

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

TEOFILA OCHOA LIZARBE, ETC., .
ET AL., . Case No. 07-21783-CIV-Jordan
Plaintiffs, . Miami, Florida
v. . February 11, 2008
9:08 a.m.
TELMO R. HURTADO HURTADO, .
Defendant. .
.

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Transcript of Trial Proceedings had
before the Honorable Adalberto Jordan,
United States District Judge.

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Proceedings recorded by mechanical stenography, transcript
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1 MONDAY, FEBRUARY 11, 2008, 9:08 A.M.
2 THE COURT: Good morning. Please be seated.
3 MR. BROCHIN: Good morning.
4 THE COURT: Good morning. This is Case
5 Number 07-21783, Teofila Ochoa Lizarbe, et al., vs. Telmo
6 Ricardo Hurtado. If you could please announce your
7 appearances.
8 MR. BROCHIN: Good morning, your Honor. Bobby
9 Brochin, Morgan, Lewis, on behalf of the plaintiffs. With me
10 is Marisa Fortunati of Morgan, Lewis, as well as Amanda Smith
11 of Morgan, Lewis.
12 THE COURT: Good morning.
13 MR. BROCHIN: Good morning.
14 Also, your Honor, if I could introduce the
15 plaintiffs to you, Teofila Lizarbe and Cirila Baldeon.
16 THE COURT: Good morning.
17 And we have our interpreter here for them?
18 MR. BROCHIN: Yes.
19 THE COURT: Are the microphones working? You
20 checked them?
21 THE INTERPRETER: Yes, your Honor.
22 THE COURT: Thank you.
23 Let me go ahead and swear you in, because you're
24 not part of the staff here at the court, right?
25 THE INTERPRETER: No, your Honor.

1 THE COURT: All right. If you could just state
2 your name and just give me generally your qualifications, and
3 I'll go ahead and swear you in.
4 THE INTERPRETER: May it please the Court, my full
5 name is Francis, F-R-A-N-C-I-S, Robert, R-O-B-E-R-T, Icaza,
6 I-C-A-Z-A. I am a qualified interpreter. I took the
7 qualifications examination here in the state of Florida in
8 May of 1998, I believe, at which I passed my qualification,
9 and I have been an interpreter in the state of Florida
10 qualified since that day. And I've been interpreting for
11 approximately the last 19 years in a professional capacity.
12 THE COURT: From English to Spanish and Spanish to
13 English?
14 THE INTERPRETER: English to Spanish and Spanish to
15 English only, sir.
16 THE COURT: All right. Thank you.
17 Please raise your right hand.
18 Do you swear, Mr. Icaza, that you will faithfully
19 and truly certify and interpret from English to Spanish and
20 Spanish to English in this court proceeding?
21 THE INTERPRETER: I so swear.
22 THE COURT: All right. Thank you very much.
23 THE INTERPRETER: Thank you, sir.
24 MR. BROCHIN: Your Honor?
25 THE COURT: Yes, Mr. Brochin.

1 MR. BROCHIN: A couple of matters, if I may.
2 We have a witness, Eduardo Gonzalez, who is from
3 Peru, but lives in New York. He only had with him a Peruvian
4 picture ID, or national ID, and not his passport, and being
5 from New York, he doesn't have a driver's license. The point
6 is, is they would not let him in absent either a letter or
7 some direction from the Court to permit him to come up to the
8 courtroom and sit here and testify. So, I'm asking if you
9 could do so and -- so he could come up, Eduardo Gonzalez.
10 THE COURT: And he has some sort of ID with him?
11 MR. BROCHIN: He has -- as I understand, your
12 Honor, it's a Peruvian national ID, and it's a picture ID,
13 as -- I understand, as well. What he did not have was his
14 passport, which is being held, I believe, by the embassy, as
15 he's here for a conference, as well. But he does not have a
16 driver's license, but he does have a picture ID showing him
17 to be Peruvian.
18 THE COURT: I'll have my courtroom deputy draft up
19 a quick letter to send it to down to the court security
20 officer so that he can be let up.
21 MR. BROCHIN: Thank you, your Honor.
22 And also with me, as I introduced to the Court, is
23 Amanda Smith. She's from New York. We have filed papers
24 before you to move her admission pro hac vice, and I'd ask
25 that that be granted so that she may participate in the

1 trial.

2 THE COURT: One second, please.

3 (Discussion had off the record.)

4 THE COURT: When did you file the papers for her,

5 Mr. Brochin?

6 MR. BROCHIN: I believe we filed them on Friday,

7 your Honor.

8 THE COURT: Okay.

9 Why not file them a day or two earlier than that?

10 MR. BROCHIN: I know. Well, we needed to get her

11 certificate of good standing from the federal court, and it

12 was held up.

13 THE COURT: I'll go ahead and grant the motion for

14 pro hac vice admission for Ms. Smith.

15 MR. BROCHIN: Thank you.

16 THE COURT: Let me just -- this is a trial on li --

17 excuse me -- on damages after a default on liability by the

18 defendant, Mr. Hurtado.

19 I am still almost completely at a loss,

20 Mr. Brochin, as to what substantive damages law you want me

21 to apply. Your memo said nothing about that whatsoever. And

22 there's a split of authority in the federal courts as to what

23 law is applicable under these circumstances. Some courts

24 apply the law of the state where the acts leading to

25 liability took place, some courts apply a species of federal

1 common law, and some courts apply the law of the forum state

2 in the United States where the action is being instituted.

3 So, I'm happy to hear all of the testimony today,

4 but you're going to have to file something to let me know

5 what substantive damages law you want me to apply. That's

6 why I asked for a brief, but the brief said nothing on that

7 issue.

8 MR. BROCHIN: Your Honor --

9 THE COURT: I mean I know generally what damages

10 you want me to award, but without knowing the substantive

11 law, it makes it very difficult to figure out what my limits

12 are and what sorts of things I can do or not do.

13 MR. BROCHIN: Your Honor, we -- first of all, if we

14 could, we will file a memo and perhaps with the evidence in

15 to support the applicable law. But in a general way, the law

16 is not clear on what is applied.

17 THE COURT: I know, I know, but you're the

18 plaintiff, and you need to tell me what you would like me to

19 apply, and I'll figure out whether I think you are right or

20 not. But in the absence of you telling me what you want me

21 to do, I'll figure out what the best result is and figure out

22 what substantive law to apply. But, right now, you haven't

23 given me any guidance as to where you want me to go.

24 MR. BROCHIN: Your Honor, we will do that. We will

25 submit a memorandum more pointed to which law -- and I

1 suppose what we're looking at is domestic common-law

2 remedies, federal law procedure, as well as substantive law,

3 and perhaps Peruvian law. I think it's the former that we

4 were looking at, and what the cases have fairly much applied

5 since it's a tort -- it is a tort that we're here on, that it

6 is the domestic common remedies that are available for tort

7 law. And I think the Eleventh Circuit has spoke to that in

8 the sense that federal law, federal -- this is a federal

9 forum to allow this Court to apply common domestic remedies

10 for the violations of international law.

11 So, in the tort world of pain and suffering, those

12 are the damages we're looking at that are available in common

13 law. But if you're asking -- and this is what we will brief

14 you on -- whether it should be the law of Florida's tort law,

15 some sort of federal body of jurisprudence involving tort

16 law, or perhaps the law in Peru, we will do that.

17 THE COURT: That's what I would like to know.

18 MR. BROCHIN: We will do that. But as I suggested,

19 I believe it's -- we are looking at the former, that is,

20 common law -- domestic common-law remedies that are available

21 for common-law torts, in terms of damages.

22 THE COURT: Right. I understand, I understand.

23 Well, you know, one of the issues is figuring out

24 whether or not there's any interest in having domestic

25 Florida law apply in a case where the state of Florida hasn't

1 provided the forum or the jurisdiction to entertain this

2 action. So, you're going to have to explain -- I mean I

3 think the most persuasive choices are a body of federal

4 common law and/or supplemented by Peruvian law, or Peruvian

5 law by itself. But if you think Florida law should provide

6 the remedies for your clients, I'm more than happy to hear

7 that submission on your part when you file that brief.

8 MR. BROCHIN: No, I think it -- well, I don't

9 believe it's the law of Peru that's available, although that

10 could supplement it. I believe it's more applicable to

11 federal common law on torts, to the extent there is common

12 law on torts that exist for violations of international law.

13 THE COURT: I'm ready to hear whatever evidence

14 you'd like to present.

15 MR. BROCHIN: Your Honor, if I may be permitted to

16 give an opening -- some opening -- an opening statement, I --

17 perhaps that would put some things in context.

18 THE COURT: Sure.

19 MR. BROCHIN: Your Honor, as you mentioned, we're

20 here today for a trial on damages and to present evidence on

21 behalf of 11 plaintiffs who are seeking damages under the

22 Alien Tort Claim Act and the Torture Victim Protection Act.

23 These damages are going to arise from the brutal

24 and cruel and vicious beating and raping and murder of men,

25 women, and children in a very small close-knit community

1 known as Accomarca. It's located up in the mountains of
 2 Peru, some 17, 18,000 feet above sea level.

3 These damages come from the murder of the elderly,
 4 as the defendant, who is Telmo Hurtado's troops shot an
 5 80-year-old woman, Juliana Baldeon, when she tried to put
 6 water out on the fire that was burning her house with the
 7 bodies of her family and her friends and her community, to
 8 the killing of the young, including the plaintiff, nine-month
 9 year old (sic) Edgar Pulido Baldeon. Defendant Telmo Hurtado
 10 and the Peruvian army slaughtered some 69 men, women, and
 11 children. They burned Llocclapampa to the ground, and then
 12 they stole the little possessions that they had, as they
 13 changed their clothes for a celebration in the hills of
 14 Accomarca.

15 These men, women, and children of Llocclapampa are
 16 tranquil people. They were a people of peace. They were
 17 family people. They were people of a community, a tribe, if
 18 you will. They were farmers and ranchers who lived and had a
 19 very strong relationship with the very rugged land on which
 20 they lived. They were people with no arms, no weapons, no
 21 grenades, no means of defending themselves. They were not
 22 involved in political causes or movements. They were human
 23 beings living peacefully and happily with what God gave them.
 24 And they were innocent human beings in a country that was the
 25 site of a brutal, brutal civil war between the Peruvian army

1 and the Sendero Luminoso, or the Shining Paths. It was a
 2 civil war that lasted for some 20 years.

3 So, I'd like to first, if I may, your Honor,
 4 introduce to you the ten plaintiffs that are before the
 5 Court.

6 Here today, as I've introduced to you, are two of
 7 the ten plaintiffs. These are the two plaintiffs that
 8 survived the massacre on August 14, 1985. Teofila Ochoa
 9 Lizarbe, 37 today, Teofila was a 12-year-old girl back in
 10 1985. Teofila will testify about her life in Llocclapampa
 11 before the massacre in 1985 and after. And she will tell you
 12 what Defendant Telmo Hurtado and the Peruvian soldiers did to
 13 her and her family on August 14, 1985.

14 Teofila will also tell us about five other
 15 plaintiffs, all of who she saw murdered on August 14th. They
 16 are Silvestra Ochoa Lizarbe, Teofila's dedicated mother of
 17 nine children, who was beaten and burned and killed with her
 18 one-year-old baby in her arms. Plaintiff Edwin Ochoa
 19 Lizarbe, Teofila's youngest sibling, murdered at age one.
 20 There's Plaintiff Gerardo Ochoa Lizarbe, who hid
 21 with Teofila on August 14th, until they were split and
 22 Gerardo was gunned down trying to escape. Gerardo was age
 23 ten.

24 THE COURT: What was his relationship to her,
 25 brother?

1 MR. BROCHIN: Her relationship -- it was her
 2 brother.

3 THE COURT: Her brother.

4 MR. BROCHIN: Gerardo Ochoa Lizarbe is Teofila's
 5 brother, younger brother.

6 In fact, the five estates -- or six estates for
 7 Teofila, one is the mother and the five are her younger
 8 siblings. That's also Plaintiff Victor Ochoa Lizarbe,
 9 Teofila's brother, age eight; Plaintiff Ernestina Ochoa
 10 Lizarbe, Teofila's sister, age six; and Plaintiff Celestino
 11 Ochoa Lizarbe, Teofila's brother, age three.

12 Plaintiffs Victor, Ernestina, and Celestino also
 13 went with their mother to their deaths, as Defendant Hurtado
 14 and his soldiers rounded up the people in the village for
 15 execution.

16 THE COURT: So there are, in addition to her, six
 17 other family members --

18 MR. BROCHIN: Six other family members.

19 THE COURT: -- right?

20 MR. BROCHIN: Correct. Her mother and her five
 21 younger siblings, ranging from age ten to age one. And
 22 that's Ms. Lizarbe at the end.

23 THE COURT: Okay.

24 MR. BROCHIN: And then next to her is Plaintiff
 25 Cirila Pulido Baldeon, also 37. Cirila was 12, also, at the

1 time of the massacre, and she, too, will testify today to the
 2 events of August 14th.

3 Cirila hid in her house for two days with her
 4 brother, Alfredo, age five, and her sister Elba, age two, and
 5 she, too, witnessed the massacre of her family and friends,
 6 including the two other plaintiffs, her mother Fortunata
 7 Baldeon Gutierrez -- that's Cirila's mother -- and Plaintiff
 8 Edgar Pulido Baldeon, Cirila's brother. Edgar, as I
 9 mentioned, was nine months old.

10 And while not plaintiffs, Cirila's family members
 11 Lorenzo and Lorenzo's children -- Torbio, age ten; Damisa,
 12 age eight -- and Cirila's cousins, Nestor Gamboa, age ten,
 13 and Francia Gamboa, age nine, also were beaten and shot and
 14 burned and murdered by Defendant Telmo Hurtado.

15 In fact, your Honor, 26,257 people died or
 16 disappeared from the region of Ayacucho during the civil war
 17 and it is on behalf of these plaintiffs, Teofila Ochoa
 18 Lizarbe and Cirila Pulido Baldeon, and their dead mothers,
 19 brothers, and sisters that we are here seeking damages.

20 And I do want to talk about damages for a moment in
 21 the sense that it is clear to us that under the Alien Tort
 22 Claim Act and Torture Victim Protection Act, both
 23 compensatory and punitive damages are available. The law is
 24 clear, and as I alluded to earlier, your Honor, the Eleventh
 25 Circuit has said that what the Alien Tort Claim Act does is

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1 it establishes a federal forum where courts can fashion, and
2 perhaps a little bit to the uncertainty, but fashion domestic
3 common-law remedies to give effect to the violations of
4 customary international law.

5 Courts have awarded substantial compensatory damage
6 awards to plaintiffs in light of the gravity of the abuses
7 involved, and damages are available for the psychological
8 injury caused by this massacre on August 14th. The law does
9 recognize that victims of violations of international norms
10 are entitled to compensation for all harm proximately caused
11 by Mr. Hurtado's conduct.

12 To quote a decision recent, it says:

13 "It's a principle of international law that
14 every violation of an international obligation
15 which results in harm creates a duty to make
16 adequate reparation." And that such reparation,
17 "must wipe out all the consequences of the illegal
18 act and reestablish the situation which would have
19 existed if the act was not committed."

20 Under international law, plaintiffs are entitled to
21 compensatory damages for a broad range of physical,
22 emotional, and social harm. They include injury to feelings,
23 humiliation, shame, degradation, loss of social position, and
24 that compensation should be commensurate to the injury.

25 The extreme physical and emotional pain suffered by

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1 these ten plaintiffs as a result of the inhumane acts
2 perpetrated by Hurtado will be palpable and felt today.
3 These two plaintiffs sitting here before you continue to
4 suffer great harm from their ordeals. They suffer from
5 nightmares and flashbacks, and from emotional scars and
6 losses that run very, very deep.

7 Punitive damages are also available. "Punitive
8 damages are appropriate, if not essential, mechanism for
9 upholding prohibitions against human rights abuses reviled by
10 the international community." And as with compensatory
11 damages, numerous courts have imposed punitive damages for
12 awards from violation of international law.

13 Punitive damages in this arena, your Honor, we
14 believe are designed to, first, punish and teach Telmo
15 Hurtado, but also to deter others from committing these same
16 abuses. As stated by the Court in the Second Circuit in
17 *Filartiga*:

18 "Courts must make clear the depth of the
19 international revulsion against torture, and then
20 measure the award in accordance with the enormity
21 of the offense."

22 And perhaps, your Honor, which we did cite in our
23 brief, the Court in the case of *Doe vs. Saravia* laid it out
24 best in terms of some guidance on damages by concluding that
25 the decisions under these statutes that award compensatory

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1 and punitive damages consider six factors, and they are as
2 follows, in deciding damages:

3 One, the brutality of the act; two, the
4 egregiousness of Hurtado's conduct; three, the unavailability
5 of a criminal remedy; four, the international condemnation of
6 the act; fifth, the deterrence of others committing similar
7 acts; and finally, sixth, the provision of redress to the
8 plaintiffs, the country, and the world. And I would add,
9 also to this one small community known as Accomarca.

10 And, your Honor, if I could perhaps, and then I'll
11 return, if I may just show you this map. We'll use this as a
12 reference. This is actually -- may I speak here?

13 THE COURT: Just turn the microphone over.

14 MR. BROCHIN: Thank you.

15 Actually, your Honor, this is a map that was drawn
16 by the two plaintiffs from the town. And we blew it up and
17 made it a little fancier, but this is the town of Accomarca,
18 which is beyond the hills. And there are paths, and as I
19 mentioned, it's a very rugged and mountainous area, and paths
20 that lead down, for the farming and the ranching, down to a
21 little bit of a flat-lying area here, which we call
22 Llocclapampa.

23 I should also tell you that the native language in
24 this area is not Spanish, it's Quechua, which is an Incan
25 descent language. And while I've come to hear it as a

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1 beautiful language, I've also come to hear it as a very
2 difficult language to speak, but I'm going to try. These are
3 terms in Quechua, which was their native language, and the
4 village people, including the plaintiffs, that's the language
5 they spoke in this area.

6 THE COURT REPORTER: I'm sorry.

7 MR. BROCHIN: That's the language they spoke in
8 this area.

9 And then, finally, your Honor, there's a photo
10 there which basically is a photo looking from here down, and
11 we have a -- if I may, I can bring this to you.

12 (Discussion had off the record.)

13 MR. BROCHIN: This is actually, your Honor -- and
14 that's marked as Plaintiffs' Exhibit 1.

15 (Plaintiffs' Exhibit Number 1 was marked for
16 identification.)

17 MR. BROCHIN: And what the people of Accomarca
18 would do -- they live in this town, which is beyond that
19 ridge. And then in the months of June and July and August,
20 September, they would migrate down these paths, live in their
21 homes or huts scattered throughout the mountains, and farm
22 them and fertilize them during these summer months, fertilize
23 the fields with their animals, and then return in
24 October/November, perhaps, back to the town of Accomarca,
25 which is --

1 THE COURT REPORTER: Excuse me, Mr. Brochin.
 2 MR. BROCHIN: And they would return back to the
 3 town of Accomarca, which was beyond the mountain ridge there
 4 So, the photo you're looking at is actually
 5 standing as if you were on top of this mountain ridge looking
 6 down. And if you can see the small little landing area
 7 that's a lighter tan color, that's that flatland down there
 8 with -- which they've called Lloccllapampa.

9 Now, indeed, the people of Accomarca, including the
 10 plaintiffs, came down from the town during those months and
 11 were there in these mountain ranges on the night of
 12 August 13th.

13 And on that night, Cirila's family heard gunshots
 14 in the town of Pitecc, which is located up on the far corner
 15 there. And they heard them, and her mother feared for her
 16 father's life and they left that evening for Huaranjapata.

17 And then in the early morning of August 14th, which
 18 was a clear day, a warm day, a sunny day, Hurtado and his
 19 Peruvian soldiers arrived for Operation Huancayoc. It was an
 20 operation and a mission to cleanse Accomarca of everyone. It
 21 was to treat all people down there as terrorists -- men,
 22 women, pregnant women, children, babies.

23 And to that end, some 30, 40, perhaps more,
 24 soldiers arrived rounding up all the people of Lloccllapampa.
 25 They entered their houses -- not looking for weapons, not

1 leaves aren't on the trees, so the site lines are great.

2 And it was the defendant, Second Lieutenant Telmo
 3 Hurtado, who was there, of Lince 7, and it was Second
 4 Lieutenant Telmo Hurtado, of Lince 7, who was in charge of
 5 this operation, Operation Huancayoc.

6 Now, after the beatings and the rapings in that
 7 field, which took place down here near this tree, Defendant
 8 Hurtado had them line up basically in two lines, one for men
 9 and one for women, and a third line for some extra men -- I
 10 mean extra women and children. And single file they led the
 11 women into the main structure of the Gamboa house. They led
 12 the men into the side structure of the Gamboa house. And a
 13 few of the women and children into this side area here, which
 14 was a -- maybe like a kitchen or a corral. It was an open
 15 area where perhaps goats or other animals live.

16 And when they led them down into that area, they
 17 were summarily executed; first, by firing weapons with
 18 counseled shots into the house over and over and over again.

19 Then Lieutenant Hurtado had grenades thrown into
 20 the houses, such that explosions caused a fire and burnt the
 21 houses down completely and every person trapped in them.

22 Teofila, age 12, and Cirila, age 13, watched as
 23 their families perished. They smelled the burning flesh of
 24 their mother and listened to their desperate screams for
 25 help.

1 questioning anyone, not searching houses -- but rounding up
 2 all for a beating and for torture and for raping of women and
 3 girls, and then to kill them.

4 Teofila's mother, when the soldiers arrived,
 5 offered them soup and fed them, for which they thanked her
 6 and then hauled her and her four children -- Victor,
 7 Ernestina, Edwin, and Celestino -- down to that flatland in
 8 Lloccllapampa of a killing field.

9 Cirila, she hid in her house. Cirila's house is
 10 located up here on the ridge, which as you can appreciate by
 11 the photograph is a quite rugged place. Teofila's house was
 12 further down more toward this flat area called Lloccllapampa.

13 Down there on the flatlands of Lloccllapampa near a
 14 tree, some call a pepper tree, the soldiers beat them with
 15 their weapons and kicked them with their boots. They
 16 screamed profanity at them, mindful that no one in
 17 Lloccllapampa had weapons or posed any threats, and they
 18 would drag the women and girls off into the ditch to sexually
 19 assault them.

20 All the while Teofila and Cirila watched perched
 21 from their houses hearing the desperate screams of women
 22 being raped and of men being beaten. They could see the
 23 brutality, the havoc, the chaos that was brought upon their
 24 families. The vista here is long. The mountain range is
 25 far. It was a clear day. And at that time of year, the

1 When it was over, Lieutenant Hurtado had his
 2 subordinates change their clothes into civilian clothes and
 3 then march up the mountain for their journey back to the town
 4 of Accomarca, down this main path, for a celebration at night
 5 where they would drink and eat the animals that they just
 6 stole from the victims of Lloccllapampa.

7 But as they were going up that mountain, they saw
 8 Juliana Garcia Baldeon, an 80-year-old woman, whose house was
 9 burning with bodies of flesh, desperately trying to put this
 10 fire out. And wanting to exterminate all, and certainly
 11 eliminate witnesses, two or three soldiers returned to shoot
 12 and kill her.

13 Plaintiff Gerardo, who was hiding with Teofila,
 14 tried to run down from her house into the fields of
 15 Lloccllapampa to escape and was shot and killed. Again,
 16 Gerardo was ten.

17 Teofila ran to the back area toward a gully as the
 18 soldiers shot at her, and hid under a rock as the bullets
 19 flew by, trembling with fear.

20 Cirila, she and Alfredo and Elba remained holed up
 21 in the house, not eating for two days for fear that the smoke
 22 from the house to make the food would signal to the soldier
 23 their whereabouts. And there they remained until two days
 24 later, when the few survivors of the massacre came quickly
 25 out to bury the dead in those homes.

1 Cirila and Teofila and the other few survivors dug
2 two pits to bury the dead. Both -- most were burned beyond
3 recognition. Teofila found her mother with her brother in
4 her arms and his head decapitated. Cirila could not identify
5 her mother or her brother. Burial was done in haste. They
6 still feared the soldiers would return, and they certainly
7 feared for their life.

8 This gravesite was exhumed a month later. It was
9 exhumed in March of '06, and March of '07, and will be done
10 so again in March of '08.

11 Now, after it was over, to escape the horror of
12 Accomarca, Teofila soon left to escape to Lima. Cirila did
13 not. She moved back to her house there on the mountains of
14 Huancayoc. And when the massacre of Accomarca came to light
15 in the ensuing days, the Peruvian military returned some two
16 or three weeks later to hunt down and kill the remaining
17 survivors to silence any witnesses. And after hiding in
18 gullies by day and eating at night, for two or three weeks,
19 Cirila was on the run again and in fear for her life. She
20 was chased by Peruvian soldiers until she took refuge by a
21 waterfall and was left there for dead by the soldiers.

