

TO THE CENTRAL COURT OF INSTRUCTION No. 5

Don JUAN MIGUEL SANCHEZ MASA, attorney of the courts and of Doña Josefina Llidó Mengual, Dña. María Alsina Bustos, Dña. Laura González-Vera, the Asociación de Familiares de Detenidos Desaparecidos de Chile (Association of Relatives of Detained and Disappeared Persons in Chile), the Agrupación de Ejecutados Políticos (Group of those Executed for Political Reasons) and of the other parties involved in the private and popular prosecution as is accredited in Summary Proceedings 19/97, separated piece N° 3, originating in Summary Proceedings 1/1998 of the Central Court of Instruction N° 6, I appear before the Court and as provided for by law **STATE:**

That this representative has learned of the **Report** which is attached, written by the **United States Senate**, Permanent Investigations Committee, Committee on Governmental Affairs, prepared by the Minority Team of the Permanent Subcommittee of Investigations, published on 15 July 2004 under the title "Laundrying of money and foreign corruption: application and efficacy of the Patriot Act. Study of the Riggs Bank case (attached doc. n° 1).

That the report referred to contains information in relation to assumed crimes of concealment of assets and laundering of capital that derive directly from the the resolutions adopted by this Court to attach the assets of the indicted Augusto Pinochet Ugarte which I describe in the following order:

	<u>Page</u>
BACKGROUND	2
1. The Order for the attachment of assets of 19th October 1998	2
2. Identity of relatives of Augusto Pinochet	2
3. The Charges against Augusto Pinochet of 10.12.1998	2
4. Amount involved in alleged crimes of concealment of assets and money laundering	3
5. Place in which the alleged crimes were committed	3
6. Alleged perpetrators of the crimes charged	9
7. Surety	12
8. Subsidiary civil responsibility	12
9. Estimate of damage and losses caused by the indicted Augusto Pinochet in relation to the victims who are parties to the present case	13
LEGAL REASONING	13
Actions requested	19
PROPOSAL	20
<u>Attached documents:</u>	
1. U.S. Senate Report of 15.7.2004 (original)	
2. Translation of pages related to the accusations	

BACKGROUND

FIRST.- In a Writ of 19th October 1998 this Court determined

“1. To order the embargo, blockage and deposit of all balances in all bank accounts controlled by Augusto Pinochet Ugarte, either directly or through third persons, or that may be controlled by members of his family, and that are located in any country; therefore, as a preventative measure send the corresponding rogatory letters (...).”

“2. Request all documentation, transfer statements, and statements of the origin or destination of funds since the opening of these accounts until the present, even in the event that an account has been closed.”

This writ is firm, the High Criminal Court having rejected the appeals made by the Public Prosecution Service (Writs dated 24th September and 5th November 1999).

SECOND.- The members of Augusto Pinochet’s family who are referred to in the present case are his wife **Lucia HIRIART RODRÍGUEZ** and his five children

Inés Lucía		Pinochet Hiriart, married to Julio Ponce Lerou
Augusto Osvaldo	id	id
María Verónica	id	id, married to Hernán García Barzelato
Marco Antonio	id	id
Jacqueline Marie	id	id, married to Iván Noguera

THIRD.- That in the **Firm Writ of 10th December 1998 the Court** determined to declare that Augusto PINOCHET UGARTE had been charged, and also

“4. Declare provisionally, and without prejudice to what may eventually be definitively decided, the civil responsibility of the person indicted, confirming the embargo ordered on October 19, 1998.”

FOURTH.- **Amount** involved in alleged crimes.

The U.S. Senate **Report** referred to formulates a detailed list of actions involving the disposal of assets belonging to the person charged which, in the Spanish version of the Report, can be read in Appendix nº 2.

The actions took place subsequent to the Writs of 19th October and 10th December with the deliberate and conscious purpose of protracting, impeding or preventing the efficacy of the seizure, blockage and deposit of the balances of the bank accounts which **Augusto Pinochet Ugarte**, directly or through third parties and members of the family held in Riggs Bank.

The value of the **concealed assets** which have been identified amounts to a proven minimum of **eight million United States dollars**.

FIFTH.- Place in which the alleged crimes were committed.

The crimes were committed, in part, in Spain, the United Kingdom, United States, Bahamas and Chile:

1) in **Spain**, on page 29, note 88, the Report affirms that

“There is also evidence that Riggs had helped Mr. Pinochet move funds from other banks in Spain to the United Kingdom. See OCC document, “Targeted Examination: Accounts related to Mr. Augusto Pinochet” (7/9/02), Bates OCC 0000517599-600.”

2) in the **United Kingdom**, on page 21 the Report identifies

“(3) Account No. 25-005-393, a personal checking account, was opened at Riggs in London on an unknown date and, in April 1997, was converted to a personal NOW account, Account No. 74-041-013. The NOW account was closed in May 2000.⁵² From 1997 until 2000, the account balance fluctuated between about \$40,000 and \$1.1 million.⁵³ In 2000, when the account closed, funds were apparently transferred to a newly opened account at Riggs in the United States under the name of the Pinochet shell corporation, Althorp Investment, Ltd.”

On page 23 it identifies

“(6) The U.S. dollar CD for Althorp, Account No. 81-442-002, was issued by Riggs in the United States on March 26, 1999, with funds from the London CD described above. This CD was automatically renewed at 90-day intervals. It was initially funded with \$1.6 million, but \$500,000 was withdrawn on May 15, 2001, and credited to the Althorp money market account, Account No. 76-835-493. On April 5, 2002, another \$500,000 was withdrawn and credited to Mr. Pinochet’s personal money market account, Account No. 76-835-282. In June, the CD was renewed for another 90-day period with \$619,500.⁶⁷ Although the Subcommittee was not given documentation showing when this CD terminated, Riggs has indicated that all Pinochet-related accounts were closed in July or August 2002.⁶⁸”

On page 26

“Riggs also produced a Riggs & Co. “Know Your Customer Client Profile” for Althorp Investment Ltd.⁷² This profile was completed in May 1999.

⁶⁷ See, e.g., Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052; OCC examination materials (undated), Bates OCC 0000517592-93.

