

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 3,  |
| 2003   |                                    | ) |             |
|        |                                    | ) |             |
|        | ARMANDO FERNANDEZ-LARIOS,          | ) |             |
|        |                                    | ) |             |
|        |                                    | ) |             |
|        | Defendant.                         | ) |             |
|        |                                    | ) |             |
|        | -----                              | ) | x           |

VOLUME 8

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

APPEARANCES:

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

Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

569

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

I N D E X

Red. Rec.

Direct Cross

WITNESSES FOR THE PLAINTIFF:

JUAN CHIMINELLI FULLERTON(depo) 581  
ARMANDO FERNANDEZ LARIOS 620

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF IN EVID.

DEFENDANT'S

21  
22  
23  
24  
25

RICHARD A. KAUFMAN, CMRR

570

1 (Open court. Jury not present.)

vs.

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

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

4 Would counsel state their appearances.

5 (All parties present.)

the

6 THE COURT: First of all, I need someone from

filed

7 plaintiffs' side to explain to me how this pleading got

inform

8 yesterday in the night box and you totally neglected to

means I

9 me about it and when it is filed in the night box, that

3

10 didn't get it. It didn't come up to my chambers until

issues is

11 o'clock in the afternoon. The first I hear there are

12 at 3 o'clock yesterday afternoon.

in the

13 Why would you have not flagged this issue for

14 morning saying, Judge, here is a courtesy copy, or,  
Judge, we  
15 filed it downstairs, do you want us to give you a copy,  
this is  
16 coming up? Are you trying to sandbag me? Is this the  
way you  
17 practice law in San Francisco?

18 MR. KERRIGAN: No, Your Honor. We presented  
it to  
19 Mr. Davis in the morning.

20 THE COURT: It doesn't have a certificate of  
service  
21 on it.

22 MR. KERRIGAN: At the time it was filed it had  
not  
23 been served. We gave it to Mr. Davis in the morning.  
We  
24 should have filed a certificate thereafter sometime  
during the  
25 day. We were on the fly going through letters rogatory  
with

RICHARD A. KAUFMAN, CMRR

571

1 counsel. Mr. Davis had not an opportunity to even read  
the  
2 motion.

3 THE COURT: That is fine. All you have to say  
this is  
4 coming up, Judge.

5 MR. KERRIGAN: We should have done it, Judge.  
We

part to 6 clearly dropped the ball. There was no intent on our  
7 do anything that is compromising our professional  
8 responsibilities here and we have worked with Mr. Davis  
from 9 the beginning of the case with that understanding and  
have 10 never breached that. This was not a breach of that.

11 THE COURT: I am glad to hear that. I was  
very 12 concerned it was coming up without a certificate of  
service. 13 Why wouldn't you have let me know sometime during the  
day to 14 expect this so I could be on the lookout rather than it  
15 appearing in my chambers 3 o'clock in the afternoon on  
issues 16 ostensibly coming up today. I am not prepared to deal  
with it 17 today.

18 MR. KERRIGAN: We understand that. We are not  
asking 19 the Court to deal with it today. We anticipated this  
testimony 20 would last into next week and Mr. Davis would have an  
21 opportunity to address it. We can do it in a timely  
way at the 22 beginning of Court next week. That was our Court, our  
23 intentions.

24 THE COURT: All you have to do is flag it for  
me, say 25 Judge, this is coming up. We filed a memorandum this  
morning,

572

1 do you want a copy now or do you want to wait for copy  
for  
2 Judge. We could discuss it. I will say to Mr. Davis  
when are  
3 you going to respond and it isn't something I am  
dealing with  
4 at 3, 4 o'clock in the afternoon for witnesses  
appearing the  
5 next day. It is not fair to him and not appropriate  
for the  
6 Court to have to deal with it that way.

7 MR. KERRIGAN: We agree 100 percent. On the  
night box  
8 issue, not understanding the local procedure, the  
proceeding  
9 was taken by one of our lawyers to the Court and they  
said do  
10 you want this in the night box and the lawyer said yes.  
We  
11 didn't understand the significance of it.

12 THE COURT: What happens is, the normal  
process is it  
13 goes into the night box. Because of that process it  
takes a  
14 number of hours for it to come into chambers so it ends  
up  
15 slowing down the process for the copy of Judge to come  
up. It  
16 did not arrive in my chambers until 3 o'clock in the  
afternoon.

17 MR. KERRIGAN: We don't expect the Court to  
look at it

18 on that basis. If we lose as a result of that, we  
apologize.

19 THE COURT: Do you intend to file a response?

20 MR. DAVIS: I have not filed a response. I  
didn't get

21 a chance to look at it until after I spoke to your  
office. It

22 wasn't until 6 o'clock that I had a chance to read it.  
I need

23 someone to help me with this back in the office.

24 THE COURT: When are you going to file a  
response?

25 MR. DAVIS: The end of business on Monday, if  
that is

RICHARD A. KAUFMAN, CMRR

573

1 okay, Your Honor. I know we will be dark on Monday.

2 THE COURT: That is true.

3 MR. DAVIS: If you want me to file it earlier

--

4 THE COURT: If it is not filed by this  
afternoon,

5 there is no way I will be able to look at it until  
Tuesday

6 because I am observing my holiday on Monday and that  
does not

7 include sitting in synagogue and reading pleadings.

8 MR. DAVIS: I understand. They filed it. I  
have to  
9 respond.  
10 THE COURT: Let's see how far we get.  
11 Would you also make sure that Lisa has your  
phone  
12 numbers. We had a devil of a time getting in touch  
with any of  
13 you yesterday afternoon. In fact some of the offices  
didn't  
14 even have a number for you, they had to call travel  
agents. If  
15 you have hotel numbers and cellphones, we need to have  
that so  
16 my staff isn't spending an hour and a half trying to  
track you  
17 down if there is some issue my chambers needs to speak  
to you  
18 about.  
19 MR. KERRIGAN: We will take care of that  
today, Your  
20 Honor.  
21 THE COURT: Are we ready to proceed?  
22 MR. DAVIS: One issue with respect to the  
second  
23 letter rogatory. Yesterday I expressed to you I wanted  
to have  
24 what I call -- the statement of Mr. Arredondo and last  
night  
25 Francis gave me a translation. I have a copy for the  
Court.

RICHARD A. KAUFMAN, CMRR



1 THE COURT: How do you expect to utilize this,  
in your 2 case?

3 MR. DAVIS: What I would like to do is read it  
after 4 the witness testifies much in the sense --

5 THE COURT: On an impeachment basis?

6 MR. DAVIS: Yes.

7 THE COURT: Based upon the representation of  
the 8 plaintiffs yesterday, you have no objection?

9 MS. HEALY: We have no objection.

10 THE COURT: Are you introducing the letters  
rogatory, 11 the documents themselves into the record or only  
relying on the 12 reading of them?

13 MR. CUNNINGHAM: We are relying on the  
reading.

14 THE COURT: And you are going to do the same  
with the 15 statement?

16 MR. DAVIS: Yes, Your Honor.

17 MR. CUNNINGHAM: With respect to the reading,  
is it 18 possible to get a limiting instruction to clarify that  
is being 19 offered only for impeachment and it is not substantive  
20 evidence?

21 THE COURT: What is your position on that?

22  
impeachment

MR. DAVIS: It is clearly being offered as

23

evidence. It is the witness' version four years prior.

24  
have

THE COURT: Let me propose this. Once you

25  
to

finished with the designated areas that you are going

RICHARD A. KAUFMAN, CMRR

575

1  
not?

proceed on, is there redirect on the designations or

2

MR. DAVIS: There will not be.

3  
particular

THE COURT: Then you will go into this

4

statement; correct?

5  
theirs.

MR. DAVIS: Yes, Your Honor. They will read

6  
read the

I have cross designations and I would actually like to

7  
my own

impeachment before I get into the cross designations;

8  
the

preference of presentation to the jury then go through

9

cross designations of this witness.

10  
completed,

THE COURT: After the letters rogatory are

11  
behalf of

I will instruct the jury as follows. Mr. Davis on

12  
given by

the defendant is now going to read to you a statement

13 Sergio Arredondo Gonzalez on August 14, 1998. This  
statement  
14 is offered by the defendant to impeach the witness'  
credibility  
15 under the Rules of Evidence.  
16 Any objection?  
17 MR. DAVIS: For the record, Your Honor,  
according to  
18 Commentary Rule 613 I have in the Federal Evidence 2004  
19 Courtroom Manual, I am reading from the commentary;  
where prior  
20 inconsistent statement is offered for the purpose of  
21 impeachment, the jury may only consider the prior  
statement as  
22 substantive evidence where the prior statement is  
admissible  
23 hearsay, and I believe that would be admissible hearsay  
and I  
24 can give you a copy of the book --  
25 THE COURT: Is that from the commentary, the  
advisory

RICHARD A. KAUFMAN, CMRR

576

1 committee notes?  
2 MR. DAVIS: Weisenberger On Federal Evidence.  
3 THE COURT: That is Mr. Weisenberger's take on  
it;  
4 correct?  
5 MR. DAVIS: I don't believe so.

6 THE COURT: Is there case authority?  
7 MR. DAVIS: Not with that particular quote.  
It is  
8 referencing the committee notes.  
9 THE COURT: On what basis would this statement  
come in  
10 as substantive evidence?  
11 MR. DAVIS: Only to the extent it came in as  
12 admissible hearsay.  
13 THE COURT: How is it admissible hearsay?  
14 MR. DAVIS: Perhaps under 807 because it is a  
sworn  
15 statement given at another time, that is what it is, a  
sworn  
16 statement given by the witness in front of the Chilean  
judicial  
17 system, so it would come in under 807.  
18 MR. CUNNINGHAM: As a little bit of  
background. The  
19 statement is one of many that was made in the  
proceedings we  
20 heard a little bit about before Judge Guzman in Chile  
and many  
21 of the witnesses have made many statements to Judge  
Guzman and  
22 the decision he may be asking Your Honor to make here  
may open  
23 the door to a great many statements no one has  
considered  
24 putting into evidence in this case.  
25 I respectfully submit these statements do not  
meet the

577

not 1 807 exception and it is also the case neither side has  
2 given the other side notice they intend to rely on that  
3 exception.

offering it 4 THE COURT: At this juncture you are not  
5 as substantive evidence?

6 MR. DAVIS: That is correct.

proposed 7 THE COURT: Is there any objection to the  
8 instruction by the Court?

"only," 9 MR. CUNNINGHAM: I would ask you add the word  
10 "it is only being used to impeach and not being offered  
as  
11 substantive evidence," and I would be amazed if the  
jury has  
12 any idea what we are talking about.

proposed 13 THE COURT: What is your position on the  
14 amendment?

15 MR. DAVIS: We agree.

on 16 THE COURT: The instruction will be, Mr. Davis  
17 behalf of the defendant is now going to read to you a  
statement  
18 given by Sergio Arredondo Gonzalez on August 14, 1998.

This

19 statement is offered by the defendant only to impeach  
the  
20 witness' credibility under the Rules of Evidence and is  
not  
21 being offered as substantive evidence.

22 MR. CUNNINGHAM: Thank you, Your Honor.

23 THE COURT: Mr. Davis?

24 MR. DAVIS: That is fine, Your Honor, although  
I am  
25 advised there is a correction on the date. It is the  
4th of

RICHARD A. KAUFMAN, CMRR

578

1 August.

2 THE COURT: You are correct, it says the 4th.

3 MR. CUNNINGHAM: One other issue?

4 THE COURT: Yes.

5 MR. CUNNINGHAM: Plaintiffs intend to read the  
6 responses to two requests for admissions after we read  
the  
7 letter rogatory this morning and I understand Mr. Davis  
has  
8 some issues related to that.

9 THE COURT: What are those?

10 MR. CUNNINGHAM: The two requests for  
admission are,  
11 admit that you accompanied the Arellano delegation to  
Copiapo

12 on or about the eve of October 16, 1973, and the  
response was,

13 defense admits the request for admission number 34.

14 Number 35 was, admit on or about October 17,  
1973,

15 Arellano ordered that 13 Copiapo prisoners be loaded  
onto a

16 truck and driven away. The response was, defendant  
admits

17 request for aid mission number 35.

18 MR. DAVIS: He read it correctly. Probably we  
19 shouldn't have admitted that. The admission in the  
case should

20 not be deemed it is acknowledged by this defendant.

21 Mr. Fernandez does not know whether or not General  
Arellano

22 made that order or not and that would be his testimony.  
I

23 don't want that to be an argument that the plaintiffs  
can make

24 based on this admission, that that admission somehow  
says that

25 and I don't think it would be fair to Mr. Fernandez.  
It is

RICHARD A. KAUFMAN, CMRR

579

1 something the lawyers do and it has nothing to do that

2 Mr. Fernandez knows or doesn't know.

3 THE COURT: That is something you would have  
to deal

4 with when your client testifies. This is an admission  
that was  
5 filed in the case. The way Mr. Cunningham has  
presented it is  
6 exactly what the due process in the case and the  
process of the  
7 pleadings has revealed, that these were admissions that  
were  
8 presented to the defendant and they were admitted. If  
there is  
9 further explanation, you would have to take up the  
further  
10 explanation through whatever way you feel is  
appropriate. From  
11 what you are saying, it seems you would take it up  
through  
12 the testimony of your client or other persons.

13 MR. DAVIS: It would be through the testimony  
of my  
14 client.

15 THE COURT: I am not sure I understand the  
objection.

16 MR. DAVIS: I don't want this to be used to  
misstate  
17 what it says and I don't want it to be argued this is  
an  
18 admission by Mr. Fernandez that he knew this. The  
rules on  
19 requests for admissions doesn't say that is the  
knowledge of  
20 the party making the admission, it is just an admission  
of  
21 discovery advice. The intent of the rule and the  
testimony  
22 before the Court are two different things and I don't  
want them



23 to argue or cross examine my client why did you make  
this  
24 admission. He didn't make the admission, I made the  
admission  
25 on his behalf. Secondly, he doesn't have any knowledge  
of

RICHARD A. KAUFMAN, CMRR

580

1 that. It is made by me for other reasons. That is not  
his  
2 knowledge. That is all I am trying to point out.

3 THE COURT: I guess if he was asked, that is  
what he  
4 would say.

5 I am not sure what the objection is. Is there  
any  
6 basis for this admission not to come in?

7 MR. DAVIS: Only to the extent it would cause  
8 confusion to the jury if this admission constitutes he  
knew  
9 that an order was made. That is where the problem is.

10 THE COURT: What the admission is, on or about  
October  
11 17, 1973, Arellano ordered that 13 Copiapo prisoners be  
loaded  
12 onto a truck and driven away. That is the extent of  
the  
13 admission, that Arellano ordered this, that the  
prisoners be

of it. 14 placed on a truck and driven away. That is the extent

15 MR. DAVIS: Yes.

16 MR. CUNNINGHAM: There was a prior admission.

17 MR. DAVIS: I have no problem with the prior admission

18 being read to the jury.

19 THE COURT: If that is an objection to number 35, it

20 is overruled. The admission was made, it is introducible under

21 the Rules of Evidence. You can object to any additional

22 questions or any argument that is made or any inference that

23 the plaintiff attempts to raise from that at the appropriate

24 time. I don't find there is any basis to sustain the objection

25 for this admission not to come into evidence, for him not to

RICHARD A. KAUFMAN, CMRR

581

1 read it.

2 MR. DAVIS: Again, my objection has to do with the

3 potential for it to be misused far beyond from what it says and

4 that is my objection to this admission.

5 THE COURT: I don't give legal opinions in advance.

6 In the comes up and you make an objection, I will rule  
on it.

7 If you want to make a motion in limine in  
writing that

8 they be precluded from saying something, and you give  
me

9 authority, I will rule on it. Other than that I can't

10 anticipate what they are going to say or what your  
argument

11 will be unless you give me something more substantive  
than what

12 you are giving me at this time.

13 MR. DAVIS: Yes, Your Honor.

14 THE COURT: Let's go.

15 (Jury present.)

16 THE COURT: Mr. Davis, it is my understanding  
you are

17 going to read your designated portions of the letter  
rogatory

18 of Sergio Arredondo Gonzalez?

19 MR. DAVIS: That is correct, Your Honor.

20 Actually, no. This is from Juan Chiminelli.

21 THE COURT: I apologize.

22 MR. DAVIS: This is a continuation of Mr.  
Chiminelli's

23 examination taken in Santiago, Chile, Friday April 26,  
2002,

24 starting at page 4 question 12.

25 Q. Did you accompany General Arellano to Cauquenes?  
When did

travel 1 you arrive? When did you leave? Did Fernandez Larios  
2 to Cauquenes with the group?

3 A. I do not remember the exact date. I think it was  
October.

4 October 1. We were in Cauquenes and we stayed there  
just one

5 day and we spoke with Commander Castillo White who was  
the

6 Commander of the Army. We had lunch and Fernandez  
Larios also

7 traveled with us.

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

9 garrison? What condition did you find the prisoners in  
when

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

11 you receive concerning the treatment of the prisoners?  
What

12 orders did you give concerning the treatment of the  
prisoners?

13 To whom did you give those orders?

14 A. I never saw any prisoner. I didn't even go to the  
15 regiment. I didn't stop there. We spoke with the  
governor in

16 Cauquenes and from there to the officer's club and the  
17 logistical activities only. I learned of it through  
the

18 newspapers.

during 19 Q. When did you first learn four prisoners were killed  
October 20 the course of General Arellano's stay in Cauquenes in  
21 of 1973?  
the 22 A. I learned any information about the events through  
23 newspapers only and quite a bit later.  
killed? 24 Q. Did you know in advance the prisoners would be  
25 A. No.

RICHARD A. KAUFMAN, CMRR

583

1 Q. When did you know this?  
2 A. After my return to Santiago.  
3 Q. Who participated in killing the prisoners?  
4 A. Through the newspapers, as far as I know, no.  
5 Q. Did you participate in the killings?  
6 A. No.  
7 Q. Who ordered that the prisoners be killed?  
8 A. No. I imagine it may have been an order of the  
higher 9 authority in the area. It cannot have been otherwise.  
10 Q. To whom were those orders given?  
11 A. No.  
12 Q. What were those orders?  
13 A. I do not know, either.

14 Q. Who else knew they would be killed?  
15 A. No.  
16 Q. Describe in detail how they were killed?  
17 A. No. I only know what came out in the newspapers.  
18 Q. Who was present when they were killed?  
19 A. I don't know, either.  
20 Q. What did each of these individuals do in connection  
with  
21 the killings?  
22 A. Ditto.  
23 Q. Did Fernandez Larios participate in killing those  
24 prisoners?  
25 A. I have no knowledge because we were not there.

RICHARD A. KAUFMAN, CMRR

584

1 Q. What did he do? How do you know this?  
2 A. I have no knowledge.  
3 Q. Question 19. What were your orders concerning the  
4 prisoners at the garrison? What condition did you find  
the  
5 prisoners in when you arrived? Were they being well  
treated?  
6 What orders did you receive concerning the treatment of  
the  
7 prisoners? What orders did you give concerning the  
treatment  
8 of the prisoners? To whom did you give these orders?

