

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
30, 2003		)	
		)	
	ARMANDO FERNANDEZ-LARIOS,	)	
		)	
	Defendant.	)	
		)	
	-----	)	x

VOLUME 5

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.
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Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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WITNESSES FOR THE PLAINTIFF:

VICTOR BRAVO MONROY (Depo.) 322  
IVAN MURUA CHEVESICH (Depo.) 359

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF IN EVID.  
Plaintiffs' Exhibit 18..... 349:5  
Plaintiffs' Exhibit 19..... 379:17  
Plaintiffs' Exhibit 20..... 381:22

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 do have rulings for you on the  
7 depositions, save the one deposition I did not have, I  
had a  
8 double on the doctor, so obviously I couldn't rule on  
Patricio  
9 Lapostol.

10 Who are you calling first?

11 MS. HEALY: We will be calling Victor Bravo  
first.

12 THE COURT: I had a question as to page 11  
lines 12

13 through 17. What is the probative value of this  
conversation

14 between the two unidentified soldiers at the cemetery,  
if any?

15 MS. HEALY: That snippet of testimony is  
relevant to

16 show the soldiers were so nervous and in such a  
difficult state

17 themselves that it impacts on Mr. Bravo's understanding  
of the

18 circumstances under which he had been called out late  
at night

19 to identify the bodies. We are not actually offering  
that

Bravo's 20 particular portion for the truth, but only to show Mr.

21 impressions at the time.

22 THE COURT: Ostensibly, there is very little  
probative

23 value. I don't see any probative value of the fact  
they had a

24 drunken conversation.

25 MS. HEALY: The probative value is not great.  
It does

RICHARD A. KAUFMAN, CMRR

1 add to the circumstances surrounding Mr. Bravo's  
experience at

2 the time.

3  
17. I do

4  
conversation

5 between the unidentified soldiers.

6  
corpses;

7 correct?

8 MS. HEALY: Yes.

9  
and 18,

10  
there

11  
statement to

12  
a group

13  
flashed

14  
were with

15  
they direct

16 the flashlight.

17  
the same.

18  
he saw.

add to the circumstances surrounding Mr. Bravo's

the time.

THE COURT: I will sustain lines 12 through

not find there is any probative value as to the

between the unidentified soldiers.

He is going to testify about seeing the

correct?

MS. HEALY: Yes.

THE COURT: The last line in a path, lines 17

so they directed the flashlight towards the ground and

was a whole row of corpses. I will allow that

come in as well as line 6 through half of 9. There was

of military personnel. Everything was dark. As they

the flashlight onto my face, I couldn't see whom they

or whom they were speaking to. It ends there, then

the flashlight.

As to page 12, lines 12 through 18, that is

He will be testifying about what he observed and what

19 This is an opinion --  
20 MS. HEALY: We would offer it as a proper lay  
opinion  
21 under Rule 701.  
22 THE COURT: There are other portions in the  
deposition  
23 in which he talks about the condition of the body.  
This is in  
24 general, it is not specific enough and it relates to  
any one  
25 corpse and it is cumulative. He does testify to  
observing

RICHARD A. KAUFMAN, CMRR



that 1 gunshot wounds in hands. I don't remember anything  
2 indicates corvos being used in any of the observations.  
3 Without that observation, I would sustain that as well  
as well 4 as his opinion they were massacred. That is sustained.

5           Though much of this testimony does come in as  
it 6 relates to his observations, I will allow that to come  
in and 7 this would be cumulative.

8           As to page 21 line 9 through page 22 line 18.  
This 9 objection is sustained as the witness recognizes the  
defendant 10 because of the information he comes to know after the  
event and 11 because of conversations he had afterwards with the  
officers. 12 It would be excluded, therefore, on hearsay, and I do  
not find 13 there is an exclusion based upon -- it does not fall  
within the 14 exclusion of refutation under 801.

15           MS. HEALY: 803.21.

16           I would ask the Court reconsider page 21 lines  
13 17 through 17 because those in fact are the witnesses' own  
18 personal observations of an individual.

19           THE COURT: I will allow the question at line

20 through line 17.

21 MR. DAVIS: The issue on this I would also  
have, in

22 their papers they somehow misstate this testimony as  
saying

23 Fernandez is at the cemetery. This witness does not  
say

24 Mr. Fernandez is at the cemetery. He identifies him  
only at

25 the dining hall. In their papers they argue that.

RICHARD A. KAUFMAN, CMRR

1                   If you look at the preceding question they  
don't  
2                   designate, they ask whether Armando was present at date  
-- did  
3                   you see him at Copiapo at any time, and I objected to  
the  
4                   question and Mr. Kerrigan rephrased his question. Did  
you see  
5                   who you now know as Fernandez on the 16th of October,  
and all  
6                   we have is his identification as I set forth in other  
examples  
7                   later on in this testimony. It is all based on what  
somebody  
8                   told him. Everything is based on what Mr. Vidal told  
him and  
9                   Mr. Mendoza told him.

10                   THE COURT: The question at line 10 is, did  
you see  
11                   who you now know as Armando Fernandez Larios, did you  
see that  
12                   man on the 16th of October. The identification of him  
by name  
13                   would have to be stricken.

14                   Actually what would happen, how we would  
proceed with  
15                   this, line 3, was Armando Fernandez Larios present on  
the date  
16                   of October 16 and did you see him at Copiapo at any  
time. The  
17                   answer would be, among the officers there dressed in  
combat

18 fatigue, there is a tall man then in combat fatigues  
with a  
19 corvo attached to his legs. He had all the  
characteristics of  
20 a typical commando leader which was different from the  
officers  
21 I knew. That is the only identification. That is  
based upon  
22 his observation of what he saw. The remainder of the  
23 identification as the defendant would be excluded based  
upon  
24 hearsay.  
25 MR. DAVIS: The question would be the one from  
lines 3

RICHARD A. KAUFMAN, CMRR

17? 1 to 5 and the answer starts at line 13 and ends at line

2 THE COURT: Yes.

3 MS. HEALY: Thank you, Your Honor.

this 4 THE COURT: Is that everything with respect to

5 witness?

6 MS. HEALY: Two more. Page 33 lines 16

through 25.

7 THE COURT: Page 33 line 16. Recollection

based upon

8 conversations with other witnesses, is sustained. It

is

9 hearsay. Page 23 lines 13 through 25. The three

persons who

10 had been executed, was this part of the actions at

Copiapo on

11 the same date?

12 MS. HEALY: They are actually executed during

the day

13 of the 17th in a separate action, not the early morning

hours

14 of the 17th along with the 13 that included Winston

Cabello.

15 THE COURT: What is the probative value?

16 MS. HEALY: To show the difference between a

military

17 execution versus a massacre. The witness observed two

18 different sets of bodies and he distinguished between

the

19 markings he sees on each of them after they are killed.

will now 20 MR. DAVIS: It goes to confusion. The jury  
with 21 think Mr. Fernandez is alleged to have something to do  
other acts 22 these other executions. There is already a lot of  
23 in this case, now they are putting in three additional  
24 executions. Perhaps with a limiting instruction.  
25 MS. HEALY: We would accept a limiting  
instruction.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: What would you propose that be?

2 MS. HEALY: This evidence is not offered to  
show

3 Mr. Fernandez was involved in these particular killings  
but

4 only to show the witness can distinguish between people  
who

5 were killed by military execution and people who have  
been

6 massacred.

7 MR. DAVIS: It has to go a little further than  
that

8 and say there is no allegation or indication that Mr.  
Fernandez

9 has anything to do with these and these are for  
comparison

10 purposes only, not anything having to do with any  
allegations

11 against Mr. Fernandez.

12 There is no allegation anywhere Mr. Fernandez  
or the

13 Caravan, to my knowledge, had anything to do with these  
three

14 executions.

15 THE COURT: Let me propose this. When this  
evidence

16 comes in, there are no allegations in this case, there  
are no

17 allegations that the defendant, Mr. Fernandez,  
participated in

18 or was involved in the killing of persons by military  
firing

19 squads. This evidence is offered for the purpose of  
comparing

20 the witness' observation as to persons who had been  
killed.

21 MS. HEALY: I would propose two additional  
changes to

22 that. The plaintiffs do not make these allegations.

23 THE COURT: Okay.

24 MS. HEALY: Also, with respect to the killing  
of these

25 three people by a military firing squad, because there  
are

RICHARD A. KAUFMAN, CMRR



1 other allegations in this case.

2 THE COURT: It would then be, the plaintiffs  
make no

3 allegations in this case that the defendant Mr.  
Fernandez

4 participated in or was involved in the killing of these  
three

5 persons by military firing squad. This evidence is  
offered for

6 the purpose of comparing the witness' observation as to  
persons

7 who had been killed.

8 I don't like the ending.

9 This evidence is offered for the purpose of  
comparing

10 the witness' observation as to the manner in which  
persons had

11 been killed.

12 MS. HEALY: That appears to be acceptable.

13 MR. DAVIS: Yes, Your Honor.

14 THE COURT: Counsel please approach for one  
moment.

15 (Side bar.)

16 THE COURT: In regard to the matter that was  
taken up

17 at the end of the day yesterday as to the jurors, what  
are

18 counsel's positions?

19 MR. DAVIS: I think they ought to be allowed  
to come

the rear 20 in and go as they please. Perhaps they could be told  
21 entrance has fewer members of the press.  
22 THE COURT: Let me propose this. What I  
thought I 23 might do, if we are going to do any kind of pickup we  
need to 24 organize it and it needs to be handled expeditiously so  
it 25 could be efficiently done by tomorrow morning. It will  
take

RICHARD A. KAUFMAN, CMRR

1 several days to organize.

2           What I would suggest if everybody agrees and  
there is

3 no objection, that I go into the juryroom and speak  
with the

4 jurors indicating that I understand someone has  
mentioned

5 photographs have been taken of you and get an idea from  
them

6 what their feelings are about it. As the conversation  
goes, I

7 may propose alternatives to them, asking them if they  
wish to

8 come in another entrance. They might want to come in  
that way

9 and make arrangements for them to be met over there, or  
I guess

10 they could come in and walk over. Once they are inside  
I don't

11 think there is a problem, or if there are strong  
feelings about

12 it we could make arrangements for them to meet, very  
early in

13 the morning, 7:30 at some outside location. That would  
be my

14 recommendation, to let me talk to them if there is no  
objection

15 to my going in the juryroom.

16           MR. DAVIS: I have no objection. It seems  
burdensome

17 for them to have to go someplace 7:30 in the morning  
when their

18 services are required at 9:30.

19 THE COURT: That would be the only way the  
marshals

20 can accomplish it.

21 MR. CUNNINGHAM: Whatever the Court wants to  
do with

22 regard to solving the problem.

23 THE COURT: Let me do this. Maybe at the  
first break

24 today I will go in and talk to them.

25 MR. CUNNINGHAM: Maybe you have done that  
before, but

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1 you may get a release of information about the case.

would not

2 THE COURT: No, I have done it before and I

telling

3 allow anybody to talk to me about the case. I begin by

here to

4 them I am not here to talk about the case at all, I am

about

5 talk to them about any feelings of being uncomfortable

some

6 coming into the building. I understand there have been

strongly and

7 people whose photographs were taken. If you feel

it

8 don't want me to do it, I won't do it; but I have done

I

9 before and gone into the juryroom and talked to jurors.

10 don't talk about the case.

11 MR. CUNNINGHAM: That is fine with me.

and I

12 THE COURT: We will do that at the first break

13 will report back to you and see how that works.

14 (Open court.)

15 THE COURT: Bring the jury in.

16 (Jury present.)

17 THE COURT: Call your next witness.

with a

18 MS. HEALY: The plaintiff calls Victor Bravo

19 videotaped deposition.

20 (Videotape played.)

