

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 7,
2003)	
)	
	ARMANDO FERNANDEZ-LARIOS,)	
)	
	Defendant.)	
)	
	-----x)	

VOLUME 9

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

APPEARANCES:

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

For the Defendant:	STEVEN W. DAVIS, ESQ.
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Court Reporter:

Richard A. Kaufman, CMRR

RICHARD A. KAUFMAN, CMRR

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I N D E X

Rec.

Direct Cross Red.

WITNESSES FOR THE PLAINTIFF:

ARMANDO FERNANDEZ LARIOS 720 758

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF IN EVID.

DEFENDANT'S

RICHARD A. KAUFMAN, CMRR

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.)

not

6 THE COURT: Juror number 6 has indicated he is

can stay

7 feeling well today. He is here. He doesn't think he

starts

8 all day. He is here. Lisa has talked to him and if he

with it.

9 feeling badly, he will let her know and we will deal

and the

10 I have read over the brief by the plaintiff

one and an

11 response by the defendant as to the two areas on cross

12 examination. I am prepared to give you my ruling on

over my

13 initial ruling on the second area. I just want to read

second

14 prior orders before I give you a final ruling on the

15 area.

the

16 As to the first area, which would be the cross

17 examination concerning the defendant's membership in or

18 connection with DINA, I do find this was excluded under

based

19 motion in limine. I do not find any additional nexus

20 upon the plaintiffs' submission. I do not find it
relevant or
21 probative of issues that are pending before this jury.
22 As to the second issue, which is the cross
examination
23 of the defendant in regard to his having provided false
24 testimony to the Chilean Supreme Court as evidenced by
the Rule
25 11 hearing before Judge Parker in the Letelier case, I
just

RICHARD A. KAUFMAN, CMRR

1 want to review the orders on the motions in limine, but
my
2 initial ruling -- what I think the ruling is going to
be, but I
3 do want to check the orders; is that cross examination
on his
4 failure to tell the truth before the Chilean Supreme
Court,
5 would be an area that would come under Rule 608B. This
would
6 be a specific instance of conduct of the witness for
the
7 purpose of attacking his credibility, other than a
conviction
8 of a crime. 608B provides it may not be proved by
extrinsic
9 evidence. However, if it is probative of truthfulness
or
10 untruthfulness, the Court in its discretion may grant
the
11 party, grant inquiry into an area on cross examination
12 concerning the witness' character for truthfulness or
13 untruthfulness.

14 I do want to review the orders on the motions
in
15 limine to be sure it is within the ambit of that order.
My
16 recollection is that order precluded the introduction
of the
17 subject area of the Letelier assassination or the
defendant's
18 involvement in it.

ask the 19 The plaintiff, would therefore, be allowed to
Chilean 20 defendant whether he indeed lied under oath to the
inquiry. 21 Supreme Court, and that would be the extent of the
not 22 Extrinsic evidence would not be introduced and it is
23 introduced, it is not introducible under 608B.
Letelier 24 It would not be introduced as part of the
proceeding 25 case, but simply would be referred to as a judicial

RICHARD A. KAUFMAN, CMRR

inquiry 1 or another proceeding, and there would be no further
by the 2 whatsoever into the subject area as previously ruled on
3 Court, concerning the Letelier assassination.

in 4 I have just looked at the order on the motion
conviction 5 limine and my order covers the subject area. His
car 6 and his role in assisting with the preparation of the
7 bombing.

area of 8 This does not directly relate to the subject
relates 9 the car bombing of the Letelier assassination, but only
Chilean 10 to a perjury -- the failure to be forthright before the
the fact 11 Supreme Court as to answering questions concerning --
the extent 12 he was untruthful in a judicial proceeding, would be
13 of the cross examination.

versus United 14 In support of this ruling, I cite Walder
States 15 States, 347 U.S. 62, a 1954 decision by the United
Rule 403 16 Supreme Court. I do not find this is a violation of
made of 17 as constructed by the Court in that no mention will be
18 the subject area, but only concerning the fact that the

19 defendant was previously not truthful.

20 In addition, I cite United States versus

21 D E L A T O R R E, 639 F.2nd 245, a 1981 decision by
the Fifth

22 Circuit in which the Fifth Circuit found, clearly
crimes

23 involving dishonesty such as perjury are extremely
probative of

24 a witness' credibility and H Y N E S versus C O U G H L
I N, 79

25 F.3rd, 285, a 1996 decision by the Second Circuit.

RICHARD A. KAUFMAN, CMRR

1 In addition, the committee notes under 608B
2 specifically reference exactly the circumstance here,
which is,
3 the principal witness testified and an inquiry into his
4 character for truthfulness.

5 Is my ruling clear to the plaintiff, you may
inquire
6 into the fact he was not truthful and no further? You
may not
7 mention the subject area and no extrinsic evidence may
be
8 introduced. You may only make inquiry whether or not
he was
9 truthful in another proceeding.

10 MR. KERRIGAN: I understand, Your Honor.

11 MR. DAVIS: Your Honor, just to take this out
a little
12 bit, to look at the import of the Court's ruling.
13 Mr. Fernandez would testify if he were asked the
question he
14 was ordered to lie by a superior. That was always his
15 testimony. We have the plea colloquy. That would be
his
16 testimony and he also ultimately as you also know from
the plea
17 colloquy from the Letelier case, he came forward and
corrected
18 that lie, albeit nine years later.

19 THE COURT: You can go into all those matters.
He can

20 explain and you can go into all those matters on your
21 questioning of him.

22 MR. DAVIS: Again, I am not trying to open the
door on

23 that matter. I am seeking guidance in light of your
previous

24 ruling. It puts the defendant in an unfair
disadvantage. I

25 understand your ruling but I am trying to gauge what I
can do

RICHARD A. KAUFMAN, CMRR

was 1 and not do in regard to opening doors which I thought
2 already shut by Your Honor's pretrial order.

far as 3 THE COURT: This inquiry need not be made as
4 the subject area. The subject area of the inquiry by
5 Chilean Supreme Court, nor does the defendant need to
6 go into the subject area when saying he was ordered by
7 superiors to lie; and that would be the extent of it. They would
8 inquire whether he was truthful in another judicial proceeding,
9 not even mentioning the Chilean Supreme Court; another
10 proceeding, and the rebuttal by the defendant would be that he was
11 ordered.

before 11 MR. DAVIS: I just want to put it out there
12 your they come in and hear something and we do run afoul of
13 order for order or I run afoul of what I think is a favorable
14 me. If he were to say I was ordered to lie in another
15 proceeding. Then I would ask him, did you attempt to
16 correct that and he would say, yes, I resigned from the Army
17 and came here trying to correct it.

18 Are you now saying I have opened the door to
the
19 entire Letelier proceeding because that is what I am
trying to
20 avoid and you are putting him in the unfair position,
21 respectfully, Your Honor, that he asked to defend the
statement
22 with one arm tied behind his back.
23 THE COURT: I don't think what you said is
violative
24 of the order. They are entitled to bring out he lied,
you are
25 entitled to bring out he was ordered to lie and
corrected it.

RICHARD A. KAUFMAN, CMRR

these 1 Neither side need go into the subject area surrounding
2 events which is the scope of my motion in limine.

questioning 3 MR. DAVIS: It can be made clear in the
4 this is a proceeding unrelated to anything with regard
to the 5 plaintiffs' allegations in this case.

6 THE COURT: The question should be unrelated
to this 7 case.

8 MR. KERRIGAN: There is one other matter if
you have 9 concluded, Your Honor?

10 THE COURT: Yes.

Your 11 MR. KERRIGAN: In the examination on Friday
12 Honor, I counted, and I am happy to read this from the
13 transcript if the Court would care for me to do that,
six times 14 in which Mr. Davis made a speaking objection. These
were not 15 lightly presented. These were very forceful speaking
16 objections asserting affirmative testimony in the form
of an 17 objection.

18 Here is the problem I have with it, Your
Honor, I 19 don't know how I should respond. We have not responded
in kind

20 because you issued an order we should not do that.

21 THE COURT: I would remind both sides I do not
allow

22 speaking objections and I expect the parties to comply
with

23 that.

24 There were one or two times you indicated it
was a

25 speaking objection which I did not think it was but
there was a

RICHARD A. KAUFMAN, CMRR

sides to 1 violation of my ruling by Mr. Davis and I expect both
2 comply with my rulings.

of 3 MR. DAVIS: Your Honor, it was just a question
4 Mr. Kerrigan asking for the witness to comment on the
testimony 5 of other witnesses is totally outside --

6 THE COURT: I don't find that was a speaking
7 objection. That was one of the times you said he was
asking 8 for comment of other testimony and I didn't find that
was a 9 speaking objection.

10 Bring in the jury.

11 (Jury present.)

12 THE COURT: You are still under oath, sir.
13 Thereupon --

14
15 ARMANDO FERNANDEZ LARIOS,
16 called as a witness herein, having been previously duly
sworn, 17 was examined and testified further as follows:

18 THE COURT: You may proceed, Mr. Kerrigan.

19 DIRECT EXAMINATION

20 BY MR. KERRIGAN: (Continuing.)

21 Q. Mr. Fernandez, continuing the questioning we were
involved

22 with last week. When you traveled to each one of these
cities
23 in Chile and arrived at the regiment, did you ever go
out on
24 any detail with any members of the helicopter group
into the
25 surrounding area outside of the regiment, for any
reason?

RICHARD A. KAUFMAN, CMRR

1 A. That I remember, no, sir.

2 MR. DAVIS: Your Honor, the interpreter is
3 translating. If he could face the other way.

4 THE COURT: Who is he translating for?

5 MR. DAVIS: The family.

6 BY MR. KERRIGAN:

7 Q. You never sought in any of these regiments to go
outside
8 the regiment and establish, for example, a perimeter
zone, a
9 protection zone around the regiment?

10 A. As I remember, I never go outside the regiment.

11 THE COURT: I didn't hear you.

12 BY THE WITNESS:

13 A. I never remember going out of the regiments.

14 BY MR. KERRIGAN:

15 Q. And you never made any arrests of people outside
the
16 regiment?

17 A. When you say arrest.

18 Q. Did you apprehend people outside of the regiment in
19 connection with your helicopter group?

20 A. No, sir.

21 Q. And you took no prisoners?

22 A. No, sir.

23 Q. And you received no fire, no one fired at you or
engaged

24 you in any kind of combat activity?

25 A. No, sir.

RICHARD A. KAUFMAN, CMRR

to do 1 Q. And your sole function in going to the regiment was
2 what?

3 A. Excuse me.

sure 4 MR. DAVIS: The witness is distracted. I am
5 Frank is doing the best he can.

hallway, 6 THE COURT: Maybe you can move back into that
7 sir.

8 BY MR. KERRIGAN:

the 9 Q. What was the purpose of going to the regiments with
10 helicopter group?

assigned to 11 A. As I said the other day in my statement, I was
12 General Arellano to be his bodyguard.

it was 13 Q. When you described Friday your duties, you told us
14 different being a bodyguard under the military in Chile
15 at the time, than, for example, a bodyguard to the president
16 of the United States; is that the basis of what you said?

17 A. Yes.

be by 18 Q. You would agree with me a bodyguard means you must
19 correct? the side of the person you are a bodyguard for;

At this 20 A. Yes. When is the opportunity to be at the side.
be 21 time when we were inside the regiment, I didn't need to
22 there because we were inside the regiment.
the 23 Q. And you didn't need to be there when you were in
were the 24 helicopter by his side; correct, or is that when you
25 bodyguard?

RICHARD A. KAUFMAN, CMRR

1 A. When I was inside?

2 Q. When you were inside the helicopter?

3 A. There was only military inside.

4 Q. He didn't need a bodyguard inside the helicopter?

5 A. I didn't think so.

6 Q. And he didn't need a bodyguard inside the regiment?

7 A. No.

8 Q. But you had orders to be a bodyguard?

9 A. That is the assignment they give me. The order
they give

10 me. I can't complain the orders.

11 Q. Did you ever go back to the people that gave you
this order

12 after you came back to Santiago from Cauquenes?

13 A. I am sure I report when I return to the chief of
the staff

14 and said here I am again.

15 Q. Did you turn in a report of your activities with
General

16 Arellano?

17 A. No, we don't need to do that.

18 Q. Did you report to a commanding officer and explain
to a

19 commanding officer any aspect what you had done on this

20 helicopter trip?

21 A. I am sure the only thing I said was, here I am, and
that is

22 it. What I was going to report? I cannot report the

23 activities of a General.

24 Q. I am talking about what you did.

25 A. I understand.

RICHARD A. KAUFMAN, CMRR

1 Q. Report what you said you did?

2 A. The only thing I am sure I report saying, sir, I am
here.

3 Q. When you came back, did you report to any other
commanding
4 officer?

5 A. I am sure I report to the Commander of the Second
Commander
6 of the infantry school and I said I am here again.

7 Q. So your report to him was, I am here again?

8 A. I don't know exactly the words I said. I am sure
that I
9 arrived there.

10 Q. Would you please look at page 454 of your
deposition which

11 is in that binder, line 18.

12 A. Okay.

13 Q. You were asked a series of questions about your
duties as a
14 bodyguard and if you go to 455 line 1, did you make
this

15 statement. "It was my duty to be the bodyguard. The
name
16 bodyguard means you must be at his side."

