





1 THE COURT: Mr. Marshal, would you bring in the  
2 jury?

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

4 THE COURT: General Garcia, you may come up to  
5 the witness stand and we will resume redirect  
examination.

6 THE COURT: Mr. Klaus, when you are ready, you  
7 may proceed.

8 REDIRECT EXAMINATION (RESUMED)

9 BY MR. KLAUS:

10 Q. Good morning, General Garcia.

11 A. Good morning.

12 Q. Let me ask you, do you know who the enlisted men  
were  
13 on duty at the National Guard post in San Vincente in  
14 December, 1979?

15 THE INTERPRETER: Excuse me, counsel, December  
16 of --

17 MR. KLAUS: 1979.

18 THE WITNESS: No, I do not know them.

19 BY MR. KLAUS:

20 Q. Do you know who the local commander was for the  
21 National Guard post in San Vincente, December, 1979,  
22 specifically?

23 A. No, I do not know.

24 Q. Did that National Guard commander have the authority  
25 to recruit people to serve under him in 1979?

1 A. Under his command?

2 Q. Yes.

3 A. No, no, I do not know that.

4 Q. Was he responsible for training the troops -- the  
5 members of the National Guard under his command?

6 A. The initial training, maybe not, because that was  
the  
7 training that took place at the National Guard school.

8 Q. Was there a school that every new recruit to the  
9 National Guard would go to in 1979?

10 A. Yes, there was a school.

11 Q. And where was that located?

12 A. At the national headquarters of the National Guard.

13 Q. Every new recruit no matter how low a level he was  
14 going to serve at would attend that school?

15 MR. GREEN: Objection; leading.

16 THE COURT: Sustained.

17 BY MR. KLAUS:

18 Q. Would every recruit attend that school?

19 A. Yes.

20 Q. Now, we heard some testimony by the Plaintiffs about  
21 some of the things that they recommended that you should  
22 have done to combat the torture and violation of human  
23 rights that was so widespread in El Salvador at the time.  
24 And one of the things they mentioned was you should

25 publicly denounce violations of human rights; is that

1 correct?

2 A. Yes.

3 Q. Did you do that?

4 A. Yes.

5 Q. I am going to show you an exhibit that was  
previously

6 marked as part of Exhibit 49 -- let me ask you, in

7 preparing to defend this case, did you prepare a scrap

8 book?

9 A. Yes.

10 Q. And did the scrap book contain newspaper articles  
and

11 speeches from when you were Minister of Defense?

12 A. Yes.

13 Q. I am going to pass you an exhibit that has been  
marked

14 as Defendants' Exhibit 47. Can you identify that  
exhibit?

15 MR. GREEN: Excuse me, I am trying to find it.

16 MR. KLAUS: I just gave you another copy.

17 MR. GREEN: Well, I am trying to find it.

18 MR. KLAUS: Okay.

19 THE WITNESS: Yes, I can identify it.

20 BY MR. KLAUS:

21 Q. And what is that?

22 A. This is an explanation and an answer provided

23 publicly.

24 Q. And when was that published?

25 A. On the 24th of December of 1979.



1 Q. And where was it published?

2 A. In the entire -- in El Salvador.

3 Q. Was it published in a newspaper?

4 A. Yes. In the Dario dee Ohy of El Salvador. D-A-R-I-O,

5 another word D-E, Ohy, O-H-Y.

6 Q. Is this an accurate account of what you expressed at  
7 that time?

8 A. This is a clarification made by the public forces  
9 concerning an allegation made at the time as well. And  
it

10 was about an accusation against the armed forces of  
moving  
11 to the right, which is to say serving the extreme right.

12 MR. KLAUS: I would like to move this into  
13 evidence, Defendants' Exhibit 47.

14 THE COURT: Is there any objection to the  
receipt

15 of what is now marked Defendants' 47?

16 MR. GREEN: No, Your Honor.

17 THE COURT: Defendants 47 will be received into  
18 evidence without objection.

19 (Defendants' Exhibit 47 received in evidence  
20 without objection.)

21 MR. KLAUS: I would like to publish it to the  
22 jury.

23 THE COURT: You may.

24 BY MR. KLAUS:

25 Q. Could you read what the article says?

1 A. I will not read it all, but just one portion of it.

2 Q. Can you refer to what portion you are reading to --  
3 reading?

4 A. Yes, first I am going to read paragraph three.

that

Party

5 THE INTERPRETER: The interpreter would sight  
6 translate from the document from which the witness has  
7 just read. "The armed forces in light of statements  
8 the Christian -- that the National Democratic Union  
9 has made -- has published through Channel Two television  
10 on December 21 and seeking the peace of mind of the  
11 citizenry in general advises that: We reject concepts  
12 expressed by representatives of UDN.

of

13 "Second, we emphatically deny that the armed  
14 forces is moving to the right or becoming an instrument  
15 the Oligarchic group. On the contrary, we are sure that  
16 we are making sincere efforts to interpret the general  
17 will and that we are not at the service of any of the  
18 minority extremes."

the

19 And to go quickly to number four, which is here  
20 (indicating), "We state that this entire process that  
21 armed forces is supporting and guaranteeing is oriented  
22 towards truly profound and radical changes."

23 And further along there are some requests of

24 providing proof concerning the accusation made by this  
25 political group.

1 BY MR. KLAUS:

2 Q. What was the accusation that the political group  
made?

3 A. The accusation was that weaponry was entering to be  
4 used by the Oligarchic right, and they were pointing to  
the  
5 armed institution --

6 THE INTERPRETER: Interpreter requests  
7 clarification from the witness.

8 THE COURT: Yes.

9 THE WITNESS: As a contributor to that process.

10 BY MR. KLAUS:

11 Q. Was it your desire as head of the armed forces or as  
12 Minister of Defense to see the reforms set forth in the  
13 proclamation of October 15, '79? Was it your desire to  
14 support those reforms?

15 A. That is so. That was one of the objectives that the  
16 majority, we, the majority of the armed forces had, and  
at  
17 this time, December of '79, they had yet to be  
implemented.

18 Q. That was two months after the coup, the revolution?

19 A. Yes, yes, that is so.

20 Q. I am going to pass you another exhibit. This is  
21 marked Plaintiffs' Exhibit 38. Can you identify that  
22 exhibit?

23 A. Yes, I can identify it.

24 Q. And what is it?

25 A. This is another response to the social political

1 changes as promised by the armed forces and this is as a  
2 consequence to certain opposition within the armed forces  
3 that existed in opposition to the reforms that were being  
4 implemented. It is a response based on the armed forces  
5 proclamation.

6 Q. Is this a newspaper article from El Dario de Ohy?

7 A. I believe it is from La pens Graphica -- no. No, it  
8 is from Dario de Ohy. It is from El Dario de Ohy,  
9 Thursday, 10 of January, 1980.

10 Q. How many newspapers were printed in El Salvador at  
the  
11 time of general circulation?

12 A. At the time there were four main newspapers. Dario  
de  
13 Ohy. Prensa Grafica, P-R-E-N-S-A, G-R-A-F-I-C-A. Diaro  
14 Latino, D-I-A-R-O, L-A-T-I-N-O. And Diario El Mundo,  
15 D-I-A-R-I-O, E-L, M-U-N-D-O.

16 Q. Does this article accurately reflect the opinion of  
17 the ruling Junta at that time.

18 A. That is so, as well as that of the armed force.  
19 Mainly this document is from the armed force for one  
20 reason, there was serious opposition to the reforms, both  
21 from the right as well as from the left.

22 MR. KLAUS: I would ask to move this into  
23 evidence, Your Honor.

24 THE COURT: How do you mark that?





1 THE COURT: Any objection to the receipt of  
2 Defendants' 38?

3 MR. GREEN: Objection to relevancy. No mention  
4 of torture and no mention of investigation.

5 THE COURT: I will receive that in evidence  
over  
6 objection.

7 (Defendants' Exhibit 38 received in evidence  
over  
8 objection.)

9 BY MR. KLAUS:

10 Q. Can you read the headline?

11 A. Armed force promises sociopolitical changes.

12 Q. And can you read the important parts from the  
exhibit?

13 A. This document was read by the members of the  
permanent  
14 counsel, COPEFA, COPEFA, of the armed forces.

15 Q. What was COPEFA?

16 A. COPEFA is the organization which has been mentioned  
17 here which is comprised of the young officers. The armed  
18 forces to the Salvadoran people.

19 "The proclamation of the armed forces, and of the  
20 movement of October 15, 1979 established the beginning of  
a

21 process of democratization and profound social change  
22 within the Salvadoran society. This process which  
involves

23 all sectors of the country has encountered considerable  
24 obstacles always in its realization.

25 "Both the extreme right as well as the ultra-left  
have

1 stated difficulties for its implementation.  
Nevertheless,

2 the vast majority of the Salvadoran people have felt that  
3 their aspirations have been interpreted and they have  
4 supported this decision.

5 "The armed forces reaffirms its commitment with the  
6 people as set forth in the proclamation, the proclamation  
7 of the armed force. Pursuant to promoting the road to  
8 change and democracy. It feels that it is the historic  
9 alternative for El Salvador and is fully committed to  
10 making it a reality, placing for that task all of its  
11 enthusiasm and making whatever sacrifices may be  
necessary.

12 "The recent Government crisis gives us as experience  
13 two major lessons. The first, that it is possible within  
a  
14 Democratic framework to overcome crisis in a rational and  
15 positive manner. The second, in order to implement the  
16 articles of the proclamation of the armed force, it is  
17 necessary to establish and define in an unequivocal  
manner  
18 the line that the Government must follow and must present  
19 to the people.

20 "In this endeavor the armed force aware of its  
21 historical role feels that the fundamental objective of  
the  
22 basic reforms is to produce change in the economic power

23 structure, the social power structure and political power  
24 structure of the country in order to pass from an  
25 Oligarchic structure, which is now in force, to wider

rights  
1 participation of the society of all Salvadorans and to a  
2 society that promotes human beings and defends those  
3 which are -- and those rights which are itself due. For  
4 this, it feels that it is necessary."

5 Q. Paragraph four where is it even El Campo Militar.

6 A. Then it sets forth the implementations to be carried  
7 out in the course of this change. In the economic area,  
8 and then we go to number four which is -- the one that is  
9 pertinent to us, in the military area.

revolutionary  
10 Q. Is that describing the reforms that the  
11 Junta felt was necessary in the military?

12 A. Yes, yes, that is so.

reforms  
13 Q. Is this an accurate recollection of what those  
14 were, or what the military -- what the Junta explained to  
15 the military.

16 MR. GREEN: Objection, Judge. This is from  
17 COPEFA, this is not from the military, and specifically  
18 refers to COPEFA.

19 THE COURT: What is the legal objection?

20 MR. GREEN: Leading, here it says COPEFA.

bring  
21 THE COURT: I don't think that is a leading  
22 question. There may be something wrong, and you may  
23 that out in cross.

24

MR. KLAUS: I will rephrase it.

25

1 BY MR. KLAUS:

2 Q. What does number four represent?

3 A. Number four, in the military area to decidedly  
support  
4 all of the reforms and norms that are conducive to  
5 achieving the changes that the country needs within the  
6 political social and economic process, to respect  
7 individual rights of Salvadorans by establishing the  
8 adequate procedures of social order. Within these, its  
9 role will be established as pertains to its function of  
10 enforcing the law and public order. Under this aspect  
the  
11 security corps shall intensify their participation in  
12 Government actions that are oriented towards achieving  
13 common well-being and integrating themselves more  
actively  
14 to the democratization process and to the respect of  
human  
15 rights.

16 And C, to reiterate its recognition of the  
17 revolutionary Government Junta of the full capacity that  
18 corresponds to the presidency of the republic and to his  
19 condition of the commander general to the armed force.

20 Q. Did you support these reforms?

21 A. Yes. This is a document issued by COPEFA as well as  
22 by the armed force, by the armed force, and it says here  
23 where it deepens -- where the armed force deepens its

24 historic commitment to the transformation process of our  
25 society.



1 Q. Was this your understanding of the role of the  
2 military in the new government?

3 A. That was the purpose in accordance with the  
4 proclamation of October 15.

5 Q. Was this your understanding? Is this what you  
6 believed the role of the military should be in the new  
7 government?

8 MR. GREEN: Objection; asked and answered.

9 THE COURT: I will permit it.

10 THE WITNESS: That is so.

11 BY MR. KLAUS:

12 Q. You agreed to recognize the Junta and the presidency  
13 as the commander in chief of the armed forces?

14 MR. GREEN: Objection; leading.

15 MR. KLAUS: Did you?

16 THE COURT: You may answer the question.

17 THE WITNESS: I always recognized that.

18 BY MR. KLAUS:

19 Q. You agreed to respect the human rights of all  
20 Salvadorans?

21 MR. GREEN: Objection; leading.

22 BY MR. KLAUS:

23 Q. Did you agree?

24 A. That is so.

25 Q. Did you agree to support the reforms set forth by  
the

1 revolutionary Junta?

2 A. The reforms and human rights were one of the main  
3 reasons why I remained within the government.

4 Q. I will ask you again, did you agree to support the  
5 reforms?

6 MR. GREEN: Objection; asked and answered.

7 THE COURT: Overruled.

8 THE WITNESS: Always.

9 BY MR. KLAUS:

10 Q. Did that include the economic reforms?

11 A. Yes, the three main reforms, agrarian reform, bank  
12 reform, and the reform of the control of foreign trade.

13 Q. And while you were in office, did you do everything  
14 you could to support and carry out the orders given you  
15 the revolutionary Junta?

16 A. That is so.

17 MR. KLAUS: I am going to pass you what is  
18 as Defendant's Exhibit 52-B.

19 THE INTERPRETER: Your Honor, the interpreter  
20 would make a slight explanation to the recently read  
21 document. The photocopy does not allow the sequence of  
22 words to be read clearly, and therefore it is the  
23 interpreter's impression that the witness upon reading

by

marked

has

24 assumed some words that cannot be seen but make sense  
25 within the exhibit placed before him. The interpreter

has

1 rendered the words of the witness as spoken by the  
2 witness. The difficult copy notwithstanding.

3 THE COURT: All right. Thank you.

4 BY MR. KLAUS:

5 Q. Can you identify this exhibit?

6 A. Yes.

7 Q. And what is it?

8 A. This is a summary of a speech that I made in the  
9 coastal region of El Salvador at a meeting with peasants  
10 and indigenous peoples of the region of San Sonsonate.

11 Q. What is the date of this article?

12 A. November the 10 of 1980. But the meeting was on the  
13 Saturday, 8.

14 Q. What's the title of the article?

15 A. Minister of Defense describes the situation.

16 Q. And in what newspaper was this printed?

17 A. This is La Prensa Grafica, November 10, 1980.

18 MR. KLAUS: I would move this in as 52-B.

19 THE COURT: Is there any objection to 52-B?

20 MR. GREEN: Relevance.

21 THE COURT: I will overrule that objection and  
22 receive 52-B into evidence over objection.

23 (Defendants' Exhibit 52-B received in evidence  
24 over objection.)

Your

25

MR. KLAUS: I ask to publish it to the jury,

1 Honor.

2 THE COURT: You may.

3 BY MR. KLAUS:

4 Q. Does this accurately reflect the contents of your  
5 speech on November 8, 1980?

6 A. Yes.

7 Q. Can you summarize your speech?

8 A. Yes.

9 Q. And what did you say?

10 A. On that date, which was a meeting of the  
revolutionary  
11 government Junta at which I was present, I was not going  
to  
12 speak on that day at that meeting but as a result of a  
13 request from Mr. Adrian Esquino Lisco, A-D-R-I-A-N,  
14 E-S-Q-U-I-N-O, L-I-S-C-O.

15 Q. Who was he?

16 A. He was the president of the association of  
indigenous  
17 peoples of El Salvador, who made a presentation to the  
18 revolutionary government Junta and he publicly requested  
19 that I say my opinions, among which I said, I said the  
20 Democratic and peaceful revolutionary process that is  
21 underway at this time in El Salvador has destroyed two  
22 myths. The first is that revolutions are carried out  
23 exclusively through a Marxist-Leninist process, and the

24 second, that they pertain to revolutions done and carried  
25 out without the participation of the armed force.



1           And that is why within the Salvadoran revolutionary  
2 process agrarian reform is what is vital, and that is  
3 why -- and that is where the terrorists have aimed their  
4 batteries in a desire to demonstrate to the world that  
5 there has been failure.

6 Q.   When you are referring to terrorists, are you  
7 referring to people from the left and people from the  
8 right, or just people from the left? Who are you  
referring  
9 to?

10           THE INTERPRETER: Interpreter requests question  
11 be read back.

12 BY MR. KLAUS:

13 Q.   Who are you referring to when you are referring to  
14 terrorists trying to interrupt the agrarian reform?

15 A.   I'm referring to the left, the extreme left, those  
who  
16 are carrying out violence against the reforms that were  
17 being instituted.

18 Q.   Were the members of the organization of indigent  
19 people -- indigenous people the recipients of land from the  
20 agrarian reform, the receivers of land?

21 A.   They received lands and they formed cooperatives  
when  
22 the reforms were carried out.

23 Q.   Was there also resistance from the extreme right to

24 the expropriation and distribution of the lands?

25 A. Yes, there was.

1 Q. Go ahead. What else did you say in your speech?

2 A. Another important part is where it was stated that  
our  
3 military institution is aware of what it is doing because  
4 it has a document that governs its conduct. It is the  
5 proclamation of the armed forces of October 15, 1979 in  
6 which the basic principles of the transformation is being  
7 carried out at this time in the country are stated.

8 Q. I want to bring your attention back to the first  
page  
9 of this article. That is a picture of you in the center  
of  
10 the page, correct?

11 A. Yes.

12 Q. And next to that there is another article that  
refers  
13 to finding 14 dead people. What was that article about?

14 A. Well, I will read it. Well, I will read it. The  
15 deaths of two professors, two driver's and four peasants  
in  
16 the jurisdiction of Chalatenango has caused sadness in  
17 different sectors of that area where they were well-known  
18 and highly esteemed. The finding of six dead bodies was  
19 also reported. Four men and two women. In Amaya, this  
20 brings the total to 14 victims. Professor Luis Armando,  
21 L-U-I-S, A-R-M-A-N-D-O, T-R-U-J-I-L-L-O, 39 years, and  
his  
22 wife, Fran Cisca, F-R-A-N, C-I-S-C-A. Catalina,

23 C-A-T-A-L-I-N-A, Gomez, G-O-M-E-Z, age 38 died within the  
24 nucleus, and it doesn't continue. Sam Botello, when they  
25 were both riding a motorcycle, shot down, et cetera, and

riddled 1 gives the names of Nevtalie (phonetic), 29 who died  
2 with bullets the first. And this is all taking place in  
3 the area of Chalatenango.

4 Q. Does this article -- this article indicates these  
5 people died from bullet wounds, correct?

6 MR. GREEN: Objection; leading.

7 THE COURT: Sustained.

8 BY MR. KLAUS:

9 Q. According to this article, how did these people die?

10 A. Well, violently.

11 Q. Does it attribute blame to anyone?

12 MR. GREEN: Objection; this is hearsay.

13 THE COURT: The document is in evidence.

14 MR. GREEN: Yes.

15 THE COURT: So he may publish the document.

16 BY MR. KLAUS:

17 Q. Does it attribute blame to anyone?

is 18 A. I cannot state that because the rest of the article  
19 not here, but it is just simply information.

20 THE COURT: Let me stop for a second now. The  
21 document was received into evidence for the purpose of  
22 demonstrating what it was that General Garcia may have  
23 said to others, and for that purpose and that purpose  
24 alone. All right?

MR. KLAUS: It is really for two purposes. Do

for  
of

1 you want an explanation sidebar?

2 THE COURT: The reason I have admitted it is

3 the purpose it was offered and I assume for the purpose

4 demonstrating what was said by General Garcia, what

5 messages he caused to be delivered.

6 MR. KLAUS: I also wanted to show, and I have

7 another question that will show the relevancy.

8 THE COURT: All right. Announce your next

9 question.

10 BY MR. KLAUS:

11 Q. Were these kind of reports of violent deaths common

12 during that time?

13 A. Yes.

14 Q. What would you do as head of the -- as Minister of

15 Defense when you saw an article like that?

16 A. Communication was established with the area of

17 responsibility following regular channels, in order to

18 establish conditions of responsibility.

19 Q. Did you view victims like were described in that

20 article as victims of war?

21 MR. GREEN: Objection; leading.

22 THE COURT: Sustained.

23 BY MR. KLAUS:

24 Q. Did you have a special response when you read about

25 people being murdered?



1 A. Yes.

2 Q. Did you contact the local commander for that area?

3 A. Well, not always. You must consider that at that  
time

4 the violence situation was so extreme, but there were  
5 organizations that were specifically interested in  
6 obtaining information concerning what was going on.

7 Q. Did you try to stop those kind of murders?

8 A. Yes, within the realm of the possible. I did  
9 everything possible to stop it.

10 Q. Was that the purpose of the war?

11 A. That was the purpose of -- please repeat.

12 Q. Was one of the reasons your Government was fighting  
a

13 civil war to stop the violence?

14 A. That was one of the objectives, but violence in El  
15 Salvador is a very special case that must be analyzed  
16 exclusively.

17 Q. Was it the goal of the revolutionary Junta to  
18 establish order and stop violence?

19 A. That was always the order of the revolutionary  
Junta.

20 Q. Was it the -- one of the stated purposes of the  
21 revolutionary Junta to establish the rule of law?

22 A. Yes.

23 Q. Is that so people wouldn't resolve their differences

24 by murdering each other?

25 A. That was the purpose.

as

1 Q. I am going to turn your attention to what is marked  
2 Defendants' Exhibit 54. Can you identify that exhibit?

3 A. Yes.

4 Q. What is that?

5 A. This is a commentary of what I said at the City of  
6 Guatemala, the month of June of 1981.

7 Q. Is that a speech you gave?

8 A. Yes.

9 Q. And where is the City of Guatemala?

10 A. It is the capital city of the Republic of Guatemala.

11 Q. And where was the speech reported, what newspaper is  
12 that?

13 A. This is the newspaper Prensa Libre, P-R-E-N-S-A,  
14 another word L-I-B-R-E, of the Republic of Guatemala.

15 Q. How does that translate? Can you translate Prensa  
16 Libre for us?

17 A. Prensa Libre is the title of the newspaper.

18 Q. And how does that translate into English?

to

19 MR. KLAUS: I am going to ask the interpreter  
20 translate that.

translate

21 THE INTERPRETER: The interpreter would  
22 Prensa Libre translates into English free press.

23 BY MR. KLAUS:

24 Q. Is that an accurate translation of your speech?

25 A. Yes.

1                   MR. KLAUS: I ask to move that into evidence,  
2 Defendants' 54.

3                   THE COURT: Any objection to the receipt of  
4 Defendants' 54?

5                   MR. GREEN: Relevance. This speech was given  
in  
6 Guatemala. There is no showing it had any connection to  
7 El Salvador.

