

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 79-1541

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UNITED STATES OF AMERICA,

Appellee,

v.

GUILLERMO NOVO SAMPOL,

Appellant.

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No. 79-1542

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UNITED STATES OF AMERICA,

Appellee,

v.

ALVIN ROSS DIAZ,

Appellant.

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No. 79-1808

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UNITED STATES OF AMERICA,

Appellee,

v.

IGNACIO NOVO SAMPOL

Appellant.

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APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLEE

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COUNTERSTATEMENT OF THE CASE

On August 1, 1978, appellants Guillermo Novo Sampol and Alvin Ross Diaz were indicted, along with Juan Manuel Contreras Sepulveda, Pedro Espinoza Bravo, Armando Fernandez Larios, Jose Dionisio

Suarez Esquivel, and Virgilio Paz Romero,<sup>1/</sup> for their participation in the September 1976 bombing murder of former Chilean Ambassador Orlando Letelier and an American associate, Ronni Moffitt. The seven men were charged with conspiracy to murder a foreign official (18 U.S.C. § 1117), murder of a foreign official (18 U.S.C. § 1111, 1116), first-degree murder of Orlando Letelier (22 D.C. Code § 2401), first-degree murder of Ronni Moffitt (22 D.C. Code § 2401), murder by use of explosives to blow up a vehicle engaged in interstate commerce (18 U.S.C. 844 (1)). Guillermo Novo was also charged with two counts of false declarations to the grand jury (18 U.S.C. § 1623). Appellant Ignacio Novo Sampol (hereafter referred to as Ignacio Novo) was charged with two counts of false declarations (18 U.S.C. § 1623) and one count of misprision of a felony (18 U.S.C. § 4). On January 8, 1979, when trial began before the Honorable Barrington D. Parker, Contreras, Espinoza, and Fernandez were still awaiting the outcome of extradition proceedings in Chile. Suarez and Paz had become fugitives and had not yet been apprehended. On February 14, at the conclusion of a lengthy trial, appellants Guillermo Novo, Alvin Ross, and Ignacio Novo were found guilty by a jury of all charges against them.

<sup>1/</sup> For the purposes of this brief, Guillermo Novo Sampol will be referred to as "Novo", Alvin Ross Diaz as "Ross", Juan Manuel Contreras Sepulveda as "Contreras", Pedro Espinoza Bravo as "Espinoza", Armando Fernandez Larios as "Fernandez", Jose Dionisio Suarez Esquivel as "Suarez", and Virgilio Paz Romero as "Paz."

At sentencing on March 23, 1979, Guillermo Novo and Alvin Ross were sentenced to concurrent life sentences on Counts One, Two, Three and Five and to a consecutive life sentence on Count Four. Guillermo Novo was also sentenced to five years' incarceration on each of his two false declaration charges, to run concurrently with each other and with the life sentences on Counts One, Two, Three and Five. The judgment and commitment on Count Three was vacated on March 27 for both Guillermo Novo and Alvin Ross. Ignacio Novo was sentenced to five years' incarceration on each of his two false declaration charges, to run concurrently with each other, and to three years' incarceration on the misprision count, to run consecutively to the five-year sentences. These appeals followed.

#### The Government's Evidence

The chain of events which led to the bombing deaths of Orlando Letelier and Ronni Moffitt on September 21, 1976, at Sheridan Circle began years before with the arrival in a far-off country of a little-known man. Michael Vernon Townley, an American citizen, first became involved with the country of Chile when his father's occupation required a family move to Santiago in 1957. The family returned to the United States in 1967, but in 1971 Townley moved back to Chile to make it his permanent home (Tr. 1584-1585). Prior to his departure for Chile in late 1970, he called the public office of the Central Intelligence Agency (CIA) in Miami. A CIA employee came to his place of work and Townley informed the man that he was returning to Chile and would be glad

to supply the CIA with any information on conditions there in which the agency might be interested. Townley hoped that by establishing contact with the CIA he might be able to use the agency to benefit Chile (Tr. 1588-1589); however, he heard nothing further from the CIA after his initial conversation (Tr. 1590).

From 1970 to 1973 Townley became involved in activities opposing the government of Salvadore Allende and worked with a political group called Patria y Libertad, which ran an opposition radio station. In late March, 1973, he was forced to flee the country because police were seeking him in connection with his anti-Allende activities. He returned to Miami and worked in an automobile transmission shop until the Allende Government was overthrown in September, 1973 (Tr. 1585-1586). During his relatively brief stay in the United States, Townley again called the CIA office, this time at the request of people he had been working with in Chile who wanted CIA help in their opposition to Allende. He had had no contact with the agency from his initial contact in 1970 until his phone call in 1973. No further relationship developed with the CIA after the 1973 call and Townley returned to Chile shortly after Allende was ousted. He never did any work whatsoever for the CIA (Tr. 1586, 1589-1590).

Meanwhile, Orlando Letelier and his wife Isabel, both Chilean citizens, had come to the United States in 1960, when Letelier was hired as an economist by the Inter-American Development Bank. The Letelier family returned to Chile in 1970 when Salvadore Allende was elected President (Tr. 1494-1495). In 1971 Letelier was ap-

pointed ambassador to the United States from Chile and served in that capacity until May, 1973. He was recalled to Chile in 1973, when he was appointed Minister of Foreign Relations. Over the next few months he also served as Minister of the Interior and Minister of Defense (Tr. 1495-1496). When Allende was overthrown on September 11, 1973, Letelier was arrested and imprisoned at Dawson Island (Tr. 1497, 1499). Although no charges were ever placed against him, he was held in various prisons for a year. During this time Isabel Letelier appealed to many international organizations to help secure his release (Tr. 1501). He was finally released and expelled from Chile on September 11, 1974. In January, 1975, the Leteliers came to the United States where Letelier began to work at the Institute for Policy Studies and American University in Washington, D.C. (Tr. 1512-1513).

Soon after his arrival in the United States, Letelier began to speak out against the human rights violations which he had witnessed in Chile and to publicize the economic plight of the Chilean people. Among other criticisms, he deplored the bombings which had occurred, the closing of the Chilean Congress, and what he perceived to be the loss of democracy in his homeland (Tr. 1513-1514). During 1975 and early 1976, Letelier spoke at universities and international forums about his concern over human rights in Chile. His efforts included lobbying with various U.S. senators and congressmen in regard to American relations with Chile (Tr. 1514, 1516). Letelier spoke to Senator George McGovern

twice in 1975, emphasizing the serious human rights violations which the new Chilean Government was pursuing (Tr. 1344, 1347). Sensitized to the Chilean situation by his conversations with Letelier, McGovern supported a bill passed in June, 1976, which cut off military aid and reduced economic aid to Chile (Tr. 1349, 1351). Letelier was also working at this time with Dutch politicians to try to stop the floating of a \$62 million loan to Chile by a group of Dutch businessmen. Ralus ter Beek, a member of the Dutch Parliament, spoke to Letelier several times in 1976 and helped stop the loan as a result of those conversations (Tr. 1365-1366). Considerable publicity was generated in Holland about Letelier's campaign to have the loan blocked (Tr. 1370-1371). Isabel Letelier began receiving from family and friends Chilean newspapers containing articles hostile to her husband which described his lobbying efforts (Tr. 1515, 1523).<sup>2/</sup>

While Orlando Letelier was engaged in becoming an enemy of the new Chilean Government, Michael Townley was equally busy in becoming its friend. The regime which generated outrage in Letelier inspired loyalty in Townley. In March or April, 1974, after his return to Chile and while Letelier was still imprisoned, Townley met a man named Pedro Espinoza. Espinoza's duties in

<sup>2/</sup> The trial court excluded from evidence a political cartoon in a Chilean newspaper dated October 1, 1976, which Isabel Letelier had saved. The cartoon depicted a political association between Letelier and several prominent American legislators, including Senator McGovern (Tr. 1518).

military intelligence during the incumbency of the Allende Government had included efforts to track down Townley (Tr. 1590-1591). Townley developed a casual friendship with Espinoza, who eventually suggested that Townley might be useful to the Chilean intelligence service because of his knowledge of electronics, which he had learned as a hobby (Tr. 1586, 1592). Townley accordingly began to work for DINA, the Chilean intelligence agency, in late 1974, originally using the name Kenneth Enyart and later, Juan Andres Wilson (Tr. 1592-1593).

At around this time, Townley was in the office of a DINA official named Guttierrez when Guttierrez received a telephone call and noted on a piece of paper the names of three people -- Dr. Orlando Bosch, Guillermo Novo, and Dionisio Suarez -- who had entered Chile. Townley told Guttierrez that he thought it was unwise for DINA to have anything to do with Bosch, who was the only one he had heard of at the time (Tr. 1600).

