PROOF OF FOREIGN LAW
AND FOREIGN EVIDENCE

Author:

RICHARD R. ORSINGER
ATTORNEY AT LAW
310 S. St. Mary's St., Ste. 1616
San Antonio, Texas 78205
(210) 225-5567 (Telephone)
(210) 267-7777 (Telefax)
Email: richard@orsinger.com

Of Counsel to McCurley, Kinser,
McCurley, & Nelson, LLP
5950 Sherry Lane, Ste. 800
Dallas, Texas 75225
(214) 273-2400 (Telephone)
(214) 273-2470 (Telefax)
Email: richard@mkmn.com

State Bar of Texas
Advanced Family Law Course 2002
Wyndham Anatole Hotel – Dallas, Texas
August 5-8, 2002

© 2002
Richard R. Orsinger
All Rights Reserved

TABLE OF CONTENTS

I. INTRODUCTION . . . -1-

II. PRESUMPTION OF SIMILARITY OF FOREIGN LAW. . . . -1-

III. PROOF OF FOREIGN LAW IN TEXAS CASES. . . . -1-
- A. JUDICIAL NOTICE. . . . -1-
  - 1. Commentary. . . . -1-
  - 2. Case Law. . . . -2-
- B. TESTIMONY OF EXPERTS. . . . -3-

IV. AUTHENTICATING FOREIGN GOVERNMENT RECORDS. . . . -3-
- A. AUTHENTICATION GENERALLY. . . . -3-
- B. TRE 901 and 902. . . . -4-
  - 1. The Language of the Rules . . . -4-
  - 2. Commentary. . . . -5-

V. USING TRANSLATIONS OF FOREIGN DOCUMENTS. . . . -5-
- A. TRANSLATIONS IN TEXAS COURTS. . . . -5-

VI. INTERPRETERS IN TEXAS COURTS. . . . -6-
- A. TRCP 183. . . . -6-
- B. TRE 604. . . . -6-
- C. FEDERAL CASE LAW. . . . -7-

Proof of Foreign Law and Foreign Evidence©

by
Richard R. Orsinger

Board Certified in Family Law
and Civil Appellate Law
Texas Board of Legal Specialization

I. INTRODUCTION. This article discusses the procedures for proving foreign law in Texas trial court proceedings. It also discusses the use of foreign language documents as evidence. And, it discusses the evidence rules and procedures for using interpreters in court proceedings in Texas. TRCP=Texas Rule of Civil Procedure; TRE=Texas Rules of Evidence; FRE= Federal Rule of Evidence.

II. PRESUMPTION OF SIMILARITY OF FOREIGN LAW. Where neither party establishes the law of another jurisdiction, and the court does not otherwise take judicial notice of it, then it will be presumed that the law of the other jurisdiction is identical to Texas law. *Ogletree v. Crates*, 363 S.W.2d 431, 435 (Tex. 1963). As noted in Olin Guy Wellborn III, *Judicial Notice under Article Ii of the Texas Rules of Evidence*, 19 ST. MARY'S L.J. 1, 28 (1986):

> [I]f no party establishes the content of applicable foreign law in accordance with the provisions of the rule, the absent law will be supplied by the common-law presumption of identity. That is, Texas courts will presume that the unproved foreign law is identical to Texas law.

III. PROOF OF FOREIGN LAW IN TEXAS CASES.

A. JUDICIAL NOTICE. In Texas courts, the trial judge can take "judicial notice" of certain information, which relieves any party from having to "prove" that information through the offer of evidence to the fact-finder (judge or jury). Tex. R. Evid. 201-203 govern judicial notice. Rule 201 deals with judicial notice of "adjudicative facts." Rule 202 deals with determination of the law of other states of the United States. Rule 203 deals with determination of the law of foreign countries. Tex. R. Evid. 203 reads:

> Rule 203. Determination of the Laws of Foreign Countries
>
> A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that the party intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.

1. Commentary. The following commentary on the Texas Rules of Evidence relating to judicial notice is helpful. Murl A. Larkin, *Article II: Judicial Notice*, 30 HOUS. L. REV. 193, 198 (1993):

> The judicial function of determining law is traditionally characterized as within the concept of judicial notice. [FN25] "Law" includes, of course, not only the law of the forum [FN 26] but also the law of sister states [FN27] and foreign countries. [FN28] When the content or applicability of law of the forum is to be noticed, the judge is unrestricted in his investigation and conclusion. He may reject the propositions of either party or of both parties. He may consult the sources of pertinent data to which they refer, or he may refuse to do so. He may make an independent search for persuasive data or rest content with what he has or what the parties present. [FN29] When other than domestic law is involved, determination of the law is generally considered a question of fact, which is subject to the requirements of formal pleading and proof. [FN30] Regardless of the type of law to be

> determined, the requirements of general knowledge or indisputability are inapplicable.

