

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

	ESTATE OF WINSTON CABELLO, ET AL.,)	Docket No.
)	99-0528-CV-
LENARD)	
	Plaintiffs,)	
)	Miami, Fl.
33128)	
	v.)	September
23, 2003)	
)	
	ARMANDO FERNANDEZ-LARIOS,)	
)	
	Defendant.)	
)	
	-----x)	

VOLUME 2

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOAN A. LENARD
and a jury

APPEARANCES:

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

For the Defendant:	STEVEN W. DAVIS, ESQ.
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Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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Rec.

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WITNESSES FOR THE PLAINTIFF:

PATRICIO BARRUETO	100	129
ANGEL RUBEN HERRERA JOFRE (depo.)	136	148

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF	IN EVID.
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DEFENDANT'S

1 (Open court. Jury not present.)

vs.

2 THE COURT: Estate of Winston Cabello, et al.

3 Armando Fernandez-Larios, Case Number 99-0528.

4 Would counsel state their appearances.

5 (All parties present.)

6 THE COURT: Both sides are ready to proceed?

7 MR. CUNNINGHAM: Yes.

8 MR. DAVIS: Yes.

them in

9 THE COURT: Bring the jury in. I will swear

before

10 and I have some opening instructions to give them

11 opening statements.

12 (Prospective jurors present.)

Lisa

13 THE COURT: Now that you have all been seated,

raise

14 will swear you in and she will ask you to stand up and

15 your right hands.

16 (A jury of eight sworn.)

been

17 THE COURT: Ladies and gentlemen, you have now

you will

18 sworn as the jury to try this case. By your verdict,

19 decide the disputed issues of facts. I will decide all

trial and

20 questions of law and procedure that arise during the

21 before you retire to the juryroom at the end of the
trial to
22 deliberate upon your verdict and decide the case, I
will
23 explain to you the rules of law that you must follow
and apply
24 in making your decision.
25 The evidence presented to you during the trial
will

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1 primarily consist of the testimony of the witnesses and
2 tangible items, including papers or documents, called
exhibits.

3 You should pay close attention to the
testimony
4 because it will be necessary for you to rely upon your
memories
5 concerning what the testimony was. Although, as I
indicated to
6 you previously the court reporter is making a
stenographic
7 record of everything that is said, typewritten
transcripts will
8 not be prepared in sufficient time or appropriate form
for your
9 use during your deliberations and you should not expect
to
10 receive them.

11 On the other hand, any exhibits admitted in
evidence
12 during the trial will be available to you for detailed
study if
13 you wish during your deliberations. If an exhibit is
received
14 in evidence but it is not fully read or shown to you at
the
15 time, do not be concerned, because you will get to see
and
16 study it later during your deliberations.

17 If you would like to take notes during the
trial you

18 may do so. On the other hand, of course, you are not
required
19 to take notes if you do not want to. That will be left
up to
20 you individually, and we have provided pads and pens
for you if
21 you wish to take notes.
22 If you do decide to take notes, do not try to
write
23 everything down because you will get so involved in
note taking
24 you might become distracted from the ongoing
proceeding. Just
25 make notes of names and dates and places, things that
might be

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1 difficult to remember.

2 Also, your notes should be used as aids to
your memory
3 and if your memory should later differ from your notes,
you
4 should rely upon your memory and not your notes.

5 If you do not take notes, you should rely upon
your
6 own independent recollection or memory of what the
testimony
7 was, and you should not be unduly influenced by the
notes of
8 other jurors. Notes are not entitled to any greater
weight
9 than the recollection or impression of each juror
concerning
10 what the testimony was.

11 During the trial you should keep an open mind
and
12 should avoid reaching any hasty impressions or
conclusions.

13 Reserve your judgment until you have heard all the
testimony in
14 evidence, the closing arguments or summations of the
lawyers
15 and my instructions or explanations to you concerning
the
16 applicable law. Because of your obligation to keep an
open
17 mind during the trial coupled with your obligation to
then

evidence 18 decide the case only on the basis of the testimony and
trial in 19 presented, you must not discuss the case during the
should 20 any manner amongst yourselves or with anyone else. Nor
you 21 you permit anyone to discuss it in your presence, and
be 22 should avoid reading any newspaper article that might
seeing 23 published about the case. You should avoid hearing or
called 24 any television comments about the trial.
25 From time to time during the trial I may be

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1 upon to make rulings of law on objections made by the
lawyers.
2 You should not infer or conclude from any ruling or
other
3 comment I may make that I have any opinions on the
merits of
4 the case favoring one side or the other, and if I
should
5 sustain an objection to a question that goes unanswered
by a
6 witness, you should not guess or speculate what the
answer may
7 have been, nor should you draw any inferences or
conclusions
8 from the objection itself.
9 During the trial it may be necessary for me to
confer
10 with the lawyers from time to time out of your hearing
with
11 regard to questions of law or procedure that require
12 consideration by the Court or Judge alone. On some
occasions
13 you may be excused from the courtroom for the same
reason. I
14 will try to limit these interruptions as much as
possible, but
15 you should remember the importance of the matter you
are here
16 to determine and should be patient even though the case
may
17 seem to go slowly.

18 The order of the trial proceedings are as
follows. In
19 a moment the lawyers for each of the parties will be
permitted
20 to address you in turn and make what we call their
opening
21 statement. The plaintiff will then go forward with the
calling
22 of witnesses and presentation of evidence during what
we call
23 the plaintiff's case-in-chief. When the plaintiff
finishes by
24 announcing that the plaintiff rests, the defendant will
proceed
25 with witnesses and evidence, after which within certain

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call 1 limitations, the plaintiff may be permitted to again
rebuttal 2 witnesses or present evidence during what we call the
may rebut 3 phase of the trial. The plaintiff proceeds first and
or 4 at the end, because the law places the burden of proof
further 5 burden of persuasion upon the plaintiff as I will
6 explain to you as part of my final instructions.

7 When the evidence portion of the trial is
completed, 8 the lawyers will then be given another opportunity to
address 9 you and make their summations or final arguments in the
case. 10 After which I will instruct you on the applicable law
and you 11 will then retire to deliberate upon your verdict.

12 Now we will begin by affording the lawyers for
each 13 side an opportunity to make their opening statement in
which 14 they may explain the issues in the case and summarize
the facts 15 they expect the evidence will show.

16 I caution you, that the statement the lawyers
make now 17 as well as the arguments they present at the end of the
trial

18 are not to be considered by you either as evidence in
the case
19 or as your instruction on the law. Nevertheless, what
these
20 statements or arguments are intended to help you
understand the
21 issues and the evidence as it comes in, as well as the
22 positions taken by both sides.

23 I ask you give the lawyers your close
attention as I
24 recognize them for purposes of opening statement.

25 You may proceed.

RICHARD A. KAUFMAN, CMRR

1 MR. CUNNINGHAM: May it please the Court.
Good

2 morning ladies and gentlemen.

3 Winston Cabello was killed in the middle of
the night

4 off a deserted road in Northern Chile. Twelve other
men were

5 murdered with him that night and in the day or days
after,

6 another 55 men were killed. They were killed by men
working

7 for the newly installed dictator in Chile, General
Pinochet.

8 One of the men that assisted in those killings is the
defendant

9 in this case.

10 Winston Cabello was 28 years old when they
killed him

11 in 1973. He was an economist working hard in the
Northern

12 regions of Chile as a regional planner, but Winston
Cabello was

13 much more than that to the people that loved him. He
was a

14 brother, a son, a husband, and he was the father of two
little

15 girls.

16 We are here on behalf of Winston Cabello's
family,

17 because for the last 30 years the defendant, Mr.
Fernandez, has

18 been evading responsibility for his role in those
killings and

19 we are here asking that you hold Mr. Fernandez
accountable for

20 ending Winston Cabello's life far too early.

21 I am Leo Cunningham and one of the lawyers
that

22 represents the plaintiffs in this case, Mr. Cabello's
family.

23 I would like to introduce to you the
plaintiffs who

24 are here because you did not meet them yesterday and I
would

25 ask them to stand as I call them out. Alto Cabello is
Winston

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1 Cabello's brother. Zita is the elder of Winston
Cabello's two
2 sisters. She is also the representative of the estate
of
3 Winston Cabello in this case. Karin Saray Cabello
Moriarty was
4 Winston's little sister. She was 13 when he was
killed.

5 Another plaintiff in this case is Winston's
mother,
6 Elvira Miranda. She is not well enough to be here so
you won't
7 see her during the course of the trial, and Winston's
wife
8 Veronica, his widow and two daughters who are now
adults are
9 still in Chile so you won't be seeing them, either.

10 I introduced the lawyers working with me
yesterday,
11 Bob Kerrigan from Pensacola and Nicole Healy from
California.
12 Why California? Because Winston Cabello's brother and
sister
13 live in California.

14 I will give you an overview of what the
evidence will
15 show after telling you what our claims are and the
point is to
16 give you an understanding why you are listening to the
evidence
17 that you will be listening to over the next few days as
it

18 comes in. Just as you are allowed to take notes, this
is an
19 attempt to help you organize in your own mind and
listen to the
20 evidence in this case.
21 There are eight claims in this case but they
really
22 charge Mr. Fernandez with four things that the law
forbids.
23 Our first claim is that Mr. Fernandez participated in
the extra
24 judicial killing of Winston Cabello. Judge Lenard
already
25 explained at the end of the case she will give you
detailed

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1 instructions about the law that applies here. But so
you have
2 an inkling of what it is you are listening for, let me
tell you
3 what we will have to prove in connection with that
claim. We
4 will have to prove that Mr. Cabello was killed. That
we have
5 to prove it was extra judicial, it wasn't properly
authorized
6 by a Court. We will have to show it was done by
someone acting
7 under color of law. That really means acting by
someone who
8 was purporting to be acting in an official capacity for
the
9 government.
10 You will hear evidence to help you decide
whether
11 Winston Cabello was killed, whether the killing was or
was not
12 properly authorized and whether the men who did it were
acting
13 as part of their official duties.
14 Our second claim is that Mr. Fernandez
participated in
15 the torture of Winston Cabello. The law defines
torture to be
16 the inflicting of severe, mental or physical pain for a
17 particular forbidden purpose and the Judge will explain
what

18 those purposes are later on, and again, by someone
acting under

19 color of law in their official capacity.

20 You will hear evidence to help you decide
whether

21 Mr. Cabello was subjected to pain, why, and by whom.

22 Our third claim against Mr. Fernandez is
cruel,

23 inhuman and degrading punishment by him against Mr.
Cabello.

24 It doesn't require us to prove the pain was severe or
it was

25 for one of these forbidden purposes.

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1 Our fourth claim is that Mr. Fernandez
participated in
2 crimes against humanity that affected Winston Cabello.
To
3 prove that claim requires that we prove that Winston's
killing
4 was part of widespread or systematic violations against
the
5 civilian population.

6 So you will not just hear about the death of
Winston
7 Cabello, you will hear about the death of twelve other
men in a
8 town called Copiapo and you will hear about the
killings in
9 four other towns.

10 The name of that offense, crimes against
humanity, may
11 be a little confusing. This is not a criminal case and
some of
12 you may have sat on criminal cases before. This is not
a
13 criminal case, it is a civil case. Don't be fooled by
the name
14 of that offense. The Judge will instruct you on the
burden of
15 proof at the end. It is a civil case, so we will have
to prove
16 our case by a preponderance of the evidence, not beyond
a
17 reasonable doubt. I don't want people to be fooled by
the name

18 of crimes against humanity.
19 Those are the four kinds of claims in the
case, and
20 there are three different ways Mr. Fernandez can be
held
21 legally responsible for those claims. The first is, if
he
22 personally committed the acts in issue, and we intend
to
23 emphasize the next two manners in which Mr. Fernandez
can be
24 held legally responsible.
25 Judge Lenard will instruct you on two
important legal

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1 doctrines, one is the doctrine of aiding and abetting
and the
2 other is the doctrine of conspiracy. To be held
responsible as
3 an aider and abettor, we will have to establish that
someone
4 committed the offense, not necessarily Mr. Fernandez
personally
5 but someone else did it and Mr. Fernandez substantially
6 assisted and when he substantially assisted, he knew he
was
7 providing substantial assistance.

8 To be responsible as a conspirator, we will
have to
9 show that Mr. Fernandez was part of an agreement. It
doesn't
10 have to be a formal agreement. It could be an
understood
11 agreement, that Mr. Winston Cabello was killed as a
result of
12 that agreement and the killing was in furtherance of
that
13 agreement.

