

1 MR. TABAK: Thank you, sir.

2 (Jury present)

3 THE COURT: Good morning, ladies and gentlemen.

4 Mr. Tabak?

5 MR. GREEN: Your Honor, the government calls
6 Maximiliano Lora.

7 THE COURT: Mr. Guranich, would you first reswear
8 the interpreter, and then we will swear the witness.

9 (Isolina Bernhardt was sworn as the
10 Interpreter by the Clerk of Court.)

11 M A X I M I L I A N O L O R A, called as a
12 witness, being first duly sworn, testified
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. GREEN:

16 Q Mr. Lora, are you testifying today voluntarily?

17 A I got a subpoena, and I was forced to come here.

18 MR. AGUILAR: I object, your Honor. That
19 is not responsive to the question.

20 THE COURT: Well, he has responded. He said
21 he was subpoenaed and he came here pursuant to the
22 subpoena, which is a compulsive form of process. I will
23 let it stand.

24 Q Is there also an order requiring you to testify
25 today?

1 A Yes.

2 Q What is your understanding of that order?

3 A That anything that I say here, anything

4 that I testify, won't be used against me.

5 Q How old are you, Mr. Lora?

6 A Thirty-six years old.

7 Q Where were you born?

8 A In Cuba.

9 Q When did you come to the United States?

10 A In 1969.

11 Q Is it fair to say that you do speak some English?

12 A Yes.

13 Q Is it also fair to say that you have asked for

14 a translator because you feel more comfortable speaking

15 Spanish?

16 A Correct.

17 Q Do you understand that you can speak English,

18 if you prefer to do that?

19 A Yes.

20 Q Where do you live at the present time, Mr. Lora?

21 A In New Jersey.

22 Q What do you do for a living?

23 A Truck driver.

24 Q What other work have you done since you came to the

25 United States?

1 A X-ray technician, I had a drafting school, I was
2 the manager of a thirty-unit building for a few years. I
3 also used to sell cars. I used to manage a supermarket.

4 Q Did you also have a karate studio?

5 A Yes.

6 Q What were your qualifications for that?

7 A Black belt.

8 Q Have you ever been convicted of a crime?

9 A Once.

10 Q In fact, were you convicted of possessing a
11 weapon in New Jersey?

12 A That was the reason why I was convicted.

13 Q Did you ever work for a man named Manuel
14 Fernandez?

15 A Correct.

16 Q By what names do you know him?

17 A By "Manolo," "Manny," "Manuel."

18 Q Any others?

19 A No.

20 Q About what year did you first meet Mr. Fernandez?

21 A When I came from Cuba to New Jersey, in 1973.

22 Q In what city did you meet him?

23 A In Elizabeth.

24 Q Did you work for Mr. Fernandez in New Jersey?

25 A Correct.

1 Q In what business?

2 A Supermarket.

3 Q Did there come a time that you learned that
4 Mr. Fernandez was traveling to Miami?

5 A Yes.

6 Q Did you later learn from Mr. Fernandez what kind of
7 business he was doing in Miami?

8 A Yes.

9 Q What did Mr. Fernandez tell you he was doing?

10 A That he was in the marijuana business.

11 Q Did there come a time that you went to work for
12 Mr. Fernandez in Miami?

13 A Yes.

14 Q When you first went to Miami to work for
15 Mr. Fernandez, what type of work did you do for him?

16 A I went there to look after him, but in addition
17 to that, I drove trucks loaded with marijuana on two or three
18 occasions, and also on two or three occasions he
19 sent me to collect some money voluntarily.

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21 (Continued on next page)

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1 Q And will you tell the jury approximately how
2 long you remained in Miami at that time?

3 A Several months.

4 Q And then did you return to New Jersey?

5 A Correct.

6 Q Was there a second time that you went to work
7 for Manny, Manuel Fernandez, in Miami?

8 A Correct.

9 Q And why did you go to work for him the second
10 time?

11 A Because I found out that he had been shot,
12 and then he was a friend of mine. I wanted to be with
13 him.

14 Q And did you learn from Mr. Fernandez who he
15 believe had shot him?

16 A Yes.

17 Q And who was that?

18 A Luis Fuentes.

19 Q Mr. Lora, had you ever met Luis Fuentes before?

20 A Yes.

21 Q When was that?

22 A He used to work for Manuelito.

23 Q And after you returned --

24 THE COURT: When you say Manuelito, to whom did
25 you have reference?

1 THE WITNESS: Manny Fernandez.

2 Q Now, Mr. Lora, when you went back to Miami to
3 work for Mr. Fernandez the second time did you ever try to
4 find Luis Fuentes?

5 A We never found him.

6 THE COURT: No. Did you try to find him?

7 THE WITNESS: Yes.

8 Q With whom did you try to find him?

9 A With Arocena.

10 Q Were there other people as well?

11 A Yes.

12 Q Do you see Mr. Arocena in the courtroom today?

13 A Yes. The one over there (indicating).

14 THE COURT: Well, there are a lot of people
15 over there.

16 THE WITNESS: The gentleman who is sitting at
17 the corner, with that thing between his ears.

18 THE COURT: Between his ears. All right.
19 That is the hearing device. The witness has pointed out
20 Mr. Arocena.

21 Q Did you know Mr. Arocena's name at the time?

22 A (In English) No.

23 THE COURT: What name did you know Mr. Arocena
24 by?

25 THE WITNESS: (Through the interpreter) I never

1 found out any name.

2 Q Where was the first place that you met
3 Mr. Arocena?

4 A Trianon.

5 Q What is Trianon?

6 A It's a restaurant in Miami.

7 Q With whom did you go to the Trianon Restaurant?

8 A With Manuel Fernandez.

9 Q And when you got there, was Mr. Arocena with
10 anybody?

11 A Yes.

12 Q Do you know that person's name?

13 A If I see his picture, yes, but I don't remember
14 his name.

15 Q Let me show you, Mr. Lora, what is marked
16 Government's Exhibit 625, which is in evidence, and ask you
17 if you recognize the person in that photograph.

18 A Yes.

19 Q And who is that man?

20 A The one who was with Arocena on that day.

21 THE COURT: At the Trianon Restaurant?

22 THE WITNESS: Correct.

23 MR. GREEN: Your Honor, may I just briefly show
24 this to the jury, so they will understand who is meant.

25 (Pause.)

1 Q Now, when you got to the Trianon Restaurant,
2 what if anything did Mr. Fernandez tell you to do?

3 A He told me to get into the car with Arocena
4 and two other persons who were there that I do not remember
5 who they are, and to go with him and not to say anything
6 in the car, and when we get to Luis' house, to show him who
7 Luis Fuentes was.

2 8 Q What if anything did Mr. Fernandez tell you
9 what would happen after you identified Luis Fuentes?

10 A That they were going to get him, because they
11 were going to kill him.

12 Q After you met Mr. Arocena at the Trianon
13 Restaurant, what did Manny Fernandez do?

14 A He left.

15 Q And what did you do?

16 A I left with them, with Arocena, in the car to
17 get -- to see Luis.

18 Q Who was driving

19 A Arocena.

20 Q Where were you sitting?

21 A On the right-hand side.

22 Q In the front seat?

23 A Yes.

24 Q And was there anybody else in the car?

25 A Two people in the back that I do not remember

1 who they were.

2 Q Where did Mr. Arocena drive to?

3 A To Hialeah.

4 Q What was he doing while he drove?

5 A He was talking on the radio.

6 Q And did you hear any voices coming out of the
7 radio?

8 A Yes.

9 Q Do you know what type of radio that was?

10 A I don't remember.

11 Q Did you understand anything that was said at
12 that time?

13 A No.

14 Q Why not?

15 A Because they were talking in code.

16 Q Was there any conversation between Mr. Arocena
17 and the man in the back seat?

18 A If I remember correctly they were talking, and
19 they opened a briefcase that they had, which had a machine-
20 gun inside.

21 Q And what did the man in the back seat do with
22 the machine-gun?

23 A Well, they had it there.

24 Q Did Mr. Arocena say anything to you at that
25 time?

- 1 A Whether I wanted a revolver.
- 2 Q And what did you tell him?
- 3 A No, that I didn't want any revolver.
- 4 Q Did Mr. Arocena have a gun at the time?
- 5 A Yes. He had a pistol. If I remember cor-
6 rectly, he had a pistol.
- 7 Q Do you recall what kind?
- 8 A I think it was a Baretta.
- 9 Q And why didn't you take a gun from Mr. Arocena?
- 10 A Because I didn't need any pistol, because I
11 wasn't going to kill anyone.
- 12 Q Now, did you have your own gun at the time?
- 13 A Yes.
- 14 Q And was it legal to have that gun?
- 15 A It was a legal gun that I always had on me,
16 and when I used to hang out with Manuelito I had that gun,
17 but it was a legal gun.
- 18 THE COURT: Legal or illegal?
- 19 THE WITNESS: Legal.
- 20 THE COURT: Legal. All right.
- 21 Q What happened when you got to Hialeah?
- 22 A We passed by the front of the park, and we
23 drove around two or three times to see if we could manage
24 to see Luis, but we never saw him.
- 25 Q What happened when you failed to find Luis

1 Fuentes?

2 A Well, we left.

3 Q Now, Mr. Lora, did there come a time several
4 days later, that you went to La Caretta Restaurant?

5 A Yes.

6 Q Where is that located?

7 A I don't remember very well. I know where it
8 is, but I don't remember which streets.

9 Q Is that in Miami?

10 A Correct.

11 Q Did you go to the restaurant with anybody?

12 A No, I went by myself.

13 Q And after you got there did anybody else
14 arrive?

15 A Yes. Arocena arrived.

16 Q What happened after Mr. Arocena arrived?

17 A He and I went to the same place where we went
18 a previous time, to see if we would see Luis.

19 Q Did Mr. Arocena have anything with him at that
20 time?

21 A A camera and that thing that he used to see
22 through: binoculars.

23 Q Now, did you go back to Mr. Fuente' house at
24 Hialeah?

25 A Yes.

1 Q What did Mr. Arocena do when you arrived
2 there?

3 A He was taking some pictures, and we parked the
4 car about a block away from the house and we stayed there
5 for about an hour or two, waiting to see if Luis would
6 arrive.

7 Q Did Luis Fuentes arrive?

8 A No.

9 Q And what did you do when he didn't show up?

10 A We left.

11 Q Now, did you ever see the photographs that
12 Mr. Arocena took at Luis Fuentes' house?

13 A Yes.

14 Q Where were you when you saw these photographs?

15 A That was, if I remember correctly, I think it
16 was at a McDonald's -- excuse me -- at the parking lot of
17 a McDonald's.

18 Q Whom were you with at the time?

19 A With Manuel Fernandez.

20 Q And was anybody else there?

21 A Arocena was there with me.

22 Q How would you describe the photographs?

23 A They were all bad. They weren't any good.

24 Q What was done with the photographs after you
25 saw them?

1 A He kept the pictures.

2 Q Now, did there come a time that you accompanied
3 Mr. Fernandez to an office building?

4 A Yes.

5 Q Where was that building?

6 A In Miami.

7 Q What happened when you got there?

8 A Well, Manuelito and I got out, and we went up
9 to the building, and when we got upstairs Arocena was
10 there with two or three people. We went in, and
11 Manuelito, they began talking about weapons, and then they
12 were showing some weapons to Manuelito, and then we left.

13 Q Do you recall what type of weapons were shown
14 to Mr. Fernandez?

15 A Pistols and revolvers.

16 Q And who was there besides Mr. Arocena?

17 A There were other people there, but I don't
18 remember exactly who they were.

19 Q Did Mr. Fernandez take any of the weapons with
20 him at that time?

21 A No.

22 Q Now, do you know a man named Oscar Daria?

23 A Yes; I know him.

24 Q Who is he?

25 A A man who owed some money to Manuel.

1 Q Do you know how much money he owed?

2 A About 200,000 pesos -- dollars.

3 Q And how was it that he owed that money?

4 A For the sale of grass on credit, and he owed
5 him that money.

6 Q Now, did there come a time when you went with
7 Mr. Fernandez to Oscar Daria's house?

8 A Yes.

9 Q Who went with you?

10 A Arocena, Manuelito and myself and another man,
11 the man on the picture.

12 Q The man in the photograph that you were shown
13 a little while ago?

14 A Yes.

15 Q And what happened when you got there?

16 A We got there, and Manuelito knocked on the
17 door, and when he opened he told him that the money was
18 owed him, that now he owed that money to them.

19 Q Mr. Mr. Fernandez said to whom?

20 A To Daria.

21 Q And when Mr. Fernandez said that the money was
22 owed to them, to whom was he referring?

23 A To Arocena and the man who was there.

24 Q How close were Mr. Arocena and the man in the
25 photograph standing in relationship to Mr. Fernandez at

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that time?

A They were very close to each other. Everybody was very close to each other.

Q Now, after Mr. Fernandez said that to Mr. Daria, did Mr. Daria say anything?

A He told him not to worry, that he was going to pay him back and that he didn't have to get anybody to collect the money.

(Continued on the next page.)

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Q Did Mr. Arocena say anything?

A If I remember correctly, he said that he had to have the money in one or two weeks.

Q After Mr. Arocena said that, what happened?

A Nothing. We left.

Q Are you familiar with a business called Latin Tire Company?

A Yes., It is a place where tires are fixed and there is a very large shopping center there, in front.

Q Did there come a time that you accompanied Mr. Fernandez to the shopping center near Latin Tire Company?

A Yes.

Q What happened when you got there?

A Arocena and Manuel began to talk inside the car. I got out of the car and went to have some coffee.

Q What happened next?

A After they finished, Arocena drove off in his car and we drove off in ours.

Q Did there come a time that Mr. Fernandez asked you to deliver money to somebody?

A Yes.

Q Do you know how much money it was?

A About -- I think it was between 15 and 20 thousand pesos -- I mean dollars.

Q For what purpose were you delivering the money?

1 A For a purchase that Manolito was making
2 from him for 10 or 15 machine guns.

3 Q Purchased from whom?

4 A From Arocena.

5 Q Did you in fact deliver the money?

6 A Yes, I delivered it.

7 Q Where did you go to deliver it?

8 A To 88th and Kendall.

9 Q What happened when you got there?

10 A I got there and there was nobody there, until a
11 person arrived, and I delivered it to him, the man in
12 the photograph.

13 Q To your knowledge --

14 THE COURT: We are about to switch interpreters,
15 apparently. We will swear the relief interpreter.

16 MR. AGUILAR: Your Honor, there is no need
17 to do that. I believe she has been sworn already, and
18 we will stipulate to her qualifications.

19 THE COURT: You will continue giving your
20 interpretation under the oath administered when you first
21 began?

22 THE INTERPRETER: Yes, your Honor.

23 THE COURT: Please state your name.

24 THE INTERPRETER: Anita Zevallos.

25 Q Mr. Lora, do you know whether Mr. Fernandez ever

1 received the guns for which he delivered the money?

2 A No.

3 Q Where was Mr. Fernandez living during the time of
4 the meetings with Mr. Arocena?

5 A In Coral Gables, in Solano Prado.

6 Q Where were you living, Mr. Lora?

7 A I lived with him.

8 Q How would you describe the house that
9 Mr. Fernandez had in Coral Gables?

10 A A really large house, about four rooms, with a
11 swimming pool in the back and a canal behind the swimming
12 pool.

13 Q Did there come a time that you were visited there
14 by Mr. Arocena?

15 A Yes.

16 Q Did Mr. Arocena come with anybody?

17 A Yes.

18 Q With whom?

19 A The gentleman in the photograph.

20 Q Did those men have anything with them when they
21 arrived?

22 A They had a briefcase.

23 Q What happened after they arrived?

24 A They sat down in a room that Manolito had, which
25 was a sort of an office, and they started to talk to each

1 other, and they opened the briefcase and they have a
2 machinegun in it, and then, afterwards, when I entered
3 the office, he told me that they had given this to him as
4 a gift.

5 Q How many machineguns did the men give to
6 Mr. Fernandez?

7 A Two.

8 Q Did they give Mr. Fernandez anything in addition
9 to the guns?

10 A Two silencers.

11 Q Do you know what type of machineguns they were?

12 A I think they were Macs.

13 Q About how long did Mr. Arocena and the other
14 man remain at Mr. Fernandez' house?

15 A About two hours, I think.

16 Q Did there come a time after that day --

17 THE COURT: You said that they gave the two
18 machineguns and silencers at the office, is that correct?

19 THE WITNESS: Ues, they gave them to Manolito.

20 THE COURT: - Where? -

21 THE WITNESS: In the office. In the office of
22 Manolito. He had sort of an office in his home.

23 Q Did there come a time after that day that
24 Mr. Fernandez gave one of the machineguns to somebody?

25 A Yes. He gave it as a gift to a gentleman who had

1 some business dealings with him, I think. Pardon me,
2 I think he lent it to him.

