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U.S. DISTRICT COURT
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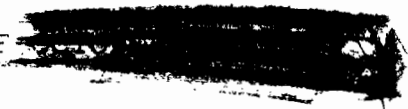
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
vs. :
LUIS ALFREDO COLON-OSORIO :

CRIMINAL ACTION
NO. H-85-50

Before: HON. T. EMMET CLARIE, SENIOR U.S.D.J.

PROCEEDINGS OF 

A p p e a r a n c e s :

For the United States of America:

CARMEN ESPINOSA VAN KIRK, ESQ.
Assistant U. S. Attorney
450 Main Street
Hartford, Connecticut 06103

DAVID BUVINGER, ESQ.
Department of Justice
Washington, D. C.

For the Defendant:

RONALD L. KUBY, ESQ.
13 Gay Street
New York, New York 10014

Also Present:

PEDRO SEGARRA, Interpreter
Elliott Sperber
Official Court Reporter

1 THE COURT: Good morning, ladies and
2 gentlemen.

3 MS. VAN KIRK: Good morning.

4 MR. KUBY: Good morning, Judge.

5 THE COURT: The first order of business?

6 MR. KUBY: This is a motion for review of
7 detention order for Luis Colon, who is on his way in
8 now.

9 THE COURT: Did I understand that counsel
10 had a motion pending to be sworn in as a member of
11 the Bar?

12 MR. KUBY: That is correct, your Honor. And
13 I think we can do that in the absence of Mr. Colon.

14 THE COURT: That is what I was thinking.
15 You are Mr. Kuby?

16 MR. KUBY: Yes, I am.

17 THE COURT: And the application papers are
18 in order, Madam Clerk?

19 THE CLERK: Yes, your Honor.

20 THE COURT: And without passing upon whether
21 two people from the same firm are appropriate to be
22 representing defendants in an alleged common conspiracy,
23 without passing upon that by your admission, Madam
24 Prosecutor, are you ready to move the admission of
25 this gentleman?

1 MS. VAN KIRK: Yes, your Honor. Since the
2 Clerk has advised the Court that the papers have been
3 properly filled out, the Government moves for the
4 admission of Mr. Kuby as a member of the Bar of this
5 Court.

6 THE COURT: The motion is granted. The Clerk
7 will proceed to swear in the Petitioner.

8 (Mr. Kuby was duly sworn.)

9 MR. KUBY: I think --

10 MR. VAN KIRK: Your Honor, before we begin
11 I have a preliminary matter.

12 This is the United States of America versus
13 Luis Alfredo Colon-Osorio, Criminal No. H-85-50.

14 THE COURT: Before we get to that now, we
15 have the question of the interpreter.

16 MS. VAN KIRK: Yes, that was the first order
17 of business. The interpreter has to be sworn.

18 THE COURT: Counselor, have you met the
19 interpreter?

20 MR. KUBY: Yes, I have, your Honor.

21 THE COURT: Are you satisfied with his
22 capabilities of conversing with your client and with
23 you?

24 MR. KUBY: Yes.

25 THE COURT: Very well. Come forward, Mr.

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Interpreter, please.

For the record first give your name and address on the record.

MR. SEGARRA: Pedro Segarra. My address is 64 Heath Street, Hartford.

THE COURT: You have been an interpreter here before in this case?

MR. SEGARRA: Yes, your Honor.

THE COURT: And have you talked with the defendant, Luis Alfredo Colon-Osorio?

MR. SEGARRA: Yes, your honor.

THE COURT: You can communicate with him and he with you?

MR. SEGARRA: Yes, sir.

THE COURT: Very well, the Clerk will proceed to swear in the interpreter.

(Mr. Pedro Segarra was sworn as interpreter.)

MS. VAN KIRK: Your Honor, another preliminary matter, if I might. It is that Mr. Ruby wrote a letter to the Court concerning the scheduling of this hearing, as well as the hearing of Ojeda-Rios.

The hearing of Ojeda-Rios was originally scheduled for the 23rd of October. And it was my understanding that Mr. Kunstler, who represents Mr. Ojeda-Rios, was unavailable at that time. And that they

1 wanted the hearing to be held on November 9th, and the
2 date of November 1st was ultimately agreed upon.

3 [REDACTED] would like the Court to request of Mr.
4 Kunstler to file a notice or a motion for a continuance
5 from the original date, so that we have in the record
6 a record that the delay from the 23rd to November 1st
7 was at the defendant's request, since an issue in this
8 case is the length of the proceedings, and the cause
9 and reasons for delay.

10 THE COURT: To whom did he make the request
11 for the continuance?

12 MS. VAN KIRK: To the Clerk's Office.

13 MR. KUBY: Your Honor, I actually can't
14 speak for Mr. Kunstler, without running the risk of
15 the next preliminary matter that we have to deal with.
16 But I will convey that request to him, and I expect
17 he will either do so by his written motion, or perhaps
18 orally waive any time problem resulting from his
19 actual engagement.

20 THE COURT: Very well.

21 There were two minor matters that were going
22 to be taken up before we went into the lengthy one.

23 Counselor?

24 MR. CLAPP: On behalf of Ivonne Melendez-
25 Carrion, a financial affidavit has been submitted,

1 appointing counsel. And as of last Friday, your Honor,
2 I have been appointed to the CJA panel.

3 At this time I would like to move for appoint-
4 ment for Ms. Melendez. I would like to have that
5 appointment made nunc pro tunc, your Honor, back to
6 the original date, consistent with the statute and the
7 plan.

8 The original date of appearance, your Honor,
9 was September 3rd. That was, your Honor, an under-
10 standing, I believe, that I mentioned to you in a
11 letter concerning this matter, that was understanding
12 with Magistrate Eagan.

13 THE COURT: The thing that went through my
14 mind was this, without checking the rule, whether you
15 can go back beyond the date of getting on the list or
16 not is a query. I don't know the answer to that. If
17 it can be done I would grant that motion to do it. But
18 I don't know for a certainty that it can go beyond the
19 date of your being approved last Friday. That is the
20 thing that concerns me.

21 But if it can be done, the Court will grant
22 it.

23 MR. CLAPP: That, your Honor, I believe in
24 my own review of the statute and the plan, that the
25 statute and plan are silent on that matter.

1 THE COURT: That is why I wanted to check it
2 out, before I told you something contrary to what the
3 law or the regulations provide.

4 MR. CLAPP: Thank you, fine, your Honor.

5 THE COURT: Very well. And Ms. Levy -- we
6 took care of her problem in Chambers?

7 MR. CLAPP: Yes, your Honor.

8 THE COURT: I guess we are ready to proceed,
9 Counselor.

10 MR. KUBY: Your Honor, I would like to
11 briefly address the potential conflict of interest
12 problem, since I am here before you today, and Mr.
13 Kunstler will be here before you on the first.

14 THE COURT: In other words, I am sure you
15 appreciate the problem. In other words, for example,
16 we have three Public Defenders upstairs, who are
17 eligible to try cases, and they are on salary.

18 Now, we cannot, or do not as a matter of
19 policy, for example in a conspiracy case, if there are,
20 say, five defendants, we don't appoint three defendants
21 to each of the Public Defenders. If their office is
22 involved with one of them, then they are precluded
23 from representing any of the others. You appreciate
24 that?

