

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 17, 2016
	:	8:34 a.m.
v.	:	
	:	
PEDRO PABLO BARRIENTOS NUNEZ	:	
	:	
Defendant	:	
	:	

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

Court Reporter: Amie R. First, RDR, CRR, CRC, CPE
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by mechanical stenography.

Transcript produced by Computer-Aided Transcription.

1 APPEARANCES:

2

3 For the Plaintiffs: Mark D. Beckett

4 Richard S. Dellinger

5 L. Kathleen Roberts

6 Daniel McLaughlin

7 Christian Urrutia

8 Amy Belsher

9

10 For the Defendant: Sean W. Landers

11 Luis F. Calderon

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1 THE COURT: Good morning. We're back on the
2 record in Jara versus Barrientos Nunez, 6:13-civil-1426.

3 We have most of our counsel this morning present.

4 I've had an opportunity to review the portions of
5 the testimony of Mr. Baez which are in dispute.

6 And I don't know if you need this back,
7 Mr. Calderon, but you're welcome to it.

8 MR. CALDERON: Yes, Judge.

9 THE COURT: So I guess, Mr. Beckett, if you'd
10 like, I'll give you an opportunity to argue your point with
11 respect to whether or not the defendant should be entitled
12 to have this portion of his testimony published during the
13 presentation of Mr. Baez's testimony in your case in chief,
14 to the extent that bears on your objection to the substance
15 of the testimony as it relates to the potential admission
16 of this later extrinsic evidence of a prior inconsistent
17 statement.

18 MR. BECKETT: Yes.

19 THE COURT: I'm happy to hear from you.

20 MR. BECKETT: Thank you, Judge.

21 I understand Your Honor is talking about this in a
22 two-step process, the first the publication to the jury of
23 the sections of the deposition, which is separate from the
24
25

1 question to the ultimate admissibility of the prior --
2 allegedly prior inconsistent statement.

3 THE COURT: Seems so to me.

4 MR. BECKETT: Okay.

5 With respect to the passages that have been
6 marked, what we would say, Judge, is that this is the
7 equivalent of publishing the inconsistent declaration to
8 the jury. It's quoted in the passage, it's discussed in
9 the passage, and the jury will naturally be inclined to
10 think that there is a prior inconsistent statement.

11 And I think the prejudicial effect of that is that
12 it will effectively have been published to the jury before
13 there's been a ruling in this particular case.

14 There may be situations where a foundation can be
15 laid and that a jury can be instructed to disregard that.
16 But here, if these selections are played, I think
17 effectively it will require the plaintiffs to address the
18 issue.

19 We will address the issue. We need to address it.
20 But we don't think that the document should be admitted,
21 for reasons that I can go into on a substantive basis. But
22 I understand it is not what the Court is focused on at the
23 moment.

24 But I would ask Your Honor, if Your Honor is
25 inclined, to allow this to go forward to just deal with the

1 ultimate issue, which I'm prepared to argue as well --

2 THE COURT: I'm prepared to do that this morning.

3 MR. BECKETT: Okay.

4 THE COURT: I mentioned it in two steps only
5 because, you know, for purposes of the record, since we
6 don't have the document in -- at least let me tell you how
7 I understand the issue, and then you tell me if I've got it
8 right. If I do, then we'll talk about -- we'll proceed
9 substantively.

10 The issue, as I understand it, is on an issue that
11 is obviously a critical issue; that is, whether or not the
12 Defendant Barrientos Nunez was present at the Chilean
13 stadium at the time in question in 1973.

14 The witness Baez has testified during his
15 deposition testimony, his video deposition which has been
16 presented to the jury, that the defendant was present.

17 On some occasion previously, he executed a
18 declaration in which he indicated that Mr. Barrientos Nunez
19 was not present.

20 In that testimony, his oral testimony that was
21 shown to the jury -- we haven't gotten to that portion
22 yet -- he is confronted with that statement. He's given an
23 opportunity to explain the circumstances surrounding that
24 statement. He does so in his deposition testimony.

25 He explains that what is recorded in the

1 declaration is not consistent with his memory. It's not
2 what he said, and, in fact, the declarant must have made
3 changes to it.

4 He also acknowledged that he's not literate. He's
5 not able to read what's on the document, wasn't able to
6 read it at the time.

7 So he's confronted with the document. He's given
8 an opportunity to explain the inconsistent statement. And
9 your clients -- Counsel, I don't know if it was you,
10 Mr. Beckett, at the time. But whoever was there on behalf
11 of the plaintiff was given -- had opportunities to explore
12 the inconsistencies with Mr. Baez.

13 So under 613(b), tell me what it is about that
14 predicate that's deficient. Because it's not immediately
15 apparent to me.

16 MR. BECKETT: Thanks.

17 First of all, I think that is a very accurate
18 summary of what happened. Second of all, I was the counsel
19 that was present.

20 So I think we start with Section 613, which we
21 talked about yesterday. But then we're in the situation
22 where we're dealing with a witness that is now unavailable.
23 And that's where the case that I cited to the Judge
24 yesterday comes into play.

25 Again, that case doesn't deal directly with this

1 situation, but it does say that once you're dealing with an
2 unavailable witness, because that witness cannot be
3 recalled, you're in a different situation.

4 Now, that case does say that the witness does have
5 to have an opportunity to explain the inconsistent
6 statement. But what I would put to the Court is that it's
7 not sufficient for me to do that.

8 We came upon this witness. He was initially
9 presented to us as a witness by the defense. We went down,
10 we deposed him. And we were aware of this declaration and
11 had to address that with him in the course of our
12 deposition.

