

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.)
NICOLAS CARRANZA,)
Defendant.)

NO. 03-2932-MI /P

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
NOVEMBER 3, 2005
VOLUME IV

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THURSDAY MORNING & AFTERNOON

NOVEMBER 3, 2005

The jury trial in this case resumed on this date, Thursday, November 3, 2005, at 9:10 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: All right. I think we're ready to proceed with the case. Yes, sir. Ready to proceed in the case. Anything else? We can bring the panel in.

COURT SECURITY OFFICER: Yes, Your Honor.

(Jury in at 9:10 a.m.)

THE COURT: All right. You may be seated and we can have the witness come back around, and our interpreter.

MR. EISENBRANDT: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. EISENBRANDT: Thank you.

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

3 JOSE LUIS GARCIA,
4 was thereupon called as a witness on behalf of the
5 Plaintiffs, and having been first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION (CONTINUED)

8 BY MR. EISENBRANDT:

9 Q. Good morning, Professor Garcia.

10 A. Good morning.

11 Q. Sir, in the military, what is a chain of information?

12 A. Maybe it would be clearer to know how information flows
13 to explain how chain of command works.

14 Q. Go ahead and explain that to us, please.

15 A. I would like it, if you could, please, put up on the
16 projection the organic defense law where the chain of command
17 is clearly explained.

18 MR. EISENBRANDT: Your Honor, may I have
19 permission to approach the witness?

20 THE COURT: You may.

21 BY MR. EISENBRANDT:

22 Q. Sir, can you please tell us what the document is that I
23 just handed you?

24 A. It is the organic law for national defense of the
25 Republic of El Salvador which was in force at the time of the

1 events that bring us to this trial.

2 Q. Is this the type of document that you and others in
3 your field of expertise would reply upon?

4 A. Yes.

5 MR. EISENBRANDT: Your Honor, we would request
6 to move this document into evidence as Exhibit 11.

7 THE COURT: So received.

8 (Exhibit Number 11 was marked. Description:
9 Organic Law.)

10 BY MR. EISENBRANDT:

11 Q. Sir, can you turn to the last page of that document,
12 please, and please tell us what that is on the last page?

13 A. On the last page, we see a national defense
14 organizational chart of which shows us how the command links
15 were organized in the year 1979 in the Republic of El
16 Salvador. If we look at the projection, we see that the
17 commander in chief of the armed force appears at the top of
18 the chart, is the highest authority of national defense. By
19 the time of 1979, the commander in chief of the armed force
20 must have been -- or must be the President of the Republic,
21 but let us not forget that the president had been overthrown
22 through a military coup, and he had been replaced by a junta.
23 This junta was comprised of two colonels and four civilians.
24 The law allows the president of the republic or whomsoever
25 should replace him to appoint as the commander in chief of the

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DIRECT - JOSE LUIS GARCIA

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1 armed force to appoint a general, who would replace the
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2 command functions of the President of the Republic. This
3 means the command, above all, is exercised with the type of
4 commander in chief of the armed force by the President of the
5 Republic by whomsoever replaces the president, in this case a
6 junta, and that command could be delegated upon a general, who
7 would be then be named general in chief or chief general.
8 Now, moving from there you can see a white line that traverses
9 downwards from commander in chief of the armed force. This
10 is -- the graph is slightly mistaken because the graph says
11 ministry of defense instead of minister of defense.

12 Q. Professor, let me ask -- perhaps I want to double
13 check, can we -- is it possible to put the Spanish up?

14 A. I apologize for my English, I made a mistake. This is
15 correct, the ministry of defense.

16 Q. Sir, feel free to refer to the copy you have in Spanish
17 there and then we will leave the English up for the jury.

18 A. So from the commander in chief of the armed force, you
19 see a line that comes out, you see this line means command
20 link. Below, we have the ministry of defense. The ministry
21 of defense is comprised by the minister and the undersecretary
22 of defense. These are the two persons that are in that line
23 of command.

24 Q. Sir, let me ask you when you say Undersecretary of
25 Defense, is that the same as saying Vice-minister of Defense?

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1 A. Yes, the term was used indistinctly.

2 Q. And in the year 1980, who was in the position of
3 vice-minister?

4 A. The position of Vice-minister was occupied by
5 Mr. Colonel Carranza.

6 Q. So, sir, according to this graphic, you have the
7 commander in chief, as you have explained through the ministry
8 of defense. Explain to us what the lines mean coming from the
9 ministry of defense down to the -- through the general staff
10 and to the six boxes below.

11 A. If you look at the chart, you will see from the
12 ministry of defense, a white line descends, and those lines
13 establish the dependence link. And you have the general staff
14 of the armed force. Under the charge of the general staff of
15 the armed force is the chief of the general staff of the armed
16 force, and from the chief of the general staff for the armed
17 force, you will see this line that drops and then broadens.
18 You have the army -- you will see the army, the air force the
19 national navy, the national guard, the national police and the
20 treasury police. And then you will see that these lines that
21 start at the commander in chief of the armed force establish
22 the -- they establish the command link between the commander
23 in chief of the armed force all the way down to the troops,
24 from the President of the Republic all the way down to the
25 troop units. With the exception of the President of the

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1 Republic, above whose authority there is nothing, and we go
2 down to the ministry of defense, you can see that the ministry
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3 of defense falls under the president of the republic, and then
4 from the ministry of defense, we see the commander in chief of
5 the general staff of the armed force. And then from the
6 commander in chief of the general staff do depend then the
7 army, the air force, et cetera, which means that every -- all
8 of the people that are included in graphic has someone above
9 him who commands him, and below him those who obey him. This
10 is a military structure, and this allows the exercise of
11 command and also the exercise of the responsibility that this
12 means, keeping in mind that one is always responsible to one's
13 superior, and one must demand the compliance with one's orders
14 by one's subordinates. It's almost impossible, for example,
15 the minister of defense to come down here and see and find out
16 what is happening to a particular soldier in the national
17 guard, and that's why you have the chain of command, because
18 it normally takes place at level of the national guard, a
19 soldier of the national guard has committed a breach of the
20 law, and I am the minister of defense, immediately as soon as
21 I -- if I find out that the inconvenience, the crime, whatever
22 it is that has taken place, and that's -- this information has
23 not arrived to me through these lines of command and that no
24 one here at the level of the national guard has made -- taken
25 any measures to make sure that this type of violation receives

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1 its punishment, the road that is followed in any armed force
2 is that the minister of defense queries the commander in chief

3 of the general staff, tell me what happened with that soldier
4 in the national guard, and you will submit a report in a
5 certain specific frame time. Commander in chief of the
6 general staff of the armed force then speaks to the commander
7 in chief of the national guard and says to him, a soldier in
8 the national guard is accused of such and such a thing, in a
9 specific period of time you will submit a report and tell me
10 what has happened and what you have done to resolve that
11 problem. The chief of the national guard -- you see, I have
12 gone from the top all the way down to a specific soldier. The
13 chief of the national guard will then speak to the chief of
14 the subunit where the soldier has been deployed, and he
15 queries him on what has happened and what measures have been
16 taken to solve the problem.

17 Q. Professor --

18 A. I'll finish with but one phrase.

19 Q. Go ahead.

20 A. You see, the responsibility is exercised at each one
21 level, and that at each level, we have that each one of them
22 is responsible, first, to find out what happened and then to
23 determine what measures have been taken in order to correct,
24 and if those measures have been executed and if this accused
25 party is, in fact, guilty or not. And if at any one of these

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1 levels of command -- and if at any one of these levels of
2 command the responsible party, the commander has failed in his
3 duty to find out, to take responsibility for the actions, then

4 the office, the office immediately above that finds out that
5 these measures have not been taken must then exercise his
6 command and bring to play his disciplinary attributions. At
7 every level, at each level there are disciplinary attributes
8 that establish the jurisdiction, which is what it is called,
9 for each one of the members of this chain in order to maintain
10 discipline, which we said yesterday was the -- is the backbone
11 of any military organization. And that allows us as military
12 people to walk about armed in an unarmed society and
13 differentiates an armed force from a band of bandits.

14 Q. Sir, through this chain of command that you have
15 described, what should a commander do if a subordinate -- if
16 he finds out that a subordinate has tortured a prisoner?

17 A. He must bring to play at any one of the levels that you
18 see on the chart information in the command chain, and we see
19 that the requirements goes from top to bottom, and from the
20 bottom, up comes the information. First, he must inform
21 himself of what has taken place. Once I, at any one of these
22 levels of the chain of command, I am made -- it is made known
23 to me that there has been the commission of an infraction, it
24 could be a crime, it could be a breach of discipline, I
25 take -- I put my attributes, my capacities into movement, the

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1 attributions that the Military Code of Justice assigns to me
2 at my hierarchical level. If it is a crime, it can go to a
3 court's marshal. If is a disciplinary breach, I have

4 disciplinary attributes that allow me to apply a series of
5 punishments to these infractions.
6 Q. Would torture be considered a crime as you just
7 mentioned?
8 A. Yes, it is a crime, of course.
9 Q. Would it be the same if a subordinate killed a
10 civilian?
11 A. Yes, of course, upon that, the Salvadoran constitution
12 already speaks, it is not even the Military Code of Justice.
13 Article 177 of the Salvadoran constitution authorizes the
14 ministry of defense to establish an urgent court marshal if
15 you can call it that at any place within the Republic to try
16 not only military people, but also civilians who may have
17 committed crimes against human rights, thus jeopardizing
18 security of the state. These are extremely broad attributions
19 that are established in order to maintain the rights of people
20 as I also know. But the minister of defense is authorized to
21 apply these measures in order to make sure that no one is
22 going to have the authority to -- no one is going to have the
23 right to abuse the people.
24 Q. Sir, does a commander have any duties in terms of
25 training subordinates?

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1 A. Yes, and we're speaking of different responsibilities
2 in this matter according to the place held or position held in
3 each chain of command. Commanders always exercise through the
4 people that depend on the four under one when one is an

5 officer of high rank. I'm the Vice-minister of Defense and I
6 am the ministry of defense. I am not the person in charge of
7 informing the subordinates concerning the -- I'm not in charge
8 of the training of soldiers concerning how they must respect
9 human rights, but I am responsible for overseeing and in
10 showing that through all of those lines of command. In this
11 specific case, we're talking about the Vice-minister of
12 Defense. I have to insure that the commander in chief of the
13 general staff of the armed force has taken the measures to
14 insure that instruction is imparted at the Army, at the air
15 force, et cetera, et cetera. And each one, depending on your
16 level of hierarchy, has the duty to oversee that that
17 instructional training plan that I have ordered be complied
18 with or enforced at all of the command levels. Those are the
19 attributions of command, to give orders and to oversee their
20 compliance or enforcement, because otherwise anyone can do
21 anything.

22 Q. Sir, do you still have Exhibit 10 in front of you, the
23 ordinance?

24 A. Yes, I have it here.

25 Q. Okay. Could I ask you to look at Article 9 of the

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1 ordinance, please? I'm sorry, not the national defense Law.

2 MR. BROOKE: Exhibit 10.

3 MR. EISENBRANDT: Yes, Exhibit 10.

4 A. Article 9?

- 5 Q. Yes. Let's wait just a minute so we can put that up on
6 the screen for the jury. Paragraph three. Sir, can I ask you
7 to read the third paragraph there, the final paragraph,
8 please?
- 9 A. The third?
- 10 Q. Yes.
- 11 A. The superior shall also be responsible for violations,
12 abuses and misbehaviors that results from his negligence or
13 weakness in overseeing the behavior of his subordinates. This
14 is what I tried to explain up until this time.
- 15 Q. So when it is a violation to the abuses and
16 misbehaviors, would that include torture of a prisoner or
17 killing of civilians?
- 18 A. Yes.
- 19 Q. Generally speaking, sir, what are the duties -- you've
20 described the duties of a commander, what are the duties of a
21 subordinate?
- 22 A. A subordinate has duties and rights. Amongst the
23 duties is to comply with all legal orders as issued by his
24 superior.
- 25 Q. Now, when you say legal orders, what does that mean?

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- 1 A. It means that they should not be against the
2 Constitution or other established law.
- 3 Q. So let me bring up Article 9 again and ask you to read
4 the first paragraph of Article 9.
- 5 A. Article 9. Legal orders of superiors must be executed

6 by subordinates, without remark or complaint of any kind,
7 without hesitation or murmur; yet they may complain in the
8 event there were cause for doing so, after they have carried
9 them out. This excludes that they may be an illegal order
10 because the only orders that can be obeyed are legal orders.
11 I can level a complaint, as this article says, as a
12 subordinate if I feel that that -- the execution of that order
13 places the structure that I belong to in jeopardy or that it
14 does not comply with the objective of the mission, but it
15 under no circumstances means that I can comply with an illegal
16 order, because it clearly states here that you only comply
17 with those orders that are legal.

18 Q. When you say legal, does that imply that subordinates
19 would have to follow the national laws and the national
20 Constitution?

21 A. Yes.

22 Q. Does that mean that subordinates have to follow --

23 MR. FARGARSON: Your Honor, I --

24 THE COURT: Objection sustained, leading.

25 BY MR. EISENBRANDT:

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DIRECT - JOSE LUIS GARCIA

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1 Q. What are subordinates' duties in terms of human rights
2 treaties that we discussed yesterday?

3 A. They have all of the obligations that emerge from the
4 statement and the contents of international and national law
5 that protects all citizens from all types of abuses that go

6 against the dignity of human people.

7 Q. Did these particular obligations apply in El Salvador
8 in 1980?

9 THE INTERPRETER: The interpreter requests that
10 counsel repeat the question.

11 BY MR. EISENBRANDT:

12 Q. Did these obligations apply in El Salvador in 1980?

13 A. I must say that, unfortunately, they were not complied
14 with, and I can explain what was happening.

15 Q. First, let me ask you: Were they in effect in El
16 Salvador in 1980?

17 A. All of the laws were in effect, the empire or the ruler
18 of the Constitution was never suspended. There are
19 dictatorships that establish a special regime that is above
20 the Constitution, such as, unfortunately, took place in my
21 country, but in El Salvador, the Constitution was never not in
22 effect.

23 Q. Sir, can I ask you to look again at the command chart
24 of the national guard slot?

25 A. I have it here on the screen.

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DIRECT - JOSE LUIS GARCIA

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1 Q. Sir, you have already walked us true through this, but
2 where does this particular chart come from, where is it found?

3 A. This is an annex to the organic law for national
4 defense of the Republic of El Salvador, and that establishes
5 the command links that govern the functioning of the armed
6 force in the year of 1979.

7 Q. As -- did it in 1980 as well?
8 A. Yes.
9 Q. Can I ask you to look at Article 375 of the ordinance,
10 please? Just a minute, let's give the jury a chance to see
11 it. Okay. Go ahead and read that, sir.
12 A. Article 375. It shall be proof of lack of spirit and
13 ineptitude in command, for any commanding officer who commands
14 others or who is alone at the head of a troop, to say that he
15 was unable to contain the troop under his command: That he
16 alone could not control so many, as well as other statements
17 expressed with the purpose of excusing himself for the
18 excesses of his people or for his cowardice in war action,
19 since, he who is in command, from the moment he takes control
20 of his troops must jealously enforce obedience in all matters
21 and inspire valour and disdain for risk.
22 Q. Sir, I would like to talk to you specifically about the
23 ministry of defense. Can you please look at Articles 36 and
24 37 of the law of national defense.
25 A. Of the organic law you said?

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DIRECT - JOSE LUIS GARCIA

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1 Q. Yes, sir.
2 MR. EISENBRANDT: Your Honor, may I approach
3 the witness to help him find the article?
4 THE COURT: You may.
5 BY MR. EISENBRANDT:
6 Q. Can you read Article 36 right now?

7 A. Yes. Article 36 states the ministry of defense of
8 Defense is comprised by the minister of the branch, the
9 undersecretary of defense and by the departments as considered
10 by the respective regulation.

11 Q. And in 1980, who was the Undersecretary of Defense in
12 El Salvador?

13 A. Colonel Carranza.

14 Q. Sir, what does this say about the duties of the
15 Undersecretary of Defense within the ministry of defense?

16 A. The Undersecretary of Defense has the duties and the
17 attributes that the law confers upon him. It all starts with
18 the political Constitution, and the political Constitution
19 says that the Undersecretary of Defense, along with the
20 minister of defense, are the officers who through their
21 signature give validity to the orders and degrees and other
22 measures that the president establishes concerning the
23 function of their specific area and that they are responsible
24 and that the minister and the undersecretary are responsible,
25 and it states it in those terms, for the consequences of those

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1 measures that they have signed, along with the President of
2 the Republic, and that that responsibility does not conclude
3 with the mere act of opposing the measure unless they have
4 resigned to their position prior. Let me show you. That's
5 Article 75 of the Constitution, which associates the
6 responsibility for the high command with the minister and the
7 undersecretary concerning all of the orders, all of the

8 measures, all of the agreements that regulate the functioning
9 of the armed force, and you will see that in addition, Article
10 77 says it is the minister and the undersecretary are
11 solitarily responsible for whatever they authorize under their
12 hand.

13 Q. Sir, let me ask you then -- let me ask you then to read
14 Article 37 then of the national defense Law.

15 Sir, let me stop you there and let him translate.

16 A. Article 37. The ministry of defense is instituted for
17 the following purposes:

18 1. To develop the national defense policy as pertains
19 to the fundamental principles by which the action of the armed
20 force must be inspired, towards the achievement of the
21 political objective of the Republic.

22 Q. Sir, let me ask you, in paragraph one where it says to
23 develop national defense policy, what does that mean, explain
24 that to us.

