

Ex. 28

SEARCH WARRANT ON ORAL TESTIMONY

NO 93A
(Rev. 5/82)

United States District Court		DISTRICT Southern District of New York	
UNITED STATES OF AMERICA v. DOMENIC M. FRANZA		DOCKET NO.	MAGISTRATE CASE NO.
		TO: Any authorized Federal law enforcement officer	

Oral testimony having been communicated to me by the below-named affiant that he/she has reason to believe that ~~(on the premises)~~ (on the premises known as) 3720 Barker Ave., Bronx, NY, First Floor

In the Southern District of New York, there is now being concealed certain property, namely yellow jewelry boxes, black electrical tape, galvanized pipes and end caps, explosive powder, fuses, two-inch plastic tape, brown wrapping tape, brown wrapping paper, green magic marker, Casio keyboard, white index cards, heavy duty self-sealing plastic bags, and other evidence of the manufacture and shipping of an explosive device, in violation of 18 U.S.C. § 922.

and as I am satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that there is probable cause to believe that the property so described is being concealed on the person or premises above-described and that grounds for application for issuance of the search warrant exist as communicated orally to me in a statement which has been electronically recorded and, upon return of the warrant, will be transcribed, certified as accurate, and attached hereto,

YOU ARE HEREBY COMMANDED to search within a period of 24 hours the person or place named above for the property specified, serving the warrant and making the search ~~(in the daytime 6:00 A.M. to 10:00 P.M.)~~ (at any time in the day or night) and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to any U.S. Magistrate Judge sitting in the U.S.

Courthouse, Foley Square, New York, NY, Room 331 as required by law.

NAME OF AFFIANT GERALD T. RAFFA	SIGNATURE OF FEDERAL JUDGE OR U.S. MAGISTRATE <u>Leonard Bernick by AUSA</u>	DATE & TIME WARRANT ISSUED <u>2/11/91 10:45pm</u>
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AFFIANT'S CERTIFICATION
I certify that on February 11, 1991 at 10:45pm, The Hon Leonard Bernick U.S. Magistrate Judge (Federal Judge or U.S. Magistrate) orally authorized the issuance and execution of a search warrant conforming to all the foregoing terms.

NAME OF AFFIANT John GERALD T. RAFFA	SIGNATURE OF AFFIANT <u>Gerald T. Raffa</u>	EXACT TIME EXECUTED <u>1:55am</u>
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INSTRUCTIONS — The original warrant is to be completed by the Federal Judge or U.S. Magistrate at the time the warrant is read to him/her, verbatim, over the telephone. The form in the hands of the affiant is the duplicate original. The Federal Judge or U.S. Magistrate is to enter the exact time the warrant is issued and sign the warrant. The affiant, as per the oral instruction of the Federal Judge or U.S. Magistrate, will enter the same information on the duplicate original. The Affiant's Certification is to be completed by the agent. When the agent executes the warrant in accordance with 41(c)(2)(F), he/she should enter the exact time the warrant was executed.

"If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure Rule 41(c), show reasonable cause

RETURN

DATE WARRANT RECEIVED 2/11/91	DATE AND TIME WARRANT EXECUTED 2/2/91 1:55 AM	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH In Residence
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INVENTORY MADE IN THE PRESENCE OF
G. T. RAPP

INVENTORY OF PROPERTY TAKEN PURSUANT TO THE WARRANT

- (1) ONE (1) CAN OF BULLS-EYE SMOKELESS POWDER
- (2) ONE (1) ROLL OF BLACK ELECTRICAL TAPE
- (3) ONE (1) GREEN MARK MARKER
- (4) ONE (1) BAZ OF MISCELLANEOUS PAPERS

CERTIFICATION

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

J. T. [Signature]
Carrie [Signature] (Seizing Agent)

Subscribed, sworn to, and returned before me this date.

Federal Judge or U.S. Magistrate

Date

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Transcript of Tape of
Search Warrant/Application
on Oral Testimony

DATE: February 11, 1991

TIME: 10:25 p.m.