21 Thereupon - -

22

23 VICTOR BRAVO MONROY,

24 called as a witness by the Plaintiff, having been first  
duly

25 sworn, testified as follows.

RICHARD A. KAUFMAN, CMRR

1 Q. Would you state your full name for us, please?

2 A. Victor Francisco Bravo Monroy.

3 Q. What is your current occupation?

4 A. I am the head of a fleet. I work in a fishing  
company.

5 Q. Have you ever lived in Copiapo?

6 A. Yes, 21 years.

7 Q. You lived in Copiapo 21 years?

8 A. Yes.

9 Q. From what time to what time?

10 A. From the 2nd of May 1962 until 1978. I had a  
summer home

11 in Caldera. So I kept living in that house but I  
always had

12 connection with Copiapo because it was 70 kilometers  
away until

13 I finally moved permanently to Caldera.

14 Q. What was your job in 1973?

15 A. I was the provincial head of the service of  
identification

16 and registry.

17 Q. What kinds of things did you do in this job?

18 A. I supervised all the offices of the civil registry  
and

19 Bureau of Identification in the province of Atacama.  
At that

20 time it was a province.

21 Q. And that included Copiapo?

22 A. Yes. The main seat was there, the headquarters.

23 Q. I am going to ask you now about events that  
occurred on

24 October the 16th, 1973. Would you tell us what  
happened in the

25 evening of 1973 at your home, in the early evening  
hours?

RICHARD A. KAUFMAN, CMRR



1 A. There was a curfew at that time. I can't remember  
the  
2 exact hour, but it was about as of 4 o'clock or 5  
o'clock in  
3 the afternoon. Nobody could leave, be on the streets.  
I can't  
4 remember if it was exactly between 4 o'clock or 6  
o'clock in  
5 the afternoon. And it had already gotten dark. At  
about 8  
6 p.m., a jeep showed up at my home. It was commanded by  
a  
7 subofficer from the Army and a soldier who had a sub  
machine  
8 gun.

9 Q. Before you go any further, you testified it was  
dark. Was  
10 this at night?

11 A. It was around 7 o'clock in the evening. It was  
already  
12 dark. It was late. They asked for Victor Bravo. I  
came out  
13 of the house. "You have to get into the Jeep and come  
with  
14 us." There was no explanation about where we were  
going.

15 They just said, "get into the Jeep."

16 Q. Was this an unusual occurrence for Army officers to  
come  
17 and get you from your home without telling you why?

18 A. Totally unusual. Because it was -- it had to do  
with an

19        arrest. I didn't know where they were taking me or  
why. The  
20        jeep then took us to the regiment. It entered the  
regiment.  
21        It stopped near the dining halls and we got out. We  
went into  
22        a large dining room. They told me to wait in one end  
of the  
23        dining hall.  
24        Q. Did you wait there?  
25        A. And there I waited for about two hours.

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1 Q. What happened then?

2 A. Officers came and went. And I knew the majority of  
these  
3 officers because I am also a diving instructor. I am  
also a  
4 sailing instructor. So I have given several of them  
5 instruction on sailing and diving.

6 Among them were officers I didn't know. I  
didn't  
7 recognize and they also had other clothes on. And far  
away  
8 from where I was they talked a lot among themselves.  
The ones  
9 who knew me said hello from far away, but they never  
approached  
10 me close.

11 Q. In terms of the officers that were not dressed --  
or  
12 appeared to be dressed differently, how many officers  
were  
13 these and what was the dress?

14 A. They had combat fatigues on which is different from  
what  
15 the officers usually wear in every day life.

16 Q. And how many were there, about?

17 A. As they came and went, they came in and they went  
out, I  
18 would calculate about two or three.

19 Q. You waited about two hours. Then what happened?

20 A. And the same subofficer told me, "let's go." He  
didn't  
21 tell me where we were going. We went back inside the  
Jeep. On  
22 his lap he had a submachine gun and the one in the back  
of him  
23 seated in the back had a machine gun. The streets in  
the city  
24 were deserted because there was a curfew. We went  
through the  
25 downtown area. We crossed over to get to the Northern  
highway.

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1 I was thinking we were probably heading towards  
Caldera, but he

2 crossed the bridge that leads to -- he crossed the  
bridge over

3 the river that leads to the cemetery.

4 Q. What happened when you went into the cemetery then?

5 A. There was a group of military personnel.  
Everything was

6 dark. As they flashed the flashlight onto my face I  
couldn't

7 see whom they were with or whom they were speaking to.  
They

8 directed the flashlight towards the ground and there  
was a

9 whole row of corpses. They all had the bag in which  
sleeping

10 bags are put into. The outside cover. Each one had it  
tied

11 over its head. You could tell they had doused them  
down with

12 water. Yes. This is what this is all about. We have  
to

13 identify these corpses so we can issue the death  
certificates.

14 I complained to them that in order to make  
these

15 identifications, I needed my usual instruments. The  
cards,

16 cards that I use to take fingerprints with, the ink.  
And he

17 said, "here they are." I was surprised because these  
had been

ready 18 taken from my office, and they had all the instruments  
corpse. 19 there. All these objects were on top of the first  
this 20 So they said, "please proceed." So I took off  
because its 21 bag. I have said this very few times in my life  
22 very gruesome.  
23 Q. Did you know any of these people, Mr. Bravo?  
a time 24 A. One's memory upon seeing all this, one's memory at  
now that 25 after seeing all this goes at certain occasions. But

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Alfonso 1 I remember it, the first one that I identified was  
the 2 Gamboa. He was a friend of mine from the club. He was  
half of 3 director of a radio. They had shot off or blown off  
radio. 4 his face because he was probably a speaker over the  
body 5 That is what I thought. I took his documents off his  
recognize him 6 because he was totally -- it wasn't possible to  
aside. 7 in that state. I took his fingerprints. I put them  
8 And on and on, Jaime Sierra, Leonello Vincenti.  
now. 9 Q. Mr. Bravo, I am going to ask you about these people  
that 10 Can you tell me anybody that you knew, any of these men  
them 11 were killed, I would like you to tell me if you knew  
12 personally and what you knew about them?  
family. 13 A. I have already explained about Gamboa. I knew his  
in the 14 I can't remember exactly if he was married in my office  
Jaime 15 civil marriage ceremony. I can't remember exactly.  
had taken 16 Sierra was a young student leader. He and his group  
professor 17 over several theaters, etc. He was the stepson of a

18 much be loved by me.

19 In the case of Leonello Vincenti, I had been  
the

20 presiding authority when he was married before the  
civil

21 registry. He was a professor at the University and he  
was my

22 son's professor.

23 Q. As you tell us about these people, can you tell us  
what you

24 remember about their body, if you remember specific  
injuries

25 that you saw to the bodies of these people?

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and one  
with a  
his body.  
to you

1 A. I remember that Jaime Sierra had deep green eyes  
2 was missing. I could tell that they had removed it  
3 corvo. Plus other wounds. Leonello Vincenti was in a  
4 deplorable state. He had open gaping wounds all over  
5 I have never told the relatives this and I will explain  
6 why later on.

believe,

7 There was another young man, Larravide, I  
8 small, slightly built.

they just  
it, so  
personally.

9 I say, if they had to kill them, why didn't  
10 kill them and not do it in that way. The way they did  
11 bloody, so much hatred. They didn't even know them

father had  
Caldera. It  
I did it

12 I knew Pelleras. I knew his father. His  
13 just lost a grandson and they found him drowned in  
14 was a terrible tragedy for the family. That's the way  
15 on and on with each one. The mass grave was  
16 immediately next  
17 to them.

same  
was this

18 As I went identifying each corpse, I said the  
19 position as they were lying on the ground. Number one

19 corpse, number two was this man. Number three was --  
on the  
20 12th, when I was identifying the 12th corpse, I ran out  
of  
21 papers for which to fingerprint them with. As there  
were 13 in  
22 total. Then we heard voices coming from inside the  
cemetery  
23 and everybody was on the alert because they were people  
who  
24 were not part of the military. They put themselves in  
a  
25 defense position. And I was a civilian and anybody  
could have

RICHARD A. KAUFMAN, CMRR

1 done anything to me. Finally, this group approached  
and it was 2 a patrol squad.

3 THE INTERPRETER: He has to repeat the name of  
the 4 administrator of the cemetery.

5 A. Meza. And that is when I saw the administrator of  
the 6 cemetery. I can't remember his first name. He was  
well known.

7 He was of dark complexion, but I saw him very white  
because he 8 was so pale.

9 Q. Were the bodies that you examined, the 13 bodies,  
were they 10 all similarly massacred or were here some of the bodies  
that 11 were just executed, just by execution?

12 A. No, not one was just shot to death by execution.  
Some were

13 in worse state than others. Winston had a cut on his  
ear, if I 14 remember correctly and he had a gash, a wound from his  
ear down 15 through his throat.

16 Q. Did he have any other wounds on his body that you  
saw?

17 A. Gunshot wounds from the feet all up through the  
body, and 18 you could tell that they had tried to defend themselves  
where

19 they had gunshot wounds through their hands as well.

20 Q. Did you see any vehicle that was used to transport  
the

21 bodies to the cemetery?

22 A. It was a Tolva truck like the ones used by the  
mining

23 company. I have a feeling it was not a truck that  
belonged to

24 the regiment, but rather a truck that came from the E N  
A M I

25 Mining Company. The back part of the truck, it looks  
like it

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1 had just been watered down because it was wet.

2 Q. In the United States we have something called a  
dump truck

3 in which the bed of the truck tips up. Was that what  
this was,

4 a truck with a bed that could come up?

5 A. Yes. It was in that position, probably to wash  
away all

6 the blood.

7 Q. Were you able to identify by name the military men  
that

8 were at the cemetery with you?

9 A. No. And why? You can imagine the state I was in.  
I had

10 no idea what was going to happen to me. And then to  
observe

11 this massacre. I wasn't in a condition to identify the  
people

12 because between the nervous tension I was feeling, then  
the

13 people who were approaching us we thought they were  
going to

14 attack us, these bodies, so I couldn't identify.

15 Q. But you did identify Mr. Meza, the cemetery  
proprietor?

16 A. Yes, absolutely. There was no confusion there  
because he

17 was the only civilian who came with the military. And  
Meza is

18 taller than most people. His height is about one meter

19 centimeters.

20 Q. You identified with the fingerprints up to body  
number 12

21 but you didn't have the cards to complete that. How  
did you

22 complete that identification on body number 13?

23 A. Ah, no. I still had the cards. What was missing  
was body

24 number 13.

25 Q. Oh. The 13th body was the body on which you had  
placed all

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the 1 your instruments because you didn't have a place to put  
them? 2 instruments to keep them safe or where you could reach

3 That was on the 13th body; is that correct?

4 A. Exactly.

5 Q. You have mentioned a university professor and a  
student and

6 one or two others. Did you know all 13 of these men?

7 A. Not all 13. There was some I didn't know. The  
guard who

8 was from Caldera, I don't remember him exactly. I knew  
Jaime

9 Sierra, Jaime Palleras, Leonello Vincenti, Perez,  
Pepito Perez,

10 Larravide, Winston.

11 When Winston was arrested, that same time,  
they had

12 convened a meeting of all the heads of the public  
services

13 after the 11th of September. I saw him there for the  
last

14 time.

15 Q. So you knew six or seven of these men previous to  
that

16 night?

17 A. Yes.

18 Q. Were all of the bodies, once you identified them,  
placed in

19 a common grave?

20 A. Yes, in a common grave.

21 Q. Did you inquire of the military people that were  
there

22 whether the bodies should be given to the families?

23 A. No.

24 MR. DAVIS: Your Honor, I have something I  
would like

25 to raise at the side bar.

RICHARD A. KAUFMAN, CMRR



1 THE COURT: Come up.

2 (Side bar.)

