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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

JUAN ROMAGOZA ARCE, JANE DOE,)
in her personal capacity as)
Personal Representative of the)
ESTATE OF BABY DOE,)

Docket No.
99-8364-Civ-

HURLEY

Plaintiff,)

West Palm

Beach, Fl.

v.)

July 17, 2002
9:30 a.m.

JOSE GUILLERMO GARCIA, an)
individual, CARLOS EUGENIO VIDES CASANOVA,))
and DOES 1 through 50, inclusive)

Defendants.)

-----x

VOLUME 13
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DANIEL T.K. HURLEY
and a jury

APPEARANCES:

For the Plaintiffs: JAMES GREEN, ESQ.
PETER STERN, ESQ.
BETH VanSCHAACK, ESQ.

For the Defendant: KURT KLAUS, ESQ.

24 Court Reporter: Pauline A. Stipes, CSR, RPR, RMR
United States Courthouse
25 West Palm Beach, FL 33401

2232

1 THE COURT: Good morning. Everybody, are we
ready and 2 set to proceed.

3 MR. KLAUS: Your Honor, I want to say something
about 4 the notebooks, since everything for my trial notebook is
with 5 the jury, I just ask that we give them a folder to put it
in.

6 THE COURT all right. That is all right.

7 MR. STERN: That is fine.

8 THE COURT: All right. Mr. Marshal, would you
bring in 9 the jury, please.

10 General Vides, would you take the stand, sir.

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

12 THE COURT: Good morning, everybody, please be
13 seated. When we stopped last evening we were in direct
14 examination, I will turn back to Mr. Klaus and allow him
to 15 proceed.

16 MR. KLAUS: Thank you, Your Honor.

17 BY MR. KLAUS:

18 Q. Good morning, General Vides?

19 A. Good morning.

20 Q. Now, during your tenure as Minister of Defense, did
you

21 inform new recruits to the armed services, and I mean
every

22 branch of the armed services, Treasury Police, National
Police,

23 National Guard, Army, Navy, the Air Force, that they had a
duty

24 to respect the human rights of the citizens of El
Salvador?

25 MR. GREEN: Objection, time frame relevancy.

2233

1 THE COURT: I will overrule the objection, and you
may

2 proceed.

3 BY MR. KLAUS:

4 Q. I asked you beginning, was it during your term as
Minister

5 of Defense?

6 A. I did that from the very first day that I took charge
of

7 the position and I repeated this at each speech given on
the

8 7th of May of each year. Those speeches are here in this

9 binder.

10 Q. Were they broadcast to the entire nation?
11 A. They were transmitted or broadcast over a national
chain of
12 radio and all television stations. Articles are complete
in
13 the newspapers. My photograph is in there, too. I am
standing
14 behind no masks.
15 Q. Okay.
16 A. And at those speeches, the following people were
present:
17 The president of the Republic, the president of each one
of the
18 three branches of Government and the members of the
Supreme
19 Court.
20 Q. And why did you do that? Why did you mention human
rights
21 in your speeches?
22 A. First, because it was one of the deficiencies that
required
23 correcting, and it was also part of the proclamation.
Second,
24 because it was something that the previous minister had
started
25 and I in his relief, I had to continue doing this, and
because

2234

1 of personal conviction.

do 2 Q. When you say deficiencies that needed correcting, what

3 you mean?

place 4 A. I am referring to everything that could have taken

against 5 during the period in which the country was fighting

that 6 insurgency, any excess during combat or by the troops in
7 combat, abuses concerning people that were captured, and

8 appears in each one of my speeches every year.

being 9 Q. Had you-- were you aware of the reports about people

while 10 tortured while you were head of the National Guard and

11 you were Minister of Defense?

able 12 A. As I tried to explain in other occasions, I never was

yes, 13 to discover an event of torture being carried out, and,

was 14 there were generalized accusations that that sort of thing

15 taking place within the armed forces corps.

16 Q. So you were aware of torture, reports of torture?

they 17 A. Yes, but these were reports that with all due respect

force 18 were created in order to destroy the image of the armed

to the 19 and they never took time to talk about the damage caused

20 country by subversion.

to be 21 Q. Did you as a response to those reports, did you cause

rights? 22 distributed among the recruits manuals regarding human

23 A. Yes, some were disseminated.

marked 24 Q. I am going to ask you to look at what was previously

Is 25 as composite, Defendants' composite 61, now marked 61-B.