LOCATION: 3320 Barker Avenue
1st Floor
Bronx, New York

PARTICIPANTS: Leonard A. Bernikow
United States Magistrate Judge
Southern District of New York

John McEnany
Assistant United States Attorney
Southern District of New York

Gerald T. Raffa
Special Agent
Bureau of Alcohol, Tobacco & Firearms

AUSA McENANY: Alright, if I could -- just so I make sure
everything gets picked up -- ask you to
speak up a little bit?

HON. BERNIKOW: Alright, I have 10:25 right now.

AUSA McENANY: Alright. Your Honor, I'm here with Special
Agent Gerald T. Raffa, R-A-F-F-A.

HON. BERNIKOW: R-A-F-F-A. Mr. McEnany, how do you spell
your last name?

AUSA McENANY: M-C, capital E-N-A-N-Y.

HON. BERNIKOW: And the first name is John?

AUSA McENANY: That's correct.

HON. BERNIKOW: Alright, now what agency -- Mr. McEnany,
you're with the U.S. Attorney's Office?

AUSA McENANY: That's correct, I'm a Deputy Chief of the
Criminal Division, United States Attorney's
Office, Southern District of New York

HON. BERNIKOW: And agent Raffa is with what agency?

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AUSA McENANY: Alcohol, Tobacco & Firearms.

HON. BERNIKOW: Okay, now I'm going to ask you both -- are you there, agent Raffa?

S/A RAFFA: Yes, I am, Your Honor.

HON. BERNIKOW: Do you swear that the testimony you are about to give or the statements you're about to make, the answers to my questions that you're about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

S/A RAFFA: Yes, Your Honor.

HON. BERNIKOW: Agent Raffa?

S/A RAFFA: Yes.

HON. BERNIKOW: Mr. McEnany.

AUSA McENANY: Yes, I do, Your Honor.

HON. BERNIKOW: Alright, now the first thing I'd like to know from you is what are the exigent circumstances that require a search warrant on oral testimony?

AUSA McENANY: Your Honor, if I may, this is John McEnany. This is an investigation growing out of an attempted homicide and bombing investigation by the New York Police Department. The New York Police Department have just arrested a person named Domenic, D-O-M-E-N-I-C, M. Franza, F-R-A-N-Z-A, for attempted murder. There are also some bombings or attempted bombings involved in this case, and we have received information that Mr. Franza either directly or through an attorney has contacted relatives and requested that they go to his apartment, I understand, to try and get money from Mr. Franza, and we are concerned that if any of Mr. Franza's relatives have access to the apartment, evidence that might be there could be lost. That's the reason that we are proceeding tonight rather than waiting for tomorrow morning.

HON. BERNIKOW: I see. So in other words, Mr. Franza has been arrested and you fear that his rela-

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AUSA McENANY:

tives will go to his apartment in order to get money and disrupt the apartment?

We understand that they would like to get money from the apartment, and we don't have a problem with that under the circumstances of this case, but we do have a concern that if they go to the apartment tonight, they may also destroy, either deliberately or inadvertently, evidence that we might be searching for. I checked to see whether the apartment was going to have anybody going to it tonight after Mr. Franza's arrest, and when I learned that I thought it was important to try to get a warrant tonight.

HON. BERNIKOW:

Okay, is the apartment secure at the present time?

AUSA McENANY:

Yes. About I guess an hour and a half ago, we requested that a New York police officer, I guess -- is that correct?

S/A RAFFA:

Yes, and my agents.

AUSA McENANY:

And ATF agents secure the apartment, but I didn't think it was appropriate to try and secure the apartment and deny otherwise lawful access to it overnight, but I'll be guided by Your Honor as far as that's concerned.

HON. BERNIKOW:

Alright, I take ^{it} you have an affidavit prepared?

AUSA McENANY:

Yes, I do. I think I can go through it relatively quickly.

HON. BERNIKOW:

Very good. I take it that would also have the exigent circumstances listed in there.

AUSA McENANY:

The exigent circumstances as far as the timing are concerned are pretty much as I have told them to you.

HON. BERNIKOW:

Okay.

AUSA McENANY:

I'll mention them again, but those are they.

HON. BERNIKOW:

Okay.

