

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

| | | | |
|----------|------------------------------------|---|-------------|
| LENARD | ESTATE OF WINSTON CABELLO, ET AL., |) | Docket No. |
| | |) | 99-0528-CV- |
| | Plaintiffs, |) | |
| | |) | Miami, Fl. |
| 33128 | v. |) | September |
| 22, 2003 | |) | |
| | ARMANDO FERNANDEZ-LARIOS, |) | |
| | |) | |
| | Defendant. |) | |
| | |) | |
| | -----x |) | |

VOLUME 1

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOAN A. LENARD

APPEARANCES:

| | |
|---------------------|-------------------------|
| For the Plaintiffs: | LEO P. CUNNINGHAM, ESQ. |
| | NICOLE M. HEALY, ESQ. |
| | JENNY L. DIXON, ESQ. |

ROBERT KERRIGAN, ESQ.

| | |
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| For the Defendant: | STEVEN W. DAVIS, ESQ. |
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| Court Reporter: | Richard A. Kaufman, CMRR |
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RICHARD A. KAUFMAN, CMRR

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WITNESSES FOR THE PLAINTIFFS:

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF

IN EVID.

DEFENDANT'S

1 THE COURT: Estate of Winston Cabello, et al.
versus

2 Armando Fernandez Larios, Case Number 99-528.

3 Good morning. Counsel state their appearances
for the
4 record.

5 MR. CUNNINGHAM: Good morning. Leo Cunningham
for the
6 plaintiffs. With me is Bob Kerrigan and also Nicole
Healy.

7 MR. DAVIS: Steve Davis on behalf of the
defendant who
8 is present.

9 THE COURT: Both sides ready for trial?

10 MR. CUNNINGHAM: Yes, Your Honor.

11 MR. DAVIS: Yes.

12 THE COURT: We will proceed with voir dire
this

13 morning. Let me tell you in light of my situation what
the
14 schedule will be for this week.

15 We will start at 9:30 in the morning.
Wednesday we

16 will end at noon and that will be it for the remainder
of the
17 week because of medical issues that I have. Then we
will
18 continue on Monday.

19 I expect we should be able to pick a jury
today,

today, 20 perhaps opening statements. We will go 9:30 to 2,

21 tomorrow and stopping at noon on Wednesday.

could 22 I wanted to give you that notification so you

23 plan your witnesses accordingly.

could 24 How long do you expect the trial to take so I

25 inform the jury venire?

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Probably 1 MR. CUNNINGHAM: We expect under two weeks.
2 five trial days to present the evidence.

two 3 MR. DAVIS: I expect the defense will be under
4 days. A lot of my case will go into the plaintiff's
case.

tomorrow, 5 THE COURT: Estimating we don't start until
6 let's go on that conservative schedule. Probably the
end of 7 next week to present the evidence would be a fair
estimation to 8 inform the jurors?

9 MR. CUNNINGHAM: Yes, Your Honor.

10 MR. DAVIS: It is, Your Honor.

11 THE COURT: Both sides have received the
Court's 12 orders on the motions in limine and the motion
concerning the

13 expert witnesses. You received those orders from me?

14 MR. CUNNINGHAM: We did, Your Honor.

15 MR. DAVIS: Yes.

16 THE COURT: I have reviewed your proposed voir
dire 17 questions. As to the plaintiff's request, I will
include in 18 the questioning of the potential jurors, if any member
of the 19 panel has ever lived abroad, in what country, the dates
of

20 residence and the reason for being there.

21 Has anyone ever traveled to any Caribbean,
Central or

22 South American country, listing the country that was
visited

23 and the year visited; and has anyone lived in or
visited Chile

24 in the years of the visitation or the time period they
lived

25 there.

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1 In addition, does any member of the jury panel
have
2 family that lives outside the United States and if so,
what
3 country and depending on what the answer is there may
be a
4 follow-up; if anyone has relatives living in Chile, how
often
5 they correspond with them.

6 As to the defendant's proposed voir dire
questions, a
7 modification of question number 3 of the introductory
8 questions. Defendant Armando Fernandez served as a
second
9 lieutenant in the Chilean Military in 1973 which
replaced the
10 Allende Government in 1973.

11 Is there any member of the jury panel who has
strong
12 feelings one way or the other regarding the fact Mr.
Fernandez was
13 a member of the military.

14 Is there any member of the jury panel who has
heard,
15 read or knows anything about the change in government
in Chile
16 in 1973 that it would affect your ability to be a fair
and
17 impartial juror.

18 Is there any member of the jury panel who has
heard,

Chile 19 read or knows anything about the Pinochet Government in

impartial 20 that would affect your ability to be a fair and

21 juror.

voir dire 22 Those are the questions after reviewing the

23 questions.

inquiry 24 I have also prepared a statement to inform the
25 potential jurors what the case is about and to make

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1 whether or not they have heard, read or know anything
about the 2 case. The statement is as follows.

3 The plaintiffs in this case are family members
of a 4 Chilean National, Winston Cabello, who died in Chile in
1973.

5 The defendant Armando Fernandez-Larios was a second
lieutenant 6 in the Chilean Military at the time of Mr. Cabello's
death.

7 This case revolves around plaintiff's allegations
concerning 8 the circumstances surrounding the death of Mr. Cabello,
and 9 whether or not the defendant should be legally
responsible for 10 that death.

11 Is there any member of the jury panel who has
heard, 12 read or knows anything about this case.

13 Any objection to that statement?

14 MR. DAVIS: No objection, Your Honor.

15 MR. CUNNINGHAM: No objection.

16 THE COURT: There was an article in the paper
17 yesterday. If there is any indication from anyone that
they 18 have read something or heard something about the case,
I will 19 ask them have they discussed this case with anyone and
if they

20 say yes, with whom. I will then follow with, do you
have an
21 open mind regarding this case. Have you formed an
opinion
22 regarding the defendant based upon any outside
information,
23 then follow-up depending what the answers are regarding
any
24 publicity or outside information.
25 I have an introductory statement to the jurors
and an

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1 introduction to voir dire. I will then read the
statement to
2 them and ask them if they have heard, read or know
anything
3 about the case.

4 The other questions that I detailed to you
submitted
5 by counsel then we will go into the questionnaires.

6 I believe we have 18 jurors. There will be 15
in the
7 box and three behind plaintiff counsel. All will be
questioned
8 at once. We will take up challenges for cause then
proceed
9 with peremptory challenges, plaintiff being odd,
defense even
10 and no back striking and we will proceed until we have
eight.

11 MR. KERRIGAN: Your Honor, would you consider
asking a
12 question dealing with business relationships in Chile
past or
13 present by the jurors or their family? It may not be
14 encompassed by all the other questions you ask and I
haven't
15 reviewed all those questions, but there is no
particular
16 question --

17 THE COURT: I will include, have you lived in,
visited
18 Chile, or have any business relationships with Chile in
that

19 question.

20 MR. KERRIGAN: That is fine.

21 THE COURT: I normally allow jurors to take
notes.

22 Any objection?

23 MR. DAVIS: No, Your Honor.

24 MR. CUNNINGHAM: No.

25 THE COURT: I include in my introductory
instruction

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as well 1 to the jurors an instruction about the taking of notes
law to 2 as it would be included in the final instruction on the
3 the jury at the end of the case.

respect to 4 MR. KERRIGAN: May I ask a question with
5 jury selection?

6 THE COURT: Yes.

will 7 MR. KERRIGAN: As I understand it, the Court
I 8 present the first eight jurors and ask for challenges.
9 assume you will ask the plaintiff first on peremptory
10 challenge?

probably 11 THE COURT: No, that is not the way. We will
12 take up all 18, the 15 in the box and the three behind
cause of 13 plaintiff's counsel. We will take up challenges for
cause, we 14 those 18. Once I have ruled on the challenges for
side 15 will start with peremptory challenges. We will do this
their 16 bar, as to juror number 1. Plaintiff will exercise
their 17 peremptory first. Juror number 2, defense exercises
back 18 peremptory and so on until we have eight. There is no
19 striking.

20 MR. KERRIGAN: Thank you, Your Honor.

21 MR. DAVIS: Your Honor, I want to address one
of the

22 limitations you imposed. I worked hard to get a door
shut. If

23 we could address those issues before opening?

24 THE COURT: What issues are those?

25 MR. DAVIS: The main issue being Mr. Fernandez
came

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1 here in 1987. I was aware of the circumstances in
which he
2 came here relative to his coming to the United States.
He
3 turned himself into the United States Government. The
Letelier
4 stuff is out. I am not trying to inject that into this
case,
5 but he did resign from the Chilean Army and he did move
here.
6 I would like to get into those areas. If I say he
resigned I
7 am not opening the door to Letelier.

8 THE COURT: What do you intend to say, he
resigned
9 from the Chilean Military and moved here in 1987?

10 MR. DAVIS: Yes.

11 THE COURT: I don't think that is violative of
my
12 ruling.

13 MR. DAVIS: I just didn't want to open a door
I worked
14 hard to close.

15 THE COURT: I don't see it as a door being
opened.

16 (Interruption.)

17 MR. KERRIGAN: Do you normally ask in your
preliminary
18 questions if any of the jurors have been represented by
any of
19 the lawyers or their law firms?