8                   THE COURT: What would be the response on that?

9                   MR. KLAUS: A public statement published in a  
10 widely accepted newspaper, Your Honor.

11                   THE COURT: I will overrule the objection, and  
54  
12 will be received into evidence over objection. And the  
13 jury would have to make their own judgment as to the  
14 weight to ascribe to that evidence.

15                   (Defendants' Exhibit 54 received in evidence  
over  
16 objection.)

17 BY MR. KLAUS:

18 Q. Was that speech broadcast over any radio or  
television  
19 that you know of?

20 A. Yes, yes, and I have the originals of the copies as  
I  
21 mentioned earlier. I have all the originals on  
videotape.

22 Q. Was it broadcast in El Salvador at the time?

23 A. Yes. It was broadcast in El Salvador later.

24 Q. Do you know when it was broadcast in El Salvador?

25 A. Not exactly, but it is possible it was some three or

1 four days later.

2 Q. Can you tell us what you said in your speech?

3 A. Yes. This speech is important because it makes a  
4 brief summary of what was going on in El Salvador at that  
5 time. And it starts with a question that I feel is still  
6 valid. And starts out by saying the big question is who  
7 responsible for the situation in El Salvador.

is

8 I think that today, more than 20 years after this  
9 started, this question can still be asked and my answer  
10 that day was we are all guilty, all Salvadorans left  
11 something undone so that the situation that we were  
12 could take place.

living

13 We all didn't do something that we should have. It  
14 will now be very painful and tragic to achieve  
15 normalization, it is impossible to say when the struggle  
16 will end because the subversives are using new tactics in  
17 their terrorist war, and our Army must face them with  
18 scarce weaponry.

19 But the people are tired of subversive vandalism.  
20 They assault, kill, kidnap people for the mere fact of  
21 being family members of soldiers. In general terms I can  
22 say our weaponry is insufficient.

that

23 And I would like to make a parenthesis and say at

24 time we would receive --

25 MR. GREEN: Objection; non-responsive, he is

not



1 quoting from the article.

2 THE COURT: I'll sustain the objection.

3 THE WITNESS: For example, our radar are the  
4 people that alerts us by telephone or by whatever means

it

5 may pertaining to any unidentified airplane, but that we  
6 all know from where it comes. We need help.

States,

7 We have received that now from the United

we

8 but it is indispensable that we receive more. Now that

9 are winning in the military area, suddenly voices are  
10 raised throughout the world asking for dialogue and  
11 negotiation. But the El Salvadoran Army asks its

dialogue

12 with whom and for what? The people are the ones who

must

13 negotiate dialogue through totally free elections, to be  
14 carried out within the country during the first quarter

of

15 the next year.

16 And I say that they shall be free because the  
17 Army will not support any candidate. It shall be the  
18 people who will select the quality of the Government

that

19 it wishes. That is why we have encouraged the  
subversives

20 to put down their weapons and to turn them into votes at

21 the elections and this is the only universally accepted

22 system by Democratic countries in order to know popular  
23 will.

24 As pertains to the elections, I reiterate that  
25 there will be no official candidate, although surely

there

1 will be some who will classify it as such. The truth is  
2 that there shall not be.

3 The Salvadoran people will go to the ballot box  
4 even under gun fire for one simple reason, it is tired  
of  
5 violence and pillage.

6 Q. What did you mean there would be no official  
7 candidate?

8 A. Simply that before October the 15th, there was  
always  
9 an official candidate.

10 Q. Is that -- let me interrupt. Is that the candidate  
11 chosen by the procedure you described earlier in your  
12 testimony?

13 A. Yes, and more than selected, supported by the  
14 Government itself.

15 Q. So in this election there wouldn't be any candidate  
16 picked and appointed by the oligarchy?

17 MR. GREEN: Objection; leading.

18 THE COURT: Sustained.

19 BY MR. KLAUS:

20 Q. Is that correct.

21 MR. GREEN: Objection; leading.

22 THE COURT: Sustained.

23 BY MR. KLAUS:

24 Q. What did you mean by there wouldn't be an official

25 candidate?

1 A. That there would be no candidate supported by the  
2 armed institution, and that was the way it was.

3 Q. Now, you invited the opposition, the guerillas, the  
4 enemy to participate in the election --

5 MR. GREEN: Objection; leading.

6 BY MR. KLAUS:

7 Q. -- in your speech?

8 THE COURT: I will overrule that. You may  
9 answer.

10 THE WITNESS: Yes.

11 BY MR. KLAUS:

12 Q. Did you think that they could safely participate in  
13 the election?

14 A. Not with safety, but it was the alternative in order  
15 to end with the violation -- with the violence that was  
16 going on.

17 Q. They were in the midst of an armed struggle with  
your  
18 government at the time, weren't they?

19 MR. GREEN: Objection; leading.

20 THE COURT: Sustained.

21 BY MR. KLAUS:

22 Q. Was there a war going on at the time?

23 A. Yes.

24 Q. And were the guerillas fighting against your

25 government at the time?

1 A. That is so.

2 Q. Go ahead.

3 A. In El Salvador two wars are being fought. One  
4 internal, military. The other on paper, information,  
news.

5 In this field we are at a disadvantage, because there  
does  
6 exist an international campaign to disseminate a  
distorted

7 image of the Salvadoran reality.

8 For example, at the beginning it was said that in El  
9 Salvador there was an Army and Junta that were fighting  
and

10 murdering the people in a genocidal way. It was also --  
11 they also wanted to say that the people would support the  
12 final offensive. Doing its part in complying with the  
13 general strike order of January the 12. Nobody supported  
14 it.

15 Q. What was the final offensive?

16 A. The final offensive was the first major offensive  
17 which was called the final offensive that was launched by  
18 subversives against the country on January 10, 1981.

19 Q. Was that an armed offensive?

20 A. Armed, yes.

21 Q. Was that a military offensive?

22 A. A strong military armed offensive.

23 Q. Okay. Go ahead.

fact 24 A. Of that offensive all we knew was that it was in  
25 going to be carried out. We knew the what, the who, the



1 how, but we didn't know the when.

2 Q. Go ahead with your speech.

3 A. Nevertheless, the -- this information campaign  
4 achieved one of its purpose, to make the people of the  
5 United States believe that El Salvador is another  
Vietnam,  
6 and therefore they should not help us. This is causing  
7 grave trouble to President Reagan whom I am sure wishes a  
8 short term solution as opposed to those who feel he is  
9 using El Salvador as a sample in order to justify his  
anti  
10 Soviet positions.

11 It is ridiculous to say that the Salvadoran Army is  
12 against the people. No Army regular or subversive can  
13 survive without the support of the people.

14 At the beginning of the subversive actions, the  
route  
15 for terrorist supplies was very clear and well-known.  
16 Cuba, Nicaragua, El Salvador, by air or by sea. But now  
17 unfortunately they are involving two additional  
countries,  
18 Guatemala and Honduras. The route starts in Havana,  
19 travels to Managua, from there by land to Honduras. It  
20 goes around Guatemala and penetrates our territory at the  
21 western side.

22 THE COURT: Let me stop for a second. We are  
at

Let 23 a point where we need to take the mid-morning recess.

24 me allow the jury to step out, and we will continue on.

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

1                   THE COURT: Ladies and gentlemen, please be  
2                   seated. One of the issues in this case is whether  
General  
3                   Garcia in his -- in fulfilling responsibilities of being  
4                   Defense Minister of El Salvador took efforts to prevent  
or  
5                   to punish allegations of torture or extrajudicial  
killing  
6                   and things of that nature.

7                   Now, for that reason, General Garcia certainly  
8                   should be able to show to the jury what he said  
regarding  
9                   those subjects, however, to the extent that someone  
begins  
10                  reading a speech that deals with more general topics, it  
11                  seems to me we diverge from what is the legitimate use  
of  
12                  the material.

13                  In other words, hearsay would be what someone  
14                  said outside the court and it's unrelated to an issue --  
15                  one of the issues here is did General Garcia speak  
16                  directly or perhaps in a more general context to  
prohibit  
17                  and to talk about his views with respect to these kinds  
of  
18                  allegations.

19                  And I want to give some latitude, but I do  
think  
20                  there is a difference between that and for instance  
simply

21 reading speeches that may have dealt with a view of the  
22 war in general and so on.

23                   And I would like to ask you to think about  
that,

24 Mr. Klaus, as we go forward. I think we need to stay  
25 somewhat more focused on this issue.

1                   MR. KLAUS: I understand, Your Honor, and in  
2                   response, unfortunately the whole state of the country,  
3                   and his view of the state of the country which was what  
4                   motivated his actions and where he put -- where he spent  
5                   his daily time in his efforts go to why maybe some  
things  
6                   weren't done about human rights because there were more  
7                   pressing issues.

8                   THE COURT: I understand that. You can ask the  
9                   general that directly. He can testify because he is  
here  
10                  and subject to being cross examined as to his views as  
to  
11                  the state of the country at the time and everything  
else.  
12                  General Garcia was there, and he is able to tell you  
today  
13                  what his views are, but I don't know that someone can  
read  
14                  a speech.

15                  Now, certainly the general can consult the  
speech  
16                  if it would help him refresh his recollection as to a  
17                  particular situation. There is no problem in that  
regard.

18                  I want to come back. The reason newspaper  
19                  articles were allowed to be read was whether they are  
20                  evidence of what was said. Not the truth of what was

had  
saying  
said,

21     said, but what was said.  In other words, if somebody  
22     a videotape or a newspaper article that showed them  
23     to troops or to the nation at large that the Government  
24     was not going to tolerate human rights abuses and so on,  
25     that would be admissible simply to prove that it was

1 because that is an issue in the lawsuit.

2 I think we are kind of moving off, and it would  
3 help if you could focus that a little bit more  
4 specifically.

5 MR. KLAUS: Okay.

and

6 THE COURT: Let's take the mid-morning recess  
7 we will come back and continue on with the examination.

8 (Thereupon, a short recess was taken.)

9 (Trial reconvened after recess.)

back

10 THE COURT: Ladies and gentlemen, please be  
11 seated. We are in redirect examination. Let me turn  
12 to Mr. Klaus and allow him to proceed.

13 BY MR. KLAUS:

a

14 Q. General, we are still reviewing Exhibit 54, which is  
15 speech you gave in Guatemala City, Guatemala.

16 Do you speak regarding human rights anywhere in that  
17 speech?

provided

18 MR. GREEN: Your Honor, I have only been  
19 with one side. I believe it is two sided.

20 THE COURT: Is it a two sided document?

21 THE WITNESS: I believe that issue is not  
22 considered.

that

23 MR. GREEN: Your HOnor, I now move to strike

24 document because it does not address human rights.

25 THE COURT: Do you want to be heard on that?



1 MR. KLAUS: Yes.

Would

2 THE COURT: I will hear you later on that.

3 you make a note and we will talk about that afterwards?

4 BY MR. KLAUS:

5 Q. I am going to pass you an exhibit marked Defendants'  
6 Exhibit Number 14. Can you identify this exhibit?

7 A. Yes.

8 Q. What is this?

El

9 A. This is a speech of mine at the National Stadium in  
10 Salvador.

11 THE COURT: For the record, what is the exhibit  
12 number, please?

13 MR. KLAUS: 14.

14 THE COURT: Thank you.

15 BY MR. KLAUS:

abuses

16 Q. You heard one of the Plaintiffs testify that one of  
17 the things you could have done to stop human rights  
18 and stop torture was to speak out publicly about it. Do  
19 you mention that anywhere in this speech?

20 A. This speech, the major importance that it has is to  
21 insist upon nonviolence. I could summarize it only.

22 Q. Let me have you identify it. When was this speech  
23 given?

24 A. This speech was given September 15, 1981.

25 Q. And where was it given?

1 A. At the National Stadium of El Salvador.

2 Q. And was this speech broadcast on El Salvadoran  
3 television?

4 A. Yes.

5 Q. And was it broadcast on El Salvadoran radio?

6 A. Yes.

7 MR. KLAUS: I will ask to move this into  
8 evidence, Defendants' Exhibit 14.

9 THE COURT: Any objection to the receipt of  
10 Defendants' 14?

11 MR. GREEN: May I consult with the interpreter  
12 for a second? I can't read part of this.

13 THE COURT: Yes.

14 MR. GREEN: Objection on relevancy. There is  
no  
15 mention of human rights or torture.

16 THE COURT: I will overrule the objection and  
17 entertain a motion to strike if it does not deal with  
18 violence and things of that nature.

19 MR. GREEN: Further objection on hearsay  
grounds.

20 THE COURT: I am admitting this only for the  
21 purpose of establishing what did General Garcia say  
22 publicly with respect to the issue of violence, human  
23 rights abuses or extrajudicial killing.

24 What is the number of this exhibit?



and  
those  
over

1 THE COURT: 14 is in evidence over objection,  
2 subject to motion to strike if it doesn't deal with  
3 issues.

4 (Defendants' Exhibit 14 received in evidence  
5 objection.)

6 BY MR. KLAUS:

7 Q. What is is the title of this speech?

8 A. The title is what for me is important within this  
9 document. This is a motto that I used personally during  
my  
10 tenure as Minister of Defense.

11 Q. What does it say on top?

12 A. It says, he who holds the truth does not need  
13 violence, but he who has violence shall never find the  
14 truth.

15 Q. Did you believe that?

16 A. It was the basis of support for my way of thinking  
at  
17 the time.

18 Q. Is there anything specifically you said in this  
speech  
19 about violence and ending the violence in El Salvador at  
20 the time?

21 A. Not specifically.

22 MR. GREEN: Move to strike.

23 THE COURT: I grant the motion to strike.

24 MR. GREEN: Move to strike all of the testimony

25 regarding his sayings.

1 THE COURT: No, I won't grant that.

2 BY MR. KLAUS:

3 Q. Did you do everything you could to stop the violence  
4 in El Salvador?

5 A. I did everything that was possible within my reach,  
6 and at that time, that was not easy.

7 Q. I am going to pass you an exhibit marked Defendants'  
8 Exhibit 44. Can you identify this exhibit?

9 A. Yes.

10 Q. And what is it?

11 A. This is a speech to the Salvadorans that they  
12 participate in the elections in El Salvador.

13 Q. And when is it dated?

14 A. Tuesday, November the 10, 1981.

15 Q. And when were the elections scheduled?

16 A. March 28, 1982.

17 Q. Did you believe by participation in elections was  
the  
18 only way to stop violence?

19 MR. GREEN: Leading.

20 THE COURT: Sustained.

21 BY MR. KLAUS:

22 Q. Why was it important to you that free elections be  
23 held?

24 A. Because it was one of the main reasons that was used

25 to maintain violence, and with a freely elected  
Government,



1 it is in disputable that that possibility would be  
2 eliminated.

3 Q. And did this article call for the people of El  
4 Salvador, for everyone to participate in elections?

5 A. Yes.

6 MR. KLAUS: I ask to move this into evidence.

7 THE COURT: How is that marked?

8 MR. KLAUS: Defendants' 44.

9 THE COURT: Is there any objection to the  
receipt  
10 of Defendants' 44?

11 MR. GREEN: Yes, Your Honor. There are a  
couple  
12 objections.

13 THE COURT: Legal basis?

14 MR. GREEN: One, refers to a matter --

15 THE COURT: No. Legal basis.

16 MR. GREEN: Contains inadmissible matter.

17 THE COURT: Give me legal basis of the  
objection.

18 MR. GREEN: Contains inadmissible --

19 THE COURT: No. Give me the basis.

20 MR. GREEN: Hearsay, and brings up a matter we  
21 brought up sidebar --

22 THE COURT: I will sustain it on hearsay  
grounds.

23 This is not an exception to the hearsay rule.

24 BY MR. KLAUS:

human 25 Q. Did you give any orders to your troops regarding

1 rights?

2 A. Yes. These orders were designed to establish the  
3 behavior and the way the armed forces were to act.

4 Q. I am going to pass you an exhibit marked Defendants'  
5 Exhibit 43. Can you identify that exhibit?

6 A. Yes.

7 Q. What is it?

8 A. This is an order as issued to all of the members of  
9 the armed institution, in this specific case to the

General

10 Director of the National Guard.

11 Q. And who issued this order?

12 A. I, Minister of Defense.

13 Q. Is this an accurate copy of the order that you  
issued?

14 A. Yes.

15 MR. KLAUS: I ask to move Defendants' 43 into  
16 evidence, Your Honor.

17 THE COURT: Is there any objection to the  
receipt

18 of what is marked Defendants' 43?

19 MR. GREEN: Yes, Your Honor. There is a  
20 translation which is attached which is totally  
incomplete.

21 MR. KLAUS: I am going to remove the  
translation,

22 Your Honor. Sorry, my daughter copied these.

23 I ask to publish it to the jury.

24 THE COURT: Any objection to the receipt of

25 Defendants' 43?

1 MR. GREEN: May I have one moment, Your Honor?

2 THE COURT: Yes, of course. Uh-huh.

3 MR. GREEN: Your Honor, this is not an actual  
4 order.

5 THE COURT: What is the legal objection?

6 MR. GREEN: It is not what he said it is.

7 THE COURT: That is a credibility issue. The  
8 jury will have to determine that. Is there a legal  
9 objection?

10 MR. GREEN: Hearsay. It is unclear who issued  
11 the order.

12 THE COURT: The witness testified he issued the  
13 order.

14 I will overrule the objection, and receive 43  
15 into evidence over objection.

16 (Defendants' Exhibit 43 received in evidence  
over  
17 objection.)

18 MR. KLAUS: I ask to publish it to the jury.

19 THE COURT: You may. What are you passing out,  
a  
20 translation?

21 MR. KLAUS: No. That is the original order. I  
22 don't need to publish it. I withdraw the request to  
23 publish it.

24 THE COURT: 43 is received into evidence over

25 objection, and obviously subject to cross examination.

1 BY MR. KLAUS:

2 Q. When did you issue this order?

3 A. This order is dated February the 22, 1982.

4 Q. And who is it directed to?

5 A. In this case to the Director of the National Guard.

6 MR. GREEN: Your Honor, I have gone through  
this.

7 I have a possible further objection, may I consult with  
8 the interpreter on this?

9 THE COURT: No, we need to go forward. If you  
10 have a legal objection, you need to state it.

11 MR. GREEN: I object on the grounds of  
relevancy

12 on the same grounds.

13 THE COURT: I will entertain a motion to strike  
14 if it doesn't deal with the issues we are talking about.  
15 That is curtailing violence, human rights abuses or  
16 torture.

17 BY MR. KLAUS:

18 Q. What did this order -- what did you order the  
19 Minister -- the Director of the National Guard to do by  
20 this order?

21 A. The main objective after giving him an explanation  
22 which I am not going to read, based on the background of  
23 the way members of the National Guard used to act, at the

of

24 end it states in the eyes of the people and in the eyes

25 the world, we reiterate our historic commitment that is



1 contained within the proclamation.

2 It says before the eyes of the people and the eyes  
of  
3 the world we reiterate our historic commitment as  
contained  
4 in the proclamation to the chiefs, officers, non  
5 commissioned officers, agents and troops and we order you  
6 to stay out of any political activity of any kind that  
7 might imply partiality towards a determined party and by  
8 the same token to dedicate all of our efforts in favor of  
9 the electoral process by way of total use of all our  
means  
10 in order to facilitate the electoral activity and thus  
find  
11 the peace that the Salvadoran people have wished for for  
so  
12 long.

13 MR. GREEN: Move to strike.

14 THE COURT: I will deny the motion to strike.

15 MR. KLAUS: Nothing further with that.

16 THE COURT: All right.

17 MR. KLAUS: I ask to move that into evidence.

18 THE COURT: That is in evidence over objection,

19 43.

20 BY MR. KLAUS:

21 Q. I am going to pass you an exhibit, Defendants'  
Exhibit

22 53. Can you identify that exhibit?

23 A. Yes.

24 Q. What is it?

25 A. It is another document that refers to the

1 possibilities of a solution in El Salvador by way of  
2 elections.

3 Q. Is it a copy of a speech given by you?

4 A. It is not a copy of the speech, it is a commentary,  
5 but I feel that it probably doesn't go to the subject  
that  
6 we are speaking of.

7 MR. KLAUS: I withdraw that, Your Honor.

8 BY MR. KLAUS:

9 Q. I am going to pass you an exhibit marked Defendants'  
10 Exhibit 52-A. Can you identify that?

11 A. Yes.

12 Q. And what is it?

13 A. This is a report on the visit of members of Congress  
14 of the United States. They visited me over there in El  
15 Salvador.

16 Q. Okay. Is this a newspaper article?

17 A. Yes, from La Prensa Grafica on January 21, 1983.

18 Q. Is that a photograph of you in there?

19 A. Yes, with visiting parties that I had at that time.

20 Q. And what does it say? Is this regarding a meeting  
21 regarding human rights?

22 MR. GREEN: Objection; leading.

23 THE COURT: I don't think that suggests the  
24 answer. The witness may answer the question.



1 BY MR. KLAUS:

2 Q. Does that accurately depict who was present at the  
3 meeting?

4 A. Yes.

5 Q. Okay. I ask to move this into evidence, Your Honor,  
6 Defendants' 52-A.

7 THE COURT: Is there any objection to the  
receipt  
8 of what is now marked Defendants' 52-A?

9 MR. GREEN: Not as a photograph.

10 THE COURT: 52-A will be received into evidence  
11 without objection.

12 (Defendants' Exhibit 52-A received in evidence  
13 without objection.)

14 BY MR. KLAUS:

15 Q. Who was present at that meeting? Were they all  
16 Americans?

17 A. Mr. Kenneth Bleakley, charge d'affair of the  
American  
18 Embassy, Democrat Congressman Ohio Edward Feighan, Mary  
19 Travers, Democratic and political analyst, and  
entertainer  
20 and actor Mike Farrell.

21 Q. What was that --

22 A. I have here what was discussed.

23 MR. GREEN: Objection; hearsay.

24  
discussed.