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AUSA MCENANY:

I'll go over this paragraph by paragraph and ask the agent if that is correct to the best of his knowledge. Mr. Raffa, you are a Special Agent with the ATF and have served with the ATF for over fourteen years. You are currently the group's supervisor for ATF's Arson & Explosives Squad, which has jurisdiction for all of New York, New York. In your fourteen years in the ATF, you have participated in well over 1,000 investigations, including numerous cases involving the use of explosives, and have participated in the execution of more than 300 search warrants, is that correct?

S/A RAFFA:

Yes, it is.

AUSA MCENANY:

Alright, you make this affidavit in support of an application for a warrant to search the premises known and described as 3320 Barker, B-A-R-K-E-R, Avenue, first floor, Bronx, New York, and we'll refer to them as the subject premises hereinafter, is that correct?

S/A RAFFA:

Yes.

AUSA MCENANY:

Now, on or about February 11, 1991, did you receive a telephone call from a detective of the New York Police Department who informed you in substance of most of the information that will follow in this affidavit, is that correct?

S/A RAFFA:

Yes.

AUSA MCENANY:

And that information is as follows. In late June, 1990, Myra, M-Y-R-A, Mendez, M-E-N-D-E-Z, Franza, F-R-A-N-Z-A, was having marital problems with her husband Domenic Franza, which I'll sometimes refer to as the defendant. And at that time she left him. Agent Raffa checked and determined that the defendant is a federally-licensed firearms dealer who has listed his place of business as his residence at the subject premises. However, the defendant is not licensed to deal in explosives. The ATF has not yet been able to verify whether the defendant has a license issued by the NYPD that would be necessary to carry on a firearms business within New York City. Is that correct, agent?

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S/A RAFFA:

Yes, it is.

AUSA McENANY:

On or about July 17, 1990 in the evening, a man carrying a dozen roses knocked on the door of the residence where Domenic Franza's wife and mother-in-law were living. Josephine Mendez, the mother, opened the door and the man shot her three times. The man then proceeded to the bathroom and shot Myra Mendez Franza once. Both survived. Before leaving the apartment, the man dropped the flowers and a handwritten note affixed to the box in which they were contained. The note listed the victim's address and Myra Mendez Franza's name. Is that correct, agent?

S/A RAFFA:

Yes, it is.

AUSA McENANY:

Subsequent to the shooting, Myra Mendez Franza informed the NYPD that she believed that her husband had sent the man who shot her and her mother. At the request of the NYPD, Domenic Franza provided the NYPD handwriting exemplars. Is that correct?

S/A RAFFA:

Yes, it is.

AUSA McENANY:

On or about August 27, 1990, the NYPD's Documents Section determined that the handwriting on the note that had been dropped in the apartment by the gunman on the day of the shooting matched the handwriting exemplars provided by Domenic Franza. Is that correct?

S/A RAFFA:

Yes, it is.

AUSA McENANY:

On or about August 11, 1990, a pipe bomb was left outside the door of the home of Nelson Dacosta, D-A-C-O-S-T-A, Mendez, the brother of the defendant's wife. The bomb was found by the superintendent of the building, who notified the NYPD. The bomb was a pipe one and a half inches in diameter by six inches long filled with an explosive which could have been detonated by a firing mechanism attached to the bomb. Is that correct, agent?

S/A RAFFA:

Yes, it is.

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AUSA MCENANY:

On or about February 6, 1991, Josephine Mendez received two letters at her residence. One of the letters was addressed to Nelson Dacosta, care of Josephine Mendez, and the other was addressed to Myra Franza and Josephine Mendez. Nelson Dacosta has informed the NYPD that only members of his immediate family use his middle name Dacosta when referring to him. That group would include his mother, his sister, his brother and his brother-in-law, the defendant. In the upper left-hand corner of both letters was the return address Julio Ortiz, O-R-T-I-Z, 750 West 181st Street, New York, New York 10033. In the letter to Josephine Mendez and Myra Franza, the author of the letter threatened to kill both women and Josephine Mendez's husband. In the letter addressed to Nelson Mendez, the author threatened to kill the entire Mendez family living in the United States and in Puerto Rico. The letter also stated that the author had sent a present, in quotes, to Nelson Mendez's grandmother, who lived in Puerto Rico. Is that correct, agent?

