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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:13-cv-1426

JOAN JARA, in her individual	:	
capacity and in her capacity	:	
as the personal representative	:	
of the Estate of Victor Jara,	:	
et al.	:	
	:	Orlando, Florida
Plaintiffs	:	June 16, 2016
	:	11:01 a.m.
v.	:	
	:	
PEDRO PABLO BARRIENTOS NUNEZ	:	
	:	
Defendant	:	
	:	

TRANSCRIPT OF JURY TRIAL, VOLUME IV
BEFORE THE HONORABLE ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

Court Reporter: Amie R. First, RDR, CRR, CRC, CPE
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Proceedings recorded by mechanical stenography.

Transcript produced by Computer-Aided Transcription.

1 APPEARANCES:

2

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10 For the Defendant: Sean W. Landers

11 Luis F. Calderon

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1 P R O C E E D I N G S

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3 THE COURT: Welcome back. We're back on the
4 record in Jara versus Barrientos Nunez, 6:13-civil-1426.

5 The Court notes counsel and the parties are
6 present.

7 I had a question yesterday, Mr. Beckett, and,
8 Mr. Calderon, from one of the jurors with respect to again
9 the video translation was a little difficult for them to
10 hear and they asked if a section could be read to them.

11 It's in Mr. Valenzuela's -- we're still on
12 Mr. Valenzuela, correct? Is that the current witness?

13 MS. BELSHER: Yes.

14 THE COURT: Mr. Valenzuela's testimony, it looks
15 like at 11:40, they said there's a -- I guess they said he
16 made a response to something where there was not a
17 question. The response was, one meter 90. And they
18 couldn't match that up with a question.

19 And then at 1323, they wanted some clarification
20 about -- the question, their question to me is, him in
21 charge, can we have clarification?

22 So maybe as we watch the rest of Mr. Valenzuela,
23 you all can be looking at that. And before we finish with
24 him, go back and maybe we can publish the written portions
25 of him and clear that up.

1 MR. BECKETT: We'll do that, Judge.

2 THE COURT: All right. Thank you.

3 Anything we need to take up before our jury comes
4 in?

5 MR. BECKETT: No, Judge, not on the plaintiffs'
6 side.

7 MR. CALDERON: No, Your Honor.

8 THE COURT: All right.

9 Mr. Carter, would you get our jury.

10 Just remind the lawyers, I need to break at
11 10 after 12:00 to make my commitment. It's right here in
12 the courthouse. But I'll have people waiting on me, so I
13 can't be late. I can be, but it wouldn't be considerate.

14 MR. BECKETT: Judge, for scheduling purposes,
15 we're going to finish this videotape. We'll clear up the
16 issues that you just described.

17 And then we'll go to another videotape, which we
18 may not end by the time we break. But if not, it will just
19 run a little over after we get back. And then we'll have a
20 live witness after that.

21 THE COURT: Okay. Great. Thank you, Mr. Beckett.

22 I'm going to -- Counsel, I'm going to mark --
23 Counsel, I'm going to mark this note as Court's Exhibit
24 Number 4. You're welcome to look at it if you like. It's
25 what I just described to you.

1 MR. CALDERON: Judge, I think we may need to
2 inquire with regard to whether it's this witness or the
3 previous one. I don't think we've gotten to the section
4 where this witness describes Mr. Barrientos. And I think
5 that's what was being asked with regards to what they
6 believe his height was.

7 THE COURT: Not height. Who's in charge, they
8 said. Let me have the question back, please.

9 It's definitely this witness. Because they
10 identified Rivero Valenzuela video testimony at 1140,
11 there's a -- they say there's a comment, but there's no
12 question. The response is one meter 90.

13 And then they say at 1323, there's a response to a
14 question about a person in charge, and they couldn't --
15 apparently they couldn't hear that clearly. They wanted
16 some clarification.

17 (Jury entered the courtroom at 11:06 a.m.)

18 THE COURT: Welcome back, ladies and gentlemen. I
19 hope you had a pleasant evening. I should say evening and
20 morning.

21 As you may recall, we were in the midst of the
22 testimony of Mr. Valenzuela when we broke yesterday and
23 we're going to resume with that this morning.

24 We're going to work until a little bit after
25 12:00, and then we're going to take our lunch break so that

1 I can meet my commitment.

2 I have communicated with the lawyers the questions
3 that you posed to me in writing with respect to needing
4 some clarification about some of this witness' testimony.
5 And the lawyers are going to try to address that for you
6 before this witness is finished, or at least at some point
7 during the course of the day.

8 So, hopefully, we'll get clarity to you on the
9 questions that you had from yesterday's proceedings.

10 All right. Mr. Beckett, if the plaintiff is
11 ready, you may proceed with the testimony of
12 Mr. Valenzuela.

13 MR. BECKETT: Thank you, Judge.

14 (Playing video deposition of
15 Carlos Daniel Rivero Valenzuela.)

16 THE COURT: Does that conclude Mr. Valenzuela's
17 testimony?

18 MR. BECKETT: Yes, sir.

19 THE COURT: Do you have portions of his transcript
20 that you want to read?

21 MR. BECKETT: We need to confer on that.

22 THE COURT: Okay. Let's do that later then.
23 Do you have another witness cued up and ready to
24 go?

25 MR. BECKETT: Yes, sir.

1 THE COURT: Okay.

2 MR. BECKETT: The next witness will be Ruben Angel
3 Vargas Matta. Vargas, V-A-R-G-A-S. Matta, M-A-T-T-A.

4 This videotape deposition was taken on
5 November 17th, 2015.

6 THE COURT: All right. Ladies and gentlemen, same
7 instruction with respect to the consideration of this
8 testimony by video.

9 You may proceed, Mr. Beckett.

10 MR. BECKETT: Thank you.

11 (Playing video deposition of
12 Ruben Angel Vargas Matta.)

13 THE COURT: I need to stop here, Mr. Beckett, so I
14 can make my appointment.

15 All right. Ladies and gentlemen, I'm going to
16 excuse you for lunch. As I mentioned yesterday, I have an
17 obligation that I need to attend to. So if I could ask you
18 all to come back at 1:30 and be ready to resume, we'll pick
19 up with this witness.

20 I did speak with the lawyers yesterday about our
21 timing and they've assured me that they think we're on
22 schedule. So I'll take them at their word for that.

23 And I'll see you back here at 1:30. We'll pick up
24 with this witness. And then I think we may have some live
25 testimony.

1 Right, Mr. Beckett?

2 MR. BECKETT: Correct, Judge.

3 THE COURT: Great.

4 Remember, this is not the time to discuss the case
5 amongst yourselves or with anyone else.

6 I hope you have a pleasant lunch. I'll see you
7 back here at 1:30.

8 (Jury exited the courtroom at 12:08 p.m.)

9 THE COURT: We'll be in recess until 1:30.

10 (Luncheon recess at 12:09 p.m. to 1:32 p.m.)

11 THE COURT: All right. We're back on the record
12 in Jara versus Barrientos Nunez, Case Number
13 6:13-civil-1426.

14 Court notes counsel and parties are present.

15 Is our jury ready to come back, Mr. Carter?

16 COURT SECURITY OFFICER: Yes.

17 THE COURT: All right. Let's bring them in.

18 (Jury entered the courtroom at 1:33 p.m.)

19 THE COURT: Welcome back, ladies and gentlemen. I
20 hope you had a nice lunch.

21 Were all of you able to abide by my instructions
22 not to discuss the case amongst yourselves or with anyone
23 else?

24 JURY: Yes.

25 THE COURT: All right. Thank you very much.

1 Let's resume then with the testimony of Mr. Matta.
2 I think we were midway or partway through Mr. Matta's
3 testimony when we broke for lunch.

4 Mr. Beckett?

5 MR. BECKETT: Correct, Judge.

6 (Playing video deposition of
7 Ruben Angel Vargas Matta.)

8 MR. BECKETT: Judge, I'd just like to publish the
9 map that shows these locations so the jury can see.

10 THE COURT: Is this referenced by the witness?

11 MR. BECKETT: He referenced these points, yes.

12 THE COURT: Any objection, Mr. Calderon?

13 MR. CALDERON: Yes, Your Honor. These were not
14 exhibits to the deposition.

15 THE COURT: Okay. To be consistent in my ruling,
16 Mr. Beckett -- and if you have another witness who can
17 point out these locations on a map and use the maps for --
18 in other words, this witness was not provided with these
19 maps during the course of his testimony, as I understand
20 it. Is that right?

21 MR. BECKETT: He was not shown the map during the
22 deposition, that is correct, Judge.

23 THE COURT: So another witness will have to
24 correlate his testimony with the places on the map.

25 MR. BECKETT: Okay. Very good, Judge.

1 (Playing video deposition of
2 Ruben Angel Vargas Matta.)

3 THE COURT: Does that conclude Mr. Matta's
4 testimony?

5 MR. BECKETT: It does, Judge.

6 Judge, could we approach on a couple of issues?

7 THE COURT: Yes.

8 (Discussion at sidebar on the record.)

9 MR. BECKETT: Judge, I understand your ruling with
10 respect to the map, but I think this is distinguishable.
11 I'm not asking to bring up a complicated document that we
12 could have shown the deponent during the deposition.

13 This is something that the Court -- or at least
14 the Chilean court could take judicial notice of. And there
15 would have been no reason for me to show a map to point out
16 -- I know where it is. Miss Roberts knew where it was at
17 the time.

18 I'm trying to orient the jury to something there
19 is no dispute about as a pedagogical matter so they
20 understand better what they are hearing. And I think an
21 objection to that really is just attempting to keep them
22 from fully understanding the testimony.

23 So I don't think it's like a document that I could
24 have shown, that there's any unfairness that comes out of
25 it.

1 THE COURT: Well, the difficulty that I'm having
2 with it is -- I have no issues with respect to the map. I
3 don't think there's an objection to the map or the
4 integrity of the map or the accuracy of the map.

5 The problem is there is no sponsoring witness for
6 the map. And I don't know, what are you going to do with
7 the map?

8 MR. BECKETT: Just show it.

9 THE COURT: How are you going to possibly use the
10 map in any way, other than to -- aren't you going to have
11 to point?

12 MR. BECKETT: No. The map shows -- it has a
13 legend on it, and it shows Padre Hurtado discussed and
14 shows its relevant distance from San Antonio.

15 THE COURT: That's fine. I don't have any
16 objection to you referencing the map and saying, you know,
17 Your Honor, joint exhibit whatever it is relates to this
18 witness' testimony. But that's the end of it.

