

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 8,
2003		)	
		)	
	ARMANDO FERNANDEZ-LARIOS,	)	
		)	
		)	
	Defendant.	)	
		)	
	-----x	)	

VOLUME 10

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

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WITNESSES FOR THE PLAINTIFF:

WITNESSES FOR THE DEFENDANT:

EXHIBITS

PLAINTIFF

IN EVID.

DEFENDANT'S



1 (Open court. Jury not present.)

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

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

4 Would counsel state their appearances.

5 (All parties present.)

6 THE COURT: Are we ready to proceed?

7 MR. CUNNINGHAM: We have some cross  
designations of

8 Mr. Diaz and we have information we would like to  
present. If

9 we present that Mr. Davis would like to present other  
10 statements in front of Judge Guzman. We would have no  
11 objection to the limited comments of those substantive  
12 statements being read but we have not seen what the  
excerpts

13 are going to be.

14 THE COURT: Is that a fair representation, Mr.  
Davis?

15 MR. DAVIS: Yes.

16 THE COURT: Neither side has any objection to  
the

17 original Guzman statement and you are going to read  
some

18 statements from a subsequent Guzman statement?

19 MR. DAVIS: Yes, in 1998 he said no and before  
that he

20 said I did it, I did it, I did it.

21 THE COURT: Then we are ready to proceed?

like to 22 MR. CUNNINGHAM: I believe we are. We would  
23 see the statements, the actual statements.  
him? 24 THE COURT: Do you have the statements for  
25 MR. DAVIS: Yes.

RICHARD A. KAUFMAN, CMRR

1 Do you have a copy, Your Honor?

2 THE COURT: No, I don't.

3 MR. CUNNINGHAM: On the next issue, I believe  
there  
4 are some unresolved objections with respect to two of  
the  
5 letters rogatory Mr. Davis proposes to read next.

6 THE COURT: Okay.

7 To whom do they relate?

8 MR. CUNNINGHAM: They relate to a witness  
named De La  
9 Mahotiere and Mr. Moren Brito.

10 MR. DAVIS: I have decided not to call Mr.  
Mahotiere.

11 THE COURT: As to Mr. Brito?

12 MR. DAVIS: I will hand up the letter  
rogatory.

13 MS. HEALY: Your Honor, the plaintiffs object  
to the  
14 reading of 36D in Mr. Brito's letter rogatory.

15 THE COURT: Why were they taken from the  
garrison?

16 MS. HEALY: 36D, were any prisoners killed  
before they

17 left the garrison and was Fernandez Larios involved in  
killing  
18 the prisoners.

19 THE COURT: What page?

20 MS. HEALY: C018452.

21 MR. DAVIS: I gave you the wrong pages, Your  
Honor.

22 THE COURT: Were any prisoners killed before  
they left

23 the garrison? No.

24 MS. HEALY: Was Fernandez Larios involved in  
killing

25 these prisoners. The answer is, no, but as to parts A  
through

RICHARD A. KAUFMAN, CMRR



1 C indicates the witness lacked personal knowledge.

2 MR. DAVIS: If they wanted to read and argue  
he

3 doesn't have personal knowledge they can but the  
witness gave a

4 direct answer to a direct question and we believe it  
should go

5 into evidence. The same Rules of Evidence applies,  
that would

6 be his testimony if he was on the stand and on cross  
7 examination they could bring out you don't know this,

8 know that. This was the answer he gave under oath. In  
the

9 letters rogatory propounded to him.

10 THE COURT: Is there another question that  
indicates

11 he has no personal knowledge?

12 MS. HEALY: If you look at the answer to E,  
what did

13 he do? He did not participate. It indicates he lacks  
personal

14 knowledge whether or not Mr. Fernandez was involved.

15 THE COURT: The objection is overruled. I do  
not find

16 it is indicative of a lack of knowledge. You can make  
argument

17 as to that. I am not precluding argument, but it is a  
direct

18 answer and there is no indication of lack of knowledge.

19 Are we ready?

20 MR. DAVIS: On their cross examination, Your  
Honor, to  
21 Mr. Bravo, page 11 on the letters rogatory, question  
number 31.  
22 MS. HEALY: I believe we actually resolved  
this. We  
23 would terminate the answer after "I cannot confirm."  
24 MR. DAVIS: That is fine.  
25 The last one, Your Honor, question 83, which  
is

RICHARD A. KAUFMAN, CMRR

1 similar to a ruling you gave yesterday. Page 26,  
excuse me,

2 question number 83. Again, it would be improper  
impeachment.

3 He admits he was charged at the preliminary stage and  
there is

4 no termination. There is no conviction of any sort,  
therefore

5 I submit it would be improper impeachment under, I  
think it is

6 Rule 609.

7 THE COURT: What is your response?

8 MS. HEALY: He has not in fact been convicted  
but it

9 certainly goes to his credibility. Under 607 we  
believe the

10 statement should come in.

11 THE COURT: 607 being?

12 MS. HEALY: The credibility of witnesses. The  
fact he

13 has been charged with offenses relating to the same  
action out

14 of which this case arises is certainly relevant to Mr.  
Bravo's

15 credibility.

16 THE COURT: What is the probative value of his  
17 answers, since I have just been given the letters  
rogatory?

18 MR. DAVIS: The substantive testimony is, he  
was on a

19 trip, he didn't see Mr. Fernandez do anything. In fact  
he  
20 actually says he saw Mr. Fernandez on the night in  
Copiapo.  
21 The substance of what he says is similar to what a  
number of  
22 the witnesses said by letters rogatory, they did not  
see  
23 Mr. Fernandez take any actions against anyone and in  
Copiapo  
24 saw Mr. Fernandez in a hotel and that is what he  
testified to.

25 THE COURT: What is Bravo's involvement?

RICHARD A. KAUFMAN, CMRR

a 1 MR. DAVIS: He was on the helicopter. He was  
2 military officer but in civilian clothes.

3 THE COURT: What does he say is his  
involvement?

4 MR. DAVIS: He had his own mission. He is not  
exactly  
5 specific. He makes it clear he is not working for  
General  
6 Arellano on that. He has civilian duties throughout  
that.

7 MS. HEALY: Although --

8 MR. DAVIS: Not civilian, military duties but  
not  
9 under General Arellano.

10 MS. HEALY: In fact he admits to being an  
intelligence  
11 officer and although this evidence has been excluded  
from the  
12 jury's hearing, he was in fact a DINA member and fellow  
DINA  
13 officer with Mr. Fernandez involved in a number of post  
caravan  
14 DINA activities. The fact he has been charged with the  
same  
15 acts for which the defendant is now being sued is  
relevant to  
16 whether or not he might give a false alibi.

17 THE COURT: I will overrule the objection and  
allow  
18 the introduction of this question and answer as it may  
go to

of the 19 bias the witness has in presenting a specific version  
charges 20 events which may be to his benefit as he has criminal  
or bias 21 as he states pending in Chile. There may be interest

22 he has. On that basis I will overrule the objection.

23 Anything else?

objections. 24 MS. HEALY: I believe that resolves the

25 MR. DAVIS: They asked for what portion of the

RICHARD A. KAUFMAN, CMRR

I have  
1 substantive statement of Mr. Diaz I would be reading.  
2 my own highlighted copy I could show them briefly or  
3 extensively, just so they know where I am reading. It  
is  
4 basically discussing, I did it, I did it, I did it.

5 THE COURT: Why don't you do that.

6 (Interruption.)

7 MR. DAVIS: We submitted an electronic filing  
this  
8 morning on the jury instructions. I have an extra copy  
of the  
9 submission. We filed it about 8:35, 8:40 this morning.  
10 Whatever your pleasure is.

11 THE COURT: That is fine. How does that work  
with the  
12 electronic filing; how does the copy for Judge come up?

13 THE CLERK: We make it downstairs.

14 THE COURT: Where are we in your case?

15 MR. DAVIS: I will be finished this morning.  
We have  
16 a statement Colonel Haag gave in Chile and a few other  
things  
17 and I believe we will be finished 12:30.

18 THE COURT: Is the plaintiff presenting a  
rebuttal  
19 case?

20 MR. CUNNINGHAM: A rebuttal of two questions  
from

21 General Arellano's letters rogatory.

22 MR. DAVIS: Will we then have a charge  
conference

23 tomorrow with closing Friday?

24 THE COURT: That is what I anticipate. I have  
just

25 begun to look at this, the plaintiffs' memorandum. I  
haven't

RICHARD A. KAUFMAN, CMRR



1 looked at yours. I don't know how many contested  
issues there

2 are in the charge conference but I am hopeful we can  
get

3 through it in one day. We have one juror conflict for  
Friday.

4 One of the jurors has a class and she is also  
unavailable on

5 Tuesday.

6 MR. DAVIS: Would that mean we would start  
late on

7 Friday or not go?

8 THE COURT: Why don't we take this up at the  
end of

9 the day before they leave. The one juror next week  
indicated

10 it is a critical business trip and another juror going  
on a

11 prepaid vacation Wednesday through Sunday. It looks  
like we

12 end up losing one person. It is a question of my  
deciding when

13 we are going to go forward. My preference, probably,  
is to

14 keep going.

15 MR. CUNNINGHAM: With respect to the  
additional

16 statements of Mr. Diaz, it is the case there is a  
January 28,

17 2002 statement in which Captain Diaz expressly  
repudiates the

18 statement that I want to use, and I have no objection  
to that  
19 being read. However, what Mr. Davis wants to then do  
is read  
20 subsequent statements where Mr. Diaz reiterates and  
elaborates  
21 on the substantive testimony in his letter rogatory and  
I  
22 believe that is cumulative, time wasting and  
prejudicial.  
23 THE COURT: Do I have it?  
24 MR. DAVIS: I gave you the statement. I  
didn't give  
25 you what I had marked. This is for Captain Diaz.  
Essentially

RICHARD A. KAUFMAN, CMRR

1 there is one statement --

2 THE COURT: Give me a page. There are fax  
pages on

3 the top.

4 MR. DAVIS: Fax page 21, for example.

5 THE COURT: I go from 19 to 28 -- here it is,  
21.

6 MR. DAVIS: I would read the initial part  
about the

7 date when he is giving the statement then the first  
paragraph

8 and from there I would read the fourth and 5th  
paragraphs where

9 he describes in detail what he did, and that would be  
following

10 a similar pattern in the subsequent statements, he  
reaffirms

11 the testimony he gave --

12 THE COURT: Is there additional information?  
I think

13 I probably need to see all three of the statements.

14 MR. DAVIS: I think you have them all there.

15 THE COURT: You have to flag them for me.

16 MR. DAVIS: The first one is dated January 28,  
2002,

17 fax pages 21 and 22.

18 THE COURT: I need to start. Initially where  
is the

19 testimony concerning this area you are going to read?

20 MR. CUNNINGHAM: Your Honor, I believe the  
substance

21 of this was in the letters rogatory that were read  
yesterday.

22 THE COURT: Right, I remember that.

23 Where is the cross designation, then?

24 MR. CUNNINGHAM: The cross designation is not  
what we

25 are quibbling about at this point.

RICHARD A. KAUFMAN, CMRR

1                   MR. DAVIS: They have one question which I  
have no           2                   objection to on the cross designation.

3                   MR. CUNNINGHAM: I intend to read a prior  
statement I       4                   handed up yesterday where Diaz says I don't remember  
anything         5                   in Copiapo. Mr. Davis now has a number of statements  
where he         6                   wants --

7                   THE COURT: He will come back on a redirect.

8                   MR. CUNNINGHAM: Right.

9                   THE COURT: This is one, fax page 21 which is  
Court of         10                  Appeals Santiago 002989 and 02881 at the top; correct,  
on               11                  October 16, 1973?

12                  MR. DAVIS: Yes.

13                  THE COURT: I will overrule the objection as  
14                  cumulative and I will allow the redirect.

15                  MR. DAVIS: I will be as brief as possible.

16                  THE COURT: Have we parsed through all of  
that?

17                  (Jury present.)

18                  THE COURT: Call your next witness.

19                  MR. CUNNINGHAM: The plaintiffs are going to  
do some         20                  reading from Captain Diaz' letters rogatory.