25 MR. KUBY: Your Honor, I appreciate that is

1 the administrative plan, as it were, between the Public
2 Defender's Office and this Court. And I would represent
3 to you that the question of appointment vel non is not
4 the issue right now.

5 At this point I have been, as Mr. Kunstler
6 has been, pro bono counsel, although we placed on the
7 record that at the proper moment we do intend to make
8 motions for appointment. And that will be dealt with
9 at the proper time.

10 As to the question of a conflict at this
11 point, or a conflict in the past, or a conflict as
12 of today, what your Honor may not know is that both Mr.
13 Colon and Mr. Ojeda were addressed by Magistrate Eagan
14 quite thoroughly. It unfortunately does not appear in
15 the record, in the transcript that was provided to this
16 Court, because it took place at the time of the arraign-
17 ment, and the arraignment transcripts have not yet been
18 furnished -- at least to our office, and presumably
19 have not been furnished to the Government or to the
20 Court.

21 At that point Magistrate Eagan questioned
22 Mr. Colon, questioned myself, questioned Mr. Ojeda,
23 questioned Mr. Kunstler quite thoroughly, as to, number
24 one, whether we saw any real or potential conflicts in
25 this case. At that time we did not, and we still do

1 not.

2 Number two, he extracted, or asked for an
3 oral waiver from both Mr. Ojeda and Mr. Colon, and
4 those waivers were given, and he has asked for and
5 will receive a written waiver of any potential conflict.

6 The other question that arose was, you know,
7 what I am doing, what is Mr. Kunstler doing, to insure
8 that there is not a conflict? That is, perhaps if I
9 obtain documents from the Government which Mr. Ojeda's
10 counsel should not see -- again, I did not see that as
11 a problem, given the nature of the way that we have
12 chosen in consultation with the defendants to conduct
13 the defense.

14 But, nonetheless, as a precautionary measure,
15 I set up a filing system whereby the materials that are
16 relevant only to Mr. Colon, and would only go to Mr.
17 Colon and his counsel, are filed separately from, and
18 indexed separately from, in my office, from the other
19 materials, which only Mr. Kunstler would get, or which
20 we both would get in common.

21 So at this point in time I don't think there
22 is a problem. Any potential problems will have to be
23 dealt with.

24 THE COURT: That is a problem, of course,
25 that probably at some time will have to be disposed of

1 by one of several ways, depending on how it comes up.
2 It might be that you and Mr. Kunstler may ask to go
3 on the CJA panel, and then there will be a question
4 whether or not one might, but could the other? Because
5 they are both in the same office. Whether that excludes
6 both of you, or whether, secondly, it is limited to a
7 CJA list in the District of Connecticut. That is
8 another factor.

9 That has always been the rule in the past.

10 I know there have been, in Mr. Kunstler's
11 letter, there have been some exceptions -- I will men-
12 tion that to him, of course, when he is here -- around
13 the country, where he participated.

14 However, generally speaking, I inquired from
15 the Administrative Office, and they said generally
16 that is not permitted. So it is not a general rule.

17 MR. KUBY: Sir, I understand the general
18 policy quite well, having researched it -- I took a
19 look at Dennis' list, which is apparently the only
20 copy of the Local Rules that exists in this courtroom,
21 and he has quite clearly underlined on the appropriate
22 plan the portions which he presumably, and presumably
23 the Court has found relevant.

24 So I am well aware of that. Again, I think
25 that our position would be if we are eligible for

1 appointment pursuant to the interests of justice dis-
2 cretion vested in this Court by the Local Rules, then
3 the conflict of interest problem is not a problem,
4 provided the same waiver and the same representations
5 are made in this case as would be in any other case in-
6 volving dual representation.

7 On the other hand, if we are not eligible for
8 CJA appointment, under the interests of justice dis-
9 cretion which this Court has, then we may be in a
10 whole new situation entirely.

11 THE COURT: In other words, you are advocating
12 the rule of the Chancellor's foot, as they used to call
13 it over in England; the discretion of the Court?

14 MR. KUBY: I am pointing out that under the
15 Local Rules there is discretion. And I think insofar
16 as I can get into the minds of the people who provided
17 that discretion, it was provided in order to deal with
18 exceptional, extraordinary cases. And I think there
19 are colorable arguments that can be made on this.

20 THE COURT: All right, thank you.

21 MR. KUBY: If I may get my notes?

22 THE COURT: Certainly.

23 One final question, Counselor: Are you going
24 to offer any new evidence today?

25 MR. KUBY: Yes, I am, your Honor. And that
is the first order of business.

1 Has the Court received a transcript of the
2 hearing?

3 THE COURT: Yes.

4 MR. KUBY: What I would like to do --

5 THE COURT: In fact, I read it over last
6 night, just to refresh my memory.

7 MR. KUBY: What I would like to do is call
8 Agent Rodriguez to the witness stand, to update us on
9 some things that were discussed at the first hearing,
10 that he did not have the answers to. And at that
11 point, following the examination of Agent Rodriguez,
12 either have him lay the foundation for the admission
13 of certain documents which I have in my possession, and
14 admit them through him, or simply admit them through
15 proffer.

16 THE COURT: Proceed.

17 MR. KUBY: Thank you.

18 MR. VAN KIRK: Your Honor, I am going to
19 make an objection here. There was an issue at another
20 hearing, the hearing of Carlos Ayes-Suarez, concerning
21 the right of a defendant to call adverse witnesses.

22 The statute does not, in our opinion, allow
23 that. It allows the defendant to make proffers of
24 evidence, and to examine witnesses that appear at the
25 hearing and testify at the hearing. And that was a big

1 issue in another hearing. And I don't want the fact
2 that Agent Rodriguez just happened to be here, and was
3 seen by Mr. Kuby, and then called him as a witness, to
4 be in any way a waiver of our position, or a retrench-
5 ment of our position in that respect.

6 Therefore, I have no objection to having
7 Agent Rodriguez testify as to matters that were offered
8 on direct examination, but I would object as to new
9 matters which can be introduced by proffer on behalf
10 of the defendant.

11 THE COURT: Apparently, as I understand it,
12 he wants to correct some of the impressions that were
13 made by the testimony, some of which were allegedly
14 vague and ambiguous.

15 MR. KUBY: That is partially true, and it
16 is also true that we have received documents, Title III
17 documents, which presumably Agent Rodriguez relied upon
18 in his testimony.

19 We didn't receive them until after his
20 testimony, which in some cases flatly contradict, and
21 in other cases give other interpretations as to his
22 testimony.

23 I suggest, Judge, and I, of course, have
24 read Magistrate Eagan's opinion on subpoena power -- I
25 think the direction in which we are going falls within

1 this. I suggest we take it on a question by question
2 basis.

3 THE COURT: I don't think there is any
4 problem.

5 MR. KUBY: We will call Agent Rodriguez.
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1 J O S E P. R O D R I Q U E Z, appearing as a witness,
2 being duly sworn, testified as follows:

3 THE CLERK: Please be seated. State your
4 name and spell your last name.

5 THE WITNESS: My name is Jose, middle initial
6 P., as in "Paul" Rodriguez, R-o-d-r-i-q-u-e-z.

7 THE CLERK: Your address, please.

8 THE WITNESS: GPO Box BT, San Juan, Puerto
9 Rico 00936.

10 DIRECT EXAMINATION BY MR. KUBY:

11 Q Agent Rodriguez, when you last testified at the
12 bail hearing for Mr. Colon, you made reference to an
13 operation that you designated as El Chivo; is that correct?