9 A. I neither received nor gave any order and I have no  
10 knowledge of the treatment given the prisoners because  
I had no  
11 contact with them.

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

14 A. Yes.

15 Q. When did you arrive? When did you leave? Did  
Fernandez  
16 Larios travel to Copiapo with the group?

17 A. The afternoon of the same day we went to La Serena,  
October  
18 16, I think. I think we left the next day. We put up  
at the

19 hotel facing the square. Yes, Fernandez Larios  
traveled with  
20 the group.

21 Q. What rank did Fernandez Larios have in October of  
1973?

22 A. Lieutenant.

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

25 A. No. Not that I know. Besides, he had the least  
rank.

RICHARD A. KAUFMAN, CMRR

585

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

2  
helicopter

A. Moren, Espinosa, Arredondo, I and the two

3 pilots. All of us were more senior.

4 Q. Did Fernandez Larios direct the helicopter to any  
5 destination?

6 A. No.

7 Q. Who ordered the helicopter to go to a particular  
8 destination?

9 A. To El Salvador, by General Arellano.

10 location,

11 describe any public meetings or speeches that were  
12 given and by

12 what persons?

13 area,

14 occurred

15 on the 11th, the situation and the underlying cause.

16 subject

16 Q. If any speeches or meetings occurred, what was the  
17 of the speech or meeting?

18 A. I refer to what I have already said.

19 Arellano Stark

19 Q. Did any private meetings occur with General  
20 and any of the local officers?

21 A. Yes.

22 Q. If so, who attended such meetings?

23 A. Both the unit Commander and General Arellano.

24 Q. What was discussed?



on and

25 A. Administrative matters relating to the trials going

RICHARD A. KAUFMAN, CMRR

586

was,

1 the situation of the unit at that time. How personnel

2 needs, etc.

3 Q. Did Fernandez Larios meet with any officers?

formal

4 A. I don't think so directly, no. Aside from the

5 greetings, there was no time for a meeting.

6 Q. If so, who? What was discussed?

7 A. I refer to the answers already given.

location?

8 Q. Did Fernandez Larios give any orders at any

9 A. No.

10 Q. Did Fernandez Larios give any speeches?

11 A. No.

12 Q. What orders were you given with respect to General

13 Arellano's mission to Copiapo in October of 1973?

14 A. The same I received at La Serena and Cauquenes.

the

15 Q. What were your orders concerning the prisoners at

when

16 garrison? What condition did you find the prisoners in

orders did

17 you arrived? Were they being well treated? What

What

18 you receive concerning the treatment of the prisoners?

19 orders did you give concerning the treatment of the  
prisoners?

20 To whom did you give those orders?

21 A. I refer to what has already been stated. The same  
orders

22 which I have already described. I had no contact with  
any

23 prisoners.

24 Q. Question 32. Did anyone in General Arellano's  
group bring

25 with them any documents or records or have in their  
possession

RICHARD A. KAUFMAN, CMRR

587

1 any information identifying any of the prisoners held  
in

2 Copiapo?

3 A. No. Nothing and no one, nowhere. Everything  
organization

4 related was local. General Arellano had no record of  
them.

5 Q. Which of the officers in General Arellano's group  
knew of

6 this information?

7 A. No.

8 Q. How many prisoners' names were so identified?

9 A. I do not know.

10 Q. Whose names were so identified?

11 A. No.

12 Q. Why were those names identified?  
13 A. No.  
14 Q. What did the officers do with this information?  
Were  
15 additional names added? Whose names were added? Why  
were they  
16 added?  
17 A. I refer to what I have already said.  
18 Q. When did you first learn that 13 prisoners were  
killed  
19 during General Arellano's stay in Copiapo in 1973?  
20 A. We learned about it in Antofagasta. I learned  
about it in  
21 Copiapo. I learned that Captain Diaz, according to the  
22 newspaper sent by the regiment Commander, Haag, had  
organized  
23 that activity.  
24 Q. Did you know in advance the prisoners would be  
killed?  
25 A. No.

RICHARD A. KAUFMAN, CMRR

588

1 Q. How did you know?  
2 A. I have already answered.  
3 Q. Who participated in killing the prisoners?  
4 A. I know a captain was in charge.  
5 Q. Did you participate in the killings?

6 A. No.

7 Q. Who ordered that the prisoners be killed?

8 A. According to the official version, it was ordered  
by the  
9 local authority. I have no knowledge that General  
Arellano  
10 ordered anything like that.

11 Q. To whom were those orders given?

12 A. No. According to the preceding version only, there  
are  
13 suppositions based on what was stated before.

14 Q. What were those orders?

15 A. No.

16 Q. Who else knew they would be killed?

17 A. No.

18 Q. How were the 13 who were killed selected to be  
removed from  
19 the locations where they were being held in custody?

20 A. No.

21 Q. Who gave the orders to remove the prisoners from  
the  
22 garrison?

23 A. Ditto. Captain Diaz removed them, but I don't know  
who  
24 gave the order.

25 Q. When were those orders given?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. To whom were they given?

3 A. No.

4 Q. What were those orders?

5 A. No.

6 Q. Why were they taken from the garrison?

7 A. No.

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

9 A. That I know of, no.

10 Q. Which prisoners were killed? How were they killed?

11 A. No.

12 Q. Who participated in killing them?

13 A. No. Just as I said before, nothing more.

14 Q. Was Armando Fernandez involved in killing these  
prisoners?

15 A. No.

16 Q. What did he do?

17 A. He was together with the rest of the group so he  
could not

18 have taken part. None of the group took part in that  
activity.

19 Q. Question 37. Were prisoners taken from other  
locations as

20 well?

21 A. No.

22 Q. From what locations?

23 A. No.

24 Q. Who gave the orders to remove them from those  
locations?

25 A. Ditto.

RICHARD A. KAUFMAN, CMRR

590

1 Q. When were those orders given?

2 A. Ditto.

3 Q. To whom were those orders given?

4 A. No.

5 Q. What were those orders?

6 A. No.

7 Q. Where were the prisoners taken?

8 A. According to the papers, near Copiapo in an open  
area.

9 Q. How were they transported?

10 A. From the newspapers, they were taken in a truck.

11 Q. Were they restrained in any way?

12 A. No.

13 Q. How were they restrained, handcuffs, chains, ropes,  
etc.?

14 A. I do not know.

15 Q. Question 39. Who accompanied the prisoners?

16 A. No.

17 Q. Who rode on the truck with the prisoners?

18 A. Aside from Captain Diaz who was said to be in  
charge, I do

19 not know who else it would be.

20 Q. Did you ride on the truck with the prisoners?

21 A. No.

22 Q. If not, where were you when the prisoners were  
being  
23 transported?

24 A. I imagine he was in a hotel sleeping or in  
Santiago. I am  
25 fuzzy on the date.

RICHARD A. KAUFMAN, CMRR

591

1 Q. Where were the prisoners killed?

2 A. No.

3 Q. Were you present when they were killed?

4 A. No.

5 Q. If not, where were you?

6 A. At the hotel.

7 Q. Who else was with you?

8 A. The entire group was in different rooms but in the  
same  
9 hotel.

10 Q. Why was the truck stopped at that location? Who  
gave the  
11 order to stop the truck there? What happened after the  
truck  
12 was stopped?

13 A. I have no knowledge.

14 Q. Who was present when the prisoners were killed?

15 A. No.

any 16 Q. How many soldiers and officers were present? Were  
17 civilians present other than the prisoners?  
18 A. I do not know.  
19 Q. Who was in command of the group that killed the  
prisoners?  
20 A. Captain Diaz with unit personnel.  
21 Q. What weapons were each soldier or officer carrying  
when the  
22 prisoners were killed?  
23 A. It is presumed it had to be his weapon, SIG rifle  
and  
24 standard issue pistol.  
25 Q. Which of the officers and/or soldiers were armed  
with

RICHARD A. KAUFMAN, CMRR

592

1 pistols?  
2 A. I have no detailed knowledge.  
3 Q. What model and caliber were those pistols?  
4 A. No.  
5 Q. With what weapon or weapons was Armando Fernandez  
armed?  
6 Was he armed with a pistol? What model and caliber?  
7 armed with a corvo? Was he armed with a menga?  
8 A. He was armed with a pistol and SIG rifle.



with 9 Q. Which of the soldiers and/or officers were armed  
10 rifles and other long barreled firearms?  
11 A. I have no knowledge of that part.  
12 Q. What model and caliber were those weapons?  
13 A. No.  
were 14 Q. What happened to those weapons after the prisoners  
15 killed?  
16 A. I do not know.  
17 Q. How were the prisoners killed?  
shot. An 18 A. According to the newspaper, I find out they were  
19 application of the law governing escape.  
20 Q. How was Winston Cabello killed? Who killed Winston  
21 Cabello?  
those who 22 A. No, and I do not know that man was connected to  
23 were shot.  
24 Q. Why did the officers or soldiers use their corvos  
on the 25 prisoners?

RICHARD A. KAUFMAN, CMRR

593

1 A. I don't know.  
2 Q. How much time between the time the truck sets out  
from the 3 garrison until the first prisoner was wounded?

4 A. Ditto.

5 Q. How long after that was the first prisoner killed?

6 A. I do not know.

7 Q. What happened to the prisoners' bodies after they  
were  
8 killed?

9 A. According to the newspaper, they were taken to be  
buried in  
10 the cemetery. They asked the cemetery director for  
permission  
11 prior to the execution.

12 Q. Who gave the orders to bury them in a common grave?

13 A. I assume the local authority. That is, they  
weren't turned  
14 over to relatives there, either.

15 Q. Were you present when they were buried?

16 A. No.

17 Q. Who else was present?

18 A. No.

19 Q. Who dug the grave?

20 A. No.

21 Q. Who actually buried the prisoners?

22 A. No.

23 Q. After the prisoners were buried, what happened  
next?  
24 A. No.

25 Q. Who provided the press release to the newspaper?

1 A. No.

2 Q. Did you accompany General Arellano to Antofagasta?

3 A. Yes.

4 Q. When did you arrive?

5 A. I believe we arrived on the 18h at Antofagasta in  
the  
6 morning. We landed at Esmeralda.

7 Q. When did you leave?

8 A. We probably left Calama early the morning of the  
19th.

9 Q. Did Fernandez Larios travel to Antofagasta with the  
group?

10 A. Yes.

11 Q. What orders were you given with respect to General  
12 Arellano's mission to Antofagasta in October of 1973?

13 A. I refer to what I already stated.

14 Q. Question 57. What were your orders concerning the  
15 prisoners at the garrison? What condition did you find  
the  
16 prisoners in when you arrived? Were they being well  
treated.

17 What orders did you receive concerning the treatment of  
the  
18 prisoners? What orders did you give concerning the  
treatment

19 of the prisoners? To whom did you give those orders?

20 A. I was given no order with respect to the prisoners.  
I have

21 no knowledge as to the condition they were in. I refer  
to what

22 I have already stated before.

23 Q. Did you participate in any courts martial or  
tribunal

24 during Arellano's mission to Antofagasta?

25 A. No.

RICHARD A. KAUFMAN, CMRR

595

1 Q. Why did you participate in any courts martial or  
tribunals?

2 In what capacity did you participate? Who else  
participated?

3 What prisoners cases did you consider? What was the  
4 disposition of each of those cases? Are there any  
records that

5 reflect these facts? Where are they now?

6 A. No. I learned that the ones at Antofagasta were  
turned over

7 to relatives.

8 Q. When did you first learn the 14 prisoners were  
killed

9 during the course of General Arellano's stay at  
Antofagasta?

10 A. The trip to Calama.

11 Q. Question 59A, did you know in advance that the  
prisoners

12 would be killed?

13 A. No.

14 Q. When did you know this?  
15 A. When we traveled to Calama unofficially from what  
the  
16 people there were saying at the time we were going to  
take off.  
17 Q. Who participated in killing the prisoners?  
18 A. No.  
19 Q. Did you participate in the killings?  
20 A. No. I assume it was by personnel of the garrison.  
21 Q. Who ordered that the prisoners be killed?  
22 A. No.  
23 Q. To whom were those orders given?  
24 A. No.  
25 Q. What were those orders?

RICHARD A. KAUFMAN, CMRR

596

1 A. No.  
2 Q. Who else knew that they would be killed?  
3 A. No.  
4 Q. Describe in detail how they were killed?  
5 A. No.  
6 Q. Who was present when they were killed?  
7 A. No.  
8 Q. What did each of these individuals do in connection  
with  
9 the killings?

10 A. No.

11 Q. Did Fernandez Larios participate in killing those  
12 prisoners?

13 A. I have no knowledge.

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

15 A. I do not know.

16 Q. Did you accompany General Arellano to Calama? When  
did you  
17 arrive? When did you leave? Did Fernandez Larios  
travel to  
18 Calama with the group?

19 A. Yes, I accompanied General Arellano to Calama. We  
arrived  
20 October 19, 1973 and returned that same day at night to  
21 Antofagasta and Fernandez Larios traveled with us.

22 MR. DAVIS: That concludes the defendant's  
cross  
23 designations of this particular witness.

24 THE COURT: Is this redirect?

25 MR. CUNNINGHAM: No, it is a new witness.

RICHARD A. KAUFMAN, CMRR

597

1 This is a letter rogatory from Sergio Carlos  
Arredondo  
2 starting with question 6.

3 Q. Please describe your employment and/or military  
assignment  
4 in September and October 1973?

5 A. I was chief of general staff of the Santiago Center  
Combat 6 Group.  
7 Q. What was your rank in September and October of  
1973? 8 A. Lieutenant Colonel.  
9 Q. Where were you stationed?  
10 A. At the war academy.  
11 Q. To what unit or group were you assigned?  
12 A. I was assistant director of the Army War Academy  
and 13 starting September, the end of September, I became  
director. 14 Notwithstanding which, I never ceased being a member of  
the war 15 academy. During those months I was temporarily  
assigned to the 16 Santiago Combat Center Group.  
17 Q. Who was your commanding officer?  
18 A. General Sergio Arellano.  
19 Q. Question 70. Did you accompany General Sergio  
Arellano 20 Stark on his mission to the Northern region of Chile in  
October 21 of 1973?  
22 A. Yes.  
23 Q. Who ordered you to travel to the Northern region of  
Chile 24 in October of 1973?  
25 A. General Arellano.

598

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

2 A. I do not remember exactly. It must have been in  
October of

3 1973.

4 Q. Who also accompanied General Arellano in October of  
1973?

5 A. I remember Pedro Espinoza, Marcelo Moren and I do  
not

6 remember the others.

7 Q. Did Fernandez Larios travel also with General  
Arellano?

8 A. Yes.

9 Q. What was your assignment in connection with that  
mission?

10 A. I was in charge of discharging the orders given by  
General

11 Arellano.

12 Q. Did you know what Fernandez Larios' assignment was  
in

13 connection with that mission?

14 A. I couldn't answer with certainty but he was a  
member of the

15 mission.

16 Q. What was his assignment? If so, who gave him the  
17 assignment?

18 A. I am not sure. We reported to an officer in  
command.

19 Q. Did you know Fernandez Larios before this mission?



20 A. Yes.

21 Q. If so, how did you know him? When did you first  
meet him?

22 A. He was a member of the infantry school and the  
latter was

23 an entity under the Santiago Center Combat Group and I  
met him

24 after September 11, but I do not remember exactly how.  
It must

25 have been at GH.

RICHARD A. KAUFMAN, CMRR

599

1 Q. Question 17. Did you accompany General Arellano to  
La

2 Serena?

3 A. Yes.

4 Q. When did you arrive?

5 A. In October 1973, but I do not remember exactly the  
date.

6 Q. When did you leave?

7 A. At this point in time, I do not remember the date.

8 Q. Did Fernandez Larios travel to La Serena with the  
group?

9 A. Yes.

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

12 A. The mission was to verify the presence of prisoners  
and

13       according to the instructions those people had, they  
said to  
14       eliminate them.

15       Q.   What were your orders concerning the prisoners at  
the  
16       garrison?

17       A.   They had to be eliminated.

18       Q.   What orders did you give concerning the treatment  
of the  
19       prisoners?  To whom did you give those orders?

20       A.   I repeat, the order was to eliminate them.

21       Q.   Did you participate in any courts martial or  
tribunals  
22       during General Arellano's mission to La Serena?

23       A.   No.

24       Q.   Did you participate in any courts martial or  
tribunals?  
25       A.   No.

RICHARD A. KAUFMAN, CMRR

600

1       Q.   Question 21.  When did you first learn that 15  
prisoners  
2       were killed in La Serena in October of 1973?

3       A.   When we completed the mission.

4       Q.   Did you know in advance that the prisoners would be  
killed?  
5       A.   Yes, when we arrived at La Serena.

6       Q.   When did you know this?

7 A. When we arrived at La Serena.

8 Q. Who participated in killing the prisoners?

9 A. Army personnel of the La Serena unit and General  
Arellano's

10 delegation.

11 Q. Did you participate in the killings?

12 A. I witnessed them.

13 Q. Who ordered the prisoners be killed?

14 A. The group Commander.

15 Q. To whom were those orders given?

16 A. To the executioners directly.

17 Q. Subpart H. Who else knew they would be killed?

18 A. All the members of General Arellano's delegation.

19 Q. Describe in detail how they were killed?

20 A. They were executed in the regiment courtyard, shot,  
21 blindfolded and with short machine gun bursts.

22 Q. Who was present when they were killed?

23 A. The ones who were there plus regiment personnel I  
did not

24 recognize.

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

RICHARD A. KAUFMAN, CMRR

601

1 the killings?

2 A. I do not know. All I know is they fired, nothing  
more.

3 Q. Did Fernandez Larios participate in killing those  
4 prisoners?

5 A. Yes.

6 Q. What did he do?

7 A. I do not know how many but in any case, he fired.

8 Q. How do you know this?

9 A. I saw it. I was present at it.

10 Q. Question 57. Did you accompany General Arellano to  
11 Antofagasta?

12 A. Yes.

13 Q. When did you arrive?

14 A. I do not remember. It must have been the same day  
we left  
15 Copiapo.

16 Q. When did you leave?

17 A. I do not remember.

18 Q. Did General Arellano travel to Antofagasta with the  
group?

19 A. Yes.

20 Q. Did you participate in any court martial or  
tribunals  
21 during General Arellano's mission to Antofagasta?

22 A. No.

23 Q. Question 61. When did you first learn that 14  
prisoners  
24 were killed in Antofagasta in October of 1973?

25 A. I did not find out they were executed by General  
Arellano's

602

1 delegation and coordinated with the local authority in  
2 Antofagasta.