25 A. That means that the ministry is responsible to turn

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1 into action all of the resolutions or orders issued by the
2 Presidency of the Republic concerning the functioning, the
3 organization, et cetera of the armed force. This places this
4 organization, the ministry, at the head of the entire armed
5 force of the Republic, responsible for everything that is done
6 or what is not done throughout all of the levels of command.

7 Q. Sir, let me ask you to read paragraph three of Article

8 37.

9 A. Paragraph 3, to provide technical advice to the
10 President of the Republic and commander in chief of the armed
11 force in matters of national security and public safety.

12 Q. What does technical advice mean?

13 A. For a military man, the technical side is to know -- is
14 to know the functioning of all of the structures that are --
15 that comprise an armed force, from the highest levels all the
16 way down to the functioning of the lower -- lowest levels of
17 the organization.

18 Q. Sir, in looking again at the command chart, would you
19 please tell us, the national guard, national police and
20 Treasury Police that are there at the bottom, can you please
21 explain to us what those entities do?

22 A. In principle, they act -- well, they have a double
23 function based on the law. In principle, they actually act
24 and look at each unit individually. The national guard is
25 primarily in charge of the surveillance and border protection.

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1 That is a basic function of that organization. Secondly,
2 they must collaborate in everything that is -- everything that
3 is concerned with public order within the structure of the
4 Republic, and were it necessary to have -- to have within its
5 structure other organizations to operate as an armed force.
6 That is why they are part of the armed force.

7 The national police has the normal functions of any
8 police force, they are auxiliaries to justice, they maintain

9 public order, they perform arrests and take delinquents to the
10 judges, the normal functions of any police force. And in
11 accordance with their structure, they must also have tools
12 that will allow them to fight as an armed force in order to
13 cooperate with the rest of the force in the event of a foreign
14 aggression or in the event of an internal insurrection.

15 The treasury police, whereas by law, this is not a
16 public security force as we previous -- this unit collaborates
17 by making sure that the measures concerning the taxes are
18 under control and apply, and they also -- they are also
19 involved in the prevention of smuggling and with everything
20 that the treasury is in charge of, and they also work as an
21 auxiliary to the justice system. But the law also orders them
22 to have the tools necessary that allow them to fight as an
23 armed force. In fact, these three organizations did act as an
24 armed force in the war that was known as the Football War
25 against the Republic of Honduras. So they had war experience

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1 during the time in which we are analyzing their functioning.

2 Q. Professor, I would like to talk to you specifically
3 about the office of Vice-Minister of Defense in 1980. Can I
4 ask you to look at the ordinance again, at Article 141?

5 A. I have it here.

6 Q. Please read it, sir.

7 A. Article 141. The Undersecretary of Defense is the
8 immediate assistant to the minister of the branch whom he

9 shall replace in all cases of absence. He shall control the
10 various offices of the ministry and he shall act in all
11 matters assigned to him by the Minister.

12 Q. What kind of command authority is required of the
13 Undersecretary of Defense to replace the minister of defense?

14 A. That is included within the Code of Military Justice
15 where it speaks of authority, of jurisdiction and
16 responsibilities of the jurisdictional command. When the
17 Military Code of Justice speaks to the issue of what is a
18 superior, it says that he has to meet three conditions or some
19 of the three conditions. The first that he be, in fact,
20 exercising the command assigned to him.

21 Second, that he should be second in command and ready
22 to replace the superior when required.

23 And the third is based on the nature of the rank he
24 holds. I have -- as a colonel, as a colonel in the armed
25 force of El Salvador, I have the authority that my rank

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DIRECT - JOSE LUIS GARCIA

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1 assigns to me regardless of the position that I hold. Now,
2 the superiority that I have over the entire military structure
3 happens if I am given jurisdiction over the different elements
4 of the armed force. And this jurisdiction over the force
5 empowers me to, in short, compliance and oversee compliance.
6 And in that sense, the Military Code of Justice under Article
7 168 says specifically that the only parties authorized to
8 impose disciplinary punishment upon officers are the Minister
9 and the Undersecretary of Defense. Specifically, it provides

10 them with this authority in light of the gravest breach that
11 an officer can commit, and that punishment is the revocation
12 of command.

13 Q. Sir, let me stop you there.

14 MR. EISENBRANDT: Your Honor, may I have
15 permission to approach the witness?

16 THE COURT: You may.

17 BY MR. EISENBRANDT:

18 Q. Professor Garcia, can you tell us what that document
19 that is that I just handed you?

20 A. It is the Code of Military Justice.

21 Q. Is this the type of document that you and others in
22 your field of expertise in military structures would rely
23 upon?

24 A. Yes.

25 MR. EISENBRANDT: Your Honor, I would ask to

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1 move this into evidence as Exhibit 12.

2 THE COURT: So received.

3 (Exhibit Number 12 was marked. Description:
4 Code of Military Justice.)

5 BY MR. EISENBRANDT:

6 Q. Sir, can you read Article 186 for us, please, of the
7 code?

8 A. 186. The application of disciplinary punishments, in
9 cases having to do with violations committed by officers falls

10 upon:

- 11 1. The Minister and Undersecretary of Defense.
- 12 2. The Corps commanders, and
- 13 3. The commanders of Military Offices.

14 Termination of employment, as disciplinary punishment,
15 may only be imposed by the Minister or Undersecretary of
16 Defense.

17 Q. Sir, that final sentence, what is the implication of
18 that for the Undersecretary of Defense?

19 A. The explanation is that the law, education, it speaks
20 of the attributes of a superior. He's the superior because
21 he's the second in the chain of command which we have
22 established already the three conditions, and he's a colonel,
23 so as a superior, this provides him with authorization to make
24 that superiority or putting into movement for the compliance
25 of all legal orders and the laws and regulations of the

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1 Republic of El Salvador that the members of the armed force
2 must comply with, and this, therefore, vests upon him the
3 military jurisdiction, through this article, the authority to
4 impose disciplinary punishment upon officers within the
5 structure if they have not complied with or if they have
6 allowed that their subordinates not comply with, and in the
7 greatest cases, it gives him the responsibility, to him and to
8 the Minister to impose the gravest punishment that an officer
9 can receive, which is termination of employment.

10 Q. What type of punishment would be correct for torture of

11 a prisoner or killing of a civilian?
12 A. This is now a crime. So far, we have been speaking of
13 disciplinary breaches, and I would like to give a small
14 explanation, short explanation because I understand that for
15 the jury this must be at the highest levels of military
16 management, maybe a little bit difficult. In the military
17 organization, any military organization in El Salvador, in my
18 country, anything that is a crime or any military breach are
19 corrected by the application through the application of a
20 military -- of a Code of Justice, specifically Military Code
21 of Justice, so when its breaches of discipline or they are
22 specifically military crimes, such as rebellion or cowardness
23 in the face of the enemy, all of these military breaches, all
24 military personnel are judged through court's marshal or they
25 receive disciplinary punishment if these have been committed

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1 crimes. The violation of a human right is a violation that is
2 beyond the military jurisdiction. This is a violation that is
3 managed based on the laws of the country. So I, as a military
4 commander, if I discover that a human right has been violated
5 against a person and it has been done by a member of the armed
6 force, I then have the obligation as a superior officer to
7 appoint a military officer so that he may create a case file,
8 and this case file should be drafted immediately, investigate
9 where the crime was committed, what the circumstances of the
10 crime were, what the person involved alleges, what witnesses

11 allege, and the conclusions from the summary of that
12 investigation that I perform within military jurisdiction then
13 go to a civilian court, because this is not a military crime,
14 this is a crime of general nature. I don't know if I have
15 been clear on this, but we military people, we are ruled by
16 a -- concerning crimes and violations by our own military
17 code, but if the crime is attempt to kill, to rape, this is
18 not a military crime, it's a crime. So my obligation as a
19 military officer if it takes under my structure is to order
20 that an investigation take place immediately and that
21 investigation, that file, once it has been submitted to me at
22 the ministry of defense, turned over -- is then turned over to
23 the civilian authorities so that the formalities of law can
24 then be enforced. I don't know if I have been clear.
25 Q. Yes, sir. Let me ask you a specific example. If a

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1 member of the national police committed torture or killing of
2 a civilian, what should the Undersecretary of Defense do, the
3 Vice-minister of Defense?
4 A. If that news gets to or I find a crime has been
5 committed by -- did you say national police?
6 Q. Yes.
7 A. I have to place the chain of command in movement, which
8 as we explained at the beginning, goes from the top down, and
9 I must ask if I'm the Undersecretary of Defense, the commander
10 in chief of the general staff of the armed force what happened
11 there at the national guard, that I'm seeing it in the

12 newspaper or I'm getting this information. If the commander
13 in chief of the general staff knows that it took place, he has
14 to tell me how that event has been punished; and if he doesn't
15 know, he'll say to me I'm going to investigate. I will give
16 him a timeframe, I'll tell them you have 48 hours to provide
17 me with a report. So the commander in chief of the general
18 staff of the armed force then speaks to the Director of the
19 national police and requests a report from that commander of
20 what has happened at the national police where this or that or
21 the other is said to have taken place, and then I'll give him
22 24 hours to submit a report. We're talking about something
23 grave, we're talking about the violation of human rights, if
24 there is a crime that is stipulated to in the Constitution, so
25 the Director of the national guard starts an investigation,

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1 opens a file. It's a crime, and the results of this must all
2 end up at the level of the civilian justice. He orders the
3 creation or the performance of the investigation, and up the
4 chain of command, he sends this to the commander in chief of
5 the general staff who may or may not make any remarks or
6 observations to that investigation, and it will come to me at
7 the ministry of defense, and I will check and see if the
8 conclusions are correct. And I look at the considerations by
9 the signing officer, and I thus submit it to the corresponding
10 court so they can go ahead with their own investigation and
11 punishment. In word, I comply with the law. This is my

12 obligation as a superior officer to enforce and comply with
13 the law.

14 Q. If the report coming up through the chain of command
15 found that torture had been committed by a subordinate in the
16 national police, what should the Undersecretary of Defense do?

17 A. First thing that has to be done is what we've
18 described, the investigation has to take place and send it off
19 to the civilian justice authorities. But according to my
20 authority as a commander and my responsibility to prevent this
21 from repeating itself, I have a series of actions according to
22 my rank, according to my command responsibility that I can and
23 must enforce. But I would also like to place myself in 1979
24 when the events take place, because that's the operational
25 environment, as we say, as military personnel would say. At

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1 what time and under what circumstances did these events take
2 place. Remember, a group of young officers in El Salvador,
3 and this is in 1979, decide to do away with the torture, the
4 violations and all types of human degradations that were
5 committed by the institution, and for this end, they effect a
6 coup detat, and thus they overthrow the President of the
7 Republic, they kick out and fire all of the generals that were
8 working within the armed force and that group of -- and that
9 group of young officers decide, and they do this through a
10 proclamation, a famous proclamation that is issued in 1979.
11 There's -- that as of that time, the army is going to be at
12 the service of rather than against the people of El Salvador,

13 and they're going to create a structure where they're going to
14 share things with a group of civilians within the junta, and
15 that in order to direct or command the newer armed force, they
16 are in search of the officers that for them represented a
17 guarantee of compliance, compliance of what was established
18 within that proclamation. That is how they search Colonel
19 Garcia -- not me, but the one you mentioned earlier -- and
20 Colonel Carranza, who were officers with an enormous degree of
21 prestige within the institution. Colonel Carranza, who is
22 sitting over there, he was always the first at all of the
23 structures in his military career, he deserved and got all of
24 the respect from his subordinates. He was selected to come
25 here to the United States to go to courses. He was selected

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1 to go to the Superior War College of Mexico, and when the coup
2 takes place during the first week, he is appointed as the
3 commander in chief of the general staff of the armed force,
4 but since they wanted to give him an even higher status, they
5 set him up as the Deputy ministry of defense, along with
6 Colonel Garcia, who was also an officer with enormous prestige
7 as the minister of defense. And so to create the junta, they
8 assigned two colonels also with great prestige. These were
9 Colonels Gutierrez and Colonel Majano who had the functions of
10 the executive power along with the other civilians who were
11 members of the junta. So the revolution begins with two
12 colonels exercising the executive power along with four

13 civilians. One of them is appointed the commander in chief of
14 the armed force. First, it was Majano and then it was
15 Gutierrez. But the armed force begins to function as of the
16 level of ministry of defense as we have established
17 previously, and the specific military function, independent of
18 the political function that was all the way up there at the
19 junta, this is given to these two colonels who deserved the
20 trust by the younger officers, because they were convinced
21 that these two gentlemen were going to bring the house to
22 order and make the military organization function as it was
23 supposed to. But you listened to the Ambassador of the United
24 States who came to speak at this trial who told us that at the
25 highest level, at the political level, two trends faced off,

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1 one that said that in order to do away with the abuses, et
2 cetera, et cetera would be represented by Colonel Majano, and
3 the other said that in order to do away with all of these
4 demonstrations, we would have to apply what is known as
5 militarism. Any demonstration, beat it with sticks. These
6 are two positions that are completely different. One says
7 let's change the social order in order to stop the problems,
8 and the other said that in order for there to be no
9 demonstrations to not let the unions organize, then we apply
10 repression.

11 Q. Professor, did you hear Ambassador White talk about the
12 high command?

13 A. Of course.

14 Q. Can you tell us according to your knowledge who is in
15 the high command in 1980, what positions and what people?

16 A. The high command, according to what the law
17 establishes, is comprised by the commander in chief of the
18 armed force, the ministry and the undersecretary of defense
19 and the commander of the general staff of the armed force.
20 These four gentlemen were the high command of the armed force.

21 Q. And what is the purpose of the high command?

22 A. The high command must be the collection of the highest
23 ranking officers in the military organization, who are
24 responsible for the organization and the functioning, pursuant
25 to the laws of the entire military structure. Each one of

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1 them has a specific responsibility of command.

2 THE COURT: We probably need to take our break
3 at this time. We will have a 15-minute break. We will
4 come back and resume in 15 minutes.

5 THE CLERK: All rise. This Honorable Court
6 stands in recess for 15 minutes.

7 (Recess taken at 10:30 a.m. until 10:45 a.m.)

8 (Jury in at 10:45 a.m.)

9 THE COURT: All right. You may be seated.
10 Counsel may proceed.

11 MR. EISENBRANDT: Thank you, Your Honor.

12 BY MR. EISENBRANDT:

13 Q. Professor Garcia, before the break, you were discussing

14 the split in the Salvadoran military into two groups. Can you
15 tell us which -- in which group Colonel Carranza was?

16 A. I agree with the explanations and the statements by the
17 Ambassador who has more than an opinion, has direct knowledge
18 of what was going on. He explained that Colonel Carranza --

19 MR. BROOKE: Objection, Your Honor.

20 THE COURT: Objection sustained, since it would
21 simply repeat the testimony of a prior witness, and it
22 would be hearsay.

23 BY MR. EISENBRANDT:

24 Q. Professor Garcia, what is your personal understanding
25 of the situation in El Salvador in terms of the split you

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1 described between the military?

2 A. In El Salvador, that revolt by the younger officers
3 attempted to change the regime, the famous instituted regime
4 of the 14 families, but this affected long-term vested
5 interests, and so pressure on the military sector was
6 immediately felt as soon as the revolution started.

7 Unfortunately, the hard mans of the armed forces took sides
8 for those who defended the interests of the 14 families, and,
9 therefore, the struggle was established between a group of
10 officers who formed part of what was called the group that
11 controlled the revolutionary process which operated together
12 with the power. They were all young officers who only found
13 Colonel Majano on their side, and the conflict then was
14 established between two sectors. And the armed force

15 little-by-little went back to the previous activities. In
16 time, Colonel Majano was separated from his position and the
17 rest of the officers who formed part of the command were taken
18 out of their positions or sent abroad as military attaches so
19 that they would not interfere with the process. And, of
20 course, this caused an explosion of violence among the
21 population, which was unprecedented because they were
22 frustrated. They expected revolution to change all things,
23 but instead of changing them, they were not only maintained,
24 but rather exacerbated. And the pretext was the same one as
25 we have seen throughout Latin America with the dictatorships

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1 that covered it. The struggle against communism, anyone who
2 felt some kind of sympathy for the poorest classes was called
3 a communist.

4 MR. FARGARSON: Your Honor, excuse me, may we
5 approach up there just a moment?

6 THE COURT: Certainly, you may.

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

9 MR. FARGARSON: Your Honor, I could be wrong,
10 but I thought this witness was not a witness to give
11 history and to be an expert on history, but to testify
12 about the military and to give evidence about the military
13 order, and now he's going off into being an expert on not
14 only history, but the history of Latin America and other

15 areas, so we object.

16 MR. EISENBRANDT: Your Honor, I understand that
17 the witness can't pontificate on subjects too far away. I
18 do think in order to be able to talk about the Salvadoran
19 military structure, you have to be able to refer to a
20 situation in the country at the time and the status of the
21 military in order to locate the defendant within that
22 structure. And I intend to --

23 THE COURT: If you confine it to that, that
24 would be good. I think we're getting a little far afield.
25 It does need to be contextualized, and I understand that,

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1 because he's not testifying in a vacuum, he's testifying
2 about the structure within a context, but it needs to
3 be --

4 MR. FARGARSON: Shortened and to the point and
5 not all over the map.

6 MR. EISENBRANDT: Your Honor, I --

7 THE COURT: Generalized statements about events
8 and the world --

9 MR. BROOKE: Honduras.

10 MR. FARGARSON: And so there will be no
11 misunderstanding further, so that he doesn't start
12 commenting on what Ambassador White said to try to
13 interpret or bolster --

14 THE COURT: I sustained that.

15 MR. FARGARSON: But he mentioned that two

16 times, so hopefully no more of that.