22 Your Honor, the fact that these two 12-year-old
23 girls survived this massacre is remarkable. The fact that 23
24 years later, Teofila and Cirila are here today to testify
25 about the massacre is miraculous. And it is the act of the

1 utmost courage.

2 We will also have Eduardo Gonzalez, hopefully,
3 testify, who investigated the Accomarca massacre and
4 contributed significantly to the final report for the
5 Peruvian Truth and Reconciliation Commission. His testimony
6 is critical to the context of the massacre, so the Court may
7 assess properly the breadth of Hurtado's grievous violations
8 of international law and his brutal abuse of human rights.

9 Finally, you will hear from Peruvian Senator Javier
10 Canseco, who investigated the massacre. Senator Canseco took
11 testimony from the soldiers and victims alike, and from
12 Second Lieutenant Telmo Hurtado himself. And as a result,
13 Senator Canseco is the primary author of the Peruvian Senate
14 Commission Report on the Accomarca Massacre.

15 In the end, we will ask for a judgment for
16 compensatory and punitive damages, and I know in the end,
17 it's the hope of Teofila and Cirila that Second
18 Lieutenant Telmo Hurtado will be held accountable for his
19 atrocious and cruel acts, and in so doing some justice will
20 be served. And they have asked me to tell you on their
21 behalf that they thank you for that opportunity to testify.
22 And with that, I'd like to call them to the stand to testify.

23 THE COURT: All right. Thank you, Mr. Brochin.

24 This is Ms. Lizarbe, right?

25 MR. BROCHIN: Yes.

1 (TEOFILA OCHOA LIZARBE, PLAINTIFFS' WITNESS, WAS SWORN.

2 THE COURT REPORTER: Please sit down. Please stay
3 behind the microphone as best you can and state your full
4 name for the record, spelling your last name.

5 THE WITNESS: First of all, I would like to offer
6 my greetings to his Honor, the judge, and all of the people
7 that accompany us here today.

8 My name is Teofila Ochoa Lizarbe.

9 THE INTERPRETER: The interpreter would spell for
10 the Court, last name Ochoa, O-C-H-O-A, Lizarbe,
11 L-I-Z-A-R-B-E.

12 THE COURT: Thank you.

13 Go ahead, Mr. Brochin.

14 DIRECT EXAMINATION

15 BY MR. BROCHIN:

16 Q. Good morning. Teofila, tell -- where do you live?

17 A. I live in Lima, at Association UPI, May 26, Block D,
18 Lot 22, Santa Clara, Atritarate.

19 Q. And do you work?

20 A. Yes, I work in family homes.

21 Q. And how old are you?

22 A. Thirty-seven years old.

23 Q. And are you a Peruvian citizen?

24 A. Peruvian.

25 Q. Are you married?

1 A. Married.

2 Q. And what is your husband's name and what does he do?

3 A. Sosimo Palacios Baez.

4 Q. And does your husband work?

5 A. He works as a bricklayer.

6 Q. And do you have children and their names?

7 A. Yes, I have three children -- Junior Palacios Ochoa,
8 Paul Anthony Palacios Ochoa, and Jose Elias Palacios Ochoa.

9 Q. What are the names of your mother and father?

10 A. Miguel -- Miguel Ochoa Quispe and Silvestra Lizarbe
11 Solis.

12 Q. Teofila, I know you have eight brothers and sisters,
13 three that are alive today. What are the names of your
14 brothers and sisters that are alive?

15 A. Sophia Esperanza Ochoa Lizarbe, Miguel Ochoa Lizarbe,
16 Roman Ochoa -- Roman Francisco Ochoa Lizarbe.

17 Q. And how old are your brothers and sisters that are
18 alive?

19 A. Esperanza is 48 years old, Miguel is 46 years old, Roman
20 is 38 years old, and I'm 37 years old.

21 Q. And did your brother Miguel serve in the Peruvian army?

22 A. Yes. Yes, he was in.

23 Q. And was he in the Peruvian army before August of 1985?

24 A. No, I didn't know. No, it was later, later.

25 Q. Teofila, I want to talk to you about your life growing

1 up in Accomarca.
 2 Tell Judge Jordan what your childhood life was like
 3 when you grew up in Llocclapampa.
 4 A. When we lived there in Llocclapampa, I was there -- I
 5 lived there with my mother and my brothers and sisters, all
 6 five, and we were happy. Everything was happy, because my
 7 mother always gave me a lot of love.
 8 We were all so very, very happy. We worked the
 9 land to collect the crops. We had our animals. Our animals
 10 were grazing. Everything was so happy. We were happy with
 11 my mother. She always shared every piece of food. We were
 12 so happy, because she always gave us her warmth, and we
 13 always had the love of our mother.
 14 We were so happy; we lacked nothing.
 15 Q. Teofila, did Cirila draw out this map?
 16 A. Yes.
 17 Q. And does this show the house where you would live in
 18 with your mother and siblings when you came down from the
 19 town of Accomarca?
 20 A. Yes. That's where we lived.
 21 Q. And what is -- tell the judge what this area here, what
 22 is labeled Llocclapampa, is like.
 23 A. It is a place. It's a very big place. It's a big
 24 savanna. There are many trees. And on that date, August the
 25 14th, by then the harvest was over. And they call it

1 Llocclapampa, because it is big. It's very big. They call
 2 it Llocclla (phonetic), because many times you will see the
 3 guaycos. These are ditches.
 4 THE INTERPRETER: The interpreter would spell for
 5 the record G-U-A-Y-C-O, guayco.
 6 A. And there's lots of mud also that comes down, and you'll
 7 see that there's a lot of water, much, much water. It is
 8 very pretty. And you can see that there are valleys and
 9 there are footpaths on the way down. All that you can see on
 10 the map.
 11 Around there is where all of the people lived.
 12 That's where everyone had their house. We all lived there.
 13 We were very tranquil. We were very healthy, a very healthy
 14 lifestyle. All very happy. All of the neighbors with their
 15 animals living in that place.
 16 Q. And how far would you say it is from your house here to
 17 this area that's marked with the trees down here
 18 (indicating)?
 19 A. More or less, approximately 30 meters.
 20 Q. And how far between this tree area here and these two
 21 houses -- structures down at the end there?
 22 A. It's a little bit more. It's more or less approximately
 23 60 meters.
 24 Q. And is this up here the house where Cirila lived?
 25 A. Yes.

1 Q. Now, as a child, did the Peruvian army visit the area of
 2 Llocclapampa?
 3 A. On August the 14th, 1985, when my mother woke me up --
 4 Q. Teofila, let me reask the question, because I wasn't
 5 clear. I was talking, really, prior to August of 1985, did
 6 the Peruvian army pay visits to the area of Llocclapampa?
 7 A. Yes.
 8 Q. Could you tell us when they came what they did?
 9 A. That day I had gone to graze my animals. And when I
 10 returned --
 11 Q. I'm not talking about August 14th.
 12 THE COURT REPORTER: You've got to talk into the
 13 end, not the side.
 14 THE COURT: That's okay. He'll help you fix it.
 15 We have a lot of dead spots in this courtroom. So,
 16 although someone next to you and I can hear you, over there
 17 they may not be able to hear a word you're saying.
 18 MR. BROCHIN: Yes. I'm going to yell.
 19 THE COURT: You don't need to, as long as you've
 20 got a microphone near you.
 21 BY MR. BROCHIN:
 22 Q. Not August, 1985; before August, 1985, did the Peruvian
 23 army come ever to Llocclapampa?
 24 A. Yes.
 25 Q. Tell me about when they came. Not on August, 1985, but

1 before then.
 2 A. When they arrived at that place of Llocclapampa, they
 3 began to beat Severino Baldeon. Then after that, they killed
 4 animals, they ate the animals, and after that they left.
 5 They left -- well, after that, they left and they went to
 6 Pitecc.
 7 THE COURT: When was this?
 8 THE WITNESS: Before August the 14th.
 9 MR. BROCHIN: Do you --
 10 THE COURT: Can you put an approximate time frame
 11 on it? Was it a year before, a month before, a week before?
 12 THE WITNESS: No, about three days.
 13 BY MR. BROCHIN:
 14 Q. So, you're thinking about August 11, 1985.
 15 A. Yes. Around there.
 16 Q. Now, in August of 1985, were you living in this house
 17 with your mother and five younger brothers and sisters?
 18 A. Yes. On August the 14th, 1985, we, along with my
 19 mother, lived at that place.
 20 Q. And where were your brother -- your father and your
 21 three other brothers and sisters at?
 22 A. My father was in Ica with my brother Roman. Two of my
 23 brothers and sisters, or siblings, in Lima. And another one
 24 in the jungle.
 25 Q. Now, I know you had a special relationship with your

1 mother. Tell the Court a little bit about your mother,
2 Silvestra.

3 A. With my mother, we were like friends. We were like
4 sisters. She was a beautiful mother and she loved me. And
5 she told me that I was a very responsible daughter. And when
6 she would embrace me, she would kiss me, and she would kiss
7 and embrace all of her children who lived there with her.

8 Q. And did she care for you when you were sick?

9 A. Yes, she would care for me. When I fell ill in the
10 past, she would care for me. She would go out and she would
11 search for the medicine men, those that knew how to cure.
12 She took care of me, because I had fallen ill when I was
13 three years old. Yes. And she stayed with me until the day
14 came when I got better, when I healed.

15 Because I had become just like a baby all over
16 again. And she stayed next to me. She stayed next to me
17 until I recovered. And she would care for me and she would
18 tend to me, as she would tend to -- as she would tend to all
19 of her four other children. She was a woman and she loved me
20 very much.

21 Q. Well, did your mom ever want you to leave Llocclapampa?

22 A. No, never. She never wanted me to leave there. She
23 always wanted me to stay by her side, because I was a sickly
24 child. No, she would say, I don't want you to leave this
25 place. She wanted me to stay there with her and with my

1 brothers and sisters.

2 THE COURT: Mr. Brochin, you need to give me an
3 idea of when you want Mr. Hurtado to testify so that the
4 marshals can bring him up. So, if you give me a general
5 idea, I can let them know.

6 MR. BROCHIN: Your Honor, do you intend to have him
7 sit here through the trial?

8 THE COURT: No. Not unless you want him here for
9 the trial.

10 MR. BROCHIN: We would welcome him here for the
11 trial. He's the defendant.

12 THE COURT: I understand. But it's a default case
13 on damages, so....

14 MR. BROCHIN: I understand that, yes. But if you
15 ask for a preference, yes, we'd prefer him be here.

16 THE COURT: Okay.

17 Then we need to get her off the stand for a second
18 so that he can be brought in, and I can explain exactly what
19 it is that is going on here, if he's going to be here
20 throughout the trial and not just giving testimony. Okay?

21 MR. BROCHIN: Fine with that, yes, your Honor.

22 THE COURT: If you could just ask her to return to
23 her seat for a second, please.

24 You can bring Mr. Hurtado out. Thank you.

25 No, he's not going to testify right now.

1 THE MARSHAL: Oh, he's not?

2 THE COURT: No. So, if you could just have him
3 have a seat over there on that side, please. Thank you very
4 much.

5 Good morning, Mr. Hurtado.

6 Do you know what is happening here today?

7 THE DEFENDANT: Honestly, no.

8 THE COURT: Well, there has been a civil lawsuit
9 that was filed against you by two ladies in their personal
10 and individual capacities, and as representatives of the
11 estates of various other individuals who had been killed.
12 The claims were brought under two American laws, including
13 the Alien Tort Statute and the Torture Victim Protection Act.

14 The claims arise out of a massacre that occurred on
15 April -- excuse me -- on August 14th of 1985, in or around
16 the towns of Llocclapampa and Accomarca in Peru.

17 The allegations are that you, acting as a second
18 lieutenant of the Lince 7 squad, went into these areas and
19 directed and/or approved of the torture and massacre of over
20 50 individuals in that area, including pregnant women, small
21 children, and the elderly.

22 This lawsuit was filed against you last year, and
23 you were served with process, but you didn't respond to the
24 complaint. I sent you additional notice telling you that a
25 default judgment on liability would be entered if you did not

1 respond to the complaint against you in some way. And when
2 you did not respond, I entered judgment against you, a
3 default judgment on liability.

4 THE INTERPRETER: He's asking -- if it please the
5 Court, the interpreter has been asked to speak louder for the
6 defendant.

7 THE COURT: Does he want me to repeat anything
8 else?

9 THE DEFENDANT: (In English) No, no.

10 THE INTERPRETER: No, he does not.

11 THE COURT: All right. So, when I didn't have any
12 response from you, the individuals who filed suit against you
13 moved for a default judgment on liability, and I granted that
14 judgment in November of 2007. And then I set this trial to
15 determine what damages should be assessed against you in
16 light of that judgment on liability.

17 Do you understand what I've explained to you?

18 THE DEFENDANT: Yes, your Honor, I have just
19 understood.

20 THE COURT: So, this is a trial on damages,
21 Mr. Hurtado, and you have been brought here for testimony.
22 But now that you are here, you are certainly entitled to be
23 present during the presentation of all of the other
24 testimony, and to contest any of the evidence that is
25 presented on the issue of damages. And if you wish to ask

1 anyone who testifies any questions, I will give you that
2 opportunity. Do you understand that?

3 THE DEFENDANT: So far, yes.

4 THE COURT: Do you have any questions for me?

5 THE DEFENDANT: I do, your Honor.

6 I do not have financial resources that would allow
7 me legal representation. I do not speak the English
8 language. And, likewise, I find myself limited from being
9 able to make any type of statement, because I am ignorant of
10 the laws that you are speaking of, because I do not know the
11 laws here in the United States, and, likewise, because I am
12 also following a judicial procedure at Immigration.

13 THE COURT: Well, let me see if I can respond this
14 way, Mr. Hurtado.

15 In a civil case in the United States, unlike a
16 criminal case, I do not have the authority or the financial
17 ability to order a court-appointed attorney for you. If you
18 had told me about some of these issues when you were served
19 with the complaint, I could have tried to postpone the case,
20 or stay it for a while, so that you could try to find legal
21 representation. But I heard nothing from you for months.
22 So, it was my belief that you were not interested, in a
23 general way, with litigating this case or appearing in it.

24 With regard to your lack of command of the English
25 language, we have an interpreter here, who, from what I've

1 seen so far, is very good, and he'll be able to translate
2 everything that is said in English to you in Spanish. And
3 with regards to American law and American procedures, I can
4 certainly try to explain things as we go along or answer any
5 of your questions.

6 Now, you're not required to stay here beyond your
7 testimony, and if in light of the immigration proceedings
8 that are currently ongoing, you do not wish to say anything
9 beyond your testimony, that is perfectly fine, and I won't
10 hold that against you in any way whatsoever.

11 So, you need to tell me whether you'd like to
12 participate in this hearing over and above your testimony or
13 not. But, unfortunately, I do not have the legal ability to
14 appoint a court-financed attorney for you.

15 THE DEFENDANT: I do not wish to participate of the
16 testimonies, and I do not intend to make any statements,
17 because I do not have legal representation. Since I have
18 been incarcerated for more than ten months, I have no type of
19 work on the outside, and I have no financial ability that
20 will allow me to face this lawsuit.

21 THE COURT: That certainly is your choice with
22 regards to participation in this case, Mr. Hurtado. And if
23 you do not wish to participate beyond your testimony, I'm
24 certainly not going to force you to do that.

25 But if you are called as a witness here, you need

1 to answer questions that are posed to you, unless you contend
2 that your testimony might tend to incriminate you, that is,
3 that it might tend to expose you to criminal prosecution or
4 liability in the future. And given some of the allegations
5 that have been made against you here, it is my duty to inform
6 you that some of your testimony, depending on what your
7 answers are, might, in fact, expose you to criminal liability
8 or prosecution in the United States in the future.

9 Before you tell me anything else, do you understand
10 what I've explained to you?

11 THE DEFENDANT: Yes, your Honor, I have understood
12 and I ratify my position. I will make no statements.

13 THE COURT: Do you wish to invoke your privilege
14 against self-incrimination under the United States
15 Constitution then?

16 THE DEFENDANT: For no reason.

17 THE COURT: Well, Mr. Hurtado, I'm trying to not
18 make this difficult for you, but unless you invoke your Fifth
19 Amendment privilege against self-incrimination under the
20 United States Constitution, then you are required to answer
21 questions that are put to you. And I'm telling you that you
22 can invoke your Fifth Amendment privilege and not testify.

23 THE DEFENDANT: I invoke the Fifth Amendment and
24 not to testify.

25 THE COURT: Okay.

1 Mr. Brochin, anything else?

2 MR. BROCHIN: No, your Honor.

3 THE COURT: No?

4 All right. Mr. Hurtado, anything else you wish to
5 say?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Do you understand that by choosing to
8 invoke your Fifth Amendment privilege against
9 self-incrimination, and by choosing not to participate any
10 further in this proceeding, you're essentially giving up the
11 right to be present during this trial on damages?

12 THE DEFENDANT: Yes, I have understood, your Honor.

13 THE COURT: Do you understand that even if you
14 choose not to testify, and to invoke your Fifth Amendment
15 privilege, you can still participate in the trial, if you
16 wish to do so? Although, I understand that you don't have a
17 lawyer representing you.

18 THE DEFENDANT: I have no attorney to represent me,
19 and I understand what you have said to me, your Honor.

20 THE COURT: All right. Thank you very much,
21 Mr. Hurtado. You're excused.

22 THE DEFENDANT: Thank you, your Honor.
23 (Defendant excused.)

24 MR. BROCHIN: Your Honor, just so we're clear, for
25 the record, we would have called him to the stand and posed

1 questions to him relating to damages. And as I understand
2 the record, Mr. Hurtado has invoked his Fifth Amendment right
3 not to respond to those questions, and, therefore, that
4 testimony would not be available.

5 THE COURT: I mean, there's no other way to put it.
6 You know -- and given the prosecution that is occurring in
7 this district right now of Mr. Taylor in Judge Altonaga's
8 courtroom with regard to events that took place in his
9 homeland, I felt that it was my duty to inform him that he
10 was potentially exposing himself to criminal liability, as
11 well.

12 So -- and I advised him of that because he has no
13 lawyer. If he had a lawyer, that would have been a matter
14 for him and his attorney to decide. But he has now invoked
15 his Fifth Amendment privilege against self-incrimination, and
16 he has chosen to not be present for this trial. So, as far
17 as I'm concerned, we can continue without him.

18 MR. BROCHIN: I would only add -- and to which we
19 agree, your Honor, in terms of that process. But I would
20 only add that it was the preference of our clients, who are
21 before you today, that he sit through the trial, even if he
22 was to invoke his Fifth Amendment rights.

23 THE COURT: I understand. But, you know, no
24 litigant in a civil case can be forced to sit through a
25 trial, and the fact that he's in custody doesn't make a

1 difference. If he had not been in custody, and you
2 subpoenaed him like you did, if he would have walked in here
3 and said, I have the subpoena, but I choose not to testify, I
4 invoke my rights, and I'm walking out of this courtroom, that
5 would have been the end of it.

6 So, I certainly understand the numerous reasons why
7 you and your clients would want to have him here during this
8 trial, if for nothing else for a catharsis, but there's no
9 legal way to make him stay. He's defaulted on liability.
10 He's chosen not to be present on damages. And as far as I'm
11 concerned, that's the end of the matter for Mr. Hurtado.

12 MR. BROCHIN: Your Honor, I would say we take no
13 exception to.

14 THE COURT: Okay.

15 MR. BROCHIN: I guess I'm just reminded again what
16 a great country we live in, in terms of our laws.

17 THE COURT: We'll take a ten-minute break, and then
18 come back and continue with Ms. Lizarbe's testimony.

19 MR. BROCHIN: Thank you.

20 (Recess taken at 10:28 a.m. until 10:37 a.m.)

21 THE COURT: Welcome back. Be seated.

22 Can we get Ms. Lizarbe back on the stand, please?

23 Go right ahead.

24 MR. BROCHIN: Thank you, your Honor.

25

1 BY MR. BROCHIN:

2 Q. Teofila, we were talking about your mother before the
3 break. Now, I'd like to talk a little bit about the five
4 brothers and sisters that were murdered on August 14th.

5 Beginning with Geraldo (sic), can you tell us a
6 little bit about Geraldo?

7 A. Could you please repeat?

8 Q. Sure.

9 I want to talk a little bit about your five
10 brothers and sisters who were murdered on August 14th. Tell
11 the judge a little bit about your brother Geraldo.

12 A. On the 14th of August, it was a day, and in the morning,
13 my mother got up very early. And after she got up very
14 early, she woke me up and she said, Go and get the two
15 donkeys that are way up there.

16 When I went to bring back the animals, it must have
17 been around about six o'clock in the morning, I saw on the
18 14th of August that all around Lloccllapampa, the whole place
19 was surrounded by soldiers.

20 Q. Teofila, I know you're anxious to tell us the story of
21 August 14th, and you will. But just tell us a little bit,
22 first, about your brother. Tell us what kind of person and
23 boy Geraldo was growing up in Lloccllapampa.

24 A. He was a good boy. He was an obedient boy. He was a
25 caring and kind, loving boy, and he loved my mother and all

1 of my other brothers and sisters. He was an exemplary boy.
2 He worked very hard. He worked in the field, and we would
3 graze our animals, our sheep. And he loved my mother.

4 Q. And --

5 A. And he went to school up to the third grade in
6 elementary school. He went to school.

7 He was an obedient boy. He was always very good.
8 He was always very good to my mother. And he worked very
9 hard. And we -- we would go and we would get fruit, and
10 always he would find the best fruit and he would always give
11 it to my mother.

12 Q. And Victor, tell the Court about your younger brother
13 Victor.

14 A. Victor was a beautiful person. If we had to share a
15 piece of bread, he would share with all of us. He loved my
16 mother. He was a very good son. Many times, amongst all of
17 us, he would always be the one to help us. A very precious,
18 a very good boy.

19 THE COURT: How old was Gerardo when he was killed?

20 THE WITNESS: He was ten years old.

21 THE COURT: How about Victor?

22 THE WITNESS: Victor was eight years old.

23 THE COURT: Thank you.

24 BY MR. BROCHIN:

25 Q. And Ernestina, tell us a little bit about Ernestina.

1 A. Ernestina was a very chubby little girl. A little girl
2 who had a very strong voice. We were always very happy. We
3 always shared. And she was very precious. And if we had to
4 borrow something from each other, she was always the one to
5 say, "I have one."

6 A very obedient little girl. She would do the
7 cleaning chores in the house. She would care for the little
8 ones. A beautiful and marvelous little girl.

9 Q. And how old was Celestino (sic) when she was murdered?

10 THE COURT: Ernestina, right?

11 MR. BROCHIN: I'm sorry, Ernestina.

12 A. Ernestina was seven years old.

13 Q. And now Celestino, tell Judge Jordan a little bit about
14 Celestino.

15 A. He was a little boy. He was a little bit small, but he
16 also had a bit of a character, personality. He was a
17 beautiful little boy, and he always wanted just a little bit
18 more food. He wanted to be given a little bit more food.

19 He liked to share with all of our brothers and
20 sisters. And he was very kind. He loved my mother very
21 much.

22 Q. And Celestino, how old was he when he was murdered?

23 THE COURT: Wasn't that Celestino?

24 MR. BROCHIN: Celestino.

25 THE COURT: Okay.

1 A. Celestino was three years old.

2 Q. And Edwin, your baby brother Edwin.

3 A. Edwin was two years old -- no, one-year old. Edwin was
4 one-year old. He was a little boy who was always with my
5 mother, because he was very small; he was still lactating.
6 Sometimes my mother would carry him on her back. She would
7 carry him wrapped in the blanket. And a very good little
8 boy. Very beautiful.

9 Q. Now, in Accomarca and down in Llocclapampa, what
10 language was spoken?

11 A. We spoke Quechua.

12 Q. And is Quechua different than Spanish?

13 A. Yes. It's different.

14 Q. And your mother and your brothers and sisters that you
15 just talked about, did they speak Spanish or Quechua?

16 A. The other ones would speak -- those of us that went to
17 school, those of us who went to school who studied, Gerardo,
18 who went to school, we would speak Spanish.

19 Q. Now, as children living in Accomarca, did you or your
20 family ever fear for your safety before August 14, 1985?

21 A. No. It was tranquil.

22 Q. And did you or your family have weapons of any kind in
23 your homes?

24 A. No.

25 Q. Did you know of any people in the community of

1 Accomarca, or down in Llocclapampa, that had weapons of any
2 kind?

3 A. No.

4 Q. Did you know of a group known as the "Shining Path"?

5 A. No.

6 Q. Living down in Llocclapampa and up in Accomarca, did
7 you know what the Shining Path was?

8 A. No, nothing.

9 Q. As a child, were you or your family involved in
10 political issues or causes or movements at the time?

11 A. No.

12 Q. Teofila, I now want to turn to August 14, 1985.

13 And I know your mom got up early that day, at
14 three a.m., and I know you rose a little bit later, at
15 five a.m., and now I want you to tell the Court what happened
16 on that day.

