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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

Florida

JUAN ROMAGOZA ARCE, JANE) Docket No.
DOE, in her personal capacity) 99-8364-CIV-HURLEY
as Personal Representative of)
the ESTATE OF BABY DOE,)
Plaintiffs,)
vs.) West Palm Beach,
July 11, 2002
JOSE GUILLERMO GARCIA, an)
individual, CARLOS EUGENIO VIDES)
CASANOVA, an individual, and) VOLUME 10
DOES 1 through 50, inclusive,)
Defendants.)
_____ x

COURT REPORTER'S TRANSCRIPT OF
TESTIMONY AND PROCEEDINGS HAD BEFORE
JUDGE DANIEL T. K. HURLEY

APPEARANCES:

For the Plaintiffs: JAMES GREEN, ESQ.
PETER STERN, ESQ.
BETH VANSCHAACK, ESQ.
For Defendant: KURT KLAUS, ESQ.
Court Reporter: Pauline A. Stipes, C.S.R., C.M.

PAULINE A. STIPES

1 THE COURT: Please be seated, ladies and
2 gentlemen. I am going to pass out what is marked as a
3 fourth draft which incorporates some of our discussion
4 last night. It has a couple other additions. I thought
5 it would be helpful -- let me make sure that this is in
6 here -- it is not. Let me double check, I saved
something
7 from a disk, and I must have done something wrong
because
8 it is not on the copies I have in front of me.

9 I wanted to make sure the parties -- that the
10 jury is aware, and I think that this is correct in terms
11 of our discussions, that the concept of a subordinate,
12 wherever that is used in the jury instruction, is a
13 subordinate who exists in the relationship that we
defined
14 in element two. So that you remember we talked about
15 elements one and two are specific, three and four are
16 general, but clearly the subordinates referred to in
three
17 and four are people who are subordinate to the
Defendants
18 in this case.

19 That is the whole theory of command
20 responsibility, that the commander must have effective
21 responsibility, not only over the people who actually
22 committed the torture with respect to the Plaintiffs,
but

is
23 the other troops that the Plaintiffs are contending were
24 committing other acts of torture and I am not sure that
25 clear. I made that change, and I have incorporated the

1 others.

could

2 I thought it would be helpful if The Court

in

3 rule on the motion at limine at the outset. I think it

4 would be helpful so the defense can set their own pace

5 terms of their discussion.

want

6 Is there any further argument? Does anyone

7 to be heard further on it?

8 MR. KLAUS: No.

9 MS. VansCHAACK: No.

10 THE COURT: Okay. Let me take a moment, if I
11 can, to review this.

the

12 The Plaintiffs in this case have filed a motion
13 in limine and the thrust of the motion is to preclude

upon

14 jury from seeing or knowing that both General Garcia and
15 General Vides Casanova were awarded the United States
16 legion of merit by the President of the United States

17 their completion of service in El Salvador. The motion
18 filed by the Plaintiffs describes these commendations as
19 classic hearsay and as character evidence.

20 Now, last night in our discussion I understood
21 Ms. VanSchaack retreated a bit under the hearsay and
22 perhaps these do fall under 803.8. They are public

not

23 documents, and bear the seal of the state, but they are
24 character evidence, and character evidence is normally
25 admissible in a civil trial.

1 Now, in the courts of the United States, we
have
2 tried carefully to safeguard concepts of due process.
For
3 example, the United States Supreme Court in Davis versus
4 Alaska, when viewing an impediment to cross examination,
5 and the ability of an accused to confront the witness
6 against him, clearly opted for that right over the
preclude
7 countervailing right that was being raised as to
8 the defendant to cross examine a key prosecution witness
9 regarding his adjudication for juvenile delinquency, and
10 we did that because we believed that full cross
11 examination was critical, it is a component of due
12 process.

13 Now, it seems to me that -- by the way, in
14 support of the motion, the Plaintiffs have pointed out
and
15 correctly to a scenario that seems somewhat analogous,
16 that is, in situations, for instance, when police
have
17 officers, and sometimes high ranking police officers
18 been accused of police brutality, it is generally held
19 that their commendations and awards are usually not
20 admissible because they are not relevant. When you
think
21 about it, the issue is, did this officer do a particular

the

22 act at a particular time, and it is very specific. So

23 general rule is those commendations are not appropriate.

of

24 Now, we sit in a trial in which eight citizens

-

25 the United States sit as a jury. These are people who -

1 and I suspect the sentiment has occurred to all of us as
2 we have listened to the events of El Salvador -- but our
3 jury are people who have lived in the United States, who
4 have had the blessings, who have lived in a relatively
5 ordered society, and who are learning about events that
6 are totally alien to their own common understanding of
7 way the world works. And clearly we have listened to
8 extraordinary accounts of torture, and the infliction of
9 pain upon people.

the

10 The Defendants in this case are two of the
11 highest ranking officers in sovereign nation, but by
12 virtue of an act of the Congress of the United States,
13 this type of trial is allowed to take place. The
14 that is about to be mounted is a defense that asks the
15 jury to look at what was taking place in El Salvador.

defense

16 The defense would contend that looking back 20
17 years ago the world was gripped in cold war. Cuba was
18 regarded as a Communist satellite state, indeed a state
19 which missiles had been introduced at one point that
20 a direct threat to the safety of the United States.

in

posed

That

21 Nicaragua had fallen, and there was the view that other
22 countries in Latin America were susceptible to falling

23 into the Communist ideology. And because of their
24 proximity to the United States it was not simply an
25 ideological division, but it would have been a
development

1 that would have posed a real clear danger to the safety
2 and security of the United States.

3 The defense is contending there was in fact a
4 civil war in that country, the result of which was
5 seriously in doubt that the rebel forces appeared to be
6 gaining momentum at certain times, and there was a
7 concerted effort, number one, to institute governmental
8 change, to combat a growing insurgency, Communist
9 insurgency, and to handle all of these things
10 simultaneously.

11 And that this effort, this transition period
was
12 a transition that was marked by enormous suffering and
so
13 on. And that the people who were in charge of the
14 government following the October, 1979 coup were
15 shouldered with this responsibility of attempting to
16 effectuate the change, win a war, and to deal with all
of
17 the other cultural institutional problems that had been
18 discussed in this case.

19 The Tanda System, trying to determine who was
20 doing what, and recognizing there were in fact death
21 squads, the evidence of that is irrefutable, but trying
on
22 the one hand to determine who is responsible and so on.
23 That is the defense.

24 Now, the question becomes, are the Defendants
25 entitled in attempting to put that defense forward to

the

1 offer documentary evidence that the President of the
2 United States through his Secretaries of Defense took
3 view that these Defendants were engaged in institutional
4 reform in the Salvadoran Army, that they were engaged in
5 implementing policies regarding civilian and military
6 relations, that they were engaged in efforts to improve
7 the professionalism and ethical standards of the El
8 Salvadoran military and so on.

9 It seems to me that these documents are not
10 character evidence at all. These are not documents that
11 say General Garcia is a wonderful humanitarian or a
12 charitable person or so on. These are documents by the
13 President of the United States suggesting that General
14 Garcia in the fulfillment of his office and in handling
15 the responsibilities that were upon him was discharging
16 those responsibilities in a way that was consistent with
17 the views of the United States regarding the ethical and
18 responsible obligations of a Defense Minister or of an
19 Army general and commander.

under

20 Now, it seems to me, first, these documents are
21 admissible in a sense that they are public documents
22 seal. There is no question that they had in fact been
23 offered. I notice that the Plaintiffs suggest that they
24 were purportedly offered, but no one is seriously

25 suggesting that these are not trustworthy or truthful.

1 I think the issue is, are the Defendants in the
2 effort to put forth their defense, in the effort to try
to
3 explain the enormous difficulties that they say they
4 faced, trying to institute change within the military
5 structure, trying to combat military insurgency, are
they
6 entitled to introduce evidence that the Government of
the
7 United States regarded the discharge of their overall
8 responsibilities regarding the conduct of this war in a
9 satisfactory manner?

10 It is my view that these documents are
11 admissible, that to not admit them would be
inappropriate,
12 because it would strip to some degree the Defendants'
13 effort to explain to the jury what they were facing and
14 what they were attempting to do.

15 Now, whether that is a credible defense in
light
16 of all that we heard remains for the jury to decide, but
17 it seems to me the Defendants have an absolute right to
18 put forth this defense and these documents, in my
19 judgment, that are relevant to that defense. They are
20 relevant to an issue that is in dispute in this case,
and
21 that is, trying to make this judgment call about the
22 conflicting responsibilities, the difficulties of the

23 time, and so on.

24 I think one of the problems in a case like
this,

25 and we've talked about it, and alluded to it yesterday
in

1 our discussion about the statute of limitations, is the
2 difficulty of looking back in this instance of almost 20
3 years, and attempting to fully understand the context in
4 which these things occurred.

5 I think that is particularly critical when we
are
6 dealing with a lawsuit that is predicated in a sense on
a
7 vicarious liability theory. The Plaintiffs in this case
8 is attempting to hold two top military commanders
9 responsible, not for what they did themselves, but for
10 acts committed by their subordinates because of there
11 inaction, and so the defense has come forth attempting
to
12 explains the difficulties and so on.

13 And I take that in terms of the defense that
was
14 previously mounted in the Ford case and which has been
15 alluded to in some of the earlier arguments.

16 So, for all of these reasons, I am going to
deny
17 the Defendants' motion -- excuse me -- the Plaintiffs'
18 motion in limine and I will permit the Defendants to
19 introduce the documents in question.

20 Mr. Marshal, would you bring in the jury?

21 MR. GREEN: Your Honor, may I have a standing
22 objection?

23 THE COURT: You have an objection, yes.

24 MR. GREEN: A standing objection?

25 THE COURT: Yes.

1 (Thereupon, the jury returned to the
courtroom.)

2 THE COURT: Ladies and gentlemen, please be
3 seated.

4 Ladies and gentlemen, if for any reason we need
5 to stop, let me know. There is no question we can do
6 that. I understand one of the jurors is not feeling
well,
7 we can stop if we need to.

8 Now, when we stopped yesterday, as I mentioned,
9 we had reached a very significant point in the case in
10 that the Plaintiffs rested or have rested what is called
11 their case in chief.

12 Let me turn now to Mr. Klaus who will begin
13 presentation of the Defendants' case.

14 MR. KLAUS: Your Honor, I have a brief opening
15 statement.

16 THE COURT: Yes, sir. Feel free to move the
17 lectern into the well of the courtroom. I am sorry, I
18 didn't know you were going to do that.

19 MR. KLAUS: An opening statement is designed to
20 tell you what we feel the evidence will present.

21 THE COURT: Mr. Klaus, would you pull that
22 microphone over? I think it will help our interpreters.
23 Thank you.

of

24 MR. KLAUS: You heard a lot about the history

25 El Salvador so far, and this case in order to know the

1 roots and nature of the conflict that all these people
2 were involved in, you need to know the history of El
3 Salvador.

4 El Salvador is a small country, about the size
of
5 Massachusetts. At this time in '79 to '83, it had a
6 population in the beginning of 34 and a half million
7 people. During the conflict of '79 to '90 about one out
8 of every five people left El Salvador. Another 75,000
9 people were killed. The roots of the conflict go way
back
10 to when El Salvador was a colony, it was a colony of
Spain
11 like most of Latin America.

12 It was ruled by a Spanish governor. There were
13 large landowners who came to hold most of the property
in
14 the country. Eventually, the country gained
independence
15 in 1821. At that time all of South America, Mexico,
Costa
16 Rica, Guatemala, Honduras, all except Belize, which was
17 British Honduras at the time, Panama.

18 What happened is, at that time Mexico tried to
19 annex the rest of Central America and make it part of
the
20 Mexican empire. Conflicts broke out, there were wars.
El
21 Salvador became an independent nation. There were

America 22 conflicts in El Salvador and all the other Central
23 countries between liberals and conservatives.
Democratic 24 Liberals were people who wanted a more
25 society. Conservatives were supported by the large

1 landowners, plantation owners, by the people who
2 controlled the land, and the church. The church
supported
3 all of the conservative people, the leaders of the
4 country.

5 Toward the end of 1800's, El Salvador become
6 almost a one crop economy, became a coffee country.
7 During that time large landowners consolidated their
8 holdings, they pushed off the indigenous populations,
the
9 Indians still living there who worked for the
landowners,
10 but now had their own plots of land, allowed to live
11 independent lives as long as they worked and did
whatever
12 the large landowners wanted them to do. There was a
13 consolidation of the landowners, fewer families owned
more
14 land.

15 Toward -- and that process went on into the
20th
16 century. Toward the -- in the beginning of the 20th
17 century, toward 1930, in El Salvador there was another
18 revolt, liberals against conservatives, and Communists
19 involved, too. What the large landowners did, they used
20 the Army to crush the revolt. They killed upwards of
21 30,000 people, most of them indigenous population, the
22 Indians.

wiped 23 Before -- they essentially exterminated and
that 24 out the indigenous population in El Salvador. After
25 there were no native Salvadorans. The church supported

1 the conservative element, the oligarchy, the small group
2 of people that controlled all the land and means of
3 production.

4 It was a bumpy time from then on. From then on
5 there were popular movements, labor movements, efforts
6 consolidate peasants into groups that looked out after
7 their own interests, and a succession of military
8 dictators supported by the rich landowners. And it was
9 comfortable or mutually beneficial relationship.

10 The Army would do basically what the landowners
11 wanted. The Army offered the only opportunity for poor
12 people to get an education, to earn a decent living
13 without having to work labor. So young men would join
14 Army and hope to rise through the ranks. If they did
15 enough, they could go into the military school and be
16 of a Tanda, a class that graduated from the military
17 college and became an officer.

18 What happened in '79 was a reaction to the end
19 of -- and the disparity kept growing, disparity between
20 landowners and unlanded peasants. It wasn't just land,
21 was the factories. By that time factories had started.
22 There was a modernization of El Salvador as all over the

to

a

the

well

part

it

23 world, especially after World War Two.

America. 24 And there were other results in Central

and 25 Around that time there was a revolting in Costa Rica,

1 a brokered peace before World War Two. Costa Rica ended
2 up, now it is called the Switzerland of Central America.
3 There was a brokered peace and European nations
4 participated in negotiations. Both sides laid down
their
5 arms. They decided not to have an Army, they had a pact
6 with the United States that would protect their borders,
7 and it has been relatively peaceful ever since in Costa
8 Rica.

9 That didn't happen in El Salvador. They
weren't
10 able to reach consensus. There were constant battles
11 between the haves and have nots, and the haves used the
12 Army to put down any uprising by the have nots.

13 Eventually there was a liberalization. It was
14 inevitable, people can't live with that kind of
disparity
15 without doing something about it. There were elections.
16 There was the election in '72 where Napoleon Duarte won
17 the election and had it stolen from him, and pushed into
18 exile.

19 It started another period of repression where
the
20 Army tried to solidify the position of the oligarchies
by
21 brutally putting down any opposition. They forced any
22 political party out of the country. They exiled Duarte,

23 they exiled Ungo, who was his partner at that time. He
24 was a social Democrat, not a Christian Democrat.

25 Eventually young educated officers in the Army

1 states the coup of '79. They threw out Dictator Romero,
2 they threw out 45 of the top officers in the Army, and
at
3 that time there was, by the Plaintiffs' chart, there
were
4 maybe 100 top officers. They threw out 45 of what they
5 considered the worst officers in the Army, those who had
6 no respect for human rights, no interest in
7 democraticizing the country, moving the country toward
8 democracy. They set forth their plan for reform the
9 document in evidence, the Proclamation of the Armed
Forces
10 on October 15, '79.

11 They appointed Junta combined of two military
men
12 and two civilians, and they appointed Colonel Garcia,
13 General Garcia Minister of Defense.

14 Now, on that Junta there were two Army
officers,
15 Colonel Majano, and Colonel Guitierrez. Colonel
Gutierrez
16 was appointed head of the military, he was general
17 Garcia's superior all through this period. He was the
18 direct commander in chief.

19 From then on things disintegrated. The people
on
20 the right who opposed the coup, who lost in the coup
21 attempt still had members in the country, still had

22 members in the Army. This led to great divisions in the
23 country.

24 At that time there were Communists, guerilla
25 insurgencies started, and these people on the right

still

being
to
guerillas,

1 believed the way to deal with that was the same way
2 dealt with in Nicaragua, that was to crush and eliminate
3 any members of the opposition. You heard about draining
4 the sea. That was the methods that they employed, was
5 wipe out any potential popular support for the
6 for the Communists.

seen
pledged

7 The United States got involved because they
8 believed in a real Communist threat there. They had
9 it in Nicaragua. The members of the far left in El
10 Salvador were receiving aid, advice, and supplies from
11 Communist countries, from Cuba. They organized in Cuba,
12 they went to Cuba in order to organize, they were
13 support by Cuba, by other Communist countries.

he
few

14 Meanwhile what happened in Nicaragua, and the
15 United States was learning at this time, too, that the
16 repression didn't work. What happened with Antonio
17 Somoza's regime, he tried to put down the rebellion by
18 scorching the earth, wiping out everybody he could
19 possibly support, the people against him, and he fell,
20 had to be flown out on a U.S. plane to Miami, and his
21 members of his family.

Salvador

22 By that time we realized that this was -- we,
23 meaning the United States -- and you can see from
24 Ambassador White's summary of the situation in El
25 at the time, that there was a revolution going on, and

1 wasn't only in El Salvador, it was all over South and
2 Central America.

3 There are other factors that promoted or called
4 upon or made inevitable this revolution.

5 During the '60's we had a peace accord and we
had
6 an Alliance For Progress that you heard Ambassador White
7 talk about that started to empower people, local people,
8 people who never had ability to run a business, never
9 ability to run a business, these people were given
10 opportunities. And they learned if they worked hard,
they
11 learned they could be independent. They learned that
they
12 didn't have to depend on a job at a factory, you know,
13 like an assembly factory for a U.S. company or a big
14 plantation or coffee farm or banana farm or cotton farm.
15 They knew they could run businesses.

16 They learned that they could be independent,
but
17 maybe the biggest impetus for change was the Vatican
18 Counsel of 1968 in Medellin, Colombia. There was a
19 meeting of all of the bishops of the church. At that
time
20 El Salvador was 95 percent Catholic.

21 Now, up until that time the Catholic church
22 always supported whoever was the Government. I don't
know

23 why, but I've heard originally there has always been a
24 thought that you are going to be rewarded in the life
25 after. While you are here on earth, you need to follow

1 the law, and do what the rulers say. They must be there
2 because God put him there.

3 At the time we had a new pope, the only pope
4 probably since Christ's time that was repressed from his
5 religion. He came from Poland, faced repression and
6 discrimination and persecution for being a Catholic all
7 his life. When he became pope, a new feeling came over
8 the Catholic Church, and a new mission.

9 What came out of the Vatican Counsel of '68 was
10 that these people who repress you are sinners. You have
a
11 right to earn a living, you have a right to enjoy
dignity
12 in this life. That denial of that dignity is against
13 God's word. So instead of saying and hearing in church
14 every week, you will be rewarded in the next life, just
15 endure, perceive, participate in the sacrament, you
will
16 be saved and go on to heaven.

17 You heard you have a right to rise up against
18 repression and persecution you are facing now, and that
is
19 how you had people like Father Schindler getting
involved
20 in empowering people. There were more missionaries that
21 would go to these countries, including El Salvador, to
22 help organize people to show them what they can do on

23 their own.

24 The oligarchy, the people who actually
controlled

25 El Salvador, resented this. This was a threat to them,

1 this was a threat to their way of life. And eventually
2 that is how the problems broke out.

3 Now, during this horrible war that lasted from
--
4 depending on the point of view at least from '79 on into
5 the '90's, and some people would say, you heard
6 Ms. Gonzalez say that things are still unsafe there.