THE COURT: The question is, what was

25

THE WITNESS: What was spoken about was human

human 1 rights and ways to help solve this major problem of  
how 2 rights in El Salvador and the events we heard here and  
3 it could be solved.  
4 BY MR. KLAUS:  
5 Q. Did you have other meetings with Americans regarding  
6 the human rights of citizens of El Salvador while you  
were 7 Minister of Defense?  
8 A. Many, those meetings with members of Congress of the  
9 United States were continuous.  
10 Q. And would a Congressman bring a delegation with him  
11 when he visited?  
12 A. Yes.  
13 Q. How many during the three years or a little more  
than 14 three years that you were Minister of Defense, how many  
15 meetings did you have with U.S. Congressmen or -- or U.S.  
16 Congressmen?  
17 A. I could not give you the exact number of meetings,  
but 18 what I can say, there were no less than some 20 meetings  
at 19 least with different members of Congress from both  
parties.  
20 Q. And did you meet with any human rights groups during  
21 your duty as Minister of Defense?

22 A. I don't recall except with the one we had continuous  
23 contact with, which was not specifically about human  
24 rights, but it was something parallel, and that was the  
25 Cross.

Red



at 1 Q. Was there a human rights commission in El Salvador  
2 the time?

3 A. January 21 of '83, I think, yes, but I am not sure.

4 MR. KLAUS: I am going to ask to publish this,  
5 Exhibit 52-A.

6 THE COURT: You may.

7 MR. GREEN: I have no objection, but I would  
8 request limiting instruction for the hearsay contained  
9 therein.

10 THE COURT: Could I see that for just a second?  
11 Right.

12 Ladies and gentlemen, I have admitted 52-A  
13 for the purpose of allowing the photograph in and for  
14 purpose alone.

15 Let me pass that over and allow you to take a  
16 look at it.

17 BY MR. KLAUS:

18 Q. So there was a Human Rights Commission January,  
1983?

19 MR. GREEN: Objection.

20 THE COURT: Sustained.

21 BY MR. KLAUS:

22 Q. Was there a Human Rights Commission in El Salvador?

23 A. Yes.

24 Q. And when was that formed and by whom?

25 MR. GREEN: Your Honor, may I see the document

he

1 is using to refresh his recollection?

2 THE COURT: Yes.

3 BY MR. KLAUS:

4 Q. When was that formed?

5 A. The Human Rights Commission was formed on  
6 December 1st, 1982.

7 Q. I am going to pass you an exhibit marked Defendants'  
8 Exhibit 46. Can you identify this?

9 A. Yes.

10 Q. Is this a newspaper article for La Prensa Grafica  
11 dated January 21, 1983?

12 A. That is so. And that corresponds to the previous  
13 photograph.

14 Q. And what is it regarding?

15 A. Regards human rights.

16 Q. Does it accurately report what happened at your  
17 meeting in January of 1983?

18 A. Yes.

19 MR. KLAUS: I ask to move this into evidence,  
20 Your Honor.

21 THE COURT: How is that marked?

22 MR. KLAUS: Defendants' 46.

23 THE COURT: Is there any objection to the  
24 of what is marked Defendants' Exhibit 46.

receipt

MR. GREEN: Yes, Your Honor; hearsay.

1 THE COURT: Sustained.

2 BY MR. KLAUS:

3 Q. What happened at that meeting in January --

4 MR. KLAUS: Your Honor, I would say it is an  
5 exception to hearsay --

6 THE COURT: What rule are you relying on? What  
7 rule of the Rules of Evidence?

8 MR. KLAUS: 803.17.

9 THE COURT: Thank you. Give me a second, if  
you  
10 would. I am going to adhere to my prior ruling.

11 MR. KLAUS: And 803.8.

12 THE COURT: Again, I am going to adhere to my  
13 prior ruling.

14 BY MR. KLAUS:

15 Q. Now, you left Ministry of Defense when?

16 A. In April of 1983.

17 Q. I am going to show you an exhibit marked Defendants'  
18 Exhibit 50. Can you identify that exhibit?

19 A. Yes.

20 Q. What is it?

21 A. It is a statement by the office of the Commander  
22 General of the armed forces.

23 Q. Did you cause that statement to be printed in the  
24 newspaper?

of

25 A. The President of the republic and Commander General

of 1 the armed force, but the contents refers to the Minister  
2 Defense.

3 Q. Is that an accurate depiction of what was printed in  
4 the newspaper at that time?

5 A. Yes.

6 Q. And what date was it printed?

7 A. March 22 of 1983.

8 Q. And was that an article regarding human rights?

9 A. Yes.

10 Q. Was that a paid for advertisement by the ruling  
11 Junta -- by the revolutionary Junta?

12 A. No, by then it was Alvaro Magana, President of the  
13 republic.

14 Q. And what was the article titled?

15 A. Statement by the Commander General's office of the  
16 armed forces.

17 MR. KLAUS: I ask to move that into evidence,  
18 Your Honor, Plaintiffs' Exhibit 50 --

19 THE COURT: Defendants' 50.

20 MR. KLAUS: I mean Defendants.

21 THE COURT: Is there any objection to what is  
22 marked Defendants' 50?

23 MR. GREEN: Relevancy. This was President  
24 Magana.

THE COURT: Can you establish whether General



under 1 Garcia had anything to do with this? Was it issued  
2 his egis or with his approval.

3 BY MR. KLAUS:

4 Q. Were you Minister of Defense at the time?

5 A. Yes. And it has to do with important cases of human  
6 rights.

7 Q. And was that advertisement directed at you?

8 A. No. It was addressed to the people of El Salvador.

9 Q. But did it deal with actions by the Army and by the  
10 military forces of El Salvador at the time you were  
11 Minister of Defense?

12 A. Yes.

13 Q. Was it the Government's public response to  
allegations 14 of human rights violations?

15 MR. GREEN: Objection; leading.

16 THE COURT: I will permit that.

17 THE WITNESS: Yes.

18 THE COURT: What is the exhibit number?

19 MR. KLAUS: 50, Defendants' 50.

20 THE COURT: Any objection?

21 MR. GREEN: Relevancy. It is from President  
22 Magana. And number two, hearsay.

23 THE COURT: I will overrule it on both of those  
24 grounds, but I am permitting it for the limited purpose

25 that is what was the government, that is General Garcia

1 Minister of Defense, and that is what did the government  
2 say on human rights.

3 (Defendants' Exhibit 50 received in evidence  
over 4 objection.)

5 BY MR. KLAUS:

6 Q. What did the government say on human rights?

7 A. As this is a very important subject, I believe it is  
8 worthwhile, well, not to read all, but read the important  
9 part.

10 "In a meeting carried out on the previous Friday the  
11 18th by members of the high command of the armed forces,  
12 with the commanders of their respective units, the  
13 situation of some members of the armed forces who are now  
14 subject to the jurisdiction of the tribunals was placed  
15 under study. The need for the following was considered.

16 "One, to reiterate compliance of the observed norm  
by 17 the armed force which is not intervening in said legal  
18 cases leaving the impartial judgment to the ordinary  
19 justice system regardless of the charge, rank or category  
20 of those who will find themselves involved in criminal  
21 activities.

22 "To reaffirm the commitment of the President of the  
23 republic, Commander General of the armed forces, the

procuring 24 members of the high command and the commanders in  
25 by way of competent government organizations, the normal

1 development of legal actions that will contribute to the  
2 resolution of all criminal acts particularly the  
following:

3 A, is eliminated. B, the case of the North American  
labor  
4 activists which is under appeal by the second tribunal."

5 Q. Is that the Sheraton murders?

6 A. Yes.

7 Q. Go ahead.

8 A. "C, the case of North American citizen Michael Kline  
9 in which the accused have already turned over to the  
10 competent tribunal.

11 Q. What did that case involve?

12 A. That was the assassination of that North American.

13 Q. Okay. Go ahead.

14 A. "D, the case of the dead peasants of Canton Las  
Hojas,

15 Department of Sonsonate in which the Minister of Defense  
16 and public safety has ordered an exhaustive investigation  
17 for the purpose of determining the circumstances under  
18 which these events took place.

19 "In all of these cases, as with any other, it is a  
20 matter of special concern that justice be done regardless  
21 of special interests or pressures from groups or private  
22 persons."

23 Q. Was the last case mentioned what we referred to as  
Las

24 Hojas massacre?

25 A. Yes, that is so.

1 Q. What was your --

2 A. That is so.

3 Q. What was your understanding of what President Magana  
4 meant by that?

5 A. First, he was trying to prevent that groups such as  
6 those mentioned here in El Salvador, those that would  
7 interfere with legal procedures, he was talking about  
those  
8 who would interfere with justice. The objective was to  
9 administer justice regardless of the pressures from one  
or  
10 the other side that may come to bear.

11 Q. Did you agree with President Magana's position as  
you  
12 understood it?

13 A. Yes, yes.

14 Q. Now, going back to recruits to the armed services,  
15 during your tenure as Minister of Defense, you testified  
16 earlier that the armed forces including the security --  
17 National Guard, National Police, Treasury Police, Army,  
18 Navy, Air Force, grew from approximately 14,000 to --  
what  
19 was the final number that you acknowledged by the time  
you  
20 left office in '83?

21 A. I said 20, 22,000, 28,000.

22 Q. Okay. Did those new recruits receive any training  
in

23 human rights?

24 A. Yes.

branch 25 Q. Was that training universal for no matter which



time? 1 of the military or the police they went into at that

2 MR. GREEN: Objection; leading.

3 THE COURT: Overruled as to the last question.

4 You may answer the question.

5 THE WITNESS: Yes, it was universal throughout  
6 the entire armed forces.

7 BY MR. KLAUS:

8 Q. So the commanders of the local Army garrisons who  
9 recruited their own enlisted men, they were ordered to  
10 train those recruits in human rights?

11 MR. GREEN: Objection; leading.

12 THE COURT: Sustained.

13 BY MR. KLAUS:

14 Q. Were the commanders of the local garrisons who  
15 recruited their own recruits ordered by you to train  
those  
16 recruits in human rights?

17 MR. GREEN: Objection; leading.

18 THE COURT: Sustained.

19 BY MR. KLAUS:

20 Q. Did you order local garrison commanders to train  
their  
21 troops in human rights?

22 A. Yes, I held periodic meetings with them.

23 Q. Were new recruits given any publications to explain

24 what their duties were regarding human rights?

25 A. At the beginning we started with some small  
pamphlets

1 that were simple and understandable to the new recruits.

2 Q. I am going to pass you what is marked as Exhibit 61.

3 MR. GREEN: Objection, Judge. There are four  
4 exhibits with the same --

5 THE COURT: There is nothing to object to at  
this  
6 point. Let's just wait a minute.

7 BY MR. KLAUS:

8 Q. Are they the pamphlets you just talked about?

9 A. No. These were created at the armed forces, but  
they

10 were published after I left the office of minister. The  
11 one that was universal was the one from the Red Cross.

12 Q. Do you have that exhibit there?

13 A. Ah, yes.

14 MR. KLAUS: I would ask this be remarked --

15 BY MR. KLAUS:

16 Q. Was this given out while you were Minister of  
Defense?

17 A. Yes. Yes. Not in this form, but in this style over  
18 here.

19 Q. In what style?

20 A. On plain paper, plain paper. And then later on in  
21 this form. It was improved on later.

22 Q. Can you identify the one that was given out while  
you

23 were Minister of Defense?

24 A. The one from the Red Cross only, only.

25 Q. Which one is that?

time 1 A. These were -- they started to be created at that  
2 but they were given out later.

3 Q. Which is the one that was given out while you were  
4 Minister of Defense?

5 A. This one (indicating).

as 6 MR. KLAUS: Your Honor, I ask that be remarked  
7 Defendants 61-A.

receipt 8 THE COURT: Is there any objection to the  
9 of what is being remarked as Defendants' 61-A?

frame 10 MR. GREEN: Your Honor, I would like a time  
11 on it.

12 THE COURT: Yes, that is reasonable. Establish  
13 the time frame when this was distributed.

14 BY MR. KLAUS:

15 Q. When was that distributed?

16 A. It was at the beginning of the year '83.

17 Q. And did that go to all new recruits?

18 A. Yes, it was given to everyone, to the entire armed  
19 force.

20 MR. KLAUS: I am going to ask to move that into  
21 evidence, Your Honor.

22 THE COURT: Any objection to the receipt of the  
23 document marked Defendants' 61-A?

24                   MR. GREEN: I am not sure exactly. I have four  
25 Exhibits 61.

1 THE COURT: 61-A.

2 MR. GREEN: I don't have one 61-A.

3 THE COURT: Would you show Mr. Green the  
4 document?

5 MR. GREEN: No objection.

6 THE COURT: 61-A is received into evidence  
7 without objection.

8 (Defendants' Exhibit 61-A received in evidence  
9 without objection.)

10 BY MR. KLAUS:

11 Q. What is the title of that exhibit?

12 A. Soldiers Handbook.

13 Q. And I am going to ask you to open it up and read the  
14 page one.

15 THE INTERPRETER: Interpreter corrects himself,  
16 Soldiers Manual.

17 BY MR. KLAUS:

18 Q. You can read it out loud.

19 A. It says, "Soldier, you shall respect always and in  
20 places the rules as stated in this manual."

21 Q. And page two?

22 A. "These rules are known as the Geneva Agreements and  
23 they have been accepted by all of the countries of the  
24 world. When an armed conflict erupts, the Geneva

all

25 Conventions shall be applicable under all circumstances.



1 The distinctive emblem and protective emblem adopted is a  
2 red Cross on a white field."

3 MR. KLAUS: I will ask to publish this to the  
4 jury.

5 THE COURT: You may. 61-A?

6 MR. KLAUS: Yes. 61-A.

7 BY MR. KLAUS:

8 Q. Go ahead. What does page two say.

9 A. "Distinctive emblem and protective emblem adopted is  
a  
10 red Cross on a white field."

11 Q. Go ahead.

12 A. "Nevertheless, other emblems have also been  
accepted,  
13 the red crescent moon, the red sun and the red lion.  
14 Wounded or sicken, any soldiers can no longer fight, they  
15 shall under all circumstances be assisted and attended to  
16 such as the soldiers of your own Army. Enemy soldiers  
who  
17 put down their weapons and surrender shall not be killed,  
18 wounded or mistreated."

19 MR. GREEN: Your Honor, I am going to object.

20 There is a section relating to civilians. I object to  
the  
21 relevancy on armed combatants.

22 THE COURT: I am sorry?

about

23 MR. GREEN: I have no objection to reading  
24 the civilians on the last page, armed combatants are not  
25 relevant.

1 THE COURT: I would sustain that and maybe we  
2 could move onto the issues we are dealing with in this  
3 lawsuit.

4 BY MR. KLAUS:

5 Q. Would you read page six and seven?

6 MR. GREEN: Objection. Six deals with  
soldiers.

7 THE COURT: I don't know that.

8 BY MR. KLAUS:

9 Q. Read page seven.

10 A. "Civilian persons bear no arms. Your honor as a  
11 soldier demands that you do not attack nor mistreat  
them."

12 Q. Okay. Now, when you were Minister of Defense, did  
you  
13 know who the members of the National Guard who worked at  
14 the detention center in El Salvador were?

15 A. Would you please repeat the question?

16 Q. Did you know the National Guardsmen stationed at the  
17 detention center, at the National Guard headquarters in  
San

18 Salvador at the time you were Minister of Defense?

19 A. No.

20 Q. When was the first time you heard the allegations of  
21 Dr. Romagoza?

22 A. The first time I heard of this is when we were sent  
23 the corresponding letter to the lawsuit. I have never

24 heard the name of Dr. Romagoza nor had I ever seen him.

25 Q. When was the first time you heard the allegations of

1 Ms. Neris Gonzalez?

2 A. Also when we received the corresponding  
communication  
3 concerning the lawsuit.

4 Q. Now, other than the order that I showed you  
5 previously, did you issue any other orders regarding  
human  
6 rights to the armed forces?

7 MR. GREEN: Objection. There has been no  
8 testimony about --

9 THE COURT: What is the legal objection?

10 MR. GREEN: No predicate.

11 THE COURT: That is not a legal objection.  
12 Overruled, too broad.

13 Go ahead.

14 THE WITNESS: I do know that there were, but I  
15 have yet to be able to identify any.

16 BY MR. KLAUS:

17 Q. Did you request copies of those orders from your  
18 government after this lawsuit was served on you?

19 A. Yes.

20 Q. Did you receive any orders from -- copies of any  
21 orders from your government?

22 A. Yes, I received some.

23 Q. Did you request all the orders from when you were  
24 Minister of Defense and from when General Vides was

25 Minister of Defense?

1 A. Yes, we requested separately but I don't know if you  
2 have mine.

3 Q. I am going to show you what is marked as Exhibit 68  
4 and ask if you -- Defendants' Exhibit 68, and ask if you  
5 can identify them.

6 MR. GREEN: Do you have a copy?

7 MR. KLAUS: I have given them.

8 THE COURT: Do you have a copy for the  
9 Plaintiffs?

10 MR. KLAUS: I have given them before. I don't  
11 have an extra copy.

12 THE COURT: Wait just a second. Let counsel  
see  
13 what it is you are giving the witness.

14 MR. GREEN: Your Honor, if we may have a  
moment.

15 THE COURT: Well, we are at a point where we  
16 should take a break for the luncheon recess. Why don't  
we  
17 do that. We will stick to our schedule and come back at  
18 quarter of two and conclude with the examination. Let's  
19 be in recess until quarter of two.

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

21 THE COURT: Please be seated, ladies and  
22 gentlemen.

23 Do you have an extra copy of that?

going  
24

MR. KLAUS: No, Your Honor, I don't. I was

25 to ask Mrs. Stipes if she could make two copies.



1 THE COURT: Are there many other exhibits?

2 MR. KLAUS: That is my last exhibit for General  
3 Garcia.

4 THE COURT: All right. Let's stop for a  
second.

5 We talked about this last night. Are you almost  
finished?

6 MR. KLAUS: This is my last exhibit. I am  
done.

7 THE COURT: Now, the Plaintiffs have not had an  
8 opportunity to examine on the exhibits. Do you want  
9 examination on the exhibits?

10 MR. GREEN: Yes, Your Honor. And I do note  
these

11 orders that were just shown to us as marked Defendants'  
68

12 are not in the tab section where we have number 68.  
Now,

13 I can talk with our paralegal and see if there was some  
14 other explanation.

15 THE COURT: You haven't seen those before  
today?

16 MR. GREEN: I have not seen these before today.

17 THE COURT: Were these disclosed to the  
18 Plaintiffs before today?

19 MR. KLAUS: Yes. May have been disclosed under  
20 70, which was originally a composite of the orders  
21 regarding human rights on the exhibit list.

22                   MR. GREEN: For number 70, I see El Salvador  
23 rebel exchange for doctor, and Number 68, I see a  
letter,  
24 June of 1984 to Monsignor Artero Rivera Adamus, the  
25 Archbishop of El Salvador. I will look through the

1 exhibits. I don't have an exhibit marked 68.

2 MR. KLAUS: That is a problem with the  
paralegal.

3 On my original exhibit list filed over a year ago, they  
4 are marked as 68 and 70. On the exhibit list now, and  
5 revised exhibit list, they are marked 68 and 70, and  
they  
6 were provided in 2001.

7 THE COURT: The issue is to make sure the  
8 exhibits have been exchanged beforehand, and that is  
9 obviously important. If that turns out not to have been  
10 the case, then we need to take another look at that.

11 So when we come back, I will ask the Plaintiffs  
12 if you double check, maybe they are in there under some  
13 other number, and we can talk about that.

14 I've passed out what is marked as draft five  
15 which I think is simply meant to be the whole potential  
16 instruction with the corrections we mentioned yesterday,  
17 and we can go from there and we will discuss that  
tonight.

18 Let's take a break and why don't we pick up at  
19 quarter of two. Before we bring in the jury, I wish you  
20 would remind me and we will deal with this issue first.  
21 And it would be helpful if the Plaintiffs can tell us if  
22 they do or do not have the exhibit. If they don't, it  
is  
23 a separate issue.

on 24

MR. GREEN: I am not trying to cast aspersions

25 Mr. Klaus. He has been forthcoming the whole time.

1 THE COURT: No. I understand. There is a lot  
of  
2 paperwork going back and forth. Maybe they are  
mislabeled  
3 or something else.

4 Okay. We will be in recess until quarter of  
two.

5 (Thereupon, trial was recessed at 12:30.)

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

7 THE COURT: I wanted to take a minute if I  
could.  
8 Occasionally in the trial, and I think it is both sides,  
9 an objection lodged is lack of predicate, and case law  
10 says it is too broad an objection, it is not precise  
11 enough to allow the other side to know what you are  
12 objecting to and to cure it.

13 You are usually thinking very specifically what  
14 you think is missing. You need to specify that, and the  
15 reason for it is simply to allow the other side to cure  
it  
16 if they can.

17 MR. GREEN: There is a tension -- Judge, I try  
18 not to give speaking objections.

19 THE COURT: I understand that. Sometimes it  
can  
20 go too far, but sometimes lack of time, date, those  
kinds  
21 of things that can be indicated. I wanted to make sure

make

22 you were aware in order to preserve it for appellate  
23 review, appellate courts have said lack of predicate is  
24 not an adequate objection. You want on both sides to  
25 sure you are doing that.

one  
1 MR. GREEN: One other thing, I did object to  
2 document, you sustained on other grounds. There was a  
3 reference to the churchwomen's case, that is why I made  
--

4 THE COURT: Yes, I suspected that, but I  
5 sustained it on hearsay grounds.

6 Okay. Are we all set to bring in the jury?

7 MR. KLAUS: Yes, Your Honor.

8 THE COURT: Okay.

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

10 THE COURT: Did we resolve the issue on the  
last  
11 exhibit? Are you all set on that?

12 MR. GREEN: Yes. In terms of discovery, it was  
13 provided. I was just not able to find it.

14 THE COURT: Good. Ladies and gentlemen, please  
15 be seated. We are in redirect examination. Let me  
allow  
16 Mr. Klaus to conclude.

17 BY MR. KLAUS:

18 Q. General Garcia, you were asked before in one of the  
19 suggestions by the Plaintiffs' witnesses were for you to  
20 make specific orders regarding human rights, and we had  
one  
21 example so far. And I am going to approach you with what  
22 is marked Defendants' Exhibit 68. Can you identify that

23 exhibit?