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

4 A. Yes. After becoming aware of all the background  
5 circumstances of the prisoners of war, yes.

6 Q. When did you know this?

7 A. The night of our arrival in Antofagasta.

8 Q. Who participated in killing the prisoners?

9 A. Military personnel of the Antofagasta garrison and  
General  
10 Arellano's group.

11 Q. Did you participate in the killings?

12 A. I witnessed them.

13 Q. Who ordered that the prisoners be killed?

14 A. It is must have been a coordinated action between  
the local  
15 authority and General Arellano.

16 Q. To whom were those orders given?

17 A. To the military personnel of Antofagasta and  
General  
18 Arellano's group.

19 Q. What were those orders?

20 A. Execution of the prisoners.

21 Q. Who else knew they would be killed?

the 22 A. I assume the commanders who cooperated in removing  
them to 23 prisoners from prison in Antofagasta and transporting  
24 an execution site.

25 Q. Describe in detail how they were killed?

RICHARD A. KAUFMAN, CMRR

603

faces 1 A. They were executed with short bursts with their  
2 covered in a place I do not remember.

3 Q. Who was present when they were killed?

names I 4 A. I was present as were several more officers whose  
5 do not remember with the passing of the years.

with 6 Q. What did each of these individuals do in connection  
7 the killings?

8 A. Either they witnessed it or they were the  
executioners.

9 Q. Did Fernandez Larios participate in killing those  
10 prisoners?

11 A. Yes.

12 Q. What did he do?

13 A. He formed a part of one of the execution groups.

14 Q. How do you know this?

15 A. Because I witnessed it.

16 Q. Did you accompany General Arellano to Calama?

17 A. Yes.

18 Q. When did you arrive? When did you leave?

19 A. I do not remember very well but I think it was the  
next morning of the following day.

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

22 A. Yes.

23 Q. What orders were you given with respect to General  
24 Arellano's mission to Calama in October of 1973?

25 A. The same we received at La Serena and Antofagasta.

RICHARD A. KAUFMAN, CMRR

604

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

2  
3 A. That the prisoners had to be executed.

4 Q. Question 66. When did you first learn that 26  
prisoners were killed in Calama in October of 1973?

5  
6 A. I did not learn that. They were executed by CAL  
and General Arellano's group forces.

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

9 A. I found out about it in Calama.

10 Q. When did you know this?

11 A. In Calama.  
12 Q. Who participated in killing the prisoners?  
13 A. I answered this in the previous question.  
14 Q. Did you participate in the killings?  
15 A. No. I witnessed them.  
16 Q. Who ordered that the prisoners be killed?  
17 A. I understand it was a coordinated action between  
General  
18 Arellano and the local Commander.  
19 Q. To whom were those orders given?  
20 A. To the members of General Arellano's group and in  
turn  
21 those under authorities of the Calama unit.  
22 Q. What were those orders?  
23 A. The orders to Calama personnel were the transfer of  
the  
24 prisoners from the execution site because they had the  
vehicles  
25 for their transports and the delegation did not.

RICHARD A. KAUFMAN, CMRR

605

1 Q. Who else knew they would be killed?  
2 A. All personnel that took part.  
3 Q. Describe in detail how they were killed?  
4 A. They were executed with their eyes blindfolded and  
with  
5 short bursts of automatic gun fire.



6 Q. Who was present when they were killed?

7 A. I do not remember at this time but many officers  
from

8 Calama and of course the people at the delegation.

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

10 the killings?

11 A. They witnessed them or they were the executioners.

12 Q. Did Fernandez Larios participate in killing those

13 prisoners?

14 A. Not in all of them but he did participate, yes.

15 Q. What did he do?

16 A. He executed some prisoners.

17 Q. How do you know this?

18 A. I witnessed it.

19 Q. Question 73. What criminal charges have you faced,  
if any,

20 as a result of the events in October 1973?

21 A. At present I am under indictment by General  
Arellano's

22 delegation as the principal party and today on parole  
pending

23 criminal sentencing.

24 Q. If any, what was the disposition of any criminal  
charges?

25 A. There is of yet no final verdict in the case.

RICHARD A. KAUFMAN, CMRR

1  
plaintiffs'

MR. CUNNINGHAM: That concludes the

2 designations.

3  
impeachment

MR. DAVIS: I would prefer to read the

4 material first.

5  
6  
read to

THE COURT: Ladies and gentlemen of the jury,

7  
August 4,

you a statement given by Sergio Arredondo Gonzalez on

8  
to

1998. This statement is offered by the defendant only

9  
evidence

impeach the witness' credibility under the rules of

10 and is not being offered as substantive evidence.

11 Let's take a break first.

12  
anyone

Do not discuss this case amongst yourselves or

13  
associated with

else. Have no contact whatsoever with anyone

14  
on this

the trial. Do not read or listen to anything touching

15  
minutes.

matter in any way. Be back in the juryroom in fifteen

16  
instruct

If anybody should try to talk to you about this case,

17  
staff

them to immediately stop and be in contact with my

18 concerning it.

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

21 (Open court. Jury not present.)

vs. 22 THE COURT: Estate of Winston Cabello, et al.  
23 Armando Fernandez-Larios, Case Number 99-0528.  
24 Would counsel state their appearances.  
25 (All parties present.)

RICHARD A. KAUFMAN, CMRR

607

1 THE COURT: Bring in the jury.  
2 (Jury present.)  
3 THE COURT: You may proceed.  
4 MR. DAVIS: Thank you, Your Honor.  
5 This is a statement I will read to you from  
Santiago  
6 August 4, 1998. Sergio Arredondo Gonzalez originally  
from  
7 Santiago age 71 years, married, technical consultant on  
8 horseback riding of Quillote School of the Cavalry,  
domiciled  
9 at Los Lirios 1060, Los Romeros Con-Con 100 and  
National  
10 Identity Card Number 2.304.359-S, who legally entreated  
to tell  
11 the truth does declare.  
12 The third paragraph I will start with. Asked  
to  
13 whether he took part in the execution of the persons  
who were  
14 executed by firing squad as a result of this trip, he  
states,

15 no, I did not take part. In the area of Antofagasta I  
did  
16 witness the execution by firing squad of several  
persons and  
17 they were a group of more than ten persons.

18 Asked as to who gave the order, he answers. I  
had the  
19 impression that everything had been agreed to in some  
way, and  
20 it was in the manner that the executions happened.

21 Asked who the highest ranking officer was at  
the  
22 executions that took place at Antofagasta, he states, I  
don't  
23 recall. In addition, I must state that these  
executions mainly

24 took place at night. I want to state this was a very  
difficult  
25 time during which everything was in a state of  
confusion.

RICHARD A. KAUFMAN, CMRR

608

1 Situations were confused and tense. Orders were  
issued, then  
2 counter orders on trips, then no trips. It was a time  
in which  
3 things were difficult to identify. At times we even  
arrived at  
4 those places at night.

5 Asked about the exact location close to  
Antofagasta,

6 were those executions by firing squad took place, he  
states. I  
7 never served at Antofagasta. Therefore in relation to  
the City  
8 of Antofagasta, I don't know the place where those  
events took  
9 place. Neither do I know the name of that place. Nor  
did I  
10 participate in extracting from anywhere the persons who  
were  
11 executed by firing squad, as I did not participate in  
their  
12 transfer, either.

13 Asked about the activities in each of the  
cities he  
14 visited with General Arellano Stark in October of 1973,  
he  
15 states as pertains to La Serena, I can state that I  
don't  
16 recall that we took lodgings. We were there during a  
few  
17 hours. Neither can I remember the time we arrived, but  
I can  
18 categorically state that we did not arrive during the  
morning.  
19 We did arrive during the afternoon hours because I do  
remember  
20 that from La Serena. We boarded the helicopter to go  
to  
21 Copiapo, a location where we arrived very late at  
night.

22 Asked whether the executions of persons by  
firing  
23 squad took place during the time he was at La Serena,  
he

were 24 states, during the time we were at La Serena, there  
neither 25 executions by firing squads of six to seven persons. I

RICHARD A. KAUFMAN, CMRR

609

I know 1 took part nor participated in these executions; nor do  
traveled 2 whether other officers that comprised the group that  
said 3 with my General Arellano witnessed or participated in  
personnel 4 executions. Usually executions were carried out by  
me that 5 from the respective zones and at La Serena, it seems to  
officers 6 is what happened. On that day while we were at the  
of La 7 club or some other facility within the "Arica" regiment  
assumed 8 Serena, we heard the noise of gunshots and I naturally  
Serena 9 it was from the executions. I did not know what those  
10 executions were going to take place. We remained at La  
General 11 long enough to find out what had happened. In fact  
recall and 12 Arellano met with me and other officers who I don't  
signed a 13 it is my understanding, though, I am not sure, he  
14 document, but I don't know what that document was.

15                   Going to the next page, Your Honor. C018162.  
16                   Asked whether General Arellano Stark received  
17 knowledge of the executions that happened at  
Antofagasta, he  
18 states, yes, of course. I affirmed this if he was the  
chief of  
19 the group. He had to know everything that happened. I  
did not  
20 discuss these events with him. There were no  
discussions but  
21 there was an account. I personally gave him a report  
what had  
22 happened, which was that the people had been taken out  
of the  
23 City of Antofagasta and that they had been executed.  
Upon  
24 giving him the report of these events, my General  
Arellano made  
25 no remarks, nor did he ask me questions, nor do I  
remember if a

RICHARD A. KAUFMAN, CMRR

610

1                   General Lagos, the Commander of the Antofagasta First  
Division  
2                   was present. There is nothing I could add to these  
events.  
3                   From Antofagasta we went to Calama where we remained a  
very  
4                   short time. We went to Calama and from there we  
returned.  
5                   As pertains to Calama, we arrived there on the

6 afternoon the day following these events. As recall  
because  
7 they happened at night. We arrived at Calama where my  
General  
8 Arellano held a meeting with the Commander of the  
Calama  
9 regiment, Colonel Rivas Desgroux. After that I don't  
know  
10 where they went to. They did leave Calama and while  
they were  
11 away from Calama, executions took place which I neither  
12 attended nor witnessed. I do not know whether someone  
from the  
13 group went to those executions. I don't remember how I  
found  
14 out about the executions, but I can point out that we  
did find  
15 out about them. It seems to me that my General  
Arellano found  
16 out about these executions by speaking to Rivera, but I  
did  
17 not.

18 There is a blank because it is illegible -- of  
weapons  
19 in the country and the political climate which  
definitely  
20 provoked the revolution. From Calama we once again  
boarded the  
21 helicopter to travel to Antofagasta and it was then my  
General  
22 Arellano ordered the officers meeting at one of the  
Antofagasta  
23 regiments but I can't be precise as to which one.

24 Asked about the reason for the commission of  
services



25 performed throughout the cities of the North of the  
country, he

RICHARD A. KAUFMAN, CMRR

611

1 says, as I said at the beginning, I did not clearly  
know why we  
2 were going to the cities I have indicated, but inside  
the  
3 helicopter we received information that this group had  
the  
4 objective of reviewing criminal investigations that had  
been  
5 badly performed in the North. We traveled in olive  
green  
6 fatigues. That was the olive green uniform used daily  
during  
7 these days.

8 Asked as to whether it was true he was in  
charge of  
9 the military group that accompanied the group as stated  
by  
10 Brigadier Pedro Espinosa, he answers: I was second  
after  
11 General Arellano. I don't remember having been present  
at that  
12 execution. I may have been attending to the  
informative duties  
13 that I have previously mentioned. The only thing I can  
add is  
14 that this group continued on towards other cities of  
the North,

15 Iquique, Pisagua and Arica. From what General Arellano  
told

16 us, everything was fine in that zone, therefore we  
returned to

17 Santiago.

18 Now I am going to my cross designations. This  
is from

19 the letters rogatory that were read to you. They are  
dated May

20 6, 2002. Questions for the same witness, Sergio  
Arredondo.

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

22 A. Cavalry officer. I served in the Fourth, Seventh  
Cavalry

23 Regiment and Quillote School of Cavalry, a subordinate  
officer,

24 chief officer, and superior in the Military Institute  
Command

25 in the War Academy as professor of strategy and head of  
the

RICHARD A. KAUFMAN, CMRR

612

1 organization and personnel commission. Subsequently  
director

2 of the school of cavalry and military attache in  
Brazil,

3 another foreign assignment was the United Nations in  
India and

4 Pakistan.

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

6 in September and October 1973?

Center 7 A. I was chief of the General staff of the Santiago

8 Combat Group.

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

10 A. Lieutenant Colonel.

11 Q. Where were you stationed?

12 A. At the war academy.

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

Starting 14 A. I was assistant director of the Army war academy.

never 15 September, I became director. Notwithstanding which I

months 16 ceased being a member of the war academy. During those

Group. 17 I was temporarily assigned at the Santiago Center

18 Q. Question 22. Did you accompany General Arellano to

19 Copiapo?

20 A. Yes.

21 Q. When did you arrive? When did you leave?

remember 22 A. We arrived at night in October 1973, but I do not

23 when. I do not remember when we left.

24 Q. Did Fernandez Larios travel to Copiapo with the

group? 25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. How was he dressed?

2 A. In combat uniform.

3 Q. Was he armed?

4 A. Yes.

5 Q. If so, with what weapons was he armed?

6 A. I do not remember well. A semiautomatic weapon.

7 Q. What was his role generally with respect to the  
mission?

8 A. We did nothing at Copiapo. Absolutely nothing from  
what I

9 remember.

10 Q. How would you describe his demeanor during the time  
the

11 delegation was in Copiapo?

12 A. Normal for a subordinate officer.

13 Q. What rank did Fernandez Larios have in October of  
1973?

14 A. Second Lieutenant.

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

16 helicopter?

17 A. No.

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

19 A. All of them.

20 Q. Did Fernandez Larios direct the helicopter to any  
21 destination?

22 A. No.

23 Q. Who ordered the helicopter to go to a particular  
24 destination?  
25 A. General Arellano from La Serena to Copiapo and from  
there

RICHARD A. KAUFMAN, CMRR

614

1 helicopter didn't move.  
2 Q. When the helicopter arrived at a particular  
location,  
3 describe?  
4 A. Whenever we arrived somewhere, General Arellano met  
with  
5 the local Commander and when we arrived in Copiapo, we  
arrived  
6 at night. There were no meetings. Only General  
Arellano knew  
7 and he discussed it directly with the local Commander.  
8 Q. Question 29D. Did Fernandez Larios meet with any  
officers?  
9 If so, who? What was discussed?  
10 A. I do not know.  
11 Q. Did Fernandez Larios give any orders at any  
location?  
12 A. Not that I know.  
13 Q. Did Fernandez Larios give any speeches?  
14 A. I do not know.  
15 Q. What orders were you given with respect to General  
16 Arellano's mission in Copiapo in October of 1973?

17 situation of

A. We arrived at Copiapo and it was to see to the  
18 the prisoners.

19 the

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

21 A. When we arrived, there were no prisoners.

22 you

Q. What condition did you find the prisoners in when  
23 arrived? Were they being well treated? What orders

did you

24 receive concerning the treatment of the prisoners?

What orders

25 did you give concerning the treatment of the prisoners?

To

RICHARD A. KAUFMAN, CMRR

615

1 whom did you give those orders?

2 they had

A. We had no opportunity to see the prisoners because  
3 been taken to La Serena.

4 group bring

Q. Question 33. Did anyone in General Arellano's  
5 with them any documents or records or have in their

possession

6 any information identifying any of the prisoners held

in

7 Copiapo?

8 A. Not that I know.

9 Q. Which of the officers in General Arellano's group  
knew of  
10 this information?  
11 A. I do not think anyone knew about the prisoners in  
Copiapo.  
12 Q. How many prisoners names were so identified?  
13 A. I do not know.  
14 Q. Whose names were so identified? Why were those  
names  
15 identified? What did the officers do with this  
information?  
16 Were additional names added? Whose names were added  
and why  
17 were they added?  
18 A. I have no knowledge of anything relating to these  
questions  
19 inasmuch as I did not take part. Neither did General  
20 Arellano's delegation.  
21 Q. When did you first learn that 13 prisoners were  
killed in  
22 Copiapo in October 1973?  
23 A. The following morning when we arrived in Copiapo.  
General  
24 Arellano's group lodged and slept in Copiapo.  
25 Q. Did you know in advance the prisoners would be  
killed?

RICHARD A. KAUFMAN, CMRR

616

1 A. No. I do not remember.

2 Q. When did you know this?

3 A. The following morning.

4 Q. Who participated in killing the prisoners?

5 A. At that time, no. After that we learned a lot of  
things.

6 Q. Did you participate in the killings?

7 A. No.

8 Q. Who ordered that the prisoners be killed?

9 A. I do not know.

10 Q. To whom were those orders given?

11 A. To the ones who executed them, I assume. I assume  
the

12 order would come from the Copiapo authorities.

13 Q. What were those orders?

14 A. I do not know.

15 Q. Who else knew they would be killed?

16 A. I do not know.

17 Q. How many of the 13 who were killed selected to be  
removed

18 from the locations where they were being held in  
custody?

19 A. I do not know.

20 Q. Who gave the orders to remove the prisoners from  
the

21 garrison?

22 A. I have no knowledge.

23 Q. When were those orders given?

24 A. I have no knowledge.

25 Q. To whom were they given?



617

1 A. I do not know.

2 Q. What were those orders?

3 A. I do not know.

4 Q. Why were they taken from the garrison?

5 A. I do not know. I have no knowledge.

6 Q. Question 37. Were any prisoners killed before they  
left

7 the garrison?

8 A. I have no knowledge.

9 Q. Which prisoners were killed?

10 A. We had no knowledge.

11 Q. How were they killed?

12 A. I have no knowledge, either.

13 Q. Who participated in killing them?

14 A. I assume personnel from Copiapo. I have no  
detailed

15 knowledge.

16 Q. Was Fernandez Larios involved in killing these  
prisoners?

17 A. I do not know. I have no knowledge.

18 Q. What did he do?

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

20 Q. Were prisoners taken from other locations as well?

21 A. I do not know.

22 Q. Question 39. Where were the prisoners taken?

23 A. I do not know.

24 Q. How were they transported? Were they restrained in  
any

25 way? How were they restrained?

RICHARD A. KAUFMAN, CMRR

618

1 A. I do not know at the time. I had no involvement  
whatsoever

2 with the prisoners in the City of Copiapo.

3 Q. Question 40. Who accompanied the prisoners?

4 A. I do not know.

5 Q. Who loaded the truck with the prisoners?

6 A. I do not know. At the time I did not know. Later  
through

7 the paper we learned of other things in connection with

8 Copiapo.

9 Q. Did you ride on the truck with the prisoners?

10 A. No.

11 Q. If not, where were you when the prisoners were  
being

12 transported?

13 A. Surely in the officers club because we ate at the  
club and

14 later we billeted at the hotel.

15 Q. Where were the prisoners killed?

16 A. I do not know. I do not know the area.

17 Q. Were you present when they were killed?

18 A. No.

19 Q. If not, where were you?

20 A. I assume in the hotel.

21 Q. Who else was with you?

22 A. General Arellano's delegation lodged at the hotel.

23 Q. Why was the truck stopped at that location? Who  
gave the

24 order to stop the truck there? What happened after the  
truck

25 was stopped?

