

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANA PATRICIA CHAVEZ, CECILIA)
SANTOS, JOSE FRANCISCO)
CALDERON, ERLINDA FRANCO, AND)
DANIEL ALVARADO)

Plaintiffs,)

VS.)

NO. 03-2932-MI /P)

NICOLAS CARRANZA,)

Defendant.)

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
NOVEMBER 14, 2005
VOLUME X

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1 MONDAY MORNING AND AFTERNOON

2 NOVEMBER 14, 2005

3 The jury trial in this case resumed on this
4 date, Monday, November 14, 2005, at 9:05 o'clock a.m.,
5 when and where evidence was introduced and proceedings
6 were had as follows:

7

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9

10 THE COURT: If everyone is ready, we can bring
11 the panel in.

12 (Jury in at 9:05 a.m.)

13 THE COURT: All right. You may be seated.

14 Will there be any other witnesses for the defense?

15 MR. BROOKE: Yes, Your Honor. Norma Carranza.

16 THE COURT: All right.

17 THE CLERK: Ma'am, if you will raise your right
18 hand to be sworn. Do you solemnly swear the testimony you
19 are about to give the court and jury in this matter to be
20 the truth, the whole truth and nothing but the truth, so
21 help you God?

22 THE WITNESS: I swear.

23 THE CLERK: You may take the witness stand.

24 THE COURT: You may proceed.

25

carranza10. txt

1 (Francis Icaza previously sworn to interpret
2 English into Spanish and Spanish into English.)

3 NORMA ELIZABETH CARRANZA,
4 was thereupon called as a witness on behalf of the
5 Defendant, and having been first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BROOKE:

9 Q. Would you please state your full name for the court and
10 jury?

11 A. Norma Elizabeth Carranza.

12 Q. And what is the date of your birth?

13 A. 28th of March of 1940.

14 Q. And where were you born?

15 A. In El Salvador.

16 Q. Where do you attend school?

17 A. Elementary school at the (speaking in Spanish) and
18 secondary school at (speaking in Spanish).

19 Q. When did you meet Nicolas Carranza?

20 A. I met him in the year of 1957.

21 Q. And did you and Nicolas Carranza get married?

22 A. In 19 -- the 30th of August of 1958.

23 Q. And have you and Mr. Carranza had any children?

24 A. We have five children, one male and four females.

25 Q. What are the ages of your children and where do they

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DIRECT - NORMA ELIZABETH CARRANZA

1600

- 1 live?
- 2 A. 50, 47, 45, 41, 38. Victor Manuel lives in Los
3 Angeles, California. Maria Teresa lives in Memphis,
4 Tennessee. Norma Elizabeth lives in El Salvador. Ana
5 Consuelo lives in El Salvador, and Claudia Helena lives here
6 in Memphis.
- 7 Q. Did you live with your husband in El Salvador?
- 8 A. The majority of the time, yes.
- 9 Q. And when your husband came for training in Oklahoma,
10 did you live with him in Oklahoma?
- 11 A. Yes.
- 12 Q. And is that where your daughter Maria was born?
- 13 A. Yes.
- 14 Q. And did you then move with your husband and family to
15 the United States?
- 16 A. Yes.
- 17 Q. What year did you move to the United States?
- 18 A. It was in 1958.
- 19 Q. The year that you moved to the United States?
- 20 A. Yes, it was that year, the year I married.
- 21 Q. And did you stay in the United States then through that
22 time or did you go back and live in El Salvador?
- 23 A. No, I was here for one year during his studies here.
- 24 Q. Yes, but I mean did you move back to El Salvador after
25 you lived the one year here?

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DIRECT - NORMA ELIZABETH CARRANZA

1601

- 1 A. Uh-huh, yes.

- 2 Q. And when did you permanently move to the United States
3 to live permanently here?
- 4 A. In 1985.
- 5 Q. And what address have you lived at in the United States
6 since moving here in 1985?
- 7 A. At the same address always at 6530 Red Birch Drive,
8 Memphis, Tennessee, for 20 years.
- 9 Q. Since moving to the United States and in Memphis,
10 Tennessee in 1958, have you and your husband had occasion to
11 go back and visit in El Salvador?
- 12 A. We have returned almost every year to see my parents
13 and my daughters who live there.
- 14 Q. How many grandchildren do you and your husband have?
- 15 A. Fourteen. Beautiful children.
- 16 Q. Do you recall when your husband was made the
17 subsecretary of defense ministry?
- 18 A. Not exactly.
- 19 Q. Do you remember generally?
- 20 A. Must have been between 1983 or '81 or '84, I don't
21 know.
- 22 Q. Okay.
- 23 A. I'm not sure.
- 24 Q. No, I'm not asking for a date, I'm asking you if you
25 just generally remember when he held that position.

♀

DIRECT - NORMA ELIZABETH CARRANZA

1602

- 1 A. Yes.

- 2 Q. At any time when your husband held that position, did
3 he bring a weapon into the home?
- 4 A. Not visible because we had children in the house.
- 5 Q. At any time while he held that position, did he leave
6 the home during the middle of the night?
- 7 A. Never, never.
- 8 Q. Do you recall when your husband became the director of
9 the treasury police?
- 10 A. Yes, but not the date.
- 11 Q. All right. And as the director of treasury police, did
12 he bring a weapon into the home?
- 13 A. No.
- 14 Q. At any time while he was director of the treasury
15 police, did he leave during the night?
- 16 A. No.
- 17 Q. During your marriage at any time while you lived in El
18 Salvador with Nicolas Carranza, did he tell you that he was
19 receiving any monies from the United States government?
- 20 A. Not until my deposition in December of last year.
- 21 Q. During the course of your 30 -- course of your 47-year
22 marriage, have you witnessed, observed your husband to be a
23 man of violence?
- 24 A. Never. I would never have been able to stand 47 years
25 with a violent man.

♀

DIRECT - NORMA ELIZABETH CARRANZA

1603

- 1 Q. Has your husband been a good husband?
- 2 A. A marvelous husband.

3 Q. Has he been a good father?

4 A. More than a better husband.

5 THE INTERPRETER: More than a good husband, the
6 interpreter corrects himself.

7 BY MR. BROOKE:

8 Q. And has he been a good grandfather?

9 A. I really have no words to express. A grandfather more
10 than being a good one, very aware, careful.

11 MR. BROOKE: I believe that's all. Thanks very
12 much.

13 THE COURT: Cross examination?

14 MS. BLUM: Your Honor, we don't have any cross
15 examination.

16 THE COURT: All right. Thank you very much.

17 (Witness excused.)

18 THE COURT: Who will our next witness be?

19 MR. BROOKE: That completes the defendant's
20 proof.

21 THE WITNESS: Thank you, everybody.

22 THE COURT: Certainly. Will there be any
23 rebuttal proof from the defense?

24 MR. ESQUIVEL: Your Honor, the plaintiffs call
25 one rebuttal witness, Professor Terry Karl.

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1604

1 THE COURT: Certainly. Professor Karl, so it
2 will reflect it in the record, we're going to swear you in

3 again so it will be right here in this point of the
4 record.

5 THE CLERK: Do you solemnly swear the testimony
6 you are about to give the court and jury in this matter to
7 be the truth, the whole truth and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 MR. BROOKE: Your Honor, may we approach?

11 THE COURT: You may.

12 (The following proceedings had at side-bar
13 bench.)

14 MR. BROOKE: Your Honor, may we inquire into
15 the scope of the rebuttal to determine if it is
16 appropriate rebuttal?

17 THE COURT: Sure, if you want to.

18 MR. ESQUIVEL: I have two subjects. One is the
19 assassination of Colonel Montenegro. There was testimony
20 last week that the colonel was still alive. Professor
21 Karl will present evidence that Colonel Montenegro was
22 assassinated in 1984.

23 The second subject I have is the testimony last
24 week about members of the military who were punished for
25 the killing of the American church women, and she is going

1 to clarify the people who were punished and their
2 positions in the military.

3 THE COURT: All right. It sounds appropriate.
Page 11

4 MR. BROOKE: Can we ask what are the sources of
5 the assassination information?
6 MR. ESQUIVEL: I think we're about to find out.
7 THE COURT: I don't think we need to do that
8 right now.
9 (The following proceedings were had in open
10 court.)
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DIRECT - TERRY LYNN KARL

1606

1 TERRY LYNN KARL,
2 was thereupon called as a witness on behalf of the
3 Plaintiffs, and having been first duly sworn, was

4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ESQUIVEL:

7 Q. Good morning, Professor Karl.

8 A. Good morning.

9 Q. I have two subjects that I want to ask you about,
10 Professor Karl. The first is were you surprised last week
11 when you heard Colonel Carranza's testimony that the judge who
12 was investigating Mr. Alvarado's torture and Lieutenant
13 Commander Schaufelberger's murder was still alive?

14 A. Yes, I was. I had testified that he was dead.

15 Q. In your research and your studies, have you come across
16 evidence that Colonel Montenegro who was the judge in
17 Mr. Alvarado's case was, in fact, assassinated in 1984?

18 A. Yes, I have. His full name is Colonel Jose Montenegro
19 Vasquez.

20 MR. ESQUIVEL: Your Honor, may I have
21 permission to approach the witness?

22 THE COURT: You may.

23 BY MR. ESQUIVEL:

24 Q. Professor Karl, I've handed you -- excuse me. I've
25 handed you a document that is dated September 28th, 1983 that

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DIRECT - TERRY LYNN KARL

1607

1 is a cable from the United States Embassy. Do you recognize
2 this document?

3 A. Yes, I do. This is a cable that was sent by Ambassador
4 Tom Pickering who was U. S. ambassador at the time of Daniel

5 Alvarado's capture. It was sent directly to the secretary of
6 state, and it reflects that the interactions between the
7 embassy and the secretary of state around the case of Daniel
8 Alvarado were being watched very carefully from Washington.

9 MR. ESQUIVEL: Your Honor, the plaintiffs move
10 this cable into evidence as the next marked exhibit.

11 THE COURT: It is so received. Exhibit 54.

12 (Exhibit Number 54 was marked. Description:
13 Cable.)

14 BY MR. ESQUIVEL:

15 Q. Would you please read paragraph two of this cable for
16 the jury?

17 A. On September 24th, 1983 -- excuse me, I can't actually
18 read this. The --

19 Q. Does that say RS0, Professor Karl?

20 A. RS0, that's right. Received a letter from Colonel Jose
21 A. Montenegro Vazquez. The judge now presiding over the ITCIR
22 Schaufel -- over the Lieutenant Commander Schaufelberger
23 assassination case. And that's a document that documents the
24 name of the judge who was presiding over the murder of
25 Lieutenant Commander Schaufelberger, the American officer.

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DIRECT - TERRY LYNN KARL

1608

1 Q. And that judge is Jose A. Montenegro Vasquez, is that
2 right?

3 A. That's right.

4 Q. Now, we have heard testimony in this trial about a

5 Colonel Montenegro, can you explain to the jury why his name
6 is Montenegro Vasquez in this cable?

7 A. The way names work in Latin America is Montenegro is
8 the name he would be referred to as. Vasquez is the name of
9 his mother or his mother's family, so we would call him
10 Colonel Montenegro, and that's how he would be referred to in
11 El Salvador.

12 MR. ESQUIVEL: Your Honor, may I have
13 permission to approach the witness?

14 THE COURT: You may.

15 BY MR. ESQUIVEL:

16 Q. I have handed you a document which is an article from
17 United States Press International dated March 1, 1984. Have
18 you seen this document before?

19 A. Yes, I have.

20 Q. What is it?

21 A. It is a document by United Press, UPI, United Press
22 International that went over the wire services. It was picked
23 up by the Washington Post in Washington, D. C. And the
24 document reports the murder, the death of Army Colonel Jose
25 Alberto Montenegro Vasquez.

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DIRECT - TERRY LYNN KARL

1609

1 MR. ESQUIVEL: Your Honor, the plaintiffs move
2 this document into evidence as Exhibit 55.

3 THE COURT: So received.

4 (Exhibit Number 55 was marked. Description:
5 Article.)

6 A. It also notes, by the way, that he is the coordinator
7 of instruction judges in charge of military tribunals which
8 confirms that he would then be the same military judge that
9 was presiding over Daniel Alvarado's case.

10 BY MR. ESQUIVEL:

11 Q. Now, Professor Karl, the members of the jury are able
12 to see that exhibit. Would you please read for them the
13 sections that you were just referring to?

14 A. Yes. It says unidentified gunmen shot to death Army
15 Colonel Jose Alberto Montenegro Vasquez, 51, coordinator of
16 instruction judges in charge of military tribunals.

17 Q. Thank you, Professor Karl.

18 Have you seen evidence in declassified documents of the
19 assassination of Colonel Montenegro?

20 A. Yes, I have.

21 MR. ESQUIVEL: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 BY MR. ESQUIVEL:

25 Q. Professor Karl, I have handed you a cable from the

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DIRECT - TERRY LYNN KARL

1610

1 United States Embassy in San Salvador dated March 6th, 1984.

2 Have you seen this before?

3 A. Yes, I have.

4 Q. What is this document?

5 A. This is a cable that is sent by the embassy to the

6 department of state.

7 MR. ESQUIVEL: Your Honor, the plaintiffs move
8 this document into evidence as Exhibit 56.

9 THE COURT: So received.

10 (Exhibit Number 56 was marked. Description:
11 Cable.)

12 BY MR. ESQUIVEL:

13 Q. Professor Karl, would you please read for the members
14 of the jury paragraph two of this cable?

15 A. On March 1st, Colonel Jose Alberto Montenegro Vasquez,
16 a judge in the military tribunal, was shot and killed by would
17 be kidnappers when he resisted abduction.

18 Q. Thank you, Professor Karl.

19 From your research, did you find whether evidence of
20 Colonel Montenegro's assassination appeared in newspapers in
21 El Salvador?

22 A. Yes, I did. This assassination was -- appeared in the
23 major newspapers in El Salvador.

24 MR. ESQUIVEL: Your Honor, may I have
25 permission to approach the witness?

♀

DIRECT - TERRY LYNN KARL

1611

1 THE COURT: You may.

2 BY MR. ESQUIVEL:

3 Q. Professor Karl, I've handed you a document that is
4 written in Spanish. It is a newspaper article from March 2nd,
5 1984. Have you seen this document before?

6 A. Yes, I have. And I have seen other documents like this

7 from other newspapers in El Salvador.

8 MR. ESQUIVEL: Your Honor, the plaintiffs move
9 this document into evidence as Exhibit 57.

10 THE COURT: It is so received as 57.

11 BY MR. ESQUIVEL:

12 Q. Now, this document is in Spanish, but do you speak
13 Spanish, Professor Karl?

14 A. Yes, I do.

15 Q. Would you please translate for the members of the jury
16 or tell them what the headline of this article says?

17 A. At the top where that black box is, these are events
18 that happened the night before, so this is something that must
19 have been put in the paper very late in the production of the
20 newspapers. This is a corner of a newspaper called La Prensa
21 Grafica where they report the happenings from the night
22 before.

23 Q. And what does the newspaper report?

24 A. The newspaper headline says Fue asesinado ayer el
25 Colonel Montenegro V. The Colonel Montenegro V was

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DIRECT - TERRY LYNN KARL

1612

1 assassinated yesterday. And then it proceeds to describe that
2 Colonel Jose Alberto Montenegro Vasquez, 51 years of age,
3 whose body was found in the Centro Urbano Jardines de Moupegon
4 was assassinated. And they describe his murder.

5 Q. Thank you, Professor Karl. Now, I want to ask you --

6 A. Excuse me, this hasn't been marked in evidence.

7 (Exhibit Number 57 was marked. Description:
8 Newspaper Article.)
9 BY MR. ESQUIVEL:
10 Q. Now, Professor Karl, I want to ask you about the murder
11 of the American church women in December of 1980. Were any
12 Salvadorans soldiers punished for killing the American church
13 women?
14 A. Four American church women were murdered on December
15 the 2nd, 1980. There was tremendous pressure from the United
16 States to find who the murderers of these Americans were, and,
17 in fact, U. S. aid was contingent upon the discovery and
18 prosecution of the murders. As a result, five national guard
19 men were identified. They included the deputy sergeant who
20 was in charge of the other four national guard members. His
21 name was Luis Antonio Calendres Almon (spelled phonetically),
22 and four other national guard men. They were eventually
23 tried. They were arrested in 1981. Excuse me, let me
24 backtrack a minute. They were arrested in 1981 and put in
25 Mari on a prison, which is the prison for men. They were put in

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DIRECT - TERRY LYNN KARL

1613

1 a special section of the prison because in Mari on a prison
2 which was frequently visited between 1983 and 1985, in
3 particular, by the Red Cross, members of the U. S. Congress
4 and human rights organizations. In Mari on a prison, there's a
5 section for political prisoners, which is where Daniel
6 Alvarado was held. There is another section for military
7 prisoners. That section includes all military men who have

8 been convicted of common crime. And in frequent visits, there
9 were never any military men in that prison for human rights
10 violations. In other words, they would be there because they
11 stole the cattle of a landowner or because they had gotten
12 drunk and shot up a restaurant for common crimes, but they
13 were not there for human rights violations.

14 Q. When were the five members of the national guard tried
15 and punished for the killing of the church women?

16 A. They were tried in 1984. They were arrested on
17 April 29th, 1981, and they were tried and sentenced on May the
18 25th, 1984. This is the first time in Salvadoran history that
19 any member of the Salvadoran armed forces, and by this I mean
20 low level, none of these men are officers, including the
21 deputy sergeant who gave an order, none of these men are
22 officers. The lowest rank of officer is a sub-lieutenant, so
23 all of these are below the level of officer and are what we
24 would call normal troops, if I can put it that way. So they
25 were tried and convicted for -- by the first time in El

♀

DIRECT - TERRY LYNN KARL

1614

1 Salvadoran history. On May 25th, 1984, they were sentenced to
2 30 years in prison for the rape and murder of the American
3 church women, and they spent 17 years after that in prison
4 before they were released. These are the men -- the only men
5 who were in prison during the period of time that Mr. Romero
6 was in prison in Marióna and Mr. Alvarado was in prison there.
7 The only military men in prison for any human rights

8 violations. There were five of them. Their names are Deputy
9 Sergeant Luis Antonio Calendres Almon (spelled phonetically),
10 Daniel Canales Ramirez (spelled phonetically), Carlos Wakeen
11 Contrarez (spelled phonetically), Francisco Orlando Contrarez
12 (spelled phonetically) and Jose Roberto Morano. These are the
13 only military men, and there were no officers, as I said
14 before, who have been tried for any human rights crimes at all
15 in El Salvador until the year 1991, and that was for the
16 murder of six Jesuit priests.

17 MR. ESQUIVEL: Thank you, Professor Karl.

18 THE WITNESS: Thank you.

19 THE COURT: Cross examination.

20 CROSS EXAMINATION

21 BY MR. BROOKE:

22 Q. Professor Karl, when were the six Jesuit priests
23 killed?

24 A. Six Jesuit priests were killed on November the 16th,
25 1989.

‡

CROSS - TERRY LYNN KARL

1615

1 Q. Where was Mr. Carranza living at that time?

2 A. In the United States.

3 Q. What was his position with the El Salvadoran military?

4 A. He was outside the army.

5 Q. Why would you and Mr. Garcia bring up -- and former
6 Ambassador White bring up the killing of the six Jesuit
7 priests in 1989 in relevance to this trial?

8 A. I think because what permitted human rights violations

9 to occur in El Salvador was a concept that we call impunity.
10 Impunity means that you can commit violations of human rights
11 without any fear of legal prosecution. And there was absolute
12 impunity for Salvadoran military officers in El Salvador until
13 the murder of the Jesuits, that's why it is important.

14 Q. And you think that has relevance to Mr. Carranza?

15 A. I think that there was impunity in El Salvador when
16 Mr. Carranza was in positions of command responsibility. In
17 other words, I believe that he failed to prevent or punish any
18 human rights violations when he was subsecretary, and I also
19 believe he failed to prevent and punish the violations of
20 people in the treasury police when he was director of the
21 treasury police, and that's why I think impunity matters.

22 Q. Now, you've brought up now the killing of the American
23 church women in December of 1980, correct?

24 A. That's right.

25 Q. When did Mr. Carranza leave the position of

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CROSS - TERRY LYNN KARL

1616

1 subsecretary of ministry?

2 A. In January, early January.

3 Q. Of 1981?

4 A. That's right.

5 Q. When these military officers were apprehended in '81,
6 would that have been Mr. Carranza's position then, that he was
7 occupying that he was involved in the apprehension?

8 A. They were not officers, sir, they were normal enlisted

9 men, but they were very rapidly identified for the murder of
10 the nuns.

11 Q. And the trial of those men, would that have been
12 carried out by the ministry of defense?

13 A. The trial of the nuns was a very unusual trial. The
14 only trial, as I said, in the first time in Salvadoran history
15 that a trial like this occurred. It was conducted by a
16 regular Salvadoran judge.

17 Q. They had a separate judicial -- civilian judicial
18 system versus just a military judicial system, didn't they?

19 A. They had both, that's right.

20 Q. Versus Guatemala had a military judicial system and a
21 military?

22 A. Well, that's actually not quite correct. Guatemala
23 also has a civilian part of its judicial system.

24 Q. I'm not asking about now. I'm asking about then, in
25 1981-'82.

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CROSS - TERRY LYNN KARL

1617

1 A. There were no civilian trials of military officers in
2 Guatemala at the time, but I believe there was also a civilian
3 part of the judicial system in Guatemala.

4 Q. Now, Exhibit 56, do you have that in front of you?

5 A. I'm sorry, I don't remember which exhibit number that
6 was.

7 Q. This is one of the documents you have identified
8 referencing the killing of Judge Montenegro.

9 A. That's right.

10 Q. Now, in Exhibit 56, it indicates he was overcharged or
11 had responsibility, I assume, is what the word choice would
12 mean, with overseeing all cases involving terrorists
13 activities and membership to subversive organizations under
14 Decree 507, the state of siege law, is that correct?

15 A. That's right.

16 Q. Counsel didn't have you read that, did he?

17 A. I think the purpose of this cable was to identify the
18 judge.

19 Q. Right, but I mean that -- the fact that Judge
20 Montenegro was killed and being the one responsible for
21 overseeing the judges that handled the terrorists who were
22 incarcerated, wasn't that a continuing problem that judges,
23 the civilian judges who had responsibility for handling the
24 cases of terrorists were under extreme fear and, in fact, many
25 were killed by terrorists and guerillas?

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CROSS - TERRY LYNN KARL

1618

1 A. I think if you look at the pattern of judges that were
2 threatened and killed in El Salvador, the majority of judges
3 that were threatened had to leave the country or were killed
4 were actually attempting to investigate known cases of
5 civilian murders. For example, the judge who tried to
6 investigate the murder of Arch Bishop Romero had an
7 assassination attempt against him. He recognized the national
8 policemen who were trying to kill him and he had to flee the
9 country. So there are judges killed for all kinds of reasons

10 in El Salvador, and it is true that judges were very afraid in
11 El Salvador, but they were afraid of -- I would imagine if I
12 were a judge, they would be afraid of people who threatened
13 them, depending on the nature of the cases that they were
14 overseeing.

15 Q. Well, are you saying then that the Truth Commission
16 didn't make a finding that many of the judges and mayors were
17 killed by FLM and guerillas and they had fear of handling
18 those cases?

19 A. No, sir, I believe I just testified to that, and I also
20 testified to the targeting of mayors.

21 Q. By the FML or or by the FMLN?

22 A. By the FMLN, that's right.

23 MR. BROOKE: Thank you.

24 THE COURT: Redirect?

25 MR. ESQUIVEL: I have no further questions,

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CROSS - TERRY LYNN KARL

1619

1 Your Honor.

2 THE COURT: Professor Karl, thank you. We will
3 let you be excused.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Will there be any other proof from
7 the plaintiffs in this case?

8 MR. ESQUIVEL: Your Honor, the plaintiffs rest.

9 We have no further proof.

10 THE COURT: All right. Ladies and gentlemen,
Page 25

11 that concludes all of the evidence that will be submitted
12 in the case. At this time, there's always a break of
13 about 15 to 20 minutes. This will be part of your morning
14 break, at which time we should be returning for the
15 closing arguments in the case. As I indicated, we will
16 probably take a break between the closing arguments and,
17 of course, in closing argument in a civil case or any type
18 of case, frankly, the plaintiff goes first, the defendant
19 then has an argument, and then the plaintiff has an
20 opportunity for a brief rebuttal, which is really limited
21 in time pretty significantly. So it is usually not more
22 than 10 or 12 minutes. So the last two arguments will be
23 heard at the same time. That's the schedule that we will
24 be on. We will see you probably very close to 10:00
25 o'clock to begin final arguments in the case. We will let

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1620

1 you be excused. I need to stay here for a moment. Thanks
2 very much.

3 (Jury out at 9:45 a.m.)

4 THE COURT: I'm going to hand out the final
5 revised instructions, and we have actually pulled the --
6 and I will need one eventually.

7 MR. EISENBRANDT: Your Honor, may we approach
8 after the jury has been dismissed?

9 THE COURT: Sure. Absolutely. Everybody else
10 can be seated. Thanks very much.

11 (The following proceedings had at side-bar
12 bench.)

13 MR. EISENBRANDT: Your Honor, at this time at
14 the close of evidence, the plaintiffs would move under
15 Rule 50 for judgment as a matter of law on all the claims
16 in the case in that no reasonable jury would be able to,
17 after the close of all the evidence, be able to find in
18 favor of the defendant in this case. If you would like me
19 to expand on the argument, I'm happy to do so.

20 THE COURT: Well, as we all know, the role of
21 the court is simply to determine if there is something in
22 each basket; it is not to determine the weight or value of
23 any of the evidence. And under those circumstances, I'm
24 always reluctant to grant that type of relief where there
25 appears to have been some indication on either side in any

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1621

1 circumstance, some evidence that was submitted, unless it
2 is just simply diminished or virtually nonexistent. I
3 don't think I could do that in this case. Colonel
4 Carranza's contention, at least in part, is that he did
5 not have effective command or control and could not have.
6 That was held by others, and one of the arguments is, he
7 was essentially an administrative person within the
8 department of defense. Now, I don't have to resolve that
9 one way or the other, but the jury can consider that, and
10 that is certainly usually a factual question for the
11 panel. So unless there's something else, we need to deny

12 that.

13 On the question of the insertion of the -- of
14 course, now we have pulled out the instruction that we did
15 we just put in. You shouldn't have it in there, I hope it
16 has come out. Now, we do have -- there's certainly a
17 question of fact as to the death of the military judge,
18 and so we would not give that instruction. The jury could
19 consider that, I think it has been well explained why
20 these things would have relevance.

21 There was no instruction initially submitted by
22 anyone in connection with the definition of wanton. We
23 just included the standard definition from Blacks Law,
24 which would include the first definition is a person's
25 conduct is wanton if the person acts unreasonably or

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1622

1 maliciously, risking harm while being utterly indifferent
2 to the consequences. That's just the definition of
3 wanton. I think it is probably hopefully acceptable to
4 everybody.

5 MR. BROOKE: Your Honor, we do want to just
6 note for the record on the instruction regarding the death
7 of the military judge, that in the plaintiffs' case in
8 chief, it was standing out there as a hearsay statement,
9 and for that reason, we submit that should not have been
10 anything further involved with that issue. The fact it
11 was hearsay, and it was a --

12 THE COURT: It would have been an interesting
13 situation if the defendant had put nothing on in that
14 regard, then to allow rebuttal might have been
15 inappropriate, but there was proof and, therefore, the
16 defense was allowed to put on rebuttal, but I understand
17 the argument, absolutely.

18 MR. FARGARSON: And, Your Honor, we want to
19 renew our motion to dismiss. We don't waive that, we
20 still contend the statute of limitations applies and the
21 other issues apply that we made in our prior motions.

22 THE COURT: Exactly.

23 MR. FARGARSON: Dismissed for judgment on the
24 pleadings --

25 THE COURT: And we have gone over those.

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1623

1 Absolutely, we have gone over them carefully earlier, and
2 for the reasons that have been previously stated, I will
3 deny those motions.

4 Also, once again, the evidence is construed in
5 the light most favorable of the nonmoving party in these
6 circumstances. There is simply a dispute as to facts in
7 this case, and the jury is the appropriate entity to make
8 that determination, the court can certainly allow them to
9 do so.

10 Now, let's see, I think you have got the
11 revised instructions here. I think there may be something
12 that hasn't gotten pulled along the way, and there are a

13 couple of things. We did include under the military --
14 under the law, we changed it to Law of Command
15 Responsibility because that's what was requested, and
16 nobody opposed it.

17 MS. BLUM: Thank you very much, Your Honor.

18 MR. FARGARSON: What was that now?

19 THE COURT: We did change it back to Law of
20 Command Responsibility. I don't have any problem. That
21 was a word choice, it didn't have anything to do with the
22 substance. It is certainly appropriate.

23 MR. FARGARSON: The Law of Command
24 Responsibility?

25 THE COURT: At the end of that, I did add some

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1624

1 language, and they used an abbreviated form, which I never
2 do, but at the end of that, I added the language that we
3 talked about earlier. Defendant/commander is used to mean
4 that you cannot find the defendant liable if you find that
5 he was not a military commander. The terms are used
6 conjunctively to show the person is not only a defendant,
7 but must also be shown to be at the relevant time a
8 military commander. Now, this is an interesting concept,
9 we have talked about it. That doesn't mean, of course,
10 that he has to know what is happening, but had he -- and I
11 think you have chosen situations where he was in a
12 position that you can easily argue that he was in a

13 command position at the time of each of these events, so I
14 don't know that there is a question there, and I just said
15 at the relevant times. Somebody can argue that that was
16 not correct, but I did not put in there at the time of the
17 asserted event as to each defendant -- as to each
18 plaintiff; however, I believe that that is correct, that
19 he was in a position of command at the time of the
20 asserted event as to each plaintiff. Mr. Esquivel, I
21 believe that is right.

