

J257SEG5

1 visit, depending how things unfold.

2 UNIDENTIFIED REPORTER: Excuse me, on behalf of the  
3 journalists present, is it possible for one of us to accompany  
4 you on your trip?

5 THE COURT: No. Anything further?

6 MR. SPILKE: Yes, your Honor. We just ask that the  
7 Court take judicial notice of the weather the week starting  
8 Sunday, January 27 through February 3. And we have an Exhibit  
9 HH that we passed up that records the temperature taken from  
10 The Weather Channel.

11 THE COURT: Have you shown that to your adversary?

12 MR. SPILKE: Yes.

13 THE COURT: Is there any objection?

14 MS. BRETZ: No, your Honor.

15 THE COURT: All right then, if you would hand up the  
16 exhibit, it's been marked as Defendant's Exhibit HH, it is  
17 admitted, and I will take judicial notice of the temperature  
18 recorded on the exhibit.

19 (Defendant's Exhibit HH received in evidence)

20 All right then we are going to adjourn for now, and we  
21 may be resuming later.

22 (Recess)

23 (Continued on next page)

24 THE COURT: We are now at the MDC. It's five minutes  
25 to five. Because of the disparate accounts offered by

J257SEG5

1 defendants and the Bureau of Prisons, I ordered evidentiary  
2 hearing and visit to the MDC in order to assess the conditions  
3 facing inmates housed here. I plan to inspect the west side of  
4 the sixth and seventh floors and the SHU. If someone would  
5 like me to tour another area of the MDC, please tell me now.

6 We are accompanied by an official court reporter. I  
7 would like the attorneys to make their appearances, please.

8 MR. SPILKE: Ezra Spilke, along with --

9 MS. KUNSTLER: Sarah Kunstler on behalf of Wilson  
10 Perez.

11 MR. OLIVER: Gideon Oliver.

12 MR. OESTERICHER: Jeff Oestericher with the U.S.  
13 Attorney's office, Southern District of New York.

14 MS. BRETZ: Emily Bretz, U.S. Attorney's office of the  
15 Southern District of New York.

16 THE COURT: I would like the non-attorneys to identify  
17 themselves one by one. We will start to my left.

18 MS. PASCULLI: Victoria Pasculli.

19 MS. KENYON: Emily Kenyon, law clerk.

20 MR. MONTGOMERY: Dan Montgomery, law clerk.

21 MS. GOLD: Paula Gold, court interpreter.

22 MR. ROSS: Supervisor Special Agent John Ross from  
23 EDNY.

24 MS. VON DORNUM: Deirdre von Dornum, attorney in  
25 charge Federal Defenders.

J257SEG5

1 MS. JAMES: Letitia James, Attorney General.

2 MS. LEVY: Jennifer Levy from the office of the  
3 Attorney General.

4 MR. CHERNOFF: Harry Chernoff from the U.S. Attorney's  
5 office criminal division, and I am an attorney.

6 THE COURT: If I or an attorney would like to make a  
7 comment or ask a question, we will stop so that the  
8 stenographer may record such comments or questions. You may  
9 ask questions of inmates. I just want to make sure that they  
10 are taken down by the stenographer.

11 When we return to the courtroom, I'm going to call  
12 Ms. von Dornum back to the stand so that she may compare the  
13 current conditions with those she observed during her visit to  
14 MDC on February 1, 2019. I will recall Inspector Ross for the  
15 same purpose.

16 Should I be calling you Special Agent Ross?

17 MR. ROSS: Either way, that's fine, your Honor. It's  
18 OK.

19 THE COURT: I am focusing on the status of lighting,  
20 heat and medical attention. At the end of the tour I'm going  
21 to ask Mr. Spilke and Ms. Kunstler what specific relief they  
22 are seeking from the Court. I will repeat that question in the  
23 courtroom after Ms. von Dornum and Special Agent Ross testify.

24 Any questions before we start?

25 OK. Let's go.

J257SEG5

1 MS. VON DORNUM: I'm sorry. I would just ask that if  
2 any defendant plans to speak about their criminal case, that we  
3 stop that.

4 THE COURT: Absolutely, I will not permit them to  
5 speak on that.

6 All right. So we are now in the SHU with warden Quay,  
7 and I would like Ms. von Dornum and Special Agent Ross to point  
8 out to me anything that you think that I should take note of as  
9 we tour the facility.