14 A That is correct.

15 Q And my recollection, if I may summarize, was that
16 El Chivo was a plan to effect the murder of Alejandro
17 Martinez-Vargas, and possibly Carlos Rodriguez-Rodriguez;
18 is that correct?

19 A That's correct.

20 Q And you stated that Mr. Colon was, in fact,
21 involved in that plan; is that correct?

22 A Yes, sir, that is correct.

23 Q At the point that you offered that testimony had
24 you reviewed the wiretap logs taken from the El Centro
25 Condominium?

1 A Not the logs, no, sir.

2 Q Have you reviewed them subsequent to that?

3 A No, sir, I have not.

4 Q Have you spoken to the agents who performed the
5 translation?

6 A Yes, sir. Not about that particular -- I have
7 seen a transcript of that conversation.

8 Q You did see the transcript of that conversation?

9 A Yes.

10 Q Well let me show you what I will mark as Defendant's
11 Exhibit A for identification -- I am sorry I didn't premark
12 these.

13 MS. VAN KIRK: Would you identify that?

14 MR. KUBY: This is Page 45 of the wiretap
15 logs at the El Centro Condominium.

16 Q Can you tell me --

17 THE COURT: Excuse me, Counselor. Maybe
18 you'd better let him read it first. Because if you are
19 talking and he is reading -- some people have trouble
20 listening to the question and reading the contents.

21 Let him read it first.

22 MR. KUBY: I will accept that suggestion,
23 although I found that Agent Rodriguez is an extraordinarily
24 competent individual.

25 THE WITNESS: Thank you.

1 (Pause)

2 THE WITNESS: Okay.

3 BY MR. KUBY:

4 Q Can you tell me the name of the agent who signed
5 that log?

6 A Yes, sir, it is Edward Preciado.

7 Q And have you spoken to Agent Preciado?

8 A Not about that particular interception, no.

9 Q Well, is it not a fact that this document -- and
10 I will read from it -- is purported to be contemporaneous,
11 or a roughly contemporaneous translation of what transpired
12 that day?

13 A Correct. The conversation he was listening to,
14 as it occurred.

15 Q And the conversation took place on the 17th; is
16 that correct?

17 A Yes, sir. The El Chivo conversation that we
18 introduced, the one you are referring to about the murder,
19 occurred on the third.

20 Q But in the log it states that, and I quote, "They
21 are willing to take action to release El Chivo at the
22 appropriate time"; is that correct?

23 A That is what it states, yes, sir, that is
24 correct.

25 Q And isn't it a fact, Agent Rodriguez, that in one

1 of your previous affidavits you referred to the El Chivo
2 matter as a rescue? Do you have any recollection of that?

3 A Could I see that page?

4 Q Certainly.

5 A That is correct.

6 MS. VAN KIRK: Could we have that identified
7 and marked as an exhibit?

8 MR. KUBY: It is not an exhibit. I will be
9 glad to identify it.

10 MS. VAN KIRK: It should be, if it has been
11 referred to.

12 MR. KUBY: I am not introducing it into
13 evidence. It was offered to refresh the witness'
14 recollection. He said he didn't have a recollection.

15 MS. VAN KIRK: I think it should be marked
16 for identification.

17 MR. KUBY: That will be fine.

18 MS. VAN KIRK: Any document which is used
19 is usually marked.

20 THE COURT: B for identification.

21 BY MR. KUBY:

22 Q Agent Rodriguez, when you testified last I asked
23 you a number of questions regarding what was found in the
24 home of Mr. Colon. And at that time I recall that you did
25 not have the answers to many questions.

1 A Correct.

2 Q You have been back to San Juan since we last saw
3 each other; is that correct?

4 A That is correct, yes, sir.

5 Q That is on vacation or on business?

6 A Business.

7 Q And business in this case?

8 A Yes, sir.

9 Q Have you had occasion, or do you have information
10 that other agents had occasion to examine the weapons that
11 were allegedly found in the home of Colon-Osorio?

12 A The only thing I can add to the weapons that you
13 questioned me about in the last hearing was the log number
14 of that rocket launcher. I do not know the exact numerical
15 notation, but it is of the same lot as the two previous
16 rockets that we recovered. It is the same as the rocket
17 launcher recovery in the rocket attack on January 25, 1985,
18 of the courthouse in Old San Juan.

19 I do not know the lot number, or the actual
20 rocket in the launcher -- it has been sent to the lab. The
21 rocket is still in the launcher.

22 THE COURT: There was a live one in there?

23 THE WITNESS: Yes, sir, there was.

24 BY MR. KUBY:

25 Q It is the same lot number as the 1985 rocket?

1 What about the 1983 rocket?

2 A I am saying that the tube -- let me clarify that.
3 The tube has a lot number, and the rocket itself has
4 another lot number on it.

5 The tube that is recovered in the residence of
6 Mr. Colon-Osorio has the same lot number stamped on it as
7 the tube that was recovered at the crime scene of the attack
8 on the Old San Juan courthouse.

9 Now the launcher of the 1983 attack was never
10 recovered. The rocket tail section was, after it impacted
11 with the building,

12 Q And as I recall the rocket tail section of the
13 1983 attack, that had been examined by your agents, and you
14 had made representations to the effect that that was from
15 the same lot as the rocket or launcher used in the 1985
16 attack; is that correct?

17 A As I stated, the rocket has a different lot
18 number. That is correct. That lot had been -- the armed
19 launcher, with the lot numbers, that were recovered at Mr.
20 Colon-Osorio's house, and the rocket attack on January 25th.

21 Q So you are saying that all three are from the
22 same lot?

23 A I am not saying that. But we do not know the lot
24 number of the rocket that is in the launcher recovered at
25 Mr. Colon-Osorio's house.

1 Q You have not conducted, or you don't know the
2 results of any ballistics tests that have been recovered on
3 the other weapons?

4 A No, sir. They are at the lab. I have ~~not~~ seen the
5 results.

6 THE COURT: Excuse me, so I will follow you,
7 Counselor, on Page 58, the previous answer says: "If it
8 is the same lot as the lot that was fired" -- if it is
9 the same lot as the rocket that was fired, "we had two
10 previous Law rocket attacks. One at the Federal Build-
11 ing and one at the courthouse in Old San Juan. Both of
12 these Law rockets are of the same lot number."

13 Then the question: "Do you have new informa-
14 tion as to whether or not this is of the same lot
15 number?"

16 "Answer: Not at this time, no, sir."

17 That is what your question is, right?

18 MR. KUBY: That is correct. And taking from
19 that answer --

20 BY MR. KUBY:

21 Q You stated that both of the 1983 and 1985 Law
22 rockets were the same number? That is what you stated
23 before?

24 A Correct.

25 Q And that is not true now?

1 A No. In 1983 we did not recover the launcher. We
2 recovered the tail section of the actual rocket that impacted
3 and exploded with the Federal Building. That particular
4 tail section had a lot number stamped on it.