3 Q What was that man's name?

4 A Well, he was called -- they called him Jimmy. He
5 was Jimmy.

6 Q Do you know what type of business dealings he had
7 with Mr. Fernandez?

8 A Well, he bought grass from him.

9 Q What happened to the other machinegun?

10 A I threw it into a canal one day when he told me
11 to do so.

12 Q Why did Mr. Fernandez tell you to throw the
13 machinegun in the canal?

14 A Well, because one day it seems there was some
15 sort of complaint given because of the number of people
16 who kept coming and going into the house, and then the
17 police came and surrounded the house and that is when
18 Manolito told me to throw it into the canal. That happened
19 at night.

20 Q After you threw the machinegun in the canal
21 that night, what did you do?

22 A Then we were trying to get out of the house, but
23 we couldn't find a way to leave, so we finally left by
24 means of a little boat on the canal that was in the rear
25 of the house.

1 Q Shortly before you left the house that night,
2 did anybody have a telephone conversation?

3 A Well, I heard Manolito talking on the phone
4 several times, many times.

5 Q Did you ever hear any of that conversation?

6 THE COURT: He said he heard him several times.
7 Was there one particular conversation that you may have
8 overheard?

9 THE WITNESS: I overheard him speaking two or
10 three times, but I was so busy -- I kept peering out of
11 the window -- that I really could not pay too much attention
12 to the conversation.

13 Q Did you ever go back to that house after that
14 night?

15 A No.

16 Q How soon after that did you return to New Jersey?

17 A Well, about five days later -- five or six
18 days later.

19 Q Did you ever work for Mr. Fernandez again after
20 that?

21 A No.

22 MR. GREEN: No further questions.

23 THE COURT: You may cross-examine.

24 MR. AGUILAR: Thank you, your Honor.

25

1 CROSS-EXAMINATION

2 BY MR. AGUILAR:

3 Q Mr. Lora, you gave a statement to the FBI on
4 November 28, 1983, is that correct?

5 A No.

6 Q Was that November 17, 1983?

7 A When I spoke with the FBI, it was when I was
8 given the subpoena, and I don't recall on what date that
9 happened because I never recall dates.

10 Q Could it have been November 17, 1983, in
11 New York City?

12 A I have to repeat again that I don't recall the
13 date and so I can't tell you.

14 Q Did you also have more than one meeting with
15 the FBI?

16 A Yes.

17 Q How many meetings did you have with the FBI?

18 A I can't recall. I can't recall at the moment.
19 As a matter of fact, I should even charge for all the
20 parking lots -- tickets that I have had to pay here and
21 I don't even know how many times I have come.

22 Q Was it more than five times that you met with the
23 FBI?

24 A Yes, sir.

25 Q You met with the FBI quite frequently, isn't that

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correct?

A No.

Q Who did you meet with in the FBI?

A The only person, with Mr. Tabak.

Q That is the only FBI agent you spoke with?

A That was the only person I came to see. There were other people around, but I don't know their names.

Q Did you ever meet with Special Agent Thomas Menapace?

A I don't know him.

Q Did you ever meet with the FBI in Elizabeth, New Jersey?

A No.

Q You never had a meeting in Anthony Rinaldo's office with Agent Menapace and yourself and your attorney present?

A Yes, once, with a gentleman from the FBI whose name I do not know, and Anthony Rinaldo and myself.

Q It wasn't Agent Wack?

A Who is Wack?

THE COURT: Do you recognize the man who is sitting in the light jacket who has just held his hand up?

THE WITNESS: Yes.

THE COURT: Do you know his name?

THE WITNESS: I don't know.

1 Q You testified that you met with the FBI on several
2 occasions and the only person you spoke with was
3 Agent Wack, is that correct?

4 MR. GREEN: Objection, your Honor. That was not
5 the testimony.

6 THE COURT: I will sustain it.

7 MR. AGUILAR: I am sorry, your Honor. He testified
8 was Agent Tabak.

9 THE COURT: He believes that Mr. Tabak is an
10 agent. Well, that is his belief.

11 Q Did you ever meet with Mr. Larry Wack of the FBI?

12 THE COURT: The man who held up his hand a
13 few minutes ago and who is holding it up now.

14 Q This gentleman right here, did you ever meet with
15 this gentleman (indicating)?

16 A Yes, here on two occasions, with him and with
17 him and the other one was present, too, but not any more.

18 Q When did you meet with these gentlemen?

19 A I don't recall.

20 Q Was it this year?

21 A Yes.

22 Q Did you meet with any FBI agent last year?

23 A Tell him that if he asks me by date, I can't
24 reply because I don't recall.

25 Q I am not asking by date. I am asking you by year.

1 In the whole of 1983, did you meet with the FBI?

2 A The first time I met any of them was when I
3 received the subpoena, and I don't recall whether this
4 was in 1983 or 1984.

5 Q Did you receive a subpoena to go to Anthony
6 Rinaldo's office to meet with the FBI on November 20, 1983?

7 MR. GREEN: Objection, your Honor. This is not
8 relevant, and it has been covered.

9 MR. AGUILAR: No, your Honor, it has not. We
10 are discussing whether this man gave statements to the
11 FBI on prior occasions.

12 THE COURT: Overruled. I will let you inquire.

13 THE INTERPRETER: Would you repeat the question,
14 sir, please?

15 MR. AGUILAR: Yes.

16 Q Did you receive a subpoena to appear at
17 Anthony Rinaldo's office on Westfield Avenue, Elizabeth,
18 New Jersey, on November 20, 1983 to meet with the FBI?

19 A When I received the subpoena, I went to see
20 my lawyer, Anthony Rinaldo, and then we came to New York
21 and we spoke with Mr. Tabak, here in New York, and
22 that was the first time.

23 Q So your testimony is that you never met with
24 Agent Menapace or any agent of the FBI in Elizabeth,
25 New Jersey, in your attorney's office?

1 A No, I didn't say that. No, I didn't say that.
2 I said that after I had come here once we did have a meeting
3 in the offices of my lawyer in Elizabeth, New Jersey, Anthony
4 Rinaldo, and there was an FBI agent there who was present.

5 Q And that agent took a statement from you, is
6 that correct?

7 A Yes.

8 Q That agent is not present in court today? You
9 don't see him anywhere in this courtroom today, do you?

10 A No.

11 Q Several days after that meeting at
12 Attorney Rinaldo's office, did you have a further meeting,
13 this time in New York City, with other agents of the
14 FBI?

15 A There weren't certain agents; it was always
16 Mr. Tabak who I spoke to, and there could be one or two
17 agents present, but they never asked anything. All the
18 questions were asked by him.

19 Q Do you remember how long those meetings took?

20 A One hour, a bit over an hour.

21 Q Do you have any idea how many meetings you had
22 with Mr. Tabak?

23 A I don't recall exactly.

24 Q Was it more than five meetings?

25 A It could be. It could have been seven in all.

1 Q And they could have been anywhere from last
2 year to this year? You don't remember, correct?

3 A They could have been last year or this. I don't
4 recall exactly.

5 Q Were you subpoenaed every time to come in?

6 A No, just the first time.

7 Q The other times you came in voluntarily, isn't
8 that correct?

9 A No, not voluntarily. I had had my subpoena,
10 had received my subpoena, and I also had a paper signed
11 by the judge granting me immunity.

12 Q When was the first time that you were offered
13 immunity by the prosecutor?

14 A The first time I spoke to them, before I
15 spoke, before I made any kind of a statement.

16 Q Were you then given immunity by a federal judge?

17 A I don't know whether he was a federal judge. I
18 know he was a judge.

19 Q Then after you had been given immunity, you
20 began to have meetings with Mr. Tabak, is that correct?

21 A That's right.

22 Q Do you remember when your last meeting with
23 Mr. Tabak was?

24 A Yes.

25 Q That was Sunday, you mean -- I mean Monday?

1 A Monday, yes.

2 Q Was it here in this building or the building
3 next door?

4 A In the other building over there.

5 Q How long did that meeting last?

6 A It was pretty quick, about half an hour.

7 Q At that meeting, did you review all the
8 testimony you would give today?

9 A No.

10 Q You didn't review any prior testimony you had
11 given?

12 A Yes, a little. I answered their questions.
13 They would ask questions, and I would answer them, same
14 questions.

15 Q They told you what they were going to ask you
16 today, and they asked what your answers would be and you
17 gave them the answers you expected to give today, correct?

18 A No, they didn't tell me anything. They kept
19 asking me what they always used to ask.

20 Q That means you went over the same testimony you had
21 given them in prior meetings, correct?

22 A Same thing that I am saying here.

23 Q Then did you review your testimony before
24 the grand jury given by you on February 14, 1984?

25 A I have never seen it again.

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Q All the facts you have testified to today, you rely on your memory alone to give those facts?

A I am telling you the truth of what I can recall, the truth of what I know.

Q All I am asking you is, are you only relying on your memory for the testimony you have given today? That is all I am asking you.

A Yes, only what I can recall is what I am saying here.

Q You remember that Mr. Fernandez was doing drug dealings in Miami, is that correct?

A Yes.

(Continued on next page)

T3

1 Q How long were you with him as associate or
2 bodyguard?

3 A Well, since we were in Elizabeth we were always
4 together, I used to work with him.

5 Q Were you with him for several years.

6 A No.

7 Q Do you remember how long you were with him as
8 bodyguard?

9 Q Do you remember how many drug deals you learned
10 that he was engaged in while you were bodyguard?

11 A I recall that he had quite a few.

12 Q Do you remember any of the names of the
13 individuals he dealt with?

14 A I can't recall any specific.

15 Q Did Mr. Fernandez ever inform you of the boat
16 that was bringing in the marijuana to the United States?

17 A He would only say that they were bringing in
18 a boat, that the boat was coming, and I would help him.
19 I would go with him.

20 Q He told you every time a boat would come in?

21 A No.

22 Q He only told you once in a while when the boat
23 was coming in?

24 A When he was going to have a trip, he would say,
25 "I am going to have a trip."

- 1 Q How many times would he tell you that?
- 2 A Many times.
- 3 Q Fifty times?
- 4 A No.
- 5 Q Twenty-five times?
- 6 A He did a lot, enough. He made twenty trips
7 or twenty-one. I don't know.
- 8 Q Did he ever tell you where the boats were
9 coming in from?
- 10 A From Colombia and I think from Jamaica.
11 I think he also had some from Jamaica.
- 12 Q As part of being his bodyguard, did you travel
13 with him to Colombia and Jamaica?
- 14 A Never.
- 15 Q As part of being his bodyguard and/or associate,
16 did you ever receive large sums of money as part payment
17 for being his associate?
- 18 A No. Once in a while he would give me money
19 and some time would go by and he wouldn't give me anything,
20 but they were never very large sums.
- 21 Q How much were you getting paid?
- 22 A He would give me like, for example, one week
23 he would give me a thousand, seven hundred, eight hundred.
24 It would depend.
- 25 Q He also bought you the car you were driving; is

1 that correct?

2 A I never had any car. All the cars belonged
3 to him.

4 Q You were driving one of his cars?

5 A With him, yes.

6 Q How long did you live in that house in Coral
7 Gables, Florida?

8 A I don't know. I can't recall.

9 Q Was it six months?

10 A Less than that.

11 Q Did you ever see Mr. Fernandez --

12 MR. AGUILAR: I am sorry.

13 Q Was Mr. Fernandez the owner of the supermarket
14 that you managed here in New Jersey?

15 A Yes.

16 Q That was one of his properties that you knew
17 about?

18 A Yes.

19 Q What other properties did you know about?

20 A At that time or now?

21 Q Well, let's start at that time.

22 A Well, that I know of, the building, the build-
23 ing that had the insurance agency and the building that
24 had the supermarket. He bought it. And another build-
25 ing he also had, and I don't recall the street, also in

1 Elizabeth.

2 Q What property do you know that belongs to
3 him today?

4 A Well, now he has a farm in Miami, one or two
5 farms perhaps in Miami, and he has another farm -- he has
6 another farm in upstate New York, and I don't know,
7 perhaps -- I know of nothing else.

8 Q Do you remember his yacht?

9 THE COURT: I would not that we have switched
10 back to our first interpreter, who has previously been
11 sworn, and we will just continue the examination as it is
12 going.

13 I appreciate the interpreters switching when
14 it is appropriate, and I will note that for the record.

15 A Yes. I know he has a yacht.

16 Q He has a yacht today?

17 A Yes.

18 Q Do you know where he keeps that yacht?

19 A I don't know where it is right now at the
20 present time.

21 Q You have been on that yacht, haven't you?

22 A Yes.

23 Q On many occasions?

24 A No, not many.

25 Q It is a big yacht, isn't it?

- 1 A Yes.
- 2 Q Eighty feet?
- 3 A No.
- 4 Q Seventy?
- 5 A No.
- 6 Q How big is it?
- 7 A It's not a new yacht. It's a '57 yacht, and
8 it's about sixty feet.
- 9 Q Besides the yacht, do you also know that he
10 has several corporations which are active today in
11 Panama?
- 12 A I know he has corporations, but I don't know,
13 I don't have any firsthand knowledge about that.
- 14 Q Has he also told you that he has several
15 safety-deposit boxes in New Jersey?
- 16 A He has never told me that.
- 17 Q Has he ever told you that he has money hidden
18 away in New Jersey?
- 19 A He has never told me that.
- 20 Q Going back to the supermarket you managed for
21 Mr. Fernandez, did Mr. Fernandez order you to burn that
22 supermarket for insurance purposes?
- 23 A By the way, the day that supermarket burned
24 he was there with his car, and I was squaring away the
25 register.

1 Q The answer to my question is yes, he ordered
2 you, or no, he didn't order you.

3 A The reply was no, he didn't order me to
4 burn it. That supermarket caught fire.

5 Q Isn't it a fact that Mr. Fernandez told you
6 he had over-insured that supermarket?

7 A By the way, when that supermarket burned he
8 told me that with regard to the premiums for the super-
9 market that the insurance had gone down.

10 Q Now, you said you personally gave Mr. Arocena
11 some money for Fernandez.

12 A I didn't say that I have it to Arocena, that
13 I gave it to a man sent by Arocena. Well, whether or
14 not he sent him, I knew that he would hang out with him,
15 and I gave it to him.

16 Q Mr. Fernandez told you to give something to
17 an individual who was not Mr. Arocena; isn't that correct?

18 A I was there when -

19 MR. AGUILAR: I am going to object. He is
20 not responding to the questions I am asking. I would
21 ask the Court to instruct the witness to answer the ques-
22 tions and not explain the answer.

23 MR. GREEN: Your Honor, I would object to the
24 interruption of the witness before the answer is made.

25 THE COURT: I think the answer should be

1 completed, and then, if you believe the answer is not
2 responsive, I will consider the matter.

3 Let us have the question repeated and the
4 answer repeated up to the point of the interrupt.

5 (Record read.)

6 A (Continuing) To give the money to that man,
7 because when they were discussing, Arocena was there and
8 that other individual, and I was told to give the money to
9 that person.

10 Q In other words, Mr. Arocena and the other
11 individual was sitting there, and Mr. Fernandez said,
12 "Give it to this individual," the individual who was
13 sitting next to him; is that correct?

14 A That I was going to bring the money, and then
15 the man who was there with Arocena was going to go and
16 pick up the money.

17 Q And when you gave the money to the individual,
18 you said, "This money is for Mr. Arocena"?

19 A No. I hand over the money to him there.

20 Q You don't know why you were giving the money
21 to that individual?

22 A Yes.

23 Q Why were you giving it to him?

24 A Because they were going to send some weapons
25 back for that money, and I myself was going to pick up

1 those weapons.

2 Q And did you pick up those weapons?

3 A No.

4 Q Did anybody that you know of pick up those
5 weapons?

6 A No.

7 Q You said you threw some guns or one particular
8 weapon into a canal. What weapon was that?

9 A One of the ones that Arocena had given to him
10 as a gift.

11 Q Do you know what it looked like?

12 A Yes.

13 Q How big was it?

14 A This big (indicating), and the silencer was
15 long and this thick (indicating).

16 Q When you say that big, you would say about
17 two feet?

18 A Well, if I'm talking about the machine-gun and
19 the machine-gun was this big and the silencer was this big
20 all together, it would have to be about this big (indicat-
21 ing).

22 Q Would you say about a year, two and a half
23 feet?

24 A Something like this, all together.

25 Q And Mr. Fernandez you to throw it over into the

1 canal; correct?

2 A Yes. I myself took it and disassembled it,
3 and I threw the silencer one way and the machine-gun
4 another way.

5 Q You disassembled the silencer from the machine-
6 gun and not the machine-gun itself?

7 A No, not the machine-gun. Why was I going
8 to disassemble the machine-gun for?

9 Q Did you later find out if that gun was ever
10 recovered?

11 A Yes. I was told that they have found it.

12 Q Who found it?

13 A I don't know. The FBI people.

14 Q Have you seen that gun again?

15 A No.

16 Q You said you had a permit to carry a weapon
17 in Miami.

18 A At no time have I said that.

19 Q Was I mistaken when you said you always carried
20 a gun that was legal with you?

21 A When I mean that it was legal, I am saying
22 that it was registered.

23 Q You said you carried it with you knowing that
24 it was illegal for you to carry that firearm.

25 A Correct.

10mps

Lora - cross

1 Q So it wasn't legal, then?

2 A It wasn't legal, because I was carrying it,
3 but it was registered in my name.

4 Q Were you aware that you were violating the law,
5 because you have been convicted of that in New Jersey,
6 haven't you?

