

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 2,
2003)	
)	
	ARMANDO FERNANDEZ-LARIOS,)	
)	
)	
	Defendant.)	
)	
	-----)	x

VOLUME 7

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

APPEARANCES:

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

Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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WITNESSES FOR THE PLAINTIFF:

ALDA CABELLO	455	461	
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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: All the jurors are now here. We
had one
7 juror that was stuck in traffic.

8 I have begun to look at your proposed jury
9 instructions and I will need memorandums of law from
each side
10 basically on three discrete issues, being known, should
have
11 known, the aiding and abetting and the conspiracy.

12 I don't want you to focus, Mr. Davis, on
rulings I
13 already made. I will not be reconsidering rulings I
already
14 made in the motion to dismiss or the motions in limine.

15 As I see it, in review of the proposed jury
16 instructions, those are the major issues of contention
as to
17 what standard should be applied, is it actual knowledge
or
18 known or should have known. I will need a basis if
that is the
19 plaintiffs' position that known or should have known is
the

20 standard. I will need the basis and argument arising
out of
21 case law that supports that or are analogous to that.
22 I know the status of the law in this area is
thin as
23 to American jurisprudence and also thin as to
international
24 jurisprudence, so we are charting new territory and I
25 understand that.

RICHARD A. KAUFMAN, CMRR

1 I will both need to know the basis for your
proposed
2 jury instructions on those issues and the supporting
authority
3 for the jury instructions that you propose.

4 MR. DAVIS: When would you want these?

5 THE COURT: After the weekend. Plaintiffs by
Monday
6 and defendant by Wednesday or Thursday. First of all,
I think
7 it will help you focus what the issues are going to be.
I
8 expect we will have to spend a day or two in jury
charge
9 conference. That is what I anticipate, so I want you
to start
10 to focus on the issues you will be presenting to me, so
I think
11 it will be helpful for you and it certainly will be
helpful to
12 me to understand what your arguments are, what forms
the basis
13 for your arguments and what your authority is, so I can
be
14 prepared for the conference.

15 In addition, I have had Lisa start to inquire
of the
16 jurors as to what their conflicts are in the next week
or so.
17 I have already received one letter from one juror and
we are

as they 18 just going to have to take those up and deal with them

19 come.

20 Let's begin.

In this 21 MR. DAVIS: One thing I would like to raise.

22 morning's session of the Herald there was a headline,
something

23 to the effect -- you couldn't help but read the
headline even

24 if the jurors tried to avoid --

25 THE COURT: I skimmed it. I didn't see it.

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links 1 MR. DAVIS: It said something to the effect of
has 2 Chilean officer to human rights. The article itself
notwithstanding, there 3 inaccuracies in it as well, but all that
would 4 is no way if a juror was looking at the newspaper you
would 5 have to see the headline. You couldn't avoid it and I
and not 6 like there to be an instruction to the jury to avert
any 7 consider that, the Herald is not a reliable source of
information -- 8

instruction 9 THE COURT: You want me to put that in my
that. 10 to them? I don't think the Herald would appreciate
that we 11 What I will do is this. At the first break
discuss 12 take, I will remind them they are not to read or
reading 13 anything outside the courtroom and they should avoid
anything 14 anything touching on this matter, they should not read
on the V 15 touching on this matter in any way in the newspaper or
16 TV.

17 MR. DAVIS: For what it is worth, it is
detailed

18 pretty extensively on line.

well.

19 THE COURT: Okay. I will mention on line as

20 (Jury present.)

21 THE COURT: Call your next witness.

22 MR. KERRIGAN: Plaintiff calls Aldo Cabello.

23 Thereupon - -

24

25 ALDO CABELLO,

RICHARD A. KAUFMAN, CMRR

1 called as a witness by the Plaintiffs, having been
first duly 2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KERRIGAN:

5 Q. Would you give us your name?

6 A. Aldo Cabello.

7 Q. Where do you reside, Mr. Cabello?

8 A. Piedmont, California.

9 Q. Were you related to the deceased, Winston Cabello?

10 A. Yes. He was my brother.

11 Q. Could you tell us, just in general terms, the
structure of

12 your family in terms of the brothers and sisters of
Winston and

13 your mom and dad, give us a picture of the family prior
to
14 Winston's death?

15 A. At the time, probably my parents were married
already 30

16 years or 32. My older brother, he is three years older
than
17 me. Winston was 11 months younger than me. Zita one
of my

18 sisters, is probably two years younger than me and K A
R I N

19 was the baby of the family. I was married at the time.
At the

20 time I had just one daughter, Lorena, and Winston was
married,

21 he had two daughters, Susan and Marcela.

22 Q. What was Winston's wife name?

23 A. Veronica.

24 Q. Is Veronica still living today?

25 A. Yes, she is.

RICHARD A. KAUFMAN, CMRR

1 Q. And his daughters?

2 A. Both of them.

3 Q. And your brother, Manuel --

4 A. Manuel is married and he doesn't have any children.

5 Q. Going back to 1973, can you tell us where you were
in Chile

6 at the time and what you were doing?

7 A. 1973, I was working at the University of Chile at
the

8 school of engineering, teaching.

9 Q. Would you say that again?

10 A. I was a teacher at the school of engineering.

11 Q. What was your background, what were you trained to
do prior

12 to becoming a teacher?

13 A. I was a civil engineer.

14 Q. When did you first learn of the events that we have
been

15 talking about here that occurred in Chile in October of
1973,

16 particularly the death of your brother; when did you
first

17 learn of it?

18 A. That was probably about 10 o'clock on the 17th of
October,

19 1973.

20 Q. When did you go to Copiapo?

21 A. The next day.

were 22 Q. How far away were you from Copiapo from where you
23 living in Chile?
24 A. About 600 miles.
25 Q. Tell us what you did after you learned about your
brother's

RICHARD A. KAUFMAN, CMRR

to 1 death in terms of going to Copiapo or your family going
2 Copiapo?

3 A. The next day, I drove or began driving from
Santiago to 4 Copiapo and I was able to drive probably about 300
miles only, 5 because I began at 3 o'clock in the afternoon and there
was a 6 curfew. Around nine or ten o'clock. We couldn't
drive. I 7 stop at a small town, I think La Serena. I slept there
and I 8 began the trip the next day. I arrived at Copiapo
probably 9 about 1 o'clock in the afternoon the next day.

10 Q. Had your wife gone to Copiapo prior to the time you
were 11 there?

12 A. She was in Copiapo at the time of my brother's
death.

13 Q. Did you have occasion when you arrived in Copiapo
to talk 14 with Veronica, Winston's wife?

15 A. Yes.

16 Q. Can you tell us, just briefly, understanding she
would be 17 upset, of course, but what was her mental state, her
emotional 18 state upon your arriving in Copiapo?

19 A. She was still in disbelief. She was never shown
the body.

20 It was so unusual, so crazy there, my brother had been
killed.

21 Nobody believed it. It was like a dream.

22 Q. What was Winston's occupation or profession?

23 A. He was an economic engineer. He graduated from the
school

24 of economics at the University of Chile.

25 Q. Do you recall when he graduated?

RICHARD A. KAUFMAN, CMRR

1 A. Probably 1968 -- 1969.

2 Q. Who was the President of Chile in 1969?

3 A. Eduardo Frei, a Christian democrat I can --

4 Q. President Frei?

5 A. Yes.

6 Q. Did Winston go to work for President Frei's
government as a

7 government worker?

8 A. Yes.

9 Q. Had Winston been involved or done any other
professional

10 kind of work prior to the time he became an economist
and went

11 to work for the government?

12 A. Yes. He was trained before to become an economic
engineer,

13 he was a teacher.

14 Q. What did he teach?

15 A. Small children from like K-1 to sixth grade.

16 Q. Going back, you are in Copiapo. Do you know the
date that

17 you arrived? It would be after the 17th?

18 A. It was probably the 19th.

19 Q. Did you happen to see or talk with other families
of people

20 who have been killed in this incident at Copiapo?

21 A. Many of them, yes.

appeared 22 Q. Was there an official government publication that
23 in the local newspaper explaining the deaths and how
these 24 deaths had occurred?

25 MR. DAVIS: Objection, leading.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Sustained.

2 Rephrase your question.

3 BY MR. KERRIGAN:

4 Q. What explanation did you receive that would have
explained
5 how Winston was killed?

6 MR. DAVIS: Objection. Calls for hearsay,
Your Honor.

7 THE COURT: Sustained.

8 Rephrase your question.

9 BY MR. KERRIGAN:

10 Q. What is a bando?

11 A. It is a military order, or news. Sometimes it was
written
12 on paper, the newspaper or given through the radio.

13 Q. Was there a bando issued that related to the
killings in
14 Copiapo where Winston was killed?

15 A. Yes.

16 Q. What was that bando?

17 MR. DAVIS: It is still asking for hearsay.

18 THE COURT: Overruled.

19 BY MR. KERRIGAN:

20 Q. What was that bando, what did it say?

21 A. It was printed the day before I arrived on the 18th
of
22 October. It said 13 prisoners were transferred from
Copiapo to

was 23 La Serena and while being transported, the truck that
24 taking them had a mechanical problem on the outside of
Copiapo,
25 then the prisoners tried to escape and they were all
shot

RICHARD A. KAUFMAN, CMRR

the 1 because they didn't stop, they keep running. That was
2 explanation.

that 3 Q. Was there ever any other bando that was released
4 corrected that and stated something different than what
you 5 have just told us?

6 A. Not that I know of.

7 Q. Are your parents both alive today?

8 A. No, just my mother.

9 Q. What is your mother's age?

10 A. She is 86.

11 Q. Where does she reside?

12 A. In San Mateo, California.

brother's death 13 Q. Can you tell us the effect the news of your
14 had on -- let's start with your mother and with your
father.

learning 15 What was the visual, observable effect it had on them
16 he had been killed under these circumstances?

mother is 17 A. The most affected I would say was my father. My
18 a religious person so she was trying to explain, make
sense

so 19 through her religion all these problems. My father got
20 depressed his spirit died that day.

21 Q. Winston's children were very young, were they not?

22 A. Marcela was probably six years of age and Susan was
a year

23 old, 13 months, something like that.

24 Q. Did you know David Silberman?

25 A. I knew two of them at the time. One was a child
and the

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the 1 other was his father. Probably you are asking me for
2 father?

3 Q. I am asking you about a person that would be
4 contemporaneous with your age or a little bit older. I
guess 5 that would have been the father?

6 A. He was a friend of mine, a classmate of mine. He
was a 7 civil engineer. He graduated in the same school I did.
He was 8 about six years older than me.

9 Q. What was his occupation in 1973 and where was he
employed?

10 A. He was working as the CEO or general manager, I
would say,
11 of the mining company in Chuquicamata. Chile was one
12 the biggest copper mining companies of the world and he was
13 manager.

14 MR. KERRIGAN: That concludes my examination.

15 CROSS EXAMINATION

16 BY MR. DAVIS:

17 Q. Mr. Cabello, Chuquicamata, how far is that from
Santiago?

18 A. Probably a hundred miles.

19 Q. In October of 1973, Mr. Silberman was working 800
miles 20 away approximately from where you were living?

21 A. Yes.

22 Q. You went to Copiapo in October of 1973?

23 A. Yes.

24 Q. How big a city is Copiapo, at that time?

25 A. If I remember correctly, probably 30,000 people.

RICHARD A. KAUFMAN, CMRR

part of 1 Q. About how far from one part of town to the other
2 town, a couple of miles, more than that, the space?
3 A. Probably.
4 Q. Did you ever talk to Captain Diaz?
5 A. No.
6 Q. Did you ever talk to Colonel Haag?
7 A. Yes, I did.
when did 8 Q. Without telling me what Colonel Haag said to you,
9 you talk to Colonel Haag?
10 A. When did I talk to him?
11 Q. When did you talk to Colonel Haag?
12 A. Probably November 1973.
Colonel 13 Q. At that time your brother-in-law was still under
14 Haag's supervision because he was in prison at that
time?
15 A. Yes.
1973? 16 Q. Your brother had been arrested in September of
17 A. Yes.
September of 18 Q. And Colonel Haag was in charge of Copiapo in
19 1973 when your brother was arrested?
20 A. Yes.
21 Q. Did you ever talk to General Ojeda?
22 A. No.

were 23 Q. Did you ever talk to any of the military men who
24 stationed in Copiapo who were there in October of 1973,
other 25 than Colonel Haag who you told us about?

RICHARD A. KAUFMAN, CMRR

1 A. If I talked to any military personnel?

2 Q. Yes.

3 A. Yes, I did.

4 Q. What were the names of those people you talk to?

5 A. One of them is Adolfo Gonzalez. The other one is -
- I
6 remember his last name only, Guzman.

7 Q. These were military personnel stationed at Copiapo
in 1973?

8 A. Yes.

9 MR. DAVIS: No further questions.

10 THE COURT: Redirect?

11 MR. KERRIGAN: No, Your Honor.

12 THE COURT: You may step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MS. HEALY:

16 MS. HEALY: Jorge Ortiz Aeda, a videotape
deposition.

17 By Mr. Kerrigan.

18 Q. Good morning, we are taking your deposition today
here in

19 Chile. We will start by having you identify again your
full
20 name and your current occupation?

21 A. Jorge Nelson Ortiz Aedo. Inspector of the Army and
22 internally I occupy the position of visiting inspector
on a

23 national level.

24 Q. Would it be appropriate to address you as Inspector
Ortiz?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Why don't we start with the year 1970 and tell me
where you
2 were employed or what your responsibilities were from
1970
3 forward?

4 A. In 1970 I had the position, it was my
responsibility to be
5 charged with the position -- I was at the time in the
military.
6 I had the rank of captain of prisoners.

7 I held my position at the Santiago
Penitentiary. At
8 the Santiago Jail that no longer exists today, that
used to be
9 located at General McKenna.

10 Later on in the year 1973, when we had the
military
11 communique or the military coup, I was working at the
Santiago
12 Penitentiary.

13 In 1974 as a result of the warden being a
civilian, he
14 was a civilian during those years, he was removed from
his
15 position. It came to me to assume as the subordinate
the
16 position of warden of the Penitentiary of Santiago.

17 Q. You indicated that in 1970, I believe you said you
were a
18 captain in the military service. When did you change
from the

19 military service to the civilian service that you have
20 described today?

21 A. No. In the service of the prison service.

22 Q. In the prison service. So it was not the military
service?

23 A. No. No, not at all.

24 Q. I want to address now the prison at Santiago. What
was the

25 name of the prison again?

RICHARD A. KAUFMAN, CMRR

1 A. It was the Santiago Penitentiary.

2 Q. You were the warden of the Santiago penitentiary in
1974;

3 is that correct?