14 Those are the four kinds of claims in this
case and
15 those are the three ways we will ask that you hold
16 Mr. Fernandez legally responsible.

17 Let me turn now to the evidence and what it is
going
18 to show and how we will prove those claims.

19 The evidence will show in 1973, Winston
Cabello was a

20 28 year old economist in a town called Copiapo. You
will hear

21 much more about Winston from his brother and sisters
who will

22 testify. Winston was working for the government. He
was an

23 economic planner. The government he was working for
was

24 democratically elected in Chile. The President at the
time was

25 Salvador Allende and he was the President as a result
of an

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1 election.

2 September 11, 1973, everything changed in
Chile. That

3 was the day there was a coup d'etat. The military of
Chile

4 overthrew the democratically elected government.
Salvador

5 Allende was replaced as head of the government by a man
by the

6 name of General Pinochet. At the time of the coup,
7 Mr. Fernandez, the defendant was an officer in the
Chilean

8 Army. He was a second lieutenant. He had graduated
from the

9 military academy and he was 24 years old. A few years
younger

10 than Winston Cabello. Mr. Fernandez wasn't married and
he

11 didn't have children.

12 Right after the coup in 1973, the government
undertook

13 to terrorize its potential political opponents. Almost
14 immediately Winston Cabello was arrested and many
people were

15 arrested throughout the country even though they were
not

16 accused of a crime.

17 Right after the coup Mr. Fernandez joined a
squad. He

18 joined a squad headed by a man by the name of Arellano.
The

19 squad was small. It consisted of only enough men to
fit on a
20 single helicopter. There were two pilots for the
helicopter
21 and seven officers. One of those officers was the
defendant,
22 Mr. Fernandez.

23 You will hear witnesses refer to that squad
and what
24 it did as the Caravan de la Muerta, the Caravan of
Death. What
25 the squad did and what the evidence will show, it
traveled

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1 through Chile and it caused the killing of the people
who were 2 believed to be likely opponents of General Pinochet.

3 You probably know Chile is a long skinny
country, on 4 the West Coast of South America. The Pacific Ocean is
on one 5 side and the Andes Mountains on the other side. On the
6 overhead we put up a map that shows you how to spell
and read 7 the names I mispronounce and I apologize for that. I
am trying 8 to show you how these towns are remote and they are
quite a 9 ways from one another in this long skinny country. The
capital 10 is Santiago and you will hear reference to that.

11 The evidence will show Mr. Fernandez and his
squad 12 traveled from Santiago to a number of these towns
always in the 13 same helicopter. In early October, the squad went to a
town 14 called Cauquenes. Mr. Fernandez has acknowledged when
the 15 squad was in Cauquenes, four people were killed and he
16 acknowledged he knew his squad was connected to those
killings. 17 He acknowledged he knew that even before the squad hit
the next 18 town they visited.

19 The squad didn't go straight back or straight
on to
20 continue this killing. They went back to Santiago for
a while
21 and stopped there for a little less than two weeks.
You will
22 hear Mr. Fernandez admit when the squad was in
Santiago, he
23 didn't do anything, to report to anyone in authority,
his
24 belief that the squad was connected to the killings of
four
25 civilians.

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1 The squad continued on from Santiago and it
went to a 2 town called La Serena. In La Serena, 15 civilians were
killed 3 and Mr. Fernandez acknowledged that in his deposition
in this 4 case.

5 You will also hear about what happened in La
Serena, 6 we expect, from the deposition testimony of a man who
was in 7 charge of the army regiment there, Ariosto Lapostol
Orrego, and 8 he will describe how the killings were illegal and how
they 9 were caused by Mr. Fernandez' squad.

10 From La Serena, the squad continued up to
Copiapo and 11 before they left, 13 civilians were dead.

12 We will provide more evidence about the
details of 13 what happened in Copiapo because that is where Mr.
Cabello was 14 killed.

15 You will hear how the squad went about the
process of 16 killing the people, how they were selected, extracted
from 17 where they were being held, how they were interrogated,
how 18 they were killed and how they were buried in a mass
grave.

19 The evidence will show that the helicopter
landed in
20 Copiapo on the evening of October 16, 1973. It landed
at the
21 army garrison. Mr. Fernandez came off the helicopter
and we
22 know what he looked like and what he was doing because
he was
23 observed by one of his old classmates, Enrique Vidal,
who you
24 will hear in a deposition. Mr. Fernandez was dressed
and
25 loaded for combat. He had a gun, a distinctive knife
called El

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1 Corvo. He had a strange weapon because it was a mace,
a ball
2 and chain thing and Enrique Vidal spoke to Mr.
Fernandez and
3 asked him what is that weapon. Mr. Fernandez said to
4 Mr. Vidal, it is to caress the little pigeons. Mr.
Vidal knew
5 what Mr. Fernandez was saying --
6 MR. DAVIS: Objection, hearsay.
7 THE COURT: Sustained.
8 MR. CUNNINGHAM: Over the next few hours that
night,
9 Mr. Fernandez and the other men from Santiago went
about
10 selecting, interrogating and extracting the men that
were going
11 to be killed. You will see and hear deposition
testimony from
12 a corporal named Juan Morales. He saw the defendant
selecting
13 certain prisoners and interrogating them.
14 Mr. Morales wasn't the only person to see
15 Mr. Fernandez involved in the selection process. You
will hear
16 the deposition testimony of another person who was
detained, a
17 doctor, Ivan Murua Chevesich, and he also saw Mr.
Fernandez
18 working with General Arellano as they selected
prisoners by

19 reviewing their files, selecting the detainees, the
civilians
20 who were going to be killed.
21 The squad also had to go get the people that
were
22 going to be killed and you will hear testimony about
that from
23 a deposition by Ruben Herrera. Ruben Herrera himself
was being
24 detained at the time but he was being held in the
hospital. He
25 will state that Mr. Fernandez came to get him but a
doctor

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1 interceded and wouldn't let him be taken. Mr.
Fernandez hits
2 Mr. Herrera in the chest with his rifle but Mr. Herrera
3 survived the night and that is how he can testify about
that.

4 Corporal Morales will also testify via
deposition
5 seeing the defendant Mr. Fernandez interrogate one of
the
6 detainees and he will describe how he saw Mr. Fernandez
strike
7 one of those men, Jaime Sierra, and smash his head into
the
8 ground. Jaime Sierra is one of the 13 men who ended up
killed
9 in Copiapo.

10 When Winston was extracted or taken out of the
back
11 room that night, his brother-in-law was present and you
will
12 hear from his brother-in-law, Patricio Barrauto. He
worked
13 with Winston for a time in the regional planning office
and he
14 was also arrested and for a while he was held with
Winston
15 Cabello.

16 Later that night, the same night and we are
getting
17 into the early morning hours of the next day after the
squad

18 selection and

arrives, and after Mr. Fernandez assisted in the

19 were taken

interrogation and extraction of these prisoners, 13

20 was

away in a truck. One of those was Winston Cabello. He

21 killed.

taken out with the others to a deserted road and he was

22 were

The bodies were left overnight in the truck and they

23

buried the next day in a mass grave.

24 rogatory,

You will hear about answers to a letter

25 question and

which is a manner of getting evidence. A written

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in 1 answer and you will hear from Patricio Diaz, a captain
officers 2 Copiapo and he will state that he and two other
You 3 finished the process of eliminating the 13 in Copiapo.
4 will hear that he and other men shot them.

from 5 You will hear other evidence, you will hear
the 6 Victor Bravo. Victor Bravo was brought in to identify
hear 7 bodies very shortly after they were killed and you will
she 8 the testimony of forensic examiner, a Dr. Miranda and
9 didn't examine the bodies until after they were dug up,
10 exhumed, 17 years later.

Miranda 11 The testimony of both Victor Bravo and Dr.
12 will be that these 13 men just weren't shot, they were
13 massacred and some of them at least were slashed with
knives.

created a 14 The people responsible for these killings
15 cover story at the time and the cover story was
published as 16 official statements. It was on the radio and in the
paper. It 17 said the prisoners had been killed while trying to
escape.
18 Everyone now acknowledges that story was a lie, but
that is

19 what the families were told what had happened to their
loved
20 ones. The families were also deprived of the
opportunity to
21 bury their relatives because they were never told the
location
22 of the mass grave.
23 You will hear after Mr. Fernandez and his
squad left
24 Copiapo they continued North to a town called
Antofagasta.
25 Mr. Fernandez acknowledged at his deposition 14
civilians were

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1 killed in Antofagasta. From Antofagasta the squad
continued up

2 to a town called Calama. There 26 more men were
killed.

3 You will hear from additional witnesses about
Calama.

4 You will hear from a woman named Grimilda Sanchez. She
herself

5 was detained at La Calama and her son was one of the 26
who

6 were killed, and she saw at least some of what Mr.
Fernandez

7 did to the prisoners there, because from her cell she
was able

8 to climb up on a table and peer out a window and she
saw

9 Mr. Fernandez helping to load the prisoners onto a
truck.

10 You will also hear from the head of the army
garrison

11 at La Calama, Eugenio Rivera. He will claim the
killings were

12 done behind his back, they were the work of the squad
from the

13 helicopter and they were illegal killings.

14 You will also hear deposition testimony we
expect of a

15 man named Patricio Lapostol and he will describe the
condition

16 of the bodies of the men slain in La Calama.

17 That is the route of the Caravan of Death, the
squad

18 that Mr. Fernandez was an integral part of.
19 Mr. Fernandez has been deposed in this case,
so we
20 know that he has acknowledged these 72 people were
killed and
21 that his squad was connected to at least some of those
22 killings, he has admitted that much. One of the things
he said
23 at his deposition is worth quoting. He said, "being
part of a
24 member of Arellano made me have this kind of big
problem in my
25 conscience." He went on to explain "in that moment, I

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1 realized they would kill a lot of persons, and now I
was a part 2 of that committee." That is what he said.

3 We are here because now it is time for Mr.
Fernandez

4 to be held accountable for his role on General
Arellano's squad 5 in killing Winston Cabello and the other 71 detainees.

6 Mr. Fernandez' lawyer has the opportunity to
talk to 7 you in a moment and as the Judge explained we will
begin 8 presenting our evidence in this case.

9 I would like to thank you now and I will thank
you 10 again because a lot of people try to get out of jury
service 11 and when people like you are willing to serve, you help
us in 12 one of the most important institutions of our democracy
so we 13 lawyers really appreciate it and every trial in this
country 14 matters and is important and this trial is very
important to 15 the family of Winston Cabello.

16 Thank you in advance for all the work you will
do in 17 this case.

18 When I get to speak to you again directly
after you

19 have heard all the evidence, we will explain to you how
that
20 evidence demonstrates you should return a verdict for
Winston
21 Cabello and his family against Mr. Fernandez for what
22 Mr. Fernandez did to Winston Cabello and the other
people in
23 Northern Chile.

24 Thank you.

25 THE COURT: Mr. Davis.

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Good morning. Armando Fernandez
did not 2
torture 3 kill Winston Cabello. Armando Fernandez did not
with 4 Winston Cabello. Armando Fernandez had nothing to do
 5 Winston Cabello.

6 Mr. Cunningham just gave you an outline of his
case 7
in this 8 and nowhere in that outline and nowhere in the evidence
Armando 9 case does he ever have any evidence to tell you that
reason for 10 Fernandez was in contact with Winston Cabello. The
happen. 11 that is simple. There is none because it didn't

12 This is a serious case and it is a very
serious case 13 to my client Armando Fernandez.

14 As I told you yesterday, I am Steve Davis.
important case 15 Mr. Fernandez is sitting next to me. This is an
 16 for him as well, a very important case.

17 This is not a complicated case. Listening to
what 18 Mr. Cunningham just told you, he tries to avoid the
 19 details.
had 20 It is the details that confirm that Armando Fernandez
quote he 21 nothing to do with what happened to Mr. Cabello. The

19 just gave you was in connection with statements that
20 Mr. Fernandez made many years later after all this
happened
21 when he was asking a military officer in Chile to
exonerate him
22 from this. He didn't tell you that.
23 The case comes down to what happened to
Winston
24 Cabello and whether Mr. Fernandez had anything to do
with it.
25 That is what this case is about. The Judge will
instruct you

RICHARD A. KAUFMAN, CMRR

duty if
Chilean
lost
to decide
evidence.

