

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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VENACIO AGUASANTA ARIAS, et al., :
Plaintiffs, :
vs. : Case Number
DYNCORP, et al., : 1:01CV01908
Defendants. :
-----X

Wednesday, February 27, 2002 Washington, D.C.
Deposition of RAND BEERS, held at the offices of the International Labor Rights Fund,
733 15th Street, N.W., Suite 920, Washington, D.C., commencing at 10:00 a.m.,
Wednesday, February 27, 2002, before SHIRLEY S MITCHELL, Notary Public for the
District of Columbia.

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P R E S E N T

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P R O C E E D I N G S

Whereupon,

RAND BEERS

was called as the witness and, after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. COLLINGSWORTH:

Q. Mr. Beers, I thank you for coming today. My name is Terry Collingsworth, and I'm the lawyer representing the plaintiffs in the Arias litigation, and you're about to be deposed in that action. Do you understand that?

A. I do.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. In what circumstance?

A. I was --

Q. How many times?

A. Once.

Q. In what circumstance?

A. I was deposed in association with a case involving the Golden Venture, a ship which smuggled Chinese aliens into the United States about eight or nine ago.

Q. Do you understand the process that I ask you a question and you answer the question truthfully?

A. Correct.

Q. If you don't understand the question, I would like you to make that clear so that I can try to restate it so that it is clear.

A. I understand.

Q. If you need a break for any reason, please let me know and we will accommodate you.

A. That would be much appreciated if necessary.

Q. What is your current position?

A. My current position is the Assistant Secretary of State for International Narcotics & Law Enforcement Affairs.

Q. How long have you held that position?

A. I have been either the congressionally-confirmed secretary or the acting assistant secretary since the 5th of January 1998.

Q. Are you represented by counsel here today?

A. I am.

Q. Who is your counsel here today?

A. These gentleman (indicating).

Q. All three of them?

A. All three of them.

Q. So you have three lawyers here today to assure you that you are not going to spill any State secrets; is that correct?

A. I have three counsel here. Thank you.

Q. Prior to your current position, did you hold any positions that had anything to do with Plan Columbia?

A. Plan Columbia is a concept which did not occur until after I became the Assistant Secretary of State.

Q. Was there any predecessor program to Plan Columbia that you did have some responsibility for in a prior position?

A. The United States has had a relationship with Columbia dealing with counternarcotics for a number of decades. I first began to work in the counternarcotics area in 1988 when I was on the National Security Counsel staff.

Q. Did you help in any way to design that initial program?

A. Yes.

Q. What was your responsibility?

A. There was a series of strategy developments dating back, in terms of my involvement, to a 1999 development of a regional strategy for the Andean region. I was involved in the development of that strategy, and I had bits and pieces to do with most of the further development from a variety of different positions.

Q. What is the genesis of what we now call Plan Columbia?

MR. RIVERA: Object to the form of the

question as vague. What do you mean by genesis?

BY MR. COLLINGSWORTH:

Q. When did what we now call Plan Columbia officially start?

A. It officially became Plan Columbia, if you will, in the summer of 1999.

Q. What was its purpose as you understood it?

A. The purpose of Plan Columbia was to deal with the increased cultivation and illegal activity associated with that cultivation concerning narco trafficking in Columbia.

Q. Was it exclusively in Columbia?

A. No.

Q. Where else was it applying?

A. It was looked at as, to a lesser extent, a regional strategy which involved all of the Andean nations.

Q. Was there any explicit component of Plan Columbia at its beginning in 1999 that contains an antiterrorist element?

A. No.

MR. COLLINGSWORTH: I am now going to hand you a document that I would like marked as Plaintiffs' Exhibit 1. Just to be completely clear in the record, this is Exhibit B to the DynCorp Motion to Dismiss. It is the Declaration of Rand Beers. (Beers Deposition Exhibit No. 1 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Mr. Beers, can you take a moment to look at Exhibit Number 1 and tell me if you can identify it.

A. It is a document which I signed as representing my views with respect to our relationship with DynCorp and the U.S. government's involvement in relations with Columbia.

Q. Are you aware that you signed it under oath?

A. Yes.

Q. Who drafted this document?

A. The initial draft was done by DynCorp. It was reviewed within the State Department by my staff.

Q. Who is DonCorp?

A. DynCorp.

Q. Do you know which particular person at DynCorp drafted this?

A. No.

Q. Do you know if it was outside counsel that drafted it?

A. No, I do not know.

Q. How did it come to you first?

A. From my staff.

Q. Which person on your staff?

A. I believe it was Bob Etheridge.

Q. What is his position?

A. He's the head liaison officer for the State Department Air Wing stationed in Washington, D.C.

Q. Can you describe for me the circumstances under which you first saw this document?

MR. RIVERA: I'm sorry, are you speaking to the first draft of this document?

BY MR. COLLINGSWORTH:

Q. Yes, your first experience with this declaration.

A. When it was brought to my attention

BY Mr. Gallagher and Mr. Etheridge as a document which they had worked over and wanted me to look at since I was to be the signer of that document.

Q. Did you review it at that time?

A. I did.

Q. Did you make any changes to it?

A. I believe I did.

Q. Did you make the changes in handwriting on a draft?

A. I believe I did.

Q. Do you know if that document has been preserved?

A. I do not.

Q. You do not know?

A. Correct.

Q. Tell me, looking at this document, if you recall anything that you specifically added to it or you specifically made as a change to it.

A. I don't recall.

Q. Did you make a lot of changes to it?

A. I don't remember.

Q. You don't remember?

A. (No response.)

Q. Is that a yes, you do not remember?

A. That is a yes, I do not remember.

Q. How long of a process was it in terms of your time?

A. In terms of my time, I believe I read the draft at least twice.

Q. Did you read a different draft?

A. The second draft that I would have read would have reflected at least my changes.

Q. So you got a first draft and you read it; is that correct?

A. I got a draft. I wouldn't call it a first draft.

Q. The first draft you saw, you read and you made some changes to?

A. That's correct.

Q. You believe you made changes in
handwriting on the document?

A. That's correct.

Q. You gave it back to whom?

A. It would have either been Mr. Gallagher or Mr. Etheridge. I don't remember.

Q. Then did you get to view a subsequent draft?

A. That's correct.

Q. You read that document?

A. That's correct.

Q. Did you make any changes to it?

A. I do not remember a second set of changes.

Q. You believe you signed that second draft after reviewing it?

A. That is my belief, that's correct.

Q. In the context of reviewing your Declaration, did you review any external documents to refresh your recollection about any of the representations made in this Declaration?

A. No.

Q. Did you review a copy of the
Plaintiffs' Complaint in this case?

A. I don't remember.

MR. COLLINGSWORTH: Can we mark this as Plaintiffs' Exhibit 2. (Beers Deposition Exhibit No. 2 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Plaintiffs Exhibit 2 is a copy of the Complaint filed in this action by the plaintiffs. I again have a couple of extra copies if anyone needs one.