13 It was I who was taking the deposition.

14 But what I would say, Judge, is that what the rule
15 requires, and in fairness will result if it's not observed,
16 is that defense counsel has to confront the witness with
17 the inconsistent statement.

18 And by that, I mean not just to say, did you give
19 a prior inconsistent statement, but to confront the witness
20 with all of the inferences that the defense wants to make
21 based on that statement so that the witness can respond to
22 those.

23 Yes, it is true that he was presented with a
24 declaration. But it wasn't -- I didn't ask every question
25 that I would have asked if I had been defense counsel. I

1 asked the questions that were important to understand the
2 background of that declaration and then to get to the
3 witness' actual testimony.

4 I think that in fairness, we should have to be
5 confronted with the actual inferences that are going to be
6 drawn from that, especially where a witness is unavailable.
7 And, moreover, Judge, where the defense counsel was aware
8 that it was highly likely, if not certain, that this
9 witness would be unavailable for trial.

10 Then I could have responded. I could have come
11 back and asked this witness additional questions. I could
12 have asked for additional discovery during the discovery
13 period. And I didn't have the ability to do that.

14 In addition, Judge, I think that nested within 613
15 there has to be a 403 analysis. And the 403 analysis here
16 strongly suggests that this prior inconsistent statement is
17 just unreliable.

18 The witness has testified -- and it's not disputed
19 -- that he's illiterate. He used a thumbprint to mark the
20 declaration.

21 And the circumstances surrounding the creation of
22 the declaration itself, many of which are not disputed, I
23 think also indicate the unreliability of the document.

24 And, of course, on the other side, you have the
25 highly prejudicial effect of submitting to the jury a prior

1 inconsistent statement that was taken from an illiterate
2 man that really doesn't have any reliability at all.
3 That's highly prejudicial to our position.

4 So I think if you look at all of the circumstances
5 in this particular case, you take some guidance from the
6 Wammock case, I don't think that this should come in.

7 I understand where the Judge is going, but I think
8 there are other factors here that make this unique. And I
9 think unfairness would result if ultimately this came in.

10 Having said that, I think it's better to have a
11 ruling now from the Court on the substance of it than not,
12 and then we'll proceed accordingly.

13 THE COURT: Okay. Thank you, Mr. Beckett.

14 Mr. Calderon -- or Mr. Landers. I'm sorry.

15 MR. LANDERS: Thank you, Judge.

16 The argument by opposing counsel goes to the
17 weight of the evidence, not the admissibility. The
18 document -- excuse me.

19 At the time of the deposition, it was not agreed
20 upon between the parties that these videotape depositions
21 would be played at trial. That was a later agreement by
22 the parties.

23 The Rule 613(b), in fairness, gives the
24 opportunity for both counsels to be present, the witness to
25 be present, and everyone to have the opportunity to ask

1 questions if they wish. There's no requirement that
2 defense counsel ask questions.

3 The witness was confronted with this document,
4 which the defense will attempt to admit through Maria
5 Teresa Barrientos after she authenticates the document and
6 lays that foundation. It's the affidavit that is mentioned
7 in the deposition of Gustavo Baez Duarte that Mr. Beckett
8 did have the opportunity to ask several questions to that
9 witness, who ultimately denied making that statement and
10 ultimately called our witness a liar.

11 Reluctantly, the defense wants to introduce this
12 to the jury to lay that foundation to then admit under
13 613(b), because the opportunity to deny or explain the
14 affidavit was given to that witness.

15 It was read out loud to that witness. That
16 witness, during the deposition, identified the document, as
17 far as his signature, during Mr. Beckett's examination, a
18 fingerprint.

19 The prior inconsistent statement goes to the
20 credibility of this witness who ultimately says earlier at
21 the -- during a declaration, for the jury to decide how
22 much weight that is, that Mr. Barrientos was not at the
23 stadium, later denies that statement during the deposition.
24 The prior inconsistent statement is to the credibility of
25 that witness.

1 And if there's any prejudice to this document or I
2 guess these -- the testimony coming in, it's more to the
3 defense than to plaintiffs' counsel.

4 And the defense does not have the time or the
5 resources to edit the actual video just to play those
6 portions we're wishing to seek during the plaintiffs' case.
7 So, therefore, we must read them into the record.

8 And that's why we're asking the Court at this time
9 to allow us to read them into the record and to find that
10 the prior inconsistent statement is admissible for the
11 defense and for Maria Teresa Barrientos to testify to and
12 for the jury to consider as to the credibility of the
13 testimony they're hearing from Gustavo Baez Duarte.

14 THE COURT: Thank you, Mr. Landers.

15 Mr. Beckett, I'll give you a brief last word.

16 MR. BECKETT: First of all, I want to make it
17 clear, Judge, that now we're talking about two prior
18 inconsistent statements.

19 We have the declaration from Mr. Baez. And now we
20 have a desire on the part of defense counsel to put on
21 Mrs. Barrientos.

22 And to me, that's a second prior inconsistent
23 statement, if, indeed, that's what it is at all. So
24 without getting into that right now, I -- we're going to
25 object to that.

1 But I think that's another example of the fact
2 that they stand mute during the deposition. It's true that
3 there was not an agreement that these were de bene esse at
4 the time; but given the circumstances, it was pretty clear
5 that's what they were going to be. And we certainly
6 asserted they would be that. And the questions weren't
7 asked.

8 Now, on the basis of that, they want to bring not
9 only the declaration in, but another out-of-court statement
10 from Mrs. Barrientos.

11 And I think this shows that if this had all been
12 done appropriately at the time, we could have confronted
13 it, we could have made our decisions, and we could have
14 moved on.