S/A RAFFA:

Yes, it is.

AUSA MCENANY:

On or about February 8, 1991, a relative of the grandmother of Myra and Nelson Mendez received a Federal Express package addressed to the Roman, R-O-M-A-N, family in Levittown Catano, C-A-T-A-N-O, Puerto Rico. The label on the package listed the telephone number of the Roman family, 1-809-784-1630. The sender of the package identified himself on the Federal Express label as Julio Ortiz with an address of 750 West 181st Street in New York, New York. The relative, who had been warned by the Mendezes, opened the package and saw that it appeared to contain a bomb. The relative then called the Puerto Rico police department and reported the discovery of the bomb. Is that correct, agent?

S/A RAFFA:

Yes, it is.

AUSA MCENANY:

Subsequently, the Puerto Rico police department defused the bomb, which had been made out of a nine-inch galvanized pipe two and a half inches in diameter with grooved ends,

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galvanized end caps and explosive powder filling, a fuse lighter, a pyrotechnic fuse, a trip wire, black electrical tape, all of which was contained in a Casio, C-A-S-I-O, keyboard carrying case. The Casio carrying case had a serial number, 48200135809. In addition, the Federal Express package containing the bomb had been prepared with the following items: corrugated cardboard, a green magic marker, black plastic electrical tape, pieces of wood, yellow sanitary napkins, plastic tape two inches wide and shiny in color, four by five inch filing cards cut in half, and self-sealing clear plastic evidence bags approximately eight by seven inches, white tape and brown sealing tape. Is that correct, agent?

S/A RAFFA:

Yes, it is.

AUSA McENANY:

On or about February 11, 1991, Domenic Franza was arrested by the New York Police Department and charged with the attempted murder of Josephine and Myra Mendez. In the defendant's wallet at the time of his arrest was a piece of paper with the words Levittown, in quotes, and the telephone number of Myra Mendez's grandmother in Puerto Rico, which is the same telephone number that I read earlier. Is that correct, agent?

S/A RAFFA:

Yes, it is.

AUSA McENANY:

Your Honor, the government would submit that based on the foregoing, there is probable cause to believe that the defendant fabricated the bomb sent to Puerto Rico, and is guilty of, among other offenses, the illegal manufacture and transportation of a destructive device in violation of Section 922 of Title 18. The government would also submit that there is probable cause to believe that there will be found on the subject premises at least some of the following items used in the fabrication of the bomb sent to Puerto Rico as described in the form for oral search warrant, which I will now read with the Court's permission. And the items we would be searching for would be black electrical tape, galvanized pipes and end caps, explosive powder, fuses, two-inch plastic tape, brown wrapping tape, brown wrapping

paper, green magic marker, Casio keyboard, white index cards, heavy-duty self-sealing plastic bags, and other evidence of the manufacture and shipping of an explosive device in violation of 18 U.S.C. Section 922. For the reasons which I have -- I'm sorry, let me describe the rest of the information on the form as I fill it out. It would be entitled United States of America ...

HON. BERNIKOW: Alright, let me ask the agent, is that all correct what Mr. McEnany has said?

S/A RAFFA: Yes, Your Honor, it is.

HON. BERNIKOW: Alright, now I take it then that's your filling on the application, is that correct?

AUSA MCENANY: That's correct, Your Honor.

HON. BERNIKOW: Alright, it appears to me that there is probable cause for the search of the apartment. Let me just ask you, this is the home address of the defendant Domenic Franza.

AUSA MCENANY: Agent, is that correct?

S/A RAFFA: Yes, it is, Your Honor.

HON. BERNIKOW: I see. And it appears that you're saying that the exigent circumstances have to do with the fact that other people or friends of his could get to his apartment and destroy some of this evidence that you are seeking a search warrant for.

AUSA MCENANY: There is that concern, Your Honor; that is the reason.