1 it is your duty to follow the evidence. It is not your
2 you are mad at Armando Fernandez because he was in the
3 Military in 1973 or you feel sorry for the family that
4 their brother, Mr. Cabello. That is not what you are
5 this case on. You are to decide this case on the

about
Armando
father
there.
where he
Chile.
military
military
he joined
infantry.
in the

6 I would like to give you a little background
7 Armando before I get into telling you what happened.
8 was born in 1949. He was born in Washington, D.C. His
9 was in the Chilean Military, the Air Force. They lived
10 They were part of the Embassy in Washington. That is
11 was born. He came back and was raised and educated in
12 He wanted to go to military school and he went to
13 school and in December of 1969 he graduated from
14 school. In January of 1970, 21 years old, almost 21,
15 the Army as a second lieutenant and he worked in the
16 That is what he did, the lowest lieutenant you could be
17 Chilean Military.

18 He did this all the way up until September 11,
1973,
19 the date that Mr. Cunningham told you about. That is
when the
20 coup happened in Chile and Mr. Cunningham told you the
coup was
21 led by a military -- he didn't tell you, but it was led
by
22 General Pinochet, and they took over the government and
it was
23 a time of war in Chile. Armando was stationed in
Santiago at
24 that time and for the first time in his military career
he was
25 hearing gun shots and there was resistance and bullets.
As a

RICHARD A. KAUFMAN, CMRR

1 member of the Chilean Military, he was following what
he had to
2 do and he patrolled the streets. He believed the
military was
3 the law, and he followed what he did.

4 Now, during this time, one of the things
5 Mr. Cunningham omitted and one of the many details that
were
6 omitted, on the day after this happened, Mr. Cabello
was
7 arrested in Copiapo, hundreds of miles away from
Santiago in
8 Chile.

9 It is undisputed that arrest took place by the
local
10 forces in Copiapo. Mr. Fernandez had nothing to do
with that.
11 Mr. Cabello was detained in jail from that time in
Copiapo
12 until the time of his death.

13 Armando, in September of 1973, he was 23 years
old, he
14 became 24 during that month because his birthday was in
15 September. He was ordered to report to a base and to
arrive in
16 a helicopter with General Arellano. General Arellano
was one
17 of the most powerful generals in Chile at that time.
As a
18 powerful General, he had a delegation of officers with
him.

19 The delegation of officers included colonels and
lieutenant
20 colonels and majors and even the pilots in the planes
were
21 captains. Armando was the lowest ranking officer on
that
22 helicopter. He was so low ranking, the helicopter is
very
23 noisy, he doesn't even get the earphones, he sits in
the
24 helicopter without earphones and the helicopter goes to
several
25 cities in the South of Chile, the ones Mr. Cunningham
told you

RICHARD A. KAUFMAN, CMRR

1 about.

2 The pattern Mr. Fernandez will tell you
happened in

3 these cities was, a delegation would arrive, General
Arellano

4 would give a speech to the senior officers or important
5 officers of the local regiment. He might go to the
officers

6 club and have dinner with some of the local officers
and

7 General Arellano would meet in private with the local -
- the

8 officers in charge of the local regiment and they would
talk

9 about what they were talking about. Armando wasn't
invited to

10 these meetings. He didn't know that General Arellano
had a

11 sheet of paper that he said was from General Pinochet,
but

12 General Arellano doesn't share that Mr. Armando
Fernandez.

13 We know from the letters rogatory answers you
will

14 hear from General Arellano, that piece of paper was
from

15 General Pinochet that gave General Arellano the power
of

16 General Pinochet when he was traveling around to these
various

17 cities.

18 They returned back to Santiago. Mr. Fernandez
did not
19 know when the deaths occurred in Cauquenes, he did hear
about
20 it. He didn't see it, witness it, take place in it; so
he
21 returned to his troops. A week later he is ordered
back to his
22 helicopter. A similar makeup of the crew, headed by
General
23 Arellano. There will be a Major Espinosa, a Major
Chiminelli,
24 Arredondo. All officers on the helicopter, and they go
to the
25 North.

RICHARD A. KAUFMAN, CMRR

1 From Armando's perspective, what happened in
the North
2 was the same. He didn't take part in executions, he
didn't see
3 prisoners executed.

4 Let's focus on Copiapo, the details of what
actually
5 happened in Copiapo.

6 They land around 7 o'clock at night, October
16. They
7 left the next day in the morning 10 o'clock or so.
They are
8 there 16 hours.

9 The testimony in the case from the letters
rogatory
10 from Captain Diaz, that he received an order from
Colonel Haag,
11 H AA G, is the Colonel who was in charge of the Copiapo
12 regiment. He had the charge of Winston Cabello.
Colonel Haag
13 ordered Captain Diaz on the order of General Arellano,
to take
14 these prisoners and execute them and Captain Diaz takes
these
15 prisoners, executes them with three other members of
the
16 Chilean Military. Captain Diaz will testify by letters
17 rogatory and he will confess to leading a killing of 13
people.
18 And his confession expresses the sad details of what
happened,

19 but also in those details he says, I don't know Armando
20 Fernandez, I didn't see Armando Fernandez, Armando
Fernandez
21 was not there, he had no connection with what was going
on.
22 The family, unfortunately know what happened
to
23 Mr. Cabello. Captain Dias isn't a defendant in this
lawsuit.
24 General Haag isn't a defendant in this lawsuit, General
25 Arellano isn't a defendant in this lawsuit. None of
the people

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1 with the authority or power to act or the actors who
actually 2 committed the act on Winston Cabello are here in this
3 courtroom. The only person that is here is Armando.
4 The evidence is that Armando resigned from the
Chilean 5 Army in 1978 and since 1987 he has lived in Miami. He
hasn't 6 concealed himself. Today he works here in Miami, he is
7 married. He has a job where he is a manager in a body
shop.
8 Does he feel bad he was on a helicopter with General
Arellano;
9 you better believe it; but did he have anything to do
with the 10 death of Winston Cabello; no.
11 As I said to you, at the end of this case the
Judge 12 will tell you to base your decision on the evidence.
The 13 evidence. You are not to base it on emotion, you are
not to 14 base it on whether you like Armando Fernandez or
whether you 15 feel sorry for the family and you are required by the
oath you 16 just took to decide this case on evidence. The
evidence says 17 that Armando Fernandez had nothing to do with the death
of 18 Winston Cabello.

19 THE COURT: Call your first witness.

20 MR. CUNNINGHAM: Patricio Barrueto.

21 Thereupon - -

22

23

24 PATRICIO BARRUETO,

25 called as a witness by the Plaintiffs, having been
first duly

RICHARD A. KAUFMAN, CMRR

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CUNNINGHAM:

4 Q. So the jury can hear it, would you repeat your
name?

5 A. Patricio Barrueto.

6 Q. How old are you?

7 A. 57 years old.

8 Q. Do you have a nickname?

9 A. Can you speak louder?

10 Q. Do you have a nickname?

11 A. Yes. Everybody calls Pato, P A T O.

12 Q. What do you do for a living?

13 A. I have family day care. I take care of kids zero
to five

14 years of age.

15 Q. Where do you live?

16 A. In the San Francisco Bay area.

17 Q. Are you married?

18 A. Yes.

19 Q. Who is your wife?

20 A. Zita Barrueto.

21 Q. Are you related to Winston Cabello?

22 A. He was my brother-in-law.

23 Q. Do you and Zita have any children?

24 A. Yes, two.

25 Q. Boys or girls?

RICHARD A. KAUFMAN, CMRR

1 A. Both boys, Felipe, 30 and Roberto is 25.

2 Q. Do you remember when you first met Winston Cabello?

3 A. Yes, roughly. It was probably 1963, 1964. The
second part

4 of 1963.

5 Q. How old were you at the time?

6 A. 18, 19. Late teens.

7 Q. Where did you meet Winston?

8 A. I was a student at the school of economics at the
9 University of Chile since 1963 and Winston was admitted
in

10 1964, the first part. At that time there was a Chilean
folk

11 and dance group that was created and I was part of that
and

12 Winston became part of the group as a singer and guitar
player.

13 Q. The word you used was folk and dance group?

14 A. Yes. Chilean dances and songs.

15 Q. Were you a member?

16 A. I was a member.

17 Q. What did you do in that group?

18 A. I danced.

19 Q. Did you do anything else when you were at the
university

20 with Winston other than be a member of this group?

21 A. The way the classes were organized, we had a recess
some

and 22 time in the middle of the day and usually we would meet
Winston. 23 find friends. I liked to play chess and so did
It 24 was common maybe once or twice a week we would sit in a
quiet 25 place by the cafeteria and play chess and talk.

RICHARD A. KAUFMAN, CMRR

1 Q. How did you meet your wife, Zita?

2 A. Later. This song and dance group was requested.
We were

3 having all kinds of performances in different places
and at

4 some point Winston started appearing at all
performances with

5 two girls, one was Zita and another was Zita's friend
and

6 through that acquaintance the relationship grew.

7 Q. What was Winston studying at the University of
Santiago?

8 A. He was studying economics.

9 Q. Did he get a degree?

10 A. Yes. The first degree we get at the end of class
is

11 graduated. That is considered a degree. Then we
obtain a

12 bachelor of degree and later it was kind of given to
you

13 Licenciado en Ciencias Economicas, then the
professional degree

14 of engineer -- each one of these degrees has a
different

15 requirement. Winston was very systematic about
reaching each

16 one of the requirements so he did it relatively slow.

17 Q. Did Winston have a specialty?

18 A. Since the middle of his studies he was very
interested in

19 the national accounting, which is a branch of economic
activity

20 and his dissertation for that degree was in that
particular

21 subject.

22 Q. Was Winston married?

23 A. Yes. His wife was Veronica.

24 Q. Do you know when Winston married Veronica?

25 A. Yes, in July of 1970.

RICHARD A. KAUFMAN, CMRR

1 Q. Did Winston and Veronica have any children?

2 A. Two sons. About the same age as Felipe, my older
son.

3 Q. How old is he?

4 A. 30 years old.

5 Q. Did Winston have any children from a relationship
before he

6 met Veronica?

7 A. He had a little daughter by the name of Marcela.

8 Q. Did you meet her?

9 A. I met her later when she was already a grown woman.

10 Q. If I could direct your attention to the binder in
front of
up.

11
12 MR. CUNNINGHAM: I have shown this to Mr.

Davis

13 before, Your Honor.

14 BY MR. CUNNINGHAM:

15 Q. Do you recognize that?

16 A. Yes.

17 Q. What is that?

18 A. It is a picture of Winston when he was about 24, 25
years

19 of age.

20 THE COURT: Are you moving this into evidence?

21 MR. CUNNINGHAM: May I?

22
picture. I

MR. DAVIS: I have no objection to the

23

would ask for a moment to get my exhibit notes.

24

THE COURT: Sure.

25

You may

It will be admitted as Plaintiffs' Exhibit 1.

RICHARD A. KAUFMAN, CMRR

1 publish.

2 (A document was received in
3 evidence as Plaintiffs' Exhibit 1.)

4 Q. How old is Winston Cabello in the picture?

5 A. His late 20s.

6 Q. Do you know what that picture is from?

7 A. At this particular moment I don't have a clear
8 recollection.

9 Q. Is that the Winston Cabello you remember?

10 A. Yes.

11 Q. After he graduated from the University, where did
he go?

12 A. Oficina de Planificacion Nacional, ODEPLAN. The
national

13 planning office.

14 Q. Did you use an acronym?

15 A. O D E P L A N.

16 Q. What did that office do?

17 A. It was in charge of economic planning for the
country. At

18 that time it was in charge of sectorial planning in
commerce,

19 engineering, one of the divisions was national
accounting.

20 Q. When Winston went to work for ODEPLAN, who was the
21 president of Chile?

22 A. Eduardo Frei.

Chile? 23 Q. When did Salvador Allende become the President of

24 A. 1970.

25 Q. After Mr. Allende was elected president did Winston
stay in

RICHARD A. KAUFMAN, CMRR

1 ODEPLAN?

2 A. Yes. In mid 1972 he was appointed director of
planning for

3 the region of Atacama-Coquimbo. Two provinces
comprising one

4 region.

5 Q. Who determined who the regional planners were?

6 A. In practical terms, the national director of
regional

7 planning who proposes the name to the national director
of

8 planning and these are appointees by the president of
the

9 country.

10 Q. How do you know how that process works?

11 A. I was regional director of planning for the
province, a

12 region in the South of Chile in 1971.

13 Q. What town or province was Winston working in when
he was

14 head of regional planning?

15 A. He worked in both capitals, the capital of Atacama-
16 Coquimbo and La Serena-Copiapo. He concentrated his
efforts in

17 Copiapo.

18 Q. What was the size of the two regions that Winston
was the

19 regional planner for?