15 I still contend that, yes, you can argue it goes
16 to the weight. But I think in this case it's clear that it
17 is so prejudicial, that giving it to the jury when it is so
18 unreliable, I think would work in unfairness.

19 THE COURT: All right.

20 I'm going to require you to publish that portion
21 of the deposition testimony. I think the predicate
22 established in 613(b) has been met by the witness'
23 testimony.

24 I don't think the 403 argument -- I don't think
25 the prejudice is sufficiently great to outweigh the

1 probative value potentially of the statement.

2 The question that is presented with respect to
3 the, let's call it the adversity prong of 613(b) is an
4 interesting one, Mr. Beckett.

5 It looks to me, in evaluating the testimony, that
6 the fact that Mr. Baez testified previously in a way that's
7 not consistent with the testimony he gave during his direct
8 examination is adverse to your client's interest.

9 And you had an opportunity to explore the
10 inconsistencies between Mr. Baez's testimony given in
11 response to your questions with the declaration. Whether
12 that was done with -- what's the word I'm looking for -- as
13 comprehensively or whether that was done with vigor, or
14 whether or not the defendant explored or did not explore
15 elements surrounding the creation of this document that is
16 a prior inconsistent statement.

17 And in my judgment, all of that goes to the
18 credibility. The jury is going to be required to evaluate
19 whether or not Mr. Baez's testimony as given during his
20 direct examination is the truth or whether or not the
21 testimony he gave in his declaration is the truth.

22 He gave an explanation for that, which seems to me
23 is not adverse to your position at all. But, again, that
24 goes to the jury's assessment of which version of those set
25 of facts they believe is most credible.

1 So I think that the -- and I'm just trying to make
2 sure the record is clear for purposes of the record.

3 In my judgment, the predicate required by 613(b)
4 has been met and that the testimony should be read; and
5 that the prior inconsistent statement, extrinsic evidence
6 of that is admissible.

7 I'm not reaching the question of this other
8 statement, obviously, until I know more about it and
9 what -- so I'm making no judgment about what
10 Mrs. Barrientos can testify to.

11 MR. BECKETT: Understood, Judge. Thank you.

12 THE COURT: You're welcome.

13 MR. BECKETT: And I think it's helpful to have the
14 ruling. In light of the Court's ruling, we will play not
15 only those selected sections but the entire passage of the
16 deposition that deals with the prior inconsistent
17 statement.

18 THE COURT: Okay. Very good.

19 All right. We'll be in recess until our jury is
20 back.

21 Anything else we need to address before they come
22 back?

23 MR. BECKETT: Just one other thing on that point,
24 Judge, I should just be aware of. I'm not sure how the
25 Court wants to address it.

1 The sections that I think counsel designated are,
2 some are in Spanish. And they're read out in Spanish in
3 the record.

4 I'm just noting that. I don't think that changes
5 anything. It's a little unusual. They won't be able to
6 follow that part of it, and it may create some confusion or
7 frustration. I'll just point it out.

8 THE COURT: Yeah. I obviously noticed that when I
9 was reading it. I haven't seen it play yet. But it looked
10 to me like the interpreter sort of caught up with what
11 happened.

12 But if not, we can -- when we get finished, we can
13 make a collective decision, if you all want to talk about
14 it, as to whether or not that portion would be better read
15 again. I don't want to unduly emphasize it is my point.

16 MR. BECKETT: Agree.

17 THE COURT: So I think it might be better just to
18 let it play. If the jurors have a question or concern
19 about it, they can let us know. But I don't want to try
20 your case for you. I'll leave that to you.

21 MR. LANDERS: Agreed, Judge. If the document is
22 ultimately admitted, it is translated into English. Those
23 questions and answers are translated into English.

24 MR. BECKETT: Thank you.

25 THE COURT: Thank you very much.

1 (Recess at 8:49 a.m. to 9:04 a.m.)

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

4 The Court notes counsel and parties are present.
5 Is our jury back and accounted for, Mr. Carter?

6 COURT SECURITY OFFICER: Yes, sir.

7 THE COURT: Are you ready to proceed, Counsel?

8 MR. CALDERON: Yes, Your Honor. Just to bring it
9 to your attention, the defense now does have a Spanish
10 court-certified interpreter.

11 For purposes of supplementing the record so the
12 jury understands the questions for the Spanish portion we
13 talked about before we took a break, during the deposition,
14 I had offered to Mr. Beckett that our interpreter can use
15 her language skills to interpret that to the jury so the
16 jury gets the full context in English, not just the Spanish
17 version.

18 MR. BECKETT: Judge, I think this goes hand in
19 hand with the rulings the Court's made with respect to the
20 deposition testimony, which is pretty much it comes in as
21 it is.

22 So I think if they want to bring that in -- I'm
23 sure they will -- we'll deal with that in their case. As
24 of now, we decline this offer. We believe it should be
25 played as is.

1 THE COURT: Okay. Is the interpreter going to be
2 utilized today with the translation of some testimony?

3 MR. CALDERON: Your Honor, not with regards to a
4 witness, only with regards to my client, and possibly those
5 sections depending on the Court's ruling.

6 It's just that we had an expert today, and I
7 wanted to make sure Mr. Barrientos understood what the
8 expert was saying.

9 THE COURT: Okay. So I don't need to swear her.
10 That was my question. Okay.

11 Let's bring our jury back.

12 (Jury entered the courtroom at 9:07 a.m.)

13 THE COURT: Welcome back, ladies and gentlemen. I
14 hope you had a pleasant evening.

15 Were all of you able to follow my instructions not
16 to discuss the case amongst yourselves or with anyone else?

17 JURY: Yes.

18 THE COURT: Were all of you able to avoid any
19 media exposure to the case?

20 JURY: Yes.

21 THE COURT: You may recall when we broke for the
22 evening, we were in the midst of Mr. Baez's testimony.
23 We're going to pick up with that this morning.