5 The tube of the 1985 rocket attack was recovered.
6 We can say that the rocket that loaded -- that was fired in
7 1983, the military can tell us that that rocket lot number
8 was an armed launcher, with the lot recovered in 1985.

9 Right now the tube of the rocket launcher recovered
10 in Colon-Oscario's house is of the same lot as the launcher
11 recovered in January, 1985.

12 The rocket itself, I have no information as to
13 what lot it has on it.

14 Q Was Mr. Colon under surveillance at the time of
15 the Law rocket attack in 1985?

16 A On January 25th? I cannot state that.

17 Q Was he under surveillance in the days prior to
18 that?

19 A Mr. Colon-Oscario was the target of surveillance
20 many times. I am not prepared right now to state the
21 exact dates.

22 Q As to the other weapons that you recovered, you
23 do not have the results of any ballistics tests on those?

24 A No, sir, we do not.

25 Q Were there any of Mr. Colon's fingerprints found

1 on any of the weapons?

2 A I have not got that report.

3 Q Do you know where the weapons were located in the
4 home?

5 A Yes, sir. They were found in the closet of the
6 residence.

7 Q Have you been able to ascertain who owns that
8 residence?

9 A Not at this time, no, sir.

10 Q Are you in the process of doing that?

11 A Not at this time. That is not a priority.

12 Q Among the other things found in Mr. Colon's home
13 was approximately \$6,000 in cash; is that correct?

14 A That is correct.

15 Q Do you have any indication that that money was
16 stolen?

17 A Circumstantial.

18 Q Can you explain that circumstantial indication,
19 please.

20 A Yes, sir. Mr. Colon-Osorio was overheard on
21 numerous occasions, in particular referring to that money.
22 There is one conversation intercepted -- during all this --
23 I am not sure of the exact date -- in the El Centro Condo-
24 minium, in which they are discussing money. He is to
25 bring them some money and turn it over to Sylvia Mulling-
Coward, who is also in the conversation. And she is

1 reviewing ledger entries made by Mr. Colon-Osorio for his
2 zone, keeping financial records. She refers to a ledger
3 entry where he apparently received \$100, in accordance with
4 the ledger kept by Ojeda-Rios. He gave Colon-Osorio \$100,
5 which he did not reflect as income in his ledger. And she
6 asked him why, and he stated to her that this was part of
7 the marked money, so it was not reflected.

8 Also, again --

9 Q Excuse me, Agent, before you go on, my question
10 to you is what is the indication that that \$6,000 that was
11 recovered from his residence was stolen money?

12 A I told you I had circumstantial evidence, Mr.
13 Kuby.

14 Q If I may short circuit this --

15 MS. VAN KIRK: Objection, your Honor. The
16 Agent isn't finished with the explanation.

17 BY MR. KUBY:

18 Q Continue.

19 A Okay. That is part of it. Mr. Colon-Osorio did
20 not work; had no regular job, as I would call it. We saw
21 him working on numerous cars that we know were owned by
22 the organization, at various locations. His task was to
23 move these cars periodically, so they would not be recovered
24 by the police, and to keep them in running order.

25 He has got \$6,000 in his house, previous to this

1 he shows up at the El Centro Condominium, and again it is
2 a recent date before the arrest. He comes in with a bunch
3 of money, and he needs help counting it. They count it; it
4 came up to over \$29,000.

5 This money was turned over to Sylvia-Mulling-Cowart.

6 During the arrest and searches that occur on
7 August 30th the money, the \$29,740 was recovered from Sylvia
8 Mulling-Cowart's residence in a bag that was marked "good
9 money."

10 The proceeds of the Wells Fargo robbery, as I
11 stated -- I don't know if it was in this particular hearing,
12 but in other hearings -- the money that was taken from the
13 Wells Fargo robbery, only a portion of it were there recorded
14 serial numbers for the money. The rest of the money was
15 not recorded.

16 Mr. Colon-Osorio did not work. We know that the
17 Macheteros had claimed the robbery. He had over \$29,000
18 that he turned over to Sylvia Mulling-Cowart, plus an
19 additional \$6,000 in the residence.

20 Q So in essence, is it fair to say, Agent Rodriguez,
21 that your circumstantial case is that any money that Mr.
22 Colon has in his possession is stolen money?

23 A We're looking at \$6,000.

24 Q Any money over, say, \$5 or \$10?

25 A I would say, as we stated in our search warrant,

1 that we would seize any amount of money over \$1,000.

2 Q Your position is that any money Mr. Colon has in
3 his possession in excess of \$1,000 would be stolen money?

4 A I would say so, yes, sir.

5 Q Have you matched the serial numbers of the money
6 that has been recovered with the known serial numbers of
7 the stolen Wells Fargo money?

8 A We have.

9 Q And was any of the money recovered from his
10 residence matched up with the stolen Wells Fargo money?

11 A No, sir, it was not.

12 Q Agent Rodriguez, as you may know, Mr. Colon is
13 currently being held in Danbury Correctional Institution;
14 is that correct?

15 A That is correct.

16 Q And, in fact, Mr. Colon was separated from his
17 colleagues in Puerto Rico; is that correct?

18 A That is correct.

19 Q And was transported to the United States
20 separately?

21 A Correct.

22 Q Do you know why?

23 MS. VAN KIRK: Objection, your Honor.

24 THE COURT: Sustained.

25 MR. KUBY: May I argue the question?

1 THE COURT: No harm in arguing.

2 MR. KUBY: Thank you.

3 Repeatedly, in the course of these proceed-
4 ings, I have been trying to find out why Mr. Colon has
5 been held separate from his colleagues. There is
6 currently a motion pending before Magistrate Egan
7 for transfer at this time.

8 It occurs to me, in light of the fact that
9 the Government made an in camera, ex parte submission
10 to Magistrate Egan, it occurs to me that perhaps some
11 of the information conveyed to Magistrate Egan is
12 in relation to his being kept in Danbury, and that it
13 goes to the question of dangerousness, vel non.

14 And I would briefly like to explore that
15 area, and find out if the agent has information about
16 Mr. Colon's alleged dangerousness, or lack thereof,
17 which hasn't been brought out.

18 MS. VAN KIRK: Your Honor, the Government
19 presented evidence at the hearing from which the
20 Magistrate concluded that this defendant was a danger
21 to the community and to other people.

22 Whether or not we have additional information
23 that he is dangerous is irrelevant to this hearing. It
24 is not a discovery of all the evidence that the Govern-
25 ment may have as to the defendant, but the evidence that

1 was presented at the hearing.

2 We object to any disclosure of any informa-
3 tion concerning the location of this defendant's
4 detention. We have argued it to Magistrate Eagan, and
5 he is in the process of deciding the issue.

6 And we would request that the Court not make
7 any decision until the Magistrate rules.

8 THE COURT: He is closer to counsel down
9 there, isn't he, in New York?

10 MS. VAN KIRK: That's correct, your Honor.

11 MR. KUEY: I have made both trips now, about
12 half a dozen times apiece. It is about six of one and
13 a half a dozen of the other, Judge.

14 I would reurge the question.

15 THE COURT: The objection is sustained.

16 BY MR. KUBY:

17 Q Agent Rodriguez, you testified that Mr. Colon had
18 participated in a gift giveaway for the Three Kings Day in
19 Puerto Rico?

