

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
29, 2003)	
)	
	ARMANDO FERNANDEZ-LARIOS,)	
)	
	Defendant.)	
)	
	-----x)	

VOLUME 4

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. TONY CASTRO, ESQ.
--------------------	--

Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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

I N D E X

Rec.

Direct Cross Red.

WITNESSES FOR THE PLAINTIFF:

ELVIRA MIRANDA	232	262	272
ANGEL RUBEN HERRERA (depo.)	274		

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF		IN EVID.
Plaintiffs' Exhibit 5.01-5.14.....	233:2	
Plaintiffs' Exhibit 5.18, 19, 21-27.....	245:2	
Plaintiffs' Exhibit 37.....	246:25	
Plaintiffs' Exhibit 39.....	250:3	
Plaintiffs' Exhibit 41.....	251:3	
Plaintiffs' Exhibit 43.....	254:8	
Plaintiffs' Exhibit 45.....	258:17	
Plaintiffs' Exhibit 47.....	259:15	
Plaintiffs' Exhibit 23.....	260:12	

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: I apologize for the delay. All
the jurors

7 are here. Let's proceed.

8 MR. DAVIS: The witness is on the stand and
they

9 desire to present some photographs. It might be better
to take

10 up before the jury comes in.

11 THE COURT: Okay.

12 MR. DAVIS: The plaintiffs filed a brief in
support of

13 it. I did not file a written response to it. However,
I have

14 seen the video clips.

15 THE COURT: I have not seen their brief. I
have it

16 now but I have not read it.

17 MR. DAVIS: The premise of what they want to
present,

18 they want to show a whole series of photographs of
bones being

19 excavated in Copiapo. The doctor testified about it a
little

20 bit last week and I raised the objection Wednesday at
side bar.

21 I received this and I don't think the Court had ruled
on it one

22 way or the other at that point.

23 THE COURT: No, I hadn't, I hadn't seen it.

24 MR. DAVIS: They have the videotape here. It
is our

25 position these photographs of the bones should be
excluded

RICHARD A. KAUFMAN, CMRR

1 under 403 for two reasons. First, the excavation
occurred in
2 1990, 17 years after these events occurred. What we
would see
3 in these photographs would be bones, skulls and it
shows
4 various people excavating the bodies. There are
5 approximately -- I didn't count them exactly. From
there it
6 looks to be about 15 to 18 photographs of skulls or
bones they
7 want to show. I didn't count it precisely but they
have a list
8 they have attached in their papers which they want to
hand to
9 me. I did look at the videotape they wish to present.
10 It is our position, one, the only reason to
show these
11 bones is to inflame the jury. These bones do not
depict
12 anything other than bones. She can testify as to what
she
13 believes the cause of deaths were to the extent she has
already
14 done so. Under Rule 403 Your Honor can not only
exclude
15 evidence on the basis of unfair prejudice, because we
believe
16 these photographs are only seeking to inflame the jury
against
17 the defendant.

18 Secondly, it is a needless presentation of
cumulative
19 evidence. She already testified all they uncovered
were bones,
20 there was no tissue remaining from 17 years earlier,
and that
21 really there is no issue in the case, one, that these
bodies
22 were in a mass grave. That is not a disputed factual
issue in
23 this case. Two, the fact is there is a person who has
admitted
24 to the executions. There is nothing to say Mr.
Fernandez was
25 present when the executions occurred.

RICHARD A. KAUFMAN, CMRR

1 The admission of this evidence can be
presented only
2 for one reason, to inflame the jury against him and we
believe
3 it is highly prejudicial.

4 The tissue injuries these individuals may have
5 suffered, there are other witnesses they desire to
offer who
6 will testify about that, but this witness cannot
testify about
7 that because she didn't see the tissue and that would
be the
8 only thing that would be conceivably relevant based
upon where
9 they are positioned in this case.

10 It is our position under Rule 403, unfair
prejudice,
11 needless presentation of cumulative evidence that the
12 photographs of skeletons in the ground should not be
presented
13 to this jury.

14 MR. KERRIGAN: Your Honor, we rely on our
papers and
15 I think you are reviewing them at this time.

16 This is evidence in the case. We would be
willing to
17 certainly reconsider this if Mr. Davis would stipulate
this was
18 a massacre. This evidence is necessary for us to
establish for
19 the jury the nature of the killings and that they were

20 violations of crimes against humanity.

21 Just because photographs might be offensive
doesn't

22 mean they are inadmissible. By their very nature --

23 THE COURT: Are they still photographs?

24 MR. KERRIGAN: Portions of the video. He
referred to

25 them as photographs so I am responding.

RICHARD A. KAUFMAN, CMRR

1 There is no gruesome aspect of this. This is
a
2 carefully documented archaeologic site and this was a
videotape
3 taken simultaneously with the excavation of the site.
It does
4 show bashed in skulls, for example, and other evidence
of what
5 happened.

6 Mr. Davis' position, if we had evidence of
soft tissue
7 injury that might be considered so offensive to a jury
to see
8 the actually soft tissue injury. This is just evidence
of the
9 remains, and it might be somewhat offensive but it
certainly
10 isn't gruesome. Many courts, and Your Honor deals with
this in
11 criminal cases, it has high probative value for our
crimes
12 against humanity count.

13 THE COURT: Your brief indicates there are
portions of
14 Winston Cabello's clothing. Are they included in this
video
15 excerpt?

16 MR. KERRIGAN: They are, Your Honor.

17 THE COURT: Perhaps you can show me the video
18 excerpts, please.

19 MR. KERRIGAN: Yes, Your Honor.

It 20 Do you have the index present with our papers?
21 would assist the Court.
22 THE COURT: Yes.
all of 23 MR. KERRIGAN: Would you like us to show you
24 them.
25 THE COURT: What you wish to introduce.

RICHARD A. KAUFMAN, CMRR

1 (Videotape played.)

2 THE COURT: This is the dusting. What was the
3 initial?

4 MR. KERRIGAN: The initial portion they
found. As

5 soon as they found any evidence they began the dusting.
You

6 can see in the lower right-hand side of this clip the
area they

7 are dusting around. That is cut one.

8 (Videotape played.)

9 MR. KERRIGAN: Cut two.

10 (Videotape played.)

11 MR. KERRIGAN: This demonstrates the care at
the site

12 as soon as they discovered any bones. That is cut
three.

13 This is the initial skull that was found, cut
four.

14 (Videotape played.)

15 MR. KERRIGAN: This is further demonstration
of the

16 manner in which bones were recovered from the site.

17 This is portions of clothing that was
discovered, cut

18 five. Further dusting of the second skull. You can
see the

19 glasses on the forehead. This depicts the fact the
skull was

20 caved in which the first shot did not show.

21
bodies were

This demonstrates the manner in which the

22
victims.

placed in the grave. This is boots of one of the

23

THE COURT: What excerpt are we up to?

24

MR. KERRIGAN: Excerpt number seven.

25

THE COURT: Are any of these skeletal remains

RICHARD A. KAUFMAN, CMRR

1 Mr. Cabello's?

2 MR. KERRIGAN: It is not clear from the
video, Your

3 Honor, which bones related to Mr. Cabello.

4 This gives an overall picture of the whole
site once

5 they determined the total number of bodies.

6 This is number nine.

7 It is undisputed Mr. Cabello's remains were
found

8 within the site, however.

9 THE COURT: What number is this?

10 MR. KERRIGAN: Number nine.

11 This is number ten, uncovering of clothing.

12 Further indication of other skulls and bodies
that

13 were found. This is not a duplication.

14 THE COURT: What number is this?

15 MR. KERRIGAN: Eleven. It is an attempt to
identify

16 each of them.

17 We can move this clip along. This is just a
18 measurement and depicts all of the same sort of things
at the

19 site before the bodies were removed. That is number
twelve.

20 Is that sufficient for Your Honor?

21 THE COURT: I want to see thirteen and
fourteen.

care in 22 MR. KERRIGAN: This depicts the manner and
23 which the remains were removed from the site.
24 This is thirteen, Your Honor. It is actually
5.13. 25
the 25 When we have said the numbers, it is actually 5., then

RICHARD A. KAUFMAN, CMRR

1 number.

2 This is 5.15 and really is an extension in
terms of
3 5.13 in terms of the manner in which the body was
removed.
4 This cut is a minute and twenty-one seconds.

5 This is a small ring that was found. Cut 16
indicates
6 the care taken.

7 This is the final separation of the bodies,
cut 17,
8 5.17.

9 THE COURT: I will allow the introduction of
the video
10 excerpts up until 5.15. I do not find, while it is
certainly
11 disturbing, I do not find it is a violation of Rule
403, in
12 that the prejudice does not outweigh the probative
value based
13 upon the claims plaintiff presents here.

14 I do find 5.15, 5.16 and 5.17 are cumulative,
and
15 based upon the cumulative nature would then be a
violation of
16 403.

17 MR. KERRIGAN: There are a number of
shortcuts that
18 follow taken from the actual laboratory analysis and
start with
19 5.18.

20 THE COURT: What is the probative value?
21 MR. KERRIGAN: It demonstrates how the
remains were
22 evaluated in the laboratory of the personal affects
recovered.
23 It is relatively short in duration. This demonstrates
how
24 bullet hole evidence was analyzed, depicting four holes
in
25 clothing. I think that was actually in a shirt. This
is 5.12.

RICHARD A. KAUFMAN, CMRR

1 Next is 5.20.

2 If you look at the upper left portion of the
skull,
3 you can see it has been damaged. At least the remains
appear
4 to have been damaged.

5 THE COURT: That is what the testimony is
going to
6 be -- this is 22?

7 MR. KERRIGAN: That was 20, Your Honor, a
skull.

8 THE COURT: Is there testimony that goes along
with
9 that that indicates that the skull is damaged or are
you
10 surmising? Is that what the witness will testify to?

11 MR. KERRIGAN: I believe so. In an abundance
of
12 caution we will take out 5.20. I am not positive the
witness
13 will testify to that.

14 This is 5.21. It also indicates the manner in
which
15 the bones were presented in terms of the analysis that
was done
16 and the care in which it was done in a laboratory
setting.

17 There is clothing here and boots and other items
recovered from
18 the site.

19 This is a jacket that was recovered and this
shows

20 bullet holes in the jacket.

21 THE COURT: Is that what the testimony is
going to be?

22 MR. KERRIGAN: Yes, Your Honor, it is.

23 5.22, this is a skull that was shattered.
That will

24 be the testimony.

25 More evidence of bullet holes, Your Honor,
Exhibit

RICHARD A. KAUFMAN, CMRR

1 5.23.

2 This is just the manner in which each of the
remains

3 were analyzed based on a numbering system that they
used, Your

4 Honor. 5.24, that was.

5 This is just one of the skulls that was
recovered,

6 Your Honor. There is also a shirt shown in the shot.

7 5.26 is another demonstration of the way the
various

8 bones of the remains were organized.

9 The last one, 5.27, depictions of other
remains.

10 That is the totality of the cuts. We have
paired a

11 three hour videotape down to these cuts.

12 THE COURT: As far as these excerpts, with the
13 exclusion of 5.20, I will allow the introduction and
14 publication of these laboratory site excerpts before
the jury.

