you have a degree from that university?

17 A. Yes.

18 Q. What type of degree do you have?

19 A. Bachelor's in judicial sciences, legal
20 sciences.

21 Q. Are you licensed to practice law in Mexico?

22 A. Yes.

23 Q. After you received your judicial sciences
24 degree, who did you go to work for?

25 A. I went to work for the Attorney General of the
26 State of Nuevo Leon.

27 Q. How long did you work for the Attorney General?

28

1 A. Three years.

2 Q. And what was your position with the Attorney
3 General?

4 A. I worked with the Minister of Police, first as
5 a C level agent and then a B level agent.

6 Q. The Minister of the Police in Mexico?

7 A. Correct.

8 Q. And were you basically a police officer in
9 Mexico?

10 A. Yes.

11 Q. Who did you work for after you worked for the
12 Minister of the Police in Mexico?

13 A. For IRI.

14 Q. Is that Investigative Research?

15 A. Correct.

16 Q. How long you have you worked for Investigative
17 Research?

18 A. Five and a half years, approximately.

19 Q. During your work for Investigative Research,
20 have you worked on matters for the Dole Food Company?

21 A. Yes.

22 Q. Including Mejia?

23 A. Yes.

24 Q. Who has been your supervisor on the Mejia
25 matter?

26 A. Luis Madrigal.

27 Q. Do you know a gentleman by the name of Antonio
28 Hernandez Ordenana?

1 A. Yes.

2 Q. Has Mr. Ordenana brought a criminal complaint
3 against you in Nicaragua?

4 A. Yes, that's correct.

5 Q. What type of crime has Mr. Ordenana charged you
6 with, Mr. Valadez?

7 A. Slander and defamation.

8 Q. Does Mr. Ordenana base his slander and
9 defamation claim on a conversation you allegedly had with
10 a Filemon Herrera?

11 A. Correct.

12 Q. Do you know someone named Filemon Herrera?

13 A. Yes, I do know him.

14 Q. Who is Mr. Herrera?

15 A. Mr. Herrera, he is a foreman of one of the
16 banana farms from back then.

17 Q. On which farm was Mr. Herrera a foreman?

18 A. At the Candalaria farm.

19 Q. Have you interviewed Mr. Herrera regarding the
20 Mejia matter?

21 A. Yes.

22 Q. What is your opinion of Mr. Herrera?

23 A. He's a good person. He's a very honest being.

24 Q. Mr. Ordenana in his suit against you mentions
25 that you and Mr. Herrera discussed bus visits to Candalaria.

26 Have you and Mr. Herrera ever discussed the
27 topics of buses coming to Candalaria?

28 A. Yes, that's correct.

1 Q. Can you describe for us the conversation that
2 you and Mr. Herrera had about buses coming to Candalaria?

3 A. Okay. Yes. I will now tell you about these
4 facts.

5 Q. Yes. Thank you.

6 A. I went to visit Mr. Herrera to get some
7 information regarding the banana farms --

8 THE COURT: Excuse me. Are you okay, Ms. Deutch?
9 Can we get her some water, please?

10 MR. EDELMAN: Here we go.

11

12 (Pause in proceedings)

13

14 THE COURT: Okay. Go ahead.

15 Q. BY MS. NEUMAN: Mr. Valadez, could you go
16 ahead and tell us about the conversation that you and
17 Mr. Herrera had about buses coming to Candalaria?

18 A. Okay. Well, Mr. Herrera tells me that one
19 day these buses came up and they stopped by the edge of
20 the farm next to the highway. He gets scared and he orders
21 all the guards at the farm to close the gates to the farm.

22 So people started getting out of the buses,
23 and Mr. Herrera sent one of the guards from the farm over
24 to the bus to find out what those people were doing there.
25 He was afraid that these people were squatters, there to
26 take over the land.

27 Okay. So the guard went over to find out what
28 they were up to and all that, and when he comes back the

1 guard tells him that these people were there to get to know
2 the farm, that there was a guide who was showing them where
3 the water wells were, the camps, and the banana plants when
4 banana plants were planted at the farm.

5 Q. You're saying there was a guide with the people
6 who came on the buses?

7 A. Correct.

8 Q. And the guide was showing all these things to
9 the people that had come on the buses?

10 A. Yes, he was pointing to each thing.

11 Q. What else did Mr. Herrera tell you about the
12 bus visits to Candalaria?

13 A. Well, that's it. That was all.

14 Q. The guards at Candalaria, do they carry
15 weapons?

16 A. Yes, they carry weapons. Shotguns.

17 Q. After Mr. Herrera described the buses stopping
18 at Candalaria to you, did you say anything to him?

19 A. Yes. Well, this is what this lawsuit comes
20 from.

21 Q. What did you say to Mr. Herrera about the buses
22 with the guide?

23 A. Well, I told him these are people being sent
24 by the attorneys so they can get trained about the banana
25 farms. These are people who never worked and they're being
26 sent there to get trained.

27 Q. And how did you know that the people who had
28 come to Candelaria with a guide are being sent by attorneys

1 to be trained as fake banana workers?

2 A. Well, this is information that I've received
3 through my contacts in Nicaragua.

4 Q. Did you say anything else --

5 A. Yes.

6 Q. -- to Mr. Herrera about the buses?

7 A. Yes. I told him that as a precaution to be
8 careful, so they wouldn't have them sign work verifications.

9

10 Q. Who wouldn't have them sign work verifications?
11 The attorneys?

12 A. Well, I mean, anyone, or attorneys. I mean, I
13 didn't say anyone's names specifically.

14 Q. Why did you give Mr. Herrera that warning?

15 A. Because I hold this man in high -- I regard
16 this man well. He's a friend to me and he has cooperated
17 with me.

18 Q. Did you want to prevent Mr. Herrera from
19 getting involved in the litigation fraud that's going on
20 in Nicaragua?

21 A. Up to a point, yes.

22 Q. Has Mr. Herrera ever discussed with you
23 Mr. Hernandez Ordenana visiting him at Candalaria?

24 A. Yes, in that same conversation he was telling
25 me.

26 Q. What did he tell you about Mr. Hernandez
27 Ordenana visiting him at Candalaria?

28 A. Well, that he had already visited him several

1 times and had been insisting on him to join his group.

2 Q. Mr. Hernandez Ordenana had been visiting
3 Mr. Herrera and insisting that he join his plaintiff group?

4 A. Correct.

5 Q. And what else did Mr. Herrera tell you?

6 A. Well, he made a comment to him as a warning or
7 something like that by saying that -- well, saying something
8 like it would be too bad if something were to happen to him

9 Q. Mr. Hernandez Ordenana at the time he was
10 recruiting Mr. Herrera to be a plaintiff told Mr. Herrera
11 it would be too bad if something happened to him if he
12 didn't sign up as a plaintiff?

13 A. Yes. Not coming from him, but him knowing
14 how the other people are, that something could happen.

15 Q. When you say "not coming from him," who's the
16 him?

17 A. I mean, from any plaintiff. Not coming from
18 Ordenana, but from any other plaintiff.

19 Q. Was Mr. Herrera telling you that Mr. Ordenana
20 was implying to him that he might be hurt by plaintiffs?

21 A. Correct.

22 Q. After these visits from Mr. Ordenana did
23 Mr. Herrera sign up as a plaintiff in Mr. Ordenana's group?

24 A. Yes, that's correct.

25 Q. Do you know whether Mr. Herrera felt pressured
26 to do so, so that nothing bad would happen to him?

27 A. I consider that he did.

28 Q. Do you bear any ill will towards Mr. Herrera?

1 A. No. No, no. He's my friend.

2 THE COURT: Mr. Ordenana is your friend? Did I
3 misunderstand that question?

4 MR. EDELMAN: Mr. Herrera.

5 MS. NEUMAN: He was talking about Mr. Herrera.

6 THE COURT: Thank you. I did misunderstand it.
7 All right.

8 Q. BY MS. NEUMAN: Returning to the criminal
9 complaint that's been brought against you by Mr. Hernandez
10 Ordenana, when were you first scheduled to have a hearing
11 in this matter?

12 A. March 9th.

13 Q. You didn't appear on March 9th because you had
14 already obtained a continuance; correct?

15 A. Yes, that's correct.

16 Q. To your knowledge did Mr. Hernandez Ordenana
17 appear at the Chinandega courthouse on March 9th?

18 A. He and 500 other people.

19 Q. Do you know why the other 500 people
20 showed up at the hearing that was to be between you and
21 Mr. Hernandez Ordenana?

22 A. He -- well, I understand that he was calling
23 for a march over the radio to go and protest this matter
24 that between he and I, and to apply pressure on the judge.

25 Q. Mr. Hernandez Ordenana was on the radio asking
26 people to come march at the hearing that was scheduled on
27 March 9th?

28 A. Well, not he, a reporter, Benjamin Chavez.

1 Q. Benjamin Chavez was encouraging people to
2 march on the courthouse on March 9th?

3 A. Correct.

4 MS. NEUMAN: Your Honor, we have in evidence a video
5 of this march. It's Exhibit 25. I'd like to play a small
6 excerpt from the march.

7 THE COURT: Exhibit 25 is marked for identification,
8 a video of a march on March 9th.

9 Is there objection, Mr. Axline?

10 MR. AXLINE: No, your Honor.

11 THE COURT: Go ahead.

12

13 (playing video)

14

15 THE WITNESS: Okay. This is Benjamin Chavez. This
16 is the reporter.

17 Q. BY MS. NEUMAN: This is the reporter that was
18 encouraging people to come to the march over the radio?

19 A. Correct. Yes.

20 There's someone with Juan Dominguez's shirt.

21 Q. Mr. Madrigal -- I'm sorry, Mr. Valadez, is
22 this the march that was outside the courthouse at what
23 was supposed to be the first hearing in this matter where
24 Mr. Hernandez Ordenana had sued you personally?

25 A. Yes, that's correct.

26 Q. All right. Let's see some more.

27 The T-shirts these people are wearing, is that
28 a picture of Mr. Dominguez on the backs of their T-shirts?

1 A. Yes, that's correct.

2 THE COURT: Just for the record, you're referring to
3 the man on the left whose face appears in front of the
4 American flag?

5 MS. NEUMAN: Yes, your Honor.

6 THE COURT: I was asking him.

7 MS. NEUMAN: Oh, sorry.

8 THE WITNESS: Yes. Yes.

9 Q. BY MS. NEUMAN: And what is the building that
10 these gentlemen are entering?

11 A. This is the building, the courthouse.

12 Q. They're going into the courthouse.

13 A. Correct.

14 Q. Do you know, is this inside the courthouse?

15 A. Well, this is like the vestibule. Now, once
16 past the door it's the courtroom.

17 Q. So when you go through that door you'll be in
18 the courtroom.

19 A. Correct.

20 Q. And who is this with the paperwork going into
21 the courtroom?

22 A. Francisco -- Francisco -- Chico, Chico
23 Palacios. Francisco Palacios.

24 Q. Is Mr. Palacios a recruiting captain for
25 anyone?

26 A. Yes. Yes.

27 Q. In who is he a recruiting captain for?

28 A. Well, for the Ordenana and Dominguez law firm.

1 Q. Let's pause it for just a minute.

2 Mr. Valadez, is it your understanding that you
3 all of these people showed up at the courthouse where you
4 were supposed to have a hearing to protest against yourself
5 and Mr. Madrigal?

6 A. Yes, that's correct.

7 Q. Mr. Valadez, can you tell what they're chanting
8 right there?

9 A. Yes. They're asking for justice.

10 Q. All right. Let's keep going.

11 Do you know who that gentleman in the hat is,
12 Mr. Valadez?

13 A. Chico Palacios. No. Palacios is the other
14 one, this is Chico Fletes. Chico Fletes.

15 Q. The woman in the lower corner of the screen, do
16 you know who that is?

17 A. That's Carlota.

18 Q. The Carlota that works at the Dominguez
19 Ordenana law office?

20 A. Yes.

21 Q. Can you tell me who that is, Mr. Valadez?

22 A. Ordenana.

23 Q. That's Antonio Hernandez Ordenana?

24 A. Correct.

25 Q. All right. Thank you.

26 Mr. Valadez, after seeing the video of all
27 the people that showed up and marched on the date that was
28 supposed to be the first hearing in Mr. Ordenana's case

1 against you, did you have any concerns?

2 A. Definitely.

3 Q. What concerns did you have?

4 A. For my safety, my life.

5 Q. Did you feel that if you had appeared on March
6 9th as you were you scheduled to, that anything would have
7 happened to you?

8 A. Yes. I mean, they either lynch me, they injure
9 me or they kill me.

10 Q. And would you say there were hundreds of
11 people at this march on March 9th, based on the video?

12 A. Yes. More than 500, yes.

13 Q. And we've only watched a little excerpt, but
14 have you seen the entire video of the march that's in
15 evidence as Exhibit 25?

16 A. Yes.

17 Q. In this march, are people protesting against
18 yourself and Mr. Madrigal?

19 A. Yes, correct.

20 Q. And in this march, are people requesting that
21 you and you Mr. Madrigal be essentially expelled from
22 Nicaragua?

23 A. Correct.

24 Q. Do you understand the people who participated
25 in this march to be DBPC plaintiffs in Nicaragua?

26 A. Yes.

27 Q. This lawsuit that Mr. Ordenana brought against
28 you, it's simply based on your conversation with Mr. Herrera

1 that you described for us earlier?

2 A. Yes.

3 Q. After the March 9th date, what was the next
4 date you were scheduled to appear in court in Chinandega in
5 connection with this matter?

6 A. It was 17th of April.

7 Q. On April --

8 THE COURT: Can I just interrupt for one second?

9 MS. NEUMAN: Sure.

10 THE COURT: Going back to the video, sir, you said
11 you had listened to the entire video. Did you listen to
12 the entire speech that was on the video by Mr. Hernandez
13 Ordenana?

14 THE WITNESS: Yes.

15 THE COURT: Did Mr. Ordenana mention anything
16 directly about the case that is pending here?

17 THE WITNESS: No. Almost everything was focused on
18 getting Luis and myself kicked out of the country.

19 THE COURT: Was the name of Mr. Juan Dominguez
20 mentioned at all by Mr. Ordenana?

21 THE WITNESS: No.

22 THE COURT: All right. Go on. You were asking him
23 about the hearings in April.

24 Q. BY MS. NEUMAN: Having seen this mob that
25 showed up at the first appearance that was scheduled in the
26 lawsuit that Mr. Ordenana has brought against you, were you
27 concerned for your safety at the April 17th hearing?

28 A. Yes.

1 Q. In advance of that hearing did you take any
2 actions to try and protect yourself so that you could appear
3 at the hearing and answer the charges?

4 A. Yes. If you want me to, I can tell you about
5 them.

6 Q. Yes. What did you do?

7 A. Well, I gave a written statement to the judge
8 asking her to guarantee my safety if I were to show up in
9 her courtroom. That's one.

10 I also went to and set out the Mexican Consul
11 in Nicaragua to see if they could provide some support, and
12 so he then sends an official letter to the Director of the
13 National Police requesting support and the presence of
14 police for my safety.

15 Q. The Mexican Consulate did that on your behalf?

16 A. Yes.

17 MS. NEUMAN: May I approach the witness, your Honor?

18 THE COURT: Yes.

19 If you're going to show him something, you
20 want to make sure that Mr. Axline sees it on the way.

21 MS. NEUMAN: He has it in advance.

22 MS. NEUMAN: I'm going to show the witness Exhibit
23 167.

24 THE COURT: 167 is marked for identification.

25 How would you like to describe 167?

26 MS. NEUMAN: This is a letter from the Mexican
27 Consulate.

28 THE COURT: Any objection to that being admitted?

1 MR. AXLINE: No, your Honor.

2 THE COURT: 167 is received into evidence.

3 Q. BY MS. NEUMAN: Mr. Valadez, Exhibit 167,
4 there's an original letter and then there's an English
5 translation.

6 A. Okay.

7 Q. Is this the letter that the Mexican Consulate
8 sent to the National Police, General Director, on your
9 behalf?

10 A. Yes, that's correct.

11 Q. And in this letter he says: Considering the
12 nature of the case, you fear for your personal safety and
13 had requested the MC to transmit to the police your
14 concerns.

15 Is that accurate?

16 A. Yeah, that's correct.

17 Q. I take it that when you went to visit the
18 Mexican Consulate, he took your concerns about your safety
19 seriously?

20 A. Yes, definitely.

21 Q. And he took them so seriously that he sent this
22 letter to the police?

23 A. Yes.

24 Q. You mentioned that you wrote a letter to the
25 judge.

26 A. Uh-huh.

27 Q. Is that the judge handling Mr. Ordenana's
28 complaint against you in Chinandega?

1 A. Yes, that's correct.

2 Q. You asked that she ensure your safety inside
3 the courthouse in this letter?

4 A. Yes, that's correct.

5 Q. And was some sort of security provided for
6 you inside the Chinandega courthouse on April 17th?

7 A. There were police officers inside and outside
8 the courthouse, and some of the access streets were closed,
9 and there was some kind of control for people coming into
10 the courthouse.

11 Q. Is it your understanding that those safeguards
12 were provided based on the intervention of the Mexican
13 Consulate and your own correspondence to the judge in your
14 matter?