⁶⁸ Some documentation reviewed by the Subcommittee referred to other CDs than the ones in this list, including two allegedly opened in the name of Ashburton, Account No. 81-151-950 (\$1 million CD in existence from November 1996 to May 1997) and Account No. 81-152-187 (\$1 million CD in existence from February 1996 to March 1997). Due to insufficient documentation, the Subcommittee did not include them in this list of Pinochet accounts.

⁷² ‘Riggs & Co Know your Customer Client profile’ de Althorp Investment Ltd (3/5/99), Bates OCC 00000490702-06.

Althorp had been incorporated a year earlier, in April 1998, and then had a CD at Riggs in London, worth £1 million.”

On page 29

“on March 26, 1999, Riggs allowed Mr. Pinochet to prematurely terminate the £1 million CD held in the name of Althorp at Riggs in London, and transfer the funds, totaling \$1.6 million in U.S. dollars, to a new CD in the United States.⁸⁷ Riggs did not file any suspicious activity reports that would have alerted British or U.S. law enforcement to the existence of the Pinochet funds.⁸⁸”

“In April 2000, Chilean lawyers filed suit in Chile to remove Mr. Pinochet’s immunity to prosecution due to his status as a Senator.⁹¹ In May 2000, as litigation continued in the Chilean courts, Riggs closed the final Pinochet account in London and transferred the remaining funds to a newly-opened Ashburton account at Riggs Bank in the United States.⁹² The evidence indicates that senior Riggs officials, including the general counsel, were informed of and agreed to this transfer.⁹³ Again, Riggs failed to file any suspicious activity report with any office of law enforcement.”

On page 23:

“(5) A Riggs CD was also issued in the name of Althorp at Riggs in London in April 1998, for £1 million British pounds.⁶⁴ Documents variously refer to it as either Account No. 17-172-204 or Account 74-377-015. The CD was renewed for three 90-day periods. On March 26, 1999, prior to its maturity date, the CD was “broken,”⁶⁵ and funds totaling \$1,619,500 were transferred to a newly issued CD for Althorp at Riggs in the United States, described below.⁶⁶

⁸⁷ Riggs debit receipt for \$1,619,500 (3/26/99); Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052-3.

⁸⁸ There is also evidence that Riggs had helped Mr. Pinochet move funds from other banks in Spain to the United Kingdom. See OCC document, “Targeted Examination: Accounts related to Mr. Augusto Pinochet” (7/9/02), Bates OCC 0000517599-600.

⁹¹ See, e.g., “Pinochet Hearings Continue,” BBC News (4/28/00).

⁹² At some point in 2000, Riggs apparently considered transferring management of the Pinochet trusts from its bank and trust company in the Bahamas, which was then closing, to a newly established Riggs bank and trust company in Jersey. When approached by Riggs, however, the Jersey Financial Services Authority apparently indicated that the trusts could not be transferred unless the source of wealth and funds in the Pinochet accounts were verified as having derived from wholly legitimate sources. Rather than undertake that exercise, Riggs officials decided to retain the Bahamas office of Deloitte & Touche as the trust manager for the Pinochet trusts. Subcommittee interviews of Joseph Cahill (6/25/04) and Timothy Coughlin (7/6/04). See also OCC examination materials (6/24/02), Bates OCC 0000045622, and (4/4/02), Bates OCC 0000026623.

⁹³ Interview of Joseph Cahill (6/25/04).

⁶⁴ See, e.g., OCC examination materials (undated), Bates OCC 0000517592-93.

⁶⁵ Riggs debit receipt for \$1,619,500 (3/26/99), stating: “OPENEW CD#81442002/ALTHORP INV.Co.LTD,” Bates RNB 030053. See also OCC examination materials (undated)(CD “[b]roken 3/26/99 – funds used to open CD#81-442-002 in US”), Bates OCC 0000013831.

⁶⁶ Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052.

“Evading Detection. In addition to opening multiple accounts for Mr. Pinochet in the United States and London, Riggs took several actions consistent with helping Mr. Pinochet evade a court order attempting to freeze his bank accounts and escape notice by law enforcement.”

3) the crimes were committed, in part, in the **United States of America** in which two accounts are identified in the Report on page 21:

“(1) Account No. 76-750-393, a personal money market account, was opened at Riggs in the United States in December 1994, and closed on March 25, 1999.⁴⁸ Over five years, the account balance fluctuated between about \$50,000 and \$1.2 million.⁴⁹ The Pinochet Embassy account manager told the Subcommittee that the bank closed this account after a Mexican newspaper obtained a monthly bank statement and published the account number.⁵⁰ The account was then closed and the funds transferred to a newly opened personal account, described next.

(2) Account No. 76-835-282, a personal money market account, was opened at Riggs in the United States, on March 24, 1999, with funds from the closed account. Over the next three years, the account balance fluctuated between about \$20,000 and \$550,000.⁵¹ This account was closed in August 2002.”

On page 22:

“(1) Account No. 02121401, later changed to Account No. 64-0041-01-8, was a corporate investment management account for Ashburton.⁵⁴ It was opened at Riggs in the United States on an unknown date in 1996. This account was the largest Pinochet account and, in July 2002, contained at least \$4.5 million.⁵⁵ Riggs actively managed the funds in this account, making numerous securities sales. It was closed in August 2002.

(2) Account No. 76-715-547, a corporate money market account for Ashburton, was opened at Riggs in the United States in May 1996.⁵⁶ From 1997 to 2002, the account balance fluctuated between about \$4,000 and \$1.1 million.⁵⁷ Although the Subcommittee was not given specific account closing documentation, other evidence indicates that this account was closed in August 2002.

⁴⁹ Riggs Bank monthly statements for Pinochet personal money market account (1/31/97-3/29/99), Bates RNB 006156-85.

⁵⁰ Interview of Carol Thompson (8/23/04).

⁵⁴ See, e.g., Riggs & Co. monthly statements for Ashburton investment account (July and August 2002), Bates RNB 031129-47 and 030130-36. This investment account was apparently managed originally by Rigg Bank & Trust Co. (Bahamas) Ltd. and later by Riggs' internal broker, the Riggs Investment Management Company. See, e.g., OCC examination materials (undated), OCC 0000013831.