20 THE COURT: I will have you introduce
yourselves to
21 everybody on the panel and I will ask them when I read
the
22 statements if they know anyone introduced to them in
the
23 courtroom by virtue of the fact they have had any
relationship
24 with you whatsoever, whether it be business or social.
25 I will also read a generic list of witnesses
to them

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10

1 and ask them if they know any of the persons or
recognize any
2 of the names on the witness list by the fact they have
had any
3 contact with any of those persons whatsoever, whether
it be
4 business or social.

5 MR. KERRIGAN: Other than the lawyers, Your
Honor, if
6 Your Honor would consider asking the panel if they have
any
7 relationship or involvement with the lawyers or their
law
8 firms, just to make sure we don't have somebody being
sued by
9 Mr. Davis' partner and we don't find out until halfway
through
10 the trial.

11 THE COURT: When you introduce yourselves,
identify
12 your firms and I will incorporate that into my
question.

13 (Interruption.)

14 (Jury panel present.)

15 THE COURT: Ladies and gentlemen of the jury,
I want
16 to welcome you to our courtroom. I am Judge Lenard, a
United
17 States District Judge for the Southern District of
Florida.

18 The jury is an institution of the commonlaw.
It is

19 recognized, preserved and protected by our
constitution. Jury

20 service is one of the most important duties that you as
a

21 citizen are called upon to perform. I am aware for
some of you

22 this is your first call to jury service and these
proceedings

23 are totally unfamiliar to you. Please do not be
apprehensive

24 or feel inadequate as we go along. The Court will
acquaint you

25 with the proceedings and I will instruct you what your
role is

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1 and what your duties will be.

2
personnel with

In order that you will know the Court

3
will

whom you will be working and their respective duties, I

4 introduce them to you at this time.

5
Lisa

The courtroom deputy, who you already met, is

6
that

Shelnut. She assists in the administration of cases

7 comprise the Court's docket and the coordination of the

8 day-to-day operations of the Court.

9
transcribes

The court reporter is Richard Kaufman. He

10
11
that

and takes down everything that is said in the courtroom

12 including the statements I am now making, the questions

13
and all

will subsequently be propounded to you, your answers

14 other matters in this case.

15
job is to

We also have court security officers. Their

16 enforce the Court's orders and take charge of the jury.

17
personal

If you desire information concerning your

18
court

welfare, you should make your inquiries known to the

19
necessary

security officer or courtroom deputy, who will if

20
However,

arrange with the Court to hear you on such matters.

20 you must not question either the court security officer
or the
21 courtroom deputy concerning the case that is being
tried.
22 The case set to begin trial today is that of
the
23 estate of Winston Cabello et al. versus Armando
Fernandez
24 Larios.
25 Are counsel ready to proceed?

RICHARD A. KAUFMAN, CMRR

1 MR. CUNNINGHAM: Yes, Your Honor.

2 MR. DAVIS: Yes.

3 THE COURT: Ladies and gentlemen, I will be
asking you
4 questions touching on your qualifications to serve as
jurors in
5 this particular case. This part of the case is known
as voir

6 dire examination. Voir dire meaning to speak the
truth. This

7 examination is for the purpose of determining if your
decision

8 in this case would be influenced in any way by opinions
you now

9 hold or by some personal experience or special
knowledge you

10 may have concerning the case to be tried. The object
is to

11 obtain a jury who will impartially try the issues of
this case

12 upon the evidence presented in this courtroom without
being

13 influenced by any other factor.

14 Please understand, this questioning is not for
the

15 purpose of prying into your affairs for personal
reasons. It

16 is only for the purpose of obtaining an impartial jury.

17 Not all of you will have the privilege to sit
as a

18 juror in this case. There are many reasons why a
person may

excused 19 not be selected as a juror. Either side can ask you be
If you 20 without giving a reason or the Court can excuse you.
your 21 are excused, please do not be offended or feel that
22 honesty or integrity is being questioned. It is not.
23 Swear in all the potential jurors.
24 (Jury panel sworn.)
I begin 25 THE COURT: A few housekeeping matters before

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1 the voir dire questions. I don't know if you can see,
but I
2 have a broken wrist, a broken wing, and it is my
writing hand
3 so I am afraid you will all have to bear with me a
little bit.

4 We will be hearing this trial from 9:30 to 2
today and
5 tomorrow, 9:30 to 12 on Wednesday, then the remainder
of the
6 week I need to deal with some medical issues then we
will
7 continue next week, 9:30 to 2. 2 o'clock I go on to
hear other
8 matters on my docket. I tell you to have a good
breakfast. We
9 supply snacks in the juryroom. 2 o'clock I go on to
hear other
10 matters and you go on about your business, picking
children up
11 at school, home, work, shopping, whatever you need to
12 accomplish.

13 Having said all that and stating the schedule
for this
14 week and next week, does that pose any insurmountable
problem
15 by the panel?

16 No Thursday and Friday of this week.

17 Let me also tell you, the courtroom was
recently
18 redone for acoustics. It is better, but we all still
have to

19 be married to microphones, myself, the lawyers, the
witnesses

20 and when you are answering questions in order for
everyone to

21 hear you so we have a hand-held microphone. If you
would, when

22 you are answering questions during the voir dire
process if you

23 would always start your answer with your name, that way
Richard

24 can make sure you are properly identified in the
record.

25 A JUROR: Jackson. I have a son that had
chronic

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1 surgery in April. He has an appointment next
Wednesday.

2 BY THE COURT:

3 Q. What time?

4 A. One o'clock.

5 THE COURT: We can accommodate that.

6 A JUROR: George Bofill and I have people
coming in

7 from Aberdeen, Scotland, next week.

8 BY THE COURT:

9 Q. When are they coming in?

10 A. It should be scheduled for the 29th but it will be
Monday.

11 They are staying for the rest of the week.

12 Q. Were you planning to work while they were here?

13 A. No, it is part of the function, part of the project
we are

14 working on.

15 Q. You have people coming in from Scotland as part of
your

16 work projects?

17 A. Yes.

18 Q. What is your work project?

19 A. They will be meeting with different cruise lines.
We are a

20 telecom consulting group and they will be meeting with

21 different companies for purposes of satellite
connections.

22 Q. And they are meeting with your company?

23 A. They are meeting with the proposed clients.

24 Q. Who are you in relationship to the proposed
clients?

25 A. I am part of the consulting group.

RICHARD A. KAUFMAN, CMRR

1 Q. So you are going with them to meet with the various
2 clients?

3 A. They are flying in and we are scheduling these
conferences

4 with Royal Caribbean, Carnival, etc., for them to have
5 face-to-face meetings.

6 Q. Are there other people in your business who are
going to be

7 with them?

8 A. I have two other partners.

9 Q. So they will cover for you if you are not in?

10 A. I would have to check, but I just wanted to check
to see

11 what next week's schedule is. Is it a full week?

12 Q. 9:30 to 2, Monday through Friday.

13 This is your first week of jury service?

14 A. That is correct.

15 Q. Your partners can cover, though, if you are not
available

16 between 9:30 and 2?

17 A. For each partner there is a piece of the puzzle.
We all

18 have a piece that equals 100 percent. They could cover
their

19 part. They may not be able to cover my part.

20 Q. Can you accomplish your part after 2 in the
afternoon?

21 A. Your Honor, I don't know. I have no idea because
we are

22 waiting for them in the sense of the confirmation of
morning or
23 afternoon meetings. We have tentative meetings set up
but not
24 knowing whether it is a morning meeting we will have
with the
25 client.

RICHARD A. KAUFMAN, CMRR

1 Q. Is it possible to try to set up afternoon meetings
for your 2 portion of the puzzle?

3 A. That is why I am sitting here today. Actually I
wasn't 4 supposed to be here today. It was by accident. My
number 5 wasn't scheduled to be called. That is based on one of
the 6 clerks when I registered this morning. Anyway I am
here and I 7 wanted to see what the schedule is, how long the trial
would 8 be.

9 Q. You were called for jury duty for these two weeks?

10 A. I received a summons but to my understanding the
11 registration clerk said I wasn't supposed to be here.
I am 12 here trying to do my duty and accomplish as much as
possible on 13 your behalf and on behalf of everybody sitting here.
That is 14 my schedule in the next week.

15 Q. Thank you.

16 A. My pleasure.

17 THE COURT: Anyone else? Maria Amaya. I
don't 18 understand very well. I don't speak English very well.

19 BY THE COURT:

said, 20 Q. Have you been able to understand everything I have

21 ma'am?

22 A. No.

23 A JUROR: Anitris Clarington. I teach school
and two

24 weeks seems to be a long time to be away from the
students.

25 BY THE COURT:

RICHARD A. KAUFMAN, CMRR

1 Q. What do you teach?

2 A. Civics.

3 Q. It is a good lesson in civics, jury duty.

4 A. I know.

5 A JUROR: Garcia. I have an endoscopy
scheduled for

6 Friday --

7 BY THE COURT:

8 Q. I am not sitting on Friday. You have your medical
9 situation and I have mine.

10 A. I have three medical appointments on Monday.

11 Q. What time?

12 A. Morning and afternoon.

13 Q. Do you think you would be able to reschedule the
morning?

14 A. I rescheduled it twice.

15 Q. Maybe we could help you reschedule it for the
afternoon?

16 A. They told me -- the one I have in the morning they
told me
17 they couldn't reschedule.

18 Q. Maybe Lisa can work with you. Sometimes it helps
if we
19 call with you.

20 A. Okay.

21 THE COURT: The plaintiffs in this case -- I
am sorry.

- I no 22 A JUROR: George Castellanos. My problem is -
23 speak 100 percent English.
24 BY THE COURT:
25 Q. Have you been able to understand everything I said,
sir?