21                  Question 30 I will start with.

it as it 22                   The answer is typographically mixed up. Read  
23                   is.  
next? 24                   Q. After the prisoners were buried, what happened  
25                   A. Me, personnel under my command. The military  
personnel

RICHARD A. KAUFMAN, CMRR

1 under my command. I do not remember precisely. I  
witnessed  
2 the event. I was the one responsible for the burial of  
the  
3 people. I know that the regiment Commander announced  
the death  
4 of those persons in communique although the  
announcement states  
5 they died while attempting to escape.

6 Q. Who provided the notice to the newspaper?

7 A. I know the regiment commander had the notice  
published in  
8 the newspaper.

9 Q. Question 34. Who determined what information would  
be  
10 placed on the death certificates?

11 A. I did not know it at the time. Now, at present, I  
do know  
12 there were two kinds of certificates with respect to  
their  
13 cause of death. One states bullets impact and a  
second,  
14 military execution. I do not know how that change came  
about.

15 Q. Question 42. What civil claims if any have you  
faced as a  
16 result of the events in October 1973?

17 A. No.

18 MR. CUNNINGHAM: That concludes the reading  
from the  
19 letter rogatory.

20  
provided to

We would like to read a prior statement

30,

21 Judge Guzman by this same witness, Mr. Diaz, on October

22 1998.

23 THE COURT: You may.

Diaz

24 MR. CUNNINGHAM: Appears Patricio Ramon Felix

25  
officer of

Araneda, natural of San Antonio, 51 years, married,

RICHARD A. KAUFMAN, CMRR



1 the Army in retirement, chemical engineer. I work in  
Farmae,  
2 residing at 1347 Washington Irving, Vitacura, exhorted  
to tell  
3 the truth states.

4 The second paragraph. Whether he took part in  
the  
5 events narrated in said documents, particularly in  
giving the  
6 order to shoot 13 people that would have been driven by  
trucks  
7 from Copiapo towards Serena, he replies; I do not  
remember  
8 having had participation in these events, neither  
giving the  
9 order to shoot as I have been asked regarding if I had  
10 knowledge through people who told me of having  
participated in  
11 the said events, he responds, no. I have held numerous  
jobs  
12 afterwards without ever been shown or asked by anyone  
that I --  
13 participated in events such as these, for which --  
question --  
14 whether I took part directly or giving orders of the  
case in  
15 detentions of persons, bad treatment, shooting, etc. --  
replies  
16 no.

17 Skipping down to the middle of the final  
paragraph.

with 18 Questioned regarding if he had secured psychiatric help  
Only now 19 regard to the lakes, memory lapses, he declares no.  
and 20 after 25 years have I been asked regarding this matter  
Having 21 neither did I feel the necessity to find a specialist.  
executes with 22 nothing more to add. After reading, ratifies and  
23 the Court.  
from my 24 MR. DAVIS: May I read from sworn statements  
25 redirect from Captain Diaz?

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1 THE COURT: You may.

2 MR. DAVIS: Sworn statement in front of the  
Court of

3 Appeals Santiago dated January 28, 2002. In Santiago  
on

4 January 28 year 2002 at 2000 hours the Court was in  
session and

5 the Commander of Army telecommunications appears  
Patricio Ramon

6 Felix Araneda, already individualized on the record who  
after

7 being directed to tell the truth states. Asked if he  
ratifies

8 his declaration under the date of October 30, 1998  
appearing on

9 pages 576, he replies that I do not ratify it because I  
did

10 participate in the events respecting which I am being  
11 questioned.

12 The witness further testifies on this date.  
On

13 October 16, 1973, around 2000 hours arrived at the  
Atacama

14 regiment in the City of Copiapo. The helicopter that  
was

15 transporting General Arellano Stark and his committee  
who

16 proceeded to go to the military headquarters of the  
regiments

17 where a meeting is held with the Commander of the  
regiment, the

18 participation of Captain Carlos Brito Gutierrez, the  
prosecutor  
19 of the regiment and Commander Peary from the officers.  
Because  
20 of the antecedents becoming known, I am aware during  
the  
21 meeting the list of antecedents of the arrested  
personnel in  
22 the residents quarters in the jail was requested. I  
estimate  
23 that about three hours later I was summoned to the  
military  
24 headquarters where I found Lieutenant Colonel Haag  
Blaschke  
25 together with the Second Commander, Major Carlos  
Enriotte, now

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1       deceased, where I am informed of the order to execute  
the  
2       detained 13 and that this mission must be performed  
solely by  
3       officers for which they place at my disposal the  
available unit  
4       officers in accordance which I designate to accompany  
me, then  
5       Captain Ricardo Yanez Mora, Second Lieutenant Waldo  
Ojeda  
6       Torrent and Second Lieutenant Marcelo Marambio Molina.  
I must  
7       add that Captain Yanez is the only one to whom at that  
instant  
8       I inform about the mission.

9               Reading from the next page, the middle of the  
10       paragraph, the first paragraph on the next page.

11               I directed the truck towards the South of  
Copiapo to  
12       Highway Five North driving a little over 20 kilometers.  
As  
13       soon as the highway permitted me, I drove the truck  
away from  
14       the highway and went into the pampas towards the West  
15       approximately 200 meters, stopping the truck. At that  
time  
16       when the officers descended, I informed the second  
lieutenant  
17       about the mission we had to accomplish including their  
asking  
18       me if there was any way not to comply with that order  
to which

19 I replied, no, that the order must be complied with as  
it had  
20 been ratified to me. After that we removed the  
detainees in  
21 groups of three which were shot by three of the  
officers while  
22 one watched the rest and left on the truck the firing  
was  
23 revolving with respect to the participants. Naturally  
the last  
24 group there were four shot. I must make the point to  
say in my  
25 nervousness, I did not realize that my gun was bursting  
and I

RICHARD A. KAUFMAN, CMRR

1 shot two of them in these conditions.

2 Reading from another sworn statement dated  
January 29,  
3 2000, from Captain Diaz, presented to the Court of  
Appeals in  
4 Santiago. This is the one that has Bates stamp page  
C018101 or  
5 fax page 28.

6 In Santiago January 29 of the year 2000 at  
11:45  
7 hours, the Court was in session in the command of Army  
8 telecommunications with the object to proceed with the  
9 testimony, sworn testimony of Patricio Ramon Felix Diaz  
10 Araneda, who individualized in the record of the case  
who being  
11 instructed to tell the truth state, page C018102 what I  
can  
12 state is vouched in a document from the G E N D A R M E  
R I E.  
13 of Chile sent to the criminal court of Copiapo which is  
part of  
14 the file which states, on October 17, 1973 at 030  
hours, the  
15 undersigned picks up from the jail nine of the 13  
jailed who  
16 were shot. The foregoing statement can be ratified by  
the  
17 officers that participated with me in the firing. The  
other  
18 four under arrest were taken from the quarters.

19                                Reading from the next page. Fax page 30.  
Bates stamp

20                                C018103.

21                                Captain Diaz testifies, indeed, I directed and  
22                                participated in the shooting of the 13 persons in  
Copiapo on

23                                October 17, 1973. I estimate that the firings were  
verified

24                                around 0130 and 0200 of October 17, 1973. Emphatically  
I can

25                                state the events occurred in the early hours of October  
17,

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1 1973 date which coincides with the arrival of General  
Arellano  
2 and his retinue. It is a matter of association.  
General  
3 Arellano's retinue arrived in Copiapo on October 16,  
1973  
4 approximately 2000 hours.  
5 Reading from another sworn statement from  
Captain Diaz  
6 dated January 29, 2000, fax page number 25 and Bates  
stamp page  
7 C018098. This is also before the Court of Appeals  
Santiago.  
8 Santiago January 29 of the year 2000. Appears before  
the Court  
9 Patricio Ramon Felix Diaz Araneda, already  
individualized in  
10 the record of the case sworn to tell the truth states,  
turning  
11 to the next page under the heading of C; not before  
2300 hours  
12 was assigned to the headquarters where I was received  
in an  
13 adjutant section because at those moments at  
headquarters there  
14 was General Arellano and members of his retinue and  
other  
15 people that participated in the meeting, Captain Brito,  
16 Commander Peary and others. In the adjutant section  
were  
17 Commander Haag and Major Enriotte. At that moment I  
received a

Major 18 verbal order while we were all standing together with  
19 Enriotte. It consisted of shooting outside the quarter  
certain 20 premises and only with the participation of officers  
received 21 detainees which would be named in a list. Indeed, I  
22 the list of names. This list I have the impression it  
was 23 handwritten. Having received the order I proceeded to  
I chose 24 designate the officers to accompany me in the mission.  
received 25 a truck from my company to transfer the detainees. I

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public 1 four detainees inside the quarters. After I go to the  
2 jail to remove the remaining ones. The removing of the  
3 detainees from the jail was done the latest around 0300  
hours 4 approximately.

5 Finally another sworn statement given to the  
Court of 6 Appeals of Santiago on January 29, 2002, fax page 16,  
Bates 7 number C018079. The Court of Appeals Santiago. In  
Santiago on 8 January 29 of the year 2002 at 1600 hours takes place  
the sworn 9 testimony of Patricio Ramon Felix Diaz Araneda, also  
10 individualized who being asked to tell the truth state,  
fax 11 page number 17, the first paragraph. I received the  
order from 12 Commander Haag while in the office of the adjutancy  
with Major 13 Enriotte. It is probable when I arrived to military  
14 headquarters, Commander Haag together with Enriotte  
were at 15 that time commenting the order to shoot the 13  
prisoners. Then  
16 at that moment I was ordered to carry out the order of  
17 executing the 13 prisoners.

18 That concludes the redirect, Your Honor.

19 THE COURT: Call your next witnesses?

20  
Marcelo Luis

MR. DAVIS: By letters rogatory, we call

21 Manuel Moren Brito. Question 1.

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

23 A. My name is Marcelo Luis Manuel Moren Brito, and my  
address

24 is Americo Vespucio Sur 101 Apartment 36, Las Condes.

25 Q. Going to question 21. When did you first learn  
that 15

RICHARD A. KAUFMAN, CMRR

1 prisoners were killed during the course of General  
Arellano's  
2 stay in La Serena in October 1973?  
3 A. That same day.  
4 Q. Did you know in advance that the prisoners would be  
killed?  
5 A. That is a decision of the head of the delegation.  
6 Therefore, I didn't know.  
7 Q. When did you know this?  
8 A. I refer to what I have already stated.  
9 Q. Who participated in killing the prisoners?  
10 A. It was routine for unit forces to carry out the  
executions.  
11 Q. Did you participate in the killings?  
12 A. No.  
13 Q. Question 33. When did you first learn that 13  
prisoners  
14 were killed during the course of General Arellano's  
stay in  
15 Copiapo in October of 1973?  
16 A. That same day. In the evening that we arrived  
there.  
17 Q. Did you know in advance that the prisoners would be  
killed?  
18 A. No.  
19 Q. How did you know?  
20 A. From information making the rounds at officers  
club.  
21 Q. When did you know this?

22 A. I refer to what I have already stated, that same  
day in the

23 evening.

24 Q. Question 36. Were any prisoners killed before they  
left

25 the garrison?

RICHARD A. KAUFMAN, CMRR

1 A. No.

2 Q. 36A. Which prisoners were killed?

3 A. No.

4 Q. B. How were they killed?

5 A. No.

6 Q. D, was Armando Fernandez Larios involved in killing  
these  
7 prisoners?

8 A. No.

9 MR. DAVIS: That concludes our reading of Mr.  
Brito.

10 THE COURT: Are there cross designations?

11 MS. HEALY: No, Your Honor.

12 THE COURT: Call your next witness.

13 MR. DAVIS: Pedro Octavio Espinosa Bravo.

14 THE COURT: You may proceed.

15 MR. DAVIS: Starting with question 1.

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

17 A. My name is Pedro Octavio Espinoza Bravo. The Army  
18 telecommunications command.

19 Q. Question 3. Please describe your educational  
background  
20 and training beginning in secondary school and  
continuing  
21 through the present?

22 A. Besides regular courses at the military school, I  
am a

23 graduate of the General staff at the Army War Academy,  
24 professor of military intelligence.

25 Q. How are you presently employed?

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1 A. I do not work. I am retired.

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

4 A. During September 1973, I was employed at the Office  
of Army  
5 Intelligence.

6 Q. What was your rank in September and October of  
1973? Where  
7 were you stationed?

8 A. Rank of Army Major. At the same time I had a  
service  
9 assignment on the National Defense General staff. On a  
10 committee ordered by the President of the Republic,  
Salvador  
11 Allende.