4 A. I assumed the position.

5 THE INTERPRETER: The interpreter has
consulted with

6 the witness on the use of the term. The interpreter
considers

7 that the best rendition into the English language of
the term

8 used by the witness would be surrogate. In this case,
the

9 witness' answer would say, "I was the surrogate warden
from

10 1974 up until approximately 1976."

11 Q. Were you the highest ranking officer at the
Santiago

12 Penitentiary in the years 1975 and 1976?

13 A. That is so.

14 Q. In 1974, did you have a prisoner at the Santiago

15 Penitentiary named Silberman?

16 A. That is so. That was an intern who arrived
convicted by a

17 military tribunal, or court martial, in the City of
Calama, in

18 the North of Chile.

19 Q. Did Mr. Silberman arrive at the Santiago
Penitentiary when

20 you were the acting warden in 1974?

well, 21 A. Yes. Shortly before that date, I don't recall very
warden, 22 but when I assumed the position of surrogate, or acting
23 he was already at the penitentiary.
Was he a 24 Q. Was Mr. Silberman a well known prisoner in Chile?
average 25 person that would be, say, more well known than the

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1 prisoner in the Santiago Penitentiary?

2 A. That is so. Because David Silberman held the
position of

3 general manager of -- general manager to Cobre Chuque -
-

4 THE COURT: Counsel, would you approach,
please?

5 (Side bar.)

6 THE COURT: I will be giving the 404B
instruction at

7 the conclusion of this deposition. I didn't realize
this

8 deposition was going to be going into it. I want to
review

9 with you what I propose to be the instruction. I am
utilizing

10 the pattern jury instructions for the Eleventh Circuit.
There

11 are some changes because the standard evolved is
different.

12 Based upon my ruling on the motion in limine,
the

13 instruction would be as follows. You have just heard
evidence

14 of acts of the defendant which may be similar to those
charges

15 alleged in the complaint, but which were committed on
another

16 occasion. You must not consider any of this evidence
in

17 deciding if the defendant committed the acts alleged in
the

18 complaint. However, you may consider this evidence for
other
19 very limited purposes. If you find by a preponderance
of the
20 evidence or other evidence in this case that the
defendant did
21 commit the acts alleged in the complaint, then you may
consider
22 evidence of the similar act allegedly committed on
another
23 occasion to determine whether the defendant had the
state of
24 mind or intent necessary to commit the act alleged in
the
25 complaint, or whether the defendant had a motive to
commit the

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acted 1 act alleged in the complaint or whether the defendant
the 2 according to a plan or commission of an act alleged in
3 complaint.

this 4 MR. DAVIS: My objection to that would be,
5 deposition would make no sense with that instruction.
This is 6 describing an event that happened a year after the
events in 7 Copiapo. This is October 1974.

which is 8 THE COURT: My ruling was it was admissible,
9 the law controlling in Florida. It doesn't need to be
the 10 year, it could be the year after.

that you 11 Is there something in the instruction itself
12 are objecting to?

is an 13 MR. DAVIS: It should say, this is today, it
14 allegation as opposed to an established fact. That was
my only 15 concern.

Honor? 16 Could I get a copy of my rule back, Your

17 THE COURT: Yes.

18 I thought I better interrupt before you
finished the 19 deposition.

20 MS. HEALY: That is fine.

21 THE COURT: Does plaintiff have any objection
to the

22 instruction?

23 MS. HEALY: No, as modified for the civil
case.

24 MR. DAVIS: May I look at the pattern
instruction?

25 THE COURT: Yes. I modified it.

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1 MR. DAVIS: Other than what I stated about it
being a 2 year later, I have no other objection.

3 MS. HEALY: We have no objection.

4 THE COURT: So this deposition is the entire
5 occurrence regarding Mr. Silberman or is there other
testimony 6 as well?

7 MS. HEALY: This is the only evidence we have
on it.

8 THE COURT: At the conclusion of the
deposition I will

9 read the instruction to them as indicated.

10 MS. HEALY: That is fine.

11 MR. DAVIS: Yes, Your Honor.

12 (Open court.)

13 THE COURT: You may proceed.

14 BY THE WITNESS:

15 A. That is so, because David Silberman held the
position of

16 general manager -- general manager to C O B R E C H U
Q U I.

17 Q. How long was Mr. Silberman in the Santiago
Penitentiary

18 before he was removed from the penitentiary?

19 A. As I said earlier, I don't have the exact date of
arrival

20 from Calama, but it must have been at the beginning of
1974

month of 21 when he entered the penitentiary, more or less in the
22 March.
your 23 Then after that, while I was the acting or is
24 gate warden with Mr. Silberman under my charge, he was
in the 25 penitentiary until exactly October the 4th of 1974.

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7th, 1 Q. Would you tell us now what happened on October the
2 1974, that resulted in Mr. Silberman leaving the
penitentiary?

1974, 3 A. I must correct. The date was the 4th of October of
4 at approximately 1800 hours.

5 Q. Thank you. And what happened?

6 A. At that aforementioned time, there did appear at
the

7 Santiago Penitentiary a military patrol. The leader of
the

8 military patrol was then obligated to offer the
password that

9 we were using at that time or upon that date, which was
10 obligatory to all persons who came to any institution
in, in

11 our case a penal institution, a password that was
delivered on

12 a daily basis by the headquarters of the Army.
Sometimes there

13 would be a leakage of this password and it would be
changed for

14 reasons of security.

15 Q. So this military patrol came to the prison and who
was it

16 that express the password, was it someone in the
military

17 patrol that came? Was it an officer, or who was it?

18 A. It was the person in charge of the patrol who was
an

19 officer of the Army.

20 Q. What did this person, who was the officer in
charge, tell

21 you was his reason for coming to the penitentiary?

22 A. Once he came in and after giving the password, he

23 identified himself with the desk officer of our unit.
My

24 officer or desk officer from my unit advised me of the
presence

25 of this officer, and I ordered him brought to my
office.

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interior 1 I came out to meet with him, and inside an
introduced 2 patio or yard, we sustained a conversation where he
that 3 himself by giving me a document. And it was within
penitentiary 4 document there was an order to the warden of the
patrol, 5 to turn over to this military officer of that military
was to 6 that I was to turn over prisoner Silberman, and that I
telephone 7 confirm the contents of that order by calling a
8 number, which I did effectively.

9 And I communicated to the number that I was
given and 10 it was answered by an officer who gave me his identity
over the 11 phone.

12 Now, the reasons why Mr. Silberman could leave
the 13 penitentiary, even though he was a convicted intern, it
was 14 because that within the copies of the ruling or
sentence, in 15 which he was convicted to the terms of incarceration
that he 16 must meet or comply with, there was a clause that said
that the 17 military tribunal or court martial, said that he was to
be

18 placed available to the government junta in Santiago
for which-

19 soever investigations he may be needed for.

20 Q. Did you proceed to release Mr. Silberman to this
officer?

21 A. I immediately ordered that my clerk draw up a
record or a

22 document so that on the signatures with the officer
having been

23 duly identified, with the intern duly identified, and
the

24 physical conditions in which he found himself at the
time, he

25 was being delivered under signature, which is to say,
the

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1 intern to the person in charge of the patrol.

2 Q. Did the person in charge of the patrol identify
themselves
3 by name?

4 A. Using an identity card where the name appeared,
which was
5 later known as a result of the passage of time and the
passage
6 of procedure, that this was a false or assumed name.

7 Q. What was, if you recall, the false or assumed name
of the
8 officer that was in charge?

9 A. If memory doesn't fail, but of course this is
subject to
10 confirmation, the name is Alejandro Q U I N T E R O S.

11 Q. Would you describe now what happened to Mr.
Silberman as he
12 was released to this officer who identified himself by
the name
13 previously given us?

14 A. He seemed very concerned. He made no remarks,
because in
15 addition, he had been withdrawn from the penitentiary
on two
16 previous occasions to be investigated.

17 Q. Describe now, if you will, what you observed in
terms of
18 Mr. Silberman being taken from the penitentiary?

19 A. Well, I accompanied the group until the main gate
of the

20 penitentiary. When they withdraw from our unit, they
made him

21 climb into a --.

22 THE INTERPRETER: The interpreter has
consulted with

23 the witness and understands that the expression used in
Chile

24 is the equivalent to a pickup truck and the witness'
response

25 was, "as they were leaving, the unit, they made him
climb into

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1 the back of a pickup truck that bore no license plate,
which
2 was a characteristic for those vehicles that were used
within
3 the state security forces. State security
organizations."

4 A. After that the vehicle drove away and this was the
end of a
5 particular piece of business that was normal under the
6 conditions we were living at the time.

7 Q. Was Mr. Silberman placed in any kind of restraints
or have
8 any kind of blindfold or anything like that, or was he
taken
9 out without any accompanying restrictions or
restraints?

10 A. At that time, with no physical limitations, led
away by
11 members of the patrol.

12 Q. You earlier indicated --

13 MR. DAVIS: Your Honor, may we approach the
side bar?

14 THE COURT: Come up.

15 (Side bar.)

16 MR. DAVIS: I apologize, Your Honor. We met
in regard

17 to this. There are some questions on page 16, line 25,
down to

18 page 17 line 24, where it talks about other
proceedings, and I

19 asked counsel if they could not play that portion.

20 THE COURT: Page 16 line 25?

21 MR. DAVIS: Yes.

22 MS. HEALY: That is satisfactory.

23 (Open court.)

24 A. With the surname Fernandez Larios.

25 Q. Do I understand that you identified Fernandez
Larios from a

RICHARD A. KAUFMAN, CMRR

1 photograph and realized that that was the officer who
had come
2 to the prison? Is that the basis of your statement
that it was
3 Fernandez Larios?

4 A. That is so.

5 MS. HEALY: I would like to publish to the
jury
6 Exhibit 11 already admitted into the evidence.

7 THE COURT: You may.

8 MS. HEALY: Continuing.

9 Q. I show you what has been marked previously as
Exhibit 1
10 which we will adopt for this deposition also as Exhibit
1 and
11 ask you if you can identify that person?

12 A. Yes. There is no doubt that as a result of the
passage of
13 time the person here has been completely changed, but
as a
14 result of the characteristics of his face, the nose,
the ears,
15 it is he.

16 Q. And who is he?

17 A. I beg your pardon?

18 Q. You said, it is he. You need to identify who he
is?

19 A. Fernandez Larios.

20 Q. Okay. Has Mr. Silberman been seen or found since
the day

21 he left the penitentiary with Fernandez Larios?

22 A. No. What was known was, that he was amongst the
23 disappeared persons in Chile.

24 Q. As I understand it, to this date Mr. Silberman has
not been
25 found?

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not been 1 A. As far as my information is concerned, no, he has
2 found.

3 Q. So he would be number four?

4 A. That is so.

the 5 Q. Inspector Ortiz, thank you very much. That's all
6 questions I have. At this time Mr. Davis may inquire
now 7 further.

8 By Mr. Davis.

9 Q. Good morning Senor Ortiz. The first question I
want to ask 10 is, back in 1974, did you routinely turn over prisoners
to 11 members of the military?

12 A. Good morning, counsel. That is true. Based on
13 legal statutes that existed at that time, it was routine that
we 14 would turn over prisoners, specially those that had
been 15 convicted. And this was a special case, based on a

16 clause, a clause that stated that he was to be available to the
17 government junta in Santiago as a result of his
condition of a 18 convicted prisoner.

19 Q. Right now I am not questioning why you did this. I
am just

20 asking about the number of times that this type of
process
21 would have occurred and to give us some sense of scale.
22 Is this something that happened on a daily
basis, a
23 weekly basis, a monthly basis? Please explain how
often you
24 would turn over prisoners to members of the military?
25 A. This was daily. And to different branches of the
armed

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1 forces.

2 Q. Would it be done with more than one prisoner on a
daily
3 basis?

4 A. Of course. At that time the prison service was
under
5 orders, or at the availability of the appropriate
organizations

6 to turn over as many prisoners as many times as were
necessary
7 or required, and as many times as they so ordered.

8 Q. Again, I am not trying to get into the reason
things were
9 done. I am trying to get the number of times things
were done.

10 I believe you confirmed that this is the practice of
turning
11 over prisoners to people in the military. Is this
something
12 that happened on a daily basis for a number of
different
13 prisoners that were within your jurisdiction?

14 A. That is so.

15 Q. The time that you turned over Mr. Silberman in 1974
that
16 you described in your direct with Mr. Kerrigan, would
that time
17 have been less than half an hour, 30 minutes?

18 A. Approximately 45 minutes, because it was necessary
to draw
19 up the corresponding record of confirmation.

20 Q. Who else was with you from the prison when this
occurred?

21 A. There was an officer there who had the position of
chief of
22 the internal service, under whom all prisoners were
held.

23 Q. What was his name?

24 A. He had the rank of lieutenant for the time, at that
time,

25 and his name was Manuel O L G U I N Silva, S I L V A.

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other
1974,

1 Q. And how many people were in -- was that the only
2 person involved with the transfer of this prisoner in
3 this other person just named?

of the
down

4 A. In addition, the clerk who drafted the record of
5 confirmation of delivery. Then later on, the officer
6 guard, or the desk officer who writes down, and writes
7 confirmation of the turnover of the prisoner in the
8 corresponding record book.

October

9 Q. How many prisoners were under your jurisdiction in
10 of 1974?

2,000,

11 A. I do not recall the exact number, but it was above
12 up to 2,500 prisoners, including common prisoners, and
13 prisoners who had been convicted by court martial.

prison and
was an
being

14 Q. Would you explain to us how it is you recall the
15 circumstances of Mr. Silberman being taken from the
16 in that explanation tell us, if you would, whether he
17 unusual prisoner or there was something unusual about
18 released to the junta, or anything that would help us
19 understand how it is you remember this so clearly.

delete the

20 Mr. Kerrigan. To the interpreter. Let's

as 21 term "remember so clearly," to state how you remember
restate 22 opposed to the characterization of "clearly" and I will
23 that if the question was too long.
of that 24 A. It was unusual, at the time, in the prison service
unusual to 25 time and in the guard service of this time, it was

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convicted 1 turn over prisoners. It was unusual to turn over
organizations 2 prisoners to organizations for investigation, in
convicted 3 that were outside organizations, except when a
time 4 prisoner commits another crime while serving his prison
called or 5 and then he is made available to some court and he is
concerning 6 subpoenaed in to provide statements or testimony
7 that new commission of a crime.

recall 8 Now, in the specific case of Mr. Silberman, I
included 9 it distinctly because of the special clause that came
that the 10 amongst the sentence papers, or documents, which said
11 prison service had to provide him as many times as was
12 necessary that he may be then interrogated.

had in 13 Q. Do you recall many other convicted prisoners who
available for 14 their sentencing papers that they should be made
15 interrogation by the junta, other than Mr. Silberman?
warden, it 16 A. It never came to me, as the acting or surrogate
those 17 never came to me to ever deal with any other case with
18 conditions.