3 MR. DAVIS: Your Honor, I would object to the  
4 testimony starting at page 19 line 20 through page 20  
line 18.

5 I apologize. I thought I objected previously to it.  
It is

6 clearly asking for hearsay and the witness is  
describing,

7 making a conclusion he was shocked or surprised and  
talking

8 about the alcohol.

9 One of the reasons I didn't raise it in my  
papers --

10 is that an answer, the question is, did you hear that  
discussed

11 among the military people there? They were only  
talking about

12 what had just happened.

13 THE COURT: Where is the answer?

14 MR. DAVIS: The next page.

15 THE COURT: I was looking at the wrong page.

16 MS. HEALY: There is no hearsay answer. The  
answer

17 goes into the alcohol and the nervousness but that is  
an

18 observation by the witness. It is his impression at  
the time

19 of the behavior of the soldiers.

20 THE COURT: I will sustain the objection as  
hearsay.

21 That would cover line 20 on page 19 to --

22 MR. DAVIS: Page 20 line 18 because the  
witness said

23 the officers, they were commenting that they were in  
shock.

24 THE COURT: Up to line 6 on page 20 as  
hearsay. Line

25 lines 8 through 10, it is not within the competence of  
the

RICHARD A. KAUFMAN, CMRR

1 witness that they were consuming liquor to overcome  
their  
2 emotional state and line 10 and 11 through 18 would be  
hearsay.

3 (Open court.)

4 (Videotape played.)

5 Q. Was Armando Fernandez present on the date of  
October 16 and  
6 did you see him at that time.

7 A. Among the officers there dressed in combat fatigues  
there  
8 is a tall man, thin man in combat fatigues with a corvo  
9 attached to his leg. He had all the characteristics of  
a  
10 typical commando leader which was different from the of  
the  
11 officers I knew.

12 Q. Had you ever examined bodies of people you knew  
that had  
13 been killed by military firing squad?

14 A. The next day, yes, I saw three of them who had been  
15 executed, Garcia Posada, Maguindo, and another one  
whose name I  
16 can't recall. And Tapia. They had the gun shot wound on  
their  
17 chest.

18 Q. And the people that you just told us about where  
you  
19 examined their bodies, they didn't have any corvo  
wounds or

20 other disfiguring wounds; is that correct?

21 A. No, nothing. They had all their clothes on. I  
remember

22 Garcia had a ring on with a stone in it. The face was  
23 perfectly all right.

24 MS. HEALY: Page 24 line 9.

25 THE COURT: Ladies and gentlemen of the jury,  
the

RICHARD A. KAUFMAN, CMRR

1 plaintiffs make no allegations in this case that the  
defendant,  
2 Mr. Fernandez, participated in or was involved in the  
killing  
3 of these three persons by military firing squad. This  
evidence  
4 is offered for the purpose of comparing the witness'  
5 observation as to the manner in which these persons had  
been  
6 killed.

7 You may proceed.

8 (Videotape played.)

9 Q. That evening when you were in the dining hall, is  
that when  
10 you saw the person you have identified as, I believe,  
as  
11 Fernandez Larios? Is that when you saw him, in the  
dining hall  
12 while you were waiting?

13 A. Yes, for the first time.

14 Q. Did you see the other military men in combat  
uniform in  
15 that dining hall at some point in time in that two  
hours?

16 A. As I said before, while I was waiting in the dining  
hall,  
17 there must have been a group of seven or eight military  
men,  
18 but they kept coming in and out. But I figured about  
seven or

dressed 19 eight military people and there were three who were

20 differently and I didn't know them at all.

you would 21 Q. Very early in your testimony today, you said that

these men 22 explain later why you didn't tell the families how

23 had been killed. Would you tell us now?

reasons. 24 A. The reason was this. It was just for humanitarian

look 25 Because when they would question me what did my husband

RICHARD A. KAUFMAN, CMRR

office to 1 like, or my son, or my brother, they would go to my  
knew I 2 implore me to tell them about their loved one. As they  
the 3 was the one who identified them. I explained here are  
with a 4 fingerprints I took from them, and there was one card  
bloody 5 lot of blood on it. In one case, that case with the  
shot to 6 card, I didn't show it to his widow. Her husband was  
7 death. It was the widow of Leonello Vincenti.

seen 8 So I never told them in what condition I had  
9 them. I certainly didn't tell Zita.

10 Q. When was the exact time that you were first  
contacted? You 11 said it was after the curfew when the military men came  
to your 12 house?

13 A. It was about 7 p.m. in the afternoon.

14 Q. What would be the time period between the time you  
were 15 first approached by the military before the time you  
actually 16 got to the cemetery?

17 A. I would say about two to two and a half hours.

18 Q. So you believe approximately you were at the  
cemetery 9:30,

19 10 o'clock that evening?

20 A. Yes.

21 Q. Prior to going to the cemetery, how many men did  
you see

22 that were wearing the combat fatigues?

23 A. I would say three maximum.

24 Q. The men wearing combat fatigues, you saw them in  
the dining

25 hall at the regiment?

RICHARD A. KAUFMAN, CMRR



1 A. Yes, in the dining room.

2 Q. Did you see them anywhere else?

3 A. No.

4 Q. Do you recall the men in combat fatigues --

5 MS. HEALY: That concludes the testimony of  
Mr. Bravo.

6 The plaintiffs do have additional videotapes  
to offer.

7 However we need to resolve the objections on this  
deposition.

8 THE COURT: Who is next?

9 MS. HEALY: Mr. Morales.

10 THE COURT: Let's take a break at this time.

11 Do not discuss this case amongst yourselves or  
anyone

12 else. Have no contact whatsoever with anyone  
associated with

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

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

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

16 with my staff concerning it.

17 There are a few matters I need to take up with  
the

18 lawyers. You may be back in the juryroom in 20  
minutes. Leave

19 your notebooks on your chairs.

20 (Jury leaves room.)

Juan 21 THE COURT: In regard to the objections of  
22 Morales Alcota, page 11 lines 19 through 24, that  
objection is 23 sustained.

24 MS. HEALY: I would point out lines 23 and 24  
really  
25 are the next question and if the Court is going to  
sustain the

RICHARD A. KAUFMAN, CMRR

1 objection, we ask it only be as far as line 22.

2 MR. DAVIS: Then we have a predicate not  
established

3 in the testimony of this witness. He is basing  
everything on

4 hearsay. I wasn't at this deposition. No one on  
behalf of the

5 defendant was at this deposition. Our position would  
be the

6 identification testimony should not be allowed because  
it is

7 based on hearsay, based upon his own testimony  
throughout this

8 deposition. He learns about Fernandez by seeing his  
picture in

9 the media subsequent to the preceding events.

10 MS. HEALY: He says in this objected to  
portion, he

11 heard the name mentioned in the office that day.

12 THE COURT: I sustained that. The plaintiffs  
claimed

13 this was not hearsay pursuant to 801(d)(2) B. I do not  
find

14 there is an adoption by the party. On that basis it is

15 sustained.

16 MS. HEALY: We would ask, however, we be  
permitted to

17 play the question on lines 23 and 24 which would tie in  
with

18 the answer on the following page.

23 and 19 THE COURT: I will allow the question at line  
20 24 and the answer on page 12.  
21 Then there was an objection at page 22. The  
basis for 22 the identification, because he had seen him on the news  
is 23 sustained. The answer, because he saw him inside my  
office at 24 line 6 is overruled as that is based upon observation.  
The 25 continuation of the answer, because his name was said  
several

RICHARD A. KAUFMAN, CMRR

1 times in my office is sustained.

inside 2 He may answer that question because he saw him  
3 his office.

deposition 4 Those are the objections with regard to the  
5 of this witness; is that correct?

6 MS. HEALY: Yes.

7 MR. DAVIS: Yes, Your Honor.

very 8 In light of your ruling -- I am sorry, I think  
ruling. 9 slowly at times. I am trying to figure out your

identification 10 My position would be we object to the

has 11 of this witness. I think our objection under Rule 28  
12 already been ruled on by the Court, but we still have  
the same 13 objection as to this entire deposition.

taken 14 THE COURT: This was one of the depositions  
in and 15 after the offer was made for a notary or person to come  
16 perform an oath.

17 MR. DAVIS: Yes.

18 THE COURT: What was your other basis?

on 19 MR. DAVIS: The entire identification is based

20 hearsay and an after the fact identification. Your  
Honor has  
21 sustained the hearsay aspect of this but there is after  
the  
22 fact identification. Your Honor is going to allow the  
23 testimony to proceed as identifying Mr. Fernandez, I  
would ask  
24 that the question -- that the answer on line 5 be  
admitted.

25 THE COURT: What page?

RICHARD A. KAUFMAN, CMRR

1  
reference --

MR. DAVIS: Page 22 and we leave out the

2

THE COURT: Page 22 line 5?

3  
because I had

MR. DAVIS: You sustained the objection,

4

seen him on the news.

5  
answers,

THE COURT: Do you want all three of those

6  
in?

6

the three manners in which he identifies them to come

7

MR. DAVIS: No, only one and two.

8  
news and

8

THE COURT: Because he had seen him on the

9

because he came in my office?

10

MR. DAVIS: Yes.

11

THE COURT: Okay.

12

We are in recess for 15 minutes.

13

(Thereupon a recess was taken, after which the

14

following proceedings were had.)

15

(Open court. Jury not present.)

16  
vs.

16

THE COURT: Estate of Winston Cabello, et al.

17

Armando Fernandez-Larios, Case Number 99-0528.

18

Would counsel state their appearances.

19

(All parties present.)

20  
with this

20

MR. DAVIS: There is one preliminary issue

21  
one of my

21

next designation. Specifically, I wanted to withdraw

22 designations I made. They want to play it, so we now  
have an  
23 objection to resolve; page 23 line 20, Mr. Morales'  
deposition.  
24 I had made an objection through page 24 line 3. I  
would like  
25 to take it out but plaintiffs' desire to play it and I  
would

RICHARD A. KAUFMAN, CMRR



1 like to make an objection.

2 THE COURT: You are objecting to it?

3 MR. DAVIS: Yes, to something I had designated  
and a  
4 question following it they also object and designated.

5 What the question and answer deals with, the  
witness

6 learning from outside parties that the prisoners had  
tried to  
7 escape. He is relating that. I would object to that  
portion

8 of the answer being that they had tried to escape in  
both

9 questions page 23 into page 24; that any answers by  
this

10 witness relaying a story that the prisoners had tried  
to escape

11 would necessarily be hearsay since he doesn't testify  
he

12 witnessed this event and I believe those questions and  
answers

13 relating to that should be excluded.

14 MS. HEALY: Your Honor, this is the false  
story that

15 the Government of Chile, the regime, had put out widely  
at that

16 time. We are not offering it for its truth because the  
17 prisoners didn't attempt to escape.

18 I would also point out the portion of the  
answer on

19 23, line 25 beginning after they had tried to escape  
continuing

20 through 24 line 3, appeared to be from Mr. Morales' own

21 knowledge what he heard that night. We would ask at  
least that

22 portion remain in.

23 THE COURT: What do you mean his own personal

24 knowledge what he heard?

25 MS. HEALY: He talks about hearing gun shots  
during

RICHARD A. KAUFMAN, CMRR

1 the night and he located the gun shots in a particular  
area.

2 THE COURT: If it is not coming in for the  
truth of  
3 the matter, what is the probative value?

4 MS. HEALY: This is a story that was told to  
the  
5 families and put out widely by the military regime to  
falsely  
6 pretend that the prisoners were shot trying to escape  
when in  
7 fact they were murdered. It certainly goes to damages  
at the  
8 very least.

9 THE COURT: I will overrule the objection.  
10 It is not hearsay, it is not coming in for the  
truth  
11 of the matter asserted and represents what the witness  
heard  
12 that night.

