

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING

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UNITED STATES OF AMERICA,
PLAINTIFF,
VS.
RUBEN ZUNO-ARCE, ET AL.,
DEFENDANTS.

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) NO. CR 87-422(F)-ER
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REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, MARCH 5, 1990

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APPEARANCES:

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FOR DEFENDANT ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
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FOR DEFENDANT VASQUEZ-VELASCO:

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PROCEEDINGS

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MONDAY, MARCH 5, 1990

DEFENDANT ZUNO-ARCE'S MOTION TO DISCLOSE
ALL PRIOR IN CAMERA FILINGS BY THE GOVERNMENT,
OR IN THE ALTERNATIVE FOR RECUSAL

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THE COURT'S RULING

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LOS ANGELES, CALIFORNIA, MONDAY, MARCH 5, 1990, 10:00 A.M.

1 THE CLERK: ITEM NO. 7, CRIMINAL 87-422, UNITED
2 STATES OF AMERICA VERSUS RUBEN ZUNO-ARCE, JUAN JOSE
3 BERNABE, AND JAVIER VASQUEZ-VELASCO.

4 COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD.

5 MR. MEDRANO: FOR THE UNITED STATES, YOUR HONOR,
6 MANUEL MEDRANO AND JOHN CARLTON.

7 MR. MEDVENE: IF YOUR HONOR PLEASE, MESSRS.
8 BLANCARTE AND MEDVENE FOR MR. ZUNO-ARCE, WHO IS PRESENT,
9 YOUR HONOR.

10 MS. KELLY: GOOD MORNING, YOUR HONOR. MARY
11 KELLY FOR JUAN JOSE BERNABE.

12 MR. NICOLAYSEN: GOOD MORNING, YOUR HONOR.
13 GREGORY NICOLAYSEN APPEARING FOR DEFENDANT JAVIER VASQUEZ-
14 VELASCO, WHO IS PRESENT.

15 THE COURT: ALL RIGHT.

16 MR. NICOLAYSEN: FOR THE RECORD, YOUR HONOR, THE
17 COURT INTERPRETERS STAFF ARE ALSO HERE.

18 THE COURT: YES. WE HAVE A NUMBER OF MOTIONS IF
19 WE ARE ABLE TO GET TO THEM TODAY. THOSE THAT WE DO NOT
20 REACH TODAY WILL BE SCHEDULED LATER.

21 I WANT TO FIRST DEAL WITH THE MOTION BY THE
22 DEFENDANT ZUNO-ARCE, WHICH IS ENTITLED "MOTION TO DISCLOSE
23 ALL PRIOR IN CAMERA FILINGS BY THE GOVERNMENT, OR IN THE
24 ALTERNATIVE FOR RECUSAL."

25 THIS MOTION THE COURT HAS READ AND CONSIDERED,

1 AND THE COURT'S TENTATIVE CONCLUSION IS THAT IT SHOULD BE
2 DENIED FOR THE FOLLOWING REASONS:

3 THIS COURT HAS RECEIVED FOUR IN CAMERA FILINGS
4 FROM THE GOVERNMENT IN THIS CASE AND NUMEROUS IN CAMERA
5 FILINGS FROM THE DEFENDANT. THE DEFENDANT ZUNO-ARCE MOVES
6 THE COURT TO ORDER DISCLOSURE OF THESE IN CAMERA FILINGS
7 ON THE GROUND THAT THEY DENY HIM DUE PROCESS OF LAW.

8 HE REPEATEDLY ASSERTS THAT THEY ARE THE BASIS
9 FOR HIS DETENTION WITHOUT BAIL. THAT IS AN ASSERTION THAT
10 COULD NOT BE FARTHER FROM THE TRUTH. THE COURT DENIED
11 BAIL IN THIS CASE BECAUSE IT DEEMED MR. ZUNO-ARCE TO POSE
12 A RISK OF FLIGHT. THE FINDINGS MADE BY THE COURT IN THAT
13 REGARD WERE NOT BASED UPON ANY IN CAMERA FILINGS.

