CASE NO. 06-6234

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

NICOLAS CARRANZA

APPELLANT

v.

ANA PATRICIA CHAVEZ,
CECILIA SANTOS,
JOSE FRANCISCO CALDERON,
ERLINDA FRANCO, and
DANIEL ALVARADO
APPELLEES

On Appeal from the United States District Court
For the Western District of Tennessee

BRIEF OF APPELLANT NICOLAS CARRANZA

Proof Copy

ROBERT M. FARGARSON, ESQ.
BRUCE D. BROOKE, ESQ.
FARGARSON & BROOKE
254 Court Avenue, Suite 300
Memphis, Tennessee 38103
(901) 523-2500

CASE NO. 06-6234

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

NICOLAS CARRANZA

Defendant-Appellant.

DISCLOSURE OF CORPORATE AFFILIATION AND FINANCIAL INTEREST

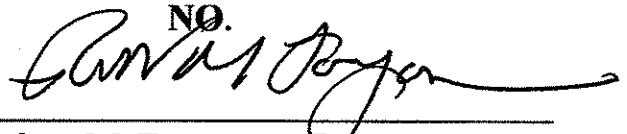
Pursuant to 6th Cir. R.26.1, NICOLAS CARRANZA makes the following disclosure:

Is said party a subsidiary or affiliate of a publicly owned corporation?

NO.

Is there a publicly owned corporation, not a party to the appeal that has a financial interest in the outcome?

NO.



Robert M. Fargarson, Esq.

February 28, 2008

Corporate Disclosure Statement

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

RULES **PAGE**

STATUTES **PAGE**

OTHER AUTHORITIES **PAGE**

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The jurisdiction of the district court, which tried the case now appended, was based on allegations that the Defendant was liable for acts of torture and extrajudicial killings as defined by international law and for other causes against humanity, which gave the court jurisdiction under the Torture Victims Protection Act, Public L. No. 102-256, 106 Stat. 73 (1992), defined as 28 U.S.C. § 1350 note, and the Alien Tort Claim Act, 28 U.S.C. § 1350 and 28 U.S.C. § 1331(b), based on the Federal questions presented by the claims.

The basis of the jurisdiction of the Court of Appeals is that a final Order of Honorable Jon McCalla, United States District Judge for the Western District of Tennessee, Western Division, was entered on August 15, 2006, which denied Defendant's Motion of Judgment Notwithstanding the Verdict for New Trial or Remittur (R.181, Order, Apx ____).

Appellant timely filed Notice of Appeal on September 14, 2006. (R.184 Notice of Appeal, Apx_____).

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument is requested. This case involves complex facts and substantial issues of law, some of which may be best explained orally rather than by writing alone.

Consequently, due to the complex facts and multiple legal issues, Appellant believes oral argument is appropriate.

STATEMENT OF ISSUES FOR REVIEW

I. DID THE COURT ERR IN HOLDING THAT THE PLAINTIFFS' CLAIMS WERE NOT BARRED BY THE TEN (10) YEAR STATUTE OF LIMITATIONS?

II. DID THE COURT ERR IN EXCLUDING PROOF OF THE PEACE ACCORD AND AMNESTY AGREEMENT OF EL SALVADOR?

III. DID THE COURT ERR IN PERMITTING THE INTRODUCTION OF HIGHLY PREJUDICIAL HEARSAY AND INFLAMMATORY EVIDENCE, INCLUDING:

A. THE TRUTH COMMISSION REPORT

B. THE UNSUPPORTED TESTIMONY OF PLAINTIFFS' EXPERT WITNESSES KARL & WHITE

C. CABLES ALLEGEDLY TRANSMITTED FROM THE UNITED STATES EMBASSY IN EL SALVADOR INCLUDING ONE ALLEGEDLY PREPARED BY MILITARY ATTACHE COLONEL BRIAN BOSCH

D. HORRIFIC PHOTOGRAPHS OF DEAD BODIES AS VICTIMS OF ALLEGED MILITARY ATROCITIES?

IV. DID THE COURT ERR IN PERMITTING TERRY KARL TO TESTIFY AS A MILITARY EXPERT?

V. **DID THE COURT ERR AS A MATTER OF LAW IN ITS JURY INSTRUCTIONS ON THE ISSUES OF COMMAND RESPONSIBILITY?**

VI. **DID THE COURT ERR IN EXCLUDING THE TESTIMONY OF DEFENDANT'S EXPERT DR. DAVID ESCOBAR GALINDO, INCLUDING TESTIMONY RELATING TO THE AMNESTY LAW?**

STATEMENT OF THE CASE

This action is brought by the Plaintiffs, who at the time of their claims, were citizens of El Salvador. Plaintiffs' Complaint alleges claims based upon the Torture Victims Protection Act (TVPA) Pub. L. No. 102-256, 106 Stat. 73 (Enacted March 12, 1992) (Modified 28 U.S.C. § 1350 as note), and the Alien Tort Claims Act (ATCA) 28 U.S.C. § 1350, which have a ten (10) year statute of limitations. Plaintiffs contend that they are entitled to damages from the Defendant for acts of extrajudicial killings, inhumane conduct and/or torture of themselves or members of their family, which occurred more than twenty (20) years prior to the filing of their Complaint and that were allegedly committed by unknown and unidentified persons in the Salvadoran military or security forces.

The Plaintiffs' claims are asserted against the Defendant, Nicolas Carranza, who served as El Salvador's Sub-Minister to the Minister of Defense from October 1979 until January 1981, and Director of the Treasury Police from June 1983 until May 1984. The Plaintiffs contend that the Defendant is liable under the theory of command responsibility as Sub-Minister to the Minister of Defense over three (3) units of the Salvadoran military, namely, The National Guard, The National Police and The Treasury Police.

The Plaintiffs allege that, in such position, he exercised command responsibility over, conspired with, or aided and abetted subordinates of the

military, or persons, or groups in coordination with the military, or under their control, to commit extrajudicial killings, torture, or crimes against humanity and to cover up the abuses.

The Defendant, Nicolas Carranza, admitted service as Sub-Minister to the Minister of Defense, but contends that he was not an operational military officer, but in such position, was an administrative officer and carried out the directives and orders of his superior, who was the Minister of Defense. He denied all of the other allegations alleged and testified that he knew nothing about the claims of any Plaintiff, except for one Plaintiff joined in the Second Amended Complaint, namely, Daniel Alvarado, who was in custody of the Treasury Police for a brief period of time while Carranza was the Director of the Treasury Police. The Defendant otherwise denied that he had any knowledge of the circumstances, events or claims of any other Plaintiff. The other Plaintiffs, aside from the said Daniel Alvarado, offered no evidence or knowledge that the Defendant Carranza was a participant or aware of the events involving them personally or involving their parents' injuries or deaths, or that he had any actual personal connection with any of the events or claims.

The Defendant Carranza asserted various affirmative defenses, including the defense of the statute of limitations for claims made by the Plaintiffs. The statute of limitations for such claims was ten (10) years. In addition, Defendant claims

that he is immune from suit pursuant to the Amnesty Law passed by the Salvadoran legislature on March 20, 1993 following a Peace Accord Agreement, which terminated the civil war and granted broad, absolute and unconditional amnesty in favor of those in one way or another, who participated in political crimes, crimes with political ramifications, or common crimes before January 1, 1992. The effect of the law was to bar all civil claims of criminal actions against such participants in the civil war in El Salvador prior to that time. The Amnesty Law and Peace Accord was sponsored by the United Nations and participated in by the United States, which was interested in the Peace Accord with a hemispheric neighbor.

The claims of the Plaintiffs against the Defendant Carranza were tried to a jury, who could not reach a verdict on the case of Ana Patricia Chavez, but did award compensatory damages of $500,000 each to Cecilia Santos, José Francisco Calderon, Erlinda Franco and Daniel Alvarado, and $1,000,000 each in punitive damages.

The Defendant, Nicolas Carranza, filed a Motion for Judgment Notwithstanding the Verdict for a New Trial or Remittur, which Motion was denied by the Court on August 15, 2006, and the Defendant filed his Notice of Appeal on September 14, 2006. The Defendant's appeal to the Honorable United States Court of Appeals for the Sixth Circuit is to correct the errors and wrongs

committed against him in the trial of the case in the United States District Court for the Western District of Tennessee, Western Division, by the Honorable Jon P. McCalla, United States District Judge.

STATEMENT OF FACTS

The Plaintiffs, Ana Patricia Chavez, Cecilia Santos, José Francisco Calderon, Erlinda Franco and Daniel Alvarado, who are or were at all times pertinent citizens of El Salvador, filed their original Complaint in this action, pursuant to the Torture Victims Protection Act (TVPA) codified as note 28 U.S.C. § 1350, and the Alien Tort Claim Act (ATCA), 28 U.S.C. § 1350. The original Complaint was filed on December 3, 2003 in the United States District Court for the Western District of Tennessee, by Plaintiffs José Oscar Chavez, Ana Patricia Chavez, Haydee Duran, Cecilia Santos, José Francisco Calderon, Jane Doe I and Jane Doe II. (R.1, Complaint, p. 1, Apx. p.__).

The initial Complaint was not filed until December 10, 2003 by José Oscar Chavez and Patricia Chavez, Cecilia Santos, José Francisco Calderon and Jane Doe I and Jane Doe II. Jane Doe II was Erlinda Franco (R.1, Complaint, Apx. p.___). The claims of each Plaintiff were the result of events that happened in July, September and November of 1980. (R.1, Complaint, p. 3-5, Apx. p.__).