HON. BERNIKOW: Alright, it appears that that shows not only probable cause but the necessary exigent circumstances for the issuance of the warrant, and I will therefore authorize the issuance of this warrant. And now I have before me a document entitled A093A, Search Warrant Upon Oral Testimony. United States District Court, Southern District of New York, in the matter of the search of ...

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AUSA McENANY: Okay, and I'm entitling this, Your Honor, United States of America v. Domenic M. Franza. That'll be in the caption.

HON. BERNIKOW: Okay, United States of America v. Domenic ...

AUSA McENANY: M as in Mary, Franza, F-R-A-N-Z-A.

HON. BERNIKOW: Yeah.

AUSA McENANY: And the warrant is directed to any authorized federal law enforcement officer.

HON. BERNIKOW: Any ...

AUSA McENANY: Authorized federal law enforcement officer.

HON. BERNIKOW: Any authorized federal law enforcement officer.

AUSA McENANY: And then the next section I would cross off "on the person of," and fill in for "on the premises known as" ...

HON. BERNIKOW: Wait a minute now, sworn oral testimony having been communicated to me by Agent Raffa?

AUSA McENANY: That's correct.

HON. BERNIKOW: What's his first name again?

AUSA McENANY: Gerald.

HON. BERNIKOW: Gerald. Raffa. That on the ...

AUSA McENANY: Premises.

HON. BERNIKOW: That on the person of and on the premises ...

AUSA McENANY: Known as, and that would ^{b2} 3320 Barker, B-A-R-K-E-R, Avenue, Bronx, New York, first floor.

HON. BERNIKOW: Is that the only apartment on the first floor?

AUSA McENANY: Is that the only apartment, agent?

S/A RAFFA: There is the basement, there is the first floor, and the second floor, Your Honor. We

would like to search the first floor.
That's the apartment that's there.

HON. BERNIKOW: And the entire first floor is the apartment
of Mr. Franza?

S/A RAFFA: Yes, Your Honor.

HON. BERNIKOW: Alright. Alright, that's in the Southern
District of New York. Go ahead.

AUSA McENANY: And there is now being concealed certain
property, namely ...

HON. BERNIKOW: There is now concealed a certain person ...

AUSA McENANY: There is now being concealed certain proper-
ty ...

HON. BERNIKOW: Certain property, namely black electrical
tape, what else?

AUSA McENANY: Black electrical tape, galvanized pipes and
end caps ...

HON. BERNIKOW: Galvanized pipes and end caps.

AUSA McENANY: Yellow sanitary napkins ...

HON. BERNIKOW: Yellow sanitary napkins.

AUSA McENANY: Explosive powder ...

HON. BERNIKOW: Explosive powder.

AUSA McENANY: Fuses ...

HON. BERNIKOW: Fuses.

AUSA McENANY: Two-inch plastic tape ...

HON. BERNIKOW: Two-inch plastic tape.

AUSA McENANY: Brown wrapping tape ...

HON. BERNIKOW: Brown wrapping tape.

AUSA McENANY: Brown wrapping paper ...

HON. BERNIKOW: Brown wrapping paper.

AUSA McENANY: Green magic marker ...

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HON. BERNIKOW: Green magic marker. Go ahead.

AUSA McENANY: Casio keyboard ...

HON. BERNIKOW: Casio keyboard.

AUSA McENANY: White index cards ...

HON. BERNIKOW: White index cards.

AUSA McENANY: Heavy-duty self-sealing plastic bags ...

HON. BERNIKOW: Heavy-duty self-sealing plastic bags.

AUSA McENANY: And other evidence of the manufacture ...

HON. BERNIKOW: Other evidence of the manufacture of ...

AUSA McENANY: Manufacture and shipping of an explosive device ...

HON. BERNIKOW: Manufacture and shipping of an explosive device.

AUSA McENANY: In violation of ...

HON. BERNIKOW: In violation of 18 United States Code ...

AUSA McENANY: Section 922.

HON. BERNIKOW: Alright, I am satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit, and that there is probable cause to believe that the property or person so-described is concealed on the person or the premises above-described, and that grounds for application for issuance of a search warrant exist as communicated orally to me in a sworn statement which has been recorded electronically, stenographically or in longhand, and upon return of the warrant will be transcribed, certified as accurate and attached hereto. You are hereby commanded to search on or before ...