Soon after he began working for DINA, Townley was ordered to come to the United States to buy electronic counterintelligence equipment which could detect hidden microphones and telephone taps. He visited several electronics firms in Florida, including Audio Intelligence Devices (AID), which sold surveillance equipment (Tr. 1592, 1594). The company required proper identification and maintained a check-in, check-out record system. Townley visited AID several times over the next two years, always using the name Kenneth Enyart (Tr. 1595).

In early 1975, Pedro Espinoza approached Townley about a mission in Mexico which DINA wanted him to undertake. Townley was then called to DINA headquarters, where Contreras, the head of DINA, gave him \$25,000 and specific instructions for the Mexico mission (Tr. 1595-1596). Contreras was the only person in DINA with authority to approve a mission outside the country and the issuance of false documentation (Tr. 1697-1699). Contreras instructed Townley to go to the United States and solicit the help of the Cuban community in disrupting a meeting of Chilean exile leaders scheduled in Mexico City for February, 1975. The purpose of the mission was the assassination of two leftist Chilean exiles. Townley was selected for the assignment because he was familiar with the Cuban community in Miami and because he was an American and could enter Mexico freely. Since Chile and Mexico had severed diplomatic relations, a Chilean citizen could not enter Mexico easily (Tr. 1597-1598).

In early February, 1975, Townley came to the United States to try to contact Cuban groups (Tr. 1599). While in Miami, he bought from Silmar Electronics a paging device, which worked by transmitting a coded tone message which was then picked up by a specific receiver. He intended to modify the system so that it could detonate an explosive charge by remote control radio (Tr. 1610). The Cuban groups whom he was able to contact appeared to be too talkative and loose in security. Finally, a man named



Felipe Rivero suggested he talk to appellant Guillermo Novo, the head of the Cuban Nationalist Movement (CNM) in New Jersey. Townley remembered the name as being one of the people who had arrived with Orlando Bosch in Chile in late 1974 (Tr. 1599-1600).

Townley and his wife Mariana travelled to New Jersey and arranged a meeting with Novo (whom he identified in court, Tr. 1607-1608) at a restaurant. Novo brought Jose Dionisio Suarez with him. Townley hoped to establish his credentials as a DINA agent, but the two Cubans were very suspicious, fearing that he might be a CIA agent trying to penetrate their group. At the end of the discussion, Townley told them where he was staying so they could get in touch with him (Tr. 1601-1602). Early the next morning, Novo, Suarez, and a third man burst into the Townleys' motel room with guns, again voicing their suspicions that Townley was a CIA agent (Tr. 1604). While rummaging through the couple's belongings, Novo found identification in all three of the names Townley used -- Kenneth Enyart, Michael Townley, and Andres Wilson Silva. Trying to convince Novo of his DINA affiliation, Townley had him call the Chilean Embassy and speak to someone Townley knew there. Finally, after much discussion, Novo announced that he would have to accept Townley on faith until he had checked with his own Chilean contacts (Tr. 1604-1605). A couple of days later Novo related that he had confirmed that Townley was indeed a DINA agent (Tr. 1605). Townley explained to Novo

and Suarez that he needed a loan of explosives and the assistance of a member of the group in order to complete the Mexico mission (Tr. 1607). In the course of the conversation Novo made it clear that he was the head of the northern section of the CNM and was in charge of clandestine operations (Tr. 1614-1615). As a result of his request, Townley obtained from the CNM several sticks of plastic explosives, some detonating cord, and various blasting caps, which were all delivered in a paper bag by an unknown person to Townley's motel room (Tr. 1608). Novo and Suarez stipulated that the explosives were a loan and that Townley was obligated to replace whatever he received with similar materials (Tr. 1613).

After exchanging telephone numbers with Novo and receiving assurances from him that a CNM member would join them in a few days, the Townleys returned to Miami. Shortly afterward they met Virgilio Paz, the promised assistant, at the Miami airport (Tr. 1609, 1611). A few more days elapsed while they secured false papers in Miami, and then the three of them set out for Mexico. During the trip Townley showed Paz the paging device and explained how it could set off explosives. By the time they arrived in Mexico City, however, the meeting had already concluded and the assassination targets had left the city (Tr. 1611). Townley disposed of the explosives and radio equipment in Mexico City to avoid Customs inspection. Paz flew back to New Jersey and Townley eventually returned to Chile (Tr. 1612).

Through several Lan Chile Airline pilots and employees with whom he had established friendships, Townley sent the CNM replacement explosives and publicity material favorable to the Chilean Government. Townley addressed the packages to Guillermo Novo or Javier, the name used by Paz. A Lan Chile employee named Fernando Cruchaga at Kennedy Airport in New York would then call the CNM to have them pick up the packages (Tr. 1613, 1615-1616).

In November, 1975, Ernest Cheslow, a salesman at Grand Central Radio in New York, was approached by a customer who wanted to buy a Fanon and Courier paging system consisting of a transmitter, an encoder, and four receivers (Tr. 2685, 2689, 2713). Since Cheslow did not have the equipment in stock, the customer put down a deposit and Cheslow gave him a receipt (Tr. 2704, 2713). Later, the customer picked up the equipment and in discussing the sales tax, revealed that he was from New Jersey and was planning to send the equipment to Argentina (Tr. 2696). Cheslow identified Government Exhibits 71 and 73 as the store's copies of the sales invoice and Government Exhibit 72 as the customer copy (Tr. 2692, 2709). After the purchase he was shown photographs in an effort to identify the customer and picked out photos of Virgilio Paz and Alejandro Romeral; although he tried his best, he was not sure of the identifications (Tr. 2700, 2719). The following month after the Grand Central Radio purchase, Townley received a telephone call from Paz, who asked for information on how to modify Fanon and Courier paging devices like those they had taken to Mexico. Townley could not

give a clear explanation over the telephone, so he had Paz send him the devices in Chile (Tr. 1620). The equipment he received from Paz consisted of a Fanon and Courier transmitter, encoder, and several receivers, all identical to the items bought at Grand Central Radio (Tr. 1621, 2686-2689). Townley modified the receivers to enable them to activate a blasting cap and modified the transmitter to be able to operate on a twelve-volt automobile battery. He then sent the whole system back to Paz (Tr. 1621).

In June or July, 1976, Townley received a call from Armando Fernandez Larios, a captain in the Chilean Army. Fernandez told Townley that Pedro Espinoza, who was then operations director of DINA, wanted to speak to him. Espinoza and Townley had a meeting in which Espinoza asked if Townley would undertake a mission. Townley was reluctant because his wife was sick and due for an operation, but he indicated that he would follow an order. There was no discussion of the nature of the mission at that time (Tr. 1622-1623). A few weeks later Espinoza requested another meeting at which he outlined the details of the assignment. Townley was instructed to travel to Paraguay with Fernandez, who was also a DINA agent. Fernandez would obtain false Paraguayan documentation for both of them through a contact which had been made by Contreras.<sup>3/</sup>

<sup>3/</sup> Government's Exhibit No. 91 was a cable dated July 18 from Contreras, the head of DINA, to Guanes, the head of Paraguayan intelligence, asking the Paraguayans to assist two Chilean army officers who were travelling to Paraguay (Tr. 2818, 2832, 4159-4162).

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They were then to enter the United States with Paraguayan passports and arrange to kill Orlando Letelier. Townley was authorized to contact the CNM for support if necessary, but the killing was to be carried out by himself and Fernandez and should look like an accident if possible (Tr. 1624-1625).

Townley and Fernandez arrived in Paraguay in late July. They were informed by Paraguayan authorities that since Colonel Guanes, the head of Paraguayan intelligence, was not there, it might take several days for them to secure their documents. They told the Paraguayans that they were going to the United States to do electronic countersurveillance for Chilean businesses. They also used false names; Townley applied for his passport and visa in the name of Juan Williams Rose.<sup>4/</sup> The day they received their passports they met a Dr. Pappilardo, who was secretary to the President of Paraguay (Tr. 1626-1627). Pappilardo told them that if they needed help in the United States, they should contact his good friend, General Vernon Walters of the CIA, with whom he had just been working. Pappilardo gave them Walters' telephone number (Tr. 1628). After Townley and Fernandez signed their passports, the Paraguayans retained the documents for several days

<sup>4/</sup> It was stipulated that Government's Exhibit No. 38 was a Paraguayan visa application to enter the United States in the name of Juan Williams Rose, kept as a record by the State Department in the normal course of business (Tr. 4024). Government's Exhibit No. 15 was the Paraguayan passport issued to Townley in the name of Juan Williams (Tr. 1859), while Government's Exhibit No. 16 was the Paraguayan passport issued to Fernandez in the name of Alejandro Romeral (Tr. 1860).

and finally gave them back with U.S. visas in them. By this time, however, Townley was becoming nervous because the process had taken so long and because he saw a surveillance report on himself and Fernandez on the desk of a Paraguayan Army Colonel. He feared that they had been exposed to the CIA. Fernandez telephoned DINA headquarters to report their anxieties and they were told to take their passports and return to Chile immediately. Plans for going on to the United States were cancelled (Tr. 1629-1630).