12 Q. Question D. Who was your commanding officer?

13 A. General Lutz.

14 Q. Question E. Which other officers did you report to  
during  
15 that period?

16 A. General August Lutz and Aviation General Nicanor  
Estrada.

17 Q. Question 7. Did you accompany General Sergio  
Arellano  
18 Stark on his excursions to the Northern region of Chile  
in  
19 1973?

20 A. I did not accompany the General. Rather, I used  
the

Chile. 21 helicopter to move from the South to the North of

Chile 22 Q. Who ordered you to travel to the Northern region of

23 in October of 1973?

24 A. Army Intelligence Director, General Lutz.

Arellano? 25 Q. When were you ordered to accompany General

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not  
to the  
October 16,

1 A. I again refer to what I have stated before. I did  
2 accompany General Arellano on his trip from the South  
3 North, and I received the order to go South on Saturday  
4 September 29, 1973 from the intelligence director and  
5 concerning the trip North I received that order on  
6 1973.

October of

7 Q. 7C. Who else accompanied General Arellano in  
8 1973?

Chiminelli,  
Major  
Larios.

9 A. I remember that his adjutant, named Juan  
10 accompanied him. The chief of staff of troop command  
11 Marcelo Moren Brito and a Second Lieutenant, Fernandez  
12 As regards the remainder of the crew, I do not recall.

that

13 Q. Question 9. What was your role in connection with  
14 mission?

director  
where the  
delegation  
those

15 A. The orders I received from the Army intelligence  
16 were to collect information from the different places  
17 helicopter transporting General Arellano and his  
18 would be. The matters were those corresponding to all

19 activities of an internal nature and some counter  
intelligence

20 matters in the military.

21 Q. Question 10. What was Fernandez Larios' role?

22 A. I do not know what Major Larios' role was on  
General

23 Arellano's mission.

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

25 A. No. I had seen him on the trip General Arellano  
made to

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1 the South. I always performed my duties in civilian  
clothing,  
2 unarmed and without personnel under my command.  
Therefore, I  
3 had no communication with the members of General  
Arellano's  
4 mission.

5 Q. Question 1. Did you accompany General Arellano to  
6 Cauquenes?

7 A. As I previously stated, I was not part of General  
8 Arellano's group. My military assignments were  
strictly in  
9 function of my rank, not command. On this trip,  
likewise, I  
10 traveled using the helicopter as a means of transport.  
I  
11 traveled in civilian dress without weapons and without  
12 personnel under my command.

13 Q. 12A. When did you arrive?

14 A. We arrived in Cauquenes on October 1, 1973 and left  
15 Cauquenes the same day.

16 Q. Question 14. What were your orders concerning the  
17 prisoners at the garrison? What condition did you find  
the  
18 prisoners in when you arrived? Were they being well  
treated?  
19 What orders did you receive concerning the treatment of  
the  
20 prisoners? What orders did you give concerning the  
treatment

21 of the prisoners? To whom did you give those orders?  
22 A. I had no relationship with the detainees and  
received no  
23 orders from General Arellano in this regard. I never  
had any  
24 contact with prisoners and even in the proceeding  
conducted by  
25 minister Juan Guzman, I was subjected to several  
witness

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whose 1 confrontations with persons under investigation under  
2 control it was said the prisoners had been.

3 Q. That would be enough on that answer.

four 4 Question 16. When did you first learn that  
5 prisoners were killed in Cauquenes in October of 1973?

6 A. I do not remember if it was through the newspapers  
7 but it was much later I found out there had been executions in  
8 Cauquenes.

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

10 A. I did not know.

11 Q. When did you know this?

12 A. Through the newspapers at a much later time

13 Q. Who participated in killing the prisoners?

14 A. I do not know who could have taken part because the  
15 Arellano and helicopter I was traveling in and the one General

1 and 16 his personnel were traveling in left Cauquenes October  
17 taken according the later information, those executions had

18 place on October 4, 1973. A date on which I was in  
Valdiva.

19 Q. Did you participate in the killings?

20 A. By virtue of what I stated before, I could not have

21 participated in those killings because on the 3rd and  
4th I was  
22 in the City of Valdivia. Therefore, it would be for me  
to be in  
23 Cauquenes on that date.  
24 Q. Question 17. Did you accompany General Arellano to  
La  
25 Serena and when did you arrive, when did you leave?

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1 A. With respect to General Arellano's trip to La  
Serena, I  
2 declare I did not accompany General Arellano because I  
was not  
3 subordinate to him. I only used the helicopter as a  
means to  
4 transport me to the Northern zone. The trip the  
helicopter  
5 made to La Serena began at the Tobalaba Airport on  
October 16,  
6 1973 and that same day the helicopter continued on to  
Copiapo  
7 where we arrived at dusk October 16, 1973.

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

9 A. Yes, Lieutenant Fernandez Larios was traveling in  
General  
10 Arellano's group.

11 Q. Question 18. What orders were you given with  
respect to  
12 General Arellano's mission to La Serena in October  
1973?

13 A. I received no orders from General Arellano because  
I was  
14 not under his command. Neither could I have knowledge  
of or  
15 know what the mission was that he had. Therefore, I  
received  
16 no orders regarding to the mission being carried out by  
General  
17 Arellano.

18 Q. Question 19. What were your orders concerning the

19 prisoners at the garrison?  
20 A. I never knew the quantity or number of prisoners at  
La  
21 Serena. Neither did I know where they were nor did I  
have any  
22 contact with any prisoner in this city. I received nor  
gave  
23 any orders because I had no one to give them to due to  
the fact  
24 I had no relationship to the group which accompanied  
General  
25 Arellano.

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1 Q. Question 122. Did you accompany General Arellano  
to

2 Copiapo? When did you arrive? When did you leave?

3 A. Concerning the trip to the City of Copiapo, I did  
not

4 accompany General Arellano. I only used the helicopter  
as a

5 means of transportation and we arrived at dusk October  
16, 1973

6 and we left that city on October 17.

7 Q. Question 23. Did Fernandez Larios travel to  
Copiapo with

8 the group? How was he dressed? Was he armed? If so,  
what

9 weapons was he armed with? What was his role generally  
with

10 respect to the mission? How could you describe his  
demeanor of

11 the delegation during the time he was in Copiapo?

12 A. Lieutenant Fernandez traveled in the helicopter  
from Serena

13 to Copiapo joining the delegation under General  
Arellano's

14 command. Lieutenant Fernandez was dressed in a  
military

15 uniform and was armed with the standard weapon of an  
officer.

16 The uniform was field dress. I do not recall whether  
he was

17 carrying a rifle or a pistol. During the entire time I  
did not

I 18 know nor did I learn what Fernandez Larios' role was.  
19 couldn't make any statement regarding Lieutenant  
Fernandez 20 Larios' behavior as my activity was independent of that  
being 21 performed by the military group and my activities had  
nothing 22 to do with actions of this group.  
23 Q. Question 24. What rank did Fernandez Larios have  
in 24 October, 1973?  
25 A. Lieutenant.

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had a 1 Q. Question 26. How many officers on the helicopter  
2 higher rank?

order 3 A. I refer to my foregoing statement to the effect any  
4 for General Arellano's military group would have to  
come from 5 the Chief of General staff, who was Colonel Sergio  
Arredondo.

6 Q. Question 28. Who ordered the helicopter to go to a  
7 particular destination?

8 A. General Arellano.

9 Q. Question 29. When the helicopter arrived at a  
particular 10 location, describe any public meetings or speeches that  
were 11 given and by what persons? If any speeches or meetings  
12 occurred, what was the subject of the speech or  
meeting. Did 13 any private meetings occur with General Arellano Stark  
and any 14 of the local officers? If so, who attended such  
meetings? 15 What was discussed?

16 A. Yes. I recall at the places where the helicopter  
arrived,  
17 the unit was assembled and General Arellano addressed  
all  
18 personnel of the unit. At each of the garrisons. He  
spoke of

the 19 the caution and conduct that personnel must observe in  
20 activities they had discharged. I also remember at the  
in their 21 garrisons he visited, he met with the unit commanders  
22 offices. I have no knowledge of what matters were  
dealt with 23 at these meetings.

left 24 Q. Question 37. Were any prisoners killed before they  
they 25 the garrison? Which prisoners were killed? How were

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1 killed? Who participated in killing them? Was Armando  
2 Fernandez Larios involved in killing these prisoners?  
What did  
3 he do?

4 A. I know nothing about this and refer to what I  
stated in  
5 question 34 and I have no knowledge that Lieutenant  
Fernandez

6 Larios might have taken part in any of the events  
mentioned to  
7 me inasmuch as I saw Lieutenant Fernandez Larios the  
night of

8 the 16th in the company of a Linea Aerea Nacional  
flight  
9 attendant. Therefore I have no knowledge that  
Lieutenant

10 Fernandez might have participated in anything strange  
as an  
11 Army officer.

12 MR. DAVIS: That concludes defendant's reading  
of this  
13 witness.

14 THE COURT: Are there cross designations?

15 MS. HEALY: Yes.

16 Q. Question 30.

17 MR. DAVIS: I will give Mr. Castro an  
indication where

18 that testimony concludes.

19 THE COURT: Any objection?

20 MS. HEALY: No.

21 THE COURT: Proceed.

22 MS. HEALY: Continuing.

23 Q. What orders were you given with respect to General  
24 Arellano's mission to Copiapo in October 1973? What  
were your  
25 orders concerning the prisoners at the garrison? What

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1 condition did you find the prisoners in when you  
arrived? Were  
2 they being well treated? What orders did you receive  
3 concerning the treatment of the prisoners? What orders  
did you  
4 give concerning the treatment of the prisoners? To  
whom did  
5 you give those orders?  
6 A. I know nothing, nor did I learn anything on that  
occasion  
7 about anything having to do with the prisoners. I only  
found  
8 out from a report that the night before there had been  
an  
9 attempted escape which I cannot confirm.  
10 Q. Question 83. What criminal charges, if any, have  
you faced  
11 as a result of the events in October of 1973? If any,  
what was  
12 the disposition of any criminal charge?  
13 A. I am formally charged as a principal in connection  
with  
14 these events in an action pursued by Minister Juan  
Guzman and  
15 the indictment is in force and effect, in the  
preliminary  
16 stage. It is the only action I have faced as a result  
of these  
17 events.  
18 Q. Question 84. What civil claims, if any, have you  
faced as

19 a result of the events in October 1973?

20 A. No.

21 Q. If any, what was the disposition of any civil  
claims?

22 A. I have had none.

23 MS. HEALY: That concludes the counter  
designations.

24 THE COURT: Redirect or redesignation?

25 MR. DAVIS: No.

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1                   We would next call Lieutenant Colonel Oscar  
Haag based           2           on sworn testimony he provided on January 29, 2000.

3                   THE COURT: You may proceed.

4                   MR. DAVIS: This is before the Court of  
Appeals in           5           Santiago. It is the testimony of Oscar Haag dated  
January 29,          6           2000 at 3 p.m.

7                   In Santiago January 29 of the year 2000 at  
1500 hours,         8           the Court was in session in the command of Army  
9                   telecommunications with the object to interrogate Oscar  
Ernesto             10          Haag Blaschke, already individualized in the record of  
the                 11          case, who being instructed to tell the truth states.  
The                 12          deponent is advised of the reason for his appearance  
before the         13          Court and evidence is given of his testimony on January  
7,                 14          1999, recorded at page 906, expressing that he ratifies  
it in               15          all its parts.

16                  Likewise, the opponent is asked regarding the  
17                  circumstances of being suggested as the one who gave  
the then           18          Captain Patricio Diaz Araneda the order to shoot 13  
people a

19 fact which occurred on October 17, 1973 in the Sector  
known as

20 Cuesta Cardones in Copiapo. Questioned to reply if,  
indeed, on

21 October 16, 1973, while at the adjutancy of the  
military

22 headquarters he gave the order to shoot the 13  
arrested; using

23 only officers he replies no, it cannot be because I was  
always

24 in the interior of the headquarters with General  
Arellano.