RICHARD A. KAUFMAN, CMRR

619

1 A. I have no knowledge as to anything that happened  
there.

2 Q. 44. Who was in command of the group that killed  
the  
3 prisoners?

4 A. I do not know.

5 Q. What weapons were each soldier or officer carrying  
when the  
6 prisoners were killed? Which of the soldiers and or  
officers

7 were killed with corvo knives?

8 A. I do not know, either.

9 Q. Which of the soldiers and/or officers were armed  
with  
10 pistols?

11 A. I do not know.

12 Q. What model and caliber were those pistols?  
13 A. I do not know.  
14 Q. With what weapons or weapons was Fernandez Larios  
armed?  
15 A. The weapons with which a subordinate officer was  
armed in  
16 actions of war, pistols, semiautomatic weapons,  
grenades  
17 munitions and corvo.  
18 Q. Was he armed with a menga?  
19 A. I do not know what a menga is.  
20 Q. Which of the soldiers and/or officers were armed  
with  
21 rifles or other long barreled firearms?  
22 A. I do not know. The Army used the same weapons from  
Arica  
23 Puntarena.  
24 Q. 49. What weapons if any were used to kill the  
prisoners?  
25 A. I do not know.

RICHARD A. KAUFMAN, CMRR

620

1 MR. DAVIS: That concludes defendant's cross  
2 designation.  
3 THE COURT: Anything on redirect?  
4 MR. CUNNINGHAM: No, Your Honor.  
5 THE COURT: Call your next witness.

requests 6 MR. CUNNINGHAM: We would like to read two  
7 for admissions and the responses.

8 THE COURT: You may.

request 9 MR. CUNNINGHAM: The plaintiffs propounded a  
10 for admission number 34 that read as follows. This was  
11 propounded to the defendant. Admit that you  
accompanied 12 General Arellano's delegation to Copiapo on or about  
the eve of 13 October 16, 1973. The response, defendant admits  
request for 14 admission number 34.

admission 15 The plaintiffs' propounded request for  
16 number 35 to the defendant. Admit on or about October  
17, 17 1973, General Arellano ordered that 13 Copiapo  
prisoners be 18 ordered onto a truck and driven away. The response,  
defendant 19 admits request for admission to number 35.

20 THE COURT: Call your next witness.

Honor. 21 MR. KERRIGAN: We call Mr. Fernandez, Your  
22 Armando Fernandez Larios.

23 Thereupon - -

24

25 ARMANDO FERNANDEZ LARIOS,

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 full name?

6 A. Armando Fernandez Larios.

7 Q. Do you go by the last name of Fernandez or do you  
go by 8 Fernandez Larios as your last name?

9 A. I always go by Armando Fernandez. We never use the  
second 10 name.

11 Q. So that would be your father's name?

12 A. Yes.

13 Q. Mr. Fernandez, could you tell us your date of  
birth?

14 A. 18 September 1949.

15 Q. Where do you now reside?

16 A. Miami.

17 Q. In front of you to your right is a notebook and in  
that

18 notebook is a copy of your deposition that was given in  
the

19 past. Were you deposed on the 13th of August in the  
year 2001

20 through the 15th of August; do you recall?

21 A. Yes.

22 Q. Is Spanish your native language?

23 A. Yes, sir.

24 Q. We have our interpreter present here who is  
available.

25 Would you prefer to have the questions put to you in  
Spanish or

RICHARD A. KAUFMAN, CMRR

622

1 English?

2 A. Well, I think it is better in English but if I have  
any

3 doubt, I will ask you.

4 Q. At any time on any question or any word I would  
like to

5 have interpreted, if you will advise us, then we will  
ask our

6 interpreter to do that?

7 A. Thank you very much.

8 Q. The deposition that you gave and the answers you  
gave in

9 August of 2001, have you had an opportunity to review  
those

10 questions and answers before today?

11 A. Well, after that, yes, I saw it.

12 Q. You watched the videotape?

13 A. I read these pages.

14 Q. You read the transcript?

15 A. I read them.

able to

16 Q. You are able to read English sufficiently, you were

17 read the transcript without any difficulty?

the same

18 A. I can say, yes. As you know, this is my English,

19 way I speak, the same way I can read.

20 Q. Were there portions of the transcript of your sworn

21 testimony that you were unable to read or understand?

22 A. Some words, yes, were difficult to understand.

the words

23 Q. Did you ask for assistance so you would know what

24 were that were typed in the deposition?

have an

25 A. No, because after I read the complete sentence I

RICHARD A. KAUFMAN, CMRR

623

1 idea what I am talking about.

material or

2 Q. That leads me to this question. Was there any

should be

3 significant parts of the deposition that you think

error

4 corrected now, something you said that you think was in

5 you would like to correct?

maybe if you

6 A. I don't recall seeing something like that, but

this is

7 ask me some question and I don't know, I can tell you

8 what I am not agreeing.



9 Q. When you read through it whenever that was, you  
didn't find  
10 something that immediately caught your attention and  
you knew  
11 you needed to correct or change?  
12 A. That I recall at this moment, no.  
13 Q. Have you been able to understand all the testimony  
that has  
14 been given in this trial?  
15 A. Yes.  
16 Q. And all of the documents that have been referred to  
here,  
17 have you been able to adequately appreciate or  
understand what  
18 these documents say?  
19 A. Yes.  
20 Q. You graduated from military school in Chile in 1969  
about;  
21 is that right?  
22 A. Yes.  
23 Q. And in the training you received, you actually  
graduated as  
24 an officer; did you not?  
25 A. Yes, sir.

RICHARD A. KAUFMAN, CMRR

624

1 Q. In that training, would you tell us today what you  
learned,

of  
the  
terms

2 tell us what you learned with regard to the treatment  
3 civilians by the military, unarmed civilians, what was  
4 training you received and the education you received in  
5 of using force of violence against unarmed civilians?  
6 A. I don't think we received that kind of training.  
7 Q. And you were in the military school in Chile for  
two years?  
8 A. Yes.  
9 Q. And you graduated and you were an officer?  
10 A. Yes.  
11 Q. And I believe in fact you were an instructor in  
that  
12 school?  
13 A. Yes.  
14 Q. And you never, ever, discussed at any time the use  
of force  
15 or violence by the military against unarmed civilians?  
16 A. Maybe I misunderstand your question. When you ask  
me about  
17 civilian, nobody teach me. In the Army nobody teach  
how to  
18 treat a civilian unarmed. We receive education to  
fight the  
19 war against soldiers.  
20 Q. Have you ever heard of things like the Geneva  
Convention,  
21 for example?  
22 A. Yes, of course.  
23 Q. You know the protocol of the Geneva Convention, the

24 military cannot use force of violence against protected  
25 civilians or unarmed prisoners?

RICHARD A. KAUFMAN, CMRR

625

1 A. Yes.

2 Q. So, if the military uses force of violence against  
unarmed  
3 civilians, it is a violation of not only the Geneva  
Convention  
4 but certainly the Chilean Code of Honor if nothing  
else?

5 A. The way you are putting this is telling me if I  
received  
6 instruction to go against civilians.

7 Q. Let me restate the question, then.

8 Did you receive instruction and did you  
understand at  
9 the time that the military cannot use force of violence  
against  
10 unarmed civilians and protected prisoners? Did you  
learn that  
11 in your training?

12 A. I think everybody don't need to be a military to  
understand  
13 that.

14 Q. You agree with that principle?

15 A. Yes, of course I am agreeable.

16 Q. Generally speaking, do you now acknowledge that  
people were

17 killed at many cities in Chile when the helicopter  
arrived in  
18 those cities and before the helicopter departed those  
cities,  
19 that many, many people were killed in Chile?  
20 A. Of course I know that.  
21 Q. And you agree, do you not, that some of the people  
on this  
22 helicopter were responsible for those deaths, some of  
the  
23 people? I understand you say you are not responsible  
but some  
24 of the people on the helicopter were responsible for  
the  
25 deaths, for killing these people?

RICHARD A. KAUFMAN, CMRR

626

1 A. Yes, but it is important to tell you the people I  
think  
2 were responsible they were very high, high level in the  
3 military.  
4 Q. Do you agree with this. There were people on the  
5 helicopter who were responsible for killing unarmed  
civilians?  
6 A. I cannot tell you they are responsible for that,  
but I can  
7 tell you that General Arellano, who was in charge of  
this, he  
8 was command of these people and go to the regiments and  
after

9 that happened all these tragic things; but I don't know  
if he  
10 was responsible or was the Commander-in-Chief of the  
regiment.  
11 I don't know what they talk. I don't know if the  
Commander in  
12 Chief of the regiment or the Commander of the  
helicopter was in  
13 control. I have never been at a meeting with them.  
14 Q. Do you agree people on the helicopter, some of the  
people,  
15 participated in the brutal killing of innocent unarmed  
16 civilians, do you agree with that or not?  
17 A. I don't know if they participated. I never knew  
about  
18 that. I never knew if they participated. I never knew  
if they  
19 were signing papers or not signing papers.  
20 Q. I am not asking you about signing papers. I am  
asking you  
21 about killing unarmed civilians?  
22 A. Sir, what I am trying to explain you, I cannot tell  
you. I  
23 am not the person that can tell you, yes, they are  
responsible.  
24 I don't know who was responsible of that.  
25 Q. Would you go to page 109 of your deposition,  
actually 108?

RICHARD A. KAUFMAN, CMRR

1 A. I have it.

2 Q. Take a moment, if you would, to read over that so  
you are

3 familiar with that page

4 (Interruption.)

5 BY MR. KERRIGAN:

6 Q. This question was propounded at page 108 to you  
line 2.

7 "So you think you may have learned this from someone  
else,

8 perhaps one of your classmates? Yes, or maybe I hear  
that the

9 officers that were talking in the helicopter, not in  
the

10 helicopter or sitting at a table" --

11 A. Excuse me, I don't know where you are?

12 Q. The top of page 108?

13 A. I am reading 108 here.

14 Q. You have the correct page.

15 A. I say I don't remember talking this to anybody.

16 Q. Then line 2.

17 "Question: So you think you may have learned  
this

18 from someone else, perhaps one of your classmates?

19 "Answer: Yes, or maybe I hear that the  
officers that

20 were talking in the helicopter, not in the helicopter  
or

21 sitting at a table, maybe they talk at that point and I  
22 realized they killed somebody."

23 A. Yes, that was my answer.

24  
the table

Q. So you knew in Cauquenes that officers sitting at

25 that came from this helicopter were involved in killing

RICHARD A. KAUFMAN, CMRR

628

1 somebody at Cauquenes?

knew

2 A. That was not your question. Your question was if I

3 who was doing this and I say, no.

that were

4 Q. So you are hearing this conversation of officers

they have

5 in the helicopter and at that time when you realized

6 killed somebody? That is when you realized that?

I didn't

7 A. I want to explain something here. I am not saying

When I put

8 said this, but I am trying to tell you that I hear.

anything in the

9 here in the helicopter, it is impossible I hear

part. I

10 helicopter. It was so noisy. Maybe it was in another

11 am not telling you I didn't said this.

12 Q. So you are at the table?

in the

13 A. I don't know if it was in the table, the hallway,

14 patio.

you heard

15 Q. Wherever it was, you heard these officers from this

16 helicopter discussing that they had killed somebody;

17 that?

18 A. No, I don't said that. What I said was I hear from  
19 somebody. I don't know if they were the guys of the  
helicopter  
20 or guys in the regiment -- or officers in the  
helicopter or  
21 regiment.

22 Q. When you heard people talking about killing  
somebody, did  
23 you say who got killed and who did it?

24 A. Yes. I think that was the normal reaction, of  
course.

25 Q. Sure.

RICHARD A. KAUFMAN, CMRR

629

1 A. Yes.

2 Q. What did they tell you?

3 A. I don't remember what they tell me. This was 30  
years ago.  
4 30 years ago and I can't tell you what was the  
conversation.  
5 It is impossible for me to tell, oh, I remember 30  
years ago I  
6 spoke with this officer about the people that were  
killed two  
7 days or one day or the same day. I don't know. That  
is the  
8 truth.



9 Q. Had there been other people killed before Cauquenes  
so you  
10 heard discussions of people getting killed so it wasn't  
a very  
11 significant thing to you at that time?  
12 A. Sir, during the 11th of September when we wake up  
that  
13 morning, we hear we were in a revolution and we were in  
a war.  
14 The only word that we hear every day we are in a war,  
we are in  
15 a war. As a military, you begin to feel being in a war  
and  
16 when you ask me somebody died, it is not that I said I  
am happy  
17 they died but you must understand in a war you know  
that people  
18 die.  
19 Q. I didn't suggest anybody would be happy somebody  
died. I  
20 asked you if there had been previous killings at other  
stops  
21 before you got to Cauquenes where those men were  
killed?  
22 A. I don't know. I don't know at Cauquenes they  
killed  
23 anybody before.  
24 Q. In any other cities you stopped at before  
Cauquenes?  
25 A. No.

RICHARD A. KAUFMAN, CMRR

1 Q. Any of the cities where people were killed?

2 A. No. I don't remember exactly what was the first  
stop that

3 we make in the helicopter. Maybe Cauquenes was one of  
the

4 first.

5 Q. Cauquenes is South of Santiago?

6 A. Yes.

7 Q. It was on the first helicopter trip you took and  
eventually

8 you get back to Santiago?

9 A. No.

10 Q. You go back for two weeks to Santiago before you  
make the

11 trip North?

12 A. Okay.

13 Q. You were on the trip South to Cauquenes?

14 A. Yes.

15 Q. You can't tell us today if that is the first thing  
you

16 heard about civilians being killed, you can't remember  
if that

17 is the first you heard about it?

18 A. Your question is about Cauquenes?

19 Q. Yes.

20 A. No, I never hear there are people killed before  
that.

21 Q. Not before. The question I am asking you is, when  
you were

22 at Cauquenes and you heard these officers talking about  
killing

it who 23 people, I wanted to ask, who, or tried to ask, who was  
what did 24 was saying that they were involved in the killing and  
25 you ask them about this killing?

RICHARD A. KAUFMAN, CMRR

631

killed 1 A. Excuse me, sir. I am sure that nobody told me they  
executed 2 somebody. What I hear is, you know in Cauquenes they  
3 people.

4 Q. You want him to help you with the word?

5 A. Yes.

6 (Interruption.)

7 BY THE WITNESS:

Cauquenes, 8 A. Nobody said I shot somebody. What they said, in  
9 died this person.

talking or 10 You must understand, when these people were

ask them 11 I hear from I don't know who, means I can't begin to

Colonel 12 questions. If I hear a Major, a Captain, a Lieutenant

didn't have 13 or General, I don't know who, talking about this, I

talk to 14 the right to say excuse me, let me talk about this. To

15 a superior, you must ask permission to talk to him.  
You cannot

16 say, hey, Captain or a Major, let me ask you a  
question. You

17 cannot say that.

18 Q. So you have to show great respect to the officers  
that are

19 superior to you?

20 A. Very much.

21 Q. This is not a situation, for example, where the  
group of

22 you in the helicopter squad and General Arellano sat  
around and

23 drank some drinks and laughed and almost had a party;  
it

24 couldn't have been that kind of relationship?

25 A. No.

RICHARD A. KAUFMAN, CMRR

632

1 Q. That is not possible?

2 A. It is difficult that occurred.

3 Q. That is exactly what you did 30 days after all  
these

4 killings, you had a cocktail party at General  
Arellano's house

5 and you were there drinking and associating,  
socializing with

6 all these people and there was no my General, my Major,  
my

7 Captain, you were all there drinking?

8 A. You are totally wrong. Your statement and your  
question is  
9 totally wrong.  
10 Q. You may correct me.  
11 A. When you said I was in a party of the house of  
General  
12 Arellano don't mean that an officer cannot go when the  
13 Commander in Chief of the regiment makes a party in his  
house  
14 he invites all of the officers. When you say we were  
drinking  
15 meaning we were having a lot of fun, cheers, let me  
have  
16 another scotch; no.  
17 Q. This was a party, you were drinking --  
18 A. When you say drinking.  
19 Q. Drinking alcoholic beverage?  
20 A. I am not saying I don't have a glass of wine or  
coke, I  
21 don't know.  
22 Q. It was a cocktail party at General Arellano's house  
and is  
23 that is where you went after all these killings?  
24 A. Listen, I am not saying I was not in the party.  
Also I am  
25 saying because I was there I cannot go and say to  
General

RICHARD A. KAUFMAN, CMRR

thank you 1 Arellano, General Arellano, it is nice to be here,

2 very much. The party is a military party.

helicopter 3 Q. The only people at this party were people in the

4 squad?

5 A. I don't think so. I think there were more.

6 Q. Who else was there?

the 7 A. I don't remember. I remember there was people from

persons. 8 helicopter but I don't remember if there were other

party -- 9 Q. All the people from the helicopter were at the

10 MR. DAVIS: Mr. Kerrigan is talking over

11 Mr. Fernandez.

12 THE COURT: Let him finish.

13 BY THE WITNESS:

helicopter or 14 A. I cannot tell you if all the people of the

I 15 one of them didn't go. I don't recall how many people.

the person 16 cannot recall. I cannot recall 30 years ago who was

17 who was at that party.

say 18 Please, I want to make very clear, when you

is a 19 cocktail, it doesn't mean drink. In Chile it means it

20 party you don't sit at a table to have dinner.

21 BY MR. KERRIGAN:

you 22 Q. So the definition of the cocktail party didn't mean  
23 were at a formal table?  
24 A. Yes.  
25 Q. And there were alcoholic beverages being served?

RICHARD A. KAUFMAN, CMRR

634

1 A. I think so.  
2 Q. And you consumed them?  
3 A. I think so.  
4 Q. And you talked to the other people there?  
5 A. When you say I talk to the other people. I talked  
to the 6 guys that talked to me.  
7 If I am siting here or standing here and there  
are two 8 Majors talking there and a Second Lieutenant Colonel  
there and 9 a Captain is there, I cannot go and say, can I enjoy  
your 10 conversation. That is normal, very normal in the  
Chilean 11 military. The Second Lieutenant is always in the  
corner. I am 12 not saying he is in a corner. I hope you understand my  
13 expression.  
14 Q. You can explain.  
15 A. He is always apart of the group.

16 Q. For example, you wouldn't have shared a room with  
one of  
17 these superior officers, you wouldn't be in two bunks  
together?

18 A. Of course not.

19 Q. But it did happen in Antofagasta with Chiminelli,  
you spent  
20 a night with Chiminelli?

21 A. Yes.

22 Q. You just said of course not.

23 A. Because he decide I could spend a night in the same  
room.

24 I wouldn't say Major Chiminelli, we are going to sleep  
in the

25 same room, no.

RICHARD A. KAUFMAN, CMRR

635

1 Q. He was a friend of yours before the helicopter  
missions?

2 A. Don't say he was my friend. I met him in  
Concepcion. I

3 don't know. You cannot be like a friend with a Major  
unless

4 you know him many, many years. To make you understand  
5 something, sir. If I graduate in 1969, the guy that  
graduates

6 in 1968 are my superiors, and I cannot refer to them as  
--

7 Q. You may avail yourself of the interpreter for any  
question



8 or word you would like.