17 A. On a day, the 14th of August of 1985, my mother rose
18 early at three or four in the morning. She got up to cook,
19 and you usually cooked very early in the morning over there.
20 And my mother sent me to go and get the donkeys a little bit
21 further up the hill.

22 I went up to get the burro -- it's an animal -- and

23 I was scared. The soldiers had already surrounded

24 Llocclapampa. They had surrounded us already. And I was
25 scared and trembling, and I returned home. And I said,

1 "Mother, I don't know what's happening. I'm scared. They
2 have weapons."

3 And my mother says, "I wonder what's happening?"

4 And then my mother told me that that night she had
5 been unable to sleep. She felt desperate. What will happen?

6 After that, two soldiers entered the house, saying
7 that we should all go down to the field, to gather in the
8 field. And my mother says, "I wonder what's happening." And
9 to those two soldiers, she invited them to drink a soup.

10 They ate. And my mother, very sadly, because I had brothers
11 and sisters in Lima, she said, "Maybe my son is doing just
12 this." And even saying that, she invited them, crying. And
13 at that time, the soldiers said to her, after they finished
14 eating, "Right now, go on down and gather on the field."

15 My mother -- well, they left and my mother says to
16 me, "What's going to happen, daughter? You stay here in the
17 house. You're the eldest." And I didn't want to stay.

18 I would say to my mother, "Take me with you."

19 And my mother said, "No, you're big, you're the
20 eldest, you have to stay here and care for the house."

21 And I didn't want to stay there by myself. So, she
22 left me there with my brother, Gerardo, hugging me. We had
23 my birth certificate and the birth certificates of my
24 brothers and sisters, some money that we got from the sale of
25 a cow.

1 Then she said, "What will happen? Maybe they'll
2 burn something." She sort of felt something was going to
3 happen. She made a little hole in the ground, and she buried
4 the birth certificates there, and the money.

5 She said, "The day your father comes back, make him
6 see where this is." And it was then I felt desperate,
7 crying, "No, I don't want to stay here. I don't want to be
8 big."

9 And then she said, "You have to stay with your
10 brother Gerardo."

11 And my mother left. She was taken. And then she
12 was carrying my little brother Edwin, another one by the
13 hand, another one pulling the other one along, down to the
14 field. And all of the men and the women that they would find
15 in the houses, they would take them down to the field.

16 Out in that field, they beat, they hit them with
17 their weapons, they kicked them. And they would abuse of the
18 women (sic). And I would look down from my house crying,
19 trembling. And after they brought them together and after
20 beating them and abusing them, they were taken in single
21 files. And when they got close to the Gamboa house, Cesario
22 Gamboa's house, from a tree, my mother looked up to the house
23 and beckoned to me, using her hand (indicating).

24 And I didn't go down. And me and my brother, we
25 were crying. And they put them in the house, all of them in

1 single file. And after they went in, just the last ones were
2 going into the house, that's when the firing began. All of
3 the soldiers started shooting. And then there was a
4 tremendous cry -- children, little girls, little boys. And
5 then they grabbed and they threw it in the hole, that thing
6 that would explode. And I was desperate and crying. I
7 didn't know what to do.

8 And then the soldiers began to come towards us.
9 And I ran up the hill. I escaped up the hill. And my
10 brother Gerardo ran down. He was followed and he was killed
11 They shot him.

12 And I kept on running up, at Icuje, straight up.
13 And then I saw across from me those that had been -- that
14 stayed behind, children that had stayed behind in the houses,
15 with about five soldiers. They were bringing little
16 children -- about maybe five or six children, boys and girls.
17 And I looked at them face-to-face, but we were separated by a
18 gully. And they waved at me like that (indicating).

19 And I said, "Well, they already killed my mother,
20 and they killed all of those people. If I go there, they'll
21 kill me. If I turn around, they'll kill me." And bullets
22 would fly by here, by my neck, bullets would fly by, by my
23 feet, bullets would fly by. And then there I was, and then I
24 tripped and fell on a rock.

25 After I fell, they got -- they climbed down into

1 the gully and began to come towards me. So, then I got up
2 and I climbed upwards, and there was a rock. And I hid
3 behind that rock. And where I had fallen, that's where they
4 were looking for me, looking like as if they were looking for
5 gold. And from that place where I was, I sat there
6 trembling. They're going to find me right away.

7 And since they didn't find me, they came back down.
8 There were some houses there. And at each house, they would
9 put a child inside, a boy or a girl. One soldier would go
10 inside. And the little girl would scream inside. And then
11 the gunshot sounded. And then it caught fire; the whole
12 house burned down. And that's what they were doing in each
13 one of the houses -- men, women, children.

14 And once that was over, and while I was hiding,
15 then they went over to where all the people had been burned.
16 They all gathered there, they all got together. And I saw
17 that they changed their clothes. They put on white T-shirts.
18 And then they climbed up to Accomarca, the town, following
19 the road of Cumo.

20 And from that place, I could see that a woman of 80
21 years old was going down carrying her bucket in case someone
22 had survived.

23 So I, too, I went down there. I was just about to
24 come out. And then from up the hill, soldiers came back.
25 And they killed her, too. And they pushed her in. And from

1 that -- from there, they went off to Accomarca, straightaway.

2 And then at Accomarca, as was said, what I've heard
3 is they celebrated. They ate the best animals. That's what
4 they did.

5 And I stayed there at that rock, and it was
6 eight o'clock at night. I came out and went under a tree.
7 And I spent the whole night there trembling. No hat, no
8 shoes, crying. There was -- I had no one. Desperate.
9 Because I had lost the things -- I had lost what I had loved
10 the most.

11 Under a tree, that's where I was at four o'clock in
12 the morning. And I came across a cousin, indicating a
13 female, who had also lost her mother. So, then she took me
14 with her far away to a woman that was at that place. And she
15 had a little house. And she greeted us, she let us in.

16 "Oh, you've lost your mother. Don't cry," she
17 would say to me. "Eat," she would say to me. I was not
18 hungry. Crying and crying. And in my heart, there was such
19 tremendous pain.

20 And after that, my grandfather found me. And he
21 brought me to Hatumri, to my aunt, where my aunt lived. And
22 after three days, we went back to the place where they had
23 burned. And without -- with several others who had survived,
24 myself, Cirila, and the boys began to bring them out. Some
25 had heads, some had parts of their arms, some had parts of

1 their legs missing, destroyed like that.

2 My mother, I found her from the waist up with a
3 baby on her back -- no baby -- embracing the baby, Ernestina,
4 no head. And I cried very much. Desperate. Why? My God,
5 why did they take them from me? They took her from me, my
6 mother, the one I loved the most. I would faint from the
7 pain.

8 My mother had a large shawl, and we wrapped her
9 with that and we buried her. In two pits, those that were
10 complete, and then those that were just a piece here or a
11 piece there would go into another pit. And we did this
12 quickly. We were scared that they would return and kill us.

13 Helicopters would fly overhead. We buried them
14 quickly and we left, along with my aunt and my grandfather.

15 And then after that, I suffered in that town
16 greatly. And my aunt brought me to Lima. And in Lima, I
17 began to work in family homes. And I was mistreated. There
18 was no one to speak for me.

19 So, I worked in a family home. I cared for babies.
20 And they didn't pay me. I would eat their children's
21 leftovers. They mistreated me. I didn't know how to speak
22 Spanish well. They would send me to the third floor on a bed
23 that I could -- I couldn't even sleep on. There I slept and
24 cried remembering my mother. "Why did you leave me?" That's
25 what I would say. So I remained there and worked and worked.

1 They didn't pay me.

2 So then I changed over to another household, and it
3 was the same there. I had to work throughout the holidays.
4 I began to go to school, until I got to 4th -- 3rd grade
5 elementary. And because I couldn't do the work, because I
6 had homework, then I couldn't continue to go to school in the
7 daytime. I would go to school at night. But I have not
8 finished my studies.

9 These things would always clash. When you have no
10 one, your mother, your family, anyone to speak for you, then
11 they treat you -- they treat you badly. They don't care if
12 you eat or if you don't eat. They would pay you. They would
13 give me tips. That's how I have lived in Lima. My life has
14 been very sad.

15 Q. Teofila, when those soldiers came to your home on
16 August 14th, did they look for any weapons in your house?

17 A. No.

18 Q. Did they ask you any questions about who you were?

19 A. No.

20 Q. And the women that you saw being dragged down to the
21 fields of Llocclapampa, were some of them visibly pregnant?

22 A. Yes. And before that, we knew that there were several
23 women who were pregnant.

24 Q. And the soldiers that were there that night -- or that
25 day, what were they wearing?

1 A. They were wearing green clothes with a kind of lead
2 color. It was kind of a mixture, a combination. They had
3 weapons.

4 Q. And did they have backpacks?

5 A. Backpacks, yes.

6 Q. Carrying on their backs?

7 A. Yes.

8 Q. Now, you told us about moving to Lima. Did there come a
9 time when you returned to the fields of Llocclapampa?

10 A. Me?

11 Q. Yes. Did you go back to Llocclapampa for your father?

12 A. No. It was 18 years later when my father died, just a
13 while ago.

14 Q. And is that when you returned back to Accomarca?

15 A. Yes, that was the time.

16 Q. And what happened to your father?

17 A. My father drank a lot, because he had lost my mother, he
18 lost my brothers and sisters. He cried a lot. He would call
19 out to Victor and Ernestina, his children, and he began to
20 drink alcoholic beverages. That was his suffering. And he
21 became engaged with a woman who had six children, just like
22 he had, so that he could forget. But his suffering was too
23 great. So after all of that, my father passed away.

24 Q. And prior to the massacre on August 14th, were your
25 mother and father happily married?

1 A. They were happily married. They were very happy. And
2 my father would go out on trips to bring us clothes and to
3 bring us -- you see, up in the mountains, what we get are the
4 cereals, but down in Lima, it's the rice, bread. And when he
5 returned, he -- with my mother, they would embrace. And with
6 us, too. Very happy. They loved each other very much.

7 Q. And you mentioned your cousin, who I think you met up
8 with, who had also lost her mother. What was the name of
9 your cousin?

10 A. Catalina Ochoa.

11 Q. And if I'm understanding you clearly, you moved to Lima
12 how soon after the massacre on August 14th?

13 A. After the 14th of August, about five -- five -- about
14 five or six days after. I could not stay there. I was very
15 fearful. I was very scared.

16 Q. And you talked about going to school. How did you do in
17 school?

18 A. When I was in Lima, I did well in school. I learned. I
19 learned little by little to read and to write, to write. And
20 I would tell my story, what had happened to my mother, in
21 order to be able to enroll. And they understood that pain
22 that I had. I began to go to school.

23 The first years were very difficult, because I
24 couldn't speak Spanish very well. But after that, I learned.
25 I was the best student. I was a hall monitor. I was a very

1 loved -- well loved by my teachers.

2 And when Mother's Day would arrive, I would say a
3 poem. I would dedicate a poem. I would sing a song, that I
4 had no -- that I did not have my mother, that others did have
5 theirs.

6 When I would open my copybook -- when I got my
7 report card, there was no one who would go and get it, no one
8 to pick it up. And I would go get it by myself. And it was
9 very sad.

10 When my schoolmates would eat, I had nothing to
11 eat. Their mothers would come to school to pick them up.
12 But there was no one to pick me up. Sometimes I would only
13 drink water with lemon in it, dry bread. And that was my
14 life.

15 I wanted things, but I had no money. And so, the
16 days went by. During holidays, it was off to do very hard
17 work so that I could buy my school supplies, my clothes. And
18 that's the way it was.

19 Q. Now, Teofila, did you become part of or become a member
20 of an association of survivors of the Accamarca Massacre?

21 A. Yes. Some time ago, the elder ones of the orphans had
22 created -- had formed, and I still -- you know, I didn't have
23 my documents or anything. And then when the years went by in
24 2002, we saw the association, the office association, and we
25 began to work. And that's when I joined. For the fight, for

1 my mother, for my brothers and sisters, and for the people
2 that live in Accamarca, as well as in Lima. They suffer,
3 too. They have not recovered from the pain, the trauma still
4 in their hearts, pain, bitterness, sadness.

5 Q. You spoke about the gravesites where you buried your
6 mother and siblings. Was this down here at the tree where
7 they had been beaten and sexually assaulted?

8 A. No. By the house, a little bit further down. There is
9 a large tree, and the other one is the moye tree (phonetic).

10 Q. So, the gravesite is down here?

11 A. Yes.

12 Q. Now, you understand that there's been an exhumation at
13 that gravesite?

14 A. Yes.

15 Q. And it was done, correct, in -- first time in September
16 of 1985?

17 A. Yes. There were two or three, but I went to the last
18 one.

19 Q. You went to the one that was in March of 2007?

20 A. Yes. Yes, the last one, 2007.

21 Q. And can you tell us what you saw when you went to the
22 exhumation of that grave in March of 2007?

23 A. When we went there, the pits were opened -- the graves
24 were opened by the experts and by all of those who had to do
25 with this who came from Lima. We found clothes, sandals,

1 pieces of arms, ribs, heads, bones, very burned bones,
2 completely burned. We found all of that.

3 Q. Now, you talked about your brother Gerardo running down
4 out of the house toward the fields. Did he say anything to
5 you as he was running away?

6 A. Yes. He said, "I want to die next to my mother." And
7 that's where we separated, crying. And he ran down and
8 that's where they shot him.

9 Q. Was he scared?

10 A. Yes, he was scared.

11 Q. And your other brothers and sisters, as they were being
12 led away with your mother, did you see them going toward the
13 fields of Llocclapampa?

14 A. Yes, with my mother. Together with my mother, they went
15 down.

16 Q. And were they scared?

17 A. Yes, they were scared.

18 Q. Can you tell us how the memory of what happened to you
19 and your mother and brothers and sisters has affected you?

20 A. It has affected me greatly. Because the one I loved the
21 most, the one I loved was taken from me. It affected me a
22 lot, because I was desperate. When I slept, I would dream of
23 my mother. In my dreams, I would call her, "Mommy." I would
24 tremble, desperation, a lot of fear.

25 And the men that I would see, I was very scared of

1 them. The soldiers, a lot of fear. When I would see them, I
2 would tremble completely. And the pain is still inside me.
3 Great suffering.

4 To be left with no one, totally. My head would
5 hurt. My heart would hurt. And I would say, "I wish I were
6 dead. Why did you leave me, Mommy?" That's what I would
7 say.

8 Q. How do you think your life would be different if Telmo
9 Hurtado and his Peruvian army had not massacred the people of
10 Llocclapampa?

11 A. My life would have been different. The love, the
12 tenderness of my mother -- she still wanted me to go to
13 school. She wanted me to become a professional. She wanted
14 all her children. And she would have raised me with so much
15 love. I would be the happiest one, the most joyful one, to
16 have my mother next to me.

17 Q. Now, have you or the association of survivors received
18 any compensation for what Telmo Hurtado and the Peruvian army
19 did to you and your family on August 14, 1985?

20 A. No, we haven't received anything. And we still continue
21 to search for justice.

22 Q. Now, this morning, Telmo Hurtado was sitting right there
23 in that chair. And if he was sitting there right now, what
24 would you say to him?

25 A. I would tell him to repent for all of the things that

1 he's done, to feel the pain of what he had done, and that he
 2 should be extradited to Peru so that there is justice there.
 3 I would tell him to speak. Who were the ones who told him?
 4 Why did they do this? My mother, the children, they were
 5 innocent. They didn't know how to -- they didn't even know
 6 how to read or write. I want justice to be done. That's
 7 what I ask for, your Honor.
 8 MR. BROCHIN: No further questions.
 9 Thank you.
 10 THE COURT: Thank you, Mr. Brochin.
 11 Thank you, Ms. Lizarbe.
 12 This is probably a good time to break, so we'll see
 13 you back at one o'clock. Okay?
 14 MR. BROCHIN: Thank you, Judge.
 15 THE COURT: Thank you.
 16 (Luncheon recess taken at 11:39 a.m.)
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1 MONDAY, FEBRUARY 11, 2008, 1:12 P.M.
 2 THE COURT: Please be seated.
 3 Sorry I was late. I had a call from Judge Martinez
 4 about a committee matter that we're working on, and it took a
 5 little bit longer than I thought. So, my apologies.
 6 Mr. Brochin, you can call your next witness.
 7 MR. BROCHIN: Thank you, your Honor.
 8 We call Cirila Baldeon.
 9 (CIRILA BALDEON, PLAINTIFFS' WITNESS, WAS SWORN.)
 10 THE WITNESS: Thank you.
 11 First of all, your Honor, and for those of you who
 12 are with me, I swear to tell the whole truth on behalf of my
 13 mother and on behalf of my people. Thank you.
 14 THE COURT: Thank you, Ms. Baldeon. Have a seat,
 15 please.
 16 DIRECT EXAMINATION
 17 BY MR. BROCHIN:
 18 Q. Could you tell us where you live, please.
 19 A. I live at Lima, Peru, at Association 26 of May, Block F,
 20 Lot 3, Santa Clara, Atritarate.
 21 Q. And what is your full name?
 22 A. My name is Cirila Pulido Baldeon.
 23 Q. And do you currently work?
 24 A. Yes. I work in family homes.
 25 Q. And how old are you?

1 A. Thirty-seven.
 2 Q. And are you a citizen of Peru?
 3 A. Yes.
 4 Q. And do you have children?
 5 A. Yes, I have two daughters.
 6 Q. And what are their names and ages?
 7 A. Maria Castillo Pulido, 16 years of age; Lizette Diana
 8 Castillo Pulido, 13 years old.
 9 Q. And is there someone you consider to be your husband?
 10 A. My husband, his name?
 11 Q. Yes, please.
 12 A. My husband's name is Victor Castillo Baldeon.
 13 Q. And what are the names of your mother and father?
 14 A. My father's name is Panfilo Pulido Chuchon, and my
 15 mother's name is Fortunata Baldeon Gutierrez.
 16 THE COURT: What is the father's name again,
 17 please?
 18 THE WITNESS: Panfilo Pulido Chuchon.
 19 BY MR. BROCHIN:
 20 Q. And I understand that you have three brothers and
 21 sisters, two of who are alive today. What are the names of
 22 the two brothers and sisters who are alive?
 23 A. Alfredo Pulido Baldeon, 28 years old; Elba Pulido
 24 Baldeon, 26 years old.
 25 Q. And what is the name of your brother that was murdered

1 on August 14, 1985?
 2 A. Edgar Pulido Baldeon, nine months old.
 3 Q. Cirila, I want to talk to you a little bit about your
 4 life growing up in Accomarca and down in Llocclapampa. Tell
 5 us a little bit about your childhood growing up in Accomarca.
 6 A. Before the 14th?
 7 Q. Yes. Just tell us about growing up in Accomarca as a
 8 child.
 9 A. Well, I lived with my mother, along with my brothers and
 10 sisters and my father.
 11 Well, I lived with my mother in Accomarca. And it
 12 was normal. It was a happy life. I went to school. I would
 13 help my parents. We lived happily. And sometimes in times
 14 of summer, after the harvest, we would come down to
 15 Llocclapampa to fertilize our fields so that we could have a
 16 good harvest.
 17 Q. And when you would come down from Accomarca to
 18 Llocclapampa, would you come down and stay here at this
 19 house that is marked on this map here?
 20 A. Yes.
 21 Q. And by the way, did you and Teofila prepare this map
 22 that is shown on this board?
 23 A. Yes.
 24 Q. And you talked about going to school in Accomarca. What
 25 school did you go to?

1 A. My school in the town was called the school for
 2 children, Cesar Vallejo.
 3 Q. What sort of things were you taught at that school as a
 4 young child?
 5 A. Well, like they teach all children. Once you get into
 6 the school in the first grade that you go into, they teach
 7 you the five vowels. And then we would continue studying and
 8 going to school, and we would go into the next grade, and
 9 that would be where they would teach you the book called
 10 "Lalito."
 11 Q. Now, would you go to your school in Accomarca -- when
 12 you were down in Lloccllapampa, down in the fields, would you
 13 go up to your school in Accomarca?
 14 A. Yes.
 15 Q. And how long a journey would it be for you each day to
 16 travel from Lloccllapampa up to Accomarca to go to school?
 17 A. Well, from my house down in Lloccllapampa to the town,
 18 it would be about -- well, you see, as we all walked
 19 together, several kids, we would all walk together, then it
 20 would be short. It would be something like 30 to 40 minutes.
 21 MR. BROCHIN: Your Honor, I had handed you at the
 22 beginning this morning what was marked as Plaintiffs' Exhibit
 23 Number 1, which is the photograph. I would like to admit
 24 that into evidence.
 25 THE COURT: The large one or the small one?

1 MR. BROCHIN: The larger one. I believe it should
 2 be marked. And Cirila would testify that it accurately
 3 depicts that region and area, if I need to ask her.
 4 THE COURT: Here. Just go ahead and show her the
 5 smaller one, and I'll keep the other one here. You can admit
 6 it.
 7 BY MR. BROCHIN:
 8 Q. Cirila, is that -- what is that a photograph of?
 9 A. This is Lloccllapampa, all of the Lloccllapampa. These
 10 are the hills over here, and up on the top is the town of
 11 Accomarca.
 12 Q. I'm -- if you can see where my pen is and see the circle
 13 that I am making with my pen, is this the area that would be
 14 known as Lloccllapampa?
 15 A. Yes. All of that lower area is known as Lloccllapampa.
 16 Q. And in the hills here, would this be the paths that lead
 17 up to Accomarca?
 18 A. Yes.
 19 Q. And is the town of Accomarca, as this photo's reflected
 20 above -- over the other side of the ridge here?
 21 A. Yes. It's a little bit closer. It's right there.
 22 Q. And your house would have been up on this ridge right
 23 here across from the Lloccllapampa area, correct?
 24 A. Yes.
 25 Q. And does the photograph that you're looking at

1 accurately depict the Lloccllapampa area as it was in August
 2 of 1985?
 3 A. Yes. It would be during the summertime.
 4 Q. Yes.
 5 MR. BROCHIN: Your Honor, I would move Plaintiffs
 6 Exhibit Number 1 into evidence.
 7 THE COURT: Plaintiffs' 1 is admitted.
 8 (Plaintiffs' Exhibit Number 1 was admitted into
 9 evidence.)
 10 BY MR. BROCHIN:
 11 Q. Tell Judge Jordan about a typical day that you would
 12 have in Lloccllapampa when you were down there during the
 13 summer months.
 14 A. When the military soldiers arrived?
 15 Q. No, prior to the military soldiers arriving.
 16 A. Well, we lived normally with many other people and their
 17 cattle, and we would fertilize the fields in order to be able
 18 to have a good harvest.
 19 Q. Now, as a child, prior to August 14, 1985, before that
 20 day, would the Peruvian Army visit this region of
 21 Lloccllapampa?
 22 A. No. They only came by just a few days before the 14th
 23 of August, but they went through and they were okay -- they
 24 were calm and there was no violence.
 25 Q. Now, in the summer of 1985, who lived with you in this

1 house in Lloccllapampa?
 2 A. That would be my father and my mother and my brothers
 3 and sisters.
 4 Q. Tell the Court a little bit about your mother, Fortunata
 5 Gutierrez.
 6 A. Well, my mother was a very good woman. She loved us
 7 very much. She supported us in everything. She was very
 8 hardworking. She loved us a lot and she gave us advice.
 9 Q. Did your mother encourage you to go to school?
 10 A. Yes. She never let me miss any school. She always --
 11 they always bought me my school supplies. My father would
 12 come to the city to earn money so that we didn't -- we
 13 weren't lacking anything. My mother worked very hard in the
 14 fields to make sure she could feed us.
 15 Q. And --
 16 THE COURT: What was the nearest city -- just so I
 17 can get a sense of geography, what was the nearest big city?
 18 THE WITNESS: Lima, for example. Ica.
 19 THE COURT: How far was Lima from where you lived?
 20 THE WITNESS: Well, from my town to Lima, it would
 21 be one night and one day travelling.
 22 MR. BROCHIN: If I may, I got this blowup, which
 23 doesn't have Lima on it; it's got the -- Ayacucho. Sorry.
 24 It doesn't have Lima on it, but it has Ayacucho. And I've
 25 also got a small version here for you.