7 A Correct.

8 Q The same charge: Carrying a concealed weapon;
9 is that correct?

10 A When I had that case, it was not for carrying
11 a weapon. That weapon was at my home.

12 Q You mean you were charged with criminal
13 possession of a dangerous weapon, a loaded pistol, because
14 you had a gun in your house?

15 A No. At no time was it loaded. I had it
16 where I keep my hunting weapons, and I had -- it was
17 unloaded, and I have greased it, and it was there.

18 Q Do you know what you were convicted of in
19 New Jerse?

20 A For that.

21 Q For what?

22 A For having an illegal weapon.

23 Q You were never convicted of criminal possession
24 of a dangerous weapon to wit, a loaded pistol?

25 A (In English) No.

1 (Through the interpreter) No.

2 Q Let me ask you now: Were you arrested --

3 MR. AGUILAR: Strike that.

4 Q When was the last time you spoke with Mr.

5 Fernandez?

6 A Yesterday.

7 Q Here in New York?

8 A No. He called me up at home.

9 Q How long did you speak with Mr. Fernandez?

10 A For about ten minutes.

11 Q Before that, yesterday, when had you spoken

12 with Mr. Fernandez?

13 A The other day, when I saw him here, when I
14 was going to testify and I couldn't,

15 Q And in your conversation yesterday did you
16 discuss your testimony that you would give today here?

17 A No.

18 Q Did you talk about everything other than the
19 testimony you would give today?

20 A I simply told him it had been printed in the
21 papers and the way the rumors were going, and, by the way,
22 I told him that I was going to testify, and he told me to
23 tell the truth about everything.

24 Q Now, let me go back a little bit regarding the
25 fire at that supermarket.

- 1 A Correct.
- 2 Q Was anybody killed there?
- 3 A Nobody.
- 4 Q Was there an investigation regarding possible
5 arson?
- 6 A Not that I know of.
- 7 Q You don't remember if the Fire Department went
8 in to interview Mr. Fernandez regarding the suspicious
9 nature of the fire?
- 10 A Not that I know of.
- 11 Q How familiar are you with weapons such as guns
12 and pistols?
- 13 A I like them very much. I do hunting, and
14 I have a lot of weapons at home.
- 15 Q You have testified that you believe Mr. Arocena
16 had a Baretta pistol; is that correct?
- 17 A I'm not sure. Let me make it very clear.
18 I am not sure, but I do know that he was holding a small
19 weapon in his hand. He was holding a revolver or a
20 pistol, and I think that it looked rather like a pistol,
21 but I don't remember very well.
- 22 Q He had it in his hand?
- 23 A And then he was holding it in his hand, and
24 then he put it next to that place where you showed here.
- 25 Q Do you remember how long he had it there?

1 A I don't remember exactly how long, but then
2 he took it and he carried it with him.

3 Q Did you have or own a Baretta at one time?

4 A Yes.

5 Q You know what they look like?

6 A Yes.

7 Q And yet you are confused today because you
8 don't know if he had a pistol, a Baretta or a gun or if
9 he had anything?

10 A I don't remember well, but I do know that he
11 was holding a pistol or a gun in his hands. That's for
12 sure.

13 Q Was it black, silver or chrome?

14 A Black.

15 Q What calibre Baretta did you own?

16 A (In English) 380.

17 Q And do you remember what calibre Baretta you
18 say Mr. Arocena had?

19 A I already told you that I don't remember.

20 When I said it was a Baretta, it could have been a 380,
21 but I don't remember exactly.

22 Q Are you saying it was not a 380?

23 A I am saying that I don't remember.

24 Q Now, you said that Mr. Fernandez received
25 some weapons from Mr. Arocena while he was in his office

1 at the Coral Gables home; is that correct?

2 A What I said was that they got there and they
3 sent it to him in a briefcase.

4 Q And were you outside the office when that
5 happened?

6 A At that moment, yes, but I saw when they
7 arrived holding the briefcase in hand.

8 Q And then --

9 A And then I went into the office and they were
10 having a conversation here and were looking at the two
11 machine-guns, and Manuelito told me in front of them that
12 they had given it to him as a gift.

13 Q But it was not in exchange for money then?

14 A No. In that case, no.

15 Q How about in any case?

16 A Well, yes. In the case of the 20,000 pesos,
17 and they never sent the weapons back.

18 THE COURT: Pesos?

19 THE WITNESS: Dollars.

20 Q You testified it was 20,000 or 15,000?

21 A Well, between fifteen and twenty.

22 Q You never knew how much it was, did you?

23 A He told me, but I don't remember. I do know
24 that it was between fifteen and twenty.

25 Q But you don't know the amount? You really

15mps

Lora - cross

1624

1 don't?

2 A I don't remember it, but I do know that it
3 wasn't less than 15,000 and no more than 20,000.

4 Q Did you ever own stock in the Latin Tire Company
5 in Miami?

6 A Never in my life.

7 Q But you were aware that Mr. Fernandez was part
8 owner of the Latin Tire Company, weren't you?

9 A That's what you say to me.

10 Q Didn't he ever tell you that he had several
11 businesses in Miami?

12 A Yes. The only ones he had were about marijuana,
13 as far as he told me.

14 Q You don't know if he had any legitimate
15 businesses in Miami?

16 A No; I don't remember.

17 MR. AGUILAR: Your Honor, may I have a moment?

18 THE COURT: Certainly.

19 (Pause.)

20
21 (Continued on the next page.)
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ET4

1 Q When Mr. Fernandez imported his marijuana into the
2 United States, did you know or did you learn anywhere that
3 he stored that marijuana?

4 A Correct.

5 Q And it was stored in various warehouses all
6 over Miami and Hialeah?

7 A Yes, he had some warehouses, those warehouses,
8 and also at one of the farms that he owned.

9 Q One of those Mini warehouses?

10 A No, I only remember one.

11 Q Do you remember under what assumed names
12 Mr. Fernandez worked?

13 A He always used his name.

14 Q But it wouldn't surprise you to learn that
15 he may have used other aliases, correct?

16 A It is strange, because he never told me and
17 he would have told me because I was always hanging out
18 with him.

19 Q So if he were to testify that he used those
20 aliases, that is something --

21 THE COURT: That you don't know anything about,
22 is that right?

23 THE WITNESS: Right.

24 Q You said you were forced to come here to testify
25 today?

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A I got a subpoena.

Q When did you get that subpoena?

A A few days -- a few days ago.

Q Are your expenses being paid by the government today?

A Yes, but I have lost all the receipts.

Q Are you going to be submitting a voucher to get paid, to be reimbursed for expenses?

A No, I am not going to submit it.

MR. AGUILAR: I have nothing further, your Honor.

REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Lora, when you spoke with Mr. Fernandez on the telephone the other day, was there any conversation about a person named Augustine, or Gus, Garcia?

A Oh, he told me --

MR. AGUILAR: I object to anything that was told to him by Mr. Fernandez.

THE COURT: You did go into the conversation?

MR. AGUILAR: I didn't ask him --

THE COURT: You went into the subject of it, because I remember hearing it.

I would suggest, however, that counsel will be limited in what he can ascertain since the cross-examination on the subject was relatively limited.

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MR. GREEN: May we have a side bar?

THE COURT: No. Ask your next question.

MR. GREEN: May we have an answer to the previous question, your Honor?

THE COURT: All right, let's have an answer to the previous question.

Mr. Reporter, please read back the last question.

(Question read)

THE COURT: So the answer is yes, is that correct, sir?

THE WITNESS: Well, that he was here, that he was here, and that he was staying in Elizabeth, that he had seen Manolito testify.

Q What else did Mr. Fernandez tell you?

MR. AGUILAR: I am going to object.

THE COURT: Sustained.

Q You testified that Mr. Arocena had a gun when you were driving with him to Hialeah, is that correct?

A Yes.

Q Was there anything attached to that gun?

A A silencer.

Q Let me show you what has been marked Government's Exhibit 285 for identification (handing).

Do you recognize that document?

A Yes.

1 Q What is it?

2 A It is a paper. It is a document signed by the
3 judge.

4 Q What does that order require you to do?

5 A To tell the truth.

6 Q What is your understanding of what would happen
7 if you did not tell the truth today?

8 A That I can be prosecuted.

9 Q Based upon your statements today?

10 A Yes.

11 MR. GREEN: The government offers Government's
12 Exhibit 285 for identification, your Honor.

13 MR. AGUILAR: Your Honor, we have no objection if
14 also the prior order is going to be entered.

15 THE COURT: The one related to --

16 MR. AGUILAR: To this gentleman.

17 THE COURT: All right. He testified before the
18 grand jury, I assume, under a similar order?

19 MR. GREEN: The defense is free to offer that order.

20 THE COURT: I assume they do at this time.

21 Do you have an objection?

22 MR. GREEN: No objection.

23 THE COURT: 85 for identification is received.

24 xxxxx

25 (Government's Exhibit 285 was received
in evidence.)

1 THE COURT: On recross, I will permit you to
2 offer the other order. If you have a copy, that will suffice.

3 Q Mr. Lora, you testified that you gave between
4 15 thousand and 20 thousand dollars to someone, is that
5 correct?

6 A Correct.

7 Q Was the man who you gave the money to the same
8 man you had seen Mr. Arocena with in the Trianon
9 Restaurant?

10 A Correct.

11 Q Was that also the same man who went with
12 Mr. Arocena to Manuel Fernandez' house with the two
13 machineguns?

14 A Correct.

15 MR. GREEN: May I have one moment, your Honor?

16 THE COURT: Certainly.

17 (Pause)

18 MR. GREEN: No further questions, your Honor.

19 THE COURT: Mr. Aguilar, I indicated you could
20 offer the document, if you wish, and you could certainly
21 have any recross that is pertinent.

22 MR. AGUILAR: I have just a few questions concerning
23 the document, your Honor.

24 THE COURT: Fine.

25 MR. AGUILAR: May I approach the witness, your

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Honor?

THE COURT: Yes.

Let the record reflect we have switched interpreters again. Please state your name.

THE INTERPRETER: Anita Zevallos.

REXCROSS EXAMINATION

BY MR. AGUILAR:

Q I hand you a document, Mr. Lora. Do you recognize that document?

THE COURT: That should be identified. We will call it Defendant Arocena's Exhibit A for identification.

(Defendant Arocena's Exhibit A was marked for identification.)

A It could possibly be the same one I was shown before, but I don't recognize it because it doesn't have the yellow seal it had before.

THE COURT: He means the exhibit tag.

MR. GREEN: The government would stipulate that other than the markings placed by one counsel or another on the document, that this is a fair and accurate copy of the order signed by Judge Sweet granting use immunity to Mr. Lora --

THE COURT: Before the grand jury?

MR. GREEN: Yes, your Honor.

THE COURT: Do you wish to offer that or leave the

1 stipulation where it is?

2 MR. AGUILAR: We will leave the stipulation where
3 it is, your Honor.

4 THE COURT: It is stipulated by the government
5 that Judge Robert Sweet of this court previously conferred
6 what we call use immunity on Mr. Lora prior to his giving
7 evidence before the grand jury.

8 MR. AGUILAR: If we can get the date of that,
9 September 28, 1983 --

10 THE COURT: Is that agreeable?

11 MR. GREEN: Your Honor, the government would
12 stipulate that was the date that the compulsion order was
13 signed by Judge Sweet.

14 THE COURT: All right.

15 Ladies and gentlemen, it has been stipulated
16 further that Judge Sweet has signed an immunity order
17 conferring what we call use immunity on Mr. Lora for his
18 testimony before the grand jury, that he did that on
19 September 23, 1983?

20 MR. GREEN: September 28, 1983, your Honor.

21 THE COURT: I beg your pardon, September 28, 1983.

22 BY MR. AGUILAR:

23 Q Mr. Lora, it would be fair to say that you have
24 been giving information to the FBI or to Mr. Tabak since
25 September 28, 1983, isn't that correct?

1 A Which was the day I signed that immunity, right?

2 THE COURT: That you signed the immunity or that
3 you received it?

4 THE WITNESS: Sorry, that I received the
5 immunity.

6 THE COURT: Since that time, you have been
7 cooperating with the government and giving information to
8 the government?

9 THE WITNESS: Correct.

10 Q And you have met with either Mr. Tabak or agents
11 of the FBI on numerous occasions since that day?

12 A Mr. Tabak has always been there.

13 MR. AGUILAR: Nothing further.

14 REDIRECT EXAMINATION

15 BY MR. GREEN:

16 Q What is your understanding of what would happen
17 if you did not obey the order requiring you to testify
18 in the grand jury?

19 MR. AGUILAR: I object to that, your Honor.

20 THE COURT: No, it is reasonably appropriate re-
21 redirect. I will allow it. You did open the door.

22 A That I would be prosecuted.

23 MR. GREEN: No further questions.

24 MR. AGUILAR: No questions, your Honor.

25 THE COURT: You may step down. You are excused.

rmjah 9 Lora-redirect

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(Witness excused)

THE COURT: Ladies and gentlemen, we will take our recess at this time. It will be ten minutes. Please do not discuss the case among yourselves, and keep an open mind.

(Recess)

THE COURT: Mr. Tabak?

MR. TABAK: Your Honor, the next witness has requested that although he testifies in English, that there be a translator standing by in case there is a word he wants a translation for.

MR. AGUILAR: No problem, your Honor.

THE COURT: Very well.

MR. TABAK: The government calls Gerardo Necuze.

GERARDO NECUIZE, called as a witness

by the government, being first duly sworn, testified as follows:

THE COURT: Mr. Necuse, Miss Zevallos, a court interpreter, will be here to assist you if you require it. Do you understand?

THE WITNESS: Yes, your Honor.

DIRECT EXAMINATION

BY MR. TABAK:

Q Where were you born?

A Holguin, Province of Orienti in Cuba.

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Q Can you spell that?

A H-o-l-g-u-i-n.

Q Since when have you been in the United States?

A Since September of 1969.

Q What is your citizenship status?

A I am a naturalized American citizen.

T5

(Continued on next page)

1 Q Why did you move to the United States?

2 A Because Fidel Castro established a Communist
3 government in Cuba, and I don't like the Communists.
4 My family had businesses. I was planning to become a
5 lawyer, and Mr. Castro has changed all the laws in Cuba,
6 and I decided I didn't want to be a lawyer in a Communist
7 country, and that is one of the reasons I come up here.

8 Q will ask you to speak a little louder, so the
9 jury can hear you.

10 Now, Mr. Necuze, where did you regularly
11 reside when you came to the United States?

12 A I resided in Yonkers, New York.

13 Q And when you were living in Yonkers, what was
14 your first job?

15 A I was an accounting clerk in Twentieth-Century-
16 Fox here in Manhattan.

17 Q And what happened to that job?

18 A I was working for two years, and the company
19 moved to California, so I decided to stay here in New York.

20 Q And what did you do?

21 A I started working as an agent, an insurance
22 agent, at the Prudential Insurance Company in Newark,
23 New Jersey.

24 Q Who was your immediate boss there?

25 A Mr. Jose Ignacio Gonzalez.

2mps

Necuze - direct

1636

1 Q Do you know his full name?

2 A Yes. His name is Jose Ignacio Gonzalez.

3 Q Did you continue working for Prudential while
4 you lived in Yonkers?

5 A Because of the distance, I wanted to move to
6 New Jersey, because I wanted to be closer to my office.

7 Q How long did you continue to work at Prudential
8 in Newark?

9 A I worked for Prudential from December '71 up
10 to January '79.

11 Q What was your position as of January '79?

12 A I was promoted to sales manager.

13 Q How were you doing financially at Prudential
14 as of January '79?

15 A What I regarded as pretty good. I was making
16 twenty-eight, thirty thousand, thirty-two thousand a year.

17 Q Why did you leave Prudential in January of '79?

18 A I decided to change my position and move to
19 Miami. Most of us Cuban people have in mind sooner or
20 later we want to go back to the kind of weather that they
21 have in Cuba.

22 I had two teen-agers, kids, that they were
23 fourteen or fifteen. They were starting high school, and
24 I was afraid they might decide to fall in love and stay
25 here.

1 I love New York, by the way, but I have my
2 parents and all my family in Miami, and so I had decided to
3 move to Miami.

4 Q Did you expect to have a particular job in
5 Miami?

6 A Yes. Jose Ignacio Gonzalez for all the years
7 we were working in Newark, we were like family, and my
8 daughter grew up with his kids, and we were very friendly,
9 and once he told me he had an opportunity to have a good
10 job with Home Life Insurance Company in Miami, and he
11 was going to open an office in Miami, and he was offering
12 me to be assistant manager of the company, with a good
13 salary, which was going to take a little bit of doing,
14 because he had to resign from Prudential and he had to take
15 some classes and courses with Home Life Insurance.