10 MS. VON DORNUM: Yes, your Honor. I would already  
11 note that when we were here before it was dark in this area,  
12 dimly lit and significantly cooler.

13 MR. ROSS: This is warm.

14 MS. VON DORNUM: This is warm compared to what it was.  
15 The medical room also did not have lights at all, and the  
16 lieutenant had indicated to us that it was difficult to give  
17 medical treatment to the SHU inmates because there wasn't even  
18 light in that medical room.

19 THE COURT: You are pointing to the medical room?

20 MS. VON DORNUM: Yes, the medical room is there to  
21 your right behind your law clerk.

22 MR. ROSS: And I agree, and also I see the med cart,  
23 prescription cart just left.

24 THE COURT: Warden?

25 MS. VON DORNUM: Should we start with the west side,

J257SEG5

1 your Honor, the side facing the water?

2 THE COURT: So we are now where?

3 WARDEN QUAY: Inside range 3 of the Special Housing  
4 Unit.

5 THE COURT: And is this the direction going west?

6 WARDEN QUAY: Yes, it's U-shaped, so we will start  
7 here and we can walk all the way around.

8 THE COURT: Very well.

9 MS. VON DORNUM: Is the food heating unit working now?  
10 It looked like it was.

11 WARDEN QUAY: Yes.

12 THE COURT: Ms. von Dornum and Special Agent Ross, if  
13 there is a particular space you would like me to look into,  
14 please point that out to me.

15 MS. VON DORNUM: I think -- correct me if I'm wrong --  
16 I think the cell with the leak was cell 114 on this range.

17 MR. SPILKE: I'd just like to note that we just heard  
18 someone shouting from one of the cells, "They punish us when we  
19 talk. We would like to talk to someone."

20 THE COURT: I don't feel the need to do so.

21 MR. SPILKE: Yes, your Honor. Thanks.

22 THE COURT: So I just wanted to observe that we're  
23 standing where?

24 WARDEN QUAY: Range 4 of the Special Housing Unit.

25 THE COURT: Range 4. And I am standing under a vent

J257SEG5

1 that is blowing cold air.

2 UNIDENTIFIED SPEAKER: So one of our facility's  
3 personnel is here with the thermometer, so we can check the  
4 temperature.

5 PERSONNEL: 72.6

6 (in front of cell 204-114.

7 THE COURT: So this is facing the water?

8 We are standing outside of range 4, cell 114. It  
9 houses an inmate by the name of [REDACTED], who has  
10 inmate register number [REDACTED].

11 Ms. von Dornum, this is the cell that you stated had  
12 the water damage; is that correct?

13 MS. VON DORNUM: That's correct, your Honor.

14 THE COURT: So just looking in the window, this very  
15 narrow window, I can see abundant water damage. Towards the  
16 back is a rectangular shaped cell. On the ceiling you can see  
17 copious amounts of paint peeling and hanging from the ceiling.  
18 The ceiling is painted white, but the water damaged area has a  
19 kind of a golden tone to it. It almost looks like wet tissues  
20 hanging from the ceiling.

21 Ms. von Dornum, do you have anything that you wanted  
22 to comment on.

23 MS. VON DORNUM: The day we were here we couldn't see  
24 it because it was dark in the cell, but the inmate described  
25 exactly what you're saying, and the lieutenant confirmed what

J257SEG5

1 you're saying, that he thinks that's prevalent through parts of  
2 the facility, but we were not able to visually see it that day.

3 THE COURT: Was it this particular inmate that you  
4 spoke to?

5 MS. VON DORNUM: It was.

6 THE COURT: Did he state that there was water dripping  
7 in currently?

8 MS. VON DORNUM: He said that there was water dripping  
9 whenever there was snow melting, or rain or condensation. That  
10 night it was quite cold so it was starting to drip down onto  
11 the sheets. He said the sheets were already soaking wet from  
12 prior days, and there had been no fresh sheets for a week, and  
13 Lieutenant Ramos confirmed all of that was the case.

14 THE COURT: Excuse me. Warden, is there a way that I  
15 can ask him questions through the door?

16 MS. VON DORNUM: Through the crack.

17 THE COURT: Excuse me, Mr. [REDACTED], my name is Annalisa  
18 Torres; I'm a federal district court judge, and I am inspecting  
19 this prison, and I heard that there was water damage on your  
20 ceiling. Could you comment on that?