2235

1 that one of the pamphlets that you had distributed to new
2 recruits in the armed services while you were Minister of
3 Defense?

was 4 A. Yes, this is also, this is also a piece of work that

Commission, 5 being carried out by the Government's Human Rights

of 6 and it had to be given out with that purpose. This is one

7 them.

evidence, 8 MR. KLAUS: I would ask to move 61-B into

9 Your Honor.

of 10 THE COURT: Is there any objection to the receipt

11 what is now marked Defendants exhibit 61-B?

12 MR. GREEN: Foundation, exact time frame.

13 THE COURT: Let me stop for a minute. Wait a
minute.

this

14 61, 61-A is in. Okay. I will overrule that objection --

15 is 61-B.

16 MR. KLAUS: Yes.

17 THE COURT: I will receive 61-B into evidence over
18 objection.

19 (Defendants' Ex. 61-B received into evidence.)

20 MR. KLAUS: I ask to publish it to the jury, Your
21 Honor.

22 THE COURT: You may.

23 BY MR. KLAUS:

Los

24 Q. Now, the title on the front page says Department of a

25 Derechos Humanos, and underneath, Ministerio de la Defensa

2236

that The

1 Nacional. Is the Departamento de Derechos Humanos, is

2 Department of Human Rights?

general

3 A. Yes, this is an organization that changed names as it
4 became more and more formalized, first it was under the
5 staff, and then under the Ministry of Defense.

6 Q. Los Derechos Humanos, that is human rights?

7 A. Yes, that is what it means.

means

8 Q. And Desarrollo Historico de los Derechos Humanos,

9 history of human rights?

10 personnel so

A. Yes. It was to start giving teachings to the

11 they would start developing awareness for human rights.

12 evidence

Q. Now, new recruits already received the manual in

13 as 61-A, correct?

14 MR. GREEN: Objection, leading.

15 THE COURT: Sustained.

16 BY MR. KLAUS:

17 recruits

Q. Prior to you being Minister of Defense, had new

18 received the manual that is in evidence?

19 by

A. I don't think that this manual was received by the new

20 recruits, but they did receive talks that were carried out

21 of

the first Commission on Human Rights under the direction

22 garrisons,

Monsignor Freddy Delgado, going around the quarters,

23 giving talks on human rights in the presence of officers,

24 soldiers, everyone.

25 something

Q. Well, let me ask you the question again, maybe

2237

1 was lost.

2 Did you-- You were present when General Garcia
3 testified, correct?

4 A. Yes.

5 Q. And General -- Do you remember General Garcia
testifying
6 that the manual printed by the Red Cross was distributed
to all
7 new recruits, correct?

8 MR. GREEN: Objection, leading.

9 THE COURT: Sustained.

10 BY MR. KLAUS:

11 Q. Do you remember General Garcia testifying that that
manual
12 printed by the Red Cross was received by all recruits?

13 A. Yes.

14 Q. Did recruits continue to receive that manual during
your
15 tenure as Minister of Defense?

16 A. Yes. These manuals were already at the garrisons, and
they
17 would be passed down or handed down from one generation to
the
18 next.

19 Q. Do you know who this manual was distributed to?

20 A. Yes. This manual was distributed to all of the
security
21 corps and the members of the Army.

22 Q. Now, can you turn to the second page. Can you read
what
23 that says?

24 A. Everything on page two or some paragraph.

25 Q. Everything on page two.

2238

1 That is okay, let me interrupt you.

2 A. One, development of human rights, development of human
3 rights --

4 Q. That is okay, let me interrupt you.

5 THE COURT: We are having a problem, the jury is
having
6 difficulty. Is there a page missing?

7 MR. KLAUS: I think that is part of the exhibit.

8 THE COURT: All right. Let me let you go back
and ask
9 you to help us all and see where you are. Can you show
the
10 jury what General Vides is looking at?

11 MR. KLAUS: Page 11, and page 10.

12 THE COURT: Can you show that to the jury so the
jury
13 knows what you are looking at?

14 All right. Thank you very much.

15 BY MR. KLAUS:

16 Q. Can, there is an illustration of some parents with a
child
17 and it says at the top let us respect human rights.

18 Q. Okay. And the page that is marked page 10, what does
that

19 say?

they

20 A. There is a book of the political Constitution so that

And

21 always are aware that the Constitution must be respected.

22 a symbol of justice to indicate to them that good and bad

23 actions will be weighed.

the

24 Q. And what does it say on page 10? Can you show that to

25 jury?