13 MS. HEALY: This videotape runs roughly 40  
minutes.  
14 We can handle the objection of the next excerpt as  
well.

15 THE COURT: What is the next one?

16 MS. HEALY: Dr. Murua.

17 THE COURT: Didn't I give you my rulings on  
that?

18 MS. HEALY: Not on Dr. Murua.

19 THE COURT: Dr. Murua, page 27 lines 4 through  
13.

20 That objection is overruled. It is based upon personal  
21 observation by the witness.

22 Page 37 line 3. That is sustained. Hearsay.

23 MS. HEALY: For clarification purposes,  
sustained as

24 to which particular portion, only line 3?

25 THE COURT: The question is, page 36 line 23.

RICHARD A. KAUFMAN, CMRR

1 Question, so the first time you believe you associated  
a name  
2 Armando Fernandez with the person who was in the room  
with you  
3 was approximately 20 years later when you saw a picture  
of  
4 Armando Fernandez; is that correct? Answer, no. Three  
days  
5 after this incident Vidal and Mendoza gave me this  
information.  
6 Larios was Vidal's roommate in the barracks when they  
were  
7 studying to join the Army.

8 The identification is based upon hearsay given  
by  
9 Vidal and Mendoza.

10 Page 57 --

11 MR. DAVIS: Actually page 56 line 23, Your  
Honor.

12 THE COURT: It would be the same basis. Vidal  
13 disclosed the name --

14 MS. HEALY: I would note for the Court we  
haven't  
15 designated anything on page 57.

16 MR. DAVIS: That is the basis of my objection,  
the  
17 identification of Mr. Fernandez. The entire testimony  
is based  
18 on hearsay. The witness was told three days later by  
19 Lieutenant Vidal that Armando Fernandez was there and  
that is

his 20 how he adopted this identification of Mr. Fernandez in  
21 testimony here.  
22 THE COURT: The question is designated on page  
56;  
23 correct?  
24 MS. HEALY: Yes.  
25 THE COURT: But not the answer?

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: For some reason, no.

2 THE COURT: So we don't need the question if  
the

3 answer hasn't been designated. That would be stricken.

4 Does that cover your objections, Mr. Davis?

5 MR. DAVIS: There is an objection on page 28  
line 2.

6 It goes from page 27 line 24 to page 28 line 9.

7 THE COURT: That objection is overruled. He  
says the

8 identification is based upon a picture that he saw 20  
years

9 later. They are entitled to bring out the manner in  
which he

10 made the identification. It is 20 years later but they  
are

11 entitled to the identification.

12 Are we ready now?

13 MS. HEALY: Yes.

14 THE COURT: Bring in the jurors.

15 (Jury present.)

16 THE COURT: Call your next witness.

17 MS. HEALY: The plaintiffs are offering the  
videotaped

18 deposition testimony of Juan Morales Alcota. The  
deposition

19 excerpts run approximately 40 minutes.

20 THE COURT: You may proceed.

21 Q. Would you state your full name, please?

22 A. My name is Juan de dios Morales Alcota.

23 Q. What is your age?

24 A. 60 years.

25 Q. Were you ever in the service of the Chilean  
Military?

RICHARD A. KAUFMAN, CMRR



1 A. Yes.

2 Q. What was your rank in 1973?

3 A. I had the rank of corporal first class.

4 Q. Where were you stationed in September of 1973?

5 A. I was at the City of Antofagasta.

6 Q. Did you have a need or were you assigned to go to  
Copiapo

7 in late September or early October, 1973?

8 A. At the beginning of the month of October I went  
from

9 Antofagasta to Copiapo.

10 Q. What was the reason that you went to Copiapo, were  
you

11 assigned there by the military?

12 A. I belonged to the engineer's regiment at the time  
in

13 Copiapo.

14 Q. What job did you have in Copiapo with the military  
after

15 you arrived there in October of 1973?

16 A. I worked in the second section, security.

17 Q. What were your responsibilities in the second  
section for

18 securities?

19 A. The creation of documentation, security plans,  
codes. That

20 was more or less my job.

21 Q. Where was your office located in the garrison at  
Copiapo?

22 A. On the second floor.

23 Q. Where was your office in relation to Carlos Brito's  
office?

24 A. Almost at the same level, but his was on the first  
floor.

25 Q. Where were the records maintained of prisoners that  
were

RICHARD A. KAUFMAN, CMRR

1 held in the garrison?

2 A. In a metal filing cabinet in our office on the  
second

3 floor.

4 Q. What were your duties in regards to the records of  
these

5 prisoners? Did you have any duties?

6 A. I would create the cards.

7 Q. I now want you to explain, if you would, the cards  
that

8 were maintained for each prisoner, what those cards  
looked

9 like?

10 A. The cards were a document which registered the  
information

11 of the person, the name of the person, the name of  
their

12 national identity card, their address and their  
political

13 affiliation.

14 Q. Was all of this information maintained on one large  
card?

15 A. Individual. It was individual for each person. It  
was

16 individual for each person.

17 Q. These were in a locked file cabinet in the office?

18 A. Yes.

19 Q. When you arrived in Copiapo in October of 1973,  
with were

20 there prisoners being held in the garrison?

21 A. At the unit as well as at the public jail of  
Copiapo.

22 Q. So there are two distinct locations, the jail,  
which I

23 think is like ten blocks or so away, and the garrison  
itself;

24 is that correct?

25 A. Yes, more or less, yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Do you know the proximate number of political  
prisoners  
2 that were held in Copiapo in the garrison?  
3 A. I don't recall the amount, but I do think that it  
must have  
4 been about 35 persons at least, as far as I knew.  
5 Q. How many people came to the office who were with  
the  
6 helicopter and not assigned normally to Copiapo?  
7 A. Two persons who came in.  
8 Q. Who were those persons?  
9 A. One of them was Fernandez Larios.  
10 Q. Do you know the name of the other person?  
11 A. No, no, I don't recall.  
12 Q. Did you have occasion later that day to see  
Fernandez  
13 Larios outside of the office?  
14 A. I don't know if that was the same day or whether it  
was the  
15 day after that I saw him outside during the  
mistreatment of a  
16 person.  
17 Q. Describe what you saw him do?  
18 A. With his rifle he hit him in the thorax.  
19 Q. Did he strike him any place else?  
20 A. Yes, at the thorax maybe two or three times and I  
heard the  
21 bones crack.

22 Q. Who was this person that was struck?

23 A. Fernandez Larios.

24 Q. Who did Fernandez Larios strike?

25 A. Jaime Sierra, and he hit him later on again not  
with the

RICHARD A. KAUFMAN, CMRR

his 1 rifle but with his foot. He hit him in the head with  
2 rifle. When he hit him in the head with his rifle, the  
3 detainee, Sierra, fell to the ground with his forehead  
maybe 15 4 centimeters off the concrete, the payment. Later on  
with his 5 foot, with the boot, he hit him in the back of the  
head, on the 6 nape of the neck, and that slammed his forehead into  
the 7 concrete, and it sounded like a watermelon.

8 Q. You earlier testified that Fernandez Larios struck  
Senor 9 Sierra in the thorax and in your explanation you then  
said that 10 he struck him in the head with his rifle butt. I want  
to be 11 certain he was struck both in the thorax and in the  
head with 12 the rifle.

13 A. No, no, no. In the thorax with the rifle, with the  
rifle 14 butt and in the head with his foot, using the sole of  
his foot 15 slammed his head down.

16 MS. HEALY: We would like to publish to the  
jury what 17 has already been admitted as Exhibit 11.

18 THE COURT: Okay.

19 MS. HEALY: Thank you. We will continue.

20 Q. Who is that person?

21 A. This is Fernandez Larios.

22 Q. The picture that you have been shown, does it  
depict

23 Fernandez Larios exactly as he looked that day?

24 A. No.

25 Q. What is the difference?

RICHARD A. KAUFMAN, CMRR



1 A. He is heavier here.

2 Q. But you recognize his face?

3 A. Yes.

4 Q. How was he dressed in the garrison?

5 A. He was wearing a uniform, which is to say, combat  
uniform.

6 Q. Was the combat uniform the same uniform that people  
who

7 were stationed at the garrison were wearing that day?

8 A. No. He had it, yes, but not with all of the  
weaponry that

9 he had.

10 Q. Did other people who came with Fernandez Larios on  
the

11 helicopter dress as Fernandez Larios did?

12 A. Yes.

13 Q. And that dress was different than the normal dress  
of the

14 garrison officers?

15 A. No. They had the same one, but it was the weaponry  
that

16 made it different. They had the weaponry, which is to  
say,

17 grenades.

18 Q. What other weaponry, particularly with Fernandez  
Larios,

19 did he have on his person, if you recall?

20 A. Pistol. The dagger. Curved dagger.

21 Q. A curved dagger that I believe in the Chilean  
history is

22 called a corvo?

23 A. Yes, the corvo.

24 MS. HEALY: The plaintiffs would like to have  
25 introduced Exhibit 18.

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: No objection.

Exhibit

2 THE COURT: It will be admitted as Plaintiffs'  
3 18.

4 (A document was received in  
5 evidence as Plaintiffs' Exhibit 18.)

6 MS. HEALY: May I publish?

7 THE COURT: You may.

8 MS. HEALY: Continuing.

Exhibit 2

9 Q. I would like to show you now what is marked as  
10 and ask you if you can identify that?

11 A. A corvo.

Fernandez

12 Q. Is that similar to the corvo that was carried by  
13 Larios in October of 1973?

14 A. Yes.

were at

15 Q. Prior to the arrival of the helicopter while you  
16 the garrison, were any other prisoners executed before  
17 the helicopter arrived?

18 A. No, no.

19 Q. Were people executed after the helicopter arrived?

20 A. After.

pronunciation

21 Q. And it was Sierra, I believe is the correct  
22 of the name of the person who was struck?

23 A. Jaime Sierra.

24 Q. Now, when --

25 A. I would like to add a small part there.

RICHARD A. KAUFMAN, CMRR

He 1 Detainee Sierra later on asked to be killed.  
2 begged to be killed because he could no longer stand  
the 3 beatings, the pains.

4 Q. Who did he say that to?

5 A. To him, to Fernandez Larios.

6 Q. How was it that you saw that encounter that day  
between

7 Mr. Sierra, Senor Sierra and Fernandez Larios, how did  
you  
8 happen to see that?

9 A. I came out of the office into the corridor on the  
second  
10 floor. They had the prisoner up in the corridor on the  
second  
11 floor.

12 Q. Were the prisoners that day interrogated by  
Fernandez  
13 Larios and any other persons that came with the  
helicopter?

14 A. Yes.

15 Q. Where was that interrogation, was it on the first  
floor or  
16 the second floor of the garrison office building?

17 A. Second floor. Second floor.

18 Q. How do you know that other prisoners were  
interrogated that  
19 day on the second floor of that building?

office.  
20

A. Because I worked there inside. That was our

place in  
21

Q. The interrogation of the prisoners, did it take

the second  
22

the office that you worked or in the other office on

23

floor?

where  
24

A. Inside our office there is a small office. That's

25

the code equipment was kept as well as the files.

RICHARD A. KAUFMAN, CMRR

1 Q. Is that where the prisoners were interrogated?

2 A. Yes.

3 Q. While you were in your office then, did you see  
prisoners

4 being taken through your office into this smaller  
office to be

5 interrogated?

6 A. No, but with the door open -- with the door open,  
yes.

7 Q. How long did the interrogation of the prisoners  
take?

8 A. Approximately half an hour, 20 minutes, 40 minutes.

9 Q. For each prisoner?

10 A. Yes.

11 Q. Did the prisoners have their lawyers with them at  
the time

12 they were interrogated?

13 A. No.

14 Q. Was Fernandez Larios involved in the interrogation  
of any

15 of the prisoners?

16 A. Yes.

17 Q. Who was present in addition to Fernandez Larios in  
the

18 interrogation of any of the prisoners if you recognized  
any of

19 these other people?