24 A. This one is General Vides.

25 Q. The top one, May, '83, weren't you still -- I will

ask



have

1 you -- how many -- that exhibit -- all right. Let me  
2 that.

3 Defendant's Exhibit 68. Can you identify that?

4 MR. GREEN: Objection. There is no marking or  
5 exhibit number on that exhibit.

6 MR. KLAUS: I have to mark it. If I could be  
7 allowed to mark it.

8 THE COURT: All right. As long as we all  
9 understand what we are talking about. Plaintiffs' 68,

is

10 MR. GREEN: No, Your Honor, the problem is, it  
11 a composite exhibit.

the

12 MR. KLAUS: The one removed was the date '83,  
13 one I had the actual label on it. The one sitting on  
14 of your books there.

top

15 MR. GREEN: I think these documents need to be  
16 labeled right now.

17 THE COURT: I do, too. We have some stickers  
18 here. Give it to Mr. Klaus, and he will mark it.

19 MR. KLAUS: I am sorry, Your Honor.

B,

20 THE COURT: That is all right. Mark it 68-A,  
21 C, so we can differentiate.

22 BY MR. KLAUS:

23 Q. I will ask you to identify what is marked  
Defendants'

24 Exhibit 68-A, 68-B and 68-C. Can you identify them?

25 A. Yes.

1 Q. And what are they?

2 A. These are orders issued by the Minister of Defense,  
3 when I was the Minister of Defense, to the armed  
institute,  
4 the armed force.

5 Q. Are they general orders that went out to all the  
armed  
6 forces?

7 A. To all of the armed forces.

8 Q. And did they all deal with human rights issues?

9 MR. GREEN: Objection; leading. If I may be  
10 heard sidebar.

11 THE COURT: The witness may answer that yes or  
12 no.

13 BY MR. KLAUS:

14 Q. Did they all deal with human rights issues?

15 A. Yes.

16 Q. How many orders were there issued by you as Minister  
17 of Defense?

18 A. There are six here that are examples of all of those  
19 that were issued in El Salvador.

20 Q. And if you could summarize what these orders  
21 instructed the armed forces to do?

22 MR. GREEN: I would ask it be summarized by  
23 exhibit.

24 BY MR. KLAUS:

25 Q. Can you summarize what 68-A orders all the armed

1 forces to do?

and

2 A. The first one, general order, Ministry of Defense

remember

3 Public Safety, et cetera. "I request that you all

4 that we are professional soldiers and that the

5 transcendental moment in which we live obligates us as a

6 result of the existence itself of the institution to

7 remember and to make a reality the concept of discipline,

8 respect, and professionalism."

9 Q. And when was that order issued?

10 A. October 19, 1979.

11 Q. And the next --

12 MR. GREEN: I move to strike that. Doesn't

13 relate to human rights.

14 THE COURT: Nothing has been offered. The

and

15 Defendant is reading from an exhibit not in evidence,

offered.

16 there has been no objection, and nothing has been

into

17 MR. KLAUS: I offer to move the Exhibit 68-A

18 evidence.

receipt

19 THE COURT: Is there any objection to the

20 of 68-A?

21 MR. GREEN: Yes, Your Honor, to the extent that

22 it does not address human rights or command

23 responsibility.

engaging 24 THE COURT: Does the order deal with not

25 in violence or human rights abuses?

1 professionally

MR. KLAUS: It deals with behaving

2 and according to discipline.

is

3 THE COURT: Let me stop you. All right. Then,  
4 again, of course, the weight to be ascribed to evidence

the

5 a matter for the jury to determine, so I will overrule  
6 objection, and I will receive -- is this 68-A?

7 MR. KLAUS: Yes.

but

8 THE COURT: I will receive 68-A into evidence  
9 over objection.

10 (Defendants' Exhibit 68-A received in evidence  
11 over objection.)

12 BY MR. KLAUS:

13 Q. How many orders are contained in Exhibit 68-A?

14 A. One, two, three.

15 Q. And when were each one of those orders issued?

16 A. The first 19 of October, 1979, the next 17 of May,  
17 1981, and the third, 9 of March, 1982.

18 Q. And what did the second order deal with?

the

19 A. "On this day of the soldier, I call upon the Lord to  
20 shed upon us his blessings and strengthen us to be  
21 victorious under the situation in which we live. The  
22 commanders of military corps shall not lose sight that

23 armed force has as its main objective maintaining public  
24 order, protecting people and properties. Consequently,  
25 they assist civil authorities and private authorities

that



1 revolutionary

1 may require their support as per order of the

2 government Junta, the Minister of Defense and Public

3 Safety, infantry colonel Jos, Guillermo Garcia."

4 that

4 Q. And what did you mean to convey to the troops by

5 order?

6 A. Mainly to respect or respect for people as it says

7 here, respect for people and protection of people and

8 properties, as well as maintain public order.

9 issued?

9 Q. And what about the third order, when was that

10 A. I feel this is not specific because it speaks of

11 safety during an electoral event.

12 Q. Is that regarding the election?

13 MR. GREEN: Objection; leading.

14 THE COURT: Sustained.

15 BY MR. KLAUS:

16 Q. Was that order issued March 9, 1982?

17 an

17 A. Yes. It was precisely for the preparation towards

18 Salvador

18 electoral event, the first free elections that El

19 specifies

19 was going to celebrate, and it specifies, and it

20 of

20 that any attitude that violates or supports these norms

21 behavior shall be immediately reported that the

22 corresponding investigation be ordered, establish  
23 responsibilities and punish the infractors."

24 Q. Did that mean if anyone impugned the free elections,  
25 they were to be punished?

1 MR. GREEN: Objection; irrelevant and leading.

2 THE COURT: Sustained on leading grounds.

3 BY MR. KLAUS:

4 Q. What did you mean by that?

5 MR. GREEN: Objection; irrelevant. Nothing to  
do  
6 with human rights abuses.

7 THE COURT: I will overrule that objection.

8 THE WITNESS: Respect that must be had for  
people  
9 or any attitude that violates or supports the norms of  
10 behavior, which is to say any abuse that may be  
committed  
11 so that the corresponding investigation can be ordered  
and  
12 responsibilities determined and punish infractors.

13 BY MR. KLAUS:

14 Q. Let me ask you to look at an exhibit marked 68-B.

15 Is this a copy of an order you issued in 1980?

16 A. Yes.

17 Q. Is that an accurate copy and rendition of the order  
18 you actually issued May 7, 1980?

19 A. That is so, sir.

20 MR. KLAUS: I ask to move this order into  
21 evidence, Your Honor.

22 THE COURT: Is there any objection to the  
23 acceptance of 68-B into evidence?

not 24 MR. GREEN: Two objections. Number one, I am  
25 sure the copy that is there has the second paragraph

1 redacted.

2 MR. KLAUS: Yes, it does.

3 MR. GREEN: Okay. Second, it does not address  
4 human rights abuses, and therefore irrelevant.

5 THE COURT: Okay. Does this deal with the  
issue  
6 of either respecting human rights?

7 MR. KLAUS: Exactly, it even uses that  
language.  
8 The last sentence.

9 THE COURT: Again, I receive the exhibit into  
10 evidence over objection and certainly subject to a  
motion  
11 to strike.

12 (Defendants' Exhibit 68-B received in evidence  
13 over objection.)

14 THE COURT: You may proceed.

15 BY MR. KLAUS:

16 Q. Was this order directed to all members of the armed  
17 forces?

18 A. To the entire armed force.

19 Q. Including the security forces?

20 A. Yes, security forces, Army, Navy, Air Force.

21 Q. National Guard?

22 A. Also.

23 Q. Treasury Police?

24 A. Yes, security forces.

25 Q. And what he -- can you summarize what this order

1 ordered?

2 A. Yes.

3 Q. Please do.

4 A. "The historic attitude of the soldier has been one  
of

5 strict compliance with the law and not by that leaving  
out

6 evidence of his deep human sentiment as a result of his  
own

7 origin. Upon establishing himself within his behavior of

8 society with respect to the rights and liberties of the

9 citizen such as life, property and highly jealous of the

10 compliance with his duty.

11 Q. What did you mean by --

12 MR. GREEN: I will --

13 THE COURT: Let me come back to this again. As  
14 with any issue of disputed fact, it is going to be for  
the

15 jury to decide on the facts of the case, so I am going  
to

16 overrule the objection. And of course the lawyers can  
17 argue to the jury the weight you feel should be  
attributed

18 to the evidence, but I will allow the exhibit to be in

19 evidence over objection.

20 Now, let me go back to Mr. Klaus and allow him  
to

21 proceed.

22 BY MR. KLAUS:

23 Q. What did you mean by respetuoso de los derechos y  
24 libertades del ciudadano?

25 A. Respect for human rights and freedoms that all



1 citizens have. And as it says there specifically respect  
2 for life and property.

3 Q. And that was a general order to all of the armed  
4 services?

5 A. For the entire armed force.

two

6 Q. I will ask you to look at Exhibit 68-C. Are these  
7 orders that you issued?

8 A. Yes.

9 Q. Do both these orders deal with human rights?

10 A. Let me read this for just a moment.

11 Doesn't say human rights specifically, but it sets  
12 forth the order so that each one will know what helps  
13 participation is and therefore be able to establish  
14 responsibilities.

can

15 Q. What about the second order? Without reading it,  
16 you tell me, does it deal with human rights?

17 A. It doesn't specify it exactly, but it does speak of  
18 respect that is necessary for persons.

Honor.

19 MR. KLAUS: I withdraw Exhibit 68-C, Your

20 BY MR. KLAUS:

light

21 Q. Let me ask you in conclusion, General Garcia, in  
22 of all you heard here and in light of what is transpiring  
23 in the last 23 years, are you sorry for what happened to

24 not only these Plaintiffs but other people who suffered  
25 while you were Minister of Defense, who suffered from

1 torture, who suffered from having family members killed,  
2 who suffered the horrors of the war?

3 A. Yes, yes, yes, sir.

4 Q. Are you satisfied personally that you did everything  
5 you could to bring peace to your country?

6 MR. GREEN: Objection, Judge. This is humans  
7 rights.

8 THE COURT: Legal basis of your objection?

9 MR. GREEN: Relevancy, Your Honor.

10 THE COURT: I will overrule the objection. I  
11 will permit it.

12 THE WITNESS: I did everything possible to  
13 prevent what happened from happening, but the conditions  
14 in my country that we all now know were very sad.

15 BY MR. KLAUS:

16 Q. Is there anything, knowing now what you know, that  
you  
17 would have done differently?

18 A. Yes.

19 Q. What?

20 A. That our troops all know exactly what their  
condition  
21 was based on, their own conviction not to violate human  
22 rights.

23 Q. Can you explain that further? I didn't understand  
the

24 translation.

25 A. After so many years transpired after that conflict

in

1 which we Salvadorans were involved among brothers, it is  
2 painful to know that those differences may still exist  
that  
3 are the product of that conflict.

4 Q. When I asked you what would you have done  
differently,

5 I didn't understand the translation. Can you repeat your  
6 answer?

7 A. What I would have done in that situation after all  
has

8 passed would be to try to eliminate the causes that  
created

9 that conflict, to establish personal conditions to make  
it

10 possible to achieve what was achieved but by peaceful  
11 means.

12 MR. KLAUS: Nothing further, Your Honor.

13 THE COURT: Ladies and gentlemen, the normal  
14 process is that we would have direct examination, cross  
15 examination and redirect and it would stop.

16 However, I indicated to the lawyers last night,  
17 because there are documents that were not offered during  
18 the direct examination, it is appropriate and important  
19 that the Plaintiffs have a right to have cross  
examination

20 if they choose to. And Mr. Green told me he wishes to  
do

21 so.

22                   So I will turn back to counsel for the  
Plaintiffs  
23                   for limited recross on any of the documents offered  
during  
24                   redirect examination.  
25                   Recross examination by Mr. Green.

1 RE CROSS EXAMINATION

2 BY MR. GREEN:

3 Q. General Garcia, would you agree that actions speak  
4 louder than words?

5 A. That is so.

and

6 Q. You requested any and all documents of your orders  
7 speeches concerning human rights from El Salvador during  
8 the period 1979 to '83, correct?

9 A. No, no, I have many more.

than

10 Q. Well, General Garcia, the Plaintiffs asked you for  
11 those, and you never produced a single document, other  
12 what you produced today.

13 MR. KLAUS: Objection; argumentative.

issues

14 THE COURT: Wait a minute now. Discovery  
15 are separate, I will deal with those. Let me go back to  
16 Mr. Green and allow him to ask the next question.

17 BY MR. GREEN:

that

18 Q. You have not shown us one piece of documentation  
19 you, A, publicly condemned torture. There wasn't one  
20 concerning torture in any of those documents that you  
21 testified about today, correct?

word

22 A. In these, that is not there.

23 Q. Yes. Nor was there any documentation where you  
24 publicly condemned decapitation?

25 A. I never knew of a case of those.



1 Q. Nor was there one single piece of documentation that  
2 you testified about today where you publicly condemned  
3 rape?

4 A. I believe that by mentioning the term respect for  
5 man's rights, I believe all violations are concerned  
6 including those that you have mentioned, decapitation, et  
7 cetera.

word  
8 Q. You didn't use the word rape, you didn't use the  
9 decapitation, and you didn't use the word torture, did  
you?

10 A. No. No. No.

11 Q. And not one of those documents that you testified  
12 about today did you publicly condemn enforced  
13 disappearance?

14 A. It is not mentioned there.

15 Q. Nor did you mention cover-up?

16 A. That word is not there.

17 Q. Nor did you mention code of silence?

18 A. Not that one either.

orders  
19 Q. Nor did you ever issue an order in any of those  
that  
20 that you -- or speeches that you testified about today  
21 officers would be removed if they violated human rights?  
22 A. But it states to respond for what they do.

report

23 Q. The only word that you produced was an order to  
24 information about election stuff, you didn't ask or issue  
25 an order that required reporting of human rights abuses?

an

1 A. All those that had been read are under the title of  
2 general order, and everything that is written within is  
3 order.

4 Q. And, sir, the only thing you actually produced that  
5 mentioned, specifically mentioned anything relating to  
6 human rights for unarmed civilians was prepared by the  
7 International Committee of the Red Cross, correct?

8 THE INTERPRETER: The interpreter would request  
9 clarification from the witness on a term.

10 THE WITNESS: Yes, but it had value within the  
11 armed institution, but it is published by the  
12 International Red Cross, but it was disseminated against  
13 all elements of the armed forces.

14 MR. GREEN: May I approach the witness, Your  
15 Honor?

16 THE COURT: Yes.

17 BY MR. GREEN:

18 Q. Sir, I am going to show you what is marked as  
19 Defendant's Exhibit Number 61.

20 THE COURT: Let me let you go back to the  
21 lectern.

22 MR. GREEN: I want to show him one page, Your  
23 Honor.

24 THE COURT: You may.

25

MR. GREEN: What is the date on this document -

-

1 THE COURT: Let me ask you to go back to the  
2 lectern to ask the question.

3 THE WITNESS: Geneva, 1972. It is an old  
4 document from the Red Cross that we have used.

5 MR. GREEN: May I get the exhibit?

6 THE COURT: Yes, of course.

7 BY MR. GREEN:

8 Q. General Garcia, you testified on redirect that you  
had  
9 this pamphlet disseminated to the troops in early 1983?

10 THE INTERPRETER: 1980, counsel?

11 MR. GREEN: 1983.

12 THE WITNESS: I didn't say that it was exactly  
13 what  
14 disseminated in 1983, but that it was used and it is  
15 was sent to me by the general staff as what was used at  
16 that time.

16 BY MR. GREEN:

17 Q. Sir, by this time in 1983 when the general staff  
sent  
18 this to you to begin using it, there had been tens of  
19 thousands of deaths, rapes, tortures and decapitation in  
El  
20 Salvador, correct?

21 A. I could not say how many, but there had been abuses  
of  
22 that nature.

seven

23 Q. And this document which has one sentence on page

24 that talks about unarmed civilians had been available to

1972

25 you as Minister of Defense because it was published in

1 when you became Minister of Defense in October, 1979?

2 A. Yes.

3 Q. And you waited almost three and a half years to  
4 disseminate this to the troops?

5 A. Well, I don't have the exact date, but, maybe, yes,  
6 maybe it was up until then.

other

7 Q. And, General Garcia, every other document, every  
8 speech, every other newspaper article, every other order  
9 that you produced today were words and not actions,  
10 correct?

11 A. That is your position and I respect it.

12 Q. And, General Garcia, these are the types of speeches  
13 that you gave to Ambassador Hinton?

14 A. What?

15 Q. These were the types of speeches that you gave to  
16 Ambassador Hinton, correct?

17 A. Well, I don't understand what you are trying to say.  
18 I spoke to Ambassador Hinton.

sort

19 Q. And you talked generally about what you were doing  
20 with your troops concerning respecting rights and that  
21 of thing, correct?

22 A. Yes.

23 Q. And Ambassador Hinton was President Reagan's  
24 Ambassador to El Salvador, correct?

25 A. Yes.



1 Q. And this is the same Ambassador Hinton who met with  
2 you on a regular basis face-to-face at the time and  
3 Ambassador Hinton concluded you talked a good game but he  
4 no longer believed you or trusted you, correct?

5 A. That was his opinion.

6 Q. Okay. And, General Garcia, you said you were sorry  
7 today?

8 A. Yes.

9 Q. Those were your words today?

10 A. Yes.

11 Q. Two years ago you wrote concerning the Romagoza case  
12 when you were first sued in this case, you said, "These  
are  
13 people that helped or were part of guerilla groups that  
14 dropped bombs, fired guns, planted mines and now want to  
15 appear as victims. Please don't try to present  
yourselves  
16 as martyrs in any way."

17 A. Who did I say that to?

18 Q. You said that to your lawyer who provided it to us.

19 MR. GREEN: May I approach the witness, Your  
20 Honor?

21 THE WITNESS: Yes.

22 BY MR. GREEN:

23 Q. And that is what you said about Dr. Romagoza's  
torture

24 when you were confronted with the claims that he had been  
25 tortured, you said don't let him be a martyr?

1 A. I recall having written something like that as a  
2 recommendation to our attorney, but I do not recall this  
3 being directly to their name. If it were that way, to  
say  
4 that we know that terrorism wears no uniform and at that  
5 time we had that terrorism situation in which you could  
6 come to the opinion that some of this existed, but if you  
7 show it to me and I am referring to Dr. Romagoza, then I  
8 would like to see it.

9 Q. Sir, you are referring to the Romagoza case. That  
10 includes Dr. Romagoza, Neris -- Ms. Neris Gonzalez, and  
11 Professor Carlos Mauricio.

12 A. Well, I would like to see if it is true that their  
13 names are there.

14 Q. We are talking about the Romagoza case. These are  
the  
15 three people we are talking about when you wrote to the  
16 lawyer, "Please don't try to present yourselves as  
martyrs  
17 in any way."

18 THE COURT: Counsel, I think the witness is  
19 asking you to see the document. Can you do that?

20 MR. GREEN: May I approach?

21 THE COURT: Let me let you go back to the  
22 lectern. Thank you.

23 What is the question you are asking, Mr. Green,

24 just so the question is clear?

25

1 BY MR. GREEN:

2 Q. General Garcia, isn't it true in response to your  
3 being confronted with the allegations from Dr. Romagoza,  
4 Neris Gonzalez, and Professor Mauricio, you replied,  
5 "Romagoza case, please don't let yourself be presented as  
6 martyrs"?

7 A. That is not true. It is written here very fairly,  
it  
8 says, there are people that helped, and I am not  
referring  
9 to any of these three and these are the ideas I believe  
10 that an accused may hold freely and say them to his  
11 attorney.

12 Q. And when you made those comments, and when you were  
13 talking about martyrs, and you didn't want these people -

-

14 MR. KLAUS: Objection. That is privileged  
15 material. That is a communication between General  
Garcia  
16 and I they got by mistake.

17 MR. GREEN: They sent it to us, Your Honor.

18 MR. KLAUS: By mistake.

19 THE COURT: Let's move on.

20 BY MR. GREEN:

21 Q. General Garcia, you were sorry today, but you  
weren't  
22 sorry then, were you?

23 THE COURT: Then meaning when?  
24 MR. GREEN: Late 1999.  
25 THE COURT: We are moving on to a new subject

1 matter other than this.

2 MR. GREEN: I have nothing further.

3 THE COURT: All right. Anything further?

4 MR. KLAUS: No, Your Honor.

5 THE COURT: General Garcia, you may step down.

6 Defense may call your next witness -- excuse  
me.

7 General Garcia, would you stay there for a moment? May  
I  
8 see counsel sidebar for a moment.

9 (Sidebar discussion on the record.)

10 THE COURT: We have one question from the jury  
11 and it asks when did General Garcia send his children to  
12 the United States for safekeeping, that is the year?

Any  
13 objection to that?

14 MR. KLAUS: No.

15 MS. VanSCHAACK: I think it was asked and  
16 answered.

17 THE COURT: I think it was, too, but I will put  
18 it to him.

19 (After sidebar.)

20 THE COURT: Is someone typing in the gallery  
area  
21 of the courtroom?

22 Is somebody typing? Could I ask you to stop  
23 doing that? It is bothering some of the jurors, okay.

24 Thank you so much.

25 General, one of the jurors has a question, you



1 may have covered that before, I wonder if you would  
2 respond to it.

children

3 The question is: When did you send your  
4 to the United States for safekeeping, do you recall the  
5 year that would have happened?

November

6 THE WITNESS: Yes. It was by phases, based on  
7 their age and schooling needs that each one had. The  
8 eldest, the first, which were the eldest came in

the

9 of 1979, and then later on the others. I don't recall  
10 exact dates. They came upon the dates as their studies  
11 required, but I do not recall the exact dates, but they  
12 did continue to arrive.

13 THE COURT: All right. Thank you. Thank you.  
14 You may step down, sir.

15 (Witness excused.)

16 THE COURT: Defense may call its next witness.

17 MR. KLAUS: We call General Vides, Your Honor.

be

18 THE COURT: All right. General Vides, please  
19 seated.

normally

20 Mr. Klaus, I will ask, other than as is  
21 permissible on direct examination, that any and all  
22 exhibits be offered on direct examination so we are able

23 to follow the regular course on that.

24 MR. KLAUS: Yes, Your Honor, I was able to get

25 everything organized.

1 THE COURT: General, would you raise your right  
2 hand?

3 CARLOS VIDES, DEFENDANT SWORN.

4 (Testimony through an interpreter.)