⁵⁵ Riggs & Co. monthly statements for Ashburton investment account (July 2002) at Bates RNB 031129. See also Riggs bank listing of Pinochet accounts as of 5/2/01 (In 2001, Account 64-0041-01-8 had \$4.79 million), Bates OCC 0000490714

⁵⁶ “Riggs & Co Know Your Customer Client Profile” (7/9/98), Bates OCC 0000045887 and 92.

⁵⁷ Riggs Bank monthly statements for Ashburton money market account (1/31/97-5/31/02), Bates RNB 029645-715.

(3) Account No. 76-835-493 was a corporate money market account that was opened in 2000, in the name of “Ashburton Company, Ltd. #2,” but then changed in 2001, to “Althorp Investment Co. Ltd.,” Mr. Pinochet’s other offshore shell corporation.⁵⁸ The account was opened at Riggs in the United States in May 2000, with funds transferred from Mr. Pinochet’s personal NOW account at Riggs in London.⁵⁹ From 2000 to 2002, the account balance fluctuated between about \$200,000 and \$950,000.⁶⁰ This account closed in August 2002.”

4) The crimes have been committed in part in the **Bahamas**. Page 20 of the Report identifies the following transactions:

*“**Establishment of Two Offshore Shell Corporations.** In July 1996, about 18 months after Riggs opened a personal account for Mr. Pinochet, a detailed indictment accusing Mr. Pinochet of crimes against humanity was filed in Spain.⁴² In 1996, and again in 1998, Riggs helped Mr. Pinochet set up two offshore shell corporations in the Bahamas, Ashburton Company Ltd. and Althorp Investment Co., Ltd. Neither company had any employees or physical offices, but were listed as the nominal owners of Riggs bank accounts and CDs that benefitted Mr. Pinochet and his family.*

Riggs Bank & Trust Co. (Bahamas) Ltd., a Riggs subsidiary in the Bahamas with authority to open bank accounts and establish trusts in that country, established the companies.⁴³ Ashburton was incorporated first, in or around April 1996.⁴⁴ The nominal owner of the company was the Ashburton Trust, which Riggs helped establish in the Bahamas in May 1996.⁴⁵ The trustee of the Ashburton Trust is Riggs Bank & Trust Co. (Bahamas) Ltd.; the settlors are Mr. and Mrs. Pinochet; and the trust beneficiaries are their five children. Riggs personnel were named as the officers and directors of Ashburton, so that Mr. Pinochet’s name never appeared on the incorporation papers. Riggs incorporated the second offshore shell corporation, Althorp Investment Co., Ltd., in February 1998, using a similar structure.⁴⁶”

⁵⁸ Compare, e.g., Riggs monthly statement for “ASHBURTON CO LTD #2” (August 2001), Bates RNB 028848, with Riggs monthly statement for “ALTHORP INVESTMENT CO LTD” (September 2001), Bates RNB 028849.

⁵⁹ See, e.g., OCC examination materials (undated), Bates OCC 0000013831.

⁴² See complaint filed by the Union of Progressive Prosecutors before Spain’s highest criminal court (7/4/96), at <http://www.derechos.org/nizkor/chile/juicio/denu.html> (as of 7/5/04).

⁴³ Riggs Bank & Trust Co. (Bahamas) Ltd. is now closed. When open, it operated as a shell bank – it had no actual employees or offices in the Bahamas. Instead, it was managed by the Bahamas office of Deloitte & Touche, with which Riggs Bank had a long-standing relationship. When Riggs Bank & Trust Co. (Bahamas) Ltd. set up a trust or corporation for a Riggs client, Deloitte personnel actually filled out the paperwork and made the necessary arrangements on behalf of Riggs, including supplying officers and directors for offshore entities. See, e.g., OCC examination materials, undated, Bates OCC 0000045858-59 and OCC 0000045608.

⁴⁴ See Riggs document agreeing to manage Ashburton Co. Ltd. (4/26/96), Bates OCC 0000045893-903.

⁴⁵ See Riggs document establishing the Ashburton Trust (5/16/96), Bates OCC 0000045893-903.

⁴⁶ See Bahamas Certificate of Incorporation of Althorp Investment Co., Ltd. (2/23/98), Bates RNB 030007; Riggs document establishing Althorp Investment Co., Ltd. (undated), Bates OCC 0000045883-86; Riggs document establishing the Althorp Investment Co., Ltd. Trust (4/8/98), Bates

5) The crimes were committed, in part, in Chile. The **Report** states in page 2 in summary that Riggs

“delivered over \$1.9 million in cashiers checks to Mr. Pinochet in Chile to enable him to obtain substantial cash payments from banks in that country.”

On pages 32-33 there are details

“On August 18, 2000, using funds from Pinochet accounts in the United States, Riggs issued eight, sequentially numbered cashiers checks payable to Augusto Pinochet, each in the amount of \$50,000, for a total of \$400,000.¹⁰⁵ According to the OCC, Riggs then paid for the private banker who sometimes handled the Pinochet relationship to travel to Chile, so that he could hand deliver the checks to Mr. Pinochet.¹⁰⁶ Mr. Pinochet cashed these checks, \$50,000 at a time, at several banks over the course of several months.¹⁰⁷ By sending him these cashiers checks, Riggs enabled Mr. Pinochet to obtain substantial cash payments while in Chile.

“On May 15, 2001, Riggs did it again. It used Pinochet funds to issue ten, sequentially numbered cashiers checks, each in the amount of \$50,000, for a total of \$500,000.¹⁰⁸ These checks were made payable to Maria Hiriart and/or Augusto P. Ugarte. They were sent by overnight delivery to Chile.¹⁰⁹ Mr. Pinochet, again, cashed the checks at several banks over the course of several months.¹¹⁰ Unlike the cashiers checks issued in 2000, however, these cashiers checks drew their funds, not from a Pinochet account directly, but from Riggs’ own concentration account. This action meant that Mr. Pinochet could cash the checks without fear that they could be traced back to one of his accounts at Riggs.

