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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	Criminal Case No. 91-0449-GT
	)	(Hon. Edward Rafeedie)
12 Plaintiff,	)	
	)	DATE: November 13, 1991
13 v.	)	TIME: 9:00 a.m.
	)	
14 ROBERT MORALES, SR. (1)	)	GOVERNMENT'S TRIAL MEMORANDUM
	)	
15 Defendant.	)	
	)	
16	)	

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and  
18 through its counsel, William Braniff, United States Attorney,  
19 Phillip L.B. Halpern, Assistant U.S. Attorney, and Steven P.  
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I

STATUS OF THE CASE

A. INDICTMENT

On May 6, 1991, defendant and his son, Robert A. Morales, Jr, were originally charged in a 201-count indictment. On August 22, 1991, the grand jury returned a 17-count superseding indictment. This indictment charged defendant with Conspiracy in violation of Title 18, U.S.C., Section 371 (Counts 1 and 13), Bribery in violation of Title 18, U.S.C., Sections 201(b)(2)(B) and (C) (Counts 2 and 3), Financial Money Laundering in violation of Title 18, U.S.C., Sections 1956(a)(1)(B)(i) and (a)(1)(A)(ii) (Counts 4 through 10), Laundering Purported Drug Proceeds (Counts 12 and 13), Tax Evasion (Counts 14 and 15), Assisting in the Preparation of a False Return (Count 16), and Assisting Tax Evasion (Count 17).

The Government will present a redacted indictment for trial purposes. This indictment will omit Count 4 to avoid any possible prejudice that might flow to the defendant. In the redacted version, all counts after 4 have simply been renumbered to reflect the presence of only 16 remaining counts.

B. CUSTODY STATUS

On May 8, 1991, defendant was arraigned on the original indictment. At arraignment, the Government moved to detain defendant without bail. On May 10, 1991, a detention hearing was held to determine whether defendant should be held in custody pending trial. Following a six-hour hearing, the magistrate

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1 detained defendant finding that clear and convincing evidence  
2 existed that if released defendant would continue to obstruct  
3 justice or flee to Mexico.

4 Defendant moved for modifications of his detention order in  
5 Magistrate's Court on June 4, 19, and 26, 1991. On each occasion,  
6 the Magistrate refused to modify his order. On July 9, 1991, the  
7 Honorable Gordon Thompson, Jr. affirmed the Magistrate's detention  
8 order.

9 C. TRIAL STATUS

10 Trial is scheduled for November 13, 1991, at 9:00 a.m. before  
11 the Honorable Edward Rafeedie, United States District Court Judge  
12 for the Central District of California, sitting by designation in  
13 the Southern District of California. Depending on stipulations,  
14 the estimated length of trial is four weeks.

15 D. INTERPRETER

16 It is not presently anticipated that the services of an  
17 interpreter will be necessary. However, if the defense does not  
18 stipulate as to various Mexican bank records, an interpreter may  
19 be required for this limited purpose.

20 E. PRETRIAL MOTIONS

21 On August 30, 1991, defendant filed motions to: (1) obtain  
22 discovery; (2) strike surplusage; (3) dismiss the indictments due  
23 to infirmities in the jury selection proceeding and pre-accusatory  
24 delay; (4) sever counts; and (5) suppress statements. On  
25 September 19, 1991, Judge Thompson issued an order granting in  
26 part, and denying in part, defendant's discovery requests. On the

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1 substantive issues, the Court denied defendant's motions to strike  
2 surplusage and sever counts, and delayed ruling on the Miranda and  
3 jury selection issues.<sup>1/</sup>

4 On August 17, and 28, 1991, the Government informed the  
5 defendant that pursuant to 18 U.S.C. § 3505 it intended to rely on  
6 certifications from Bermuda and Mexico to introduce certain  
7 foreign bank records. On October 15, 1991, defendant filed a  
8 notice of intention to object to the introduction of foreign  
9 records. Subsequently, he filed a formal motion to exclude the  
10 foreign bank records.

11 On October 21, 1991, defendant filed a supplement to his  
12 motion to dismiss due to infirmities in the jury selection  
13 process. This supplement was based on his law clerks review of  
14 the jury selection plan and master jury wheel for the Southern  
15 District of California. On this date, defendant also moved (in an  
16 untimely fashion) to dismiss Counts 2 and 3 for duplicity. On  
17 November 5, 1991, the Government responded to defendant's  
18 motions to: (1) exclude foreign bank records; (2) dismiss Counts  
19 2 and 3 for duplicity; and (3) dismiss the indictment based on the  
20 jury selection procedure. These motions are currently set to be  
21 heard on November 12, 1991.

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24 1/The Court also ordered that the parties each supply their  
25 own transcripts of the tape unless they agree on a joint  
26 transcript. To this end, the Government has supplied the  
27 defendant with a copy of the excerpts it intends to play for the  
28 jury. While the Government has supplied defendant with rough  
transcripts, defense counsel has promised not to use these rough  
versions "in any court for any purpose, including the impeachment  
of any government witness or calling into question the accuracy of  
the final transcript."

1 On November 8, 1991, the Government received a copy of  
2 defendant's motion to disqualify Assistant U.S. Attorney Phillip  
3 L.B. Halpern. That same date, the Government filed its response  
4 and opposition. It is unclear when defendant intended to have  
5 this motion heard as it is undated.<sup>2/</sup>

6 F. GUILTY PLEAS

7 On September 16, 1991, Robert A. Morales, Jr. pled guilty to  
8 Counts 1 and 161 of the original indictment charging conspiracy in  
9 violation of 18 U.S.C. § 371, and tax money laundering in  
10 violation of 18 U.S.C. § 1956 (a)(1)(A)(2). Sentencing is  
11 presently set for December 2, 1991.

12 On August 21, 1991, defendant pled guilty to Count 192 and  
13 195 of the original indictment charging tax evasion in violations  
14 of 26 U.S.C. § 7201, and filing a false return in violation of 26  
15 U.S.C. § 7206(2). Sentencing is presently set for November 14,  
16 1991.

17 On November 5, 1991, Morales entered a guilty plea to Count  
18 4 of the superseding indictment charging money laundering in  
19 violation of 18 U.S.C. § 1956(a)(1)(B)(i). Sentencing was  
20 tentatively set for November 14, 1991 in order to calendar a later  
21 date.

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24 <sup>2/</sup>On November 1, 1991, Judge Thompson heard three hours of  
25 testimony relating to certain admissions defendant made while  
26 federal agents were executing a search warrant at his residence.  
27 The Court subsequently ruled that only those statements made by  
28 defendant after he had received Miranda warnings are admissible at  
trial. Rather than offer these admissions at trial, the  
Government plans on relying on defendant's statements during his  
guilty pleas.

1 II

2 INTRODUCTION

3 Robert Morales, Sr. (hereinafter referred to as "Morales")  
4 was an Internal Revenue Service (hereinafter referred to as the  
5 "IRS") Revenue Agent assigned to the San Diego field office, 880  
6 Front Street, San Diego, California. In this capacity, he  
7 routinely conducted audits of various taxpayers in San Diego and  
8 Imperial counties to determine if they were in compliance with  
9 Internal Revenue laws.

10 Since 1986, Morales has accepted hundreds of thousand of  
11 dollars in bribes from one taxpayer, Mario Saikhon, in return for,  
12 inter alia, taking favorable action on Saikhon's behalf while  
13 auditing his returns. The majority of the illegal bribes were  
14 made by: (1) payroll checks to Reynaldo Cendejas (Morales'  
15 brother-in-law who did not work for Saikhon), and (2) checks  
16 payable to J.B. FARMS, INC. (a "shell corporation" owned and  
17 controlled by Morales). These payments assisted Saikhon in  
18 evading the payment of millions of dollars in tax owed the  
19 Government.

20 In addition, as part of a Government undercover  
21 investigation, Morales and his son, coconspirator Robert A.  
22 Morales, Jr. (hereinafter referred to as "Bobby Morales")  
23 laundered \$100,000 in cash that they had reason to believe was  
24 derived from narcotics trafficking. The Moraleses laundered these  
25 funds by dealing in amounts under \$10,000, and using various  
26 nominee bank accounts to avoid the currency reporting require-

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1 ments. In addition, the Moraleses knowingly prepared false and  
2 fraudulent income tax returns for the Government undercover agent.

3 III

4 STATEMENT OF FACTS

5 A. BACKGROUND

6 On or about June 6, 1960, Morales was hired by the IRS as a  
7 Revenue Agent. The IRS initially posted Morales in its branch  
8 office located in El Centro, California. He remained in this post  
9 until approximately 1968 when the IRS transferred him to its San  
10 Diego, California post of duty.

11 As a Revenue Agent, Morales was required to examine and audit  
12 individual, business, partnership and corporate tax returns. The  
13 purpose of these examinations and audits was to determine correct  
14 Federal tax liabilities. In performing this function, Morales was  
15 responsible for, among other things, reviewing assigned cases to  
16 determine if they had audit potential. In making this decision,  
17 he was required to perform preaudit analyses in order to determine  
18 which cases were most likely to result in revealing tax liability.

19 If an IRS revenue agent determines that a complete audit  
20 would be unlikely to result in additional tax, he would typically  
21 "survey" the case. This results in the case being closed and the  
22 file being returned to the appropriate district service center.  
23 On the other hand, if the preaudit analysis suggested  
24 irregularities, the Revenue Agent would be responsible for  
25 setting the potential scope of the examination, correctly  
26 identifying the necessary records, and completing the audit.

27 While performing these duties, Morales was assigned to audit  
28 various tax returns filed by Mario and Dora Saikhon. Mr. Saikhon

1 is one of the largest farmers in the Imperial Valley. In addition  
2 to owning 3,500 acres in the Valley, he leases large tracts of  
3 land and owns interests in numerous other farming operations.  
4 Between 1985 and 1989, the income from Saikhon's farming  
5 operations alone grossed in excess of one hundred and thirty  
6 million dollars (\$130,000,000).

7 B. TAX RETURNS OF MARIO SAIKHON

8 Since approximately 1978, Morales has controlled or audited  
9 every single personal tax return of Mario and Dora Saikhon (Form  
10 1040) (hereinafter referred to as "Saikhon tax return"). In  
11 addition, he has controlled all of Saikhon's corporate returns (as  
12 well as several returns of Saikhon family members) that have been  
13 audited by the IRS over the last decade. In controlling these  
14 returns in violation of IRS policy, Morales ensured that no honest  
15 revenue agent was assigned to audit Saikhon's returns and enabled  
16 Saikhon to evade millions of dollars in taxes with impunity.

17 1. Tax Years 1977 - 1981

18 a. 1978 Tax Year

19 In early 1981, Morales was apparently assigned Saikhon's 1978  
20 personal tax return. In the course of his audit, he requested  
21 copies of Saikhon's 1979 Form 1040 (personal return) and Form 1120  
22 (corporate return) for the tax year ending February 28, 1979  
23 (hereinafter referred to as Saikhon's "79-02"). Such a request  
24 would be perfectly proper if the return contained issues that  
25 flowed through to the 1979 tax year.

26 Although many of his (and Palmer's) workpapers are undated,  
27 it appears that Morales initially computed that Saikhon would have  
28 a \$947,555 tax deficiency. This calculation was based solely on

1 the disallowance of tax shelters by another IRS Revenue Agent on  
2 the East Coast. According to Saikhon's accountant, Edgar Palmer,  
3 Saikhon was displeased with both the amount and timing of the  
4 deficiency. In response, Morales allowed Saikhon additional  
5 deductions unrelated to the tax shelter.