2. Case Law. The proper manner of proving Mexican law was considered in the case of *Ossorio v. Leon*, 705 S.W.2d 219 (Tex. App.--San Antonio 1985, no writ):

> Appellees' reply raises procedural issues concerning the timeliness of the filing of appellant's summary judgment motions and the quality of the summary judgment proof. A discussion of these matters must precede a discussion of the substantive law of this case.
>
> A hearing was held in June 1983 on the motions for summary judgment, after which the trial court took the motions under advisement and asked for briefs from parties. Judgment was not rendered until July, 1984. In the interim, in addition to the requested briefs, the following documents were filed with permission of the court; (1) Appellant's Second Amended Motion for Summary Judgment (replacing the First Amended Motion for Summary Judgment filed without leave of court); (2) Appellant's attorney's affidavit concerning General Ossorio's will; (3) a copy of the English translation of the Civil Code of Mexico; (4) a copy in Spanish of the Civil Code of Mexico; (5) a notarized copy of appellant's affidavit (substituted for unsworn one filed earlier); (6) sworn legal opinions of Mexico's law by lawyers McKnight and Steta (substituted for unsworn opinions filed earlier).
>
> Appellees complain that the documents were untimely filed and are therefore not proper support for appellant's motion for summary judgment. TEX. R. CIV. P. 166-A(c) (Vernon Supp. 1985) provides, however, that a summary judgment can be based on "pleadings, depositions, answers to interrogatories, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court ..." (emphasis added).
>
> Since the court specifically granted leave to file the above documents, the documents were properly before the trial court and before this court on appeal. The trial court's judgment recites that he considered the pleadings, the briefs, the arguments of counsel, and summary judgment evidence. We assume that he considered all the documents in his possession that can be characterized as fitting into the above categories.
>
> Appellees further contend that some of the affidavits offered by appellant were based on hearsay. Granted that Mrs. Ossorio's and Mr. Salinas' statements include some hearsay as to the intent of the deceased, but there is abundant evidence of his intent completely separate and apart from those affidavits. Both the contract of deposit itself, signed by the deceased, and the will evince his intent to make a gift to his wife of the funds in their joint account, if his wife survived him. The affidavits of McKnight and Steta, both being legal opinions, are properly based on the facts as related to them, and are not considered hearsay.
>
> Appellees objected to the proof of foreign law offered by appellant because the appellant failed to plead the foreign law, because appellant filed no motion to take judicial notice of the foreign law, because appellant attached no affidavit to the Civil Code of Mexico, and because appellant failed to produce a statute book of the Federal District of Mexico "purporting to have been printed under the authority thereof." Appellant is apparently referring to article 3718 of the Revised Civil Statutes, which was repealed in 1983. *222 Rule 203 of the Texas Rules of Evidence (Vernon Supp.1985), and Rule 184(a) of the Texas Rules of Civil Procedure (Vernon Supp.1985), provide:
>
> > A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish to the opposing party or counsel copies of any written materials or sources that he intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish to the opposing party or counsel both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including, but not limited to affidavits, testimony, briefs, and treatises.

> If the court considers sources other than those submitted by a party, it shall give the parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. Its determination shall be subject to review on appeal as a ruling on a question of law. When appellant introduced the foreign law, she requested, and the trial court granted, a postponement in order to comply with the above rules.
>
> We find that the appellant, with leave of court to file the documents offered, and with the postponement granted by the court, complied fully with the applicable statutes in calling the foreign law to the attention of the court. We have considered the other reply points raised by the appellees, regarding acknowledgments and jurats and find that appellant complied with TEX. R. CIV. P. 166-A (e) (Vernon Supp. 1985) regarding form of affidavits to document her summary judgment proof.