MR. Beers, we have handed you Plaintiffs' Exhibit 2, it is the Plaintiffs' Complaint in this case. I'm asking to you look it over and tell me if you have ever seen this before.

A. I do to not remember having seen it.

Q. Mr. Beers, I want to be very clear on this, and I'm not trying to be in any way facetious. Is it that you don't remember or that you didn't see it?

A. Sir, I see a lot of documents in my

day-to-day business, and I can't tell you every document that I've seen. It may have passed across my desk. It may not have passed across my desk. I truthfully cannot answer that question, other than to say I don't remember.

Q. As you sit here today, do you have any personal knowledge about the nature of the Plaintiffs' Complaint in this case?

A. Yes, I have had the Complaint explained to me.

Q. Tell me, if you can, what you understand the Plaintiffs are attempting to achieve here.

A. It is my understanding that the Plaintiffs, Ecuadorians, are seeking to have some kind of what you, a lawyer, might call injunctive relief -- I'm not a lawyer, and that may not be the correct term -- with respect to DynCorp's activities in Columbia because of its alleged effect upon the Plaintiffs.

Q. That's your understanding that you believe that they are trying to get an injunction to stop the spraying in Columbia?

A. I did not say that.

MR. RIVERA: Objection.

BY MR. COLLINGSWORTH:

Q. Then correct me because that's what I heard. I'm sorry.

A. I said injunctive relief.

Q. What kind of injunctive relief?

A. I don't know.

MR. COLLINGSWORTH: Mr. Beers, I'm handing you a document that we will call Plaintiffs' Exhibit Number 3, which is a February 26, 2002 letter to me from Mr. Gallagher. (Beers Deposition Exhibit No. 3 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Mr. Beers, I would like you to quickly review this list of documents here that were transmitted to me by Mr. Gallagher.

A. (Examining.) Yes.

Q. Did you review any of those

documents in your preparation to sign the Declaration that we have called Plaintiffs' Exhibit 1?

A. No.

Q. Do you know of any documents that relate to Plan Columbia that have informed you of your view that are not on this list?

A. No.

Q. Are there any other testing documents about Plan Columbia that are not on this list?

MR. RIVERA: Object to the form of the question. Testing?

BY MR. COLLINGSWORTH:

Q. Are there any documents that discuss testing the safety of the fumigant used in Plan Columbia that are not on this list?

A. I don't know the answer to that question.

Q. Who would know the answer to that question?

A. People who work in the Air Wing of

the State Department.

Q. Can you give me a name or two of someone on your staff who would be the person that you would go to who is an expert on the testing of the safety of Plan Columbia materials?

A. I would go to Mr. Etheridge, but Mr. Etheridge may not be the expert on that particular subject. He is the head of the Liaison office in Washington D.C.

Q. Let's now focus on what we call Plan Columbia. You said it began in 1999; is that correct?

A. That's correct.

Q. Is there a particular statute that authorizes Plan Columbia?

A. There is an appropriations document which funds Plan Columbia which is self-authorized.

Q. I'm sorry?

A. Is self-authorized.

Q. What does that mean, self-authorized?

A. In the normal appropriations

process, there is an authorizing bill and there is an appropriating bill. The authorizing bill authorizes the appropriations, and the appropriation bill actually appropriates the money. This was a supplemental appropriation. There was no authorizing document, bill, law passed separately. So the document, the bill, the law authorizes itself. This is not an infrequent device.

Q. Does any portion of the appropriation bill authorize the spraying of fumigants in Ecuador?

A. I do not remember.

Q. Is it your testimony, as you sit here, that it might be that you're allowed to spray in Ecuador under Plan Columbia?

A. I think it would be more likely that it would not have been prohibited.

Q. Is there any contractual authorization for DynCorp to spray in Ecuador?

A. No.

Q. Sorry?

A. No.

MR. COLLINGSWORTH: I'm going to hand you another document and we're going to call this Plaintiffs' Exhibit 4. (Beers Deposition Exhibit No. 4 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Mr. Beers, the document I have handed to you, Plaintiffs' Exhibit 4, is apparently some portion of a contract between the State Department and DynCorp for Plan Columbia. This is the version that is available on the Internet. I would first like you to review that and tell me if it in fact is a portion of the contract between DynCorp and the Department of State.

A. (Examining.)

MR. HOLLINGSWORTH: Excuse me, I object to that question on the grounds that I don't understand it. Are you saying that this purports to be the contract between DynCorp and the United States?

MR. COLLINGSWORTH: Yes. I'm asking

MR. Beers if he can tell me if it's true.

THE WITNESS: I don't know.

BY MR. COLLINGSWORTH:

Q. Have you ever seen the contract that is between the State Department and DynCorp authorizing the spraying in Columbia that is going on now?

A. Not to my knowledge.

Q. Who in the State Department would have signed such a contract?

A. I don't know the answer to that specifically.

Q. You have never seen the actual contract?

A. No, not to my knowledge.

Q. I just asked you, though, if the contract authorizes DynCorp to spray in Ecuador, and you said no; is that correct?

A. That is correct.

Q. What is the basis of your knowledge of that if you have not seen the contract?

A. Being briefed on the contract's contents.

Q. Who briefed you on the contents?

A. It would have been Mr. Etheridge or other members of the Air Wing.

Q. The?

A. Air Wing.

Q. What is the Air Wing?

A. It's the office within the bureau of International Narcotics & Law Enforcement Affairs which is responsible for working the contract with DynCorp.

Q. So it would be fair to say, then, that if DynCorp sprayed in Ecuador, that would be in violation of the contract?

MR. RIVERA: Object to the form of the question. It mischaracterizes the witness's testimony. For point of clarification, are you talking about intentional spraying or unintentional spraying into Ecuador?

MR. COLLINGSWORTH: Let's take a look at both of those.

MR. HOLLINGSWORTH: Same objection.

MR. RIVERA: You can answer the question if you understood it, or if you need it read back, the court reporter can do that for you.

THE WITNESS: As I said, DynCorp is not authorized to spray in Ecuador.

BY MR. COLLINGSWORTH:

Q. Are you aware of any requests made by the government of Ecuador to the United States government or the government of Columbia to stop spraying in Ecuador?

A. No.

MR. GALLAGHER: Objection. Assumes facts not in evidence.

BY MR. COLLINGSWORTH:

Q. The answer was?

A. I am not aware.

Q. Are you aware of a meeting that occurred roughly on Wednesday, February 13th between representatives of the government of Ecuador and the government of Columbia and

MR. Baca, who I believe works for you?

A. No, I'm not.

Q. Does Mr. Baca work for you?

A. Yes. He is the director of the Narcotics Affairs Section in the U.S. Embassy in Bogota. Technically, he works for the ambassador and not for me. The line of command is through the ambassador.