16 Q When you moved to Miami, did you immediately
17 start working for Home Life?

18 A Jose Ignacio Gonzalez had some problems which
19 I suppose was to open the office for Home Life in Miami,
20 or maybe he wasn't ready to become manager of Home Life,
21 and I moved to Miami in January of '79 and I didn't have a
22 job, and I started working in a job that I thought was
23 related, and I started working for Coastal Merchandise in
24 Miami, and I was a salesman for that company until January
25 1980, until Ignacio Gonzalez was set in Miami, and I

1 started working as assistant manager for Home Life Insurance
2 Company.

3 Q What extracurricular activities did you become
4 aware that Mr. Gonzalez was involved in, aside from the
5 insurance business?

6 A He was very involved in politics. He was an
7 anti-Communist. He was a person that if somebody was
8 arrested for immigration problems, I mean a Cuban, he would
9 ask me to go with him and to picket the jail that he was in
10 or any kind of office of the government that might listen
11 to our request that the guy if he was returned to Cuba he
12 could be killed -- that kind of activities.

13 Q Prior to January of 1980 had you ever heard of
14 Omega 7?

15 A Yes.

16 Q What did you know about Omega 7?

17 A That it was an anti-Communist organization, that
18 they were very active, as you might say, freedom fighters.

19 Q Prior to January 1980 had you ever done anything
20 for or with Omega 7?

21 A No.

22 Q I direct your attention to April 1980. Did
23 anything happen that changed your involvement with Omega 7?

24 A Yes. One afternoon Joseph Ignacio Gonzalez
25 approached me in the office -- it was five or six o'clock;

1 I remember that, because I was by myself in the office --
2 and he came over and gave me a piece of paper which was a
3 communiqué from the Omega 7, and he had a tape recorder in
4 the office, which he brought to my office, and he asked
5 me to read it into the tape recorder so he could record it,
6 which I did.

7 Q What did the communiqué from Omega 7 relate to?

8 A It was in relation to the Cuban -- I am sorry --
9 the Peruvian Embassy, where they told the Peruvian people
10 on the Island that anyone who wanted to leave Cuba, there
11 was no problem; just apply for asylum in any Embassy;
12 they would remove the guards from the Embassy, and within
13 hours ten thousand Cubans were inside that Embassy, kids
14 that didn't have anything to eat, and the whole Cuban
15 community immediately started moving, trying to get clothes
16 and food and everything, and that communiqué was basically
17 asking the Cuban people and all the Cuban organizations
18 in exile to do something for those people.

19 Q What particular Cuban Embassy had all those
20 people gone to?

21 A Peru.

22 Q Did you have any discussion with Jose Ignacio
23 Gonzalez about how to read this communiqué so your voice
24 would not be recognized?

25 A First of all, when I read it, I know that Jose

1 Ignacio Gonzalez got to be doing something, because he was
2 very active as an anti-Communist, but what I read was signed
3 by Omega 7, and it was a big shock, because what I really
4 believed was the people fighting for Cuba and really anti-
5 Communist, and he asked me -- he has a voice, Jose Ignacio
6 Gonzalez has a voice that is easily recognized. It is
7 not as bad as mine, and he asked me to put a pencil between
8 my lips and to bite the pencil so I can break the weight
9 of my voice so I could bring to that communique.

10 Q When you made the tape recording of this
11 communique, did you do it with a pencil sideways in your
12 mouth?

13 A Yes; I did.

14 Q What happened to that tape recording for the
15 Omega 7 of the communique that you made?

16 A I did not participate in that. I heard it on
17 the radio, which I assume was on the Cuban radio station in
18 Miami.

19 Q I am going to show you Government's Exhibit 309
20 for identification.

21 Do you recognize that?

22 A Yes.

23 Q That is the tape that I recorded.

24 THE COURT: That was the tape that you recorded
25 back in April 1980, with the pencil in your mouth?

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THE WITNESS: Yes, your Honor.

Q And how do you know that that is a copy of
t9e tape that you recorded?

A Because I heard it.

Q Where did you listen to it?

A In your office and also on the radio.

Q I am going to show you Government's Exhibit
309-T for identification.

Do you recognize that?

A Yes.

Q What is that?

A This is the communique that I read into the
tape recorder.

Q Is it fair to say that this is a fair and
accurate translation of what is contained on Government's
Exhibit 309 for identification?

A Yes.

MR. TABAK: Government offers Government's Exhibit
309 and Government's Exhibit 309-T for identification into
evidence.

MR. AGUILAR: Your Honor, we would have no
objection, except there is one particular word in the trans-
lation. I don't know if it is a typographical error or not
I don't know what it means.

THE COURT: Why don't you point out the word

1 to counsel quietly, and perhaps you can work it out.

2 (Pause.)

3 MR. AGUILAR: We have no objection, your Honor.

4 I don't think Mr. Tabak knows, either.

5 THE COURT: That was part of the exchange, I
6 gather.

7 (Government's Exhibit 309 and Government's
8 Exhibit 309-T for identification were received in
9 evidence.)

xx 10 MR. TABAK: With the Court's permission, I
11 would like to distribute copies of the transcript of 309-T
12 to the jury so they can follow along as we play the Spanish
13 tape.

14 I will now play Exhibit 309 in evidence.

15 (Tape was played.)

16 MR. TABAK: I will now collect the copies of
17 the transcript from the jury.

18 BY MR. TABAK (Continuing):

19 Q Mr. Necuze, after you made this Omega 7 taped
20 communique, did you ever have additional discussions with
21 Ignacio Gonzalez about Omega 7?

22 A Yes

23 Q Did you meet an individual named Arocena,
24 Eduardo Arocena?

25 A Yes.

1 Q How did you meet him?

2 A As the assistant manager of Home Life, I
3 was introduced to Mr. Arocena by Jose Ignacio Gonzalez,
4 and in the beginning he was a friend who was going to
5 become an agent, and he was to be trained by me at Home
6 Life.

7 Q And what state of the United States was this in?

8 A In Miami, Florida, Coral Gables.

9 Q Do you know where Mr. Arocena had lived
10 previously?

11 A In New York City.

12 Q Had you known Mr. Arocena when you lived in
13 New Jersey?

14 A Not as far as I remember.

15 Q Had Mr. Jose Ignacio Gonzalez known Mr. Arocena
16 from New Jersey?

17 A Yes.

18 Q Did you participate in a series of discussions
19 with Mr. Arocena and Mr. Gonzalez about matters having
20 nothing to do with insurance?

21 A Yes.

22 Q What did you eventually learn through those
23 discussions?

24 A I learned that Mr. Arocena was a member of the
25 Omega 7 organization and a very active person in the Omega 7

1 organization, in the beginning that he was the head of
2 the Omega 7 organization.

3 Q Did you later learn what his position was?

4 A Yes.

5 Q What was that?

6 A That he was the head of the Omega 7.

7 Q And what if anything did you learn in that
8 regard about Mr. Gonzalez?

9 A I didn't get the question.

10 Q Did you learn anything about any relationship
11 between Mr. Jose Ignacio Gonzalez and Omega 7?

12 A Yes.

13 Q What did you learn?

14 A I learned that Ignacio Gonzalez and Eduardo
15 Arocena were members of Omega 7.

16 Q As a result of these discussions did you your-
17 self eventually become a member of Omega 7?

18 A Yes.

19 Q Did you ever participate in preparing within
20 him Omega 7 communiques?

21 A Yes.

22 Q Will you describe to the jury how you did that?

23 A More or less the communique was done, and I
24 reviewed it. I checked for any grammar mistakes and more
25 or less some ideas, some words.

1 Q Did you ever personally type an Omega 7
2 communique?

3 A Yes. Once I did.

4 Q Will you describe to the jury how you did that?

5 A It was in the beginning, I was supposed to wear
6 gloves, not to leave any fingerprints on the paper, and I
7 didn't have gloves, so I borrowed some balloons, and with
8 them I tried to type, which I am not an expert.

9 Q Now, with the balloons on your fingers did you
10 finish typing the communique?

11 A No. I was forty-five minutes trying to do it,
12 and it seemed to me that typewriters and myself were not
13 very good together, and Arocena came over and put the
14 balloons on his fingers and finished it.

15 Q Did you ever personally participate in bombings
16 and attempted bombings on behalf of Omega 7?

17 A Yes.

18 Q What was the first Omega 7 bombing that you had
19 anything to do with?

20 A I was in a back-up car, I think you call it,
21 and I was following Jose Ignacio Gonzalez and Eduardo
22 Arocena, and they were going up to Hialeah to place bomb
23 in a building, in INA, which was in those days American
24 Airways, the travel agency that used to make business
25 with Castro, which we considered was a Communist agency

1 for the Cuban Government.

2 Q Did the bomb go off in that particular bombing?

3 A No.

4 Q Did you participate more actively in other
5 bombings and attempts to bomb for Omega 7?

6 A Yes.

7 Q What was the next bombing you participated in?

8 A The Mexican Consulate in Miami.

9 Q Where was the Mexican Consulate located?

10 A Brickell Avenue.

11 Q Were you familiar with the location of the
12 Mexican Consulate?

13 A Yes.

14 Q How were you familiar with it?

15 A Because the first office that I worked with
16 Home Life Insurance Company was in the same building.
17 I don't remember the floor, but it was in the same building.
18 It was in a big office, and it was too big for the force of
19 agents that we had, and we moved to Madruga Avenue.

20 Q Had Home Life already moved to Madruga Avenue
21 before the bombing at the Mexican Consulate?

22 A Yes.

23 Q Why was the Mexican Consulate an Omega 7 target
24 at that particular time?

25 A Because all the Cubans know the Mexican Govern-

1 ment is not a pro-United States Government. It is kind
2 of a leftist government, and in those days they visited
3 Fidel Castro, and he flew to Mexico, and they received
4 Fidel Castro in Mexico as a big hero, and he was acclaimed
5 by the Mexican Government, and in my opinion that was the
6 reason.

7 Q Who made the bomb for the bombing of the
8 Mexican Consulate?

9 A Eduardo Arocena.

10 Q Where and when did you see the bomb?

11 A At the La Hacidenda Apartment, when he gave it
12 to me.

13 Q Please describe what happened when Mr. Arocena
14 brought the bomb?

15 A He gave it to me. I was in those days living
16 in the place, and he proved to me there was no problem.
17 He checked it using light bulbs that you use in a flash
18 camera, and after he proved to me that there was no problem
19 he told me not to connect the battery, just leave it like
20 it was until I was ready, just wind up the watch and then
21 put the battery with the wires, and then we go off.

22 Q Did Mr. Arocena ever try to teach you to build
23 bombs yourself?

24 A Yes.

25 Q Will you describe how he did that?

1 A More or less in the same way that I explained:
2 The light bulb and how the wires were to be put
3 and the detonator et cetera.

4 Q Did he ever ask you to read anything in that
5 regard?

6 A I was supposed to refer to something we had
7 something like a magazine, which was a military instruction
8 book, how to work with explosives, how to make a Molotov
9 cocktail et cetera.

10 Q Did Mr. Arocena give you this magazine?

11 A Yes.

12 Q How many copies did he give you?

13 A I don't remember. 25, 40 or 50. I don't
14 remember exactly.

15 Q Please tell the jury what eventually happened
16 with this bomb that Mr. Arocena gave you to use at the
17 Mexican Consulate in Miami?

18 A Mr. Arocena and myself brought some cream lotion
19 that we used in order to look darker. I was wearing a
20 mustache. Jose Ignacio Gonzalez was wearing a beard and
21 a mustache.

22 We went over to the Mexican Consulate in Miami,
23 and while I was talking to the receptionist Jose Ignacio
24 Gonzalez put the bomb under a sofa in the reception area.

25 I suppose on account of the dirt underneath the

1 sofa the bomb didn't stick to the paper that he had, and
2 it fell down, and he pushed it with his foot, and I
3 found that out later when I was talking to the reception-
4 ist, he explained what happened.

5 Q Why were you talking to the receptionist?

6 A To distract his attention while Ignacio
7 Gonzalez was placing the bomb.

8 Q Was the bomb enclosed in anything?

9 A Yes. It was enclosed in a Padron Cigar empty
10 box.

11 Q Where had the beard and the mustaches that you
12 wore come from?

13 A We bought it in Miami at a place that sold
14 toys for kids and things for parties and birthdays.

15 Q Where did you put the cream lotion to make you
16 look darker --

17 A At the La Hacienda Apartments.

18 Q Where did you put it?

19 A My face and my neck.

20 Q Do you know whether the bomb went off at the
21 Mexican Consulate in Miami?

22 A Yes, because we heard the news on the radio.
23 We took the car -- when I say we, Ignacio Gonzalez and
24 myself -- and we saw the big hole, and I almost -- I
25 couldn't believe it.

1 Q Where was Mr. Arocena while you and Mr.
2 Gonzalez was bombing the Mexican Consulate?

3 A I was told by Mr. Arocena that he was coming
4 to New York, that we should synchronize everything so that
5 at the same time the thing was happening in the Mexican
6 Consulate in Miami, he would be doing the same thing in
7 New York.

2 8 Q Did you at some time after the bombing you
9 did with Mr. Gonzalez at the Mexican Consulate, have a
10 discussion with Mr. Arocena about your performance?

11 A Yes. He was very happy that we had the
12 success that we had, and he hugged me and congratulated
13 me, and that was all.

14 Q Did he say anything about the job that you had
15 done?

16 A Yes. It was a big damage that we had done.
17 It was bigger damage than some jobs that Omega 7 ever did.

18 Q You testified Mr. Arocena gave you the bomb
19 for the Mexican Consulate when you and Mr. Arocena were at
20 the La Hacienda Apartments.

21 A Yes.

22 Q How did you come to have an apartment there?

23 A Because I was having marital difficulties, and
24 I needed a place where I could be alone and sleep normally,
25 and that was the reason I got into that apartment.

1 Q Was your wife doing anything that caused you
2 to go to that apartment?

3 A Yes.

4 Q What was she doing?

5 A She was calling the office and going over there
6 and giving me some hard times.

7 Q Did you rent the apartment in your own name?

8 A No.

9 Q Why didn't you rent the apartment in your own
10 name?

11 A Because if I rent it under my own name, my wife,
12 she would find out where I was living, and the year before
13 I moved over to my parents' house, and I had that problem,
14 because she was calling at three o'clock in the morning,
15 and my father is seventy years old, and I couldn't afford
16 it; I would have to go back to my parents or I would lose
17 my family because of the aggravation, and Mr. Arocena had
18 a Social Security account in the name of Alejandro Medina,
19 and he said, "Why don't you use the Social Security to rent
20 the apartment," and I thought it wouldn't be easy to get
21 an apartment showing a Social Security number, and after
22 making calls and calls at the apartment they told me,
23 "If you come over and fill out an application we can
24 get you an apartment."

25 I went over, and I wrote down, Alejandro

mps

Necuze - direct

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1 Medina, and I completed more or less the application and
2 I signed "Alejandro Medina", and I gave the application
3 back to Mr. Arocena that day or the next day.

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5 (Continued on the next page.)
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1 Q Had you ever used the name Alejandro Medina before
2 this?

3 A No, sir.

4 Q Who came up with that name for you to use?

5 A Eduardo Arocena.

6 Q Did you ever use the Social Security card
7 Mr. Arocena loaned to you again?

8 A No.

9 Q Who paid for the rent on this apartment under
10 the name Alejandro Medina?

11 A Mr. Arocena.

12 Q Did he say why he was paying the rent?

13 A In the way we built a name for Alejandro Medina
14 in Miami and also could be used for the organization.

15 Q Did you ever use the name Alejandro Medina
16 yourself in any other connection?

17 A No.

18 Q Do you still live at the LaHacienda apartment?

19 A No.

20 Q What happened when you left that apartment?

21 A I went back to my family.

22 Q What happened to that apartment?

23 A It was rented by another person.

24 Q Do you know who continued to pay the rent?

25 A In my opinion, in the beginning, was Eduardo

1 Arocena.

2 MR. AGUILAR: Objection, your Honor.

3 THE COURT: Do you know that it was Arocena, of
4 your own knowledge?

5 THE WITNESS: I know it was Arocena when I was
6 living there.

7 Q I am going to show you Government's Exhibits 320
8 and 321 for identification. Do you recognize those?

9 A Yes. This is my handwriting.

10 Q What are these documents?

11 A These are the leases that I sign at LaHacienda
12 apartments.

13 Q And what is Government's Exhibit 321 for
14 identification?

15 A This is a letter in which I state that I was
16 transferring all my rights in that apartment to another
17 person.

18 Q On Exhibit 321 for identification, is all of the
19 handwriting your handwriting?

20 A On 321?

21 Q Yes.

22 A Yes, this is my handwriting.

23 Q On Government's Exhibit 320 for identification,
24 is all the handwriting yours or only some of it?

25 A The signature on the leases and all of this is my

1 handwriting (indicating).

2 Q When you say "all of this" --

3 A I am talking about the name --

4 Q Is that the last 14-inch page in the exhibit?

5 A Yes.

6 MR. TABAK: The government offers Exhibit 320
7 and 321 in evidence.

8 MR. FERNANDEZ: No objection.

9 THE COURT: Received.

XXXXXX

10 (Government's Exhibits 320 and 321 were
11 received in evidence.)

12 Q I am now going to show you Government's
13 Exhibit 297, which is already in evidence. Do you
14 recognize what that is a photograph of?

