

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 CASE NO. NO. 20-CV-24294-KMM-LOUIS

4 RAQUEL CAMPS, in her capacity as the) Pages 1-233
5 personal representative of the)
6 ESTATE OF ALBERTO CAMPS,)

7 EDUARDO CAPPELLO, in his individual) Miami, Florida
8 capacity, and in his capacity as the)
9 personal representative of the ESTATE)
10 OF EDUARDO CAPPELLO,) June 30, 2022
11 8:45 A.M.

12 ALICIA KRUEGER, in her individual
13 capacity, and in her capacity as the
14 personal representative of the ESTATE
15 OF RUBEN BONET,

16 and, MARCELA SANTUCHO, in her
17 individual capacity, and in her
18 capacity as the personal
19 representative of the ESTATE OF ANA
20 MARIA VILLARREAL DE SANTUCHO,

21 Plaintiffs,

22 vs.

23 ROBERTO GUILLERMO BRAVO,

24 Defendant.

25 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LAUREN FLEISCHER LOUIS
U.S. MAGISTRATE JUDGE

APPEARANCES:

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08:33AM 1 THE COURT: Good morning.

08:33AM 2 THE COURTROOM DEPUTY: Calling Case No. 20-CV-24294,

08:33AM 3 Raquel Camps v. Roberto Guillermo Bravo. Counsel, please state

08:33AM 4 your appearances beginning with the plaintiff.

08:33AM 5 MR. KRISHNAN: Good morning, Your Honor. Ajay Krishnan

08:33AM 6 for plaintiff.

08:33AM 7 THE COURT: Good morning, Mr. Krishnan.

08:33AM 8 MR. KRISHNAN: Good morning.

08:33AM 9 MS. MATTHEWS: Good morning, Your Honor. Elzbieta

08:33AM 10 Matthews for plaintiffs.

08:33AM 11 THE COURT: Good mornings, Ms. Matthews.

08:33AM 12 MS. VARGAS: Good morning, Your Honor. Claret Vargas for

08:33AM 13 plaintiffs.

08:33AM 14 THE COURT: Thank you, Ms. Vargas.

08:33AM 15 MR. DAVIS: Good morning, Your Honor. Steve Davis on

08:33AM 16 behalf of defendant Roberto Bravo.

08:33AM 17 THE COURT: Good morning, Mr. Davis.

08:33AM 18 MR. SLADE: Good morning, Your Honor. Roger Slade on

08:33AM 19 behalf of Roberto Bravo.

08:33AM 20 THE COURT: Mr. Slade.

08:33AM 21 MR. SLADE: Good morning.

08:33AM 22 THE COURT: I note the presence of the defendant.

08:33AM 23 And my law clerks will be coming out to you with printed

08:33AM 24 copies of proposed jury instructions. You'll see that it is not

08:33AM 25 intended to look like a final proposed set. That will be obvious

08:33AM 1 because there will still be two versions of some of the
08:33AM 2 instructions in there. But for others, it does represent what I
08:34AM 3 propose to give. For some of these, hopefully it's not going to
08:34AM 4 be too remarkable a change from what was proposed to what I
08:34AM 5 propose.

08:34AM 6 The verdict form, I think still will be probably a heavy
08:34AM 7 lift for us. I thought that it might be constructive to go
08:34AM 8 through the instructions as much as we can this morning and use
08:34AM 9 our next time together for the verdict form, which may be
08:34AM 10 influenced by some of what we do here.

08:34AM 11 And then could I just ask this high-level question. Mr.
08:34AM 12 Davis, is it premature for me to ask questions about the
08:34AM 13 affirmative defense instructions, specifically whether or not you
08:34AM 14 still will be seeking an affirmative instruction at all, for
08:34AM 15 example, on exhaustion?

08:34AM 16 MR. DAVIS: I am pretty sure that exhaustion will fall
08:34AM 17 out of the case, Judge, so, yes -- so the answer is no. I will
08:35AM 18 not be seeking an instruction on exhaustion.

08:35AM 19 THE COURT: Okay. All right.

08:35AM 20 MR. DAVIS: Yes, I will not be seeking.

08:35AM 21 THE COURT: But the self-defense instruction, is it
08:35AM 22 premature for us to be having a conversation about that, or is
08:35AM 23 your position on that settled and we can have that discussion this
08:35AM 24 morning?

08:35AM 25 MR. DAVIS: Yes.

08:35AM 1 THE COURT: Okay. All right. So then I know where you
08:35AM 2 are on both. When you get your set, then just ignore the
08:35AM 3 instruction on exhaustion. And that will also make us change the
08:35AM 4 earlier instruction that just introduces the concept of
08:35AM 5 affirmative defenses because it had that one listed as well.

08:35AM 6 MR. KRISHNAN: Your Honor, may I just get some
08:35AM 7 clarification? Is exhaustion out of the case now? Or I think Mr.
08:35AM 8 Davis said that it will be, and I assume that's because there's
08:35AM 9 still plaintiffs yet -- one plaintiff at least that's yet to
08:35AM 10 testify. I don't know -- and it's relevant obviously to the
08:35AM 11 presentation of evidence.

08:35AM 12 THE COURT: Fair question. So, Mr. Davis, I guess Mr.
08:36AM 13 Krishnan is asking for purposes not limited to the jury
08:36AM 14 instructions but whether or not it would be something that has to
08:36AM 15 come in -- still focusing on the testimony.

08:36AM 16 MR. DAVIS: My apologies.

08:36AM 17 THE COURT: You're fine.

08:36AM 18 MR. DAVIS: Yes, it's out of the case.

08:36AM 19 THE COURT: Okay. All right. Well, as soon as the
08:36AM 20 clerks had -- there must be a problem with the printer because
08:36AM 21 they were right behind me. I -- you know, this won't -- I know
08:36AM 22 you have my set in front of you. So maybe we should just go ahead
08:36AM 23 then and start knowing that the defendant will be seeking the
08:36AM 24 affirmative defense self-defense. And the two instructions that
08:36AM 25 here are proposed -- I'm just going to turn to the plaintiffs and

08:36AM 1 ask, has any federal court agreed that your international law
08:36AM 2 instruction on self-defense would apply to this U.S. cause of
08:36AM 3 action?

08:36AM 4 MS. MATTHEWS: Your Honor, I think it is implicit TVPA
08:36AM 5 case law.

08:36AM 6 THE COURT: I'm asking a different question.

08:37AM 7 MS. MATTHEWS: Yes. This issue hasn't come up before.

08:37AM 8 THE COURT: Okay. I disagree that it's implicit. And I
08:37AM 9 can't find through independent research a basis to apply that
08:37AM 10 instruction. I'm not -- I'm not persuaded by the authorities
08:37AM 11 you've advanced that it's an accurate statement of U.S. law, and
08:37AM 12 the instruction that the defendant has advanced I know is.

08:37AM 13 MS. MATTHEWS: Your Honor, I think there's two issues.
08:37AM 14 The first one is that whether conduct constitutes an extrajudicial
08:37AM 15 killing under the TVPA is explicitly defined by international law
08:37AM 16 in the statute.

08:37AM 17 And defendant is arguing that his conduct did not
08:37AM 18 constitute an extrajudicial killing because he was acting in
08:37AM 19 self-defense. And so what plaintiffs --

08:38AM 20 THE COURT: You raise an interesting point here, which is
08:38AM 21 twofold for me at least. Self-defense is not pled in this case as
08:38AM 22 an affirmative defense, but it's being treated as such by the
08:38AM 23 parties. But there is a difference between denying that you have
08:38AM 24 proven that the killing here satisfies the TVPA, which is a
08:38AM 25 denial, versus the affirmative defense of self-defense.

08:38AM 1 MS. MATTHEWS: And I think that brings me to my second
08:38AM 2 point, Your Honor, which is that if defendant maintains that this
08:38AM 3 is an affirmative defense and not a definition of the conduct at
08:38AM 4 issue, not a limitation on the conduct at issue, then it's his
08:38AM 5 burden to prove, which is not what's in his instruction.

08:38AM 6 THE COURT: It is now. Did you guys give them the
08:38AM 7 copies?

08:38AM 8 THE COURTROOM DEPUTY: Yes, Judge.

08:38AM 9 THE COURT: Okay.

08:38AM 10 MS. MATTHEWS: And, Your Honor, we would object to
08:38AM 11 self-defense being an affirmative defense because it was not pled
08:38AM 12 in the defendant's answer, and he's never stated that he intended
08:39AM 13 to have it be an affirmative defense in this case.

08:39AM 14 THE COURT: I anticipated that that would at some point
08:39AM 15 be advanced, though it seems that it's a hard argument to make for
08:39AM 16 the plaintiffs at this point because it has been exhaustively
08:39AM 17 briefed before I got involved. It has been -- I see Mr. Krishnan.
08:39AM 18 I believe you can see me today because I know I can see you -- but
08:39AM 19 the point is that even as the parties briefed the seventh
08:39AM 20 affirmative defense, they recognized the absence of a specific
08:39AM 21 affirmative defense that had been pled, and yet everyone is
08:39AM 22 traveling on the assumption that it's part of the case. And you
08:39AM 23 proposed a jury instruction on it on the assumption that it's part
08:39AM 24 of the case.

08:39AM 25 MS. MATTHEWS: But I think we were pretty clear in our

08:39AM 1 jury instruction that this was about what conduct constitutes
08:40AM 2 extrajudicial killing under the TVPA and whether or not the
08:40AM 3 defendant was acting, you know, in a way that excused his
08:40AM 4 liability -- and not as -- we weren't treating it as an
08:40AM 5 affirmative defense.

08:40AM 6 THE COURT: All right. We can pick that back up when we
08:40AM 7 get to that one. So now you have the set. You see the first
08:40AM 8 instruction, the Court's instruction to the jury, is the pattern
08:40AM 9 as proposed.

08:40AM 10 I am going to just kind of pick through these for the
08:40AM 11 record. If you have an issue that you want to discuss on any of
08:40AM 12 them that I don't raise, please interject.

08:40AM 13 Second instruction likewise is pattern.

08:40AM 14 The third that begins on the third page here when I say,
08:40AM 15 you must consider all of the evidence. The most recent version of
08:41AM 16 the Eleventh Circuit pattern does not include that final paragraph
08:41AM 17 that was in the proposed set. And so I've just advanced a set
08:41AM 18 that tracks our current Eleventh Circuit pattern. I'll give you a
08:41AM 19 chance outside of this discussion this morning to compare against
08:41AM 20 what you had advanced and raise argument again at our final charge
08:41AM 21 conference if you think it needs to be added back and why.

08:41AM 22 So again, the next one is just strictly pattern. You
08:41AM 23 should ask yourself whether there was evidence that a witness
08:41AM 24 testified falsely.

08:41AM 25 On the expert instruction, I am disinclined -- I as a

08:41AM 1 general rule rarely include factual or evidence statements in the
08:41AM 2 jury instructions. That is for you to tell them in closing
08:41AM 3 argument, so the plaintiffs advanced an instruction on expert
08:42AM 4 witnesses and proposed that it was necessary to identify by name
08:42AM 5 the four experts. I disagree. It's not my practice. I looked at
08:42AM 6 your reasoning, but it's -- just as a practice, that's not what I
08:42AM 7 do unless I have an awfully good reason, and I didn't think that
08:42AM 8 these were good reasons.

08:42AM 9 The preponderance standard that follows, I am disinclined
08:42AM 10 to reinsert the issue of proof beyond a reasonable doubt that the
08:42AM 11 plaintiffs here proposed. And I understand your argument that
08:42AM 12 this has quasi criminal aspects to it, but the proposal even began
08:42AM 13 with something to the effect of like, you've heard or you've heard
08:42AM 14 some things about proof beyond a reasonable doubt. They haven't,
08:42AM 15 not since voir dire. And I don't want to reintroduce a concept
08:43AM 16 only to tell them to put it out of their mind. I think it's
08:43AM 17 confusing.

08:43AM 18 Okay. So the next two pages are not where they will be,
08:43AM 19 but they just conclude with the somewhat standard instructions;
08:43AM 20 the one that says, of course, I've given you instructions of
08:43AM 21 damages, shouldn't be interpreted that I think they should or
08:43AM 22 should not prevail. The verdict must be unanimous, through
08:43AM 23 explaining the verdict. Okay, those are all just standard.

08:43AM 24 Then we get on the next page to your competing
08:43AM 25 instructions on claims liability and the like. I have looked at a

08:43AM 1 number of examples from other courts that have done TVPA
08:44AM 2 instructions, and I think they're very good, and so we have
08:44AM 3 largely proposed instructions that track -- I'm flying from
08:44AM 4 memory -- but I think it was the Eastern District of Virginia and
08:44AM 5 the Pennsylvania -- Eastern District of Pennsylvania cases that
08:44AM 6 have their jury instructions available, and we use those for
08:44AM 7 guidance. So I want to recognize that you are going to need a
08:44AM 8 minute or two to go through those with a fine-tooth comb. But you
08:44AM 9 have the benefit of my reasoning why the one that we have proposed
08:44AM 10 looks like that.

08:44AM 11 But then we get to attempted extrajudicial killing.

08:44AM 12 Plaintiffs, I am very unsettled on whether or not this is
08:44AM 13 an accurate statement of law and whether it should be given to the
08:44AM 14 jury. Are you aware of a court that has given this instruction on
08:44AM 15 attempted killing?

08:45AM 16 MS. MATTHEWS: Yes. In fact, the Eastern District of
08:45AM 17 Virginia case that you just referenced was, I believe -- if it's
08:45AM 18 *Wafra v. Ali*, that was an attempted extrajudicial killing case,
08:45AM 19 and this instruction was given there.

08:45AM 20 THE COURT: Let me --

08:45AM 21 MS. MATTHEWS: I think in that case, Your Honor, the
08:45AM 22 Court did not include the definitions, but the substance of the
08:45AM 23 instruction and the fact that it's only a substantial step is
08:45AM 24 needed, was given. I can give the page number from the transcript
08:45AM 25 if that would be helpful, the trial transcript where the court

08:45AM 1 read the instruction.

08:45AM 2 THE COURT: Yes. Go ahead.

08:45AM 3 MS. MATTHEWS: It's at -- it's in Volume III, at page 205

08:46AM 4 to 206. Would you like the docket number also?

08:46AM 5 THE COURT: It's 294?

08:46AM 6 MS. MATTHEWS: Yes. Yes, that's correct.

08:46AM 7 THE COURT: Okay.

08:48AM 8 Does the defense team have a copy of the instruction that

08:48AM 9 I'm looking at from the Wafra case?

08:48AM 10 MR. DAVIS: No, Your Honor.

08:49AM 11 THE COURT: Do you have another copy?

08:49AM 12 MS. MATTHEWS: Not to hand. But we can probably get one

08:49AM 13 printed. We don't have a printer, unfortunately.

08:49AM 14 THE COURT: Could you pass a copy to my clerk so that he

08:49AM 15 could make a copy?

08:49AM 16 MS. MATTHEWS: I don't have a hard copy. I just have one

08:49AM 17 --

08:49AM 18 THE COURT: Okay.

08:49AM 19 Alex, can I e-mail it to you?

08:49AM 20 THE COURTROOM DEPUTY: Yes.

08:49AM 21 (Brief pause.)

08:51AM 22 THE COURT: Let me make sure that the -- or rather wait

08:51AM 23 until the defendants have the set from the Eastern District to

08:51AM 24 look at.

08:53AM 25 Okay. While we're waiting for that, I know this is a bit

08:53AM 1 out of order here, but where the -- and I apologize that our pages
08:53AM 2 aren't numbered, and so that's going to make it a challenge for
08:53AM 3 you to get on the same page with me. But there is a proposed that
08:53AM 4 tracks the Eleventh Circuit's 372, which I'm even having trouble
08:53AM 5 finding in my set.

08:53AM 6 MS. MATTHEWS: That's preponderance --

08:53AM 7 THE COURT: Of the 372.

08:53AM 8 MS. MATTHEWS: I think that's defendant's burden on
08:53AM 9 affirmative defenses?

08:53AM 10 THE COURT: Yes.

08:54AM 11 (Brief pause.)

08:54AM 12 It's not in theirs either, so I don't think we have the
08:54AM 13 right set.

08:55AM 14 MS. MATTHEWS: Your Honor, it looks like it's in the set
08:55AM 15 that was -- the 372 is in the set given to us at least.

08:55AM 16 THE COURT: Okay. Good. It's not in the set that I have
08:55AM 17 in my hand, so that's why I can't find it, and I can't find it
08:55AM 18 electronically either, so I'm at a standstill until I can get on
08:55AM 19 the same page with you.

08:55AM 20 The only point that I wanted to make is that it currently
08:55AM 21 says, exhaustive of remedies and statute of limitations where it
08:55AM 22 should say, self-defense assuming -- I mean, we're going to
08:56AM 23 include it and statute of limitations but not exhaustion, and I
08:56AM 24 just wanted to make that, I thought, fairly easy change. So I'm
08:56AM 25 just going to use it electronically then, because I've got the

08:56AM 1 wrong set in my hand.

08:56AM 2 All right. Now, while I'm trying to -- and I'm trying
08:56AM 3 not to waste time here -- confirm that I even have the same set
08:56AM 4 that you do. As you are going through it, I invite you to tell me
08:56AM 5 which of these instructions you want to use this time to discuss.

08:57AM 6 MR. SLADE: Your Honor, if I could be heard on the issue
08:57AM 7 of the equitable tolling, it is our position that the equitable
08:57AM 8 tolling issue goes to the Court and not the jury. And I have case
08:57AM 9 law to support that. So we're going to object to that instruction
08:57AM 10 being included in the jury instructions. I can cite the cases for
08:57AM 11 you. I have the Arce case from the Eleventh Circuit, 432 F.3d
08:57AM 12 1254.

08:57AM 13 I have other cases from other circuits, Montin v. The
08:57AM 14 Estate of Johnson, 636 F.3d 409, Eighth Circuit, 2011; Pauling vs.
08:57AM 15 Secretary of the DOI, 71 F.Supp.2d 231, Southern District of New
08:57AM 16 York, 1999. And I have some other cases as well.

08:58AM 17 That's our case law. And the reason for that, Your
08:58AM 18 Honor, is because it's an equitable issue, and the Court decides
08:58AM 19 equitable issues like estoppel, injunctions, things of that
08:58AM 20 nature. So that issue should not go to the jury, so we object to
08:58AM 21 this instruction being included in the jury instructions.

08:58AM 22 THE COURT: And let me hear your response to the cases
08:58AM 23 that the plaintiff has pointed out noting that this was reversible
08:58AM 24 error because it should have gone to the jury, like Kleiman from
08:58AM 25 our district recently?

08:58AM 1 MR. SLADE: Well, Your Honor, and I'm relying on the
08:58AM 2 Eleventh Circuit, the Arce case.

08:58AM 3 MS. MATTHEWS: Your Honor, what defendant is referring to
08:58AM 4 in Arce is a footnote where the circuit just reflected on the fact
08:58AM 5 that the judge had decided the issue rather than the jury.

08:58AM 6 And if you look at the trial transcript where that
08:59AM 7 decision was made, the judge made that decision because there was
08:59AM 8 no dispute of fact. And it actually states it on the record that
08:59AM 9 had there been a dispute of fact, he believed that the issue
08:59AM 10 should go -- probably go to the jury.

08:59AM 11 THE COURT: I think that this is a difficult and complex,
08:59AM 12 probably our weightiest issue that we're going to have between now
08:59AM 13 and tomorrow.

08:59AM 14 I mean, I'll be candid with the plaintiffs. I disagree
08:59AM 15 that the Fourth Circuit case stands for the proposition you've
08:59AM 16 advanced with respect to the reliance on the criminal proceeding
08:59AM 17 that could take place in Argentina. And I have not been able to
08:59AM 18 find any case that similarly, unlike the truth and reparation
09:00AM 19 proceedings, and the rationale for relying on the truth and
09:00AM 20 reparations proceedings that may be going on in another country,
09:00AM 21 which would be time-consuming and may lull a plaintiff into
09:00AM 22 reasonably relying on those proceedings to bring the remedies that
09:00AM 23 they may otherwise be seeking in this cause of action.

09:00AM 24 I've been unable to find any court that analogized a
09:00AM 25 criminal proceeding or a prospective criminal proceeding to have

09:00AM 1 that same impact. Are you aware of any case?

09:00AM 2 MS. MATTHEWS: I think two things. The Fourth Circuit
09:00AM 3 case, I didn't raise it with respect to the reasonable reliance
09:00AM 4 issue. That was to do with generalized fear being sufficient;
09:00AM 5 that it didn't need to be individualized fear for the plaintiffs,
09:00AM 6 which I think the Court is clear that generalized fear is
09:01AM 7 sufficient to toll the statute of limitations.

09:01AM 8 On the second point, I think our position is that the
09:01AM 9 level of involvement in a truth and reconciliation commission is
09:01AM 10 similar, if not less than, the involvement in ongoing criminal
09:01AM 11 proceedings in the country, and where the incident occurred, and
09:01AM 12 that the reasoning in both Thomas and In Re Apartheid applies
09:01AM 13 equally to the circumstances in this case because it's still a
09:01AM 14 domestic proceeding that has the possibility to provide
09:01AM 15 accountability and justice to the plaintiffs, and --

09:01AM 16 THE COURT: Do that again. I do not understand what
09:01AM 17 you're relying on the Apartheid case for.

09:01AM 18 MS. MATTHEWS: In Re Apartheid, the Court also recognized
09:02AM 19 that participating in the truth and reconciliation proceedings
09:02AM 20 tolled the statute because the truth --

09:02AM 21 THE COURT: So maybe you don't understand my concern,
09:02AM 22 which is not if there was such a proceeding still going on.

09:02AM 23 And it's without any meaningful dispute that any
09:02AM 24 reparation proceeding in Argentina happened a decade or two ago;
09:02AM 25 right? So there is no record evidence that there is any prospect

09:02AM 1 of a similar truth and reparations proceeding occurring in
09:02AM 2 Argentina in this case.

09:02AM 3 MS. MATTHEWS: That's not our position.

09:02AM 4 THE COURT: Right. My concern is that there was in both
09:02AM 5 of those cases a fairly fulsome explanation as to why that would
09:02AM 6 be sufficient to toll the statute of limitations both the time
09:02AM 7 commitment that a plaintiff would be expected to provide in that
09:02AM 8 and, second, that they had a basis to believe that they would get
09:03AM 9 those remedies.

09:03AM 10 Now, the word justice has been used repeatedly, but these
09:03AM 11 plaintiffs can't obtain money in any criminal proceedings;
09:03AM 12 correct?

09:03AM 13 MS. MATTHEWS: Your Honor, the criminal justice system in
09:03AM 14 Argentina is actually quite different to the system here.

09:03AM 15 THE COURT: There's no record evidence that these
09:03AM 16 plaintiffs have any prospect of getting money in a criminal
09:03AM 17 proceeding in Argentina?

09:03AM 18 MS. MATTHEWS: I --

09:03AM 19 THE COURT: Are you saying there will be?

09:03AM 20 MS. MATTHEWS: I don't -- we'd have to get back to you on
09:03AM 21 the that. However, I don't think the reasoning is that -- and
09:03AM 22 actually in truth, the reasoning in Thomas was about not
09:03AM 23 reparations but about the fact that the Supreme Court of Liberia
09:03AM 24 eviscerated the recommendations. And if you look at -- it's not
09:04AM 25 clear from the decision. But if you look at the underlying

09:04AM 1 briefing on the matter and the expert reports that were submitted,
09:04AM 2 it was actually the prospect for criminal accountability that was
09:04AM 3 eviscerated by the Supreme Court's ruling, and that's what began
09:04AM 4 to toll the -- the statute of limitations began to run from that
09:04AM 5 date when the Supreme Court of Liberia invalidated the
09:04AM 6 recommendations for criminal prosecutions in Liberia. I can -- I
09:04AM 7 can get you the supporting evidentiary record that backed up that
09:04AM 8 decision, but I would --

09:04AM 9 MR. KRISHNAN: And, Your Honor, one other point that I
09:04AM 10 just want to make is that I do think that this particular issue is
09:04AM 11 a significant one. We'd certainly want to brief it if this is --
09:04AM 12 this is, obviously, a direction in which we're going, where this
09:05AM 13 particular argument, which this issue which the Court is raising
09:05AM 14 and is one we're getting, you know, the day before this is
09:05AM 15 supposed to be submitted to a jury, wasn't raised by the
09:05AM 16 defendant.

09:05AM 17 THE COURT: It's why I asked them to file the directed
09:05AM 18 verdict motion in advance.

09:05AM 19 MR. KRISHNAN: Understood. And this argument -- this
09:05AM 20 issue about whether that tolling factor applies only to the truth
09:05AM 21 and reconciliation commissions and not --

09:05AM 22 THE COURT: It's your burden. I appreciate that it's a
09:05AM 23 weighty one. But to suggest that you couldn't have seen this
09:05AM 24 coming is --

09:05AM 25 MR. KRISHNAN: Well, the reason -- well, I'll say a

09:05AM 1 couple of things.

09:05AM 2 So one is that the -- you know, that it's the
09:05AM 3 proceedings. The courts that discuss this aren't so narrow as
09:05AM 4 requiring a truth and reconciliation commission. I understand the
09:05AM 5 Court's rationale, and it's something that we can address.

09:05AM 6 There is also --

09:05AM 7 THE COURT: Hold up. I'm sorry. But again, I need to
09:05AM 8 reorient you. Like this is an exceptional, exceptional
09:05AM 9 circumstance that would toll the statute of limitations to be used
09:06AM 10 sparingly. So I just feel like I need to reorient the plaintiffs
09:06AM 11 on what it is that you are asking because it is -- extraordinary
09:06AM 12 circumstances is your burden. So it is not a question of whether
09:06AM 13 or not it's being sprung on you that you couldn't rely on the
09:06AM 14 criminal proceedings; like you had to have a theory of the case
09:06AM 15 before you advanced it.

09:06AM 16 MR. KRISHNAN: Understood. And, Your Honor, we don't
09:06AM 17 dispute that. I will say that the TVPA -- the case law in the
09:06AM 18 TVPA I believe in the legislative history itself does reference
09:06AM 19 using tolling in the interests of justice, which I think is
09:06AM 20 different from your standard equitable tolling situation. We
09:06AM 21 can -- and we'll get to that. There are a couple of other points
09:07AM 22 I wanted to make. One is a real floodgates issue.

09:07AM 23 The idea that people all around the world while
09:07AM 24 participating in domestic remedies must also go and simultaneously
09:07AM 25 file lawsuits in the United States in order to hold their place

09:07AM 1 for civil cases that they may want to bring later could be a very
09:07AM 2 significant issue. And there may be others, but I just -- the
09:07AM 3 point I want to make is simply that we'd like an opportunity to
09:07AM 4 address this particular point that you're raising. We may not be
09:07AM 5 able to do it right here. And we want an opportunity at least to
09:07AM 6 brief it.

09:07AM 7 THE COURT: Ms. Matthews, you referenced the Thomas case.
09:07AM 8 You're referring to the Eastern District of Pennsylvania.

09:07AM 9 MS. MATTHEWS: Yes, that's correct, Your Honor. And, you
09:07AM 10 know, I think it's very important to state on the record, Your
09:07AM 11 Honor, that it's plaintiffs' position that the time and effort
09:08AM 12 required to participate in criminal proceedings in Argentina is
09:08AM 13 analogous and similar to that required to participate in TRC
09:08AM 14 proceedings in other situations.

09:08AM 15 THE COURT: I would characterize that as a proffer, for
09:08AM 16 which there has not been evidence.

09:08AM 17 MR. KRISHNAN: We'll get there, Your Honor.

09:08AM 18 THE COURT: That's why I said it.

09:08AM 19 I'm looking at the Thomas case, which, again, I
09:08AM 20 understand that you're prepared to show us something that didn't
09:08AM 21 make it into the published opinion, but this is describing the
09:08AM 22 establishment of the truth and reconciliation commission, and the
09:08AM 23 change in the Supreme Court of Liberia's ruling that eviscerated
09:08AM 24 that commission's authority --

09:08AM 25 MS. MATTHEWS: Yes.

09:08AM 1 THE COURT: -- to provide meaningful justice to war
09:09AM 2 crimes?

09:09AM 3 MS. MATTHEWS: Yes. It eviscerated the recommendations
09:09AM 4 made by the TRC.

09:09AM 5 THE COURT: Okay. And tolled the statute of limitations
09:09AM 6 period, at least until 2011.

09:09AM 7 The other thing that I consistently see in each of the
09:09AM 8 cases finding that tolling applied is that it applied -- it tolled
09:09AM 9 to a point known and that the plaintiffs had established.

09:09AM 10 The theory in this case is that the statute of
09:09AM 11 limitations has not begun to run, and it has no definitive point
09:09AM 12 at which it would start to run.

09:09AM 13 MR. KRISHNAN: Your Honor, I think that -- this point, I
09:09AM 14 do want to address. It really just has to do with where we stand
09:09AM 15 in time. The availability of a domestic remedy is something that
09:09AM 16 is apparent once it's no longer available. And so if you have an
09:10AM 17 act that makes the domestic remedy unavailable and it happens and
09:10AM 18 then you see it happen, it's very obvious in hindsight that it has
09:10AM 19 occurred.

09:10AM 20 The situation we have here is that no such act has
09:10AM 21 happened yet. And so if, for instance, in the Thomas case before
09:10AM 22 that evisceration of the criminal -- the possibility of a criminal
09:10AM 23 remedy had happened, if the plaintiffs went to sue in the United
09:10AM 24 States, they would similarly be in a situation where the statute
09:10AM 25 had not yet begun to run.

09:10AM 1 THE COURT: Let's take that to its natural conclusion
09:10AM 2 then. There is no statute of limitations for Mr. Bravo then.

09:10AM 3 MR. KRISHNAN: No, not at all.

09:10AM 4 THE COURT: I don't know if you're agreeing with that
09:10AM 5 statement.

09:10AM 6 MR. KRISHNAN: I'm disagreeing with it.

09:10AM 7 THE COURT: Okay. Because your statute of limitations
09:10AM 8 position depends still on the pending extradition and potential
09:10AM 9 for criminal proceedings in Argentina; right?

09:10AM 10 MR. KRISHNAN: That's correct.

09:10AM 11 THE COURT: That extradition request that has once been
09:11AM 12 denied in this district?

09:11AM 13 MR. KRISHNAN: It's once been denied.

09:11AM 14 THE COURT: So if it is denied in this district, it would
09:11AM 15 be your position that it could be brought again?

09:11AM 16 MR. KRISHNAN: Your Honor --

09:11AM 17 THE COURT: So until he's prosecuted in Argentina, there
09:11AM 18 is no statute of limitations?

09:11AM 19 MR. KRISHNAN: That's not at all our position. The
09:11AM 20 reason why the first extradition proceeding -- and if the jury
09:11AM 21 finds that we should have sued after the first extradition was
09:11AM 22 denied, so be it. We're within the statute. But we have a
09:11AM 23 proffer and a reasonable basis to -- here on these facts to say
09:11AM 24 that the first extradition proceeding wasn't the end of the story.

09:11AM 25 THE COURT: Can I stop you there? That's the first time

09:11AM 1 I've heard you say something like that. You would also advance
09:11AM 2 the position that if there was an event that started the statute
09:11AM 3 of limitations, it was the denial by Judge Dube of the
09:11AM 4 extradition?

09:11AM 5 MR. KRISHNAN: That is -- that is -- that would be a
09:12AM 6 reasonable conclusion for the jury to draw. However, we have --
09:12AM 7 we have an argument that that did not start the statute yet,
09:12AM 8 because the bases for the denial of the extradition were things
09:12AM 9 that could be undone by the criminal prosecution securing the
09:12AM 10 conviction against the codefendants in Argentina, because the
09:12AM 11 basis for denying extradition in that situation was that Mr. Bravo
09:12AM 12 would be impervious to criminal prosecution in Argentina, there
09:12AM 13 wasn't probable cause, and, therefore, the extradition would be
09:12AM 14 improper.

09:12AM 15 Securing the conviction against the codefendants was
09:12AM 16 something that would make it clear that the basis for denying
09:12AM 17 extradition was incorrect. And that -- and so the plaintiffs will
09:12AM 18 demonstrate -- we have evidence ready to go, and I think there was
09:12AM 19 actually evidence that was already put in by Mr. Cappello that
09:12AM 20 securing the conviction in 2012 was something that made it
09:13AM 21 possible to go after Mr. Bravo again. That 2012 order, ordered
09:13AM 22 the -- whatever relevant branch of the Argentine government
09:13AM 23 prosecutor's office to initiate extradition proceedings again
09:13AM 24 against Mr. Bravo.

09:13AM 25 THE COURT: Let me ask you to pause for a second, because

09:13AM 1 I continue to firmly believe that the law does not recognize the
09:13AM 2 theory that the plaintiffs are advancing in one bucket; that is,
09:13AM 3 this is indefinite you can sue him whenever. But you've just said
09:13AM 4 two things that may negate our need to figure out as a matter of
09:13AM 5 law whether or not equitable tolling is available to you under the
09:13AM 6 circumstances you have advanced. So I want to hone in on them
09:13AM 7 because I think it is important for us not to reach legal
09:13AM 8 decisions that these circumstances don't require me to. In fact,
09:13AM 9 I'm pretty sure I have an ethical obligation to not. So you've
09:14AM 10 just told me -- what was the date of the denial of the
09:14AM 11 extradition?

09:14AM 12 MR. KRISHNAN: It was --

09:14AM 13 THE COURT: I know it was 2010.

09:14AM 14 MR. KRISHNAN: It was in November of 2010, and we filed
09:14AM 15 in October of 2020. That was -- I could tell you from personal
09:14AM 16 knowledge that that was --

09:14AM 17 THE COURT: It was intentional.

09:14AM 18 MR. KRISHNAN: Yes.

09:14AM 19 THE COURT: And then the second one is the 2012, but
09:14AM 20 the -- okay. It was November 1st, thank you.

09:14AM 21 MR. KRISHNAN: But, Your Honor, I just want to clarify,
09:14AM 22 we are not taking the position that it's indefinite. It's just
09:14AM 23 that an event hasn't occurred yet that has closed the door on the
09:14AM 24 criminal proceedings. The jury could disagree with us on that;
09:14AM 25 that the event that happened that closed the door was the denial

09:14AM 1 of the first extradition. I mean, if that's how the jury goes, we
09:14AM 2 could live with that.

09:14AM 3 THE COURT: I think that you and I are actually saying
09:14AM 4 the same concept using different words, and here's why. Because
09:14AM 5 if you're telling me that it's not indefinite, the triggering
09:14AM 6 event just hasn't happened yet, that's the same thing as saying
09:14AM 7 it's indefinite as to this defendant. I know you disagree with
09:15AM 8 me. But the statute of limitations begins to run when the
09:15AM 9 occurrence happens. The occurrence was in 1972.

09:15AM 10 So to say that it is just indefinitely tolled is the same
09:15AM 11 thing as to say because the triggering event hasn't happened yet.
09:15AM 12 As you said, we have to look at it in this moment of time. In
09:15AM 13 this moment of time, it hasn't happened, and we have no reason to
09:15AM 14 believe when or that it will happen. That makes it indefinite.

09:15AM 15 But any way around it, I think that your argument on the
09:15AM 16 November 1st, 2010, is a very good one, and I turn to the defense
09:15AM 17 here to say, Mr. -- let me just hear your response because it
09:15AM 18 seems to me -- I'm not asking you to agree -- that it makes it
09:15AM 19 timely, but rather that as a matter of fact, this is sufficient
09:15AM 20 then to put the affirmative defense and equitable tolling to the
09:15AM 21 jury.

09:15AM 22 MR. SLADE: Your Honor was correct when you said this is
09:15AM 23 a civil case. So I can't understand why the progress of a
09:16AM 24 criminal court proceeding in another country should toll the
09:16AM 25 statute of limitations here. There is no case that was cited in

09:16AM 1 our memo or that they have cited, which takes that position. You
09:16AM 2 would be to be making law on that point.

09:16AM 3 So the fact that there is a criminal proceeding going on,
09:16AM 4 it could go on forever. The point is there was nothing stopping
09:16AM 5 these plaintiffs from filing a lawsuit in the United States of
09:16AM 6 America at anytime -- let's say after the TVPA was enacted --
09:16AM 7 there was plenty of opportunity for them to do that. The criminal
09:16AM 8 case is not like the truth and reconciliation commission. They
09:16AM 9 haven't put on evidence about exactly what was so time-consuming
09:16AM 10 about the criminal case that prevented them from doing this or why
09:16AM 11 Mr. Bravo's extradition to Argentina even matters.

09:16AM 12 The truth is, if they want to file a lawsuit here in the
09:16AM 13 United States, they had opportunity to do that. And even if they
09:16AM 14 filed in Argentina civilly against Mr. Bravo, what would be
09:16AM 15 required then, let's assume they got the filing, they got their
09:17AM 16 judgment for damages, what would happen next? They'd have to come
09:17AM 17 to the United States, domesticate the judgment, and sue Mr. Bravo
09:17AM 18 here anyway.

09:17AM 19 So this whole thing about a criminal proceeding or the
09:17AM 20 extradition proceedings in Argentina is an excuse that is not
09:17AM 21 covered by the statute. It's not covered by the case law. And
09:17AM 22 what they're asking you to do is to create new law that doesn't
09:17AM 23 fit that I don't see any basis for.

09:17AM 24 THE COURT: I agree on two points. No matter where we go
09:17AM 25 from here, this decision will be the first. It will either be the

09:17AM 1 first court that denies equitable tolling for a TVPA plaintiff, or
09:17AM 2 it will be the first court to agree -- subject to Ms. Matthews
09:17AM 3 showing me -- otherwise in the Wafra case as it is printed doesn't
09:17AM 4 suggest as much -- that a criminal proceeding is a basis for
09:17AM 5 equitable tolling. Again, from what you've advanced and Mr.
09:17AM 6 Krishnan has asked for an opportunity to brief it, I don't know
09:18AM 7 when you plan to do that, but I invite that, of course. I thought
09:18AM 8 that the motion for directed verdict brought it to the forefront,
09:18AM 9 and that was filed Tuesday night at my request. Thank you,
09:18AM 10 defense counsel. I'm sorry. But I thought -- I thought we needed
09:18AM 11 the guidance and to orient and focus the evidence related to
09:18AM 12 equitable tolling as it was coming in to the jury and know where
09:18AM 13 we were headed, and so now I think we do.