20 A. There were some people who arrived in the  
helicopter, but I

21 don't recall their names.

22 Q. Was Fernandez Larios there in the interrogation of  
all the

23 prisoners?

24 A. In some of them, yes, but in general, he was the  
only one

25 who would remain in the office.

RICHARD A. KAUFMAN, CMRR



1 Q. In other words, he would be involved either by  
himself or  
2 with others in the interrogation of each prisoner; is  
that  
3 correct?  
4 A. No. He acted kind of like the head of the little  
group of  
5 people doing it.  
6 Q. Explain, if you would now, what Fernandez Larios  
did with  
7 the records of the prisoners in your presence?  
8 A. He was with Carlos Brito when he turned over the  
file.  
9 Q. Who turned over the files? Did Carlos Brito turn  
over the  
10 files to Fernandez Larios or did Fernandez Larios  
somehow turn  
11 the files over to Carlos Brito?  
12 A. It was from Carlos. It was requested by Fernandez  
Larios.  
13 Q. Were these the cards that you have referred to of  
the  
14 prisoners that were there at Copiapo, in the garrison?  
15 A. It was a list. It wasn't the cards themselves.  
Exactly,  
16 of course, later on they did get the cards, but it was  
a list  
17 of all of the names of the political prisoners.  
18 Q. Who gave that list to Fernandez Larios?  
19 A. Mr. Carlos Brito, the second in command.

20 Q. In the list that was given by Carlos Brito to  
Fernandez  
21 Larios, what was on the list if you saw it other than  
the names  
22 of the prisoners?  
23 A. No. All I saw, really, was that Fernandez Larios,  
what he  
24 did was, he would check off the names.  
25 Q. I want to know the names of the persons from the  
helicopter

RICHARD A. KAUFMAN, CMRR

1 who were looking at those individual cards?

2 A. The one I recall is Mr. Fernandez Larios.

3 Q. How is it today, this many years later, that you  
can recall

4 specifically Fernandez Larios from all of the people  
that you

5 saw from the helicopter? How is it that you know that  
today?

6 A. Because I have seen him on the news, because I saw  
him

7 inside my office and because his name was said several  
times in

8 my office.

9 Q. Are you certain today that the person that struck  
Senor

10 Sierra was Fernandez Larios?

11 A. Yes.

12 Q. Did Fernandez Larios review the individual records  
of each

13 of the prisoners?

14 A. Yes, from the cards. The cards.

15 Q. And the cards are the records of each prisoner,  
separate

16 cards for each prisoner?

17 A. For each one of the persons.

18 Q. Do you know today how many people were interrogated  
by the

19 people who came in the helicopter?

20 A. I think that it would be more than 35.

21 Q. Did you ever see the list that had been -- with the  
check  
22 marks placed on the list, after Fernandez Larios  
completed his  
23 check marks on the list; did you ever see that list  
again?  
24 A. No, no.  
25 Q. Did Fernandez Larios check each prisoner's name or  
some of

RICHARD A. KAUFMAN, CMRR

1 the prisoners?

2 A. No. To some.

3 Q. Were the people who were interrogated, if you know,  
the

4 people who were checked on the list by Fernandez  
Larios?

5 A. No. It was to the majority of the persons, no.  
Not just

6 some. And as they were coming into the office, they  
would

7 bring them in as well as from the jail to the office.

8 Q. You earlier said that it appeared to you that  
Fernandez

9 Larios was in charge of this process. Could you  
describe now

10 why, or explain now, why you think it appeared that he  
was in

11 charge?

12 A. Well, because he was kind of like the lead singer  
in that

13 group. He carried the voice. He was kind of the  
little boss

14 of that group.

15 Q. That group, meaning the people who came on the  
helicopter?

16 A. In the helicopter.

17 Q. What do you recall learning about the execution of  
the

18 prisoners that took place after the helicopter came to  
Copiapo?

19 transferred

20 found out

21 surrounding

22 Cardones, we

23

24 day,

25 therefore,

A. Well, it was that the group of detainees were

to La Serena, and it was the following day that we

that they had tried to escape and it was in the

areas of Copiapo in an area known as Cuesta de

heard some gunshots in the night.

Q. You were told the next day, or you learned the next

that the prisoners had attempted to escape and were,

RICHARD A. KAUFMAN, CMRR

1 shot and killed; is that correct?

2 A. Yes. It was the following day that I learned that  
they had

3 attempted an escape.

4 Q. No prisoners were executed when you were in Copiapo  
before

5 the helicopter arrived?

6 A. No.

7 Q. And that night, after the helicopter had come  
during the

8 day, prisoners were killed because you were told they  
attempted

9 to escape?

10 A. Of course.

11 Q. Do you know the names of any of those prisoners  
that were

12 killed that night at Copiapo?

13 A. One of them was Jaime Sierra.

14 Q. Now he said the names of the ones on the list. I  
want to

15 go back to the list.

16 What list are you referring to when you say  
their

17 names were on the list?

18 A. The list of those political prisoners who were  
transferred

19 to La Serena.

20 Q. How was it that you learned the names of the  
prisoners who

21 were killed, even though today you do not know those  
names; how

22 did you know that, the day after they were killed?

23 A. Because they were later on no longer detained.  
They had

24 disappeared.

25 Q. How long did Fernandez Larios review the individual  
records

RICHARD A. KAUFMAN, CMRR



1 of the prisoners? Did he do it just one time or did he  
go back 2 over it several times?

3 A. No. What I saw was that he reviewed the individual  
cards

4 once. He reviewed the cards, all of them. And then  
what I saw 5 later on was that he was handed a general listing.

6 Q. Did you ever see the prisoners' bodies?

7 A. Yes.

8 Q. What was the occasion for you to see their bodies?

9 A. Because I was assigned to the mission of  
transferring them

10 by truck over to the area of the cemetery.

11 Q. Where was the truck when you went to get the truck  
with the 12 prisoners' bodies in it?

13 A. There was a plot of land that our regiment had. I  
don't

14 know if it was rented or whether the regiment owned it.  
And it

15 was in a sector called La Lamera.

16 Q. That is in Copiapo?

17 A. Yes.

18 Q. Who asked you to go to the truck where the  
prisoners'

19 bodies were?

20 A. It must have been my boss, my director. It must  
have been.

command.

21 I don't recall that. The one who was second in

22 Q. Was it Carlos Brito?

able to

23 A. Yes. He had to have given the order for me to be

24 have left the office.

25 Q. What time were you dispatched to the truck?

RICHARD A. KAUFMAN, CMRR

1 A. 1:30 in the morning.

2 Q. Was this the morning in which the prisoners had  
been killed

3 or was it approximately 24 hours later?

4 A. No. 24, no. It was before. No. It must have  
been 24

5 hours after the prisoners had been killed.

6 Q. To make sure that we have this correct. It was the  
next

7 night after you heard the gun shots?

8 A. Yes, of course. It must have been. It was -- it  
was

9 later. I am not sure if it was 24 hours or 48 hours.  
No, but

10 I do think it is must have been 24 hours.

11 Q. When you went to the truck, did someone go with  
you?

12 A. No. I was guarding the vehicle.

13 Q. You were guarding the vehicle. Did you drive the  
vehicle?

14 A. Yes. The vehicle was under my responsibility.

15 Q. Who drove the vehicle with you and where did you  
go?

16 A. I went alone. I drove the vehicle alone.

17 Q. And where did you drive the vehicle to?

18 A. To the general cemetery. Not to the main entrance,  
but to

19 a side entrance.

20 Q. Why were you delivering -- why did you drive the  
truck to

21 the side entrance, who told you to do that?

22 A. The person in charge, because in that area they  
seemed to

23 have dug a mass grave. At about 30 meters from the  
inside of

24 that gate is where you found that pit.

25 Q. Were you involved in the burial of the prisoners?

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1 A. I had to take their fingerprints.

2 Q. Did you take their fingerprints with anybody else  
present,

3 or did you do that by yourself also?

4 A. There were others. They were soldiers. They were  
5 privates.

6 Q. Did you then take the fingerprints of each of the  
prisoners

7 before they were buried?

8 A. Yes.

9 Q. Did you identify the deceased individually and  
record their

10 names somehow?

11 A. No. I didn't make a list. I just took the  
fingerprints.

12 Q. Who did you give the fingerprints to? When you  
took the

13 fingerprints, I assume you put it on a card. Who did  
you give

14 it to?

15 A. It seems to me that it was that same card where  
they had

16 the political affiliations on it. It seems to me that  
was the

17 same card that was used for fingerprinting.

18 Q. Who asked you to go to the truck where the  
prisoners'

19 bodies were?

20 A. It must have been my boss, my director. It must  
have been.

21 I don't recall now. The one who was second in command.

22 Q. Was it Carlos Brito?

23 A. Yes. He had to have given the order for me to be  
able to

24 have left the office.

25 MS. HEALY: That completes the testimony of

RICHARD A. KAUFMAN, CMRR

1 Mr. Morales.

2 THE COURT: Call your next witness.

3 MS. HEALY: This is a videotape deposition of  
Dr. Ivan  
4 Murua Chevesich.

5 Mr. Kerrigan. Would you state your name for  
the  
6 record, please.

7 The Witness: My name is Ivan Murua Chevesich.

8 Mr. Kerrigan: At this time the court reporter  
is  
9 going to swear our interpreter under oath and also do  
the same  
10 to you.

11 (Interpreter sworn.)

12 Thereupon --

13

14 IVAN MURUA CHEVESICH,

15 called as a witness herein, having been duly sworn, was  
16 examined and testified as follows:

17 Q. Dr. Murua, could you tell us what kind of a doctor  
you are?

18 A. I am an anesthesiologist.

19 Q. Where were you trained, doctor?

20 A. In Germany, in West Germany.

21 Q. In West Germany. Are you a resident and citizen of  
the  
22 country of Chile?

23 A. Yes. I am a Chilean citizen and a German citizen.

24 Q. Where were you in September of 1973?

25 A. I was the director of a hospital -- the El Salvador

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with the 1 Hospital. El Salvador Hospital, which is associated  
an 2 Copper Mining Company in the North of Chile. There is  
Salvador, but 3 El Salvador here in Chile. A hospital called El  
4 it is not related to the one in the North of Chile.  
the 5 Q. In the North of Chile where you were involved with  
6 hospital, what city was closest to you?  
7 A. The closest city to where I was, was Copiapo.  
prior to 8 Q. What was your job responsibility in the hospital  
9 the coup of September 12, 1973?  
10 A. I was a director of the El Salvador Hospital.  
11 Q. May I ask your age today, your current age?  
12 A. I'm 60 years old. At that time, I was 33.  
13 Q. Had you already become a doctor in 1973?  
14 A. Yes.  
Santiago, Chile 15 Q. To recap, prior to 1973 you were trained in  
when you 16 as a physician and pediatrician and then after 1973  
17 were exiled in West Germany, you specialized in  
anesthesiology;  
18 is that correct?  
patients 19 A. Because it was a language problem. Because the  
20 who are asleep can't talk to you.

1973 at  
of

21 Q. We all agree with that. I want to take you now to  
22 the time of the coup. Were you arrested after the coup  
23 September 11, 1973?  
24 A. Yes.  
25 Q. Where were you arrested?

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1 A. In my home in El Salvador at 3 o'clock in the  
afternoon.

2 Q. Would you tell us about that arrest and where you  
were

3 taken for confinement?

4 A. Let's say my arrest was done in a very elegant way.  
5 Because the police who took me had orders issued by the  
6 interior ministry in Santiago. Because the order said  
that

7 they had to arrest several leaders of different  
services

8 because they lived there with us. Because its a mining  
town up

9 in the mountains, they took me to the police  
headquarters in

10 El Salvador.

11 Q. Were you confined at the police headquarters there?

12 A. And then they took me to the Potrerillos  
headquarters, near

13 the copper smelting facility, which is 3,000 meters  
away.