19 Then the jury is going to have to take -- the
20 problem I have, Mr. Beckett, is it's not proper to
21 interrupt the witness' testimony to now introduce exhibits
22 that he never saw, he never referenced, he didn't sponsor,
23 and have the jury somehow think that this witness lends
24 credence to this map. He may very well had, had he been
25 asked. But he wasn't asked.

1 MR. BECKETT: Okay. I understand what your point
2 is there.

3 MR. DELLINGER: We can show it now.

4 MR. BECKETT: I'd like to show it now.

5 THE COURT: It's in evidence. I have no problem
6 with you putting it on the screen.

7 And you can tell me, Your Honor, this is Joint
8 Exhibit A. It's a map of whatever it is. May I publish?

9 Yes, you may. Publish it as long as you don't
10 comment on it.

11 MR. BECKETT: Understood.

12 Judge, one other thing. With respect to -- with
13 respect to the note from the jury, we've conferred on this
14 and we agree, their references seem to be from two separate
15 depositions. We've identified the passages. They've
16 already been played, but we can read them in.

17 It wasn't the one deposition. The one reference
18 about the measurement was from an earlier deposition.
19 There's no reference to that in the one we thought it was
20 in.

21 MR. CALDERON: Your Honor, if the Court wants to
22 inquire of the jury, just to make sure we're not
23 misrepresenting something. But I agree with Mr. Beckett
24 that it was Riquelme's description of one meter 90. And
25 then it was Valenzuela with a question regarding who was in

1 charge.

2 If you want to inquire of the jury, I do think
3 that's accurate, though.

4 THE COURT: I'm not entirely sure that's going to
5 be a productive exercise. But --

6 MR. BECKETT: We could read it in and ask them if
7 that answers the question.

8 THE COURT: Let's do that. Just make sure you
9 make it clear who the witness is.

10 MR. BECKETT: Absolutely. Okay.

11 (End of discussion at sidebar.)

12 THE COURT: All right. Mr. Beckett, you may
13 proceed.

14 MR. BECKETT: Thank you, Judge.

15 With the Court's permission, I would just like to
16 publish to the jury JTX-64.

17 THE COURT: All right. You may publish.

18 MR. BECKETT: Could I ask for assistance for the
19 ELMO from Miss Flick?

20 Thank you.

21 THE COURT: Ladies and gentlemen, this document is
22 a map that's already been received into evidence. It's
23 being displayed to you.

24 To the extent there's any -- some of the testimony
25 you've heard or may hear. I'll give you a minute to take a

1 look at it. There's no testimony with respect to the map.
2 You can take a minute and look at it. There may or may not
3 be later on.

4 And this along with the rest of the exhibits, of
5 course, will be available to you during the course of your
6 deliberations.

7 Call your next witness, please, Mr. Beckett.

8 MR. BECKETT: Judge, we just had some transcripts
9 to read into the record.

10 THE COURT: Ladies and gentlemen, these are
11 portions of depositions the lawyers, in response to your
12 query about clearing up a couple of things, have gone back
13 through testimony. They're going to publish a couple of
14 excerpts, I think from two separate depositions, if I
15 understood you correctly, Mr. Beckett.

16 And they will identify for you who the witnesses
17 were and the page and line of the deposition that's being
18 read.

19 MR. BECKETT: Thank you.

20 This is from the deposition of Mario Arturo
21 Gonzalez Riquelme. It's from page 25 of the transcript
22 printed.

23 "Question: Could you please tell me again how
24 tall he was? Because it doesn't seem that the translator
25 understood that.

1 "Answer: More or less, an estimate, about one
2 meter 90."

3 And then the other quote is from the deposition of
4 Carlos Daniel Rivero Valenzuela. This is from page 14 of
5 the printed transcript.

6 "Question: Was Barrientos in charge of the first
7 section of the Second Company of Tejas Verdes?"

8 Answer -- or "The Witness: Yes."

9 THE COURT: Thank you, Mr. Beckett.

10 MR. BECKETT: Thank you.

11 THE COURT: Call your next witness.

12 MR. BECKETT: This will be by Mr. Urrutia.

13 MR. URRUTIA: Plaintiffs call Denis Boris Navia.

14 THE COURT: Denis Boris Navia Perez.

15 MR. URRUTIA: Your Honor, we have a small
16 preliminary matter before this witness testifies. I was
17 hoping we could have a sidebar with defense counsel.

18 THE COURT: Okay. It would have been great if we
19 would have done that when we were just up here. We'll come
20 back up.

21 MR. BECKETT: My fault.

22 MR. URRUTIA: My apologies.

23 (Discussion at sidebar on the record.)

24 THE COURT: Yes, sir.

25 MR. URRUTIA: Your Honor, the exhibits we plan to

1 submit during this -- during this examination, it's
2 Plaintiff's Exhibit 3. I think there's three pending
3 objections on foundation, authenticity, and best evidence
4 rule.

5 In light of the exhibits, is it possible to rule
6 on those during a sidebar so it doesn't effect the
7 perception of the jury as to the authenticity?

8 I think the translation will be here.

9 THE COURT: Tell me what I'm looking at.

10 MR. URRUTIA: This is a poem that this witness
11 will likely testify was written by Victor Jara, how it was
12 before he was killed. We would like to submit it into the
13 record.

14 Defense has raised an objection that it is
15 potentially not an authentic poem.

16 And in light of why we're going to submit it into
17 the record --

18 THE COURT: Tell me what the evidence is under
19 rule -- tell me what the testimony will be under the
20 appropriate rule of evidence, which is probably 901, that
21 this is, in fact, what it is purported to be.

22 MR. URRUTIA: The witness will testify that he saw
23 Victor write the poem. He will testify that he then
24 transcribed the poem to smuggle it out of the next
25 detention center, National Stadium.

1 That Victor gave him the poem and that Victor
2 wrote this hours before he was killed under the impression
3 that he was very much likely going to be killed.

4 THE COURT: And tell me what this witness'
5 perspective or point of view, how is it that he knows these
6 things?

7 MR. URRUTIA: He saw Victor write the poem.
8 Victor gave him the poem after he wrote it. He then
9 transcribed the poem himself, knows it was smuggled out,
10 and can verify this poem and the language is exactly what
11 he transcribed.

12 THE COURT: Mr. Calderon, tell me what it is that
13 suggests there is a reliability issue with respect to this
14 document.

15 MR. CALDERON: Judge, I mean, with respect to the
16 foundation -- well, I think that would establish it.
17 There's the issue with regards to authenticity and best
18 evidence. And where is the actual document that he
19 transcribed it to so that we can compare it to what's typed
20 up?

21 THE COURT: Okay.

22 I think that's going to go to a weight issue as
23 opposed to admissibility. So I'm going to overrule your
24 objection.

25 But you certainly are free to cross-examine the

1 witnesses with respect to what happened to the original
2 document and where is it, how do we know this corresponds
3 with what was on that document.

4 But I think it's a weight issue and not an
5 admissibility issue. So I'm going to overrule your
6 objection.

7 And I'll allow you to examine the witness and
8 introduce this document.

9 And, of course, Mr. Calderon, you can
10 cross-examine as you think appropriate. Obviously, you
11 don't have to ask those questions but you may.

12 MR. CALDERON: Thank you, Judge.

13 MR. URRUTIA: Thank you.

14 (End of discussion at sidebar.)

15 THE COURT: Mr. Navia.

16 Thank you, Mr. Icaza. Would you ask the witness
17 to step forward and raise his right hand to be sworn,
18 please.

19 (Witness sworn.)

20 THE WITNESS: Yes, I swear.

21 THE COURT: Please take the witness stand.

22 All right. Thank you for being back, Mr. Icaza.
23 Do you have your handheld microphone?

24 Would you ask the witness to state his full name,
25 please, and to spell his surname.

1 THE WITNESS: My name is Denis Boris Navia Perez,
2 N-A-V-I-A.

3 THE COURT: Thank you, sir.

4 You may inquire, Mr. Urrutia.

5 MR. URRUTIA: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 BY MR. URRUTIA:

8 Q Mr. Navia, where do you currently reside?

9 A I reside at Santiago, Chile.

10 Q How long have you resided in Santiago?

11 A I was born in Santiago, Chile; and I have never left
12 Santiago.

13 Q How old are you?

14 A Seventy-four years of age.

15 Q And where did you study?

16 A I have university studies. I am an attorney from the
17 University of Chile.

18 Q And what is your current employment?

19 A I practice law, free law, at the City of Santiago.

20 Q Let's go back to September 1973. At that time, what
21 were you doing professionally?

22 A In September of 1973, I held the position of chief of
23 personnel and appointments at the Technical University of
24 the state.

25 Q To make things clear, is it okay if I refer to the

1 university as the UTE?

2 A Yes.

3 Q During your time at the university, the UTE, did you
4 become acquainted with Victor Jara?

5 A I started working at the Technical University in the
6 year of 1968. And Victor Jara entered the Department of
7 Extensions and Communications in the year 1971.

8 Q How often would you see Victor Jara at the UTE?

9 A In my position as head of the department of personnel,
10 I had contact with academicians and teachers including
11 Victor Jara.

12 Q Approximately how often would you see Victor Jara?

13 A Well, I would see him frequently, almost every day.

14 Q And in your opinion, was Victor Jara a well-known
15 figure in Chile in September of 1973?

16 A Yes. Victor Jara was a popular singer who was well
17 known in Chile. And, therefore, everyone knew Victor Jara.

18 Q Let's move forward to September 11, 1973. When did
19 you hear first that a coup was occurring?

20 A On the morning of September 11th at the office of
21 the president of the university. Also radio stations that
22 were still on the air, supporters of the Government of
23 President Allende. As well as there were radio stations at
24 that time were already under the control of the
25 revolutionaries effecting the coup.

1 Q Did you see Victor Jara at the UTE on the 11th?

2 A On the 11th, Victor Jara came to the university
3 with his guitar because he had to sing at an event that
4 would be attended by the President of the Republic at 11:00
5 in the morning at the event already organized at the UTE.

6 Q And do you know why President Allende was to go to the
7 UTE?

8 A President Allende was about to announce the convening
9 of a plebiscite, which is to say, which is to say a
10 consultation with the people of Chile in order to decide
11 the political situation of Chile.