RICHARD A. KAUFMAN, CMRR

1 A. I understand some. I can write English.

2 Q. You can write English?

3 A. I can't.

4 Q. But you have been able to understand everything I
have said?

5 A. Not 100 percent.

6 Q. 99, 98?

7 A. 95.

8 Q. Can you read English?

9 A. I can read some, not 100 percent. I can read.

10 THE COURT: I will read a statement of the
11 case to you.

12 The plaintiffs in this case are family members
13 of a Chilean National, Winston Cabello, who died in Chile in
14 1973.

15 The defendant Armando Fernandez-Larios, was a second
lieutenant
16 in the Chilean Military at the time of Mr. Cabello's
death.

17 This case revolves around plaintiffs' allegations
concerning
18 the circumstances surrounding the death of Mr. Cabello
and
19 whether or not the defendant should be held legally
responsible
20 for that death.

21 Has anyone heard, read or know anything about
this
22 case?
23 THE COURT: Would counsel for the plaintiffs
and the
24 defendant introduce themselves, the names of their
firms and
25 the persons associated with them at counsel table,
please?

RICHARD A. KAUFMAN, CMRR

1 MR. CUNNINGHAM: Leo Cunningham, from a law
firm

2 Wilson, Sonsini, Goodrich and Rosati. With me is
Nicole Healy

3 also with the law firm and with us is Robert Kerrigan
from the

4 law firm of Kerrigan, Estess.

5 MR. DAVIS: Steve Davis in the law firm of
Boies

6 Schiller & Flexner. With me is Armando Fernandez.

7 THE COURT: Is there anyone on the jury panel
who

8 knows any of the persons introduced to you in the
courtroom by

9 virtue of the fact you have had any contacts with them

10 whatsoever, whether it be business or social?

11 A JUROR: Marie De Val. I am familiar with
the law

12 firm, your law firm. I work part time --

13 BY THE COURT:

14 Q. Where do you work part time?

15 A. Vamal Corporation. Your law firm, Bruce, is
actually the

16 lawyer we are using.

17 Q. The Vamal Company, you work for them in what
capacity?

18 A. Property manager. I help my mother. She is a
property

19 manager.

20 corporation,
corporation,

Q. Who is the Vamal Corporation? Is it a big
21 small corporation?

22 plazas

A. I guess a small corporation. It is a few shopping
23 they own.

24 firm?

Q. The corporation has hired a lawyer in counsel's

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Do you have any contact with the lawyer?

2 A. Yes.

3 Q. Would that contact or the relationship affect your
ability

4 to be a fair and impartial juror?

5 A. I don't think so, no.

6 Q. Think so or know so?

7 Let me ask it this way.

8 Would you be able to sit and listen to the
evidence in

9 this case and make a determination based upon the
evidence that

10 is presented in this courtroom and be fair to both the
11 plaintiff and the defendant?

12 A. Yes.

13 THE COURT: My next question was, if there is
anyone

14 on the jury panel who has had any contact with the law
firms,

15 not necessarily these lawyers but other lawyers in
their law

16 firm whether it be business or social?

17 I will read a list of potential witnesses to
you:

18 Zita Cabello Barrueto, Patricio Barrueto, Aldo Cabello,
Karin

19 Saray Cabello Moriarty. Dr. Elvira Miranda. Dr. Ivan
Murua

20 Chevesich. Enrique Vidal Aller. Victor Bravo Monroy.

21 Leonardo Meza Meza. Juan de Dios Morales Alcota.
Angel Ruben

22 Herrera Jofre. Armando Fernandez Larios. Sergio
Carlos

23 Arredondo Gonzalez. Marcelo Luis Manuel Moren Brito.
Patricio

24 Francisco Andres Lapostol Amo. Ariosto Lapostol
Orrego.

25 Grimilda Sanchez. Eugenio Rivera Desgroux. Jorge
Ortiz Aedo.

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Bravo. 1 Sergio Victor Arellano Stark. Pedro Octavio Espinoza
Guillermo 2 Juan Viterbo Chiminelli Fullerton. Juan Manuel
Efrain 3 Contreras Sepulveda. Emilio Robert Mahoiere Gonzalez.
Stanley 4 Jana Giron. Jorge Escalante. Rosmary Lieberman.
Kleiboemer. 5 Pimental. David Geneson. Michael Kozack. Axel
6 Oscar Haag.

7 Is there anyone on the jury panel who
recognizes any
8 of the names I read to you by virtue of the fact you
have had
9 any contact with any of those persons whatsoever by
virtue of
10 the fact it be business or social?

11 Is there any member of the jury panel who has
ever
12 lived abroad and if so what country and what were the
dates of
13 residence in that country and your reason for being
there?

14 A JUROR: Marie De Val. Germany, Italy, Spain
and I
15 have traveled extensively.

16 BY THE COURT:
17 Q. When you lived in those countries, can you tell us
when you
18 lived in those countries?

19 A. Germany five years ago.

20 Q. Was there a reason?

21 A. Business. I also lived in Italy about seven years
ago and

22 Spain about seven years ago as well.

23 Q. Was it all business related?

24 A. Yes.

25 THE COURT: Has any member of the jury panel
traveled

RICHARD A. KAUFMAN, CMRR

country 1 to any Caribbean, South American or Central American
2 naming the country visited and the year visited?

3 A JUROR: I went to the Dominican Republic in
2001.

4 BY THE COURT:

5 Q. Was it business or pleasure?

6 A. Pleasure.

Middle 7 A JUROR: George Bofill. I have been in the
8 East. I have been in the Far East. I have been in
Puerto Rico, Brazil, Venezuela, Chile, Argentina.

10 BY THE COURT:

11 Q. When was it you visited those countries; do you
remember?

12 A. I have been traveling for quite a while.

13 Q. Pleasure?

14 A. These date back from 1997 forward.

15 Q. That was related to pleasure?

16 A. Business.

17 Q. What was your business in Chile?

18 A. In Chile I was serving as senior analyst for AIG,
corporate offices in New York.

20 Q. AIG is what?

21 A. American International Group.

22 Q. When was that?

23 A. Between 1998 and 2000.

24 Q. How long were you in Chile?

25 A. Two weeks at a time.

RICHARD A. KAUFMAN, CMRR

1 Q. How many times did you travel to Chile?

2 A. I think three times.

3 A JUROR: De Val. I also traveled in the
Caribbean,

4 the islands and South America, Brazil, Argentina,
Dubai, the

5 Middle East

6 BY THE COURT:

7 Q. Pleasure related?

8 A. All business.

9 Q. What business is that?

10 A. Model.

11 A JUROR: Jose Bazan. I traveled to the
Dominican

12 Republic for pleasure 2001.

13 A JUROR: Cynthia Pawley Martin. I was in
Jamaica in

14 April for pleasure.

15 A JUROR: Jack Osman. I was in the Jamaica
for

16 pleasure, Dominican Republic for pleasure. Israel for

17 pleasure.

18 BY THE COURT:

19 Q. When was that?

20 A. Approximately nine, ten years ago.

21 A JUROR: Garcia. I lived in Mexico, Spain.

Europe, 22 traveled all over the world, Asia, Australia, Japan,

23 Caribbean, South America, many different times.

24 BY THE COURT:

25 Q. Chile?

RICHARD A. KAUFMAN, CMRR

1 A. Yes. Two weeks ago, Santiago.

2 Q. For business or pleasure?

3 A. Business.

4 Q. How often have you traveled to Chile?

5 A. This is my second time.

6 Q. When was the last time before that?

7 A. Two years ago.

8 Q. What business are you in?

9 A. Hewlett Packard.

10 A JUROR: George Escalla. I have traveled all
over
11 the Caribbean and Central America, Venezuela. I have
been
12 doing cruises every summer since I was 17.

13 BY THE COURT:

14 Q. As a passenger?

15 A. Yes.

16 Q. Have you been to Chile?

17 A. No.

18 THE COURT: Anyone else who has lived in or
visited or
19 had business relationships with Chile that we haven't
covered?

20 Is there any member of the jury panel who has
family
21 that lived outside the United States and if so, what
country.

22 A JUROR: Garcia. I have a family living in
Mexico
23 and Spain.
24 THE COURT: The defendant, Armando Fernandez,
served
25 as a second lieutenant in the Chilean Military in 1973
which

RICHARD A. KAUFMAN, CMRR

any
way or the

1 replaced the Allende Government at that time. Is there
2 member of the jury panel who has strong feelings one
3 or regarding the fact Mr. Fernandez was a member of the
4 military?

heard,
in Chile
fair and

5 Is there any member of the jury panel who has
6 read or knows anything about the change in government
7 in 1973 such that it would affect your ability to be a
8 impartial juror?

9 Would you come up, jury.

10 (Side bar.)