In late August or early September, Espinoza met again with Townley and told him that although the assassination of Letelier was still to be carried out, the manner of its execution was to be changed drastically. Fernandez had already left for the United States, using the name Faundez (Tr. 1664), to conduct surveillance on Letelier.<sup>5/</sup> Espinoza told Townley to contact the GNM and persuade them to carry out the mission for DINA. Townley had serious reservations about the plan because he had had numerous recent telephone conversations with appellant Guillermo Novo and Virgilio Paz about the expulsion by Chile of an anti-Castro Cuban named Rolando Otero, wanted in the United States for terrorist activities. Novo had told him that due to the GNM's anger over this action, they would have to take a strong public stand against the expulsion, although they would maintain contact on the intelligence level. Townley accordingly felt that it would be difficult

<sup>5/</sup> Government's Exhibit No. 44 was a Chilean visa application to enter the United States in the name of Armando Faundez Lyon, kept as a record by the State Department in the normal course of business.

be difficult to obtain CNM cooperation at a time when they were still upset over the Otero matter (Tr. 1658-1659)<sup>6/</sup>. However, after speaking to Espinoza, Townley made preparations to go to the United States, securing from DINA a passport and international driver's license in the name of Hans Petersen Silva<sup>7/</sup> (Tr. 1660). He left Chile on September 8, bringing with him ten electric matches<sup>8/</sup> as a present for the CNM and also to use in an explosive device if that method of assassination was chosen. When he arrived at Kennedy Airport on September 9,<sup>9/</sup> he saw Fernando Cruchaga of Lan Chile Airlines, who told him that someone was waiting to see him. Fernandez and a woman named Liliana Walker (Tr. 1664) had come to the airport to meet him; Fernandez quickly briefed Townley on the

<sup>6/</sup> Special Agent Robert Scherrer of the FBI, assigned as legal attache in South America at the time, participated in the removal of Otero from Chile, after threatening DINA with diplomatic reprisals if they did not give him up (Tr. 2860-2861).

<sup>7/</sup> Townley identified Government's Exhibit No. 17b as the international driver's license.

<sup>8/</sup> Townley identified Government's Exhibit No. 36 as the electric matches he brought with him, noting that they exhibited the modification he had made in replacing their single strand wire with multi-strand wire (Tr. 1870-1871). Stuart Case, an FBI explosives expert presented by the defense, testified that his examination of the matches in Exhibit No. 36 revealed that they had indeed been altered by a soldered connection not normally present on commercial matches. During a conversation with Case in the course of the investigation, Townley accurately described the alterations before Case showed him the matches (Tr. 4702-4703).

<sup>9/</sup> It was stipulated that Government's Exhibit No. 55 was a copy of a flight manifest kept in the regular course of business by Lan Chile Airlines, listing Hans Petersen as a passenger on Flight 142 from Santiago to New York on September 9, 1976 (Tr. 4030).

information he had gathered during his surveillance of Letelier (Tr. 1662-1663). Townley called Virgilio Paz from the airport and they arranged to meet for dinner that evening (Tr. 1664). Fernandez and Walker prepared to take the next flight back to Chile and <sup>10/</sup> Townley rented a car in which he drove to Paz's house. <sup>11/</sup> He, Paz, and Paz's wife had dinner at the Bottom of the Barrel Restaurant in Union City. Townley made a collect call to his sister in Tarrytown to arrange a visit with her <sup>12/</sup> and then asked Paz to set up a meeting with Guillermo Novo. The next day he had lunch with Novo, Suarez, and Paz in Union City (Tr. 1665-1666). Townley outlined his mission and requested their help in the form of equipment and personnel. The Cubans, however, were more interested in discussing their concern about Otero's expulsion from Chile. They finally told him that the project would have to be discussed with other members of the group (Tr. 1666-1667).

On the night of September 10, Novo, Suarez, Paz, Alvin Ross,

<sup>10/</sup> It was stipulated that Government's Exhibit No. 57 was a copy of a flight manifest kept in the regular course of business by Lan Chile Airlines, listing Armando Faundez and Liliana Walker as passengers on Flight 143 from New York to Santiago on September 9, 1976 (Tr. 4031).

<sup>11/</sup> Townley identified Government's Exhibit No. 18 as the Avis rental agreement in the name of Hans Petersen Silva, which was stipulated to be a duplicate copy of Government's Exhibit No. 59 and was kept in the regular course of business by Avis Rent-A-Car (Tr. 1861, 4031-4033).

<sup>12/</sup> Fred Fukuchi, Townley's brother-in-law, testified that he received a telephone bill for a collect call made on September 9, 1976, from telephone number 863-9719 (Tr. 2677). It was stipulated that that number was listed to the Bottom of the Barrel Restaurant in Union City, New Jersey (Tr. 4033).



and other members of the CNM met with Townley in his hotel room at the Chateau Renaissance.<sup>13/</sup> Again, much of the discussion focused on Rolando Otero. The CNM felt that Chile was asking a great deal from them, while they were getting very little in return (Tr. 1667-1668). According to Novo and Paz, Chile and the CNM shared a common political ideology, but they also wanted concrete help from Chile, such as recognition of a government in exile, sanctuary for fugitives, and participation in training programs. Townley received no response from the group that night, but the next day Novo told him that the CNM would cooperate in the murder (Tr. 1670-1672). Novo and Paz established two conditions for their cooperation -- that Townley would have to wait a few days because they were involved in something else and that Townley would have to be present during the mission so that the hand of DINA would clearly be involved in the killing (Tr. 1673).

Paz gave Townley the same Fanon and Courier paging system which Townley had modified in Chile and sent back to Paz. Novo and Suarez supplied TNT, a small amount of C-4 plastic explosives and some detonating cord. Townley and Paz left for Washington in Paz's Volvo in the early morning hours of September 16,<sup>14/</sup> expect-

<sup>13/</sup> Townley identified Government's Exhibit Nos. 19, 19a, and 19b as receipts from the Chateau Renaissance (Tr. 1862). It was stipulated that Government's Exhibit Nos. 60, 61, 62, and 63 were all guest registrations and bills in the name of Hans Petersen for September 9-11 and 13-14, made and kept by the Chateau Renaissance in the normal course of business.

<sup>14/</sup> Footnote on next page.

ing another CNM member to join them later (Tr. 1674-1676). Townley brought with him only his Kenneth Enyart identification and left all other documents behind (Tr. 1677).

As soon as they arrived in the Washington area, they located Letelier's home and place of employment and then checked into the Holiday Inn at 15th and Rhode Island Avenue, N.W. <sup>15/</sup> Over the next two days Townley and Paz corroborated the surveillance information which Fernandez had supplied. Townley bought electronic components and tools at two different Radio Shacks and baking pans and friction tape at a Sears store (Tr. 1678). <sup>16/</sup> He was, however, still

14/ Townley identified Government's Exhibit No. 20 as a gas station receipt with a license plate number on it which was stipulated to be the tag number of Paz's Volvo (Tr. 1862, 4159). Townley also identified Government's Exhibit No. 21 as a receipt for a meal eaten on the New Jersey Turnpike, 21b as a toll receipt for the Delaware Turnpike, 21c as a toll receipt for the Delaware Memorial Bridge, 21d as a toll receipt from the J.F.K. Memorial Highway, and 21e as a toll receipt for the Baltimore Harbor Tunnel. All of these receipts were dated September 16, 1976 (Tr. 1862-1864).

15/ Townley identified Government's Exhibit Nos. 24 and 24a as Holiday Inn receipts for September 16, 17, and 18 in the name of K. Enyart (Tr. 1865). It was stipulated that Government Exhibit Nos. 66 and 84 were a guest registration and bill in the name of K. Enyart made and kept by the Holiday Inn in the regular course of business (Tr. 4039). These records reflected the number of guests to be two (Tr. 4040, 5124).

16/ Townley identified Government's Exhibit No. 22 as a receipt for breakfast for two from a restaurant on Wisconsin Avenue near the Sears store (Tr. 1864). He identified Government's Exhibit No. 23 as a receipt for dinner with Paz at Luigi's Restaurant (Tr. 1865). He also identified Government's Exhibit No. 26 as his receipt for the items purchased at Sears (Tr. 1866). It was stipulated that the serial numbers on the receipt were matched with a Sears catalogue to determine that the items purchased were aluminum baking pans (Tr. 4042-4043).