12 Q On the 11th, do you recall the first time you saw
13 military personnel?

14 A On the 11th, the afternoon, once we were inside
15 the university, around a thousand persons. And we could
16 not exit because of the curfew. A delegation of
17 high-ranking officers of the Army came in to speak to the
18 president of the university to have him turn over the
19 university.

20 The president of the university informed the
21 academicians, the employees, and the students there was
22 more than a thousand people on the premises. And the
23 officers requested that they should all be ready for the
24 following day to transfer these people to each of their
25 respective homes.

1 And they also asked Dr. Quibic (phonetic), president
2 of the university, to carry out the official turning over
3 of this house of studies.

4 Q In the afternoon of the 11th, did you see Victor
5 Jara?

6 A Yes. On the 11th, Victor Jara, in the afternoon,
7 came in and on several occasions to the office of the
8 president of the university to the building known as the
9 Central House.

10 But after that, Victor Jara, with half of the people,
11 went to the building known as the School of Arts.

12 Q In what physical condition was Victor in when you saw
13 him?

14 A Victor Jara was fine. He was in good health, and he
15 had an excellent appearance.

16 Q And do you know where Victor Jara was on the night of
17 the 11th?

18 A On the night of the 11th of September, and half
19 of -- Victor Jara and half of the students of the
20 academicians and teachers went to sleep inside the old
21 building of the School of Arts.

22 Q And in what building did you spend the night of the
23 11th?

24 A I remained in the building known as the Central House.
25 I accompanied Dr. Quibic to the building of the School of

1 Arts. And as soon as we arrived, we saw Victor Jara
2 singing his songs and raising the spirits of the people.

3 Q And on the morning of the 12th, what building were
4 you in?

5 A On the 12th, the following day, I was at the
6 Central House next door to the office of the president.

7 Q And how did that morning begin?

8 A That morning we saw a military group comprised of some
9 100 soldiers under the command of a military officer
10 surrounded the Central House of the university.

11 And they also brought in a Jeep with a cannon, and
12 they pointed it or aimed it at the building of the Central
13 House.

14 Those of us that were there were thinking it was war
15 games. We never thought that they would fire. And the
16 first volley surprised us all. The ordnance entered
17 through the front walls.

18 It destroyed the back walls. And it landed in what we
19 know as El Patio de las Rosas, destroying part of the
20 building which is made of glass.

21 Q And after that cannon was fired, what happened next?

22 A There was a second shot. And that provoked a stampede
23 amongst all of us that were there, and we ran to the
24 president's office. The president of the university wanted
25 to communicate with the president of the Catholic

1 university.

2 In order to denounce the intervention of university
3 grounds, we pushed him so that he would lay on the ground.
4 Because at that moment, the 100 soldiers that were
5 surrounding the Central House received an order to fire
6 their rifles and machine guns that they were carrying, to
7 fire them upon the building, the Central House.

8 And we dragged our university president down to the
9 subterraneous or underground area of the Central House in
10 the middle of a terrible firefight.

11 Q For how long did this firefight last?

12 A That hail of bullets lasted approximately some eight
13 to ten minutes.

14 Q And to your knowledge, did anyone from the UTE fire a
15 weapon?

16 A No. From the university, not a single shot was fired.
17 There were no weapons in the university.

18 Q Did you leave the building after this attack?

19 A While we were underground, we heard a voice over a
20 megaphone. Surrender. And come out with your hands in the
21 air.

22 The president of the university took a white shirt and
23 tied it to a large broom, and he exited in order to face
24 the soldiers that were there.

25 The officer faced him. And he said, Where are the

1 weapons?

2 And the president answered, The only weapons in this
3 university are knowledge, research, and culture.

4 Q And after you were outside the main building, what did
5 you do?

6 A When we came out of the principal house, the soldiers,
7 using the stocks of their rifles, forced us to lie down on
8 the street, on the pavement. And they beat us. They
9 insulted us. They would walk in their boots over our
10 bodies.

11 And we received the order not to move, even being
12 allowed to be able to urinate.

13 Q And how long were you in that position?

14 A From 8:00 until midday, approximately until 12:00.

15 Q And on the 12th, when did you first see Victor
16 Jara?

17 A The soldiers also invaded the house, the School of
18 Art. And amongst beatings and rifle stock strikes, they
19 brought all of the teachers and students who have been
20 there, amongst whom was Victor Jara.

21 Q And do you know where Victor Jara went after exiting
22 the School of Arts?

23 A We were all brought together on a basketball court,
24 and we had the opportunity to drink some water. The
25 soldiers gave us water from the helmets.

1 And we -- and they informed us that minibuses would
2 be coming to collect us to transfer us to Chile Stadium.
3 And the transfer started first with the women. And later
4 on, the rest of the prisoners.

5 Q And when you were on the minibus -- sorry. Strike
6 that.

7 Did you get on one of those minibuses?

8 A Yes, I was forced to climb onto one of those
9 minibuses.

10 Q And did you recognize anyone that was on the minibus
11 with you?

12 A Yes. On the same minibus that I was traveling in,
13 they brought on Victor Jara.

14 Q And at that moment, in what physical condition was
15 Victor Jara in?

16 A Victor Jara was still fine.

17 Q Where did this bus go?

18 A The buses drove to Chile Stadium, a sporting complex
19 which is about seven or eight blocks away from the
20 university.

21 Q And when you arrived there, how did you get off the
22 bus?

23 A When we arrived there, the first thing that we saw was
24 soldiers. The bus upon which I was traveling parked by a
25 side door.

1 Q And what did you do?

2 A On a street known as Union Latinoamericana.

3 Q And how did you have to disembark this bus?

4 A We disembarked amid insults and beatings. We had to
5 enter the stadium between two lines of, or rows of
6 soldiers, who would beat us, kick us with their boots and
7 with their rifles. I suffered a wound on my hand.

8 Q And did the soldiers ask you to do anything with your
9 hands?

10 A No. They asked for nothing.

11 I was moving along, jumping, and with my hands behind
12 my head such as I'm doing now.

13 Q I'm going to show you an exhibit, Joint Exhibit 19.
14 If we can pull that out.

15 Is that picture -- can you see the picture?

16 A Yes.

17 Q Is that picture representative of how you had to place
18 your hands?

19 A Exactly.

20 Q And relative to you, where was Victor Jara?

21 A We were walking in a line, jumping, jumping. And they
22 would beat us.

23 Victor Jara was walking at four or five positions
24 before me.

25 Q Approximately how far?

1 A Three or four meters.

2 Q And how many soldiers were present at this time?

3 A Approximately ten soldiers on each one of the lines.

4 Q And where were these lines relative to you?

5 A The lines?

6 Q And where were the soldiers relative to you?

7 A They were immediately next to me. Beating and
8 screaming.

9 Q What would they scream?

10 A They would say, Traitors. Shit eaters. Shit
11 communists. And many other insults.

12 Q Was there any individual that was, from what you could
13 tell, in charge of these soldiers?

14 A Yes. That is so. It was an officer standing on a
15 riser in combat uniform, with a pistol on his belt, with
16 the Corvo, which is part of the uniform of Chilean
17 officers, with grenades on his belt, with a helmet down to
18 his eyes. His face covered in black. Pistol and a
19 submachine gun.

20 Q And when you were looking at Victor Jara, how was he
21 treated by the soldiers?

22 A During the time or at the moment that we were jumping,
23 suddenly the officer points out with his finger -- he
24 points out Victor, who was jumping in his line.

25 And he says, Bring that son of a bitch over here.

1 The soldier who was closest pushes him. And the
2 officer tells him off and says, Do not treat him like a
3 little miss, damn it.

4 And then the soldier gives Victor a ferocious rifle
5 butt in the middle of the back. Victor falls on his knees.
6 And receives another rifle butt very hard. Because with
7 that strike, he goes flat on the ground and falls at the
8 feet of the officer.

9 Q And what does the officer do with Victor when he's at
10 his feet?

11 A The officer comes down from the riser and, with
12 terrible fury, begins to beat him. One, two, three,
13 ten kicks. Upon his hands, his stomach, ribs. And also in
14 the face.

15 Victor tries to cover himself with his hands.
16 Especially over his face.

17 And the officer screams, You are shit, Victor Jara.
18 You're a communist. I will teach you to sing Chilean
19 songs, son of a bitch.

20 And he beats. And he beats. And he beats.

21 Victor Jara does nothing. He covers himself with his
22 hands.

23 And suddenly the officer discovers that there are
24 hundreds of eyes that are watching him. We stop as we saw
25 the punishment upon our singer.

1 And then the officer screams, What's the matter with
2 these shits who don't move forward. Move ahead.

3 And this one -- and he's talking about Victor Jara.
4 He says to the soldier, Put him in that corridor. And if
5 he moves, kill him, damn it. You kill him, damn it.

6 Victor is badly wounded. At a certain moment, the
7 officer pulls his pistol. And we thought, He's about to
8 kill him.

9 Nevertheless, at this point, he hits him with the
10 barrel of the gun upon his head. And blood begins to flow.
11 Victor's blood. Covers his forehead and his eyes.

12 That image will remain with us within our eyes, within
13 our thoughts, and within our hearts.

14 Q Mr. Navia, just as a matter of procedure, this has to
15 be a question and answer.

16 A Okay.

17 Q Okay. Thank you.

18 A Thank you.

19 Q After this occurs, do you see where Victor Jara goes?

20 A Victor Jara is dragged to an interior corridor of
21 Chile Stadium. And a soldier permanently aims at him.

22 Victor Jara is badly wounded, and he moves with great
23 difficulty. And he's forced to sit upon the concrete
24 floor, prohibited from moving.

25 Q And after this occurs to Victor Jara, where do you go?

1 A We continue to jump. And we enter into the interior
2 portion of the stadium where there is a commission of three
3 officers who, within a book, write down the names of the
4 prisoners. And they demand that we turn over our national
5 identity cards.

6 Q And what were you wearing at that time?

7 A What was I wearing? Well, I was wearing jacket,
8 trousers, and a sweater.

9 Q And did you have anything in the pockets of your
10 jacket?

11 A Yes. In my pockets I had a notebook, some bills, a
12 pencil, and the keys to my house.

13 Q Were you able to enter the stadium with your notebook?

14 A Yes, I was able to enter. But I must clarify that
15 when we entered into the location where the officers were
16 asking for our national identity cards, we were very much
17 surprised that there were three professors who were naked.