15 A. Yes.

16 Q. Prior to the hearing on March 17th, were there
17 additional broadcasts on the radio encouraging people to
18 come and again protest against you and Mr. Madrigal?

19 A. Well, yes, there were, but this time Benjamin
20 Chavez was calling only for a sit-in and not for a march
21 in front of the courthouse.

22 Q. Do you know why he was calling for only a
23 sit-in and not a march?

24 A. I think it was unauthorized.

25 Q. A march was not authorized?

26 A. Correct.

27 Q. On April 17th, the day that you had to appear
28 in court in Chinandega, in addition to having consulted the

1 Mexican Consulate and the judge, did you take other measures
2 to try and ensure your personal safety?

3 A. Yes.

4 Q. Could you please describe for us what you did.

5 A. Okay. Well, for starters, I didn't show up
6 in Chinandega, I mean, I was just going in and leaving
7 very quickly. Days before, we went there to study the
8 courthouse, to look at the egress and exits, the neighboring
9 buildings and houses in case there was a need to leave
10 through the back, and then look at the direction of the
11 traffic on the streets in case we needed to identify an exit
12 pathway.

13 And we had several cars and several people
14 who were watching, and they were mingled with the crowd,
15 and they would be there to support me when once I left the
16 courthouse.

17 Q. When you say "we," do you mean yourself and
18 other investigators from Investigative Research?

19 A. Well, only our people, the investigators.

20 Q. So, prior to April 17th you studied the layout
21 of the entire area to see how you could get in and out
22 safely and quickly; is that right?

23 A. Correct.

24 Q. On the day of April 17th, did you have other
25 people there to support you, to make sure you could get in
26 and out safely and quickly?

27 A. Yes.

28 Q. And you said you had people mingling in the

1 crowd. What did you mean by that?

2 A. There were colleagues who were mingling there,
3 just watching where the over the crowd, making sure they
4 were not carrying weapons, sticks, knives, and another
5 colleague there to, you know, could come in and out of the
6 courthouse or the courtroom and to let me know what was
7 going on outside.

8 Q. While you were in the courtroom?

9 A. Yes. Or in the vestibule.

10 Q. Did you go to the courthouse together with your
11 attorney?

12 A. Well, no. That was another safety measure.
13 We sent the attorney first and then I walked in behind him
14 about 15 or 20 meters.

15 Q. And why did you do that?

16 A. Well, I mean, he's from Chinandega, the
17 attorney's from Chinandega, and many people know him, and
18 if they know him they're going to wait to see who's with
19 him, and whoever's with him is Francisco Valadez, because
20 people don't know me.

21 Q. People couldn't recognize you in Chinandega?

22 A. No.

23 Q. Have you kept a low profile in connection with
24 your investigative work?

25 A. Yes.

26 Q. Were you able to appear at your hearing on
27 April 17th?

28 A. Yes, I did appear.

1 Q. And were you able to leave safely?

2 A. Yes.

3 Q. Do you feel safe staying in Chinandega
4 currently?

5 A. No.

6 Q. Would you feel safe staying in Esteli
7 currently?

8 A. Not there either.

9 Q. Do you have to go back for another appearance
10 in this lawsuit over a conversation that Mr. Hernandez
11 Ordenana has brought?

12 A. Yes.

13 Q. When do you have to go back?

14 A. The 14th of May.

15 Q. Do you plan to appear on that date?

16 A. Yes.

17 Q. Are you concerned for your safety in connection
18 with that appearance?

19 A. Yes, definitely.

20 Q. And do you plan to keep the Mexican Consulate
21 and others advised of your concerns?

22 A. Yes. I'm in contact with the Mexican Consul.

23 Q. Have these incidents, these marches against you
24 and Mr. Valadez, these radio broadcasts, have they caused
25 you to feel intimidated in connection with the work you're
26 trying to do in Nicaragua?

27 A. Yes, somewhat unsafe.

28 Q. And have all these events interfered with the

1 work you're trying to do in Nicaragua?

2 A. Yes, definitely.

3 Q. During your investigation, Mr. Valadez, have
4 you interviewed witnesses who have been visited by
5 Mr. Dominguez?

6 A. Yes.

7 Q. Without revealing a name, the first person who
8 you interviewed who had been contacted by Mr. Dominguez,
9 what did he tell you about that contact?

10 A. Well, in that interview, Mr. Dominguez
11 introduces himself as Dominguez, the representative of the
12 banana workers in the United States. So he gets there and
13 he tells him of his knowledge that he has been visited by
14 Luis Madrigal and Francisco Valadez.

15 Q. The witness tells Mr. Dominguez that the
16 witness has been visited by you and Mr. Madrigal?

17 A. Correct.

18 Q. What else does Mr. Dominguez say to the
19 witness?

20 A. Okay. So he tells him that in this world
21 there are good people and bad people, and in this case
22 Luis Madrigal and Francisco Valadez are the bad people;
23 that they, meaning Luis Madrigal and Francisco Valadez,
24 work for Dole, and that what they're trying to do is
25 to block their lawsuit and not to give anything to the
26 people -- I mean to the plaintiffs.

27 Q. Did this witness indicate or tell you how
28 Mr. Dominguez knew that he or she had been interviewed by

1 yourself and Mr. Madrigal?

2 A. No, no. He didn't tell me that.

3 Q. Did the witness tell you whether Mr. Dominguez
4 made any overt or implied threats during this conversation
5 about any cooperation with you and Mr. Madrigal?

6 A. He only insinuates that it wouldn't be good for
7 him to talk to us because other people could be upset with
8 that, and that that could bring some harm.

9 Q. To make sure I'm understanding, Mr. Dominguez
10 insinuated to the witness that it wouldn't be good for
11 him to cooperate because other people might harm him as a
12 result?

13 A. Yes. Correct.

14 Q. Based on your interview of this particular
15 witness, did he have information about the claims of the
16 Mejia plaintiffs?

17 A. Yes.

18 Q. During the course of the Mejia investigation,
19 did you ask this witness if he would sign a formal written
20 statement?

21 A. Yes, I did ask him.

22 Q. What did he say?

23 A. No, definitely not. He fears for his life and
24 the safety of his family.

25 Q. Did this witness ever ask you for any money?

26 A. No, never.

27 Q. Did you ever offer him any money?

28 A. Not that either.

1 Q. When Mr. Dominguez visited this witness, did he
2 come alone or with others?

3 A. He was with two other people.

4 Q. Did other witnesses you've interviewed have
5 similar visits from Mr. Dominguez?

6 A. Yes. Yes.

7 Q. Have you ever interviewed John Doe 4?

8 A. May I see the list, or?

9 Q. Do you want me to show you the name of that
10 person?

11 THE COURT: Any objection?

12 MR. AXLINE: No objection.

13 THE WITNESS: Yes, please.

14 Q. BY MS. NEUMAN: Here's No. 4.

15 A. So --

16 THE COURT: Please do not say the person's name out
17 loud.

18 THE WITNESS: Yes. Without saying the name, during
19 the course of my investigation, yes.

20 Q. BY MS. NEUMAN: You've interviewed John Doe 4.

21 A. Yes. Yes, I did interview him.

22 Q. Did you ask John Doe 4 for a formal written
23 statement?

24 A. Yes.

25 Q. What did he say?

26 A. He did give me one, but it wasn't easy, I had
27 to continue visiting him and visiting him.

28 Q. Did you have to talk to John Doe 4 about the

1 protective order in order to get him to give you a written
2 statement?

3 A. Yes.

4 Q. After John Doe 4 gave you a written statement,
5 did you ask him if he would come forward and give a
6 deposition?

7 A. Yes. Yes.

8 Q. What did he say?

9 A. No, definitely not.

10 Q. Did he tell you why he was unwilling to give a
11 deposition?

12 A. Because of his -- because he was afraid that
13 something would happen to him, afraid for his life and of
14 his family.

15 Q. Without revealing a name, did John Doe 4 give
16 you information that one or more Mejia plaintiffs did not
17 work as DBCP applicators on banana farms?

18 A. Correct.

19 Q. And he was too afraid to come forward and give
20 a deposition to confirm that? Is that right?

21 A. Yes.

22 Q. Other than their association in the law office
23 in Chinandega, are you aware of any other business ventures
24 that Mr. Dominguez and Mr. Hernandez Ordenana have together?

25

26 A. No, I don't know that.

27 Q. You have in front of you the list of John Doe
28 witnesses, Mr. Valadez.

1 A. Correct.

2 Q. In your contacts, in all your contacts with
3 those witnesses, the John Doe witnesses, did they ever
4 ask you to be paid to provide information?

5 A. No. Never.

6 Q. Have you ever paid anyone any money for
7 information in connection with the investigation that
8 you've been conducting on Dole's behalf in Nicaragua?

9 A. No, never. There's no point.

10 Q. What do you mean there's no point?

11 A. Well, I mean, if we're looking for the truth,
12 I shouldn't have to pay to get the truth.

13 Q. Did you ever tell anyone that Dole would
14 do anything for them if they came forward and testified,
15 compensate them in any way?

16 A. No. Never.

17 MS. NEUMAN: I have nothing further, your Honor.

18 THE COURT: Mr. Brem?

19 MR. BREM: No, your Honor. Thank you.

20 THE COURT: Mr. Crow?

21 MR. CROW: No questions, your Honor.

22 THE COURT: Mr. Axline?

23 MR. AXLINE: One question, your Honor.

24

25 CROSS-EXAMINATION

26 BY MR. AXLINE:

27 Q. Mr. Valadez, my name is Michael Axline. Good
28 afternoon.

1 A. Good afternoon.

2 Q. You testified that no John Doe witness had ever
3 requested payment in exchange for testimony?

4 A. Correct.

5 THE COURT: Of him. Of him.

6 Q. BY MR. AXLINE: Of you.

7 A. Yes, that's correct.

8 Q. I'd like you to look at the list of John Doe
9 witnesses and look at Witness No. 24.

10 A. Uh-huh. Okay.

11 Q. And confirm for me that that witness never
12 discussed payment or compensation or any benefit in exchange
13 for testimony with you.

14 A. No. Never.

15 MR. AXLINE: That's all the questions I have.

16 THE COURT: I want to thank the law firm of Miller,
17 Axline & Sawyer for doing what they attempted to do to
18 keep this gentleman safe last week.

19 The group of us, the counsel and myself,
20 have been concerned about the escalating threats in recent
21 months, and as I indicated about last Tuesday morning,
22 which seems like a century ago now, but as I indicated last
23 Tuesday morning, it was because of the escalating threats
24 and the change in the tenor of the situation in Nicaragua
25 that has brought about the change in my thinking from having
26 a full-fledged trial on a limited issue in front of a jury
27 set in September and this rather unusual proceeding, but it
28 was because of concerns that all counsel had for witnesses,

1 for investigators and attorneys, and during that hearing
2 that we had last week, during conversation, Mr. Axline asked
3 if there was anything that he could do to help contribute
4 whatever it might be, maybe nothing, but maybe something,
5 and it was decided upon that he and his office, together
6 with Mr. Boone, who I think was the author of the e-mail,
7 would send an e-mail down to parties that be in Nicaragua,
8 Mr. Hernandez Ordenana, and I believe a copy was also sent
9 to Mr. Dominguez, asking for their cooperation to try and
10 tone down the situation down there and do anything that
11 was possible.

12 I'm glad that Mr. Valadez did not come to any
13 harm, but I do want to thank the law firm of Miller, Axline
14 & Sawyer, specifically Mr. Axline for suggesting it, and
15 Mr. Boone for drafting it. I don't know whether it helped,
16 but I really do appreciate the attempt. So thank you.

17 MR. AXLINE: It was the least we could do, your
18 Honor.

19 THE COURT: All right. Anything else for this
20 witness, Ms. Neuman?

21 MS. NEUMAN: No, your Honor.

22 THE COURT: Mr. Axline?

23 MR. AXLINE: No, your Honor.

24 THE COURT: Mr. Crow?

25 MR. CROW: No, your Honor.

26 THE COURT: Mr. Brem?

27 MR. BREM: No. No, your Honor.

28 THE COURT: Is this witness excused, everybody?

1 MS. NEUMAN: Yes, your Honor.

2 THE COURT: Everybody's nodding or saying yes.

3 All right. Thank you very much, sir, for
4 coming in.

5 And again, congratulations on the birth of your
6 recent child. You're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. Next witness?

9 MR. EDELMAN: Your Honor, we will call to the stand
10 Dr. Oriel Soto Cuadra.

11 THE COURT: Dr. Oriel Soto Cuadra, please come
12 forward.

13 THE CLERK: Sir, please raise your hand to be sworn,
14 please.

15

16 ORIEL SOTO CUADRA,

17 called as a witness by the Defendants,

18 having been first duly sworn, was examined

19 and testified through the interpreter as follows:

20

21 THE CLERK: Thank you. You can be seated at the
22 witness stand.

23 Sir, please state and spell your name for the
24 record.

25

26 THE WITNESS: Good afternoon, your Honor.

27 My name is Oriel Soto Cuadra.

28 THE INTERPRETER: Interpreter's spelling, your Honor:

1 Oriel, O-r-i-e-l, Soto is S-o-t-o, and Cuadra is
2 C-u-a-d-r-a.

3 THE CLERK: Thank you.

4 MR. EDELMAN: Your Honor, may I approach to provide
5 the witness an important set of documents that have already
6 been provided to Mr. Axline?

7 THE COURT: That's fine.

8 Is that all right with you, Mr. Axline? Do you
9 have a problem with that?

10 MR. AXLINE: No, that's fine.

11 MR. EDELMAN: Thank you, your Honor.

12

13 DIRECT EXAMINATION

14 BY MR. EDELMAN:

15 Q. Dr. Soto, good afternoon.

16 A. Good afternoon.

17 Q. Could you describe your educational background,
18 please.

19 A. Perfect. I'm an attorney, graduated in
20 Nicaragua, in 1970 I graduated from Law School of
21 Centroamericana University in Managua.

22 Q. Continue, please.

23 A. After that I studied international law,
24 specialized in international law studies in Costa Rica in
25 1986 and 1987. I also studied human rights and fundamental
26 rights.

27 Q. Let me just ask you to pause for one moment.

28 Your Honor, one of the documents I provided

1 you is Exhibit 7, which has previously been admitted into
2 evidence, and this is the declaration of Dr. Soto that
3 was previously submitted to the court, and --

4 THE COURT: I have reviewed this; right?

5 This was with the other documents; is that
6 right?

7 MR. EDELMAN: Correct.

8 THE COURT: All right. I have reviewed Exhibit 7.

9 MR. EDELMAN: I'm sorry. And if you wish to follow
10 along with his background, it's in English on Page 1 of his
11 declaration.

12 THE COURT: Okay. Thank you.

13 Q. BY MR. EDELMAN: Dr. Soto, I'm sorry, I
14 interrupted you. Please continue.

15 A. Yes. I was telling you that after graduating
16 as an attorney in Nicaragua I studied international law in
17 Costa Rica in 1986 and 1987, and there was a specialty in
18 human rights and fundamental rights. After that, in 1998 I
19 studied at the Institute of Diplomatic Studies in Mexico
20 City.

21 Those are my studies regarding this profession.

22 Q. Okay. Thank you.

23 So it appears from your background that you
24 obtained your law degree and you did different things for
25 awhile, and then you studied some more. Is that correct?

26 A. Correct. Correct.

27 Q. All right. And after you graduated from law
28 school or obtained your law degree, what did you do next?

1 A. Immediately after that I became a civil judge
2 in Nicaragua.

3 Q. Where in Nicaragua?

4 A. In the capital, Managua, in the Department
5 of Managua.

6 Q. And who recommended you to be a civil judge?

7 A. Two of the members of the Supreme Court of
8 Justice of Nicaragua, I would have the opportunity to have
9 as professors at the university at the law school, and they
10 submitted my name to the court and it is the Supreme Court
11 who assigns the names of the judge.

12 Q. All right. So it was the Supreme Court.

13 A. Exactly. The Supreme Court, yes.

14 Q. And how long were you a judge in Managua?

15 A. For nine years, from 1970 to '79, I held the
16 position of district judge and municipal judge.

17 Q. And in 1979 when you ceased being a judge,
18 was that because of the Sandinista Revolution?

19 A. Exactly. There was a restructuring of the
20 judicial functions then, and so that's when I finished
21 my judicial post.

22 Q. What work did you do after the revolution?

23 A. I changed -- well, my judicial role ended
24 and I went into the field of consulting in legal matters
25 for government entities, specifically as advisor in legal
26 matters for the Justice Ministry.

27 Q. The Justice Ministry in Nicaragua?

28 A. In Nicaragua specifically.

1 Q. And did you continue to live in Nicaragua?

2 A. Yes. Correct. I continued living in
3 Nicaragua.

4 Q. Okay. And for what periods of time did you
5 serve as advisor to the Minister of Justice?

6 A. It was around four years, until 1984.

7 Q. And what did you do in 19 -- did you say 1984?

8 A. 1984.

9 Q. And then what did you do starting in 1984?

10 A. I started my own professional private practice
11 for two years.

12 Q. In Nicaragua?

13 A. Always in Nicaragua.

14 Q. Specializing in what kinds of work?

15 A. A law office handling legal matters, lawsuits,
16 legal defense.

17 Q. And in 1986 what did you do?

18 A. In 1986 I left Nicaragua and went to Costa
19 Rica.

20 Q. And why did you do that?

21 A. Well, back then the situation in Nicaragua
22 wasn't very comfortable, there were a lot of problems,
23 and I also wanted to continue with postgraduate studies.
24 For those two reasons.