7 This was a move, a process, a transition from a
8 oligarchy, military dictatorship to a democracy. And
9 October 15, '79 was the beginning of it. And that is

what

10 Ambassador White says. You will hear Ambassador Corr
11 testify.

didn't

12 You heard professor Karl testify that she
13 think the democracization process started and
14 demilitarization process started until after '92. Well,
15 that is just not true. You will hear -- you already

heard

16 from Ambassador White the revolution started back then
and
17 they were involved in a revolution, and you need to
weigh
18 those different opinions.

for

19 You need to look at Ambassador White's basis
20 his testimony. He is a career diplomat. He is not a
21 professor writing a thesis that has to come up with new

22 perspective on history. He is somebody who had U.S.
23 interests at hand, and had to give accurate accounts to
24 his government, to the U.S. Government, and that is what
25 his cable is about.

1 During that time, right after the coup, the
2 faction on the right got even more vehement. They knew
3 their power was slipping away, they became more
4 repressive.

5 Within the Army there were members of death
6 squads, within every segment of society. You heard
about
7 Roberto D'Aubuisson. Roberto D'Aubuisson is credited
with
8 masterminding Archbishop Romero's death, planning
several
9 coups. You heard about the lieutenant, Lieutenant
10 Carranza who was involved in coup attempts. And all
11 during that time he was being paid by the CIA to furnish
12 information. He was being paid \$90,000.00 a year by our
13 government to give them information.

14 You will hear -- you already heard about how
15 pervasive the human rights violations were, about the
16 unlawful detention, about the massacres. Most of those,
17 and the commission report, U.N. Truth Commission Report
18 attributes almost -- 85 percent of them to the right,
and
19 to forces within the Army or without of the Army.

20 What the case is going to boil down to is
whether
21 these men had actual control, had command control over
the
22 people who perpetrated the acts on these Defendants,

23 whether those acts happened or not --

24 THE COURT: Mr. Klaus, you said on the

25 Defendants.

1 MR. KLAUS: I mean on the Plaintiffs, I am
sorry.

2 What you are going to have to look at, and what
3 you will hear evidence about is how poor the command
4 structure was in the El Salvadoran Army. How -- as you
5 heard the expert, General Garcia from Argentina,
explain,
6 there is a chain of command. You heard him, when I
asked
7 about what happens when there is a break in the command.
8 Well, doesn't take much more than common sense to figure
9 out if the chain of command depends on working from top
to
10 bottom, if there are breaks in it, the people at the
11 bottom aren't going to get their commands or not have to
12 follow them because there is nobody above them.

13 What the Plaintiffs have to show is that there
14 was -- that my clients had direct control over the
people
15 who actually perpetrated the acts. What the evidence
will
16 show is that they didn't have direct control, and we
will
17 try to show this by giving you examples of things that
18 were happening with the armed forces in El Salvador.

19 You had members of the military accepting
bribes
20 from U.S. companies, to sell faulty -- to buy faulty
21 ammunition and give it to their own troops in the field.

22 You have El Salvadoran military officers selling guns to
23 the Communist guerillas that are fighting their own
24 troops. You have them disobeying written orders,
totally
25 ignoring written orders, going off on their own doing

1 their own campaigns. You have them being influenced by
2 the outlawed group ORDEN, or what was left of its
members.

3 Even Ms. Gonzalez testified the person who was
4 directing the men in uniform who abducted her and raped
5 her and tortured here were being directed by a man in
6 civilian clothes, somebody from ORDEN. ORDEN was
outlawed
7 by the proclamation of October 15.

8 ORDEN was a huge civilian organization that had
9 an office in the National Guard headquarters. It was at
10 one time supposedly the intelligence branch, one of the
11 intelligence gathering branches of the National Guard.
12 They were civilians who would give information to
members
13 of the military, but they were responsible for almost
all
14 the repression.

15 There was a system of bribery, a system of
16 payments where private individuals would have access to
17 military personnel and would have them do their bidding,
18 and these were former members of ORDEN.

19 Within the same Army these people existed.

20 You will hear how precarious the government
was,
21 how during a short time period from '79 to '80, there
were

You

22 three different governments, three different Juntas.

23 saw the letter from the Christian Democrats.

to

24 You will hear about General Garcia's attempts

25 implement those reforms. You will hear how it became

1 harder and harder to institute reforms because
opposition
2 from the right continued and continued, and our
interest,
3 United States interest, and basically everybody's
interest
4 was in maintaining some stability in the country.

5 You heard Ambassador White talk about the
6 greatest fear that anybody had was instability, the fear
7 of uncertainty, the same fear we all have.

8 We are lucky here, we are fortunate here we
have
9 certainty in our lives. We know when we get up, our
10 newspaper is going to be there, we turn on the spigot,
11 there is going to be water there. We know when we drive
12 on the road, we will be safe. We know most people will
13 follow the laws.

14 And even Dr. Caddy, when he was talking about
15 what he thought the worst thing that Professor Mauricio
16 suffers is lack of being able to plan for the future
17 because he doesn't have any certainty, because he feels
--
18 he is afraid to plan for the future because he doesn't
19 know what is going to happen tomorrow.

20 And that was -- that was the biggest fear of
our
21 government. We needed to know, we needed to have a
22 reliable future for El Salvador for a lot of reasons.

23 Number one, we were afraid of becoming Communist and
24 eventually affecting us. We had a lot of investments
25 there, and we wanted stability in the region.

1 Now, you also will hear during that time the
2 United States invested a lot of money in El Salvador.
3 During the war period from '79 to '92, U.S. taxpayers
4 contributed more to the economy of El Salvador than El
5 Salvador did, we gave -- more than half of what the
6 national product was came from our pockets, from our tax
7 money.

gross

8 You are going to hear that from this time
9 forward was a long painful process towards democracy and
10 it ended in negotiated peace, neither side could really
11 win, the far right side could not win, the middle was
12 being torn apart, and the leftist couldn't win, either.
13 Out of all of that came a democracy. El Salvador is a
14 democracy.

period

15 It is a tragic horror on the pain, suffering
16 deaths that people of El Salvador suffered through this.

and

17 Thank you.

18 THE COURT: Mr. Klaus, you may call your first
19 witness.

20 MR. KLAUS: I am going to call General Garcia.

come

21 THE COURT: General Garcia, would you please
22 up to the witness stand?

yourself 23 General Garcia, please sit down and make
24 comfortable. I will ask you if you would pull the chair
25 up to the desk area. You will be more comfortable, and

1 that will allow people to hear you.

2 Sir, if you would begin by raising your right
3 hand? You may stay seated.

4 JOSE GUILLERMO, DEFENDANT SWORN.

5 THE COURT: General, the jury met you at the
6 beginning of the case, but for the clarity of the
record,

7 would you please state your full name? And would you
8 spell your last name for the court reporter?

9 THE WITNESS: My name is Jos, Guillermo Garcia,
10 G-A-R-C-I-A.

11 THE COURT: Thank you.

12 Mr. Klaus, you may proceed.

13 DIRECT EXAMINATION

14 BY MR. KLAUS:

15 Q. General Garcia, when were you born?

16 A. I was born the 25th of June of 1933.

17 Q. And where were you born?

18 A. I was born in San Vincente, El Salvador.

19 Q. Is that the same province that Neris Gonzalez comes
20 from?

21 A. Yes, it is the same province.

22 Q. And how many children were in your family?

23 A. I was an only child to my mother, natural child, and
I

24 have siblings only on my father's side.

25 Q. What do you mean when you say natural child?

1 A. I was the son of a single mother.

2 Q. Okay. And were you raised by your single mother?

3 A. Yes, yes, sir.

4 Q. And she didn't have any other children?

5 A. No, no, she had no other children.

6 Q. And what type of education did you receive?

7 A. The normal education that one would receive at that

8 time. I received my elementary education at a public

9 school in San Vincente. And my high school studies, I
did

10 those at a Catholic Celestine high school.

11 Q. Was that St. Thomas Catholic High School?

12 A. Yes, a Catholic school, Santo Thomas, and I received

13 my high school diploma in 1952.

14 MR. KLAUS: Your Honor, I would like to
approach

15 the witness.

16 THE COURT: You may.

17 BY MR. KLAUS:

18 Q. Did you prepare a curriculum, a resum, for this
trial?

19 A. Yes.

20 Q. And is this a copy of it?

21 A. Yes.

22 Q. That is marked Defendant's Exhibit 10?

23 A. Yes.

24 Q. And do you have a copy of it there?

25 A. Yes, I do.

1 Q. I am going to ask you to refer to your copy when I
2 refer to it, to the exhibit.

3 MR. KLAUS: I will ask to move this exhibit
into
4 evidence, Your Honor.

5 THE COURT: Is there any objection to the
receipt
6 of what is now marked Defendants' Exhibit Number 10?

7 MR. GREEN: No objection to the one --

8 THE COURT: As redacted?

9 MR. GREEN: -- as redacted.

10 THE COURT: Defendant's Exhibit 10 will be
11 received into evidence without objection, understanding
12 that it is a redacted form.

13 (Defendants' Exhibit 10 received in evidence
14 without objection.)

15 BY MR. KLAUS:

16 Q. And this sets forth your career from when you
17 graduated from high school?

18 A. Yes, yes, sir.

19 Q. And when you graduated from high school in '52, what
20 did you do next?

21 A. I entered the military school of El Salvador.

22 Q. Now, in order to enter the military school of El
23 Salvador, did you have to pass any tests? What is the
24 admission procedure? What was it at that time?

25 A. The normal procedure at that time was to sit for an

1 admission examination that was comprised of two main
2 portions, one intellectual, and another physical.

3 Q. And if you got a high enough grade, you were
admitted?

4 A. Yes.

5 Q. Now, how long were you at the military academy?

6 A. For four years.

7 Q. And were you -- when you graduated, were you given a
-
8 did you enter military services, and were you given a
rank?

9 A. Yes, I graduated after four years and received a
rank
10 of second lieutenant.

11 Q. Now, you heard testimony before about Tandas. What
is
12 your understanding what a Tanda is?

13 A. A Tanda we recognize as a graduating class.

14 Q. So your Tanda would be the class of '56?

15 A. Yes.

16 Q. Who else that we've heard about here was in your
17 Tanda?

18 A. None of those mentioned here was part of my Tanda.

19 Q. Was Colonel Gutierrez in your Tanda?

20 A. Not from my Tanda.

21 Q. Was Colonel Majano?

22 A. Not he either.

23 Q. Was Roberto D'Aubuisson?

24 A. Not he either.

25 Q. Carranza?

1 A. Not he either.

2 Q. You have a copy of your -- what you titled
3 chronological personal history. You have a copy of it
4 there you want to refer to?

5 A. Yes.

6 Q. Did you receive any awards or any special
recognition
7 in military school?

8 A. Yes. When I graduated, I received the main title
for

9 my graduation. I was the honor student for my Tanda.

10 Q. You were number one in your class?

11 A. Yes.

12 Q. Any other awards?

13 A. Yes. Well, I obtained some honors. For example, at
14 the weapons school I also received a scholarship to study
15 at the Superior Institute in Mexico where I graduated as
an
16 officer of the general staff.

17 And other private activities I was assigned to, for
18 example, and I know we all are aware of how our country
is
19 constantly attacked by earthquakes. I came here to the
20 United States to train in providing service to people
21 affected by earthquakes.

22 Q. Okay. I want to stay within a time frame.

23 A. Okay.

24 Q. You graduated in November, '56. What was your first
25 assignment as a member of the military?

1 A. I was appointed commander of one section of an
2 infantry brigade.

3 Q. How many people would be under you at that time?

4 A. 30 persons.

5 Q. How many people were in the El Salvadoran military
at
6 the time?

7 A. Approximately 8,000, 9,000 persons.

8 Q. And that includes the Army, the Navy, the Air Force
9 and the National Guard, Treasury Police and National
10 Police?

11 A. Yes, sir.

12 Q. And who was the commander in chief of all those
armed
13 forces at that time?

14 A. When I graduated, it was the President of the
15 republic. He was the commanding general of the armed
16 forces.

17 Q. Now, can you describe your career for the next three
18 years?

19 A. Yes, certainly. I was performing my duties as an
20 officer at the First Infantry Brigade, complying with my
21 obligations and duties, such as those that corresponded
to
22 my rank as well as those that corresponded to me as a
23 person.

24 Q. And what was your next position in the military?

25 A. I was later on appointed instructing commander of a

1 section at the military school for cadets.

2 Q. And when was that?

3 A. In 1960.

4 Q. And how long did you stay as a teacher at the
military
5 academy?

6 A. I was at the military academy for approximately more
7 or less three years, because from there I was promoted to
8 lieutenant, and from there to captain.

9 Q. So you taught at the military school in 1963?

10 A. That is so.

11 Q. And what was your next assignment?

12 A. I went to study at the weaponry school and later on
I
13 returned to the military school.

14 Q. So you went to study more and then you returned to
15 teach at the military school?

16 A. Yes.

17 Q. Now, what happened in 1965?

18 A. In 1965 something special happened. I was deployed
to
19 a post which is usually reserved for people who are
20 considered useless, all this motivated by a series of
21 opinions that were in existence at the time, and
22 fundamentally for complying with my obligations at the
23 military school, with respect to the law and the school

24 regulations.

25 Q. So you were demoted?

1 A. No. Yes, I -- no, but I received a demotion in
2 employment after having been commander of the cadet
school,
3 which could be considered as an honorary and important
4 reward. I was transferred then to a post that was
5 practically without any value.

6 Q. So, you weren't demoted in rank, but you were
demoted
7 by being given a less prestigious position?

8 A. Yes, yes, that is so.

9 Q. Is that the way people were disciplined in the
10 military at that time?

11 A. Partly, yes. But this was not the result of a
12 disciplinary measure but simply for the fact of not
having
13 followed or complied with an order that was not correct.

14 Q. You received an order from a superior and you
15 determined it wasn't correct and you disobeyed it or
didn't
16 follow it?

17 A. That is so. I was ordered to make changes on grades
18 for students who were undeserving or who acted
incorrectly
19 and I refused to comply with that order.

20 Q. Were you ordered to inflate the grades of some
21 students?

22 A. Yes.

23 Q. And because you refused to do it, you were
transferred

24 to a less prestigious post?

25 A. Yes, that is so.

1 Q. Who ordered you to do that?

2 A. Well, I received the order from the director of the
3 military school.

4 Q. What was your next assignment?

5 A. I was later on sent to study general staff at the
6 Superior School of Mexico.

7 Q. What happened on June 10, 1965?

8 A. This is what I said at the beginning. I was
9 commissioned to the construction of 360 housing units for
10 the displaced persons from an earthquake, and without the
11 knowledge necessary to perform this type task, we
received
12 rapid orders.

13 THE INTERPRETER: The interpreter corrects
14 himself. We received rapid training and we were able to
15 perform the task.

16 BY MR. KLAUS:

17 Q. Was that funded by the United States?

18 A. Yes, it was financed by the United States.

19 Q. Did the United States Army help in the construction?

20 A. They provided all materials. We merely provided the
21 labor.

22 Q. Then after that you went to the -- what school in
23 Mexico?

24 A. The Superior War School of Mexico.

25 Q. And when was that?

1 A. From 1967 to 1970.

2 Q. And what was your next assignment?

3 A. When I returned, I was at the general staff for a
4 short period and once again I returned to the military
5 school as chief of studies and training.

6 Q. And what was your next promotion in '72?

7 A. I was promoted to lieutenant colonel.

8 Q. And then what happened next, '73?

9 A. I was appointed director of an organization that was
10 just beginning at the time. It was reserved for the
armed

11 institutions. It was sort of like a cooperative, a bank
12 for the military collective. And then I was sent here to
13 the United States to attend a course for assistance in
the

14 event of disasters.

15 Q. I want to go back to March 12, 1973 where it says in
16 this document you were appointed director of the Mutual
17 Fund Savings Bank of the armed forces per Executive
Order,

18 Executive Power Decree Number 173.

19 A. This is the one I just made reference to.

20 Q. Did you have any training in banking or mutual
funds?

21 A. No. It was a board of directors and I was one of
the

22 directors.

23 Q. Okay. And then next in June of '73 you were sent to
24 United States?

25 A. That is so.

1 Q. Okay. What did you take place in there?

2 A. It was -- I learned, it was an international course
3 where there were representatives of many countries. And
we
4 learned the methods that in the event of disaster are
used
5 to care for displaced persons.

6 Q. Now, wasn't your country at war in 1969?

7 A. Yes. We had a war with Honduras.

8 Q. Okay. And when did that war end?

9 A. It was a rapid war that lasted 100 days -- I
10 apologize, I apologize, 100 hours.

11 Q. When was there a peace signed between El Salvador
and
12 Honduras?

13 A. It was years later, and I personally participated in
14 the bilateral commissions with Honduras in order to
achieve
15 peace with Honduras.

16 Q. Okay. And what happened next in your career?

17 A. I was appointed Deputy Chief of the Presidential
18 General Staff, which is the general staff to the
President.
19 I was later on appointed President of the National
20 Administration for Telecommunications.

21 Q. Can you give us the dates when those things
happened?

22 A. The first was September, 1973 when I participated in

1st, 23 the peace negotiations with Honduras, and on November
24 1973, which is the same year, I was Deputy Chief of the
was 25 Presidential General Staff. And in February of 1974, I

1 appointed President of ANTEL.

2 THE INTERPRETER: The interpreter will spell

3 A-N-T-E-L, ANTEL.

4 BY MR. KLAUS:

5 Q. What is ANTEL?

6 A. ANTEL is the National Administration for
7 Telecommunications.

8 Q. And what was your next appointment?

9 A. Later on I was changed, I was transferred back to
the
10 military school to hold the position I held previously.

11 Q. And who was the head of the military school at that
12 time? When was that and who was the head of it?

13 A. This happened in July of 1977. The director was --
I
14 don't have it in mind right now. Oh, it was Colonel
15 Agustin Martinez Varela.

16 Q. And then tell us what happened from there up until
17 your appointment as Minister of Defense.

18 A. Then I was passed on as commander as one of the
19 departments of -- the Department of Sonsonate. Later on
I
20 was in San Vincente, and later on I was called in to
become
21 Minister of Defense.

22 Q. Now, how were you appointed Minister of Defense, and
23 by whom?

the 24 A. Well, I was called upon by the military members of
25 government Junta, by both of them, Colonel Gutierrez and

1 Colonel Majano. To both of them I refused to become
2 minister because I did not want to be Minister of
Defense.

3 Q. Why not?

4 A. First, because I felt it was such a convulsive
5 situation, and so powerful. I felt that anything that
was

6 done in addition to being difficult would possibly not be
7 understood. And in addition, I had already considered
8 retirement. I was called not once, but one of them
called

9 me twice and the other four times. I didn't accept until
10 the following day, and with the reservations of --

11 THE INTERPRETER: The interpreter corrects
12 himself. With the necessary reservations because it was
13 an extremely difficult situation that we lived in in El
14 Salvador.

15 BY MR. KLAUS:

16 Q. Let me go back. You are married, correct?

17 A. Yes.

18 Q. And when were you married?

19 A. I was married on July the 26th of 1959.

20 Q. And how many children do you have?

21 A. Five.

22 Q. Do they all live here in the United States?

23 A. They all live over here -- they are the reason why I

24 am here, because when I was Minister of Defense, we also
25 suffered of the pressure of threats that we lived under

at

1 the time. My children were threatened with death,
2 especially the smallest, and I decided it was best for
them
3 to leave in order to not expose them.

4 Q. Okay. You are still married to the same woman?

5 A. Yes, sir.

6 Q. When did you send your children to the United
States?

7 A. I sent them in November, 1979, approximately about a
8 month after October 15. It was all because one of my
9 children, the youngest, who was attending school under a
10 fictitious name so as not to be identified, at one point
11 was identified in school and I took that to be a threat
12 because he had been threatened with death.

13 Q. Do you know who threatened them?

14 A. No.

15 Q. You were Minister of Defense, but you didn't feel
you
16 could protect your own children?

17 MR. GREEN: Objection; leading.

18 THE COURT: I don't think that suggests --
well,

19 it does, actually. Let me go back and ask you to
rephrase
20 the question.