20 A Yes, sir, I did.

21 Q And that this gift giveaway was claimed by the
22 Macheteros?

23 A That is correct.

24 Q It was claimed by the Macheteros through a phone
25 call, is that correct, that was placed to Hartford?

1 A That is correct.

2 Q And was a phone call also placed to Puerto Rico?

3 A Yes, sir.

4 Q And the name that the individual used in Hartford,
5 was that the same name he used in Puerto Rico?

6 A The individual identified himself to the people in
7 Puerto Rico, the calls that he made in Puerto Rico, only as
8 the Press Agent of the Macheteros, to Mr. Lester of the
9 Hartford Courant, who I believe asked him what his name was.
10 He stated his name was Juan. That's the only time he iden-
11 tified himself by name, in that one call.

12 Q Did a written communique follow that phone call?

13 A No, sir, it did not.

14 Q Isn't it a fact that in the past actions which
15 you claim have been claimed by the Macheteros, they were
16 followed by communiques?

17 A The majority of them were, yes, sir.

18 Q Isn't that a fact, that that is one means by
19 which you can authenticate whether or not the Macheteros
20 did or did not commit that particular act?

21 A That is one means, but we can substantiate the
22 calls with physical evidence in this case also.

23 Q When was this gift giveaway?

24 A January 6th.

25 Q Was Mr. Colon under surveillance that day as he

1 left his home on January 6th?

2 A No, sir, he was not.

3 Q When did you or your agents first spot Mr. Colon?

4 A We were concentrating our surveillances on that
5 day on Juan Enrique Segarra, also a defendant in this case.
6 We took Mr. Segarra from his Vega Baja residence to a
7 location in Vega Baja where he picked up a yellow step-van,
8 that he drove into the San Juan metropolitan area. Our
9 surveillance, when we concentrated on him, he went to a Burger
10 King located on Avenida Barbosa in San Juan, where he met
11 Mr. Colon-Osorio and Isaac Camacho-Negron.

12 At that time the three persons got into the van,
13 traveled to the location of the gift giveaway, and conducted
14 the gift giveaway.

15 Q Was Mr. Colon disguised at that time?

16 A He was not disguised at the Burger King location.

17 Q He was disguised at the gift giveaway?

18 A Yes, sir, he was.

19 Q Did you watch him change into his disguise?

20 A No, sir, we did not.

21 Q How was the person you claim to be Mr. Colon, how
22 was he disguised?

23 A I do not know the exact description. They were
24 all wearing Three King disguises, as stated in the logs.

25 Q Were there photographs of Mr. Colon taken in this

1 disguise?

2 A Photographs were taken, but I do not recall any
3 taken of the three kings. We got photographs of the van,
4 the people around the van. We could not obtain a position
5 shooting into the van, as they were handing out gifts. How-
6 ever, we do have photographs of the Three Kings on that day,
7 taken by the people distributing the gifts, which were re-
8 covered from Mr. Colon-Osorio's residence.

9 Q Were you or your agents able to identify Mr. Colon
10 from those photographs?

11 A We identified one person. We recovered four
12 colored slides from Mr. Colon Osorio's residence, depicting
13 two people giving out gifts. One of those persons is a
14 photograph of a full face shot of Juan Enrique Segarra,
15 even with the disguise you could identify him.

16 THE COURT: What was his name?

17 THE WITNESS: Juan Enrique Segarra, another
18 defendant in the case, your Honor.

19 The other individual depicted in the photo-
20 graphs is only -- he has got his back turned during
21 the time the four photographs were taken. I cannot
22 determine who that person is.

23 Q So the answer to my question then, as to whether
24 or not you could determine from looking at the photographs
25 you received whether Mr. Colon was dressed as one of the

1 Three Kings, the answer to that is no?

2 A That is correct.

3 Q Did you recover any of the money that was used to
4 purchase these gifts?

5 A Yes, sir -- not in Puerto Rico.

6 Q You did not recover any of the money in Puerto
7 Rico; you recovered some of the money in which they disbursed
8 the gifts in Hartford?

9 A That is correct.

10 Q And was that money marked?

11 A That money was not a part of the money that had
12 recorded serial numbers, no, sir.

13 Q And Mr. Colon was not in Hartford, was he?

14 A No, sir, he was not.

15 Q And, Agent Rodriguez, you testified at one point
16 that Mr. Colon had served in the Army, but to your knowledge
17 he had never served in Vietnam?

18 A That is correct.

19 MR. KUBY: Can I have this marked as
20 Defendant's Exhibit C for identification?

21 Q If I may show you Defendant's Exhibit C for
22 identification, I direct your attention to the paragraph
23 on the first page that says Luis Alfred Colon-Osorio, and
24 the first sentence on the next page. If you would read
25 those to yourself, please?

1 A Yes.

2 Q Do you recognize that document?

3 A Yes, sir, I know of this. I knew you were going
4 to ask that.

5 Yes, sir, it is a page of an affidavit filed by
6 me, to obtain Title III coverage of a particular location.

7 Q And it was signed by you; is that correct?

8 A That is correct.

9 Q And, in fact, this particular portion was repeated
10 on more than one occasion in subsequent affidavits; isn't
11 that correct?

12 A That is correct.

13 Q And this document states, "Colon-Oscric joined
14 the Army at age 17, and spent three years in Vietnam."

15 A That is correct.

16 Q And those are statements you made to a Federal
17 District Judge, to obtain the wiretap application --

18 A That's correct.

19 Q -- the order?

20 A That's correct.

21 MR. KUBY: If I may have just a moment
22 here, Judge?

23 THE COURT: I understand the final ascertain-
24 ment, however, is that he was or was not a military
25 personnel in Vietnam?

1 THE WITNESS: He was not, your Honor.

2 THE COURT: As of today, in your investigation,
3 he was not?

4 THE WITNESS: He was not.

5 THE COURT: He was assigned over in Germany?

6 THE WITNESS: Your Honor, he spent -- this
7 background that Mr. Kuby has indicated on this particular
8 page, that was conducted by another agent for me, in
9 gathering information on these people for the affidavit.
10 This agent withdrew this information from previous FBI
11 filed that were in error.

12 Since that time we have subpoenaed the actual
13 military records from St. Louis, and Mr. Colon-Osorio
14 spent approximately six months in the military. He
15 enlisted in 1969, was discharged honorably, under con-
16 ditions of unsuitability, in 1970.

17 He did go overseas to Germany, and spent
18 part of those six months in Germany.

19 BY MR. KUBY:

20 Q Can you tell me the information that the previous
21 agent relied upon to say that he spent three years in
22 Vietnam?

23 A Yes, sir. He took that from previous FBI files.

24 Q And do you happen to know why previous FBI files
25 say that he spent three years in Vietnam?

1 A No, sir, I do not.

2 Q Have you seen those previous FBI files yourself?

3 A No, sir, I have not.

4 Q At any point?

5 A No, sir.

6 Q And you have not seen them, of course, when you
7 swore to this affidavit?

8 A No, sir. I was relying on the background.

9 Q On what date did you receive these military
10 records?

11 A It was this year, sir. I do not recall the
12 exact date.

13 Q We had at the last hearing quite a discussion of
14 code names?

15 A Yes, sir.

16 Q And I would like to address a couple of those
17 points now.

18 You stated that he had used the code name Manuel?

19 A That's correct.

20 Q Until the most recent split in the Macheteros?

21 A Correct.

22 Q And what was the date of that split?

23 A I do not know the exact date.

24 Q Can you give me an approximate date?

25 A When I am talking about -- when we talk of the

1 recent split, it really wasn't a split. The recent division
2 that occurred was simply the ouster of the zone headed by
3 Juan Enrique Segarra and his membership, which included four
4 individuals.