11 BY THE COURT:

12 Q. Your name?

13 A. George Escalla.

it would

14 Q. You indicated in regard to the Chilean Government
15 affect your ability to be a fair and impartial juror?

father, uncle
Cuba.
to jail
jumping off a

16 A. I am very strongly opposed to communism. My
17 and grandfather were involved, not in Chile, but in
18 Having been arrested, my father was going to be taken
19 for his stance against communism. He escaped by
20 train.

21 feelings you

22 evidence

Q. Would you be able to put aside whatever strong

23 have about communism in Cuba and sit and listen to the

24 in this case and be fair to both the plaintiff and the

25 defendant?

A. I can try.

RICHARD A. KAUFMAN, CMRR

1 Q. Do you think it might affect your ability to be a
fair and 2 impartial juror because of the overthrow of the Allende
3 Government in 1973?

4 A. I want to say, yes. I do have really strong
feelings about 5 it. I don't know where the case is going to go but if
it 6 starts to touch upon issues of politics and things like
that, 7 things of that nature, specially issues going after
people 8 because of their beliefs, I might.

9 Q. Do you think it would be better for you to sit on a
10 different type of case?

11 A. Even though I find this interesting, yes.

12 Q. I appreciate your candor.

13 (Open court.)

14 THE COURT: Is there any member of the jury
panel who 15 has heard, read or heard anything about the Pinochet
Government 16 in Chile that would affect your ability to be a fair
and 17 impartial juror?

18 Mr. Abascal Garcia. Would you come up,
please.

19 (Side bar.)

20 BY THE COURT:

21 Q. Is there something about the Pinochet Government?

22 A. I have strong feelings about it.

23 Q. Would you be able to put aside whatever feelings
you have

24 regarding the Pinochet Government and sit and listen to
the

25 evidence in this case and be fair to both the plaintiff
and the

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1 defendant?

2 A. I would try. I am not sure.

3 Q. You are not sure if you could?

4 A. No.

5 Q. Do you think it would be better if you sat on a
different
6 type of jury?

7 A. Yes.

8 Q. I appreciate your candor.

9 (Open court.)

10 THE COURT: We are now going to turn to the
11 questionnaires you were given when you came into the
courtroom.

12 BY THE COURT:

13 Q. Ms. Hartley. If you would, ma'am, go down the
list. Just
14 give the number of the question and your answer?

15 A. Jacqueline Hartley. 2, insurance collection. 3 --

16 Q. How long have you been in insurance collection?

17 A. Twelve years.

18 Q. For whom do you work?

19 A. Florida Medical Center. 3 Miami, North Miami area.

20 Q. How long have you been there?

21 A. Five years.

22 Q. Number 5.

23 A. Married. 6, disabled.

24 Q. What did he do before he was disabled?

25 A. Truck driver, construction. 7, 15 and 25.

RICHARD A. KAUFMAN, CMRR

1 Q. Are they working?
2 A. One, as a laborer. The other is school age.
Hobbies,
3 cooking. 9, none. 10, no. 11, no. 12, no. 13, yes.
14,
4 no. 15, yes.
5 Q. Criminal or civil?
6 A. Criminal.
7 Q. Did the jury reach a verdict?
8 A. Yes.
9 Q. Were you the foreperson?
10 A. No. 16, no. 17, no
11 BY THE COURT:
12 Q. Mr. Bazan?
13 A. Jose Bazan. Real estate broker. Investor and a
teacher.
14 Q. How long have you been a real estate broker?
15 A. Over 30 years.
16 Q. What do you teach?
17 A. Real estate.
18 Q. Number 3.
19 A. Miami, Hialeah Lakes. 4, over 40 years. 5,
divorced. 7,
20 two children, 34 and 36.
21 Q. Are they employed?
22 A. Yes.
23 Q. What do they do?

24 A. They work for AT&T Communications. 8, reading.
Investing.

25 Five years in the U.S. Army.

RICHARD A. KAUFMAN, CMRR

where 1 Q. What was your assignment in the army, your rank and
2 were you stationed?

3 A. I was stationed in Forth Worth in Georgia. I got
4 Sergeant E5. I worked in personnel. 10, yes. We had
5 someone for collection of commissions due to us.

6 Q. That was in relation to your work?

7 A. Yes, ma'am. 11, no. 12, no. 13, yes. 14, no.
15, yes.

8 Q. Criminal or civil?

9 A. Civil.

10 Q. Did the jury reach a verdict?

11 A. Yes, Your Honor.

12 Q. Were you the foreperson?

13 A. No, Your Honor. 16, yes. 17, no.

14 BY THE COURT:

15 Q. Ms. Corea?

16 A. Bertha Corea. Beauty consultant. I live in Miami
17 for five years. I am married. Do I have to answer number 6?

18 Q. Yes.

19 A. He is self-employed.

20 Q. What does he do?

21 A. He works in construction. 7, I have two children,
18 and

22 6.

23 Q. They are in school?
24 A. Yes, he is in school. My hobby is reading. 9, no.
10,
25 no. 11 no. 12, no. 13, yes. 14, no. 15, no. 16,
no. 17,

RICHARD A. KAUFMAN, CMRR

1 no.

2 BY THE COURT:

3 Q. Mr. Kwasniak?

4 A. Wesley Kwasniak. Occupation, city planner until
January of
5 this year. 3, South Miami. 4, 20 years. 5, married.
6,
6 accountant. 7, no children. 8, sports. 9, no. 10,
no. 11,
7 no. 12, no. 13, yes. 14, no. 15, no. 16, no. 17,
no.

8 BY THE COURT:

9 Q. Mr. Bofill?

10 A. George Bofill. 2, IT and telecom consultant. I
live in
11 West Kendall. 4, 44 years. 5, married. 6,
accountant. 7, 13
12 and 15, boys.

13 Q. They are in school?

14 A. They are in school. 8, gardening. 9, none. 10,
yes.
15 Specifically after the Andrew disaster. 11, no. 12,
no. 13,
16 no. 14, no. 15, no. 16, no. 17, no.

17 A JUROR: De Val. I have a correction. Did I
say 13,

18 no?

19 BY THE COURT:

20 Q. Yes.

21 A. It should have been a yes.

22 BY THE COURT:

23 Q. Ms. Llerena?

24 A. Nancy Llerena. I am a banker.

25 Q. For how long?

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31

5, 1 A. Over 30 years. 3, West Kendall. 4, over 30 years.
26 and 2 married. 6 my husband is a welder. 7, two daughters,
3 18.

4 Q. Are either one of them employed?

5 A. No. One is a grad student and the other one just
started 6 university. 8, reading. 9, no. 10, no. 11, no. 12,
no. 7 13, yes. 14, no. 15, yes. Criminal. We did reach a
verdict 8 and I was not the foreperson. 16, no. 17, no.

9 BY THE COURT:

10 Q. Ms. De Val?

11 A. Model and part-time property manager. 3, Coral
Gables.

12 Q. How long have you been a model and part-time
property 13 manager?

14 A. Model, ten years, property manager, two years. 4,
six 15 years. 5, divorced. 7, no. 8, cooking and traveling.
9, no.

16 10, yes. 11, yes. 12, no. 13, no. 14, no. 15, no.
16, no.

17 17, no.

18 BY THE COURT:

19 Q. Ms. Lane?

20 A. Tanessa Lane. 2, I am a bus operator.

21 Q. For how long?

22 A. Two years.

23 Q. Did you have an occupation before that?

24 A. I was a school driver for the Department of
Transportation.

25 3, Miami. 4, 11 years. 5, yes, I am married. 6, my
husband

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1 also is a bus operator. 7, three kids, 16, 18 and 22.

2 Q. Are they all in school or are any of them employed?

3 A. Two in school and the oldest one works.

4 Q. What does she do?

5 A. She works at a real estate office. 8, I like to
read. 9,

6 no. 10, no. 11, no. 12, no. 13, yes. 14, no. 15,
yes.

7 That was a criminal trial.

8 Q. Did the jury reach a verdict?

9 A. Yes.

10 Q. Were you the foreperson?

11 A. No. 16, no. 17, no.

12 BY THE COURT:

13 Q. Ms. Amaya, can you answer these questions?

14 A. I can't read them.

15 BY THE COURT:

16 Q. Ms. Jackson?

17 A. Pinky Lorraine Jackson. Occupation, PNR clerk. 3,
18 Miami --

19 Q. PNR?

20 A. I work in a prison.

21 Q. As a PNR clerk, what do you do?

22 A. Prepare the charts for the nurses.

23 Q. You are in the clinic of the prison?

24 A. Yes. 5, single. 6, no. 7, 18 months old.

25 Q. Where do you live?

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1 A. Miami.

2 Q. How long have you lived in Miami?

3 A. 41 years. 7, I have a son 18 months old. 8,
reading. 9,

4 no. 10, yes.

5 Q. What kind of lawsuit?

6 A. An automobile accident in 1998.

7 Q. You were the plaintiff?

8 A. Yes. 11, I had a brother that was on a conspiracy
charge.

9 12, no. 13, yes. 14, no. 15, yes, criminal. 16,
yes. 17,

10 no.