1 THE COURT: Great. Thank you.
 2 Thank you.
 3 BY MR. BROCHIN:
 4 Q. And, also, your nine-month brother, Edgar, tell us a
 5 little bit about Edgar (sic).
 6 A. Well, he was a precious child. He was well-developed, a
 7 little bit chubby, and he had kind of like a big forehead.
 8 But he was a happy child.
 9 Q. And what language was spoken in Accomarca and down in
 10 Llocclapampa?
 11 A. Mostly we spoke Quechua.
 12 Q. And did your mother and father and your siblings speak
 13 or understand Spanish?
 14 A. My mother would speak Quechua to my father, but
 15 sometimes whenever they went to the city, sometimes she would
 16 speak Spanish.
 17 MR. BROCHIN: Your Honor, if I may. Just for point
 18 of reference, the town of Accomarca is down here at the --
 19 for your reference point, it's down here on the bottom
 20 toward -- of the page (indicating).
 21 THE COURT: I see it. Thank you.
 22 MR. BROCHIN: Okay.
 23 BY MR. BROCHIN:
 24 Q. Now, did your brothers or sisters go to school when they
 25 were living in Accomarca?

1 A. Yes.
 2 Q. Did all three -- both Elba and Alfredo go to school?
 3 A. Alfredo. Elba wasn't in school yet.
 4 Q. And as children, did you or your family ever fear for
 5 your safety in Accomarca prior to August, 1985?
 6 A. No. We were very peaceful.
 7 Q. And as a family, did you have any weapons in any of your
 8 homes or huts?
 9 A. No. We didn't even know what they were.
 10 Q. Do you know if any of the other families in
 11 Llocclapampa or Accomarca had weapons of any kind?
 12 A. No.
 13 Q. Approximately how many families would you say lived in
 14 these hills of -- right above Llocclapampa?
 15 A. Well, mostly, I would say there would be around about,
 16 more or less, 20 people, because in each house, there was a
 17 family, and in each family you would have four or five or six
 18 people, and that would be the mothers and the fathers and the
 19 brothers and sisters.
 20 Q. So, when you say "people," you mean 20 -- more or less
 21 20 families.
 22 A. Yes.
 23 Q. And you talked about going to school in Accomarca. When
 24 you went to school, did you ever hear at the school anything
 25 about the -- some entity or movement known as the "Shining

1 Path"?
 2 A. No. No, I don't remember, because I was little then,
 3 and I knew nothing of those things.
 4 Q. Do you know of a group known as the "Shining Path"?
 5 A. Of course, now that all of those things have happened.
 6 Q. Well, prior to these things happening, and living in
 7 Llocclapampa, did you know any member of the Shining Path?
 8 A. No.
 9 Q. As a child, were you ever, or your parents, involved in
 10 any political issues or causes?
 11 A. No.
 12 Q. Now, you mentioned earlier about the soldiers coming.
 13 Did some soldiers from the Peruvian Army come to the
 14 Llocclapampa area on August 11, 1985?
 15 A. Yes. A few days before the 14th of August.
 16 Q. And do you know if they came to take anyone away when
 17 they visited the Llocclapampa area on August 11th?
 18 A. All I heard was that they had taken Mr. Seferino
 19 Baldeon -- Seferino Baldeon, who was a man who lived in my
 20 village.
 21 Q. Do you know what the soldiers that came on August 11th,
 22 what they were wearing then?
 23 A. Normal military clothes.
 24 Q. Were they wearing the same military clothes as the
 25 soldiers who visited Llocclapampa on August 14th?

1 A. Yes.
 2 Q. And do you know how many soldiers visited the area of
 3 Llocclapampa on August 11th?
 4 A. At least 20 or more.
 5 Q. I want to talk about the night of August 13, 1985. What
 6 happened that night?
 7 A. Well, my parents and I heard a fire at Pitecc at
 8 about five o'clock in the afternoon.
 9 Q. And did --
 10 A. Shall I continue?
 11 Q. Yes, please.
 12 A. Then my father and my mother decided to go to --
 13 (Discussion had off the record.)
 14 A. They decided to go to Huaranjapata, where we have a
 15 fruit orchard. And they were going to use the road to Jeoje,
 16 but they never got to Huaranjapata.
 17 Q. Why that night did your mother and father set out to the
 18 orchard?
 19 A. Because they were scared that the soldiers might come
 20 and hurt us, and that's why my mother and my father left.
 21 Q. Were they in fear that the soldiers would take your
 22 father?
 23 A. Yes.
 24 Q. And so, left behind at your house in Llocclapampa was
 25 who?

1 A. My father and my mother went to the house of
 2 Mrs. Lorenza Janampa, who is my grandmother.
 3 Q. And when they did that, though, who was left in this
 4 house in Lloccllapampa when your mother and father went to
 5 the orchard?
 6 A. Me and my brother and sister.
 7 Q. And that was your brother Alfredo and your sister Elba.
 8 A. Yes.
 9 Q. And how old is -- how old at that time was Alfredo?
 10 A. Alfredo was five years old; Elba was two years old.
 11 Q. And how about your younger brother Edwin (sic), where
 12 was he?
 13 A. My brother Edgar was with my mother.
 14 Q. She went with your mother and father over to the orchard
 15 on the night of August 13th (sic)?
 16 A. Yes.
 17 Q. Now, on the morning of August 14, 1985, was that a clear
 18 day?
 19 A. Yes. The sun was just coming up.
 20 Q. And at that time in Lloccllapampa, are the leaves off
 21 the trees?
 22 A. Yes. Because it's summertime, the trees have no leaves
 23 and everything is clear.
 24 Q. And on the day of August 14th, being a clear day, with
 25 no leaves on the trees, were you able to see clearly and far?

1 A. Yes.
 2 Q. And I understand on the day of August 14th, you awoke at
 3 about seven a.m. in the morning, is that right?
 4 A. No, I woke up earlier, but I heard shooting. When I
 5 looked down on Lloccllapampa, the soldiers were already
 6 chasing people.
 7 Q. So -- now, I want you to -- Cirila, I want you to tell
 8 the Court exactly what happened on August 14, 1985.
 9 A. Everything?
 10 Q. Everything.
 11 A. Well, on the 14th of August of 1985, the soldiers
 12 arrived at about five in the morning. I heard the shooting,
 13 and the entire Lloccllapampa was already surrounded. The
 14 soldiers were already gathering people, all of the people,
 15 house by house.
 16 All of the people were making a lot of noise. They
 17 were making a lot of noise. The dogs were barking. The
 18 soldiers were screaming and firing their guns.
 19 They gathered all of the people underneath the tree
 20 in Lloccllapampa. After they gathered everyone there,
 21 underneath the big tree, that's where they beat the men.
 22 They dragged the women, they beat them. And then close to
 23 that tree, by that tree, there is a ditch and that's where
 24 they would drag the women. The women would scream and the
 25 children would cry.

1 After doing all of that, around about one or two in
 2 the afternoon, they took them to the house of Cesar Gamboa,
 3 who had an adobe and shingle-roofed house. And then he has a
 4 little house next to it made of hay or straw. And then
 5 there's another small little hut next to the adobe house.
 6 Into the straw hut, they put all of the men. Into
 7 the adobe hut, they put all of the women. And then in the
 8 small little kitchen, a few of the women and the children.
 9 After putting them into those houses, the soldiers stood in a
 10 line and they began to fire. And then one of the soldiers
 11 threw something, and then there was an explosion. And then
 12 the soldiers would dive onto the ground.
 13 And then that's the way it was. There were three
 14 explosions, and then all three houses caught fire. And then
 15 you could hear the people screaming and the children
 16 screaming.
 17 Then when I looked down on Lloccllapampa, I saw
 18 that the house belonging to Jose Chuchon was on fire. And
 19 also the house of Mr. Ciprian Gamboa, and that is in
 20 Apospata.
 21 And then after finishing that, the soldiers ran
 22 around going from house to house to kill all of those who
 23 were left behind.
 24 After killing all of those people, then they came
 25 over to the road that goes to Accomarca. And then when they

1 arrived at Cumopata, which is on the way to Accomarca, they
 2 let off some shots and they shot the mother-in-law for Cesar
 3 Gamboa, Mrs. Juliana Baldeon Garcia, who went down to put the
 4 fire out.
 5 From there, the soldiers, they fired -- the
 6 soldiers fired, and since they couldn't kill her from that
 7 distance, three soldiers came back. One of the soldiers
 8 stayed back and stayed in the field before you get to that
 9 house. And only one soldier came down and he made fire --
 10 three shots.
 11 And then at about five o'clock, they headed for
 12 Accomarca, at about five. They carried off with all the
 13 animals making a lot of noise and yelling.
 14 Q. Now, let's go back a little.
 15 How many soldiers, would you say, from the Peruvian
 16 Army were there that day of August 14th?
 17 A. At least 30 or more soldiers. They were very many.
 18 Q. And when they first arrived, where did you see them when
 19 you first saw them? Let me reask that.
 20 When you first saw them, where were they, the
 21 Peruvian soldiers?
 22 A. On the 14th of August?
 23 Q. Yes.
 24 A. The soldiers?
 25 Q. Yes.

1 A. They were in Llocclapampa.
 2 Q. But in looking at this map, were they up here in this
 3 region?
 4 A. No. They were all in the area of Llocclapampa, and
 5 another group was coming down from Huancaloccampa.
 6 Q. So they were in this area here of Huancaloccampa?
 7 A. Yes.
 8 THE COURT: Where were you when you saw all of this
 9 occur?
 10 THE WITNESS: In my house.
 11 BY MR. BROCHIN:
 12 Q. Right here on this chart.
 13 A. Yes.
 14 Q. And you could see clearly from your point at your house
 15 here to Huancaloccampa where the soldiers were?
 16 A. Yes.
 17 Q. And you were hiding in your house with your brother
 18 Alfredo and Elba?
 19 A. Yes.
 20 Q. And did the Peruvian military that you saw, did they
 21 have weapons?
 22 A. Yes.
 23 Q. And were they wearing backpacks?
 24 A. Yes.
 25 Q. Do you know what was inside the backpacks?

1 A. No, I don't know.
 2 Q. And is there an area known as Jeoje?
 3 A. Yes. It's the same area of Llocclapampa. It's in the
 4 surrounding area.
 5 Q. Would you say it's in the area where I am drawing my pen
 6 here?
 7 A. Yes.
 8 Q. And from your house, did you see any men, or women, or
 9 children heading from Jeoje down to the fields of
 10 Llocclapampa?
 11 A. Yes, because from each one of the houses, they would get
 12 the people out in groups, groups after groups, like that.
 13 Q. And how many people did you see coming from Jeoje?
 14 A. Well, it would have been at least eight or ten people.
 15 Q. And those people that were being led from Jeoje down to
 16 the tree in Llocclapampa area, was your mother and brother
 17 Edwin (sic) among those eight to ten people?
 18 A. Yes. My mother was. My father escaped.
 19 Q. And how about your brother Edwin, was she (sic) with
 20 your mother?
 21 A. My nine-month-old brother, Edgar, was on my mother's
 22 back.
 23 Q. Going from Jeoje down to the trees down in
 24 Llocclapampa?
 25 A. Yes.

1 Q. Now, when you were watching that, did you know that was
 2 your mother and your brother going from Jeoje down to the
 3 trees in Llocclapampa?
 4 A. Yes.
 5 Q. The women that you saw being beaten and sexually
 6 assaulted, were any of them visibly pregnant?
 7 A. Well, the town is a small town and we all know who's
 8 pregnant. And you can tell because -- well, you know who's
 9 pregnant because, well, their little belly is big.
 10 Q. And you could see women with bellies carrying children.
 11 A. Yes.
 12 Q. And these are the people that were led down to the tree
 13 area, what we have marked on your map? Is that where the men
 14 were beaten?
 15 A. Yes.
 16 Q. And you saw that?
 17 A. Yes.
 18 Q. Were the soldiers saying or screaming anything at the
 19 men, women, and children they were beating and raping?
 20 A. All I heard were yells, not words.
 21 Q. Now, did you see the fire that ensued in the Gamboa
 22 house?
 23 A. Yes.
 24 Q. Can you describe it for us?
 25 A. What? About Cesar Gamboa?

1 Q. About the house burning. Can you describe what you saw?
 2 A. Well, it was in that house they put all of the people
 3 inside. And then in the other house next-door, which has
 4 the -- the straw hut, that's where they put the men. And
 5 then in the adobe and shingled-roofed house, that's where
 6 they put the women. And then next-door to that, there was a
 7 small hut that was a kitchen. And then a few women were put
 8 in there and all of the children.
 9 Q. Were you able to hear screams from those houses as they
 10 burned?
 11 A. Yes. Yes, you could hear that.
 12 Q. Now, when night fell on August 14th, you were still in
 13 your house with Alfredo and Elba?
 14 A. Yes.
 15 Q. How did you feel?
 16 A. Very sad, traumatized, crying. I couldn't speak. I
 17 couldn't scream. It was nothing but tears that would pour
 18 down my face. And I would hug my little brother and sister
 19 and I would cry.
 20 Q. Were you able to smell anything?
 21 A. Yes.
 22 Q. What?
 23 A. (No response.)
 24 Q. What did you smell?
 25 A. It smelled like somebody was roasting something, kind of

1 like beef or pork. And the whole of Llocclapampa was
 2 covered in smoke.

3 Q. Now, did someone come to your house that night of
 4 August 14th?

5 A. Yes. Mrs. Damasa Palacios arrived, and she was
 6 desperate.

7 Q. What did Ms. Damasa tell you the night of August 14th?

8 A. On the night of the 14th of August, Mrs. Damasa came,
 9 she hugged me and held me, and she told me, "Your mother has
 10 died, too."

11 Q. Did she tell you Edwin (sic) had been killed, as well?

12 A. Yes, Edgar, the one she was carrying.

13 Q. Edgar, I'm sorry.

14 And what did Ms. Damasa tell you about your father?

15 A. That my father wasn't with them, that my father had been
 16 able to escape.

17 My mother had said that no, that the soldiers
 18 couldn't do anything to her, that they had an assembly, that
 19 they couldn't do anything to her, that they had all gotten
 20 together and that they -- the soldiers couldn't do anything
 21 to her that -- in -- and also because she had a baby.

22 Q. Now, the following day of August 15th, did you stay in
 23 the house all day?

24 A. Yes, I stayed in my house all alone -- well, with my
 25 brother and my sister.

1 Q. And how were you feeling the day after, on August 15th,
 2 in your house?

3 A. I couldn't sleep, I couldn't eat. All I could do was
 4 cry and cry with my little brother and sister.

5 Q. In fact, did you eat on the day of August 15th?

6 A. No. Because I was scared, because I was scared, and I
 7 couldn't cook because of the smoke. You see, over there, we
 8 cook with firewood. And then -- if there was smoke, then the
 9 soldiers could see it and they could come back and kill us.

10 Q. Now, did there come a time on that day, August 15th,
 11 that you sent Alfredo somewhere?

12 A. Yes. Yes, I sent Alfredo out to -- to take word to my
 13 father, who was over in Huaranjapata, where we had our
 14 orchards, to take word to my father to tell him that the
 15 soldiers had returned, which is -- well, that they were no
 16 longer there. That they had gone back.

17 Q. Did you send Alfredo out to see, perhaps, if your mother
 18 was with your father?

19 A. Yes, because at the beginning, I couldn't believe that
 20 my mother had died. And I want to make sure, and that's why
 21 I sent my little brother.

22 And then when he got to Huaranjapata, he didn't
 23 find my mother and he didn't find my father, and he was --
 24 like he had gone crazy, running around calling out for his
 25 mother and his father.

1 Q. And so, Alfredo came back to your house with you and
 2 Elba?

3 A. Yes. Yes, then he came back.

4 Q. And what did he say?

5 A. And he told me that my mother and father weren't there.
 6 And then a little while later, my father came and
 7 he asked me, "Where is your mother?"

8 And then I spoke to my father, and I told him that
 9 they had left together, that they had gone away together, and
 10 I want my mother, I want my mother, and I want my mother.
 11 And I began to cry, and he hugged me and held me close.

12 Q. And then the next day was August 16th.

13 A. Yes. On the 16th of August, some of the survivors
 14 appeared. And then we went down to Accospata where they had
 15 burnt the house, and we couldn't even identify the bodies in
 16 order to give them a Christian burial. That you couldn't
 17 recognize anything, because it was nothing but tiny little
 18 bits, tiny little bits, because most of them were in the
 19 adobe and shingle house. They were all unrecognizable,
 20 absolutely nothing. And my mother -- and of my mother, all
 21 we found was a piece of a sweater.

22 And some people, you couldn't recognize because
 23 they had this -- there were these arms over here, these legs
 24 over there, the heads over the other. And the majority of us
 25 used sandals over there, and there were sandals all over the

1 place, all burned. Some bits and pieces of clothing. Some
 2 people were just from the waist up and other people from the
 3 waist down.

4 And then there were about 20 of us there, 20 people
 5 there, and they opened two big pits. And they buried them
 6 there as quickly as possible, because we were very scared.
 7 They could come back and they could kill us all.

8 Q. Was there a smell in the air?

9 A. Yes.

10 Q. And were you able to recognize Teofila's mother?

11 A. Yes. Teofila's mother was there from the waist up, and
 12 her baby was on her back. And it looked as if someone had
 13 roasted a potato. And one of her little sisters, Ernestina,
 14 was there and her brains were splattered all over the place.

15 Q. Did you have a friend there, Maria Flores Baldeon?

16 A. Yes, I had a friend there by the name of Maria Flores
 17 Baldeon, and her little brother, Geruasio Flores Baldeon.

18 Q. How old was your friend Maria?

19 A. She was my age, 12 years old.

20 Q. And her brother, how old was he?

21 A. Three or four years old.

22 Q. And your grandmother, what was her name?

23 A. No, this was a woman who was accompanying them, and her
 24 name was Bonifacia Sulka.

25 Q. What was your grandmother's name?

1 A. My mother, who was there with my -- my grandmother who
 2 was there with my mother, my grandmother's name is Lorenza
 3 Janampa.
 4 Q. And did your grandmother have two children?
 5 A. My father went to visit my grandmother, Maxima Pulido.
 6 Q. Now, after August 16th, and after burying the bodies,
 7 you returned back to your home here in Llocclapampa?
 8 A. Yes, I went back to take my brother and sister -- we
 9 went further down the river to hide.
 10 Q. So, you left the house that you were in on the days of
 11 August 14th and 15th and went somewhere to hide?
 12 A. Yes. That we only came back to -- we only went back to
 13 get something, food to take with us, because we couldn't go
 14 out in the daytime, because we were scared and we thought
 15 that they would come back and kill us, because the
 16 helicopters were constantly flying overhead.
 17 Q. And you took your brother Alfredo and Elba with you?
 18 A. Yes.
 19 Q. And where did you go?
 20 A. We went down to Puccapampa, close to the river.
 21 Q. And how long did you stay there in hiding at Puccapampa
 22 down near the river?
 23 A. Almost three weeks, something like that.
 24 Q. And there come a time, after being there for three weeks
 25 and hiding, that the Peruvian soldiers returned (sic)?

1 A. Well, after three weeks, since everything was peaceful,
 2 we returned to my house.
 3 Q. And did there come a time after you returned to your
 4 house -- you're talking about you returned to your house here
 5 near -- in Llocclapampa, correct?
 6 A. Yes. I went back to my house since everything was
 7 quiet. Then the soldiers -- then the soldiers came back a
 8 few days before the Senate commission came.
 9 Q. And tell us what happened when the Peruvian soldiers
 10 returned back to Llocclapampa after the Senate
 11 commission (sic).
 12 A. When they returned, they came to look for the people.
 13 They came in a helicopter, and they started looking for
 14 people. That's when I escaped with my father up through
 15 Jeoje, into the brush, and two soldiers followed me. I hid
 16 under a rock. And bullets were flying above me and bullets
 17 were kicking up all of the dirt. Because with my father
 18 running away into the brush, we got separated.
 19 Then I ran into a man by the name of Lucio Ochoa
 20 close to a gully. And then I continued to run, and then I
 21 got separated from him.
 22 And then there was this water running down the
 23 gully, and it was falling like a waterfall. And I went down
 24 over the waterfall, and I was scared. And then at -- that
 25 waterfall had some space behind it at the bottom, and that's

1 where I hid.
 2 And then two soldiers continued to look for me in
 3 the gully, and they continued to shoot. And then since they
 4 couldn't find me, they went away, and I stayed behind that
 5 waterfall all day long until nightfall.
 6 Q. How did you feel when you were staying all night in that
 7 waterfall?
 8 A. Scared. The only hope that I had was -- the only hope
 9 that I had to escape was to stay there, because if I came out
 10 and they saw me, they would kill me.
 11 Q. Were you by yourself?
 12 A. Yes, I was alone.
 13 Q. Did there come a time when you met up with Pedro
 14 Baldeon?
 15 A. Well, then I kept on walking down the gully in the
 16 water. It was nighttime; it was about seven o'clock at
 17 night. I was scared, and I was walking, and I came across
 18 Pedro Baldeon. And we walked out of that gully together to
 19 go back to my house after the soldiers had left.
 20 Q. When the soldiers -- Peruvian soldiers were chasing you
 21 toward the waterfall, were they shooting at you?
 22 A. Yes.
 23 Q. Now, did there come a time when the Peruvian Army
 24 established some sort of military outpost in Accomarca?
 25 A. Well, after that -- later on, after the Senate

1 commission had come and gone, and after the accusations had
 2 been made, it wasn't until then that they came and they
 3 established a military outpost in Accomarca.
 4 Q. And do you know what the purpose of that military
 5 outpost was?
 6 A. The purpose was to tell us that they're not going to do
 7 anything to us anymore, that all of the Accomarca residents
 8 and all of the survivors could come back to the town, to come
 9 back and go back to their peaceful living.
 10 Q. And how did the soldiers from the Peruvian Army behave
 11 once they returned to Accomarca to set up the military
 12 outpost?
 13 A. Well, that was difficult. And it's hard to say what
 14 happened. I didn't even go out into the cities. I had no
 15 family to go to the city with. And I had my little brother
 16 and sister there, and I had to take care of them.
 17 When the military base was installed, we returned
 18 to live in the town, and we lived almost under their command.
 19 The animals that we had, they always ate the best ones, the
 20 best cereals. They would take from the fields anything they
 21 wanted. They were kind of like the owners, because we were
 22 fearful that they were going to beat us or kill us.
 23 They would do anything they wanted. Sometimes they
 24 would rape the young ladies, the young girls. And then in my
 25 town, there's no way to tell how many children they have left

1 behind, abandoned.
 2 Q. How long did you live in Accomarca after the massacre of
 3 August 14, 1985?
 4 A. All the time up until '93. It was in '89 I went out to
 5 Ayacucho, which is a city, because then I would go to
 6 Ayacucho, I would come back to the town, and like that. But
 7 I moved finally and definitively in '93 to Lima.
 8 Q. When you were in Accomarca from 1985 and Ayacucho from
 9 1985 to 1993, did you go to school (sic)?
 10 A. No, I went to school until '89.
 11 Q. Was life normal for you after August 14, 1985?
 12 A. No, it was difficult.
 13 Q. How so?
 14 A. Because I was 12, I had a brother of five and a sister
 15 of two. I had to take care of my little brothers and
 16 sisters. Since I was the oldest, I had to help with their
 17 schools, with their food, with their clothes.
 18 My father, because of his pain, he also became an
 19 alcoholic. He would drink; he would cry. And I had to look
 20 after all of them. Because sometimes for us up in the
 21 mountains, it's difficult to work in the fields and work in
 22 the house. And it was difficult because I was never able to
 23 overcome that trauma, that nightmare, until now, because
 24 those events that took place are always present in my dreams.
 25 Q. Do you have nightmares?

1 A. Yes, I always have nightmares. Nightmares that I was
 2 being burned, that the soldiers were chasing me. And that's
 3 the trauma that I have. I have this trauma even today,
 4 because I'm scared of fire.
 5 Q. And how about soldiers? Do you have a fear for soldiers
 6 or people in military uniform?
 7 A. Yes. And I always carry a grudge.
 8 Q. Who is Victor Castillo Baldeon?
 9 A. He's my husband.
 10 Q. And when did you meet up with Victor Castillo Baldeon?
 11 A. I met him at school. He was my schoolmate, who
 12 supported me a lot in those days when I was really bad.
 13 Sometimes he would help me with my homework. He would talk
 14 to me a lot. He always encouraged me that I had to get
 15 ahead. And I fell in love with him when I was 15 years old,
 16 and then I had my first daughter when I was 18.
 17 Q. Did you have difficulty giving birth to your first
 18 child, Maria?
 19 A. Yes. When I was five months pregnant, they drafted my
 20 husband into the military. So, I spent two years by myself
 21 while my husband was in the Army. And this has also been one
 22 of the most difficult moments of my life that I've gone
 23 through. Because I had to work just like that, pregnant. No
 24 one to tell me what pregnancy is about and how to do the
 25 controls.