AUSA McENANY: I'd say twenty-four hours, Your Honor, although I believe, and agent, you can tell me if that is correct, that the agents intend to execute this search immediately. Is that true?

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S/A RAFFA:

Yes.

AUSA MCENANY:

I've inserted twenty-four hours if that's okay with the Court, though.

HON. BERNIKOW:

Person or place named above for the person or property specified, serving this warrant and making the search at any time in the day or night, because it is now past 10:00 p.m., as I find reasonable cause to have been established and that if the person or property to be found there, to seize same, leaving a copy of this warrant in receipt for the person or property taken, prepare a written inventory of the person or property seized, and promptly return this warrant to ...

AUSA MCENANY:

And I have filled any U.S. Magistrate Judge sitting in the U.S. Courthouse ...

HON. BERNIKOW:

Sitting in the U.S. Courthouse.

AUSA MCENANY:

Foley Square ...

HON. BERNIKOW:

Foley Square.

AUSA MCENANY:

New York, New York, Room 331.

HON. BERNIKOW:

Alright, date and time issued. It is now February 11th.

AUSA MCENANY:

And I have 10:45. Is that what you have, Your Honor?

HON. BERNIKOW:

10:45 p.m. Title in Leonard Bernikow, United States Magistrate Judge, and I'm authorizing you to sign my name.

AUSA MCENANY:

Alright, and I will fill out the rest of the form with ...

HON. BERNIKOW:

And the city and state there?

AUSA MCENANY:

Not on this form, but I'll put in ...

HON. BERNIKOW:

If you don't have it on this form -- well, I'll put Nassau County where I'm at at the present time, New York State.

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AUSA MCENANY: Okay, Nassau County. Alright, I think I have it. Alright, and I'll have Agent Raffa sign the form.

HON. BERNIKOW: He signed his affidavit?

AUSA MCENANY: Yes, the bottom of the oral search warrant form.

HON. BERNIKOW: Right, okay. And his name and ...

AUSA MCENANY: Yes. Alright, I think I've got the form correctly filled out, and I will arrange for copies of this and a transcript of the tape to be sent over to Your Honor as soon as we have one prepared pursuant to Rule 41.

HON. BERNIKOW: Very good.

AUSA MCENANY: Alright, Your Honor, thank you very kindly.

HON. BERNIKOW: Okay. Good night.

S/A RAFFA: Thank you, Your Honor.

AUSA MCENANY: Good night.

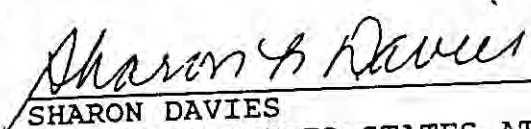
HON. BERNIKOW: Good night.

[End of proceeding]

Certification

I certify that the above is a true and accurate transcript of the specified taped search warrant/application.

Dated: New York, New York
September 23, 1991


SHARON DAVIES
ASSISTANT UNITED STATES ATTORNEY

Raffa - People - Direct

1
2 shipping of explosive device in violation of 18
3 U.S.C. 922.

4 Q Was that request to search that location for
5 that items granted by Judge Berkinow?

6 A Yes, it was.

7 Q And what is contained under the oral
8 affidavit? Does that contain the total amount of
9 information as communicated to Judge Berkinow through
10 the U.S. Attorney in your presence when you were asked
11 to respond to whether it was correct or incorrect?

12 A Yes, it was.

13 Q Where did you get that information to
14 communicate to Judge Berkinow?

15 A I got it from our agent down in Puerto Rico,
16 from our licensing section and from our -- the police
17 officers in the 34th Precinct. Detectives in the
18 34th Precinct.

19 Q When you say the officers in the 34th
20 Precinct, who are you referring to?

21 A Jerry Giorgio. His partner, I think it's Gil
22 Ortiz.

23 Q By agents in Puerto Rico, who are you
24 referring to?

25 A Reynaldo Rodriguez. I think I spoke to one or