18 Q Mr. Navia, please allow me to ask the questions.

19 Thank you.

20 Approximately how large was this notepad?

21 A That notebook was of the size of a passport.

22 Q And as you entered the stadium, where did you go?

23 A Once we were inside the stadium, I was sent to the
24 south bleachers of the Chile Stadium.

25 Q And once in the stadium, can you describe what the

1 stadium looked like?

2 A The image of that stadium, it was a stadium of
3 horrors. There were already around 2,000 political
4 prisoners in that stadium.

5 And the officers would scream. They were insults.
6 And there was movement of the prisoners all the way up, all
7 the way down. Some would come in tied, bound, hands and
8 feet. Others were forced to sit on the floor.

9 And over the microphones, they would call out
10 different people. The stadium was a madhouse.

11 Q And you mentioned that they would make announcements.
12 How would they make these announcements?

13 A Announcements were made over a microphone on a
14 pedestal located in one of the corridors of the stadium.

15 Q And do you know who or whom would make those
16 announcements?

17 A Those announcements were made by the officer with the
18 greatest hierarchy within the stadium.

19 Q And how loud were those announcements?

20 A The volume was loud because there were loudspeakers
21 throughout the entire stadium.

22 Q Can you describe what this announcer looked like?

23 Can you describe what this announcer looked like?

24 A On the announcements, they would say, The employees
25 from such-and-such a textile factory should go to the third

1 floor.

2 The employees of the Ministry of Education must go to
3 the north bleachers.

4 Q But do you recall what the announcer or announcers
5 looked like physically?

6 A I especially remember the officer of the highest rank
7 or hierarchy. He introduced himself by saying, I am Major
8 Mario Manriquez. And I am in charge of you.

9 And at a certain moment, he delivered the following
10 threat:

11 I want you to try to escape. I want you to laugh. I
12 want you to yell. I want you to yawn. To do anything in
13 order to use those which are Hitler's saws.

14 And he was referring to some machine guns that the
15 German Army had used located at the upper portion of the
16 stadium.

17 He would end by saying, Even though I need no motive
18 nor pretense to perforate you with those machine guns and
19 see your guts hanging from the fences of the stadium.

20 THE COURT: Mr. Navia, let's take our afternoon
21 break.

22 Ladies and gentlemen, I'll give you a chance to
23 stretch your legs and use the facilities. You've been here
24 about 90 minutes. So take a break, and I'll see you back
25 here at 20 minutes after the hour.

1 (Jury exited the courtroom at 3:04 p.m.)

2 THE COURT: We'll be in recess until 3:20.

3 MR. CALDERON: Your Honor, can we take up a brief
4 matter?

5 THE COURT: Yes.

6 MR. CALDERON: Judge, with all due respect, and I
7 know this is difficult for the victims, or the plaintiffs
8 to hear. We would just ask they try to contain their
9 emotions in the presence of the jury.

10 We're watching them cry. We've seen a few jurors
11 look in their direction.

12 THE COURT: Mr. Beckett, I'll leave that to you
13 during the course of the break. I know it's -- I can't do
14 anything, obviously, to control the emotive impact of the
15 testimony on your clients.

16 But I do need to ask you to ask them, as best they
17 can, to avoid doing anything demonstrative that might draw
18 the attention of the jurors away from the witness or the
19 witness' testimony.

20 I have been focused on the witness, and I have not
21 noticed it myself. So I don't -- I have no view as to
22 whether or not there's been any inappropriate behavior.
23 I'm not suggesting that there is.

24 But just if you could mention to them to do the
25 best they can.

1 MR. BECKETT: We'll mention it, Judge, but
2 obviously there is going to be an emotional impact on them.
3 We reject any suggestion that there's been some kind of
4 histrionics or drama going on. They're just responding to
5 what they're hearing.

6 THE COURT: I don't --

7 MR. BECKETT: I'm not saying --

8 THE COURT: I don't think Mr. Calderon suggested
9 that there had been any histrionics.

10 I'll make the record clear that I've been present
11 in the courtroom. It's not gotten my attention because
12 I've been focused on the witness.

13 Had there been histrionics, it would have gotten
14 my attention. So I don't think that's the suggestion. I
15 think perhaps in anticipation that it may get worse,
16 Mr. Calderon is bringing it to my attention.

17 I'm only asking you to mention to them to do the
18 best they can in difficult circumstances, which I
19 acknowledge.

20 MR. BECKETT: Thank you, Judge.

21 THE COURT: You're welcome.

22 (Recess at 3:06 p.m. to 3:21 p.m.)

23 THE COURT: Back on the record in Jara versus
24 Barrientos Nunez, 6:13-civil-1426.

25 Court notes counsel are present. The parties are

1 not.

2 Are they coming back in?

3 MR. BECKETT: They are coming back in, Judge.

4 Judge, can we just have one minute?

5 THE COURT: Yes.

6 MR. BECKETT: Your Honor, the Jaras are upset with
7 the suggestion that they have done something wrong. We've
8 assured them that they haven't. But they are feeling
9 conflicted about whether to come back into the courtroom.
10 We're encouraged them to do that.

11 They're on their way. I think we can start.

12 For the record, if anything -- and I have talked
13 to my colleague about this. If anything, the family was
14 trying to hide the emotions by leaning down, bending down
15 so that they wouldn't be seen to be crying, rather than
16 trying to display their emotions.

17 So I think it's the opposite of what has been
18 suggested.

19 THE COURT: Well, again, because it may become
20 important if someone is looking at the transcript, I want
21 to make it absolutely clear that at no time did any member
22 of the Jara family draw the attention of the Court. Never
23 did I see the Jara family acting in any way that I think is
24 inappropriate. It is very compelling testimony,
25 undoubtedly difficult for them.

1 I make no suggestion whatsoever that anything the
2 Jaras have done is in any way intentional or intended to
3 draw the jury's sympathy or prejudice. I didn't interpret
4 Mr. Calderon's objection to suggest that, only perhaps in
5 anticipation that that might occur.

6 So I want to --

7 Mrs. Jara, I want to make sure that you hear from
8 me that I have no criticism of you.

9 Can she hear me?

10 MS. ROBERTS: Your Honor, she is, but she can't
11 hear you very well. I can repeat to her.

12 THE COURT: I want to make sure, Mrs. Jara, that
13 you know that there's no suggestion that you've done
14 anything whatsoever inappropriate. I know this is
15 difficult for you to hear.

16 I'm only asking that you be mindful to try to do
17 your best to maintain your emotions. And I understand it's
18 a very difficult thing to ask you to do.

19 That's all. You've done nothing wrong.

20 MR. CALDERON: And, Your Honor, I did speak with
21 Mr. Beckett outside. And I did interpret her putting her
22 head down as it might be an increasing emotional reaction.
23 His explanation, I'm satisfied with.

24 So I -- you know, as the Court had indicated, that
25 was merely my concern is that it would escalate. And it

1 appears that was an effort to hide herself from the jury.

2 THE COURT: Well, the facts are difficult. And
3 there are human beings involved and human beings have
4 emotions. And human beings will respond to difficult facts
5 with emotions.

6 As long as there's not an effort in my mind to
7 play on the jury's sympathy or prejudice or to overstate or
8 to be hyperbolic in their reaction, then there's -- the
9 Court seems -- the Court's of the mind that there's been
10 nothing untoward that's been done by any of the parties.

11 So that will be clear on the record. And let's
12 see if we can't move on and get on with the testimony.

13 MR. BECKETT: Thanks, Judge.

14 THE COURT: Bring our jury in, please, Mr. Carter.

15 (Jury entered the courtroom at 3:29 p.m.)

16 THE COURT: Welcome back, ladies and gentlemen.

17 There was a minor procedural issue I had to take
18 up with the lawyers, which we took advantage of your
19 absence to do that. So I apologize that you were back
20 there a little longer than we anticipated. But I think
21 we're ready to proceed now with the examination of this
22 witness.

23 MR. URRUTIA: Thank you, Your Honor.

24 BY MR. URRUTIA:

25 Q Before we broke, Mr. Navia, we were speaking about a

1 Mr. Manriquez. Did you ever see Mr. Manriquez holding
2 anything in his hands?

3 A Yes. Officer Manriquez always had documents in his
4 hands.

5 Q Do you ever see him holding anything else in his
6 hands?

7 A Yes.

8 Q What?

9 A Yes, I saw him at one point holding a document folder
10 or briefcase.

11 Q Do you recall what color this briefcase was?

12 A It is my vague memory on the color, green or brown.

13 Q Turning to Victor Jara, do you know where he was in
14 the stadium on the evening of the 12th?

15 A Victor was forced to remain seated in the corridor.
16 And he remains there from Wednesday, 12, until Thursday,
17 13, at around 4:00 in the afternoon.

18 Q You say that he was forced to remain in the corridor.
19 Why do you say that?

20 A He was forced to remain there with a soldier pointing
21 at him, aiming at him with his rifle, forbidden from
22 drinking water and even to go to the bathroom.

23 Q And how far away from Mr. Jara were you on that
24 evening?

25 A From my seat, there would be approximately some

1 12 meters.

2 Q And did you see any other soldiers around Mr. Jara
3 other than the soldier that was guarding him?

4 A Yes. During the night of Wednesday, the 12th,
5 Victor Jara is exhibited as a trophy before some other
6 delegations of officers from other branches of the armed
7 forces.

8 Q And what did these other officers do when they see
9 Victor Jara?

10 A The officers that would come forward would beat him,
11 insult him. And there was one officer of the FACH, the
12 Chilean Air Force, after kicking him several times, he
13 flicked the -- he flicked a cigarette butt towards him
14 close by, and he told him to smoke.

15 Victor Jara reached out to take the cigarette. And
16 with his left boot the officer placed it upon his hand,
17 immobilizing the hand, and with the other boot he began to
18 beat him on the wrist and the forearm. And he told him,
19 now, you son of a bitch, you'll never be able to play the
20 guitar.

21 Q And after this, where did Victor Jara remain?

22 A Victor Jara remained in the corridor until Thursday.

23 Q And after Thursday the 13th, where does Victor
24 Jara go?

25 A Around about 4:00 in the afternoon, there is a sudden

1 commotion in the stadium. New buses with new prisoners
2 arrived. And all of the soldiers are called to the main
3 entrance of the stadium.

4 And Victor Jara is left by himself in the corridor.
5 And then his friends slid over to the corridor, and we
6 dragged him over to the bleachers.

7 Victor is badly wounded.

8 Q Excuse me, Mr. Navia. We have to do this in a
9 question and answer. I understand you have a lot to say,
10 but please endeavor to just answer my questions.