21 BY MR. KLAUS:

22 Q. You were Minister of Defense at the time, correct?

23 A. Yes.

24 Q. Were you able to protect your own children?

25 A. Relatively.

1 Q. But you sent them to the United States?

2 A. Yes, because I decided if anything were to happen,
let
3 it happen to me and not my children.

4 Q. Did you identify where the threats came from?

5 A. No. I found the threats which were in writing, some
6 by phone, but we found surveillance, which was being
7 carried out not only towards my family, but also of
myself.

8 Q. Were you being followed, is that what you are
saying?

9 A. No. We were being followed by places where we would
10 go, what routes we would follow, and later all that was
11 confirmed. Well, in fact two of my driver's had attempts
12 on their lives. My Chief of Security was shot, killed,
13 decapitated, next to his son because he was a member of
my
14 security staff.

15 My foster brother was also murdered for the mere
16 reason of being my foster brother. And one of my
driver's
17 was shot twice. And that has resulted in the fact that
he
18 is in a wheelchair with half a kidney, practically no
19 intestines, half a stomach and a totally damaged spine.
20 And the other one was shot in his right lung. He almost
21 lost his life. He now lives in Canada.

22 Q. Did you ever find out who did these things?

23 A. No.

24 Q. Do you know if they were done by right-wing people,
or

25 left-wing people?

1 A. I don't know, but I wondered about both.

2 THE COURT: Mr. Klaus, if I might, I think we
are
3 at a time when we ought to stop for the mid-morning
4 recess.

5 Why don't we take a 15 minute break and we will
6 come back and continue on with the direct examination.

7 Let me allow the jury to step out.

8 (Thereupon, the jury retired from the
courtroom.)

9 (Thereupon, trial reconvened after recess.)

10 THE COURT: Mr. Marshal, would you bring in the
11 jury, please?

12 (Thereupon, the jury returned to the
courtroom.)

13 THE COURT: Ladies and gentlemen, please be
14 seated, when we stopped we were in direct examination.
15 Let me turn back to Mr. Klaus so he may proceed.

16 Mr. Klaus.

17 MR. KLAUS: Thank you, Your Honor.

18 BY MR. KLAUS:

19 Q. General Garcia, what was the situation in your
20 country, in El Salvador, when you were appointed Minister
21 of Defense?

22 A. Well, it was a situation which might be considered
23 chaotic. There was a history of different attitudes on
the

24 part of the population in terms of wanting some kind of
25 change, some kind of substantial reformist changes. And

I

1 agree with those who say changes were needed in El
2 Salvador. I participated in a meeting with two other
3 persons where the representatives of those who are known
by
4 the name of oligarchy, they seated us before them.

5 Q. When was that meeting?

6 A. That was in 1978 -- no, I am sorry. It was before
7 1977, I'm sorry.

8 Q. Okay. Who was present at that meeting?

9 A. The President of the republic and representatives of
10 those known as the oligarchy. I mention this because it
is
11 important in terms of what has happened to us in El
12 Salvador. Three of us who were there had been considered
13 to have the possibility of becoming presidential
candidates
14 at that point.

15 I arrived there much the same way as I think the
other
16 person arrived as well, without knowing what was
happening.

17 And they seated us before all those people, some I knew
18 because, for example, Engineer Mauricio Borgonovo, who
was
19 the Secretary of State, had been with me during the peace
20 negotiations with Honduras, that is why I knew him.

21 So I asked him what is this meeting all about, and
he

22 said, oh, the same thing as always, because Mauricio
class 23 Borgonovo was one of the people who belonged to that
own 24 but held reformist ideas. He was murdered later in his
25 home.

1 You know what that meeting was about? It was
simple,
2 they were deciding who was going to be the next
3 presidential candidate and appoint him right then and
4 there. That's why they asked for the opinion of the
three
5 of us who were there.

6 I was the first one who spoke, and I said that I had
7 an opportunity to say what I felt at that time, and I was
8 clear when I was asked what opinion I had of El Salvador
9 and its future and I told them if profound changes were
not
10 instituted at that point in El Salvador, we were later
11 going to lament the consequences, and I said other
things.

12 The other person spoke after, and then the third
one.
13 The second person who spoke, the second person was in
14 agreement with what the country needed doing at that
time,
15 just set it forth differently.

16 And the last one who spoke simply said these things
17 should not be done. This country should be ruled as it
has
18 been ruled, with an iron hand. That's the candidate that
19 was nominated, and that was the next President of El
20 Salvador.

21 I mention this because I am not ashamed to say that
in

22 El Salvador that's how candidates were appointed. I took
23 that as a lesson, that it was not yet time to express
24 everything one feels in order to carry out some kind of
25 change.

because 1 I once say I was singled out as a possibility
2 the representatives of the Christian Democratic union
3 approached me as the representatives of the MMR party,
4 with -- I am sorry, socialist tendency. They told me if
I 5 was appointed the candidate for the official party, they,
6 the Christian Democrats, and the MMR would join the
7 official party in order to avoid any opposition.

8 And I told the President of the republic that, but
9 there was no comment.

10 What I would like to lay before you is that we were
11 arriving at the very last time when El Salvador could
have 12 been controlled --

13 MR. GREEN: Objection; non-responsive to the
14 question.

15 THE COURT: What was your question?

16 MR. KLAUS: What were the conditions in El
17 Salvador at the time.

18 THE COURT: I will overrule the objection.

19 BY MR. KLAUS:

20 Q. Let me ask you, who were the other two people with
you 21 at the meeting?

22 A. One of them was General Vides Casanova, and the
other

23 was General Romero.

24 Q. Who was the second one?

25 A. General Vides.

1 Q. And who was the third one?

2 A. General Romero.

3 Q. Okay, go ahead.

4 A. I believe that my country was in urgent need of
those

5 reforms that were later carried out, but unfortunately a

6 better future was not being contemplated for my country.

7 That's all.

8 Q. So in what state was your country when you took
office

9 as Minister of Defense?

10 A. As I said, a very chaotic situation. We had
protests

11 every day, there were dead people every day, and there
were

12 also abuses.

13 Q. While General Romero was President, were you ever

14 disciplined for participating in any meetings regarding

15 reforms?

16 A. No.

17 Q. You weren't transferred to a less prestigious

18 position?

19 MR. GREEN: Objection; leading.

20 THE COURT: Sustained.

21 BY MR. KLAUS:

22 Q. Were you ever transferred?

23 A. Yes.

24 Q. Were you transferred to a less prestigious position?

25 A. Relatively so.

1 Q. Do you know why?

2 A. I don't know. Many times it's for expressing my
3 opinion, but mostly my transfers later were because there
4 was a new government. The President was General Romero.

5 Q. Now, how many people were at that meeting and were
you
6 asked questions?

7 MR. GREEN: Objection; compound question.

8 THE COURT: I think the question is how many
9 people were at the meeting.

10 MR. GREEN: And were you asked questions.

11 THE COURT: I will permit it. Go ahead.

12 BY MR. KLAUS:

13 Q. How many --

14 Let's go back. Where was that meeting?

15 A. It was in somebody's home, I never knew whose, but
it
16 was the home of a wealthy person.

17 Q. And how many people were there?

18 A. Maybe about 40, 45 people.

19 Q. Did those people ask you and General Vides and
20 President Romero questions?

21 A. Yes. The difference was in the answers.

22 Q. How long did that meeting last?

23 A. Maybe approximately two hours. What I would like to
24 emphasize --

MR. GREEN: Objection; non-responsive.

1 THE COURT: I would like to hear the answer.

2 THE WITNESS: What I would like to emphasize to
3 be understood in my country.

4 THE COURT: Let me ask counsel to go back and
5 restate the question, if you would, please.

6 BY MR. KLAUS:

7 Q. Is that how the President was chosen in your
country?

8 A. That's how he was chosen.

9 Q. That group wouldn't actually choose the President,
10 they would choose the candidate for a particular party;
is

11 that correct?

12 MR. GREEN: Objection; leading.

13 THE COURT: Sustained.

14 BY MR. KLAUS:

15 Q. Were there elections in your country at the time?

16 A. Yes.

17 Q. The person chosen at that meeting, what would he be?

18 A. A candidate for the official party.

19 Q. Had anyone but the official party every won an
20 election in El Salvador prior to '77?

21 A. I think there was one, but I think it was before
1930.

22 Q. What about Napoleon Duarte in '72?

23 A. That was an election decided by the assembly. There

24 was no absolute majority so the assembly was the one who
25 chose the president.

1 Q. Do you know if the president was chosen the same way
2 in Mexico?

3 MR. GREEN: Objection; irrelevant.

4 THE COURT: Overruled on relevancy grounds.

5 THE WITNESS: I have no knowledge of whether it
6 was that way.

7 BY MR. KLAUS:

8 Q. What about in Guatemala?

9 A. Same thing.

10 Q. You don't know?

11 A. No, I don't.

12 MR. GREEN: Objection -- withdrawn.

13 BY MR. KLAUS:

14 Q. What about in Honduras?

15 A. I can't give an opinion. I don't know.

16 Q. Where do you live now, General Garcia?

17 A. I live in Plantation, the City of Plantation.

18 Q. And how long have you lived there?

19 A. About approximately ten -- 12 years.

20 Q. And how did you come -- are you a permanent resident
21 of the United States?

22 A. Yes, yes.

23 Q. How did you come to be a permanent resident of the
24 United States?

25 A. As I said in the beginning, my family came here, and

1 later I came, too, and I requested political asylum.

2 Q. And were you granted political asylum?

3 A. Yes, sir.

4 Q. Now, going back to the conditions in your country at
5 the time you were appointed, who was your direct superior
6 when you were Minister of Defense?

7 A. Well, first, it was the governing revolutionary
Junta,
8 and then Colonel Gutierrez as Colonel and Chief of the
9 armed forces.

10 Q. Can you tell us when those changes took -- when did
11 Colonel Gutierrez become Commander in Chief of the armed
12 forces?

13 A. I don't know exactly, but I believe it was towards
the
14 middle of 1980, but I am not very sure.

15 Q. Was it in January of 1980?

16 MR. GREEN: Objection; leading.

17 THE COURT: Sustained.

18 BY MR. KLAUS:

19 Q. You've seen the letter from the Christian Democrats,
20 correct?

21 A. Yes.

22 Q. Can you tell me when -- what governments you were
23 Minister of Defense under?

24 A. Well, the first Junta, until December 31, or

25 January 1st, 1980 when the Junta was restructured.
Later,

1 in the beginning of 1980, a new Junta was formed where
2 Dr. Dada Hirezi was a member, and he was replaced by
3 Engineer Duarte.

4 Q. And when was that?

5 A. That was in March, 1980.

6 Q. And when -- who were the members of the Junta -- who
7 were the members of the first Junta; who were the members
8 of the second Junta?

9 A. The ones in the first Junta were Colonel -- were
10 Colonel Gutierrez, Engineer Mayorga Quiros, Colonel
Majano,
11 and Dr. Ungo, and Mr. Andino.

12 Q. Were any of those people present at that meeting in
13 '77?

14 A. The meeting I talked about?

15 Q. Yes.

16 A. Not that I recall.

17 Q. Okay. And who were the members of the second Junta?

18 A. The second Junta, which was formed January 9th,
1980,

19 one person was Dr. Morales Erlich, Dr. Hector Hirezi, and
20 Doctor -- a physician Jos, Avalos, and also Colonel Jaime
21 Gutierrez and Colonel Adolfo Majano.

22 Q. Were any of those people present at the meeting in
23 1977?

24 A. No.

25 Q. And in March, 1980, there was another Junta formed,

1 correct?

2 MR. GREEN: Objection; leading.

3 THE COURT: Sustained.

4 BY MR. KLAUS:

5 Q. Who were the members of the next Junta, and when was
6 that formed?

7 A. Once again, there were five members. Jos, Napoleon
8 Duarte, Dr. Avalos Navarrete again, Colonel Adlofo

Majano,

9 Colonel Gutierrez, and Dr. Jos, Morales Erlich.

10 Q. And then was there a fourth Junta?

11 A. Well, it was restructured in December, 1980 when
12 Dr. Majano left the Junta.

13 Q. And who --

14 A. Colonel Gutierrez was appointed Vice President at

that

15 point, and Engineer Napoleon Duarte was appointed

President

16 of the Junta.

17 Q. And who were the other members?

18 A. I am sorry, Colonel Gutierrez, Dr. Avalos Navarrete,
19 and Dr. Morales Erlich.

20 Q. Now, Napoleon Duarte was a Christian Democrat,
21 correct?

22 A. Yes, he was a Christian Democrat.

23 Q. Were any of those people at that meeting in '77?

24 A. No, none of them.

25 Q. What was the next government you served Minister of

1 Defense under?

2 A. Well, after the elections of 1982 -- and by the way,
3 we have a video to recall what those of us who lived
4 through it, as to how that election was carried out, and
5 how the people of El Salvador in the midst of the chaos -

6 MR. GREEN: Objection; non-responsive.

7 THE COURT: Sustained.

8 Let me go back to allow Mr. Klaus to restate

the

9 question.

10 BY MR. KLAUS:

11 Q. What was the next government that you served under

as

12 Minister of Defense?

13 A. That of Doctoral Alvaro Magana in 1982. I had
14 finished with the Junta, and Dr. Magana called me once
15 again to be the minister.

16 Q. How did Dr. Magana come to become president of the
17 republic?

18 A. By that time those of us who were in Government felt
19 an urgent need to exit the de facto state in which we

found

20 ourselves, to have elections and appoint a President.

21 These elections were held on March 26, 1982.

22 Q. Was Dr. Magana a candidate for president in that

23 election?

24 A. No. It was just so as to appoint a constitutional
25 assembly.

1 Q. Was this one of the reforms called for in the
2 proclamation of the armed forces October 15, 1979?

3 A. Yes, free elections was one of the key points of the
4 proclamation.

5 Q. Was this one of the reforms called for by the
6 Christian Democrats; letter of 1980?

7 A. That, and the other basic ones carried out in El
8 Salvador such as agrarian reform --

9 MR. GREEN: Objection; nonresponsive. He
10 answered the question, now he is adding more.

11 THE COURT: Sustain the objection.

12 BY MR. KLAUS:

13 Q. What were the other reforms called for in the
14 October 15 proclamation?

15 A. Agrarian reform, banking reform, and reform in
foreign
16 trade.

17 Q. Did you support all these reforms?

18 A. Yes, sir.

19 Q. Did you do whatever was in your power to institute
20 those reforms while you were Minister of Defense?

21 A. I did everything I could to support the decision of
22 the Junta which carried out these reforms in a way which
23 had never been seen in El Salvador. And we all ran the
24 risk in supporting these reforms.

in

25

For example, bank reform, that was done in one day,

1 one single day our soldiers occupied all banking offices
2 throughout El Salvador, and the transformation was
carried
3 out in a legal form.

4 Q. What was the transformation?

5 A. All banks came under the control of the central
6 Government.

7 Q. What about the agrarian reform, was that ever
8 instituted?

9 A. Yes, there was a difference of about three days. I
am
10 not exactly sure, but it was immediate. That was the
main
11 reform.

12 Q. What, what did that reform entail?

13 A. Take away ownership of land in El Salvadoran, make
it
14 the property of peasant cooperatives. At that time, land
15 reform was considered to be very advanced for that time.

16 Q. Was that done in phases?

17 A. No, I think it was one fell swoop at once.

18 Q. Was land taken from landowners and distributed to El
19 Salvadorans?

20 A. Everyone. That's why it was considered to have been
21 such an exaggerated great event at that time in our
22 country.

23 Q. Did that meet with resistance from landowners?

24 A. Well, it wasn't so much of it, for some reasons,
25 because it was the armed forces that physically occupied

1 the land.

during

2 Q. Was there a rise in violence in the countryside
3 that time?

of

4 A. Yes. Because once the reformists instituted, the
5 reaction follows immediately against the reform, so then
6 those that were in government found that we had two sets

we

7 well defined resisters, the right, and the left, both
8 violent. And if that weren't enough, the great problem

were

9 all lived with at that time, infiltration of the armed
10 institutions, from the right and from the left, which

look

11 acting quietly, surreptitiously to make the government

brought

12 bad. And at that time, coups were talked about every
13 question, there was a coup from the right and this

14 about not exactly instability of the armed forces --

15 MR. GREEN: Objection; non-responsive to the
16 question of countryside.

17 THE COURT: Let me ask you to ask the next
18 question.

19 BY MR. KLAUS:

20 Q. What brought about the resistance of the land reform
21 and other reforms that the -- the Junta, your Government
22 was trying to institute?

Bombs

23 A. The violent factions in El Salvador increased.

24 were placed in banks, nobody knew who had done it. They

25 were supposed to be from one side, the right, and at the

1 same time there were bombs from the left.

2 Q. What about torture and disappearances, and killings?

3 A. Yes. If you look at the newspaper from that time,
if

4 you would like to have an idea, I have newspaper
clippings

5 in order from that time, you can see what was happening

6 every day in El Salvador. Attempted crimes, kidnappings,

7 machine gunnings, religious -- houses of worship were
being

8 occupied, threats. Everything, everything that can

9 contribute to chaos in a country.

10 Q. Were these violations, tortures, detentions,

11 occupations of churches, were they being done by members
of

12 the military?

13 A. No. They were organizations either from the right
or

14 from the left, but I want to be honest, within the armed

15 institutions there were elements that served the right
and

16 also there were elements of the armed forces that served

17 the terrorists. Both had the same objective, to make the

18 government at that time look bad.

19 Q. Had you issued orders against violations of human

20 rights during your time as Minister of Defense?

21 A. Yes, we issued orders and we also made them public.

22 have here some examples. We won't see it all, but I want
23 you to realize what it was that we did.

24 Q. Let me go back. When you were a student in the
25 military academy, were you taught to respect human
rights?

1 A. Directly as specifically, no. Yes, but it was also
2 considered in classes on international law in which laws
3 were made known.

4 Q. Okay. When you were -- that is when you were a
5 student; is that correct?

6 A. Yes.

7 Q. Were there already laws -- when you became Minister
8 Defense and before that, were there already laws in El
9 Salvador requiring protection of human rights?

10 A. Laws as such, no. And I would like to make a short
11 explanation on this point.

12 MR. GREEN: Objection; non-responsive.

13 THE COURT: No. I will permit the witness to
14 explain his answer.

15 THE WITNESS: At that time, 20 or 22 years ago,
16 to speak of human rights in El Salvador is not the same
17 you speak of human rights now nor as it is spoken of in
18 the world.

19 If albeit it wasn't an unknown term, many
20 held reservations. For that reason human rights were
21 taken so explicitly as they are today. And precisely
22 of the major products of this process that we started,

of

as

people

not

one

23 that we initiated was that in the Constitution of 1983,
24 the value of human rights is set forth for El Salvador.

25 THE COURT: Let me go back to Mr. Klaus.

1 BY MR. KLAUS:

2 Q. Do you have copies of any orders that you issued
3 regarding human rights?

all

4 A. Yes. What I am going to show was disseminated to

5 of the military corps in order to set forth conditions of
6 respect.

7 For example --

8 Q. When was that distributed?

1979.

9 A. This was disseminated on the 15th of November of

10 And it says, and I am only going to read some short
11 excerpts --

12 MR. GREEN: Your Honor, could we have a copy of
13 the order that he is quoting from?

14 THE COURT: Yes.

15 MR. KLAUS: It is coming from Exhibit 38.

to

16 THE COURT: Could I stop you all? I want you
17 reflect on where we are and what is happening.

18 MR. KLAUS: I need -- in order to get it out of
19 my exhibit I need to see --

20 THE COURT: I understand that. What are you
21 doing?

22 MR. KLAUS: He is referring to this exhibit.

23 THE COURT: I understand that. Is there some

24 agreement counsel have between themselves that I am not
25 aware of?

1 MR. GREEN: No, Your Honor.

2 THE COURT: The witness is reading from a
3 document not in evidence. Is that by your agreement?

4 MR. GREEN: No.

5 THE COURT: There is no objection about that?

6 MR. GREEN: I will object because he is reading
7 from an exhibit. I may end up agreeing to the exhibit.

8 THE COURT: I understand that, but the
procedure
9 we have been following, the exhibits must be marked in
10 evidence, and if they are marked, they can be published
to
11 the jury. I am inquiring whether you have made an
12 agreement to deviate from that procedure.