17 THE COURT: Well --

18 MR. EISENBRANDT: He --

19 THE COURT: We need a little more guidance
20 there.

21 MS. BLUM: I think he has kind of a
22 professorial style as a professor --

23 MR. EISENBRANDT: I intend to bring him back.

24 MR. FARGARSON: We all agree to that.

25 THE COURT: I sustain the objection in the

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1 sense that you need to get more focused and stay within
2 the bounds of the general area of discussion.

3 MR. FARGARSON: True.

4 THE COURT: I sustain the objection.

5 (The following proceedings had at side-bar
6 bench.)

7 THE COURT: I sustained the objection. The
8 testimony is to be limited to the structure of the
9 Salvadoran military and the obligations of the military
10 commander. While certainly it can be discussed in a
11 context of events within El Salvador, it is not to go
12 beyond the area in which the witness has been qualified as
13 an expert, so we have discussed that, and I will allow you
14 to redirect the question.

15 MR. EISENBRANDT: Thank you, Your Honor.

16 BY MR. EISENBRANDT:
17 Q. Professor Garcia, within the split within the military
18 structure that you were describing, where did Colonel Carranza
19 fall?
20 A. He was on the side of those who wanted to maintain the
21 status quo.
22 Q. Professor, can I ask you to look at the national
23 defense Law again at Article 26, please?
24 MR. EISENBRANDT: Your Honor, may I approach
25 the witness?

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1 THE COURT: Yes, that's fine.
2 BY MR. EISENBRANDT:
3 Q. Professor, can you please read Article 6 just through
4 the first point there? I'm sorry, 26.
5 A. It speaks to the duties of the Director of the national
6 defense, and it reads, Article 26. It is the responsibility
7 of the Undersecretary of Defense to provide technical advice
8 to the minister of defense in all matters concerning the
9 branch.
10 Q. Professor, earlier, with regard to Article 36, you
11 described technical advice, can you please tell us how that
12 would apply here in this article?
13 A. Technical advice consists on being able to express
14 opinions, to advise or to order operations of the different
15 elements that form part of the structure of the armed forces.
16 Here it reads: In all matters concerning the Branch, the

17 Branch being the whole group of elements forming part of the
18 armed forces, in order for me to be able to provide technical
19 advice or assessment, we saw that graph earlier listing all
20 the organizations within the armed forces, it is necessary for
21 me to know how they operate, to know how they are managed, to
22 know how they are operating, to know what are the capabilities
23 of each one, I should then intervene directly in order to be
24 informed, and I should order all the elements of the structure
25 to report to me information that will allow me to fulfill this

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1 technical duty to the ministry of defense.
2 Q. What sorts of obligations would the Undersecretary of
3 Defense have to obtain information?
4 A. I must have the capacity or capability of traveling to
5 any branch of the forces to observe the operation, to
6 interrogate its components, to see them operate in the field,
7 to take some corrective measure, if necessary, which means
8 that I must have the capacity for handing down orders in order
9 to make sure that the mission is being accomplished, and I
10 must also report to the Minister who has political
11 responsibilities with the army command as to how this
12 structure is operating and these opportunities granted upon me
13 by this very article. As a superior, as we said earlier, I
14 have the authority and I have the disciplinary elements at my
15 disposal to apply those to any officer who may not be
16 fulfilling or complying with the orders from the defense

17 ministry.

18 Q. Professor Garcia, can you please read the second point
19 under Article 26 of the responsibilities?

20 A. Second, to coordinate the technical function of the
21 general staff of the armed force with each of its different
22 branches.

23 Q. What does coordinate the technical function imply?

24 A. We know that military operation means the use or
25 implies the use, the joint use, the joint use of one, two or

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1 more elements of the armed forces. Perhaps the army may need
2 support from the air force or craft from the navy or perhaps
3 to provide security of order, these are operations that are
4 called joint forces operations. In order to provide this
5 technical function, I must understand all the operation of all
6 of these branches, and then I must work with the general chief
7 of staff who is really in charge of conducting those forces in
8 order to put together a structure that will allow him to
9 comply with his mission, to fulfill his mission, and that is
10 why the regulations bestowed this authority on the
11 Undersecretary of Defense.

12 Q. Sir, would you please read the third point under
13 Article 26?

14 A. Yes, it reads: To propose appointments, removals,
15 assignments, resignation acceptances and awarding of leaves
16 for officers and employees of the armed forces.

17 Q. Practically speaking, what would the Undersecretary do

18 to comply with that third point?
19 A. In order to know whom I must promote, whom I must
20 demote, who I should change, who I need to throw out, I need
21 to know this thing. Otherwise, I cannot propose a thing. It
22 is my duty to advise the minister of defense who also has the
23 same mission that I have together with the commander in chief
24 of the armed forces who is in the end who will decide.
25 Therefore, my command authority must allow me to oversee all

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1 activities carried out by the armed forces and to have true
2 knowledge of who is who within the armed forces because,
3 otherwise, how could I comply with this mission if I don't
4 know the people.
5 Q. Professor, you have testified about the obligations of
6 a commander in terms of investigating, what are the duties of
7 a commander to prevent human rights abuses?
8 A. I will perhaps repeat something that I have already
9 expressed before, but perhaps it is convenient that I do so,
10 because it is basic and essential. Within the chain of
11 command, the commander receives and provides information of
12 all the chain, and for all the chain, I receive information
13 through my orders. If I am within the ministry of defense, I
14 have to provide information to the members of the general
15 staff, to the general and commander of the air force, to all
16 branches. Furthermore, I receive information as to what is
17 going on through the reports that they should provide me with

18 through that very chain of command. The army, for instance,
19 reports of anything that is going on to the chiefs of staff.
20 The general chief of staff report tells me about what is going
21 on in the army and I, in my own duty, must report to the
22 commander in chief. Information comes and goes from superiors
23 to subordinates, from subordinates to superiors, and that is
24 the main means that I have in order to learn what is going on
25 through what flows through my chain of command, but that is

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1 not the only means that I have.

2 Q. Professor, if a commander receives information --
3 information that subordinates have continually been torturing
4 and killing, what concrete steps could a commander take to
5 prevent future tortures and killings?

6 A. First of all, I must make sure that the information has
7 an acceptable degree of truth. For that purpose, I have my
8 own means of information at these levels within the defense
9 ministry. I have -- in the general staff of the armed forces,
10 which is under the ministry of defense, I have the section,
11 it's actually the Intelligence Department, the G-2. The G-2,
12 one of its missions is to keep the members of the structure
13 well informed, their superiors, as to what is happening,
14 everything that is happened. That is the intelligence
15 function. That is one means I have. Furthermore, I have
16 other means.

17 Q. With that information, what steps could a commander
18 take with a particular unit responsible for torture and

19 killing?

20 A. Once that we have verified that the information is
21 real, immediately I must take a number of legal measures which
22 are, as we have said before, ordering an investigation in
23 order to determine the identity of those responsible, then see
24 whether they have already been punished or whether they have
25 been placed at the orders of justice, and if that has not been

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1 done, that report on an investigation, once I receive it, I
2 must forward it to the corresponding judge in the several
3 instances or agencies who try crimes against persons and
4 against human rights. That is an element of justice that is
5 present in Salvadoran law. And then the civil judge who is
6 charged with the case, I will just give to him kind of a
7 report. Besides all that, I must also take disciplinary
8 measures. If it was an officer who has not complied with his
9 duty or has allowed subordinates to do so, I must order
10 suspension of his employment immediately, he cannot continue
11 to work in this capacity, and the person who -- the
12 perpetrator himself, I have the authority of placing him under
13 arrest and put him at the disposition of justice, and I have
14 to do that. I cannot allow those people to continue in an
15 attitude that will lead them to commit such violations.
16 Furthermore, this must be an example for the rest of the
17 structure in the sense that I will know -- I will not allow in
18 any way to continue the type of crime that you have described

19 to me.

20 Q. If a commander received information that his
21 subordinates were committing human rights abuses while wearing
22 civilian clothes, what steps could you take to prevent that in
23 the future?

24 A. Now, evidently, this is information that arrives on my
25 command, and I always have the duty of finding out whether

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1 this is real information or whether this information that does
2 not deserve our faith, as we say in military language, meaning
3 it does not deserve our attention, if it does deserve our
4 attention, but I don't really have the capacity of knowing who
5 it was, where it was. Because the axis information is being
6 denied to me, I, as a commander, have every capacity and
7 authority of immediately going to the place where the events
8 took place and verify where these violations have taken place.
9 At the place of the events, I would interrogate all those
10 allegedly responsible. Furthermore, one does know through the
11 intelligence services that in this place is where such things
12 happen, there are some who are promoters or some are kind of
13 the heads. If you're a commander, you can find out everything
14 that is going on, so the first thing I would do in use of my
15 authority in being able to go at my own will, I can take those
16 who are allegedly the perpetrators and I will send those to
17 the most dangerous place on the border. Immediately, I would
18 gather the rest of the group, and I would say I would never
19 even tolerate any murmur with regards to this. Now, if we

20 have information that they are committing crimes while in
21 disguise and without wearing their uniforms, I will
22 immediately transfer them or run them from the institution.

23 Now, the officer directly in command of this
24 group, if that person is firmly pointed, as pointed out as
25 the one responsible, I could immediately suggest that he

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1 may be sent to retirement or transfer him immediately.
2 The very thing with his immediate superior, if he has
3 tolerated this, let's say in a department, which was army
4 organization, if the department chief does not take
5 measures to correct what one of the companies or sections
6 are doing, he is also responsible and so, therefore, I
7 must punish him too. I have to tell him you are
8 responsible for allowing such a thing, for allowing the
9 prestige of the armed forces to be in everyone's mouth
10 because you have failed to take preventive methods. In
11 the end, there's a number of things I can do.

12 Q. Professor, let me ask you about the treasury police
13 specifically in 1983. What was the reputation of the treasury
14 police in El Salvador?

15 A. From the report I have obtained, I can say that the
16 reputation was not the best. As a matter of fact, it was very
17 bad. It was one of the organizations that had -- that was
18 famous for committing the most human rights violations.

19 Q. If you became Director of the treasury police, what

20 would you do on your first day in light of this?
21 A. On the first day of my command and if there were rumors
22 and news that even within my own command there were
23 clandestine places of detention where human rights were being
24 abused, I would have visited every single corner of my office,
25 my home, the place where I exercise my command and make sure

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1 that under my command there would be no activities except for
2 those strictly accepted and authorized and ordered by military
3 regulations and legal orders or laws. Then I would gather all
4 the chiefs of the Finance Police and tell them that even up to
5 that moment there had been some strange events, as of that
6 moment, I would not tolerate them any more. If I had some
7 precise information, as I said earlier, as to one of those
8 members who were alleged violators, particularly human rights,
9 which was the most horrible of knowledge about this
10 institution, I would have immediately separated them from
11 office. I would not tolerate a rotten apple, and then I would
12 proceed to investigate case-by-case those who will be reliable
13 as per reports existing on the operations of this structure.

14 MR. EISENBRANDT: Thank you, Professor Garcia.
15 Your Honor, I pass the witness.

16 THE COURT: Cross examination?

17 CROSS EXAMINATION

18 BY MR. BROOKE:

19 Q. Buenos dias, Professor Garcia.

20 A. Good morning, Mr. Attorney.

- 21 Q. If there is any question that you do not understand,
22 please do not hesitate to have me repeat it.
- 23 A. Thank you.
- 24 Q. How many days have you been in Memphis?
- 25 A. I have been -- I believe this is the fifth day.

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- 1 Q. And besides being paid to testify, are you also being
2 paid for reimbursement of your expenses?
- 3 A. Yes, I'm provided with food and lodging.
- 4 Q. And besides testifying in this matter, how many other
5 cases have you testified for either one or more of these
6 attorneys who are in the courtroom here today?
- 7 A. Of those present here, only for one, Madame.
- 8 Q. And this year, how many cases have you testified in for
9 the United Nations or the OAS or any other party?
- 10 A. This year, I have collaborated with Judge Gavel
11 (spelled phonetically) in Paris, France with regards to a
12 trial that he is following against Argentine generals
13 responsible for the murders of French nuns.
- 14 Q. Have each of the cases you have testified for this year
15 had the same fee arrangement?
- 16 A. No.
- 17 Q. Have they been higher or lower?
- 18 A. I have only been paid for the trip.
- 19 Q. Is it true that the per capita income in Argentina is
20 about \$12,000 per year of U. S. dollars?

21 A. According to whom?
22 Q. From your knowledge as being a Buenos Aires citizen in
23 Argentina --
24 MR. EISENBRANDT: Objection, Your Honor. The
25 witness is not qualified as an economic expert.

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CROSS - JOSE LUIS GARCIA

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1 THE COURT: Objection is overruled, only in the
2 sense that it is designed to bring some perspective to the
3 compensation question.
4 A. Well, that depends. You see, an attorney makes a lot
5 more than a laborer, and if you're asking about the average
6 salary throughout the country, I don't really know what you
7 mean.
8 BY MR. BROOKE:
9 Q. Professor, Argentina is at the bottom of South America,
10 is that correct?
11 A. It is in the southern most part, not in the lower part.
12 THE COURT: Sort of depends on where you are in
13 the universe.
14 BY MR. BROOKE:
15 Q. And El Salvador is northwest of Argentina?
16 A. It is northwest, yes.
17 Q. I would like to understand your actual service in the
18 Argentine army. Am I correct that your first assignment was
19 in the cavalry in 1948?
20 A. Yes.
21 Q. Sir, when you started in the cavalry in 1948, were --

22 was the calvary identified as the gaucho part of the army?
23 A. I wish it had been recognized in that manner, because
24 the gauchos are indeed a national pride and creators of our
25 nationality, but, no, they were soldiers.

†

CROSS - JOSE LUIS GARCIA

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1 Q. And in that position, you were in -- if we look at our
2 military chain of command chart, you were somewhere underneath
3 the army?

4 A. Yes, way down.

5 Q. And then how long did you serve in the calvary?

6 A. I served in all ranks all the way to captain. In my
7 country, it is not like in El Salvador, if you enter the
8 calvary, you die as a calvary man, and if the gunner goes into
9 artillery, he ends up as an artillery man; we do not switch
10 branches.

11 Q. How long did you serve in the army in the calvary
12 corps?

13 A. I was there until the third year as a captain when I
14 entered the Superior War College, it was approximately 10
15 years.

16 Q. So are you saying you were three years serving in the
17 calvary?

18 A. Ten, ten.

19 Q. Ten years. So from 1948 to 1958, approximately, is
20 when you served in the calvary?

21 A. Approximately.

22 Q. Was any of that service for those ten years while you
23 were teaching at any war college or going to a war college?
24 A. No, it was when I was in calvary regiments, and then
25 later on when I was in the calvary school.

♀

CROSS - JOSE LUIS GARCIA

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1 Q. After you served up to the office of a captain in the
2 calvary, approximately up until 1958, what was your next
3 assignment?
4 A. Afterwards, I attended Superior War College for three
5 years.
6 Q. And then after that three years, what did you do?
7 A. Then I was selected to come to the United States to
8 take the course as armored carrier in Fort Knox.
9 Q. I believe that course was approximately one and a half
10 years?
11 A. One year.
12 Q. So that puts us to about 1962. What did you do then?
13 A. It would be 1963.
14 Q. All right. And what did you do then.
15 A. Then I went back to the calvary school that I had just
16 left. After I had been there for about three months there at
17 the calvary school in courses, then I was selected for part of
18 what was called Special Commission for the Restructuring of
19 the army, which changed the full structure of the Argentine
20 army through one year's work.
21 Q. It took one year to change the structure?
22 A. Two -- three years.

23 Q. And then what did you do?
24 A. Then I was selected to be the commander of the Sixth
25 Cavalry Regiment.

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CROSS - JOSE LUIS GARCIA

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1 Q. And I believe at the Sixth Cavalry, you had
2 approximately 2200 troops under your authority?
3 A. Yes, that was the greatest number we had, because in
4 the Argentine Republic we have a graduating class that comes
5 in, and then nine or ten months later, we start getting
6 attrition and so regiments start being reduced. In those
7 days, we used to have military service, compulsory military
8 service, we would get a class coming in, and then later on
9 they would leave.
10 Q. And then you were -- as commander of the Sixth Cavalry
11 Regiment for how long?
12 A. Two years, almost two years.
13 Q. So that puts us to about 1967 or '68?
14 A. Yes.
15 Q. And then what did you do?
16 A. Then I was taken to the Joint Chiefs of Staff of the
17 armed forces.
18 Q. And what was your position there?
19 A. I was in charge of the Operations Department of the
20 Joint Chiefs of Staff for a long term.
21 Q. How long?
22 A. I was there on one -- two years.

- 23 Q. So that puts us at about 1970, 1971?
24 A. Yes.
25 Q. And then what did you do, sir?

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CROSS - JOSE LUIS GARCIA

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- 1 A. That is when, together with a group from my army, all
2 of us having the rank of colonels, we decided to end the
3 military dictatorship.
4 Q. From 1948 to 1971, how many military dictators did you
5 serve under?
6 A. I can say -- please, let me do the calculation. First,
7 the revolution called liberty -- first, the revolution called
8 liberating revolution which ended the presidency of President
9 Perone. Then the dictatorship of General Ongania and then the
10 dictatorship of General Lanuce, and that is when we revolted.
11 Lanuce, and that is when we revolted.
12 Q. Now, when you were in the army, I take it you were not
13 part of the general staff or the Office of ministry of defense
14 for your country?
15 A. During that time period?
16 Q. During the time period we have talked about up to now.
17 A. Yes, through the command chain, I did depend on the
18 ministry of defense.
19 Q. I've not asked if you depended on it, I asked if you
20 were, in fact, part of.
21 A. I was part of the ministry of defense, because the
22 ministry of defense was comprised of a number of organizations
23 from the top levels all the way down to regiment level.

