

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
24, 2003		)	
		)	
	ARMANDO FERNANDEZ-LARIOS,	)	
		)	
	Defendant.	)	
		)	
	-----	)	x

VOLUME 3

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.
	ROBERT KERRIGAN, ESQ.
For the Defendant:	STEVEN W. DAVIS, ESQ.

Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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WITNESSES FOR THE PLAINTIFF:

DR. ELVIRA MIRANDA 178

WITNESSES FOR THE DEFENDANT:

EXHIBITS

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DEFENDANT'S

RICHARD A. KAUFMAN, CMRR

1 (Open court. Jury not present.)

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

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

4 Would counsel state their appearances.

5 (All parties present.)

6 THE COURT: Since all the jurors have just  
7 arrived, are we ready to begin?

8 MR. DAVIS: Yes. Mr. Kerrigan informed me  
they have a  
9 witness that flew in from Chile --

10 THE COURT: Do you wish to proceed with the  
witness  
11 then continue reading afterwards?

12 MR. DAVIS: Yes, Your Honor.

13 THE COURT: That is fine. I will inform the  
jurors.

14 (Jury present.)

15 THE COURT: Ladies and gentlemen, Mr. Davis is  
going  
16 to hold off the continuation of the reading of the  
deposition  
17 that he started yesterday and the plaintiff is going to  
be  
18 calling a witness at this time.

19 We will take that witness out of turn.

20 MR. KERRIGAN: We call Elvira Miranda.

21 Thereupon - -

22

23

ELVIRA MIRANDA,

24  
first duly

called as a witness by the plaintiffs, having been

25

sworn, testified as follows:

RICHARD A. KAUFMAN, CMRR

1 DIRECT EXAMINATION

2 BY MR. KERRIGAN:

3 Q. Good morning doctor.

4 A. Good morning.

5 Q. Would you tell us your name, please?

6 A. Elvira Miranda Vasquez.

7 Q. What is your profession, doctor?

8 A. I am a clinical pathologist, a cytopathologist and  
a  
9 medical examiner.

10 Q. What is a clinical pathologist?

11 A. It is a pathologist that deals with illnesses in  
patients  
12 by way of microscopic studies, as well as the deceased  
persons  
13 in hospitals.

14 Q. Do you perform autopsies?

15 A. Not at this time.

16 Q. Have you performed autopsies in the past?

17 A. Yes.

18 Q. Could you at this time give us a summary of your  
19 educational background?

20 A. Seven years University studies of premed to obtain  
the  
21 degree of clinical physician. After that three years  
of  
22 specialization in clinical pathology. Four years  
working as a

as a 23 clinical pathologist in the hospital. And four years  
24 medical examiner pathologist. Exclusively.  
years of 25 Q. Dr. Miranda, could you tell us about the latter

RICHARD A. KAUFMAN, CMRR

1 your training in pathology and start with the clinical  
2 experience you had that I think was about three years  
in  
3 duration?

4 A. It is three years for forensic pathologist to be  
trained.

5 Excuse me. For clinical pathologist to be trained.  
After that

6 I spent four years working as a clinical pathologist  
full-time  
7 at a hospital. After that I entered service with the  
legal  
8 medical service as a forensic pathologist.

9 Q. Doctor, you indicated you are not now performing  
autopsies.

10 What does your present practice consist of?

11 A. My specialty has become more and more  
subspecialized. At

12 this time at the legal medical service, I have a short  
workday,

13 during which I perform microscopic studies of autopsies  
that

14 others perform in order to clarify the causes of death.  
The

15 rest of my workday I spend at the cancer control  
laboratory

16 working on, doing work on uterine cancer as a cyto-  
17 pathologist.

18 Q. The subspecialty that you are now engaged in is  
called

19 what?

20 A. Histo forensic pathology on the one hand, and cyto-  
21 pathology on the other hand.

22 Q. Have you been directed by judges in Chile to  
perform  
23 autopsies in the past?

24 A. Yes.

25 Q. Would you explain what the designation "medical  
legal"

RICHARD A. KAUFMAN, CMRR

1 means in Chile?

2 A. It is what is known over here as a medical  
examiner.

3 Q. Are you required to give opinions on causes of  
death to the  
4 courts in Chile?

5 A. It may be so, yes. Frequently, but it may be in a  
written  
6 form, not in an oral form. Judges send me questions  
along with  
7 some of the backgrounds they have been able to gather  
so we can  
8 manage to determine the causes of death.

9 Q. I asked you about the term "medical legal." Can  
that be  
10 distinguished from just a medical practice, or what is  
the  
11 significance of the term "medical legal" in Chile other  
than as  
12 a medical examiner; is there any other designation?

13 A. A canothologist, those that perform autopsies in  
Chile are  
14 called canothologist which comes from the Greek root,  
canoto  
15 which means death, and logos, which is the study of  
death,  
16 therefore.

17 Q. Have you testified in a court before in Chile?

18 A. We don't have this system of justice in Chile. It  
has only

19        been this year they are starting to use it in some  
cities.

20        Q.    In Chile, times before this year, has the medical  
examiner

21        served as an adviser to the judiciary of the country?

22        A.    That is their mission.

23        Q.    Directing your attention to Copiapo in 1990, did  
you have

24        occasion to be involved in the exhumation of bodies in  
Copiapo?

25        A.    Not prior to Copiapo.    Copiapo was the first time.

RICHARD A. KAUFMAN, CMRR

the 1 Q. Let me restate the question. Were you involved in  
2 exhumation of 13 bodies in Copiapo in 1990?

3 A. Yes.

exhumation 4 Q. Will you tell us how you became involved in the  
5 process in 1990?