21 We are having a hard time hearing you, and I want the  
22 court reporter who is standing right here -- you can see him,  
23 right -- I want him to hear what you're saying, so I'm going to  
24 see if he can put his ear next to this little hole and hear  
25 you. Just wait a minute moment, please. When he is ready to

J257SEG5

1 listen to you, he will tell you, and if you could just describe  
2 to him the condition.

3 I just heard you say it was like sleeping under a  
4 waterfall, and you said that happened during the black-out,  
5 correct?

6 INMATE: Yes.

7 THE COURT: And what else do you have to say? You say  
8 it was freezing cold and you did not have any boxes?

9 They did not give you briefs or correct clothing to  
10 wear under these conditions. Is that what you just said?

11 INMATE: Yes.

12 THE COURT: OK. Do you have anything else you want to  
13 tell me? One second. You said it was terrible because you  
14 could not see what it is. He says that he could not take a  
15 shower, he said you have to stink because the shower was  
16 freezing cold. What else? Basically he says they didn't care  
17 for you. If you tried to get an extra blanket, they ignored  
18 him.

19 Anything else? One second. He says basically these  
20 were crazy conditions. I was sick with a chest cold.

21 Is there anything further you want to say? He says,  
22 no, ma'am, that's it.

23 Thank you, Mr. [REDACTED].

24 What's your name, sir?

25 INMATE: [REDACTED].



J257SEG5

1 THE COURT: One second, Mr. [REDACTED]. Mr. [REDACTED] has  
2 inmate registration number [REDACTED], and he has pointed to me  
3 parts of his ceiling where there is water dripping. You can  
4 see it, it is abundant, it is plain as day.

5 Did you want to say anything else?

6 He says that they were here with no heat, no extra  
7 blankets. He said that during the whole time -- during the  
8 whole time he is a mental health patient, and he was feeling  
9 suicidal and no one came to help him. He said the temperature  
10 dropped to freezing, they had nothing in there, they had no  
11 thermal shirts.

12 Anything else?

13 No hot water. He said the food was cold. We couldn't  
14 see, we couldn't read. We couldn't read the Bible because we  
15 couldn't see. I couldn't do my legal work due to the fact that  
16 we had no electricity. And that's basically it.

17 OK, thank you.

18 And I had no medical attention. I had no medical  
19 attention.

20 And you had no medical attention. And this is range  
21 4, cell 113. OK, thank you.

22 Sir, tell me your name.

23 INMATE: My name is [REDACTED].

24 THE COURT: I want to note that Mr. [REDACTED] is a  
25 roommate with Mr. [REDACTED], and his inmate registration number

J257SEG5

1 is [REDACTED].

2 And what do you have to say, sir.

3 He said he would like to elaborate his cell mate was  
4 going through a real mental breakdown here. He asked for  
5 attention because when the power was off the emergency buttons  
6 were not working. The officers were walking around only every  
7 hour or so. When we finally got the officer's attention -- I  
8 think his name is Gaymen, to be correct -- and I said the man  
9 is suicidal, and I think they took it as a joke.

10 I physically had to take the -- literally had to take  
11 the noose out of his cellmate's hand he was trying to kill  
12 himself.

13 I'm sorry to hear that.

14 This box on my door, I was having chest pain and --

15 So, you were asking for medical attention, you had  
16 chest pains, you couldn't breathe. But you referred to a box.  
17 This box here.

18 One day I asked him, and he said the medical attention  
19 is coming. It never came. So when I waited the next day, I  
20 asked him again, they never came, so when he was handing out, I  
21 literally had to stick my arm out to prevent him from closing  
22 the slot just so I could get some medical attention.

23 Sorry to hear that. Thank you for telling me.

24 INMATE: Thank you very much. Thank you for being  
25 worried about us, ma'am, and treating us like human beings.

J257SEG5

1 THE COURT: I'm very worried about you.

2 MR. OLIVER: Back at 1121 there is a significant  
3 amount of moisture coming from the ceiling.

4 THE COURT: My name is Analisa Torres. I am a judge  
5 in the Federal District Court, and I am coming to take a look  
6 at the conditions here.