6 After a private meeting with Saikhon, Morales apparently  
7 proposed \$309,212 in additional deductions that reduced Saikhon's  
8 tax deficiency to \$741,605 for the 1978 tax year. Indeed,  
9 Morales informed Palmer that Saikhon was entitled to a \$122,900  
10 casualty loss on an ocean front wall abutting two of Saikhon's La  
11 Jolla residences, and a \$186,312 casualty loss to faulty "drainage  
12 ditch tiling" that allegedly became worthless in 1978. Although  
13 he recognized that these deductions were improper, Palmer believed  
14 that it was not his position to argue with an IRS agent who was  
15 unilaterally granting his employer additional deduction.

16 Saikhon apparently accepted the \$741,605 "reduced" tax  
17 deficiency as he gave Morales a check in this amount on or about  
18 August 27, 1981. By letter dated October 29, 1981, Palmer wrote  
19 Saikhon's attorney, Russel Kirk, to inform him that Morales and  
20 Saikhon reached "an agreement" on August 27 that Saikhon's 1978  
21 tax liability would be \$741,605. At this time, Palmer indicated  
22 to Kirk that "Morales is to hold the '79 and '80 returns as long  
23 as he can, or until Mario feels he has funds to pay those years."

24 Even though the IRS received Saikhon's \$741,605 check,  
25 Morales improperly failed to close out his audit of Saikhon's 1978  
26 return. Rather, he requested that Saikhon complete several

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1 "Consent to Extend the Time to Assess Tax" (Form 872) forms.  
2 These forms extended the statute of limitations on Saikhon's 1978  
3 return to November 30, 1983.

4 Morales' decision to improperly retain control of Saikhon's  
5 1978 audit allowed him to circumvent IRS safeguards and request is  
6 control of Saikhon's 1981 tax return. Because this return  
7 contained a \$1,496,272 Schedule F loss, Saikhon was theoretically  
8 entitled to carryback a "net operating loss" of \$614,788.  
9 Normally, this type of carryback loss would be carefully  
10 scrutinized by IRS auditors.

11 Based on his improper request, Morales received Saikhon's  
12 1981 return. Upon receipt, he applied the carryback to Saikhon's  
13 1978 tax return. However, an examination of IRS documentation  
14 reveals that Morales never audited, challenged or even questioned  
15 the amount of Saikhon's loss. In other words, Morales simply  
16 accepted the return as filed, preventing other auditors from  
17 challenging the loss.

18 On May 31, 1983, as a result of accepting this carryback,  
19 Morales revised his original estimation of Saikhon's 1978  
20 additional taxes to \$272,291, rather than the \$741,605 reflected  
21 in the original audit change form (or the \$947,555 he originally  
22 calculated).

23 b. 1977 Tax Year

24 In addition to the fraudulent deductions allowed by Morales  
25 on Saikhon's 1978 return, Morales also allowed Saikhon a deduction  
26 of \$500,000 in out of pocket expenses relating to the tax  
27 shelters. In contrast to the bogus casualty losses, these  
28 expenses would normally be deductible. In computing Saikhon's

1 allowable expense, Morales included a \$100,187.50 letter of credit  
2 expended in relation to the tax shelters. He then used this same  
3 letter of credit to obtain a fraudulent deduction on Saikhon's  
4 1977 return.

5 Saikhon's 1977 tax return was handled by an IRS Tax Auditor,  
6 Michael Lester, assigned to the IRS office in Los Angeles,  
7 California. After fraudulently informing Lester that he was  
8 auditing a subsequent year, Morales prepared work papers and an  
9 Audit Change Report demonstrating that Saikhon was entitled to  
10 \$300,000 in out of pocket expenses not considered in Lester's  
11 audit report. Included in these out of pocket expenses was the  
12 same \$100,187.50 letter of credit that Morales had allowed Saikhon  
13 to deduct in 1978.

14 c. 1979 Tax Year

15 Saikhon's 1979 tax return was officially assigned to Morales  
16 on July 7, 1981. Once again, due to the disallowance of tax  
17 shelters, Saikhon was forced to pay additional tax (on a taxable  
18 income of \$1,867,983). However, other than computing the tax owed  
19 due to the disallowance (\$900,092), Morales basically "no changed"  
20 the return. That is, there were no additional taxes due as a  
21 result of Morales' "audit." In fact, due to a \$7,413 adjustment  
22 to the "useful life" of the drainage ditch tiling, see supra, at  
23 p. 5, Morales reduced the tax Saikhon owed by approximately  
24 \$3,500.<sup>3/</sup>

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26 \_\_\_\_\_  
27 <sup>3/</sup>Morales also audited Saikhon's 1979-02 corporate return.  
28 Following his "audit" he allowed Saikhon a refund of \$2,384. This  
refund was predicated upon a "bad debt" allowance of \$5,000 not  
originally taken by Ed Palmer.

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d. 1980 Tax Year

As was the case with 1979, due to the disallowance of tax shelters, Saikhon was forced to pay \$252,166 in additional tax (on a taxable income of \$444,712) in 1980. However, once again, Morales "no changed" the return, except for a slight offset (\$7,606) due to the drainage ditch.

e. 1981 Tax Year

As indicated above, Morales improperly requested control of Saikhon's 1981 tax return containing a \$1,496,272 Schedule F loss. Based on this loss, Morales applied the carryback to reduce Saikhon's 1978 tax liability without auditing the return. A tax change form was executed on May 31, 1983 (along with the 1978 and 1979 tax years) reflecting his adjustments.

It should be noted that Morales also requested control of Saikhon's corporate return for the 1981 fiscal year. After obtaining control, he preceded to allow Saikhon a refund of \$46,000 based on an alleged bad debt of \$100,000. Morales' workpapers supporting this adjustment consisted basically of a conclusory narrative.<sup>4/</sup>

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<sup>4/</sup>Like an old dog finding its way home, this return eventually is reassigned to Morales as a Joint Committee Examination. On May 11, 1988, as a result of a net operating loss claimed by Saikhon's corporation for the 1987 fiscal year, Saikhon applied to the IRS for a refund of \$474,123 (this refund effected Saikhon's corporate returns for fiscal years 1981, 1982, 1984 and 1985). On June 27, 1988, the IRS assigned Saikhon's corporate return for fiscal year 1981 (along with 1982, 1984, 1985 and 1987) to Morales for Joint Committee examination. Despite this designation, between June 27, 1988 and March 27, 1990, Morales charged no time whatsoever to these returns. Nor, did it appear that he did any work on these examinations as the presence of workpapers was conspicuously absent from the case file.

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f. Bribe Payments

Unfortunately, due to the absence of bank records, it is impossible to conclude exactly what bribes, if any, were paid to Morales during this period. However, it is clear that during this period Morales was receiving free meals, produce and other incidental benefits from Saikhon and other taxpayers.

2. Tax Years 1982 - 1983

a. 1982 Tax Year

According to IRS records, Saikhon's 1982 tax return was automatically identified for examination. On June 4, 1984, Saikhon's 1982 tax return was officially assigned to Morales as reflected by a "Group Control Card" (Form 5345). That same day, Morales "surveyed" the return.

As a result of Morales surveying the 1982 tax return, it was sent back to the federal record center. While en route to the records center, the IRS assigned this return to the "Taxpayer Compliance Measurement Program" (hereinafter referred to as "TCMP"). This program normally subjects the return to an in-depth examination of all line items. As a result of being granted TCMP status, the return was sent back to Morales on or about September 17, 1984.

After receiving the return for TCMP treatment, Morales charged 112 hours to the audit. Following his TCMP audit, Morales allegedly discovered \$170,000 of additional itemized deductions that Saikhon's accountant allegedly failed to list on the return. As a result of this conclusion, Saikhon was granted a \$65,296 refund. The IRS officially closed the 1982 TCMP audit from Morales' group on December 5, 1984.

1 According to IRS records, Saikhon's corporate return for  
2 fiscal year 1982 was once again automatically identified for  
3 examination. Because Morales was auditing Saikhon's corporate  
4 return for fiscal year 1981, he was assigned the 1982 corporate  
5 return. However, Morales "surveyed" the return the same day it  
6 was received. Even though this return should not have even been  
7 discussed with the taxpayer, a copy with the survey stamp already  
8 in place was found in Saikhon's office during the execution of the  
9 search warrant.<sup>5/</sup>

10 b. 1983 Tax Year

11 On June 28, 1984 (shortly after surveying the 1982 personal  
12 return), Morales apparently fabricated a reason to request  
13 Saikhon's 1983 return. Upon receiving control of the return,  
14 Morales made several minor adjustments. In total, his actions  
15 resulted in Saikhon owing a whopping \$205 in additional taxes (the  
16 return as filed reflected a tax liability of \$818,025 on  
17 approximately \$20,000,000 in gross income).

18 Once again, due to the absence of bank records, it is  
19 difficult to state with certainty exactly what Morales received in  
20 return for his actions on Saikhon's 1982 and 1983 tax returns.  
21 Fortunately, Saikhon's original check ledger discovered in the  
22 search of the Morales garage, sheds some light on the subject.

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26 5/As previously discussed, this return is reassigned to  
27 Morales as part of the Joint Committee Examination. Once again,  
28 Morales charges no time whatsoever to this return. Nor, did it  
appear that he did any work on this occasion as the presence of  
workpapers was again conspicuously absent from the case file.

1 This ledger reveals that on July 20, 1984 (shortly after Morales  
2 surveyed Saikhon's 1982 personal return), Saikhon issued a \$25,000  
3 check to Sonora Diesel, a company owned by Morales' brother.

4 In fact, Rene Morales provided absolutely no services to  
5 Saikhon. After utilizing the check to fund Sonora Diesel's  
6 Mexican operation, he repaid the defendant in cash. In delivering  
7 the cash, Rene followed his brother's warning to never take more  
8 than \$10,000 across the border at any one time.

9 In addition to the Sonora Diesel check, Saikhon also issued  
10 a \$8,400.48 check to Mossy Nissan on December 4, 1984 (utilized  
11 to Purchase Morales a Nissan Pick-up truck). Ten days later,  
12 Saikhon issued a \$4,000 check to Morales' son, Richard.

13 The first of these checks was issued the same day Morales granted  
14 Saikhon the \$65,296 refund on his 1982 TCMP audit.

15 In this same period, Morales also received ever increasing  
16 sums of cash from Mario Saikhon and other taxpayers.<sup>6/</sup>  
17 Approximately \$50,000 of these cash payments can be traced to

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19 <sup>6/</sup>At trial, the Government intends to introduce evidence  
20 demonstrating that Morales had secreted original taxpayer records  
21 and official IRS materials relating to taxpayers whom he had  
22 audited. These taxpayers include two large Imperial Valley  
23 farmers Ben and Tony Abatti (copies of 1976 through 1978 general  
24 ledgers, official correspondence dated 2/7/89, and a copy of Ben  
25 Abatti's personal tax return for 1987); Danny Danenberg (1985  
26 corporate return and various related workpapers; eight separate  
27 California Farm Exchange returns; official IRS correspondence,  
28 appellate papers and various taxpayer checks and invoices); J.  
Sterling Hutchinson (taxpayers original tax returns for 1972 and  
1973); Terry Singleton (copies of almost a dozen separate personal  
and partnership tax returns plus various workpapers); Joe Jacobs  
(copies of five separate personal tax returns plus various  
workpapers); Mario Saikhon (copies of 16 separate personal and  
partnership tax returns, various workpapers, and a massive amount  
of original and duplicate taxpayer receipts, checks, ledgers and  
other records); and George Hopelian (an original IRS transcript  
and various taxpayer records).