6 A. The legal medical service in Chile has the  
obligation of 7 performing autopsies, legal medical autopsies by way of  
8 judicial orders issued by judges. On that opportunity,  
the

9 Judge of Copiapo ordered exhumations to be performed at  
the  
10 Copiapo cemetery. At that time we were forming a group  
or we

11 had already formed a group to begin by studying in  
order to  
12 prepare for these events, and such a group did not  
exist until

13 that time. This is how part of our group offered  
itself as  
14 volunteers to the director and we went to Copiapo to  
perform  
15 the exhumations.

16 Q. Who was in the group of the people that went to  
Copiapo  
17 with you?

18 A. There was Dr. America Gonzalez, a forensic  
pathologist,

19 Dr. Patricio Carrasco, a forensic odontologist, a  
photographer,  
20 Carlos Palauo and an autopsy assistant, Ivan Pardo, and  
myself.  
21 That was the team that traveled from Santiago and from  
Copiapo  
22 were added on the medical examiner and his assistant.  
23 Q. What is an odontologist?  
24 A. He is a dentist who has training as a clinical  
dentist with  
25 a specialization in forensic dentistry primarily  
directed

RICHARD A. KAUFMAN, CMRR

case. 1 towards the identification of dental remains, in this

2 Q. In this case, was identification accomplished where  
3 possible by dental remains?

4 A. Yes. In fact, that is what happened. These are  
gathered

5 together and compared against information that is  
acquired

6 concerning victims who had disappeared and suspected to  
be at

7 that place.

8 Q. Why was this done in 1990 and not in earlier years?

9 MR. DAVIS: Objection. There has to be a  
predicate

10 established she would have personal knowledge of that.

11 THE COURT: Sustained.

12 Rephrase your question.

13 BY MR. KERRIGAN:

14 Q. What was your understanding in 1990 by the  
directive given

15 to you by the Court of your mission in Copiapo and the  
time

16 that mission was directed to be accomplished?

17 A. The time allotted to this was minimal. We had to  
identify

18 the bodies recovered from there and advise the Judge of  
the

19 cause of death and the manner in which it took place,  
if it

This is 20 were possible to do so with the background available.

21 through the findings at the site.

this 22 Q. Was General Pinochet still in power in 1990 when

23 exhumation took place?

24 A. No.

25 Q. Were there any other locations in Chile that you  
know about

RICHARD A. KAUFMAN, CMRR

1 where mass graves have been discovered?

2 MR. DAVIS: Objection, relevance.

3 THE COURT: Sustained.

4 BY MR. KERRIGAN:

5 Q. Have you been involved in forensic work in any  
other mass  
6 grave sites in Chile?

7 A. Yes, at Paine working on some bone remains located  
by the  
8 legal medical service.

9 Q. Have you done other laboratory analysis of other  
remains  
10 that have been provided to you for analysis that have  
come from  
11 other sites in the country?

12 MR. DAVIS: Objection, relevance.

13 THE COURT: Sustained.

14 BY MR. KERRIGAN:

15 Q. Did you have any preconceived views of what you  
would find  
16 in Copiapo as a result of the exhumation before you  
began the  
17 work that you began?

18 MR. DAVIS: Objection. That is an improper  
question.

19 THE COURT: Sustained.

20 MR. KERRIGAN: May it please the Court, I  
didn't

21 understand the basis of the objection. It is an  
improper

22 question but I don't understand the objection.

23 THE COURT: Sustained. Rephrase your  
question. It is

24 leading.

25 BY MR. KERRIGAN:

RICHARD A. KAUFMAN, CMRR

1 Q. Did you do work preparatory to the exhumation in  
Copiapo in

2 1990 before you went to Copiapo?

3 A. Yes. By studying with our group concerning the  
best way to

4 work with the bone remains, the best way to identify  
them and

5 also working and looking through the literature as the  
best way

6 to conduct the identification.

7 Q. Were there also professional archeologists at this  
site?

8 A. Yes.

9 Q. What was their role?

10 A. Yes. They are appointed by the Judge, and their  
mission is

11 to carry out the excavations and obtain in the best way

12 possible the preservation of the bone remains.

13 Q. The team of physicians that were with you and the  
14 photographer, as well as the professional  
archeologists, were

15 they all at the exhumation at the same time that the  
exhumation

16 was taking place?

17 A. That is correct.

18 Q. This was all under the orders of a Judge in Chile  
at the

19 time?

20 A. Yes, correct.

21 immediately

Q. When you went to Copiapo, were you able to

22 found?

identify the site where the bodies were ultimately

23 different

A. No, excavations were performed first in several

24

places before we found the place where the remains were

25

located.

RICHARD A. KAUFMAN, CMRR

with the 1 Q. Was there a videotape recording made simultaneous  
2 work you did at the site?

made, but 3 A. Yes. At that time there was a videotape that was  
4 it had nothing to do with our team.

5 Q. Have you had a chance to view that videotape?

6 A. Yes.

you 7 Q. Does the videotape accurately record the events as  
8 recall them when you were there and I think you are  
actually in 9 some of the videotape?

10 A. That is so.

portion, 11 Q. At this time, Dr. Miranda, we will play a small  
12 just the first cut of this tape and ask you to describe  
that.

13 MR. DAVIS: May we have a side bar?

14 THE COURT: Come up.

15 (Side bar.)

excerpt but I 16 MR. DAVIS: I don't know the particular  
17 have seen the entire tape and there are some parts  
which are 18 quite gruesome.

evidence? You 19 THE COURT: Are you offering this into  
20 just can't play the tape.

21                   MR. KERRIGAN: I understand but the doctor has  
to be  
22                   able to describe what she has seen then we will put it  
into  
23                   evidence.  
24                   I don't understand the objection.  
25                   MR. DAVIS: There are some parts of this that  
are

RICHARD A. KAUFMAN, CMRR

1 quite gruesome. That is why I object to the entire  
tape.

