

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

GARY A. FEES,
UNITED STATES ATTORNEY
BY: MANUEL A. MEDRANO
JOHN L. CARLTON
ASSISTANT U.S. ATTORNEYS
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 894-0619/894-6682

FOR DEFENDANT RUBEN ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
BY: JAMES BLANCARTE, ESQ.
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064-1683
(213) 312-3150

ALSO PRESENT:

MR. JAMES GOLDMAN, U.S. MARSHAL
WITNESS SECURITY PROGRAM

MR. CRAIG MEACHAM, U.S. MARSHAL

CR-87-422(F)-ER, U.S. VS. MATTA, ET AL., TUESDAY, MAY 8, 1990
2:30 P.M.

I N D E X

DEFENDANT ZUNO'S MOTION TO BE RETURNED TO
THE METROPOLITAN DETENTION CENTER RATHER THAN
THE FEDERAL COURTHOUSE DURING TRIAL PROCEEDINGS

P. 4

LOS ANGELES + CALIFORNIA TUESDAY, MAY 8, 1990

+ 2:30 P.M.

(EXCERPT OF PROCEEDINGS.)

THE COURT: LET THE RECORD SHOW THE DEFENDANT MR. ZUNO ARCE IS PRESENT WITH HIS COUNSEL, AND GOVERNMENT'S COUNSEL ARE ALSO PRESENT.

I HAVE CONVENED THIS HEARING FOR THE PURPOSE OF CONSIDERING A MOTION FILED ON BEHALF OF THIS DEFENDANT REQUESTING HIS RETURN TO THE METROPOLITAN DETENTION CENTER RATHER THAN TO HAVE HIM -- RATHER THAN BEING CONFINED IN THE COURTHOUSE FACILITY.

IS THERE A MARSHALS' REPRESENTATIVE HERE FROM THE U.S. MARSHALS OFFICE?

OH, YES, I SEE A MARSHAL IS PRESENT.

WOULD YOU COME FORWARD, PLEASE?

ARE YOU HERE ON THIS MATTER ALSO?

MR. GOLDMAN: YES, YOUR HONOR, I AM.

THE COURT: WOULD YOU STATE YOUR NAME FOR THE RECORD?

MR. GOLDMAN: MY LAST NAME IS GOLDMAN, SPELLED G O L D M A N. MY FIRST NAME IS JAMES. I'M FROM THE U.S. MARSHALS SERVICE.

THE COURT: AND, MARSHAL, WOULD YOU STATE --

MR. MEACHAM: CRAIG MEACHAM, M E A C H A M, UNITED

1 STATES MARSHAL, CENTRAL DISTRICT OF CALIFORNIA.

2 THE COURT: ALL RIGHT. THE FIRST INQUIRY THAT I
3 WANT TO MAKE -- AND I DON'T WANT YOU NECESSARILY TO GO INTO
4 REASONS -- CAN YOU TELL ME THE GENERAL REASON WHY THE
5 DEFENDANT IS HOUSED IN THE COURTHOUSE RAHTER THAN AT THE
6 METROPOLITAN DETENTION CENTER WHERE HE WAS PREVIOUSLY?

7 MR. GOLDMAN: YES, YOUR HONOR. I WORK FOR THE
8 WITNESS SECURITY DIVISION. WE WERE DIRECTED HERE AT THE
9 WITNESS SECURITY SAFE CITE TO ASSUME CUSTODY OF MR. ZUNO ARCE,
10 AND WE INCORPORATED HIS DETAIL INTO THE DETAIL WITH MR. MATTA,
11 WHO WAS ALREADY CONFINED HERE IN THE DISTRICT.

12 THE COURT: WELL -- IS THE MOTIVATIONAL REASON FOR
13 HOUSING HIM HERE FOR SECURITY REASONS?

14 MR. GOLDMAN: YES, YOUR HONOR. BY HOUSING HIM HERE
15 IN THE COURTHOUSE, WE ARE NOT PUT IN A SITUATION WHERE WE HAVE
16 TO TRANSPORT HIM BACK AND FORTH FROM THE M.D.C. SO HE'S
17 ESSENTIALLY HOUSED IN THE SAME FACILITY WHERE HE'S PRODUCED
18 FOR COURT PROCEEDINGS. IT IS A MUCH SAFER ARRANGEMENT.

19 THE COURT: ALL RIGHT.

20 NOW, COUNSEL FOR MR. ZUNO, AS YOU KNOW, THE DECISION
21 ABOUT WHERE A PRISONER SHOULD BE HOUSED IS GENERALLY LEFT TO
22 THOSE WHO ARE IN HIS CONTROL AND WHO ARE RESPONSIBLE FOR HIS
23 SECURITY AND FOR THE SECURITY OF THE PARTY. AND THE COURT
24 DOES NOT GENERALLY INTERFERE IN THOSE DECISIONS.

25 MR. BLANCARTE: YES, YOUR HONOR. IF I MAY, YOUR

1 HONOR, WE ACKNOWLEDGE AND ACCEPT THE FACT THAT WE SHOULD NOT
2 DISTURB THE DECISIONS OF THE U.S. MARSHAL OR THE FEDERAL
3 BUREAU OF PRISONS, AND WOULD NOT IMPOSE UPON THE COURT TO
4 INTERVENE BASED UPON WHAT THE COURT HAS PREVIOUSLY SAID ON THE
5 SUBJECT.

6 OUR MOTION TODAY ADDRESSES FIRST THAT IN AN ATTEMPT
7 TO DETERMINE WHETHER THIS WAS A DECISION FROM THE OFFICE OF
8 THE ASSISTANT U.S. ATTORNEY, WE WERE TOLD THAT THEY DID NOT
9 PLAY A ROLE IN THAT DECISION. AND WE THEN ADDRESSED OURSELVES
10 TO THE U.S. MARSHAL, NAMING MR. GOLDMAN, WHO I SPOKE TO, WHO
11 SAID THAT IT WAS NOT HIS DECISION, THAT HE GOT ORDERS FROM
12 WASHINGTON, AND COULD NOT TELL ME WHO IN WASHINGTON, WHAT
13 AGENCY OR WHY MR. ZUNO'S CIRCUMSTANCES HAD BEEN CHANGED.