14 THE COURT FOUND THAT MR. ZUNO-ARCE WAS A FLIGHT
15 RISK BECAUSE HE POSSESSES SIGNIFICANT WEALTH, IS AN
16 EXCLUDED ALIEN, HAS A PILOT'S LICENSE, LACKS SIGNIFICANT
17 CONTACT WITH THIS DISTRICT, HAS MOST OF HIS SIGNIFICANT
18 CONTACTS WITH MEXICO WHERE HE RESIDES, AND WAS FACING
19 MULTIPLE FELONY CHARGES, EACH CARRYING MAXIMUM SENTENCES
20 OF LIFE IMPRISONMENT. THOSE ARE THE FACTORS UPON WHICH
21 THE COURT FOUND THAT MR. ZUNO-ARCE'S POSITION HAD CHANGED
22 AFTER HE WAS INDICTED IN THIS CASE, AND HE WAS A FLIGHT
23 RISK. I IN FACT FOUND HIM TO BE A FLIGHT RISK PRIOR TO
24 THAT TIME WHEN HE WAS MERELY A DETAINED WITNESS.

25 NOW, THE NINTH CIRCUIT AFFIRMED THIS COURT'S

1 DETENTION ORDER ON JANUARY 16, SO THAT THE DEFENDANT'S
2 ASSERTION THAT HE IS BEING DETAINED BECAUSE OF SOME IN
3 CAMERA FILINGS TO THIS COURT IS INACCURATE.

4 THIS COURT HAS RECEIVED IN CAMERA FILINGS UNDER
5 WELL-ESTABLISHED PRECEDENT. THIS COURT RECEIVED AN IN
6 CAMERA FILING WITH RESPECT TO THE DEFENDANT VASQUEZ-
7 VELASCO'S REQUEST TO REVEAL THE NAMES OF CONFIDENTIAL
8 INFORMANTS. THE NINTH CIRCUIT HAS EXPRESSLY AUTHORIZED
9 SUCH FILINGS. AT THE EXPRESS REQUEST OF THE DEFENDANT
10 ZUNO-ARCE'S COUNSEL, THIS COURT RECEIVED AN IN CAMERA
11 FILING FROM THE GOVERNMENT IN RESPECT TO ZUNO-ARCE'S
12 MOTION FOR BAIL ON JANUARY 22.

13 AS I HAVE ALREADY DISCUSSED, THE COURT DID NOT
14 BASE ITS BAIL DECISION ON ANY OF THESE IN CAMERA FILINGS,
15 BUT RATHER UPON THE FINDING THAT THE DEFENDANT POSED A
16 RISK OF FLIGHT. THE NINTH CIRCUIT HAS AFFIRMED THE
17 DECISION.

18 NOW, THE COURT ALSO RECEIVED IN CAMERA FILINGS
19 IN RELATION TO THE KASTIGAR HEARING, WHICH WAS REQUESTED
20 BY THE DEFENDANT ZUNO-ARCE AND WHICH HAS BEEN DECIDED BY
21 THE COURT. I GRANTED THAT HEARING. THE PROPRIETY OF IN
22 CAMERA FILINGS FOR THE PURPOSE AND WITH RESPECT TO THE
23 KASTIGAR HEARINGS CANNOT BE SERIOUSLY QUESTIONED. UNITED
24 STATES VS. ROGERS, 722 FED.2D 557, A 1983 NINTH CIRCUIT
25 CASE, AND UNITED VS. CROWSON, A 1987 NINTH CIRCUIT CASE,

1 AUTHORIZE THIS PROCEDURE.

2 THE COURT ALSO RECEIVED AN IN CAMERA FILING FROM
3 THE GOVERNMENT WITH RESPECT TO AN ARREST WARRANT FOR A
4 MATERIAL WITNESS IN THIS CASE; ALL OF THESE FILINGS HAVE
5 BEEN AUTHORIZED BY THE COURT. THE SUGGESTION THAT THEY
6 WERE FILED WITHOUT AUTHORIZATION BY THE COURT IS TOTALLY
7 UNFOUNDED. THE COURT FURTHER NOTES THAT THE IN CAMERA
8 FILINGS HAVE BEEN AUTHORIZED BY STATUTE IN CONNECTION WITH
9 DISCOVERY ISSUES UNDER THE JENCKS ACT AND BY CASE LAW AND
10 REGARDING DISCOVERY ISSUES UNDER BRADY.