7 Sir, just tell me your name, please.

8 INMATE: [REDACTED] and [REDACTED].

9 THE COURT: So, I am looking into the cell, and I can  
10 see abundant water on the ceiling. You can tell that there is  
11 water damage. He's now showing me a very dingy yellowed  
12 blanket that is obviously water damaged. Yes, I see also mold  
13 on top of the florescent light. It's a black, blotchy mold. I  
14 also saw that in cell number 114. Mr. [REDACTED] is showing me his  
15 left arm that has a rash on it, and he says it's from the water  
16 dripping. He says that he thanks God for Ms. Webster who gives  
17 him supplies when he needs it. Mr. [REDACTED] says she is the only  
18 officer. He says -- Mr. [REDACTED] says they did not have heat or  
19 hot water for two weeks.

20 Thank you both for giving me this information.

21 Is there someone who can contact his family? We have  
22 a lawyer here who might assist you in contacting your family.

23 We are on the seventh floor now, and this is the west  
24 side, correct?

25 WARDEN QUAY: Yes.

J257SEG5

1 THE COURT: All right. Is there anything that you  
2 want to point out, Ms. von Dornum?

3 MS. VON DORNUM: Yes. It's significantly brighter  
4 both in the common area which only had emergency lighting  
5 previously, and even more notably in the cells. Significantly  
6 warmer in the common area, which I already thought was  
7 comfortable when we were here on Friday February 1, but now is  
8 significantly warmer. People are out. There was nobody out;  
9 everyone was locked in when we were here before. And they  
10 appear to be allowed to move around freely, and people are  
11 wearing far less clothing than when I last saw them.

12 THE COURT: Yes, there are a lot of people dressed in  
13 shorts.

14 Is there anything else you wanted to point out beyond  
15 that?

16 MS. VON DORNUM: Can we go in a cell? I don't want to  
17 invade anybody's privacy.

18 When we were in here the last time we were here the  
19 cells windows had frost on the glass.

20 THE COURT: This is cell 13. Do you know what  
21 direction this is facing?

22 MS. VON DORNUM: It looks like this is facing the  
23 street, Third Avenue. This looks like it's the east side here.  
24 And the west side is those cells.

25 THE COURT: And you say you saw frost on the inside of

J257SEG5

1 these windows.

2 MS. VON DORNUM: On both sides on this floor. It was  
3 quite cold.

4 THE COURT: Tell me your name.

5 INMATE: [REDACTED].

6 THE COURT: My name is Annalisa Torres. I am a  
7 federal judge.

8 INMATE: How are you doing, Annalisa?

9 THE COURT: There was a time when there was a lack of  
10 heat.

11 INMATE: Yes.

12 THE COURT: Recently; is that right?

13 INMATE: Yes.

14 THE COURT: And can you describe to me what the  
15 conditions were like in your cell.

16 INMATE: It was cold. We just now got blankets a  
17 couple days ago. What day was that? Yeah, Monday, we just now  
18 got the blankets. We went a whole week with it being freezing,  
19 no lighting, my toilet not working. You can flush the toilet  
20 right now, it's not working. It was cold. They're not letting  
21 us take showers. They're not feeding us properly. We supposed  
22 to come out at least one hour regularly. They keep us in the  
23 cell for 23 hours, and we didn't come out at all.

24 THE COURT: What made you realize how cold it was?  
25 Was there anything that you could see?

J257SEG5

1 INMATE: You could see your breath on the window.  
2 THE COURT: What is your name?  
3 INMATE: [REDACTED].  
4 THE COURT: And you say you could see your breath on  
5 the window?  
6 INMATE: Yes. It was so cold that we had to block the  
7 air vent.  
8 THE COURT: Tell me your name.  
9 INMATE: [REDACTED].  
10 THE COURT: And you're saying that the air vent needed  
11 to be covered; is that it?  
12 INMATE: Still covered right now.  
13 THE COURT: Let me take a look at that. Where is  
14 that? So walking into cell 13 on the right side, near the  
15 ceiling there is a vent which is covered.  
16 INMATE: Cardboard, cardboard and string.  
17 THE COURT: And why did you cover it?  
18 INMATE: Because it was too cold.  
19 THE COURT: Was it you who put the cover on?  
20 INMATE: Yes.  
21 THE COURT: Thank you.  
22 MS. KUNSTLER: Your Honor, this is unit J71.  
23 THE COURT: On the seventh floor, OK. Thank you.  
24 What is your name, sir.  
25 INMATE: [REDACTED]. I have been waiting to see