The First Amended Complaint was filed February 23, 2004 and joined Plaintiff, John Doe (Daniel Alvarado) whose claim resulted from events in August 1983. (R.12, First Amended Complaint, p. 1, Apx. p.___). A Second Amended Complaint was filed June 20, 2005, which removed as Plaintiffs, José Oscar Chavez, Haydee Duran and Jane Doe I and added some facts and claim of John

Doe I. (R.31, Second Amended Complaint, pp. 3-8, 32, Apx. p.__; R.32, Agreed Order, Apx. p.__)

Plaintiffs claimed Nicolas Carranza served as El Salvador's Sub-Minister to the Minister of Defense and Public Security, from about October 1979 until January 1981, during which time he "exercised command and control over the three units of the Salvadoran Security Forces" (R.31, Second Amended Complaint pp. 2-3, Apx. p.__). He served as Director of the Treasury Police from about June 1983 until May 1984, during which time he "possessed and exercised command and control over the Treasury Police". (Id. at 3).

Carranza has been a resident of the United States since 1984. He has resided in Memphis, Tennessee since 1986. The Defendant, Nicolas Carranza, has been a naturalized United States citizen of the United States since 1991 He was married in 1958 and he and his wife had five (5) children. (Tr. 1365, Apx. p.__). Carranza had been employed in Memphis as a realtor and then a security officer at Brooks Museum Park and Brooks Art Gallery. Eventually, he was promoted to Chief of Security for the art gallery. (Tr. 1367-1369, Apx. p.___). Since 1985, he had not been known by any aliases nor did he undertake to change his identity to try to secrete himself. He has resided at the same address in Memphis, Tennessee, since April 1985. He has not tried to hide his identity. He has a Social Security number, Tennessee driver's license, and he has been listed in the Memphis phone book at

the same residential address in twenty (20) years. The Defendant, Nicolas Carranza, has not taken any action to prevent any of the Plaintiffs from pursuing legal remedies nor otherwise threatened any Plaintiff or caused any Plaintiff to be threatened if they elected to pursue legal remedies (Tr. 1364-1370, Carranza Affidavit in Support of Motions for Summary Judgment and to Dismiss, Apx. p.___).

The claims made by the respective Plaintiffs were based on actions and incidents that occurred almost twenty-five (25) years prior to the filing of the December 10, 2003 Complaint. The claims of the Plaintiff Ana Patricia Chavez was the result of the alleged extrajudicial killings of her mother and father on or about July 26, 1980, allegedly by members of Security Forces of the El Salvador Military or individuals under their control. (R.1, Complaint, Apx. p.__).

The claim of Cecilia Santos arose out of events that commenced on September 25, 1980 at a shopping center in El Salvador when, she contends, two (2) private security officers arrested her and she was taken to National Police Headquarters, where she was allegedly tortured and assaulted by individuals wearing civilian clothes and wearing some clothes that she contends was typical of the National Police. (R.1, Complaint, Apx. p.__).

The Plaintiff Francisco Calderon's claim arises out of events that occurred on September 11, 1980 and, allegedly members of the National Police knocked on the

door of the Calderon's home in San Salvador, where he was grabbed by several men wearing civilian clothes and masks, and he was forced to the floor. He alleges the men were dressed in civilian clothes, but carrying weapons similar to those used by Security Forces or death squads. His father, Paco Calderon, was shot several times and killed on that evening. (R.1, Complaint, Apx. p.__).

The claim of Plaintiff Jane Doe, a/k/a Erlinda Franco, was based on events that occurred on November 27, 1980, when members of the FDR were killed by a group of heavily armed men, wearing civilian clothes and some wearing uniforms of the Security Forces. She alleges that the men were carrying G3 rifles, or weapons commonly used by Security Forces. Her husband was killed that evening, along with others and allegedly tortured as well. (R.1, Complaint, Apx. p.___).

The claim of Plaintiff, John Doe, a/k/a Daniel Alvarado, was based on events of August 25, 1983, when he was abducted while attending a soccer game by men in civilian clothes. Those men carried G3 rifles and some had military caps. He alleges that he was taken to the headquarters of the Treasury Police, where he was tortured. (R.27, First Amended Complaint, Apx. p.__).

The Defendant Carranza filed pleadings denying knowledge of the 1980 and 1983 claims until he was served with the 2003 lawsuit. (Tr. 1364, Apx. p.___).

He was born in 1933 in El Salvador, and after completing high school,

attended three (3) years of college at the National University in El Salvador in the City of San Salvador. (Tr. 1371-1373, Apx. p.___).

After attending military school, Carranza served in various positions in the military, including being a professor at the military school from 1964 to 1969 (Tr. 1388, 1399, Apx. p.__); attending three (3) years of school in Mexico during the period of 1974 to 1977 (Tr. 1399-1401, Apx. p.__); and, serving as Manager of ANTEL, the country's communication system, from 1977 to September of 1979. (Tr. 1402-1404, Apx. p.__). In addition, Carranza was asked by the Minister of Defense, to serve as Sub-Minister to the Minister of Defense, which was a position Mr. Carranza occupied from 1979 to January 3, 1981, for a total of one (1) year and two to three (2-3) months. (Tr. 1413-1415, Apx. p.__). At that time, there was a military junta and the Commander-in-Chief of the Armed Forces was responsible as the head of the chain of command. (Tr. 1414-1415, Apx. p.__). As Sub-Minister to the Minister of Defense, Carranza acted as technical advisor to the Minister, and as his subordinate had to accept and not disobey the orders of a military superior. (Tr. 1420-1424, Apx. p.__).

During Carranza's tenure as Sub-Minister to the Minister of Defense, the civil disturbances within El Salvador increased following the murder of FDR members. Because the Sandinistas were powerful in Nicaragua during the presidency of Somoza, they were able to send men and weapons to El Salvador to

assist leftist activity against the government. (Tr. 1437, Apx. p.__).

Because of the increase in activity in many places and the guerillas' more sophisticated ways of combat, the military had to recruit more troops to patrol the streets, roads, and important places. (Tr. 1437, Apx. p.__).

With regard to the claims of each individual Plaintiff, Carranza was not aware of, nor familiar with, the alleged murder of Chavez' family member on July 26, 1980. Carranza knew nothing about it until the lawsuit that was filed on December 10, 2003. (Tr. 1442, Apx. p.__).

The same is true of all other Plaintiffs, namely Calderon, for the alleged killing of his father on September 11, 1980; Santos, for her arrest and alleged torture on September 25, 1980; and, all other Plaintiffs, except Alvarado. (Tr. 1442-1443, Apx. p.__).

Carranza became Director of the Treasury Police on May 31, 1983 at the request of the Minister of Defense, Vides Casanova, to improve image and conditions. Carranza was only Director for one year. Carranza met Alvarado, because Carranza was Director of the Treasury Police when Alvarado confessed to the murder of the U.S. Embassy attaché, Commander Schaufelberger. (Tr. 1451-1460, Apx. p.__).

Carranza met Alvarado the day he was presented to the press for a press conference, because he admitted that he killed Commander Schaufelberger. (Tr.

1461, Apx. p.__). Later, a reporter wanted to interview Alvarado, and Carranza asked Alvarado if he wanted to be interviewed. (Tr. 1463, Apx. p.__).

After Alvarado was interviewed by representatives of the United States, within several weeks, he revoked his confession and claimed the confession was extracted by torture. Carranza talked to Alvarado and asked why he had not told him (Carranza) he had been tortured. (Tr. 1464, Apx. p.__). Also, Alvarado admitted that Carranza was angry when he asked Alvarado, "Why didn't you tell me (Carranza) that you had been tortured." (Tr. 853, Apx. p.__).

Prior to the trial before the jury, Carranza filed Motions to Dismiss based on the statute of limitations and lack of jurisdiction (R.9, Motion to Dismiss, Apx. p.__); a Renewed Motion to Dismiss based on the statute of limitations (R.13, Renewed Motion to Dismiss, Apx. p.__); (R37, Motion for Judgment on the Pleadings or Summary Judgment, Apx. p.__).

Carranza filed his. (R.41, Answer and Affirmative Defenses, Apx. p.__). He filed a Motion to Limit and Exclude Evidence of Plaintiffs' Witnesses, namely Robert White and Terry Karl. (R.92, Motion in Limine to Limit the Evidence of Plaintiffs' Witnesses and Exclude Evidence, Apx. p.__). Carranza filed a Motion to Exclude the Truth Commission Report as Hearsay. (R112, Motion to Exclude the Truth Commission Report as Hearsay, Apx. p.__).

The Plaintiffs filed a Motion to Exclude the Testimony of David Escobar

Galindo. (R.74, Motion in Limine to Exclude Testimony of Dr. David Excobar Galindo, Apx. p.__); and all References to the Salvadoran Amnesty Law. (R76, Motion in Limine to Exclude any and all References to Salvadoran Amnesty Law, Apx. p.__).

The Court denied all of the Defendant's above-cited Motions (R.28, Order Denying Motion to Dismiss, Apx. p.__; R.37, Motion for Judgment on the Pleadings or Summary Judgment, Apx. p.__; R.97, Order Denying, Apx. p.__), and granted the Plaintiffs' Motions (Status Conference, October 27, 2005, pp. 22-29).

The Court denied Carranza's Motion in Limine to Limit Evidence of Plaintiffs' Witnesses and to Exclude evidence of Plaintiffs' witnesses, especially Terry Karl and Robert White (R.92, Motion in Limine to Exclude Plaintiffs' Witnesses and Limit Evidence, Apx. p.__; Status Conference, October 27, 2005, pp.29-30), the Judge allowed political scientist Terry Karl to testify beyond the scope of the Pre-Trial Order designation, thus allowing Karl to testify about military matters without any military training or service (Tr. 901-904, Apx. p.__), to which Carranza objected.

The evidence was presented and the case presented to the jury, which returned verdicts for Santos, Calderon, Franco and Alvarado. (R.148-R.153, R.154–R.158, Minute Entry for Proceedings/Verdict, Jury Verdicts, Apx. p.__).

The claim of Chavez was dismissed. (R.164, Stipulation of Dismissal of Ana Patricia Chavez, Apx. p.__), and the Court entered Judgment on the Verdict. (R.165, Judgment on Jury Verdict and Stipulation of Dismissal, Apx. p.__).