20 A. 200, 250 kilometers long. I would say the combined

21 population may be 80,000 persons. The people are
concentrated
22 in the main cities. It is very dry. In the province
of
23 Coquimbo, there is agriculture so there are more rural
24 locations.
25 Q. What town did Winston live?

RICHARD A. KAUFMAN, CMRR

1 A. Copiapo.

2 Q. Who did he live with?

3 A. His family. His wife and his daughter.

4 Q. At some point did you and Zita move to Copiapo?

5 A. Yes. By March, April, 1972, I was offered the
opportunity

6 to work in a different part of the country and Zita and
I chose

7 Copiapo.

8 Q. Why did you choose Copiapo?

9 A. Very importantly because Winston was there and from
a

10 professional point of view there were more
opportunities there.

11 Q. What was your relationship with Winston when you
moved to

12 Copiapo?

13 A. He was the director of the office. I was under his
direct

14 authority. I was chief of planning, that was the title
we

15 used.

16 Q. What was the work Winston was doing in Copiapo?

17 A. I described briefly the work of the national
planning

18 office. That was the work that was done at the
regional level

19 and that is what we did. We looked at the investment
project,

20 how they articulated with what the governmental
strategy was
21 and we looked at specific needs the province may have
and see
22 the best way to meet those needs in the short and long
term.

23 Q. Was Winston a member of any political parties?

24 A. No.

25 Q. Were you?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. Explain to the jury what happened in Chile on
September 11,
3 1973?

4 MR. DAVIS: Objection. It calls for a
narrative.

5 THE COURT: Sustained.

6 I think we will take a break. We will take a
15

7 minute recess. Do not discuss this case amongst
yourselves or

8 anyone else. Have no contact whatsoever with anyone
associated

9 with the trial. Do not read, listen or see anything
touching

10 on this matter in any way. If anyone should try to
talk to you

11 about this case, immediately instruct them to stop and
report

12 it to my staff.

13 You may leave your notebooks on your chairs,
be back

14 in the juryroom in 15 minutes.

15 (Jury leaves room.)

16 THE COURT: You may step down, sir.

17 First of all in regard to breaks, I think it
would be

18 best if the family members for both sides do not remain
on the

19 floor here. I will have the floor here cleared so all
visitors

other 20 in the gallery will not be on the floor. You can use
21 floors for telephones and restrooms so the jury can
have the 22 use of this floor during breaks.

23 I also wanted to give you my ruling on the
issue that 24 was presented to me yesterday in regard to Rule 28B. I
have 25 reviewed the memorandum provided by counsel yesterday
afternoon

RICHARD A. KAUFMAN, CMRR

1 and this morning. On the basis of the arguments made
by
2 counsel, I find that the depositions on August 27 and
August 28
3 of Ariosto Lapostol Orrego and Grimilda Sanchez and
Eugenio
4 Rivera do not comply with Rule 28B. There was an
objection
5 concerning the lack of compliance with 28B.3. On
August 29 at
6 9 o'clock the deposition of Ivan Murua Chevesich and
7 thereafter, I find there was constructive waiver by
defense
8 counsel as the citations to the deposition indicate
that at
9 that time inquiry was made of Mr. Davis if they
provided a
10 notary -- if plaintiffs provided a notary from Chile
who could
11 give an oath under Chilean law would be sufficient. He
12 indicated it would not. I do find that would have
cured the
13 problem, therefore there was constructive waiver at
that time.

14 Those depositions thereafter would be
admissible.

15 We will be in recess for 15 minutes.

16 MR. DAVIS: The depositions before August 29 are
out?

17 THE COURT: Yes.

18 MR. DAVIS: One other procedural question. On
making

19 objections before the jury, I can make them in one word
or

20 longer.

21 THE COURT: I do not allow speaking objections
before

22 the jury. I expect counsel from both sides will stand
up, make

23 your objection and either cite to a rule or a short
indication

24 what your objection. I am fairly liberal with side
bars. You

25 may request one. I may not always grant it. I may
call you up

RICHARD A. KAUFMAN, CMRR

1 if I find that additional argument is necessary based
upon the 2 objection; but I do not allow speaking objections.

3 MS. HEALY: Would the Court permit the first
three 4 depositions you cited to be admitted under Rule 807,
the other 5 hearsay exception?

6 THE COURT: 807 being the residual rule?

7 MS. HEALY: Yes.

8 THE COURT: What is the defense position on
that?

9 MR. DAVIS: The position set forth in our
papers, the

10 rule is not satisfied. You have to have a deposition
first

11 before you get into the hearsay. We set that position
out in

12 our papers. I don't believe that would be the
appropriate way

13 to allow them to come in.

14 THE COURT: My finding is those depositions
were

15 violative of Rule 28B. They were not complied with and
the

16 evidentiary provision of Rule 807, the residual hearsay
would

17 not be applicable, so the ruling would stand as to
those

18 depositions.

19 We are in recess for 15 minutes.

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

22 (Open court. Jury not present.)

23 THE COURT: Estate of Winston Cabello, et al.

vs.

24 Armando Fernandez-Larios, Case Number 99-0528.

25 Would counsel state their appearances.

RICHARD A. KAUFMAN, CMRR

1 (All parties present.)

2 THE COURT: Bring in the jury.

3 (Jury present.)

4 THE COURT: You are still under oath, sir.

5 Thereupon --

6

7 PATRICIO BARRUETO,

8 called as a witness herein, having been previously duly
sworn,

9 was examined and testified further as follows:

10 THE COURT: You may proceed.

11 BY MR. CUNNINGHAM:

12 Q. If I may take you back to September 11, 1973. Do
you
13 recall what happened that morning?

14 A. I woke up to the music on the radio, a kind of
unusual
15 nature, marching, military music. I thought I heard an
16 announcement saying all radios need to conform to this
national
17 chain, and the music woke me up.

18 Q. Was it the normal broadcast?

19 A. It wasn't the normal setting in the dial. It
wasn't the
20 same broadcasting.

21 Q. At some time that morning did you get news there
was a
22 change in Santiago?

23 A. A little later they repeated the same thing, that
indicated

24 to me the military was in place. That was a little
unusual. I

25 finished dressing real fast and went to Winston's
house. We

RICHARD A. KAUFMAN, CMRR

the 1 listened to the radio a little bit more then went to
2 office.

Allende? 3 Q. Did you get news what happened to President

4 MR. DAVIS: Objection. Hearsay.

5 THE COURT: Sustained.

6 BY MR. CUNNINGHAM:

the 7 Q. At some point did you gather an understanding that
8 government in Chile had changed?

was a 9 A. When it all subsided I thought it was obvious there
10 military junta in place. They said as much around 10
or 12 11 there was a specific announcement from the junta. At
that time 12 we had already inferred from what we had observed in
the town 13 of Copiapo that the military were in control.

14 Q. What did you observe?

was 15 A. Winston and I went to -- when we noticed, when it
the -- 16 obvious to us, something unusual was going on. We took
control 17 office and drove throughout the city and saw military
the 18 points at different places of the city. We drove to
left 19 University where my wife Zita was working and she had

to 20 earlier in the morning while I was still asleep. I had
we saw 21 verify she was okay. As we were leaving the University
22 the military being deployed in front of the University
23 building.
President 24 Q. After September 11, 1973, did you ever hear from
25 Allende again, see him on TV or heard him on the radio?

RICHARD A. KAUFMAN, CMRR

1 A. Later I heard his last message, his last radio
broadcast.

2 Q. Who did you understand to be the head of the
Chilean

3 Government after September 11, 1973?

4 A. The military junta, for all practical purposes.
The

5 official image on the TV was General Pinochet.

6 Q. Turning to the following day September 12, 1973,
what

7 happened to Winston that day?

8 A. When we were at the office sort of wondering what
to do,

9 there was a meeting called for all the chiefs of
services of

10 the region, of the province into the intendencia. That
is the

11 maximum administrative and political authority of the
province

12 and he has the power to do that, so he called this
meeting.

13 Q. Before September 11, who was the head of the
intendencia?

14 A. A civilian appointed by President Allende. After
September

15 11, it was the commander of the military garrison,
Lieutenant

16 Colonel Oscar Haag.

17 Q. Who called the meeting of the chiefs?

18 A. Oscar Haag.

19 Q. Did Winston go to that meeting?

20 A. Yes.

21 Q. When did you next hear from Winston after he went
to that

22 meeting?

23 A. Late in the evening he called me and he said I am
in jail,

24 I have been sent to jail. I don't know why. Please
give me a

25 sleeping bag. And something else I forgot exactly what
it was.

RICHARD A. KAUFMAN, CMRR

1 I ran and picked up his sleeping bag. Tried
to talk
2 to the Fiscal -- that is the military prosecutor. I
couldn't
3 get there so I went back to the jail to give him what
he had
4 requested. I saw him at that time and we talked
briefly.

5 Q. Were you able to get word to Veronica, his wife?

6 A. Yes. From there I took the car or the vehicle of
the
7 office to his house. I parked there. I told his wife
Winston
8 had been detained. I went home and told Zita.

9 Q. On the night of the 1st you said you saw Winston
Cabello?

10 A. Yes.

11 Q. Where did you see him?

12 A. In jail. The lobby of the jail.

13 Q. Did you continue to visit with him in the days that
14 followed?

15 A. Yes.

16 Q. Where did those visits take place?

17 A. For a while in the jail, in the part of the jail
and when
18 Winston was transferred to the military garrison, I
visited him

19 a couple of times there.

20 Q. Do you know when approximately how long after he
was

21 arrested he was transferred from the jail to the
garrison?

22 A. A couple of weeks later.

23 Q. Were you aware of any charges being filed against
Winston

24 Cabello?

25 A. No.

RICHARD A. KAUFMAN, CMRR

1 Q. At some point were you put in jail?

2 A. Yes.

3 Q. When did that happen?

4 A. About the time he transferred to the military
garrison. A

5 little after that I was detained.

6 Q. Can you put an approximate date on that?

7 A. I should, but I can't.

8 Q. Do you know if it was before October or after?

9 A. Definitely before.

10 Q. How was it you came to be detained?

11 A. Truly, a part of my mind still doesn't know that,
but I can

12 explain many times I was sent to questioning and I was
asked

13 different questions regarding the vehicle of the
office, which

14 had been surrendered to the military already and
eventually the

15 Fiscal, military prosecutor Brito, send me to the jail.

16 Q. How did you get word you were under arrest?

17 A. I don't remember exactly, but somehow -- at the
office at

18 that point there were three persons working. When this

19 incident happened, one person would stay in the office
and I

20 would go back to the office as if nothing happened and
we would

21 go back together home. If I didn't come they had to
presume I

22 was arrested.

23 Q. When you were arrested, where were you placed?

24 A. In jail.

25 Q. Were you charged with any crime?

RICHARD A. KAUFMAN, CMRR

1 A. Never.

2 Q. Directing your attention forward a little bit to
the night
3 of October 16, 1973. Actually to the day of October
16, 1973.

4 Would you explain what happened to you that day?

5 A. That was Tuesday. I was in jail. In the morning I
did my

6 laundry and I was looking at it when a prisoner who was
in jail

7 as well came in from the garrison where he was being
questioned

8 in the morning. He approached me and said Barrueto,
you are

9 going to be questioned today in the afternoon by the
military

10 prosecutor, then you will be released to Caldera.
These are

11 his words. It pretty much confirmed what I suspected
will

12 happen.

13 Q. Were you questioned later that day?

14 A. Later in the day I was taken to the military
garrison and

15 made to wait for a few hours outside the office of the
military

16 prosecutor and I waited until Major E N R I O T T I
came out.

17 He saw me and he asked me like it was my fault, what
are you

18 doing here. I said a smartalecky thing and I smiled
and said I

19 don't know, I was told to be here. He then told me you
are not

20 going to be questioned today. A delegation from
Santiago

21 arrived. He paused for a while and said you are
staying here

22 tonight. Get a haircut.

23 Q. Did you stay at the garrison or the jail that
night?

24 A. They sent me to the barracks in the garrison. I
didn't go

25 back to the jail until much later.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you see Winston Cabello on the 16th?

2 A. I met him briefly. I arrived after dinner, I do
remember

3 that and close to the time we were supposed to go to
bed,

4 Winston approached me and said, we will find you a bed
tonight.

5 We will talk more tomorrow to see what the conditions
of the

6 garrison was.