17 A. Yes, I just told you that.

18 Q. Except it wasn't needed at any time in the
helicopter or
19 the regiment; that is your testimony?

20 A. I don't understand your last question, your last
statement.

21 Q. Must be by his side, but it wasn't necessary when
he was in

22 the regiments or when he was in the helicopter;
correct?

23 A. Well, the way you are putting, sir, it is correct
what I

24 said. You need to be -- being a bodyguard, you need to
be at

25 the side of the person you are taking care. In this
case it

RICHARD A. KAUFMAN, CMRR

They put
moment
would

1 was a military. I was assigned to be a bodyguard.
2 me, go and be the bodyguard of the General. At that
3 when I was with him, if he decided not to be with me, I
4 say okay.

screen the

5 Q. In your testimony Friday -- we have put on the
6 quote, I think, if you look at the bottom of the page?

7 THE COURT: What is this?

8 MR. DAVIS: Objection.

the

9 MR. KERRIGAN: This is the actual quote from
10 deposition.

11 MR. DAVIS: Objection.

12 THE COURT: Sustained. Improper impeachment.

13 BY MR. KERRIGAN:

been 30
that

14 Q. You said Friday several times, I believe, it has
15 years ago and your memory is not very good about things
16 happened 30 years?

17 A. I think it is normal to any person.

30

18 Q. My question is not about a normal person. You said
19 years was a long time for you to remember things?

20 A. Yes.

21 Q. In fact, Mr. Fernandez, you have been remembering
this in
22 some detail now for over 20 years, have you not, since
the
23 early 1980s? This was brought to your attention in the
early
24 1980s, was it not?
25 MR. DAVIS: Objection. I don't know what
"this" is.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Sustained.

2 Rephrase your question.

3 BY MR. KERRIGAN:

4 Q. Weren't you aware of publicity about the Caravan of
Death
5 occurring in the early 1980s in which your name was
mentioned?

6 A. Yes.

7 Q. In the early 1980s, it was nine or ten years after
this had
8 happened?

9 A. Yes.

10 Q. And you were very upset about your name being in
the press?

11 A. Yes.

12 Q. Mr. Fernandez, was that when you started to make
your
13 diary?

14 A. No, no. I don't think so.

15 Q. When did you start the diary?

16 A. I don't know. Maybe it was 1976, 1978, 1979. I
really
17 don't remember.

18 Q. And it stopped when?

19 A. When I came here to the United States.

20 Q. In 1982 and 1983 when this was being discussed, you
were
21 making notes, daily notes in your diary?

my life 22 A. Not daily notes. Notes for things that happened in
23 only. What I remembered, I never wrote about my past.
had been 24 Q. But you knew allegations had been made that people
25 killed by the Caravan of Death?

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. And you were concerned about it?

3 A. Of course I was concerned.

4 Q. You remembered at that time, certainly, in the
early 1980s

5 with some recollection, you could remember better than
you can

6 now 30 years later?

7 A. I think to, yes.

8 Q. So when you testified it had been 30 years ago,
really, for

9 the last 20 years you have been aware of these
allegations

10 being in the public; correct; the last 20 years?

11 A. Yes.

12 Q. Before this trial today, have you made any
statements at

13 any time about the Caravan of Death to anybody that
would

14 refresh your memory today if you recalled those
statements what

15 you knew in 1981 or 1982?

16 A. Well, I think --

17 MR. DAVIS: Your Honor, I have an objection.
We can

18 take this up side bar.

19 (Side bar.)

20 MR. DAVIS: The issue I have, Your Honor, and
I don't

21 know what Mr. Fernandez is going to recall, but he did
give
22 statements to the Justice Department. They gave him
lie
23 detector examinations in connection with the other
proceeding,
24 the Letelier proceeding. The witness has been told to
tell the
25 truth --

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Where are you going with this?

2 MR. KERRIGAN: It has nothing to do with
Letelier.

3 I think the side bar references and when I
finish my
4 explanation the Court may agree, I think they are very
5 disruptive to cross examination. There is no possible
6 reference to Letelier --

7 THE COURT: What are you talking about?

8 MR. KERRIGAN: He made the statement to
Arellano and
9 others publicly when he was accused.

10 THE COURT: You need to rephrase your question
because
11 it is a very open-ended question as to statements he
made to
12 anybody. If you want to ask him about statements he
made to
13 Arellano then ask that question.

14 MR. KERRIGAN: It didn't occur to me this
could
15 possibly come up.

16 MR. DAVIS: Mr. Kerrigan is complaining about
speaking
17 objections and I am trying to come here and raise
legitimate
18 issues.

19 THE COURT: It was an open-ended question.
20 It is not disruptive.

21 You can certainly ask him about a statement he
made to
22 Arellano but making any statements to any person opens
a very
23 broad door.
24 MR. KERRIGAN: My expectation was when I asked
about
25 the Caravan it would never possibly lead to statements
about

RICHARD A. KAUFMAN, CMRR

1 Letelier. That had nothing to do with Letelier --

2 THE COURT: Ask your questions more narrowly.

3 (Open court.)

4 THE COURT: Sustained.

5 Rephrase your question.

6 BY MR. KERRIGAN:

7 Q. When your name was appearing in conjunction with
the

8 Caravan of Death, you went to General Arellano, did you
not?

9 A. Yes, sir.

10 Q. When you went to General Arellano, did you have
permission

11 from General Arellano to address him, to go to him, to
speak to

12 him?

13 A. No, he was not a General. He was a civilian when I
went to

14 see him. He was a civilian.

15 Q. You felt once he became a civilian, no longer would
you

16 have to ask him for permission to speak, you could go
and talk

17 to him?

18 A. The normal thing is you can do it. You can ask
permission

19 to ask because -- he was a military. You must feel
some

20 respect.

for 21 Q. What you asked General Arellano to do, was to cover
under 22 you; didn't you; you have to cover for me because I was
23 your command?
24 A. I don't know if the correct word is "cover," what I
said.
25 I said to General Arellano he must tell what he knows
about me,

RICHARD A. KAUFMAN, CMRR

1 what he knows, what he knew that my function at that
moment was

2 at that moment was delicate.

3 Q. Did you just say your conscience --

4 A. No conscience.

5 Q. We have an interpreter and you are entitled to have
all

6 these questions put to you in Spanish if you would
like, and to

7 answer in Spanish if you prefer to do that.

8 A. No, it is correct like that.

9 Q. When you went to General Arellano, you asked him to
cover
being

10 for you because your name was appearing in the press as

11 associated with these killings?

12 A. I would like to respond with the interpreter

13 (Interruption.)

14 A. My answer to your question is, I did not ask
General

15 Arellano to cover for me.

16 What I asked him to do was for him to tell the
truth

17 as to the function I performed within that group.

18 BY MR. KERRIGAN:

19 Q. What was the truth you asked General Arellano to
say?

20 A. That I was not involved in any of the killing with
the

21 Caravan.

22 Q. And General Arellano refused to do that; didn't he,
he

23 refused to do that?

24 A. No. He said he was very nervous and that Colonel
Arellano

25 was involved with this, he didn't know anything at the
moment.

RICHARD A. KAUFMAN, CMRR

1 Q. He said Colonel Arellano or Arredondo?

2 A. Excuse me, Arredondo.

3 Q. He said Colonel Arredondo was involved in the
killings?

4 A. Yes, that is what I remember he said.

5 Q. Who else did he say was involved in the killings?

6 A. Nobody. He don't name me any other person.

7 Q. So when you had this conversation with General
Arellano,
you and
8 did you leave on a pleasant note? Did you say thank
9 goodbye?

10 A. No.

11 Q. Mr. Fernandez, wasn't the problem you were facing
that your
killings,
12 name was being circulated as being involved in the
13 but that your hope was that General Arellano would just
say you
14 were following orders, that is why you went to ask him
for
15 help?

16 A. Yes, of course.

17 Q. That you were following orders?

18 A. No. He was in charge of the helicopter and I was
saying in
19 the way that he was in charge he must make a statement
and
20 release my name of all these things telling the
newspaper,

must 21 because if he was in charge, he was the person that
22 take --
23 Q. Must take responsibility?
24 A. Must take responsibility.
wouldn't 25 Q. And the people that were following orders, they

RICHARD A. KAUFMAN, CMRR

1 have to take the responsibility because he was the
General in 2 charge?
3 A. In that moment, I don't know if they will take the
4 responsibility, the people that follow his orders.
5 Q. Were you asked in this lawsuit to produce pictures
that 6 were taken of you between 1973 and 1987; do you recall
if you 7 were asked that?
8 A. I don't recall.
9 Q. Isn't it true you don't have any pictures, we have
one 10 picture in evidence, but you don't have any pictures
taken of 11 you between 1973 and 1987?
12 A. I think I provide you with a scrapbook that has a
lot of my 13 pictures there.
14 Q. You provide me with what?
15 A. A book.
16 Q. What are you saying you provided?
17 A. I don't know. I don't know if I have any
photograph. I 18 think the photograph you have from me you have it.
19 Q. The photograph that was produced was your drivers
license? 20 A. Yes.
21 Q. And you have no passport photos from 1973 to 1987?

22 A. I don't think so, no.

23 Q. And you had no other photographs of you taken, for
example,

24 pictures of you taken with your uniform?

25 A. No, I don't have it.

RICHARD A. KAUFMAN, CMRR

1 Q. From 1973 to 1987?

2 A. I don't have it.

3 Q. But my question is, were any pictures taken of you
between

4 1973 and 1987, for example, in your full dress either
combat

5 uniform or dress uniform?

6 A. Maybe I have some or maybe my mother has a lot in
Chile. I

7 don't have it. I don't have that photograph. I am not
saying

8 they never take me a photograph but I don't have it.
If you

9 ask me if I have it, really I don't have that
photograph.

10 Q. You asked your mother to destroy your diary. What
else did

11 you ask her to destroy?

12 A. Sir, when I said I asked my mother to destroy, she
said

13 what are you going to do with it and I said nothing and
I don't

14 remember what kind of photograph she has about me.

15 Q. Do you believe Dr. Murua has misidentified you in
his

16 testimony?

17 A. Yes, sir.

18 Q. Have you in your possession here in the United
States any

19 pictures of you in your military uniform from 1973 to
1987 when

20 you left Chile?

21 A. Excuse me. From what date?

22 Q. 1973 to 1987; do you have any pictures with you
here of you

23 in your military uniform or combat uniform?

24 A. What I remember, no, sir.

25 Q. Do you know the source of the picture that was
presented

RICHARD A. KAUFMAN, CMRR

1 here of the cadets in a line? Where did that picture
come 2 from?

3 A. From the military school. That must be in 1968.

4 Q. How did you get that picture?

5 A. I think that was one of the first day we went
inside of the

6 military school, the first, second -- maybe a month we
were

7 there. I get that picture. I don't know.

8 Q. Where did you get it?

9 A. From the military school.

10 Q. Did you have to write to Chile to get it or did you
bring

11 it here with you?

12 A. I think I have it here.

13 Q. Where are the other pictures of you?

14 A. I don't have another one.

15 Q. But you had that picture?

16 A. I think so. I don't have another one. I don't
know why --

17 I don't know your point if I have that picture why I
don't have

18 another one. I don't have another one.

19 Q. Did you send this picture with Mr. Davis to Chile
or give

20 it to Mr. Davis to bring to Chile for presentation to

21 Dr. Murua?

it to

22 A. I don't know if I give it to Steven. I must give

23 him, yes.

24 Q. Why would you give a picture for purposes of

25 identification; what would be the point of that?

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. KERRIGAN:

4 Q. Did you give the picture to Mr. Davis to take to
Chile for
5 purposes of having someone see if they could identify
you in
6 that picture?

7 MR. DAVIS: Objection. Now he is going into
8 attorney/client communications among other things.

9 THE COURT: Sustained.

10 BY MR. KERRIGAN:

11 Q. Mr. Fernandez, did you by the use of this picture,
intend
12 to obtain a misidentification from any witness that
would look
13 at the picture?

14 MR. DAVIS: Objection, Your Honor.

15 THE COURT: Which picture are you referring
to, the
16 one in evidence?

17 MR. KERRIGAN: Of the cadets in a line.

18 THE COURT: Overruled.

19 BY MR. KERRIGAN:

20 Q. Was that your intent?

21 A. No.

22 MR. KERRIGAN: Your Honor, I have had copies
made of

jury 23 the exhibits in evidence I would like to publish to the
24 and one for the Court and for counsel. There are three
would 25 photographs, Plaintiffs' Exhibits 19, 20 and 13, and I

RICHARD A. KAUFMAN, CMRR

1 like to present them to Mr. Davis to review. These are
exact
2 copies of the exhibits, but before they are published I
wanted
3 to give them to counsel and I will continue my
questioning.

4 BY MR. KERRIGAN:

5 Q. There is a picture in evidence taken some years
later where
6 it looks like you have gained some weight from your
earlier
7 days in the military?

8 A. Yes.

9 Q. When was that picture taken, if you know?

10 A. I don't know. Late 1970s.

11 Q. Late 1970s.

12 A. Yes.

13 Q. What was the difference in your weight if you
recall, and
14 just approximately between the picture we have seen
here that

15 you have identified in the late 1970s and the picture
we have

16 marked as Exhibits 13, 20 and 21 where you are a cadet,
what is
17 the approximate difference in your weight?