“On October 11, 2001, Riggs repeated the action a third time, issuing ten sequentially numbered \$50,000 cashiers checks, drawn on Riggs’ own concentration account, for a total of \$500,000.¹¹² Made payable to Maria Hiriart and/or Augusto P. Ugarte, these checks were, again, sent by overnight mail to Mr. Pinochet in Chile. Mr. Pinochet, again, cashed them over the course of several months.¹¹³

OCC 0000045878-80; list of signatories for Althorp account at Riggs Bank (6/12/01), Bates OCC 0000045872.

¹⁰⁶ OCC examination materials, Bates OCC 0000045627.

¹⁰⁷ See copies of these cleared checks, Bates OCC 0000045749-62.

¹⁰⁸ Riggs was unable to provide a written request from Mr. Pinochet for these cashiers checks, but did produce a letter of instruction signed by representatives of Ashburton. See OCC examination materials, Bates OCC 0000045860.

¹⁰⁹ Subcommittee interview of Carol Thompson (6/23/04); see also two handwritten notes from Ms. Thompson instructing a Riggs employee to send “10 checks totaling \$500,000” to “A.P. Ungarte” in Chile, (5/14/01), Bates RNB 029977-78.

¹¹⁰ See copies of these cleared checks, Bates OCC 0000045746-47, 45771-88.

¹¹² Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

¹¹³ See copies of these cleared checks, Bates OCC 0000045796-807.

“On April 8, 2002, Riggs performed the same service one last time, mailing ten sequentially numbered \$50,000 cashiers checks to Mr. Pinochet in Chile.¹¹⁴ These checks were made payable to L. Hiriart and/or A.P. Ugarte, and totaled \$500,000. They were drawn directly from the Pinochet accounts rather than from the Riggs concentration account. Mr. Pinochet cashed them over several months.

“Altogether, Riggs transferred \$1.9 million to Mr. Pinochet in Chile through four sets of cashiers checks. When asked why, on each occasion, it had supplied multiple cashiers checks in identical amounts instead of a single check for the full amount, the key Riggs employee told the Subcommittee that Mr. Pinochet had requested this approach so that he could distribute the checks to his descendants before his death.¹¹⁵ Analysis of the cleared checks, however, shows that Mr. Pinochet personally signed and cashed them over several months, a pattern equally consistent with his using the funds for his own expenses.

“When asked why Riggs didn’t simply wire transfer the funds to a Pinochet account in Chile, which would have been faster, less expensive, and more secure than physically transporting checks to Chile, Riggs personnel were unable to provide a satisfactory explanation.¹¹⁶ When asked why Riggs had debited some of the cashiers checks from its own concentration account instead of directly from Mr. Pinochet’s accounts, Riggs personnel apparently told OCC examiners that the bank often handled cashiers checks in this manner to protect client “confidentiality.”¹¹⁷ When further pressed by the OCC about this action, Riggs informed the examiners that it “would immediately cease the practice.¹¹⁸”

SIXTH.- Alleged perpetrators of the offences for which charges have been brought

The following have so far been identified as perpetrators of the offences, pending further investigations:

- the indicted **Augusto Pinochet Ugarte,**
- the members of the Board of Directors of Riggs Bank, in particular

- 1) **JOSEPH L. ALLBRITTON,**
- 2) **ROBERT L. ALLBRITTON;**
- 3) **STEVEN B. PFEIFER;**

¹¹⁴ Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

¹¹⁵ Interview of Carol Thompson (6/23/04). See also OCC examination materials, Bates OCC 0000045860 (Pinochet wanted to “start distributing monies to his children and grandchildren before his death.”).

¹¹⁶ OCC examination materials, Bates OCC 0000045861.

¹¹⁷ Id.

¹¹⁸ Id.

4) CAROL THOMPSON.

Mr. JOSEPH L. and Mr. ROBERT L. ALLBRITTON were members of the Board of Directors of Riggs Bank and its largest shareholders at the time when the offences were committed (pages 14; 15; 19; 29;36; 57: 60; 63 (notes 237 y 239); 65; 66; 79; 81 y 83 of the **Report**).

STEVEN B. PFEIFER had been a member of the Board of Directors of the Bank for some time (pages 13 (note 20); 14; 15; 28 (note 83); 31-32 of the Report), and

CAROL THOMPSON was the Vice-President of the Embassy Banking Division for Latin America, met twice each year with the indicted Pinochet, and spoke directly with him at least on a quarterly basis, managing day to day the fraudulent transactions which were carried out through the accounts and formed part of a delegation of the Bank which traveled to Santiago a few days after his arrival from London (March 2000), as stated on pages 19, 21, 27, 28, 32 (notes 105 y 109), 34 (note 115) of the **Report**.

Riggs Bank N.A. is registered in Delaware, U.S.A. and operates from Washington D.C.. Forming part of it are Riggs Bank Europe Ltd, with head offices in London and Berlin; Riggs Bank & Trust Company (Bahamas) Ltd, now Riggs Bank in the Bahamas; Riggs Bank and Trust Company Ltd on the Isle of Jersey and Riggs & Co. International Ltd. (RCIL) in London, and the other institutions identified on page 12 of the U.S. Senate Report.

Riggs Bank N.A. is the property of Riggs National Corporation, registered in Delaware with its head office in Washington.

As for the indicted Pinochet in 2001, on page 33, note 112:

“Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.”

As regards the accused **JOSEPH L. ALLBRITTON** y **ROBERT L. ALLBRITTON**, on page 36:

“Role of Board and Officers of Pinochet Accounts. Information reviewed by the Subcommittee indicates that key Riggs Board members and senior officers were well aware of the Pinochet accounts.