15 I do not find that the probative value is outweighed by
any

16 unfair prejudice based upon the claims made by the
plaintiff.

17 While the video excerpts are clearly disturbing, the
claims as

18 they are alleged by the plaintiff encompass a
disturbing set of

19 circumstances including crimes against humanity.
Therefore, I

20 find they are both relevant and probative and not a
violation

21 of Rule 403, and I cite in support of my ruling, U.S.
versus

22 Y A H W E H, 792 Federal Supplement 104, a 1992
decision in the

23 Southern District of Florida, and U.S. versus McRae,
24 M C R A E, 5393 F.2nd, 700, a Fifth Circuit decision in
1979.

25 Are we ready?

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: Yes.

2 THE COURT: Bring the jurors in.

3 (Jury present.)

4 THE COURT: Is your witness here?

5 MR. KERRIGAN: She is, Your Honor. I call
6 Dr. Miranda back to the stand

7 Thereupon --

8

9 ELVIRA MIRANDA,

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

11 was examined and testified further as follows:

12 DIRECT EXAMINATION

13 BY MR. KERRIGAN: (Continuing.)

14 Q. Dr. Miranda, we had discussed the autopsy findings
for six
15 of the 13 victims at Copiapo when you last concluded
your

16 testimony; is that correct?

17 A. That is correct.

18 Q. At this time we have portions of the video tape
that was
19 taken and I would like to call your attention to
certain
20 portions of it.

21 MR. KERRIGAN: At this time we would like to
offer

this

22 into evidence Plaintiffs' Exhibit .01 through 5.14 for
23 portion of the examination.

24 THE COURT: It will be admitted as Plaintiffs'
25 Exhibit .01 through 5.14.

RICHARD A. KAUFMAN, CMRR

1 (A document was received in
2 evidence as Plaintiffs' Exhibit 5.01-5.14.)

3 THE COURT: You may publish.

4 BY MR. KERRIGAN:

5 Q. Dr. Miranda, we are going to show exhibits that the
Court
6 has introduced into evidence in just a moment. I would
like to
7 ask you if you could describe as you see the video
portions
8 played, what generally is happening in that video if it
is not
9 clear by the video itself.

10 Dr. Miranda, these are portions of the
videotape you
11 earlier described in your testimony last week. These
are
12 excerpts or portions of that videotape.

13 MR. KERRIGAN: At this time we would like to
play cut
14 5.01.

15 THE COURT: You may.

16 (Videotape played.)

17 BY THE WITNESS:

18 A. These are clothings found at the very site of the
19 excavation. This is work performed by the
archeologists once
20 the bones have been found. They clear away the earth
debris

21 using small shovels and brushes.

22 MR. KERRIGAN: Would you play 5.02.

23 BY THE WITNESS:

24 A. This continues to be the work of the archeologists.

25 MR. KERRIGAN: 5.03.

RICHARD A. KAUFMAN, CMRR

1 BY THE WITNESS:

2 A. What we see here is the clearing away of a cranium
where
3 you could see the glasses on that cranium.

4 MR. KERRIGAN: 5.04.

5 BY THE WITNESS:

6 A. This is similar to the previous one. It has been
slightly
7 better cleared away from the earth and the rest of the
body is
8 being cleared.

9 BY MR. KERRIGAN:

10 Q. This is the same skull seen in the previous clip;
is that
11 correct?

12 A. That is correct.

13 MR. KERRIGAN: 5.05.

14 BY THE WITNESS:

15 A. The archeologist that was at the head of the group
of
16 archeologists clearing away the bodies. Here he is
clearing
17 away a scapula.

18 MR. KERRIGAN:

19 Q. Why are they using brushes?

20 A. In order not to damage the bones remained.

21 MR. KERRIGAN: Would you please, 5.6.

22 BY THE WITNESS:

eye 23 A. This is the cranium we have seen recently with the
24 glasses on top of the cranium.
being 25 Here the lower portions of the body are also

RICHARD A. KAUFMAN, CMRR

and not 1 cleared away in order to separate them from each other
2 mix them up.

along 3 Here you can see evidence of the lower members
4 with the footwear. The archeologist will remove some
samples 5 of the dirt.

6 MR. KERRIGAN: 5.07.

7 BY THE WITNESS:

remains. This 8 A. This is the archeologist clearing away human
9 is another cranium. The brushes are used softly to
move the 10 dirt away.

better 11 This is the same cranium, better cleared and
12 exposed.

13 MR. KERRIGAN: 5.08.

14 BY THE WITNESS:

You can 15 A. Here is the work of the archeologist continuing.
16 see the rest of the bones more clearly. You can see
they are 17 all lying in the same direction. Some craniums are
more 18 destroyed while others are more complete. The attempt
is to 19 recover the largest part of the craniums that have been
20 destroyed.

21 BY MR. KERRIGAN:

22 Q. What do you mean by destroyed?

23 A. The ones that show more wounds in order to be able
to
24 evaluate them.

25 MR. KERRIGAN: 5.09.

RICHARD A. KAUFMAN, CMRR

1 BY THE WITNESS:

2 A. The continuation of the clearing of the bodies.
This is a
3 view of the rest of the excavation, of the grave.

4 We were observing these actions standing
around the
5 archeologists but we could not go into the grave.

6 BY MR. KERRIGAN:

7 Q. "We" refers to who?

8 A. Dr. Gonzalez, indicating a female physician. The
dentist
9 Dr. Carrasco. The photographer and the assistant Ivan
Pardo
10 and myself.

11 MR. KERRIGAN: 5.10.

12 BY THE WITNESS:

13 A. Here the remains of more cleared away with the
clothing.
14 In the meantime, more craniums become evident or
apparent.

15 MR. KERRIGAN: 5.11.

16 BY THE WITNESS:

17 A. The cranium that we saw previously, one of the
first ones
18 to be cleared.

19 MR. KERRIGAN: 5.12.

20 BY THE WITNESS:

21 A. The archeologists measuring the characteristics of
the

can now 22 grave. They keep their written notes. On the edge you
used to 23 see the rolls of aluminum foil that are going to be
been 24 cover the craniums. Up until that time, nothing has
25 extracted.

RICHARD A. KAUFMAN, CMRR

1 BY MR. KERRIGAN:

2 Q. What is this depicting here, doctor?

3 A. The remainder of the craniums and one we saw
previously

4 with considerable bone destruction.

5 MR. KERRIGAN: Replay 5.11.

6 BY MR. KERRIGAN:

7 Q. Identify if you would, we may stop this, the
cranium in

8 which there was substantial damage.

9 A. It is on the left-hand side.

10 MR. KERRIGAN: Play 5.12, now.

11 BY THE WITNESS:

12 A. On the left angle of the screen. It is the one
that is

13 very close to the area being measured. This one over
here.

14 BY MR. KERRIGAN:

15 Q. Doctor, you are able on the screen to draw any
marks or

16 explanatory arrows. Would you do that. If that would
assist

17 you, you may do that. You don't have to do that,
though.

18 What is the condition of this skull?

19 A. This cranium appears incomplete. You can see
considerable

20 destruction on the right-hand side. There is a
fracture on the

This is 21 upper mandible and fractures on the lower mandible.

22 what I can see from this angle.

23 THE INTERPRETER: The witness is following
24 instructions and no lines are appearing on the screen.

25 BY THE WITNESS:

RICHARD A. KAUFMAN, CMRR

left 1 A. This is the area that was conserved and this is the
which is 2 side. There is an extensive fracture at the frontal,
nose, and 3 almost absent with disappearance of the bones of the
upper 4 also from the orbit, or right eye. A fracture on the
what I 5 mandible and a fracture on the lower mandible. This is
6 can see from this angle.

7 MR. KERRIGAN: Play 5.13, please.

8 BY THE WITNESS:

9 A. This is the beginning of the extraction of a
cranium. This 10 is the archeologist and Dr. Gonzalez receiving the
cranium upon 11 the aluminum foil.

12 BY MR. KERRIGAN:

13 Q. Are you now working with the archeologist in the
removal of 14 the remains?

15 A. That is correct. I am on the upper portion of the
grave.

16 Outside of it, labeling all the materials that Dr.
Gonzalez 17 hands over to me.

18 These are documents that were found along with
the 19 bodies. These are probably the national identity cards
for the

clothing 20 time period. Dr. Gonzalez is removing clothing or
21 remains, along with the archeologist.
22 Q. Why are they placing things in plastic bags?
are used 23 A. Those are labeled and along with the bones, they
24 for later examination. These larger bags are for the
longer 25 bones and to include the entire combination of bones.

RICHARD A. KAUFMAN, CMRR

lower 1 At this time you are seeing the removal of the
2 extremities.

3 The clothing remains are stuck to the bones.
4 Dr. Gonzalez is working on one corner.

5 There is where they are removing another
cranium. The 6 gentleman in red is Dr. Carrasco, the dentist.

7 At the top of the screen is a tray on which
the 8 totality of the bodies are to be played.

9 MR. KERRIGAN: Please play 5.14, please.

10 BY THE WITNESS:

11 A. This is clothing from the previous portion with
large 12 holes, both on the shirt as well as on a jacket.

13 BY MR. KERRIGAN:

14 Q. What do these holes depict, doctor?

15 A. It is necessary to compare the holes in the front
of the 16 piece with the holes in the back to determine whether
or not 17 they correspond to the entrance or exit of projectiles.
The 18 larger holes correspond to the exit of projectiles.

19 MR. KERRIGAN: If you would go to 5.18.

20 BY MR. KERRIGAN:

21 Q. Where are these pictures taken?

The 22 A. At the Copiapo morgue where we studied the bodies.
23 morgue is inside the cemetery.
if you 24 Q. I would like to go back on this and ask you again
25 would tell us what it depicts, 5.18.

RICHARD A. KAUFMAN, CMRR

1 What does this cranium reflect?

2 A. Here we can see a considerably large fracture and I
will

3 draw a line across it. What we try to do is
reconstitute or

4 put the most amount of bone back together in order to
try to

5 identify the direction the fractures have traveled to
determine

6 whether there is any sign of a projectile.

7 In this case there is a considerable fracture
on the

8 right side, and there is absence of bone matter at that
level.

9 The fracture continues over to the left side. There
are

10 fractures as I described at the beginning at the level
of the

11 upper mandible or jaw and the lower mandible.

12 Q. Does this cranium depict any damage to the left
orbit?

13 A. I can identify a fracture here at the orbit level.

14 MR. KERRIGAN: 5.19.

15 BY THE WITNESS:

16 A. Holes in clothes that correspond to probably
entrances of

17 projectiles. These holes are clearly depicted. They
are very

18 circular.

19 BY MR. KERRIGAN:

was it 20 Q. Where these entrance or exit evidence was found,
21 tested for gun powder?
22 A. Yes. On some of that that suggested entrances and
exits,
23 the test was run on them for gun powder and the result
was
24 positive.
25 MR. KERRIGAN: 5.21.

RICHARD A. KAUFMAN, CMRR

the 1 Let's finish playing this because I stopped in
only 19 2 middle of it. We will play the whole portion which is
3 seconds but I stopped it too early.