25 Q. All right. And so between 1986 and 1991 you
26 were in Costa Rica; is that correct?

27 A. Exactly. That's when I was there.

28 Q. And then in 1991 when the Sandinistas lost

1 the government majority, did you return to Nicaragua?

2 A. Exactly. Elections were in 1990, and I
3 returned to Nicaragua in 1991.

4 Q. And what did you do professionally when you
5 returned to Nicaragua?

6 A. Well, once again I was advising government
7 institutions, and I had the opportunity to be a legal
8 advisor to the president's office back then.

9 Q. And was that the president of Nicaragua?

10 A. The presidency of the Republic of Nicaragua.

11 Q. And that was President Chamorro?

12 A. It was President Violeta Chamorro, correct.

13 Q. And were you advising the president on the
14 constitutionality of bills?

15 A. It was part of my role, first as a member
16 of the Legal Advisors Department and then as a Director of
17 legal matters for the presidency, I had the role to review
18 bills, to analyze different bills to see if there were any
19 constitutional problems with them.

20 Q. And in that role were you also called upon to
21 analyze portions of the Nicaraguan Penal Code?

22 A. Yes. On the Penal Code and also reforms
23 related to the Penal Code.

24 Q. And when did you leave your government
25 position?

26 A. In 1996 when President Chamorro's period ended.

27 Q. All right. And since you left the government
28 in 1996 have you been in private practice?

1 A. Exactly. Since then I've been in private
2 practice.

3 Q. And during this time frame have you also been
4 teaching constitutional law at the Centroamericana
5 University?

6 A. Yes, I was a professor of constitutional law at
7 the Centroamericana University.

8 Q. All right. Dr. Soto, if you could you look at
9 the declaration which I've placed in front of you, please.

10 A. Yes.

11 Q. And look at the numbering in the lower
12 right-hand corner and look for a page, please, that begins
13 D9 and goes through D17, and tell us if that is a true and
14 you correct copy of your resume.

15 THE INTERPRETER: Counsel, D9?

16 MR. EDELMAN: D9.

17 THE COURT: It's D7.9.

18 MR. EDELMAN: Yes, D7.9.

19 THE INTERPRETER: Up to D?

20 THE COURT: 17.

21 MR. EDELMAN: 17. D7.17.

22 THE WITNESS: Yes. Correct. This is a copy of my
23 CV.

24 Q. BY MR. EDELMAN: All right. Thank you for
25 spending the time with me on your background. I'd like to
26 switch gears with you now and talk about DBCP litigation
27 in Nicaragua.

28 Dr. Soto, I believe you were in court when we

1 watched the video of the march of 500 or so protesters on
2 what was supposed to be a routine hearing for the case of
3 Mr. Valadez.

4 Did you see that video?

5 A. Yes, I did.

6 Q. All right. And are you familiar, sir, with the
7 sorts of pressures that have been brought to bear on judges
8 in Nicaragua on DBCP cases?

9 A. Yes, I know that types of protests and the
10 pressure that's taken place.

11 Q. Can you explain to us as a former judge of
12 nine years and based on your familiarity with this issue,
13 what kinds of pressure is placed on judges in Nicaragua in
14 connection with DBCP cases?

15 A. Yes. I'd like to specify that this kind of
16 pressure has been brought to bear not only on judges, you
17 know, with trials already underway, but also with groups of
18 protesters who before Law 364 was approved were protesting
19 before Congress to have that law approved, given that the
20 legislators took some time debating the law, this bill, and
21 during this time there were a lot of protests, protests from
22 these people who established themselves in front of the
23 offices of the Congress, of the national Congress.

24 Q. You're talking about to get Law 364 passed?

25 A. Exactly. So to have that bill approved as a
26 law.

27 Q. All right. I think I'm going to bypass Law 364
28 for today's proceedings, given the hour, and just focus on

1 the sort of pressure that's put on judges in connection with
2 DBCP cases.

3 Can you describe the nature of the pressure
4 that is put on judges in DBCP cases?

5 A. Of course. In the different courtrooms where
6 the plaintiffs have brought suit for damages stemming
7 from the application of DBCP, it is common for groups of
8 plaintiffs to meet periodically in front of the courtrooms,
9 the offices, to pressure the judges to hear their
10 complaints, to do it quickly, and it is known that these
11 complaints are brought forth by untold numbers of people,
12 I mean, it's not one or two people who come forward with
13 the complaint, but it could be, you know, hundreds of
14 people for sometimes just one complaint.

15 So, alongside the filing of the complaint
16 it's usual to have groups of people that are related to the
17 lawsuit to pressure the judges to issue a favorable ruling
18 to what they seek. In some cases this has reached certain
19 acts of violence to pressure the judges.

20 Q. Do you have any specific examples of that?

21 A. Yes. One of the cases that I remember is
22 before Judge Vida, V-i-d-a, Benavente, B-e-n-a-v-e-n-t-e.
23 She's a district judge, a trial court judge before whom
24 were filed a series of complaints, and she heard them
25 and she ruled favorably.

26 But in one case when she didn't rule favorably
27 for the plaintiffs, they wanted to retain assets or the
28 estates of people who had been sued, entities who had been

1 sued, because she was taking her time in determining if
2 she had the authority to do so, and if that proceeded, and
3 because she didn't do so after all, the protests became more
4 intense in front of her office and this caused the judge to
5 recuse herself from this case.

6 Q. So, you're saying that because the plaintiffs
7 were seeking to obtain assets of the defendants and she
8 didn't rule as quickly as the plaintiffs would have liked,
9 there were violent protests in front of her courtroom?

10 MR. AXLINE: Object. Mischaracterizes the testimony.

11 THE COURT: Sustained. You did mischaracterize what
12 this gentleman said. Try it again.

13 MR. AXLINE: I didn't hear the word "violence" in his
14 description of the protest.

15 THE COURT: I'm not quarreling with you. It was a
16 mischaracterization. Sustained.

17 Try it again, Mr. Edelman.

18 MR. EDELMAN: All right. I thought it was, but let
19 me try again.

20 Q. Were the protests in front of Judge Benavente
21 violent?

22 A. Correct, they were violent, and the judge
23 herself said so in her own finding.

24 Q. All right. And if you look at your
25 declaration, Exhibit 7, which you have in front of you,
26 and turn to Exhibit B, beginning on Page D7.19, can you
27 direct us to what the judge says with regard to the
28 plaintiffs' violence?

1 A. Yes. The judge said verbatim.

2 THE INTERPRETER: Aside from the literal rendering,
3 the witness states this is what Judge Benavente said in her
4 finding.

5 MR. EDELMAN: And there's an English version which we
6 put up on the screen.

7 THE COURT: It reads:

8 "THIRD CIVIL COURT OF MANAGUA DISTRICT,
9 THIRD DAY OF APRIL, TWO THOUSAND SIX. TWO
10 MINUTES PAST TEN IN THE MORNING:

11 "Whereas this Court has been subjected
12 to grave offenses by the plaintiffs' legal
13 counsel and by the plaintiffs themselves, who
14 appeared at this Courtroom engaging in violence
15 with the aim of obtaining the award of the sued
16 transnational corporations' trademarks to them
17 without having put up the legally prescribed
18 security, there being a pending appeal in the
19 trial for execution of judgment before this
20 Court, for said reasons and in conformity with
21 the Excuse Act of the sixteenth day of February,
22 nineteen hundred and six, this Court elects said
23 Act's protection and, to give the parties an
24 honest and transparent administration of Justice,
25 it excuses itself from continuing to try this
26 case. This case is to be transferred to the
27 Deputy Judge for trial. Notice to be served,
28 signature illegible."

1 Q. BY MR. EDELMAN: Putting aside the issue with
2 Judge Benaventa who recused herself because of violence
3 of plaintiffs and their legal counsel, or great offenses,
4 are you aware of aberrant results which have been obtained
5 in DBCP cases in Nicaragua because of the pressure that
6 is put on judges?

7 A. There are other cases of which I have
8 knowledge.

9 Q. Can you give us just one example.

10 A. Of course. I was saying that on several
11 cases there are several plaintiffs, it isn't just a matter
12 one or two people, but it's groups of fifty or one hundred
13 people who bring forth one lawsuit.

14 There's also a case where in a ruling by
15 another trial court, in a trial court the judge ruled
16 favorably for the plaintiff -- plaintiffs, favoring even
17 people who were not -- who did not appear in the original
18 complaint, meaning there were a number of people who
19 didn't appear in the lawsuit, and the judge's ruling in
20 an inconsistent way determined that other people who were
21 not -- didn't appear in the complaint also had a right to
22 compensation. And so there were third parties who were not
23 part of the trial. And they were -- and the judge's ruling
24 favored them, as well.

25 I need to clarify that in our country a legal
26 action, a civil one, is private, we don't have what is known
27 as class action, so only those who have a specific interest
28 in the case can participate, and third parties who are not

1 part of the complaint cannot be favored by a ruling. And
2 this type of ruling is subject to impeachment.

3 Q. So in this incident you're describing, people
4 who are not plaintiffs in the case were nonetheless awarded
5 judgment in their favor by the judge?

6 A. Of course. That was the matter.

7 Q. And is this because of the pressure that is put
8 on judges in the DBCP cases?

9 A. Precisely. This type of protests influences
10 the judges' decisions. One way or another, the judges
11 are influenced to issue this kind of ruling.

12 MR. EDELMAN: Your Honor, I neglected at the end
13 of his qualifications to offer Dr. Soto as an expert in
14 Nicaraguan law practice procedure and in the Nicaraguan
15 legal system.

16 THE COURT: Any objection to that offer as an expert?

17

18 MR. AXLINE: No, Judge.

19 THE COURT: Anybody else have an objection?

20 MR. BREM: No, your Honor.

21 THE COURT: Hearing no objections, Dr. Soto Cuadra is
22 received as an expert in this matter.

23 MR. AXLINE: And I'll just state for the record,
24 your Honor, that he's been offering opinion testimony in
25 my view as statements of fact, but I'm not interrupting
26 because I don't want to interrupt the flow of the
27 proceedings.

28 THE COURT: Some of the things that he's said has

1 been opinion testimony and not expert testimony, that's
2 true.

3 MR. EDELMAN: Okay.

4 THE COURT: Is there anything you want me to do about
5 that particularly?

6 MR. AXLINE: No, your Honor.

7 THE COURT: Okay.

8 Q. BY MR. EDELMAN: Dr. Soto, are you aware
9 of instances where Dole itself has been thwarted in its
10 efforts to defend itself in Nicaragua on DBPC cases?

11 A. Yes, I also have knowledge of some cases
12 related to -- I have knowledge that the lawsuits, so
13 the sued company has had to obtain birth certificates
14 for those who are suing it, and so they've gone to the
15 different localities, to the civil registry, to obtain
16 birth certificates for those plaintiffs.

17 Q. The sued company being Dole?

18 A. Yes. Dole. Dole Specifically.

19 Q. All right. So Dole has tried to get birth
20 certificates of the plaintiffs in defending itself?

21 A. Yes, it has tried to obtain and verify the
22 registry of those birth certificates in the civil registry.

23 Q. And is that something that one is allowed to
24 do under Nicaraguan law, to obtain birth certificates for
25 that purpose?

26 A. According to the law, that registry is public.

27 Q. And has Dole been allowed to obtain copies of
28 those birth certificates in accordance with Nicaraguan law?

1 A. It has tried to do it, its representatives
2 have issued requests, but they've faced obstacles at
3 the register's office in obtaining that information.

4 Q. What kind of obstacles?

5 A. I know of two occasions, one is the civil
6 registry in Leon, and the registry at El Viejo, where
7 there have been requests from Dole representatives before
8 the mayor, the local mayor. Well, first there have been
9 delays with those requests where they've been told that
10 only that specific person, himself or herself, or through
11 a judge's order, could they obtain that information, and
12 for that reason Dole's representative had to turn to the
13 Supreme Court justice which issued a writ stating that the
14 registry is a public matter and anyone, an attorney, an
15 intern or anyone, could obtain the information of the birth
16 certificates.

17 Q. And how long did it take in this instance
18 for Dole to get copies of these birth certificates?

19 A. Well, at the end it took a year --

20 Q. All right.

21 A. -- to get the authorization for that
22 information.

23 Q. In your expert opinion, Dr. Soto, why was
24 Dole not given access to the birth certificates as required
25 by Nicaraguan law?

26 A. Dole's access was obstructed in one way or
27 another because the municipal officials were favoring the
28 plaintiffs. And perhaps they were also thinking that maybe

1 groups of plaintiffs would show up before these offices
2 to protest.

3 Q. And the plaintiffs, again, in the cases you're
4 referring to are DBCP plaintiffs?

5 A. Specifically in these cases, yes.

6 Q. Okay. I would like to switch gears with you
7 and talk to you about the case that's currently pending in
8 Chinandega against Mr. Valadez.

9 Are you familiar with an action filed by
10 Mr. Ordenana against Francisco Valadez?

11 A. Yes, I've seen the file. Copies of the file.

12 Q. You've read copies of the file?

13 A. I've read copies of the file.

14 Q. All right. Can you describe for us the type of
15 case that Mr. Ordenana has filed against Mr. Valadez?

16 A. It's an action for slander and defamation.

17 Q. Is "calumnia" defamation, or is it insult?

18 THE INTERPRETER: Calumnia is C-a-l-u-m-n-i-a, and
19 according to my legal dictionary, calumnia: Slander,
20 aspersion, defame.

21 Q. BY MR. EDELMAN: Okay. If you can explain to
22 us what an action for calumnia is.

23 A. An action for calumnia, it's a suit lawsuit.
24 They have a lesser category. I'm trying to think of the
25 name. It is illegal behavior of a lesser degree of
26 severity.

27 Q. And what are its elements? What does one have
28 to do to have committed that act?

1 A. Yes, in that a person is accused of falsely --
2 well, calumnia, where a person has falsely accused somebody
3 of committing a crime.

4 Q. Is there an aspect of the charge that
5 Mr. Ordenana has brought against Mr. Valadez that does not
6 depend on falsity?

7 A. An aspect -- I think it is related to something
8 that is attributed to Mr. Valadez. It's an element as far
9 as attributing to Mr. Valadez something that he allegedly
10 said.

11 THE COURT: Excuse me for one second.

12 Are you saying that under that law, an
13 individual who's a defendant could be found guilty for
14 something he did not actually say but was simply attributed
15 to him by a third party?

16 THE WITNESS: Well, in this case we can say that
17 that is the characteristic of this accusation.

18 According to what is stated in the
19 complainant's writ, Ordenana, he filed his complaint on
20 the basis that a third party told him that Mr. Valadez on
21 a previous date had told him that Ordenana was recruiting
22 people to be plaintiffs, and that they were farmworkers.
23 Well, I mean, here, the comments of a third party, they are
24 the basis for the complaint.

25 THE COURT: All right. So, to go back to where I
26 was, are you saying that I could be accused and found guilty
27 of saying something wrong or bad about another person even
28 if I never said it?

1 THE WITNESS: That could be the case, of course.

2 THE COURT: Thank you.

3 Q. BY MR. EDELMAN: Would you look, please, at
4 Paragraph 11 of your declaration, which we'll put up on the
5 screen, please, Page D7.4.

6 Just so we can understand, and I'll ask the
7 translator to translate Paragraph 11 to the witness, and
8 I'm interested in particular in the second -- well, he'll
9 have to read the whole thing, but I'm interested in the
10 second sentence.

11 THE INTERPRETER: I'm sorry, what paragraph? 11?

12 MR. EDELMAN: 11.

13 THE COURT: While that's being read to the witness,
14 on the screen Paragraph 11 says:

15 "Slander and insult actions have different
16 legal elements. Slander requires that the
17 statement be false and that the statement must
18 concern another having committed or participated
19 in a concrete crime. In contrast, an actionable
20 insult statement must injure the dignity of
21 another by impairing his fame, image, reputation,
22 or honor, or attacking his self-esteem. Falsity
23 of the statement is not a requirement for an
24 insult action and, unless the statement is
25 related to a current public interest, truth is
26 not a defense."

27 THE WITNESS: Correct.

28 Q. BY MR. EDELMAN: All right. And is this

1 Paragraph 11 from your declaration an accurate statement
2 of the distinction between a slander action and an action
3 for actionable insult?

4 A. Oh, correct. Yes. Of course, yes.

5 Q. So am I correct in understanding that
6 Mr. Ordenana could prevail against Mr. Valadez for
7 Mr. Valadez having insulted Mr. Ordenana even if what
8 Mr. Valadez said was true?

9 A. That could be the case.

10 Q. All right. Thank you. We can put that aside.
11 I'd like to ask you about the hearings in
12 Mr. Valadez's case.

13 Are you aware of the first hearing in this
14 case?

15 A. Yes, I am aware.

16 Q. All right. And do you know when it was
17 supposed to be?

18 A. The first hearing was scheduled for March 9th
19 of this year.

20 Q. And do you know how it came to be that it was
21 continued to April 17th?

22 A. It happened that days before the scheduled
23 date, according to the file, on March 5th Mr. Valadez
24 through his attorney filed a request to the judge in charge
25 of the case requesting a rescheduling of the first hearing.