Q. Does he report directly to you information?

A. He reports information to me. He does not report directly to me.

MR. RIVERA: Do we have a first name for

MR. Baca?

THE WITNESS: Richard.

MR. RIVERA: Just to make sure we're talking about the same Mr. Baca for clarity on the record.

BY MR. COLLINGSWORTH:

Q. Richard Baca. Do you know if Mr. Baca is engaged in discussions about the width of an area at the border of Columbia where no spraying will be

permitted?

MR. RIVERA: Object to the form of the question. Discussions with whom?

MR. COLLINGSWORTH: The government of Ecuador and the government of Columbia.

MR. RIVERA: The witness may answer subject to the restriction that may not reveal any classified or State secret information.

THE WITNESS: I do not know.

BY MR. COLLINGSWORTH:

Q. Are you aware of any discussions that have occurred between anyone on the issue of creating an area from the Ecuadorian border into Columbia where no spraying would be permitted to avoid spraying in Ecuador?

MR. RIVERA: Same objection.

THE WITNESS: I am aware of that, yes.

BY MR. COLLINGSWORTH:

Q. What is your awareness?

MR. RIVERA: Same objection.

THE WITNESS: I'm following counsel's advice on discussing the exact nature of it.

BY MR. COLLINGSWORTH:

Q. I'm not clear then. You are aware that these discussions are going on between the government of Ecuador --

A. No. I'm sorry, you asked me a separate question. You said am I aware of discussions about a buffer zone. The answer to that is yes.

Q. The buffer zone being an area from the border of Ecuador into Columbia where no spraying would be permitted to avoid spraying in Ecuador; is that correct?

MR. RIVERA: Object to the form of the question as compound. You may answer.

THE WITNESS: I am aware of the discussions of a buffer zone.

BY MR. COLLINGSWORTH:

Q. You're not aware that Mr. Baca is participating in them?

A. No. I am not aware of discussions with the government of Ecuador.

Q. There are discussions between the government of Columbia and the government of the United States; is that correct?

A. That's correct.

Q. Mr. Baca is leading those discussions?

A. Those discussions transpired long before Mr. Baca arrived at the post.

Q. When did those discussions occur?

A. At the early time of the initiation of spring in the Putumayo department.

Q. That would have been in 1999?

A. No. That would have been in the fall of 2000.

Q. How did those discussions conclude?

A. I'm not going to discuss that.

Q. You're not going to discuss that because?

A. I don't want to draw attention to the methods of operations of DynCorp and Columbian pilots because we're talking about a matter that may affect their safety.

MR. RIVERA: Just to be clear, I suppose

we're objecting on the basis of classified State security, national security privilege.

MR. HOLLINGSWORTH: The same objection on behalf of DynCorp. The basis for that is national security, foreign policy and the contract itself.

BY MR. COLLINGSWORTH:

Q. Were the discussions concluded?

A. Yes.

Q. Is there a buffer zone?

A. Yes.

Q. The part you're objecting to is telling me how wide it is?

A. Yes.

Q. Because that's a national security secret?

A. Because we don't wish to preview where people would have sanctuary. We don't wish to preview where we might fly.

Q. Do you have any knowledge at all of similar discussions involving the government of Ecuador?

A. As I earlier said, no.

Q. What is the reason that there is a buffer zone, however wide it is?

MR. RIVERA: Let me again just object on the grounds to the extent that the witness would have to reveal in his answer any information that would be protected by State secrets or national security or other privilege. With that objection, you may answer to the extent that you don't reveal such information.

THE WITNESS: As a concept, it is to try to ensure that the areas to which a spray is delivered are, in fact, most likely to hit targets and most likely not to hit places that are not targets.

BY MR. COLLINGSWORTH:

Q. Would it be fair to say, then, that one purpose of the buffer zone is to insure that the spraying does not enter into Ecuador?

A. Yes.

Q. Because Ecuador is not a target of --

A. That is correct? 2

Q. -- the spraying?

MR. RIVERA: Make sure he finishes his question before you answer.

THE WITNESS: The answer to the question as completed is yes.

MR. COLLINGSWORTH: Thank you.

THE WITNESS: Thank you, Counsel.

BY MR. COLLINGSWORTH:

Q. Are you aware of any reports that spraying has occurred in Ecuador?

A. Yes.

Q. Describe for me your knowledge along those lines.

MR. RIVERA: I'm going to raise the same objection with respect to the witness may answer subject to preservation of any national security or classified information.

THE WITNESS: I have heard press reports.

BY MR. COLLINGSWORTH:

Q. Press reports of spraying in Ecuador?

A. Or drift of spray into Ecuador.

Q. Have you ordered any kind of investigation of that?

A. Yes.

Q. Who is conducting that investigation?

A. The embassy.

Q. The embassy in?

A. Bogota.

Q. The U.S. Embassy in Bogota?

A. That's correct.

Q. Is there any conclusion to those investigations?

MR. RIVERA: I'm going to raise the same objection I did previously.

THE WITNESS: The conclusions that I understand are that the information does not stand up to the allegations. The press reports do not stand up discretely.

BY MR. COLLINGSWORTH:

Q. Is there a written report to that effect?

A. No, not to my knowledge.

Q. How did you come to learn that information?

A. It would have been communicated to me by staff, from telephone conversations with people in the embassy.

Q. Do you know who communicated that to you?

A. I would have to ask Mr. Etheridge.

Q. I would like to direct your attention to paragraph 9 of your Declaration.

A. (Witness complies.)

Q. The relevant portion is in the second line of paragraph 9. "It should be noted that the punitive class is drawn from a region adjacent to one largely controlled by drug traffickers and international terrorists." What is the region that you are referring to there?

A. The region within Ecuador or the region within Columbia?

Q. The region within Ecuador.

A. To the best of my knowledge, it

would have involved Sucumbios and Carchi departments, or provinces if that's what they're called, in Columbia.

Q. What are you referring to in Columbia?

A. I'm referring to the cultivation and the trafficking and insurgent organizations which are no different from trafficking organizations that exist in the Putumayo region department and the overlap of that department into Narino in Southern Columbia.

Q. Are there any specific terrorist targets in Sucumbios, Ecuador?

MR. RIVERA: I object to the question again to the extent that it would call for revealing information protected by State secrets, privileged or other national security privileges.

THE WITNESS: I don't know what a target is.

BY MR. COLLINGSWORTH:

Q. Are there any terrorist groups that are on the U.S. government's list that are known to be hiding or based in Sucumbios, Ecuador?

MR. RIVERA: Same objection.

THE WITNESS: There is general information that the BART from time to time has some of its elements within Ecuador.