24 Q. Did you work in the office of the ministry of defense
25 for Argentina up until 1971?

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CROSS - JOSE LUIS GARCIA

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1 A. No, I formed part of the structure, but at the
2 Minister's office, I did not work.
3 Q. Were you of the commander in chief of the armed forces
4 of Argentina?
5 A. They didn't let me get there.
6 Q. On the -- after 1971, what was the next position that
7 you ever accepted with the Argentine military forces?
8 A. Prisoner.
9 Q. And what was the next position you accepted?
10 A. The next position was once the regular government had
11 come back, it was -- it was once the constitutional government
12 had returned and they appointed me as a professor at the
13 Superior War School, and at that point, I had to really learn
14 what the composition was of the Office of the ministry of
15 defense because I needed to teach about it.
16 Q. And you taught and were with a war college or war
17 school from then on, is that correct?
18 A. At the Superior War College for two years, interrupted
19 then by the war of the South Atlantic.
20 Q. The war of the South Atlantic, we know as the Invasion
21 of the Falkland Islands?
22 A. I know no such a thing as Falkland Island. I know the
23 Malvinas Islands, which are Argentine.

24 THE COURT: I think he used the nongovernmental
25 term in that area, so we can move on.

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CROSS - JOSE LUIS GARCIA

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1 BY MR. BROOKE:

2 Q. In World War I, the Argentine army and the country was
3 declared a neutral, is that correct?

4 A. I understand so. I was not really born yet, but I
5 understand that Argentina was neutral during that conflict.

6 Q. What is your age, sir?

7 A. Eighty years of age.

8 Q. And in the second world war, up until March 27th, 1945,
9 Argentina declared itself to be a neutral nation, didn't it?

10 A. It was neutral during the first years, and during the
11 last year, it declared war on the countries of the Axis.

12 Q. And up until that time, it provided arms for the Axis
13 nations, didn't it?

14 A. That is what you say. I have no such information.

15 Q. Well, when you began your service in 1948, had
16 Argentina also become a haven, a center for accepting
17 former --

18 MR. EISENBRANDT: Objection, Your Honor,
19 relevance.

20 THE COURT: Objection sustained, not relevant
21 in the case.

22 BY MR. BROOKE:

23 Q. Sir, on the military chain of command, where do the
24 military colleges fit?

25 A. The military colleges fall within each one of the

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CROSS - JOSE LUIS GARCIA

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1 different branches of the forces. There's one for the army,
2 one for the air force. Each one of these structures has a
3 recruitment center, and I'm making reference to my country.
4 I'm not sure if you're asking about that.

5 Q. For your country, the military colleges that you served
6 for would all have been under the command of the army?

7 A. Yes, the army.

8 Q. In 1979 and 1980 in El Salvador at the Vice-minister,
9 Sub-minister of Defense office, how many people did
10 Mr. Carranza have on his staff?

11 A. In those days, the army of the Republic of El Salvador
12 had covered a lot of its organization, meaning that they
13 had -- or under the organization, they had the superior
14 command of the chief of the armed forces which depended, and
15 they had a group for laborer. It would be perhaps -- well, I
16 don't really know because I did not personally tour this, but
17 like any work organization, it would have personnel,
18 intelligence, logistics departments, and it also had general
19 staff of the armed forces, and I don't want to give you a
20 number, because I don't really know.

21 Q. How many people worked in the intelligence area?

22 A. No, I don't know.

23 Q. How many people were in the air force?

24 A. How many people worked at the air force is that the

25 questi on?

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CROSS - JOSE LUIS GARCIA

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1 Q. Yes.

2 A. Of El Salvador?

3 Q. Yes.

4 A. It was a reduced number, because the air force was
5 barely being put together. They had a small number of
6 aircraft. The air force might have, I calculate, maybe 200 or
7 300 persons.

8 Q. How many people worked for the national navy?

9 A. Yes. National navy was also being formed. They were
10 operating on small patrol boats in the Gulf of Vonseca,
11 particularly on the border of Nicaragua, and I calculated it
12 might have the same amount of people that the air force had.

13 Q. How many people were in the national guard?

14 A. I can actually tell you that the combined armed forces
15 of El Salvador back in 1979 was in the order of 14,000
16 persons, and the mass was under the army, then the national
17 guard. The national police had some less troops, and then the
18 smallest, of course, was the treasury police.

19 Q. Beside these Treasury and national police, were there
20 local police departments also?

21 A. Not that I know of.

22 Q. When the coup detat took place, I think, in October of
23 1979, how many military were discharged through the result of
24 the coup detat?

25 A. As I said earlier, those who were run from their

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CROSS - JOSE LUIS GARCIA

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1 institution were the generals, not a single general was left
2 in there. There were 10 or 15 generals in the structure
3 accompanied by some colonels.

4 Q. So is it your testimony basically then that the rest of
5 the military stayed intact?

6 A. The rest of the forces were left practically intact
7 except for some small modifications.

8 Q. Where in the military chain of command that you have
9 referred to do U. S. military advisors appear?

10 A. U. S. military advisors, I remember there was a colonel
11 in charge of the program for advisory and equipping the
12 Salvadoran armed forces who worked at the level of the
13 ministry of defense, and then each one of the other forces,
14 let's say the army, the air force, they had their own
15 advisors.

16 Q. Are you saying then they would work within this
17 military chain of command?

18 A. No, outside, but for the United States armed forces,
19 they did send troops outside their country.

20 Q. Am I correct that you started serving as an expert
21 witness in 1983?

22 A. In 1984.

23 Q. And that first trial was in Argentina, then you were in
24 a trial in 1991 in El Salvador, and then in a trial in Haiti
25 where each of the defendants were in a criminal case, is that

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CROSS - JOSE LUIS GARCIA

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1 correct?

2 A. They were accused -- well, actually, I did more cases
3 like this than you say, but those which you have pointed out,
4 they were all accused of human rights abuses.

5 Q. And those were criminal trials in the country where the
6 crime was committed, is that correct?

7 A. That is correct, criminal cases handed down by civil
8 courts in which I served as an expert witness such as this
9 one.

10 Q. Now, as a military expert, designated expert for the
11 United Nations since 1983?

12 A. No. It was in 1984, as I said, and I was working for a
13 commission that was trying the three military juntas that we
14 had in my country from 1976 to '84, and they were tried for
15 violations to human rights by a federal chamber which saw all
16 three cases together, and that federal chamber proposed that I
17 work as an expert witness because in those days, I was a
18 professor of national defense at the national defense School.

19 Q. Well, are you an expert for the United Nations in
20 stopping human rights violations in countries around the
21 world?

22 A. No, not to stop them. I am an expert for advising
23 courts on these matters. I don't really have a power to stop
24 them, but I can provide my opinion as an expert witness at any
25 trial on alleged violators of human rights.

- 1 Q. And this is for what you are no amateur?
- 2 A. I am no amateur because I have a title that enables me
3 to do so, just like you have a title as an attorney which
4 allows you to perform at this trial.
- 5 Q. In the chain of command, everyone is under authority,
6 is that correct?
- 7 A. All groups or persons are under an authority.
- 8 Q. And that is the basis for every military structure?
- 9 A. That is the basis, that does not detract responsibility
10 or authority from any of the members of the chain of command.
- 11 Q. You had mentioned the Geneva Conventions?
- 12 A. Yes, I made reference to the four Geneva Conventions
13 with its third additional article which is meant to cover
14 internal conflicts in order to protect not only prisoners of
15 war but also civilian populations involved in a conflict and
16 all the norms that a military commander must follow of any
17 hierarchy in order to protect those who have deposed weapons,
18 those who are not involved in the conflict or who are victims
19 of the conflict.
- 20 Q. And as you said, there is to be the greatest care
21 extended to observe and not interfere with the civilian
22 population?
- 23 A. It's not a matter of not interfering, it is rather
24 avoiding causing them any harm or avoiding any crimes against
25 them. It is not a matter of not interfering with the civilian

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CROSS - JOSE LUIS GARCIA

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1 population, but rather making sure that there are no abuses
2 against the population.

3 THE COURT: We probably should take our lunch
4 break now.

5 Ladies and gentlemen, we will be coming back at
6 1:30, that's an hour and 15 minutes from now. Do not
7 discuss the case among yourselves. Do not let anybody
8 talk with you about the case. We will start promptly at
9 1:30.

10 THE CLERK: All rise. This Honorable Court
11 stands in recess until 1:30.

12 (Recess taken at 12:15 until 1:30 p.m.)

13 THE COURT: You can bring the panel in.

14 (Jury in at 1:30 p.m.)

15 THE COURT: You may be seated, and counsel may
16 proceed.

17 BY MR. BROOKE:

18 Q. Professor, you have indicated that in October or the
19 fall of 1979, there was a coup detat in El Salvador.

20 A. Could you repeat the years?

21 Q. 1979, October, 1979.

22 A. Yes.

23 Q. And rather than there being a commander in chief, a
24 junta was established?

25 A. I have already clarified that the commander in chief

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1 position belongs to the president of the country or whomever
2 replaces him. And then the junta appoints one of its members,
3 Colonel Majano as the commander in chief of the normal forces.

4 Q. Who was -- who were the members of the junta?

5 A. The military members of the junta were Majano and
6 Gutierrez, both colonels, and then after that, they were
7 the -- the names escape me at this point, but they were
8 civilians who represented different political trends in the,
9 shall we say, in the City of San Salvador.

10 Q. So you do not know the names of the four civilian
11 members of the junta?

12 A. Yes, I have them written down, but I don't recall them.

13 Q. When you were going to El Salvador in 1991 to
14 participate in the trial in El Salvador regarding the Jesuit
15 priest, how much time did you spend in El Salvador at that
16 time?

17 A. A little bit over three weeks.

18 Q. During that time, what government documents did you
19 review?

20 A. At that time, I reviewed -- well, I start, as I always
21 do, with the political Constitution of the country, then I
22 take up the defense law, then the Code of Military Justice,
23 then I take the ordinance that is in force for the period, and
24 from there, new needs for other documents will arise,
25 depending on the type of matter that I'm investigating.

- 1 Q. You indicated that while you were there in 1991, it was
2 the height of the Civil War?
- 3 A. It was the height of -- well, it was almost the end of
4 the Civil War, because there was a face off, shall we say, the
5 country's authorities with a guerrilla that was operating also
6 in the country. It was close to the beginning of the peace
7 talks.
- 8 Q. Do you know when Mr. Carranza left El Salvador?
- 9 A. Yes, in 1984.
- 10 Q. You've discussed the Argentine Consti tuti on provi si on
11 that said all ci ti zens are required to rise up against a
12 mi li tary di ctatorship, is that correct?
- 13 A. Yes.
- 14 Q. And you with other officers in approximately 1971
15 decided to exercise and rely upon that provi si on, is that
16 correct?
- 17 A. Yes.
- 18 Q. How long had that provi si on been in the Argentine
19 Consti tuti on?
- 20 A. As of the year 1853.
- 21 Q. And is the provi si on still in the Argentine
22 Consti tuti on?
- 23 A. Yes.
- 24 Q. And since 1948, since you have been part or associated
25 with the Argentine army and government, how many military

1 dictatorialships have there been?

2 A. You're asking me while I was in service?

3 Q. Since --

4 A. After duty --

5 Q. You have been -- from 1948 all the time through your
6 association as a professor with war colleges and everything.

7 A. I believe I already answered that, but I will repeat.
8 Well, in 1955, we had the liberating revolution which was a
9 military dictatorship, and then in the year 1966, we had a
10 dictatorship of General Lanuce, and then in '67, '68, around
11 there, I am not exactly clear, the dictatorship of General
12 Lanuce against which I did rebel.

13 Q. Did you rebel against the dictatorship, military
14 dictatorship of General Jorge Videla in 1975?

15 A. I was outside the armed force because, well, I had
16 just -- I had just -- I had been arrested, I had been in jail.

17 THE COURT: Let's check your battery there, it
18 is probably dying on this one. We will get you a new
19 battery.

20 THE INTERPRETER: The interpreter would supply
21 the second portion of the witness' response.

22 THE COURT: Yes, sir.

23 A. Along with other friends, who in the same situation, we
24 had established a security company in order to make money with
25 which to live. When democracy returns to my country, I return

1 to the armed force.

2 BY MR. BROOKE:

3 Q. Did you rebel against the military dictatorship of
4 Field Marshal Roberto Viola in March of '81?

5 A. He wasn't a field marshal, he was a lieutenant general,
6 but I could not rebel because I have already told you, I was
7 not a member of the armed force, I was outside, I didn't get
8 back in 1983 when the third junta or dictatorship concludes
9 and the presidential administration of Dr. Alfonsín begins.

10 Q. And Raul Alfonsín is with the Radical Civic Union?

11 A. That is the name of the party that won the election and
12 he goes in as the president.

13 Q. And in 1979 in El Salvador when the coup d'état takes
14 place, you have described that there was a revolution in
15 place, is that correct?

16 A. Yes.

17 Q. And you have described that as a military officer, one
18 of your obligations is to avoid and protect the country and to
19 avoid the jeopardy of the insecurity of the state?

20 A. Yes, it is to protect the country and to protect the
21 institutions of the government, the governmental institutions
22 that emerge from the Constitution.

23 Q. At any time while you have served in the army of
24 Argentina, were you retained by the Central Intelligence
25 Agency of the United States and requested to provide

1 information?
2 MR. EISENBRANDT: Objection, relevance.
3 THE COURT: Let's talk about it at side bar.
4 (The following proceedings had at side-bar
5 bench.)
6 MR. EISENBRANDT: Your Honor, I don't know what
7 his answer is going to be, but I don't know what --
8 THE COURT: Well, do you know the answer?
9 MR. BROOKE: I have no idea.
10 MR. EISENBRANDT: I don't know what that has to
11 do with his expertise in the military structure, in the
12 Salvadoran military structure, in particular.
13 THE COURT: I wouldn't think it would make any
14 issue in the case more likely or less likely --
15 MR. BROOKE: I think our position, Your Honor,
16 has been that Mr. Carranza was recognized by the United
17 States government to be a person of trust.
18 THE COURT: I don't know about that. I don't
19 know any information to that effect.
20 MR. BROOKE: That's our position.
21 THE COURT: Right.
22 MR. BROOKE: And this man is attempting to --
23 THE COURT: Our government also has paid some
24 pretty bad people.
25 MR. ESQUIVEL: We agree with that, Your Honor.

1 MR. BROOKE: In this case, this man has
2 testified as a military expert. We're saying effectively
3 go after the weight of his testimony, that we're showing
4 that his relationship, experiences have absolutely no
5 comparable situation to that of Mr. Carranza, what he's --

6 THE COURT: Well, that would be different from
7 the question of whether or not he -- what was he -- I have
8 no idea the answer. Nobody knows?

9 MR. EISENBRANDT: I don't know what the answer
10 is.

11 THE COURT: Why don't we find out the answer?

12 MR. FARGARSON: Well, he answered the question.

13 MR. EISENBRANDT: I actually didn't hear what
14 he said when I was walking up.

15 MR. FARGARSON: He said something. Even though
16 we were coming to side bar, I understood him to say
17 something in Spanish like God help me from -- God keep me
18 from making something.

19 THE COURT: I don't know.

20 (The interpreter came to side bar.)

21 THE INTERPRETER: Yes.

22 THE COURT: I think we did not hear the answer
23 that he gave.

24 THE INTERPRETER: The objection was raised, and
25 the gentleman uttered some words, but you were already on

1 your way to side bar, so I did not interpret.

2 THE COURT: And our only question was did he
3 indicate already whether or not he ever worked for the
4 CIA.

5 THE INTERPRETER: In a matter of speaking, yes.

6 THE COURT: He did indicate whether or not --

7 THE INTERPRETER: Yes, he did indicate whether
8 or not.

9 THE COURT: Did he say whether or not he did,
10 did he yes or no?

11 THE INTERPRETER: He said God forbid such a
12 thing should fall upon me.

13 THE COURT: That's what I thought he said.

14 We will let him answer the question. Sometimes
15 it makes a difference. You want to know and they don't
16 have an objection, then we have no issue.

17 MR. EISENBRANDT: No, as long as I'm not
18 waiving an objection on any further relevance on that.

19 THE COURT: Okay. No problem.

20 (The following proceedings were had in open
21 court.)