22 MR. ESQUIVEL: I believe that's right. I think
23 that's what the proof has shown.

24 THE COURT: I said we would put something in.
25 We have sort of ad libbed it before, we have all sort of

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1625

1 explained it to the jury before, we may as well write it
2 down. Anybody have a problem with the modification? I
3 don't say things like can't, we don't use --

4 MS. BLUM: You put cannot?

5 THE COURT: I put cannot.

6 MS. BLUM: Thank you.

7 THE COURT: I literally never do that.

8 MS. BLUM: I was going to be very offended by a
9 contraction in the jury instructions.

10 THE COURT: I think I have actually corrected
11 at least one, maybe I didn't correct it on this one,
12 right?

13 THE LAW CLERK: Perhaps not.

14 THE COURT: But we have been working to get rid
15 of those. We don't like them either. It was actually --
16 we had that discussion, and that was actually pulled from
17 the transcript -- not the transcript, but the real time.

18 Punitive damages, what we did on punitive
19 damages was expanded your punitive damages section because
20 there were no definitions in there, really. We need to
21 have definitions for intentional, malicious, wanton and
22 reckless, so I have included definitions for those. And I
23 have pointed out that they will not be deciding the amount
24 at the time. There might be some additional proof in that
25 regard, and we have indicated that to the jury, but they

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1626

1 would have to answer the question. And if they say, of
2 course, that it was not, then we won't have a punitive
3 damages question. At the very end, I notice that we
4 needed to make sure that it was said, a little
5 interlineation here, and that will be your final verdict
6 in this case as to that plaintiff, because they could find
7 as to one plaintiff yes, as to one plaintiff, no.

8 MS. BLUM: Oh, yeah, that would be helpful.

9 THE COURT: I just want to make sure it is
10 correct, but I don't want to suggest that at any time you
11 don't decide each case separately because you do.

12 MS. BLUM: You're going to insert that at the
13 verdict form, is that --

14 THE COURT: It just goes at the bottom, and we
15 have got them most everywhere else, and if I read one that
16 doesn't have one in there and it is clear that it should,
17 and it needs it, I will try to add that at the time.

18 Anything else on the instructions? I mean I
19 think you have got the final version and --

20 MR. BROOKE: We just want to note for the
21 record our exception to the charge on command
22 responsibility, Your Honor.

23 THE COURT: Certainly, certainly. Did I ask
24 any questions during the trial? I have got over here on
25 statements of counsel, I don't remember asking a single

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1627

1 question.

2 MR. FARGARSON: I don't think you did.

3 THE COURT: During a jury trial, I usually
4 don't. You never know what the answer will be, as we all
5 know.

6 MR. FARGARSON: I don't think it hurts to have
7 it in there. I mean I don't think -- I don't think it
8 hurts to have it in there.

9 THE COURT: Except that they may think I have
10 lost my mind since I didn't ask any.

11 MR. ESQUIVEL: Or they forgot something.

12 THE COURT: Did I ask a question at any time?

13 THE LAW CLERK: Not that I remember.

14 THE COURT: I don't remember a single question.
Page 33

15 MR. ESQUIVEL: Not that I remember.
16 MS. BLUM: I don't think you did.
17 THE COURT: I will just strike it, I don't want
18 to confuse them. They may try to figure out which
19 questions I asked.
20 MS. BLUM: Did we fill in the expert witness
21 names?
22 THE COURT: No, we didn't. I will do that in
23 just a moment. Let's see -- we have heard from -- let me
24 get my list over here.
25 MR. BROOKE: You want to put them in

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1628

1 alphabetical order? I think Araujo is first, Your Honor.
2 THE COURT: Let's see. Everybody has referred
3 to Ambassador White, I feel it will be confusing if I
4 don't say Ambassador White.
5 MR. ESQUIVEL: It is his title, Your Honor.
6 THE COURT: Well, I mean since everybody has
7 referred to him in that way, including the defense, it is
8 kind of hard not to. It might be confusing to the jury.
9 Ambassador Robert White.
10 MR. EISENBRANDT: Then you can go with
11 Professor Garcia, if you want.
12 THE COURT: Sure.
13 MR. EISENBRANDT: Since that is how everybody
14 generally was referring to him.

15 THE COURT: Do we have a section there on
16 deposition testimony?
17 THE LAW CLERK: Yes.
18 THE COURT: We do, we do. I know we talked
19 about it.
20 MR. BROOKE: Do you have the standard charge on
21 expert witnesses?
22 THE COURT: Yes.
23 MR. FARGARSON: Yeah, it is in there.
24 THE COURT: It is the standard charge. How am
25 I supposed to refer to Professor Jose Antonio Araujo?

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1629

1 MR. BROOKE: He was a professor for a short
2 while, Your Honor, which they have challenged completely.
3 THE COURT: I could say attorney.
4 MR. ESQUIVEL: That would be accurate, he's an
5 attorney.
6 MR. FARGARSON: That's fine, that's what he is.
7 Attorney and professor, just like me.
8 MR. ESQUIVEL: Right, we will call you
9 Professor Fargarson.
10 THE COURT: Is Terry with an I or Y?
11 MS. BLUM: It is Y.
12 THE COURT: I thought I copied it from all the
13 materials, but I wanted to -- four experts.
14 MR. ESQUIVEL: That's correct.
15 THE COURT: Ambassador Robert White, Professor
Page 35

16 Jose Luis Garcia, Professor Terry Lynn Karl and Attorney
17 Jose Antonio Araujo.

18 MR. FARGARSON: Araujo.

19 THE COURT: Well, they will have it written. I
20 think that's it, just four.

21 Okay. Anything else?

22 MS. BLUM: I think we're set.

23 MR. FARGARSON: Give us a few minutes to go to
24 the restroom.

25 THE COURT: We will take a restroom break.

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1630

1 Tell them we're just taking a restroom break, and we will
2 start in five minutes.

3 THE CLERK: Okay.

4 (Recess taken at 10:00 until 10:05 p.m.)

5 THE COURT: All right. I think -- is everybody
6 ready to proceed?

7 Mr. Esquivel, are you going to take the lead?

8 MR. ESQUIVEL: Yes, I am, Your Honor, I will be
9 giving the closing argument. We're ready.

10 THE COURT: Are you going to split the
11 argument?

12 MR. ESQUIVEL: We're not going to split the
13 argument, Your Honor.

14 THE COURT: And let me ask the same thing, is
15 this going to be one argument or is it going to be split?

16

MR. BROOKE: Split.

17

THE COURT: And about how much time -- I'm

18 going to basically -- I will watch the time a little bit.

19 If anybody starts to exceed an hour altogether, then I

20 will say something about it. We said 90 minutes, I would

21 let you have up to 90 minutes. Do you think you will need

22 that much?

23

MR. ESQUIVEL: I don't think we'll need that

24 much. It may be a little bit more than an hour.

25

THE COURT: We will break at the end of yours

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1631

1 anyway, that will let us have a good gauge about how much
2 time we're going to need. Good, I think we're all set,
3 you can bring the panel in. You will be getting copies
4 during the -- Ms. Rimmer will distribute them in a moment,
5 but I don't think you probably need anything additional.

6 (Jury in at 10:08 a.m.)

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CLOSING ARGUMENT BY MR. ESQUIVEL

1632

1 THE COURT: All right. You may be seated.
2 Counsel for the plaintiff may proceed with closing
3 argument.
4 MR. ESQUIVEL: Thank you, Your Honor. Good
5 morning.
6 THE JURY: Good morning.
7 MR. ESQUIVEL: Let me begin by thanking you for
8 your service as jurors in this case. None of you
9 volunteered to participate in this case, and when you came
10 to the courthouse and into this courtroom two weeks ago,
11 you couldn't have imagined the kind of testimony that you
12 were going to hear and the kind of case that you were
13 going to be asked to serve on. And you have paid close
14 attention to the witnesses, you have paid careful
15 attention to the documents and the exhibits that have been
16 put up during trial, and you have learned during the

17 course of this trial how much this case means to our
18 clients, the plaintiffs, and we appreciate on behalf of
19 myself, my co-counsel and our clients, appreciate very
20 much your service in this case.

21 Two weeks ago, Judge McCalla went through and
22 talked about all of the ways that we can ensure a fair
23 trial, and at the end of that day, two weeks ago, there
24 was some consensus that in order to have a fair trial, to
25 be sure that both sides are heard, we should focus on the

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CLOSING ARGUMENT BY MR. ESQUIVEL

1633

1 facts. And this morning, I will be going through with you
2 the facts in this case. In this case, the fact is that
3 the plaintiffs have suffered terrible, horrible losses.
4 They have experienced torture, they have experienced
5 murder. The fact is that Colonel Carranza is responsible
6 for those injuries. Colonel Carranza is responsible as a
7 commander. He had command authority over the troops, over
8 the soldiers who committed these acts against the
9 plaintiff. And as a commander, the fact is he had a duty
10 to be sure that those under his command did not commit
11 these kinds of abuses. The fact is that Colonel Carranza
12 failed in his duty as a commander.

13 Now, before we talk about the facts, I want to
14 say a couple of things about the law. Judge McCalla will
15 instruct you after the arguments about the law, and he
16 will tell you what law governs this case. One of the
17 things that he will talk about is the burden of proof, and

18 as the plaintiffs in this case, we have the burden of
19 proof and every one has seen TV and movies and hears the
20 phrase beyond a reasonable doubt. And that is the burden
21 of proof in a criminal case, but as we have said before,
22 this is a civil case, and that is not the burden of proof
23 in this case. In this case, the plaintiffs have the
24 burden of showing their claims, of proving their claims by
25 a preponderance of the evidence, and a preponderance of

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CLOSING ARGUMENT BY MR. ESQUIVEL

1634

1 the evidence simply means the greater weight of the
2 evidence. It means that the plaintiffs' claims are more
3 likely than not true. So imagine a scale, and on this
4 scale is the plaintiffs' evidence and the defendant's
5 evidence. Now, if the evidence that is presented at trial
6 is equally balanced, the same amount of evidence supports
7 the plaintiffs' case and the same amount of evidence
8 supports the defendant's case, then the burden of proof
9 means that the plaintiffs cannot win in that situation,
10 because the burden is on us, the plaintiffs. But in a
11 civil case, if the evidence leans in favor of the
12 plaintiffs, if there is more evidence in favor of the
13 plaintiffs' case than in favor of the defendant's case,
14 then that is the greater weight of the evidence and the
15 plaintiffs have proven their case; and if you find by a
16 preponderance of the evidence that the plaintiffs have
17 proven their case, then they are entitled to judgment

18 against Colonel Carranza.

19 The other point of law I want to talk to you
20 about is command responsibility. This is a case about
21 command responsibility. The plaintiffs have not alleged
22 and are not saying that Colonel Carranza pulled the
23 trigger in any of these situations or that he directly
24 tortured any of the plaintiffs. The plaintiffs' claim is
25 that Colonel Carranza is responsible as a commander, and

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CLOSING ARGUMENT BY MR. ESQUIVEL

1635

1 in any command responsibility case, there are two levels
2 of proof. There are two levels to the case.

3 The first level is the acts or the abuses
4 suffered by the plaintiffs, and in this case, we have
5 three claims, extrajudicial killing, torture and crimes
6 against humanity. Those are the three parts of the first
7 level of command responsibility.

8 The second level of any command responsibility
9 case is proving that the defendant is responsible for
10 those underlying acts under a theory of command
11 responsibility, and so as we go through the evidence this
12 morning, I will talk to you about those underlying claims
13 in the first level and I will talk to you about the
14 command responsibility at the second level that Colonel
15 Carranza has for each of those claims.

16 There are two periods at issue in this lawsuit.
17 The period in 1980 when Colonel Carranza was the
18 vice-minister of defense in El Salvador and the period in

19 1983 to 1984 when he was the director of the treasury
20 police. And in the 1980 period, four of the plaintiffs
21 have their claims. They were themselves tortured or their
22 family members were killed during that year.

23 Let's start with the plaintiff, Ana Patricia
24 Chavez. Let me ask her to stand up, please. Thank you.
25 Ana Patricia Chavez's parents were killed by a death squad

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CLOSING ARGUMENT BY MR. ESQUIVEL

1636

1 in their home in July of 1980. Ana Patricia Chavez is
2 bringing a claim for the extrajudicial killing of her
3 parents, and she is also bringing a claim for Colonel
4 Carranza's responsibility for those killings.

5 The second plaintiff in the 1980 period is
6 Cecilia Santos, and let me ask her to stand up, please.
7 Thank you. Ms. Santos was tortured in the national police
8 headquarters in 1980. Ms. Santos is bringing a claim for
9 her torture. Now, it is common in cases for the court to
10 make certain decisions on parts of the case before trial,
11 and that has happened in this case. Before the trial
12 began, the court has already held that what happened to
13 Cecilia Santos in the national police headquarters meets
14 the legal definition of torture, and so Judge McCalla will
15 instruct you that her claim, her cause of action for
16 torture has already been established. The question you
17 will be asked to decide for Cecilia Santos is whether
18 Colonel Carranza is responsible as a commander for her

19 torture.

20 The next plaintiff in the 1980 period is
21 Francisco Calderon. Mr. Calderon's father was killed in
22 Mr. Calderon's home in September of 1980. Mr. Calderon
23 brings claims for torture and for extrajudicial killing.
24 The extrajudicial killing of his father and a claim for
25 his own torture, the torture that he suffered in being

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CLOSING ARGUMENT BY MR. ESQUIVEL

1637

1 forced to witness his own father's death. Again, before
2 trial, the court has already found that what happened to
3 Mr. Calderon's father meets the legal definition of an
4 extrajudicial killing, and that what happened to
5 Mr. Calderon in being forced to witness his father's
6 murder meets the legal definition of torture. Those two
7 things have already been found. You will be asked to find
8 that Colonel Carranza is responsible as a commander for
9 the torture of Francisco Calderon and for the
10 extrajudicial killing of his father.

11 The fourth plaintiff from the 1980 period is
12 Erlinda Franco. Ms. Franco's husband was Manuel Franco,
13 one of the six leaders of the FDR, tortured and
14 assassinated in 1980. Ms. Franco brings claims for
15 extrajudicial killing and for crimes against humanity.
16 The court has already found before trial that what
17 happened to Erlinda Franco's husband meets the legal
18 definition of an extrajudicial killing. So that has
19 already been established. Erlinda Franco is also suing,

20 however, for crimes against humanity, and Judge McCalla
21 mentioned that briefly in his preliminary instructions and
22 you have heard something about that. Crimes against
23 humanity basically means that what happened to Manuel
24 Franco was not a random event or a random occurrence, but
25 part of a larger widespread and systematic attack by the

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CLOSING ARGUMENT BY MR. ESQUIVEL

1638

1 Salvadoran military against a civilian population. You
2 will be asked to find that the killing of Manuel Franco
3 was a crime against humanity, and you will also be asked
4 to find that Colonel Carranza is responsible as a
5 commander for the extrajudicial killing of Manuel Franco
6 and for a crime against humanity.

7 Let's begin with the claims of Ana Patricia
8 Chavez and her claim for extrajudicial killing. As I
9 said, Judge McCalla will read you the instructions of the
10 law. These are the instructions that you will find when
11 you hear those and when you take them back to the jury
12 room with you for your deliberations. There are three
13 elements to a claim of extrajudicial killing. The first
14 element is that a person or persons deliberately killed
15 Humberto and Guillermina Chavez. Humberto and Guillermina
16 Chavez are Ana Patricia Chavez's parents. This first
17 element, there can be no doubt has been met. It merely
18 recognizes that they were killed and that their killing
19 was not some kind of a mistake, but a deliberate act. And

20 you will recall the testimony of Ms. Chavez that her
21 mother was thrown to the bed, she was beaten and shot and
22 that her father was shot in the corridor of the house.

23 The second element of an extrajudicial killing
24 is that the person or persons acted under the actual or
25 apparent authority of El Salvador. In this case, you have

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CLOSING ARGUMENT BY MR. ESQUIVEL

1639

1 heard testimony and seen documents about the practice of
2 military death squads in El Salvador, and it was military
3 death squads who went into the Chavez home and committed
4 these killings. You have heard testimony about how death
5 squads operate. They operated with the same MO. They
6 wore masks, they carried large caliber rifles, they
7 targeted particular sections of the population, teachers
8 like Guillermina and Humberto Chavez, political leaders
9 like Humberto and Guillermina Chavez who were part of the
10 Christian democratic party. They invaded people's home,
11 and they committed their murders in front of families,
12 leaving witnesses so that they could terrorize and put
13 fear into the population. These death squads operated
14 within the military structure.

15 Remember the testimony of Professor Karl when
16 she showed you the military chain of command chart and she
17 identified within the three branches of the security
18 forces the intelligence section within each of those
19 security forces. That is where the death squads operated.
20 That is where they resided within the military hierarchy.

21 Ambassador White told you that the death squads
22 were military death squads that were made up of military
23 personnel dressed in plain clothes.

24 When you go back to the jury room, you will
25 have the opportunity to take with you all of the documents

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CLOSING ARGUMENT BY MR. ESQUIVEL

1640

1 and all of the evidence in this case. One of those
2 documents is the United Nations Truth Commission Report
3 for El Salvador. This is the commission that was
4 established and received 22,000 complaints. They
5 investigated those complaints, they went to the sites
6 where things occurred, they heard testimony, they
7 conducted interviews. This is the United Nations Truth
8 Commission Report finding about death squads. Death
9 squads operated in coordination with the armed forces and
10 acted as a support structure for their activities. You
11 will see that in Trial Exhibit 28. The Truth Commission
12 Report goes on to say about death squads.

13 The State of El Salvador, through the
14 activities of members of the armed forces and/or civilian
15 officials, is responsible for having taken part in,
16 encouraged and tolerated the operations of the death
17 squads which illegally attacked members of the civilian
18 population. That is the State of El Salvador. That is
19 the second element for extrajudicial killing that the
20 death squads operated under the authority of the State of

21 El Salvador.
22 You also saw evidence from U. S. government
23 declassified documents. Trial Exhibit 7, which is a memo
24 by the State Department which refers to the assassination
25 of the leaders of the FDR. That statement department memo

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CLOSING ARGUMENT BY MR. ESQUIVEL

1641

1 found the following:

2 There is no doubt that last Thursday's killing
3 of the FDR leadership was done by the security forces.
4 Our embassy reports that the Maximilliano Martinez
5 brigade, which took credit for the assassination is simply
6 a phantom front or pseudonym for elements of the security
7 forces. The security forces carried out their murder in
8 plain clothes so they could deny what they had done. That
9 was their mode of operation.

10 You also saw a declassified document, in
11 Exhibit 4, an embassy telegram from Ambassador White
12 describing a meeting between himself, Minister of Defense
13 Garcia and Vice-minister Carranza. Ambassador White wrote
14 in his comment to that cable:

15 Garcia and Carranza know perfectly well that
16 some middle and low level members of the military are
17 involved in death squads and other right-wing violence.

18 And you saw in Colonel Carranza's own words in
19 Exhibit 2 a quote from a newspaper article in 1984.

20 Colonel Carranza said this about death squads:

21 The first time the death squads appeared, they

22 appeared in Brazil. Those in the death squads were police
23 officials, police officials who shot criminals, mostly
24 thieves. There was no law then and no way to put them in
25 jail. Every time the police arrested someone, they were

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CLOSING ARGUMENT BY MR. ESQUIVEL

1642

1 set free, so crimes went unpaid. We too found that the
2 justice system did not punish the terrorists here who
3 attacked the population, and so we had to take measures on
4 our own.

5 Those are Colonel Carranza's own words about
6 the death squads. We had to take measures on our own.
7 All of the testimony that you have heard in this case
8 describes uniform military personnel acting in conjunction
9 with nonuniform personnel. This is the way that the
10 Salvadoran military operated, in plain clothes, so they
11 could deny what they were doing.

12 Remember the testimony of Luis Ramirez, he was
13 the eyewitness to the abduction of the leaders of the FDR.
14 He worked in the school where the FDR leaders were
15 meeting. He saw uniformed military personnel at the
16 perimeter of the school, and then when he got to the
17 school, he saw plain clothes men taking the leaders of the
18 FDR and putting them in a pickup truck.

19 You heard the testimony of Cecilia Santos, she
20 was taken to national police headquarters by plain clothes
21 officers, marched into national police officers and

22 watched plain clothes people milling around. She was
23 tortured by people wearing plain clothes. And when they
24 took off her bandanna to take her picture, the men were
25 wearing plain clothes and masks. The modus operandi of

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CLOSING ARGUMENT BY MR. ESQUIVEL

1643

1 the death squad.

2 Daniel Alvarado was taken into treasury police
3 headquarters by police clothes treasury police officers.
4 They identified themselves as something called the freedom
5 commandos. He was tortured by people in plain clothes.

6 Francisco Calderon looked out his window on
7 September the 11th, 1980 and saw uniform members of the
8 national police demanding to be let in. When he opened
9 the door, those policemen stepped back and let the plain
10 clothes men to come in to shoot his father.

11 And Ana Patricia Chavez, in Ana Patricia
12 Chavez's case, you remember her testimony. It fits this
13 pattern exactly. It is in the morning when she sees a man
14 in plain clothes with a large rifle standing in her
15 parents' house, and remember she asked him what do you
16 want, and he did not reply. He was not there to cause
17 maihem, he was not there for any purpose but the specific
18 purpose, he was looking for someone in particular. And
19 when Ana Patricia Chavez's mother came out of the
20 bathroom, he saw the person that he was after.

21 Ms. Chavez, Guillermina Chavez, leader of the ANDES union,
22 member of the ANDES teachers union, member of the

23 Christian democrat political party. When that man saw
24 her, he had what he wanted, he threw her on the bed, he
25 beat her, he asked for propaganda, and then he shot her

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CLOSING ARGUMENT BY MR. ESQUIVEL

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1 and her husband.

2 So, ladies and gentlemen, there's not just a
3 preponderance of the evidence, there's overwhelming
4 evidence that those persons who killed Ana Patricia
5 Chavez's parents were acting under the actual or apparent
6 authority of El Salvador.

7 Now, the final element for extrajudicial
8 killing is that this killing was not previously authorized
9 by a judgment of a court affording judicial guarantees
10 recognized as indispensable by civilized peoples. That
11 was very clearly written by a lawyer. That is a lot of
12 words that means a very simple thing. It means that this
13 is not a killing that was authorized by a court or by a
14 governmental body that would be considered a judicial
15 process by civilized peoples. The killing of Ana Patricia
16 Chavez's parents could not have been conducted pursuant in
17 any kind of court order of a civilized judicial system.
18 No judicial system carries out executions by sending
19 people in plain clothes to someone's home to beat them and
20 then to shoot them in their beds. That's not the way
21 executions are carried out. So very clearly, the third
22 element is met. This is a murder, this is not something

23 that is pursuant to a judicial order. And when you find
24 those three things, you will find that Ana Patricia Chavez
25 as proven her claim for extrajudicial killing.

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1 Now, let's talk about Erlinda Franco's claim
2 for crimes against humanity. There are also three
3 elements for a claim for crimes against humanity. The
4 first element is that a person or persons committed
5 murder, torture or other inhumane acts. The court has
6 already found that the killing of Manuel Franco is an
7 extrajudicial killing. It is a murder, and, therefore,
8 the first element is met for crimes against humanity.

9 The second element of crimes against humanity
10 is that the person or persons committed the act as part of
11 a widespread or systematic attack directed against a
12 civilian population. You have heard testimony and seen
13 evidence and documents about the extent of violence in El
14 Salvador in the year 1980. At least 10,000 civilians were
15 killed, the overwhelming majority by the military in 1980.
16 You saw pictures of bodies by the side of the road, you
17 heard testimony that it was common in El Salvador to see
18 bodies decomposing on the side of the road. You saw
19 pictures of piles of bodies in downtown San Salvador. You
20 saw a picture of a body dump, El Playon with rotting
21 corpses and skeletons. You heard Professor Karl's
22 testimony that the only access to El Playon was through a
23 military check point. This was a widespread attack

24 against civilians by the Salvadoran military. To give you
25 a sense of the blood bath that took place in El Salvador

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1 in 1980, consider that 10,000, at least 10,000 people were
2 killed in that year, and in that year, El Salvador had a
3 population of five million people. Now, the population in
4 the United States today is almost 300 million people. So
5 if you wanted to get a sense of what that kind of killing
6 would look like in the United States, that would be like
7 600,000 deaths, 600,000 murders of civilians in one year
8 in the United States. That is the effect of 10,000
9 killings in El Salvador in 1980. Of course, there were
10 body dumps. Of course, there were piles of bodies on the
11 street. You cannot have that level of violence, such
12 widespread atrocities without that kind of grotesque
13 scene, and that, ladies and gentlemen, was the reality of
14 El Salvador in 1980. And the Salvadoran military was
15 responsible for the overwhelming majority of this
16 violence.

17 You heard the testimony of Professor Terry Karl
18 who has spent her career studying El Salvador, who has
19 visited El Salvador, interviewed all levels of Salvadoran
20 society, she testified about state terror and about the
21 particular strategy of repression, the targets of
22 repression of the Salvadoran military in 1980.

23 You heard Ambassador White's testimony that in

24 1980, the military was killing thousands of civilians.
25 And the facts in this case show that the military was

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1 responsible for these killings.

2 Trial Exhibit 7, again, is the declassified
3 memorandum from the United States State Department which
4 finds that the embassy reports made clear that the
5 security forces and the military are responsible for much
6 of the killings and human rights abuses in the country.
7 The assassination of the FDR Leadership reflects an
8 intensification, an extension of the repression conducted
9 by the security forces since last March.

10 You also saw a document from the United States
11 Embassy in San Salvador, this is Trial Exhibit 5,
12 referring to the assassination of the leaders of the FDR.
13 The evidence that the security forces are responsible for
14 this action is overwhelming.

15 You will have with you in the jury room the
16 United Nations Truth Commission. The Truth Commission
17 found after receiving 22,000 complaints that the
18 overwhelming majority of violence committed in El Salvador
19 was committed by the military. So this is a widespread
20 attack. But it is also a systematic attack. That means
21 it was planned, it was carried out, it wasn't random.

22 You heard the testimony of Colonel Carranza's
23 own witness, Mr. Romero. Mr. Romero was tortured in all
24 three branches of the Salvadoran security forces in

25 January of 1981. He was tortured in five out of the six

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1 branches of the Salvadoran military, the army, the air
2 force, the treasury police, the national police, the
3 national guard. This is what it means to have systematic
4 torture and state terror when all of the military branches
5 are given a green light to commit these kinds of
6 atrocities. These tortures had names, they were carried
7 out in the same way in different parts of El Salvador.
8 They consisted of electric shocks, of beatings, of people
9 being apprehended in plain clothes, of suffocation. They
10 were particular targets of repression, teachers, students,
11 union members, leaders of political parties. All of our
12 clients' claims are representative of those targets of
13 repression. And the goal of this repression was to stop
14 reforms, to stop peaceful opposition to 50 years of
15 military dictatorship. The overwhelming evidence in this
16 case has shown that the Salvadoran military was willing to
17 torture and murder in order to stay in power and that the
18 killing of the FDR leaders was not a random event, but was
19 part of that widespread and systematic attack that was
20 directed against the Salvadoran civilians. So that's the
21 second element.

22 The third element of crimes against humanity is
23 that the person or persons knew or should have known that
24 the attack was part of a widespread or systematic attack.

The members of the security forces that carried

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1 out the assassination of the FDR leaders had to have known
2 in November of 1980 that what they were doing was a part
3 of this systematic attack. The leaders of the FDR were
4 well-known. You heard testimony that they appeared on
5 television. They were seen in the newspapers. They were
6 quoted. They were well-respected political leaders who
7 were well-known in El Salvadoran society. The people who
8 abducted, tortured and killed those people knew who these
9 men were, and they knew that the killing of the FDR
10 leaders was a politically motivated act that was part of a
11 systematic attack against the Salvadoran population. You
12 have seen proof in writing of the Salvadoran military's
13 knowledge of this systematic attack.

14 Trial Exhibit 6 is the cable written by Brian
15 Bosch, the military attache in the United States Embassy
16 in 1980, the person Ambassador White described as one of
17 the military attaches in his experience. Colonel Bosch
18 spoke Spanish. His job was to report on the Salvadoran
19 military, to understand Salvadoran military structure and
20 how it operated. And this is his report in December of
21 1980 documenting a meeting among mid level officers, the
22 minister of defense and Vice-minister Carranza.

23 Most military officers were highly pleased with
24 the assassination of the six FDR leaders. These officers
25 believed that other leaders and members of the FDR should

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1 be eliminated in a similar fashion wherever possible.
2 These feelings were expressed by several middle level army
3 officers on 28 November, 1980 in the presence of Colonel
4 Garcia Marino, minister of defense and Nicolas Carranza,
5 subminister of defense, and both Garcia and Carranza
6 indicated that they supported this line of thinking. From
7 the comments of all those present during this
8 conversation, it was clear that Garcia, Carranza and the
9 other officers present accepted as a fact that the
10 military services were responsible for the assassination
11 of the six FDR leaders.