19 Q. Are you certain today that the man that you have
described
20 as the head of the military group that removed Mr.
Silberman
21 was, in fact, Fernandez Larios? Are you certain of
that today?

22 A. Exactly.

23 MS. HEALY: Mr. Davis would like to read in a
short
24 portion from page 19 line 9 through page 20 line 2.

25 MR. DAVIS: To clarify the end of the direct.

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1 THE COURT: You may.

Davis

2 MS. HEALY: I will read the question and Mr.

3 will read the answer.

to the

4 Q. What is the exact title that you now have in regard

5 penal system in Chile?

6 A. At this time?

7 Q. Yes.

8 A. Inspector.

of the

9 Q. What does the term "inspector" mean in the context

10 penal system in Chile?

times.

11 A. It is equivalent to the rank of Colonel in past

you,

12 Q. In the organizational structure, who would be above

13 superior to you in the penal system in Chile?

administrative

14 A. Our organization, national director, deputy

my

15 director, deputy technical director and as a result of

16 seniority, then it would be me.

17 Q. You would be number four?

18 A. That is so.

Jorge

19 MS. HEALY: That concludes the deposition of

20 Ortiz.

21 THE COURT: Ladies and gentlemen of the jury,
you have
22 just heard evidence of acts of the defendant which may
be
23 similar to those alleged in the complaint, but which
were
24 committed on another occasion. You must not consider
any of
25 this evidence in deciding if the defendant committed
the act

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1 alleged in the complaint. However, you may consider
this
2 evidence for other very limited purposes. If you find
by a
3 preponderance of the evidence from other evidence in
this case
4 that the defendant did commit the acts alleged in the
5 complaint, then you may consider evidence of the
similar act
6 allegedly committed on another occasion to determine
whether
7 the defendant had the state of mind or intent necessary
to
8 commit the acts alleged in the complaint, whether the
defendant
9 had a motive to commit the acts alleged in the
complaint, or
10 whether the defendant acted according to a plan.

11 You may proceed. Call your next witness.

12 MR. CUNNINGHAM: Zita Cabello Barrueto.

13 Thereupon - -

14

15 ZITA CABELLO BARRUETO,

16 called as a witness by the Government, having been
first duly

17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CUNNINGHAM:

20 Q. State your name.

21 A. Zita Barrueto Cabello.

22 Q. You live with your husband in Northern California?

23 A. Yes.

24 Q. Can you explain how names work in Chile? What was
your
25 name before you were married?

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1 A. Before I was married, my name was Zita Cabello
Bravo. We
2 take -- Cabello comes from my father's side and Bravo
comes
3 from my mother's side. My father was Manuel Cabello
Brito.
4 They lose the Brito and my -- the children get the
first name
5 of the father and the first name of the mother.
6 Q. As a matter of practice, before you were married,
people
7 called you senorita Cabello or Bravo?
8 A. Senorita Cabello, sometimes we use the two last
names in
9 more formal settings, but usually we use the first last
name,
10 Cabello. That would be the father's last name.
11 Q. Could you identify your brothers and sisters, what
are
12 their names?
13 A. My older brother is Manuel Cabello like my father,
then
14 Aldo Cabello, then Winston Cabello, me, Zita and my
sister
15 Karin Cabello.
16 Q. Are all of the Cabello children who are still
living,
17 citizens of the United States?
18 A. No, my brother Aldo is still a Chilean citizen.
19 Q. Your brother Winston before he died, was he a
citizen of

20 Chile?

21 A. Yes.

22 Q. Could you please describe your education?

23 A. In Chile, I obtained a master degree in economics
and

24 engineering and in the United States I went to the
university

25 of California, Berkely, and obtained a Master's degree
in

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1 behavioral science and later on a Ph.D. in development
2 economics.

3 Q. What do you do for a living now?

American
4 A. Teaching at the University of California, Latin
Oakland.
5 studies. I am a visiting scholar Mills College in

Winston have
6 Q. What would the age difference between you and
7 been?

8 A. Two years.

9 Q. Where did you grow up?

town, the
10 A. We grew up until I was ten years old in a small
A I C O.
11 Southern part of Chile. The name of the town is R E N

were
12 Q. What was your relationship with Winston when you
13 growing up?

our
14 A. Winston was always my partner in many games and in
15 childhood, I always remember going to the river --
there was a

16 beautiful river and our life was like a vacation,
swimming in
17 the river, he was always around me teaching me how to
swim. He
18 was always an inspiration in my live, even to today.

19 Q. When you were at the University, did you see
Winston?

20 A. I studied economics like him. I believe I studied
21 economics because he was studying economics. I was
following
22 his own path and during our time of studying economics,
he was
23 the one always taking care of me to be sure I knew on
the day
24 of my exams. He reminded me always of the books I
needed to
25 buy. Also he was involved in the dance and folklore
group.

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1 The school of economics has their own folkloric dance
group and
2 Winston was involved in that group. He used to play
the guitar
3 and sing. I don't play an instrument, I don't sing,
but he
4 always took me with him to these presentations at
different
5 places. My husband Patricio was always in that group.
Later
6 on I became involved in the group but Patricio had
already left
7 the group. I also became part of the members of that
group as
8 a dancer. Since I couldn't sing or play an instrument,
I
9 became a dancer, which was a very interesting
experience for
10 me.

11 Q. After the University at some point, did you and
your
12 husband move to Copiapo?

13 A. We moved to Copiapo, I believe, I am not sure
exactly, the
14 early month of 1973.

15 Q. What was Copiapo like when you got there in 1973?

16 A. Copiapo is like a small oasis. I remember I flew
the first
17 time to Copiapo and when we were arrived into Copiapo I
was
18 looking down and there was totally desert and the only
thing I

19 remember, it was a beautiful color. Later on that
year, it
20 rained one time during the winter and the desert had a
lot of
21 seed. Every time it rained during the springtime,
there was a
22 carpet of beautiful flowers like pink and all flowers
and I was
23 looking down and I couldn't believe what I was looking
at, I
24 didn't know, but the desert was the most beautiful
color and
25 suddenly I see this small town surrounded by this
beautiful

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find a 1 mountain. The town, you didn't know you were going to
2 town between these beautiful mountains.

with 3 Q. When you were in Copiapo, did you stay in touch
4 Winston?

house 5 A. Almost every day. He went to have breakfast at my
6 almost every day. I was working too, he knew we would
7 have
8 some breakfast. He would pick up my husband Patricio
9 and he
10 drove Patricio to the office. I saw him almost every
11 day.

12 Q. Did you know Winston's wife Veronica?

13 A. Yes. Usually on the weekends we went to Caldera
14 which had
15 a beautiful beach over there and we always have a
16 family
17 outing. I have my oldest son Felipe, the same time as
18 Winston
19 and Veronica's daughter, so we always went to the ocean
20 with
21 them.

22 Q. Coming into September of 1973, how did you learn
23 the coup
24 had taken place?

25 A. I was on the bus to the university that day. It
26 was
27 probably around 8 o'clock and I listened on the radio,
28 the bus

19 driver had the radio on and at that moment I heard the
military
20 communique explaining to the Chilean population, there
was a
21 movement in Santiago and the communication I heard at
that
22 moment, they were talking to the Chilean population not
to
23 worry, there was no problem, but at the same time they
were
24 telling there was a deadline for President Allende to
surrender
25 otherwise they would bombard the presidential palace.
That

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1 came kept repeating probably all morning until 11 a.m.

2 Q. Did you see any signs of violence in Copiapo on the
day of

3 the coup?

4 A. Absolutely nothing.

5 Q. Between September 11 and October 16, how did life
in

6 Copiapo change?

7 A. There was some fundamental changes in our life. We
had

8 curfew. The curfew in the morning included not getting
out of

9 the house before 6 a.m. or 7 a.m. and during the first
two

10 weeks probably, the curfew in the afternoon was 6 p.m.
After 6

11 p.m. you had to be in your house and in the morning you
could

12 not get out of your house before six or seven. That
was a big

13 change.

14 The other big change, in Chile we have never
had

15 experience of a military coup, and to have the presence
of the

16 military on the street was very unusual. We never saw
any

17 military, never saw people with guns and for the first
time in

18 Chile, the first time I saw people with guns, machine
guns or

19 these military jeeps going around the street, that was
very
20 unusual for Chileans to see that.
21 So that changed. It was a feeling of
uncertainties we
22 don't know what to expect, but besides that, I will
never --
23 one moment in my mind imagine that any atrocities will
take
24 place. That never crossed my mind.
25 Q. Did you learn on the day after the coup Winston had
been

RICHARD A. KAUFMAN, CMRR

1 detained?

2 A. Around 4 o'clock p.m. September 12 I was teaching
at the
3 University and a friend of mine who worked with Winston
came to
4 the university to let me know Winston had been
detained.

5 Q. Did you have a chance to visit Winston after he was
6 detained?

7 A. Yes, I did visit him. I think it was about three
times a
8 week.

9 Q. Where was he initially detained?

10 A. He was detained at the jail, first.

11 Q. At some point was he moved?

12 A. Yes. He was transferred to the garrison, to the
military
13 headquarters that was about ten blocks from the jail.
I don't

14 remember exactly the date when he was transferred to
the
15 garrison.

16 Q. Were you able to visit him while he was at the
garrison?

17 A. Yes.

18 Q. How frequently?

19 A. I think three times a week.

20 Q. What did you observe of his mood and physical
condition

21 when you visited him at the garrison?

22 A. His mood had become not changed. Among the
siblings, he

23 was more outgoing than anybody else, very warm. He
didn't

24 change. He was still that very optimistic young man
and every

25 time I went to see with him, he was lifted by his
spirits more

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1 than I did to him. He would say the military was
trying to

2 figure out how they would organize the government, I
guess

3 since he was the head of a very important government
4 department. His opinion was, the government had to
figure out

5 how they were going to run the government and in his
opinion he

6 was there while they are going to decide -- he was
probably

7 even thinking he would go back to his position as
director of

8 regional planning.

9 Q. What did you observe about his health?

10 A. There was no change. I brought food every day to
him,

11 because the food they gave there is not good food. I
decided

12 to bring food to him and to my husband and he would
complain

13 about my food sometimes. He was good. He was eating
well and

14 very happy. He didn't have any big concern about his
safety.

15 Q. Did you have any concerns about his safety?

16 A. The first day when I saw he was detained, yes.
That night,

17 that was the worse night that I had because I didn't
know at

18 that moment what he did, why they are detaining people.
In a

19 few days since I kept going, visiting him, everything
was so
20 calm, that he was in a good mood, he was very
optimistic, it
21 was a momentary situation, I wasn't scared any more. I
wasn't
22 worried about his safety.
23 Q. To your knowledge, had Winston ever been arrested
or
24 detained before October 12?
25 A. No.

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1 Q. I am sorry, September 12?

2 A. No, never.

3 Q. Were you aware of any charges brought against him
while he
4 was detained?

5 A. No.

6 Q. When was the last time you saw Winston?

7 A. I saw him on October 14 on Sunday, about two days
before he
8 was murdered.

9 Q. Did he tell you anything that day that lifted your
spirits?

10 A. Yes. When he saw me, immediately he was extremely
happy.

11 He said you are going to be very happy. Carlos Brito
the
12 military prosecutor just told him he will be released,
and also
13 my husband. He said no worry, this weekend we will be
going
14 home.

15 Q. How did you first learn that Winston had been
killed?

16 A. On October 17 it was about 9 a.m. I was at my
office and
17 one of my colleagues came to me and said do you want to
go for
18 a cup of coffee. I went with her to have a cup of
coffee and
19 when I was drinking coffee with her, she said, I heard
some

the 20 rumors that Winston was killed last night. I dropped
found 21 coffee and I went home. I run home, and in my house I
moment I 22 Veronica with Susan, they were in my house. At that
or two 23 looked at her and she said during the night about three
-- 24 a.m., a military officer came to her house and told her
into 25 MR. DAVIS: Your Honor, it is beginning to get

RICHARD A. KAUFMAN, CMRR

1 hearsay.

2 THE COURT: Sustained.

3 BY MR. CUNNINGHAM:

4 Q. As a result of what Veronica told you, what did you
do
5 next?

6 A. I went to the garrison.

7 Q. Why did you go there?

8 A. To find out if the information I had received that
Winston
9 was killed was true or not.

10 Q. Did you get information from the garrison?

11 A. I couldn't because it was surrounded by military
men. I
12 couldn't even get a few feet away from the guards.
They told
13 us to get away from there and there was no information
about
14 that, and trying the whole day trying to search for
this
15 military man. I wanted to hear from him, to find out
this
16 information. It was so insane, there was no way you
are going
17 to believe that information; but still there was some
doubt.
18 We couldn't find him and I went to another house, to
another
19 military man --

20 Q. Whose house was that, the other military man?

21 A. The brother-in-law of the military man that went to
22 Veronica's house.

23 Q. Who did you go to this military man's house with?

24 A. Veronica. I didn't go inside immediately.
Veronica went

25 inside and a few minutes later I decided to walk in and
I heard

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and I 1 this man saying, it is true, there is nothing we can do
running 2 wish there was something we can do. I left that room
what to do 3 away. I completely started running. I didn't know
4 and at that moment, I decided not to believe. It was
5 impossible to believe that story.

6 There was this lawyer that a friend of mine,
she hired
7 this lawyer to help her husband who was also executed
that day,
8 Leonello Vincenti, and his wife said to me --

9 MR. DAVIS: Hearsay, Your Honor.

10 THE COURT: Sustained.

11 BY MR. CUNNINGHAM:

12 Q. Did you see if the lawyer could give you some
assistance?

13 A. I went to go to his house and I said I need help.
My

14 brother has been detained, my husband has been detained
and I
15 have information that he has been executed and I want
you to go
16 to the garrison to speak with the Commander at the
garrison and
17 said please go see what happened.

18 Q. Did the lawyer invite you to come back the next day
and
19 talk to him?

20 A. Yes.

21 Q. Did he tell you to do something before you arrived
at his

22 office?

23 A. He said to buy the newspaper and he insisted I
should bring

24 with me Inez, the wife of Leonello, and he said I
should be at

25 the office at 9 o'clock a.m. because at that moment I
will know

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1 exactly what the decision for Winston and Patricio will
be 2 published in the newspaper.