BY MR. COLLINGSWORTH:

Q. Within Sucumbios, Ecuador?

A. Within Sucumbios.

Q. I don't speak Spanish. I'll do my best.

A. Nor do I.

Q. I would like to direct your attention to paragraph 25 of your Declaration. It begins, "As directed by the bureau, DynCorp International works directly with the United States military," et cetera, et cetera. Who within the Bureau would be the person you're referring to, or persons, who are directing DynCorp?

A. It would be me and through me the office director of the State Department Air Wing,

MR. John McLaughlin, and through him his

representatives in Columbia, and in a second chain of command from the ambassador through the Narcotics Affairs Section within Columbia.

Q. Mr. Baca, does he work in Narcotics --

A. He is the director.

Q. Thank you.

MR. RIVERA: Make sure that counsel finishes his question before you answer.

THE WITNESS: I'm sorry.

BY MR. COLLINGSWORTH:

Q. How frequent are the interactions in that chain you have just described between DynCorp and the bureau? Is it a daily thing or a weekly thing?

A. It is a constant relationship. It is daily and hour to hour. They live and work together.

Q. I understand the limitations on what you can say here, but what are the general issues that are being worked out on a day-to-day basis in this relationship? Is it where to spray? Is it

what to spray? What are the general issues?

A. Logistics.

Q. What do you mean by that?

A. I mean the support for the aircraft and associated material, gasoline, spray material that are necessary for DynCorp to carry out its function.

Q. In the next paragraph, paragraph 26 of your Declaration, you describe a process to develop detailed flight plans. Can you tell me how that works?

A. The government of Columbia with the support of the United States determines where coca cultivation exists with a degree of geographic precision that allows a specific field to be designated as a field to be sprayed. The general geographic area and then the fields themselves are determined with the final responsibility for saying that those areas may be sprayed residing with the government of Columbia. The flight plans are then laid out for a particular day to cover the fields from among

the list of fields which will be sprayed on that day and by that flight. Prior to the take off of the aircraft, the government of Columbia determines whether or not the weather or wind conditions are appropriate to being able to deliver the spray effectively to the target selected and only if the weather and wind are appropriate, it's not raining,

THE Wind is not above a certain velocity. The aircraft are authorized to take off. They then take off and return to base. If an unusual condition results during the course of the flight, then the pilot has the authority to return to base on his own recognizance. The planes that fly are a combination of planes that are flown by DynCorp and flown by the Columbian National Police.

Q. When you were speaking earlier about the logistics and the interaction between the bureau and DynCorp, is the government of Columbia involved in those logistical coordination activities as well?

A. Only insofar as it may involve a

flight clearance to move something from point A to point B. We are responsible for supplying our own DynCorp logistical back up.

Q. Is a computer program prepared based on the aerial intelligence that is guiding the spray pattern of the airplane?

A. There is a program set which is used to guide it, yes, that's correct.

Q. How is that created?

A. It's created in the -- as a result of some multispectral imagery, which is taken from an aircraft which is flown by us. Not every field which is sprayed is necessarily registered on that, but most of the fields which are sprayed are registered on that.

Q. Who creates the computer program in cases where there is one?

A. It would be a, I believe, subcontractor of DynCorp.

Q. A subcontractor of DynCorp. Do you know the name of the subcontractor?

A. I don't recall off the top of my head.

Q. Do you know where that computer program is created physically? Is it created in Columbia, or is it created somewhere in the United States?

A. I believe it's in Columbia.

Q. Do you know the lag time between gathering the information and actually having the computer program ready to be operational?

A. No.

Q. Do your flight plans take account of the issue of drift?

A. Yes.

Q. How do they do that?

A. As I said earlier, they are not allowed to fly if the wind is too great.

Q. Is that the only precaution taken?

A. Pilots can make a decision in flight.

Q. Are you aware of any studies conducted regarding the issue of drift with respect 2 to Roundup, the fumigant base that is being used in Plan Columbia?

A. No.

Q. Are you aware that there are any studies?

A. No.

Q. Do you know what kind of spray was initially being used when Plan Columbia first began?

A. No.

Q. Do you know what kind of spray is being used now?

A. No.

Q. Is it a derivative of Roundup?

A. I am not at liberty to say.

Q. I'm sorry?

A. I am not at liberty to say.

Q. Is that a national security secret what the actual spray is?

MR. RIVERA: I'm going to object to the question on the grounds that the identity of the particular spray would be protected by a privilege 3 concerning another national security law enforcement privilege or the privilege for information submitted upon a pledge of confidentiality with the government.

MR. HOLLINGSWORTH: Same objection, also based on the contract.

MR. COLLINGSWORTH: We're going to mark that one because I don't believe that you will be able to keep us from knowing what is the name of the spray being used.

BY MR. COLLINGSWORTH:

Q. Is it a derivative of Roundup?

MR. RIVERA: Same objection.

MR. HOLLINGSWORTH: Same objection.

BY MR. COLLINGSWORTH:

Q. What company makes it?

MR. RIVERA: Same objection.

MR. HOLLINGSWORTH: Same objection.

BY MR. COLLINGSWORTH:

Q. Has the spray changed?

A. Yes.

Q. When did it change?

A. I don't know.

Q. Why was it changed?

A. I'm not sure.

MR. COLLINGSWORTH: Let's mark this as Plaintiffs' Number 5. (Beers Deposition Exhibit No. 5 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. I've handed you Exhibit 5, which is a transcript of your famous appearance on 60 Minutes. I'm wondering if you could take a moment to review that and tell me if it accurately reflects what you said.

MR. RIVERA: Do you want the witness to read the entirety of the transcript, or are there particular portions that you would like him to look at?

MR. COLLINGSWORTH: It's not that long. He can read the portions that he did actually say.

MR. RIVERA: Read through it and make sure you're comfortable with what you have read.

THE WITNESS: (Witness complies.)

Those are all my words to the best of my recollection.

BY MR. COLLINGSWORTH:

Q. Mr. Beers, on page 3 of this document near the top, it's your first appearance, I think, Mr. Rand Beers: "That's correct. By comparison, table salt and baby shampoo are more toxic or as toxic as glyphosate."

MR. RIVERA: I'm sorry, what page are you on?

THE WITNESS: We haven't found the point you're making. It's on page 2 of mine.

MR. RIVERA: Let's make sure we're on the same page, literally.

MR. COLLINGSWORTH: Yes, my pages somehow are different. Sorry.

BY MR. COLLINGSWORTH:

Q. On page 2 at the top, you are quoted as saying, "That's correct. By comparison, table salt and baby shampoo are more toxic or as toxic as glyphosate."

A. Glyphosate.

Q. Is glyphosate one of the chemicals being sprayed in Columbia?

A. Glyphosate is the generic name of the chemicals that are being sprayed in Columbia.

Q. In the next set of questions,

MR. Croft asks you about Roundup. There, you don't claim any kind of national security privilege, and instead you answer the questions about the commercial applicability of Roundup. That's what it appears to be saying. Am I incorrect there?