24 Is the plaintiff ready to proceed, Mr. Beckett?

25 MR. BECKETT: Yes, Your Honor.

1 THE COURT: All right.

2 (Playing video deposition of

3 Gustavo Baez Duarte.)

4 MR. BECKETT: Judge.

5 THE COURT: Yes.

6 MR. BECKETT: Your Honor, there was one segment
7 that was designated that for some reason fell out of the
8 production of the videotape. I've just showed my
9 colleagues that passage. It's literally four lines long.
10 This is the point at which it was dropped. I'd just like
11 to read it into the record.

12 THE COURT: All right.

13 Is that okay with the defense?

14 MR. CALDERON: That's fine, Your Honor.

15 THE COURT: Okay. Thank you.

16 You may proceed.

17 MR. BECKETT: "The Interpreter: Yes. The exact
18 translation is five or six times. I saw him five or six
19 times. And I saw him with a portfolio five or six times."

20 THE COURT: All right. Thank you, sir.

21 (Playing video deposition of

22 Gustavo Baez Duarte.)

23 MR. BECKETT: Judge, there was another small
24 production issue. If I can just confer with counsel, it
25 will take one minute.

1 THE COURT: Yes.

2 MR. BECKETT: Judge, we just have a retranslation
3 that was agreed to by the parties. It wasn't picked up in
4 the dubbing.

5 And I'd like to read that, if I could, into the
6 record.

7 THE COURT: No objection --

8 MR. CALDERON: That's fine.

9 THE COURT: -- Mr. Calderon?

10 MR. CALDERON: No objection, Your Honor.

11 THE COURT: You may proceed.

12 MR. BECKETT: Upon further review, translation
13 should read, "Five of six times. Every time I saw him."

14 (Playing video deposition of
15 Gustavo Baez Duarte.)

16 THE COURT: Mr. Beckett, let's pause here. Let's
17 pause here and let the jury take their mid-morning break
18 and give my court reporter an opportunity to stretch as
19 well.

20 Ladies and gentlemen, we'll take our morning
21 recess. If I could ask you to be ready to come back in in
22 15 minutes, that will be a quarter to the hour. We'll
23 resume with the testimony of this witness.

24 Thank you, Mr. Carter.

25 (Jury exited the courtroom at 10:31 a.m.),

1 THE COURT: We'll be in recess for 15 minutes
2 until 10:45. Do you all need me for anything?

3 MR. BECKETT: Not presently, Judge.

4 THE COURT: Thank you.

5 (Recess at 10:31 a.m. to 10:49 a.m.)

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

8 The Court notes all counsel are present. The
9 parties are not present.

10 Are they coming back in, Mr. Beckett?

11 MR. BECKETT: I'm sure they're on their way,
12 Judge. Let us just check.

13 THE COURT: I can start without them. I just want
14 to note for the record that they're not present.

15 Let's bring our jury back, please, Mr. Carter.

16 Now all counsel and parties are present.

17 (Jury entered the courtroom at 10:51 a.m.)

18 THE COURT: Welcome back, ladies and gentlemen.
19 Sorry to be a little late getting back. It's my -- I made
20 the mistake of returning a phone call.

21 So are we ready to proceed with the testimony of
22 Mr. Baez, Mr. Beckett?

23 MR. BECKETT: Yes, Judge.

24 THE COURT: All right. You may proceed.

25 (Playing video deposition of

1 Gustavo Baez Duarte.)

2 MR. BECKETT: Judge, we're having some pixelation
3 issues here. I think the quality is good enough to go
4 forward if the Court agrees. If it's not, we'll stop for a
5 minute and see if we can correct it.

6 THE COURT: I'd like to fix it. I didn't know if
7 the latency was on your end or where it was. I'd like to
8 see if we could take a minute and fix it.

9 MR. BECKETT: Okay. Let us have a minute.

10 THE COURT: Okay.

11 MR. BECKETT: Judge, it looks like we just have
12 some what I'm calling pixelation or problems around this
13 area. It goes on for another minute. It is still
14 decipherable. And then it goes away.

15 It seems like it should be okay. If not, we'll
16 stop again. We've fast-forwarded and observed it, and it
17 seems like it will be okay.

18 THE COURT: All right. What we'll do, then, is
19 we'll proceed, and I'll ask the jury to let me know if they
20 feel it's necessary. Then we can have the questions and
21 answers read aloud. I'll just count on you to let me know
22 later on. If you think it's necessary, we'll do that.

23 You may proceed, Mr. Beckett.

24 MR. BECKETT: Thank you.

25 (Playing video deposition of

1 Gustavo Baez Duarte.)

2 MR. BECKETT: Judge, we have an agreed revised
3 translation for the last answer I'd like to read into the
4 record.

5 THE COURT: All right.

6 MR. BECKETT: Upon further review, translation
7 should read, "Heart of the Army. Behind Barrientos is a
8 military family. It's a big family. I am alone."

9 (Playing video deposition of
10 Gustavo Baez Duarte.)

11 MR. BECKETT: Judge, here we're just going to
12 pause the tape and then move forward pursuant to an
13 agreement with counsel to the next spot.

14 Judge, can we have a moment to confer?

15 THE COURT: Yes.

16 MR. BECKETT: Thank you.

17 I think we have an agreement. We're going to move
18 the tape forward.

19 THE COURT: Okay.

20 (Playing video deposition of
21 Gustavo Baez Duarte.)

22 MR. BECKETT: Judge, that's the end of that tape.
23 I would like to read some stipulations, if I could at this
24 time.