25 Questioned by the Court, if and when he met  
General

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1 Arellano Stark after this person arrived at Copiapo on  
October  
2 16, 1973, he replies, indeed, we met at headquarters  
with  
3 General Arellano and besides also participating in this  
4 meeting, the Prefect of the Carabineros, the then  
Commander  
5 Rene Peary F A R G E S T R O M. Also present was the  
Prefect  
6 of investigations of Copiapo whose name I do not  
recall, plus  
7 another investigations perfunctory, an officer of  
Carabineros,  
8 police, whose name and rank I do not recall.  
9 Also present at the meeting was attorney Rojas  
10 Hidalgo, my counsel. Among the retinue besides  
Arellano there  
11 was the then Major Pedro Espinoza. All of them  
reviewed the  
12 arrested mens' antecedents. Also among them was  
Captain Carlos  
13 Brito who had the files of the arrested persons. We  
were all  
14 in the area of the adjutancy of the military  
headquarters.  
15 General Arellano, Major Espinoza, Captain Carlos Brito  
16 Gutierrez, together with investigations functionaries  
and  
17 police in charge of intelligence whose names I do not  
remember,  
18 worked at a table with the files and antecedents of the

19 arrested. We were sitting in front of the table and  
watching  
20 from afar what they were doing. General Arellano asked  
21 questions from the audience. We answered. There was a  
file  
22 with all the data of the detained persons which  
contained their  
23 political affiliation and charges against them. This  
24 documentation was kept in a cardex. In charge of the  
cardex  
25 was Captain Carlos Brito. The latter was showing the

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1        respective cards for each arrested man and sometimes  
General  
2        Arellano made marginal notations. I do not recall the  
color  
3        pencil he used. I only saw him from afar, so I could  
not  
4        precise what he jotted down. In some cases he made  
notations.  
5        In others he did not. This meeting started around 2000  
hours  
6        on October 16, 1973 and ended a little before midnight  
of that  
7        day. At the end of the meeting, I invited General  
Arellano,  
8        Arredondo and attorney Rojas for a snack to recover  
from the  
9        long working session, which was accepted. Afterwards  
General  
10       Arellano asked me to take him to his lodging, which was  
the  
11       Hotel Turismo, located in the city's Plaza De Armas. I  
12       remember I took him to his reserve room. Also on the  
same  
13       occasion I took the then Lieutenant Colonel Arredondo  
to the  
14       hotel. I remember Lieutenant Colonel Arredondo or  
another  
15       officer of the retinue came sporadically to the  
meeting. I  
16       knew Arredondo because I knew that he practiced  
horsemanship.  
17       Besides Arellano, sent notes to the outside to members  
of his

18       retinue as they had his confidence. General Arellano,  
while in  
19       the office of the military headquarters sent written  
messages  
20       presumably to members of his retinue. I ignored their  
21       contents. At the end of the meeting General Arellano  
delivered  
22       the list which he had received from the prosecutor's  
office  
23       with the names of all the arrested who were held at  
that moment  
24       in the regiment and a few in the local jail. Those  
were around  
25       70 and he had marked the names of 13 persons ordering  
they be

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with  
not be

1 shot as soon as possible. These people were executed  
2 pending proceedings because the General's order could  
3 unfulfilled due to his high investiture.

with the

4 After reading, it is ratified and executed  
5 Court.

6 May I have a side bar?

7 THE COURT: Yes.

8 (Side bar.)

just  
I could

9 MR. DAVIS: I think I am done, Your Honor. I  
10 wanted to review with my colleagues where we were. If  
11 have five minutes.

12 THE COURT: We will take 15 minutes.

possible

13 MR. CUNNINGHAM: We want to confer about our  
14 redirect.

15 THE COURT: You can do that now?

motion.

16 MR. CUNNINGHAM: Yes. We also have a Rule 50

want to

17 THE COURT: We can take that all up. I also  
18 discuss the jurors situation, one has a prepaid  
vacation, he is

would be

19 going to the Bahamas. I don't know if the parties

20  
deliberate, to

21  
of that

22  
23  
who we

24  
of thing.

interested in flying him there, if he stayed to

split the cost of doing that; so we have to discuss all

and see how we are going to proceed. We need six to

deliberate. It is a question of what the timing is,

lose and how we proceed with deliberations; that type

25 (Open court.)

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1 THE COURT: We are going to take a 15 minute  
recess.

2 Do not discuss this case amongst yourselves or  
anyone

3 else. Have no contact whatsoever with anyone  
associated with

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

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

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

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

8 concerning it.

9 Leave your notebooks on your chairs and be  
back in the

10 juryroom in 15 minutes.

11 (Jury leaves room.)

12 THE COURT: We will be in recess for 15.

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

15 (Open court. Jury not present.)

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

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

18 Would counsel state their appearances.

19 (All parties present.)

20 MR. DAVIS: Two matters, Your Honor. The  
document is

English 21 Exhibit 8. It is a document dated January 21, 1987, an  
Chilean 22 translation of Mr. Fernandez' resignation from the  
23 Army.  
24 THE COURT: Okay. You are seeking to put this  
into 25 evidence?

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without 1 MR. DAVIS: Yes. I would like to do it  
2 calling Mr. Fernandez.

3 THE COURT: What is the plaintiffs' position?

wants to 4 MR. KERRIGAN: It is clearly hearsay. If he  
5 do it he has to put the defendant on the stand. Beyond  
that 6 there are a number of other letters associated with  
7 so-called resignation and those letters would then  
8 relevant in the case in terms of cross examination.

self 9 You can't hand in a letter and say this is a  
10 serving declaration and sit down. There is an  
extensive amount 11 of material behind that resignation.

12 THE COURT: Such as what?

three 13 MR. KERRIGAN: There are at least two letters,  
14 or four pages or five pages where he set forth various  
15 declarations he would be subject to cross examination  
about in 16 conjunction with the resignation, explaining the  
resignation 17 and in those letters he never once says I did not  
participate 18 in killing these people, not once in any of the  
letters. We

19 believe those letters would then become relevant. They  
are not

20 in evidence now.

21 THE COURT: Is there any objection to  
introducing

22 those letters?

23 MR. DAVIS: That goes into the ruling on the  
Letelier

24 stuff. That is what all that concerns. I wanted to  
put this

25 in.

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1 THE COURT: Let me see the letters.

2 MR. KERRIGAN: That material can be redacted  
from the  
3 letters.

4 THE COURT: With the redaction of the Letelier  
subject  
5 area, is there an objection to that? I am trying to  
see if you  
6 introduce this and they introduce their letters, do we  
need the  
7 defendant back on?

8 MR. KERRIGAN: That may obviate it.

9 MR. DAVIS: The only letter I am aware of is  
one  
10 letter dated January 21, 1987. It is my Exhibit 7.

11 There is a letter in Spanish and this is the  
English  
12 translation.

13 MR. KERRIGAN: There is a letter in 1985 as  
well, Your  
14 Honor, that relates --

15 THE COURT: How could there be a letter that  
relates  
16 to the 1987 resignation in 1985?

17 MR. KERRIGAN: It refers to the subject  
matters  
18 referred to in the 1987 letter that deals with his  
resignation.

19 MR. DAVIS: You have it in front of you. That  
would

20 be Exhibit 6 in my packet, the 1985 letter.

1985 21 THE COURT: Do you have an objection to the

22 letter, Exhibit 6 coming in?

23 MR. DAVIS: I would have to call the witness  
to the

24 stand. I was trying to establish a date of resignation  
and

25 avoid details of things this Court has ruled on in  
motions in

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1           limine and that was the purpose in putting in, my  
purpose in  
2           trying to put in the 1987 resignation. That is all I  
was  
3           trying to put in and Mr. Fernandez testified very  
briefly about  
4           these issues in his examination.

5                     THE COURT: What is there in Exhibit 6 that  
relates to  
6           Exhibit 8? Exhibit 8 says I am resigning.

7                     MR. KERRIGAN: Number one. The defendant has  
8           testified that he is a deserter. I don't know whether  
this is  
9           to reestablish --

10                    THE COURT: No, Mr. Kerrigan. You questioned  
him  
11           whether he was a deserter. You typified him as a  
deserter. He  
12           said he resigned.

13                    MR. KERRIGAN: I believe he said he had  
deserted from  
14           the Chilean Military.

15                    THE COURT: Is that your recollection of the  
16           testimony?

17                    MR. DAVIS: No.

18                    THE COURT: It is not my recollection of the  
19           testimony. You asked him about that and he said he  
resigned  
20           which is why Mr. Davis I assume wants to put in Exhibit

21 because that is his resignation letter.

in 22 Be that as it may, what in paragraph number 1

23 Exhibit 6 has to do with deserting?

Your 24 MR. KERRIGAN: I am reading the letter now,

25 Honor.

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1 THE COURT: I am trying to determine what the  
Exhibit 2 6 relates to, or becomes probative of anything in  
Exhibit 8 if 3 I allow the defendant to introduce Exhibit 8.

4 MR. KERRIGAN: We have enclosures indicated on  
Exhibit 5 Number 8. They are documents referenced on this  
exhibit.

6 THE COURT: Request for irrevocable discharge  
sworn 7 statement.

8 MR. KERRIGAN: There are two documents that  
are 9 referenced here.

10 THE COURT: Where are they?

11 MR. KERRIGAN: One of them says 1985. We are  
back to 12 that problem. The other one 905, and 06, I don't know  
what 13 they are and I can't find them. This was initially  
presented 14 to us as an inclusive kind of pack of material which  
included 15 this 1985 letter and other matters, but we never did  
see all of 16 it. All we have is this now Exhibit 8.

17 THE COURT: Let me ask you, Mr. Davis, what is  
the 18 probative value of Exhibit 8, is it to rebut the  
questioning of

19 Mr. Kerrigan?  
20 MR. DAVIS: Just the date he resigned from the  
Chilean  
21 Army.  
22 THE COURT: Can the parties stipulate as to  
the date  
23 he resigned?  
24 MR. KERRIGAN: As to the date he submitted a  
letter of  
25 resignation and we would be happy to do that.

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1 MR. DAVIS: I will be happy with that.

2 THE COURT: So we have taken care of this  
issue.

3 That is the date of?

4 MR. DAVIS: January 21, 1987.

5 MR. KERRIGAN: By that stipulation -- we are  
trying to

6 accommodate to get this moving along. Our position in  
our case

7 is, he deserted and sent this resignation letter after  
he moved

8 to the United States. We ought to tell the jury he  
sent a

9 letter of resignation after he came to the United  
States and

10 the date of that letter was such and such. That would  
be

11 perfectly satisfactory to us, but to suggest this was a  
routine

12 kind of resignation from the military service and a  
proper

13 submission, we can't stipulate to that.

14 THE COURT: Now you can't stipulate that the  
date

15 was --

16 MR. KERRIGAN: We can stipulate to the date if  
the

17 Court will tell the jury this resignation was submitted  
after

18 Mr. Fernandez came to the U.S. and mailed this letter  
to the

would be 19 Chilean Military and tendered his resignation and that

20 the truth and we would stipulate to that.

21 THE COURT: Did he submit this from the United  
States?

22 MR. DAVIS: He gave it to his brother and he  
left the

23 country. It was delivered after he left or  
contemporaneous

24 with his departure.

25 I would accept Mr. Kerrigan's statement.

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1                   THE COURT: Tell me the wording of this  
stipulation

2                   you will state to the jury?

3                   MR. DAVIS: I need to write it down.

4                   It says on January 21, 1987, Armando Fernandez  
Larios

5                   tendered a resignation to the Chilean Army as he left  
for the

6                   United States, or at the same time he left for the  
United

7                   States.

8                   MR. KERRIGAN: That is fine.

9                   THE COURT: At the same time he left or at the  
time he

10                  left for the United States.

11                  MR. DAVIS: With that we will rest.

12                  THE COURT: You are going to read that  
stipulation to

13                  the jury?

14                  MR. DAVIS: Yes.

15                  THE COURT: You will rest and the plaintiffs  
have one

16                  or two questions?

17                  MR. DAVIS: Which we object to as outside the  
scope of

18                  our case.

19                  THE COURT: Let me hear what it is?

20                  MR. CUNNINGHAM: Two questions of General  
Arellano who

The two 21 we called in our case-in-chief by letters rogatory.  
subparts. 22 questions would be, question 63 which has a number of  
at 23 When did you first learn that 14 prisoners were killed  
Ortiz, 24 Antofagasta in October of 1973? I repeat Colonel  
Fernandez 25 Lieutenant Arredondo, Major Moren, Lieutenant Armando

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1 Larios and forces of the Armored School under Commander  
Ortiz  
2 took part in the crimes of the 13 persons at  
Antofagasta.