A. Yes.

Q. What are you intending to answer there?

A. I'm doing two things at the same time. I am talking about glyphosate, the generic, and I am responding to his question about how a specific commercial vendor might set up their own guidelines.

Q. But you don't --

A. But I am not confirming that Roundup

is what is being used in Columbia.

Q. For purposes of our going to the court and trying to get a court order, the issue you are claiming national security on here is whether or not this glyphosate that you are spraying --

MR. GALLAGHER: Glyphosate.

MR. COLLINGSWORTH: We all know what we mean.

BY MR. COLLINGSWORTH:

Q. -- is in fact Roundup?

A. We are not acknowledging the name of the supplier.

Q. That is a national security secret?

A. Counsel made the objections.

MR. RIVERA: Again, it's information protected by one of the governmental privileges including information submitted to the government on a pledge of confidentiality, as well as the law enforcement privilege and possibility the national security privilege.

BY MR. COLLINGSWORTH:

Q. But we can say that glyphosate is one of the chemicals?

A. We can certainly talk about glyphosate.

Q. Are there any other chemicals that are added to the mixture that is being used in Plan Columbia besides glyphosate?

A. When one speaks of glyphosate as the generic active agent that is used to actually affect the plan, there are another set of chemicals which are included, and they are called surfactants. Their purpose is to allow the glyphosate to remain on the leave long enough to have its active effect on the plant. It is like baby shampoo.

Q. Is one of the ingredients that you're describing called Cosmo-Flux?

A. That is correct.

Q. Is Cosmo-Flux part of the mixture that is being used in Plan Columbia?

A. That is correct.

Q. Is another one something called

Poea, P-o-e-a?

A. I believe that is the correct name.

Q. What is the difference, as you sit here, between Cosmo-Flux and Poea?

A. They're produced by different manufacturers.

Q. But they do the same thing?

A. Yes.

Q. Which of them is being used in Plan Columbia?

A. Both.

Q. Together?

A. Yes.

Q. Why would you need two of them?

A. Because in the commercially available mixture which we purchase, the second of the two surfactants is already an ingredient of the mixture which we purchase. We add the Cosmo-Flux in addition to that to have an additional surfactant effect.

Q. Where is the Cosmo-Flux that you are adding manufactured?

A. I don't know.

Q. Do you know the name of the company that manufacturers it?

A. No.

Q. Has the company that is supplying it, the Cosmo-Flux that is being used in Plan Columbia, has the company changed from the beginning of the program until now?

A. That supplies the Cosmo-Flux?

Q. Yes.

A. I don't know.

Q. Let me direct your attention to page 3. About halfway down the page it says,

MR. Beers: "There is no question that at certain dosage levels, glyphosate or the commercial mixture can injure people or kill them. What I'm trying to say is that the levels that we apply are well below any of those levels." Did you, in fact, say that?

A. I did.

Q. What are the dimensions or factors in your mind that would determine whether a certain

dosage level would kill someone?

A. The science, as I understand it, is that the dosage level would have to be a considerable degree greater than the very small amount of dosage that a single flight would allow to land on an individual. The actual mixture of either glyphosate or surfactant which would fall on an individual, a naked person of approximately 150 pounds standing in a field, which would never happen, would have approximately 12 milligrams of the total amount of substance. Nine plus milligrams would be glyphosate, the remaining 2 plus milligrams would be surfactant. That's hardly anything, approximating what the standard tests have suggested would be the dosage level for glyphosate and its surfactant as manufactured in the United States and testing would be.

Q. Is there any process under which someone is testing what is actually being sprayed, the content of it? 2

MR. HOLLINGSWORTH: I object to the form of that. It's unclear to me.

THE WITNESS: Nor me.

MR. COLLINGSWORTH: I'm sorry, I'll try again.

BY MR. COLLINGSWORTH:

Q. You're getting this fumigant and spraying it. Is anyone testing the actual chemical compound that is being sprayed on some sort of random basis to make sure that we're clear on what it is made of?

MR. HOLLINGSWORTH: Same objection.

THE WITNESS: I have indicated that products which are manufactured and sold in the United States are tested regularly. That's the test data we have.

BY MR. COLLINGSWORTH:

Q. Is anyone using commercially in the United States the exact same chemical formulation with the addition of these two surfactants that you've described in testing it?

A. Cosmo-Flux is not sold within the 3 United States.

Q. When you say that the people who are testing it in the United States, that would be irrelevant to whether the chemical as used is the same, right?

MR. RIVERA: Object to the form of the question.

MR. HOLLINGSWORTH: Objection.

BY MR. COLLINGSWORTH:

Q. Everyone objected to the form of the question, but the issue is whether you understood the question.

MR. RIVERA: If you understand the question, you may answer subject to the objection.

THE WITNESS: As to the matter of the irrelevance of the test that has been done in the United States, I believe it is relevant to the matter at hand.

BY MR. COLLINGSWORTH:

Q. Why is that?

MR. RIVERA: I'm sorry, Counsel. I'm going back and flipping through Mr. Beers' 4 Declaration, and it seems that we're going a bit far afield from what he was supposed to be testifying to today. Obviously, we've been giving some latitude to talk somewhat about the herbicide. But my understanding of his authorization and the request for his testimony today really concerns the policy position of the State Department and various aspects of the impact of this litigation on national security and other concerns that are described in the Declaration rather than the science or the health effects, for the most part, of the herbicide.

MR. COLLINGSWORTH: I'm going to direct you to paragraphs 22 and 23 of Mr. Beers' Declaration, both of which involve his assertions that there are no grounds to suggest concern for human health. I believe that my questions are extremely relevant there, and I have just a few more which I would like to complete.

BY MR. COLLINGSWORTH:

Q. You were beginning to explain to me the relevance of the testing that is done on one compound to the actual health effects of the compound being used in Columbia which is different. Why did you say that it was relevant?

A. When you get to the actual mixture that is being sprayed in Columbia, that is when it is mixed with the water, which is the largest single content of the mixture, the glyphosate and the surfactant that comes with the glyphosate represent a certain proportion which is the bulk of the combination, and 1 percent of the actual out the nozzle of the spray is Cosmo-Flux. We have, because it is not sold in the United States, asked EPA to look at the ingredients as provided on a proprietary basis by the manufacturer. And EPA has, after looking at the contents, judged the contents of Cosmo-Flux as safe to be sprayed on food crops in the United States. That, in combination with the testing against the commercially available products which are comparable to what we use, gives us the view that is contained in the statement.

Q. Is it true that no one has actually tested on humans the specific compounds together that are being used in Plan Columbia?

A. To the best of my knowledge, no one tests on humans or any of the herbicides or pesticides. They are all done on animals.

Q. Are you aware of any scientific tests done on animals to test the effects of the specific combination of compounds being sprayed in Plan Columbia?