18 A. I can't tell you.

19 Q. Would you agree with me you look substantially
different in
20 that picture as opposed to the cadet picture?

21 A. I am not agreeing with that because I am the same
person.

22 Q. You wouldn't agree that photograph we have taken of
you in

23 the late 1970s you wouldn't agree it looks
substantially

24 different than your cadet picture?

25 A. One I was dressing in military uniform and the
other one I

RICHARD A. KAUFMAN, CMRR

old and 1 was in civilian. In one I am 17 years old or 18 years

2 the other one I was 28 years old.

including 3 Q. The pictures shown to the witnesses in Chile

you were 4 Dr. Murua and Enrique Vidal were pictures of you when

5 17, 18?

6 A. Yes.

mission in 7 Q. How old were you when you were on the helicopter

8 Copiapo?

9 A. I think 24.

10 Q. 1973 in Copiapo?

11 A. 23 or 24 years old.

12 Q. Your birthday is September. So you turned 24.

13 A. Yes.

publish to 14 MR. KERRIGAN: At this time I would like to

three 15 the jury for purposes of further examination these

Court. 16 photographs. I have eight copies for the jury and the

17 THE COURT: Any objection?

18 MR. DAVIS: No objection.

19 THE COURT: You may proceed.

20 BY MR. KERRIGAN:

was taken 21 Q. The photograph we have been discussing here that

as 22 of your military group is now before the Court and jury
23 Exhibit 19. Is that the same photograph you have been
24 referring to here in your testimony?
25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. This photograph was taken when you were 17 or 18?

2 A. 18.

3 Q. And the year was 1968 or 1969?

4 A. It must be 1968.

5 Q. Between this photograph and say 1976, do you have
any other
6 photographs of you in uniform during that period of
time?

7 A. I don't know.

8 Q. You are pictured in this photograph, are you not?

9 A. Yes.

10 Q. Are you in this photograph?

11 A. Yes.

12 Q. Are you the person with the cast on your hand?

13 A. Yes.

14 Q. And the person in front of you is Enrique Vidal?

15 A. Yes.

16 Q. Would you go to Plaintiffs' Exhibit 20, the next
exhibit in

17 the stapled package. This photograph was presented to

18 Dr. Murua. Dr. Murua has testified he put an X on
everyone who

19 was not you?

20 A. Yes.

21 Q. Is there an X on you in this picture?

22 A. No, sir.

line? 23 Q. There is not an X on the person in the front of the
24 A. No, sir.
time 25 Q. Have you ever seen Dr. Murua prior to 1973 at any

RICHARD A. KAUFMAN, CMRR

1 prior to 1973?

2 A. No.

3 Q. Had you talked or met with Dr. Murua after 1974?

4 A. No.

5 Q. If you would go to Exhibit Number 13 and you will
see a

6 circle around your face?

7 A. Yes.

8 Q. This was identified by Enrique Vidal?

9 A. Yes.

10 Q. The person in this photograph with a circle around
the face

11 is the same person that is in the photograph marked
Exhibit 20

12 which there is no X; correct?

13 A. Yes.

14 Q. Did you see Enrique Vidal on the second floor of
the

15 garrison building in the regiment at Copiapo in the
presence

16 of -- Dr. Murua on the second floor in the
interrogation area

17 of the garrison at Copiapo with a briefcase in your
hand

18 standing there with General Arellano?

19 A. No, sir, I was not there.

20 Q. Is it your testimony if Dr. Murua has made this

21 identification, he is in error?

22 A. I think he makes an error, yes.

I am 23 Excuse me. I am not saying nobody was there.

24 saying he is not lying. He confused me with another
person.

25 Q. Yet he could identify you from a military
photograph at

RICHARD A. KAUFMAN, CMRR

1 your military training when you were 17 years old?

2 MR. DAVIS: Objection, mischaracterizes his
testimony.

3 THE COURT: Sustained.

4 BY MR. KERRIGAN:

5 Q. Why didn't you send or present to Dr. Murua in his
6 deposition testimony photographs of you taken at a time
when

7 you were in your military uniform similar to how you
would have

8 appeared in 1973 in Copiapo; why did you not do that?

9 A. Excuse me. Really I don't understand your
question. Why I

10 don't send photograph to Dr. Murua?

11 Q. Why didn't you present through your lawyer or
otherwise to

12 Dr. Murua to identify the person he saw, why didn't you
send a

13 picture of you in a military uniform how you look in
1973?

14 A. I didn't have a photograph of me to send. I don't
know.

15 Q. You did not go to Chile for these depositions;
correct?

16 A. No, sir.

17 MR. KERRIGAN: Your Honor, I have completed my
18 examination on the photographs if the Court wants them
19 recovered from the jury at this time.

20 THE COURT: That is fine. They can just put
them

21 down, unless you need them back.

22 BY MR. KERRIGAN:

23 Q. In the early 1980s in Chile, the first cities
deaths that

24 were in the press from the Caravan resulted in Calama;
wasn't

25 that when the first article came out?

RICHARD A. KAUFMAN, CMRR

1 A. I think so, yes.

2 Q. Calama was the last stop in the mission before you
went

3 back to Santiago; it is the furthest city North?

4 A. As I recall, no, sir. I think we continued North.

5 Q. Was that the last stop in which there were reported
deaths

6 that you know of from the caravan?

7 A. What I know, yes.

8 Q. When was it you learned, you say, about finding out
about

9 people being killed in Calama?

10 A. The same answer I give you Friday. I don't know it
was the

11 same day, the second day, the third day when we arrived
in

12 Santiago. I don't know.

13 Q. I believe the answer you just gave is what you have
said

14 about Copiapo and Antofagasta as well?

15 A. Yes.

16 Q. And La Serena?

17 A. Yes.

18 Q. And Cauquenes?

19 A. Yes.

20 Q. That you learned about it that day, the second day,
the

21 following day or when you went back to Santiago?

recall 22 A. The most important thing I tell you is I don't
23 knowing how I knew that.
in the 24 Q. Would you agree each time this helicopter stopped
25 cities we have talked about today and Friday, that
during this

RICHARD A. KAUFMAN, CMRR

were 1 stop, while the helicopter was there, unarmed civilians
2 killed?

3 A. Yes.

about 4 Q. And that your testimony is in each case you learned
5 it shortly thereafter?

6 A. But sir, there are many other stops that the
helicopter do 7 that they didn't shot anybody, and for that reason I
cannot 8 know what happened every time the helicopter stopped.

9 Q. Actually, you couldn't know because you are not
sure that 10 any of those other stops even had prisoners; right?
You didn't 11 know that because you never saw any prisoners.

12 Why do you differentiate another stop where
somebody 13 wasn't killed from these cities where we know they were
killed?

14 A. Which I didn't know at that moment?

15 Q. Why do you say the helicopter stopped at other
places where 16 nobody was killed; why did you say that today?

17 A. Because you are asking me the last stop was in
Calama and I 18 say no, the last stop was in Arica. There were many
stops and 19 now you are saying me why you didn't learn -- how come
you

20 learned only one day, the second day and in another
stop -- I
21 was not in charge. I was not asking what happened
here.
22 Q. In the cities in which you stopped, your earlier
testimony
23 to us was you only remembered two cities in the South.
Do you
24 remember other cities the helicopter stopped now, in
the South,
25 South of Santiago?

RICHARD A. KAUFMAN, CMRR

1 A. I am sure we stopped in several other cities. I
think we
2 stopped in Valdiva.
3 Q. In Valdiva?
4 A. In Valdiva.
5 Q. People were killed in Valdiva?
6 A. I don't know.
7 Q. Were people killed in Valdiva or not when the
helicopter
8 stopped?
9 A. From what I remember, what I know, no.
10 Q. In the cities we talked about here, each time the
11 helicopter stopped in each one of these towns in Chile
and
12 people were killed, you knew about it after; correct?
13 A. When you say after, it could be a day, two days, a
week.
14 Q. What was it about the events that occurred in the
cities we
15 have talked about that caused you to have a guilty
conscience
16 about what happened? What was it in those cities?
17 A. Excuse me, sir.
18 Q. What was it in the cities that we talked about
where these
19 people were all killed that caused you to have a guilty
20 conscience, if you had a guilty conscience?
21 A. I don't have a guilty conscience for what happened
there.

22 I am not guilty for what happened there.

23 Q. Page 346. Line 11, if you would look at your
deposition.

24 (Interruption.)

25 BY MR. KERRIGAN:

RICHARD A. KAUFMAN, CMRR

1 Q. The question was asked:

2 "Question: What was it with being a member of
3 Arellano's comitiva that weighed on your conscience?

4 "Answer: Well, I think you know the answer.

Any

5 normal person would answer the question. Now I
realized, or in

6 that moment I realize that they would kill a lot of
persons and

7 now I was part of the committee, that committee."

8 A. Yes, sir, I answered that.

9 Q. Would you agree with me today, the people that died
in

10 those cities died as a result of some conduct by some
members

11 of the helicopter squad, that they had some involvement
in

12 these killings; would you agree with that today?

13 A. I cannot say I am agreeing with that. What I am
saying, of

14 course, when you put part and part, you see General
Arellano

15 was in charge of this committee and he order, or
somebody

16 ordered to do this. Of course I must feel bad because
I was

17 being part of that helicopter. Only to be named in
this is

18 bad.

19 Q. But you felt bad to be part of the helicopter
group. Was

group 20 it because you knew that some people on the helicopter
21 had engaged in these terrible crimes?
22 A. I can't tell you, sir. I cannot tell you if
Arellano give 23 the order or don't give the order. I can't tell you if
24 Arredondo give the order or not give the order. I was
never 25 present in a meeting.

RICHARD A. KAUFMAN, CMRR

of this 1 Q. My question is, you were concerned about being part
the 2 helicopter group, then you must have thought members of
and 3 helicopter group participated in these atrocious acts
4 crimes?

you about 5 A. Yes, but I was never in the meeting, I can't tell
6 that.

arrival of 7 Q. Did you think there was a connection between the
these 8 the helicopter with the five or six of you and all of
there was a 9 deaths and then the helicopter left; did you think
10 connection between all of that?

11 A. You are trying to put words in my mouth.

in time. 12 MR. DAVIS: Clarification, Your Honor, point

13 THE COURT: Sustained.

14 Rephrase your question.

15 BY MR. KERRIGAN:

connection 16 Q. At that moment, did you think there was a
of 17 between the helicopter arriving in these cities and all
happening? 18 these people being killed, at the moment it was

think what 19 A. At the moment it was happening, it is normal to

20 happened they kill somebody and the helicopter was
there, but

21 it is very important you understand me, I didn't know
what was

22 happening. I was the lowest man there, I was never in
a

23 meeting. I never saw or I never hear saying oh, we are
going

24 to kill this, this and this person.

25 Q. So it is your testimony that the activity of these

RICHARD A. KAUFMAN, CMRR

with
something
that were
happened?
it.
a lower
duties in
people in all
wouldn't
officer?
killed
regiments.
regiment.
What do you mean, the people that did the killings?
A. I think so.
Q. Why were you concerned about being a member of the

1 helicopter participants would have been by officers
2 superior ranking to you; correct? In other words, if
3 bad happened there, it was officers superior to you
4 physically engaged in whatever terrible things
5 A. Excuse me, sir. Your question I don't understand
6 Q. Is it really your testimony, Mr. Fernandez, you as
7 rankings officer wouldn't be given responsibility and
8 association with the killing and torture of these
9 of these cities in Chile; is that your testimony, they
10 have you involved because you were too low ranking an
11 A. I think because I was not part for the people that
12 these people. The people that were killed in what I
13 understand, they were part of the people of the
14 From their own regiments.
15 Q. You understand these people were part of the
16 What do you mean, the people that did the killings?
17 A. I think so.
18 Q. Why were you concerned about being a member of the

19 helicopter squad if they hadn't done anything wrong?
20 A. Because my name was in the newspaper and the
newspaper said

21 that General Arellano went to Calama with all this
committee

22 and I was part there and they put my name.

23 Q. Actually that article didn't talk about all these
other

24 cities which would have included your name also;
correct?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Did you think at that moment there was a connection
between
2 the arrival of the helicopter squad including you and
these
3 killings? At that moment did you think there was a
connection
4 at the time you were there?

5 MR. DAVIS: Objection to the form. What
moment?

6 THE COURT: Sustained.

7 Rephrase your question.

8 BY MR. KERRIGAN:

9 Q. At the time you were there when people had been
killed
10 simultaneously with the arrival of your helicopter, did
you
11 think there had to be a connection here because people
are
12 getting killed every time we arrived?

13 A. You are say when we arrived. We arrived at many
places and
14 people were not killed.

15 Q. Would you go to page 109 of your deposition, line
20.

16 "Question: I didn't ask you if you gave the
order. I
17 asked you if you knew there was a connection between
these two
18 events or did you think they were unconnected?

19 "Answer: Well, of course I must have thought
at the

20 moment there was something, must have a connection
because we

21 were there and they killed somebody there."

22 A. Yes.

23 Q. Who is a "they"? Who are you talking about?

24 A. The military.

25 Q. The people on the helicopter?

RICHARD A. KAUFMAN, CMRR

1 A. No. You say I must have thought in that moment. I
have
2 thought in that moment does not mean that I knew what
happened
3 where I said oh my God, now we are going to land here
and they
4 are going to kill persons.