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missing a blasting cap, which was essential to initiate the detonation of high explosives (Tr. 1682).

Meanwhile, back in New Jersey, Jose Barral, a long-time friend of the CNM, received a telephone call from appellant Guillermo Novo (whom he identified in court) (Tr. 2890).<sup>17/</sup> Novo told him that a mutual friend was coming to see him on an important matter. A short while later, Suarez, whom Barral had known for years, arrived at his home with appellant Alvin Ross, whom Barral knew less well (but identified in court) (Tr. 2891-2892). Suarez said he needed a large blasting cap, which Barral interpreted to mean a No. 6, which would set off plastic explosives. Suarez indicated that he needed the cap immediately, but did not specify for what purpose (Tr. 2892-2893). Barral was not sure where Ross was during the conversation and could not recall whether he was present throughout the entire discussion (Tr. 2922-2923). Barral told Suarez that it would take a short while to get the cap, so Suarez left a telephone number where he could be reached (Tr. 2894). After Suarez and Ross had left, Barral obtained the blasting cap, called Suarez and shortly thereafter met Suarez in the street to give it to him.<sup>18/</sup> Ross did not accompany Suarez the second time to pick up the

<sup>17/</sup> It was stipulated that hotel records would show that a telephone call had been made on September 16 from K. Enyart's room at the Holiday Inn to Center Ford, which was stipulated to be Guillermo Novo's place of employment (Tr. 4040, 5124).

<sup>18/</sup> Barral identified Government's Exhibit No. 78 as one of the two blasting caps he had in his possession when Suarez made his request. Exhibit No. 78 was the same as or similar to the one he gave Suarez (Tr. 2898). The one he retained, which became Exhibit No. 78, had two long yellow and orange leg wires.

cap (Tr. 2894-2895). The next bombing that Barral heard about, two to three days later, was the one which killed Letelier (Tr. 2896).

After a telephone call from Paz, Suarez arrived in Washington on Saturday morning, September 18 (Tr. 1679).<sup>19/</sup> He brought with him several blasting caps to supply the deficiency in Townley's equipment (Tr. 1682). When Suarez arrived, Paz and Townley checked out of the Holiday Inn and into the Regency Congress Motel on New York Avenue.<sup>20/</sup> Suarez checked into another motel down the street (Tr. 1680). Although explosives had been one of the possible methods they had been considering, they made the final decision to use a bomb that morning because both Suarez and Paz had employment problems. Suarez wanted to return to New Jersey soon because he was starting a new job that week and Paz also was eager to leave Washington as soon as possible (Tr. 1681). That afternoon they put the explosive device together in the Regency Congress room (Tr. 1682), using the Fanon and Courier paging system to build a remote control bomb. A person using the system, by depressing two keys in the proper sequence on the encoder, could transmit a tone com-

19/ It was stipulated that hotel records would show that a telephone call was made on September 17 from K. Enyart's room at the Holiday Inn to Center Ford, Guillermo Novo's place of employment.

20/ Townley identified Government's Exhibit No. 25 as a receipt from the Regency Congress, dated September 18 in the name of Ken Enyart (Tr. 1865). It was stipulated that Government's Exhibit No. 85 was a guest registration and bill in the name of Ken Enyart made and maintained by the Regency Congress in the regular course of business (Tr. 4040).

ination which would then be picked up by a receiver tuned to the transmitter's frequency. Townley had modified the receiver in Chile so that when it received the correct transmission, it would close a switch which would then activate the blasting cap (Tr. 1874-1876). Townley also included one of his electric matches in the bomb (Tr. 1871).

After building the bomb, Townley told Paz and Suarez that he wanted to get back to New Jersey and leave the country before the bomb was exploded, in accordance with the instructions he had received from Espinoza. At about midnight on September 18, they drove out to Letelier's home. On the way, Paz informed Townley that he would have to attach the bomb to Letelier's car himself (Tr. 1683) because the CNM wanted someone from DINA directly involved in the mission as a matter of faith (Tr. 1684). Paz and Suarez parked the car about a block from Letelier's home and Townley found Letelier's car in his driveway. He checked the license plate number and then slid underneath and taped the bomb to the cross-member under the driver's seat. Since he had very little light and was extremely cramped, he accidentally taped over the safety switch. He had set it in an armed position, but was afraid the pressure of the tape would move it back to a safe position (Tr. 1684-1686).

Townley then returned to Paz's car and the three of them drove back to the Regency Congress. Suarez picked Townley up early the next morning and took him to National Airport, where he boarded a flight for Newark. <sup>21/</sup> It was agreed that Suarez would telephone Guill-

lermo Novo to have someone pick him up when he landed. Before leaving, Townley described to Paz and Suarez the trouble he had encountered with the safety switch. He requested that Letelier be alone in the car when the bomb was exploded and suggested that it be done opposite a small park where there would be few people likely to be injured. However, both the discretion as to timing and the paging device itself were left in the hands of Paz and Suarez, as were the remainder of Townley's electric matches (Tr. 1686-1687).

When Townley arrived in Newark, appellant Alvin Ross was there to meet him and questioned him about what had occurred. Townley told him that the bomb had been attached to the car. They ate breakfast and then went to a small apartment in Union City, where Novo was waiting. <sup>22/</sup> Townley briefed him on the details of the mission and then asked to borrow his car to visit his sister in Tarrytown (Tr. 1688). After a brief detour to an office building in Manhattan, which Novo wanted to visit, Townley drove up to his sister's home, where he stayed until late afternoon. <sup>23/</sup> He then

<sup>21/</sup> Townley identified Government's Exhibit No. 28 as an airline ticket folder and receipt in the name of K. Enyart, dated September 19, from Washington to Newark (Tr. 1867). It was stipulated that Government's Exhibit No. 87 was a copy of a flight manifest kept in the regular course of business by Eastern Airlines, listing K. Enyart as a passenger on Flight 518 from Washington to Newark on September 19, 1976.

<sup>22/</sup> In a tour with FBI agents in 1978, Townley directed them to the building, which was located at 541 36th Street, Union City. He described a first-floor apartment which agents discovered was rented to Alvin Ross (Tr. 2964-2965).

<sup>23/</sup> Footnote on next page.

drove back to New Jersey, picked up Novo, and they drove out to Kennedy Airport where Townley took a flight to Miami. Before leaving, Townley placed his immigration form I-94 in a stack of I-94's departing to Spain on Iberia Airlines. Thus, as far as the immigration people would know, Hans Petersen had gone to Spain on September 19 (Tr. 1690-1691).<sup>24/</sup>

The next day, September 20, Orlando Letelier received a copy of the Official Gazette from Chile (Government's Exhibit No. 10), which contained a copy of a Chilean Government decree depriving him of his citizenship (Tr. 1524). Ronni Moffitt and her husband Michael, associates of Letelier at the Institute for Policy Studies, were scheduled to have dinner with the Leteliers that evening because Michael and Letelier were writing an essay together. Since the Moffitts' car had broken down, Letelier drove them to his home in his car (Tr. 1202-1204). The Moffitts stayed until around midnight, eating dinner, working on the essay and commiserating with Letelier on the loss of his citizenship. It was arranged that they would go home in Letelier's car and pick him up the next morning, September 21 (Tr. 1205).

On the morning of September 21, Townley, in Miami, was becoming nervous because nothing had happened in Washington. He called

<sup>23/</sup> Fred Fuhuchi testified that his brother-in-law visited them for several hours in mid-September, 1976 (Tr. 2675).

<sup>24/</sup> It was stipulated that Government's Exhibit No. 50 was an I-94 form in the name of Hans Petersen, which was kept by the Immigration and Naturalization Service in the regular course of business (Tr. 4027).

Paz's home in New Jersey and Paz said he had just gotten home at about 7:30 a.m. and did not want to talk. Townley hung up and went to visit Audio Intelligence Devices, where he had some electronic equipment on order. He spent several hours there, signing in and out as was required (Tr. 1692-1694).