A. No.

Q. Are there any plans to do such a test?

A. We are considering the possibility.

Q. Who would conduct the test that you are considering?

A. I don't know.

Q. Are you working with the EPA on that?

A. The EPA would certainly be involved.

Q. Are you familiar with any legal

requirement under the Executive Order 12114 to test these materials prior to using them in a context that might harm humans?

A. I'm not familiar with that executive order and would need to review it before I could answer your question.

Q. Are you aware of any discussions that have occurred in your bureau about the need to conduct an environmental impact study?

MR. RIVERA: I'm going to object to the question to the extent it requires the witness to reveal any information that would be protected by the deliberative process or any other applicable privilege.

BY MR. COLLINGSWORTH:

Q. I believe you can answer the question without giving up the details that counsel has enumerated.

MR. RIVERA: If you understand the question.

THE WITNESS: I guess you're going to have to reformulate the question.

BY MR. COLLINGSWORTH:

Q. Have there been any discussions inside your bureau regarding the need to comply with environmental regulations by testing the impact of the compound that you are spraying in Columbia?

MR. RIVERA: Just a question of clarification. The impact on the environment?

MR. COLLINGSWORTH: No. Humans or the environment.

MR. RIVERA: I thought I heard environment somewhere in your qualifications.

MR. COLLINGSWORTH: Humans are existing in the environment.

MR. RIVERA: That's helpful to be clear on the question.

THE WITNESS: At this particular point in time, I am not aware of any specific plans to do any environmental impact study of this particular spray compound.

BY MR. COLLINGSWORTH:

Q. You're not familiar with Executive

Order 12114?

A. No.

Q. Are you aware of whether there are any laws in Columbia that would require an environmental impact study to be done before you could spray something like the fumigant you are using?

A. I'm not specifically aware of any, no.

Q. Are you aware of any discussions about whether the program is in compliance with the law in Columbia on that dimension?

A. Yes. It is my understanding that it is in compliance with the law in Columbia.

Q. Does the fumigant that you are using in Columbia kill food crops like corn, yucca, et cetera?

A. It kills plants.

Q. So if a farmer's plants were sprayed by this fumigant, it would kill them, just as it is killing the cocaine?

A. It could.

Q. There is no way that this fumigant distinguishes between cocaine and corn. It kills plants; is that correct?

A. That is correct.

Q. You had earlier said that the dosage is low enough that it cannot hurt humans in terms of the spray that you are using in Columbia, correct?

A. I said that it is not significant enough to kill humans.

Q. Could it injure humans?

A. The studies that have been done on glyphosate have suggested that there is a mild eye irritation that results.

Q. Are you aware of any other health effects just from the glyphosate?

A. No.

Q. Again, that study did not introduce the Cosmo-Flux; is that correct?

A. But it did have the surfactant that is part of the glyphosate mixture.

Q. Which surfactant, what is the word?

A. The other one, the Bpoe.

Q. Would someone increase their chances of suffering an injury if they are sprayed frequently? Is frequency a factor in your determination?

MR. RIVERA: I'm sorry, I object to the form of the question.

BY MR. COLLINGSWORTH:

Q. I will be happy to try again if you don't understand it, Mr. Beers.

A. There is a second set of studies that are done on most herbicides, and they are exposure -- prolonged exposure to the substance. It is my understanding that those studies are conducted over a 90-day period, and they presume a certain dosage level administered on a daily basis. Those studies with respect to glyphosate do not suggest a long-term effect. However, and more importantly, it is unlikely that an individual would be sprayed more than once. It is highly unlikely that an individual would ever be sprayed more than twice, period. 2

Q. But that would be a factor if in fact they were? In increasing the risk to a person, the dosage is one factor, but the frequency is another factor?

A. That's what I said.

Q. Are you aware of any rules or recommendations by the commercial manufacturers of this kind of fumigant that you are using in Columbia dealing with the altitude from which it should be sprayed?

A. I believe there are some references in the guidelines.

Q. Do you have any knowledge of what those guidelines are? Should it be sprayed very high up or close to the ground?

A. It should be sprayed close to the ground.

Q. How close to the ground?

A. I don't remember precisely, but the guidelines say.

Q. Do you believe, as you sit here, that the DynCorp program in Columbia is in 3 compliance with those guidelines in terms of altitude?

MR. RIVERA: Object to the question. Could you clarify, whose guidelines?

BY MR. COLLINGSWORTH:

Q. The guidelines that you referred to that the commercial manufacturers recommend.

A. As I cannot remember what the commercial guidelines are, I'm at odds to respond to your question.

Q. Is it part of the direction that the bureau is giving DynCorp to be in compliance with the commercially-recommended applications of the fumigant?

A. We have our own guidelines.

Q. Are they different in terms of the altitude recommendation than the commercial guidelines?

A. Our guidelines are 50 to 150 feet.

Q. What are the commercial --

A. I don't know.

Q. Do the commercial vendors put a 4 warning label on the fumigant if it has glyphosate in it?

A. I believe so.

Q. Does the warning include telling humans to be out of the area?

A. I'm not positive about that.

Q. Let's go back to your 60 Minutes transcript, page 2. You are specifically asked the question near the top of the page by Mr. Croft that the commercial Roundup says that people should stay out of area, as well as pets, if the area is being sprayed, and you respond to the question. Do you have any knowledge at all of the commercial regulations?

A. I'm sorry, I still don't see it on the page.

Q. Page 2, the second question

MR. Croft asks you, it begins, "If you looked at the --

A. Okay, got it.

Q. Could you review both the question and your response. 5

A. (Examining.)

Q. Do you have any knowledge of the commercial warning that Roundup is using?

A. Mr. Croft, I believe, is correct in quoting the Roundup web site. I have never said we're using Roundup, sir.

Q. Is it your position that it is okay, that you would not warn people to be out of the area when you're about to spray the actual fumigant that you're using in Columbia?

A. We do not warn people to be out of the area when we are spraying.

Q. Because it's perfectly safe to be sprayed?

A. It is also a risk.

Q. Could you acknowledge the first part of the question, though. Is it your position that it is perfectly safe to be sprayed by the actual fumigant that you are using in Columbia?

A. As I have said earlier, there are

testing indications that it could be mildly irritating to the eye. If you judge that to be unsafe, then I'm not in a position to say it's safe. We do not judge it to be harmful to the health of individuals.

Q. You also say on that same page that you compare it to table salt, is that correct, on the level of toxicity?

A. That's correct.

Q. Are you aware that the New York Attorney General in 1996 got an injunction against Monsanto for saying that glyphosate is as safe as table salt because it was proved to be untrue?

A. No, I'm unaware of that.

Q. What do you base your statement on that it is as safe as table salt?

A. Information that has been provided to us in comparing the toxicity levels, which are done by independent testers to determine what the toxicity of table salt or baby shampoo is. So I'm looking at test results. We are looking at test results.

