

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.)	October 1,
2003)	
)	
	ARMANDO FERNANDEZ-LARIOS,)	
)	
)	
	Defendant.)	
)	
	-----)	x

VOLUME 6

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

APPEARANCES:

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

Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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I N D E X

Direct Cross

Red.

WITNESSES FOR THE PLAINTIFF:

ENRIQUE ALFONSO VIDAL ALLER	404
PATRICIO FRANCISCO LAPOSTOL AMO	434

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF	IN EVID.
Plaintiffs' Exhibit 13.....	431:19

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: Are we ready to proceed?

7 MR. DAVIS: I have a scheduling issue. On
Friday

8 morning I have a 9 o'clock mandatory pretrial on a case
pending

9 in Vero Beach. I was trying to attend by phone. It is
before

10 Judge Hawley in state court. I only ask that I either
could

11 use the telephone here --

12 THE COURT: How long is the pretrial going to
be?

13 MR. DAVIS: I don't know. A half hour to 45
minutes.

14 THE COURT: Maybe we can call him and he can
reset it?

15 MR. DAVIS: I have that request in to do that.

16 THE COURT: Give the number to Lisa. Maybe he
could

17 change it to the afternoon or after we finish here.

18 MR. DAVIS: Okay.

19 MR. KERRIGAN: Yesterday we stayed after Court
and

It 20 figured out what happened with this feedback problem.

21 wasn't our fault. Inherent in the equipment --

22 THE COURT: Robert should be here today.

23 MR. KERRIGAN: We got it all straightened out.

24 equipment Would you consider telling the jury these

25 problems are problems with the equipment that have been

RICHARD A. KAUFMAN, CMRR

1 corrected or something. I don't want it to appear we
don't 2 know how to run the tape.

3 THE COURT: I will mention it to them.

4 Robert should be here in any event. This has
been an 5 endemic problem.

6 MR. DAVIS: For the record, Mr. Kerrigan does
not know 7 how to run a tape.

8 THE COURT: Anyway, here is Robert. The man
of the 9 hour.

10 THE COURT: Ladies and gentlemen, as you
noticed

11 yesterday we were having some problems with the
evidence

12 presentation system. Unfortunately this has been a
problem we

13 have had since the installation of the system. I am
sure I

14 know I have your patience in dealing with it. We do
have court

15 personnel here today during trial to make sure
everything runs

16 smoothly.

17 You may proceed.

18 MS. HEALY: The plaintiffs are calling Enrique
Vidal

19 Aller. It is another videotape deposition. It will
run about

20 an hour and fifteen minutes.

21 (Videotape played.)

22 Thereupon - -

23

24 ENRIQUE ALFONSO VIDAL ALLER,

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

RICHARD A. KAUFMAN, CMRR

1 sworn, testified as follows:

2 By Mr. Kerrigan.

3 Q. Would you please state your complete name for our
records?

4 A. Enrique Alfonso Vidal Aller.

5 Q. What is your current occupation or profession?

6 A. I work in mining, in Atacama, Copiapo.

7 Q. Were you in the Chilean Army in 1973?

8 A. Correct.

9 Q. The questions I am now going to ask you will deal
with this
10 time period of September and October, 1973.

11 What was your rank and responsibilities in the
Chilean
12 Army in September of 1973?

13 A. I was a lieutenant, no, not lieutenant, I had two
stars.

14 Lieutenant.

15 Q. You were a lieutenant. And what was your
responsibility in

16 the Army? Where were you working in September of 1973?

17 A. I was assigned to the engineering regiment number
one,

18 whose headquarters was in Copiapo. At that time I was
the

19 assistant to the regiment.

20 Q. Who was the Commander of the regiment?

21 A. It was Colonel Oscar Haag B A S C H K E.

22 Q. Could you give us an idea of what you did as the
assistant

23 to Oscar Haag? What were your job responsibilities?

24 A. Basically, my job was to coordinate activities
between the

25 commander and the rest of the officers in the regiment.

RICHARD A. KAUFMAN, CMRR

1973? 1 Q. Did you have that responsibility in October of

charge 2 A. Yes. I was assistant to the commander and I was in
3 of the guards in the regiment.

General 4 Q. Do you recall the events in October 1973 when
5 Arellano and other men arrived at Copiapo?

6 A. Yes, correct, I do.

of 7 Q. Would you tell us what you recall about the arrival
8 General Arellano and the men that were with him?

the sun 9 A. It was the 16th of October. Since it was summer,
and 7 10 is out until late. It must have been between 6 o'clock
11 o'clock in the evening.

12 Q. Did you see the helicopter land?

13 A. Yes.

helicopter 14 Q. Was anybody else standing with you when the
15 landed?

didn't 16 A. Well, as I was the assistant to the commander and I
17 receive it. know why the helicopter was coming, I was there to

landed? 18 Q. Would you tell us what you saw after the helicopter

19 Who got out of the helicopter?

20 A. The first one to come out of the helicopter was
Lieutenant
21 Armando Fernandez Larios, accompanied by a second
lieutenant
22 called Hugo Julio and then after that, General Arellano
came
23 out of the helicopter.
24 Q. Did anybody else come out of the helicopter?
25 A. There were three or four other officers of higher
rank and

RICHARD A. KAUFMAN, CMRR

1 Arellano asked me where is the commander of the
regiment. I
2 immediately said, yes, I will go fetch him, because I
saw it
3 was a general who had come out of that helicopter.
4 Q. Did you know Armando Fernandez Larios before this
time when
5 the helicopter landed?
6 A. Yes.
7 Q. How did you know him?
8 A. Because we both entered the military academy the
same day.
9 Q. Did Fernandez Larios say anything to you when he
came out
10 of the helicopter?
11 A. Yes, we greeted each other. I don't recall the
exact words
12 he said.
13 Q. What conversation did you have with him or did you
ask him
14 what his purpose was being there?
15 A. Yes. At that time I went to fetch the commander of
the
16 regiment because Arellano asked me to bring him over.
At the
17 moment when Haag approached Arellano, then I took
Armando
18 Fernandez Larios aside and I asked him the question.
19 Q. What did he say?
20 A. What did I speak to him? Oh, he asked me how many

yes? 21 prisoners were there here in the garrison in Copiapo,

are 22 Q. No. Who asked you the question how many prisoners

23 there in Copiapo, who was that person?