At the conclusion of the Plaintiffs' evidence and proof in chief, the Defendant moved for a direct verdict. (Tr.1211-1214, Apx. p.__). Following jury verdicts and judgment on the verdicts (R.165, Judgment on Jury Verdict and Stipulation of Dismissal, Apx. p.__), the Defendant filed a Motion for Judgment Notwithstanding the Verdict, New Trial or Remittur. (R.167, Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittur, Apx. p.__).

The Court denied Carranza's Motion for Judgment Notwithstanding the Verdict or for New Trial. (R.181, Order Denying Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittur Apx. p.__), and Carranza filed Notice of this appeal now before the Honorable Court to redress the multiple errors committed against him in the trial. (R.186, Notice of Appeal, Apx. p.__).

SUMMARY OF ARGUMENT

The Defendant, Carranza, contends that in the trial of the case in District Court, numerous errors were committed against him, which denied him a fair trial, due process and equal protection of the law.

These errors committed included the failure of the Court to grant his various Motions for Dismissal; for Summary Judgment; for Directed Verdict at the conclusion of the Plaintiffs' proof; and, for a Post-Trial Motion for Judgment Notwithstanding the Verdict and for Summary Judgment, due to the fact that the Plaintiffs' claims were more than twenty (20) years old and were time-barred by the statute of limitations applicable to their causes of action and for other evidentiary errors.

The Trial Court erred in failing to grant the Defendant's Motions to Dismiss and various other Motions, and the Court failed to recognize the sovereign laws of El Salvador and grant full faith and credit or comity to the Peace Accord and Treaty entered into in El Salvador to end the civil conflict on January 1, 1992 and passed as law by the Legislature of El Salvador in March of 1993, which prohibited civil or criminal suits by participants in the conflict in El Salvador.

The Trial Court also erred in permitting Plaintiffs, over the objections of the Defendant, to offer into evidence hearsay information, including The Truth Commission Report, cables by unknown authors, transmitting information between

the United States Embassy in El Salvador, a number of which were unsigned and highly redacted, and one in particular attributed to military attaché Brian Bosch, who denied preparing the document and its contents concerning Carranza.

Additionally, the Trial Court erred in allowing the Plaintiffs' witnesses to offer photographs of dead bodies and atrocities allegedly committed by the military without any proof or evidence that would connect the Defendant or the military to such photographs, and permitting Terry Karl, tendered as a political science expert, to offer evidence regarding military matters and command responsibility, without military credentials or experience. The Court also allowed Ambassador Robert White and Karl to review and read hearsay documents from unidentified sources to testify to various acts that had allegedly occurred by the military even after the Defendant was no longer a member of the Salvadoran military in El Salvador.

Finally, the Trial Court erred in granting Plaintiffs' Motion in Limine to Exclude the Testimony of Dr. David Escobar Galindo, a witness desired to be offered by Carranza, who participated in the Peace Accord Salvadoran Treaty and Amnesty Law, and was aware of the parties who participated in it, the reasons for the Law, and other matters and circumstances surrounding the Law and Peace Agreement and Salvadoran Amnesty Law. The Court erred in the refusal to grant or permit any mention of the Peace Accord and Salvadoran Amnesty Law during the trial of the case to the jury.

ARGUMENT

I. THE COURT ERRED IN HOLDING THAT THE PLAINTIFFS' CLAIMS WERE NOT BARRED BY THE TEN (10) YEAR STATUTE OF LIMITATIONS.

The court erred in failing to grant Carranza's Motions to Dismiss and for Summary Judgment and Judgment Notwithstanding the Verdict on the ground that the claims were barred by the statute of limitations.

The relevant statute of limitation applicable to the Plaintiffs' causes of action is what is commonly known as "Torture Victims Protection Act" of 1991, also codified in 28 U.S.C. § 1350. § 2(c) clearly states that the statute of limitations is as follows:

> "No action should be maintained under this section unless it commenced within ten (10) years after the cause of action arose."

The claims of the Plaintiffs recited in the Complaint clearly occurred well over twenty (20) years prior to the commencement of this action in Federal Court. The claims of Santos, Calderon and Franco occurred between June and November of 1980. Their Complaint was filed on December 3, 2003 or over twenty-three (23) years following their causes of action occurring. (R.1, Complaint, Apx. p.__).

In 2004, entered on the Docket on July 30, 2004, John Doe (Alvarado) was joined as a Plaintiff in that Complaint and his cause of action was based on an abduction by men in civilian clothes on August 25, 1983 and events that took place thereafter. Consequently, his claim was made over twenty-one (21) years after the

cause of action occurred. (R.27, First Amended Complaint, Apx. p.__).

In the face of the Motions to Dismiss, Summary Judgment, Directed Verdict at the conclusion of the proof; and, Judgment Notwithstanding the Verdict or in the Alternative for New Trial, the Plaintiffs contended that the statute of limitations should be tolled due to extraordinary circumstances in El Salvador based upon the fact that they feared bringing any actions because they were concerned that relatives still residing in El Salvador might face some retaliation from someone. The District Court found that the statute of limitations should have been tolled until at least March of 1994, when the first national elections occurred after the end of the civil war. The Court stated it was not necessary to determine whether the violence continued following the signing of the Peace Accord when the first relatively peaceful national elections occurred because the Plaintiffs' claims are timely under either circumstance. (R.28, Order Denying Defendant's Motion to Dismiss, p. 5, Apx. p.__).

Carranza contends that the District Court picked out a date arbitrarily that allowed all claims to be tolled without regard to other circumstances and other issues involved in the case concerning the prejudice to the Defendant in allowing tolling, and the fact that, after such a lengthy period of time, witnesses were dead; could not be located; and, the cause of action was brought in Tennessee rather than El Salvador, where the incidents took place.

The Court noted that the Sixth Circuit had identified five (5) factors to consider when determining whether or not to apply equitable tolling. The case cited was *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552 (6th Cir. 2000), which was a different type of case involving employment discrimination. However, one of the issues to be considered is prejudice to the Defendant. The Court made no ruling in regard to any prejudice to the Defendant, even though Carranza claimed, in his renewed Motion to Dismiss, that equitable tolling of the statute of limitations violates the Defendant's right to a fair trial and denies him due process and equal protection of the law for events that occurred more than twenty (20) years prior to the claims and he had not been a member of the Salvadoran military or government since May of 1984. (R.13, Renewed Motion to Dismiss, Apx. p.__).

Carranza filed a Pre-Trial Motion to Dismiss and a Motion for Summary Judgment prior to the trial of the case, again based on the statute of limitations, the doctrine of comity, and the doctrine of full faith and credit, which Carranza contends the Courts of the United States should accord to the laws enacted by El Salvador.

Perhaps they were wrong or uninformed, but it appears that no matter when a lawsuit is filed based on the Torture Victims Protection Act or the Alien Tort Claim Act, the Plaintiffs would contend that the statute of limitations had not

expired and should be tolled.

The standard of review is whether or not the District Court abused its discretion in applying equitable tolling. *Ellis v. General Motors Acceptance Corp.*, 160 F.3d 706 (11th Cir. 1998).

The claimant has the burden of showing extraordinary circumstances exist. *Justice v. United States*, 6 F.3d 1474 (11th Cir. 1993). Additionally, it has been held that tolling is an extraordinary remedy, which should be used sparingly. *Sowin v. Dept of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453 (1990).

Congress has provided guidance regarding equitable tolling in these cases where S. Rep. No. 102-249 states the following:

> "The legislation provides for a 10-year statute of limitations, but explicitly calls for consideration of all equitable tolling principles in calculating this period with a view toward giving justice to plaintiff's rights. Illustrative, but not exhaustive, of the types of tolling principles which may be applicable include the following. The statute of limitations should be tolled during the time the defendant was absent from the United States or from any jurisdiction in which the same or similar action arising from the same facts may be maintained by the plaintiff, provided that the remedy in that jurisdiction is adequate and available. Excluded also from calculation of the statute of limitations would be the period when a defendant has immunity from suit. The statute of limitation should also be tolled for the period for the period of time in which the plaintiff is imprisoned or otherwise incapacitated. It should also be tolled where the defendant has concealed his or her whereabouts or the plaintiff has been unable to discover the identity of the offender."

None of the above statements apply to this particular case. The Defendant

has been in the United States, in Tennessee, since 1984. (Tr.1364, Apx. p.__). He has not concealed his whereabouts to prevent the Plaintiffs from bringing legal action and he has not taken any action to hinder the Plaintiffs from bringing any legal action they wanted to bring, and none of them offered any specific proof of any threat to them or their families.

In this particular case, the Court tolled the statute of limitations beyond the period of time chosen or selected by the Court in *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006). The *Arce* Court determined that the tolling of the statute of limitations ended with the civil war in 1992. (Id. at 21-22, Apx. p.__).

The Trial Court in the pending case chose to toll the statute of limitations until the time of the first elections after the Peace Accord in March of 1994. This is true even though none of the Plaintiffs were aware of their right to bring a legal action until they were apparently contacted by The Center for Justice and Accountability to participate in the present lawsuit against Carranza. Without citing any authority, the District Court held the fact that one or even all the Plaintiffs might have been unaware that they could pursue a legal claim against the Defendant in the United States until 2002 or 2003, as some Plaintiffs testified, was not relevant to the equitable tolling determination. In other words, even though the Plaintiffs did not know that they had a claim, the Court relied upon pre-trial affidavits asserting that some of the Plaintiffs were fearful of bringing a claim they

did not know existed for fear of retaliation based on circumstances in El Salvador. (Tr.1214-1218, R.181, Order Denying Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittur, pp. 8-9, Apx. p.___).

Carranza contends that the "evidence" of fear was never presented as evidence in the trial of the case, but in affidavits that were submitted to the Court in response to the various Motions to Dismiss and Motions for Judgment as a Matter of Law. (Tr.1213-1220, Apx. p.__). At the trial of the case, none of the Plaintiffs testified about fear. As a matter of fact, the Plaintiff Calderon testified that he was "not afraid" of the military. (Tr. 724, Apx. p.__).