Q. But you said the specific compound that you are using has not been tested on humans; is that correct?

A. That's correct. Nor are any of the tests, to the best of my knowledge, on humans.

Q. What date are you referring to?

A. I'm referring to the standard tests that EPA sets up to look at toxicity levels of substances.

Q. As part of the bureau's oversight in coordination with DynCorp, is there any attempt to try to spray areas when populations are not likely to be there?

A. Sure.

Q. What kinds of guidelines are you providing?

A. The general guideline, which is to not spray people if it is at all avoidable, to not spray houses, to not spray fields that are clearly food crop fields. But if food crop is intercropped with coca, then it is coca.

Q. Are these guidelines in a written form, or are they part of the contract?

A. I'm not sure.

Q. But you are sure that that is one of the factors in entering into this coordination with DynCorp?

A. Yes.

Q. Do you know if the pilots themselves are instructed as to the possible risks of spraying humans?

A. I don't know that for a fact.

Q. Do you know if the containers for the fumigant that you are using contain warning labels of any sort?

A. I don't know that.

Q. Should they, according to your understanding of the safety precautions?

MR. RIVERA: Object to the form of the question. You're asking him should the --

BY MR. COLLINGSWORTH:

Q. Is there any regulation, guideline or requirement of the contract or any other direction that your bureau has given to DynCorp to

say that the barrel storing this material for use must have a warning label as to its possible negative health effects?

A. I don't know.

MR. COLLINGSWORTH: Let's mark this as Plaintiffs' Exhibit 6. (Beers Deposition Exhibit No. 6 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Mr. Beers, I've handed you Plaintiffs' Exhibit 6, which is a report on the study of health complaints in Columbia related to aerial eradication. This was produced to me by

MR. Gallagher, and it's on the list that I showed you earlier of the documents produced. I believe you said that you had not reviewed any of the documents. So my question is simply have you ever reviewed this particular report?

A. Yes.

Q. In what context?

A. It was information that had been

produced by the embassy concerning health effects that was of interest to me. I read it.

Q. What conclusion, if any, did you draw from this report regarding the risk to humans being sprayed with the fumigant that you are using in Columbia?

A. That this report did not provide a conclusion that would suggest that there is a risk to humans.

Q. Did it prove the opposite, though, in your mind that there is no risk to humans?

A. No.

MR. COLLINGSWORTH: I have another report that we're going to call Plaintiffs' Exhibit 7. (Beers Deposition Exhibit No. 7 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Have you ever seen this report before?

A. Yes.

Q. Did you have a role in drafting it?

A. No.

Q. Did you have a review role?

A. Not in the chain of its finalization, no.

Q. In what sense did you?

A. I read it in conjunction with my work. I looked at it as it was being prepared. I did not personally sign off on this document when it went forward.

Q. The pages aren't numbered, but if you take the second to last page, the second new paragraph, "Human dietary exposures and risks are minimal. Exposure to workers," et cetera. Do you know what studies, if any, that is based on?

A. There are, as I said earlier, a series of studies which have been done with respect, on the one hand, to the specific testing for toxicity and long-term effects on individuals? There have been other studies which use that information and other information that reach the conclusions of the first sentence, including studies that were done by the United Nations.

Q. Is it your understanding that this particular paragraph I have pointed to you, if you look at the paragraph above and below it, there's a reference to the word "glyphosate". Is it your understanding that these studies were limited to glyphosate?

A. And its normally included surfactants.

Q. But not the mixture that you're using in Columbia?

A. It did not include reference to any Cosmo-Flux, to the best of my knowledge.

MR. COLLINGSWORTH: I have one more document that we will call Plaintiffs' Number 8. (Beers Deposition Exhibit No. 8 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Have you ever seen this before,

MR. Beers?

A. I certainly have seen something that is very similar to it. What doesn't -- what I don't remember is a document that began with these questions. I remember a document very much like this, if not the same thing, which included questions and answers like these.

Q. The document that you're referring to, was it still focused on the program in Columbia?

A. Yes, and it was produced by the Narcotics Affairs Section.

Q. Do you know who in the Narcotics Affairs Section produced the document you recall, whether or not it was this one?

A. I believe the individual in question would have been Suzanne Shelton.

Q. What is her position?

A. She is a member of the Narcotics Affairs Section.

Q. Is she a scientist?

A. No.

Q. What is her background?

A. She's a lawyer.

Q. On that note, Mr. Beers, your 4 background is history; is that correct?

A. I have a rather eclectic background. But, yes, that's my academic training.

Q. But you're not a chemist or a biologist?

A. I am not a scientist.

Q. Are you aware of any studies that have tested just glyphosate for damage from inhalation on humans?

A. Not that I remember. However -- excuse me -- the standard test includes inhalation.

Q. The standard test?

A. Dermatology, inhalation, eye irritation and a fourth category.

Q. What is the fourth category?

A. I don't remember.

Q. When you say standard test though, again you're referring to the tests on the commercial products here in the United States?

A. That's correct.

Q. Mr. Beers, the area of Columbia, the width of which you have not told me but that we 5 have called the no-spray zone, is there any alternative being used there to eradicate the coca plants?

A. No, not to my knowledge.

Q. I'm not under oath, but I'm going to tell you truthfully that my 7-year-old and I were sort of discussing this case, and he suggested that hand picking -- his name is Alexander - - seems to be a logical thing to do, that people wouldn't be hurt and they could actually find the real plants that they're looking for. Has that option been explored at all by your bureau?

MR. RIVERA: I'll object to the form of the question to the extent that it requires divulging any classified or otherwise protected information. Otherwise, you may answer.

THE WITNESS: We use manual eradication in other countries. The governments, excuse me, of those countries use manual eradication. Peru and Bolivia, to be specific, in the Andean region.

BY MR. COLLINGSWORTH: 6

Q. Why is it not being used in Columbia?

MR. RIVERA: Same objection.

THE WITNESS: The volume of the coca, the security considerations to put people on the ground.

BY MR. COLLINGSWORTH:

Q. I would like to take about a five-minute break. We're close to wrapping up. (A brief recess was taken.)

BY MR. COLLINGSWORTH:

Q. Thank you for your indulgence,

MR. Beers. I'm just about done here. Have you heard of any studies, particularly in California, where students have reported negative health effects from the spraying of the fumigant known as Roundup?

A. No, I can't say that I have.

Q. If we look at Exhibits 6, 7 and 8, the three studies that were produced by

MR. Gallagher to me -- I'll be very careful with the question, and you'll probably be instructed to

be very careful with the answer -- I'm not asking you for anything, other than whether you can tell me if there are other studies that you're aware of that show any negative effects of the fumigant that you are using in Columbia?

A. I know of no studies that show a negative effect of the fumigant that we are using in Columbia.

Q. Do you know of any studies, other than these three that are Exhibit 6 through 8, that show that it does not hurt anyone to spray the fumigant that you are using in Columbia, that are specific to that fumigant?