11 Q. For the trial jury you sat on, it was a criminal
jury?

12 A. Yes.

13 Q. Did they reach a verdict?

14 A. It was a hung jury.

15 Q. You served on a grand jury?

16 A. Just that criminal.

17 Q. You never served on a grand jury that returned
indictments?

18 A. No.

19 BY THE COURT:

20 Q. Mr. Osman.

21 A. 1, Jack Osman. 2, I manage liquor stores and check
cashing

22 stores. 3, I am in Miami Beach. 4, 37 years. I am
married.
23 6, no. She is a housewife. 7, 7 year old and five
year old.
24 8, spending time with the kids. 9, no. 10, no. 11,
when I
25 was young my dad's company was involved in litigation
with a

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17, no. 1 bank. 12, no. 13, yes. 14, no. 15, no. 16, no.

2 BY THE COURT:

3 Q. Mr. Castellanos?

retired 4 A. Joel Castellanos. I am a private duty nurse. I am

Married. 5 now. North Miami Beach. I lived there for 26 years.

dead, the 6 My wife is a nurse. We have four children. One is

7 others are 37, 34 and 32.

8 Q. Are any of the children employed?

Jose 9 A. My older child is CPA. The other is counselor in

teacher. 10 Martine School. My other is a nurse, studying to be a

11 Q. Number 8?

12 A. Office and take care of the grandchildren.

13 Q. Number 9?

15, no. 14 A. No. 10, no. 11, no. 12, no. 13, no. 14, no.

15 16, no. 17, no.

16 BY THE COURT:

17 Q. Ms. Bates?

U.S.A. Dry 18 A. Rosa Bates. I am a presser, I used to work for

Grove, 19 Cleaning. I am not employed there any longer. Coconut

love 20 25, 30 years. 5, Singer. 6, no. 7, no. Hobbies, I

14, no. 21 fishing. 9, no. 10, no. 11, no. 12, no. 13, no.

22 15, no. 16, no. 17, no.

23 BY THE COURT:

24 Q. Ms. Martin?

25 A. Cynthia Pawley Martin. I am an RN. The quality
manager

RICHARD A. KAUFMAN, CMRR

1 for Blue Cross. I have been there for six years. I
have been
2 a nurse for over 20. I have lived in Miami all my
life. I
3 live in Coral Gables. I am divorced. Two children, 19
and 17.
4 The 19 year old works and goes to college. She works
at the
5 container store. Hobbies, run, go to school, orchids,
roses.
6 9, no. 10, no. 11, no. 1, no. 13, yes. 14, no.
15, no.
7 16, no and 17, no.

8 BY THE COURT:

9 Q. Ms. Done?

10 A. Deanette Dunn. A student and part-time
administrative
11 assistant.

12 Q. What are you studying as a student?

13 A. Criminal justice.

14 Q. Where?

15 A. Miami-Dade.

16 Q. As an administrative assistant, what do you do?

17 A. A family company, IT company, computer company.
Miami

18 Springs for 20 years. I am single. 6, no. 7, no. 8,
19 motorcycle writing and scrap booking. 39, none, 10
through 17,
20 no.

21 BY THE COURT:

22 Q. Ms. Clarington?

23 A. Anitris Clarington. Teaching for four years.
Prior to

24 that accounting. Cutler Ridge, lifetime. 5, single.
8,

25 reading, writing. 9, no. 10, no. 11, yes, related to

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16, no. 1 Hurricane Andrew. 12, no. 13, yes. 14, no. 15, no.

2 17, no.

3 BY THE COURT:

4 Q. Mr. Escalla?

5 A. George Escalla. Number 2, working in the IT
industry for
6 about ten years, all of those years in the health care
sector.

7 Living in Redlands, number 3. 4, living in the
Redlands.

8 Three and a half years. Before that in Westchester.
Married.

9 My wife is a teacher. 7, one son three months old. 8,
I like

10 working in my spare time with computers and
electronics. I

11 also volunteer at church and have other activities at
church.

12 No military service. 10, no. 11, no. 12, no. 13,
yes. 14,

13 no. 15, yes. Criminal. We did reach a verdict. I
was not

14 the foreperson. 16, no. 17, no.

15 BY THE COURT:

16 Q. Mr. Garcia?

17 A. Gerardo Abascal Garcia. I work for Hewlett
Packard. I

18 live in Surfside. Before that I lived in Guadalajara,
Mexico.

No
19 I am married. My wife also works for Hewlett Packard.
20 children. Hobbies, golf, tennis, travel. 9, yes. 10,
yes.
21 Real estate fraud. We settled and we also have another
lawsuit
22 in the condominium we live against the developer.
23 Q. You were in the military?
24 A. I was in Mexico and served for one year.
25 Q. In Mexico?

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1 A. Yes.

2 Q. What was your rank?

3 A. It is part of the requirement. At that time it was
a
4 requirement.

5 Q. What did you do on the weekend?

6 A. We received instructions, learned how to use a gun,
things
7 like that.

8 Q. And you had a civil lawsuit in regard to real
estate?

9 A. Real estate fraud.

10 Q. Were you plaintiff or defendant?

11 A. Plaintiff. We settled out of Court. 11, my family
was
12 involved in the same. 12 through 16, no. 17, I
answered
13 before.

14 THE COURT: Counsel please approach.

15 (Side bar.)

16 THE COURT: Do you waive your client's
presence at
17 side bar?

18 MR. DAVIS: Yes.

19 THE COURT: Any additional questioning of
either an
20 individual juror or the panel as a whole?

21 MR. KERRIGAN: Number 7, Marie De val. She
said yes

the 22 to 10 and 11. I don't believe the Court inquired as to
suit. I 23 details of that. She has been involved in a civil
24 thought she said yes to both of those.
25 THE COURT: Ms. De Val, you indicated you had
been

RICHARD A. KAUFMAN, CMRR

1 involved in a civil lawsuit?

2 A JUROR: Yes.

3 THE COURT: What was that?

4 A JUROR: We were involved in a lawsuit. We
were the
5 ones suing because we had our money tied up in a
mortgage
6 company and they weren't basically releasing it so we
were in a
7 lawsuit.

8 THE COURT: Number 11, your family?

9 A JUROR: The same one. Also number 10. My
fiance's
10 ex was suing him for half the house and I was a witness
in that
11 case.

12 THE COURT: Thank you.

13 Any other questions of the panel as a whole or
any
14 other individual?

15 MR. DAVIS: No.

16 THE COURT: Do you need a moment?

17 MR. DAVIS: Yes.

18 MR. KERRIGAN: We will go through the
challenges for
19 cause.

20 THE COURT: Yes.

21 MR. KERRIGAN: Then we will know the total
panel.

22 THE COURT: Yes.

23 MR. KERRIGAN: At that moment, could we have a
break

24 at that time to talk with our clients or do you want to
address

25 all of that?

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1 THE COURT: You want to take a break or you
want to go 2 through the challenges first?

3 MR. DAVIS: Yes.

4 MR. KERRIGAN: Yes, please.

5 THE COURT: Any challenges for cause of the
18?

6 I take it everybody agrees on Ms. Amaya who
can't read 7 or speak English?

8 MR. DAVIS: Yes.

9 MR. KERRIGAN: Yes.

10 THE COURT: She is excused for cause.
11 Any other challenges for cause from either
side?

12 MR. KERRIGAN: Does the Court have any other
jurors 13 you will challenge without us making argument?

14 THE COURT: That was the only one I felt there
was no 15 question.

16 If you want to bring up any challenges for
cause you 17 may.

18 MR. KERRIGAN: Ms. De Val referred to Mr.
Davis'

19 partner who referred to him by the first name which
suggests a

20 relationship that is not totally independent of the law
firm

21 represented by business. It is unusual to refer to a
lawyer by
22 the first name. It suggests a relationship that may
produce a
23 problem.
24 MR. DAVIS: She said she could be fair.
25 THE COURT: I will bring her up side bar and
inquire

RICHARD A. KAUFMAN, CMRR

a 1 about that relationship so you will know and I can make
2 determination.

3 Ms. De Val, can you come up, please, ma'am.

4 BY THE COURT:

5 Q. You indicated through the property management with
your mom
6 you deal with a lawyer named Bruce, defense counsel's
firm?

7 A. Yes.

8 Q. How often do you have contact?

9 A. Not often. Usually when my mother is out of town
or I
10 speak with the secretary.

11 Q. What type of work is he doing for the Vamal
Corporation?

12 A. There is a person buying a property from Vamal and
they
13 were late on the payment so we hired the law firm to
get the
14 money. Now they are taking care of it.

15 Q. You have pending litigation?

16 A. Yes.

17 Q. How close is the relationship -- do you know
Bruce's last
18 name?

19 A. Schiller.

20 Q. How close is your relationship?

not
21 A. I just do it when my mother is out of town. It is
22 close.
23 Q. You say you do it when your mother is out of town,
what are
24 you doing?
25 A. He sent a bill in, I would write the check out.

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1 Q. This is an ongoing situation with a tenant -- you
hold the 2 mortgage?

3 A. My boss owns the property. My mother is property
manager.

4 I am the property manager's assistant when she is out
of town.

5 They sold the property to Riviera Building and they are
6 supposed to pay in a certain amount of time and they
didn't.

7 We hired them, now we are in the process of obtaining
the

8 money. If they don't pay on time, then they will have
to sue.

9 Q. You call on behalf of Vamal Corporation?

10 A. Yes.

11 Q. You have no interest in the property?

12 A. No.

13 Q. Any relationship with Bruce Schiller outside of
talking to

14 him?

15 A. No.

16 Q. Would it affect your ability to be fair and
impartial?

17 A. No.

18 MR. DAVIS: I don't know who that lawyer is.
I have a

19 different Bruce but I don't know that name.