24 A. Armando Fernandez Larios asked me personally.

25 Q. What did you say to him?

RICHARD A. KAUFMAN, CMRR

1 A. I told him that there were many, but the exact
number of
2 prisoners, that information was in the hands of the
military
3 prosecutor, Carlos Brito. Because there were some
prisoners
4 held in the regiment and others were in the public
jail, and I
5 didn't have that information.

6 Q. How were these men dressed, General Arellano and
Fernandez
7 Larios and the other men that got out of the
helicopter?

8 A. All in green clothes, war, for wartime.

9 Q. Did they have arms?

10 A. Yes.

11 Q. What else, what other kinds of weapons did they
have or
12 what were the kinds of weapons that they had?

13 A. Pistols, a submachine gun and then Arellano told
the
14 commander of the regiment off because the commander was
wearing
15 the gray uniform that is used for days off for the
military.
16 He told him, "in this country we are in a state of war
and here
17 you are with clothes that we use when we are off duty."

18 Q. Were the other people, the other officers at
Copiapo, the

19 Army officers, were they also dressed in combat uniform
or were
20 they dressed in non-combat uniforms?
21 A. They were all in combat fatigues.
22 Q. Did the Army officers that were at Copiapo before
General
23 Arellano came, were they dressed in the same kind of
clothes as
24 those men that came with General Arellano?
25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. You had this conversation with Fernandez Larios.
Did you
2 observe him do anything else in the area where the
helicopter
3 landed? Did you observe him engage in any other
conduct there?
4 A. What I really noticed was, he seemed very nervous.
He was
5 like looking for prisoners.
6 Q. Did you have occasion to see him interrogate
anybody?
7 A. Directly him, no.
8 Q. What did you do after the helicopter landed, you
are
9 talking to Fernandez Larios; what happened next?
10 A. He went in company of the military prosecutor, the
officers
11 and the task force to see the men under arrest.
12 Q. Did you go with them?
13 A. No.
14 Q. When did you next see Fernandez Larios?
15 A. When he came back with the prisoners, and in his
hand I
16 paid special attention to the fact that in his hand was
a kind
17 of chain with a ball at the end of it and a spike.
18 Q. In whose hands?
19 A. In the hands of Lieutenant Fernandez.
20 Q. So we are sure of names, this is Fernandez Larios?

21 A. Yes, correct.

22 Q. Describe this thing that he had in his hands for
us?

23 A. It was a chain with a wooden handle to hold on to
it with a

24 steel ball with spikes.

25 Q. Is this something that you had seen before that he
had with

RICHARD A. KAUFMAN, CMRR

1 him, or is this something you had not seen before?

2 A. No, never, and neither is it an object used by the
Army.

3 Q. At the moment you were having this conversation
with

4 Mr. Brito, had some of the prisoners been interrogated
before

5 this time?

6 A. Yes, it was late.

7 Q. Who was with Fernandez Larios when you saw him with
this

8 instrument that you described, this device you
described; who

9 was present with him?

10 A. He was with the officers who belonged to the task
force who

11 came with General Arellano.

12 Q. Did you see prisoners with them at that time?

13 A. No, no. They were coming back after having been
with the

14 prisoners and I was at the Commander's headquarters.

15 Q. About what time was that?

16 A. It must have been between 10:30 p.m. and 11 o'clock
p.m.,

17 about between 10:30 p.m. and 11 p.m. in the evening.

18 Q. What were you doing from the time the helicopter
arrived

19 until you saw them at 10:30 or 11?

20 A. I was preparing the orders to be issued for the
next day,

21 the orders to be issued to the men in the garrison.

22 Q. Had you worked late in the evening on previous
days?

23 A. Yes, because the commander of the regiment was also
the

24 region's intendant, so we had to work both in the
regiment and

25 at the intendency.

RICHARD A. KAUFMAN, CMRR

1 Q. What did you next observe after you saw General
Arellano's
2 men together and you had this conversation with Mr.
Brito?
3 What happened next?
4 A. What Brito said to me?
5 Q. What was the condition of Fernandez Larios when you
saw him
6 at about 10:30 in the evening, did he appear to be in a
normal
7 condition?
8 A. No.
9 Q. What was his condition?
10 A. He seemed to be on a kind of high. He was kind of
nervous.
11 No, he wasn't normal, let's say.
12 Q. What was the condition of the other men that were
with
13 Fernandez Larios?
14 A. They were calm. There was a vast difference
between him
15 and the other officers.
16 Q. Could you describe with more detail Fernandez
Larios than
17 you have given us now? Could you tell us in greater
detail
18 what you observed?
19 A. I saw him very kind of upset and very nervous.
Something
20 had upset him.

21 Q. Where did you see this? Was it in a courtyard, or
where
22 exactly did you see General Arellano's men and
Fernandez
23 Larios?
24 A. Yes, in the Court beyond a reasonable doubt by the
-- or in
25 front of the Commander's headquarters.

RICHARD A. KAUFMAN, CMRR

1 Q. How long did you --

2 A. Because the prisoners were held about 200 meters
from the

3 Commander's headquarters, in the mechanics workshops.

4 Q. Where did Fernandez Larios and the men that were
with him

5 go after you saw them out there?

6 A. I can't really remember where they went.

7 Q. Did you see them again that evening?

8 A. Yes, in the officer's club, the dinner we had.

9 Q. What time was the dinner?

10 A. About 12. 12 midnight, zero hours.

11 Q. What did you observe Fernandez doing at the dinner,
if you

12 recall?

13 A. No, he wasn't at the dinner.

14 Q. Were the other men with General Arellano at the
dinner?

15 A. Arellano was at the dinner.

16 Q. Were the men that came with Arellano in the
helicopter at

17 the dinner or not at the dinner?