15 A Yes.

16 Q What is that?

17 A The apartment that I used to live.

18 THE COURT: The LaHacienda?

19 THE WITNESS: LaHacienda Apartments, yes, sir.

20 MR. TABAK: I would like to quickly show that
21 to the jury, your Honor.

22 THE COURT: You may .

23 (Pause)

24 Q At or about the same time, in September, 1981,
25 when you and Mrs. Gonzalez were bombing the Mexican

1 Consulate in Miami and Mr. Arocena was in New York --

2 MR. AGUILAR: I object. There is no need
3 for counsel to repeat all the testimony --

4 THE COURT: He now has, but I hope he won't
5 in the future.

6 Q Were other Omega 7 members participating in any
7 other action you are aware of?

8 A Yes.

9 Q And what was that?

10 A Justo Rodriguez and Hector Gomez.

11 Q What were they doing?

12 A They were placing an explosive device, I suppose,
13 in the Replica Magazine in Miami.

14 Q What type of device was this?

15 A It was a propane tank, some gasoline, oil,
16 in a garage can I bought. I gave it to them and they put
17 it all together and they placed it in front of the door of
18 the Replica Magazine.

19 Q Did you buy all of those things?

20 A No, sir.

21 Q Which did you buy?

22 A I bought the garbage can.

23 Q Whose idea was it for Justo Rodriguez and Hector
24 Gomez to place that device by Replica Magazine?

25 A Hector Gomez.

1 Q How do you know that?

2 A Because he explain the use of the propane tank,
3 due to the lack of explosive, and that it would work.

4 Q Who decided how that device should be
5 assembled, if you know?

6 A I don't really remember exactly, but I suppose --

7 Q I don't want you to suppose. Did anyone give
8 you instructions on how the device should be assembled?

9 A Arocena told me to tell Gomez and Rodriguez
10 to put it all together and to put the propane tank inside
11 the garbage can and against the front door of the
12 Replica Magazine.

13 Q Did Mr. Arocena tell you what he thought would
14 happen when they did it?

15 A The propane tank was supposed to explode.

16 Q Did you participate in any later bombing attempts
17 involving Replica Magazine?

18 A Yes.

19 Q Would you please describe that to the jury?

20 A One night Arocena, Gonzalez and myself took an
21 explosive device which I threw to the roof of the
22 Replica Magazine. It didn't work and Ignacio Gonzalez
23 went to his house and I stay with Mr. Arocena. Together we
24 went to LaHacienda Apartment and we had a 57-millimeter shell
25 and we try to invent some kind of explosive and we went back

1 and also I threw it over the roof of the Replica Magazine.

2 THE COURT: What happened that time?

3 THE WITNESS: Nothing happened, your Honor.

4 Q Who put together this device?

5 A Arocena, and I help him.

6 Q During 1981, did you come to meet an individual
7 named Manny Fernandez?

8 A Yes, I did.

9 Q Did Manny Fernandez come to have a relationship
10 with Omega 7?

11 A Yes.

12 Q What was that relationship?

13 A He was a drug dealer, that he needed Omega 7,
14 or any kind of macho group that will take care of the drug
15 debts that some people had with him, and that is the way it
16 happened.

17 Q What was Omega 7 going to get out of this, if
18 you know?

19 A Shake up the people that Mr. Fernandez will
20 give to us the name and addresses.

21 Q Was Omega 7 going to be given anything for
22 doing this?

23 A Supposed to be a percentage of the collection,
24 thirty percent. I don't remember exactly the percentage.

25 Q Did Mr. Arocena ever tell you of any other

1 services he provided for Mr. Fernandez?

2 A I believe that he had, you know, meet Fernandez,
3 but I do not know what kind of relationship they had
4 before.

5 Q Did Mr. Arocena ever tell you anything he did
6 to help Mr. Fernandez --

7 MR. AGUILAR: He asked the question and now he is
8 asking it in a different fashion, your Honor.

9 He said he didn't know what kind of relationship
10 they had.

11 THE COURT: Overruled.

12 You may answer.

13 A Please repeat the question.

14 Q Did Mr. Arocena ever tell you anything else
15 he ever did for Mr. Fernandez in any other connection?

16 THE COURT: Other than collect debts.

17 A Oh, yes. I remember once Arocena make the
18 comment that he help Manny Fernandez escape from the
19 police that was surrounding his house, or something like
20 that.

21 Q Did you have a good or a bad personal relationship
22 yourself with Manny Fernandez?

23 A Bad.

24 Q Why was that?

25 A Because the first meeting that a person from Omega 7

1 had with Mr. Manny Fernandez, I was the person, that I
2 should meet Mr. Manny Fernandez. It was in a restaurant
3 in Miami. I didn't know Mr. Manny Fernandez and Ignacio
4 Gonzalez when we went to the restaurant, and he introduce
5 to me Mr. Manny Fernandez. I was supposed to be very
6 tough and rough, according to Arocena, with Mr. Fernandez.
7 I don't like tough people, and it wasn't difficult for
8 me to be rough with him. He had the handbag in his
9 hand and, playing rough, I told him, "You better remove
10 that handbag from the table because you might have a
11 tape recorder in it."

12 I didn't know what to say, and that came to
13 my mind. The meeting was for three or four minutes, and
14 he stand up and complain that he didn't want to make
15 business with me, he didn't want to see me again.

16 THE COURT: Where did this meeting take place?

17 THE WITNESS: Trianon Restaurant on Flagler
18 Street.

19 Q Did you, after the meeting, have a discussion
20 with Mr. Arocena about that?

21 A Yes. I explain to him I didn't like that
22 guy and Mr. Fernandez dislike me, so we are even, and
23 then they decide I should not handle any more of Manny
24 Fernandez.

25 Q Did you see Mr. Fernandez on other occasions?

1 A Yes. I saw him once at the office that we had
2 on 27th Avenue and Eighth Street.

3 Q Who was present that day?

4 A Eduardo Arocena and Ignacio Gonzalez.

5 Q Was anything shown to Mr. Fernandez during that
6 meeting?

7 A The guns-we had, pistols and machineguns, you
8 know.

9 Q Was Mr. Fernandez accompanied by anybody
10 on the occasions you saw him?

11 A Yes. He had a bodyguard.

12 Q Have you seen that bodyguard recently?

13 A Yes, today. He just left through that door to go
14 outside.

15 THE COURT: Do you recall his name?

16 THE WITNESS: I think that is Max or Maximiliano
17 Lara or Laro.

18 Q Do you know how Manny Fernandez got linked up with
19 Omega 7 in the first place?

20 A My understanding is that Alpin Ross was the one
21 that connected Manny Fernandez with Omega 7 organization.

22 Q How did you learn that?

23 A Through a conversation, I don't remember,
24 with Ignacio Gonzalez or Eduardo Arocena, but I know that
25 was the way he was connected, Manny Fernandez, with the

1 organization.

2 Q Did Mr. Ross get anything in return for that
3 introduction?

4 THE COURT: If you know.

5 A Yes, it was \$10,000 he was asking just for making
6 the connection.

7 Q Did you ever see Mr. Arocena with a large amount
8 of cash?

9 A I don't know what is a large amount of money,
10 but I remember he went and bought some furniture for
11 his own office, I think it was three or four thousand
12 dollars, more or less. I don't remember exactly the
13 amount.

14 Q Were you there at the time?

15 A Yes, I was there.

16 Q Did you see how he paid?

17 A Yes.

18 Q How did he pay?

19 A He paid in cash.

20 Q I direct your attention to February of 1982.

21 Was there an attempt at that time to gain international
22 publicity for Omega 7?

23 A Will you repeat the question?

24 Q During February of 1982, was there an attempt to
25 gain international publicity for Omega 7?

rmjah 11 Necuse-direct

1 A Could you rephrase that again, because I did not
2 really understand the question.

3 Q Did you ever participate in a meeting with
4 somebody from out of the country?

5 A Yes.

6 Q Who was that?

7 A That was a French guy by the name of Lassier.
8 I understood that Mr. Lassier was a French reporter,
9 that he was a reporter with a lot of experience with, you
10 know, warfare, and he was willing to go to Cuba with us,
11 the Omega 7 people, in order to film and record an
12 operation, you know, a sabotage operation, with the
13 Omega 7 people, and that is what I heard the first time
14 the name of Hubert Lassier, I think is the name.

15 Q Was there ever such an operation inside Cuba?

16 A No, it never happen.

17 Q Was there a meeting with Mr. Lassier?

18 A Yes.

19 Q Please tell the jury about that.

20 A Mr. Lassier was in Miami, and he wanted to meet
21 the Omega 7 organization, and we got together in a
22 warehouse in Hialeah. Mr. Brocena was addressing the
23 conversation with -- there were two guys, Lassier and
24 another guy. One of them was filming the conversation and
25 the sound machine was not working, and he was use a tape

1 recorder instead.

2 Q How did Mr. Lassier get to the warehouse that
3 day?

4 A He was in a van with Rodriguez, Mr. Gomez,
5 myself, et cetera, we were there, and that is the way it
6 happened.

7 Q Was anything done with that van before
8 Mr. Lassier got into the van?

9 A I didn't hear the question.

10 Q Was anything done to the van before he got
11 into the van?

12 A Yes, it was painted, the glass, with black
13 paint, so you couldn't notice the outside and the place
14 that the meeting was going to be.

15 Q How were you and the other Omega 7 people
16 dressed at the warehouse?

17 A We had some hood mask, I suppose you say.

18 Q How was Mr. Arocena in particular dressed?

19 A He was dressing with a black sweater and a
20 black hood on his head, I am sure.

21 Q Were there any weapons displayed at that time?

22 A Yes.

23 Q Was anybody else present at the time?

24 A Yes.

25 Q Who was that?

1 A Inside there were the two guys, Lassier and the
2 other person. Inside was Arocena and I was next to him, on
3 his left side, Hector Gomez was on the right side and I was
4 taking care of his hood because I didn't want anyone to
5 see even one cell of his face.

6 Q Was anybody else there?

7 A Outside was Ignacio Gonzelaz, Hector Rodriguez
8 and Jose Dans.

9 Q What was the financial status of your business
10 while all of you were busy with Omega 7 activities?

11 A In very bad shape. We lost the office, we couldn't
12 afford a secretary. We only had a part-time secretary
13 and the checks are bouncing. So we decide to split.

14 Q How were all of you living? Where were you
15 getting the money from?

16 A From the group.

17 Q In what form were you getting paid?

18 A Cash.

19 Q Who was giving you the money?

20 A To me, Ignacio Gonzalez.

21 Q Do you know where he got it from?

22 A From Eduardo Arocena.

23 Q Did there come a time in the spring of 1981 when you
24 and Mr. Gonzalez split up with Mr. Arocena?

25 Q Yes.

1 Q Why did you separate from Mr. Arocena?

2 A Because we were economically in bad shape, and
3 Ignacio had the chance to get a good contract with an
4 insurance company and we moved to another office and
5 Mr. Arocena, he moved his business to another office
6 also.

7 Q In August of 1982, did you have any further
8 contact with Mr. Arocena?

9 A Yes. I met him.

10 Q For what purpose?

11 A We were exchanging, you know, information, because
12 the relationship was not as good as before, and even I
13 complete a life insurance application for him.

14 Q While you were filling out the life insurance
15 application for Mr. Arocena, did anybody else come?

16 A Yes. We were just ourself in his office, and
17 somebody knock at the front door. He went over
18 and they serve to him a subpoena.

19 Q What was the subpoena for?

20 A A grand jury in New York.

21 Q About two weeks after that, did you participate
22 in an Omega 7 attempted bombing?

23 A Yes.

24 Q Where was that at?

25 A The Nicaraguan Embassy -- I am sorry, Consulate,

1 in Miami.

2 Q Was any preparation done before that attempted
3 bombing?

4 A Yes. Arocena and myself, we drove around
5 looking for the TV camera they had outside. He did it
6 by himself, he drove around and check it, and I did
7 also the same.

8 Q Did you get a bomb to put there?

9 A Yes.

10 Q Where did you get the bomb from?

11 A From Arocena.

12 Q What did you do with the bomb?

13 A When I was checking, I never was sure that
14 nobody was living besides -- I should explain that this
15 is like a two-family building, with four apartments,
16 and to the best of my knowledge is, I never was sure
17 that it was just a consulate building and I was always
18 afraid it might be an apartment in which people would be
19 living.

20 I had to do it, but at the last minute, Ignacio
21 Gonzalez was driving the car and I was the one that was
22 supposed to connect the bomb, and I put a piece of tape
23 in the battery so that the battery and the wires cannot
24 make, you know, any kind of contact. In other words,
25 I just killed the possibility that the bomb would explode.

1 Q What did you do with the bomb?

2 A We park in the back of the Western Union building,
3 next to the Nicaraguan Embassy, and I threw the bomb
4 to one of the sides of the building. In that moment,
5 a police car just all of a sudden came inside the parking
6 lot, and I had the white gloves in my hands and Ignacio
7 was in the car and I said to myself, "This is it, they got
8 us."

9 I got inside the car and begged Ignacio to
10 drive slowly, "If they are going to stop us, they will."
11 The police car went the same way we were going, and he
12 stop at the light, very slowly, and Ignacio made a left
13 turn and we kept on going on that avenue and the police
14 just, you know, drive away.

15 Q So were you arrested that night?

16 A No, sir.

17 Q Was there anything else in the car that might
18 have been a problem?

19 A A few things like, you know, gloves and pieces
20 of tape that we throw away from the window when we were
21 driving away from that place.

22 Q Did there bomb go off?

23 A No.

24 Q Did you have any discussions thereafter with
25 Mr. Arocena about that bomb?

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A Yes.

Q What was the discussion?

A He couldn't believe that it didn't go off, and I was not going to tell him that I disconnect it.

Q A few weeks thereafter, did you do anything to help Mr. Arocena go into hiding?

A Oh, yes.

Q What did you do?

A I pick him up, and I don't remember the place, and I take him to a Howard Johnson and myself I got a room for him, and after I knew he was safe, I went out and I bought meals for him, which I took it and brought it to him, and I don't remember if it was one day, two days or three days, but I know it was a few times.

Q During 1983, were you called to testify before a federal grand jury in this building which was investigating Omega 7?

A Yes.

Q What happened at the beginning of each session before you were asked any questions?

A That I was informed of all my rights, very long, because this is almost twenty-five minutes, and always is the same, and I got advice that I could use the Fifth Amendment of the Constitution -- you know, everything about the rights of a person in this country.

1 Q Did you in fact take the Fifth Amendment and
2 refuse to answer questions in the grand jury?

3 A No.

4 Q Why not?

5 A For two reasons. First, I just wanted to know how
6 far the United States Government knew about Omega 7,
7 because Mr. Arocena was called before us and I knew who
8 was Mr. Arocena and I felt that I had to protect Arocena
9 even if I had to commit perjury, which I did.

10 Q What did you do after you appeared in the
11 grand jury each time?

12 A I tried to give the information to Eduardo
13 Arocena so he knew what was happening, and I was afraid
14 he might be caught by the government.

15 Q Did you meet personally with him to give him
16 the information?

17 A No.

18 Q How did you get the information to Mr. Arocena?

19 A Through Ignacio Gonzalez.

20 Q Was there anybody else that you used to get
21 information to Mr. Arocena?

22 A Mainly Ignacio Gonzalez and Pepi Dans. You
23 know, he knew what was happening and supposedly he
24 contact Arocena.

25 Q Was Pepi Dans actually a member of Omega 7?

1 A No.

2 Q After Arocena was arrested on July 22, 1983,
3 did you immediately decide to cooperate with the
4 government?

5 A No.

6 Q What eventually caused you to change your
7 attitude?

8 A First, I knew I commit perjury many times,
9 which I didn't care -- when I heard the tapes from the
10 FBI and I know Arocena's voice and I know Arocena was
11 talking to Agent Larry Wack and giving the information
12 about the organization, I spoke to Mr. Tabak and I offer
13 myself as a group, Ignacio Gonzelz and Hector Gomez, and
14 we were willing to decide to plead guilty and if the
15 government would look for immunity for us, which was
16 promised, I just decide to go for a settlement with the
17 government.

18 Q Was there anything in particular that you were
19 concerned about?

20 A The drug business with Omega 7.

21 Q How did that relate to your deciding to enter
22 into an agreement with the government?

23 A First of all, because I feel like I have
24 my reputation that I never touch any drugs, and I didn't
25 want to go on a trial, which would mean I was making

1 surveillance with the drug people they were leaving.

2 That was mainly --

3 Q Did you eventually enter a formal agreement
4 with the government?

5 A Yes, I did.

6 Q What did you agree to do?

7 A I agreed to plead guilty. I agreed to
8 admit everything I did. I was not forced by the
9 government. I had big discussions with Mr. Tabak and I
10 am sorry, but once I call him an animal, and now I apologize,
11 but I just wanted to be sure that no one would thought I
12 was looking just to get out of this problem and not taking
13 care of the rest of my friends, that they were really the
14 ones that were in action, action people.