09:18AM 14 I understand your positions. Obviously, we will have to
09:18AM 15 wait for the close of evidence for motions. I repeat that this is
09:18AM 16 both a significant and I think the most weighty issue that we have
09:18AM 17 to resolve as to whether or not it goes to the jury. But --
09:19AM 18 because the question is not just whether or not there is a dispute
09:19AM 19 here -- the parties clearly dispute the law with respect to
09:19AM 20 equitable tolling, but the sufficiency of the evidence that would
09:19AM 21 have to go in front of the jury, there's proffers that have been
09:19AM 22 made here that aren't yet in the record.

09:19AM 23 Okay. This is clearly something that we're going to have
09:19AM 24 to not only continue to develop the record from an evidentiary
09:19AM 25 standpoint but plaintiffs intend to brief it. I hope that Mr.

09:19AM 1 Krishnan can give us a heads-up on when you anticipate to file
09:19AM 2 that. But talk to your team and figure out what's realistic.

09:19AM 3 MR. KRISHNAN: Will do. Thank you, Your Honor.

09:19AM 4 THE COURT: I would note for what it is worth, I also
09:20AM 5 want you to be considering, but on your proposed instruction on
09:20AM 6 the limitation, there are circumstances listed -- and I've
09:20AM 7 continued to leave them here, that at least it is my observation
09:20AM 8 are inapplicable and that juries shouldn't be instructed on.

09:20AM 9 So for example, you've characterized one of them as where
09:20AM 10 the plaintiffs were unable to locate the defendant. I don't think
09:20AM 11 that's supported by any case that that's where the standard is.
09:20AM 12 The defendant not being in the jurisdiction or actively concealing
09:20AM 13 himself and -- it was confirmed yesterday that concealment is not
09:20AM 14 going to be the plaintiffs' argument. So I don't think that that
09:20AM 15 should go to the jury.

09:20AM 16 And, simply, while they have heard about the repressive
09:20AM 17 regime, the evidence of it predated the statute. And so I
09:21AM 18 continue to struggle with how, especially how it's phased here,
09:21AM 19 situations where a repressive regime exists but doesn't exist
09:21AM 20 during the relevant period of tolling should go to the jury.

09:21AM 21 MS. MATTHEWS: Sorry, Your Honor.

09:21AM 22 THE COURT: It's okay. I was just trying to tick through
09:21AM 23 what the other ones were and the extent to which they are, again,
09:21AM 24 at all applicable here.

09:21AM 25 MR. KRISHNAN: Your Honor, can we just address briefly

09:21AM 1 that one about repressive regime exists? Because when looking
09:21AM 2 over it last night, we also didn't think that that quite
09:21AM 3 accurately covered the issue. And does Your Honor understand when
09:21AM 4 Ms. Matthews talks about generalized fear versus individualized
09:21AM 5 fear with that issue?

09:21AM 6 THE COURT: What you've characterized as like country
09:21AM 7 culture.

09:21AM 8 MR. KRISHNAN: Country conditions. And the reason -- the
09:21AM 9 idea is that it's not actually required. While we have it in
09:22AM 10 spades in this case, it's not actually required that the
09:22AM 11 individual plaintiffs experience persecution or experience fear;
09:22AM 12 it is that the country conditions are such that they create a fear
09:22AM 13 more generally, and the reason -- while the reasoning -- while
09:22AM 14 that is ultimately what the Fourth Circuit case -- where they
09:22AM 15 landed, the idea being ultimately that it shouldn't -- the
09:22AM 16 plaintiffs shouldn't have to subject themselves to the potential
09:22AM 17 persecution and file in order to be -- to be the beneficiary of
09:22AM 18 the tolling. And so when we say generalized fear versus
09:22AM 19 individualized fear, it's whether the country conditions exist
09:22AM 20 that -- such that a reasonable person would remain in fear at a
09:22AM 21 level that would deter them or prevent them from filing a lawsuit.

09:22AM 22 That's part of the reason why we have put in evidence
09:22AM 23 that even though these plaintiffs did engage in 2005 with the
09:23AM 24 criminal process, witness protection was available, victim
09:23AM 25 protection was available, and that events continued to occur even

09:23AM 1 after 2005. And you will hear a gripping one from Ms. Camps later
09:23AM 2 today that would have continued to make reasonable people fear.

09:23AM 3 And so while our fear -- you know, we've been
09:23AM 4 vociferously advocating the fear gets us at least until 2005.
09:23AM 5 Depending on what happens on the other issue, we may be pushing
09:23AM 6 the fear argument further than 2005, and we have the evidentiary
09:23AM 7 basis for it. So we have alternative language for that repressive
09:23AM 8 regime exists. We agree with you it's not just the existence of
09:23AM 9 the repressive regime. What's the language?

09:23AM 10 MS. MATTHEWS: That the repressive regime generates
09:23AM 11 widespread fear.

09:23AM 12 THE COURT: You're drawing that from Wafra.

09:23AM 13 MS. MATTHEWS: Yes.

09:23AM 14 THE COURT: The 2021 opinion?

09:24AM 15 MS. MATTHEWS: Yes, Your Honor.

09:24AM 16 THE COURT: Okay. But I'm hearing both that the law
09:24AM 17 supports you, but that factually you may be moving away from it.
09:24AM 18 I thought you just said that you've revisited, and you're not sure
09:24AM 19 that is part of the instruction that you're going to advance? But
09:24AM 20 now --

09:24AM 21 MR. KRISHNAN: No. I don't think it -- that repressive
09:24AM 22 regime exists. Repressive regime exists isn't quite right. It's
09:24AM 23 that the -- it's the repressive regime creates -- generates
09:24AM 24 widespread fear.

09:24AM 25 THE COURT: I'm sorry. I am still just trying to make

09:24AM 1 sure that I can contextualize your agreement. Are you proposing a
09:24AM 2 change to your prior language or agreeing that that bullet point
09:24AM 3 should come out?

09:24AM 4 MR. KRISHNAN: A change to the prior language that a
09:24AM 5 repressive regime generates widespread fear. In that case, it's
09:24AM 6 not the fact that the regime exists because it stopped existing.
09:25AM 7 It's that it generated widespread fear that continued. And so
09:25AM 8 it's the country conditions of fear -- even though you had a
09:25AM 9 democratically elected government, we've had plenty of record
09:25AM 10 evidence of terrible things that continued after that. That
09:25AM 11 wasn't just from the repressive regime in place. So it is the
09:25AM 12 existence of widespread fear from a governmental body. And do
09:25AM 13 they have to be governmental?

09:25AM 14 But in any event, that's the issue. It's generalized
09:25AM 15 fear. It's not just individualized. And the place where we had
09:25AM 16 put it was repressive regime exists. I think we would just modify
09:25AM 17 it to say something like repressive regime generates widespread
09:25AM 18 fear.

09:25AM 19 Is that clear, Your Honor?

09:25AM 20 THE COURT: It's clear, at least, I understand what your
09:25AM 21 argument is. We're clearly not going to be deciding it yet;
09:25AM 22 right? So I think we've recognized that we're going to be looking
09:25AM 23 for some briefing from you on the issue, and I'm just trying to
09:26AM 24 think of if there's any in the last -- I probably really should
09:26AM 25 just let you go take your comfort break before we bring the jury

09:26AM 1 in. But I was trying to see if there was anything else that we
09:26AM 2 could cover in this time or figure out what else we need to cover.

09:26AM 3 MR. KRISHNAN: Your Honor, on the inability -- this is
09:26AM 4 just putting this out there. We can brief it too. This is the
09:26AM 5 inability to locate the defendant. You had said sort of that -- I
09:26AM 6 think you had suggested that it only is in situations that involve
09:26AM 7 concealment, active concealment.

09:26AM 8 THE COURT: What I meant to say is I had not seen
09:26AM 9 anything that approached our facts where the plaintiffs just
09:26AM 10 simply didn't know where he was. It's not that he was outside the
09:26AM 11 jurisdiction or the -- or concealed himself. And, again, not to
09:27AM 12 be collapsed into the category that the courts have recognized
09:27AM 13 that the plaintiffs didn't know anything about the crimes until
09:27AM 14 the investigations were undertaken by their countries.

09:27AM 15 MR. KRISHNAN: We have -- do you want to give the cites?

09:27AM 16 MS. MATTHEWS: Yeah. The cite we used would be Samantar,
09:27AM 17 and it's -- I can give the cite. It's 2012 WL 3730617. And there
09:27AM 18 the Court referenced the defendants' absence from -- I believe
09:27AM 19 it's actually from Somalia where the incident occurred and
09:27AM 20 plaintiff's lack of knowledge about his whereabouts in the years
09:27AM 21 following his departure from Somalia prevented the commencement of
09:27AM 22 TVPA claims.

09:27AM 23 THE COURT: His absence from Somalia?

09:27AM 24 MS. MATTHEWS: Yes, Your Honor.

09:27AM 25 THE COURT: Okay. All right. I'll look at it and so

09:28AM 1 will the defendant.

09:28AM 2 MR. KRISHNAN: Your Honor, can I just clarify something,
09:28AM 3 which was about this active concealment point. What I said is --
09:28AM 4 yesterday was that in a particular context is that we could
09:28AM 5 refrain from arguing active concealment. I do want to say that
09:28AM 6 the circumstances that we're overtly relying on are that the event
09:28AM 7 happened, it was covered up by the military, and Mr. Bravo was
09:28AM 8 sent to the United States where he would be difficult to find.
09:28AM 9 You know, we have a dispute that the jury can decide as to how
09:28AM 10 difficult he was to find. But without knowing -- as you've heard,
09:28AM 11 without knowing his first name, without having access to
09:28AM 12 governmental records, there was no way to search for him. And
09:28AM 13 that is certainly not something I intended to say we wouldn't be
09:28AM 14 arguing.

09:28AM 15 THE COURT: I understand. I think that -- well, it seems
09:28AM 16 to me that there is an evidentiary basis for -- let me be careful,
09:29AM 17 because I don't want to go so far as to say that the jury should
09:29AM 18 be instructed that that's a circumstance that's extraordinary.
09:29AM 19 But I recognize at least the similarity here that I've seen in
09:29AM 20 other cases that note the inability of the plaintiffs to know
09:29AM 21 enough about their claims to bring them. And so that seemed
09:29AM 22 analogous but different than the cases I have reviewed before.
09:29AM 23 I've seen Yousuf in which the defendant just -- he was here and
09:29AM 24 living open and notoriously, but just the plaintiffs, just as a
09:29AM 25 subjective matter, didn't know them. So I'll look at this case.

09:29AM 1 And I guess the bigger observation that I want to make is
09:29AM 2 that if -- to the extent the jury is getting instructed on
09:29AM 3 equitable tolling and we're listing examples of what might
09:30AM 4 constitute extraordinary circumstances, they must be consistent
09:30AM 5 both with the evidence in this case and with the law, meaning that
09:30AM 6 the evidence has to be sufficient to go to a jury on that theory
09:30AM 7 and not just ones that have come out of other cases but have no
09:30AM 8 applicability here. That's the larger point I'm trying to make.

09:30AM 9 MR. KRISHNAN: Understood.

09:30AM 10 THE COURT: So let's -- we'll have to pick this up at the
09:30AM 11 next break and -- so give some thought, please, to the set of
09:30AM 12 instructions that you have and what other argument you want to
09:30AM 13 pursue with those instructions. And let's let you take your break
09:30AM 14 before we bring the jury in, okay.

09:30AM 15 MR. KRISHNAN: Thank you, Your Honor.

09:30AM 16 MR. SLADE: Thank you, Your Honor.

09:30AM 17 THE COURT: We're going to go right back into the
09:30AM 18 deposition?

09:30AM 19 MR. KRISHNAN: (Nodding.)

09:30AM 20 THE COURT: And then we have a live witness?

09:30AM 21 MR. KRISHNAN: Right, Your Honor.

09:30AM 22 THE COURT: Okay.

09:30AM 23 (Recess at 9:30 A.M.)

09:45AM 24 THE COURT: All set?

09:45AM 25 MR. KRISHNAN: Yes, Your Honor.

09:45AM 1 THE COURT: Okay. Bring them in.

09:45AM 2 MR. KRISHNAN: May I ask if we have the control to play

09:45AM 3 the remainder of the video, which is where we're going to start?

09:45AM 4 THE COURT: Yes. Thank you.

09:45AM 5 (Jury in at 9:45 A.M.)

09:46AM 6 THE COURT: Good morning, ladies and gentlemen. I hope

09:46AM 7 you enjoyed your late start.

09:46AM 8 Ready to go?

09:46AM 9 Okay. Everyone, have a seat, and we'll pick up where we

09:46AM 10 left off.

09:46AM 11 Mr. Krishnan.

09:46AM 12 MR. KRISHNAN: Thank you, Your Honor. We'll continue

09:46AM 13 playing the video of plaintiff Marcela Santucho.

09:46AM 14 THE COURT: Thank you.

09:46AM 15 (Video of Marcela Santucho played.)

09:51AM 16 MS. SABHARWAL: Your Honor, plaintiffs move to admit

09:51AM 17 PX106 and PX132 into evidence.

09:51AM 18 THE COURT: Do you mind repeating those numbers for me?

09:51AM 19 MS. SABHARWAL: Sure. It's PX106 and PX132.

09:51AM 20 THE COURT: Defendant's position on 106?

09:51AM 21 MS. SABHARWAL: Both of these exhibits were discussed

09:51AM 22 during the video.

09:51AM 23 MR. DAVIS: No objection to 132.

09:51AM 24 THE COURT: So admitted.

09:51AM 25 MR. DAVIS: And no objection to 106.

09:52AM 1 THE COURT: 106 and 106T I assume?

09:52AM 2 MR. DAVIS: Yes. Yes, Your Honor.

09:52AM 3 THE COURT: Okay. So admitted.

09:52AM 4 (Plaintiffs' Exhibits PX106 and PX132 received.)

09:52AM 5 MR. KRISHNAN: Your Honor, the plaintiffs would next call

09:52AM 6 Dr. Rodolfo Pregliasco.

09:52AM 7 THE COURT: Okay. Come forward, Dr. Pregliasco.

09:52AM 8 THE COURTROOM DEPUTY: Please raise your right hand.

09:52AM 9 (The witness is sworn.)

09:52AM 10 THE WITNESS: I do.

09:52AM 11 THE COURTROOM DEPUTY: Please state your name and spell

09:52AM 12 it for the record.

09:53AM 13 THE WITNESS: Rodolfo Guillermo Pregliasco,

09:53AM 14 P-R-E-G-L-I-A-S-C-O.

09:53AM 15 MR. KRISHNAN: Your Honor, with this witness, we have a

09:53AM 16 slide deck that is marked PDX8, and the individual pages are 8.1

09:53AM 17 through 8.16. These were shared previously with defense counsel,

09:53AM 18 and I believe those -- there are no objections to PDX8?

09:53AM 19 MR. DAVIS: That's correct, Your Honor.

09:53AM 20 MR. KRISHNAN: And so we would propose handing up to the

09:53AM 21 Court and counsel the slide deck so Your Honor has it while we're

09:54AM 22 going through the presentation.

09:54AM 23 THE COURT: Okay. Thank you.

09:54AM 24 MR. KRISHNAN: May I proceed, Your Honor?

09:54AM 25 THE COURT: Yes, sir.

09:54AM 1 RODOLFO PREGLIASCO, PLAINTIFFS' WITNESS, SWORN

09:54AM 2 DIRECT EXAMINATION

09:54AM 3 BY MR. KRISHNAN:

09:54AM 4 Q. Good morning, Dr. Pregliasco.

09:54AM 5 A. Good morning.

09:54AM 6 Q. Dr. Pregliasco, could you just state your full name, please?

09:54AM 7 A. Rodolfo Guillermo Pregliasco.

09:54AM 8 Q. And, Dr. Pregliasco, what is your job title?

09:54AM 9 A. I am the director of the Forensic Physics Department at the
09:55AM 10 Atomic Center in Bariloche.

09:55AM 11 Q. And what is the Bariloche Atomic Center?

09:55AM 12 A. It is a large national research facility.

09:55AM 13 Q. And what do you do there?

09:55AM 14 A. My tasks are to make the connection between the work conducted
09:55AM 15 by the investigators and the laboratories and the legal system.

09:55AM 16 Q. And what field specifically do you work in?

09:56AM 17 A. I am a physicist; therefore, I work in the field of physics.

09:56AM 18 And related to the field of physics are all types of

09:56AM 19 reconstructions. In particular, I have worked in the

09:56AM 20 reconstruction of traffic accidents, crime scenes, and the field
09:56AM 21 of acoustics in terms of firearms.

09:56AM 22 Q. In the United States, sir, at least in English, we use the
09:56AM 23 term, forensics. Is that something at all applicable to what you
09:57AM 24 do?

09:57AM 25 A. Indeed, it does. We understand that forensics applies --

09:57AM 1 no -- that in forensics, you apply the scientific method in terms
09:57AM 2 of clearing up legal issues.

09:57AM 3 Q. Okay. And let's just clear up one issue, which is that the
09:57AM 4 place you work is the Bariloche Atomic Center. What does -- what
09:57AM 5 does an atomic center have to do with forensics?

09:57AM 6 A. Well, the atomic center is not directly related with
09:58AM 7 forensics. It is actually more involved with nuclear energy.
09:58AM 8 However, it does have very, very large capabilities, and many many
09:58AM 9 laboratories, and I lead a smaller group that handles matters
09:58AM 10 related to the legal system.

09:58AM 11 Q. And you mentioned that you're a physicist. Why is a physicist
09:58AM 12 doing work in forensics?

09:59AM 13 A. Because we have discovered that scientific research is
09:59AM 14 uniquely suited to the forensics field. In particular,
09:59AM 15 reconstructions allow for placing events in the space and time
09:59AM 16 continuum. That's why it's so relevant.

09:59AM 17 Q. And you used the word, reconstructions. What do you mean by
09:59AM 18 that?

09:59AM 19 A. The reconstructions consists in putting together physical
10:00AM 20 evidence and assess their value in terms of the space and --

10:00AM 21 THE INTERPRETER: I'm sorry.

10:00AM 22 THE WITNESS: -- to assess the consistency of the
10:00AM 23 evidence and match that with the larger nature.

10:00AM 24 BY MR. KRISHNAN:

10:00AM 25 Q. Thank you. I probably should have asked a more specific

10:00AM 1 question. What exactly is it that you're reconstructing when you
10:00AM 2 talk about reconstructions?

10:00AM 3 A. Generally speaking, we're talking about traffic accidents and
10:00AM 4 the reconstruction of crime scenes.

10:00AM 5 Q. And how many years of experience do you have in the field of
10:01AM 6 physics?

10:01AM 7 A. 30 years.

10:01AM 8 Q. And in forensic science?

10:01AM 9 A. 20.

10:01AM 10 Q. And for how many years have you been doing reconstruction
10:01AM 11 work?

10:01AM 12 A. 20 years.

10:01AM 13 Q. Now, can you please describe your academic background starting
10:01AM 14 with university.

10:01AM 15 A. I graduated with my bachelor's degree in physics from the
10:01AM 16 University of Buenos Aires in the year 1987.

10:01AM 17 I received my Ph.D. at the University of Buenos Aires in
10:02AM 18 1993 in the area of atomic collisions.

10:02AM 19 Q. Okay. Before we go on, did you work on a set of slides to
10:02AM 20 assist with your testimony today?

10:02AM 21 A. That is correct.

10:02AM 22 Q. Okay.

10:02AM 23 MR. KRISHNAN: And I am going to ask to publish PDX 8.2.

10:03AM 24 BY MR. KRISHNAN:

10:03AM 25 Q. Dr. Pregliasco, on your screen, there's a little green mark.

10:03AM 1 Do you see that?

10:03AM 2 A. Yes.

10:03AM 3 Q. Can you press the clear button in the bottom left-hand side of
10:03AM 4 your screen? Great. Thank you.

10:03AM 5 MR. KRISHNAN: We're having a tech issue, but that's
10:03AM 6 okay. I'll just note -- this one, I'm not sure it really needs to
10:03AM 7 be published to the jury, but we'll talk it in while the tech
10:03AM 8 issue is being worked out.

10:03AM 9 BY MR. KRISHNAN:

10:03AM 10 Q. Dr. Pregliasco, I'd like to talk about some of your
10:03AM 11 memberships and affiliations outside of your work at the Bariloche
10:04AM 12 Atomic Center.

10:04AM 13 Do you do anything in the field of forensics outside of your
10:04AM 14 work for the center?

10:04AM 15 A. Yes, I do, mostly because my field of work has to do -- is
10:04AM 16 directly involved with the relationship between the crime scene
10:04AM 17 and the investigations.

10:04AM 18 Q. And PDX 8.2 has now been published to the jury.
10:04AM 19 What are you showing on PDX 8.2, Dr. Pregliasco?

10:05AM 20 A. This is -- these are the activities in which I am engaged
10:05AM 21 outside of my regular work.

10:05AM 22 Q. And could you please highlight one or two of these for the
10:05AM 23 jury that relate particularly to reconstruction?

10:05AM 24 A. The first one on this list is one that I am particularly proud
10:05AM 25 of. This one was established by the Argentine Security Ministry

1 in order to bring together a standardized protocols for crime
2 scene investigations.

3 Q. And what exactly -- I'm sorry. I'll let you finish.

4 A. And for that particular working group, only two outside
5 experts were brought in outside of other individuals related to
6 the security ministry, and one of those experts --

7 THE INTERPRETER: Correction.

8 THE WITNESS: -- and I was one of those experts.

9 BY MR. KRISHNAN:

10 Q. And what exactly was the work product that was generated?

11 A. A series of protocols and guidelines were published in the
12 official Gazette. That is the official government publication
13 relating to how to conduct crime scene investigations.

14 Q. And were those related to reconstruction?

15 A. Precisely.

16 Q. And maybe could you give just one other example of something
17 that was significant to the field of forensics that you worked on?

18 A. I was one of the authors and publishers of the Scientific
19 Evidence Manual for Argentina, which consisted of producing the
20 mission describing the main areas -- the various forensic areas
21 and tapping on each individual specialist for those areas and to
22 explain to judges and prosecutors the reach of how to assess or
23 explain the forensic evidence.

24 Q. It's a work that's used by judges and prosecutors in
25 Argentina?

10:08AM 1 A. In fact, yes.

10:08AM 2 Q. Have you authored any publications in the fields of either

10:08AM 3 physics or forensics?

10:08AM 4 A. I have authored approximately 25 publications in the field of

10:09AM 5 physics and 10 in the field of forensics -- and all of this work

10:09AM 6 has been subject to peer review.

10:09AM 7 Q. Thank you. Have you ever served as a forensics expert in any

10:09AM 8 court proceedings?

10:09AM 9 A. Yes, that is correct.

10:09AM 10 Q. Approximately, how many?

10:09AM 11 A. On more than 60 occasions.

10:09AM 12 Q. In which courts?

10:09AM 13 A. I have appeared in state courts, federal courts, and on two

10:10AM 14 occasions, I appeared before international courts.

10:10AM 15 Q. And when you say state and federal courts, what country are

10:10AM 16 you referring to?

10:10AM 17 A. Argentina.

10:10AM 18 Q. What types of cases do you testify on?

10:10AM 19 A. Generally speaking, I have testified in cases related to

10:10AM 20 reconstruction and also in criminal cases.

10:10AM 21 Q. When you say reconstruction, reconstruction of?

10:10AM 22 A. Well, whatever each particular case dealt with.

10:10AM 23 Q. Okay. Before, you had used the terms accident scenes and

10:11AM 24 crime scenes; is that right?

10:11AM 25 A. Yes. That is exactly the type of thing I'm referring to.

10:11AM 1 Q. What was your assignment in this case?

10:11AM 2 A. In this case, my task was to create a reconstruction of the

10:11AM 3 military base as it was back in 1972. I actually had to draft a

10:11AM 4 blueprint and to correlate, that is, the statements given

10:12AM 5 throughout the case with the actual physical condition of the

10:12AM 6 location.

10:12AM 7 Q. Okay. And just so you know, I'm going to ask you not to refer

10:12AM 8 in your testimony today to any statements that any particular

10:12AM 9 witness has given. Is that understandable?

10:12AM 10 A. You're very clear.

10:12AM 11 Q. Did you review documents in order to perform your analysis in

10:12AM 12 this case?

10:12AM 13 A. Yes, indeed.

10:12AM 14 Q. And what types of documents?

10:12AM 15 A. I basically reviewed my expert testimony or presentation

10:12AM 16 during the trial that took place, the trial that was conducted in

10:13AM 17 Argentina back in 2008.

10:13AM 18 Q. Okay. And what trial are you referring to?

10:13AM 19 A. This was the trial held in Argentina related to the Trelew

10:13AM 20 Massacre.

10:13AM 21 Q. Okay. And what was the nature of your work in that case?

10:13AM 22 A. To locate any physical evidence that still remained at the

10:13AM 23 Almirante Zar Naval Base at that time.

10:13AM 24 Q. And the jury has heard about a criminal trial in Argentina

10:13AM 25 involving Mr. Sosa and Mr. Del Real. Is that the trial you're

10:14AM 1 referring to?

10:14AM 2 A. That is the same trial.

10:14AM 3 Q. Okay. And for which party were you working when you did the
10:14AM 4 work in the Argentina case?

10:14AM 5 A. Neither party. I was requested by the court.

10:14AM 6 Q. Okay. And are you being paid for your work as an expert in
10:14AM 7 this case?

10:14AM 8 A. I am just receiving my regular salary for the work I do, which
10:15AM 9 besides the investigations and research that I conduct also
10:15AM 10 includes my testifying in court whenever necessary in cases that I
10:15AM 11 have been involved in. I have been reimbursed for my travel and
10:15AM 12 lodging expenses.

10:15AM 13 Q. And when you say you're getting paid your regular salary --
10:15AM 14 excuse me -- your regular salary by who?

10:15AM 15 A. The National Committee on Atomic Energy and CONICET, which is
10:15AM 16 an acronym for the National Council on Scientific and Technical
10:15AM 17 Investigation.

10:15AM 18 Q. Is that your employer?

10:15AM 19 A. Yes.

10:15AM 20 MR. KRISHNAN: Your Honor, at this point, I proffer Dr.
10:15AM 21 Pregliasco as an expert in forensic reconstruction of crime scenes
10:16AM 22 and accident scenes.

10:16AM 23 MR. DAVIS: No objection, Judge.

10:16AM 24 THE COURT: So recognized.

10:16AM 25 BY MR. KRISHNAN:

10:16AM 1 Q. Now, I'd like to turn to the next slide, which is PDX 8.3.
10:16AM 2 Just to orient the jury. Can you tell us, Dr. Pregliasco, what
10:16AM 3 we're looking at here?

10:16AM 4 A. Yes. We're looking at the southern cone of South America.
10:16AM 5 What is highlighted in yellow shows the Republic of Argentina, and
10:16AM 6 what is highlighted in green is the province of Chubut in the
10:16AM 7 region called Patagonia. And the city of Trelew is on the
10:17AM 8 Atlantic coast of the Chubut province.

10:17AM 9 Q. Great. Thank you. I see you marked on your screen, which is
10:17AM 10 helpful. If you need to do that at any point during your
10:17AM 11 testimony, please feel free to do so. And you can clear that with
10:17AM 12 the bottom left corner of the screen. And let's go on to the next
10:17AM 13 slide.

10:17AM 14 MR. KRISHNAN: And I guess before we -- well, this is a
10:17AM 15 demonstrative at this point. But, Your Honor, we're showing
10:17AM 16 Plaintiffs' Exhibit 87 in demonstrative PX 8.4, and we'd like to
10:17AM 17 move in PX87 at this point.

10:17AM 18 MR. DAVIS: No objection, Your Honor.

10:17AM 19 THE COURT: So admitted. You said PX87; right?

10:17AM 20 MR. KRISHNAN: Yes.

10:17AM 21 THE COURT: Thank you. Go ahead.

10:17AM 22 (Plaintiffs' Exhibit PX87 received.)

10:17AM 23 BY MR. KRISHNAN:

10:17AM 24 Q. Dr. Pregliasco, what are we looking at here?

10:17AM 25 A. This is a satellite image taken from Google Earth where I have

10:18AM 1 included the scale, and you can see the perimeter of the military
10:18AM 2 base.

10:18AM 3 Q. And what year was this from?

10:18AM 4 A. This is from 2008.

10:18AM 5 Q. 2008. Okay. So I think PDX 8.4 says 2012, but this is
10:18AM 6 actually from 2008; is that right?

10:18AM 7 A. I took the photograph or the image back in 2008. It was
10:18AM 8 presented in court in 2011.

10:18AM 9 Q. I'm not sure the --

10:19AM 10 A. Or '12 rather.

10:19AM 11 Q. I'm not sure the difference matters. This isn't 1972; right?

10:19AM 12 A. No.

10:19AM 13 Q. Okay. There's a box -- a yellow box in the center -- there
10:19AM 14 you go. You've circled it. There's that yellow box there.
10:19AM 15 What's that yellow box?

10:19AM 16 A. This is what I have called in my expert documents or my expert
10:19AM 17 testimony the main building.

10:19AM 18 Q. Okay.

10:19AM 19 A. This is the very first building that you go -- that is located
10:19AM 20 after you walk in or go into the base.

10:19AM 21 Q. Okay. And now let's go on to PDX 8.5. What are we looking at
10:20AM 22 here, Dr. Pregliasco?

10:20AM 23 A. This is a blueprint that I prepared of the main building.

10:20AM 24 Q. Okay. And from what year is this blueprint?

10:20AM 25 A. This is exactly how I found the building to be when I did my

10:20AM 1 work in 2008.

10:20AM 2 Q. And so this is not 1972; right?

10:20AM 3 A. No.

10:20AM 4 Q. Now, can you just orient us how this diagram in 8.5 relates to

10:21AM 5 the aerial view we were just looking at in 8.4?

10:21AM 6 A. This represents the building that was highlighted in yellow in

10:21AM 7 the previous image.

10:21AM 8 Q. Okay. And how do you get into this building?

10:21AM 9 A. The building has two entryways through the main part of the

10:21AM 10 building. One of the entryways is between the two rooms labeled

10:21AM 11 17 and 20, and the other entryway is between the rooms labeled 18

10:21AM 12 and 19. And these are the only entryways into the building.

10:22AM 13 Q. Which way is north on this diagram?

10:22AM 14 A. In this direction.

10:22AM 15 Q. That's up?

10:22AM 16 A. That's up.

10:22AM 17 Q. And what is on the left side of the drawing in the yellow box?

10:22AM 18 A. That's what I have designated as the west wing of the

10:22AM 19 building, which is the location where the events that are being

10:22AM 20 discussed here took place.

10:22AM 21 Q. Okay. Now, is the portion of the building in the yellow box,

10:22AM 22 does that represent how the layout of the building looked in 1972?

10:22AM 23 A. No. The building has been remodeled on several occasions.

10:23AM 24 But the external structure is the same.

10:23AM 25 Q. Okay. Let's go to the next slide, 8.6, PDX 8.6. Could we

1 clear that, please? Thank you.

2 And on PDX 8.6, we're displaying PX 91.

3 First, do you recognize PX 91, which is the diagram in the
4 slide?

5 A. Indeed.

6 Q. And what is it?

7 A. This is the result of my reconstruction when I determined how
8 the -- what was the layout of the area back in 1972.

9 MR. KRISHNAN: At this point, Your Honor, we'd move in
10 PX91.

11 MR. DAVIS: No objection, Judge.

12 THE COURT: So admitted.

13 (Plaintiffs' Exhibit PX91 received.)

14 BY MR. KRISHNAN:

15 Q. Now, let's walk through this diagram, Dr. Pregliasco. First
16 of all, which way is north on this drawing?

17 A. It's indicated right here, and it's the top part. Upwards.

18 Q. And if someone had entered the main building from one of the
19 two entrances you showed us on the last slide, how would they get
20 into this area?

21 A. Access to the west wing is only through one door, which is
22 located on the lower area of the room labeled as hall.

23 Q. And then is it okay for me to refer to this as the cellblock
24 area?

25 A. Yes, I think that's appropriate.

10:25AM 1 Q. And let's talk about the rooms marked celda, C-E-L-D-A. I
10:25AM 2 assume that's in Spanish; correct?

10:25AM 3 A. Yes, that's right.

10:25AM 4 Q. And what are those?

10:26AM 5 A. These are the cells where the prisoners were located -- some
10:26AM 6 of the prisoners were located back in 1972.

10:26AM 7 Q. Okay.

10:26AM 8 THE INTERPRETER: Correction from the interpreter. The
10:26AM 9 witness stated that some of the cells were occupied by the
10:26AM 10 prisoners.

10:26AM 11 BY MR. KRISHNAN:

10:26AM 12 Q. Okay. Now, what -- let's move to this area called hall,
10:26AM 13 H-A-L-L. Was that -- just what is it?

10:26AM 14 A. This is an open space or an open area that is located
10:26AM 15 immediately after the entry and close to the cells.

10:27AM 16 Q. And the room marked sala, S-A-L-A, what's that?

10:27AM 17 A. At the time when I made my visit to the military base, this
10:27AM 18 was used as a uniform storage area. But despite the fact that it
10:27AM 19 is the largest room in the area, I did not find any reports
10:27AM 20 describing its function back in 1972.

10:27AM 21 Q. And the room bano, B-A-N-O, what's that?

10:28AM 22 A. At the time when I made my visit, that was a small office.
10:28AM 23 But there was quite a bit of evidence that that had been a
10:28AM 24 bathroom before.

10:28AM 25 Q. Okay. You talked about your visit. What visit?

10:28AM 1 A. From the time the judge assigned me to the case, on three
10:28AM 2 different occasions, I made a trip to the city of Trelew in 2008.
10:28AM 3 Q. And how long were you there each time?
10:28AM 4 A. During the first two visits, I stayed for a couple of days,
10:29AM 5 and my third visit was for approximately 12 days.
10:29AM 6 Q. How did you get access to a naval base to do this work?
10:29AM 7 A. I had a court order issued by a federal judge to allow me to
10:29AM 8 do that.
10:29AM 9 Q. Did you do this work, reconstruction work developing PX91 by
10:29AM 10 yourself?
10:29AM 11 A. No. I had a five-member team working with me.
10:30AM 12 Q. How many person-hours would you estimate went into the
10:30AM 13 development of PX91?
10:30AM 14 A. I calculate approximately 350 hours.
10:30AM 15 Q. Okay. I want to talk you through -- talk through with you
10:30AM 16 some of the techniques that you used to develop PX91 and the work
10:30AM 17 that you did. Is that okay?
10:30AM 18 A. Okay.
10:30AM 19 Q. Let's actually go to the next slide, which is PDX8.7. It
10:30AM 20 shows PX90. What is PX90, which is shown on the right-hand side
10:31AM 21 of the slide?
10:31AM 22 A. That is the way in which I documented the condition of the
10:31AM 23 cellblock as I found it in 2008, and these are photographs that I
10:31AM 24 myself took.
10:31AM 25 Q. Okay.

10:31AM 1 MR. KRISHNAN: And at this point, Your Honor, we'd move
10:31AM 2 in PX90.

10:31AM 3 MR. DAVIS: No objection, Judge.

10:31AM 4 THE COURT: So admitted.

10:31AM 5 (Plaintiffs' Exhibit PX90 received.)

10:31AM 6 BY MR. KRISHNAN:

10:31AM 7 Q. What's the diagram on the top right part of PX90?

10:31AM 8 A. This represents the perspective or the viewpoint from which
10:31AM 9 each photograph was taken. The purpose of this photographs is to
10:32AM 10 document from all directions the condition of the area where the
10:32AM 11 cells were located.

10:32AM 12 Q. And is it fair to say, just to move things forward, Dr.

10:32AM 13 Pregliasco, that your job back in 2008 was to take this building
10:32AM 14 the way it looked in these photos and develop from that how the
10:32AM 15 building would have looked back in 1972?

10:32AM 16 A. Indeed.

10:32AM 17 Q. Okay. Let's go to the next slide, PDX 8.8. And what are we
10:33AM 18 looking at here, Dr. Pregliasco?

10:33AM 19 A. We are looking at one of the techniques that were utilized to
10:33AM 20 do the reconstruction. It has to do with the markings that were
10:33AM 21 on the ceiling, where you can actually see or perceive the
10:33AM 22 markings on the ceiling indicating the dividing walls that were
10:33AM 23 there in previous time.

10:33AM 24 Q. I'm going to ask you to explain that in one second. But I'll
10:33AM 25 note PDX 8.8 shows PX95. Are these photos ones of the cellblock

10:33AM 1 area from 2008?

10:34AM 2 A. That's correct.

10:34AM 3 MR. KRISHNAN: We'd move in PX95, Your Honor.

10:34AM 4 MR. DAVIS: No objection.

10:34AM 5 THE COURT: So admitted.

10:34AM 6 (Plaintiffs' Exhibit PX95 received.)

10:34AM 7 BY MR. KRISHNAN:

10:34AM 8 Q. Can you just give that explanation now of how you used these
10:34AM 9 photos to get to these markings shown in photographs we see?

10:34AM 10 A. You can detect some irregularities in the ceiling with the
10:34AM 11 naked eye. But they are difficult to be shown to someone else
10:34AM 12 just utilizing a photograph. So what we did is that we enhanced
10:35AM 13 the contrast, which is what is reflected in this photograph
10:35AM 14 labeled B, which allow us to see more clearly where the walls were
10:35AM 15 located. And then if you go down to the photograph marked C, then
10:35AM 16 we can get an understanding of the wall structure. And this --
10:35AM 17 the wall structure is confirmed because when you look at it, it
10:35AM 18 turns out that each cell is exactly the same size. And each one
10:36AM 19 of them also has a light bulb in the middle of each cell.

10:36AM 20 Q. Let's go to the next slide, 8.9. And this slide says, paint
10:36AM 21 analysis. What are you showing here, Dr. Pregliasco?

10:36AM 22 A. We are looking at one of the most useful techniques in order
10:36AM 23 to conduct or do the reconstruction in this case. And this
10:36AM 24 technique consists of analyzing each successive layer of paint on
10:36AM 25 the wall. And we can see here -- because they have been scraped

10:37AM 1 off, you can distinguish the various layers of paint.