7 Q. Based on your assessment, what state of health was

8 Mr. Cabello in?

9 A. Perfect.

10 Q. That night of the 16th, did you go to bed?

11 A. Yes. There were bunk beds arranged on one side of
the

12 room. There was a fence right in front and I was in
the lower

13 bunk bed right by the door in the middle of this
divider on one

14 side of the room and the other side of the room was the
door to

15 the patio.

16 Q. At some point in the evening, were you awakened?

17 A. Yes.

18 Q. By what?

19 A. The one I remember most vividly, the door was
opened rather

20 loudly. This door that divided was right there. I saw
a

a 21 military person coming in in full combat fatigues with
I was 22 machine gun. He stands right by the foot of my bed and
23 scared.
the 24 There was another person on the other side of
low light 25 room -- the light there wasn't too light. There was

RICHARD A. KAUFMAN, CMRR

1 and there were some people by the door, on the side of
the door
2 that made me guess there were more people outside like
pushing
3 to see what was going on. My attention was directed to
this
4 person and I started looking pretty much from the feet
up. I
5 saw the machine gun and I saw the smile and I stopped
there. I
6 didn't have the guts to look him in the eyes.

7 Q. You are describing a military man with a machine
gun right
8 near your bunk?

9 A. Yes.

10 Q. Were there other military men you could see?

11 A. On the other side of the room there was one in near
12 darkness and other people by the door, two, at least
maybe
13 three. It was dark by the door.

14 Q. What were these people doing, why had they come
into the
15 bunk room?

16 MR. DAVIS: Objection. He can say what he
saw.

17 THE COURT: Sustained.

18 Rephrase your question.

19 BY MR. CUNNINGHAM:

20 Q. Can you explain what you heard or saw --

21 MR. DAVIS: Objection. What he saw.

22 THE COURT: Sustained.

23 BY MR. CUNNINGHAM:

24 Q. Can you explain what you heard when these men came
into the

25 bunk room?

RICHARD A. KAUFMAN, CMRR

1 A. I heard voices --

2 MR. DAVIS: Objection.

3 THE COURT: Voices is fine. Anything that was
said

4 would be hearsay.

5 MR. CUNNINGHAM: May we have a side bar on
this?

6 THE COURT: Come up.

7 (Side bar.)

8 MR. CUNNINGHAM: What the witness is going to
say, the

9 military men were calling for names. It is not for the
fruit

10 of what was said.

11 THE COURT: Any objection to that?

12 MR. DAVIS: Is he going to list names or just
calling

13 out names.

14 MR. CUNNINGHAM: He will say the names he
heard.

15 MR. DAVIS: It is an out of court statement.

16 MR. CUNNINGHAM: He is purporting he heard
someone say

17 Winston Cabello and another list of names. In response
to that

18 people came out. He will not say the guy said we are
here to

19 do something, which would be hearsay.

20 THE COURT: What is your position?

21 MR. DAVIS: It is an out of Court statement.
It is

22 hearsay.

23 MR. CUNNINGHAM: There is no truth being
asserted. It

24 is if they sounded a horn. They said Winston Cabello,
Leonello

25 Vincenti. They didn't say anything for anyone to
assess the

RICHARD A. KAUFMAN, CMRR

1 truth of.

out of

2 THE COURT: Is there any issue he was called

is not

3 the jail and taken out of the jail? It seems to me it

4 an issue this happened.

5 MR. DAVIS: I would stipulate to that.

may say

6 THE COURT: I will overrule the objection. He

it is

7 the names that he heard but nothing further and I find

matter

8 not hearsay. It is not coming in for the truth of the

9 asserted other than it is a name he heard.

10 (Open court.)

11 THE COURT: You may proceed.

12 BY MR. CUNNINGHAM:

they came

13 Q. Mr. Barrueto, what did you hear from the men as

14 into the bunk room?

please

15 A. I hear them calling names, the following persons

Leonello

16 come out, and the first names were Winston Cabello and

17 Vincenti.

18 Q. Do you know how many names they called out?

19 A. 13. They asked them to hurry up. There were other

20 words --

21 MR. DAVIS: Objection.

22 THE COURT: Sustained, the other words.

23 BY MR. CUNNINGHAM:

24 Q. The man that was standing in the room with the
machine gun,

25 had you ever seen him before?

RICHARD A. KAUFMAN, CMRR

1 A. No.

16th? 2 Q. Were you in the garrison after the night of the

3 A. Yes.

4 Q. For how long?

5 A. Until November, I believe.

6 Q. Did you ever see that man again?

7 A. No.

8 Q. What did Winston do when his name was called?

lower 9 A. He was at the end of the room on that side in the

pants, 10 bunk bed. He sat on the bed and started putting on his

chance to 11 a sweater. He put his shoes on. He didn't have a

12 complete his shoes and his belt when he was coming out.

said I 13 One of the times when they called hurry up, he

14 am hurrying, I am hurrying, and walked out.

other men 15 Q. Of the 13 names that were called out, how many

16 were in that bunk room?

17 A. Two.

Cabello 18 Q. After he was called out, did you ever see Winston

19 again?

20 A. No.

had 21 Q. Did you hear or read any news accounts as to what

22 happened to Winston?

23 MR. DAVIS: Objection. It calls for hearsay.

24 THE COURT: He can answer yes or no.

25 MR. CUNNINGHAM: May I approach on this as
well?

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Come up.

2 (Side bar.)

3 MR. CUNNINGHAM: Where I am going here, this
is the

4 evidence of the cover story. There was an article, a
visual

5 report and article that the prisoners had been shot
trying to

6 escape. That is what he will talk about. I am not
offering it

7 for the truth because it wasn't true but I have to get
in there

8 was this cover story and that is what he will describe.

9 MR. DAVIS: My position is, not only is it
hearsay it

10 is also irrelevant because there is no testimony
anywhere in

11 this case and they don't contend it is Armando
Fernandez who

12 had anything to do with what was released or who
released this

13 false information.

14 I will certainly stipulate Mr. Cabello died,
but I

15 don't believe this witness is appropriate to testify
what is

16 true or not.

17 MR. CUNNINGHAM: It goes to the existence of a
18 conspiracy --

19 THE COURT: Will you tie that up, the
newspaper

20 account with someone who released that information and
tie it
21 up to the defendant or a member of the conspiracy? The
fact
22 there are newspapers he was shot while he was escaping,
what is
23 the nexus to a conspiracy?
24 MR. CUNNINGHAM: I will not be able to draw
every link
25 in that chain. It was put by means of what is called a
Bando,

RICHARD A. KAUFMAN, CMRR

1 a military communique.

with 2 THE COURT: What is the evidence going to be
3 regard to that, the Bando?

government to 4 MR. CUNNINGHAM: It was put out by the
5 falsely explain what happened to these men.

proving a 6 I think it goes to something in addition to
7 conspiracy. It goes to proving that the killings were
illegal.

evidence 8 The fact there is a cover story issued about them is
9 that people didn't even engage in a legal process.

news 10 THE COURT: What will he testify to, what the
11 report was?

here. It 12 MR. CUNNINGHAM: I have the newspaper report
13 is in Spanish. It says the prisoners tried to escape
and were 14 frustrated.

15 THE COURT: Does it say where it comes from?

by the 16 MR. CUNNINGHAM: It says on it it was issued
17 government.

18 THE COURT: Do you have a translation?

the 19 MR. CUNNINGHAM: I don't. I don't care about

the 20 details. The headlines are enough. I will not explore
21 details of it.
well. 22 MR. DAVIS: I have an objection to that as
put out 23 THE COURT: Would that be the nexus this was
will 24 by the government and it was part of a conspiracy; I
the 25 sustain the objection because it is irrelevant whether

RICHARD A. KAUFMAN, CMRR

1 newspaper reported they were shot while escaping or
not, unless
2 you bring in a Bando as part of the conspiracy. Some
of the
3 jurors may read Spanish, some may not, the headline
stating
4 prisoners shot while escaping is irrelevant at this
juncture.
5 Perhaps it might become relevant at a later time but
based upon
6 his testimony it is irrelevant what he read in the
paper.

7 MR. CUNNINGHAM: I am beginning to get the
feel of
8 this. At that moment in time what was going into the
paper in
9 Chile was going into the paper.

10 THE COURT: You are telling me but you are not
keep on
11 introducing it. Where is the nexus, that is what I
do you
12 asking you. You just want to get in the headline. How
you are
13 intend to introduce that, that is why I asked you how
14 tying it up.

15 MR. CUNNINGHAM: I can tie it to the military
because
16 of the way it is labeled in the paper.

17 THE COURT: You don't have a translation. You
said
18 you only want the headline. If you had a headline that
said

19 the military reported that or it was released by the
military
20 government that these prisoners were shot while they
escaped,
21 it might become relevant and probative but without
having the
22 translation and counsel having the ability to see that,
23 otherwise it is not appropriate and it is improper to
introduce
24 an article not translated, with some of the jurors
being able
25 to speak Spanish and some may not.

RICHARD A. KAUFMAN, CMRR

1 You may be able to provide that nexus but I
think you
2 have to have a translation of the article depending on
what it
3 says. If it says the military government reported
today these
4 prisoners were shot trying to escape, then it may start
to
5 provide that nexus of conspiracy or extrajudicial or
the other
6 crimes against humanity; but without that nexus I will
sustain
7 the objection.

8 MR. DAVIS: Before we leave, does the picture
have to
9 stay up?

10 THE COURT: No, I will remove it.

11 (Open court.)

12 THE COURT: You may proceed. Sustained.

13 BY MR. CUNNINGHAM:

14 Q. At some point did you have an understanding 13
people had
15 been killed in Copiapo, twelve in addition to Winston?

16 A. Yes.

17 Q. Did you know any of the other twelve men?

18 A. I knew some of them from before. I met a few of
them in
19 jail and there were a couple I never met.

20 Q. With respect to the twelve, do you know whether any
of them

21 were charged with crimes?

22 A. I am aware only of Jaime Sierra.

23 Q. Of the twelve, you are saying the only one you are
aware

24 was charged with a crime was Mr. Sierra?

25 A. The only one with charges.

RICHARD A. KAUFMAN, CMRR

1 Q. With respect to the other twelve men, do you
remember any

2 of their names?

3 A. I remember Leonelli Vincenti. He was a professor
at the

4 technical university, a professor of physics. Pedro
Perez who

5 was also a member of the same department. Alfonso
Gamboa, he

6 was the director of Radio Tacama -- the local radio. I
met him

7 when Winston and I went a couple of times to deliver
some

8 information.

9 Q. The director of the radio was named Alfonso Gamboa?

10 A. That is right. He was also the one who fixed the
food in

11 jail so it would taste a little bit better.

12 Q. Do you recall Fernando Carvajal?

13 A. He worked for Congressman Hagal. He was the
driver. I

14 remember him. I know his brother Agapita Carvajal, but
I never

15 met him, I only met Fernando.

16 Q. You referred to Agapita Carvajal?

17 A. Yes.

18 Q. But you didn't know him?

19 A. I never met him.

20 Q. Did you know a Manuel Cortazer?

21 A. He was a student leader. To the best of my
recollection he

22 was a student body president in high school. I met him
in

23 jail.

24 Q. Did you meet a Leopoldo Larravide?

25 A. He was also a student. He was a student at the
University

RICHARD A. KAUFMAN, CMRR

one who 1 and President of the student body there and he was the
2 told me I would be questioned that day. He was the one
3 bringing the news. He is kind of fair skin and a
smile.

October 4 Q. Did anything else happen to the Larravide family on
5 17?

6 A. His son was born the same night.

7 Q. Did you know a Ricardo Mancía?

trade 8 A. Not very well. I knew he was a leader of the local
9 school --

this 10 MR. DAVIS: The question is whether he knew
11 person and the witness is giving a narrative answer.

12 THE COURT: Sustained as to the narrative.

13 Just answer the question, sir.

14 BY MR. CUNNINGHAM:

15 Q. You didn't know Mr. Mancía very well?

16 A. No.

what 17 Q. By working with him in the same town, did you know
18 Mr. Mancía did for a living?

19 A. No.

20 Q. Adolfo Pelleras?

21 A. He was a local merchant.

22 Q. So we follow the order here. Did you know him?

23 A. I met him in jail.

24 Q. What did you understand him to be doing?

25 A. From what he told me, he was a merchant.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you know a man named Jaime Sierra?

2 A. I had seen him. I talked to him once or twice
before these
3 events.

4 Q. Did you know a man Atilio Ugarte Gutierrez?

5 A. No.

6 Q. Where or what is the Cuesta Cardones?

7 A. The province is a flat country and three
boundaries. River

8 Copiapo where we were, then you have to climb up to the
desert.

9 That is called in general the Cuesta Cardones. It is
kind of

10 near the middle of where we were.