2 MR. KERRIGAN: I will have her identify the  
3 abbreviated portions. We tried to take the portions  
out.

4 THE COURT: Have you seen the portions they  
want to  
5 play?

6 MR. DAVIS: No. I don't know what they  
propose to  
7 play.

8 MR. KERRIGAN: The first two or three  
segments. If we  
9 could take a break, there might be some question about  
it but  
10 they actually identify the remains of Winston Cabello.  
It is  
11 heart part of our case and she will identify it. We  
have  
12 pictures of a jacket that was recovered from the grave,  
so we  
13 think it is relevant and probative. We don't go  
through an  
14 extended display of everybody else. That is what the  
three  
15 hour tape would have done. We tried to condense it  
with  
16 respect to our client, Mr. Cabello.

17 THE COURT: Do you know what portions he is  
talking  
18 about?

19 MR. DAVIS: I have a general idea. I have the  
same  
20 objection. It is gruesome. We stipulate the man was  
dead and  
21 we will stipulate he died from external causes. To  
that  
22 extent, I don't know what the point of this is other  
than to  
23 inflame the jury. Obviously, my defense is my client  
didn't do  
24 it; but the purpose of this is only to inflame the  
jury.

25 THE COURT: How long is the taped portion?

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: The first portion is two  
minutes and it  
2 shows how they lined out the soil and tried to identify  
it and  
3 they actually had the wrong spot. The next cut is  
where the  
4 bodies were buried and they begin the exhumation  
process and it  
5 shows the archeologists carefully dusting off each bone  
and  
6 trying to preserve each body.

7 THE COURT: How long is that segment?

8 MR. KERRIGAN: Maybe three minutes. Once we  
do see  
9 it, I can tell him to stop it until we get to a point  
where we  
10 want to play the whole segment. There are two or three  
other  
11 segments, but none of them would be over three or four  
minutes.

12 THE COURT: I can't make a determination  
without  
13 seeing it whether or not its purpose is to inflame the  
jury. I  
14 wish while we were waiting for the jurors I could have  
been  
15 looking at it then.

16 I will send the jury out and you can play the  
tape for  
17 me.

18 You don't have any objection to the  
authenticity of

19 the tape?

20 MR. DAVIS: No.

21 MR. KERRIGAN: The first two cuts won't bother  
22 anybody. It is later in the cuts where you see the  
skulls.

23 THE COURT: You could show it to him and maybe  
he will

24 say okay. You didn't show it to him.

25 MR. DAVIS: If he is showing soil stuff, I  
have no

RICHARD A. KAUFMAN, CMRR

1 objection to that.

2 THE COURT: The second portion?

3 MR. KERRIGAN: You see a bone, some indication  
of a  
4 body and the point was to show it was a scientifically  
5 preserved site.

6 In our case there is an major issue about  
wounds to  
7 the body which we say could have been made by a knife  
wound and  
8 there are marks on the sweater of his that show --

9 THE COURT: Do you object to the first two  
cuts?

10 MR. DAVIS: I do not.

11 THE COURT: You need to move it into evidence.  
You  
12 just can't play it.

13 MR. KERRIGAN: I understand.

14 THE COURT: If there is no objection to it,  
you can  
15 move it into evidence so it is properly in the record.

16 The third cut?

17 MR. KERRIGAN: I will stop with that and be on  
the  
18 safe side to make sure there is nothing offensive. I  
will work  
19 with Steve on the break with that.

20 (Open court.)

21 THE COURT: Do you have an exhibit number to  
identify

22 for me?

23 MR. KERRIGAN: It is number 5, but for the  
record it

24 will be a greatly abbreviated portion of number 5 as  
described

25 on your list.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Is there any objection other than  
as  
2 indicated side bar?

3 MR. DAVIS: Just as indicated at side bar  
other than  
4 the two portions.

5 THE COURT: I will admit the first two  
excerpts of  
6 Plaintiffs' Exhibit 5 into the record and you may  
publish.

7 (A document was received in  
8 evidence as Plaintiffs' Exhibit 5.)

9 BY MR. KERRIGAN:

10 Q. Dr. Miranda, at this time we will play a very small  
portion  
11 of the videotape that was an earlier portion when they  
were  
12 trying to identify where the location of the bodies  
might be.

13 I will ask you to watch this tape and I will have a  
question or  
14 two about it.

15 (Videotape played.)

16 BY MR. KERRIGAN:

17 Q. What is the location of what we are now seeing?

18 A. The cemetery at Copiapo.

19 Q. Were the bodies ultimately found somewhere on the  
cemetery  
20 grounds?

21 A. That is correct, yes.

22 Q. As this tape goes on, in just a moment we will see  
some

23 marks on the ground like a grid. What was the purpose  
of what

24 we are now seeing, marking off the portion we see?

25 A. Well, archeologists have their system to mark off  
what they

RICHARD A. KAUFMAN, CMRR

1 are going to excavate in accordance with the background  
2 information they had.

3 Q. So the archeologists were actually controlling the  
4 exhumation protocol, the exhumation procedure?

5 A. Yes.

6 Q. Here they are marking on the ground, it looks like  
squares  
7 that are being marked?

8 A. I think their idea was the bodies could be there.  
They  
9 could be, somehow, in boxes, because I see it is very  
carefully  
10 lined off.

11 MR. KERRIGAN: We can stop that now.

12 BY MR. KERRIGAN:

13 Q. Was this the site where the bodies were found?

14 A. No.

15 Q. Were the bodies ultimately found in this cemetery  
location?

16 A. Close by to that sector where the initial  
excavation was  
17 done.

18 Q. Was the legal doctor of Copiapo present when this  
19 exhumation process was underway?

20 A. He was there also, and the Judge of Copiapo was  
there also.

21 Q. Would you describe for us the process that was  
followed to

22  
acceptable to

preserve the remains in such a fashion that was

23  
actually

you and to the archeologists; what information was

24

followed?