26 Q. And was her granting of that request for
27 continuance of the first hearing uncommon in Nicaragua?

28 A. In these kinds of cases, which, once again,

1 they're a lesser degree as far as the type of crime, it's
2 common that a judge reconsiders and reschedules a hearing.

3 Q. How did the pro banana forces or the pro banana
4 worker forces react to the judge's decision to grant the
5 continuance?

6 A. They didn't like it at all and, precisely,
7 they went on March 9th to stage a protest, and that's what
8 we had the opportunity to see here, and that was in front
9 of the judge's office.

10 Q. And this protest that we saw, was that covered
11 by the national media?

12 A. Yes, definitely. It was broadcast on
13 newscasts, evening newscasts that same night -- that same
14 day. I was able to watch these protests on the television.

15 Q. And did Mr. Ordenana threaten to take any
16 action against the judge, against her personally, for
17 having granted this routine continuance?

18 A. In the same broadcasts of the news, Ordenana
19 appeared and stated that the judge's ruling was illegal,
20 and that he didn't agree with it, and he was going to file a
21 complaint against her before the Judicial Affairs Committee.
22 They oversee the judges.

23 Q. Do they keep files on judges?

24 A. Yes. Definitely. We could say that for every
25 judge there's an administrative file, we could call it like
26 that, and that's where they receive and file any complaints
27 against a judge.

28 Q. And speaking as a former judge of nine years

1 yourself, how do judges react to having complaints against
2 them placed in their file for review by the Judicial Affairs
3 Committee?

4 A. Without a doubt, any judge would be very
5 worried if there is a complaint filed, something that could
6 stain their file.

7 Q. Is filing a complaint against a judge a way of
8 putting pressure on that judge?

9 A. Undoubtedly, any judge would feel pressured.

10 Q. Let's turn to the April 17th hearing. Are
11 you aware whether protesters showed up at that hearing,
12 just last fry Friday I guess it was, for Mr. Valadez?

13 A. Yes, I have information that, indeed, there
14 were protesters who gathered there at precisely the same
15 time that the hearing took place in the Chinandega
16 courthouse.

17 Q. Now, tell us please, Dr. Soto, what was the
18 purpose of this April 17th hearing?

19 A. It's a preliminary hearing for this type of
20 lawsuit in which the complaining party restates its position
21 regarding this crime of slander and defamation and the
22 defense states its position as to why the case shouldn't
23 proceed.

24 And there is also mention of the defendant
25 may retract what was said or as some sort of mediation
26 so the defendant may retract.

27 Q. And did Mr. Valadez's attorney seek to have
28 this complaint dismissed?

1 A. Yes, definitely. He argued that there was
2 evidence that were repetitive and useless, that's what he
3 said, for this matter, so he was asking for the case not
4 to go to trial.

5 Q. All right. And you're holding up a document
6 as you're answering my question which has been marked as
7 Exhibit 168 and provided to the Court and opposing counsel.

8 A. Yes.

9 Q. And can you tell us what that is?

10 A. Yes, I'm looking at it.

11 THE COURT: Have you seen it?

12 MR. AXLINE: Yes, your Honor.

13 THE COURT: 168 has been marked for identification,
14 and it is?

15 THE WITNESS: This is a legal record. It records the
16 appearance by the parties. It's almost like a transcript
17 but not completely, not quite, of what was said during
18 the hearing. It's an official document which at the end
19 includes the judge's ruling to start the trial and to
20 continue the case.

21 THE COURT: For clarity then, Exhibit 168 is an
22 official court document.

23 THE WITNESS: Definitely, it's an official court
24 document.

25 Q. BY MR. EDELMAN: And who are the people who
26 have signed this on the last page?

27 A. Here we have the signature by the defendant,
28 Mr. Valadez, his defense attorney, the plaintiff,

1 Mr. Ordenana, and his attorney. It is also signed by the
2 judge's secretary or clerk.

3 MR. EDELMAN: Your Honor, I would offer Exhibit 168
4 into evidence.

5 THE COURT: Any objection?

6 MR. AXLINE: No objection. I'm assuming we'll get an
7 English language translation at some point.

8 THE COURT: I'm assuming we will, too, since I'm
9 going to have to be able to read it.

10 MR. EDELMAN: We will.

11 THE COURT: All right. Exhibit 168 is received into
12 evidence. It is defendant Dole's responsibility to get
13 here in 48 hours an English language translation and send
14 a copy of the certified translation by a certified Spanish
15 interpreter to all counsel.

16 MR. EDELMAN: Will do, your Honor. Thank you.

17 Q. Dr. Soto, I don't want to get too bogged down
18 in the details of legal arguments, particularly given the
19 hour, but having reviewed the file of the case brought by
20 Mr. Ordenana against Mr. Valadez, would you in your expert
21 opinion have expected the judge to grant the motion by
22 Mr. Valadez's lawyer to dismiss the case?

23 A. Yes, I reviewed it, and the judge could have
24 dismissed it.

25 Q. All right. And can you tell us whether the
26 court placed any travel restrictions on Mr. Valadez in
27 terms of his ability or inability to leave Nicaragua?

28 A. Indeed, she imposed an initial measure

1 of the restriction of leaving the country without her
2 authorization, and whenever he's thinking of leaving the
3 country he has to advise her of the dates when he's thinking
4 of leaving and he has to obtain the judge's authorization.

5 Q. So on the basis of this lawsuit brought by
6 Mr. Ordenana for slander and insult, Mr. Valadez can no
7 longer leave Nicaragua without first getting the court's
8 permission?

9 A. Only with her authorization can he go out.

10 Q. And for a case of this nature, which I think
11 you earlier characterized as a low form of misdemeanor,
12 would you expect a judge to impose travel restrictions
13 on a defendant prior to trial?

14 A. I would not have expected this for this kind of
15 misdemeanor.

16 Q. What is your opinion, Dr. Soto, on why the
17 judge made the decision she did at this April 17th hearing?

18 A. Surely, I think that given the history of the
19 protests, on the one hand, that have taken place in front
20 of her office on two occasions, and given the fact of the
21 complaint filed before the Supreme Court, she is making
22 these kinds of rulings.

23 Q. The complaint filed against her before the
24 Supreme Court. Is that what you're referring to?

25 A. Exactly. Because of the complaint filed
26 against her she proceeded to go forward with this case.

27 MR. AXLINE: Objection. I believe that misstates
28 prior testimony. I don't recall testimony regarding a

1 complaint filed in the Supreme against this judge.

2 THE COURT: That was my understanding also. Perhaps
3 I missed a step.

4 Mr. Edelman, I thought the complaint filed was
5 about another judge. Is it this one who also had a
6 complaint filed against her?

7 MR. EDELMAN: Yes. Let me clear that up with the
8 witness, your Honor.

9 Q. You referred to a complaint filed against
10 this judge that is before the Supreme Court. Can you
11 clarify which complaint you're referring to?

12 A. I was referring to the fact that in Ordenana's
13 television comments he stated his conformity and he said
14 he was going to complain before the Supreme Court, and
15 also from what I've talked about with the attorney for
16 Mr. Valadez, there was a filing of a complaint against
17 the judge of this matter.

18 Q. And just so we're clear, you're talking
19 about the complaint that Mr. Ordenana made when the judge
20 continued the first hearing?

21 A. After she continued the case, exactly. That's
22 what I was referring to.

23 Q. Thank you.

24 Did the judge say anything in this official
25 judicial record of the April 17th hearing, Exhibit 168,
26 concerning her ability to protect the safety of Mr. Valadez
27 when he appears before her?

28 A. Yes. There's an opinion that the judge

1 expresses in her statement --

2 Q. Before you read it, tell us where it is so we
3 can put it on the screen.

4 A. Okay. It's on Page 2.

5 THE COURT: This is Exhibit 168, Page 2? Page 2 of
6 168?

7 MR. EDELMAN: Page 2 of 168, your Honor.

8 Q. Is it where it begins "Se impone"?

9 A. The second part states it.

10 THE COURT: Can the translator please translate that?

11

12 THE INTERPRETER: Yes, your Honor.

13 "Regarding periodic appearances by the
14 plaintiff, this measure does not apply to the
15 defendant given that this court cannot guarantee
16 the safety of the plaintiff on the dates that he
17 may have to comply with said measure."

18 Q. BY MR. EDELMAN: So, is the court saying that
19 the court cannot guarantee the safety of Mr. Valadez when
20 he's required to appear for trial?

21 A. Yes, indeed, that's what the judge is stating
22 in her finding. And because she cannot guarantee the
23 safety, she does not impose on him the obligation to report
24 periodically.

25 Q. But she did set a trial date; correct?

26 A. Correct. The finding itself has a date of May
27 14th for the trial.

28 Q. All right. And the court is saying that it

1 cannot guarantee Mr. Valadez's safety when he appears for
2 trial?

3 A. It doesn't say so expressly. It doesn't say
4 it.

5 Q. It just says the court can't guarantee his
6 safety, period.

7 A. What the finding says about May 14th is that
8 the court will request through an official letter the
9 support of law enforcement for the day of the trial, court
10 trial. It mentions it there.

11 Q. All right. Thank you.

12 Are you concerned that when Mr. Valadez's trial
13 takes place that the judge will find him guilty?

14 A. Yes, surely it's a cause for worry given the
15 history of the case.

16 MR. EDELMAN: No further questions, your Honor.

17 THE COURT: Are there criminal penalties for this?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: What type of penalties?

20 THE WITNESS: There's a fine. The punishment would
21 be a pecuniary fine. Punishment.

22 THE COURT: Is there any jail or imprisonment that
23 could occur because of this?

24 THE WITNESS: That kind of punishment doesn't exist
25 for this type of case. But in case the defendant doesn't
26 comply with the payment or the fine, he could be jailed
27 for contempt of court.

28 THE COURT: All right. So although there is

1 no direct imprisonment provisions in this statute, the
2 consequence of failure to pay the fine could include
3 imprisonment. Is that correct?

4 THE WITNESS: Correct. Correct, your Honor.

5 THE COURT: Is there a provision for a ceiling and
6 a floor for the amount of the fine? For example, does it
7 say the fine is up to, for example, a thousand dollars,
8 or no higher than that, or no lower than \$500, or is any
9 amount appropriate?

10 THE WITNESS: Yes, there is a fine that varies from
11 something equivalent to -- it's equivalent to 100 or 200
12 days wages as a fine.

13 THE COURT: Do you know in your capacity as an expert
14 about what that would equate to either in -- is it cordobas?

15 MS. NEUMAN: Cordobas, your Honor.

16 THE COURT: -- in cordobas or dollars?

17 THE WITNESS: Yes, indeed, your Honor. It would be
18 an average of equivalent to the defendant's average daily
19 earnings, and it varies according to a person's income, and
20 if there's no specific measure, then an average is taken
21 for the wages for industrial workers, or minimum wage for
22 industrial workers.

23 If that's the case, the average monthly salary
24 is \$120, and then for that you do an average for 200 days
25 if that were the top punishment, the top level. Ceiling.

26 THE COURT: So that's about 150 times three and a
27 third; is that right? You said \$150? Did I hear that
28 right?

1 THE WITNESS: \$120.

2 THE COURT: \$120 times three and a third months. Or
3 a hundred days; right? Is that what I heard? A hundred
4 days? Or was it 200 days?

5 MR. EDELMAN: One to 200 days. It's a range.

6 THE COURT: Okay. I got it.

7 MR. EDELMAN: If I could just follow up to make sure
8 I understand.

9 Q. Are you saying, Dr. Soto, that a way a court
10 would first try to determine the fine if Mr. Valadez were
11 found guilty, would be to fine him between one hundred
12 and two hundred days of his annual salary?

13 A. Of Mr. Valadez. That would be the first case.

14 Q. And it's only if the court couldn't ascertain
15 what he makes that it would resort to this formula that you
16 referenced?

17 A. Yeah, this table.

18 Q. Okay. Last question for you. Given the
19 pressures that you've described that are put upon judges
20 in DBCP cases, do you have any concern that even though
21 the law only calls for a fine, that Mr. Valadez could be
22 detained in jail if he were found guilty?

23 A. That is a valid worry given the existing
24 pressures. It could be the situation where a higher
25 punishment is imposed, higher than what the code allows.

26 MR. EDELMAN: I have nothing further, your Honor.

27 THE COURT: Who gets the money? Does it go to the
28 state or to the accuser?

1 THE WITNESS: That goes to the state.

2 THE COURT: All right. Mr. Brem, any questions?

3 MR. BREM: No, your Honor.

4 THE COURT: Mr. Crow?

5 MR. CROW: No, your Honor.

6 THE COURT: Mr. Axline?

7 MR. AXLINE: No, your Honor.

8 THE COURT: May this witness be excused?

9 Mr. Edelman?

10 MR. EDELMAN: Yes, your Honor.

11 THE COURT: Mr. Brem?

12 MR. BREM: Yes, your Honor.

13 THE COURT: Mr. Crow?

14 MR. CROW: Yes, your Honor.

15 THE COURT: Mr. Axline, may this witness be excused?

16 MR. AXLINE: Oh. Yes, your Honor.

17 THE COURT: Thank you very much for coming. It was
18 very nice meeting you. You are excused.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: In terms of planning, do you have any
21 witnesses?

22 MR. EDELMAN: No, your Honor.

23 THE COURT: Mr. Brem, are you planning on calling any
24 witnesses?

25 MR. BREM: I am not, your Honor.

26 THE COURT: Mr. Crow?

27 MR. CROW: No, your Honor.

28 THE COURT: Mr. Axline?

1 MR. AXLINE: No, your Honor.

2 THE COURT: We're going to take a brief break. We
3 are going to have arguments. I have previously given time
4 limits that will not be exceeded. I am planning on ruling
5 today orally with a rather relatively short ruling and
6 then a more extensive ruling in writing with a full
7 statement of decision containing all of the supporting
8 evidence.

9 So let's see, can we make it back here at a
10 quarter to four?

11 A quarter to four, everybody. Thank you.

12

13 (Recess taken)

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1 THE COURT: All right. Back in the matters of Mejia
2 versus Dole, BC340049, and Rivera versus Dole, BC379820.
3 The record should reflect that all parties and attorneys
4 previously stated are present.

5 All right. I have given time limits to
6 everybody. Normally I time you, but I'm going to trust
7 you and I'm going to assume we're going to move along.

8 I have given the burden of proof to the
9 defendants because they are the ones that will benefit
10 from this proceeding. That's number one.

11 Number two, although I believe that the
12 standard of proof for an OSC regarding terminating sanctions
13 is normally preponderance of the evidence, I intend to
14 use and will be using the burden of proof of clear and
15 convincing evidence, which is the second strongest type
16 of proof that we have beyond the -- or slightly less than
17 beyond reasonable doubt, which is the level of proof
18 required in criminal cases.

19 The reason that I am doing this is that I
20 realize that the ramifications of any findings in this case
21 are far flung and I do not want the appearance that the
22 findings here are merely the balance of the scale plus a
23 small little goose-down feather sitting on top of it which
24 tips the balance.

25 The evidence here that I've heard strongly
26 and far exceeds mere preponderance of the evidence. I
27 recognize that some of the findings that I will be required
28 to make here will have impacted not just on the plaintiffs

1 in Mejia and Rivera, but have impact potentially on
2 other courts in this country and perhaps courts in other
3 countries, including Nicaragua.

4 Consequently, I want to make sure that I
5 am comfortable with any findings that I make and will be
6 using the burden of proof of clear and convincing evidence.

7 You're on, Mr. Edelman.

8

9 CLOSING_ARGUMENT_BY_DEFENDANT_DOLE_FOOD_COMPANY,_INC.
10 _____

10

11 MR. EDELMAN: Thank you, your Honor.

12 Your Honor, at my opening statement just a
13 few days ago I told you that you would see evidence about
14 make-believe plaintiffs with make-believe claims based on
15 make-believe evidence with make-believe damages. We have
16 shown that in spades by clear and convincing evidence.

17 Plaintiffs' response to this argument has
18 evolved over the last six months. When Dole first stood
19 before you in October of 2008 and asked for permission
20 to take John Doe discovery based on representations to
21 your Honor that there were witnesses in Nicaragua who we
22 thought would come forward but who needed assurances of
23 confidentiality and protection from the pressure that is
24 being applied to people in that environment, we were met
25 with ridicule. Our allegations of fraud were mocked by
26 plaintiffs and their counsel, who said: If the fraud is
27 as rife and as endemic as you assert, why have we not seen
28 it before?

1 And so for six months, aided and armed by your
2 protective order, we have gone out in the search for truth.

3 Plaintiffs' most recent argument in their
4 trial brief is that this proceeding, this proceeding,
5 this OSC proceeding, would be a credibility contest between
6 one side and the other.

7 This has not been a credibility contest.
8 Dole has presented a 112-page brief, replete with citations
9 to over eight volumes of evidence, 181 exhibits, we've
10 come forward with 27 John Doe depositions and declarations,
11 and we've presented four live witnesses in this hearing.