13 MR. GREEN: No, Your Honor.

14 THE COURT: Let me go back to Mr. Klaus and
allow
15 him to lay the appropriate predicate.

16 BY MR. KLAUS:

17 Q. Is this a copy of the order you issued at that time?

18 A. It is not exactly an order, but this is a position
to
19 the entire nation disseminated over a national chain of
20 media, radio and television upon the 15th of November,
21 1979.

22 Q. What is it exactly that you are looking at?

23 A. What does it say?

24 Q. No, can you identify it?

25 A. It is titled the Salvadoran people must trust its

1 armed forces.

2 Q. Is that from your notebook marked Exhibit 49?

3 A. No, but this is a copy, I believe. I believe it is
4 over there.

5 Q. Is this Exhibit 49?

6 A. Yes.

7 MR. GREEN: Your Honor, may we be heard
sidebar?

8 THE COURT: Hold on a second, if you would.

9 MR. KLAUS: I am going to move to admit the
10 exhibit. I need to give him the actual exhibit. What
he
11 is looking at is a copy.

12 THE COURT: Is there any objection to the
receipt
13 of Defendants' Exhibit 49?

14 MR. GREEN: Yes, Your Honor, there is.

15 THE COURT: What is the basis of the objection?

16 MR. GREEN: Not prepared in conformity of the
documents
17 pretrial order, and explicit directions, it has
18 not authenticated.

19 THE COURT: Forgive me, are you offering the
20 entire book?

21 MR. KLAUS: No.

22 THE COURT: The specific exhibit has to be
23 marked. Is there an objection to specific Exhibit 49?

24

MR. KLAUS: I will mark it 49-A.

25

THE COURT: No. It is marked on the exhibit

1 list. Is there any objection to the document being
2 offered Defendants' Exhibit 49?

3 MR. GREEN: Yes, Your Honor. There has been an
4 inadequate foundation laid.

5 THE COURT: What is missing?

6 MR. GREEN: In that he has not indicated that,
7 where this document comes from.

8 THE COURT: I think what has to be established
9 is, number one, who is the author, and to whom did it

go.

10 MR. KLAUS: Okay. If I can --

11 THE COURT: And if this is an accurate copy of
12 what went out.

13 BY MR. KLAUS:

14 Q. Can you identify that?

15 A. Yes.

16 Q. What is it? What is it?

17 A. It is a communication to the people disseminated

over

18 national chain of radio and television upon November 15,
19 1979.

20 Q. Is that an accurate copy and transcript -- and
21 transcription of your words that went out over national
22 radio and television November 15, 1979 in El Salvador?

23 A. Yes.

24 MR. KLAUS: I offer it into evidence.

THE COURT: Any objection to the receipt of the

1 exhibit?

did

2 MR. GREEN: Again, inadequate foundation. He
3 not indicate whether he personally heard this broadcast.

4 THE COURT: All right. I will let you explore
5 that, as to whether the general is aware it was in fact
6 broadcast.

7 BY MR. KLAUS:

8 Q. Do you know whether it was broadcast or not?

9 A. Yes.

10 Q. And over what radio stations and what television
11 stations was it broadcast?

12 A. All stations radio and television of El Salvador.

13 MR. GREEN: Objection; hearsay. He has not
14 established whether he heard it over all radio and
15 television stations.

16 THE COURT: I will overrule the objection and
17 receive Defendants' 49 into evidence over objection.

over

18 (Defendants' Exhibit 49 received in evidence
19 objection.)

20 THE COURT: You may proceed.

21 BY MR. KLAUS:

your

22 Q. What did you say to the people of El Salvador in
23 speech that day?

on

24 A. Is mainly, the acts of the institution are founded
25 the ideological principles of the armed forces

1 proclamation, with special emphasis upon the validity of
2 the -- of human rights, of breaking away from past
schemes
3 or frame works, the elimination of corruption, and the
4 guarantees of respecting the will of the people as stated
5 in free elections and beyond any official party, with
6 respect to republic and norms -- Republican, Democratic
and
7 representative norms that are basic to our Constitution.

8 Q. Okay.

9 A. A wish -- is also to say to the people that our wish
10 is that the people be the ones to exercise power. Is but
11 following Democratic pathways in a peaceful and orderly
12 fashion. We, the military officers, wish to perform in
13 such a manner that we may be prepared in accordance with
14 the best interests of the homeland and that we might be a
15 guarantee for the people.

16 We need retraining, such that should be intensive as
17 to relationships especially those against civility framed
18 within and making emphasis upon the compliance with laws
as
19 a guarantee for peace and stability because we are aware
20 that through modern technique and modern systems we shall
21 be able to better serve.

22 We will be able to eliminate violations to human
23 rights which so many problems have brought for our
country.

24 We search for the full identification of the armed forces
25 with the people, the fundamental mission of the reason of

1 being and the objectives of the current government.

2 We invite dissident groups to the current government
3 to make the most of the opportunity of expressing
4 themselves legally and in a timely fashion --

5 THE INTERPRETER: The interpreter corrects
6 himself. To express themselves legally and peacefully
for
7 the development of our country and avoiding destruction
8 that violence brings with it.

9 THE WITNESS: The armed forces follows the
10 framework for, for development as established by the
11 revolutionary government Junta which is to search for
12 political solutions and peaceful solutions. We have
faith
13 in the process, and we desire calm and we also want
peace.

14 These are the principal parts of the speech.

15 BY MR. KLAUS:

16 Q. Did threats against you and your family increase
after
17 this speech?

18 A. I could not -- I could not -- I do not recall. I do
19 not recall that.

20 Q. What were the public reactions to this speech; if
you
21 know?

22 A. There were reactions in the sense that the
Salvadoran

the 23 people, albeit that they are a peaceful people, but at
of 24 same time they are too violent. It is a characteristic
the 25 Salvadorans, but the reaction was along the lines that

1 majority, this is what they wanted.

2 Q. Was there increased violence because of this?

3 MR. GREEN: Objection; leading.

4 THE COURT: Sustained.

5 BY MR. KLAUS:

6 Q. Did you discern any public reaction to this?

7 MR. GREEN: Objection; asked and answered.

8 THE COURT: I will permit the witness to answer
9 the question.

10 THE WITNESS: Yes. We were living the very
11 beginning of this Junta. We had been in but one month,
12 this was on the 15th of November, 1979, one month later.
13 And this possibly created an increase in violence.

14 MR. GREEN: Objection; calls for speculation.

15 THE COURT: Sustained.

16 MR. GREEN: Move to strike.

17 THE COURT: I grant the motion to strike.

18 BY MR. KLAUS:

19 Q. Do you know or discern any change -- any reaction

20 the public in this?

21 MR. GREEN: Objection; repetitive, asked and
22 answered.

23 THE COURT: Overruled. You may answer the
24 question.

so

from

but

25

THE WITNESS: Not from the public in general,

right 1 reactions from those unidentified elements from the
2 and from the left.

3 BY MR. KLAUS:

this 4 Q. Was there a reaction from the military regarding
5 speech?

6 A. Well, yes, of acceptance.

7 Q. Was there any reaction from rightist elements in the
8 military at that time?

9 A. I do not recall exactly.

10 Q. Okay. When the revolt of October 15 took place,
11 were -- what happened in the military?

12 A. Well, the majority within the armed force was
13 supporting this movement.

the 14 Q. Were any officers removed from the armed forces by
15 new Junta?

16 A. Yes. Yes.

17 Q. How many?

exact 18 A. Between 40 and -- 40 or 50, I do not recall the
19 number, but within the first order a large number were
20 either retired or dismissed.

21 Q. And what happened to the President, General Romero?

22 A. Well, he was expelled from the country.

the

23 Q. Were some of those officers removed expelled from

24 country, also?

25 A. Yes.

1 Q. Did officers that supported Romero remain in the
2 military after the coup?

3 A. Almost no, but maybe some may have, but the main
ones
4 left, including Major D'Aubuisson.

5 Q. Were there officers within the military who -- I am
6 including all the armed forces -- that oppose the
reforms?

7 A. I think not. I don't remember, but the majority was
8 in agreement with the proclamation.

9 Q. Okay. Now, did you give any other speeches -- what
10 was the next time you gave a speech regarding human
rights?

11 THE COURT: Mr. Klaus, if I might, unless
you've
12 separately marked these exhibits, I am going to ask that
13 you do that. And I am looking at your exhibit list and
I
14 noticed what was marked as Exhibit 49 refers to a scrap
15 book and so on. And I think it is very important, we
16 talked about this earlier, that all of the exhibits be
17 individually marked and, by the way, that I have a
correct
18 exhibit list, because that is going to be very important
19 at the end of the case so we can keep track of these
20 things.

21 Why don't we stop at this point, and I ask you
to

I

22 go back and individually mark each of the exhibits. And
23 ask that you get me an updated exhibit list with each of
24 the exhibits listed on there. That is what we need from
25 both sides, and I have that from the Plaintiffs.

1 Why don't we stop at this point. Let's stick
to
2 our schedule. We will come back at quarter of two and
3 come back to General Garcia for the continuation of
direct
4 examination.

5 We will be in recess until quarter of two.
6 (Thereupon, the jury retired from the
courtroom.)

7 (Thereupon, a short recess was taken.)

8 (Trial reconvened after recess at 1:45.)

9 THE COURT: Would you bring the jury in?

10 General Garcia, if I might, if I could ask if
you
11 would listen to Mr. Klaus' question and try to respond
12 directly, understanding that Mr. Klaus is going to have
an
13 opportunity to ask a second or follow-up question. I
14 think that would help us move forward. Okay? Thank
you.

15 (Thereupon, the jury returned to the
courtroom.)

16 THE COURT: Mr. Marshal, could I see you for a
17 second?

18 Ladies and gentlemen, please be seated.

19 When we stopped, we were in direct examination
so
20 I am going to turn back to Mr. Klaus and allow him to
21 proceed.

22 MR. KLAUS: Thank you.

23 BY MR. KLAUS:

24 Q. General Garcia, do you own the house that you live
in?

25 A. No.

1 Q. Do you pay rent?

2 A. No. I live with my children.

3 Q. Do you -- what was your income last year?

4 A. Six, 6,000 and something. I do not recall the rest.

5 Q. And where do you get your income from?

6 A. We have 11 grandchildren and I take them to and from
7 school in addition to the pension that I have.

El

8 Q. What pension do you receive from the Government of
9 Salvador?

10 A. \$700.00 monthly.

11 Q. Do you have any income from investments or interest
12 earned on bank accounts or certificates of deposit?

13 A. None, no.

14 Q. Do you have any other income beside your pension and
15 what you earn by taking your grandchildren to school?

16 A. No, I have not.

17 Q. How many people live in the house in Plantation?

18 A. In that house we live, my son, his wife, their two
19 children, my wife, my son and I.

20 THE INTERPRETER: The interpreter stands
21 corrected.

husband,

22 THE WITNESS: It is my daughter and her
23 and to complete the list their two children, my wife, my
24 male son and I, seven.

1 BY MR. KLAUS:

2 Q. How many bedrooms does the house have?

3 A. Four.

4 Q. Have you lived in the same house since you came to
the United States in 1989?

5
6 MR. GREEN: Objection; assumes a fact not in
7 evidence, leading.

8 THE COURT: What was the objection?

9 MR. GREEN: Assumes a fact not in evidence,
10 mainly the year. He said ten to 12 years before. And
11 number two, leading.

12 THE COURT: I will overrule both of those
13 objections. You may proceed.

14 BY MR. KLAUS:

15 Q. I want to go back to El Salvador in 1979 and I want
16 you to look at an exhibit. It is Exhibit 31. Can you
17 identify that exhibit?

18 A. Yes. It is the organizational chart of the National
19 Guard.

20 Q. And was that the way the National Guard was
organized when you were Minister of Defense?

22 A. Yes.

23 MR. KLAUS: I would like to move that into
24 evidence, Your Honor.

THE COURT: How is that marked, counsel?

1 MR. KLAUS: Defendants' Exhibit 31.

2 THE COURT: Is there any objection to the receipt

3 of what would now be marked Defendants' Exhibit 31?

4 MR. GREEN: No, Your Honor.

5 THE COURT: Defendants' 31 received into evidence

6 without objection.

7 (Defendants' Exhibit 31 received in evidence
8 without objection.)

9 MR. KLAUS: Your Honor, I have copies for the
10 jury.

11 THE COURT: All right. You may publish that.

12 MR. GREEN: Judge, we do have a jury binder that

13 we talked about, and this would be appropriate, I think,
14 with the other documents we talked about.

15 THE COURT: Why don't we wait on that. We can
16 discuss that further. I think we were going to discuss it

17 this evening.

18 You may pass that out.

19 MR. KLAUS: They have to hold the pages together.

20 THE COURT: Let's make sure everybody has enough

21 copies, and you can show how it should be held together,
22 if you would. Maybe it is obvious.

23

A JUROR: Yes.

24

THE COURT: Okay.

25

1 BY MR. KLAUS:

2 Q. What is the lowest rank indicated on that chart?

3 A. National Guard, agent, agent, National Guard.

4 Q. Is that an individual member, or is he a sergeant,
or
5 a corporal?

6 A. No rank.

7 Q. Okay. Does that indicate how many members of the
8 National Guard there were when you were Minister of
9 Defense?

10 A. Yes, more or less between 1500 and 2000.

11 Q. Now, when you became Minister of Defense, how many
12 members of the National Guard were there?

13 A. I do not recall the exact number.

14 Q. Was it roughly the same, 2000?

15 A. Yes, more or less. Yes, more or less.

16 Q. Did that number increase while you were Minister of
17 Defense?

18 A. Perhaps a little.

19 Q. So when you resigned as Minister of Defense, how
many
20 members of the National Guard were there?

21 A. I do not recall the exact number. Nevertheless it
was
22 more or less the same.

23 Q. How many were there?

24 A. 1500, 2000, more or less.

25 Q. Where would -- at the time you were Minister of

Guard, 1 Defense, General Vides was director of the National

2 correct?

3 A. Yes, yes.

4 Q. Where would he appear on that organizational chart?

5 A. Here (indicating).

6 Q. And where would the Commander of the National Guard
7 post at San Vincente appear?

8 A. Here (indicating).

the 9 Q. Okay. And where would the Commander in charge of

10 detention facility at the National Guard headquarters
11 appear?

12 A. Right there (indicating).

at 13 Q. At the same level of the Commander of the barracks

14 San Vincente?

15 A. Yes, he held -- he was the Commander of the
16 Commander's post in San Vincente.

17 Q. Okay. Was there a separate commander for the
18 National -- for the detention facility at the National
19 Guard headquarters at San Salvador at that time?

20 THE INTERPRETER: The interpreter requests the
21 question read back.

22 MR. KLAUS: I can repeat it.

23 BY MR. KLAUS:

24 Q. Was there a commander for the detention facility at
25 the National Guard headquarters in 1979?

1 A. Would you please repeat the question?

2 Q. Was there a commander in charge of the National
Guard
3 detention center at the National Guard headquarters in
San
4 Salvador at that time?

5 A. Specifically as a special commander, no.

6 Q. Would there be an officer in charge of the detention
7 facility at the National Guard headquarters in San
Salvador
8 in 1979?

9 A. Yes.

10 Q. Where would he appear on that chart?

11 A. At S-1, Department of Personnel and Justice.

12 Q. Okay. How many officers would be in between General
13 Vides and the commander of the San Vincente barracks of
the
14 National Guard?

15 A. Three or four tiered.

16 Q. And how many between General Vides and the commander
17 in charge of the detention facility at the headquarters
in
18 San Salvador?

19 MR. GREEN: Objection; assumes there was a
20 commander.

21 THE COURT: Overruled.

22 THE WITNESS: Two.

23 BY MR. KLAUS:

24 Q. Were there inspections of the jails at that time
while

25 you were Minister of Defense by any international

1 organization?

2 A. Yes.

3 Q. And what international organization?

4 A. The International Red Cross.

5 Q. Did they have free and open access to all detention
6 facilities in your country?

7 MR. GREEN: Objection; leading.

8 THE COURT: I don't think that suggests an
9 answer. I will permit that.

10 THE WITNESS: Totally. They would enter at the
11 time that they wished, and they had absolute freedom to
12 visit all of the posts in the country.

13 BY MR. KLAUS:

14 Q. If the Red Cross had a complaint about a prisoner,
15 who
16 would receive that in the Government at that time?

17 A. The Red Cross had a very special procedure. They
18 visit
19 would arrive, they would visit the corps, they would
20 the prisoners or captives, they would see the conditions,
21 or their conditions, and they would provide their
22 recommendations.

23 Sometimes directly to the President of the republic,
24 Engineer Duarte, sometimes to me, and sometimes to the
25 chief of the corps, related only to the condition of the
26 prisoner.

25 Q. Did you receive any complaints from the Red Cross

1 regarding any one of these Plaintiffs while you were in
2 office?

3 A. No.

4 Q. What were your orders regarding detention of
5 individuals while you were Minister of Defense?

6 THE INTERPRETER: Interpreter requests
7 clarification from counsel.

8 BY MR. KLAUS:

9 Q. What were your orders regarding detention of
10 individuals while you were Minister of Defense?

11 THE INTERPRETER: The interpreter is unclear
12 whether the orders are orders issued or orders received.

13 Counsel, would you clarify for the interpreter?

14 BY MR. KLAUS:

15 Q. Under what orders would you operate, whether you
16 received them or gave them, regarding detention of
17 individuals while you were Minister of Defense?

18 A. Repeat, please.

19 Q. Under what orders -- can you describe the orders
that
20 you operated and those under you operated regarding
21 detention of individuals while you were Minister of
22 Defense?

23 A. Commanders, and I am referring to the corps of
public
24 security, had requests from respective judges who would

25 order the arrest of persons.

1 Q. And what happened to someone after he was arrested?

capturing

2 A. He was taken to the corps of whomsoever was

3 him and a preliminary investigation was performed and to

4 whomsoever according report was issued for the legal

5 aspect.

6 Q. Were any member -- when you say the corps of public

7 security, do you mean Treasury Police, National Guard and

8 the National Police?

9 A. Yes.

10 Q. Is -- does that also include prisoners taken by the

11 Army?

12 A. When the Army arrested or had arrested people, they

13 would usually send them to the security corps.

14 Q. What about prisoners of war?

15 A. Them, too.

corps

16 Q. Okay. Was anyone in any of the public security

17 or the Army authorized to torture any prisoners?

18 A. No.

19 Q. Were they expressly forbidden to torture prisoners?

20 A. Yes.

21 Q. And did those orders come from you directly, or did

22 they come from the Junta?

23 A. From both as well as from the respective security

24 corps.

25 Q. Okay. How do you explain the 22,000 complaints

1 received by the U.N. Truth Commission, the 750 urgent
2 action telegrams from Amnesty International --

3 MR. GREEN: Objection; assumes a fact not in
4 evidence.

5 THE COURT: Overruled.

6 MR. KLAUS: I didn't hear.

7 THE COURT: I overruled the objection.

8 BY MR. KLAUS:

9 Q. How do you explain those among other complaints of
10 torture if it was against your orders?

11 A. They simply followed channels to get to whomsoever
it corresponded to, and I am referring to those we received
12 because both Amnesty International as well as other
13 organizations would send the correspondence, be it to the
14 presidency, the ministry, the general staff, and
15 sometimes to the commanders.
16

17 Q. I don't think I made my question clear.

18 THE COURT: Could I stop you, though, for a
19 second? I want to go back to something.

20 The jury is going to have to decide what is --
21 what has been testified to in evidence. If you conclude
22 that someone is misstating something or that they are --
23 for instance, someone poses a question and said if such
24 and such happened, you know, what would be the cause or

25 what have you, you are going to have to decide whether

1 that premise has been established in the evidence, okay?
2 And obviously when someone answers a question that is
3 premised on something, if the premise is not
independently
4 established, then the answer falls, too.