5 Q. So you thought the connection was what between the
6 helicopter and the deaths? What was the connection you
thought
7 existed?

8 A. The connection in that moment, I know in this
moment,
9 because everything was going in the newspaper and if
you said
10 me there is a connection with that, every time the
helicopter
11 stopped in this place they were killed, of course they
killed
12 persons, but I don't know if Arellano ordered or he
didn't
13 order.

14 Q. So when you say I must have thought at the moment
something
15 must have a connection because we were there and they
killed
16 somebody there?

17 A. Yes.

18 Q. What is the connection between "we" and "they," the
people
19 that did the killing?

20 A. Maybe Arellano ordered the Commander of the
regiment to

21 kill this person and the Commander of the regiment
obeyed the

22 order and he decide who was going to kill the person.

23 Q. You have testified, have you not, one of the
purposes at

24 least that General Arellano stated was to have the
people in

25 the regiment feel like they were part of the coup,
involved in

RICHARD A. KAUFMAN, CMRR

1 the coup; correct? Wouldn't the best way to have
people feel
2 they were part of the coup to have them engage in
conduct that
3 caused people's death and killings?
4 A. When you say engage?
5 Q. Wouldn't it be a good way to involve people in the
coup to
6 have people out in these remote regiments actually do
some kind
7 of violent acts? This would be a good way to get them
involved
8 in the coup?
9 A. I don't understand your question.
10 I would like to ask him a question.
11 Q. Sure.
12 (Interruption.)
13 BY THE WITNESS:
14 A. To have which people involved?
15 BY MR. KERRIGAN:
16 Q. The people in the regiment. You were going to
people in
17 the regiment and you said General Arellano wanted them
to
18 become involved in the coup; correct and wouldn't a
good way
19 for them to be involved in the coup or the spirit of
the coup
20 would be to shoot people, kill people?

going 21 A. If Arellano think that way, I don't know. How am I
more big; 22 to know he would try to kill these people to make it
23 I don't know.
were not 24 Q. You agree the people that were killed at Copiapo
squad? 25 killed by a firing squad, a military empaneled firing

RICHARD A. KAUFMAN, CMRR

1 A. I was not there, I don't know exactly what happened
there.

2 Q. Did you hear Victor Bravo's testimony?

3 MR. DAVIS: Objection.

4 THE COURT: Sustained.

5 BY MR. KERRIGAN:

6 Q. You say today you don't know how these people were
killed

7 in Copiapo; correct?

8 A. Yes, of course. I was not there.

9 Q. And you have been here through the whole trial and
you have

10 seen all the testimony?

11 A. Yes.

12 MR. DAVIS: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. KERRIGAN:

15 Q. Yesterday, Friday, I think you said six or seven
people

16 were killed at La Serena. Did you see that or did I
17 misunderstand?

18 A. I said it is because I read it in someplace here.

19 Q. How many people were killed at La Serena?

20 A. I don't know.

21 Q. How many people were killed at Antofagasta?

22 A. I don't know.

23 Q. How many people were killed at Calama?

24 A. I think 26.

25 Q. How many people were killed at Copiapo?

RICHARD A. KAUFMAN, CMRR

1 A. I know, 13.

2 Q. In Cauquenes?

3 A. I read three or four.

4 Q. Were you involved in the disappearance of David
Silberman?

5 A. No, sir.

6 Q. Do you know when I speak of David Silberman, who he
was?

7 A. Yes, sir.

8 Q. Did you go into the jail at Santiago under an
assumed name,

9 present yourself to the authorities there, he
eventually

10 Inspector Ortiz, and take David Silberman from the jail
in

11 Santiago?

12 A. No, sir. I don't recall taking any prisoner from
the

13 penitentiary.

14 Q. Page 136 line 13 -- page 613 line 21.

15 You were asked this question, were you
involved with

16 the disappearance of David --

17 MR. DAVIS: Objection. Improper impeachment.

18 THE COURT: Sustained.

19 BY MR. KERRIGAN:

20 Q. What did you answer to the question were you
involved with

21 the disappearance of David Silberman?

22 MR. DAVIS: Same objection.

23 THE COURT: Sustained.

24 MR. KERRIGAN: Can we have a side bar?

25 THE COURT: Come up.

RICHARD A. KAUFMAN, CMRR

1 (Side bar.)

2 THE COURT: How is that impeachment?

3 MR. KERRIGAN: He answered, I don't think so.
Then he

4 goes on to say I don't recall. That is entirely
different from

5 an emphatic, no. Why do you say you don't recall?
Because I

6 don't recall. I know who he is because I read the
newspaper

7 and I don't recall what happened.

8 THE COURT: Let me see his answer.

9 (The question referred to was read by the
reporter as

10 above recorded.)

11 MR. KERRIGAN: Then he goes on to say, I don't
12 remember seeing him or being involved with that case.

13 He emphatically stated he didn't do it.

14 THE COURT: He said he doesn't recall. I
don't think

15 I was involved.

16 I don't see this is impeachment. It is the
same

17 answer.

18 Sustained.

19 MR. KERRIGAN: Can I have you read that?

20 THE COURT: Read it back to him.

21 (The question referred to was read by the
reporter as

22 above recorded.)

a 23 MR. KERRIGAN: He said no, sir, in response to

24 straightforward question.

I don't 25 MR. DAVIS: Then you asked him and he said no,

RICHARD A. KAUFMAN, CMRR

1 remember.

2 THE COURT: The two questions that were asked,
were

3 you involved and he said no. Do you remember going to
the

4 jail? No, I don't remember going to the jail.

5 The questions on page 613 from lines 21
through page

6 614 line 10 are no different than what he has testified
here in

7 Court.

8 MR. KERRIGAN: Could I see --

9 THE COURT: Mr. Kerrigan, I have ruled now.

10 (Open court.)

11 BY MR. KERRIGAN:

12 Q. You testified you did not know Captain Diaz before
-- at

13 any time, really; is that correct?

14 A. Captain Diaz? No.

15 Q. Do you know about Captain Diaz' previous statements
he has

16 made to Judge Guzman in Chile?

17 A. No. Excuse me. I know the statement about Captain
Diaz

18 when Mr. Davis make me read that.

19 Q. Would you repeat what you just said? You know
about

20 Captain Diaz what?

21 A. From the statement that my lawyer has.

in 22 Q. You have read Captain Diaz' account to Judge Guzman
23 Chile; you have read over that?
24 A. Read what?
Chile? 25 Q. You have read Captain Diaz' statement he gave in

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. And he told Judge Guzman he didn't have anything to
do with
3 this, you know he said that?

4 MR. DAVIS: Objection.

5 THE COURT: Sustained.

6 BY MR. KERRIGAN:

7 Q. Are you aware of Captain Diaz' arrest in Chile?

8 A. What I know -- I don't know if he is arrested at
this
9 moment, no. I think he was arrested.

10 Q. You know Captain Diaz made an arrangement with the
11 prosecutors in Chile which resulted in his release in
prison;
12 do you know that?

13 MR. DAVIS: Objection, Your Honor.

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

15 BY THE WITNESS:

16 A. How can I know the arrangements he made with the
prosecutor
17 in Chile.

18 BY MR. KERRIGAN:

19 Q. Captain Diaz is a free man, he is walking around
free in
20 Chile?

21 A. I don't know, if you say he must be.

that

22 Q. And he was facing kidnapping charges for the people

23 were killed the next day in Copiapo, the three people?

24 A. No.

25 MR. DAVIS: Objection.

RICHARD A. KAUFMAN, CMRR

1 THE COURT: Sustained.

2 MR. KERRIGAN: May I have a moment?

3 THE COURT: Let's take a break.

4 Do not discuss this case amongst yourselves or
anyone

5 else. Have no contact whatsoever with anyone
associated with

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

7 matter in any way. Be back in the juryroom in 15
minutes. If

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

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

10 concerning it.

11 You may leave your notebooks and the exhibits
on your

12 chairs. Be back in the juryroom in 15 minutes.

13 (Jury leaves room.)

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

16 (Open court. Jury not present.)

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

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

19 Would counsel state their appearances.

20 (All parties present.)

21 MR. KERRIGAN: Your Honor, I wanted to make
sure I
22 understood the Court's ruling. You do not want any
reference
23 to the Chilean Supreme Court, just a judicial
proceeding?

24 THE COURT: In another judicial proceeding
unrelated
25 to this matter. Another judicial proceeding unrelated
to this

RICHARD A. KAUFMAN, CMRR

1 matter.

2 MR. DAVIS: Not to interrupt, Tony Castro has
joined

3 me.

4 MR. KERRIGAN: Your Honor, I will read the
question so

5 you can make any objection.

6 Mr. Fernandez, do you admit in another
judicial

7 proceeding unrelated to this matter you intentionally
lied

8 under oath.

9 THE COURT: Any objection?

10 MR. DAVIS: I objected as stated before and I
believe

11 in light of Your Honor's previous ruling, that puts the
12 defendant at an unfair advantage. Other than that, no

further

13 objection.

14 MR. KERRIGAN: I will ask the question exactly
that

15 way.

16 THE COURT: Are you ready?

17 MR. CUNNINGHAM: Mr. Tony Castro is here and I
18 understand a letter rogatory will be read. I am
flagging that.

19 MR. DAVIS: I am about to hand my designations
to

20 counsel so they can look at it. We had them prepared
this

21 morning.

22 THE COURT: How much longer do you have with
this

23 witness?

24 MR. KERRIGAN: Two minutes.

25 THE COURT: Let's bring them in.

RICHARD A. KAUFMAN, CMRR

1 (Jury present.)

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

3 Thereupon --

4

5 ARMANDO FERNANDEZ LARIOS,

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

7 was examined and testified further as follows:

8 THE COURT: You may proceed.

9 BY MR. KERRIGAN:

10 (Continuing.)

11 Q. Do you acknowledge today any responsibility or any
Cabello? 12 involvement in any way with the death of Winston

13 A. I don't have nothing to do with the death of
Winston 14 Cabello.

15 THE COURT: I can't hear you, sir.

16 BY THE WITNESS:

17 A. I have nothing to do with the death of Mr. Winston
Cabello.

18 BY MR. KERRIGAN:

19 Q. Do you acknowledge any responsibility whatsoever or
20 participation in the event that resulted in the death
of all of

21 these other people in these other cities we talked
about?

22 A. No, sir.

23 Q. Mr. Fernandez, do you admits that in another
judicial
24 proceeding unrelated to this matter, that you
intentionally
25 lied under oath.

RICHARD A. KAUFMAN, CMRR

1 A. I was ordered by my superiors to lie in another
proceeding.

2 Q. So you did what your superiors told you to do?

3 A. Yes, sir.

4 Q. And you followed that order?

5 A. Yes, sir.

6 Q. And you followed other orders that were given to
you by

7 General Arellano and your superiors throughout your
travels in

8 Chile?

9 A. It is the normal procedure for military to obey the
orders

10 of the superiors.

11 MR. KERRIGAN: No further questions. That
concludes

12 my examination of the witness.

13 THE COURT: Mr. Davis.

14 CROSS EXAMINATION

15 BY MR. DAVIS:

16 Q. You were asked questions about testimony in another
17 proceeding unrelated to this one. Did you resign from
the

18 Chilean Army as a result of the order given to you to
lie under

19 oath.

20 A. Yes, sir. I was very disappointed with that.

21 THE COURT: I can't hear you.

22 BY THE WITNESS:

23 A. I was very disappointed with that.

24 BY MR. DAVIS:

25 Q. Did you resign from the Chilean Army in 1987?

RICHARD A. KAUFMAN, CMRR

1 A. Yes, sir.

2 Q. Do you have any friends in the Chilean Army today?

3 A. Not so many.

4 Q. Did you rectify on the public record that false
testimony?

5 MR. KERRIGAN: Objection, leading.

6 THE COURT: Sustained as to leading.

7 BY MR. DAVIS:

8 Q. Did you correct that testimony, sir?

9 A. Yes, sir.

10 Q. You were asked questions on your direct about your
service

11 in the military in 1973. Describe for the jury what
you were

12 doing in September of 1973 generally before you got
assigned to

13 the helicopter?

14 A. I was in the infantry school as an instructor of
soldiers

15 and when the 11th of September came, we were assigned
to go

16 patrol the streets and one day they ordered me to go to
the

17 helicopter.

18 Q. In your assignment of patrolling the streets, what
were

19 your general duties?

20 A. What I remember this moment, there were hundreds of

21 military in the street and we were taking care of the
curfew.

22 That is it. And of course patrolling the street during
the

23 day.

24 Q. You were physically based in the Santiago area?

25 A. Yes, sir.

RICHARD A. KAUFMAN, CMRR

1 Q. How big is Santiago?

2 A. In that moment, I think it was around 4 million
persons.

3 Q. As far as geographic. Is it as big as the Miami
area?

4 A. Bigger than Miami.

5 Q. A big city?

6 A. Very big. The biggest city in Chile.

7 Q. You were assigned to go to the helicopter?

8 A. Yes.

9 Q. Did you even know anything about the helicopter?

10 A. No.

11 Q. How did it come to pass you had to go to the
helicopter?

12 A. Excuse me?

13 Q. How did it come about that you had to go to the
helicopter?

14 A. I think the second Commander-in-Chief of the
infantry

15 school one day called me and said Fernandez, you must
go to the

16 Toalaba Airport. It is a very small airport and go to
General

17 Arellano and you are going to have a trip and of course
they

18 told me three or four days, the normal things to take
on a

19 trip.