11 EX PARTE -- IN CAMERA FILINGS WILL PROBABLY COME
12 UP MANY TIMES DURING THE COURSE OF THIS CASE.

13 NOW, THE DEFENDANT HERE CLAIMS THAT HE HAS A
14 DISCOVERY RIGHT TO THE IMMEDIATE CONTENTS OF THESE
15 FILINGS. THERE IS AUTHORITY SUBMITTED TO SUPPORT THAT
16 PROPOSITION.

17 DEFENSE COUNSEL SEEMS TO BELIEVE THAT IN CAMERA
18 FILING DOCUMENTS, WHICH WAS PERMITTED BY COURT ORDER AND
19 AUTHORIZED UNDER CASE LAW, SOMEHOW ENTITLES HIM TO
20 IMMEDIATE PRODUCTION OF THEIR CONTENTS. THE DEFENDANT
21 ARGUES HERE THAT THE USE OF ANY IN CAMERA FILING DEPRIVES
22 THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS AND THAT
23 DEFENDANT IS ENTITLED TO THEIR IMMEDIATE DISCLOSURE. THIS
24 IS CLEARLY NOT THE LAW. IN CAMERA FILINGS HAVE BEEN HELD
25 PROPER IN THE CIRCUMSTANCES UNDER WHICH THEY WERE UTILIZED

1 IN THIS CASE, AND A DEFENDANT HAS NO GENERAL DISCOVERY
2 RIGHT IN A CRIMINAL CASE.

3 NOW, TO THE EXTENT THAT THE DEFENDANT'S REQUEST
4 IS MERELY A ROVIERO REQUEST FOR DISCLOSURE OF THE IDENTITY
5 OF CONFIDENTIAL INFORMANTS, IT IS REDUNDANT SINCE THIS
6 REQUEST IS MADE IN THE DEFENDANT'S MOTION FOR PRETRIAL
7 DISCOVERY AS REQUEST NO. 8.

8 I THINK THE DEFENDANT SHOULD UNDERSTAND THAT
9 THERE ARE WELL RECOGNIZED GOVERNMENTAL INTERESTS INVOLVED
10 IN THESE IN CAMERA FILINGS, AND THE COURT IN CONSIDERING
11 MATTERS IN CAMERA IS BALANCING THE GOVERNMENTAL INTERESTS
12 TO PROTECT THE FREE FLOW OF INFORMATION FROM THE
13 INFORMANTS, TO PROTECT THE INTEGRITY OF ITS INVESTIGATION,
14 AND TO PROTECT THE SAFETY OF THE INFORMANTS, AND THAT IS
15 THE PRINCIPAL UPON WHICH IN CAMERA FILINGS ARE GENERALLY
16 SUBMITTED.

17 THE DEFENDANT'S MOTION IN THE ALTERNATIVE THAT
18 THE COURT RECUSE ITSELF BECAUSE OF HAVING RECEIVED THESE
19 IN CAMERA SUBMISSIONS IS TANTAMOUNT TO SAYING THAT IF THE
20 COURT DOES NOT REVERSE ITS EARLIER DECISION, IT THEREFORE
21 SHOULD RECUSE ITSELF. WELL, THAT MOTION IS TOTALLY
22 UNFOUNDED, AND I WOULD DENY THAT AS WELL.