While Townley was at AID, Ronni and Michael Moffitt drove to the Letelier home and waited until Letelier was ready to leave for work. The three of them set out for the Institute in Letelier's car, with Letelier driving, Ronni in the front passenger seat, and Michael in the back seat (Tr. 1206-1207). They drove down Massachusetts Avenue and suddenly, as the car entered Sheridan Circle, Michael heard a quick hissing sound and saw a flash of light at the front of the car. The car erupted in a deafening explosion, generating a terrible heat and smell (Tr. 1208). Onlookers saw a brilliant flash of light as the car rose into the air and came to rest in the circle between Massachusetts Avenue and 23rd Street (Tr. 1290, 1294). Michael was stunned, but managed to crawl out a back window. He noticed his wife stumbling out of the car toward the curb, but saw no sign of Letelier. He ran around the car and saw Letelier sitting in a large hole in the floor, facing the rear, with his head hanging back. He tried to respond to Michael's shouts and slaps, but could not speak. Michael reached into the car and tried to lift him out and then saw that the lower part of his body had been blown off. When he realized that there was nothing he could do for his friend, he looked for Ronni, whom he



had thought was all right, and saw her collapse on the lawn of one of the embassies. He ran to her and saw Dr. Dana Peterson trying to stop the blood coming out of Ronni's mouth (Tr. 1211, 1302). Eventually an ambulance arrived and took her away and he was driven to the hospital. A short time later hospital staff told him that his wife was dead (Tr. 1212-1213). Isabel Letelier was summoned to the hospital and was informed that her husband was also dead (Tr. 1526-1527). Subsequent tests of the paging system described by Townley revealed that the person who detonated the bomb could have been no more than one thousand feet away from Letelier's car at the time of the explosion (Tr. 3866). The medical examiners found that a piece of shrapnel had severed Ronni Moffitt's carotid artery and cut a hole in her windpipe; as a result, she breathed in her own blood and drowned in it (Tr. 1323). They also found that Orlando Letelier had bled to death as a consequence of the traumatic amputation of both legs (Tr. 1328). The mission of Michael Townley and members of the CNM had been accomplished with grisly success.

Late that same morning in Miami Townley called appellant Ignacio Novo, the brother of Guillermo Novo, in order to arrange a meeting. Ignacio (whom Townley identified in court, Tr. 1700) asked him if he had heard the news that something big had happened in Washington (Tr. 1693). The two had a late lunch or early dinner together and Townley described for Ignacio what he, Paz, and Suarez had done in Washington and how the mission had been conducted (Tr. 1695).

On the night of September 22 or, in the early morning hours of September 23, Townley flew back to Santiago from Miami, using the name of Kenneth Enyart.<sup>25/</sup> He reported to Espinoza what had happened (Tr. 1696). Eventually he replaced the explosives which he had borrowed from the CNM by sending small quantities of explosives to Paz from time to time. He also sent money to reimburse Paz and Guillermo Novo for expenses they had incurred in assisting him in the assassination (Tr. 1701-1702).

On October 27, 1976, Guillermo Novo testified before the grand jury investigating the Letelier and Moffitt murders in which he had participated only the month before. While under oath, he told the grand jury that he had never heard of Letelier before he was killed, and had no idea why he was murdered or who was responsible for it. He also claimed that the CNM had never done anything related to Chile and that he knew no one who was a member of DINA (Tr. 4151-4154).

Ignacio Novo appeared before the grand jury on October 29, 1976. After taking the oath, he testified that he had never heard Letelier's name before he heard about the murders on the news and that he thought that Cuban communists had possibly carried out the assassination. He also claimed that he knew no one in DINA and had not had contact within the previous two years with anyone who

<sup>25/</sup> It was stipulated that Government's Exhibit No. 88 was a copy of a flight manifest kept in the regular course of business by Lan Chile Airlines, listing Kenneth Enyart as a passenger on Flight 153 from Miami to Santiago on September 23, 1976 (Tr. 4043-4044).

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had been in Chile or was presently in Chile (Tr. 4147-4150).

On October 21, 1976, a month after the murders, Special Agent Ovidio Cervantes of the FBI interviewed Ignacio Novo about the Letelier murder. In response to questioning, Novo revealed none of his knowledge about the identity of the participants. He did, however, claim to be the national coordinator for the CNM, identifying his brother Guillermo as the second national chief (Tr. 3742-3744).

Special Agent Larry Wack of the FBI was notified by the Secret Service in May, 1977, that they were working with a man in whom he might be interested. Wack met Ricardo Canete in the Secret Service office and learned that he was in touch with Ignacio Novo (Tr. 3590). Canete had been arrested on a counterfeiting charge and was working with Secret Service agents in return for their help on his case (Tr. 3376). He had been a founding member of the CNM and had known both Novo brothers (whom he identified in court) since 1960 (Tr. 3230-3032). Canete participated in the group until 1965 and then drifted away, although he still maintained haphazard contact with Ignacio (Tr. 3233-3234).

After his conversation with Wack, Canete called Ignacio at Center Ford, his place of business, and suggested a meeting, claiming that he might have some things of interest to Ignacio. At the meeting, Canete offered Ignacio various types of false identification and Ignacio replied that he might have a use for

them. He explained that the Government was trying to accuse the CNM of the Letelier murder. During the conversation Ignacio excused himself and said that he had to contact friends in DINA to see how things were going. He made a telephone call and then returned. Canete asked if the group could give him any help if he fell under suspicion and Ignacio assured him that they could send him to a farm in South America for awhile (Tr. 3235-3236).

A few days later Canete and Ignacio met again. Ignacio confirmed that he wanted to do business with respect to the documents and asked about types and prices. Ignacio asked the bartender for a sales check and wrote down on it the kinds of documents he wanted. Canete filled in the prices he would charge.<sup>26/</sup> When Canete said he could obtain a blank West German passport, Ignacio tried to think of a Germanic sounding name and finally decided on Frederick Pagan (Tr. 3238-3239). Canete contacted Ignacio when the documents were ready and they went to the Szechuan Taste restaurant, where they exchanged documents and money.<sup>27/</sup> Before giving the documents to Ignacio, Canete made copies of them, which he turned over to Wack.<sup>28/</sup>

<sup>26/</sup> Canete identified Government's Exhibit No. 97 as the sales check, with Ignacio's writing on the left and his own writing on the right (Tr. 3239).

<sup>27/</sup> Both Canete and Wack identified Government's Exhibit Nos. 100-100e as the surveillance photographs taken by Wack of Canete, Ignacio, and a woman friend of Ignacio's, going into the restaurant (Tr. 3258, 3592).

<sup>28/</sup> Canete identified Government's Exhibit No. 99 as the original documents he gave to Ignacio (Tr. 3243). Both Canete and Wack identified Government's Exhibit No. 98 as the copies of those documents (Tr. 3242, 3591).

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Canete met with Ignacio again in June, 1977, to give him the balance of the documents which had been ordered <sup>29/</sup>(Tr. 3260). Ignacio requested still more documents and they arranged to meet again.

At the later meeting Ignacio asked for a New York driver's license and other identification in the name of Victor Triquero and a permanent and temporary license in the name of David Costa. <sup>30/</sup> Ignacio explained that since he would soon be leaving for Miami and possibly South America, he wanted the documents as soon as possible. He gave Canete some money and instructed him to contact appellant Alvin Ross if he had any problems (Tr. 3268).

In late June or early July, Canete called Ross (whom he identified in court) to arrange a meeting with him. During their discussion in a bar, Canete told Ross he was worried that the FBI might pick him up and asked what the CNM could do for him. Ross said they had friends in the intelligence community in South America, where Canete could be placed temporarily on a farm (Tr. 3269-3270). A few days later Canete and Ross met again at Ross' place of employment, Ascione Motors. From there they drove to a restaurant

<sup>29/</sup> Canete identified Government's Exhibit No. 103 as a forged Social Security card in the name of Pagan and Government's Exhibit No. 102 as an altered Panamanian passport, both of which he gave to Ignacio. Both Canete and Wack identified Government's Exhibit No. 101 as the Xerox copy given to Wack of the Panamanian passport (Tr. 3262, 3593).

<sup>30/</sup> Canete identified Government's Exhibit Nos. 105 and 105a as the originals of the Triquero documents (Tr. 3265). He and Wack both identified Government's Exhibit Nos. 104 and 104A as the copies of those documents given to Wack (Tr. 3265, 3594). Canete identified Government's Exhibit No. 106 as the Costa temporary license (Tr. 3267).

in Ross' car. During the ride, Ross' briefcase was open on the seat and Canete saw two folders in it, one labelled "Orlando Letelier" and one labelled "Chile" (Tr. 3274). After eating dinner, Canete and Ross returned to Ascione Motors, where Canete used a typewriter to make up more false documents. While he worked, Canete bragged about his work, causing Ross to begin bragging about his specialty, which he described as making bombs. Ross said that the bomb he had made which had worked very well recently was the one which killed Letelier (Tr. 3275-3276). He also said that he had used an acid back-up in the bomb, that he had been "the wheel man," that the bomb had been attached to Letelier's car while it was in a garage for repairs, and that the group had stayed in a motel in Arlington, Virginia (Tr. 3276, 3463, 3486-3488). Canete did not entirely believe the narrative, but reported it to Wack anyway (Tr. 3463-3464). Ross also typed out on an Ascione Motors letterhead a further list of specific documents which he wanted from Canete; Canete gave the list to Wack.<sup>31/</sup> Shortly thereafter Canete began to feel nervous about the eventual possibility of having to testify against members of the CNM. Accordingly, he broke off contact with Wack and tried to disappear (Tr. 3423).