14 I MENTIONED THAT MR. ZUNO HAD BEEN AT M.D.C. WITHOUT
15 INCIDENT FOR THE BETTER PART OF FOUR MONTHS, HAD MADE NO
16 THREATS OF ANY KIND AGAINST ANYONE AND HAD RECEIVED NO THREATS
17 AGAINST HIM, TO THE BEST OF OUR KNOWLEDGE.

18 MR. GOLDMAN SAID THAT HE WAS SIMPLY FOLLOWING ORDERS
19 AND HAD NO PERSONAL KNOWLEDGE OF THE MOTIVES OR GROUNDS OR ANY
20 SHOWING AS TO WHY THIS ADDED SECURITY WAS NECESSARY.

21 I DID ASK MR. MEDRANO, WHO'S PRESENT HERE, WHETHER
22 THIS MIGHT HAVE BEEN THE RESULT OF ANY REQUEST OR INTERVENTION
23 BY THE D.E.A. HE SAID THAT THAT WAS POSSIBLE, BUT HE HAD NO
24 PERSONAL KNOWLEDGE THAT THE AGENCY --

25 THE COURT: WHAT IS THE POINT OF ALL THIS?

1 MR. BLANCARTE: THE POINT WAS, YOUR HONOR --

2 THE COURT: THE POINT IS --

3 MR. BLANCARTE: -- EVEN THOUGH WE ACKNOWLEDGED THAT
4 WE SHOULD NOT INTERVENE IN THOSE DECISIONS, WE ALSO FELT THAT
5 AN OUTSIDE AGENCY SHOULD NOT BE ALLOWED TO INTERVENE WITH SUCH
6 A REQUEST IF IT WERE, IN FACT, NOT A DECISION OF THE FEDERAL
7 BUREAU OF PRISONS.

8 THE COURT: DO YOU HAVE ANY EVIDENCE THAT ANY
9 OUTSIDE AGENCY HAS INTERVENED IN MAKING THE DECISION WHERE
10 YOUR CLIENT SHOULD BE PLACED?

11 MR. BLANCARTE: ONLY THAT WE WERE NOT ABLE TO GET
12 ANY CONFIRMATION OR DENIAL AS TO WHETHER THE D.E.A. OR ANY
13 AGENCY OTHER THAN THE U.S. MARSHAL OR THE FEDERAL BUREAU OF
14 PRISONS HAD REQUESTED THIS ADDED SECURITY.

15 MR. GOLDMAN SAID THERE WAS NO NONE AT THE U.S.
16 MARSHALS OFFICE THAT HE KNEW OF THAT I COULD CONTACT TO
17 CONFIRM WHETHER IT WAS THE DECISION OF THE U.S. MARSHAL, SO WE
18 SUSPECTED THAT IT COULD HAVE BEEN THE D.E.A. OR SOME AGENCY
19 OTHER THAN THE U.S. MARSHAL THAT REQUESTED THIS.

20 THE COURT: WELL, UNLESS YOU'RE PREPARED TO OFFER
21 SOME EVIDENCE ON THE SUBJECT, I CONSIDER THE MATTER CLOSED.
22 THOSE DECISIONS ARE GENERALLY MADE BY THE PEOPLE WHO HAVE
23 RESPONSIBILITY FOR THE CUSTODY OF THE PRISONER.

24 MR. BLANCARTE: IT IS NOT MY UNDERSTANDING FROM WHAT
25 MR. GOLDMAN HAS SAID THAT IT WAS, IN FACT, A DECISION OF THE

1 U.S. MARSHALS OFFICE. CERTAINLY IT WAS NOT THE DECISION OF
2 THE U.S. MARSHAL IN LOS ANGELES; THAT MUCH MR. GOLDMAN MADE
3 CLEAR.

4 IF IT WAS A DECISION FROM THE U.S. MARSHAL IN
5 WASHINGTON, D.C., THAT WAS NOT CLARIFIED BY MR. GOLDMAN
6 BECAUSE I BELIEVE HE'S NOT IN A POSITION TO MAKE IT.

7 THE COURT: FIRST OF ALL, I DON'T THINK MR. GOLDMAN
8 OR ANYONE ELSE IS REQUIRED TO EXPLAIN TO YOU WHY THE DEFENDANT
9 IS BEING HELD WHERE HE IS.

10 MR. BLANCARTE: THEN LET ME MENTION, YOUR HONOR,
11 THAT MR. ZUNO, AS YOU KNOW, IS A PRETRIAL DETAINEE, AND THE
12 RIGHTS OF A PRETRIAL DETAINEE ARE MORE AMPLE THAN THOSE OF
13 SOMEONE WHO HAS ALREADY BEEN CONVICTED AND IS SERVING A
14 SENTENCE.

15 THE COURT: AND THE CONDITIONS UNDER WHICH HE IS
16 PRESENTLY CONFINED ARE FAR SUPERIOR TO THOSE AT THE M.D.C.

17 MR. BLANCARTE: YOUR HONOR, I WOULD TAKE ISSUE WITH
18 THAT, RESPECTFULLY, IN THE FOLLOWING PARTICULARS.

19 THERE IS ABSOLUTELY NO POSSIBILITY OF HAVING ANY
20 CONFIDENTIALITY OR ANY KIND OF ATTORNEY-CLIENT COMMUNICATION
21 WITH MR. ZUNO AT THE PRESENT TIME.

22 I HAVE CLARIFIED WITH THE ATTORNEY FOR MATTA
23 BALLESTEROS THAT HIS STATEMENT TO THE COURT THIS MORNING DID
24 NOT COME OUT THE WAY HE WANTED IT TO, AND HE HAS MADE THE
25 FOLLOWING REPRESENTATION TO ME.

1 THE COURT: WELL, HIS STATEMENT WILL SPEAK FOR
2 ITSELF. DON'T --

3 MR. BLANCARTE: VERY WELL, YOUR HONOR. GOING BACK
4 TO THE CONFIDENTIALITY, THERE IS ABSOLUTELY NO WAY TO HAVE AN
5 ATTORNEY-CLIENT COMMUNICATION WITH MR. ZUNO UNDER THE PRESENT
6 CIRCUMSTANCES.