3 Q. Who went to the lawyer's office the next morning?

4 A. I went to Veronica's house first then to Inez
Leto's house 5 then to the lawyer's office.

6 Q. Did you buy the newspaper before you went to the
lawyer's 7 office?

8 A. No. We completely forgot about the newspaper.

9 When we were at the office talking, like it
was 9 10 o'clock already, we remembered the newspaper and at
that moment

11 Veronica went to buy a newspaper and I stayed at the
office 12 with Inez and the lawyer arrived. He looked at us and
said,

13 you have not read the newspaper. We said no, we
haven't. At 14 that moment Veronica arrived with the newspaper in her
hands.

15 Q. In the newspaper, was there one of these bandos
that have 16 been described?

17 A. Yes. There was a military communique signed by the
18 Commander of Atacama.

19 Q. I refer your attention to the binder in front of
you and

20 direct your attention to Exhibit 4. What is Exhibit 4?
21 A. It is a translation of the article that was
published, the
22 military communique published in the newspaper October
18.
23 Q. If it is the translation, it may be 4.1. Can you
look on
24 the page before it?
25 A. Yes.

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1 Q. Is Exhibit 4 a copy of the bando?

2 A. Yes.

3 Q. What is Exhibit 4.1?

4 A. The translation of the article.

5 Q. Does Exhibit 4.1 also include a translation of the
date on
6 which the paper was published?

7 A. Yes.

8 MR. CUNNINGHAM: I would move into evidence
4.1, the
9 translation.

10 MR. DAVIS: May we approach?

11 THE COURT: Yes.

12 (Side bar.)

13 MR. DAVIS: We object to this on three
grounds. The
14 first is hearsay. I understand they are saying the
article is
15 false, but it is hearsay.

16 There is no evidence anywhere in this record
to the
17 release of this to Fernandez Larios in any way, shape
or form.

18 He had nothing to do with this release. He had no
connection
19 to this.

20 Your Honor has been asking about a nexus.
There is no

21 nexus between this document and anything Armando
Fernandez is
22 alleged to have done. There is nothing in this record
where
23 this came from, how it was prepared. It is only her
testimony
24 it was published in the newspaper. We believe it is
hearsay
25 and no connection to Mr. Fernandez and it should be
excluded.

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1 MR. CUNNINGHAM: If I may point out. On the
photocopy
2 of the article, and I could show you the original if
you
3 prefer. It says here something in Spanish translated
head of
4 the area under state of siege. It has the same
indication I
5 can show you on a different copy at the top of the
article.
6 That is what ties this to the government.
7 THE COURT: That means what?
8 MR. CUNNINGHAM: That means it was issued by
the new
9 head of the government the new intendant.
10 THE COURT: This is a bando?
11 MR. CUNNINGHAM: Yes.
12 THE COURT: Why don't you establish that
predicate,
13 that is what she saw and that is what that meant, I
will
14 overrule the objections and allow the introduction of
it. It
15 is not coming in for the truth of the matter asserted,
16 therefore it is not hearsay. The nexus is the fact
that it was
17 issued by the military by the government that was in
power at
18 that time with just the same military and government
under
19 which the defendant is alleged acted in the complaint.

20 Therefore, I find there is a sufficient nexus as to
this
21 official release of information from the military
government as
22 part of the overall conspiracy as charged in the
complaint for
23 the systematic execution of persons who were part of
the
24 Allende Government in one form or another including the
decendent
25 Winston Cabello.

RICHARD A. KAUFMAN, CMRR

1 (Open court.)

2 THE COURT: Overruled.

3 BY MR. CUNNINGHAM:

4 Q. If I could direct your attention to 4.1, the
language that

5 says "head of the area under state of siege," do you
see that?

6 A. Yes.

7 Q. Who was the head of the area under state of siege
at that

8 time in Atacama?

9 A. Commander Oscar Haag.

10 Q. Is that the language that accompanied the bandos
does that

11 had been described?

12 A. Yes.

13 MR. CUNNINGHAM: We would move into evidence
4.1.

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

15 4.1.

16 (A document was received in

17 evidence as Plaintiffs' Exhibit 4.1.)

18 BY MR. CUNNINGHAM:

19 Q. You were here this morning where your brother
described the

20 story that the government put out?

21 A. Yes.

believe 22 Q. It says a prisoner escape was thwarted. Did you
23 that?
24 A. No.
25 Q. Why not?

RICHARD A. KAUFMAN, CMRR

1 A. It would be totally insane. You won't believe
story like
2 that. Winston was going to be released. There was no
reason
3 for him to have done anything like this. Not only for
Winston,
4 I would say for everybody. It didn't make sense.
Besides
5 saying that, it doesn't make sense. It was so absurd.
When I
6 read, I didn't even finish reading the explanation
because I
7 knew my brother would never have tried to escape.
There was no
8 reason for him, knowing also he was going to be
released the
9 following day.

10 Of course we never thought about that. We
never
11 believed this story but we already knew the General --
came
12 that night and that killing happened because he arrived
in
13 Copiapo --

14 MR. DAVIS: Your Honor, she is getting into
hearsay.

15 I move to strike the last comment.

16 THE COURT: Sustained as to hearsay.

17 The motion to strike is granted. The jury is
18 instructed to disregard the last statement of the
witness.

19 BY MR. CUNNINGHAM:

for 20 Q. In the days after Winston died, was there a funeral

21 him?

22 A. No, there was not.

23 Q. Why not?

24 A. We never received the body.

after 25 Q. What were your energies devoted to in days just

RICHARD A. KAUFMAN, CMRR

1 Winston was killed?

2 A. I remember after we read this newspaper, finally
they knew

3 he was dead, there was nothing else I could do about
him. I

4 realized I could not save him, but I wanted to save my
husband

5 because I didn't know if he was alive and I didn't live
for one

6 year to feel the pain of his loss because I had to save
my

7 husband and I also knew my father was very sick. I
took the

8 responsibility to save my husband's life and my
father's life

9 and that was the only thing I did.

10 Q. Have you met the families of other victims of the
squad?

11 A. Probably I have met most of them.

12 Q. In October of 2002, was there a memorial service in
13 Santiago?

14 A. Yes.

15 Q. In connection with that, did you place an
advertisement in

16 the El Mercurio newspaper?

17 A. Yes.

18 Q. What was the purpose of the advertisement?

19 A. To advise people of the Chilean community to this
memorial

20 that we had for Winston and all the victims of the
Caravan of

21 Death.

22 Q. Was there anything else you were doing in that ties
meant?

23 A. Yes. We asked for information regarding Fernandez
Larios,

24 if anybody had any information about him.

25 Q. Did you include any photographs in that
advertisement?

RICHARD A. KAUFMAN, CMRR

picture 1 A. Yes. We included a picture of Winston and also a
2 of Fernandez Larios.
3 Q. Was the picture you included one you were sure was
4 Fernandez Larios?
5 A. No.
6 Q. How did you get the picture you included in that
ad?
7 A. I have this magazine called Analysis and there were
several
8 pictures that said he was Fernandez Larios and it was
over on
9 the cover page and inside the magazine, so I chose
that. I had
10 never seen him before. I had never seen Fernandez
Larios so I
11 didn't know if it was Fernandez Larios. Just the
magazine
12 picture said it was Fernandez Larios.
13 Q. Do you know what your brother Winston was wearing
on the
14 night he was killed?
15 A. Yes. He was wearing a beautiful sweater my mother
had
16 knitted for him and I always borrowed it from him. It
was kind
17 of a blue, green kind of sweater.
18 Q. Were the people who were detained in the garrison,
did they
19 wear prisoner garb?

20 A. You wear your own regular clothes.

21 Q. Was Winston a good dresser or a bad dresser? How
did he

22 dress?

23 A. I think he dressed well. He was not sloppy and not
very

24 casual. I think he was more on the formal side of the
way he

25 dressed.

RICHARD A. KAUFMAN, CMRR

old? 1 Q. We have heard that your mother Elsa is now 86 years

2 A. Yes.

3 Q. Does she live with your son Felipe?

4 A. Yes.

5 Q. Is she well enough to travel to Miami?

6 A. No.

7 Q. Can you describe any changes you noticed in your
mother 30

8 years ago when she learned her son Winston had been
killed?

9 A. I will say that my mother also, as my brother Aldo
said,

10 she tried to find refuge in God and her own beliefs and
I think

11 she came very much attached -- and prayed and
understand

12 something you could never understand and one way for
her to

13 find some kind of release for the pain -- also at the
same time

14 I saw my mother, her own life was committed also to
protect my

15 father; so everything about my mother was sad. She
worried

16 about my father, if he didn't eat, he didn't speak, he
didn't

17 love, he didn't want to do anything; so she was always
trying

18 to figure out what to do about that.

when 19 Q. Winston's older daughter Marcela, was she about ten
20 her father was killed?
21 A. Yes.
22 Q. Did you observe any affect on her?
many, 23 A. My observation, physical observation, was not that
24 because in Chile I only stayed for one year after
Winston died,
25 October 17 we left Chile with my husband and son Felipe
on

RICHARD A. KAUFMAN, CMRR

1 September 24, so I didn't really have a chance to see
them as I
2 was only concerned about Patricio and my father. What
I know
3 about Marcela through my father and mother when they
came to
4 the United States, in 1978 my father and mother came to
live
5 with me and my family, so I learn about Marcela and
Susan
6 through my father, how much they loved her and how much
they
7 missed her because they saw that was a very special
daughter
8 they had left in Chile. That is how I learned, I get
closer to
9 Marcela through my parents.

10 Q. How did the killing of your brother affect you?

11 A. The day Winston died, I lost half of myself. I
didn't know
12 what it means -- I had no idea what to do, how to begin
a new
13 life when my life did not belong to me any more because
in
14 Chile, to realize that, even your own life is in the
hand of
15 somebody else, and I lost all hope except Winston's
work
16 inspired me to have hope. He told me they could cut
all the
17 flowers but they will never prevent the spring from
coming

18 back. That had been for me the source of my hope that
the
19 flowers will bloom and people will never kill each
other again
20 and that is what I am trying to do all my life, prevent
the
21 pain that my father and my mother and everybody had
suffered
22 because somebody decided that my brother was not worth
to live
23 any more. That is what I have been trying to do my
whole life,
24 prevent this from happening again.

25 MR. CUNNINGHAM: No further questions.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: We will take a break at this time.
2 Do not discuss this case amongst yourselves or
anyone
3 else. Have no contact whatsoever with anyone
associated with
4 the trial. Do not read or listen to anything touching
on this
5 matter in any way. Be back in the juryroom in fifteen
minutes.
6 If anybody should try to talk to you about this case,
instruct
7 them to immediately stop and be in contact with my
staff
8 concerning it.
9 THE COURT: Ladies and gentlemen of the jury,
it is
10 very important you make your decision in this case
based on the
11 evidence presented here in this courtroom and by no
other
12 means. I caution you do not read anything that is in
the
13 newspaper, do not watch anything that is on TV, do not
listen
14 to anything that is on the radio or read anything on
line. It
15 is very important that you follow my instructions.
16 You may leave your notebooks on your chairs
and be
17 back in the juryroom in fifteen minutes.
18 (Jury leaves room.)

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

21 (Open court. Jury not present.)

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

vs.

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

24 Would counsel state their appearances.

25 (All parties present.)

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Can we have a brief discussion
about the 2 schedule? I have 15, 30 minutes on the cross
examination. 3 That would get us to 12:30. I believe they have told
me there 4 are certain letters rogatory they want to read in. Two
of them 5 I have no objection. The other one they gave me the
all so I 6 designation and I haven't had a chance to look at them
know how 7 don't know whether I object or do not object. I don't
objections we 8 far if Your Honor wants us to take up whatever
rogatory 9 have this afternoon so we can start the letters
tomorrow. 10

11 THE COURT: How long will the letters rogatory
take?

12 MR. CUNNINGHAM: There is one we want to offer
that 13 will take a couple of minutes. Then there are four
others we 14 want to use which we haven't gone through yet. We have
one 15 short witness, Karin.

16 THE COURT: Let's continue with the cross and
redirect 17 of this witness and the letters rogatory if there is no
objection to them and we will see where we are.
18

19 MR. DAVIS: Okay.

20 THE COURT: Bring in the jurors.

21 (Jury present.)

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

23 Thereupon --

24

25 ZITA CABELLO BARRUETO,

RICHARD A. KAUFMAN, CMRR

sworn, 1 called as a witness herein, having been previously duly

2 was examined and testified further as follows:

3 THE COURT: You may proceed, Mr. Davis.

4 CROSS EXAMINATION

5 BY MR. DAVIS:

6 Q. On your direct examination you described an advertisement

7 that you placed in a newspaper in Chile last year?

8 A. Yes.

9 Q. I have handed you a document marked Defendant's Exhibit 2

10 for identification. Is this a copy of the ad that was placed?

11 A. Yes, it is a copy.

12 Q. This ad was placed in El Mercurio?

13 A. Yes.

14 Q. El Mercurio is one of the largest publications in Chile?

15 A. Yes.

16 Q. It is published in Santiago?

17 A. Yes.

18 Q. And it is read throughout the entire country of Chile?

19 A. Yes.

20 Q. When you were in Copiapo, did you have access to El
21 Mercurio?

22 A. Yes.

23 Q. The article placed in the newspaper -- this is an
24 advertisement you had to pay for?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Did it run just one day or did it run on several
days?

2 A. Only one day.

3 Q. It ran in October 2002?

4 A. Okay 2002. I think October 20th.

5 Q. The top line of that article, it talks about your
case
Miami,

6 against Armando Fernandez here in federal court in
7 Florida; is that correct?

8 A. That is correct.

9 Q. In this advertisement you placed in El Mercurio you
list the

10 names of your attorneys, Mr. Kerrigan's firm and
11 Mr. Cunningham's firm; is that correct?

12 A. That is correct.

13 Q. You ask for information concerning Armando
Fernandez

14 Larios, for people to come forward to you?

15 A. That is correct.

16 Q. As part of that you placed a picture?

17 A. Yes, that is correct.

18 Q. You also -- I might add you also had a web address
you

19 solicited for people to send information to you about
this

20 case; is that correct?

21 A. That is correct.

marked 22 Q. I would like to show you what has been previously
23 Plaintiffs' Exhibit 12 -- I have handed you a document
we have 24 marked Plaintiffs' Exhibit 12; do you see that?
25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Would you agree that document is a copy of the
picture you
2 used in the advertisement you placed in El Mercurio?

3 A. Yes, that is correct.

4 MR. DAVIS: I move Plaintiff's Exhibit 12 into
5 evidence.

6 MR. CUNNINGHAM: No objection.

7 THE COURT: It will be admitted as Plaintiffs'
Exhibit
8 12.

9 (A document was received in
10 evidence as Plaintiffs' Exhibit 12.)

