

# Hanigan jury sent home as judge seeks testimony on alien 'deal'

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The Arizona Daily Star

The judge and lawyers in the robbery trial of Thomas and Patrick Hanigan used a lull in the proceedings yesterday in an attempt to pave the way for testimony by a Douglas attorney who once represented three Mexican aliens alleged to have been beaten and tortured by the Hanigans.

U.S. District Judge Richard Bilby sent the jury home without letting them hear any testimony because of "witness scheduling and legal problems" he said had to be worked out.

Bilby then spent hours discussing legal

matters with the lawyers in his chambers.

Later in open court, the judge refused to let defense attorneys ask the three Mexicans to waive the attorney-client privilege so lawyer Jose Lerma of Douglas could testify about any arrangements the aliens may have made with him regarding efforts to collect civil damages from the Hanigans.

However, Bilby gave permission for the aliens to consult with the Mexican consul in Tucson or Phoenix and an attorney about the attorney-client privilege before they answer further questions.

Attorneys and their clients cannot be required to reveal anything from their confidential discussions, and only clients can waive that privilege.

Two of the aliens, Manuel Garcia Loya and Bernabe Herrera Mata, had been extensively questioned earlier by the judge and attorneys for the prosecution and defense about their understanding of the contract between a lawyer and his client. The judge said afterward he did not believe either of the Mexicans understood the attorney-client privilege.

The third Mexican, Eleazar Ruelas Zavala, was not questioned.

Patrick and Thomas Hanigan are on trial before an all-Anglo jury on federal charges of robbery affecting commerce. They are accused of robbing, torturing and beating the three aliens, who illegally entered the United States west of Douglas seeking work on Aug. 18, 1976.

Another all-Anglo jury acquitted the Hanigans on 22 assault and robbery charges in Cochise County in 1977. Protests by Hispanic groups that a fair trial was not conducted led to the present retrial on federal charges.

Evidence came out at the 1977 trial that Lerma had offered Hanigan attorney Wes-

ley Polley a deal on behalf of the Mexicans — to drop possible charges against the Hanigans in return for a money settlement.

Bilby did not announce a decision yesterday on the mental competence of Ruelas Zavala, which he had questioned Monday. Sources disclosed that Ruelas Zavala was examined yesterday by Dr. Jose Santiago, chief of psychiatry at Kino Community Hospital.

Bilby expressed concern, away from the jury, about confused and conflicting testimony given by Ruelas Zavala, who admitted making errors in his testimony in

the 1977 trial and said he did not remember making certain statements.

Raul Avellyra, Mexican consul in Douglas at the time of the aliens said they were tormented, testified yesterday that he helped engage Douglas lawyer Michael Herbolich as attorney for the three to file a lawsuit in an attempt to collect civil damages from the Hanigans.

Herbolich later filed the suit, which still is active in U.S. District Court in Tucson.

Asked why he kept anyone from talking to the aliens without special permission

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after Aug. 19, 1976, Avelyra said: "The boys had very little education, and I did not want them to accept an arrangement with any lawyer that would prevent the criminal case from going to court."

In other developments surrounding the trial, the Hispanic Tucson Coalition on Justice held a press conference to announce that pickets will be out again today to protest what it claims is the inept handling of the case by the prosecution.

Sal Baldenegro, a member of the Chicano Consortium for Public Issues, which is part of the National Coalition on the Hanigan Case, said he was "angered" by the demeanor of the prosecution.

He said U.S. Attorney for Arizona Michael Hawkins is "just going through the motions" in order to be able to say he tried.

Ruben Sandoval, San Antonio attorney for the National Coalition who has been critical of the entire trial proceeding, claimed the prosecution has not sufficiently prepared witnesses to withstand

cross-examination by defense attorneys, or has failed to protect them by making objections.

Baldenegro said problems that plagued the 1977 trial are being allowed in the present trial. He said the status of the aliens and their credibility is being attacked by calling them "wetbacks" and "illegals."

As to their credibility, Baldenegro said: "Who the hell carries a tape recorder while he's lying flat of his back, naked, and being tortured in the desert?"