7 THE COURT: WHY IS THAT?

8 MR. BLANCARTE: BECAUSE THERE IS A CELL ADJACENT TO
9 MR. ZUNO WHERE MR. MATTA BALLESTEROS IS HELD. AT BEST, MR.
10 BALLESTEROS IS FIVE TO TEN FEET AWAY, AND IF EVERYTHING THAT
11 I --

12 THE COURT: WELL, IS THERE A WALL BETWEEN THE CELLS?

13 MR. BLANCARTE: NO, SIR, IT'S AN OPEN CELL WITH JUST
14 A WIRE MESH ACCROSS IT. IN OTHER WORDS, THE TWO CELLS FACE
15 OUT.

16 COUNSEL HAS TO SIT OUTSIDE OF THE CELL AND
17 COMMUNICATE WITH MR. ZUNO THROUGH THE BARS AND THROUGH THE
18 WIRE MESH.

19 MR. BALLESTEROS DURING MY VISIT WAS READING
20 NEWSPAPERS, WHICH HIS ATTORNEY EXPLAINS HE MUST READ OUT LOUD
21 BECAUSE HE'S NOT VERY LITERATE. I COULD HEAR, EVEN THOUGH HE
22 WAS SPEAKING IN A LOW TONE OF VOICE, EVERY SINGLE WORD THAT
23 MR. BALLESTEROS WAS SAYING AS HE READ THE PAPERS TO HIMSELF.

24 I MUST ASSUME THAT HE COULD NOT ONLY HEAR ME AND
25 EVERY COMMUNICATION I MAKE TO MR. ZUNO, BUT AS THE COURT MAY

1 RECALL, MR. ZUNO HAS TO WEAR A HEARING AID, SO EVEN MY
2 ATTEMPTS TO SPEAK TO HIM IN A LOW VOICE ARE OF NO SUCCESS
3 BECAUSE I HAVE TO SPEAK LOUD ENOUGH FOR HIM TO HEAR ME.

4 THE U.S. MARSHAL WHO IS ASSIGNED TO SECURITY AND IS
5 STATIONED APPROXIMATELY 20 FEET AWAY FROM MR. ZUNO AND HIS
6 COUNSEL AT ALL TIMES, WALKED OVER TO ME AND SAID COUNSEL, YOU
7 DON'T HAVE TO WHISPER BECAUSE I DON'T SPEAK SPANISH ANYWAY.
8 OBVIOUSLY, HE COULD HEAR MY SPEAKING IN SPANISH TO MR. ZUNO.

9 I THANKED HIM FOR HIS COURTESY BUT TOLD HIM THAT MY
10 CONCERN WAS THAT MR. ZUNO HAS SAID HE DOES NOT KNOW AND HAS
11 NEVER MET MR. BALLESTEROS. IT'S MY UNDERSTANDING THAT MR.
12 BALLESTEROS HAS TAKEN THE SAME POSITION OF NOT KNOWING MR.
13 ZUNO.

14 IF MR. BALLESTEROS WAS TO OVERHEAR --

15 THE COURT: COUNSEL, YOUR POINT IS THAT YOU CAN'T
16 TALK TO YOUR CLIENT WITHOUT BEING OVERHEARD?

17 MR. BLANCARTE: THAT'S ONE POINT, YOUR HONOR.

18 THE COURT: ALL RIGHT. THEN GET ON TO THE NEXT
19 POINT. I DON'T WANT TO READ ALL THIS DIALOGUE --

20 MR. BLANCARTE: THERE CANNOT BE ANY KIND OF
21 CONFIDENTIAL CLIENT COMMUNICATION WITH MY CLIENT. THAT'S ONE
22 POINT, SIR.

23 THE COURT: ALL RIGHT. WHAT ELSE?

24 MR. BLANCARTE: THE OTHER POINT IS THAT THE
25 CONDITIONS OF HIS INCARCERATION AT PRESENT HAVE NO OPPORTUNITY

1 FOR EXERCISE OR ANY OF THE NORMAL ACTIVITIES THAT HE HAD
2 WITHOUT INCIDENT FOR THE FOUR MONTHS THAT HE WAS AT M.D.C.

3 AND ABSENT ANY EVIDENCE ON THE RECORD OR ANY SHOWING
4 BY THE GOVERNMENT THAT ADDED SECURITY IS WARRANTED IN MR.
5 ZUNO'S CIRCUMSTANCES, AND GIVEN THAT MR. ZUNO IS IN THE SAME
6 SITUATION AS BERNABE RAMIREZ AND JAVIER VASQUEZ VELASCO, WE
7 BELIEVE THAT AT MINIMUM, THERE SHOULD BE A SHOWING AS TO WHY
8 THIS IS WARRANTED OR NECESSARY, GIVEN THAT IT DOES GREATLY
9 RESTRICT THE ABILITY OF COUNSEL NOT ONLY TO COMMUNICATE WITH
10 MR. ZUNO, BUT I CANNOT EVEN PASS HIM A SHEET OF PAPER, BECAUSE
11 THE WIRE MESH DOES NOT ALLOW HIM TO VIEW THE DOCUMENTS.

12 THE COURT: LOOK, COUNSEL, IF YOU HAVE PAPERS THAT
13 YOU WANT YOUR CLIENT TO CONSIDER AND THAT YOU WANT TO DISCUSS
14 WITH HIM, TAKE TWO COPIES -- ONE FOR YOURSELF AND ONE FOR HIM,
15 PUT THEM TOGETHER IN A BATCH AND HAVE THE JAILER HAND THEM TO
16 YOUR CLIENT, AND THEN YOU CAN GO THROUGH THEM AT THE SAME
17 TIME.

18 YOU DON'T HAVE TO HAVE THE SAME DOCUMENT TO PASS
19 THROUGH THE CELL, YOU CAN HAVE DUPLICATE DOCUMENTS AND ASK HIM
20 TO LOOK AT HIS AND YOU LOOK AT YOURS AND YOU CAN DISCUSS IT.
21 IS THERE SOME PROBLEM WITH THAT?