20 THE COURT: She may have the name wrong.

21 MR. KERRIGAN: The lawyer referred to by the
first
22 name would suggest there is something going on and she
hasn't
23 been totally candid.
24 MR. KERRIGAN: In 30 years it has happened a
couple of
25 times.

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1 MR. DAVIS: I don't know the name of the
person she

2 identified. I am 99 percent sure we don't have a
lawyer by the

3 name of Bruce Schiller.

4 A. There is a Jonathan Schiller, a named partner. I
don't

5 believe cause has been established.

6 I have never done any work for her.

7 THE COURT: I will deny the challenge for
cause. This

8 is not her interest, it is the Vamal Corporation. She
only

9 helps her mom out. She is a property manager. She
indicates

10 she has had contact maybe with this lawyer, maybe
another

11 lawyer, maybe it is this firm with respect to money
owed to

12 Vamal Corporation. I don't find the fact she indicated
the

13 lawyer's first name is indicative of anything different
than

14 any attorney/client relationship and she is not even a
client,

15 the corporation is the client.

16 I do not find she cannot be fair and
impartial. She

17 indicated she could as she indicated when I questioned
her

18 further. I will deny the challenge for cause.

19 Any other challenges for cause?

20 MR. DAVIS: Juror number 12, Your Honor.

21 Mr. Castellanos. He said he understands 95 percent
English.

22 He did answer your questions on the questionnaire but
he did

23 say 95 percent and I don't want him to miss the 5
percent that

24 may be the most important of the case. I think he
should be

25 excused from the jury. I would like him to understand
100

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1 percent of what I am saying.

2 MR. KERRIGAN: We do have an interpreter
available.

3 THE COURT: The interpreter is not available
for the
4 juror.

5 MR. KERRIGAN: If it was an ambiguity on some
term.

6 That has been done. It is possible to do that. We
have a
7 person who is qualified to do that.

8 He said he understood 95 percent of the
English
9 language. I don't know what that means, exactly. He
read
10 every question.

11 THE COURT: I have to agree. I really let him
be
12 totally on his own with respect to the questionnaire to
see if
13 he had any problem. He only brought it up after juror
number 9
14 brought up the English and he seemed to handle reading
all of
15 the questions, answering all of the questions and
answering my
16 follow-up question. I think he is sufficiently fluent
in
17 English that he would not have a problem.

18 I will deny your challenge for cause.

19 MR. DAVIS: Jurors 17 and 18 I would challenge
for
20 cause. Juror 17, Mr. Escalla, he said he had strong
feelings
21 against the communists, then he said I have strong
feelings
22 against people with those political views. He said his
father
23 barely escaped from Cuba. I believe the strong
political views
24 and it is very close to home what we have in this case
and I
25 don't believe it is appropriate to have a person who
has been

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feelings. It 1 forthright to tell this Court that he has strong
2 is a close personal matter involving his father.

3 MR. CUNNINGHAM: We agree.

4 THE COURT: I agree, too.

5 Is there any issue with respect to number 18?

6 MR. KERRIGAN: I think there is.

would 7 MR. DAVIS: We object for the same reason. I
8 love to have him on the jury panel because of his time
in the 9 military.

It 10 He is obviously well traveled, well educated.
11 looks like he would be well read. He had no hesitancy
when you 12 asked questions about the Pinochet regime. He raised
his hand. 13 That is one of the reasons we asked that question be
asked to 14 elicit that from someone on this panel. I don't
believe a 15 juror like that who came forward is trying to get out
of jury 16 duty. He would have strong feelings against the
Pinochet 17 regime.

18 MR. KERRIGAN: Mr. Davis has made a compelling
19 argument and I agree.

cause. 20 THE COURT: I agree, too. He is excused for

you can 21 Do you want 20 minutes, I can rest my hand and

22 discuss with your clients peremptories.

to seem 23 I will not excuse them yet. I don't want it

and I 24 as an invitation to leave. We will let everybody stay

25 will declare a recess.

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1 (Open court.)

2 THE COURT: We are going to take a 20 minute
recess --

3 A JUROR: Marie De Val. I believe I said the
last

4 name incorrectly.

5 THE COURT: What was it?

6 A JUROR: Weil.

7 THE COURT: We will take a break at this time.
You

8 will hear me state these words every time we break
because it

9 is a very important instruction.

10 Do not discuss this case amongst yourselves or
anyone

11 else. Have no contact whatsoever with anyone
associated with

12 the trial. Do not read or listen to anything touching
on this

13 matter in any way. Be back in the juryroom in twenty
minutes.

14 If anybody should try to talk to you about this case,
instruct

15 them to immediately stop and be in contact with my
staff

16 concerning it.

17 If you should happen to see any of the lawyers
or

18 anyone else you know is associated with the trial
during the

19 break and they do not even seem to acknowledge you,
they are
20 following my instructions and you are to have no
contact with
21 them whatsoever to avoid even the appearance of
impropriety.
22 The court security officer will take you out
through
23 the juryroom. You are welcome to any of the snacks in
there.
24 You can stay there or you can go away from this floor.
I know
25 it is very confusing here physically, the buildings. I
am

RICHARD A. KAUFMAN, CMRR

301 North
1 Judge Lenard. You are on the 7th floor in the tower,
2 Miami Avenue, right across the street from the big
construction
3 project. If you get lost, all you have to find is a
gentleman
4 or lady who has a blue blazer with the badge on it,
tell them
5 you are before Judge Lenard and they will help you get
back.

6 You can go down to the snack bar if you would
like.

7 Be back in the juryroom in 20 minutes.

8 (Jury leaves room.)

9 THE COURT: We are in recess for 20 minutes.

10 (Thereupon a recess was taken, after which the
11 following proceedings were had.)

12 THE COURT: We are back on you the estate of
Winston
13 Cabello versus Fernandez Larios.

14 Will the parties states their appearances
again for
15 the record.

16 (All parties present.)

17 THE COURT: Can we proceed without the jurors?

18 MR. DAVIS: Yes.

19 MR. CUNNINGHAM: Yes.

20 THE COURT: Juror number 1 to the plaintiff?

21 MR. KERRIGAN: Accept.

22 MR. DAVIS: Accept.
23 THE COURT: Juror number 2 to the defendant.
24 MR. DAVIS: Accept.
25 MR. KERRIGAN: Strike.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Juror number 3 to the plaintiff.
2 MR. KERRIGAN: Accept.
3 MR. DAVIS: Accept.
4 THE COURT: Juror number 4 to the defendant.
5 MR. DAVIS: Accept.
6 MR. KERRIGAN: Accept.
7 THE COURT: Juror number 5 to the plaintiff.
8 MR. KERRIGAN: Strike.
9 THE CLERK: You have one left.
10 THE COURT: Juror number 6 to the defendant?
11 MR. DAVIS: Strike.
12 THE COURT: Juror number 7 to the plaintiff?
13 MR. KERRIGAN: Strike.
14 THE COURT: You are done.
15 Juror number 8.
16 MR. DAVIS: Give me a moment to calculate,
Your Honor.
17 THE COURT: Sure.
18 (Interruption.)
19 MR. DAVIS: Strike juror number 8.
20 THE CLERK: One left.
21 THE COURT: Juror number 10 to the defense.
22 MR. DAVIS: Accept juror number 10, Your
Honor.
23 THE COURT: Juror number 11 the plaintiff no
longer

24 has peremptory.

25 To the defense.

RICHARD A. KAUFMAN, CMRR

Rosa 1 MR. DAVIS: We would strike juror number 13,
2 Bates.

3 THE COURT: Juror number 11, Mr. Osman is
juror number 4 5. Juror number 12, Mr. Castellanos is juror number 6.
5 Cynthia Pawley Martin is juror number 7 and Deanette
Pawley 6 Dunn is juror number 8; correct?

7 MR. KERRIGAN: Correct, Your Honor.

8 MR. DAVIS: Yes.

9 THE COURT: Both sides tender the jury?

10 MR. KERRIGAN: The plaintiff does, Your Honor.

11 MR. DAVIS: The defendant does, Your Honor.

12 THE COURT: Lisa indicated to me you had some
issues.

13 What are the issues?

14 MR. CUNNINGHAM: There are three issues
outstanding 15 likely to affect openings. One is jury instructions
have never 16 been settled in this case. Last, we expect there was
quite a 17 gap of disagreement although your orders last week
probably 18 resolved much of the dispute. The other open issue is
19 deposition excerpts and their admissibility has not
been 20 determined. We provided excerpts to Mr. Davis and we
received

his 21 his response to our excerpts today and he also provided
any 22 intended excerpts but those have not been settled in
23 manner.

the 24 Third, I propose using some demonstrative in
this 25 course of my opening. I have shown it to Mr. Davis

RICHARD A. KAUFMAN, CMRR

1 morning and he would like to raise those issues this
morning.

2 THE COURT: As to issues one and two I don't
know how

3 I will rule on those prior to opening statements until
I hear

4 the case and the evidence and we have a jury conference
at the

5 end of the case. I will not determine those issues
that you

6 can't agree on for the jury instructions.

7 As far as the deposition excerpts, I am not
sure what

8 the issue is. The relevance of those excerpts?