4 BY THE WITNESS:

of 5 A. This is a piece of a sleeve that belongs to a piece
6 clothing.

7 This is footwear.

8 BY MR. KERRIGAN:

this 9 Q. The bones that are laid out on the table, what does
10 refer to?

is 11 A. Once the examination has concluded, the entire body
it 12 placed in order as close to its natural physiology as
13 appears in the body, for the purpose of later on
showing it to 14 family members.

15 Q. Was that in fact done, to the family members?

16 A. Yes.

in which 17 This corresponds to Winston Cabello's jacket
18 you could see oblique longitudinal tears. This
corresponds to

19 the backside of the jacket. You can see they are
linear and

20 clearly marked.

appear 21 These tears correspond, clearly, to tears that
part of 22 in the lining on the inside of the jacket and the front
23 the jacket, you can see this area here.
see 24 This is the area of the jacket where you could
This 25 linear tears surrounded by traces of blood around it.

RICHARD A. KAUFMAN, CMRR

earlier. 1 corresponds to the front part of the jacket as I said

2 MR. KERRIGAN: Please play 5.22.

3 BY THE WITNESS:

4 A. This corresponds to another cranium with
considerable

5 destruction to the entire maxilla facial area. The
upper

6 mandible is absent. The bones of the nose as well, as
well as

7 the lower orbits of the eyes, and the lower jaw or
mandible

8 shows considerable fracturing.

9 BY MR. KERRIGAN:

10 Q. Is this a natural occurring process that is
occurring here

11 or is it the result of trauma?

12 MR. DAVIS: Objection. Beyond the disclosure
for this

13 particular witness to render an opinion on this kind of
14 photograph.

15 THE COURT: Come up.

16 (Side bar.)

17 MR. DAVIS: Your Honor, we object. This is
getting

18 into opinion testimony as opposed to what she is
observing. He

19 asked her to render an opinion whether this is trauma
versus

in an 20 natural occurring context. I don't know she is tied up
and no 21 individual report. Therefore, there is no predicate
opinion. 22 evidence in the record for her to express this kind of

23 THE COURT: Is there such a finding made on
the 24 individual reports?

25 MR. DAVIS: There is references to small
damage.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Individual reports?

2 MR. DAVIS: Yes.

3 MR. KERRIGAN: The people that shot the video
were
4 not people working with the pathologist. I cannot tell
you
5 that skull is related to a specific person but we have
reports
6 that depicts the massive damage to the skull.

7 THE COURT: This is in a laboratory?

8 MR. KERRIGAN: Right.

9 THE COURT: Can't she match it up?

10 MR. KERRIGAN: I don't know if she can match
them up.

11 One of the problems is, they had a professional
photographer
12 and the pictures didn't turn out. That was their
person and
13 the films were double exposed so they had to rely on
these
14 videos taken by other people. If she had done that, we
15 wouldn't be standing talking, we would have it nailed
down.

16 THE COURT: But she made such findings in
regard to
17 some of the examinations and this was one of the skulls
she
18 examined?

19 MR. KERRIGAN: It is exactly.

will 20 THE COURT: I will overrule the objection. I
whether 21 allow the evidence in. You can certainly cross her on
weight 22 or not she can match it up. I think it goes to the
23 rather than the introduction of the evidence.
24 (Open court.)
25 THE COURT: Overruled.

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: Your Honor, at this time so we
have
2 the record straight, I would like to introduce 5. --

3 THE COURT: She didn't answer the question.
Are you
4 withdrawing the question?

5 MR. KERRIGAN: No.

6 BY MR. KERRIGAN:

7 Q. I would like to ask you the question posed to you -
-

8 THE COURT: Do you want Richard to read it
back?

9 MR. KERRIGAN: Please.

10 (The question referred to was read by the
reporter as
11 above recorded.)

12 BY THE WITNESS:

13 A. This is the result of considerable trauma.

14 BY MR. KERRIGAN:

15 Q. What do you mean by trauma?

16 A. This is mechanical violence, probably performed
with an
17 object of considerable weight or considerable violence.

18 MR. KERRIGAN: Your Honor, at this time I
would like
19 to offer into evidence Plaintiffs' Exhibits 5.18 and
5.19,
20 5.21, 22, 23, 24, 25, 26 and 27, which I believe
comports with

21 the Court's rules.

22 THE COURT: This is the video?

23 MR. KERRIGAN: Yes. These are the lab
portions.

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

25 5.18, 5.19, 21, 22, 23, 24, 25, 26 and 27.

RICHARD A. KAUFMAN, CMRR

1 (A document was received in
2 evidence as Plaintiffs' Exhibit 5.18, 19, 21-

27.)

3 MR. KERRIGAN: Play 5.22 -- I don't think we
4 completed 5.21. Let's complete this segment.

5 BY MR. KERRIGAN:

6 Q. Doctor, I will play this entire cut all the way
through.

7 A. Perfect.

8 (Videotape played.)

9 BY MR. KERRIGAN:

10 Q. What are we looking at here, doctor, 5.22?

11 A. These are holes in clothes that correspond or were
caused
12 by projectiles, from a firearm.

13 The same with the dolly back, is the camera
moving
14 backwards. This is where we see the entirety of that
piece of
15 clothing.

16 MR. KERRIGAN: 5.24.

17 BY MR. KERRIGAN:

18 Q. What do the numbers refer to?

19 A. The numbers were assigned as the bodies were
extracted.

20 MR. KERRIGAN: 5.25, please.

21 BY THE WITNESS:

22 A. This is cranium number 9 from the grave extraction.

23
number 9.

This is the clothing that belongs to body

24

MR. KERRIGAN: 5.26.

25

BY THE WITNESS:

RICHARD A. KAUFMAN, CMRR

of body 1 A. The bones that correspond to the hand and the feet
2 number 10. This is the remainder of the bones.

3 MR. KERRIGAN: Lastly, 5.27.

4 BY THE WITNESS:

body 5 A. This belongs to another body, which we labeled as
6 number 10.

7 BY MR. KERRIGAN:

discussing 8 Q. Do you have with you the autopsy reports we were
9 last week?

10 A. Yes, I have them here.

marked for 11 Q. I would like to ask you to go to what has been
12 autopsy identification as your Exhibit Number 36, which is the
13 report for Edwin Ricardo Mancilla?

14 A. Yes, I have it here.

15 Q. This is Mancilla's autopsy report?

16 A. Mancilla.

this 17 Q. Would you tell us the results of your findings on
18 autopsy?

evidence. 19 THE COURT: It was not introduced into

Exhibit 36. 20 MR. KERRIGAN: We offer it as plaintiffs

21 We would like to introduce Exhibit 37 into evidence.

Exhibit 22 THE COURT: It will be admitted as Plaintiffs'
23 37.
24 (A document was received in
25 evidence as Plaintiffs' Exhibit 37.)

RICHARD A. KAUFMAN, CMRR

1 BY THE WITNESS:

2 A. The cause of death was cranial trauma and trauma to
the
3 upper right extremity.

4 BY MR. KERRIGAN:

5 Q. What was the nature of the cranial trauma?

6 A. The production method that generated this trauma
can be
7 explained by the use of a blunt object, but the action
of
8 projectiles cannot be entirely ruled out.

9 Q. Would the trauma that you observed here be
sufficient to
10 cause death?

11 A. Of course, and it explains the death.

12 Q. Would you look at the portion of your autopsy
report that
13 analyzes the clothing, which is in the first paragraph,
I
14 think?

15 A. Yes.

16 Q. Would you describe that for us now?

17 A. It contains a navy blue jacket, machine sewed.
Buttons on
18 the right side, of which only two remain. Apparently
metallic
19 buttons sewn with thread of the same color. It has a
short V
20 neck. Two front lower pockets, transverse. The cloth
is of an

type 21 elastic fine type. The waste and cuffs are of the same
elastic. 22 but smaller. The edge is of a more separate type of
There 23 It shows five button holes on the left side, vertical.
an area 24 are six holes in the front upper left side located in
shoulder, 25 of 18 by eight centimeters, 26 centimeters below the

RICHARD A. KAUFMAN, CMRR

diameter. 1 which measure between four and 20 millimeters in
2 Five of them are circular and show a smaller diameter.

the back 3 There was a large tear in the middle area of
4 four centimeters below the V neck and 13 centimeters
long. It 5 also shows smaller tears, six and three centimeters in
diameter 6 at the mid dorsal area, 30 centimeters below the neck
line.

frontal 7 On the right sleeve there are two holes on the
8 face, three by 2.5 centimeters, and one by .5
centimeters.

to the 9 Q. Were you able to determine the cause of the damage
and the 10 articles of clothing you depicted here with the tears
11 holes that were seen?

to back. 12 A. These holes were produced by a projectile in front

frontal face 13 Q. What about the holes in the sleeve?
14 A. On the right sleeve I only have holes on the

are 15 of the sleeve and I am unable to determine whether they
16 entrance or exit holes, but they are also produced by
17 projectiles from a firearm. I do see here it says the
back

18 area, so they do go from front to back.

19 Q. Does that conclude your findings as to Mr. Mancia?
20 A. There is also a shirt of his that shows tears. The
shirt
21 is blue. The front area is stains and shows no tears.
On the
22 back it shows one tear on the left side. This is on
the back
23 left side.
24 It also shows an additional vertical tear
which is at
25 a right angle with the previous one.

RICHARD A. KAUFMAN, CMRR

1 THE INTERPRETER: May I consult with the
witness on 2 the use of an expression?

3 THE COURT: You may.

4 BY THE WITNESS:

5 A. At the middle of the neckline seam, there is a
horizontal 6 tear, twelve centimeters long on the left back area.
And 19 7 centimeters below the neckline is another irregular
tear 12 8 centimeters long.

9 The right sleeve of this garment also shows a
tear 10 inside to back, 3.5 centimeters long.

11 That pertains to the clothing.

12 Q. Based on the examination of the clothing and the
other 13 examination you did, are you able to tell us the number
of 14 projectiles that could have caused this damage?

15 A. Well, more than two.

16 Q. At this time, doctor, will you turn to what has
been marked 17 for identification as Plaintiffs' Exhibit 38.

18 MR. KERRIGAN: We offer into evidence
Plaintiffs' 19 Exhibit 39.

20 THE COURT: Is she going to identify 38 first?

21 MR. KERRIGAN: She will.

22 BY MR. KERRIGAN:

23 Q. Tell us the name of the person reflected in your
report

24 there?

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

RICHARD A. KAUFMAN, CMRR

1 39.

2 (A document was received in
3 evidence as Plaintiffs' Exhibit 39.)

4 BY THE WITNESS:

5 A. The name is Adolfo Mario Pelleras.

6 BY MR. KERRIGAN:

7 Q. Could you give us the results of your finding of
8 Mr. Pelleras?

9 A. In this case, no wounds to the bones as a result of
10 projectiles were found, or any other agent. Even
though the
11 clothing showed holes that responded positively to a
gun powder
12 analysis.

13 Q. How is it you could have evidence of gun powder on
clothing
14 with evidence of projectile penetration yet not see any
bone
15 damage?