3 Question 70 is, how many times --

4 THE COURT: Was this read previously?

5 MR. CUNNINGHAM: It was not.

6 How many times did you see Fernandez Larios in  
person  
7 since October 1973? The answer, the only time I saw  
him after  
8 that was more or less in 1982 or 1983 when I was no  
longer on  
9 active duty and was working as General Director at the  
Banco  
10 Bif where he came to ask me to swear to the facts he  
was  
11 accompanying me to Chuquicamata when the execution of  
the 26  
12 people took place. Executions in which he  
participated. I  
13 flatly refused his request and never heard from him any  
more  
14 after that.

15 MR. DAVIS: Neither Antofagasta nor Calama  
were any  
16 part of defendant's case. That would not be rebutting  
anything  
17 in defendant's case and their rebuttal as I understand  
it would  
18 be limited to rebutting that which I put in evidence in  
my case

Calama 19 and I did not put in anything on either Antofagasta or  
20 on any of the witnesses I read. I read Captain Diaz,  
21 exclusively Copiapo and in testimony this morning, all  
of which 22 had to do with Copiapo and not Calama or Antofagasta.  
It is 23 outside the defense case.

24 THE COURT: When he came to ask me to swear to  
the 25 fact -- where?

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1 MR. CUNNINGHAM: Chuquicamata.

2 THE COURT: Did you bring up Chuquicamata?

3 MR. DAVIS: No.

4 THE COURT: Why would this be proper rebuttal?

5 MR. CUNNINGHAM: Because we just heard yet  
another

6 phony alibi for Copiapo. The phony alibi we just heard  
from

7 Espinosa was that the defendant was with a flight  
attendant

8 that night. Now we have a new alibi and that goes to  
the fact

9 this defendant asked another potential witness --

10 THE COURT: A flight attendant at Copiapo.  
These

11 questions go to two other places, not Copiapo. Were  
they on

12 the same night?

13 MR. CUNNINGHAM: No.

14 THE COURT: On different dates?

15 MR. CUNNINGHAM: Yes.

16 The point is, Your Honor, question 70 relates  
to this

17 defendant asking for alibis from witnesses and that is  
why we

18 want to provide further rebuttal evidence on the basis  
of these

19 silly alibis we keep hearing.

20 MR. DAVIS: There is no testimony anywhere

He 21 Mr. Fernandez talkED to the last witness, Mr. Espinosa.  
even a 22 testified about what he testified to. There is not  
representation 23 connection of a conversation here. To make this  
we 24 argument is extraordinary given the factual record that  
towards 25 presented. We presented a very specific case directed

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the 1 what happened at Copiapo. That is what we presented as  
the 2 defense case and they are going outside of anything in  
excluded 3 defense case that we presented and it should be  
be. 4 because it is not part of what a rebuttal case would

General 5 MR. CUNNINGHAM: We called this witness,  
we are 6 Arellano before we called the defendant in our case, so  
alternative 7 rebutting in addition what the defendant said. In  
reopen. 8 to allowing us to do this in rebuttal is allowing us to  
rebuttal 9 You have vast discretion under 611 to allow it in for  
10 or we could reopen with respect to these two questions.

11 THE COURT: What is your position on the  
reopening?

12 MR. DAVIS: I would object to it. They have  
rested 13 and I have already planned my defense accordingly. If  
they 14 would reopen, I would have to recall Mr. Fernandez to  
the 15 stand.

16 THE COURT: In your case-in-chief you  
presented the 17 letters rogatory from General Arellano who detailed the

subject 18 involvement of the defendant in what? What were the  
19 areas?  
20 MR. CUNNINGHAM: He described -- I am looking  
back.  
21 He described traveling to Copiapo. He described the  
dress of  
22 the defendant.  
23 THE COURT: But you chose at that time not to  
24 introduce this question 63 which had to do with  
Antofagasta?  
25 None of that subject area was gone into regarding  
General

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1 Arellano's letter rogatory and the involvement of the  
2 defendant?

3 MR. CUNNINGHAM: We did not offer it at that  
time,

4 Your Honor.

5 THE COURT: But there was other testimony  
offered from

6 other persons concerning the defendant's involvement in  
7 Antofagasta; correct?

8 MR. CUNNINGHAM: Yes. Letter rogatory  
testimony from

9 Colonel Arredondo said this defendant participated in  
the

10 killings in both Antofagasta and Calama.

11 THE COURT: I will sustain the objection. I  
do not

12 find this is proper rebuttal as the defendant's case  
related

13 solely to the involvement of the defendant and other  
persons at

14 Copiapo, and I will deny the request to reopen the  
case,

15 plaintiffs' case, to offer this testimony concerning  
the

16 defendant's -- question 63, the defendant's involvement  
in

17 Antofagasta. The plaintiffs had an opportunity to  
present this

18 portion of the letters rogatory of General Arellano.  
Other

19 portions were read to the jury. There was testimony by  
another  
20 witness as to the defendant's involvement in  
Antofagasta. That  
21 being the letter rogatory of Colonel Arredondo. In  
addition  
22 there was testimony also in the plaintiffs' case as to  
the  
23 defendant, and I believe the defendant was questioned  
about it,  
24 the defendant going to a witness or somebody else who  
was  
25 present and asking them to provide an alibi or indicate  
he was

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1 not in and did not participate.

2 Was there not other testimony concerning that?

3 MR. CUNNINGHAM: It was, regarding this  
incident.

4 THE COURT: So this was already presented, the  
second  
5 question?

6 MR. CUNNINGHAM: The subject matter was  
touched on.

7 THE COURT: I will sustain the objection and  
not allow  
8 the plaintiffs to reopen. They have already presented  
these  
9 subject matters through other witnesses. I find it  
would be  
10 confusing for the jury and the presentation of any  
litigant's  
11 case by necessity needs to be finite in nature. The  
plaintiffs  
12 obviously made strategic decisions what they would  
present or  
13 not present and they have covered these areas. I do  
not find  
14 there is a necessity nor would the plaintiffs be  
prejudiced by  
15 the failure of the Court to allow them to reopen their  
case at  
16 this time.

17 You will present the stipulation, you will  
close your

18 case. There is no rebuttal on the part of the  
plaintiffs.

19 THE COURT: Before I bring the jury back in,  
let's  
20 discuss some timing issues.  
21 Tell me in your estimation of the charge  
conference  
22 that a day is a sufficient amount of time?  
23 MR. DAVIS: We agree, Your Honor.  
24 MR. CUNNINGHAM: As do we.  
25 THE COURT: Sometimes there have been charge

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1 conferences in fairly complicated cases I have  
estimated will  
2 take a couple of hours and they take a couple of days.  
I think  
3 a day of trial hours should be sufficient, but we will  
see.

4 How long are closings going to be?

5 MR. CUNNINGHAM: Combined, we would like to  
split it.

6 Under two hours.

7 THE COURT: Two hours for both?

8 MR. CUNNINGHAM: Yes.

9 THE COURT: For the defendant?

10 MR. DAVIS: I would like to have the same  
amount of

11 time. I don't think I will use two hours but I would  
like the

12 same amount of time.

13 THE COURT: If we started Friday morning, we  
could

14 complete the arguments, not the charge, in the allotted  
trial

15 time and perhaps having them come in -- have them be  
prepared

16 to be there the whole day and perhaps going into charge  
after a

17 lunch break or the rebuttal closing and completing  
everything

18 on Friday.

19 MR. DAVIS: Are we going to start late on  
Friday?

20 THE COURT: I am trying to determine that now.  
21 Juror number 8 missed a class last week. She  
can't  
22 miss it this time. She also has a conflict on Tuesday  
in which  
23 she missed a business trip -- she missed one yesterday  
and  
24 today but she doesn't feel she can miss the one on  
Tuesday,  
25 although I can reconfirm that with her. Then we have  
juror

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leaving 1 number 5 who has a prepaid vacation to the Bahamas  
2 Wednesday morning.

would like 3 Tell me what your positions are and how you  
4 to proceed? Do you understand what the issues are?

5 MR. CUNNINGHAM: I think so.

schedule 6 I would like to accommodate juror number 7's  
7 on Friday yet conclude the case that day and hope they  
could 8 begin deliberations and perhaps complete them.

9 THE COURT: We will not be able to conclude  
the case 10 on Friday afternoon. We would need most of Friday for  
closing 11 arguments and charging. I would expect charging would  
take an 12 hour, about an hour. Her class is 9:30 to 12:30 on  
Friday and 13 she is not available on Tuesday.

14 Lisa, can you go and reconfirm that with her  
and see 15 what is happening with her business trip and whether or  
not she 16 can miss it on Tuesday?

17 Then we have juror number 5, who has a prepaid  
18 vacation beginning on Wednesday.

19 MR. CUNNINGHAM: Are Saturday deliberations  
out of the

20 question?

21 THE COURT: Yes. It is a holiday weekend and  
quite

22 frankly because of my health circumstance -- in an  
elongated

23 day on Friday, that will be a big effort for me and I  
don't

24 know what plans people have over the weekend.

25 If we proceed on Friday morning and I dismiss  
number 7

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1           because of her Friday conflict and her Tuesday  
conflict, we  
2           then have seven jurors. Then the issue becomes either  
on  
3           Friday afternoon whenever arguments and charge are  
completed or  
4           on Tuesday morning, how we then take up the issue of  
juror  
5           number 5 who has a prepaid vacation beginning on  
Wednesday.  
6           Does he go in and deliberate? Do I tell him he doesn't  
go, or  
7           do I tell him he will be flown out there when  
deliberations are  
8           completed? Do we let him go into deliberations  
thinking he has  
9           a plane flight over his head on Wednesday morning and  
10          unfortunately we are down on Monday because of the  
federal  
11          holiday.  
12                   MR. CUNNINGHAM: Our position is we would like  
him to  
13          participate in the deliberations. We would hope the  
jury can  
14          reach a verdict on Tuesday and we would be willing to  
discuss  
15          his prepaid flight situation. That is something the  
parties  
16          need to do.  
17                   MR. DAVIS: I would share Mr. Cunningham's  
view with  
18          that. It seems, though --

19 THE COURT: Lisa says the juror said the  
business trip  
20 is one she needs to attend on Tuesday.  
21 If the parties hadn't concluded deliberations  
on  
22 Tuesday and juror number 5 had to come back on  
Wednesday, the  
23 parties would be willing to fly him over to the  
Bahamas,  
24 somehow split that cost among the parties at the  
conclusion of  
25 deliberations?

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1 MR. CUNNINGHAM: Yes.

2 THE COURT: How I would handle that particular  
3 situation is, with the parties' consent I will talk to  
him  
4 about that by himself, not in open court so he has to  
state his  
5 position in front of everybody and indicate to him that  
he  
6 should not feel pressured in deliberations but would he  
be  
7 willing, if deliberations went further than Tuesday, to  
be  
8 flown out later on Wednesday or when deliberations  
concluded  
9 and asked if he would be willing to do that.

10 I know I could tell him he can't go but I  
don't think  
11 you would want a juror deliberating who is told he  
can't go on  
12 his prepaid vacation.

13 MR. CUNNINGHAM: That is right.

14 THE COURT: I am going to discharge them now  
until  
15 Friday morning. If I am going to let juror 7 go, I  
will let  
16 her go now.

17 Let me take a few moments and I will have  
juror number  
18 5 come into chambers.

19 MR. CUNNINGHAM: Is it the case there will be  
no time

20 for deliberations on Friday?  
21 THE COURT: Think about it. We have two hours  
and two  
22 hours. Let's say we start at 9:30. That takes us to  
about  
23 1:30 or 2. We need some breaks. The jurors, Richard  
and  
24 myself, it won't be good for anybody. It takes us to 2  
two.  
25 We need to have a lunch break of an hour or take a  
break

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1 somewhere in that time period. A lunch break from two  
to three  
2 and resume at three and finish at four. That is a long  
day.  
3 Jurors are not in the habit of being here for eight or  
nine  
4 hours so it is an extremely long day.

5 I would think what would happen and although  
it is not  
6 anybody's preference, because of the holiday on Monday,  
they  
7 would come back on Tuesday morning or maybe they would  
have a  
8 short period of time on Friday to get to be together as  
a jury  
9 deliberating, between four and five, but that would be  
it, and  
10 come back Tuesday morning and start deliberating.  
Could they  
11 accomplish it on Tuesday? Yes. Could they not  
accomplish it  
12 on Tuesday? Yes. It is a determination really in  
their hands.