22 THE COURT: The witness may answer the
23 question.

24 A. God forbid such a thing should fall upon me.

25 BY MR. BROOKE:

1 Q. And, sir, the greatest punishment that an officer can
2 have is the revocation of his command and termination of
3 employment?
4 A. As a result of a disciplinary breach, yes. If you talk
5 about a crime, then that's something else.
6 MR. BROOKE: Thank you very much, Professor.
7 THE COURT: Redirect?
8 MR. EISENBRANDT: I have no further questions,
9 Your Honor.
10 THE COURT: All right. Thank you very much.
11 We will allow you to step down.
12 (Witness excused.)
13 THE COURT: Ms. Blum, who will our next witness
14 be?
15 MS. BLUM: The plaintiffs call Irma Calderon.
16 THE CLERK: Ma'am, if you will raise your right
17 hand to be sworn. Do you solemnly swear that the
18 testimony you are about to give the court and jury in this
19 matter to be the truth, the whole truth and nothing but
20 the truth, so help you God?
21 THE WITNESS: Yes, I swear.
22 THE CLERK: You may take the witness stand.
23
24
25

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

3 IRMA CALDERON,
4 was thereupon called as a witness on behalf of the
5 plaintiffs, and having been first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. BLUM:

- 9 Q. Mrs. Calderon, where do you currently reside?
10 A. At Daly City, California.
11 Q. And how long have you been living there?
12 A. Almost four years.
13 Q. What is your current occupation?
14 A. Housekeeping.
15 Q. Do you work for a company or do you work for individual
16 families?
17 A. For a company and individual families.
18 Q. And are you married?
19 A. Yes.
20 Q. How long have you been married?
21 A. Twenty-one years.
22 Q. And what is the name of your husband?
23 A. Mario F. Najarro.
24 Q. And what is your husband's occupation?
25 A. He's an electrician.

- 1 Q. Do you have any children?
- 2 A. Yes.
- 3 Q. How many children do you have?
- 4 A. Two.
- 5 Q. How old are your children?
- 6 A. Nineteen and 18 years old.
- 7 Q. Are they still living at home with you?
- 8 A. Yes.
- 9 Q. Are they students?
- 10 A. Yes.
- 11 Q. What is your current immigration status?
- 12 A. I am an asylum applicant.
- 13 Q. Do you hope to become a U. S. citizen one day?
- 14 A. Yes.
- 15 Q. What is the country of your birth?
- 16 A. El Salvador.
- 17 Q. And what city were you born in in El Salvador?
- 18 A. In Ahuachapan.
- 19 Q. How old are you now, Ms. Calderon? How old are you?
- 20 A. Forty-seven years old.
- 21 Q. I would like to ask you a few questions about your
- 22 family in El Salvador, your family of origin. How many
- 23 siblings do you have?
- 24 A. Three.
- 25 Q. How many brothers and how many sisters?

♀

DIRECT - IRMA CALDERON

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- 1 A. Two sisters and one brother.

- 2 Q. And where do you fit into the order of the children?
- 3 A. I am the second.
- 4 Q. And when you were growing up, what was your father's
- 5 occupation?
- 6 A. He's always been a professor and the principal at a
- 7 school.
- 8 Q. What kind of school was that?
- 9 A. An elementary school, yes.
- 10 Q. And what was your mother's occupation?
- 11 A. She was a professor too.
- 12 Q. For most of your childhood, did your family live
- 13 all together in one house?
- 14 A. Yes.
- 15 Q. Could you tell the jury a little bit about your
- 16 relationship with your father when you were growing up?
- 17 A. We had an excellent relationship. He was all the best
- 18 to me. He was friendly, he was respectful, he was protective.
- 19 I can -- I cannot describe all that he was to me. He was
- 20 everything to me.
- 21 Q. Do you know whether your father was involved in any
- 22 organizations?
- 23 A. Yes.
- 24 Q. Could you tell the jury what the organizations were?
- 25 A. In ANDES June 21.

- 1 Q. Do you know what kind of organization ANDES June 21

- 2 was?
- 3 A. Yes.
- 4 Q. What was that?
- 5 A. It was a teacher's organization, a union dedicated to
6 achieving greater benefit, social benefits, financial benefits
7 for all of its members.
- 8 Q. Do you know if the ANDES organization was affiliated
9 with any other organizations?
- 10 A. No.
- 11 Q. Do you know if your family was involved in any other
12 organizations besides ANDES?
- 13 A. No.
- 14 Q. Did you -- could you tell the jury a little bit about
15 your own schooling, where did you attend school?
- 16 A. Yes, I studied my full elementary school and my high
17 school -- all the way to the high school. And then I did this
18 in Ahuachapan. After that, I graduated from the university
19 with a degree in economics.
- 20 Q. What university did you attend?
- 21 A. I attended the Central American University known as
22 Jose Simeon Canas, UCA.
- 23 Q. What year did you enter the UCA?
- 24 A. At the end of 1975.
- 25 Q. And while you were attending the UCA, did you live at

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- 1 home in Ahuachapan?
- 2 A. No.

- 3 Q. Where did you live?
- 4 A. Well, I moved because of the distance, it was too far
5 away, so I moved over to new San Salvador to Ciudad Merliot,
6 Santa Tecla.
- 7 Q. And who were you living with?
- 8 A. I lived there with my brother and with a maid who
9 assisted us in doing the household chores.
- 10 Q. And your brother's name is?
- 11 A. Jose Francisco Calderon.
- 12 Q. And how many years did you attend the university?
- 13 A. Six years.
- 14 Q. And so you were attending the university and living
15 with your brother in 1980, is that correct?
- 16 A. Yes, yes.
- 17 Q. Do you know who Nicolas Carranza was in 1980, what
18 position he held?
- 19 A. Yes.
- 20 Q. What was that position?
- 21 A. He was the deputy minister of defense and public
22 safety.
- 23 Q. Did there come a point when your father came to live
24 with you and your brother?
- 25 A. Yes.

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- 1 Q. When was that?
- 2 A. He came to live with us in June of 1980.

3 Q. Do you know why your father came to live with you then?

4 MR. FARGARSON: Your Honor, excuse me just a
5 moment, may we approach?

6 THE COURT: Sure.

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

9 MR. FARGARSON: I think Ms. Blum is getting to
10 a point where she may -- she is not going to give hearsay
11 as to what she was told or what she heard because in the
12 deposition she said she didn't know about the brochures or
13 anything like that.

14 MS. BLUM: Oh, yeah, I'm not having her -- she
15 is not going to testify to any of it.

16 MR. FARGARSON: Okay. The -- well, I just want
17 to make sure she doesn't say what she heard before I would
18 get to object, so as long as you just stay on that track.

19 MS. BLUM: I hope that she is not going to do
20 that. She isn't planning to. I'm just soliciting a very
21 generic sort of response from her.

22 MR. FARGARSON: I didn't mean to interrupt you
23 in the middle of something, I wanted to try to get this
24 fleshed out.

25 MS. BLUM: I appreciate that.

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1 THE COURT: And one other thing, if she is no
2 longer a party, she is a witness?

3 MS. BLUM: She is a witness.
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4 MR. BROOKE: As to what her father said, are
5 you planning on getting her -- that he had been threatened
6 and that type of thing?

7 MS. BLUM: I think she was aware that her
8 father felt fear. She is not going to be discussing the
9 content of a conversation she had with her father.

10 MR. BROOKE: You had said -- in the deposition
11 she says one place that the security -- her father said
12 the security police were there at the door, something like
13 that.

14 MS. BLUM: Oh, in terms of the events of the
15 night of her father's assassination, she will be reporting
16 her eyewitness account from her point of view of what
17 happened during the assassination.

18 MR. FARGARSON: She can do that. The thing I
19 was concerned about is those brochures, she said she had
20 to learn that from somebody because she said she didn't
21 know anything about it.

22 MS. BLUM: Right. She is not planning to
23 testify about that.

24 MR. FARGARSON: I know you're going to do the
25 right thing, but I just wanted to make sure that you did.

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1 MS. BLUM: Okay.
2 (The following proceedings were had in open
3 court.)

- 4 BY MS. BLUM:
- 5 Q. Ms. Calderon, where we left off, you had just stated
- 6 that your father came to live with you at -- in what month?
- 7 A. In June of 1980.
- 8 Q. If you know, do you know why he came to live with you?
- 9 A. Yes, he felt threatened.
- 10 Q. I would like to direct your attention to the events of
- 11 the evening of September 11th, 1980. What time did you
- 12 normally return from school to your home?
- 13 A. Almost always at about 6:00 in the afternoon.
- 14 Q. And do you remember whether that evening if you
- 15 returned home about that time?
- 16 THE INTERPRETER: Counsel, can you repeat?
- 17 BY MS. BLUM:
- 18 Q. Excuse me. Do you remember whether that evening you
- 19 returned home about that time?
- 20 A. Yes.
- 21 Q. And did you eat dinner?
- 22 A. Yes, with my father.
- 23 Q. Okay. And after dinner, what did you do?
- 24 A. Well, as normal, I took to studying in my room.
- 25 Q. And what was your father doing?

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- 1 A. He was -- well, at night, he was reading, and then he
- 2 went over to watch television.
- 3 Q. What time did your brother return home?
- 4 A. I don't recall exactly what time he came that night.

- 5 Q. At a certain point in the evening, did you hear a
6 knocking at the door?
- 7 A. Yes.
- 8 Q. About what time was this?
- 9 A. At 10:00 o'clock at night.
- 10 Q. And what was the sound at the door?
- 11 A. A loud sound, a very loud sound.
- 12 Q. Did you personally answer the door?
- 13 A. No.
- 14 Q. Did you have any idea who might be at the door?
- 15 A. We were very scared, we were very scared because, well,
16 at night, in the night, no person would be out there visiting,
17 and there was a law that prevented people from being out on
18 the street after 7:00 o'clock at night.
- 19 Q. What did you and your father do at this point?
- 20 A. Well, all of a sudden, I felt great terror, anguish,
21 panic. We -- I ran into my father, we looked at each other
22 face to face, and I don't know, I think that at that time he
23 said that we should go to the backyard, to the backyard of the
24 house. He would keep a ladder there, he kept it lying down
25 horizontally.

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- 1 Q. Do you know why your father maintained a ladder in the
2 backyard?
- 3 A. He was scared, he was scared of anything that could
4 happen to us, happen to all of us, and he kept it there.

- 5 Q. So did you go outside into the yard at this point?
- 6 A. Yes, he took the ladder and he stood it up vertically,
7 and he told me that I should try and get out of the house, and
8 I went with the maid, and he was out there just to help me get
9 up the ladder.
- 10 Q. And where was the ladder leading to?
- 11 A. It would lead to a house, the house that was next door,
12 and it would also let you get into an empty lot behind the
13 house.
- 14 Q. Did you begin to climb the ladder?
- 15 A. I started to climb the ladder, and I was almost at the
16 end of the ladder when a man who was up on the roof, he put a
17 gun against my head.
- 18 Q. How was the man dressed?
- 19 A. He was a man dressed in civilian clothes wearing a hat,
20 regular clothes, regular clothes, wearing a hat, and he also
21 had his face here, his mouth down here covered.
- 22 Q. What did you do when you saw the man?
- 23 A. I don't know -- don't even know how, but I jumped off
24 the top rungs of the ladder, and my father, he took me inside
25 to hide me in one of the bedrooms in the back of the house, he

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- 1 took me with the maid who would -- the one who helped us.
- 2 Q. And did you remain in one of the bedrooms then?
- 3 A. Yes, I stayed there with the maid.
- 4 Q. And was the bedroom door closed?
- 5 A. My father closed the door to that bedroom, and there

6 was another bedroom next door that was -- that was
7 communicated through a bathroom, and we went through that
8 bathroom, and we went into the other room, and then he closed
9 that door as well.
10 Q. At any point, did -- was there a banging on the door of
11 the bedroom?
12 A. Yes, I wanted to -- I wanted to leave the room, but the
13 maid, the maid didn't let me. She told me not to go out.
14 Q. Was there a window?
15 A. She told me to stay where we were, and then at that
16 moment, we dove on to the floor to hide, and some men came to
17 the door and began to bang very hard on the door to the
18 bedroom, and we stayed there.
19 Q. Was there a window in the bedroom?
20 A. Yes.
21 Q. And from that window, what -- where would you look
22 into?
23 A. It looked into the area where my father went and --
24 which is towards the living room, and I stood there for a
25 moment and looked, and I saw when those men were coming in.

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1 Q. How many men did you see?
2 A. Three.
3 Q. And did you observe anything else?
4 A. Three men dressed the same, with weapons, that's what I
5 saw.

- 6 Q. And could you see either your father or your brother?
- 7 A. No, I could only hear them.
- 8 Q. And what did you hear?
- 9 A. I heard when my father was there and they said to him
- 10 that he had to accompany them, that they were going to take
- 11 him with them, and he said no.
- 12 Q. Did you hear anything else?
- 13 A. Well, I could hear, but I couldn't hear everything, I
- 14 could just hear pieces. All I could hear -- well, later on, I
- 15 heard four or five gunshots, and then I heard -- I heard my
- 16 brother crying, I could hear the moans and the breaking of
- 17 glass, because they broke -- with the rifles, they broke all
- 18 of the bulbs.
- 19 Q. Did you hear the men leave the house?
- 20 A. Yes.
- 21 Q. How long after that did you stay in the room that you
- 22 were in?
- 23 A. I just heard them leave, and I heard some other
- 24 gunshots, but these were outside the house. And then I came
- 25 out, I can't tell you exactly when.

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- 1 Q. What did you see when you came out of the bedroom?
- 2 A. I saw my father sprawled on the floor all torn up, his
- 3 head was blown apart, and I saw my brother sitting next to
- 4 him.
- 5 Q. And what did your brother do?
- 6 A. He didn't let me out, I wanted to go and be down there

7 where he was, but he didn't let me, he stopped me.
8 Q. And what happened next?
9 A. He didn't let me get close, and then immediately after
10 that -- well, a little bit later, neighbors began to arrive.
11 See, all of the neighbors knew about it, they all realized
12 what had happened, they were very scared. But when the men
13 left, they began to arrive, and a medical student arrived at
14 the house, that's what I remember.
15 Q. Who came to your house the next morning?
16 A. The person who does the official recognition or
17 identification of bodies. I don't know the name of the
18 person, the judge, the judge, the judge who does that.
19 Q. Ms. Calderon, could you tell the jury how your father's
20 murder affected your brother?
21 A. It affected us all. This affected us all. My family
22 simply disintegrated. He -- we have all had problems, we have
23 all had trouble, emotional problems, psychological problems,
24 financial problems. He was everything to us, and that is
25 precisely why I'm here.

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1 Q. Could you --
2 A. To beg for justice. I have kept this in my heart all
3 of these years.
4 MS. BLUM: Thank you. Pass the witness.
5 THE COURT: Cross examination?
6 CROSS EXAMINATION

- 7 BY MR. FARGARSON:
- 8 Q. I only have a few questions. Are you okay and ready to
9 answer a few questions? Ms. Calderon, I understood you to say
10 that you saw three men?
- 11 A. Yes.
- 12 Q. Were all of the men in civilian clothes?
- 13 A. Yes.
- 14 Q. Did all of them wear masks?
- 15 A. Yes, masks. If masks are what you call what they
16 placed over here, yes.
- 17 Q. Well, what I need is were they wearing something that
18 covered their face to conceal their identity?
- 19 A. Yes.
- 20 Q. And obviously you didn't know any of the people?
- 21 A. No.
- 22 Q. Did you see any other men around the house or anywhere
23 wearing military uniforms?
- 24 A. No.
- 25 Q. Did I understand you to say that this was reported to

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CROSS - IRMA CALDERON

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- 1 the justice of the peace, but you didn't know the gentleman's
2 name?
- 3 A. I don't understand.
- 4 Q. Okay. What happened that evening to your father, was
5 it reported to a civil authority or a justice of the peace or
6 something like that where you were?
- 7 A. Yes, the person who went to identify the body.

8 Q. Okay. And do you know who that was?
9 A. It, I imagine, was a government authority over there
10 who does that type of work, I don't know her personally.
11 Q. Ms. Calderon, you say there were other neighbors that
12 came out after this happened?
13 A. Yes. Well, if I don't -- if I remember correctly, the
14 first one to arrive was the next door neighbor. Then after
15 that, other neighbors arrived.
16 Q. Did anyone see these men drive off or tell you they saw
17 the men drive off?
18 A. Yeah, there were remarks. There were remarks. Later
19 on, they told me, the neighbors told me that they had seen
20 something. Several neighbors told me.
21 MR. FARGARSON: All right. Excuse me, I
22 believe that's all. Hold on just a minute, Judge.
23 Thank you, ma'am. That's all, Your Honor.
24 THE COURT: Any redirect?
25 MS. BLUM: No, Your Honor.

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CROSS - IRMA CALDERON

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1 THE COURT: We will let the witness step down.
2 (Witness excused.)
3 THE COURT: Who will our next witness be?
4 MS. BLUM: The next witness for the plaintiffs
5 is Francisco Calderon.
6 THE CLERK: Sir, if you will raise your right
7 hand to be sworn, please. Do you solemnly swear that the

8 testimony you are about to give the court and the jury in
9 this matter to be the truth, the whole truth and nothing
10 but the truth, so help you God?

11 THE WITNESS: I swear.

12 THE CLERK: You may take the witness stand.

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DIRECT - FRANCISCO CALDERON

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

3 FRANCISCO CALDERON,

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

7 DIRECT EXAMINATION

8 BY MS. BLUM:

- 9 Q. Where do you currently reside?
- 10 A. In San Francisco, California.
- 11 Q. And, Mr. Calderon, are you bilingual?
- 12 A. I understand a lot, but I prefer to give my testimony
- 13 in Spanish. This is very delicate.
- 14 Q. How long have you resided in the United States?
- 15 A. I'm about to be here for 25 years.
- 16 Q. And are you a U. S. citizen?
- 17 A. Yes.
- 18 Q. When did you naturalize?
- 19 A. In October of 1996.
- 20 Q. Where are you currently employed?
- 21 A. Right now, I'm working as a security officer.
- 22 Q. And where do you work?
- 23 A. I work for a company called DN Security Services.
- 24 Q. Are you married, sir?
- 25 A. Yes.