“Senior bank officials had been instrumental in bringing the first Pinochet account to the bank in late 1994. The account manager said that she sometimes spoke directly to Mr. Allbritton about the Pinochet accounts. In 2000, key Riggs Board members and bank officers traveled to Chile to meet with clients, including Mr. Pinochet who had been released from house arrest in the United Kingdom weeks, if not days, before the meeting. In 2001, a Riggs Board member informed senior officials at the bank about the

*Pinochet attachment order, pending legal actions against Mr. Pinochet, and accusations concerning his involvement with wrongdoing.*¹²⁵

“In 2002, when the OCC began a targeted examination of the Pinochet accounts, senior Riggs officers who were also Board members attended some meetings with OCC staff. One Riggs officer told an OCC examiner that, “Mr. Pinochet has a relationship with the Chairman of Riggs.”¹²⁶ During the course of the examination, the head of the International Banking Group wrote to Riggs’ then top anti-money laundering officer:

“Riggs Bank Legal Affairs Division and Compliance Division have been aware of all activities relating to these accounts. At no time has the International Group acted on this account without the express consent of both the Legal Affairs and Compliance Divisions.”¹²⁷

“In mid-2002, a Riggs board member provided a requested legal memorandum to the bank on whether it could close the Pinochet accounts without incurring any liability from the client.

“On October 15, 2002, the OCC presented its findings on the Pinochet accounts to the Riggs Board of Directors. According to OCC personnel present at the meeting, the Board reacted with resentment over how the OCC had handled the matter.¹²⁸ According to the OCC, Ms. Allbritton, a Board member, complained that the agency had effectively forced the bank to close the Pinochet accounts.¹²⁹ In July and August 2002, Riggs closed the Pinochet accounts.”

On page 71:

“The 1994 trip to Chile by senior Board members to solicit the Pinochet account (...) illustrate the Board’s personal involvement in these accounts. In 2002 and 2003, some Board members expressed opposition to closing the Pinochet (...) accounts due to money laundering concerns. In March 2003, senior bank officers complained to the OCC about forcing the bank to adopt a rigorous AML program. These are not the actions or sentiments of a Board committed to AML excellence.”

On page 79:

“2002 Meeting with Riggs Board of Directors. On October 15, 2002, the OCC met with the Riggs Board of Directors about its 2001 Report on Examination for the period, April 2001 to April 2002, and also discussed the

¹²⁵ Fulbright & Jaworski memorandum from Steven B. Pfeiffer to Joseph Cahill and Raymond Lund (5/21/04), with attached materials, Bates OCC 0000045919-42.

¹²⁶ OCC examination materials (4/4/02), Bates OCC 0000026623.

¹²⁷ Internal Riggs memorandum dated 6/21/02, from Sean Terry, then head of the International Banking Group, to Stan Dore, then BSA Officer, Bates RNB 029064-65.

¹²⁸ Interviews with Lester Miller and David Hunter (6/4/04).

¹²⁹ Id.

targeted anti-terrorist financing and Pinochet examinations. Despite the bank's ongoing AML deficiencies and the disturbing AML practices uncovered during the Pinochet examination, the OCC told the Board that the bank's overall AML compliance was "satisfactory." The OCC also called on the bank to correct the remaining deficiencies, and the bank committed to resolving them by the end of 2002. One Board member, Ms. Allbritton, complained to the OCC about losing the Pinochet accounts."

On page 83:

"2002 Board Meeting. On October 16, 2002, the Federal Reserve Bank of Richmond presented its annual examination findings to the RNC Board of Directors. After the meeting, the Chairman of the Board, Joseph Allbritton, told a senior Federal Reserve Bank official that, the day before, the OCC raised concerns about certain accounts controlled by Augusto Pinochet accounts, wanted Riggs to close the accounts, and requested the Federal Reserve's views on the matter. The Federal Reserve representative did not express an opinion at that time, but did ask the OCC about the accounts. A month later, in November, negative media stories about Saudi Arabia accounts at Riggs Bank began, and by January 2003, the OCC had initiated its targeted examination of the Saudi accounts. A Federal Reserve examiner participated in the OCC examination, which uncovered questionable account activity and fundamental AML deficiencies."

As regards the accused **CAROL THOMPSON**, on pages 19, 21, 27, 28, 32 (notes 105 y 109) and 34 (note 115) of the **Report**, there is specific evidence of her direct and knowing participation in the alleged offences.

SEVENTH.- In accordance with art. 589 of the Law of Criminal Proceedings¹, it is requested that the Court order that the accused should jointly and severally provide a surety of the equivalent in euros of US\$ **10.240.000 US\$** to cover pecuniary liabilities, interests and costs and determine the attachment of the assets of the accused and of the joint civil responsibility sufficient to cover such liabilities if the surety is not provided.

EIGHTH.- **Subsidiary Civil Responsibility**

This will apply to those institutions which have collaborated in the commission of the alleged offences:

¹ Article 589 of the Law of Criminal Proceedings determines: "When there is evidence of criminality in the Summary of Proceedings on the part of a person the Judge will order that a surety be provided sufficient to ensure the pecuniary liabilities which may ultimately be declared appropriate and will in the same Writ determine the attachment of assets sufficient to cover such responsibilities if the surety is not provided.. The amount will be fixed in the same Writ and may not be less than one third more than the probable total value of the pecuniary responsibilities."

- **Riggs Bank N.A.**, registered in Delaware, U.S.A. and operating from Washington DC;
- **Riggs Bank Europe Ltd**, with its head office in London;
- Riggs Bank & Trust Company (Bahamas) Ltd, now **Riggs Bank in the Bahamas**; and on
- **Riggs National Corporation**, registered in Delaware, with its head office in Washington, owner of the above.

NINTH- For appropriate legal effects the provisional estimate of the damages and losses caused to those I represent is expressed in the following terms:

- for each of the persons assassinated or detained and missing, 300.506 euros.
- For each person subjected to torture, 30.000 euros.

As established in the **Writ of Indictment** of Augusto Pinochet Ugarte **dated 10 of December 1998** (THIRD fact)

1. the number of people killed or made to disappear by State officials acting on the orders of Augusto Pinochet total almost five thousand, which implies an estimate for damages and losses of 1,502,530,000 euros in this category;
2. more than 50.000 persons were subjected to torture by officials under the command of Pinochet. Damage and losses in this category amount to a minimum of 1,500,000 euros;

The total of both amounts, excepting errors and omissions, is **3,002,530,000 euros**.