25 THE COURT: All right. Ladies and gentlemen,

1 remember my instructions to you about the consideration of
2 stipulations between the parties.

3 You may proceed, Mr. Beckett.

4 MR. BECKETT: Thank you.

5 Stipulation 13: The second section of the Second
6 Company was commanded by sub-lieutenant Rodriguez Rodrigo
7 Fuchloger who was of a rank junior to defendant.

8 14: The third section of the Second Company was
9 commanded by sub-lieutenant Fernando Del Valle, who was of
10 a rank senior to defendant -- junior to defendant, was a
11 rank junior to defendant.

12 Thank you.

13 15: In September 1973, Manuel Rolando Mella San
14 Martin was a sergeant in the first section of the Second
15 Company.

16 31: In September 1973, defendant could issue
17 orders to all officers in the Second Combat Company except
18 for Captain Luis German Montero.

19 32: In September 1973, defendant was the highest
20 ranking officer in the Second Combat Company directly below
21 Captain Luis German Montero.

22 Stipulation 36: Mauser was the manufacturer of
23 Luger.

24 Thank you, Judge.

25 THE COURT: Thank you. Call your next witness.

1 MR. CALDERON: Your Honor, could we please sidebar
2 quickly with regards to some designations?

3 THE COURT: All right.

4 (Discussion at sidebar on the record.)

5 MR. LANDERS: Your Honor, there's several
6 designations that defense was asking to be played that
7 plaintiff did not play. We're asking to read those to put
8 into context at this time.

9 There are not many lines. To begin with, it
10 should only take a few moments instead of waiting three
11 days and essentially recalling this witness for just
12 several lines of designations.

13 Earlier, we had argued about different
14 designations that the plaintiff ended up playing on their
15 own. I believe they have an objection to us reading them
16 into the record at this time.

17 But to put it into context, the jury is focused on
18 this witness. We'd like to read certain designations as we
19 have previously made to plaintiffs' counsel, nothing new,
20 into the record at this point.

21 THE COURT: What's the objection?

22 MR. BECKETT: Judge, first of all, these don't
23 come in via some kind of rule of completeness because this
24 topic wasn't discussed at all in our designations. I want
25 to note that.

1 Second of all, these relate to a specific exhibit
2 that's also not part of your designations and not part --
3 it's not an exhibit that's in evidence.

4 So it's going to be misleading to the jury. These
5 gentlemen had the ability to put this document into
6 evidence to give it context or even how as to read it.

7 It's not going to make any sense to them, and they're going
8 to have to fill in the pieces in some narrative form later
9 since the exhibit is not in evidence. It's inherently
10 confusing.

11 MR. LANDERS: Judge, this is testimony that was
12 given at a prior proceeding. We're not asking to see the
13 document. We're not even asking about the contents of the
14 document.

15 We're asking about a prior statement and the
16 omissions made, because Mr. Barrientos was not included in
17 the declaration given by this witness. A separate
18 declaration that we're not offering for any evidence other
19 than the fact that there was a prior statement, and
20 Mr. Barrientos' name was omitted from any statement given
21 in a prior proceeding.

22 THE COURT: Help me understand, Mr. Beckett, what
23 rule of evidence are you relying upon to require that the
24 defense postpone their publication of a portion of the
25 deposition that was published by you? Tell me, what am I

1 missing?

2 MR. BECKETT: We're making an objection to this.
3 This is an objection to this designation because it's based
4 on hearsay.

5 It's not just noting that there was a prior
6 declaration. It's reading the contents of the prior
7 declaration into the record which is an out-of-court
8 statement.

9 THE COURT: Well, I don't have the declaration.
10 So I need to get myself informed about it. So I will take
11 a lunch break, and I'll take it up and look at it and see
12 whether or not I agree or disagree. I want to make sure I
13 understand your objection.

14 So you think the contents of the exhibit published
15 are in the question?

16 MR. BECKETT: Yes.

17 THE COURT: And that's the issue that you have?

18 MR. BECKETT: Yes. Yes. That and the fact that
19 it's not comprehensible because the underlying exhibit
20 isn't in the record.

21 THE COURT: So you're not objecting to its
22 publication of the testimony under rule of completeness.
23 You're objecting to the testimony because you think that
24 the reference to the exhibit is impermissible?

25 MR. BECKETT: I think the rule of completeness

1 also applies because it was not a topic that was in the
2 designations.

3 THE COURT: You and I have a fundamental
4 disagreement of that rule as it relates to topics. So
5 you're going to lose on that one with me.

6 MR. BECKETT: Okay.

7 THE COURT: But I'll look at the context of the
8 statement to see whether or not there's something to your
9 objection that it's potentially misleading or that the
10 reference to the document is in itself somehow
11 objectionable. I'll take a look at that.

12 MR. BECKETT: Okay. Thank you, Judge.

13 THE COURT: You're welcome.

14 (End of discussion at sidebar.)

15 THE COURT: All right. Ladies and gentlemen, I
16 have a matter that's going to take me a little bit longer
17 to resolve probably than I thought.

18 And we're close enough to lunch that I'm going to
19 excuse you for the lunch break. And I'll be able to sort
20 this out while you all are gone. And that way, I won't
21 have to waste your time.

22 If you all could come back and be ready to go at
23 1:30, that will give me time to sort this out and give the
24 lawyers and my staff a chance to take their lunch break;
25 and we'll resume with the proceedings.

1 I'm sorry. 1:15. I don't want to stretch you too
2 long. That will give us an hour and 15 minutes. We need
3 the time to stay on schedule.

4 So let's come back at 1:15. And we'll deal with
5 the proceedings wherever we are based on how I sort this
6 issue out that I have to resolve.