11 Q. How far from Copiapo is it?

12 A. A few miles.

13 Q. Did you know of a man named David Silberman?

14 A. He was --

15 MR. DAVIS: Objection. He said did he know of
a man.

16 THE COURT: Sustained.

17 BY MR. CUNNINGHAM:

18 Q. Had you heard the name David Silberman?

19 A. I heard and read his name.

20 Q. What did you understand his position to be in
Chile?

21 MR. DAVIS: Objection.

22 THE COURT: Sustained.

23 Rephrase your question.

24 BY MR. CUNNINGHAM:

25 Q. In connection with your economic work, did you have

RICHARD A. KAUFMAN, CMRR

1 occasion to talk with the people in charge of the
mines?

2 A. Yes.

3 Q. You talked to people who were in charge of the
mines?

4 A. Occasionally.

5 Q. As a result of being an economic planner, did you
have an
6 understanding who were the people in charge of the
mines?

7 A. Yes.

8 Q. In connection with your work and hearing about the
mines,

9 did you ever hear who David Silberman was?

10 MR. DAVIS: Same objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. CUNNINGHAM:

13 Q. In connection with your work in the planning
department,

14 did you come to hear of the reputation of any of the
people who

15 were in charge of mines?

16 MR. DAVIS: Objection, relevance.

17 THE COURT: Sustained.

18 BY MR. CUNNINGHAM:

19 Q. Without explaining who he was, could you explain in
what

20 connection you heard of David Silberman?

21 MR. DAVIS: Objection, Your Honor.

would 22 THE COURT: Sustained as to what he heard. He

23 not be able to state what he heard.

24 BY MR. CUNNINGHAM:

25 Q. At some point were you released from detention at
Copiapo?

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. When did that happen?

3 A. Mid December, probably after Christmas.

4 Q. Of 1973?

5 A. Yes.

6 Q. Where did you go when you were released?

7 A. I was sent by the military authority to a small
town called

8 H U A S C O in the same province, with orders of
presenting

9 myself to the police station and signing in twice a day
at that

10 police station and could not leave that town.

11 Q. Was there a name for the state you were in?

12 A. Internal exile.

13 Q. At some point did you leave Chile?

14 A. In December of 1974, 13th December, 1974.

15 Q. Is that when you came to the United States?

16 A. To the Bay area.

17 MR. CUNNINGHAM: No further questions.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. DAVIS:

21 Q. I guess it is almost at the end of good morning.
My name

22 is Steve Davis. I represent Mr. Fernandez.

23 Just a few questions, sir.

in 24 You told us that you were arrested some time
25 September of 1973; is that correct, sir?

RICHARD A. KAUFMAN, CMRR

I don't
arrested?
the
military
Colonel
time
at the

1 A. Yes. It could be maybe the beginning of October.
2 have it clear. That time frame.
3 Q. You didn't know the precise date but you were
4 A. Yes.
5 Q. At the time you were arrested, you were living in
6 Copiapo area?
7 A. That is correct.
8 Q. When you were in Copiapo, Copiapo was under
9 control at that time?
10 A. Yes.
11 Q. The head of the local military at that time was
12 Haag?
13 A. That is correct.
14 Q. H A A G?
15 A. That is correct.
16 Q. Colonel Haag is the person who was in charge at the
17 you were arrested?
18 A. Yes.
19 Q. And Colonel Haag was the person who was in charge
20 time your brother-in-law was arrested?
21 A. That is correct.

- excuse 22 Q. Colonel Haag was in charge when you were released -
23 me, when you were sent to internal exile?
24 A. That is correct.
25 Q. As far as timing when you went to internal exile,
you said

RICHARD A. KAUFMAN, CMRR

1 several months; when was the proximate time?

2 A. December, the same year.

3 Q. So from the end of September to the beginning of
October

4 until you were first arrested until December when you
were sent

5 to internal exile, you were a prisoner in Copiapo?

6 A. Correct.

7 Q. You were under the person in charge of Copiapo,
Colonel

8 Haag?

9 A. Correct.

10 Q. And he was in charge until the time you were
released?

11 A. That is also correct.

12 THE COURT: Any redirect?

13 MR. CUNNINGHAM: No.

14 THE COURT: You may step down.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MR. CUNNINGHAM: Our next witness is by
videotape.

18 MR. DAVIS: I need a side bar on procedure.

19 (Side bar.)

20 THE COURT: Which videotape is this?

21 MS. HEALY: The deposition of Mr. Herrera.
We have

22 shown our proposed excerpts to Mr. Davis. We have had

23 objections and resolved them.

24 MR. DAVIS: One, Your Honor, I would point out
to the

25 Court, in Mr. Herrera's deposition he identifies a
picture of

RICHARD A. KAUFMAN, CMRR

1 Mr. Fernandez. In his deposition at page 126, Mr.
Herrera and
2 I have a full copy of the deposition for Your Honor, he
3 explains how he comes to the identification and from
126 line
4 21 to 127 line 8 it is basically hearsay after the
fact.
5 THE COURT: This was not agreed to?
6 MS. HEALY: We have no plan to show this
portion of
7 the deposition.
8 THE COURT: At another portion in the
deposition he
9 identifies the photo?
10 MS. HEALY: In a portion we plan to play.
11 THE COURT: And this is another portion?
12 MR. DAVIS: Yes.
13 THE COURT: Let me read it.
14 You can play that portion. Then it would be a
15 determination for the jury which of the identification
or lack
16 of certainty of the identification they wish to believe
or
17 disbelieve.
18 MR. DAVIS: So my objection to the after the
fact
19 identification would be overruled?
20 THE COURT: Where is it after the fact?

21
paragraph 20

MS. HEALY: He first identified this

22
He is

pages earlier. It is after the initial identification.

23
identify

asked on cross examination, I believe, how he came to

24

Mr. Fernandez.

25
identification?

THE COURT: So this is the initial

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: The second time he is questioned,
how did
2 you come to learn it was Mr. Fernandez and he said
somebody
3 told me. That is Mr. Davis' objection.

4 MR. DAVIS: Thank you.

5 THE COURT: Then what does he say later?

6 MR. DAVIS: He is saying he is told.

7 MS. HEALY: It goes to credibility. If he
wants to
8 play it to impeach the credibility --

9 THE COURT: The identification of the photo,
where is
10 that?

11 MS. HEALY: Earlier on. Page 101 line 17 the
12 photograph is marked.

13 THE COURT: He says that is the officer that
went to
14 the hospital Tuesday in October. He identifies the
defendant
15 as the officer who went to the hospital in October.

16 MS. HEALY: He identifies the photograph and
later on
17 comes this portion.

18 THE COURT: It would go to weight.

19 I would overrule the objection as to any
exclusion of
20 the photograph identification but you can certainly
play that

the 21 excerpt in which he indicates he was informed it was
22 defendant.
23 MR. DAVIS: One last procedural question. I
made a 24 number of cross designations. My client doesn't have
the 25 financial ability to hire someone to get these
videotapes

RICHARD A. KAUFMAN, CMRR

1 edited. I can read it to the jury.

2 THE COURT: Whatever your pleasure is. You
can read

3 it or if you want to stake a break and find it on the
video.

4 MR. DAVIS: There are extensive portions. I
don't

5 know how much easier it would be.

6 THE COURT: However you want to handle it.

7 THE COURT: They can play it and on cross if
you want

8 to take a break and go through and identify --

9 MR. DAVIS: Do we have the capability of doing
that?

10 MS. HEALY: It is time consuming to locate
the

11 excerpts.

12 THE COURT: Do you have the entire videotape?

13 MS. HEALY: We do.

14 THE COURT: You can always start and stop a
videotape.

15 How long is the videotape?

16 MS. HEALY: Three hours. The portion we are
going to

17 play is 25 minutes.

18 MR. CUNNINGHAM: We digitized the video to
play it in

19 the courtroom from the original.

20 THE COURT: From the original?

21 MS. HEALY: We have the entire thing.
22 MR. CUNNINGHAM: To bring it into a digital
format
23 what Mr. Davis is asking requires an expert to do it
out of
24 Court. It is doable but it takes some time.
25 THE COURT: Otherwise you can take the
videotape and

RICHARD A. KAUFMAN, CMRR

1 start and stop it. Or you can read it.

I will

2 MR. DAVIS: I don't want to hold the jury up.

3 read it right now.

reading

4 THE COURT: Do you have any objection to him

5 it.

the jury

6 MS. HEALY: No. We would like to play for

excerpt

7 excerpts of Angel Ruben Herrera Jofre. This deposition

8 is going to run roughly 25 minutes.

9 We are having trouble getting this working.

10 THE COURT: Let's take a break.

anyone

11 Do not discuss this case amongst yourselves or

associated with

12 else. Have no contact whatsoever with anyone

on this

13 the trial. Do not read or listen to anything touching

minutes.

14 matter in any way. Be back in the juryroom in fifteen

instruct

15 If anybody should try to talk to you about this case,

staff

16 them to immediately stop and be in contact with my

17 concerning it.

18 (Thereupon a recess was taken, after which the

19 following proceedings were had.)

20 (Open court. Jury not present.)

vs. 21 THE COURT: Estate of Winston Cabello, et al.
22 Armando Fernandez-Larios, Case Number 99-0528.
23 Would counsel state their appearances.
24 (All parties present.)
25 THE COURT: Bring the jury in.

RICHARD A. KAUFMAN, CMRR

1 (Jury present.)

will be

2 MS. HEALY: Ladies and gentlemen, what you
3 seeing is excerpts of Angel Ruben Herrera Jofre. His
4 deposition was taken on November 16, 2000.

5 (Videotape played.)

6 Q. Good morning, Mr. Herrera.

7 A. Good morning.

8 Q. Could you state your full name for the record?

9 A. Angel Ruben Herrera Jofre.

10 Q. How old are you?

11 A. 56 years old.

12 Q. Where were you born?

13 A. I was born in Chile.

14 Q. In what city?

15 A. O V I A L L E.

16 Q. Where do you currently live?

17 A. Right now I live in Stockton, California.

18 Q. How long have you lived in Stockton, California?

19 A. Since 1976.

20 Q. Are you married?

21 A. Yes.

22 Q. How long have you been married?

23 A. 30 years.

24 Q. Are you currently working?

25 A. Yes. I work for a construction company.

RICHARD A. KAUFMAN, CMRR

1 Q. What do you do for the construction company?

2 A. Carpenter.

3 Q. How long have you been a carpenter?

4 A. Since I arrived in the United States in 1976.

5 Q. Do you know what date you saw Winston Cabello?

6 A. I don't know whether it was the 14th or the 15th of
7 October. He was surprised to see me. I told him I had
8 heard that -- a list being read, where among others,
they
9 mentioned Winston Cabello.

10 Q. You mentioned hearing something about a list?

11 A. I heard next to where the fiscalia operated a list
being
12 read. The voice was Carlos Brito. I thought they
wanted to
13 scare me. I did not want to believe, but still I told
Winston
14 they are going to kill us -- they are going to kill
us.

15 Q. Tell us exactly what you heard?

16 A. I heard when Brito started reading out loud, he
said
17 something like -- he said something like, this --
these
18 are they -- Lincayan Zepeda, Vargas, Juan Lefeta, Angel
Ruben
19 Herrera, and mentioned Leonello Vincinte, Pedro Perez,
Alfonso
20 Gamboa, Jaime Sierra, Winston Cabello. All of us, some
of us

the 21 were -- some were already in jail, some were still at

22 regiment.

23 Q. How many names did they read?

names. 24 A. I couldn't specify but I remember they read 15

25 Q. Do you know what day you arrived at the hospital?

RICHARD A. KAUFMAN, CMRR

- 1 A. October 15.
- 2 Q. Why do you know it was October 15?
- 3 A. It was a Monday.
- 4 Q. What type of treatment were you given while you
were in the
- 5 hospital?
- 6 A. First a blood transfusion.
- 7 Q. Anything else?
- 8 A. I think I received an injection about every four
hours.
- 9 Q. Do you know what type of medication you were
injected with?
- 10 A. No.
- 11 Q. Were you conscious during the time you were in the
- 12 hospital?
- 13 A. Yes.
- 14 Q. Were you aware what was happening around you?
- 15 A. Yes.
- 16 Q. Did you have visitors?
- 17 A. Only my wife.
- 18 Q. You said your wife worked at the hospital. What
did she
- 19 do?
- 20 A. She used to work at the hospital. She was surgery
nurse.
- 21 Q. Do you recall the night of October 17, 1973, the
night of
- 22 the 16th to the 17th?