22 MR. BLANCARTE: THE PROBLEM WITH THAT IS THAT THERE
23 IS NO WAY FOR ME TO BE ABLE TO SEE THROUGH THE SCREEN WHEN
24 WE'RE TRYING TO REVIEW THE SAME DOCUMENT.

25 AND IN ORDER TO SPEAK LOUD ENOUGH TO UNDERSTAND EACH

1 OTHER, WE MUST SPEAK LOUD ENOUGH FOR THE GUARD AND MR.
2 BALLESTEROS TO HEAR US.

3 AND THE THIRD POINT, YOUR HONOR, IS THAT THROUGHOUT
4 MR. ZUNO'S DETENTION AT M.D.C., WE HAVE BEEN ABLE TO VISIT HIM
5 ON A 24-HOUR BASIS. THE SIGNIFICANCE OF THAT IS THAT WE WILL
6 BE IN TRIAL FOR THE MAJORITY OF THE HOURS DURING WHICH NORMAL
7 VISITS WOULD BE ALLOWED FOR MR. ZUNO.

8 THE COURT: WHAT ARE THE HOURS?

9 MR. BLANCARTE: 6:30 A.M. TO 7:30 P.M. IN THE
10 EVENING. THOSE EVENING HOURS, WHICH WE MIGHT OTHERWISE BE
11 ABLE TO USE AND NOT TAKE ANY TIME AWAY FROM THIS COURT AND THE
12 PROCEEDINGS IN THIS COURT, WOULD BE RESTRICTED AT LEAST AS WE
13 UNDERSTAND THE CURRENT PROCEDURES TO BE.

14 AND WE DON'T KNOW OF ANY REASON WHY COUNSELS'
15 ABILITY TO COMMUNICATE AND VISIT WITH THE CLIENT SHOULD BE
16 RESTRICTED AT THIS TIME.

17 LASTLY, YOUR HONOR, THE MANNER IN WHICH THIS WAS ALL
18 CARRIED OUT CAUSES GREAT SUSPICION. THE GUARD WHO AWAKENED
19 MR. ZUNO ABOUT 3:00 A.M. IN THE MORNING BEFORE HIS TRANSFER
20 TOLD MR. ZUNO TO GET HIS BELONGINGS TO GET READY TO LEAVE.

21 MR. ZUNO INQUIRED AS TO WHY, SINCE THERE WAS NOT A
22 COURT DATE THE FOLLOWING MORNING. THE GUARD TOLD HIM THAT HE
23 SHOULD GET HIS BELONGS BECAUSE HE WAS BEING RELEASED TO RETURN
24 TO HIS HOME IN MEXICO. IT WAS NOT UNTIL MR. ZUNO WAS PLACED
25 HERE AT THE COURTHOUSE THAT HE REALIZED THAT THAT WAS AT BEST

1 A VERY CRUEL JOKE BEING PLAYED BY THE PARTICULAR GUARD WHO
2 MADE THE COMMENT TO HIM.

3 THE RESTRICTED ACCESS TO RECREATIONAL AND EXERCISE
4 FACILITIES AND THE TRAUMA THAT IT HAS CAUSED HIM AT THIS POINT
5 ON THE EVE OF TRIAL, WE THINK IS POSSIBLY A STRAIGHT-UP
6 ATTEMPT TO INDUCE SOME TYPE OF PSYCHOLOGICAL PRESSURE OR
7 PSYCHOLOGICAL WARFARE ON WHAT IS AN ARMS'-LENGTH PROCESS
8 BEFORE THIS COURT.

9 THE DEFENSE IS PREPARED TO CONFRONT WHATEVER
10 EVIDENCE THE GOVERNMENT MAY HAVE AGAINST MR. ZUNO, BUT WE
11 DON'T THINK IT IS NECESSARY TO UNDULY PRESSURE HIM DURING THIS
12 PRE-DETAINEE STATUS TO TRY TO DEMORALIZE HIM OR TRY TO BREAK
13 HIS SPIRIT OR TRY TO MAKE IT DIFFICULT, IF NOT IMPOSSIBLE, FOR
14 COUNSEL TO EFFECTIVELY REPRESENT HIM.

15 THE COURT: WELL I FIND IT VERY DIFFICULT, WHEN I
16 HEAR FROM THE MARSHALS REGARDING THESE THINGS, TO UNDERSTAND
17 WHY YOUR CLIENT, FROM ALL THE PEOPLE THAT HAVE BEEN HOUSED
18 THERE -- AND WE HAD TWO THERE IN THE LAST TRIAL UNDER THE SAME
19 CONDITIONS WHO WERE ABSOLUTELY DELIGHTED TO BE THERE AND NOT
20 AT THE METROPOLITAN DETENTION CENTER OR SOMEWHERE ELSE.

21 AND THEIR COUNSEL WERE ABSOLUTELY DELIGHTED TO HAVE
22 THEM THERE. THEY EXPRESSED GREAT JOY AT HAVING THE DEFENDANT
23 AVAILABLE HERE AT THE COURTHOUSE WHERE THEY HAD IMMEDIATE
24 ACCESS TO THE DEFENDANT WHEN THEY NEEDED TO SEE HIM.

25 AND EVEN YOUR CO-DEFENDANT HERE, MR. MATTA'S

1 COUNSEL, INDICATED THIS MORNING THAT HE WAS QUITE HAPPY WITH
2 THE ARRANGEMENT. I FIND IT VERY DIFFICULT TO UNDERSTAND THESE
3 COMPLAINTS ABOUT THOSE FACILITIES.

4 THERE IS NOTHING SINISTER ABOUT IT. THE DECISION IN
5 THE LAST TRIAL TO HOLD THOSE PEOPLE THERE WAS MADE BY THE
6 PEOPLE IN CHARGE -- ON THE RECOMMENDATION OF THE PEOPLE IN
7 CHARGE OF CUSTODY AND WITH THE APPROVAL OF THE COURT.

8 MR. BLANCARTE: FIRST, YOUR HONOR, I WOULD NOT
9 PRETEND TO SPEAK FOR ANY OF THOSE INDIVIDUALS. SECOND, THERE
10 HAS BEEN NO SHOWING AS TO THE NEED TO DO THIS, AND MR. ZUNO,
11 HIMSELF, HAS MADE IT QUITE CLEAR TO US, AND WE WITNESSED HIS
12 CONDITION AND HAVE SEEN THAT THIS HAS GREATLY CHANGED HIS
13 ABILITY TO DEAL EFFECTIVELY WITH COUNSEL.