9 (Interruption.)

10 THE INTERPRETER: The interpreter understands  
that the

11 witness is trying to make a distinction between two  
words used

12 in Spanish that in English is only used as "you." In  
Spanish

13 the word "TU" is very familiar and the word "USTED"  
denotes

14 respect. A translation is not possible. He also  
indicates

15 anyone speaking to a superior, anyone graduated before  
his year

16 has to request permission.

17 Q. You would not use the word "TU" to a superior  
because that

18 would denote a personal relationship. You would use  
the word

19 "USTED"?

20 A. Yes.

21 Q. Back to Chiminelli. When you arrived to get on the  
22 helicopter to go South to Cauquenes and other cities  
South, you

23 went up and greeted Chiminelli; is that right?

24 A. It is part of the respect in the military. If I  
know

25 somebody, I go in front of him and say good morning, my  
Major.

RICHARD A. KAUFMAN, CMRR

1 Q. You knew him enough to approach him to say good  
morning my

2 Major?

3 A. Yes, superiors.

4 Q. When you are up to Antofagasta, there are a number  
of

5 killings that have taken place in other cities by the  
time you

6 get to Antofagasta?

7 A. Yes.

8 Q. You are in a room with Chiminelli and you know him,  
respect

9 him, he is your superior. Did you say Mr. Chiminelli  
or my

10 Major, what are we doing with all of these killings?  
What is

11 going on?

12 A. I don't remember saying that but I can tell you if  
I said

13 that, maybe he would say it is not your problem. I am  
not

14 saying he said that, please.

15 In the military, you don't discuss military  
things

16 that don't go with your rank with superiors.

17 Q. When you went back to Santiago you knew people had  
been

18 killed in Cauquenes and somebody associated with the  
helicopter

19 had been involved; you agree with that?

20 A. Yes.

21 Q. You are back in Santiago and your father was a  
career

22 military person?

23 A. Yes.

24 Q. An Air Force person. Why didn't you call your  
father and

25 say we may have been involved or there may be an  
execution of

RICHARD A. KAUFMAN, CMRR

637

1 an illegal order. We may be involved in killing  
unarmed

2 civilians. Why didn't you call your father and ask him  
what he

3 would do?

4 A. Two things. In the military you don't discuss  
military

5 things with your family. My father was in the  
military. He

6 retired in 1952.

7 Q. If he had not retired, would you be able to call  
him?

8 A. I don't know. He was retired.

9 Q. Why didn't you call your father and say I may have  
been

10 involved, even though I haven't done anything, I may  
have been

11 involved in the execution of an order where unarmed  
civilians

12 are being killed?

13 A. It is easy for you, easy for anybody now to say  
that was  
14 illegal because of course now we understand it was  
illegal.  
15 Now when you have been here for 24 hours a day, you are  
in a  
16 war, you are in a war, and your superiors are the  
government  
17 and your superiors, I can tell, they were like the law,  
they  
18 have the law, for us they were right. I am not saying  
this was  
19 right. I am not saying for us in that year, for us all  
what  
20 they do was correct. I didn't think, oh, this is not  
correct.  
21 For everybody and you can ask me, okay, what do you  
think when  
22 you knew about this. I didn't said oh, my God, this is  
not  
23 correct. I said my superior decides this. It is so  
difficult  
24 for you and so difficult for a person who is not the  
military  
25 to understand when you are in a lower rank, you don't  
have the

RICHARD A. KAUFMAN, CMRR

638

1 capacity -- not the capacity. You don't have the right  
to  
2 begin to question what your superiors do.

3 Q. Mr. Fernandez, is it your position in this trial  
that you  
4 never talked to any prisoners? You never interrogated  
any  
5 prisoners? You never struck any prisoners; is that  
your  
6 position in the trial today, you didn't do any of those  
things?

7 A. No.

8 Q. We may have a translation problem.

9 MR. DAVIS: He can ask him factually what  
happened but  
10 his position implies something of a legal nature.

11 THE COURT: Sustained.

12 Rephrase your question.

13 BY MR. KERRIGAN:

14 Q. Are you saying you never saw any prisoners any  
place in any  
15 of these cities where all of these people were killed  
you never  
16 saw anyone of those prisoners?

17 A. If I recall, no.

18 Q. You never interrogated any prisoner?

19 A. Never.

20 Q. You were in the cities when all of these things  
were  
21 happening with the helicopter and you never saw  
anything,  
22 nothing, zero?

23 A. Not zero. When you say I never saw, it is very  
easy to  
24 explain that all the prisoners -- when the prisoners  
were in

They 25 the regiment they were not walking around the regiment.

RICHARD A. KAUFMAN, CMRR

639

1 were in cells or I don't know, in barracks or in jail.

2 Q. How do you know where they were if you didn't see  
them?

3 A. I don't know. That is what I am saying.

4 Q. They can be in a hotel?

5 A. Maybe they were.

6 Q. How do you know the prisoners were in cells if you  
never

7 saw them?

8 A. What other part are they going to be? You are  
putting

9 words in my list. You are changing my words. They  
must be

10 there. What other part would they be.

11 Q. You never saw one prisoner?

12 A. I don't remember seeing any prisoner.

13 Q. You never interrogated a prisoner?

14 A. Of course I don't see, I don't interrogate.

15 That is another point I want to make very  
clear.

16 MR. KERRIGAN: I move to strike as  
unresponsive.

17 THE COURT: Wait for a question, sir.

18 BY MR. KERRIGAN:

19 Q. Why, Mr. Fernandez, do you tell us today about the  
20 authority of superior officers and your obligation to  
follow  
21 their orders if you did nothing wrong? Why is that  
involved in  
22 your decision making if you didn't do anything wrong?

23 A. I don't understand your question.

24 Q. If you didn't do anything wrong yourself, why do  
you tell  
25 us about the importance of following your orders from  
your

RICHARD A. KAUFMAN, CMRR

640

1 leaders and they were the law and your commanding  
officers did  
2 things?

3 A. Because I am trying to explain you about that. I  
am

4 telling you about the rank of the military, the way the  
5 military are. I am not justifying myself with telling  
you  
6 this.

7 Q. You are not saying today in this trial you did  
anything as

8 a result of an order that came from a commanding  
officer that  
9 was wrong, that was illegal, you didn't do anything  
like that?

10 A. No.

11 Q. So your response to my question was, I think, you  
don't  
12 know of anything, you admit to nothing, doing nothing  
wrong at  
13 any of these stops in any way?  
14 A. What I recall, no.  
15 Q. What do you mean as you recall?  
16 A. My answer is, no.  
17 Q. When you got off the helicopter at Copiapo, did you  
see  
18 somebody there that you knew?  
19 A. When I was reading this, the deposition I make, I  
said I  
20 saw Ojeda, thinking Ojeda was a classmate of mine.  
21 Q. Enrique Vidal?  
22 A. Yes.  
23 Q. Enrique Vidal graduated with you from the military  
school  
24 or academy in 1969?  
25 A. Yes.

RICHARD A. KAUFMAN, CMRR

641

1 Q. He testified by videotape deposition; did you watch  
that?  
2 A. Yes.  
3 Q. Do you recall that he said he saw you get off the  
4 helicopter first?  
5 A. Yes.



6 Q. Was that right or wrong?

7 A. Really, I don't know. Maybe I can give you an  
explanation

8 about this. I don't know if I did the first, but I am  
sure I

9 didn't open the door of the helicopter because I am not  
allowed

10 to do that. If I get out first, I get out first. I  
don't

11 recall being the first or the last.

12 Q. When you went up to Enrique Vidal, you had a  
conversation

13 with him, did you not?

14 A. I imagine, yes. He said I spoke with him. Maybe  
that is

15 true. I don't recall.

16 Q. How were you dressed?

17 A. In combat, in green fatigues.

18 Q. What did you have on your person in terms of  
weapons?

19 A. I have the normal weapons that an officer used in  
that day.

20 In that day all of us were dressed in fatigues. We  
have a

21 rifle or fusil; a rifle. We have a pistol and we have  
a corvo;

22 but everybody in the Army used. Listen to me, I have  
been in

23 the Army, Vidal in that statement said they didn't have  
it.

24 Q. So they didn't have any corvos in that regiment?

25 A. Yes.

642

had 1 Q. General Arellano said everybody on the helicopter  
2 corvos?

3 A. I don't know.

4 Q. Did you ever give your corvo to anybody at the  
regiment to 5 use?

6 A. No.

7 Q. And you didn't see when you went around the  
regiment, you 8 didn't see anybody else with corvos that were stationed  
there?

9 A. I don't think so.

10 Q. When you talked to Vidal, he also, you said, had  
some kind 11 of weapon with spikes and a ball, a leather strap?

12 A. Yes.

13 Q. What is that?

14 A. That is the first time in my life I hear the word  
menga. I 15 have never seen a weapon like that, and I want to make  
very

16 clear here to everybody, that is totally, totally  
unnormal that

17 an officer is going to be with his rifle here, with a  
menga,

18 the arm I don't know, in his other hand, and going  
around the

19 regiment. In the army you cannot use an arm not in the  
rules.

20 Then he said in one moment that I put this thing in my  
back.

21 Q. He said in your belt.

22 A. With the rifle, with the pistol and this thing with  
points,

23 I don't know the name he used in my back where I sit is  
24 totally -- if you ask anybody in the Army, if you go to  
Chile

25 and ask everybody in the Army if they have seen that  
weapon

RICHARD A. KAUFMAN, CMRR

643

1 once, I am sure they will say, no.

2 Why, he is the only guy, the only person that  
sees me

3 with this weapon or arm, I don't know how they can tell  
you,

4 because I don't know why he said that. Really, I don't  
know.

5 The only thing is I tell you, nobody in the Army will  
use that

6 weapon, carry that weapon.

7 More. If you come to the U.S. as an officer  
and found

8 boots that are better we used to use in the Army, you  
cannot

9 use that boots in the Army of Chile. You must use the  
boots

10 that the Army of Chile provides.

11                   What I am trying to explain, it is totally  
ridiculous

12                   that an officer will carry this weapon in his hand all  
day long

13                   and put it in his belt. If I put it in my belt and I  
walk,

14                   what is that big ball with -- I don't know what is the  
word in

15                   English, the spikes.

16                   Please, I am not going to ask you a question  
but

17                   think, if you put that weapon in your belt and walk  
from here

18                   to the door, what is going to happen to your legs.  
This weapon

19                   I have never, never seen a weapon like that.

20                   Q. You didn't say to Enrique Vidal, it is to caress  
the little

21                   pigeons; you did not say that, or did you say it?

22                   A. Of course not. If I don't have that weapon, how I  
am going

23                   to say, listen, this weapon is to -- what is the word  
to the

24                   pigeons?

25                   Q. You have an interpreter?

RICHARD A. KAUFMAN, CMRR

644

1                   A. To caress the little pigeons. I am denying one  
thousand

is to 2 percent I have that weapon. How can I say listen, this

3 caress the pigeons.

using? 4 Q. You would not have a weapon you were not trained in

trained to 5 You wouldn't carry some weapon you are not formally

6 use?

7 A. No, but also --

you had 8 Q. That is exactly what you told us about the corvo,

9 no training with a corvo?

10 A. No.

you didn't 11 Q. So you had a weapon that you had no training but

12 have this other weapon?

never saw 13 A. That is another point. When I was an officer and  
14 instructor, I never received instruction of corvo and

Army was 15 instruction of corvo. This corvo that we use in the

in the 16 an ornament in the uniform. If you take a corvo we use

were 17 Army, it is not shaped. There, two officers said they

corvo 18 shaped. They were not shaped. You can do this to the

corvo we 19 and the corvo will not cut your hand. That is the

Army but 20 have in the military school. I don't know in another

21 I don't think that is the correct thing.

combat 22 Q. You are in a state of war, you are dressed in your

23 uniform and ready for war?

24 A. Yes.

25 Q. And you have an ornament on?

RICHARD A. KAUFMAN, CMRR

645

1 A. We can put an ornament or parts of the uniform.

2 Q. You said ornament. It wasn't my word.

3 A. You must understand and I explained you --

4 Q. You can ask the interpreter if there is a word. If  
that is

5 not the word you want to use, ask Francis.

6 A. It is part of the uniform. That don't mean we were  
using

7 the corvo. Nobody used the corvo. I have never hear  
somebody

8 that said I used the corvo, never.

9 BY MR. KERRIGAN:

10 Q. Did you hear the testimony of Dr. Miranda?

11 A. Yes, the lady.

12 Q. The pathologist?

13 A. Yes.

14 Q. How was Winston Cabello killed, if you recall?

15 MR. DAVIS: Objection. Outside the scope.  
What the

16 medical examiner said how he was killed? I think it is  
an

17 inappropriate question.

18 THE COURT: Overruled. If he knows he can  
answer.

19 BY MR. KERRIGAN:

20 Q. You may answer the question.

21 A. I don't know the answer.

22 Q. His throat was slit.

23 MR. DAVIS: Objection.

24 THE COURT: Sustained. It is not a question.

25 BY MR. KERRIGAN:

RICHARD A. KAUFMAN, CMRR

646

1 Q. Was his throat slit from his ear?

2 A. I don't know. I cannot remember what she said. If  
she

3 said that, I am sure --

4 Q. Did you hear the testimony from Mr. Lapostol that  
the corvo

5 could be used to cut somebody's throat?

6 A. Yes.

7 Q. It is the inside blade of the corvo that is used?

8 A. I don't know if it is the inside or the outside. I  
don't

9 know that.

10 Q. How was it Mr. Lapostol, if you know, knew the use  
of the

11 corvo if it wasn't part of the training of the  
military?

12 MR. DAVIS: Objection. He is asking him to  
speculate

13 what another witness would know.

14 THE COURT: Sustained.

15 BY MR. KERRIGAN:

16 Q. Are you certain there was no training in the  
Chilean

17 Military, training you received at the academy in the  
use of a

18 corvo to cause death or great bodily harm to another  
person?

19 A. What I remember in that year, I don't remember  
previous any

20 things about using the corvo, never.

21 When you said how come you don't know about  
this, I am

22 sure -- you know there is coming -- my point is to tell  
you how

23 I know. How I know, when you have a corvo you say  
okay, this

24 is the corvo and they use it like this and this is  
1879.

25 Q. That is because the weapon had been around since  
the late

RICHARD A. KAUFMAN, CMRR

647

1 1880's?

2 A. But that doesn't mean we use it.

3 Q. You were in combat uniform and you were ready for  
war and



were 4 you have a weapon you were not trained to use. You  
5 wearing it because it was part of the uniform?  
6 A. It is not the position, my position. It is the  
statement I 7 do as part of the uniform we were using in that years.  
In that 8 year, every officer, every corporal was using a corvo.  
9 Q. But only a few people on the helicopter had them?  
10 A. I don't remember.  
11 Q. Who else had them?  
12 A. I don't know, I don't remember. It was part of our  
13 uniform. Maybe the senior officers didn't have it.  
Maybe the 14 senior officers didn't use it. I don't remember if  
senior 15 officers used it or didn't use it.  
16 Q. Is it possible you are the only one on the  
helicopter with 17 a corvo?  
18 A. Yes, maybe.  
19 Q. One corvo in Copiapo?  
20 A. Yes.  
21 Q. You stated you were at war?  
22 A. Yes.  
23 Q. Who were you at war with?  
24 A. When I said we were at war, it is what our  
superiors, our 25 government at that moment said, we are at war. We are  
in war

648

1       against people that were against the government and  
that means

2       for us, they were enemies of the government.

3       Q.   And you were not at that time a political person,  
you

4       weren't associated with one political side in Chile?

5       A.   No.

6       Q.   With your allegiance to the government, you could  
have been

7       on the right or the left depending whichever government  
it was?

8       It wasn't you were relying solely on one side or the  
other?

9       A.   Yes.

10      Q.   In fact, your father was a friend of Allende?

11      A.   When I said he was friends with Allende, the  
correct word

12      is, he knew Allende.  Friend means that they visit each  
house

13      and my father, I think I know, he never went to his  
house,

14      Allende never went to my house and the only thing I  
said was,

15      one day many, many years ago before he was elected  
president, I

16      was in the street with my father and Allende said hello  
to my

17      father or Allende said hello to him and they talked  
ten, 15

18      minutes.

19 against the

20 that

21 dictatorship

Q. The war you are describing is the government  
people who were opposed to the current government; is  
correct; and the government at that time was the  
of Pinochet?

23 A. Yes.

24 enemy;

25 correct?

RICHARD A. KAUFMAN, CMRR

649

In

These

remember

this court,

a

1 A. The other part, gentlemen. Let me put it this way.

2 Colombia is a war.

3 Q. The FARC are the guerillas fighting the government.

4 are unarmed civilians in a jail.

5 A. No. A lot of these people have weapons and if you

6 one of the statements of the persons that I hear in

7 he declared he had a weapon hiding.

8 Q. That was Herrera. He had been sentenced and he was

9 criminal?

10 A. I don't know.

11 Q. Who are you saying had a weapon?

12 A. I don't know, somebody give this statement here.  
He said

13 he was interrogated and he denied where were his  
friends and

14 where was the weapon and he said if you had weapon and  
he said

15 yes.

16 Q. If these people had weapons and they were enemies,  
it was

17 justified to kill them?

18 A. I don't know, it was not my job to say who must be  
killed

19 or not killed.

20 Q. What difference would it make if they had weapons?  
21 Did you want to tell us they had weapons?

22 A. You just put me an example of the guerillas, they  
had

23 weapons and these people also had weapons to fight  
against the

24 military. Why they have weapons? To fight the  
military.

25 Q. Did any of these people that were killed of the 72  
we have

RICHARD A. KAUFMAN, CMRR

650

1 in this case, the caravan of death, did any of them  
have

2 weapons when they were killed?

3 A. I don't know.

4 Q. You know they didn't have any?

5 A. I don't know did they have weapons before that.

6 Q. At the time of their death they didn't have any  
weapons and

7 you are saying they might have had them before; is that  
8 correct?

9 MR. DAVIS: Objection. He is asking the  
witness to  
10 speculate.

11 THE COURT: Sustained.

12 BY MR. KERRIGAN:

13 Q. Do you agree the 13 people that were killed at  
Copiapo were  
14 slaughtered?

15 MR. DAVIS: Objection. The witness has not  
been  
16 established as even seeing it.

17 THE COURT: Sustained.

18 MR. KERRIGAN: Can I request the objections be  
made  
19 without speaking comment?

20 THE COURT: I agree.

21 BY MR. KERRIGAN:

22 Q. Do you believe that the people that were killed at  
Copiapo  
23 were killed based upon a military execution, an  
appropriate  
24 military execution?

25 MR. DAVIS: Objection. Predicate. In light  
of are

651

1 instruction I don't want to say anything further.

2 MR. KERRIGAN: Let me withdraw and back up.

3 BY MR. KERRIGAN:

4 Q. When you watched this videotape of the exhumation  
and heard

5 the testimony from Dr. Miranda about the condition of  
these

6 bodies, were you -- what was your reaction to that?