At about the same time, in August, 1977, a man named Carlos

<sup>31/</sup> Canete identified Government's Exhibit No. 107 as the list typed by Ross. Canete and Wack both identified Government's Exhibit No. 108 as copies given to Wack of the documents typed by Canete and given to Ross (Tr. 3277-3278, 3595).

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P. Garcia rented a room in the name of C and P Novelty Company at 4523 Bergenline Avenue, Union City. Luis Vega, the building superintendent, gave Garcia the key to the room and saw him around the building several times after that (Tr. 3005-3006). At the time Garcia moved into the room, it was totally empty; Vega had cleaned it out thoroughly (Tr. 3008). Shortly afterward, on September 21, Special Agent Richard Sikoral of the FBI spoke to Alvin Ross at his home at 541 36th Street. Ross told Sikoral that he was establishing a business called the C and P Novelty Company at 4523 Bergenline Avenue (Tr. 3158-3159). Garcia last paid the rent for the room on October 31. When no rent was paid for November or December, Vega put another lock on the door so Garcia could no longer gain entry (Tr. 3007, 3075). During this time Vega began to clean out the room with the intention of using it for his own office. He never saw Garcia again and no one ever approached him about paying the rent (Tr. 3007, 3012). On February 28, 1978, Sikoral went to 4523 Bergenline looking for Ross. He asked Vega who ran C and P Novelty and showed him some photographs, from which Vega picked a photograph of Alvin Ross (Tr. 3010-3011, 3161).<sup>32/</sup> Vega explained that the C and P room had been abandoned and that he was

<sup>32/</sup> At trial, Vega identified as Carlos P. Garcia a man displayed to him by the defense during voir dire. On cross-examination, Vega said that he had recognized the real Garcia as the man he had seen while the jury was out of the room and that Ross was not Garcia (Tr. 3036, 3062-3063). Though made available by the Government, Vega was never recalled by the defense to make an identification before the jury nor was the man he identified ever called by the defense to testify.

cleaning it out. Sikoral asked him to call the FBI if he discovered anything which he thought they might find interesting (Tr. 3182). Sikoral then went to Ross' apartment and found him there. Ross said that his business, which he had been running with his partner, Carlos P. Garcia, had gone bankrupt and he was establishing another enterprise to be run out of his home. Ross declined to give any information about Garcia other than his name (Tr. 3160).

In March, while he was cleaning out the C and P room, Vega found some items which looked to him like bombing material. He called the FBI and Sikoral and another agent came to the room where Vega had laid out the found materials. Vega refused to take a receipt for the items because he was going to throw everything away anyway. The agents took custody of the materials, which included the electric matches identified by Townley as those he had altered and left with Paz and the Grand Central Radio receipt for the purchase of Fanon and Courier paging equipment identified by Ernest Cheslow as the customer copy. Also found were detonating cord, a bottle of potassium permanganate used in explosives, with Paz's fingerprints on it (Tr. 3885), Chilean newspaper articles, and letters from Guillermo Novo to President Pinochet of Chile, to Ronald McIntyre, attache at the Chilean Embassy, and to Sergio Crespo, Consul General for Chile.<sup>33/</sup> Finally, Sikoral recovered a

<sup>33/</sup> The letter expressed the displeasure of the CNM over the Chilean expulsion of Rolando Otero. The Crespo letter, with Guillermo Novo's fingerprint on it, contained the following statement: "The Cuban Nationalist Movement has intrepidly defended the best interests of the Chilean nation by supporting in every way, public and private, worthy of comment and worthy of silence, the Government led by his Excellency, President Pinochet" (emphasis supplied) (Tr. 3889, 5186-5187).



list of weapons and explosives with initials of various CNM members opposite each item (Tr. 3163-3169).<sup>34/</sup>

Meanwhile, in September 1977, Ricardo Canete was rearrested on another charge and resumed cooperation with Wack; an agreement was reached whereby he would not be prosecuted on the new charge if he provided truthful and accurate information to investigators. He would be prosecuted if the information were not truthful and accurate (Tr. 3300, 3426-3430).

In January, 1978, Michael Townley, in Chile, received a telephone call from Guillermo Novo requesting a loan of \$25,000 for the people who had been involved in the Letelier mission. Alvin Ross also spoke to Townley and stridently demanded the money (Tr. 1717). Townley contacted Contreras to convey the request, but Contreras replied that since he was no longer the director of DINA, he had no access to funds. DINA had been replaced by an organization called CNI and Contreras had been replaced by another director (Tr. 1712-1714). Townley called Novo back and told him that it was impossible to obtain the money. They had one final conversation in which Novo reiterated the request and Townley repeated Contreras' response (Tr. 1718).

In March, 1978, a month or two after Townley's conversations with Novo and Ross, Canete was able to re-initiate contact

<sup>34/</sup> Vega and Sikoral also testified to the above facts at the hearing to suppress evidence recovered from 4523 Bergenline Avenue.

with the CNM through a person who recommended that he contact Virgil Paz at Roy's Chevrolet. When he called Paz, Canete told him that he expected to be subpoenaed to the grand jury in the Letelier investigation (Tr. 3281). Canete met with Paz and Ross at the Bottom of the Barrel restaurant, where Canete said that the FBI was looking for him. He told them he was uncertain about what to do if subpoenaed to testify in the Letelier case. Paz replied, "Look, we did it. They know it. We know it. But let them prove it." Canete looked at Ross for confirmation and Ross nodded affirmatively (Tr. 3286). Canete understood from the revelation that Paz was telling him that it would be to his disadvantage to reveal anything if called to testify (Tr. 3492). Ross volunteered that the Government had even found some papers of his, but were too stupid to figure out what they had (Tr. 3286). In case Canete should need to get in touch with someone, Ross wrote his name, address, and telephone number on a matchbook cover which he gave to Canete.<sup>35/</sup>

Canete met Paz and Ross again at the Bottom of the Barrel about ten days later and they told him they needed passports very quickly.<sup>36/</sup> They were nervous and disappointed when he told them he would need four to six weeks to obtain them (Tr. 3289). Canete had other conversations during this period in which Ross said a <sup>35/</sup> Canete identified Government's Exhibit No. 109 as the matchbook cover given to him by Ross.

<sup>36/</sup> Michael Townley arrived in the United States in the custody of FBI agents on April 8, 1978.

Mr. Propper was down in Chile but was not going to get what he wanted. Ross also complained that some people did not know the value of a man's work since they placed more value on \$25,000 than they did on a person's work. If he had to, he said, he would lay it all the way into the hands of Contreras Sepulveda (Tr. 3295-3296).

Contreras and Townley, in fact, had been having their own problems down in Chile, where news of the United States investigation of the crime had sparked public speculation. Townley met with Contreras and Fernandez to construct a common story which they could tell if called to testify by the Chilean ad hoc investigator, General Orozco (Tr. 2057, 2133). On March 29, Townley appeared before Orozco and gave a statement in which he described his connection with the CNM and his trip to the United States, but omitted to mention anything about the planning and execution of the assassination plot (Tr. 2105).<sup>37/</sup> Some parts of the statement were completely true, some were completely false, and some

<sup>37/</sup> This statement had not been turned over to the defense as Jencks material prior to trial because the Government had been informed by the Chilean military court that the statement was sealed and could not be made available to the prosecutor (Tr. 1742-1743). An unsigned, unverified copy of the statement mysteriously appeared in the hands of defense counsel halfway through the trial (Tr. 1650-1655), apparently obtained and forwarded by Miranda Carrington, Chilean counsel for Manuel Contreras (Tr. 1737). Defense counsel then received a signed copy over the weekend from Miranda Carrington after the court had expressed doubts about the authenticity of the first document. The Government was again told by Chilean authorities that it could not have the statement (Tr. 1941-1946).

were partially true, but incomplete (Tr. 2110). On April 7, Townley was expelled from Chile and arrived in the United States in the custody of FBI agents on April 8; a material witness warrant was served on him at that time (Tr. 1999). During the following week his sister and parents secured the services of Seymour Glanzer, Esquire, as his attorney and Glanzer entered into negotiations with the Government. General Orozco arrived from Chile, along with Major Pantoja of DINA, who released Townley from his vow of silence relative to DINA's participation in the Letelier assassination. Townley accordingly made a full and accurate verbal statement to Orozco as a continuation and modification of the statement he had given him three weeks earlier. On the advice of counsel, Townley, on April 17, entered into an agreement to cooperate fully with the United States Government. The statement which he had given orally to Orozco was then transcribed on April 18 for use in Orozco's secret investigation.<sup>38/</sup> The agreement with the United States required that Townley provide complete, accurate, and truthful information on all aspects of the Letelier investigation and all other crimes committed against American citizens or on American soil of which he had knowledge. In return, he would be allowed to plead guilty to conspiracy to murder a foreign offi-

<sup>38/</sup> This transcription of the verbal statement, which had originally been denied to the prosecution by Chilean authorities, was turned over in mid-trial after the Government informed Chile that the March 29 statement had been publicly disclosed and made available to the defense. Both the original March statement and the April modification were admitted into evidence.