16 A. Well, with some degree of frequency projectiles
will cause
17 damage to soft tissue and vital organs that in and of
18 themselves are able to cause death, leaving no trace
upon the
19 bones.

20 Q. Would you turn your attention now to exhibit number
40
21 marked for identification and identify the name of the
person?

22 A. The name is Pedro Perez Flores.

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

24 Plaintiffs' Exhibit 41 for Mr. Perez.

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

RICHARD A. KAUFMAN, CMRR

1 41.

2 (A document was received in
3 evidence as Plaintiffs' Exhibit 41.)

4 BY MR. KERRIGAN:

5 Q. Could you give us the results of your findings for
the
6 remains of Mr. Perez?

7 A. The cause of death was cranial facial trauma of the
upper
8 extremities and in the thoracic area by way of
projectile.

9 Q. Would you give us the results of your findings in
regards
10 to the totality of the injuries or the totality of the
damage
11 to the remains you observed?

12 A. In the report point 13, it says these are homicidal
shots,
13 necessarily mortal in nature.

14 Q. Would you describe the damage observed to the
cranium?

15 A. There is a burst at the base of the cranium with
loss of
16 the right hemicranium. This conserves the vertical
from the
17 frontal portion of the internal third of the parietal
18 cerebellum cavity and the upper third of the cranium
and the
19 cranial cavity.

in lay 20 Q. Dr. Miranda, before you continue, would you tell us
skull that 21 terms that we could understand, what happened to the
not use 22 you saw; what was the damage that you saw, and try to
23 as many medical terms, if you would?
24 A. That will be all right.
25 I can't show you the burst at the base of the
cranium

RICHARD A. KAUFMAN, CMRR

1 but there is considerable loss of the right
hemicranium, that

2 is to say the bones on this part of the head are
absent. There

3 are fractures of the cavity which compromise the
parietals

4 which are up here.

5 Q. When you said a loss of bone, is the loss
occurring, the

6 loss of bone occurring because of a natural decaying
process or

7 has it occurred because of trauma to the cranium?

8 A. This is a result of trauma which causes
considerable

9 fracturing and the smaller pieces are destroyed
completely and

10 they are also lost because of their conservation within
the

11 dirt.

12 Q. Would this trauma be from a projectile, or are you
able to

13 observe that?

14 A. It is difficult to select one or the other in this
case.

15 There are no contact traces of a projectile.

16 Q. What other damage was done to the cranium?

17 A. The other wounds are fractures to the cavity of the
18 sutures.

19 Q. Any additional damage to the front of the face or
jaw?

fracture 20 A. Yes. On the left frontal portion, there appears a
21 in the upper edge of the orbit. There is loss of two
thirds of 22 the outside of the upper orbital area, with a burst in
the left 23 orbit and the loss of the left mala, this bone here.
There are 24 fractures to the upper jaw. There are bursts in the
walls of 25 the orbit, fracture to the mala. That is it.

RICHARD A. KAUFMAN, CMRR

1 Q. Were you able to identify any ribs, damage to the
ribs?

2 A. There are 14 complete ribs and 13 rib fragments
that

3 correspond to fractures.

4 Q. Are you able to determine, were you able to
determine the

5 cause of these rib fractures?

6 A. On one of the ribs we find a semi-circular
fracture, with

7 an inside bevel.

8 Q. What does that signify?

9 A. That means that that fracture was produced by a
projectile

10 from a firearm.

11 Q. Are you able to determine how many projectiles were
used

12 here for what you could find evidence of damage?

13 A. Well, at least three.

14 Q. Are you able to determine that the damage to the
skull was

15 caused by a projectile?

16 A. There is not enough elements in order to determine
that.

17 Q. So your estimate of three projectiles is in
addition to the

18 damage that was observed to the skull?

19 A. Yes. There is damage to the upper extremities and
to the

20 thorax.

21 Q. Can you tell us specifically what caused this man's
death?

22 A. In light of that major cranial distruction, it is
most

23 probable it was the cranial facial trauma that caused
the

24 death.

25 Q. Would you turn now to Exhibit 42 marked for
identification

RICHARD A. KAUFMAN, CMRR

1 and tell us the name of the individual?

2 A. The name is Jaime Ivan Sierra Castillo.

3 MR. KERRIGAN: At this time we offer in
evidence

4 Plaintiffs' Exhibit 43, the autopsy report of Mr.
Sierra.

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

6 43.

7 (A document was received in
8 evidence as Plaintiffs' Exhibit 43.)

9 BY MR. KERRIGAN:

10 Q. Would you tell us the results of your finding from
the

11 autopsy of Mr. Sierra?

12 A. The cause of death was cranial facial pelvic
trauma. Also

13 trauma to the upper right extremities and the upper
left

14 extremities, caused by projectiles fired from a
firearm.

15 Q. Would you tell us the nature of the damage to the
cranium?

16 A. You would have me describe the cranial wounds?

17 Q. Yes.

18 A. The cranium is incomplete with a loss of the right
temporal

19 area. A loss of the left parietal and of the front
half of the

20 occipital.

21 Q. What in laymans terms is the front of the
occipital?

22 A. The bone that we have back here is called the
occipital.

23 The front part would be the one that is further
forward.

24 Q. Continue, doctor.

25 A. The cranium shows numerous fractures caused to the
cavity

RICHARD A. KAUFMAN, CMRR

1 that compromised the parietals. There are fractures of
the
2 same type that compromised the base of the cranium,
both at the
3 lower level as well as the mid level.

4 Q. Doctor, did you observe convoluted fractures?

5 A. In medicine, we tend to speak of comminute
fractures when

6 speaking of long bones. Nevertheless, if we want to
make this

7 extensive to flat bones, such as the ones in the
cranium, they

8 are also comminute.

9 Q. Would you continue with your findings.

10 A. Practically all of the bones in this cranium show
fracture.

11 Q. Were you able to determine the cause? Was it by

12 projectile, or otherwise?

13 A. As described in the report, the cause was
projectiles fired

14 from a firearm.

15 Q. What other damage did you find to the bones of Mr.
Sierra?

16 A. There are fractures at the pelvic level on the left
side.

17 There are fractures to the bones on the right forearm,
both the

18 radius and the cubitus. These were even impossible to
measure

19 because they were bursts in the distal portion. Also
to the

20 bones in the left thigh, which is called the femur,
which shows
21 a comminute fracture where there is a sign of an impact
of a
22 projectile from a firearm. This is on the front --
this is on
23 the back portion of this bone.
24 Q. Doctor, if you said somebody had a fracture of the
femur,
25 does that mean the same thing as a broken leg or broken
big

RICHARD A. KAUFMAN, CMRR

1 bone of the leg?

2 A. Yes.

3 Q. Where is the radius in the arm?

4 A. It is in the forearm. There are two bones in the
forearm,

5 the radius and the cubitus. The radius goes on the
outside,

6 the cubitus on the inside.

7 Q. Fractures of the radius would mean a broken arm as
well as

8 a broken leg?

9 A. That is correct.

10 Q. Were you able to determine the cause of the
fractures in

11 the arm and leg?

12 A. The fracture on the leg we were able to determine
was

13 because of a trace on the bone which showed this was a
14 projectile. Because of the bevel of the wound.

15 Q. What about a fracture of the radius?

16 A. This is considerable destruction which was probably
caused
17 by a projectile. There is no trace to confirm this
fully.

18 Q. The trauma to the pelvis?

19 A. The trauma to the pelvis also corresponds to a
fracture
20 from a projectile from a firearm. It also has an
internal

21 bevel and this correspond to a rear entry of a
projectile.

22 Q. When you have multiple wounds like this, are you
able to

23 determine which was likely a cause of death?

24 A. Usually the largest trauma is the one that will
cause

25 death. Considering there is considerable cranial,
facial

RICHARD A. KAUFMAN, CMRR

1 trauma, this is the most important of the wounds.

2 Q. Would you now go to --

3 THE COURT: Mr. Kerrigan, we are going to take
a break.

4 Do not discuss this case amongst yourselves or
anyone else. Have no contact whatsoever with anyone
associated with

5 the trial. Do not read or listen to anything touching
on this matter in any way. Be back in the juryroom in fifteen
minutes.

6 If anybody should try to talk to you about this case,
instruct them to immediately stop and be in contact with my
staff concerning it.

7 Hand your notebooks to the court security
officer and

8 I will see you in fifteen minutes.

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

11 (Open court. Jury not present.)

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

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

14 Would counsel state their appearances.

15 (All parties present.)

21 THE COURT: Let's proceed.

22 (Jury present.)

23 THE COURT: You are still under oath, ma'am

24 Thereupon --

25

RICHARD A. KAUFMAN, CMRR

1 ELVIRA MIRANDA,

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

3 was examined and testified further as follows:

4 THE COURT: You may proceed.

5 BY MR. KERRIGAN: (Continuing.)

6 Q. Would you look at Exhibit 44 marked for
identification by

7 the plaintiff. Identify the name of the 11th victim,
if you

8 would?

9 A. Atilio Ernesto Ugarte.

10 Q. Would you tell us the results of your findings for
11 Mr. Ugarte?

12 MR. KERRIGAN: We offer Exhibit 45 into
evidence at

13 this time.

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

15 45.

16 (A document was received in
17 evidence as Plaintiffs' Exhibit 45.)

18 BY THE WITNESS:

19 A. It is shown here there are not enough elements to
establish

20 the precise and exact cause of death. Nevertheless,
the bones

21 show trauma to the lower left extremity by projectile.

22 trauma that could be mortal, or fatal.

23 BY MR. KERRIGAN:

24 Q. Did you make a finding whether this was caused by a

25 projectile or were you able to do that?

RICHARD A. KAUFMAN, CMRR

here it 1 A. As described in this report, it is established in
2 was by firearms projectile.

bone 3 Q. This was the only evidence you found in terms of
4 damage, was to the femur in one of the legs; is that
correct?

5 A. In the left femur; that is correct.

6 Q. Would you go now to what has been marked for
identification

7 as Plaintiffs' Exhibit 46. Would you identify the name
of the 8 12th victim?

9 A. The name is Nestor Leonello Vincenti.

10 MR. KERRIGAN: At this time we offer into
evidence

11 Exhibit 47, Mr. Vincenti's autopsy report.

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

13 47.

14 (A document was received in
15 evidence as Plaintiffs' Exhibit 47.)

16 BY MR. KERRIGAN:

17 Q. Could you tell us the results of your findings with
this 18 victim?

19 A. In this case, the cause of death was a thoracic and
spinal

20 column trauma and trauma to the upper extremity by
projectile.

21 Q. What was the cause of death?

22 A. At the third point it says that the thoracic trauma
is

23 presumably fatal in and of itself.

24 Q. Were you able to determine the direction of the
projectile,

25 front to back or back to front?

RICHARD A. KAUFMAN, CMRR

front to 1 A. The primary trajectory of the projectiles was from
2 back.

marked for 3 Q. Would you now turn to Exhibit 22, if you would,
4 identification and identify the name of the person
whose 5 autopsy is reflected in that exhibit?