5 THE COURT: General, the jurors met you at the  
6 beginning of the case, but for the clarity of the  
record,  
7 would you restate your name?

8 THE WITNESS: My name is Carlos Eugenio Vides  
9 Casanova.

10 THE COURT: Would you spell your last name?

11 THE WITNESS: V-I-D-E-S.

12 THE COURT: Thank you.

13 You may proceed.

14 DIRECT EXAMINATION

15 BY MR. KLAUS:

16 Q. When were you born?

17 A. December 3, 1937.

18 Q. And where were you born?

19 A. I was born in the State of Santa Ana, Republic of El  
20 Salvador.

21 Q. And how many siblings did you have?

22 A. Three others.

23 Q. And were you raised with your siblings by your  
mother  
24 and father?

25 A. Yes. They were married their whole lives until they

1 passed away.

2 Q. And where did you go to school?

3 A. At the San Jos, Jesuit School. That was primary  
4 school and secondary school.

5 Q. I am going to pass you what is marked Defendants'  
6 Exhibit 24. Can you tell us what this exhibit is?

7 A. Yes. That is my chronological history regarding my  
8 studies and positions held as well as decorations.

9 Q. Was that prepared by you?

10 A. It's based on my military records which were sent by  
11 the Ministry of Defense.

12 Q. Was this document prepared by you?

13 A. Yes, and I put it in order so it could be better  
14 understood.

15 MR. KLAUS: I ask to move Defendants' Exhibit  
24 into evidence, Your Honor.

17 THE COURT: Is there any objection to the  
receipt of what is marked Defendants' Exhibit 24?

19 MR. GREEN: No, Your Honor.

20 THE COURT: Defendants' 24 received into  
evidence without objection.

22 (Defendants' Exhibit 24 received in evidence  
over objection.)  
23

24

MR. KLAUS: I ask to publish it.

25

THE COURT: You may.

1 BY MR. KLAUS:

2 Q. This is, like you said, chronological of your  
personal

3 history, correct?

4 A. Yes.

5 Q. Did you have to take a test to be admitted to the  
6 military academy?

7 A. Yes.

8 Q. Is that the same test that General Vides would have  
9 taken?

10 THE COURT: You said General Vides.

11 MR. KLAUS: I'm sorry, I meant General Garcia.

12 THE WITNESS: Yes, a year after --

13 BY MR. KLAUS:

14 Q. You were behind him, correct?

15 A. Correct.

16 Q. Did you know him --

17 A. No, a year after him.

18 Q. Yes, okay. Did you know him while you were in  
school?

19 A. Yes, I had a chance to meet him in school during  
most

20 of his professional life. I have known his family  
closely

21 and in summary, he is one of the people in the armed  
forces

22 who I respect the most for his principles, his  
professional

23 ability.

24 MR. GREEN: Objection; irrelevant.

25 THE COURT: I will sustain the objection.

Let's



1 go back to the next question.

2 BY MR. KLAUS:

3 Q. Is he one of your best friends?

I  
4 A. Best friend, no. Best friends are people with whom  
been  
5 have had a great deal of contact. General Garcia has  
6 my superior. I have always respected him. I have never  
7 called him Guillermo like Professor White said. I  
respect  
8 him as a professional, friends and man. Best friends I  
can  
9 count them on the fingers of one hand.

10 Q. So you don't socialize, you and General Garcia  
11 haven't -- historically haven't socialized together,  
12 correct?

13 MR. GREEN: Objection; leading.

14 THE COURT: Sustained.

15 BY MR. KLAUS:

16 Q. When did you graduate from the military academy?

17 A. I want to be sure. November 15, 1957.

18 Q. And your first assignment was what?

19 A. My first assignment was as a second lieutenant in  
the  
20 San Vincente area. That was the first assignment I had.

21 Q. Now, eventually you also came back as a teacher at  
the  
22 academy; is that correct?

23 A. That's correct.

1960? 24 Q. And the first time you became a professor was in

25 A. That's correct.

until 1 Q. Okay. And you taught off and on at the academy  
2 when, from '60 until when?

3 A. I don't think there is any single officer with the  
4 only possible exception of General Garcia who spent more  
5 time at the military academy than I did. Two or three  
6 different assignments for three years at a time each or  
7 more.

opportunity 8 Q. Did you, during your career, ever have an  
9 to study in the United States?

10 A. Unfortunately, no.

11 Q. Now, in -- I see here October 19, looking at page  
12 four, 1979, that is when you were appointed Director  
13 General of the National Guard?

14 A. That's correct.

15 Q. Did any of your officers or your subordinates ever  
16 refer to you as Director or address you as Director while  
17 you were Director of the National Guard?

referred 18 A. No. Our ordinances are very clear. A subordinate  
19 refers to his superior by rank, I would have been  
20 to Major, Colonel, whatever I was, but never Director.

21 Q. When you were appointed Director of the National  
22 Guard, who reported to you?

23 A. The government revolutionary Junta.

24 Q. Is that the same -- is that the same revolutionary

25 Junta that appointed General Garcia to Minister of  
Defense?

1 A. Yes.

2 Q. Okay. Were you recommended to that position by  
3 General Garcia?

4 A. Well, the word recommendation doesn't exist in a  
5 military aspect.

6 Q. Do you know personally if he recommended you for  
your  
7 position?

8 A. Yes. When the Junta asks for somebody who can go  
and  
9 prove, somebody who could go fix the National Guard,  
10 General Garcia said that the right person might be  
myself.

11 In other words, revolutionary government Junta could  
12 approve or reject the decision.

13 Q. December 31, 1981, you were promoted to general.  
Who  
14 promoted you?

15 A. I was promoted by the revolutionary government  
Junta.

16 Q. Who was your direct superior while you were the head  
17 of the National Guard?

18 A. It was the chief of the general staff, then the  
19 Minister of Defense, and President in that upwards order.

20 Q. Who was the chief of the general staff while you  
21 were -- while you were head of the National Guard?

22 A. I'm not sure who it was. I am trying to remember  
the

23 names. I don't remember whether it was Colonel Carranza,  
24 who was already there, or there was somebody before him.

25 Q. Colonel Carranza?

1 A. I am not sure, because later there was a Colonel  
2 Flores Lima, Arenas, Blandon, I am not sure.

3 Q. While you were head of the National Guard, were  
there  
4 three different heads of the general staff?

5 MR. GREEN: Objection; leading.

6 THE COURT: Sustained.

7 BY MR. KLAUS:

8 Q. Did you have different commanders, different  
9 superiors -- did your superiors change while you were  
head  
10 of the National Guard?

11 THE INTERPRETER: Your Honor, there is no  
answer.

12 May I elicit one?

13 THE COURT: Yes.

14 THE WITNESS: Yes, but I am not sure. There  
15 might have been someone before Colonel Carranza, there  
was

16 Colonel Flores Lima, and Colonel Reyes Mena, and then  
17 Colonel Blandon. I was already Minister of Defense.

18 Q. Okay.

19 A. I can't quite remember about those changes during  
20 those three years, but I do believe those changes did  
21 occur.

22 Q. Okay. You were Minister -- you were head of the  
23 National Guard in December, 1979, correct?

24 A. That's correct, October.

25 Q. Okay.



1 A. October, 1979.

2 Q. Where was your office located?

3 A. It was about 150 feet or so from the National Guard  
4 building. It was a separate building.

5 Q. Okay. Was -- how big was the entire National Guard  
6 headquarters, and what buildings were located there?

7 A. Well, I would say maybe about ten acres, of which  
part  
8 would be occupied by the soccer field. Aside from the  
9 headquarters, there was the National Administration  
10 building, and then the building itself which was about  
150  
11 meters by about a hundred meters deep and there was also  
a  
12 motor repair building, a hospital. And then also a  
13 servicemen's club building, a building for the training  
of  
14 the band, and there was a pool towards the rear of the  
15 building for the troops, and then near the administration  
16 building there was an officers club, and a small pool.

17 Q. Was there a training school there for all the new  
18 recruits?

19 A. Yes. In the National Guard headquarters, and that's  
20 about 80 percent of the human -- the personnel were  
located  
21 in that building. Just for general knowledge, in the  
22 beginning there were only 150 men and a short time after

23 arrived, the school swelled to about 800 students.

when 24 Q. How many members of the National Guard were there

25 you took office in October, 1979?

1 A. About 1700, and then a few months later there was an  
2 increase of about 540, students, that is.

3 Q. How long were the students trained before they went  
on  
4 active duty in the National Guard?

5 A. Training would last for six months.

6 Q. Now, were there detention cells at the National  
Guard  
7 headquarters?

8 A. Yes, there were, but not as large prison, it was  
small  
9 place.

10 Q. How many cells were there?

11 A. When I arrived and I tried to supervise the cells  
12 mentioned by Mr. Alvarez, they were no longer in  
existence.

13 Because there was a commander between General Alvarenga  
and  
14 myself, and there would have been Porleto, and he ordered  
15 them demolished.

16 But I was at the place where they were sent. I  
built

17 eight cells apart from that building. Each cell was  
about

18 three meters wide by about five meters deep, and each one  
19 had a small toilet and a small wash basin. The beds were  
20 made of concrete so as to be able to put a small mattress  
21 in there, because there had been a case at the National

out

22 Police where somebody hung themselves with those things

23 of the bed.

24 This jail was built on a simple design, but which

25 allowed better control and good hygiene.

1 Q. Was there any -- when you -- what you said was  
2 interpreted as supervised. When you arrived, did you  
3 visit -- when you took your post, did you visit the  
4 building that Dr. Alvarez -- that Professor Alvarez  
talked  
5 to us about?

6 A. Yes. But it had been demolished, those cells no  
7 longer existed.

8 Q. Was that in a separate building from where you  
9 constructed the cells?

10 A. No. This other one was inside the building.

11 Q. Did those cells --

12 A. There are places that have been more or less  
13 designated.

14 Q. Were there other rooms in that building besides the  
15 eight cells that you had constructed?

16 A. Just the small desk area where the man would sit who  
17 was in control of the ingress and egress of prisoners.

18 THE COURT: Mr. Klaus, we are at a point where  
we  
19 should stop for the mid-afternoon recess, let's stop and  
20 take a 15 minute break and we will come back to General  
21 Vides' testimony.

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

23 MR. GREEN: Your Honor, I don't know if you  
want

revisions 24 to look at this right now. We have our proposed

25 to The Court's instructions.

1 THE COURT: I do. Thank you very much.

2 (Thereupon, a short recess was taken.)

3 (Trial reconvened after recess.)

4 MR. GREEN: Judge, I wanted to make it clear  
that

5 communication was made available to the Plaintiffs  
during  
6 discovery by the Defendants, that at least portions of  
7 those communications were already played to the jury in  
8 the video depositions that were played earlier in this  
9 trial. And I took that deposition back in either  
10 January 31, 2001, or February 1st, 2001. This is the  
11 first I ever heard that that was an attorney/client  
12 confidential communication.

13 THE COURT: I thought you were referring to a  
14 written document. Was that discussed in the deposition?

15 MR. GREEN: Yes.

16 THE COURT: And there was no assertion of  
17 attorney/client privilege?

18 MR. KLAUS: I don't think it was discussed in  
the  
19 deposition, it wasn't discussed when they played the  
20 excerpts here.

21 THE COURT: When it was raised in the  
deposition,  
22 did you object to it?

given

23 MR. KLAUS: I doubt it. What it was, notes

24 to me by his binder, I instructed my secretary to send

That

25 everything out to the printer and send them copies.



1       went with it. It wasn't so damaging, it just went.

2                   When he brought it up at the deposition that  
was

3       notes to me, and the notes referred to what he  
explained,

4       but it was notes to me with the first binder that he  
ever

5       prepared when the case first came out.

6                   THE COURT: Well, I think, you know. We all  
7       agree that a communication between the client and the  
8       lawyer is a privileged communication. The law becomes a  
9       little bit more merky when there is an inadvertent  
10      disclosure of that communication. There are some courts  
11      that have held if the communication is disclosed, that  
the

12      privilege is waived, and there are other courts who have  
13      held the opposite.

14                  Now -- and it may be, too, that sometimes the  
15      analysis differs when you are dealing with, for  
instance,

16      an internal document or something like that as opposed  
to

17      a direct communication from the client. But bearing in  
18      mind that it is the client's privilege, that is it is  
not

19      the lawyer's privilege, it is the client's privilege, it  
20      would seem to me only the client can waive that  
privilege.

21                  Now, I have to tell you I am distressed if

22 indeed -- now, these things happen, but if this is made  
23 known to the defense earlier that the note had been  
24 inadvertently made available to the Plaintiff, I think  
25 defense has an obligation, indeed I think defense

counsel

seek 1 has an obligation immediately to make that known and  
2 recovery of it. And I suppose through an appropriate  
3 motion to preclude any further use of it.

that 4 Now, I understand what Mr. Green is saying,  
5 is, he is saying he was not aware of the fact that it  
was 6 attorney/client, that he has had it, and indeed  
apparently 7 it was used without anybody saying anything in the  
8 deposition.

is 9 There is no way we can go back and undo it, it  
10 there, but I think we should stay away from that. I  
mean, 11 it is there, if you feel I need to do something else on  
12 it, I will be happy to hear you, but I ask you to take a  
13 look at the case law on this.

that 14 This is an area where there is a great deal  
15 has been written, and my recollection is, even in  
16 instances of inadvertent disclosure, it is the client's  
17 privilege, and as I said, I think there are perhaps  
18 different -- shades is the wrong word, but clearly when  
19 there is something directly from the client communicated  
20 to the lawyer, I think we all agree that is entitled to  
21 the greatest protection unless the client has willingly

22 accented to have made that public.

23 MR. GREEN: I want to make it clear, I am as

24 respectful of the attorney/client privilege as anyone  
is.

25 If there is any doubt in my mind, I would have raised  
it.

1 I discussed this communication at the deposition, I  
2 believe with General Garcia if not Vides Casanova as  
well,  
3 and there was full discussion of it. And I didn't think  
4 there would be any issue whatsoever. Attached to it  
were  
5 a whole bunch of other documents produced in discovery.

6 THE COURT: If there is anything further that  
7 needs to be done, I will wait on you to make whatever  
8 motion is appropriate, I will handle it. Otherwise I am  
9 inclined to leave it as it is.

10 MR. GREEN: I want you to understand, I didn't  
11 think I was doing anything wrong.

12 THE COURT: Thank you very much.

13 Mr. Marshal, bring in the jury.

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

15 THE COURT: Ladies and gentlemen, please be  
16 seated. We are in direct examination. I will allow  
17 Mr. Klaus to proceed.

18 BY MR. KLAUS:

19 Q. General Vides, you saw the diagram that Dr. Romagoza  
20 testified to?

21 A. Yes.

22 Q. Could those cells have existed at the National Guard  
23 headquarters while you were head of the National Guard?

24 A. They did not exist.

25 Q. Is it possible that they existed in another building

1 somewhere in San Salvador?

2 A. It's possible. Not that I was aware of it.

3 Q. Could they have been at the National Police  
4 headquarters?

5 A. I wouldn't be able to answer that.

6 Q. Could someone have been tortured on the 10 acres of  
7 the National Guard headquarters without you knowing it in  
8 December of 1979?

9 A. I think it could have happened without one knowing  
10 about it, but I was never aware of a single act of  
torture  
11 during my tenure at the National Guard. I tried to  
12 supervise to the best of my ability, despite the fact  
that  
13 the deputy director was the one in charge of visiting all  
14 the facilities, not only there but throughout the  
country.  
15 But I took care to check on the building, make sure  
16 everything was clean, make sure everything was in order,  
17 except I never spoke with anyone who was detained. And I  
18 have never interrogated anybody in my entire life, that  
has  
19 never been my function.

20 Q. Could that have happened for three and a half weeks  
21 beginning December 12, 1980 at the National Guard  
22 headquarters, could someone have been detained and  
tortured

23 without you knowing?

24 A. To me, it is very difficult that someone could have

25 been tortured under those conditions. Any torture, any



who  
gun  
a  
1 scream could have been heard by all the people, people  
2 lived there. It wasn't just one building, much less a  
3 shot, anyone could have heard. Firing a gun shot inside  
4 building would have been heard. Being detained for a  
5 period of two weeks given the state of siege --

6 But I have not been able to confirm that because the  
7 National Guard files were destroyed first before the  
peace  
8 commission, and later a fire destroyed not only the  
9 ordinance rooms but some of the files were stored close  
to  
10 there.

11 Q. General Vides, I am going to ask you to listen to  
the  
12 question and try to answer the question that I ask you,  
13 okay?

14 A. Yes.

15 Q. If you feel you need to explain, you can ask for a  
16 opportunity to explain your answer.

17 A. Certainly.

18 Q. How many people were detained at the National Guard  
19 headquarters on a regular basis in December of 1980; if  
you  
20 know?

21 A. I couldn't say how many exactly, but the eight cells

22 were enough to keep one person in each cell.

23 Can I give an explanation?

24 Q. Yes.

25 A. Since the people who were being held there were  
either

1 because they had been remitted by The Court or they had  
2 been captured. They were sent by other National Guards  
3 posts to the National Guard headquarters, and we had to  
4 place orders -- certain amount of time to place them with  
5 orders from regular courts.

referred  
6 Q. You mean people held in detention, there were  
7 to you from regular courts?

8 MR. GREEN: Objection; leading.

9 THE COURT: Sustained.

10 BY MR. KLAUS:

didn't  
11 Q. I will ask you to restate the answer before. I  
12 understand the interpretation.

13 A. To explain, after investigation was found he was  
14 guilty, he would be remitted to the appropriate court.  
And

15 if it turned out he wasn't guilty, since the early days  
of  
16 1980, it was procedure to hand the person who was under  
17 arrest over to relatives so that he wouldn't later turn  
up  
18 disappeared.

19 Q. Okay. Did the Red Cross have access to the entire  
20 National Guard headquarters while you were head of the  
21 National Guard?

22 A. Yes. There was an order from the Junta, and also  
from

23 the Defense Ministry and we had to let them in.

24 Q. Was their access limited in any way by you or any of

25 your subordinates that you know?

1 A. No. The orders were to allow them to visit wherever  
2 they wanted. The only thing is an officer would  
accompany  
3 them, and when they questioned somebody who was being  
held,  
4 they had to do it in the presence of the officer who was  
5 escorting them.

6 Q. Okay. Who was the person in charge of the prisoners  
7 or of the detainees at the National Guard headquarters  
8 December 12, 1980?

9 A. The person in charge would be the assistant director  
10 but it was also done through the general staff, and the  
11 special sections one and two when someone had to be  
12 interrogated. We had a very small interrogation section,  
13 and sometimes when an important person such as a guerilla  
14 commander was being held, we would ask the general staff  
15 for help and they would send somebody for purposes of  
16 obtaining information that had to do with battle  
17 information.

18 Q. Who was the subdirector in December, 1980?

19 A. Colonel Aristides Napoleon Montes.

20 Q. Is that M-O-N-T-E-S?

21 A. Yes.

22 Q. And who was in charge of the interrogation unit in  
23 December, 1980?

24 A. Well, since there are no files, it is difficult to

but 25 confirm it, and it is very delicate to be naming names,

1 I believe that it was, Colonel at that time, Major Denis  
2 Moran. It is hard to name somebody, but it could have  
been  
3 he. It has been 23 years, it is hard to remember so  
much.

4 Q. Was that the intelligence unit -- was the  
5 interrogation unit and intelligence unit the same thing?

6 A. Yes, same thing.

7 Q. Is this the same Major Moran that we've heard  
8 testimony about being connected with D'Aubuisson?

9 A. Yes, the only thing I am not sure of is the date on  
10 which he was there, but I think it was he.

11 Q. So, if there was a prisoner who was thought to hold  
12 valuable information about the enemy, would he be turned  
13 over to the investigation, interrogation unit?

14 A. No. Somebody from the general staff or whatever  
would  
15 come and do the interrogation. These were people who  
were  
16 trained in that regard.

17 Q. Were they under your command?

18 A. No.

19 Q. Who was their commander in chief?

20 A. I would like to correct something I mentioned  
before.

21 Q. Go ahead.

22 A. I remember in speaking with General Garcia, the head

Colonel

23 of the Chief of Staff, Colonel Adolfo Castillo, and

24 Carranza was Secretary of Defense.

25 Q. And who would have sent someone to do the



1       interrogation that you just described?

2                   MR. GREEN:  Objection; speculation.  He is not  
3       testifying as to what he knows.

4                   THE COURT:  Sustained.

5       BY MR. KLAUS:

6       Q.    Do you know who would have sent the interrogation  
team  
7       to interrogate the prisoner we just described?

8       A.    Somebody from department two of the general staff.

9       Q.    Not somebody -- and that person would not be under  
10       your command, correct?

11                  MR. GREEN:  Objection; leading.

12                  THE COURT:  Sustained.

13       BY MR. KLAUS:

14       Q.    Would that person be under your command?

15       A.    No.

16       Q.    Now, in December -- do you know who was the  
commander  
17       of the National Guard headquarters in San Vincente  
18       December 26, 1979?

19       A.    I wouldn't be able to say.  The report that at the  
20       National Guard no longer exist so I could name a name  
with  
21       certainty.

22       Q.    Okay.

23       A.    And many officers, upwards of 90 percent of the

24 officers in the National Guard were not academy officers,  
25 so it wasn't somebody whose name you would remember  
easily.

years, 1 These were people who had been guardsmen for 25, 30  
2 and they had risen in the ranks. That is why when an  
3 academy officer would arrive at the guard, you are  
4 considered kind of a strange person.

5 Q. Were there any other members of the National Guard  
6 while you were the head of the National Guard who were  
7 graduates of the military academy?

8 A. Yes, five, seven, a small number.

9 Q. Would the commander of the post at San Vicente have  
10 been a graduate of the military academy?

He 11 MR. GREEN: Objection; calls for speculation.  
12 doesn't know who it was.

13 THE COURT: Sustained.

14 BY MR. KLAUS:

was 15 Q. Okay. While you were head of the National Guard,  
16 it infiltrated by external forces?

17 MR. GREEN: Objection; leading.

answer 18 THE COURT: I will overrule that. You may  
19 the question if you know the answer.

for 20 THE WITNESS: It's possible, but I can't say  
21 sure. If I knew that somebody had infiltrated the  
22 National Guard, I would have taken the appropriate  
action,

can  
23 people acted very surreptitiously. 23 years later, I  
24 tell you there were people perhaps very close who were  
25 collaborating one way or the other.