23 NOW, THAT IS BASICALLY HOW THE COURT VIEWS THIS
24 MOTION. I VIEWED IT MORE AS AN ATTEMPT TO REVISIT ISSUES
25 THAT WE HAVE ALREADY DECIDED, WHICH COUNSEL ARE EITHER

1 UNWILLING OR UNABLE TO ACCEPT THE COURT'S RULING WITH GOOD
2 GRACE.

3 THERE ARE WAYS TO OBTAIN INFORMATION.
4 UNDENIABLY THE DEFENDANT WOULD BE ENTITLED AT SOME POINT
5 IN TIME TO KNOW WHAT INFORMANT WOULD TESTIFY AGAINST HIM,
6 AND AT THE APPROPRIATE TIME WILL KNOW WHAT STATEMENTS HAVE
7 BEEN MADE BY HIM. THAT HAS NEVER BEEN DENIED. THE POINT
8 IS THAT AT THE POINTS OF TIME THAT THIS IN CAMERA MATERIAL
9 WAS FURNISHED TO THE COURT THE DEFENDANT'S RIGHT TO KNOW
10 IS OUTWEIGHED BY THE GOVERNMENTAL INTERESTS INVOLVED,
11 WHICH I HAVE ALREADY MENTIONED.

12 OF COURSE, AS THE CASE DRAWS CLOSER TO TRIAL THE
13 BALANCE THEN HAS TO BE CONSIDERED BECAUSE THE DEFENDANT
14 HAS A RIGHT TO A FAIR TRIAL, AND THE WAY THAT THIS SHOULD
15 HAVE BEEN HANDLED, AND IT WAS BY OTHER COUNSEL IN THE CASE
16 WHO FILED, WAS A MOTION TO DISCLOSE THE IDENTITY OF THE
17 INFORMANT, ALTHOUGH YOU DIDN'T FILE A MOTION LIKE THAT.
18 YOU FILED -- YOU INCLUDED IT IN THE DISCOVERY MOTION WHICH
19 YOU HAVE FILED TODAY.

20 NOW, THAT IS WITH RESPECT TO THIS MOTION. I
21 DON'T THINK IT WARRANTS ANY ARGUMENT. I'D LIKE TO GET ON
22 TO THE OTHER MOTIONS.

23 MR. MEDVENE: IF THE COURT PLEASE, MAY I BE
24 HEARD VERY BRIEFLY, YOUR HONOR?

25 THE COURT: ALL RIGHT.

1 MR. MEDVENE: I WANT TO BRING ONE POINT TO THE
2 ATTENTION OF YOUR HONOR THAT I DON'T BELIEVE HAS BEEN
3 ADDRESSED BY YOUR HONOR OR BY THE GOVERNMENT, AND THAT IS
4 THAT IN EVERY CASE THAT WAS CITED, TO THE BEST OF MY
5 KNOWLEDGE, BY THE GOVERNMENT -- BASICALLY THEY ARGUED TO
6 SUSTAIN YOUR ABILITY TO IN AN EX PARTE FASHION HAVE A
7 CONVERSATION WITH THEM PRECLUDING --

8 THE COURT: JUST A MOMENT. I HAVE NEVER HAD ANY
9 CONVERSATION WITH THEM.

10 MR. MEDVENE: IN WRITING, SIR.

11 THE COURT: WELL, THEY SUBMITTED IN CAMERA
12 MATERIALS IN WRITING.

13 MR. MEDVENE: YES, SIR. NOT ONLY SUBMITTED IN
14 CAMERA MATERIALS, BUT REQUESTED PERMISSION TO FILE IN
15 CAMERA MATERIALS BY FILING THAT IN CAMERA EX PARTE, SO WE
16 ARE REDUCED TO THE POINT WHERE WE DON'T EVEN KNOW WHEN
17 THEY REQUESTED PERMISSION TO FILE IN CAMERA.