10:37AM 2 Q. And just at a high level, can you explain to the jury how
10:37AM 3 analyzing paint might help you figure out what the cellblock area
10:37AM 4 looked like in 1972?

10:37AM 5 A. By analyzing the paint layers, we can understand, or it allows
10:37AM 6 us to understand which walls -- which areas have been remodeled,
10:37AM 7 which walls have -- which walls have been added and which walls
10:37AM 8 have been removed.

10:38AM 9 Q. And just very briefly, because I don't want to spend too much
10:38AM 10 time on this, just how can analyzing the paint tell you which
10:38AM 11 walls have been added and which walls have been removed?

10:38AM 12 A. We conducted a paint analysis in many areas of the cellblock.
10:38AM 13 And what we found mostly was a layer that indicated a succession
10:38AM 14 of eight different paint layers, which were of a particular color,
10:39AM 15 each one. And we have called that particular structure the
10:39AM 16 original. Whenever remodeling is done, the old paint layers don't
10:39AM 17 get painted again. Everything that's left is painted with a new
10:39AM 18 color. So what we found was that any area that had been remodeled
10:39AM 19 only had the newer, the newer three layers of paint.

10:39AM 20 Q. Okay. And how does analyzing paint help you determine walls
10:39AM 21 that have been removed?

10:40AM 22 A. Because if you conduct an analysis position by position in
10:40AM 23 terms of the paint structure, you can find the original sequence
10:40AM 24 on one wall, and then there is a stripe let's call it, an area
10:40AM 25 where there is only -- there are only three layers of paint. So

10:40AM 1 along that stripe, you can see that there was a remodel or a
10:40AM 2 modification done there.

10:40AM 3 Q. And the stripe would reflect where a wall would have been?

10:40AM 4 A. Exactly.

10:41AM 5 Q. Let's go to the next slide, please. This is 8.10 being shown,
10:41AM 6 and it has PX97. What's PX97?

10:41AM 7 A. This is a photograph taken by me that reflects the condition
10:41AM 8 of the area and how we left it after we finished our work.

10:41AM 9 Q. And what time frame are the markings on the floor and on the
10:41AM 10 wall that you can see in black in PX97?

10:41AM 11 A. These are markings placed by me that reflect step by step the
10:42AM 12 reconstruction that we did. And it's to reflect the condition of
10:42AM 13 the cells at the time, that is, back in 1972.

10:42AM 14 Q. And when was the photo taken?

10:42AM 15 A. 2008.

10:42AM 16 Q. By?

10:42AM 17 A. I did.

10:42AM 18 MR. KRISHNAN: I'd move in PX97, Your Honor.

10:42AM 19 MR. DAVIS: No objection.

10:42AM 20 THE COURT: So admitted.

10:42AM 21 (Plaintiffs' Exhibit PX97 received.)

10:42AM 22 BY MR. KRISHNAN:

10:42AM 23 Q. Let's go to the next slide. Actually before we do that, why
10:42AM 24 do you draw these markings on the ground?

10:42AM 25 A. Because we wanted to get an idea of the sensation as to how

10:43AM 1 the walls were in 1972, which is different from when I saw it.

10:43AM 2 Q. Let's go to the next slide, PDX8.11. And PDX8.11 has a

10:43AM 3 side-by-side of PX91 and PX97, and there is a red arrow on each of

10:43AM 4 those two depictions of the exhibits. What does the red arrow

10:43AM 5 indicate?

10:43AM 6 A. That red arrow represents the width of the corridor that was

10:44AM 7 located between the cells.

10:44AM 8 Q. How wide is that corridor?

10:44AM 9 THE INTERPRETER: Counsel, I'm sorry. How wide is that?

10:44AM 10 MR. KRISHNAN: How wide is that corridor.

10:44AM 11 THE WITNESS: Exactly four feet, 11 inches.

10:44AM 12 BY MR. KRISHNAN:

10:44AM 13 Q. Let's go to the next slide, 8.12. And -- okay. 8.12 has a

10:44AM 14 corridor on it with some people -- people in it. Dr. Pregliasco,

10:44AM 15 what are you depicting here in PDX8.12?

10:44AM 16 A. Based on the measurements of the place that I took, I had

10:45AM 17 wanted to show how the hallway would look from one end. And this

10:45AM 18 is not just a sketch. It's a drawing in scale.

10:45AM 19 Q. And what dimensions did you use? I don't need the specific

10:45AM 20 numbers, but just where did you get the dimensions from for this

10:45AM 21 depiction?

10:45AM 22 A. Those are the exact dimensions that I obtained from the

10:45AM 23 reconstruction.

10:45AM 24 Q. And does that include the height of the ceiling?

10:46AM 25 A. The height of the ceiling, the position and size of the

10:46AM 1 window, and the position and size of the doors. And that includes
10:46AM 2 the width of the hallway.

10:46AM 3 Q. Thank you. And how many people did you put in the hallway?

10:46AM 4 A. 19.

10:46AM 5 Q. Okay. And did you literally actually do one by one for the
10:46AM 6 19?

10:46AM 7 A. (No response.)

10:46AM 8 Q. In creating this, did you first draw the people in the back
10:46AM 9 and then the next people one set by one set to get to the front?

10:47AM 10 A. That's right.

10:47AM 11 Q. Okay. I'd like to take you to the next slide, PDX8.13. And
10:47AM 12 8.13 has PX91 next to PDX6 on it. Do you see that, Dr.

10:47AM 13 Pregliasco?

10:47AM 14 A. That's right.

10:47AM 15 Q. Actually, could we just do one thing real quick. Could we go
10:47AM 16 back to 8.12? I apologize.

10:48AM 17 Okay. And, Dr. Pregliasco, do you have an opinion as to --
10:48AM 18 oh, what is the -- what is the -- from whose perspective or from
10:48AM 19 which perspective is the PDX 8.12 supposed to be?

10:48AM 20 A. Any point in the hall, which is lined up with the hallway.

10:48AM 21 Q. And what opinion, if any, do you have about the ability to see
10:48AM 22 the people in the back of the corridor if you're standing in the
10:48AM 23 hall?

10:48AM 24 MR. DAVIS: Objection, Judge. Calls for speculation.

10:48AM 25 THE COURT: Overruled.

10:48AM 1 THE WITNESS: I think the image speaks for itself that
10:49AM 2 you can see the people in the front very well and not very well
10:49AM 3 the people in the back.
10:49AM 4 BY MR. KRISHNAN:
10:49AM 5 Q. Let's go to the next slide, 8.13. And, Dr. Pregliasco, we
10:49AM 6 have here PX91 next to PDX 6. And I'll just note for you that PDX
10:49AM 7 6 was a demonstrative that was used during testimony yesterday.
10:49AM 8 And my question for you is this, Dr. Pregliasco: I want you to
10:49AM 9 assume some facts, and I'm going to give you a set of facts to
10:50AM 10 assume. Is that okay?
10:50AM 11 A. Okay.
10:50AM 12 Q. Before I get to the facts, I want you to assume -- can you
10:50AM 13 just explain -- PX91 is modified a little bit on the left-hand
10:50AM 14 side. Can you just explain that?
10:50AM 15 A. Yes. Do you mean that it reflects -- it's reflected partially
10:51AM 16 that the area of the bathroom is missing?
10:51AM 17 Q. Right. And why is that?
10:51AM 18 A. Because the idea is to compare with the testimonies, and the
10:51AM 19 testimonies don't include that area in their sketches.
10:51AM 20 Q. You used the word testimonies. But basically PDX 6 doesn't
10:51AM 21 include rooms that might be south of the southernmost part of the
10:51AM 22 drawing; is that fair?
10:51AM 23 A. Uh-huh.
10:51AM 24 Q. And in your drawing, PX91, there would have been the sala and
10:52AM 25 bano at the bottom of PX91?

10:52AM 1 A. That's right. They would be in this area.

10:52AM 2 Q. Okay. Now, we're going to get back to those facts that I'm

10:52AM 3 going to ask you to assume.

10:52AM 4 Okay. So I'm going to ask you to assume that there are five

10:52AM 5 circles towards the southern part of PDX, and I'm going to draw a

10:52AM 6 circle if I can -- no. Maybe I can't. Could you draw a circle

10:52AM 7 around the five lower circles in PDX6.

10:52AM 8 A. My finger is --

10:52AM 9 Q. Okay. And I'm going to ask you to assume that those five

10:52AM 10 lower circles represent soldiers that are shooting towards the

10:53AM 11 north wall of the corridor. Do you understand?

10:53AM 12 A. All right.

10:53AM 13 Q. And could you just maybe show for the jury on PX91 what you

10:53AM 14 understand the north wall of the corridor to mean?

10:53AM 15 A. It's towards the top.

10:53AM 16 Q. Okay. And what is the north wall of the corridor?

10:53AM 17 A. This one here.

10:53AM 18 Q. Maybe go to exit.

10:53AM 19 A. Exit, okay.

10:53AM 20 Q. Okay. Thank you. The north wall of the corridor. Okay.

10:53AM 21 Now, it may be a little bit difficult to see because of the

10:54AM 22 arrows, but there are two parallel red lines in the corridor. Do

10:54AM 23 you see those?

10:54AM 24 A. You mean these walls here?

10:54AM 25 Q. Yes. Now, I'm going to ask you to assume that those two

10:54AM 1 parallel lines represent prisoners, 19 prisoners.

10:54AM 2 A. Correct, yes.

10:54AM 3 Q. Okay. And I want you to further assume that those prisoners
10:54AM 4 are moving in the southward direction towards the soldiers.

10:54AM 5 MR. DAVIS: Your Honor, I have an objection. This is
10:54AM 6 outside the scope of the report filed in this case.

10:54AM 7 MR. KRISHNAN: It is within.

10:55AM 8 THE COURT: The southward movement? Can you flesh out
10:55AM 9 which piece of that you think is outside the scope?

10:55AM 10 MR. DAVIS: His report talks about forensic results about
10:55AM 11 damage to walls, one on the north wall and the south wall.

10:55AM 12 THE COURT: Yes.

10:55AM 13 MR. DAVIS: He has commentary on testimony that's been
10:55AM 14 excluded. So this is going beyond the scope of the report.

10:55AM 15 MR. KRISHNAN: I'm not sure.

10:55AM 16 THE COURT: I am not sure that I understand the objection
10:55AM 17 yet. I'm just going to remind Mr. Krishnan about our conversation
10:55AM 18 yesterday and wait for the next question. I'm going to overrule
10:55AM 19 the objection as I understand it.

10:55AM 20 MR. KRISHNAN: The question is going to be that with
10:55AM 21 these assumptions, would it be possible or do you have an opinion
10:55AM 22 as to whether it would be consistent with the layout that you have
10:56AM 23 depicted for one of the prisoners to receive a single bullet wound
10:56AM 24 to the back of the neck?

10:56AM 25 MR. DAVIS: Same objection, Judge. It's outside the

10:56AM 1 scope of the report.

10:56AM 2 MR. KRISHNAN: It's in the report.

10:56AM 3 THE COURT: 128; is that right?

10:56AM 4 MR. KRISHNAN: PX127, I believe, is the report.

10:56AM 5 Paragraph 92.

10:56AM 6 THE COURT: Thank you. Overruled. That's overruled.

10:57AM 7 You can answer it, sir.

10:57AM 8 THE WITNESS: A prisoner could receive a bullet wound if
10:57AM 9 he or she is wounded or shot at several times. In that case, as
10:58AM 10 he or she falls, he or she could receive a bullet wound in the
10:58AM 11 back of the body. But in the statements that we have heard
10:58AM 12 yesterday --

10:58AM 13 BY MR. KRISHNAN:

10:58AM 14 Q. I don't want you to talk about any statements you've heard.
10:58AM 15 I'm just asking you to assume that there is --

10:58AM 16 A. Okay.

10:58AM 17 Q. -- a single gunshot wound in the back of the neck.

10:58AM 18 A. I think that's highly improbable in this scenario.

10:58AM 19 Q. Now, does that opinion change if I were to add the fact that
10:58AM 20 the closest soldier shooting is nine to ten feet away from the
10:59AM 21 first prisoner?

10:59AM 22 A. No, not at all. That opinion would only change depending on
10:59AM 23 the position but not the distance.

10:59AM 24 Q. Okay. So assuming that there is a nine- to ten-foot gap
10:59AM 25 between the northernmost soldier and the southernmost prisoner,

10:59AM 1 does the position of the soldiers affect in any way the opinion
10:59AM 2 you just gave?

11:00AM 3 THE INTERPRETER: You meant the soldier being the
11:00AM 4 furthest north and the prisoner -- sorry.

11:00AM 5 BY MR. KRISHNAN:

11:00AM 6 Q. Let me take it in two parts so the translation is easier. I
11:00AM 7 would like you to assume that there is a nine- to ten-foot gap
11:00AM 8 between the closest prisoner and the closest soldier. With that
11:00AM 9 understanding in mind, does the actual position of the soldiers,
11:00AM 10 assuming that there is a nine- to ten-foot gap, does that
11:00AM 11 change -- regardless of the position of the soldiers, would that
11:00AM 12 change your opinion?

11:01AM 13 A. No, it would not change my conclusion.

11:01AM 14 Q. Okay. And assuming that there is evidence showing that
11:01AM 15 certain prisoners were shot within 20 inches, would such evidence
11:01AM 16 be consistent or inconsistent with a nine- to ten-foot gap between
11:01AM 17 the closest prisoner and the closest soldier?

11:01AM 18 MR. DAVIS: Objection. Also outside the scope of the
11:01AM 19 report.

11:01AM 20 THE COURT: Sustained.

11:01AM 21 MR. KRISHNAN: It's also in paragraph 92.

11:01AM 22 THE COURT: I under -- let me ask a question before I
11:01AM 23 rule on that.

11:01AM 24 How much longer do you think that you have with your
11:02AM 25 expert so that I can plan the jury's morning break? It's after

11:02AM 1 11:00. I just was looking at the clock.

11:02AM 2 MR. KRISHNAN: I think somewhere between 20 and
11:02AM 3 30 minutes.

11:02AM 4 THE COURT: So we would take a break before that. Why
11:02AM 5 don't we use this as that opportunity then, and we'll let the jury
11:02AM 6 go. I know it's just after 11:00, so 11:15. Okay.

11:02AM 7 (Jury out at 11:02 A.M.)

11:02AM 8 THE COURT: Okay.

11:02AM 9 Mr. Krishnan, have a seat. The objection that I
11:02AM 10 anticipated, and I would agree with and will hear your response
11:03AM 11 to, would have been notwithstanding the fact that it was
11:03AM 12 disclosed, that was I would say an example of one of the
11:03AM 13 disclosures that caused me to raise the issue with you yesterday;
11:03AM 14 that is, that just asks this expert to comment on the plausibility
11:03AM 15 of Mr. Bravo's testimony. We don't need his assist to tell us
11:03AM 16 whether 20 inches is more than nine feet.

11:03AM 17 MR. KRISHNAN: The latter one, I will withdraw, Your
11:03AM 18 Honor. Based on the point you just made, he doesn't need to tell
11:03AM 19 us that.

11:03AM 20 THE COURT: All right. Sorry. I don't mean to be
11:03AM 21 flippant. But just for purposes of the record, the greater point
11:03AM 22 is then the only additional thing he would be doing would be to
11:03AM 23 comment on the credibility of the statement. And that is what I
11:03AM 24 had asked you to avoid yesterday. Just for purposes of
11:04AM 25 information.

11:04AM 1 MR. KRISHNAN: I don't want Your Honor to think that I
11:04AM 2 was trying to flout what you were telling me yesterday.

11:04AM 3 THE COURT: I didn't.

11:04AM 4 MR. KRISHNAN: I thought I was trying to play within the
11:04AM 5 rules of what I thought you were suggesting.

11:04AM 6 THE COURT: I thought you were crafting your direct very
11:04AM 7 consistent with what we had discussed yesterday. This is the only
11:04AM 8 one that I thought -- it's not the question as much as it is the
11:04AM 9 answer that I don't see how it can avoid that problem. So that's
11:04AM 10 where I was. If there's anything else that either of you have to
11:04AM 11 take up, tell me. Otherwise, I will give you your restroom break.
11:04AM 12 Okay.

11:04AM 13 MR. KRISHNAN: Nothing from us, Your Honor.

11:04AM 14 THE COURT: So you anticipate 20 to 30. Okay. So we'll
11:04AM 15 start the cross then before we go to lunch. We started late. And
11:04AM 16 if it's okay with you, we'll let them go a little bit late, maybe
11:04AM 17 12:15 for lunch. Okay. Does that work for everybody?

11:04AM 18 MR. DAVIS: Fine, Your Honor.

11:04AM 19 THE COURT: All right. See you at 11:15.

11:04AM 20 MR. DAVIS: Your Honor, I had another issue.

11:04AM 21 THE COURT: I'm sorry, Mr. Davis. Yes, sir.

11:04AM 22 MR. DAVIS: Despite the fact that I have another issue
11:04AM 23 that I would like to deal with first. But that being said, I
11:04AM 24 would still move to strike the testimony that he just provided
11:05AM 25 about the ten-centimeter shot. Because his -- in his report, he

11:05AM 1 talks about a specific person Maria Angelica Cabeli. And her
11:05AM 2 autopsy report has not been admitted, and there is no evidence of
11:05AM 3 that in this record. And he is commenting on stuff. That's why I
11:05AM 4 said it's outside the scope. I wasn't going to have this argument
11:05AM 5 in front of the jury. And I would move to strike that testimony
11:05AM 6 as not being based on any fact that has been admitted into
11:05AM 7 evidence in this case.

11:05AM 8 THE COURT: Mr. Davis, didn't we hear video testimony
11:05AM 9 from a gentleman who inspected a body that had -- he didn't -- I
11:05AM 10 don't remember whether or not he listed her name, but he inspected
11:05AM 11 the body and found a bullet wound at the nape of her neck.

11:05AM 12 MR. KRISHNAN: He did list her name.

11:05AM 13 MR. DAVIS: This one identifies a person -- there is no
11:05AM 14 tying up of those two. And again, Your Honor saying this witness
11:05AM 15 is not allowed to testify or comment on other testimony, and this
11:06AM 16 would be -- there would be no predicate for what he wrote in his
11:06AM 17 report in evidence in this case.

11:06AM 18 Therefore, what he's testifying now is outside the scope
11:06AM 19 of his report, and I would move to strike the testimony.

11:06AM 20 THE COURT: I'm going to deny the motion to strike. And
11:06AM 21 I'll explain because the concern that I had yesterday was the
11:06AM 22 propriety of calling an expert to offer through the prism of an
11:06AM 23 expert that someone's testimony in this case was more credible
11:06AM 24 than someone else's, which is the province of the jury, as opposed
11:06AM 25 to answering the question from the perspective of a physicist if

11:06AM 1 particular facts were consistent with the rules of physics. There
11:06AM 2 is evidence in this case. It does not have to be tied to the name
11:06AM 3 of the person he disclosed.

11:06AM 4 In fact, I think that would be closer to running afoul of
11:06AM 5 what I wanted the plaintiffs to avoid with his testimony. But
11:07AM 6 there is a basis for the plaintiffs to elicit an expert opinion on
11:07AM 7 whether or not a shot to the back of the neck was physically
11:07AM 8 possible consistent with the physical evidence that he collected
11:07AM 9 from the scene. So I'm going to deny the motion to strike. And
11:07AM 10 the reason I fleshed it out is in the hopes that A, if it's wrong,
11:07AM 11 you can explain to me why it's wrong. But second of all, to the
11:07AM 12 extent that it is guiding for the parties' future objections on
11:07AM 13 direct. Okay.

11:07AM 14 MR. DAVIS: Thank you, Judge.

11:07AM 15 THE COURT: With that, I'll give you your bathroom break,
11:07AM 16 which just got very short. But I'll still see you at 11:15.
11:07AM 17 Thank you.

11:07AM 18 (Recess at 11:07 A.M.)

11:16AM 19 THE COURT: Can I bring the jury?

11:16AM 20 MR. KRISHNAN: Yes, Your Honor.

11:16AM 21 MR. DAVIS: Sorry, Judge. We were talking.

11:16AM 22 THE COURT: Okay.

11:16AM 23 (Jury in at 11:16 A.M.)

11:17AM 24 THE COURT: All right. Welcome back.

11:17AM 25 Mr. Krishnan.

11:17AM 1 MR. KRISHNAN: Thank you, Your Honor. I think we need a
11:17AM 2 translator first. Your Honor, may I go check?

11:17AM 3 THE COURT: Would you? Thank you.

11:17AM 4 THE INTERPRETER: Forgive me, Judge.

11:17AM 5 MR. KRISHNAN: Ms. Lind, could we take this down, please?

11:18AM 6 THE INTERPRETER: Go ahead.

11:18AM 7 BY MR. KRISHNAN:

11:18AM 8 Q. Dr. Pregliasco, I want to move on to a different subject now
11:18AM 9 also within the cellblock area.

11:18AM 10 A. Okay.

11:18AM 11 Q. All right. Are you aware of --

11:18AM 12 MR. KRISHNAN: Well, first, let me actually just move in
11:18AM 13 an exhibit, which I think will come in without objection, which is
11:18AM 14 PX121. Could we please pass a copy up to the Court? Does Your
11:18AM 15 Honor need a copy?

11:18AM 16 THE COURT: Of 121?

11:18AM 17 MR. KRISHNAN: Yes.

11:18AM 18 THE COURT: I assume you're going to publish it.

11:19AM 19 MR. KRISHNAN: Yes. But I think we also need to give one
11:19AM 20 to the witness.

11:19AM 21 MR. DAVIS: No objection.

11:19AM 22 MR. KRISHNAN: We are going to publish it.

11:19AM 23 THE COURT: All right. It's admitted.

11:19AM 24 (Plaintiffs' Exhibit 121 received.)

11:19AM 25 MR. KRISHNAN: And could we please publish PX121?

1 BY MR. KRISHNAN:

2 Q. Now, Dr. Pregliasco, do you recognize PX121?

3 A. Indeed.

4 Q. Okay. And can you just describe briefly to the jury what
5 PX121 is?

6 A. These are photographs taken from a magazine from 1972.

7 Q. Okay. And what's your understanding of what the picture is
8 intended to depict -- I'm sorry. Let me just rephrase it.

9 What's your understanding of what the picture depicts?

10 A. The magazine itself actually attempts to explain it in the
11 caption.

12 Q. Go on. You don't need to read it if you can just explain
13 briefly.

14 A. What the caption states is that this is evidence of the shots
15 fired by Pujadas.

16 Q. Okay. And tell us your -- have you read this article?

17 A. I have.

18 Q. And tell us about the -- where the article comes from?

19 A. It comes from a magazine of the time by the name of Asi,
20 A-S-I.

21 Q. And approximately when was this article published?

22 A. Immediately after the events.

23 Q. Okay. And what's your understanding of whose version of
24 events were described in this article?

25 MR. DAVIS: Objection. This is outside the scope of his

11:22AM 1 expertise, Your Honor.

11:22AM 2 MR. KRISHNAN: I'm just asking about the article that the
11:22AM 3 photo that he testifies about is where it came from.

11:22AM 4 THE COURT: Overruled.

11:22AM 5 THE WITNESS: I don't understand the question.

11:22AM 6 BY MR. KRISHAN:

11:22AM 7 Q. Whose version of events were -- to your understanding, whose
11:22AM 8 version of events was described in the article?

11:22AM 9 MR. DAVIS: Same objection, Your Honor.

11:22AM 10 THE COURT: Overruled.

11:22AM 11 THE WITNESS: I must state that these are the only
11:22AM 12 photographs taken in 1972 that ever came out and were known by the
11:23AM 13 public. And the purpose of the photographs is not to document the
11:23AM 14 location, given the fact that the photographs were taken from only
11:23AM 15 one point of view or one perspective.

11:23AM 16 BY MR. KRISHNAN:

11:23AM 17 Q. Dr. Pregliasco, I just -- please listen to the question, and
11:23AM 18 I'll reask the question, and then we can get to other issues, but.

11:23AM 19 A. Okay.

11:23AM 20 Q. The first question is just talking about the article where
11:23AM 21 this came from. Whose version of events do you understand to have
11:23AM 22 been described in the article?

11:23AM 23 MR. DAVIS: Same objection, Your Honor.

11:23AM 24 THE COURT: Overruled.

11:23AM 25 THE WITNESS: From the military.

11:23AM 1 BY MR. KRISHNAN:

11:23AM 2 Q. Okay. And I think you had mentioned something before. What's
11:24AM 3 your understanding of other -- roughly contemporaneous, the
11:24AM 4 existence of other contemporaneous photographs of the events at
11:24AM 5 Trelew?

11:24AM 6 A. No, there were not -- there were no other photographs. And
11:24AM 7 the purpose of those photographs were not -- was not to document
11:24AM 8 the location.

11:24AM 9 Q. Okay. So what do you mean by that the purpose of the
11:24AM 10 photographs is not to document the location?

11:24AM 11 MR. DAVIS: Objection, Your Honor.

11:24AM 12 THE COURT: Sustained.

11:24AM 13 MR. KRISHNAN: Fair enough.

11:24AM 14 BY MR. KRISHNAN:

11:24AM 15 Q. Does the manner in which -- does the origin or the manner in
11:24AM 16 which the -- do you have any -- strike that.

11:25AM 17 Do you have any opinions about the reliability of the
11:25AM 18 photographs with respect to whether or not they depict shots by
11:25AM 19 Pujadas?

11:25AM 20 MR. DAVIS: Objection, Your Honor. I'm sorry.

11:25AM 21 THE COURT: Overruled. Yes or no?

11:25AM 22 THE WITNESS: I do have an opinion.

11:25AM 23 BY MR. KRISHNAN:

11:25AM 24 Q. And what's that?

11:25AM 25 MR. DAVIS: Objection, Judge. Outside his expertise.

11:25AM 1 There is no foundation laid. He is a forensic person. He can
11:25AM 2 talk about physical evidence, key physical evidence. But he
11:25AM 3 can't -- he's asked now to comment on physical evidence.

11:26AM 4 THE COURT: Sustained. Lay a predicate for the opinion.

11:26AM 5 MR. KRISHNAN: Okay.

11:26AM 6 BY MR. KRISHNAN:

11:26AM 7 Q. Let me do a little bit more background actually. Just so
11:26AM 8 everyone understands, where in the cellblock area do these photos
11:26AM 9 depict?

11:26AM 10 A. Given the fact that I was at the place, this door is the door
11:26AM 11 that opens into the room that I have designated as the bathroom.

11:26AM 12 And I know this because of the shape of the door and the
11:27AM 13 dimensions of the door. And also because I am there to actually
11:27AM 14 scratch the paint, scratch the paint off, at the place where one
11:27AM 15 of the bullet holes is depicted, and I found that there was a
11:27AM 16 bullet hole that had been repaired, and it indicates that -- and
11:27AM 17 it is compatible with a caliber .45 firearm.

11:27AM 18 Q. Let's stop there. Let's stop there. Let's just for a second
11:27AM 19 --

11:27AM 20 MR. KRISHNAN: Ms. Lind, could we go back to PX91 for a
11:27AM 21 second, just to orient folks?

11:27AM 22 BY MR. KRISHNAN:

11:28AM 23 Q. So we're looking at PX91. Can you just circle on PX91 what
11:28AM 24 door we're talking about?

11:28AM 25 A. Yes. This is the bathroom door.

11:28AM 1 Q. Okay. Now we can go back to PX121.

11:28AM 2 Now, did you evaluate for purposes of your report in this
11:28AM 3 case the question of whether these bullet holes are consistent
11:28AM 4 with or inconsistent with shots fired -- purported to be fired by
11:28AM 5 Mr. Pujadas?

11:28AM 6 MR. DAVIS: Objection again because consistent with the
11:29AM 7 Court's ruling.

11:29AM 8 MR. KRISHNAN: This is the -- I'm laying the predicate.

11:29AM 9 THE COURT: Overruled.

11:29AM 10 THE WITNESS: Well, part of my job is to look and see
11:29AM 11 from where the shots might have been fired.

11:29AM 12 BY MR. KRISHNAN:

11:29AM 13 Q. Fair enough. But just -- just to be clear, I need to be
11:29AM 14 really specific about this.

11:29AM 15 For purposes of your report in this case, did you analyze
11:29AM 16 the question of whether these photographs are consistent with or
11:29AM 17 inconsistent with purported shots by Pujadas?

11:29AM 18 THE COURT: I'm going to interrupt and ask a different
11:29AM 19 question.

11:29AM 20 Were you -- do you have an opinion based on your
11:30AM 21 observation on where the shots could have originated from, and
11:30AM 22 where they could not have originated from?

11:30AM 23 THE WITNESS: Thank you. That is a better question.

11:30AM 24 BY MR. KRISHNAN:

11:30AM 25 Q. Yes or no?

11:30AM 1 A. Oh, yes, yes, of course.

11:30AM 2 Q. Okay. Thank you. So let's get to that question. But before
11:30AM 3 we do, do you know when the photograph was taken?

11:30AM 4 A. Well, they were taken after the events and before the magazine
11:31AM 5 was published.

11:31AM 6 Q. And just to frame that for folks, the events occurred on?

11:31AM 7 A. The events took place on the night of August 22, 1972.

11:31AM 8 Q. And the photographs were published on approximately?

11:31AM 9 A. I don't recall the date of the publication, but they were
11:31AM 10 published about the -- around the time of the -- when the funerals
11:31AM 11 took place, so it might have been three days later.

11:32AM 12 Q. Okay. Now, do you have any opinions about the reliability of
11:32AM 13 the photographs for performing the work you just described?

11:32AM 14 A. As far as documenting any facts, they do not fall into the
11:32AM 15 protocols for crime scene investigation --

11:32AM 16 THE INTERPRETER: Correction from the interpreter --
11:32AM 17 crime scene preservation.

11:32AM 18 BY MR. KRISHNAN:

11:32AM 19 Q. And what do you mean by that?

11:32AM 20 A. That there is no way -- no confirmation that this was
11:32AM 21 published or produced after the fact.

11:33AM 22 Q. And do you have any opinions -- do you have any opinions
11:33AM 23 with -- any other opinions with respect to the reliability of
11:33AM 24 these photographs for purposes of the work you just described?

11:33AM 25 A. Yes, that's correct.

11:33AM 1 Q. And what's that?

11:33AM 2 A. If we were to compare the -- these photographs with the
11:33AM 3 photographs that I took during -- that I took when I visited the
11:33AM 4 base, these photographs are incomplete in terms of the information
11:34AM 5 that I was able to gather. And they, in fact, have been marked
11:34AM 6 indicating what it is that we need to interpret. And that is
11:34AM 7 completely outside of any good forensic practice.

11:34AM 8 Q. Why does that -- sorry. Let me ask another question because I
11:34AM 9 think you've answered. I think you've answered. Let me just ask
11:34AM 10 another question to focus.

11:34AM 11 A. Okay.

11:34AM 12 Q. And why does what you just described cause you to question the
11:34AM 13 reliability of these photographs for performing the work we just
11:34AM 14 described?

11:34AM 15 MR. DAVIS: Objection, Judge. It's outside the scope.

11:34AM 16 THE COURT: Of the disclosed opinion?

11:34AM 17 MR. DAVIS: Yes.

11:34AM 18 THE COURT: Where is it disclosed?

11:35AM 19 MR. KRISHNAN: 66.

11:35AM 20 THE COURT: Page or paragraph?

11:35AM 21 MR. KRISHNAN: Paragraph -- sorry, page 45.

11:35AM 22 THE COURT: All right. Mr. Krishnan, if that's where
11:35AM 23 you're headed, I don't see how that's consistent with the
11:35AM 24 discussion we had yesterday.

11:35AM 25 MR. KRISHNAN: It doesn't refer to any specific -- the

11:35AM 1 point is just one about the completeness of the record.

11:35AM 2 THE COURT: Okay. All right. If you think that point
11:36AM 3 hasn't been made yet, bear in mind, you have about ten minutes
11:36AM 4 left for this direct.

11:36AM 5 MR. KRISHNAN: Okay. Very good.

11:36AM 6 BY MR. KRISHNAN:

11:36AM 7 Q. Why does -- why does the not having more -- why does the issue
11:36AM 8 you just described cause you to question the reliability of these
11:36AM 9 photos?

11:36AM 10 MR. DAVIS: Same objection, Judge.

11:36AM 11 THE COURT: Overruled.

11:36AM 12 THE WITNESS: Because of the lack of preservation of the
11:36AM 13 crime scene, and the publication is only trying to display some of
11:36AM 14 the aspects of what happened that night.

11:36AM 15 MR. DAVIS: Judge, move to strike. He's giving an
11:36AM 16 opinion about why the newspaper article was published.

11:37AM 17 THE COURT: Sustained.

11:37AM 18 BY MR. KRISHNAN:

11:37AM 19 Q. Let's go on, Dr. Pregliasco. Let's focus on the right-hand
11:37AM 20 picture. Are you -- how many bullet holes are depicted there?

11:37AM 21 A. Two.

11:37AM 22 Q. Okay. And were you able to perform any analysis with respect
11:37AM 23 to those two bullet holes?

11:37AM 24 A. Just one of them.

11:37AM 25 Q. Okay. And which one?

11:37AM 1 A. The lower one.

11:37AM 2 Q. Why not the top one?

11:37AM 3 A. Because the upper one happened on an area that had a piece of

11:37AM 4 glass, and that glass is not there any longer.

11:38AM 5 Q. Okay. Thank you. Let's go back to PX91, please. Can you

11:38AM 6 please draw a line on your screen between the south wall of cell 3

11:38AM 7 and cell 7?

11:38AM 8 THE INTERPRETER: For the interpreter, it's cell 1 and

11:38AM 9 what?

11:38AM 10 BY MR. KRISHNAN:

11:38AM 11 Q. Cell 3 and 7. I want you to assume, Dr. Pregliasco, that

11:38AM 12 somebody was standing there and shooting towards the bathroom

11:38AM 13 door. Okay. Based on the analysis you performed, would it be

11:38AM 14 possible for someone standing -- is it consistent or inconsistent

11:39AM 15 with the physical evidence of the lower bullet hole that the shot

11:39AM 16 could have been fired from the line you just drew from the --

11:39AM 17 between the south wall of cell 3 and cell 7?

11:39AM 18 A. It is --

11:39AM 19 MR. DAVIS: Excuse me. Objection. It calls for -- he's

11:39AM 20 already said it's incomplete, and he can't make the analysis. Now

11:39AM 21 he's asking him to make the analysis. So I'd object to the

11:39AM 22 testimony, Your Honor.

11:39AM 23 THE COURT: Overruled.

11:39AM 24 THE WITNESS: It is possible.

11:39AM 25 BY MR. KRISHNAN:

11:39AM 1 Q. Sorry?

11:39AM 2 A. It is possible. It would be possible to have shot from there.

11:40AM 3 Q. It would be possible?

11:40AM 4 A. To have fired from there.

11:40AM 5 Q. To have fired from there. Okay. How?

11:40AM 6 A. The hold on the door is three feet from the floor, and I have

11:40AM 7 come to -- I made a determination that the angle that creates had

11:40AM 8 a horizontal trajectory, it's a 14-degree angle. This means that

11:40AM 9 every four feet that we are away from the door, the shot must have

11:40AM 10 come from a foot higher. So if we find ourselves 16 feet away

11:41AM 11 from the door, that shot could have been fired from a level of

11:41AM 12 seven feet, seven feet high.

11:41AM 13 Q. And could you please stand up and --

11:41AM 14 MR. DAVIS: Objection, Judge. Outside the scope of the

11:41AM 15 report.

11:41AM 16 THE COURT: Overruled.

11:41AM 17 BY MR. KRISHNAN:

11:41AM 18 Q. And can you please stand up and indicate to the jury how such

11:41AM 19 a shot would have to have been fired from the line that you drew

11:41AM 20 from the south wall of cell 3 to cell 7?

11:41AM 21 A. Well, taking my height as the basis, it would have been from

11:41AM 22 this position (indicating).

11:41AM 23 Q. And let's go to another exhibit, which is PX122.

11:42AM 24 MR. KRISHNAN: May we approach, Your Honor?

11:42AM 25 THE COURT: Yes.

11:42AM 1 BY MR. KRISHNAN:

11:42AM 2 Q. Do you have -- sorry. We shouldn't put up PX122. It's not in
11:42AM 3 evidence yet. Do you have PX122 in front of you?

11:42AM 4 A. I do.

11:42AM 5 Q. And what's the origin of it?

11:43AM 6 A. This is the sketch that I drew reflecting the trajectory and
11:43AM 7 the various positions, and this is part of my report.

11:43AM 8 MR. KRISHNAN: Your Honor, we move PX122 into evidence.

11:43AM 9 MR. DAVIS: There is no objection, Your Honor.

11:43AM 10 THE COURT: Thank you. So admitted.

11:43AM 11 (Plaintiffs' Exhibit PX122 received.)

11:43AM 12 BY MR. KRISHNAN:

11:43AM 13 Q. And we're publishing it now. And, Dr. Pregliasco, can you
11:43AM 14 please just explain what you are depicting in PX122 with the red
11:43AM 15 line?

11:43AM 16 A. Well, the general blueprint is what I prepared as a result of
11:43AM 17 my reconstruction. And the red line indicates the overview of the
11:44AM 18 trajectory. The red line indicates the view from above of the
11:44AM 19 trajectory, according to my findings through my analysis.

11:44AM 20 Q. And there's a dark red line. And can you just explain what
11:44AM 21 that -- what the end points of the dark red line that's in the
11:44AM 22 hall area indicate?