25  
had

A. The remains were carefully removed. First when we

RICHARD A. KAUFMAN, CMRR

1 indications they could possibly be there, they started  
using  
2 heavy picks and shelves. After that when we saw the  
first  
3 indications, which if I remember correctly, were some  
pieces of  
4 paper. They switched over to smaller shelves and  
brushes.

5 The bodies are uncovered carefully and the  
6 archeologists proceed to isolate them in order to  
extract them  
7 in the most careful manner possible. They are  
retrieved in  
8 whatever measure it is possible to do so. The skulls  
are  
9 covered with aluminium foil and the rest of the body is  
10 deposited into plastic bags, and they are then closed  
with the  
11 appropriate label.

12 Q. I think it is aluminum foil. Is it aluminum foil?

13 THE INTERPRETER: The interpreter would advise  
the  
14 Court as an Englishman he has used the English  
expression for  
15 aluminum foil. We say aluminium.

16 MR. KERRIGAN: Thank you.

17 BY MR. KERRIGAN:

18 Q. Doctor, I would like to ask you now, I think you  
have some  
19 papers with you, I would like to ask you to discuss  
with us now

20 the actual findings that were made at the site and if  
you need

21 to refer to your papers you may do so?

22 A. Yes.

23 MR. KERRIGAN: At this time we offer into  
evidence,

24 or initially for identification, however the Court  
pleases, the

25 following exhibits which are the 13 autopsy reports  
that has

RICHARD A. KAUFMAN, CMRR

1       been translated into English by a certified translator.

2               THE COURT:   What are the exhibit numbers?

3               MR. KERRIGAN:   Exhibits 23, 25, 27 and every  
odd

4       number through 47.  There should be 13 in total.

5               THE COURT:   Have you presented these to  
defense

6       counsel?

7               MR. DAVIS:   I have them, Your Honor.  I do  
have an

8       objection.

9               THE COURT:   Are you going to go through the  
predicate

10       with each exhibit?

11               MR. KERRIGAN:   Yes.

12               THE COURT:   Is it one objection as to all?

13               MR. DAVIS:   We can probably handle this side  
bar.

14               (Side bar.)

15               MR. DAVIS:   I do not have a problem with  
authenticity.

16       Mr. Cabello's report would be relevant.  The other  
twelve would

17       not be relevant.  This is the various versions of what  
they

18       have of the translation.  This is the conclusion of  
what she

19       comes up with.

20               THE COURT:   Let me ask the question.  How many  
others

21 are there?

22 MR. KERRIGAN: A total of 13 based on the  
crimes

23 against humanity count.

24 THE COURT: Are there findings in the report  
the

25 remains were buried at the same time?

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: Yes. She has dated on each  
one --

2 THE COURT: She completed these reports?

3 MR. KERRIGAN: All of her reports or her  
colleague,

4 Mr. Gonzalez.

5 THE COURT: The date of death is at the same  
time?

6 MR. KERRIGAN: Yes.

7 THE COURT: I will overrule the objection  
based on the  
8 crimes against humanity.

9 (Open court.)

10 BY MR. KERRIGAN:

11 Q. The 13 autopsy reports we are going to discuss, can  
you  
12 tell us whether all of these bodies were killed, all of  
these  
13 people were killed at the same time resulting in this  
mass  
14 grave?

15 A. Yes. They show indications of all having died at  
one time.

16 Q. Dr. Miranda, were these autopsy reports prepared as  
part of  
17 your official duties there in response to the Court  
order for  
18 the exhumation?

19 A. Yes.

20 conclusions in

21 bit more

23 the name

Q. I would like to address now basically the

twelve of the 13 men and we will discuss in a little

detail, Mr. Cabello.

24 Could you go to the first report and identify

25 of the person that was ultimately determined to be that

person's identity?

RICHARD A. KAUFMAN, CMRR

1                   THE COURT: You will have to identify the  
exhibit,  
2                   have her identify the exhibit or stipulate as to the  
3                   identification of the numbers and move them into  
evidence,  
4                   otherwise your record will not be clear.

5                   MR. KERRIGAN: I agree, Your Honor, and we  
haven't  
6                   done that correctly.

7                   BY MR. KERRIGAN:  
8                   Q. Would you identify first Mr. Cabello's autopsy  
report?

9                   THE COURT: What exhibit is that?  
10                   The easiest way to do this since I have  
overruled the  
11                   objection is have her identify all the reports and the  
12                   translations and to move them into evidence and you can  
13                   question her about them.

14                   MR. KERRIGAN: Would it be better if we  
identify them  
15                   by numbers?

16                   THE COURT: Use the numbers on your exhibit  
list.

17                   MR. KERRIGAN: So we have number 23 straight,  
which  
18                   is Mr. Cabello, then I propose to have her identify  
them as we  
19                   go along and attach those numbers.

20                   THE COURT: Okay.

21 BY MR. KERRIGAN:

22 Q. Dr. Miranda, we were discussing how to do this  
23 procedurally.

24 A. Thank you.

25 Q. I want you to wait and discuss Mr. Cabello's  
autopsy report

RICHARD A. KAUFMAN, CMRR

1 after we discuss briefly the others; okay?

2 A. Yes.

3 Q. If you would first identify the name of the person,  
then I

4 will announce for our record what that exhibit number  
will be

5 so we have it straight.

6 A. The name on this case is Pedro Perez Flores.

7 MR. KERRIGAN: Your Honor, at this time we  
identify

8 that autopsy report as Exhibit 25.