14 I MEAN, WE HAVE TO GET THROUGH HIS --

15 THE COURT: FRANKLY, COUNSEL, I'LL HEAR FROM THE
16 MARSHAL ON THIS --

17 MR. BLANCARTE: MAY I MAKE ONE MORE COMMENT, WHICH
18 IS THAT THE PARTICULAR MARSHALS WHO HAVE BEEN ATTENDED TO MR.
19 ZUNO'S SECURITY DETAIL HAVE BEEN PROFESSIONAL AND COURTEOUS IN
20 EVERY RESPECT, AND THIS MOTION IN NO WAY ADDRESSES THE
21 TREATMENT THAT THEY HAVE GIVEN MR. ZUNO, BECAUSE THEY HAVE
22 BEEN, AS I SAID, PROFESSIONAL AND COURTEOUS IN EVERY
23 RESPECT -- IT'S THE CONDITION.

24 THE COURT: WELL, I'M NOT SURPRISED.

25 NO, MR. GOLDMAN, YOU'VE HEARD WHAT COUNSEL'S

1 COMPLAINTS ARE. ARE YOU FAMILIAR WITH THE SETUP DOWN THERE?

2 MR. GOLDMAN: YES, YOUR HONOR.

3 THE COURT: WHAT IS THIS PROBLEM WITH
4 CONFIDENTIALITY THAT HE SPEAKS ABOUT?

5 MR. GOLDMAN: ON WEEK DAYS DURING NORMAL OPERATIONS
6 OF THE MARSHALS OFFICE, WHAT WE REQUESTED THAT DEFENSE COUNSEL
7 DO IS MEET WITH THE DEFENDANTS BACK IN THE CELL BLOCK AREA
8 ADJACENT TO THEIR CELLS.

9 THE COURT: WHY IS THAT?

10 MR. GOLDMAN: THERE IS SO MUCH ACTIVITY ON THE OTHER
11 END, WE HAVE REQUESTED THAT WE WORK WITHIN THOSE PARAMETERS.
12 IF THAT'S NOT WORKING OUT ALL RIGHT, I'LL DO MY BEST TO CHANGE
13 IT.

14 BUT WHAT WAS FAILED TO BE MENTIONED WAS ON WEEKENDS,
15 HOLIDAYS AND EVENINGS, DEFENSE COUNSEL MEETS WITH THEIR CLIENT
16 IN THE NORMAL LAWYER-CLIENT INTERVIEW ROOMS AT THE FAR END OF
17 THE CELL BLOCKS. THAT WASN'T MENTIONED, AND I'D LIKE TO
18 CLARIFY THAT POINT.

19 AS FAR AS LEGAL VISITATION, THE HOURS, IT'S 8:00
20 A.M. TO 8:30 EVERY DAY. WE WANT TO WORK WITHIN THAT
21 PARAMETER. IT IS NOT 6:30 TO 7:30.

22 THE 6:30 TO 7:30 PORTION IS FOR FAMILY VISITATION
23 AND IT'S EVERY OTHER DAY FOR THE DEFENDANTS, MONDAY THROUGH
24 FRIDAY, AND 1:00 TO 3:00 ON THE WEEKENDS, YOUR HONOR.

25 MR. BLANCARTE: IF I MAY, YOUR HONOR, I WAS THERE ON

1 A SUNDAY, AND THE ROOM THAT I WAS REQUIRED TO INTERVIEW MR.
2 ZUNO AT WAS THE SAME CELL THAT WAS ADJACENT TO MR.
3 BALLESTEROS.

4 I WAS THERE ON A THURSDAY AT 7:40 P.M. IN THE
5 EVENING, AND SHOWED MY ATTORNEY BAR CARD AND WAS NOT ALLOWED
6 TO SEE MR. ZUNO BECAUSE I WAS TOLD IT WAS AFTER HOURS. I'M
7 SURE MR. GOLDMAN MAY NOT BE AWARE OF THAT BECAUSE HE WAS NOT
8 THE MARSHAL PRESENT ON EITHER OF THOSE OCCASIONS, BUT THAT IS
9 DIFFERENT THAN THE EXPERIENCE I'VE HAD, WHICH I'VE DECLARED
10 UNDER PENALTY OF PERJURY IN MY DECLARATION.

11 MR. GOLDMAN: YOUR HONOR, IT'S ACCURATE. I WAS NOT
12 THERE ON SUNDAY. MR. MATTA WAS RECEIVING A FAMILY VISIT AT
13 THE SAME TIME DEFENSE COUNSEL ARRIVED TO MEET WITH MR. ZUNO.
14 SO THERE WAS A MISUNDERSTANDING ON THE STAFF'S PART WHO WERE
15 PRESENT AT THE TIME.

16 THE LEGAL VISITATION ON EVENINGS AND WEEKENDS IS TO
17 OCCUR IN NORMAL ATTORNEY-CLIENT INTERVIEW CELLS AT THE FAR
18 END.

19 THE COURT: WELL, I THINK THE DEFENDANT IS ENTITLED
20 TO CONFIDENTIAL AND PRIVATE MEETINGS WITH HIS COUNSEL.

21 MR. GOLDMAN: YES, YOUR HONOR.

22 THE COURT: AND HE'S ENTITLED TO LIBERAL ACCESS TO
23 HIS COUNSEL SO THAT HIS COUNSEL CAN SEE HIM AT ALL REASONABLE
24 TIMES. THAT DOESN'T NECESSARILY MEAN UNLIMITED TIMES.