18 A. The only ones who were at the dinner were the
pilots of the

19 helicopter and the second lieutenant, Hugo Julio.

20 Q. Did you see Fernandez Larios after the dinner?

21 A. No.

22 Q. Did you know Winston Cabello?

23 A. Yes.

24 Q. How did you know him?

25 A. Because he was the chief of service in ODEPLAN in
Copiapo.

RICHARD A. KAUFMAN, CMRR

1 Q. What relationship or --

2 A. And as I worked with the intendant, I had to
receive him

3 when he wanted to talk to the intendant.

4 Q. Did you have a good relationship with him?

5 A. Let's say a typical relationship between the
assistant to a

6 commander and the chief of service.

7 Q. Did you know that he was in jail at Copiapo?

8 A. Yes. There were many chiefs of different services
held in

9 Copiapo.

10 Q. Do you know when Winston Cabello was supposed to be
11 released from the jail in Copiapo? Do you know the
date he was

12 supposed to be released?

13 A. All those under detention were going through --
their cases

14 all were pending.

15 It seems that the day that Arellano arrived,
those

16 cases were hastened, they were sped up.

17 Q. Did you know Dr. Murua?

18 A. Yes. He was arrested along with Dr. Jera
Sepulveda. No, I

19 can't remember the other doctors, but it was several of
them

20 from the mining company called El Salvador. It is a
mine that

21 is about 22 kilometers North of Copiapo towards the
Andes. He
22 was the camp -- he was the attending physician for the
camp.
23 Q. Could you describe the conditions in Copiapo in
regards to
24 the citizens that lived there? Was there anarchy and
25 lawlessness in Copiapo prior to October 16, 1973, or
what was

RICHARD A. KAUFMAN, CMRR

1 the state of the community?

2 A. The military unit took over all the public services
and the
3 intendancy. Everything was under control. All the
media,
4 radio, all was controlled. Yes, the atmosphere was one
of calm
5 and peace.

6 Q. Did General Arellano express to the officers that
were
7 there his purpose for coming there?

8 A. He met together with the unit commander, with the
military
9 prosecutor and also with the second in command, Carlos
10 E N R I O T T I.

11 Q. Were you present when they had that meeting?

12 A. No. They were the superiors, the highest ranking
officers
13 in the unit.

14 Q. When did you learn that some prisoners had been
killed?

15 A. I found out on the evening of the 16th. It must
have been
16 between 2:30 and 3 o'clock in the morning.

17 Q. Would that be the morning of the 17th of October?

18 A. Yes.

19 Q. How did you learn that some members had been killed
there?

20 A. Well, at first the comment was that 13 prisoners
were to be

21 transferred to the jail in La Serena, and because they
tried to
22 escape in the Southern, through the Southern portion of
23 Copiapo, they shot them to death on the spot.
24 Q. You have earlier described seeing Fernandez Larios
with the
25 device?

RICHARD A. KAUFMAN, CMRR

the
1 A. He was with it all the time. He had emerged from
2 helicopter already holding this object.
3 Q. Did you see the helicopter depart?
4 A. Yes. The next day.
5 Q. What time?
6 A. It must have been around twelve noon.
17th?
7 Q. Did you see Fernandez Larios the next day on the
8 A. No.
with
9 Q. Did you see any of the other men that had arrived
10 General Arellano?
11 A. Yes. They said goodbye to the commander at his
12 headquarters. Yes, because those officers went
directly to the
13 helicopter and the General went to say goodbye in the
14 Commander's headquarters.
15 Q. Did you see the men go to the helicopter?
16 A. Yes. Yes, I went -- I saw them get into the
helicopter.
17 Q. Did you see Fernandez Larios get into the
helicopter?
18 A. Yes. The same task force that had arrived at the
regiment.
took
19 I'm not sure of the exact hour at which the helicopter
20 off, 11, 12 in the morning.

21 Q. You earlier testified you saw Mr. Larios arrive
with this

22 device --

23 MR. DAVIS: Your Honor, there was a piece
designated.

24 THE COURT: What page?

25 MR. DAVIS: Page 24, the completion of the
answer.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: What lines?

2 MR. DAVIS: 9 to 15.

3 THE COURT: Any objection?

4 MS. HEALY: I would actually object and ask in
fact

5 the beginning of that colloquy be read.

6 THE COURT: Come up --

7 MS. HEALY: Which would begin on page 23 line
23.

8 MR. DAVIS: No objection.

9 THE COURT: Page 23 line 23 through page 24
line --

10 the ending line?

11 MR. DAVIS: Line 15.

12 THE COURT: Both sides stipulate?

13 MS. HEALY: Could we start page 23 line 18
because

14 that is the beginning of the discussion.

15 MR. DAVIS: That is fine.

16 THE COURT: Page 23 line 18 through 24 line
15.

17 MS. HEALY: This is not in our excerpts.
Should I

18 read the question?

19 THE COURT: Yes.

20 "Q Did anybody tell you after the helicopter
departed, what

21 had happened to these men, how these men were killed.

22 A. Yes.

23 Q. Who told you?

24 A. There were several people.

25 Q. What was the story you were told?

RICHARD A. KAUFMAN, CMRR

but in 1 A. They were supposed to transfer them to La Serena
2 actuality, they had the order to kill them.

3 Q. Who killed these men?

4 A. The ones that went in the truck. The ones that
transferred
5 them out of the jail. It must have been Captain Diaz,
Patricio
6 Diaz, but I didn't see him when he killed them. I
can't
7 remember the rest of the personnel that was in the
truck.
8 There was a first corporal who was in the truck whose
surname
9 was Gonzalez."