LEGAL REASONINGS

I.- The facts related constitute an offence of concealment of assets, provided for in art. 519 of the Penal Code of 1973 and in art. 257 of the new Code.

I.1.- The Doctrine and the Jurisprudence (amongst many others, sentences of the Supreme Court of 20-1-1995 [RJ 1995\25], 26-9-1995 [RJ 1995\6747], 16-2-1996 [RJ 1996\879], 20-2-1996 [RJ 1996\1323], 7-3-1996 [RJ 1996\2188], 22-5-1996, 12-7-1996, 21-10-1996 [RJ 1996\8039], 31-1-1997 [RJ 1997\395], 23-9-1998 [RJ 1998\7364], 26-10-1998 [RJ 1998\8720], 21-10-1998 [RJ 1998\8298], 26-10-1998 [RJ 1998\8720]) attest that it is a crime of simple activity, intentional and of unfulfilled result, whose consummation would not require a concrete prejudicial result; it suffices that the active subject carry out the acts for the purpose of rendering ineffective the actions of the creditors – in this case the victims of the horrendous crimes attributed to the **indicted Pinochet**- putting at risk the effectiveness of the indemnification and frustrating the rights of the victims to receive satisfaction from the assets of the debtor (sentences of the Supreme Court of 16-2-1996 [RJ 1996\879] or 28-2-1996 [RJ 1996\1331]). In the offence of concealment of assets the sanction is directed at the very danger which the conduct of the debtor represents for the rights of

the creditors, infringing the obligation to maintain untouched the assets themselves as a universal guarantee in favour of any creditor.

I.2.- In the case in hand there is a basic assumption: the expectation that a pecuniary indemnity will be required in the future in favour of the victims of the numerous offences of **terrorism, genocide and torture** of which **Augusto Pinochet is accused**. That person, following on his arrest in London on 16th October 1998 at the request of this Court and the Writ of the following 19th October which attached his assets, and in particular after he had been charged on 10th December 1998, foresaw a clear threat to his assets and, taking action before the possible requirement as the result of a trial for the payment of indemnities had materialized, he frustrated or aborted the legitimate expectations of the victims who have brought this action by adopting the measures of concealment of assets which have been described and which tend to evade the rights of those victims and elude his patrimonial liabilities (sentences of the Supreme Court, amongst them of 9-5-1986 [RJ 1986\2433], 9-6-1986 [RJ 1986\3122], 27-11-1987 [RJ 1987\8621], 27-9-1990 [RJ 1990\7254], 2-11-1990 [RJ 1990\8511], 22-11-1990 [RJ 1990\9079], 6-3-1991 [RJ 1991\1915], 20-4-1991 [RJ 1991\2836], 13-2-1992 [RJ 1992\1293], 7-5-1992, 25-11-1992 [RJ 1992\9526], 20-2-1996 [RJ 1996\1323], 7-3-1996 [RJ 1996\2188] or 21-11-1996 [RJ 1996\8888]).

I.3.- The offence is of a continuous nature despite the fact that the transactions, carried out in conjunction with those of the accused whose cooperation was necessary, through **Riggs Bank**, to configure, mask or camouflage the intended malevolent intent, were initiated at a moment when the indemnity could not yet be exacted, since it is sufficient, as stated in Supreme Court sentence of 7-5-1992, that a debt should have been foreseen.

As indicated in the sentence of 20-4-1991, this offence is considered to be committed even if the debt has not yet entered the sphere of binding law; it suffices that a justifiable expectation should exist that the claim related to a credit might be made at any moment and, subsequently, affirmed by means of a judicial resolution. This is because the concept of creditor is not static in terms of the time period in which the debt may be exacted; it should be understood to refer to any credit relationship, including that of an extra-contractual nature, without having to wait for a judicial resolution or for any other instrument which determines that the debt should be coactively resolved and paid.

I.4.- In addition, there is a dynamic element in the case in hand: the conduct whereby Pinochet's own assets were removed from the sphere of action of the victims, through concealment by means of the transactions described in the **U.S. Senate Report**, whose purpose was to render ineffective the means whereby the victims could ensure their rights to obtain satisfaction of their credits and whereby, in consequence of such evasive stratagems, the subject becomes totally or partially insolvent, or experiences a significant, although fictitious, reduction of his estate, making it impossible or extremely difficult for his creditors to collect the sums legitimately due to them (sentences, amongst others, of 2-11-1990, 14-2-1992 [RJ 1992\1180], 7-3-1996).

I.5.- In addition, since a concrete threat to assets is involved, as indicated in the sentence of 18-7-1992, because it requires that the possibility of the victims recovering the sums due to them should truly be endangered, real damage is not required for the purposes of consummation (sentences of 25-10-1990 [RJ

1990\8303], 6-3-1991 [RJ 1991\1915] or 21-11-1996 [RJ 1996\8888]): the real damage pertains not to the phase of the accomplishment of the crime but to that of its expiry. It is not necessary that the debtor should materially damage his creditor victims in a real and effective manner; it is sufficient that he carry out acts for the purpose of making their actions ineffective by putting at risk the effectiveness of their credits, as a result of which the moment of their consummation is transferred to, or anticipates, the moment in which actions are taken, as enumerated in the U.S. Senate Report, in relation to the indicted **Pinochet**'s assets which place him in a situation of not being able to meet his obligations, all of this with the intent or purpose of damaging the interests of his victims (sentences of 17-2-1992, 25-2-1993 [RJ 1993\1546], 20-5-1993 or 19-10-1998 [RJ 1998\8094]).

I.6.- Finally, as regards the subjective specification, this would consist, in the first place, of:

- a) the malevolent intent (*mens rea*). It is clear from the **U.S Senate Report** that **the indicted Pinochet and his bankers of Riggs Bank** in the present lawsuit, in relation to his victims, knew that the concealed assets were subject to the fulfillment of the judicial order attaching his assets in order to comply with the indemnities related to the offences and knew that their behaviour was in consonance with this: the managers of Riggs Bank and Pinochet were aware that they were hiding and concealing assets and, in addition, were willing to give the appearance of insolvency.
- b) In second place, given that it the offence is one of intentions and of unfulfilled results, the subjective element of injustice reflected in the expression "*in detriment of...*" applies, as in the **U.S. Senate Report**. That is, it is a direct malevolent intent.