1 deposits in the Cabrillo Federal Credit Union in 1985 and 1986.  
2 Evidence of the cash bribes also appears in various notations  
3 (bribe ledger) from Morales 1987 diary, a Danenberg check written  
4 to cash, and a \$2,000 cash wrapper from Saikhon's El Centro bank  
5 found in the Morales residence.

6 3. Tax Years 1984 - 1988

7 a. 1984 Tax Year

8 On August 19, 1986, Saikhon's 1984 return was assigned to  
9 Morales. Prior to Morales taking any action, he arranged for his  
10 friend, George Cossolias, to represent Saikhon during the audit.<sup>7/</sup>  
11 On October 10, 1986, Morales officially requested records relating  
12 to Saikhon's 1984 tax year.<sup>8/</sup> Due to the approach of the civil  
13 statute of limitations, Morales had Saikhon execute a waiver on  
14 September 10, 1987.

15 This waiver extended the civil statute only until March 30,  
16 1989. However, Morales incorrectly informed his supervisor that  
17 the extension was unlimited in duration. As a result of this  
18 error, Morales' manager was not aware of any impending statute of  
19 limitation problems. Although he continued to list Saikhon's 1984  
20 return on his time sheet up until he was relieved of his duties,  
21 the statute had "blown" on April 30, 1989.

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24 <sup>7/</sup>Morales and Cossolias had an unusual relationship. Among  
25 other things, Morales: (1) had a "free run" of the office;  
(2) lent money to Cossolias; (3) directed clients to his firm; and  
(4) convinced Cossolias to employ his son.

26 <sup>8/</sup>It must be noted that at the same time Morales began  
27 charging work to Saikhon 1984 and 1985 returns (and Saikhon began  
28 using Cossolias to prepare his 1986 return), Morales started  
systematically accepting bribes from Saikhon through the ghost  
employee, Reynaldo Cendejas. See infra, at p. \_\_\_.

1           Although Morales was allegedly auditing Saikhon's 1984  
2 return for almost four years, absolutely no workpapers were  
3 present in the case file for this tax year. Significantly,  
4 original taxpayer records and IRS workpapers prepared by Morales  
5 in November 1986 were subsequently seized in various locations in  
6 the Morales residence. In this regard, it should be noted that  
7 IRS policy prohibited agents from leaving these types of materials  
8 in their houses.<sup>9/</sup>

9                           b.    1985 Tax Year

10           Prior to being assigned Saikhon's 1984 tax return, Morales  
11 officially requested his 1985 return. This request was made by  
12 Morales even though he had absolutely no official interest in  
13 Saikhon's post 1983 returns on August 14, 1986. In justifying his  
14 request, Morales falsely claimed that he had a "continuing issue  
15 from 1984."

16           Once again, a review of IRS files failed to reveal any  
17 workpapers whatsoever for this tax year. Rather than performing  
18 an audit, Morales simply continued to carry both the 1984 and 1985  
19 returns on his time sheets until he was relieved of his  
20 duties.<sup>10/</sup>

21           On October 24, 1986, Morales requested control of Saikhon's  
22 corporate return for the 1985 (and 1986) fiscal year. He  
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24           <sup>9/</sup>As previously discussed, this return is also reassigned to  
25 Morales as part of the Joint Committee Examination. Morales again  
26 charges no time whatsoever to this return. In addition, it does  
not appear that he did any work on this occasion as the file  
reveals the total absence of workpapers.

27           <sup>10/</sup>Nor were any workpapers found at the office of Saikhon's  
28 designated representative, George Cossolias. Indeed, his  
accountant admits to having done no work on either tax audit.

1 attempted to justify his request for control on the basis that the  
2 returns were somehow related to Saikhon's personal tax return. In  
3 any event (as is the case with Saikhon's 1984, 1985, 1986 and 1987  
4 personal returns), Morales performed no work whatsoever on this  
5 audit.

6 c. 1986 Tax Year

7 (1) Preparation of the Personal Tax Return

8 Contrary to his usual practice, Saikhon allowed Cossolias to  
9 prepare his 1986 tax return. According to Saikhon, the return had  
10 to be prepared by an accountant in San Diego so that "Bob Morales  
11 could clear it." Pursuant to Saikhon's instructions, Palmer  
12 subsequently turned over his workpapers to George Cossolias.

13 On February 10, 1987, Cossolias and Ron Ulman (the employee  
14 assigned the task of preparing the return) traveled to El Centro  
15 to begin work on the return. While Ulman familiarized himself  
16 with Saikhon's books and records, Cossolias and Saikhon filled out  
17 a tax questionnaire. Over the next several days, Ulman prepared  
18 a preliminary tax return based on trial balances obtained from  
19 Saikhon's books and records. These preliminary computations  
20 revealed that Saikhon would owe substantial amounts of tax.

21 Upon learning of the preliminary calculation, Saikhon  
22 expressed displeasure over the amount of tax due and owing.  
23 However, prior to finalizing the return, Morales called Cossolias  
24 and told him that Saikhon's trial balances failed to include  
25 several reductions in income. In particular, he stated that a  
26 \$615,175.50 and a \$250,000 bad debt from Danny Danenberg (another  
27 Imperial Valley farmer who Morales was auditing) were omitted.

28 //

1 That evening, Saikhon showed up at Cossolias' office with  
2 Morales. The three of them discussed the bad debts in Cossolias'  
3 library. Following the meeting, Cossolias directed Ulman to  
4 recompute Saikhon's tax liability utilizing the bad debt write  
5 off. As a result of the adjustment, Saikhon's tax liability was  
6 reduced by approximately \$300,000.

7 Significantly, Cossolias' workpapers contain no support for  
8 these substantial adjustments to Saikhon's reported income. In  
9 fact, Cossolias admits that a review of his workpapers demonstrate  
10 that the adjustment is fraudulent. These workpapers contain an  
11 accounting of crop settlements between Saikhon and Danenberg (dba  
12 California Farm Exchange) that in fact demonstrate that Saikhon  
13 received the monies he claimed were bad debts. A copy of this  
14 accounting was also found in the master bedroom at the Morales  
15 residence.<sup>11/</sup>

16 (2) Audit of the 1986 Personal Tax Return

17 On May 24, 1989, Morales requested control of Saikhon's 1986  
18 (and 1987) tax returns. As a result of his request, the IRS  
19 assigned control of Saikhon's 1986 (and 1987) return to Morales on  
20 June 3, 1989. Not surprisingly, (as was the case with Saikhon's  
21 1984 and 1985 return), a review of the official case file failed

22 //

23 //

24 //

25

26 11/When preparing Saikhon's financial statements, Ed Palmer  
27 discovered the adjusting journal entry prepared by Cossolias'  
28 office relating to the alleged bad debts. Palmer questioned  
Saikhon's bookkeeper, Marilyn Tison as to the origin of this  
entry. Tison replied, "You don't want to know about it."

1 to reveal any workpapers whatsoever for this tax year. Once  
2 again, Morales simply listed the return on his time sheet without  
3 performing any apparent work on the audit.<sup>12/</sup>

4 d. 1987 Tax Year

5 On May 24, 1989, Morales requested control of Saikhon's 1987  
6 tax return utilizing a fraudulent justification. Once again, (as  
7 was the case with Saikhon's 1984, 1985 and 1986 returns), a review  
8 of the case file failed to reveal any workpapers whatsoever for  
9 this tax year.

10 On April 28, 1987, Saikhon executed his corporate return for  
11 fiscal year 1987. This return reflected a loss of \$1,109,414 on  
12 gross receipts of \$11,039,847. Based on this loss, on May 11,  
13 1987, Saikhon executed three separate refund applications seeking  
14 \$472,123. Several days later, Saikhon sent his corporate return  
15 to the IRS Service Center in Fresno, California (received by  
16 Fresno on May 18, 1987).

17 Rather than also mailing his refund applications to Fresno,  
18 Saikhon mailed the applications directly to Morales on June 4,  
19 1987. Upon receipt, Morales sent the applications to the Fresno  
20 Service Center. On June 22, 1987, the IRS Service Center approved  
21 Saikhon's refund claims.

22 Due to the size of the refund (in excess of \$200,000), the  
23 IRS was required by statute to prepare a special written report to  
24 be filed with the Joint Committee on Taxation in Washington, D.C.

25  
26 12/As previously stated, Morales requested control of  
27 Saikhon's corporate return for the 1986 and 1985 fiscal years.  
28 As was the case with Saikhon's 1984, 1985, 1986 and 1987 personal  
returns, a review of the case file failed to reveal any workpapers  
whatsoever for this tax year.

1 Accordingly, the IRS consolidated all of the affected returns  
2 (1981, 1982, 1984, 1985 and 1987) and assigned them to Morales  
3 because he was allegedly currently auditing Saikhon's 1984 and  
4 1985 returns. Once again, Morales performed absolutely no work on  
5 these returns.

6 On November 16, 1987, Saikhon's corporation filed a second  
7 return for the 1987 fiscal year. This return was necessitated by  
8 Saikhon's corporation changing its accounting periods to a fiscal  
9 year ending on July 31, 1987. After this return was computer  
10 selected for audit, it was assigned to Morales as he was auditing  
11 numerous Saikhon returns. This return was simply "surveyed" by  
12 Morales.

13 e. 1988 Tax Year

14 At the time Morales was relieved of his duties, Saikhon's  
15 1988 tax return had not yet been assigned for audit. However,  
16 once again Morales' shadow appears on the return prior to it even  
17 being filed. The return, prepared by Jeff Nunn, CPA, of the firm  
18 Calderon, Jaham & Osborn, CPA's, in El Centro, California, was  
19 signed by Saikhon on March 1, 1989. For some reason, instead of  
20 being mailed directly to the Fresno Service Center, the return was  
21 then given to Morales later in the day.

22 In turn, Morales personally delivered the return to the San  
23 Diego Examination Division prior to the end of the day (evidenced  
24 by the date stamp on the tax return). Upon delivery to the IRS,  
25 Morales attached a routing slip to the return and forwarded it to  
26 the Fresno Service Center. On the routing slip, Morales wrote the

27 //

28 //

1 remark, "Taxpayer is under audit for prior years." In this  
2 manner, Morales ensured that the 1988 return (if identified for  
3 audit by the IRS) would be assigned to him.

4 C. ILLEGAL BRIBE PAYMENTS TO MORALES FROM SAIKHON

5 1. Reynaldo Cendejas Payroll Checks

6 At approximately the same time Morales assumed control of  
7 Saikhon's 1984 and 1985 tax returns, the two hatched a scheme to  
8 further conceal Saikhon's bribe payments. Simply stated, the  
9 scheme consisted of placing Morales' brother-in-law, Reynaldo  
10 Cendejas, on Saikhon's payroll even though he performed no work.  
11 The payroll checks would then be sent on a weekly basis to the  
12 Morales residence.

13 On October 3, 1986, utilizing the first two payroll  
14 checks, Morales opened up a savings account in the name of  
15 Reynaldo Cendejas at the Heartland Savings and Loan.  
16 Subsequently, Morales deposited 178 Reynaldo Cendejas payroll  
17 checks (totalling \$167,865.91), into the Cendejas account at  
18 Heartland. The penultimate Cendejas payroll check (dated  
19 March 20, 1990), was found by IRS agents in Morales' wallet  
20 located in the master bedroom of his residence on March 27, 1990.  
21 The last Cendejas payroll check (dated March 27, 1990), was seized  
22 by IRS agents during the search of Saikhon's business on that  
23 date. According to Saikhon's office manager, no further payroll  
24 checks have been issued in Mr. Cendejas' name.