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cial (18 U.S.C. § 1117) and would avoid prosecution on any additional charges related to his participation in the Letelier assassination. The Government would also, subject to judicial approval, agree to the imposition of a specific sentence of three and a half to ten years' incarceration and would recommend parole when he became eligible (Tr. 1879-1882).

Alvin Ross and Guillermo Novo were arrested in Miami on April 14. Recovered from Ross was a brown telephone and address book (Government's Exhibit No. 114) containing the name Andres Wilson and Townley's Chilean telephone number (Tr. 4048). Recovered from Novo were a black telephone and address book (Government's Exhibit No. 117) (Tr. 4049) and a driver's license and other identification cards in the name of Victor Triquero (Government's Exhibit Nos. 123-124-F) (Tr. 4156). Ignacio Novo was arrested on May 4 (Tr. 4049-4050).

A search warrant was executed for Ross' apartment at 541 36th Street, Union City, New Jersey, in late April, 1978. FBI agents recovered numerous identification documents in the name of Frederick Pagan, Victor Triquero, and David Costa (Government's Exhibit Nos. 99, 105-105-A, and 106), identified by Canete as among those he had given to Ignacio Novo (Tr. 3243, 3265, 3267). Also recovered were two black address books (Government's Exhibit Nos. 120, 121), a metal object on which Guillermo Novo's fingerprint was later found, and a Brigade 2506 manual with Alvin Ross' name on it <sup>39/</sup> (Government's Exhibit Nos. 124-124a) (Tr. 5120-5122).

39/ Footnote on next page.

All three appellants were arraigned on charges in the instant case on August 11, 1978. Guillermo Novo and Alvin Ross were detained at the Metropolitan Correctional Center (MCC) in New York. At about the same time Sherman Kaminsky was also incarcerated at the MCC (Tr. 3681). Kaminsky had pled guilty in several jurisdictions to charges of interstate racketeering in 1966 and had fled before sentencing to become a fugitive for twelve years (Tr. 4382). He was sentenced on one of those charges on June 14, 1978. The sentencing judge made it a condition of probation that Kaminsky continue to cooperate with the Government.<sup>40/</sup> Kaminsky understood the judge to mean continued cooperation in the investigation of threats to kill a police officer and a federal judge which he had reported to authorities when he heard about them (Tr. 3816). After his sentencing Kaminsky remained at MCC to await the outcome of his cases in other jurisdictions.

In May or June, 1978, Kaminsky met Alvin Ross (whom he identified in court, Tr. 4381), who had heard that Kaminsky had been a member of the Hagannah, an arm of the Israeli military. Ross talked about the Cuban Nationalist Movement and their aspirations to have a military organization like the Hagannah (Tr. 4341-4342). Over the next few months, Ross often approached

<sup>39/</sup> The manual described techniques for surveillance and counter-surveillance, as well as materials and methods for manufacturing explosives.

<sup>40/</sup> See Appellants' Brief I, Appendix Vol. II.

Kaminsky and talked to him about the congruity of interests and ideology between the CNM and Chile. Ross said that Chile could supply money, safe territory, an exchange of agents, and weapons and explosives. He also told Kaminsky that he had been involved in Letelier's murder, along with DINA, a traitor named Townley in DINA, someone named Sepulveda, and other members of the CNM (Tr. 4349-4350). He had attended a meeting at which Townley said that DINA and General Contreras wanted a Marxist agent assassinated. The agent was a threat to DINA and the CNM felt that their cooperation in the murder would help cement relations and agreements between themselves and DINA. Ross referred to Letelier as a rotten communist Marxist and said he had contributed two wires used in the bomb that killed him<sup>41/</sup> (Tr. 4371-4372). Ross also expressed anger at DINA for their failure to give him some money which he had requested (Tr. 4380). He told Kaminsky that he would not pay for Letelier's murder because people would believe anything of the CIA; the CIA would be the scapegoat (Tr. 4375).

During some of these conversations, Ross expressed his hatred of the CIA and revealed that the CNM was planning to blow up Russian ships in American harbors. Fearing that these plans could create an international incident, Kaminsky contacted his attorney, William Aronwald, Esquire, on August 11. He turned over to him some notes which he had made and asked him to notify the CIA because he felt

<sup>41/</sup> The most conspicuous feature of a blasting cap (Government's Exhibit No. 78) is the two long colored leg wires protruding from the small cap.

that Ross was a dangerous man, capable of carrying out his plans (Tr. 3806, 3819). The notes which Kaminsky gave Aronwald made no mention of the Letelier assassination by name but indicated that Ross had said that a person blown up in Washington was a double agent of the CIA (Tr. 3681). Rather than passing the information to the CIA, Aronwald gave the notes on August 17 to Assistant United States Attorney Schwartz in the Southern District of New York. Schwartz at the time knew nothing about Ross or the case on which he was being held, but after learning who was handling Ross' case, called Eugene Propper and forwarded the notes to the District of Columbia U. S. Attorney's Office, which received them on August 28. No discussions with any segment of the Government about the Letelier case occurred until mid-October, when Kaminsky went to Schwartz's office to talk about the threat to the police officer on which he had supplied information previously. Aronwald then mentioned the information which Ross had revealed to Kaminsky about the Letelier case. After some discussion, Aronwald and Schwartz instructed Kaminsky not to discuss Ross' defense with him and not to initiate a conversation, but just to listen if Ross introduced the subject (Tr. 3810-3812). Kaminsky, in fact, had found it difficult to avoid conversations with Ross since Ross seemed to regard him as a confidante and continually sought him out to talk (Tr. 3808).

On October 31, Kaminsky and Aronwald met for the first time with Eugene Propper, one of the prosecutors in the Letelier case.

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At that time Aronwald and Propper began to work out an agreement whereby Kaminsky would report what he heard and possibly testify for the Government. Both Propper and Aronwald warned Kaminsky not to discuss defense strategy or initiate conversations with Ross. Aronwald agreed to screen any notes taken by Kaminsky and delete any references to Ross' defense before passing them on to the Government (Tr. 3685-3686).<sup>42/</sup>

The written agreement between Kaminsky and the Government stipulated that if he testified truthfully, the Government would recommend a sentence of probation in the Illinois case which was still pending. The Government also required Kaminsky to make restitution in Illinois and agreed to provide protection for him and his family (Tr. 4384-4386).

Sherman Kaminsky was not the only inmate at MCC to be approached by one of the appellants. Antonio Polytarides had been convicted of illegal diversion of firearms in 1977 and was brought to MCC on a writ from Sandstone, Minnesota. The purpose of the writ was to allow him to assist Customs Agent Joseph King in King's investigation of other people involved in Polytarides' case (Tr. 3933-3937). When other inmates heard about the nature of his con-

<sup>42/</sup> All the information contained in the two previous paragraphs was presented either by Sherman Kaminsky during voir dire or during Aronwald's representations to the court. No such evidence was presented to the jury. The court ruled that Kaminsky could testify to the jury only about conversations he had with Ross prior to October 31 (Tr. 4279). The conversations specifically related to Letelier, described above, occurred before October 31 and were presented to the jury.

viction, they began to approach him about arranging weapons transactions. A Cuban named Sotomeyer wanted to buy five machine guns for himself and five for the Cuban group responsible for the Letelier bombing. Polytarides called Agent King at the end of February or beginning of March and told him that he wanted to go back to Sandstone since his writ was satisfied. When King heard about the proposed weapons transactions, however, he told Polytarides he would speak for him to the parole board if Polytarides would go ahead with agreeing to supply weapons to those who approached him (Tr. 3935-3939). Around the end of May, an associate of Sotomeyer introduced Polytarides to Guillermo Novo. Polytarides told Novo he had been informed by Sotomeyer that his group had arranged the Letelier bombing; Novo replied that his group had indeed been responsible. Polytarides reported back to King on all the conversations he had with people wanting to buy weapons. King never asked him to try to find out anything about Novo's case; Polytarides' only role was to respond to requests for weapons and report to King on the progress of the deals (Tr. 3941-3942). Around the middle of July, King mentioned that there were two fugitives in Novo's case and asked if Polytarides could obtain any information concerning their whereabouts. Polytarides offered help to Novo in getting the fugitives out of the country, but Novo declined and broke off all further conversations with him (Tr. 3944). In December, 1978, Novo began to re-initiate contact with Polytarides when he learned that Polytarides had obtained parole. Novo wanted to buy

one hundred sixty machine guns, grenades, and plastic explosives (Tr. 3947-3948). During the period when these negotiations were occurring, Novo seemed very angry one day and Polytarides thought it strange because Novo was usually calm. He asked Novo what was wrong. Novo said that they had been betrayed by certain people in their case, but that they would pay them back (Tr. 4176). Alvin Ross was present during the conversation and nodded his head, but said nothing.<sup>43/</sup> The only benefit Polytarides received from the Government for testifying in the Letelier case was protection for him and his family (Tr. 4313).