25 HOW MUCH TIME DO YOU WANT TO SPEND WITH A CLIENT?

1 IT ISN'T NECESSARY TO INTERVIEW THE CLIENT 24 HOURS EACH DAY.

2 WITHIN THE PARAMETERS PROVIDED HERE, IT SEEMS TO ME
3 THAT YOU CAN FIND SUFFICIENT TIME TO VISIT WITH YOUR CLIENT.

4 AND INSOFAR AS HAVING TO SHOW A NEED FOR THIS
5 DECISION TO HOUSE HIM THERE, I DON'T THINK THAT IS NECESSARY.
6 THE PEOPLE CHARGED WITH THE RESPONSIBILITY FOR HIS CUSTODY AND
7 SECURITY HAVE MADE THAT DECISION. THE COURT WILL DEFER TO
8 THOSE.

9 TO THE EXTENT THAT THESE OTHER PROBLEMS ABOUT WHICH
10 COUNSEL HAS COMPLAINED ARE NOT REMEDIED, THEN I WOULD -- YOU
11 CAN BRING IT BACK TO THE COURT. BUT I THINK THE MARSHALS
12 OFFICE SHOULD ADOPT A UNIFORM POLICY REGARDING THESE TWO
13 PRISONERS AND POST IT AND MAKE IT AVAILABLE TO ALL PERSONNEL
14 SO THAT EVERYBODY KNOWS WHAT IS PERMITTED AND WHAT IS NOT.

15 MR. GOLDMAN: I'LL TYPE UP A MEMO AND PREPARE IT AND
16 HAVE IT AVAILABLE FOR DEFENSE COUNSEL, YOUR HONOR, AS TO
17 SPECIFIC HOURS SO THERE WILL BE NO FURTHER QUESTIONS.

18 MR. BLANCARTE: YOUR HONOR, WE WOULD AGREE WITH THE
19 COURT'S LAST STATEMENT ON THOSE SUBJECTS, BUT WE THINK THE
20 RECORD IS STILL NOT CLEAR AS TO WHETHER, IN FACT, IT IS A
21 DECISION OF THE MARSHALS OFFICE --

22 THE COURT: I'VE SAID THAT I DON'T THINK THE RECORD
23 NEEDS TO SHOW THAT. THEY HAVE SHOWN THAT THEY MADE THAT
24 DECISION BY PUTTING THEM THERE. THE COURT WILL DEFER TO THAT
25 DECISION.

1 IT HAS BEEN INDICATED TO THE COURT IT WAS DONE FOR
2 SECURITY REASONS. OBVIOUSLY, WHEN YOU HAVE A DEFENDANT --
3 EACH TIME YOU TRANSPORT HIM IN AND OUT OF THE JAIL, AS THEY
4 WOULD HAVE TO IF HE WAS AT THE METROPOLITAN DETENTION CENTER,
5 THAT WOULD CAUSE AN EXPOSURE THAT IT APPARENTLY FELT IS NOT
6 NECESSARY IN THIS CASE, AND WAS BETTER NOT MADE.

7 AND I ASSUME THAT THE REASON THAT THE DEFENDANT IS
8 IN THE COURTHOUSE -- AS FAIRLY INFERRABLE, IS SO THAT HE
9 SHOULD NOT HAVE TO BE TRANSPORTED BACK AND FORTH.

10 MR. BLANCARTE: THAT WOULD NOT EXPLAIN THE
11 DIFFERENCE BETWEEN BERNABE RAMIREZ AND JAVIER VASQUEZ VELASCO.

12 THE COURT: WELL, PERHAPS MR. ARCE IS CLASSIFIED
13 DIFFERENTLY THAN THOSE. THAT'S ONE OF THE FUNCTIONS OF THE
14 CUSTODIANS, IS TO CLASSIFY THE NATURE AND EXTENT OF THE RISKS
15 INVOLVED AND TO MAKE THE APPROPRIATE CONFINEMENT.

16 I DEFER TO THEIR DECISION IN THIS CASE. I THINK,
17 BASED ON MY KNOWLEDGE OF THE FACILITIES DOWN THERE, THAT THE
18 DEFENDANT IS COMFORTABLE.

19 LET ME ASK YOU THIS. HOW IS THIS DEFENDANT FED
20 THERE?

21 MR. GOLDMAN: HE'S FED THREE MEALS A DAY. HE
22 DOESN'T RECEIVE FOOD FROM THE BUREAU OF PRISONS.

23 THE COURT: AND WHERE DO THEY COME FROM?

24 MR. GOLDMAN: PRIVATE RESTAURANTS IN THE AREA.

25 THE COURT: SO THE DEFENDANT IS FED FROM PRIVATE

1 RESTAURANTS?

2 MR. GOLDMAN: YES, YOUR HONOR.

3 THE COURT: THE FOOD IS BROUGHT IN?

4 MR. GOLDMAN: YES, YOUR HONOR.

5 THE COURT: AND THAT'S THREE TIMES A DAY?

6 MR. GOLDMAN: YES, YOUR HONOR.

7 THE COURT: DOES HE OF CELL WHICH HE OCCUPIES ALONE?

8 MR. GOLDMAN: HE HAS A SINGLE CELL, HE HAS A BED, A
9 TELEVISION, A NEWSPAPER --

10 THE COURT: HE HAS HIS OWN TELEVISION SET IN CELL?

11 MR. GOLDMAN: YES.

12 THE COURT: WHAT OTHER AMENITIES ARE THERE?

13 HE DID NOT HAVE THIS AT THE METROPOLITAN DETENTION
14 CENTER, DID HE?

15 MR. BLANCARTE: AS PART OF THE GENERAL POPULATION,
16 THEY HAD DIFFERENT TELEVISION, RADIO AND RECREATIONAL
17 FACILITIES. THE DIFFERENCE HERE IS THAT HE HAS TO REMAIN --

18 THE COURT: THAT WAS IN A COMMON ROOM, NOT IN EACH
19 CELL?

20 MR. BLANCARTE: THAT IS CORRECT, YOUR HONOR. THERE
21 IS A BENCH, THERE IS A COT AND THERE IS A TELEVISION IN HIS
22 ROOM.