10 MS. HEALY: That is the end of that part.

11 We will proceed.

12 Q. At what time did this occur? Was it after whoever
met with

13 Mr. Brito or was it before this meeting with Mr. Brito?

14 A. No, he was with it all the time. He had emerged
from the
15 helicopter already holding this object.

16 Q. Did you talk with Colonel Haag after his meeting
with
17 General Arellano?

18 A. Yes.

19 Q. Was Winston Cabello one of the 13 prisoners that
was
20 killed?

21 A. Yes.

22 By Mr. Davis.

23 Q. You said there were some prisoners that were housed
in the

24 regiment and some that were kept some distance away?

25 A. Yes, in the public jail.

RICHARD A. KAUFMAN, CMRR

1 Q. How far was the public jail from the regiment?

2 A. One kilometer.

3 Q. Approximately how large physically was the
regiment, the

4 physical boundaries of the regiment?

5 A. Five hectares.

6 Q. What is a hectar?

7 A. 10,000 square meters. So five hectares are 50,000
square

8 meters.

9 Q. The helicopter landed within the physical
boundaries of the

10 regiment?

11 A. Yes, in the football field.

12 Q. Did you have any specific notice that the
helicopter was

13 going to land, or did you just see a helicopter coming
and went

14 out to greet it?

15 A. I just suddenly saw this helicopter land.

16 Q. Was there a specific reason that you went to greet
it? Was

17 that part of your duties?

18 A. I don't want to give you another speech, but I have
to

19 explain why I went there. Because I am in charge of
the guard

20 who was on duty in my capacity as assistant to the
Commander.

that is 21 The chief guard says to me, it, there is a helicopter
guard on 22 coming to land. I said, well, surround it with the
the 23 duty. And all of them were pointing with their arms at
is when I 24 helicopter because they didn't know who it was. That
25 approached the helicopter. The door opened and Armando

RICHARD A. KAUFMAN, CMRR

1 Fernandez Larios came out with Hugo Julio and behind
them came

2 General Arellano, 70 meters from the commander's
headquarters.

3 Q. Wasn't the helicopter marked as a military
helicopter, a

4 Chilean Military helicopter?

5 A. Not while it was still up in the air, because it
created

6 twirls of dust as it landed.

7 Q. How many men from your regiment were physically
located at

8 the football field when the helicopter landed?

9 A. The guards on duties?

10 Q. The total men that you said that went out with you
that

11 were pointing the rifles at the helicopter?

12 A. Eight.

13 Q. You testified that the helicopter landed around 6
to 7

14 o'clock in the evening, but it was still light at the
time the

15 helicopter landed?

16 A. Yes.

17 Q. What time did it get dark at that time of year in
Copiapo?

18 A. At 9 o'clock.

19 Q. On the particular night of October 16, 1973, was it
a clear

20 night? Was it a cloudy night, cloudy afternoon?

21 A. It was clear.

22 Q. When you saw Armando Fernandez, the first time you
saw him
23 when he got off the helicopter, you said you recognized
him
24 from military school; is that correct?

25 A. Yes, that's correct.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you ask him why they were there since you did
not know?

2 A. Yes.

3 Q. What did you ask him?

4 A. I asked him, who is in the helicopter with you,
because he

5 was just a lieutenant and he must have been with
somebody

6 higher ranking.

7 Q. Is there anything else that you can remember about
that

8 first conversation you had with Armando when they first
landed?

9 A. I asked him, who is in the helicopter with you, and
what's

10 the objective of this visit.

11 Q. Do you remember anything that Armando said to you
from that

12 conversation?

13 A. How many people were detained here.

14 Q. Is that the only thing you remember Armando asking
you at

15 that first time that you saw him?

16 A. Yes.

17 Q. Did other officers come out of the helicopter
within

18 seconds after Armando came out of the helicopter?

19 A. Correct.

20 Q. So, would you estimate that you only had a few
seconds at

coming 21 that point to talk to Armando because the General was

22 and you had to attend to the General?

23 A. Yes. We kept walking together.

how did 24 Q. When you saw that a General was on the helicopter,

General's 25 you get word to Colonel Haag to notify him of the

RICHARD A. KAUFMAN, CMRR

1 arrival?

2 A. I went running to his office, the Commander's
office to

3 tell him that General Arellano was coming, and I didn't
know

4 who General Arellano was.

5 Q. So, then, the helicopter lands, you see Armando,
you see

6 that there is a General and you actually greet and
receive the

7 General?

8 A. Yes.

9 Q. I don't know what the official Chilean Military
greeting

10 would be, but I assume you salute him or recognize his
rank in

11 some fashion?

12 A. Yes, immediately.

13 Q. Do you similarly greet the other officers who were
coming

14 off the helicopter?

15 A. No.

16 Q. Then, when you see it is a General, do you then ask
for the

17 General's permission to be excused to go tell your
Colonel that

18 the General is there?

19 A. Yes. He said -- the General asked me to bring over
the

time to 20 commander of the regiment. That's why I didn't have

21 greet the rest of the task force.

think you 22 Q. I understand. So you then ran over to which, I

headquarters? 23 said it was relatively close, to Colonel Haag's

24 A. Yes, 70 meters away.

there? 25 Q. Was Colonel Haag in his office when you arrived

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. Did you then bring the Colonel to greet the
General?

3 A. Correct.

4 Q. So, did you have any further discussion with
Armando

5 Fernandez after you brought Colonel Haag to greet
General

6 Arellano?

7 A. Yes, correct.

8 Q. What did Armando tell you that he was doing with
General

9 Arellano?

10 A. He said, I am the General's right-hand man. He
trusts me

11 totally.

12 Q. What else was said between you and Armando at that
time?

13 A. That he was looking thin.

14 Q. You were looking thin or Armando was looking thin?

15 A. No. I asked him why was he looking so thin.

16 Q. Anything else that you discussed at that time?

17 A. And I asked him why were these superior officers
here as

18 part of this task force, what had they come here to do
in the

19 regiment.

20 Q. I think you testified earlier you said 6:30 to 7
o'clock

so, as I 21 was the time period that the helicopter arrived. And
see 22 understand it from your earlier testimony, you did not
correct? 23 Armando again for the next two to three hours; is that
10, 24 A. Yes, correct.
25 Q. You believe the second time you saw him was around

RICHARD A. KAUFMAN, CMRR

1 10:30 in the evening?