9 MR. DAVIS: One is compliance with Rule 28 and
two,

10 there are a number of designations that are hearsay
based on

11 objections we would have to go through and sort out to
Your

12 Honor much as you would if you had a witness on the
stand and

13 you would have to rule on hearsay. We haven't
discussed how we

14 would address those type of objections during the
trial.

15 We could take those up at any time Your Honor
wants

16 with or without the jury here.

17 THE COURT: There are objections to specific
excerpts?

18 MR. DAVIS: Yes.

19 THE COURT: What is the Rule 28 objection?
20 MR. DAVIS: They took a series of statements
in Chile
21 that do not comply with Rule 28B, Your Honor, it talks
about
22 depositions in foreign countries. The depositions may
be taken
23 in a foreign country pursuant to any applicable treaty
or
24 convention pursuant to letter request or notice before
person
25 authorized to administer oath in a place --

RICHARD A. KAUFMAN, CMRR

1 THE COURT: You have to slow down. It is
necessary

2 for your record.

3 MR. DAVIS: -- whether or not captioned
letters

4 rogatory, or before a person authorized to administer
oath in a

5 place where the examination is held by law thereof or
by law of

6 the United States, or 4, before a person commissioned
by the

7 Court --

8 Our objection, Your Honor, statements taken in
Chile

9 are not taken pursuant to any treaty. They do not
comply with

10 the requisites of anything of Rule 28 specifically the

11 witnesses who are testifying down there, although they
are

12 sworn in they are really not under any possible
sanction by

13 this Court or by even a Chilean Court to tell the
truth. I

14 stated the objections at the time the depositions were taken.
I

15 attended a series of depositions in Chile one year and
the

16 following year I did not attend a series of
depositions. I

17 think they are only offering one in which I did not
attend, but

18 the objection is the same for all of them. They have
to
19 satisfy Rule 28 before the deposition itself could be
used
20 before this Court.

21 They did do letters rogatory and they are
addressed
22 within the committee notes to Rule 28, they are done by
the
23 Chilean Court, the official way in which you could take
24 discovery abroad.

25 THE COURT: You don't have an objection to the
letters

RICHARD A. KAUFMAN, CMRR

1 rogatory?

2 MR. DAVIS: Other than to certain questions on
hearsay 3 and things of that nature, but no.

4 THE COURT: Other depositions were not taken
pursuant 5 to letters rogatory?

6 MR. DAVIS: These depositions were not taken
pursuant 7 to anything other than a simple notice, and that is our
problem 8 we would have with the depositions.

9 THE COURT: In terms of opening statement, you
will 10 have to -- it should have been an issue you brought to
my 11 attention prior to now in the form of a written motion
and 12 memorandum. I will not be able to rule on this off-
the-cuff.

13 In terms of opening statements, you will have
to 14 refrain from going into those areas on opening
statement, or,
15 if you bring it up in opening statement and you don't
produce,
16 you would have to suffer those consequences.

17 MR. CUNNINGHAM: Your Honor, most of our case
is going 18 to come in through depositions. If we don't have the
19 depositions, we don't really have a case.

to our 20 The issue was raised by Mr. Davis in objecting
we did, 21 evidence in connection with the supplemental briefing
raised 22 in particular, on the motion in limine. The issue was
those 23 there and we had assumed given Your Honor relied on
would 24 depositions in making those rules, that the depositions
25 be admissible.

RICHARD A. KAUFMAN, CMRR

20
tomorrow?

THE COURT: You can proceed with them

21
like to

MR. CUNNINGHAM: It is not the way we would

22
witnesses we

present the case by any stretch but we have some

23

can proceed with.

24
these

THE COURT: On what basis did you proceed with

25

depositions?

RICHARD A. KAUFMAN, CMRR

The 1 MR. HEALY: Your Honor, if I may be heard.
December 2 parties filed a joint scheduling report some time in
be a 3 of 1999 in which both parties anticipated there would
that and 4 number of foreign depositions. Both parties signed
5 submitted it to this Court --

6 THE COURT: Let me do this. Is there any
objection to 7 Lisa releasing the jurors who are not chosen?

8 Let's bring all the jurors in, you can call
the names 9 of the jurors that have been chosen, they can take
their seats 10 and we could dismiss them for the day and take up this
issue.

11 (Jury panel present.)

12 THE CLERK: Ladies and gentlemen, if I call
your name 13 you are excused to go to lunch and you need to be back
over at 14 the juryroom where you reported at 8 o'clock. You need
to 15 report there by 1:45.

16 (The jurors excused left the room.)

17 THE CLERK: As I call your names, would you
take the 18 seats I assign to you.

19 (A juror of eight was seated.)

20 THE COURT: I will dismiss you for the day.
There are
21 a number of issues I need to discuss with the lawyers
and
22 rather than have you sit around and come back, I will
ask you
23 to come back tomorrow morning at 9:30.
24 Do not discuss this case amongst yourselves or
anyone
25 else. Have no contact whatsoever with anyone
associated with

RICHARD A. KAUFMAN, CMRR

on this
you about
contact
you

1 the trial. Do not read or listen to anything touching
2 matter in any way. If anybody should try to talk to
3 this case, instruct them to immediately stop and be in
4 with my staff concerning it.

5 If you would on the way out, Lisa will meet
6 outside in the hall. If you would give her all of your
7 numbers, home, business, beeper, cell, any way to get
8 with you.

9 You are in the tower building, the seventh
10 floor.
11 Make sure when you walk in the building tomorrow, have
12 your
13 jury tag on so everyone knows you are serving on the
14 jury.
15 Come up to the juryroom and await the beginning of the
16 trial.

17 Have a nice lunch and I will see you tomorrow
18 for the
19 trial.

20 (The potential jurors left the room.)

21 THE COURT: Were these depositions taken on
22 notice
23 law
24 before a person authorized to administer oath either by
25 thereafter or by the law of the United States? How
26 were these

19 depositions taken?

20 MR. HEALY: The depositions were taken
effectively

21 pursuant to a stipulation between the parties contained
in a

22 joint scheduling order. It was filed some time in
December of

23 1999.

24 THE COURT: What does the stipulation say?

25 MR. HEALY: It references the parties'
anticipation

RICHARD A. KAUFMAN, CMRR

1 they would take a number of depositions overseas.
Subject to
2 the preliminary statement and other dispositive motions
--

3 THE COURT: Slowly.

4 MR. HEALY: The parties also wish to advise
the Court
5 the parties anticipated the substantial foreign
discovery
6 including depositions and that depositions, deposition
7 transcripts and documents will have to be translated.
Thus the
8 parties anticipate substantial time will be needed to
9 substantiate, coordinate potential witnesses overseas.

10 THE COURT: What was the process by which
those
11 depositions were taken overseas. Was there a notice?

12 MR. HEALY: They were taken pursuant to notice
13 provided to Mr. Davis substantially in advance of the
14 depositions being --

15 THE COURT: Before a person authorized to
administer
16 the oath?

17 MR. HEALY: We had a licensed certified court
reporter
18 at each of the depositions. Rule 29 says, unless
otherwise
19 directed by the Court, the parties may by written
stipulation

at any 20 provide the depositions may be taken before any person
may be 21 time or place upon notice in any manner when so taken
happened. 22 used like any other deposition. That is in fact what
what the 23 THE COURT: I am not quite sure I understand
Rule 28 24 objection is based upon the joint scheduling order and
25 and Rule 29?

RICHARD A. KAUFMAN, CMRR

1 stipulated the

MR. DAVIS: It is so simple. I never

2 Federal Rules of Civil Procedure can be violated.

3 THE COURT: What rule was violated?

4 United States

MR. DAVIS: They brought a notary from the

5 witnesses to States down to Chile. They were able to gather

6 basically -- come and show up at a time that the notices were

7 memory, they noticed about twelve people and I am speaking from

8 noticed about I don't have those notices in front of me. They

9 time. I may twelve people and six or seven showed up the first

10 be wrong about the number.

11 There is no one from Chile who was there who
12 administered an oath. It was not taken to any Chilean
13 procedure. I stated this objection to Mr. Kerrigan at
the time

14 basis they we took these depositions I objected to them on the

15 Procedure. did not comply with the Federal Rules of Civil

16 testimony, Armando Fernandez has no way to compel any

17 There is no for example, to rebut or go after these witnesses.

18 submitted subpoena power he has for witnesses in Chile. We

19 letters rogatory, a judicially sanctioned process both
here and
20 in Chile. Not where they can bring people in and not
bring
21 people in. We are literally at the mercy of whoever
22 voluntarily decided to show up.

23 It is our position these rules failed to
comply with

24 Rule 28 --

25 THE COURT: Wouldn't it come in under 28B.3,
on notice

RICHARD A. KAUFMAN, CMRR

place a 1 before a person authorized to administer oath in a
the 2 person is held either by law thereafter or the law of
3 United States?

4 MR. DAVIS: No one has designated the person
who 5 showed up for the deposition, the Court reporter was
authorized 6 to administer an oath in Chile. I submit if any of
those 7 witnesses lied in those depositions, there is no
perjury 8 sanction. They could say literally anything. Some
answered, 9 some did not answer questions. It is a very
distressing 10 process for me as an advocate trying to defend a
client. They 11 did not comply with depositions in foreign countries
under Rule 12 28. These should not be admissible to the extent the
Court 13 finds they don't comply with Rule 28B. It is their
burden to 14 show they complied with the rules. Cooperation of
scheduling 15 does not mean I waived the rules of civil procedure as
it 16 applied the taking of depositions.