14 Q. How long were you confined there?

15 A. I was detained there about three days.

16 Q. Where were you transferred or taken after that  
confinement?

17 A. I was taken to the public jail in Copiapo.

18 Q. The coup was on September 11. When were you arrested  
after

19 September 11?

20  
arrested on

A. I was arrested on the 11th of September. I was

21

the 11th of September at 3 o'clock in the afternoon.

22  
jail at

Q. So three or four days later you were taken to the

23

Copiapo?

24

A. Yes.

25

Q. How long were you in the jail at Copiapo?

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about 1 A. It seems to me it was about until -- I think it was  
2 the 20th or 21st of October after Garcia's death.

were 3 Q. Were there other people in jail in Copiapo when you  
4 there?

5 A. Yes, there were about 80 to 110 political  
prisoners, plus  
6 the ordinary prisoners already in jail.

7 Q. When was the next time that you were interrogated?

8 A. The 16th of October.

9 Q. Do you know the approximate time?

10 A. We didn't have watches because they didn't allow us  
to have  
11 watches, but I remember the sun was out. The sun sets  
at about

12 9 o'clock in the evening in the North of Chile in  
September.

13 It must have been between 7 and 8 o'clock in the  
evening. The  
14 early evening. They had taken us from the jail to the  
regiment  
15 and they had us in tent.

16 Q. When you said "us," who else was taken with you to  
the  
17 tent?

18 A. Jera, J E R A. Mr. Garcia of those I recall  
because they  
19 were my friends, Maguindo Castillo who was one of the  
people

20        who were also killed with Ricardo.  There was a  
secretary who

21        worked with one of the leading authorities in the  
province but

22        who was in Mexico.  I can tell you of those I knew  
personally.

23        There were many more.  There were those young men, two  
or three

24        who were assassinated, who were killed.  There was  
Vincenti or

25        Vincencio.  I can't remember.  It was an Italian  
surname.  And

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1 there was another one with and Italian surname. A very  
well 2 known family in the area of Copiapo. I met him in the  
jail.

3 Q. Tell us about when you were taken to interrogation  
and were 4 you taken by yourself to be interrogated?

5 A. So we have an idea, this room was on the second  
floor.

6 There was a corridor below. These typical square  
buildings 7 that are used in regiments. There were two desks. At  
one desk 8 Mr. Brito was seated and the other desk another  
military man.

9 Q. Tell us what happened in the interrogation. You  
are 10 talking to Mr. Brito and in the interrogation he is  
11 interrogating you; is that right?

12 A. He started asking me about the post I had, my job  
13 responsibilities. And he started showing me some cans  
or tins 14 with holes in them. He was saying they were used as  
arms like 15 as explosives. He asked where in the mine I had this  
16 clandestine or underground hospital so I answered him,  
what 17 hospital are you talking to me about. The only one I  
know is 18 the El Salvador and its not clandestine because  
everybody knows

I 19 it. He kept pressing me about these issues and really,  
20 didn't realize -- I was just laughing. It made me  
laugh 21 because I didn't realize how serious the situation was  
that I 22 was in. I thought he was either crazy or trying to  
implicate 23 me in something that I was not implicated in.  
24 And then he started reviewing, looking over my  
file, 25 the file on me, which was quite thick, and there were  
two files

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1 on the -- because it was my file and Jera's file  
because he was

2 the next one after me.

3 At that moment we had already been at this for  
half an

4 hour. Three military men came, showed up and they  
stood up and

5 greeted each other in military fashion. Yes, they came  
in

6 rather with a harsh attitude. They didn't come in  
greeting

7 people in a friendly way. Yes, they told Brito off for

8 something I can't remember it and told him to give them  
the

9 files.

10 Q. At the time that the military people came in, you  
were

11 seated at a desk with Mr. Brito when the three military  
men

12 came in; is that correct?

13 A. Exactly.

14 Q. Now, tell us what you observed between the three  
military

15 men and Mr. Brito?

16 A. There was another military man behind Brito, but I  
couldn't

17 see him very clear. I could see him behind us moving  
around,

18 but I didn't know what he was doing and I noticed he  
became

19 very nervous, because apparently the situation wasn't  
the most

20 calm situation.

21 Q. Doctor, just a second. Who was nervous?

22 A. The one who was seated before me, Brito.

23 Q. This was the person that was interrogating you  
before the

24 military people came in?

25 A. Yes.

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1 Q. What did you see?

2 A. They asked him for the files and they handed --  
they were

3 handed some more files. The files were given to the  
officer

4 who was apparently in command of this. And he was a  
rather

5 big, heavily built man. He wasn't fat. He was just  
big built.

6 And that was General Arellano Stark. He opened up the  
files

7 and started looking through them with a pencil that on  
one side

8 it was blue and on the other side it was red. It was  
those

9 official pens used by government institutions, the post  
office,

10 and it was -- the brand name was Faber.

11 Q. Doctor, do you know the names of the other two  
military men

12 that came in with General Arellano?

13 A. This man Larios that I am accusing. The other  
military man

14 was, I think, and I found out later and I have never  
said this

15 before and I am telling you this now for the first time  
was,

16 was Julius -- his surname was Julius or Julio.

17 Q. When you referred to Larios, are you referring to  
Armando

18 Fernandez Larios?

19 A. Yes, I am referring to him.

20 Q. Where was he in relation to General Arellano in the  
room?

21 A. He was to his right with a briefcase. He wasn't  
armed

22 because there was another one who was armed, which  
could have

23 been this Julio person I have mentioned.

24 Q. What did you see General Arellano do with the red  
pen and

25 the files?

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1 A. He put a red circle on each file because as I  
realized the  
2 situation was not very calm, I kind of looked at this  
from the  
3 corner of my eye.  
4 Q. In other words, you tried to not be noticed?  
5 A. Yes, as much as possible, because my file was among  
those  
6 files. It was my file and under that Dr. Jera's file.  
7 Q. Okay, what happened next?  
8 A. And he said rather vulgarly, we have to just  
eliminate.  
9 These are -- eliminate them. These are the orders. At  
that  
10 moment he said something to Brito, who was there. I  
could see  
11 that the situation wasn't very simple.  
12 Q. Doctor, could you describe Fernandez Larios, the  
way he  
13 looked that day you saw him in the office with General  
14 Arellano?  
15 A. He was in combat fatigues, military combat  
fatigues, not  
16 the usual uniform with the stripes. I couldn't tell  
the  
17 military rank because they weren't in the normal  
uniform. You  
18 could only tell by the attitudes people had who was in  
command  
19 and who was a subordinate and who had to obey.

20 He was a white complexion dark hair, black  
hair, more  
21 or less tall. Slightly thin. No, he wasn't fat at  
all.  
22 Thinner than I am. Years later I was able to recognize  
him  
23 because I saw a photograph.  
24 Q. I want to go back to your comment about General  
Arellano  
25 when he said, and I want to use the words you used.  
"We need

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1 to eliminate them. "Tell me as best you can recall, you  
said it  
2 was vulgar, but tell me as best you can recall now what  
General  
3 Arellano said about the people that he had the red  
check marks  
4 on the names?  
5 A. Who, Arellano? All these people with red circles  
on the  
6 file have to be liquidated. I was very surprised  
because I had  
7 no idea that this situation was going to become so  
brutal.  
8 Q. What was the response of Mr. Brito when Arellano  
said these  
9 people have to be eliminated?  
10 A. He didn't say anything. He just remained motion  
less and  
11 off.  
12 Q. Were you taken from the room before General  
Arellano was  
13 taken -- before Arellano left the room?  
14 A. Yes, of course.  
15 Q. Was Fernandez Larios present in the room when  
General  
16 Arellano said "these people have to be eliminated"?  
17 A. Yes.  
18 MR. DAVIS: Your Honor, may we approach -- I  
would

19       like the entire answer to be read, actually in that  
section.

20                   THE COURT: Any objection?

21                   MS. HEALY: No objection.

22                   Continuing.

23       A. Yes.

24                   MS. HEALY: We had deleted that because Mr.  
Davis

25       objected to the reading of that answer. We can read it  
into

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1 the record.

2 MR. DAVIS: I did not object to the answer.

3 I will read it.

4 THE COURT: Ms. Healy, why don't you ask the  
question

5 and Mr. Davis will read the answer in totality.

6 MS. HEALY:

7 Q. Was Fernandez Larios present in the room when  
General

8 Arellano said these people have to be eliminated?

9 A. Yes. I think he was the General's advisor in the  
Chilean

10 Army. As in the United States Army, generals tend to  
have an

11 aide de camp. They have an adviser with them and that  
was

12 Mr. Larios. I could tell by the briefcase, and he is  
like a

13 private secretary that somebody might have.

14 THE COURT: You may proceed.

15 Q. When you went back to Copiapo, did you discover  
then any of

16 the prisoners who had been there before who then were  
not

17 there?

18 A. Yes, I knew they had already killed them. Yes,  
because

19 this came out in the press in Copiapo around the 17th  
or the

files 20 18th, the only newspaper in Copiapo, which is in the  
21 here, you can see it. They published the list of the  
technical 22 University of the young men who were killed. And they  
23 purportedly tried to escape. I can't if it was 14 or  
17 young 24 men.  
25 Q. Do you remember now the occupation or profession of  
some of

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1 the people that were killed at Copiapo that day?

2 A. Yes. Which day? Or in General?

3 Q. Of the people that you learned -- when you learned  
of the

4 people who had been executed, their names, did you know  
any of

5 those people before they were executed? Did you know  
them in

6 the jail there or otherwise?

7 A. I met them in jail.

8 Q. When you met them in jail, did you learn what they  
did,

9 what their profession or work was?

10 A. Yes, exactly.

11 Q. Could you tell us those that you remember, even if  
you

12 don't recall their names, the professions or work that  
these

13 people did, that were executed?

14 A. Ricardo Garcia was a general manager of the El  
Salvador

15 Copper Mine. I also -- apart from his post as a  
general

16 manager, I knew him, also before, because we were  
friends

17 because of his job in the Cepal. Thanks to him I had  
the job

18 at the hospital because it is a very good -- it was a  
very good

19 paying job.

20 Q. Who else did you know?

21 A. Vincencio or Vincenti. He was a professor at the  
Technical  
22 University in geology. In Copiapo is the main geology  
faculty.

23 Q. Do you recall any others?

24 A. I remember other people. I can't remember the  
names. I  
25 remember the young men who were on that list because he  
was the

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the  
union  
secretary or  
was one  
call

1 professor of all these young men. They were all from  
2 Technical University. Except for two or three who were  
3 leaders, one was Maguindo Castillo Tapia, and the  
4 Dr. Hagel, who at that time was in Mexico. And there  
5 gentleman, I think he is still alive, and they used to  
6 him, nickname him, The Rabbit.

it was  
is still

7 In my testimony to Judge Guzman, we found out  
8 the same man we were talking about and I found out he  
9 alive.

because  
learn their  
observed the  
did you  
before  
did you  
that was

10 In general, those are the people I recall,  
11 during the month we were together, I didn't really  
12 names, and at that time they were also my patients.  
13 Q. What was the relationship that you and as you  
14 other prisoners or detainees in jail; what relationship  
15 have to the guards before these military people came,  
16 General Arellano and his group came; what relationship  
17 and the other prisoners have with the local military  
18 guarding you?

19 A. It was a very good relationship. Nothing at all  
happened.

20 Yes, that's Y they called Commander Haag -- they nick  
named him

21 Pope John XXIII because nothing had happened.

22 Q. You say nothing had happened. That is before  
General

23 Arellano came?

24 A. Yes, before he came. Even the interrogations that  
we were

25 subjected to were quite mild. Perhaps others not so.