12 And so, ladies and gentlemen, there is not just
13 a preponderance of the evidence, there is overwhelming
14 evidence that on Erlinda Franco's claim for crimes against
15 humanity that a person or persons committed murder of her
16 husband, Manuel, that these persons committed this as part
17 of a widespread or systematic attack on the civilian
18 population, and that the persons who committed these knew
19 or should have known that they were part of that
20 widespread or systematic attack. When you make those
21 findings, you will find that Erlinda Franco has proven her
22 claim for crimes against humanity.

23 Now, I have talked about the first level claims
24 for 1980. Now, I want to talk to you about command
25 responsibility, that Nicolas Carranza is responsible as a

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1 commander for all these first level claims because he was
2 the commander of those who carried out these acts.

3 There are three levels -- three elements,
4 excuse me, excuse me, to a claim for command
5 responsibility. The first element is that there is a
6 superior-subordinate relationship that existed between
7 Colonel Carranza and the person or persons who committed
8 the acts involved in this case. This means that Colonel
9 Carranza had the practical ability to exert control over
10 his subordinates in the military that committed the acts
11 against these plaintiffs. That is what that element
12 requires, and the proof on this issue has been
13 overwhelming as well. For two of these plaintiffs, their
14 relationship to the military is obvious. Francisco
15 Calderon testified, and he saw with his own eyes uniform
16 members of the national police participating in the
17 operation that killed his father. And Cecilia Santos
18 knows from her own experience and testified how she was
19 lead into the national police headquarters, and it was the
20 national police headquarters where she was tortured.

21 The Truth Commission for El Salvador and
22 declassified U. S. documents prove that the people who
23 carried out the assassination of the FDR leaders were also
24 subordinates of Colonel Carranza. This is Trial Exhibit
25 28. The finding by the Truth Commission about the FDR

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1 assassi nation:

2 It is not possible to determine precisely which
3 public security force carried out these criminal
4 operations. Nevertheless, the commission considers that
5 there is sufficient evidence to indicate that state bodies
6 were jointly responsible for this incident which violated
7 international human rights law.

8 The Truth Commission went on to find that the
9 commission has substantial evidence that the treasury
10 police carried out the external security operation which
11 aided and abetted those who committed the murders. So
12 those who were involved in the assassination of the
13 leaders of the FDR were subordinates of Colonel Carranza
14 while he was the vice-minister of defense. They were
15 members of the treasury police.

16 And for Ana Patricia Chavez, we talked earlier
17 about the death squads. The death squads that came to Ana
18 Patricia Chavez's house and killed her parents were
19 residing in the military, they functioned within the
20 military structure, and because they functioned within the
21 military structure, they answered in the chain of command
22 and ultimately answered to Colonel Carranza. This element
23 is the key element for this part of the trial because it
24 is this element that Colonel Carranza has contested most
25 strongly in this case. Colonel Carranza has argued to you

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1 and will argue to you that he had no command authority as
2 the vice-minister of defense. He will tell you that as
3 the vice-minister of defense, he was only an advisor and
4 he had no command responsibility for the troops that
5 committed these acts.

6 Ladies and gentlemen, that is simply not true,
7 and the evidence in this trial is completely to the
8 contrary. Colonel Carranza was a member of the high
9 command of the Salvadoran military as the vice-minister of
10 defense. Those are the four leading military officers in
11 the Salvadoran military. Colonel Carranza is trying to
12 tell you that he was a high commander who had no command
13 authority, and that just doesn't make sense. The members
14 of the high command exercised command authority.

15 Colonel Carranza's specialty throughout his
16 military career was tactics and operations. And you
17 remember he said in his own testimony that he spent his
18 career learning tactics and operations. He spent his
19 career studying tactics and operations. He spent his
20 career teaching tactics and operations. And in 1980, when
21 he arrives at the pentacle of his military career and he
22 is appointed to the highest post that he will have in the
23 Salvadoran military as vice-minister of defense, he would
24 have you believe that he abandoned his specialty, he
25 abandoned his specialty in tactics and operations and had

1 absolutely no operational authority over the Salvadoran
2 military. That simply doesn't make sense.

3 You have seen in this trial Article 186 of the
4 code of military justice. You have seen it so many times
5 I will not put it up for you. You know what it says. You
6 know Article 186 gives to Colonel Carranza as the
7 vice-minister of defense the authority to discipline
8 officers who are committing abuses. He is one of two
9 people in the Salvadoran military who have the authority
10 to remove from employment any officer for disciplinary
11 punishment, and he never exercised that authority.

12 You have also seen many times Article 26 of the
13 law of national defense. I don't need to put that up for
14 you because you know what it says. Mr. Carranza --
15 Colonel Carranza's own witness Mr. Araujo told you that
16 under that law that vice-minister of defense had an
17 obligation to ensure discipline among the members of the
18 armed forces. That is testimony from his own witness.
19 His own witness says that he had a duty to ensure
20 discipline, and he certainly did not comply with that
21 duty.

22 You have seen the military chain of command
23 chart. Remember from Colonel Carranza's testimony, he
24 admitted, he admitted that when he was in the ministry of
25 defense as the vice-minister of defense, he had command

1 authority over the nonsecurity forces, the army, the air
2 force and the national navy, but he has no explanation for
3 why he is in the chain of command for those three entities
4 and yet denies that he had command authority over the
5 remainder of the branches of the Salvadoran military. It
6 simply doesn't make sense, ladies and gentlemen. He
7 admits that he has command authority over those three. He
8 also has command authority over the security forces. And
9 document after document after document in this trial
10 proves that Colonel Carranza had that authority.

11 Trial Exhibit 1 in this case is a cable from
12 the United States Embassy, and remember Ambassador White's
13 testimony about these cables, this is not the opinion of
14 one person in the embassy. These cables to the State
15 Department in Washington represent the consensus of all of
16 those who are working in the United States Embassy.
17 Members of the defense department, military attaches,
18 members of the CIA, political officers, all embassy
19 personnel come together to inform the state department,
20 and this is what that consensus said in February of 1980:

21 Colonel Carranza is the operational commander
22 of the security forces. There it is in black and white.

23 Exhibit 33 in this case is an article from the
24 Washington Post dated December 14, 1980. That article
25 notes that Colonel Carranza was in charge of day-to-day

1 operations by the army and the security forces. That is
2 an observation at the time.

3 Exhibit 34 in this case is a memo to the
4 National Security Council of the United States. In that
5 memo, it says, more specifically, we need a dramatic and
6 tangible restructuring of the military high command,
7 including the dismissal of several of the leaders of the
8 security forces, e.g. Carranza or Moran who are most
9 clearly associated with the repressive right. The
10 National Security Council of the United States identifies
11 Colonel Carranza as a leader of the security forces, but
12 it is just not United States government documents, members
13 of the Salvadoran government who were in high positions of
14 authority confirm all of this information.

15 Exhibit 35 is a cable describing a meeting
16 between Ambassador White and Colonel Majano. You remember
17 Colonel Majano was a member of the junta. He was the
18 leader of the young officers who tried to reform the
19 Salvadoran military, to promote democracy, to throw off 50
20 years of military dictatorship. This is what Colonel
21 Majano had to say about this issue:

22 Majano stated that real power in the country
23 was exercised by Colonels Garcia and Carranza and that it
24 was idle to believe that they could not put an end to the
25 human rights abuses if they wanted to do so, if they

1 wanted to do so.

2 Exhibit 36 is a cable describing a meeting
3 between Ambassador White and Jose Napoleon Duarte, another
4 member of the junta in El Salvador. This is what Mr.
5 Duarte said:

6 That he was convinced now that Vice-minister of
7 Defense Carranza has important links with the extreme
8 right and exercises the real power in the high command.
9 The real power in the high command was exercised by
10 Attorney Nicolas Carranza.

11 Remember Ambassador White's testimony in this
12 court. He told you that Minister of Defense Garcia was
13 the public face of the military, and that Colonel Carranza
14 was the executive officer, the operational head, the man
15 who made things happen. He said Colonel Carranza was the
16 quarterback, that Colonel Carranza was the real leader of
17 the troops in the field. That is consistent with
18 everything we know about Nicolas Carranza, about his
19 background in the military, about his specialty in tactics
20 and operations. And recall the testimony that you heard
21 from Brian Bosch that was read to Professor Karl
22 describing Colonel Carranza as the center of gravity in
23 the ministry of defense, as the de facto field commander
24 in chief, that while Colonel Garcia focused on strategy
25 and political affairs, Carranza concerned himself with

1 forced employment and security forces.

2 Ladies and gentlemen, that is the critical
3 question for this part of the trial, and on that critical
4 question, the evidence is overwhelming that Colonel
5 Carranza did, in fact, command the Salvadoran military.
6 He was within the military chain of command, and he
7 exercised the real power in the high command and in the
8 ministry of defense.

9 The second element of command responsibility is
10 that Colonel Carranza knew or should have known that his
11 subordinates had committed, were committing or were about
12 to commit torture or extrajudicial killing. Now, it is
13 important for you to know that this -- this part of the
14 command responsibility law does not require that Colonel
15 Carranza knew or should have known about the specific
16 things that happened to these plaintiffs. Judge McCalla
17 will read you the law and describe that element. And that
18 law says that it is sufficient for Colonel Carranza to
19 have knowledge generally about torture and extrajudicial
20 killing. He does not have to have knowledge of these
21 specific acts. And as we said before, the evidence of
22 torture and extrajudicial killing by the Salvadoran
23 military in 1980 was overwhelming. It is inconceivable
24 that Colonel Carranza could not have known that his
25 subordinates were committing these types of acts. He

1 admitted as much in his testimony. He admitted that he
2 had notice of human rights abuses by radio. He admitted
3 that he had notice of allegations of human rights abuses
4 by television. He listened to the sermons of Arch Bishop
5 Romero in which Arch Bishop Romero called on the military
6 to stop the repression, to stop the violence. Colonel
7 Carranza admitted that it was common to see bodies
8 decomposing on the side of the road, and Colonel Carranza
9 admitted that where there is smoke, there is fire. When
10 you have this overwhelming number of allegations of
11 abuses, some of them have to be true. And so certainly
12 Colonel Carranza knew or should have known what was
13 happening by the subordinates under his command.

14 There are also documents that show his
15 knowledge. Trial Exhibit 1 describes a meeting in the
16 United States Embassy in which Colonel Carranza
17 participated. This is what he said:

18 Colonel Carranza also conceded excesses on part
19 of security forces, that he defended them for bearing the
20 brunt of terrorist assault and now harsh criticism of PDC
21 partners while maintaining good morale and avoiding
22 desertions.

23 Colonel Carranza conceded in 1980 excesses on
24 the part of the security forces.

25 You will also see that evidence in Trial

1 Exhibit 4 which describes a meeting between Ambassador
2 White, the head of the military group of the United States
3 in El Salvador. Minister Garcia and Colonel Carranza.

4 That cable states:

5 On October 27, Milgroup Commander Colonel
6 Cummings and I met for approximately two hours at
7 breakfast with the minister and vice-minister of defense,
8 Colonels Garcia and Carranza. I covered all of the points
9 made in reftel, the referenced telephone call. I
10 emphasized the need to control right-wing violence and to
11 put an end to the abuses committed by the military.

12 And finally, ladies and gentlemen, Exhibit 50,
13 which is another declassified document describing a
14 meeting between Ambassador White and Colonel Carranza and
15 other members of the Salvadoran military. Ambassador
16 White said this:

17 I emphasize to all present that unbridled
18 violence was responsible for the plummeting international
19 reputation of El Salvador and, unfortunately, the widely
20 held opinion that some members of the security officers
21 were involved was too often substantiated by convincing
22 evidence reported here and abroad. So in 1980, ladies and
23 gentlemen, clearly Colonel Carranza knew or he should have
24 known that torture and extrajudicial killing were being
25 committed by his subordinates.

1 The final element of command responsibility is
2 the third one. Colonel Carranza failed to take all
3 necessary and reasonable measures to prevent torture or
4 extrajudicial killing or to punish subordinates after they
5 committed these abuses.

6 At the beginning of this trial, Judge McCalla
7 read to you certain stipulated facts. That means facts
8 that are undisputed. These are facts that the parties,
9 the plaintiffs and the defendant have agreed to ahead of
10 trial. These are facts that you must accept as true
11 because the parties have agreed to them. These facts --
12 in these facts, Colonel Carranza makes admissions on this
13 third element. Colonel Carranza admits that as
14 vice-minister of defense he did not initiate an
15 investigation to determine whether any members of the
16 Salvadoran military were responsible for human rights
17 abuses. That is an undisputed fact.

18 It also undisputed that while serving as
19 vice-minister of defense, Colonel Carranza did not
20 discipline or punish any members of the Salvadoran
21 military for human rights abuses. That is a fact, and
22 that is because Colonel Carranza's argument is not that he
23 did anything to try to stop this; Colonel Carranza is
24 saying that he did not have the responsibility or the
25 authority to do it.

1 Remember, ladies and gentlemen, that this is a
2 small country with a small military. As Professor Karl
3 said in 1981, there are 33 field officers in the security
4 forces, that's 33 people who have day-to-day
5 responsibilities as officers for the security forces. If
6 Colonel Carranza as vice-minister of defense wanted to do
7 something to stop these abuses, all he had to do was get
8 those 33 people in a room and issue the order. The order
9 that says these abuses must stop, because as he said, in
10 the Salvadoran military, orders are to be followed. There
11 is to be no discussion, and if orders are not followed,
12 then people should be disciplined. Colonel Carranza never
13 did that, never took the simple step of getting those 33
14 people together and saying this must stop. And for that,
15 he has failed in his duty to take reasonable measures to
16 prevent torture, and the plaintiffs, because they have
17 proven the first, the second and the third element have
18 proven that Colonel Carranza is responsible for what
19 happened to these plaintiffs. He is responsible as a
20 commander.

21 Now, ladies and gentlemen, let's go to the
22 second period in this case, and the claims of the fifth
23 plaintiff, Daniel Alvarado. Daniel Alvarado was tortured
24 in treasury police headquarters in August and September of
25 1983. Daniel Alvarado brings two claims in the first

1 level. First, he brings a claim for torture. As with
2 some of the other plaintiffs, the court before trial has
3 already found that what happened to Daniel Alvarado in
4 treasury police headquarters meets the legal definition of
5 torture. The court has already found that he was
6 tortured. Daniel Alvarado also brings a claim for crimes
7 against humanity, that what happened to him at treasury
8 police officers was not a random act or part of a
9 widespread or systematic attack against civilians. And
10 Daniel Alvarado also alleges that Colonel Carranza is
11 responsible for his torture and for his crime against
12 humanity under the law of command responsibility.

13 The same elements that govern Erlinda Franco's
14 claims for crimes against humanity also govern Daniel
15 Alvarado's claim. First that a person or persons
16 committed murder, torture or other inhumane acts. The
17 court has already found that what happened to Mr. Daniel
18 Alvarado constitutes torture. So that element is met.

19 The second element is that the person or
20 persons committed the act as part of a widespread or
21 systematic attack directed against the civilian
22 population. What happened to Daniel Alvarado in 1983 is a
23 continuation of the same attack against civilians that
24 began in 1980, the same patterns emerged, targeting
25 students, using the same methods of torture, torture that

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1 people who did this were so sadistic that they had names

2 for the torture. You recall Daniel Alvarado's testimony,
3 the little airplane with the pilot, the little airplane
4 without a pilot, that is the nature of this torture. The
5 man who oversaw his torture, Major Ricardo Pozo told him
6 that they worked in shifts, this is like an operation that
7 is being carried out, this is not a random act. These are
8 people who live in shifts torturing Daniel Alvarado and
9 others. That's why in December of 1983, shortly after it
10 became publicly known that Daniel Alvarado was tortured in
11 the treasury police, the vice-president of the United
12 States, George Bush flew to El Salvador after years of
13 being ignored by the Salvadoran military, the
14 vice-president of the United States went to El Salvador to
15 tell the Salvadoran military that it had to stop, and not
16 stop isolated incidents, stop the widespread and
17 systematic torture and killings that were being committed
18 by the military. That's the second element of crimes
19 against humanity.

20 The third element is that the person or persons
21 knew or should have known that the act was part of a
22 widespread or systematic attack. We know by name the
23 person who was in charge of Daniel Alvarado's torture, it
24 was Major Ricardo Pozo, the head of the intelligence
25 section of the treasury police, one of the few officers

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1 with whom Nicolas Carranza who met regularly, who reported

2 to Ni col as Carranza who soci alized wi th Ni col as Caranza.
3 This is a high ranking officer who had to have known that
4 what he was doing, in operating a torture chamber and in
5 working men in shifts, in cycling people through a torture
6 chamber was not a random act, this was part of a
7 systematic attack, it was part of the widespread violence
8 committed by the Salvadoran military. And when you find
9 those three elements in Daniel Alvarado's case, you will
10 find that he has been the subject of a crime against
11 humanity and that he has proven his claim for a crime
12 against humani ty.

13 Now, let's talk about Colonel Carranza's
14 responsibility as a commander for the 1983 period, the
15 time in which Daniel Alvarado was tortured. I read to you
16 the first element of command responsibility which requires
17 that Colonel Carranza have the practical ability to exert
18 control over the subordinates who committed these acts.
19 Again, before trial, the parties agreed on certain facts.
20 These facts are undisputed in this case. And one of those
21 facts controls this first element. Colonel Carranza
22 admits that while he served as the director of the
23 treasury police he had the legal authority and the
24 practical ability to exert control over subordinate
25 members of the treasury police. When you see the jury

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1 instructions in your deliberations, you will see that this
2 stipulation mirrors the language that is required to prove

3 that element. Colonel Carranza has admitted that he was
4 the superior of those in the treasury police who committed
5 these acts. He was the superior of Major Ricardo Pozo.

6 The second element requires the plaintiffs to
7 prove that Colonel Carranza knew or should have known that
8 his subordinates had committed, were committing or were
9 about to commit torture or extrajudicial killing.

10 You heard Colonel Carranza's own testimony in
11 this trial that before he assumed the -- he became the
12 director of the treasury police, it had the worst
13 reputation for human rights, that it was alleged that
14 torture was being done in the treasury police, that a
15 death squad was being operated out of the treasury police,
16 and you heard his testimony that those allegations
17 continued throughout the time that he served as the
18 director of the treasury police. He knew or should have
19 known that torture was happening under his command. This
20 is knowledge that is also reflected in the documents that
21 have been entered into evidence.

22 Trial Exhibit 39 describes the conversation
23 between Colonel Carranza and a member of the United States
24 Embassy in June, 1983. It says Colonel Carranza was
25 candid in admitting that these were abuses within the

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CLOSING ARGUMENT BY MR. ESQUIVEL

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1 treasury police, though he allowed that they may not be
2 much worse than those existing within the other security

3 forces.

4 Colonel Carranza admitted that there were
5 abuses in the treasury police. And at end of his tenure,
6 when he was leaving his position as director of treasury
7 police, he also admitted there were abuses at that time.
8 In his own words, in Exhibit 32, which is a newspaper
9 article in the Christian Science Monitor, Colonel Carranza
10 is quoted as saying, quote, abuses are committed, said
11 Colonel Nicolas Carranza, the former chief of the treasury
12 police, told the Monitor shortly before his transfer from
13 that post last week, and there may be some cases of
14 torture, but this is because our men lack training and
15 equipment. These are Colonel Carranza's own words. There
16 is torture, but it is because we lack training and we lack
17 equipment.

18 You saw evidence that the torture of Daniel
19 Alvarado was publicly known throughout the world. It was
20 the lead story on the NBC Nightly News in November of
21 1980 -- in 1983 in the United States. It was the subject
22 of an article in NewsWeek Magazine. How could Newsweek
23 Magazine, the viewers of the NBC nightly news all know
24 about Daniel Alvarado's torture and treasury police and
25 knowledge not make its way to the director of the treasury

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CLOSING ARGUMENT BY MR. ESQUIVEL

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1 police, Colonel Nicolas Carranza? That just doesn't make
2 sense, ladies and gentlemen.

3 And finally, you saw the embassy cable that is
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4 Trial Exhibit 40. This describes a meeting between
5 Colonel Carranza and Chris Leibengood, who is a regional
6 security officer and who was investigating on behalf of
7 the United States the murder of Lieutenant Commander
8 Albert Schaufelberger. In that meeting, Colonel Carranza
9 described Daniel Alvarado's capture and his confession and
10 he said Colonel Carranza requested that details concerning
11 the event be given to him so that the interrogation could
12 be better directed. Colonel Carranza put himself in the
13 center of the investigation of the death of Lieutenant
14 Commander Schaufelberger. He told the United States
15 Embassy that information ought to be given to him so that
16 the interrogation could be better directed. Colonel
17 Carranza was offered any needed technical assistance,
18 specifically ballistics comparisons, polygraph
19 examinations, typewriter comparisons. He indicated that
20 he would request such assistance should it become
21 necessary. Again, Colonel Carranza is in the center of
22 the investigation of Lieutenant Commander Schaufelberger.
23 And so, ladies and gentlemen, he knew or he should have
24 known what was happening to Daniel Alvarado and others who
25 were being tortured at the treasury police.

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CLOSING ARGUMENT BY MR. ESQUIVEL

1669

1 The third element is that Colonel Carranza
2 failed to prevent or to punish, to take all necessary and
3 reasonable measures to prevent torture or killing or to

4 punish the subordinates after the fact. And on this
5 issue, there is also an undisputed fact that the parties
6 agree on that govern this element. It is undisputed that
7 Colonel Carranza did not prosecute under military law or
8 refer to civilian courts any members of the treasury
9 police for incidents of torture or extrajudicial killing.

10 You heard evidence in this case of at least two
11 people who were tortured by the treasury police,
12 Mr. Romero and the plaintiff, Mr. Alvarado. And both of
13 those men told you that no one was ever investigated, no
14 one was ever punished for their torture. By failing to
15 investigate and punish torture that Colonel Carranza
16 should have known about, he failed in his duties as a
17 commander. He failed to take the necessary and reasonable
18 measures to prevent that torture or to punish those after
19 they had been committed; and because he failed in those
20 duties, he is responsible as a commander for the torture
21 of Daniel Alvarado.

22 I would like to talk to you for a moment about
23 what the defendant, what Colonel Carranza has said during
24 the course of this trial. What the defendant has done is
25 presented excuses for his behavior when there is no

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CLOSING ARGUMENT BY MR. ESQUIVEL

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1 justification for what happened and there is no
2 justification for Colonel Carranza ignoring his duty to
3 prevent and punish what happened.

4 The first excuse that Colonel Carranza has put
Page 75

5 forward is that there was a conflict in El Salvador
6 military and armed guerillas, suggesting that something
7 about this conflict excuses what happened in this case.
8 Professor Karl and Ambassador White told you about the
9 armed conflict in 1980. This is a group of three or four
10 or 500 guerillas that were operating, and certainly they
11 committed some violent acts, but they pale in comparison
12 to the violence that was committed by the Salvadoran
13 military in 1980, and the real revolution that was
14 happening in El Salvador was not the 300 armed guerillas,
15 it was 300,000 people who took to the streets peacefully
16 to march, to demand their rights, to advocate for
17 democracy, to try to put an end to 50 years of military
18 dictatorship. That was the real threat to the Salvadoran
19 military, and that was the threat that caused the
20 Salvadoran military to begin its campaign to target
21 teachers, students, union leader, political leaders to try
22 to get rid of those groups, the civilians who were
23 peacefully pursuing their rights. None of these
24 plaintiffs were involved in any way with armed resistance
25 to the government, none of them.

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CLOSING ARGUMENT BY MR. ESQUIVEL

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1 But most importantly on this point, Colonel
2 Carranza told you this himself, there is no justification
3 for torture. There is no justification for murder. Even
4 if you have an armed guerilla who you have captured and

5 brought into police headquarters, you cannot torture that
6 person. The law does not allow it. The Geneva
7 Conventions do not allow it. There is no justification
8 for doing it. So all of the evidence and all of the
9 questions we have heard and all of the answers that have
10 been given about armed guerillas in El Salvador are
11 irrelevant to this case. They have nothing to do with the
12 plaintiffs' claims.

13 Now, the defendant has also offered the excuse
14 that the United States may have supported what was going
15 on in El Salvador at the time. When you go to the jury
16 room to deliberate, you will have all of the cables from
17 the United States Embassy that have been entered into
18 evidence, and you can read those cables and you can see
19 for yourself that United States policy during this time
20 was consistent, and the policy was that the United States
21 was constantly telling the Salvadoran military that it had
22 to stop these abuses, it had to stop torturing and it had
23 to stop killing, and it didn't matter whether President
24 Carter was in the White House or Vice-president Bush was
25 sent to El Salvador in 1983, it didn't matter. It was

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CLOSING ARGUMENT BY MR. ESQUIVEL

1672

1 always consistent that the United States did not support
2 these tortures and these abuses.

3 Now, Colonel Carranza has suggested that
4 because he provided information to the Central
5 Intelligence Agency, that makes him a good idea, that puts

6 him on the side of the United States and how could he
7 possibly have committed these acts if he was providing
8 information to the United States government.

9 Well, the truth is, as Ambassador White said,
10 that the Central Intelligence Agency is interested in
11 intelligence, they need information, and sometimes they
12 have to get that information from people who may not be
13 doing very good things. But it's the information that is
14 important. It is getting information from people who are
15 in the seats of power, who have access to decision makers,
16 who understand the interworkings of government. That was
17 Colonel Carranza's role as an informant for the CIA, and
18 it does not give him the seal of approval of the United
19 States, it does not make him a trustworthy person, it
20 makes him a person who was a key part of the government.
21 It makes him a person who was in the middle of things in
22 El Salvador, and for that reason, for that reason, he was
23 valuable to the CIA, to provide information.

24 But Colonel Carranza himself told you, he told
25 you this is not something that makes him trustworthy, this

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CLOSING ARGUMENT BY MR. ESQUIVEL

1673

1 is something that he is ashamed of. Colonel Carranza
2 considers the time that he provided information to the
3 United States government as being the only tarnish to his
4 military record. This is the only thing that Colonel
5 Carranza is ashamed of in his military service, that he

6 provided information to the U. S. government.

7 You will see in the declassified documents, the
8 United States policy is clear, but it is not just clear
9 with respect to the Salvadoran military. U. S. government
10 documents make clear what the United States policy was for
11 Colonel Carranza in particular.

12 In March of 1980, Ambassador White wrote the
13 following cable, which is Trial Exhibit 2. Ambassador
14 White said at least one senior officer, Colonel Carranza,
15 has got to go and the sooner the better. That, Ladies and
16 gentlemen, was the United States policy about Colonel
17 Carranza in 1980.

18 Another excuse that Colonel Carranza has
19 offered during trial is that he did what he could while he
20 was the director of the treasury police. He presented
21 testimony of people who provided paint to the treasury
22 police to paint the cells. He provided testimony of
23 people who provided mattresses so that the prisoners would
24 have a mattress to sleep on. He said that he worked to
25 improve the image of the treasury police, and he stressed

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CLOSING ARGUMENT BY MR. ESQUIVEL

1674

1 to the members of the treasury police that they had to
2 improve their public image, their public relations. He
3 went to the troops of the treasury police when he first
4 assumed command, and he said if, if you are torturing
5 people, you must stop; and if you are killing people, you
6 must stop. Well, no one volunteered that they were

7 killing or torturing anyone. But Colonel Carranza did not
8 comply with his duties. His duty was not to paint the
9 cells. His duty was not to provide mattresses or to
10 improve the image of the treasury police. His duty was to
11 investigate and punish torture and killings that were
12 taking place under his command. That was his obligation
13 as a commander, and on that obligation he failed.

14 Colonel Carranza has refused to accept
15 responsibility for what he has done. He has refused to
16 accept his responsibility as a commander, and what he has
17 done in this trial is to try to blame others. And we
18 heard during the course of this trial, a long list of
19 people that Colonel Carranza has tried to shift the blame
20 to. We have heard about communists and leftists and
21 Cubans and Sandinistas, and Ambassador White, the United
22 States military, a lack of evidence, superiors,
23 subordinates, plaintiffs, a long list of people who are
24 responsible that Colonel Carranza says are really
25 responsible, when he refuses to accept his own

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CLOSING ARGUMENT BY MR. ESQUIVEL

1675

1 responsibility.

2 We have talked about the communists, the
3 leftists, the Cubans, the Sandinistas, all of this armed
4 opposition. These threats of communism is irrelevant to
5 the claims in this case. None of it justifies what
6 happened to these plaintiffs.

7 Recall the questions of Ambassador White about
8 whether he failed in any of his duties, and what
9 Ambassador White said is, he may have failed in some of
10 these duties, but Colonel Carranza failed by design. He
11 failed by design.

12 Recall you heard some testimony from Luis
13 Rameriz about whether he could identify the soldiers who
14 were at the perimeter of the school when the FDR leaders
15 were abducted and how could he tell whether they were
16 U. S. uniforms or Salvadoran uniforms. And recall the
17 testimony of where U. S. military advisors fit into the
18 Salvadoran military structure.

19 Ladies and gentlemen, the U. S. military sent
20 advisors to El Salvador, but they were not members of the
21 Salvadoran military, they did not have the
22 responsibilities that Colonel Carranza had to supervise
23 his troops and to punish those responsible for abuses. It
24 is not the fault of the United States military, and it is
25 not the fault of a lack of evidence. You will take the

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CLOSING ARGUMENT BY MR. ESQUIVEL

1676

1 documents into the jury room with you and see all of the
2 evidence, all of the notice that Colonel Carranza and
3 members of the Salvadoran military had about abuses. And
4 Ambassador White said it was like Alice in Wonderland.
5 The members of the Salvadoran military talked a good game,
6 they said a lot of things, but they never acted, they
7 never acted, they never fulfilled their duties.