17 Again, we worked very cooperatively on
scheduling

18 things but waiving substantive rights are another
thing.

19 THE COURT: You took a Notary Public from the
U.S.

20 down there and that is who swore the witnesses in?

21 MR. HEALY: We took a U.S. court reporter.

22 THE COURT: Who placed the person under oath?

23 MR. HEALY: The court reporter placed the
individuals

24 under oath. The court reporter is licensed in the
United

25 States, not in Chile. Rule 29 doesn't say you have to
have a

RICHARD A. KAUFMAN, CMRR

1 court reporter or other person under the law of the
2 jurisdiction. Depositions aren't regularly conducted
in Chile.

3 There is no process there by which Chilean lawyers
would do
4 that.

5 THE COURT: Are there people authorized to
administer
6 an oath?

7 MR. HEALY: The process is entirely different.
There
8 is not the same kind of process by which witnesses can
give
9 testimony under oath.

10 THE COURT: Are there people who are
authorized to
11 give oaths in Chile?

12 MR. HEALY: Judges are, for example. We did
use
13 letters rogatory for certain witnesses but that is not
the only
14 way evidence can be obtained in a foreign country. I
would
15 refer the Court to the *Aerospatiale* case --

16 THE COURT: What is the cite?

17 MR. HEALY: I will be happy to supply that to
the
18 Court. *Aerospatiale versus USDC*, 42 U.S. 522 at 531 to
538.

19 In that case petitioners contended the Hague evidence

20 convention was the only way the parties can obtain
evidence
21 overseas. The U.S. Supreme Court said that is not
true. That
22 it was within the Court's discretion how foreign
evidence may
23 be collected or presented to the jury. One of the ways
one can
24 do that is by stipulation.
25 I would point out to the Court as well, we
advised

RICHARD A. KAUFMAN, CMRR

1 Mr. Davis by letter on August 27 of this year that we
believed
2 all of these depositions are admissible under Rule 807
3 regardless whether they are also admissible under rules
28 and
4 29 of the Federal Rules of Civil Procedure.

5 These depositions were transcribed. All but
one of
6 them was also videotaped. The jury can see the
deponents, hear
7 their testimony, weigh their credibility for
themselves.

8 We would submit these depositions are just as
9 admissible as if they were done here in Florida.

10 Mr. Davis was also present for the first round
of
11 depositions, subjected the witnesses to cross
examination and
12 participated by telephone for all but two of the second
round
13 of depositions and cross examined the witnesses.

14 All the indicia of reliability are present.

15 The witnesses, of course, are unavailable so
the
16 testimony should be admissible under Rule 804 as well
as Rule
17 807 and one of the witnesses is particularly
unavailable
18 because we believe he has died since the deposition.

19 If Your Honor would like a briefing on this
matter, we

20 would be happy to supply the Court with a memorandum.

21 THE COURT: Okay.

22 Why don't both sides provide memorandum, the
plaintiff

23 by 4 o'clock today and the defendant by 9 o'clock
tomorrow

24 morning. And you will have to proceed with calling
other

25 witnesses.

RICHARD A. KAUFMAN, CMRR

1 MR. CUNNINGHAM: I understand we put you in a
box
2 here. The opening is entirely dependent on this
deposition
3 testimony.

4 THE COURT: How did you expect me to proceed
if you
5 all knew this was an issue or anticipated this might be
an
6 issue. Wouldn't it have been the better part of valor
to make
7 the Court aware of this potential issue?

8 MR. CUNNINGHAM: In retrospect, yes.

9 THE COURT: Prior to today?

10 MR. CUNNINGHAM: I apologize. I thought by
virtue of
11 it having been flagged in the briefing, albeit in
footnotes.

12 THE COURT: It was not an issue before the
Court that
13 you asked me to rule on. Was it ever brought up to me
as an
14 issue to rule on in any of the motions in limine by
either
15 side? If you knew this was a potential issue, I could
file a
16 motion in limine saying please, we are making you aware
of
17 this. We are anticipating there will be an objection
to this?

18 We are at the beginning of trial. I have a
jury

being 19 coming in tomorrow. I worked very hard last week after
pending 20 injured, to make sure all of the motions that were
time to 21 before me were ruled on. Now you will have to give me
22 rule on them.

will. 23 MR. CUNNINGHAM: Thank you, Your Honor, we

issues, 24 MR. DAVIS: Did you want to move on to other
25 the demonstrative exhibits?

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Yes.

2 proposes

MR. DAVIS: Mr. Cunningham showed me what he

3 Part

to use as a demonstrative exhibit in opening statement.

4 of it I assume he will have slides or power point --

5 THE COURT: Do you have it for the Elmo.

6 set to be

MR. CUNNINGHAM: If I can hand Your Honor a

7 presented by power point.

8 in the

MR. DAVIS: My problems are with the exhibits

9 every

back. Plaintiffs list the number of persons killed at

10 location by the Caravan --

11 THE COURT: You are talking about the summary?

12 map of

MR. DAVIS: I can't find my copy of it. The

13 killed.

Chile where they start listing all the people that are

14 THE COURT: Right. And a listing of names.

15 October

MR. DAVIS: You certainly said activities in

16 this case

of 1973 would be part of the fair game of evidence in

17 but you did not say they could put in -- there are also

18 to

limiting instructions not to establish this propensity

19 opportunity,

commit the acts but to show for a motive, scheme,

20 that was the basis of the ruling, I believe, and here
they are
21 flagrantly putting in the names of people, for only one
22 purpose, to inflame the anger of the jury. Our
position would
23 be any listing of the names of the various people who
were
24 killed by the Caravan would be prejudicial and should
not be
25 brought before this jury.

RICHARD A. KAUFMAN, CMRR

1 Obviously, anything in connection with Mr.
Cabello,
2 there is one with his picture. There is not much I can
say
3 about it, that is the death that is at issue in this
case. To
4 throw out all these other --

5 THE COURT: Wasn't that part of my ruling,
that all of
6 these activities were admissible as part of the res
gesti of
7 the Caravan of Death? I am not quite sure I understand
what
8 the argument is that is outside my ruling.

9 I would like to know the footnotes you are
referring
10 to on the motions in limine as well.

11 MR. DAVIS: I understood the evidence could
come in
12 for his knowledge, his intent, not to show there was a
13 propensity. That is the reason, the basis of my
objection,
14 Your Honor, they are putting these number of persons
out there
15 particularly in opening statement which is only serving
to
16 inflame the jury against my client and I believe the
Court can
17 exercise its discretion and not allow -- it is just a
18 demonstrative exhibit. They can talk about this stuff
but to

19 something like

20 prejudicial to

to this

basis

of the

19 put up the names, it is something about putting

20 that in writing before the jury that is unfairly

21 Mr. Fernandez.

22 MR. CUNNINGHAM: Your pretrial ruling referred

23 issue. That it was admissible, not only on the 404B

24 Mr. Davis is suggesting, but that this is the res gesti

25 case.

RICHARD A. KAUFMAN, CMRR

regard to

1 THE COURT: Are you presenting evidence in
2 all of this?

3 MR. CUNNINGHAM: Yes, we are.

who were

4 THE COURT: All these other names of persons
5 killed at these various places?

the

6 MR. CUNNINGHAM: At least the numbers, if not
7 names, Your Honor.

against

8 In addition, one of our claims is crimes

of a

9 humanity which requires we prove the killing was part
10 widespread or systematic violation against the civilian
11 population. It is one of the elements of two of our

claims.

on

12 THE COURT: As far as a demonstrative exhibit
13 opening statement based on what your representations

are, I

14 will require the plaintiffs to redact the names. It

would be

15 more appropriate for closing argument to utilize the

names

16 depending what the evidence is that is presented at

trial. If

17 what your evidence will show there were 15 killed in La

Serena,

18 4 killed in Cauquenes, I will allow the names and the

19 photographs of Mr. Cabello for Copiapo, but as far as
the other

20 names are concerned, I think that would be more
appropriate for

21 closing.

22 MR. CUNNINGHAM: Thank you, Your Honor.

23 MR. KERRIGAN: There is one other thing that
might

24 save the Court some time. I recall in the course of
the

25 depositions in Chile with Mr. Davis, we offered at some
point

RICHARD A. KAUFMAN, CMRR

1 to have a Chilean Notary if necessary, if that was the
issue,
2 the notarizing or the swearing in and I think Mr. Davis
if I
3 recall said that was not the problem. The source of
his
4 objection which he timely made was, there would be no
sanction
5 for a person committing perjury in a deposition in
Chile that
6 was played in a United States courtroom.

7 THE COURT: I suggest in your memorandum this
8 afternoon, if there is such a portion in the
deposition, you
9 provide me with that excerpt.

10 Anything else?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: I will see you tomorrow morning at
9:30.

13 As soon as you have the identification of
those
14 footnotes, please make counsel from the other side
aware of it
15 and call into chambers.

16

17 o0o

18

19 I certify that the foregoing is a correct
20 transcript from the record of proceedings

21 in the above-entitled matter.

22

23

24

25

Date

Official Court Reporter

RICHARD A. KAUFMAN, CMRR