1 BY MR. KLAUS:

2 Q. Was Denis Moran one of those people?

3 A. Could be one of them. Lieutenant Sibrian could be  
4 another, but these people never gave any indication that  
5 they were doing anything inappropriate.

6 Q. Did you suspect those people of not following your  
7 orders when you were head of the National Guard?

8 A. No, I did not suspect. It is possible they might  
9 have.

10 Q. Do you remember any incidents of insubordination  
while  
11 you were head of the National Guard?

12 A. Yes, I remember a case.

13 Q. What was that?

14 A. It was when a group of terrorists or subversives  
15 captured two National Guardsmen in the center of San  
16 Salvador and took them inside a church, a church that is  
on  
17 the Parque Libertad Rosario. I was finished working  
about  
18 eight p.m. that day. I live about three, four blocks  
away  
19 from the National Guard. I would go have dinner, and if  
I  
20 had work pending, I would go back. When I came back,  
there

21 was an uprising of troops. They had boarded a tank --

22 THE INTERPRETER: May the interpreter clarify?

23 THE COURT: Yes.

24 THE WITNESS: San Salvador never had quite  
tanks.

25 When we were at war with Honduras, we had certain pickup

1 trucks, trucks with kind of a small windows so those who  
2 were inside could -- for observation, and then during  
time  
3 of war a 30 MM -- 30 caliber machine gun was mounted on  
4 it.

5 When I arrived at the guard, the assistant  
6 director told me that they had boarded these armored  
7 pickups and they wanted to go rescue those who were  
being  
8 held. This was when I had barely started. It was in  
'79,  
9 beginning of '80, it has been a long time, I can barely  
10 remember.

11 The assistant director of the guard was a very  
12 responsible person who had risen from guardsman to  
13 colonel, knew his people, and he thought he could  
control  
14 them. He said let me handle the situation, maybe I can  
15 stop it. And he could not stop it.

16 So then I had to stop it and they were very  
17 threatening, anybody could have taken a shot at me. A  
18 captain named Rodriguez stood between the men with  
rifles  
19 and myself. I did not allow those troops to leave, and  
20 they told them they would have to step over my dead  
body.  
21 I told them they would not breakdown the church doors.  
22 They wanted to breakdown not only the doors of that

23 church, but all the church doors in San Salvador.

24 I asked them to give me a time, eight, ten,  
maybe

25 to one a.m., perhaps. We spoke with the members of the



he 1 Junta, and they tried to speak with Monsignor Romero so  
2 could intercede so those people could be brought out.  
3 Monsignor Romero helped us deliver the people from the  
4 guardsmen. Someone spoke to him, I didn't do it  
5 personally.

guardsmen 6 And they made a mistake, they said that the  
7 members of the Junta wanted to speak to the two  
8 who had been freed and that delay, once I told them that  
9 they had been freed, they almost killed me again because  
10 they wanted to go back.

was 11 It calmed down once the attacks with the two  
12 guardsmen come out had arrived. The people who had been  
13 involved were dismissed from the corps. At that time  
14 having taken them to trial, having done anything further  
15 would have been disastrous for the projects the Junta  
16 trying to carry out.

aspects 17 That perhaps is the most important of the  
18 I remember. We suffered -- we all did, who were there,  
19 that was part of our duty. My house was machine gunned  
at 20 one point when I was getting out of my car.

21 MR. GREEN: Objection; unresponsive.

22 THE COURT: Right, I sustain.

23                    Let me go back to Mr. Klaus so he could ask the  
24                    next question.  
25

1 BY MR. KLAUS:

2 Q. Were you married at the time in October, '79?

3 A. No. I was a widower.

4 Q. Did you have children by your first wife?

5 A. Three.

6 Q. And were they in El Salvador at the time?

7 A. 1979, yes.

8 Q. Did you have -- you had two siblings, who -- how  
many  
9 siblings did you have?

10 A. I have three brothers, we are four boys.

11 Q. Were they all in El Salvador at the time?

12 A. At the time, yes, and they still live there. The  
13 oldest is a doctor, he is a pediatrician, and the  
guerillas  
14 kidnapped him, but they released him after three days,  
15 1984.

16 MR. GREEN: Objection; non-responsive.

17 THE COURT: Sustained.

18 BY MR. KLAUS:

19 Q. They were all there at the time, correct?

20 A. You stopped me.

21 Q. They were all there, your brothers?

22 A. Yes.

23 Q. And your parents were there?

24 A. Yes.

25 Q. Did any of your family ever suffer acts -- were any

war? 1 of your family victims of acts of terrorism during the

2 MR. GREEN: Objection; irrelevant, 403.

3 THE COURT: Overruled.

certain 4 THE WITNESS: Yes, but I couldn't say for

5 it was a terrorist, it could have been the death squads,  
6 too. And I say this because both times where there was  
an

7 attack on my house in 1979, and the bomb at my mother's  
8 house in 1989 before I stopped being Minister, that was  
a

9 time when I was exerting a great deal of pressure for  
10 human rights. I couldn't confirm it, but I think some  
11 people --

12 MR. GREEN: Objection; speculation.

13 MR. KLAUS: I didn't hear the answer.

trying 14 THE WITNESS: But I think some people were

15 to give me lessons regarding the fact that I was going  
too

16 far.

17 BY MR. KLAUS:

18 Q. What happened --

19 A. My niece was machine gunned down at the university.

20 Q. All right. What else happened -- what other acts of  
21 violence did your family suffer during the war?

that

22 A. Except for my brother's kidnapping, as I recall,

23 is it.

24 Q. What happened to your niece?

25 A. I was out, she was in college, they machine gunned

1 her, I don't know how many bullet holes. I was here, I  
2 couldn't go to the funeral.

3 MR. GREEN: Objection. Time frame.

4 THE COURT: The objection is the time frame has  
5 not be set.

6 BY MR. KLAUS:

7 Q. Did that happen during the war.

8 MR. GREEN: Objection to the time frame, '79 to  
9 '83.

10 THE COURT: I haven't heard the time frame.

11 BY MR. KLAUS:

12 Q. When did that happen?

13 A. I don't know the exact date. But it is in books in  
14 several places.

15 Q. Was it prior to the Peace Accord being signed?

16 A. Yes.

17 Q. Okay. Was she killed?

18 MR. GREEN: Objection.

19 THE WITNESS: Yes.

20 THE COURT: Wait a minute.

21 MR. GREEN: Withdrawn.

22 THE COURT: All right.

23 BY MR. KLAUS:

24 Q. What happened to your house in 1979, and what month  
25 did it happen?





1 A. It was in January or February.

2 Q. Of '79?

3 A. No -- at my house, yes, 1979.

4 Q. What month in 1979?

5 A. I couldn't say. Perhaps December, January, one of  
6 those months.

7 Q. Okay. While you were head of the National Guard?

8 A. Yes.

9 Q. What happened?

10 A. There was a union organizer, and I had just -- I met  
11 him at a meeting. He came up to me one day and he said,  
12 said, be careful because I heard they want to kill you.

I

between

13 had my personal vehicle at home, and I would travel  
14 the office and my house in my official vehicle. I would  
15 get out, open the door and come in, there were some steps  
16 to my house.

else

should

and

17 That day I had the idea to take the car somewhere  
18 for safekeeping. I had two security people at the house.  
19 I told them, well, one open the door, the other one  
20 be upstairs guarding. The garage had a little terrace  
21 a small brick wall. Somebody had figured out the exact  
22 time it took me to get out and open the door as was my

Any

23 routine. They drove by and they fired about 20 shots.

24 one of them could have hit home had I been opening the

25 door.

1           And the Mason who built the wall at the house put  
2 concrete inside those blocks that they sell, and that is  
3 what saved the life of the National Guardsman who was  
4 guarding when I went in.

5           And I would like to correct a date. I had already  
6 gotten married, and my daughter was about a month old, so  
7 it could be December, 1980.

8       Q.    Okay.

9       A.    It is very hard to remember dates when you dealt  
with  
10 thousands of dates every day, but I think the date I just  
11 gave is correct rather than the previous one.

12       Q.    Was your daughter at home then?

13       A.    Yes. She was little, she was a newborn and I  
remember  
14 my wife lay on the floor to protect her. And as I said,  
we  
15 tried to investigate. I cannot attribute that attack to  
16 the left-wing terrorist or to the death squad.

17       Q.    Did you see the people who fired the shots?

18       A.    No. They went by quickly in a vehicle. I  
understand  
19 there was some kind of a station wagon or truck where the  
20 rear window could be lifted, and in a matter of seconds  
21 somebody emptied the rifle cartridges.

22           But, of course, when that is done toward you, you  
23 expect that it is normal.

24 Q. Now, when did you get married again?

25 A. December 8, 1979, somebody out there will correct  
me.

still

at

1 Q. And how many children do you have -- and you are  
2 married to the same woman?

3 MR. GREEN: Objection. The general is looking  
4 at a note card. May I look at that?

5 THE COURT: Yes.

6 MR. KLAUS: Yes, sure.

7 MR. GREEN: Just dates.

8 THE COURT: Thank you.

9 BY MR. KLAUS:

10 Q. Are you still married to the same woman?

11 A. Yes.

12 Q. And how many children do you have with her?

13 A. Four. Three girls and a boy.

14 Q. Did your wife and children stay with you in El  
15 Salvador during the war?

came

16 A. Yes. Except for the last -- when the oldest one

over,

17 to the United States, I don't have the exact date. And  
18 then when my tenure as Minister of Defense was almost

an

19 the last of the four oldest ones came over. So you have

20 idea about 1984, which was around the same time President

I

21 Duarte's daughter was kidnapped, '84, '85, around there.

22 would have to --

23 MR. GREEN: Objection; non-responsive.

24 THE COURT: Let me go back. Would you state

the

25 next question?

1 BY MR. KLAUS:

2 Q. When did you move to the United States?

3 A. August 21, 1989.

4 Q. And have you lived here ever since?

5 A. Yes.

1984

6 Q. Did you send your family to the United States in

7 to, to avoid the violence in El Salvador?

8 MR. GREEN: Objection; leading.

answer.

9 THE COURT: I don't think it suggests an

10 THE WITNESS: No. My family came over a year  
11 before I ended my tenure as Minister of Defense because  
12 the children had to be placed in school by August, which  
13 is more or less when school starts, so they became  
14 residents about a year, a little over a year before I  
15 arrived. But as a result of the violence, the only one  
16 sent was the last one of the first three and the Embassy  
17 warned us that the guerillas were going to kidnap either  
18 President Duarte's daughter or my youngest. President  
19 Duarte said his daughter had security, nothing would  
20 happen.

I

21 MR. GREEN: Objection; hearsay.

22 THE COURT: Right, I sustain the objection.

23 Let's go ahead.

24 BY MR. KLAUS:

25 Q. You can't tell me what somebody said.



1           When was your brother kidnapped?

2   A.   I have the date here, I have the date from the Red  
3   Cross documents about his kidnapping.

4   Q.   Let Mr. Green look at that.

5   A.   June 4th, 1984. And it he was free June 11, 1984,  
so  
6   approximately ten days. Yes. The letter from the  
Embassy

7   is dated the 12th, yes.

8   Q.   And you were Minister of Defense at that time?

9   A.   Yes, I was Minister of Defense.

10   Q.   Do you know who kidnapped him?

11   A.   I didn't know until two, three months ago.

12           MR. GREEN:  Objection; hearsay. He is not an  
13   expert.

14           MR. KLAUS:  Okay.

15           THE COURT:  Let me stop you for a second. I  
16   sustain the hearsay objection. Go ahead.

17   BY MR. KLAUS:

18   Q.   When was your parents' house bombed?

19   A.   Let me look in the newspaper here, but it was in  
20   January, 1989.

21           MR. GREEN:  Objection; relevancy, time period.

22           THE COURT:  I will permit it.

23           THE WITNESS:  January 28, 1989.

24   BY MR. KLAUS:

25 Q. Now, while you were head of the National Guard, did

their 1 local commanders receive their budgets in a lump sum,

2 budget allotments in a lump sum?

3 A. I would like to clarify the word local commanders,  
4 because I would like to be sure what it is you are  
asking.

5 If you are talking about the guard, they had different  
6 denominations. Director, assistant director.

7 Q. Was the National Guard divided -- were the commands  
8 divided into regions of the country?

9 A. Yes. That's why I wanted to say the names, because  
10 the local commander would be somebody who belonged to the  
11 territorial service.

were 12 Q. And what were the commanders -- how many regions  
13 the National Guard divided into?

14 A. There were five commands. And each command was  
15 responsible for three departments in the country. It is  
a

16 small country, but to give an example, it would be  
17 responsible for Florida and Georgia, and maybe one other.

18 Q. Did those regional commanders receive their budgets  
in  
19 a lump sum allotment?

20 A. There was no budget for anybody there. The budgets  
to  
21 which Ambassador Corr was referring was when we got

22 military aid from the United States. And the security  
23 forces never received any aid from the United States in  
24 that sense because it was forbidden by law for whatever  
25 reason and the security forces didn't get anything. It

was

1 Army, Navy, and Air Force.

2 Q. Did you know -- when was the first time you heard of  
3 the allegations -- when was the first time you heard the  
4 allegations of Dr. Romagoza?

5 A. Likewise when I received the court summons at home.

6 Q. Had you been contacted by any member of his family  
7 while he was -- when he was allegedly detained?

8 A. No.

9 Q. Did you ever visit him while he was detained?

10 A. Not that, either.

11 Q. And when was the first time you heard of the  
12 allegations of Ms. Gonzalez?

13 A. Likewise when I received written notification of the  
14 lawsuit filed here.

15 Q. And when was the first time you heard a complaint of  
16 Professor Mauricio?

17 A. Likewise when the lawsuit arrived.

18 Q. While you were head of the National Guard, did you  
19 receive any specific complaints from -- alleging torture  
20 or -- alleging torture?

21 A. The way it has been presented here, it is possible  
it  
22 was received, but as to say so and so is being tortured  
23 here, or so and so, this was done there, I don't  
remember.

torture 24 Q. Were you aware that there were allegations of  
National 25 and mistreatment of El Salvadoran civilians by the

1 Guard when you were head of the National Guard?

2 A. Yes, I knew generally the National Guard had a bad  
3 reputation, especially in the last years, because before  
4 1970, I think it had a well-deserved reputation with the  
5 people. So I had read somewhere there was a degree of  
6 violence with members of the National Guard.

7 Q. Well, you were living there at the time, right? Did  
8 you read --

9 MR. GREEN: Objection. There is no response.

10 MR. KLAUS: I am sorry, I didn't give him a  
11 chance to answer.

12 THE WITNESS: Was I living where, in El  
Salvador,  
13 in my home or at the guard?

14 BY MR. KLAUS:

15 Q. In El Salvador?

16 A. Yes.

17 Q. Did you ever hear Archbishop Romero's homilies  
setting  
18 forth the names of the people who disappeared or had been  
19 tortured at the hands of the National Guard?

20 A. Despite the fact that many people did listen to  
them,  
21 I did not listen to them.

22 Q. Did you ever hear them ever?

23 A. I couldn't say for sure, but I don't think so.

24 Q. Did you read the newspaper?

25 A. Yes.



1 Q. Did you see allegations of abuse by National Guard  
2 members when you read the newspaper?

3 A. Not specifically. There were general accusations.

4 Q. What about the advertisements taken out by friends  
or

5 family of people who disappeared, did you ever see any of  
6 them in the newspaper while you were head of the National  
7 Guard?

8 A. Yes.

9 Q. What did you do when you saw one of those ads in the  
10 paper?

11 A. When I saw an ad, I generally didn't do anything.  
But

12 normally attorneys would come to the guard, especially to  
13 see if they could visit the installations to find out  
14 whether a person was being held there or not, and that  
they  
15 couldn't find them there, they would go to the Supreme  
16 Court to get a Writ of Habeas Corpus to keep looking  
17 elsewhere.

18 Q. If a lawyer requested to visit a facility to look  
for

19 someone who had disappeared, would you permit them to do  
20 that?

21 A. Yes, he was allowed.

22 Q. Did each National Guard post have a detention  
23 facility?

24 A. Very rudimentary one. Throughout the whole country,  
25 the National Guard posts weren't like headquarters, they

the  
belong  
at

1 were houses throughout the cities, which were rented by  
2 Ministry of the Defense or whatever. Sometimes they  
3 to the Ministry of Defense, but most of them were rented.  
4 And then they would have a house next door, and maybe a  
5 house on the other side, a house behind it, and the door  
6 the edge of the sidewalk, and then the street.

flexible.  
house,

7 Those houses would be made of palm frons, and  
8 depending on the size of the post, that would be  
9 That would -- and that would depend the size of the  
10 the installation that would house the post, no such  
11 headquarters per se.

12 MR. KLAUS: Your Honor, may I retrieve an  
13 exhibit?

14 THE COURT: Yes.

15 BY MR. KLAUS:

the

16 Q. This is previously admitted Defendants' Exhibit 31.  
17 Is that the organizational chart while you were head of  
18 National Guard?

at

19 A. Yes, with some variance. Some increments of troops  
20 some given unit.

21 Q. Do you know roughly or approximately how many

22 detention facilities there were under the control of the  
23 National Guard at the time you were head of the National  
24 Guard, at the time you began, and at the time you end?  
25 A. Normally, you see, everything that is down here --

1 Q. I will ask you to listen to the question and answer  
2 the question.

3 Do you know how many detention facilities the  
National  
4 Guard had in 1979, December, 1979?

5 A. The first one would be at the National director at  
the  
6 national headquarters and the commanders' posts. They  
may  
7 have had a room where they would deposit a detainee to  
have  
8 him moved immediately the following morning to the  
national  
9 headquarters.

10 So it would be to say that they were not real jails  
11 throughout all of this. The flow of the detainees would  
go  
12 to the National Guard, they would be interrogated, they  
13 would be turned over to the courts or then they would be  
14 released if they had no guilt. The idea is that it is  
15 different, it is very different than to the National  
Police  
16 where they had space to have people detained for months,  
17 for grave crimes and then the people that were remitted  
by  
18 the competent courts would then been sent off if  
necessary  
19 to the jails.

20 Q. So the National Guard only had one detention  
facility;

21 is that your testimony?

22 MR. GREEN: Objection; leading.

23 THE COURT: Sustained.

24 BY MR. KLAUS:

25 Q. Is your testimony that the National Guard only had

one

1 detention facility in 1979?

2 MR. GREEN: Objection; leading.

3 THE COURT: Sustained.

4 BY MR. KLAUS:

5 Q. How many detention facilities did the National Guard  
6 have in 1979?

7 A. Same thing, a transit room at each post, and the one  
8 we had with the new eight cells that were built at the  
9 national headquarters.

10 Q. How many posts were there?

11 A. Command posts, five, and then you had the command

post

12 below them 15, and outposts, multiply that by three, and  
13 then multiply that by four or five because there are that  
14 many posts, which is to say that the National Guard had  
15 some 160 to 180 small houses in the little towns at which  
16 there was one chief.

17 There was one outpost chief or post chief who would

be

18 a corporal, and he would have some eight or ten National  
19 Guardsmen below him depending on the area. One

secretary,

20 and then they would report to the line commanders, and

then

21 the company commanders, and then these other, one, two,  
22 three, up to the five commanders officer. They had very  
23 few staff, because it was all distributed throughout the

24 national territory, and that is the way it always was.

25 Everyone was employed.



correct?

1 Q. There were between 160 and 180 posts; is that

major.

2 A. Yes, approximately. And then at the end of the  
3 conflict they began to grow, instead of eight, they would  
4 have maybe, let's say some additional six persons. The  
5 commanders posts were run by an officer with rank of

the

6 A major or lieutenant would be the second in charge at  
7 commanders post.

8 Q. When you say by the end of the conflict, what do you  
9 mean? What date do you mean?

10 A. No. I mean in the middle of the conflict.

11 Q. What year, by what year had it reached that amount?

be

12 A. For example, in '83, '84. Those additional 540  
13 recruits that we graduated in 1980, and then they would

three,

14 deployed out to the 150 or 60 posts, some would get  
15 some would get four depending on the needs of each one.

in

16 Q. How many National Guardsmen were killed or deserted  
17 1980; do you know?

18 A. I don't have that data.

19 Q. How about in 1982?

20 A. At this time, I do not have any memory of the amount  
21 of dead in that sense. But people would die more or less  
22 four or five each week. As a result of ambushes or any

which 23 other types of situations. And there were periods in  
24 there were no clashes, and there were no casualties.  
you 25 But it wasn't so high because these were not what

1 would call front line combat troops, they were more  
2 involved in arresting people, in providing security for  
the  
3 farms in the area.

4 Q. Did you ever receive any complaints about detainees  
5 being abused at any of the 160 to 180 outposts while you  
6 were head of the National Guard?

7 A. Very little that I can recall. Usually those that  
8 would provide complaints would be those usually involved  
in

9 those institutions, involved with human rights. Yes,  
based  
10 on photocopies that were turned over, at least 1,000  
people

11 turned over to the courts, and among them many National  
12 Guardsmen for murder, for robbery, and for different  
other  
13 causes, but not for torture that I can recall.

14 Q. What would you do when you received, or if you  
15 received a complaint regarding torture of a detainee at  
one  
16 of the outposts?

17 A. I do not recall having received complaints of that  
18 nature.

19 Q. Now, in 1983 you were appointed Minister of Defense;  
20 is that correct?

21 A. Yes, April 17, '83.

22 Q. And who appointed you?

23 A. President Magana.

24 Q. And you were ratified by the National Constituent

25 Assembly?

1 A. Yes, it is my understanding that the President  
2 provided or submitted three names and in the assembly  
there  
3 were 60 members and I received 60 votes.

4 Q. Okay. Now, you heard a proclamation of the Fuerra  
5 Armada that was adopted by the revolutionary Junta,  
6 correct?

7 A. Yes.

8 Q. Did you agree with the reforms called for in that  
9 document?

10 A. Yes, but I was no fan of the reforms. I believe  
that  
11 they could have been carried out in another way.

12 Q. Okay.

13 A. But I did support them because I believe they were  
14 necessary to support the country, and because the armed  
15 forces had to do something for its people and that is the  
16 reason why I supported them because of discipline, but I  
17 was no fan of the reforms.

18 Q. Now, while you were Minister of Defense, did you  
meet  
19 with representatives from the United States on a regular  
20 basis?