5 Q And it was after that point, according to your
6 testimony, that Mr. Colon began using the code name Rafi?

7 A I can't say after; I would say somewhere around
8 that time.

9 Q And approximately what date, month and year?

10 A I would say -- this is just an estimated guess --
11 it could have occurred, the code name change, there was a
12 restructure in the organization; I would say it occurred
13 from January to April of this year.

14 Q January and April of 1985?

15 A Yes.

16 Q Did he remain "Manuel" to anybody after the
17 division or the restructure?

18 A In conversations intercepted at El Centro, the
19 code names, even though we knew they had changed them, they
20 were called by their old code names sometimes, and sometimes
21 by their new ones. For example, Mario, Ruben Ramos-Acosta,
22 a person not indicted or arrested, was in El Centro, and
23 Ojeda would refer to him as "Mario" and "Ernesto." And
24 Sylvia also referred to him as "Mario" and "Ernesto."

25 I can't recall at this time in the interceptions

1 whether they referred to Colon-Osorio as Manuel in there or
2 not.

3 Q Colon also used the name Hector, isn't that
4 correct?

5 A That is correct.

6 Q And is it not a fact that one of the targets of
7 the Title III surveillance contacted Colon's home and asked
8 for Hector?

9 A I'm sorry, sir?

10 Q Is it not a fact that one of the targets of the
11 Title III surveillance, specifically William Bird Forteza,
12 contacted Colon's home and asked for Hector at one point?

13 A I do not know what you are referring to.

14 Q Well, I'll see if I can find that reference for
15 you.

16 It is clear from your investigation, is it not,
17 that he was referred to as Hector by people that you alleged
18 to be in the Macheteros?

19 A No, sir. Where we got Hector, we got an FBI agent
20 living in the adjacent apartment to Mr. Colon-Osorio, when
21 he was living at 2405 Paseo Arce, in Levittown, Puerto Rico.

22 During this time the agent, who was attempting to
23 get close to Mr. Colon-Osorio -- we did not have him identi-
24 fied at that time. We were trying to figure out who he was.
25 He met Mr. Colon-Osorio outside the residence at one time,

1 and he, Mr. Colon-Osorio, introduced himself to this agent
2 as Hector.

3 Q And Mr. Colon-Osorio was allegedly in the company
4 of Filiberto Ojeda-Rios; is that correct?

5 A That's correct.

6 Q So he was also using the name Hector; is that
7 correct?

8 A That is correct.

9 Q He was also using the name Julio Lopez; is that
10 correct?

11 A No, sir, Julio Lopez was a name used by Ojeda-Rios.

12 Q Did at any point Mr. Colon identify himself as
13 Juan?

14 A Not to my knowledge.

15 Q Not to your knowledge. Why was Hector not regarded
16 as a code name?

17 A Hector -- we did not hear them refer to him as
18 Hector. After the arrest we interviewed his wife. She knew
19 him by the name of Hector.

20 We see that as an alias, not as a code name, not
21 as an organizational code name.

22 Q So the distinction between a code name and an
23 alias would be if a person alleged to be a member of the
24 Macheteros addresses another person by a name different
25 from his own, that would be a code name?

1 A Not at all times.

2 Q Well, when would it be and when would it not be?

3 A We have not found any background information on
4 the code name of Hector when we received documents. In
5 conversations, when they addressed Colon-Osorio, where they
6 called him by names, it was usually by Manuel or Rafi.

7 And on the document seized since August 30th, they
8 reflect both these code names, Manuel and Rafi, but not
9 Hector.

10 Q And the documents don't reflect the name Hector,
11 therefore, Hector was not a code name? That is the tenta-
12 tive conclusion you reached?

13 A I would say Hector is not the code name of Luis
14 Colon-Osorio, no.

15 Q So if I may summarize your testimony, when people
16 use names other than their own, you regard them as code
17 names if you can match them up with names that appear on
18 documents; is that correct?

19 A Either that, or if they are referred to -- we are
20 talking about a clandestine organization. When they intro-
21 duce themselves to one another they don't use true names.
22 Some of these people know each other well enough so where
23 they do know the true names of some certain individuals.

24 In their houses, in their safehouses, they don't
25 use true names.

1 What I am saying, when he introduced himself to
2 the agent, I don't believe that any member of the organization,
3 when introduced to any person outside the organization --
4 that they possibly would use a true name.

5 And I know definitely they would not use a code
6 name.

7 But Hector is an alias given to a person outside
8 the organization who he did not know, and therefore, I do
9 not regard it as a code name.

10 Q So again it would be a code name if one alleged
11 member of the Macheteros referred to another alleged member
12 of the Macheteros by name, number one; then it would be
13 considered a code name, or, number two, if it appeared on
14 documents which you seized?

15 A I really cannot define at this time the exact
16 parameters that would make the name be a code name.

17 We had distinguished code names through documents
18 and overhears, but there are overhears, for one example,
19 where -- let's see -- excuse me, Orlando Gonzalez-Claudio,
20 in a conversation in Levittown, referred to Filiberto Ojeda-
21 Rios by the name of Ojeda, the true name, Rios.

22 THE COURT: Haven't we covered this now,
23 Counselor? I am not getting any benefit out of it,
24 unless you are.

25 MR. KUBY: I would just like to introduce one

1 more document to the agent.

2 Q I would like to show you Exhibit D for identifica-
3 tion. Agent Rodriguez, let me show you Defendant's Exhibit
4 D for identification and just ask you to read the last four
5 lines there, sir.

6 A "Discussion of documents continues among all
7 present. Rodriguez-Rodriguez mentions calling Hector" --

8 THE COURT: Is this a full exhibit?

9 MR. KUBY: For identification. I didn't mean
10 for him to read it out loud.

11 THE COURT: If he is going to read it it
12 should be an exhibit, as you know.

13 THE WITNESS: I am sorry. Do you want me
14 to continue?

15 MS. VAN KIRK: I object.

16 Can we have a foundation for the introduction,
17 and an identification of it?

18 BY MR. KUBY:

19 Q Have you concluded reading it?

20 A Yes.

21 Q Do you recognize the document?

22 A Yes, sir, it is an overhear log. The log that is
23 made simultaneous with a Title III overheard.

24 Q And this was taken from 3384 Levittown Boulevard;
25 is that correct?

1 A That's correct.

2 Q And among the participants in the conversation
3 are Luis Colon-Osorio; is that correct?

4 A Can I see that?

5 That is correct.

6 MS. VAN KIRK: Is there a date on that?

7 MR. KUBY: 6/23/84.

8 BY MR. KUBY:

9 Q And Luz Berrios-Berrios talks about contacting
10 Hector, about matters being discussed with Ojeda-Rios; is
11 that correct?