In the present case it is clear that the concealment of assets took place in prejudice of the victims who are the accusers in this case. Moreover, in the case of the offence of concealment of assets, what is punishable is the very danger which the conduct of the debtor represents for the rights of the creditor victims, creating or making more acute a situation of insolvency by hiding assets with the intention of keeping them.

The loss to the victims is the result of a failure to pay the credit-indemnity to which they are entitled, which is the object of protection. The facts described make clear the subjective element consisting precisely in the wish to defraud the victims to which the Supreme Court has referred, calling it specific malevolent intent, an intentional element, a malicious objective to cause damage, deliberate intent to damage, a tendential element etc.. Specifically, an intention to damage and defraud, in the case in hand, the legitimate rights of the victims, in a spirit of tending to evade the payment of the indemnity. This is the content or significance of the subjective element which has been abused, evading the personal, patrimonial, universal responsibility of the indicted Pinochet as stated in arts. 1111 y 1911 of the Civil Code.

This subjective element is inferred, of necessity, from the actions carried out by the indicted **Pinochet and his bankers in Riggs Bank** in order to provoke the insolvency of the former (sentences of the Supreme Court, amongst many others, of 6-6-1990, 31-5-1991 [RJ 1991\4017], 17-9-1992 [RJ 1992\7886], 23-10-1992 [RJ

1992\8434], 11-11-1992 [RJ 1992\8794], 24-11-1992 [RJ 1992\9514], 25-11-1992 [RJ 1992\9526], 16-2-1996 [RJ 1996\879], 20-2-1996 [RJ 1996\1323], 25-2-1996, 26-3-1996, 7-4-1996, 20-4-1996, 21-10-1996 [RJ 1996\8039], 21-11-1996 [RJ 1996\8888], 24-1-1998 [RJ 1998\89], 1-7-1998 [RJ 1998\5825] or 19-10-1998 [RJ 1998\8094], etcetera).

I.7.- In the case under judgment the conduct of those **responsible in Riggs Bank** includes all the elements of the crime, both objective and subjective, of the offence of concealment of assets in relation to a merchant. As indicated, amongst other sentences of 14-5-1991 (RJ 1991\3648), 13-2-1992 (RJ 1992\1293), 26-6-1992 (RJ 1992\5844), 26-9-1995 (RJ 1995\6747), 31-1-1997 (RJ 1997\395)... etc., the condition of merchant really constitutes a sub-type in aggravated form, as a function of the special public confidence which is inspired by a merchant, together with the relative facility with which juridical mercantile activities can be conducted, for all of which reasons a merchant enjoys a “status” characterized by more exacting obligations, added culpability, and, for that reason, greater penal rigour.

The above statement should be related to the fact that the concealment of assets is itself a special crime –sentence of 26-11-1990 (RJ 1990\9193)–, that has been committed by the indicted Pinochet - owner of the assets which he fraudulently abstracted - in which a prior binding juridical relationship coincides with the condition of debtor in relation to the indemnity (sentences, amongst others, of 10-3-1989 [RJ 1989\2573], 20-5-1990, 6-3-1991 [RJ 1991\1915], 12-2-1993 [RJ 1993\1068] or 25-2-1993 [RJ 1993\1546]).

The categorisation of debtor is also extended to include legal entities, although in that case, if there is no juridical-penal recognition of capacity to commit an offence, the liability is that of individual persons who hold management posts and posts of responsibility, as indicated in art. 31 of the Penal Code.

What is more, the passive subject of the offence are the victims who comprise the civil action in these proceedings within a juridical relationship of a patrimonial nature in which there is some diversion of assets from the assets of the debtor (sentence of 14-12-1987 [RJ 1987\9757]).

II.- Art. 301 of the Penal Code.²

² **Article 301. [Laundering].** 1. Any person who acquires, converts or transmits assets, knowing that they have their origin in a serious crime, or carries out any other act for the purpose of hiding or concealing their illicit origin, or of assisting the person who has participated in the infraction or infractions to escape the legal consequences of their acts, shall be penalised with a prison sentence of six months to six years and a fine in an amount of three times the value of the assets. The penalties will be imposed in the higher range when the assets have their origin in the traffic of toxic drugs, narcotics or psychotropic substances as described in arts. 368 to 372 of this Code.

2. The same penalties will be applied to sanction, as appropriate in each case, the hiding or concealment of the true nature, origin, location, destination, movement or rights over the assets or their ownership, in the knowledge that they originate in one of the crimes referred to in the above or in an act of participation in those crimes.

3. If those events are the result of serious recklessness, the penalty will be of six months to two years of imprisonment and a fine amounting to three times the value concerned..

4. The guilty person will be punished even if the crime in which the assets have their origin or the acts which are punished, as referred to above, were committed, totally or partially, in a foreign country.

III.- JURISDICTION.- Art. 65.1º e) extends the jurisdiction of the Penal Chamber of the National Court to include the offences connected with all those referred to in the same art. 65.

IV.- SUBSTANTIVE LAW

IV.1.- Art. 257 of the Penal Code.³

IV.2.- Royal Decree 925/1995, of 9 junio, (RCL 1995\1963), which approves the Ordinance of Law 19/1993, de 28-12-1993 (RCL 1993\3542), which determines certain measures to prevent money laundering.

V. Arts. 27⁴, 28⁵, 29⁶ y 31⁷ of the Law of Criminal Legal Proceedings.

ACTIONS REQUESTED

A) That it be resolved that the Bank of Spain should be ordered to provide information to this Court about any bank account of which it is aware whose holder or proxy is or has been: Augusto Pinochet Ugarte; **Ashburton Company Ltd.** or **Althorp Investment Co. Ltd.,**

B) That it be resolved that the following Letters Rogatory should be sent:

³ **Article 257. [Concealment of assets]** 1. Will be punished with prison terms of from one to four years and a fine of twelve to twenty four months:

1st The person who hides his assets prejudicing his creditors. 2nd The person who, for the same purpose, carries out any act of dispersal of property or creation of obligations which defers, renders difficult or impedes the efficacy of seizures or of a process whose nature is executive or binding, be it judicial, extra-judicial or administrative, which has been initiated or is foreseen as likely to be initiated

2. That which is foreseen in the present article will be applied, whatever the nature or origin of the obligation, when an attempt is made to evade compliance or payment, including the economic rights of the workers, independent of whether the creditor is a private individual or a legal entity, public or private.