11 MR. CUNNINGHAM: Your Honor, that does not
correspond
12 to our Exhibit 12. May I suggest it be Plaintiff's
Exhibit 1?

13 THE COURT: Yes. We will strike Exhibit 12
and make
14 it number 1.

15 There is already a 1 on the list. Do you want
to
16 substitute this?

17 MR. CUNNINGHAM: Yes.

18 THE COURT: This will now be admitted as
Defendant's
19 Exhibit 1.

20 (A document was received in
21 evidence as Defendant's Exhibit 1.)

22 BY MR. DAVIS:

23 Q. What we have in front of you on the screen as
Defendant's

24 Exhibit 1, that is a copy of a picture you placed in El

25 Mercurio in October of 2002 in an ad; is that correct?

RICHARD A. KAUFMAN, CMRR

1 A. That is correct.

2 Q. And I believe you testified on your direct that you
said

3 you had never seen Mr. Fernandez before?

4 A. Correct.

5 Q. So you had got this picture from a publication from
15 years earlier; is that correct, 1986, 1987?

7 A. That is correct.

8 Q. Analysis?

9 A. A magazine Analysis. I got the magazine only -- I
didn't
10 get the magazine in 1987. I got the magazine only
recently.

11 Q. So it is clear. You at some point in the 1990s or
even
12 after 2000, you got a copy of a magazine called
Analysis?

13 A. That is correct.

14 Q. In this magazine, was the picture we see as
Defendant's
15 Exhibit 1?

16 A. That picture and several other pictures of
Fernandez
17 Larios.

18 Q. In that magazine, that magazine was published in
Chile in
19 1986?

20 A. I believe so.

21 Q. Do you now know this is not a picture of Armando
Fernandez

22 Larios?

23 A. Yes.

24 Q. You now know that?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

your
1 Q. In your direct, you had talked about about when
2 brother was arrested. He was arrested on September 12?
3 A. That is correct.

the
4 Q. When he was arrested, Colonel Haag was in charge of
5 Copiapo region at that time; is that correct?
6 A. That is correct.

arrest?
7 Q. Is Colonel Haag the one that ordered your brother's
8 A. I believe so.

the city
9 Q. And your brother was arrested and taken to first
10 jail?
11 A. Yes.

12 Q. After he spent some time in the city jail, he was
13 transferred to the jail at the garrison?
14 A. That is correct.

husband
15 Q. Your brother was in the garrison jail when your
16 went to the garrison jail?
17 A. That is correct.

have
18 Q. During this time, Colonel Haag is the one who could
19 released your brother or not released your brother; is
20 correct, he had the authority to do that?
21 A. I assume, yes.

22 Q. Yet your brother stayed in detention continuously
23 throughout that time period?

24 A. Yes.

25 Q. He was never released at any time?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. During that time period after September 12 of 1973,
during

3 the month of September and October, did you know
whether the

4 local military personnel were torturing any of the
prisoners

5 that were held?

6 A. I heard some rumors, but I never met any of the
prisoners

7 that related a torture.

8 Q. For example, Mr. Herrera whose testimony was read
at the

9 beginning of this trial, he testified about a lot of
torture

10 that happened to him in early October of 1973. Did you
know

11 this torture was going on by the local Copiapo troops
at that

12 time period?

13 A. No, not about him.

14 Q. The military wasn't sharing that information with
the

15 public?

16 A. The information that I learned some time is through
rumors

17 or families. I didn't even know Ruben Herrera.

18 Q. Since all that has happened, you have made it one
of your

19 purposes in going through life to try and find out what

20 happened to your brother; is that fair to say?

21 A. Yes.

22 Q. You worked on that for many years, really since
1974?

23 A. That is correct.

24 Q. You have gone back to Chile a number of times?

25 A. Only during the last two years.

RICHARD A. KAUFMAN, CMRR

last two 1 Q. You have gone back at least three times during the
2 years?

3 A. That is correct.

people 4 Q. You have been trying to find witnesses and locate
brother? 5 who might know something about what happened to your

6 A. That is correct.

7 Q. During that time, have you talked to Colonel Haag?

8 A. Yes.

or 9 Q. Colonel Haag is the one that ordered the execution,
10 Captain Diaz, to order the execution of your brother?

11 A. That is not what he told me. He said Arellano --

Did you 12 Q. I didn't ask what he said. Just if he is the one.
13 ever talk to Captain Diaz?

14 A. No.

15 Q. Did you ever talk to Second Lieutenant Ojeda?

16 A. No.

Gonzalez? 17 Q. There is a witness named Mr. Gonzalez, Adolfo

18 A. I spoke with him.

General 19 Q. Did you speak with -- did you ever try to speak to
20 Arellano?

21 A. Yes.

22 Q. And he didn't speak to you?

23 A. No.

24 Q. Did you ever speak with Second Lieutenant Marcelo
Marambio?

25 A. No.

RICHARD A. KAUFMAN, CMRR

- 1 Q. You know who I am talking about?
- 2 A. Yes.
- 3 Q. Captain Diaz still lives in Chile?
- 4 A. I think so.
- 5 Q. And Colonel Haag still lives in Chile?
- 6 A. He passed away.
- 7 Q. But he lived in Chile until he died, he stayed in
Chile?
- 8 A. Yes.
- 9 Q. Lieutenant Ojeda lives in Chile?
- 10 A. That, I have no idea.
- 11 Q. Captain Brito still lives in Chile?
- 12 A. Yes.
- 13 Q. Do you know a Captain M A H O T I E R E?
- 14 A. Yes. He lives in Chile, yes.
- 15 Q. Earlier your brother described Copiapo as being a
city of
- 16 about 30,000 as of 1973; would that be your
recollection?
- 17 A. I am not sure about numbers. I know it is less
than
- 18 100,000.
- 19 Q. As I understand it, you never heard a helicopter
come when
- 20 you were in Copiapo?
- 21 A. No.
- 22 Q. You never physically saw or heard the helicopter?

23 A. I did not.

24 Q. During the time this happened in October of 1973,
you were

25 working full-time at that time?

RICHARD A. KAUFMAN, CMRR

1 A. That is correct.

2 Q. You were shown an Exhibit 4.1?

3 A. The translation.

4 Q. Do you have that in front of you?

5 A. Yes.

6 Q. The date of that document is October 17?

7 A. Yes, correct.

8 Q. You read that article at or about October 17, 1973?

9 A. No, no. The military communique is October 17 but
it was
10 published on October 18 in the newspaper.

11 Q. Did you ever -- withdrawn.

12 At any time from the time you first received
that
13 information from the military, do you know who wrote
that
14 document?

15 A. This one?

16 Q. Yes?

17 A. Commander Haag.

18 Q. He ordered that document to be released?

19 A. He ordered it to be released on October 18.

20 Q. And he approved the release of that document?

21 A. He wrote it and he of course approved it.

22 Q. Did you talk to Colonel Haag during that time
period?

23 A. Yes.

24 Q. Did you work with him to secure the release of your
25 husband?

RICHARD A. KAUFMAN, CMRR

1 A. That is correct.

2 Q. Are you aware there were other executions that
occurred in

3 Copiapo, not talking about the executions referred to
in

4 Exhibit 4, but other executions that were occurring in
Copiapo

5 during that time period?

6 A. There were only three that happened on October 17
during

7 the day.

8 Q. But there were other executions?

9 A. Those three, yes.

10 Q. Did you at any time learn from Colonel Haag why
your

11 husband was released?

12 A. I don't understand. He was not released. He was
sent to

13 internal exile. The only reason I believe, I try to
explain I

14 didn't want him to go to this concentration camp where
he was

15 supposed to be sent. He allowed Patricio and I to go
together

16 into exile. That is the only reason I believe he
allowed

17 something for the family.

18 Q. Personally, Colonel Haag told you your brother
tried to

19 escape?

to my 20 A. During the conversation I asked him what happened

escape. 21 brother, why did you kill him and he said he tried to

22 Later he said it was Arellano who gave the order.

brother 23 Q. But the first story Colonel Haag told, he said your

24 was shot while trying to escape?

25 A. Yes, that was the first time.

RICHARD A. KAUFMAN, CMRR

1 Q. That is what he said to you?

2 A. The first time in 1973.

3 Q. That is what he said to you in 1973?

4 A. In 1973.

5 Q. His other conversations with you were much later
than that?

6 A. Yes, that is correct.

7 Q. Like 20, 30 years later?

8 A. Yes.

9 MR. DAVIS: No further questions.

10 THE COURT: Redirect?

11 MR. CUNNINGHAM: None, Your Honor.

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

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. CUNNINGHAM: Karin Cabello Moriarty.

16 Thereupon - -

17

18 KARIN CABELLO MORIARTY,

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

20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CUNNINGHAM:

23 Q. Tell us your name?

24 A. Karin Cabello Moriarty.

25 Q. Are you married?

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. Do you have any children?

3 A. Yes.

4 Q. How many?

5 A. One.

6 Q. How old?

7 A. A daughter, 11.

8 Q. Where do you live?

9 A. Santa Clara, California.

10 Q. Where do you work?

11 A. Stamford, University.

12 Q. Are you the youngest of the Cabello children?

13 A. Yes, the youngest one.

14 Q. How much older than you would Winston be if he was
alive?

15 A. 15 years.

16 Q. Can you describe how Winston treated his little
sister?

17 A. He was wonderful. He would play with me. He would
tease

18 me, make jokes. He would also ask me to make his cafe
latte

19 and he was also there for me when my parents didn't
have enough

20 money, he would buy me shoes if I needed shoes for
school. He

21 bought me my first bicycle, my only bicycle, and we
would

He 22 drive. He had a little small fiat 600, very tiny cars.
in a very 23 taught me how to drive when I was 11 because we lived
24 deserted area.
25 Q. Did you know Winston's daughter Marcela?

RICHARD A. KAUFMAN, CMRR

younger
than I
in a
father
whole
very close

1 A. Yes. We grew up together. She is only four years
2 than I am and since my brothers and sister were older
3 was, my playmate from childhood was Marcela. We lived
4 school, in a grammar school, the principals house. My
5 was a principal, was next to the school, so we had a
6 playground to ourselves and we would play. We lived
7 together.

Marcela?
8 Q. Do you remember seeing Winston with his daughter

because
together.
10 she was very curly like he was. We would eat fruit
11 That is what I remember clearly.

12 Q. Do you know Winston's wife Veronica?

13 A. Yes.

14 Q. How did you know her?

us in
were
to help
little

15 A. When they first got married, they came to live with
16 the house. Veronica became another sister to me. We
17 actually close in age, so it was fun to have a friend
18 me with homework and I remember she would always make

19 drawings and I was enchanted by that, to see how we
could share

20 all her drawings.

21 Q. Do you know Winston and Veronica's daughter Susan?

22 A. Yes.

23 Q. How do you know Susan?

24 A. I remember her from being a baby. They didn't live
with us

25 at the time, of course, but I remember seeing her and
she was

RICHARD A. KAUFMAN, CMRR

1 all round like a little doll.

2 Q. How old were you in 1973?

3 A. I was 13.

4 Q. Where were you living?

5 A. M A L L O C O.

6 Q. Malloca is about 25 miles?

7 A. It is 25 miles from Santiago.

8 Q. A long way from Copiapo?

9 A. 11 hours by bus at least.

10 Q. At some point did you learn your brother had been
detained?

11 A. Pretty soon after the 12th of September we learned
that he

12 was detained.

13 Q. Do you remember the last conversation you had with
Winston?

14 A. Yes.

15 Q. When was that?

16 A. It was around the 15th of October.

17 Q. What did he tell you in that conversation?

18 A. He was so happy. He said he was going to be
released that

19 week.

20 Q. Did he speak with your mother at the same time?

21 A. Yes. He asked me to put my mom on the phone, so I
gave my

22 mother the phone and I said Winston is on the phone,
hurry up.

killed? 23 Q. At some point did you learn your brother had been

24 A. Yes, the same week.

25 Q. How did you learn that?

RICHARD A. KAUFMAN, CMRR

was a
coming
which
tea only
strange. I
was
color
complexion, but
they
there,
is true.
happened?

1 A. It was Thursday or Friday, I can't remember. It
2 school day. I knew it was during the week and I was
3 home on my bike and I saw tons of cars outside my house
4 was unusual for a week day. People would come to have
5 on Sundays, so I knew right away something was very
6 went to park my bike by the kitchen porch and my father
7 standing there with his arms crossed and there was no
8 left in him. He has always been very dark in
9 there was no life, his eyes were watery and he told me
10 killed him, the military killed him.
11 So I went inside the house and my cousins were
12 Winston's best friend was there and they said, yes, it
13 Q. After that, did you talk to Veronica, what had
14 A. Yes.
15 Q. What was Veronica's reaction?
16 A. She was incredibly sad because she told me that her
17 friend
said to
from school told her. I think his name is Adolfo. She

do the 18 me he came home and told me, here is my weapon, you can
19 same to me. This is sad.
20 Q. What do you miss most about Winston?
to 21 A. His laughter. He was so kind, like a good person
22 everyone, to my parents, of course. Out of all my
siblings, he
23 was the one most organized. He would organize my
parents' life
24 and would play the guitar with my father or would learn
how to
25 knit with my mother. He was always there helping them
and

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1 making them happy.

2 MR. CUNNINGHAM: No more questions.

3 MR. DAVIS: No questions, Your Honor.

4 THE COURT: You may step down.

5 (Witness excused.)

6 THE COURT: Call your next witness.

7 MR. CUNNINGHAM: This would be a letter
rogatory.

8 THE COURT: You may proceed.

9 MR. CUNNINGHAM: This is a letter rogatory for
10 Leonardo Meza.

11 Q. Please state your full name and present address?

12 A. My full name is Leonardo Meza Meza, and my present
address

13 is Passaje El Viento 3717 de Maipu.

14 Q. Number 6. Please describe your employment in
September and

15 October of 1973?

16 A. I was in charge of the Copiapo Cemetery.

17 Q. For how long had you been employed at that time?

18 A. For more or less ten years before.

19 Q. When did your employment cease?

20 A. After the convoy came and I buried 13 cadavers.

21 Q. Why did it cease?

22 A. As they watched everything while I was working, the
order

23 was if I were to say anything, I would be number 14.
They were

24 constantly following me in the cemetery with their
jeep.

25 Q. On or about October 16, 1973, were you directed to
prepare

RICHARD A. KAUFMAN, CMRR

1 a mass grave?

2 A. No. They came to see me at the Army cemetery and
they told

3 me they were going to come and pick me up at dawn and
that I

4 was to watch out for them and I was to tell no one
about this.