12 Plaintiffs' response has been to not respond.
13 They didn't designate any of the plaintiffs' depositions
14 to support their case, and, in fact, the one deposition
15 that they had designated, six lines from the plaintiff
16 in the Rivera case, they withdrew after hearing that
17 plaintiff's testimony in open court.

18 Why this lack of response by plaintiffs and
19 their counsel in this hearing? We must assume it is for
20 the same reasons that plaintiffs' counsel has sought to
21 withdraw for the last two months, with citations to the
22 Rules of Professional Conduct in their briefs, Rule 3-200,
23 3-700, and the Rules of Professional Conduct which preclude
24 counsel from relying on evidence asserting a position that
25 is without merit or probable cause.

26 So, if this isn't a credibility contest what is
27 it? We're here in this proceeding, we've been here in this
28 proceeding because of an Order to Show Cause entered by this

1 court, an Order to Show Cause in which court has questioned
2 the authenticity and the reliability of any documentary
3 evidence presented by plaintiffs that comes out of
4 Nicaragua.

5 The Court has serious doubts about the bone
6 fides of any plaintiff claiming to have been injured as a
7 result of exposure to DBCP while employed on a Nicaraguan
8 banana plantation associated with Dole.

9 And so the Court, citing the Schlesinger
10 case, set an Order to Show Cause, pursuant to the Court's
11 inherent power and responsibility, to terminate litigation
12 if deliberate and egregious misconduct make any sanction
13 other than dismissal inadequate to ensure a fair trial.

14 We've heard a lot in this case over the last
15 six months and in the last three days about what it is
16 that has set the stage for the fraudulent enterprise
17 that we've observed, and we've pointed out that most
18 unfortunately it starts with the grave poverty in Nicaragua,
19 a country which is the second poorest in the western
20 hemisphere, where the per capita annual income is slightly
21 over a thousand dollars, and where the plaintiffs' lawyers,
22 according to witnesses in this case, would set out to go to
23 the poorest areas where impoverished people would be most
24 desperate and most willing to pose as banana workers in the
25 hope of a big payoff.

26 We've heard about corrupt courts, and in
27 closed proceedings you have heard evidence about payment
28 to Nicaraguan judges in DBCP cases, payments that are at

1 the trial court level and are at the very highest levels
2 in the Nicaraguan judicial system.

3 You've heard about four DBCP plaintiffs'
4 firms. You've heard first and foremost about Juan Dominguez
5 and Antonio Ordenana, with their offices in Los Angeles for
6 Mr. Dominguez, and for both Mr. Ordenana and Mr. Dominguez
7 in Chinandega, you've heard about the Provost Umphrey firm,
8 you've heard about Carlos Gomez, and you've heard about
9 Ojeda, Baca, Espinoza & Gutierrez. Representatives of those
10 four firms have been referred to as The Group of 8.

11 We've spoken about the Nicaraguan government,
12 which passed a law, Law 364, which took away basic due
13 process rights of the, quote, transnationals in their
14 ability to defend themselves in Nicaragua, requires them
15 to post a \$15 million bond for the privilege of appearing
16 in court in the first instance, waives all statute of
17 limitations going back to the 1970s, and presumes sterility
18 based on exposure from two lab reports, and we've heard
19 all sorts of evidence about phony lab reports obtained from
20 laboratories on the take.

21 You've heard about recruiting captains,
22 probably the biggest capping situation any of us can ever
23 imagine, where the evidence has shown that hundreds of
24 non-banana workers would present themselves at the law
25 offices of Juan Dominguez to be trained in the art of being
26 a banana worker. And sometimes the lawyers and their
27 secretaries and staff would be seen going out into the
28 countryside, into towns like Esteli, where there are no

1 bananas growing in Nicaragua, and never have been, but which
2 is one of the largest sources of plaintiffs in the over
3 10,000 cases that are pending in Nicaragua, Nicaragua and
4 the United States.

5 That is the environment that has created these
6 cases that are before us. And we spoke early on in my
7 opening and have seen evidence in the case about how these
8 manufactured DBCP claims took place. We've talked about
9 captains who are paid to recruit thousands of Nicaraguan
10 men to pose as former banana workers, plaintiffs who are
11 trained to lie, records which are falsified and presented
12 in this court and other courts of a history of employment
13 on a banana farm that never took place, we've heard
14 about fake sterility, children who are hidden and not
15 acknowledged, bogus lab results, and we've seen, and we're
16 seeing in this court and in another court in the United
17 States at this juncture, how the plaintiffs and their
18 lawyers are trying to use the American courts to reward
19 and to legitimize false claims.

20 So focusing on just recapping briefly the
21 evidence on step number one, the recruitment of non-banana
22 workers. We know from the evidence we've seen over the
23 last three days, what I just said, that these DBCP law firms
24 paid an army of captains to go out and recruit plaintiffs.
25 They didn't have to be banana workers; in the words of one
26 witness, they didn't have to know from banana farms, and
27 they all knew that the people they were recruiting were
28 not former banana workers and were not sterile.

1 You heard from six John Doe witnesses who
2 testified yesterday in closed session that Nicaraguan law
3 firms knowingly recruited plaintiffs that never worked on a
4 banana farm and were not sterile, and were indeed instructed
5 to go out and find those people.

6 Two plaintiffs admitted, they admitted in
7 their depositions, that they were brought to the Dominguez
8 law firm by a recruiting captain. Mr. Barrera identified
9 in his deposition his captain, Dennis Mondragon; Hency Diaz
10 verified under oath in his interrogatory response that he
11 was recruited by a captain, Calvin Escobar, recruiting and
12 capping, which is prohibited under the California Rules of
13 Professional Conduct.

14 WE saw all sorts of evidence that plaintiffs
15 never worked on banana farms. There were four plaintiffs
16 who supposedly overlapped in Candalaria, one of the farms,
17 in 1976, overlapped on an irrigation crew that would have
18 been comprised of only eight people, yet despite the fact
19 that they testified that they were four of the six
20 applicators in 1976, neither knew the other. They didn't
21 know each other. They hadn't figured out that in order to
22 be credible if they were placed on the same farm at the same
23 time on the same eight-person team, they should get their
24 act together and testify that they knew each other.

25 Co-workers. What co-workers? Some of
26 these plaintiffs couldn't name any of their co-workers.
27 Mr. Quinonez who said he had been on a farm for eight
28 years, eight years, could not name one. Three of the

1 plaintiffs who had been on the farms for two or three
2 years, Hendy, Barrera and Martinez, could only name their
3 supervisors, and I'll talk more about that in a moment.

4 Davila, four years on a farm, Mendez, three
5 years on a farm, Tercero, two years, and Cruz, one year,
6 could only name one or two applicators and supervisors.

7 Step two: Training plaintiffs to lie
8 convincingly. How was this done? We've seen the evidence,
9 it was done through training manuals, fields trips to banana
10 farms, in fact we heard today from Mr. Valadez about his
11 conversation with Mr. Herrera who was the head of the
12 farm at Candalaria that a bus showed up with all sorts of
13 people and guides who were looking at the farm and looking
14 at the buildings and taking notes and Mr. Herrera didn't
15 know who those people were. So he summoned the guards.
16 And low and behold, as Mr. Valadez explained to him, and
17 this is why he got sued I guess, those people were putative
18 plaintiffs with their guides, the lawyers, and they were
19 taking a tour of the farm so that they could figure out
20 what the farm looked like, what its layout was, where the
21 buildings were, so they could testify credibly in deposition
22 and at trial.

23 We heard evidence about coaching seminars,
24 seminars that took place at the Law Offices of Mr. Dominguez
25 and Mr. Ordenana, seminars that took place in the country
26 where there are hundreds of plaintiffs at a time, and we
27 learned that the plaintiffs would watch videos and be
28 presented with pictures as part of their education so that

1 they could pose as banana workers.

2 And again, we heard closed testimony from
3 John Doe witnesses about this training process. Credible,
4 corroborated testimony from numerous individuals about
5 how it took place.

6 We also looked at evidence which tied
7 specifically Mr. Dominguez and his office and his employees
8 to ten separate training manuals. "Special Document on
9 the Various Banana Plantations in the Western Part of
10 the Country." That's what one was called.

11 Another was called an "Orientation and Training
12 Document." Another was called "Improvement Guidelines of
13 Banana Farms."

14 Two plaintiffs admitted in deposition that
15 they studied coaching materials. Mr. Tercero talked about
16 pictures, he talked about videos; Mr. Quinonez talked about
17 how he had to study at the law offices in Chinandega,
18 Mr. Dominguez's offices, before he could testify as a
19 plaintiff.

20 In fact, Mr. Quinonez implicated five other
21 Mejia plaintiffs. He talked about how Carlota, whose
22 picture we saw earlier today in the video of the protest
23 at the courthouse, Carlota would tell the plaintiffs to
24 study the questions, to study the questions that would be
25 asked, and then he linked five other plaintiffs -- Cruz,
26 Diaz, Martinez, Mejia and Mendez -- to the same fraudulent
27 training meetings.

28 We heard about how the make-believe irrigators

1 were trained. John Doe 16 testified that Antonio Ordenana
2 trained a group of so-called irrigators in preparation for
3 their trip to the United States. What trip? This trip.
4 This is the only case in the United States that's being
5 brought by irrigators, and Mr. Ordenana was training the
6 group to come to this court to give perjured testimony about
7 a life that they never lived as irrigators on various farms.

8

9 Step No. 3: Falsify work histories and
10 offer fake evidence. First, plaintiffs were assigned
11 to a particular farm, and we even saw a sort of amusing
12 clip in one of the depositions of a plaintiff who couldn't
13 remember at first whether it was Maria Elsa or Candalaria
14 that he was supposed to have been on, and he corrected
15 himself and got back on track; witnesses were chosen to
16 support the false employment claims, in other words, every
17 alleged plaintiff was supposed to have two co-workers who
18 would vouch for that person, so they created teams; and
19 then we heard testimony about former farmworkers who signed
20 blank work certificates and then they were filled in at the
21 law offices. So, you would get somebody to sign and be paid
22 by the certificate, we were told, to sign these to be later
23 used as employment records in this litigation.

24 This is an example of one by Francisco I think
25 it's Varela Rivera, we'll see that name again on the next
26 page, but when you step back and you think about it, common
27 sense would dictate that the supervisors, a supervisor of
28 all the farms, which is what the signatory to particular

1 document was supposed to have been, would not be able to
2 verify the employment claims of every applicator, you're
3 talking of thousands of employees, many farms, yet that's
4 the type of thing that was presented. Common sense dictates
5 that, but then the John Doe testimony itself proves that
6 many of the plaintiff work certificates were fraudulently
7 obtained.

8 We had deposition testimony about the people
9 who signed the false certificates, you see the names of
10 people who signed on the left, these are the ones we were
11 able to obtain, undoubtedly there are many others, Francisco
12 Varela, who we just saw on this certificate right here,
13 signed 3,000 to 4,000 fake certificates, blank when he
14 signed them, that were filled in later.

15 Half the plaintiffs didn't even know the
16 supervisors who signed their work certificates. Tercero
17 could not recall Mr. Flores; Davila did not know who
18 Altamirano Meza was; Cruz did not know Altamirano Meza,
19 et cetera, et cetera.

20 So Step 4: Fake sterility history by hiding
21 children and creating bogus lab results. Again, we
22 heard from five John Doe witnesses about the fraudulent
23 practices provided -- or which these laboratories
24 participated in to produce fake tests showing sterility. We
25 heard about results that were never obtained, we heard about
26 people bringing in doctored sperm, old sperm, applying flame
27 to sperm, not providing any sperm at all but coming in with
28 fruit juice, we heard all sorts of different stories about

1 how these results were doctored and in many cases not even
2 obtained in the first instance. The whole thing was a
3 charade.

4 And when you start looking carefully at some
5 of these test results, which we didn't have an opportunity
6 to do in much detail in the time that we had, you'll see
7 that a lot of these test results -- because, remember,
8 under Law 364 and the way these people were trained, each
9 plaintiff was supposed to have two tests, a lot of these
10 test results were on exactly the same day, at exactly the
11 same time for the same plaintiff, but from supposedly
12 different labs, and in some cases the information was
13 inconsistent; so in the document we're looking at now
14 for Faustino Escorcía Cruz, in the first test result on
15 September 12th, 2005, he supposedly had abstained for five
16 days, and on the second test result on the same date and
17 supposedly during the same time period, he is written down
18 as having abstained for six months.

19 I can't cover all the evidence that we've seen
20 in the last few days on these sperm results. Perhaps one
21 of the most shocking bits of evidence we heard was about
22 a meeting, a meeting that was held in 2003 with the key
23 Nicaraguan lawyers, key American lawyers, key recruiting
24 captains, key laboratory representatives, all the critical
25 people to the fraudulent enterprise. Who ran that meeting?
26 Judge Socorro Toruno. Who is Judge Socorro Toruno? She
27 is a judge hand-picked by the Supreme Court justice in
28 Nicaragua to handle all of the DBCP cases in Chinandega.

1 Hand-picked because she was committed to the cause. And
2 committed she was. She called everyone involved together
3 for this meeting and she told them what they needed to do
4 to make their case credible. In order for the DBCP cases
5 to be credible, the lab results had to make sense. Prior
6 to that time the results were coming in 100 percent sterile.
7 100 percent azoospermic. She said to everybody assembled:
8 This isn't the way we're going to do this. This doesn't
9 make any sense. From now on we're going to follow a
10 different formula. It's going to be 40 azoospermic, 30
11 percent oligospermic, and 30 percent uncertain. And all the
12 labs are going to do that, these are the results all the
13 captains are going to seek, and nobody worry because you
14 have the protection of the Nicaraguan judiciary. And if you
15 say anything, I can guarantee you will go to jail.

16 This is the same judge, Judge Toruno, who was
17 responsible for issuing a \$98 million judgment which is
18 the subject of enforcement proceedings before United States
19 District Court Judge Huck in Florida today, a case which
20 has been stayed by Judge Huck pending the results of your
21 Honor's Order to Show Cause.

22 Several plaintiffs are in fact fertile we
23 learned. In fact, evidence of their post-exposure children
24 abounds. We heard from Mr. Cruz, who was confronted
25 with the fact that he's listed as the father on a birth
26 certificate of a son, a birth attended by his mother. He
27 was trying to deny that this child was his, but wasn't able
28 to explain why it would be that his mother, that is the

1 plaintiff's mother, was at the hospital when the baby was
2 born.

3 Mr. Zelaya, whose testimony I referred
4 to earlier in my closing, that's the six lines that was
5 withdrawn by the plaintiffs' counsel, he's listed as the
6 father on a birth certificate.

7 Mr. Flores. Mr. Flores was shown by
8 paternity tests, which we didn't have at the time of his
9 deposition, to be the father of three of four children he
10 claimed were conceived by his spouse's infidelity. And so
11 in deposition we had to sit through wildly contradictory
12 and completely incompatible, inconsistent stories by
13 Mr. Flores, who said his wife was cheating on him and by
14 his wife who said that she went out and had an affair with
15 her husband's blessing because they were concerned, they
16 thought he was infertile and they wanted to have a family.
17 He says she's cheating, she says no, I did it with his
18 blessing, they both say they weren't his children, and
19 three of them turned out to be his children.

20 Mr. Peralta, who listed two children on
21 an employment application, confronted with that in his
22 deposition, and admitted that two other women claimed that
23 he fathered their children. He went into deposition and
24 he said having a child is the most important thing in the
25 world to me, yet he couldn't explain why, when these women
26 claim that he was the father of the children, he had never
27 followed up.

28 So, getting to Step 5: The use of the

1 American courts to reward and legitimize false claims.
2 In this case alone we are on the Sixth Amended Complaint.
3 Seven complaints, 18 plaintiff and spouse depositions,
4 dozens of motions, pleadings and hearings, enormous written
5 discovery, and the Court, above all, has been very giving
6 with its time and its resources on this case. It's been a
7 huge effort by everybody involved. And what happens when,
8 through our legal system, the truth begins to emerge?
9 Depositions take place, admissions are obtained, documents
10 are obtained, birth certificates. Well, what happens is
11 that plaintiffs and their counsel start dismissing. They
12 start dismissing the cases when the evidence starts going
13 the other way.

14 The attrition rates in these cases are like
15 nothing any of us have ever seen. Tellez, 76 percent of the
16 plaintiffs were dismissed before the case went to trial.
17 Mejia, 62 percent are already gone, but they would all be
18 gone, they would all be gone as of two weeks ago if the
19 strategy of plaintiffs' counsel had been effective, because
20 in the middle of this OSC proceeding with the Motion to
21 Withdraw having been denied, plaintiffs tried to dismiss
22 this entire case, to prevent this proceeding from going
23 forward, to prevent findings being made by your Honor, and
24 to prevent a record made of the fraud that has taken place
25 in this courtroom. That was not successful and so we are
26 here today.

27 We have relied, the Court has relied on
28 Schlesinger_vs._Walt_Disney_Company: When the plaintiff

1 has engaged in misconduct during the course of litigation
2 that is deliberate, that is egregious, and that renders
3 any remedy short of dismissal inadequate to preserve the
4 fairness of the trial, the trial court has the inherent
5 power to dismiss the action. Such an exercise of inherent
6 authority is essential for every California court to remain
7 a place where justice is judicially administered."