7 MR. DAVIS: Objection.

8 Can we have a side bar?

9 THE COURT: Come up.

10 (Side bar.)

11 MR. DAVIS: Your Honor, it is inappropriate  
cross

12 examination. He is asking the witness to comment on  
other

13 evidence he saw in the courtroom. Nothing about this  
witness'

14 emotional state is an issue. The witness is being sued  
for

15 something that happened in Chile in 1973. He should be  
asked

16 questions about that and the facts this witness  
testified to,

17 not about comments on the evidence presented in this  
courtroom.

18 It is not his province. Mr. Kerrigan is leading him  
where he

19 wants to lead him but he is giving a closing argument  
type of  
20 presentation. It is not appropriate for him to ask  
these types  
21 of questions to Mr. Fernandez. What was his reaction  
to the  
22 exhumation of these skeletons.

23 MR. KERRIGAN: I think it is relevant to show  
that his  
24 current testimony, position, in this case is that he  
knew  
25 nothing about any of this and was totally unaware of it  
and I

RICHARD A. KAUFMAN, CMRR

652

1 can ask him based on the information he has seen in  
this trial  
2 has any of that information even been given to him at  
any time  
3 in the past.

4 THE COURT: That is not what you are asking.  
You are  
5 asking him to comment about his reaction to seeing the  
6 exhumation. It is improper questioning and I order you  
to stop  
7 and you know that.

8 (Open court.)

9 THE COURT: Sustained.

10 BY MR. KERRIGAN:

11 Q. I want to go back to Cauquenes. You came back to  
Santiago  
12 and you said earlier in your testimony you were  
reluctant or  
13 you didn't feel you could discuss this situation with  
your  
14 father; is that correct, the situation in Cauquenes?

15 A. Yes.

16 Q. When you came back to Santiago were you troubled by  
what  
17 you had learned had happened in Cauquenes?

18 A. When you use the word "troubled."

19 Q. Were you concerned that civilians may have been  
killed in  
20 Cauquenes?

21 A. It is difficult to answer that question. I knew  
something  
22 happened, but if you look at it as a military thing,  
you must  
23 try to put the uniform and the training that you have  
and you

24 feel that the people that they died in that  
opportunity, you

25 feel they were enemies. Unfortunately, that is the way  
it is.

RICHARD A. KAUFMAN, CMRR

653

1 Unfortunately, that is the way I feel. Now you say to  
me, now

2 that I am 54 years old, 30 years older, of course I  
feel



3 different. Of course I will never participate in  
something  
4 like that at my age and having all this bad experience,  
of  
5 course not, but in that moment, you cannot feel, my  
God, my  
6 superiors are doing something bad. That is so  
difficult to  
7 understand, to put you in the place of the military. A  
8 subordinate does not question the orders of a superior,  
the  
9 orders or the resolutions of a superior.

10 Q. If you had received an order -- this is an example.  
I am  
11 not saying you ever received this order.

12 If you had received an order that would have  
required  
13 you to do an illegal act, how would you have been able  
to  
14 challenge that order under the Chilean Military Code?

15 MR. DAVIS: Objection. Speculation.

16 THE COURT: Sustained.

17 BY MR. KERRIGAN:

18 Q. Does the Chilean Military Code tell you how to  
challenge an  
19 illegal order, the training you received?

20 A. Yes.

21 Q. How do you challenge it?

22 A. You go in front of your superior and say this is an  
illegal  
23 order.

24 Q. Did you do that after Cauquenes?

all the 25 A. That is what I am trying to explain. For us, for

RICHARD A. KAUFMAN, CMRR

654

1 soldiers, the second lieutenants, the sergeants, the  
colonels,

2 our superiors were correct. That is what I am trying  
to

3 explain you. You don't question the orders or the  
resolution

4 that the superiors do in those years. We were in a  
war. I

5 don't want to put this thing as similar in what  
happened in the

6 states. There are many, many wars in this moment in  
the world.

7 I don't see any soldiers going to a General saying, no,  
I am

8 not going to do it. If they do it, I don't know, maybe  
they

9 have a military trial but in the United States it is  
different

10 than Chile. We have another culture.

11 I am not saying we are better or bad from the  
United

12 States. I am trying to say in the military of Chile, I  
have

13 never seen an officer saying to a General, my General,  
I think

14 you are wrong.

15 Q. In fact as you have told us in the history of  
Chile, the  
16 military never turned against the civilian population  
until  
17 Pinochet; is that correct?  
18 A. No, it is not correct.  
19 Q. Correct me then. Tell me when the military turned  
against  
20 the civilian population other than Pinochet?  
21 MR. DAVIS: Objection.  
22 THE COURT: Sustained.  
23 BY MR. KERRIGAN:  
24 Q. Mr. Fernandez, one of the missions of this  
helicopter squad  
25 as it traveled throughout Chile was to make the local  
regiments

RICHARD A. KAUFMAN, CMRR

655

1 feel like they were part of the coup; wasn't that the  
idea?  
2 A. Yes.  
3 Q. And to feel like, to understand the reality that  
you were  
4 bringing to them, that it was a war; correct?  
5 A. No. Of course not.  
6 Q. Let me restate the question. You may have  
misunderstood  
7 the question.

8                   You and your group were trying to impress upon  
these  
9                   regiments throughout the country there was really a war  
and you  
10                  were really at war and you wanted to impress upon them  
the  
11                  importance for them to feel like they were part of a  
coup and  
12                  part of the new government?

13                 A. Two things. You are making a big mistake when you  
ask me  
14                 and my group. You are putting me in front of this jury  
that I  
15                 was in charge of this group, that I am part of this big  
group.

16                 No. I was in a group that was in charge of a General  
and I  
17                 didn't have nothing to do with what the General wants  
to make  
18                 understand the regiment.

19                         By the way I just remember in Chile there was  
a period  
20                         when General Ibanez was part of the government against  
21                         civilians.

22                 Q. What was your role in this helicopter?

23                 A. I was commandeered to be the bodyguard of General  
Arellano,  
24                 a General I didn't know personally.

25                 Q. Did you receive a written order to do this?

RICHARD A. KAUFMAN, CMRR

1 A. No, sir.

2 Q. In fact you never received written orders for the  
trip

3 South or the trip North?

4 A. No.

5 Q. In fact when you showed up for the helicopter is  
the first

6 time General Arellano asked you what are you doing  
here?

7 A. No, he didn't say what are you doing here. I  
presented

8 myself and I said they send me here to be your  
bodyguard. The

9 question asked me was I a paratrooper or Commander.

10 Q. And you said no, you weren't?

11 A. No.

12 Q. And you told him you were going to be his  
bodyguard?

13 A. I cannot say I am going to be your bodyguard. He  
must know

14 I was going there.

15 Q. How do you say he must know?

16 A. Because nobody is going to send me and I just say I  
am

17 here.

18 Q. He must have received some orders?

19 A. Somebody must have called the infantry school and  
said send

20 a Commander to the helicopter. He must have known I  
was

21 coming.

as a 22 Q. Will you tell us about your prior training to serve  
23 bodyguard prior to that, if you would?  
24 A. We don't have that kind of training in the  
military, but at  
25 that moment in war that we were going to use the war,  
it is

RICHARD A. KAUFMAN, CMRR

657

1 easy to send an officer that he has the capacity to  
know that  
2 the bodyguard is a person who must protect the General.  
3 Q. So you had no prior training to be a bodyguard?  
4 A. Correct.  
5 Q. And you received no instructions from anybody on  
the  
6 helicopter what your job responsibilities would be or  
your  
7 duties as a bodyguard; correct?  
8 A. Yes, sir.  
9 Q. Is that correct?  
10 A. Yes.  
11 Q. In the course of being with General Arellano, many  
times  
12 General Arellano went off by himself and you were not  
with him?  
13 A. Correct.  
14 Q. And you had never served as a bodyguard for anybody  
in the

15 past?  
16 A. No.  
17 Q. In fact, as an example, at Copiapo you left the  
general  
later?  
18 early in the day and didn't see him until 24 hours  
19 A. Yes.  
20 Q. But you are his bodyguard?  
21 A. Yes, but I can explain.  
22 Q. You are entitled to explain. How can you explain  
being a  
23 bodyguard and not being close to his side?  
24 A. You are using the word bodyguard in the same way  
you see  
25 here in the U.S. or you see in the movie, the bodyguard  
that

RICHARD A. KAUFMAN, CMRR

658

1 goes around the person they are protecting, around  
every place  
2 he goes and you are focused about the bodyguard you see  
on TV  
3 or the movies or you know has happened here in every  
country  
4 with the president. They put me as a bodyguard because  
they  
5 said go and stay with General Arellano because they  
need a guy  
6 to -- I am not going to affirm this, we need to have a  
second

7 lieutenant to carry the bags or something like that. I  
don't

8 remember carry bags.

9 When I said bodyguard, in the military, a  
bodyguard

10 was a guy that was for him.

11 Q. Chiminelli if you remember his letters rogatory, he  
said he

12 was in charge of the General's personal security?

13 A. Yes. He was the attache of Arellano.

14 Q. He said he was in charge of his personal security?

15 A. No. I don't recall perfect. I think he was trying  
to say

16 he was in charge of all his personal things, also  
security in

17 his office during the time he worked with him.

18 Q. When you received instructions to be his bodyguard,  
tell us

19 what you thought that duty meant?

20 A. I thought that the duty was going in front of him  
and every

21 time he wanted to go to a place I must go with him.  
That was a

22 bodyguard like that; but now we are going to go to the  
other

23 part, to the military. If General Arellano need me,  
but he

24 never need me of course, he would say Lieutenant  
Fernandez come

25 here.



1 Q. He called you by your first name?

2 A. No, I don't think so. If he say Armando, maybe  
sometimes

3 he was nice. I don't remember maybe he was nice and  
say

4 Armando.

5 Q. Did he call you by your first name at the cocktail  
party?

6 A. I don't know. Maybe it was normal he said  
Fernandez.

7 Q. That is your explanation of your understanding of  
being a

8 bodyguard?

9 A. Yes.

10 Q. Please continue.

11 A. I am trying to tell you that the moment I was  
assigned to

12 be a bodyguard was not the same bodyguard you see here  
to the

13 President of the U.S. or the President of any country  
or to a

14 General, no. I was the guy that was going to be at his  
side

15 when he need me, and of course in the regiment, I was  
not

16 allowed -- I was -- he don't need me because we were  
inside of

17 the regiment.

18 Q. That leads me to this question. You are going to  
military

19 reservations?

20 A. Yes.

21 Q. Why would he need a bodyguard when he is taking a  
22 helicopter that goes into a military reservation?

23 A. That is a question you must ask General Arellano.

24 THE COURT: We will take a break.

25 Do not discuss this case amongst yourselves or  
anyone

RICHARD A. KAUFMAN, CMRR

660

1 else. Have no contact whatsoever with anyone  
associated with

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

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

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

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

6 concerning it.

7 Leave your notebooks on your chairs.

8 Be back in the juryroom in 15 minutes.

9 (Jury receives room.)

10 THE COURT: We will be in recess for 15  
minutes.

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

13 (Open court. Jury not present.)

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

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

16 Would counsel state their appearances.

17 (All parties present.)

18 (Jury present.)

19 THE COURT: You are still under oath, sir.

20 Thereupon --

21

22 ARMANDO FERNANDEZ LARIOS,

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

24 was examined and testified further as follows:

25 MR. KERRIGAN: Would you read the last  
question and

RICHARD A. KAUFMAN, CMRR

661

1 answer of the witness?

2 (The question referred to was read by the  
reporter as

3 above recorded.)

4 BY MR. KERRIGAN: (Continuing.)

5 Q. Were you advised at any time there was a potential  
threat

6 to General Arellano that you should be particularly  
aware of

7 and to be prepared to address?

8 A. During the trip?

9 Q. During the trip, yes.

10 A. No.

11 Q. When General Arellano left the confines of the  
regiment,  
12 would you agree with me if there was any danger he  
would be  
13 exposed to greater danger outside the protection of the  
14 regiment?

15 A. I don't understand your question, I am sorry.

16 Q. When General Arellano and the helicopter squad was  
within  
17 the regiment, they were protected by the guards and  
military  
18 people in that regiment, it was a safe environment.  
Would you  
19 agree with me when General Arellano left the regiment  
he would  
20 be exposed to, if there was a danger, it would be a  
greater  
21 danger outside the regiment?

22 A. Yes, but what I remember, every time he goes out of  
the  
23 regiment he goes out with the Commander of the  
regiment. That  
24 means that the Commander of the regiment would put his  
own  
25 people with him and the people of the regiment would be  
in

RICHARD A. KAUFMAN, CMRR

1 charge of that.

2 I remember one time he went to the house and  
stayed in

3 the house of one of the chiefs of one of the regiments,  
how

4 come I was going to be in the house.

5 Q. Would you state that again? You remembered one  
time and I

6 didn't understand what you said?

7 A. I remember one opportunity he went to sleep in the  
house of

8 the Commander in one of the cities.

9 Q. And that residence was outside the regiment?

10 A. Yes.

11 Q. Did you go and stand by and protect his safety at  
that

12 location?

13 A. Of course not. The house must have guards from the

14 regiment.

15 Q. Did you discuss with the regiment personnel who  
would be

16 responsible for your General's safety?

17 A. No, sir.

18 Q. He was exposed, was he not, to potential danger  
when he

19 went up to the mine at Copiapo; right?

20 A. I think --

21 Q. Not Copiapo. When he went to visit the copper  
mine, he was

22 exposed to some danger?

23 A. I don't know.

24 Q. You didn't go with him?

25 A. No, because I am sure he went with the Commander of  
the

RICHARD A. KAUFMAN, CMRR

663

1 regiment.

2 Q. Did General Arellano leave the base, the regiment  
at

3 Copiapo, after you left him on the afternoon of October  
the

4 16th; did he leave?

5 A. I don't recall that.

6 Q. That would be your job, wouldn't it, to know if he  
was

7 leaving to protect him?

8 A. No, of course not.

9 Q. In fact your testimony has been that you went to  
sleep that

10 evening and you really don't know where General  
Arellano was at

11 Copiapo?

12 A. I don't know where he was. I cannot tell you where  
he was

13 or when he was going to go out. The normal thing was,

14 Chiminelli, Arredondo, or any of the people who were  
there say

15 we don't need you until tomorrow at 8 o'clock. As easy  
as

16 that. Go to the house and stay there.

your 17 Q. Who was your supervising officer who was directing

18 responsibilities there for the General?

because 19 A. Well, nobody was. I think maybe it was Chiminelli

20 he was the attache of General Arellano.

21 Q. Is it your testimony now that Chiminelli was your  
22 commanding officer?

maybe 23 A. No. The question you asked me, who was, and I said

you here 24 he will tell me listen, General Arellano doesn't need

morning. 25 or we don't need you here until 8 o'clock in the

RICHARD A. KAUFMAN, CMRR

664

1 Q. Chiminelli didn't know how you got picked for this  
2 helicopter squad, did he?

3 A. No. I think, no.

4 Q. You say you don't know how you got picked for it?

and they 5 A. Correct. I told you, I was in the infantry school

6 choose me. They say you must go here.

powerful 7 Q. General Arellano at the time was perhaps the most

8 person in the country, was he not, military person?

9 A. Maybe I make the mistake saying the most power --

10 Q. You said maybe you made a mistake. What are you  
referring

11 to?

12 A. In my statement I said he was the most powerful  
General.

13 Q. That is exactly what you said, he was the most  
powerful

14 General in Chile above Pinochet?

15 A. Arellano before the coup he was very famous in the  
Army

16 because he was a General that everybody knew he was an  
officer

17 of Allende and everybody in the military knew that, he  
was an

18 opposer of Allende. That means everybody knew Arellano  
was

19 something that was not, not talking about coup, but he  
was

20 involved in going against the government. If you read  
part of

21 the history of the coup, they said, I don't said --

22 MR. KERRIGAN: Objection. It is unresponsive.

23 THE COURT: Wait for a question, sir.

24 MR. KERRIGAN: Would you read back the last  
question?

25 (The question referred to was read by the  
reporter as

RICHARD A. KAUFMAN, CMRR

665

1 above recorded.)



2 BY MR. KERRIGAN:

3 Q. Are you now saying that General Arellano was not  
the most  
4 powerful General in Chile at the time you were on the  
5 helicopter with him?

6 A. Sir, yes, he have a lot of power. Let me explain  
you, it  
7 is very important I explain you this.

8 The history said --

9 MR. KERRIGAN: Objection. The witness has  
answered  
10 the question. Now attempting to tell us the history of  
11 something and there is no way to anticipate what that  
testimony  
12 conceivably can be.

13 THE COURT: Wait for a question, sir.

14 Ask your next question.

15 BY MR. KERRIGAN:

16 Q. You said I believe in your testimony earlier to the  
jury  
17 that maybe what General Arellano needed was somebody to  
carry  
18 his case, carry his briefcase; you said that?

19 A. Yes.

20 Q. In fact, you did that, you carried his case?

21 A. Maybe. I don't remember. Maybe I do.

22 Q. At Copiapo you carried his case because you were  
seen on  
23 the second floor of Copiapo with his case from the  
witnesses  
24 that testified?

25 A. That's what they testified.

RICHARD A. KAUFMAN, CMRR

666

1 Q. Is it true or not true?

2 A. No, I don't remember being on the second floor with  
General  
3 Arellano in an office with his briefcase.

4 Q. You don't remember being in a room on the second  
floor at  
5 Copiapo where you were interrogating prisoners?

6 A. No.

7 Q. And you don't remember being present with a  
briefcase with  
8 General Arellano?

9 A. I don't remember that, no.

10 Q. Did you hear Dr. Murua's testimony?

11 A. Yes.

12 Q. Did you see Dr. Murua there that day?

13 A. Of course not. I never see him.

14 Q. You have never seen him ever?

15 A. I don't think so.

16 Q. Did you hear his testimony?

17 A. Yes.

18 Q. About the identification of you?

19 A. Yes.

20 Q. Did you interrogate -- strike that.

your 21 Did you strike any prisoner with the butt of

22 rifle at Copiapo?

23 A. My answer, is, no. I never do it. No.

24 Q. Earlier in your testimony you described the process  
by

25 which you would challenge an illegal order; do you  
recall that

RICHARD A. KAUFMAN, CMRR

667

1 testimony today?

2 A. Yes.

3 Q. If you would, tell us why you never challenged any  
order

4 while you were on this helicopter mission? At any  
city, at any

5 time, you never challenged any order. Why didn't you?

6 A. What orders?

7 Q. When people were being killed, when civilians were  
being

8 killed at each one of these cities and you knew General

9 Arellano either gave the order or agreed with the order  
-- you

10 knew that; didn't you?

11 A. Yes.

12 Q. Why didn't you challenge that decision or that  
order when

13 civilians were being killed?

14 A. To whom?

15 Q. To your commanding officer, Chiminelli?  
16 A. What I would tell to Chiminelli or Espinosa,  
listen, I  
17 think General Arellano is doing a bad thing?  
18 Q. You had no evidence General Arellano had given the  
order?  
19 A. Or I would tell to anybody.