8 Now, the next two are interesting because when
9 Colonel Carranza is the vice-minister of defense, he
10 blames the minister of defense, the number one guy. He
11 says I was the number two guy, I can't be held
12 responsible. It would have been insubordination for me to
13 issue orders to investigate abuses or to punish people,
14 that was not my responsibility, that was the minister's
15 responsibility. He was the number one guy, it is his
16 fault. But then look what he does when he becomes
17 director of the treasury police, and he's the number one
18 guy at the treasury police. When he's the director of the
19 treasury police, he says, oh, I didn't have responsibility
20 for that. I told the number two guy to go investigate
21 that, I told the subdirector to go and investigate that,
22 that wasn't my responsibility. When he's the number two
23 in command, it is the number one man's fault. When he's
24 the number one in command, it is the number two man's
25 fault. Colonel Carranza will say anything to try to avoid

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CLOSING ARGUMENT BY MR. ESQUIVEL

1677

1 his responsibility in this case.

2 And probably the most egregious example of
3 trying to shift blame was Colonel Carranza's suggestion
4 that it was Francisco Calderon and Daniel Alvarado who are
5 to blame to what happened to him. He expected Francisco
6 Calderon after seeing the national police show up at his
7 house and gun down his father to go to the minister of

8 defense and talk about what happened to his father. The
9 minister of defense knew who was responsible for that.
10 There are 10,000 killings in this year. He doesn't need
11 Francisco Calderon to tell him that. And Francisco
12 Calderon is smart enough to know that if you go to the
13 minister of defense and start complaining about the
14 national police killing your father, you will be next. It
15 is not his fault that Colonel Carranza did not exercise
16 his authority, did not comply with his duty to
17 investigate. It is not Mr. Calderon's duty to
18 investigate, it is the military commander's duty to
19 investigate. And it is not Daniel Alvarado's fault that
20 he didn't tell Colonel Carranza earlier what was happening
21 to him. It was Colonel Carranza's direct report, Major
22 Pozo, who carried out this torture. And Colonel Carranza
23 certainly knew about what happened to Daniel Alvarado, and
24 it cannot be the case that Daniel Alvarado's story would
25 have been completely different, had Colonel Carranza said,

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CLOSING ARGUMENT BY MR. ESQUIVEL

1678

1 had he just spoken up earlier. It is not their fault, it
2 is Colonel Carranza's fault.

3 Now, the last thing I want to talk to you about
4 is damages. You will be asked to find that the Defendant
5 Colonel Carranza is liable for punitive damages. At the
6 end of the verdict form for each plaintiff, you will have
7 a different form where you will make your findings for
8 each plaintiff. At the end of each of those five forms,

9 you will be asked a question, and the question is whether
10 Colonel Carranza's conduct was intentional, malicious,
11 reckless or wanton. That is the standard, that is the
12 finding you must make in order to find Colonel Carranza
13 responsible for punitive damages. And punitive damages
14 focus on the defendant. These are damages that are
15 intended to punish the defendant for what he has done and
16 to deter other people, to make sure that other people
17 don't commit similar acts.

18 When you go to deliberate, you will find that
19 when you reflect on the evidence and the testimony that
20 what Colonel Carranza has done is intentional, it was
21 reckless, it was malicious. He had a duty as a commander
22 to ensure discipline, and rather than comply with that
23 duty, he stood back and watched as 10,000 civilians were
24 killed by those under his command. How can that not be
25 reckless? How can that that not be malicious?

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CLOSING ARGUMENT BY MR. ESQUIVEL

1679

1 You will see that in evidence, Trial Exhibit 6,
2 you have seen before. This is the document that makes
3 clear Colonel Carranza not only study back and watched,
4 this is what he wanted to happen. He was pleased with the
5 assassination of the leaders of the FDR. He believed that
6 other leaders of the FDR ought to be eliminated in a
7 similar fashion. That is what Colonel Carranza believed.

8 Remember Exhibit 32, the article from the

9 Christian Science Monitor, in Colonel Carranza's own words
10 describing the death squads as they appeared in Brazil and
11 saying we too found that the justice system did not punish
12 the terrorists here who attacked the population, and so we
13 had to take measures on our own.

14 Ladies and gentlemen, the evidence that this
15 was malicious, that this was reckless, that this was
16 intentional is overwhelming, and you will have the
17 opportunity to make that finding in this case.

18 You will also be asked -- we will ask you to
19 award compensatory damages to the plaintiffs. Now, this
20 is a case about justice. I said that at the beginning of
21 the trial. But it is a civil case, and the only remedy
22 that the plaintiffs have is to seek money damages. We all
23 know that no amount of money can compensate the plaintiffs
24 for what they have lost. That is impossible. But that is
25 what the law requires, that in a civil case they be

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CLOSING ARGUMENT BY MR. ESQUIVEL

1680

1 awarded damages to compensate them for what they have
2 lost. These plaintiffs are all very different and they
3 have very different stories, but there is one thing that
4 unites all of them and all of their stories, these were
5 all five people who were young people in 1980, in 1983 and
6 had a promising future ahead of them. These were people
7 who were studying, who were working, who were starting
8 their families. They had dreams and hopes and ambitions
9 of what their life would be like in El Salvador, and that

10 was taken away from each and every one of them. From some
11 of them, it was taken away over the period of years while
12 they sat in a jail for no reason. For some of them, it
13 was taken away in a matter of minutes by a death squad
14 coming and killing their loved ones. But what unites all
15 of them is they had some important part of their life that
16 was taken away from them.

17 Cecilia Santos wanted to be a math teacher.
18 Her father taught her that education was a way to support
19 herself and support her family, but her dreams of being a
20 math teacher changed on a day that she went to the
21 shopping mall for no reason other than to buy a birthday
22 present, and on that day, her life changed forever. The
23 night began in a taxi ride to the national police
24 headquarters with threats by members of the national
25 police, and it continued inside the national police where

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CLOSING ARGUMENT BY MR. ESQUIVEL

1681

1 she was tortured with acid placed on her hands, with acid
2 put in her nose, with electroshocks to her hands, her
3 breasts, her gums and a rape with a metal object. She
4 spent three years in prison for no reason. How do you
5 compensate someone for losing three years of their life?
6 Her dreams of teaching math were gone. Her dreams of
7 staying in El Salvador were gone. For many years, Cecilia
8 Santos could not hear the sound of keys jingling without
9 being taken back to that awful night in the national

10 police headquarters when she was tortured. This is the
11 kind of fear that she has been forced to live with.

12 In 1980, Francisco Calderon worked in a
13 factory. His sister was in school and his father was his
14 hero. His father was recognized as one of the best
15 teachers in El Salvador. But when he received the award,
16 the father refused it, and his son admired him for it.
17 Because the father could not accept an award in 1980 when
18 dozens, if not hundreds, of his fellow teachers were being
19 killed by the military, and he refused that award even
20 though he knew it would put him in danger. That is the
21 kind of man that Francisco Calderon's father was. He was
22 the center of that family.

23 And on September the 11th, 1980, members of the
24 national police and death squads stormed into
25 Mr. Calderon's house, put him on the floor and put a rifle

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CLOSING ARGUMENT BY MR. ESQUIVEL

1682

1 on his back. But that allowed Francisco Calderon's father
2 to commit one last heroic act, because you remember that
3 Francisco Calderon and his father shared the same name.
4 And when the father came into the room and saw his son on
5 the floor, he knew that there could be a mix-up. They
6 were looking for Francisco Calderon, the father, but they
7 had found Francisco Calderon, the son. And so Francisco
8 Calderon's father said not my son, I am Francisco
9 Calderon, and in that heroic act, that brave act, he may
10 have saved his son's life. And for that heroic act, he

11 was put on the floor and shot in the head next to his son.
12 Francisco Calderon did not just lose his father that
13 night, he lost his best friend, someone who could give him
14 advice, someone with whom he could share the joys and
15 sorrows of his life. The family lost its center.

16 Irma Calderon took the stand and told you our
17 family fell apart, they were forced to leave El Salvador,
18 they were forced to leave behind their dreams and their
19 aspirations. Francisco Calderon told you I don't know why
20 I didn't go crazy.

21 Ana Patricia Chavez was a young woman 23 years
22 old in 1980. She was married, she had a baby girl, she
23 was living in San Salvador and studying to be a secretary.
24 She was very close to her parents, they visited her
25 parents every weekend. But within the course of a few

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CLOSING ARGUMENT BY MR. ESQUIVEL

1683

1 minutes in July of 1980, Ana Patricia lost also everything
2 that was dear to her. She sat in a room in her mother's
3 house with her baby, and she cried and she prayed. She
4 cried for her mother who was being beaten savagely in the
5 room next to her. She prayed for her mother that her
6 mother would not be killed. She prayed for herself that
7 she would not be raped. She prayed for herself that she
8 would not be killed. She prayed for her baby that she
9 would not be killed, but that day, the death squads took
10 most of her life away from her, her husband, her mother,

11 her father, her career, her future, all of it taken away.
12 She had no place to go. She and her brothers and sisters
13 had to stay in that same house where their parents were
14 gunned down. Ana Patricia that day lost the affection of
15 her mother, she lost the affection of her father, she
16 never got to share with her mother the joys and sorrows of
17 raising her own children and was forced to flee El
18 Salvador.

19 Erlinda Franco in 1980 was a mother of four
20 children. She was married to Manuel, a university
21 professor. He was a respected political leader. He was a
22 good father. He was a good husband. He was a good
23 provider, and suddenly, it was all taken away. She was
24 left a widow with four children less than 12 years old.
25 She couldn't tell her children how their father had been

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CLOSING ARGUMENT BY MR. ESQUIVEL

1684

1 killed because she needed to protect them. She went to
2 identify her husband's body and found him lying on the
3 floor. He had a burn mark around his neck and he had
4 marks in his neck as if barbed wire had been attached to
5 his neck. That day, she lost almost everything. Her
6 husband, the father of her children, her financial
7 support, her home. She went to her parents, but she
8 couldn't stay with her parents because it was too
9 dangerous. Ms. Franco has been severely depressed since
10 that time because she was left unprotected and there was
11 no one there to help her.

12 And finally Daniel Alvarado, he wanted to go to
13 school. He wanted to study and become an engineer, but he
14 couldn't because the military attacked the school, because
15 they attacked the students and they closed the university.
16 And one day when he's watching a soccer game in 1983, his
17 life is changed forever. He is taken to the treasury
18 police headquarters where he endures days and days of
19 physical pain, electric shock, beatings, suffocations,
20 being hung from the ceiling by his arms. He endures
21 psychological torture, constant interrogation, being
22 forced to sign a false confession, then being forced to
23 appear at a press conference and admit to media from
24 around the world that he confessed to a crime he did not
25 commit. He was forced to leave the country where he was

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CLOSING ARGUMENT BY MR. ESQUIVEL

1685

1 born after spending three years in prison for no reason,
2 forced to leave his parents who still live there. And
3 Daniel Alvarado has never been back to El Salvador. How
4 could he ever go back? It is hard to imagine that lives
5 could be thrown off trajectory, thrown off course any more
6 than the lives of these five plaintiffs, of these five
7 survivors.

8 When you go back to the jury room to
9 deliberate, you will be the judge of the facts. You will
10 be the judge of the facts, and you will have the power to
11 express in money terms what these folks have lost. And

12 when you go to deliberate, consider what they have lost,
13 consider what Colonel Carranza has taken from them and
14 give them the justice that they have deserved for far too
15 long.

16 THE COURT: Ladies and gentlemen, I'm trying to
17 figure out how long -- let's take at least a 15-minute
18 break, and I understand that the defense is going to
19 divide their close, which is perfectly fine, it is
20 perfectly okay, so we may end up doing part of the close
21 before lunch and part afterwards because it is not an
22 endurance contest, we want to you to be able to have a
23 reasonable lunch. It takes a little while to do these
24 things. So I'm going to let you be excused, I'm going to
25 check about the schedule and make sure that is going to

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1686

1 work with everybody before I take my break. Don't talk
2 about the case among yourselves, don't let anybody talk
3 with and, of course, continue to keep an open mind, we
4 have still got a ways to go. I'm going to let you be
5 excused right now and I will check with counsel at side
6 bar just to make sure we are on schedule.

7 (The following proceedings had at side-bar
8 bench.)

9 THE COURT: We ran over a little bit -- well,
10 we ran over a little bit, not too much.

11 MR. BROOKE: I would think the best way is to
12 take an early lunch and just do us all at one time. That

13 way, I think it would be fair to the plaintiffs.

14 THE COURT: Usually what we try to do is we do
15 go ahead and stay until about 12:00 -- who is going to go
16 first?

17 MR. BROOKE: I was going to go first.

18 THE COURT: Yours will probably be a little
19 shorter anyway, would that be right?

20 MR. FARGARSON: His may be longer than mine.

21 MR. BROOKE: I was thinking if we did it all at
22 one time, it may -- the continuity may be better.

23 THE COURT: I hate to lose the time. If we
24 started at 5 till and we let you finish yours and then
25 took our lunch break, the advantage for you is that you

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1687

1 get to respond while you can still -- while they can still
2 remember, not that they are going to forget, but while it
3 is still fresh in their mind about the plaintiffs' close,
4 so that's the reason I hate to take a long break.

5 MR. BROOKE: I just was thinking if we went
6 from -- take a lunch till 12:45 and then start --

7 THE COURT: I don't know if it is ready
8 upstairs, I don't know. If the food isn't there, I can't
9 do anything about it. It is not there. I would do that
10 if there was food there. Okay. Is it okay for us to do
11 that? I mean is that going -- that way, you will finish
12 yours, and then Mr. Fargarson, when we come back, will

13 finish his split.

14 MR. BROOKE: Mr. Esquivel, he went for an hour
15 and a half.

16 THE COURT: An hour and 40 minutes or so.

17 MR. ESQUIVEL: Is that right?

18 THE COURT: Oh, I timed it. We started at
19 10 -- I actually gave him the benefit of 10:08 start, and
20 we finished at virtually probably 42, at 11:42 is when I
21 had noted, but it may have been 11:40, so we went 92
22 minutes, which is pretty long. Let's stick -- we will be
23 back at -- well, about 10 minutes from now and let's
24 see -- I think the split will be more fair. I'm just
25 concerned about not letting that much time lapse, and we

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1688

1 can't send for lunch because they don't have lunch up
2 there.

3 MS. BLUM: Your Honor, before we depart, I
4 wanted the record to reflect the plaintiffs' objection to
5 the additional instruction under the law of command
6 responsibility, the two sentences that you added.

7 THE COURT: How do you want to change it?

8 MS. BLUM: Well, as far as I'm concerned, and I
9 think this is what I stated on Friday, those two sentences
10 are really superfluous, they're essentially raising the
11 same issue that is raised in the question of effective
12 command. If the defendants -- defense is that he was
13 not -- he did not have effective command, that's what the

14 whole superior-subordinate relationship instruction speaks
15 to. And, you know, as far as I'm concerned, I think this
16 could be misleading to the jury.

17 THE COURT: How do you want to change it?

18 MS. BLUM: I would delete it.

19 THE COURT: Well, assuming I'm not going to do
20 that, how do you want to change it? The problem is that
21 if it was as clear as I thought it should be to start
22 with, we wouldn't have added anything. It is a little --
23 I agree with you that all the concepts are in there,
24 there's no problem in that regard.

25 MS. BLUM: I mean when you have a situation

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1689

1 where a -- the defendant is a lawful military commander
2 with a title and rank within a military structure, then
3 the jury is basically dealing with the question of whether
4 that person who is ranked a colonel who has a title is an
5 effective commander, and that's captured by the
6 superior-subordinate relationship instruction.

7 THE COURT: It is, that's true.

8 MS. BLUM: I mean there's no --

9 THE COURT: There's no rule that says we can't
10 say it twice to be clearer. In criminal cases -- this
11 isn't a criminal case -- we often do that. We often
12 express a concept two or three ways because for you or me,
13 one explanation may be clear; for another person, another

14 expression may be clearer, and that's the reason to do it.
15 It is just that many people, many eyes see things
16 differently, and so we want to give the different views of
17 the same concept so that it is well understood.

18 MS. BLUM: Maybe we could --

19 THE COURT: But if nobody objects, we will just
20 take it out.

21 MR. BROOKE: We object, Your Honor. We think
22 it is necessary because it is a difficult doctrine to
23 begin with, and I think the explanation would be useful.

24 THE COURT: It says defendant/military
25 commander is used to mean that you cannot find the

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1690

1 defendant liable if you find that he was not a military
2 commander. The term argues conjunctively to show that the
3 person was not only a defendant, but must also be shown to
4 be at the relevant time a military command.

5 MS. BLUM: Well, I guess you could say if you
6 find that he was not -- he did not have effective control
7 as a military commander --

8 THE COURT: Well --

9 MS. BLUM: No matter how you splice the pie,
10 he --

11 THE COURT: This can't be just any military
12 commander, he can't just be a military commander -- if he
13 was a military commander in the department, the first
14 department in El Salvador --

15 MS. BLUM: Uh-huh.

16 THE COURT: -- and this happens in the ministry
17 of defense or if it happens in the treasury police, he
18 doesn't have liability, so --

19 MS. BLUM: It doesn't make him any less a
20 military commander, it just makes him not the superior of
21 the -- of that subordinate.

22 THE COURT: That's true. Is there any
23 circumstance where it could be found that he's not a
24 military commander? Probably not in this case. I mean
25 the whole period of time, he was -- he was the military

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1691

1 commander, he had a title, he was in charge of entities
2 during both the 1980 and 1983 event, that's true. So
3 you're right about that.

4 MS. BLUM: Essentially, his defense is that
5 even in that position he had no practical ability to
6 control anybody below him, because that's not the
7 authority he was given in that position.

8 THE COURT: That's what essentially his
9 argument is, right.

10 MS. BLUM: That is captured in the
11 superior-subordinate relationship instruction. Now, if he
12 wants to make a cross reference to that instruction
13 somehow through the language of effective control or
14 effective command --

15

THE COURT: Well --

16

MS. BLUM: See, the thing is, the way it is structured right now is we have the three elements --

18

THE COURT: I don't want to be instructing them that he was a military commander. They still have to make that factual determination. I mean I'm not going to give them an instruction that he was a military commander.

22

MS. BLUM: Oh, absolutely, oh, absolutely.

23

THE COURT: That's what I'm worried about is making it clear that they're still making that determination also. Not just that there was the superior

25

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1692

1 subordinate relationship between -- because the way it is
2 worded, it has always been a -- between the
3 defendant/military commander -- in other words, by saying
4 defendant/military commander, it sounds like I'm taking
5 away a factual issue from the panel. Now, you and I might
6 say, well, it is really not much contested, but they're
7 not agreeing to it, they're not agreeing that he was the
8 defendant military commander. They're saying he was a
9 defendant and that he happened to be a military commander,
10 but he's not one in the same because they coalesce at the
11 same point in time. Now, do I agree with that? I don't
12 have a point of view, I just want to make sure that we're
13 not creating a factual issue on appeal. Do I think
14 there's probably much contest on this? It doesn't matter
15 what I think.

16 MS. BLUM: Well, that's obviously my concern is
17 I -- that's why I raised the issue for the record, about
18 keeping this in, because I wanted to make sure that we
19 have preserved for the record our objection to an
20 additional step in proof when, in fact, you're in a
21 situation with a de jure commander such as Colonel
22 commander, then the burden essentially is -- in terms of
23 the defense is whether he's got the practical authority.
24 It is -- you know, there's not really an issue of law here
25 about whether he's a de jure commander or not.

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1693

1 THE COURT: But I wasn't asked to, and I didn't
2 grant summary judgment on that question.

3 MS. BLUM: Right, I realize that. I'm just
4 saying that the -- the instructions give the jury a way to
5 address the primary defense in the case, which is does he
6 exert control over the people below him or not. That's
7 essentially their defense.

8 THE COURT: I said a military commander, I
9 didn't say the. It is one of those things -- let me think
10 about it, I mean I don't disagree.

11 MR. BROOKE: Your Honor's clarification by the
12 addition goes to the objection that we said Thursday in
13 the instruction that when we have defendant/military
14 commander, it gives the inference to the jury that it has
15 been decided by the court.

16 THE COURT: And it hasn't been.

17 MR. BROOKE: It has not.

18 THE COURT: I haven't decided the
19 superior/inferior relationship -- or subordinate
20 relationship, I haven't decide that, and yet the language
21 suggests that the court has, I just haven't decided it.

22 MR. BROOKE: And that's our continuing
23 objection to that portion of the instruction.

24 THE COURT: That's why I put in the
25 paragraph -- let's think about it, I mean I don't really

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1694

1 think that there is a big problem there, but we need to a
2 short break.

3 MR. BROOKE: You want to see if the lunch may
4 be up there?

5 THE COURT: It won't be there yet, and so we
6 will start and get as far as we can.

7 (Recess taken at 11:55 until 12:00 p.m.)

8 THE COURT: All right. I think we have
9 everybody and, of course, I have considered this point.
10 The purpose of instructions is always to provide as much
11 clarity as possible to a group of individuals, who are not
12 lawyers who are not skilled in the law and obviously need
13 guidance. This is an area where the court simply states
14 the proposition of law. Lawyers can argue the application
15 of the facts in that context. This is all the court is
16 attempting to do. For me to make -- to make a different

17 determination in light of some of the proof in the case
18 might appear to constitute a factual determination by the
19 judge and I just don't do that. I don't think it is an
20 accurate statement, it can be further clarified, that's
21 okay with me, it is certainly fine, but the fact that it
22 might be superfluous doesn't mean that it is inappropriate
23 so the objection that was raised is not one that the court
24 would sustain, and I must admit the language can always be
25 improved. I would be glad to try to improve the language,

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1695

1 but I do know that the defendant has taken certain
2 positions in the case which I think necessitate this type
3 of clarification.

4 I think we're ready to proceed with the panel.
5 Bring the panel in.

6 THE COURT SECURITY OFFICER: Yes, Your Honor.
7 (Jury in at 12:05 p.m.)

8 THE COURT: We're going to divide our arguments
9 for the defense. I think everybody agrees in light of our
10 time constraints and the lunch schedule that we are on
11 that that will be the proper way to handle that. And
12 obviously you will need to consider all the arguments as
13 argument that is allowed in the case and not give any
14 portion of the argument more consideration than the other,
15 recognizing at all times that argument is simply that, it
16 is argument, it is not the parties' position regarding how

17 you should interpret and consider the evidence in the
18 case.

19 Mr. Brooke, I think we're set.

20

21

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23

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CLOSING ARGUMENT BY MR. BROOKE

1696

1 MR. BROOKE: Ladies and gentlemen, when we went
2 through the voir dire, which is the exercise of selecting
3 a jury, it is known as the voir dire, which means speaking
4 the truth, and in that exercise, one thing certainly was
5 apparent, and that is you can't judge a book by its cover
6 in this case. You are asked to look at facts and
7 circumstances that occurred 24 to 26 years ago in a
8 foreign land. You're asked to make a decision based upon
9 documents that more often than not were authored by other
10 persons who, with their observations, their opinions wrote
11 what they wrote at or about the time supposedly that the
12 document was made. Those documents, those opinions, those
13 observations, just as you all as jurors during the
14 exercise of figuring out that we don't make any judgment
15 based on what we may initially perceive, that they're back
16 24, 26 years ago, Mr. Carranza wasn't given any -- these
17 people weren't under oath when they wrote what they wrote,

18 but today it is sort of like the old CBS that Edward R.
19 Murrow would do, you are there. Back in the days of black
20 and white television, Murrow used to have, you know, you
21 go to the battlefield with Napoleon, so forth, where you
22 would be George Washington crossing the Delaware, and they
23 try to put you, as the television viewer, let's look at
24 it. And the difficulties 24, 26 years later is not just
25 one of time in communication and memory, which, for

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CLOSING ARGUMENT BY MR. BROOKE

1697

1 example, I couldn't remember what I had for lunch Thursday
2 afternoon. I do remember Armistice Day which was Friday
3 the 11th, but, you know, to remember things 24, 26 years
4 ago, that's what we're asked to do. And besides the time
5 delay, the plaintiffs all admit, but for Alvarado, that
6 none of them ever knew Mr. Carranza, talked with
7 Mr. Carranza or confronted Mr. Carranza at or about the
8 time these horrific, terrible facts took place. Besides
9 the time factor, we have a communication, language factor,
10 and you have had and witnessed before your eyes the
11 problems with sound and hearing, problems of language,
12 problems of asking the right question versus answering
13 the -- you know, people were not -- in the translation, a
14 lot was lost because I would ask a man have you taken
15 courses in political science, for example, and he
16 apparently was assuming course meant that that was his
17 field of study or something, you know, just things like

18 that. And then we have a generational communication issue
19 here, and then we have a political communication issue
20 here. We have got a state department who has their ideas
21 and we have got a people on the ground, people in a
22 revolution, people in battles going on.

23 One thing we do know is the defendant, who
24 didn't know any of these persons or their families --
25 however, he did meet Alvarado, that he couldn't deny the

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CLOSING ARGUMENT BY MR. BROOKE

1698

1 horri fic and terrible tortures and killings that they have
2 descri bed because he didn't know about them. And so we
3 stipulated to them, that those, in fact, happened.
4 There's no issue about it. But what precipi tated where
5 we're at today? You've heard that these people were
6 contacted by an attorney and told they had a lawsuit 22 or
7 so years after the events. And it is a lawsuit out of El
8 Salvador, events in El Salvador. And all you have to do
9 is just re-live the torture, the murder, that's all you
10 have to do, we'll take care of the rest. And I submit
11 that you have been confronted with text out of context,
12 making pretext 24, 26 years after the fact of writings of
13 persons and alleged observations of persons who weren't
14 part of the scene. And I ask you, let's put in context,
15 if you were there that in 1979, August of 1979,
16 Mr. Carranza has been working at the telecommuni cations
17 company, he is made an officer in the general staff for
18 just 15, 25 days or so, and then he is appointed by the

19 military dictator Romero to serve as the sub or
20 undersecretary minister of defense, appointed by the
21 military dictator to serve in that role, the
22 undersecretary, subsecretary minister of defense. I'm a
23 political science major, I have lived in this country for
24 a number of years, I don't know the name of Donald
25 Rumsfelds' undersecretary of defense, I don't know Melvin

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CLOSING ARGUMENT BY MR. BROOKE

1699

1 Laird's undersecretary of defense, I don't know Robert
2 McNamara's undersecretary of defense, but Mr. Carranza was
3 an undersecretary of defense. And within a month and a
4 half or so, by October the 15th, there's a coup, and the
5 last military dictator to ever control El Salvador is out.
6 And you have heard this theory that the military
7 dictatorship -- that the military wanted to get this
8 dictatorship back in order. And the coup is -- from the
9 observations of those writings and documents was
10 undertaken by a younger generation -- and I don't know
11 what younger versus older is, but younger generational
12 level of officers who put the coup through and made a
13 junta, J-U-N-T-A. And the junta was comprised of three
14 civilian members and two military men, Gutierrez, and from
15 here, I don't take any responsibility for my pronunciation
16 of any names because there a lot of them are similar, but
17 we have a Majano, two members of the junta, and underneath
18 that junta, rather than a president, commander in chief,

19 there is this junta, five guys running the ship of state,
20 five presidents of the United States at one time. And
21 underneath that is a minister of defense. And what do
22 they do? These young military fellows push through the
23 coup as well as the civilian members, they say apparently
24 keep the same military defense secretary there,
25 Mr. Garcia, and whoever you have on your staff, and

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CLOSING ARGUMENT BY MR. BROOKE

1700

1 Mr. Carranza was part of that staff. And the plaintiffs'
2 attorneys who are skilled in communicating, they have put
3 before you what appears to be plain language to me that
4 the undersecretary shall advise, coordinate and propose,
5 advise, coordinate and propose. Nowhere in there do I
6 read shall issue orders, do this, shall issue orders. The
7 fact is he never issued any orders. But let's take what
8 you are there behind the curtains to see what happens.
9 Five guys, the presidents, and we get to December, early
10 January, there is such disunity in the group that several
11 of the junta resign here and so now here we are, 1980,
12 January of 1980, several of the junta resign, some
13 replaced, and we get to February of 1980 and then March of
14 1980. And there is supposedly disunity in the troops, the
15 younger officers feel that this junta thing that they set
16 is quite the way they were hoping for, and Majano -- if
17 you want to take the time to read the full text of these
18 exhibits, you will see that Majano kept, I'm the
19 reformist, I'm the one that should be the president. You

20 will see that in there.