18 THE LAST TIME WE WERE HERE OR A COUPLE OF TIMES
19 AGO YOUR HONOR RULED THAT THEY HAD TO GET PERMISSION. WE
20 HAD ARGUED FOR THAT IN HOPES THAT WE CAN ARGUE AGAINST THE
21 NECESSITY OF THEM FILING IN CAMERA. THE WAY THEY
22 RESPONDED, AND WHAT YOUR HONOR PERMITTED, WAS FOR THEM TO
23 EVEN FILE THEIR REQUEST TO FILE IN CAMERA --

24 THE COURT: ARE YOU SAYING TO THE COURT THAT YOU
25 WERE NOT AWARE OF EACH OF THESE INSTANCES OF THE IN CAMERA

1 FILINGS?

2 MR. MEDVENE: MY UNDERSTANDING IS WE WERE NOT.
3 THE INSTANCES AFTER YOUR HONOR RULED THAT THEY HAD TO GET
4 PERMISSION --

5 THE COURT: DO YOU MEAN --

6 MR. MEDVENE: EXCUSE ME, YOUR HONOR. AFTER YOU
7 RULED, THEY HAD TO GET PERMISSION. MY UNDERSTANDING OF
8 WHAT THEY DID WAS WE DIDN'T GET NOTICES WHEN THEY GOT
9 PERMISSION, AND I BELIEVE THEY ADMIT THIS IN THEIR PAPERS.
10 WE FIND IT OUT FOR THE FIRST TIME NOW THAT THEY ACTUALLY
11 WENT IN CAMERA TO YOU EX PARTE. SO NOT ONLY DON'T WE GET
12 A PAPER NOW, THEY GO TO YOU WITHOUT EVEN US KNOWING THEY
13 WENT TO YOU.

14 BUT SO THAT I DON'T OBSCURE THE POINT, YOUR
15 HONOR, IN WHAT HAS GONE ON IN THIS CASE, EVERY CASE THEY
16 HAVE CITED SUSTAINING THEIR RIGHT TO HAVE THIS EX PARTE
17 CONVERSATION WITH YOU IS A JENCKS ACT CASE WHERE WE ARE
18 TALKING 3500(C). THE JENCKS ACT IS A CASE WHERE THE WHOLE
19 ARGUMENT MADE BEFORE THE COURT ON EACH AND EVERY ONE OF
20 THE FOUR CASES THEY CITED WAS THAT THIS IS NOT RELEVANT TO
21 THE STATEMENT THAT THE WITNESS IS GOING TO MAKE. JENCKS
22 SPECIFICALLY PROVIDES FOR THAT.

23 NOW, WE ARE NOT ONLY TALKING JENCKS. WE ARE
24 TALKING DUE PROCESS CLAUSE ASSISTANCE OF COUNSEL. BUT
25 MORE IMPORTANTLY, AND THIS IS MAYBE WHAT WE HAVE NOT SAID

1 CLEARLY TO THE COURT, AND I APOLOGIZE FOR THAT. IN OUR
2 CASE THE HARM OF WHAT IS HAPPENING, YOUR HONOR, UNLIKE
3 JENCKS WHERE THERE IS THE ARGUMENT IS IT RELEVANT OR NOT
4 TO THE WITNESS'S TESTIMONY, WHAT IS HAPPENING HERE IS IT
5 IS RELEVANT. WE GO IN WITH THE GIVEN THAT IT IS RELEVANT.

6 IN OTHER WORDS, THEY ARE SAYING TO YOU, AT LEAST
7 AS WE UNDERSTAND IT, HERE IS EVIDENCE IN CAMERA BECAUSE WE
8 CAN'T TELL THEM, JUDGE. YOU HAVE IT, AND WE WILL HAVE IT.
9 ZUNO INVOLVED HIMSELF IN THIS CONSPIRACY TO KIDNAP
10 CAMARENA. THEY CAN'T HAVE IT, JUDGE, BUT YOU AND I WILL
11 HAVE IT -- THAT HE IS A NARC DEALER.