20 Q. You knew people were being killed?

21 MR. DAVIS: He is cutting off the witness.

22 THE COURT: Let him answer.

23 BY THE WITNESS:

24 A. How come I was going to challenge an order of a  
superior  
25 that I thought in that moment that everything they do  
is

RICHARD A. KAUFMAN, CMRR

668

1 correct, and I remember I told you a few minutes ago,  
at my age  
2 now, it is different than when I was 23 or 24 years old  
and a  
3 second lieutenant belonging to an Army, an Army I  
cannot  
4 imagine, it don't cross my mind going in front of  
General  
5 Arellano or Chiminelli, saying, sir, I think you are  
wrong.  
6 Q. You are not certain that General Arellano had given  
the

7 order to kill civilians, you weren't certain at the  
time he had  
8 issued the order? Of course not.

9 Did you ask anybody who gave this order to  
kill these  
10 civilians.

11 A. To whom was I going to ask?

12 Q. Did you ask anybody?

13 A. No. I am trying to explain. It is impossible for  
me in  
14 that year to go to a superior, not to a friend, to a  
superior  
15 that is in grade ten years higher than me to say who is  
giving  
16 this order? What do you think is going to be is the  
answer of  
17 that Major or Colonel, they will say what are you  
talking  
18 about.

19 Q. Wouldn't it be possible, Mr. Fernandez, that there  
was no  
20 order at all, there was anarchy and there was killing  
and no  
21 one had given an order allowing it; that is possible;  
isn't it?

22 A. I don't think so.

23 Q. You thought there was an order?

24 A. Yes.

25 Q. Who gave the order?

never in  
not in.

1 A. I cannot tell you. I was there in a meeting I was  
2 a meeting with General Arellano and his staff. I was

3 Q. Is it your testimony --

4 MR. DAVIS: He is cutting the witness off.

5 THE COURT: Let him answer.

6 BY MR. KERRIGAN:

7 Q. Is there something you wanted to add?

8 A. Not now.

of the  
the

9 MR. KERRIGAN: We would like to show a listing  
10 helicopter participants. I would like to show it on  
11 screen.

12 MR. DAVIS: No objection.

13 BY MR. KERRIGAN:

the

14 Q. Are these people listed here the people who were on  
15 helicopter?

Julio.

16 A. Yes. The only thing I don't recall is pilot Hugo

17 Q. He could have been, you just don't recall?

18 A. I don't recall.

your

19 Q. Is it your testimony -- who on that list would be  
20 superior officer?

that moment

21 A. You must put it in the way of the military. At

22 I didn't have a man that said I am going to be your  
superior.  
23 I think I will go to Chiminelli or Moren, not to  
Espinosa,  
24 because at that moment he was dressing as a civilian,  
or  
25 Arredondo, if I need something, maybe I would go to any  
of

RICHARD A. KAUFMAN, CMRR

670

1 these officers and say, sir, I need this. I didn't  
have a  
2 person that said I was in charge of you.

3 Q. Espinosa was reporting to Army intelligence?

4 A. Yes.

5 Q. So you had somebody in the helicopter reporting to  
a  
6 private or independent intelligence agency of the Army?

7 A. Yes, I think so.

8 Q. Did he report to Arellano?

9 A. I don't know.

10 Q. Is it your testimony you were reporting to who on  
this  
11 helicopter? Who were you reporting to?

12 A. To one of the officers.

13 Q. So when the officers got together with the staff  
meeting  
14 with General Arellano, is it your testimony you were  
the only

15 one that didn't participate in these meetings because  
you were

16 a second lieutenant?

17 A. Yes.

18 Q. You were an officer, though?

19 A. Listen --

20 MR. DAVIS: He asked three questions at once.

21 THE COURT: Sustained.

22 BY MR. KERRIGAN:

23 Q. You were an officer?

24 A. Yes.

25 Q. Your answer is you couldn't participate in these  
meetings

RICHARD A. KAUFMAN, CMRR

671

1 and they didn't include you in the meetings?

2 A. No.

3 Q. And you were the only one on the helicopter that  
didn't

4 participate in the meetings?

5 A. I don't know if the others participated.

6 Q. Who participated in the meetings with General  
Arellano?

7 A. I don't know, I was not in the meeting.

8 Q. So they had meetings and where would you be, would  
you be

9 outside of the door?



inside of 10 A. Or maybe in the clubhouse or outside. I was not  
11 the meeting.

went into 12 Q. When you were outside the door, do you know who  
13 the meetings with General Arellano?

Chief of 14 A. I don't know. I assume it was the Commander in  
15 the regiment, the attache of the regiment. The second  
person of 16 Commander of the regiment. Maybe the intelligence  
17 the regiment.

18 Q. And the people in the helicopter; right?

19 A. Right.

but you, 20 Q. So everybody of significance was in these meetings  
21 you were the only one not in these meetings?

rank 22 A. If you see all the people I said, they are superior  
Army 23 and I was a lower rank; yes. You will never see in the  
important for 24 meetings like this kind of meeting that was very  
25 them with me inside.

RICHARD A. KAUFMAN, CMRR

672

carry 1 Q. Did you ever receive any order that you refused to  
2 out while you were on this helicopter mission?

3 A. No.

4 Q. I want to go back to Santiago.

5 When you went back to Santiago after Cauquenes

--

6 Cauquenes is a city on this map?

7 A. Yes.

8 Q. You went back to Santiago and were you anticipating

going

9 back in the helicopter again? Did you think you would

go on

10 another helicopter trip?

11 A. No.

12 Q. You didn't know if you were going to go or not?

13 A. If I was going where?

14 Q. You didn't know if you would be going on a later

trip

15 North?

16 A. No.

17 Q. You did not know?

18 A. No.

19 Q. You are back in Santiago and as far as you know

that

20 mission is over?

21 A. Yes.

22 Q. You didn't talk with your father and you explained

why.

23 Did you talk to a priest about it, what you

had seen

24 or felt had happened?

25 A. I told you, sir, for me at that moment,

unfortunately,

673

1           unfortunately in our mind we thought there was a war  
and this  
2           was a war and what my superiors do, I thought in that  
minute  
3           they were doing the correct thing because? That moment  
the  
4           government was the law and I thought I cannot thought  
in that  
5           minute my superiors are doing something bad. If you  
ask me now  
6           at this moment, of course I know they were doing  
something not  
7           correct.

8           Q. Not correct or they did something that was illegal;  
which  
9           one?

10          A. I am sorry my words are --

11          Q. That is okay. Which one?

12          A. Illegal or not correct. It if it was illegal for  
that  
13          reason, they have a trial in Chile and I am sitting  
here.

14          Q. What they did, these officers on that helicopter,  
what they  
15          did was illegal?

16          A. When you said this officer what they did in the  
helicopter,  
17          you are referring to what they did to the people or the  
orders

18 they give?

19 Q. Your question is the order they did? Let me  
restate the

20 question.

21 These officers in this helicopter and stopped  
at these

22 cities engaged in illegal acts which included the  
torture and

23 killing of civilians; you agree with that?

24 MR. DAVIS: Objection. The way it is phrased.  
He is

25 not asking the witness what he saw or observed.

RICHARD A. KAUFMAN, CMRR

674

1 THE COURT: Sustained.

2 Rephrase your question.

3 BY MR. KERRIGAN:

4 Q. Do you agree with this statement. The people on  
this

5 helicopter you were traveling with, those very same  
people,

6 engaged in illegal acts which resulted in the death of  
unarmed

7 civilians in every one of these cities on this map?

8 MR. DAVIS: Objection.

9 Can we approach.

10 THE COURT: Come up.

11 (Side bar.)

12 inappropriate

13 he

14 game but

15 I think

17 act.

18 is an

24 would do

MR. DAVIS: I object. This is also

questioning. If he wants to ask him what he saw, what

heard, what orders he was given, all of that is fair

to have him make some legal conclusions what they did,

it is inappropriate.

17 THE COURT: You can't ask him about an illegal

18 MR. KERRIGAN: The killing of civilians, that

19 illegal act?

20 THE COURT: The objection is sustained.

21 Ask a proper question.

22 (Open court.)

23 BY MR. KERRIGAN:

24 Q. You have testified now these many years later you

25 things differently, essentially?

RICHARD A. KAUFMAN, CMRR

675

1 A. Of course, I am 30 years older.

2 Q. What would you do differently now?

3 MR. DAVIS: Objection. Relevance.

4 THE COURT: Sustained.

5 BY MR. KERRIGAN:

6 Q. What did you do then that you would not do now?

7 MR. DAVIS: Same objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. KERRIGAN:

10 Q. You are back in Santiago and you are back at your  
assigned

11 duties after you came back from Cauquenes?

12 A. Yes.

13 Q. How were you notified you had been selected to go  
back on

14 the helicopter?

15 A. I don't recall. I imagine the same person, the  
same

16 officer in the infantry school said you must go again.

17 Q. Did you receive a written order?

18 A. No.

19 Q. Did you have any idea what your job  
responsibilities would

20 be or your mission responsibilities on this next trip  
would be?

21 A. No. I assume it was the same.

22 Q. If you will tell us exactly what you did on the  
initial

23 trip to Cauquenes, what duties you performed on that  
trip or

24 that mission, what exactly did you do?

25 A. When you say exactly, I don't understand.

1 Q. You got on the helicopter and one of the cities you  
stopped  
2 at was Cauquenes. You got off the helicopter. What  
were your  
3 responsibilities once you got off the helicopter?

4 A. To be with General Arellano and go inside of the  
places he  
5 was and when he go inside of a meeting he goes inside  
and I  
6 wait.

7 Q. That is all you did at Cauquenes?

8 A. That is what I remember, yes. I don't remember  
anything  
9 else.

10 Q. Actually, Mr. Fernandez, you had a diary, did you  
not?

11 A. Well, not. No. I didn't have a diary.

12 Q. What did you tell your mother you wanted destroyed?

13 A. Oh, that was many years ago, many, many years ago,  
many  
14 years after. I wrote what I do every day, but it was  
not in  
15 those years.

16 Q. Why did you tell your mother to destroy a diary?

17 A. Because I came here and that was in Chile.

18 Q. Why didn't you have her mail it to you?

19 A. Because I didn't want to.

20 MR. DAVIS: Objection. This was a document  
prepared  
21 many years later.

22 THE COURT: Overruled.

23 BY THE WITNESS:

24 A. Because I didn't want to have it. It was something  
in

25 Chile and I was here. I didn't want to have it.

RICHARD A. KAUFMAN, CMRR

677

1 BY MR. KERRIGAN:

2 Q. Are you saying you didn't make any notes in this  
diary

3 about the circumstances of all of these killings?

4 A. No, no. Totally untrue.

5 Q. Why did you start keeping a diary years later?

6 A. Why? Because one day --

7 MR. DAVIS: Objection, relevance.

8 THE COURT: Sustained.

9 BY THE WITNESS:

10 A. It was many years --

11 THE COURT: Sir, I sustained the objection.

12 BY MR. KERRIGAN:

13 Q. Did General Arellano specifically pick you to go on  
the

14 helicopter mission North which will include cities like  
Copiapo

15 and La Serena?

16 A. I don't know if he specifically picked me.



do you 17 Q. Did General Arellano approve of you being assigned,  
18 know?  
me, of 19 A. Of course he was a General and if somebody send for  
20 course he must have his approval.  
21 Q. Would you look at page 157 of your deposition.  
22 A. Yes.  
23 Q. You later had a conflict with General Arellano?  
24 A. Yes.  
General 25 Q. Did you say at page 157 of your deposition, that

RICHARD A. KAUFMAN, CMRR

678

1 Arellano picked you for the flight?  
2 A. I don't understand.  
did you 3 Q. Did you say in your deposition going onto page 158;  
4 say there, how come he would call me in the next trip?  
5 A. Yes.  
6 Q. That question was put to you because of a  
conversation you  
7 had with General Arellano?  
8 MR. DAVIS: Objection. It mischaracterizes  
the  
9 deposition testimony.  
10 BY MR. KERRIGAN:  
11 Q. If you go to line 20 at 157 --

12  
straighten

MR. KERRIGAN: I am anticipating -- I can

13 it out.

14 THE COURT: Are you going to rephrase this?

15 MR. KERRIGAN: I am.

16 BY MR. KERRIGAN:

17 Q. The question was put to you at line 5, page 157.  
The

18 question was put to you about General Arellano, why  
would he

19 hate you?

20 A. Yes.

21 Q. You can read your whole answer, your entire answer?

22 A. You want me to read it now?

23 Q. Yes.

24 MR. DAVIS: Objection on the basis of  
relevance.

25 THE COURT: Sustained.

RICHARD A. KAUFMAN, CMRR

679

1 BY MR. KERRIGAN:

2 Q. Would you read the portion of the answer that  
starts at

3 line 20?

4 MR. DAVIS: Same objection, Your Honor.  
Objection to

5 relevance.

6 THE COURT: Sustained.

7 BY MR. KERRIGAN:

158 line 8 Q. Would you read the portion of the answer at page  
9 1, three sentences?

10 MR. DAVIS: I object.

11 THE COURT: Sustained.

12 BY MR. KERRIGAN:

13 Q. Did you say in this deposition right here, how come  
he  
14 would call me in the next trip; did you say that  
statement?

15 A. Excuse me, sir?

16 MR. DAVIS: Objection.

17 THE COURT: Sustained. Improper question.

18 BY MR. KERRIGAN:

19 Q. Did General Arellano call you to go for the next  
trip  
20 North? Did he call you?

21 A. If he called me personally?

22 Q. Did he call you?

23 A. He didn't call me. He didn't take the phone and  
say  
24 Lieutenant Fernandez, come. Somebody called to the  
infantry  
25 school and said send Fernandez here again.

RICHARD A. KAUFMAN, CMRR

1 Q. If you said how come he would call me in the next  
trip, did  
2 you mean pick you?  
3 A. Pick me, call me, choose me.  
4 Q. Are we in agreement General Arellano picked you for  
this  
5 next trip to go North?  
6 MR. DAVIS: Objection. He has asked the  
question five  
7 different ways.  
8 THE COURT: Overruled.  
9 BY THE WITNESS:  
10 A. I think so. I was in the next trip, of course  
General  
11 Arellano will say we sent for him to come. I don't  
know if he  
12 was the person who said okay, call Fernandez. I don't  
13 imagine --  
14 BY MR. KERRIGAN:  
15 Q. The same people with the exception of the pilots;  
but the  
16 same group was picked to go on the trip North of  
Santiago?  
17 A. There was some change there.  
18 Q. You don't have the change. We will put back on the  
screen  
19 the participants of the helicopter.  
20 Who was on the trip South that included stops  
at  
21 Cauquenes?  
22 A. What I remember was of course Arellano, Chiminelli,

23       Espinosa. I think Carlos Lopez, number 11 and me. I  
don't  
24       know if Marcelo Moren was there or not.  
25       Q. The trip North?

RICHARD A. KAUFMAN, CMRR

681

1       A. Moren, Espinosa, Chiminelli. I don't remember Hugo  
Julio,  
2       and me and the pilot I don't remember. They were the  
pilots.  
3       I don't know if they were the same.

4       Q. What conversations did you have with anybody on the  
5       helicopter, not what they said, but what did you say  
when you  
6       came to the helicopter and you are getting ready to go  
North;  
7       what did you do, for example, when you saw Chiminelli?

8       A. I will be very glad to tell you if I recall it. It  
is 30  
9       years ago. I assume I said good morning, how are you.  
The  
10       normal military greetings.

11       Q. Did you discuss or ask Chiminelli what is the  
purpose of  
12       our next trip? Did you ask Chiminelli that?

13       A. I don't think so. I don't recall.

14       Q. Did you wonder at the time what the purpose might  
be?

15       A. No.

16 Q. Did you have any idea where you were going?  
17 A. No.  
18 Q. Let's go to La Serena. The first stop was La  
Serena going  
19 North. What happened in terms of the killings at La  
Serena?  
20 A. I don't know what happened. I know they killed  
somebody in  
21 the regiment.  
22 Q. Somebody in the regiment. Prisoners?  
23 A. Yes, of course.  
24 Q. You say "they." Who killed them?  
25 A. I assume the people from the regiment.

RICHARD A. KAUFMAN, CMRR

682

1 Q. From where?  
2 A. From La Serena.  
3 Q. What about the people on the helicopter?  
4 A. I don't know if they were there because I was not  
there.  
5 Q. But you were at La Serena?  
6 A. Yes.  
7 Q. You are saying you were not there?  
8 A. I was not there when they killed these people.  
9 Q. Did you ask any of the other people who were with  
you on  
10 the helicopter any questions about the deaths at La  
Serena?

11 A. Sir, I cannot tell you if I asked or didn't ask. I  
don't  
12 know. What I am totally sure, if they were going to  
talk  
13 something about this, they were not going to talk in  
front of  
14 me.

15 Q. Your testimony is, you didn't participate in any of  
this at  
16 La Serena, anything that happened to any of these  
prisoners?

17 A. No.

18 Q. You weren't involved in selecting them?

19 A. No.

20 Q. Or interrogating them?

21 A. No, sir.

22 Q. And you weren't involved in their deaths in any  
way?

23 A. No, sir.

24 Q. Would you agree with me the people who were  
involved in

25 killing these people at La Serena were not authorized  
by any

RICHARD A. KAUFMAN, CMRR

683

1 order you know of to kill these people? You knew of no  
order  
2 authorizing the killing of these people?

3 A. I don't understand your question.

4 Q. Did you know of any order that had been given to  
authorize  
5 the killing of these people at La Serena?  
6 A. No.  
7 Q. These were civilians at La Serena?  
8 A. Yes, they were civilians.  
9 Q. There were no court martials at La Serena that you  
know  
10 about?  
11 A. I don't know if there were court-martials or no.  
12 Q. You didn't attend any or see General Arellano  
involved in a  
13 court martial while you were is there?  
14 A. No.  
15 Q. The people that were killed at La Serena, do you  
know if  
16 they were unarmed?  
17 MR. DAVIS: Objection. He said he didn't see  
it.  
18 Outside of personal knowledge.  
19 THE COURT: Sustained.  
20 Rephrase your question.  
21 MR. KERRIGAN: Respectfully, speaking  
objection.  
22 BY MR. KERRIGAN:  
23 Q. When did you learn people had been killed at La  
Serena if  
24 you didn't know when you were there?  
25 A. Excuse me? When?



684

1 Q. When.

2 A. When I knew about that.

3 Q. When did you find out people had been killed at the  
time  
4 you stopped at La Serena?

5 A. I don't remember if it was the same day, the second  
day,  
6 the third day.

7 Q. It could have been the same day?

8 A. Maybe.

9 Q. Tell us exactly what you remember finding out about  
these  
10 killings? What information did you get about the

11 A. Military -- when we were sitting in someplace or  
talking,  
12 they said somebody was killed in La Serena or people  
were  
13 killed in Calama. I don't remember sitting in a room  
with a  
14 person discussing this.