11 And when you saw Mr. Jara, what injuries did he have?

12 A Well, his face was bloodied. There was dry blood in
13 his hair. And he complained greatly of pain in his ribs.
14 He told us he had wounds and hematoma all over his body.

15 Q And after Mr. Jara was near you, what did he do the
16 night of the 13th?

17 A We gave him water and we managed to procure a little
18 bit of food.

19 Q And on the morning of the 14th, where was Victor
20 Jara?

21 A We managed to get him to sleep on the basketball court
22 in the stadium. The rest of us were sitting. And the
23 basketball court was reserved for the elderly and the sick.
24 And we cleared out a space so that he could sleep on the
25 floor of the basketball court.

1 Q And during the day of the 14th, did you speak with
2 Mr. Jara?

3 A On the 14th, the prisoners were being transferred
4 to the National Stadium in groups of 20 prisoners. And
5 Victor, we registered him with his full name, which is to
6 say instead of Victor Jara we wrote down Victor Lidio Jara
7 Martinez, his full and complete name.

8 Q And do you recall what Mr. Jara was wearing at that
9 moment?

10 A Well, I remember his trousers. I don't remember the
11 color. He was wearing a sweater. Chile is very cold in
12 September.

13 Q And did you speak with Mr. Jara on the 14th?

14 A In fact, I did in the afternoon of the -- on the
15 afternoon of Friday, the 14th. We surrounded Victor.

16 Q And do you recall what Mr. Jara said?

17 A Yes. He made remembrances of his wife, Joan, of his
18 daughters, Manuela and Amanda.

19 He remembered the university president, President
20 Allende.

21 He was asked, what would he, a revolutionary singer,
22 do under a dictatorship? Would he remain in Chile, or
23 would he travel to foreign lands?

24 His face responded with a somber smile. And he said,
25 Joan surely will leave with the little girls to England.

1 And I will return to my land because I want to always be
2 close to my land.

3 That's what he said that night.

4 Q Were you around Mr. Jara on the 15th of September?

5 A On the 15th of September, the transfers to the
6 National Stadium began.

7 Q Excuse me. Sorry. Maybe you misunderstood my
8 question.

9 I was just asking, were you around Mr. Jara on the
10 15th of September?

11 A Yes. I was first with Victor Jara. I was sitting in
12 the seat that was immediately next to his.

13 Q And do you recall what Mr. Jara was doing on the
14 morning of the 15th?

15 A Yes. At that time, two or three persons from the
16 university were being freed, and we all began to write
17 messages for our mothers or for our wives telling them we
18 were alive.

19 And then Victor Jara, sitting next to me, asks me for
20 a pencil and a piece of paper. I pull out the notebook
21 that I had in the inside pocket of my jacket where there
22 was still blank pages, and I passed it to him along with a
23 pencil.

24 Q And do you know what Mr. Jara does with these notepad
25 and pencil?

1 A At that time, I thought he was writing a letter to
2 Joan. Nevertheless, the messages we wrote left, and he
3 continued to write and he wrote and he wrote very quickly.

4 Q Do you know for how long he wrote?

5 A I think it would have been three minutes, four
6 minutes.

7 Q And what did Mr. Jara do with that paper after he was
8 done writing?

9 A While he was writing, two soldiers approached, and
10 they dragged him towards the upper section of the Chile
11 Stadium. This was happening at the north side bleachers of
12 the Stadium.

13 And they took him to the other section where there
14 were two naval officers visiting, one rather large. And
15 from a distance, we continued to watch as he insulted
16 Victor. And Victor would respond with a smile.

17 Orders were given to the soldiers to beat him again.

18 Q And Mr. Navia, do you recall where that notepad was
19 when that happened?

20 A As they took Victor away, he threw the notebook into
21 the air, and I caught it and I put it away. And I forgot
22 about it. And we followed Victor with our eyes.

23 Q Where did you put the notepad?

24 A The notebook, I put away in the inside pocket of my
25 jacket.

1 Q Do you recall when you left Chile Stadium?

2 A Yes. I was evacuated on Saturday the 15th, around
3 17, 1800 hours.

4 Q I'm going to show you an exhibit. It's Exhibit, Joint
5 Exhibit 58.

6 We'll try this. And if need be, we can fix the feed.

7 Do you recognize the image --

8 Okay. That's fine. That's fine.

9 Do you recognize this image?

10 A Yes. The image is a graphic of Chile Stadium.

11 Q And do you recall from where you exited the Stadium?

12 A I exited through the main gate.

13 Q This should be a touchscreen. So if you touch where
14 the main gate is, it should mark it.

15 Can you please do that?

16 Does the area I circled indicate the main entrance
17 gate?

18 A That's the main gate of the Stadium.

19 Q And when you left the Stadium, what do you recall
20 seeing?

21 A We were jumping and jumping. They were poking us with
22 bayonets and beating us on our way to the street where the
23 buses were that would transfer us to the National Stadium.

24 Suddenly, at the main entrance to the Stadium, we saw
25 a grotesque, horrible spectacle, 20 or 30 cadavers piled

1 up.

2 Q And of these cadavers, did you recognize any of them?

3 A Amongst the bodies, amongst the cadavers there
4 were two bodies and two faces, two faces and two bodies
5 that were absolutely recognizable.

6 Q Who did you recognize?

7 A Two persons. Litre Quiroga, a large man, a director
8 of the police of the popular government.

9 Q And who else did you recognize?

10 A The other body and the face that were known was that
11 of Victor Jara.

12 Q And can you describe what Victor looked like at that
13 moment?

14 A Yes. Victor had all of the signs or appearances of a
15 dead person. Lividity was in his face, his eyes
16 semi-opened. One of his eyes was closed shut because of a
17 kick he had received upon entering the Stadium; the other
18 eye slightly opened.

19 Q And do you recall what the rest of his body looked
20 like?

21 A What I recall is that one of his legs was curled back;
22 his mouth was slightly opened; one of his hands was
23 underneath his body.

24 I recall this perfectly well. And his body was
25 covered with bloody impacts. There was bloodstains. There

1 were many bloodstains on his body.

2 I must add, I must add that all of the bodies were
3 covered in a type of limestone powder because repairs were
4 being made to the locker rooms.

5 Q And where did you go after you saw this happen -- or
6 please strike the question.

7 Where did you go after you saw Victor Jara?

8 A We were taken towards the buses that were parked on
9 the street.

10 Q And where did you board those buses?

11 A We boarded them towards the National Stadium.

12 Q And did you go to National Stadium?

13 A They did, in fact, transfer us to the National
14 Stadium. We weren't sitting in the buses. We were lying
15 on the buses one on top of the other.

16 Q And how long did it take you to get to National
17 Stadium?

18 A It was a long time, because many buses departed with
19 prisoners and they were driving slowly down the streets of
20 Santiago.

21 Q And at National Stadium, were you able to keep the
22 booklet that you had that Victor Jara wrote on?

23 A I did, in fact. I was asked for a piece of paper and
24 a pencil. And in that moment, I remembered that I still
25 had the notebook.

1 Q And when you looked -- did you look at the notebook?

2 A At that moment, I looked at the notebook.

3 Q And what was in the notebook?

4 A I found the last song, the last verse, the last
5 canticle written by Victor Jara on Saturday, 15
6 September 1973, where he told of the attack, the blood in
7 Chile Stadium.

8 Q How do you know Victor Jara wrote that?

9 A Because I picked up that notebook. I saw him as he
10 wrote it. And that booklet was -- that notebook was in my
11 power until I gave that poem its first reading.

12 Q And after you read the poem, what did you do with the
13 poem?

14 A I shared the existence of that poem with other
15 professors from the university.

16 Q And what was the reaction?

17 A We all agreed that we had to preserve that song, that
18 poem that had been written two hours before he was killed.

19 Q How did you -- strike that.

20 Did you indeed preserve that poem?

21 A Yes. The original with the assistance of another
22 person, I hid it inside the sole of my shoe. But before
23 that, I put together two copies with the complete poem and
24 I wrote them on the inside of a cigarette pack.

25 Q And what did you do with the copies?

1 A A physician and a student were being freed upon that
2 day. I must remember and remind you that Chile Stadium got
3 to the number of 14,000 prisoners.

4 Q Okay. Thank you.

5 And do you know what happened to the copies that you
6 gave to those two other individuals?

7 A The student that we gave a copy to, he was searched at
8 the entrance to the National Stadium. And they found the
9 poem upon him and of the torture. They came to get me at
10 the location where I was.

11 And I was led, I was led to the velodrome which, at
12 that time, had been turned into a center for, which had
13 been turned into a center for torture and interrogations.

14 Q And do you know what happened to the original that was
15 in your possession?

16 A The officer from the FACH who was interrogating me,
17 told me, Asshole, told me, Asshole, take off your shoe.

18 I first took off my left shoe where the poem was not
19 hidden. And he hit me and he ordered me, the officer
20 ordered me to take off my other shoe where I was hiding the
21 song, the right shoe.

22 Q And what happened to the song?

23 A The student was hanging naked. And thus, I knew that
24 he had turned over all of the information. And the
25 interrogation upon my person then began.

1 Q And during this time, do you know what happened to the
2 poem that you had in your shoe?

3 A The officer took out the poem and filed it away with a
4 filing card that he was putting together.

5 Q I'm going to pull up Plaintiff's Exhibit 3.

6 THE COURT: Don't display it until it's in
7 evidence.

8 MR. URRUTIA: My apologies.

9 Please don't display it.

10 THE COURT: I've turned the jurors' screens off,
11 but I can't turn that one off. Do you have a hard copy?

12 MR. URRUTIA: I do, Your Honor.

13 THE COURT: You can use a hard copy to
14 authenticate it with the witness. And then assuming that
15 it's properly authenticated, we'll allow you to display it
16 once it comes into evidence.

17 MR. URRUTIA: Okay. May I approach?

18 THE COURT: You may.

19 BY MR. URRUTIA:

20 Q Can you please take as much time as you need to
21 carefully read that document that I just handed you.

22 A (Complying.)

23 Q And when you're done, please let me know.

24 A (Complying.)

25 Q And just to clarify, Mr. Navia, you don't have to read

1 the English part. That's the translation. Just the
2 Spanish.