25 It should be noted that the activity in the account is  
26 consistent with the conclusion that it is being controlled by

27 //

28 //

1 Morales, and not utilized by an ordinary farm employee and father  
2 of six. In addition, an analysis of the expenditures reveal that  
3 they were all for Morales' benefit.

4 a. Obstruction of Justice

5 In reality, Reynaldo Cendejas is a retired furniture seller  
6 living in Mexico who only met Mario Saikhon on two occasions.  
7 While their first meeting was merely social, their second was not.  
8 Upon travelling to San Diego in August 1990 to renew his driver's  
9 license, Morales told Cendejas that he was "in a very bad spot"  
10 and needed Reynaldo's help. Although Morales was somewhat unclear  
11 as to the exact origins of his difficulties, he informed Reynaldo  
12 that it stemmed from the government discovering a connection with  
13 Mario Saikhon.

14 On August 24, 1990, Morales and Cendejas went to Anthony's  
15 Fish Grotto in La Mesa, California to meet Mario Saikhon.  
16 According to Morales, the purpose of the meeting was to have  
17 Reynaldo sign various contracts indicating that he was employed by  
18 Saikhon. When he arrived, Saikhon explained that he did not yet  
19 have the contracts. However, Morales and Saikhon then proceeded  
20 to go over "the story" they wanted Cendejas to tell people.<sup>13/</sup>

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21 <sup>13/</sup>According to Morales and Saikhon, Cendejas was to tell  
22 people that he had been employed by Saikhon for four and a half  
23 years. he was told that his salary was originally \$1,100 per  
24 week, but that it was reduced in January, 1990 by half. Mario  
stated that Reynaldo was to say that he stopped working for him in  
longer.

25 During this conversation, Morales told Cendejas to say that  
26 he was being paid this money for being in charge of carrots and  
asparagus in Mexicali. It was Morales' belief that Cendejas  
27 should be able to pull it off because he knew some farmers in  
Moches, Mexico. Therefore, Cendejas was to say that he was  
receiving money from Mario in return for purchasing carrots in  
28 Moches for delivery to Saikhon.

1 According to Morales, it was imperative that Cendejas insist  
2 that he was receiving money from Mario. If Cendejas did not  
3 corroborate this story, Morales stated that he (Morales) would be  
4 in big trouble. Although Cendejas recognized that this story was  
5 all a big lie, he initially agreed to do it because Morales was  
6 married to his sister.<sup>14/</sup>

7 b. Cendejas Tax Returns

8 In order to conceal the illegal bribes, Morales filed tax  
9 returns for Reynaldo Cendejas in 1986, 1987 and 1988. These  
10 returns list the Saikhon wages and most of the interest generated  
11 thereon. In all other respects, they appears to be complete  
12 shams. Based on these forged and fraudulent returns the IRS  
13 issued over \$5,000 in tax refunds in Reynaldo's name.

14 2. J.B. Farms Interest Payments

15 In addition to the \$171,327.93 (plus interest and tax  
16 refunds) received through payroll checks to Reynaldo Cendejas,  
17 Morales also accepted bribes through the use of the shell  
18 corporation J.B. Farms (aka and also dba "J.F. Farms", "JB Farms"  
19 and "JF Farms"). J.B. Farms was in all respects a true "shell"  
20 corporation that had no legitimate business and served only to  
21 facilitate illegal activity. In order to insulate himself,  
22 Morales incorporated J.B. Farms in Arizona using the address of

23 //

24 //

25 \_\_\_\_\_  
26 <sup>14/</sup>Since September 1990, Cendejas has spoken to Morales on  
27 various occasions. In their conversations, Cendejas has attempted  
28 to convince Morales to simply tell the Government the truth.  
Despite his efforts, Morales insisted that Cendejas continue to  
maintain in any discussions with federal agents that he had worked  
for Saikhon.

1 his brother Rene. In addition, he failed to list his name as one  
2 of the principals and paid the initial incorporation fee with a  
3 \$700 check drawn on the Cendejas Heartland account.

4 Subsequently, Mario Saikhon issued eight checks in the name  
5 of J.B. Farms (and one in the name of Cendejas Farms)<sup>15/</sup> that  
6 totalled \$2,298,470. The first two checks totalling \$118,477 were  
7 deposited in the First La Mesa Bank. Similar to the Cendejas  
8 Heartland expenditures, all withdrawals from the J.B. Farms' First  
9 La Mesa accounts are consistent with the conclusion that the funds  
10 were meant to be retained by Morales as bribe payments. In any  
11 event, it is clear that the interest generated on these funds was  
12 to be retained by Morales.

13 The final seven checks were deposited in a variety of  
14 accounts at the Great American First Savings Bank between October  
15 1977 and December 1988. As for these funds, it is clear that the  
16 principle (\$1,830,000) was destined to be eventually returned to  
17 Mario Saikhon.<sup>16/</sup> In this regard, the bribe consists of the use  
18 of the funds prior to their return (among other things, these  
19 funds generated over \$100,000 in interest).

20 \_\_\_\_\_  
21 <sup>15/</sup>Morales also arranged to have a second sham corporation,  
22 Cendejas Farms, incorporated in California. Once again, Morales  
23 utilized various family members to serve as straw officers. The  
24 corporation was originally set up using Bobby Morales office  
25 address and a \$350 check drawn on a J.B. Farms account.  
26 Similar to J.B. Farms, Cendejas Farms conducted no legitimate  
27 business and existed solely to facilitate the transmission,  
28 concealment and expenditure of illegal payments received from  
Saikhon.

<sup>16/</sup>The overwhelming majority of these repayments were  
deposited by Saikhon in a nominee bank account in the name of  
Saikhon's uncle. This allowed Saikhon to claim illegal deductions  
when the checks were issued, but not declare the income when they  
were repaid. In total, Saikhon funnelled over 10 million dollars  
in tax evaded income through this account.

1 An analysis of the checks issued from the above listed  
2 accounts corroborates the theory that Saikhon expected Morales to  
3 eventually return the majority of the principal from the checks  
4 written to J.B. Farms. However, the analysis also indicates that  
5 the remainder of the withdrawals are consistent with the  
6 conclusion that the interest was being retained by Morales as a  
7 bribe from Saikhon.<sup>17/</sup>

8 3. Other Benefits

9 In addition to accepting monetary bribes from taxpayers, it  
10 appears that Morales and his family accepted a number of other  
11 incidental benefits in return for assuring that Saikhon's received  
12 favorable treatment on any tax audits. These benefits included,  
13 inter alia, a new 1985 Nissan pick-up, employing one of the  
14 Morales children, the use of Saikhon's corporate plane, free  
15 produce, a pool table, meals, liquor, and tickets to various  
16 sporting events.

17 4. Sonora Diesel

18 Saikhon and Morales also used Rene Morales' company Sonora  
19 Diesel to facilitate their illegal activity. In July 1984,  
20 Saikhon issued a \$25,000 check to Sonora Diesel. Morales  
21 instructed his brother that he was to treat the payments as an  
22 "interest free loan". This money was to be utilized by Sonora  
23 Diesel and then paid back in 60 to 90 days. The terms of the

24 //

25  
26 <sup>17/</sup>Morales utilized five undisclosed Mexican bank accounts  
27 (established with proceeds derived from Saikhon checks written to  
28 J.B. Farms) to further disguise and facilitate his illegal  
activities. These accounts were used both to conceal his own  
illegal income as well as funnel money back to Saikhon.

1 repayment envisioned that Rene (and his partner Luis Guerrero)  
2 would pay Morales back with cash that Sonora Diesel generated in  
3 its normal course of business.

4 The next Saikhon check was not given to Rene until January  
5 1988. On this occasion, Rene was given a \$50,000 check drawn on  
6 Mario Saikhon's general business account (deducted as a fuel  
7 expense by Saikhon in December 1987). Over the next several  
8 months, Rene repaid his brother in cash. Pursuant to his  
9 brother's instructions, Rene never brought more than \$10,000 in  
10 cash over the border when repaying the "loan."

11 In late March 1990, Morales told Rene that he was upset  
12 because federal agents had seized records that would reveal that  
13 J.B. Farms did not exist. In this conversation, the defendant  
14 admitted that J.B. Farms was merely a sham company that he and  
15 Mario Saikhon were using to evade taxes.

16 After telling Rene that he was assisting Saikhon to evade  
17 taxes, Morales asked him to help by destroying Sonora Diesel's  
18 books and records. Morales explained that these records could  
19 show that he was assisting Saikhon in evading taxes by indicating  
20 how he was moving money through various bank accounts. By  
21 destroying these records, Federal Agents would not be able to  
22 force Rene to produce them in response to a subpoena. Upon  
23 returning to Arizona, Rene destroyed Sonora Diesel's records by  
24 tearing them up and throwing them in the garbage. In addition,  
25 Rene told his partner to destroy all records he was maintaining in  
26 Mexico. Shortly thereafter, Rene received a phone call from his  
27 brother. In this conversation, Morales confirmed that Rene had  
28 destroyed all of the Sonora Diesel records as instructed.

1 In late May 1990, Rene was issued a grand jury subpoena  
2 relating to the instant prosecution. Following receipt of the  
3 subpoena, he contacted his brother to inform him that he was  
4 suppose to testify the following month. Subsequently, Morales met  
5 with Rene and told him to lie to the grand jury. Specifically, he  
6 wanted Rene to tell the grand jury that J.B. Farms was in fact a  
7 farm owned by Morales. In addition, he wanted Rene to tell the  
8 grand jury that the checks he received from J.B. Farms were for  
9 farm related activity.

10 D. TAX EVASION

11 Up until the tax year 1989, Morales filed joint personal  
12 income tax returns with his wife, Sarah. Although these returns  
13 contain a wide array of questionable deductions and exemptions,  
14 most notable is the failure to declare any of the income received  
15 from Mario Saikhon. In this regard, Morales failed to declare:  
16 (1) any of the payroll checks to Reynaldo Cendejas; (2) the  
17 interest generated from Saikhon funds deposited in various bank  
18 accounts; and (3) other incidental benefits.

19 E. BRIBES FROM OTHER TAXPAYERS

20 As indicated in fn. 4, Morales possessed in his residence  
21 both original records and IRS documents relating to a number of  
22 different taxpayers. These records are particularly significant  
23 due to the fact that, similar to Mario Saikhon, Morales had  
24 previously audited these individuals. In this regard, they  
25 demonstrate not only his disregard for IRS policies and procedures  
26 designed to protect the integrity of the system, but are also  
27 circumstantial evidence of additional bribe payments.

28 //

1           In particular, the materials he secreted that pertained to  
2 Danny Danenberg (dba California Farm Exchange) support the  
3 government's theory that Morales was accepting cash bribes in  
4 exchange for failing to properly audit tax returns. This  
5 conclusion is buttressed by Morales' 1987 diary which has a  
6 variety of coded references suggesting a number of bribe payments  
7 by Danenberg. One of these entries is further backed up by a  
8 check Danenberg wrote to cash several days prior to the date  
9 Morales records the bribe.