15 Q Have you in fact pleaded guilty to any charges
16 relating to Omega 7?

17 A Yes.

18 Q What do you understand the possible maximum
19 penalties to be?

20 A I am facing ten years in jail, and \$20,000 in
21 fine.

22 Q What did the government agree to do as part of
23 this agreement with you?

24 A The only thing that the government agreed to do
25 is to make a recommendation to a federal judge in Florida,

1 telling them the kind of people that we are, that we
2 were frustrated because we are Cubans and want to see
3 our Cuba free, and just if we had to testify, to come
4 over and testify on this trial.

5 Q Did the agreement say anything about whether
6 you were going to be charged with any other Omega 7 crimes?

7 A I would not be charged -- let me correct that:
8 No one of us will be charged with any additional crimes
9 committed while we were Omega 7 people.

10 Q And that applied to whom?

11 A Justo Rodriguez and Ignacio Gonzalez.

12 THE COURT: And you?

13 THE WITNESS: And me.

14 Q Have you been sentenced yet?

15 A No.

16 Q Why is that?

17 A Because the United States Government requests
18 from the judge in Florida to wait for the sentence until
19 this trial will be over, and if we have to testify,
20 which I never thought I had to testify, that then the
21 sentence will be applied.

22 Q Did the United States Attorney's office for
23 New York take any position about whether it would make a
24 specific recommendation to the judge of what the sentence
25 should be?

1 A No. As a matter of fact, the judge told the
2 United States Government that he would not accept any
3 kind of recommendation -- let me correct myself: He
4 will not make any decision due to any kind of recommendation,
5 that he never tell anyone what is going to be his sentence,
6 and this Judge Roettger works that way.

7 Q Judge Roettger, in Florida?

8 A Yes.

9 Q I am going to show you Government's Exhibit 325
10 for identification.

11 THE COURT: That is Judge Roettger, in
12 Fort Lauderdale?

13 THE WITNESS: Yes, sir.

14 A Yes.

15 Q Do you recognize that?

16 A Yes, sir.

17 Q What is that?

18 A This is the agreement that was signed by my
19 lawyer, myself and you people.

20 Q Did Justo Rodriguez and Ignacio Gonzalez also
21 reach agreements?

22 A Yes.

23 Q Did they also plead guilty?

24 A Yes.

25 THE COURT: What is the ID number on that?

1 MR. TABAK: 325, your Honor.

2 THE COURT: Thank you.

3 Q Do you know where Mr. Gonzalez is now?

4 MR. AGUILAR: Objection, your Honor.

5 THE COURT: You can answer yes or no.

6 A Yes.

7 MR. TABAK: I won't pursue that line at this time,
8 your Honor.

9 Q Do you know Eduardo Losada-Fernandez?

10 A Yes.

11 Q Who is he?

12 A He owns a supermarket in Newark, New Jersey.

13 Q Did you ever discuss Mr. Losada with Mr. Arocena?

14 A Once Mr. Arocena he made a comment in the basement
15 of the grocery store somebody shoot machineguns, they
16 sboot in the walls, he said.

17 THE COURT: Who said that?

18 THE WITNESS: Eduardo Arocena.

19 Q Did you ever discuss Pedro Remon and
20 Sanchez with Mr. Arocena?

21 A No.

22 Q Do you know who they are?

23 A Yes, sir.

24 Q What do you know about them?

25 A That they are in jail and they was supposed to be

1 former Omega 7 people.

2 Q When you were doing the bombings for Omega 7 that
3 you testified about, did you ever do anything with
4 Mr. Remon or Mr. Sanchez?

5 A No.

6 Q I am now going to show you Government's
7 Exhibit 310 for identification. Do you recognize that?

8 A Yes.

9 Q What is that?

10 A This is a tape of a conversation.

11 Q Who was the conversation between?

12 A Arocena.

13 Q And whom?

14 A Me.

15 Q I am now going to show you Government's
16 Exhibit 310-T for identification. Do you recognize that?

17 A Yes.

18 Q What is that?

19 A The conversation I had with Arocena.

20 Q Is this a reasonably accurate English
21 translation of a conversation you had with Mr. Arocena
22 on or about December 10, 1981 at 11:26 a.m.?

23 A Yes.

24 MR. TABAK: The government will offer Exhibits 310
25 and 310-T in evidence.

1 MR. FERNANDEZ: As long as we have the same
2 proviso we have on other translations, we won't object.
3 May I ask who made these?

4 THE COURT: The conversation is in Spanish?

5 MR. TABAK: Yes, your Honor.

6 THE COURT: So the jurors are going to have to
7 rely on the translation and that is obviously a problem.

8 MR. TABAK: I can ask another question in this
9 area, your Honor.

10 Q How do you know that this particular transcript
11 is a reasonably accurate translation of what is on
12 Exhibit 310?

13 A Because I heard it in your office.

14 Q What, if anything, did you do with the translation
15 while you were listening to the tape?

16 A I don't get --

17 THE COURT: Did you follow it, correct it?

18 THE WITNESS: Yes.

19 THE COURT: What did you do?

20 THE WITNESS: I followed it.

21 Q Do you believe this is a reasonably accurate
22 translation of what is in that tape?

23 A Yes.

24 THE COURT: Any objection?

25 MR. FERNANDEZ: No objection.

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(Government's Exhibits 310 and 310-T

were received in evidence.)

MR. TABAK: Your Honor, given the time, the government would suggest that perhaps we take the luncheon recess, and resume with this tape afterwards.

THE COURT: Ladies and gentlemen, we will take our luncheon recess at this time. I will ask the jurors to be prepared to proceed, ready to continue hearing this case at 2:00 p.m., which is fifty minutes from now.

Please do not discuss the case among yourselves, and keep an open mind.

T7

(Continued on next page)

2 AFTERNOON SESSION

3 (2:00 p.m.)

4 (Jury present.)

5 THE COURT: Good afternoon, everyone.

6 - -

7 G E R A R D O N E C U Z E , resumed.

8 THE COURT: Mr. Tabak, you may proceed.

9 MR. TABAK: Now, your Honor, with the Court's
10 permission I would like to distribute copies of Exhibit
11 310-T, the translation which was admitted into evidence
12 just before the luncheon recess, so the jurors can follow
13 the playing of the recording, Exhibit 310.

14 I will now play Exhibit 310.

15 THE COURT: Very well.

16 (Tape was played.)

17 THE COURT: If the jurors would pass the tran-
18 scripts down, they will be collected.

19 You may proceed, Mr. Tabak.

20 DIRECT EXAMINATION (Continued)

21 BY MR. TABACK:

22 Q Mr. Necuze, what was the conversation about
23 that was on Exhibit 310, that was just played?

24 A This conversation is referring -- is between
25 Eduardo Arocena and myself, Mr. Arocena calling the office

1 and letting me know that Brown is a code that we used for
2 the FBI, visited Hugo Castro's house, and I am worried
3 about him, and I am explaining to him everything, and I
4 am concerned, because he may be the next to be visited by
5 the FBI.

6 Q Hugo is who?

7 A Enrique Castro.

8 Q And you said "Brown" for the FBI. Is there
9 some reason for that?

10 A Yes. According to National Solidarity, it was
11 helping an agent by the name of Brown in the beginning of
12 '60, '61, '62 -- I don't remember -- and it was a kind of
13 joke among us. Instead of saying FBI, "Brown" will mean
14 FBI people.

15 Q Did Mr. Gonzalez say he was helping the FBI
16 people?

17 A Yes. He was breaking into houses to find
18 proof against Communists, I think in New York.

19 THE COURT: When was that?

20 THE WITNESS: Your Honor, '60, '61, '62.

21 Q After 1960, did Mr. Gonzalez have anything to
22 do with the FBI on a cooperative basis, as far as you
23 know?

24 A No.

25 Q On the second page of the transcript you refer

1 to Manolo's friend, Andres. Whom were you talking about?

2 A Manolo's boy, Andres.

3 Q On the third page of the transcript, when you
4 mentioned getting a haircut, what were you referring to?

5 A I was kidding with him that I needed a haircut,
6 but my intention was to let him know that I was worried
7 about him, that he should take a haircut, and he started
8 laughing.

9 Q There is also mention on Page 3 of the tran-
10 script of El Gorila. Whom was that referring to?

11 A Armondo Santana.

12 Q How is it that his name came up in the conversa-
13 tion?

14 A He was visiting Miami, and I understood
15 Arocena wanted to meet Santana.

16 Q I am now going to show you Exhibits 311 and
17 311-T for identification, two exhibits.

18 Do you recognize Exhibit 311 for identification
19 and Exhibit 311-T for identification?

20 A Yes.

21 Q And what are they?

22 A It is a conversation between Arocena and
23 myself.

24 Q And is 311-T a fair and accurate translated
25 transcript in English of the conversation you had with

1 Mr. Arocena on December 15, 1981 at about three o'clock
2 p.m.?

3 A Yes.

4 MR. AGUILAR: Your Honor, I assume the same
5 predicate will apply in this case as applied to the
6 others.

7 THE COURT: Some additional questions might be
8 appropriate at this point.

9 Q How do you know that Exhibit 311-T is a fair
10 and accurate translation of the conversation on the tape,
11 Exhibit 311?

12 A Because I heard the tape in your office.

13 Q And what were you doing with the transcript
14 at the time?

15 A I checked it to be sure it was translated in
16 the proper way.

17 THE COURT: And was it?

18 THE WITNESS: It was.

19 THE COURT: Is there any objection?

20 MR. AGUILAR: No, your Honor.

21 (Government's Exhibits 311 and 311-T for
22 identification were received in evidence.)

xx 23 MR. TABAK: With the Court's permission, I will
24 distribute copies of Exhibit 311-T to the jury so they can
25 follow along with the tape.

1 THE COURT: may.

2 MR. TABAK: ill now play Exhibit 311.

3 (Tape was pl ed.)

4 MR. TABAK: will now collect the copies from
5 the jury of Exhibit 311.

6 Q Mr. Necuze, who is Victor who is mentioned on
7 this?

8 A Eduardo Arocena.

9 Q And do you know why he was called Victor?

10 A When I met him, he was Victor, not Eduardo.

11 Q Who is Manny and Manolo, who is mentioned?

12 A Manuel Fernandez.

13 Q And what was this conversation about?

14 A In my opinion, this is --

15 MR. AGUILAR: I would object.

16 THE COURT: Would you tell us, if you know,
17 what the conversation is about?

18 THE WITNESS: Your Honor, Manny is Manny
19 Fernandez. When I mentioned my partner, I am referring
20 to Ignacio Gonzalez.

21 Now, in the way that the conversation went, to
22 the best of my recollection, they were asking Ignacio
23 Gonzalez to get in touch with Eduardo Arocena, because
24 Manny was calling Ignacio, and he wanted to meet him as
25 soon as possible to inspect, regarding the photographing

1 and inspection of a factory.

2 Q Do you know what the photographs were of,
3 actually?

4 A I suppose a house that was under surveillance
5 or something like that.

6 THE COURT: But not a factory?

7 THE WITNESS: Not a factory.

8 Q I am now going to show you Government's Exhibit
9 312 and Government's Exhibit 313 for identification.

10 Do you recognize those?

11 A Yes; I do.

12 Q What are they?

13 A Those are tapes that you played to me, so I
14 could recognize the persons who were in the conversation.

15 Q And did you recognize the voices of the people
16 on those tapes?

17 A Yes.

18 Q Who was on each of the tapes?

19 A Milton Badilla and Eduardo Arocena.

20 Q Now, Mr. Necuze, do you see Eduardo Arocena
21 sitting in the courtroom?

22 A Yes.

23 Q Would you please point him out?

24 A Right there (indicating).

25 Q And will you point what he is wearing?

2 A He is wearing a gray suit, two-piece suit,
3 with a gray tie.

4 Q Where is he sitting in the courtroom?

5 A Right there (indicating).

6 Q Will you put it into words?

7 A I don't know how to say.

8 THE COURT: Is he sitting at the first or the
9 second table?

10 THE WITNESS: The second table, to the right
11 of the table.

12 MR. TABAK: May the record reflect that
13 Mr. Necuze has identified the defendasnt, Eduardo Arocena?

14 THE COURT: Yes.

15 MR. TABAK: I have no further questions on
16 direct.

17 CROSS EXAMINATION

XX 18 BY MR. AGUILAR:

19 Q Mr. Necuze, you have testified before the grand
20 jury on two occasions, and you have also had five or six
21 debriefings with the FBI or the U. S. Attorney's office;
22 is that right?

23 A Yes.

24 Q At the time you were giving this testimony and
25 undergoing the debriefing, did you feel you were helping

1 the Cuban cause?

2 A Yes; I did.

3 Q You indicated during your direct testimony
4 that you came to the United States from Cuba, I believe,
5 in 1969.

6 A That is correct.

7 Q Approximately how old were you when you came
8 to the United States?

9 A I did not hear you.

10 THE COURT: Please keep your voice up.

11 (To the witness:) How old were you when you
12 came from Cuba in 1969, Mr. Necuze?

13 THE WITNESS: Thirty-one years old.

14 Q Sir, did you fulfill a military obligation in
15 Cuba?

16 A No.

17 Q Were you in any of the Armed Forces of the
18 Cuban Government?

19 A No.

20 Q When you came in 1969 until you went to Miami
21 in 1979 or 1980, did you know Eduardo Arocena?

22 A No.

23 Q You had never met him?

24 A Not that I remember.

25 Q Not that you remember. Sir, you indicated

1 you had some family problems and that is what caused you
2 to move your residence on more than one occcaion.

3 A That is correct.

4 Q And the second time was the time you used the
5 name Alejandro Medina?

6 A I never said the second time. I just said
7 once.

8 Q Does that mean you rented a house on more than
9 one occasion?

10 A Yes.

11 Q Sir, as a result of leaving your house, did
12 you have to undergo psychiatric treatment?

13 A No.

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15 (Continued on the next page.)

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ET8

1 Q Have you ever undergone psychiatric treatment?

2 A No.

3 Q During the time you were cooperating with the
4 United States Government, were you ever asked to undergo
5 hypnosis?

6 A No.

7 Q Were you given any type of exams to undergo?

8 A No.

9 Q You previously testified that you were of the
10 opinion that Mr. Tabak was an animal. Why were you of that
11 opinion?

12 A Because he was calling Cubans to the grand
13 jury and we start getting the pressure of the questioning,
14 because the kind of questions that Mr. Tabak was making
15 at the grand jury -- I am now talking about myself -- I
16 start realizing that Mr. Tabak, he had knowledge of what
17 was going on inside the Omega 7 organization, and I
18 was lying.

19 Q Then it was because of the pressure tactics
20 that he was using?

21 A I don't know that answer, because I just
22 was in the grand jury once, with Mr. Tabak, and I don't
23 know how to determine how much pressure or how less
24 pressure.

25 Q But you did call him an animal?

1 A Oh, yes, I did.

2 MR. FERNANDEZ: May I approach the witness
3 and show him Government's Exhibit 320?

4 THE COURT: Yes. That is the lease.

5 MR. FERNANEZ: The lease, yes.

6 MR. TABAK: Would you show him the original?

7 MR. FERNANDEZ: Yes.

8 THE COURT: All right.

9 Q You indicated that you executed this lease
10 on or about April of 1981?

11 A Yes.

12 Q It is your handwriting on the lease ?

13 A Not on the lease. The signature is on the
14 lease, my signature.

15 Q I refer you to the third page of that lease,
16 the page that starts with "GTM General Partnership."
17 That is this sheet over here (indicating).

18 A Yes.

19 Q Do you have it now?

20 A Yes.

21 THE COURT: It is actually the second sheet for
22 him, because you have a Xerox of a two-sided page.

23 Q In the lease agreement, this lease agreement is
24 made out to Alejandro Medina and Maria Medina. Who is
25 Maria Medina?

1 A There is no one.

2 Q Isn't it a fact that there is a Maria Medina
3 on the lease?

4 A I mention that name because in my opinion it was
5 easy to get an apartment like, you know, a married couple
6 or a couple, instead of getting an apartment for an
7 unmarried person.

8 Q Is it your testimony today that you gave the
9 name Maria Medina to the person who was writing the
10 lease?

11 A Yes, the same that I did saying Aurora Lopez.
12 I never met a Maria Medina in my life.

13 Q At the time you entered into this contract,
14 you were not telling the truth, is that right?

15 A Of course that is correct.

16 Q You indicated you joined Omega 7 because it was
17 fighting Communism -- withdrawn.

18 Why did you join Omega 7?

19 A For the reason you said before, because they were
20 fighting the Communists.

21 Q Was it effective?

22 A I can't hear you.

23 Q Was the fight they had against Communism effective?

24 THE COURT: At least at the time you joined it.

25 Q At the time you joined.

1 A I don't understand the question.

2 THE COURT: Were they doing a good job?

3 THE WITNESS: Oh, yes. Thank you, your Honor.

4 MR. FERNANDEZ: Thank you, your Honor.

5 Q You indicated that Exhibit 309-T, the tape,
6 where you made the declaration in Spanish, that it was read
7 to you by Mr. Gonzalez, is that correct?

8 A No. I said that he handed it to me.

9 Q I am sorry. When you said these words that are
10 contained on Exhibit 309-T, to the best of your knowledge,
11 were they true?