2 A. More or less.

3 Q. And the second time you saw him, did you have any
direct

4 conversation with him?

5 A. No, he was very busy.

6 Q. So you saw him in the company of other officers
from the

7 helicopter at that time?

8 A. Correct.

9 Q. As far as you could tell, was Armando the lowest
ranking of

10 the officers that he was with at that particular
moment?

11 A. At that moment.

12 Q. Yes?

13 A. Yes.

14 Q. How long would it be that you saw him in this
second time

15 that you observed him even though you didn't talk to
him?

16 A. Ten minutes.

17 Q. Where were you physically located when you saw him
on the

18 second time?

19 A. I was in the corner of the area where you enter the

20 Commander's headquarters.

21 Q. When you saw Armando, could you tell where he was
coming

22 from?

23 A. Yes.

24 Q. Where was that?

25 A. From behind the -- from where the prisoners were in
the

RICHARD A. KAUFMAN, CMRR

hall for 1 barracks that are behind -- it is behind the dining
2 the officers.

standing 3 Q. The second time that you saw him, were you just
4 there watching them or were you in the company of
someone else?

for -- 5 A. I was with Sergeant M A U N A, who was the driver
6 the Commander's driver.

were 7 Q. Were you standing there talking to the sergeant or
8 you -- what were you doing with the sergeant?

the meal 9 A. He was standing next to me. I was watching over
10 time of the soldiers.

you 11 Q. When you are standing there the second time, are
12 actually physically located inside a building?

13 A. No, outside.

men 14 Q. And the people that you are -- you are watching the
15 eat? The people under your command were eating dinner?

the 16 A. No, they were filing up to go eat to the area where
17 dining hall is.

for 18 Q. Was that part of your duties, to watch them file in
19 dinner?

charge of

20 A. In reality, the assistant to the Commander is in
21 everything that goes on in the regiment.

22 Q. So it was part of your duties?

23 A. Yes, of course.

second

24 Q. How far was Armando from you when you saw him the
25 time?

RICHARD A. KAUFMAN, CMRR

1 A. He was in the company of the rest of the task force
he was
2 walking towards me from 250 meters away near the
barracks.

3 Q. What was the closest he got to you during that
time?

4 A. Twenty meters.

5 Q. It was now nighttime? It was dark?

6 A. Yes, but the courtyard of the regiment had
lighting.

7 Q. Was Armando wearing the same uniform?

8 A. Yes, the same one.

9 Q. Earlier you testified that he had this chain with a
ball
10 and spikes in his hands?

11 A. Iron, yes.

12 Q. You had never seen this object prior to that day?

13 A. I am sorry, I don't understand the question.

14 Q. The object that you testified that you saw Mr.
Fernandez,

15 Armando holding, you said you had never seen it before?

16 A. No, never.

17 Q. What I am trying to understand, was Armando holding
it in
18 his hand or was it attached to his uniform in some
fashion?

19 A. He had it in his hand.

20 Q. And then I understood you to also testify in Mr.
Kerrigan's

got off 21 direct, that he actually had this in his hand when he

22 the helicopter?

23 A. No. No, I believe that when he descended from the
24 helicopter, he had it on his waste.

got off 25 Q. You noticed the first time that you -- when Armando

RICHARD A. KAUFMAN, CMRR

1 the helicopter, you noticed this weapon?

2 A. Yes.

3 Q. You had never seen that weapon before in your life?

4 A. Yes, I had seen it in movies about the Romans.

5 Q. But you had never seen one in person before?

6 A. No, never.

7 Q. Did you ever ask Armando what that weapon was?

8 A. No. He told me it was to beat the pigeons with.

9 Q. At this first time you saw him?

10 A. Yes.

11 Q. Now for the third time, were any of the other
officers or

12 individuals who were with Armando, were any of them
holding

13 weapons?

14 A. Yes.

15 Q. What weapons were they holding?

16 A. Pistols. I want to clear up that when I first saw
Armando

17 Fernandez get out of the helicopter, he didn't have
this object

18 in his hand, the chain.

19 Q. You clarified that.

20 A. Because he greeted me with a handshake, and with a
hug. So

21 it wasn't like he was going to beat me with this. And
then he

22 showed up with this.

23 Q. So when Armando got off the plane, he was not
holding any
24 kind of rifle? Wait a minute. When Armando got off
the
25 helicopter, he wasn't holding any kind of rifle? I
meant

RICHARD A. KAUFMAN, CMRR

rifle? 1 holding in his hands, like a rifle. He was holding a

2 A. Yes, a submachine gun.

3 Q. Okay. I am just now responding -- if he was
holding a gun,

4 how did he hug you and hold the gun the same time?

5 A. No, he didn't have it in his hand. No, it was
hanging from

6 his shoulder. That's why I wanted to clarify to you
that he

7 didn't have this object with a chain and ball with
spikes in

8 his hands the first time.

9 Q. The second time when you saw Armando, where did you
go and

10 where did he go where you stopped seeing him any more?

11 A. We never saw each other again after that second
time.

12 Q. But when you stopped seeing Armando that second
time, did

13 you return inside a building, did he go into a
building? In

14 other words, where was Armando or where were you when
he

15 disappeared from sight, from your sight?

16 A. I didn't see him again because I went to my office
and he

17 stayed with the task force and the military prosecutor
on the

18 second floor.

in 19 Q. So the last time you saw Armando in this whole time
somebody's 20 Copiapo was when he was physically going into
21 office?
22 A. Yes, the prosecutor's office.
building 23 Q. And the prosecutor's office was in a different
24 from your building?
25 A. It was in the second floor.

RICHARD A. KAUFMAN, CMRR

1 Q. Just so that I understand it and I apologize for my
2 ignorance. I understand that the prosecutor's office
is on the
3 second floor, but is it in the same building as your
office or
4 is it in another building?