5 I think we talked about this, before, when a
6 lawyer asks a question, the lawyer cannot testify, that
7 has to be in the evidence somewhere. Okay. So the jury
8 is going to ultimately decide whether something was in
9 fact established in the evidence.

10 And so I come back once again, if by chance a
happened,
11 question is asked that says what if this or that
evidence,
12 if that is not independently established in the
13 then obviously the answer falls, because the answer is
14 dependent on that premise being established, okay?

15 Now, let me go back to Mr. Klaus and allow him
to
16 restate the question.

17 BY MR. KLAUS:

18 Q. Do you acknowledge that people were tortured in
19 detention facilities of the armed forces of El Salvador
20 while you were Minister of Defense?

21 A. No, I have never had any proof of that.

22 Q. If they were, would that have been against your
23 orders?

24 A. Yes.

25 Q. If you had reports of those, of tortures happening
in

1 detention facilities of the armed forces, what would you
2 do?

3 A. I would have acted in a manner, in the first place,
in
4 accordance with the law. And in second, in accordance
with
5 my own principles, because I have always been against
6 torture.

7 Q. So what would you have done?

8 A. I would have punished in accordance with the law.

9 Q. Who received the letters that were sent in response
to
10 the urgent action request of Amnesty International?

11 A. Well, there was someone at the personnel department
whomsoever
12 who was also in charge of transmitting those to
13 it corresponded, if it was to the National Police, the
14 National Guard or the Treasury Police or to a military
15 corps.

16 Q. What about the letters that were addressed to you?

17 A. They were also sent to whomsoever it corresponded.

18 Q. Who is that person? Was that only one person who
19 opened those letters?

20 A. Normally, yes.

21 Q. Was that the same person that received the
complaints
22 from the Red Cross?

23 A. Yes.

24 Q. Who was that person?

25 A. Could be the chief of personnel or someone within

his

1 department.

2 Q. Well, you were Minister of Defense, who was chief of
3 personnel?

4 A. Well, I could not give you the name now, but I could
5 find it.

6 Q. During the time when you were Minister of Defense,
did

7 El Salvador receive military aid from the United States?

8 A. Yes.

9 Q. Was that aid contingent on El Salvador being
certified

10 regarding human rights?

11 A. In part, yes.

12 Q. Was certification ever withheld during your
13 administration as Minister of Defense?

14 A. Maybe delayed. When I became Minister of Defense,
15 there was a period, a lag time in the assistance that did
16 not materialize -- that did not materialize until the
year

17 1981, which is to say that after the 15th of November and
18 until January of 1981, there was no assistance.

19 Q. Were there U.S. military advisers in El Salvador
20 during your administration as Minister of Defense?

21 A. Yes.

22 Q. Did you meet with them on a regular basis?

23 A. Yes.

24 Q. How many advisers were there?

25 A. There was a maximum of 55, but it was almost always

1 not that full number, it was less.

2 Q. Did you also meet with the Ambassador and members of
3 his staff while you were Minister of Defense, United
States
4 Ambassador?

5 A. Yes, many times.

6 Q. Did they mention violations of human rights
occurring
7 by your armed services in any of those meetings?

8 A. There was mention, but in general terms without
9 exclusively specifying, but we did speak upon human
rights
10 violations.

11 Q. Did they mention specific instances at all to you
12 during your whole administration?

13 A. How do you mean specific instances?

14 Q. I mean either murders or tortures or massacres.

15 A. Not specifically.

16 Q. What was your procedure if you received a complaint
17 about someone being tortured who was being held in
18 detention?

19 A. To investigate it.

20 Q. Did you ever receive complaints of any of these
three
21 Plaintiffs being tortured?

22 A. No.

23 Q. Did you ever receive complaints of anyone else being

24 tortured?

25 A. No.

1 Q. Did you receive complaints from the United States or
2 any of its representatives regarding death squads?

3 A. Yes.

4 Q. And what was your response?

5 A. Obtain information. As I would say to everyone who
6 would point out in -- including the national and
7 international press, that they should mention specific
8 names and specific events.

9 Q. What about the specific names that were mentioned by
10 Archbishop Romero in his homilies?

11 A. Yes, they were names, but they were mentioned in a
12 general manner. For example, we knew Mayorda (phonetic)

by

13 zone was in the death squads or any other, but the events
14 themselves were not specified.

15 Q. What about the names mentioned by Major D'Aubuisson

on

16 television?

17 A. Mentioned in what sense?

18 Q. Lists of subversives.

19 A. Well, if he -- well, in fact, I don't understand the
20 question very well, excuse me.

21 Q. You heard Professor Karl describe an incident where
22 she saw Major D'Aubuisson on television showing some

people

23 and the next day they showed up dead. Do you remember

that

24 incident?

25 A. I do not recall the event, no, but I do recall that

but 1 more than once Major D'Aubuisson mentioned some people,
2 I do not recall specifically who.

3 Q. Do you have any memory of when he would read lists,
4 Major D'Aubuisson would read lists over the television
that 5 some of those people would turn up dead?

6 A. I do not recall that, because if I did recall it, I
7 would have to give names, and I have no specifics.

8 Q. Who did you attribute those deaths to?

9 MR. GREEN: Objection; lack of foundation.

10 THE COURT: What do you mean by that?

11 MR. GREEN: Lack of predicate.

12 THE COURT: That is not a legal objection.

13 MR. GREEN: He has not indicated how he would
14 come to attribute anything.

15 THE COURT: I will overrule that.

16 BY MR. KLAUS:

17 Q. To whom would you attribute the deaths of people
whose 18 bodies were found on the street?

19 A. Right, it could be from several sources. In El
20 Salvador, as we have already stated, the state of
violence 21 was exaggerated, and when a dead body would show up on
the 22 street, even with marks that would indicate that that
death

this

23 had been caused by a death squad, it was possible, and
24 is without proving it, that it could have been done by
25 another group that didn't belong to a death squad.

1 MR. GREEN: Objection; speculation.

2 THE COURT: Right. But the question goes to
the
3 witness' state of mind. So I am receiving this not for
4 the truth, but what was the witness thinking, why did he
5 act or not act, so I will overrule the objection and
allow
6 the witness to continue with his answer.

7 THE WITNESS: Yes, that was one of the big
8 problems we had, that cadavers would show up, dead
people
9 would show up, they would be identified, but there was
not
10 a way in order to identify where that came from.
11 Suppositions were made because of the way in which a
12 cadaver would show up, because there was their suspicion
13 there was another organization committing the crime and
14 left traces to indicate as if it was another one. And
15 that is one of the big problems that we had.

16 BY MR. KLAUS:

17 Q. Do you agree that there were, during that time
period
18 from 1979 to 1983, approximately 30,000 civilians killed
in
19 El Salvador?

20 A. No. I believe it was less.

21 Q. How many do you think were killed?

22 A. In the period -- excuse me, from when?

23 Q. From the coup to when you resigned?

24 A. The global focus is more, not 30,000, maybe some 50
to

25 60,000, but I would like to clarify. These are not dead

1 people found in the street, but I am including all that
2 happened in El Salvador.

3 Q. How many people -- how many members of the military
4 were killed during that time?

5 A. 14,000.

6 Q. How many guerillas were killed?

7 A. I do not know the exact number.

8 Q. When you took over as Minister of Defense, what was
9 the total number of -- how many members of the armed
10 forces, including all the armed forces, security forces,
11 Army, Navy, Air Force, how many members were there?

12 A. It reached a maximum number of 59,000 and while I
13 there, it reached a maximum of some 40, 45,000.

14 MR. GREEN: Objection; non-responsive to the
15 question.

16 THE COURT: Sustained.

17 MR. GREEN: Move to strike.

18 THE COURT: I grant the motion to strike and
19 allow Mr. Klaus to restate the question.

20 BY MR. KLAUS:

21 Q. When you started in November, 1979, how many members
22 of the armed forces were there?

23 A. There were approximately seven or 8,000.

24 Q. Total, including the security forces?

was

25 A. Including the security forces, the maximum number

1 would be approximately 13,000.

2 Q. And when you left office, how many were there in all
3 of the armed forces?

4 A. Approximately 59,000 -- no, no, I apologize, I made
a
5 mistake. Approximately 40,000.

6 Q. Where did the -- during the time you were in office,
7 you said 14,000 members were killed?

8 A. Yes.

9 Q. Where did the new recruits come from?

10 A. They were recruited, there was a recruiting system,
11 and they were replaced. We had a mandatory service for
two
12 years, so they were constantly renewed.

13 Q. At what age would somebody be drafted in El
Salvador?

14 A. 18 years of age.

15 Q. Did you have members of the military who were
younger
16 than 18?

17 A. Some.

18 Q. What was the minimum age you would accept someone
into
19 the military?

20 A. It was not that they were accepted, they were
youths,
21 they were kids, and it would seem incredible, but they
22 wanted to be in the Army, who wanted to serve, and so,

23 therefore, we would accept those younger than 18 years of
24 age.

25 Q. Were you aware of corruption within the military?

1 A. Specifically not, but it is a subject upon which we
2 try to provide an example. When the military coup
started,
3 the first thing the young officers requested was that,
4 avoid corruption, and to comply with that when it was
5 requested of me one day at an officers' meeting, my
answer
6 was, we will make an example.

7 I said here there are four or five officers who own
a
8 Mercedes Benz vehicle and who have not the capacity to
own
9 it, economic capacity. I am not going to name them, but
I
10 do give you 24 hours to turn in the car that you are
using
11 now. These were some Mercedes Benz cars that had been
sent
12 over from Nicaragua and that belonged to the Somoza
family.

13 And the second test will be that all purchases made
at
14 the military of defense will be made by a commission,
made
15 up of all of the chiefs and offices of the armed forces.

16 Q. Did you come to find out after your term in office
17 there were incidents of corruption?

18 A. I have no knowledge.

19 Q. Have you heard allegations of corruption while you
20 were in office?

21 A. I don't recall.

22 Q. Did you have actual or direct control over the
people

23 in the National Guard detention center while you were

24 Minister of Defense?

25 A. No.

1 Q. Who did?

2 A. The Director of the National Guard.

3 Q. Did you have direct control over the individual in
4 charge of the National Guard headquarters in San Vicente
5 while you were in office?

6 A. No.

7 Q. Who did?

8 A. Well, according to the organizational chart, it
would
9 be the assistant director of the National Guard.

10 Q. And who was that?

11 A. At the time it was Colonel Montes.

12 Q. Can you spell that?

13 THE INTERPRETER: M-O-N-T-E-S.

14 THE WITNESS: Montes.

15 BY MR. KLAUS:

16 Q. Did you ever have an officer disobey an order from
you
17 while you were Minister of Defense that you know of?

18 A. It's possible.

19 Q. Can you recall any specific instances?

20 A. I don't remember right now.

21 Q. Do you remember any allegations of people doing
things
22 against your orders -- people under your command doing
23 things against your orders?

24 A. Yes.

25 Q. And do you recall any specific instances of

1 allegations of people disobeying your orders?

that

2 A. Not specifically, but I know that it is possible

3 they may have been doing things that were not the proper

4 things.

you

5 Q. Did anyone -- were there any attempted coups while

6 were Minister of Defense?

7 A. Many.

8 Q. Can you give us any examples?

very

9 A. Well, it is difficult to define specifically who was

10 about to effect a coup. They are trying to keep it a

11 secret, but there were many attempted coups. It was a

12 delicate time, and within the armed forces there were

13 totally opposed points of view, and those opposing forces

to

14 wanted to hold power. They would do everything possible

15 make it appear as though the Government had problems, it

16 wasn't doing well.

17 Q. Was there efforts by officers to destabilize the

18 government?

19 A. Yes, many.

20 Q. Can you give us specific examples?

21 A. Well, specific example is Colonel Majano -- I am

22 sorry -- Major D'Aubuisson who was always plotting.

23 Q. Did any U.S. advisers ever inform you of potential

24 coups?

25 A. Well, they would give general information.

1 Q. How did you come to leave the military service?

2 A. There was an internal problem within the armed
3 institutions. The kind of war that was being waged in El
4 Salvador was very special, as is a regular war. And I
5 myself had my own way of carrying out this kind of war

and

6 I was always opposed to generalized actions, for example
7 bombings, because El Salvador is very populated, and it
8 difficult to specify what area it is that needs to be
9 bombed.

is

10 It was always my inclination to carry out war in

small

11 combat units and that created problem within the
12 institution. For example, and this is very specific

case,

13 I have problems with the Air Force because I refused to
14 allow them to use napalm. You know what napalm is. It's
15 material that once it falls, it hits, it burns, it is
16 abrasive material, and it is forbidden by international
17 law. Of course that caused opposition which gave me
18 problems.

19 There was a case of an officer who was giving me
20 problems and I was ordered to transfer him out of the
21 country. This man did not carry out the order. He got

his

22 people together, and he practically carried out

23 insubordination. I tried to handle the problem personnel
24 wise, but when I realized the problem was too large
because
25 I was dealing with two different sectors of the armed

1 forces, I opted for resignation in order to avoid
problems 2 within the armed institutions.

3 Q. Who were those officers?

4 A. One was Colonel Ochoa Perez.

5 Q. And who was the other?

6 A. Colonel Blandon. Colonel Bustillo mainly. And if
7 I -- no, I don't remember the other.

8 Q. So, as a result -- were there ever any other
instances 9 where you faced removal because of opposition within the
10 military?

11 A. Not that I recall.

12 Q. Was it a constant worry about opposition within the
13 armed forces to your policies?

14 A. Not in the beginning, but it increased, and there
were 15 different ways of focusing the problems within the armed
16 forces, and that was one of the big problems we had in
the 17 institution. We had to deal with personnel problems in
the 18 institution, we had to deal with the war itself. We had
to 19 deal with government politics. It was a whole series of
20 things that would keep us busy not only -- not all day,
24 21 hours a day.

22 Q. Did the United States through its advisers and
23 representatives express concern to you about maintaining
24 the integrity of the armed services?

25 A. Yes.

those 1 Q. And who -- who from the United States expressed
2 concerns?

3 A. Well, several people, the military attaches, the
4 Ambassador.

you? 5 Q. Were you afraid of the Army falling apart beneath

6 A. Partly because we were at war, and it was what was
7 least expected, least desired, but I did everything
8 possible to keep the armed institution together. But, if
9 for example, we had officers who went too far -- the
10 guerillas, they would kill their commanders, and they
would
11 take the troops away, all those problems had to be
solved.

12 It's difficult to be in a position such as we had
13 trying to deal with all those huge problems which were
14 really serious. Out of one Brigade, one of the officers,
a
15 captain, which is one of the people in this room we refer
16 to as the young officers, he took his whole -- his troop
17 over to the guerillas after having murdered his own
18 commander, and having set a whole barracks afire, that of
19 the second Brigade.

rise 20 So we had very grave internal problems which gave
21 to maintaining particularly rigid positions to avoid some
22 of the things that happened.

23 Q. Did you have problems with members of the military
24 carrying out murders or massacres against civilians?

25 A. Yes, there were.

1 Q. Had there ever been, prior to '79, had there ever
been 2 divisions of this magnitude within the military?

3 A. Yes, there had.

4 Q. When?

5 A. Before 1979, yes, there were attempted crimes, there
6 were murders, there were massacres, and --

7 THE COURT: Would you repeat that for the
8 general? There were murders, there were massacres and?

9 THE WITNESS: Yes, there used to be before we
10 took over.

11 BY MR. KLAUS:

12 Q. What I asked you is, were there ever divisions
within 13 the military of that magnitude before 1979?

14 A. Yes, they did exist.

15 Q. When?

16 A. Well, for example, when there would be a coup. But
17 that would be in a different environment, different from
18 the war that we had to deal with. You can have divisions
19 in terms of difference of opinions, and difference in
terms 20 of armed differences, which in fact were happening in our
21 day.

22 Q. That is what I am asking. Were there ever that
23 serious divisions within the military, was it ever in
that

24 much of a danger of falling apart as, prior to '79 as it
25 was from '79 to '83?

1 A. No, it was different. It was -- the possibility was
2 greater in our day than before.

3 Q. Even with the Tanda System, the possibility of the
4 armed forces falling apart was real; is that correct?

5 A. Before, or after?

6 Q. No, during the time you were Minister of Defense.

7 A. Yes.

8 Q. What caused those divisions?

9 A. Well, the different inclinations that existed within
10 the armed institutions. There was one segment that had
11 been prepared or different, perhaps new progressive
ideas,
12 and there was another segment with exaggeratively
13 conservative views, that would create difference,
14 opposition which it is different where there are no
weapons
15 then when people are armed.

16 Q. Did that interrupt the chain of command?

17 A. Yes.

18 Q. Now, you were able to retire, correct?

19 A. Yes.

20 Q. What did you do after you retired in '83?

21 A. Well, I came here, I would come and go from El
22 Salvador. Part of my family was there and the bulk of my
23 family here. I spent some time trying to decide whether
to

24 stay here or go there, and I opted for staying here. And
25 then I gave myself over entirely to my daughter's

1 education. In the end they were all educated here.

2 MR. KLAUS: I would like an opportunity to
3 approach.

4 BY MR. KLAUS:

5 Q. Can you identify that exhibit? It is marked Exhibit
6 11, Defendants' Exhibit 11.

7 A. Yes.

8 Q. What is that?

9 A. It's recognition I received here from the Government
10 of the United States.

11 MR. GREEN: Your Honor, same objection as
stated
12 earlier.

13 THE COURT: Well, I don't think we have quite
14 gotten to that point. Let's move to the next question
so
15 we could have the formal offer and preserve the
objection.

16 BY MR. KLAUS:

17 Q. Where did you receive that?

18 A. From the Department of Defense.

19 Q. And when did you receive it?

20 A. After I was no longer Minister of Defense.

21 Q. I am going to ask you to look -- can you identify
22 Exhibit 12?

23 A. Yes.

24 Q. Did you receive them together?

25 A. Yes.

1 Q. And where were you when you received them?

2 A. I came here to the United States.

3 Q. And who gave them to you?

4 A. The Secretary of Defense.

5 Q. The Secretary of Defense of the United States?

6 A. Yes, sir.

7 MR. KLAUS: I would ask to move Exhibits 11 and
8 12 into evidence, Your Honor.

9 THE COURT: Preserving the same objections that
10 were raised earlier?

11 MR. GREEN: Yes, Your Honor.

12 THE COURT: Defense Exhibits 11 and 12 are
13 received into evidence over objection.

14 (Defendants' Exhibits 11 and 12 received in
15 evidence over objection.)

16 MR. KLAUS: Your Honor, I have copies for the
17 jury.

18 THE COURT: Yes, you may publish that.

19 BY MR. KLAUS:

20 Q. Can you read what Exhibit 11 says?

21 THE COURT: Wait a moment, and we will get that
22 passed out.

23 Mr. Klaus, if you want, you are entitled to
24 publish the exhibit yourself or have the witness
publish.

MR. KLAUS: I am going to ask to read it, it is

1 in English.

2 BY MR. KLAUS:

3 Q. The exhibit says, "The President of the United
States

4 of America, authorized by Act of Congress, has awarded
the

5 Legion of Merit, Degree of Commander, to Brigadier Jos,

6 Guillermo Garcia Merino -- is that you?

7 A. Yes.

8 Q. "-- Minister of Defense and public security
government

9 of El Salvador, for meritorious performance of duty.

10 "General Garcia distinguished himself by
exceptionally

11 meritorious conduct in outstanding performance of duty as

12 Minister of Defense and public security of El Salvador
fro

13 October, 1979 to April, 1983. During this period,
General

14 Garcia's professionalism, dedication to duty and
democratic

15 ideals marked him as a true soldier statesman. His
tenure

16 as Minister of Defense and public security saw El
Salvador,

17 although beset by an externally supported Marxist-
Leninist

18 insurgency, move irrevocably toward the goal of

19 participatory democracy. The reforms that were initiated

20 after the October, 1979 revolution have been implemented

21 successfully in large due to General Garcia's tireless
22 efforts. His sound judgment, military leadership and
23 political acumen have been a singular inspiration to the
24 people of El Salvador and a sterling example of the role
25 a military leader in a representative government.

of

General

1 Garcia's extraordinary accomplishments, leadership and
2 service reflect great credit upon him, the Salvadoran
armed
3 forces and El Salvador."

