

(JUDGE'S RULING.)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTIAN DAVID :
V. : C. A. NO. 84-3543
SECRETARY OF STATE :

WASHINGTON, D. C.

JANUARY 22, 1985

THE ABOVE-ENTITLED MATTER CAME ON BEFORE THE
HONORABLE THOMAS P. JACKSON, UNITED STATES DISTRICT
COURT JUDGE.

APPEARANCES:

JAMES LESAR
FOR THE PLAINTIFF

JOHN MARTIN
MURRAY STEIN
FOR THE GOVERNMENT

PHYLLIS MERANA
OFFICIAL REPORTER

P R O C E E D I N G S

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2 THE COURT: I HAVE CONSIDERABLE DOUBT THAT I HAVE
3 ANY JURISDICTION IN THIS MATTER AT ALL. IT SEEMS TO
4 ME THAT THE SHAPIRO CASE RATHER CLEARLY COMMITS THIS
5 MATTER TO THE DISCRETION OF THE SECRETARY OF STATE WHEN
6 PROCEEDINGS HAVE REACHED THIS STAGE. AND OTHER CASES
7 HAVE DECIDED THAT IN HABEAS CORPUS PROCEEDINGS, RELATIVE
8 TO A PROPOSED EXTRADITEE, THAT THE SOLE FUNCTION OF
9 THE COURT IS TO DETERMINE WHETHER OR NOT THERE IS PROBABLE
10 CAUSE TO BELIEVE THAT THE INDIVIDUAL, WHO IS IN CUSTODY
11 AND HAS TO BE EXTRADITED, IS, IN FACT, THE INDIVIDUAL
12 WHO IS CHARGED BY THE EXTRADITING STATE OR BY THE STATE
13 SEEKING EXTRADITION AND THAT THERE IS THE ANGLO-AMERICAN
14 EQUIVALENT OF PROBABLE CAUSE TO SUPPORT THE CHARGE.

15 NEVERTHELESS, ASSUMING THAT I WERE TO HAVE
16 JURISDICTION IN THIS CASE, I, NEVERTHELESS, FIND THAT
17 THE ARGUMENTS HAVE, IN SUBSTANCE, BEEN PRESENTED AND
18 DECIDED DEFINITELY BY JUDGE FOREMAN IN ILLINOIS AND
19 THE SEVENTH CIRCUIT COURT OF APPEALS, AND THE SUPREME
20 COURT HAS NOT REGARDED IT AS WORTHY OF REVIEW ON APPLICATION
21 FOR A WRIT OF CERTIORARI, THAT THERE ARE, IN FACT, NO
22 NEW GROUNDS PRESENTED HERE WHICH HAVE NOT, IN SUBSTANCE,
23 BEEN PREVIOUSLY CONSIDERED BY ANOTHER COURT AND THAT,
24 THEREFORE, THE PRINCIPLE SET FORTH IN THE CASE OF FERNANDEZ
25 VERSUS PHILLIPS, 268 U.S. 311, 1915, APPLIES, NAMELY,

1 THAT A WRIT OF HABEAS CORPUS IS NOT TO BE UTILIZED
2 FOR REHEARING IN AN EXTRADITION CONTEXT WHAT HAS ALREADY
3 BEEN HEARD AND DETERMINED, HAVING ACCORDED DUE PROCESS
4 OF LAW BY A JUDICIAL OFFICER ON A PRIOR OCCASION.

5 FINALLY, I FIND THAT THE FRENCH LAW, AS PRESENTED
6 TO ME IN THE MOST AUTHORITATIVE FORM, IN THE FORM OF
7 A CERTIFICATION FROM THE FRENCH AMBASSADOR, DOES PROVIDE
8 THAT THE STATUTE OF LIMITATIONS IS TOLLED DURING THE
9 TIME THAT THE PROPOSED EXTRADITEE IS IN THE CUSTODY
10 OF THE EXTRADITING STATE. AND, CONSEQUENTLY, TO THE
11 EXTENT THAT THE STATUTE OF LIMITATIONS REPRESENTS NEW
12 GROUNDS NOT PREVIOUSLY HEARD, IT IS, NEVERTHELESS, DETERMINED
13 AS A MATTER OF FACT THAT FRENCH LAW IS AS IT IS REPRESENTED
14 TO ME BY THE FRENCH AMBASSADOR.

15 IN ALL OTHER RESPECTS, IT SEEMS TO ME THAT THE
16 DISCRETION AS TO WHETHER TO EXTRADITE RESTS WITH THE
17 SECRETARY OF STATE, THAT HE HAS PROPERLY EXERCISED HIS
18 DISCRETION IN THIS CASE, AND FOR THE FOREGOING REASONS
19 THE RULE TO SHOW CAUSE IS DISCHARGED AND THIS COMPLAINT
20 PRESENTED IN THE FORM OF A CONSOLIDATED PETITION FOR
21 HABEAS CORPUS RELIEF AND FOR WRIT OF MANDAMUS IS DISMISSED
22 WITH PREJUDICE.

23 I WILL ENTER AN ORDER TO THAT EFFECT.

24 MR. LESAR: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU, COUNSEL.


1 YOU HAVE PRESENTED A RATHER COMPLEX MATTER
2 ON RATHER SHORT NOTICE, AND I APPRECIATE IT.

3 WE WILL STAND IN RECESS.

4 (WHEREUPON, THE ABOVE-ENTITLED MATTER WAS
5 ADJOURNED.)

6
7 CERTIFICATE OF REPORTER

8 THIS RECORD IS CERTIFIED BY THE UNDERSIGNED
9 REPORTER TO BE THE OFFICIAL TRANSCRIPT OF THE PROCEEDINGS
10 INDICATED.

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14 PHYLLIS MERANA

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