In *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 893, 896 (Tex. App.-- Houston [14th Dist.] 2000, pet. denied), the court of appeals made the following comments about Rule 203:

> Rule 203 is a hybrid rule by which presentation of the law to the court resembles presentment of evidence, but which the court ultimately decides as a matter of law. See Ahumada, 992 S.W.2d at 558; Gardner v. Best Western Int'l, Inc., 929 S.W.2d 474, 483 (Tex. App.--Texarkana 1996, writ denied). The determination of the law of a foreign country may present the court with a mixed question of law and fact. Id. Summary judgment is not precluded when experts disagree on the interpretation of the law if, as in this case, the parties have not disputed that all of the pertinent foreign law was properly submitted in evidence. Id. Where experts disagree on application of the law to the facts, the court is presented with a question of law. Id. at 558-59. On appeal, we must determine whether the trial court reached the proper legal conclusion. Id.; see also Duncan v. Cessna Aircraft Co., 665 S.W.2d 414, 421 (Tex. 1984); Salazar v. Coastal Corp., 928 S.W.2d 162, 166 (Tex. App.--Houston [14 th Dist.] 1996, no writ).

Mentioning the intent to rely on foreign law in a motion for summary judgment met the requirement to give notice by pleading of intent to rely on foreign law.. *Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 525 (Tex. App.--Texarkana 1993, writ denied).

Sometimes a litigant will need to refer the court to international law. That can be done through the procedure of judicial notice. According to Professor Olin Guy Wellborn III, *Judicial Notice under Article Ii of the Texas Rules of Evidence*, 19 ST. MARY'S L.J. 1, 28 (1986):

> Although it is not covered by rule 203, international law is subject to judicial notice as a matter of common law, because international law is "part of our law." [FN138] In addition, in Texas, Spanish and Mexican law, when and to the extent that they are applicable as the law of the former sovereign, have always been subject to judicial notice for that purpose. [FN139]

B. TESTIMONY OF EXPERTS. Apart from judicial notice, the law of a foreign country can be proved through the testimony of expert witnesses. *AG Volkswagon v. Valdez*, 897 S.W.2d 458, 460 (Tex. App.–Corpus Christi 1995, orig. proceeding) (German Federal Data Protection Act proved up by affidavit of German attorney). As noted in *Gardner v. Best Western Int'l, Inc.*, 929 S.W.2d 474, 482 (Tex. App.-Texarkana 1996, writ denied):

> [W]hen the only evidence before the court is uncontroverted opinions of a foreign-law expert, a court generally will accept those opinions as true so long as they are reasonable and consistent with the text of the law. See AG Volkswagen v. Valdez, 897 S.W.2d 458, 461 (Tex. App.--Corpus Christi 1995, no writ); Lawrenson v. Global Marine Inc., 869 S.W.2d at 526.

IV. AUTHENTICATING FOREIGN GOVERNMENT RECORDS.

A. AUTHENTICATION GENERALLY. The general rule of authentication in Texas courts is TRE 901. The requirement of authentication is met by evidence sufficient to support a finding that the matter in question is what its proponent claims.

You can authenticate a document by:

- testimony of a witness with knowledge;
- as to handwriting, lay opinion on genuineness;
- as to voice, identification by someone who has heard the speaker speak.

Some evidence is "self-authenticating," meaning that no sponsoring witness is required to lay the predicate for authenticity:

- certified copies of government records;
- official publications;
- newspaper and periodicals;
- commercial paper; and
- business records with business record affidavit.

In order to be admissible, court records must first be authenticated–i.e., it must be shown that the document is what its proponent says it is. Once the document is authenticated then the normal rules of admissibility apply. For example, a properly-authenticated government record may be inadmissible hearsay if offered for the truth of the matter stated and no exception to the hearsay rule applies.

B. TRE 901 and 902. Texas Rules of Evidence 901 and 902 govern authentication in Texas civil proceedings.

1. The Language of the Rules. The rules, as they relate to government records, are as follows [omitted language is reflected by an ellipsis . . . .]:

> Tex. R. Evid. Rule 901. Requirement of Authentication or Identification
>
> (a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> (b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
>
>> (7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
>>
>> * * *
>>
>> (10) Methods provided by statute or rule. Any method of authentication or identification provided by statute or by other rule prescribed pursuant to statutory authority.
>
> Rule 902. Self-Authentication
>
> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
>
> (1) Domestic Public Documents Under Seal. . . . .
>
> (2) Domestic Public Documents Not Under Seal. . . . .
>
> (3) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person, authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification. The final certification shall be dispensed with whenever both the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces such requirement, in which case the record and the attestation shall be certified by the means provided in the treaty or convention.
>
> (4) Certified Copies of Public Records. . . . .
>
> (5) Official Publications. . . . .
>
> (6) Newspapers and Periodicals. . . . .
>
> (7) Trade Inscriptions and the Like. . . . .
>
> (8) Acknowledged Documents. . . . .