While it may seem reasonable to the Court, it seems unreasonable to Carranza that, when a person does not know he has a claim, his asserted fear of bringing a claim he does not know exists can be used to toll the cause of action. All of the Plaintiffs testified at the trial that they learned they could bring a lawsuit in either 2002 or 2003 after being invited to participate by Plaintiffs' counsel, or learning through the newspaper. (Tr.495, 577, 771, Apx. p.__).

In December of 2003, Franco found out, as a result of a phone call from one of the Plaintiffs' lawyers and a member of The Center of Justice and Accountability, namely Alumena Bernabeu. (Tr. 495, Apx. p.__).

Cecilia Santos, a resident of the United States since 1983, did not learn that she could file a lawsuit in the United States until 2002. (Tr. 577, Apx. p.__).

Ana Chavez moved to the United States in 1980 and has been a United States resident since that time, but did not learn she could file a lawsuit, such as the one in which she was a Plaintiff, until December of 2003. (probably meant 2002). (Tr. 771, Apx. p.__).

The same is true of Francisco Calderon, who did not learn about filing a case until 2002, though he had been a United States resident since 1981, and has remained in San Francisco since that time. (Tr. 729-730, Apx. p.__).

Alvarado was a resident of Sweden and Franco was a resident of El Salvador. Like Defendant Carranza, Plaintiffs Chavez, Calderon and Santos have all been United States residents. Consequently, to toll the statute of limitation for residents of the United States against another resident of the United States seems to fly in the face of fairness. Three (3) of the parties were no longer aliens. They had been living in the United States long enough to familiarize themselves with United States law, and yet they are accorded the same privileges of nonresidents of the United States, simply on the basis of some claim of "alleged fear". That seems analogous to not suing the police for police brutality for fear of retaliation. Would that toll a statute of limitations for ten (10) to (12) years?

The Court erred in denying all of Defendant's Motions to Dismiss the Complaints and for Summary Judgment and trying the case in Memphis, Tennessee, twenty (20) years after the alleged acts. The Defendant was denied a

fair trial because of Plaintiffs' delay in bringing the suits, which prevented Defendant from having timely access to documents and witnesses in existence at the time of the alleged acts to provide his own defense.

The District Court abused its discretion in tolling the statute of limitations for all of the Plaintiffs due to the unproven claimed "fear". (Tr. 1213-1220, Apx. p.__).

II. THE COURT ERRED IN EXCLUDING PROOF OF THE PEACE ACCORD AND AMNESTY AGREEMENT OF EL SALVADOR.

The District Court held that the laws of El Salvador did not apply and that the Doctrine of Comity did not apply in view of the fact that it only applied when there was a conflict between laws of the United States and the laws of El Salvador. The Court contended that there was no such conflict in view of the fact that the Plaintiffs could obey or follow each law. (R.97, Order Denying Motion for Judgment on Pleadings or for Summary Judgment, Apx. p.___). The Court acknowledged in its opinion that the Amnesty Law of El Salvador grants a "broad, absolute and unconditional amnesty...in favor of all those who in one way or another participate in political crimes, crimes with political ramifications or common crimes committed before January 1, 1992, and that the Legislature Assembly of El Salvador adopted the Amnesty Law on March 20, 1993. (R.97,Order Denying Motion for Judgment on Pleadings or for Summary Judgment, p.7, Apx. p.__).

The Standard of Review regarding the application of the Doctrine of Comity is whether or not the Court abused its discretion in failing to apply the Doctrine of Comity. *Somportex Limited v. Philadelphia Chewing Gum Corporation*, 453 F.2d, 435 (3rd Cir. 1971).

The Peace Accord Agreement was entered into with the assistance of the United Nations and Western Hemispheric Nations, including the United States, all of which sought peace and stability in Central America. (R. 97, Order Denying Motion for Judgment on Pleadings or for Summary Judgment, Apx. p.___).

Carranza submits that the case of *Hoffmann-Laroche v.Empagran*, 542 U.S. 155 (2004) has a significant parallel and rationale that is applicable to this case. *Hoffman* involved the issue of price fixing and was filed by foreign Plaintiffs in a United States District Court to pursue a claim for treble damages. Such a remedy allegedly might undermine a foreign nation's own antitrust enforcement policies thereby diminishing foreign firms' incentive to cooperate with antitrust authorities in return for prosecutorial amnesty. (Id. at 164, 168-169).

The Supreme Court reasoned that the application of the United States Antitrust Laws to other nations that have their own regulatory laws was unduly intrusive when there was no domestic harm. The Court cited Restatement of the Law, § 403(2) (Restatement of the Law, Third Foreign Relations, § 403(2)) in arriving at its decision. The Court made note of the fact that the Courts of the

United States should not provide a venue "to any foreign suitor unhappy with its own sovereign provisions for private anti-trust enforcement".

The opinion has the following comments:

> "We thus repeat the basic question: Why is it reasonable to apply this law to conduct that is significantly foreign insofar as that conduct causes independent foreign harm and that foreign harm alone gives rise to the plaintiff's claim? We can find no good answer to the question.
>
> The Areeda and Hovenkamp treatise notes that under the Court of Appeals' interpretation of the statute
>
> > ' Malaysian customer could ... maintain an action under United States law in a United States court against its own Malaysian supplier, another cartel member, simply by noting that unnamed third parties injured [in the United States] by the American [cartel member's] conduct would also have a cause of action. Effectively, the United States courts would provide worldwide subject matter jurisdiction to any foreign suitor wishing to sue its own local supplier, but unhappy with its own sovereign's provisions for private antitrust enforcement, provided that a different plaintiff had a cause of action against a different firm for injuries that were within U. S. [other-than-import] commerce. It does not seem excessively rigid to infer that Congress would not have intended that result.' P. Areeda & H. Hovenkamp, Antitrust Law ¶ 273, pp. 51-52 (Supp. 2003)." Id. at 166-67

While the facts of the *Hoffman* case are different, the principles should apply to this case, because the alleged acts were foreign to the United States and the Claimants were all former citizens of the foreign nation.

Carranza contends the Trial Court was wrong in refusing to apply the law of

El Salvador by comity or reciprocity.

III. THE COURT ERRED IN PERMITTING THE INTRODUCTION OF HIGHLY PREJUDICIAL HEARSAY AND INFLAMMATORY EVIDENCE, INCLUDING:

A. THE TRUTH COMMISSION REPORT

B. THE UNSUPPORTED TESTIMONY OF PLAINTIFFS' EXPERT WITNESSES KARL & WHITE.

C. CABLES ALLEGEDLY TRANSMITTED FROM THE UNITED STATES EMBASSY IN EL SALVADOR, INCLUDING ONE ALLEGEDLY PREPARED BY MILITARY ATTACHE COLONEL BRIAN BOSCH.

D. HORRIFIC PHOTOGRAPHS OF DEAD BODIES AS VICTIMS OF ALLEGED MILITARY ATROCITIES.

The Standard of Review for the admission of evidence is abuse of discretion. Defendant filed a Pre-Trial Motion in Limine to Exclude Evidence and Testimony, including testimony by alleged experts of events and atrocities unrelated to the Plaintiffs' claims. (R.92, Motion in Limine to Limit the Evidence of Plaintiffs' Witnesses and Exclude Evidence, Apx. p.__). Defendant asserted that the proof be limited to the witness' knowledge of the facts surrounding the Plaintiffs' claims and that evidence concerning other alleged events of homicide, murder, torture, or kidnappings be excluded from evidence. The Court denied the Motion and Plaintiffs' case was presented on highly inflammatory hearsay and innuendo (Status Conference, October 27, 2005, pp. 29-30, Tr. 986) As Defendant feared and anticipated, Plaintiffs and their witnesses offered hearsay evidence of

atrocities, tortures and deaths, allegedly committed by El Salvador military personnel or paramilitary personnel prior to, after, and at or about the time the events concerning the Plaintiffs' claims took place, as well as, hearsay of events that took place after Carranza's fourteen (14) to fifteen (15) months of service as the Sub-Minister to the Minister of Defense (October 1979 - January 1981), his one (1) year service as the Director of the Treasury Police (June 1983 - May 1984) and even after he was no longer a resident of El Salvador. (Exh. 28, United Nations Truth Commission Report, Sept. 11, 2004, Tr. 986, 1364-1365, 1413-1415, 1451-1460).

Defendant insisted that the admission of such uncorroborated inflammatory hearsay would be highly prejudicial and create an atmosphere of guilt by association simply because the Defendant was a member of the Salvadoran military. Evidence of other acts that may or may not have even occurred while Carranza was a member of the military, which took place during El Salvador's many years of civil unrest, did not establish any proximate causal relationship to an act of commission or omission by Carranza. Such "evidence" is only innuendo and speculation.

The Defendant contended that he would be denied his right to a fair trial by the admission of such speculative hearsay evidence, depriving him of due process and his right to cross-examine and confront witnesses. (R.92, Motion in Limine to

Limit the Evidence of Plaintiffs' Witnesses and Exclude Evidence, pp.1-2, Apx. p.__).

The Court erred as a matter of law by erroneously admitting into evidence hearsay documents and speculative testimony in reliance thereon by a misapplication and erroneous interpretation of Rule 803(8) of the Federal Rules of Evidence. The Trial Court erred in admitting such hearsay evidence based upon Plaintiffs' counsel's erroneous reliance upon the exceptions to the hearsay Rule for "ancient documents" and "public records". In permitting such hearsay as evidence, the Defendant was deprived of his right to cross-examination, the right of confrontation of witnesses and due process.