20 Q. Did you wear a different uniform than the uniform
you were

21 previously wearing patrolling the streets of Santiago?

22 A. The same.

23 Q. Were the other soldiers in Santiago wearing the
same

24 uniform?

25 A. The same.

RICHARD A. KAUFMAN, CMRR

1 Q. Describe for me what it was, what it looked like?

2 A. Green fatigues with a cap that is green also, boots
and
3 arms as any of the soldiers, like a soldier wears in
the war.

4 Q. Is that the uniform you were wearing when you went
to the
5 helicopter?

6 A. Yes.

7 Q. When you reported to the helicopter the first time,
were
8 you given any instructions or directions what was going
to
9 happen?

10 A. No.

11 Q. Describe what happened when you got on the
helicopter, who
12 was on the helicopter and what was your configuration
on the
13 helicopter?

14 A. As I remember when I arrived to this little
airport, I
15 imagine I asked where was General Arellano and they
said to me
16 in that helicopter. When I arrived there, I saw some
military
17 and I saw General Arellano. I think that was the first
time I
18 see him in my life in person and there was a Lieutenant
19 Colonel, two majors, three majors, and what took my
attention

knew in 20 was a civilian that had long hair. The only person I
him a 21 that moment that I remember was Major Chiminelli; I met
in a 22 couple of years ago in the City of Concepcion and I was
23 regiment and he was in another regiment.
24 Q. That would have been 1971 that you met Major
Chiminelli?
25 A. Yes. I don't know if I asked him or how I realized
that

RICHARD A. KAUFMAN, CMRR

1 this gentleman dressed in civilian clothes was Major
Espinosa.

2 Q. When you get on the helicopter, did you have any
3 conversation on the helicopter as it travels?

4 A. The helicopter is a big one. This is the kind of
5 helicopter that is used to put troops from one part to
another.

6 When we go inside of the helicopter, what I remember
very

7 clear, everyone have these things to cover the ears,
because it

8 is very, very noisy inside; but I didn't have one
because they

9 didn't have more, and I have all this trouble without
hearing,

10 but I didn't have any conversation in the helicopter.

11 Q. Did you bring with you a change of uniform when you
went on

12 this trip?

13 A. I think the only uniform I had was a green fatigue.

14 Q. Did you have a camouflage uniform?

15 A. No, I never used camouflage uniform.

16 Q. You have told us on your direct examination that
you went

17 to a number of cities. Approximately how many cities
did you

18 go to in the South of Chile?

19 A. Let me see what I remember. You want the names?

20 Q. Even the number or the names if you remember the
names?

21 A. I think four or five.

22 Q. Four or five different cities in the South?

23 A. Yes.

24 Q. Can you give us an idea what happened at those
cities, as a

25 general overview what happened at each of those cities;
what

RICHARD A. KAUFMAN, CMRR

1 happened?

2 A. As I said in my testimony, when I arrived there, we
got out
3 of the helicopter and the General and his staff went to
the
4 meetings with the Commander-in-Chief of the regiment,
with the
5 Commander-in-Chief and Second Commander-in-chief of
each
6 regiment.

7 Of course I was not there because it is very
easy to
8 understand that a General with a Colonel and the
9 Commander-in-Chief of the regiment and the second
Commander of
10 the regiment, they are all in the rank of Lieutenant
Colonel or
11 Colonel or Major. I don't see me as a Lieutenant going
inside
12 of these meetings.

13 Q. Do you recall being in any meetings with any of
these
14 senior military personnel, General Arellano, Mr.
Arredondo, the
15 local military commanders?

16 A. That is what I am trying to explain you. A General
and a
17 Colonel and a Second Lieutenant and a Major, they are
so high
18 in rank that they will never allow a lieutenant to go
and

19 participate in these kinds of meetings. You must make
a
20 difference between officers. There are officers that
from
21 Major to General and lower rank from Second Lieutenant
to
22 Captain and all the meetings there were only seniors --
I don't
23 know if all the meetings were only seniors, but what I
am
24 saying, when the seniors like Major, Second Lieutenant
Colonel
25 or General, they are in another level. It is
impossible that

RICHARD A. KAUFMAN, CMRR

1 these young guys go inside of the meeting.

2 Q. What did you do during those times?

3 A. The normal thing what I recall is to go immediately
to the

4 club office and stay there and hang there until they
say okay,

5 Fernandez, we are going to go back or go to another
base.

6 Q. In your direct testimony, you said clubhouse. Is
that an

7 officers club?

8 A. Yes.

9 Q. Explain what an officers club was at these various
regiment

10 in 1973, what kind of facility, what do you do there?

11 A. At an officers club you can have lunch, you can
have food.

12 There are rooms assigned to the officers that live in
that

13 regiment and also in most of the clubhouse have room
for guests

14 that come to the regiment.

15 Q. Is that where you recall for the most part staying
and

16 showering while on the trip?

17 A. Yes.

18 Q. Other than the green hat that you described, did
you have

19 any other color hats that you wore while you were on
this trip?

20 A. No.

21 I must make this very clear. The uniform in
the Army

22 of Chile as in any Army in the world is only one. When
you are

23 in the military and you are in someplace and you must
use some

24 kind of uniform, you cannot change. You cannot put
something

25 in your uniform that is not allowed that you must use.

RICHARD A. KAUFMAN, CMRR

1 Q. Is the military strict about the uniform?

2 A. Very strict.

3 Q. Did you carry any hand grenades with you on the
helicopter?

4 A. I don't remember using hand grenades in the
helicopter. I

5 don't think I used hand grenades. Really I don't
remember

6 using them.

7 Q. You testified you return back to the base in
Santiago for a

8 couple of weeks before you went back in the helicopter?

9 A. Yes.

10 Q. Did you volunteer to go back on the helicopter a
second

11 time?

12 A. No.

13 Q. Did you know there was going to be another mission?

14 A. No.

15 Q. How did you go to the helicopter the second time?

16 A. If I recall, the same Second Lieutenant Colonel
necessarily

17 that was the second in command of the infantry school,
he said

18 Fernandez, you must go there again. Okay. Excuse me,
the word

19 "okay" is not correct. I will obey your orders.

20 Q. How does it work in the chain of command in the
military,

Colonel? 21 do you have to obey this order from your Lieutenant
22 A. I am sure every Army in the world is the same. A
soldier 23 is prepared to go to war and a soldier is prepared to
obey 24 orders. You cannot deny orders. Of course you can do
it but 25 you never do that. When an officer, a superior gives
you an

RICHARD A. KAUFMAN, CMRR

1 order, you are prepared to say yes.

2 Let me put you a little sample of this. We
are

3 prepared at one moment in a war to die because a
superior gives

4 us an order to go and fight. Nobody wants to die in a
war,

5 nobody, but the soldiers go to war and they say I am
going to

6 die and the moment you go to war and a superior says
stand up

7 and run, you can't say no. You know if I stand up I am
going

8 to die, but you can't say no, you stand up and run.

9 Q. As being on the helicopter when you arrived at
these

10 various regiments as a Second Lieutenant in 1973, what

11 authority did you have over the members of the local
military

12 regiment as a second lieutenant arriving in a
helicopter such

13 as you did? What military authority did you have?

14 A. None.

15 Q. Why is that?

16 A. I will be very specific about this. I am a second
17 lieutenant. If I apply to a regiments and there is a
soldier

18 in that regiment, I cannot give him a direct order and
say come

19 here and bring me a jeep. He will say to me, I am
sorry my

saying I 20 Lieutenant, you must talk with my superior. I am not
to 21 am not a superior of the other one. What I am trying
another 22 explain is, being an officer from Santiago if I go to
going to 23 city, I cannot just say okay, open me the door, I am
your 24 go inside. The officer at the door will say may I have
and say 25 ID. I show him the ID and he would call his officer

RICHARD A. KAUFMAN, CMRR

1 this officer wants to come inside of the regiment.

2 You cannot go and say I am an officer and I
will

3 report this to anybody. Being an officer, I cannot
give direct

4 orders to any person in another regiment.

5 Q. What would be your relationship with officers in a
local

6 regiment, a Captain of rank or higher in a local
regiment, what

7 would be your relationship with that person as far as
your

8 ability to give orders or not or receive orders?

9 A. If anybody understands about military, understands
about

10 boy scouts, and I am making this comparison, it is
totally

11 impossible that a lieutenant going to go to a superior
in

12 another regiment that he don't know and ask for
something or

13 order something. That is totally, totally out of the
normal

14 way that the Army worked. Not only down in Chile, but
I think

15 it works in any Army in the world.

16 Q. In 1937 when you went to these various cities, did
you give

17 orders to superior officers?

18 A. My answer is, no, and I want to repeat. In any
case, no

a 19 one, no one who has a lower rank will give an order to

20 superior. It is not the Army.

21 Q. I have talked about your going back, you were
ordered to go

22 back to the base where the helicopter took off to the
North.

23 You went to a number of cities and you told Mr.
Kerrigan you

24 went to several cities in the North?

25 A. Yes.

RICHARD A. KAUFMAN, CMRR

1 Q. Six or seven different cities?

2 A. Yes.

3 Q. You went to Copiapo?

4 A. Yes.

5 Q. Did you give any orders to anyone at Copiapo?

6 A. Of course not.

7 Q. When you got to Copiapo, what is your recollection
of the
8 events at Copiapo?

9 A. The only recollection I have in this moment is that
I
10 arrived there and I went the same place I always went
in the
11 other places, to go to the clubhouse and stay there.

12 I don't recall being in any meeting or with a
13 prisoner, and of course I was not there when of course
they
14 unfortunately killed 13 persons.

15 Q. Is that the only time you have been to Copiapo in
your
16 life?

17 A. Yes.

18 Q. Did you leave the next morning?

19 A. Yes.

20 Q. Did you go around and do an inventory of the
weapons they
21 had in Copiapo?

22 A. No.

far as 23 Q. Do you know what weapons they had at Copiapo, as

24 firsthand knowledge?

25 A. I think they have the same weapons that we have in

RICHARD A. KAUFMAN, CMRR

think 1 Santiago. Maybe they change the type of rifles, but I
2 they have the same weapons.

3 Q. Do you know what kind of knives they had?
4 A. No.

names of 5 Q. Did you at any time in Copiapo look at a list of
6 prisoners?
7 A. No, never.

would 8 Q. Did you at any time in Copiapo give orders what
9 happen to prisoners?
10 A. This is so strange that I am here telling about
this. How
11 come this second lieutenant was going to go to this
regiment
12 and ask people that were the superiors, give me all the
13 records. I am going to check the list. Of course the
Major in
14 charge of that will say to me hey, get out of this
office, or
15 who are you.

16 Q. Do you recall seeing any persons dressed as
civilians at
17 Copiapo on the base?
18 A. No.

19 Well, of course Mr. Espinosa was a civilian
there.

20 Q. Other than Mr. Espinosa who was with you --

21 A. I don't recall seeing anybody.

22 Q. Did you ever meet Colonel Haag?

23 A. I imagine when we arrived to the regiment and
Colonel Haag

24 go to receive or appear to receive General Arellano
everybody

25 say hello and I am sure I salute him as a military, but
to talk

RICHARD A. KAUFMAN, CMRR

1 with him, no.

2 Q. Have you ever met Captain Diaz in your life?

3 A. Never, and I don't remember him.

4 Q. Did you ever meet Lieutenant Ojeda?

5 A. No.

6 Q. He was one of the local -- strike that.

7 Other than Mr. Vidal, do you recall anyone
that you

8 saw in Copiapo that you remember?

9 A. No.

10 Q. We have heard testimony about this device called a
menga.

11 Have you ever heard of a menga before, Mr. Fernandez?

12 A. It was the first time I hear the word mango
referring as an

13 arm when they take my testimony.

14 Q. You mean your deposition in Chile?

15 A. My deposition. What I can imagine what this mango
is I

16 have never seen in my life. I have never seen in a
museum one

17 of that. Of course nobody in the Army would approve,
would

18 they allow him to have this piece steel with a chain
going

19 around -- the first question somebody would say me,
what is

20 that.

21 Q. Did you ever have a mango in your possession?

22 A. No, never. I have never seen one in my life.

23 Q. When you were at Copiapo, did you ever beat any
prisoners?

24 A. No, sir, no. My statement is totally no. It is
totally

25 false. I never beat anybody.

RICHARD A. KAUFMAN, CMRR

1 Q. At any time while you were in Copiapo, did you
receive an
2 order to do anything in connection with the prisoners?
3 A. No. Of course not and why they will give this kind
of
4 order to the lowest person in the helicopter and not
give to
5 the person of the regiment.
6 Q. Did you ever receive an order to do anything in
connection
7 with the prisoners?
8 A. No, sir.
9 Q. The testimony has been the helicopter left Copiapo
the next
10 morning?
11 A. Yes.
12 Q. Did you sleep that night?
13 A. I think so. Of course I sleep at night.
14 Q. Did you sleep every night you were on the trip?
15 A. Of course.
16 Q. Did the helicopter go to La Serena, Calama and
other cities
17 after that?
18 A. Arica, yes.
19 Q. At any of those cities, did you have any connection
with
20 any of the prisoners?
21 A. No, sir.