J257SEG5

1 a doctor since we locked down. I have colitis, many medical  
2 issues along with mental health issues. I was locked in my  
3 cell, I used the bathroom maybe over the course of 15 to 20  
4 times. My toilet was shut off all night. And then on top of  
5 that I have a rash. Now I have to try to make it to court  
6 tomorrow. I have a rash that's bleeding. I showed the officer  
7 my underwear, and they said it's above my pay grade.

8 THE COURT: So sorry to hear that, sir.

9 INMATE: Then on top of that I still haven't seen  
10 anybody for my issues.

11 THE COURT: Can you tell me the name of your lawyer?  
12 ■

12 INMATE: Karloff Comisho.

13 THE COURT: Say that loud?

14 INMATE: Karloff Comisho.

15 THE COURT: OK.

16 INMATE: I'm in the Southern District.

17 THE COURT: I am going to contact him and let him know  
18 about what you're telling me. And I am certainly hoping that  
19 you feel better, sir.

20 INMATE: I will try to make it to court tomorrow. I  
21 mean I'm bleeding, so...

22 THE COURT: Sorry to hear that. I really do hope you  
23 get better.

24 INMATE: Thank you, ma'am.

25 THE COURT: Tell me your name.

J257SEG5

1           INMATE: [REDACTED]. I just wanted to make the  
2 point that I have obstructive sleep apnea and was without my  
3 machine for seven days.

4           THE COURT: Why were you without the machine?

5           INMATE: There was no power, no power to plug in. My  
6 cell is right over here, and the only power outlet is outside  
7 the cell and all the outlets were out, and so I -- it's a  
8 deadly condition if it goes the wrong way. And I'm not alone.  
9 I think there were eight other people in the building that had  
10 obstructive sleep apnea and were in the same condition I was.

11          THE COURT: And when were you able to get the machine  
12 back?

13          INMATE: I was only until -- the first Saturday when  
14 the event happened and the electrical fire, it was the next  
15 Saturday after they brought us over to the east building where  
16 they had electricity and we could plug in our machines.

17          THE COURT: You were sleeping in the east building?

18          INMATE: Only for one night. I spent an entire week  
19 without my machine and it was hard to sleep. It was very,  
20 very, you know, very anxiety because you have to worry about  
21 when you go to sleep and the apnea.

22          THE COURT: Sorry to hear that. I hope that that  
23 doesn't happen again.

24          INMATE: Thank you.

25          THE COURT: [REDACTED]?



J257SEG5

1 INMATE: I was stuck in the cell. I wasn't getting my  
2 medicine properly.

3 THE COURT: When did this happen, sir?

4 INMATE: During the whole lockdown. It was like a  
5 week. A week, a whole lockdown. And they wasn't feeding us  
6 right.

7 THE COURT: What is your name.

8 INMATE: [REDACTED]. Like at 6:30, they were  
9 feeding us at 10 o'clock. That was breakfast. And at lunch we  
10 supposed to get at 11 o'clock, we was getting that at 5  
11 o'clock. And that's dinner time. Then at 7:30, you know, the  
12 food is cold. There was days the lunch they wanted to give it  
13 to us as dinner at night. The same lunch, they wanted to give  
14 it to us as dinner.

15 THE COURT: And what is your name?

16 INMATE: [REDACTED].

17 THE COURT: Thank you very much. I appreciate you  
18 giving me this information?

19 INMATE: On officer -- the officer jammed the arrest  
20 button. So Sunday morning I passed out, I had to go to the  
21 hospital, I could have bust -- I couldn't press the arrest  
22 button because they jammed it. We was told we shouldn't be  
23 pressing the button.

24 THE COURT: Are you all right now?

25 INMATE: No I still haven't been seen yet. I still

J257SEG5

1 don't know. I am still in pain.

2 THE COURT: Do you know the name of your lawyer?

3 INMATE: Jacob Mitchell.

4 THE COURT: So I'm going to contact your lawyer and  
5 tell him about having these problems.

6 All right. Thank you, sir. I'm going to go to  
7 inmates on the sixth floor now.

8 INMATE: My name is [REDACTED]. I had a host of  
9 medical problems. I haven't gotten my medication. I couldn't  
10 get the medication until Monday.