10           Finally, these materials also corroborate the fact that  
11 Morales was taking illegal payments from Singleton and Jacobs for  
12 the preparation of their tax returns. Although the payments were  
13 for relatively small sums (\$200 - \$400), Morales later audited the  
14 returns he himself prepared. Regarding one of these audits,  
15 Morales told Singleton that he had signed off on one of  
16 Singleton's audits that had come in for review.

17           F.    GOVERNMENT UNDERCOVER INVESTIGATION

18           Prior to a full understanding of Morales illegal activities,  
19 the IRS introduced Morales' to an undercover agent in order to  
20 determine if he: (1) was assisting taxpayers in filing false  
21 returns; (2) soliciting bribes in exchange for changing the result  
22 of tax audits in the taxpayer's favor; and (3) improperly  
23 referring client's to a local CPA. The Undercover Agent, Roberto  
24 Martinez, acting in an undercover capacity as Roberto Mendez  
25 (hereinafter referred to as "UCA Martinez"), was introduced to  
26 Bobby Morales on September 27, 1988 and continued to have contact  
27 with both Moraleses through August 1989.

28    //

1           During this time, Martinez discussed a variety of legal and  
2 illegal activity with the Moraleses. These discussions included  
3 the advancement of a loan to the agent, the preparation of false  
4 income tax returns, and the laundering of narcotics proceeds.  
5 Although there is a logical overlap in these discussions, for  
6 clarity, they shall be addressed separately.

7           1.    The Loan

8           In order to determine if Morales possessed large amounts of  
9 cash not commensurate with his employment as a Revenue Agent,  
10 Martinez approached Bobby Morales on September 27, 1988. While  
11 purporting to meet with Bobby Morales' business partner, John  
12 Arnold, Martinez was introduced to Bobby Morales for the first  
13 time. During the conversation, Martinez explained that, although  
14 he was currently operating an import-export business headquartered  
15 in Texas, he wanted to relocate in San Diego.

16           Martinez told Bobby Morales that he needed to have financial  
17 statements prepared in order to obtain short term loans from  
18 financial institutions. The agent stated that he often needed  
19 short term loans between \$12,000 and \$20,000 until his business  
20 was able to collect on outstanding accounts receivable. At a  
21 subsequent meeting, Martinez continued to indicate that he had an  
22 immediate need for \$15,000 to \$20,000.

23           On November 7, 1988, UCA Martinez arranged to have lunch with  
24 Bobby Morales. During their luncheon, Bobby inquired whether  
25 Martinez still needed a loan. Bobby stated that "[they] might be  
26 able to get someone to loan you some money," if Martinez could  
27 provide collateral and had the appropriate financial statements.  
28 According to Bobby, the loan was to be made by an unnamed

1 corporation. After lunch, Morales told the undercover agent to  
2 call him and he would set-up an appointment regarding the loan.

3 On November 11, 1988, during a luncheon meeting with Bobby  
4 Morales, UCA Martinez was introduced to the defendant. Bobby  
5 explained that Morales was the Chief Executive Officer of a  
6 corporation which they owned on the side. When discussing the  
7 terms of the loan, Morales stated that he did not want to be  
8 repaid in cash because of the reporting requirements for  
9 transactions in excess of \$10,000. After explaining the CTR  
10 requirements, Morales volunteered two suggestions for avoiding  
11 having CTR's filed if UCA Martinez didn't "want the problems with  
12 the report made out."<sup>18/</sup>

13 During their conversation, Morales also acknowledged that he  
14 was employed by the IRS. He then admitted to Martinez that it was  
15 improper to audit someone he had met (or a friend). According to  
16 Morales, upon retirement he intended to do consulting work and  
17 already had three clients. Morales identified one of these  
18 clients as a farmer from the Imperial Valley whose gross receipts  
19 are in excess of \$30 million. Morales then claimed that he  
20 currently gave this "client" advice at no charge because of the  
21 "conflict of interest."

22 On November 17, 1988, Martinez met Bobby Morales at the law  
23 offices of Steven Wilhelm. During this meeting, Wilhelm drew up  
24 loan documents (12 percent interest) and Bobby gave Martinez a  
25

---

26 <sup>18/</sup>In particular, Morales explained how the undercover agent  
27 could illegally structure his deposits. In this regard, he stated  
28 that Martinez could deposit the cash at multiple institutions on  
the same day, and deposit multiple amounts at the same institution  
on different days.

1 \$15,000 check drawn on J.B. Farms. Although the check was drawn  
2 on a J.B. Farms account, Bobby explained that it was really from  
3 Cendejas Farms which would repay J.B. Farms for the amount of the  
4 check. According to Bobby, the Farms bring in a lot more income  
5 than his accounting business.

6 2. False Returns

7 During the period December 12, 1988, through March 7, 1989,  
8 UCA Martinez, met several times with the Moraleses for the purpose  
9 of preparing his 1985 through 1988 tax returns. Previously,  
10 Martinez had stated to the Moraleses that his accountant in Texas  
11 had prepared schedules showing his income and expenses for those  
12 years, and estimated the taxes due on the returns. Basically,  
13 Agent Martinez explained to the Moraleses that he had not filed  
14 those delinquent returns because he did not want to pay all the  
15 tax rightfully owed. Agent Martinez told the Moraleses that he  
16 wanted to clear up his prior tax problems because it had been  
17 bothering him, but he emphasized that he did not want to pay the  
18 tax.

19 On January 12, 1989, the undercover agent had a meeting with  
20 Bobby Morales. At this meeting, Bobby Morales instructed the  
21 Agent as to how he could reduce the agent's overall tax liability  
22 by inflating the actual commission deductions contained on the  
23 schedules. Bobby Morales explained to the agent that the chances  
24 of being audited would not be high, and the agent's taxes could  
25 basically be cut in half utilizing the fabricated figures. If  
26 audited, Bobby counseled Martinez to cover up the inflation of the  
27 commission deduction by lying to the IRS.

28 //

1 On January 24, 1989, the undercover agent met with the  
2 defendants at the Morales residence. During this meeting, Morales  
3 specifically indicated that he was aware that his son had reduced  
4 the agent's taxes from \$105,000 to \$46,642. Moreover, he  
5 indicated that he was aware that the tax was reduced through the  
6 use of the commission deduction.

7 On February 1, 1989, the agent met the Moraleses at their  
8 residence to pick up the completed tax returns for 1985 through  
9 1987. During this meeting, Agent Martinez specifically asked  
10 Morales if there would be any problems caused by the fact that he  
11 had not actually paid the inflated commission figures contrived by  
12 the Moraleses. In response, Morales replied, "No, I'll take care  
13 of it."

14 Agent Martinez continued to indicate that he was worried  
15 having those items in the tax returns. Morales however, explained  
16 how they could cover themselves by lying to the IRS. In  
17 particular, he suggested that nobody will be able to find out if  
18 he tells the IRS that his records were lost.<sup>19/</sup>

19 3. Money Laundering

20 On January 24, 1989, while assisting Martinez in the  
21 preparation of the false tax returns, Morales on his own started  
22

23 <sup>19/</sup>During this meeting, Bobby Morales also counseled the  
24 agent on how he could evade future income tax by improperly  
25 adjusting his commission expenses. In particular, he stated that  
26 if the agent continues to encounter this "type of big income" and  
27 does not "want to pay [all the correct tax, he] might want to find  
28 someone that can take commissions." The Moraleses then explained  
that Martinez could accomplish this by finding someone that he  
could write checks to that could be deducted as a payroll or  
commission expense. Bobby then suggested that the individual  
could keep some of the money for his assistance in the illegal  
scheme, and the balance could be returned to the agent.

1 to lecture the agent in how to avoid having Currency Transaction  
2 Reports filled out. During his lecture, Morales informed the  
3 agent that the purpose of the report was to trace "laundering  
4 operations." He then proceeded to instruct the agent on various  
5 methods of laundering money.

6 On February 1, 1989, at a meeting with the Moraleses at their  
7 residence, Morales continued to emphasize ways to evade the CTR  
8 requirement. Morales told the agent that if it's necessary he'd  
9 assist in the formation of an Arizona Corporation. With this  
10 corporation, Morales suggested that the agent could use both a  
11 personal and a corporate banking account to assist in the illegal  
12 laundering money.

13 In this conversation, Morales also volunteered to personally  
14 assist the agent in the money laundering. Among other things, he  
15 told the agent:

16 I can, I can, I can launder \$20,000. No problem. I  
17 have another bank account. I just take it in, take  
18 \$4,000 a day, take \$3,000 another day and, uh, and then,  
and then I give you a check and then you go deposit it  
in your bank account.

19 The undercover agent then asked Morales, "if a guy came by and  
20 gave you \$30,000, then you could take care of it for me?"

21 Morales, replied:

22 Uh huh (positive reply). That's why I say the two  
23 corporations in Arizona and one in California....And  
24 then after you get that, we'll go on and then you can  
25 think about incorporating in Arizona. Well, I'll get  
26 in, in touch with that. We'll go to Tucson, fly over  
there, get incorporated, and then fly back.....Because  
I, I like that idea of two states. It makes it very  
hard for anybody to check into two states.

27 //

28 //

1 In this fashion, the defendant instructed the agent to use the  
2 same approach that Morales and Saikhon were using to launder some  
3 of the illegal bribe payments.

4 On March 12, 1989, in a telephone conversation with Morales,  
5 Agent Martinez inquired if his offer to launder money for him was  
6 still open. Morales replied that his offer to "move" \$30,000 or  
7 \$40,000 was still good. The agent then indicated that he would be  
8 in San Diego in a couple days with the money. Morales told the  
9 agent that it would take about three days to get a cashier's  
10 check. Morales stated that they could discuss his fees when  
11 Martinez dropped off the money.

12 On March 14, 1989, Agent Martinez met with the Moraleses to  
13 give them \$35,000 in cash. At this time, Bobby Morales, said he  
14 could convert the cash to cashier's checks in two days. The  
15 defendant assured Martinez that his name will not be on any form.  
16 Bobby Morales added, "We never even met you."

17 In this conversation, the Moraleses indicated they could  
18 "handle" \$75,000 to \$100,000 for the agent. Prior to any further  
19 transactions, the agent informed the Morales that he was in the  
20 narcotics business. In response, Morales indicated that he had  
21 suspected as much. Subsequently, the Morales laundered \$45,000  
22 and \$20,000 in cash for Martinez over the next five weeks.

23 G. SEARCH WARRANTS

24 On March 27, 1990, federal agents executed five search  
25 warrants and eight seizure warrants in relation to the instant  
26 investigation. In particular, search warrants were executed at  
27 the Morales residence, Saikhon's business and the accounting firm  
28 of George Cossolias. During the execution of the Morales search

1 warrant, the defendant was not entirely restricted to one  
2 location. During one of his jaunts, IRS Inspector Ruben Florez  
3 observed Morales tearing up various records and documents. Among  
4 the items recovered, was a slip indicating the deposit of a  
5 Reynaldo Cendejas payroll check.