22 Q. You have lived in Miami since 1988?

23 A. Yes.

24 Q. You have lived here under your own name since 1988?

25 A. Of course.

RICHARD A. KAUFMAN, CMRR

1 MR. DAVIS: Nothing further.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. KERRIGAN:

truth 5 Q. Your testimony was you resigned from the Army. The
6 is, you deserted from the Chilean Army?

7 MR. DAVIS: Objection.

8 THE COURT: Overruled.

9 BY THE WITNESS:

10 A. No, I resigned.

11 BY MR. KERRIGAN:

United 12 Q. You sent your resignation after you came to the
13 States?

14 A. Yes.

Chilean 15 Q. You have no evidence it has been accepted by the
16 Military?

17 A. No.

18 Q. So you deserted the Chilean Army?

19 MR. DAVIS: Objection.

20 THE COURT: Sustained.

21 BY MR. KERRIGAN:

But there 22 Q. You said there were no orders given in Copiapo.

was it 23 was an order given by General Arellano and that order,
away 24 not, to load the prisoners into the truck to take them
in 25 from the jail; that order was given by General Arellano

RICHARD A. KAUFMAN, CMRR

1 Copiapo, was it not?

2 A. I don't know that General Arellano give that order.

3 Q. Do you know in our lawsuit today --

4 MR. DAVIS: Objection.

5 THE COURT: Sustained.

6 Rephrase your question.

7 BY MR. KERRIGAN:

8 Q. Did you hear the admission read to the jury that
General

9 Arellano gave this order in Copiapo to load the
prisoners on to

10 the truck? Did you hear that read in the courtroom?

11 MR. DAVIS: Objection.

12 THE COURT: Sustained.

13 BY MR. KERRIGAN:

14 Q. When Mr. Davis was asking you to explain the mango
or

15 menga, I believe your testimony was, if I wrote it down
16 correctly, what I can see, and then you said, what I
can

17 imagine.

18 A. Yes.

19 Q. So you have seen it before?

20 A. No, sir. Maybe you are making my bad English
telling

21 something that is not correct.

22 I want to clarify again. I have never seen a
mango.

hands. I 23 I don't imagine soldiers walking with a mango in his
arm with 24 don't imagine any soldiers dressing in a uniform of an
saying 25 a mango in his hand going around a regiment and nobody

RICHARD A. KAUFMAN, CMRR

1 a, what is this, take it out of the unit.

2 If the only place I have that mango, nobody
said in

3 all this trial that they saw me with that mango.

4 Q. The pilot Mahotiere said you were dressed like
Rambo?

5 A. I don't know.

6 Q. You don't know he said that?

7 MR. DAVIS: Objection.

8 THE COURT: Sustained.

9 BY MR. KERRIGAN:

10 Q. Have you ever read his statement that you were
dressed like

11 Rambo?

12 A. I hear the statement but I don't remember. If you
said he

13 said it, he said it; but it is so easy to tell you, if
he said

14 I was dressed like Rambo, you can feel Rambo was using
a

15 camouflage uniform. Rambo don't use a hat. Yet Rambo
has arms

16 that can shoot a helicopter. It is totally out of the
control

17 to compare a soldier dressing with Rambo the way I was
18 dressing.

19 Q. He also said you had grenades on the helicopter?

20 A. I repeat, I don't know if I had a hand grenade. I
am not

21 saying I am not using it. I imagine I don't use it
because why

22 I was going to have this grenade on my body.

23 Q. You testified to questions Mr. Davis propounded
referring

24 to any Army in the world; is that correct?

25 A. What I said?

RICHARD A. KAUFMAN, CMRR

1 Q. This wouldn't be true in any Army in the world?

2 A. I think so.

3 Q. What was it you said was so unique to the Chilean
Army in

4 which you had officers that were not superior to one
another,

5 what was it about the Chilean Military structure that
you would

6 not have authority over a subordinate officer, if you
happened

7 to be at another location someplace?

8 A. I would like him to explain me the question again.

9 Q. Sure.

10 Are you saying in all armies in the world, if
a

11 superior officer goes outside of where they normally
would be

12 assigned, that they would have no authority over
subordinate

13 officers at all and that is true in all armies in the
world?

14 A. I think in all armies in the world, nobody -- let
me put it

15 this way what I am trying to explain.

16 If an officer from California comes to a
regiment here

17 in Miami, he cannot go inside the regiment and begin to
give

18 orders. He can give orders when he reports to the
superior of

19 the regiment in Miami and the superior said this is
going to be

20 an officer from this regiment.

21 Q. But you agree, don't you, General Arellano was a
superior

22 officer to the Colonels that were at these regiments?

23 A. Yes.

24 Q. And that he had the authority over them as a
superior

25 officer?

RICHARD A. KAUFMAN, CMRR

1 A. Yes.

2 Q. Why is it then --

3 A. Because I remember --

4 Q. Let me finish the question.

5 Why is it you acknowledge that was the case,
that

6 General Arellano had superior command authority over
the people

7 at the regiment when he wasn't assigned to the
regiment; how

8 could that be?

9 A. Because he has a letter and I know you know about
this. He

10 has a letter of the Commander-in-chief of the Army
saying that

11 he has the authority to go to that regiment and said
now, I am

12 the chief.

13 It is not that he arrived and said we are
going to do

14 this. Of course the moment he arrived to the
regiments, he

15 must show the letter to the Commander-in-Chief of the
regiment

16 and say I have the authority to be your boss because
the

17 Commander-in-Chief allows me to do this.

18 Q. You were with General Arellano and Espinosa and all
the

19 other people in the helicopter, but they had no
authority at

Haag in 20 all, only General Arellano had authority over Colonel
21 Copiapo, for example?
22 A. I think you are correct. General Arellano was in
that 23 moment the Commander of the regiment when he arrived
there, 24 because he had the authority of the Commander-in-Chief
of the 25 Army.

RICHARD A. KAUFMAN, CMRR

1 Q. These orders that you say were involved did not
invest with
2 subordinates of General Arellano in the helicopter with
like
3 authority, that is, with the ability and the authority
to give
4 commands to subordinates in those regiments when
General
5 Arellano was there?

6 A. Your question is very large.

7 Q. Did you understand it? I will be glad to state it
again.

8 A. Please.

9 Q. General Arellano had orders that put him in charge
of these
10 regiment subordinates?

11 A. Yes.

12 Q. Including Colonel Haag who was the highest ranking
officer
13 at Copiapo?

14 A. Yes.

15 Q. Those orders investing in General Arellano the
authority he
16 had didn't apply in any way to the men that came with
General
17 Arellano, including you?

18 A. I think you are correct. The superiors -- like
Major
19 Chiminelli cannot give an order to Colonel Haag. Of
course

20 not. Major Espinosa cannot give an order to Colonel
Haag or an
21 order to the Commander-in-Chief of the regiments, you
go and
22 pick me this in a room.
23 Q. You are saying a subordinate officer can't give a
command
24 to a superior officer and that was not done at Copiapo?
No
25 subordinates was giving commands to superior officers;
that is

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1 what you said?

2 A. I am sorry, I need that translated.

3 (Interruption.)

4 BY THE WITNESS:

5 A. Yes.

6 BY MR. KERRIGAN:

7 Q. You are saying a Captain can't give an order to a
Colonel?

8 A. Yes.

9 Q. With the helicopter group at Copiapo and General
Arellano
10 was the superior officer there, that invested in you as
a
11 lieutenant, authority over subordinates to you in
Copiapo?

12 A. No, of course not.

13 Q. My question is, this order that came in the
Commander
14 Pinochet investing in Arellano the right to control
over these
15 regiments, did not in any way apply to you, Espinosa or
anybody
16 else on the helicopter, you had no authority at all?

17 A. No. When you say no authority, that is what I am
trying to
18 explain. Arellano has his staff, all these majors and
19 Colonels. If he gives an order to the Commander of the
20 regiment, the Commander of the regiment will obey; but
don't

21 mean that one of the majors can give an order to a
Colonel.

22 Q. But the Major can give an order to a Captain or
Lieutenant?

23 A. But not from the same regiment.

24 Q. The order that was sent with General Arellano, it
is your

25 testimony that order did not give people with General
Arellano

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rank? 1 any authority over anybody in any of these regiments by

me that 2 A. Listen, you are confusing me here. You are telling

give an 3 Arellano cannot give an order or the Colonel cannot

4 order to whom in the regiment?

5 Q. Let me restate it.

6 Arellano has 7 You arrive in the helicopter and General

of the 8 an order. That order says he is the commanding officer

9 regiment in essence?

10 A. At one point it can be like that.

in each 11 Q. Is it your testimony that under those circumstances

Captains, 12 one of these cities, that people on the helicopter,

people in 13 Majors, Lieutenants, had no authority at all over the

14 the regiment?

15 A. Yes, of course.

for the 16 Q. When their General was the supervising authority

17 entire regiment?

18 A. Yes, of course.

19 Q. No authority?

20 A. With the military, no. You must be totally sure.

Q. But isn't --

of the 21 MR. DAVIS: Your Honor, he was in the middle
22 answer.
23 BY THE WITNESS:
obey the 24 A. If he would say to Captain Diaz, you are going to
Major 25 order of Major Espinosa, he will obey the orders of

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1 Espinosa, but if Major Espinosa said to Captain Diaz,
you have
2 to do this and Captain Diaz will say I have to talk
with my
3 direct superior, Colonel Haag, or second in command.

4 BY MR. KERRIGAN:

5 Q. What you just told us about this arrangement, is it
your
6 testimony that happens in armies all over the world,
the
7 situation you just described here?

8 A. I think all the armies have the same.

9 Q. You think the armies of the world when someone
arrives like
10 a General, one of the most powerful Generals you agree
in Chile
11 at the time, when they arrive and have an order from
the junta,
12 that they can control that regiment, you say that is
something
13 that happens in militaries all over the world?

14 A. I don't know what happened all over the world, but
I am
15 saying, what I was trying to explain you, in all the
armies in
16 the world you must obey the orders of your superior. I
thought
17 I used the correct word. It is a chain of command you
must
18 follow.

19 Q. It is your sworn testimony as I understand it now
that you
20 gave no orders at any of these locations in Chile?
21 A. No.
22 Q. That you did not participate in any way in terms of
an
23 interrogation of any prisoners?
24 A. No.
25 Q. And that you did not even see prisoners any place
in any of

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1 these regiments?

2 A. What I recall, no.

3 Q. At any time?

4 A. No.

5 Q. And you were not involved in the execution of an
order to

6 load the prisoners onto a truck in Copiapo and take
them from

7 the jail to the point where they were killed; you did
not

8 participate in the execution of that order?

9 A. Oh, no.

10 MR. KERRIGAN: That is all I have, thank you,
Your

11 Honor.

12 THE COURT: You may step down.

13 (Witness excused).

14 THE COURT: Call your next witness.

15 MR. CUNNINGHAM: We would read a request for
admission

16 or a small part of the answer to the complaint.

17 THE COURT: Come up.

18 (Side bar.)

19 MR. DAVIS: I don't think it is appropriate to
read

20 any part of any complaint to the jury. If that is the
case I

21 could be cross examining Cabello on the multiple
theories of

22 the case presented in the second amended complaint.

23 THE COURT: Under what authority would you be
reading

24 any portion of the complaint?

25 MR. CUNNINGHAM: He admitted the allegation in

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1 paragraph 36, which is simply on or about October 16,
the
2 defendant and five members of the squad arrived at
Copiapo
3 military garrison by helicopter.

4 THE COURT: Do you have that in the
admissions?

5 MR. CUNNINGHAM: Something similar to it in
the
6 admissions.

7 THE COURT: Why don't you read it from the
admissions.

8 MR. CUNNINGHAM: What is Your Honor's practice
with
9 respect to extricating on the request for admissions?
In other

10 courts the Judge will actually read what has been
admitted and
11 stipulated to. I don't know whether that is your
practice.

12 THE COURT: As far as what?

13 MR. CUNNINGHAM: In closing instruction. The
14 following are at issue in this case because they are
admitted.

15 THE COURT: That is something we will take up
at

16 charge conference, whether it comes in as an
instruction from

17 the Court.

18 MR. DAVIS: As long as we are here. On
scheduling,

19 Your Honor, I brought Mr. Castro here to read letters
rogatory.

20 Do you want to start with our letters rogatory this
21 afternoon -- we are prepared to go forward.

22 THE COURT: How long are the motions going to
take?

23 MR. DAVIS: It depends how long you wish to
entertain

24 arguments. I can make the motion in ten minutes or do
you wish

25 for me to make the motion, have argument on it later
on?

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1 THE COURT: As long as the juror who is not
feeling 2 well is able to go forward, why don't we utilize the
jury time.

3 You can make your motion and present your
argument 4 later or tomorrow morning.

5 MR. CUNNINGHAM: We have not had a chance to
go 6 through the excerpts from the letters rogatory that Mr.
Davis 7 will be reading in a moment.