5 That is how they came at dawn to my house. I opened
the

6 cemetery for them. They came in with the cadavers and
while

7 the trench was being prepared, they sent the jeep to
fetch

8 Victor Bravo Monroy, the officer in charge of the civil
9 registrar of the cemetery and they completed this
proceeding

10 and he left and I stayed there and the excavation
measured 1.4

11 meters approximately. Once they were buried in the
trench,

12 they left and I was left to close the cemetery.

13 Q. Who directed you to prepare the grave?

14 A. They just came to pick me up, eight or nine
soldiers and

15 they did it.

16 Q. Under whose order were you directed to prepare the
grave?

17 A. I don't know. They brought all their own
materials. My

18 mission was to open the cemetery and nothing else.

19 Q. What directions were you given about preparing the
grave.

20 How many bodies were you told would be buried there?

21 A. They didn't tell the number of bodies. 13 were
taken out

22 of the truck. They placed them in a line while the
trench was

23 prepared. Later the officer of the civil registry took
prints.

24 I know there was 13 because I counseled them.

25 Q. When were you informed of the number of bodies to
be buried

RICHARD A. KAUFMAN, CMRR

1 in the grave?

2 A. They never told me the number of bodies. In the
end there

3 were 16, because after a few days, they brought three
more

4 people who were from El Salvador but these came in
caskets and

5 additionally they came with death certificates.

6 Q. Were you present at the time of the burial?

7 A. Obviously, yes.

8 Q. What time did the burials occur?

9 A. Four or five in the morning, it was dark.

10 Q. Did you view the bodies before they were buried?

11 A. Yes, I lined them up.

12 Q. How many bodies did you see?

13 A. I counted 13.

14 Q. What was the condition of the bodies?

15 A. They were stiff, dead. They made me help them and
I was

16 stained with blood.

17 Q. Were there visible marks of injuries on the bodies
and if

18 so describe the injuries you saw?

19 A. It was nighttime in the cemetery. There was a lot
of

20 darkness and I remember as I was pulling down the
cadavers I

21 was stained with blood helping them.

the

22 MR. CUNNINGHAM: That concludes the reading of

23 letter rogatory.

24 THE COURT: Counsel please approach.

25 (Side bar.)

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Where are we?

2 MR. CUNNINGHAM: We have another letter
rogatory to

3 read and we would call Mr. Fernandez. His examination
will

4 take some time.

5 THE COURT: Can you call him now and start
with him?

6 You have just given him the designations.

7 MR. DAVIS: I could probably go through some
of these

8 quickly and get them done. Ideally I would prefer my
client

9 not go on until tomorrow.

10 THE COURT: How long do you need?

11 MR. DAVIS: If I could have ten minutes.

12 MR. CUNNINGHAM: It may be a little longer
than that.

13 THE COURT: You want to take a 15 minute
break?

14 MR. DAVIS: Yes.

15 THE COURT: Will there be areas for me to rule
on?

16 MR. DAVIS: Probably.

17 THE COURT: Do you have a copy for me?

18 MR. CUNNINGHAM: If not, I will have one for
you.

19 THE COURT: I will tell them to come back in a
half

20 hour.

21 (Open court.)

22 THE COURT: Ladies and gentlemen of the jury,
there are

23 a number of matters I need to take up with the
attorneys. It

24 will take about a half hour, so I am going to give you
an

25 extended snack break or lunch, whatever you want.

RICHARD A. KAUFMAN, CMRR

1 Do not discuss this case amongst yourselves or
anyone
2 else. Have no contact whatsoever with anyone
associated with
3 the trial. Do not read or listen to anything touching
on this
4 matter in any way. Be back in the juryroom in thirty
minutes.
5 If anybody should try to talk to you about this case,
instruct
6 them to immediately stop and be in contact with my
staff
7 concerning it.

8 Let's make it 1:15. That will be easier.

9 (Jury leaves room.)

10 THE COURT: You may be seated for a moment.

11 I take it you should finish reading the
letters
12 rogatory today and start with the defendant tomorrow?

13 MR. DAVIS: I think that will work.

14 THE COURT: I am here. As soon as you are
ready for
15 me, let Lisa know and I will come back.

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

18 (Open court. Jury not present.)

19 THE COURT: Estate of Winston Cabello, et al.
vs.
20 Armando Fernandez-Larios, Case Number 99-0528.

21 Would counsel state their appearances.

22 (All parties present.)

23 THE COURT: You are going to tell me you have
resolved

24 all the issues on the letters rogatory?

25 MR. DAVIS: As to two of the witnesses they
desire to

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1 play. In fact I think three of the witnesses they
desire to
2 play.

3 THE COURT: How long will they take?

4 MR. DAVIS: Clearly the rest of the afternoon.

5 THE COURT: How many objections on the others,
are
6 there?

7 MR. DAVIS: There are serious on Arredondo
unless you
8 want to do it now.

9 THE COURT: No. I want to tell them what time
to come
10 in tomorrow. Can you argue it at the end of today?

11 MR. DAVIS: I prefer to argue in the morning.
It will
12 take 15 minutes. If not, I will argue it now.

13 THE COURT: I prefer to take it up once we are
done
14 with the jury at two. If you need a few more minutes
to get
15 ready, I can give you that. I would like to conclude
it so we
16 can start tomorrow morning at 9:30.

17 Bring the jurors in.

18 (Jury present.)

19 THE COURT: You may proceed.

20 Call your next witness.

21 MR. CUNNINGHAM: Reading from letters rogatory
of
22 Sergio Arellano Stark.
23 Q. Please describe your employment and/or military
assignments
24 in September and October 1973? What was your rank in
September
25 and October 1973? Where were you stationed? To what
unit or

RICHARD A. KAUFMAN, CMRR

officer? 1 group were you assigned? Who was your commanding

2 A. In September and October of 1973, I was Army troop

Santiago 3 commander and was in charge of the troops who acted in

command 4 September 11, 1973. I was Brigade General. I was in

5 and my headquarters consisted of around six officers.

6 Q. Which other officers did you report to during that

period? 7 A. To the commander in chief of the Army.

8 Q. For what matters did you report to those officers?

9 A. For all matters relating to my professional

activity. 10 Q. Which officers were under your command during that

period? 11 A. Colonel Becker Wistuba, Lieutenant Colonel Carlos

Lopez 12 Tapia, Colonel Humberto Tizarro Semur, and other

officers whose 13 names I do not remember.

14 Q. Did you travel on a military mission to the

Northern region 15 of Chile in October of 1973?

16 A. Yes.

17 Q. Who ordered you to travel to the Northern region of

Chile 18 in October 1973?

19 A. The commander in chief of the area, Augusto

Pinochet

20 Ugarte.

1973? 21 Q. Who accompanied you in that mission in October of

22 A. Lieutenant Colonel Sergio Arredondo Gonzalez, Major

Fernandez 23 Marcelo Moren Brito and Second Lieutenant Armando

24 Larios, and on the mission not under my direction but

that of

25 the Army office of intelligence, Lieutenant Colonel

pedro

RICHARD A. KAUFMAN, CMRR

1 Espinoso Bravo.

2 Q. Did Fernandez Larios travel with you?

3 A. Yes.

4 Q. Did you select him for this mission?

5 A. No. I met him just when we all boarded the
helicopter. I

6 did not select any of the officers who accompanied me.

7 Q. Who assigned him to accompany you on this mission?

8 A. He placed himself under my orders.

9 Q. When were you notified he was assigned to accompany
you?

10 A. Lieutenant Colonel Sergio Arredondo Gonzalez was
professor

11 at the war academy and all the professors became a part
of the

12 headquarters of the Army Second Division as some
students also

13 did.

14 Q. Why was he assigned to accompany you?

15 A. This question has been answered. Arredondo
selected

16 Marcelo Moren and Fernandez Larios taking them out of
their

17 respective units.

18 Q. What was Fernandez Larios' role?

19 A. I did not give Fernandez Larios a special mission.

20 Q. Did you know Fernandez Larios before this mission?
If so,

21 how did you know him?

22 A. No.

23 Q. When did you first meet him?

24 A. I saw him for the first time when we boarded the
helicopter

25 at the beginning of the trip in response to question B.

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1 MR. CUNNINGHAM: Mr. Davis has some counter
2 allegations.

3 THE COURT: Yes.

4 BY MR. DAVIS:

5 Q. Question 24. Did you travel to Copiapo? Why did
you go to
6 Copiapo?

7 When did you arrive and when did you leave?

8 A. I traveled to Copiapo following La Serena, arriving
in said
9 city around 20:00 hours. The day of October 16, 1973.
I

10 traveled because it was one of the garrisons I had to
visit

11 pursuant to the orders of the commander in chief of the
Army

12 and the objective was the one described with respect to
the

13 giving instructions to the troop of the unit of that
city. I

14 left the 18th for Antofagasta.

15 Q. Did Fernandez Larios travel to Copiapo with that
group?

16 How was he dressed? Was he armed? If so, with what
weapons

17 was he armed? What was his role generally with respect
to the

18 mission? How would you describe his demeanor during
the time

19 the delegation was in Copiapo?

that 20 A. Fernandez Larios traveled and the weapon is the one
and some 21 goes with the field uniform consisting of a revolver
22 officers used a corvo. I personally did not give any
23 instruction to any of the officers of the delegation.
With 24 respect to question E. Many deaths occurred in
Copiapo. I 25 believe there were 13 persons executed in the night
from

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Atacama 1 October 15 to the 16th. I presume by personnel of the
yet left 2 regiment at Copiapo in circumstances which I had not
the 3 Santiago. This is corroborated by the declaration of
who 4 director of the cemetery of Copiapo, Leonardo Meza Meza
to 5 stated October 16 in the morning three officers arrived
there are 6 request an order for burial for 13 people. I think
of 7 13 and that they had been executed in a staged transfer
been 8 prisoners from Copiapo to La Serena which fact had not
Santiago 9 conveyed to the commander of the second division of
10 nor to the Commander of La Serena.

September 11 Q. What rank did Fernandez Larios have in October in
12 of 1973?

13 A. Lieutenant.

on the 14 Q. Did Fernandez Larios give orders to anyone who was
15 helicopter?

able to 16 A. Fernandez Larios was not positioned in rank to be
17 issue orders. He was the lowest ranking of all.

rank? 18 Q. How many officers on the helicopter had a higher

Moren,

19 A. There were the three, Sergio Arredondo, Marcelo

20 Pedro Espinosa and myself, of course.

21 Q. Did Fernandez Larios direct the helicopter to any

22 destination?

23 A. No.

24 Q. Question 30. Who ordered the helicopter to go to a

25 particular destination?

RICHARD A. KAUFMAN, CMRR

1 A. I ordered the helicopter to Mineral Delegation
Salvador

2 because he needs to speak to the Colonel of the
Carabineers who

3 was there, it went to pick him up. It went to
Copiapo. He

4 would be with me a few hours and returned in the same
5 helicopter.

6 Q. Question 32. What orders were you given with
respect to

7 the mission to Copiapo in October of 1973?

8 A. I refer to what I have already answered.

9 Q. What were your orders concerning the prisoners at
the

10 garrison, what condition did you find the prisoners in
when you

11 arrived? Were they being well treated? What orders
did you

12 receive concerning the treatments of prisoners? What
orders

13 did you give concerning the treatment of the prisoners?
To

14 whom did you give those orders?

15 A. I refer to what I have already answered.

16 Q. Question 35. When did you first learn that 13
prisoners

17 were killed in Copiapo in October of 1973? Did you
know in

18 advance that the prisoners would be killed? When did
you know

19 this? Who participated in killing the prisoners? Did
you take
20 part in the killings? Who ordered that the prisoners
be
21 killed? To whom were those orders given? What were
those
22 orders? Who else knew they would be killed?
23 A. It came out in the newspapers. I do not know
whether the
24 director of the cemetery, when they asked him for
burial
25 permission, could have given that information to the
press.

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1 That is how I learned about it, through the press. The
2 prisoners were dead when arrived in Copiapo. They were
3 executed when I was still in Santiago. Letters C to H
were
4 already answered. I was in Santiago and I gave no
order.

5 MR. DAVIS: So that makes sense, the questions
are
6 sequentially numbered from C to H and that is what the
witness
7 was referring to.

8 THE COURT: Right.

9 Q. Question 36. Did anyone in your group bring with
them any
10 documents or records or have in their possession any
11 information identifying any of the prisoners held in
Copiapo?

12 Which of the officers in the group knew of this
information?

13 How many prisoners names were so identified? Whose
names were

14 so identified? Why were those names identified? What
did the

15 officers do with this information? Were additional
names

16 added? Whose names were added? Why were they added?

17 A. I had no information in the events that already
occurred

18 and I don't think anyone had any information because we
were

19 going to receive same from the respective Commander
once we

20 arrived in Copiapo. As to question A, I don't know.
Letters B

21 C, D, E, F, and G, I had no knowledge of the
information. The

22 only information I had which was indicated to me
concerning the

23 execution of the following person Ricardo Garcia
Posada, Benito

24 Tapia, and Maguindo Castillo Arredondo. I also learned
of the

25 official notice through Commander Joaquin Lagos First
Army

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the 1 Division headquartered in Antofagasta. Addressed to
2 Commander in Chief of the Army, Augusto Pinochet
requesting 3 official authorization of said execution pursuant to
Article 75 4 of the Code of Military Justice, amended by Executive
Law 51 5 October 1, 1973.

6 Q. Question 37. With respect to the prisoners in
Copiapo, how 7 were the 13 who were killed selected to be removed from
the 8 locations where they were being held in custody?

9 A. The executions of the 13 people in Copiapo were
carried out 10 in the night from October 15 to 16 when my delegation
and I 11 were still in Santiago. I do not know how those
persons were 12 removed from their detention locations were selected.

13 Q. Who gave the orders to remove the prisoners from
the 14 garrison? When were those orders given? To whom were
they 15 given? What were those orders? Why were they taken
from the 16 garrison?

17 A. It is most likely it was on the order of one of
those 18 implicated or one of the officers of the Atacama
regiment but I

C and 19 have no certain knowledge of this. As to letters A, B,

20 D, already answered.

21 Q. Question 39. Were prisoners taken from other
locations as

22 well? From what locations? Who gave the orders to
remove them

23 from those locations? When were those orders given?
To whom

24 were they given? What were those orders? Why were
they taken

25 from the garrison?

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1 A. I have no knowledge. As to letter A, already
answered. As

2 to letter B, C, D, E, F, I have no knowledge.

3 Q. Were any prisoners killed before they left the
garrison?

4 Which prisoners were killed? How many were killed?
Who

5 participated in killing them? Was Armando Fernandez
Larios

6 involved in killing those prisoners? What did he do?

7 A. Letters A, B and C, I repeat those executions were
carried

8 out in the night of October 15 to 16. Therefore I have
no

9 knowledge of the details of the persons who took part
in that.