12 A I do not understand the question.

13 MR. FERNANDEZ: May I have the copy of the
14 exhibit?

15 THE COURT: You may. The government can furnish
16 the exhibit to the witness via counsel.

17 (Pause)

18 THE COURT: Counsel wishes you to look at
19 309-T, the communique, to read it and after you have read
20 it, to answer his question, which is, was that, to the
21 best of your knowledge, true.

22 A Yes.

23 Q So it was true that Cuba is an enslaved country,
24 and so on, just what the communique says?

25 A Yes.

1 Q You did this voluntarily?

2 A Yes.

3 Q Nobody forced you to enter into this?

4 A No.

5 Q You felt you were helping the cause of freedom
6 of Cuba?

7 A This was my baptism as a possible member of
8 Omega 7 -- on that date that that is the first time that
9 I recall I have ever seen any kind of information regarding
10 Omega 7.

11 Q So that we are not confused, it was not a
12 baptism like little kids get baptized. You knew what you
13 were doing?

14 A After I read it.

15 Q You entered into it voluntarily?

16 A Yes.

17 Q Because you felt it was the right cause?

18 A Oh, yes.

19 Q Did you ever rent any storage space at the Mini
20 warehouse?

21 A Yes.

22 THE COURT: Mini-Stor-It warehouse?

23 THE WITNESS: Yes, I did.

24 Q When did you rent at the Mini-Stor-It warehouse?

25 A I believe that was in 1983.

1 Q How many units did you rent?

2 A I just rent one.

3 Q Did you rent it under your name?

4 A Yes, I did.

5 Q You never rented any other units at the warehouse
6 under another name?

7 A No, I did not.

8 Q Did you ever have access to more than one
9 unit -- strike that.

10 Did you ever have access to any unit that was not
11 the unit that you rented at the Mini store house?

12 A No.

13 Q You previously indicated that you did not
14 know Mr. Arocena in New Jersey, is that correct?

15 A Let's put it this way: As a formal introduction,
16 as live in the place that I met him and I could have a
17 recollection that he was Mr. Eduardo Arocena, no. I
18 met him, many peoples in New Jersey, I had lunch, and
19 I was in restaurants, maybe Arocena or Remon, Lopez or
20 Sanchez or anything was there, but I did not know the
21 name of Eduardo Arocena.

22 Q Is it possible that you met him in Newark,
23 New Jersey, at the restaurant owned by Jose Angel, called
24 the Havan Madrid?

25 A It is very possible. That was a hanging place for

1 us, the people from Prudential.

2 Q Did you participate in any operations of Omega 7
3 before you lived in Florida?

4 A No.

5 Q So the extent of your involvement with Omega 7
6 was limited to Florida?

7 A That is correct.

8 Q This apartment you had at LaHacienda in Miami,
9 Florida, did you know any of the neighbors that lived
10 around there?

11 A Before I rented?

12 Q No, after you rented.

13 A Oh, yes.

14 Q How were you known to them? What name did you
15 use?

16 A Alejandro Medina. I was called Alex.

17 Q You used to go around Miami saying you were
18 Alejandro Medina?

19 A Oh, no. As an insurance agent, I was known by
20 my own name. It is very difficult to sell insurance using
21 two names, especially when you have to sign the
22 application.

23 Q Did you not say that you were known to your
24 neighbors as Alejandro Medina?

25 A It depends the way you want to prospect the word

1 "neighbors," because if you see the photo, there are
2 several apartments in this unit, and eventually when they
3 saw me living there, they would ask "Hi. How are you?"
4 And I couldn't say "Necuse," because I was supposed to be
5 Alejandro Medina.

6 Q Did you have a telephone there?

7 A Yes.

8 Q Under whose name?

9 A Alejandro Medina.

10 Q I guess you told Southern Bell in Florida your
11 name was Alejandro Medina?

12 A Yes.

13 Q Did you have electricity?

14 A Yes.

15 Q Under whose name?

16 A Alejandro Medina.

17 Q How did you make the payments on your monthly
18 bills?

19 A By cash.

20 Q You went personally?

21 A Some of the time I did it, sometimes -- I am not
22 sure. I don't know if Arocena did it or who did it.

23 Q I previously asked you if you knew who Maria Medina
24 was, and you indicated that you didn't. Is it possible that
25 the name Lilliana, would that refresh your recollection?

1 A Could be.

2 Q Did that person live with you at the LaHacienda
3 Apartments?

4 A No.

5 MR. TABAK: Objection.

6 THE COURT: He has answered. I will let it
7 stand.

8 Q Did you work for Beta Export and Import?

9 A No. What do you mean, if I work for Beta?

10 Q Just what the word means, did you ever work for
11 Beta Import and Export?

12 A No.

13 Q Did you work for Financial Consultants?

14 A Yes.

15 Q Approximately how much did you make there?

16 A I couldn't hear you.

17 Q Approximately how much did you make there?

18 A In Financial Consultants?

19 Q Yes, sir.

20 A We were working straight on commissions.

21 Q How much did you make?

22 A A year?

23 Q Yes.

24 A Oh, that year, I don't really remember. It wasn't
25 that much.

1 Q Did you file income taxes for that?

2 A Yes.

3 Q But you don't remember what you earned for
4 Financial Consultants?

5 A I can tell you right now --

6 Q It is your testimony --

7 A Not as much as I used to make.

8 Q It is your testimony today that you worked for
9 Financial Consultants for one year?

10 A No, I didn't say that.

11 Q How long did you work for that company?

12 A Financial Consultants was established -- I
13 don't remember. I think it was three, four, five years,
14 two years. I don't remember.

15 Q What was your position in that company? Were
16 you a salesman or an officer?

17 A Financial Consultants?

18 Q Yes.

19 A I was the vice president, I think, of the
20 corporation.

21 Q Who paid the expenses for that corporation, sir?

22 A When?

23 Q During the time you were there, the four or five
24 years, I believe you said.

25 A You want the answer, right, a truthful answer? So

1 I am going to give it to you.

2 Q I hope all your other answers were truthful.

3 A Oh, yes. The way they are put it, we had two
4 corporations, All-America and Financial Consutlants.
5 Financial Consultants was mainly the company to be used
6 for insurance business.

7 So the checks or the commission came under the
8 name of Financial Consultants, formally. All-America
9 was created in order to have another line in imports
10 and exports.

11 Q The question I asked was, who paid the bills?

12 A Financial Consultants?

13 Q Yes, sir.

14 A Financial Consultants was created when we were
15 on McGrew Avenue and we had the lease on the building of
16 Home Life Insurance, and Financial Consultants was
17 created but it was inactive.

18 Then when we move to 27th Avenue and Eighth
19 Street, Financial Consultants, we were selling insurance
20 through that name and we sold some insurance on which we
21 get some commissions.

22 Does that answer that question?

23 Q No. The Financial Consultants, that company that
24 you had, who paid the bills?

25 A We paid the bills, in part from the commissions that

1 we got.

2 Q Who is "we"? Is that you and who else?

3 A And Ignacio Gonzalez.

4 Q Did you have a lot of monetary problems during the
5 time you had Financial Consultants?

6 A Yes, at the end.

7 Q Did you ever owe Mr. Arocena any money?

8 A No.

9 Q You indicated that you participated in several
10 missions for Omega 7, is that correct?

11 A I didn't say "missions."

12 Q I am sorry. You participated in several what?

13 A The bombing of the Mexican Consulate.

14 Q What did you call them when you were doing them?

15 A Excuse me?

16 A What did you call these activities when you
17 were doing them?

18 A Anti-Communist activities.

19 Q Did you at any time intend to hurt anyone?

20 A No.

21 Q So what was the purpose for the activities,
22 then?

23 A The activities was like the significance of me
24 putting a bomb -- it was to let the world know that the
25 Cuban people, we were making some kind of noise in the

1 world.

2 Q But you did not intend to hurt any people or
3 any innocent bystanders?

4 A No.

5 Q How many of these activities did you -- strike that.
6 You participated in activities against the Nicaraguan
7 Consulate?

8 A Yes.

9 Q The Mexican Consulate?

10 A Yes.

11 Q And against Replica Magazine?

12 A Yes.

13 Q Did you participate in any others, sir?

14 A No.

15 Q I am going to call it "missions."

16 At the time you were doing these missions or
17 activities, did anybody put a gun to your head to force
18 you to do it?

19 A Oh, no.

20 Q Were you doing this voluntarily?

21 A I was very proud.

22 Q Why?

23 A Because I thought I was doing something for my
24 country.

25 Q Do you feel you are doing something for your

1 country at this time?

2 A Yes.

3 Q How many times have you met with the FBI,
4 approximately? You don't have to be exact.

5 A No, I can give you, I think, the exact date.
6 I am almost sure -- I am sure the month was February,
7 and the year was 1982. The date I think was the 13th or
8 14th of February, 1982. That was the first time they pay me
9 a visit at the office we have in 62 Northwest 27th Avenue.

10 Q When you say they paid you a visit, did they
11 pay you any money?

12 A They pay me a visit. That means that they went
13 to see me and interview me, as an FBI agent, Agent Currier.

14 Q Have you been paid?

15 A From the FBI?

16 Q Yes.

17 A Did I receive any money?

18 Q Yes.

19 A No.

20 Q Did you receive any promise of protection or change
21 of identity?

22 A They told me if I was willing or in need
23 of getting any kind of witness protections, they would be
24 willing to give it to me anytime, and I deny it, I don't
25 want it.

1 Q Who was the person from the FBI that promised
2 you he would give you a new identity?

3 A Excuse me?

4 MR. TABAK: Objection. That is not the testimony
5 so far.

6 THE COURT: Sustained as to form.

7 Q Who was the person from the FBI that you had these
8 discussions with?

9 A What discussions?

10 Q As to whether you wanted a new identity and they
11 would give you one.

12 A I think that was Agent Walzer.

13 THE COURT: In Miami?

14 THE WITNESS: Yes.

15 Q You previously indicated that you plead guilty
16 to an indictment before the Honorable Judge Roettger
17 in Fort Lauderdale?

18 A Yes.

19 MR. FERNANEZ: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 MR. FERNANDEZ: This is 3502.

23 Q This is, I believe, Exhibit 315 (handing)?

24 MR. TABAK: For the record, this was premarked
25 but not introduced as Government's Exhibit 315 for

1 identification.

2 THE COURT: That is 315 for identification.

3 Do you recognize that document?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Is that a criminal information in
6 which you are named as one of the defendants in the
7 United States District Court for the Southern District of
8 Florida?

9 THE WITNESS: Yes, your Honor.

10 Q With respect to the information, I assume you
11 had your attorney explain to you what the charges were?

12 A Yes.

13 Q Could you tell us on Count 2, page 6, what
14 you were charged with? I am sorry, that is a misleading
15 question.

16 MR. FERNANDEZ: He is not charged with anything,
17 your Honor.

18 THE COURT: No, he isn't. Try Count 3.

19 Q How many counts are there on that information?
20 You may refer to it.

21 MR. TABAK: The government will not object if
22 the defense wishes to offer this in evidence and then
23 the document can speak for itself.

24 THE COURT: He has not chosen to do that. I
25 think we can agree the information contains three counts.

1 The witness may not be familiar with the manner in which
2 it is structured.

3 Q Of the three counts, I believe you are charged
4 in two of them?

5 THE COURT: Count 1 and Count 3?

6 THE WITNESS: Yes, your Honor.

7 Q So you were not accused of Count 2, is that
8 correct?

9 A That is correct.

10 Q Your attorneys, Judge Durant and Mr. Canale,
11 accompanied you during certain negotiations with
12 Mr. Frederick Mann, Assistant United States Attorney?

13 A No, you are wrong. My attorney at that time was
14 Mr. Joseph Ryan.

15 Q Is he your attorney now?

16 A Yes.

17 Q He is the attorney that is representing you when
18 you are going to be sentence on that information?

19 A That is correct.

20 Q Those are the only charges that you have pending
21 against you?

22 A You say "just," but for me, it is a lot.

23 Q It is two charges, is that correct?

24 A That is correct.

25 Q You are going to be sentenced after today?

1 A That is correct.

2 MR. FERNANDEZ: Your Honor, may I have one
3 second?

4 THE COURT: Certainly.

5 (Pause)

6 Q What was your nickname or what was your nom
7 de guerre, or your war name, for Omega 7?

8 A Diago.

9 Q Were you also known as El Moro?

10 A Yes.

11 Q Were you also known as Zoro?

12 A Yes.

13 Q And you were also known as Alejandro Medina?

14 A No.

15 Q You previously testified that you appeared
16 before the grand jury I believe on two occasions, is
17 that correct?

18 A I am not sure. Maybe it was more than two
19 occasions. I am almost sure it was three, at least.

20 Q On July 8 of 1983, do you recall having
21 appeared before the grand jury?

22 A I am not sure about the date.

23 Q On or about July, '83?

24 A I suppose so.

25 Q Do you recall ever making the statement that you

1 had gone to a psychiatrist?

2 A Can I answer that question?

3 Q Surely.

4 A Sure. At the grand jury when it arrived about
5 my Alejandro Medina apartment, I explain to the grand jury
6 that I had to take -- to change the name when I rented
7 that apartmnet, which is a shame, because I would have
8 loved to use mine, and in order to explain the reason
9 that I had to leave my house was that my wife, she was
10 a very nervous person and even I went as far as talking
11 to her brother-in-law, which is a psychiatrist, and he
12 is a doctor, and also to her father, trying to solve
13 the problems I had in my marriage, and I asked them to tell
14 me a psychiatrist to which I could take my wife and I could
15 go myself in order to clarify what was going on in my
16 marriage.

T9

18 (Continued on next page)

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1 Q So you in fact went to a psychiatrist?

2 A Yes. If that's the way you want to put it,
3 yes.

4 Q Now, I want to get back for a second to
5 Financial Consultants, which is a company you say you
6 worked for for four or five years and you were vice
7 president.

8 A Yes.

9 Q Did you ever receive funding for that company
10 from Argentina?

11 A No. Just to make it easier for you, I never
12 handled the accounts. I was not the person who was,
13 you know, getting the checks, the checks that were in
14 the name of Financial Consultants.

15 Now, to me it is very difficult to answer the
16 truth when you had Financial Consultants, All-American and
17 also some insurance policies that we sold.

18 Q To your knowledge, in any one of your companies
19 that you were involved in during that time period when
20 you had Financial Consultants and the other companies, did
21 you ever receive funding from Argentina, the country of
22 Argentina?

23 MR. TABAK: Objection.

24 THE COURT: If you know.

25 MR. TABAK: I would like to ask for clarification.

1 whether he means the Government of Argentina or some
2 individual in Argentina.

3 THE COURT: Any individual or company in
4 Argentina.

5 THE WITNESS: No, your Honor. As a matter
6 of fact, we were trying to get some wine, and we had to
7 send money in order to get the labels and everything
8 that's necessary to get the brand of wine, the labels, the
9 cork and everything about the wine business, and as far as
10 you know, we only lost all the money. We lost our
11 partnership with the Argentine people.

12 I can give you the name of the company,
13 Fincoex, and and the distributor, Parana.

14 Q So you had dealings with Argentina, but you
15 did not receive any funding from there, that you know of?

16 A I don't want to answer immediately, because
17 you are asking for an assumption, that we were involved in
18 that kind of negotiation with Argentina, and the person that
19 could give you a better answer unfortunately is not here,
20 and Ignacio Gonzalez and another partner that we had, by
21 the name of Jaime Venito, and Padre Aldesecca -- and I don't
22 know if you want the whole answer. I will give you the
23 whole answer, okay?

24 Q Please.

25 A There is is Padre and Jaime Venito, who is a

1 big personality among the Cuban people, if you know him.

2 Q I am sorry. I don't.

3 A And he is from Spain, and he had good connec-
4 tions with financial people in Spain, and he got that
5 gentleman that happens that he was the supervisor or kind
6 of a co-owner of Galerie Special, which is a big store in
7 Spain, and he convined the guy to come over, and he came
8 over to Miami and he made the connections with the Argentine
9 people that he was doing business, and we were starting,
10 trying to get into the wine business, and, as a matter
11 of fact, I'm giving it for the record, I have a half bottle
12 of wine in my house that I saved that they sent as a
13 sample from Argentina.

14 Q So your answer is you did not receive funding
15 from Argentina; is that correct?

16 A Not that I remember.

17 Q Did you receive any money from the Chilean
18 Government or from any of the organizations in Chile?

19 A No.

20 Q Did you receive explosives from Guatemala?

21 A No.

22 Q Did you make any trips to Guatemala?

23 A No.

24 Q Who is Victor Gard?

25 A Victor Gard is an Argentinian person that he

1 visited the officemaybe two times, three times -- I don't
2 remember. I was never formally introduced to Mr. Victor
3 Gard, and according to Arocena, he is a big chief, I
4 suppose I should say in the right wing Argentinian
5 Government, whatever.

6 Q Have you finished your answer?

7 A I think so.

8 Q But as far as you know he never gave you any
9 money?

10 A Gave me what?

11 Q As far as you know, sir, Mr. Gard did not give
12 you any money?

13 A I don't think I ever even shook his hand.

14 THE COURT: From that I take it you mean you
15 never received anything from his hands, including money;
16 is that right?