3 A I have finished, yes.

4 Q Do you recognize that document?

5 A Yes. This is a song of the last poem by Victor Jara.

6 Q How do you know that that's the last song of Victor
7 Jara?

8 A Because I read the text in its original; and at that
9 time, I wrote down two copies.

10 And naturally, I remember each one of the verses, part
11 of which, in fact, I have memorized.

12 MR. URRUTIA: Your Honor, I'd like to move this
13 into evidence.

14 THE COURT: Any additional objections,
15 Mr. Calderon?

16 MR. CALDERON: No, Your Honor. I would just like
17 to review the document that was handed to the witness. I
18 didn't have an opportunity to see it.

19 THE COURT: Surely.

20 You can retrieve it, please, Mr. Urrutia.

21 MR. CALDERON: Your Honor, subject to the previous
22 objections.

23 THE COURT: All right. Objection is overruled.

24 Plaintiff's 3 will be received. You may publish
25 it.

1 A Not of me.

2 Q Now, you talked a little while ago about the soldiers
3 appearing at the university. Correct?

4 A Yes, in fact, I did.

5 Q And that was on the morning of September 12, 1973?

6 A The morning of 12 September 1973.

7 Q And it's correct that shots were fired by the
8 military, I guess, towards the school and towards the
9 central building?

10 A Yes, that is a fact. Many, many shots were fired.

11 Q Were any of the students or people in the building
12 killed?

13 A No. At that time none of the students or the
14 professors were killed.

15 Q Do you recall how many soldiers were in the stadium?

16 A Well, they were spread out throughout the entire
17 stadium. I would presume that inside the stadium, there
18 must have been some 40 or 50 soldiers.

19 Q What about outside the stadium?

20 A I saw only those who -- who greeted us only.

21 Q Okay. And about how many soldiers were those?

22 A The soldiers who received us was a column of
23 approximately 20 soldiers.

24 Q You said column. You described earlier that there
25 were two rows. Do you recall that?

1 A Yes. Two rows. Approximately ten soldiers on each
2 one.

3 Q And there was an officer who specifically pointed out
4 Victor Jara; is that correct?

5 A Yes. In fact, that is how it was.

6 Q And have you been able to identify who this officer
7 was?

8 A No. He has never been identified.

9 Q How did you know that this person was, in fact, an
10 officer?

11 A Officers wore a different uniform from those of the
12 soldiers. They wore a pistol. They would wear a Corvo.
13 They were carrying grenades. The belts on their uniforms
14 were different.

15 And in addition, their condition as officers was quite
16 large because of their yelling and the orders that they
17 would give out.

18 Q Did their uniforms bear any epaulets or any insignia
19 indicating their rank?

20 A No. No, I distinguished no signs of hierarchy upon
21 their uniforms.

22 Q And you describe -- is it correct that you describe
23 the uniforms as being, is it combat uniforms?

24 A Yes. In effect, it was the camouflage uniform.

25 Q And could you describe what colors that camouflage

1 was?

2 A Well, the camouflage color of military people is a
3 mixture of green and gray.

4 Q And so your testimony is that the -- is it your
5 testimony that the officers did not wear those uniforms?

6 A No. The uniform was exactly the same. It was a
7 camouflage uniform.

8 Q You stated earlier that they had different uniforms.
9 Can you describe the difference in the uniforms?

10 A The difference is, more than anything else, in the
11 elements added to that uniform with different belts, with a
12 pistol at their waist. Soldiers do not carry pistols.

13 The officer carries a Corvo. The soldier does not
14 wear a Corvo.

15 Q Okay. When you referred to the soldiers having
16 pistols and submachine guns, what soldiers were you
17 referring to? Were these officers?

18 A The officers would carry a machine gun that was
19 different to that carried by the soldiers.

20 Q So in addition to the different belts, the fact that
21 they had pistols, the Corvo, the grenades, they also had a
22 submachine gun?

23 A It is my understanding it is called a submachine gun.
24 I don't know much about weapons.

25 Q But those were the differences that you saw?

1 A That is so.

2 Q And after that point, you described three officers
3 that you saw as you entered the stadium that were beating
4 Victor Jara; is that correct?

5 A No. Those soldiers that were in the entranceway --
6 and there were three officers -- I cannot know whether they
7 were lieutenants, captains. The rank, I know not.

8 They were writing down in the registry. And they
9 would ask us for our national identity cards.

10 Q Okay. And I appreciate the additional information,
11 but I'm going to ask that you listen to the question and
12 try to respond just to the question.

13 A Okay.

14 Q With regards to those three officers, were they
15 wearing the uniforms that you just described?

16 A That is so.

17 Q And was your name one of the names that were entered
18 into that registry?

19 A That is so. I was entered into the book.

20 Q And how did they verify your identity?

21 A Our national identity cards were later on returned to
22 us while we were at the National Stadium.

23 Q So then at that point when you entered the stadium,
24 they took your identification card?

25 A Yes, they took my national identity card.

1 Q But you were not searched or, I guess for lack of a
2 better description, patted down for any weapons?

3 A No, I was not searched.

4 Q Now, you also described that there were
5 2,000 political prisoners within the stadium; is that
6 correct?

7 A That is so.

8 Q Okay. And did you consider everyone in that stadium
9 to be a political prisoner?

10 A Those who were in there were political prisoners.

11 Q Now, you said that there was a microphone with a
12 pedestal; is that correct?

13 A That is so.

14 Q And you said that this was located in the hallway; is
15 that correct.

16 A That is so.

17 Q And that announcements were made from that podium and
18 that pedestal and that microphone; is that correct?

19 A That is so.

20 Q And this, the person making these announcements, this
21 was the -- Major Manriquez?

22 A Major Manriquez, as he introduced himself.

23 MR. CALDERON: If I could just have a moment,
24 Your Honor.

25 THE COURT: Yes.

1 MR. CALDERON: If we could turn on the ELMO,
2 please.

3 BY MR. CALDERON:

4 Q Could you please point on the screen where you saw the
5 pedestal with the microphone?

6 MR. CALDERON: And for the record, this is
7 Exhibit 84. Joint Exhibit 84.

8 THE COURT: Thank you.

9 THE WITNESS: (Complying.)

10 BY MR. CALDERON:

11 Q Thank you.

12 A Thank you.

13 MR. CALDERON: This is Joint Exhibit 58. I
14 apologize. That was Exhibit -- for the record, that was
15 Exhibit 58. This is Exhibit 84.

16 THE COURT: All right. Thank you for the
17 correction.

18 BY MR. CALDERON:

19 Q And is the microphone and pedestal where the
20 announcements were made, is that visible on this
21 photograph?

22 A From where I was, where I was, it was visible.

23 Q And I appreciate that. What I'm asking you is, do you
24 see that place where the pedestal and the microphone were
25 positioned in this photograph?

1 A (Indicating.)

2 Q Thank you.

3 Now, the person that was speaking into the microphone,
4 that was Major Manriquez, correct?

5 A That is so.

6 Q Did any other officers make announcements from that
7 pedestal and that microphone?

8 A Yes, they did, in fact, make announcements from that
9 microphone.

10 Q And have you been asked to, at any point in time,
11 identify Major Manriquez?

12 A Yes. I was -- I had a face-to-face with him in the
13 criminal process which is being carried out in Santiago.

14 Q Now, did you ever see any persons that you believed to
15 be officials speak with Major Manriquez at that pedestal?

16 A Well, officers, of which there were several, would go
17 by. They would converse with Manriquez. They would ask
18 him something. They would take prisoners to his presence.

19 Q Well, do you think that any of those officers, that
20 you were able to see them long enough to identify them?

21 A Me?

22 Q Yes.

23 A With that indication, if I'm in any condition to do it
24 today?

25 Q That's my question.

1 A Impossible.

2 Q Now, you described other -- well, could you quickly
3 describe to me what Manriquez looked like?

4 A Appearance of Mr. Manriquez. He always wore a helmet.
5 He would wear the helmet down to his eyes. And I remember
6 him because he introduced himself by saying, I am Mario
7 Manriquez, in charge of this facility.

8 Q Could you describe his skin color, his weight, his
9 height?

10 A He was a man of a height of a meter 70.

11 His skin wasn't exactly white. His skin was somewhere
12 between white and brown.

13 That's what I recall. I recall nothing else.

14 Q And you don't remember his approximate weight, if he
15 was -- you used the term voluminous. Was he a voluminous
16 person?

17 A No, I never said voluminous. He was of a normal
18 stature or of a normal contexture or size.

19 Q And when I said voluminous, I meant with respect to
20 other individuals.

21 A No, he wasn't a fat guy.

22 Q Now, you stated that you had seen him two hours before
23 he had been murdered, with respect to Victor Jara.

24 A That is so.

25 Q And is that based on when you saw the corpse?

1 A Are you asking me if I saw the --

2 Q I'm asking you, how did you know he was killed two
3 hours after you saw him?

4 A Because when we -- those of us from the Technical
5 University exited the Chile Stadium around about 6:00 in
6 the afternoon. And I had seen Victor alive at more or less
7 12:30, 1:00 in the afternoon. I would -- I calculated that
8 he had died two hours prior. An approximate perception.

9 Q So you did not see him being murdered?

10 A No, I did not see him when he was killed.

11 Q But you said that you saw the corpse?

12 A I saw the cadaver, yes.

13 Q And so your approximation is based on the time that
14 you saw him alive and the time you saw the corpse?

15 A That is so.

16 Q And the bodies, were they covered with anything, these
17 cadavers that you saw?

18 A Many had limestone powder or gypsum, white.

19 Q So the bodies were not covered with any kind of sheet
20 or clothing?

21 A No. They were just piled up.

22 Q Now, you also described that in the upper section of
23 the stadium you saw two Navy officers; is that correct?

24 A That is so.

25 Q You also described that you had seen officers from the

1 AS or FACH?

2 A That is so.

3 Q Could you first describe for me the uniforms that the
4 naval officers were wearing?

5 A The Navy officers that I saw that day were two
6 officers wearing blue helmets and with blue uniforms. It
7 was not combat uniforms such as those of the soldiers.

8 Q How did you know that these two naval officers were,
9 in fact, officers and not just soldiers?

10 A Because of their uniforms, the uniforms they wore.

11 Q And what about that uniform was different or signified
12 some sort of rank?

13 A Well, because in Chile, the uniform and the appearance
14 of an officer is different to that from a simple soldier.

15 Q Did they have -- did the uniforms have epaulets, or
16 was it a jacket and pants compared to a typical jumpsuit?

17 A The appearance of a Navy officer would not indicate
18 that they were simple soldiers. They had all of the
19 appearance of an officer.