11 THE COURT: Today is Tuesday. You are talking about  
12 yesterday?

13 INMATE: Last week.

14 THE COURT: Last week.

15 INMATE: Last week. And as you can see I'm in a wheel  
16 chair, and I have some problems with stuff, a lot of things,  
17 and off the record I will speak.

18 THE COURT: I understand, sir.

19 INMATE: It's serious. Serious problems.

20 THE COURT: Well, I hope that you are feel better and  
21 I hope the conditions improve. Thank you for telling me.

22 I'm going to the sixth floor.

23 We're now on the sixth floor on the west side.

24 Ms. von Dornum, is there a particular location you would like  
25 me to look in?

J257SEG5

1 MS. VON DORNUM: Your Honor, this is unit 61 where  
2 many inmates complained of medical problems including the man  
3 with the bandages that hadn't been changed in two weeks with  
4 the gunshot wound and the emaciated man. And it was quite cold  
5 in this unit. So we could compare the conditions. I don't  
6 think you're going to learn anything different than you learned  
7 above. But there were many medical cases on this particular  
8 unit that Investigator Ross and I saw.

9 THE COURT: OK.

10 MS. VON DORNUM: This is [REDACTED].

11 THE COURT: Hi, Mr. [REDACTED].

12 INMATE: How are you doing.

13 THE COURT: How are you?

14 INMATE: I'm fine, but my situation is that I got  
15 glaucoma, and I needed to go to the hospital because the  
16 pressure in my eye is high, and they haven't taken me yet. And  
17 then I also got these bandages on for over three weeks. They  
18 still didn't take me out the building to change the bandages.  
19 And like the situation here was just really ridiculous, you  
20 know, it's cold in the room, there is no shower, no laundry.

21 THE COURT: When was that?

22 INMATE: All last week. You know, I kept asking them  
23 I seen flashes in my eyes and I'm supposed to go immediately if  
24 I see flashes in my eye. And I was telling the officers, and  
25 they was just completely ignoring me. So like I don't know

J257SEG5

1 what's is going to happen. They still haven't taken me out yet  
2 to see any medical situation.

3 THE COURT: Perhaps you can take the name of an  
4 attorney?

5 MS. VON DORNUM: We're his attorneys, your Honor. We  
6 brought it to the attention of the Court. I also brought it to  
7 the attention of Ms. McFarland on Friday when we were standing  
8 here, and Assistant Warden King, and pointed out the bandage  
9 and the glaucoma. That is Friday when Investigator Ross and I  
10 were here.

11 But you haven't received medical attention since  
12 Friday?

13 INMATE: No, no.

14 THE COURT: Sorry to hear that.

15 INMATE: And I told them -- I explained to them like  
16 my doctors told me if I see color or floaters, that I'm  
17 supposed to immediately go to the hospital. And I seen it a  
18 few times already, and I told them that, and they just  
19 completely ignored me. I may have a retina detachment and not  
20 know it right now.

21 THE COURT: All right. I'm certainly hoping you get  
22 to see the doctor soon.

23 INMATE: Thank you.

24 Excuse me. My name is [REDACTED], and I have a  
25 mean headache and my chest be hurting me. I have been spitting

J257SEG5

1 blood. Every time I cough, this right here on this left side I  
2 got a ball, you know. I have sent e-mail for medical. Today I  
3 sent an e-mail for medical, and nobody called me, you know. I  
4 don't know what's going on, and I really need medical  
5 attention.

6 THE COURT: Very sorry to hear you're not feeling  
7 well.

8 If you would please take down the name of his attorney  
9 and contact him, I would appreciate that.

10 INMATE: My name is [REDACTED]. Now for some  
11 reason the food was coming up undercooked and cold.

12 THE COURT: When was this?

13 INMATE: This was Saturday, and I think Friday night.  
14 One of them, Friday, Saturday or Sunday. It was two days in  
15 the nighttime it came up cold, so I caught a bad stomach ache  
16 with a bunkie in the cell, so I'm trying to explain to the  
17 officer, listen, I need to see medical attention. They would  
18 not see me see, medical attention. Two days later and the  
19 stomach ache is gone, so I'm just nasty.