12 A According to that log, that's correct.

13 Q So according to this log Hector would be a code
14 name?

15 A No, sir. I can't make that determination from
16 that log.

17 MR. KUBY: And I am almost done, Judge.

18 Q Have you had occasion to review the preliminary
19 lab reports that were submitted to defense counsel?

20 A Which ones are you referring to?

21 MR. KUBY: Would you mark this for identifica-
22 tion, please?

23 Q I ask you to look at this and read it to yourself.
24 Have you seen that FBI report before?

25 A Yes, sir, I have.

1 Q Have you seen the document referred to in this
2 report?

3 MS. VAN KIRK: Your Honor, I am going to
4 object to any questioning about matters that do not
5 pertain to issues raised at the detention hearing.

6 If counsel can proffer how this relates to
7 the issues at the detention hearing, I will have no
8 objection. But I fear that we are going into a dis-
9 covery of information, an exchange of discovery
10 material, which is provided to the defense.

11 And I believe that is not proper for the
12 detention hearing.

13 THE COURT: I haven't seen it, so I don't
14 know what is on it.

15 MR. KUBY: Your Honor, I will be happy to
16 hand it up. It is simply an FBI report saying that
17 three latent fingerprints were developed on a piece of
18 paper, with a certain title, identifying those finger-
19 prints as belonging to Luis Alfredo Colon-Osorio.

20 My reason for asking this is, this is the
21 only FBI report that I have seen having Mr. Colon's
22 fingerprints on it. Presumably if the FBI is checking
23 for his fingerprints on documents, those documents
24 should be the fruits or instrumentalities, or perhaps
25 in some way related to the crime he is charged with,

1 which is certainly one of the factors that this Court
2 must consider in a bail review.

3 I would simply like to know what document
4 they are talking about. If this is an operational plan
5 for the Macheteros to take over Puerto Rico, or whether
6 this is a receipt.

7 MS. VAN KIRK: Your Honor, this document was
8 not introduced by the Government to prove dangerousness
9 or risk of flight. It was a document provided to the
10 defense pursuant to discovery orders.

11 I will have no objection to asking the
12 witness if it pertains to any of the matters that were
13 covered on direct examination or on cross-examination
14 thus far. But to have him now testify about what are
15 matters that will be testified to at the trial, we
16 object.

17 THE COURT: In other words, here is simply a
18 certification that the latent fingerprints of this
19 defendant is on a particular piece of paper, have been
20 identified as impressions of the right thumb, left
21 ring and left little finger of Luis A. Colon, also
22 known as Luis Colon-Osorio. That is all it says. Then
23 continued on next page, and there is no next page.

24 So, as far as it goes, I suppose you could
25 say: "Is this the only fingerprint of which you have

1 knowledge that it involves my client?" I suppose that
2 would be a legitimate question.

3 MS. VAN KIRK: I have no objection to that.

4 THE COURT: I don't want to phrase his
5 questions for him.

6 MR. KUBY: I wouldn't ask you to, Judge.

7 BY MR. KUBY:

8 Q Is that the only fingerprint of Mr. Colon that you
9 have knowledge of?

10 A At this time, that is correct.

11 Q And can you relate to me the contents of that
12 document?

13 MS. VAN KIRK: Objection.

14 MR. KUBY: I simply want to know the contents
15 of that document.

16 THE COURT: This document?

17 MR. KUBY: The document referred to as having
18 Mr. Colon's fingerprints.

19 THE COURT: Doesn't it speak for itself,
20 whatever it is?

21 MR. KUBY: Well, because we haven't been
22 provided with the document -- it has simply been
23 identified that the paper begins "Miantojo, Inc."

24 THE COURT: Why don't you ask him does he
25 know in that exhibit what Miantojo -- I can't pronounce

1 it without reading it.

2 BY MR. KUBY:

3 Q Do you know what in this exhibit is meant by
4 Miantoje, Inc.?

5 A That's what was on the document seized, but I do
6 not recall the contents of that piece of paper.

7 Q Do you recall if it in any way related to the
8 crimes here charged?

9 A That's a tough one. Indirectly it does.

10 Q How is that?

11 MS. VAN KIRK: Objection. Your Honor, we
12 are going now into the discovery.

13 THE COURT: I think we are getting into
14 discovery now, Counselor. You might get into that --
15 that it is a store front that was allegedly used,
16 referred to in some other transcript, and a lot of
17 miscellaneous matters that would keep us here all
18 day for no good purpose.

19 MR. KUBY: I am finished with my examination,
20 then, of this witness.

21 I have an additional affidavit to offer, and
22 then --

23 THE COURT: Have you showed it to counsel?

24 MR. KUBY: I have given a copy to the
25 Government.

1 MS. VAN KIRK: May I cross-examine?

2 THE COURT: On this witness? Is there anything
3 new, anything new from this witness that you want to
4 bring out, that you think would be helpful to your
5 case?

6 MS. VAN KIRK: Your Honor, I have no
7 questions.

8 THE COURT: All right. Now you want to offer
9 your affidavit, Counsel?

10 MR. KUBY: That certainly shortens the pro-
11 ceedings somewhat, your Honor.

12 THE COURT: We like to get to the heart of it.

13 MR. KUBY: This is a sworn statement by
14 neighbors of Luis Colon-Osorio.

15 THE COURT: In English?

16 MR. KUBY: It is in both English and in
17 Spanish.

18 THE COURT: You have a translation attached?

19 MR. KUBY: I do, sir.

20 THE COURT: Very good.

21 MR. KUBY: The aspect of this that I would
22 like to briefly point out, number one, that they knew
23 him under an alias. The alias was apparently Juan
24 Durante. The reasons for his assuming an alias have

25

1 been adequately ventilated in the previous hearing.

2 THE COURT: It is in the transcript; I read
3 that.

4 MR. KUBY: I am not going to belabor that.
5 I want to point out that there are over 40 people from
6 his community who signed this affidavit, requesting --
7 saying that they know him, at least for the past few
8 years; that he has always been a responsible person;
9 he has a very good reputation in the community, and
10 requesting that bail be granted.

11 And I would submit this now.

12 THE COURT: It may be filed as a full
13 exhibit F, for purposes of this hearing. Defendant's
14 Exhibit F, a full exhibit.

15 MR. KUBY: And I concluded my additional
16 presentation of evidence.

17 THE COURT: Thank you.

18 Counselor, is there anything you want to
19 add?

20 MS. VAN KIRK: No, your Honor, we will rely --

21 THE COURT: On the record?

22 MS. VAN KIRK: We rely on the transcript in
23 the proceedings before Magistrate Eagan.

24 THE COURT: Very well.

25 I was going to call to counsel's attention.

1 that -- I guess it was Mr. Williams that filed a motion,
2 and you might not be here when it comes up. I told him
3 to put it on the calendar for this reason.

4 He is asking for a translation of the 900
5 tapes that are not going to be used by the Government.
6 And I would like your impression, that if you would
7 like the ones that are not going to be used by the
8 Government?