4 Do you remember what year you received this?

5 A. 1983. After I stopped being Minister.

6 MR. KLAUS: If I could have a moment.

7 No further questions.

8 THE COURT: Ladies and gentlemen, this is
9 probably the appropriate time to take a break for the
break
10 mid-afternoon recess. Why don't we take a 15 minute
11 and we will come back and continue with the cross
12 examination.

13 Court will be in recess for 15 minutes.

14 (Thereupon, the jury retired from the
courtroom.)

15 (Thereupon, a short recess was taken.)

16 (Thereupon, trial reconvened after recess.)

17 THE COURT: Ladies and gentlemen, please be
18 seated. Please sit down for a moment.

19 Ladies and gentlemen, when we were trying to
20 decide where to hold the trial, we talked about it, that
21 is the lawyers and myself, and we decided for many
reasons
22 that this courtroom was preferable to some of the other

acoustics

23 facilities that were available. We thought the
24 were better here, and even though it was a relatively
25 small courtroom, that we could accommodate everyone. I

1 mention that, though, because the room is a relatively
2 small room.

3 Now, secondly, I think that it is clear to
4 everybody that the issues that we are discussing in the
5 case are terribly, terribly difficult issues, and the
6 parties on both sides have waited a great deal of time
to
7 come here to court to try to put this in front of a
jury,
8 to allow the jury to hear the positions that are taken
by
9 both sides so the jury can give us whatever their
verdict
10 is going to be.

11 Now, and, of course, when you think about it,
12 that is the essence of the trial. Many times there are
13 two sides to a story, and for there to be an orderly
14 resolution, both sides have to have the opportunity to
put
15 their positions in front of the jury, understanding that
16 at the end of the case, after the lawyers have argued,
the
17 jury is going to have a right and obligation indeed to
18 choose.

19 Now, I want to share with you a note I have
20 received from the jury. And I haven't, by the way, had
a
21 chance to share this with counsel, I just received it.

22 The note reads as follows: Someone in the
23 gallery is huffing and puffing a lot, seemingly at
certain
24 moments in the testimony. Could she please stop. I
find
25 it distracting along with several other jurors. I don't

1 know if it is being done on purpose or not, but it
2 happened a lot today, and several of us agree. Meaning
3 several of the jurors.

4 Now, sometimes if people are not conscious of
5 something like that, sometimes people may be expressing
6 themselves without being aware of it, and I want to tell
7 you, and I said this earlier, I really think that the
8 parties and the folks who have been with us, the
observers
9 in the courtroom have behaved admirably throughout the
10 entire trial.

11 I think this is one of the most difficult
12 that I have ever presided over, and by that I mean in
13 terms of the emotional quotient of the evidence being
14 presented. But I would simply mention to all of the
15 guests in the courtroom, and in a sense, you are not
16 guests, this is a courtroom of the United States, and as
17 people in the United States, you have an absolute right
to
18 be here because this is a public proceeding, but I think
19 the one proviso has to go with that is that all of us
have
20 an obligation to do nothing that would interfere with
the
21 parties' rights to have this matter finally resolved.

22 May I ask you to be extra on guard, to kind of

23 catch yourself, and if there is something that comes up
24 that is tough on you, step outside if you need to do
that.
25 I think that would be the better way to handle that.

1 We don't want to do anything that distracts the
2 jury's attention from the evidence. Ultimately the jury
3 will have a chance to listen to the lawyers on both
sides
4 argue the case aggressively to them, and that would help
5 the jury make their own judgments about what is
believable
6 or not, and what have you.

7 So I want to share that with you and ask you
for
8 your cooperation and help in that regard.

9 Mr. Marshal, would you bring in the jury,
please?

10 (Thereupon, the jury returned to the
courtroom.)

11 THE COURT: Ladies and gentlemen, please be
12 seated. As we were about to break, Mr. Klaus concluded
13 his direct examination. Let me turn to Mr. Green to
14 conduct the cross examination on behalf of the
Plaintiffs.

15 Mr. Green.

16 MR. GREEN: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. GREEN:

19 Q. Good afternoon, General Garcia.

20 A. Good afternoon.

21 Q. Do you agree with the principle that the soldier, be
22 he friend or foe, is charged with protection of the weak

23 and unarmed?

24 A. Yes.

25 Q. Do you agree that it is the very essence and reason

1 for a soldier's being?

2 A. Yes.

sacred 3 Q. Do you agree that when a soldier violates this

4 trust, he not only profanes his entire cult but threatens
5 the very fabric of international society?

6 A. Yes.

your 7 Q. Sir, I would like to ask you some questions about

8 resum, which you testified about earlier today.

9 A. Yes.

10 Q. Now, you were a member of the Tanda of 1956?

11 A. Yes.

12 Q. And you had enrolled at the military academy of El
13 Salvador in 1953?

14 A. Yes, sir.

1955, 15 Q. So, you were there with the Tanda of 1953, 1954,

16 1956, 1957, 1958, and 1959?

17 A. Yes.

18 Q. And General Vides Casanova was in the Tanda of 1957,
19 so he was there for three years while you were at the
20 military school?

21 A. Yes, one, yes.

22 Q. Nicholas Carranza was in the Tanda of 1957?

23 A. Yes.

24 Q. General Garcia, you graduated first in your class at
25 the military school in 1956, correct?

1 A. Yes.

2 Q. And you received the President of the republic's
3 award?

4 A. Yes.

5 Q. And given the history of military dictatorship in El
6 Salvador from 1930 on, graduating first in your Tanda was
7 very important?

8 A. Important as it is in any other type of graduation,
it
9 seems to me.

10 Q. But in El Salvador, given the military dictatorship
11 that occurred effectively from 1930 through 1956, the
date
12 of your Tanda, graduating first in your Tanda was a
pretty
13 important, pretty significant accomplishment?

14 A. Well, first, I don't think that they were all
15 dictatorships at that time, other than the first one,
which
16 was that of General Martinez.

17 Q. But they were military governments, weren't they?

18 A. Yes.

19 Q. Given the importance of the military role in El
20 Salvador Government from 1930 through your 1956 Tanda,
you
21 would agree, would you not, that graduating first in your
22 Tanda was a significant accomplishment?

be

23 A. An accomplishment up until that moment, because the
24 rest of the career is based on the development that can
25 achieved.

1 Q. In fact, graduating first in your Tanda allowed many
2 people to consider you to be presidential material?

3 A. No.

4 Q. General Garcia, just as in the United States with
5 being assigned to West Point, being assigned as you were

in

6 1960 to the military academy of El Salvador was a very
7 important posting?

8 A. Relatively, yes.

9 Q. And you were then appointed section commander in
10 company of cadets structure?

11 A. Yes.

12 Q. The following month you were appointed professor of
13 the study of armsat?

date,

14 A. No, that is level -- unless there is a different
15 but, yes. This was simultaneous.

16 Q. And the following year, February 1st, 1961, you were
17 appointed professor of ballistics and gun instruction at
18 the military academy?

19 A. Yes.

20 Q. And one year later, you were appointed professor of
21 cadet and command?

22 A. Yes.

23 Q. And as professor of cadet and command, one of your
24 responsibilities was to instill in the cadets respect for

25 authority and command?

1 THE INTERPRETER: The interpreter would request
2 counsel repeat the last part of the question.

3 BY MR. GREEN:

4 Q. As professor of cadet and command, one of your
5 responsibilities was to instill in the cadets respect for
6 authority and command?

7 A. Yes.

8 Q. And as the number one graduate in your 1956 Tanda,
and
9 continuing as a professor at the military academy, you
had
10 great knowledge and leadership abilities, correct?

11 MR. KLAUS: Objection, requires it -- evidence
of
12 character.

13 THE COURT: I will overrule. You may answer
the
14 question.

15 THE WITNESS: I believe that I did not consider
16 that I had leadership.

17 BY MR. GREEN:

18 Q. You had knowledge of leadership, you had learned
19 leadership skills during your four years at the military
20 school?

21 A. It was an obligation.

22 Q. And one of the obligations -- well, let's move on a
23 little bit.

24 In 1963, you were appointed professor of "Ability to
25 Command and Tactics School" at the military academy?

1 A. Yes, tactics and command, that is the subject
matter.

2 Q. And it is a very important subject matter for cadets
3 and military commanders?

4 A. Like all of the others that were taught at the
school.

5 Q. But the purpose of a military academy, and the
purpose
6 of a place like West Point and Annapolis and the United
7 States is to identify potential leaders and train them on
8 how to lead?

9 MR. KLAUS: Objection; confusing, misleading --

10 THE COURT: I am sorry?

11 MR. KLAUS: Confusing, misleading the jury,
12 relevance --

13 THE COURT: Sustained on relevancy. The basis
of
14 the objection is West Point and Annapolis. Let's go to
El
15 Salvador.

16 BY MR. GREEN:

17 Q. Could you tell the ladies and gentlemen of the jury
18 what you taught students during the course that is on
your
19 resum, as "Ability to Command and Tactics School"?

20 A. The specific ways in which an officer, depending on
21 his level and category, performs his mission.

Tanda,

22 Q. At El Salvador at the time you were in the 1956

command,

23 and at the time you went back to teach courses on

24 the armed forces were based and organized on a chain of

25 command?

1 A. Yes, like all armies normally.

law

2 Q. General Garcia, in fact El Salvador had very clear
3 on the chain of command?

4 A. It had its laws, yes.

5 Q. And under Salvadoran law a captain was supposed to
6 obey a major?

yes.

7 A. From rank to rank and from position to position,

8 Q. So a captain would have to obey a major, and a major
9 would have to obey a colonel all the way up to general?

10 A. Yes.

11 Q. And that hierarchy flowed all the way down -- the
12 chain of command flowed all the way down to the lowest
13 rank, which was private?

14 A. Yes.

chain

15 Q. And in fact a military cannot function without a
16 of command?

17 A. That is so, yes.

command

18 Q. And part of the chain of command, and part of
19 structure are the twin principles of command and
20 subordination?

21 A. That is the principle.

22 Q. And when you were Minister of Defense, people under
23 your command had to obey you?

it 24 A. On principle, yes, that's the law. But in reality,
25 depends on whether or not the order is complied with.

were

1 Q. General Garcia, when you were general or when you
2 a colonel, you could issue an order to a lieutenant or a
3 sergeant, couldn't you?

4 THE INTERPRETER: Issue an order to --

5 MR. GREEN: A lieutenant or sergeant.

6 THE WITNESS: No. No. It must follow a
regular

7 channel.

8 BY MR. GREEN:

9 Q. General Garcia, if you saw a captain pistol whipping
10 an unarmed civilian, is it your testimony to this jury
you

11 had no authority to give that captain a direct command to
12 cease and desist?

13 A. Yes, of course, because he is violating a law.

14 Q. So you would agree that as a colonel or as a
general,

15 you could give a direct command to a subordinate whether
it

16 is a lieutenant or a sergeant, correct?

17 A. So long as there is an emergency or there is a
18 consummated act. If I see that the law is being
violated,

19 it is not necessary for me to be general or colonel,
anyone

20 has the duty to act in order to prevent what is
happening.

21 Q. General Garcia, you also had a duty to investigate

22 alleged violations of human rights?

23 A. Yes.

24 Q. General Garcia, let's go back to your resum,.

25 In October of 1963 you were appointed commander of

the

1800

1 Company of Cadets at the military academy?

2 A. Yes.

3 Q. And you held that position through the middle of
1964?

4 A. Yes.

5 Q. So let me make sure I understand this. You
testified

6 earlier that during your time at the military school when
7 you were a student, you had contacts with cadets from the
8 1953 Tandas, all the way up to the 1959 Tanda?

9 A. Yes.

10 Q. And since you were back at the military school as a
11 professor or as a commander from 1960 through 1964, you
had

12 continuing contacts with the Tandas of 1960, '61, '62,
'63,

13 '64, '65, '66, and '67?

14 A. No.

15 Q. Which of those Tanda did you not have contact with?

16 A. As time passes, graduating classes or Tanda begin to
17 dissolve because certain requirements must be met for the
18 next promotion.

19 Q. Let me try to shorten this.

20 THE COURT: Wait a minute, now. You need to
21 allow the witness to finish his answer.

22 Had the general completed the answer?

23 THE WITNESS: No, no.

24

MR. GREEN: I apologize.

25

THE WITNESS: Situations arise in which Tanda

1 practically separate.

2 BY MR. GREEN:

3 Q. But you had at least some contact with each of those
4 seven or eight Tandas from 1960 to 1967?

5 A. But I apologize, but I don't understand what type of
6 contact.

7 Q. Well, you were professor or commander at the
military

8 school during the five year period from 1960 to 1964?

9 A. Yes.

10 Q. So during that time, you did have contact with those
11 Tanda?

12 A. Well, no, because I was at the military school, but
13 those Tanda had gone to the headquarters, to the military
14 posts, the garrisons. We were not together. That is

what

15 I am referring to.

16 Q. I didn't ask you whether you were together, I asked
17 you whether you had -- isn't it true you had some contact
18 with each of those Tanda?

19 A. Well, relatively in the way that I had contact with
20 all officers in the armed forces. It makes no difference
21 if they are from one or another Tanda.

22 Q. General Garcia, in May of 1965 you were appointed
23 company commander in the National Guard?

24 A. Yes.

25 Q. And where were you assigned during your initial

1 assignment to the National Guard?

2 A. In the National Guard as a result of an order I was
3 appointed, but physically I was only approximately in the
4 National Guard for one week because I was within other
5 commissions at my own request because I didn't want to be
6 in the National Guard because it was a public security
7 corps and I didn't like being in a public security corps

so

8 I was changed over and I was sent to the President's
9 general staff.

10 Q. General Garcia, when you became Minister of Defense,
11 isn't it true your official title was Minister of Defense
12 and Public Security?

13 A. That is so.

14 Q. And your control, your command included both the
15 military forces and security forces?

16 A. Yes.

17 Q. Particularly the National Guard and the National
18 Police?

19 A. Yes.

20 Q. You returned, did you not, to the military academy

in

21 1971?

22 A. Yes.

23 Q. And you stayed there from 1971 until 1973?

24 A. Yes.

25 Q. And again you had direct contact with the Tanda that

years, 1 were presently at the military academy during those

2 correct?

you 3 A. That's where I don't understand the question when

4 say to me did I encounter the Tanda.

5 Q. The members of the Tanda.

6 A. Oh, some member or some members?

7 Q. Yes.

8 A. Yes, it is possible.

9 Q. And you continued to teach classes, correct?

10 A. Yes.

11 Q. And you have five, ten, 20 people in your class?

12 A. Yes, yes.

13 Q. And these were all candidates for graduation?

14 A. Yes.

15 Q. Cadets?

16 A. Yes.

17 Q. And then in 1977 you went again back to the military
18 academy?

19 A. Yes.

20 Q. General Garcia, you were appointed commander of
21 military unit number five, and commander of the
Department

22 of San Vincente July 1st, 1978, correct?

23 A. Yes.

24 Q. And you said earlier that you were born in San
25 Vincente?

1 A. Yes.

2 MR. GREEN: Mr. Stern, could you put up the
map,

3 please?

4 BY MR. GREEN:

5 Q. General Garcia, could you use the pointer and show
the

6 ladies and gentlemen of the jury where San Vincente is on

7 the map?

8 A. San Vincente is here (indicating).

9 Q. And what was the name -- what was the official name
of

10 your command?

11 A. Department commander.

12 Q. And could you give the jury an approximate outline
of

13 the department that you were commanding?

14 A. More or less it was this, up to here, over here

15 (indicating).

16 Q. And where is the quartile you commanded?

17 A. In the center of the -- in the central area of the

18 City of San Vincente.

19 Q. And you went to the Coelgio, C-O-E-L-G-I-O, Santo

20 Thomas. Where is that?

21 A. Across from the Canas Park in the City of San

22 Vincente. Canas is C-A Spanish N-A-S, south side.

that

23 Q. And on that map you indicate that the department

the

24 was in your Army command extended from the low lands on

25 Pacific coast up into the high lands?

but
1 A. No. I pointed to the Department of San Vicente,
2 within an organization, military organization, brigades,
3 battalions or companies have their seat in one place, but
4 their activities are in accordance with instructions that
5 they receive and they must not be confused with security
6 corps that function within the same City of San Vicente
7 and throughout the other municipalities of San Vicente.

some
8 In some of them it is the National Police, and in
9 others it is the National Guard charged with purely
public
10 security activities.

is
11 The San Vicente command, just like any other, only
12 involved in purely military instruction, combat.

13 Q. And, General Garcia, isn't it true as in the case
14 reported by Dr. Romagoza, that there are times when the
15 Army and the National Guard conduct joint operations?

16 A. In war time, yes.

17 Q. Now, there was a National Guard headquarters in San
18 Vincente, correct?

19 A. Yes.

20 Q. And that was the fourth command, the fourth
21 commandancia?

22 A. Let me see. I think so. Yes. Yes, the fourth.

23 Q. And how far is the Army quartile from the National

24 Guard headquarters in San Vincente?

25 A. Approximately one block more or less.

1 Q. And, General Garcia, the National Guard headquarters
2 is near the market area, the central square area of San
3 Vincente, correct?

4 A. Yes. And precisely, since you mention that to me, I
5 think this is an opportunity --

6 Q. No, sir. Just answer my question, please.

7 Let me ask you, how many people were in the National
8 Guard headquarters in San Vincente in 1978, July 1st,
1978
9 when you arrived?

10 A. I don't know. I don't know.

11 Q. Okay.

12 A. There was no relationship between the National Guard
13 and the headquarters of San Vincente. Absolutely no
14 relationship.

15 Q. General Garcia, you lived in San Vincente at the
time?

16 A. Yes, yes.

17 Q. In fact, there were a lot of times you commuted
18 between San Vincente and San Salvador and back, correct?

19 A. Yes.

20 Q. And that was less than 40 miles, probably closer to
21 like 34, 35 miles?

22 A. 60 kilometers exactly.

23 Q. Point 62, we end up with something like 36 miles?

24 A. Yes.

25 Q. Now, General Garcia, when you were assigned to the

in
1 National Guard command in San Vincente, you were living
2 San Vincente, correct?
3 A. National Guard command --
4 Q. Excuse me. When you were military commander in San
5 Vincente, you were living there?
6 A. My family lived in San Salvador, and I would travel
to
7 San Salvador, but I would spend a lot of time there in
San
8 Vincente, yes.
9 Q. It was a commute that you made very frequently,
10 correct?
11 A. Yes.
12 Q. And how many men were under your command when you
were
13 in San Vincente?
14 A. A, 300, two companies, 150 and 150.
15 Q. And you had barracks there?
16 A. Yes.
17 Q. And you would go out there and review your troops
18 under your command when you were in San Vincente?
19 A. Yes.
20 Q. And you wear a uniform?
21 A. Yes.
22 Q. And they salute you?
23 A. Yes. This is normal.

24 Q. And every so often you would inspect your troops?

25 A. Yes.

1 Q. And you didn't keep your troops right inside the
2 barracks 24 hours a day, seven days a week, 365 days a
3 year, did you?

4 A. Yes.

5 Q. You kept them there under lock down conditions 365
6 days a year?

7 A. No.

8 Q. You send them out on patrols?

9 A. Normally it was for training, not for patrolling.
10 They would go for training. There was a training field.
11 The garrison had its training field on the west side of
the
12 city.

13 Q. But your troops would come and go to the quartile on
a
14 daily, weekly basis, correct?

15 A. Yes.

16 Q. And so your troops would be wearing their uniforms,
17 correct?

18 A. Yes.

19 Q. They were identifiable as such?

20 A. Yes.

21 Q. And the National Guardsmen were also wearing their
22 uniforms a block away?

23 A. Yes.

24 Q. And the National Guardsmen were coming and going?

25 A. Yes.

1 Q. During the 18 -- strike that.

2 You were appointed commander of military unit five
3 July 1st, 1978?

4 A. Yes.

5 Q. And you stayed in that position as colonel until
6 October 19, 1979 when you were appointed Minister of
7 Defense?

8 A. Yes.

9 Q. And during that time it was your obligation as
10 military commander to know what was going on militarily
in
11 the Department of San Vincente?