After presenting all of its testimony, the Government moved most of its exhibits into evidence and rested its case.

#### The Defense Evidence

Isabel Letelier, called by the defense, testified that her family's mail from Chile often looked like it had been opened and that once a Metro schedule and a driver's license were delivered in transposed envelopes (Tr. 4635). She feared that DINA was being helped by the FBI or CIA in opening mail (Tr. 4637, 4656). Her husband feared being followed by DINA because he was told when released from prison in Chile that DINA had a very long arm (Tr. 4656).

<sup>43/</sup> Most of the above facts were elicited during voir dire of Polytarides. The only testimony he presented before the jury was Novo's statement about having been betrayed; there was no testimony about the weapons transactions context in which his relationship with Novo developed.

Edward Cannell was a Marine guard stationed at the American Embassy in Santiago from 1970 to 1972 (Tr. 4658). He lived at the Marine House where embassy personnel and other Americans often socialized (Tr. 4660). He met Michael Townley at a discotheque in late 1970 or early 1971 and often saw him at social functions at the embassy (Tr. 4663-4664). Americans living in Santiago commonly gathered at the embassy because of the high political unrest in the country (Tr. 4670-4672). There was a top secret unit called Pol-R at the embassy but he never saw Townley enter that section (Tr. 4675).

Stuart Case, an explosives expert at the FBI, testified that Townley had described in detail the bomb used to kill Letelier. Townley said he had used one commercial blasting cap and one that he had made himself. He thought that the blasting cap leg wires were yellow and purple (Tr. 4693-4696). Case testified that blasting caps made by the same company often have different colored leg wires and that Townley correctly described the modifications he had made on the electric matches before Case ever showed them to him (Tr. 4700-4703).

George Landau, currently U.S. Ambassador to Chile, testified that he was ambassador to Paraguay from 1972 to 1977. In June, 1976, General Vernon Walters, Deputy Director of the CIA, came to Paraguay and met with Landau and a high official in the Paraguayan Government named Pappilardo (Tr. 4780-4782). In July, Pappilardo called Landau to tell him that Paraguay had received a high level

request from Chile. Chile had informed Paraguay that two army officers named Juan Williams Rose and Alejandro Romeral were being sent to the United States to investigate dummy Chilean corporations. To make them inconspicuous, Chile wanted Paraguay to issue them Paraguayan visas to enter the United States (Tr. 4782-4783). Normally, such visa requests would have been forwarded routinely to the American Consulate without any knowledge of the U.S. Ambassador. However, Pappilardo suggested that Landau contact Walters to let him know about the situation; Pappilardo wanted to do Walters a favor by alerting the CIA about the Chilean request (Tr. 4785, 4792-4793). Landau was also informed by Pappilardo that he had given the two Chileans Walters' name and telephone number so Walters could monitor them (Tr. 4784). Suspicious of the Chileans' intentions, Landau obtained their Paraguayan passports and photographed them. He then forwarded the photographs to Walters by diplomatic pouch so Walters could decide whether to investigate them or deny them entry (Tr. 4785-4786). A message arrived that the photographs had been delivered to George Bush, the head of the CIA, since Walters was no longer with the agency. Landau then received a message from Walters explaining that he had left the agency, was unaware of any visit by Chileans, and that the CIA wanted no contact with them. He advised Landau to inform the State Department, which Landau immediately did (Tr. 4787, 4793). Landau then asked Pappilardo to get the Paraguayan passports back from the Chileans and informed him that the visas were revoked. When he received

the passports, the photographs had been removed (Tr. 4788-4789). Landau put the passports in his files and kept them until the names Williams and Romeral arose in the Letelier investigation. He then handed them over to the FBI (Tr. 4799).

Rene Rodriguez testified that he was sales manager for Jess Jones Volkswagen in New Jersey in September, 1976. Suarez started work there that month and stayed with the dealer a week or ten days (Tr. 4802-4807). Rodriguez did not remember if Suarez had arrived in the afternoon on his first day of work; he could not say whether he might have come in as late as 12:30 p.m. (Tr. 4814-4815).

Jorge Smith, the owner of a security equipment firm in Miami, testified that he met a man named Andres Wilson in October or November, 1974, when Wilson came to the store to buy counter-intelligence devices, especially debugging radio frequency equipment (Tr. 4857-4858). Before he sold the type of expensive debugging equipment Wilson wanted, Smith always asked whom the buyer represented (Tr. 4871). When he posed that question to Wilson, joking that he must be with the CIA, Wilson said he worked for DINA and showed him an identification card (Tr. 4858-4859).

Edgar Corley, a fingerprint expert at the FBI, testified that he never found a fingerprint of Alvin Ross on any of the items submitted to him (Tr. 4880). He also explained that a person does not leave a print every time he touches something and that some people never leave prints (Tr. 4886).

Letellier testified that he interviewed Isabel Letellier in his capacity as an FBI agent in September, 1976. She told him that she thought the CIA or FBI were cooperating with DINA in tampering with her mail, since DINA would not have had access to the United States mails without help (Tr. 4909, 4913).

L. Carter Cornick stated that as the principal FBI agent for the Letellier case, he testified at a removal hearing for appellant Ross in Newark on June 2, 1978 (Tr. 4948-4950). Cornick, who had participated in the debriefing of Townley, testified at the hearing that Townley told him that Ross had been present at the conspiracy meeting at the Chateau Renaissance (Tr. 4955). Townley had originally been unable to recall if Ross was at the meeting, but after speaking to his wife in late May, his recollection was refreshed. He then indicated during an informal discussion in the prosecutor's office that Ross had indeed been present. Cornick so testified at the removal hearing (Tr. 4958, 4969-4970).

Robert Gambino as Director of Security for the CIA, maintains files on people who are of potential or actual use to the agency (Tr. 4980-4982). The CIA has established public offices around the country where people can come who would like to work with the agency. If someone comes to a public office, the office obtains biographical information from the person and notifies Security to conduct a check. The division does a preliminary security check on anyone it might use in any capacity to insure that the person is honest and trustworthy (Tr. 4997-4998). Such a check consists

of a request for any information on the person from the files of various other agencies. If the check is negative, the Operations Division is notified that there is no security objection to further assessment of the person. If Operations then decides it wants to use the person in some way, Security is asked to do a more thorough investigation (Tr. 4985-4988). In December, 1970, Operations asked Security to do a name check of this type for Michael Townley. Since there was no record of his name at any of the agencies they checked, Security notified Operations that there was no security objection to further contact with Townley (Tr. 4985). A more thorough investigation was never requested and Security was informed in December, 1971, that there was no further interest in Townley (Tr. 4987-4988). If Operations had revived an interest in Townley after the 1971 cancellation, they would have been required to ask Security to do another preliminary check. No such request was made, indicating that the agency retained no further interest in Townley (Tr. 5001-5002).

Marvin Smith, also a CIA employee, is chief of the group that maintains the files of the Directorate of Operations (Tr. 5008). Those files revealed that Operations asked Security to make a preliminary check on Michael Townley so that Operations could make further contact and assess his possible usefulness. When Security indicated that they had no problem with further assessment, Operations asked their people in Miami to contact Townley. They reported that he had evidently returned to Chile (Tr. 5014-5016).



Agency employees in Chile searched for him but found that he was no longer at the address he had given (Tr. 5017). Their search was hampered by the secrecy with which it had to be conducted; notification of the American Embassy in Santiago that they were looking for Townley would have been a public revelation of their interest in him. When Operations was unable to find him in Chile or Miami, they notified Security that their interest had ended. Authority to contact him was then cancelled by Security in December, 1971. Had they wanted to contact him again, Operations would have been required to request a new preliminary check and approval from Security (Tr. 5048-5049), which they never did. The records also indicate that Townley contacted agency people in 1973 and again asked if they wanted to interview him. By that time, Operations was not interested because he had become a public figure in Chile through his anti-government activities. Newspaper articles and reports of radio broadcasts about him were put in his file, as well as a report from a State Department officer at the Santiago Embassy, where Townley had come in 1971 to reveal that he had contacts with various political groups, including Patria y Libertad (Tr. 5053, 5058).

After calling these witnesses and introducing various exhibits into evidence, the defense rested its case.