12 NOW, THAT IS WHAT THEY PURPORT TO GIVE YOU.
13 THAT IS DIFFERENT FROM 3500(C) MATERIAL, WHICH IS ALL THE
14 CASES THEY CITE, AND I DON'T THINK WE HAVE DONE A GOOD
15 ENOUGH JOB IN POINTING OUT THAT DIFFERENCE. EVERY CASE
16 THEY CITE THEY ARGUE IT IS NOT RELEVANT, BUT HERE BY GIVEN
17 IT IS RELEVANT TO THE CHARGES AGAINST ZUNO, AND THERE IS
18 NO CASE I KNOW OF, JUDGE, WHERE THEY CAN COME IN AND GIVE
19 YOU MATERIAL RELEVANT TO THIS MAN'S GUILT OR INNOCENCE,
20 NOT UNDER (C) THAT IS NOT RELEVANT, BUT RELEVANT TO HIS
21 GUILT OR INNOCENCE, AND YOU HAVE IT AND THEY HAVE IT, BUT
22 WE DON'T HAVE IT.

23 NOW, AT A MINIMUM -- AND I DON'T KNOW IF IT IS
24 ENOUGH -- BUT AS A MINIMUM YOU OUGHT TO EXCISE IT AND TELL
25 US WHAT IT IS. THIS ISN'T A SUBTERFUGE TO GET INFORMANT

1 THINGS. WE WILL WORRY ABOUT THAT LATER, BUT AT LEAST TELL
2 US WHAT THEY ARE SAYING HE DID SO THAT WE ARE ON AN EQUAL
3 PLAYING FIELD.

4 THE COURT: YOU ARE NOT ENTITLED TO THAT
5 INFORMATION. THE LAW DOES NOT ENTITLE YOU TO THAT
6 INFORMATION UNTIL THE APPROPRIATE TIME.

7 MR. MEDVENE: THERE IS NO CASE THEY CITE, JUDGE.

8 THE COURT: THERE IS NO CASE THAT YOU HAVE CITED
9 FOR THAT PROPOSITION THAT YOU ARE ARGUING, NONE
10 WHATSOEVER, EXCEPT THERE IS A CONSTANT COMPLAINING THAT
11 THIS IS THE WAY ALL CASES HAVE BEEN HANDLED FOR A LONG
12 TIME, AND EVERY DEFENDANT WHO HAS EVER HAD AN IN CAMERA
13 SUBMISSION CAN MAKE THE SAME ARGUMENT -- WHY SHOULD THE
14 COURT KNOW WHAT IS BEING SUBMITTED, AND NOT THE DEFENDANT.

15 MR. MEDVENE: NO, SIR. ONLY ABOUT THINGS
16 RELEVANT TO HIS GUILT OR INNOCENCE HERE. EVERY CASE THEY
17 CITE ARE CASES WHERE THEY SAY IT HAS NO RELEVANCE TO THE
18 GUILT OR INNOCENCE. THAT IS EVERY CASE THEY CITE. THAT
19 IS JONES AND NIXON AND THE OTHER CASES.

20 HERE THEY ARE SAYING THIS IS DIRECTLY INVOLVED
21 IN HIS GUILT OR INNOCENCE, JUDGE, AND WE WANT YOU TO KNOW
22 THAT HE IS A BAD MAN, AND WE KNOW IT, BUT LET'S NOT TELL
23 THE DEFENSE COUNSEL.

24 THE COURT: ALL RIGHT. THAT IS ENOUGH ARGUMENT.

25 MR. MEDVENE: ALL RIGHT, SIR. MAY WE AT LEAST

1 HAVE A SUMMARY WITHOUT THE DETAIL OF WHO SAID IT -- WE ARE
2 NOT WAIVING THAT RIGHT -- BUT AT LEAST A SUMMARY OF WHAT
3 THEY HAVE GIVEN YOU THAT WE DID WRONG IN THE IN CAMERA
4 PROCEEDINGS?

5 THE COURT: YOU MAY NOT.

6 MR. MEDVENE: I AM SORRY, SIR.

7 THE COURT: YOU MAY NOT HAVE A SUMMARY.

8 - - -

9 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
10 TRANSCRIPT OF THE PROCEEDINGS HAD ON THE RECORD
11 IN THE ABOVE-ENTITLED MATTER.

12
13 John B. Thomas

14 OFFICIAL REPORTER

3/8/90
DATE