A. THE TRUTH COMMISSION REPORT

Defendant excepted to the Court's Order for Plaintiffs' Motion for Partial Summary Judgment that the Truth Commission Report is admissible in evidence (R.112, Defendant's Notice of Exception re 108; R.108, Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment, Apx. p.__). The Trial Court erroneously admitted the Truth Commission Report as an exception to the hearsay rule, pursuant Federal Rule of Evidence 803(8)(C). (R.108, Order Denying in Part and Granting in Part Plaintiffs' Motion for Summary Judgment, p. 28, Apx. p.__). Federal Rule of Evidence 803(8)(C) extends an exception to the hearsay rule for "records, reports, statements...of public offices or agencies, setting

forth...factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness". Work began on the Report on July 13, 1992. as a result of Mexico agreements between the government of El Salvador and the Frenté Farabundo Marti Pera La Liberaçion National (FMLN). (R. 108, Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment, pp. 24,27, Apx. p.__) Four (4) factors that are customarily considered in determining whether or not a report is trustworthy are:

(1) the timeliness of the investigation,
(2) the special skill or experience of the investigators,
(3) whether the agency held a hearing, and
(4) possible motivational problems.

Bank of Lexington & Trust Co. v. Vining-Sparks SEC, Inc., 959 F.2d 606, 616 (6th Cir. 1992). The Trial Court concluded that the investigation was "timely" even though the Report was based on an investigation that did not begin until at least eight (8) years after Carranza was no longer associated with the El Salvador military, and seven (7) years after he moved to the United States. (R.108, Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment, p. 27, Apx. p.__). The Trial Court admitted that the panel of commissioners did not hold a hearing. (Id. at p. 27-28, Apx. p.__). In contrast, the Court did not allow the United States Senate Hearing Committee's record of Robert White' s consideration for appointment as the ambassador to El Salvador. (Exh. A, Senate Hearing, Tr.

420, 423-424, Apx. p.___).

Only Plaintiff Erlinda Franco's claim was specifically mentioned in the Truth Commission Report referencing her husband, Manuel Franco. According to the Report, Franco was a leader of the Democratic Revolutionary Front (FDR) and, on November 27, 1980, he and five (5) other FDR leaders were abducted by "one or more public security forces" from the Colegio San José in San Salvador. Treasury Police provided the external security operation, "which aided and abetted the perpetrators". (Exh. 28, Truth Commission Report at PL0068-69, Tr. 986). There is nothing to establish that this finding is based upon anything other than hearsay.

Plaintiff Chavez could not identify the assailants upon her family, except as masked men-dressed in civilian clothes, carrying rifles, and demanding propaganda and money. (Tr. 754-755, Apx. p.__). The Court allowed Chavez to characterize this group of men as members of a "death squad" working in cooperation with the government to carry out attacks on civilians, and he cited the Truth Commission Report, which states that the Salvadoran Armed Forces "operated on the death squad model" and that operations were carried out by "members of the armed forces, usually wearing civilian clothing, without insignias, and driving unmarked vehicles". (R.108, Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment, pp. 16-17, Exh. 28, Truth Commission Report at PL0161,

PL1066, Tr. 986).

The uncorroborated hearsay set forth in the Truth Commission Report provides nothing to establish any responsibility on the part of the Defendants.

B. THE UNSUPPORTED TESTIMONY OF PLAINTIFFS' EXPERT WITNESSES KARL & WHITE

The Court erred as a matter of law in failing to grant the Defendant's Pretrial Motions, which included the following, all of which were objected to by Defendant:

a. permitting Plaintiffs' experts to testify and give subjective opinions about hearsay documents rather than testify from personal knowledge; and

b. permitting Plaintiffs' experts to testify and offer opinions outside their expertise.

The Defendant contends that other alleged acts by the military are not relevant to the Plaintiffs' claims in the cause.

Rule 401 of the Federal Rules of Evidence states:

> "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 402 of the Federal Rules of Evidence states that irrelevant evidence is not admissible:

> "All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by act of Congress, by these Rules, or by other rules prescribed by the

> Supreme Court, pursuant to statutory authority. Evidence which is not relevant is not admissible." *[emphasis added]*

Rule 403 of the Federal Rules of Evidence provides for the exclusion of even relevant evidence on the ground of prejudice, confusion or waste of time and states the following:

> "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury, or by consideration of undue delay, waste of time or needless presentation of cumulative evidence."

Defendant reiterates that such evidence is calculated and likely to prejudice the Defendant's right to due process, consistent with a fair trial of the case and he submits that said evidence should have been excluded on the ground of irrelevancy or on the ground that, even if relevant, the harm and danger of unfair prejudice to him was the likely result.

The Court allowed this type of highly inflammable hearsay evidence regarding acts by unknown third parties, including but not limited to, guerillas, members of the military and revolutionaries from other countries. (Exh. 28, United Nations Truth Commission Report, Sept. 11, 2004, Tr. 986). Some of this highly inflammatory evidence of horrible conduct and crimes that took place years after the Defendant was no longer associated with the El Salvador military and even after the Defendant had been moved out of the country for several years.

Despite the fact that Carranza's name was not listed or identified within the

lengthy Report, Plaintiffs' alleged expert Karl prepared her own summary of referencing thousands of atrocities, kidnappings and murders that took place in El Salvador and relied upon the same to imply a proximate causal relationship for which the military, and then, by presumptive speculation, Carranza were responsible. (Exh. 29, Karl Summary of the Truth Commission Report, Tr. 986-988, 990-993, Apx. p.___).

Plaintiffs' political science expert Terry Karl's misuse of the inadmissible and inflammatory hearsay in the Report is demonstrated by the fact that although the Truth Commission Report did not place any responsibility on the Defendant Carranza, wherein the Truth Commission recorded that,

> "In cases where it had to identify specific individuals as having committed, ordered or tolerated specific acts of violence, it applied a stricter test or reliability..." (Exh.28, Truth Comm'n Report at PL0025-26. (R.180, Order Denying in Part and Granting in Part Plaintiffs' Motion for Summary Judgment, p. 28, Apx. p.___).

Karl's explanation and effort to discount this fact of why Carranza was not identified in the Report, but for his title, was her claim that when the Report indicated that the,

> "...state is responsible. And by that , they are naming the top officials of the state, which is the high command, and particularly the defense ministry, so that is how the Truth Commission dealt with responsibility in those years. It says the state has responsibility for these murders." (Karl testimony, p. 1175)

Despite Karl's attempt, this amorphous and general testimony does not prove any wrongdoing by Defendant.

Robert White has testified for one or more of the Plaintiffs' attorneys on two (2) prior occasions and this was his third (3rd) appearance. (Tr. 408, Apx. p.__). The Trial Court allowed former Ambassador White to testify as an expert witness and, therefore, did not require that he have "personal knowledge" of the testimony that he presented. (Tr. 328, Apx. p.___). The Court and adverse counsel agreed to allow the Defendant to have a continuing objection to the documents tendered by White and his hearsay testimony. (Tr. 305-306, 328, Apx. p.__).

After White left his post in Paraguay in "something like November of 1979", he was acting director of the Task Force on Central America that was primarily focused on El Salvador in November-December 1979 because there was a generalized surge of anger coming out of the population and manifesting itself in marches and demonstrations throughout the country and the fear that the armed left would take advantage. The armed left was comprised of many Salvadorans, who had trained in Cuba and included Sandinistas, who were the revolutionaries in Nicaragua and had led a revolt in the Somoza dictatorship. (Tr. 372-373, Apx. p.__).

As a Carter appointee, White regarded the "...Nicaraguan revolutionaries were the examples of successful resolution against dictatorship, was probably the

primary example for the Salvadorans." (Tr. 374; Appointment by Carter, Tr. 377, Apx. p.__). Although White claimed to have been appointed as the Ambassador of El Salvador in 1979, he admitted that the hearings before the Senate Committee were before his appointment and those hearings did not take place until February 5, 1980 and February 21, 1980. (Tr. 370-371, 381, Apx. p.__). White had not been to El Salvador for five (5) or six (6) years prior to going to El Salvador in 1980. He had never met Carranza on any prior trip to El Salvador. (Tr. 371-372, Apx. p.__).

White admitted that while being interrogated before the Senate Committee by Senator Helms, he conceded that his inexperience in El Salvador, having not been there for several years, effectively made him the "worst expert" as to the prevention of civil war in that particular country. (Tr. 386-387, Apx. p.__). White also conceded that when he embarked upon his duty station in El Salvador that the discontent and violence were the result of years of festering domestic, political, economic and social problems, and not just a reflection of outside agitation and he further encouraged the Senate to provide the government of El Salvador with training and equipment for non-violent handling of riots and other violent demonstrations, training and equipment, for use of deadly force against terrorists and guerillas engaged in violent acts. (Tr. 399, Apx. p.__).

Within two (2) weeks of arrival, the predecessor interim ambassador Cheek advised his Washington superiors that questions existed as to the integrity of El

Salvador's judicial system and that the military was attempting to work with chaos or was confronted with chaos in the countryside and that there were foreign-trained leftist terrorists, as well as, "...unquestionably the most undisciplined diplomatic mission" at which he had ever served. (Tr. 388-389, Apx. p.__).

In a meeting with White's predecessor, Ambassador Cheek noted that Carranza and other military leadership were willing to discuss sensitive subjects of security forces. "We were generally encouraged by their acute awareness of the problem and its implications and their willingness to do their part in correcting the situation, if the PDC will help on the legal side." (Tr. 391, Apx. p.__).

White had only been on-the-job in El Salvador one (1) or two (2) weeks when he wrote a memo indicating that "at least one (1) senior officer, Colonel Carranza, had to go" (Exh. 2, March 13, 1989 Cable, Tr. 384, Apx. p.__).

White left the ambassadorship in El Salvador in January 1981 after Ronald Reagan took the Oath of Office on January 20, 1981. (Tr. 406, Apx. p.__).

The following are exemplars of the horrific hearsay that the Court allowed White to present to the jury:

> "The military gunned down Arch Bishop Romero." (Tr. 328, Apx. p.__).
>
> "It was military death squads that assassinated Arch Bishop Romero." (Tr. 327 Apx. p.__).
>
> "...According to all the information that we had from various sources, Colonel Carranza represented the wing of the armed

forces and security forces who believed that killing people was the solution to El Salvador's problems." (Tr. 327 Apx. p.__).