8 MR. DAVIS: I will start with Captain Diaz.

9 THE COURT: You are presenting admissions and
you will 10 rest?

11 MR. CUNNINGHAM: Yes.

12 MR. DAVIS: I will make my motion. Then I
would read 13 the letters rogatory.

14 THE COURT: And you are not prepared to go
forward?

15 MR. CUNNINGHAM: We can be prepared pretty
quickly.

16 MR. DAVIS: The entire letters rogatory on
Captain 17 Diaz.

18 MR. CUNNINGHAM: I am sure we can do it
quickly.

19 THE COURT: Present your admissions, rest your
case,

the
Captain

20 we will take a break and you can state your motion for
21 record then I will give you a chance to go through
22 Diaz' letter rogatory.
23 Is 15 minutes enough time?
24 MR. CUNNINGHAM: I believe so.
25 (Open court.)

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would 1 MR. CUNNINGHAM: Your Honor, at this point we
responses 2 read a number of requests for admissions and the
3 which are admitting them.

propounded to 4 Request for admission number 3 which was
period in 5 the defendant Armando Fernandez. Admit during some
Sergio 6 October 1973 you were under the command of General
number 7 Arellano Stark. Defendant admits request for admission
8 3.

you did 9 Request number 7, admit that in October 1973
superior 10 not refuse to execute any orders given to you by any
request 11 officer or supervisor. The response. Defendant admits
12 for admission number 7.

personnel in 13 Number 8. Admitted that in October 1973 you
The 14 accompanied Arellano and other Chilean Military
15 the delegation to various localities in Northern Chile.
admits. 16 response to request for admission number 8; defendant

October 1973 17 Request for admission number 9. Admit in
delegation by 18 you traveled to Northern Chile with Arellano in a

19 helicopter. Defendant admits request to admission
number 9.

20 Request for admission number 21. Admit you
21 accompanied Arellano's delegation to Cauquenes in early
October
22 1973. Response, defendant admits request for admission
number

23 21.
24 27. Admit that you accompanied Arellano's
delegation

25 to La Serena on or about October 16, 1973. Defendant
admits

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1 request for admission number 27.

2 Request number 33. Admit on or about the eve
of
3 October 16, 1973, Arellano's delegation visited the
town of
4 Copiapo. The response. Defendant admits request for
admission
5 number 33.

6 Number 42, admit you accompanied Arellano and
his
7 delegation to Antofagasta on or about October 18, 1973.
8 Defendant admits request for admission number 42.

9 Number 48. Admit you accompanied Arellano
delegation
10 to Calama on or about October 19, 1973. Response,
defendant
11 admits request for admission number 48.

12 That concludes the request for admissions,
Your Honor.

13 Plaintiffs' rest.

14 THE COURT: Ladies and gentlemen we will take
our
15 second break for the day.

16 Do not discuss this case amongst yourselves or
anyone
17 else. Have no contact whatsoever with anyone
associated with
18 the trial. Do not read or listen to anything touching
on this
19 matter in any way. Be back in the juryroom in 20
minutes. If

instruct 20 anybody should try to talk to you about this case,
21 them to immediately stop and be in contact with my
staff 22 concerning it.

23 MR. DAVIS: At the close of plaintiffs' case,
24 defendants moves for a directed verdict pursuant to
Rule 50.

25 There are a number of grounds for the motion. First
and fore-

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1 most, Your Honor, the claim is time barred by the
statute of
2 limitations and Mr. Fernandez has lived openly in Miami
since
3 1988. Under any circumstances, under the greatest
4 interpretation the statute of limitations would be ten
years.
5 The lawsuit was not brought until 1999. The claim is
barred by
6 the statute of limitations and all claims should be
thrown out
7 on that basis. There is no case that was plead to
establish
8 any tolling or any exception to the statute of
limitations.
9 There is no evidence that was offered in this case
excusing the
10 failure to timely file this lawsuit and Your Honor, it
is time
11 barred.
12 The second ground, Your Honor, is that in the
case
13 that has been filed here and the evidence that has been
14 presented, they said in opening and they didn't show
it, there
15 is absolutely not one shred of evidence that Armando
Fernandez
16 personally committed any act in relation to Winston
Cabello.
17 There is not a witness even from all these other
depositions,

18 the improper depositions you ruled violated Rule 28,
there is
19 no testimony from any witness at any time that says
Armando
20 Fernandez Larios had any involvement with Winston
Cabello.
21 There is nothing in this record for any juror to infer
anything
22 Mr. Fernandez did or could have done and it should be
out of
23 this case totally.
24 The next thing, Your Honor, they have claims
of aiding
25 and abetting and conspiracy. I would rather address
the

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1 conspiracy first. We will talk about it in your charge
2 conference.

3 There is no evidence to establish a
conspiracy. What

4 is the conspiracy here? Mr. Fernandez in the testimony
which

5 is undisputed said he was directed to go to a
helicopter.

6 Mr. Kerrigan established that at great pains in their
case, he

7 was a junior officer directed to this location. He
went from

8 location to location. Every witness that testified by
letters

9 rogatory said Armando Fernandez gave no orders and was
only

10 receiving orders. There is no basis for any conspiracy
and

11 they have not identified any basis for a conspiracy
that

12 Armando Fernandez is part of any group. There is no
agreement

13 that can even be inferred in a military context. They
have not

14 cited a single case in their pretrial papers saying in
a

15 military context where a person who is not given a
direct order

16 in which he committed some act, he was given orders to
report,

17 he went from location to location and there is no
evidence of

18 him receiving an illegal order or him committing an
illegal
19 order or giving an illegal order, excuse me.
20 There is no basis as a matter of law under any
theory
21 for them to say there was a conspiracy in a military
context
22 here.
23 The one remaining ground is whether Armando
Fernandez
24 aided and abetted in the execution of Winston Cabello
and there
25 is no evidence in this record to justify that being
submitted

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1 to this jury. They are asking for jurors to draw
inferences
2 upon inferences. It is impermissible. There is no
evidence
3 that Mr. Cabello's death was caused by any action of
this
4 defendant. In fact the testimony is 100 percent
contrary that
5 the order came from Colonel Haag or from General
Arellano to
6 Colonel Haag. That is the testimony in this record.
There is
7 no testimony anywhere in this record that Armando
Fernandez
8 ever had any connection with any order or any treatment
of
9 Winston Cabello.

10 Your Honor, there is absolutely no basis for
this case
11 to go to the jury. There is not sufficient evidence
and I
12 implore you to enter a directed verdict as to
plaintiffs' case.

13 THE COURT: Are you going to be supplying
authority
14 for your argument?

15 MR. DAVIS: To the extent Your Honor asks for
16 authority, a lot of what I just stated has been law in
our
17 previous papers. I am responding to their submission
on the

18 jury instructions, but most of my argument was based
upon what
19 the factual record is that they presented to this jury.
Not
20 all these allegations they have had for all these years
but the
21 actual facts that came on the witness stand and it just
doesn't
22 get them there.
23 THE COURT: I indicated to the parties side
bar I
24 would allow Mr. Davis to preserve his argument and
plaintiffs
25 requested time to review the letters rogatory. I would
like to

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1 utilize the jury time since we have a juror who is a
little bit
2 under the weather. Rather than taking time for further
3 argument, I will reserve on the motion pending argument
by the
4 plaintiff and rebuttal by the defendant. We will take
15
5 minutes so the plaintiffs can look over the letter
rogatory of
6 the defendant.

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

9 (Open court. Jury not present.)

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

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

12 Would counsel state their appearances.

13 (All parties present.)

14 THE COURT: Are we ready for the jury?

15 MR. DAVIS: We went through the designations
and cross

16 designations. I have a copy of Captain Diaz'
responses. There

17 will be three questions you need to rule on before we
start.

18 The first objection is to their cross
designation in

19 paragraph 11E.

20 MR. CUNNINGHAM: Mr. Davis told us there may
be a

answer 21 translation problem with that particular question and
we will 22 and we have not had time to work through it. I doubt
23 get to our counter designations this afternoon.
24 THE COURT: We only have 25 minutes.
25 MR. DAVIS: It will take the rest of the
afternoon.

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then we
you
1 THE COURT: Let's go through your designations
2 can take up the three afterwards or tomorrow morning if
3 need more time for the translation.

4 Bring the jurors in, please.

5 (Jury present.)

call by
A.
6 MR. DAVIS: Defendant Armando Fernandez will
7 letter rogatory, Patricio Ramon Felix Diaz A R A N E D

8 THE COURT: You may proceed.

May 3,
9 MR. DAVIS: This is a letter rogatory taken on
10 2002 in Santiago Chile.

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

Irving 1347
12 A. Patricio Ramon Felix Diaz Araneda, Washington
13 Vitacura.

training
the
14 Q. Please describe your educational background and
15 beginning in secondary school and continuing through
16 present?

branch.
in 1981.
17 A. Military school as an Army officer in the Engineers
18 Chemical Engineer at the Military Polytechnic Academy

19 Q. Question 4. How are you presently employed?

20 A. I work as a consultant at Farmae, Army Arsenal
Manufactory.

21 Q. Please briefly describe your military service?

22 A. From 1966 to 1970 in the Arauco Regiment, Osorno.
In 1970

23 to the end of 1972, Tejas Verde School of Engineers.
In 1973

24 to 1974, Atacama Regiment, Copiapo. 1975, Army
Engineering

25 Command Santiago. 1975 to 1976, Engineers Academy of
the

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1 Spanish Army, Madrid, Spain. 1977 to 1981, Military
2 Polytechnic Academy. 1981 to 1982, Military Chemical
Complex
3 Talagante. 1983 to 1987, Ministry of Public Works.
1988
4 Chilean Military Mission in Spain, Madrid. 1989, 1993,
5 Director of C E M A, Chile. 1993 to 1994, Director of
the Army
6 Investigation and Control Institute, Santiago. 1995
and 1996,
7 Assistant Director of Famae. 1997, retirement with the
rank of
8 Brigadier.

9 Q. Question 6. Please describe your employment and/or
10 military assignments in September and October 1973?

11 A. I was Army Captain with the Engineers branch and
discharged
12 duties as Company Commander in the Atacama Regiment
Copiapo.

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

14 A. Refer to what I have already said.

15 Q. Where were you stationed?

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

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

18 A. Company Commander.

19 Q. Who was your commanding officer?

20 A. Lieutenant Colonel Oscar Haag Lash.

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

22 A. To Second Lieutenant Major Carlos Enriotty Blay,
deceased.

23 Q. For what reason did you report to those officers?

24 A. Above all, matters relating to bar rack and
military life.

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

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1 A. Yes. The officers who reported to me Second
Lieutenant

2 Marcela Marambio, Lieutenant Guillermo Pena, deceased.

3 Q. Who assigned them to report to you?

4 A. By virtue of my military rank and assignment, they
were my

5 direct subordinates.

6 Q. When did you first become aware that General Sergio
North of

7 Arellano Stark would travel on a military helicopter
this

8 Chile in October of 1973? How did you first learn of
9 mission?

10 A. I learned about it only upon his arrival in
Copiapo. I had

11 no knowledge of it prior to that.

12 Q. When did General Arellano arrive in Copiapo?

13 A. He arrived October 16 at around 2000 hours. I
remember

14 that date because I was involved in a trial, not
because I had

15 received it.

16 Q. Why do you recall that date?

17 Who accompanied General Arellano?

18 A. I learned about it later. Among them is mentioned
19 Brigadier Espinosa, Colonel Arredondo, Major Moren
Brito.

20 Fernandez Larios, who I did not know before and I
didn't know

21 any other persons.

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

23 A. I have no knowledge because I did not physically
know him.

24 Q. Questions A, B and C was how was he dressed, was he
armed,

25 if so with what weapons was he armed?

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1 A. I do not know.

2 Q. 11D. What was his role generally with respect to
the

3 mission?

4 A. I do not know.

5 Q. Question 12. What rank did Fernandez Larios have
in

6 October of 1973?

7 A. Lieutenant.

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

9 helicopter?

10 A. No.

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

12 A. General Arellano and Colonel Arredondo.

13 Q. Did Fernandez Larios direct the helicopter to any
14 destination?

15 A. No.

16 Q. Who ordered the helicopter to go to a particular
17 destination?

18 A. I have no knowledge.

19 Q. When the helicopter arrived at a particular
location,

20 please describe any public meetings or speeches that
were given

21 and by what persons?

between 22 A. No. Public meeting? No. There was a meeting
night. 23 General Arellano and the regiment on October 16 at
subject 24 Q. If any speeches or meetings occurred, what was the
25 of the speech or meeting?

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meeting. 1 A. I have no knowledge. I did not take part in the
2 Q. Question 17C. Did any private meetings occur with
General 3 Arellano Stark and any of the local officers?
4 A. Yes, the meeting of the 16th.
5 Q. If so, who attended such meetings?
Lieutenant 6 A. I learned of it later through statements from
7 Colonel Haag himself. Mr. Arredondo, the Prefect of
8 Carabineers, General Perry, deceased.
9 Q. What was discussed?
10 A. I have no knowledge.
11 Q. Did Fernandez Larios meet with any officers?
12 A. No.
13 Q. If so, what was discussed?
14 A. I have no knowledge.
location? 15 Q. Did Fernandez Larios give any orders at any
16 A. No. Militarily, it is not permitted. Orders must
be given 17 through regular command channels.
18 Q. Did Fernandez Larios give any speeches?
19 A. There was not meeting that I know of.
20 Q. Did you know Fernandez Larios before this mission?
21 A. No.
22 Q. What orders were you given with respect to General

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

24 A. Yes. I received the order to shoot 13 prisoners.

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

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1 garrison?