7 (Jury exited the courtroom at 11:55 a.m.)

8 THE COURT: Counsel, if one of you all could be
9 good enough to give me the transcript back and I'll review
10 that over the lunch break.

11 MR. LANDERS: We're doing that now, highlighting
12 for the Court to have a copy.

13 MR. CALDERON: Your Honor, may I approach?

14 THE COURT: Yes.

15 All right. Thank you then. We'll be in recess
16 until 1:15.

17 (Luncheon recess at 11:57 a.m. To 1:18 p.m.)

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

20 The Court notes counsel and the parties are
21 present.

22 Yes, sir, Mr. Beckett.

23 MR. BECKETT: Judge, as I have tried to convey to
24 you through Miss Flick, we withdraw our objection, and
25 we're happy to read those parts of the designations by

1 counsel into the record.

2 They are not on the video, so I'll read them in.

3 THE COURT: Okay. Thank you very much.

4 Let's bring our jury back, please.

5 (Jury entered the courtroom at 1:20 p.m.)

6 THE COURT: Welcome back, ladies and gentlemen. I
7 hope you had a pleasant lunch.

8 I don't know if you've had a chance to meet
9 Miss Silva. She is literally our changing of the guard.
10 Miss Silva, court security officer.

11 And, again, as I told you with respect to
12 Mr. Carter, if anything comes up during your service that
13 you need, let Miss Silva know and she'll take care of it.
14 If she can't, she'll bring it to my attention.

15 During your absence, we had a conversation and
16 there's some additional portions of the witness' testimony
17 that are going to be published to you. It's not on the
18 video portion. So Mr. Beckett is going to read the
19 questions and answers to you.

20 Mr. Beckett, you may proceed.

21 This is the testimony of the same witness,
22 Mr. Baez, taken at the same time and under the same
23 circumstances. And you should consider it just as you
24 would if the witness were here testifying live in front of
25 you.

1 You may proceed.

2 MR. BECKETT: Thank you, Your Honor.

3 "Question: Okay. Do you remember giving a
4 statement in Santiago on July 3rd of 2009?

5 "Answer: In September, yes, I gave.

6 "Question: Did you give that statement in
7 response to questions that were being asked?

8 "Answer: Yes. I was asked questions and I would
9 respond to questions.

10 "Question: Does that mean, Mr. Baez, that you
11 were specifically asked about people that you saw inside
12 Chile Stadium?

13 "Answer: Yes, yes.

14 "Question: Okay. And in September of 1973, was
15 Barrientos a member of the Tejas Verdes?

16 "Answer: Yes.

17 "Question: Why didn't you mention Barrientos?

18 "Answer: Because I wasn't asked about that.

19 "Question: But, but didn't they ask you about who
20 was inside Chile Stadium?

21 "The Witness: Because that question was not asked
22 to me, my response was -- I said that he was not with us.
23 Now, had they asked me, did you see him, my answer would
24 have been, yes, I did see him at the stadium. But they
25 asked me, was he with you? The answer is no, he was not

1 with me.

2 "Question: Okay. You agree, do you not, that in
3 2009 you never mentioned that Mr. Barrientos was at Chile
4 Stadium, correct?

5 "The Witness: What I said is that he was not with
6 us but that I had seen him. We were staying at the Estadio
7 Chile. He was not with us. But did I see him? Yes, I did
8 see him. Perhaps there had been a confusion in the
9 declaration."

10 THE COURT: Thank you, Mr. Beckett. Does that
11 complete Mr. Baez' testimony?

12 MR. BECKETT: Yes, sir.

13 MR. LANDERS: Yes, Your Honor.

14 THE COURT: All right. Call your next witness.

15 MR. BECKETT: The next witness will be Pedro Pablo
16 Barrientos Nunez, by videotape. The videotape deposition
17 was taken November 9th and 10th of 2015.

18 But prior to that, Judge, I wonder if I can read
19 some stipulations into the record?

20 THE COURT: Certainly.

21 Same instructions, ladies and gentlemen, with
22 respect to stipulations.

23 MR. BECKETT: Stipulation 48: At Arsenales de
24 Guerra, defendant supervised the distribution of armbands
25 to other soldiers designed to identify them as supporters

1 of the coup.

2 51: During the coup and after the military junta
3 took power, perceived and actual political opponents of the
4 junta were detained, interrogated, tortured, and killed by
5 the Chilean Armed Forces.

6 54: Between September 11th and September
7 17th, 1973, defendant received orders from members of
8 the Chilean Armed Forces at the Ministry of Defense.

9 55: Between September 11th and September
10 17th 1973, defendant delivered reports to members of
11 the Chilean Armed Forces at the Ministry of Defense.

12 56: In 1973, Chile Stadium was a well-known
13 complex in Santiago, Chile.

14 57: After 1973, Chile Stadium continued to be a
15 well-known complex in Santiago, Chile.

16 Thank you, Judge.

17 THE COURT: Thank you.

18 Ladies and gentlemen, as I've told you before the
19 deposition, the deposition testimony, the testimony of
20 Mr. Barrientos was taken prior to trial. Lawyers were
21 present. They had an opportunity to examine the witness.
22 The witness was placed under oath. And you should give it
23 the same consideration you would were the witness
24 testifying before you live.

25 You may proceed, Mr. Beckett.

1 MR. BECKETT: Thank you, Judge.

2 (Playing video deposition of

3 Pedro Pablo Barrientos Nunez.)

4 THE COURT: Stop just a second, please. We're
5 missing our video.

6 Ginny, the projector, something is not working
7 right.

8 Sorry, ladies and gentlemen. I was engrossed on
9 my screen. I was watching on my screen and I did not
10 notice it was not up. Thank you for bringing it to my
11 attention.