20 THE COURT: Sorry to hear you weren't feeling well,  
21 but happy to hear that you are better. Thank you so much.

22 MR. SPILKE: I believe the sixth floor is also where  
23 Tabb is, and he was going to be a witness today. He was the  
24 one who wasn't brought over because he allegedly spit at a  
25 marshal.

J257SEG5

1 THE COURT: Do you know if he is here?

2 MS. VON DORNUM: He is in unit 62.

3 THE COURT: All right. So let's go see him.

4 Hello, sir. My name is Annalisa Torres, I'm a federal  
5 district court judge. I am had a hearing today, and I was  
6 expecting you to come. What happened?

7 INMATE: I went downstairs.

8 THE COURT: Before you say anything, what's your name?

9 INMATE: Zimian Tabb.

10 THE COURT: OK, go ahead.

11 INMATE: I went downstairs. I was waiting for like an  
12 hour or two. The marshals came and said do you know it's a  
13 legal visit, it's not court; do you still want to go?

14 INMATE: I said of course I want to go. He's like,  
15 well, if you want to go, just wait in the bullpen. I waited,  
16 and the next thing he is saying I can't go with my sneakers. I  
17 changed out of my sneakers, I changed into blue shoes. After  
18 that he is like -- he had like an attitude, so I got an  
19 attitude back to him. I didn't curse at him or anything. The  
20 next thing he's like I'm not taking him at all; you're going to  
21 have to call somebody else to come get him, or whatever.

22 THE COURT: So did you want to come?

23 INMATE: Of course. I was down there. I kept telling  
24 him after he was saying he wasn't going to take me, I kept  
25 saying I want to go, I'm not refusing. Because they kept on

J257SEG5

1 saying either you refuse or you're not. I said I'm not  
2 refusing, I want to come. He is like we just going to call  
3 somebody else for someone to get you. I waited another three  
4 hours, nobody ever came. The next I know they said you got to  
5 go back to your house, it was canceled.

6 MS. VON DORNUM: Mr. Tabb, was there anything in  
7 particular that you wanted to tell the Judge if you came to  
8 court today?

9 INMATE: I wanted to tell her if we get some hot  
10 water.

11 THE COURT: Are you saying currently you do not have  
12 hot water?

13 INMATE: It's like mild, it goes in and out, keeps  
14 going in and out basically like the showers, like the cells  
15 have hot water but the whole week we didn't have anything. It  
16 was crazy.

17 THE COURT: So during the week what about the showers?

18 INMATE: They didn't give us no showers at all. We  
19 were locked inside the cell since Thursday. After this  
20 everybody started getting on the public defender phone. After  
21 that we couldn't come out after that, they locked us in after  
22 that. So from Thursday on we weren't able to do anything.  
23 Before that there was no hot water to take a shower before  
24 Thursday at all.

25 THE COURT: Do you know when the hot water went out?

J257SEG5

1 INMATE: Oh, about Saturday? Saturday night.

2 THE COURT: You're talking about last Saturday or the  
3 Saturday before?

4 INMATE: Last Saturday.

5 THE COURT: So today is Tuesday.

6 INMATE: Not the Saturday just passed, the Saturday  
7 before that.

8 THE COURT: OK, all right. Thank you for telling me.

9 INMATE: All right.

10 THE COURT: OK.

11 MS. KUNSTLER: Your Honor, both Mr. Spilke's client  
12 and my client are on unit 42, the same unit, so we would  
13 request that we go to that unit since we're here.

14 MR. SPILKE: Yes.

15 THE COURT: And what is the purpose of going there?

16 MS. KUNSTLER: Well, to talk to other people on the  
17 unit about how their medical conditions are being addressed.

18 MR. SPILKE: That's for you.

19 THE COURT: So your client and your client were both  
20 in the courtroom today. If you wanted them to talk, you could  
21 have put them on the stand. That's why I don't see a need to  
22 talk to them now.

23 MR. SPILKE: Not necessarily to talk to them, Judge.  
24 Just to see what the conditions are on the unit and in their  
25 cells. I think it makes sense.