21 Now, let's get to the end of the cast of
22 characters, the people who did have the opportunity to be
23 there. First is a Robert White. He told you he was
24 ambassador to El Salvador in 1979 and 1980. And when he
25 had the opportunity to be reminded that the hearings for

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CLOSING ARGUMENT BY MR. BROOKE

1701

1 his nomination were on February the 5th and February 24th
2 in the United States in Washington, D. C., he wasn't even
3 down there. Oh, that's right. And I asked him, is the
4 nomination before your hearing. Yes, no, no. And what's
5 the significance of that? Well, then he -- of course, I
6 was back at the office in Washington reading up on
7 everything about El Salvador, but yet he's the something
8 for Latin America, I think he told us. And so he left
9 Paraguay in November, end of November, and we have got to
10 assume that he celebrated Thanksgiving and Christmas, but
11 somehow he is reading everything, finding out everything
12 about Mr. Carranza so that by the time he gets there on
13 March the 13th -- March 13th, and I have tried to put
14 these exhibits in chronological order so you can see the
15 way it was, the first exhibit, Exhibit 1, White wasn't
16 even there, and it was authored by this interim Attache
17 Cheek, and Cheek says in paragraph seven that counsel has
18 shown that Carranza was the operational commander. Cheek
19 who had filled in for the other guy who White had said was

20 the worst expert that he had ever been around or in the
21 history of the foreign service. Cheek is there and Cheek
22 writes that he thinks Carranza is the operational
23 commander. That's his perspective. And he was the
24 undersecretary of defense. And in that Exhibit 1, it is
25 interesting that Cheek comments that the military looking

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CLOSING ARGUMENT BY MR. BROOKE

1702

1 for support from other of their neighbors to fight the
2 Sandinistas and the communists, they reject that from
3 Brazil or, excuse me, from Argentina and Chile due to
4 their bad human rights images. Argentina, we have heard
5 that in this courtroom.

6 We have had a military -- the UN military human
7 rights expert before you who has testified with Mr. White,
8 Professor Karl. White has testified three times, he says.
9 But now we get to Exhibit 2, which is White's initial
10 March 12th, 1980 cable where he says at the beginning
11 despite the brief time here, and Exhibit 3 is his
12 March 19th one, it says at the end of the first week on
13 the job, but if you look at the first one, the first --
14 despite the first time here, March 13th or 12th, whatever
15 the date is, Mr. White says this is the most undisciplined
16 diplomatic mission that I have ever been around. He has
17 been in it 25 years. He says that the El Salvador Embassy
18 is chaos, much less the fact that there is a revolution
19 that has been going on for over 10 years, and it is going
20 on out in the streets, and Germany has taken their embassy

21 out, not just for security reason, which he testified to
22 in front of Congress, but now he has more time today he's
23 going to tell you other reasons too. But it was
24 revolution. And he says Carranza must go. Is that
25 judging a book by its cover? I mean the man has been

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CLOSING ARGUMENT BY MR. BROOKE

1703

1 there a day or two, apparently. But he's read so much
2 back in Washington or whatever, that he is saying Carranza
3 must go. And the interesting thing in Exhibit 2, he also,
4 you will see he writes, we need to avoid the ouster of
5 Majano, that he wants Majano to stay in there, in that
6 junta, to keep his authority in the junta. He says we
7 need personnel here in this embassy, and he says --
8 counsel has said the U. S. had this solid uniform rational
9 line of where it stood on everything, and certainly it was
10 against any torture or killings, but White says we have
11 got problems here, we have got mixed signals, we have got
12 support for the military and we have got wanting to help
13 the reformists and, you know, the military folks, I don't
14 know what they're telling out there, versus we're in the
15 state department here, and you can read it. And so then
16 at the end of the first week besides this seven-page --
17 the first day on the job, he writes a seven-page summary
18 of his thoughts as the state department guy, and then at
19 the end of the first week, he writes in Exhibit 3, success
20 from Majano -- success is going to come with Majano and we

21 need to ease out the older officers. This is a U. S.
22 ambassador making a judgment who has been on the job a
23 week saying we need to ease out the older officers. And
24 he talks about the Cuban train and the Cuban weapons in
25 the country, and this is interesting, it is March the

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CLOSING ARGUMENT BY MR. BROOKE

1704

1 19th, 1980, in Exhibit 3, he says the worst thing that
2 could happen is that if Arch Bishop Romero were to be
3 killed, that would cause havoc. Isn't it interesting that
4 five days later, Arch Bishop Romero got killed? And the
5 UN says by a sniper. And he says that Romero, who was in
6 his opinion the strongest political figure in the country,
7 that he felt that without a constant threat of Marxist
8 revolution there would be no change, no reform in the
9 country. That was Arch Bishop Romero's position, and
10 according to Ambassador White, I assume, you know, he said
11 he listened to the homilies of Arch Bishop Romero and he
12 met with Romero. I assume that they were like that. But
13 you know what, when you look at the time line, he had only
14 been there seven or eight days before Romero got killed.
15 Maybe 11 days. But he would have you believe that he and
16 Arch Bishop Romero were just these close friends and
17 buddies.

18 Well, then we get to May of 1980 in Exhibit 37
19 where D'Abuissou is arrested, and in that state department
20 telegram, it says warn Majano regarding overplaying their
21 hand against the Minister of Defense Garcia. That's what

22 our ambassador is saying. Judge a book by its cover?
23 Nowhere is Carranza mentioned.

24 Then on May 15th, this is where we get a real
25 interesting one. Exhibit 36, this is White meeting with

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CLOSING ARGUMENT BY MR. BROOKE

1705

1 Duarte, Jose Napoleon Duarte, who was the only unescorted
2 party in a cocktail in Caracas, Venezuela who walked up to
3 the only unescorted female at the party, Ms. Karl, and
4 introduced himself, hello, I'm Jose Napoleon Duarte, I'm
5 going to be the next president of El Salvador. And do you
6 know in this May 15th, 1980 Exhibit 36 message White says
7 Duarte is convinced Carranza has links with the extreme
8 right and exercises the real power in the high command.
9 Now, this is a man who in Caracas a year or before saying
10 I'm going to become the president, and he also shares with
11 Ms. Karl, do you know in 1972, I had that election won,
12 but I was defrauded, but I'm going to be president. And
13 here he is now, he's on the junta, he is meeting with
14 White, and he says, you know what, Carranza, he's the man
15 with all the power. And here is White talking with
16 Majano, wanting to keep him in authority, let him
17 presumably reach his ambition of becoming president. He's
18 also dealing with Duarte who he has got ambitions to be
19 president, and there's a revolution going on. D'Abuissou
20 at that time had been arrested, found with documents and
21 weapons and things, and as the Truth Commission found, he

22 was the author of the killing of Arch Bishop Romero. Now,
23 that's interesting. Ms. Karl who got her degrees at
24 Stanford and then was hired to go to Harvard to be the
25 head or lead the Latin American studies program, who

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CLOSING ARGUMENT BY MR. BROOKE

1706

1 suddenly is getting phone calls from Washington,
2 congressmen, we need an expert and Harvard has got to have
3 the expert, and she decides I guess I better go down
4 there, get some information, and she goes to Caracas. She
5 is working on the economic effect of oil in political
6 powers, countries with oil, but with the conversation with
7 Duarte, that sparked her interest about El Salvador. A
8 year or so later she goes down there in January of '81.
9 January -- or excuse me, June of '81, and she talks -- and
10 counsel very carefully says are these pictures something
11 you would have seen in '81 to '83. Well, Mr. Carranza
12 wasn't in the military as a military man at that time. He
13 was the military that ran the telecommunication system
14 ANTEL, but he wasn't even in it. But you saw pictures and
15 pictures and pictures of horrific scenes. She says that
16 she then traveled with Duarte, traveled with D'Abuissou,
17 very charismatic character, he holds up that watermelon,
18 cuts it with a machete, green on the outside, red on the
19 inside. Psychosociopath, whatever. The confessed author
20 of the killing of the Arch Bishop, but I traveled with
21 him. She never, all this investigation, never ever talked
22 to the vice-minister of defense who was already out of

23 office six months before she got there. But she has come
24 to tell you, well, let me tell you about these documents.
25 Isn't it interesting that Duarte, her friend, was going to

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CLOSING ARGUMENT BY MR. BROOKE

1707

1 be the president, and he ends up being president in
2 '84-'85, is elected president, and he's in the office
3 until about '89, and that's when Garcia goes down to
4 testify about Jesuit priests, the killing in '89, he goes
5 down there in 1991, he says it was the height of the civil
6 unrest. Mr. Carranza is out of the country for four or
7 five years, but you have heard about Jesuit priests being
8 killed after he has left the country. And her friend,
9 Duarte, is the president in the height of the unrest.

10 Well, if you look then at Exhibit 4, you get to
11 the October 27th, '80 meeting of White with Garcia and
12 Carranza, and you hear Garcia pleaded as the minister of
13 defense that we need to stop the killing from the right
14 and from the left. There's judges, mayors being killed by
15 the FMLN. You can read that in the Truth Commission
16 Report, kidnappings by the guerillas. The military is
17 complaining that when they take and capture a terrorist,
18 take them to the civil judges that the judges feel so
19 intimidated they let the terrorist go because of their
20 fear of reprisal by the terrorists.

21 And in the Exhibit 4, October 27th, White even records
22 that Garcia said -- stated the security force personnel has

23 been kicked out and sentenced for abuses of authority, abuses
24 of authority.

25 Now, Ms. Karl today has taken the witness stand and

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CLOSING ARGUMENT BY MR. BROOKE

1708

1 said no, no, the only people, only political officers or
2 military people, it was for killing cows or shooting up a
3 restaurant or the folks involved with the nuns, but that was
4 it.

5 Now, the man from Costa Rica, I think I heard him say
6 that those in the treasury police who had tortured and abused
7 him were in prison where he was imprisoned as prisoners.

8 Well, then, we get to the horrific killing of the FDR
9 members, and we have Exhibit 5 and 6 that has got some of
10 those which counsel has used piecemeal, and we have got an
11 Exhibit 6 that supposedly White has identified as something
12 written by Attache Bosch. I'll ask you to examine this
13 document, you find -- Mr. White couldn't even remember -- he
14 wasn't there until '80. Of course, he also that you remember
15 Mr. Carranza was -- his office was the director of treasury
16 police, and then you remember that he was the vice-minister,
17 but he says this is authored by Bosch.

18 Exhibit 6, you examine it, you try to figure out who is
19 the author of this or when it was authored and to -- that the
20 leaders approved of the assassinations.

21 Well, one thing that was authored and has a date is
22 Exhibit 50, and the defendants or -- excuse me, the plaintiffs
23 didn't bring that into evidence. We brought it into evidence.

24 Mr. White didn't bring it into evidence. But it is something
25 that White wrote. And it's how upset Garcia and those in the

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CLOSING ARGUMENT BY MR. BROOKE

1709

1 El Salvadoran military were over the FDR killings, and it has
2 in here in paragraph eight, Exhibit 50, this is authored on
3 December 3rd, 1980. Vice-minister of Defense Carranza spoke
4 next at great length. I have to say his presentation made a
5 great deal of sense. He agreed that investigation of the
6 events of Thursday was required. He said that the ministry of
7 defense was not attempting to deny its responsibility to
8 protect the civilian populous, but that the judicial system
9 had collapsed and there was a wave of crime carried on by the
10 political extremes on the left and also of the right. He went
11 on to analyze in detail the dangers of communists, the
12 interest that the United States had to have in preventing
13 another Cuba in Central America and the need to find a
14 mutually satisfactory solution for both U. S. and El Salvador.
15 He stated categorically -- this is White's word choice -- that
16 he did not reject dialog with any political group, but
17 stressed the difference between those who held political
18 opinions and those who had killed others for holding political
19 opinions. He was willing to meet with those who had ideas of
20 reform or whatever, but he wasn't anxious to meet with
21 killers. This is what White wrote. And by the end of
22 December of 1980, Mr. Carranza is going to ANTEL. January the
23 3rd, 1981, he's with ANTEL.

24 And there's an Exhibit 7 which talks about that mid
25 level officers are thought to have been those involved with

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CLOSING ARGUMENT BY MR. BROOKE

1710

1 the FDR killings, perhaps without advance approval of senior
2 high command officers, but the high command seniors were
3 unwilling or unable to apprehend or bring responsibility -- to
4 responsibility and accounting of those persons.

5 And then we get a Washington Post, December the 14th,
6 Exhibit Number 33 where the Washington Post has an article
7 that says that Mr. Carranza was in charge of the day-to-day
8 operating army and security forces. The Washington Post.
9 Now, where did they get that information? From White? From
10 Majano, Duarte? They didn't ask Mr. Carranza.

11 And then there is Exhibit 24, December 17th that there
12 is the attitude toward compromise, but that Carranza has been
13 targeted for removal by the Christian democrats. The
14 Christian democrats, that's who Ms. Karl has testified that
15 she would go to Christian democrat meetings in Caracas,
16 Venezuela, Cuba, different places around Latin America, but
17 he's out as of January the 3rd, 1981, but yet you have heard
18 thousands were killed and all this. If you look at the UN
19 report, it specifies names after names after names of people
20 involved and responsible for different things. As Ms. Karl
21 said, she didn't even know his name was in there, but it is in
22 there one time in a footnote that he helped -- that they
23 gave -- that they gave an announcement that they had secured a
24 death squad participant, they arrested him. But he is nowhere

25 to be found in this report.

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CLOSING ARGUMENT BY MR. BROOKE

1711

1 Then June of '81, we have Ms. Karl arrives, and then we
2 get in June 3rd, 1983, this photograph of Mr. Carranza and the
3 article where he with Majano -- or Moran, who used to be the
4 former director of treasury police, standing there with him
5 with sunglasses, and he says that I want to build on the
6 reputation of the treasury police or improve the treasury
7 police, and he doesn't criticize Moran in his presence in the
8 article. I guess they were hoping that he should have just
9 stood up and gone after Moran right there, but within a day of
10 the -- or several days of the article, they have got
11 Exhibit 39 where it says the newly appointed director of the
12 treasury police, and that is what you have seen from day one
13 in this case, admits that there were abuses within the
14 treasury police. How fair is that, that at the beginning of
15 this trial, this man admits there was abuses in the treasury
16 police, he has been there a week, three days, four days, and
17 he admits that there have been abuses at the treasury police,
18 they would have you believe that that means that he was
19 responsible for everything the treasury police did.

20 Well, he's in the treasury police beginning in June of
21 '83. By July, Schaufelberger is killed, a U. S. Attache
22 Schaufelberger is killed, and the next thing we know is the
23 hacienda police, Carranza finds out there's a confessed man,
24 says he has given a confession. Carranza sees him for the

25 first time, meets him for the first time at a news conference.

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CLOSING ARGUMENT BY MR. BROOKE

1712

1 This man gets in front of the press, gives this whole scenario
2 of his confession. He is allowed to give questions and
3 answers to the press. He has a video of a confession.
4 Carranza on June 1 -- or excuse me September 1 -- the arrest
5 was August 25th -- and so Exhibit 40, he's talking about,
6 which counsel has brought up, this video confession and he
7 talks about what can we do ballistic-wise, what help can you
8 give us to determine the facts of this case to the United
9 States. And then later Carranza advises the man,
10 Mr. Alvarado, that there's an opportunity, the foreign press
11 or whoever wants to interview him and are you interesting in
12 talking to them, and the man goes again and confesses.
13 Carranza then learns that the man who is supposed to
14 potentially go and be interviewed by the FBI or other
15 officials, and he allows them to be taken twice over, and
16 after which he learns that the man is recanting his
17 confession, saying it was a result of torture, and you can see
18 the photographs of the man at his press conference, there's no
19 signs of any wounds or anything on him at that time. But
20 Carranza, when he finds out the man recants his confession,
21 confronts with him with why didn't you tell me you were
22 tortured. Then Daniel Alvarado admits that what is Carranza's
23 attitude was, why didn't you tell me that you had been
24 tortured.

25 Well, by December, '83, we have the meeting with

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CLOSING ARGUMENT BY MR. BROOKE

1713

1 Vice-president Bush, and that is Exhibit 44. And in there,
2 you will see Vice-president Bush says he agrees with the idea
3 they have to defeat communism. President Reagan is insisting
4 on that. White, of course, has left back in January of '81,
5 he's gone. It is absolutely essential to defeat communism and
6 that the El Salvadorans propose a special investigation unit,
7 and they issue -- they want a special investigation unit to
8 deal with these death squads because the U. S. Congress --
9 there was a big uproar about why give money down there if in
10 any way the government or the military is involved in death
11 squads.

12 So then we get to March the 22nd, '84, Exhibit 49,
13 where the New York Times reports the state department says
14 they have no credible evidence that defendant, Mr. Carranza,
15 was personally involved with the death squads, and that the
16 treasury police improved its conditions once he became the
17 director.

18 By May the 30th, Christian Science Monitor is reporting
19 Carranza was replaced last week, and that, basically, I
20 believe you will find, is the trail of the exhibits.

21 In looking at Mr. Garcia, he has come before you to say
22 what he thinks the words advise, coordinate and propose mean.
23 He has commanded -- 2200 was the biggest regiment he has ever
24 versus you see in the Truth Commission, the military in El
25 Salvador was 19,000. There was over a million people in San

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CLOSING ARGUMENT BY MR. BROOKE

1714

1 Salvador. In communicating, there's no doubt that a former
2 ambassador is a good communicator, that a college professor
3 with several graduate students as her assistants at her side
4 going through cables and cables and cables, trying to come up
5 with whatever is a good communicator.

6 You will find in the Truth Commission that on page
7 13 -- and it is difficult to determine pages, but it has got a
8 page number, and then down here page number too, but the page
9 number of the text that they mention -- with mention of the
10 guilty parties, that that is one of their purposes. You will
11 find that they had a mandate -- emphasizing the serious acts
12 of violence and their impact. You will find that they did not
13 attempt to follow rules of judicial procedure, that they did
14 not attempt to conduct due process, but in all of that, they
15 attempted to identify any perpetrator, even though there was
16 not due process extended, and you will find that they talk of
17 specific acts and instances and nowhere, nowhere to be found
18 is Nicolas Carranza. And this study was done by the UN's
19 Commission ten years or so after the fact to look into
20 everything, all the documents, had all the witnesses, they
21 were allowed to testify or come before them on a confidential
22 undisclosed basis. You will see that this violence started
23 way back in the '30's, but especially from 1969 on, before
24 Mr. Carranza was in any position, that the FMLN murdered
25 various mayors, judges -- that is on page 44 -- U. S.

CLOSING ARGUMENT BY MR. BROOKE

1715

1 military, and you will find if you were to be asked today how
2 many people were killed by the death squads based on the
3 testimony you have heard in this case, I would be anxious to
4 know what your recollection is. Well, the UN Truth Commission
5 on page 160 of 308 says a total of 816 victims of abductions,
6 disappearances and executions that occurred between 1980 and
7 1991, eleven years. The UN Truth Commission found a total of
8 817. Now, is that the flavor of the cover of the book that
9 has been presented to y'all in this case? I submit that if
10 you take the time to read the documents, you will likely be
11 able to put a text in proper context that Colonel Carranza
12 while he was vice-minister was to advise, coordinate and
13 propose as the treasury -- as the director of treasury police,
14 three years later, whatever, he did make changes.

15 Mr. White, how would you, from your 25 years of
16 experience in the foreign service, how would you have changed
17 the events down there? Could he have stopped the killings?
18 No, he couldn't have stopped them, but he could have used his
19 influence. That's Mr. White.

20 Mr. Garcia, how long does it take to get an army unit
21 disciplined? Oh, maybe a year, two years. Ladies and
22 gentlemen, there's a story of -- well, this weekend, I went to
23 the U. T./Memphis State game, my daughter is a senior there, I
24 asked her what color should I wear. Because she is U. T. fan,
25 orange, and she knows in my heart I'm really a Memphis fan.

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CLOSING ARGUMENT BY MR. BROOKE

1716

1 I'm a Bear fan, Cub fan, so I'm used to losing, so I'm a
2 Memphis fan, and so she says, well, dad, wear whatever you
3 want. I said no, what do you want? She says I'm going to
4 wear orange. I said, well, if you are wearing orange, I'll
5 wear orange, so I'm in orange sitting with all the Memphis
6 State people, but I had a blue bell on my hat. So when
7 Memphis State hit the ball, I put that blue bell up front and
8 I would turn it around orange. And I was pulling in my heart
9 for Memphis to win the game, and we lost the game. Driving
10 back, stopped at a restaurant or a gas station and a big old
11 bus pulls in, and it is Memphis State people, I mean big
12 players, and they're seeing me in this orange outfit, right?
13 You know they judged me real quick thinking I was a U. T. fan,
14 but when I got to talking to one of the fellows about you
15 should have done this, we could have won the game this way,
16 that way, they realized, no, he's just wearing that on the
17 outside.

18 Also, up in east Tennessee, there's this old man who
19 was supposedly a wise old man, and these boys used to try to
20 play tricks on him. One day, they went up to him and said,
21 old man, I have got a bird in my hand, tell me, is he alive or
22 dead. That old man looked at it and said, boys, I can't tell
23 you if that bird is alive or dead, but I can tell you this:
24 His fate is in your hands. And I submit to you 24 years after
25 the fact, at age 72, 73, a man that they didn't know, he is

1 not culpable, he's not responsible, but his fate in 2005 is in
2 your hands. Thank you.

3 THE COURT: As I indicated, there will be a
4 second portion of the closing argument by Mr. Fargarson
5 when we come back. Do you want to try to make it a
6 45-minute lunch? We have a lot to do, and I'm looking to
7 sort of assent, I saw at least one agreement there. It
8 looks like y'all are okay with that. I know it is a
9 little short, and if it turns out you need more time, just
10 tell Mr. Warren or Mr. Ruby. We're not trying to rush
11 you. But that would put us back on track for resumption
12 at 1:40, and if that turns out you need five more minutes
13 or whatever it is, you just tell Mr. Ruby, that's
14 perfectly okay, but we will have everybody come back to
15 the courtroom at that time. So remember, ladies and
16 gentlemen, you have only heard part of the close, and you
17 have still got a ways to go, you haven't heard the final
18 instructions, and you have not had a chance to discuss the
19 evidence among yourselves, so you should keep an open
20 mind. Of course, don't talk to anybody, don't let anybody
21 talk to you about the case. We will see you at 1:40 and
22 we will conclude the arguments at that time.

23 THE CLERK: All rise. This honorable court
24 stands in recess until 1:40.

25 (Recess taken at 12:55 until 1:40 p.m.)

1 MS. BLUM: May I approach?

2 THE COURT: Certainly?

3 (The following proceedings had at side-bar
4 bench.)

5 MS. BLUM: I'm sorry, I'm obsessing about this,
6 but it is rather important.

7 THE COURT: That's okay.

8 MS. BLUM: So if Your Honor intends to keep in
9 the two sentences that you added to the end of the law of
10 command responsibility instruction, then plaintiffs would
11 prefer to just eliminate the -- to remove those two
12 sentences and eliminate the defendant/commander through
13 that whole set of instructions. Do you see what I'm
14 saying? If the issue that the defendant is raising is
15 that they don't want the words defendant and military
16 commander to go together, then it would be preferable for
17 us to just remove military commander from the statement of
18 the law command responsibility, and the following --

19 THE COURT: You would take military commander
20 out each place?

21 MS. BLUM: Right.

22 THE COURT: That's kind of what I did when I
23 did the preliminary instructions, do you recall that?

24 MS. BLUM: Yeah.

25 THE COURT: I thought it was a little

1 confusing, because of the use of the double words. I
2 think that's probably a good thing to do.

3 MS. BLUM: If it is not too much of a problem
4 for you to do that.

5 THE COURT: No, no, no.

6 MS. BLUM: I didn't mark it because I think
7 somebody just does a word search.

8 THE COURT: We wouldn't need it then because
9 you don't have the dual terms.

10 MS. BLUM: Right. And then it comes up again
11 in the superior-subordinate relationship, that's in
12 several times.

13 THE COURT: Because I think that -- that always
14 made more sense to me.

15 MS. BLUM: Okay.

16 THE COURT: I think so.

17 MR. BROOKE: Now, they want to get back off,
18 that's fine.

19 THE COURT: I think it is one of those things
20 where we want to be really clear, and I think when you put
21 it in dually, you have to explain why they're dual.

22 MS. BLUM: All right. So let's take it out.

23 THE COURT: We will just take it out.

24 MS. BLUM: Excuse me, Your Honor, there is
25 another place in the first paragraph. And did you get --

1 there's three places in the second --

2 THE COURT: Nobody would ever guess that you
3 teach.

4 MS. BLUM: I'm sorry, Your Honor, I'm not sure
5 you got all three places in the second paragraph on the
6 subordinate.

7 THE COURT: I think you are right that what we
8 will do is we will do a search, but you are right, they
9 will come out. Don't worry, I won't read them in the
10 there, so it will be gone.

11 MS. BLUM: You're saying you don't want me to
12 point out every single one to you now?

13 THE COURT: Because I think we will do a quick
14 slash search. If one pops up --

15 MS. BLUM: I think that's the easy way.

16 THE COURT: If one pops up, we will not read
17 it, I think you're right, because otherwise you will have
18 to add a little explanation. Anything else? And we will
19 look for them all, try to get rid of them all.

20 MS. BLUM: Okay.

21 MR. EISENBRANDT: That's everything.

22 MR. BROOKE: Just for the record, we still note
23 for the record our continuing objection to the command
24 responsibility charge.

25 THE COURT: Right, and what we're doing is

1 we're just taking out the -- we're just saying the
2 defendant every time as opposed to the defendant/military
3 commander because it gets potentially a little confusing.

4 MS. BLUM: I think it is only in that piece of
5 the instructions.

6 THE COURT: Right, I think so.

7 MS. BLUM: All right. Thank you very much.

8 THE COURT: No problem. You're welcome.

9 Mr. Fargarson, you all set?

10 MR. FARGARSON: I believe so.

11 THE COURT: They're all set. Okay. I think
12 everybody is ready. Yes, it looks like everybody is
13 ready, we can bring the panel in.

14 THE COURT SECURITY OFFICER: Yes, Your Honor.

15 (Jury in at 1:45 p.m.)

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1 THE COURT: Mr. Fargarson, you may proceed.

2 MR. FARGARSON: Thank you, Your Honor. Members
3 of the jury, this will be the last time on behalf of the
4 defendant we will have any opportunity to speak with you
5 and tell you things that we think are important. You may
6 not think they are, and if you don't think they're
7 important, you can completely ignore them because as a
8 juror and as a jury, you're the ones who decide the facts
9 of the case.

10 THE COURT: We need to get your microphone and
11 we want to make sure it is set so you can be heard a
12 little more easily.

13 MR. FARGARSON: Before I get to talking and
14 forget common decency, let me also tell you how much we
15 appreciate your courtesy in serving on the jury. You have
16 been, I think, the most attentive jury that I have ever
17 had the privilege of speaking to, and you have taken notes
18 and you know what this is about. Consequently, there may
19 not even be much reason for me to talk to you, and I know
20 that if I talk too long, I will be talking to myself and I
21 will try not to do that. Now, I may not talk about 30
22 minutes or 40 minutes because the responsibility of an
23 attorney is a heavy responsibility, it is a heavy
24 responsibility for counsel for the plaintiff, and it is a
25 heavy responsibility for counsel for the defendant in this

1 particular case. The plaintiffs say they want justice
2 and, ladies and gentlemen, I concede, they're entitled to
3 do justice, but on the other hand, Mr. Carranza is
4 entitled to justice as well, and he wants justice too.

5 Now, counsel has conceded that the burden of
6 proof in cases like this is on the plaintiffs, and that
7 means that in every material respect, they have the burden
8 of proof, and that's not a fictional thing. There's a
9 standard in criminal cases, there's a standard in civil
10 cases, and while this case smacks somewhat of criminality
11 because of the allegations and the claims in command
12 responsibility cases, it is still a civil case. But the
13 idea of the scales of justice is an important part of the
14 law, and it is not the number of witnesses that testify.
15 You will remember when you qualified as jurors, you were
16 told to wait and hear all the proof, and even the charge
17 of the court, and the reason for that is while it is hard
18 to go back 25 years and find witnesses that can testify
19 about those things because a lot happens in 25 years.
20 People die, they travel, they move, they make themselves
21 unavailable. On behalf of the defendant, we did try to
22 find some people that would be spokesmen on behalf of
23 Mr. Carranza about his period of time of being in El
24 Salvador and his period of time of being a military
25 officer in El Salvador. Now, I would hate to go back 25

1 years in my life and try to tell you the details of what I
2 did and what I didn't do and why I did and what I did or
3 didn't do in 1980, 1981, 1979 and 1983. I know that I
4 would have a difficult time in doing that, and I think it
5 would be difficult for anyone to go back and tell you the
6 details of why. So, consequently, this case has been
7 tried mainly on records without any eyewitnesses, and I am
8 not minimizing, members of the jury, what these plaintiffs
9 said, they can remember what happened, they can remember
10 what happened to them, and we have never denied that those
11 things happened to them, and those are gruesome, and I
12 tell you, from my heart, they're inexcusable.

13 Now, I also want to say if I make some mistakes
14 in what I tell you about the lawsuit, I may say something
15 that for lack of my own memory in two weeks, that may not
16 be right, but I will say this: If I say something that is
17 not right, as I told you at the beginning, it is not going
18 to be a mistake to try to get you to believe something
19 that isn't true. It is going to be a mistake of my mind
20 and not my heart to try to deceive you. You're here to
21 decide the truth of the case, you're here to decide it
22 without sympathy, passion, prejudice one way or the other.
23 And I know that you will do your very best to do that.

24 Now, in this particular case, you know, you
25 almost, at least from my standpoint, get two pictures of

1 Mr. Carranza. You get pictures of people that kind of are
2 for him and believe him, and you get people who, for one
3 reason or another, have painted a different type picture,
4 and so you're going to have to judge and you're going to
5 have to decide which one of those portraits of Nicolas
6 Carranza is correct in this particular case.