6 A. Winston Cabello Bravo.

evidence 7 MR. KERRIGAN: At this time we offer into
8 Exhibit 23, the autopsy report of Mr. Cabello.

Exhibit 9 THE COURT: It will be admitted as Plaintiffs'
10 23.

11 (A document was received in
12 evidence as Plaintiffs' Exhibit 23.)

13 BY MR. KERRIGAN:

finding 14 Q. Dr. Miranda, would you tell us the results of your
15 for Mr. Cabello's remains?

16 A. The cause of death in this case was a thoracic
trauma.

17 There is no evidence found as to the mechanism that
produced 18 the trauma.

19 Q. Would you look at your notes regarding the clothing
that

20 Mr. Cabello was wearing and would you describe any
marks or

21 cuts or evidence of damage to the clothing and tell us
22 specifically what you found, if you would?
23 A. On the jacket was found a tear that penetrated
through to
24 the lining of the jacket at the lower right quadrant,
measuring
25 2.5 centimeters, and on the lower left quadrant, there
are two

RICHARD A. KAUFMAN, CMRR

lining. 1 additional oblique tears. They also penetrate to the

oblique 2 On the back at the lower left quadrant there are four

lining as 3 tears. The cloth or material of the jacket and the

stuck to 4 well show considerable amounts of a white substance

color. 5 it, as well as stains that are brown or dark red in

6 Q. What are these stains, doctor?

7 A. Those brown stains correspond to blood stains.

8 Q. What damage did you observe to the ribs?

fragmented 9 A. There are 17 complete ribs and the remainder are

arc as 10 and these correspond to fractures, both in the front

11 well as the rear arc.

legs? 12 Q. Were all of the limbs intact, the arms and the

exception of 13 A. The remaining extremities are intact with the

14 the upper right extremity, which is absent.

extremity? 15 Q. What precisely is not there in the upper right

16 Is that the arm, by the way?

17 A. That is the right arm.

right arm 18 Q. Do you have any confusion or do you know why the

19 was not found with this body?

20 A. I have no elements in order to suppose.

21 Q. What was the cause of death of Mr. Cabello?

22 A. In the absence of soft tissue, and in the presence
of rib

23 fractures, at that time the cause of death was decided
to be,

24 or it was related to the thoracic trauma.

25 Q. Did Mr. Cabello die from trauma to his body caused
by any

RICHARD A. KAUFMAN, CMRR

1 external source?

2 A. That is correct.

3 Q. Did you find any evidence of gun powder on Mr.
Cabello's

4 clothing?

5 A. No gun powder evidence was found.

6 Q. Dr. Miranda, in the excavation of this site, at any
time

7 did anybody discover or bring to your attention any
weapons

8 that were found in the site, any guns or knives or any
other

9 kind of weapons?

10 A. No, no weapons were found.

11 Q. In the photographs displayed to the jury by the
video clips

12 where we saw skulls that there had been evidence of
trauma and

13 damage, were these skulls viewed in that video that
came from

14 this site?

15 A. Yes, that is correct.

16 Q. The duties that you performed at that site and in
your

17 laboratory analysis were done in accordance with the
Court

18 order that had been issued to excavate this site; is
that

19 correct?

20 A. That is so. That is correct.

I

21 MR. KERRIGAN: That concludes my examination.

22 tender the witness.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. DAVIS:

RICHARD A. KAUFMAN, CMRR

- 1 Q. Good afternoon, Dr. Miranda?
- 2 A. Good afternoon.
- 3 Q. Going back to some of your testimony from last
Wednesday.
- 4 When did you first start practicing as a medical
examiner?
- 5 A. That was in the year 1989.
- 6 Q. 1989 was the first year you started working as a
medical
7 examiner?
- 8 A. That is true as pertains to the stanicological
portion.
- 9 Q. What is stanicological portion?
- 10 A. The study of death.
- 11 Q. You had been doing this approximately a year at the
time
12 you first went out to Copiapo to look at the site?
- 13 A. That is true.
- 14 Q. As I understand it, Mr. Kerrigan put in a number of
15 exhibits that contain your autopsy reports. The visit
that you
16 were out at the site was on July 29, 1990; is that
correct?
- 17 A. That is true.
- 18 Q. And you were there for one day?
- 19 A. No, we were there for two or three days.
- 20 Q. In your report, I see that you only note one day.
For

report 21 example, look at Exhibit 22, which I think would be the
English 22 for Mr. Cabello you just testified about. We have an
were 23 translation in evidence Exhibit 23. It indicates you
24 there on July 29, 1990.
25 A. That is so.

RICHARD A. KAUFMAN, CMRR

an
Cabello
1991; is
Court.
Exhibit
report
Court; that
this
paragraph on
it says
test in
Santiago
your

1 Q. As I understand it, and again using this exhibit as
2 example, Exhibit 22 which is in front of you, for Mr.
3 you wrote the report seven months later on January 23,
4 that correct, ma'am?
5 A. That is the date upon which it is sent to the
6 Q. So the date on the report on Mr. Cabello which is
7 23, which says January 23, 1991, that is the date your
8 was finished and sent into the Court?
9 A. That is the date upon which it is sent to the
10 is true.
11 Q. Insofar as your conclusions as to the time of when
12 occurred, I direct your attention to the fifth
13 your conclusions with respect to the autopsy report of
14 Mr. Cabello where according to my English translation,
15 the proximate date of death based on the total lipids
16 accordance with standards of the general cemetery of
17 could have been more than 14 years ago. Is that what
18 report says, ma'am?

19 A. Yes, that is correct.

20 Q. That is a conclusion that is stated in each one of
these
21 various reports that you have testified to about today;
is that
22 correct?

23 A. That is correct.

24 Q. And as far as the tests that are available to you,
that is
25 the closest in which you could approximate the time
these

RICHARD A. KAUFMAN, CMRR

1 deaths occurred?

2 A. That is a date set by the central laboratory of the
medical

3 legal service and this was performed on bones from
Santiago.

4 Q. Does that still mean that is the closest available
time you

5 can estimate based upon the information available to
you?

6 THE INTERPRETER: Can I have it read back?

7 MR. DAVIS: I will re-ask it.

8 BY MR. DAVIS:

9 Q. Doctor, I am trying to ascertain what the time of
death was

10 as you indicated in your report and your report says
more than

11 14 years ago. Is there any test available to you where
you

12 could have pinpointed it with more specificity than
what you

13 say in your report in paragraph 5?

14 A. No, we do not have an analysis at our disposal that
will

15 allow us to establish an exact date.

16 Q. From the evidence -- the first time you went to
Copiapo was

17 in July of 1990?

18 A. That is true.

19 Q. Insofar as what happened before that time --
withdrawn.

20 You have no indication whether anyone was
present at
21 that site, the site where the bodies were found, prior
to the
22 time you got there and after the time these bodies were
buried?
23 A. I don't understand.
24 Q. You don't know if anyone was in that grave prior to
the
25 time you got there?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. With respect to Mr. Cabello's report, the Spanish
version

3 is Exhibit 22. I would like you to look at the
conclusions

4 section of that report. Do you have it in front of
you,

5 doctor?

6 A. Yes.

7 Q. When you write your conclusions -- withdrawn.

8 The section of conclusions you have in your
autopsy

9 reports, does that set forth your significant findings
relative

10 to this particular person?

11 A. That is correct.

12 Q. The same would be for each of the other twelve
reports, you

13 would set forth all of your significant findings in the
14 conclusion section of the autopsy report?

15 A. That is so. We send this background information to
the

16 Court, then the Judge must examine them and set forth
his

17 conclusions.

18 Q. As you set forth -- as you sit here today, there
have been

19 no written amendments to these reports; is that
correct?

20 A. That is correct.

21 Q. So this is your final report?

22 A. That is correct.

23 Q. And in paragraph three of Mr. Cabello's report, you
wrote,

24 "there is no evidence tending to explain how said
traumatic

25 injury may have been produced; but it could have been
caused by

RICHARD A. KAUFMAN, CMRR

1 projectiles or through action of a blunt instrument."

2 A. It is written in this manner in order to leave the
3 investigation open for the Judge.

4 Q. But that is your final conclusion which you have
never
5 amended from January of 1991 through today?

6 A. That is true. This case has never been handled
7 specifically.

8 Q. I believe you said on your direct examination, was
this the
9 first time you worked on an exhumation?

10 A. That is true.

11 Q. Did you ever in the course of your work, ever
interview
12 Colonel Haag?

13 A. I do not know him.

14 Q. So you didn't interview him?

15 A. No.

16 Q. Do you know who Colonel Haag was, that he was the
Commander
17 at Copiapo in 1973?

18 A. I don't know.

19 Q. Did you ever interview General Arellano?

20 A. Not him, either.

21 Q. Did you ever interview Captain Diaz?

22 A. Not him, either.

where he

23 Q. Did you ever read any statements by Captain Diaz

24 described how these killings occurred?

25 A. No.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you ever interview Captain Ricardo Yanes?

2 A. Not him, either.

3 Q. Did you ever read any statements by Captain Yanes
how these
4 killings occurred?

5 A. No.

6 Q. Did you ever interview Lieutenant Marcelo Marambio,
7 M A R A M B I O?

8 A. No.

9 Q. Do you know who Captain Yanes is, ma'am?

10 A. No.

11 Q. Who Lieutenant Marambio is?

12 A. No.

13 Q. Did you ever interview Second Lieutenant Ojeda?

14 A. No.

15 Q. Do you know who Second Lieutenant Ojeda is, ma'am?

16 A. No.

17 Q. When you were examining the remains you have talked
to us
18 about, were you restricted from learning about what
happened to
19 the individuals who were in the grave?

20 A. The criminal procedural code in Chile states that
experts
21 do not need to have any information concerning their
expert
22 witness conclusions. Once these conclusions have been

23 completed, other information can be acquired.

with 24 Q. In the course of preparing your testimony, you met

ma'am? 25 Mr. Kerrigan prior to your testifying here today,

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. How many times did you meet with Mr. Kerrigan?

3 A. Twice.

4 Q. Was that once last week before you testified here?

5 A. That was one time, and there was another time in
Santiago.

6 Q. About a year ago?

7 A. Approximately.

8 Q. Did you meet with any other representatives of the
9 plaintiffs prior to your testimony here?

10 A. Yes.

11 Q. Who did you meet with? Just the names.

12 A. With Zita Cabello who contacted me.

13 Q. Anyone else you met with on behalf of the
plaintiffs?

14 A. The group of attorneys with Mr. Kerrigan.

15 Q. You flew up here from Santiago last week?

16 A. Yes.

17 Q. Did you have to pay for that yourself or were you
18 reimbursed from the plaintiffs?

19 A. They sent me an electronic ticket.

20 Q. Did you go back over the weekend or did you stay up
here in

21 Miami?

22 A. I stayed over here.

23 Q. Were your expenses taken care of by the plaintiffs?

24 A. Not exactly. The hotel expenses, probably.

25 Q. Earlier today when we were looking at the digital

RICHARD A. KAUFMAN, CMRR

1 presentation of the pictures from the cemetery, did
your office

2 supervise, in addition to those pictures, other
pictures that

3 were taken during that time?