6 H. EVIDENCE DESTRUCTION

7 Following his indictment, arrangements were made to allow the  
8 defendant to review the discovery amassed by the Government.  
9 Typically, this review was conducted in one of the rooms in the  
10 federal building under the observation of agents from the IRS.  
11 On August 19, 1991, Morales was reviewing evidence seized from his  
12 residence. At this time, Special Agent Michael Suverkрубbe  
13 observed Morales remove a Government tag placed on a stock  
14 certificate and stuff it into his undershirt. The tag was  
15 subsequently removed from defendant's garments.<sup>20/</sup>

16 I. THE GUILTY PLEAS

17 On August 21, 1991, defendant pled guilty to Count 192 and  
18 195 of the original indictment charging tax evasion in violations  
19 of 26 U.S.C. § 7201, and assisting in filing a false return in  
20 violation of 26 U.S.C. § 7206(2). In entering his guilty plea to  
21 Count 192 defendant admitted that he knowingly failed to report  
22 all of his income on his 1986 Form 1040 in order to evade and  
23 defeat the payment of income tax. As to Count 195, defendant  
24 admitted: (1) filing a false income tax return in the name of  
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27 <sup>20/</sup>Interestingly, defendant has also written to the broker  
28 that issued the stock certificate requesting that they issue  
another certificate as the original was either lost or misplaced.

1 Reynaldo and Maria Cendejas; (2) that the return was false because  
2 the Cendejas' received none of the income that was reported on the  
3 return; and (3) it was a "phony return."

4 On November 5, 1991, Morales entered a guilty plea to Count  
5 4 of the superseding indictment charging money laundering in  
6 violation of 18 U.S.C. § 1956(a)(1)(B)(i). In entering his guilty  
7 plea, defendant admitted: (1) that he had been receiving bribes  
8 from a taxpayer in the form of payroll checks; (2) the taxpayer  
9 was paying the bribes through payroll checks issued to the  
10 defendant's brother-in-law; (3) the defendant opened up a bank  
11 account in the name of his brother-in-law; (4) the bank account  
12 was opened up without his brother-in-law's knowledge; (5) the name  
13 of the taxpayer (Mario Saikhon) appears on the payroll checks; (6)  
14 the defendant deposited the payroll checks into the bank account  
15 opened in his brother-in-law's name by forging Reynaldo Cendejas'  
16 signature on the back of the check; (7) the defendant deposited  
17 the payroll checks in order to conceal the fact that defendant was  
18 receiving bribes from Saikhon; and (8) defendant spent some of the  
19 money for his own personal use.

20 IV

21 LEGAL ISSUES

22 A. EVIDENTIARY ISSUES

23 1. Admissibility of Factual Basis of Guilty Pleas

24 Defendant Morales has entered pleas of guilty to three  
25 separate counts in this matter. Rather than introduce these pleas  
26 or read the transcript into the record, the government is willing  
27 to stipulate as to the admissions made in open court. In this

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1 manner, the Government is willing to avoid any potential undue  
2 prejudice that might inure from the jury learning of the guilty  
3 pleas.

4 The case law in this area is consistent and clear. Every  
5 single Circuit that has considered this issue has recognized that  
6 guilty pleas are admissions by a party opponent which should be  
7 admitted under Fed. R. Rule 801(d)(1). See, e.g., United States  
8 v. Ant, 882 F.2d 1389, 1393 (9th Cir. 1989); United States v.  
9 Holmes 794 F.2d 345, 349 (8th Cir. 1986); United States v.  
10 Andreadis, 366 F.2d 423, 433 (2d Cir. 1966); United States v.  
11 Myers, 49 F.2d 230, 231 (4th Cir. 1931).

12 In the present case, it is undeniable that defendant's  
13 admissions go straight to the heart of the continuing course of  
14 conspiracy, bribery, money laundering and tax fraud alleged.  
15 Indeed, the admissions are the very basis for the government's  
16 conspiracy and remaining money laundering counts. In this  
17 situation, it is absolutely clear that the conduct is relevant,  
18 probative and admissible.<sup>21/</sup>

19 2. Admissibility of Diary and Bribe Schedule

20 On March 27, 1989, while executing a search warrant at the  
21 Morales residence, the Government seized various personal diaries  
22 belonging to Robert A. Morales. These diaries bear his name and  
23 address, and were found in Morales' bedroom. Various admissions  
24 are found in these diaries.

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25  
26 <sup>21/</sup>The admissions are particularly probative of the  
27 willfulness element of the tax and money laundering charges  
28 alleged. See generally United States v. Snow, 529 F.2d 224, 226  
(9th Cir. 1976)(past failure to file returns probative of  
willfulness in tax prosecution). Thus, the defendant's statements  
are admissible.

1 For example, two pages of his 1987 diary contain a schedule  
2 of what the Government believes are cash bribes received by  
3 Morales. An examination of the diary reveals a series of entries  
4 recording a running total (of what appear to be amounts of money)  
5 that is updated after each recorded entry. Three of the entries  
6 (bribe payments) in this schedule correspond to dates on which  
7 other portions of the diary indicate that Morales he met with  
8 taxpayers' who were under audit. Although Morales attempts to  
9 encode the entries by reversing the order of the numbers, it is  
10 clear that he is recording bribe payments.<sup>22/</sup>

11 In light of this and similar admissions regarding Morales'  
12 illegal activities, the diary and its cash bribe schedule are  
13 admissible against Morales as admissions pursuant to Fed. R. Evid.  
14 801(d)(2). See, e.g., United States v. Valles-Valencia, 811  
15 F.2d 1232 (9th Cir. 1987). See also United States v. Ospina, 739  
16 F.2d 448, 451 (9th Cir. 1984). A review of these cases reveal  
17 that the diary is legally indistinguishable from the ledgers  
18 documenting drug trafficking in those cases.

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23 <sup>22/</sup>For instance, the diary schedule contains an entry reading  
24 "3/2/87 5000 22200." In addition, the diary entry for March  
25 2, 1987, reveals that Morales had "Lunch with Danny." Below that  
is the entry "0005." During this time period, official IRS  
records reveal that Morales is auditing Danny Danenberg. As  
previously noted, Danenberg is another extremely wealthy Imperial  
Valley farmer whose records are found in the Morales residence.

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3. Foreign Bank Records

As previously noted, the Government intends to introduce various records of several foreign banks.<sup>23/</sup> Specifically, we intend to introduce records from Bancomer and Banca Serfin, two Mexican banks with branches in Tijuana, Baja California. These records were seized from the Morales residence. In addition, the Government intends to introduce the complete bank records for certain accounts maintained by Morales at Banca Serfin.

a. Seized Bank Records

During the execution of the search warrant at the Morales residence, federal agents seized bank records relating to five different accounts at Bancomer and Banca Serfin. These accounts were in the names of Morales, Morales, Jr., and/or Mario Saikhon. These records consist of the customer copies of signature cards, deposit slips, withdrawal slips, statements of account balances, and various negotiable instruments.

The signature cards, and deposit and withdrawal slips bear the signatures of either the defendant or co-conspirator Bobby Morales. As such, they constitute admissions under Fed. R. Evid. 801(d)(2)(A) and (E). See United States v. Moran, 759 F.2d 777, 786 (9th Cir.), cert. denied, 476 U.S. 1102 (1985) (admitting as admissions certain foreign letters and deposit slips signed by the

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<sup>23/</sup>The records from the Bank of Butterfield in Bermuda are the subject of a separate defense motion scheduled to be heard on November 12, 1991 at 9:00 a.m. Attached hereto as Exhibit "B" is a copy of Bermuda perjury and false statement law. This attachment was inadvertently omitted from the Government's last motion response.

1 defendant). Similarly, the Bancomer and Banca Serfin documents  
2 related to the accounts for which the Government has the  
3 defendant's (or a co-conspirators') signature are admissible.

4 In addition, the seized bank records are admissible for a  
5 non-hearsay purpose. The Court may admit them not for the truth  
6 of the entries thereon, but rather as circumstantial evidence of  
7 the conspiracy, money laundering and tax charges in the  
8 indictment. In this regard, they are admissible to show Morales'  
9 use of foreign bank accounts as illegal conduits to further the  
10 conspiracy.

11 In this regard, the indictment alleges that Morales used J.B.  
12 and Cendejas Farms to: (1) conceal and disguise bribe payments  
13 from Saikhon; and (2) facilitate Saikhon's claiming of false  
14 deductions. It further alleges that Morales used the corporations  
15 to funnel repayments of income on which Saikhon had evaded taxes.  
16 See, Indictment paragraphs 19 and 27.

17 A significant portion of the money deposited in various J.B.  
18 and Cendejas Farm bank accounts was subsequently moved into one or  
19 more of these Mexican bank accounts before being repaid to  
20 Saikhon. However, the amounts and dates of these transactions are  
21 not the purpose for which the records would be introduced. The  
22 records would be introduced only for the purpose of showing  
23 Morales' use of foreign bank accounts as a conduit in furtherance  
24 of the conspiracy and his knowledge of the role these accounts  
25 play in the evasion scheme. See, e.g., United States v.  
26 Jaramillo-Suarez, 942 F.2d 1412, 1416-17 (9th Cir. August 23,  
27 1991); United States v. Lai, 934 F.2d 1414, 1424 (9th Cir.

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1 May 22, 1991); United States v. Miller, 771 F.2d 1219, 1235 (9th  
2 Cir. 1985); United States v. Nicholson, 815 F.2d 61, 63 (8th Cir.  
3 1987).

4 b. Records Obtained Directly From Banca Serfin

5 The Government also intends to introduce some bank records  
6 obtained directly from Banca Serfin in response to a request under  
7 the Tax Information Exchange Agreement in force between Mexico and  
8 the United States. These include monthly account statements and  
9 underlying records of deposits and withdrawals. Initially, the  
10 Government proposed to admit the records with a foreign  
11 certification pursuant to 18 U.S.C. § 3505. Unfortunately, the  
12 request for that certification is still pending.

13 Nevertheless, the records are admissible pursuant under the  
14 residual hearsay exception, Fed. R. Evid. 803(24).<sup>24/</sup> Courts  
15 have routinely admitted foreign business records even though they  
16 are not certified pursuant to 18 U.S.C. § 3505. United States v.  
17 Friedman, 593 F.2d 109, 118-19 (9th Cir. 1979) (admitting records  
18 of border crossings); Karme v. Commissioner of Internal Revenue,  
19 673 F.2d 1062 (9th Cir. 1982) (admitting foreign bank records);  
20 United States v. Steele, 685 F.2d 793, 806 (3rd Cir. 1982) (same).

21 Fed. R. Evid. 803(24) provides for the admission of records  
22 when they are material, probative, and when "the interests of  
23 justice will best be served by admission of the statement into  
24 evidence." Karme, 673 F.2d at 1065 (citing Friedman, 593 F.2d at  
25 119). In order to be admitted under Rule 803(24), the Government  
26 must show that: (1) there are circumstantial guarantees of

27 \_\_\_\_\_  
28 <sup>24/</sup>For similar reasons, the seized bank records are admissible  
on this additional basis.

1 trustworthiness equivalent to those under other exceptions to the  
2 hearsay rule; and (2) the records would be "more probative on the  
3 point for which they are offered than any other evidence which the  
4 proponent can procure through reasonable efforts." Id.

5 The documents sought to be admitted were retrieved and copied  
6 by bank officials in response to an official IRS request processed  
7 by the IRS Assistant Commissioner - International. In addition,  
8 as bank records there is no doubt as to their trustworthiness.  
9 Indeed, the Ninth Circuit has noted bank records are "among the  
10 most common type of business record routinely used in our courts."  
11 United States v. Miller, 830 F.2d 1073 (9th Cir.), cert. denied,  
12 485 U.S. 1033 (1988). As such, there should be no dispute as to  
13 whether the documents have equivalent guarantees of  
14 trustworthiness. See Karme, 673 F.2d at 1063-64.