9 BY MR. KERRIGAN:

10 Q. Can you tell us what your findings were or the  
official

11 findings of the wound -- the official findings of the  
remains

12 that you made?

13 THE COURT: Are you moving it into evidence?

14 MR. KERRIGAN: I thought we had done that  
side.

15 I move it into evidence.

16 THE COURT: It will be admitted as Plaintiffs'  
Exhibit

17 25.

18 (A document was received in  
19 evidence as Plaintiffs' Exhibit 25.)

20 THE COURT: What is the original report? Is  
the

21 original report --

22 MR. KERRIGAN: The originals are even  
numbers.  
23 THE COURT: Are you also moving in 24 or just  
the  
24 English translation.  
25 MR. KERRIGAN: Just the English translation.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Any objection?

2 MR. DAVIS: Only the original objection.  
Other than

3 that there is no objection.

4 THE COURT: It will be admitted as Exhibit 25.

5 (A document was received in  
6 evidence as Plaintiffs' Exhibit 25.)

7 BY MR. KERRIGAN:

8 Q. We are in Exhibit 25.

9 Would you now tell us, Dr. Miranda, what  
findings you  
10 made in the examination of this body?

11 MR. DAVIS: Your Honor, I am sorry. If I may  
try to

12 coordinate the numbers. They changed the numbers on  
the

13 exhibit.

14 MR. KERRIGAN: It is 41.

15 THE COURT: We are on 25?

16 MR. KERRIGAN: Yes, Your Honor. We are  
waiting for

17 Mr. Davis to find it because apparently these numbers  
changed.

18 THE COURT: How about putting it on the  
screen, it

19 might help Mr. Davis.

20 BY MR. KERRIGAN:

21 Q. We are all together on Exhibit 25; correct? Would  
you

22 please now tell us the results of your findings?

23 A. The cause of death for Pedro Perez Flores was a  
cranial

24 facial trauma. Trauma to the upper extremities and the

25 thoracic area.

RICHARD A. KAUFMAN, CMRR

1                   THE COURT: I have Exhibit 25 as Agapita  
Carmen  
2                   Carvajal.  
3                   BY MR. KERRIGAN:  
4                   Q. Would you go to --  
5                   THE COURT: Let's do this. Take ten minutes  
and I  
6                   will have you straighten this out so we could go  
forward  
7                   smoothly.  
8                   Do not discuss this case amongst yourselves or  
anyone  
9                   else. Have no contact whatsoever with anyone  
associated with  
10                  the trial. Do not read or listen to anything touching  
on this  
11                  matter in any way. Be back in the juryroom in ten  
minutes. If  
12                  anybody should try to talk to you about this case,  
instruct  
13                  them to immediately stop and be in contact with my  
staff  
14                  concerning it.  
15                  (Jury leaves room.)  
16                  THE COURT: The numbering system has to be the  
same as  
17                  I have on my exhibit list. If you change the numbering  
system  
18                  on me, you need to organize it and present the reports  
to her

19 with an exhibit number, have her identify it, move it  
into  
20 evidence and you can question her about it. It is a  
pretty  
21 simple process.

22 MR. KERRIGAN: It is, Your Honor. I don't  
know how  
23 it got fouled up.

24 THE COURT: Make sure Mr. Davis is aware what  
the  
25 numbers are. She will be reading from the autopsy  
reports I

RICHARD A. KAUFMAN, CMRR

1 have admitted into the record. You have to identify  
the 2 exhibit she is reading from.

3 MR. KERRIGAN: The number you have is  
correct. The 4 problem is this witness does not have that numbered  
list. We 5 will take care of that in short order.

6 THE COURT: Okay. Ten minutes.

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

9 (Open court. Jury not present.)

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

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

12 Would counsel state their appearances.

13 (All parties present.)

14 MR. KERRIGAN: Your Honor, briefly, the  
problem 15 resulted because the witness will be looking at an  
exhibit in 16 Spanish. Our translation is a different number but we  
have 17 figured that out with the Court's permission to  
identify all 18 the even numbered exhibits starting with 22 through 46  
solely 19 for identification purposes. These are the Spanish  
versions of

out on 20 the autopsy reports and I think we can straighten this  
21 the record in front of the jury.  
22 THE COURT: Bring the jury in.  
23 (Jury present.)  
24 THE COURT: You are still under oath, ma'am.  
25 Thereupon --

RICHARD A. KAUFMAN, CMRR

1

2

ELVIRA MIRANDA,

3

called as a witness herein, having been previously duly

sworn,

4

was examined and testified further as follows:

5

THE COURT: You may proceed.

6

MR. KERRIGAN: At this time for the record,

we will

7

withdraw our erroneous identification of Exhibit 25 and

we will

8

be back on our exhibit list which we will announce as

we go

9

through each one of these.

10

THE COURT: So 25 is not in evidence?

11

MR. KERRIGAN: It is not, Your Honor.

12

THE COURT: It is withdrawn.

13

Proceed.

14

BY MR. KERRIGAN:

15

Q. Would you please refer to Exhibit 24 which has been

marked

16

for identification and announce the name of the person?

17

THE INTERPRETER: The witness is speaking to

counsel

18

saying number 25 is in English is number 24 in Spanish.

Is

19

that correct?

20

BY MR. KERRIGAN:

21

Q. That is correct.

your 22 If you will identify the name of the person on  
which we 23 Spanish version of the autopsy report, the original of  
24 have marked as Exhibit 24?  
in 25 A. I apologize for insisting, but 25 in English is 24

RICHARD A. KAUFMAN, CMRR

1 Spanish.

2 THE COURT: Just identify the name on 24.

3 A. Agapito del Carmen Carvajal Gonzalez.

4 MR. KERRIGAN: We offer Exhibit 25.

5 THE COURT: It will be admitted as Exhibit 25.

6 (A document was received in  
7 evidence as Plaintiffs' Exhibit 25.)