"...then that justifies in the eyes of people like Colonel Carranza, that justifies further killing. And so the reason for the mushroom of the armed revolutionary movement was basically because the military were killing innocent people..." (Tr. 328 Apx. p.__).

"Colonel Carranza, according to our information, was the executive officer, the operational head, the man who made things happen." (Tr. 339 Apx. p.__).

Finally, White admitted that,

"Well, I don't want to presume to more knowledge than I have, because I wasn't, you know, inside the military establishment, but it was my understanding that he had operational control, meaning he would direct the different military units and security units to deploy them in this place, deploy them in another place, strengthen them, send them on a sweep of a certain department to try to eliminate armed revolt, that kind of thing." (Tr. 339-340 Apx. p.__).

"Garcia and Carranza know perfectly well that some middle and low level members of the military are involved in death squads and other right wing violence..." (Tr. 346 Apx. p.__).

"...Because of his terrible reputation as a violator...as the person who basically orchestrated death squads, that this was a central challenge to the to the U. S. Policy..." (Tr. 367).

"...I saw him as others saw him, as someone who as a leader who believed in violence as an instrument of suppressing not only - - suppressing peaceful descent." (Tr. 369 Apx. p.__).

"The Salvadoran military under the command of Colonel Garcia and Colonel Carranza systematically killed thousands of Salvadorans and leading people in the country, including Arch Bishop Romero, including the five (5) FDR leaders, including

American citizens..." (Tr. 393 Apx. p.__).

> "...The murder of six peaceful leaders of the political party dedicated to change...and the military, under the command of Colonel Garcia and Colonel Carranza, presided over that. They were responsible for the assassination of six men, yet they denied it to me, they denied it, and they - - just as they denied the murder of the American churchwomen, just as they denied the responsibility of the military for killing two American labor advisors. The military killed those men under the command of General Garcia - - I mean Colonel Garcia and Colonel Carranza." (Tr. 411-412 Apx. p.__).

White conceded that he did not believe that Colonel Carranza was personally involved in death squads and he did not believe that Carranza went on excursions with death squads and killed people. (Tr. 397 Apx. p.__). Although the New York Times reported that the State Department found there was no credible evidence that Colonel Carranza was personally involved in death squads, White indicated that he does not rely on newspaper reports for evidence. (Exh. 49, The New York Times Article, Tr. 397, 1198, Apx. p.__).

With White supposedly having all this specific knowledge about Carranza, White testified before the Truth Commission, and the Commission did not mention Carranza as a perpetrator or responsible for any crime or offense. (Tr. 396-397, Apx. p.__).

When specifically requested to relate his knowledge of Colonel Carranza's military service, he "remembered that Carranza had been the head of the Treasury Police". This position of service for Carranza, in fact, did not even take place until

May or June 1983, several years after White had been discharged as an ambassador to El Salvador and out of government service since 1981. (Tr. 379, Apx. p.__). White then also speculated that Carranza had been the "head of the intelligence part" of the Salvadoran military, "but I can't be 100 percent positive about that". (Tr. 379, Apx. p.___).

When White was requested to identify the person in the El Salvadoran military who killed Arch Bishop Romero, he merely indicated that former Major Roberto D'Abuisson was identified as the "intellectual author of the crime". (emphasis added.) (Tr. 408, Apx. p.___). As to whether or not he was in the military at the time of the crime, White could only respond, "Yes and no." White admitted that D'Abuisson was not active military at the time of the alleged killing and he claims that D'Abuisson was "...the kill-crazy person who would threaten people, everyone, had called everyone a communist and was the head of the - - and was the acknowledged head of death squads..." (Tr. 409, Apx. p.___).

C. CABLES ALLEGEDLY TRANSMITTED FROM THE UNITED STATES EMBASSY IN EL SALVADOR AND ONE ALLEGEDLY PREPARED BY MILITARY ATTACHÉ COL. BRIAN BOSCH

Robert White concedes that his source for his claim of the military's responsibility for the six (6) FDR murders was the document he represented to have been prepared by Col. Brian Bosch, which, in fact, Bosch has denounced. (Exh. 6, December 1, 1980 Memo, Tr. 357, 393-394,. (R.166-167, Motion for

Judgment Notwithstanding the Verdict, New Trial and/or Remittitur with attached Bosch Affidavit, Apx. p.__). This vivid example of the inflammatory and speculative hearsay submitted to the jury occurred when the Plaintiffs' counsel had former ambassador Robert White present a highly redacted document that was allegedly prepared by Col. Brian Bosch, who White represented to be the best military attache' with whom he had ever worked in White's years in the foreign service. The copy of document produced prior to trial was "almost illegible" and the author was not indicated. (Tr.360-362, Apx. p.__). The copy that White presented to the jury was also highly redacted and still had no author identified. Over Defense Counsel's objection the document was admitted into evidence. (Exh. 6, December 1, 1980 Memo, Tr.357, 360-362, Apx. p.__). The document allegedly memorialized a meeting between Bosch and members of the El Salvador military, including Carranza, and allegedly indicated their approval and condonation of the murder of six (6) FDR members. (Exh. 6, December 1, 1980 Memo, Tr. 357, Apx. p.__). After the trial, Defense Counsel located Col. Bosch in Arlington, Virginia and sent him a copy of the exhibit. Bosch denied preparing the document and further denied that it was in the form consistent with his work station assignment. Most importantly, Bosch indicated the contents of the document were completely inconsistent with his knowledge of the facts. He recalled that the El Salvador military were very upset about the FDR murders and

Mr. Carranza never indicated approval or condonation of such horrific conduct. (R.166-167, Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittitur with attached Bosch Affidavit, Apx. p.__).

The Court allowed White to introduce the December 1, 1980 document and he represented to the jury that it was written by Colonel Brian Bosch, "...the best or one of the very top best top ranking defense attachés with whom I have ever worked." (Exh. 6, December 1, 1980 Memo, Tr. 356-358, Apx. p.__). The document author was redacted prior to and throughout the course of the trial and, not until White testified, was the identity of the alleged author disclosed to Defendant. The document supposedly summarizes a November 28, 1980 meeting between Bosch and Salvadoran military officers and Carranza and it represents that the officers and Carranza were highly pleased with and condoned the kidnapping and murder of the six (6) FDR leaders. When Defense counsel questioned the document, since it did not have a pre-trial date stamped identification number that all of the other previously produced documents had, Plaintiffs' counsel admitted that it was a substitute document and that the first bates-stamped numbered document PL1381 that had been tendered during discovery was "almost illegible". (Tr. 360-362, Apx. p.__).

After White identified the author of Exhibit 6 as Colonel Brian Bosch, defense counsel was able to locate the Colonel in the Washington D.C. area after

the trial and provide him with a copy of the document. Bosch executed an affidavit indicating that he did not author the document and that it was completely contradictory to the kind and form of documents that he would have authored as a military attaché and that it was completely inconsistent with his recollection of Colonel Carranza's sentiments as to any type of condonation of killings in El Salvador. Likewise, Bosch indicated that Plaintiffs' counsel had met with him in July 2005, several months prior to the trial and presented a number of documents and Exhibit 6 had not been tendered as a document for Bosch's review or identification. (R.166-167, Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittitur with attached Bosch Affidavit, Apx. p.__).

White re-highlighted the alleged Bosch report during cross-examination, emphasizing that "...the majority of the middle grade officers approved of killing of the FDR leaders, and - - and gave credit to the high command, including Colonel Carranza for this decision." (Tr. 393, Apx. p.__).

The Court erred as a matter of law by allowing the Plaintiffs to admit hearsay evidence, which hearsay included an unsigned cable, highly redacted document as an allegedly written document by former U.S. military attaché Brian Bosch. Plaintiffs' witnesses, Robert White (Tr. 357, 393-394, Apx. p.__) and Terry Karl (Tr.1050-1051, Apx. p.__), adopted Bosch as the alleged author and used the document to falsely represent to the jury that the Defendant and other members of

El Salvador's military allegedly approved and condoned the killing of six (6) FDR leaders. (These portions of false testimony are attached hereto.) Contrary to this outrageous testimony, Brian Bosch relates that he met with Plaintiffs' counsel before the trial and he did not identify the exhibit and he did not give any information to counsel that would have agreed with the substance of the alleged document. (R.166-167, Motion for Judgment Notwithstanding the Verdict, New Trial and/or Remittitur with attached Bosch Affidavit, Apx. p.__).

White's testimony and the Plaintiffs' efforts to present the alleged State Department document, Exhibit 6, as a trustworthy document and a substantively correct source of truthful information that attempted to claim Carranza favored the killing of the six (6) FDR leaders is absolutely contrary to the truth. The basic rules of fairness and justice were undermined. There can be little doubt that this previously undisclosed, highly redacted, hearsay document highly inflamed and prejudiced the jury. of Plaintiffs' counsel apparently was aware that Bosch would not adopt the false information because he failed to tender the document to Col Bosch before the trial and only tendered an "almost illegible" copy of the document to Defense counsel in discovery prior to trial. Thereafter, he had White tender a redacted and non-author-identified, legible copy to the jury.

White admitted that he was merely the head of an Embassy in El Salvador. "It is the government of El Salvador that is responsible for ruling El Salvador and

the military who have been the chief instrument of power, I have no domain or dominion over El Salvador." (Tr. 396, Apx. p.__).

White testified that he had never been in the military, "...I was in the Navy." (Tr. 412, Apx. p.__). Yet, he claimed to be an expert in the El Salvadoran military. (Tr. 413, Apx. p.__).

The Court erred as a matter of law by permitting, over Defendant's objection, Plaintiffs' witnesses, Robert White and Terry Karl, to testify in reliance upon inadmissible hearsay and inflammatory irrelevant information, which was not applicable or relevant to the potential liability of the Defendant or to the facts and circumstances in the case. This evidence included hearsay regarding unknown and unidentified third parties and outrageous conduct of acts committed after the Defendant was no longer associated with the military and after the Defendant had left El Salvador.