12 Were your screens at least working during that?

13 JURY: Yes.

14 MR. BECKETT: Judge, would you like us to start
15 that again?

16 THE COURT: I don't think it's necessary. They
17 had it on their screens. I think just in the interest of
18 comfort, it's easier to look at it on the big screen as
19 opposed to the small ones. You can resume from where we
20 interrupted you.

21 (Playing video deposition of

22 Pedro Pablo Barrientos Nunez.)

23 MR. BECKETT: Just having a technical issue with
24 the video. The audio is playing. The video is frozen. We
25 may have to restart it. It will just take a minute.

1 THE COURT: Okay.

2 (Playing video deposition of
3 Pedro Pablo Barrientos Nunez.)

4 MR. BECKETT: Judge, I just want to be clear, by
5 stipulation of counsel, we're just advancing to another
6 part of the tape.

7 THE COURT: All right.

8 (Playing video deposition of
9 Pedro Pablo Barrientos Nunez.)

10 THE COURT: Let's let our jurors take a break
11 here, if we could. About how much remains on this witness?

12 MR. BECKETT: About 45 minutes on this deposition,
13 Judge.

14 THE COURT: Okay. Let's take our afternoon break.
15 We'll come back at 10 minutes after, 10 minutes after 3:00.

16 And just a reminder, we're going to adjourn for
17 the day around 4:00.

18 (Jury exited the courtroom at 2:55 p.m.)

19 THE COURT: We'll be in recess until 3:10.

20 (Recess at 2:55 p.m. to 3:14 p.m.)

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

23 The Court notes all parties and counsel are
24 present.

25 Ready to proceed, Mr. Beckett?

1 MR. BECKETT: Yes, Judge.

2 THE COURT: Let's bring our jury back, please,
3 Miss Silva.

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

5 THE COURT: Welcome back, ladies and gentlemen.

6 We're going to resume with the testimony of

7 Mr. Barrientos Nunez.

8 You may proceed.

9 (Playing video deposition of

10 Pedro Pablo Barrientos Nunez.)

11 THE COURT: Does that conclude the testimony of
12 this witness?

13 MR. BECKETT: Not quite, Judge.

14 Judge, I'd just like to quickly exhibit a document
15 that was referred to and marked as an exhibit and shown to
16 the witness in the deposition. And it's marked as a joint
17 exhibit in this proceeding.

18 THE COURT: All right. And joint exhibit what?

19 MR. BECKETT: It's Joint Exhibit 61.

20 THE COURT: Any objection, Mr. Calderon?

21 MR. CALDERON: No objection, Your Honor.

22 THE COURT: All right. You may proceed.

23 MR. BECKETT: Thank you.

24 May I ask if we have control of the ELMO,
25 Miss Flick? Thank you.

1 Maybe we'll zoom in a little more.

2 THE COURT: Ladies and gentlemen, just let me know
3 when you've had all the time you need with it. I'm not
4 hurrying you. Just let me know.

5 Good? All right.

6 Thank you, Mr. Beckett.

7 MR. BECKETT: Thank you, Judge.

8 MS. BELSHER: Miss Flick, can you switch back?
9 Thank you.

10 (Playing video deposition of
11 Pedro Pablo Barrientos Nunez.)

12 MR. BECKETT: That's the end of this videotape
13 deposition, Judge.

14 I'd like to read a few stipulations into the
15 record, with the Court's permission.

16 THE COURT: All right. You may proceed.

17 Same instructions with respect to the effect of
18 the stipulations.

19 MR. BECKETT: Stipulation 63: On
20 September 12th, 1973, members of the Second Company of
21 Tejas Verdes were assigned to Chile Stadium.

22 Stipulation 64: On September 13th, 1973,
23 members of the Second Company of Tejas Verdes were
24 assigned, excuse me, to Chile Stadium.

25 Stipulation 65: On September 14, 1973, members of

1 the Second Company of Tejas Verdes were assigned to Chile
2 Stadium.

3 Stipulation 66: On September 15th, 1973,
4 members of the Second Company of Tejas Verdes were assigned
5 to Chile Stadium.

6 Stipulation 20: In September 1973, Francisco del
7 Carmen Quiroz Quiroz was a conscript officer -- sorry --
8 conscript soldier in the Second Company.

9 Stipulation 21: In September 1973, Hector Manuel
10 Hinojosa Retamal was a conscript soldier in the Second
11 Company.

12 Stipulation 23: In September 1973, Gustavo Baez
13 Duarte was a conscript soldier in the Second Company.

14 Stipulation 61: From September 11th, 1973, to
15 approximately September 17th, 1973, members of the
16 Chilean Armed Forces detained individuals with leftist
17 political ideologies at Chile Stadium.

18 Stipulation 38: The coup overthrew the democratic
19 government of Salvador Allende.

20 Stipulation 69: Members of the Second Company
21 guarded detainees at Chile Stadium.

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

24 Thank you, Judge.

25 THE COURT: Thank you, Mr. Beckett.

1 Do you have another witness that we can get
2 started on? Is your next witness live or by video?

3 MR. BECKETT: It's live, Judge. And we're happy
4 to put a witness on. But given the timing, as he's an
5 expert witness, we were perhaps going to propose that we
6 end a little early today and begin that witness on Monday.

7 But it's up to the Court, obviously. We're happy
8 to do whatever the Court prefers.

9 THE COURT: What's your sense of our time?

10 MR. BECKETT: I think that we will end our
11 evidence Monday afternoon. We have three more witnesses,
12 an expert witness and then two fact witnesses.