8 Plaintiffs here made an argument that
9 they're not responsible or that the plaintiffs in this
10 case shouldn't be tagged with the conduct of their counsel.
11 Similar argument was made in *Schlesinger*, and the Court
12 disposed of it easily. _____

13 First, a litigant is vicariously liable for
14 intentional misconduct of its agents.

15 Second -- and in that case, it was factual,
16 it's even stronger here, in that case there was
17 circumstantial evidence from which it could be inferred
18 that the plaintiffs at least knew of the investigator's
19 illegal conduct, or acted in deliberate indifference as
20 to whether it was illegal. The evidence here is so
21 much stronger.

22 Here the plaintiffs have come into this
23 courtroom, they've presented false documentary evidence,
24 they've pretended they worked on farms as applicators,
25 they've presented false sperm tests, they disavowed their
26 children, they've lied about life as a banana applicator,
27 every step of the way they themselves have participated in
28 and committed a fraud on this court. Each and every one of

1 them.

2 Another case, Link vs. Wabash Railroad, which
3 stands for the proposition that you cannot pick an attorney
4 and then disavow the acts of your agent.

5 So what has plaintiffs' response been?
6 What have we seen, particularly today, with the testimony
7 of the two investigators for Dole? We've seen and we now
8 understand the climate that exists in Nicaragua. We saw
9 how 500 people showed up marching with a bullhorn on the
10 courthouse with placards and signs to protest what? To
11 protest a short continuance of an initial hearing in the
12 lowest form of a misdemeanor in Nicaragua. The climate
13 there is a -- it's one of fear, it's a mob mentality, and
14 people who cross the mob are legitimately in fear of their
15 lives.

16 We've heard evidence about how witnesses
17 have been threatened and intimidated by the lawyers, by
18 Mr. Ordenana, by Mr. Dominguez, by recruiting captains,
19 and everybody is told not to talk. Not to talk to the
20 transnationals, not to talk to the investigators. There's
21 a belief that if nobody talks, somehow this fraud, this
22 massive fraud can be concealed.

23 We've heard evidence in closed session about
24 how people are paid to spy on Dole's investigators. We even
25 heard testimony today about how the National Police were
26 dispatched in a show of force, without any real claim, just
27 to make the investigators know that they needed to watch
28 their backs. And we've seen evidence of fliers passed out

1 in parks so that everybody will know who Dole's
2 investigators are, and that if they're seen they should
3 be beaten, clubbed, dragged, lynched. We've heard of and
4 heard testimony about radio broadcasts where people are
5 exhorted if they see Dole's investigators to call variously
6 Mr. Dominguez, the National Police, take down license plate
7 numbers, write identifying characteristics, so that the
8 investigators can be collected.

9 We heard testimony today about Mr. Ordenana's
10 latest strategy of bringing a criminal case against
11 Mr. Valadez, and you heard evidence about how these tactics
12 are preventing Dole from defending itself, from obtaining
13 due process, from continuing to collect evidence to defeat
14 these kinds of claims. Indeed, that sort of evidence was
15 what was behind your decision ultimately to conclude that
16 with the escalation and violence and in threats following
17 the testimony that had emerged from the John Doe
18 depositions, we couldn't wait until May or September
19 for a trial on the merits, that this institution of justice,
20 this court, had been so blatantly violated that the time had
21 come to collect the evidence on fraud and hear it in one
22 sitting.

23 There has been a refusal on the part of
24 witnesses on the plaintiffs' side, witnesses and counsel,
25 to obey court orders that might expose the fraud.
26 Your Honor invoked the crime-fraud exception to the
27 attorney-client privilege on the basis of a detailed
28 showing by Dole and said that we were entitled to go

1 forward with the deposition of Mr. Ordenana and his
2 employees and Mr. Dominguez. We could get none of
3 them for deposition.

4 We heard evidence about a bounty -- this is
5 another shocking piece of evidence, about a bounty that has
6 been offered recently by Mr. Dominguez and Mr. Ordenana in
7 Nicaragua: 20,000 U.S. dollars, a fortune, a fortune in
8 Nicaragua, for anyone to provide a list of the John Doe
9 witnesses.

10 This is a picture of Mr. Dominguez with a
11 microphone at a rally saying to those who are assembled:

12 "We know, we well know that there are
13 collaborators in this country contracted by
14 the multinationals that are their attorneys,
15 their investigators, spies, and all sort of
16 people that have opposite interests than yours.

17 "There are Nicaraguan attorneys employed
18 by the multinationals.

19 "And don't trust these people, even though
20 it is someone you know."

21 We've heard all sorts of evidence about
22 Mr. Dominguez's radio broadcasts warning people not to speak
23 with Dole, it's investigators, or any of the transnationals.

24 And this is a brochure that we saw today.
25 Terrifying, terrifying for Mr. Madrigal to have brochures
26 with his face posted all over Chinandega, passed out
27 in the parks and everybody being told: Look for him, he's
28 blackmailing, he's bribing. If you see this person, report

1 him to the National Police.

2 And this of course is a picture of what
3 we saw earlier, the march that took place at the hearing for
4 Mr. Valadez in connection with the criminal complaint and
5 trumped-up charges of, quote, insult that Mr. Ordenana has
6 brought against Mr. Valadez. And we heard further testimony
7 today about how Mr. Ordenana is attempting to intimidate
8 the judge responsible for trying this case.

9 We heard testimony about another judge who
10 was met with violent protests by groups of plaintiffs in
11 DBCP cases, such that she recused herself from any further
12 handling of those cases.

13 And even though there's no evidence of it,
14 we've seen time and time again in the press, in the press
15 releases, in the hand-outs in Nicaragua, the accusations
16 that are being made by the plaintiffs and their lawyers in
17 Nicaragua accusing the investigators and the transnationals
18 of attempting to bribe witnesses.

19 They always would say that Dole's offering
20 \$50,000 for a bribe, but you heard from 27 John Doe
21 witnesses in this case, each of whom affirmed under oath
22 that they never received a penny from Dole, they never
23 asked for a penny, they came forward to tell the truth. One
24 witness yesterday when asked, why are you putting yourself
25 on the line like this to come forward, he said there's
26 nothing worse than a restless conscience. You cannot sleep.

27

28 And many of these witnesses came forward

1 because they knew what they had done was wrong and they
2 wanted to tell the truth.

3 And all these claims of bribery have come
4 to naught. There was only one deposition that we took
5 in the case, of a witness that Mr. Dominguez proffered,
6 the deposition was ridiculous, it fell apart after two
7 hours, counsel stipulated to withdraw it, and that was
8 the only deposition that the plaintiffs took in this case.

9 After they withdrew his declaration, they have
10 not submitted any declarations in this proceeding to support
11 the bribery claim, a claim which they said in open court at
12 one point was their primary defense to Dole's fraud charges.

13

14 At one point Mr. Dominguez even suggested that
15 my partner and I had been in Nicaragua bribing people. We
16 took the stand at your Honor's request, we raised our right
17 hands, we presented on our passports, and we were quickly
18 able to refute the allegations by showing we weren't even
19 in Nicaragua during the time in question.

20 We haven't had as much success getting
21 Mr. Dominguez's deposition. We've been met with repeated
22 motions to quash, efforts to postpone his deposition; at
23 a time when Mr. Dominguez was supposed to be home under
24 doctor's orders, unable to work, recovering from surgery,
25 we learn that he's in fact in Nicaragua, having traveled
26 all that way, working, working on these cases.

27 I mentioned earlier our efforts to get
28 Mr. Ordenana's deposition. We spent months pushing for an

1 answer, after your Honor ordered that we were entitled to
2 that discovery under the crime-fraud exception, and that if
3 we didn't get it, you were going to consider evidentiary
4 sanctions.

5 So we pushed and we pushed, it took a couple
6 months, and finally we get a letter from Mr. Ordenana, a
7 very bizarre letter, where he tells us that the situation
8 that we have set out is very similar to a saying they have,
9 "We have in our Central American country," I'll just say it
10 in English.

11 THE COURT: Thank you.

12 MR. EDELMAN: "The donkey is chained up whilst the
13 tiger runs free."

14 And he says: "I trust that you will be able
15 to properly analyze this analogy within the context of the
16 aforementioned information. Consequently, we will not
17 submit ourselves to the jurisdiction of your court, since
18 my employees and I are citizens of the Republic of
19 Nicaragua."

20 Your Honor, quoting from a pretty old
21 Supreme Court case at this point in time, in conclusion:

22 "Tampering with the administration of
23 justice in the manner indisputably shown here
24 involves far more than an injury to a single
25 litigant. It is a wrong against the institutions
26 set up to protect and safeguard the public,
27 institutions in which fraud cannot complacently
28 be tolerated consistently with the good order of

1 society. Surely it cannot be that preservation
2 of the integrity of the judicial process must
3 always wait upon the diligence of litigants.
4 The public welfare demands that the agencies of
5 public justice not be so impotent that they must
6 always be mute and helpless victims of deception
7 and fraud."

8 Your Honor, I would respectfully submit on
9 behalf of Dole that the integrity of the judicial process
10 demands that these cases be dismissed by your Honor and
11 that appropriate referrals be made to the State Bar and
12 to prosecutorial agencies to deter this kind of conduct
13 in the future.

14 Thank you.

15 THE COURT: Thank you, Mr. Edelman.

16 I'm going to mark these slides as Court's 3,
17 for identification, Court's 3, the slides from Dole today.

18 Mr. Brem?

19 MR. BREM: My remarks will be brief, your Honor.

20 THE COURT: I'm all ears.

21

22 CLOSING_ARGUMENT_BY_DEFENDANT_DOW_CHEMICAL_COMPANY

23

24 MR. BREM: Your Honor, a handful of years ago a
25 courageous federal district judge in Corpus Christi,
26 Texas, pulled back the curtain on the Oz that was Silica
27 Litigation. Coincidentally, that judge, Janice Jack, was
28 a nurse turned lawyer turned judge.

1 She correctly noted that there were only 79
2 silica cases filed in 2001, but that in Mississippi alone
3 in 2002 some 10,000; that there had been five times as many
4 cases filed in Mississippi than you'd expect in the whole
5 United States. And in fact, I noticed in the paper just
6 the other day one of the doctors who helped promulgate that
7 fraud had just lost his medical office in a sixth or seventh
8 state. She did that, but not before millions in defense
9 and millions in settlements had been paid by defendants.

10 Well, your Honor, I want to start by saying
11 thank you on behalf of my client, the Dow Chemical Company,
12 for doing the same thing here. The evidence in the last
13 three days can leave no doubt that there is a massive
14 conspiracy in Nicaragua, conspiracy to fraudulently
15 take money from my client, from Mr. Crow's client, from
16 Ms. Neuman and Mr. Edelman's clients, and from other
17 defendants.

18 You know, your Honor and I have been together
19 a couple years working on these cases, and as your Honor
20 knows I'm now in my 17th year of representing The Dow
21 Chemical Company in DBCP cases and, quite frankly, not
22 everything I've seen is pretty. I've seen a plaintiff
23 in a case in Texas send an imposter to Dallas for that
24 plaintiff's deposition and that plaintiff's medical
25 examination because that imposter really was sterile.
26 We knew that that plaintiff had five kids, all born
27 after the last DBCP had been applied in Costa Rica.

28 I've seen settling plaintiffs in the

1 Philippines bring suits claiming not to have received
2 the settlement funds when their own thumbprint was on the
3 agreement that they signed when they received the money,
4 and a picture of their ID was attached.

5 I've seen in other cases in your Honor's court
6 brought by the Provost Umphrey law firm where 2500 or so
7 filed suit again here in California when they had already
8 filed suits in Texas in early 1990s, and they had already
9 settled those cases with my client and others. And I've
10 seen your Honor dismiss those cases by granting our motion
11 for summary judgment.

12 And along with your Honor, I saw the very
13 first plaintiff in the very first banana worker case ever
14 tried in this country sit on that witness stand and deny
15 that a child born after his last work on the farms was his,
16 when he had testified in his deposition that it was his,
17 when he had submitted interrogatories to this court and to
18 the defendants that it was his child, when he had told our
19 expert that it was his child, when he had told three of the
20 plaintiffs' experts that it was his child, and then I heard
21 his lawyers ask this court two weeks into trial for further
22 discovery on that issue.

23 But in spite of all those many oddities,
24 I have never seen anything in all of the years working
25 on this litigation like has been shown by the evidence
26 submitted in this court in this proceeding, where the U.S.
27 and Nicaraguan plaintiffs' lawyers have more clients than
28 ever worked in the dozen or so banana farms in Nicaragua

1 in any job at any time.

2 Mr. Edelman just said there were 10,000.
3 10,000 is just the Nicaraguan plaintiffs that are
4 represented by Mr. Hernandez Ordenana and Mr. Dominguez.
5 There are some 6,000 other plaintiffs out there represented
6 by other law firms, including Provost Umphrey, many more
7 people than ever worked on any banana farm at any time in
8 any job.

9 It's a small wonder they had to travel all
10 the way to the north part of the country, to Esteli, to
11 find people to sign up.

12 So thank you again, your Honor, for taking the
13 time on this case, for making the effort. Any judge could
14 have done this in all of these years, but you did. It was
15 a painstaking effort, a grinding effort, giving up your
16 evenings and weekends to deal with all of us, to expose what
17 is happening in Nicaragua, because what is happenings there
18 has tentacles that reach beyond the Mejia and Rivera cases,
19 beyond the Tellez case that I tried in your Honor's court
20 two years ago, beyond the other cases in this court. It
21 reaches into other states and other courts, where judgments
22 produced by this conspiracy, Nicaraguan judgments, had been
23 registered in an attempt to further export the product of
24 this conspiracy into our country and our court system, and
25 to take money from American companies, including my client.

26 Mr. Edelman told you about the 9\$98 million
27 judgment that has been registered in Florida, that's pending
28 before Paul C. Huck. Those plaintiffs are represented by

1 the Provost Umphrey law firm. They have another judgment,
2 \$802 million, that's just looking for a home, waiting to
3 see what Judge Huck does.

4 That \$98 million, as enormous as that judgment
5 is, is a mere stalking horse. And your Honor, if you hadn't
6 done what you've done here, all of the handicaps that we
7 have, we defendants have in defending these cases, might
8 well have been insurmountable.

9 In a U.S. case, if we had suspicions that
10 somebody hadn't worked where they said they worked or done
11 the job that they said they did, we'd simply send a subpoena
12 and depose their co-workers, and ask them: Mr. Sabalbuero,
13 did Mr. McCoy ever work with you in Department 324?
14 And we'd know one way or the other. We can't do that in
15 Nicaragua. No compulsory process available to us to know,
16 to compel witnesses to testify under oath. It was your
17 protective order that allowed these depositions to go
18 forward.

19 In a U.S. case, if we wanted to know if
20 somebody worked somewhere or if they'd seen a doctor, we'd
21 simply send a subpoena and get the employment records or
22 the medical records, just the normal tricks of the trial
23 lawyer's trade in a personal injury case. We can't do that
24 in Nicaragua. There's no compulsory process available to
25 us. As we've heard, all the records were destroyed almost
26 30 years ago anyway. Your Honor's protective order has
27 allowed this to happen.

28 Your Honor, based on the evidence, each of the

1 ten Mejia plaintiffs and the one plaintiff left in Rivera,
2 Mr. Zelaya, should be dismissed with prejudice because each
3 plaintiff has participated in fraudulent training programs
4 and each plaintiff has submitted fraudulent documentary
5 evidence in this court. That alone would be enough.

6 But they should also be dismissed for another
7 reason, because these cases are the fruit of a tree so
8 poisonous that serpents refuse to live in it; that even
9 the rattlesnakes of South Texas would refuse to find shade
10 under it.

11 But even if your Honor imposes the greatest
12 sanction available to the Court, terminating sanctions,
13 dismissing the case with prejudice, it can only reach
14 the Mejia plaintiffs, and it really highlights how poorly
15 equipped our civil justice system is to deal with this
16 level of out and out criminality.

17 Mr. Edelman gave you some suggestions about
18 what to do. I'd like to give you another. I urge you
19 strongly to dismiss these cases with prejudice by any
20 standard. I also urge you, your Honor, to do so in the
21 strongest possible terms, using the strongest possible
22 language, to send out the word to friend and foe alike
23 that on our system of justice will not tolerate this.

24 Thank you.

25 THE COURT: Thank you, Mr. Brem.

26 Mr. Crow?

27 MR. CROW: Thank you, your Honor. I just have a very
28 few brief comments.

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CLOSING_ARGUMENT_BY_DEFENDANT_AMVAC_CHEMICAL_CORPORATION

MR. CROW: Mr. Edelman has summarized the evidence very well in his closing argument, and I'm not going to repeat any of those here.

Amvac also appreciates all your consideration and time, your many, many weeks and months spent on this case, and Amvac also urges that the Mejia and Rivera cases now by dismissed with prejudice and all other appropriate sanctions be assessed.

Thank you.

THE COURT: Thank you.

Mr. Axline.

CLOSING_ARGUMENT_BY_PLAINTIFFS

MR. AXLINE: Your Honor, I can only say that we also appreciate the time that you have spent on this case, we have faith in the fairness of the Court, we understand that it has reviewed all the evidence, and we are prepared to submit the case to your Honor for your decision.