10 Q. Question 43. Where were the prisoners killed?
Were you

11 present when they were killed? If not, where were you?
Who

12 else was with you?

13 A. I referred to what I have already stated.

14 Q. Question 44. Why was the truck stopped at that
location?

15 Who gave the order to stop the truck there? What
happened

16 after the truck was stopped?

17 A. I refer to what I have already stated.

18 Q. Who was present when the prisoners were killed?
How many

present 19 soldiers and officers were present? Were any civilians
20 other than the prisoners?
to the 21 A. I refer to what I have already stated. According
of 22 proceeding being conducted by Minister Guzman, a group
allegedly 23 officers directed by Captain Patricio Diaz Araneda
24 took part. This was stated by Brigadier Araneda
carried out in
Command 25 January of 2000 at the Penalolen Telecommunications

RICHARD A. KAUFMAN, CMRR

1 Center.

2 Q. Who was in command of the group that killed the
prisoners?

3 A. Patricio Diaz Araneda.

4 MR. DAVIS: That is it.

5 THE COURT: Are there further questions from
the
6 plaintiff?

7 MR. CUNNINGHAM: Not of this witness, Your
Honor.

8 We would next read from letter rogatory of
Marcela
9 Luis Manuel Moren Brito starting at 7.

10 Q. Did you accompany General Sergio Arellano Stark to
his
11 mission to the Northern region of Chile in October of
1973?

12 A. Yes.

13 Q. Who ordered you to travel to the Northern region of
Chile
14 in October of 1973?

15 A. General Arellano through his general staff.

16 Q. When were you ordered to accompany General
Arellano?

17 A. I do not remember the date.

18 Q. Who else accompanied General Arellano in October of
1973?

19 A. There were two phases, in the South and in the
North. In

20 the South, as the most senior, he was accompanied by
Mr. Carlos

21 Lopez Tapia, Mr. Pedro Espinosa, the deponent and the
adjutant

22 Officer Chiminelli. The others were subordinate
officers and

23 not commissioned officers. In the North, General
Arellano,

24 Sergio Arredondo, Pedro Espinosa, the deponent,
Chiminelli, and

25 officers.

RICHARD A. KAUFMAN, CMRR

General 1 Q. Did Armando Fernandez Larios also travel with
2 Arellano?
3 A. Yes.
4 Q. What was your role in connection with that mission?
alleged 5 A. Military responsibility, investigation of the
6 prisoners in different regions of the country.
7 Q. What was Fernandez Larios' role?
8 A. I have no idea.
9 Q. Question 55.
10 Did you accompany General Arellano to
Antofagasta?
11 A. Yes.
12 Q. When did you arrive?
13 A. I know we arrived early in the morning. I don't
remember
14 the date.
15 Q. When did you leave?
16 A. After Copiapo at night, we arrived in the early
morning in
17 Antofagasta.
18 Q. Did Fernandez Larios travel to Antofagasta with the
group?
19 A. Yes.
20 Q. What orders were you given with respect to General
21 Arellano's mission to enter --

22
certification

A. I witnessed the executions as minister of

23 with garrison troops. I do not remember which unit.

24 Q. Question 59.

25
were killed

When did you first learn that 14 prisoners

RICHARD A. KAUFMAN, CMRR

1 during the course of General Arellano's stay in
Antofagasta in

2 October of 1973?

3 A. In the field.

4 Q. Did you know in advance that the prisoners would be
killed?

5 A. No.

6 Q. When did you know this?

7 A. At the same time as the executions.

8 Q. Who participated in killing the prisoners?

9 A. Personnel from the Antofagasta garrison.

10 Q. Did you participate in the killings?

11 A. As a witness, yes. Not as executioner. As
minister of

12 certification together with other officers of the
commission.

13 Q. Subpart I. Describe in detail how they were
killed?

14 A. They were shot, nothing more.

15 Q. Who was present when they were killed?

16 A. In general, the entire delegation plus officers
from the

17 garrison.

18 Q. Question 60.

19 Did you accompany General Arellano to Calama?

20 A. Yes.

21 Q. When did you arrive?

22 A. It must have been October or November.

23 Q. When did you leave?

24 A. No, it must have been during the day.

25 Q. Did Fernandez Larios travel to Calama with the
group?

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. What were your orders concerning the prisoners at
the
3 garrison?

4 A. They were not in the regiment. They were taken
into the
5 field by unit personnel in trucks.

6 Q. Subpart C. What orders did you receive concerning
the
7 treatment of the prisoners?

8 A. None. To witness the execution only.

9 Q. Question 64. When did you first learn that 26
prisoners
10 were killed during the course of General Arellano's
stay in
11 Calam in October 1973?

12 A. The same day the execution took place.

13 Q. Did you know in advance the prisoners would be
killed?

14 A. No.

15 Q. When did you know this?

16 A. In the field.

17 Q. Who participated in killing the prisoners?

18 A. Personnel of the Calama regiment.

19 Q. Did you participate in the killings?

20 A. I was a witness. I did not participate.

21 Q. Who ordered that the prisoners be killed?

22 A. The most senior of the delegation.

23 Q. To whom were those orders given?

24 A. I have no knowledge, but I imagine it must have
been in

25 conversation with the commander in the unit. We the
members of

RICHARD A. KAUFMAN, CMRR

1 the delegation did not take part in that operation
which was 2 delegated for the riflemen.

3 Q. What were those orders?

4 A. Execution.

5 Q. Who else knew they would be killed?

6 A. I do not know. I can infer they are the persons
that took 7 part in the execution.

8 Q. Describe in detail how they were killed?

9 A. They were executed. They were shot.

10 Q. Who was present when they were killed?

11 A. Everyone from the delegation except General
Arellano and 12 Chiminelli and the helicopter pilot.

13 MR. CUNNINGHAM: That concludes the
plaintiffs' 14 section.

15 BY MR. DAVIS:

16 Q. Question 5. Please briefly describe your military
service?

17 A. My first assignment was to the Anadien Regiment of
18 Cauquenes and I have been stationed at garrison from
Arica to 19 Punta Arenas from 1955 to 1986 at which time I retired
with the 20 rank of Colonel.

21 Q. Please describe your employment and/or military
assignments

22 in September and October 1973?
23 A. In September 1973, I acted as second Commander of
the Arica
24 La Serena regiment. In October, on the order of
Arellano, I
25 was assigned to a special military board.

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1 Q. What was your rank in September and October 1973?

2 A. Army Major.

3 Q. Where were you stationed?

4 A. I was stationed with the Reinforced Infantry
Battalion the

5 Arica La Serena Regiment. In October on the order of
Sergio

6 Arellano, I was assigned to a special military board.

7 Q. To what unit or group were you assigned?

8 A. The same.

9 Q. Who was your commanding officer?

10 A. General Arellano.

11 Q. Which other officers did you report to during that
period?

12 A. To the general staff of General Arellano Stark who
was

13 commander of the Santiago Center Combat Group.

14 Q. For what matters did you report to those officers?

15 A. Military orders, purely military orders.

16 Q. Which officers reported to you during this period?

17 A. I do not remember the officers, but they were my

18 subordinates, part of my battalion, captains,
lieutenants,

19 second lieutenants.

20 Q. Who assigned them to report to you?

21 A. Army regulations.

22 Q. Question 12.

23 Did you accompany General Arellano to
Cauquenes?

24 A. Yes.

25 Q. When did you arrive?

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on a 1 A. I don't remember but it must have been in October,
a 2 weekday. I asked General Arellano permission to visit
other 3 relative who was working at Banco Delegation Estado and
4 acquaintances in Cauquenes.

5 Q. When did you leave?

6 A. I do not remember.

7 Q. Did Fernandez Larios travel to Cauquenes with the
group?

8 A. No.

9 Q. What orders were you given with respect to General
10 Arellano's mission to Cauquenes in October of 1973?

11 A. I didn't receive any orders because I asked for
permission
12 to visit some acquaintances.

13 Q. Question 15. Did you participate in any court
martial or
14 tribunals during General Arellano's mission to
Cauquenes?

15 A. No, none.

16 Q. Why didn't you participate in any court martial or
17 tribunals? B, in what capacity did you participate.
C, who
18 else participated. D, which prisoners cases did you
consider.

19 E, what was the disposition of each of those cases. F,
are

are they 20 there any records that reflect these facts. G, where
21 now.
22 A. I repeat I never took part in any court martials or
23 military tribunal nor do I have knowledge who took part
in
24 them. In cooperation with the Court, it is my
testimony
25 Mr. Guzman found some bodies which presumably are the
bodies

RICHARD A. KAUFMAN, CMRR

1 that disappeared in Cauquenes.

during 2 Q. When did you first learn four prisoners were killed

October 3 this course of General Arellano's stay in Cauquenes in

4 of 1973?

5 A. The same day when the word was going around in the
6 afternoon downtown.

killed? 7 Q. Did you know in advance the prisoners would be

8 A. I did not know in advance.

9 Q. When did you know this?

the 10 A. That same day in the afternoon before we boarded

11 helicopter.

12 Q. Who participated in killing the prisoners?

13 A. I have no idea.

14 Q. Did you participate in the killings?

15 A. No.

16 Q. Who ordered that the prisoners be killed?

17 A. It had to have been the most senior in command.

18 Q. To whom were those orders given?

19 A. No.

20 Q. What were those orders?

21 A. No.

22 Q. Who else knew they would be killed?

23 A. I have no knowledge.

24 Q. Describe in detail how they were killed?

25 A. I don't know, because I did not take part.

RICHARD A. KAUFMAN, CMRR

1 Q. Who was present when they were killed?

2 A. I have no idea. It must have been the same ones
who were

3 taking part, but I don't know who they were.

4 Q. What did each of these individuals do in connection
with

5 the killings?

6 A. I have no knowledge.

7 Q. Did Fernandez Larios participate in those killings,
in

8 killing those prisoners?

9 A. I have no knowledge.

10 Q. What did he do? How do you know this?

11 A. I refer to what I already stated.

12 Q. Question 22. Did you accompany General Arellano to
13 Copiapo?

14 A. Yes.

15 Q. When did you arrive?

16 A. No, it must have been in October, but I do not
remember the

17 date.

18 Q. When did you leave?

19 A. We left Serena, but I don't remember the date.

20 Q. Did Fernandez Larios travel to Copiapo with the
group?

21 A. Yes.

22 Q. What rank did Fernandez have in 1973?

23 A. Second lieutenant.

24 Q. Did Fernandez Larios give orders to anyone who was
on the

25 helicopter?

RICHARD A. KAUFMAN, CMRR

rank. 1 A. He couldn't issue orders because he was lower in
rank. 2 Q. How many officers on the helicopter had a higher
rank? 3 A. There were two. The rest were field officers and
4 subordinate officers and field personnel.
5 Q. Did Fernandez Larios direct the helicopter to any
6 destination?
7 A. No, General Arellano was the one who gave orders.
8 Q. Who ordered the helicopter to go to a particular
9 destination?
10 A. The head of the delegation. General Arellano's
delegation 11 had no involvement in Copiapo inasmuch as it arrived
after the 12 execution and through reports we learned they executed
them 13 along the stretch going from Copiapo to La Serena
during the 14 transfer. The Copiapo regiment took part in the
killings. 15 Q. When the helicopter arrived at a particular
location, 16 describe A, any public meetings or speeches that were
given and 17 by what persons. B, if any speeches or meetings
occurred, what 18 was the subject of the speech or meeting?
19 A. I have no knowledge there were public meetings or
speeches

20 given because I was not witness to any of these mass
meetings.

21 Q. Did any private meetings occur with General
Arellano and

22 any of the local officers?

23 A. No. Privately, no, that is it. General Arellano
met with

24 the unit commander, nothing more.

25 Q. If so, who attended such meetings?

RICHARD A. KAUFMAN, CMRR

1 A. The unit commander.

2 Q. What was discussed?

3 A. I have no idea.

4 Q. Did Fernandez Larios meet with any officers?

5 A. I have no knowledge.

6 Q. If so, who? What was discussed?

7 A. It is likely he met with fellow company officers
but I was

8 not a witness thereto. Therefore, I have no knowledge.

9 Q. Did Fernandez Larios give any orders at any
location?

10 A. I think that request is absurd. Fernandez Larios
had no

11 commanding authority.

12 Q. Did Fernandez Larios give any speech also?

13 A. No.

14 Q. What orders were you given with respect to General
15 Arellano's mission to Copiapo in October of 1973?

16 A. Nothing. When we arrived, everything had been
carried out.

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

18 THE COURT: Anything further?

19 MR. CUNNINGHAM: Not with respect to this
witness.

20 THE COURT: Do you have further letters
rogatory?

21 MR. CUNNINGHAM: We do. From the letter
rogatory of

22 Juan Viterbo Chiminelli Fullerton. Starting at 6.

23 Q. Please describe your employment and or military
assignments

24 in September and October 1973?

25 A. Personal adjutant to General Arellano in charge of
the

RICHARD A. KAUFMAN, CMRR

1 administrative part of the adjutancy of the army troop
command,
2 of the military garrison of Santiago.

3 Q. What was your rank in September and October of
1973?

4 A. Army Major.

5 Q. Where were you stationed?

6 A. With the Army troop command.

7 Q. To what unit or group were you assigned?

8 A. Adjutant to the commander of the Army troop
command.

9 Q. Who was your commanding officer?

10 A. General Arellano.

11 Q. Which other officers did you report to during that
period?

12 A. To no one else.

13 Q. For what matters did you report to those officers?

14 A. I referred to what I have already stated and the
nature of

15 my work activities for the General was administrative,

16 logistical and personal.

17 Q. Question 7. Did you accompany General Sergio
Arellano

18 Stark on his mission to the Northern region of Chile in
October

19 of 1973?

20 A. Yes.

21 Q. Who ordered you to travel to the Northern region of
Chile

22 in October of 1973?

23 A. General Arellano.

24 Q. When were you ordered to accompany General
Arellano?

25 A. I do not remember the exact date. It had to be two
days

RICHARD A. KAUFMAN, CMRR

1 before leaving.

1973 ? 2 Q. Who else accompanied General Arellano in October of

other I 3 A. Besides the pilot, who was De La Mahotier and the

Marcelo 4 think was Palomo, Col. Arredondo, Pedro Espinosa,

5 Moren, Armando Fernandez, went North and no one else.

General 6 Q. Did Armando Fernandez Larios also travel with

7 Arellano?

8 A. Yes.

9 Q. What was your connection with that mission?

security in 10 A. I went as the general's adjutant, his personal

to the 11 charge of the administrative and logistical part seeing

and 12 staff food, vehicles, paying bills, only administrative

13 logistical.

14 Q. What was Fernandez Larios's role?

not 15 A. I basically do not know what it was because he is

showed up 16 selected by General Arellano to go on the trip. He

17 there and climbed aboard the helicopter.