2 A. The order was given by Lieutenant Colonel Oscar
Haag and

3 the order was to shoot the 13 prisoners.

4 Q. What orders did you receive concerning the
treatment of the

5 prisoners?

6 A. Already answered.

7 Q. What orders did you receive concerning the housing
or

8 removal of the prisoners?

9 A. The order was only to execute them.

10 Q. Who gave you those orders?

11 A. The regiment Commander.

12 Q. Did you participate in any courts or tribunals
during

13 General Arellano's mission to Copiapo?

14 A. No.

15 Q. Question 22. Did anyone in General Arellano's
group bring

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

17 any information identifying any of the prisoners held
in

18 Copiapo?

19 A. I have no knowledge.

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

21 this information?

meetings 22 A. I assume General Arellano, who presided over the
23 and the Commander of the regiment.
24 Q. How many prisoners' names were so identified?
25 A. 13 names.

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1 Q. Whose names were so identified?

2 A. I remember Winston Cabello among the 13. The
other,
3 Mr. Vincenti, and I do not remember the rest of the
names.

4 Q. Why were those names identified?

5 A. They gave me a list of the names.

6 Q. What did the officers do with this information?

7 A. I do not know. They only gave me a handwritten
sheet with
8 names, and I did turn over that list to any officer.

9 Q. Were additional names added? Whose names were
added? Why
10 were they added?

11 A. No. Only those 13.

12 Q. When did you first learn that 13 prisoners were
killed in
13 Copiapo in October of 1973?

14 A. The same time as their execution. I was the
officer in
15 charge responsible for their execution.

16 Q. How did you learn they had been killed?

17 A. Already answered. I was the one in charge and
responsible
18 for that execution.

19 Q. Question 24. Did you know in advance the prisoners
would
20 be killed? How did you know? Who else knew they would
be

killed? 21 killed? When did you know that the prisoners would be
killed? 22 A. I found out about it October 16 around 2300 hours.
When I 23 received the order, General Arellano and Commander Haag
knew 24 about it.
25 Q. Who ordered the prisoners be killed?

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my
General

1 A. I received the order from Colonel Haag, but it is
2 understanding that he must have received the order from
3 Arellano.

4 Q. To whom were those orders given?

5 A. To me.

6 Q. What were those orders?

7 A. To execute the detainees included in the report.

8 Q. Did you give any orders to kill the prisoners?

but I

9 A. I was accompanied by personnel under my command,
10 directed the whole operation.

11 Q. If yes, to whom did you give those orders?

12 A. I already answered this.

13 Q. Who participated in killing the prisoners?

Marambio

14 A. Captain Ricardo Yanez, Second Lieutenant. Marcelo
15 and Second Lieutenant Waldo Ojeda. I refer to the
16 military rank they had in the year 1973.

were

17 Q. What happened to the prisoners' bodies after they
18 killed?

19 A. They were buried at the Copiapo Cemetery in a
common grave
20 October 17 at night.

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

in the 22 A. The regiment Commander. The corpses were recorded
interred 23 registry maintained by the cemetery and they are
24 there.

25 Q. Did you give the order to the cemetery
administrator?

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order to
demanding
Registry
the

1 A. Yes, because we sent for the cemetery director in
2 be able to bury the person's remains. He previously
3 of us the participation of the officials of the City
4 who proceeded to identify and take the fingerprints of
5 deceased at the cemetery itself.

did you
you to do

6 Q. When did you give him the order? What specifically
7 order him to do? Under what authority? Who ordered
8 so?

Commander
Commander

9 A. There was a formal document between the regiments
10 and cemetery management to proceed to the burial.

11 Haag directly ordered me to arrange for it.

12 Q. Question 28. Had you ever given such an order or
directive
13 to the cemetery administrator at any other time?

14 A. No.

15 Q. If yes, when did you give him a similar order or
directive?

16 A. That night, of October 17.

17 Q. Who did you direct him to bury?

18 A. We found out with military personnel under my
command, I do

19 not remember names. It was military personnel, yes.

20 Q. Was that person or were those individuals killed?

21 A. Yes.

22 Q. How was that person or those persons killed?

23 A. By execution.

24 Q. Who killed them? Who killed him or them?

25 A. The unit under my command of which I was a part.

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1 Q. Why?

2 A. I only received a military order. I do not know
the
3 reason.

4 Q. Were you present when the 13 prisoners killed on or
about
5 October 17, 1973, were buried?

6 A. Yes. I took part in the burial.

7 Q. Question 35. How often did you see Fernandez
Larios before
8 October 1973?

9 A. No, I never saw him before.

10 Q. How many times did you see Fernandez Larios in
person since
11 October 1973?

12 A. Never.

13 Q. When was the last time you spoke with Fernandez
Larios?

14 A. I have never spoken with Fernandez Larios.

15 MR. DAVIS: That concludes defendant's reading
of
16 Captain Diaz' testimony.

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

18 Do not discuss this case amongst yourselves or anyone
else.

19 Have no contact whatsoever with anyone associated with
the

20 trial. Do not read, listen or see anything touching on
this

about 21 matter in any way. If anyone should try to talk to you
it to 22 this case, immediately instruct them to stop and report
23 my staff.
24 Give your notebooks to the court security
officer and
25 I will see you tomorrow morning at 9:30.

RICHARD A. KAUFMAN, CMRR

1 Have a nice afternoon and evening.

2 (Jury leaves room.)

3 THE COURT: Let's review what we can in the
letter

4 rogatory to which there are objections to. These are
the
5 plaintiffs' designations?

6 MR. CUNNINGHAM: Yes, Your Honor.

7 MR. DAVIS: We object to the question 11E. We
have

8 the Spanish version. The next two we object to are
questions

9 41 and 42. It would be improper impeachment, Rule 609,
10 impeachment by evidence of conviction of crime.

11 Here he was charged, the charges were somehow
12 resolved. It is making reference to a collateral
proceeding in

13 which Mr. Guzman is not here to examine him on. It is
hearsay.

14 It for sure would be improper impeachment based upon
what is in

15 this record, albeit it is a letter rogatory and two,
saying

16 what Judge Guzman did or did not do.

17 Captain Diaz testified based on where he is
today and

18 whatever happened with Captain Diaz and I can't tell
you what

19 happened with Captain Diaz. It will only cause
confusion to

If they 20 these jurors. Captain Diaz has confessed to a murder.
kind of 21 want to call him a liar, they can; but insofar as any
and should 22 improper impeachment, this is not proper impeachment
23 not be allowed in evidence.

24 MR. CUNNINGHAM: I do want to call Captain
Diaz a liar
25 and base it on his answers to 41 and 42, and a further

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Diaz gave 1 statement we haven't did you have. In 1998, Captain
he 2 a statement to Judge Guzman. In that statement he said
statement 3 couldn't remember what happened in Copiapo. That
invite the 4 coupled with these two answers, 41 and 42 I think
light of 5 inference that Captain Diaz has changed his story in
truth. 6 these charges and is now not telling the complete

we need 7 We want to be able to make that argument and
8 the answers to 41 and 42.

the basis 9 THE COURT: Let's take up 41 first. What is
10 that 41 comes in under the Rules of Evidence?

bias of 11 MR. CUNNINGHAM: It comes in because of the
charged 12 this witness is at issue in this case. That is, he was
a 13 and he got out from under those charges and he is like
his 14 rolling snitch who got a deal from the government and
of 15 testimony has changed between the time, or as a result
16 getting that deal.

obtained 17 THE COURT: What evidence do you have that he
18 some kind of deal?

19 MR. CUNNINGHAM: We don't have admissible
evidence

20 other than the answers to these questions.

21 THE COURT: What is in his answer in 41 that
indicates

22 he received some kind of plea agreement or some kind of
deal?

23 MR. CUNNINGHAM: The indictment has been
withdrawn and

24 there are currently no charges pending against him.

25 THE COURT: It is sustained. It is not proper

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not a
that
deal
to, upon
this
says he
indictment
pending

1 impeachment under the Rules of Evidence because it is
2 prior conviction and I do not find there is anything
3 indicates in the answer there was a plea agreement or a
4 with, I suppose it is Judge Guzman you are referring
5 which bias, an inference of bias can be drawn such that
6 would become admissible in these proceedings. The only
7 information in the answer to question 41 -- first he
8 was absolved of criminal charges. Then he says the
9 was withdrawn and there are currently no charges
10 against him.

the
this

11 There is no basis for why. We don't know why
12 indictment was withdrawn or dismissed on the basis of
13 answer.

of the
for which
to be

14 MR. CUNNINGHAM: I will make a weaker version
15 argument of bias. A man who has confessed to a crime
16 he has received no potential punishment is less likely
17 believed in connection with that confession.

18 There is something going on here.

19 THE COURT: Is there double jeopardy in Chile?

20 MR. CUNNINGHAM: I don't know.

21 THE COURT: It seems to me if you are
admitting

22 involvement you are subjecting to potential criminal
charges

23 rather than a lack of criminal charges. It is a
statement

24 against interest. I received the orders, I killed
people.

25 I don't know how this becomes -- what you have

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1 indicated, a man has confessed to a crime for which he
has
2 received no potential punishment is less likely to be
believed.

3 MR. CUNNINGHAM: Right.

4 THE COURT: I am not following that logic. Do
you
5 have any authority with respect to that logic?

6 MR. CUNNINGHAM: No.

7 THE COURT: It is sustained.

8 MR. CUNNINGHAM: In the answer at 41A he says
all
9 criminal charges against me were dismissed in full.

10 I think that goes to whether or not he is at
risk now
11 for the confession he made.

12 THE COURT: I don't know. Unless you can
present
13 evidence to me he is not at risk, I don't know whether
he is at

14 risk or not. There is nothing in the answer that
indicates he
15 is not at risk, therefore he is going to take the
burden upon

16 himself because he has been totally absolved.

17 In our jurisprudence, there are instances
where
18 charges might be dismissed and brought at a later time.
The
19 government or state government nolle proseques the
charges, it

time. 20 doesn't mean the charges can't be brought at a later

21 MR. CUNNINGHAM: Captain Diaz seems to be the
22 cornerstone of the defendant's case. He has confessed
to this

23 crime. It appears there are no consequences to that
24 confession. I think it goes to the weight the
confession

25 should be given.

RICHARD A. KAUFMAN, CMRR

me there
time

1 THE COURT: What evidence do you have to show
2 are no consequences other than the charges were at one
3 dismissed against him?

4 MR. CUNNINGHAM: That is all I have.

show
because
basis in
not be
him.

5 THE COURT: I don't find that is sufficient to
6 any less weight should be given to his confession
7 criminal charges were dropped against him, without any
8 fact, or in law, under Chilean law, that charges could
9 brought against him or could not be refiled against

a
confession,

10 There is an insufficient record for me to make
11 determination it should go to the weight of his
12 therefore, it is denied.

13 MR. CUNNINGHAM: If I could find such evidence
14 overnight --

15 THE COURT: If you can, I will consider it.

16 MR. DAVIS: We object to that.

consider

17 THE COURT: If they find some nexus, I will
18 it.

rogatory

19 MR. DAVIS: We would have some more letters

20 to read in the morning.

21 THE COURT: I haven't ruled on 42 yet.

22 What is the basis for 42?

23 MR. DAVIS: I withdraw it.

24 THE COURT: Can we take up the translation
issue now?

25 MR. DAVIS: The short answer is, I don't know.
It was

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1 handed to Mr. Castro. I can tell you what the hearsay
2 objection to it is.

3 THE COURT: What is the number?

4 MR. DAVIS: Question 11. It is 11E. The
question is,

5 it is directed to, how would you describe his demeanor.
The

6 question is referring to Mr. Fernandez during the time
the

7 delegation was in Copiapo and he says I have no
description

8 whatsoever, I have no knowledge he was there.

9 Then he gives some other information about
somebody

10 said he may have killed somebody. That clearly would
be

11 hearsay, clearly does not come into evidence.
Regardless of

12 any translation issue, I would say the witness has
already, by,

13 under Rule 602, lack of personal knowledge, has
established he

14 cannot testify to this, therefore should be excluded
for that

15 basis alone regardless of any translation issue.

16 MR. CUNNINGHAM: We will submit that, Your
Honor.

17 THE COURT: You are withdrawing that?

18 MR. CUNNINGHAM: Yes.

19 With respect to Captain Diaz, we would like to
impeach

20 him by reading the prior inconsistent statement he gave
to
21 Judge Guzman in which he said he did not recall these
events,
22 and I have a copy of the statement if Your Honor would
like to
23 see it.
24 MR. DAVIS: They provided me with a copy. It
is
25 actually a copy I had translated. I have not had a
chance to

RICHARD A. KAUFMAN, CMRR

the

1 review it. If I could address it the first thing in
2 morning.

3 THE COURT: Sure. Can you give me a copy?

4 MR. CUNNINGHAM: Yes.

5 THE COURT: We are in recess until tomorrow
morning.

6

7

o0o

8

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

12

13

14

15

Date

Official Court Reporter

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