8 BY MR. KERRIGAN:

9 Q. You may refer to Exhibit 24, your Spanish version.

10 What were your findings regarding the body of  
Senor  
11 Gonzalez?

12 A. The cause of death was thoracic trauma, thoracic  
and right  
13 lower extremity trauma by way of projectiles with exit.

14 The main trajectory of projectiles was,  
through the  
15 thorax based on examination of clothing from front to  
back.

16 In the lower right extremity, based on  
examination of  
17 the bone from back to front.

18 Q. Dr. Miranda, were the indications you just gave us  
from  
19 projectiles; what does that mean, projectiles?

20 A. Referring to projectiles from a firearm.

21 Q. Did you say that the lower extremity -- was that an  
injury

the 22 to the femur or what portion of the lower extremity did  
23 injury occur to?  
24 A. Specifically to the femur.  
to 25 Q. The femur entrance of the projectile was from back

RICHARD A. KAUFMAN, CMRR

1 front?

2 A. That is correct.

3 Q. And the thoracic entry of the projectile was from  
front to

4 back?

5 A. That is correct.

6 Q. Would you now go to -- we should define thoracic.  
What do

7 you mean when you say thoracic, or thorax?

8 A. Specifically, to fractures on the ribs.

9 Q. How many ribs were fractures of Senor Gonzalez?

10 A. At least two.

11 Q. Would you now go to Exhibit 26 and identify the  
name of the

12 person first?

13 A. My 26 corresponds to Fernando Del Carmen Carvajal  
Gonzalez.

14 MR. KERRIGAN: We move into evidence the  
English

15 translation of this autopsy report which is Exhibit 27.

16 THE COURT: Any objection, other than  
previously

17 stated?

18 MR. DAVIS: No.

19 THE COURT: It will be admitted as Plaintiffs'  
Exhibit

20 27.

21 (A document was received in

22 evidence as Plaintiffs' Exhibit 27.)

23 BY MR. KERRIGAN:

24 Q. Would you tell us your findings on the remains of  
this

25 person?

RICHARD A. KAUFMAN, CMRR

1 A. Because these bones were incomplete, it was not  
possible to  
2 establish the specific cause of death.

3 Q. Did you find any evidence in this autopsy report of  
trauma  
4 of any kind?

5 A. I am looking through the clothing. No. The bone  
remains  
6 were considerably incomplete, and the clothing does not  
show  
7 any evidence that would characterize any type of wound.

8 Q. Would you go now to exhibit, your Exhibit Number 28  
and  
9 identify the name of the person?

10 A. Manuel Roberto Cortazar Hernandez.

11 MR. KERRIGAN: At this time we move into  
evidence  
12 Exhibit Number 29, which is the English translation of  
Exhibit  
13 28.

14 MR. DAVIS: The same objection as before.

15 THE COURT: It will be admitted as Plaintiffs'  
Exhibit  
16 29.

17 (A document was received in  
18 evidence as Plaintiffs' Exhibit 29.)

19 BY MR. KERRIGAN:

20 Q. What were your findings in regard to Senor  
Hernandez?

pelvian 21 A. The cause of death was traumatism to the thoracic  
22 area as well as the lower right extremity by  
projectile. The  
23 characteristics of the gun shots means that they are of  
the  
24 homicidal nature, such as it is described within the  
report.  
25 Q. Are you able to tell us how many projectiles caused  
this

RICHARD A. KAUFMAN, CMRR

1 damage to the bones that you observed?

2 A. At least two.

3 Q. Earlier you had indicated that you observed  
clothing. What

4 is the purpose of looking at clothing for your  
analytical

5 analysis?

6 A. When examining all types of bodies with or without  
soft

7 tissue, it is important to consider the clothing  
because upon

8 them there would be or could be traces of gun powder or  
carbon

9 particles from projectiles, in the case of projectiles.  
The

10 size of the holes leads us to analyze the size and the  
11 trajectory of the projectiles. This will allow us to  
be able

12 to develop a gear and establish guidance whether the  
13 projectiles were front to back, back to front, in an  
angle or

14 lateral and also the size of the holes will allow us to  
know

15 which was the entrance and which was the exit of the  
16 projectile.

17 Q. Were you able to determine with Senor Hernandez,  
were you

18 able to determine the direction of the projectiles, I  
believe

19 you said at least two?

means it

20 A. It is not described within the conclusions, which

21 is probable this may not be determined in this case.

marked

22 Q. Would you now go to your Exhibit Number 30 which is

there?

23 for identification and indicate the name of the victim

24 A. Alfonso Ambrosio Gamboa Farias.

evidence

25 MR. KERRIGAN: At this time we move into

RICHARD A. KAUFMAN, CMRR

Exhibit 1 Exhibit Number 31 which is the English translation of  
2 Number 30.

Exhibit 3 THE COURT: It will be admitted as Plaintiffs'  
4 31.

5 (A document was received in  
6 evidence as Plaintiffs' Exhibit 31.)

7 BY MR. KERRIGAN:

8 Q. Dr. Miranda, could you give us your findings in  
regard to 9 Senor Farias?

10 A. Gamboa Farias. The cause of death was thoracic  
traumatism 11 with exit of the projectiles, with a primary trajectory  
from 12 front to back.