21 A. While I was Minister of Defense?

22 Q. Yes.

23 A. Yes.

Mauricio 24 Q. Did you ever receive a complaint by Professor  
25 because of his detention while you were Minister of

1 Defense?

2 A. No. There was a communique, in the newspaper.

3 Q. Do you remember that from when you were -- from when  
4 you were Minister of Defense, or did you just learn about  
5 it now?

6 THE INTERPRETER: Interpreter wishes to consult  
7 with the witness on clarification.

8 THE COURT: Yes.

9 THE WITNESS: I learned of it when we received  
10 the paperwork concerning the lawsuit. I was given a  
11 communication from the Vice Minister of Defense in which  
12 Sundays after the add in the paper that mentioned that  
13 Mr. Mauricio had been captured, the Vice Minister was  
14 answering that he was under arrest at the national --  
15 under arrest at the National Police and under  
16 investigation, which is to say the Vice Minister was the  
17 authorized party to hear of these types of cases and  
18 report on them.

19 So to that letter I do respond because it comes  
20 from the Ministry, but I could not recall it, I did not  
21 recall it.

22 Q. Okay. Who was the head of the National Police at  
that  
23 time, in December of 1983?

24 MR. GREEN: Objection; relevancy.

THE COURT: Are you asking who was the head of



think

1 the National Police regarding Professor Mauricio? I

2 Mr. Green is suggesting you have the wrong date.

3 BY MR. KLAUS:

4 Q. Who was the head of the police in June of 1983?

5 A. 1983. Colonel Nuila.

6 Q. Can you spell that?

will

7 THE INTERPRETER: Counsel, just a moment, I

8 be right with you.

second

9 THE WITNESS: Colonel and Dr. Reynaldo Lopez

10 Nuila. R-E-Y-N-A-L-D-O, first surname, L-O-P-E-Z,

referred

11 surname, N-U-I-L-A. He is a lawyer. He is also

12 to in our country as a doctor.

13 BY MR. KLAUS:

14 Q. Okay. He would have been in charge of the people

15 under detention by the National Police at that time?

16 A. Yes, he was the responsible party for the National

17 Police in general.

18 Q. Now, other than when you were head of the National

19 Guard and inspected the cells at the National Guard

20 headquarters, did you ever visit a jail from 1979 to when

21 you retired?

The

22 THE INTERPRETER: Up until when, counselor?

23 interpreter would request the last piece.

24 MR. KLAUS: Until you retired in 1989.

25 MR. GREEN: Objection to the 1989 time frame.

1 THE COURT: What is the legal objection?

2 MR. GREEN: Relevancy.

3 THE COURT: I will overrule the objection.

4 THE WITNESS: I did not do so personally. I  
5 prefer to go and visit the wounded soldiers at the  
6 military hospital and tend to the larger problems of the  
7 country, but I did go a couple of times accompanying  
8 President Duarte when he wished to visit on one occasion  
9 the police, and on another occasion the National Guard.

10 Q. So both times you visited the National Guard  
11 headquarters and the National Police headquarters you  
went  
12 with the President Napoleon Duarte?

13 A. Yes, yes.

14 Q. Did you see any signs of torture or torture  
equipment  
15 either time?

16 A. No, no. Neither on that date nor before that, I  
know  
17 nothing of that. They show up, these procedures, the  
same  
18 procedures show up in every single book, about every  
single  
19 place where people are detained. Unfortunately we never  
20 saw them.

21 Q. You were appointed Minister of Defense a second time  
22 in June of 1984; is that correct?

23 A. Yes. Normally the Minister of Defense would finish  
24 his tenure with the President, but President Duarte  
25 appointed me Minister of Defense.

1 Q. And he was elected president after President Magana,  
2 correct?

3 A. Correct. Yes.

4 Q. Now, do you know how many helicopters El Salvadoran  
5 armed forces had in 1979?

6 A. 50, 54, 56 helicopters.

7 Q. In '79?

8 A. There is only one helicopter, which is the one used  
by  
9 the President. And the first helicopter was given after  
10 the offensive of January 21, some few months later.

11 Q. When were the first helicopters received by the  
armed  
12 forces of El Salvador?

13 A. Two or three months after the offensive of January  
of  
14 '81.

15 Q. Were there any other privately owned helicopters in  
El  
16 Salvador in December 1979?

17 A. To my knowledge at least two.

18 Q. And how about by December of 1980, how many  
19 helicopters were -- how many helicopters did the Army  
have?

20 A. I don't believe it would be more than six or eight  
21 helicopters.

22 Q. By December of 1980, how many helicopters did the  
Army

23 have?

24 MR. GREEN: Objection; asked and answered.

25 THE COURT: I will overrule the objection. You

1 may answer the question.

between

2 THE WITNESS: I am not sure. I estimate

3 six and eight helicopters.

4 BY MR. KLAUS:

in

5 Q. You just testified before that the military didn't  
6 receive any helicopters until after the final offensive

7 January of 1981. Are you changing your testimony now?

8 MR. GREEN: Objection; leading and  
9 mischaracterizes prior testimony.

10 THE COURT: A, I don't think that suggests an  
11 answer. I will allow the question.

12 THE INTERPRETER: Interpreter asks the question  
13 be read back.

14 BY MR. KLAUS:

final

15 Q. You testified prior that the military forces of El  
16 Salvador did not have any helicopters until after the

you

17 offensive of January of 1981. Is that correct, or are  
18 changing your testimony?

19 A. No. That is correct.

20 Q. Listen to the interpretation.

21 A. Yes, military helicopters, because there was a small  
22 helicopter that was used by President Molina more than  
23 anything else.

24           The interpreter will spell Molina for the record.

25   M-O-L-I-N-A.   And two small helicopters that belong to



1 autonomous institutions, and those were all of the  
2 helicopters owned by the state.

3 Q. Were those military helicopters, the ones that were  
4 operated by the institutions?

5 A. No. They had their own pilots, and whenever they  
6 needed it, there was always more than one helicopter  
7 trained who was at the Air Force.

8 Q. Now --

9 A. And to ratify, it was after the offensive of '81  
that  
10 the first helicopters arrived.

11 Q. Did the United States send advisers to teach people  
12 from El Salvador how to fly the helicopters?

13 A. I believe that they took people, they brought people  
14 here to the United States to train them. We did not have  
15 people who could fly that type of helicopter.

16 Q. Okay. While you were Minister of Defense, did  
17 you order your troops, was there still -- did the Army  
18 still recruit members locally? Did the individual -- let  
19 me rephrase it.

20 Did individual commanders recruit their own troops  
21 while you were Minister of Defense?

22 A. Yes. There was a recruiting system established  
23 throughout the country which was under a command that was  
24 known as territorial service. They had lists of

25 individuals who had arrived at the age for military

the  
do  
1 service, and following those lists that were handled by  
2 local commanders, which are those corporals and sergeants  
3 which are the local commanders, they would go and  
4 communicate to these people that it was time for them to  
5 their military service.

6 At that time it was mandatory military service, so  
7 only if they were facing some major difficulty would they  
8 be left out.

9 Each commander of major military garrisons would  
10 receive these recruits, and from there they would be  
11 deployed out to the different military units. And  
because  
12 many soldiers said they wanted to live in one particular  
13 area because they had some family member, so we always  
14 tried to see that the people could work in an area where  
15 they had family.

16 Q. At what age were they drafted?

17 A. 18 years of age, and there were exceptions of people  
18 who requested permission to enter at an earlier age and  
19 along with permission provided by their parents, this was  
20 allowed. The vast majority, 18 years old.

21 Q. What was the youngest someone could enlist? At what  
22 age was the youngest that you would accept someone in the  
23 military?

troops, 24 A. The one I knew of when I went out to visit the  
short, 25 to go out and visit the garrisons, I saw him kind of

years, 1 a little bit small, and he was some 16 years old, 16  
2 three months old, but he wanted to provide the service.

Minister 3 Q. Now, the military forces grew while you were  
4 of Defense, correct?

grown 5 A. Yes, it grew a little bit more than what it had  
6 before.

branches 7 Q. When you became Minister of Defense, how many people  
8 were in the military and security forces, all the  
9 you've heard described before?

Woerner's 10 A. Some 25,000 men, which according to General  
11 report there was some 27,000, but it was more or less  
12 between those two numbers.

13 Q. And when you retired, how many members of the armed  
14 services were there?

15 A. 55,000.

16 Q. Now, how many new officers had graduated from the  
17 military academy during those five years that you were  
18 Minister of Defense?

19 A. I have a graph, not to answer that question, but it  
20 will give us an idea, because I didn't have all the  
21 necessary information in order to generate that data.

22 Q. Let Mr. Green see it --

23 A. And this became a concern for me when I heard the  
24 number of troops spoken by Colonel Garcia.

25 MR. GREEN: I object to the testimony about  
this.

1 This is '83 to '89. This is irrelevant to our time  
2 period.

3 THE COURT: I will overrule that, I will permit  
4 that.

5 MR. GREEN: May I see this?

6 THE COURT: Surely.

7 Mr. Klaus, you may proceed.

8 BY MR. KLAUS:

9 Q. Can you say how many officers graduated during that  
10 time period from the military academy from '83 to when  
you retired in '89?

11  
12 MR. GREEN: I object to this testimony. This  
13 documentation has not been provided to parties in  
14 discovery.

15 THE COURT: The witness can look at anything to  
16 refresh their recollection, and that is the question, is  
17 General Vides simply looking at something to refresh his  
18 recollection, or is he testifying from a document that  
has not been provided.

19  
20 MR. KLAUS: I don't even know what he is  
looking at.

21  
22 THE COURT: I think the question is, is the  
23 general simply refreshing his recollection, or he has no

24 independent recollection but for the document.

25



1 BY MR. KLAUS:

your

2 Q. Do you need to refresh your recollection, refresh  
3 memory?

4 A. Yes. This data I have extracted from military year  
5 books where we have the correct numbers of graduates.

6 THE COURT: Let me stop you for a second.

7 BY MR. KLAUS:

8 Q. Do you have any independent memory how many people  
9 graduated from the military academy during that time?

300

the

10 A. Well, in '83, which is one of the largest graduating  
11 classes, many came to study here at Fort Benning in the  
12 United States. Others graduated in El Salvador, about  
13 and change, second lieutenants, possibly more than what  
14 armed forces had been able to generate in ten, 15 years  
15 prior.

16 Q. In '83, 300 officers graduated?

17 MR. GREEN: Objection; asked and answered.

18 THE COURT: I will overrule the objection.

another

19 THE WITNESS: Yes. I could explain it in  
20 way.

21 BY MR. KLAUS:

22 Q. Just -- do you have any acknowledge of in total how  
23 many new officers there were during that time period from

24 '83 to '89?

25 A. Possibly some 800 officers.

1 Q. Okay.

2 A. Because I don't have data for '88 and '89 --

3 THE INTERPRETER: Interpreter corrects himself.  
4 '87 and '88.

5 THE COURT: Let me stop you for a second. The  
6 claims made against General Vides, are they exclusively  
7 for actions allegedly committed when he was Director of  
8 the National Guard. Do they implicate responsibility as  
9 Minister of Defense?

10 MR. GREEN: As Minister of Defense between May  
11 and June, 1983, when Professor Mauricio was detained and  
12 tortured at the National Police headquarters.

13 MR. KLAUS: He was only Minister of Defense for  
14 one month.

15 THE COURT: Okay. I understand.

16 BY MR. KLAUS:

17 Q. Now, when you retired, that is when you moved to the  
18 United States, correct?

19 A. Yes, some months after retiring.

20 Q. While you were Minister of Defense, were your  
recruits  
21 instructed -- were new recruits instructed on human  
rights?

22 A. Yes. In 1983, according to a book that I have there  
23 by the UNISEF, from the United Nations. That was the  
year

24 during which for the first time the greatest effort had  
25 ever been made on human rights within the armed forces.

1 But as of the earlier years, from 1980 there had  
2 already been instruction that speeches should be given on  
3 human rights, and also participation from members of the  
4 church at each one of the headquarters. But it wasn't  
5 until '83 that the Commission for Human Rights was  
created.

6 And if I am not mistaken, it was under the direction  
7 of Monsignor Delgado, Freddy Delgado.

8 THE INTERPRETER: The interpreter would spell  
the  
9 last name, D-E-L-G-A-D-O, Delgado.

10 BY MR. KLAUS:

11 Q. You saw the manual that the new recruits were given  
12 while General Garcia was Minister of Defense. Were they  
13 given any other manuals when you became Minister of  
14 Defense?

15 MR. GREEN: Objection; time frame.

16 THE COURT: Well, I think the time frame is in  
17 the question. I think the question is were there any  
18 other manuals or directions given other than the one  
19 referred to from the International Red Cross.

20 THE WITNESS: Yes, I believe you have a copy of  
21 the first manual we gave out in 1984 that contains all  
22 instructions with respect to human rights, and elements  
of  
23 international law as well. If you don't have it, I have  
a

24 copy of it there in my briefcase. It is the thick one.

25 THE COURT: Mr. Klaus, if I could suggest, it

is

1 five of five, and we are getting to a point where we  
need  
2 to stop. Why don't we stop at this point. When we come  
3 back in the morning you could pick up. I will ask  
4 Mrs. Stipes to read this question back and get us back  
on  
5 track and allow you to begin on it.

6 Ladies and gentlemen, let me tell you where I  
7 think we are, and I need to check with the lawyers  
because  
8 this is a fluid situation in terms of our time frame,  
but  
9 I think that the parties were hopeful that we would  
10 conclude the testimony tomorrow.

11 There is some additional testimony, obviously,  
12 from the defense, and then there may be some brief  
13 testimony from the Plaintiffs in the rebuttal phase of  
the  
14 case. I am not sure we are going to be able to achieve  
15 all of this, but our hope was time permitting that we  
16 conclude the evidence tomorrow so that we would be able  
to  
17 spend Thursday with the final arguments.

18 That is our hope, and as you know, the process  
is  
19 a little bit fluid, and we need to be able to give the  
20 parties a chance to cover the issues that they are  
21 attempting to cover. But I simply wanted to let you  
know

22 what our projected time frame is. Whether we can comply  
23 with it we will wait to see tomorrow, because obviously  
24 that will be very important.

25 I want to ask you to be ever so diligent,  
please



1 don't let anybody talk to you, please be sure you don't  
2 talk to anybody about the case. And I am going to ask  
you  
3 to be very careful of the media, and with respect to  
4 especially the newspapers, please, if you just bring  
them  
5 in and run them by Mr. Caldwell, we will get them back  
to  
6 you.

7 Have a nice night and see you tomorrow morning  
at  
8 9:30.

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

10 THE COURT: General Vides, you may step down.  
11 Thank you, sir.

12 Ladies and gentlemen, let's take a ten minute  
13 break and we will come back and turn back to jury  
14 instructions. We will take a ten minute recess.

15 (Thereupon, a short recess was taken.)

16 (Thereupon, trial reconvened after recess.)

17 THE COURT: Ladies and gentlemen, just as a  
18 preliminary matter, because I think it will help us in  
19 formulating an approach to some of the issues that we  
need  
20 to deal with, last night we talked about whether  
Professor  
21 Mauricio and Ms. Gonzalez were going to limit their  
claims

22 under the Alien Claim Act --

23 MR. GREEN: Your Honor, I am pleased to  
announce

24 we have streamlined things under the ATCA. Professor

25 Mauricio and Ms. Gonzalez, we talked about torture as  
one

1 basis and the other basis crimes against humanity.  
After  
2 continued discussions, we have agreed to limit it just  
to  
3 torture. There would be torture under the TVPA for  
4 Dr. Romagoza, and torture for Professor Mauricio and  
5 Ms. Gonzalez under the ATCA.

6 THE COURT: Professor Mauricio and Ms. Gonzalez  
7 are proceeding exclusively under the Alien Tort Claim  
Act.  
8 And is it fair to say the lists could be longer but the  
9 parties have decided to limit the allegations or the  
claim  
10 to claims of torture?

11 MR. GREEN: Torture on the ATCA, and torture  
and  
12 extrajudicial killing for Dr. Romagoza.

13 THE COURT: Dr. Romagoza is also claiming  
torture  
14 as to himself.

15 MR. GREEN: Yes. And we do have a --

16 THE COURT: Just so it is clear, and both  
parties  
17 understand, what we had begun to do last night was to  
18 address under the Alien Tort Claims Act, what other acts  
19 are cognizable as torts that would violate international  
20 law. And I think the one we put sort of on the list was  
21 sexual battery or rape, and I take it the parties have

22 concluded that they would pursue that and pursue it more  
23 under the definition of torture?

24 MR. GREEN: Yes, Your Honor.

25 THE COURT: Okay. I do think that streamlines

1 it, but when I was looking, when we talked about this  
2 before in trying to set out the elements for command  
3 responsibility, we were dealing with torture,  
4 extrajudicial killing and whatever is that third  
category.

5 This in a sense allows us to pull back that. Okay.  
That  
6 is helpful to know.

7 I wonder also again in the interest of trying  
to  
8 save time, if we can to take a look at some proposals  
that  
9 the Plaintiffs have made that may be really without  
10 objection.

11 Mr. Green at some point asked about including  
an  
12 instruction on the use of depositions as evidence.  
Would  
13 everybody take a look at what the Plaintiff has  
requested  
14 on page four?

15 MR. KLAUS: No objection.

16 THE COURT: All right. I am going to grant the  
17 Plaintiffs' request and I am going to include that  
18 proposed instruction.

19 There was another instruction that I thought  
was  
20 pretty important and it was the business of multiple  
21 claims. Let me see if I can find that.

22 MS. VanSCHAACK: Might be page 14, Your Honor.

23 THE COURT: Yes. Reserving the right to make  
24 some minor stylistic change. Does defense have any  
25 objection to the proposed instruction set forth on page

1 14?

2 And what it really talks about is, and here is  
3 how I would suggest if it has to be amended, is to talk  
4 about not only each of the Plaintiffs individually, but  
5 the claims against each Defendant must be considered  
6 individually, too.

third

7 MS. VanSCHAACK: I tried to do that on the  
8 sentence.

9 THE COURT: I notice you have done that, and I  
10 agree with the concept that you put forth. In other  
11 words, I think it would be helpful if we identify who  
12 brought what claim against which Defendant, and each of  
13 the Plaintiffs' claims need to be considered separately,  
14 and each claim against a particular Defendant by a  
15 particular Plaintiff needs to be considered separately.  
16 And how the jury resolves one case does not reflect how  
17 they resolve something else. Each of the claims must be  
18 evaluated independently.

19 MR. KLAUS: I agree with that concept.

20 THE COURT: I might do a slight change to that  
21 but I will grant the Plaintiffs' request and include the  
22 separate claims instruction.

23 MR. KLAUS: Is it my understanding you are  
24 dropping --

THE COURT: No, I will come back to that.



1           In this case Ms. Gonzalez and Dr. Romagoza have  
2 brought claims against both General Garcia and General  
3 Vides Casanova, and Professor Mauricio has brought a  
claim  
4 only against General Vides.

5           MS. VanSCHAACK: That is correct.

6           THE COURT: Okay. Now, just to go back so  
7 Mr. Klaus is clear about this. In this case Dr.  
Romagoza  
8 is proceeding under the Torture Victim Protection Act.  
9 Ms. Gonzalez and Professor Mauricio are proceeding under  
10 the Alien, but all of the Plaintiffs are predicating  
their  
11 claims on torture, and nothing else.

12           MR. KLAUS: Torture Victim Protection Act  
13 includes rape.

14           THE COURT: I am not sure it does, but I think  
15 that is clearly going to be the argument, the type of  
16 sexual battery or the rape that is described here is in  
17 the nature of torture, and meant to be degrading, and so  
18 on.

19           Clearly, I think that is why the Plaintiffs  
have  
20 elected to pursue that. Clearly they could have pursued  
21 it independently or certainly Ms. Gonzalez could have,  
22 sexual battery, and as I indicated last night, I don't

that

23 think there is any question it is one of those torts

24 would be recognized as a violation of international law.

25 But I do think the definition of torture is

that  
1 sufficiently broad that it covers, really, everything  
2 is described and discussed, and I think for simplicity  
3 purposes it makes it helpful that the core allegations  
are  
4 the same.

anything  
5 Okay. I am trying to think if there is  
6 else in here that might be quick and agreeable to  
7 everybody.

sexual  
8 MR. KLAUS: Are we going to eliminate the  
9 battery definition?

10 THE COURT: Yes. Again, just because it looks  
11 like it is simple, why don't we go to damages. Because  
12 the -- I am not sure I understand the proposed change.

it  
13 MS. VanSCHAACK: With all due respect, I think  
14 is the period that was missed there. There were a  
couple  
15 typos that were caught, and the same with the next  
change.

16 THE COURT: Yes, thank you. And the next one  
17 rare has to be changed to are.

18 MS. VanSCHAACK: Yes.

19 THE COURT: Period after evidence. Okay.

me  
20 Let's go to punitive damages on page 12. Let

21 see if I can find the paragraph. Yes, you caught it can

22 be as large. The Plaintiff has that on 12, and that  
23 change needs to be made.

24 Let me go above it to the paragraph that starts  
25 you may award punitive damages. The Plaintiff has

turn  
that  
1 suggested that we add callously indifferent. Let me  
2 to counsel for the Plaintiff so you can explain where  
3 has come from.

4 MS. VanSCHAACK: Your Honor, if you recall,  
5 Mr. Green suggested this earlier when we were doing a  
6 brief overview of all of the jury instructions. I  
7 at several punitive damages instructions, including the  
8 Supreme Court case, page 13, language about  
indifference,  
9 reckless indifference or callous indifference is often  
10 included in the instruction.

11 THE COURT: Is this a standard jury  
instruction?

12 MS. VanSCHAACK: With all due respect, that was  
13 your instruction.

14 MR. GREEN: With all due -- I don't know,  
Judge,  
15 it looked very familiar to me. The reason we added  
16 callous indifference is because of the Supreme Court  
17 instruction on the callous indifference can be a basis -

18 THE COURT: Does the case you cited say callous  
19 indifference can be a basis?

20 MS. VanSCHAACK: It does.

21 THE COURT: What is defense view about that?

22                   MR. KLAUS: Is that in addition to reckless  
23 indifference, in addition to reckless?

24                   THE COURT: Give me a minute. I want to look  
at  
25 the standard pattern jury instructions. There was a

1 recent case that went to the United States Supreme Court  
2 on punitive damages, but I think it was in the Title  
Seven  
3 context and it tried to look at a split in the circuits.  
4 I am not sure if that is where this comes from or what.  
5 Give me a minute.