4 A. No. The photographer took some photographs, but no
video

5 was taken.

6 Q. Where are those photographs today?

7 A. I do not know.

8 Q. In addition to making observations of the various
remains,

9 you indicated there were certain tests that were
performed such

10 as gun powder tests; do you remember that, ma'am?

11 A. Yes.

12 Q. Were there other tests that were done, such as a
lipid test

13 and a hair test?

14 A. Yes.

15 Q. In the exhibits I received, I don't see copies of
those

16 test results. Do you have copies of the test results
in the

17 exhibits you have?

18 A. No. I don't have copies of those tests, either.
Those

19 tests, all of the documents were sent in their totality
all

20 over to the Court, and I don't have copies.

21 Q. So they were never attached to your report, ma'am?

22 A. They were attached to the report and they were sent
23 separately. They were sent as annexes.

24 Q. In any of your reports are you able to identify
with

25 specificity the type of guns that were used in causing
death on

RICHARD A. KAUFMAN, CMRR

1 these various individuals?

2 A. No.

3 Q. I don't see notations of actually finding bullets.
Did you

4 find bullets at the site, ma'am?

5 A. No.

6 Q. As I understood your testimony earlier, you are
saying it

7 is possible for a person to have received a soft tissue
injury

8 that would have not -- soft tissue injury from a bullet
and it

9 would not show up on the bones you were able to
examine?

10 A. That is correct.

11 Q. At any time that you were out there were you able
to make

12 any kind of calibration as to the caliber of the gun
that made

13 the injuries?

14 A. No, I have no ballistic studies.

15 Q. And in fact, were ballistic studies even ordered?

16 A. No projectiles were found to be studied.

17 Q. In fact, when you used -- you used the term
"projectiles"

18 frequently in your reports; is that correct, ma'am?

19 A. Yes.

20 Q. And for us you would agree you could use the term
"bullet"

21 for it?

22 A. You can extend that to a bullet, yes.

23 Q. Yet you are saying at the site nowhere were bullets
found

24 in connection with any of these remains?

25 A. Correct.

RICHARD A. KAUFMAN, CMRR

1 Q. Was anyone even assigned to look for that
particular kind

2 of evidence?

3 A. Well, the holes were sent in for gun powder
studies, or

4 maybe residue of gun powder.

5 Q. I am sorry. I asked was anybody assigned to look
at

6 ballistic issues or look for bullets; that was my
question?

7 A. Specifically, no.

8 MR. DAVIS: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 (Interruption.)

11 MR. DAVIS: That is all I have, Your Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. KERRIGAN:

15 Q. Dr. Miranda, as a pathologist examining the remains
and the

16 other studies you did, is it part of your discipline
you go out

17 and conduct interviews with people?

18 A. No.

19 Q. If somebody like Captain Diaz would have told you
20 something, some account of this that was totally
inconsistent

21 with your findings, would you have changed your
scientific

22 findings because Captain Diaz had a different story on
how
23 these men were killed?
24 A. It is impossible. The findings speak for
themselves.
25 Q. The fact that the expenses for you to come to this
trial

RICHARD A. KAUFMAN, CMRR

1 and stay here and have to stay over for the weekend;
did that
2 in any way impact the truthfulness of your testimony
you have
3 given to the jury today?

4 A. That is impossible for that to happen.

5 Q. The photographic evidence that was displayed for
the jury,
6 was it in any way doctored or changed from the original
7 photographs that were taken at that time?

8 A. No. They faithfully represent the reality at that
time.

9 Q. At the time you performed the examination that you
10 performed, Dr. Miranda, did you even know any member of
the
11 Cabello family?

12 A. No.

13 Q. Where you have entrance wounds and exit wounds,
would you
14 expect to find a bullet?

15 A. Certainly not.

16 MR. KERRIGAN: That is all I have. It
completes my
17 examination.

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

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MR. KERRIGAN: I believe Mr. Davis wants to
continue

22 reading a portion.

you

23 THE COURT: You will continue with the reading

24 started last week?

25 MR. DAVIS: Yes.

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: Could Dr. Miranda be excused
to go

2 back to Chile?

3 THE COURT: Is she excused?

4 MR. DAVIS: Yes.

5 THE COURT: Yes.

6 MR. DAVIS: We were reading the deposition of
Angel

7 Ruben Herrera, who testified last Tuesday before you
and we

8 were reading further excerpts today. To help me with
the

9 reading is Tony Castro from my office. He will be
reading the

10 answers of the witness, Mr. Herrera. He will take the
witness

11 stand with Your Honor's approval.

12 THE COURT: You may take the witness stand.

13 MR. DAVIS: We left off at page 65. I am
starting

14 with line 22 with the resumption of the examination.

15 Q. Mr. Herrera, before we took a break for lunch, you
were

16 telling us about being tortured I guess the night of
October

17 12?

18 A. Yes.

19 Q. Clarify what was the date you were talking about?

20 A. October 1 of the year 1973.

12th

21 Q. Was it the morning of the 12th or the night of the

22 just so we can clarify?

23 A. The night of the 12th.

24 Q. Also, into the morning of the 13th?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. You talked about four people who were asking you
questions

2 and you said you recognized their voices; is that
correct?

3 A. Of some of them, yes.

4 Q. Which ones were -- withdraw that. Which voices did
you

5 recognize?

6 A. I recognized the voice of Juan Morales, Sergeant
Bernal,

7 Sergeant Garrido and Major Brito, who went by the name
or had

8 people refer to him by the name of Barrionuevo.

9 Q. Did you know any of these people before you were
arrested

10 and detained at the intendencia?

11 A. Yes.

12 Q. Who did you know?

13 A. Juan Morales.

14 Q. How did you know Juan Morales?

15 A. We went to high school for several years together.

16 Q. Do you know any of the other people?

17 A. Sergeant Garrido.

18 Q. How did you know him?

19 A. I was friends with his sister.

20 Q. How long were you friends with his sister?

21 A. More than two years.

22 Q. How did you know his sister?

23
visited their

A. She was a girlfriend of a friend of mine. I

24

home.

25
while you

Q. Did Juan Morales or Sergeant Garrido threaten you

RICHARD A. KAUFMAN, CMRR

1 were at this place being tortured?

2 A. Only Morales.

3 Q. Were you surprised Morales threatened you?

4 A. No.

5 Q. Why not?

6 A. I know that military discipline forces them to.

7 Q. Did you have a friendly relationship with Morales
when you
8 went to high school with him?

9 A. Very close friends.

10 Q. Were you shocked when you were asked questions --
did you
11 fall out of your chair?

12 A. No.

13 Q. Was anybody holding you in your chair at this time?

14 A. Yes, but I don't know who.

15 Q. Did they administer any other physical torture
besides the
16 electric shocks and I guess they put the foot to your
stomach;
17 anything else?

18 A. No.

19 Q. Do you know how long this lasted?

20 A. I don't know exactly but for me it was more than
three
21 hours.

22 Q. When they stopped, how did you feel?

23 A. I was ill. Felt very bad, very ill. I vomited.

24 Q. Did you have any sicknesses prior to the time you
were

25 tortured?

RICHARD A. KAUFMAN, CMRR

- 1 A. Yes.
- 2 Q. What type of illness or sickness?
- 3 A. I had an open ulcer.
- 4 Q. How long had you had that?
- 5 A. Since I was 22. That was the first time it was
bleeding.
- 6 Q. Had you ever been hospitalized because of your
ulcer?
- 7 A. Three times.
- 8 Q. After being tortured, you said you were vomiting.
Did you
- 9 have any blood?
- 10 A. Yes, mainly blood.
- 11 Q. What happened after they stopped torturing you?
- 12 A. I was taken back to the closet.
- 13 Q. Was a sack still on your head?
- 14 A. Yes.
- 15 Q. You said the closet was by an office?
- 16 A. Yes.
- 17 Q. What type of office was it, if you know?
- 18 A. That is where the Fiscalia or office of the
investigating
- 19 Judge operated.
- 20 Q. Was the investigating Judge a member of the
military?
- 21 A. At that time it was Major Brito.
- 22 Q. How do you know that office was next to the closet?

23 A. Because I had been there before.

just

24 Q. But you couldn't see where you were, so could you

25 describe what else?

RICHARD A. KAUFMAN, CMRR

I went
bag.
could
they
as they
were
you were
any
Marambio came
on the

1 A. At the moment I was there, I didn't know; but when
2 out days later to the hospital, I came out without the
3 Q. So you realized later where the office was?
4 A. But before that I was sure I was there because I
5 hear, I could hear how they wrote on a typewriter when
6 were interrogating other people.
7 Q. Could you hear what people were saying next door?
8 A. They were interrogating, asking questions, the same
9 did to me but without tortures.
10 Q. Just to clarify my question. It wasn't that they
11 asking, it was just whether or not you could hear them?
12 A. Yes.
13 Q. You said you were taken back to your closet after
14 tortured on the morning of the 13th. Were you given
15 medical treatments?
16 A. No.
17 Q. What happened during the day of the 14th?
18 A. I was all covered with blood and Lieutenant
19 to visit me. He mocked me. He pushed me to throw me

20 floor and I remained there until that very night. I
was taken

21 back for the same thing, the same place, I think. I
think.

22 There are other two persons there next to me who were
being

23 interrogated.

24 Q. Who were these other two people who were being

25 interrogated?

RICHARD A. KAUFMAN, CMRR

1 A. I remember the name of one of them. One of them
was Pedro
2 Vega.

3 Q. Why do you believe it was if same place you had
been the
4 night before?

5 A. Because of the duration of the trip going over
there and
6 the same cold that I felt.

7 Q. You said there was two other people being
interrogated
8 besides you. Were you transported with those persons
to this
9 place?

10 A. No, separately.

11 Q. Were you all sitting very close together? Can you
describe
12 how far apart you were?

13 A. I could only hear, but I figure about six feet.

14 Q. Were you also -- you said you were interrogated.
What type
15 of questions did they ask you?

16 A. First, first they had me keep quiet. Garrido spoke
to me
17 at my ear. He told me not to move or say anything.

The others
18 were interrogated and asked if I appeared armed at a
meeting on
19 September 11.

20 Q. Did you answer?

21 A. Yes.

22 Q. What did you answer?

23 A. Yes.

24 Q. You heard the other people being interrogated?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

shocked? 1 Q. Could you tell whether or not they were also being
asked, 2 A. I was made to -- I arrived there after, but later I
3 and yes.
4 Q. Who did you ask?
5 A. Mr. Pedro Vega.
6 Q. Which military officers were present that night?
7 A. The same ones.
8 Q. The same four that had been there the night before?
9 A. Precisely.
10 Q. You said first you were told to be silent and
listened.
11 Then what happened?
12 A. Then I was interrogated.
13 Q. Did they ask you similar questions that they asked
you the
14 night before?
15 A. Similar, but they now wanted me to incriminate
other
16 people.
17 Q. Who did they want you to incriminate?
18 A. Garrido whispered to my ear before we arrived
there. We
19 know everything. I don't know whether he said that to
help me.
20 I think so. The other person who was there was a
person who
21 sold the rifle to me.