13 MR. DAVIS: It is our position, I would not  
want a  
14 jury to get a case 4 o'clock on a Friday afternoon  
because  
15 people might feel pressured, they would want to get out  
of  
16 here. I think it is unfair to the jurors whatever  
their  
17 thoughts are or to the parties.

18 THE COURT: It is a long day. Closing  
arguments is an  
19 intense part of the case. I don't disagree. I don't  
think  
20 they could accomplish it on Friday and it is unlikely  
they  
21 would come to a conclusion within that hour after being  
here  
22 all day. More than likely they would start Tuesday  
morning.  
23 They could possibly conclude it on Tuesday but I would  
not want  
24 them to go into deliberations on Tuesday with juror  
number 5  
25 without knowing he could get to his vacation later.

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1                   One never knows with a jury how long it will  
take.

2                   The jurors don't know until people start talking about  
a case.

3                   It seems to me that is the best way to proceed.

4                   With permission from both sides I would like  
it on the  
5                   record, I will talk to juror number 5.

6                   MR. CUNNINGHAM: That is fine, Your Honor.

7                   MR. DAVIS: Yes, it is fine.

8                   THE COURT: Let's take another ten minutes and  
I will  
9                   ask him to come into chambers.

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

12                  THE COURT: I am going to inform him only that  
the  
13                  Court is going to make arrangements for him to be flown  
to the  
14                  Bahamas. I will not mention either side.

15                  MR. CUNNINGHAM: That is agreeable.

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

18                  (Open court. Jury not present.)

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

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

21                  Would counsel state their appearances.

22 (All parties present.)

23 THE COURT: I talked to juror number 5. It is  
fine

24 with him. He was very understanding. I explained to  
him I did

25 not want him going into deliberations feeling pressured  
and

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1 that arrangements would be made for him by the Court if  
he was  
2 agreeable to that at the conclusion of deliberations.  
He  
3 expressed to me he is going to Jamaica with a number of  
couples  
4 and he would send his wife and joining up with them  
later would  
5 be fine.

6 With that caveat, my preference would be to  
dismiss  
7 juror number 7 now, instructing the jurors they are  
going to  
8 come back after the reading of the stipulation by Mr.  
Davis and  
9 the resting of the defendant, informing the jurors that  
now  
10 concludes the presentation of evidence. There is  
additional  
11 work the lawyers and I need to do in preparation for  
the case  
12 to be presented to them for closing argument and the  
charge of  
13 the jury and deliberations and closing arguments will  
begin  
14 9:30 on Friday, dismiss juror number 7 and give them a  
schedule  
15 of Monday being a federal holiday and I will tell them  
to be  
16 prepared to be here all day on Friday and all day on  
Tuesday,  
17 and they will be receiving the case either on Friday or

18 Tuesday.

19 I will have Lisa sort of contact the travel  
agency

20 used by the Court and get a printout of various flights  
to

21 Jamaica for Wednesday, Thursday and Friday. Hopefully  
it will

22 be Wednesday afternoon or Thursday morning.

23 MR. DAVIS: I understand there is no contact  
of juror

24 number 7 after she is dismissed?

25 THE COURT: There will be no contact with  
juror number

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1 7 by either side until the conclusion of the case,  
which means  
2 the end of deliberations.

3 Let me bring the jurors in and we will  
proceed. The  
4 defendant will rest. I will dismiss them for the day  
and we  
5 will take a break and come back for motions.

6 (Jury present.)

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

8 MR. DAVIS: This is a stipulation entered into  
between  
9 the parties.

10 On January 21, 1987, Armando Fernandez Larios  
tendered  
11 a resignation from the Chilean Army as he left for the  
United  
12 States.

13 With that, Your Honor, defense rests.

14 THE COURT: Ladies and gentlemen of the jury,  
this  
15 concludes the presentation of testimony in this case,  
and I  
16 want to give you the schedule of how we are going to  
proceed in  
17 preparation for turning the case over to you for  
deliberations.

18 There are a number of issues that the  
attorneys and I  
19 need -- that they need to present to me and I need to  
resolve

20 prior to closing arguments and the charging of the  
jury.

21 I will be dismissing you now for the rest of  
the day

22 and tomorrow the lawyers and I are going to take up  
those

23 issues.

24 Closing arguments will begin on Friday morning  
at 9:30

25 and the case should be turned over to you for  
deliberations

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1 either Friday afternoon, so you should be prepared to  
be here  
2 all day on Friday, or Tuesday morning. Monday, October  
13 is a  
3 federal holiday, Columbus Day, so we will not be here.  
4 Everybody gets a long weekend including you.  
Deliberations  
5 will begin either Friday afternoon or Tuesday morning.  
6 I know that juror number 7 has a class at FIU  
Friday  
7 morning and a business trip, so if you remain a few  
minutes I  
8 will take up the issue with you.  
9 Do not discuss this case amongst yourselves  
or anyone  
10 else. Have no contact whatsoever with anyone  
associated with  
11 the trial. Do not read or listen to anything touching  
on this  
12 matter in any way. If anybody should try to talk to  
you about  
13 this case, instruct them to immediately stop and be in  
contact  
14 with my staff concerning it.  
15 Give your notebooks to the court security  
officer.  
16 Enjoy your weekend -- I am sorry. You will come in  
Friday  
17 morning at 9:30 then there will be a long weekend.  
18 Is everybody clear?

19                                    You don't come back tomorrow. Today is  
Wednesday. We

20                                    will be here working on Thursday but you don't need to  
be here.

21                                    The next time you will come back to Court is Friday  
morning

22                                    9:30 for closing arguments. Be prepared to be here all  
day.

23                                    Make arrangements to be here all day, and you should be  
24                                    receiving the case either Friday afternoon or Tuesday  
morning.

25                                    If you have any questions, Lisa will go over  
it with

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1           you. If you get confused when you are home, you can  
call           2           chambers.

3                       I know I speak for everyone how much we  
appreciate           4           your patience and your dedication. You have been a  
wonderful           5           jury and I expect you will continue to be a wonderful  
jury.

6           Enjoy your day off and I will see you Friday morning at  
9:30.

7                       Ms. Hawley, if you would remain in your seat  
for just           8           a few moments.

9                               (Jury leaves room.)

10                      THE COURT: As I understand it, Ms. Hawley  
Martin, you           11           have a class at FIU you missed last Friday and that you  
feel           12           you cannot miss this Friday; is that correct?

13                      A JUROR: The problem is, I have emailed and  
called           14           the instructor and she never gets back to me. I am not  
sure           15           what effect it will have. I also E mailed --

16                      THE COURT: I will be happy to have chambers  
call.

17                      A JUROR: That might help.

18                      THE COURT: In addition you have a business  
trip on           19           Tuesday. Can you miss that business trip?

20  
realigning my

A JUROR: It is very important. We are

21  
be

entire department throughout the state. 15 people will

22  
there.

23  
the

THE COURT: Is there anyone else that can do

24  
presentation?

25  
A JUROR: Really, no. I am the manager of the

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1 department.

2 THE COURT: Can this be reset?

3 A JUROR: I can ask them but there are 15  
people  
4 throughout the state.

5 THE COURT: They are coming here?

6 A JUROR: No, we are all going to  
Jacksonville.

7 THE COURT: Any chance it can be done on  
Monday?

8 A JUROR: I will follow up. I will have to  
ask.

9 There are a couple of vice presidents involved. That  
is the  
10 problem. I will research it today and see what I can  
do.

11 THE COURT: I am not sure I understand. If I  
can get  
12 in touch with your teacher to make sure there are no  
problems  
13 for you or she understands you are serving on a jury,  
you are  
14 willing to miss Friday?

15 A JUROR: Yes.

16 THE COURT: And you will see whether you can  
do  
17 something on Tuesday?

18 A JUROR: Yes.

19 THE COURT: What I will ask you to do then,  
can you

her 20 call Lisa this afternoon or tomorrow morning and let

21 know -- the class we can deal with, to let her  
understand it is

22 important you be here and she work with you. The  
question is

23 whether or not you can reschedule or somehow whether  
Tuesday

24 can be dealt with and that your business trip can be  
postponed

25 or someone else can handle it or it can be done on  
Monday or

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there, I 1 you need to be there. If you absolutely need to be  
have 2 will let you be there. If there is any way you can  
or move 3 someone else handle it or reschedule it by moving it up  
to me I 4 it back, let Lisa know and when she communicates that  
coming 5 will tell you what your status is going to be as far as  
6 back on Friday.

7 A JUROR: Do I need to give you the number?

and take 8 THE COURT: Yes. Lisa will go with you now  
you call 9 all the information on the teacher and sometimes when  
response, 10 from a Federal Judge's chambers, sometimes it gets a  
11 not all the time.

12 (Juror leaves room.)

than I 13 THE COURT: That was a little less absolute  
14 thought it was going to be.

either 15 I will make a determination when she calls and  
for 16 tell her -- I think I will have her come in on Friday  
with the 17 closing argument. My position always is in dealing  
be 18 jury is take it one step at a time and not let somebody

19 released until such time as that time has come. You  
never  
20 really know -- of course we don't wish it on anybody  
but  
21 something can happen to somebody getting sick or they  
can fall  
22 or somebody gets ill in their family and somebody else  
can't  
23 come and it changes the dynamics of decisions that have  
to be  
24 made. I think I will tell her to come in on Friday  
when she  
25 calls Lisa and maybe that Tuesday situation can be  
cleared up,

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1 maybe it can't, but we can take that up. If it can't,  
my  
2 inclination is to let her go, specially in light of  
juror  
3 number 5's easy acquiescence to be flown over to  
Jamaica at a  
4 later time.

5 How long will we need for argument? He has  
made his  
6 argument. Then you have your motion?

7 MR. CUNNINGHAM: A short motion for a directed  
8 verdict.

9 THE COURT: An hour?

10 Let's take an hour and come back at 1:15. I  
have a  
11 sentencing at 2:30 so you have me from 1:15 to 2:15.

12 (Luncheon recess.)

13 (Afternoon session.)

14 (Open court. Jury not present.)

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

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

17 Would counsel state their appearances.

18 (All parties present.)

19 THE COURT: Just to update you as to my  
thought  
20 process in regard to juror number 7, she is definitely  
going to  
21 come in on Friday. If she calls Lisa this afternoon or

in 22 tomorrow morning, we will call her and tell her to come  
far as 23 Friday morning and we will see what her situation is as  
24 the business meeting on Tuesday.  
25 Did the plaintiffs respond to the motion for  
directed

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1 verdict pursuant to Rule 50 by Mr. Davis?

2 MR. CUNNINGHAM: The plaintiffs oppose the  
motion and

3 I will speak to each of the areas that Mr. Davis  
outlined as

4 the basis for his motion.

5 Before I do that, Your Honor is no doubt aware  
what

6 the standard is for a Rule 50 motion. It is the case  
the

7 evidence has to be viewed with all logical inferences  
in a

8 light most favorable to the non-moving party, in this  
case the

9 plaintiff's.

10 Mr. Davis reiterated in argument that the  
Court has

11 rejected in two motions to dismiss the facts that he  
referred

12 to in support of the position on that ground, that

13 Mr. Fernandez has been living openly in Miami since  
1988. Your

14 Honor previously rejected that fact as being material  
to

15 determining the statute of limitations argument and the  
tolling

16 that the Court has found applicable.

17 THE COURT: That was taken into consideration  
in my

18 prior order, is that what you are saying?

19 MR. CUNNINGHAM: Yes. The same facts we have

20 previously asserted on those motions were also re-  
established  
21 at trial in this matter. In that regard I would remind  
the  
22 Court of the testimony of Dr. Miranda, who described  
the  
23 excavation process and how when the excavations began,  
digging  
24 occurred in the wrong place. I refer to the testimony  
of  
25 Leonard Netza who testified by letter rogatory, he was

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1 cautioned if he were to say anything to anyone he would  
be  
2 number 14; so he was threatened so he did not reveal  
the  
3 location of the bodies.

4 It is also the case Victor Bravo never told  
the family  
5 about the condition of the bodies and finally, our  
client,  
6 Ms. Cabello, pointed out that the bodies were not  
returned and  
7 that is why there was no funeral for Winston Cabello.

8 The same facts the Court has previously  
considered in  
9 connection with this motion have been established at  
this  
10 trial. I am not sure they needed to, quite frankly,  
but they  
11 have been.