1 So I went to the hospital all by myself to give
 2 birth. I nearly died. I had a cesarean section. No one to
 3 visit me, no one to be with me, because I was just lying in
 4 the hospital by myself.
 5 I left the hospital. I was discharged after eight
 6 days, after the operation. Then I started to work right
 7 away, lifting heavy things. And then I had an infection in
 8 the operation wound, and they had to operate again. And I
 9 almost died. And I was very frustrated laying in the
 10 Ayacucho hospital.
 11 My husband put up a big fight, and he managed to
 12 find me, locate me, and he came with his commanding officer
 13 to find me. And at the headquarters, he got some medications
 14 for me, and it was better, it was better. And I didn't have
 15 any money to get out of hospital, money to pay my expenses.
 16 So that's where I was; I was in the hospital.
 17 And then it was a friend helped me out to get out
 18 of the hospital. And so, I continued to work until my
 19 husband got out of the Army in '93. And in '93, we moved to
 20 Lima.
 21 Q. Your husband served in the Peruvian Army?
 22 A. Yes.
 23 Q. How long was he in the Peruvian Army?
 24 A. Two years.
 25 Q. Your child, Maria, was born, and how's she doing today?

1 A. Yes, she's a very intelligent girl. She's going to
 2 school. And she's in the preparatory school at the academy.
 3 She's thinking very clearly. She wants to go to university.
 4 She wants to become someone. I'm very proud of my daughter,
 5 and I want to help her get ahead in life so that she isn't
 6 like me, ignorant. And I would have completed my studies if
 7 they hadn't taken my mother.
 8 My little brother, nine months old, what -- what
 9 fault of his was all of this? Now, I'd be -- I'd have a
 10 young brother looking to get ahead.
 11 Q. And you were in Lima beginning in 1993. Tell us a
 12 little bit about your life in 1993 in Lima and what you did
 13 there.
 14 A. Well, when I got, in '93, to Lima, I didn't know the
 15 city, but my husband had a brother who lived there. He lived
 16 in a little hut, and we went there. And we went out to find
 17 work so that we could both work so that we could survive.
 18 Q. And tell me a little bit about your life in Lima today
 19 in 2008.
 20 A. Well, we live there together, my husband and my
 21 children. We're always working, working hard. Sometimes
 22 it's very difficult, because there's no stable work there.
 23 My husband works in civil construction, and I work in family
 24 homes, or sometimes I'll do small little business
 25 enterprises.

1 Q. Are you involved in an association for the survivors of
2 the Accamarca massacre?

3 A. Yes. Yeah, we made an association of family members of
4 those affected by political violence from the district of
5 Accamarca.

6 Q. Are you involved with that association?

7 A. Yes, yes, we are.

8 Q. And what does it do?

9 A. Yes, I'm in the association. There are eight of us who
10 lead it. You have a chairman, and I am the secretary of the
11 records. And then you also have Celestino Baldeon; he's the
12 chairman of the association. Pompio Baldeon is the finances;
13 he's the finance -- he's the treasurer. Then you have
14 Florian Palacios; he's a vice chairman. We have an
15 association.

16 Teofila Ochoa, she's the secretary for public
17 relations; Francisco Ochoa, secretary for organization; and
18 then you have Carmela Soto Martinez, secretary for human
19 rights; and Emiliano Quispe, and he is the ranking member.

20 Q. And what does the association of survivors actually do?

21 A. Well, we formed the association in order to get justice,
22 in order to give us strength, to give us the strength we need
23 to fight to the end, so that the guilty are punished.

24 Q. And have you or your family members or anyone in the
25 association for the Accamarca Massacre received any

1 compensation as a result of that massacre?

2 A. No, nothing.

3 Q. You talked about earlier the gravesites for your family.

4 A. Yes.

5 Q. Were they down here close to the Gamboa house?

6 A. Yes, that's where the two pits are.

7 Q. And the beating and the raping of women and girls, was
8 that done here with this tree area in the area called
9 Llocclapampa?

10 A. Yes.

11 Q. And these gravesites, have they gone through an
12 exhumation?

13 A. I don't recall. I think that the first exhumation
14 happened in 2006 and then in 2007.

15 Q. Were you at the exhumation when it occurred?

16 A. Yes, in the year 2006 and the year 2007.

17 Q. Tell us what you saw when it occurred in March of 2006.

18 A. The exhumation was done in front of the judge, the
19 prosecuting attorney, the medical examiners, all of the
20 authorities of Accamarca. The bones were taken out. They
21 took out skulls, femurs, the torsos, all of the burned bones
22 and all of the little pieces, the little pieces of clothing,
23 the sandals. Everything that they could find was exhumed.

24 Q. And did you go to the exhumation that occurred in March
25 of 2007?

1 A. 2006 and 2007.

2 Q. And you saw similar things when you went in 2007?

3 A. Yes.

4 Q. Now, how has the memory of what happened to you and your
5 mother and your brother Edgar affected you?

6 A. Well, it affected me greatly, because my mother -- I've
7 always needed my mother. I always had my mother to support
8 me when I was a child. And I missed her in my childhood and
9 my adolescents, even till now. Even now I need my mother to
10 help me, to give me support with my children, so that my
11 children can at least say that they have a grandmother.

12 It's difficult. My -- I ask myself sometimes why
13 my brother didn't survive, because now I'll have no more
14 brothers. Maybe he would have -- he would have been a good
15 man. Maybe he would have loved me, loved me even more than
16 my other brothers and sisters.

17 Q. Well, how would your life be different if Telmo Hurtado
18 and his Peruvian soldiers did not brutally do what they did
19 to you in Llocclapampa on August 14, 1985?

20 A. Well, it would have been different because at least I
21 would have gone to school with my brother and sister. My
22 mother would be alive. She was young. My little brother was
23 nine months old. He would be a young man, full of life.

24 My town, maybe it would have been a better town,
25 because ever since that date, there's been nothing but

1 poverty. Because people there have continued to live under
2 that trauma.

3 There's much alcoholism. There are others who are
4 now deaf, others are mute. There are others who have lost
5 their minds, have gone insane, the children. It's destroyed
6 our entire town, destroyed all of our houses. It took all of
7 our animals. They took all of our things, and we had to
8 start all over again.

9 And from that trauma, many people moved to the
10 city. And because of that trauma, they don't want to return
11 to the town. And they live in the city. They live in
12 poverty, working hard to survive.

13 Q. Now, Telmo Hurtado, who was in charge of the operation
14 for Lince 7 on August 14, 1985, and led that group of
15 Peruvian soldiers into your community of Llocclapampa was
16 here today in court. If he was sitting here now, is there
17 anything you would want to tell him or ask him?

18 A. Yes. I always wanted to ask him -- I always wanted to
19 say to him to his face that he is a murderer. That he's done
20 grave harm, evil to my people. They killed innocent people,
21 children, women, men, and old people, who had nothing to do
22 with anything.

23 Q. And you, on behalf of your mother and behalf of your
24 brother Edgar, brought this lawsuit here in the United States
25 against Telmo Hurtado. Why did you do that?

1 A. I don't know why, but I do know I wanted to achieve
2 justice.

3 And I would ask his Honor that everything we have
4 said here, it is the whole truth and we live this in our own
5 bodies. I would ask that he be deported to Peru as soon as
6 possible so that he can answer for the crimes he has
7 committed.

8 For us, it has been very difficult to travel all
9 the way over here to achieve justice. In my town, we have
10 spent our whole lives traumatized in this nightmare since
11 that year when this happened.

12 And the children, what was their sin? My
13 nine-month-old brother and the other children, children
14 months old to children of 13, 80-year olds, lactating
15 mothers, people who spoke Quechua, who couldn't even speak
16 Spanish, and did not know even to read or to write, what was
17 their sin?

18 And then in order to achieve justice, that's why
19 I'm here, where one can tell the whole truth.

20 Q. We thank you.

21 MR. BROCHIN: We have no further questions.

22 THE COURT: All right. Thank you very much.
23 (Witness excused.)

24 THE COURT: Who is the next witness, Mr. Brochin?

25 MR. BROCHIN: Your Honor, we'd like to call two

1 more witnesses, and we'll try to keep them short. But I'd
2 also like to enter the deposition transcript of a deposition
3 we took. We don't intend to read it, but we'd like to file
4 it with the Court. It is the deposition of Clemente Baldeon
5 Teccsi, who was a survivor and eyewitness. And it was a
6 short deposition that I took over the telephone, but he was
7 sworn in twice, actually. There was a justice of the peace
8 who swore him in, in Accomarca, and the court reporter, who
9 was present in Miami, swore him in over the phone. And this
10 is that transcript.

11 THE COURT: What exhibit number do you want to give
12 it?

13 MR. BROCHIN: Well, if it's an exhibit, I would
14 give it Exhibit Number 4.

15 THE COURT: Okay. Admitted as Plaintiffs'
16 Number 4.

17 (Plaintiffs' Exhibit Number 4 was admitted into
18 evidence.)

19 THE COURT: You can just leave it right there.

20 So, who is the next witness that you want to call?

21 MR. BROCHIN: Next witness would be Eduardo
22 Gonzalez.

23 THE COURT: Okay.

24 MR. BROCHIN: And with the Court's permission,
25 Ms. Smith will conduct the direct examination.

1 THE COURT: Sure.

2 MR. BROCHIN: Thank you.

3 THE COURT: We'll go ahead and take our afternoon
4 break now, though. Okay.

5 MR. BROCHIN: Okay.

6 THE COURT: We'll see you back in 15 minutes.

7 MR. BROCHIN: Thank you.

8 (Recess taken at 2:57 p.m. until 3:20 p.m.)

9 THE COURT: Ms. Smith, you can call your next
10 witness.

11 MS. SMITH: The plaintiffs call Eduardo Gonzalez.

12 (EDUARDO GONZALEZ, PLAINTIFFS' WITNESS, WAS SWORN.)

13 THE COURT REPORTER: Please sit down. Please stay
14 behind the microphone as best you can and state your full
15 name for the record, spelling your last name.

16 THE WITNESS: My name is Eduardo Gonzalez-Cueva.

17 MS. SMITH: Your Honor, Mr. Gonzalez will testify
18 in English.

19 THE COURT: That's fine.

20 THE COURT REPORTER: I'm sorry. The spelling of
21 your last name?

22 THE WITNESS: Gonzalez, G-O-N-Z-A-L-E-Z, Cueva,
23 C-U-E-V-A.

24

25

1 DIRECT EXAMINATION

2 BY MS. SMITH:

3 Q. Mr. Gonzalez, can you tell us your nationality, please.

4 A. I'm a Peruvian citizen.

5 Q. And where do you live now?

6 A. I live in New York City.

7 Q. And are you employed in New York City?

8 A. Yes. I work in a human rights organization.

9 Q. And the name of that organization?

10 A. It's the International Center for Transitional Justice.

11 Q. And what is your present title with that organization?

12 A. I'm the deputy director for the center, problems in the
13 Americas region.

14 Q. And can you tell us, briefly, your educational
15 background, what academic degrees you hold and where those
16 were obtained.

17 A. I am a sociologist by formation. I receive a
18 baccalaureate in social sciences in the Catholic University
19 in Peru. Then I received a sociology license, also in the
20 Catholic University in Peru. And after receiving a Fulbright
21 Scholarship, I came to the United States to pursue varied
22 studies, and I received a master's in arts in sociology.

23 Q. Can you tell us, the master's, what university that was
24 from?

25 A. I received my master's from the New School for Social

1 Research in New York City.
 2 Q. The New School for Social Research.
 3 A. That is correct.
 4 Q. And the dates of your degrees, your baccalaureate was
 5 received....
 6 A. In 1993. My license to operate as a sociologist was
 7 received in '94. And my master's was received in '98.
 8 Q. Wonderful. Thank you.
 9 And any other specialized degrees or other training
 10 in sociology?
 11 A. Yes. I have curried a couple of diplomas. I studied
 12 with my university and the Jagellonian,
 13 J-A-G-E-L-L-O-N-I-A-N, University in Poland, studies on
 14 democratic theory, and with American University in
 15 Washington, studies of human rights.
 16 Q. Thank you.
 17 And when you said "my university" in your last
 18 answer, did you mean the Catholic University in Lima?
 19 A. No. I am referring to a joined course by the New School
 20 and the Jagellonian University.
 21 Q. Thank you.
 22 And could you just, very briefly again for the
 23 Court, review the positions that you've held since the
 24 completion of your sociology license in 1994?
 25 A. Yes. I have held a number of research positions.

1 Q. From the --
 2 A. The time when I got my license in sociology?
 3 Q. Exactly. Thank you.
 4 A. I have held a number of research and teaching positions.
 5 (Discussion had off the record.)
 6 THE COURT: No, he's not.
 7 Are you translating for them, or you don't want
 8 this translated? Or you don't need it translated?
 9 MS. SMITH: I believe the interpreter was going to
 10 move and translate directly for the plaintiffs.
 11 THE INTERPRETER: It's a malfunction. Your Honor,
 12 if you don't mind, I'd like to replace the battery in this
 13 machine, and we'll be good to go.
 14 THE COURT: Okay.
 15 THE INTERPRETER: I'm sorry for the interruption.
 16 THE COURT: No, that's okay.
 17 (Discussion had off the record.)
 18 MS. SMITH: May I continue?
 19 THE COURT: Yes.
 20 BY MS. SMITH:
 21 Q. Mr. Gonzalez, I think you were describing your
 22 professional experience starting in 1994 after the receipt of
 23 your license.
 24 A. Yes. I was mentioning that I held a number of research
 25 positions and teaching positions. I did conduct research for

1 the Institute of Peruvian Studies, a leading social science
 2 association in my country. I also taught at the Catholic
 3 University of Peru. And when I moved to New York to study, I
 4 also conducted research for my professors and --
 5 Q. Let me just --
 6 A. -- I taught, too.
 7 Q. Let me just interrupt you so we can get some dates in
 8 there.
 9 You're at the Institute of Peruvian Studies. When
 10 did you hold the research assistant position, for which
 11 years?
 12 A. In 1994.
 13 Q. And the professor at -- you mentioned, I believe, at
 14 Catholic University, the professorship?
 15 A. Yes, I believe it was parallel to my position in the
 16 Peruvian Studies Institute.
 17 Q. I see.
 18 And when did you move to New York to attend the New
 19 School on your Fulbright?
 20 A. I moved to New York in mid-1995, after receiving my
 21 scholarship from the Fulbright Foundation.
 22 Q. I see. I see.
 23 And when you were in New York, could you tell us
 24 about the teaching positions that you held.
 25 A. Yes. I co-taught a course in the master's program. And

1 I also taught in undergraduate -- an undergraduate college
 2 from my university.
 3 Q. An undergraduate college at the New School?
 4 A. That is correct.
 5 Q. Is that called Lang College?
 6 A. That is Lang College, yes.
 7 Q. Thank you.
 8 And at some point did you have a position with
 9 the -- an NGO in New York?
 10 A. That is also true. I participated in the NGO Coalition
 11 for the International Criminal Court, which is basically a
 12 consortium of leading human rights organizations interested
 13 in the establishment and entry in the force of the
 14 International Criminal Court.
 15 Q. And then -- was that in New York or in Lima?
 16 A. It was based in New York, but it was basically an
 17 intenerating position. I did participate in the United
 18 Nations Rome Conference for the establishment of the
 19 International Criminal Court as a civil society observer.
 20 And then I participated in numerous activities around the
 21 world pushing for the establishment of such a court.
 22 Q. And did there come a time when you moved back to Peru
 23 permanently?
 24 A. Yes, that is correct. In year 2000, I moved back to
 25 Peru, and I continued working for the coalition for the ICC,

1 International Criminal Court.

2 Q. I see.

3 And was there a time that you were employed by the
4 Peruvian Truth and Reconciliation Commission?

5 A. More or less a year after I went back to Peru. A Truth
6 and Reconciliation Commission was in start (sic) in our
7 country. That happened after the fall of the regime led by
8 Mr. Alberto Fujimori.

9 Q. And what year was that, sir?

10 A. Mr. Fujimori fell from power in November of the year
11 2000. He fled the country. A provisional government was
12 established immediately thereafter. And that provisional
13 government called for a government of national unity, and one
14 of its first measures was to establish a Truth and
15 Reconciliation Commission.

16 Q. And what was your initial position with the Peruvian
17 Truth Commission?

18 A. I was hired by the commission to undertake the task of
19 enabling victims to appear before the national audience and
20 tell their stories, such as I did today. My formal title was
21 coordinator for the public hearings and victim protection
22 unit.

23 Q. And how long did you hold that position?

24 A. I did hold it over 2000 -- all the year 2002.

25 Q. And then after that, were you employed in a different

1 Q. Thank you.

2 And after the conclusion of your employment with
3 the Truth Commission, what was your next place of employment?

4 A. I was hired by the then-nascent International Center for
5 Transitional Justice. Given my experience with the Truth
6 Commission, and from that time on, I have been helping the
7 work of similar institutions, truth commissions in different
8 countries around the world.

9 Q. And your first position with the ICTJ?

10 A. Was a senior associate.

11 Q. And did you move from that position to the position that
12 you hold today?

13 A. Yes. I was recently asked by the organization to be the
14 deputy director for our work in the Americas.

15 Q. And that is the position you hold today?

16 A. That is my current position, yes.

17 Q. Thank you.

18 Could you describe briefly, then, given that
19 educational and professional experience, your -- the subject
20 matter of your specialized field.

21 A. Yes. My specialization is on the field of transitional
22 justice. This is a relatively new field, which emerges from
23 the intersection of human rights law and political science.

24 Transitional justice refers to the different ways in which
25 societies are dealing with a violent past or with a

1 position with the Truth Commission?

2 A. Yes. After conducting successfully a number of
3 hearings, the commissioners requested me to join an editorial
4 committee that would be in charge of compiling all the
5 information created by the commission, and, therefore,
6 producing the final report of our institution.

7 Q. And did you, in fact, assist in the production of that
8 final report?

9 A. Yes. From December, 2002, until August, 2003, this
10 editorial committee, composed by a number of members of the
11 senior staff of the commission, conducted different kind of
12 investigations, made sure that the investigations were
13 consistent, conducted control of quality of these
14 investigations, compiled the information, and produced,
15 finally, what is our final report, a document comprising
16 about 4,000 pages, nine volumes, and 12 annexes.

17 Q. And did the Truth Commission then conclude its
18 activities after the production of the final report?

19 A. Yes. The Truth Commission concluded in -- the 28th of
20 August, 2003. In the same date, the commission issued copies
21 of the final report to the three branches of our government,
22 and made the public -- the final report publicly available.

23 Q. Made the which report publicly available?

24 A. The final report of the TRC, the Truth and
25 Reconciliation Commission.

1 dictatorial past, and trying to establish the truth about
2 what has happened, and try to ensure that the measure of
3 justice and reparation is available for victims of mass
4 violations.

5 Q. And would you say that your expertise is concentrated in
6 Peru?

7 A. I have developed my expertise over time, during my
8 employment in the ICTJ. My main expertise is on the field of
9 truth seeking, that is on the specialized research that we
10 call truth commissions, and, certainly, I have significant
11 experience in the Americas and in Peru.

12 Q. And have you published articles or reports, other than
13 the Truth Commission report you just mentioned, in -- with
14 respect to the social and political history of Peru for
15 transitional justice?

16 A. Yes, I have. I have authored a number of publications,
17 some of which have appeared in scientific journals in the
18 field or in books and compilations.

19 Q. Would you say more than 15?

20 A. I would say certainly about a dozen of professional
21 documentation.

22 Q. About a dozen.

23 And I know you mentioned that you served in -- as a
24 panelist and as a conference participant in several
25 conferences. Could you describe that experience, just very

1 briefly, for the Court.
 2 A. Yes. During my professional experience dealing with
 3 transitional justice and human rights, I have participated in
 4 enumerable conferences. During the time I served at the
 5 coalition for the ICC, I travelled extensively, explaining to
 6 different sectors what was the International Criminal Court.
 7 And then with the Truth Commission, and after the Truth
 8 Commission, I have given technical assistance and shared my
 9 expertise in different countries, too.

10 Q. Thank you.

11 Just a little background on the Peruvian Truth and
 12 Reconciliation Commission in particular. To inform the
 13 Court, can you describe briefly what is a truth commission?

14 A. Yes. A truth commission is a nonjudicial body.

15 Q. A nonjudicial body?

16 A. Nonjudicial. Normally, a panel of experts or persons of
 17 very high moral repute that are called to help establish the
 18 truth about crimes that occurred in a violent or dictatorial
 19 past. And that are supposed to help further judicial
 20 investigations, to help victims channel their voices in the
 21 public sphere, and are supposed to also help explain the
 22 facts and try to find some kind of recommendation, so that
 23 there is a measure of deterrence in the future.

24 Q. And the Peruvian Truth Commission, when it was formed in
 25 2002, who were the members of that commission? The

1 commissioners.

2 A. Yes. The Truth Commission was established by
 3 presidential decree in June, 2001, actually.

4 Q. Pardon me.

5 A. And in September, 2001, it received an actual
 6 confirmation of its membership, which was 12 members,
 7 including academics, specialists in human rights issues,
 8 spiritual leaders of Peru, and one of several members of the
 9 Catholic church.

10 Q. And how large was the Truth Commission staff?

11 A. The number of the staff varied over time. Peru is a
 12 very large country, and we needed to establish an institution
 13 that was able to receive testimony all over the country. At
 14 the largest moment of the Truth Commission, we had 14 offices
 15 in different areas of Peru, and a staff of about 500 persons.

16 Q. Five hundred?

17 A. Yes.

18 Q. And I know you described this briefly a moment ago, but
 19 could you tell us what were the specific objectives of the
 20 Truth Commission?

21 A. The Truth Commission was mandated, first and foremost,
 22 with finding the facts about what happened, establishing
 23 facts that until that moment had been an object of
 24 significant debate in our society. It was asked to give an
 25 explanation or a context to the events that had taken place

1 in Peru in the course of the confrontation with the Shining
 2 Path, to contribute to national reconciliation, and to make
 3 specific policy recommendations so that the country would
 4 not -- would, hopefully, prevent the occurrence of this kind
 5 of situations.

6 Q. And in this fact-finding function, what sources did the
 7 Truth Commission look to?

8 A. The Truth Commission was fortunate to have a number of
 9 very varied sources. As you will -- probably know, the
 10 violence in Peru took place mostly under democratically
 11 elected regimes. So, there was abundant information in the
 12 prosecutors' offices and, in general, in the state
 13 institutions. So, the Truth Commission had access to those
 14 pieces of information.

15 The commission also had access to information that
 16 had previously been unavailable, such as military
 17 documentation, and also declassified documents that the
 18 government of the United States put at the service of the
 19 Truth Commission. And, finally, the commission had access to
 20 direct first-person testimonies from victims, witnesses, and
 21 in some cases also from people of the -- either the insurgent
 22 organizations who were in prison, or members of the security
 23 forces of Peru.

24 Q. Thank you.

25 And you mentioned the first-person testimonies.

1 How many different testimonies were taken over the course of
 2 the Truth Commission?

3 A. Yes. Over the 23 months that the commission was in
 4 existence, we took approximately 17,000 testimonies in all
 5 the territory of Peru.

6 Q. And among those 17,000, was there a set of cases that
 7 the commission determined warranted special attention or
 8 investigation?

9 A. The commission decided that there was no moral
 10 difference between cases. All cases deserved the attention
 11 and the care of the commission.

12 However, at the same time, the commission
 13 recognized that there were a number of cases that had created
 14 a very deep impact in the national psyche, in the national
 15 consciousness, events that had been extremely traumatizing
 16 for our society. And the commission decided that it was fair
 17 to ensure that a number of very exemplary cases of brutality
 18 would be deeply studied, reconstructed, and that the results
 19 of our investigation should be put in the hands of the
 20 prosecutorial services of Peru so that justice will have a
 21 chance to be served.

22 Q. And were the events which took place on August 14, 1985,
 23 in the Accomarca District one of those special cases?

24 A. Yes. A massacre of Accomarca is one of those cases.

25 Q. And these 70 cases that were selected, was there a name

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1 that was given to the unit that investigated those cases?
2 A. Yes. Those cases were entrusted to a specific unit
3 called a "special investigations unit." And a summary of the
4 investigations of that body was included in one specific
5 volume of the final report of the Truth Commission, volume
6 number 7.
7 Q. And the cases that were investigated by the special
8 investigations unit, did the commission determine that those
9 cases warranted additional or different public hearings?
10 A. In some cases, the Truth Commission thought that some
11 cases were important in terms of ensuring that some measure
12 of justice will happen, and, therefore, it exercised its good
13 judgment to decide what cases had a good chance of actually
14 seeing justice done.
15 In some other cases, the Truth Commission selected
16 cases because of their educational value. We wanted the
17 Peruvian population, who for years have not believed the
18 victims, who for years have been prejudiced against the
19 victims, to actually hear and learn that these things were
20 real.
21 Q. And --
22 A. Those are the cases that we selected for public hearings
23 in front of a national audience.
24 Q. And was the case of the Accomarca Massacre one of those
25 cases that were selected for special public hearing?