22 Q. So not Pedro Vega but the other person being
interrogated?

23 A. The other person.

24 Q. You purchased a rifle from him?

25 A. With ammunition.

RICHARD A. KAUFMAN, CMRR

1 Q. When did you purchase that?

2 A. Three months earlier.

3 Q. Did they ask you about that?

4 A. Yes, because it was an Army rifle.

5 Q. Do you know whether or not it had been stolen?

6 A. I guess, by another military person.

7 Q. Were you also physically harmed that evening?

8 A. Yes.

9 Q. What happened?

10 A. The same. Shocks. I felt it less severe, but it
was the

11 same.

12 Q. What effect did it have on you?

13 A. I did not lose my consciousness.

14 Q. Did you have any vomiting or bleeding?

15 A. No.

16 Q. How long do you think this torture lasted?

17 A. I think about an hour.

18 Q. What happened after that?

19 A. I was returned to the closet.

20 Q. Did you feel sick or ill at that time?

21 A. Yes. There I passed out.

22 Q. In the closet?

23 A. In the closet.

24 Q. Was anyone present when you passed out?

took me 25 A. The soldier that was guarding me, he knew me. He

RICHARD A. KAUFMAN, CMRR

1 to the shower.

2 MR. DAVIS: Page 80 line 1.

3 I would like to refer to the page before that
was read
4 to the jury last week.

5 THE COURT: That is fine.

6 MR. DAVIS: Page 79 line 8.

7 Q. Tell me exactly what you heard?

8 A. I heard when Brito stated reading out loud, he said
9 something like this. These are -- these are they.

Lincollan

10 Cepeda, Vargas, Juan Lefeta, Angel Ruben Herrera, and
mentined

11 Leonello Vincenti, Pedro Perez, Alfonso Gamboa, Jaime
Sierra,

12 Winston Cabello. All of us. Some of us were
incomunicado.

13 Some of us were already in jail. Some of us were still
at the

14 regiment.

15 Q. How many names did they read?

16 A. I can't specify but I remember they read 15 names.

17 Q. Do you know when it was?

18 A. I think on the 14th. I am not sure.

19 Q. Was it after or before your second torture?

20 A. After.

21 Q. You mentioned after your second torture a young man
who you

22 don't recall his name helped you to take a shower.
Then what
23 happened after that?
24 A. I was left there again. Time passed so like meal
time came
25 around. That is when I saw Winston.

RICHARD A. KAUFMAN, CMRR

when
took it
soldier

1 Q. You said they took the bag off your head. Was that
2 Winston came to visit, to show him, or was that they
3 off before he came?
4 A. It was removed since I can not move my hands the
5 told him to feed me.
6 Q. You couldn't move your hands?
7 A. No, it was very burned, blistered.
8 Q. You said you didn't eat?
9 A. Uh, uh.
10 Q. How long was Winston there?
11 A. I don't think more than three minutes.
left?
12 Q. Did they put the sack back on your head when he
13 A. Yes.
you?
14 Q. Do you know what time of day it was he came to feed
15 A. Normally it was between 11 and twelve.
16 Q. In the morning?
17 A. Yes.
18 Q. You ate once a day?
19 A. I think so.
20 Q. What happened after he left?
21 A. Back to the cell. I was in a cell. He came in.
22 Q. In the cell or the closet?

23 A. The closet is the cell.

24 Q. I am trying to refer to it as one thing.

25 A. They adapted the closet to be a cell.

RICHARD A. KAUFMAN, CMRR

1 Q. Was there a light on in the closet?

2 A. Dim.

3 Q. Were you taken out of the closet that day?

4 A. Only at night for the torture.

5 Q. Did you have some place to go to the bathroom?

6 A. The soldier would take me out.

again
7 Q. You said they took you out. Did they take you out

8 that night to torture you?

9 A. What night are we talking about?

the
10 Q. The night from the 12th to the 13th and the 13th to

11 14th. So it would be the 14th to the 15th?

12 A. Yes, that would be the last time.

13 Q. Can you describe whether or not something different
14 happened that evening than happened the other evenings?

Wanted
15 A. Just it was another person they were interrogating.

16 him to incriminate me and me to incriminate him.

17 Q. Were there any soldiers there besides the four you
18 mentioned?

19 A. No, the same ones.

was?
20 Q. Do you know who the other person being interrogated

21 A. His name was Ruben Duarte.

22 Q. Were you tortured that night as well?

23 A. Very little.

24 Q. Do you know how long you were there?

25 A. I don't know whether an hour.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you get sick that night?

2 A. I was already sick. I passed out continuously.

3 Q. During the interrogation?

4 A. No.

5 Q. When?

6 A. During the day when I was by myself.

7 Q. After you were interrogated that third night, what
8 happened?

9 A. I bled profusely. I passed out. The soldier
called a

10 nurse or medic who checked me, spoke with the
investigating

11 Judge and a doctor came shortly. Apparently I needed
medical

12 treatment.

13 Q. When you said you started bleeding profusely, was
that at

14 the place you were being interrogated or back in your
closet?

15 A. In the closet.

16 Q. Where were you bleeding?

17 A. Through the mouth.

18 Q. Which soldier examined you?

19 A. The soldier that saw me on the floor was the same
one that

20 had given me the shower. The medic. His last name was

21 Iglesias.

were 22 Q. Did you have the sack on your head still while you
23 bleeding you through your mouth?
24 A. Yes. At that moment, yes. They removed it so I
didn't 25 have it any more.

RICHARD A. KAUFMAN, CMRR

1 Q. They removed it when Iglesias came?

2 A. Yes.

3 Q. Do you know who called the doctor?

4 A. The investigating Judge.

5 Q. Brito?

6 A. Yes.

7 Q. How do you know he called the doctor?

8 A. Because he came with the doctor.

9 Q. Was the doctor, if you know, a military doctor?

10 A. He was a physician. In a time of war, all
physicians

11 become part of the military in Chile.

12 Q. Do you know what time of day it was when the doctor
came?

13 A. I think when the doctor came it was around noon.
No,

14 sorry. The doctor first arrived with Brito, examined
me. Left

15 and came back. I don't know how long after. I was --
the

16 doctor told the investigating Judge in front of me I
was his

17 patient. Previously I had bleeding and in his opinion
because

18 of the amount of blood I lost I could only live six
hours more.

19 Q. Was this the same doctor you had seen while you
were in the

20 hospital prior to the time you were detained?

21 A. Yes.

22 Q. What happened after that?

23 A. The investigating Judge came back and told me you
will go.

24 You are going to the hospital without guards, but you
cannot

25 escape because if you try something, we will take your
wife and

RICHARD A. KAUFMAN, CMRR

1 daughters.

2 Q. Did you go to the hospital?

3 A. Juan Morales took me there with Garrido.

4 Q. Did you walk there?

5 A. No.

6 Q. How were you taken?

7 A. In a pickup truck.

8 Q. Could you walk at that time?

9 A. Yes.

10 Q. Were you still losing blood?

11 A. Not at that point.

12 Q. How far was the hospital from the place you were
detained?

13 A. A quarter mile.

14 Q. Could you see the hospital from the military
compound?

15 A. Yes.

16 Q. How big was the hospital?

17 A. Small. 300 beds.

18 Q. Is this the same hospital you had been into before?

19 A. Yes.

20 MR. DAVIS: Page 87 line 7.

21 Q. Mr. Herrera, before we took this short break. You
22 described being taken to the hospital. When you
arrived at the

23 hospital where did they take you?

alone 24 A. They emptied a room about this size and left me
25 there.

RICHARD A. KAUFMAN, CMRR

1 Q. For the benefit of the people that are on the
phone, they

2 don't know how big this room is?

3 A. About 20 feet by 16 feet.

4 Q. How many beds were in that room?

5 A. Earlier there had been four beds.

6 Q. How do you know?

7 A. Because I know the hospital.

8 Q. Could you please, Mr. Herrera, take that pen there
and draw

9 the layout of the room as best you can?

10 A. Have big windows here, big windows here. This is
the bed

11 where I was before they had -- I know they had -- this
is the

12 bed where I was. I know the hospital because my wife
worked

13 there. This is the way it was laid out before. This
one were

14 removed. This was the door, hallway, hallway and there
was

15 another hospital room there. I don't know if there
were people

16 in there or not.

17 Q. Was there a door between your hospital room and the
one

18 next door?

19 A. Yes, it was closed.

20 Q. Could you see out the windows?

21 A. No.

22 Q. Why?

23 A. They were painted over.

24 Q. They were totally painted over?

with 25 A. They don't use curtains or shades. They just paint

RICHARD A. KAUFMAN, CMRR

1 white paint.

2 Q. Was your room close to the doorway out to the hall,
that

3 led to the hall?

4 A. Yes, right there.

5 Q. Did I say room and not bed? Was your bed close to
the

6 door?

7 A. Yes.

8 Q. How far was the door from your bed?

9 A. Six to seven feet.

10 Q. You were in this room by yourself?

11 A. Alone.

12 MR. DAVIS: Moving on to page 102.

13 Q. How long were you in the hospital?

14 A. I went back to the regiment October 20 or a little
bit

15 later.

16 MR. DAVIS: Page 104, line 5.

17 Q. How long were you back at the regiment?

18 A. It was about ten days at the regiment. Then I was
19 transferred to jail.

20 Q. When you say transferred to jail, where was the
jail?

21 A. The jail is about three miles from the regiment.

22 Q. How long were you in jail?

23 A. Total, 28 months.

24 Q. Always the same jail at Copiapo?

25 A. No. I was transferred to Chanaral.

RICHARD A. KAUFMAN, CMRR

1 Q. When were you transferred to Chanaral?

2 A. About 16 months after being in Copiapo. I don't
know the
3 date. 15 were transferred. The reason they gave is we
were a
4 danger, we were transferred. Then I requested exiting
the
5 country.

6 Q. You said that you were in for 28 months and you had
been
7 transferred about 16 months to another jail?

8 A. Uh-huh.

9 Q. Did you have some type of trial before and were
given a
10 sentence?

11 A. Yes. I was sentenced. I don't remember the date.
I
12 really was never interested in remembering that. I
don't know
13 if you can understand but I do not have dates clear in
my mind
14 because I had forgotten them; but I was sentenced
between
15 November and December to five years in prison. I was
taken to
16 a court martial where sentence was given.

17 MR. DAVIS: Page 109 line 2.

18 Q. Mr. Herrera, before we took a break you had been
talking
19 about dates. You said you tried to forget dates. Was
that

20 true?

21 A. Yes.

22 Q. Are you certain that the day that your mother and
your wife

23 came in and brought you the cake was October 12?

24 A. Yes, I am sure.

25 Q. And you are sure on that same night or after that
you were

RICHARD A. KAUFMAN, CMRR

1 tortured for the first time?

2 A. That same night.

3 Q. Are you sure that you were also tortured the night
4 afterwards?

5 A. Yes.

6 Q. And again, the night after that?

7 A. Yes.

8 Q. And the night after that night, did you go to the
hospital?

9 A. Monday morning I went to the hospital.

10 Q. Do you know the day of the month you went to the
hospital?

11 A. I know it was Monday.

12 Q. How many nights had you spent in the hospital when
you were

13 visited by Lieutenant Ojeda and the other person with
the

14 Corvo?

15 A. Two nights.

16 Q. It was your second night or after two nights?

17 A. After two nights.

18 Q. You went to the hospital on Monday morning. Which
night

19 did it happen?