Army

23 A. I remember the night of the 16th to the 17th, an

24 officer came to visit.

25 Q. Can you describe how you were feeling that night?

RICHARD A. KAUFMAN, CMRR

1 A. I was calm slept well. But I would wake up
continuously.

2 I figure it must have been four or five in the morning.

3 Q. Were you alone in your room?

4 A. Alone.

5 Q. Was your wife anywhere nearby?

6 A. No. I imagine -- I don't know -- she was at the
surgical

7 nurse's dormitory.

8 Q. Do you know what time you went to sleep that night?

9 A. I was in bed, I would sleep off and on.

10 Q. You said that you had injections every four hours?

11 A. Uh-huh.

12 Q. Do you recall what times you had those injections?

13 A. At eight, twelve, four, eight, twelve.

14 Q. You mentioned something happening about 4 o'clock
in the

15 morning. Is that on October 17?

16 A. We call it the wee hours of Tuesday, the 16th.
That is

17 already the 17th.

18 Q. It is 4 a.m. on the 17th?

19 A. Let's say Tuesday.

20 Q. What happened at 4 o'clock, approximately 4 o'clock
on

21 Tuesday?

22 A. I woke up because I heard some steps. The floor is
ceramic

23 tile and you could hear easily. I sensed several
steps. The
24 door opened and officer Ojeda appeared. And another
military
25 officer or another member of the military dressed in a

RICHARD A. KAUFMAN, CMRR

1 different manner.

2 Q. When these people came into the room, was the light
on?

3 A. They turned the light on.

4 Q. When you say "they," who turned the light on?

5 A. I don't know whether Ojeda or -- maybe the medic or
a nurse

6 with them.

7 Q. You said two military people came in, Ojeda you
knew?

8 A. That was the only one I knew.

9 Q. And the other person, what did the other person
look like?

10 A. Had a uniform sort of like a battle-type uniform
with a

11 black beret. Face painted with camouflage equipment. I
noticed

12 how exaggeratedly armed he was. They had me identify
myself.

13 Q. Let's stop here. I want to get to the description
of the

14 person. You said he was wearing a black beret?

15 A. Yes.

16 Q. Had you seen that type of hat worn by the local
military

17 before?

18 A. Only one whose last name is Cruz.

19 Q. Were the person besides -- were Ojeda and the other
person

20 dressed alike?

21 A. No. He had a military cap.

22 Q. You said he was exaggeratedly armed. Can you
describe the

23 weapons this person had?

24 A. My attention was directed to what is called a
Corvo, which

25 is a big sort of machete or knife, a gun, machine gun.

RICHARD A. KAUFMAN, CMRR

1 Q. Mr. Herrera, I would like you to draw, if you can,
what you 2 call the Corvo.

3 MS. HEALY: At this time we would like to
publish the 4 drawing of the Corvo as Plaintiffs' Exhibit 17.

5 MR. DAVIS: No objection.

6 THE COURT: It will be admitted as Plaintiffs'
Exhibit 7 17.

8 (A document was received in
9 evidence as Plaintiffs' Exhibit 17.)

10 THE COURT: You may publish.

11 MS. HEALY: I would like to return to the
testimony 12 of Mr. Herrera.

13 THE COURT: You may.

14 (Videotape resumed.)

15 Q. Is that the handle you were pointing to?

16 A. Uh-huh.

17 Q. That is the blade you were pointing to?

18 A. Yes.

19 Q. And that is the handle?

20 A. Yes.

21 Q. Where did the person who came into the room carry
the 22 Corvo?

23 A. In the belt.

24 Q. What did the people that came into your room say?

25 A. They had me identify myself. The other man told me
to get

RICHARD A. KAUFMAN, CMRR

again. I 1 up. I started to dress. Somebody opened the door
the 2 saw other military personnel dressed like the man with
told me 3 Corvo. The doctor came in. He introduced himself. He
said 4 to lie down. I did it quickly. The man with the Corvo
the 5 get up. I looked at the doctor and I got up. He told
doctor 6 doctor, I am sorry but I have to take him with me. The
return. 7 said Major -- at your orders, Major, but I will

up with 8 Q. Just to clarify. Was the person telling you to get
was saying 9 the corvo saying to the doctor, at your orders? Who
10 that?

the 11 A. The guy with the Corvo, with the knife said that to
12 doctor. He said at your orders, but I will be back.

that would 13 Q. The person with the Corvo, did you see anything
14 indicate his rank?

15 A. No.

can you 16 Q. When the person told you to get up and get dressed,
17 describe their tone of voice?

18 A. Like an order. Get up, lie down.

19 Q. Did he touch you in any way?

20 A. He hit me with the rifle.

21 Q. How did he hit you with the rifle?

22 A. With the back of the rifle he went like -- then he
said

23 you can stay here.

24 Q. Did he do that to you after the doctor came back?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Did he hit you hard?

2 A. No.

3 Davis: Object to the form.

4 Q. Where did he hit you?

5 A. The chest.

6 Q. You said there were other people out in the hall?

7 A. I saw other military people dressed like the guy
with the

8 Corvo out in the hallway. I don't know how many.

9 Q. How many can you recall seeing?

10 A. Three. They were outside keeping an eye or
guarding.

11 Q. How were these people dressed?

12 A. With camouflage.

13 Q. Were they dressed like the man that came into your
room

14 with the Corvo?

15 A. Exactly the same.

16 Q. How close did Lieutenant Ojeda and the other man
come to

17 you when they were speaking to you?

18 A. The distance between you and me. Also the other
one, next

19 to him. Ojeda did not speak.

20 Q. Did you notice anything about them, physically?

21 A. There was something there that caught my attention.
Which

22 is, the gaze of the officer. I assume he was an
officer.

23 Because if Ojeda was under him, he must have been his
superior.

24 He was like enjoying what he was doing.

25 Q. You say that the person you didn't know seemed like
he was

RICHARD A. KAUFMAN, CMRR

say 1 superior to the person you did know, Ojeda. Why do you

2 that?

3 A. Because he was giving the orders.

doing. 4 Q. You say that he seemed to be enjoying what he was

5 Why do you say that?

can't say 6 A. The way he came in. The way he was looking. I

the war, 7 happiness but it was an impression like he was winning

he hit 8 something like that. I was unarmed, I was sick and if

9 me, it gave him pleasure to do it.

10 Q. After he hit you, did he leave?

11 A. They left.

12 Q. Did you see them again?

13 A. Never again.

rifle that 14 Q. Did you later find out who the person with the

15 hit you is?

mention 16 A. For a long time, those that remained alive didn't

somebody 17 this. But I recall once, I saw somebody on the news,

Pinochet, 18 behind -- I don't know if it was a general, or maybe

Zepeda. At 19 and I saw his face. I mentioned this to Lincoyan

20 that point I was in jail and I told him that was it.

21 Q. Do you know the name of the person you saw in the
22 photograph?

23 A. No.

24 Q. Did you later see him in another photograph?

25 A. Well, being free in the United States with my
family and my

RICHARD A. KAUFMAN, CMRR

and the 1 friends, they sent me a magazine where it was mentioned
mentioned. 2 name of the person, which I had never said, ever

careful. But 3 I received a phone call telling me to be

4 I was already here. I did not mention it, I did not
lived. 5 initiate -- which is what I saw, what I felt and what I

was in 6 Q. Do you believe you know the name of the person who
of the 7 the hospital room that night that hit you with the butt
8 rifle?

9 A. I am 99 percent sure I do.

10 Q. What is that person's name?

11 A. Armando Fernandez Larios.

12 Q. Why do you think that was the person that was in
your room?

clearly 13 A. Because later I saw pictures of him. I think I can
14 identify faces.

15 That look, even when I sleep I feel it.

16 Q. What about his features do you recognize?

he was 17 A. Very cold. Like I said that he enjoyed doing what
18 doing.

19 Q. What about his features do you recognize?

20 A. When I saw the picture, I noticed he was more
overweight.

His 21 The first one I saw him he was thinner, good-looking.

22 features, they were not like crude. He looked fine,
but it was

23 his gaze that most scared me, his look.

24 Q. When did you see the photos of him, about what year

25 A. I think it was around 1988, 1989, when this fact
was

RICHARD A. KAUFMAN, CMRR

1 mentioned. However, I did not want to see or know
about it, I 2 did not want to dig this up but a relative in Copiapo -
- I was 3 called on the phone. I had no choice but to confirm.
That is 4 why I am sure it is him. I wish it wasn't.

5 MS. HEALY: At this point the plaintiff would
like to 6 publish for the jury Plaintiffs' Exhibit 11.

7 MR. DAVIS: With the same objection we had
before.

8 MS. HEALY: These were the objections Your
Honor 9 resolved at the side bar.

10 THE COURT: The objection is overruled. It
will be 11 admitted as Plaintiffs' Exhibit 11.

12 (A document was received in
13 evidence as Plaintiffs' Exhibit 11.)

14 THE COURT: You may publish.

15 MS. HEALY: We would like to complete the
deposition 16 of Mr. Herrera.

17 THE COURT: You may.

18 (Videotape resumed.)

19 Q. Do you recognize the person in the photograph?

20 A. Yes.

21 Q. Who do you recognize that person to be?

22 A. The officer that was in the hospital on Tuesday in
October.

23 Q. Which part of his features do you recognize?

24 A. Over the top part of his face, over the nose, his
eyes. He

25 was wearing a beret.

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the 1 MS. HEALY: That completes the excerpts of
2 deposition of Mr. Herrera.

I need 3 MR. DAVIS: I have excerpts to play as well.
4 some technical assistance from Lisa.

5 THE COURT: Do you need some time to prepare?

6 MR. DAVIS: Probably three or four minutes.

7 THE COURT: We can take a stretch break.

8 (Interruption.)

9 THE COURT: Let's take a five minute recess.

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

19 (Open court. Jury not present.)

20 THE COURT: Estate of Winston Cabello, et al.
vs.

21 Armando Fernandez-Larios, Case Number 99-0528.

22 Would counsel state their appearances.

23 (All parties present.)

24 THE COURT: We are going to proceed and
everything is

25 set.

RICHARD A. KAUFMAN, CMRR

1 Bring in the jury.

2 (Jury present.)

3 MR. DAVIS: This is the continuing portion of
the
4 deposition of Mr. Herrera. These are other portions of
the
5 transcripts you didn't previously here.

6 (Videotape resumed.)

7 THE COURT: We are having a technical problem.

8 MR. DAVIS: May I come side bar?

9 THE COURT: Yes.

10 Wait a moment, Robert is here. Maybe he could
fix it.

11 (Interruption.)

12 THE COURT: Let's do this. We will finish in
20
13 minutes. If you would come and straighten this all
out.

14 Mr. Davis, you will read the deposition to
finish this
15 portion up and we will straighten it all out after
everybody is
16 gone for the day.

17 MR. DAVIS: I am reading from the deposition
of
18 Mr. Herrera taken November 16, 2000.

19 I am starting at page 26 line 25.

20 Q. Had you ever been arrested or detained from
September 11

21 until October 2?

22 A. Yes.

23 Q. When?

24 A. On September 17.

25 Q. What happened on September 17?

RICHARD A. KAUFMAN, CMRR

were
jail, the
materials and
Francisco
asked

1 A. I felt that I had to visit other colleagues that
2 imprisoned. We had good relations with the people at
3 guards. We always donated food, things, tools,
4 they let me go in. I spoke with Ricardo Garcia and
5 Lida and Dr. Jara. Then an Army lieutenant came in and
6 me if I was under arrest. I said no. He took me to --

7 MR. DAVIS: The interpreter had a question.

8 Line 27, line 20.

to the

9 Q. What was the name of the lieutenant that took you
10 regional offices?

11 A. Lieutenant Lira. I don't know his first name.

12 Q. You don't know his first name?

13 A. No.

that date,

14 Q. When you were visiting these three prisoners on
15 where were they?

to talk

16 A. They were inside the jail in like -- they were free
17 with each other, walk around.

18 Q. Were they in a room together?

19 A. There were many in a room.

20 Q. Did the room have beds in it?

21 A. Yes.

structure 22 Q. Where was it, the city jail or another type of

23 where they were?

24 A. The city jail.

the 25 Q. Did you go with Lieutenant Lira from the jail to

RICHARD A. KAUFMAN, CMRR

1 government center?

2 A. Yes.

3 Q. What happened when you arrived?

4 A. He delivered me to a Major Ortiz, Captain Diaz and
another

5 military I don't know who he was.