5 A. Yes, correct, the same building.

6 Q. Did you see him walk upstairs or take an elevator
to go to
7 the second floor?

8 A. Yes. The whole task -- the entire task force.

9 Q. You said you had some conversations with Colonel
Haag
10 regarding the fact that General Arellano had some
orders that
11 exceeded Colonel Haag's authority?

12 A. A General has command over the Colonel, and the
General
13 also had a document which indicated he was a delegate
named by
14 the Commander in chief of the Army. From that moment
on, he
15 was the Commander of the garrison in Atacama.

16 Q. Does that mean that General Arellano could then
direct
17 Colonel Haag and any other officer at that -- or any
other
18 member of the military from that point forward while he
was at
19 your regiment?

20 A. That's right.

21 Q. Would he need this piece of paper or authority he
had from

22 some General in Santiago in order to have that
authority, or

23 would he have that authority by virtue of the fact he
was a

24 General?

25 A. No. He was given the document by the Commander in
chief of

RICHARD A. KAUFMAN, CMRR

1 the Army.

2 Q. Did Armando Fernandez have any authority to issue
orders to

3 anyone at Copiapo on October 16, 1973?

4 A. No. He received orders directly from General
Arellano.

5 No, neither could he issue an order to the commander of
the

6 regiment.

7 Q. In response to Mr. Davis' questioning, you said
that

8 Fernandez Larios said that this device that he had in
his hand

9 was for the pigeons. What did you understand that to
mean?

10 Did you understand that to mean that they would kill a
pigeon,

11 a bird? Or what did that mean, pigeons?

12 A. No. I said he said it is to caress the little
pigeons.

13 Q. What did that mean to you?

14 A. To beat up the prisoners.

15 Q. I am going to show you what has been marked in Dr.
Murua's

16 testimony, Exhibit Number 1 and ask you if you have
ever seen

17 this paragraph before?

18 A. Oh, there I am.

19 MS. HEALY: I would like to publish to the
jury again

20 Plaintiffs' Exhibit 19.

21 We are continuing.

22 A. There I am and there is Armando Fernandez Larios.

23 Q. I have another photograph and I am going to ask you
to

24 circle on photograph 2 --

25 Mr. Kerrigan. Ask him to please hand the
photograph

RICHARD A. KAUFMAN, CMRR

1 back to me.

2 Mr. Davis. You should mark that as an
exhibit.

3 Q. Could you show me which one is Fernandez Larios and
which

4 one is you?

5 A. That's Armando Fernandez Larios. He has his arm in
a cast,

6 and that is me.

7 Q. You are right in front of him?

8 A. Yes, correct. I am a bit bigger, yes. It's the
same one?

9 Q. You saw Fernandez Larios with his hand in a cast.
Is that

10 how you made this identification? What did the cast on
his

11 hand -- do you recall the cast being on his hand in
1973?

12 A. Yes. No, not in 1973. Not in 1973. This
photograph was

13 taken 1968, 1969.

14 Q. '68, '69. Okay?

15 A. Here we were cadets at the military academy.

16 Q. You were much thinner then?

17 A. Yes.

18 Q. Now, I am going to show you what has been marked in
19 Dr. Murua's testimony as exhibit number 2. You will
notice

20 that there are several Xes on people in this line.

21
jury what

MS. HEALY: I would like to publish to the

22 has already been admitted as Plaintiffs' Exhibit 20.

23 Continuing.

24
picture?

Q. Tell me if you identify Fernandez Larios in that

25 A. Yes, there.

RICHARD A. KAUFMAN, CMRR

Is 1 Q. Is he the man in the picture that there is no X on?
2 Fernandez Larios in that picture with no X on him?

3 A. Correct. And this is Gonzalez Celis, who doesn't
have an 4 X, either and he was the Dean of the Catholic
University. He 5 passed away.

6 Q. So there are two people in the picture who do not
have an X 7 on them. One is Fernandez Larios and one is the
gentleman you 8 just told us about?

9 A. Yes, Fernando Gonzalez Celis. He has already
passed away.

10 Q. Would you take a pen and circle on the exhibit that
we have 11 just given you, Fernandez Larios, just a circle around
his 12 face?

13 MS. HEALY: At this time we would like to have
14 admitted Plaintiffs' Exhibit 13.

15 MR. DAVIS: No objection.

16 THE COURT: It will be admitted as Plaintiffs'
Exhibit 17 13.

18 (A document was received in
19 evidence as Plaintiffs' Exhibit 13.)

20 THE COURT: You may publish.

21 Q. As I understand it, you are directly in front of
Fernandez

22 Larios in this photograph; is that correct?

23 A. That's correct.

24 Q. In your testimony, you recalled as I recollect your
25 testimony, that you asked Fernandez Larios what are you
doing

RICHARD A. KAUFMAN, CMRR

1 here, what is your purpose here. Did you ask him that
2 question?

3 A. Yes.

4 Q. What did he say?

5 A. "You will soon find out."

6 Q. One final question. Did Fernandez Larios have in
his
7 possession any knife?

8 A. A corvo on his right leg.

9 Q. What do you mean on his leg?

10 A. It is a knife that is tied to the leg.

11 Q. What does the knife look like?

12 A. It is curved. It is a curved knife with sharp
edges on the
13 inner side and the outer side.

14 Q. Is this a knife that is normally carried by people
in the
15 Chilean Army in 1973?

16 A. No. Only the special forces.

17 By Mr. Davis.

18 Q. There were other forces that would have a corvo on
them in
19 1973 in the Chilean Army?

20 A. Yes.

21 Q. Did other members of the helicopter have this
corvo?

22 A. As he had been my classmate, I had particularly
noticed

23
particularly

him, the way he -- what he was wearing. And I

24
gun.

noticed that he had a pistol, a corvo, and a submachine

25

That is it.