11:44AM 23 A. As I stated just a moment ago, the trajectory has -- goes from
11:45AM 24 high to low. The area that has the most intense coloring
11:45AM 25 indicates the area that there exists between a shot from the

11:45AM 1 height of -- from shoulder height and the other end point closest
11:45AM 2 to the bathroom door indicates a shot fired from waist level.
11:45AM 3 Q. Could you just stand up and demonstrate if you were standing
11:45AM 4 at the southern tip of that red line approximately what the height
11:46AM 5 of the gun would be?
11:46AM 6 A. In --
11:46AM 7 THE COURT: You need a microphone, sir. Sorry.
11:46AM 8 Oh, I guess just my interpreter needs the microphone. Go
11:46AM 9 ahead. I apologize.
11:46AM 10 THE INTERPRETER: It's okay, Judge.
11:46AM 11 THE WITNESS: If this was the location of the door, the
11:46AM 12 closest distance would indicate a shot fired from this height,
11:47AM 13 this level, and this is approximately the distance that we're
11:47AM 14 talking about.
11:47AM 15 BY MR. KRISHNAN:
11:47AM 16 Q. Okay. And now can you do the far -- the northernmost point of
11:47AM 17 the line?
11:47AM 18 A. This location indicates a shot fired from this -- at this
11:47AM 19 level in this manner.
11:47AM 20 Q. Okay.
11:47AM 21 A. And just for completeness --
11:47AM 22 Q. We don't need to do -- let me ask you before you do.
11:47AM 23 MR. DAVIS: I just object. Ask that he wait till there
11:47AM 24 is a question asked.
11:47AM 25 MR. KRISHNAN: Okay.

11:47AM 1 BY MR. KRISHNAN:

11:47AM 2 Q. And then assuming that you were at the line of the southern
11:47AM 3 wall of cell 3 to cell 7, at what height would the gun have to be?

11:47AM 4 A. It's this way.

11:47AM 5 Q. Okay. Thank you. Could you go back to the stand, please?

11:48AM 6 A. This is the trajectory that it would have moved.

11:48AM 7 MR. DAVIS: Objection. Move to strike. If there is no
11:48AM 8 pending question, he should not be able to provide testimony.

11:48AM 9 THE COURT: I am -- it was my impression it was complete
11:48AM 10 because the answer -- make sure that the witness understands that
11:48AM 11 you have to respond to any question that's asked and that's all.

11:48AM 12 THE WITNESS: I'm sorry.

11:48AM 13 BY MR. KRISHNAN:

11:48AM 14 Q. Just a few last questions. How far -- if you could just draw
11:48AM 15 a line from -- between cells 3 and cell 7. From that line, just a
11:48AM 16 vertical line all the way down to the wall where the south wall of
11:49AM 17 the hall -- sorry. That's not quite what I meant.

11:49AM 18 You can undo. Thank you.

11:49AM 19 Just draw a line that indicates a vertical line from the
11:49AM 20 north boundary to the south boundary of the hall.

11:49AM 21 How long is that distance?

11:49AM 22 A. Almost 16 feet.

11:49AM 23 Q. Okay. And what is the distance between the northernmost tip
11:49AM 24 of the red line and the southern tip of -- that line between cell
11:50AM 25 3 and cell 7. Okay. You can do that. Let me just ask that

11:50AM 1 question again.

11:50AM 2 If you draw a vertical line between the top of the red line
11:50AM 3 going straight up to that line between cell 3 and cell 7, great,
11:50AM 4 what's that distance?

11:50AM 5 A. Over six feet.

11:50AM 6 Q. Okay. And then the last thing I just want to do to orient
11:50AM 7 folks before I conclude is -- can you clear, please. Can we for a
11:50AM 8 second pivot back to the photograph, which was PX121?

11:51AM 9 So we've been talking about the lower bullet hole on the
11:51AM 10 right-hand photograph; right?

11:51AM 11 A. Yes, that's correct.

11:51AM 12 Q. Okay. And, first of all, what's the connection between that
11:51AM 13 bullet hole on the left-hand picture on PX121?

11:51AM 14 A. My conclusion is that it reflects the same projectile.

11:51AM 15 Q. By the same projectile, do you mean the same bullet?

11:51AM 16 A. Yes.

11:52AM 17 Q. Okay. Now, I just want to go back to the PX -- I think it's
11:52AM 18 the 91, which is where we just were. And can you just show us
11:52AM 19 where that left-hand -- sorry, not 91. It was 122.

11:52AM 20 Where on PX122 is the, in your opinion, the bullet hole that
11:52AM 21 was depicted on the left-hand side of the left-hand photo?

11:53AM 22 THE INTERPRETER: Just a second, please. The interpreter
11:53AM 23 needs a moment.

11:53AM 24 THE WITNESS: It was located at one of the beams of
11:53AM 25 supporting areas of the bathroom and the hinge.

11:53AM 1 BY MR. KRISHNAN:

11:53AM 2 Q. Okay. Were you actually able to find the bullet?

11:53AM 3 A. No.

11:53AM 4 Q. And why not?

11:53AM 5 A. Because the battle -- the bathroom was dismantled, and there
11:53AM 6 are no other dividing walls left or beams.

11:53AM 7 Q. And so how could you tell -- if the bullet wasn't there
11:53AM 8 anymore, how could you tell that that's where it was?

11:54AM 9 A. The floor, which is a tiled floor, have cement inserts
11:54AM 10 reflecting where previous construction was located.

11:54AM 11 Now, in this plan, I'm not indicating my reconstruction of
11:54AM 12 the bathroom; rather, it indicates the markings found on the
11:54AM 13 floor. So then we know that there was a wall or some sort of
11:54AM 14 structure where the hinge to the bathroom door was located.

11:55AM 15 Q. And how is it that the location of the two bullet holes
11:55AM 16 depicted helped you determine the trajectory?

11:55AM 17 A. Oh, because a straight line is defined by the two end points.

11:55AM 18 Q. Okay. And can you show on the screen for PX122 where the
11:55AM 19 second end point is? Let me ask a different -- yeah. There we
11:55AM 20 go. Okay. And can you just draw the trajectory we're talking
11:55AM 21 about?

11:56AM 22 MR. KRISHNAN: Okay. Thank you. No further questions,
11:56AM 23 Your Honor.

11:56AM 24 THE COURT: Ladies and gentlemen, if you're not
11:56AM 25 uncomfortable, I thought we could go at least until 12:15 before

11:56AM 1 Lunch. I see nodding heads and thumbs up.

11:56AM 2 Mr. Davis, your cross.

11:56AM 3 MR. DAVIS: Thank you, Your Honor.

11:56AM 4 CROSS-EXAMINATION

11:56AM 5 BY MR. DAVIS:

11:56AM 6 Q. It's still morning, Dr. Pregliasco. We have not met. My name
11:56AM 7 is Steve Davis. I represent the defendant, Roberto Bravo. I'm
11:56AM 8 going to ask you some questions. And so if you don't understand,
11:56AM 9 please ask me to explain those questions. Is that agreeable to
11:56AM 10 you?

11:56AM 11 A. Yes, yes. I'm pleased to be able to help.

11:56AM 12 Q. Thank you very much. I just want to go through a little bit
11:57AM 13 of the background that you have. The first time you ever visited
11:57AM 14 the naval base was in 2007?

11:57AM 15 A. That's right.

11:57AM 16 Q. And in the 35 years since 1972 before you got there, the
11:57AM 17 building or the room had been altered?

11:57AM 18 A. That's right, many times.

11:57AM 19 Q. And what you saw in 2007 is very different than what existed
11:57AM 20 in 1972?

11:57AM 21 A. That's right. And that's why a reconstruction was made.

11:57AM 22 Q. It had been painted several times, the room?

11:58AM 23 A. Since the origin of the base, eight times.

11:58AM 24 Q. Okay. So from 1972 to when you did your analysis or to
11:58AM 25 whenever the Trelew naval base was built, which would be before

11:58AM 1 1972?

11:58AM 2 A. Since the construction of the base.

11:58AM 3 Q. And in what year was the base constructed?

11:58AM 4 A. Approximately in the year '69.

11:58AM 5 Q. 1969?

11:58AM 6 A. Yes.

11:58AM 7 Q. The room that you had been in had been replastered a number of

11:58AM 8 times?

11:58AM 9 A. No.

11:58AM 10 Q. They didn't put plaster over the walls? I thought that's what

11:59AM 11 you said. Maybe I misunderstood your testimony on direct.

11:59AM 12 A. I only found changes in the plaster in the north wall.

11:59AM 13 Q. Well, you looked at the entire room. And so I'm talking about

11:59AM 14 your work that you did to inspect the entire room. So the north

11:59AM 15 wall had been replastered several times?

11:59AM 16 A. I would like to be more precise. The north wall from a meter

12:00PM 17 and 70 centimeters up, it was never replastered. The lower part

12:00PM 18 has two changes.

12:00PM 19 Q. I just wanted to know if there was replastering. You've

12:00PM 20 answered my question. I have nothing further on that subject.

12:00PM 21 I'm only going to ask you just some other questions about changes

12:00PM 22 that had been made. The doors that were in the room had been

12:00PM 23 moved -- were removed? I'm talking about the entire room.

12:01PM 24 A. May we go back to the exhibit that shows my reconstruction so

12:01PM 25 that I can be more clear?

12:01PM 1 Q. Do you know which page you're talking about, Doctor?

12:01PM 2 MR. DAVIS: Can you put up 91 -- or can you put up 91 for

12:01PM 3 us, please?

12:01PM 4 BY MR. DAVIS:

12:01PM 5 Q. Is this what you're talking about?

12:01PM 6 A. Yes.

12:01PM 7 Q. So this is actually a good place to start. When you were

12:01PM 8 there in 2007 and 2008, which you testified you were there on two

12:01PM 9 different occasions, one for a number of days?

12:01PM 10 A. Uh-huh.

12:01PM 11 Q. None of the cells that are depicted in this Exhibit 91 are

12:01PM 12 present any longer?

12:02PM 13 A. That's not true. Cell number 1 and cell number 2 were there.

12:02PM 14 And that is reflected in the blueprint that I prepared after my

12:02PM 15 visit in 2008.

12:02PM 16 Q. So the cells 3 through 10 are no longer there?

12:02PM 17 A. That's correct.

12:02PM 18 Q. And you were just asked some questions about the distance from

12:02PM 19 cell 7 to the south wall before the bathroom. Do you recall those

12:02PM 20 questions? You were just asked those questions six minutes ago.

12:02PM 21 A. Yes, that's right.

12:02PM 22 Q. And I believe you testified the distance between cell 7 and

12:03PM 23 the bathroom is approximately six feet?

12:03PM 24 A. No, that's incorrect. 16 feet.

12:03PM 25 Q. Oh, 16 feet. I misheard you then. I apologize.

1 Looking at --

2 MR. DAVIS: You can take the picture down -- or you take
3 it, please.

4 THE WITNESS: Please, I would like to see the plan --

5 BY MR. DAVIS:

6 Q. I would be happy to provide it if you think it's responsive to
7 my questions. So I'm not trying to keep it -- I just have some
8 other questions I'd like to ask if that's okay?

9 THE WITNESS: I'm sorry. I am a teacher, and I have that
10 impulse to be exhaustive.

11 BY MR. DAVIS:

12 Q. I understand. And my job is to ask questions.

13 So insofar as the modifications in the 35 years from 1972 to
14 2007, you never saw any construction plans between 1972 and 2007?

15 A. No. In fact, they were requested, and they were not provided.
16 They did not have any documentation regarding the blueprints --
17 the military requesting requesting my plans.

18 MR. DAVIS: I'm sorry. I didn't understand the answer.
19 Could you please say it again?

20 THE INTERPRETER: Yes.

21 THE WITNESS: There were no floor plans. We requested
22 them, but they didn't have them. As a matter of fact, the
23 military requested my plans from me.

24 BY MR. DAVIS:

25 Q. And, Doctor, I'm going to be asking you some very precise

12:05PM 1 questions, which I think require yes or no answers. So I'd ask
12:05PM 2 that you answer it yes or no if that's agreeable to you, please.

12:05PM 3 Did you ever -- you never saw any demolition plans?

12:05PM 4 A. No.

12:05PM 5 Q. You never saw any demolition drawings?

12:05PM 6 A. No.

12:05PM 7 Q. You never saw any contracts that would have described whatever
12:05PM 8 work was done in the room?

12:05PM 9 A. No.

12:05PM 10 Q. And as you sit here today, you cannot tell this jury how many
12:06PM 11 different repairs or changes were done to the room?

12:06PM 12 A. Yes, I can say.

12:06PM 13 Q. But you've not seen the actual documents for any of those
12:06PM 14 changes?

12:06PM 15 A. No. I have not seen documents, but I've seen the marks that
12:06PM 16 those remodelings have left in the place.

12:06PM 17 Q. Do you know who supervised any of the changes?

12:06PM 18 A. I asked about that to the people from the military base, and
12:06PM 19 they were unable to answer.

12:06PM 20 Q. So the answer is, no, you don't know who supervised the
12:07PM 21 changes?

12:07PM 22 A. That's right.

12:07PM 23 MR. DAVIS: Can you please put up Plaintiffs' --
12:07PM 24 actually, Plaintiffs' Exhibit 91 again. I'm sorry. Thank you.
12:08PM 25 Oh, you can do it too.

12:08PM 1 MR. SMITH: I just need him to switch over.

12:08PM 2 MR. DAVIS: The power is in the front up here.

12:08PM 3 BY MR. DAVIS:

12:08PM 4 Q. Looking at Exhibit 91, you were saying that you found --
12:08PM 5 strike that.

12:08PM 6 You saw evidence of two bullet holes in Plaintiffs'
12:08PM 7 Exhibit 121, which is the two photographs?

12:08PM 8 A. Yes. Everybody has been able to see them.

12:08PM 9 MR. DAVIS: Can you bring up 121, please?

12:09PM 10 BY MR. DAVIS:

12:09PM 11 Q. And you were asked some questions about Plaintiffs'
12:09PM 12 Exhibit 121, and just so we orient ourselves, the door -- the --
12:09PM 13 there's two pictures on Plaintiffs' Exhibit 121; correct?

12:09PM 14 A. That's right.

12:09PM 15 Q. And the picture on the right on what we're seeing here where
12:09PM 16 it has the two circles, that is the picture that was published on
12:09PM 17 August 29, 1972, in Chile -- excuse me -- in Argentina?

12:10PM 18 A. That's what I believe.

12:10PM 19 Q. And the top picture is a picture of a -- or is a glass -- some
12:10PM 20 sort of a hard glass window; correct?

12:10PM 21 A. That's right.

12:10PM 22 Q. And did you measure the height of that -- of where that bullet
12:10PM 23 hole is indicated on this photograph?

12:10PM 24 A. I don't remember now the height, but I did measure it.

12:10PM 25 Q. And the shot on the -- that's reflected on the door is -- did

12:11PM 1 you also estimate where that distance was?

12:11PM 2 A. It is impossible to determine the trajectory with a bullet
12:11PM 3 with only one point.

12:11PM 4 Q. So you're looking at the picture on the right of Exhibit 121.
12:11PM 5 And as an expert, is it impossible for you to say the trajectory
12:11PM 6 at which that bullet entered; is that what you're testifying to?

12:11PM 7 A. Are you referring to the bullet -- the one higher up? The
12:12PM 8 upper one?

12:12PM 9 Q. But you have no estimate of what height the lower bullet hole
12:12PM 10 is located?

12:12PM 11 THE INTERPRETER: I'm sorry, counsel.

12:12PM 12 MR. DAVIS: Sure.

12:12PM 13 BY MR. DAVIS:

12:12PM 14 Q. Do you know what level the bottom bullet hole is reflected on
12:12PM 15 that door?

12:12PM 16 MR. KRISHNAN: I'm just going -- I wouldn't normally do
12:12PM 17 this except for the translation, but I'm going to object as vague.

12:12PM 18 THE COURT: What height perhaps, Mr. Davis?

12:12PM 19 MR. DAVIS: Yes.

12:12PM 20 THE COURT: I'm sorry. Do you understand the question
12:12PM 21 asks you what height the hole is?

12:12PM 22 THE WITNESS: The lower one is three feet from the floor.

12:13PM 23 BY MR. DAVIS:

12:13PM 24 Q. From the floor?

12:13PM 25 A. From the floor.

12:13PM 1 Q. And the upper one is how many feet from the floor?

12:13PM 2 A. I don't know. But it must be around eight feet.

12:13PM 3 Q. So was that a floor -- you didn't see the door -- you never

12:13PM 4 made an inspection of the door when it was physically there;

12:13PM 5 correct?

12:13PM 6 A. No. I did see that picture.

12:13PM 7 Q. The outside door --

12:13PM 8 THE INTERPRETER: I'm sorry, that door.

12:13PM 9 THE WITNESS: I did see that door.

12:13PM 10 BY MR. DAVIS:

12:13PM 11 Q. And the level -- and is the glass still there?

12:13PM 12 A. No.

12:13PM 13 Q. It's a solid door today?

12:13PM 14 A. Yes.

12:13PM 15 Q. So do you know -- so do you know -- how high is the total door

12:14PM 16 today?

12:14PM 17 A. It's documented in my report, but I don't have the information

12:14PM 18 accessible. But it's a regular door.

12:14PM 19 Q. But my understanding of your report was you said because it

12:14PM 20 was glass, you couldn't make an assessment of where the bullet

12:14PM 21 hole was located?

12:14PM 22 A. Of course.

12:14PM 23 Q. Because from a ballistics standpoint, this photograph is not

12:14PM 24 particularly useful to you?

12:14PM 25 A. I don't agree with that conclusion.

12:14PM 1 MR. DAVIS: Say that again. I'm sorry.

12:14PM 2 THE INTERPRETER: I do not agree with that conclusion.

12:15PM 3 MR. DAVIS: Your Honor, we have -- I don't speak Spanish,
12:15PM 4 but we have a translation issue. How do I -- so I guess I'll try
12:15PM 5 to clarify.

12:15PM 6 Anyway, my understanding of the translation -- and this
12:15PM 7 is just for the benefit of this, that my question was asking about
12:15PM 8 is the photograph of use to him, and the translation was: Was the
12:15PM 9 door of use to him. So that was the cross.

12:15PM 10 So I'd just ask, if I'm going to reask the question, to
12:15PM 11 try and make sure. I will do the best I can.

12:15PM 12 THE COURT: Okay.

12:15PM 13 BY MR. DAVIS:

12:15PM 14 Q. So going back, the door -- the picture of the door is not of
12:15PM 15 any use to you as a forensic scientist in making any kind of
12:15PM 16 assessment; correct?

12:15PM 17 A. No, it's not correct.

12:16PM 18 Q. And so that I understand it, go back to 91, please. If the
12:16PM 19 door on the bottom -- let's see here.

12:16PM 20 The door that we're looking at that's on the right is the
12:16PM 21 door that's reflected, and I can't really mark on it -- yes,
12:16PM 22 that's it. Can you highlight that?

12:16PM 23 That's the door we were just looking at; correct?

12:16PM 24 A. Yes.

12:16PM 25 Q. Or at least the door that was there 35 -- or 50 years ago?

12:16PM 1 A. Yes. It's the only door that opens that way.

12:16PM 2 Q. But that is a different door -- the door that you saw is a

12:17PM 3 much different -- a different door than what existed in 1972?

12:17PM 4 A. No. It's the same door.

12:17PM 5 Q. The same exact door from 1972 is still there today or still

12:17PM 6 there in 2007 when you went to the naval base?

12:17PM 7 A. That's right. If you're interested, I can explain you -- I

12:17PM 8 can explain why.

12:17PM 9 Q. But the glass has been replaced?

12:17PM 10 A. That's right.

12:17PM 11 Q. And that -- but that picture of that door reflects two bullet

12:17PM 12 holes in 1972?

12:17PM 13 A. That's right.

12:18PM 14 Q. Now, I want you to look at the bathroom -- excuse me -- the

12:18PM 15 interior bathroom door. Go down to where the toilet is.

12:18PM 16 Sir, that -- go back to 121 for just a moment.

12:18PM 17 Just so we're looking at the right thing, we're now -- we're

12:18PM 18 going to look at -- the bathroom door is reflected on the left

12:18PM 19 side of Exhibit 121; correct?

12:18PM 20 A. That's right.

12:18PM 21 Q. Okay. And stay there for one second.

12:19PM 22 A. I can't delete that line. I have no access. I'm sorry.

12:19PM 23 Q. And this door on the left, that's a bathroom door that --

12:19PM 24 that's no longer there; correct?

12:19PM 25 A. Exactly.

12:19PM 1 Q. Okay. I knew those doors weren't there. So the bathroom door
12:19PM 2 that's reflected -- go back to 91. And the bathroom door inside
12:19PM 3 -- circle where the bathroom is. That -- as I understood your
12:19PM 4 testimony, that's now concrete, but you could tell that something
12:19PM 5 used to be there; correct?

12:19PM 6 A. Yes.

12:19PM 7 Q. And that no longer exists?

12:19PM 8 A. Exactly.

12:19PM 9 Q. And what we see in Exhibit 121 was a picture of a hole in a
12:20PM 10 bathroom door that's no longer there?

12:20PM 11 A. That's right.

12:20PM 12 Q. And when you were talking about -- that door -- so what's on
12:20PM 13 the floor of that bathroom door -- of where that bathroom door was
12:20PM 14 today?

12:20PM 15 A. Like I said, the floor is made out of tile. And the markings
12:21PM 16 that are here have been filled -- topped with concrete, and they
12:21PM 17 are at the level of the tile. But the concrete is not on top of
12:21PM 18 the tile, but it goes through the tile.

12:21PM 19 Q. It was repaired over time?

12:21PM 20 A. First, you put the walls, and then you put the tiles.

12:21PM 21 Q. So it's been fixed. And presently today, is there still a
12:21PM 22 bathroom there? I mean a toilet there?

12:21PM 23 A. No. It's an office.

12:22PM 24 THE COURT: Mr. Davis, I hesitate to interrupt you, but
12:22PM 25 we're now at 12:25. If you're close, I think we can hold out for

12:22PM 1 you. And if you don't think you're close, then perhaps we should
12:22PM 2 take lunch. What's your pleasure, sir?

12:22PM 3 MR. DAVIS: I believe I'm under ten minutes, but I don't
12:22PM 4 know for sure. It may be even shorter than that.

12:22PM 5 THE COURT: Let me just check.

12:22PM 6 Ladies and gentlemen, are we comfortable for another ten
12:22PM 7 minutes? We're okay.

12:22PM 8 Go ahead, Mr. Davis, I'm sorry.

12:22PM 9 MR. DAVIS: My apologies.

12:22PM 10 BY MR. DAVIS:

12:22PM 11 Q. Could you go back to 91? You gave us your testimony about
12:22PM 12 looking at the block. And you said that the distance between cell
12:23PM 13 3 and cell 7 was four feet ten inches?

12:23PM 14 A. That's incorrect.

12:23PM 15 Q. Maybe I misheard. It was four foot nine?

12:23PM 16 A. No. 4'11".

12:23PM 17 Q. My apologies. So it's almost five feet. But I know you want
12:23PM 18 to be exact that that's the distance. So as I understand it, the
12:23PM 19 cells that existed in 1972 did not have bars on it. Is that
12:23PM 20 consistent with what you understand?

12:23PM 21 THE INTERPRETER: Did not have?

12:23PM 22 MR. DAVIS: Bars.

12:24PM 23 THE WITNESS: The only cells remaining are number 1 and
12:24PM 24 2. And the doors to those cells are solid. And they have a
12:24PM 25 cutout that is now covered with a piece of wood. And I do not

12:24PM 1 know what they looked like or what they were in 1972.

12:24PM 2 BY MR. DAVIS:

12:24PM 3 Q. So the cells that currently exist, you're not sure if that's
12:24PM 4 the same condition the cells were in in 1972?

12:24PM 5 A. No. I am sure that the cells are just like they were back in
12:24PM 6 1972 because of the paint layers.

12:25PM 7 Q. But the door into the cell is the same as it was in 1972?

12:25PM 8 A. Yes.

12:25PM 9 Q. And you said -- and I didn't understand -- you said the top of
12:25PM 10 the door was filled in. Could you -- what did you mean by that?

12:25PM 11 A. Am I allowed to draw here?

12:25PM 12 Q. You have to draw nicely. But other than that...

12:25PM 13 A. So this is the door.

12:25PM 14 Q. Yes.

12:25PM 15 A. And the door has a wooden insert in this shape. And that
12:25PM 16 would be a modification. I have no way of knowing what was there
12:26PM 17 back in 1972. But the rest of the door is exactly what was there.

12:26PM 18 Q. And so do you know whether -- so do you know how wide that
12:26PM 19 door -- excuse me -- that opening is that you're showing on
12:26PM 20 this -- on your drawing?

12:26PM 21 A. I do not have the information right here with me. But I
12:26PM 22 understand that it's somewhere between 30 and 40 centimeters wide.
12:26PM 23 That would be approximately one foot.

12:26PM 24 Q. One foot by one foot?

12:26PM 25 A. It's a bit taller than wide.

12:27PM 1 Q. Okay. I understand. I understand. And what were the
12:27PM 2 dimensions of the actual cells?
12:27PM 3 A. Well, I don't recall the exact dimensions. But you can deduce
12:27PM 4 that from the layout that we are looking at because this --
12:27PM 5 Q. Go ahead. I'm sorry.
12:27PM 6 A. Because this plan or this drawing has a scale.
12:27PM 7 Q. Fair enough. You can take that down. You had a
12:27PM 8 demonstrative, and it's not in front of me. You had an animation
12:27PM 9 of the prisoners. Do you recall that?
12:28PM 10 A. Yes.
12:28PM 11 Q. And in that animation, the witnesses were facing forward --
12:28PM 12 excuse me -- the prisoners were facing forward?
12:28PM 13 A. That's right.
12:28PM 14 Q. And it would look different if the prisoners instead of facing
12:28PM 15 forward were facing across to the cell, the picture?
12:28PM 16 A. For sure.
12:28PM 17 MR. DAVIS: Thank you, Doctor. I have no further
12:28PM 18 questions.
12:28PM 19 MR. KRISHNAN: Your Honor, I have a very short few
12:28PM 20 minutes of redirect, but I really don't want to keep folks here.
12:29PM 21 THE COURT: Does that mean less than five?
12:29PM 22 MR. KRISHNAN: Yes, less than five.
12:29PM 23 THE COURT: I'm getting nods.
12:29PM 24 Go ahead, Mr. Krishnan. You have a very patient jury.
12:29PM 25 MR. KRISHNAN: Could we clear the screen, please? And if

12:29PM 1 we could get control back?

12:29PM 2 REDIRECT EXAMINATION

12:29PM 3 BY MR. KRISHNAN:

12:29PM 4 Q. Dr. Pregliasco, I just want to clear up one thing. I'm
12:29PM 5 talking about the bathroom door again. And while I'm asking
12:29PM 6 questions, if you're able to pull up the photo of the bathroom
12:29PM 7 door, that would be great.

12:29PM 8 I want to talk about that lower hole in the bathroom door.
12:29PM 9 Were you able to find that bullet hole when you were there in
12:29PM 10 2008?

12:29PM 11 A. That's correct.

12:29PM 12 Q. How did you find it?

12:29PM 13 A. I took the picture -- no. I held the picture. And I
12:30PM 14 calculated the position where the bullet hole should be, and I
12:30PM 15 scraped the paint off at that place, and I found a hole in the
12:30PM 16 wood that had been repaired with --

12:30PM 17 THE WITNESS: Plaster.

12:30PM 18 THE INTERPRETER: Plaster?

12:30PM 19 THE WITNESS: Synthetic plaster.

12:30PM 20 THE INTERPRETER: Synthetic plaster.

12:30PM 21 BY MR. KRISHNAN:

12:30PM 22 Q. Did you analyze that hole?

12:30PM 23 A. I did.

12:30PM 24 Q. And was there any trajectory information about the bullet that
12:30PM 25 you could determine when analyzing that hole?

12:31PM 1 MR. DAVIS: Objection. Outside the scope, Your Honor.

12:31PM 2 MR. KRISHNAN: It's not. I'm just -- it's part of his
12:31PM 3 analysis for the trajectory.

12:31PM 4 THE COURT: Overruled.

12:31PM 5 THE WITNESS: I said, yes. Yes, that's right.

12:31PM 6 BY MR. KRISHNAN:

12:31PM 7 Q. And can you just explain?

12:31PM 8 THE INTERPRETER: From the interpreter, for the repair of
12:31PM 9 the door, I would say it was repaired with some sort of filler.

12:31PM 10 THE WITNESS: Okay. The door consists of two pieces of
12:31PM 11 plywood actually. And the width that separates those two pieces
12:32PM 12 of plywood, it's less than an inch, two centimeters wide. So we
12:32PM 13 took a cylinder, which had the exact same diameter of a
12:32PM 14 .45-caliber projectile, and we introduced that into the hole, and
12:32PM 15 there was very little room for it to move. It didn't move much.
12:32PM 16 So projecting that direction towards the inside of the bathroom,
12:33PM 17 we could then see that it went through the location of the hinge
12:33PM 18 to the door to the toilet.

12:33PM 19 BY MR. KRISHNAN:

12:33PM 20 Q. The reason why I'm asking these questions is I think on cross
12:33PM 21 you testified that if you only have one point, you cannot
12:33PM 22 determine a trajectory. And my question is -- do you want to
12:33PM 23 translate that? And my question is: Just based on the exterior
12:33PM 24 door alone, are you able to determine some trajectory information?

12:33PM 25 A. And that is correct. But I would like to clear up one point.

12:34PM 1 If I have the photograph and only the photograph, in that case, I
12:34PM 2 only know one point of that trajectory. But if I'm actually -- if
12:34PM 3 I have the door, the door is of a certain thickness, thus I can
12:34PM 4 infer the trajectory based on the actual door. And that's why
12:34PM 5 having the photographs and having the actual door are two very
12:34PM 6 different things.

12:34PM 7 MR. KRISHNAN: Thank you. Nothing further, Your Honor.

12:34PM 8 THE COURT: Okay. All right. So thank you. You are
12:34PM 9 welcome to stay with us, but you're also free to go. You are
12:34PM 10 excused.

12:34PM 11 (The witness is excused.)

12:35PM 12 And with that, ladies and gentlemen, we'll take our lunch
12:35PM 13 break, and let's just go ahead and come back at 1:35. Okay.

12:35PM 14 (Jury out at 12:35 P.M.)

12:35PM 15 THE COURT: Thank you for your patience.

12:35PM 16 The next witness is also live?

12:35PM 17 MR. KRISHNAN: Sorry, Your Honor.

12:35PM 18 THE COURT: The last expert, is that who is next?

12:35PM 19 MR. KRISHNAN: Yes. I think the remainder goes Langer,
12:35PM 20 and then it's deposition video of Celi and then Raquel Camps.

12:36PM 21 THE COURT: And how long is the deposition?

12:36PM 22 MR. KRISHNAN: About 20 or 25 minutes.

12:36PM 23 THE COURT: Okay. All right. Well, I mean, if at 1:35
12:36PM 24 -- how long is Langer?

12:36PM 25 MR. KRISHNAN: I think it sounds like an hour.

12:36PM 1 THE COURT: Okay. I am with guarded optimism that the
12:36PM 2 questions are laser focused and that no more than an hour is
12:36PM 3 necessary for Langer.

12:36PM 4 MR. KRISHNAN: Thank you, Your Honor. Yes.

12:36PM 5 THE COURT: Okay. See you at 1:35.

12:40PM 6 (Lunch recess 12:40 P.M. to 1:35 P.M.)

01:37PM 7 THE COURT: In a minute, my law clerk is going to be
01:37PM 8 handing out a revised set of instructions that fix some things,
01:37PM 9 and we still obviously have a fair amount to -- sorry -- to cover
01:37PM 10 when we have a charge conference. It was my sincere hope, I am
01:37PM 11 not ready to give up on it, that we would let the jury go a little
01:37PM 12 bit early today when the evidence concluded and do a charge
01:37PM 13 conference this afternoon and it looks like maybe a final in the
01:37PM 14 morning. So let's try to plow ahead.

01:37PM 15 Are we ready to start?

01:37PM 16 MR. KRISHNAN: Yes, Your Honor. There is one evidentiary
01:37PM 17 point, which I think could -- depending on how -- could carry over
01:37PM 18 to tomorrow.

01:37PM 19 THE COURT: Would everyone else like to sit down?

01:37PM 20 MR. KRISHNAN: It's the Marandino prior statement. At
01:37PM 21 this point, it's pretty clear that there is a significant
01:37PM 22 discrepancy between Mr. Bravo's recounting of events and
01:37PM 23 Marandino's recounting of events. Both of whom were present. And
01:38PM 24 so we would move into evidence Mr. Marandino's prior statement PX
01:38PM 25 76.

01:38PM 1 THE COURT: When did he make that prior statement?

01:38PM 2 MR. KRISHNAN: In 2008, I believe. 2008.

01:38PM 3 THE COURT: And how does that predate his motive to color
01:38PM 4 the testimony?

01:38PM 5 MR. KRISHNAN: Because he testified in 2021. And it's
01:38PM 6 not clear at this point what the allegation of fabrication is
01:38PM 7 going to be. You know, we're going to hear it in closing. But
01:38PM 8 you know, it's at this point, Mr. Bravo's testified, Marandino's
01:38PM 9 testified, defense is clearly going to bolster Mr. Bravo's version
01:38PM 10 of events. There are consistencies over time between
01:39PM 11 Mr. Marandino's prior statement and his current one. Mr. Bravo's
01:39PM 12 have changed. It is not clear to me -- until we hear their
01:39PM 13 closing, it is not going to be clear to me what exactly their
01:39PM 14 claim is. But that's the issue. He testified before the criminal
01:39PM 15 proceedings occurred before others had testified. It was -- this
01:39PM 16 was at the beginning of the process in 2008. The trial didn't
01:39PM 17 happen until 2012.

01:39PM 18 THE COURT: So the statement I'm looking at happened in
01:39PM 19 2008?

01:39PM 20 MR. KRISHNAN: Correct.

01:39PM 21 THE COURT: What are the circumstances -- I'm sorry. Let
01:39PM 22 me say this. We'll take this up at the next break. But I haven't
01:39PM 23 heard a proffer that would explain that this was -- that this is a
01:39PM 24 statement he made prior to circumstances that would give rise to
01:40PM 25 the fabrication.

01:40PM 1 MR. KRISHNAN: Yes. I think those circumstances would be
01:40PM 2 hearing the other evidence at trial and trying to testify
01:40PM 3 consistently with that. This was before any of that had happened.

01:40PM 4 THE COURT: Okay. We'll take that up at a break. Let's
01:40PM 5 bring the jury in.

01:40PM 6 (Jury in at 1:40 P.M.)

01:40PM 7 THE COURT: Okay. Welcome back from lunch, ladies and
01:41PM 8 gentlemen.

01:41PM 9 Mr. Krishnan, Mr. Muzzio.

01:41PM 10 MR. MUZZIO: Thank you, Your Honor. Plaintiffs call
01:41PM 11 Professor Maximo Langer.

01:41PM 12 THE COURT: Professor Langer, could you come forward,
01:41PM 13 please.

01:41PM 14 THE COURTROOM DEPUTY: Sir, please raise your right hand
01:41PM 15 to be sworn.

01:41PM 16 (The witness is sworn.)

01:41PM 17 THE WITNESS: I do.

01:41PM 18 THE COURTROOM DEPUTY: Thank you, sir. Please be seated.
01:41PM 19 State your name. Can you spell your last name for the record?

01:41PM 20 THE WITNESS: Maximo Langer. L, as in Lawrence, A, N as
01:41PM 21 in Nancy, G as in George, E, R as in Robert.

01:41PM 22 MAXIMO LANGER, PLAINTIFFS' WITNESS, SWORN

01:41PM 23 DIRECT EXAMINATION

01:41PM 24 BY MR. MUZZIO:

01:41PM 25 Q. Good afternoon, Professor Langer.

01:41PM 1 A. Good afternoon.

01:41PM 2 Q. Professor Langer, where are you presently employed?

01:41PM 3 A. I am the David -- excuse me -- I am the David G. Price and
01:42PM 4 Dallas Price Professor of law at UCLA School of Law. I also have
01:42PM 5 taught at the Di Tella University in Argentina. Every year, I
01:42PM 6 teach there.

01:42PM 7 Q. How long have you been teaching law?

01:42PM 8 A. I have been teaching law -- at UCLA, I have been teaching law
01:42PM 9 since 2003. At the Trelew University, I have been teaching since
01:42PM 10 2007.

01:42PM 11 Q. Do you also perform legal research?

01:42PM 12 A. Yes. I perform legal research on comparative law on criminal
01:42PM 13 law. I do also international criminal law and human rights.

01:42PM 14 THE COURT: You might need to slide back just a little,
01:42PM 15 Professor. Thank you.

01:42PM 16 THE WITNESS: Of course, Your Honor.

01:42PM 17 BY MR. MUZZIO:

01:42PM 18 Q. Could you explain what comparative law is?

01:42PM 19 A. Of course. Comparative law is the field of law that compares
01:43PM 20 the laws of different legal systems as a way to generate mutual
01:43PM 21 understanding and bridges between different legal systems; like
01:43PM 22 let's say the United States and Argentina; right, to create mutual
01:43PM 23 understanding between these two legal systems.

01:43PM 24 Q. Are there any legal systems in particular that your research
01:43PM 25 focuses on?

01:43PM 1 A. Yes. The United States and Argentina are two of those. I
01:43PM 2 work also in Latin America and Continental Europe and Western
01:43PM 3 Europe.

01:43PM 4 Q. Other than your work as a comparative legal scholar, do you
01:43PM 5 have any other background in Argentine law?

01:43PM 6 A. Yes. I have a law degree from the University of Buenos Aires
01:43PM 7 School of Law. I also -- as I was saying earlier taught -- teach
01:43PM 8 there every year, and I've been teaching there in different
01:43PM 9 fashions since the early 1990s. And I also practice criminal law
01:43PM 10 in Argentina, and in Argentina as an attorney, and also as a law
01:44PM 11 clerk in a federal court, but criminal trial court.

01:44PM 12 Q. Does any of your legal scholarship focus on remedies?

01:44PM 13 A. All of my scholarship, in one way or another, it focuses on
01:44PM 14 the question of remedies.

01:44PM 15 Q. And what are some of the places in which your legal
01:44PM 16 scholarship has been published?

01:44PM 17 A. Well, the top journals in my field of knowledge, the American
01:44PM 18 Journal of Comparative Law, the American Journal of International
01:44PM 19 Law, the Harvard International Law Review, the Yale Journal of
01:44PM 20 International Law, and others.

01:44PM 21 Q. Are you being compensated for your testimony today?

01:44PM 22 A. No. I am doing this work pro bono. I am only being
01:44PM 23 reimbursed for the travel expenses to be here in Miami these days.

01:44PM 24 Q. Let's talk about some of the research that you did before you
01:44PM 25 got here today.