6 Q. Were they in a room at the city center?

7 A. Yes.

8 Q. Did you know Major Ortiz and Captain Diaz before
you went

9 to meet them that day?

10 A. Yes.

11 Q. How were they dressed?

12 A. Degala is good dress.

13 MR. DAVIS: These are interpretation
questions.

14 (Line 8 page 29.)

15 Q. So not the same that Haag and Brito were in when
you met

16 them earlier?

17 A. It was the same. Not Brito's. Haag was dressed in
elegant

18 form.

19 Q. But it is gray, a uniform?

20 A. Yes.

21 Q. When you met these three military persons, what
happened?

22 A. I was interrogated.

23 Q. What do you mean by you were interrogated, can you
describe
24 that?
25 A. They wanted to know why I went to meet those three
persons

RICHARD A. KAUFMAN, CMRR

1 I mentioned before.

2 Q. Did you tell them why you went to visit them?

3 A. Yes.

4 Q. What did you tell them?

5 A. They are my comrades.

6 Q. Did they ask you about anything else?

7 A. More than asked. They threatened me.

8 Q. How did they threaten you?

9 A. They put a gun to my head.

10 Q. Who put a gun to your head?

11 A. Captain Diaz.

12 Q. What did they say when they put a gun to your head?

13 A. That they were going to kill me.

14 Q. Did Captain Diaz say that?

15 A. Yes. Captain Diaz.

16 Q. Was he the only person that threatened you?

17 A. Also Ortiz.

18 Q. How did Ortiz threaten you?

19 A. Same way but adding that, that if I did not reveal
where we

20 had hidden weapons and where others were hiding, they
would

21 take my wife and daughters.

22 Q. Did they say what they would do with your wife and

23 daughters?

are "I 24 A. I could repeat what they said. You know what we
25 know what we are going to do."

RICHARD A. KAUFMAN, CMRR

1 Q. Did you know where people were hiding at that time?

2 A. Yes.

3 Q. Did you tell them?

4 A. No.

5 Q. Did you know where weapons were hidden at that
time?

6 A. Yes.

7 Q. Did you tell them?

8 A. No.

9 Q. Did they harm you physically in any way at that
meeting?

10 A. No.

11 Q. What happened or how long did you meet with them?

12 A. I think about 20 minutes.

13 Q. What happened after that?

14 A. They laughed at me and told me if I got home in ten
15 minutes, I should. I would stay at home or else I
would be

16 detained by the patrols. I drove very fast to my home
and got

17 home.

18 Q. Did they repeat any restrictions on your
communications

19 with other people or movements?

20 A. No.

21 (Page 32 line 1.)

22 Q. After you returned home, this was on the 17th. Do
you know

23 what time it was?

24 A. It was 8 p.m.

25 Q. Were you and your wife and the female who was
living with

RICHARD A. KAUFMAN, CMRR

1 you at your home with you at home at that time?

2 A. Only my wife and daughters.

3 Q. Did they ever hide out during this time?

4 A. No, never.

5 Q. Did you stay at home that night?

6 A. Yes.

7 Q. Tell me if you left the home again the following
days?

8 A. Yes.

9 Q. When did you leave again?

10 A. I could go to my job then keep coming back home.

11 Q. Did anything else happen to keep you from going to
your

12 job?

13 A. No.

14 Q. Were you ever called back to talk to any of the
military

15 officials after the 17th?

16 A. No.

17 Q. Did you go back to the jail at any time?

18 A. No. They forbid me from doing that.

19 Q. Were you ever arrested after that time?

20 A. On October 2.

21 Q. What happened on October 2?

22 A. 2 a.m., policemen from Paipote knocked on my door
and

23 arrested me.

24 Q. How many were there, two?

25 A. Four.

RICHARD A. KAUFMAN, CMRR

1 Q. Do you know the names of those four people?

2 A. No. I don't remember them, but I know them very
well.

3 Q. That was on October 2?

4 A. Yes.

5 Q. What did they tell you?

6 A. They had an arrest warrant for me.

7 Q. Did you go with them?

8 A. Yes.

9 Q. Did you resist?

10 A. No.

11 Q. Where were you taken?

12 A. First to Paipote and at 6 a.m. to the regiment.

13 Q. What happened during the time you were at Paipote?

14 A. I was in a cell.

15 Q. Did you know why you were being held?

16 A. Yes.

17 Q. Why?

18 A. For the same reason they had detained the others.

19 Q. Why do you believe that is?

20 A. We were political leaders. Others were not as
important as

21 us were also detained and the reason I figured I was
out during

22 that period, they wanted to see what I was going to do.

23 Q. So, during the period from September 17 through
October 2,

24 did you make any plans or meet with any people in
resistance to

25 the coup?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. Did you speak out or say anything or did you just
continue

3 in your life working at your job?

4 A. I continued going to my work place but we would
talk about

5 it, but there were no plans.

6 (Page 35 line 7.)

7 Q. Mr. Herrera, just before the break we were talking
about

8 your arrest at 2 a.m. on October 2. I want to go back
to the

9 17th, however, when you met with the three persons,
Ortiz, Dias

10 and the other soldier. You said you got back at 8
o'clock p.m.

11 how do you know you got back at that time?

12 A. I was, because I was given ten minutes to go back
home.

13 Q. Do you know if you left at 7:50 then?

14 A. Yes.

15 Q. Was there a curfew in place in your town during
this time?

16 A. Yes.

17 Q. When did the curfew begin?

18 A. You mean the day or the other?

19 Q. The day.

20 A. It was 6 a.m. to 8 p.m.

21 Q. Did the curfew begin being imposed on the day of
the coup?

22 A. Yes.

23 Q. I also want to clarify. You said you met with Haag
and

24 Brito and you said they were wearing certain uniforms
which

25 were the uniforms they wore on the street. You said
they had

RICHARD A. KAUFMAN, CMRR

1 some type of insignia?

2 A. The lieutenant colonel has his rank and uses a
uniform,

3 which is a coat.

4 (Page 59 line 4.)

5 Q. Did you believe at the time you were detained you
would be

6 released eventually?

7 A. No.

8 Q. What did you think would happen?

9 A. I thought I would be sentenced or executed.

10 Q. When you say sentenced, sentenced to what?

11 A. Like other -- I suppose like others who had been
sentenced

12 in other cities to life imprisonment.

13 Q. Did you receive news while you were detained?

14 A. Yes.

15 Q. Was that what you referred to when you said you
were afraid

16 you would be sentenced to life in prison like others,
like

17 others you read in the newspaper?

18 A. We had a television set that they supplied us so we
would

19 hear their decrees.

20 Q. What do you mean by decrees?

21 A. The television was intervened by the military and
was only

22 acting under orders of the military.

23 Q. Did the television televise people's sentences?

24 A. Well, they would say, for example, Cocopaiados, was

25 executed or in such and such a place someone was
executed or

RICHARD A. KAUFMAN, CMRR

after 1 somebody was sentenced to life in prison. That was day
2 day.

3 Q. Was it a military person reporting or was it just a
4 journalist?

5 A. A journalist.

Major 6 Q. Let's go back to 6 o'clock on the 12th. You said

7 Anrete came. When he came to get you, did he tell you
to bring 8 your things or leave your things?

9 A. He only called me by my name. He told me I did not
need 10 anything. A soldier put like I say a sleeping bag over
and 11 tied it at the neck. I was taken to a small cell.

12 Q. Did Major Anrete put the bag over your head?

13 A. No.

14 Q. Who did?

15 A. A soldier.

16 Q. Whose name you don't know?

17 A. No.

18 Q. Was this bag a light color or a dark color?

19 A. Green canvas.

could? 20 Q. So you couldn't see anything through it or you

21 A. I couldn't.

22 Q. Do you know what happened next?

no watch, 23 A. I was left at that cell for several hours. I had
10, 11 24 but I couldn't see it anyway, and I guess it was around
25 or 12, midnight.

RICHARD A. KAUFMAN, CMRR

left in

1 Q. Let me back up for a little bit. You said you were

2 a cell. How did you get from the room to the cell?

went up

3 A. It was a closet next to the Fiscalia, because I

4 some stairs. I was taken by a soldier on each side by

the arms.

5 I had been at the Fiscalia before. I sensed that a

door was

6 opened and I was put into a small place. I managed to

untie a

7 little bit my -- and I saw where I was. It was dark,

but I

8 knew it was a closet.

9 Q. Could you, could you feel how big the walls were?

How do

10 you know it was a closet?

11 A. That is what I know because I was able to touch.

12 Q. Were you told anything when you were put into the

closet?

13 A. They told me I was going to be held there. That is

all.

14 Q. They left the bag over your head?

15 A. With the bag over my head and instructions not to

remove it

16 and two soldiers outside.

17 Q. How do you know the two soldiers were outside?

18 A. They were talking among themselves.

19 Q. You said you were there until about midnight. How

did you

20 know?

21 A. Because when -- I guess it was four. I wouldn't
know if

22 another person who was there, who was silent. I was
taken, I

23 was taken out to the hallway. They talked among
themselves. I

24 was placed in a car and they started to drive for, I
think it

25 was around 20 minutes. We came to a certain place. I
was

RICHARD A. KAUFMAN, CMRR

1 taken down. I felt it was cold. I figured I was
somewhere in

2 the mountain.

3 Q. Let's back up. How close is Copiapo to a mountain?

4 A. Right there.

5 Q. Did you still have the sack on your head?

6 A. Yes but my arms were -- I was with a shirt only.

7 Q. Did you know how many soldiers were in the car?

8 A. I think four or at the very least I heard four.

9 Q. Did you recognize any of their voices?

10 A. Yes.

11 Q. Whose voices did you recognize?

12 A. Juan Morales -- I recognized the voice of Juan
Morales,

13 Sergeant Garrido, Sergeant Bernal and Major Brito.
Major Brito

14 would go by the name of Barrionuevo.

15 Q. Can you translate that?

16 A. New neighborhood.

17 Q. Do you know why they went by that name?

18 A. No. It is actually the first time I ever recalled
it

19 again.

20 Q. You said they brought you to a place and you felt
it was

21 cold and they took you out of the car. What happened
after

22 that?

23
wooden chair.

A. We went inside a car. I was made to sit on a

24 My clothes were taken off completely. Electrodes were

25 connected to my hands, here. I was interrogated, asked
many

RICHARD A. KAUFMAN, CMRR

1 things about weapons, who were other leaders, who was
here, who

2 were we going to execute and they would ask us
questions again

3 and again and when I couldn't respond, there were
electrodes on

4 the genitals and the mouth, the nose and at one point
the eyes.

5 Q. So they moved the electrodes from your hands to
other

6 places?

7 A. Yes. They would remove them and put them under a
bag.

8 They would not remove the bag, they would put them
under.

9 Q. Did you answer their questions?

10 A. Some I did, some I didn't.

11 Q. Can you describe whether or not you were in pain?

12 A. You cannot describe the pain. That is not pain, it
is

13 something else. What I knew was, my body would kind of
jerk.

14 My body would kind of fold into itself. They would
straighten

15 my body out, put somebody with his foot there and I was
-- they

16 would straighten out my body. I know I lost
consciousness

17 several times.

18 Q. Who was asking you the questions?

19 A. Morales, Brito, Bernal. Mainly Major Brito.

20 Q. How often would you get shocked?
21 A. They would not even give me time to answer before
they
22 would give me another.
23 Q. You said you lost consciousness several times?
24 A. Yes.
25 Q. Do you know how long you lost consciousness?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. What happened when you woke up?

3 A. I felt like they were talking

4 (page 65 line 22.)

5 THE COURT: Is this a good place to break?

6 MR. DAVIS: Yes.

7 Do not discuss this case amongst yourselves or
anyone

8 else. Have no contact whatsoever with anyone
associated with

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

10 matter in any way. If anybody should try to talk to
you about

11 this case, instruct them to immediately stop and be in
contact

12 with my staff concerning it.

13 Give your notebooks to the security officer.
If you

14 are taking notes, make sure you identify your notebook
by the

15 number of your seat. That way we can make sure we get
your

16 notebooks back to you.

17 Tomorrow we are 9:30 to 12.

18 Have a nice afternoon and evening. I will see
you

19 tomorrow.

20 (Jury leaves room.)

until

21 THE COURT: We are in recess in this matter

22 tomorrow morning at 9:30.

23

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RICHARD A. KAUFMAN, CMRR

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

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Date

Official Court Reporter

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RICHARD A. KAUFMAN, CMRR