20 Q Now, with regards to the FACH officers, can you tell
21 us what that stands for again.

22 A FACH means Chile Air Force.

23 Q Could you describe the uniforms that these individuals
24 were wearing?

25 A Yes. They were wearing combat uniforms. The helmet

1 is blue, but it is a blue that's different to that of the
2 Navy. It is a darker blue. And they, on their collars,
3 they carried, shall we say, the FACH insignia.

4 Q And were these -- did these individuals appear to be
5 officers?

6 A Those that visited on Wednesday, visited Victor and
7 beat him, were FACH officers.

8 Q Was there ever any salute among the officers and the
9 soldiers that were given to indicate rank?

10 A No. Only orders and compliance with orders.

11 Q Did you ever see anyone giving orders to Manriquez?

12 A No. Never.

13 Q Now, have you ever read about the facts regarding the
14 death of Victor Jara in any official reports?

15 THE INTERPRETER: The interpreter requests counsel
16 to repeat the question.

17 BY MR. CALDERON:

18 Q Have you ever read any official reports regarding the
19 death of Victor Jara?

20 A Official reports, no.

21 Q What about unofficial reports?

22 A Unofficial, yes.

23 Q And were these unofficial reports through media
24 outlets, such as newspapers and the television?

25 A Newspaper, as well as books. Reports from the church.

1 Q Thank you.

2 Now, you stated earlier that there were about 14,000
3 prisoners in the Estadio Chile. Did you mean the Estadio
4 Nacional?

5 MR. URRUTIA: Objection. That's a
6 mischaracterization what he said.

7 THE COURT: Objection is overruled.

8 THE WITNESS: Yes. In fact, I was referring to
9 the National Stadium.

10 MR. CALDERON: Nothing further, Your Honor.

11 THE COURT: Any redirect, Mr. Urrutia?

12 MR. URRUTIA: Yes, I do.

13 **REDIRECT EXAMINATION**

14 BY MR. URRUTIA:

15 Q Mr. Navia, based on what you knew in September of
16 1973, would you have been able to recognize Erica Del
17 Transito Osorio Araya?

18 A Yes, I could have recognized.

19 Q Did you know Erica Del Transito Osorio Araya in 1973?

20 A No, I did not know her in 1973. I met her later.

21 Q So what did you mean when you just indicated that you
22 could indeed recognize her?

23 A I didn't understand the question.

24 Q Okay. Let me restate it again.

25 If you were -- strike that.

1 In 1973, based upon, of your knowledge at that time,
2 could you have recognized Erica Del Transito Osorio Araya?

3 A I cannot clearly understand what is being asked of me.

4 Q If you didn't know Erica in 1973, as you stated, would
5 you have been able to recognize her as Erica if she was in
6 your presence?

7 A No. I would repeat that I met Erica years after the
8 coup d'etat.

9 MR. URRUTIA: May I approach, Your Honor?

10 THE COURT: Yes. Show counsel what you have
11 there.

12 MR. URRUTIA: May the record reflect I handed
13 Mr. Navia a blank piece of paper with a pen.

14 BY MR. URRUTIA:

15 Q Mr. Navia, could you draw the principal buildings of
16 the UTE as you recall them in 1973?

17 MR. CALDERON: Judge, I'm going to object as to
18 relevance and scope.

19 THE COURT: Sustained.

20 MR. URRUTIA: May I have a sidebar, Your Honor?

21 THE COURT: Do you want to be heard?

22 MR. URRUTIA: Yes.

23 The university, and as Mr. Navia had testified
24 earlier, had multiple student -- multiple students in
25 multiple different buildings. And I'm just hoping that he

1 can indicate on a map that he draws those two buildings
2 where those students would have been on September 11th,
3 1973.

4 THE COURT: The objection is it's outside the
5 scope of the cross-examination. You're on redirect.

6 I sustained the objection.

7 MR. URRUTIA: Okay.

8 BY MR. URRUTIA:

9 Q Earlier you stated that there were 2,000 students --
10 or strike that.

11 Earlier you stated that there were 2,000 prisoners in
12 Chile Stadium. Did that number ever change during your
13 time at Chile Stadium?

14 A Yes. In fact, the number grew. An approximate
15 calculation tells us that at Chile Stadium there was at
16 some time close to 5,000 political prisoners.

17 MR. URRUTIA: One second, Your Honor.

18 THE COURT: Sure.

19 BY MR. URRUTIA:

20 Q Mr. Navia, when you saw Victor Jara in Chile Stadium,
21 did you ever see soldiers from the Army near him?

22 A Well, in fact, when we entered, Victor was jumping
23 along amongst the soldiers. After that, a soldier held
24 guard over him over 24 hours in a fixed point with his
25 rifle.

1 And, lastly, when Victor was sitting in the north
2 bleachers writing his last canticle, so two soldiers
3 violently handled him and took him, and took him to the
4 upper section of the stadium.

5 The same soldiers. I apologize. Those very same
6 soldiers beat him with the stocks of their rifles. And
7 Victor once again begins to bleed.

8 Q Okay. Mr. Navia, were any of these soldiers you just
9 described from what you could tell members of the Army?

10 A Absolutely. They were members of the Army of Chile.

11 Q Do you know the color of an Army uniform in 1973 in
12 Chile?

13 A Well, it was a camouflage uniform, which is a mixture
14 of green and gray.

15 Q And did you see soldiers with that type of uniform at
16 Chile Stadium?

17 A That is so. I did, in fact, see soldiers with that
18 camouflage uniform there.

19 Q Approximately how many?

20 A I have already testified to this. My estimation is
21 that there were 40 to 50 soldiers at the interior of the
22 stadium.

23 MR. URRUTIA: One second.

24 I have no further questions, Your Honor.

25 THE COURT: Thank you.

1 May this witness be excused?

2 MR. URRUTIA: Yes.

3 THE COURT: Mr. Calderon?

4 MR. CALDERON: Yes, Your Honor.

5 THE COURT: Thank you, Mr. Navia. You are
6 excused. If you're here pursuant to a subpoena, you are
7 released from it. Go about your business.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Call your next witness.

10 MR. BECKETT: Judge, we may have something we want
11 to discuss before Baez. Our colleagues have an application
12 they want to make in connection with this or at least to
13 make a point.

14 MR. LANDERS: Yes, Judge, if we may approach at
15 sidebar to make a record.

16 THE COURT: All right.

17 (Discussion at sidebar on the record.)

18 MR. LANDERS: Your Honor, just to put on the
19 record and to make the Court aware of off-the-record
20 conferences between opposing parties.

21 Opposing counsel, I believe, now at this point is
22 going to introduce the video deposition -- videotaped
23 deposition of Gustavo Baez Duarte.

24 Opposing counsel has informed us they are
25 withdrawing certain designations that they previously made;

1 therefore, causing us to recall this witness during our
2 defense case in chief and adding Gustavo Baez to our
3 defense witness list.

4 These designations were during Mr. Beckett's
5 direct examination of the witness, go to the foundation
6 that we must lay for Defendant's Exhibit 1 that we intend
7 to introduce through defense witness Maria Teresa
8 Barrientos, which is an affidavit or a sworn declaration by
9 this witness, Gustavo Baez Duarte, to satisfy the
10 foundation of 613 Subsection (b), that this witness was
11 shown a document that was signed by the witness, given the
12 opportunity to explain, and ultimately does deny in
13 attempting to introduce this document as a previous
14 inconsistent -- prior inconsistent statement.

15 THE COURT: Let me interrupt you and see if I can
16 cut to the chase rather than -- if what you're telling me
17 is there are portions of this deposition that you want to
18 publish in the interest of completeness, you'd be entitled
19 to do that.

20 You can do it when Mr. Beckett finishes his
21 portion, or if Mr. Beckett wants to go ahead and play the
22 portions you want to have played, either way you want to do
23 it.

24 You're certainly entitled to have portions of the
25 deposition published you want to have published, whether

1 Mr. Beckett wants to do it or not.

2 MR. BECKETT: We're going to oppose the prior
3 statements. We don't think the requirements of 613(b) and
4 the relevant case law in this circuit permit its use in the
5 way they are proposing.

6 That's why we're not -- when they attempt to play
7 it, we're going to apply to Your Honor to attempt it from
8 being played.

9 This declaration, that is a focus of this part of
10 the declaration from being presented into evidence.

11 THE COURT: Well, I'm going to have to have it in
12 front of me in order to do it. So it's late into the day.
13 I'm going to send our jury home and let you all tell me
14 what we're talking about.

15 MR. BECKETT: Judge, I think we can play -- it
16 doesn't come up for some time. We can play 15 minutes of
17 the tape and at least use that time.

18 THE COURT: Okay. Good.

19 MR. LANDERS: I would -- just brought it to the
20 Court's attention because opposing counsel objects to me
21 doing that and reading the deposition during my -- excuse
22 me -- during their case in chief, is why I brought it to
23 the court.

24 THE COURT: It's probably my shortcoming. I don't
25 expect the issues --

1 MR. BECKETT: We can't expect you to understand.

2 THE COURT: I want to use our time. Then I'll
3 take it up after the jury goes home.

4 MR. LANDERS: Yes, Judge.

5 (End of discussion at sidebar.)

6 THE COURT: Sorry for the interruption, ladies and
7 gentlemen. I think we're going to have a witness whose
8 testimony we won't complete today, but we'll get started
9 with it. It's also a video deposition.

10 What is the name of the witness again,
11 Mr. Beckett?

12 MR. BECKETT: Judge, I have three stipulations I'd
13 like to read in connection with this witness.

14 THE COURT: Can you tell me the witness' name?

15 MR. BECKETT: Yes. I'm sorry. Gustavo Baez
16 Duarte.

17 THE COURT: Okay.

18 MR. BECKETT: And the deposition date is
19 November 18th, 2015.

20 THE COURT: All right. Ladies and gentlemen, same
21 instructions with respect to the video deposition of this
22 witness.

23 Now, you have other stipulations that you'd like
24 to announce on the record before we proceed with the
25 testimony?

1 MR. BECKETT: Yes, Judge.

2 THE COURT: All right.

3 MR. BECKETT: May I do that?

4 THE COURT: This, ladies and gentlemen, I'll just
5 remind you is stipulations or agreements that the lawyers
6 have made with respect to items that won't require any
7 proof. Once the parties have agreed that they are
8 stipulated facts, then Mr. Beckett will tell you what they
9 are and you're to accept those as if they had been
10 established by the evidence.