23 THE COURT: THIS DEFENDANT THEN IS SPARED THE NEED
24 TO HAVE JAIL FOOD.

25 CAN YOU TELL ME SOME OF THE PLACES WHERE HE GETS HIS

1 FOOD, WHERE THE FOOD IS BROUGHT FROM? DO YOU KNOW?

2 MR. GOLDMAN: DENNY'S, COLIMA'S -- ANY NUMBER OF THE
3 LOCAL RESTAURANTS THAT WE GO TO.

4 THE COURT: WELL, IS THERE A MENU PROVIDED TO THE
5 DEFENDANT? DOES HE PICK WHAT HE WANTS?

6 MR. GOLDMAN: YOUR HONOR, WE HAVE SOME PEOPLE THAT
7 ARE BILINGUAL THAT GO BACK AND ASK HIM WHAT HE REQUESTS.

8 ONE THING THAT CAME UP THAT I NEED TO CLARIFY IS THE
9 OFFER OF EXERCISE. MR. ZUNO HASN'T EXERCISED, BUT WE OFFER --
10 THERE IS A LARGER CELL NEARBY ON EVENINGS AND WEEKENDS, AND WE
11 OFFER EXERCISE TO THE DEFENDANTS IN THIS CASE.

12 MR. MATTA HAS MADE USE OF THIS, BUT SO FAR TO THE
13 BEST OF MY KNOWLEDGE, MR. ZUNO HAS NOT. I DON'T WANT THE
14 COURT TO BE LEFT WITH THE IDEA THAT HE'S PUT IN A CELL AND
15 LEFT THERE. IF HE WANTS TO EXERCISE, HE CAN, BUT NOT ABOVE
16 THAT.

17 WE OFFERED HIM EXERCISE AND, OF COURSE, WE LOG IT IN
18 WHEN IT IS DECLINED.

19 WE KEEP A RECORD OF OUR ACTIVITIES.

20 THE COURT: WELL, I THINK HE SHOULD BE PROVIDED THE
21 OPPORTUNITY, IF HE WANTS IT, TO EXERCISE. AND IF THAT'S
22 AVAILABLE TO HIM, THAT'S FINE. IT SHOULD BE AVAILABLE.

23 I DON'T FIND ANY REASON TO INTERVENE WITH THE
24 PRESENT SITUATION, COUNSEL, EXCEPT TO THE EXTENT THAT I HAVE
25 INDICATED THAT THE PROBLEMS YOU'VE COMPLAINED ABOUT SHOULD BE

1 REMEDIED AND ADDRESSED, AND I'M SURE THEY WILL BE.

2 AND TO THE EXTENT THEY'RE NOT, YOU MAY VOICE YOUR
3 CONCERNS AGAIN.

4 MR. BLANCARTE: YOUR HONOR, I'M GOING TO APPROACH
5 THE COURT, IF NECESSARY AT A LATER DATE, BUT I FEEL THAT
6 WORKING WITH MR. GOLDMAN IN THAT CIRCUMSTANCE WOULD PROBABLY
7 ADDRESS THE CONCERNS IF MR. ZUNO, IN FACT, IS REQUIRED TO STAY
8 IN THE COURTHOUSE.

9 WHAT I WOULD ASK THE COURT IS WOULD THE COURT BE
10 DISTURBED IF, IN FACT, THIS WAS CAUSED BY THE INTERVENTION OF
11 AN AGENCY OTHER THAN THE U.S. MARSHAL?

12 AND I WOULD ASK THE COURT TO INQUIRE OF THE U.S.
13 ATTORNEY IF THAT WAS THE CASE, BECAUSE I WOULD THINK THAT
14 WOULD CHANGE THE COMPLEXION OF THE COURT'S READING OF THE
15 CIRCUMSTANCES UNDER WHICH MR. ZUNO IS BEING DETAINED.

16 THE COURT: I THINK YOU'RE PARANOID ABOUT THIS AND
17 ATTRIBUTE SOME SINISTER MEANING ABOUT IT, COUNSEL.

18 I DON'T THINK THERE IS ANY NEED TO MAKE THAT INQUIRY
19 BECUASE THE PEOPLE WHO ARE CHARGED WITH HIS CUSTODY ARE THE
20 ONES CHARGED WITH MAKING THOSE DECISIONS.

21 WHETHER OR NOT -- AND I WILL ASK THE U.S. ATTORNEY
22 JUST TO EASE YOUR MIND, IF THAT IS THE CASE, WHAT, IF
23 ANYTHING, YOU KNOW ABOUT THIS.

24 MR. MEDRANO: YOUR HONOR, NO REPRESENTATIVE OF THE
25 U.S. ATTORNEYS OFFICE HAS EVER INTERVENED IN ANY WAY IN THE

1 DECISION TO HOUSE DEFENDANT ZUNO IN THE LOCKUP IN THIS
2 COURTHOUSE.

3 TO OUR KNOWLEDGE, YOUR HONOR -- AND I'M SPEAKING ON
4 BEHALF OF MR. CARLTON AND MYSELF -- NO REPRESENTATIVE OF THE
5 DRUG ENFORCEMENT ADMINISTRATION HAS EVER INTERVENED AS TO
6 MAKING THIS DECISION AS WELL.

7 THE COURT: I CAN'T UNDERSTAND, COUNSEL, WHY YOU
8 THINK THEY WOULD DO THIS. WHAT COULD BE THE PURPOSE?

9 MR. BLANCARTE: BECAUSE ON A PRIOR --

10 THE COURT: DO YOU THINK THIS IS SOME FORM OF
11 PUNISHMENT THAT IS BEING IMPOSED ON YOUR CLIENT?

12 MR. BLANCARTE: WE SUSPECT THAT THAT IS POSSIBLE,
13 YOUR HONOR. IN ADDITION, WHEN MR. ZUNO WAS HELD IN WHAT THEY
14 CALL "THE HOLE" FOR SOLITARY CONFINEMENT ON 8 NORTH AT M.D.C.
15 APPROXIMATELY FOUR MONTHS AGO, I WENT UP TO THE ATTENDANT IN
16 CHARGE OF THAT FLOOR AND ASKED HIM WHY MR. ZUNO WAS NOT PART
17 OF THE GENERAL POPULATION, AND HE SAID IT WAS ON ORDER OF THE
18 D.E.A..