13 Q. Could you describe specifically what damage you  
observed to 14 the remains here?

15 A. There is a fracture on the right scapula.

16 Q. Where is the scapula in the human body?

17 A. It is here, on your back.

18 Q. Could you determine if that was front to back or  
back to 19 front?

20 A. Here on the bone, the projectile will leave a mark  
upon

of the 21 entry and upon exit. In this case the characteristics  
projectile 22 orifice, or the trauma to the bone shows that the  
23 traveled from front to back.  
has been 24 Q. Would you now go to your Exhibit Number 32 which  
victim 25 marked for identification and indicate the name of the

RICHARD A. KAUFMAN, CMRR

1 there, please?

2 A. Raul Guardia Olivares.

3 MR. KERRIGAN: We move into evidence Exhibit  
33 which  
4 is the English version of Exhibit 32.

5 THE COURT: It will be admitted as Plaintiffs'  
Exhibit  
6 33.

7 (A document was received in  
8 evidence as Plaintiffs' Exhibit 33.)

9 BY MR. KERRIGAN:

10 Q. What were your findings in regard to Senor  
Oliveras?

11 A. The cause of death was cranial facial trauma as  
well as  
12 trauma to the cervical spine as well as to the thoracic  
area.

13 Q. Dr. Miranda, would you tell us what you mean in  
terms of  
14 the anatomy, what damage to the cranial area is;  
specifically

15 Dr. Miranda, what part of the body are we talking  
about?

16 A. We are talking about the head, but I am being more  
specific  
17 speaking about the face area and the area of the  
cranium which  
18 is the rest of the bones in the head.

19 Q. What specific damage did you observe to the bones  
in the

20 head?

21 A. A fracture to the parietal or the bones on the left  
side of

22 the cranium.

23 Q. Were you able to determine what caused that damage?

24 A. No. The bones did not show any evidence of  
projectiles,

25 but this could not be outruled, either.

RICHARD A. KAUFMAN, CMRR

kind of 1 Q. Could some other form of blunt trauma cause that  
2 damage?  
3 A. That is correct. A major trauma.

Explain 4 Q. Would you go on to the remainder of your findings.  
5 what damage you observed or what damage you observed  
6 remains?  
7 A. The bones in the head did not show, or were not  
8 present.  
9 The bones for the nose or the bones here at the  
10 cheekbones.  
11 There was a small remainder of the upper mandible,  
12 fragmentation of the lower jaw fracture that I already  
13 mentioned in the cranium and fractures to the cervical  
14 vertebrae.  
15 Q. What is the spinous process of the cervical  
16 vertebrae?  
17 A. The vertebrae has some side plates and some spiny  
18 apothesis  
19 which is what you can touch upon your own body  
20 specially at the  
21 seventh vertical vertebrae as a prominent bone.

17 Q. Was there damage to the spinous process?  
18 A. Yes.

19 Q. Were you able to determine the cause of that?  
20 A. There were no specific marks on the bones to  
indicate any

21 object that could have caused this damage.

22 Q. Where is the thoracic vertebrae?

23 A. The vertebrae starts at the base of the cranium  
with seven

24 cervical vertebrae. The seventh one is the one that  
any person

25 can touch upon themselves as the most prominent one of  
the

RICHARD A. KAUFMAN, CMRR

other, 1 seven. There are twelve dorsal vertebrae one after the  
2 and these would correspond to the thoracic vertebrae.

about, 3 Q. The damage to the spinous process you just told us  
4 was this something that would have occurred by natural  
decay, 5 or is this trauma induced, if you know?

from 6 A. It is very improbable that it could have happened  
7 natural causes. This is a very firm bone. It is not a  
soft 8 bone.

buried 9 Q. Were the vertebral bones in the 13 people that were  
10 here, other than what you have indicated here and the  
damage to 11 these vertebrae, were they generally intact?

12 A. The majority, yes.

the 13 Q. Summarizing, doctor, would you restate if you would  
14 damage that you found here from whatever external  
source?

to the 15 A. Well, I described the major damage to the head and  
16 cervical spine.

17 Q. What was the likely cause of death here, doctor?

the 18 A. The most important and in and of itself, by itself,  
19 cranial facial trauma.

20 Q. Would you now turn to Exhibit Number 34, marked for  
21 identification purposes and tell us the name of the  
person?

22 A. Raul Leopoldo, Larravide Lopez.

23 MR. KERRIGAN: We move to introduce into  
evidence

24 Exhibit 35, the English translation of the Spanish  
version of

25 the autopsy report reflected in Exhibit 34.

RICHARD A. KAUFMAN, CMRR

Exhibit 1 THE COURT: It will be admitted as Plaintiffs'  
2 35.

3 (A document was received in  
4 evidence as Plaintiffs' Exhibit 35.)

5 BY MR. KERRIGAN:

6 Q. Dr. Miranda, what effect did this process of the  
exhumation  
7 and examination of the remains, what affect did it have  
on you  
8 personally?

9 MR. DAVIS: Objection.

10 THE COURT: Sustained.

11 BY MR. KERRIGAN:

12 Q. Had you ever seen anything like this in your career  
before?

13 MR. DAVIS: Objection.

14 THE COURT: Sustained.

15 BY MR. KERRIGAN:

16 Q. What do you think, Dr. Miranda, as you examined all  
of  
17 those bodies and remains during the period of time you  
did and  
18 reported to the Court was the likely event that caused  
this  
19 death, these deaths?

20 MR. DAVIS: Objection. She can testify about  
the

21 specific findings of the individuals but now he is  
going into

22 events.

23 THE COURT: Sustained.

24 You will need to lay a predicate.

25 BY MR. KERRIGAN:

RICHARD A. KAUFMAN, CMRR

about 1 Q. Let's go to Exhibit 34, your Exhibit 34 and tell us

2 Senor Lopez. What were your findings?

found 3 A. It says here, the study performed or upon a parka

projectiles 4 next to the bones, shows holes that correspond to

5 fired by a firearm.