12 A. From a military standpoint, yes.

13 Q. And you would agree, General Garcia, that a military
14 commander has a duty to preserve the peace?

15 MR. KLAUS: Objection to the form of the
16 question. He speaks --

17 THE COURT: What is the legal basis?

18 MR. KLAUS: Misleading, confusing. It is in a
19 declarative sense, not in an interrogatory sense.

20 THE COURT: I think it is a question. What is
21 your objection? I don't understand the objection.

22 MR. KLAUS: Confusing and misleading.

23 THE COURT: I will allow the witness to answer
if
24 he can do it. This is cross examination.

1 THE WITNESS: Yes.

2 BY MR. GREEN:

3 Q. And military commander has a duty to fight wars?

4 A. Yes.

5 Q. And in preserving the peace and in fighting wars, a
6 military commander has a duty to respect the rights of
7 unarmed civilians?

8 A. Yes.

9 Q. And a military commander has a duty to protect
unarmed
10 civilians from violations of human rights, there being
11 committed by others?

12 THE INTERPRETER: Committed by, counsel?

13 BY MR. GREEN:

14 Q. Committed by others.

15 A. Could you please repeat the question?

16 Q. Isn't it true that a military commander has a duty
to
17 protect unarmed civilians from violations of human rights
18 being committed by others?

19 A. There could be a difference there. As a principle,
20 no. Not because I am a military officer, but I believe
any
21 person has the duty and obligation to respect and protect

22 the human rights of others. But specifically during
peace
23 time, that's what the security forces were there for.

in

24 Q. So is it your position that if the security forces

25 San Vincente in 1978 and 1979 were engaged in massive

1 repression against unarmed civilians, you had no duty
2 whatsoever as a military commander to investigate,
prevent
3 or punish?

4 A. Massive in what way?

5 Q. You know --

6 MR. KLAUS: Objection; argumentative.

7 THE COURT: Sustained. But I think the
question
8 that is being asked, Mr. Green, you correct me if I have
9 the wrong question, I think the question you put is, if
10 the military commander believes that members of the
11 security force, in other words, someone who is not under
12 the military commander's responsibility, does the
military
13 commander have an obligation to intervene. Is that the
14 question you put?

15 MR. GREEN: Yes, Your Honor.

16 THE COURT: Okay.

17 THE WITNESS: As I explained earlier, the
18 security forces, the police, National Guard were
19 responsible for everything that pertains to public
20 security. At that time the Army had no -- could not
21 interfere or had no responsibility for matters
concerning
22 public safety.

23 BY MR. GREEN:

no

24 Q. So your answer is you, as a military commander, had

25 duty whatsoever to intervene to protect unarmed civilians

1 from massive repression that was occurring against
unarmed 2 civilians?
3 A. To protect them in a moment of the occurrence of a
4 fact, to protect them, yes. But the Army did not
intervene 5 in anything that had to do with public safety. Examples,
6 accidents, murders, robbery, et cetera, these are police
7 activities, not military.
8 Q. General Garcia, during your 16 or 17 months as
9 military commander of unit five in the Department of San
10 Vincente, did you read the newspapers?
11 A. Yes, normally, yes.
12 Q. Did you see bodies along the side of the road that
had 13 been killed or decapitated?
14 A. At that time, no.
15 Q. Did you know anyone who was in the National Guard
16 headquarters who was assigned to the National Guard
17 headquarters in San Vincente?
18 A. I don't recall because we did not have contact with
19 them.
20 Q. Did you hear stories about the National Guard
21 torturing people in the Department of San Vincente,
between 22 1978 and 1979?
23 A. No. No.

24 Q. General Garcia, do you have -- let's go back to the
25 military school for one second.

1 What kind of uniforms did the cadets wear?

academies

2 A. They had several uniforms, such as military

3 have in any part of the world. Daily uniform, campaign

4 uniform, gala uniform.

wear?

5 Q. Was the gala uniform the parade dress that they

6 A. Yes. And on Sundays to go out on leave.

7 Q. General Garcia --

8 MR. GREEN: Mr. Stern, if you could get the

9 military school.

10 BY MR. GREEN:

the

11 Q. Before we put it on the easel, General Garcia, I am

12 going to show you a photograph. Does that appear to be

13 military school cadets?

14 A. Yes.

15 MR. KLAUS: Objection as to relevance.

16 THE COURT: I will permit it.

17 BY MR. GREEN:

step

18 Q. General Garcia, I notice that these cadets are

19 marching in a particular parade step and what is that

20 called --

21 THE COURT: Let's move on to something else,

22 please.

23 BY MR. GREEN:

24 Q. General Garcia, you testified earlier about a speech
25 that you gave that was broadcast over the radio and

1 television?

2 A. Yes.

3 Q. It is Defense Exhibit Number 47?

4 A. Yes.

5 Q. You have it with you?

6 A. No. It is over there.

7 Q. General Garcia, could you read to the ladies and
8 gentlemen of the jury the title of that speech.

9 THE COURT: Mr. Stern, would you remove the
10 photograph? Thank you.

11 Go right ahead.

12 THE WITNESS: The Salvadoran people must trust
13 its armed forces, words of the Minister of Defense and
14 Public Safety Colonel Jos, Guillermo Garcia. Broadcast
15 over the national chain of radio and television
16 November 15, 1979.

17 BY MR. GREEN:

18 Q. General Garcia, when you issued this speech, this
was
19 directed to civilians throughout El Salvador, correct?

20 A. To the entire nation, yes.

21 Q. And by issuing the speech, did you personally assume
22 the responsibility of protecting everyone's human rights?

23 A. I think we have always had that. Of the whole
world?

24 Q. No, in El Salvador.

25 A. Yes.

the

1 Q. General Garcia, going back to your resum, for a
2 minute, I notice that on October 19, 1979, going on to
3 next page where you talk about Engineer Jaime Abdul
4 Gutierrez.

5 A. Yes.

of

6 Q. And you refer to him by his professional specialty
7 engineer, correct?

8 A. Colonel and Engineer Jaime Gutierrez.

9 Q. Mr. Gutierrez, his military command was in the
10 engineering corps as opposed to an actual field command,
11 correct?

engineering

12 A. First, he was a military officer, a career military
13 officer infantry, and as an officer he studied
14 and graduated as an engineer.

15 Q. General Garcia, you mentioned that you allowed the
16 inspection of jails by the Red Cross, correct?

17 A. Yes.

18 MR. KLAUS: Objection.

19 BY MR. GREEN:

20 Q. And General Garcia, the Red Cross could only inspect
21 jail cells that they could find?

place

22 A. All of them. They had absolute freedom to enter all
23 of the corps of the country without limitation as to

24 or time.

25 Q. General Garcia, if there was a secret cell, if it is

1 being hidden from the Red Cross, the Red Cross could not
2 find it, correct?

3 MR. KLAUS: Objection; beyond the scope of his
4 knowledge, calls for speculation.

5 THE COURT: Let me just stop for a minute.
6 Ladies and gentlemen, this is what I mentioned before.

In
answer

7 other words, there is a premise, and so clearly the
8 depends on whether the premise is established. And it
9 will be up to you ultimately to decide whether, looking
10 at the evidence, whether the premise has been established.

fact
been

11 I think the question asks the general if in
12 there were a secret cell or secret jail, would that have
13 precluded the Red Cross from finding it if it had not
14 shown to the Red Cross. I think that was the question.

15 BY MR. GREEN:

16 Q. Would you please answer the question?

17 A. Yes. What I say is that the Red Cross with its
18 authorization to enter any of the military corps without
19 limitation of any kind could take it upon itself to find
20 any type of jail or cell or whatever it is.

21 Q. General Garcia, the National Guard had secret jail
22 cells, didn't it?

is

23 MR. KLAUS: Objection; relevance unless there

24 a time frame.

25 THE COURT: Let me ask you to specify the time

1 frame if you would.

2 BY MR. GREEN:

3 Q. General Garcia, there were secret jail cells at the
4 National Guard headquarters in 1978, weren't there?

5 MR. KLAUS: Objection as to --

6 THE COURT: Overruled. You may answer the
7 question.

8 THE WITNESS: '78?

9 BY MR. GREEN:

10 Q. Yes.

11 A. I don't know.

12 Q. There were secret jail cells in the National Guard
13 headquarters in San Salvador in 1979, correct?

14 A. I don't think so.

Guard

15 Q. And there were secret jail cells in the National
16 headquarters in 1980 to '81, correct?

17 A. I don't think there were secret, I don't think.

18 Q. You never went over there to inspect, did you?

19 A. Yes.

20 Q. Did you go through every room, through every floor -

-

21 THE COURT: Just a minute. I don't think the
22 witness had a chance. The general was about to answer
23 that question.

is

24 THE WITNESS: Yes, and here is something that
25 important. When the revolutionary government Junta

1 appointed General Casanova at that time, at that time
2 Colonel Casanova, the Junta and I went to the National
3 Guard. On the first day that he went to the National
4 Guard and General Vides called together all the
personnel
5 for the National Guard and verbally recited the first
6 rules under which the National Guard was going to
operate,
7 insisting upon the respect for human rights, and that is
8 why I say I don't think.

9 And later on, allow me to qualify, during an
10 inspection by General Vides at the National Guard, he
was
11 asked to empty a pool that was in the National Guard
12 because it was thought there was some sort of a jail or
13 something, what do I know, hidden in there, and nothing
14 was found.

15 BY MR. GREEN:

16 Q. General Garcia, let me make sure I understand. You
17 heard the testimony of Roberto Alvarez in this case?

18 A. Yes.

19 Q. Roberto from the organization?

20 THE COURT: Let's go back to Mr. Green and
allow
21 Mr. Green to state the question.

22 BY MR. GREEN:

case

23 Q. General Garcia, Roberto Alvarez testified in this
24 that he went to the National Guard headquarters not once,
25 but twice. The first time he went, he could not find any

found 1 of the secret cells. On the second time he went, he
2 secret cells; isn't that true?
3 A. He said that, that is his opinion, that is his
4 testimony.
5 Q. And isn't it true that the Organization of American
6 States issued a report to the Government of El Salvador
7 concerning those secret cells and Mr. Alvarez's attempts
to 8 find those?
9 A. Yes.
10 Q. General Garcia, when you became Minister of Defense
in 11 October, 1979, did you order an investigation as to who
was 12 responsible for the secret torture cells in the National
13 Guard headquarters in San Salvador?
14 A. I don't recall, because I think that it was General
15 Vides who had to do that, and I hope that he did so.
16 Q. General Garcia, did you ever order the Director of
the 17 National Guard, then Colonel Vides Casanova, to conduct
an 18 investigation as to who was responsible for those secret
19 cells?
20 A. As of the first day he was ordered by the
21 revolutionary government Junta to perform that type of
22 investigation.

23 Q. Did you ever personally order Colonel Vides Casanova
24 to conduct an investigation as to who was responsible for
25 the secret torture cells in the National Guard

1 headquarters?

directly

2 A. Personally, I do not recall having said that

3 to him, no.

gone

4 Q. General Garcia, do you think that if you had even

5 over and conducted an investigation personally in October

for

6 of 1979 or November of 1979, as to who was responsible

7 the secret cells, you might have prevented this man,

8 Dr. Juan Romagoza, from being tortured and raped?

in

9 A. I never had knowledge that there was torture cells

10 the National Guard.

11 Q. And as far as you are concerned, nothing that the

to

12 Organization of American States said made any difference

13 you whatsoever as a military commander?

any

14 A. Of course you must attend to any resolution or

15 recommendation, but I do not recall nor have I received

16 recommendation making any type exclusive recommendation.

17 Q. General Garcia, is it your testimony that a military

18 commander exercises his command responsibility when he

19 takes an attitude of I see nothing and I hear nothing?

20 A. No. I believe that it should not be that way. But

21 one must tell the truth, whatever that may be.

22 Q. General Garcia, is it your contention that all

23 opponents of the military government were Communist?

24 A. No --

25 MR. KLAUS: Objection as to relevancy, time

1 period.

2 THE COURT: I think the time period would be
3 helpful. Could you specify that?

4 BY MR. GREEN:

5 Q. Is it your testimony that all opponents of the
6 military government between 1979 and 1983 were Communist?

7 A. No.

8 MR. KLAUS: Objection; confusing, misleading,
9 relevancy, misstates evidence.

10 THE COURT: Overruled on all grounds.

11 Let me go back to Mr. Green.

12 BY MR. GREEN:

13 Q. Is it your testimony that all opponents of the
14 military government between 1979 and 1983 were Communist?

15 THE COURT: I think the question has been
16 answered. The answer is no.

17 MR. GREEN: Okay.

18 BY MR. GREEN:

19 Q. General Garcia, you testified earlier that the
20 military under your regime was instrumental in
implementing
21 the bank reforms, the reforms of the banks in El
Salvador?

22 A. Yes.

23 Q. Could you tell the ladies and gentlemen of the jury

of

24 how, exactly, you were able to order the implementation

25 the bank reform within a 24 hour period?

1 A. It was not I who implemented the bank reform. I
2 received the orders from the revolutionary government
Junta
3 to provide protection to the banks in order to comply
with
4 the reform law issued by the revolutionary government
Junta
5 and physically our soldiers were present at every bank in
6 El Salvador and had in writing the order from the
7 government Junta in which it was said to all of the
8 employees upon their arrival that a change was in place
in
9 the bank management of El Salvador. That.

10 Is the order that I issued after having received the
11 order from the revolutionary government Junta and so it
was
12 with the agrarian reform as well.

13 Q. And who in particular did you ask to implement your
14 order?

15 A. To the entire armed institution.

16 Q. Navy?

17 A. I think not, because they are on the water.

18 Q. The Army?

19 A. The Army, yes.

20 Q. How about the public security forces?

21 A. Yes, I believe so.

22 Q. And they followed your order?

23 A. Yes.

24 Q. And this was an unpopular order, correct?

25 A. A difficult order, and transcendental in El Salvador,

1 maybe because within the armed institution, they were
2 people who were opposed to the bank reform, that was our
3 problem.

4 Q. But you were able to get it done?

5 A. With opposition, but we managed. Not all liked
that,

6 nor were all in agreement.

7 Q. In fact, there was opposition from the rich
8 landowners?

9 A. Of course.

10 Q. But you and your subordinates were able to give firm
11 orders and implement that within a 24 hour period?

12 A. Uh, yes.

13 Q. And you personally had the will to do that?

14 A. Yes.

15 Q. Because you thought it was important?

16 A. Yes.

17 Q. General Garcia, you said on your direct testimony
that

18 human rights were not taken as explicitly in 1979 as they
19 are today?

20 A. I don't understand, pardon, I apologize. I said?

21 Q. Yes. You indicated that human rights in El Salvador
22 in 1979 were not as --

23 A. I am sorry, yes. What I want to say, what I say in
24 fact is that before 1979 and during that time to speak of

25 human rights was not such as it is today where everyone

1 knows and has knowledge what human rights are. In that
2 time it was different.

3 Q. General Garcia, in 1979, in 1980, and 1981, all the
4 way up to 1983, it was clear from the Geneva protocols,
5 Geneva conventions that torture of unarmed civilians was
6 never permitted under any circumstances anywhere?

7 MR. KLAUS: Objection. Document not in
evidence.

8 THE COURT: I will overrule the objection. You
9 may restate the question.

10 BY MR. GREEN:

11 Q. General Garcia, isn't it true in 1979 when you
became

12 Minister of Defense, all the way through 1983 when you
13 resigned from the Ministry of Defense, it was absolutely
14 clear from the Geneva conventions and protocols that
15 torture was never permitted against unarmed civilians
16 anywhere, anyplace, any time?

17 A. Yes. Yes.

18 Q. You knew that then and you know that now?

19 A. Yes. Yes.

20 Q. And the prohibition, the absolute prohibition
against

21 torture under any circumstances was just as clear in 1979
22 as it is today in 2002?

23 A. Yes, yes, that is so.

24 Q. General Garcia, you talked about the bank reform and
25 how you and your subordinates were able to implement that

1 within a very short period of time. You issued orders?

2 A. One order, yes.

3 Q. You sent troops out to banks all over the country?

4 A. Yes.

5 Q. And your troops told the bank employees about your
6 order?

7 A. Yes, they were carrying the instructions.

8 Q. Now, General Garcia, you testified when you came in
as

9 Minister of Defense, 40 to 50 officers were removed from
10 military service and/or expelled from the country?

11 A. Approximately, yes.

12 Q. And that happened because there was a will to get
rid

13 of the bad apples?

14 A. Yes.

15 Q. General Garcia, you said that, during your direct
16 testimony that El Salvador -- the El Salvadoran armed
17 forces were in danger of falling apart between 1979 and
'83

18 because of divisions between progressives and
reactionaries

19 within the El Salvadoran armed forces?

20 A. Yes.

21 Q. There were progressives in the forms of the likes of
22 Colonel Majano?

23 A. Yes.

with 24 Q. And the 17 reformist officers commonly associated

25 him?

1 A. Yes.

in

2 Q. And there were the reactionaries that were arrested

3 May, 1980?

4 A. Yes.

like

5 Q. And when you had a choice between getting rid of the
6 reactionaries or getting rid of the reformist officers

got

7 Colonel Majano and his 17 followers, you reassigned and
8 rid of Colonel Majano and his 17 reformers?

9 A. No.

10 MR. GREEN: May I have a moment, Your Honor?

11 THE WITNESS: That was an instruction from the
12 revolutionary government Junta.

13 MR. GREEN: May I have a moment, Your Honor?

14 THE COURT: Surely, yes.

15 BY MR. GREEN:

Catholic

16 Q. General Garcia, the Socorro Juridico was the
17 Church organization?

18 A. Yes.

credible?

19 Q. And in your opinion information from the Socorro
20 Juridico about civilians being retained would be

21 A. Some of it, yes.

22 Q. You did not think, you did not believe that the

23 Socorro Juridico was a subversive organization, did you?

24 A. No.

25 Q. Yet you deny that the officers of the Socorro
Juridico

1 were ever raided by the Salvadoran armed forces?

2 MR. KLAUS: Objection; relevancy without a time
3 frame.

4 THE COURT: Let me ask Mr. Green if he would be
5 good enough to give us a time frame.

6 BY MR. GREEN:

7 Q. Yet you deny that the offices of the Socorro
Juridico

8 of San Salvador were ever raided between the years 1979
and

9 1983 by members of the Salvadoran armed forces?

10 A. When did I deny this?

11 THE COURT: No, the question is, do you deny it
12 today?

13 THE WITNESS: No.

14 BY MR. GREEN:

15 Q. Did you, as of January 31, 2001, did you deny that
the

16 forces of the military and/or security forces --

17 THE COURT: Let me stop you, Mr. Green. Is the
18 answer inconsistent with what was given?

19 MR. GREEN: Yes.

20 THE COURT: The answer is no, he does not deny
21 it.

22 MR. GREEN: I am asking if he denied it
recently.

23
deposition,

THE COURT: You want to do that with

24
statement

you want to show there was a prior inconsistent

25

at a earlier time?

1 MR. GREEN: Yes, your Honor.

2 THE COURT: You may do that.

3 BY MR. GREEN:

4 Q. General Garcia, isn't it true as recently as
5 January 31, 2001 you denied --

6 THE COURT: You need to read the full question
7 and answer, if you would, and line and page to the other
8 side.

9 MR. GREEN: Page 147, General Garcia's
10 deposition, lines three through six.

11 BY MR. GREEN:

12 Q. Do you recall being asked the following question and
13 giving the following answers?

14 "Did the forces of the military and/or security
forces
15 raid the officers of Socorro Juridico on or about July
4th,
16 1980?

17 "Answer. No."

