



1           3. The attorney for a defendant charged by complaint, indictment, or information shall have  
2 three working days, after notification orally or in writing by the District Judge or Magistrate Judge that  
3 a witness is being detained in the case, within which to interview a detained material witness who is  
4 an adult. In the case of a detained material witness who is a juvenile under the age of eighteen years,  
5 the attorney shall have 24 hours within which to conduct the interview. The specified time limits may  
6 be extended by the District Judge or Magistrate Judge for good cause. The attorney for the defendant  
7 shall promptly notify the District Judge or Magistrate Judge after the interview of the juvenile whether  
8 he wishes to have the person remain in custody as a material witness setting forth orally his reasons  
9 therefor.

10           4. Following the three-day working period referred to in Paragraph 3 of these procedures, all  
11 parties shall appear before the District Judge or Magistrate Judge. At such time counsel shall advise  
12 the Court of such material witness they wish to be detained for video tape deposition pursuant to 18  
13 U.S.C. 3144. Such deposition(s) shall be scheduled within the next five working days. As to witnesses  
14 for which detention is not requested, they shall be released to the Immigration and Naturalization  
15 Service for further proceedings.

16           5. The deposition shall be conducted in accordance with Rule 15, Federal Rules of  
17 Criminal Procedure and under the general supervision of a Magistrate Judge. A Magistrate Judge shall  
18 stand by and be available during the deposition to rule on matters that are impractical to reserve for the  
19 trial judge. In the discretion of the Magistrate Judge, he or she may, but need not, attend and preside  
20 over all or part of the deposition.

21           6. Following the deposition(s), the District Judge or Magistrate Judge shall release the material  
22 witness(es) from custody absent a showing that further detention is necessary to prevent a failure of  
23 justice. Such a showing may be made by counsel for the defendant ex parte by an affidavit submitted  
24 in camera, or in an in camera hearing. Such affidavit and any hearing conducted thereon shall be kept  
25 under seal unless otherwise ordered by a District Judge. In considering whether to discharge a witness,  
26 the nature of the proposed testimony of the detained person, the number of persons the United States  
27 Attorney and the defendant(s) seek to have remain in custody, and the cumulative nature of the  
28 testimony expected to be given, shall be considered by the District Judge or Magistrate Judge.

1           7. The material witnesses so discharged shall be remanded to the custody of the District  
2 Director of the Immigration and Naturalization Service. No deportation or voluntary return shall be  
3 effectuated by the District Director of the Immigration and Naturalization Service for any alien who  
4 has not been finally discharged as a material witness without concurrence of the District Judge or  
5 Magistrate Judge.

6           **DATED** this 16<sup>th</sup> day of April, 1996.

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/s/ Richard M. Bilby  
Richard M. Bilby, Judge  
*for Chief Judge Robert Broomfield*