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DIRECT - FRANCISCO CALDERON

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- 1 Q. What is your wife's name?
- 2 A. Cecilia.
- 3 Q. And how long have you been married?
- 4 A. In 1992.
- 5 Q. What country were you born?
- 6 A. In El Salvador.
- 7 Q. In what city in El Salvador were you born?
- 8 A. In Ahuachapan.

9 Q. Could you tell the jury a little bit about the town of
10 Ahuachapan, how big it is and what it is like?

11 A. The -- Ahuachapan is a city that borders with
12 Guatemala. It is a small city. I think it would be maybe a
13 little bit bigger than the center of downtown Memphis. The
14 number of inhabitants, I can't tell you, but it is not that
15 many. Everybody knows everybody. We don't need a specific
16 address to be able to get to anyone's -- to be able to get to
17 anyone's house, to know anyone's name.

18 Q. If you know, was there a national police station there?

19 A. The three bodies of public unsafety -- I apologize,
20 public safety.

21 Q. Could you tell the jury what those three bodies of
22 public safety were?

23 A. National police, national guard, treasury police. And
24 also there was -- there was also a garri son, a garri son where
25 there were soldiers from the Salvadoran army, I was

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DIRECT - FRANCISCO CALDERON

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1 forgetting.

2 Q. So all three security forces had posts in the town of
3 Ahuachapan?

4 A. Correct.

5 Q. Could you tell the jury a little bit about your own
6 education in El Salvador?

7 A. I studied in Ahuachapan, my elementary school, my
8 junior and middle school, and I went to the capital city to
9 get my high school diploma. That happened in 1970 when I got

10 my high school diploma from a vocational high school.
11 Q. Could you tell the jury a little bit what family life
12 was like for your family growing up in Ahuachapan?
13 A. Well, the normal family. I say a normal family because
14 after what happened, this was no longer a normal family, it
15 was completely disintegrated, but we grew up as a normal
16 family. All together, we spent our lessons together, we spent
17 it with our parents, just a full complete family.
18 Q. What was your father's name?
19 A. Juan Francisco Calderon Celis.
20 Q. And what is your name?
21 A. Jose Francisco Calderon.
22 Q. Did your father have a nickname?
23 A. Yes, Paco. Nickname, yes.
24 Q. And do you have a nickname?
25 A. Yes, I do too. Paco as well.

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DIRECT - FRANCISCO CALDERON

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1 Q. So how did people keep your father Paco and you Paco
2 straight?
3 A. To refer to him, they would call him Paco; and to refer
4 to me, they would say Paco Son.
5 Q. Could you give the jury a sense of your father as a
6 person?
7 A. For me, my best friend, an exemplary father,
8 respectful, kind. He even -- he taught me to love and respect
9 plants and animals and brothers and sisters. For me, he was

- 10 an exceptional man.
- 11 Q. What was your father's occupation?
- 12 A. He was a professor of basic education, always in
13 education, and he graduated as a teacher from education, but
14 he won a scholarship to go to the teachers teaching school,
15 called Alberto Mas Ferrer, so he received a degree in the
16 specialty -- there were teachers schools dedicated to
17 graduating teachers, and he became a teacher at the teacher's
18 school graduating teachers.
- 19 Q. Where was that school located?
- 20 A. In Ahuachapan.
- 21 Q. And do you know how long he taught at that school?
- 22 A. My father was but three months from his retirement, 30
23 years of service. That was the gift that they gave him, his
24 murder from the government.
- 25 Q. Did your father seem to enjoy his teaching job?

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DIRECT - FRANCISCO CALDERON

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- 1 A. He loved it. He was a teacher because it was his
2 vocation. To be a teacher, you have to have vocation.
- 3 Q. Was there anything your father didn't seem to like
4 about his job?
- 5 A. Yes, he was very sensitive to the matter, he thought
6 that -- that all children had the right to mandatory free
7 education and that the state had to provide help to the poor
8 people, people who could not send their children to school
9 because of their financial limitations.
- 10 Q. But wasn't there public education in El Salvador at

11 that time?

12 A. Yes, but people -- in fact, people with very little
13 money had no access even if they had the desire to do so.

14 Q. Why would that be?

15 A. Well, let's say a maid would like to send her children
16 to school, that she would have other children and who would
17 take care of those children while she worked, so the older
18 children ended up taking care of the smaller children, so
19 people like that don't have access.

20 Q. Do you know if your father belonged to any
21 organizations?

22 A. Yes, and he was very proud to be a member of the
23 National Association of Salvadoran Educators, ANDES June the
24 21.

25 Q. Do you know why that organization was called ANDES

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DIRECT - FRANCISCO CALDERON

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1 June 21?

2 A. Yes, because the teachers' day is held on the 22nd of
3 June, on the official calendar, and the day before, the 21st
4 of June, in 1965, that was the date of the founding of that
5 organization, so they called it ANDES June 21, there is sort
6 of the relationship between the two names.

7 Q. Do you know why ANDES was founded?

8 A. Yes, as far as I know, and I know this and my father
9 would also tell me other things, I recall a teacher, professor
10 had died in Ahuachapan. I remember his name, Yeyo Flores, and

11 when he passed away, his widow was completely destitute, so
12 this is an example. So they founded ANDES for the need to be
13 able to organize and ask the government for benefits for
14 teachers or for their families for whenever any teacher passed
15 away.

16 Q. So that is what we would think of as a pension?

17 A. Yes, yes, yes, benefits.

18 Q. Do you know -- are you aware of any other issues that
19 ANDES was concerned with?

20 A. Yes, teachers have a direct relationship with parents,
21 so the government was afraid of ANDES because educators have a
22 lot of contact with the population, and they will teach them,
23 they will teach the people to demand, to make social demands
24 to which everyone has a right as a civilian population.

25 Q. Do you remember a strike by the teachers union at any

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DIRECT - FRANCISCO CALDERON

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1 particular time when you were growing up?

2 A. Yes, yes, I remember, and I helped him participate too,
3 the first strike in 1968 and the next one in 1971, that was
4 the largest strike in the teachers union.

5 Q. Could you tell the jury about the 1968 strike and why
6 it occurred.

7 A. Yes, in 1968, ANDES had yet to receive legal official
8 recognition by the government per juri di co personal ity, so
9 they were pressuring the Congress, the international assembly
10 to approve it, so since they didn't do that, there was a
11 strike, and they took over the ministry of education, and

12 18,000 teachers participated, and that strike lasted about a
13 year -- a month and a half, two months, and that's when the
14 first teachers disappeared and were murdered, and it was the
15 national guard at the time that was led by a terrible assassin
16 Jose Antonio Medrano. They were all assassins who ran that
17 place, but he was in charge at the time.

18 Q. When you say 18,000 teachers went on strike, is that
19 about the size of the teachers union?

20 A. Yes. You see, since they were trying to get benefits
21 for the teachers, it almost was the 100 percent of the
22 teachers who became members of the association. Maybe four
23 teachers didn't become organized because they were military
24 officer's wives or maybe the mother of some military officers
25 who weren't going to get involved, but that was incomplete, I

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1 would say 99.9 percent.

2 Q. And then you mentioned there was another large strike
3 in 1971, is that correct?

4 A. Yes.

5 Q. And could you tell the jury about that strike?

6 A. During that strike, as I recall, I don't recall
7 exactly, I was young, I was 20 years old, I was pretty young
8 at the time, but I think it lasted about three months, and
9 salaries were not paid to the teachers, and they were trying
10 to get their rights, some of the rights that had been taken
11 from them arbitrarily, but it was the largest strike, it was

12 also the most repressive strike ever, especially on the part
13 of the public security forces.

14 Q. Could you explain to the jury what you mean by
15 repressive?

16 A. Well, on the part of the repressive core or the
17 oppressive core, those who never respected human dignity, and
18 they would see -- in the teacher, they would see a potential
19 enemy because a teacher can teach, it is different, that is
20 why there is a song that says a teacher is more -- a 100
21 teachers is more important than a battalion of army vehicles,
22 and that's why they were hated and feared, and that's why the
23 disappearances began and that have never been investigated
24 even to this day.

25 Q. When you refer to repression at that time of the

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DIRECT - FRANCISCO CALDERON

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1 teachers, what specifically are you referring to?

2 A. Well, they were captured, they -- and they were placed
3 in these cells that were always clandestine. They were
4 tortured, they were forced to sign things and then they became
5 political prisoners or -- and then they became potential
6 murderers, and these were the laborers and teachers because
7 the laborers began to support the teachers, and they became
8 inseparable, and then ANDES definitely began to receive
9 support from the people. And these oppressive forces would
10 say they were subversives and they were teaching subversion to
11 the people.

12 Q. If you know, how many teachers do you believe there

13 were in El Salvador in late 1979?
14 A. I'm not very sure, but 18,000 teachers.
15 Q. And how many members, if you know, do you believe ANDES
16 had in late 1979?
17 A. I'm not sure. We're talking about 1980, there were --
18 no, I'm not exactly sure, I don't want to give you a number
19 that is not right.
20 Q. Okay. If you know, how many teachers were assassinated
21 in 1980?
22 A. No one would believe it, but in 1980, just short of 500
23 teachers were massacred. I think my dad was number 460 around
24 about that time, just because he thought different to the
25 military people.

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1 Q. What was your father's particular role in the ANDES
2 organization?
3 A. Well, he was -- the fact is he never really occupied
4 any position of leadership in the organization, but he did --
5 unfortunately had -- or maybe fortunately because I respect
6 him greatly, and I respect the way he died, which to say
7 bravery, with courage, defending what he loved, he was a born
8 leader, everyone followed him, because they had all been
9 friends in school, and the other teachers had been his
10 students, he had taught them and he was a leader that
11 everybody supported.
12 Q. Could you give the jury an example of your father's

13 leadership role, how it manifested itself?
14 A. Well, here is an example. Sometimes they would have a
15 little strike, it is kind of like a show of strikes by the
16 teachers, maybe a week, 15 days because of something that the
17 government had promised to give and hadn't come through. So
18 he would say, well -- he would say here are my keys, I'm going
19 on strike, and I am going on strike, anybody who wants to can
20 come. See, he wouldn't push anyone, and so when he would say
21 I'm going on strike, the school would go on strike. There
22 would be a -- there would be a director's, a principal's group
23 and even the little nuns, they would say, Paco, what are you
24 going to do. He would say I'm going on strike. So they would
25 all go on strike. He was a born leader.

♀

DIRECT - FRANCISCO CALDERON

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1 Q. If you know, was the ANDES union affiliated with any
2 other organization?
3 A. Not that I know of.
4 Q. Was your father a member of any political parties or
5 other organizations?
6 A. No, no, he was an idealistic, he didn't like politics.
7 Politics is dirty.
8 THE COURT: It is probably a good time to take
9 a break.
10 MS. BLUM: I appreciate that.
11 THE COURT: A 15-minute break. When we come
12 back, of course, we will resume the testimony. Don't
13 discuss the case among yourselves, don't let anybody talk

14 with you. We will see you in 15 minutes.

15 THE CLERK: All rise. This honorable court
16 stands in recess.

17 (Recess taken at 3:00 p.m. until 3:17 p.m.)

18 THE COURT: All right. Bring the jury in.

19 MR. BROOKE: Your Honor, we're missing one
20 lawyer here. Mr. Fargarson went to the restroom. Here he
21 is, Your Honor.

22 THE COURT: I think we have got everybody.
23 Okay. I think we're about ready.

24 (Jury in at 3:17 p.m.)

25 THE COURT: All right. You may be seated, and

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DIRECT - FRANCISCO CALDERON

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1 counsel may proceed.

2 BY MS. BLUM:

3 Q. I just want to go back a little bit, Mr. Calderon, to
4 your own experiences. You said that you were born -- when
5 were you born?

6 A. I was born on September the 18th, 1951.

7 Q. And so that how old are you now?

8 A. Fifty-four years of age.

9 Q. And you mentioned that you went to high school in San
10 Salvador, is that correct?

11 A. That is correct.

12 Q. So during the period of time that you were in high
13 school, were you living at home with your family in

- 14 Ahuachapan?
- 15 A. Correct.
- 16 Q. When did you stop living with your family?
- 17 A. When I went to study my high school, rather, my
- 18 vocational high school in San Salvador.
- 19 Q. With whom were you living?
- 20 A. I lived with one of my father's sisters in Ciudad
- 21 Delgado.
- 22 Q. And after you completed your vocational training, where
- 23 did you move to?
- 24 A. I went to live in Santa Tecla because I -- an
- 25 opportunity presented to me. I had not graduated yet, I was

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DIRECT - FRANCISCO CALDERON

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- 1 undergoing my -- what we call our private exams, which is what
- 2 we need to get a degree, and I was hired by Kimberly-Clark
- 3 Corporation.
- 4 Q. And what did you do for Kimberly-Clark Corporation?
- 5 A. It was a company that was beginning its operations in
- 6 El Salvador, and I went to work for them in paper making
- 7 processes for El Salvador.
- 8 Q. And what was your particular job?
- 9 A. My position is called machine tender. I was
- 10 responsible for the process and paper making.
- 11 Q. How long did you work for this corporation?
- 12 A. Until 1976.
- 13 Q. Were you involved in any unions or organizations while
- 14 you were working for Kimberly-Clark?

- 15 A. I was not able to because since I worked in
16 supervision, that was not possible, because a supervisor is
17 sandwiched between management and the workers.
- 18 Q. Where did you go to work after Kimberly-Clark?
- 19 A. I worked with Delicias S. A. for a special nine months,
20 I believe it was nine months.
- 21 Q. And what did Delicias S. A. manufacture?
- 22 A. Sweets. They had a sweets department, chocolate and
23 pasta.
- 24 Q. And?
- 25 A. Pasta.

♀

DIRECT - FRANCISCO CALDERON

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- 1 Q. That's an interesting combination.
2 And where did you go to work after that?
- 3 A. I had been working for Delicias S. A., but I was not
4 being paid and in accordance to what I was requesting, so then
5 I went to work for Cigarrería Morazan, which is a British
6 company. It is a tobacco company, and they cover the process
7 in manufacture of cigarettes all the way from the tobacco leaf
8 to the cigarette box.
- 9 Q. And where did you live when you were working for that
10 tobacco company?
- 11 A. I lived in Antiguo Cuzcatlan in Ciudad Merliot.
- 12 Q. And did you own your own home?
- 13 A. No, actually, that home was bought for us by my father
14 so that we would not have to rent, but I did say that it was

15 mine, because I was the eldest son and I had to control my
16 sister who was studying at the UCA.

17 MS. BLUM: All right. May I approach the
18 witness, Your Honor?

19 THE COURT: You may.

20 BY MS. BLUM:

21 Q. Mr. Calderon, does this picture depict fairly and
22 accurately the ceremony where your father received a medal?

23 A. Yes, correct.

24 MS. BLUM: Your Honor, I move this picture into
25 evidence as Plaintiffs' Exhibit 13.

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DIRECT - FRANCISCO CALDERON

703

1 THE COURT: So received.

2 (Exhibit Number 13 was marked. Description:
3 Photograph.)

4 BY MS. BLUM:

5 Q. Mr. Calderon, could you tell the jury when this picture
6 was taken and when you saw the picture?

7 A. This photograph was taken at the offices of the
8 secretary of education. In it, the secretary of education, or
9 rather the minister of education is awarding my father a
10 medal. Well, he was awarded his medal as one of the best
11 teachers of the year. That was in 1979.

12 Q. Mr. Calderon, are you referring to the woman standing
13 there as the minister of education?

14 A. That is correct. Her name is Angelica Diaz.

15 Q. And do you remember when this ceremony occurred?

- 16 A. I don't recall exactly, but I do know that it was a
17 Monday in June. It could have been June the 20th in 1979.
- 18 Q. And did this photograph appear in the newspaper?
- 19 A. Perhaps not this one, but there were other photographs
20 taken during that ceremony and perhaps that one appeared in
21 one of the newspapers in the afternoon.
- 22 Q. Do you know what happened moments after this photograph
23 was taken?
- 24 A. Yes.
- 25 Q. What happened?

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DIRECT - FRANCISCO CALDERON

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- 1 A. Yes. Upon receiving the medal, he, my father, thanked
2 the minister, and he said these words, thank you, Madame
3 Minister, for this prize, but I will not accept it in symbol
4 of my rejection to the violations against my colleague
5 teachers, the ones who have disappeared. Thank you, Madame
6 Minister, but I reject it.
- 7 Q. Was your father's rejection of the award reported in
8 the newspaper?
- 9 A. It was to be published in newspapers and he was able to
10 speak through the national radio of El Salvador which belongs
11 to the government of the republic, he spoke to the whole
12 nation, as a matter of fact.
- 13 Q. And he said those words on the public radio that is
14 owned by the government, is that correct?
- 15 A. Exactly, as I have repeated him, and I felt very proud

16 of it.

17 Q. Did you see your father soon after the ceremony?

18 A. Yes, upon my return from work, I had not been able to
19 attend the ceremony because I was working for Cigarreria
20 Morazan. I was only able to listen to this -- I was given the
21 opportunity to listen to the radio at my work.

22 Q. So did you see your father at his home in Ahuachapan?

23 A. No, it was in Ciudad Merliot.

24 Q. And how did you react to your father's rejecting the
25 award?

♀

DIRECT - FRANCISCO CALDERON

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1 A. I told him, father, this will be -- well, it might
2 signify your murder.

3 Q. What did you mean by that?

4 A. Because with this, he was demonstrating his repudiation
5 or rejection towards the government, and he had done so
6 publicly.