RICHARD A. KAUFMAN, CMRR

1 Q. Those are the weapons he had on him?

2 A. Yes.

3 By Mr. Kerrigan.

4 Q. Did any of the other officers that were stationed
at

5 Copiapo have corvos that they carried on them?

6 A. No.

7 By Mr. Davis.

8 Q. Whether they carried them or not, did other
personnel,
9 military personnel that were stationed at Copiapo have
that

10 corvo as within -- access to corvos?

11 A. No. The regiment in Copiapo does not have corvos.

12 MS. HEALY: That concludes the deposition of
13 Mr. Vidal.

14 THE COURT: We will take a break.

15 Do not discuss this case amongst yourselves or
anyone

16 else. Have no contact whatsoever with anyone
associated with

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

18 matter in any way. Be back in the juryroom in ten
minutes. If

19 anybody should try to talk to you about this case,
instruct

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

21 concerning it.

22 (Open court. Jury not present.)

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

vs.

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

25 Would counsel state their appearances.

RICHARD A. KAUFMAN, CMRR

1 (All parties present.)

2 THE COURT: Bring the jury in.

3 (Jury present.)

4 MS. HEALY: We call Patricio Lapostol Amo. It
is a
5 videotape deposition and runs approximately 25 minutes.
6 By Mr. Kerrigan.

7 Q. Would you state your complete name?

8 A. You want all my surnames?

9 Q. Yes.

10 A. My full name is Patricio Francisco Andres Lapostol
Amo.

11 Q. What is the extent of your formal education?

12 A. I am a former officer of the Army. I have taken
University
13 courses related to the prevention of risks.

14 Q. When did you join the Chilean Army?

15 A. I joined the military academy as a cadet in 1968.

16 Q. Where were you assigned in 1973 in the month of
September?

17 A. I was, at that time, in the Calama regiment.

18 Q. Who was the Commander, Commandant, of the regiment?

19 A. It was Colonel Eugenio Rivera D E S G R O U X.

20 Q. Before the coup, what responsibilities did you have
in the
21 Army in Chile in Calama in September of 1973?

22 A. I was a second lieutenant and I belonged to the
artillery

23 division. On the 11th of September, that unit was
assigned to
24 go up to C H U Q U I C A M A T A to protect the mine
and the
25 people who lived up there.

RICHARD A. KAUFMAN, CMRR

1 Q. Would you tell us what you recall occurring on
October 16,
2 1973?

3 A. That day, by sheer coincidence, I had to go down to
the
4 town of Calama to run some personal errands and to take
care of
5 some issues related to the division of which I was a
member.

6 Q. I stated October 16 and I intended to say October
19.
7 Which date was it you are now referring to?

8 A. On the 19th of October, the task force from
Santiago
9 arrived.

10 Q. Describe the arms that they were carrying, the men
with
11 General Arellano?

12 A. Normally we use pistols, in other words, and guns.
13 However, the men who were accompanying General Arellano
were
14 equipped with handguns, corvos and rifles. Excuse me.
I don't
15 know if rifles and fusil are the same thing. When I
say fusil,

16 I am talking about the SIG specifically. Its like an
M16.

17 MS. HEALY: Mr. Davis would like to read in
some
18 testimony not part of the clip.

19 Q. What is a corvo?

blade is 20 A. It is a knife created by the Chilean Army whose
21 curved. It has a sharp edge on either side and a tip.
22 Q. Is this something that the Chilean Army officers
would 23 normally carry with them in 1973?
24 A. Yes. This arm was only used for special
presentations or 25 parades, but not as a weapon to be used for combat.

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: Continuing.

2 Q. Is there any unusual characteristics of a corvo as
compared
3 to a simple knife?

4 A. The corvo is a weapon or an arm that inflicts great
damage
5 because of the shape it has. Because of its curved
shape.

6 When it is used in a human body, it inflicts much more
damage
7 to the tissue and tearing away than what a normal knife
would.

8 You can easily slit someone's throat by using the inner
curve
9 of this knife.

10 Q. Is the knife designed in a fashion that when
someone is
11 stabbed with it, that it is likely to cause death?

12 A. Of course.

13 Q. And is it likely to cause immediate death or a slow
death?

14 A. It causes a death because the person bleeds to
death
15 slowly.

16 Q. Do you know Fernandez Larios?

17 A. Yes.

18 Q. Did you see Fernandez Larios with General Arellano?

19 A. Yes. He was part of the task force.

20 Q. How did you know the name Fernandez Larios?

to me 21 A. I didn't know his name, then, but he was introduced
22 at the luncheon we had later on.
23 Q. Tell us what happened at the luncheon?
task 24 A. It was a normal lunch. The people who were in the
25 force were seated at a large table. Generally they
were seated

RICHARD A. KAUFMAN, CMRR

1 to officers of similar rank to them and they started
talking to
2 one another.

3 Q. Was Fernandez Larios at this lunch?

4 A. Yes, I think so.

5 Q. What happened next?

6 MR. DAVIS: Your Honor, we have an issue.

7 (Side bar.)

8 MR. DAVIS: Page 18 line 8 through 10.

9 I think we agreed what can be played before
the jury.

10 The problem we have is the way they are playing the
tape. They

11 play the entire answer in Spanish. The part that
should be

12 excluded from the answer is going to be played to the
jury and

13 some of the jurors speak Spanish.

14 THE COURT: Why don't you read it. Read line
5

15 through 8 then omit that from the playing of the video
and go

16 on.

17 (Open court.)

18 Q. What happened next?

19 A. The lunch finished and I -- from what I understand
-- no,

20 not from what I understand. What happened was a
certain number

21 of people left.

22 Q. What you are telling us now, is this something you
observed

23 or is this something someone told you?

24 A. That was the comment that had been made and by the
entrance

25 where the guard is on duty, a jeep and a truck left.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you see the jeep and the truck leave?

2 A. Yes, I did.

3 Q. Who was in the truck?

4 A. I didn't notice. I just saw the vehicles leave.

5 Q. About what time did you see the truck leave,
approximately,

6 the time?

7 A. Between 2:30 and 3 o'clock in the afternoon.

8 Q. What happened next? The truck has gone. What
happens from

9 3 o'clock to, say, 6 o'clock?