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General  
Larios;

1 Q. How do you know today that the person you saw with  
2 Arellano in the office that day was Armando Fernandez  
3 how do you know that?

pressing  
clearly  
I think  
he was  
the press

4 A. The thing is, when you are in these difficult  
5 situations and I have a very good memory, I could see  
6 as in a photograph. There was three military people.  
7 that's why I remember because I saw his photograph when  
8 a young man, because this Mr. Larios has appeared in  
9 very many times here in Chile.

that was  
Larios?

10 Q. When did you first realize yourself that the man  
11 with General Arellano was named Armando Fernandez

allowed  
that

12 A. Twenty years later.  
13 Q. What picture did you see of Fernandez Larios that  
14 you to make that identification, and when did you see  
15 picture?

must have  
something

16 A. I came back to Chile in 1986, more or less. It  
17 been in 1990. There was a publication and on TV  
18 about this person, and that's where I recognized him.

19 BY MR. DAVIS:

Armando 20 Q. Dr. Murua, my name is Steve Davis. I represent

21 Fernandez. I am going to ask you some more questions  
today.

22 I would like to go back to your testimony as  
of when

23 you were being interrogated for the second time in  
Copiapo when

24 General Arellano walked in.

25 Immediately before the General walked in, you  
were in

RICHARD A. KAUFMAN, CMRR



1 this room with two other individuals?

2 A. There was Brito and there was a military man behind  
him

3 looking for some papers, and no one else.

4 Q. How were you dressed at that time?

5 A. I had a black leather jacket on with a sheepskin or  
suede

6 inside which we were given when we were in the field  
working

7 and just ordinary trousers.

8 Q. Well, was it regular looking clothes as opposed to  
9 something that someone might describe as like the  
clothes a

10 prisoner might wear?

11 A. No. Chile is not a rich country like the states.

12 Prisoners don't have special clothes.

13 Q. Were you handcuffed or were you tied up or were you  
in any

14 way restrained?

15 A. No.

16 Q. So you were able to sit there much in the fashion  
like you

17 are able to sit here today?

18 A. Yes. The atmosphere is different, but yes, the way  
you

19 described it.

20 Q. When General Arellano walked in, did he come in  
first and

21 the other two military personnel come in after him?

for 22 A. Yes, and he came in. He was very upset, very angry  
23 some situation I have no idea about.  
24 Q. I assume that when he walked into the room, you  
were not --  
25 people didn't say, Dr. Murua, this is General Arellano?  
You

RICHARD A. KAUFMAN, CMRR

1 weren't introduced to him formally?

2 A. No.

3 Q. And I also took it is from your testimony that when  
he

4 walked, and given the demeanor that he expressed, you  
tried to

5 make yourself as quiet as possible?

6 A. Yes, I realized the situation wasn't very  
comfortable.

7 Q. How long were you in the room with -- now we would  
have

8 five other people in the room at this point; correct?

9 A. Yes, six, including the military man behind and  
myself.

10 Q. So there would be the six of you that would have  
been in

11 that room for approximately how long, sir?

12 A. I was there 20 minutes.

13 Q. With all six people there?

14 A. Yes.

15 Q. During that 20 minutes, did anyone -- were they  
talking

16 about you directly as far as you could determine?

17 A. No. My interrogation finished once these people  
entered

18 the room.

19 Q. What was Mr. Brito -- did he have a military rank  
at that

20 time?

21       A.  Because of his age, must have been 30 something,  
because  
22       Lieutenant Vidal was 22.  I reckon he could have been a  
23       captain.  
24       Q.  I just want to know should I refer to him as  
Captain Brito  
25       or just Mr. Brito, whichever is easier.  Maybe I will  
just use

RICHARD A. KAUFMAN, CMRR

1 Mr. Brito for the time being.

2 Did Mr. Brito indicate to General Arellano,  
you know,

3 sir, let us take this prisoner? Did he identify you as  
a

4 prisoner?

5 A. No, nothing.

6 Q. And I assume --

7 A. It was a surprising situation for everyone, because  
these

8 people suddenly walked in. So I could tell that he was  
trying

9 to get me out of there -- Brito was trying to get me  
out of

10 there as soon as possible, because he probably had to  
take

11 orders from these people.

12 Q. During this time period -- but you still believe  
that even

13 though he was trying to get you out of there, it took  
him 20

14 minutes from the time that General Arellano first got  
in there

15 before he gets you out of that room?

16 A. At that moment they were talking and looking at the  
files.

17 And they were looking at the files and talking to one  
another.

18 Many minutes had passed. At a certain time there was a  
pause,

19 but it was a long period I was there. I didn't ask  
what time  
20 could I leave because detained people don't say that.  
I tried  
21 to be as inconspicuous as possible. I was worried that  
my file  
22 was one of those files. In one of those pauses, Brito  
says,  
23 yes, you can go.  
24 Q. When he said you can go, did you stand up and just  
walk  
25 outside of the room?

RICHARD A. KAUFMAN, CMRR

1 A. And very quickly, because I was accompanied by a  
soldier.

2 Q. During this time, the time that you were there, you  
were

3 never struck by anyone?

4 A. No. Yes, I want to tell you, sir, that I'm telling  
the

5 truth here.

6 Q. Okay. I am just asking questions, sir.

7 A. I am not adding anything or taking away.

8 Q. I appreciate that. I am just merely asking the  
questions

9 doing my job, sir.

10 Now, you have identified in Mr. Kerrigan's  
direct that

11 you believe that Armando Fernandez was with General  
Arellano?

12 A. Yes.

13 Q. And as I understand it, in 1973 when this person  
was in the

14 room with you, nobody used his name; is that correct?

15 A. No.

16 (Interruption.)

17 MS. HEALY: Your Honor, may we have the  
Court's

18 indulgence, we have to make an edit.

19 (Interruption.)

20 THE COURT: Should we take a break now so you  
wouldn't

21 feel like we are all looking at you?

22 MS. HEALY: That would be fine.

23 THE COURT: Do not discuss this case amongst  
24 yourselves or anyone else. Have no contact whatsoever  
with  
25 anyone associated with the trial. Do not read or  
listen to

RICHARD A. KAUFMAN, CMRR



in the  
talk to  
and be

1 anything touching on this matter in any way. Be back  
2 juryroom in fifteen minutes. If anybody should try to  
3 you about this case, instruct them to immediately stop  
4 in contact with my staff concerning it.

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

7 (Open court. Jury not present.)

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

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

10 Would counsel state their appearances.

11 (All parties present.)

12 THE COURT: I have an unsigned note from one  
of the

13 jurors which I will read to you. "1, what is  
defendant's full

14 name. 2. In this current testimony, this is Dr. Ivan,  
which

15 lawyer is now asking questions. It is very confusing  
all of

16 this questioning.

17 I think we can very easily respond to this  
when the

18 jurors come in unless there is objection. I will  
inform them

19 of the defendant's full name, Armando Fernandez Larios  
and

20 Mr. Davis, this is your portion of the deposition?  
21 MR. DAVIS: Yes, Your Honor. I will just  
announce to  
22 them we are continuing with the deposition testimony of  
Ivan  
23 Murua Chevesich and this is the questioning by Mr.  
Davis.  
24 MS. HEALY: Also for scheduling purposes, we  
have  
25 another 15 minutes of testimony and after that we would  
like to

RICHARD A. KAUFMAN, CMRR

1 take up the objections on the two remaining deposition  
2 transcripts for which there are unresolved objections.  
That  
3 would be Patricio Lapostol and Enrique Vidal.

4 THE COURT: I don't believe you provided the  
5 transcript to me of Enrique Vidal, so I have not  
reviewed that  
6 at all.

7 MS. HEALY: Full transcripts were provided to  
the  
8 Court in July. Apparently Mr. Davis just provided you  
with  
9 another one.

10 THE COURT: So I am not prepared to take those  
up. I  
11 can give you my rulings on it tomorrow. I can give you  
the  
12 rules on Patricio Lapostol. Perhaps I can look at it  
now.

13 I will let the jurors go after the conclusion  
of this  
14 deposition testimony. We will begin tomorrow morning  
at 10 and  
15 ending at 12:30.

16 Bring in the jury.

17 (Jury present.)

18 THE COURT: Ladies and gentlemen of the jury,  
in  
19 response to an inquiry by one of your members, the full  
name of

20 the defendant is Armando Fernandez Larios.

21 We are continuing now with the deposition  
testimony of

22 Dr. Ivan Murua Chevesich and the questioning now is by  
the

23 defendant's lawyer, Mr. Davis.

24 MS. HEALY: May we proceed?

25 THE COURT: Yes.

RICHARD A. KAUFMAN, CMRR

1 (Videotape played.)

2 Q. Sir, I thought you told us on Mr. Kerrigan's direct  
you did  
3 not know the name until many, many years later. Are  
you  
4 retracting what you said on Mr. Kerrigan's testimony  
direct?

5 A. No. I'm not retracting my statement because I  
would be  
6 lying. I am now recalling which is different from  
saying a  
7 lie. I learned of his name through Vidal and also the  
name of  
8 General Arellano Stark because otherwise I would never  
have  
9 known their names.

10 MR. DAVIS: Your Honor. We need to go side  
bar.

11 THE COURT: Come up.

12 (Side bar.)

13 MR. DAVIS: Your Honor, in light of your other  
ruling  
14 this morning, this next part should not be read  
starting with

15 line 17 on page 37 all the way to page 39 line -- page  
38 line

16 16. I don't want that read.

17 THE COURT: Is that the end of it?

18 MS. HEALY: Yes.

19 MR. DAVIS: My apologies.

20 (Open court.)

21 Q. When you said earlier you had seen pictures, when  
was the

22 first time you believe you saw a picture of Armando  
Fernandez?

23 A. I think it was around, about the year 1990.

24 Q. Was the picture that you saw, a picture that was  
described

25 as being a picture taken around 1990 when you said you  
saw

RICHARD A. KAUFMAN, CMRR

an old 1 this, or was it a picture that was published that was  
2 picture of Armando Fernandez?

several 3 A. I believe there was -- yes, I believe there were  
4 pictures of him taken many years ago and as well as a  
recent 5 picture. That's when I said, yes, he is the same one,  
and also 6 there was a whole report on him on the TV in Chile.  
And in 7 this TV program, there he appeared as a young man with  
General 8 Arellano.

9 Q. Let me show you this. Do you think Armando  
Fernandez is in 10 this photograph?

11 MS. HEALY: At this time plaintiffs would like  
to 12 offer Exhibit 19 and have it admitted.

13 THE COURT: Any objection?

14 MR. DAVIS: No objection.

15 THE COURT: It will be admitted as Plaintiffs'  
Exhibit 16 19.

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

19 MS. HEALY: May I publish?

20 THE COURT: You may.

21                    You may continue.

22            Q.    You say you think Armando Fernandez is in this  
photograph.

23            For the record, it is a photocopy of a photograph?

24            A.    It is could be him or him.

25            Q.    I am sorry, which one?

RICHARD A. KAUFMAN, CMRR



1 A. Can I ask you where you got this photograph?

2 Q. You can ask me, but I am not going to answer you?

3 A. Then I won't tell you. I won't reply, either.

4 Q. If you are not going to answer my question, you  
certainly

5 are not obligated to -- Senor, I won't interrupt you.  
I am

6 asking you a question.

7 I ask again, who are the two people that you  
believe

8 could be Armando Fernandez? So the record is clear, I  
am not

9 saying Armando Fernandez is in that photograph.

10 A. This is a difficult problem to answer from a legal  
11 standpoint. If I were an uneducated or illiterate  
person,

12 because everybody has -- I could say, oh, its him, or  
him or

13 him, because all these people have military clothing  
on, the

14 same dark hair. I could say this is Vidal. If I were  
to tell

15 you oh, it is him or him or him, I would be -- I could  
be

16 lying.