(9) Commercial Paper and Related Documents. . . . .

(10) Business Records Accompanied by Affidavit. . . . .

(11) Presumptions Under Statutes or Other Rules. Any signature, document, or other matter declared by statute or by other rules prescribed pursuant to statutory authority to be presumptively or prima facie genuine or authentic.

2. Commentary. The following commentary explains the operation of Rule 902(3). R. Doak Bishop, *International Litigation in Texas: Texas Rules of Evidence and Recent Changes in the Texas Rules of Civil Procedure*, 36 BAYLOR L. REV. 131, 150 (1984):

> The new Texas evidence rule is taken both from Rule 44(a)(2) of the Federal Rules of Civil Procedure and from section 5.02 of the [Uniform Interstate and International Procedure Act, 13 U.L.A. 459 (1980)]. The last sentence of the new provision abolishes the requirement for final certification of a foreign document if both the United States and the foreign country in which the records are kept have entered into a treaty or convention that deletes such a requirement. This provision has been added in order to authorize Texas courts to make use of the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, [FN 77] which greatly simplifies and expedites the authentication of official documents in one country for use in another. Thirty countries are now parties to this Convention. [FN78] Unfortunately, this Convention may not be self-executing and binding on state or federal courts unless implemented either by rule or legislation. [FN79] In any event, this sentence would provide specific authorization to Texas lawyers to proceed in accordance *151 with any treaties or conventions entered into by the United States, and will have the added advantage of calling to the attention of the bar the existence of conventions that may affect their clients' rights. Under the Hague Public Documents Convention, the requirement of a final certification is abolished and replaced with a model apostille, which will be issued by officials of the country where the records are located. [FN80] The apostille certifies the signature, official position, and seal of the attesting officer. [FN81] The authority who issues it must maintain a register or card index showing the serial number of the apostille and other relevant information recorded on it. [FN82] A foreign court can then check the serial number and information on the apostille with the issuing authority in order to guard against the use of fraudulent apostilles. [FN 83] This system provides a reliable method for maintaining the integrity of the authentication process, and the apostille can be accorded greater weight than the normal authentication procedures, because foreign officials are more likely to know the precise capacity of the attesting officer under foreign law than would an American official. [FN84]

V. USING TRANSLATIONS OF FOREIGN DOCUMENTS.

A. TRANSLATIONS IN TEXAS COURTS. TRE 1009 governs the admissibility of translations of documents in a foreign language in Texas court proceedings. TRE 1009 provides:

> Rule 1009. Translation of Foreign Language Documents
>
> (a) Translations. A translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate. Such affidavit, along with the translation and the underlying foreign language documents, shall be served upon all parties at least 45 days prior to the date of trial.
>
> (b) Objections. Any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation. Such objection shall be served upon all parties at least 15 days prior to the date of trial.
>
> (c) Effect of Failure to Object or Offer Conflicting Translation. If no conflicting translation or objection is timely served, the court shall admit a translation submitted under paragraph (a) without need of proof, provided however that the underlying foreign language documents are otherwise admissible under the Texas Rules of Evidence. Failure to serve a conflicting translation under paragraph (a) or failure to timely and properly object to the accuracy of a translation under paragraph (b) shall preclude a

party from attacking or offering evidence contradicting the accuracy of such translation at trial.

(d) Effect of Objections or Conflicting Translations. In the event of conflicting translations under paragraph (a) or if objections to another party's translation are served under paragraph (b), the court shall determine whether there is a genuine issue as to the accuracy of a material part of the translation to be resolved by the trier of fact.

(e) Expert Testimony of Translator. Except as provided in paragraph (c), this Rule does not preclude the admission of a translation of foreign language documents at trial either by live testimony or by deposition testimony of a qualified expert translator.

(f) Varying of Time Limits. The court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this Rule.

(g) Court Appointment. The court, if necessary, may appoint a qualified translator, the reasonable value of whose services shall be taxed as court costs.

VI. INTERPRETERS IN TEXAS COURTS.

A. TRCP 183. Texas Rule of Civil Procedure 183 authorizes the appointment of interpreters for use during court proceedings.