12 With respect to the issue of this defendant's  
13 liability for each of these claims as a direct  
participant, I  
14 would bring to the Court's attention the following  
evidence  
15 that was adduced. I remind the Court that the Court  
has in an  
16 earlier order noted that the plaintiffs are entitled to  
prove  
17 their case by circumstantial evidence. In fact the  
evidence of  
18 direct participation in the killing is circumstantial;  
but it

19 begins with the fact we have an eye witness testifying  
that at  
20 three of the other cities, one before Copiapo and two  
after,  
21 this defendant acted directly in killing these unarmed  
civilian  
22 detainees. That was in letter rogatory testimony of  
Colonel  
23 Arredondo.

24 With respect to direct participation in the  
killing of  
25 Winston Cabello in Copiapo, it is a circumstantial case  
based

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the 1 primarily on the presence of a corvo and the nature of  
2 appearance of the deceased.

3 Enrique Vidal testified to seeing the  
defendant with a 4 corvo. The defendant himself admitted he had a corvo.  
I 5 believe at one point in his testimony he acknowledged  
because 6 other people in the regiment did not have corvos, his  
was the 7 only corvo in Copiapo.

8 Patricio Lapostol testified how a corvo could  
be used 9 to slash a throat and Victor Bravo described the  
decendent and 10 the manner in which he had been killed and it included  
a deep 11 gash from his ear down through his throat.

12 Dr. Miranda testified there was no gun powder  
found on 13 Winston Cabello's clothing; so the evidence is  
sufficient to 14 allow a jury to infer that Winston Cabello was killed  
with a 15 corvo and that ties the defendant directly.

16 With respect to the conspiracy, in passing on  
an 17 objection based on 801D.2E, the Court made a  
preliminary 18 finding there was evidence there was a conspiracy here,  
and in

19 fact the Court was right. The law is clear, we do not  
have to  
20 have direct evidence of an agreement and that an  
agreement can  
21 be inferred from concerted activity and that is what we  
have  
22 here. The Court heard all about it.  
23 The response to that is, I believe Mr. Davis'  
position  
24 is, because there was an order there couldn't be a  
conspiracy.  
25 I may not quite be doing it justice.

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1           It is the case, however, if one conspires to  
do  
2           something that would be an illegal order, it would be  
illegal.

3           The fact you are ordered to do it simply no defense.

4           In that regard I would cite the Court to one  
case from  
5           the American Military Courts, U.S. versus Kinder 14 CMR  
742.

6           It is a 1973 case.

7           THE COURT: Do you have a copy of that by  
chance?

8           MR. CUNNINGHAM: I have a copy. I will be  
happy to  
9           give you mine.

10          THE COURT: We can make a copy if you want it  
back.

11          MR. CUNNINGHAM: That is the case where an  
airman  
12          followed the orders of a superior to kill a civilian  
and he was  
13          nonetheless convicted on a conspiracy theory for that  
slaying.

14          The evidence there was a conspiracy here, I  
will just  
15          touch on it very briefly. Again we have the testimony  
of  
16          Colonel Arredondo that in La Serena and Antofagasta and  
Calama,  
17          the killings were directly conducted by local people  
with

18 members of the death squad including Mr. Fernandez, and  
that  
19 Mr. Fernandez participated directly in those killings.  
20 It is also the case, we heard testimony, in  
Copiapo  
21 Mr. Fernandez was working with others as he went about  
doing  
22 the activities that were the precursors to killing  
these  
23 detainees. For example, we heard when it came to the  
process  
24 of trying to collect the prisoners, the men from  
Santiago were  
25 involved with the locals in doing that. We heard the  
testimony

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take 1 of Patricio Barrauto how men came into the barracks to  
there were 2 Winston out that night. We heard from Mr. Herrera,  
3 attempts to pull him out of the hospital that night.

review of 4 We also heard testimony with respect to the  
is 5 the files and marking of the files where Mr. Fernandez  
regard, 6 placed in the presence of General Arellano in that  
resulted 7 again, people working together to do the process that  
8 in the deaths of these men.

9 THE COURT: Who gave that testimony?

the case 10 MR. CUNNINGHAM: From Dr. Murua. It is also  
process of 11 that Juan Morales testified in connection with the  
his 12 interrogating and selecting the prisoners and I believe  
group 13 testimony was this defendant was the head of a little  
the boss 14 that was doing it. He said words to the effect he was  
15 of the little group. We have the percipient witnesses  
to that 16 describing concerted activity and tying this defendant  
17 group activity.

18 Not to overlook the obvious, it is the case  
this was a

by 19 small group, small in number, group of men who traveled  
number 20 helicopter from city to city and it is not in dispute a  
21 of these cities, including the five we focused on here,  
22 civilians ended up dead.

evidence 23 With respect to aiding and abetting, the  
also go 24 would be, much of the evidence I just described would  
assisted in 25 to establishing that Mr. Fernandez substantially

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1 each of these killings, including the killing of  
Winston 2 Cabello.  
3 We heard testimony from Enrique Vidal, for  
example, 4 what the defendant said when he got off the helicopter  
and how 5 he intended to use his bizarre weapon in connection  
with 6 beating the prisoners.  
7 We heard about how he attempted to extract and  
8 interrogate prisoners. We heard how he was involved in  
actual 9 violence against Mr. Herrera who testified to that  
personally 10 and to a detainee named Jaime Sierra, who was described  
as 11 having had his head smashed by this defendant.  
12 He was also described as reviewing the files  
in the 13 office as I described and finally Colonel Arredondo's  
14 testimony, in certain of the cities he actually did the  
15 killings himself along with other people.  
16 Another factor in support of the aiding and  
abetting 17 theory and one which my colleague Ms. Healy, will talk  
about 18 further when we present our own Rule 50 motion in this  
case, by 19 defendant's own admissions, he was a bodyguard for  
General

Haag 20 Arellano, who is the person who gave the orders through  
21 that resulted in these killings; and it would be our  
contention 22 that is tantamount to a confession when he testifies he  
is 23 providing the support of being a bodyguard. That  
itself can be 24 inferred to be of substantial assistance to the jury in  
this 25 case.

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1 I believe that addresses each of the points  
Mr. Davis  
2 has raised. That is why we oppose the Rule 50 motion  
and that  
3 a properly instructed jury could infer there is  
liability on  
4 each of the theories we intend to argue here, direct  
and the  
5 two indirect theories, aiding and abetting, and the  
conspiracy.

6 MR. DAVIS: The standard is not to guess and  
that is  
7 what they are asking us to do. There is not a piece of  
8 evidence anywhere in anything they have presented to  
this Court  
9 that ever puts Armando Fernandez in the same room, the  
same  
10 place, any contact with Winston Cabello. There is no  
way on  
11 this record this Court can allow a personally committed  
act on  
12 Winston Cabello to go to the jury. They are asking for  
guess  
13 upon guess upon guess. The law does not --  
circumstantial  
14 evidence doesn't mean you throw it up there and you  
guess. In  
15 has to be logical inferences from the evidence and this  
is not  
16 what they are asking to do.

17 The evidence in this case is very clear. They  
have

18 none when it comes to any contact between Armando  
Fernandez and  
19 Winston Cabello and it has never changed from day one  
in this  
20 case.  
21 The second point, Your Honor, when you talk  
about the  
22 statute of limitations, the case was filed in February  
1979.  
23 Mr. Fernandez moved here in 1988 living in his own  
name. There  
24 is no basis ever plead by the plaintiffs to permits  
tolling.  
25 Your Honor's ruling on a motion to dismiss does not  
legally

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1 establish tolling because you can establish tolling  
without a  
2 factual record. There is no factual record before this  
Court  
3 anywhere to allow any tolling. As we have cited in our  
4 previous papers the events that happened to Mr. Cabello  
5 happened in 1973. The statute of limitations is ten  
years. If  
6 tolling applies and it is ten years based upon the TVPA  
which  
7 was enacted in 1992, the statute of limitation is  
tolled only  
8 for so long as the time plaintiffs would know they  
would have a  
9 cause of action.

10 Under any circumstance, the record here would  
be they  
11 would have known by 1985 because they listened to that  
12 testimony from Mr. Fernandez, there were all sorts of  
questions  
13 about the Caravan of Death in 1985.

14 More importantly, clearly, at any outset, the  
latest  
15 would be 1991, when these bodies were recovered with  
16 Dr. Miranda and tolling only would have protected them  
up to  
17 that point and they had a reasonable time after 1990 to  
bring  
18 their cause of action and nine years is not a  
reasonable time  
19 under any case they can cite to you.

20                    This case is 100 percent time barred, Your  
Honor.

21                    On the aspects of the aiding and abetting and  
22                    conspiracy, there is a case I will cite to the Court  
and  
23                    supplemental authority, but the name of the case is  
U.S. versus  
24                    Amado, 495 F.2nd 545. It is the Fifth Circuit which  
would be  
25                    governing this Court and there at page 550, "in order  
to

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the  
cooperate  
exists as  
intent.

1 establish a person as a participant in a conspiracy,  
2 evidence must show the accused intended to join and  
3 in the illegal venture. Knowledge of that conspiracy  
4 a minimum requirement for establishing the requisite

evidence to  
context."

5 Furthermore, to establish the intent there is no  
6 establish a conspiracy, particularly in a military

go on  
was on  
military  
on that  
case

7 It is uncontested Mr. Fernandez was ordered to  
8 the helicopter, he had no choice. It is uncontested he  
9 the helicopter. There is no case cited to you in a  
10 context about a conspiracy. I have not read the case  
11 Mr. Cunningham has just referred to so I can't comment  
12 case because I did not see that; but there has been no

making these  
conspiracy  
power  
here, what  
change

13 previously cited and Your Honor knows we have been  
14 objections in a military context with regard to a  
15 for quite a while; but the question is, what was the  
16 Mr. Fernandez had to change anything that happened  
17 could he have done and there was no power he had to

18 anything here. He had no ability to give orders to  
anyone.

19 There is no testimony that he even received any illegal  
order.

20 The premise of the case Mr. Cunningham presented to you  
is, as

21 I understood from his description of the case, the  
person

22 received an illegal order then acted upon it and used  
that as a

23 defense in the case. That is his description. That is  
not

24 what we have here. No one has said Mr. Fernandez was  
ordered

25 to do anything with regard to Winston Cabello. There  
is no

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1 testimony from any witness in any of the many witnesses  
that  
2 testified by letters rogatory. There is no record  
evidence  
3 anywhere he was given such an order; so to say he is  
somehow  
4 liable for a conspiracy absolutely flies in the face of  
the law  
5 of conspiracy and they have not even identified what  
the  
6 conspiracy was to do.

7 Finally, Your Honor, aiding and abetting.  
They have  
8 not provided to you and all these claims are based upon  
9 international law. International law, international  
treaty,  
10 that talks about a person's duty to, in effect, stop a  
killing,  
11 and that is really what they are trying to impose upon  
12 Mr. Fernandez here, and I submit there is no such law  
that is  
13 out there. I have not seen any cited in this case, in  
this  
14 Court that there is any international law anywhere that  
would  
15 have required Mr. Fernandez to act against that which  
he did  
16 not even know.

17 So, Your Honor, the case is time barred. They  
have  
18 not alleged a violation of international law in the  
context of

gave 19 a junior military officer. They have not alleged he  
That is the 20 orders or had anything to do with Winston Cabello.  
21 issue in this case.  
received an 22 They have not alleged that Mr. Fernandez  
or 23 order as to Winston Cabello there is no giving orders  
merely 24 obeying orders tied to Mr. Fernandez and they are  
is not 25 attempting to build inferences upon inferences and it

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they  
don't  
impose

1 permitted, Your Honor, and the circumstantial evidence  
2 claim they have is nothing but a series of blocks that  
3 add up to any kind of liability that the jury can  
4 against Mr. Fernandez.

5 For those reasons, we believe the case against  
6 Mr. Fernandez should be dismissed pursuant to Rule 50.

and read  
to have

7 THE COURT: I want to consider your arguments  
8 over the cases you have provided to the Court. I hope  
9 a ruling for you in the morning. I will reserve.

10 Does the defendant have a Rule 50 motion?

entire

11 MR. DAVIS: We renew it at the close of the  
12 case.

13 THE COURT: Okay.

described the

14 MS. HEALY: Again, Mr. Cunningham has  
15 legal standard so I won't reiterate that.

when

16 Again, we believe that the evidence shows even  
17 construed in favor of the defendant, that the  
18 plaintiffs have  
19 proven their case.