20 A. It was on Monday night I slept. Tuesday I was
sleeping

21 when they came for me. I don't know what time.

in the 22 Q. It was some time during the second night you spent
23 hospital?
24 A. The second night I managed to sleep.
25 Q. You said you went in Monday morning to the
hospital. You

RICHARD A. KAUFMAN, CMRR

1 slept that night without a problem?

2 A. Yes.

3 Q. Did you sleep the next night without a problem?

4 A. I slept some hours that night, the next night.

5 Q. Is that the night you had the visitors or was it
the next
6 night?

7 A. That night.

8 MR. DAVIS: Moving on to page 111, line 4.

9 Q. Okay, Mr. Herrera, my name is Greg Metzger. Mr.
Herrera,
10 when did you first learn this lawsuit was going to be
filed?

11 A. I think about four or five months ago.

12 MR. DAVIS: Page 111 line 20.

13 Q. How is it you learned about the existence of this
lawsuit?

14 A. Mrs. Zita Cabello called me to ask me some things
about

15 that time.

16 Q. Before Ms. Zita Cabello called you, did you know
who she

17 was?

18 A. Yes.

19 Q. How did you know her?

20 A. I knew her in Chile.

21 Q. How long did you know her in Chile?

22 A. A short time.

Zita 23 Q. What was the nature of your relationship with Ms.
24 Cabello?
25 A. We were associates of the Allende government, like
she, her

RICHARD A. KAUFMAN, CMRR

1 husband and her sister.

2 Q. Did you speak to her at any time between the time
you were

3 arrested October 1973 and 1976 when you left Chile?

4 A. I had not seen her before October 1973 and I have
never met

5 her in person here. I have seen her but I have not
spoken with

6 her.

7 MR. DAVIS: Moving on to 113 line 3.

8 Q. So I can make it clear, you said you didn't know
her as an

9 associate of the Allende Government. If you never had
personal

10 dealings with her, can you explain what you meant or
did I

11 misunderstand you?

12 A. I knew she was the wife of a man whose last name
was

13 Barleto. On a few occasions she visited the office of
my

14 party. I knew through University students who were
members of

15 my party. I know she gave classes at the University,
but I

16 never spoke with her.

17 Q. Okay. Did you ever speak with Winston Cabello
prior to the

18 time he came to be detained -- prior to the time you
came to be

19 detained with him on October 2 at the Atacama Military

20 Institution?

21 A. Before?

22 Q. Before that.

23 A. Yes.

24 Q. What was the relationship with him prior to that
time?

25 A. Periodically we held meetings of the political

RICHARD A. KAUFMAN, CMRR

1 organizations. This was called the People's Unity and
all of 2 those, with the participation of all those who were
named to 3 post as I was, named by the Allende government for
public post 4 and that is when I knew him. That is how I knew him.

5 Q. Did you have a social or friendly relationship with
him?

6 A. Political.

7 Q. Was the People's Unity Action Movement an Allende
political 8 party?

9 A. No.

10 Q. How was it related to Allende?

11 A. We founded the People's Unity Action Movement
composed of 12 several parties, the socialist party, the communist
party,

13 MAPU, the radical party and another small party.

14 Q. Did the People's Unity Action Movement favor the
Allende 15 regime?

16 A. Of course.

17 Q. Was Pinochet at the head of the military at that
time in

18 1973 regarded by you as an enemy of the People's Unity
Action 19 Movement?

20 A. Well, prior to --

21 Q. Prior to 1973 at any time prior to 1973?

22 A. No.

23 Q. After the coup in 1973, was Pinochet regarded as an
enemy

24 of the People's Unity Action Movement?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Were persons who were members of Pinochet's
military after
2 the coup regarded as enemies of the People's Unity
Action
3 Movement?

4 A. Yes.

5 MR. DAVIS: Page 123 -- 124 line 1.

6 Q. I was back at the wee hours of okay 17. My
understanding is
7 prior to that you had a blood transfusion; is that
correct?

8 A. Yes.

9 Q. Do you know how long ago prior to having been
awoken in the
10 wee hours of October 17 you had the blood transfusion?

11 A. No, I don't know.

12 Q. You also from the time you were admitted to the
hospital I
13 believe on October 15 were given injections of drugs on
a
14 schedule of eight, twelve, four, eight, twelve, four;
is that
15 correct?

16 A. Yes, correct, and some pills.

17 Q. Do you know how long prior to being awoken on
October 17 it
18 had been since your last dosage of pills or injections?

19 A. No.

20 Q. Could it have been at twelve midnight?

21 A. It could be.

22 Q. How is it you remember the schedule of eight,
twelve, four,

23 eight, twelve and four?

24 A. Because in Chile, they are given at the regular
schedules.

25 I had been sick before and it was the same doctor and
the same

RICHARD A. KAUFMAN, CMRR

1 medicine.

2 Q. So prior to the ordeal in the hospital, I also
understand

3 your testimony to be that you had suffered three
consecutive

4 nights of torture?

5 A. Yes.

6 Q. And in the wee hours of the morning, the officer
who was

7 wearing the black beret and had the weapons including
the Corvo

8 was someone who you did not know at that time or
recognize?

9 A. No.

10 Q. What if any facial hair did that person have at
that time

11 on October 17 in the wee hours?

12 A. I did not remember any facial hair.

13 Q. Do you know for certain he didn't have any facial
hair?

14 A. I do not, no. I didn't pay attention.

15 Q. If I am understanding you, the first time you
believe the

16 man you believed to be Armando Fernandez was in 1988 or
1989

17 when you saw his photograph on television; is that
correct?

18 A. No, that was not the first time.

19 Q. Would you correct me on that, please?

20 A. Being still in jail and I did not remember the
date, I saw

21 behind the General, I don't know whether Pinochet or
somebody

22 else, and I told Licollan Cepeda and -- that is the
man I saw.

23 Q. How long after October 17 was that?

24 A. I can't remember that.

25 Q. Was it --

RICHARD A. KAUFMAN, CMRR

- 1 A. I didn't pay attention.
- 2 Q. Was it a matter of years?
- 3 A. No, because I was only two years and eight months
in jail.
- 4 Q. Could it have been a matter of months?
- 5 A. Yes, it could be.
- 6 Q. At the time you saw this person behind Pinochet,
did that
- 7 person have any facial hair?
- 8 A. I don't remember. I mainly paid attention to his
eyes and
- 9 his eyebrows.
- 10 Q. After that time, when was is the first time you
believed
- 11 this person was Armando Fernandez?
- 12 A. I didn't reach that conclusion. Somebody informed
me.
- 13 Somebody from the Army gave the version, provided the
version
- 14 that I gave.
- 15 MR. DAVIS: Page 133 line 18.
- 16 Q. Did you meet with the Cabello attorneys prior to
commencing
- 17 the deposition today?
- 18 A. Yes.
- 19 Q. Approximately how many times?
- 20 A. Twice.
- 21 Q. For how long?

22 A. I think the first time one hour and the second time
another

23 hour.

24 MR. DAVIS: 138 line 4.

25 Q. It is a given you like to see Mr. Pinochet
prosecuted and

RICHARD A. KAUFMAN, CMRR

1 punished for the events that occurred in 1973; is that
correct?

2 A. No. I agree he should be prosecuted and after the
3 prosecution, well, what will be, will be.

4 Q. Do you believe the officers in Pinochet's military
5 operating at that time should also be prosecuted?

6 A. Yes.

7 MR. DAVIS: That is all we have, Your Honor.

8 THE COURT: Is there any redirect on the
deposition?

9 MS. HEALY: No, Your Honor.

10 THE COURT: Thank you, sir.

11 We will break for the day at this time.

12 Do not discuss this case amongst yourselves or
anyone

13 else. Have no contact whatsoever with anyone
associated with

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

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

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

17 with my staff concerning it.

18 Give your notebooks to the court security
officer.

19 Have a nice afternoon and evening. I will see you
tomorrow

20 morning at 9:30.

21 (Jury leaves room.)

22 THE COURT: Where are we in the plaintiffs
case?

23 MR. CUNNINGHAM: We have a ways to go.

24 THE COURT: Can you give me a percentage? I
know we
25 are moving slowly and some of that is not your fault,
it was

RICHARD A. KAUFMAN, CMRR

1 because of my situation but we will have to deal with
that.

2 MR. CUNNINGHAM: I predict we will be ending
on

3 Tuesday assuming Monday is dark next week. That will
be my

4 best guess.

5 THE COURT: I may still complicate that
schedule. We

6 will have to deal with that.

7 THE COURT: Defendant's case?

8 MR. DAVIS: Two days.

9 MR. KERRIGAN: A number of depositions will
be

10 played. We will need your rules on probably a dozen
questions

11 or answers before the jury comes in and before we start
to play

12 those. If we could do that maybe Monday morning.

13 MR. DAVIS: Both sides have made written
submissions

14 on this.

15 THE COURT: The next witness you are calling,
are

16 there unresolved objections on that?

17 MR. CUNNINGHAM: Your Honor. That witness is
Victor

18 Bravo by deposition.

19 THE COURT: Do I have the written submissions
on

20 those?

-- I

21 MR. DAVIS: Yes. They filed something Friday

22 shouldn't answer whether you have it or not.

23 THE COURT: I have plaintiffs' responses to
unresolved

24 objections. I will do my best to look at those. I
have

25 excerpts of the transcript that you are referring to?

RICHARD A. KAUFMAN, CMRR

1 MR. KERRIGAN: Yes, you do.

2 MR. DAVIS: If you need the entire transcript
of
3 Mr. Bravo, I will provide the Court with a copy of his
4 deposition.

5 MR. KERRIGAN: The next two would be Dr.
Murua and
6 Mr. Morales. That will cover tomorrow for sure and
probably
7 into the next day.

8 THE COURT: Do I have all the objections as to
those
9 two witnesses?

10 MR. DAVIS: Yes.

11 THE COURT: It was all filed at the same time?
12 Lisa, bring me what I have that was filed so I
could
13 make sure.

14 (Interruption.)

15 MR. DAVIS: I also have the entire transcript
for
16 Dr. Murua and Mr. Morales as well.

17 THE COURT: All right.
18 I see the plaintiffs' response relates to all
the
19 witnesses?

20 MR. CUNNINGHAM: Yes.

21 THE COURT: And the defendant's objection
relates to

22 all the witnesses?

23 MR. DAVIS: Yes.

24 THE COURT: I will do my best to consider
these this

25 afternoon. I have cancelled my afternoon calendar.

RICHARD A. KAUFMAN, CMRR

tomorrow

1 I will do my best to have rules for you
2 morning.

3 Anything else?

4 MR. KERRIGAN: No.

5 MR. DAVIS: No.

6

7

oOo

8

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

12

13

14

15

Date

Official Court Reporter.

16

17

18

19

20

21

22

23

24

RICHARD A. KAUFMAN, CMRR