D. HORRIFIC PHOTOGRAPHS OF DEAD BODIES AS VICTIMS OF ALLEGED MILITARY ATROCITIES

The Court erred as a matter of law by admitting into evidence, over Defendant's objections, highly inflammatory photographs depicting numerous dead bodies and victims of alleged military atrocities, for which there was no direct causal relationship to any conduct of the Defendant, and the proof grossly prejudiced and inflamed the trier of fact. (These erroneously admitted and inflammatory exhibits included, but are not limited to, Exhibits 20, 22, 25 and 26,

Tr. 900, Apx. p.__).

IV. THE COURT ERRED IN PERMITTING TERRY KARL TO TESTIFY AS A MILITARY EXPERT.

Carranza objected to Terry Karl testifying as an expert in the cause on the ground that she was relying on hearsay evidence, but in addition thereto, she intended to testify as an expert regarding military matters. The objection was made on the basis that Terry Karl had never been a member of the military and did not have any military experience or training whatsoever. (Tr. 901-904, Apx. p.__).

The Court's response to the Defendant's objection was:

> "I think that's an area where she can be cross-examined. I do agree with you in that regard, and the jury may decide that that is just --- her credentials are insufficient in that area. I – but it is really an issue that the jury should be allowed to address, not that I should preclude the jury from hearing that." (Tr. 904, Apx. p.__).

The Defendant contends this was clear error by the Court to allow the jury to decide whether her credentials to testify in regard to military matters were sufficient or insufficient. That was the duty of the Court to decide and the Court did not follow the clear directive of *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The *Daubert* case set standards with regard to the ability of expert witnesses to testify. The ability of an expert to testify is determined by the education, training, experience and familiarity with the area in which they are to testify.

With regard to the testimony of expert witnesses, it seems clear by virtue of *Daubert* that the Judge is the "gate keeper" in determining or assessing the proffer of an expert witness.

In *Daubert*, it is stated or the comment is made by the Court as follows:

> ..."Judge Weinstein has explained: Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge, in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses." See Weinstein, 138 F.R.D. at 632

With regard to Terry Karl, the Court did not act truly as a gatekeeper. His comments that "the jury may decide that that is just – her credentials are insufficient in that area. I – but it is really an issue that the jury should be allowed to address, not that I should preclude the jury from hearing that", would raise the question as to why should the jury be able to determine whether credentials of an individual are sufficient to testify instead of the judge. The statement of the Court is contrary to *Daubert*. In addition, it is contrary to the way the Trial Court handled the desire of the Defendant to offer Dr. David Escobar Galindo as his expert witness in the cause. The Court excluded Galindo's testimony under the *Daubert* test and did not allow the jury to determine whether or not his credentials would permit him to testify, even with first-hand knowledge of matters in El Salvador, whereas Terry Karl had to glean her information from after-the-fact visits, conversations and review of books and documents. The Court, in fact,

followed a double standard rule by contending that any evidence offered by Galindo would be prejudicial to the Plaintiffs, but did not consider the fact that evidence offered by Karl would prejudice the Defendant, especially in view of the wide area in which she intended to testify.

It is clear that Terry Karl was a teacher not a military technician. The record indicates that she did not have any military experience whatsoever and had never been in any branch of the military service in the United States or any other country. Nevertheless, she was allowed to testify about the military chain of command and military functions by the Trial Court, which apparently allowed the jury to weigh her credentials rather than the Trial Court make that determination based on her credentials. (Tr. 1178-1179, Apx. p.__).

The Trial Court committed clear error in failing to discharge its responsibility under *Daubert* as the gatekeeper, because Terry Karl possessed absolutely no credentials with which to testify about military matters and military structure.

The Standard of Review is *de novo* in the Appellate Court as set forth in *Daubert v. Merrill Dow Pharmaceuticals, Inc.* (Id. at 579) and Federal Rule of Evidence, Rule 702, governing expert testimony, which requires a witness as an expert to be qualified by reason of knowledge, skill, experience and training. Terry Karl possessed no experience or training in military matters and should not

have been allowed by the Trial Court to testify in the presence of a jury as a military expert.

V. THE COURT ERRED AS A MATTER OF LAW IN ITS JURY INSTRUCTIONS ON THE ISSUES OF COMMAND RESPONSIBILITY.

The Court erred as a matter of law by allowing the Plaintiffs to rely upon the theory of command responsibility in their attempt to impose liability on Defendant Carranza by:

a. failing to instruct the jury on the issue of the proximate cause of the injuries and damages; and

b. failing to properly instruct the jury on Defendant's scienter or knowledge of the occurrences.

The Court erred as a matter of law for failing to grant a mistrial when Plaintiffs' counsel referred to the post-World War II Nuremberg trials against Nazi war criminals when, in distinction, Defendant's counsel was not allowed to impeach the credibility of Plaintiffs' alleged UN military human rights expert from Argentina by pursuing inquiry that Argentina was, in fact, a haven and refuge for German Nazi war criminals. (Tr.____, Apx. p.__).

The Plaintiffs acknowledge that the Defendant was not a perpetrator or participant of any of the acts which caused the Plaintiffs or their family members harm or injury. As a matter of fact, the Plaintiffs are not able to offer any proof that the Defendant Carranza was even aware of the occurrences, except with regard to Alvarado. With regard to Alvarado, the records thus far indicate that he was not

threatened by Defendant Carranza, nor did he even complain of acts of torture or mistreatment to Carranza at any time when he was in his presence.

With regard to the doctrine of command responsibility, the Plaintiffs had the burden of proving three (3) basic elements. *Ford v. Garcia,* 289 F.3d, 1288 (11th Cir. 2002. The first element is that the Defendant had effective command over the troops who were actually committing the atrocities or murders. Effective control is the "actual" ability to make troops commit or not commit a given act. Id. at 1288, 1290-1291. Plaintiffs offered no real substantive proof that Defendant had effective control over any of the unknown parties who caused injury to the Plaintiffs.

The second element is that the Defendant knew or should have known that persons under his effective command, again, under his effective command, had committed or were committing torture or killing. Id. Plaintiffs offered no proof to establish that Defendant had such knowledge.

Third element is that the Defendant failed to take all necessary and reasonable measures within his power to prevent the commission of the torture and/or killing and failed to investigate the events in an effort to punish the perpetrators. Again the key, with regard to the third element, is that the Defendant had the power, that is, he was in the chain of command in order to take the actions. Id. The proof was that Defendant had an administrative capacity as Sub-Minister

to the Minister of Defense and his position as Director of the Treasury Police was exercised when he ordered an investigation after Alvarado recanted his confession. (Tr.1465-1466, Apx. p.__).

VI. THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF DEFENDANT'S EXPERT DR. DAVID ESCOBAR GALINDO INCLUDING TESTIMONY RELATING TO THE AMNESTY LAW.

The Plaintiffs filed a the Motion in Limine to Exclude the Testimony of Dr. Galindo that he could not meet the test of *Daubert v. Merrill Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993), and his testimony was allegedly inadmissible under certain Federal Rules of Evidence. (R.74, Motion in Limine to Exclude Testimony of Dr. David Escobar Galindo, Apx. p.__).

The Defendant's Response to the Plaintiffs' Motion in Limine was, in addition to his designation as an expert witness that Galindo could provide relevant facts and information to the jury concerning the conflict in El Salvador and the facts surrounding the conflict, which resulted in the Amnesty Agreement, Peace Accord and legislative enactment in El Salvador. (R.99, Response to Plaintiffs' Motion in Limine to Exclude Testimony of Dr. David Escobar Galindo, Apx. p.__).

Secondly, even though the Court was of the opinion that the Amnesty Agreement should not be made a part of the lawsuit, Dr. Galindo could offer personal and factual information, and first-hand knowledge of circumstances in El

Salvador that resulted in the resolution of the civil war. His testimony would fall within the same category as Terry Karl's testimony, much of which he could rebut. Karl was not a resident of El Salvador, but had to acquire her information about the conflict by second-hand or hearsay information. Dr. Galindo lived in El Salvador, was a resident of El Salvador, and a party to the meetings and proceedings to bring about a resolution and was knowledgeable about all the facts and circumstances of the conflict and the desire and necessity to bring the conflict to an end and have a Peace Accord. (Status Conference, October 27, 2005, pp. 22-29, Apx. p.__).

While the Court permitted the testimony of Terry Karl about events to which she was not a witness and only gained knowledge by a visit to El Salvador, the review of books, and talking to individuals after the fact. She was allowed to testify not only as a political science expert, but also as a military affairs expert. The Court refused to allow Dr. Galindo, the expert with first-hand knowledge, to testify. (Status Conference, October 27, 2005, pp. 22-29, Apx. p.__).

Carranza contends that Dr. Galindo was more of an expert than Terry Karl and was more knowledgeable about political affairs and the history of the civil war in El Salvador. His testimony would have been based on personal knowledge, not hearsay. While it is submitted that the Court erred in preventing Dr. Galindo from offering his opinions, there can be no question that the Court erred in preventing Dr. Galindo from offering factual evidence.

Carranza also contends that the Trial Court was in error in granting the Motion in Limine primarily on the basis of the Court's opinion that the Amnesty Agreement and Peace Accord should not come into evidence because it might prejudice the rights of the Plaintiffs. In all fairness, the Court should have made the same decision about Terry Karl's ability to testify and give evidence about military matters since she could not qualify as an expert under the principles of *Daubert v. Merrill Dow Pharmacy, Inc.*, 509 U.S. 579 (1993). However, as to her credentials as an expert in military matters, the Court's response to that issue and Carranza's objection was "You can cross-examine her on those issues." (Tr. 904, Apx. p.__). This was error, and the same result should have been granted to Dr. Galindo.

CONCLUSION

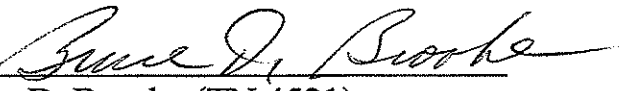
In conclusion, the Appellant contends that, based upon the facts, law, issues and errors committed against him, the Judgment against him should be set aside and the Complaints dismissed or, in the alternative, a new trial granted to him.