7 I know you're tired of looking at things like
8 this, but I would like you one more time to look at this.
9 Now, this is a very important piece of information. It
10 gives the outline of the organizational chart of the
11 military, and you have seen it, and we have talked about
12 it and we have discussed it, and witnesses have seen it
13 and talked about it and discussed it. But one thing is
14 sure, there's not just one ministry of defense, there are
15 two people that serve in the ministry of defense. And in
16 the ministry of defense at that particular time, there was
17 Guillermo Garcia, he was a very important person, he was a
18 very powerful person, and the undersecretary, the
19 subsecretary was Nicolas Carranza.

20 Now, in four plaintiffs' cases, the plaintiffs
21 are trying to convince you that Nicolas Carranza, the
22 undersecretary of defense, had effective control over all
23 of the military personnel, he had the authority. Now, I
24 hope there's one thing you have learned, and that is in
25 regard to the military, a military person has

1 responsibility down, but he also has responsibility up.
2 In other words, if you have been in the military or if you
3 have got people in the military, you know that you don't
4 run around those that are on top of you, you have to be
5 under their authority. Nicolas Carranza was under the
6 authority of Guillermo Garcia. Now, can he just take off
7 and do anything he wants to? Is that proper under the
8 chain of command? No. He has a person over him that he's
9 responsible to. As a matter of fact, the requirements are
10 that he assist and he do the things that Garcia wants him
11 to do. You know, the way that the counsel for the
12 plaintiffs are painting this, what did this minister of
13 defense do? In other words, from their point of view,
14 Nicolas Carranza had all the authority, had all the
15 responsibility, carried on only the operational activities
16 and did everything in place of Garcia, so what did he do?
17 Sit at his desk and twiddle his thumbs and every now and
18 then go to a meeting or cocktail party with Mr. White?
19 No, that's one of the things that is left out of this
20 lawsuit. What was his responsibility as minister of
21 defense? And you're getting the picture painted that
22 Mr. Carranza was one of the most powerful men in the
23 military, but look at his career. He did make good
24 grades. He was a very reliable officer at every school he
25 went to, but what did his career consist of up until he

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CLOSING ARGUMENT BY MR. FARGARSON

1727

1 got this job? He was mainly a professor. He was in the

2 calvary one time, and he was sent over to the union one
3 time, but the majority of the time, he was a professor and
4 he was a teacher. This picture of him being real
5 powerful, he never was offered this job, he was never
6 offered the job of the president or anything like that.
7 It was always somebody else, and this probably was the
8 best job that he had. But he was under the authority of
9 Garcia.

10 And while I'm talking about that, there's no
11 secrets in this case. Plaintiffs' counsel talked about,
12 well, you know, they're going to say when he was there, it
13 was Garcia's fault, that's right. Garcia had effective
14 control and legal authority over every branch of the
15 military service because, other than the commander in
16 chief, he was the top man on that totem pole, not Nicolas
17 Carranza.

18 And as far as what his responsibility was, you
19 have seen this. You have seen this a number of times. To
20 provide technical advice. He's an advisor, he makes
21 suggestions, he doesn't give the orders. Garcia gives the
22 orders. He's the one that hands down the orders. If he
23 hands down an order, he can give Nicolas Carranza one and
24 say see that this order is carried out, and he passes it
25 on down the line, but you don't have one shred of

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CLOSING ARGUMENT BY MR. FARGARSON

1728

1 information in this record out of the voluminous records

2 that Terry Karl has looked at, that apparently Ambassador
3 White looked at, that apparently Colonel Garcia from
4 Argentina looked at, not one order, not one command signed
5 by Nicolas Carranza ordering anything to take place. To
6 provide advice, to coordinate technical functions of the
7 general staff. Now, what does plaintiffs' counsel say
8 that means, to coordinate technical functions? Oh, that
9 means that he was in charge of all operations and tactics.
10 Is that what that says? Is that what coordinate technical
11 function of the general staff, is that what it says, is
12 that what it means? Where is some document, where is some
13 order, where is some command that says coordinate
14 technical functions of the general staff means that
15 Nicolas Carranza was in charge, that he was the man that
16 carried out all operations and ordered all tactical
17 maneuvers and things for the military. Mr. White says,
18 oh, well, he took me up in an helicopter, we went into an
19 area and he showed me that is what it was. Well, one trip
20 in a helicopter to acquaint him with a situation certainly
21 doesn't prove and translate into he had the responsibility
22 of tactics and operations of the entire military, and
23 Garcia advocated that to him, and then Garcia went about
24 his business, I guess, doing nothing, as I assume they
25 would propose. And then number three, to propose

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CLOSING ARGUMENT BY MR. FARGARSON

1729

1 appointments, removals, assignments, resignations. To
2 propose. It doesn't say make them, it doesn't give him

3 the authority to make appointments. It says propose.
4 That's like recommend. That's like make a suggestion. It
5 doesn't translate into the fact that he had the power to
6 order appointments, removals, assignments, resignations
7 and things of that nature. He could make proposals. Does
8 all that translate into him being the power behind the
9 throne, the man that made the decisions, the one that gave
10 the orders, the one that was in control of the things in
11 the military? No. Now, because it doesn't, because it
12 doesn't translate into that, and it is obvious that it
13 doesn't, let me come back to one more thing, because when
14 it doesn't translate into that, and when he's second, the
15 sub, the vice just like in our country, we would say,
16 well, the president and the vice-president, George Bush
17 and Dick Cheney, does Dick Cheney have the authority that
18 the president does? You know he doesn't. Now, this is a
19 foreign country, but the issue is the same. The president
20 has the responsibility, he's the commander in chief. Dick
21 Cheney just does what the president tells him to do. And
22 the same thing is true down there. Vice is the same in
23 their country as sub or under, and under means you're
24 under the authority of someone else, and that's exactly
25 what Nicolas Carranza was, he was under the authority of

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CLOSING ARGUMENT BY MR. FARGARSON

1730

1 Garcia. So they don't point the finger at Garcia? Why
2 aren't they telling him why didn't you do this, why didn't

3 you do that, why weren't you the one that took care of
4 those things, why didn't you issue the orders for all
5 these things that they complain about? So in order to get
6 around that, to circle the wagon and skirt that issue,
7 they come down here and they say, oh, well, wait a minute,
8 we have got another idea, we have got another fault, and
9 that is he's on the high command. He's one of these five
10 people and, consequently, as one of those five people, he
11 had command authority. Well, there's a problem with that
12 too because there's five of them, and he's only one. Now,
13 is he powerful enough to make those five men to do
14 whatever he wants them to? Not on your life. They had
15 egos bigger than his on there. They had people just as
16 anxious, and we have seen the discord that took place in
17 the military in '70 and '79, he doesn't have the legal
18 authority and the effective ability to make all five of
19 these men do what he wants them to do. He doesn't have
20 that authority at all. So the fact that he's one of five,
21 and they are over these branches of the military, that
22 doesn't mean that Nicolas Carranza alone has the authority
23 and the power to move these men to act like the
24 plaintiffs' attorneys want them to act, to do all the
25 things that they want him to do.

♀

CLOSING ARGUMENT BY MR. FARGARSON

1731

1 Let me talk a minute about a few of the facts
2 of the lawsuit and, ladies and gentlemen, as I said
3 earlier to you, and as I told you from the very start,

4 there's no dispute about what happened to these people.
5 There's no dispute, and I think it is unfair for
6 plaintiffs' counsel to say oh, well, Mr. Carranza is
7 accusing Mr. Calderon of being at fault for not
8 investigating the case or that Mr. Carranza is at fault
9 for accusing Daniel Alvarado for not telling him he was
10 tortured. That's not it at all. Mr. Carranza tried to
11 say his heart goes out to these people, and I told you
12 that at the very start, that we were making no claim, no
13 contention that those people were not wronged, that they
14 weren't hurt and that they weren't hurt severely, and I
15 would expect you to be sympathetic as a human being to
16 them, but in trying a lawsuit to put aside sympathy and
17 passion and prejudice in deciding the case because we knew
18 what happened to them, there's no secret about that.
19 There hasn't been much of a secret about much in this
20 lawsuit because of all the documents, all the depositions,
21 all the time, you saw that Mr. Carranza gave a deposition
22 for almost two days. So they know what our defense has
23 been all along, and we know what their claim has been all
24 along. And this is about justice, it is about what's
25 right.

♀

CLOSING ARGUMENT BY MR. FARGARSON

1732

1 You know, in the Truth Commission Report, which
2 is a document that you will see and you have seen, in that
3 Truth Commission Report, one of the conclusions or one of

4 the premises by which they operated is that in the process
5 of the investigation when they ran across serious
6 situations, serious occurrences where there was evidence
7 enough to name names, they named names. The perpetrators
8 and those that were guilty. Nowhere in that document are
9 you going to find the name of Nicolas Carranza as being a
10 perpetrator of wrong.

11 Now, Ms. Karl says, oh, well, his name isn't in
12 there, but there's some documents we didn't get, and his
13 name, I guess she wanted to tell you must be in those
14 documents hidden away somewhere else, or the other idea
15 is, well, the name state was used, and that represents
16 Nicolas Carranza. Well, you draw your own conclusions
17 from those things, and you decide what those things mean.

18 Now, I have been talking about the chain of
19 command and I have been talking about it with regard to
20 the entire military, and only four of the claims that are
21 presented occurred during the time that Nicolas Carranza
22 was the vice-minister of defense. There is one claim when
23 he was with the treasury police, and that is a different
24 situation because when he was at the treasury police, he
25 was a director, and he did have control over the treasury

♀

CLOSING ARGUMENT BY MR. FARGARSON

1733

1 police. In other words, he was the director, every one
2 under him was under his responsibility, and in that
3 instance, he did -- he was a commander and he did have
4 authority over that part of the treasury police.

5 Now, what did he do? Of course, the claim is
6 basically he did nothing. The claim is, well, he spruced
7 up a little bit trying to make the image of the treasury
8 police look better, but he really didn't do much of
9 anything. Now, let's look at that for a few minutes and
10 see if that is a correct analysis or there might be some
11 shallowness in just putting what he did in those terms.

12 First of all, he said that not only did he talk
13 to the men and tell them things needed to change, but he
14 also inspected the premises, and I know that's going to
15 raise your curiosity, it raised mine, but if he was the
16 inspector of the premises, why didn't he find these
17 clandestine cells where this torture was taking place?
18 Well, now I'm not sure I can answer that question, but I
19 have a proposal to make. You can believe it or not. You
20 can say you're full of baloney, they were right there
21 under his eyes and he saw them, and he just said, well,
22 now, we'll just turn our head to that, we will just not
23 pay any attention to that. But he said he inspected the
24 premises and he didn't find anything.

25 Well, now, when Daniel Alvarado had confessed

♀

CLOSING ARGUMENT BY MR. FARGARSON

1734

1 wrongfully that he had killed Albert Schaufelberger and he
2 was taken to a news conference, he was blindfolded. Now,
3 why would he be blindfolded? I propose he was blindfolded
4 so he didn't know where he was coming from because he

5 would obviously know where he was going when he got there,
6 they were going to take the blindfold off. That's number
7 one. He was blindfolded so he wouldn't see where he was
8 coming from. Number two, he was placed in an automobile
9 and driven, he said, a few meters, obviously, some
10 distance or they would have walked. In other words, it
11 wasn't close or he would have walked, they could have
12 blindfolded him and walked him over there. I'm not trying
13 to be facetious, but he was put in a car and he was taken
14 over there. And then you will remember, I asked him I
15 said, well, when you got over there, could you see where
16 you came from. Do you remember what he said? No, he
17 didn't tell where he came from. He couldn't see whether
18 this was where he came from. So what I am suggesting to
19 you is that when Mr. Carranza inspected the facilities,
20 wherever Daniel Alvarado was kept and wherever Daniel
21 Alvarado was tortured wasn't in exactly the same place
22 where the headquarters were. Otherwise, it wouldn't have
23 been necessary to blindfold him, it wouldn't be necessary
24 to put him in the car, it wouldn't have been necessary to
25 transport him over there. Now, you can believe that or

‡

CLOSING ARGUMENT BY MR. FARGARSON

1735

1 not, I don't know. I'm just putting forth this is a
2 perhaps or a proposal which I believe, but you can choose
3 not to believe that that happened, but that answers, I
4 think, at least that question.

5 Secondly, I want you to consider something
Page 139

6 else, and that is, you know, as important as this press
7 conference was, and it was important, I guess, because it
8 was a news worthy item, even after it happened,
9 Mr. Carranza was walking one day through the jails where
10 Mr. Alvarado was next door to some police officers and
11 prisoners, and he came across the cell where Mr. Alvarado
12 was, and you remember what he said to Mr. Alvarado? He
13 said, well, what are you doing here? In other words, he
14 didn't -- he paid so much attention to Mr. Alvarado down
15 at the news conference that he didn't even know that was
16 the same young man that had confessed a few days earlier
17 to the assassination of Albert Schaufelberger. That's how
18 much attention he paid to Daniel Alvarado.

19 And then the next time he talks to him, some
20 news person wants to talk to him. And so he has someone
21 take Daniel Alvarado to his office. He said there's a
22 newspaper person down here, would you like to talk to
23 them, would you like to say a word to him. Mr. Alvarado
24 admits that he didn't say you have got to do it, I want
25 you to do it, you better do it, and if you don't do it,

♀

CLOSING ARGUMENT BY MR. FARGARSON

1736

1 you're going to be in trouble. And he didn't say when you
2 get down there, you better not tell him you have been
3 tortured because at that time Mr. Carranza didn't even
4 know he had been tortured. He hadn't been told, he didn't
5 have any marks on him, he didn't know anything about the

6 torture. And so he goes down there and talks to the news
7 men, tells them the same thing, and people don't
8 misunderstand what I'm saying, I know he had been
9 tormented, I know he was under mental pressure, but all
10 I'm saying is he didn't say anything to alert Mr. Carranza
11 to what had been going on and what had happened to them.
12 And then he was in another place. And then the next thing
13 that comes along is he talked to representatives of the
14 United States when it all comes out that he had confessed
15 because he had been tortured. And what did Nicolas
16 Carranza do? Well, he met with him, and he was angry, and
17 he wasn't angry at him. You remember what Daniel Alvarado
18 said when he was on the witness stand? He said that he
19 appeared to be angry, he didn't say that he was angry, he
20 says you're a problem for me and why didn't you tell me
21 you had been tortured.

22 Now, because of the confession, Mr. Carranza
23 just couldn't release him from prison, he just couldn't
24 set him free, there had to be some other judicial
25 processes, but he was taken away from there, and he was

♀

CLOSING ARGUMENT BY MR. FARGARSON

1737

1 sent to the prison at Santa Ana in El Salvador, and he was
2 handled through Salvadoran processes of law at that time.
3 But the point I'm making to you is the first that
4 Mr. Carranza knew anything about torture was after the
5 confession was revoked and after he found out what
6 happened. And I think Daniel Alvarado will acknowledge

7 that, the first time he said anything about torture to
8 Mr. Carranza was on that particular day.

9 Now, there's the other gentleman who testified
10 in the case who came all the way from Costa Rica. Now, I
11 want you to understand something, he didn't have to do
12 that. There's no process in the United States that
13 reaches a citizen out of the country. Julio Talavera
14 Romero came of his own accord, and he came to tell his own
15 story. Now, you know, this may not be of interest to you
16 at all. You may say, oh, well, there's nothing to that,
17 but I think it gives you a picture at the same time of
18 Mr. Carranza and what he thought about how to treat people
19 and how to treat people humanely and how to respond to
20 them and how to act to them, because here is an individual
21 that was flying arms to the guerillas and had allegedly
22 boxes of arms in an airplane trying to fly them in to
23 those who were fighting against the government of El
24 Salvador. And I want you to understand something else,
25 ladies and gentlemen of the jury, we knew he was going to

‡

CLOSING ARGUMENT BY MR. FARGARSON

1738

1 talk about torture, we knew that, we knew what had
2 happened to him, we knew that, and we knew that they were
3 going to ask you all about it, so it would print the same
4 picture and same pattern of Daniel Alvarado, but his story
5 is not only a story of survival, it is a story of how he
6 was humanely treated by Mr. Carranza and how Mr. Carranza

7 responded and acted to him, which gives us a little
8 glimpse. I mean it doesn't tell the whole story, I know
9 that, but the issue is what did Mr. Carranza do when he
10 went down to the treasury police? What effort did he
11 make? Was it just paint, which I guess they want you to
12 believe? Was it just a few beds for comfort, which I
13 guess that's what they want you to believe? But look a
14 minute at Mr. -- I will just call him Julio, look at what
15 he says. Look at his story because, as I say, you may not
16 think it is worth anything, you may not think it means a
17 thing, and you may just think for some reason, for some
18 strange circumstance Mr. Carranza singled him out as a
19 beneficiary of his love and affection or something like
20 that. You may think that.

21 Have we got these backwards? I don't know, but
22 anyway, let's look. I tried to put these now because when
23 I was reading, I was reading too fast, and this way is big
24 print, giant print which I need to read well. And here is
25 questions by Mr. Brooke:

♀

CLOSING ARGUMENT BY MR. FARGARSON

1739

1 From your observations, sir, what general
2 conditions in the premises or the facilities were made
3 when Colonel Carranza became the new director of the
4 treasury police?

5 In the few hours during which I was able to
6 observe after my petition, I saw that there was a cleanup.
7 There was an improvement in the physical condition of the

8 cells that up to that moment had been under the treasury
9 police, but I was not able to see much more because I was
10 transferred from the cell -- from that cell to a room with
11 different conditions in which I stayed for a few weeks,
12 and then I was transferred from the treasury police to the
13 jail in Santa Ana.

14 When Colonel Carranza met you, sir, what was
15 your body weight?

16 Close to 100 pounds.

17 Can you tell the jury what you weigh today?

18 I'm a bit fat, 170 pounds.

19 Since returning to Costa Rica, you and your
20 family now operate a restaurant?

21 Yes.

22 How is it that you learned of this trial or
23 Mr. Carranza having become involved in the trial?

24 A politician -- through a politician in Costa
25 Rica, Colonel Carranza got in touch with me to find out

♀

CLOSING ARGUMENT BY MR. FARGARSON

1740

1 whether I would be willing to have a conversation with
2 him. I responded affirmatively, then he went to Costa
3 Rica and explained me to me the situation, asking me
4 whether I wanted to tell that part of my story in El
5 Salvador, that part which -- of which he and I were the
6 stars, each one at a different end. And after some days
7 of talking it over with my family and remembering the

8 moments of approximately 21 years ago, I was living at the
9 treasury police where neither my government, nor human
10 rights, nor the International Red Cross had been able to
11 rescue me from terror, from that trampling of my rights,
12 from that denial to a due process. When my family and I
13 appraised that, we appraised Mr. Carranza's actions
14 positively, whom in spite of belonging to the armed forces
15 and that government, put me in a different position, and I
16 believe that he not only saved my life with that action,
17 but also did a lot of good to my wife, my children and to
18 my parents who in those days were still alive and were
19 suffering very much due to the condition I was imprisoned
20 in.

21 Between the time you left incarceration of the
22 prison in El Salvador, have you had any communication with
23 Mr. Carranza any time prior to the last several months?

24 The answer to that was no. But it doesn't show
25 up on there. So that was that. And then he next said we

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CLOSING ARGUMENT BY MR. FARGARSON

1741

1 knew -- we knew he had been tortured, we knew what had
2 happened to him because that was part of his story, and he
3 said Mr. Carranza got him out of that situation, and as
4 far as he was concerned, he saved his life and the life of
5 his family and made a whole new scenery for him, put him
6 in another position that allowed his family to come over
7 and see him and talk to him and stay in an officer's room,
8 and so we knew they were going to ask questions like that.

9 And here is what Mr. Eisenbrandt said:
10 You referred earlier to a petition that you
11 made at the treasury police for better treatment. That
12 petition you made directly to Colonel Carranza?
13 Yes.
14 And you met with him to make that petition?
15 Yes.
16 You were then transferred to Santa Ana prison,
17 is that right?
18 A few weeks after Mr. Carranza started as a
19 director of the treasury police, he personally transferred
20 me to Santa Ana prison.
21 But first within the treasury police, you were
22 transferred to a separate room from your previous cell?
23 Yes.
24 And that room was not near the cell where you
25 had been in?

♀

CLOSING ARGUMENT BY MR. FARGARSON

1742

1 It was a room that belonged to an officer, and
2 they took him out, and it was turned over to me precisely
3 so that I could receive my family.

4 And how long did you stay in that room?

5 A very few weeks until the moment when I was
6 transferred to Santa Ana.

7 After your transfer to Santa Ana, did you meet
8 with any member of the treasury police to talk about your

9 torture?

10 Not at Santa Ana. In Mari ona. I was held not
11 with political prisoners, but with certain police officers
12 and members of the army who had been internationally
13 accused of assassinations. These were people who had
14 mistreated me and captured me at the treasury police who
15 were -- who were Colonel Moran's trusted people, and there
16 were three who were accused of the assassination of the
17 nuns, an event which I believe took place in '80.

18 I want you to notice something there. Terry
19 Karl said, well, the only people over there at Mari ona
20 were those that had assassinated the nuns, three men that
21 assassinated the nuns. That's not quite what Julio Romero
22 said. He said there were people who had mistreated me and
23 tortured me at the treasury police who were the -- who
24 were Colonel Moran's trusted people and there were three
25 who were accused of assassination. In other words, at

♀

CLOSING ARGUMENT BY MR. FARGARSON

1743

1 that prison, there were treasury individuals who were
2 accused of inhumane treatment, who had been put in jail
3 and who had been punished for it, and they were Moran's
4 men working for him, who had been there under Moran, the
5 immediate director of the prison -- the treasury police
6 before Mr. Carranza got there.

7 And then the final one. They talked about the
8 lawyer that represented him that didn't represent him at
9 the hearing, and then Mr. Brooke said:

10 At any time after you learned that Mr. Carranza
11 had become director of the treasury police, did you
12 receive any torture?

13 No, no. That is the reason why I'm here.
14 I'm -- which is to say everything changed positively when
15 he received the treasury police. That is my history,
16 that's what happened.

17 And did Colonel Carranza allow you to have
18 visitation with your wife?

19 Yes, I said it before.

20 And what was the name of the facility or prison
21 at which you were where the police officers, members of
22 the military who had committed human rights violations
23 were incarcerated or jailed with you?

24 He said:

25 Are you referring to Mariana?

‡

CLOSING ARGUMENT BY MR. FARGARSON

1744

1 Now, back to what did he do at the treasury
2 police? Nothing. Is that what it was? Did he just
3 spruce things up? Did he just make things look a little
4 nice? Is that all he did? Or did he do more? Well, who
5 are you going to believe? Are you going to believe this
6 man that came all the way up here from Costa Rica, took
7 his time to come up here and wanted to tell you his story,
8 wanted to give you the history of what happened to him.
9 And he talked about two stars, one in -- he said two stars

10 at two different ends, one in captivity, one a commander.
11 He took all the time to come up here on his own without
12 any coercion, without any subpoena, he couldn't be
13 subpoenaed, to tell you that story. And his story is when
14 Nicolas Carranza took over the treasury police, contrary
15 to what you want to hear, contrary to cables, contrary to
16 anything else you want to hear, and what you have heard,
17 Julio Talavera Romero says things changed almost
18 immediately. Conditions changed, his life changed,
19 torture stopped when Nicolas Carranza took over.

20 Now, folks, you can believe that or not.
21 That's just one man's story, but we have tried to go back
22 25 years and find whatever we could to present to you to
23 let you do justice, justice for them and justice for
24 Mr. Carranza. That's what they want, that's what we want.
25 We want this case to be decided on the truth and light of

♀

CLOSING ARGUMENT BY MR. FARGARSON

1745

1 the case on honesty and decency, and I mean that with all
2 my heart.

3 Under command responsibility, Nicolas Carranza
4 had to have the legal authority, the legal authority and
5 effective control to act over the subordinates.

6 Now, members of the jury, we have tried to
7 explain to you that as head -- I mean as subhead, as
8 underhead, as undersecretary of defense, he didn't have
9 the legal authority. They're going to say, oh, he did,
10 yes, he did, they were partners, you heard those people

11 say they were partners. Legally, they were not partners,
12 there was no partnership in that arrangement. Just like
13 there is no partnership in the United States of America
14 between the vice-president and the president, they both
15 have separate jobs and responsibilities. And in El
16 Salvador at that time, they both had separate jobs and
17 separate responsibilities. Garcia was the head man down
18 there, Carranza was his subordinate and had to report to
19 him and had to operate under his authority. And because
20 of that, he didn't have legal authority and he couldn't
21 act effectively apart from that. He couldn't act on his
22 own, he couldn't circumvent the power and the authority of
23 the one over him, and you know that's true. You know that
24 in your place of employment, you don't go around your
25 superior, you don't go behind their back. That's not

♀

CLOSING ARGUMENT BY MR. FARGARSON

1746

1 honest, that's not decent, that's not right. And when he
2 was with the treasury police, yes, he had authority, he
3 had command authority, but what did he do? Well, he
4 started doing things.

5 Now, members of the jury, he was only there a
6 year, one year. The thing that Colonel Garcia from
7 Argentina did say, and he was asked this question, how
8 long does it take to get a disciplined troop, and he said
9 a year to two years, if I recall correctly, a year to two
10 years. Now, I don't know whether you made a note on that

11 or not, so how are you going to straighten everything out
12 that's wrong and that had been wrong in the military of El
13 Salvador with the treasury police for years? Are you
14 going to do it in a year? You going to take care of
15 things and get everything all straightened out and all
16 cleaned up within that period of time? No. And that's
17 all the time he had. But whatever it was, something was
18 going on because a bunch of them ended up in jail for
19 violating human rights. Now, I can't honestly tell you
20 that was under Mr. Carranza's watch, I can't say that. I
21 don't know. I don't know how they got there, but you know
22 something was going on, it was -- it was Moran's men, and
23 he wasn't very well-known for doing much when it was his
24 watch, so how they got there, I don't know, but this I do
25 know, and I think now this you do know for sure, by the

♀

CLOSING ARGUMENT BY MR. FARGARSON

1747

1 greater weight and preponderance of the evidence, he was
2 doing something to make a difference with the treasury
3 police when he took charge and when he took control, and
4 it was more than just window dressing, it was more than
5 just paint like they want you to believe. There was
6 actually good things taking place in that area.

7 Finally, and I know you're wondering if this
8 really is finally, and I think it is, I think it is going
9 to be, you know, the best military attache, Mr. White
10 said, he ever had or he ever saw was this fellow Brian
11 Bosch, and then I understood maybe he thought Brian Bosch

12 was critical of Mr. Carranza. You be the judge of that.
13 You be the judge of what he said Bosch thought of
14 Mr. Carranza, but I want to read from Brian Bosch's book
15 about Mr. Carranza. Now, understand this book was printed
16 in -- long after these things happened down there at El
17 Salvador, long after that. It wasn't contemporaneous with
18 1980, it wasn't contemporaneous with 1984. I think it is
19 about 1999 or something like that. Anyway, far later.

20 Here what's Brian Bosch wrote about Nicolas
21 Carranza. I will try not to read real fast, I will try to
22 read slow. Despite the fact that Colonel Nicolas Carranza
23 was an exceptionally talented officer, he had not been
24 accepted in President Romero's intercircle. Colonel
25 Carranza graduated first in the class of 1957. He was a

♀

CLOSING ARGUMENT BY MR. FARGARSON

1748

1 superb student at U. S. Army Artillery School at Fort
2 Sill, Oklahoma and he eventually attended the Mexican
3 staff college. It was this agreement with how President
4 Romero was governing however caused him to be removed as
5 general manager of ANTEL in August of 1979 and vanished to
6 La Nina, the furthest point east in the country. After
7 the coup was a success, Carranza, age 46, returned a favor
8 and was allowed to remain on active duty. As subsecretary
9 of defense, he was directly subordinate to Colonel Garcia
10 that in many instances he functioned as the minister's
11 partner. Before the coup, Colonel Carranza was not viewed

12 as overly rightist when he was compared to the president's
13 close associate. But after the overthrow of Romero, he
14 was frequently identified as being the conservative. His
15 distrust in the PDC placed him inadvertently in a hard
16 right category which may have been unjust. Colonel
17 Carranza was a reasonable, intellectual officer who
18 realized that an extreme course would not be in El
19 Salvador's interest. Despite this fact, ultra
20 conservatives were drawn to the secretary a situation
21 that eventually caused unnecessary divisiveness in the
22 government during 1979-1980 period. I want to you notice
23 it says he inadvertently in a hard right category which
24 may have been unjust. You know, in qualifying you as a
25 juror, you were kind of looking at people and trying to

♀

CLOSING ARGUMENT BY MR. FARGARSON

1749

1 size them up, and I kind of got picked out maybe as a
2 plaintiff or something other than what I got picked out
3 for right then, but it wasn't what I was, it wasn't what I
4 am. And that's easy to do, like, you know, we don't want
5 to put a handle on somebody as a communist that is not a
6 communist. By the same token, we don't want to put
7 hardliner on somebody that is not a hardliner that is
8 reasonable and intelligent and knows an extreme course
9 would not be in El Salvador's best interest. Now, here is
10 the best military attache Mr. White thought, and that's
11 his analysis long after the situation of what Nicolas
12 Carranza was. And that he was unjustly put -- perhaps

13 unjustly put in the category of an extremist, of a hard
14 right liner that has gone through the core of these
15 documents in this particular case.