18 Do you recall being asked that question and giving
19 that answer?

20 A. I do not recall that very well, but if it is written
21 thusly, and my answer is no, then I accept that that is
22 what I answered.

23 Q. General Garcia, with respect to the Christian
Democrat

that

24 letter, you testified on direct that you were aware of

25 letter. General Garcia, that letter detailed 19 specific

1 instances of torture and killings by members of the El
2 Salvadoran armed forces as of January 31, 1980?

3 THE COURT: That is a question? You are asking
4 the question? Does he agree that is what the letter
did?

5 MR. GREEN: Yes.

6 THE COURT: Okay.

7 THE WITNESS: If the letter says so, yes, that
is
8 correct.

9 BY MR. GREEN:

10 Q. General Garcia, did you order an investigation of
the
11 case of La Colonia, April 22, that reported four murdered
12 in the presence of an Army tank?

13 A. What colony was this?

14 Q. The case of La Colonia, a neighborhood in San
15 Salvador. It was reported as incident number two in the
16 Christian Democratic letter.

17 A. No. I don't recall.

18 Q. Okay. General Garcia, did you order an
investigation
19 in incident number three, which was the case of Jos,
Mejia
20 and Francisco Ventura, university students captured in
21 front of the United States Embassy where witnesses
22 confirmed that it was National Guardsmen who captured
them?

I

23 A. In accordance to what we saw in the exposition here,
24 believe that no investigation was performed directly from
25 the ministry. But in accordance with that very same

1 information, some investigation was in fact performed.

2 Q. You never ordered the investigation, and you never
3 reviewed the investigation to determine whether the
4 investigation was a whitewashed or whether it was in fact
a legitimate investigation, did you?

6 A. No, no, I do not recall that.

7 Q. General Garcia, with respect to incident number
four,
house
morning
8 which reports two persons violently taken from their
9 in Cojutepeque, C-O-J-U-T-E-P-E-Q-U-E, in the early

10 of January 23 by agents of the security forces, and then
11 disappeared, did you order an investigation, did you
12 personally order an investigation of that incident?

13 A. It is difficult to remember whether an investigation
14 was ordered or not when it comes to an incident of that
15 nature, but specifically, I don't recall that.

16 Q. And you never issued a written order that it be
17 investigated, did you?

18 A. I don't recall. I don't think so.

19 Q. And you never picked up the telephone to call either
20 the National Guard headquarters, Treasury Police
21 headquarters or in Cojutepeque what happened to those men
22 on January 23, correct?

23 A. It is possible that something was done, but I don't

24 recall. It is such a long time ago and there were so
many
25 cases. To be specific on such a matter like that, no,
no.

1 I cannot answer categorically.

2 Q. You produced no written orders whatsoever concerning
3 investigations whatsoever of these 19 instances, have
you?

4 You haven't produced a single one?

5 A. It's possible.

6 Q. You have not produced one to the Plaintiffs in this
7 case, or to The Court, have you?

8 A. In their case?

9 Q. In any of these 19 incidents reported in the
10 January 31, 1980 Christian Democrat letter. You produced
11 no written orders, you produced no investigations?

12 MR. KLAUS: Objection; relevancy, Your Honor.

13 THE COURT: I beg your pardon?

14 MR. KLAUS: Objection as to relevancy.

15 THE COURT: Overruled on relevancy grounds.

16 MR. KLAUS: Could I be heard? Prejudicial
effect
17 outweighs probative value.

18 THE COURT: I will overrule that. I will hear
19 you later when we stop today, and we can come back to
20 that.

21 Let me see if we can't get the answer to that
22 question and we will stop for the day.

23 MR. GREEN: May I state the question?

24 THE COURT: Yes.

1 BY MR. GREEN:

2 Q. General Garcia, isn't it true that you produced not
3 one single written order, not one single piece of paper
4 indicating an investigation of any of the 19 specific
5 instances of disappearance or torture or killing that
were
6 set forth in the January 31, 1980 letter from the
Christian
7 Democrats?

8 A. I believe that it depends on who the letter is
9 addressed to. Is it addressed directly to the Minister
of
10 Defense?

11 Q. It was directed to you as a member of the high
12 command. Have you seen that letter, sir?

13 A. Then it is possible that some member of the high
14 command of the government Junta, of the -- the President
or
15 the prosecuting attorneys office may have ordered an
16 investigation.

17 MR. GREEN: Move to strike the answer.

18 THE COURT: I think we need to stop at this
19 point, let's do that.

20 Ladies and gentlemen, again, please understand
21 how important it is to not talk to anybody about the
case,
22 please do not let anyone talk with you. I wanted to ask

23 you again to be very, very careful with respect to
24 whatever media coverage there might be of the case, you
25 want to avoid that. The whole reason is we want to make

1 sure whatever you are looking at to make your final
2 decisions, it is information presented here in the
3 courtroom through this process of examination, cross
4 examination, and then you can consider that and reach
the
5 conclusions that you think are appropriate.

6 In talking with the lawyers last night, we
still
7 believe there is the possibility that we are moving
toward
8 the conclusion of the case next week.

9 There is the possibility that it might go over
10 until the following Monday, that is, we might have
11 following arguments the next Monday, and we will have to
12 wait, really, until we have perhaps another day of the
13 defense case to get a sense of the length of time that
it
14 is taking.

15 So, I ask you to be vigilant regarding the
16 general jury instructions, and we will reconvene Monday
17 morning at 9:30 and we will continue on with the cross
18 examination at that time.

19 Have a nice weekend, everybody. We will see
you
20 then.

21 General, you may step down.

22 (Thereupon, the jury retired from the
courtroom.)

23 THE COURT: Ladies and gentlemen, please be
24 seated.
25 I've passed out what I indicated, what I have

1 marked as The Court's fourth draft which deals with the
2 concept of command responsibility that we have been
3 discussing. I wanted to point out to you, and I
4 apologize, this morning I had the papers mixed up, I
5 didn't realize it was a three page revision, but I put
in
6 bold what is an addition on the second page.

7 And the purpose of that was to indicate that
8 wherever we used the term subordinate, whether it be in
9 the first two elements or for that matter the third and
10 fourth element, that it refers to somebody who does
enjoy
11 a subordinate relationship to one of the Defendants.

12 The purpose of that is to underscore the fact
13 that whether we are talking about the person accused of
14 actually torturing one of the Plaintiffs in the case or
15 someone accused of having committed similar acts of
16 torture on other people, the critical issue is all of
17 those people have to be under the effective control of a
18 particular Defendant.

19 That was the purpose of it. I wasn't sure that
20 that was clear.

21 What I was going to suggest, if it is all right
22 with everybody, is to put the jury instruction aside
23 tonight and we will come back to that on Monday or

issues

24 whatever else we need to do. I know we have other

25 that we have to deal with.

1 I wondered whether you had the opportunity to
2 reflect on the approach we needed to take because of the
3 potential claims under two statutes, and I thought maybe
4 it would be helpful if everybody had an opportunity to
5 kind of lay their concerns on the table about the issues
6 that are at hand in those two statutes. And then what
7 approach we ought to take in either a verdict form or in
8 the instructions as well.

9 And I think we all agree by the way we are
going
10 to have some type instruction that explains what is the
11 Alien Tort Claims Act, and another that explains what is
12 the Torture Victim Protection Act, and both of those do
13 allow claims in the Federal District Court for the type
of
14 issues that are complained of.

15 I wonder if it would be helpful to have a
16 discussion about the concerns that both parties may
have,
17 and then try in light of that to figure out an approach
18 that we need to develop to safeguard those concerns.

19 Is the Plaintiff still of a mind that it wants
to
20 pursue claims under both statutes?

21 As I said before, it sort of moots the issue if
22 the Plaintiffs ultimately decide what we are really
23 talking about is torture, and torture certainly is

there 24 cognizable under the Torture Victim Protection Act,

25 is no question.

1 What I think has gotten us moving on there are
2 other aspects, other torts under the Law of Nations that
3 might be different from torture, might be less than
4 torture, but cognizable under the Alien Tort Claims Act.

5 Have the Plaintiffs reached a conclusion, or
6 would it be beneficial to give you more time if you are
7 still thinking that through?

8 MR. GREEN: Judge, there is an exhaustion
issue.
9 That is applicable to one statute and not the other, and
10 that has required us to do some research.

11 THE COURT: You want to take more time on that?

12 MR. GREEN: I believe so. There is a lot to be
13 said for the simplicity and focus of just going --

14 THE COURT: If it can be done. If it can't, it
15 can't. It calls for a judgment call by the Plaintiffs.
16 Just if you do feel you want to pursue both statutes, we
17 need to seriously talk about first how do we present
that

18 to the jury, because the claims would be different, I
19 think, and how do we elicit the jury's verdict on that
in

20 a way that preserves the separateness if we need to so
21 should there be a recovery on both, but should the
22 appellate court find there is some impediment to one,
the

about 23 other stands independent. I think we need to think

24 those issues.

start 25 Ultimately it seems to me what is going to

1 all of this is the judgment call that the Plaintiffs
have
2 to make based on their research and consideration. And
3 you are right, I suppose there is the issue of
simplicity
4 and straightforwardness on one side versus some of these
5 other legal concerns that are there. And I think if at
6 some point, if you would be willing to kind of lay out
7 what your concerns are, it may be that the defense is
not
8 as concerned about something and might be willing to
9 stipulate that that isn't an issue or something. I was
10 thinking that might help you as well in making an
election
11 if you are inclined to do that.

12 MR. GREEN: We have had some preliminary
13 discussions with the defense, if I may have a moment.

14 THE COURT: Yes.

15 MR. GREEN: Judge, we haven't put together a
16 complete list, it is clear punitives are available under
17 the Alien Tort Claims Act, and we think they are
available
18 under the Torture Victim Protection Act. Your Honor
ruled
19 that way in the other trial, we are comfortable with
that.

20 There is not a huge amount of case law on the
21 issue of punitives being available under the Torture

22 Victim Protection Act. We think the legislative history
23 and existent case law clearly supports what Your Honor
24 ruled in the Ford case.

25 That is one of the issues we are mulling over

think 1 among ourselves and that we can -- I can tell you I
2 by Monday we can give you a more exhaustive list of some
3 of our concerns. But as Your Honor has recognized
4 repeatedly, and I believe the Eleventh Circuit suggested
5 as much, this is a developing area of the law. The U.S.
6 Supreme Court has not spoken on many of the issues,
7 particularly command responsibility except in the
8 Yamashita case 75 years ago.

9 These are some of the things the lawyers are
10 trying to work out among ourselves, where do we think
the 11 law is, where do we think the law should be, what is the
12 best prediction where the U.S. Supreme Court will go in
13 addressing some of these issues.

14 THE COURT: I read some of the cases, too, that
15 talk about concerns allowing punitive damages on a
statute 16 being made retroactive. In other words, applying the
17 statute to the events that occurred prior to enactment
in 18 1992, I guess it was.

19 The case law seems to me to be without question
20 that the Act has been applied to activity that occurred
21 before 1992 and the rationale has always been is that
the 22 Law of Nations, the international law has been
ultimately

23 clear.

in 24 Now, I read some recent cases. Judge Leonard

25 a case dealing with a gentleman from Chile has again

Supreme 1 voiced the concern about punitive damages, citing
2 Court case, but there is no case that I've read
3 explicitly -- no Supreme Court case that explicitly says
4 they are not recoverable.

5 My attitude, my conclusion, a tentative
6 conclusion, is that -- I realize we are in the civil
7 forum, but we have to remember this same doctrine was
8 invoked at Nuremberg and Tokyo and resulted in the issue
9 of death sentences. If punishments in the criminal
arena 10 can be imposed and punitives can be imposed, I see no
11 difference. I don't think there is a constitutional
12 impediment in allowing punitive damages under the
Torture 13 Victim Protection Act.

14 But as you pointed out, there are cases that
cite 15 concern. I think where we have to be, either through
some 16 discussions with the defense allaying the concerns you
17 might have, and if you can't do that, and if you simply
18 conclude you are going to proceed under both statutes,
19 then we need to come back to how do we do that, and how
do 20 we do it in such a way so that the separateness of these
21 issues are preserved in the event that the concerns that

are
22 have led you to pursue it that way in the first place
23 validated.
affect
24 We need to discuss that. That is going to
25 us in terms of how we go from here on the jury

1 instructions. And also, as I said, on the other issues.

2 I don't know what else we can do on that. We
3 have to wait for a definitive decision by the
Plaintiffs,
4 and we are getting to that point where you really need
to
5 arrive at some conclusion on that.

6 It occurred to me, I don't know what your
7 thinking about this is, but it occurred to me that if
you
8 ultimately do decide to pursue remedies under both
9 statutes, and putting aside the issue of torture, which
I
10 think is cognizable under both, we then need to look at
11 what are torts recognized by the Law of Nations that are
12 really being sought in this particular case.

13 And I think it would help if the Plaintiff
could
14 simply delineate the particular tort that the evidence
has
15 suggested, and it would seem to me the way that ought to
16 be handled is that The Court ought to instruct the jury
17 that if the jury finds that this did occur, as a matter
of
18 law that is a tort cognizable under the Law of Nations,
19 and therefore an appropriate subject matter of the Alien
20 Tort Claims Act.

21 What I was thinking about the normal way, for

a 22 instance in a criminal case where you are talking about
of 23 controlled substance, and you turn and say as a matter
24 law, for example, cocaine is a controlled substance, and
nature 25 you go on from there. I would think that given the

1 of the description of the activities apart from the
2 torture, that we would have little difficult in
concluding
3 that those acts fit a particular tort and are cognizable
4 under the concept of the Law of Nations, but we do need
to
5 consider how we approach that.

6 MR. GREEN: Judge, I operate pretty well under
7 deadlines, and am I hearing a deadline of five o'clock
on
8 Monday?

9 THE COURT: Well, we have a problem, we have to
10 deal with the remainder of the jury instructions. We
have
11 made a dent, I think a significant dent, but there are
12 other issues, but seems to me if you are going to submit
13 these other approaches, we need to sit down and talk
about
14 that.

15 I would ask the Plaintiffs if you would be
16 prepared by Monday to have thought this through and give
17 us your answer what route or routes you want to take,
and
18 your thought on how do we approach this, do we say here
19 are two claims, you should award damages under one,
20 without reference to the other, and do the same with
other
21 without reference to the other, and The Court would make

a

22 whatever adjustment is needed in terms of monetary so
23 there would not be double recovery in the event there is

that

24 recovery by the Plaintiffs? If there is no recovery,

25 would be clear as well.

1 But I think we need to think that through,
2 because your concerns are, obviously, if by chance
3 punitive damages are recoverable under one statute but
not
4 the other, we need to present that and make sure the
jury
5 responds under that statute. I don't know. I don't
have
6 any approach to this, but I have been thinking about it.

7 MR. GREEN: One of the things we could do --
were
8 we to keep it -- go under both statutes on a parallel
9 basis, come up with a decision kind of approach and
10 special instructions to the jury.

11 THE COURT: Would you give a little thought to
12 that? All of this is going to be, I think, driven by
13 first your choices, and secondly by the concerns that
are
14 moving you one way or the other. But we do need
direction
15 and guidance from the Plaintiffs on that.

16 I don't want to place a limit on you. What is
17 your sense in terms of cross examination?

18 MR. GREEN: I have another 30 to 45 minutes on
19 cross.

20 THE COURT: And on Monday -- what was our
21 agreement Monday morning?

22 MR. KLAUS: Try to start Ambassador Corr.

23 THE COURT: Is that all right with you and move
24 forward, take Ambassador Corr, come back and complete
the
25 cross examination of General Garcia, and begin direct

1 examination of General Vides?

2 MR. KLAUS: I am going to have redirect.

3 THE COURT: I am saying that. I am not
4 suggesting you don't.

5 MR. KLAUS: Are you saying to finish cross
6 examination first?

7 THE COURT: No. I thought the agreement was in
8 order to accommodate former Ambassador Corr we would
take
9 him first thing Monday morning.

10 MR. KLAUS: I prefer that for his sake.

11 THE COURT: We will get him in and out and move
12 on to General Garcia, and move on to General Vides'
13 testimony.

14 It sounds to me, I don't know whether we are in
15 the window to conclude next week. Why don't we hold
that
16 in abeyance and see where we are.

17 The only concern, the case that is following
you
18 requires interpreters who speak a very difficult
19 dialect -- difficult to get dialect of Chinese, and they
20 are being flown in from Albuquerque, and I am getting
21 pressure from the interpreter's office to see if I can't
22 give them a day. We told them we are talking Monday or
23 Tuesday for that case. If you could let me know so I

24 could let the other folks know about that.

25 Any other critical matter we need to talk
about?

1 MR. GREEN: There is one matter, I did move to
2 strike general Garcia's last response to my last
question.

3 THE COURT: I am inclined to let it stand. I
4 hear what you are saying. I have asked the general to
try
5 to listen to the questions and try to be as responsive
as
6 possible understanding you can ask additional questions
7 and Mr. Klaus can do the same on redirect.

8 I really think we have been making much better
9 progress. Your questions are very specific and to the
10 point, and I really think with the interpretation
11 difficulties that that has helped tremendously.

12 Okay. Let's take a break.

13 MR. STERN: Your Honor, at the risk of
belaboring
14 the point, I want to ask on your views of distributing
15 jury binders.

16 THE COURT: I heard you on that. I think we
are
17 beyond that, but if you feel there are some exhibits
that
18 would be beneficial to the jury, I don't have a problem
19 with you preparing a binder for the jury to take back
20 during their deliberations, if there are exhibits that
you
21 all agree.

I

front

22 Anything we can do to help the jury in its
23 discussion and evaluation of the case is well taken, and
24 would think that, you know, just a directory at the
25 of it as to what the exhibits are that are in there. I

1 would like to leave that with you, but I said
repeatedly,
2 I think a jury book is a beneficial thing, and I suspect
3 both of you have contributions you want to make to it.

4 MR. KLAUS: When it comes time, it is great. I
5 think he wants to give them their exhibits now, I think
it
6 is too late to be looking at their exhibits while my
case
7 is on.

8 THE COURT: Obviously. Most jury books are
9 passed out at the beginning and we talked about it, and
we
10 got involved in other things and didn't get to it. That
11 having been said, I think also this may be the kind of
12 case where it may be helpful if the jury had a binders
13 that had some of the principal exhibits that are
14 contributed by both sides. That is what we talked about
15 all the way along.

16 Understanding where we are looking in terms of
17 the jury beginning deliberations, either Thursday
evening
18 or perhaps the following Monday evening, I would urge
you
19 to put that together if you can all agree to it.

20 MR. KLAUS: I don't have a problem with what
they
21 have in here so far, and I am going to probably put a
few

22 in, too. They really have nice ones, big ones. I will
23 put a few in there, too.

24 MR. STERN: We will give final thought to it.
25 That may be something we want to do on Monday.

1 MR. KLAUS: I object to it being done now.

middle

2 THE COURT: You don't want the jury in the
3 of the defense case paging through Plaintiffs' exhibits?
4 Maybe the time we have it ready is when jury begins its
5 deliberation.

prejudice

6 Now, please understand that is without
7 to any party in cross or anything else. If the exhibit
8 becomes helpful, and you want the jury to have the
9 exhibit, I don't have a problem with that.

be

10 It occurs to me, Mr. Green, I thought it might
11 helpful if the general had a copy of the letter, and it
12 occurred to me it is probably in English.

13 MR. GREEN: They are attached.

14 THE COURT: Please don't hesitate to do that.

reconvene

15 Okay, we will be in recess and we will

16 Monday at 9:30.

17 (Thereupon, trial was recess at 5:30.)

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1		I N D E X			
2	OPENING BY MR. KLAUS				1701
3		WITNESSES FOR THE DEFENDANTS			
4		Direct	Cross	Redirect	Recross
5	JOSE GARCIA	1716	1792		
6		E X H I B I T S			
7	Defendants' Exhibit 10				1719
8	Defendants' Exhibit 11				1787
9	Defendants' Exhibit 12				1787
10	Defendants' Exhibit 31				1761
11	Defendants' Exhibit 49				1752
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