17 Q. I am only asking, sir --

18 A. And because I don't want to lie, I can't reply to  
your

19 question.

20  
saying from

21  
is in

22  
23  
photograph?

24  
Defendant's

Q. So I am asking -- are you finished? So you are

that picture you can't tell whether Armando Fernandez

that picture or not?

A. In this photograph, specifically in this

Mr. Davis. I would like to mark this as

25 Exhibit 1.

RICHARD A. KAUFMAN, CMRR

1 Q. Did I understand it, sir, you are refusing to  
identify,

2 whether you see anyone named Armando Fernandez,  
defendant's

3 Exhibit 1?

4 Mr. Kerrigan. Counsel, before that is  
translated, in

5 fairness to the witness, I just want you to reconsider  
asking

6 that question. I think he said he was unable to  
identify in

7 this photograph. I think that's different from  
refusing to

8 identify. I don't mind you asking that question if you  
think

9 he is refusing to identify.

10 Q. I will clarify it, sir. I ask you, looking at  
Defendant's

11 Exhibit 1, please identify Armando Fernandez, if you  
can?

12 A. No, I couldn't tell you because all these  
individuals here

13 look very much alike. I could make a mistake. Plus at  
my 60

14 years of age, my eyesight might --

15 Q. With respect to the physical characteristics of the  
person

16 you testified was Armando Fernandez, how tall was that  
person?

17 MS. HEALY: At this time we would like to  
offer

18 Plaintiffs' Exhibit 20 and have it admitted.

19 MR. DAVIS: No objection.  
20 THE COURT: It will be admitted as Plaintiffs'  
Exhibit  
21 20.  
22 (A document was received in  
23 evidence as Plaintiffs' Exhibit 20.)  
24 MS. HEALY: May I publish?  
25 THE COURT: You may.

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: We will continue.

2 Q. Have you ever seen the photograph that has been  
shown to  
3 you before today?

4 A. No.

5 Q. Of the people you see in that photograph, are you  
able to  
6 say with some certainty who it is not? In other words,  
are you  
7 able to look at this photograph and say this person is  
not

8 Fernandez Larios?

9 A. I can mark on it?

10 Q. Yes.

11 A. That's not him. Because if he is here, I would  
imagine  
12 that he would be in the foreground, and not in the  
back. I  
13 can't see who are in the back.

14 (Interruption.)

15 Q. How many people in the foreground of this picture  
do not  
16 have an X on them?

17 A. Six people.

18 Mr. Kerrigan. The question I asked him was  
how many  
19 people do not have an X on them.

20 A. There are two that I didn't mark with an X in the  
21 foreground.

22 Q. Okay. I want to show you this photograph.

23 (Interruption.)

24 THE COURT: Is it so low you can't get any  
volume on

25 it?

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: The audio in the original was not  
terribly  
2 good.

3 THE COURT: Why don't you try to put a  
microphone down  
4 there. Maybe that will amplify it rather than turning  
it up so  
5 high. If you can't play it, you will have to read it.

6 MS. HEALY: We can start at page 54 line 6.

7 THE COURT: Do you want to designate one of  
your other  
8 counsel to do answers or questions?

9 MS. HEALY: We can do that, Your Honor.

10 Q. Have you ever seen the photograph shown to you  
before  
11 today?

12 A. No.

13 Q. I would like you to take a pen on this copy. I  
will hand  
14 this to you. Of the people you see in that photograph,  
are you

15 able to say with some certainty who it is not? In  
other words,

16 are you able to look at this photograph and say this  
person is  
17 not Fernandez Larios?

18 A. I can mark on it?

19 Q. Yes.

20 A. That is not him. Because if he is here, I would  
imagine he

21 would be in the foreground and not in the back. I  
can't see

22 who are in the back.

23 Q. Okay: How many people in the foreground of this  
picture do

24 not have an X on them?

25 A. Six people.

RICHARD A. KAUFMAN, CMRR



1                   MR. KERRIGAN: The question I asked him was  
how many           2           people do not have an X on them.

3           A. There are two that I didn't mark with an X in the  
4           foreground.

5           Q. Okay. I want to show you this photograph we will  
mark as           6           Exhibit 3.

7                   MS. HEALY: Plaintiff's Exhibit 11 was shown  
to the           8           witness.

9           Q. Do you recognize that man?

10          A. Yes.

11          Q. Who is that?

12          A. That's Fernandez Larios.

13          Q. Okay.

14          A. With his black hair.

15          Q. Do you see that man Fernandez Larios pictured  
there,           16           exactly pictured in the Exhibit Number 2?

17          A. No, because they are younger here. They are  
younger than    18           he is in this picture.

19          Q. Dr. Murua, do you understand the seriousness of  
your           20           testimony today? Identifying Fernandez Larios as the  
man that        21           was in the room with General Arellano?

22 A. Uh-huh.

23 Q. You have to answer yes or no.

24 A. Yes.

25 Q. Do you have any doubt in your mind whatsoever that  
man that

RICHARD A. KAUFMAN, CMRR

1 was in the room with General Arellano with the  
briefcase was

2 Fernandez Larios?

3 A. No doubt at all, it was him:

4 MS. HEALY: This is Mr. Davis asking  
questions.

5 Q. Did he have any facial hair at that time in October  
of

6 1973?

7 A. No, he was shaven and he had black hair.

8 Q. Did he have anything else distinguishing about him  
in the

9 way the hair was styled?

10 A. No, just typical military hair style.

11 Q. Could you see the top of his head? Because I think  
you

12 testified earlier he was wearing a cap?

13 A. Yes.

14 Q. So you can not see the top of his hair?

15 A. I can see, yes, here. I could see his hair. The  
cap

16 didn't have flaps on it.

17 Q. Did he have sideburns?

18 A. Yes, short. Short sideburns like mine.

19 Q. Is that like a standard military haircut at the  
time?

20 A. Yes. In the Chilean Army you can't wear long hair,  
so it

21 was your regulation haircut.

similar 22 Q. So a lot of the military personnel would have had

23 hair styles?

24 A. Yes, exactly.

25 MR. DAVIS: That is the conclusion of that  
deposition.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: We will break for the day at this  
time.

2 Tomorrow morning, I again have a very early  
medical  
3 appointment. I don't want you to be waiting here for  
me so we  
4 will start at 10 rather than 9:30 because it took me  
such a  
5 long time. I hope it won't take as long tomorrow. We  
will  
6 begin tomorrow at 10 o'clock. I understand one of your  
members  
7 has a medical appointment so we will end at 12:30  
tomorrow.

8  
9 Do not discuss this case amongst yourselves or  
anyone  
10 else. Have no contact whatsoever with anyone  
associated with  
11 the trial. Do not read or listen to anything touching  
on this  
12 matter in any way. If anybody should try to talk to  
you about  
13 this case, instruct them to immediately stop and be in  
contact  
14 with my staff concerning it.

15 Give your notebooks to the court security  
officer. I  
16 will see you tomorrow morning at 10 o'clock. Have a  
nice  
17 afternoon and evening. I will see you tomorrow.

18 (Jury leaves room.)

19  
ruling first

THE COURT: I am prepared to give you my

20  
8

as to the Patricio Lapostol deposition. Page 20 lines

21 through 10 is sustained as hearsay.

22 Page 21 line 20 to page 23 line 7.

23  
description of

What is the probative value here of the

24 the military execution?

25  
actual

MS. HEALY: He is distinguishing between an

RICHARD A. KAUFMAN, CMRR

in 1 military execution and the kind of killings he observed  
2 Altacama which was more brutal in a number of ways.

3 THE COURT: I will overrule that objection.

4 Page 22 lines 11 through 14 is sustained. His  
5 emotional reaction is irrelevant.

based 6 Page 22 lines 17 to page 23 line 7, overruled  
7 upon the witness' personal knowledge.

8 That concludes Patricio Lapostol, the  
deposition.

9 Now, Enrique Vidal. Page 23 line 13 --

10 MS. HEALY: 23 line 13?

11 THE COURT: I am sorry. There was a reason --  
page 13 12 lines 15 to 21. It is sustained as hearsay.

13 Page 15 lines 15 through 18, sustained. It is  
14 hearsay.

15 Page 16 lines 3 to page 17 line 1. That is  
overruled  
16 based upon his personal observation. With the caveat  
on page

17 17 line 2, something had upset him, was sustained.

18 MS. HEALY: We already deleted that, actually.

19 THE COURT: Page 20 line 18. What is the  
probative  
20 value?

21 MS. HEALY: Again, it goes to the false story  
the

22 prisoners were shot trying to escape.

23 THE COURT: I understand that is what it is.  
What is

24 the probative value of it? Why is it relevant and  
probative?

25 MS. HEALY: It was a story widely published by  
the

RICHARD A. KAUFMAN, CMRR



1 government intended to communicate to the family  
members and  
2 others these individuals really were criminals and not  
that  
3 they were victims of a massacre.

4 THE COURT: You come back to the original on  
the first  
5 day of trial when Mr. Cunningham sought to introduce  
the  
6 newspaper article and I asked him where is the nexus  
going to  
7 go, or the inference this was information that was  
dispensed by  
8 the military or the government. The nexus is not  
present in  
9 this testimony. What nexus are you going to provide?

10 MS. HEALY: The nexus would be the article  
itself.

11 THE COURT: I am not asking about the article.  
I am  
12 asking about this testimony?

13 MS. HEALY: It is related to the article which  
would  
14 come in relating to the false story.

15 THE COURT: Where is the nexus this was  
something that  
16 was disclosed by the government or the military? You  
keep on  
17 saying that. What evidence do you have showing that?

18 MS. HEALY: The article itself shows it as an  
article

was 19 by the commander of the region in which the false story

20 disseminated publicly.

presented 21 THE COURT: It is not the way Mr. Cunningham

22 it. It was a newspaper article. Now it is a different  
type of

23 article?

24 MS. HEALY: It is the same article. We had it

25 translated.

RICHARD A. KAUFMAN, CMRR

1                   MR. CUNNINGHAM: The government would public  
2                   announcements, bandos, in the local papers so the  
article which  
3                   is now translated indicates it is from the chief of the  
region  
4                   and indicates that as well at the bottom, and the  
people who  
5                   live in the region at the time, the family members,  
would  
6                   testify they routinely received communications from the  
7                   government in this form.

8                   THE COURT: That is what the translation  
indicates, it  
9                   was from the government?

10                  MR. CUNNINGHAM: Yes, it does.

11                  THE COURT: On that basis I will overrule the  
12                  objection.

13                  Page 27 lines 3 through 17. It is sustained.  
This is  
14                  not a personal observation but an opinion.

15                  MS. HEALY: I would point out the first  
portion of  
16                  that from line 3 to 6 do appear to be the personal  
observation  
17                  of Mr. Vidal.

18                  THE COURT: No, it is not. It is opinion. It  
is not  
19                  an observation of how he looked or appeared.

20                  Page 43, line 23, is overruled. That will be  
to 44

21 line 2.  
22 Page 56 line 5 -- that would come in as an  
admission,  
23 pages 43 and 44.  
24 Page 56 line 5. It is overruled through line  
18 based  
25 upon what the understanding of the witness was. It is

RICHARD A. KAUFMAN, CMRR

lines 19

1 sustained as to the statement by Mr. Kerrigan from  
2 through 23 with the witness' answer on page 57 line 1.

3 Is that it?

4 MS. HEALY: Yes.

5 MR. DAVIS: That is on the objections on that  
one.

6 The last ruling, you are allowing Mr. Vidal to testify  
what he thought the statement meant?  
7

8 THE COURT: His understanding.

9 I will see you tomorrow morning at 10 o'clock.  
We are

10 in recess.

11

12 o0o

13

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

17

18

19 \_\_\_\_\_

20 Date Official Court Reporter

21

22

23

24

25

RICHARD A. KAUFMAN, CMRR