10 Let me restate the question. Just a minute.

11 What did you observe happening, or what do you
know

12 from your own personal knowledge happening from between
3 and,

13 say, 6 o'clock? What was your next involvement with
the

14 prisoners who had been taken off?

15 A. At around 1730 or 1800 hours, the Lieutenant
Mandiola,

16 Jorge Mandiola, asked me to accompany him to organize a
guard

17 in the spot where the prisoners had been shot.

18 Q. Did you organize this company?

19 A. I went up with Mandiola. We organized the company.
And

20 then later on when Captain Minoletti, M I N O L E T T
I, showed

back to 21 up, we went back to Calama. And then later on I went

22 Chuquicamata.

23 Q. I want to go back a step here now.

jeep 24 Did you see when the truck left who was in the

truck 25 that followed the truck or who was driving and in the

RICHARD A. KAUFMAN, CMRR

1 cab?

2 A. No.

3 Q. When you organized this company, what did you do?

4 A. We ordered the soldiers to protect, safeguard the
zone, the
with the

5 area, and to not allow people who were not associated
6 division or the unit, specifically civilians.

7 Q. Did you personally see the bodies?

8 A. Yes.

9 Q. Would you describe in as much detail as you can
give us,
10 the condition of the bodies?

11 A. Absolutely destroyed.

12 Q. Could you provide more detail what you mean
absolutely
13 destroyed?

14 A. Several gunshot wounds and in some cases, knife
stabs.

15 Q. Were there any other mutilations of the bodies?

16 A. No, because -- not really, because it wasn't a very
17 pleasant sight.

18 Q. When you went there, did you expect to see bodies
that had
19 resulted from a military execution?

20 A. Yes, but not -- that's not what I saw.

21 Q. Had you ever seen bodies that resulted from a
military

22 execution?

23 A. Yes.

24 Q. What was the difference between bodies that result
from a

25 military execution and what you observed on October the
19th,

RICHARD A. KAUFMAN, CMRR

1 1973?

2 A. In a military execution, there is a formal
procedure during

3 which the persons to be executed, you know, is in a
specific

4 place and carries a circle placed over his heart.
There is a

5 firing squad. There is an officer in command of this
firing

6 squad. There is a priest who belongs to the religion
professed

7 by the person to be executed. And that constitutes an
enormous

8 difference when I compared this with the bodies I saw
on the

9 19th of October.

10 The military executions which took place from
11 September 11 and prior to the 19th of October were the
result

12 of a formal procedure. The executions that took place
on the

13 19th of October were summary.

14 Q. Did you know personally any of the men that had
been killed

15 there?

16 A. Yes. Yes, specifically I knew a man called Haroldo
17 Cabrerias, C A B R E R A S. I had arrested him in the
City of

18 Chuquicamata upon instructions of the military
commander of

19 that zone. I believe he was specifically under house
arrest.

20 I was the one assigned to pick him up at his home, take
him to

21 the unit and from there he was taken to the jail.

22 The other person that I knew, but not
personally, but

23 I knew that he was the owner of a radio station, was
the

24 husband of Carmen Hertz, H E R T Z.

25 Q. As to the gentleman that owned the radio station,
what was

RICHARD A. KAUFMAN, CMRR

1 the charge that was against him at the time?

2 A. He was accused of carrying on with a radio
transmission

3 despite the military edicts that had been issued saying
nobody

4 could divulge any news of any kind once the coup d'etat
had

5 taken place.

6 Q. Were you involved in any way in taking the
prisoners from

7 the jail to either the truck or to turn them over to
General

8 Arellano's men?

9 A. No.

10 Q. Once you had secured the company that went and put
the

11 soldiers around the bodies, what did you do after that?

12 A. I said that once Captain Minoletti showed up,
Mandiola and

13 I left and I went back up to Chuquicamata.

14 Q. So Captain Minoletti took over the supervision of
the

15 soldiers around the bodies; is that correct?

16 A. Captain Minoletti's specific responsibility was to
start

17 burying the bodies. He was the command are of the
engineering

18 division, and with mechanical shovels, they proceeded
to bury

19 the bodies.

20 Q. Do you know why the bodies weren't given to the
families?

21 A. No.

22 Q. Is that something that would normally be done after
an

23 official military execution?

24 A. Yes.

25 Q. Were the bodies buried in a single grave, do you
know?

RICHARD A. KAUFMAN, CMRR

size, and 1 A. They opened up a grave. I don't know the exact
2 that was the mission of the engineering division.

3 Q. Have all of those bodies been recovered?

4 A. No.

5 Q. Is there any doubt in your mind today that the
person that

6 you were introduced to at the luncheon is Armando
Fernandez

7 Larios, the person that you have seen in the newspaper
and

8 perhaps on television, is there any doubt in your mind
today

9 that that is the same person?

10 A. It is the same person.

11 MS. HEALY: Your Honor, that concludes the
testimony

12 of Patricio Lapostol.

13 THE COURT: We will break at this time because
one of

14 your members has a medical appointment.

15 Do not discuss this case amongst yourselves or
anyone

16 else. Have no contact whatsoever with anyone
associated with

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

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

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

20 with my staff concerning it.

21 You may give your notebooks to the court
security

22 officer. I will see you tomorrow morning at 9:30.
Have a nice

23 afternoon and evening.

24 (Jury leaves room.)

25 THE COURT: At the request of the parties
yesterday I

RICHARD A. KAUFMAN, CMRR

just

1 did speak to the jurors and they had no problems. I
2 wanted to report that back to you.

at this

3 Are there any other issues we need to take up
4 time?

5 MR. DAVIS: No, Your Honor.

tomorrow?

6 THE COURT: Do you have live witnesses

7 MR. CUNNINGHAM: Yes.

8 THE COURT: I will see you tomorrow.

9

10 o0o

11

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

15

16

17

18

Date

Official Court Reporter

19

20

21

22

23

24

25

RICHARD A. KAUFMAN, CMRR