MR. RIVERA: If I can just clarify the question, you're asking for State Department information or studies that are reflected in State Department materials as opposed to EPA or anyone else?

MR. COLLINGSWORTH: Any study.

THE WITNESS: Relevant to Columbia?

BY MR. COLLINGSWORTH:

Q. Yes.

A. There is another study which I have not seen the final version of it -- although, it may now exist -- which was similar to the Aponte study, a different area and a larger group.

Q. Do you know who is conducting that study?

A. I believe it is the same group of people.

Q. That did?

A. The Aponte study.

Q. Was any study done dealing with the fumigant that you are using in Columbia on Patrick Air Force Base?

A. I'm not aware of one.

Q. Who trains the DynCorp pilots that are operating in Columbia?

A. The DynCorp pilots that are operating in Columbia are provided through a subcontractor, East Corporation. The Air Wing and DynCorp together have a pilot training program. I can't say in any individual instance who specifically trained that pilot on this mission.

They are all experienced pilots.

Q. But your wing division does some training in Columbia?

A. Or in Patrick.

Q. For people that would be going down to Columbia?

A. That's correct.

Q. You said the Colombian government could stop a particular fumigation flight if the wind was to great?

A. Right.

Q. Are there any other --

A. Or any other reason. They could stop it, period.

MR. RIVERA: Let me instruct the witness to let Mr. Collingsworth finish his question.

THE WITNESS: Sorry.

BY MR. COLLINGSWORTH:

Q. Are you aware of any other reasons that in fact have been used to stop a flight, other than weather, by the Colombian government?

A. You're including wind within the weather question?

Q. Yes.

A. Yes, I am.

Q. What was the reason or reasons?

A. The government of Columbia stopped spraying in Putumayo on approximately the 5th of February of the year 2001 because they wanted to end spraying in Putumayo at that time to see what would happen with respect to the local campesino signing up for alternative development.

Q. Was it resumed?

A. Yes.

Q. Any other reasons you're aware of why the Columbian government stopped the spraying?

MR. RIVERA: Stopped the spraying in Putumayo?

MR. COLLINGSWORTH: In Columbia.

MR. RIVERA: Ever?

MR. COLLINGSWORTH: Yes.

THE WITNESS: No, I'm not.

BY MR. COLLINGSWORTH:

Q. Could your bureau stop a particular
spray run for any reason?

A. Yes.

Q. What would the reasons be that your bureau would be authorized to stop a particular fumigation run in Columbia?

A. In the judgment of the people who were involved, the spraying conditions were such that it was inappropriate, assuming that the Columbian government hadn't on its own recognizance stopped that or for other considerations which might be political.

MR. COLLINGSWORTH: I'm handing you an exhibit that we're going to mark as Plaintiffs' Number 9. (Beers Deposition Exhibit No. 9 was marked for identification.)

BY MR. COLLINGSWORTH:

Q. Mr. Beers, I've handed you a Declaration signed by a Salvador Quishpe, who is the political director of an organization called Conaie. Do you know that organization? Have you heard of them before?

A. I'm not sure.

Q. I would direct your attention to paragraph number 5, the last paragraph.

A. (Witness complies.)

Q. If you could read that paragraph.

MR. RIVERA: Can Mr. Beers have a minute to read the entire document?

MR. COLLINGSWORTH: Sure.

MR. RIVERA: Thank you.

BY MR. COLLINGSWORTH:

Q. Have you had a chance to review paragraph number five?

A. I have.

Q. In paragraph number five, the declarant is questioning the foreign policy objectives of the United States government. And my question to you is, is a factor of your foreign policy considerations that are enumerated throughout your own Declaration trying to maintain good relations with the local populations who are not drug traffickers and who are not terrorists?

MR. RIVERA: I'm sorry, the local population in Columbia?

MR. COLLINGSWORTH: And Ecuador.

THE WITNESS: It is not the policy of the United States to drive people away from the United States.

BY MR. COLLINGSWORTH:

Q. Have you ever sent or directed anyone to go to Ecuador to specifically investigate whether there are effects that would be visible that would be consistent with the claim that the fumigation has occurred in Ecuador?

MR. RIVERA: I'll object to the extent that it calls for a revealing any classified or other national security protected information.

THE WITNESS: Not to my knowledge.

BY MR. COLLINGSWORTH:

Q. Are there any plans to do that?

MR. RIVERA: Same objection.

THE WITNESS: Not at present.

BY MR. COLLINGSWORTH: 4

Q. Are you aware of any study done by anyone that would indicate to your satisfaction that there is no harm done in Ecuador that would be consistent with fumigation?

A. We have looked into the allegations, and we have found no evidence that spraying was done in Ecuador or that spray drifted into Ecuador.

Q. But you have said that you didn't send anyone to Ecuador to do that. How did you accomplish that?

A. We know where the planes are.

Q. So based on your knowledge of where the planes actually flew?

A. That's correct.

Q. What evidence do you have of the plane flight paths that would to you demonstrate that it is impossible that they sprayed in Ecuador?

A. Almost all planes and one plane on every flight of planes is equipped with a location system which tells us where the plane is.

Q. What is the closest, as you sit here today, that you're aware of a plane that was spraying under Plan Columbia came to the border with Ecuador ever in the history of Plan Columbia?

MR. RIVERA: I'll object to the question to the extent that it calls for revealing any classified State secret information.

THE WITNESS: I'm not in a position to answer that question.

BY MR. COLLINGSWORTH:

Q. Do you know the answer to it and you're not answering because --

A. No, I don't know the answer to the question.

Q. Who would know the answer to that question on your staff? Is there someone who is particularly --

A. Officials in the Air Wing.

Q. Is there one particular official who would be most likely to have that information?

A. I'm not sure.

Q. Do you have some options for me?

A. Mr. Etheridge.

MR. COLLINGSWORTH: Mr. Beers, that 6 concludes my questions. Thank you very much.

THE WITNESS: Thank you.

MR. COLLINGSWORTH: Does anyone else have anything?

MR. HOLLINGSWORTH: No questions. (Whereupon, at 11:47 a.m., the deposition of RAND BEERS was concluded.)

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UNITED STATES OF AMERICA) DISTRICT OF COLUMBIA)

I, RAND BEERS, the witness herein, having read the foregoing testimony of the pages of this deposition do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

RAND BEERS

Subscribed and sworn to before me this _____ day of _____, 2002.

_____.

UNITED STATES OF AMERICA) DISTRICT OF COLUMBIA)

I, SHIRLEY S. MITCHELL, Notary Public within and for the District of Columbia, do hereby certify:

That the witness whose deposition is hereinbefore set forth, was duly sworn and that the within transcript is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2002.

My Commission Expires: March 31, 2005