01:44PM 1 Professor Langer, were you retained by plaintiffs to provide
01:44PM 2 expert testimony in this case?

01:45PM 3 A. Yes, I was.

01:45PM 4 Q. And what is the nature of that -- strike that.

01:45PM 5 What was your assignment?

01:45PM 6 A. Essentially to explain what legal remedies plaintiffs had
01:45PM 7 available in Argentina regarding the events that happened in
01:45PM 8 Trelew on August 22, 1972.

01:45PM 9 Q. Could you briefly explain to the jury what a legal remedy is?

01:45PM 10 A. Of course. A legal remedy is essentially a means that the
01:45PM 11 court or some other body may use to bring legal redress for a past
01:45PM 12 wrong, a past legal wrong or to enforce a legal right.

01:45PM 13 Q. And in a criminal case, what would be an example of a legal
01:45PM 14 remedy?

01:45PM 15 A. For instance, in a criminal case, it would be punishment like
01:45PM 16 imprisonment the punishment. That would be a legal remedy for the
01:46PM 17 legal wrong of committing a crime.

01:46PM 18 Q. What about in a civil case?

01:46PM 19 A. In a civil case like this one, for instance, typically would
01:46PM 20 be compensation, monetary compensation.

01:46PM 21 Q. And are there any other types of legal remedies that you're
01:46PM 22 familiar with?

01:46PM 23 A. Yeah. Of course. There are also administrative remedies that
01:46PM 24 are remedies that the state as such may use in order to bring some
01:46PM 25 sort of legal redress or some sort of way of addressing a given

01:46PM 1 situation.

01:46PM 2 Q. What materials did you review in reaching your overall
01:46PM 3 conclusions on the availability of remedies for victims and their
01:46PM 4 families related to the Trelew Massacre?

01:46PM 5 A. Well, I reviewed the type of legal materials or the materials
01:46PM 6 more broadly that legal scholars, legal academics review when we
01:46PM 7 are talking about questions of remedies, and that includes the
01:46PM 8 laws -- for instance, the laws of Argentina, or for instance
01:47PM 9 executive decrees; right, by Argentina, or a case law, cases --
01:47PM 10 cases that our Argentinian courts have issued. I have also
01:47PM 11 reviewed case files related to this case and some other sort of
01:47PM 12 legal documents related to this case.

01:47PM 13 I have also reviewed contemporary materials; like for
01:47PM 14 instance, documents from the United States Department of State;
01:47PM 15 right, at the time when or contemporaneously when the events of
01:47PM 16 Trelew took place. I have also reviewed also media reports to
01:47PM 17 give some context and also reports by professional associations,
01:47PM 18 let's say the New York Bar Association; right, and you know I'm
01:47PM 19 talking about things that happened in Argentina at that given
01:47PM 20 point in time.

01:48PM 21 Q. And you may have said this, and I apologize. But why did you
01:48PM 22 review these sorts of materials?

01:48PM 23 A. Well, the thing is that there is the law in the books and then
01:48PM 24 there is the law in action; right, meaning by this that there we
01:48PM 25 have to study for the question of remedies what the formal law is;

01:48PM 1 right? If the laws of Argentina give a legal remedy in a given
01:48PM 2 case or for a given situation, but then we have to see whether the
01:48PM 3 remedies are effective; right, and that's the law in action;
01:48PM 4 right? And so I've been reviewing materials; right, to analyze
01:48PM 5 the issue of both dimensions.

01:48PM 6 MR. MUZZIO: Your Honor, at this point, plaintiffs would
01:48PM 7 move to proffer Professor Langer as an expert as to the
01:48PM 8 availability of legal remedies in Argentina.

01:48PM 9 MR. SLADE: No objection, Your Honor, to him being
01:48PM 10 proffered as an expert. Just note for the Court that we have
01:48PM 11 withdrawn the exhaustion defense. I'm not sure what the relevance
01:48PM 12 of the testimony is going to be based upon what I've heard so far.

01:48PM 13 THE COURT: Agreed. Mr. Muzzio -- counsel, keep the
01:49PM 14 scope of the testimony relevant to the issues at play.

01:49PM 15 MR. MUZZIO: It certainly will be, Your Honor.

01:49PM 16 THE COURT: Thank you.

01:49PM 17 BY MR. MUZZIO:

01:49PM 18 Q. Professor Langer, I want to begin by talking about civil
01:49PM 19 remedies related to the Trelew shootings. Did any families in
01:49PM 20 Argentina file civil lawsuits following the Trelew shooting?

01:49PM 21 A. Yes. There were four families including three of the
01:49PM 22 plaintiffs in this case, and a survivor of the shooting in Trelew
01:49PM 23 that filed civil lawsuits in Argentina between 1972 and 1974.

01:49PM 24 Q. Do you have an understanding as to the result of those civil
01:49PM 25 lawsuits filed between 1972 and 1974?

01:49PM 1 A. Yes. After starting at the normal pace as normal lawsuits,
01:50PM 2 the lawsuits were -- translating from Spanish -- paralyzed. The
01:50PM 3 plaintiffs stopped moving the lawsuits forward. They didn't move
01:50PM 4 forward them anymore. And around 1977, all the civil lawsuits had
01:50PM 5 been dismissed.

01:50PM 6 Q. Do you have an understanding as to why the lawsuits were
01:50PM 7 dismissed?

01:50PM 8 A. Yes. My study basically has reached the conclusion that the
01:50PM 9 plaintiffs or family members of the plaintiffs or their lawyers
01:50PM 10 were all persecuted in a way that made impossible to them to
01:50PM 11 pursue these civil lawsuits in Argentina.

01:50PM 12 Q. All right. Aside from the persecution that you just
01:50PM 13 described, was there anything else that may have made it difficult
01:50PM 14 for families of victims to obtain civil remedies for the killings
01:50PM 15 at Trelew during this period?

01:51PM 16 A. Yes. One of the obstacles was that on the very same day in
01:51PM 17 which the shootings took place, the military regime at the time
01:51PM 18 issued a decree that they call a law, but it was just a decree,
01:51PM 19 basically making a crime disseminating communications that could
01:51PM 20 be attributed to so-called subversive groups. And that had the
01:51PM 21 potential effect of essentially criminalizing any public
01:51PM 22 expression of alternative account to the account that the military
01:51PM 23 was providing about what had happened that day.

01:51PM 24 Q. Now, I want to talk about criminal remedies.

01:51PM 25 Were there any criminal remedies immediately following the

01:51PM 1 Trelew shootings?

01:51PM 2 A. After -- immediately following the Trelew shootings, there was
01:51PM 3 this military investigation. I've been sitting at this trial, and
01:52PM 4 I think we've heard about this. An Argentine criminal court in
01:52PM 5 2012 said that this was not a criminal investigation; that that
01:52PM 6 was an administrative one, and essentially, that investigation
01:52PM 7 ended up not holding anyone criminally accountable anyway.

01:52PM 8 Q. Did a criminal investigation into the Trelew shootings
01:52PM 9 eventually occur in Argentina?

01:52PM 10 A. Yes. There was a criminal investigation that started in the
01:52PM 11 year 2005 and ended up with criminal convictions against three of
01:52PM 12 the people that participated in the shootings in Trelew on
01:52PM 13 August 22, 1972. In 2012, they were convicted in that way.

01:52PM 14 Q. Thank you, Professor Langer. Before we talk about that
01:52PM 15 criminal proceeding, I would like you to provide a little more
01:52PM 16 background into criminal procedure in Argentina.

01:53PM 17 How many parties typically participate in a criminal case
01:53PM 18 like the one that you reviewed related to the Trelew shootings
01:53PM 19 that began in 2005 and finished in 2012?

01:53PM 20 MR. SLADE: Objection, Your Honor. Criminal procedure in
01:53PM 21 Argentina is outside the scope of this gentleman's report.

01:53PM 22 THE COURT: Can you proffer where you're headed?

01:53PM 23 MR. MUZZIO: A proffer for the scope?

01:53PM 24 THE COURT: Yes.

01:53PM 25 MR. MUZZIO: Yes, Your Honor, this goes --

01:53PM 1 THE COURT: Bearing in mind -- I'm sorry -- specific to
01:53PM 2 what remains at issue.

01:53PM 3 MR. MUZZIO: This is relevant to the plaintiffs'
01:53PM 4 participation in the criminal proceedings, which goes directly to
01:53PM 5 tolling.

01:53PM 6 MR. SLADE: Your Honor, that's not covered in the scope
01:53PM 7 of the report, and I can cite the pages and lines of the report.
01:53PM 8 He wasn't retained for that purpose, and I don't understand --

01:53PM 9 THE COURT: Let me ask Mr. Muzzio to direct me where in
01:53PM 10 his report that's disclosed and the report number.

01:53PM 11 MR. MUZZIO: Thank you, Your Honor. He talks --

01:53PM 12 THE COURT: No, no. Sorry. The report is what exhibit
01:53PM 13 number?

01:54PM 14 MR. MUZZIO: It's not an exhibit. We have a copy of it
01:54PM 15 though.

01:54PM 16 THE COURT: Oh. I'll take it, please.

01:54PM 17 MR. MUZZIO: We have two copies. Would you like two or
01:54PM 18 --

01:54PM 19 THE COURT: I just need one. Page and paragraph?

01:54PM 20 MR. MUZZIO: So he on page 15 -- I'm sorry -- paragraph
01:54PM 21 15, page 7, talks about --

01:54PM 22 THE COURT: Hold on. Let me just get there and look.
01:54PM 23 Because on page 15, I have two diagrams and that's all. I have
01:54PM 24 the wrong report, wrong expert.

01:54PM 25 MS. LIND: Sorry, Your Honor.

01:55PM 1 THE COURT: Which paragraph?

01:55PM 2 MR. MUZZIO: 15 A, and then I have additional paragraphs

01:55PM 3 to cite, Your Honor.

01:55PM 4 THE COURT: I'm not sure I agree that 15 A discloses

01:55PM 5 that. Where else?

01:55PM 6 MR. MUZZIO: He -- specifically paragraphs 55 and 56

01:56PM 7 discusses the criminal proceedings in Argentina, as well as 57.

01:56PM 8 THE COURT: The question you just asked isn't disclosed

01:56PM 9 in any of these paragraphs.

01:56PM 10 MR. MUZZIO: I can ask --

01:56PM 11 THE COURT: I apologize, ladies and gentlemen of the

01:56PM 12 jury, but this may take a little bit more time. I know you just

01:56PM 13 came in, but I can't do this in front of you. So I'm going to ask

01:56PM 14 you to go back and refresh your beverages quickly. We will be as

01:57PM 15 fast as we can.

01:57PM 16 (Jury out at 1:57 P.M.)

01:57PM 17 THE COURT: Mr. Muzzio, I'm sorry. Your best argument

01:57PM 18 here that these paragraphs disclose the degree of involvement by

01:57PM 19 the family members.

01:57PM 20 MR. MUZZIO: If I asked that question, it was inelegant,

01:57PM 21 Your Honor. My position is that these paragraphs disclose that

01:57PM 22 Mr. Langer reviewed the criminal proceedings in Argentina and is

01:57PM 23 here prepared to testify about those proceedings and the potential

01:57PM 24 remedy that they provided to the plaintiffs.

01:57PM 25 THE COURT: And what those have provided and how is that

01:57PM 1 still at issue?

01:58PM 2 MR. MUZZIO: No. It's the participation in the process
01:58PM 3 of the criminal proceedings in Argentina which is relevant to
01:58PM 4 tolling.

01:58PM 5 THE COURT: Okay. So I don't know if you and I are just
01:58PM 6 talking past each other. You want him to talk about what the
01:58PM 7 families did in the past?

01:58PM 8 MR. MUZZIO: I want him to explain the criminal
01:58PM 9 proceedings in Argentina and explain how the plaintiffs could have
01:58PM 10 participated in them. Our clients themselves are testifying about
01:58PM 11 what they specifically did.

01:58PM 12 THE COURT: Right. So you're not going to elicit from
01:58PM 13 him the hypothetical of what they could have done. They're going
01:58PM 14 to talk about what they did; right?

01:58PM 15 MR. MUZZIO: Yes.

01:58PM 16 THE COURT: Okay. So I'm still trying to understand what
01:58PM 17 you're going to elicit from Professor Langer.

01:58PM 18 MR. MUZZIO: It's going to be about the proceedings
01:58PM 19 themselves, how they were advanced, Mr. Bravo's role in those
01:58PM 20 proceedings, the pursuit of remedies against Mr. Bravo, how it
01:58PM 21 related to the extradition proceedings against Mr. Bravo, and I
01:58PM 22 think all of that goes to plaintiffs' reliance on those
01:58PM 23 proceedings.

01:58PM 24 THE COURT: How so?

01:58PM 25 MR. MUZZIO: Reasonable -- I wasn't here for the charge

01:59PM 1 conference, Your Honor. But I believe plaintiffs' position is
01:59PM 2 that reasonable reliance on proceedings that are going on in the
01:59PM 3 home country toll the statute of limitations.

01:59PM 4 THE COURT: That's the plaintiffs' position, yes.

01:59PM 5 MR. MUZZIO: Yes.

01:59PM 6 THE COURT: But I don't understand what Professor Langer
01:59PM 7 is adding to that.

01:59PM 8 MR. MUZZIO: He's describing the remedies that were
01:59PM 9 available during the period. So that the jury can assess whether
01:59PM 10 the plaintiffs reasonably relied on those remedies while they were
01:59PM 11 going on.

01:59PM 12 THE COURT: Oh, during the criminal proceedings that are
01:59PM 13 already behind us?

01:59PM 14 MR. MUZZIO: Yes, Your Honor, yes. From the period of
01:59PM 15 2005 until at least 2012, the criminal investigation starts in
01:59PM 16 2005, it concludes with convictions in 2012. Plaintiffs' position
01:59PM 17 is that that period at least should toll the statute of
01:59PM 18 limitations. I understand there was discussion this morning
01:59PM 19 about --

01:59PM 20 THE COURT: That's okay. I'm listening to you. You
01:59PM 21 don't have to -- go ahead.

01:59PM 22 MR. MUZZIO: Whether the extradition denial provided
02:00PM 23 estop for that. Professor Langer is here to explain why in his
02:00PM 24 professional opinion it would not, it would not have ended
02:00PM 25 reasonable reliance on that period. He won't testify --

02:00PM 1 THE COURT: All right. He's going to say that there was
02:00PM 2 not reasonable reliance? Do that again.

02:00PM 3 MR. MUZZIO: No, no, no. He is not going to testify as
02:00PM 4 to whether -- the ultimate issue whether it would have been
02:00PM 5 reasonable or not to rely on that. He is going to provide his
02:00PM 6 expert opinion on how those proceedings would have allowed for
02:00PM 7 extradition to advance. This is all disclosed in his report, Your
02:00PM 8 Honor.

02:00PM 9 We never received a motion. We never received e-mail.
02:00PM 10 He describes the criminal proceedings. He describes efforts to
02:00PM 11 extradite Mr. Bravo. He describes how Mr. Bravo was located. He
02:00PM 12 describes Bravo's attempt to evade extradition. He describes the
02:00PM 13 Truth and Reconciliation Commission in Argentina.

02:00PM 14 THE COURT: Okay. I would agree with you that he can and
02:01PM 15 should be able to testify about the Truth and Reconciliation
02:01PM 16 Commission. I don't understand the -- either the necessity or
02:01PM 17 appropriateness of him describing historically the events relating
02:01PM 18 to the extradition.

02:01PM 19 MR. KRISHNAN: Your Honor, if I may, just because I was
02:01PM 20 here this morning earlier when we discussed this and now, I think
02:01PM 21 here it's simply to describe -- you know, the plaintiff who will
02:01PM 22 testify, Ms. Camps in particular can say what she did.

02:01PM 23 THE COURT: Uh-huh.

02:01PM 24 MR. KRISHNAN: She is not a lawyer. And so her
02:01PM 25 describing the legal process is going to come in I think in a

02:01PM 1 garbled way. Professor Langer can describe what -- with
02:01PM 2 specifics, kind of what a complainant in a criminal proceedings in
02:01PM 3 Argentina can do. It's sort of that simple.

02:02PM 4 THE COURT: And that sounds fine. But I understood the
02:02PM 5 proffer now to be that he's going to describe what efforts were
02:02PM 6 made in the extradition proceeding to find Mr. Bravo, to extradite
02:02PM 7 Mr. Bravo. That it was unsuccessful. None of that seems like it
02:02PM 8 should be coming in through an expert witness. I don't understand
02:02PM 9 how that's happening. That was my specific question.

02:02PM 10 MR. KRISHNAN: On that specific issue, there is just a
02:02PM 11 connection, which I think to no one -- myself included when I
02:02PM 12 first joined the case -- a connection that would be obvious to no
02:02PM 13 one as to why the criminal proceedings against people who are not
02:02PM 14 Bravo is connected in any way to extradition efforts for Mr.
02:02PM 15 Bravo, but they are very closely tied together. You need to
02:02PM 16 review the case file to understand that, which is what this
02:02PM 17 witness has done. And it's just providing that connection, which
02:02PM 18 I think otherwise wouldn't be understood; that this witness can
02:03PM 19 do.

02:03PM 20 THE COURT: I'm not following your proffer. A connection
02:03PM 21 between the Argentina case, the extradition proceeding, and?

02:03PM 22 MR. KRISHNAN: And those two things. Between those two
02:03PM 23 things. Between the criminal trial in Argentina which charged Mr.
02:03PM 24 Bravo for which Mr. Bravo never appeared because he was in the
02:03PM 25 United States, and efforts to extradite him, which flowed out of

02:03PM 1 the criminal proceeding.

02:03PM 2 THE COURT: But how much more do we need to know about
02:03PM 3 this? They know there was a proceeding for which he did not
02:03PM 4 appear and that extradition was denied.

02:03PM 5 MR. KRISHNAN: Well, but the extradition process arose
02:03PM 6 out of the criminal proceeding. It's that link that I worry the
02:03PM 7 jury is not going to get. The final decision in 2012 --

02:03PM 8 THE COURT: You questioned Mr. Bravo on that yesterday
02:03PM 9 explicitly.

02:03PM 10 MR. KRISHNAN: We did. And I'm not sure how much the
02:03PM 11 jury would have gotten from Mr. Bravo's --

02:03PM 12 THE COURT: So Mr. Langer is, first of all, not an expert
02:04PM 13 on U.S. law; right? So's he going to be talking about it from the
02:04PM 14 Argentina side to say that there is a proceeding. He's not here.
02:04PM 15 Argentina can ask the United States for him.

02:04PM 16 MR. KRISHNAN: There are two probably two pieces of it.
02:04PM 17 It's simply that the final order in 2012 at the criminal trial
02:04PM 18 order in 2012 ordered the prosecutor to initiate extradition
02:04PM 19 proceedings against Mr. Bravo.

02:04PM 20 THE COURT: Okay.

02:04PM 21 MR. SLADE: Your Honor --

02:04PM 22 MR. KRISHNAN: And that the file shows that the
02:04PM 23 prosecutors did not know where Mr. Bravo was until 2008 when
02:04PM 24 Interpol told them. Interpol advised the prosecutors where Mr.
02:04PM 25 Bravo was. That supports every single plaintiff who said, until

02:04PM 1 2008, we had no idea where he was. The case file indicates that
02:04PM 2 not even government prosecutors knew where he was until 2008 when
02:04PM 3 Interpol gave that information to the prosecutors.

02:04PM 4 THE COURT: Okay.

02:04PM 5 MR. SLADE: Your Honor, respectfully, none of this is in
02:04PM 6 the report. The report is limited to several areas of inquiry.
02:05PM 7 The scope of the report is delineated on page 7. It clearly
02:05PM 8 states, the purpose of this witness' testimony, which is to talk
02:05PM 9 about issues regarding exhaustion. Basically procedures in which
02:05PM 10 certain statements of witnesses were taken, which we were going to
02:05PM 11 object to on other grounds because of buttressing the testimony of
02:05PM 12 other witnesses, and also whether statements given by witnesses
02:05PM 13 would have exposed them to criminal liability. And that's the end
02:05PM 14 of it.

02:05PM 15 There is no disclosure in this report that there is going
02:05PM 16 to be an explanation about the criminal proceedings and how they
02:05PM 17 affected the --

02:05PM 18 THE COURT: Fair observation. Where is that disclosed?

02:05PM 19 MR. MUZZIO: Your Honor, paragraphs 55 to 57 describe the
02:05PM 20 criminal proceedings, describe the results, they describe the
02:05PM 21 efforts to extradite Mr. Bravo during those proceedings. They
02:05PM 22 cite to the case record for the second extradition proceeding.
02:05PM 23 They talk about --

02:05PM 24 THE COURT: Will you slow down, please? I'm trying to
02:06PM 25 keep up with you. I know you know this well. I'm just trying to

02:06PM 1 get to the paragraph.

02:06PM 2 MR. MUZZIO: I'm sorry.

02:06PM 3 THE COURT: It discloses what Mr. Krishnan just proffered
02:06PM 4 about where the prosecutors just learned of Bravo's whereabouts.

02:06PM 5 Okay. That, you agree, is disclosed?

02:06PM 6 MR. MUZZIO: Thank you, Your Honor.

02:06PM 7 THE COURT: Hold on. Mr. Slade.

02:06PM 8 MR. SLADE: Your Honor, it is disclosed by way of
02:06PM 9 background. But when you talk about what this witness is coming
02:06PM 10 here to testify to, there are two parts of this report, which
02:07PM 11 indicate what we could expect when we came in here he was going to
02:07PM 12 say. The summary of conclusions, which is on page 4, which talks
02:07PM 13 nothing about that, that he was going to give an opinion about the
02:07PM 14 criminal proceedings in Argentina, and on the scope of the report
02:07PM 15 on page 7. So it's disclosed in two places what this witness is
02:07PM 16 going to testify to.

02:07PM 17 Now, he can provide any background he wants in order to
02:07PM 18 support those conclusions. But what they're citing to you is the
02:07PM 19 background, they are not citing to you what was disclosed to us
02:07PM 20 about what this witness was going to say on the witness stand and
02:07PM 21 give his opinion about. And that's why we would be prejudiced if
02:07PM 22 they pivoted because of what happened this morning and change
02:07PM 23 their approach, recast their witness's testimony, and came to this
02:07PM 24 court in the afternoon of day four of the trial with a completely
02:07PM 25 new theory and completely new conclusions by their expert who --

02:07PM 1 this has been outstanding for months.

02:07PM 2 Of course, we didn't take the witness's deposition
02:07PM 3 either. But that having been said, it's very clear what he was
02:08PM 4 supposed to testify to, and we don't think that he can stray from
02:08PM 5 that. That's prejudicial to us.

02:08PM 6 THE COURT: He's not going to stray from the report. But
02:08PM 7 now the question becomes, again, what it is you intend to elicit
02:08PM 8 and whether or not it's fairly disclosed. I agree that the fact
02:08PM 9 of -- the historical facts are disclosed in here, and I'm still
02:08PM 10 trying to appreciate whether these are background facts that
02:08PM 11 support an opinion, as opposed to the purpose of his testimony was
02:08PM 12 to come in here and be a historian with respect to the file, and
02:08PM 13 that's not how I had understood it from the scope either.

02:08PM 14 So just, again, slowly, your intended proffer for him is?

02:08PM 15 MR. MUZZIO: Yes. He is going to testify about the
02:08PM 16 availability of remedies and whether those remedies were available
02:08PM 17 against Mr. Bravo. And the criminal proceeding in Argentina
02:09PM 18 involved the search for Mr. Bravo. It was interrelated with the
02:09PM 19 extradition attempt, and after extradition was denied, the court
02:09PM 20 order -- the court order that convicted the defendants that were
02:09PM 21 in Argentina, ordered that that file be forwarded to the
02:09PM 22 appropriate court in Argentina to continue extradition.

02:09PM 23 And so I believe that Mr. Langer's testimony on the
02:09PM 24 availability of remedies in Argentina during this period of 2005
02:09PM 25 to 2012 is going to ultimately be relevant to whether or not the

02:09PM 1 plaintiffs were reasonably relying on that proceeding during this
02:09PM 2 time period. That goes directly to tolling. It's disclosed in
02:09PM 3 his report. His report is very clearly about remedies. It's not
02:09PM 4 limited to exhaustion of those remedies. And he describes it in a
02:09PM 5 lot of detail, as well as all of the documents. And Mr. Slade's
02:10PM 6 suggestion that they didn't have notice that he was going to
02:10PM 7 testify about these things, it's in the report.

02:10PM 8 THE COURT: Well, I'm struggling to find it, anything
02:10PM 9 close to the way you're characterizing it now, and I'm combing it.
02:10PM 10 So.

02:10PM 11 MR. KRISHNAN: Your Honor, paragraph 57, line -- first
02:10PM 12 sentence.

02:10PM 13 THE COURT: I understand. But that's why I remarked the
02:10PM 14 difference between what historical facts from the file does he
02:10PM 15 recite in this report as a basis for an opinion. I see that those
02:10PM 16 facts are listed in here as opposed to the correlation to an
02:10PM 17 opinion that these plaintiffs continued to rely on -- well, either
02:10PM 18 -- I mean, previously, I had a proffer that you were going to
02:10PM 19 elicit from Professor Langer how much time they were going to
02:10PM 20 spend in criminal proceedings, which I think at this point, you've
02:10PM 21 said that's not what you meant, and that's not where you're
02:11PM 22 headed; right?

02:11PM 23 MR. MUZZIO: No, Your Honor. It's on the availability --

02:11PM 24 THE COURT: Sorry. I just want to make sure that we're
02:11PM 25 clear on that. That's not where you're headed with Professor

02:11PM 1 Langer? You're not going to ask him to testify about how much
02:11PM 2 time these plaintiffs did or would take in a criminal proceeding?

02:11PM 3 MR. MUZZIO: No, no. The individual plaintiffs, no.
02:11PM 4 That's not in the report.

02:11PM 5 THE COURT: Any plaintiff? You're not going to elicit
02:11PM 6 from him what happens in a criminal proceeding and how
02:11PM 7 time-consuming it is for the plaintiffs, because that's not
02:11PM 8 disclosed?

02:11PM 9 MR. MUZZIO: No.

02:11PM 10 THE COURT: Okay. So we take that one off the table, and
02:11PM 11 now we talk about the extent to which the report fairly discloses
02:11PM 12 what remedies were available. That patently is. But your point
02:11PM 13 is that among those remedies that he disclosed he would testify
02:11PM 14 about is the outcome of the criminal proceeding.

02:11PM 15 MR. MUZZIO: It's not just the outcome. It's how the
02:11PM 16 outcome would have affected extradition proceedings.

02:12PM 17 THE COURT: How it would have?

02:12PM 18 MR. MUZZIO: Or how it did.

02:12PM 19 THE COURT: How it did.

02:12PM 20 MR. MUZZIO: If you look at paragraph 57, it talks about
02:12PM 21 how following the convictions, the case file was forwarded to the
02:12PM 22 appropriate federal court in Rawson, Argentina.

02:12PM 23 THE COURT: I understand. But again, he's just reciting
02:12PM 24 facts that he learned from a file as opposed to how that plays
02:12PM 25 into any opinion in this case. That's the piece I'm just not

02:12PM 1 following you on.

02:12PM 2 MR. MUZZIO: I believe that the opinion is that it
02:12PM 3 advanced the extradition proceedings. I believe that's clear from
02:12PM 4 that fact being disclosed. I don't think it's prejudicial to the
02:12PM 5 defendants. I think they very reasonably could have anticipated
02:12PM 6 that he would make a statement that says that the criminal
02:12PM 7 proceedings advanced extradition when he says that they did. And
02:12PM 8 I think that that's an appropriate subject for an expert opinion
02:12PM 9 because it requires specialized knowledge.

02:12PM 10 We don't want to be in a position where they're then
02:12PM 11 objecting to our clients testifying about extradition. I believe
02:13PM 12 when Mr. Cappello testified, they did make objections when he
02:13PM 13 tried to give some type of testimony related to the legal
02:13PM 14 proceedings.

02:13PM 15 THE COURT: Let me try one more -- be patient with me.
02:13PM 16 You've had this expert for a long time. I've had him for
02:13PM 17 15 minutes. You intend to elicit from him an explanation of the
02:13PM 18 proceedings, criminal and -- what we would consider quasi
02:13PM 19 criminal; that is, there was a trial, the result of which had the
02:13PM 20 impact of leading to the extradition proceedings restarting here
02:13PM 21 after 2012?

02:13PM 22 MR. MUZZIO: Yes, Your Honor.

02:13PM 23 THE COURT: And have I just summarized all of the
02:13PM 24 testimony that you intend to elicit from Professor Langer?

02:13PM 25 MR. MUZZIO: I will also ask him about the TRC process in

02:13PM 1 Argentina, which is disclosed in the report as well. And he will
02:13PM 2 provide testimony that there was no TRC for the Trelew Massacre.

02:13PM 3 THE COURT: Okay.

02:13PM 4 MR. MUZZIO: And how the trial itself could have been a
02:13PM 5 substitute.

02:13PM 6 THE COURT: Okay. Piece by piece. The first piece with
02:14PM 7 respect to the explanation about the legal proceedings that, as I
02:14PM 8 just summarized it back, seems appropriate and fairly disclosed.
02:14PM 9 Do you disagree with that?

02:14PM 10 MR. SLADE: I do.

02:14PM 11 THE COURT: Because?

02:14PM 12 MR. SLADE: I disagree with that because they specified
02:14PM 13 what this witness was going to give an opinion about, and that was
02:14PM 14 not included in there. So because he goes into an entire history
02:14PM 15 of what happened in Argentina over a period of years doesn't give
02:14PM 16 me the information I need to prepare for this trial in order to
02:14PM 17 cross-examine this witness on this issue, which by the way, I
02:14PM 18 think just came up during the course of the trial because they've
02:14PM 19 just only recently identified their tolling mark.

02:14PM 20 THE COURT: I don't disagree that they're making an
02:14PM 21 election of what part of the report to now focus on. But you know
02:14PM 22 as an historian in a legal -- sorry -- I keep saying historian --
02:14PM 23 as a legal expert -- two things, the intention to rely on those
02:15PM 24 two facts is patently disclosed in the report even if not under a
02:15PM 25 paradigm of, this is my opinion. But also those are fairly bland

02:15PM 1 facts, I mean, in the context of this whole trial. So I'm trying
02:15PM 2 to decipher the prejudice of allowing him to explain the process
02:15PM 3 which is disclosed.

02:15PM 4 MR. SLADE: Well, Your Honor, again, it's surprise is the
02:15PM 5 first issue. The second issue is that this witness was clearly
02:15PM 6 proffered to begin with, the way I look at the report, to address
02:15PM 7 the exhaustion defense. That's why it says here in the first
02:15PM 8 paragraph, the available remedies to the plaintiffs in Argentina
02:15PM 9 during the years at issue. And this witness was going to testify
02:15PM 10 about the fact that there were no available remedies, they
02:15PM 11 couldn't exhaust the administrative exhaustion remedies. So when
02:15PM 12 we took exhaustion off the table, now they've pivoted to change
02:15PM 13 their theory to something else, which they really can't do in the
02:15PM 14 middle of trial.

02:15PM 15 So I don't think we need Mr. Langer to give us an opinion
02:16PM 16 about whether there was an extradition proceeding, what the
02:16PM 17 results of it were, because it's already been testified, or that
02:16PM 18 there was a criminal proceedings and what the results of that
02:16PM 19 were. That's also already been testified to.

02:16PM 20 These are just facts -- procedural history of things that
02:16PM 21 occurred in Argentina, which I'm sure Mr. Langer knows about, but
02:16PM 22 his expert opinion is not going to be helpful to the jury because
02:16PM 23 we've already talked about all these things, and we already know
02:16PM 24 what happened.

02:16PM 25 THE COURT: I understand and I do agree especially as you

02:16PM 1 characterize it opinion, but to nonetheless allow an expert in
02:16PM 2 Argentine law to explain those two proceedings to the jury, again,
02:16PM 3 in a manner that's -- those facts are disclosed, it is not tied to
02:16PM 4 a particular fact that the plaintiffs are electing to use solely a
02:16PM 5 piece of the disclosed report, I don't agree is prejudicial.

02:16PM 6 Now, the other piece of the TVPA, what Mr. Muzzio just
02:16PM 7 proffered with respect to the absence of that remedy there, did
02:17PM 8 you also want to be heard there? Or did you --

02:17PM 9 MR. SLADE: I don't see where that's disclosed either.

02:17PM 10 THE COURT: Tell me, Mr. Muzzio.

02:17PM 11 MR. MUZZIO: I'm sorry, Your Honor, the specific issue --

02:17PM 12 THE COURT: You said you're also -- we locked down the
02:17PM 13 one thing you're going to elicit from him. I am going to permit
02:17PM 14 you to have him describe from his expertise as a -- I'm sorry --
02:17PM 15 perspective as an expert on Argentine law and procedure, the
02:17PM 16 effect of the resolution of the criminal proceedings on the
02:17PM 17 renewed extradition effect -- request. You said the next thing
02:17PM 18 you were going to elicit from him was about the absence of a truth
02:17PM 19 commission. Did I understand you correctly?

02:17PM 20 MR. MUZZIO: Yes, Your Honor. But I'll just clarify.
02:17PM 21 There was a truth commission in Argentina in the mid 1980s. It
02:17PM 22 covered some --

02:17PM 23 THE COURT: Hold up. Is that what you intend to elicit
02:18PM 24 from him?

02:18PM 25 MR. MUZZIO: That's part of the testimony, yes.

02:18PM 1 THE COURT: Where is it disclosed in the report?

02:18PM 2 MR. MUZZIO: Okay. Your Honor, paragraph 20 -- I'm sorry
02:18PM 3 -- page 20, paragraph 35 and 36.

02:18PM 4 THE COURT: 35 does not disclose that.

02:19PM 5 MR. MUZZIO: CONADEP was the Truth and Reconciliation
02:19PM 6 Commission, Your Honor.

02:19PM 7 THE COURT: Okay. Again, I'm trying to ask you to be
02:19PM 8 patient with me. But I thought your proffer was that you intended
02:19PM 9 to elicit from him that there was not a Truth and Reconciliation
02:19PM 10 Commission, which this paragraph does not say.

02:19PM 11 MR. MUZZIO: There was not one that applied to the Trelew
02:19PM 12 shootings. This Truth and Reconciliation Commission only
02:19PM 13 addressed crimes committed by the junta that began in 1976 and
02:19PM 14 continued until 1983.

02:19PM 15 THE COURT: So from the last sentence there -- the facts
02:19PM 16 that are the subject of this lawsuit are not included in the never
02:19PM 17 again report -- you think fairly discloses that there was no
02:19PM 18 commission?

02:19PM 19 MR. MUZZIO: That that commission did not address the
02:20PM 20 facts that are alleged in this case. It did not investigate them.

02:20PM 21 THE COURT: Why would that be pertinent to anything
02:20PM 22 that's still going on?

02:20PM 23 MR. MUZZIO: Professor Langer was going to offer the
02:20PM 24 opinion, Your Honor, that this criminal lawsuit functioned as the
02:20PM 25 only investigation that Argentina had broadly into these crimes.

02:20PM 1 THE COURT: I -- even as I'm reading, my brain won't stop
02:21PM 2 asking this question. You just told me, and I know that my
02:21PM 3 plaintiffs have testified to having gotten reparations. And I am
02:21PM 4 trying to square what you're telling me that you intend to elicit
02:21PM 5 from him. So I'm going to just admit that my brain won't find it
02:21PM 6 in this paragraph because it knows it's not so. I am confused.

02:21PM 7 MR. MUZZIO: I'll do my best to explain it. I understand
02:21PM 8 that there's a lot going on here.

02:21PM 9 MR. KRISHNAN: May I just explain -- just make one point,
02:21PM 10 Your Honor, based on having been here this morning? If a source
02:21PM 11 of confusion for Your Honor is equating the reparation laws with a
02:21PM 12 Truth and Reconciliation Commission type thing like CONADEP, I
02:21PM 13 think those are different.

02:21PM 14 THE COURT: That much I understand.

02:21PM 15 MR. KRISHNAN: Okay.

02:21PM 16 THE COURT: But I thought that Mr. Muzzio just proffered
02:21PM 17 that it's his intention to elicit from Mr. Langer that there was
02:21PM 18 no equivalent process at all, and the only thing that was
02:21PM 19 available to the victims was this criminal proceeding, which,
02:21PM 20 again, my brain can't get its head around because I know my
02:22PM 21 victims got money from a proceeding, so.

02:22PM 22 MR. KRISHNAN: Oh. Yeah, I think that is just because
02:22PM 23 there was -- reparations are a different thing. The reparations
02:22PM 24 were available to people that were victimized by the later junta
02:22PM 25 and the earlier junta alike. I don't think that -- I think in our

02:22PM 1 view, the reparations are sort of a totally separate thing. It's
02:22PM 2 just that CONADEP existed for later junta. It didn't exist for
02:22PM 3 the earlier junta. It's just that simple.

02:22PM 4 THE COURT: Okay. Maybe more to the point and what this
02:22PM 5 discussion is focusing for me is why doesn't this have to do with
02:22PM 6 exhaustion instead of anything else? Because if we're even
02:22PM 7 debating if there was another process, the extent of that process,
02:22PM 8 if this one dealt with Trelew but not the junta, so forth, doesn't
02:22PM 9 all of this go to exhaustion and not whether or not the families
02:22PM 10 were relying on the extradition?

02:23PM 11 MR. KRISHNAN: Your Honor, I think that there they're so
02:23PM 12 closely overlapping the tolling factor about the reliance on a
02:23PM 13 domestic remedy and exhaustion of domestic remedies, that it
02:23PM 14 applies to both. It's -- the opinion applies equally to
02:23PM 15 exhaustion and to the tolling factor that we're relying on, which
02:23PM 16 I understand, Your Honor, your view from this morning about the
02:23PM 17 tolling factor, but that's the tolling factor.

02:23PM 18 MR. MUZZIO: One small point I would add, Your Honor, is
02:23PM 19 Mr. Langer's testimony on this subject will be very limited. He
02:23PM 20 is just going to make the point that there was no other public
02:23PM 21 investigation or accountability process in Argentina related to
02:23PM 22 the Trelew shootings. And I think that goes directly to the heart
02:24PM 23 of reasonable reliance when this was our client's only opportunity
02:24PM 24 in Argentina to have a public accountability process. And by
02:24PM 25 this, I mean, the 2005 to 2012 criminal investigation and trial.