THE COURT: Thank you, Mr. Axline.

Mr. Edelman, is there any rebuttal?

MR. EDELMAN: No, your Honor.

CASE NUMBER: BC340049
CASE NAME: MEJIA vs. DOLE, et al.

1 LOS ANGELES, CA THURSDAY, APRIL 23, 2009
2 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
3 TIME: 4:50 P.M.
4 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
5 APPEARANCES: (AS HERETOFORE NOTED)

6 * * *

7
8 (The proceedings continued in open court, as follows:)

9
10 THE COURT: At this time I'm going to give a
11 relatively brief oral ruling. There will be a much
12 longer written ruling at a later time that will include
13 all of the citations to all of the evidence that is
14 appropriate.

15 If I were to start in trying to review all of
16 it now, I have eight volumes, each of them are four-inch
17 binders back there, and everything that we've heard here
18 the last three days, we'd be here until next week, and I'm
19 not going to do that to all of you. I know many of you
20 want to get home and -- well, I know many of you want to
21 get out and start sitting in the traffic jam on the way
22 home.

23 All right. I want to, first, thank my staff,
24 who has been wonderful to me and very supportive. This
25 has been a very difficult case for the attorneys and myself,
26 and it's been a very difficult case for the staff. They
27 have had to process mountains of materials that have come
28 through here every single day.

1 Mr. McCoy, the court reporter, has been here
2 late into the evening and early mornings working with me
3 while I've had impromptu conference calls with counsel to
4 try and deal with emergencies that have arisen in Central
5 America. That was very frustrating for all of us because
6 I had no real control; all I could do was try to ride herd
7 on the problems and make suggestions.

8 I want to thank Mr. Sabalbuero, affectionately
9 known by me as "The Boss," the clerk who sits over here, for
10 dealing with the mounds of evidence that have come through,
11 bringing me Diet Cokes when things got rough, and just
12 dealing with the problems.

13 And Ms. Piedra, the official meeter and greeter
14 that I know you've all met when you've come through here,
15 for shepherding all the people in and out, taking care of
16 all of the phone calls, and making sure that everything
17 was on time.

18 And last, Mr. Adam Phipps, who's hiding in
19 the corner over there, for being the eminence grise in
20 the courtroom.

21 Finally, thank you to all the attorneys for
22 helping us get to this point. This is a very sad day
23 for me to be presiding over such a horrific situation.
24 The counsel have all been wonderful.

25 I especially want to thank Mr. Axline of
26 the law firm of Miller, Axline & Sawyer for stepping up
27 to the plate and helping all of us deal with this very
28 unique and dreadful situation with which we're confronted.

1 So Mr. Axline, my hat's off to you if I had
2 one, but my hat's off to you, and thank you very much for
3 doing the right thing and walking the tightrope between
4 representing plaintiffs and your obligations and duties
5 to this court, me in particular, and our legal system
6 in the United States. So thank you very much.

7 In science, there are small ecosystems,
8 such as the Sargasso Sea in the middle of the Atlantic
9 where there is very few winds that ever blow and there's
10 very little waves. The sailors in the 17- and 1800s when
11 they went through that said they were having the doldrums
12 because no ships moved easily through there.

13 This little unique ecosystem supports its
14 own wildlife and own grass and own flora and fauna. In
15 deep seas there are volcanic vents emitting scalding water,
16 supporting multitudinous sulfur-based bacteria that could
17 not live anywhere else. The Antarctic supports large
18 ungainly and flightless birds, cute little critters called
19 penguins, that couldn't live anywhere else except for maybe
20 the zoos.

21 In Nicaragua we seem to have a social
22 ecosystem that's evolved. There have been several factors,
23 and I want to go through what factors have come together,
24 to make this particular odd social ecosystem which we've
25 had the opportunity to view for the last few days.

26 The Sandinista Revolution changed the system
27 of government there. I'm not quite sure what it's been
28 replaced with. I know there is a government there. I

1 have no idea how well it's really functioning. More on
2 that later.

3 We have the infamous Law 364 which presumes,
4 basically, that if somebody says they've been exposed
5 to DBCP because they were once a farmworker, and claims
6 that they are sterile, well, then, they're entitled to
7 compensation.

8 The companion law that works with it, the
9 civil procedure that goes with it, that requires, I believe,
10 that the defendants answer within I think three days, pay
11 a \$15 million approximate bond in order just to walk into
12 the courtroom. I'm lucky that we work here. Our courts
13 are free.

14 And eight days to deliver all the evidence?
15 It took us four and a half months of day-in-and-day-out
16 trials in the Tellez case for 12 people, to allow all
17 parties to thoroughly review and allow the jury to consider
18 the evidence. It couldn't have been done in eight days,
19 and, yet, this law allows in Nicaragua five hundred to a
20 thousand plaintiffs to be processed at one time in eight
21 days. And finally, the judge rules within three days
22 after that.

23 What other factors came together to allow this
24 unique social ecosystem? A judiciary without scruples,
25 apparently; extreme poverty; the lack of compulsory process
26 for discovery; the inability of an order that I make to
27 be carried out in another country down there.

28 In the United States, there's comity between

1 the various states here that allows me to make an order
2 and have a judge in North Dakota follow through. The Hague
3 Convention allows discovery between courts within the United
4 States and England and France, Germany, Japan, all sorts of
5 places. The Pan-American Convention allows for discovery
6 with many of the nations in this hemisphere. But not so
7 for Nicaragua.

8 There is a lack of a respect for law,
9 apparently, down there that I've seen that has been
10 part of the confluence of factors that have come
11 together to allow this unique social ecosystem to evolve.

12 I've been scratching my head for the last few
13 days and wondering what new life form, what creature has
14 been spawned from these factors.

15 Changing gears for just a minute, in Greek
16 mythology there was a chimera, who was a mythical creature
17 with the head of a lion -- actually it was a fire-breathing
18 she monster, which some in this case might describe me as
19 being that person or that critter, but that's for another
20 day.

21 Anyway, a chimera was a fire-breathing she
22 monster with a head of a lion, a body of a goat, and a
23 tail of a snake. A truly fearsome creature. True, there
24 were lesser amalgamations of body parts, we have the
25 flute-playing pan who had the head and torso of a man and
26 the body of a goat, and Medusa, sprouting a head of snakes
27 where her hair should be.

28 Here, we also have a chimera that is really

1 truly heinous and repulsive. It's been created from
2 separate organisms cemented together by human greed and
3 avarice.

4 Well, you might be asking what kind of
5 organisms have been cemented together to form this strange
6 chimera? These organisms are really groups of people
7 or classifications of people. It's made up of groups
8 of attorneys who actually designed this creature, which
9 is the neural system, the brain of this creature. These
10 attorneys have been both in Nicaragua and some in the
11 United States.

12 There have been groups of men, called captains,
13 or recruiting captains, who have been the arms and the eyes
14 for this monster, who reached out and grabbed the groups of
15 men to make spurious claims that they are sterile arising
16 from a chemical called DBCP, manufactured by U.S. companies
17 such as Dow and Amvac, and used by U.S. companies such as
18 Dole.

19 These men have alleged hours of make-believe
20 toil in stinky, smelly wet fields where pipes of DBCP
21 irrigation burst all over them, causing them to wade,
22 perhaps almost even swim, through the contaminated waters.
23 They claim that they toiled away as farm laborers and
24 irrigators while being rained upon by DBCP or swimming
25 in it.

26 There have been groups of medical personnel
27 providing sham laboratory reports indicating sterility
28 where none really exists; groups of fathers denying

1 paternity of their own children, posing as lonely men
2 coming into the court, saying that they had no solace in
3 their old age because they have no children. They have
4 denied to their children their paternity and claim they
5 have no comfort from their offspring, from their own
6 loins in their old age.

7 There are groups of corrupt Nicaraguan judges
8 devouring bribes and to award judgments based on trumped-up
9 allegations and facts.

10 This chimera even has a cancer within it.
11 Some members, I think mainly the captains, feed on the
12 weaker members, the plaintiffs, the impoverished, demanding
13 that these workers pay to go to meetings, pay to go on field
14 trips to banana plantations, pay for training manuals, pay
15 to watch videos, pay for everything they do. Lots has been
16 promised, but very little has actually been delivered.

17 This chimera has an enforcement arm, The Group
18 of 8. We heard a little bit about The Group of 8, I heard
19 some about it yesterday, Mr. Edelman talked about it today,
20 but it appears to be a group of individuals from the various
21 law firms in Nicaragua who were there to ride herd on these
22 cases, to bring them from their creation in somebody's mind
23 in the law offices in Chinandega, the offices of the banana
24 workers, on through training and on into courts like this
25 one or courts in Nicaragua, and perhaps with the hope of
26 courts elsewhere in this country.

27 There is a pervasive atmosphere of fear and
28 extreme danger. We listened to investigators here today,

1 I listened yesterday to several John Doe witnesses, and
2 on Monday (sic) morning there was a montage of various
3 John Doe witnesses who talked about their concerns.

4 I absolutely believe their fear, and I feel
5 for them. Their fear is the reason we're here today in
6 this extraordinary proceeding.

7 The fear that has been generated by
8 The Group of 8 and by the Law Offices of Juan Dominguez
9 and Mr. Ordenana, perhaps by other law offices down there,
10 perhaps by other law offices in this country -- and I'm not
11 including the Miller Axline firm. Just so we're all clear,
12 whenever I talk about law offices in this country, I am
13 not intending to in any way impugn Mr. Axline, Mr. Miller,
14 or Mr. Boone. Or Mr. Sawyer for that matter, who I don't
15 really know at all.

16 This atmosphere that is existing in Nicaragua,
17 the atmosphere of threat and intimidation, has hindered the
18 progress of this case and any other case. Probably hindered
19 the progress -- and I'm sure it did, hindered the progress
20 of Tellez -- the ability to gain information. It has
21 interfered significantly with this court's ability to do
22 what I took an oath to do, which is to allow all parties
23 to come before myself, to have a fair trial, to have a fair
24 proceeding.

25 I promised all the litigants in all of my
26 cases to provide them with due process, and I have failed
27 here because I can't provide that because of the conditions
28 in Nicaragua. I can only provide due process as to things

1 within my control. I cannot control the events in
2 Nicaragua.

3 I strongly believe in the right to a jury
4 trial, and yet I've been forced to take it away from
5 plaintiffs here. Today is one of the sadder days of
6 my life in having to do that. And on March -- help me
7 out, 6th? Was that the date?

8 MS. NEUMAN: March 6th, yes, your Honor.

9 THE COURT: On March 6th, when I made the
10 determination on my own to conduct an OSC, Order to Show
11 Cause, to terminate this case, and later when I did the
12 written ruling on March 11th, it was very painful, because
13 I truly believe in the jury system, I truly believe in our
14 system of justice that allows twelve people to come together
15 to listen and make a determination of whether is it true
16 or not.

17 The purpose of today's proceeding and of the
18 last few days is not for me to sit as the jury. I am not
19 here to be a trier of fact, I am here to safeguard our
20 system of justice and to recognize that I failed the parties
21 in my ability to give them a fair trial. All parties, the
22 plaintiffs and the defendants. And for that I'm sorry. I
23 would have liked to have gone on.

24 The actions of the attorneys in Nicaragua and
25 of some of the attorneys in the United States, specifically
26 the Law Offices of Juan Dominguez, have perverted this
27 court's ability to deliver justice to those parties that
28 come before it.

1 The purpose of this proceeding is to decide
2 whether or not a fraud has been perpetrated on this court
3 and on the parties. What has occurred here is not just
4 a fraud on this court, but it is blatant extortion of
5 the defendants.

6 "A fraud on the court occurs where it
7 can be demonstrated, clearly and convincingly,
8 that a party has sentiently set in motion some
9 unconscionable scheme calculated to interfere
10 with the judicial system's ability impartially
11 to adjudicate a matter by improperly influencing
12 the trier or unfairly hampering the presentation
13 of the opposing party's claim or defense."

14 That's Aoude vs. Mobil Oil Corporation, a
15 1989 case found at 892 F.2d 1115 at 1118. This standard
16 has been indisputably met here.

17 "When the plaintiff has engaged in
18 misconduct during the course of the litigation
19 that is deliberate, that is egregious, and that
20 renders any remedy short of dismissal inadequate
21 to protect the fairness of this trial, such
22 an exercise of inherent authority is essential
23 for every California court to remain a place
24 where justice is judicially administered."

25 That's from Schlesinger vs. Walt Disney,
26 155 Cal.App.4th, specifically from Pages 764 to 765,
27 and that was quoting from the case of Von Schmidt vs. Widber
28 , a 1983 case found at 99 Cal. 511 at 512.

1 "Terminating sanctions dismissing claims
2 of the offending party are warranted in such
3 circumstances."

4 And if you took all the bad cases that I've
5 read and put them together, they don't even come close to
6 what's happened here. They do not approach what we've seen.

7 "The misconduct necessary to invoke the
8 inherent power to dismiss has been described as,
9 among other things, conduct due to willfulness,
10 fault, or bad faith, and having a relationship
11 to the matters in controversy such that the
12 transgression threatens to interfere with
13 the rightful decision of the case, or egregious
14 misconduct such as willful or contemptuous
15 behavior, a deliberate attempt to hinder or
16 prevent effective presentation of defenses
17 or counterclaims, or stalling in revealing
18 one's own weak claims or defense."

19 That's a citation again from Schlesinger
20 at Page 765 Footnote 20. _____

21 I've told you that I'm using the standard
22 of proof of clear and convincing evidence, and it might
23 have been Mr. Brem or it might have been Mr. Edelman,
24 I don't know which one, that said I could have used a
25 higher standard. That's true, I could have used beyond
26 a reasonable doubt because, actually, everything, all the
27 findings that I made, I truly believe beyond a reasonable
28 doubt. But clear and convincing will do. It's more than

1 just a feather sitting extra on a scale.

2 Plaintiffs' and plaintiffs' attorneys'
3 misconduct in this record is so outrageous and pervasive
4 and profound that it far exceeds anything described, as
5 I said, in any of the reported cases. Here, there is
6 massive amounts of evidence demonstrating the recruiting
7 and training of fraudulent plaintiffs to bring cases
8 in both the Nicaraguan and U.S. courts. Mr. Dominguez,
9 I understand from my readings, has about 92 Nicaraguan
10 lawsuits with 4,081 plaintiffs, and claim damages of,
11 and this is almost hard to read, \$21,537,000,000, and
12 those are pending.

13 There is uncontroverted proof of the
14 systematic fabrication of work certificates, which
15 were signed in blank and filled in later, to apply
16 to any plaintiff whom counsel or their employees on
17 whim and their agents might choose.

18 There is a plethora of evidence of spurious
19 lab reports, using a preordained ratio of sterility from
20 between azoospermia, no sperm, oligospermia, some small
21 amount of sperm, to uncertain, whatever that is, but the
22 goal of which is that the people are not able to have
23 children that is somehow related to DBCP. This ratio was
24 developed and used by the laboratories in forming their
25 false reports.

26 Fertile men seeking to be plaintiffs have
27 hidden or disavowed their own children. How despicable.

28 Yet this conduct that I've been discussing

1 is only the beginning, is only the tip of the iceberg as
2 to what we've seen here.

3 This conduct that has infested this case
4 with fraud, a reprehensible conduct, has been put together
5 by several in Nicaragua, including Dominguez and Ordenana,
6 together with other DBCP plaintiff law firms, which has
7 created a pervasive atmosphere of fear and intimidation to
8 discourage witnesses from testifying, to routinely directing
9 witnesses in person or on the radio not to communicate with
10 Dole investigators.

11 Also in conjunction with their strategy of
12 fear and intimidation, Dominguez and Ordenana have targeted
13 Dole's investigators. You've heard about that today
14 with Mr. Valadez, who is the recipient or has the honor
15 of answering in a criminal court in Nicaragua to a charge
16 brought by Mr. Ordenana.

17 There has been evidence that Dominguez and
18 Ordenana have approached individuals personally and told
19 them, in no uncertain terms: Do not cooperate with Dole
20 investigators or defense investigators, or else, something
21 might happen to you, unspecified, but frightening
22 nonetheless.

23 It appears, and I find by a clear and
24 convincing standard of evidence, that both Dominguez
25 and Ordenana directed people to hurt the investigators
26 on sight and to hurt anybody who came forward with
27 testimony about the illegal schemes brewing in Nicaragua.

28 There have been demonstrations staged, there's

1 been leafleting passed out in the parks to cause fear in
2 the minds and hearts of the investigators so that they will
3 not go forward.

4 Unfortunately, it's worked. Mr. Valadez
5 is under criminal complaint and is very concerned about
6 going to and from that country.

7 Mr. Madrigal is very concerned for his safety,
8 and has had to move around and not investigate thoroughly.
9 He has to watch his back.

10 And Mr. Valadez couldn't just walk into a
11 court to respond to a criminal charge, he had to sneak in
12 a few days earlier and scope the location out, looking for
13 routes for a fast egress. How sad.

14 There's been subornation of perjury,
15 both in this country and in Nicaragua. We've talked
16 about the intimidation of witnesses and interference with
17 another party's investigation. Those alone are grounds
18 for dismissal, and have been used previously in the matters
19 of Black vs. Suzuki Motor Corporation, found at 2008 WestLaw
20 at 2278663, and in the matter of Johnese vs. Jani-King,
21 found at 2008 WestLaw 631237.