15 Further, absent stipulation, the Government is not assured  
16 that a complete set of the bank records relevant to the  
17 transactions at issue can be introduced pursuant to Fed. R. Evid.  
18 803(6). Unless the certification, requested two months ago, is  
19 received or a witness can be convinced to voluntarily appear at  
20 trial, it does not appear that the information would be procurable  
21 from any other source through reasonable efforts. Accordingly,  
22 the records should be received pursuant to Rule 803(24).

23 4. Proof of Expenditures

24 The Government plans to call several witnesses to prove the  
25 nature of expenditures from various bank accounts to establish  
26 Morales' control of the accounts. Fortunately, it should not be  
27 necessary to do so in all instances. The length of the trial can  
28 be considerably shortened in those instances where the face of the

1 check indicates that the purpose for the check was not for the  
2 return of funds to Mario Saikhon. These checks are admissions  
3 either of Morales, his agent or a co-conspirator, made in  
4 furtherance of the conspiracy. If they show on their face that  
5 they were for personal purposes, then no further testimony is  
6 required. See Greenberg v. United States, 280 F.2d 472, 476 n.6  
7 (1st Cir. 1960).

8 5. Summary Charts and Summary Experts

9 As part of its case-in-chief, the Government will introduce  
10 summaries and charts of: (1) financial transactions between the  
11 defendant and various banks and individuals; (2) Morales' and  
12 Saikhon's additional tax liability; and (3) phone calls between  
13 Morales and co-conspirator Saikhon, Cossolias, and others. Such  
14 evidence is admissible under Rule 1006 of the Federal Rules of  
15 Evidence which provides, as follows:

16 The contents of voluminous writings, recordings, or  
17 photographs which cannot conveniently be examined in court  
18 may be presented in the form of a chart, summary, or  
19 calculation. The originals, or duplicates, shall be made  
available for examination or copying, or both, by other  
parties at reasonable time and place. The court may order  
that they be produced in court.

20 Rule 1006 allows for evidence to be presented at trial in a  
21 simple time-saving fashion by allowing the use of summaries of  
22 voluminous materials. Courts have held that the Rule should be  
23 liberally employed in complex cases so as to effectuate its  
24 underlying purpose. In re U.S. Financial Securities Litigation,  
25 609 F.2d 411 (9th Cir. 1979). Often, the summaries are construed  
26 as "necessary aids" in the presentation of evidence, Keith v.  
27 Volpe, 858 F.2d 467 (9th Cir. 1988), cert. denied, \_\_\_ U.S. \_\_\_,  
28 110 S.Ct. 61, (1989), and as helpful to the jury in organizing and

1 evaluating complex and fragmentally revealed testimony. United  
2 States v. Shirley, 884 F.2d 1130 (9th Cir. 1989); United States  
3 v. Johnson, 319 U.S. 503, 519 (1943); United States v. Soulard,  
4 730 F.2d 1292, 1299-1300 (9th Cir. 1984). The purpose of using  
5 such summary charts and witnesses is simply to place large numbers  
6 of documents in understandable form.<sup>25/</sup>

7 For evidence to be admissible under Rule 1006, the Government  
8 need only establish that the underlying material upon which the  
9 summaries are based constitute admissible evidence. U.S. v.  
10 Meyers, 847 F.2d 1408, 1412 (9th Cir. 1988). The only other  
11 requirement is that the underlying evidence must be made available  
12 to the defendant prior to trial. City of Phoenix v. Com/Systems,  
13 Inc., 706 F.2d 1033, 1038 (9th Cir. 1983). In this case, the  
14 Government has satisfied the requirements.<sup>26/</sup>

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17 <sup>25/</sup>This Circuit, and the others examining this issue, have  
18 consistently held that summaries may be used to illustrate  
19 voluminous evidence whenever they may be helpful to the judge's or  
20 jury's consideration of the evidence. Fed. R. Evid. 1006; United  
21 States v. Johnson, 594 F.2d 1253, 1255 (9th Cir.), cert. denied,  
444 U.S. 964 (1979); United States v. Robinson, 774 F.2d 261, 275-  
276 (8th Cir. 1985); United States v. Lemire, 720 F.2d 1327, 1347  
(D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (1984); United  
States v. Seelig, 622 F.2d 207, 214 (6th Cir.), cert. denied, 449  
U.S. 869 (1980).

22 <sup>26/</sup>When considering the admissibility of exhibits of this  
23 nature, it is critical to distinguish between charts or summaries  
24 as evidence and charts or summaries as pedagogical devices. Charts  
25 and summaries of evidence are governed by Fed. Rule of  
26 Evidence 1006, which permits the introduction of charts,  
27 summaries, or calculations' of voluminous writings, recordings, or  
28 photographs which cannot conveniently be examined in court.' In  
contrast, charts or summaries of testimony or documents already  
admitted into evidence are merely pedagogical devices, and are not  
evidence themselves." United States v. Wood, 943 F.2d 1048, 1053  
(9th Cir. 1991) (citations omitted). Pedagogical devices should  
be used only as a testimonial aid, and should not be admitted into  
evidence or otherwise be used by the jury for deliberation. Id.

1 In using the summaries, the Ninth Circuit has suggested that  
2 the Court instruct the jury that the charts are an explanation of  
3 other evidence and not proof per se. The jury should be told that  
4 the summaries were presented as a matter of convenience. To the  
5 extent the jury finds that they are not in truth summaries of  
6 facts and figures shown by the evidence in the case, they should  
7 be instructed to disregard them. Id.; United States v. Abbas,  
8 504 F.2d 123, 125 (9th Cir. 1974), cert. denied, 421 U.S. 988  
9 (1975).<sup>27/</sup>

10 a. Schedules of Additional Tax Liability

11 In its case, the Government will call two IRS Revenue Agents  
12 who are expert witnesses trained in taxation and accounting.  
13 These expert witnesses will provide an analysis of the tax  
14 consequences of the Government's evidence. In anticipation of  
15 portions of their testimony, the Government provided copies of  
16 certain summary schedules relating to preliminary computations of  
17 Morales' and Saikhon's additional tax liability on or about  
18 August 1, 1991.

19 Pursuant to Fed. R. Evid. 1006, the Revenue Agent's final  
20 schedules will be prepared based entirely on evidence that has  
21 been admitted or is admissible. United States v. Soulard, 730  
22 F.2d at 1300; United States v. Gardner, 611 F.2d 770, 776 (9th

23  
24 <sup>27/</sup>It should also be noted that summary charts may be used in  
25 opening statement to aid the trier-of-fact in understanding what  
26 the Government's evidence will be. United States v. Rubino, 431  
27 F.2d 284, 289-290 (6th Cir. 1970), cert. denied, 401 U.S. 910  
28 (1971); cf. United States v. Johnson, 594 F.2d at 1255  
(underlying evidence summarized on chart need only be admissible,  
not already admitted, for chart to be used at trial); cf. also  
United States v. Davis, 564 F.2d 840, 846-847 (9th Cir. 1977),  
cert. denied, 434 U.S. 1015 (1978) (impliedly recognizing  
permissibility of use of summary chart in opening statement).

1 cir. 1980). At the conclusion of the expert's testimony, the  
2 schedules of additional tax liability are admissible in evidence.  
3 See, e.g., United States v. Wood, 943 F.2d at 1053-54; United  
4 States v. Orlowski, 808 F.2d 1283, 1289 (8th Cir.) cert. denied,  
5 107 S.Ct. 3210 (1986); United States v. Harenberg, 732 F.2d 1507  
6 (10th Cir. 1987).<sup>28/</sup>

7 It should be emphasized that the final summary schedules of  
8 tax liability reflect evidence that is admitted at trial. By  
9 necessity they will therefore not be finalized until shortly  
10 before the agent testifies.<sup>29/</sup> See United States v. Scharf,  
11 558 F.2d 498, 502 (8th Cir. 1977). Final tax liability schedules  
12 will be provided to the defense shortly before the Revenue Agent  
13 testifies.

14  
15 <sup>28/</sup>Copies of the summaries may be given to the jury while the  
16 expert witness testifies concerning them. Barsky v. United  
States, 334 F.2d 180, 181 (9th Cir. 1964).

17 <sup>29/</sup>In order to facilitate the presentation of evidence and the  
18 jury's understanding of the nature of the benefit received by  
19 Mario Saikhon, the government may call summary witness George  
20 Garcia twice in its case-in-chief. Revenue Agent Garcia will  
21 testify at the conclusion of the presentation of a block of  
22 evidence related to Morales' actions or omissions in connection  
with Mario Saikhon returns from 1977-1988 which were assigned to  
him for audit. He will focus on how Morales' actions were  
violations of his official duties as a Revenue Agent. If the full  
tax impact in Saikhon's favor is still at issue at the conclusion  
of the Government's case-in-chief, it may be necessary to recall  
Agent Garcia.

23 The recall of expert witnesses has been specifically endorsed  
24 in United States v. Jackson, 549 F.2d 517 (8th Cir.), cert.  
denied, 430 U.S. 985 (1977). There the court observed that the  
25 government's presentation of expert testimony served to carefully  
26 delineate separate events and occurrences and thus to protect  
27 against confusion of the jury. The court allowed cross-  
28 examination each time the expert was called as to matter testified  
to at that time, as well as to issues of credibility. The Court  
observed that the use of the witness in this fashion enabled the  
government "to clearly present an organized factual recital in an  
extended conspiracy trial." Id. at p. 528.

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b. Summaries of Phone Tolls

The government will present summaries of the number of phone calls between Morales, Saikhon and others. The Government has amassed literally thousand of pages of phone bills related to service on a number of different extensions since 1986. These documents are far too voluminous to be effectively utilized in court. Moreover, only through a summary of analysis of the volume and timing and the numbers serviced do the phone bills become probative of the conduct charged in the indictment.

6. Seized Evidence-Chain of Custody

The government has, unsuccessfully, sought a stipulation that the evidence it intends to introduce from the various search warrants was, in fact, seized in the execution of the warrants in the places indicated in the search warrant inventory. Nevertheless, these documents should be admissible without requiring chain of custody testimony from the over thirty agents involved in the execution of the warrants.

The test of admissibility of physical objects connected with the commission of a crime merely requires a showing that the object is in substantially the same condition as when it was seized. In this regard there is a presumption of regularity in the handling of exhibits by public officials. United States v. Kaiser, 660 F.2d 724, 733 (9th Cir. 1981), cert. denied, 455 U.S. 856 (1982), overruled on other grounds, United States v. De Bright, 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc). The Government is not required, in establishing chain of custody, to

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1 call all persons who may have come into contact with the piece of  
2 evidence. Galeage v. United States, 276 F.2d 914, 917 (9th Cir.  
3 1960).

4 At trial, the Government plans to call Special Agent Roger  
5 Lange who was present at the Morales residence and was assigned  
6 the duties of custodian for all documents seized in the course of  
7 the five warrants. He will testify as to the procedure for  
8 seizing, identifying, inventorying and storing the seized  
9 materials. Agent Lange's testimony will support the conclusion  
10 that the evidence has not changed in a material way -- ample  
11 foundation on which to admit the seized records. United States v.  
12 Kaiser, 660 F.2d 724, 733 (9th Cir. 1981), cert. denied, 455 U.S.  
13 956 (1982), rev'd on other grounds, United States v. De Bright,  
14 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc).<sup>30/</sup>

15 7. Proof Of Absence Of Public Records From IRS  
16 Detroit Computing Center, San Diego County  
Recorder, and Imperial County Recorder

17 To prove the conspiracy to defraud, money laundering and the  
18 tax offenses, the Government will introduce affidavits from  
19 responsible officials of the Internal Revenue Service Detroit  
20 Computing Center San Diego County Recorder, and Imperial County  
21 Recorder indicating by affidavits the non-existence of certain  
22 public documents. Such affidavits are admissible pursuant to Fed.  
23 R. Evid. 803(10), 902(8) and Fed. R. Crim. P. 27.