11 You may proceed.

12 MR. BECKETT: Thank you, Judge.

13 Stipulation 69: Members of the Second Company
14 guarded detainees at Chile Stadium.

15 Stipulation Number 70: Members of the Second
16 Company guarded Victor Jara at Chile Stadium.

17 And then Stipulation 36: Mauser, M-A-U-S-E-R, was
18 a manufacturer of Luger, L-U-G-E-R.

19 Thank you.

20 THE COURT: You're welcome.

21 You can proceed now with the testimony of
22 Mr. Duarte.

23 (Playing video deposition of

24 Gustavo Baez Duarte.)

25 THE COURT: Let's stop here. Did we get all of

1 the answer in? Good. Thank you.

2 All right. Ladies and gentlemen, I'm going to
3 excuse you for the evening. Thank you again for your
4 patience and attention today. I know it's draining. And I
5 appreciate your efforts.

6 If you could be back in the morning at 9:00. Our
7 schedule for tomorrow will be a pretty full day with the
8 exception that as a bonus for your good service and
9 attention, you're going to get off a little bit early
10 tomorrow, about 4:00.

11 I'm going to -- I have another commitment before I
12 leave here that I need to get done before the courthouse
13 closes. And I'm going to squeeze it in between 4:00 and
14 5:00 tomorrow.

15 So I'll see you all tomorrow morning at 9:00 with
16 the reminder that you're not to discuss the case amongst
17 yourselves or with anyone else. Avoid any exposure to any
18 media coverage.

19 And we'll see you back here in the morning at 9:00
20 ready to pick up with Mr. Duarte.

21 (Jury exited the courtroom at 5:01 p.m.)

22 THE COURT: I've only got a few more minutes this
23 afternoon. I've got a commitment at 5:30. I would like to
24 at least get a little bit more of an introduction of what
25 the issue is with respect to this witness.

1 And I'll be available in the morning between 8:30
2 and 9:00 to give you all an opportunity if you want to
3 argue it obviously in a more fulsome way.

4 But maybe you can give me an introduction to it,
5 Mr. Landers, and I'll at least know what to expect in the
6 morning.

7 MR. LANDERS: Thank you, Your Honor. The
8 plaintiff has withdrawn certain designations in
9 Mr. Duarte's deposition that defense wishes to read into
10 the record. Mr. Beckett objects to us doing that during
11 the plaintiff case in chief.

12 Therefore, I was just informing the Court that the
13 defense will then have to recall Mr. Baez Duarte as a
14 witness during our defense case in chief to read in certain
15 designations.

16 The designations have to do with laying the
17 foundation as to an exhibit that the defense will attempt
18 to introduce as a prior inconsistent statement through
19 Maria Teresa Barrientos. That is as an affidavit and a
20 sworn document, or at least according to the deposition, a
21 document that was signed and fingerprinted by Mr. Baez
22 Duarte to lay the foundation under 613 subsection (b) that
23 the document was previously shown to him.

24 He had the opportunity during Mr. Beckett's direct
25 examination during the deposition to confirm or deny that

1 document.

2 He did admit to the actual document and knowing
3 that document. But as to the contents, he denies. I'm not
4 asking the Court to rule at this point as to the
5 admissibility of that document, just to lay the foundation.

6 Unless opposing counsel is going to stipulate the
7 foundation has been laid through the deposition, I will not
8 have to read in the designations as to that portion that
9 opposing counsel is not playing at this point and has
10 withdrawn, which is, of course, their right.

11 He just objects to me reading it during their case
12 in chief.

13 MR. BECKETT: Judge, can I be heard on this?

14 THE COURT: Yes.

15 MR. BECKETT: Mr. Baez purportedly had a prior
16 declaration.

17 THE COURT: Mr. Duarte.

18 MR. BECKETT: Sorry. Baez Duarte. We call him
19 Mr. Baez.

20 MR. DELLINGER: Next to last names. It's
21 confusing.

22 MR. BECKETT: Sometimes it is. Sometimes it
23 isn't. Makes it more complicated.

24 But Mr. Baez had a prior declaration allegedly.
25 He is illiterate. I want to make that clear. He cannot

1 read. He did have a declaration, and it was the subject
2 of -- it was a subject during the deposition.

3 What we contend, A, is that since we are not
4 referring to it in our designations, the rule of
5 completeness would not apply and our opponents couldn't
6 demand that we designate it in our case in chief.

7 With respect to their case in chief, what we say,
8 Judge, is that the requirements of Rule 16, 613(b) cannot
9 be met here. We're in a different realm now.

10 The witness is unavailable. And, in fact, we told
11 our colleagues at the time when we went down to Chile to
12 take these depositions that they would likely become
13 de bene esse depositions because it was unlikely the
14 witnesses would or could travel to the Court.

15 What happened is, yes, this came up in the course
16 of questioning because we had it presented to us and we had
17 to ask him questions about it.

18 But what we contend, Judge, is that the witness
19 needs to be confronted with this prior inconsistent
20 statement by the party that wants to use it. He needs to
21 be confronted by them. And there was never any one
22 question asked by our colleagues against the witness at
23 that time.

24 We don't know exactly how they're going to use it.
25 We had a right to hear from them if they wanted to use it;

1 that they thought it was important; that they confronted it
2 in their way with him; that they asked him the specific
3 questions they had coming out of the prior inconsistent
4 statement so that we could then determine during the period
5 of discovery what, if anything, we would do in response to
6 that. But they didn't do that.

7 THE COURT: Okay. I'll give you an opportunity to
8 argue this some more in the morning.

9 But let me just give you my -- my off-the-cuff
10 reaction is, first of all, I think you're conflating two
11 issues. The rule of completeness with respect to the
12 publication of the portions of the deposition that they
13 wish to publish is unrelated to the issue that arises under
14 613(b).

15 MR. BECKETT: I agree with that.

16 THE COURT: Under 613(b), as I suspect you know,
17 there are essentially four criteria: First, the witness
18 must be examined by the -- the witness has a right to be
19 confronted with the statement and to be examined by the
20 statement; and his adversary or the party against whom the
21 exhibit is being offered has to be given the opportunity to
22 examine the witness. Those are the first two main ones.

23 The next one is, it has to be not unduly
24 prejudicial under 403; and, finally, it has to be relevant
25 material with respect to some issue in the case.

1 So those are -- that's the predicate that has to
2 be laid for the admission of an extrinsic prior --
3 extrinsic evidence of a prior inconsistent statement.

4 Now, I don't know whether you can do that or not.
5 But with respect to what's in the deposition, I think the
6 defendant is entitled to have those portions of the
7 deposition read. And he may or may not meet the strictures
8 of Rule 613(b). I'll have to decide that after I hear it.

9 But he's not obligated under the rule of
10 completeness to wait until it's his case in chief to
11 publish those portions of the deposition. It can be done
12 contemporaneously and should be done with the publication
13 of the portions you're reading.

14 MR. BECKETT: So, Judge, I agree with the Judge's
15 view on 613. I think we are in a situation where there's
16 an unavailable witness, though, and there's case law that's
17 relevant to that.

18 And I would defer the Court to *Wammock v. Celotex*,
19 793 F.2d 1518. It doesn't exactly deal with the situation
20 -- the situation is unique -- but does give guidance on the
21 question of unavailability.

22 THE COURT: Are you arguing 613 now?

23 MR. BECKETT: Yes, this relates to 613.

24 THE COURT: Okay. As I said, I don't have time
25 this afternoon to get into that. I'll hear that more

1 completely in the morning.

2 But I do want to address the question of whether
3 or not they are going to need to recall this witness or to
4 publish in their case in chief. I don't know that it
5 matters materially to them.

6 But if they want to publish that portion of the
7 deposition now, they are entitled to do that.

8 MR. BECKETT: Judge, I guess our position would be
9 on that, that yes, they have a right to designate. But if
10 they're trying to use that foundation to admit a prior
11 inconsistent statement under Rule 613, it would be
12 prejudicial to have it published if ultimately all of those
13 foundation questions result in it not being admitted into
14 evidence, without being used.

15 That's the concern we have. We completely agree
16 that they have the right --

17 THE COURT: Let's do this: Give me the portions
18 of the deposition that are in dispute so I can read them,
19 and I can make a judgment as to whether or not there's
20 anything prejudicial that's in them.

21 Are you suggesting that they shouldn't be able to
22 examine the witness about the statement at all? Because
23 that's a horse of a different color.

24 What we started off talking about is the admission
25 as a document of extrinsic evidence of a prior inconsistent

1 statement. That is not the same as examining a witness
2 orally about a prior inconsistent statement. Two entirely
3 different evidentiary issues.

4 MR. BECKETT: Yes, Judge. But to be clear, they
5 never examined the witness about this statement. They
6 never did.

7 And the second point, I think, is the questions
8 regarding the foundation for that statement will alert the
9 jury to the existence of the statement. And then if the
10 statement ultimately is kept out, we will have suffered
11 prejudice as a result of that.

12 THE COURT: That's why I want to read the portions
13 of the deposition so I can make a determination for myself
14 whether what you say is so.

15 It's not uncommon for jurors to hear an effort to
16 establish a predicate for the introduction of evidence and
17 have the document not come in.

18 But I hear you. You're concerned that it may
19 raise a specter in their mind that there is something being
20 withheld from them. But I can't make that judgment without
21 seeing the testimony.

22 So if between now and tomorrow, if you all could
23 make that -- or if you have it there now.

24 MR. CALDERON: We have it ready, Your Honor.

25 THE COURT: Great. Hand that up to me.

1 MR. BECKETT: No objection, Judge.

2 THE COURT: Okay. Hand that up to me,
3 Mr. Calderon. I'll take it for homework.

4 Why don't we plan on coming together in the
5 morning then at 8:30, and I'll give you all an opportunity
6 to make arguments. And I'll give you a ruling on this so
7 we can move forward with it.

8 MR. BECKETT: Thank you, Judge.

9 MR. CALDERON: Thank you, Your Honor.

10 THE COURT: Have a pleasant evening. See you in
11 the morning.

12 (Proceedings adjourned at 5:10 p.m. until
13 Friday, June 17, 2016, at 8:30 a.m.)

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16 C E R T I F I C A T E

17

18 I certify that the foregoing is a correct
19 transcript from the record of proceedings in the
20 above-entitled matter.

21

22 s\Amie R. First, RDR, CRR, CRC, CPE

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