19 SUBSEQUENT TO THAT, I CALLED MR. MEDRANO AND ASKED
20 MR. MEDRANO IF HE WOULD AUTHORIZE MR. ZUNO TO BE PUT IN THE
21 GENERAL POPULATION. MR. MEDRANO WAS KIND ENOUGH TO SAY THAT
22 HE WOULD LOOK INTO IT, CALLED ME BACK AND SAID THAT HE WAS
23 GOING TO CAUSE MR. ZUNO TO BE PUT INTO THE GENERAL POPULATION.

24 THAT PRIOR INCIDENT IS PART OF WHAT CAUSES ME TO
25 SUSPECT THAT THERE WAS INTERVENTION BY THAT AGENCY OR AN

1 AGENCY OTHER THAN THE U.S. MARSHALS OFFICE.

2 THE COURT: I'LL SHARE WITH YOU SOME INFORMATION
3 WHICH I OBTAINED HERE RECENTLY IN A MEETING WITH THE WARDEN OF
4 THAT PRISON.

5 WE WERE DISCUSSING THE VERY SUBJECT ABOUT COMPLAINTS
6 MADE BY PRISONERS OR INMATES ABOUT BEING HELD IN THIS SECTION
7 THAT YOUR CLIENT WAS HELD IN.

8 AND I ASKED HER SPECIFICALLY WHO MAKES THAT
9 DECISION. AND SHE SAID USUALLY IT IS ON THE RECOMMENDATION OF
10 THE ARRESTING AGENCY. AND THAT WOULD BE CONSISTENT WITH WHAT
11 YOU SAY. AND I ASKED HER THEN WHAT RECOURSE THEN DOES AN
12 INMATE HAVE TO CHALLENGE THAT, OTHER THAN GOING TO COURT.

13 SHE SAID HE HAS ADMINISTRATIVE RECOURSE. HE COULD
14 GO TO THE WARDEN. HE COULD GO TO THE REGIONAL BUREAU OF
15 PRISONS HEAD, AND ALL THE WAY UP ADMINISTRATIVELY TO CHALLENGE
16 THE HOLDING IN THAT PARTICULAR AREA IF IT IS NOT WARRANTED.
17 SO --

18 MR. BLANCARTE: IF I MAY, YOUR HONOR, IN THIS CASE
19 WE TRIED --

20 THE COURT: WHEN -- SHE SAID WHEN THESE AGENCIES
21 ARREST PEOPLE AND THEY PERCEIVE THEM TO BE HIGH-RISK
22 INDIVIDUALS OR FOR SOME REASON IN NEED OF GREATER SECURITY,
23 THEY MAKE THAT RECOMMENDATION.

24 AND THE REASON I WAS ASKING HER ABOUT THIS WAS
25 BECAUSE I FRANKLY WAS TIRED OF HAVING THE COURT BROUGHT INTO

6 1 IT, BECAUSE ESSENTIALLY THESE DECISIONS THE COURT DEFERS TO
2 THE PEOPLE CHARGED WITH HOLDING THE CUSTODY OF THE INDIVIDUAL,
3 AND I DO NOT LIKE TO BE INVOLVED IN THEM.

4 MR. BLANCARTE: UNDERSTANDING THAT, YOUR HONOR, I
5 ASKED MR. GOLDMAN WHETHER THERE WAS SOMEONE AT THE U.S.
6 MARSHALS OFFICE IN WASHINGTON, GIVEN THAT THE LOCAL OFFICE HAD
7 NO JURISDICTION ON THE MATTER, THAT I COULD CONTACT TO EXHAUST
8 THE ADMINISTRATIVE PROCESS AND NOT HAVE TO COME INTO THE
9 COURT.

10 MR. GOLDMAN SAID HE WAS NOT FAMILIAR WITH THE FACTS
11 AND CIRCUMSTANCES AS TO WHO I COULD CONTACT, AND I WAS NOT
12 ABLE TO PROCEED ADMINISTRATIVELY.

13 THE COURT: WELL, I'M TALKING ABOUT THE BUREAU OF
14 PRISONS, I'M NOT TALKING ABOUT THIS HOLDING THE DEFENDANT IN
15 THE COURT HERE. THAT'S BEING DONE BY THE MARSHALS OFFICE.

16 I DON'T KNOW OF ANY SIMILAR PROCEDURE AVAILABLE FOR
17 ADMINISTRATIVE REVIEW OF THAT DECISION.

18 MR. BLANCARTE: I WOULD BE MORE THAN HAPPY TO PURSUE
19 IT ON THAT ANGLE, IF I COULD BE ADVISED BY THE U.S. MARSHALS
20 OFFICE AS TO WHO TO SPEAK TO.

21 THE COURT: WELL --

22 MR. BLANCARTE: AND THEY'RE PRESENT, YOUR HONOR.
23 I'D BE HAPPY TO FOLLOW UP WITH ANYBODY THEY INDICATE WOULD BE
24 THE APPROPRIATE CONTACT.

25 THE COURT: TO FOLLOW UP WHAT, COUNSEL?

1 MR. BLANCARTE: -- ON THE REQUEST OF THE TRANSFER.
2 ABSENT THIS PROCEEDING, I WOULD GLADLY FOLLOW THROUGH ON AN
3 ADMINISTRATIVE LEVEL.

4 THE COURT: WELL. I LEAVE THAT TO YOU TO PURSUE.

5 MR. BLANCARTE: MIGHT I ASK THE COURT TO INQUIRE WHO
6 I WOULD CONTACT OF THE OFFICIALS THAT ARE HERE.

7 THE COURT: COUNSEL, IF YOU WANT TO CONTACT SOMEBODY
8 IN THE U.S. MARSHALS OFFICE, IT IS NOT A PRIVATE AGENCY.
9 THEY'RE A PUBLIC AGENCY, THEY HAVE OFFICES IN WASHINGTON AND
10 ELSEWHERE. YOU CAN CONTACT THEM YOURSELF.

11 MR. BLANCARTE: VERY WELL, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE'RE ADJOURNED.

13 THE CLERK: PLEASE RISE. THIS COURT IS NOW IN
14 RECESS.

15 (PROCEEDINGS ADJOURNED.)

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17

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19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
20 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

21

22

23

24

25

Julie A. Churchill
JULIE A. CHURCHILL, CSR 6155, RPR
OFFICIAL COURT REPORTER

DATED: 2-20-92