24 The absence of any record, or a negative record, is generally  
25 admissible into evidence over a hearsay objection. Rule 27 of the  
26 Federal Rules of Criminal Procedure provides that "[a]n official  
27

28 <sup>30/</sup>Any failure to establish the exact chain of custody would go only to weight and not admissibility. See id.

1 record or an entry therein or the lack of such a record or entry  
2 may be proved in the same manner as in civil actions." Rule 44 of  
3 the Federal Rules of Civil Procedure provides that:

4 . . . [a] written statement that after a diligent search  
5 no record or entry of a specified tenor is found to  
6 exist in the records [of his office,] designated by the  
statement, . . . is admissible as evidence that the  
records contain no such record or entry.

7 The Federal Rules of Evidence specifically allow the  
8 admission of these negative records:

9 "The following are not excluded by the hearsay  
10 rule, even though the declarant is available as a  
witness:

11 . . . . .

12 "(10) Absence of public record or entry. To prove  
13 the absence of a record, report, statement, or data  
14 compilation, in any form, or the nonoccurrence or  
15 nonexistence of a matter of which a record, report,  
16 statement, or data compilation, in any form, was  
17 regularly made and preserved by a public office or  
agency, evidence in the form of a certification in  
accordance with rule 902, or testimony, that diligent  
search failed to disclose the record, report, statement,  
or data compilation, or entry."

18 Fed. R. Evid. 803(10).

19 Rule 902(8) provides that documents accompanied by a  
20 certificate of acknowledgement executed in the manner provided by  
21 law by a notary public or other officer are admissible. Thus,  
22 affidavits from the above offices, repositories for certain public  
23 documents, attesting to the fact that a diligent search did not  
24 find any records filed by or on behalf of the defendant, any  
25 entity or person acting on his behalf, or the undercover agent or

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1 anyone acting on his behalf, are admissible. See United States v.  
2 Lee, 589 F.2d 980, 987 (9th Cir.), cert. denied, 444 U.S. 969  
3 (1979); United States v. M'Biye, 655 F.2d 1240, 1242 (D.C. Cir.  
4 1981).

5 8. Co-conspirator Statements

6 In order for co-conspirator statements to be admissible under  
7 Fed. Rule 801(d)(2)(E), the statement must be found to have been  
8 made "in furtherance of the conspiracy."<sup>31/</sup> The focus of the  
9 inquiry is on the intent of the declarant in making the statement.

10 United States v. Zavala-Serra 853 F.2d 1512, 1516 (9th Cir. 1988).

11 The statements concerning activity of the conspiracy can relate to

12 future events, Id. at p. 1516, or to past events. United States

13 v. Tille 729 F.2d 615, 620 (9th Cir. 1984), cert. denied, 469 U.S.

14 845.<sup>32/</sup>

15 Any statements that are meant to apprise another of the  
16 developments of the conspiracy, to facilitate assistance and  
17 cooperation or to allay fears are deemed in furtherance of the  
18 conspiracy for 801(d)(2)(E) purposes. United States v. Llano 830

19 F.2d 1532, 1543 (9th Cir. 1987). However:

20 "[M]ere conversations between co-conspirators" or  
21 "merely narrative declarations" are not admissible as  
22 statements in furtherance of a conspiracy. United States v. Tille  
23 Instead, the statements must "further the common  
24 objectives of the conspiracy," or "set in motion  
25 transactions that [are] an integral part of the  
26 [conspiracy]."

27 <sup>31/</sup>The statements need not have been made to a member of the  
28 conspiracy to be admissible. United States v. Taylor 802 F.2d  
1108, 1117 (9th Cir. 1986).

<sup>32/</sup>This is especially true when the nature of the conspiracy  
requires ongoing concealment and the "purpose of the conspiracy is  
to formulate future strategies of concealment." United States v.  
Tilles, 729 F.2d at 620.

1 United States v. Smith 790 F.2d 789, 794 (9th Cir. 1986), quoting  
2 United States v. Layton 720 F.2d 548, 556 (9th Cir. 1983)  
3 (citations omitted), cert. denied, 465 U.S. 1069 (1984).

4 It is important to note that at some point before the  
5 government rests, it must provide sufficient evidence of the  
6 existence of a conspiracy. Layton, supra, at 555. The proof of  
7 the conspiracy may consist entirely of circumstantial evidence.  
8 United States v. Fleishman 684 F.2d 1329, 1338 (9th Cir.), cert.  
9 denied, 459 U.S. 1044 (1982). The court may allow the government  
10 to introduce co-conspirator declarations before laying the  
11 required foundation under the condition that the declarations will  
12 be stricken if the government fails to ultimately establish by  
13 independent evidence that the defendant was connected to the  
14 conspiracy. United States v. Rabb 752 F.2d 1320, 1325 (9th Cir.  
15 1984), cert. denied, 471 U.S. 1019 (1985).

16 The proof of conspiracy required to admit a co-conspirator's  
17 statement is "substantial evidence" that a conspiracy exists and  
18 "substantial evidence" that the defendant has at least a "slight  
19 connection" to the conspiracy. Id. The court may consider as  
20 evidence of the conspiracy the statements sought to be admitted as  
21 well as any other independent evidence of it. Bourjaily v. United  
22 States \_\_\_ U.S. \_\_\_, 107 S.Ct. 775, 2778 (1987).<sup>33/</sup>

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26 <sup>33/</sup>If the statements are being offered only to prove the  
27 existence of a conspiracy, and not for the truth of the matter  
28 asserted, there is no hearsay problem at all. The statements are  
admissible under 801(c) and are significant only by virtue of the  
fact that they were made. United States v. Miller 771 F.2d 1219,  
1233 (9th Cir. 1985).

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V

WITNESSES

A list of potential witnesses will be supplied to defense counsel at the time of trial.

VI

EXHIBITS

Defense counsel has been provided with virtually open discovery since his client was indicted. The Government has gone well beyond the strictures of Rule 16 and provided the defense with numerous reports and memorandum, an index to the tens of thousands of documents it has seized, and allowed the copying of any of the subpoenaed records. A detailed exhibit list will also be provided to defendant at the time of trial.

Thus far, the defense has provided the Government with absolutely no reciprocal discovery. Nor has the defense supplied any witness statements as previously ordered by Judge Thompson.<sup>34/</sup>

VII

STIPULATIONS

Shortly after the original indictment was returned the Government sought various stipulations from defense counsel in order to expedite the proceedings. Finally, in return for the Government agreeing to provide him with rough transcripts of the undercover tapes (and other materials), defense counsel stated that:

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<sup>34/</sup>The Government assumes that defendant's failure to supply any reciprocal discovery is due to the fact that he has none.

1           With respect to the introduction of documents and  
2 stipulations to testimony from custodians of records, I  
3 would propose that we agree to meet several weeks in  
4 advance of trial so that we can discuss specifically the  
5 proposed stipulations the government might wish. In  
6 advance of any such discussion, I cannot agree to  
7 stipulate, but I will agree to seriously discuss the  
8 matter with you and attempt to be as reasonable as  
9 possible.

10       See, letter to Assistant U.S. Attorney Phillip L.B. Halpern  
11 (July 5, 1991). However, on August 26, 1991, after failing to  
12 persuade the Government to settle the case on his terms, he  
13 threatened the Government with the prospect of a lengthy trial as  
14 he would not now stipulate to anything.<sup>35/</sup>

15       In an attempt to get defense counsel to live up to his word,  
16 on September 26, 1991, the Government sent him a draft order  
17 regarding 27 stipulations that could expedite the trial process by  
18 avoiding the necessity of numerous records custodians. See, Draft  
19 order attached hereto as "Exhibit A." Subsequently, we also  
20 allowed Mr. Iredale to review all of the seized evidence that the  
21 Government intended to introduce at trial. In this fashion, we  
22 hoped that Mr. Iredale would not object to the introduction of  
23 this evidence solely on the basis that the custodian of records or  
24 the seizing agent was not called to the stand.

25       Despite the Government's best efforts, Mr. Iredale continues  
26 to break his promise to even discuss the stipulation issue  
27 seriously. At this time, the Government is fully prepared to call  
28 every single domestic records custodian. They have all been

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26       <sup>35/</sup>It seems that defendant was willing to agree to discuss  
27 stipulations, as long as the case was not going to be tried. On  
28 the other hand, once counsel recognized that the case might go to  
trial he had no qualms about breaking his word to "seriously  
discuss the matter....and....be as reasonable as possible."

1 subpoenaed and have indicated a willingness to testify at trial.  
2 However, in an attempt to shorten the trial, the Government will  
3 once again list a number of witnesses that we would be willing to  
4 omit calling if defendant will stipulate to either the  
5 admissibility of the records they would produce, or in some cases  
6 their testimony:

- 7 1. Custodian of Records - Daystop Motel
- 8 2. Custodian of Records - Three Line, Inc.
- 9 3. Custodian of Records - Sweetwater Skating Center
- 10 4. Custodian of Records - Helix Pet Hospital
- 11 5. Custodian of Records - Bob Baker Nissan
- 12 6. Custodian of Records - American Olean Tile
- 13 7. Custodian of Records - Del Piso Tile
- 14 8. Custodian of Records - Terminex
- 15 9. Custodian of Records - Blue Cross of California
- 16 10. Custodian of Records - Farmer's Insurance
- 17 11. Custodian of Records - Dr. Frank Phillips
- 18 12. Custodian of Records - National University
- 19 13. Custodian of Records - Evans Tire
- 20 14. Custodian of Records - Valhalla Veterinarian Clinic
- 21 15. Custodian of Records - El Cajon Travel
- 22 16. Custodian of Records - IRS Detroit Service Center
- 23 17. Custodian of Records - IRS Fresno Service Center
- 24 18. Custodian of Records - Cabrillo Federal Credit Union

25 In total, the Government has requested Mr. Iredale to stipulate to  
26 the introduction of business records that will otherwise  
27 necessitate the calling of 45 separate records custodian.

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1           In addition, it would be beneficial if Mr. Iredale would  
2 stipulate that:

3           1. Reynaldo Cendejas' signature card (Exhibit 300) at the  
4 Heartland Bank contains a false social security number;

5           2. Cendejas' signature card contains the defendant's date  
6 of birth;

7           3. J.B. Farms check number 110 (Exhibit 2441) was used to  
8 purchase 17 superbowl tickets;

9           4. J.B. Farms check number 177 (Exhibit 168) was used to  
10 pay the contractor who repaired the driveway at the Morales  
11 residence;

12           5. J.B. Farms check numbers 144 and 222 (Exhibits 166 and  
13 167) were used to purchase San Diego Charger Season Tickets;

14           6. J.B. Farms check number 149 and 226 (Exhibit 1848 and  
15 1905) and Cendejas Farms check number 121 (Exhibit 2536) were  
16 utilized to pay for the construction of a gardening shed in the  
17 Morales' back yard and for some remodeling in Bobby Morales'  
18 office.

19           Finally, in lieu of introducing the defendant's guilty pleas,  
20 the Government would agree to stipulate to the admissions outlined  
21 above in § II(F) that were made by the defendant while under oath  
22 in Court.

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