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1 A. The Accomarca case, being one of the most paradigmatic
2 cases, was selected both as a case for possible
3 judicialization, and also as a case --
4 THE COURT REPORTER: I'm sorry? "For possible..."
5 A. Judicialization. In Spanish I could say it?
6 (Speaking Spanish.)
7 THE INTERPRETER: Prosecution.
8 A. Prosecution, hopefully. And as a case for public
9 hearings.
10 Q. I see.
11 And I just want to examine for a second your
12 specific role with respect to the Accomarca hearings and the
13 Accomarca chapter that you mentioned.
14 A. Yes.
15 Q. You mentioned that your first role with the Truth
16 Commission was as a public hearing officer. As a public
17 hearing officer, did you attend the hearings that were held
18 on the Accomarca case?
19 A. My role was to design, organize, attend, and ensure that
20 the hearing happened in the case of Accomarca.
21 Q. So, you were present.
22 A. The hearing took place on the 8th of April of 2002, and
23 I was present.
24 Q. And just so we get it down for the record, can you
25 describe your specific role with respect to Volume VII, the

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1 volume that you mentioned memorializes the events that took
2 place in Accomarca?
3 A. Yes. As I said, the editorial committee was in charge
4 of ensuring the consistency and the solidity of our final --
5 THE COURT REPORTER: I'm sorry. Which committee?
6 A. Editorial committee was in charge of ensuring the
7 consistency, the solidity of our investigation, and,
8 therefore, we all in this editorial committee had a different
9 role.
10 I was particularly in charge of Volume VII, that is
11 the special cases. And in that capacity, I had to oversee
12 the production of this particular volume. And, certainly, I
13 became very familiar with the Accomarca case.
14 Q. Do you recall which specific chapter within Volume VII?
15 A. It is Chapter 2.15.
16 Q. Thank you.
17 A. Of Volume VII.
18 Q. Thank you.
19 I'd like to discuss with you the Truth Commission's
20 findings in general. Can you describe for the Court's
21 information, briefly, what is the Shining Path.
22 A. Yes. The Shining Path is an insurgent organization,
23 communist to Maoist organization, that attempted to establish
24 a communist government in Peru by force, after a process that
25 they thought would be a generalized peasant uprising that

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1 would be extremely bloody and violent, but that would
2 ultimately lead to a communist society.
3 It was a political party that emerged as a splinter
4 of radical parties in the Marxist left during the '70s, and
5 it evolved on to be an armed organization that made extensive
6 use of terror tactics.
7 Q. And was the Shining Path active in any one particular
8 part of Peru predominantly?
9 A. At the worst moment of the violence, the Shining Path
10 was present everywhere in the country. But the cradle for
11 the Shining Path --
12 Q. Cradle?
13 A. Cradle -- the emerging place for the Shining Path was
14 the province of Ayacucho in the southeast of the country.
15 Q. And are you aware that the town and district of
16 Accomarca is in the Ayacucho department?
17 A. Yes, Accomarca belongs in Ayacucho, that is correct.
18 Q. And can you describe briefly for the Court the
19 population of the Ayacucho department?
20 A. Ayacucho is one of the poorest departments of Peru.
21 Remains so. It was one of the poorest departments or
22 provinces of Peru at the time of the violence.
23 According to the latest national census, for
24 instance, the average illiteracy rate in Peru is about
25 15 percent, and in Ayacucho it's about 30 percent. And that

1 is certainly a higher figure in the rural areas.
 2 Q. So, the literacy rate is quite low.
 3 A. Certainly.
 4 Q. A very large percentage, perhaps 85 percent, are
 5 illiterate.
 6 A. Eighty-five percent of people in Peru are literate, in
 7 general, over all Peru.
 8 Q. I see.
 9 A. In Ayacucho, the rate of literacy descends to about
 10 70 percent.
 11 Q. Thank you.
 12 So I got it reversed.
 13 A. Yes.
 14 Q. So, approximately 30 percent in Ayacucho cannot read.
 15 A. Cannot read or write, no.
 16 Q. In the rural population of Ayacucho that you just
 17 mentioned, what other characteristics do they share? Do they
 18 speak the same language?
 19 A. The rural population of Ayacucho dedicates to
 20 agricultural activities, basically. They speak a specific
 21 form of Quechua, the language that the Incas spoke in Peru.
 22 Q. The language that the Incas spoke?
 23 A. Yes, that is correct.
 24 They speak a specific variety of Quechua, the
 25 Ayacucho Quechua. And they have very specific culture and

1 forms of communal life and organization. There are
 2 indigenous communities that have dedicated themselves for
 3 centuries -- having dedicated for centuries to agricultural
 4 labors.
 5 Q. And why is it, in your opinion, that the Shining Path
 6 selected Ayacucho as a base of operations?
 7 A. Ayacucho was objectively a very deprived area of Peru.
 8 There were objective evidences of social oppression and
 9 injustice, mistreatment of the peasant population, ignorance,
 10 poverty. And they found a space for their violent doctrine.
 11 Ayacucho was also an area where universities were
 12 creating a crop of young people with high aspirations, but
 13 with no avenues for social mobility. And the Shining Path,
 14 therefore, found a number of people who were desperate enough
 15 to think that an armed struggle would be the solution for the
 16 province of Peru.
 17 Q. And the young people that you just mentioned who were
 18 desperate for the new idea, were those in urban areas or
 19 rural areas?
 20 A. There have been a number of studies on this issue. And
 21 mostly what the studies made with members of Shining Path in
 22 jails have shown that basically the profile of a Shining Path
 23 member was actually urban and with an education above the
 24 average.
 25 Q. So, the rural indigenous populations -- could you maybe

1 just describe for us what the consequences on those rural
 2 indigenous populations were to the increased Shining Path
 3 activities prior to 1985.
 4 A. Yes. The Shining Path organized itself on the basis of
 5 a number of military plans. And the initial military plans
 6 of the Shining Path aimed at displacing and destroying
 7 traditional communal indigenous authorities and replacing
 8 them with new authorities designed by the Shining Path and
 9 responding only to this clandestine structure.
 10 So, that resulted in a very authoritarian treatment
 11 of the indigenous population. It also resulted in a number
 12 of killings of indigenous authorities who resisted the
 13 Shining Path and assassinations of every person who would be
 14 considered perhaps an informant of the security forces.
 15 Q. And in this dynamic that you're describing, were the
 16 rural indigenous populations willing participants in Shining
 17 Path activities?
 18 A. The Truth Commission found that there were many
 19 different situations in the rural areas in Ayacucho, but that
 20 the indigenous population, the peasant population, in
 21 general, were found between two fires, between two very
 22 authoritarian and violent forces. On the one side, the
 23 Shining Path trying to create basis for their project. On
 24 the other side, the security forces that try to repress
 25 whatever they consider suspect of supporting the Shining Path

1 and the insurgency.
 2 Q. And just for the Court, let's review briefly, and we'll
 3 try to keep it brief, the role of the Peruvian executive
 4 branch at the time of the rise of the Shining Path.
 5 Perhaps you could start in 1985 with the
 6 description of who -- who was president of Peru?
 7 A. Peru recovered its democracy in 1980, after 12 years of
 8 a military dictatorship. We had a freely, democratically
 9 elected president from 1980 to 1985, Mr. Fernando Belaúnde, a
 10 conservative. In 1985, a social democratic young leader was
 11 elected president, Mr. Alan Garcia. And they exercised the
 12 power of the executive branch.
 13 Q. I see.
 14 And I think I misdirected you a bit there. In
 15 1980, President Belaúnde was elected, correct?
 16 A. Yes, that is correct.
 17 Q. And prior to that, it was a military dictatorship.
 18 A. Yes, we suffered 12 years of a military dictatorship.
 19 Q. And President Belaúnde, how -- you described -- let me
 20 start this way. You described the rise of the Shining Path
 21 in the, I believe, late '70s, correct?
 22 A. Yes. They were quite active in the '70s preparing for
 23 the armed struggle.
 24 Q. How did President Belaúnde react to the rise of the
 25 Shining Path?

1 A. President Belaúnde dismissed the Shining Path as cattle
 2 rustlers.
 3 Q. Cattle rustlers?
 4 A. He called them cattle rustlers. He believed that they
 5 were perhaps some kind of traditional Latin American
 6 guerrilla, in the style of a Castroite --
 7 THE COURT REPORTER: I'm sorry. "Latin
 8 American...."
 9 A. Latin American guerrilla movement, such as a Castroite
 10 or a Guevara-styled movement, and he thought that it was a
 11 very traditional organization.
 12 Q. And did he at any point create a -- or encourage the
 13 creation of a legislative provision that reacted to the
 14 Shining Path?
 15 A. President Belaúnde, as I said, was at the beginning
 16 extremely negligent about the emergence of the Shining Path
 17 And he, for two years, thought that it was a police issue.
 18 And he did not care to prepare any kind of specific strategy
 19 to deal with this organization.
 20 After -- and plus, he had been the object of a
 21 coup d'état in the '60s. And he was very reluctant to bring
 22 in the military to deal with this organization. He did not
 23 trust the military.
 24 However, by the end of 1982, it was very clear that
 25 the Shining Path activity had overrun the police forces in

1 Ayacucho, and at that point, President Belaúnde made a sudden
 2 change and simply entrusted the authority -- both the
 3 military and the political authority -- over Ayacucho to the
 4 Armed Forces directly, through a specific norm that
 5 established something called the political and military
 6 commands over the area of Ayacucho.
 7 Q. So, President Belaúnde, in response to the Shining Path,
 8 established a political and military command over certain
 9 portions of the country.
 10 A. That is right.
 11 According to our Constitution, the executive branch
 12 can declare it an emergency, a given area, and during an
 13 emergency, certain liberties can be temporally abrogated or
 14 limited. However, President Belaúnde added to that
 15 characteristic the creation of specific powers for the
 16 military forces, so that they will, in all effects, become
 17 also the political authority over the areas declared an
 18 emergency.
 19 Q. So, President Belaúnde created an emergency zone by
 20 which a political military command established both military
 21 and political control.
 22 A. That is correct.
 23 Q. And that was over portions of the country, including
 24 Ayacucho.
 25 A. Certainly. For people -- for citizens living in

1 Ayacucho, their direct authority was no longer the civilian
 2 authorities that they had elected, but basically the military
 3 authorities in charge of operations in the region, yes.
 4 Q. And just to review -- return to the executive branch,
 5 when did President Belaúnde's term end?
 6 A. In July of 1985.
 7 Q. And who was elected at that time?
 8 A. Mr. Alan Garcia was elected.
 9 Q. And President Garcia, was he elected on the same type of
 10 political platform, the same kind of conservative platform
 11 you mentioned with respect to President Belaúnde?
 12 A. Certainly not. President Garcia was elected at the
 13 height of a very progressive movement. He was elected with
 14 enormous numbers and on the basis of a platform of economic
 15 reform, and, very interestingly, a platform of reducing the
 16 human rights violations that took place in Ayacucho.
 17 Q. And we'll return to that in a moment, but just to
 18 complete the summary. President Garcia's term ended in what
 19 year?
 20 A. President Garcia ended in 1990, July of 1990.
 21 Q. And who was elected, just briefly?
 22 A. At that point, elections were held and Mr. Alberto
 23 Fujimori was elected president.
 24 Q. And how long did his term....
 25 A. His term should have ended in July, 1995. However,

1 Mr. Fujimori staged a coup d'état in alliance with the Armed
 2 Forces, dissolved the courts and the Parliament of Peru,
 3 changed the Constitution, and allowed himself to be
 4 reelected. So, he held a second mandate until the year 2000.
 5 At that point, he altered again the constitutional mandate in
 6 order to be reelected for a third term. But his third term
 7 was interrupted due to scandals dealing with human rights and
 8 with corruption.
 9 Q. His third term was interrupted due to scandals due to
 10 human rights and corruption?
 11 A. That is correct.
 12 Q. And who assumed power at that point?
 13 A. Mr. Fujimori escaped the country in November of the year
 14 2000, a few months into his third mandate. And at that
 15 point, the Congress of the republic selected a provisional
 16 president, Mr. Valentín Paniagua.
 17 Q. And Mr. Paniagua's -- President Paniagua's term ended
 18 very briefly, I understand?
 19 A. Yes. It was basically a caretaker administration that
 20 was in charge of organizing new elections and trying to fix
 21 some of the desperate situations that had been left by
 22 Mr. Fujimori. His government lasted until July of the year
 23 2001.
 24 Q. And at that point....
 25 A. At that point, an engineer, Mr. Alejandro Toledo, was --

1 an economist, Mr. Alejandro Toledo, was elected president.
 2 Q. And when did President Toledo's term end?
 3 A. He ruled Peru for five years, and he left the
 4 administration in July, 2006, at which Mr. Alan Garcia was
 5 elected, for the second time, president of the Republic of
 6 Peru.
 7 Q. This is the same Alan Garcia who was president between
 8 1985 and 1990.
 9 A. Physically it's the same person, yes.
 10 Q. I understand. Thank you for that summary.
 11 Could you describe for us, sir, the increasing
 12 violence against civilians suspected of being affiliated with
 13 the Shining Path prior to 1985, say between 1980 and 1985.
 14 A. The Truth Commission found that the number of
 15 extrajudicial executions and the number of enforces
 16 appearances, the number of tortures, and in general the
 17 violence against the civilian population reached a pike (sic)
 18 between 1983 and 1985. Those were the years of the highest
 19 violence in the conflict in Peru. And that pike coincides
 20 with the entry into action of the Armed Forces in Ayacucho.
 21 Q. Could you describe that briefly, the entry into action
 22 of the Armed Forces in Ayacucho?
 23 A. Yes. As I said, a political military control was
 24 established, and it was entrusted to a general by the name of
 25 Clemente Noel. Mr. Noel applied a policy of indiscriminate

1 repression in areas suspected of harboring Shining Path
 2 guerrillas.
 3 Q. Did you say "indiscriminate reparation"?
 4 A. Indiscriminate repression.
 5 Q. Could you describe that concept, just briefly, for the
 6 Court?
 7 A. Yes. For the initial strategy of the Peruvian Army, the
 8 objective of the counterinsurgency was to deny any kind of
 9 support to the military activities of the insurgency, to deny
 10 any kind of political or physical sheltering, and they
 11 suspected that certain sectors of the population were doing
 12 precisely that for the Shining Path. So, they decided that
 13 they had to demonstrate absolute fire power on areas that
 14 they considered liberated areas of the Shining Path or, in
 15 military slang, red zones.
 16 Q. And did those red zones roughly correspond to the
 17 emergency zones that you mentioned before?
 18 A. Roughly, yes.
 19 Q. And those were zones for which there was a political
 20 military command rather than a civilian command.
 21 A. The politically military command of Ayacucho, which
 22 ruled over this emergency zone, was organized in subemergency
 23 zones. And those subemergency zones have control over the
 24 areas deemed to be more dangerous or more penetrated by the
 25 influence of the Shining Path.

1 Q. During this period in the 1980s, did the executive
 2 branch essentially abdicate responsibility for dealing with
 3 the Shining Path to the military?
 4 A. I think that is a correct characterization. In fact,
 5 during these years, it was very clear that the Armed Forces
 6 were determining the strategy unfettered of any kind of
 7 control. There were no cases of military subject to any kind
 8 of a trial or justice proceedings because of crimes. There
 9 was no investigation into allegations of crimes committed by
 10 the Army.
 11 So, yes, in fact, it was very clear that nobody was
 12 in charge except the Army. And in all cases, it was clear
 13 that the executive branch was not in charge of defining
 14 strategies to fight against terrorism, and that, in general,
 15 civilian authorities had decided to be powerless.
 16 Q. And did the executive branch retain any meaningful
 17 oversight in any way?
 18 A. Certainly not. In fact, the escalation of human rights
 19 violations were a very sensitive issue in Parliament in Peru
 20 during those years, and it's partly why President -- well, a
 21 candidate with a platform based on human rights, such as
 22 Mr. Garcia, had such success --
 23 Q. In 19 --
 24 A. -- when he ran for president in 1985.
 25 Q. In 1985 the first time.

1 A. Yes.
 2 Q. And you described the -- in your word, the
 3 counterinsurgency that was enacted by the Armed Forces. To
 4 what extent was that counterinsurgency directed at the
 5 Shining Path, itself, and to what extent was it directed at
 6 the civilian population? Or was there any difference?
 7 A. The Truth Commission has found that, in fact, in the
 8 mind of the military authorities developing this strategy,
 9 there was no difference between the Shining Path and certain
 10 sectors of the civilian population. They were just
 11 preoccupied with destroying the organization, and for them
 12 the organization included the civilians that supported the
 13 Shining Path.
 14 Q. And when you say "the civilians that supported the
 15 Shining Path," do you just mean men?
 16 A. No. There is a very extensive and proven pattern of
 17 action by the Armed Forces during the whole conflict, whereby
 18 they did not make any kind of distinction between men of
 19 military age, who could be presumably combatants for the
 20 insurgents, and women, children, the elderly.
 21 Q. Thank you.
 22 Mr. Gonzalez, I'd like to turn now to the Truth
 23 Commission findings with respect to the Accomarca Massacre in
 24 particular.
 25 As you testified, the events of August 14, 1985,

<p style="text-align: right;">Page 126</p> <p>1 outside the town of Accomarca were one of the cases selected 2 for investigation by the special unit that you mentioned, 3 correct? 4 A. (Witness nodding head affirmatively.) 5 Q. And have you heard the testimony that was given this 6 morning by our two plaintiffs in this action? 7 A. Yes, I have heard the testimony already. 8 Q. And I believe you testified that you heard the testimony 9 given by survivors of the massacre during the Truth 10 Commission hearings, is that correct? 11 A. At the public hearings, yes, I did. 12 Q. And generally are those testimonies consistent with each 13 other? 14 A. They're very consistent. Most of the facts that the 15 Truth Commission reconstructed are there. It is -- I mean 16 not having heard these plaintiffs before, it is -- it is very 17 interesting to hear how much there is a coincidence between 18 what you hear them say today, what you found in the Truth 19 Commission, and what was available in the testimonies of 20 other persons surviving the massacre of Accomarca. 21 Q. As a Peruvian, how did it make you feel to hear this 22 testimony this morning? 23 A. This is not -- it's really not an easy question. As a 24 Peruvian, I am ashamed of what I have heard. I do believe 25 that what happened was the result of disrespect for human</p>	<p style="text-align: right;">Page 128</p> <p>1 today? 2 A. Yes, it is consistent. 3 Q. Did the Truth Commission make specific findings with 4 respect to a military operation carried out by the Peruvian 5 Army in the Accomarca District in August of 1985? 6 A. The Truth Commission established that what happened in 7 Accomarca was a result of a plan that was designed by the 8 highest military authorities of the subzone of security in 9 which Accomarca was. The operation had a specific name, 10 Operation Huancayoc -- 11 Q. Could I interrupt you for one moment? Do you know if 12 Huancayoc -- it's a place name? 13 A. Yes. It refers to the geographic area in which 14 Accomarca is located, is some kind of a quebrada, a pass? 15 Q. Is it -- 16 THE INTERPRETER: White? 17 A. No, a pass within -- 18 THE INTERPRETER: A pass. 19 A. A pass between mountain regions. 20 Q. Let me ask you, have you heard it referred to by another 21 name today, Huancayoc? 22 A. I think that some people may refer to Huancayoc was 23 Huancaloccpampa (sic). 24 Q. Huancaloccpampa? 25 A. Yes, that is correct. "Pampa" in Quechua means a plain,</p>
<p style="text-align: right;">Page 127</p> <p>1 life in general, but in particular is a mark of the great 2 shame of Peru, which is racism against the indigenous 3 population. I think that the treatment that the indigenous 4 populations and the peasant populations received during the 5 war, the complete lack of compassion that they experienced 6 after their victimization are a mark of shame that Peru will 7 have for centuries. 8 And on a more personal level, I -- I am -- I'm a 9 father, and I -- I simply cannot stand the description of 10 crimes committed against children. I do believe that that is 11 probably the most horrible atrocity I have heard. But I must 12 say that this is also very consistent with hundreds of 13 testimonies that we heard during the experience of the Truth 14 Commission. 15 Q. Hold on for one moment. I just want to check with the 16 interpreter. 17 (Pause.) 18 BY MS. SMITH: 19 Q. I believe you testified that the Truth Commission 20 findings with respect to the Accomarca Massacre were 21 memorialized in Volume VII, Chapter 2.15 of the Truth 22 Commission final report. Is that correct? 23 A. Yes, 2.15. Yes. 24 Q. And that the report, what was memorialized in that 25 chapter, is that also consistent with the testimony you heard</p>	<p style="text-align: right;">Page 129</p> <p>1 a specific area. So, Huancaloccpampa is a name that you 2 could use in the area. 3 Q. So, Operation Huancayoc in Spanish referred to an 4 operation in Huancaloccpampa, in Quechua. 5 A. Yes. 6 Q. I'm sorry, I interrupted you. Please continue with your 7 description. 8 A. So, what the Truth Commission established is that there 9 was an operation by the name of Operation Huancayoc, designed 10 by the military commanders of the region, with the objective 11 of searching and/or destroying what they believed would be a 12 specific group of combatants from the Shining Path. 13 The Army claimed that they had arrested a number of 14 informants, that these informants have referred to be 15 originally from the town of Accomarca, and the military in 16 this planning asserted that Accomarca was a place of hiding 17 for military material by the Shining Path, and that it was a 18 place for preparing cadres and combatants -- 19 THE COURT REPORTER: I'm sorry. "Preparing...." 20 A. Cadres, C-A-D-R-E-S. 21 THE COURT: Cadres. 22 A. And combatants for the Shining Path. 23 MS. SMITH: Thank you, your Honor. 24 A. So, the stated goal of the operation was to destroy that 25 kind of organization and support that allegedly the Shining</p>

1 Path had in the area.
 2 Q. And did the Truth Commission make specific findings with
 3 respect to how many patrols went into -- were part of
 4 Operation Huancayoc?
 5 A. The Truth Commission established that four patrols were
 6 assigned the direct responsibility of executing the
 7 Operation Huancayoc.
 8 Q. And did the Truth Commission make a finding with respect
 9 to who led those patrols?
 10 A. Yes, it did. The commission established that the
 11 patrols had code names representing wild animals. There was
 12 a patrol called Tiger, under the command of another
 13 lieutenant, Castenada; a patrol code named Wolf -- I do not
 14 remember who was the person in charge of that patrol; a
 15 patrol named Lynx 7, "lynx," as in the wildcat, Lynx 7 --
 16 Q. And in Spanish that would be "lince"?
 17 A. "Lince," that is correct.
 18 Under the command of Second Lieutenant Telmo
 19 Hurtado; and another patrol called Lynx 6 under the command
 20 of a person by the name of Juan Rivera Rondon.
 21 Q. And did the Truth Commission find that the military
 22 commanders and the persons you have mentioned gave any
 23 specific orders with respect to the treatment of civilians
 24 during Operation Huancayoc?
 25 A. The Truth Commission cites the deposition of Mr. Hurtado

1 when he was under investigation after the crime.
 2 Mr. Telmo Hurtado stated during his investigation,
 3 his military investigation, that he had actually asked
 4 whether every -- or any civilian, any inhabitant, who was
 5 found in the area of the operation should be considered a
 6 terrorist criminal? And he was answered that, yes, every
 7 civilian in the area should be considered a terrorist
 8 criminal.
 9 Q. And just to clarify, the objective of the operation was
 10 to, as you stated it, I believe, capture or destroy?
 11 A. It was -- what the commission found is that the actual
 12 military language says "capture and/or destroy."
 13 Q. Capture and/or destroy.
 14 A. Yes.
 15 Q. Can you please describe the findings of the Truth
 16 Commission with respect to the specific events of August 14,
 17 1985. The Court has heard the testimony of the plaintiffs,
 18 so if we could just review briefly.
 19 A. Yes. What the commission found is that the operational
 20 scheme included detaching two patrols, the patrol code name
 21 Tiger and the patrol code name Wolf, to encircle the area of
 22 the operation, not to allow the escape of persons in that
 23 area. And that the patrols called Lynx 6 and Lynx 7 would be
 24 intervening into the area. Lynx 6 would attack the higher
 25 region, and Lynx 7 would intervene in the lower region, which

1 is why Lynx 7 interfacing (sic) Llocclapampa, this lower
 2 area here.
 3 Q. Llocclapampa is the same -- the word that...
 4 A. What the commission found was that the military patrols,
 5 the Lynx patrols, entered into the area; they gathered the
 6 population that they found in Llocclapampa. They -- with
 7 the pretext of an assembly. However, when they had reduced
 8 the population -- or had controlled the population, which was
 9 basically civilians, they proceeded to separate the men and
 10 the women. They mistreated and tortured the men, and they
 11 raped the women.
 12 After that, they conducted the men and the women
 13 into two different houses that were apparently very close.
 14 And after putting them in that state of indefiniteness, they
 15 were completely defenseless, Mr. Hurtado gave the order of
 16 killing the persons, and he led by launching hand grenades
 17 into the houses.
 18 Q. He, himself...
 19 A. He, himself.
 20 The persons were killed by the effect of hand
 21 grenades and machine gun fire.
 22 Q. And after the events you just described, and the
 23 explosions in the house and the burning of the house, were
 24 there other incidents of violence throughout the day and
 25 immediately thereafter?