17 THE WITNESS: That is right, your Honor.

18 MR. FERNANDEZ: One second, your Honor.

19 (Pause.)

20 MR. FERNANDEZ: I have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. TABAK:

23 Q Did Mr. Arocena ever tell you anything about
24 Victor Gard's personallity?

25 A Just what I said, that Victor Gard was a, for

XX

1 me -- I'm not talking about all the people; just my
2 opinion for myself, a right wing person. He is a person
3 that in today's world is a person that is fighting for a
4 democratic way of living, because anything that is not on
5 the right side is kind of pink, and pink is very close to
6 red, so I can say that.

7 Q Did Mr. Arocena ever discuss with you whether
8 Victor Gard was a nice person, or the kind of person
9 he was?

10 A To the best of my recollection, they have thed
11 mutual respect, Arocena and Victor Gard. I do not know
12 the details of that kind of relationship.

13 Q You were just asked if you had ever gone to
14 Guatemela. Did you ever plan to go to Guatemala?

15 A Yes; I did.

16 Q And will you tell the jury what that was all
17 about?

18 A Of course, it related to a trip that Eduardo
19 Arocena and Ignacio Gonzalez were going to Guatemala to
20 kidnap someone. I never found out the name. As a
21 matter of fact, under oath, I think they never really
22 wanted to do that, and I have absolutely no idea that the
23 trip was really for doing that.

24 Q Did Mr. Arocena tell you why he and Mr. Gonzalez
25 were going to kidnap this peson?

1 A For a ransom.

2 Q You also testified you spoke to a psychiatrist
3 about your marital situation. Were you ever personally
4 treated by a psychiatrist?

5 A Never in my life.

6 Q And what did the psychiatrist tell you about
7 consultation?

8 MR. FERNANDEZ: Objection.

9 THE COURT: Sustained.

10 Q I am going to show you Government's Exhibit
11 2006 for identification. You testified about the Mini-
12 Stor-It. Do you recognize that?

13 A Yeds.

14 Q What is that?

15 A This is my name, with my middle initial, the
16 last name and the address of the place I am living and the
17 telephone number and the signature at the bottom.

18 Q And what is the name in which you rented the
19 Mini-Stor-It locker?

20 A Eduardo R. Necuze.

21 MR. TABAK: Government offers Exhibit 2006 into
22 evidence.

23 MR. AGUILAR: No objection.

24 THE COURT: Received.

xx 25 (Government's Exhibit 2006 for identification

1 was received in evidence.)

2 Q Is that the only locker which you ever rented
3 at the Mini-Stor-It?

4 A Yes.

5 Q Now, on cross-examination you twice testified
6 that you felt you were helping your country's cause by
7 doing what you were doing. Can you explain to the
8 grand jury --

9 THE COURT: No. They are not grand. They
10 are a good group, but they are not a grand jury.

11 Q (Continuing) Will you explain to this fine
12 jury what you meant by that?

13 A When I began, when I started feeling there was
14 a need for what I was doing, it was a kind of feeling
15 that I could do something for my country.

16 Putting bombs is not the best way to defend
17 your country. Though I believe morally it is right, it
18 is illegal. But out of the frustration of knowing what
19 is happening in Cuba, maybe it was the only way in our
20 hands to tell the world. Maybe we are doing something
21 wrong, but I love our country, and we feel like doing
22 something.

23 Q How do you you feel that by doing what you are
24 doing you are helping your country?

25 A I am going to be honest with you, Mr. Tabak.

1 I never thought the Omega 7 organization, anyone in

2 Omega 7 would give a chance to the Communist Government

3
4 in Cuba to see us in court morally destroyed, associated
5 with drugs and lookin like we are garbage, and that is
6 what really hurts, believe me. That really hurts,
7 because I am going to give my life, anything, not to give
8 Fidel Castro the chance to have us in the Communist news-
9 paper in Cuba, with the image that we are here to destroy
10 the country, and when I went to the grand jury I lied
11 three or four times, and then to go back and say I lied.

12 What is next?

13 Q How do you feel that by making an agreement
14 with the United States Government you are helping your
15 country?

16 A First of all, when I went to your office I
17 went with a lawyer, Mr. Justin Ryan. I was lucky I had
18 a good lawyer. And Mr. Tabak offered me that he didn't
19 want to destroy any organization, that he was not an anti-
20 Cuban, and I didn't believe him at the beginning, and I
21 said, you are a human being, you are a decent man, you are
22 a human being.

23 I do not want anything just for me. Unfortun-
24 ately, Arocena is in jail, and I know Arocena was giving
25 information to the Cuban Government, because I heard the

1 statement.

2 If you want to offer anything, you have to
3 offer it for Rodriguez and Gonzalez. And I also told
4 this man, you Honor, three times in one day, taking
5 Ignacio Gonzalez out of jail and advising him what was
6 offered from the Government and begging Arocena to do the
7 same, and he is like a brother, and he knows it, but he
8 pushed me, and I am here. So finally we signed the
9 agreement, Ignacio included, and he finally signed the
10 agreement, and with the permission of the Court I am
11 finished with what I have to say.

12 MR. FERNANDEZ: Was there a request?

13 THE COURT: Well, I am not sure the Government
14 is finished questioning you, and I don't know if Mr.
15 Fernandez has questions on recross.

16 Is there any objection to Exhibit 315?

17 MR. AGUILAR: No, your Honor.

18 THE COURT: It is received.

19 (Government's Exhibit 315 for identification
20 was received in evidence.)

xx 21 BY MR. TABAK (Continuing):

22 Q By your previous response, are you finished
23 with the answer or was there something else you wanted
24 to say?

25 A No. That is all I wanted to say.

1 MR. TABAK: I have no further questions of the
2 witness.

3 RE CROSS EXAMINATION

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4 BY MR. FERNANDEZ:

5 Q Have you been advised by anybody in the United
6 States Attorney's office that you will be testifying
7 against other members of the Omega 7?

8 MR. TABAK: Objection.

9 THE COURT: Sustained.

10 MR. FERNANDEZ: No further questions.

11 THE COURT: Anything further?

12 MR. TABAK: Not from the Government.

13 MR. FERNANDEZ: No, your Honor.

14 THE COURT: You may step down. You are
15 excused.

16 THE WITNESS: (Through the interpreter) Which
17 way do I get out? This way?

18 THE COURT: Go that way.

19 (Witness excused.)

20 ~~MR. TABAK: Before calling our next witness, the~~
21 ~~Government would offer Exhibit 400 for identification into~~
22 ~~evidence.~~

23 MR. AGUILAR: I have no objection, your Honor.

24 THE COURT: Received.

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25 (Government's Exhibit 400 for identification

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MR. GREEN: Now that the item is evidence, I ask the agent to simply lift it up and show it to the jury.

THE COURT: Very well, you may do that.

(Pause)

THE COURT: At this point we will recess for the day.

Ladies and gentlemen, I indicated that we would recess at this time. Please do not discuss the case among yourselves, continue to keep an open mind on all aspects of the case until it has been concluded and given to you following my charge.

The jury is directed to return to resume hearing the case tomorrow morning at 10:00 a.m.

(The jury left the courtroom)

MR. TABAK: Your Honor, there is one thing the government would like to raise now that the jury has been excused for the day, which is that the government pursuant to a motion that it filed on August 7th of 1984 would offer the grand jury testimony of an unavailable witness, namely, Jose Ignacio Gonzalez, which we have redacted to delete all references to Mr. Arocena and we would offer that pursuant to Federal Rule of Evidence 804(b)(3).

THE COURT: Very well, I will hear the defendant's attorneys.

MR. AGUILAR: To be honest with the Court,

1 we are not prepared to handle that motion at this time. We
2 have been discussing it and Mr. Fernandez and I talked
3 about the exclusion of all the testimony. It doesn't per-
4 tain to Mr. Arocena and the only reason the government would
5 try to introduce that right now is to further buttress the
6 testimony of their star witness Mr. Necuze.

7 Mr. Gonzalez was available up to, I believe, less
8 than two months ago. The government at that time should
9 have chosen to put him under bond or had the Court place
10 a bond on this individual high enough to have him appear at
11 trial as a witness and they put him under a \$40,000 minimum
12 bond and he skipped the country and we would not have an
13 opportunity to cross-examine this individual and we believe
14 any testimony introduced through his statement would be
15 highly prejudicial to this defendant.

16 THE COURT: You would concede, I am sure, at
17 this point, that he is "unavailable," is that correct?

18 MR. AGUILAR: Yes, your Honor, we believe he
19 is unavailable, although we believe he has mailed letters
20 to a lot of people both in New Jersey and New York from
21 Miami.

22 THE COURT: Let's assume for present purposes
23 that the witness is unavailable. The government seeks
24 to introduce his grand jury testimony as being statements
25 against the witness' penal interest and therefore not hearsay.

1 MR. GREEN: Your Honor, with respect to the
2 confrontation clause argument, I would direct your
3 attention to the Katsougrakis case, which is at
4 715 F.2d 769. I have only the slip opinion, your Honor,
5 and I cannot cite the precise page, but in this decision
6 it deals with a question admittedly not precisely on
7 point, but it does deal with the question of a statement
8 against penal interest, which was offered in that case,
9 and it deals precisely with the question whether
10 admission of that statement, which admittedly falls within
11 the penal interest exception, as does this one -- whether
12 that statement would violate the confrontation clause.
13 In the Katsougrakis case, that was a statement made without
14 opportunity for confrontation. Indeed, as I recall,
15 it was made shortly before the declarant died, although
16 it was not offered as a dying declaration.

17 In the Court of Appeals decision in that case,
18 in dealing with the confrontation clause argument, the
19 court says, "Appellants argue that even if declarant's
20 statements satisfy Rule 804(b)3, they do not survive
21 constitutional scrutiny under the confrontation clause.
22 Appellants correctly point out that even though a hearsay
23 statement may fall within a hearsay exception, the statement
24 of an unavailable declarant will nonetheless be excluded
25 under the confrontation clause unless the court is

1 satisfied that it bears adequate indica of reliability. As
2 a practical matter, however, a hearsay statement that
3 satisfies the penal interest exception usually will
4 survive confrontation clause scrutiny because the
5 trustworthiness issue has already been decided --"

6 THE INTERPRETER: Your Honor, it is absolutely
7 impossible to interpret this, unless I am given a copy.

8 MR. GREEN: I will read slowly. The court
9 continues and says, "A hearsay statement that satisfies
10 the penal interest exception usually will survive
11 confrontation clause scrutiny because the trustworthiness
12 issue has already been decided in favor of admissibility."
13 The Supreme Court has reaffirmed this view, holding that
14 "Reliability can be inferred without more in a case
15 where the evidence falls within a firmly rooted hearsay
16 exception."

17 The government would rely on this case for
18 the proposition that as a general matter, any statement that
19 falls within the penal interest exception at the same time
20 satisfies the confrontation clause, particularly where,
21 as here, there are corroborating circumstances to support
22 that statement.

23 The government would also of course rely on
24 the Winley case, although the confrontation clause issue was
25 not specifically addressed there, but at least by implication

1 that case stands for a similar proposition, in the
2 government's view.

3 Finally, the government would cite a paragraph
4 in the slip opinion in United States v. Potamitis,
5 docket No. 84-1036, to 38, and that was decided July 10,
6 1984, and in that slip opinion, the Court of Appeals
7 cites Ohio v. Roberts, which is of course the same
8 Supreme Court decision cited by the Court of Appeals in the
9 Katsougrakis case, and cites that for a similar proposition,
10 I believe, that to satisfy -- in essence, I think it
11 suggests that if it falls within a recognized exception,
12 it also satisfies the confrontation clause, although the
13 government does of course recognize that the decisions
14 in those cases are not precisely on point, but the
15 government would urge that the language in those opinions
16 support its offer of this evidence.

17 THE COURT: I will hear defendant's attorney.

18 MR. AGUILAR: Your Honor, we go back to the same
19 question, whether or not Mr. Arocena -- first of all, we
20 should take a two-prong approach. Mr. Arocena's case
21 in the eyes of a lot of people is very well proved.
22 First of all, this is cumulative, is not needed. There is
23 a chance that counsel for the prosecution may be wrong as to
24 the interpretation of those two cases and they are running
25 the risk of having an error in this case and bringing the

1 case back on a minor point.

2 We will not have an opportunity to cross-examine
3 this particular co-conspirator. In addition to that,
4 what is the purpose of the statement coming in, just that
5 this particular individual made statements against penal
6 interest? It denies us the right to cross-examine the
7 individual and, to be candid, it is not needed in this
8 particular case.

9 THE COURT: I thought as a matter of fact
10 when you addressed that point, that they were actually
11 offering it with certain limitations, that not even
12 refer to Mr. Arocena, and again, it seems to me, that
13 brings into question the balancing that I must do between
14 probative value and inappropriate or cumulative,
15 negative, unconstitutional effect.

16 In any event, if anyone wishes to argue the
17 matter further, they may do so, and then I am prepared to
18 rule.

19 MR. TABAK: Your Honor, I would first note that
20 by definition, the rule for unavailable witnesses only
21 applies when the witness is unavailable. We would not
22 seek to jeopardize the result of this case and put people
23 like Mr. Fernandez and Mr. Necuse through this procedure
24 twice if we thought we had any question about it being
25 perfectly legal to let it in. The balancing test applies

1 to all evidence, but as far as the confrontation question,
2 the government does believe that the Second Circuit has
3 answered that question and that under Rule 804, it is
4 clearly admissible on that basis.

5 THE COURT: Why are you offering the redacted
6 with respect to the references to Mr. Arocena?

7 MR. TABAK: We are perfectly happy to offer
8 it unredacted. We felt that under the cases, it is
9 more appropriate to redact those out and we offer it
10 to corroborate testimony of Mr. Fernandez and Mr. Lora
11 as well as Mr. Necuse and certainly defense counsel has
12 challenged their testimony.

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1 I would just note that Mr. Gonzalez took off
2 in April of 1984, that it is the Government's information
3 that he is hiding in Guatemala.

4 The United States, in addition to having him
5 indicted for failing to appear, has made several requests
6 under an extradition treaty, and it is my understanding
7 that powerful individuals in Guatemala are hiding Mr.
8 Gonzalez, and the government there has chosen not to honor
9 their treaty obligations with the United States.

10 THE COURT: I have conceded that he is unavail-
11 able. I don't think that you have procured his absence,
12 and no one else has indicated anything of a like nature.

13 MR. TABAK: Just the record is correct, I would
14 like to add that he was on a \$50,000 personal recognizance
15 bond, which was secured by his stepfather-in-law's house,
16 and the Government has filed a motion, over a month ago,
17 I believe, seeking the forfeiture of the bail.

18 THE COURT: Very well. The Court is prepared
19 to rule. Conceding that Jose Ignacio Gonzalez is an
20 unavailable witness and recognizing that the Second Circuit
21 has spoken in the cases to which the Government refers,
22 the Court nevertheless, in consideration of all the
23 circumstances, including the weight of the testimony which
24 is proffered, has determined to deny the Government's
25 motion to introduce the statements of Jose Ignacio Gonzalez

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1 made before the grand jury in this District on February
2 14, 1984.

3 The Government, recognizing some of the problems
4 that exist here, has offered the testimony and has suggested
5 that it is prepared to redact any reference to the defendant
6 Arocena. That would lead the Court to conclude that the
7 testimony is being offered largely to corroborate the
8 testimony of the witnesses Necuze, Fernandez and Lora.

9 The problem is that the jury has had a chance
10 to see these three witnesses, to observe them on both
11 direct and cross-examination. The jury would not have a
12 similar opportunity to judge the credibility of Gonzalez,
13 and although an argument can be and has been constructed
14 by tthe Government to support the introduction of Gonzalez'
15 grand jury testimony, the Court, for several reasons has
16 determined to deny the motion.

17 The first reason is that the Court continues
18 to believe that the introduction into evidence of this
19 testimony would violate the defendant's right under the
20 Sixth Amendment to confront and cross-examine all of the
21 witnesses against him.

22 Second, the testimony which is offered is
23 substantially cumulative, and in this case, where in the
24 Court's view the Government's proof is very substantial,
25 if not overwhelming, there would appear to be little to be

1 gained and much possibly to be lost by the Court granting
2 the Government's motion permitting the introduction of
3 this grand jury testimony.

4 Accordingly, in the exercise of its discretion
5 and having considered the constitutional problem which
6 has just been discussed and having determined to weigh the
7 probative value of the evidence against the prejudice in
8 this case to the defendant, the Court has determined to
9 exclude the proffered evidence.

10 Accordingly, the Government's motion to
11 introduce the grand jury testimony of Jose Ignacio Gonzalez
12 is denied.

13 I will direct at this time that the original
14 of the Government's memorandum, which the Court had
15 retained, be filed. I will return the copy to the
16 Government.

17 At this time, we will adjourn court until
18 ten o'clock tomorrow morning.

19 (Adjourned to September 5, 1984, at 10:00 a.m.)

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