02:24PM 1 I think it will -- and the plaintiffs themselves will testify as
02:24PM 2 to what they did with respect to that trial, and many of them
02:24PM 3 already have. I think it will -- it's relevant to reasonable
02:24PM 4 reliance.

02:24PM 5 THE COURT: Okay. Let me make sure then, and correct me,
02:24PM 6 please, if I am wrong. You intend to elicit two things from him;
02:24PM 7 an explanation that when the criminal proceedings concluded, it
02:24PM 8 prompted the prosecutors to renew the extradition request, which
02:24PM 9 would have led to a criminal prosecution in Argentina.

02:24PM 10 MR. MUZZIO: Yes, Your Honor. Just for full disclosure,
02:24PM 11 the other fact within that area that we would ask Mr. Langer to
02:24PM 12 talk about is his knowledge of how the Argentine government found
02:24PM 13 Mr. Bravo and when they found him. It will be one to two
02:25PM 14 questions. It will be very limited, and it's fully disclosed in
02:25PM 15 this paragraph.

02:25PM 16 MR. SLADE: Your Honor, that's not a subject for expert
02:25PM 17 testimony how the Argentine government found Mr. Bravo.

02:25PM 18 THE COURT: Yes. I don't see how he can advance those
02:25PM 19 facts. Do you want -- I'll give you -- and I mean -- tell me why
02:25PM 20 that's admissible through this witness. It's not just because he
02:25PM 21 is an expert. You can't bring in inadmissible evidence in through
02:25PM 22 your expert.

02:25PM 23 MR. MUZZIO: I understand, Your Honor. It is a unique
02:25PM 24 procedure. There's a term in Argentina called querullante, which
02:25PM 25 is a private party that participates in the criminal procedure.

02:25PM 1 And the individual that solicited Mr. Bravo's location in 2017 was
02:25PM 2 a querullante, like many of our plaintiffs.

02:25PM 3 And so Mr. Langer is just going to make the point that
02:25PM 4 it's clear that no one knew where Mr. Bravo was in 2007 because of
02:25PM 5 this uniquely positioned private party supporting the criminal who
02:26PM 6 assumed the same role. He won't say he's from the same role as
02:26PM 7 our plaintiffs.

02:26PM 8 THE COURT: How can he testify to that? How is he
02:26PM 9 competent to offer that testimony?

02:26PM 10 MR. MUZZIO: He's reviewed the documentation.

02:26PM 11 THE COURT: So he's relying on hearsay, not for an
02:26PM 12 opinion, but just to repeat it for the truth of the matter?

02:26PM 13 MR. MUZZIO: Your Honor, experts I believe can rely on
02:26PM 14 hearsay in providing their opinions.

02:26PM 15 THE COURT: What opinion is he relaying that's dependent
02:26PM 16 on that fact that's extraneous to the explanation that he is going
02:26PM 17 to offer on Argentine law?

02:26PM 18 MR. MUZZIO: Your Honor, the opinion is that the
02:26PM 19 plaintiffs involved -- I'm sorry -- the prosecutors involved, as
02:26PM 20 well as private parties that supported the criminal suit in
02:26PM 21 Argentina at the end of 2007 still did not know where Mr. Bravo
02:26PM 22 was. He has relied on public documents, which I think we could
02:26PM 23 admit through hearsay exceptions to reach those conclusions. If
02:27PM 24 Your Honor would like to move things along, I don't have to have
02:27PM 25 him talk about the specific process by which he learned that. But

02:27PM 1 I believe it would be proper for Professor Langer to at least be
02:27PM 2 able to say his conclusions based on the documents he reviewed.

02:27PM 3 THE COURT: His conclusion of what?

02:27PM 4 MR. MUZZIO: That neither prosecutors nor private parties
02:27PM 5 in Argentina that were participating in the criminal proceedings
02:27PM 6 knew where Mr. Bravo was at the end of 2007 and that they then had
02:27PM 7 to solicit the help of Interpol to locate Mr. Bravo in 2008.

02:27PM 8 THE COURT: I don't understand why you're characterizing
02:27PM 9 that as a conclusion as opposed to a fact that he read in a file.

02:27PM 10 MR. MUZZIO: It's based on his review of legal pleadings.
02:27PM 11 I think it goes to his specialized knowledge. If we had put up
02:27PM 12 one of our clients to say that they had reviewed the case file and
02:27PM 13 they made conclusions as to when Mr. Bravo was located and when he
02:28PM 14 was not through the use of Interpol in these highly complex
02:28PM 15 criminal proceedings, I think we would get a very similar
02:28PM 16 objection from defense counsel; that that's expert opinion.

02:28PM 17 THE COURT: Expert -- I think you would get the hearsay
02:28PM 18 objection. But the -- okay. So I -- absent you advancing
02:28PM 19 something to support your -- to overcome my hearsay concern, I am
02:28PM 20 not inclined to let you have him elicit those stand-alone facts
02:28PM 21 about what he read in the file that isn't tethered to or necessary
02:28PM 22 because -- to an expert opinion. I disagree with your
02:28PM 23 characterization that those things are within his legal expertise,
02:28PM 24 again, as opposed to simply facts the prosecutor did or didn't
02:28PM 25 know where he was, the prosecutor did or didn't hire an

02:28PM 1 investigator. So, okay.

02:28PM 2 So with respect to the first piece, over the
02:28PM 3 defendant's -- over the defendant's objection, I do think it is
02:29PM 4 disclosed between the 15A explanation, that he would be called to
02:29PM 5 talk about legal remedies and redress, and the characterization of
02:29PM 6 the potential for criminal proceedings is falling in the category
02:29PM 7 of remedy and redress.

02:29PM 8 MR. SLADE: Your Honor, my objection would be renewed on
02:29PM 9 relevance because I don't know what the relevance of the criminal
02:29PM 10 proceedings are to whether they could file a civil suit here,
02:29PM 11 which we talked about this morning.

02:29PM 12 THE COURT: I know. And as I often say to parties in
02:29PM 13 civil discovery disputes: The fact that you can get it here
02:29PM 14 doesn't mean that you can't get it there. I do understand their
02:29PM 15 argument and its relevance for tolling.

02:29PM 16 So again, over the defendant's objection, I am going to
02:29PM 17 let him testify on that point.

02:29PM 18 The second point though, Mr. Muzzio, that you would want
02:29PM 19 to elicit from him is that --

02:29PM 20 Let me hear you characterize it with respect to the
02:29PM 21 criminal proceeding was the only proceeding.

02:30PM 22 MR. MUZZIO: Your Honor, it's just that prosecutors and
02:30PM 23 civilians supporting the criminal proceeding in Argentina needed
02:30PM 24 the help of Interpol to find Mr. Bravo in 2008.

02:30PM 25 THE COURT: That's a fact. That does not require legal

02:30PM 1 expertise. That is a historical fact that depends on hearsay, and
02:30PM 2 it is not tethered to an opinion. What was the second -- so my
02:30PM 3 ruling stands. You're not to elicit that.

02:30PM 4 What is the next point?

02:30PM 5 MR. MUZZIO: The Truth and Reconciliation Commission,
02:30PM 6 Your Honor.

02:30PM 7 THE COURT: Could I hear you characterize it?

02:30PM 8 MR. MUZZIO: Yes. The point will be that Argentina did
02:30PM 9 have a Truth and Reconciliation Commission. It was high profile.
02:30PM 10 It existed in the 1980s, but it was only for certain sorts of
02:30PM 11 crimes. And this was our clients' first opportunity to have a
02:30PM 12 public accountability process for the Trelew shootings.

02:30PM 13 THE COURT: And the "this" in that sentence is the
02:31PM 14 extradition in the criminal case?

02:31PM 15 MR. MUZZIO: Yes. The combination of the criminal case,
02:31PM 16 which then led to extradition proceeding.

02:31PM 17 THE COURT: Okay. So even though in that proffer you're
02:31PM 18 saying truth and reconciliation, you're referring to the CONADEP.

02:31PM 19 MR. MUZZIO: Yes, Your Honor. And Mr. Langer can testify
02:31PM 20 that DONADEP was a Truth and Reconciliation Commission.

02:31PM 21 THE COURT: And so that it existed.

02:31PM 22 MR. MUZZIO: It existed.

02:31PM 23 THE COURT: It didn't address Trelew.

02:31PM 24 MR. SLADE: I just don't see the relevance of that what
02:31PM 25 happened in 1983. There was a Truth and Reconciliation Commission

02:31PM 1 with respect to other crimes in other proceedings involving other
02:31PM 2 parties and other defendants in Argentina. I'm grasping at straws
02:31PM 3 to understand why this relates to tolling or the claims on the
02:31PM 4 merits.

02:31PM 5 THE COURT: I think -- and Mr. Muzzio is going to correct
02:31PM 6 me if I'm wrong. But I think that I understand the relevance to
02:31PM 7 be that to the extent the plaintiffs are going to face this high
02:31PM 8 burden of showing that they have reasonably relied on an
02:32PM 9 extradition and criminal proceeding that a component of that
02:32PM 10 reliance is that -- while there are -- and we've heard in other
02:32PM 11 testimony -- that there are or can be these proceedings, and
02:32PM 12 Argentina, in fact, conducted them, they didn't address the Trelew
02:32PM 13 victims, and thus, this -- thus that -- God, I can't wait to see
02:32PM 14 this transcript -- their reliance on the criminal proceedings was
02:32PM 15 reasonable because it wasn't otherwise addressed.

02:32PM 16 MR. SLADE: Okay.

02:32PM 17 THE COURT: That's how I understand it. Am I right?

02:32PM 18 MR. MUZZIO: That's correct, Your Honor.

02:32PM 19 MR. SLADE: So, Your Honor, while we're on the subject
02:32PM 20 and we're taking a break here, maybe we could just mention the
02:32PM 21 other prongs of this report, and I could elicit from Mr. Muzzio
02:32PM 22 about whether he intends to elicit testimony.

02:32PM 23 THE COURT: I understood that those are the only two
02:32PM 24 things Mr. Muzzio intends to elicit from Professor Langer.

02:32PM 25 MR. SLADE: If that's the case, then there is nothing

02:32PM 1 else for me to say about that.

02:32PM 2 THE COURT: Right.

02:32PM 3 MR. SLADE: If there are other opinions in here that I
02:32PM 4 didn't think were appropriate he is not eliciting testimony on
02:33PM 5 that, I think I'll just sit down.

02:33PM 6 MR. MUZZIO: That's correct, Your Honor.

02:33PM 7 THE COURT: Okay then. Okay. So with those two very
02:33PM 8 narrow areas, it's my hope and expectation that this will be a
02:33PM 9 very short direct. Is that fair?

02:33PM 10 MR. MUZZIO: It will, Your Honor. Certainly, I just want
02:33PM 11 clarity for myself to make sure I don't ask a question that you
02:33PM 12 said I shouldn't. I can ask him about the criminal proceeding,
02:33PM 13 and how it was intertwined with the extradition efforts, and then
02:33PM 14 how the criminal judgment that happened in 2012 then led to a
02:33PM 15 second request for extradition; but I cannot ask him about how the
02:33PM 16 Argentine government located Mr. Bravo.

02:33PM 17 THE COURT: Yes.

02:33PM 18 MR. SLADE: Or Interpol.

02:33PM 19 THE COURT: Right. Well, I thought that was tied to his
02:33PM 20 last piece.

02:33PM 21 MR. SLADE: That's the first thing. I just want to make
02:33PM 22 sure I have it down it too, so we don't go over the same ground.
02:33PM 23 We had a lot of colloquy.

02:34PM 24 The second one we're allowing him to ask about?

02:34PM 25 THE COURT: Is what's disclosed on paragraphs 35 and 36

02:34PM 1 relating to essentially a description and the legal significance
02:34PM 2 of, which is both his expertise and why it's relevant, that
02:34PM 3 proceeding, what it did and more importantly did not do here and
02:34PM 4 that it was the only one.

02:34PM 5 MR. SLADE: That's CONADEP.

02:34PM 6 THE COURT: Yes.

02:34PM 7 MR. SLADE: He used another word, a Spanish word that I
02:34PM 8 wasn't familiar with because it wasn't in the report. Help me
02:34PM 9 out here.

02:34PM 10 MR. MUZZIO: The word was querullante. I will not -- I
02:34PM 11 would like to.

02:34PM 12 THE COURT: The court reporter is going to need you to
02:34PM 13 spell that, please.

02:34PM 14 MR. MUZZIO: I would ask Professor Langer to spell it, if
02:34PM 15 he's willing.

02:34PM 16 THE WITNESS: Should I do that?

02:34PM 17 THE COURT: Please.

02:34PM 18 THE WITNESS: K-U-E-R, as in Robert, A -- no. Sorry.

02:34PM 19 Q-U-E-R-E-L, as in Lawrence, L, as in Lawrence, A-N as in
02:34PM 20 Nancy, T as in Thomas, E, querellante.

02:35PM 21 MR. SLADE: I think it should be excluded just because
02:35PM 22 it's hard to spell.

02:35PM 23 THE COURT: Okay. All right.

02:35PM 24 THE WITNESS: This is why you need comparative law
02:35PM 25 experience.

02:35PM 1 THE COURT: Are we all set then? Can I bring the jury
02:35PM 2 back?

02:35PM 3 MR. MUZZIO: I just want clarity on whether I can ask
02:35PM 4 Mr. Langer about one to two questions about Argentina criminal
02:35PM 5 procedure. It's unique in that it allows private parties to
02:35PM 6 support the criminal proceedings. And that's who those
02:35PM 7 querullantes are. Professor Langer will explain it much better
02:35PM 8 than I. It will be very limited, and it's just to provide his
02:35PM 9 expert opinion and explanation.

02:35PM 10 THE COURT: And it is disclosed?

02:35PM 11 MR. MUZZIO: Yes, Your Honor. It's disclosed in that a
02:35PM 12 querullante is the one that requested --

02:35PM 13 THE COURT: Just where?

02:35PM 14 MR. MUZZIO: Yes. Let me find that paragraph.

02:35PM 15 THE COURT: Just where?

02:36PM 16 MR. MUZZIO: Let me find the paragraph.

02:36PM 17 MR. SLADE: I think I would have remembered seeing that
02:36PM 18 word.

02:36PM 19 MR. MUZZIO: It's translated into complainant.

02:36PM 20 THE COURT: Where?

02:36PM 21 MR. MUZZIO: I'm just looking for it. I apologize. So
02:36PM 22 at paragraph 55, it's the line about -- well, it's in the middle
02:36PM 23 of the paragraph: On October 30, 2007, the Secretary of Human
02:36PM 24 Rights of the Department of Justice and Human Rights of the
02:36PM 25 Republic of Argentina -- who was a complainant in the criminal

02:36PM 1 proceedings.

02:36PM 2 That is a private party complainant. And what I was
02:36PM 3 going to ask him is something that you've said I cannot, which is
02:36PM 4 how Mr. Bravo was located. I don't want to do that anymore.

02:36PM 5 What I would like to do is ask Mr. Langer one to two
02:36PM 6 questions about how private parties can support criminal
02:36PM 7 proceedings in Argentina.

02:36PM 8 THE COURT: The Secretary of Human Rights is a private
02:36PM 9 party?

02:36PM 10 MR. MUZZIO: Mr. Langer can explain that better than I
02:36PM 11 can. He is not a prosecutor. And so Argentina allows
02:37PM 12 nonprosecutors to support criminal proceedings by, for instance,
02:37PM 13 asking for their own discovery against the accused, attending
02:37PM 14 depositions, attending court hearings, having a formal role in
02:37PM 15 arguments that are advanced.

02:37PM 16 THE COURT: Hold up, Mr. Muzzio, because nothing that
02:37PM 17 you're proffering do I find in this paragraph of the report. Let
02:37PM 18 me turn to Mr. Slade.

02:37PM 19 MR. SLADE: Yes, Your Honor. I would be surprised to
02:37PM 20 learn that private parties can initiate criminal proceedings in
02:37PM 21 Argentina based upon what I read. It talks about the secretary of
02:37PM 22 something.

02:37PM 23 THE COURT: I agree.

02:37PM 24 MR. SLADE: Secretary of Human Rights.

02:37PM 25 THE COURT: I agree that that description is interesting

02:37PM 1 and not in here.

02:37PM 2 MR. MUZZIO: Your Honor, we'll withdraw that line of
02:37PM 3 questioning.

02:37PM 4 THE COURT: Okay. Okay.

02:37PM 5 MR. SLADE: Thank you.

02:37PM 6 (Jury in at 2:38 P.M.)

02:38PM 7 THE COURT: Thank you for your patience, ladies and
02:38PM 8 gentlemen. We have done our measured best to move our argument as
02:38PM 9 quickly as we could and resolved what we needed to outside your
02:38PM 10 presence.

02:38PM 11 And, Mr. Muzzio, are you ready?

02:38PM 12 MR. MUZZIO: Yes, Your Honor.

02:38PM 13 BY MR. MUZZIO:

02:38PM 14 Q. Professor Langer, did Argentina ever have a Truth and
02:38PM 15 Reconciliation Commission that investigated crimes committed by
02:38PM 16 the military government in the 1970s and 1980s?

02:39PM 17 A. There was a Truth and Reconciliation Commission in Argentina
02:39PM 18 that were between 1983 and 1984 but did not cover the events of
02:39PM 19 Trelew. It only covered events that happened between the later --
02:39PM 20 sorry -- the later military regime, the one between 1976 and 1983.

02:39PM 21 Q. So, Professor Langer, did Argentina ever have a public
02:39PM 22 accountability process for the Trelew Massacre?

02:39PM 23 A. The only public accountability process for the Trelew Massacre
02:39PM 24 is an investigation on what happened in Trelew -- was a criminal
02:39PM 25 investigation that ended up with three people being criminally

02:40PM 1 convicted for their participation in these shootings. The verdict
02:40PM 2 in that case was issued in 2012.

02:40PM 3 Q. And when did the criminal investigation in Argentina related
02:40PM 4 to the Trelew shootings begin?

02:40PM 5 A. It began in 2005.

02:40PM 6 Q. Was Mr. Bravo made to stand trial in those criminal
02:40PM 7 proceedings in Argentina?

02:40PM 8 A. That investigation led to an extradition request by Argentina
02:40PM 9 for Mr. Bravo to the United States.

02:40PM 10 The thinking is that Argentina, like the United States,
02:40PM 11 doesn't have what we lawyers call trials in absentia, meaning that
02:40PM 12 people may not be tried unless they show up to court, unless they
02:40PM 13 are present. And since Mr. Bravo did not surrender himself to
02:41PM 14 Argentine authorities, he was not tried in Argentina. Then he was
02:41PM 15 not tried together with the other people that, as I mentioned
02:41PM 16 earlier, were criminally convicted in those criminal proceedings.
02:41PM 17 So in that regard, those criminal proceedings were kind of the
02:41PM 18 equivalent to a truth commission, as I was saying, and they
02:41PM 19 function equivalent to a truth commission.

02:41PM 20 Q. What was the result of Argentina's initial extradition request
02:41PM 21 for Mr. Bravo?

02:41PM 22 A. The initial request was -- for Mr. Bravo was denied, and then
02:41PM 23 this criminal investigation that I am referring to that
02:41PM 24 essentially generated a new element of proof; right, brought by
02:42PM 25 different participants participating in these proceedings, and

02:42PM 1 this investigation, the verdict at the very end of the judgment,
02:42PM 2 basically the trial criminal court in Argentina says -- basically
02:42PM 3 refers them to an investigating judge in Argentina and asked the
02:42PM 4 investigating judge to ask for a new extradition of Mr. Bravo;
02:42PM 5 that that is the extradition that has been referred to in these
02:42PM 6 trial proceedings here in Miami-Dade these days.

02:42PM 7 Q. Thank you, Professor Langer. I want to clarify the timing of
02:42PM 8 the things you just said. So the initial extradition request of
02:42PM 9 Mr. Bravo that was denied, do you know what year that was denied?

02:42PM 10 A. Yes. It was denied in the year 2010.

02:42PM 11 Q. And the criminal prosecution of other former military members
02:42PM 12 that were accused of the Trelew shootings that were in Argentina,
02:43PM 13 that criminal prosecution that continued, what year were those
02:43PM 14 convictions entered?

02:43PM 15 A. The convictions were entered in 2012, and they were confirmed
02:43PM 16 by an appeals court in 2014, and then there was a process of
02:43PM 17 appeal to Argentinian Supreme Court that ended up with a denial;
02:43PM 18 right, of that appeal in 2021, 2021.

02:43PM 19 Q. Thank you. My last question: At the same time and in the
02:43PM 20 same order that the defendants in the criminal suit in Argentina
02:43PM 21 were convicted, what did the court do with respect to Mr. Bravo's
02:43PM 22 extradition proceedings?

02:43PM 23 A. Can you repeat the question again, please?

02:43PM 24 Q. Yes. At the same time that the Argentine court convicted the
02:44PM 25 other military members that had remained in Argentina, what did

02:44PM 1 the court do with respect to Mr. Bravo's extradition proceedings?

02:44PM 2 And if you could just state the year for the record to be clear?

02:44PM 3 A. Yes. So in 2012, when this criminal verdict was issued

02:44PM 4 against the three people for participating in the shootings that

02:44PM 5 was issued for the Trelew murder, then the criminal court in

02:44PM 6 Argentina essentially asked again an investigating federal judge

02:44PM 7 in Argentina to issue a new extradition request against Mr. Bravo.

02:44PM 8 Again, this was in the year 2012.

02:44PM 9 MR. MUZZIO: No further questions, Your Honor.

02:44PM 10 THE COURT: Mr. Slade.

02:44PM 11 CROSS-EXAMINATION

02:44PM 12 BY MR. SLADE:

02:44PM 13 Q. Professor Langer, just a couple of quick follow-up questions

02:44PM 14 from me. If you don't understand any of my questions, you'll let

02:44PM 15 me know.

02:45PM 16 The Truth and Reconciliation Commission that you referred to

02:45PM 17 in 1983, is that what it was called?

02:45PM 18 A. Yes. It was called a CONADEP, but those were the initials,

02:45PM 19 yes.

02:45PM 20 Q. And what is a CONADEP?

02:45PM 21 A. (Speaking Spanish.)

02:45PM 22 Q. I'm sorry I asked.

02:45PM 23 A. No, no, no, of course. Sorry I'm subjecting you --

02:45PM 24 Q. No --

02:45PM 25 A. -- to a crash Spanish course today.

02:45PM 1 No. It's the National Commission For the Disappearance of
02:45PM 2 People, or for the forced disappearance of people.

02:45PM 3 Q. That was more related to the time period in 1976 forward; is
02:45PM 4 that your testimony?

02:45PM 5 A. That's correct.

02:45PM 6 Q. That would be the period of the Dirty War in Argentina;
02:45PM 7 correct?

02:45PM 8 A. The period of the Dirty War of Argentina is much broader. It
02:45PM 9 really starts in the late 1960s, early 1970s.

02:45PM 10 Q. But the Truth and Reconciliation Commission you testified
02:45PM 11 about had nothing to do with the 1972 incident at Trelew; correct?

02:46PM 12 A. The Truth and Reconciliation Commission did not address that
02:46PM 13 incident in Trelew. That was addressed by the criminal
02:46PM 14 prosecution that I was referring to earlier.

02:46PM 15 Q. Now, you testified briefly about the initial extradition
02:46PM 16 request, which was filed in the United States; correct?

02:46PM 17 A. The initial extradition was, yes.

02:46PM 18 Q. And that was in approximately 2008, 2009?

02:46PM 19 A. Around those dates.

02:46PM 20 Q. And that request was denied by a federal magistrate here in
02:46PM 21 Miami, Florida; correct?

02:46PM 22 A. That's my understanding.

02:46PM 23 Q. Just one more. You're not aware of any impediment, are you,
02:46PM 24 sir, which would have prevented any of the plaintiffs in this case
02:46PM 25 from filing a lawsuit in this court? You can answer yes or no.

02:46PM 1 A. Me?

02:46PM 2 Q. An impediment?

02:46PM 3 A. Depending what you mean. What time frame are you talking

02:46PM 4 about?

02:46PM 5 Q. Well, the United States courts have been open for business

02:46PM 6 since 1972; correct? They haven't been closed?

02:47PM 7 A. What do you mean by opened?

02:47PM 8 THE COURT: Mr. Slade, I am going to ask you to keep your

02:47PM 9 questions both within the scope of direct and within his

02:47PM 10 recognized expertise.

02:47PM 11 MR. SLADE: Okay. I think I'll withdraw that. Anything

02:47PM 12 else? Okay.

02:47PM 13 Thank you very much, sir, for your time.

02:47PM 14 THE COURT: Professor Langer -- sorry. Was there any

02:47PM 15 redirect?

02:47PM 16 MR. MUZZIO: I have one question.

02:47PM 17 REDIRECT EXAMINATION

02:47PM 18 BY MR. MUZZIO:

02:47PM 19 Q. Professor Langer, Mr. Slade asked you about the Dirty War.

02:47PM 20 Could you describe for the jury what the Dirty War was?

02:47PM 21 A. Essentially what can be described as crimes against humanity

02:47PM 22 under international law. It was -- actually the trial court in

02:47PM 23 Argentina did a finding that the facts in Trelew were crimes

02:47PM 24 against humanity. A crime against humanity is essentially the

02:47PM 25 commission of a series of facts like killings, disappearances,

02:47PM 1 torture, things like that committed within a widespread; right,
02:48PM 2 like a very broad or a systematic, you know, attack; right, an
02:48PM 3 attack that follows a certain pattern against a civilian
02:48PM 4 population; right, and so that is a way at least to describe what
02:48PM 5 the Dirty War was.

02:48PM 6 MR. MUZZIO: Thank you, Professor Langer. No further
02:48PM 7 questions.

02:48PM 8 THE COURT: Professor Langer, you're excused.

02:48PM 9 (The witness is excused.)

02:48PM 10 THE WITNESS: Thank you very much.

02:48PM 11 MR. KRISHNAN: Your Honor, at this point I think we would
02:48PM 12 play the deposition of Mr. Celi.

03:03PM 13 (Video deposition of Carlos Humberto Celi played.)

03:03PM 14 MR. KRISHNAN: Your Honor, at this point, we would like
03:03PM 15 to move into evidence three exhibits related to Mr. Celi's
03:03PM 16 testimony there. It's Exhibit 68, 68T, and 69.

03:04PM 17 MR. DAVIS: No objection to 69, Your Honor. Let me just
03:04PM 18 take a look at 68.

03:04PM 19 THE COURT: I'm sorry. I'm having trouble getting my
03:04PM 20 pages.

03:04PM 21 Okay. 69, without objection; is that right?

03:04PM 22 MR. DAVIS: Yes, Your Honor.

03:04PM 23 THE COURT: Okay. And then the other two, Mr. Krishnan?

03:04PM 24 (Plaintiffs' Exhibit 69 received.)

03:04PM 25 MR. KRISHNAN: It was 68 and 68T, which were found

03:04PM 1 admissible on page 34 of Docket 107.

03:04PM 2 THE COURT: Your position, Mr. Davis?

03:04PM 3 MR. DAVIS: I thought we said we could renew the
03:04PM 4 objection at trial.

03:04PM 5 THE COURT: Is there any objection?

03:04PM 6 MR. DAVIS: Yes, it's hearsay. Yes, I have an objection
03:04PM 7 to it.

03:04PM 8 MR. KRISHNAN: Your Honor, the order doesn't say that.

03:05PM 9 It's a clear statement, page 34 of Docket 107, the last
03:05PM 10 sentence.

03:05PM 11 THE COURT: I'm looking at it. I'm with you.

03:05PM 12 MR. DAVIS: The authenticity objection is preserved, Your
03:05PM 13 Honor.

03:05PM 14 THE COURT: Is preserved, yes. Just hold up for one
03:05PM 15 second, if you don't mind. I want to give you my undivided
03:05PM 16 attention, and you don't have it right now. Hang on.

03:05PM 17 Mr. Davis is right. The ability to renew the objection
03:05PM 18 is explicitly stated on page 34 and the grounds that the Court did
03:05PM 19 not then have -- I do now. And if that's the basis of the
03:06PM 20 objection, Mr. Davis?

03:06PM 21 MR. DAVIS: Yes, Your Honor.

03:06PM 22 THE COURT: I would say that the foundation that was then
03:06PM 23 missing has been laid and would admit it, if that's the objection.

03:06PM 24 MR. DAVIS: Thank you.

03:06PM 25 THE COURT: Okay. All right. Over defense objection, 68

03:06PM 1 and 68T are in.

03:06PM 2 (Plaintiffs' Exhibits 68 and 68T received.)

03:06PM 3 And, Mr. Krishnan?

03:06PM 4 MR. KRISHNAN: Your Honor, we would at this point read in
03:06PM 5 portions of 68T and 69. Would Your Honor like me to approach with
03:06PM 6 copies?

03:06PM 7 THE COURT: I have all of your exhibits. Thank you.

03:06PM 8 MR. KRISHNAN: Thank you. And could we please have
03:06PM 9 access to the ELMO? I am now going to read into the record
03:07PM 10 portions of Plaintiffs' Exhibit 68T. Sorry about that.

03:07PM 11 My name is Carlos Humberto Celi. I am Argentinian,
03:07PM 12 56 years old, born in the City of Trelew, Chubut Province,
03:07PM 13 October 20, 1951.

03:08PM 14 When those taken to the station arrived, I wasn't there
03:08PM 15 yet. I saw them when they were in the cells. We were there. We
03:08PM 16 had the office there. We would see them when they went to the
03:08PM 17 bathroom. They were already housed there when I saw them; I saw
03:08PM 18 them between August 16th and 21, 1972. I saw them, because I was
03:08PM 19 in an office in the same guard building, so I would see them going
03:08PM 20 from the cells to the bathroom.

03:08PM 21 The cells were on the left side from the entrance door,
03:08PM 22 and they had to walk a sort of L to go to the bathroom. They were
03:08PM 23 always on the left side. I was in the junction office in the
03:08PM 24 middle of the building, and from there, I would see them on the
03:08PM 25 left.

03:08PM 1 I am now going to pause for a second and put up
03:08PM 2 Exhibit 69 and read a few words from it. Exhibit 69 is the
03:08PM 3 picture drawn by Mr. Celi. And I'm going to read a few words
03:09PM 4 there in Spanish. So I would ask that a translator please
03:09PM 5 translate them.

03:09PM 6 Entrada.

03:09PM 7 THE INTERPRETER: Entranceway.

03:09PM 8 MR. KRISHNAN: Salida.

03:09PM 9 THE INTERPRETER: Exit.

03:09PM 10 MR. KRISHNAN: Banos.

03:09PM 11 THE INTERPRETER: Bathrooms.

03:09PM 12 MR. KRISHNAN: Central telefonica.

03:09PM 13 THE INTERPRETER: Telephone office or switchboard.

03:09PM 14 MR. KRISHNAN: Now we're turning to 68T.

03:09PM 15 There might have been five cells, a single line of cells
03:09PM 16 reaching at the end of the wall, and on the other side a telephone
03:09PM 17 station where all calls (sic) of the station were received --
03:09PM 18 where all calls to the station were received and then distributed.
03:09PM 19 There was always a conscript on guard. That day, there was
03:09PM 20 nobody.

03:09PM 21 The detainees were visibly in perfect conditions; they
03:10PM 22 never said anything. They made no noise. Nothing. We never
03:10PM 23 heard them.

03:10PM 24 At this point, he is given a Romani paper sheet and asked
03:10PM 25 to draw a small map to mark his worksite and the other offices.

03:10PM 1 Once this map is completed and submitted, it becomes a formal part
03:10PM 2 of this statement.

03:10PM 3 MR. DAVIS: Judge, in this next section, I have a hearsay
03:10PM 4 objection. If I could at least lodge it, it's hearsay within
03:10PM 5 hearsay.

03:10PM 6 THE COURT: For the record.

03:10PM 7 MR. DAVIS: The witness -- do you have it in front of
03:10PM 8 you, Your Honor?

03:10PM 9 THE COURT: I do. The document has been accepted into
03:10PM 10 evidence. So that's what I mean when I say that your objection is
03:10PM 11 being noted for the record.

03:10PM 12 MR. DAVIS: Okay. Thank you.

03:10PM 13 MR. KRISHNAN: Captain Sosa and Lieutenant Bravo were
03:10PM 14 infantrymen. I always saw them in the station. Sosa was tall, at
03:10PM 15 least 1.8 meters tall. They are all athletes, somewhat blond with
03:11PM 16 white hair. For me, he was blond, and that's how I remember him.
03:11PM 17 Bravo was tall, not as tall as Sosa, but tall. I never talked
03:11PM 18 with him, because we couldn't approach them. I never talked with
03:11PM 19 him because we couldn't approach them. We knew Sosa drank. I
03:11PM 20 never saw him, but they say he drank a lot.

03:11PM 21 He inspired a lot of respect and fear, all of it
03:11PM 22 together, as if there was an "admiral." Bravo -- as if this was
03:11PM 23 an "admiral." Bravo would "dance" conscript in the weapons
03:11PM 24 square.

03:11PM 25 The day before they killed them, we worked normally. We

03:11PM 1 spent the night in the barracks, where we slept. We were about
03:11PM 2 150 meters from where the events occurred.

03:11PM 3 After the events, I was intrigued because I never again
03:11PM 4 saw Sosa or Bravo. Later, we found this out in newspapers when
03:12PM 5 they gave us days off. They read us a local newspaper and told us
03:12PM 6 we had to say what the newspaper said. They told us that if
03:12PM 7 somebody asked us something, we had to say what the newspaper
03:12PM 8 said.

03:12PM 9 They wouldn't have been able to escape from there. In my
03:12PM 10 opinion, they wouldn't have tried to escape because of the place,
03:12PM 11 the amount of guards, the building where they were. It would have
03:12PM 12 been impossible.

03:12PM 13 People in Trelew -- I'll just go ahead and finish. Here
03:12PM 14 we go. It would have been impossible. People in Trelew didn't
03:12PM 15 believe the official information. To me, they opened the cells
03:12PM 16 and killed them there. That there were no conscripts, that was
03:12PM 17 for sure; I didn't see them. Everybody was saying there were no
03:12PM 18 conscripts.

03:12PM 19 MR. KRISHNAN: And with that, Your Honor, we will call
03:12PM 20 our final witness, plaintiff Raquel Camps.

03:13PM 21 THE COURT: Okay.

03:13PM 22 MR. MUZZIO: I anticipate introducing a few exhibits and
03:13PM 23 seeking to introduce a few exhibits. Some are already in
03:13PM 24 evidence. Could we just move the display back to Ms. Lind? I
03:13PM 25 won't do it immediately. But I just didn't want to --

03:13PM 1 THE COURT: You can move the display back. But is there
03:13PM 2 agreement about with respect to the other exhibits you intend to
03:13PM 3 introduce?

03:13PM 4 MR. MUZZIO: No. Well, there is one already in evidence,
03:13PM 5 and there is one that they are not objecting to, and there is two
03:13PM 6 that they are.

03:13PM 7 THE COURT: Tell me the one that they're not so we can
03:13PM 8 just move it in.

03:13PM 9 MR. MUZZIO: Certainly. I believe it's 53. 111 should
03:14PM 10 already be in evidence. There's two images I'm using.

03:14PM 11 THE COURT: Okay. So 53.

03:14PM 12 Is that correct, Mr. Davis, no objection?

03:14PM 13 MR. DAVIS: There was one I certainly wanted to object
03:14PM 14 to. I just want to make sure that I have it.

03:14PM 15 Yes. That's fine. There is no objection.

03:14PM 16 THE COURT: So 53 is admitted. You can publish.

03:14PM 17 (Plaintiffs' Exhibit 53 received.)

03:14PM 18 MR. MUZZIO: Should I approach? I don't need to put it
03:14PM 19 up right now.

03:14PM 20 THE COURT: I have all of your exhibits. Thank you.

03:14PM 21 THE COURTROOM DEPUTY: Would you raise your right hand.

03:14PM 22 (The witness is sworn.)

03:14PM 23 THE WITNESS: Yes, I do.

03:14PM 24 THE COURTROOM DEPUTY: Thank you. Please be seated.
03:15PM 25 State your name and spell your last name for the record.

03:15PM 1 THE WITNESS: Maria Camps Pargas, C-A-M-P-S, separate
03:15PM 2 word, P-A-R-G-A-S.

03:15PM 3 MARIA CAMPS PARGAS, PLAINTIFF, SWORN

03:15PM 4 DIRECT EXAMINATION

03:15PM 5 BY MR. MUZZIO:

03:15PM 6 Q. Good afternoon, Ms. Camps.

03:15PM 7 A. Good afternoon.

03:15PM 8 Q. Ms. Camps, where do you live?

03:15PM 9 A. I live in Buenos Aires, Argentina.

03:15PM 10 Q. What is your profession?

03:15PM 11 A. I work with the judiciary in Buenos Aires in a program for
03:16PM 12 access to justice.

03:16PM 13 Q. Can you tell me more about what you do?

03:16PM 14 A. What I do is that I go to vulnerable neighborhoods and small
03:16PM 15 towns. We provide low-income individuals and individuals with few
03:16PM 16 resources the ability to access and take advantage of their rights
03:16PM 17 and justice.

03:16PM 18 Q. Why did you choose this line of work?

03:16PM 19 A. Well, to go to the various neighborhoods and be with people
03:17PM 20 with few resources was what my dad used to do, and I enjoy it
03:17PM 21 because it's a way for me to be close to him.

03:17PM 22 Q. What was your father's name, Ms. Camps?

03:17PM 23 A. Alberto Miguel Camps, and my mother, Rosa Maria Pargas.

03:17PM 24 Q. Ms. Camps, why are you here today?

03:17PM 25 A. I am here to seek justice on behalf of my father.

03:18PM 1 Q. Are you here in your --

03:18PM 2 A. Please forgive me. It is still quite difficult for me.

03:18PM 3 Because of all the suffering that Mr. Bravo inflicted upon him
03:18PM 4 both physically and mentally and emotionally.

03:18PM 5 THE COURT: Ms. Camps, I understand that you're upset.
03:18PM 6 If you need a break, will you please let me know? I'm up here.