13 And it depends on cross-examination of the expert
14 and the other witnesses, but I'm thinking if not by noon,
15 then soon after noon on Monday.

16 THE COURT: All right. Ladies and gentlemen,
17 you'll get out -- or Mr. Codner, ladies and Mr. Codner, I
18 guess that's still ladies and gentleman.

19 I'm going to let you go as a reward for good
20 behavior, with the admonition to remember my instructions
21 not to discuss the case amongst yourselves or with anyone
22 else.

23 Especially since we're going to be apart over the
24 weekend, I ask you to be particularly vigilant about media
25 or exposure to the news, television, or anything that may

1 be on the internet.

2 And I hope you have a pleasant weekend. And I'll
3 see you back here Monday morning at 9:00. And we'll resume
4 with the presentation of the plaintiffs' case in chief.

5 (Jury exited the courtroom at 3:48 p.m.)

6 THE COURT: Mr. Calderon, Mr. Landers -- you all
7 can be seated.

8 Assuming that the plaintiff rests its case
9 sometime on Monday, what does your case look like in terms
10 of time?

11 MR. CALDERON: Judge, we've got four witnesses, of
12 which I believe probably Mr. Barrientos would be the
13 longest.

14 From my end, I anticipate probably all four
15 witnesses taking about an hour each. And again, that's
16 subject to their cross-examination and possible redirect.

17 So I'm assuming that the testimony on our end will
18 probably be about four hours from the four witnesses.

19 THE COURT: I know you can't predict the
20 cross-examination, Mr. Beckett, but I'm trying to look
21 ahead to see when we might be able to plan on doing closing
22 arguments. And I've got to get a charge conference in
23 there somewhere.

24 I, as you know from my schedule, I'm not available
25 Thursday and Friday. And I'm really hoping that we can get

1 this case to the jury without some long delay of four days
2 between some portions of the evidence and them having to
3 come back.

4 But I want to do that obviously in a way that
5 doesn't degrade in any way the fairness of the proceeding.

6 So that's just a reminder. Again, so anything you
7 all can do to streamline the presentation that might allow
8 us to get to closing arguments on Wednesday, I think would
9 be -- I know it would be much appreciated by the jurors. I
10 mean, I'm going to be here, regardless.

11 And probably for your travel as well, even though
12 I know that you're happy to come back. I'm sure you're
13 enjoying your stay.

14 MR. BECKETT: Absolutely. We love Orlando, Judge.

15 I think we're of the same mind, Judge. We'd like
16 to try to get this case to the jury on Wednesday and we
17 will do all we can. I suspect the amount of cross will be
18 about equal to the length of direct, those estimates. But
19 by that calculation, I think that should be possible.

20 THE COURT: Okay.

21 MR. CALDERON: And, Judge, I mean, we're prepared
22 to work late if we want to do the charging conference after
23 hours. So we're happy to do that if you're willing to do
24 that.

25 THE COURT: Oh, sure. I think that's probably

1 going to -- I think we'll probably do that. We'll either
2 stay late one day or come in early one day, depending on
3 where we are in terms of the testimony.

4 I'll make myself available before or after. I'm
5 really thinking principally about our jurors and you all.

6 As I said, I don't want a long break between the
7 end of the case and the jurors' deliberations because I
8 just think that's counterproductive. But it's not the end
9 of the world. But I'd like to avoid it if we can.

10 MR. BECKETT: We agree, Judge.

11 Judge, in this regard, although I think I know the
12 answer to this question, it might be useful to know whether
13 the Court has particular views on length of closing,
14 closing submissions, closing statements.

15 THE COURT: I do. Generally, that shorter is
16 better. That said, I know it's an important case and you
17 all have a lot of time invested in it.

18 What do you think, if you were operating without
19 restraint, Mr. Beckett, what do you think would be a
20 reasonable estimate? And don't give me a big number just
21 in the hopes that I'll have it.

22 MR. BECKETT: I won't bargain with you, Judge. I
23 think we would have normally said 90 minutes. But we would
24 try to make it shorter than that if possible.

25 THE COURT: How about you, Mr. Calderon?

1 MR. CALDERON: About 30 to 45 minutes. Probably
2 closer to 30.

3 THE COURT: I will tell you, again, this benefit
4 of experience, for what it's worth. I mean, closing
5 arguments that are longer than an hour are really, really
6 hard on the jurors.

7 I mean, I don't care how compelling the lawyers
8 are or how compelling the case is. You know, sitting and
9 listening to a lawyer make a closing argument for more than
10 an hour, you know, is difficult for the jurors.

11 So I would be hard-pressed to give you more than
12 an hour to close the case. I think that you should
13 probably plan on 60 minutes. I'll give it some thought.
14 But that's just gracious plenty. You know the old adage of
15 no souls saved after the first 20 I think applies equally
16 to closing, if not more.

17 But I recognize you have some ground to cover and
18 I'd be willing to give you an hour. But I think beyond
19 that would strain the attention span of the jurors probably
20 to the point where it would be counterproductive.

21 MR. BECKETT: Very good, Judge. That's good to
22 know for planning purposes. Appreciate it.

23 THE COURT: Thanks. I hope you all have a
24 pleasant weekend and find some time to do something other
25 than work.

1 I'll see you back here on Monday morning at 9:00.

2 MR. BECKETT: Thanks, Judge.

3 MR. CALDERON: Thanks.

4 (Proceedings adjourned at 3:53 p.m. until

5 Monday, June 20, 2016, at 9:00 a.m.)

6 *****

7

8 C E R T I F I C A T E

9

10 I certify that the foregoing is a correct

11 transcript from the record of proceedings in the

12 above-entitled matter.

13

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

15

16

17

18

19

20

21

22

23

24

25