6 MR. GREEN: Is that a Title Seven or an ADA  
case?

7 THE COURT: The one that went to the Supreme  
8 Court I think was Title Seven.

9 MR. GREEN: I know there was an ADA case.

10 THE COURT: That discussed that.

11 MR. GREEN: Well, vaguely.

12 THE COURT: This is the standard from the  
13 Eleventh Circuit pattern jury instructions. It talks  
14 about with malice or reckless indifference, and, of  
15 course, reckless indifference to someone's Federally  
16 protected rights. That is not what we are dealing with  
17 here, with malice or reckless indifference.

18 MR. GREEN: Judge, I can cite some language to  
19 you about the need to adapt pattern instructions to  
20 specific cases, but I am sure you are aware of that.

21 THE COURT: What would you think of recklessly  
22 indifference rather than callously indifferent? Sounds  
to  
23 me that is more in line with the general -- the thing we

it

24 want to show is, this is higher than negligence, and so

25 is not -- I am wondering about the callous indifference,



1       whether that is sufficient.  And maybe we are quibbling  
2       here, but I think recklessly indifferent is more in line  
3       with punitives.

4               MR. GREEN:  Recklessly implies some type of  
5       conscious act or choice between two acts.  Here, I think  
6       what we have or what the evidence shows is really  
7       callousness.  If the jury accepts our theory, the  
8       Defendants just didn't care, they were willfully blind.  
9       Not that they consciously chose to torture any of the  
10      individual Plaintiffs here, but they were willfully  
blind.

11             THE COURT:  What is the case you rely on?

12             MS. VanSCHAACK:  Smith v Wade.

13             THE COURT:  Let me read that case.  I will  
14      reserve on that.  That is significant.  We want to be  
sure  
15      that is correct.

16             MR. KLAUS:  If you want to include callous  
17      indifference in the next sentence in the definition, I  
18      don't object to it being included in that.

19             In other words, if they are proposing wanton  
20      reckless, recklessly indifferent, and included the next  
21      sentence, an act is wanton, reckless, callously  
22      indifferent if it is in a manner to reflect utter  
23      disregard for the potential consequences of the act and  
24      safety of others.

If you want to include it in both sentences, I

1 have no objection.

2 MR. GREEN: We have no problem.

3 THE COURT: You would not object if we simply -

the

4 MR. KLAUS: To me it is another way of saying

5 same thing, if they want to be able to argue that they

that

6 weren't reckless, they were callous and indifference,

7 is fine with me.

8 THE COURT: Your point is, you don't have an

9 objection if the wording is wanton and reckless or

10 callously indifferent, and then the next sentence would

indifferent

11 say an act is wanton and reckless or callously

12 if it is done in such a manner, et cetera?

13 MR. KLAUS: Correct.

14 THE COURT: Okay.

15 MR. KLAUS: I don't object.

inclusion

16 THE COURT: So you don't object to the

17 of the phrase as long as it is placed in both sentences?

18 MR. KLAUS: No.

Smith

19 THE COURT: All right. Let me look at the

20 case and I will get back with you on that.

see

21 Okay. I think that is the easy ones. Let me

if 22 if we can go back and deal with some of the other ones  
23 we can.  
about 24 Let me take a second, if I might, and talk  
25 page five.

1           I think in light of some of the comments that  
2           were made during the jury selection, that I first need  
to  
3           indicate that the Plaintiffs are bringing their causes  
of  
4           action pursuant to two federal statutes, and name the  
5           statutes and indicate to the jury that both of those  
6           statutes allow these claims to be brought.

7           And then indicate that Professor Mauricio and  
8           Ms. Gonzalez are proceeding under one statute, and  
9           Dr. Romagoza is proceeding under another, but for the  
10          purpose of this case, the elements are really all the  
11          same.

12          Now, I say that and we all know that the  
critical  
13          difference is for someone to bring a cause of action  
under  
14          the Alien Tort Claims Act, the threshold requirement is,  
15          of course, that person not be a citizen of the United  
16          States, whereas the Torture Victim Protection Act was  
17          enacted to allow the citizen of the United States to  
have  
18          the same rights to bring the same claims as could be  
19          brought under the Alien Tort Claims Act.

20          And I take it in this case there is really no  
21          issue, is there, with respect to the fact that Professor  
22          Mauricio and Ms. Gonzalez are in fact not citizens of  
the

23 United States and are in fact entitled to pursue their  
24 claim?

25 MR. KLAUS: No, there is no problem.

1 THE COURT: Okay.

2 MS. VanSCHAACK: I think that is fine. I think  
3 we can collapse some of this.

4 THE COURT: I will boil it down, but I think  
what  
5 I need to tell the jury, it is federal law to allow  
these  
6 claims to be brought, it happens to be there are two  
7 different statutes, but the claims are exactly the same.  
8 And then here are the claims and then to go on and say  
the  
9 claims being made here are claims for torture, and the  
10 legal theory that the Plaintiffs are relying upon to  
hold  
11 the Defendants liable is this concept of command  
12 responsibility.

13 Okay. All right. Let me turn to the  
Plaintiffs  
14 so they might speak in favor of the proposed changes.

15 MS. VanSCHAACK: The two other, if I am not  
16 mistaken, additions we have made outside the command  
17 responsibility context are inclusion of introductory  
18 language to the torture definition just to make clear --

19 THE COURT: Where are you?

20 MS. VanSCHAACK: Page eight. And we have an  
21 additional instruction on page nine. This was to make  
22 clear that torture under international law to be  
unlawful

make 23 must be committed under color of law, and I wanted to  
24 sure the instructions fully stated the law on that.  
to 25 I included a sentence indicating that in order



1       have jurisdiction, the persons committing the torture  
must       2       be acting under color of law. And page nine, pattern  
3       instructions, under color of law means acting while the  
4       individual is purporting to or acting under some  
5       authority.

6               THE COURT: Is that an issue in this lawsuit?

7               MR. KLAUS: Yes.

8               THE COURT: Is there a claim -- let me back up.

9               Obviously there is an issue of whether, number  
whether      10       one, whether torture was committed. I am not sure  
11       you are contesting that or not. But a second issue is  
if           12       the torture is -- if the torture was committed, were the  
13       perpetrators under the effective command of the  
14       Defendants.

15               Is there any issue here about it being under  
16       color of law?

17               MR. KLAUS: Yes. Ms. Gonzalez's testimony was  
18       that there was somebody from ORDEN, there which was a  
19       illegal organization at the time directing these people  
--           20       directing them.

21               MR. GREEN: Your Honor, that was not the  
22       testimony --

23               THE COURT: That is all right. Where does the

24 definition of color of law come from?

25 MS. VanSCHAACK: From the Eleventh Circuit

1 pattern instructions.

2 THE COURT: Do you have a cite for me on that?

3 MS. VanSCHAACK: 1.1.1, First Amendment claim.

4 MR. KLAUS: Actually the individual has to be  
5 under the actual apparent authority or color of law. If  
6 they want to include all three of those.

7 THE COURT: Wait a minute now, if you would,  
8 please.

9 First, where does the under color of law  
10 requirement come from?

11 MS. VanSCHAACK: If I am not mistaken, in  
Section  
12 3-B of the TVPA.

13 THE COURT: And is that also true of the Alien  
14 Tort Claims Act?

15 MS. VanSCHAACK: The definition of torture in  
16 international law includes some state requirement,  
either  
17 action or apparent color of law. I was concerned about  
18 there being an omission in the instruction that might be  
19 an error that would be raised on appeal, in terms of  
being  
20 faithful to the TVPA.

21 THE COURT: How do you see this fitting in,  
then,  
22 in the context of command responsibility? Does this in  
23 your view become a third requirement?

24 MS. VanSCHAACK: I think it is inherent to the  
25 idea of subordination. The prong we labeled, in essence

1 prongs one and two.

2 THE COURT: You have it here, but where does it  
3 fit? Let's assume The Court has to give that  
instruction,  
4 but where does it fit, what does it relate to?

5 MS. VanSCHAACK: Frankly, it could be  
considered  
6 encompassed within one and two the way we formulated the  
7 doctrine. The only reason I add it there is because of  
8 the definition of torture in the TVPA does sort of  
include  
9 that within the TVPA. I think if we agree it is  
10 encompassed in elements one and two, it won't be  
11 necessary.

12 THE COURT: You know, it seems to me, and going  
13 back to what Mr. Green indicated earlier, that is the  
14 benefit and indeed necessity of trying to tailor  
15 instructions so they fit the facts of a particular case,  
16 in this case both Defendants are -- without question  
were  
17 legitimate office holders and ministers holding  
18 governmental authority in their country.

19 Where we get into a problem is with the  
20 suggestion that either there were renegade troops or  
21 alternatively people from ORDEN or some other group that  
22 were involved in this. And my view, too, is that the  
23 color of law concept is inherent in one and two, and my

down 24 concern is that we don't want to do anything to water  
faithful 25 what I think we've tried to set out trying to be

1 to the case law on command responsibility.

2 And I would like to come back to the defense,  
3 because I agree with everything Mr. Klaus has said. We  
4 talked repeatedly about the necessity for showing that  
5 whoever committed the torture, for a commander to be  
6 liable, you have got to show the commander did indeed  
7 effective control over those people.

8 Now, in the context of this case, clearly that  
9 would be color of law. In other words, you were saying  
10 this case for the Plaintiff to prevail, they would have  
11 prove by a preponderance of the evidence that the  
12 minister did indeed have effective control over the  
13 perpetrating the act.

14 It sounds to me that is color of law.

15 MR. KLAUS: Sounds like it is strange, but it  
16 clearly implicit it is under color of law if these men  
17 were holding legal positions at the time, and they  
18 committed the act under actual authority. Not just  
19 apparent --

20 THE COURT: Can you live were not striking  
21 understand color of law?

it.

22 MR. KLAUS: I have no objection to excluding

23 I have no objection to excluding it. I think it would

24 only confuse the jury, because I think after they go

25 through command responsibility instruction, and look at



1 that, they say what does this mean now.

2 THE COURT: Let's go back to the Plaintiff. In  
3 light of that record statement by the defense, would the  
4 Plaintiff feel comfortable in doing that?

5 MS. VanSCHAACK: Indeed, we can take out the  
6 first sentence page eight, and the separate instruction  
7 page nine. The torture instruction would start the  
8 torture means.

9 THE COURT: Okay.

10 The parties agree the law does require a  
11 that the acts are done under color of law, but given the  
12 facts of this case, no matter what side one may take or  
13 view of the evidence, we tried to structure command  
14 responsibility that it does incorporate that concept.

15 Okay. Let's go back, then, and why don't we  
16 to tackle some of the changes in command responsibility.  
17 And could I suggest we bypass the first, which is really  
18 just a stylistic change? And why don't we look at the  
19 proposal that the Plaintiffs have made on page six.

20 And I think the thrust of this proposal is to  
21 deal with the suggestion that if the jury were to  
22 conclude, number one, that the torture occurred, two,  
23 the perpetrator was not a member of the military, or the

on

showing

try

that

24 security forces, but was in fact acting under the  
25 effective control of the Defendant, that there should be

1 liability in that situation. I think that is its  
intent.

2 MS. VanSCHAACK: That is right, we raised this  
3 yesterday and you suggested we submit language.

4 THE COURT: You know the example that I was  
5 thinking of is a posse. In the old days apparently  
6 sheriff's had the ability to go out and literally  
7 commander people who are not members of any organized  
8 police force or anything else and deputies them and seek  
9 their assistance.

10 And I think what they are trying to say if you  
11 have that kind of a situation where a civilian is truly  
12 acting under the authority of the commander, that the  
13 commander is responsible for what the civilian has been  
14 drafted to do.

15 MR. KLAUS: I agree with that. I think it is  
16 covered in the instruction we have. If the commander  
has  
17 the actual ability to control the person, it doesn't  
18 matter whether he is a member of the armed services of  
his  
19 country or not, doesn't matter if he is a civilian, if  
he  
20 is a member of some foreign service.

21 If the commander has the actual ability to  
22 control that person which is covered in the last  
sentence

23 on the first paragraph under element two, I think any  
24 extra language will serve to confuse. And I think the  
25 real crux is the actual ability to control, and doesn't

1 remember that that person, the person being controlled  
by  
2 the superior has to be under his formal command, has to  
be  
3 anything but another person.

4 THE COURT: I am just looking at what the  
5 Plaintiff has asked for.

6 It says a defendant military commander may also  
7 be held liable under the doctrine of command  
8 responsibility even if the perpetrators were not under  
the  
9 defendant military commander's formal command if -- and  
I  
10 think this is probably where I disagree with the last  
11 part, because it says, if the commander had the material  
12 ability to prevent it, or punish.

13 And I think what it leaves out is that in that  
14 situation, the commander had to have effective control  
15 over the perpetrator. In other words, the fact that  
16 somebody does not wear a uniform, but if a jury were to  
17 conclude that they were some type of a civilian who  
18 nonetheless was under the authority and control of the  
19 military commander, the military commander could be  
20 liable, but the requirement is that there be effective  
21 control.

22 MS. VanSCHAACK: I agree in a sense with

23 Mr. Klaus, the first sentence in some respects  
encompasses

24 this. It is a dense sentence. We wanted to unpack this

25 and set this out for the jury, we tracked the language  
of

1 effective control.

2 THE COURT: Let me take a swing at this, and I  
3 will have something for you tomorrow.

4 MR. KLAUS: Just add that first part, a  
defendant  
5 military commander may also be liable under the doctrine  
6 of command responsibility or you might add --

7 THE COURT: You need to go to the lectern,  
8 Mr. Klaus.

9 MR. KLAUS: I am sorry.  
10 Just language that the person doesn't have to  
be  
11 a member of the military, or doesn't have to be under  
his  
12 formal command, if we can somehow put that in the last  
13 sentence, I think that is really the part, the crux of  
14 what you want to say.

15 THE COURT: But they must be under his  
effective  
16 control.

17 MR. KLAUS: His actual control, yes.

18 THE COURT: We've used the words effective  
19 control, and there is a definition for that, effective  
20 control means actual control, and means he had authority  
21 over them.

22 MR. KLAUS: They left that out.

23 THE COURT: I understand that. They left it in

24 in the next page.

25 Let me try to draft something that responds,  
that



1 is something we need to deal with.

2 I wanted to ask you, the jury instructions talk  
3 about the material ability to prevent the torture or to  
4 punish the people accused of it. I think when you talk  
5 lawyers, the word material has a meaning. I am not sure  
6 it does when I talk to jurors. And I wonder if you both  
7 would feel comfortable if we change the word material to  
8 practical. I think that is what it means.

9 MR. GREEN: Could I look something up on the  
10 computer?

11 MR. STERN: In the last sentence?

12 THE COURT: Yes, wherever we used it, we've  
13 used  
14 on.  
15 United  
16 about  
17 it in the definition of command responsibility and so  
18 I think we have taken it as a quote from one of the  
19 Nations tribunals, and everyone knows when you talk  
20 fraud, the fact that you talk about material  
21 misrepresentation it is important.

18 But I am wondering whether you say someone  
19 confers  
20 the material ability to do something, whether that  
21 a concept to the jury, I think it means they had the  
22 practical ability to do it or the actual ability to do  
it.

that 22 I don't know. I am searching for a synonym to convey

23 responsibility.

my 24 MS. VanSCHAACK: That was the reasoning behind

that 25 striking constructive. We know what that means, but

1 is not the way people speak.

2 THE COURT: I agree. I put back constructive  
3 because it is the alternative to actual, right.

4 MS. VanSCHAACK: That is fine.

5 THE COURT: Can everyone live with practical?  
6 Does that make sense or no? Do you have want to time  
7 think about it?

8 MR. KLAUS: I prefer actual, but I will settle  
9 for practical.

10 MR. STERN: Subject to conferring with other  
11 members of our team.

12 THE COURT: All right. I think particular  
13 ability is the sense that conveys somebody could have  
done  
14 something.

15 If you find another word, I will look at it.

16 Why don't we stop now. We are getting close.

17 MS. VanSCHAACK: Could I highlight the  
additional  
18 additions?

19 THE COURT: Yes.

20 MS. VanSCHAACK: Page seven and moves on to  
page  
21 eight. I know we discussed the pattern and practice  
22 before. I did look at other cases, not only in the  
23 international context but in the Alien Tort Claims Act.

24 THE COURT: Tell me what you are looking at.

25 MS. VanSCHAACK: Defendant commander should

have

In 1 known when there is a pattern and practice of abuses.  
there 2 other words, there is an inference to be drawn when  
3 is a pattern and practice out there that the commander  
4 should have known. I think that is what Judge Barkett  
5 said in her concurrence.

a 6 THE COURT: I think that is too high. I think  
7 commander should have known even if there weren't a  
8 pattern.

9 If reliable people come and say there is a  
10 village of El Mozote where we believe women and children  
11 have been killed. The fact that somebody comes to you  
of 12 some repute and says this thing has happened, that is  
not 13 a pattern, perhaps if that is the first time. But I  
think 14 somebody could argue that is such an extraordinary event  
15 that a military commander has a duty when that kind of  
16 information is presented to them to get out there and  
17 investigate.

18 Now, there may be reasons why they can't do it,  
19 but I am suggesting, there is no question there is a  
20 pattern and practice that you need to do it, but I think  
21 somebody could argue that is a high standard, and that  
22 duty to investigate and that action may come into effect

23 well before a pattern and practice has developed.

24 MS. VanSCHAACK: I see your point. We could

25 probably reconsider that for now.

1 THE COURT: I will be happy to reconsider it.

2 When you think did about it, it has a lot to do  
3 with the nature of the complaint. If somebody says one  
4 person has been reported missing, disappeared, that  
might  
5 be one thing, but if somebody comes to you and says, you  
6 know, we think three, 400 people have been killed, that  
7 comes to a whole different level.

8 And for instance, if they said one or two  
guards  
9 may have been involved in something as opposed to  
10 suggesting a battalion may have done something that is  
11 just horrific, obviously commanders are trying to make  
and  
12 have to make priorities in judgments, but it would seem  
to  
13 me the more extraordinary the complaint, and the more  
14 reliable the news of it, that may -- a finder of fact  
15 could well say that of itself should have triggered this  
16 commander to start doing something and doing it on a  
broad  
17 base. If you think this is not an isolated act but it  
18 involved a complete failure of military command so a  
19 battalion or lesser group were involved in something  
like  
20 that.

21 I don't know. That is my thought.

I

22 MS. VanSCHAACK: That is a valid interpretation

23 don't think we thought of. We will reconsider it.

said

24 THE COURT: Okay. It is six o'clock, and we

25 we would stop.



are 1                    Could I come back to double check, I know we  
2                    in a sort of tight time frame and my sense is because of  
3                    what happened with the exhibits, we went longer than  
4                    anticipated.

5                    Is it still reasonable to think we may conclude  
6                    presentation of evidence tomorrow?

7                    MR. KLAUS: I should finish with General Vides  
8                    before lunch, within an hour, and I don't anticipate  
9                    calling any of the Plaintiffs.

is 10                   THE COURT: With that in mind, Mr. Green, what  
11                   your sense as to the Plaintiffs' ability to present its  
12                   case.

the 13                   MR. GREEN: We may have Ms. Gonzalez show to  
14                   jury her burn marks and --

15                   THE COURT: How do you propose to do that?

that 16                   MR. GREEN: We will ask her to wear a blouse  
17                   you could pull up. And Dr. Romagoza will show his left  
18                   arm where he was shot, and we anticipate that Professor  
19                   Garcia will be 20, 25 minutes on direct and that  
Professor 20                   Karl will be 45, no more than 60 minutes.

21                   THE COURT: Sounds to me from what you are  
22                   saying, it is reasonable all of that testimony could be

23 presented tomorrow?

24 MR. GREEN: Yes.

25 THE COURT: Okay, good. Good. Let's see how

we

1 do, then, okay.

2 I would like to ask your help in terms of final  
3 argument, and Mr. Green mentioned that we might be able  
4 to bring in some additional seating into the courtroom, and  
5 I want to take a look at that, and if that is possible,  
6 you know, assuming we can comply with whatever fire rules or  
7 safety rules there are.

8 MR. GREEN: I thought you were immune here.

9 THE COURT: We are until something happens, and  
10 then they want to know how could that have happened.

11 There are spaces in the back where we could add  
12 a couple chairs here and there. I think what I need from  
13 you is if there are family members on both sides who  
14 want to attend or something like that, whether we need to  
15 reserve some seating for that.

16 And I would like to ask you to think about it  
17 so you could let me know tomorrow, and we can obviously  
18 parse out the other seats on a first come, first serve basis.  
19 We need to reserve some seating for the press, you know,  
20 and to try to accommodate everybody.

21 I think this is one time when the size of the

22 courtroom may be a little bit of a problem. I thought  
23 about moving the matter, and we have all of the  
equipment  
24 set up. It is so difficult to do, so I think we need to  
25 stay, and it is just a question of what accommodations  
can

1 we make so people will be comfortable and so on, and  
safe.

2 MR. GREEN: What I was going to suggest is 11  
per

3 side. As I counted back there, there is enough room for  
4 about 18 per side.

5 THE COURT: Why don't you all think about that,  
6 and if you could tell me, you know, what is a reasonable  
7 number of people that you really expect because we want  
to

8 keep some seating for the general public. You know,  
9 things have worked out, I haven't talked with the  
10 marshals, I don't believe we have had to turn anyone  
away.

11 The only limitation is we really need to have  
12 there be seating. If we can bring in extra chairs, we  
13 will try to do that. I think there is a space on both  
14 sides that might allow for that. I will talk to the  
15 marshal and see what we can do in that regard.

16 Let's take a break and start up at 9:30.

17 (Trial was recessed at 6:10 p.m.)

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1		I N D E X			
2		WITNESSES FOR THE DEFENDANTS			
3		Direct	Cross	Redirect	Recross
4	JOSE GARCIA				2138

5	CARLOS VIDES	2148			
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7 E X H I B I T S

8	Defendants' Exhibit 47				2067
9	Defendants' Exhibit 38				2071
10	Defendants' Exhibit 52-B				2077
11	Defendants' Exhibit 54				2085
12	Defendants' Exhibit 14				2097
13	Defendants' Exhibit 43				2101
14	Defendants' Exhibit 52-A				21-5
15	Defendants' Exhibit 50				2112
16	Defendants' Exhibit 61-A				2118
17	Defendants' Exhibit 68-A				2130
18	Defendants' Exhibit 68-B				2133
19	Defendants' Exhibit 24				2149

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