16 I probably talked longer to you than I told you
17 I should, but your emotion gets going when there's so much
18 involved and so much at stake. There's a lot at stake for
19 them and I know what they have been through. There's a
20 lot at stake for Mr. Carranza who is going through this
21 right now. Folks, we ask that you use your common sense,
22 your common judgment, your ordinary intelligence, that you
23 base this on the truth and you do justice, and I believe
24 if you do, you will find out that this is what Colonel
25 Carranza was, the man that Bosch says this about and the

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CLOSING ARGUMENT BY MR. FARGARSON

1750

1 man that Julio Talavera Romero says my life changed, and
2 it changed my life, and it changed the life of my family,
3 and you'll understand that Nicolas Carranza would not have
4 necessarily harmed those family members if he had known
5 what was going on. God bless you. Thank you.

6 THE COURT: Will there be a rebuttal argument
7 from the plaintiffs?

8 MR. ESQUIVEL: I do have a brief rebuttal
9 argument, Your Honor.

10 THE COURT: You may proceed.

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1751

1 MR. ESQUIVEL: I don't know what Colonel
2 Bosch's personal opinion was of Colonel Carranza, but I do
3 know that we have agreed to decide this case on the facts,
4 and the book that Mr. Fargarson just read from, Colonel
5 Bosch says this about the facts: And his observations in
6 1980, Colonel Carranza was the de facto field commander in
7 chief, and that while Garcia focused on strategy and
8 political affairs, Carranza concerned himself with forced
9 deployment and the security forces. That is from that
10 book. That is what Colonel Bosch observed. That is a
11 fact in this case now. Now, the defendant has suggested
12 that we have not explained what Colonel Garcia did, that
13 he was sitting at his desk twiddling his thumbs. Of

14 course, that's not the case. We have explained what he
15 did. It was what Colonel Bosch said he did, he was the PR
16 man. Colonel Garcia was the political man. He was the
17 one who was doing the political maneuverings. Remember
18 what Ambassador White said, Colonel Garcia would faint at
19 the sight of blood, while Colonel Carranza was the
20 soldiers's soldier, that was their two roles, that's what
21 Colonel Bosch is talking about when he said Colonel
22 Carranza functioned as the minister's partner, that was
23 their partnership. So clearly Colonel Garcia had a role.
24 Now, earlier I put up the slide talking about
25 shifting blame, and the ways that Colonel Carranza is

♀

REBUTTAL ARGUMENT BY MR. ESQUIVEL

1752

1 trying to shift the blame to others, and apparently I
2 forgot one of the places where shifting blame, and that is
3 the plaintiffs' lawyers. Mr. Brooke referred to
4 Ms. Bernabeu who is sitting on the bench, one of the
5 lawyers for the plaintiffs, apparently it is our fault now
6 that we have talked to our clients, that we have told them
7 about their rights, that we have served them as lawyers,
8 it is our fault that we have served in that capacity. We
9 didn't make up this lawsuit. The plaintiffs' lawyers
10 didn't make any of this up. All of this happened, and
11 they have conceded that it happened and that it was
12 terrible, and the law affords them a right to have
13 justice, the law affords them the right to hold the people

14 responsible who were truly responsible. So please don't
15 allow them to shift the blame to others, to shift the
16 blame to the lawyers, that's not right. And also don't
17 allow them, please, to shift the blame to the witnesses
18 who have testified in this case, to Ambassador White, to
19 Professor Karl and to Professor Garcia from Argentina.
20 Ambassador White has spent his career in service to the
21 United States, he is a public servant of the United
22 States. He has served this country abroad, he has
23 challenged people in Paraguay, in El Salvador who violated
24 human rights. This is a man who has given his life to his
25 country. He served his country in the United States Navy.

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1753

1 This is a man of integrity. This is not his fault. What
2 happened in Salvador is not his fault. Ambassador White
3 did his part. And don't blame Professor Karl, a woman who
4 has studied El Salvador for most of her career, who has
5 interviewed every level of Salvadoran society, a woman who
6 has been dedicated to the study of El Salvador, to
7 reviewing the cables in a search for the truth, as a
8 professor at a leading research university whose job is to
9 discover the truth and teach her students the truth.
10 Don't blame it on her. And don't blame it on Professor
11 Garcia from Argentina. This is man who spent time in jail
12 because he refused to serve under a military dictatorship,
13 that's the integrity of Professor Garcia. And Professor
14 Garcia had come all the way from Argentina, from Buenos

15 Aires to present his testimony to you, he is an expert in
16 human rights with the United States. The defendants
17 themselves have told you that. This is a man of
18 integrity. And if we're going to question credibility, if
19 we are going to raise that question, then I would ask you
20 to consider the testimony you heard this morning. On
21 Thursday, Colonel Carranza took the stand, and he told you
22 that Colonel Montenegro, the judge in Daniel Alvarado's
23 case was alive. He made it sound like he had just
24 recently talked to Colonel Montenegro. You found out this
25 morning the facts, the fact is that Colonel Montenegro was

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1754

1 assassinated in March of 1984. That was reported in the
2 Salvadoran newspapers, that was reported in the United
3 States newspapers, that was reported by the United States
4 Embassy. There is no doubt that Colonel Montenegro was
5 killed in 1984. He is not, he is not alive today. So if
6 we are measuring credibility of witnesses, please keep
7 that fact in mind.

8 Let me also clear up something about the
9 documents and exhibits in this case. Counsel for the
10 defendant has suggested that the plaintiffs have
11 selectively read to you parts of these cables and that we
12 have picked and chosen our favorite parties and presented
13 those to you and are somehow taking everything out of
14 context. I will encourage you to read those cables.

15 There is nothing in those cables that will contradict what
16 we have told you during our case. Those cables tell the
17 full story, and they tell the full story of Colonel
18 Carranza's responsibility and the responsibility of the
19 Salvadoran military for this extraordinary violence that
20 took place. There is nothing in those cables to hide.
21 Those are available for you to read, and you are the
22 judges of the fact, and when you deliberate, you can
23 decide for yourselves whether any of those were taken out
24 of context or whether they tell the real story about
25 Colonel Carranza.

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1755

1 There have also been comparisons made in this
2 case to the United States, frequent comparisons. None of
3 those comparisons are valid. I don't need to tell you
4 that. El Salvador is not in the United States. El
5 Salvador was a military dictatorship for 50 years. It is
6 a different system of government, it is a different
7 construction of government. To compare the leaders of El
8 Salvador to the president and vice-president of the United
9 States are ridiculous. The military doesn't run the
10 United States. The United States is governed by a
11 democratically elected civilian controlled people. The
12 people who control the military in the United States are
13 civilians, the president of the United States. That is
14 not what happened in El Salvador. In El Salvador, the
15 government was controlled by the military. Professor Karl

16 told you the military was the government, and the
17 government was the military. That's what a military
18 dictatorship means, that the military controls what is
19 going on. So when they talk about the junta, when the
20 defendant talks about the five people in the junta as if
21 they were five presidents of the United States, that is
22 not correct. The power in El Salvador was in the
23 military, and that meant that the power in El Salvador was
24 in the ministry of defense, and Colonel Carranza was not a
25 subsecretary of defense, he was the subsecretary of

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1756

1 defense. There were two people that composed the ministry
2 of defense, and they were the minister and the
3 vice-minister, Colonels Garcia and Carranza, that was the
4 ministry of defense.

5 The defendant has said that Colonel Carranza
6 was not the top man and that it would have been
7 insubordination for him to go around Colonel Garcia, but
8 Colonel Carranza, the standard he is being held to in this
9 case is not to go around anybody, this is not a matter of
10 trying to avoid orders or go around your superior, all of
11 these commanders in the chain of command had the same
12 obligation, and that was to ensure the discipline of their
13 troops, and so Colonel Carranza would not have gone around
14 Colonel Garcia by issuing orders saying that human rights
15 had to be respected or investigating and punishing human

16 rights abuses, that was his duty and that was the duty of
17 every commander in the Salvadoran military. So there is
18 no way in which Colonel Carranza was limited in his
19 ability to do that because he would just have been
20 complying with the obligation that every military
21 commander has.

22 And the fact that Colonel Carranza was among a
23 group of people who had the authority, who had the
24 practical ability to make changes does not relieve him of
25 responsibility.

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1757

1 The judge will instruct you on the law and he
2 will tell you that the fact that there are others who are
3 responsible, there are other trials, the defendant has
4 referred to the other cases and witnesses that witnesses
5 have testified in, and there certainly are other cases
6 other places, but today's case, this case is about Colonel
7 Carranza, and the fact that others are responsible does
8 not alleviate his responsibility in this case in this
9 place.

10 Now, let me talk for a moment about Daniel
11 Alvarado's case. The fact that he was blindfolded and
12 taken to the press conference, counsel for the defendant
13 has suggested that that means he must have been outside
14 the treasury police headquarters and that's why he was
15 blindfolded. I would suggest exactly the opposite, the
16 reason that he is blindfolded, the reason why his torturers

17 don't want him to know where he is exactly because he is
18 in the treasury police headquarters. Remember, this is a
19 military that goes out and commits its acts in plain
20 clothes. It does everything it can to deny
21 responsibility, and so to have somebody who has been
22 tortured to realize that they were actually tortured on
23 the premises of the treasury police headquarters, that
24 would be a big mistake. And so what do you do to make
25 sure that your witnesses don't know where they are, don't

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1758

1 realize they're really in headquarters? That's why you
2 blindfold them, that's why you put them in a car and you
3 drive them a few meters to the press conference to
4 disorient them so that they don't know where they are and
5 they don't realize that they are in the headquarters, but
6 really that is irrelevant to the question, because no
7 matter where he was tortured, we know in this case who
8 tortured him, and it was Major Ricardo Pozo, he is the one
9 that led the torture, and whether that took place on the
10 grounds of the treasury police or whether that took place
11 across the street or in the basement of some office,
12 wherever that took place, it was being done by men under
13 Nicolas Carranza's command, under his direct examination,
14 and he had the obligation once he has notice of that
15 torture to investigate and punish.

16 And one thing that you did not hear anything

17 about in today's argument is that the investigation and
18 punishment of those who tortured Daniel Alvarado, and
19 that's because the parties have agreed ahead of time in a
20 stipulated fact that Colonel Carranza did not investigate
21 or punish any torture or any instance of extrajudicial
22 killing in the treasury police.

23 Now, he did help Mr. Romero, and thank God for
24 Mr. Romero that he did, but let's be clear about the
25 implications of what Mr. Romero said. First of all,

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1759

1 counsel for the defendant has said we knew that Mr. Romero
2 had been tortured and that this would come out, and I
3 recall that Colonel Carranza on the stand said that the
4 first time he had ever heard that Mr. Romero had been
5 tortured was when he testified in this courtroom.
6 Apparently, he didn't get the message when Mr. Romero told
7 him in 1983 I am a human being and I have rights.
8 Apparently, that didn't register with Colonel Carranza
9 that something had been going on, that this man is wasting
10 away in the treasury police in solitary confinement
11 weighing a 100 pounds and says I'm a human being and I
12 have rights, that didn't put him on notice of torture and
13 human rights abuses. But in any case, the importance of
14 Mr. Romero's testimony is that while he was being led to
15 better quarters, Mr. Alvarado was being led to the torture
16 chamber. And the larger point is that Mr. Romero was
17 tortured beginning in January of 1981 in five of the six

18 branches of the Salvadoran military. And had Colonel
19 Carranza complied with his obligations in 1980 to get rid
20 of systematic terror, to get rid of systematic torture,
21 what happened to Mr. Alvarado should never have happened.
22 But because in 1980 the Salvadoran military was the kind
23 of place where five of the six branches could brutally
24 torture a man systematically, Mr. Romero ran into that
25 military, and in January of 1981 felt its consequences.

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REBUTTAL ARGUMENT BY MR. ESQUIVEL

1760

1 Now, there is one thing that the plaintiffs
2 agree with the defendant about, and that is that it has
3 been a long time since these events took place. And I'm
4 sure that Colonel Carranza would like to confine all of
5 this stuff, all of the plaintiffs' stories, all of the
6 evidence of his role in military violence and to confine
7 that to ancient history, to pretend as if none of it ever
8 happened. The Reverend Martin Luther King, Jr. was fond
9 of saying that the moral arc of the universe is long, but
10 it bends towards justice. Our clients know how long the
11 moral arc of the universe can be. For 25 years, they have
12 lived with the pain of their physical torture. For 25
13 years, they have lived with the emotional pain of their
14 torture and of losing their loved ones, of having their
15 lives thrown completely off course. And now 25 years
16 later and a few minutes from now, you all will be the
17 judge of the facts, and you all will have the opportunity

18 to give them the justice that they deserve. You all will
19 have the opportunity to bend that arc of justice, to bend
20 that moral arc ever so slightly towards justice. We ask
21 that you consider the facts, you consider the evidence and
22 you render a verdict for the plaintiffs.

23 THE COURT: Ladies and gentlemen, we're going
24 to take a short break until 10 after the hour, at which
25 time you will return for the final instructions on the

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1761

1 law.

2 Of course, continue to keep an open mind until
3 you have gone through all this process, and we will see
4 you at 10 after the hour.

5 THE CLERK: All rise. This honorable court
6 stands in recess.

7 (Recess taken at 3:00 until 3:14 p.m.)

8 MR. FARGARSON: Your Honor, could we have a
9 brief side bar?

10 THE COURT: Certainly.

11 (The following proceedings had at side-bar
12 bench.)

13 THE COURT: All right.

14 MR. FARGARSON: I just want to mention one
15 thing, I think it was not right for David to mention other
16 cases in his argument. There's no proof of other cases,
17 and to bring up the idea that there are other cases --

18 THE COURT: Is there anything in the record?
Page 165

19 MR. ESQUIVEL: Your Honor, I thought that there
20 was several questions by the defendants about the witness'
21 testimony in other cases, and the witness' --

22 THE COURT: There was a question as to --

23 MR. BROOKE: For the attorneys.

24 THE COURT: Of the attorneys.

25 MR. ESQUIVEL: Have you testified for these

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1762

1 attorneys in other cases?

2 THE COURT: Right, and they --

3 MR. EISENBRANDT: And they referred to
4 Professor Blum.

5 MR. ESQUIVEL: I think it is a fair inference
6 from the record.

7 THE COURT: That's true, I forgot about that.
8 I didn't forget about it, that is exactly what happened.

9 MR. BROOKE: There is no reference as to other
10 cases regarding any fact or issues in this case.

11 THE COURT: Well, there wouldn't have been, not
12 any fact or issues in this case necessarily, although
13 Garcia has been tried in Miami. I can't remember who
14 else.

15 MR. EISENBRANDT: Professor Garcia testified
16 previously in an El Salvador case, that was a well known
17 Jesuit case --

18 THE COURT: I'm sorry, the former secretary of

19 defense was tried in -- or minister of defense was tried
20 in the Miami case.

21 MR. FARGARSON: Well, I still think it is
22 error. I mean it is wrong, and we object.

23 THE COURT: I'm trying to think --

24 MR. FARGARSON: Note the objection on the
25 record.

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1763

1 THE COURT: Exactly, and I'm thinking back, he
2 did ask Professor Karl about other times she had been
3 retained. I can't remember what her responses were
4 particularly. She has been retained in a previous case
5 obviously and has testified about El Salvador, and she
6 said made maybe one time or two, I can't remember.

7 MR. EISENBRANDT: She said twice, Your Honor.

8 MR. FARGARSON: But nothing was asked her about
9 where she testified or what the name of the case it was.

10 MR. BROOKE: Or what kind of case.

11 MR. ESQUIVEL: Your Honor, in my argument, I
12 only made reference to other cases that these witnesses
13 have testified in. I didn't mention any particular name,
14 any particular subject matter. I just said that there
15 were other cases, and I thought that was a fair inference
16 from the questions that the defendant's counsel had asked
17 to several of the witnesses.

18 MS. BLUM: The issue of other cases was also
19 raised when --

20 THE COURT: I think it is not a material point
21 in the case because I'm going to tell them they need to
22 decide this case anyway --

23 MS. BLUM: Which is one of the jury
24 instructions.

25 THE COURT: Right, I think it is consistent

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1764

1 with the jury instruction. What -- do you want me to do
2 something about it?

3 MR. FARGARSON: Yeah, I want you to give a
4 mistrial, I want to try this thing again in another 12
5 days.

6 THE COURT: Well, I know that's --

7 MR. FARGARSON: I don't know.

8 THE COURT: That would be a rather extreme
9 remedy.

10 MR. FARGARSON: No, no, no, I don't -- I don't
11 want to go through it again.

12 MR. BROOKE: Just an instruction that they
13 should not be concerned in any regard as to any other
14 potential case or cases.

15 MR. EISENBRANDT: It is already in the jury
16 instructions.

17 MR. FARGARSON: Just put something in there
18 that this case is separate from anything else, that no
19 other cases are relevant.

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THE COURT: Okay.

MR. EISENBRANDT: Right, I think we're --

MR. FARGARSON: Or nothing about any other case
is relevant to your decision in this case or something
like that.

MS. BLUM: I think that's exactly what is in

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the jury instruction.

MR. FARGARSON: Well, I should have read it
then, shouldn't I?

THE COURT: It should be in here, because we
have got something -- do not refer to other matters. It's
the same thing we use in every case, and I'm just trying
to get to it here so I can -- I had it between my fingers,
that's why I couldn't get it. Do not consider others.
You are here to determine -- in this case, you are not
called upon to return a verdict as to the liability of any
other person or persons. Nor are you to consider the
liability -- this is my other cases instruction. I think
this tells them it is not something to consider.

MR. EISENBRANDT: Absolutely.

THE COURT: I think that covers it.

MR. FARGARSON: Okay.

THE COURT: Well, if there was a motion for
mistrial, which I hope there wasn't, we are going to deny
that, and I think we will take care of it with the
instruction.

21 MR. FARGARSON: Okay. All right.
22 (The following proceedings were had in open
23 court.)
24 THE COURT: We're ready.
25 (Jury in at 3:20 p.m.)

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JURY INSTRUCTIONS BY THE COURT

1766

1 THE COURT: All right. You may be seated.
2 Ladies and gentlemen, we have now come to that
3 point in the case where it is my duty to instruct you in
4 the law that applies to the case and that you must follow
5 in making your decision.
6 As jurors, it will be your exclusive duty to
7 decide all questions of fact submitted to you and for that
8 purpose to determine the effect and value of the evidence.
9 You must not be influenced by sympathy, bias,
10 prejudice or passion for one side or the other.
11 You are not to single out any particular part
12 of the instructions and ignore the rest, but you are to
13 consider all of the instructions as a whole and regard
14 each in the light of all of the others.
15 I will instruct you about where the law places
16 the burden of making out and supporting the facts
17 necessary to prove the facts necessary to prove the legal
18 theories in this case. I can't believe I got some
19 redundancy right there. It just proves how many times you
20 go over it, you are still going to have it. Then I'm

21 going to instruct you on where the law places the burden
22 of making out and supporting the facts necessary to prove
23 the legal theories in this case.

24 When, as in this case, the defendant denies the
25 material allegations of the plaintiffs' claims, the law

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JURY INSTRUCTIONS BY THE COURT

1767

1 places upon the plaintiffs the burden of proving, that is
2 the burden of supporting and making out their claims upon
3 every essential element of that particular claim, by the
4 greater weight or preponderance of the evidence.

5 Remember, of course, you will have a full set of the
6 written instructions at the end of the case.

7 Preponderance of the evidence means that amount
8 of factual information presented to you in this trial
9 which is sufficient to cause you to believe that an
10 allegation is probably true. Preponderance simply means
11 the greater weight of the evidence. In order to prevail,
12 the balance of the scales must be tipped in favor of the
13 party who carries the burden of proof; in this case, the
14 plaintiffs. If the evidence on a particular issue appears
15 to be equally balanced, the party having the burden of
16 proving that issue must fail.

17 You must consider all of the evidence
18 pertaining to every issue regardless of who presented it.

19 You, the members of the jury, are judges of the
20 fact concerning the controversy involved in this lawsuit.
21 In order for you to determine what the true facts are, you

22 are called upon to weigh the testimony of every witness
23 who has appeared before you and to give the testimony of
24 the witnesses the weight, faith, credit and value to which
25 you think that it is entitled.

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JURY INSTRUCTIONS BY THE COURT

1768

1 You will note the manner and demeanor of the
2 witnesses while on the witness stand. You must consider
3 whether the witness impressed you as one who was telling
4 the truth or one who was telling a falsehood, and whether
5 or not the witness was open and forthcoming.

6 You should consider the reasonableness or
7 unreasonableness of the testimony of the witness; the
8 opportunity or lack of opportunity of the witness to know
9 the facts about which he or she testified; the
10 intelligence or lack of intelligence of the witness; the
11 interest of the witness in the result of the lawsuit, if
12 any; the relationship of the witness to any parties of the
13 lawsuit, if any; and whether the witness testified
14 inconsistently while on the witness stand; or if the
15 witness said or did something or failed to say or do
16 something at any other time that is inconsistent with what
17 the witness said while testifying.

18 If a witness is shown to have knowingly
19 testified falsely concerning any material matter, you have
20 the right to distrust the witness' testimony in other
21 particulars, and you may reject all the testimony of that

22 witness or give it the credibility you think it deserves.
23 An act or omission is done knowingly if it is done
24 voluntarily and intentionally and not because of mistake
25 or accident or some other innocent reason.

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JURY INSTRUCTIONS BY THE COURT

1769

1 Insignificant discrepancies do not affect a
2 witness' testimony, but important or significant
3 discrepancies do. In weighing the effect of a
4 discrepancy, always consider whether it pertains to a
5 matter of importance or an unimportant detail and whether
6 the discrepancy results from innocent error or intentional
7 falsehood.

8 You have heard the testimony of Ambassador
9 Robert White, Professor Jose Garcia, Professor Terry Lynn
10 Karl, an attorney, Jose Antonio Araujo, each of who was
11 permitted to testify as an expert in this case. An expert
12 is allowed to express his or her opinion on those matters
13 about which the expert has special knowledge, training or
14 expertise. Expert testimony is presented to you on the
15 theory that someone who is experienced or knowledgeable in
16 the field can assist you in understanding the evidence or
17 in reaching an independent decision on the facts.

18 In weighing each expert's testimony, you may
19 consider the expert's qualifications, his or her opinions,
20 his or her reasons for testifying as well as all of the
21 other considerations that ordinarily apply when you are
22 deciding whether or not to believe a witness' testimony.

23 You may give expert testimony whatever weight, if any, you
24 find that it deserves in light of all of the evidence in
25 this case. You should not however, accept a witness'

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JURY INSTRUCTIONS BY THE COURT

1770

1 testimony merely because he or she is an expert. Nor
2 should you substitute it for your own reason, judgment and
3 common sense. The determination of the facts in this case
4 rests solely with you, the jury.

5 Some of the testimony before you is in the form
6 of deposition answers which have been received in evidence
7 or played in open court through a video deposition. A
8 deposition is simply a procedure where the attorneys for
9 one side may question a witness or an adverse party under
10 oath before a court stenographer prior to trial. And the
11 testimony is preserved in writing and/or videotape. This
12 is part of the pretrial discovery, and each side is
13 entitled to take depositions. You may consider the
14 testimony of a witness given at a deposition according to
15 the same standards you would use to evaluate the testimony
16 of the witness given here at trial.

17 These are the rules that should guide you,
18 along with your common sense, your common experience and
19 your common observations gained by you in your various
20 walks in life in weighing the testimony of the witnesses
21 who have appeared before you in this case.

22 If there is a conflict in the testimony of the

23 witnesses, it is your duty to reconcile that conflict, if
24 you can, because the law presumes that every witness has
25 attempted to and has testified to the truth. But if there

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JURY INSTRUCTIONS BY THE COURT

1771

1 is a conflict in the testimony of the witnesses, which you
2 are not able to reconcile in accordance with these
3 instructions, then it is with you absolutely to determine
4 which of the witnesses you believe have testified to the
5 truth and which ones you believe have testified to a
6 falsehood.

7 Again, immaterial discrepancies do not affect a
8 witness' testimony, but material discrepancies do. In
9 weighing the effect of a discrepancy, always consider
10 whether it pertains to a matter of importance or an
11 unimportant detail, and whether the discrepancy results
12 from innocent error or intentional falsehood.

13 The greater weight or preponderance of the
14 evidence in a case is not determined by the number of
15 witnesses testifying to a particular fact or a particular
16 set of facts, rather it depends on the weight, credit and
17 value of the total evidence on either side of the issue.
18 And of this, you, as jurors, are the exclusive judges.

19 If in your deliberations you come to a point
20 where the evidence is evenly balanced and you are unable
21 to determine which way the scales should turn on a
22 particular issue, then you, the jury, must find against
23 the plaintiff upon whom the burden of proof has been cast

24 in accordance with these instructions.

25 You must not consider as evidence any

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JURY INSTRUCTIONS BY THE COURT

1772

1 statements of counsel made during the trial. If however
2 counsel for the parties have stipulated to any fact or
3 facts, or any fact has been admitted by counsel, you will
4 regard that fact as being conclusively established.

5 As to any question to which an objection has
6 been sustained, you must not speculate as to what the
7 answer might have been or as to the reason for the
8 objection, and you must assume that the answer would be of
9 no value to you in your deliberations.

10 You must never speculate to be true any
11 insinuation suggested by a question asked a witness. A
12 question is not evidence. It may be considered only as it
13 supplies meaning to the answer.

14 The jury may consider all of the evidence
15 admitted in the case. Testimony and documents which the
16 court allowed into evidence over a hearsay objection may
17 be considered by you as evidence on the same basis as all
18 other evidence for the purpose for which it was admitted.
19 This, of course, is all for you, the jury, to decide. You
20 will recall that there were some occasions where we talked
21 about something being received just for notice purposes,
22 we used that illustration about the call as to a fire at
23 the Orpheum where that will tell you where somebody did

24 the next thing, it would not be proof that the particular
25 event reported occurred.

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JURY INSTRUCTIONS BY THE COURT

1773

1 There are two kinds of evidence, there is
2 direct evidence and there is circumstantial evidence.
3 Direct evidence is testimony by a witness about what that
4 witness personally saw or heard or did. Circumstantial
5 evidence is indirect evidence, that is it is proof of one
6 or more facts from which you can find another fact.

7 You may consider both direct and circumstantial
8 evidence in deciding this case. The law permits you to
9 give equal weight to both, but it is for you to decide how
10 much weight to give to any evidence.

11 Before the trial in this case, the parties
12 agreed to the truth of certain facts in this action. As a
13 result of this agreement, the plaintiffs and the defendant
14 entered into certain stipulations in which they agreed
15 that the stipulated facts would be taken as true without
16 the parties presenting further evidence on the matter.
17 This procedure is often followed to save time in
18 establishing facts which are undisputed.

19 The following facts have been stipulated to by
20 the parties:

21 1. From October, 1997 to January 1981, Ni col as
22 Carranza was the subsecretary of defense and public
23 security in El Salvador and a member of the Salvadoran
24 high command.

25 2. While serving as subsecretary of defense,

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JURY INSTRUCTIONS BY THE COURT

1774

1 Mr. Carranza did not initiate an investigation to
2 determine whether any members of the Salvadoran military
3 were responsible for human rights abuses.

4 3. While serving as subsecretary of defense,
5 Mr. Carranza did not discipline or punish any members of
6 the Salvadoran military for human rights abuses.

7 4. While serving as subsecretary of defense,
8 Mr. Carranza did not prosecute under military law or refer
9 to civilian courts any members of the Salvadoran military
10 for incidents of torture or extrajudicial killing.

11 5. From 1997 to 1984, the Salvadoran
12 Constitution and the laws of El Salvador, including
13 international agreements to which El Salvador was a party,
14 prohibited members of the Salvadoran military from
15 committing torture and extrajudicial killing.

16 6. From May, 1983 to May, 1984, Mr. Carranza
17 served as director of the treasury police of El Salvador.

18 7. While serving as director of the treasury
19 police, Mr. Carranza had the legal authority and practical
20 ability to exercise control over subordinate members of
21 the treasury police.

22 8. While serving as director of the treasury
23 police, Mr. Carranza had the authority to discipline any
24 subordinate who was responsible for committing a crime or

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JURY INSTRUCTIONS BY THE COURT

1776

1 in August, 1983.

2 17. Plaintiff Daniel Alvarado has now resided
3 in Sweden since April of 1986.

4 18. The claims of the Plaintiff Cecilia Santos
5 are the result of events that allegedly occurred in
6 September-October, 1980.

7 19. Plaintiff Cecilia Santos moved to New York
8 from El Salvador in June of 1983 and has been in New York
9 for 20 years.

10 20. The Defendant Nicolas Carranza has been a
11 resident of the United States since 1985.

12 21. The Defendant Nicolas Carranza has been a
13 naturalized citizen of the United States since 1991.

14 22. The Defendant Nicolas Carranza has not
15 concealed his identity or location since 1985 and has
16 lived at the same residence since 1985.

17 23. Ana Patricia Chavez does not know the
18 names of the individuals who committed the alleged acts
19 claimed by her.

20 24. Cecilia Santos does not know the names of
21 the individuals who committed the alleged acts complained
22 of by her.

23 25. Jose Francisco Calderon does not know the
24 names of the individuals who committed the alleged acts
25 claimed by him.

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1 26. Erlinda Franco does not know the names of
2 the individuals allegedly responsible for the alleged acts
3 complained of by her.

4 27. When Ana Patricia Chavez referred to her
5 husband and of being married in El Salvador, she is
6 referring to a common law marriage which was common in El
7 Salvador at the time. It was customary for a person to
8 refer to her husband even if they had not been officially
9 married, which they were not. Ms. Chavez is not bringing
10 a claim for the death of Omar Reyes.

11 It is a common practice for the court to make
12 certain rulings before the trial. You must follow those
13 rulings in your deliberations.