15 Q. I just asked you if you could recall how you  
learned about  
16 the number of people killed at La Serena. How many  
were killed  
17 there, by the way?

18 A. I don't know.

19 Q. How did you find out these people were killed?

20 same day or

21 Calama or

22 in La

A. After this happened, I don't know if it was the

21 the next day or the third day when I was arriving to

22 Antofagasta, somebody said you know, they killed people

23 Serena.

24 Q. Who is "they"?

25 word.

A. When they say killed, I am not using the correct

RICHARD A. KAUFMAN, CMRR

685

firing

1 They also said in La Serena, they were executed by

2 squad.

3 Q. Mr. Fernandez -- did you finish?

was

4 A. When I am saying they killed, the word they used

5 fusilaros, which is --

6 THE INTERPRETER: Executed by firing squad.

7 BY THE WITNESS:

8 A. And that was legal.

English

9 Q. You don't understand the word "executed" means? In

10 you don't understand the word "executed"?

11 A. I understand.

12 Q. You don't understand the words "firing squad"?

understand

13 A. Yes, but it is different. I want to make you

14 when you say in Spanish these people killed persons and  
this  
15 person was killed and this person was fusilado, that  
means this  
16 fusilado was a person that had a trial or was doing  
something  
17 bad and they killed him. That was the word they always  
used in  
18 this trip.  
19 In La Serena, fusilado, I don't know how to  
say this.  
20 This number of persons.  
21 Q. In your testimony today, you have not used the  
words  
22 executed by firing squad. My question to you is, do  
you  
23 understand the English, executed by firing squad?  
24 A. Yes. No, I don't understand. I don't know exactly  
what  
25 that means. That is why I am telling you the word  
fusilado is

RICHARD A. KAUFMAN, CMRR

686

1 different than killed.  
2 Q. I understand that. I understand your answer.  
3 You don't know the word "firing squad"? You  
don't  
4 know what it means?  
5 A. Now that you have said it I understand firing squad  
is a

6 group of persons that shoots one another.

7 Q. You know what "executed" means?

8 A. Yes.

9 Q. And I think you know what executed by firing squad  
means?

10 A. Yes.

11 Q. Before today you never heard the word firing squad  
or you

12 didn't know what it meant?

13 A. I don't think I don't know. What I am trying to  
explain

14 you is, when I tried to use this word fusilado, I  
didn't know

15 how to say that and I asked this gentleman.

16 Q. When you refer to people being killed, you thought  
they

17 were talking about being killed by firing squad?

18 A. Yes, sir.

19 Q. Did you ask them what were the offenses, why were  
they

20 being killed?

21 A. I don't know if I ask or know. Of course I imagine  
in that

22 moment because they were opposite of the government and  
they

23 were planning against the government or maybe they were  
having

24 arms. I didn't see the files of the people.

25 Q. Did you ask the people on the helicopter if they  
witnessed

1 the firing squad of these deaths? Did you ask your  
colleagues

2 on the helicopter about it?

3 A. No, sir.

4 Q. Did you ask anybody about it, even an enlisted  
person, did

5 you ask anybody about these people that had been  
killed?

6 A. Sir, I repeat to you one hundred times. How was I  
going to

7 ask? Listen, what happened. Of course they will say  
it is not

8 your problem. I cannot ask to the people or the  
friends I have

9 in the regiment because we were not there.

10 Q. You couldn't ask people in the regiment because  
they were

11 not there? Did I misunderstand that?

12 A. Yes.

13 Q. What did you say?

14 A. What I said is, if somebody died in La Serena and  
we go to

15 another place, how come I was going to ask some people  
in La

16 Serena about that if I didn't know about it.

17 Q. I thought you said you may have learned about the  
same day?

18 A. No, I don't remember. I said maybe it was the same  
day,

when I 19 maybe it was the second day or the third day or maybe  
20 arrived to Santiago I don't remember.  
at La 21 Q. You can't tell us today how many people were killed  
22 Serena when the helicopter was there?  
23 A. I read one of the statements that said six or  
seven, what I 24 read in one of the statements here.  
25 Q. You didn't know that before -- when did you learn  
that how

RICHARD A. KAUFMAN, CMRR

688

1 many people had been killed at La Serena?  
2 A. I don't know this moment. I can't tell you how  
many people 3 were dead or died in La Serena.  
4 Q. Died or dead?  
5 A. Dead.  
6 Q. Or killed by firing squad, fusilado, killed by  
firing 7 squad?  
8 MR. DAVIS: Objection. Trying to play with  
the 9 language.  
10 THE COURT: Sustained.  
11 BY MR. KERRIGAN:  
12 Q. Did you have the sense when you were leaving La  
Serena

13 there had been questionable killings there while the  
helicopter  
14 was at La Serena?  
15 A. I don't remember that.  
16 Q. Did you feel that?  
17 A. I don't remember. I don't remember my feelings at  
the  
18 moment.  
19 Q. There was no discussion on the helicopter before  
you got on  
20 the helicopter or any discussions what happened at La  
Serena  
21 with any of the other people on the helicopter?  
22 A. Inside the helicopter was impossible.  
23 Q. Before you got on?  
24 A. No.  
25 Q. The next stop is Copiapo?

RICHARD A. KAUFMAN, CMRR

689

1 A. Yes.  
2 Q. We talked about Enrique Vidal?  
3 A. Yes.  
4 Q. You saw him?  
5 A. Yes.  
6 Q. As I understand your testimony, you do not agree  
that, or  
7 you do not admit you were on the second floor in the

8           interrogation area of the garrison near Copiapo?  
9           A.   Maybe I will be more clear.  
10                        I don't remember -- I never interrogate any  
person. I  
11           never saw prisoners.  Maybe I was on the second floor  
but not  
12           with prisoners.  Nobody I ever saw.  I was not inside  
of any  
13           meeting and I don't know if I was on the second floor  
one  
14           minute and I go back; I cannot remember what I did 30  
years  
15           ago.  
16           Q.  Did you see any prisoners there?  
17           A.  No.  
18           Q.  You know they were being interrogated on the second  
floor.  
19           You didn't see them coming and going?  
20           A.  No, sir.  
21           Q.  What were you doing on the second floor?  
22           A.  I am not telling you I was on this second floor.  
Maybe  
23           Dr. Murua saw another person.  
24           Q.  You think he may have misidentified you?  
25           A.  I think so.

RICHARD A. KAUFMAN, CMRR



taller and

1 Q. Dr. Murua said the person they identified was

2 thin; you heard him say that?

3 A. Yes.

4 MR. DAVIS: Objection to the reference on  
testimony.

5 THE COURT: Sustained.

6 MR. KERRIGAN: Can we approach?

7 THE COURT: No, sir. Rephrase your question.

8 BY MR. KERRIGAN:

9 Q. Were you tall and thin when you were in the Chilean  
military

10 service on this helicopter mission in October of 1973?

11 A. Was I as tall as I am now, yes, and I was thinner.

12 Q. Were you very thin?

13 A. Yes, like any military second lieutenant.

14 Q. You pretty much look like the typical second  
lieutenant in

15 the military service --

16 A. If you see the photograph that you showed yesterday  
where I

17 was in a line there, all are thin, tall and young.

18 Q. So you weren't thinner than somebody else,  
substantially

19 thinner?

20 A. I was thinner.

21 Q. Substantially?

22 A. Yes.

23 Q. You were?

24 A. Yes.

25 Q. In fact your nickname, tell us what it was?

RICHARD A. KAUFMAN, CMRR

691

1 A. Flaco.

2 Q. What does that mean?

3 A. Thin.

4 Q. Gaunt?

5 A. Yes.

6 Q. That was your nickname?

7 A. Yes.

8 Q. You would agree you were tall and thin?

9 A. Yes.

10 Q. Who else on the helicopter mission was tall and  
thin that

11 Dr. Murua has you confused with?

12 MR. DAVIS: Objection.

13 THE COURT: Sustained.

14 BY MR. KERRIGAN:

15 Q. Was there anybody else on this mission taller and  
thinner

16 than you were?

17 A. I don't know. Maybe Arredondo. What I remember,  
no.

18 Q. I actually asked two questions thinner and taller.  
Was

19 anybody thinner than you on this mission?

20 A. What I remember, no.

21 Q. You mentioned Arredondo. How well did you know  
Arredondo?

22 A. He was from the cavalry. I don't know where I met  
him. He

23 was a very big sportsman. He jumped with horses. He

24 participated in the Olympics.

25 Q. And you knew him before the helicopter mission?

RICHARD A. KAUFMAN, CMRR

692

1 A. I don't remember.

2 Q. How did you find out that Arredondo was engaged in  
sporting

3 activity if you couldn't have casual conversations with  
him?

4 A. Because he was famous in the Army for that. Not  
very, very

5 famous but everybody knows he was in the olympics.

6 Q. You knew of him but you may not have known him  
personally?

7 A. I think that is correct.

8 Q. Did you hear the testimony read by letters rogatory  
here?

9 A. Yes.

10 Q. Arredondo's testimony was read to the jury. Did  
you in

11 fact kill people at these cities?

12 A. No.

13 Q. Did you participate in any way?

14 A. No, sir.

15 Q. By selecting prisoners?

16 A. No.

17 Q. By interrogating prisoners?

18 A. No.

19 Q. By concocting cover up stories?

20 A. What is concocting.

21 Q. Making up stories about prisoners?

22 A. No.

23 Q. Were you involved in the story that was published  
as the

24 bando that said these prisoners at Copiapo had tried to  
escape?

25 A. If I was involved in that?

RICHARD A. KAUFMAN, CMRR

693

1 Q. Yes.

2 A. No.

3 Q. That was not true, was it?

4 A. Of course that is not true. Now we know from the  
statement

5 other people said it was not true.

6 Q. Were you involved with Captain Diaz in coming up  
with the

7 story about the escape, the cover story?

8 A. I want to make very clear, you can show me 10,000

9 photographs of Captain Diaz and I will never recognize  
him. I

10 think I never spoke with him. I think he never -- I  
never see

11 him. I never talk with him, never.

12 Q. Do you know that Captain Diaz wrote a letter to  
General

13 Haag setting forth this escape story?

14 MR. DAVIS: Objection.

15 THE COURT: Sustained. Rephrase your  
question.

16 BY MR. KERRIGAN:

17 Q. Did Captain Diaz write a letter for General Haag  
about how

18 he set forth this escape story?

19 A. It is not a letter. It is like a document. For us  
it is

20 different in the military.

21 Q. And you knew about it?

22 A. Not at the date. I know it now because of all the  
things

23 we know Captain Diaz make in a statement about the  
document.

24 Q. He just made it up --

25 MR. DAVIS: He is interrupting.

RICHARD A. KAUFMAN, CMRR

694

1 THE COURT: Don't interrupt the witness.

2 BY THE WITNESS:

3 A. I don't know if he makes it. He signed it.

4 BY MR. KERRIGAN:

5 Q. He signed a statement that was a story that was a  
lie?

6 A. Yes.

7 Q. Are you saying you didn't know anything about that,  
the

8 cover story?

9 A. What I can tell you is, that he make letter the  
next day

10 this thing happened. That means we were not there.

11 Q. But you were there the next day, October 17. You  
didn't

12 leave until the afternoon?

13 A. That don't mean I see what he wrote and give it to  
the

14 Commander in charge of the regiment. How come I was  
going to

15 go to the office of Captain Diaz and say let me see the

16 document you are making or he called me and said  
Fernandez, let

17 me show you this, if he never see me. He never talk  
with me.

18 Q. You had nothing to do with creating this cover  
story about

19 the escape?

20 A. Of course not. I want to explain to you, if you  
put in

21 uniform a person, can you imagine you being a Captain  
and you

22 are going to call a Second Lieutenant that you don't  
know to

23       come from Santiago to make him -- let me make this  
story.

24       Q.   Did Chiminelli help him make the story?

25       A.   I don't know who.

RICHARD A. KAUFMAN, CMRR

695

1       Q.   Did Espinosa help him?

2       A.   I don't know.

3       Q.   But this story was made up while you were still in  
Copiapo?

4       A.   That don't mean I was involved in the story.

5       Q.   But the story was made up while you were there?

6       A.   I imagine. I don't know. I don't know, sir.

7       Q.   You saw the document?

8       A.   I saw the document now in all these files, but I  
didn't see

9       the document when this happened.

10      Q.   But you know the document was prepared on the day  
you were

11      still in, that was the point?

12      A.   I don't know when it was prepared. How can I am  
going to

13      know when the document was prepared. Maybe the  
document was

14      made ten years ago or ten years after that. I don't  
know. I

15      was not there. I was not in the office that they make  
this

16 story that they planned this or decided to write this  
document.

17 Q. The people on the helicopter participated in the  
killings

18 at Copiapo; you agreed to that?

19 A. It is not my people.

20 Q. The people on the helicopter participated in the  
killings

21 at Copiapo, correct or not?

22 A. I don't know if they participate or not in the  
killing of

23 the persons at Copiapo. I don't know. I didn't tell  
you.

24 General Arellano was sitting in an office and he talks  
to

25 Colonel Haag and they decided who they were going to  
kill. I

RICHARD A. KAUFMAN, CMRR

696

1 don't know. I was not there, sir.

2 Q. Did you hear any gun shots?

3 A. No.

4 Q. You said you went to sleep at Copiapo?

5 A. Yes.

6 Q. And you didn't see General Arellano until the next  
day?

7 A. I think so.

8 Q. Did they have a dinner there that night at Copiapo  
for the



9 officers?

10 A. I don't remember that.

11 Q. What do you remember about Copiapo?

12 A. About the regiment?

13 Q. What you did there. What do you remember today?

14 A. I think we arrived there, we went to the meeting  
and I went

15 to the club house. I think it was a very small  
regiment. I

16 don't know how big it was. I stay in the club house.  
As usual

17 as a second lieutenant it must be.

18 Q. What else do you remember about being at Copiapo?

19 A. The club house was very old and I went to sleep  
there and

20 the next day we go to another place.

21 Q. Did you take your weapons off while you were in  
Copiapo?

22 A. Maybe I take off my weapons. I imagine I take off  
my

23 weapons when I was going to have dinner or went to  
sleep, of

24 course.

25 Q. So you are in combat uniform, you are at war and  
you are

RICHARD A. KAUFMAN, CMRR

697

1 taking off your weapons and having dinner? You don't  
go in

2 with your normal weapons?

3 A. Go in where?

4 Q. To the club, wherever you had dinner?

5 A. When you are seated, you put your weapons at your  
side.

6 Q. Did you have weapons with you at Copiapo all the  
time?

7 Were they with you all the time?

8 A. I think so. I don't remember how I am going to  
take out my

9 weapons and put them in another place.

10 Q. I am just asking if you took your weapons off when  
you were

11 at Copiapo?

12 A. When I went to sleep.

13 Q. Not other than that?

14 A. Or when I have dinner.

15 Q. Who did you room with?

16 A. I think I sleep alone.

17 Q. What time did you go to sleep?

18 A. I don't remember. Late.

19 Q. How late?

20 A. 10, 10:30.

21 Q. What time did you get up?

22 A. I don't remember. I am sure it was 7:30, 8, 9.

23 Q. When did you learn that people had been killed  
during the

24 night at Copiapo?

25 A. I don't know when I know. I don't know if I knew  
that day

698

1 or I knew when we arrived at another city or Santiago.  
It was 2 not something you can say oh, they killed these people  
and they 3 make a meeting to say this.

4 MR. KERRIGAN: Your Honor, I am at a point.

5 THE COURT: We will break now.

6 On Monday it is a religious holiday for at  
least one 7 member of the jury and my religious holiday as well.  
There

8 will be no Court on Monday.

9 On Tuesday, Ms. Hawley, you indicated you had  
a 10 business trip that you could possibly postpone.

11 Did somebody have a doctor's appointment on  
Tuesday?

12 A JUROR: 2:30.

13 THE COURT: If we broke at 2, would that give  
you 14 enough time?

15 A JUROR: Yes.

16 THE COURT: I have a medical appointment as  
well early 17 in the morning, so we will begin at 10.

18 Do not discuss this case amongst yourselves or  
anyone

19 else. Have no contact whatsoever with anyone  
associated with  
20 the trial. Do not read or listen to anything touching  
on this  
21 matter in any way. If anybody should try to talk to  
you about  
22 this case, instruct them to immediately stop and be in  
contact  
23 with my staff concerning it.  
24 You must refrain from reading anything in the  
25 newspapers, seeing anything on TV or reading anything  
on line.

RICHARD A. KAUFMAN, CMRR

699

1 You may give your notebooks to the court  
security  
2 officer.  
3 Have a good weekend, a good holiday and I will  
see you  
4 on Tuesday morning at 10 o'clock.  
5 (Jury leaves room.)  
6 THE COURT: Mr. Davis, you had indicated you  
would  
7 like to submit the memorandum -- you may step down.  
8 You would like to submit the response by  
Monday. I  
9 would like it by noon. I will not be here but members  
of my  
10 staff can look at it to have it ready for me.  
11 Any other issues or matters?

12                   MR. DAVIS: Looking at scheduling, it seems  
likely we  
13                   could finish, if not Tuesday with the entire trial,  
Wednesday  
14                   with the entire trial. Obviously there will be motions  
and I  
15                   assume you would want to entertain that separately from  
the  
16                   jury. We just want to point that out for scheduling.  
17                   Under any circumstances we should be finished  
by  
18                   Wednesday midday if not earlier.

19                   THE COURT: I am awaiting your memorandum  
Monday and  
20                   in regard to the issues I anticipate being the major  
issues for  
21                   the jury charge conference, and the jurors have  
provided to me  
22                   their conflicts and after Thursday of next week we  
start to run  
23                   into different conflicts for at least two jurors.  
Juror number  
24                   7 has a 9:30 class at FIU she missed this Friday but  
feels she  
25                   cannot miss next Friday. She has also a business trip  
on the

RICHARD A. KAUFMAN, CMRR

700

1                   14th she has indicated to me while she can miss it on  
the 7th

critical

2 and 8th of next week, the business trip on the 14th is

the 15th

3 and juror number 5 has a prepaid vacation beginning on

4 and of course we have a federal holiday on the 13th.

part of

5 If we can finish up on Tuesday or the early

for jury

6 Wednesday, perhaps we could use Wednesday and Thursday

as to

7 charge and motions and then I will make a determination

way we

8 what happens with the juror who has a conflict. Either

or

9 will start to lose somebody for either business trips

point

10 prepaid vacation. I will make a determination at that

Tuesday.

11 whether we will go forward on Friday or wait for

12 Any other issues?

13 Have a nice weekend.

Kerrigan

14 MR. DAVIS: My client is on the stand. Mr.

on

15 had no objection to me preparing him for his testimony

16 Tuesday.

17 THE COURT: That is fine.

18 o0o

19 I certify that the foregoing is a correct

20 transcript from the record of proceedings

21 in the above-entitled matter.

22

23

\_\_\_\_\_

24

Date

Official Court Reporter

25

RICHARD A. KAUFMAN, CMRR