03:18PM 7 THE WITNESS: (Nodding.)

03:18PM 8 THE COURT: But while you're here, I need you to listen
03:18PM 9 to the attorneys' questions and just answer their questions. If
03:18PM 10 there is no question pending, I want you to wait for a question.
03:19PM 11 Will you do that?

03:19PM 12 THE WITNESS: Yes.

03:19PM 13 THE COURT: Okay. Thank you.

03:19PM 14 BY MR. MUZZIO:

03:19PM 15 Q. Ms. Camps, are you here in your personal capacity?

03:19PM 16 A. No. I am here on behalf -- I am representing my father.

03:19PM 17 Q. And have you done anything to confirm your status as your
03:19PM 18 father's representative?

03:19PM 19 A. Yes. I requested a Miami court to grant me the status of
03:19PM 20 legal representative, and the court did so.

03:19PM 21 Q. Ms. Camps, how do you feel testifying here today?

03:19PM 22 A. It is quite hard for me. This is something I have been
03:20PM 23 wanting to do for many years. For a very long time, we in my home
03:20PM 24 could not even discuss the matter or seek justice because we were
03:20PM 25 fearful. And that fear never really goes away completely.

03:20PM 1 Q. Ms. Camps, when did you, Ms. Krueger, Ms. Santucho, and Mr.
03:20PM 2 Cappello file this lawsuit against Mr. Bravo?

03:20PM 3 A. October 2020.

03:21PM 4 Q. And, Ms. Camps, when did you begin pursuing remedies on behalf
03:21PM 5 of your father -- strike that.

03:21PM 6 Ms. Camps, when did you begin pursuing legal remedies on
03:21PM 7 behalf of your father for the Trelew Massacre?

03:21PM 8 A. In 2005.

03:21PM 9 Q. Why not before?

03:21PM 10 A. Well, there were several reasons. First of all, fear. I
03:21PM 11 didn't get to find out what had actually happened to my parents
03:22PM 12 until I was an adult. My parents were not discussed in my home.
03:22PM 13 In fact, there were not any photographs of them.

03:22PM 14 Q. What are some things that you learned about your past that
03:22PM 15 caused you fear?

03:22PM 16 A. What I found out was that -- and that caused me to be fearful
03:22PM 17 is that my father had been killed in August of 1977, and my mother
03:22PM 18 had also been kidnapped and murdered in August of 1977 as well.

03:23PM 19 My uncle was also kidnapped and disappeared and -- excuse me
03:23PM 20 -- but my mother is also -- was also disappeared. That was in
03:23PM 21 August of 1976. My uncle was disappeared in August of 1976, and
03:23PM 22 my father had been one of the victims at the massacre in Trelew in
03:23PM 23 1972.

03:23PM 24 Q. Was there anything else that you experienced while you were
03:23PM 25 growing up that contributed to your fear?

03:23PM 1 A. Yes.

03:23PM 2 Q. What was that?

03:23PM 3 A. There was something that caught my attention. It was the fact

03:24PM 4 that sometime around mid August and until the end of August, my

03:24PM 5 family, my grandparents and I, would leave the city in Buenos

03:24PM 6 Aires and go to the outskirts of the -- of town. And that was

03:24PM 7 unusual for me because I actually had to miss school for a couple

03:24PM 8 of weeks, approximately two weeks.

03:24PM 9 Q. And how did this experience contribute to your fear?

03:24PM 10 A. Well, as I became an adult, I came to understand that those

03:25PM 11 were the dates -- actually, the anniversary dates of the Rawson

03:25PM 12 escape and the massacre at Trelew, the murder of my father, my

03:25PM 13 mother's disappearance, all of those at the hands of the military.

03:25PM 14 Q. I want to talk a little bit more specifically about some of

03:25PM 15 the things you mentioned that contributed to your fear. Who

03:25PM 16 raised you after your parents died?

03:26PM 17 A. My paternal grandparents raised me. That is my father,

03:26PM 18 Alberto Miguel's parents.

03:26PM 19 Q. And Alberto Miguel is Alberto Miguel Camps?

03:26PM 20 A. Yes.

03:26PM 21 Q. Did you ever speak to your grandparents about your father,

03:26PM 22 Alberto Camps?

03:26PM 23 A. No.

03:26PM 24 Q. Why not?

03:26PM 25 A. They could not talk to me about it. They wouldn't really tell

03:26PM 1 me who my parents had been. There was no way to have them speak
03:27PM 2 to me about them. It was as if it was a secret.

03:27PM 3 Q. Did you ever ask them about your dad when you were growing up?

03:27PM 4 A. When I was approximately six years old, they would tell me
03:27PM 5 that they had passed away in a car accident. And I recall that
03:27PM 6 when I was approximately ten years old, I did ask my grandpa
03:27PM 7 because I thought it was odd. He looked at me, and his answer
03:28PM 8 was, don't ever ask me again about that.

03:28PM 9 Q. Ms. Camps, what was your reaction to that?

03:28PM 10 A. I felt fear. I understood that something terrible had
03:28PM 11 happened, and that in some way he was telling me this in order to
03:28PM 12 protect me.

03:28PM 13 Q. At what point -- strike that.

03:28PM 14 Ms. Camps, how did you learn -- strike that again.

03:28PM 15 At what point, Ms. Camps, did you learn that your parents
03:28PM 16 had not been killed in a car accident?

03:28PM 17 A. Well, I remember that I was a teenager, sometime around 1994,
03:29PM 18 1995, I was looking for photographs at home, and I found a
03:29PM 19 newspaper clipping that said that my father had been killed by the
03:29PM 20 military and that he had been a survivor of the Trelew Massacre.
03:29PM 21 And the same newspaper clipping stated that my mother had been
03:30PM 22 kidnapped, and the date was August 16, 1977.

03:30PM 23 Q. What did you do after learning that?

03:30PM 24 A. Well, after that, the Argentine government proposed and
03:30PM 25 enacted reparations laws. I applied to seek benefits under that

03:30PM 1 law to see if I qualified for those.

03:30PM 2 Q. Did you receive reparations?

03:31PM 3 A. Yes.

03:31PM 4 Q. When did you receive reparations?

03:31PM 5 A. Approximately in 1998.

03:31PM 6 MR. MUZZIO: Your Honor, at this point I would like to

03:31PM 7 ask the witness about a document that's not in evidence.

03:31PM 8 THE COURT: Lay a foundation.

03:31PM 9 MR. MUZZIO: May I show her the document?

03:31PM 10 THE COURT: I assume, Mr. Muzzio, you will take whatever

03:31PM 11 steps you need to lay the foundation to seek admission. I don't

03:31PM 12 know what steps you're going to take. Oh, if you're asking my

03:31PM 13 permission to approach.

03:31PM 14 MR. MUZZIO: Yes.

03:31PM 15 THE COURT: Oh, go ahead. Yes. Sorry.

03:32PM 16 MR. MUZZIO: And just for the record, Your Honor, I'm

03:32PM 17 showing her 49T, which is both -- it's in Spanish, and we've

03:32PM 18 translated it. So I will be looking at the translation, and Ms.

03:32PM 19 Camps is looking at the original in Spanish.

03:32PM 20 THE COURT: Okay.

03:32PM 21 BY MR. MUZZIO:

03:32PM 22 Q. Ms. Camps, do you recognize this document?

03:32PM 23 A. Yes.

03:32PM 24 Q. What is this document?

03:32PM 25 A. This is the certificate of the first disappearance of my

03:33PM 1 mother.

03:33PM 2 Q. Is this your document?

03:33PM 3 A. Yes.

03:33PM 4 Q. How did you receive this document?

03:33PM 5 A. I received this document because of the investigation

03:33PM 6 conducted by the government based on the application that I had

03:33PM 7 filed to see if I qualified for benefits.

03:33PM 8 MR. MUZZIO: Your Honor, at this time, I would move to

03:33PM 9 admit the document as a public record.

03:33PM 10 MR. DAVIS: The objection is only to relevance; this

03:33PM 11 relates to her mother, not her.

03:33PM 12 THE COURT: Proffer the relevance.

03:33PM 13 BY MR. MUZZIO:

03:33PM 14 Q. Ms. Camps, what was the date of the disappearance of your

03:33PM 15 mother?

03:33PM 16 A. August 16, 1977.

03:33PM 17 Q. What is the significance of that date to you other than the

03:33PM 18 disappearance of your mother?

03:33PM 19 A. This is the anniversary of the Rawson Prison escape.

03:34PM 20 MR. MUZZIO: Your Honor, at this time, I would move to

03:34PM 21 admit the document.

03:34PM 22 MR. DAVIS: Same objection.

03:34PM 23 THE COURT: Overruled. So admitted.

03:34PM 24 (Plaintiffs' Exhibit 49T received.)

03:34PM 25 MR. MUZZIO: May we publish?

03:34PM 1 THE COURT: Yes. If indefinite -- I don't think I have
03:34PM 2 control back.

03:34PM 3 MR. MUZZIO: We need that -- it's late in the week.

03:34PM 4 Ms. Lind, could you zoom in on the last line in the
03:35PM 5 middle section where it says, last place seen?

03:35PM 6 BY MR. MUZZIO:

03:35PM 7 Q. Ms. Camps, this document says that the last place your mother
03:35PM 8 was seen was CCD El Vesubio; what does that mean to you?

03:35PM 9 A. El Vesubio was a very well-known clandestine concentration
03:35PM 10 camp.

03:36PM 11 MR. MUZZIO: We can take this down.

03:36PM 12 Your Honor, may I approach the witness with another
03:36PM 13 document?

03:36PM 14 THE COURT: Go right ahead.

03:36PM 15 BY MR. MUZZIO:

03:36PM 16 Q. Ms. Camps, do you recognize the document I'm showing you?

03:36PM 17 A. Yes.

03:36PM 18 Q. What is it?

03:36PM 19 A. This is my father's death certificate.

03:37PM 20 MR. MUZZIO: Your Honor, at this time, I would move to
03:37PM 21 admit 48T.

03:37PM 22 THE COURT: 48T?

03:37PM 23 MR. MUZZIO: 48T.

03:37PM 24 MR. DAVIS: I have no objection, Judge.

03:37PM 25 THE COURT: So admitted.

03:37PM 1 (Plaintiffs' Exhibit 48T received.)

03:37PM 2 MR. MUZZIO: May we publish to the jury?

03:37PM 3 THE COURT: Yes.

03:37PM 4 BY MR. MUZZIO:

03:37PM 5 Q. Ms. Camps, what date does this document say your father died
03:37PM 6 on?

03:37PM 7 A. August 17, 1977.

03:37PM 8 MR. MUZZIO: Ms. Lind, could you please zoom in on the
03:37PM 9 cause of death section?

03:37PM 10 BY MR. MUZZIO:

03:38PM 11 Q. Ms. Camps, what does this document describe as the cause of
03:38PM 12 death for your father?

03:38PM 13 A. It says: Brain hemorrhage due to a bullet.

03:38PM 14 MR. MUZZIO: You can take the document down.

03:38PM 15 BY MR. MUZZIO:

03:38PM 16 Q. Ms. Camps, when was the first time you saw your father's death
03:38PM 17 certificate?

03:38PM 18 A. This was part of the investigation conducted by the government
03:38PM 19 for someone to qualify for reparations.

03:38PM 20 Q. How did it make you feel to see that document describe your
03:39PM 21 father's death?

03:39PM 22 MR. DAVIS: Your Honor, objection. Relevance. This was
03:39PM 23 three years or five years after the Trelew events. So how she
03:39PM 24 felt about this would not be relevant to the claims in this
03:39PM 25 lawsuit.

03:39PM 1 THE COURT: Overruled.

03:39PM 2 THE WITNESS: Well, it was very hard. It was terrible

03:39PM 3 for me. It states there that my father was killed by a bullet to
03:39PM 4 the head.

03:39PM 5 BY MR. MUZZIO:

03:39PM 6 Q. And I believe, Ms. Camps -- strike that.

03:39PM 7 When was it that you learned how your parents -- strike that
03:40PM 8 again. I apologize.

03:40PM 9 After the reparations process concluded, Ms. Camps, did you
03:40PM 10 seek out more information about your parents?

03:40PM 11 A. No.

03:40PM 12 Q. Why not?

03:40PM 13 A. Well, it was very difficult, the results of this
03:40PM 14 investigation, and getting to know that my father had been
03:40PM 15 murdered by the military, and my mother had been disappeared by
03:40PM 16 the military, and I needed more time in order to continue
03:41PM 17 investigating or looking into it. I just couldn't do it at that
03:41PM 18 time.

03:41PM 19 Q. Was there ever a turning point for you where you began to seek
03:41PM 20 out more information about your parents?

03:41PM 21 A. Yes.

03:41PM 22 Q. When was that?

03:41PM 23 A. That was in 2001.

03:41PM 24 Q. And what happened in 2001?

03:41PM 25 A. In Argentina, there is a forensic anthropology team, and this

03:42PM 1 team is responsible for identifying the remains of disappeared
03:42PM 2 individuals. So what they do is that they do comparison or they
03:42PM 3 match a sample of blood from the relatives, and then after that,
03:42PM 4 the remains are returned -- delivered to the families.

03:42PM 5 Q. And what happened in 2001 with this organization?

03:42PM 6 A. Well, the forensic anthropology team reached out to us for us
03:43PM 7 to provide them with a blood sample because there existed a
03:43PM 8 possibility that my uncle's remains might be recovered. So in the
03:43PM 9 end, we did provide the samples, and there also existed a
03:43PM 10 possibility that my mother or father's remains would be
03:43PM 11 identified. And in the end, my father's remains were identified.

03:43PM 12 Q. Ms. Camps, you mentioned that you were searching for your
03:43PM 13 uncle's remains. Can you explain why you were searching for your
03:43PM 14 uncle's remains?

03:43PM 15 A. My uncle had disappeared in August of 1976.

03:44PM 16 Q. Through this process that you described in 2021 -- I'll start
03:44PM 17 over.

03:44PM 18 Through this process that you described in 2001, were you
03:44PM 19 able to obtain your father's remains?

03:44PM 20 A. Yes.

03:44PM 21 Q. Were you able to view your father's remains at that time?

03:44PM 22 A. Yes.

03:44PM 23 Q. How did you feel when you saw them?

03:44PM 24 A. It was very hard for me to see my father's bones in a box --
03:45PM 25 in a box. And then and there, I became aware that I just didn't

03:45PM 1 know him, that I knew nothing of his history, and that I needed to
03:45PM 2 learn what had happened to him in order for me to find out who I
03:45PM 3 was.

03:45PM 4 Q. Ms. Camps, could you explain what you meant by you knew
03:45PM 5 nothing about him at this time?

03:45PM 6 A. I just didn't know what he liked to eat, what sport he was
03:46PM 7 involved in, I didn't know whether he enjoyed reading or if he
03:46PM 8 liked to do other things. I knew nothing about him.

03:46PM 9 Q. And why did you not know those things about your father?

03:46PM 10 A. Because, as I said before, the matter was not discussed at
03:46PM 11 home. There were no photographs, there was no -- no story,
03:46PM 12 nothing ever being told.

03:46PM 13 Q. After you saw your father's remains, did you try speaking with
03:46PM 14 your grandparents again about your father?

03:47PM 15 A. No. My grandfather had already passed, so I never was able to
03:47PM 16 discuss it with him. And my grandmother did not want to talk.
03:47PM 17 Poor thing, I understood that it was painful and sad for her. And
03:47PM 18 she told me, I don't know a whole lot, and I just can't tell you a
03:47PM 19 whole lot, because your grandfather would not tell me, and he did
03:47PM 20 it to protect me. And I also remember that she told me, silence
03:47PM 21 is health.

03:48PM 22 Q. How did you feel when your grandmother told you, silence is
03:48PM 23 health?

03:48PM 24 A. That's when I understood fear. I understood that if you knew
03:48PM 25 anything, then you would likely be killed or you could be killed.

03:48PM 1 MR. MUZZIO: And for the record, because my enunciation
03:48PM 2 was a little lacking on that last question, I had asked, how did
03:48PM 3 you feel when you heard -- I'm sorry. Strike that.

03:48PM 4 The question was: How did you feel or what was your
03:48PM 5 reaction to your grandmother saying, silence is health, and it was
03:49PM 6 translated correctly, I believe, but that was just H-E-A-L-T-H.

03:49PM 7 BY MR. MUZZIO:

03:49PM 8 Q. After your grandmother said this to you, did you do anything
03:49PM 9 else to learn more about your father after seeing his remains?

03:49PM 10 THE INTERPRETER: For the interpreter -- after?

03:49PM 11 MR. MUZZIO: Seeing his remains.

03:49PM 12 THE INTERPRETER: I'm sorry. Just repeat the question
03:49PM 13 entirely exactly as you said it, please, for the interpreter.

03:49PM 14 BY MR. MUZZIO:

03:49PM 15 Q. After your grandmother said this to you, did you do anything
03:49PM 16 else to learn more about your father?

03:50PM 17 A. As I said before, I actually felt the need to get to know his
03:50PM 18 story, to get to know him again.

03:50PM 19 Q. What did you do?

03:50PM 20 A. What I knew was that my father had been a survivor of the
03:50PM 21 Trelew Massacre. So I started to contact relatives of -- that is,
03:50PM 22 people who had their dear or their loved ones there, and in the
03:50PM 23 end, I traveled to Trelew.

03:50PM 24 Q. Why did you decide to travel to Trelew?

03:51PM 25 A. Because I wanted to meet people who had met my father, people

03:51PM 1 who could tell me what he was like.

03:51PM 2 Q. Did you meet with them when you took that trip?

03:51PM 3 A. Yes.

03:51PM 4 Q. And around what time was this?

03:51PM 5 A. That must have been around 2002, 2003.

03:51PM 6 Q. How did you feel when you met with other families of victims
03:51PM 7 in Trelew?

03:51PM 8 MR. DAVIS: Objection, Your Honor. It's relevance. This
03:51PM 9 is all in the past.

03:51PM 10 THE COURT: Sustained.

03:52PM 11 MR. DAVIS: This is well past any time frame.

03:52PM 12 THE COURT: Sustained.

03:52PM 13 Next question, Mr. Muzzio.

03:52PM 14 BY MR. MUZZIO:

03:52PM 15 Q. Ms. Camps, did you still feel afraid at this time?

03:52PM 16 MR. DAVIS: Same objection.

03:52PM 17 THE COURT: Sustained. Additionally, it's a vague
03:52PM 18 question, Mr. Muzzio.

03:52PM 19 BY MR. MUZZIO:

03:52PM 20 Q. For the record and clarity, you took this trip to Trelew
03:52PM 21 around what time?

03:52PM 22 A. I don't recall very well. At the end of 2002, early 2003.

03:53PM 23 Q. Did you pursue a lawsuit against anyone involved in the Trelew
03:53PM 24 Massacre at this time?

03:53PM 25 A. No, not at that time.

03:53PM 1 Q. When was the first time that you pursued a lawsuit against
03:53PM 2 anyone involved in Trelew?

03:53PM 3 A. In 2005.

03:53PM 4 Q. Why was it only in 2005 that you pursued a lawsuit against
03:53PM 5 others involved in Trelew?

03:54PM 6 A. Well, in 2005, the government provided or offered the
03:54PM 7 possibility of these trials taking place. We had been offered a
03:54PM 8 program for the security of witnesses. My children were young,
03:54PM 9 and the existence of this program gave me a certain assurance that
03:54PM 10 I could move forward.

03:54PM 11 Q. Were you still afraid, Ms. Camps, in 2005?

03:54PM 12 MR. DAVIS: Objection, Your Honor, relevance.

03:55PM 13 THE COURT: Overruled.

03:55PM 14 THE WITNESS: Yes.

03:55PM 15 BY MR. MUZZIO:

03:55PM 16 Q. Why?

03:55PM 17 A. Because my parents had been killed by the military; the
03:55PM 18 military that had killed and disappeared many other people in
03:55PM 19 Argentina. The fear of the silence that my family had lived under
03:55PM 20 and the families of other victims of the massacre.

03:55PM 21 Q. Was the -- when was the Witness Protection Program first
03:55PM 22 offered to you, Ms. Camps?

03:55PM 23 A. I don't recall exactly the date, but it must have been when
03:56PM 24 the investigation began, sometime around 2006, 2007.

03:56PM 25 Q. Was the Witness Protection Program important to you in your

03:56PM 1 decision in proceeding in the lawsuit against other individuals
03:56PM 2 involved in the Trelew Massacre?

03:56PM 3 A. Yes.

03:56PM 4 Q. Why?

03:56PM 5 A. Because I had been fearful, and I had young children going to
03:56PM 6 school, and this was providing me with a certain amount of
03:56PM 7 certainty or sense of security rather that I could move forward in
03:57PM 8 my seeking justice.

03:57PM 9 Q. Around the time that you began supporting -- strike that.

03:57PM 10 This process that I've been referring to as a lawsuit that
03:57PM 11 began around 2005 or 2006, was that actually a criminal proceeding
03:57PM 12 related to the Trelew Massacre?

03:57PM 13 MR. DAVIS: Objection. Leading, Judge.

03:57PM 14 THE COURT: Sustained.

03:57PM 15 BY MR. MUZZIO:

03:57PM 16 Q. This process that I have been describing as a lawsuit that
03:57PM 17 began around 2005, 2006, what was that?

03:57PM 18 A. Well, we -- rather, I, initiated or filed as a complainant to
03:58PM 19 begin a trial against the individual who had taken part in the
03:58PM 20 Trelew Massacre.

03:58PM 21 Q. Did anything happen around the time that you began this
03:58PM 22 criminal process related to Trelew that contributed to your fear?

03:58PM 23 MR. DAVIS: Objection. Relevance, Judge.

03:58PM 24 THE COURT: I'm going to sustain that and ask you -- I'm
03:58PM 25 just going to sustain it.

03:58PM 1 BY MR. MUZZIO:

03:58PM 2 Q. Was there anything else around this time that made it
03:58PM 3 difficult for you to proceed with this criminal proceeding?

03:59PM 4 A. Yes.

03:59PM 5 Q. What was that?

03:59PM 6 A. Around the year 2006, there was another case dealing with
03:59PM 7 crimes committed during the military dictatorship and one of the
03:59PM 8 witnesses who was about to give testimony regarding his own
03:59PM 9 kidnapping.

03:59PM 10 MR. DAVIS: Objection. Relevance. This is talking about
03:59PM 11 a totally different matter at this point.

03:59PM 12 MR. MUZZIO: May I be heard?

03:59PM 13 THE COURT: You may.

03:59PM 14 MR. MUZZIO: She's talking about another witness in a
03:59PM 15 related criminal proceeding against the military government that
03:59PM 16 was disappeared at around the same time she was deciding whether
04:00PM 17 or not to proceed with her own proceeding. It's highly relevant
04:00PM 18 to her state of mind at the time.

04:00PM 19 THE COURT: And her competency to make this hearsay
04:00PM 20 testimony?

04:00PM 21 MR. MUZZIO: It's not offered for the truth, Your Honor.
04:00PM 22 It's offered for the effect on her.

04:00PM 23 THE COURT: If it's not being offered for the truth, then
04:00PM 24 it's inadmissible in this context. So sustained.

04:00PM 25 BY MR. MUZZIO:

04:00PM 1 Q. When did the criminal case related to the Trelew shooting
04:00PM 2 formally begin?

04:00PM 3 A. It started in the year 2005.

04:00PM 4 Q. How did that criminal proceeding advance over time?

04:01PM 5 A. Well, the investigation started being conducted, we started --
04:01PM 6 they started -- well, we started to compile documentation,
04:01PM 7 testimony.

04:01PM 8 Q. And when did the criminal process in Argentina result in a
04:01PM 9 conclusion?

04:01PM 10 A. In the year 2012 was the sentencing.

04:02PM 11 Q. And what was the sentencing?

04:02PM 12 A. The sentence was that all those that participated in the
04:02PM 13 massacre, in the Trelew Massacre were convicted except Mr. Bravo.

04:02PM 14 Q. Ms. Camps, I want to talk about your role in this criminal
04:02PM 15 proceeding. Can you describe your role in this proceeding?

04:02PM 16 A. Well, I was -- yes. I was a complainant in this process
04:03PM 17 seeking justice.

04:03PM 18 Q. What was that process like for you?

04:03PM 19 MR. DAVIS: Objection, Your Honor. She's identified that
04:03PM 20 the process started and it came to a conclusion. It would be
04:03PM 21 irrelevant at this point.

04:03PM 22 THE COURT: Overruled.

04:03PM 23 THE WITNESS: It was very hard for me.

04:03PM 24 BY MR. MUZZIO:

04:03PM 25 Q. Why was that?

04:03PM 1 MR. DAVIS: Same objection.

04:03PM 2 THE COURT: Sustained. If you want to lay a predicate

04:03PM 3 for its relevance.

04:03PM 4 BY MR. MUZZIO:

04:03PM 5 Q. Ms. Camps, can you provide some of the reasons why it was
04:03PM 6 difficult for you?

04:03PM 7 MR. DAVIS: Objection, Your Honor. Same question.

04:04PM 8 THE COURT: She hasn't told us what she did.

04:04PM 9 MR. MUZZIO: She said she was a claimant, and it's the
04:04PM 10 term querullante. I can ask her to describe that term if it would
04:04PM 11 be helpful.

04:04PM 12 THE COURT: Or you could have her explain what she did.

04:04PM 13 MR. MUZZIO: Okay.

04:04PM 14 BY MR. MUZZIO:

04:04PM 15 Q. Ms. Camps, what did you do as a claimant in this criminal
04:04PM 16 proceeding?

04:04PM 17 A. What we would do is something very exhausting. It was very
04:04PM 18 emotionally and physically draining, because we would talk again
04:05PM 19 about what had happened, about what had happened to my father.

04:05PM 20 MR. DAVIS: Judge, I'd object to this answer is now not
04:05PM 21 talking about what she did, which was the question.

04:05PM 22 THE COURT: Agreed. And it would be helpful, Ms. Camps,
04:05PM 23 I want you to answer the question what you did. I heard you start
04:05PM 24 with we. Tell us what you did.

04:05PM 25 MR. MUZZIO: May I ask the witness another question?

04:05PM 1 THE COURT: Of course.

04:05PM 2 BY MR. MUZZIO:

04:05PM 3 Q. Ms. Camps, what did you specifically do to support the
04:05PM 4 criminal proceeding?

04:05PM 5 A. I helped out -- helped the attorneys out to start
04:05PM 6 investigations. I went to the hearings. I attended the hearings.
04:06PM 7 I had meetings frequently with the attorneys to see how the case
04:06PM 8 was moving forward.

04:06PM 9 Q. Were you a party to the criminal proceeding?

04:06PM 10 MR. DAVIS: Objection, Your Honor. Calls for a legal
04:06PM 11 conclusion.

04:06PM 12 THE COURT: Overruled. Answer if you know the answer,
04:06PM 13 Ms. Camps.

04:06PM 14 THE WITNESS: Yes.

04:06PM 15 BY MR. MUZZIO:

04:06PM 16 Q. Can you explain that a little more?

04:06PM 17 A. I was the party that was filing a complaint for what happened
04:06PM 18 in the Trelew Massacre.

04:07PM 19 Q. And as a party to this criminal proceeding, can you describe
04:07PM 20 some of the responsibilities that you had?

04:07PM 21 MR. DAVIS: Objection. Leading again, Your Honor. She
04:07PM 22 said she's a party.

04:07PM 23 THE COURT: Not leading. Overruled.

04:07PM 24 THE INTERPRETER: I'm sorry, counsel. The last portion
04:07PM 25 of your question for the interpreter.

04:07PM 1 BY MR. MUZZIO:

04:07PM 2 Q. Can you describe the responsibilities that you had?

04:07PM 3 A. Well, since I lived in Buenos Aires, one of the things I would
04:07PM 4 do was meet with the attorneys, like I said before, to see how the
04:07PM 5 investigations were going in the case. Many times since other
04:08PM 6 family members lived far away from Buenos Aires, the documentation
04:08PM 7 that needed to be requested, I would request. Well, I would
04:08PM 8 travel to the hearings and be present at the hearings.

04:08PM 9 Q. Can you describe the type of traveling that you had to do?

04:08PM 10 MR. DAVIS: Objection. Relevance, Judge.

04:08PM 11 THE COURT: Overruled. I'm going to give you a little
04:08PM 12 room here.

04:08PM 13 MR. MUZZIO: Thank you.

04:08PM 14 THE WITNESS: Yes, in order to attend the hearings, the
04:09PM 15 trial was taking place a thousand miles away from where I lived.

04:09PM 16 BY MR. MUZZIO:

04:09PM 17 Q. And was it difficult for you to travel to the proceedings?

04:09PM 18 A. Yes, of course, it was very difficult. It was very costly.
04:09PM 19 The flights were expensive. Another thing is that the trips or
04:09PM 20 the flights to Trelew were not frequent at all. And sometimes
04:10PM 21 that caused us to have to fly in the same flight as those -- as
04:10PM 22 the defendants or the accused ones. I'm sorry. It was also
04:10PM 23 difficult to coordinate all aspects of my life. My work, my
04:10PM 24 children. At that time, my grandmother was very ill.

04:10PM 25 Q. How often did you take these trips to participate in the

04:10PM 1 criminal proceedings?

04:10PM 2 A. I made those trips every time that I could during the length
04:11PM 3 of the criminal process.

04:11PM 4 Q. Was supporting the criminal proceeding -- strike that.

04:11PM 5 How would you describe the experience of supporting the
04:11PM 6 criminal proceeding in Argentina from 2005 to 2012?

04:11PM 7 MR. DAVIS: Objection. Relevance, Judge.

04:11PM 8 THE COURT: Sustained.

04:11PM 9 BY MR. MUZZIO:

04:11PM 10 Q. Was there anything else that contributed to the difficulty of
04:11PM 11 supporting the criminal proceeding from 2005 to 2012?

04:11PM 12 MR. DAVIS: Same objection.

04:11PM 13 THE COURT: Overruled.

04:11PM 14 THE WITNESS: Yes, it was exhausting. For me, it meant
04:12PM 15 to dedicate a lot of my physical and emotional energy. Every time
04:12PM 16 I would return from audiences in Trelew, I had to ask for some
04:12PM 17 days off because I was so exhausted. I couldn't go back to work.

04:12PM 18 BY MR. MUZZIO:

04:12PM 19 Q. Was Mr. Bravo a defendant in the criminal trial related to
04:12PM 20 these proceedings?

04:12PM 21 A. Yes.

04:12PM 22 Q. Was he tried in the criminal trial related to these
04:12PM 23 proceedings?

04:12PM 24 A. Yes.

04:12PM 25 Q. Was he convicted?

04:12PM 1 A. No. He couldn't be tried because we couldn't find him in
04:13PM 2 Argentina.

04:13PM 3 Q. When did you first learn that Mr. Bravo was not in Argentina?
04:13PM 4 A. In 2008.

04:13PM 5 Q. Had you searched for Mr. Bravo before 2008?
04:13PM 6 A. No. No, I just knew --

04:13PM 7 MR. DAVIS: Objection, Your Honor.

04:13PM 8 THE COURT: She's mid answer. Sorry.

04:13PM 9 THE WITNESS: No. I just knew that his name was Bravo.
04:13PM 10 I didn't know his first name, and Bravo is a very common name --
04:13PM 11 last name in Argentina.

04:13PM 12 THE COURT: Mr. Davis, sorry. Go ahead now.

04:13PM 13 MR. DAVIS: She said she didn't search for him. So
04:14PM 14 that's -- anyway. I'd object on the basis of relevance. She said
04:14PM 15 she didn't search for him.

04:14PM 16 THE COURT: No pending question. Overruled. I'm going
04:14PM 17 to let the next question go ahead.

04:14PM 18 BY MR. MUZZIO:

04:14PM 19 Q. Do you know where Mr. Bravo was in 2008?
04:14PM 20 A. Yes.

04:14PM 21 Q. And where was he?
04:14PM 22 A. In Miami, United States.

04:14PM 23 Q. At that point when you learned that Mr. Bravo was in the
04:14PM 24 United States, did you try to bring a lawsuit against him here in
04:14PM 25 the United States?

04:14PM 1 A. No.

04:14PM 2 Q. Why not?

04:14PM 3 MR. DAVIS: Objection, Your Honor.

04:14PM 4 THE COURT: Basis?

04:14PM 5 MR. DAVIS: It's not relevant. He could have been sued
04:14PM 6 then. But she didn't bring the lawsuit.

04:14PM 7 THE COURT: I can't hear you, Mr. Davis. You said she
04:15PM 8 could have?

04:15PM 9 MR. DAVIS: I'm sorry. I said she could have sued him,
04:15PM 10 but she didn't. I object on the basis of relevance. It's a fact
04:15PM 11 of whether she's sued or not.

04:15PM 12 MR. MUZZIO: He's misstating the witness' testimony, but
04:15PM 13 that's just one of the problems.

04:15PM 14 THE COURT: Let me just make sure. You're objecting to
04:15PM 15 the question why they didn't sue in 2008?

04:15PM 16 MR. DAVIS: Yes.

04:15PM 17 THE COURT: Overruled.

04:15PM 18 MR. MUZZIO: I want to make sure that the record is clear
04:15PM 19 and the translation was a little different from my question.

04:15PM 20 BY MR. MUZZIO:

04:15PM 21 Q. After learning that Mr. Bravo was in the United States, did
04:15PM 22 you try to sue him here in the United States at that time in 2008?

04:15PM 23 A. No.

04:15PM 24 Q. Why not?

04:16PM 25 A. Because we were dealing with the criminal proceeding in

04:16PM 1 Argentina. And we filed an extradition request for him to be
04:16PM 2 brought back to Argentina to face federal -- I'm sorry -- to face
04:16PM 3 criminal charges over there where the events took place.

04:16PM 4 Q. Was Mr. Bravo extradited back to Argentina?

04:16PM 5 A. No.

04:16PM 6 Q. Do you know when that request for extradition that you just
04:17PM 7 talked about was denied?

04:17PM 8 A. Yes. It was November 1st, 2010.

04:17PM 9 Q. At the time that that extradition request was denied in
04:17PM 10 November of 2010, did you come to the United States and try to sue
04:17PM 11 Mr. Bravo?

04:17PM 12 A. No.

04:17PM 13 Q. Why not?

04:17PM 14 MR. DAVIS: Objection, Your Honor. Relevance.

04:17PM 15 THE COURT: I assume this goes to the tolling argument.

04:17PM 16 MR. MUZZIO: Yes, Your Honor.

04:17PM 17 THE COURT: Overruled.

04:17PM 18 MR. DAVIS: And, Judge, also it would call for
04:17PM 19 speculation. Since she didn't do it, that would be the other
04:17PM 20 grounds.

04:17PM 21 THE COURT: Overruled as to speculation.

04:18PM 22 THE WITNESS: No.

04:18PM 23 BY MR. MUZZIO:

04:18PM 24 Q. Why not?

04:18PM 25 A. First of all, as I mentioned before, it was very draining

04:18PM 1 emotionally and physically, and it required time, money, and
04:18PM 2 emotional investment, and we had started the criminal proceedings
04:18PM 3 in Argentina where the events took place, and we were hopeful that
04:19PM 4 if we obtained a conviction in our favor, we would finally be --
04:19PM 5 going to be able to bring him to Argentina to face charges.

04:19PM 6 Q. Did you obtain a conviction in that criminal case?

04:19PM 7 MR. DAVIS: Judge, objection. It's now asked and
04:19PM 8 answered.

04:19PM 9 THE COURT: Basis?

04:19PM 10 MR. DAVIS: She's already talked about the 2012 case.

04:19PM 11 THE COURT: Sustained.

04:19PM 12 BY MR. MUZZIO:

04:19PM 13 Q. Did the court order that convicted other members of the
04:19PM 14 military for their roles in the Trelew Massacre relate to your
04:19PM 15 effort to extradite Bravo in any way?

04:20PM 16 MR. DAVIS: Calls for a legal conclusion.

04:20PM 17 THE COURT: Let me just remind you, Ms. Camps, that you
04:20PM 18 should answer if you know, if you have a basis for knowing the
04:20PM 19 question that Mr. Muzzio was asking you.

04:20PM 20 Were you able to translate it?

04:20PM 21 MR. MUZZIO: I may be able to ask a more specific
04:20PM 22 question.

04:20PM 23 THE COURT: Okay. Withdrawn. Go ahead.

04:20PM 24 BY MR. MUZZIO:

04:20PM 25 Q. Did the 2012 conviction of other military members involved in

04:20PM 1 the Trelew Massacre in Argentina say anything about Mr. Bravo's
04:20PM 2 extradition process?

04:20PM 3 MR. DAVIS: Objection. Judge, that's asking for hearsay.
04:20PM 4 He's talking about a conviction.

04:20PM 5 THE COURT: Can I assume that you're just laying a
04:20PM 6 predicate to get to a different point?

04:20PM 7 MR. MUZZIO: Yes.

04:20PM 8 THE COURT: Overruled.

04:21PM 9 THE WITNESS: Yes.

04:21PM 10 BY MR. MUZZIO:

04:21PM 11 Q. Did the decision advance your extradition efforts in any way?

04:21PM 12 A. What the ruling said is that Bravo's extradition --

04:21PM 13 MR. DAVIS: Your Honor, now she's talking about --

04:21PM 14 THE COURT: You'll get to move to strike. But can we let
04:21PM 15 the record reflect the answer?

04:21PM 16 THE INTERPRETER: I'm sorry.

04:21PM 17 THE WITNESS: Yes. That ruling said that the extradition
04:21PM 18 of Mr. Bravo should be requested again.

04:22PM 19 THE COURT: Okay. Hold on, Mr. Davis.

04:22PM 20 MR. DAVIS: I move to strike. The document would be the
04:22PM 21 best evidence of that.

04:22PM 22 THE COURT: I understand.

04:22PM 23 Ladies and gentlemen, I just want to make sure that you
04:22PM 24 understand that the -- you've heard those -- you've heard other
04:22PM 25 evidence of what Ms. Camps is saying. Mr. Muzzio is laying a

04:22PM 1 predicate to get to the question that is --

04:22PM 2 MR. MUZZIO: I think that that is my -- I'm going to move
04:22PM 3 on to the appeal in a moment. That's my last question about this
04:22PM 4 judgment as it relates to the extradition.