14 Although we have had one trial, this case is
15 actually a combination of five separate cases. Each
16 plaintiff is pursuing an individual claim for monetary
17 damages grounded on the allegation that the plaintiff was
18 the victim of unlawful acts and that the defendant is
19 responsible for those acts under the law of command
20 responsibility. Federal law permits claims of this nature
21 to be brought in this court.

22 Let me now review with each of you each of the
23 claims before you.

24 1. Cecilia Santos brings a claim against
25 Mr. Carranza for torture. Before the trial, the court

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1 ruled that the treatment of Cecilia Santos constituted
2 torture under the applicable legal definition. Thus, as
3 to Cecilia Santos, you will only have to decide if the
4 defendant is responsible under the law of command
5 responsibility for her torture.

6 2. Jose Francisco Calderon brings a claim
7 against Mr. Carranza for torture. Before the trial, the
8 court ruled that Jose Francisco Calderon, that is, being
9 forced to witness the death of his father, constituted
10 torture under the applicable legal definition. Jose
11 Francisco Calderon also brings a claim against
12 Mr. Carranza for the extrajudicial killing of his father.
13 Before the trial, the court ruled that the killing of Jose
14 Francisco Calderon's father constituted an extrajudicial
15 killing under the applicable legal definition. Thus, as
16 to Jose Francisco Calderon, you will only have to decide
17 if the defendant is responsible under the law of command
18 responsibility for his torture and for the extrajudicial
19 killing of his father.

20 3. Ana Patricia Chavez brings a claim against
21 Mr. Carranza for the extrajudicial killing of her mother
22 and her father. The court did not make a determination
23 before trial about this claim. Thus, as to Ana Patricia
24 Chavez, you will have to decide if the killing of her
25 mother and father constituted an extrajudicial killing

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1 under the definition I will give you as part of these
2 instructions and if the defendant is responsible under the
3 law of command responsibility for those killings.

4 4. Erlinda Franco brings a claim against
5 Mr. Carranza for the extrajudicial killing of her husband.
6 Before the trial, the court ruled that the killing of
7 Manuel Franco constituted an extrajudicial killing under
8 the applicable legal definition. Thus, as to Erlinda
9 Franco, you will have to decide if the defendant is
10 responsible under the law of command responsibility for
11 the extrajudicial killing of her husband. You also will
12 have to decide if the extrajudicial killing of her husband
13 was a crime against humanity, under the definition that I
14 will give you as part of these instructions, and if the
15 defendant is responsible under the law of command
16 responsibility.

17 5. Daniel Alvarado brings a claim against
18 Mr. Carranza for torture. Before the trial, the court
19 ruled that the treatment of Daniel Alvarado constituted
20 torture under the applicable legal definition. Thus, as
21 to Daniel Alvarado, you will have to decide if the
22 defendant is responsible under the law of command
23 responsibility for his torture. You will also have to
24 decide if his torture was a crime against humanity under
25 the definition I will give you as part of these

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1 instructions, and if the defendant is responsible under
2 the law of command responsibility.

3 Although these claims have been presented
4 together, each is separate from the others, and each
5 plaintiff and defendant are entitled to have you
6 separately consider each claim as it affects that party.
7 Therefore, in your deliberations, you should consider the
8 evidence as it relates to each claim separately, as you
9 would have had each claim been tried before you
10 separately.

11 On Plaintiff Ana Patricia Chavez's claim for
12 extrajudicial killing, the plaintiff has the burden of
13 proving each of the following elements by a preponderance
14 of the evidence.

15 1. A person or persons deliberately killed Ana
16 Patricia Chavez's parent, Humberto Chavez and Guillermina
17 Chavez.

18 2. The person or persons killed the victim
19 while acting under color, that is while acting under the
20 actual or apparent authority, or color of law of El
21 Salvador; and

22 3. The killing was not previously authorized
23 by a judgment of a regularly constituted court affording
24 all judicial guarantees which are recognized as
25 indispensable by civilized peoples.

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1 Acts are done under color of law when a person
2 acts or purports to act in the performance of official
3 duties. Action under color of law means action that is
4 clothed with the authority of the government, including
5 actions that abuse, misuse or overstep the actor's legal
6 authority. Acts done under color of law also include
7 those acts that demonstrate a substantial degree of
8 cooperation between a private person and the government.

9 On their claims for crimes against humanity,
10 Erlinda Franco and Daniel Alvarado have the burden of
11 proving each of the following elements by a preponderance
12 of the evidence.

13 1. A person or persons committed any of the following
14 acts: Murder, extermination, enslavement, deportation,
15 imprisonment, torture, rape, persecution on political, racial
16 or religious grounds, enforced disappearance of persons,
17 apartheid, or other inhumane acts of a similar character
18 intentionally causing great suffering or serious injury to
19 body or to mental or physical health.

20 2. The second element the person or persons committed
21 the act as part of a widespread or systematic attack directed
22 against a civilian population; and

23 3. The person or persons knew or, based on the
24 circumstances, should have known that the act was part of a
25 widespread or systematic attack.

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1 The term widespread refers to the large scale nature of
2 the attack and the number of targeted persons. The term
3 systematic refers to the organized nature of the acts of the
4 violence and the unlikelihood that they occurred randomly.

5 Although this claim refers to, quote, crimes against
6 humanity, closed quote, the plaintiffs' burden of proof
7 remains a preponderance of the evidence and not the higher
8 burden of proof required in criminal cases.

9 The plaintiffs seek to hold the defendant
10 responsibility under the law of command responsibility. The
11 law of command responsibility makes a military commander
12 liable for the acts of his subordinates even if the commander
13 did not order those acts.

14 To hold a military commander liable under the law of
15 command responsibility, the plaintiffs must prove the
16 following elements by a preponderance of the evidence:

17 1. A superior-subordinate relationship between existed
18 between the defendant and the person or persons who committed
19 torture, extrajudicial killing and/or crimes against humanity.

20 2. The defendant knew or should have known, in light
21 of the circumstances, at the time that his subordinates had
22 committed, were committing or were about to commit torture,
23 extrajudicial killing and/or crimes against humanity.

24 3. The third element, the defendant failed to take all
25 necessary and reasonable measures to prevent these abuses or

1 failed to punish the subordinates after the commission of
2 torture, extrajudicial killing and/or crimes against humanity.

3 The first element of command responsibility is the
4 existence of a superior-subordinate relationship between the
5 defendant and the person or persons who committed the abuses
6 involved in this case. To establish this element, the
7 plaintiffs must prove by a preponderance of the evidence that
8 the defendant had effective control over the person or persons
9 who committed torture, extrajudicial killing and/or crimes
10 against humanity.

11 The effective control requirement is satisfied if the
12 defendant had the legal authority and practical ability to
13 exercise control over his subordinates. The defendant cannot
14 escape liability, however, where his own action or inaction
15 caused or significantly contributed to a lack of effective
16 control over his subordinates. Even if a defendant lacked
17 legal authority, he nonetheless possessed effective control if
18 he had the practical ability to exercise control over his
19 subordinates.

20 The second element of command responsibility is the
21 actual or constructive knowledge by the defendant of abuses
22 committed by his subordinates. The plaintiffs may prove this
23 element by a preponderance of the evidence in one of two ways.
24 First, the plaintiffs may prove that the defendant actually
25 knew that subordinates had committed, were committing or were

1 about to commit torture, extrajudicial killing and/or crimes
2 against humanity. Alternatively, the plaintiffs may prove
3 that in light of the circumstances at the time, the defendant
4 should have known that subordinates had committed, were
5 committing or were about to commit torture, extrajudicial
6 killing and/or crimes against humanity.

7 With respect to this element, the plaintiffs do not
8 have to prove that the defendant knew or should have known
9 about the abuses against the specific victims in this case.
10 Rather, the knowledge element would be satisfied if the
11 plaintiffs prove that the defendant knew or should have known
12 that his subordinates had committed, were committing or were
13 about to commit torture, extrajudicial killing and/or crimes
14 against humanity. The defendant should have known that such
15 abuses were being committed if subordinates were engaged in a
16 pattern, practice or policy of committing torture,
17 extrajudicial killing and/or crimes against humanity.

18 The plaintiffs may establish the third element by
19 proving by a preponderance of the evidence that the defendant
20 failed to take all necessary and reasonable measures to
21 prevent torture, extrajudicial killing and/or crimes against
22 humanity or failed to punish his subordinates after the
23 commission of such abuses. Failure to punish may be
24 established by proof that the defendant failed to properly
25 investigate reliable allegations of torture, extrajudicial

1 killing and/or crimes against humanity committed by
2 subordinates or failed to submit these matters to appropriate
3 authorities to investigate, that is for investigation and
4 prosecution.

5 You are here to determine the liability of this
6 defendant as to each claim asserted from the evidence. You
7 are not called upon to return a verdict as to the liability of
8 any other person or persons. Nor are you to consider the
9 liability that such other persons may or may not have or
10 whether such persons have been, will be or should be charged
11 with liability in this or any other court. You must determine
12 whether or not the evidence in this case convinces you, by a
13 preponderance of the evidence, of this defendant's liability
14 without regard to any belief you may have about the liability
15 of any other person or persons.

16 I want to explain something more about proving a
17 person's state of mind as it is relevant to the instructions
18 that I have given to you.

19 Ordinarily, there is no way that a person's state of
20 mind can be proved directly because no one can read another
21 person's mind and tell what that person is thinking.

22 But a person's state of mind can be proved indirectly
23 from the surrounding circumstances. This includes things like
24 what the person said, what the person did, how he acted or any
25 other facts or circumstances in evidence that show what was in

1 the person's mind.

2 You may also consider the natural and probable results
3 of any acts that the person knowingly did or failed to do and
4 whether it is a result -- whether it is reasonable to conclude
5 that the person intended those results. This, of course, is
6 all for you, the jury, to decide.

7 In your deliberations, you should not give any regard
8 to the political views, beliefs or affiliations of any of the
9 parties or any other person about whom you have heard
10 testimony as a basis to excuse torture, extrajudicial killing
11 or crimes against humanity. Every person - no matter what his
12 or her political views, beliefs or affiliations has the right
13 to be free from torture, extrajudicial killing and crimes
14 against humanity.

15 It is my duty to instruct you as to the proper measure
16 of damages to be applied in this case if you find that the
17 plaintiffs have proven each of the elements of their claims.
18 By instructing you regarding damages, I am not indicating one
19 way or the other that I have any opinion regarding whether or
20 not damages should be awarded in this case.

21 If you find in favor of any or all of the plaintiffs
22 against the defendant, then you must determine an amount that
23 is fair compensation for the damages suffered by the plaintiff
24 or plaintiffs. Compensatory damages seek to make the party
25 whole, that is to compensate the plaintiff for the damage

1 suffered as a result of the defendant's wrongful conduct. The
2 damages, if any, that you award, must be full and fair
3 compensation, no more and no less.

4 If you decide to award compensatory damages, you should
5 be guided by dispassionate common sense. Computing damages
6 may be difficult, but you must not let that difficulty lead
7 you to engage in arbitrary guesswork. On the other hand, the
8 law does not require the plaintiffs to prove their losses with
9 mathematical precision, but only with as much definiteness and
10 accuracy as the circumstances permit.

11 In particular, you may award compensatory damages for
12 pain and suffering and mental and emotional distress. No
13 evidence of the monetary value of such intangible things as
14 pain and suffering has been or need be introduced into
15 evidence. There is no exact standard for fixing the
16 compensation to be awarded for these elements of damages. Any
17 award you make must be fair in light of the evidence presented
18 at trial.

19 You should consider the following in determining the
20 amount of compensatory damages to the extent you find them
21 proved by a preponderance of the evidence.

22 You should consider emotional pain and suffering,
23 mental anguish, physical disfigurement, physical pain.

24 In evaluating these items, you may consider the
25 following factors: Physical torture, including methods used

1 or abuses suffered; mental abuses, including fright and
2 anguish; length of time torture endured; length of detention;
3 the victim's age or other limiting physical or emotional
4 characteristics.

5 In making an award for such damages, you must use your
6 best judgment and establish an amount of damages that is fair
7 and reasonable in light of the evidence before you.

8 In addition to compensatory damages, you have the
9 discretion to award punitive damages. Unlike compensatory
10 damages where you are -- unlike compensatory damages which are
11 imposed to reimburse a plaintiff for his or her suffering,
12 punitive damages are designed to punish a defendant for his
13 wrongful conduct and to deter him and others from committing
14 similar misconduct in the future. In the context of
15 international law violations, punitive damages may be awarded
16 to punish heinous conduct and to demonstrate that human rights
17 abuses will not be tolerated. You may, in your discretion,
18 award punitive damages in this case only if you find that the
19 defendant's conduct was intentional, malicious, wanton or
20 reckless.

21 A person's acts -- a person acts intentionally when it
22 is the person's purpose or desire to do a wrongful act or to
23 cause the result. A person acts maliciously when the person
24 is motivated by ill-will, hatred or personal spite. A
25 person's conduct is wanton if the person acts unreasonably or

1 maliciously risking harm while being utterly indifferent to
2 the consequences.

3 A person acts recklessly when the person is aware of,
4 but consciously disregards, a substantial or unjustifiable
5 risk of injury or damage to another. Disregarding the risk
6 must be a gross deviation from the standard of care that an
7 ordinary person would use under the circumstances.

8 If you decide to award punitive damages, you will not
9 assess an amount of punitive damages at this time. You will,
10 however, report your findings to the court. If you, the jury,
11 find that the conduct of the defendant as determined under
12 these circumstances was intentional, malicious, wanton or
13 reckless, then indicate so in your response to the last
14 question on the verdict form that you are considering, but do
15 not indicate the amount of punitive damages you would award.
16 That question will be reserved until the parties have a final
17 opportunity to present some additional evidence on the
18 question.

19 Of course, if you find that the actions of the
20 defendant were not intentional, malicious, wanton or reckless,
21 then you should so indicate in your response to the last
22 question on the verdict form that you are considering, and
23 that will be your final verdict in this case as to that
24 plaintiff.

25 Finally, ladies and gentlemen of the jury, we come to

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1 that point where we will discuss the form of your verdict and
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2 the process of your deliberations. You will be taking with
3 you to the jury room five verdict forms which will reflect
4 your findings. The verdict forms read as follows -- and I'm
5 going to tell you they are in sort of random order. That
6 emphasizes that each case is a separate claim -- I mean each
7 person's claim, each plaintiff's claim is separate and you
8 consider them separately and evaluate them separately, so
9 they're fairly random. We start with the verdict form number
10 one, just happens to be that it is the verdict form as to the
11 Plaintiff Cecilia Santos, and it reads as follows: And they
12 will all be quite similar, but there will be some differences.

13 We, the jury, find the following answers to the
14 questions submitted by the court.

15 1. Do you find that Nicolas Carranza is liable under
16 the law of command responsibility for the torture of Plaintiff
17 Cecilia Santos? And there is a blank with the word yes to its
18 right and another blank with the word no to its right.

19 If your answer to question 1 is no, you will stop
20 there. The presiding juror should sign this verdict form and
21 you should not go any further as to this verdict form. If
22 your answer to question number 1 is yes, then you should
23 proceed to the following question. And this is what this
24 second question says: What is the total amount of
25 compensatory damages that should be awarded to Plaintiff

2 dollar sign in front.

3 The third question is do you find that Nicolas
4 Carranza's conduct was intentional, malicious, wanton or
5 reckless and, again, there's a yes or a no. And you would put
6 your finding there if you reach that question, and then
7 there's a line with the word presiding juror underneath it and
8 a line with the word date underneath it.

9 Now, each verdict form is set in a somewhat similar
10 way, but you know already that the questions are a little
11 different, so we will go through them fairly quickly, but it
12 is important that you handle each one separately.

13 Verdict form number two, Plaintiff Jose Francisco
14 Calderon. We, the jury, present the following answers to the
15 questions submitted by the court.

16 1. Do you find that Nicolas Carranza is liable under
17 the law of command responsibility for the extrajudicial
18 killing of Plaintiff Jose Francisco Calderon's father, Paco
19 Calderon, and it is a yes or a no.

20 2. And this one has two questions before you get to
21 the little other language. It says 2, do you find that
22 Nicolas Carranza is liable under the law of command
23 responsibility for the torture of Plaintiff Jose Francisco
24 Calderon, and that has a yes and a no blank.

25 Now, in this one -- read each one carefully. If your

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1 answer to both question 1 and question 2 is no, you would stop
2 there, the presiding juror would sign the verdict form and you

3 would not go any further. If your answer to question 1 and/or
4 question 2, either question was yes, then you should proceed
5 to the following question:

6 3. What is the total amount of compensatory damages
7 that should be awarded to Plaintiff Jose Francis Calderon,
8 again, there's a blank with a dollar sign in front; and

9 4. Do you find that Nicolas Carranza's conduct was
10 intentional, malicious, wanton or reckless. Again, there's a
11 yes or no. Again, a signature line for the presiding juror,
12 again a date line.

13 Verdict form three, plaintiff Ana Patricia Chavez.

14 We, the jury, present the following answers to the
15 questions submitted by the court:

16 1. Do you find that Nicolas Carranza is liable under
17 the law of extrajudicial killing -- excuse me, is liable under
18 the law of command responsibility for the extrajudicial
19 killing of -- of course, it has got the names of Ana Patricia
20 Chavez's parents, and then it will say yes or no.

21 If your answer to question number 1 is no, stop there.
22 The presiding juror would sign the verdict form and you would
23 not go any further. If your answer is yes, then, of course,
24 you would proceed to the next question. And these questions,
25 of course, are the same as the last two on the other forms.

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1 What is the total amount of compensatory damages that should
2 be awarded to the Plaintiff Ana Patricia Chavez, again, a

3 dollar sign and a blank line.
4 3. Do you find that Nicolas Carranza's conduct was
5 intentional, malicious, wanton or reckless, and, again,
6 there's a yes and a no, and, again, there is a blank signature
7 line for the presiding juror and a date line.

8 Verdict form four, the Plaintiff Erlinda Franco.

9 We, the jury, present the following to the questions
10 submitted by the court:

11 1. Do you find that Nicolas Carranza is liable under
12 the law of command responsibility for the extrajudicial
13 killing of Plaintiff Erlinda Franco's husband, Manuel Franco.
14 Again, there's a yes or a no.

15 2. Do you find that Nicolas Carranza is liable to
16 Plaintiff Erlinda Franco under the law of command
17 responsibility for crimes against humanity, and, again,
18 there's a yes or a no.

19 Remember, of course, when you get to each theory, you
20 go back and you have to look at that section of the
21 instructions, what is a crime against humanity and have each
22 of the elements been satisfied, and if they have not been
23 shown by the greater weight or preponderance of the evidence,
24 any single element, then you have to return a verdict for the
25 defendant on those. So, of course, that's something you will

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1 remember on each one of these.

2 And then if your answer to both questions 1 and 2 is
3 no, stop here, the presiding juror should sign the verdict

4 form, and you should not go any further. If your answer to
5 question number 1 and/or question number 2 is yes, either one
6 is yes, then you should proceed to the following question:

7 3. What is the total amount of compensatory damages
8 that should be awarded to Plaintiff Erlinda Franco and, again,
9 there's a line with a dollar sign in front; and.

10 4. Do you find that Nicolas Carranza's conduct was
11 intentional, malicious, wanton or reckless and, again, there's
12 a yes or no. You insert your determination and, again,
13 signature line for the presiding juror and the date on it.

14 Verdict form number five -- and you can take up any
15 person in any order you want. You can start with number five,
16 number three, it doesn't matter. The numbers are simply there
17 to help us keep them straight. Verdict form number five,
18 Plaintiff Daniel Alvarado.

19 We, the jury, present the following answers to the
20 questions submitted by the court to the jury:

21 1. Do you find that Nicolas Carranza is liable under
22 the law of command responsibility for the torture of the
23 Plaintiff Daniel Alvarado. There's a blank with a yes and a
24 blank with a no.

25 2. Do you find that Nicolas Carranza is liable to the

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1 Plaintiff Daniel Alvarado under the law of command
2 responsibility for crimes against humanity, and, again,
3 there's a blank with the word yes and a blank with the word

4 no.

5 If your answer to both questions 1 and 2, if those
6 answers are no, then you will stop at that point, and the
7 presiding juror should sign the verdict form and you should go
8 no further. If your answer to question 1 and/or, that is
9 either question 1 or 2 is yes, then you should proceed to the
10 following question:

11 3. What is the total amount of compensatory damages
12 that should be awarded to the Plaintiff Daniel Alvarado, and,
13 again, there's a dollar sign and a blank.

14 4. Do you find that Nicolas Carranza's conduct was
15 intentional, malicious, wanton or reckless, again, a blank
16 with a yes and a blank with no, and then another line
17 presiding juror, signature line and a date line.

18 I think all of you understand that under every theory,
19 that is if it is extrajudicial killing, under the particular
20 theory, then, of course, you're going to be -- when they're
21 applying command responsibility, for example, you're going to
22 go back and analyze each one in light of the instructions, and
23 each element has to be satisfied in order for a verdict to be
24 returned for the plaintiff on that particular theory that's
25 articulated in the verdict form. That's how you will do that.

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1 Well, it is always exciting when you get to the end of
2 the line and you find that you're missing the last pages.

3 There we go.

4 Ladies and gentlemen, when you go to the jury room, you
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5 will be selecting a presiding juror. That person will preside
6 over your deliberations and will be your spokesperson here in
7 the court. When you have completed your deliberations, your
8 presiding juror will fill in and sign each of the verdict
9 forms.

10 Each verdict, of course, must represent the considered
11 judgment of each of you. In order to return any verdict, in
12 order for you to return a verdict, it is necessary that each
13 of you agree to that verdict. Now, I want to make it clear
14 that every answer on a verdict form, any single verdict form
15 is a verdict, so as to each answer, all nine of you have to
16 agree; that is, each of your verdicts must be unanimous.

17 It is your duty as jurors to consult with one another
18 and to deliberate with a view to reaching an agreement. Each
19 of you must decide the case for yourself, but do so only after
20 impartial consideration of the evidence with your fellow
21 jurors. In the course of your deliberations, do not hesitate
22 to re-examine your own views and change your opinion if you
23 become convinced -- if you become convinced that your initial
24 view was erroneous or any view, frankly, was erroneous. But,
25 of course, do not surrender your honest conviction as to the

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1 weight or effect of evidence solely because the opinion of the
2 your fellow jurors or for the mere purpose of returning a
3 verdict.

4 We will be sending with you to the jury room all of the

5 exhibits that have been marked and received, and I believe
6 every exhibit that was submitted was ultimately marked and
7 received. The exhibits will be there for your review and for
8 your consideration, and you certainly may not have seen them
9 in their entirety. You may, of course, take a break before
10 you begin deliberating. And remember do not begin to
11 deliberate or do not discuss the case at any time unless all
12 nine of you are present together in the jury room. Now, some
13 of you, a good many of you, have taken notes in this case, and
14 let me remind you that these are for your own individual use
15 only. They are to be used by you only to refresh your
16 personal recollection about the case. They're not exhibits,
17 they're not evidence. They are not to be shown to others or
18 otherwise used as a basis for your discussions about the case.

19 If you should desire to communicate with me at any
20 time, please write down your message or question and pass the
21 note to the court security officer, who will bring the note to
22 my attention. I will then respond as promptly as possible
23 after consulting with counsel either in writing or by having
24 you return to the courtroom so that I can address you orally.
25 Please understand that I may only answer questions about the

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1 I am and I cannot answer questions about the facts. I cannot
2 answer questions about the evidence. You are the judges of
3 the facts. I caution you, however, with regard to any message
4 or question that you might send that you should not tell me
5 your numerical division at any time. In other words, don't

6 say we voted and it is -- don't do that, please. You can tell
7 me we have reached a verdict, we have not reached a verdict,
8 but you cannot tell me your numerical division at any time.

9 All right. Let me see counsel at side bar.

10 (The following proceedings had at side-bar
11 bench.)

12 THE COURT: All right. Well, y'all should
13 approve them, we have virtually submitted them intact.
14 That is about what everybody has submitted all along.
15 Nobody has -- anything you want to take up?

16 MS. BLUM: A few grammatical things. In the
17 jury instructions, I don't know how particular you want to
18 be about those things.

19 THE COURT: If we have got something that is --
20 we would like to get them right, but sometimes I ad lib a
21 little bit.

22 MS. BLUM: Okay. That's fine.

23 THE COURT: You have got a couple you want to
24 change?

25 MS. BLUM: There was, in the --

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1 THE COURT: I was marking things myself too.

2 MS. BLUM: You probably picked them up already.

3 THE COURT: I might not have. I should change
4 these.

5 MS. BLUM: There is like this run-on sentence,

6 I think you picked that up. In the verdict form, there's
7 some -- you know, it says -- do you have an example of one
8 of them? They're all the same.

9 THE COURT: I can make them sound better than
10 they actually read, or worse.

11 MS. BLUM: The presiding juror should sign --
12 stop here, and then it goes: The presiding juror should
13 sign the verdict form and you should go further, do you
14 want to have it all like that or stop here, and then I had
15 just put a semicolon and then a sentence and a comma.

16 THE COURT: You know, I have been used
17 criticized for using semicolons for jurors because they
18 say it causes confusion, but it doesn't bother me.

19 MS. BLUM: Well, okay, fine, leave it the way
20 it is. It is like four sentences run together.

21 THE COURT: They do. They do. Okay. I think
22 it is okay.

23 MS. BLUM: You would put a semicolon right
24 there.

25 The only other place I thought was of concern,

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JURY INSTRUCTIONS BY THE COURT

1800

1 I think it is in the extrajudicial killing instruction.

2 THE COURT: Uh-huh.

3 MS. BLUM: Because it has a period, it should
4 have a colon, and then each element should have a
5 semicolon.

6 THE COURT: I agree with you, I think that --
Page 203

7 that's just where -- there's a period, and it should have
8 a colon. I know where that is.
9 All right. Anything else?
10 MR. FARGARSON: Well, the only thing is I have
11 always got objections to everything, and I object to the
12 idea that command responsibility includes should know.
13 THE COURT: You get the Supreme Court to change
14 all this, I'm all with you. Whatever they say, I'm going
15 to agree with. Maybe not really.
16 MR. FARGARSON: I understand that. But you
17 understand what I'm saying. That is what has been
18 criticized a great deal, it has been criticized in the
19 United Nations and so --
20 THE COURT: It sort of depends on whose shoe --
21 whose shoe it is as to whether it is being criticized or
22 not.
23 MS. BLUM: Actually, I think --
24 THE COURT: I couldn't really change it.
25 MS. BLUM: No, I think it is pretty much as it

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JURY INSTRUCTIONS BY THE COURT

1801

1 stands right now.
2 MR. BROOKE: We except to that charge.
3 MR. FARGARSON: I'm just saying I object to it.
4 THE COURT: What we're going to do is -- does
5 that cover everything?
6 MR. FARGARSON: I think it does.

7 THE COURT: Then what we will do is we will let
8 the jury go back. Hopefully, they will get their
9 presiding juror today. They will be coming back at 8:30
10 tomorrow, and they will be deliberating. Hopefully,
11 tomorrow is a good day that we will not be terribly busy,
12 we have kind of cleared it out anyway.

13 MR. FARGARSON: Now, could I ask, Your Honor,
14 if you bring them in the courtroom.

15 THE COURT: I do not bring them in the
16 courtroom in the morning because I know you have things to
17 do.

18 MR. FARGARSON: So is it absolutely necessary
19 for us to be here with our clients until the jury reports?

20 THE COURT: No, it is not. Now, I will talk a
21 little bit more after I let them go back.

22 (The following proceedings were had in open
23 court.).

24 THE COURT: I'm going to hand to Mr. Ruby the
25 verdict forms, and we will make a few grammatical changes,

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JURY INSTRUCTIONS BY THE COURT

1802

1 correct a few things in this, which won't take us very
2 long at all, and then we will send it back to you also.
3 Of course, you will probably want to take a break anyway.
4 What I suggest we do is this: I'm going -- after you
5 elect your presiding juror, we usually suggest to a panel
6 that starts deliberating that you stay until -- not stay
7 too long because you get tired, it is a long day and, you

8 know, you go home between 5:15, 5:30. All you have got to
9 do is tell Mr. Ruby that we're going -- you need to come
10 back at 8:00 tomorrow. You need to come back on a regular
11 schedule. Joe will have all the exhibits ready for you in
12 just a moment. Whenever you are on break -- for example,
13 if you go out right now and say let's take our break right
14 now, hand the verdict folder back to the court security
15 officer. That tells us that you're on break. When you
16 come back, you knock on the door and get it back. We need
17 to know that you're on a break, and we're not trying to --
18 you get a lot of leeway, you need to tell us, and that's
19 how you will tell us. And with other aspect, if you
20 decide that you want smaller lunch hours and that sort of
21 thing you, set your own schedule from now on, you can set
22 your own schedule. But we're going to let you be excused
23 to begin your deliberations. We will send these back in a
24 moment. We will send back the exhibits shortly. All
25 right, Joe.

♀

JURY INSTRUCTIONS BY THE COURT

1803

1 (Jury out to start deliberations at 4:20 p.m.)
2 THE COURT: Let everybody -- we will let you be
3 excused, we will let everybody get situated for the next
4 matter. I will give them about five minutes to make the
5 transition and I will be right back.
6 THE CLERK: All rise. This honorable court
7 stands in recess.

8 carranza10.txt
(Recess taken at 4:23 p.m.)
9 (Jury was excused to go home at 5:05 p.m.)
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