9 MR. KUBY: Absolutely, your Honor.

10 THE COURT: Secondly, he suggests I think
11 two people, at an hourly rate, and he states, to trans-
12 late these.

13 And I put it on the calendar to determine
14 that we are not going to have 12 or 15 lawyers each
15 asking their own translators to translate it. I want
16 all counsel to agree upon the two translators -- I
17 think they are law school students that speak Spanish --
18 Mr. Williams suggests, I think, that they are. You can
19 talk with him, but what I want to do is get all the
20 attorneys to agree to one translation, by competent
21 people, so that they won't come back and ask the Court
22 to pay for ten different translations.

23 MR. KUBY: Judge, I will certainly consult
24 with my colleagues in an effort to reach a consensus.
25 I would simply point out that in terms of time

1 constraints, I think we already recognize that the
2 original time frame sets forth for substantive motions,
3 which was set, that it was set with excessive optimism.

4 But to have two law students translating a
5 thousand hours of tape, I think it would take about
6 four months.

7 THE COURT: We don't want to do that. We
8 don't want to prolong it. The probabilities are that
9 if you get them you may not even read over more than
10 one or two of them, because -- I don't know what is on
11 there any more than you do, but usually it turns out
12 to be gibberish or junk or garbage, and you say, "Why
13 am I wasting my time by reading it?"

14 MR. KUBY: Let's hope so, Judge.

15 I will consult with Mr. Williams.

16 THE COURT: Very good.

17 MR. KUBY: Do you wish to hear arguments?

18 THE COURT: I think I have heard all the
19 argument I need. But I don't want to deprive you of
20 argument, if you think it would be helpful to what has
21 been brought out.

22 MR. KUBY: I would simply like to clarify
23 the record on some points. We received your ruling on
24 Senor Hilton Fernandez, in which you deferred passing
25 on the constitutional questions for a later date. And

1 I would just like to clarify --

2 THE COURT: There is one thing that we have
3 to get ironed out first on that. I understand Mr.
4 Kunstler filed a motion before the Magistrate, and I
5 want to ascertain first whether he is working on a pre-
6 liminary memorandum on that issue that was submitted
7 to him, or whether when he comes in on Friday he wants
8 the Court to issue a ruling on that particular very
9 interesting issue.

10 MR. KUBY: Magistrate Eagan represented that
11 he was making a preliminary oral finding of constitution-
12 ality, which permitted the bail hearings to proceed.
13 He said that would be followed by a written memorandum.
14 It has not been.

15 THE COURT: I will clear that point up and
16 find out whether or not he is working on one or not.
17 And if not, we will proceed after I hear Mr. Kunstler
18 on Friday, to issue a ruling on the constitutionality
19 issue.

20 MR. KUBY: And this would be obviously
21 required for Second Circuit purposes, and --

22 THE COURT: It would apply to everyone.

23 MR. KUBY: And it would apply to everyone.
24 And I would like to urge in this case, as I raised
25 before Magistrate Eagan, and incorporate by reference,

1 objections to the unreliable hearsay being admitted;
2 objections to the facial unconstitutionality of the
3 statute, objections on the timeliness grounds; objections
4 on the ten-day rule; objections to this Court's original
5 jurisdiction over Mr. Colon, because he was seized
6 pursuant to a blanket warrant; objections to the detention
7 order issued thus far --

8 THE COURT: Have all these been briefed?

9 MR. KUBY: No, they have not. Some have been
10 raised orally, some have been briefed.

11 THE COURT: You want the Court to rule on
12 them without any brief?

13 MR. KUBY: No, I would not. What I would
14 like to do, for those that have not been briefed, to
15 submit a brief to you by Monday.

16 THE COURT: Very good.

17 MR. KUBY: I don't intend --

18 THE COURT: This coming Monday?

19 MR. KUBY: That's correct.

20 THE COURT: On all these issues? Will you
21 and Mr. Kunstler have the same brief?

22 MR. KUBY: No, no. There have been briefs
23 submitted, for example, on the facial unconstitutionality
24 on the timeliness issue, on the ten-day rule violations -- I don't know if one has been sent up on the
25

1 blanket warrant or not. We are sort of trying to divvy
2 these things up.

3 THE COURT: There has been mention of them
4 along the way in comment, but nobody issued any memo-
5 randum on the point.

6 MR. KUBY: Okay, we will send that up.

7 THE COURT: Nor has the Government issued any
8 counter memorandum on the point, I don't think.

9 MS. VAN KIRK: No, your Honor. We have
10 responded to the memoranda that have been filed.

11 MR. KUBY: Well --

12 THE COURT: By Monday you will have your
13 memorandum, hitting all of these points?

14 MR. KUBY: Or at least incorporating by
15 reference memoranda that have been previously filed
16 before Magistrate Eagan.

17 I would also like to point out specifically,
18 as to this case, some of the criteria which I think
19 the Magistrate relied on in an unconstitutional manner.

20 He relied on the possession of weapons,
21 specifically these weapons, as indicators of dangerous-
22 ness. I think that citizens have the right to keep and
23 bear arms, and in the absence --

24 THE COURT: Bazockas?

25 MR. KUBY: In the absence of some sort of

1 criminal charge, your Honor, there hasn't been an indi-
2 cation whatsoever in any of these hearings that any of
3 these weapons were possessed illegally. I don't know
4 what the firearms laws are --

5 THE COURT: If I had a bazooka or an M-16
6 at my home, without a license, would I have it legally?

7 MR. KUBY: Judge, I don't know what the fire-
8 arms laws are in Puerto Rico. I do not know --

9 THE COURT: The Federal laws apply, don't
10 they?

11 MR. KUBY: That is correct. I don't know if
12 Commonwealth permits holding these weapons. And I am
13 not going to represent to you that I completely under-
14 stand the relationship between Federal firearms laws
15 and Commonwealth of Puerto Rico laws.

16 I know lots of people in Puerto Rico have
17 lots and lots of guns. I have walked out of prison
18 with attorneys, and they walk across the street, and
19 they hand in a brass token, and they get their .38's,
20 and they stick it in their socks -- I nearly died the
21 first time I saw it. But lots of people in Puerto Rico
22 have lots of guns, for lots of purposes.

23 This man has not been charged with illegal
24 possession of any weapons, in any court. And until
25 those charges are at least brought, I think there has

1 to be a presumption of regularity, of possession of
2 anything, until criminal charges against him are
3 brought.

4 I don't think it is fair to rely on naked
5 possession, without criminal charges, as indicia of
6 dangerousness.

7 THE COURT: All right. You will include that
8 in your brief?

9 MR. KUBY: I will.

10 Also, membership in the Macheteros has been
11 repeatedly raised, and is mentioned in every single
12 one of these detention orders. I think under the
13 First Amendment that people have a right to be associa-
14 ted with and affiliated with organizations, even
15 organizations who are clandestine.

16 I will represent to you that in Puerto Rico
17 this weekend some 2,000 people, at an outdoor rally,
18 stood up and sang La Borinquena, the national anthem
19 of Puerto Rico. And the last line is, "We shall free
20 ourselves with machetes."

21 These were not terrorists; these were a lot
22 of old ladies, old men, young men -- I don't think
23 simple membership in the Macheteros, or simple allegiance
24 to the Macheteros is a constitutional criterion on
25 which to base a detention order.

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That is all.

THE COURT: Very good, thank you.

Nothing further, adjourn court, Mr. Bailiff.

(Whereupon, the hearing was concluded.)