22 For the last few days, as I promised Mr. Axline
23 that I would do, I have thought long and hard about what
24 remedies are available. I especially looked at the unique
25 situation with Mr. Mejia, who there is testimony he had
26 actually worked on a banana farm, although he did not work
27 as an irrigator.

28 What do I do with this? As I had told you

1 earlier, I'm not here to sit as the judge of the facts.
2 Counsel has been urging me to make factual determinations
3 regarding whether somebody did or didn't work as an
4 irrigator or on a farm. To do so I would in essence
5 be sitting as the jury, which I do not want to do.

6 However, I find, by clear and convincing
7 evidence, and, actually, if you want to say that, beyond a
8 reasonable doubt, that each and every one of the plaintiffs
9 in the Mejia and the Rivera cases have presented fraudulent
10 documents and actively participated in a conspiracy to
11 defraud this court, to extort money from the defendants,
12 and to defraud the defendants.

13 That alone, without worrying about what exact
14 statements are true and what statements are not true, is
15 more than sufficient to dismiss these individuals' claims
16 with prejudice, preventing their ability to ever come back,
17 at least in this court, and hopefully in any other court,
18 and raise these claims again.

19 For Mr. Mejia, I thought about not giving
20 terminating sanctions pursuant to this OSC process because
21 I do believe he worked in some capacity on a farm or
22 plantation, I considered rethinking the denial that I gave
23 a week or so ago to his request to dismiss voluntarily
24 without prejudice to bringing it back again, and I thought
25 about going forward on a trial as to Mr. Mejia alone.

26 But in good conscience I cannot do that
27 because I truly believe that he actively participated
28 in a heinous conspiracy to defraud this court, and all

1 other courts should he bring his case forward, and he
2 has assisted others to do that in this court, as well.

3 The evidence that's been presented to this
4 court reveals a scheme which has been intended to prevent
5 Dole and this court, and Dow and Amvac, from uncovering the
6 plaintiffs' fraud and obtaining truthful information about
7 the merits of their case, and there is no way at this time
8 for the defendants, this court, or the Miller Axline firm,
9 to know the extent of the fraud.

10 As I stated in the Order to Show Cause that
11 I put out in writing on October 11th but did orally on the
12 6th, this court questions the authenticity and reliability
13 of any documentary evidence presented by plaintiffs that
14 comes out of Nicaragua. That's true. There has been
15 nothing presented to me from Nicaragua regarding work
16 certificates, birth certificates -- I mean, witnesses
17 have said, in essence: Oh, yes, it says that on the
18 birth certificate, it says I'm the father, but it isn't
19 true, I lied -- I can't believe in government documents,
20 I can't believe in these work certificates, I can't believe
21 the laboratory reports, I can't believe medical reports.

22 What is there for me to believe? Nothing.

23 I have serious, serious doubts about the
24 bone fides of any plaintiff claiming to have been injured
25 as a result of exposure to DBCP while working on banana
26 plantations. Because of all this, lesser sanctions are
27 wholly inadequate.

28 The plaintiffs suggested that I allow the

1 plaintiffs to go forward just with the Miller Axline firm,
2 to let them go forward and try their case. The problem
3 is, I don't think the Miller Axline firm can figure out
4 the truth either.

5 What are they going to do? Go back? Who
6 are they going to talk to? They're going to talk to the
7 same people that put up and claim that Joe worked with
8 John on the banana plantation. But Miller Axline doesn't
9 have the ability, any more than Dole or Dow or Amvac, to
10 check the authenticity of that. Miller Axline doesn't have
11 the ability to go back and check the authenticity of the
12 work records or the laboratory reports. And I will not
13 have another jury sitting in this courtroom for four months
14 for a case that I cannot say is even possibly real, and I
15 can't say that.

16 Because plaintiffs' fraud permeates every
17 aspect of this case, it is not possible for this court
18 to ensure a fair, untainted trial. Plaintiffs' fraud has
19 been unstoppable and has included repeated intimidation
20 and threats against various witnesses to prevent the
21 defendants and this court from ever learning the truth.

22 As stated in Schlesinger:

23 "Plaintiffs and their counsel" -- not
24 Miller Axline -- "have a reliably predictive
25 history of misconduct. The court therefore
26 is entitled to assume, based on this history,
27 that plaintiffs would not obey remedial orders
28 if disobedience might be to their tactical

1 advantage. The court is not required to
2 gamble its ability to provide a fair trial
3 on plaintiffs turning over a new leaf."

4 And I look at Miller Axline trying to
5 take over and not have any contact with Mr. Dominguez
6 or Mr. Ordenana as an attempt to turn over a new leaf.

7 But it's doomed, Mr. Axline. I want to thank
8 you for making the suggestion, but it isn't going to make
9 it.

10 MR. AXLINE: I understand, your Honor.

11 THE COURT: I'm not buying it. Okay?

12 Because plaintiffs' counsel in Nicaragua
13 and here through Mr. Dominguez have so thoroughly coached
14 plaintiffs to lie, there's no way for this court to purge
15 the plaintiffs' wrongfully-obtained knowledge from their
16 mind, and therefore no power short of termination can fully
17 guard against the conscious or subconscious application of
18 the plaintiffs' fraudulent knowledge from shaping the future
19 course of this litigation and its outcome. Terminating
20 sanctions are therefore the only possible way to handle
21 this situation.

22 Now, a brief comment about Law 364. In 2000 or
23 2001 the Nicaraguan government passed Special Law 364, which
24 was the law that targets certain U.S. companies, including
25 Dole and Dow and Amvac, probably also Shell and any other
26 ones that either manufactured DBCP or were growers in
27 Nicaragua, if there were other growers in addition to Dole.
28 I don't know. This law presumes liability, causation, and

1 a minimum amount of damages in favor of any person who
2 claims that they were rendered sterile as a result of DBCP
3 exposure.

4 The procedural requirements of Law 364 take
5 a heavy toll on these companies as defendants if they wish
6 to actively participate in the Nicaraguan trial. And I've
7 talked a little bit about that, about the \$15 million bond
8 and the 3-8-3 requirements.

9 This court believes that the advent of Law 364
10 was a significant impetus in planting and nourishing a
11 fraudulent industry whose roots may have its origins in
12 Nicaraguan courts but whose fraudulent shoots have reached
13 into the soil of the court systems in the United States,
14 and specifically in California.

15 Like many little critters in plants that
16 live in those unique ecosystems, however, those animals
17 and plants cannot survive outside of their ecosystem.

18 Here, fortunately, although there has been
19 a strong attempt to bring the seeds of the Nicaraguan
20 corruption here to this country, it has not succeeded, and
21 if I have anything to say about it, it will not succeed.

22 Other conditions that caused this fraudulent
23 chimera, as I said before, are the Sandinista Revolution
24 from '79 to '81 that destroyed all of the employment
25 records, and I've talked before about the country's
26 poverty, the lack of the ability to enforce discovery,
27 the nonfunctioning or barely functioning judicial
28 system, and the avarice that has fueled this chimera.

1 My concerns about the legal system and the
2 judiciary in Nicaragua are not just what I've heard here
3 today or observed, it's based on the United States
4 State Department Country_Reports between 2000 and 2008,
5 in which the State Department has concluded that Nicaragua
6 lacks an effective civil law system. The most recent
7 report bluntly states:

8 "Although the law provides for an
9 independent judiciary, the judicial system
10 remains susceptible to corruption and
11 politicization, and did not function
12 independently. The Judicial Career Law
13 requires that new judicial appointments
14 be vetted by the Supreme Court of Justice.
15 However, judicial appointments were often
16 based on nepotism, influence, or political
17 affiliation. Once appointed, many judges
18 were subject to political and economic
19 pressures that affected their judicial
20 independence."

21 We certainly heard about that today
22 through the professor -- help me out. Soto Cuadra?

23 MR. EDELMAN: Soto, right.

24 THE COURT: And a little bit from Mr. Valadez.

25 The Country_Report for 2002, while this
26 chimera was in its infancy, found that the judiciary was
27 susceptible to corruption and political influence, and
28 that the judiciary was hampered by judges and lawyers

1 who often lacked sufficient training or education, and that
2 corruption and judges' political sympathies, acceptance
3 of bribes, or influence from political leaders reportedly
4 often influenced judicial actions and findings.

5 And that is from the U.S. Department of
6 State Country Reports on Human Rights Practices 2002,
7 published March 31st, 2003.

8 I have also relied on U.S. Trade Department,
9 2004, National Trade Estimate Report On Foreign Trade
10 Barriers, which says in part:

11 "The Nicaraguan legal system is weak
12 and cumbersome. Many members of the judiciary,
13 including those at high levels, are widely
14 believed to be corrupt or subject to outside
15 political pressures. Rulings in favor of
16 those who are politically connected are a
17 visible manifestation of political corruption."

18 During the time that I've been either reading
19 or listening to evidence I have learned all about that.

20 This court was presented with detailed
21 un rebutted testimony, which it finds highly credible, that
22 Mr. Dominguez and the Mejia plaintiffs' Nicaraguan counsel
23 and the Rivera plaintiffs' Nicaraguan counsel, Mr. Ordenana
24 and Mr. Zavala, conspired and colluded with, one, other
25 DBCP plaintiff lawyers and representatives, including
26 Walter Gutierrez and some U.S. lawyers from the Law Offices
27 of Provost Umphrey, and with Nicaraguan laboratories, with
28 three corrupt Nicaraguan judges in a position to influence

1 the outcome of DBCP cases. The purpose of this conspiracy
2 was to manufacture evidence and improperly influence the
3 outcome of DBCP cases pending in Nicaraguan courts in
4 favor of plaintiffs.

5 The DBCP plaintiffs' lawyers in Nicaragua
6 also provided improper benefits to Nicaraguan judges
7 in exchange for influencing the outcome of DBCP cases in
8 favor of plaintiffs, and to obtain judgments that could
9 be enforced in the United States or other jurisdictions.
10 The conspiracy was funded at least in part by Mr. Dominguez.

11

12 For example, Mr. Dominguez, Mr. Ordenana, and
13 Mr. Zavala attended at least one meeting in which Nicaraguan
14 judges, Nicaraguan and United States attorneys, captains who
15 worked for those attorneys in recruiting pretend plaintiffs
16 for DBCP cases, and representatives of laboratories that
17 performed sterility tests on DBCP plaintiffs, conspired to
18 manufacture evidence and thereby fix cases in Nicaraguan
19 courts. One such meeting took place in an exclusive
20 neighborhood in Chinandega.

21 Multiple John Doe witnesses credibly testified
22 to having attended this meeting. These witnesses generally
23 corroborate each other with respect to the identities of
24 the primary participants in the meeting and its purpose and
25 substance. The meeting was presided over by the Nicaraguan
26 judge Socorro Toruno. I find this to meet the burden,
27 clearly, of clear and convincing evidence, and probably
28 much higher.

1 And as an aside, Judge Toruno is the judge
2 who presided over the enforcement actions now pending before
3 Judge Paul Huck, a U.S. District Court judge sitting in
4 Miami, Florida.

5 I find by clear and convincing evidence that
6 the Nicaraguan judge, Socorro Toruno, presided over at least
7 two DBCP trials in Nicaragua resulting in judgments totaling
8 in the hundreds of millions of dollars against some of the
9 same defendants who are currently before this court in Mejia
10 and Rivera. _____

11 _____ During this meeting, Judge Toruno, lawyers from
12 nearly all of the Nicaraguan law firms, and Mr. Dominguez,
13 representing plaintiffs in DBCP litigation, conspired to
14 manufacture evidence of sterility and otherwise fix those
15 lawsuits in favor of plaintiffs.

16 Because of all of the evidence that's been
17 presented to me, because of my profound concern for the
18 safety of those witnesses who have come forward, the
19 safety of the investigators of the defendants, and the
20 safety of all American counsel involved in these cases, be
21 they plaintiff or defense counsel going down to Nicaragua,
22 I cannot in good conscience allow this case to continue.

23 I find that there is and was a conspiracy
24 to defraud both Nicaraguan and American courts, to defraud
25 the defendants, to extort money from these defendants,
26 not just these three defendants in the court here but all
27 manufacturers of DBCP, and all growers or owners of --
28 or I'm sorry, operators of plantations I guess is the

1 best way to say that, in Nicaragua between 1970 and 1980.

2 All right. There will be some additional
3 findings in the written ruling, I just need a chance to
4 formulate them. I've not had a chance. It's very hard
5 to do a written ruling.

6 As to the Rivera and Mejia plaintiffs, I
7 think I stated before that this is stage one of the OSC
8 proceeding, stage two will occur at a later time. I've set
9 the dates and I just don't remember them now, but counsel
10 is aware of them.

11 But as to stage one, I am ruling that each of
12 the plaintiffs in the Mejia and Rivera cases, their case
13 will be dismissed, and is dismissed, with prejudice. Again,
14 though, this is part one of the ruling, and in part two
15 there are some other additional things which will come up
16 later.

17 Now, a couple of other points that I have not
18 talked about. I presided over the Tellez trial and watched
19 the witnesses. I knew something was wrong with many of
20 the witnesses, I just didn't understand what it was, because
21 the evidence of fraud had never been raised. It couldn't
22 have been raised since the discovery of this fraud has
23 really come to a head only in the last six months or so.

24 I was asked by counsel for the defense to
25 make a statement of -- a Statement of Intent? Is that
26 the right word, Mr. Brem?

27 MR. BREM: Indication, your Honor.

28 THE COURT: A Statement of Indication regarding

1 Tellez. I declined because I do not believe that I have
2 the statutory ability to that. I still don't believe
3 that I have the statutory ability to do that.

4 But I must say that based on what I have seen
5 here, had I known anything about that then, I would have
6 taken different actions. And, that the fraud that I have
7 seen here has also contaminated each and every one of the
8 plaintiffs in the Tellez matter.

9 What a tragedy, because 16 jurors sat through
10 four and a half months of trial. Mr. Miller from the Miller
11 Axline office spent hours and hours trying the case, as did
12 Mr. Brem, and counsel, different counsel than Mr. Edelman,
13 but counsel for Dole. Millions of dollars were expended
14 in that case, and hundreds of hours of court time and
15 attorney time were spent in prosecuting a case that was
16 built on somebody's imagination, a case that was put
17 together by smoke and mirrors.

18 I apologize to all the jurors that had to
19 sit through that case and make a decision based on nothing
20 but the imagination of somebody, dreamed up in a back
21 room of some law office down in Chinandega. How sad.

22 Last but not least, there's been a tragedy
23 with these events on many levels. It's a sad commentary
24 about the government and legal system in Nicaragua and
25 the inability of the Nicaraguan system to bring justice
26 and safety to its citizens.

27 What a sad commentary that somebody thought
28 that they were free to attempt to bring this fraud into

1 United States' courts.

2 What a sad commentary about the time spent
3 by counsel and myself in the Mejia, Rivera and Tellez
4 cases, and the time has been spent for naught.

5 What a sad commentary about the amount of
6 money, millions and millions and millions of dollars, when
7 you add Tellez to it, that has been spent by the parties
8 to deal with this sham situation.

9 What a sad commentary that the law firm of
10 Miller, Axline & Sawyer has been a victim of the fraud's
11 collateral damage.

12 And mostly, what a sad commentary for
13 individuals who are now going to be unable to come to
14 this court, or any court, for redress, for wrongs that
15 they believe have been committed against them.

16 My goal here is not to find somebody liable
17 or not liable, I'm not here to make a commentary, and I
18 don't have any opinion as to whether or not there was any
19 wrongdoing by any of the defendants. We'll never know.

20 I strongly believe in our American system
21 of justice that allows a person who believes they were
22 injured to bring a claim into court that they believe is
23 valid and to allow a jury and a judge to hear the evidence
24 and make whatever finding is appropriate. But I also
25 strongly believe that nobody should be able to bring a false
26 claim into a courtroom in this country, present fraudulent
27 evidence, and extort money wrongfully from somebody.

28 We'll never know if anybody in Nicaragua

1 was actually injured or harmed by the alleged wrongful
2 conduct of the defendants, and people will never have
3 the opportunity to learn, since this fraud is so pervasive
4 and extensive that it has forever contaminated even our
5 own ability to ever know the truth.

6 I want to thank you all for putting up with
7 me for the last hour for my ability to rant. There will
8 be a written decision. The purpose of the oral decision
9 today was to let you know what I was thinking.

10 In addition to making orders to dismiss the
11 case and considering part two, I will be making referrals
12 that I believe are appropriate to either the state bar
13 of this state, perhaps state bars of other states, and
14 to prosecutorial agencies. I believe that I am required
15 to do that under the canons of ethics if I believe it is
16 appropriate. So I will also be taking those actions at
17 a later time. The written decision will have all of the
18 supporting evidence that I've only briefly alluded to today.

19 Again, thank you all for your patience.

20 Dole needs to give notice. And when are you
21 due back again, folks?

22 MR. EDELMAN: May 8th, your Honor.

23 THE COURT: I'll see you folks on May 8th.

24 Thank you all.

25 RESPONSE: Thank you, your Honor.

26

27 (At 5:45 p.m., the proceedings were adjourned)

28