Cabello

19 Here the issues in the case aren't whether Mr.

20 was killed or mistreated or was the victim of a crime  
against  
21 humanity. That is pretty well established. The issue  
that  
22 lies before the Court initially and later the jury in  
this case  
23 is whether this defendant is legally responsible for  
personaly  
24 committing those offenses or for aiding and abetting  
those  
25 offenses or conspiring with others to commit those  
offenses.

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1                   Even the undisputed evidence, putting aside  
the  
2                   evidence the defendant disputes, the undisputed  
evidence shows  
3                   the jury can infer this defendant was personally  
responsible  
4                   for committing or causing Mr. Cabello's death. Mr.  
Fernandez  
5                   Larios has admitted he was the only person in Copiapo  
with a  
6                   corvo. He also admitted may have been the only person  
on the  
7                   helicopter with a corvo. Dr. Miranda testified there  
were  
8                   knife wounds on Mr. Cabello's clothing when his body  
was  
9                   exhumed 19 years after his death. There is no evidence  
from  
10                  the contrary that Mr. Cabello was not killed or  
significantly  
11                  injured by knife. The only knife discovered in this  
case is  
12                  the corvo held by the defendant.  
13                  We also saw no evidence of gun powder on Mr.  
Cabello's  
14                  clothing unlike the clothing of some the other  
individuals who  
15                  were exhumed at Copiapo. Mr. Fernandez has not denied  
he told  
16                  Enrique Vidal he was looking for prisoners at the  
garrison. He  
17                  also didn't deny he was General Arellano's right-hand  
man. All

18 of these facts could lead the jury to infer the fact  
this  
19 defendant was involved in some way in causing the death  
of  
20 Mr. Cabello.  
21 It is not necessary for the plaintiffs to  
prove this  
22 defendant personally killed Mr. Cabello or personally  
tortured  
23 him or personally subjected him to other offenses. It  
is  
24 sufficient for us to prove this defendant aided and  
abetted  
25 others and there is substantial evidence to show this  
defendant

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1 gave practical assistance, encouragement, moral support  
which  
2 has a substantial effect on the perpetration of the  
crime.

3 Mr. Fernandez Larios admitted over and over  
and made  
4 it the cornerstone of his defense, he was General  
Arellano's  
5 bodyguard throughout what has been known as the Caravan  
of  
6 Death. By protecting General Arellano, who was  
admittedly the  
7 leader of the squad that went out and gave the orders  
to kill  
8 the prisoners at the different garrisons and most  
definitely in  
9 Copiapo, Mr. Fernandez assisted and encouraged and gave  
moral  
10 support and facilitated the commission of the crime  
against  
11 Mr. Cabello.

12 In fact, Mr. Fernandez has put on testimony  
that  
13 General Arellano gave an order to Colonel Haag, who  
transmitted  
14 that order to Patricio Diaz, who went out with a squad  
of  
15 officers and killed the 13 prisoners. By protecting  
General  
16 Arellano, by assisting General Arellano, this defendant  
has in  
17 fact aided and abetted those killings.

18                    This defendant knew what he was doing. He has  
19                    admitted he accompanied the squad to Cauquenes and that  
he knew  
20                    at the time the squad was in Cauquenes that four people  
were  
21                    killed and there was a connection between the squad's  
visit and  
22                    the death of those prisoners. He admitted he returned  
to  
23                    Santiago. He didn't tell anybody about the squad's  
doing  
24                    because he didn't need to. He already knew what was  
going on.  
25                    He returned with the squad and traveled to La  
Serena

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1 and again he understands is there is a connection  
between the

2 visit to La Serena and the death of the prisoners  
there.

3 Then they go to Copiapo where the same thing  
happened.

4 After that they traveled to Antofagasta and Calama and  
never

5 denied he was on the squad present in those cities when  
the

6 killings occurred.

7 He also admitted in regard to RFA number 35,  
General

8 Arellano gave the order that the 13 prisoners in  
Copiapo be

9 loaded onto a truck. We heard from Patricio Diaz,  
those

10 prisoners were driven out into the desert, where they  
were

11 killed.

12 He admitted General Arellano and Colonel Haag  
selected

13 the prisoners to be killed. Again from all of this  
information

14 the jury can infer this defendant facilitated those  
killings,

15 even putting aside the evidence that the defendant  
disputes.

16 He also knew the killing of unarmed civilians  
was

17 illegal and he said that. He said that, I think  
everybody

cannot 18 don't have to be a military to understand the military  
protected 19 use force of violence against unarmed civilians and  
20 prisoners.

record 21 It is quite apparent from the evidence in this  
charged 22 Mr. Cabello's killing was illegal. He had never been  
23 with a crime, never convicted of a crime.

received 24 This defendant never challenged any orders he  
and never 25 although now he says he never received orders to kill

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squad 1 gave orders to kill. Clearly, his actions assisted the  
2 in executing those prisoners illegally and summarily.

3 The evidence adds up to aiding and abetting.

There was 4 The testimony also adds up to a conspiracy.

admits 5 concerted action between the defendant and others. He

traveled 6 he served as General Arellano's bodyguard, that he

7 with the squad. He admits knowing of the death of the

the 8 prisoners at about the time those deaths occurred and

weapon 9 evidence showed that the prisoners were killed with a

with a 10 that he possessed or at least some of them were injured

person to 11 weapon he possessed and he may have been the only

12 possess such a weapon.

families 13 He also admits being aware at the time the

of the 14 were told a false story, part of the concealment phase

shot 15 conspiracy. The families were told the prisoners were

stories 16 trying to escape and he was aware at that time the

17 weren't true.

in 18 He also admits he didn't inform his superiors

19        Santiago or anywhere else, his father. He didn't talk  
to  
20        anybody about what was going on because he knew he was  
a member  
21        of the conspiracy and he was keeping quiet its  
objectives and  
22        its objectives were to eliminate people who were  
perceived to  
23        be opponents of the Pinochet regime. In this case  
there were  
24        people that had worked with the Allende regime but  
people also  
25        just doing their jobs going about their lives. These  
people

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and 1 were targeted, identified, and the defendant assisted  
2 conspired with others to kill them.

3 After all the things he saw on the Caravan he  
went to

4 a cocktail party at General Arellano's house. He  
didn't refuse

5 to go and have a few drinks with a man he thought  
directed the

6 killing of 72 people, if not more, because he  
participated in

7 those killings and he knew about the killings at the  
time.

8 Your Honor, we submit that in fact the  
evidence shows

9 certainly beyond a preponderance, this defendant is  
legally

10 responsible for the claims that we have asserted in  
this case

11 involving Mr. Cabello, his extra judicial killing,  
torture,

12 cruel and inhuman degrading treatment and his death was  
a crime

13 against humanity.

14 MR. DAVIS: It sounds like I was in a  
different trial

15 than Ms. Healy was in. The evidence was very clear.  
First of

16 all, Mr. Fernandez has 100 percent denied having any  
connection

17 with any prisoners, having done anything in connection  
with the

in 18 prisoners, ever receiving an order or giving an order  
19 connection with the prisoners.

20 More importantly, we put in Captain Diaz'  
testimony 21 who confessed to this killing, not once, twice, three  
times, 22 but four times in sworn statements, all of which were  
read in 23 this courtroom.

24 We also read into evidence Colonel Haag's  
testimony in 25 which he describes the people who were present when the  
orders

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Armando 1 to execute the prisoners were given. He does not name  
2 Fernandez. He does not say Armando Fernandez had  
anything to 3 do with it. He says General Arellano told him to do  
it. That 4 is what the testimony is in this case.

5 There is no basis for the motion that has just  
been

6 made. The factual record here is clear, how Mr.  
Cabello was 7 killed, what terrible things the military at Copiapo  
did and

8 what General Arellano did or did not do, although  
General 9 Arellano denied it, Colonel Haag testified to it,  
Captain Diaz

10 testified to it. The fact is Mr. Fernandez is not  
identified

11 anywhere with any of those witnesses as having anything  
to do 12 with the orders that were given in connection to what  
would

13 happen to the prisoners at Copiapo and specifically  
what would 14 happen to Winston Cabello.

15 This motion is totally incorrectly fact based  
and

16 ignores all of the evidence at this trial which of  
course this

17 Court has to look at all the evidence presented in this  
case

18 both on the plaintiff and defense side and it has to  
deal with

19 the undisputed confession of Mr. Diaz in this record  
and they

20 will have to answer that.

21 I also believe there were probably eight or  
nine total

22 mischaracterizations of Mr. Fernandez' testimony and  
the

23 arguments that were made, if we have a closing on this  
case I

24 will definitely take those up with them as they try to  
make

25 those arguments at trial in closing; but the fact is,  
there is

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hear no 1 no basis for any motion against Mr. Fernandez. Again I  
I hear 2 cases cited about conspiracy in a military context and  
causing 3 no evidence what he supposedly did in connection with  
death. 4 Winston Cabello's death or hear about Winston Cabello's

5 The evidence is not here, Your Honor.

Court of 6 MS. HEALY: Your Honor, again to remind the  
case, an 7 the Kinder case is extremely helpful here. In that  
killed 8 airman is directed to go out and take a prisoner and  
military 9 him. He conspires with his military superiors, his  
unarmed 10 colleagues to commit an act of violence against an  
in the 11 prisoner. The courts didn't say in that case you are  
personnel 12 military, somehow the rules are different. Military  
Mr. Davis 13 can conspire or aid and abet. This is a red herring  
14 is introducing.

shooter 15 The fact Captain Diaz confesses to being the  
what a 16 does not absolve Mr. Fernandez of liability. That is  
don't all 17 conspiracy is. A group of people get together. They

18 get in on the plan at the beginning or know the  
parameter of  
19 the plan. We cited the Alvarez case, in which a man  
who was a  
20 lookout at a shooting in a motel where a drug deal was  
going  
21 down and two BATF agents were killed, that lookout was  
found  
22 responsible because he facilitated the action of the  
people  
23 that did the shooting. U.S. versus Alvarez, 755 F.2nd  
830 and  
24 I would direct the Court's attention to 850 and 851, an  
25 Eleventh Circuit case from 1985.

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1                    This case involves a gang of thugs moving  
around Chile  
2                    imposing their version of martial law on the civilians.  
Being  
3                    in the military gave them the guns and the helicopters  
to  
4                    travel around and do what they were doing. For Mr.  
Fernandez  
5                    to claim he had no responsibility because other guys  
were the  
6                    shooters or other people told different stories, that  
doesn't  
7                    do it. He facilitated, he participated, he aided and  
abetted  
8                    and that makes him responsible.

9                    THE COURT: I take it, Mr. Davis you waived  
your  
10                    client's presence this afternoon?

11                    MR. DAVIS: Yes.

12                    THE COURT: I had one question and it relates  
back to  
13                    your Rule 50 motion as to the tolling of the statute of  
14                    limitations. What authority would you cite as to,  
first of  
15                    all, it is the burden of the plaintiff to bring such  
evidence  
16                    forth at time of trial and not just as an allegation in  
17                    pleadings; and any other authority you might have that  
supports  
18                    your proposition that the statute of limitations even  
with

19 tolling, has passed in this matter?  
20 MR. DAVIS: We cited these cases to the Court  
21 previously. They are contained in our original trial  
22 memorandum. We go through the cases of the Forty case  
versus  
23 Suarez-Mason, 672 F. Supp. 1531, as well as the  
Chappelle case,  
24 C H A P P E L L E versus National Starch and Chemical  
Company,  
25 178 F.3rd 501 and citing earlier cases, C A D A versus  
Baxter

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1 Health Care Corp. 930 F.2nd 446, Seventh Circuit, as  
well as  
2 the Eleventh Circuit decision, which we previously  
cited,  
3 Justice versus United States 6 F.3rd 1474. Those are  
the cases  
4 we previously cited in which the burden is on the  
plaintiffs to  
5 plead, prove and establish tolling. They wholly failed  
to do  
6 so and would require the case to be dismissed.

7 THE COURT: Okay.

8 I will reserve on this motion as well. I want  
to  
9 consider your arguments and read over the case law  
cited by the  
10 parties. Again, I hope to have a ruling for you if not  
11 tomorrow morning, some time during the day.

12 Tomorrow morning 9:30.

13 We are in recess.

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16

17 I certify that the foregoing is a correct  
18 transcript from the record of proceedings  
19 in the above-entitled matter.

20

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23

Date

Official Court Reporter

24

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