04:22PM 5 THE COURT: Okay. So, Mr. Davis, then your objection --
04:22PM 6 I'm going to deny the motion to strike.

04:22PM 7 Go ahead, Mr. Muzzio.

04:22PM 8 BY MR. MUZZIO:

04:22PM 9 Q. Ms. Camps, did your role in the criminal proceedings in
04:22PM 10 Argentina related to the Trelew Massacre end with the criminal
04:22PM 11 convictions in 2012?

04:23PM 12 A. No.

04:23PM 13 Q. What did you do after the criminal convictions in 2012?

04:23PM 14 A. We are still waiting for Bravo's extradition. That case is
04:23PM 15 ongoing. We are still claimants. In 2014, the convictions were
04:23PM 16 confirmed. And in 2021, an appeals court confirmed the
04:23PM 17 convictions.

04:23PM 18 Q. Was there anything after 2005 that caused you fear about
04:24PM 19 proceeding with efforts to pursue those responsible for the Trelew
04:24PM 20 Massacre?

04:24PM 21 A. Yes. In the year 2006, a witness who was supposed to testify
04:24PM 22 in a case against the military, against the dictatorship
04:24PM 23 disappeared.

04:24PM 24 MR. DAVIS: Judge.

04:24PM 25 THE WITNESS: His name was Julio Lopez.

04:24PM 1 MR. DAVIS: She's talking about another matter again.
04:24PM 2 I'd move to strike that testimony, Judge. As I understood the
04:25PM 3 testimony, she's talking about something other than --

04:25PM 4 THE COURT: I'm just waiting to ask Mr. Muzzio for a
04:25PM 5 response.

04:25PM 6 MR. DAVIS: Sorry.

04:25PM 7 THE COURT: That's okay, Mr. Davis.

04:25PM 8 MR. MUZZIO: I apologize. Your objection was?

04:25PM 9 MR. DAVIS: I guess I should say it louder. I move to
04:25PM 10 strike. The incident she was describing was unrelated to the
04:25PM 11 Trelew case.

04:25PM 12 MR. MUZZIO: Your Honor, it is related to her state of
04:25PM 13 mind as she pursued remedies in Argentina. And she has testified
04:25PM 14 -- the response (sic) was: Was there anything about it that
04:25PM 15 caused you fear?

04:25PM 16 So it's directly relevant to her fear and whether that
04:25PM 17 fear continued while she was --

04:25PM 18 THE COURT: Consistent with how the plaintiffs have
04:25PM 19 advanced their tolling argument predicated on fear, I am going to
04:25PM 20 grant that motion to strike.

04:25PM 21 So, ladies and gentlemen, I want you to disregard that
04:25PM 22 last answer when you're considering your verdict.

04:25PM 23 Mr. Muzzio, does that conclude your direct?

04:26PM 24 MR. MUZZIO: I'm very close to being done, Your Honor.

04:26PM 25 BY MR. MUZZIO:

04:26PM 1 Q. Ms. Camps, do you know what the current status of extradition
04:26PM 2 proceedings are related to Mr. Bravo?

04:26PM 3 MR. DAVIS: Objection.

04:26PM 4 MR. MUZZIO: This is just a predicate. It's yes or no.

04:26PM 5 THE COURT: It has been asked and answered, but go ahead
04:26PM 6 with your next question, Mr. Muzzio.

04:26PM 7 BY MR. MUZZIO:

04:26PM 8 Q. Ms. Camps, why not wait for Mr. Bravo to be extradited back to
04:26PM 9 Argentina before proceeding with this civil suit in the United
04:26PM 10 States?

04:26PM 11 MR. DAVIS: Objection, Your Honor, to relevance.

04:26PM 12 THE COURT: Overruled as to relevance. Go ahead.

04:26PM 13 THE WITNESS: No. We've waited too long. I don't have
04:27PM 14 time. Mr. Bravo has been living unpunished for almost 50 years.
04:27PM 15 And there is no time. The biological unpunishment -- impunity may
04:27PM 16 leave the Trelew Massacre to be left unpunished. We have waited a
04:27PM 17 long, long time. I have also waited a long time.

04:27PM 18 MR. MUZZIO: I would like now -- I would like to put up
04:27PM 19 Exhibit PX53 which is in evidence.

04:27PM 20 BY MR. MUZZIO:

04:28PM 21 Q. Ms. Camps, do you recognize this photo?

04:28PM 22 A. Yes. This picture is the only picture I have with my parents.
04:28PM 23 My brother is there with my mother, and I'm the baby with my
04:28PM 24 father. It's the only picture I have. And for me, that's a very
04:28PM 25 valuable treasure because it's the only thing that shows that at

04:28PM 1 least I spent some time with them.

04:29PM 2 MR. MUZZIO: Can we put up Exhibit 111?

04:29PM 3 BY MR. MUZZIO:

04:29PM 4 Q. Ms. Camps, do you recognize this photo?

04:29PM 5 A. Yes.

04:29PM 6 Q. What is it?

04:29PM 7 A. This is a photograph of my father in the hospital receiving

04:29PM 8 medical care after there was an attempt to kill him during the

04:29PM 9 Trelew Massacre. It is a very -- right now, well-known photograph

04:29PM 10 of my father.

04:29PM 11 Q. Ms. Camps, is there anything you'd like to tell the jury today

04:29PM 12 about what this lawsuit means?

04:30PM 13 MR. DAVIS: Objection. Calls for a narrative, Your

04:30PM 14 Honor. Not a question.

04:30PM 15 THE COURT: Sustained.

04:30PM 16 BY MR. MUZZIO:

04:30PM 17 Q. Ms. Camps, is there anything that you would briefly like to

04:30PM 18 tell the jury about what this lawsuit means?

04:30PM 19 MR. DAVIS: Same objection, Judge.

04:30PM 20 THE COURT: Mr. Muzzio, ask a focused question if you

04:30PM 21 have one.

04:30PM 22 BY MR. MUZZIO:

04:30PM 23 Q. Ms. Camps, why is this lawsuit important to you?

04:30PM 24 MR. DAVIS: Same objection, Your Honor.

04:30PM 25 THE COURT: Mr. Muzzio.

04:30PM 1 MR. MUZZIO: Your Honor, we have to take up one of your
04:30PM 2 in limine rulings. But aside from that depending on how you would
04:30PM 3 rule on that issue, I would not have further questions at this
04:30PM 4 time. But it depends on that in limine issue, so.

04:30PM 5 THE COURT: On further testimony or a document?

04:30PM 6 MR. MUZZIO: It is on a portion of her testimony that I
04:30PM 7 feel like I was not allowed to develop.

04:31PM 8 THE COURT: All right.

04:31PM 9 Ladies and gentlemen, I know that I have stretched you.
04:31PM 10 I'm going to ask you to wait for us for no more than ten minutes
04:31PM 11 so that we can conclude this witness, and we'll let you go for the
04:31PM 12 day. So if you would take just a ten-minute break, and we'll see
04:31PM 13 you back.

04:31PM 14 (Jury out at 4:31 P.M.)

04:31PM 15 THE COURT: What's the issue?

04:31PM 16 MR. KRISHNAN: Your Honor, I think the issue is the
04:31PM 17 post-2005 fear. We think we were entitled to and we would like to
04:31PM 18 put on evidence that fear continued post 2005 so that --

04:31PM 19 THE COURT: Well, be specific about what question it is
04:31PM 20 you think you didn't get to ask her. Because after laying a
04:31PM 21 predicate, Mr. Muzzio revisited, and I would be surprised if there
04:32PM 22 is anything left to cover there.

04:32PM 23 MR. KRISHNAN: I think the objections were sustained both
04:32PM 24 times he tried.

04:32PM 25 THE COURT: Well, my notes reflect that he came back

04:32PM 1 around; that she began pursuing legal remedies in 2005, not before
04:32PM 2 because of fear; that in 2006 was the first time that this
04:32PM 3 protection was offered. So what else is there?

04:32PM 4 MR. KRISHNAN: She continued to be afraid, and that she
04:32PM 5 continued to be afraid to a level that would have prevented
04:32PM 6 somebody from -- that would have prevented somebody from pursuing
04:32PM 7 these efforts.

04:32PM 8 THE COURT: Sorry. Let me ask a better question, because
04:32PM 9 my notes is that she testified extensively about post-2005 fear.

04:32PM 10 So, Mr. Muzzio, could you proffer for me what other
04:32PM 11 testimony you would be eliciting? In fact, I recall that you just
04:32PM 12 recently asked: Isn't there anything else. So what else is it
04:32PM 13 that you want to explore?

04:32PM 14 MR. MUZZIO: I would like to ask Ms. Camps if there is
04:32PM 15 anything that happened to her recently around the time that she
04:33PM 16 filed this lawsuit that has contributed to her fear.

04:33PM 17 THE COURT: Okay. But can you proffer not just the
04:33PM 18 question but what the testimony is so we can evaluate its
04:33PM 19 admissibility?

04:33PM 20 MR. MUZZIO: Sure. Should we do it outside the presence
04:33PM 21 of the witness?

04:33PM 22 THE COURT: That would be fine. Do you mind taking a
04:33PM 23 break, Ms. Camps?

04:33PM 24 (Ms. Camps exited the room.)

04:33PM 25 THE COURT: And I think I know which ruling you're

04:33PM 1 referring to because the plaintiffs' theory of fear, and you have
04:33PM 2 advanced that it doesn't have to be personal for the period of
04:33PM 3 time that depends on this criminal proceeding that is prospective.
04:34PM 4 I'll just leave it at that.

04:34PM 5 And so if that's the theory on which you're traveling,
04:34PM 6 and it's the country conditions that have covered, her
04:34PM 7 individualized fear has limited relevance.

04:34PM 8 So what is it, Mr. Muzzio, that you want to advance?

04:34PM 9 MR. MUZZIO: Around the time that she began working with
04:34PM 10 an organization in Argentina to file this lawsuit, a Molotov
04:34PM 11 cocktail was placed in Mrs. Camps' car, and immediately, the first
04:34PM 12 thought she had was that someone from the military was trying to
04:34PM 13 kill her.

04:34PM 14 THE COURT: What year?

04:34PM 15 MR. MUZZIO: I'm sorry?

04:34PM 16 THE COURT: What year did this occur in?

04:34PM 17 MR. MUZZIO: 20 -- '19 or '20.

04:34PM 18 THE COURT: And she had or had not yet filed it?

04:34PM 19 MR. MUZZIO: The complaint?

04:34PM 20 THE COURT: Yes.

04:34PM 21 MR. MUZZIO: She had not yet filed it, but she had begun
04:34PM 22 working with lawyers in Argentina. And I just want to clarify on
04:35PM 23 that because I understand where Your Honor is going was with the
04:35PM 24 lawsuit public, how could this have happened. I had the same
04:35PM 25 reaction to this the first time. But then I thought about it.

04:35PM 1 And the issue is the fear of a trauma victim continues, and it --
04:35PM 2 it was her immediate first thought after having lost her parents
04:35PM 3 that you see something like that, and it has to be the military
04:35PM 4 that is trying to kill me. Even if she -- I see you shaking your
04:35PM 5 head, Your Honor.

04:35PM 6 THE COURT: I'm sorry. I didn't mean to cut you off.
04:35PM 7 I'm listening. And I took off my mask, and my poker face is gone.
04:35PM 8 So I don't see how that survives a 403 analysis in this case, and
04:35PM 9 I'll make record of the basis for that.

04:35PM 10 I think that it is of marginal relevance not because it
04:35PM 11 doesn't clearly justify a feeling of fear in a person. It's not
04:36PM 12 that. It is first of all the remoteness from the event or any of
04:36PM 13 the country conditions that we've heard about. So to the extent
04:36PM 14 that we're traveling personally or objectively on country
04:36PM 15 conditions, it's exceptionally remote. So remote that for this
04:36PM 16 jury to accept the conclusion that it's related to the Trelew
04:36PM 17 Massacre, I think is a reach. And so if it's entirely subjective
04:36PM 18 as you said that it was her first thought, that is not the
04:36PM 19 plaintiffs' theory of tolling on which you are traveling. You
04:36PM 20 have to choose. And I don't think that it is, thus -- I think it
04:36PM 21 is substantially -- the prejudice substantially outweighs the
04:36PM 22 relevance.

04:36PM 23 MR. KRISHNAN: Can I just ask Your Honor on the "you have
04:36PM 24 to choose piece," because I think that our position is that we
04:37PM 25 don't have to choose; that there are multiple areas of tolling

04:37PM 1 that can take us through the necessary period to get us within ten
04:37PM 2 years of the filing date. If the jury thinks that the tolling
04:37PM 3 based on fear would get us there, I think we're entitled to rely
04:37PM 4 on multiple theories.

04:37PM 5 THE COURT: I disagree. You have to find -- you have to
04:37PM 6 convince this jury of exceptional circumstances, and those will --
04:37PM 7 I mean, certain exceptional circumstances; not just a generalized,
04:37PM 8 we think it should be told.

04:37PM 9 MR. KRISHNAN: I understand that, Your Honor.

04:37PM 10 THE COURT: But you will have to advance to them that
04:37PM 11 these are the circumstances; these certain circumstances were
04:37PM 12 extraordinary, and thus it would be tolled; not --

04:37PM 13 MR. KRISHNAN: I understand that. But just to be clear
04:37PM 14 about what I'm saying, I'm saying that, for instance, starting
04:37PM 15 from 1972 on, two different tolling criteria -- two different
04:37PM 16 tolling factors applied.

04:37PM 17 THE COURT: I'm going to point this out. Sorry to cut
04:38PM 18 you off. But I don't think that we can have that argument right
04:38PM 19 now. I apologize, Mr. Krishnan. It's an important argument, and
04:38PM 20 I think we need to have it, but not in the context of whether or
04:38PM 21 not she will be permitted to testify about a Molotov cocktail,
04:38PM 22 which I will not admit. That would not survive a Rule 403
04:38PM 23 analysis. It is too prejudicial and not probative enough.

04:38PM 24 MR. KRISHNAN: All right. Thank you, Your Honor.

04:38PM 25 MR. MUZZIO: Understood.

04:38PM 1 THE COURT: Thank you for highlighting it. I did not
04:38PM 2 know where you were going, Mr. Muzzio. So now I know. So does
04:38PM 3 that conclude your direct?

04:38PM 4 MR. MUZZIO: It does, Your Honor.

04:38PM 5 THE COURT: Okay. So we are going to pull the jury back
04:38PM 6 in. But since they're not here, let's talk schedule, Mr. Davis.

04:38PM 7 MR. DAVIS: I was going to say, I've been sitting here
04:38PM 8 since 1:30, and I would like to go outside for a couple of
04:38PM 9 minutes.

04:38PM 10 THE COURT: Would you --

04:38PM 11 MR. DAVIS: Regarding schedule, we have about an hour and
04:38PM 12 a half of depo designations to play. There might be one -- a
04:38PM 13 couple matters I'd like to take up.

04:38PM 14 THE COURT: Any cross of Ms. Camps?

04:38PM 15 MR. DAVIS: Oh, yes, a cross of Ms. Camps.

04:39PM 16 THE COURT: So perhaps if it works for you, I'd call the
04:39PM 17 jury back in and excuse them for the night.

04:39PM 18 MR. DAVIS: I really would like to finish her tonight. I
04:39PM 19 just really would like to go outside.

04:39PM 20 THE COURT: Oh, Mr. Davis, I did not expect you to finish
04:39PM 21 your cross tonight. If you anticipate you can finish your cross,
04:39PM 22 then you will take your bathroom break, and I will see you back
04:39PM 23 here.

04:39PM 24 MR. DAVIS: Actually, I've been told I shouldn't.

04:39PM 25 THE COURT: Okay. I had told you before that we were

04:39PM 1 stopping at 4:30. So I didn't want to --

04:39PM 2 MR. DAVIS: Sorry. My apologies.

04:39PM 3 THE COURT: -- to pull that under you.

04:39PM 4 MR. DAVIS: Tomorrow morning we will take it up.

04:39PM 5 THE COURT: Okay. So taking that from the top, I will
04:39PM 6 bring them in. You can rest your direct, and then I will excuse
04:39PM 7 them for the night.

04:39PM 8 Does that sound appropriate for everyone?

04:39PM 9 MR. KRISHNAN: Yes, Your Honor.

04:39PM 10 (Jury in at 4:39 P.M.)

04:40PM 11 THE COURT: Thank you for that, ladies and gentlemen.

04:40PM 12 Okay. We, as unusual, used the time to resolve a legal dispute
04:40PM 13 that we couldn't have in front of you.

04:40PM 14 And with that, Mr. Muzzio.

04:40PM 15 MR. MUZZIO: That concludes my direct, Your Honor.

04:40PM 16 THE COURT: Okay. And I just noticed that Ms. Camps had
04:40PM 17 not rejoined us before we announced that. But she is not going to
04:41PM 18 be examined anymore. So her direct has concluded.

04:41PM 19 With that also, ladies and gentlemen, from a housekeeping
04:41PM 20 and scheduling matter, I think that the attorneys are very much on
04:41PM 21 track to adhere to the schedule we originally told you that is
04:41PM 22 five days.

04:41PM 23 Mr. Krishnan, am I right that after the cross of this
04:41PM 24 witness, we don't anticipate any further witnesses on the
04:41PM 25 plaintiffs' side?

04:41PM 1 MR. KRISHNAN: Correct, Your Honor.

04:41PM 2 THE COURT: So we anticipate at the rate we're moving
04:41PM 3 that we will complete the evidence tomorrow, and we remain on
04:41PM 4 track. I'd like to ask you if you wouldn't mind, please, to once
04:41PM 5 again have a little bit of a later start tomorrow. If you could
04:41PM 6 be in at 9:20, we'll start at 9:30. And that will give us the
04:41PM 7 window of time that we need to do a couple of matters outside of
04:41PM 8 your presence. And we will keep moving as efficiently as we can
04:41PM 9 to stay on the schedule that we promised you, okay? Not promised.
04:42PM 10 Estimated. We're doing our best.

04:42PM 11 All right. Thank you so much and have a good night.

04:42PM 12 (Jury out at 4:42 P.M.)

04:42PM 13 THE COURT: I hope I speak for everyone when I say that
04:48PM 14 -- I heard someone else say that it's late in the week and they're
04:48PM 15 getting tired, and I recognize that there may be some utility to
04:49PM 16 us having what is an extremely important conversation to all sides
04:49PM 17 in the morning about the jury instructions. I at least want to
04:49PM 18 put that out there so that we're advancing our best chances for
04:49PM 19 getting these right.

04:49PM 20 On that note, I just wanted to at least take a minute and
04:49PM 21 tell you that I just had my law clerks advance to you revised jury
04:49PM 22 instructions. These have changed since this morning in a couple
04:49PM 23 of ways. I'm going to try to draw your attention to them to make
04:49PM 24 your review, I hope, a little bit easier.

04:49PM 25 I'm not positive if the set that you have makes that

04:49PM 1 correction I told you I was going to make this morning on the
04:49PM 2 introduction to affirmative defenses to list the two that are
04:49PM 3 actually at issue and remove exhaustion. If it doesn't, I have
04:49PM 4 made it electronically. So that change has been made.

04:50PM 5 MR. DAVIS: It's on page 7, Your Honor, in our copy. I
04:50PM 6 just marked it off.

04:50PM 7 THE COURT: Well, I apologize for that. I think it
04:50PM 8 printed before I got my edit in, but it is changed electronically.

04:50PM 9 The other one I wanted to highlight for you is that
04:50PM 10 notwithstanding -- everyone else can be seated. Sorry.

04:50PM 11 Notwithstanding, the only word I can think of was debate.
04:50PM 12 But that wasn't -- our discourse over the applicability of U.S.
04:50PM 13 versus international law. I looked at both of your proposals for
04:50PM 14 the self-defense, affirmative defense, and their sources, and
04:50PM 15 agree largely with some statements from each as accurate
04:50PM 16 statements of the law.

04:50PM 17 Quite disinclined to include the instruction that I think
04:51PM 18 takes too much away from the jury to tell them that the use of a
04:51PM 19 firearm is generally inappropriate, but much of what the plaintiff
04:51PM 20 has advanced is accurate under U.S. law and I have included, along
04:51PM 21 with much of what is both accurate and relevant here from the
04:51PM 22 defendant's affirmative defense proposed instruction.

04:51PM 23 This is my proposal as opposed to the final word on
04:51PM 24 what's being said. I want you to look at it; and when we talk
04:51PM 25 tomorrow, tell me why it's wrong, overinclusive, underinclusive.

04:51PM 1 What else? There are a couple places where in the
04:51PM 2 liability instructions, it generically said the plaintiffs have to
04:51PM 3 show. I have modified it to be more specific to, you know, as to
04:52PM 4 any of their claims, the plaintiff or plaintiffs' relatives,
04:52PM 5 because there are -- Mr. Krishnan is already nodding. He knows
04:52PM 6 where I'm going -- on the verdict form, they will have to find as
04:52PM 7 to each plaintiff. It's not all for one.

04:52PM 8 I'm trying to think of what other changes I made from the
04:52PM 9 set this morning, but that might be it. I removed the affirmative
04:52PM 10 defense on exhaustion. And -- okay. And then otherwise they
04:52PM 11 should be pretty similar to the set you probably already started
04:52PM 12 reviewing.

04:52PM 13 What ideally I would do is have you go through this
04:52PM 14 proposed set and then tell me specifically that to which you
04:52PM 15 object so that we can go meaningfully through your objections.
04:52PM 16 But I need to be able to do that after you've had an opportunity
04:52PM 17 with your teams to go through it.

04:53PM 18 So let me just turn to you each and ask procedurally how
04:53PM 19 you want to move forward from here. I understand it's ten to
04:53PM 20 5:00. We put a little time aside tonight, but I want to make sure
04:53PM 21 that it's a meaningful exercise.

04:53PM 22 MR. KRISHNAN: Your Honor, I guess two points, one is
04:53PM 23 that we intend to file our opposition to the plaintiffs' motion
04:53PM 24 with respect to the tolling issue tonight.

04:53PM 25 THE COURT: Okay.

04:53PM 1 MR. KRISHNAN: I hesitate to ask Your Honor to wait up
04:53PM 2 for it. So I just -- I think it will be filed tonight. I just
04:53PM 3 don't want to commit to a time.

04:53PM 4 THE COURT: California time.

04:53PM 5 MR. KRISHNAN: Right.

04:53PM 6 THE COURT: Thank you for the heads-up, Mr. Krishnan, I
04:53PM 7 will not wait up for it. I will look for it. And the reason I
04:53PM 8 wanted to engage you this morning was because I want to make sure
04:53PM 9 that it's focused. I thought that the directed verdict motion by
04:53PM 10 the defendant very much focused in on the question that I myself
04:53PM 11 had. And I, likewise, look to you to answer the question that I
04:54PM 12 really pushed this morning with respect in particular to the
04:54PM 13 reliance on the ongoing proceeding.

04:54PM 14 So I will forecast though that it's my expectation
04:54PM 15 that -- I understand that it's still ongoing. It just seems to me
04:54PM 16 as I sit here that the plaintiffs have advanced evidence, and
04:54PM 17 we've talked about whether or not there is one theory, the ability
04:54PM 18 to advance a blanket theory, which I disagree with, but I think
04:54PM 19 that we should be working on an equitable tolling or affirmative
04:54PM 20 defense for statute of limitations; notwithstanding where the
04:54PM 21 defendant is with the directed verdict, because I don't think that
04:54PM 22 we'll be able to make that time up; meaning, I don't think we're
04:55PM 23 going to be able to have the directed verdict argument and then
04:55PM 24 start the equitable statute of limitations jury instruction.

04:55PM 25 So without prejudice to the defendant's position and with

04:55PM 1 an open mind, I nonetheless want us to be crafting a jury
04:55PM 2 instruction so that we're -- I also think it will help frame the
04:55PM 3 argument frankly. The jury instructions should be an accurate
04:55PM 4 statement of the law. And by the time the evidence is all in, we
04:55PM 5 should have a sense of how to apply it.

04:55PM 6 So that's at least my thought. So we'll get that draft
04:55PM 7 tonight. And that will help us I think as well perhaps with the
04:55PM 8 jury instruction. And we still have to take up the verdict form.

04:55PM 9 MR. KRISHNAN: So, Your Honor, just a couple of points on
04:55PM 10 the motion -- on the opposition we will be filing tonight, my only
04:55PM 11 request to Your Honor is to keep an open mind about the state of
04:55PM 12 the law, which I'm sure you are doing, and it need not be said.
04:55PM 13 But I only say that because I think that there are positions that
04:56PM 14 have been taken in the motion that we don't think are right, and
04:56PM 15 that we think the TVPA sort of legal regime is a little bit
04:56PM 16 different than what you normally encounter with respect to statute
04:56PM 17 of limitations.

04:56PM 18 THE COURT: I agree.

04:56PM 19 MR. KRISHNAN: Otherwise, we could submit a list of
04:56PM 20 instructions to discuss tomorrow -- tonight for -- just a list so
04:56PM 21 that Your Honor can -- we can have an agenda tomorrow. We could
04:56PM 22 do it either in consultation or each of us could submit sort of an
04:56PM 23 ordered list of what we care about.

04:56PM 24 THE COURT: That would be very helpful. And candidly, it
04:56PM 25 can be by e-mail. If you e-mail the Louis chamber box and say:

04:56PM 1 These are the page numbers that we think need to be discussed at a
04:56PM 2 charge conference tomorrow morning, then I'll be focused.

04:56PM 3 MR. KRISHNAN: Thank you, Your Honor.

04:56PM 4 THE COURT: Okay.

04:56PM 5 MR. SLADE: Your Honor, we may need a little time to
04:56PM 6 review their debrief, depending on what time they file it tonight,
04:57PM 7 but in the morning. I don't know how long it's going to be or how
04:57PM 8 detailed.

04:57PM 9 THE COURT: Oh, no, I understand. I know I just
04:57PM 10 collapsed two issues, and for that I apologize.

04:57PM 11 But my point is that notwithstanding your position on the
04:57PM 12 directed verdict and with the expectation that we won't have
04:57PM 13 resolved it, can we, nonetheless, be working on an equitable
04:57PM 14 tolling affirmative defense -- I apologize -- statute of
04:57PM 15 limitations and equitable tolling jury instruction tomorrow
04:57PM 16 morning, knowing that we still have that ahead of us? That's what
04:57PM 17 I meant.

04:57PM 18 MR. SLADE: Okay. Thank you.

04:57PM 19 MR. KRISHNAN: Your Honor, on the opposition itself, I
04:57PM 20 think we would, at least for testimony that came in today, we
04:57PM 21 would probably just leave place holders for a citation, as we
04:57PM 22 wouldn't have the transcript by the time we --

04:57PM 23 THE COURT: No. I don't expect Vernita to have a rough
04:57PM 24 to you before you have the draft. I think you can summarize, as I
04:57PM 25 would expect you to do if you were making the response orally,

04:58PM 1 what you recall the evidence being.

04:58PM 2 MR. KRISHNAN: Thank you, Your Honor.

04:58PM 3 THE COURT: Mr. Davis.

04:58PM 4 MR. DAVIS: A couple of housekeeping matters. We are
04:58PM 5 going to play three depo designations, which total an hour and
04:58PM 6 15 minutes. There are some duplicates. We took most of them out.
04:58PM 7 Like state your name is repetitive. But my colleagues from the
04:58PM 8 West Coast are okay with that I think. I would like to get a
04:58PM 9 stipulated date as to February 23, 2010, as being the date that
04:58PM 10 the extradition proceeding was filed in the Southern District of
04:58PM 11 Florida. If I could have Mr. Bravo testify.

04:58PM 12 THE COURT: I'm sorry. Do that date again. February 23,
04:58PM 13 2010?

04:58PM 14 MR. DAVIS: That's when the extradition was filed. It
04:58PM 15 was decided by Judge Dube on November 1, 2010, and I just wanted
04:58PM 16 the date filed, and the jury to have that information.

04:58PM 17 THE COURT: Okay. Have you had a chance to talk to Mr.
04:58PM 18 Krishnan about it yet?

04:58PM 19 MR. KRISHNAN: No, but we could talk about it. I think
04:58PM 20 there might be a couple of similar dates we might like as well.

04:59PM 21 THE COURT: Okay. Do you have an estimate for your cross
04:59PM 22 of Ms. Camps?

04:59PM 23 MR. DAVIS: I really want it to be short. I would say
04:59PM 24 max 30 minutes, but it could be closer to 10.

04:59PM 25 THE COURT: Okay. So if we -- thank you, Mr. Davis. If

04:59PM 1 we begin at 9:30 and conclude with Ms. Camps with redirect by
04:59PM 2 10:15, as going out on a limb and assuming no more than 15 minutes
04:59PM 3 of redirect on a half-hour cross, okay, so then even with the depo
04:59PM 4 designations, the evidence is finished by noon.

04:59PM 5 As you sit here, Mr. Krishnan, you know their
04:59PM 6 designations. Is there a rebuttal case?

04:59PM 7 MR. KRISHNAN: I don't believe so, Your Honor.

04:59PM 8 THE COURT: Okay. So the jury has the case at noon,
04:59PM 9 which means I'm going to try to take a longer morning session and
04:59PM 10 a later break, because we'll hopefully then be able to slide
05:00PM 11 directly into -- oh, do you want jury instructions before or after
05:00PM 12 closing?

05:00PM 13 MR. KRISHNAN: Before, Your Honor.

05:00PM 14 THE COURT: Okay. Mr. Davis, do you agree?

05:00PM 15 MR. DAVIS: I always like after. But whatever the
05:00PM 16 Court's preference. I have no strong view.

05:00PM 17 THE COURT: You all can test your advocacy skills and see
05:00PM 18 if one persuades the other. It makes no difference to me but I
05:00PM 19 would like to be able to go directly from evidence into either
05:00PM 20 closing or charge.

05:00PM 21 How long do you estimate for your closings, though?

05:00PM 22 MR. KRISHNAN: I was thinking slightly over an hour, Your
05:00PM 23 Honor.

05:00PM 24 THE COURT: Okay. I'm not going to limit you on a
05:00PM 25 half-hour opening. I would just be mindful of the jury's

05:00PM 1 attention span.

05:00PM 2 MR. KRISHNAN: I understand, Your Honor.

05:00PM 3 MR. DAVIS: I would want obviously the same time. Look,
05:00PM 4 I don't like -- I would not likely use that much time, but I would
05:00PM 5 want the same amount of time.

05:00PM 6 THE COURT: I'm not going to limit you unless someone
05:01PM 7 says, give me a warning as to the time. You all are professional
05:01PM 8 trial attorneys, and you'll gauge the interest and the attention
05:01PM 9 of the jury. So seriously unless you tell me, can I have a
05:01PM 10 five-minute warning.

05:01PM 11 MR. DAVIS: I would ask for a five-minute warning,
05:01PM 12 although I really hope to not even get to that point.

05:01PM 13 THE COURT: Understood. Forgive me. But mostly what I
05:01PM 14 was trying to figure out is whether or not I needed the clerk's
05:01PM 15 office to be prepared to order them lunch. But they're not going
05:01PM 16 to have the case before lunch.

05:01PM 17 MR. DAVIS: Judge, just so I understand, we will finish
05:01PM 18 -- say we finish evidence by noon, just that being the time. We
05:01PM 19 would then have -- would you want to go straight into closings at
05:01PM 20 that point or charge and then closings?

05:01PM 21 THE COURT: That's what I was hoping. But what I was
05:01PM 22 really trying to accomplish is getting them back there with a
05:01PM 23 lunch and on their own, which on a two hours for closings and
05:01PM 24 charge is impossible, it's not going to happen. And so we'll
05:02PM 25 probably more realistically have a -- take a very abbreviated

05:02PM 1 lunch break, and I mean, like a half hour for them to get
05:02PM 2 something. Maybe I can -- maybe I can get the clerk's office to
05:02PM 3 let me buy them lunch anyway. We'll see.

05:02PM 4 So we'll have to do some kind of lunch break before we go
05:02PM 5 into closings then. I can't keep them here until 2:30 without
05:02PM 6 having fed them.

05:02PM 7 MR. DAVIS: Okay.

05:02PM 8 THE COURT: Okay. Well, at least we know where we're
05:02PM 9 going.

05:02PM 10 Mr. Muzzio?

05:02PM 11 MR. KRISHNAN: Before we get to that, Your Honor, verdict
05:02PM 12 form. What -- does Your Honor have a thought or plan in mind in
05:02PM 13 terms of --

05:02PM 14 THE COURT: Remember yesterday that I had asked that the
05:02PM 15 parties maybe take another look together and see if there was
05:02PM 16 anything that they agreed on. I was pessimistic when I hadn't
05:02PM 17 heard anything but still open.

05:02PM 18 MR. DAVIS: I believe that we could probably come close
05:02PM 19 to an agreement and submit it to you in the morning. It's not
05:02PM 20 going to be hard for you to decide. We took out exhaustion, so.
05:03PM 21 We will kind of conform to them that way. There wasn't a lot of
05:03PM 22 differences in truth from what I saw.

05:03PM 23 THE COURT: I did not understand where you may dig your
05:03PM 24 heels in. But I agree with you that a lot of it felt like it was
05:03PM 25 a matter of formatting, and that between the two of you, you could

05:03PM 1 largely have one form that only in limited places bracket the
05:03PM 2 differences between you. That was my hope yesterday.

05:03PM 3 So if you had something that you could advance tomorrow
05:03PM 4 morning or attach to the e-mail that tells me what instructions
05:03PM 5 you feel like we need to talk about at the charge conference still
05:03PM 6 and which ones you can live with the Court's instructions or
05:03PM 7 proposal, that would be just fine either way.

05:03PM 8 MR. KRISHNAN: Thank you, Your Honor.

05:03PM 9 MR. MUZZIO: One last point, Your Honor, on deposition
05:03PM 10 designations, which I'm sure no one wants to spend a lot of time
05:03PM 11 on right now. The first thing is there was one designation for
05:03PM 12 the Santucho deposition where we objected to the question, and the
05:03PM 13 objection was sustained on the designation ruling. But the answer
05:04PM 14 remained. And we think Judge Moore very likely intended to remove
05:04PM 15 the answer as well. It's related to -- the question was: Did you
05:04PM 16 learn that a guard was killed at Rawson Prison? And so it's the
05:04PM 17 type of propensity evidence that Judge Moore had ruled to exclude
05:04PM 18 it, and I think it was -- yeah, there is a foundation issue as
05:04PM 19 well, so we just want to make sure that's not getting played.

05:04PM 20 MR. DAVIS: If it's been ruled on, we'll take it out;
05:04PM 21 although, I need to check that. This is the first I'm hearing of
05:04PM 22 that specific designation. There are, obviously, a lot of things
05:04PM 23 going on. This is on Celi.

05:04PM 24 MR. MUZZIO: No, it's on Santucho. It's Santucho 75, 10
05:04PM 25 to 11. The question has been excluded. So all that remains is

05:04PM 1 the answer. And it seems likely that the answer was meant to be
05:04PM 2 excluded as well.

05:04PM 3 THE COURT: I don't even have a page 75 in my depo
05:05PM 4 designations for the defendants.

05:05PM 5 MR. MUZZIO: I think it's from the Santucho deposition,
05:05PM 6 the entire deposition. So it's not --

05:05PM 7 (Counsel conferring off the record.)

05:05PM 8 MR. DAVIS: Judge, we will deal with this.

05:05PM 9 MR. MUZZIO: Great.

05:05PM 10 MR. DAVIS: We will fix it.

05:05PM 11 MR. MUZZIO: The other issue -- and I think Mr. Davis
05:05PM 12 confirmed it -- but their designations had a lot of duplication.
05:05PM 13 And it wasn't just limited to the witness identifying themselves;
05:05PM 14 it was replaying substantive portions of ours. And I just want to
05:05PM 15 make sure --

05:05PM 16 Judge Moore had instructed the parties on this at the
05:05PM 17 calendar call, that there should be no duplication. So I just
05:05PM 18 wanted to make sure we're all on the same page. And we're fine,
05:05PM 19 obviously, with the witnesses identifying themselves, taking the
05:05PM 20 oath.

05:05PM 21 But substantive positions of testimony, we don't think
05:05PM 22 should be played twice.

05:05PM 23 MR. DAVIS: We'll deal with it, Judge. We'll get it
05:06PM 24 fixed, and we will avoid duplication. Like what's your name, we
05:06PM 25 want that to still be in there, and that's among the duplicative

05:06PM 1 questions, so I'll take it out.

05:06PM 2 THE COURT: So I appreciate it. Sort of two words of
05:06PM 3 warning here.

05:06PM 4 While I recognize that no one wants to hold the jury for
05:06PM 5 any longer than they have to at the risk of annoying them, at the
05:06PM 6 same time, if it's been deemed admissible and there is the
05:06PM 7 opportunity to not cut it again in time for you to see it and
05:06PM 8 verify it, that runs another risk. So I'm going to leave it to
05:06PM 9 the very experienced professional attorneys to make a decision
05:06PM 10 about how they want to handle that.

05:06PM 11 It's admissible from my perspective if they play the full
05:06PM 12 hour and a half. That may be time consuming but a decision that
05:06PM 13 you will all have to collectively decide. They might not have
05:07PM 14 time to show you the cut version before they play it, and that was
05:07PM 15 an issue yesterday, so.

05:07PM 16 MR. MUZZIO: Thank you, Your Honor.

05:07PM 17 MR. DAVIS: We were good with it, Judge. And there may
05:07PM 18 be a document that was on their exhibit list that I want to move
05:07PM 19 into evidence. The letter. You know what I'm talking about.

05:07PM 20 THE COURT: Okay. All right. Well, then, so that you
05:07PM 21 have a chance to digest what I have advanced to you and I have a
05:07PM 22 chance to wait for your proposals both on instructions and the
05:07PM 23 verdict form, I'll see you at 8:30.

05:07PM 24 MR. DAVIS: Thank you, Judge.

05:07PM 25 MR. KRISHNAN: Thank you, Judge.

05:07PM 1 MR. SLADE: Thank you, Your Honor.

05:15PM 2 (Recess at 5:07 P.M.)

3 C E R T I F I C A T E

4 I certify that the foregoing is a correct transcript from
5 the record of proceedings in the above-entitled matter.

6
7 July 1, 2022

/s/ Vernita Allen-Williams

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