J257SEG5

1 THE COURT: Well, if you wanted to put evidence on,  
2 you should have put it on today. Let's go.

3 All right. It's 6:15, and we have come to the end of  
4 our tour of the MDC. As I stated at the beginning, I would  
5 like to know what your application is at this point. What is  
6 the relief that you're seeking, Mr. Spilke?

7 MR. SPILKE: Yes, your Honor. On behalf of my client,  
8 we request an immediate transfer to another institution because  
9 of fear of retaliation, incredible fear of retaliation that my  
10 client brought to my attention. Another man on his unit was  
11 punitively transferred to the SHU for no reason, and the  
12 understanding was -- at least what was said -- was he was being  
13 made an example of.

14 THE COURT: So transfer to where?

15 MR. SPILKE: Any other institution that the marshals  
16 can bring him to. I know that Valhalla, for instance, MCC.

17 THE COURT: And retaliation for what?

18 MR. SPILKE: For bringing this motion, for bringing  
19 this to this level of scrutiny, to the attention of this Court,  
20 and, might I add, to several presidential candidates, media  
21 outlets, international news. There is intense scrutiny on this  
22 institution because of the many letters that criminal lawyers  
23 sent complaining about inability to access our clients. And  
24 that's really the genesis of this. That was the genesis of  
25 this whole thing, that I just could not see my client; I did

J257SEG5

1 not know what was going on with him. I want to do a welfare  
2 check, and I wasn't able to do that. And I think that --

3 THE COURT: But you did see him today.

4 MR. SPILKE: I did, but we've seen throughout the  
5 course of this hearing that the problems here are bigger than  
6 any one person, any one team of staff members, and it's  
7 endemic. Yes, it's warm today, it's warm outside today, but  
8 when is the next thing going to happen? And everything has  
9 been a Bandaid fix and not permanent. And just the only reason  
10 why I think people are getting medical attention today and hot  
11 food and seemed pretty happy relatively to what the reports  
12 were is because of the scrutiny.

13 So, I think that scrutiny needs to continue. I think  
14 that my client needs to be transferred because of fear of  
15 retaliation, and I think a special master needs to be appointed  
16 for the reasons stated by Ms. von Dornum on the stand today.

17 MS. KUNSTLER: Your Honor, based on what we saw here  
18 today and on Ms. von Dornum's testimony, I have no confidence  
19 in this facility's ability to provide adequate medical care to  
20 any inmate who needs care, including my client. I can supply  
21 the Court with medical records from my client through  
22 October -- through November 22. I subpoenaed but did not get  
23 medical records for him from that date forward, so I was unable  
24 to question him and speak with him about any care --  
25 corroborate anything he would tell me post that date in terms

J257SEG5

1 of the care he was or was not receiving at the facility.

2 I have been told by Adam Johnson that he will try to  
3 get me the records today, tonight. He was going to talk to  
4 Nicole McFarland. I know from my client that he is supposed to  
5 be returned to the hospital for follow-up care with the place  
6 that put in his eye socket, and that he has not been taken out  
7 to receive that care. And I remain concerned about him for  
8 that reason.

9 So I join in Mr. Spilke's request for a special master  
10 to be appointed on behalf of my client and everyone  
11 incarcerated here.

12 I do want to take time -- I know this hearing today  
13 was not about my client's bail application, but I do want to  
14 take time to consider that. If there is not another suitable  
15 facility that can take him, if he cannot be taken to a  
16 hospital, then he should be released so he can get the medical  
17 care he needs. Somebody who has orbital surgery needs to  
18 return to the hospital for follow-up.

19 THE COURT: So you're saying that you want his  
20 transfer to a hospital or transfer to another facility?

21 MS. KUNSTLER: Well, I would like him to be taken to a  
22 hospital to evaluate his eye socket, but I don't have any  
23 confidence that he can get medical care here, so I would like  
24 his transfer to another facility.

25 MR. SPILKE: Might I note that Ms. McFarland is

J257SEG5

1 present and has joined the tour and might be able to speak on  
2 the medical aspect.

3 THE COURT: The time for direct on medical records was  
4 during the hearing today, and inexplicably you put on no  
5 evidence. You did not even call your client to say how he was  
6 feeling.

7 All right. We're going to return to the courtroom.  
8 As I said again, I'm going to ask you to repeat the remedy that  
9 you're seeking, and I will make a ruling at that time.

10 (Recess)

11 (Continued on next page)

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