1 A. The whole day was an orgy of violence.
 2 After the soldiers had so killed the persons in
 3 those -- in those houses, they left the area and apparently
 4 went to celebrate, to the town of Accomarca, what they
 5 consider was the destruction of Shining Path group. And
 6 according to witnesses, some of the soldiers, for instance,
 7 took women's clothes, put them on, and started to dance,
 8 mocking the women of the area.
 9 And that in those celebrations, they realized that
 10 there were some survivors. They apparently saw an old woman
 11 who was trying to put out the fire with a bucket. So, they
 12 dispatched soldiers to go back to the area of the massacre
 13 and kill the woman, which they did.
 14 After that happened, the soldiers, as I said,
 15 celebrated. They killed the animals of the population, ate
 16 the animals, stole the property of the peasants in the area.
 17 There is no evidence at all that during that day
 18 there was any kind of armed confrontation between the
 19 Peruvian Army and any kind of insurgent group, and there is
 20 no evidence whatsoever that the soldiers actually found any
 21 kind of war material, subversive propaganda, or any kind of
 22 material indicating that, in fact, the Shining Path had been
 23 present in that area.
 24 Q. And did the Truth Commission make findings with respect
 25 to violence in the Accomarca District specifically directed

1 towards witnesses of the events of August 14, 1985, after
2 the --

3 A. Yes. The Army made a very clear attempt to make
4 investigations impossible, or at least very difficult. And
5 until mid-September, there were a number of killings, about a
6 dozen killings in the area, preceding the arrival of an
7 investigative committee created by the Senate of Peru.

8 Q. And that investigative committee, we'll get to that in a
9 moment.

10 Can you describe the findings of the Truth
11 Commission with respect to the impact on the community in
12 Accomarca immediately after the massacre?

13 A. Yes. In fact, I had mentioned a minute ago that I
14 participated in the public hearing where the survivors of the
15 Accomarca Massacre were. One of the survivors said --
16 described the effect of the massacre in his community in
17 these words. He said, "My village was like a foreign village
18 in the middle of Peru."

19 Q. After the massacre?

20 A. After the massacre.

21 What happened after the massacre is that the
22 population got displaced. Many families went to either
23 Ayacucho or Ica, the closest cities, and some went to Lima,
24 the capital of Peru. The economic activity of the area was
25 completely disrupted. And, in fact, Accomarca, as many other

1 service, and, therefore, cases that should be directed to
2 military jurisdiction, or whether they were common crimes
3 that should be tried by a civilian court.

4 And the Senate investigative committee concluded
5 that the events were common crimes, that they could not in
6 any way be described as acts of military service, and that
7 they should be tried in our normal jurisdictional system.

8 Q. And the findings of the Senate commission, were those
9 consistent with the findings of the Truth Commission later?

10 A. Yes.

11 Q. And when did the Senate commission investigation
12 conclude? How long was it?

13 A. The Senate commission concluded, if I'm not mistaken, in
14 October of '85.

15 Q. And did there come a time where the full Peruvian Senate
16 adopted the Senate commission's findings?

17 A. Which was in October of 1985, yes.

18 Q. And after the Senate's investigation concluded, were
19 there any other investigations or proceedings regarding the
20 Accomarca Massacre?

21 A. There were two concurrent investigations.

22 Q. Immediately afterwards?

23 A. Yes. One was an investigation by the civilian
24 prosecutor in Ayacucho, who had jurisdiction over this area.

25 And another was an investigation in the military court

1 towns affected by this kind of violence, has suffered
2 long-term consequences until now.

3 Q. I'm going to ask you one or two more questions about
4 that later.

5 Let's review briefly. You mentioned the Peruvian
6 Senate commission. Did the Truth Commission make findings
7 with respect to an investigation conducted by a Senate
8 committee immediately after the massacre --

9 THE COURT REPORTER: I'm sorry. "Findings with
10 respect to...."

11 BY MS. SMITH:

12 Q. To the massacre that was attempted -- let me just start
13 over.

14 Did the Truth Commission make specific findings
15 with respect to an investigation of the Accomarca Massacre
16 that was attempted by the Peruvian Senate in 1985?

17 A. Yes. The commission built its findings partly on the
18 basis of the Senate investigation, because it was an
19 investigation made when the facts were fresh, so to speak,
20 only a few weeks after the actual massacre. And the
21 commission cites extensively the conclusions of the
22 investigative committee of the Senate.

23 The center of the findings for the Senate was to
24 decide whether the events that took place in Accomarca were
25 events that would be considered events of -- part of military

1 system. The military justice decided to open a dispute over
2 jurisdiction.

3 Q. Let me just review with you briefly --

4 A. Yes.

5 Q. -- if you know, taking the military investigation first,
6 was Defendant Hurtado a person of interest in that
7 investigation?

8 A. Yes. He was under arrest in military barracks.

9 Q. And was he charged with homicide?

10 A. He was initially in their investigation. Now, when the
11 investigation became an actual indictment, he was accused,
12 yes, of homicide and a number of lesser offenses. He was
13 accused of abuse of authority, negligence, false witness, and
14 disobedience.

15 Q. In the concurrent civilian court prosecution, was
16 Defendant Hurtado --

17 A. It was --

18 Q. -- named in that?

19 A. It was an investigation about aggravated homicide.

20 Q. Aggravated homicide.

21 A. Yes, that is correct.

22 Q. And I believe you mentioned just now that the military
23 commanders filed a dispute of jurisdiction, is that correct?

24 A. Yes. It was a dispute of jurisdiction that made it all
25 the way to the Supreme Court of Peru. And the Supreme Court

1 decided in March of 2000 -- sorry -- of 1986, that actually,
2 since the events took place in a military area, those
3 conducts should be examined in military justice system.

4 Q. So, just to clarify, the military filed a dispute of
5 jurisdiction asserting that the case should be prosecuted by
6 the military.

7 A. They did. And they won that dispute.

8 Q. They won that dispute.

9 And was there a course of military proceedings,
10 then, after the Peruvian Supreme Court jurisdiction, which
11 decided the jurisdictional question?

12 A. There was a long story there, which is also partly why
13 the case of Accamarca is considered by the Truth Commission
14 to be so exemplary. First, because of the evident brutality
15 of the massacre, but also because after the massacre,
16 Accamarca is a case study of impunity.

17 The military system investigated Mr. Hurtado on the
18 1985 -- sorry -- Mr. Hurtado and the members of his patrol,
19 and other military officers involved in the
20 Operation Huancayo. And in 1987, the military courts
21 decided that only Mr. Hurtado was guilty of something, and
22 that something was the lesser offense of abuse of authority.

23 So, he was not guilty of homicide or anything else.
24 He was guilty of abuse of authority. He was sentenced to
25 four years in prison and a civil reparation of about \$300 at

1 the time.

2 Q. Just to clarify, you mentioned there was a long story.
3 Was there a series of court opinions between 1987 and 1992
4 which resulted in this?

5 A. Yes, because the 1987 decision was nullified by the
6 decision of the military court system, Mr. Hurtado was
7 investigated again, was indicted again in 1990, a new process
8 started. He was, again, charged of exactly the same
9 offenses -- homicide, negligence, abuse of authority, lying,
10 et cetera. And, again, it was found that no one was guilty
11 but him, and only for the lesser charge of abuse of
12 authority. And, again, he was found -- he was sentenced to
13 serve a short sentence, in this case, six years, and a
14 laughable reparation of about \$300 again.

15 Q. Three hundred dollars.

16 And this was in 1992 that this final decision came
17 down?

18 A. In 1992, the final decision was issued, but it was not
19 confirmed until 1993, at which point Mr. Hurtado should have
20 served prison.

21 However, the story doesn't end there, because in
22 1995, only two years after that supposedly final decision,
23 President Fujimori issued an amnesty -- well, two amnesty
24 laws, stipulating that members of the military accused or
25 sentenced for crimes of human rights would receive a full

1 amnesty and would not serve time in prison.

2 Q. You mentioned two amnesty laws. The first was the
3 amnesty law? What was the second?

4 A. Yes. Mr. Fujimori issued in June -- well, his
5 Parliament issued in June of two -- sorry -- of 1995, a law
6 stipulating this amnesty for military and police personnel.
7 But some of her judges decided not to comply with amnesty,
8 because in their opinion, it was a violation of the
9 Constitution. And according to our Constitution, every judge
10 has the right to exercise control, a constitutional review.

11 So, Fujimori's Parliament issued a second law
12 interpreting the powers of the judges and reducing those
13 powers in the case of this law in order to make the
14 application of the amnesty automatic.

15 Q. It forced the judges to comply --

16 A. It forced the judges to comply with the amnesty.

17 Q. And so, during the period between the massacre, itself,
18 the investigations, the course of court proceedings up and
19 down and up and down until 1993, when his very modest
20 sentence was finally confirmed, there was no sentence, so
21 Mr. Hurtado did not serve any time, is that correct?

22 A. There's no evidence that in the eight years intervening
23 between the massacre and the 1993 decision, he served any
24 time in prison.

25 Q. And we know that his sentence was nullified by the

1 amnesty in '95. Between '93 and '95, is there any evidence
2 that he served any portion of his sentence?

3 A. No. The military justice system is extremely opaque in
4 Peru. There is no way to exercise any meaningful control.

5 And, in fact, there is another element that would
6 make you think that he didn't serve any time. And that is
7 that Mr. Hurtado, in fact, continued serving in the Army. He
8 was cited in 1999 with a new rank, with a higher rank,
9 actually, serving in a normal way in an area in the north of
10 Peru.

11 Q. So, he was promoted?

12 A. He was, in fact, promoted.

13 And the rate of the promotions he had would only be
14 possible if the person will have never served time in prison
15 or been charged for a crime of the brutality and dishonor of
16 this crime.

17 Q. And to your knowledge, did Defendant Hurtado pay any
18 reparations to any person for the Accamarca Massacre?

19 A. There is no evidence that he paid that reparation,
20 either.

21 Q. Was there any other kind of criminal prosecution of any
22 other individual, related to the events of August 14th,
23 during the years after the Accamarca Massacre, other than
24 those that you've mentioned?

25 A. No, it was only the military -- the military

1 investigation.

2 Q. And did any other person, to your knowledge, receive any

3 other punishment related to these events?

4 A. There was no reparation for these crimes.

5 Q. To your knowledge, have the victims of the massacre

6 received any form of compensation or other form of redress?

7 A. They have not had that opportunity, no.

8 Q. Did the amnesty laws which were passed by the Fujimori

9 government, are they still in place?

10 A. No. After Mr. Fujimori escaped the country, the new

11 government of Peru reversed one of the most controversial

12 decisions of Mr. Fujimori, which was to withdraw from the

13 control of the Inter-American Court of Human Rights, a

14 special human rights court that depends on the -- of the

15 organization of American states.

16 The new government, after Fujimori fell, decided to

17 accept again the jurisdiction of the Inter-American Court.

18 In one of the cases against Peru in the court, a case

19 referring to a massacre that took place in Lima, the court

20 found that the amnesty provisions of 1995 were against Peru's

21 international obligations and were null and void.

22 Q. Was that the Barrios Altos case?

23 A. That was the Barrios Altos case.

24 In 2001, the court made that decision. And after

25 the decision, Peru asked the court --

1 Q. When you say "the court," you mean the Inter-American --

2 A. The Inter-American Human Rights Court, yes, made such a

3 decision.

4 And after that decision, Peru asked the court

5 whether that decision, that is the nullity of the amnesty,

6 applied only to the massacre of Barrios Altos, or whether it

7 had general effects for all the crimes and massacres that

8 took place in Peru. And the court answered in

9 September, 2001, that its decision had general effects.

10 Q. After the amnesty law was annulled, via this -- the

11 Barrios Altos case and its incorporation into Peruvian law,

12 was any prosecution against Defendant Hurtado initiated?

13 A. The Supreme Court of Peru incorporated the decision of

14 the Inter-American Court shortly after the court decision; I

15 believe it was early in 2002. And by virtue of that

16 decision, all the old cases could be reactivated.

17 I understand that Mr. Hurtado actually left the

18 country in 2002, and even though there is an investigation

19 going on on the case of Accamarca, a trial is not possible,

20 because our judicial system does not recognize the

21 possibility of a trial in absentia.

22 Q. So, he can't be prosecuted in Peru.

23 A. He cannot be prosecuted in Peru for these crimes, if he

24 is not there.

25 Q. A couple of general questions.

1 As a sociologist, how was the Accamarca Massacre

2 perceived in Peru? Was it notorious?

3 A. The Accamarca Massacre happened at a very important,

4 very critical political moment. It happened after three

5 years of military activity in Ayacucho. And it happened at

6 the time when a new president, a young, apparently realistic

7 president promised to reign over excesses and atrocities.

8 Q. That's President Garcia?

9 A. That was President Garcia.

10 And immediately after he took over -- he took over

11 at the end of July -- there were a number of massacres, of

12 which Accamarca was the most horrible, which was, in my

13 opinion, a way of sending a very clear message from the

14 military to the civilian government, and to civilian

15 authorities in general, that they were the ones taking (sic)

16 the decisions and calling the shots, and that they would do

17 as they considered fit, and that they would defend the

18 impunity which they operated.

19 So, I do believe that Accamarca was the

20 announcement that a horrible process of impunity was starting

21 in Peru, and that, in fact, there wouldn't be no hope for

22 justice for victims (sic). Indeed, I believe that is a case,

23 not just because this is actually what happened later, the

24 Peruvian government was intimidated, but also because, again,

25 there are some elements within the Army that let you believe

1 that -- that that was the plan all along.

2 Mr. Hurtado also said, in the military

3 investigation, that he was actually instructed by his

4 superiors not to report the crimes, because the superiors

5 were afraid that that will create justice processes such as

6 the ones that were taking place in Argentina at the time.

7 Q. And would you say that the Accamarca Massacre was

8 notorious internationally?

9 A. Well, the Accamarca Massacre was reported in The

10 New York Times, in the Nuevo Herald here in Miami. It has

11 figured in reports by the -- the human rights reports of the

12 U.S. Department of State. It has figured in reports of the

13 Inter-American Commission of Human Rights, and also in a

14 report by the Special Rapporteur on Extrajudicial Executions

15 of the United Nations. It is a very important case, not just

16 for Peru, but around the world it's considered a textbook

17 case of atrocity and impunity.

18 Q. Would an award of compensatory and punitive damages in

19 this Court to these plaintiffs against Defendant Hurtado --

20 would it serve the larger purpose of transitional justice in

21 Peru?

22 A. I believe that these defendants -- this defendant,

23 Mr. Hurtado, represents not just his person, but also a

24 terrible strategy and the arrogance of the military

25 authorities that consider that they could do as they please

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1 with full impunity.
2 And I believe that these victims, these survivors,
3 beyond themselves, represent the population of Peru who --
4 the rural population of Peru who have been massacred during
5 the whole armed conflict, and who have been victimized not
6 just by these atrocities, but also by the despise, the lack
7 of compassion, the lack of interest of society.
8 So, I do believe that a favorable finding -- or the
9 favorable decision for this -- for these survivors would send
10 a very powerful effect. One, for people in positions of
11 power, it would deter them to treat the indigenous population
12 of Peru in the way they have treated it; and, in general, to
13 the urban Creole population of Peru, who has despised for
14 ages the indigenous population of Peru, who has mistreated
15 them. I think we heard one of the witnesses telling how she
16 was mistreated when she went to Lima just for the fact of not
17 speaking Spanish and looking indigenous.
18 So, I believe that a favorable finding for these
19 witnesses, for these victims, will be extremely powerful for
20 our nation in terms of upholding the rule of law and
21 affirming the sanctity of human rights.
22 Q. I'm going to show you, if I may, what's been previously
23 marked as Plaintiffs' Exhibit 2.
24 MS. SMITH: May I?
25 THE COURT: Yes.

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1 (Plaintiffs' Exhibit Number 2 was marked for
2 identification.)
3 BY MS. SMITH:
4 Q. Mr. Gonzalez, can you identify that document?
5 A. I'm sorry?
6 Q. Can you identify the document?
7 A. Yes. What I have in front of me is the Chapter 2.15 of
8 Volume VII of the final report of the Truth Commission,
9 called "Extrajudicial Executions in Accomarca."
10 Q. And --
11 A. And immediately after that, I see an English translation
12 of the content of this report.
13 Q. So, you have a Spanish -- the Spanish language version
14 and a certified translation.
15 And do you recognize that as the document that you
16 described earlier in your testimony?
17 A. Yes, I have examined this document, and I know that this
18 is the chapter that we produced.
19 MS. SMITH: We'd move Plaintiffs' Exhibit 2 into
20 evidence.
21 THE COURT: Two is admitted.
22 (Plaintiffs' Exhibit Number 2 was admitted into
23 evidence.)
24 MS. SMITH: That's all we have for this witness.
25 THE COURT: All right. Thank you very much.

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1 Mr. Gonzalez, thank you very much. You're excused.
2 THE WITNESS: Thank you.
3 (Witness excused.)
4 THE COURT: You can call your next witness.
5 MR. BROCHIN: Your Honor, we would call Javier
6 Canseco.
7 (JAVIER CANSECO, PLAINTIFFS' WITNESS, WAS SWORN.)
8 THE COURT REPORTER: Please sit down. Please stay
9 behind the microphone as best you can and state your full
10 name for the record, spelling your last name.
11 THE WITNESS: My name is Javier, and my last name
12 is Diez Canseco. That is D-I-E-Z, and separately
13 C-A-N-S-E-C-O.
14 THE COURT: Whenever you're ready.
15 DIRECT EXAMINATION
16 BY MS. FORTUNATI:
17 Q. Senator Canseco, are you a citizen of Peru?
18 A. I am a citizen of Peru, yes.
19 Q. And would you tell us where you are from in Peru.
20 A. I'm from Lima, was born in Lima.
21 Q. And would you tell us what university you attended and
22 your educational degree.
23 A. I studied humanities in the Catholic University in Lima,
24 between 1965 and 1966. I studied one year of law school in
25 National University of San Marcos. And then I studied social

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1 sciences between 1968 and 1971 in the Catholic University in
2 Lima.
3 Q. And is your degree in social sciences, then?
4 A. Yes, in the Catholic University.
5 Q. Thank you.
6 And, Senator, when did you first become involved in
7 the legislature?
8 A. I was elected six times to Congress during my life. The
9 first time was on 1978 with the constitutional assembly that
10 the military government called after a strong social position
11 that promoted the fact that the military left the control of
12 government and called for this assembly, and afterwards, for
13 national elections in 1980.
14 Q. And when did you first become a member of the Chamber of
15 Deputies?
16 A. In 1980, I ran as a deputy for Lima, and I was elected
17 as a deputy for Lima. And at that time, I assumed, also, the
18 function of being vice president of the Human Rights
19 Commission of the Chamber of Deputies.
20 Q. And would you explain to the Court, at that time, was
21 the Peruvian legislature bicameral in nature?
22 A. Yes. We had two chambers, the Chamber of Deputies and
23 the Senate, and this lasted until 1992 when Fujimori gave the
24 coup, and then the constitutional assembly that he called for
25 established a unicameral Congress.

1 Q. And, Senator, your term in 1980 for the Chambers of
 2 Deputies, how long was that?
 3 A. Five years, until 1985.
 4 Q. And in 1985, what did you do?
 5 A. I ran for Senate on a national district, and I was
 6 elected with the second national preferential vote in the
 7 nation.
 8 Q. And does that mean the second largest number of votes in
 9 the country?
 10 A. Yes, under the system of preferential votes.
 11 Q. And was that also a five-year term, Senator?
 12 A. Yes, that was also a five-year term, until 1990.
 13 Q. And what did you do in 1990?
 14 A. In 1990, I ran again for Senate. And I was elected
 15 again in Senate, until the April 5, 1992, when Fujimori gave
 16 the military coup and he dissolved Congress (sic). He took
 17 control over the judicial power. He dismissed the national
 18 prosecutor -- I think is the word in English -- what we call
 19 the "fiscal de la nacion."
 20 THE COURT: The attorney general.
 21 A. The attorney general.
 22 MS. FORTUNATI: Thank you, your Honor.
 23 THE WITNESS: Thank you.
 24 BY MS. FORTUNATI:
 25 Q. And after -- in 1992, he dissolved Congress, so then

1 what did you do? Did you return to Congress at any time?
 2 A. Well, I was part of the democratic opposition of
 3 Fujimori's government, and I didn't ran (sic) for the
 4 constitutional assembly that Fujimori called late 1992,
 5 because, as did other political parties, we considered it a
 6 fraudulent election, so I didn't run. I ran again in 1995,
 7 and became elected part of this unicameral Congress again,
 8 until the year 2000.
 9 Q. And what happened in the year 2000, Senator?
 10 A. In the year 2000, I didn't run. It was a very
 11 controversial election, since Fujimori ran for the third
 12 period, which was absolutely illegal. And I also had a
 13 broken hip at the time, so I didn't run.
 14 And after he fled from the country, and we had this
 15 transitional government led by Dr. Paniagua, Valentín
 16 Paniagua, and he called for new elections, I ran in the year
 17 2001 and was, again, elected member of Congress, until the
 18 year 2006.
 19 Q. Thank you, Senator.
 20 And while you were in the legislature, you
 21 mentioned that while you were in the Chamber of Deputies, you
 22 were a member of the Human Rights Commission. Did you
 23 continue in that role in the Senate?
 24 A. Yes. I was a member of the Human Rights Commission in
 25 the Senate, also, in 1990 -- in 1985. And in the Chamber of

1 Deputies, I was not only member, but I was vice president of
 2 the commission between 1980 and 1985.
 3 Then as soon as December, 1980, I was head of the
 4 first subcommission that dealt with human rights violations
 5 in which the police were accused of violations in Ayacucho, a
 6 commission that operated with three members since 1981 and
 7 dealt with around nine different cases.
 8 Q. And, Senator, in the course of your legislative career,
 9 about how many investigations into human rights were you
 10 involved in?
 11 A. It's difficult to say, but I'd say that no more than 30.
 12 Q. No more than 30?
 13 A. (Witness nodding head affirmatively.)
 14 Q. Or at least 30?
 15 A. Not least (sic) than 30, yeah.
 16 I also worked on investigations dealing with
 17 corruption, and human rights dealing with handicapped people
 18 other than human rights violations.
 19 Q. Thank you, Senator.
 20 And, Senator, you just -- you were present for
 21 Mr. Gonzalez's testimony, correct?
 22 A. Yes.
 23 Q. And I know he testified somewhat about the history of
 24 Peru and the Shining Path. But I'd like you to give us a
 25 brief explanation of the political situation in Peru from the

1 years 1980 to 1985.
 2 THE COURT: I don't really need it.
 3 MS. FORTUNATI: I'd just like him to give it as his
 4 perspective as a member of the legislature what was going on
 5 in the government at that time.
 6 A. I can be very brief, because I --
 7 THE COURT: That's okay. Try your case as you see
 8 fit.
 9 MS. FORTUNATI: If it's very brief, your Honor?
 10 THE COURT: He can be as long as he wants.
 11 A. I coincide with what Mr. Gonzalez has said about this
 12 issue. I'd only add one thing. That Peru had sort of a
 13 schizophrenic political regime, because the same day that we
 14 were electing the president of the republic democratically,
 15 Mr. Belaúnde, is the same day that Shining Path, as not only
 16 an insurgent, but as a terrorist movement, began its
 17 operations in Peru. And this led to, what Mr. Gonzalez had
 18 quite extensively explained, a double political system in the
 19 country, a democratic and constitutional regime in some
 20 areas, and a militarized political regime in other areas.
 21 And the rules, procedures, and authorities were different in
 22 these areas.
 23 Q. And, Senator, would you compare this to the military
 24 dictatorship in the area of human rights?
 25 A. Yes. I think it was worse than the military

1 dictatorship for some basic reasons. First, during the
2 military government, we didn't have Shining Path. So, there
3 were killings and social conflicts and people killed, but
4 they were not in the same sort of situation than after
5 Shining Path began operating.