7 Q. Now, you stated that you were working at a tobacco
8 factory in 1980, is that correct?

9 A. Correct.

10 Q. Did you know at that time who Nicolas Carranza was?

11 A. I think so.

12 Q. Do you know what position he held in the military?

13 A. He was the second one after Garcia.

14 Q. The second one in what position?

15 A. One was the minister, and the other one was subminister
16 or undersecretary of the ministry of defense.

17 Q. At some point in 1980, did you become aware of the fact
18 that your father was arrested?

19 A. That is correct.

20 Q. And what did you do when you found that out?

21 A. We knew that this would happen at any given moment,
22 meaning they were searching for some little banana peel for
23 him to slip on.

24 Q. And so what did you do when you found out that he had
25 been apprehended?

♀

DIRECT - FRANCISCO CALDERON

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1 A. We were working -- well, it was June 16th of 1980, and
2 we were having lunch. It was lunch time at the Cigarreria
3 Morazan when my mother called me on the phone to notify me
4 that my father had been arrested in Ahuachapan.

5 Q. And what did you do?

6 A. I spoke to the general manager of the plant and told
7 him that I needed to leave on an emergency, and he agreed with
8 me.

9 Q. And did you leave the factory?

10 A. Yes.

11 Q. And did you travel back to Ahuachapan?

12 A. First I went back to the house to get my sister. From
13 there -- from there, we went to Ahuachapan.

14 Q. And what did you do when you got to Ahuachapan?

15 A. When I arrived home, they told me how it had happened.
16 There was not much information. They just told me that

17 someone had seen my father raising his arms and that he was
18 being driven, captured on the same pickup truck -- well,
19 belonging to -- you see, it was two school teachers that had
20 been arrested.

21 Q. At any point, did you see your father in the custody of
22 any of the public security forces?

23 A. That day, all of the public security forces denied
24 having him.

25 Q. And what happened the next day?

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DIRECT - FRANCISCO CALDERON

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1 A. We had placed watchmen or spies, if you will, because
2 we knew that they were up to something. We were afraid that
3 since they had been disappearing people, they would disappear
4 in the middle of the night, we had asked people to watch all
5 of the security forces. So immediately they told me that
6 there was a movement and that they had seen policemen outside,
7 there was an operation, and that is when they advised me that
8 I should come and I took my car. I had received a telephone
9 call and I saw when they were taking him out of the building,
10 of the headquarters of the national police.

11 Q. So you witnessed your father being taken out of the
12 national police headquarters -- post in Ahuachapan, correct?

13 A. I saw it with my own eyes.

14 Q. And where was your father taken?

15 A. They brought him before the investigative judge.

16 Q. And how long was your father held in custody?

17 A. Well, he was -- well, the judge ordered that he should

18 spend 72 hours there, which is the minimum time allowed or the
19 maximum time, rather, allowed, and it is still standing in El
20 Salvador, but he was charged with carrying subversive
21 material, but he was not really charged because he did not
22 have enough material for them to present charges.

23 Q. When he was released from custody, did he return to his
24 home?

25 A. No.

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DIRECT - FRANCISCO CALDERON

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1 Q. Why didn't he return to his home?

2 A. Because knowing how the repressive forces had been
3 operating, we knew that if we returned to our house in
4 Ahuachapan, they would come over to kill us.

5 Q. Had there been any other incidents that had alerted
6 your father to be concerned about returning to his home?

7 A. Of course.

8 Q. What was that?

9 A. For instance, when he was at municipal police for 72
10 hours, the commander of the department of Ahuachapan, meaning
11 the commander of the military city would come in at midnight
12 to perform psychological torture, he would come with two other
13 lieutenants and point at him with rifles.

14 MR. FARGARSON: Your Honor, excuse me, may we
15 approach?

16 THE COURT: You may.

17 (The following proceedings had at side-bar

18 bench.)

19 MR. FARGARSON: I'm wondering how can he know
20 this if he's not there in jail and not in the presence --

21 MS. BLUM: Well, it's not hearsay in the sense
22 that it's not being offered for the truth of the
23 statement. He's just stating what he heard from his
24 father, but I'm not offering it as to whether it's true
25 that it happened.

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DIRECT - FRANCISCO CALDERON

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1 THE COURT: There's no distinction. Some of
2 the other material was okay, because it was preparatory to
3 a response or something else, but the objection is
4 hearsay, it does have to be sustained.

5 MR. FARGARSON: I would appreciate the jury
6 being instructed to disregard that last statement.

7 MR. BROOKE: Uh-huh.

8 THE COURT: Sure. Okay.

9 (The following proceedings were had in open
10 court.)

11 THE COURT: There was a statement that the
12 commander would come in and -- at midnight and perform
13 psychological torture, that is a hearsay statement,
14 because there is no indication that the defendant had
15 personal knowledge and that would have been received for
16 the truth of that statement, so it can't be received as
17 the exception, it didn't lead up to the next event, so we
18 will have to disregard that. If you made a note about

19 that, if it comes up during your deliberations, you need
20 to say that was hearsay, we can not actually receive that,
21 there was no exception for a basis to receive that.

22 Counsel may proceed.

23 BY MS. BLUM:

24 Q. Mr. Calderon, you stated that your father didn't return
25 to his own home in Ahuachapan, is that correct?

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DIRECT - FRANCISCO CALDERON

710

1 THE INTERPRETER: Come again.

2 Q. After your father's arrest, he did not return to his
3 own home in Ahuachapan, is that correct?

4 A. That is correct.

5 Q. And where did your father move to?

6 A. Well, we staged a family operation. It's an operation
7 without weapons. And with that operation, what I mean once my
8 father left the jail, because, first of all, I would like to
9 clarify something, because I did see this, the jail was across
10 the street from the main park of Ahuachapan, which is public
11 space, and we had a group of people who loved my father very
12 much, they were there as witnesses of the fact that he had
13 left there; and at that very moment, the meritorious national
14 guard appeared at the park to search the purses of every
15 single woman, and they were all members of my family. Then
16 the guards went to the fence where my father was stepping out,
17 and they came over to recognize him, but they already knew
18 him, they just had him in jail, they were trying to make him

19 more afraid by pretending to recognize him, but they already
20 knew my father, they had all the information on him. So when
21 he came out, we staged an operation with four vehicles. We
22 put him inside a van and we would rotate the positions of the
23 vehicles along the way and drove to Ciudad Merliot to my
24 house. Well, it was really his house.

25 Q. Why did you think that level of precaution was

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DIRECT - FRANCISCO CALDERON

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1 necessary?

2 A. Well, I was more or less trying to say that earlier
3 because what happens is that at that moment, my father told me
4 everything. I already knew that he had not been able to
5 testify -- rather, I was not able to testify because my father
6 told me that he had been threatened, so it was foreseen, we
7 knew that he was going to be assassinated, and they did it,
8 the proof is clear.

9 Q. Where did your father move to?

10 A. To my house.

11 Q. And once your father was living with you, did he
12 exercise any particular precautions for his own safety?

13 A. Well, he did not go out anywhere. You see, that house
14 was not well-known in Ahuachapan, it was a new house, people
15 did not know it. The other thing is that, well, he would not
16 go out and he would not receive visits from anyone, he would
17 only see us, the family as a precautionary matter.

18 Q. And did he take any precautions for your safety and
19 your sister's safety?

20 A. Well, what he did do -- well, what he did do, well, you
21 see, this is legal in El Salvador and it is legal today, you
22 can bear arms as long as you have a permit. Well, They would
23 have never given him a permit, but he did have a weapon. What
24 he intended to do is the day that the death squad would
25 arrive, because he knew that they would come sooner or later,

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DIRECT - FRANCISCO CALDERON

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1 what he wanted to do is that he knew he wanted to be killed,
2 but he wanted to kill one or two, just to show to the public
3 opinion and to the world at large who the members of the death
4 squad were, but he was not able to do that for reasons I will
5 explain later.

6 Q. Mr. Calderon, I would like to direct your attention
7 towards the evening of September the 11th, 1980. How old were
8 you at this time? How old were you?

9 A. I remember that it was a huge present from the death
10 squads to me, because my father was killed on September 11th,
11 and September 18th was my birthday. My dad was killed eight
12 days before my birthday when I turned 29.

13 Q. And how old was your father?

14 A. He had just turned 51.

15 Q. And could you tell the jury a little bit about that
16 evening when you returned from work and what you did when you
17 got home?

18 A. That hideous night. I used to leave work around
19 5:00 in the afternoon, and that day, I remember I went by a

20 friend's house and I got home at about 8:00. I had dinner. I
21 spoke a bit with my dad. We exchanged some expressions. He
22 was watching TV. I said good night, dad, I'm going to sleep
23 because I had to get up at 6:00 o'clock in the morning
24 everyday.
25 Q. And was it a warm night?

‡

DIRECT - FRANCISCO CALDERON

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1 A. Typical tropical evening.
2 Q. And did you have the windows open?
3 A. Yes.
4 Q. And so you could see out on to the street through the
5 windows?
6 A. Yes, it was not that light, but it was not that dark
7 either and we could see out front. We had a big light on the
8 front of the house that said Calderon family. One big mistake
9 on my part.
10 Q. What did you hear as you were getting ready to go to
11 bed?
12 A. I was setting the alarm to wake up the next morning.
13 It was 10 o'clock at night when I heard kicking on the front
14 metal door of the house.
15 Q. And what did this sound like?
16 A. Those could not -- those noises could not be made with
17 civilian shoes like regular people wear, but rather, by logic,
18 they had to be, and as I was able to verify later, it was
19 military boots. They were dressed as civilian, but they were
20 military boots still.

- 21 Q. Did you go to answer the door?
22 A. I had no choice. I had to go out and verify who it
23 was, and find out who it was that was paying us this pleasant
24 visit at that time of the night.
25 Q. And did you look out the window before you opened the

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DIRECT - FRANCISCO CALDERON

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- 1 door?
2 A. I could not open the door because I had double dead
3 bolted it, I had.
4 Q. Before you opened the door, did you look out the
5 window?
6 A. Which is the right thing to do in order to see who is
7 the visitor.
8 Q. And who did you see?
9 A. Some unexpected visitors.
10 Q. And who were the unexpected visitors?
11 A. National civilian police with black jackets.
12 Q. How were the national police officers dressed?
13 A. Well, I think I recall they did change their uniforms a
14 couple of times over 25 years, it has been since I was there,
15 they changed uniforms, but I think I recall that they were
16 dark pants, beige or brown, and with their police insignia and
17 their helmets because they wear helmets.
18 Q. And at that time, 25 years ago, you were familiar with
19 that uniform?
20 A. Of course.

21 Q. And what happened next?
22 A. They told me to raise my hands and not to make any
23 movement. They were pointing at me. They told me not to make
24 any sudden movements, and that from -- and with my left hand,
25 I should grab the keys that were hanging on the wall.

♀

DIRECT - FRANCISCO CALDERON

715

1 Q. How many national guard -- excuse me, national police
2 officers did you see outside your house?

3 A. I could not be precise on answering that question,
4 because I did not get a chance to see outside. They did not
5 give me a chance to count, but it was a group. It could have
6 been six or seven.

7 Q. And were these men -- were these national policemen
8 armed?

9 A. I imagine, I will say so. The manner in which they
10 operate -- well, I don't know, may I explain if the gentlemen
11 from the defense allows so.

12 THE COURT: You may.

13 BY MS. BLUM:

14 Q. Okay.

15 A. Thank you, Your Honor. Well, the manner in which they
16 operated is they would lead the people to believe that they
17 were carrying out a normal operation. Of course, to do so,
18 they would have required an order from a judge, and not at 10
19 o'clock in the evening. Now, they were expecting some kind of
20 opposition, so they would come in the front just as the normal
21 operation, but then if they received some response, if we

22 tried to defend ourselves, if we had had weapons, at that
23 moment, if we had responded with bullets, then they would have
24 fallen back. That is the way in which they always perform
25 their operations, the squads; and then afterwards we would get

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DIRECT - FRANCISCO CALDERON

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1 the full operation with heavier weapons, meaning the answer to
2 the question is, yes, they had weapons. So then if we had
3 responded, they would say that it would have been a house with
4 subversives or guerillas inside, and at that point they would
5 have had every reason to mine the place or set explosives and
6 bring propaganda and claim that it was guerilla, and this is
7 the manner in which death squads operated, always under the
8 guidance of the minister of defense.

9 Q. Just to clarify for the jury, did your father support
10 the use of violence?

11 A. No, he was incapable of killing a bird.

12 Q. What type of weapons were the national police carrying?

13 A. G3s.

14 Q. Could you please explain to the jury what a G3 is?

15 A. Well, I am not an expert on weapons. I have never
16 owned a weapon. Sometimes it is not necessary to have a
17 weapon, but -- well, the thing is that it is an assault
18 weapon. It is semi-automatic, it can fire one shot and then
19 repeat with another shot, or it can fire fully automatic, and
20 it is German manufactured.

21 Q. Had you seen that weapon before?

- 22 A. But, of course.
23 Q. And in whose possession had you seen that weapon?
24 A. In the possession of the public security force of the
25 security, quote, unquote.

♀

DIRECT - FRANCISCO CALDERON

717

- 1 Q. When you were told to open the door with keys, did you
2 do so?
3 A. I had no other choice.
4 Q. And who came into the house when you opened the door?
5 A. It was a thousandths of a second in which a group of
6 bison came into my home.
7 Q. What do you mean by that?
8 A. They simply waited for me to open the door, and as soon
9 as I did, they all of them came in. I was about to go to
10 sleep, so I was wearing shorts, I was wearing no shirt, and I
11 was immediately on the ground with a G3 in my face. That was
12 the one who got me, the rest of them went inside the house,
13 uninvited.
14 Q. How many would you estimate or guesstimate that there
15 were coming into the house?
16 A. I could say five.
17 Q. And how were these men clothed?
18 A. With a large beach style hat and face masks. That was
19 their regular manner of operation to avoid being recognized.
20 Q. And what type of clothing were they wearing?
21 A. Civilian clothes.
22 Q. And how were you feeling at this moment?

- 23 A. I was thinking of what would happen next. I was
24 thinking that they were going to kill us all.
25 Q. And what did the men do after they threw you on the

♀

DIRECT - FRANCISCO CALDERON

718

- 1 ground?
2 A. They asked my name.
3 Q. And then what happened?
4 A. I answered I am Francisco Calderon. At that moment, I
5 don't know what was going on inside the house.
6 Q. How much time had passed between when they entered the
7 house and when you said your name?
8 A. One minute or a minute and a half.
9 Q. And what -- did you know where your father was?
10 A. I deduced that he would be trying to help my sister,
11 because I knew that he would not run like a coward.
12 Q. At any time, did you see your father?
13 A. Yes, about three minutes later, he was coming from the
14 hallway towards the living room where I was on the ground, and
15 he came up and said not my son, I am Francisco Calderon.
16 Q. And then what happened?
17 A. At that moment, since I was with my face to the ground,
18 my back was up, I was able to see when they told him you are
19 coming with us.
20 Q. And what did your father do?
21 A. What they did first was -- well, he said no, and I'm
22 about to use a strong word. He said I'm not coming with you,

23 kill me right here, sons of bitches.

24 Q. And were all the men who had come into the house in the
25 room at that moment?

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DIRECT - FRANCISCO CALDERON

719

1 A. Yes, they were searching the rooms. They were
2 searching the rooms, and I imagine they were searching for
3 weapons in order to be able to claim something different.

4 Q. And what did they do to your father after he said this?

5 A. They tried to forcefully remove him, but my dad was as
6 tall as I am, meaning we're not exactly small, and they
7 grabbed him by the T-shirt, and the mark of the T-shirt was
8 left on their hands.

9 Q. And then what happened?

10 A. Two of them walked down the hallway towards the rooms.
11 I don't know whether they went in the rooms, I guess they were
12 searching the rooms, and I did hear that they were hitting
13 with the stalks of their rifles against the doors in the
14 rooms, my bedroom and my sister's bedroom which had metal
15 doors to them, and they were calling her to come out, I
16 imagine they wanted her to come out so that she would witness
17 my father's death.

18 Q. And what did they do next?

19 A. They came back and with the stalks, they broke three
20 100-watt bulbs we had in the living room because I liked
21 illumination very much, they broke the bulbs and we were left
22 in the dark.

23 Q. And how close were you to your father at this point?

24 A. My father would be where the first chair is -- excuse
25 me, my father was where the first chair is, and I would have

♀

DIRECT - FRANCISCO CALDERON

720

1 been right over here. This is not precise, this is just an
2 approximation. We were in the living room.

3 Q. And what did they do to your father?

4 A. We were in the dark by then, and I don't know exactly.
5 All I know is that I heard four or five shots.

6 Q. And then what did they do?

7 A. They went outside. The living room smelled very
8 strongly of gun powder and then opened the door, went outside
9 and fired some rounds in the air just to keep the neighbors
10 from coming near.

11 Q. How long did you remain on the floor, do you think,
12 after they left?

13 A. I did not believe I was alive at that moment. I must
14 have been on the floor two, maybe three minutes, and
15 afterwards I rolled over and I felt the blood on my hand. At
16 least my father did not suffer, he was killed immediately.

17 Q. And could you see your father?

18 A. Once I got used to the darkness, I could. It was
19 terrible, his brains were all out. One of his arms, he did
20 not have an arm.

21 Q. Did anyone come over to help you?

22 A. At that time, I tried to grab a piece of newspaper to
23 put my father's brain on it, but I was not able to do so. And

24 my neighbor, he was studying his sixth year in medicine
25 school, so he helped me to do that afterwards.