18 Q. Did you know Fernandez Larios before this mission?

19 A. Yes. In Concepcion where he was second lieutenant
20 at Chacabuco and I was captain in the Guia Regiment in
1971.

21 Q. If so, how did you know him? When did you first
meet him?

22 A. I believe I just answered.

23 Q. Question 13. What orders were you given with
respect to

24 General Arellano's mission to Cauquenes in October of
1973?

25 A. Like all of them. I accompanied him for his
personal

RICHARD A. KAUFMAN, CMRR

1 security and only carried with me the binder of
documents that
2 had to be shown and to request background information
and I had
3 no involvement in any of the matters relating to the
prisoners,
4 proceedings, trial, any of those activities.

5 Q. Question 18. What orders were you given with
respect to
6 General Arellano's mission to La Serena in October of
1973?

7 A. The same ones I complied with for the South.
8 Administrative, logistical function and the security
provided
9 the General.

10 MR. CUNNINGHAM: That concludes the
plaintiffs'
11 readings.

12 THE COURT: Mr. Davis?

13 MR. DAVIS: There are two sections. One is
short and
14 one is long.

15 THE COURT: Do you want to start with that
tomorrow?

16 MR. DAVIS: It is your pleasure. It might
take about
17 15 minutes.

18 THE COURT: In total?

19 MR. DAVIS: Yes.

20 THE COURT: We will start with it tomorrow.

21 We will break for the day.

22 Do not discuss this case amongst yourselves or
anyone

23 else. Have no contact whatsoever with anyone
associated with

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

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

RICHARD A. KAUFMAN, CMRR

1 this case, instruct them to immediately stop and be in
contact 2 with my staff concerning it.

3 Give your notebook to the Court securities
officer.

4 Remember, you are to make your decision at the
end

5 this case based on the evidence in this courtroom and
you must

6 refrain from seeing, reading, listening to anything
touching on

7 this matter in any way.

8 Have a nice afternoon and evening and I will
see you

9 tomorrow morning at 9:30.

10 (Jury leaves room.)

11 THE COURT: There was some additional --
objections to

12 additional letters rogatory you want to present to me?

13 MR. DAVIS: Yes. Questions from Sergio
Arredondo.

14 The first question I object to is question and answer -
-
15 question 18.

16 THE COURT: What orders were you given?

17 MR. DAVIS: It was to verify the presence of
18 people
19 prisoners. Then according to the instructions those

19 had, they had to eliminate them. That would be a
hearsay

20 response. That is why I object to that.

21 THE COURT: Do you have a response?

22 MS. HEALY: It is a co-conspirator statement.

23 THE COURT: Who is this giving this answer?

24 MS. HEALY: Sergio Arredondo was on the
caravan with

25 General Arellano Stark, the Commander. Although the
answer is

RICHARD A. KAUFMAN, CMRR

1 a bit inarticulate, Mr. Arredondo is reporting on
orders given
2 to the actual executioners. Mr. Arellano is a co-
conspirator
3 of Mr. Arredondo. Mr. Arellano is the source of the
orders.

4 THE COURT: Doesn't it fall within 801D.2E?

5 MR. DAVIS: Again, there is no testimony
either that

6 Mr. Fernandez heard the order, was present when the
order was
7 given --

8 THE COURT: That wouldn't be required under
801D.2E.

9 MR. DAVIS: If they are trying to get it in as
a
10 statement of a co-conspirator.

11 THE COURT: Does he indicate who the orders
came from?

12 MS. HEALY: Not in that answer. Although it
is

13 apparent General Arellano is the source of the orders.
In the

14 last piece of testimony we heard, the individual who
gives the

15 orders is identified as the senior most officer of the
16 delegation and that would be Arellano.

17 MR. DAVIS: Our position, there is no
predicate to

18 establish, A, Mr. Fernandez heard this, or he was there
and

19 even if it is trying to come in as an admission of a
20 co-conspirator, there has to be a definition of what
the
21 conspiracy is. You are putting Mr. Fernandez in a
position of
22 having to defend what Mr. Arredondo did.
23 MS. HEALY: In response I would point the
Court to
24 question 21 which identifies Mr. Fernandez as one of
the
25 co-conspirators because he is also one of the
executioners.

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Which goes to the next level of
2 objections, Your Honor.

3 MS. HEALY: 21E identifies the group Commander
as the
4 source of the orders. That refers to La Serena, but
question
5 18 indicates there is no other person that gives the
orders.

6 THE COURT: At this juncture, what evidence is
there
7 was a conspiracy?

8 MS. HEALY: A certain amounts of
circumstantial
9 evidence that Colonel Arredondo, the declarant or
deponent in
10 this particular set of letters rogatory was acting
along with
11 General Arellano. That Mr. Fernandez was also a member
of the
12 conspiracy. He traveled with the helicopter and
represented
13 himself as the bodyguard of General Arellano. There
are
14 statements in here that identified Mr. Arellano as the
source
15 of the orders, Fernandez Larios is one of those who
carried out
16 the executions -- this is a group activity and all of
them are
17 in agreement what will happen at each of these stops.

18 THE COURT: I will overrule the objection and
find it

United 19 is admissible under 801D.2E and the Bourjailay versus
Supreme 20 States, 483 U.S. 171, a 1987 decision by the U.S.
amongst 21 Court. There is evidence that there was a conspiracy
government to 22 members of the military of the Pinochet military
Allende 23 seek out and kill persons who were associated with the
themselves. 24 Government separate and apart from these statements
25 In addition, the Court can utilize these statements to

RICHARD A. KAUFMAN, CMRR

1 determine the existence of the conspiracy and these
statements

2 also support the existence of the conspiracy.

3 These statements were made by a co-conspirator
and

4 were made in furtherance of the conspiracy. Therefore,
they

5 are admissible under 801D.2E.

6 MR. DAVIS: That ruling is on the statement on
7 question 18?

8 THE COURT: That was your original objection.

9 MR. DAVIS: Right, Your Honor.

10 There will be essentially the same in
questions 61 and

11 66 where the witness is testifying he saw Mr. Fernandez
kill

12 people at other locations. Three reasons it should be
13 excluded. We have a prior statement this witness gave
where he

14 does not testify to this and at a minimum we would like
to be

15 able to use this prior statement given in Chile where
he

16 contradicts what he says in these letters rogatory.

17 THE COURT: You would be entitled to impeach
him with

18 his prior statement.

19 MR. DAVIS: Number two, the absolute
prejudicial value

an end 20 of this testimony, this testimony, I believe, would put
defend 21 to any fair opportunity Mr. Fernandez would have to
22 himself in this. He will have to now explain deaths or
23 shootings that this person lied to.

24 THE COURT: What are you specifically
referring to?

25 Question 21 is about the 15 prisoners killed at La
Serena. Is

RICHARD A. KAUFMAN, CMRR

1 that part of the Caravan of Death?

2 MS. HEALY: Yes, Your Honor.

3 MR. DAVIS: So the specific questions are
starting

4 with L.

5 THE COURT: Isn't he there?

6 MR. DAVIS: Mr. Fernandez was at that
location. He

7 didn't take part in the execution.

8 THE COURT: This witness testified he did.

9 The whole reason the plaintiff seeks to
introduce it

10 is because it is prejudicial, otherwise they wouldn't
be

11 interested in introducing it. It is prejudicial to
your case

12 and supports their case. That is always the case in

13 adversarial parties. One party wants to introduce
evidence

14 prejudicial to the other side that supports the
allegations in

15 their complaint or the allegations in the indictment.
The fact

16 it is prejudicial would not support its exclusion
merely

17 because it is prejudicial.

18 MR. DAVIS: I prefaced by saying it was
unfairly

19 prejudicial.

20 THE COURT: Under 403?

21 MR. DAVIS: Yes.

22 THE COURT: How is its probative value -- how
would

23 unfair prejudice outweigh the probative value?

24 MR. DAVIS: Because they will hear for the
first time

25 in this trial Armando Fernandez actually killed
somebody. They

RICHARD A. KAUFMAN, CMRR

1 have not heard a single word about that to this point.
This
2 witness contradicts his own earlier statements but you
are
3 putting Fernandez Larios in the untenable position of
having to
4 defend a case he was not sued for. He was not sued for
Honor's
5 killings in La Serena, Antofagasta. I understand Your
before
6 rulings but to allow this testimony in by this witness
Fernandez
7 this jury would absolutely destroy any chance for Mr.
jurors,
8 to get a fairn trial, and this is in fairness to the
9 not saying anything about them, but in fairness to
grossly
10 Mr. Fernandez to hear this type of testimony, it is
should
11 unfairly prejudicial and I don't believe Your Honor
12 allow it into evidence.

13 THE COURT: What is the plaintiffs' response?

14 MS. HEALY: We have alleged this is a crime
against
15 humanity. Not just that Winston Cabello was killed.
He was
16 killed as part of that widespread systematic conduct.
The
17 Court has already ruled on that occurring in other
cities
18 before and after Copiapo. We need to establish to
prove our

19 claim, killings or tortures took place elsewhere. This
20 evidence goes to show not only that killings and
tortures took
21 place elsewhere, but also the defendant participated in
those
22 activities which demonstrates his knowledge and his
intent with
23 respect to the entire scheme which includes Copiapo.
24 In addition, I would point out that under
613B,
25 extrinsic evidence of a prior inconsistent statement by
a

RICHARD A. KAUFMAN, CMRR

1 witness is not admissible unless the witness is
afforded an
2 opportunity to explain or deny the same, and the
opposite party
3 is afforded an opportunity to interrogate the witness
there on.

4 I don't believe that permits Mr. Davis to
introduce a
5 prior inconsistent statement by a witness who is not
present
6 here.

7 MR. DAVIS: Which further compounds the
unfairness of
8 this to Mr. Fernandez, Your Honor, if that would be
your
9 ruling.

10 THE COURT: Is he questioned about the prior
11 inconsistent statement?

12 MR. DAVIS: No. These are questions the Court
13 approved and submitted to him as far as the letters
rogatory.

14 THE COURT: How do you respond to his 403
argument if
15 I say, if I rule this letter rogatory is not a 403
violation
16 because its probative value is not outweighed by unfair
17 prejudice, but then he seeks to introduce the prior
18 inconsistent statement and you assert Rule 613 and now
19 Mr. Davis says, well, in light of that there is unfair

under 20 prejudice because he said otherwise at another time and

probative 21 613 the plaintiff has now objected and now there the

22 value is outweighed by unfair prejudice?

to 23 MS. HEALY: We would agree to permit Mr. Davis

24 offer the impeaching statement.

25 THE COURT: Okay.

RICHARD A. KAUFMAN, CMRR

1 With that position by the plaintiff, I will
allow the
2 letter rogatory that refers to the killing of 15
prisoners at
3 La Serena including the defendant's participation as
part of
4 the military group that was present there with
Arredondo.

5 I do not find its probative value is
outweighed by
6 unfair prejudice, specially in light of the fact that
the
7 contradictory statement in which the witness states
otherwise.
8 I take it he says La Serena did not happen the way he
says it
9 happened here. With the introduction of that
statement, it
10 will then be up to the jury to accept or reject in
whole or in
11 part his testimony and make a determination as to
whether they
12 find one more credible than the other.

13 MR. DAVIS: Just for the record, I think your
ruling
14 will be the same. I have the same objection for the
questions
15 at interrogatory 61, A to N, which is similar testimony
at
16 another location and 66, 66A to N.

17 THE COURT: I am sorry, you are going too fast
for me.

18 I can't turn the pages that quickly.

19 61A through N, the Caravan of Death at
Antofagasta; is

20 that correct?

21 MR. DAVIS: Yes, Your Honor.

22 THE COURT: Arredondo was also there at
Copiapo?

23 MR. DAVIS: Yes.

24 THE COURT: Basically the same group of
persons that

25 went on the Caravan in the South and the North,
primarily?

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: Primarily, yes.

2 allow THE COURT: Based upon my prior ruling, I will
3 persons in the introduction of evidence as to the killings of
4 the South and North of Chile and what has been commonly
5 of death, referred to in this trial historically as the Caravan
6 the I find it is part of the res gesti of the actions of
7 encompassed defendant and others of this particular event that
8 episodes not just a single episode in Copiapo, but encompassed
9 October in cities in both the South and the North of Chile in
10 of 1973.

11 introduce I have limited what the plaintiff sought to
12 and as to other matters that occurred both inside of Chile
13 past outside of Chile after that time, but I did find in the
14 the and still find that the activities of the persons in
15 Death military in what has been referred to as the Caravan of
16 in both in October of 1973 through that helicopter expedition
17 and is the North and South of Chile is relevant and probative

18 admissible in this case and therefore overrule the
objections

19 as to question 61 which concerned the killing of 14
prisoners

20 at Antofagasta in 1973.

21 MR. DAVIS: I would have the identical
objection to

22 the questions at question 66A through N. This is now
talking

23 about Calama.

24 THE COURT: This is all part of the Caravan of
death

25 in October of 1973?

RICHARD A. KAUFMAN, CMRR

1 MS. HEALY: Yes.

2 THE COURT: I adopt the prior ruling made by
the Court

3 in the motions in limine and the written ruling and the
written

4 order and I find all of these answers to the letters
rogatory

5 of Mr. Arredondo concerning the events that took place
in the

6 Caravan of Death in October of 1973 in Chile are
related. They

7 are relevant and probative of what occurred in the
other cities

8 in October of 1973 in Chile. I have limited the
plaintiff to

9 the presentation of those events and excluded other
events that

10 I did not find were relevant, probative and part of the
res

11 gesti as to the events that took place in Copiapo in
October of

12 1973 and that is also overruled.

13 MR. DAVIS: That is the end of my objections
as to

14 Mr. Arredondo. I do have cross designations which I
have given

15 them.

16 THE COURT: Does that conclude the objections
to the

17 letters rogatory?

18 MR. DAVIS: What they were going to read.
There are

19 others I will be putting on in my case.
20 THE COURT: I just wanted to be sure we
covered
21 everything for tomorrow.
22 MS. HEALY: I believe it does.
23 THE COURT: You will proceed with these
letters
24 rogatory?
25 MR. DAVIS: I will finish reading the one I
have.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Then you will call the defendant?

2 MS. HEALY: Yes.

3 THE COURT: He is your last witness?

4 MR. CUNNINGHAM: Yes.

5 THE COURT: You will probably conclude with
him on
6 Tuesday?

7 MR. CUNNINGHAM: Perhaps tomorrow. By
Tuesday.

8 THE COURT: I will see you tomorrow morning at
9:30.

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

Richard Kaufman

19

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RICHARD A. KAUFMAN, CMRR