6 On the second hand, what we can call forced
7 disappearances, extrajudicial executions, and generalization
8 of torture as an institution in security investigations was
9 really extended in the country and grew a lot. And on the
10 second hand, I think that we had two periods after 1980. One
11 between 1980 and the end of 1982, when the police forces
12 dealt with the counterinsurgent strategy, and the other one
13 that began, really, November 1, 1983, when the first military
14 political command under General Noel was established in
15 Huamanga, Ayacucho. And since then, we lived under several
16 of these commands in different areas of the country.

17 Q. Senator, were you a member of the Senate commission that
18 investigated the mass killings in Accomarca?

19 A. Yes, I was member. I proposed the commission in the
20 Senate session in which Senator Rojas Guaroto denounced the
21 case, and I orally proposed the institution of this
22 commission. And what the Senate did was to confer the
23 capabilities of an investigation committee to the ordinary
24 human rights committee of the Senate.

25 Q. And, Senator, would you tell us what those capabilities

1 are?

2 A. Well, basically, an investigative commission has
3 subpoena powers. It can obtain the document and bring
4 towards it whatever person it asks to interrogate. And it
5 has the capability of reconstructing several facts and
6 informing Congress about them, given an opinion of political
7 responsibilities of these facts, and if it does some findings
8 of criminal or legal procedures, then it is, because of our
9 procedure rules, obliged to inform the public attorney, or
10 public prosecutor, and also the ministers of state that are
11 in charge of the area under investigation.

12 Q. And, Senator, as part of this investigation, would you
13 tell us what information you looked at?

14 A. Well, we received testimonies of people that came from
15 Accomarca to Lima. We asked for official information, and
16 interrogated military officers and military chiefs. We went
17 to Ayacucho and we went to Accomarca and Llocclapampa to
18 make a visual visit of the area. We made, with a judge and a
19 public prosecutor, the first exhumation of the graves in -- I
20 think that was September 18 or 19th --

21 Q. Senator, just --

22 A. -- in 1985.

23 Q. Thank you.

24 A. And we also, after that, received the official report of
25 the Army's inspector, or inspectore -- I don't know how to

1 say it in English.

2 Q. That's correct.

3 A. That reported what had happened in Accomarca.

4 I must say that the commission was also in charge
5 of investigating a clandestine grave with seven bodies in
6 Pucayaccu, a different area of Ayacucho.

7 Q. And, Senator, you just stated that you went to Accomarca
8 to view the -- you did the exhumation and viewed the
9 gravesite. Would you tell us about the trip to Accomarca,
10 please.

11 A. Yes. We travelled to Accomarca in a helicopter. We
12 went with the president of the commission, Senator Valle
13 Riestra, with other members of the commission,
14 Senator Del Prado and Senator Delgado Barreto, and with
15 Deputy Olivera.

16 We also went with the judge and the public
17 prosecutor and with doctors from the legal/medical institute
18 of the state, so as not to interfere with the judicial
19 procedures dealing with the exhumation.

20 Q. And, Senator, when you arrived in Accomarca, what did
21 you find there?

22 A. We landed at first in Accomarca, and then we flew to
23 Llocclapampa. In Accomarca, I made the very, very brief
24 visit to the cemetery, and we found a new body, a new

25 person --

1 Q. I'm sorry, Senator, first would you explain why you went
2 to the cemetery?

3 A. Well, we went to the cemetery, because -- for two
4 reasons. One, there was nobody in town. I mean, all the
5 houses were abandoned, even though in a couple of houses,
6 still you had some smoke coming from the kitchen. And there
7 was a military patrol in the city, in the place, in the town.
8 So, it was evident that the people had been -- had fled or
9 had been sent away.

10 And we went to the cemetery because some days
11 before, the 13th of September, Deputy Olivera had been in the
12 area with the military and had found the area again under
13 control of a military patrol, but had found five bodies which
14 still didn't have the rigor mortis of --

15 Q. We use the same word in English.

16 A. The body had a long time killed, no? In the cemetery,
17 five new persons that were afterwards identified.

18 Q. And, Senator, just to be clear for the record, that was
19 on September 13, 1985?

20 A. Yes.

21 Q. That Olivera made this?

22 A. Yes, that was on September 13th that he made this
23 finding. And that means that there were new killings after
24 August 14th.

25 Q. And then you returned there on September 18, 1985,

1 correct, Senator?
 2 A. Yes.
 3 Q. I'm just checking.
 4 A. We returned there.
 5 Q. And you arrived at the cemetery, and you had just
 6 testified that you had found a new body when I interrupted
 7 you.
 8 A. Yes. And then we got, again, in the helicopter, because
 9 they hurried us in -- telling us that we didn't have much
 10 time if we wanted to fly back to Ayacucho. And we went to
 11 Llocclapampa. We landed there had.
 12 And there we found burned houses and we identified
 13 the graves. And the judge and the public prosecutor began
 14 the operation of beginning the first exhumation with the
 15 doctors that went from this legal/medical institute.
 16 Q. And, Senator, were you there when the grave was opened?
 17 A. Yes.
 18 Q. And, Senator, what did you find? Would you describe the
 19 contents, please.
 20 A. We find a horrible spectacle, parts of human beings,
 21 several parts belong to children. They were all mixed up
 22 with mud. There was -- it smelled terrible. It was very
 23 impressive, really. It wasn't a burial. It was like a
 24 mixture of mud and parts of human beings burned up, were jus
 25 tossed somewhere in a very rapid forum.

1 And when we began working on this, some people came
 2 from the hills and got near us, and we got contact with new
 3 persons that talked to us and explained what had happened.
 4 Q. And, Senator, would you tell us how you felt when you
 5 opened the grave?
 6 A. Well, I was astonished. There were really two graves.
 7 And the doctor said that he couldn't identify how many people
 8 that were there and what parts of bodies were of the same
 9 body. It was really a horrifying spectacle. And I
 10 understood quite clearly why the people were so frightened of
 11 the situation and it was so difficult for them to be present
 12 in the area when the military forces were there.
 13 Q. And, Senator, at that time, did you and members of the
 14 commission look for signs of Shining Path?
 15 A. Yes, we looked for signs of Shining Path. We didn't
 16 find them in the area of Llocclapampa.
 17 Q. And during that trip, did you also visit the military
 18 headquarters in Huamanga?
 19 A. Yes. We were in the military base called Los Cabitos,
 20 and interviewed the head of the political military command,
 21 which was a new head, because something I have not explained
 22 is that September 17th, at night, the chief of command of the
 23 armed forces made a public statement announcing the country
 24 that they recognized that the killing had occurred under --
 25 or because of a military action in Accomarca, and that they

1 removed the general that was head of Huamanga, General Mori,
 2 also, and removed also his chief, the head of the second
 3 military region of Peru, General Sinesio Jarama. So, we had
 4 a new military chief, who was not a general, but a colonel,
 5 Colonel Brun, B-R-U-N, in the interview.
 6 We interviewed him, we interviewed the inspector of
 7 the area, the military inspector of the area, and we
 8 interviewed Lieutenant Rivera Rondon, R-O-N-D-O-N, and we
 9 also interviewed Sublieutenant Telmo Hurtado Hurtado.
 10 Q. And, Senator, I want to get to those interviews in one
 11 moment, but first I want to clarify the dates. What dates
 12 were you in Huamanga?
 13 A. In Huamanga, we were on the 18th and 19th. We went --
 14 the 18th, we had the interview with the lieutenants. And on
 15 the 19th, we went to Accomarca and Llocclapampa.
 16 Q. And so, the day before you went to Huamanga was the day
 17 they removed to the heads -- or the political -- head
 18 political command (sic)?
 19 A. The night we were before.
 20 Q. And, Senator --
 21 A. All the period before -- if you excuse me, your Honor --
 22 all the period before that night of the 17th of September,
 23 the armed forces denied that this mass killing had occurred.
 24 They systematically denied it. And it was a very special
 25 day, because they admitted this after Senator Rojas Guaroto,

1 the senator that had made the case in the Senate, went to
 2 Ayacucho and came back to Lima with pieces of bones. And in
 3 a press conference, he put the bones over the table, and he
 4 said, "They say this doesn't exist. We know where the bodies
 5 are."
 6 So, it was less than 24 hours after that that the
 7 military command admitted that the killing had been -- had
 8 occurred.
 9 Q. And, Senator, when you went to interview the two
 10 lieutenants, why did you interview them? I'm sorry. It was
 11 one sublieutenant and one lieutenant. Why did you interview
 12 them?
 13 A. We interviewed them for two reasons. One, because in
 14 this comunicado, in this public manifest of the chief of
 15 command of the armed forces, Sublieutenant Telmo Hurtado
 16 Hurtado was set as responsible of the mass killing of
 17 Accomarca by the armed forces. And because when we went to
 18 the Army base of Los Cabitos, they were presented to us by
 19 the military as those heads of the Lince patrols that
 20 operated specifically in the area that we should interview.
 21 Q. And, Senator, when you interviewed the
 22 Defendant Hurtado, who was with you?
 23 A. Senator Valle Riestra, the president of the commission;
 24 Senator Del Prado; Senator Delgado Barreto; myself; and also
 25 Deputy Olivera.

1 Q. And, Senator, would you describe the room that you
2 interviewed the defendant in?

3 A. It was a relatively large room in which there were
4 several high-ranking officials, among them --

5 Q. Were these military officials?

6 A. Sorry?

7 Q. I'm sorry, Senator. Were these military officials?

8 A. Yes, military officials. The inspector of the zone, the
9 military political chiefs, Colonel Brun, other officials who
10 didn't give their names, and the lieutenants -- the
11 lieutenant and the sublieutenant were brought in the room
12 when they were interrogated. They were not permanently in
13 the room.

14 Q. And, Senator --

15 THE COURT: Can I interrupt you for a second?

16 MS. FORTUNATI: Of course.

17 THE COURT: I don't know how much longer you have
18 with him, and I'm in no hurry, either today or tomorrow, but
19 if you're going to have much longer with him, we probably
20 need to take a break right now. So, you let me know how you
21 want to proceed.

22 MS. FORTUNATI: We probably have about 25 more
23 minutes, so we could take a break.

24 THE COURT: Okay.

25 MS. FORTUNATI: That will be fine, your Honor.

1 THE COURT: Let's do that.

2 MS. FORTUNATI: Thank you.

3 THE COURT: Do you have anything else after the
4 Senator or --

5 MS. FORTUNATI: I'm sorry, for the Senator?

6 THE COURT: No. Do you have any other witnesses or
7 testimony after him?

8 MS. FORTUNATI: No, we have no witnesses after the
9 Senator.

10 THE COURT: Mr. Brochin, that's it?

11 MR. BROCHIN: Your Honor, we will rest after the
12 senator. He's the last witness.

13 THE COURT: That's fine. We'll take a ten-minute
14 break. Okay?

15 MS. FORTUNATI: Thank you.

16 (Recess taken at 5:08 p.m. until 5:37 p.m.)

17 THE COURT: Please be seated.

18 BY MS. FORTUNATI:

19 Q. Senator, we were discussing before the break the
20 beginning of your interview with the defendant, Hurtado, and
21 you had described the room for us and the people who were
22 present.

23 First, I'd like you to tell us what he was like
24 when you entered the room. What was your impression of him?
25 A. He was dressed in a military uniform. He was a young

1 man. He spoke with decision. He showed character. And even
2 though that, he was nervous and it was a tense interview. It
3 was the last interview that day. We first interviewed Rivera
4 Rondon, then we spoke with the military inspector of that
5 military area, and finally, we spoke with him.

6 He was -- this interview was tense also, because
7 the president of the Senate commission was called by phone
8 twice, once by the president of the Senate and the second
9 time by the president of the defense commission of the
10 Senate, ordering him to leave the military base and to stop
11 the interrogation. So, we had a couple of mini-crisis in the
12 process. It was really complex. But, finally, it continued
13 and we got to the interview with Telmo Hurtado.

14 The president was also tense because of this
15 pressure, and at the moment Hurtado said that he didn't want
16 to answer more questions of the present.

17 So, in the Senate investigative commission, we
18 changed roles, and Senator Delgado Barreto assumed the
19 conduction of the meeting and I began questioning Hurtado.
20 So, I had a direct period of questions for him in which he
21 expressed his view of what he had done and of the military
22 operation that he had conducted.

23 Q. Senator, what did he say when you questioned him about
24 the killings in Accomarca?

25 A. He assumed responsibility. He said that it was a

1 military operation in a so-called red zone that the previous
2 expert has defined, and that he took an informant linked to
3 Shining Path with his patrol, and this informant permitted
4 him -- him to identify that the people in the area were
5 linked to Shining Path, and that he was convinced that they
6 were members or had links with the Shining Path, so he had to
7 proceed to go on with his orders that were to capture and
8 destroy the enemy. And these were the enemy.

9 So, I asked him, "What about the children,
10 the women, the old people?"

11 And he said, "Do you know that these people,
12 Shining Path, indoctrinate children since they are
13 two, three, four years old, and that they comply
14 with missions for Shining Path? Do you know that
15 the women are the clue -- cruelest among the
16 Shining Path members?"

17 He said, "This is a war, a war we're fighting
18 for you, for your political regime. But you don't
19 understand it. You see it in a different way.

20 And I did what my rule, my military rule permitted
21 me to do, that is, to take a decision as a chief
22 of patrol to eliminate the enemy, and that's what
23 I did."

24 I even asked him, "Did you order your men to
25 do it or did you participate?"

1 And he said, "I participated."
 2 And I asked him, "Did you use grenades?"
 3 And he said, "To destroy, yes."
 4 So, he was asked several times, because other
 5 members of the commission also asked him on this issue. And
 6 finally, we taped all this and then we transcribed it, and
 7 it's in part in the report we made for Congress.
 8 Q. Senator, what did you think when he admitted this to
 9 you?
 10 A. It was really shocking. It was -- I mean he was a young
 11 man, but he was so clearly far away, distant from the people,
 12 from -- it's like if they were not human beings.
 13 He said, "These persons are sort of
 14 ideologically possessed. They are absolutely full
 15 of ideology, and they cannot be changed. And if I
 16 interrogate them, and I find that there's nothing
 17 more useful in them, then I proceed. If there's
 18 something useful, then I take them to the military
 19 base or give them to the intelligence or to the
 20 police service. But if they're not useful
 21 anymore, then I eliminate them."
 22 Q. Senator, did he tell you whether or not the women and
 23 children and old people that he killed were armed?
 24 A. No, he never said they were armed. And in his report
 25 and in his findings, he doesn't present any arm captured in

1 the area (sic). He doesn't even argue that there was a
 2 shooting in the area, because there wasn't. He simply says
 3 that he felt that they were -- after interrogating them, they
 4 were linked or members of Shining Path, and they -- he
 5 proceeded to eliminate them.
 6 As a matter of fact, the guy he took -- the man he
 7 took as the informant was also killed. And we asked him how
 8 He said that he tried to run away, so they shot him.
 9 Q. Senator, at any time during your interview with him, did
 10 he express remorse for the killing of children and women and
 11 old people?
 12 A. I didn't feel that for a second, really. No remorse.
 13 Absolute conviction that he had proceeded correctly. He even
 14 used that word. "I proceeded correctly. It was in my
 15 attribute to do what I did."
 16 Q. Senator, did Defendant Hurtado at any time express the
 17 belief that he had done anything incorrect in this action?
 18 A. Yes. He said that his error was not to put in his
 19 report what had occurred. And that deals with the fact that
 20 the reports of some of the patrols that operated in this
 21 action established that in their way towards their objective
 22 they see people. And when they try to stop those people, and
 23 they don't stop, or they run, then they shoot them. And they
 24 give them the title of "terrorist delinquents," and that
 25 solves the issue.

1 According to those reports, on this operation, ten
 2 people were killed on the way to Accomarca and Llocclapampa
 3 on the way, not in Llocclapampa. And that was a very
 4 important issue to understand that maybe if he would have
 5 said, We had a confrontation and we killed so many people, he
 6 wouldn't have the problem that he had.
 7 Q. Would you explain that problem to us?
 8 A. Well, the problem that he had was that he was finally
 9 accused of killing unarmed civilians, no? And if he would
 10 have said something similar than what the other patrols said,
 11 no? He would have received, as they received, four days of
 12 military arrest, or six days for -- of military arrest,
 13 because of not -- of abusing authority with people that fled.
 14 That's the sanctions they received.
 15 Q. Senator, did you recognize the defendant in this
 16 courtroom today?
 17 A. Yes.
 18 Q. Is the man you saw in this courtroom sitting over here
 19 the same man that you interviewed?
 20 A. Yes, that is Telmo Hurtado Hurtado, as I remember him.
 21 Q. Senator, when you were in the Senate, did you at the end
 22 of the investigation prepare a report about this
 23 investigation?
 24 A. Yes. We had a report, a majority and a minority report.
 25 The report was voted after four days debate in Congress, and

1 it was approved with a specific resolution stating that the
 2 crimes had occurred, and that these sort of crimes should be
 3 considered crimes to be dealt with under common law and not
 4 under military procedures and judges, and that Congress
 5 should pass a law to establish clearly that extrajudicial
 6 executions, disappearances, and torture were not crimes to be
 7 dealt under military judges and military codes.
 8 MS. FORTUNATI: Your Honor, at this time, I'd like
 9 to approach the witness with the exhibit we've premarked as
 10 Plaintiffs' Exhibit 3.
 11 (Plaintiffs' Exhibit Number 3 was marked for
 12 identification.)
 13 THE COURT: Go ahead.
 14 BY MS. FORTUNATI:
 15 Q. Senator, do you recognize that document?
 16 A. Yes. This is the report that we presented as an
 17 investigative commission to the Senate and that was voted at
 18 the end of 1985 in the Senate.
 19 Q. And, Senator, did you --
 20 A. It's the Spanish version, first. And it has the
 21 majority and minority report, and I find here that there's a
 22 translation.
 23 Q. There's a certified translation attached?
 24 A. Yes.
 25 Q. And, Senator, did you take part in writing that report?

1 A. Yes, of course. There's several specific notes that I
2 signed in the report, specifically dealing with sayings of
3 Mr. Telmo Hurtado during the interview in the military base.
4 I quote part of the transcriptions that were signed by all
5 the members of the commission when the transcription occurred
6 as being authentic.

7 MS. FORTUNATI: Your Honor, at this time, we'd like
8 to move to admit Plaintiffs' Exhibit Number 3 into evidence.

9 THE COURT: Three is admitted.

10 (Plaintiffs' Exhibit Number 3 was admitted into
11 evidence.)

12 MS. FORTUNATI: Judge, would you like me to leave
13 it there?

14 THE COURT: You can just leave it there. Thank
15 you.

16 MS. FORTUNATI: Your Honor, at this time, we have
17 no further questions for this witness.

18 THE COURT: All right. Thank you very much.
19 Senator, thank you very much. You're excused.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MR. BROCHIN: Your Honor, the plaintiffs rest.

23 THE COURT: Do you want to present a closing
24 argument or do you want to do it on paper?

25 MR. BROCHIN: Your Honor, I was gonna suggest

1 try to convince me of what that theory is. And if I were
2 you, I would have a fallback position. And if you don't
3 think, you know, our main theory is correct, then you should
4 adopt this one. That's really all I need from you.

5 And then, of course, you can suggest to me, under
6 those different scenarios, what damages you believe I should
7 award and how you come to them.

8 MR. BROCHIN: That is -- that's exactly what we
9 will do. And in that, we would -- to the extent there would
10 be a closing, if you will, we will incorporate that into
11 those papers, as well.

12 THE COURT: Sure. That's perfectly fine. That's
13 perfectly fine.

14 Let me just give you -- it's almost even hard to
15 discuss, because you're talking about the value of human
16 life, and you're trying to put some sort of a monetary value
17 on it, because, in the end, that's really all that courts can
18 do. But please keep in mind that whatever law you think I
19 should apply in terms of damages is going to have to take
20 into account what sort of evidence you've presented and not
21 presented here.

22 For example, there's been no evidence or testimony
23 about how to value the lives of those who were killed under
24 some traditional tort theories. Right? For example, what
25 their earning capacity would have been, you know, how long

1 perhaps on paper, or, if you like, we could return at some
2 time later to present that, along with any other issues of
3 law that may be outstanding.

4 THE COURT: No, you don't need to. I mean the part
5 that I need you and the others to address for me is what
6 substantive law I apply. And, you know, it makes a
7 difference, because -- not just in terms of the amount, but
8 the types of damages that can be awarded. For example, if
9 you want to try to borrow or use Florida's law on wrongful
10 deaths, there are certain damages that can't be recovered.
11 Right?

12 MR. BROCHIN: Yes.

13 THE COURT: Some things can be recovered by the
14 estate; the estate can't recover some other types of damages,
15 because it's a codified statute.

16 Federal common law is different, if you borrow, for
17 example, from admiralty principles or from some other body of
18 federal common law. And I have no idea what Peruvian law
19 provides for or doesn't provide for. But you're going to
20 have to tell me, at least in summary form, what Peruvian law
21 on wrongful death is, so that I can figure out whether it
22 should have some play, or no play at all, in the damages that
23 are awarded. So, that's what I need you to find.

24 And, look, I understand that the cases are all
25 split on this issue. But you need to pick a theory, and then

1 they would have lived, how to reduce that to present value,
2 all of that. So, just understand that whatever theory you
3 think I should go with, you're going to have to put that into
4 perspective, in light of the evidence that I've heard.

5 Because if you happen to pick a theory for which
6 there's no evidence to support, then, you know, my ruling
7 will probably not be one that you're going to be
8 anticipating. So, think about these issues, and think about
9 them well, before you file -- I mean I know you will --
10 before you file your post-trial memorandum.

11 MR. BROCHIN: We've thought about them quite a bit
12 already in terms of, first of all, the difficulty of
13 assessing numbers to the values of human life. And we
14 recognize that the traditional issues, as you say, of wage
15 earning capacity, future earnings, and the like have not been
16 presented and could not have been presented.

17 THE COURT: I understand that, too.

18 MR. BROCHIN: And we've struggled with that, as
19 well. But I am perfectly clear on what you are asking us.
20 And I am perfectly clear on the issues that we need to
21 present, because we've struggled with them, as well.

22 THE COURT: Okay.

23 How long would you like to file that memorandum?

24 MR. BROCHIN: Ten days?

25 THE COURT: Sure. You want two weeks from today?

1 MR. BROCHIN: Yeah. That's gonna --
 2 THE COURT: That's fine.
 3 MR. BROCHIN: Let's see, today being --
 4 THE COURT: Today is the 11th.
 5 MR. BROCHIN: How about if I ask for two weeks from
 6 tomorrow?
 7 THE COURT: Perfect. That's fine.
 8 So, tomorrow is the 12th. So, on the 26th, your
 9 memorandum is due.
 10 MR. BROCHIN: Good.
 11 THE COURT: Okay?
 12 MR. BROCHIN: And, your Honor, if I just may make a
 13 point. I know I want to speak on behalf of the plaintiffs
 14 here, because they've many times asked me to do so, to thank
 15 you for the time that you gave them today to listen to their
 16 testimony, because --
 17 THE COURT: There's no need to thank me. I mean
 18 that's what we're here for.
 19 MR. BROCHIN: I know that. But they really wanted
 20 me to thank you and say how much they appreciated just being
 21 heard.
 22 THE COURT: All right. Thank you very much,
 23 Mr. Brochin.
 24 All right. We're in recess, and I'll wait to get
 25 your memorandum.

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1 MR. BROCHIN: Thank you, your Honor.
 2 THE COURT: Make sure that I've got all of the
 3 exhibits. I know I have the photograph from Accomarca here,
 4 and I've got the map, the one that was hand drawn, and I've
 5 got the other one. But if there are any others, just leave
 6 them right there with Fran and I'll pick them up.
 7 MR. BROCHIN: Very good.
 8 THE COURT: Okay?
 9 MR. BROCHIN: Will do.
 10 THE COURT: The other thing you need to do is make
 11 sure that -- because I may mark some of these as I go through
 12 my analysis, so make sure that you file copies of these with
 13 the clerk. And if some of them are pretty thick, you're
 14 probably going to have to do it through scanning or
 15 otherwise. So, maybe check with the clerk and see what way
 16 is electronically the easiest to do, especially when it comes
 17 to the reports and things like that. Okay? So just file
 18 them and just indicate that these are copies of the exhibits
 19 for the plaintiffs that were admitted at the trial on
 20 damages.
 21 All right? Thank you very much.
 22 MS. SMITH: Thank you, your Honor.
 23 MR. BROCHIN: Thank you, Judge.
 24 MS. FORTUNATI: Thank you, your Honor.
 25 (Proceedings concluded at 5:57 p.m.)

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 19 C E R T I F I C A T E
 20 I certify that the foregoing is a correct transcript from
 21 the record of proceedings in the above-entitled matter.
 22
 23
 24 Francine C. Salopek, RMR, CRR Date
 Official Court Reporter
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