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- 1 Q. What is your neighbor's name?
- 2 A. He is now a great physician, his name is Dr. Carlos
3 Piche.
- 4 Q. And did he stay with you for a long time?
- 5 A. Yes, the truth is he did stay awhile, and later on, the
6 neighbor from across the street came over. Everybody was
7 afraid because somebody had been murdered, and people brought
8 candles to lay him in wake, and that is how we laid wake to
9 him right there on the floor as he was. We needed a competent
10 authority to come in in order to lift the body.
- 11 Q. And had you covered your father's body?
- 12 A. Yes, because I did not want my sister to see it.
- 13 Q. Why did your -- did your father's body stay in the
14 house all night?
- 15 A. Because we could not go out, we could not go anywhere,
16 there was some kind of state of siege as of 7:00 o'clock at
17 night.
- 18 Q. And you were not allowed to leave your home after 7:00
19 o'clock?
- 20 A. No, I think that if you left your home at that hour,
21 you would never come back.
- 22 Q. Did any relatives come over to your house that night?
- 23 A. No one was able to come.
- 24 Q. At any point, did you see the son of one of your

25 cousins?

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- 1 A. Yes.
- 2 Q. When did you see him?
- 3 A. At 1:00 in the morning, meaning 9:00, 10:00, 11:00, at
4 1:00 o'clock, they got there.
- 5 Q. When you say they, who do you mean?
- 6 A. It was my female cousin's son, and it was her
7 ex-husband, meaning it was father and son who came.
- 8 Q. And was he related to Colonel Garcia?
- 9 A. Yes. His name is Francisco -- no, Carlos Francisco,
10 and he married Roxana Garcia, who is the daughter of General
11 Garcia, and his brother married the other Garcia's sister,
12 meaning that two men who are second cousins of mine married
13 the two daughters of General Garcia. But I'm not related to
14 General Garcia, it is embarrassing and it is disgusting for me
15 to think that I might be a relative of Colonel Garcia, and
16 please forgive me for the expression.
- 17 Q. Why would these two young men be able to travel to your
18 house after curfew?
- 19 A. Very good question. They were Garcia's two
20 sons-in-law.
- 21 Q. What happened while they were there?
- 22 A. Well, I was very upset, and I think that if I had seen
23 Garcia at that time, I would have strangled him if I had a
24 chance without a weapon, he and I, instead of how -- the way

25 in which they murder in a cowardly manner. I was very upset

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1 and I told my nephew, take a look at the state of your uncle
2 grandfather's body, please tell your father-in-law not to
3 continue to kill members of my family.

4 Q. When you say your nephew, you're referring to your
5 cousin's son, is that correct?

6 A. Correct.

7 Q. Did you have to have an official come to your home in
8 order to have your father's body taken to a funeral home?

9 A. Well, it seems to me that since the armed forces had a
10 lot of work in those days, murdering a lot of people, killing
11 the population of El Salvador, sometimes it simply happened
12 that the next day would come, and the judges, those officials
13 who could identify a body were too busy and so it might be
14 1:00 or 2:00 in the afternoon, and the flies were beginning to
15 lay their eggs on the body, as we say, and what I did is that
16 I looked for a contact to help me, and that is how at 7:00
17 o'clock in the morning when I was finally able to leave my
18 house in order to seek an authorized judge, turned out to be a
19 young lady, by the way. She came over, recognized the body
20 and gave me the legal document that allowed me to pick up my
21 father's corpse and bring it to the funeral home.

22 Q. How soon thereafter was your father's funeral?

23 A. Let's see, my father was assassinated at 10:00 at
24 night, and the operation lasted seven minutes because they're
25 quite professional at that. I don't congratulate them, but

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1 the body was raised at 8:00 in the morning, it was brought to
2 La Auxiliadora, the funeral home in El Salvador -- in San
3 Salvador, rather, and I had come over to the funeral home
4 because I wanted to make sure that he looked rather well, and
5 then he was transferred to Ahuachapan to lay in wake as is
6 normally done, and we buried him on Saturday at 4:00 o'clock
7 in the afternoon.

8 Q. Did you ever talk to Colonel Garcia's son-in-law, your
9 second cousin again?

10 A. Yes, about three or four weeks later, since he is my
11 cousin's son, I don't really have a problem with him, even
12 now, he told me that the general -- well, I don't know whether
13 he was a general, but his father-in-law was called general,
14 but he said the general wants to carry out an in-depth
15 investigation, take a look at these fancy words they were
16 using, an in-depth investigation into your father's death.

17 Q. And did you accept Colonel Garcia's offer to conduct an
18 in-depth investigation?

19 A. Of course not.

20 Q. Why not?

21 A. Well, because he would have come out with some bull
22 statement because they never really investigated any single
23 murder. Up to now that I know, not a single murder has been
24 investigated, so I was not about to waste my time talking to
25 this man. The truth is I'm not afraid of the military, and I

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1 was not going to go over and sit down before the minister.

2 Q. Mr. Calderon, could you tell the jury what it meant to
3 you to lose your father?

4 A. Well, the death of my father meant to me the death of
5 my best friend. He was my father. I don't know why I did not
6 go crazy. I know that we all have a bit of madness in us, but
7 I do have some emotional problems. Sometimes I suffer deep
8 depression and sometimes -- well, how could I say it, anxiety,
9 perhaps. I believe that today I feel quite happy, as a matter
10 of fact, because at least we will afford ourselves the luxury
11 of having at least in the accused and one of those responsible
12 for the murder of my father, not directly, but I say
13 responsible, because the public security forces were under the
14 command of military high command, and the military high
15 command means squad, and squad means extreme right in El
16 Salvador, and poor military man, because the military man does
17 not murder his own people.

18 MR. FARGARSON: Your Honor, may we approach?

19 THE COURT: You may.

20 (The following proceedings had at side-bar
21 bench.)

22 MR. FARGARSON: I don't mind him saying that he
23 wants satisfaction, but to go into all this dissertation,
24 he's talking about himself as a nonexpert, a lay witness
25 about the chain of command and people that are

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1 responsible, and I think that's prejudicial and
2 objectionable, and it is speculation on his part. It is
3 extreme speculation, and it is prejudicial because he's
4 trying to relate that Colonel Carranza --

5 MS. BLUM: Well, I think that the witness is
6 basically just stating his own opinion based on his
7 experiences of living in El Salvador. He has already
8 stated that he knew that Nicolas Carranza was the
9 vice-minister of defense at the time, and he's stating
10 that one of the things he feels is that he's mitigating
11 the loss of his father by being able to be here today and
12 confront someone who he believes is responsible for his
13 father's assassination. I mean we wouldn't be here if he
14 didn't believe that. So I believe he can testify to that.
15 If I asked him, as I intend to now, why he brought this
16 lawsuit, that would be his answer as well.

17 THE COURT: Under 701, a lay witness can give
18 such an opinion if it is based on a rational perception.
19 I don't know whether he's right or not, but he certainly
20 can give the statement. I did listen carefully to make
21 sure that it didn't seem to include a hearsay statement.
22 It is simply his observation as a person who was present
23 at the time. So it is allowed to be given. He doesn't
24 have to be an expert to give that statement.

25 MR. BROOKE: Your Honor, he appears to be,

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1 though, getting into the definition of parts of the
2 military when he says a squad is, the high command is --

3 THE COURT: Well, it is an interesting point,
4 but usually under 701, if he had not given the background
5 information that he did, it might be more of an issue, but
6 under 701, usually a lay witness can give such a
7 statement. Of course, the jury was able to weigh it.

8 MR. FARGARSON: I don't say he can't give a
9 statement, I'm just saying he was going into the high
10 command here, going into the minister of defense. He's
11 acting like an expert witness.

12 THE COURT: And, of course, 701 allows for
13 opinion testimony by lay individuals. In this case, I
14 think with the amount of background we have that he was
15 present, made the observations that he has made, I think
16 it is one of those situations where we should allow him to
17 testify in that regard. The jury understands that he has
18 a peculiar point of view, a particular point of view. Are
19 you about through?

20 MS. BLUM: I have got one more question and
21 then we're wrapping up.

22 THE COURT: And then we will try to -- we will
23 go to cross and see how far we get.

24 MR. FARGARSON: What was that?

25 THE COURT: We will go to cross because we have

1 got plenty of time. We may finish cross today if it is
2 possible.

3 MR. FARGARSON: Yeah, I'm not going to
4 cross-examine him long. I won't cross-examine him long at
5 all.

6 MR. BROOKE: On this?

7 THE COURT: On this.

8 MR. FARGARSON: What was that?

9 MR. BROOKE: She is asking if you're going to
10 cross-examine.

11 THE COURT: Yes, it just won't be very lengthy.
12 I think we're in good shape.

13 (The following proceedings were had in open
14 court.)

15 THE COURT: Counsel may proceed.

16 BY MS. BLUM:

17 Q. I just have one final question, Mr. Calderon. If you
18 could just put in your own words why did you file this
19 lawsuit.

20 A. Well, I want -- well, I have filed this lawsuit in
21 order to feel good with myself, because I know that with this
22 lawsuit, well, we're not seeking revenge, we're seeking
23 justice. With that, still my father's life will not be
24 returned to me, but at least I will have the dignity of
25 finding those responsible for it.

1 MS. BLUM: Thank you. I pass the witness.

2 THE COURT: Cross examination?

3 CROSS EXAMINATION

4 BY MR. FARGARSON:

5 Q. Let me ask you about that last statement that you made,
6 Mr. Calderon --

7 A. Fine.

8 Q. -- about the filing of the lawsuit. When did you learn
9 that you could file a lawsuit in the United States for what
10 happened to you and your family on September 11?

11 A. Because of the case filed against -- the case of
12 Garcia.

13 Q. Okay, but here was my question, Mr. Calderon, when did
14 you learn that you could for the first time that you could
15 file this type of lawsuit in the United States?

16 A. The response is kind of logical, I found out through
17 the newspapers because of the case, and I found out that
18 justice could be had here in the United States, and I believe
19 that was in the year 2002.

20 Q. Okay. And you came to the United States in 1981, is
21 that right?

22 A. Just to be more precise, I came on February 11th, 1981.

23 Q. Of 1981?

24 A. Correct.

25 Q. And you have been here in the United States since 1981?

1 A. Yes, I have been here. But the question was not very
2 specific.

3 Q. Well, all I meant is, has this been your home in the
4 United States since 1981?

5 A. Yes, we agree, yes.

6 Q. In San Francisco?

7 A. All the time.

8 Q. Now, you identified branches of the military government
9 in El Salvador?

10 THE INTERPRETER: Could you repeat the
11 question?

12 MR. FARGARSON: I will repeat it, I'm sorry.

13 BY MR. FARGARSON:

14 Q. I believe you identified certain branches of the
15 government in El Salvador, and I'm talking about the military
16 such as the national police, the treasury police and the
17 national guard.

18 A. Correct.

19 Q. And Mr. Calderon, did all of those different military
20 units wear different types of uniforms or different colored
21 uniforms?

22 A. The national police -- no, forgive me, the national
23 guard and the finest police or the treasury police, they wear
24 almost the same colors. Not the national police, as I recall.

25 Q. Well, what were the colors as well as you remember that

1 they wore back when you lived in El Salvador of the different
2 groups?

3 A. Meaning that you want me to give a description of the
4 three different branches?

5 Q. Here is what I mean. If one branch wore green and one
6 wore black and one wore brown or blue, would you tell me as
7 well as you remember what colors they wore, that's what I'm
8 asking you.

9 A. Finest police or treasury police, you wore green, with
10 boots up to the knee, and I will give you a better
11 description, their helmet, their G3 and their machete. That's
12 the finest police. And that corps was especially known
13 because of the fact they had to have murdered at least three
14 people in order to be able to join the treasury police.

15 Q. Okay.

16 A. So the treasury police wore the green, sometimes a
17 little darker, sometimes a little lighter, and then the
18 national police wore boots up to the ankle, not up to the
19 knees, and beige pants, I think, and the shirt was, what
20 color -- well, no, I do not recall exactly.

21 Q. Okay. That's fair enough. Now, do I understand,
22 Mr. Calderon, that on the night of your father's murder that
23 General Garcia, the minister of defense, was informed about
24 the murder of your father?

25 A. I am not exactly certain of that, because there was a

1 third person who is not here present.

2 Q. Well, let me expand on that. If it wasn't that night,
3 was it the next day that General Garcia, the minister of
4 defense, was informed about the murder of your father?

5 A. Supposedly. I'm not exactly certain of that. I repeat
6 if I had witnessed it, then I could affirm it, but since I did
7 not, I don't know.

8 Q. Okay. Well, I'm not trying to trick you, I had
9 understood in your testimony that you had a first cousin that
10 had two sons that were married to two daughters of General
11 Garcia.

12 A. Please excuse me, first of all, I am being honest, I
13 don't know whether he's trying to confuse me, I'm not making
14 up what I'm saying is the truth.

15 Q. I'm not -- Mr. Calderon, I'm not accusing you of being
16 dishonest, all I'm trying to do is clarify myself about what I
17 thought you said, I want to understand what you said.

18 A. I did answer that yes, my cousin's son is Garcia's
19 son-in-law.

20 Q. All right. Now, I also understood you to say that
21 General Garcia found out some way about the murder of your
22 father that took place on this evening in September of 1980?

23 MS. BLUM: Objection, Your Honor, asked and
24 answered.

25 MR. FARGARSON: Excuse me.

1 MS. BLUM: Asked and answered.

2 THE COURT: I will allow one last question.

3 A. Correct.

4 BY MR. FARGARSON:

5 Q. And then do I understand that you were contacted by
6 someone in General Garcia's office to either meet with him or
7 to have some type of an investigation?

8 A. No, it was my nephew who told me that.

9 Q. Oh, your nephew told you that you could meet with
10 Colonel Garcia?

11 A. That is correct, but I did not wish to do so.

12 Q. Right, I understood that you didn't wish to meet with
13 him about anything.

14 A. I did not understand whether it was a question.

15 Q. Okay. Did you desire to meet with Colonel Garcia?

16 A. No, I did not. I do not, never have, don't want to. I
17 would never sit with a military man. In this court, I do
18 because I have to.

19 Q. And then did you send a message back to Colonel Garcia
20 that you did not want to meet with him and to stop the
21 killing?

22 A. That is correct.

23 MR. FARGARSON: That's all. Thank you, sir.

24 THE WITNESS: You're welcome.

25 THE COURT: Redirect?

1 MS. BLUM: Just a couple of questions, Your
2 Honor.

3 REDIRECT EXAMINATION

4 BY MS. BLUM:

5 Q. Mr. Calderon, were you ever interviewed as a witness to
6 your father's assassination by any investigator?

7 A. Never.

8 Q. To the best of your knowledge, was an investigation
9 ever undertaken into your father's assassination?

10 A. Never. I would have been the first one to know about
11 this because after my father's murder, I was -- well, I was
12 the head of the family.

13 Q. To the best of your knowledge, was any person ever
14 held -- ever tried or held responsible for the assassination
15 of your father?

16 A. No, never.

17 MS. BLUM: Thank you very much.

18 THE COURT: Thank you, and we will let you step
19 down.

20 (Witness excused.)

21 THE COURT: Who will our next witness be?

22 MR. EISENBRANDT: Your Honor, may we approach?

23 THE COURT: Certainly.

24 (The following proceedings had at side-bar
25 bench.)

1 MR. EISENBRANDT: If Your Honor would be
2 willing, defense counsel would be in agreement, would it
3 be possible for us to start the next witness in the
4 morning, just -- it is going to be a very -- it is going
5 to be difficult testimony.

6 THE COURT: Sure. Who is it going to be?

7 MR. EISENBRANDT: It would be Ana Patricia
8 Chavez.

9 THE COURT: I didn't know. I thought maybe it
10 was somebody else.

11 MS. BLUM: We don't want her to be interrupted.

12 MR. EISENBRANDT: It would be better if we
13 could run all the way through without stopping.

14 THE COURT: That's okay. We have been trying
15 to communicate with counsel for the 8:45, and as far as we
16 know, it will be short, but we haven't been able to make
17 sure. We're going to follow the same policy. If they're
18 here on time, we should be able to start in here, which is
19 always -- some people are here early, some people are not,
20 but we will start maybe at 9:00, maybe at 9:15, a little
21 before 9:00 just in case they're right on time and we can
22 get through with the preliminary matter. That's fine. We
23 will see her tomorrow.

24 MR. FARGARSON: But for us, you want us here at
25 the same schedule?

1 THE COURT: Same schedule, just a couple of
2 minutes before 9:00, and that way you're able to get
3 situated and that's no problem.

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

5 THE COURT: Sure.

6 (The following proceedings were had in open
7 court.)

8 THE COURT: I think everybody would like to go
9 ahead and go home, it has been a fairly long day. So we
10 will ask you to come back in at 8:30 tomorrow and we will
11 start in here close to 9:00 o'clock. It may be 9:15. It
12 is going to be that same sort of schedule. There is a
13 matter that comes first tomorrow morning, and if they're
14 right on time, we will start close to 9:00 o'clock. If
15 they're late, we will start when they finish, so that's
16 how that works.

17 But remember, of course, don't discuss the case
18 with anybody at all and, of course, don't let anybody talk
19 with you about it, and avoid anything that might appear in
20 print or on radio or television about it. Continue to
21 keep an open mind. We still have got a ways to go, and
22 you should be careful in that regard. We will see you
23 tomorrow at 8:30, and we will start in here as soon as we
24 can either at 9:00 or 9:15. Thanks very much.

25 THE CLERK: All rise. This honorable court

1 stands adjourned until tomorrow morning.

2 (Court adjourned at 4:50 p.m.)

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