⁴ **Article 27.** The authors and accomplices are criminally responsible for the offences and misdemeanours.

⁵ **Article 28. [Concept of «author»].** The authors are those who carry out the act on their own, together with others, or through another, whom they use as an instrument. Also considered as authors are: a) Those who directly induce another, or others, to carry it out. b) Those who cooperate in its execution by means of an act without which it could not have been carried out .

⁶ **Article 29. [Concept of «accomplice»]** The accomplices are those who, while not being included in the above article, cooperate in the execution of the act through prior or simultaneous actions..

⁷ **Article 31. [Criminal responsibility of the representative of a legal entity]**

1. The person who acts as an administrator, de jure or de facto, of a legal entity or acts in the name of, or in representation – legal or voluntary – of, another person will be held personally responsible, even if there is not a convergence in that person of the conditions, qualities or relationships that the corresponding characteristics of the crime require in the case of its active subject, provided that those circumstances are present in the entity or person in whose name, or in representation of whom, he acts.2. On that basis, if a sentence imposes a fine on the author of the crime as a penalty, the legal entity which acted in his name or on his behalf will be responsible – jointly and severally - for its payment.

1. to the Attorney General of the **United States** (Director, Office of International Affairs, Criminal Division, US Department of Justice, Washington D.C. 20530), in order that
 - a. there should be made available to these proceedings all the documents and reports in the possession of the Permanent Investigatory Subcommittee of the U.S. Senate Committee for Governmental Affairs, as well as the U.S. Federal Bank regulators, relative to bank accounts and assets whose owner is Augusto Pinochet Ugarte, directly or through those members of his family who are referred to in background item two, or through companies under his control, particularly **Ashburton Company Ltd. y Althorp Investment Co., Ltd.;**
 - b. order the seizure, blockage and deposit of all the balances, all the insurance policies, all the insurance contracts of any kind, bills of credit, promissory notes, rights and credits of any type, including bank accounts and deposits, that Augusto Pinochet Ugarte, directly or through third parties and members of his family, may have in the U.S.A.
 - c. authorise this Court to take investigatory declarations from the managers and employees of Riggs Bank **Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer y Carol Thompson;**
 - d. order the preventive embargo of the assets of the accused **Joseph L. Allbritton, Robert L. Allbritton, Steven B. Pfeiffer y Carol Thompson,** and of the institutions with subsidiary civil liability – **Riggs Bank N.A. of Washington DC and Riggs National Corporation** – until such time as the sum fixed by the Court as surety has been met.

2. to the **authorities of the United Kingdom** in order that:

- they make available to this Court all the information in their possession about the accounts of **Riggs Bank Europe Ltd.**, with its head office in London, open or closed, of which the owner is shown to be Augusto Pinochet Ugarte, directly or through the members of his family cited in background item two, or companies under his control, in particular **Ashburton Company Ltd. and Althorp Investment Co., Ltd.;**
- order the seizure, blockage and deposit of all the balances which Augusto Pinochet Ugarte, directly or through third parties and members of his family may have in the United Kingdom - all their insurance contracts of any kind, bills of credit, promissory notes, rights and credits of any type, including bank accounts and deposits

3. to the authorities of the **Bahamas** in order that

- they make available to this Court all the information in their possession about the accounts of **Riggs Bank and Trust Company (Bahamas) Ltd.**, now Riggs Bank in the Bahamas, open or closed, of which the owner is shown as

Augusto Pinochet Ugarte, directly or through the members of his family cited in antecedent two, or companies under his control, in particular **Ashburton Company Ltd. y Althorp Investment Co., Ltd.;**

- order the embargo, blockage and deposit of all the bank balances which Augusto Pinochet Ugarte, directly or through third parties and members of his family, may have in the Bahamas - all the insurance contracts of any kind, bills of credit, promissory notes, rights and credits of any type, including bank accounts and deposits

C) any other actions which may be appropriate.

In virtue of which,

I REQUEST OF THE COURT: That, having received this document with the corresponding copy and accompanying documentation, the court proceed to:

- hold them admissible and accept for action the extension of the lawsuit to include **AUGUSTO PINOCHET UGARTE, JOSEPH L. ALLBRITTON, ROBERT L. ALLBRITTON, STEVEN B. PFEIFER, CAROL THOMPSON** and those who in the course of the investigation also prove to have been responsible for carrying out, in the period following the Writs of 19th October and 10th December, the acts described in the body of this document for the purpose of delaying, rendering difficult or impeding the efficacy of the seizure, blockage or deposit of the balances of the bank accounts which Augusto Pinochet Ugarte, directly or through third parties or members of his family, held in Riggs Bank;
- order that the first actions requested in the body of this document be carried out;
- resolve that the persons referred to should be accused;
- order that, after the investigation of the facts, if appropriate, international arrest warrants should be issued, for the purpose of delivering to the Spanish judicial authorities the persons held responsible for the matters which have been denounced;
- request that, at the appropriate moment of the proceedings, those responsible for the matters denounced should be extradited and delivered to Spain;
- accept the request that the accused should be required to present, jointly and severally, a surety for the equivalent value in euros of US dollars 10,240,000;
- accept the request that the subsidiary civil liability, jointly and severally, should be declared of the financial institutions identified at section Eighth of this request, both of which have their head offices in the United States of America;
- order that the proceedings should follow their course against the above accused and any other persons who, as the result of the investigations, also prove to be criminally responsible for the matters referred to in the body of this document.

Madrid, July the 19th, 2004

Doctor Juan E. Garcés
Lawyer. Madrid Bar Association