Tex. R. Civ. P. 183 Interpreters

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

B. TRE 604. Texas Rule of Evidence 604 sets certain qualifications for interpreters in Texas court proceedings. Rule 604 reads:

Tex. R. Evid. 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

The following commentary reflects some of the issues surrounding translators in the courtroom. R. Doak Bishop, *International Litigation in Texas: Texas Rules of Evidence and Recent Changes in the Texas Rules of Civil Procedure*, 36 BAYLOR L. REV. 131, 152-53 (1984):

[Rule 604] introduces into our state practice the requirement that an interpreter be qualified as an expert under Rule 702 in order to practice the profession of translating from one language to another. This standard is sensible, since a reliable translation can be critical to a case. The Administrative Office of the United States Courts has even begun a program of testing and certifying Spanish-English language translators for federal courts. [FN85] This program is timely because of the increasing *152 recognition of the need for qualified interpreters. [FN 86]

Two New York cases, which reached opposite results on a significant legal point because of differing translations, illustrate the importance of having an interpreter qualified in the technical area with which the substance of the testimony is concerned. In Rosman v. Trans World Airlines, [FN87] the New York Court of Appeals held that the French words 'lesion corporelle' contained in the Warsaw Convention meant bodily injury and did not connote psychic damage. The official text of the Warsaw Convention, regulating certain aviation claims, is written in French. The English translation made by the United States Department of State is unofficial only. In Palagonia v. Trans World Airlines, [FN88] however, a lower New York court later decided that 'lesion corporelle' had a broader meaning as a technical term in French legal usage, and included the concept of mental injury. In so deciding, the court rejected the testimony of defense experts and interpreters who were highly qualified in international law, the Warsaw Convention, and French lexicography and semantics, because they were without experience in translating technical French legal documents. The plaintiff's expert, on the other hand, was a lawyer with vast experience in international aviation law, in dealing with the Warsaw Convention in the French language, in teaching law in French, and in translating French legal documents.

Consequently, counsel should bear in mind that if the witness will testify about technical

> subjects (such as detailed engineering or legal matters, for example), then the translator may be required to have a technical background, as well as having sufficient language training and experience. An interpreter's expertise is generally shown either by a stipulation between the parties or by questioning the interpreter, on the record and under oath, at the beginning of a proceeding, about his or her qualifications.
>
> Rule 604 also provides that an interpreter should take an oath or affirmation that he will make a true translation. This accords with present Texas practice, [FN89] even though in one case the plaintiff's counsel was permitted to act as interpreter without being sworn. [FN 90] This unusual procedure was only upheld because the court reporter was bilingual and confirmed the translation; but even so, the court strongly recommended against this practice. Texas Rule 604 conforms with Rule 604 of the Federal Rules of Evidence.

If the trial court fails to administer the required oath to the interpreter, an objection must be made at the time or else it is waived. *Lara v. State*, 761 S.W.2d 481 (Tex. App.--Eastland 1988, no pet.).

C. FEDERAL CASELAW. Federal court cases indicate that the decision of whether or not to use an interpreter is a matter within the sound discretion of the trial judge. *U. S. v. Rodriguez*, 424 F.2d 205 (4th Cir. 1970), *certiorari denied*, 400 U.S. 841, 91 S.Ct. 83, 27 L. Ed.2d 76. In the case of *U. S. v. Addonizio*, C.A.3 (N.J.) 1971, 451 F.2d 49 (3rd Cir 1971), *certiorari denied*, 405 U.S. 936, 92 S.Ct. 949, 30 L.Ed.2d 812, it was held that the trial court properly permitted a witness's wife to act as "interpreter" for a witness who was unable to speak loudly and apparently had difficulty in making himself understood. The trial judge examined the wife thoroughly as to her ability to translate and her motives to distort testimony.

FRE 604 applies to depositions given in a foreign tongue. However, a translator who was not sworn at the time of the original deposition could be sworn and his translation ratified by live testimony before the judge at an evidentiary hearing held prior to the deposition testimony being offered in trial. *U.S. v. Kramer*, 741 F.Supp. 893 (S.D.Fla. 1990).

FRE 604, requiring an oath for interpreters, applies only to interpreters who translate testimony of witnesses on the witness stand, and does not apply to a language expert who took the stand under oath, to translate previously recorded conversations, and subjected himself to cross-examination. *U.S. v. Taren-Palma*, 997 F.2d 525 (9th Cir. 1993), *certiorari denied*, 511 U.S. 1071, 114 S.Ct. 1648, 128 L.Ed.2d 368.