Respectfully submitted,

FARGARSON & BROOKE

By: 

Robert M. Fargarson (TN 8420)
254 Court Avenue, Suite 300
Memphis, TN 38103
(901)523-2500

By: 

Bruce D. Brooke (TN 4521)
254 Court Avenue, Suite 300
Memphis, TN 38103
(901)523-2500

February 28, 2008

Robert M. Fargarson (Tennessee Bar No. 8420)
FARGARSON & BROOKE
Counsel for Nicolas Carranza
254 Court Avenue, Suite 300
Memphis, TN 38103
(901) 523-2500
(901) 523-2487 FAX

Bruce D. Brooke (Tennessee Bar No. 4521)
FARGARSON & BROOKE
Counsel for Nicolas Carranza
254 Court Avenue, Suite 300
Memphis, TN 38103
(901)523-2500
(901) 523-2487 FAX

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation provided in Fed.R.App.P.32(a)(7)(B). The foregoing brief contains 12,694 words of Times New Roman (14 point) proportional type. The word processing software used to prepare this brief was Microsoft Word 2003 for Windows XP.

Robert M. Fargarson

CASE NO. 06-6234

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellees,

v.

NICOLAS CARRANZA

Defendant-Appellant.

CERTIFICATE OF SERVICE

On this date, I, via FEDERAL EXPRESS provided a copy of Brief of Defendant-Appellant to:

David R. Esquivel, Esq.
Counsel for Plaintiffs-Appellees
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001

I declare that the statements above are true to the best of my information, knowledge and belief.

Robert M. Fargarson

Dated: February 28, 2008

APPELLANT'S DESIGNATION OF JOINT APPENDIX CONTENTS

Appellant, pursuant to Sixth Circuit Rule 30(b), hereby designates the following filings in the District Court's record as items to be included in the joint appendix.

DESCRIPTION OF ENTRY	DATE	RECORD OF ENTRY
COMPLAINT	12/10/2003	1
MOTION by Defendant to Dismiss the Complaint	01/20/2004	9
MOTION by Plaintiff Jane Doe I for Leave to File First Amended Complaint as Pseudonymous Plaintiff	02/23/2004	12
RENEWED MOTION by Defendant to Dismiss	03/09/2004	13
FIRST AMENDED COMPLAINT filed by Jose Francisco Calderon, Ana Patricia Chavez, Jose Oscar Chavez, Jane Doe I, Jane Doe II, Haydee Duran, Cecilia Santos	07/29/2004	27
ORDER Denying Defendant's Motions to Dismiss and Renewed Motion To Dismiss.	09/30/2004	28
SECOND AMENDED COMPLAINT against Nicolas Carranza , filed by John Doe, Ana Patricia Chavez, Cecilia Santos, Jose Francisco Calderon, Jane Doe, I	06/20/2005	31
AGREED ORDER re Second Amended Complaint filed by Ana Patricia Chavez, Cecilia Santos, Jose Francisco Calderon, Jane Doe, I, John Doe	06/22/2005	32
MOTION for Judgment on the Pleadings and, in Addition Thereto or in the Alternative, for Summary Judgment by Nicolas Carranza.	06/24/2005	37
ANSWER AND AFFIRMATIVE DEFENSES by Nicolas Carranza	06/24/2005	41

MOTION in Limine To Exclude Testimony of Dr. David Excobar Galindo by Manuel Franco, Jose Oscar Chavez, Ana Patricia Chavez, Haydee Duran, Cecilia Santos, Jose Francisco Calderon.	10/07/2005	74
MOTION in Limine To Exclude Any and All References to Salvadoran Amnesty Law by Manuel Franco, Jose Oscar Chavez, Ana Patricia Chavez, Haydee Duran, Cecilia Santos, Jose Francisco Calderon.	10/07/2005	76
MOTION in Limine To Limit The Evidence of Plaintiffs' Witnesses and Exclude Evidence by Defendant Nicolas Carranza.	10/17/2005	92
ORDER denying Defendant's Motion for Judgment on the Pleadings, and in Addition Thereto or in the Alternative, for Summary Judgment.	10/18/2005	97
RESPONSE to Plaintiff's Motion re Motion in Limine To Exclude the Testimony of Dr. David Escobar Galindo by Defendant Nicolas Carranza.	10/18/2005	99
ORDER Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment. Chavez DENIED. Santos, Calderon, Revelo, Alvarado GRANTED.	10/26/2005	108
NOTICE OF EXCEPTION by Nicolas Carranza To Order on Plaintiffs' Motion for Partial Summary Judgment That The Truth Commission Report Is Admissible In Evidence.	10/27/2005	112

Minute Entry for proceedings held before Judge Jon Phipps McCalla : Jury Trial completed on 11/18/2005. Partial verdict returned in favor of ptlfs Santos, Claderon, Franco & Alvarado. Mistrial declared as to Ana Patricia Chavez. Jury found for pltfs Santos, Claderon, Franco, Alvarado against dft Carranza in the amount of $500,000.00 each for compensatory damages. Unable to reach a verdict as to Ana Patricia Chavez. Arguments held on punitive damages and jury deliberated. Verdict rendered as to punitive damages: $1,000,000.00 as to Santos, Calderon, Franco and Alvarado.	11/18/2005	148
JURY VERDICT Form #1: Cecilia Santos; for Plaintiff and against Defendant Carranza.	11/18/2005	149
JURY VERDICT Form #2: Jose Francisco Calderon; for Plaintiff and against Defendant Carranza..	11/18/2005	150
JURY VERDICT Form # 3: Ana Patricia Chavez; no verdict as to Plaintiff Chavez.	11/18/2005	151
JURY VERDICT Form #4: Erlinda Franco; for Plaintiff and against Defendant Carranza.	11/18/2005	152
JURY VERDICT Form #5: Daniel Alvarado; for Plaintiff and against Defendant Carranza.	11/18/2005	153
PUNITIVE DAMAGES JURY VERDICT as to Plaintiff Cecilia Santos. Jury awarded punitive damages against Defendant Carranza in the amount of $1,000,000.00.	11/18/2005	155
PUNITIVE DAMAGES JURY VERDICT as to Pltf Jose Francisco Calderon. Jury awarded punitive damages against Defendant Carranza in the amount of $1,000,000.00.	11/18/2005	156

PUNITIVE DAMAGES JURY VERDICT as to Plaintiff Erlinda Franco. Jury awarded punitive damages against Defendant Carranza in the amount of $1,000,000.00.	11/18/2005	157
PUNITIVE DAMAGES JURY VERDICT as to Plaintiff Daniel Alvarado. Jury awarded punitive damages against Defendant Carranza in the amount of $1,000,000.00.	11/18/2005	158
STIPULATION of Dismissal *Of Claims Of Ana Patricia Chavez* by Ana Patricia Chavez.	01/17/2006	164
JUDGMENT ON JURY VERDICT AND STIPULATION OF DISMISSAL.	01/18/2006	165
MOTION for Judgment Notwithstanding The verdict, New Trial, and/or Remittitur by Nicolas Carranza with Affidavit of Brian Bosch and transcripts.	02/01/2006	167
REPLY TO RESPONSE TO MOTION re Motion for New Trial by Nicolas Carranza.	03/15/2006	180
ORDER Denying Defendant's Motion for Judgment Notwithstanding the Verdict, New Trial, and/or Remittitur.	08/15/2006	181
NOTICE by Nicolas Carranza *of Appeal*	09/14/2006	184
NOTICE OF APPEAL by Nicolas Carranza.	09/15/2006	186

DESCRIPTION OF PROCEEDING OR TESTIMONY	DATE	TRANSCRIPT PAGES AND VOLUME
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 305-306
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 327
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 328
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 339-340
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 346
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 356-358
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 360-362
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 367
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 369-374
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 377-379
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 381
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 384
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 386-389
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 391

TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 393-394
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 396-399
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 406
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 408-409
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 411-413
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 420
TRANSCRIPT of proceedings White Testimony	11/01/2005	Vol. II, 423-424
TRANSCRIPT of proceedings Franco Testimony	11/02/2005	Vol. III, 495
TRANSCRIPT of proceedings Santos Testimony	11/02/2005	Vol. III, 577
TRANSCRIPT of proceedings Garcia Testimony	11/03/2005	Vol. IV, 658
TRANSCRIPT of proceedings Calderon Testimony	11/03/2005	Vol. IV, 724
TRANSCRIPT of proceedings Calderon Testimony	11/03/2005	Vol. IV, 729-730
TRANSCRIPT of proceedings Chavez Testimony	11/04/2005	Vol. V, 754-755
TRANSCRIPT of proceedings Chavez Testimony	11/04/2005	Vol. V, 771
TRANSCRIPT of proceedings Alvarado Testimony	11/04/2005	Vol. V, 853

TRANSCRIPT of proceedings Karl Testimony	11/07/2005	Vol. VI, 900-904
TRANSCRIPT of proceedings Karl Testimony	11/07/2005	Vol. VI, 986-988
TRANSCRIPT of proceedings Karl Testimony	11/07/2005	Vol. VI, 990-993
TRANSCRIPT of proceedings Karl Testimony	11/07/2005	Vol. VI, 1050-1051
TRANSCRIPT of proceedings Karl Testimony	11/08/2005	Vol. VII, 1175
TRANSCRIPT of proceedings Karl Testimony	11/08/2005	Vol. VII, 1198
TRANSCRIPT of proceedings Karl Testimony	11/08/2005	Vol. VII, 1211-1220
TRANSCRIPT of proceedings Carranza Testimony	11/09/2005	Vol. VIII, 1364-1373
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1388-1404
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1413-1415
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1420-1424
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1437
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1442-1443
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1451-1461
TRANSCRIPT of proceedings Carranza Testimony	11/10/2005	Vol. IX, 1463-1466