6 Q. Where were these holes in the clothes?

are five 7 A. At the upper left half, at the middle third, there

diameter, and 8 orifices or holes, the largest, one centimeter in

9 the smallest, point 07 centimeters.

there is a 10 At the back left side at the lower third,

similar at 11 tear twelve by eight millimeters and another that is

12 the level of the armpit on the same side.

projectile 13 Q. Were you able to determine the direction of the

us 14 that was evidenced by the clothing notes you just told

15 about?

back. 16 A. Let me see. They could have been from front to

indicate 17 Q. What are the markings that you find on bones that

you 18 that a projectile caused the damage to the bone that

19 observed?

20 A. The bevel of the fracture is one of the signs and  
the other  
21 is a form or shape that sometimes a projectile will  
leave on a  
22 bone, which is like a semi circular shape.  
23 Q. Did you reach a conclusion in your work that you  
did as to  
24 the manner in which these wounds would have been  
inflicted on  
25 the victims you examined?

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Objection. He should break it  
down to one  
2 person.

3 THE COURT: Sustained.

4 Rephrase your question.

5 BY MR. KERRIGAN:

6 Q. Based on your examination of each one of the bodies  
and  
7 remains that you examined, did you reach a conclusion  
as to the  
8 manner in which these various wounds and trauma could  
have been  
9 produced?

10 Did you reach a conclusion?

11 MR. DAVIS: Objection. It is going into  
opinion  
12 testimony beyond the scope of what this witness was  
offered for  
13 or disclosed at pretrial.

14 THE COURT: Sustained.

15 BY MR. KERRIGAN:

16 Q. Did you file or make any conclusions given to  
official  
17 government bodies in Chile?

18 A. These reports that have been read here --

19 MR. DAVIS: That was a yes or no question.

20 THE COURT: Sustained as to the narrative.

21 Answer the question yes or no, ma'am.

22 BY THE WITNESS:

23 A. Yes.

24 BY MR. KERRIGAN:

25 Q. Would you explain your answer.

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: That does call for a narrative. I  
don't  
2 know where this is going.

3 MR. KERRIGAN: I did not ask a yes or no  
question. I  
4 asked the witness to give a description, a conclusion.  
It  
5 didn't call for a yes or no answer. At least it wasn't  
my  
6 intent, Your Honor.

7 THE COURT: The question is, did you file or  
make any  
8 conclusions given to officials, government bodies in  
Chile.  
9 The question, would you explain your answer is  
not a  
10 proper question. I will sustain it.

11 BY MR. KERRIGAN:  
12 Q. What was the conclusion you gave to the government  
of Chile  
13 about what you had observed and your evaluation of this  
site?

14 MR. DAVIS: Objection, Your Honor. Outside  
the scope  
15 of what this witness has been offered for.

16 THE COURT: Come up.  
17 (Side bar.)

18 MR. DAVIS: There was no expert disclosure on  
this  
19 witness. She has been listed as a fact witness. She  
should be

to me. 20 able to testify about these reports that were produced

she is 21 Now we are going into something -- I don't know what

22 going into.

23 THE COURT: What will she testify to?

24 MR. KERRIGAN: Her conclusions that this is a  
25 massacre. The only way this could have been effected  
is as a

RICHARD A. KAUFMAN, CMRR

1 massacre, shootings, stabbings. She gave it to the  
government

2 of Chile. She already testified to this in a  
deposition. That

3 was a deposition we can have read.

4 MR. DAVIS: Subject to my objection.

5 MR. KERRIGAN: It is not like it is a  
surprise.

6 MR. DAVIS: She is giving opinion testimony.  
There

7 were letters rogatory --

8 THE COURT: She was called as a witness to the  
autopsy

9 reports. She wasn't called as an expert witness, was  
she? Was

10 she listed as an expert to give an opinion how this  
occurred?

11 Did you list her as an expert witness?

12 MR. KERRIGAN: We took the deposition in  
Chile of a

13 pathologist --

14 THE COURT: You didn't answer my question.  
Was she

15 listed as an expert?

16 MR. KERRIGAN: Let me see. We may have.

17 THE COURT: We are going to break at this time  
anyway,

18 it is twelve o'clock.

19 (Open court.)

at this 20 THE COURT: We are going to break for the day  
not be 21 time. As I indicated that to you previously. We will  
you from 22 hearing the trial tomorrow or Friday, which will save  
upon the 23 the traffic. I think it is over by this weekend so  
24 traffic patterns will be hopefully back to normal.  
25 We will begin again Monday at 9:30.

RICHARD A. KAUFMAN, CMRR

1                   Do not discuss this case amongst yourselves or  
anyone

2                   else. Have no contact whatsoever with anyone  
associated with

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

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

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

6                   with my staff concerning it.

7                   You may give your notebooks to the court  
security

8                   officer. Drive carefully and you will have a nice long  
weekend

9                   and I will see you Monday morning at 9:30.

10                  (Jury leaves room.)

11                  THE COURT: You may step down, ma'am.

12                  (Witness temporarily excused.)

13                  THE COURT: Monday morning at 9:30.

14                  MR. DAVIS: It would be inappropriate for them  
to talk

15                  to her while she is on the stand.

16                  THE COURT: Ma'am, you may not discuss your  
testimony

17                  with anyone nor permit anyone to discuss your testimony  
with

18                  you since you are testifying, including the lawyers.  
Do you

19                  understand?

20 THE WITNESS: That is fine.

21 THE COURT: Monday morning, 9:30.

22 You will check on her status?

23 MR. KERRIGAN: We will.

24 THE COURT: We are in recess until Monday  
morning at

25 9:30.

RICHARD A. KAUFMAN, CMRR



RICHARD A. KAUFMAN, CMRR