2239

1 A. (indicating).

2 Q. And what does that say?

somewhere.

3 A. I am going to read the entire paragraph because the

4 previous two lines probably have a connection here

translate

5 THE INTERPRETER: The interpreter will sight

6 from the document, 61-B, page 10.

over

7 " Later on as a result of accumulated experience

more

8 the years during which the declaration has been in effect,

9 agreements are adopted with the purpose of implementing a

universal

10 concrete way for respect of human rights within the

11 context".

12 Q. Go ahead.

13 A. There's nothing else on that page.

14 Q. Okay. I am going to ask you to look at Ex. 61-C.
Would

15 you identify that document?

16 A. Yes, 61-C also speaks to human rights.

17 Q. And that was -- was that also distributed by The
Department

18 of Human Rights underneath the Minister of Defense?

19 A. Ah, yes.

20 Q. During the time you were Minister of Defense?

21 A. Yes.

22 MR. KLAUS: I ask 61-C be admitted into evidence,
Your

23 Honor.

24 THE COURT: Is there any objection to 61-C?

25 MR. GREEN: May I voir dire very briefly?

2240

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. GREEN:

4 Q. General Vides, isn't it true that this document was
not

5 developed or published until 1994?

6 A. Yes, but the talks and the speeches about this were
begun

7 earlier. I don't know exactly when this was, but I do
know the

8 talks happened earlier.

9 Q. Directing your attention to the last page, sir?

10 A. Yes, the date is '94.

11 MR. GREEN: Objection.

12 MR. KLAUS: We withdraw it.

13 THE COURT: All right.

14 BY MR. KLAUS:

15 Q. I will ask you what is marked Defendants' 61-B. Can
you

16 identify that?

17 A. This document, no. But the contents of this without
the

18 drawings, the contents is in the manual on human rights
that

19 was created for the members of the public security forces,
and

20 this was done in '84, January of '84.

21 Q. We withdraw that if you can't identify that.

22 MR. GREEN: Objection, nonresponsive, move to
strike.

23 THE COURT: I don't know if it is nonresponsive, I
24 didn't hear the answer.

25 THE WITNESS: Yes, because of the drawings, but
the

1 writing content is in other documents.

2 MR. KLAUS: Okay, we withdraw that exhibit.

3 THE COURT: All right.

4 BY MR. KLAUS:

5 Q. During the course of your -- as head of the National
Guard
6 and as Minister of Defense, did you have an opportunity to
meet
7 with representatives from the United States of America?

8 A. Yes, very little as director of the National Guard,
but I
9 did receive some delegations. I don't have them in mind
right
10 now, but as a Minister of Defense definitely more often,
from
11 members of Congress.

12 I remember one of them that visited El Salvador
the
13 most was Mr. Christopher Todd, the gentleman, this person
from
14 the State of Arizona who was the presidential candidate, a
15 republican, I don't have his name in mind right now, and
16 commissions of four, five Congressional members who would
come
17 to the country.

18 Other opportunities, I received President Carter
who
19 came as a result of the elections. I received the Vice
20 President of the United States Dan Quayle twice, Secretary
of
21 State, never alone. I received him because Mr. President

22 Magana invited us to the meeting, and many delegations of
23 military officers.

with 24 Q. Did you meet on a regular basis as Minister of Defense
25 military advisers from the United States?

2242

visits is 1 A. Specifically the person who is in charge of those
advisers has 2 the chief of the military group. The chief of the
it was 3 greater contact with the chief of the general staff, but
in 4 customary for me to visit all of the garrisons permanently
with 5 order to win over the minds of the officers and soldiers
6 the purpose of making sure that they would comply with the
7 orders that were being issued and at those meetings almost
8 always there would be one of the advisers who was assigned
to a 9 garrison.

10 Q. And were the troops at those meetings instructed on
11 respecting human rights?

what 12 A. That was the main objective of the visits to reaffirm
important 13 I had said in my speeches, and I believe it would be

during 14 to read at least one third of this from 1983 because
15 that speech of 1983, I gave a permanent order to the armed
16 forces that they should respect those aspects, and I would
17 repeat this year after year in order to continuously win
the 18 support of the armed forces.

1985? 19 Q. Did you receive an award from the United States in

20 A. Yes.

Legion 21 Q. And it says in your chronology that you received the
22 of Merit, page five of your chronology?

23 A. Yes, the Legion of Merit in the degree of commander.

24 Q. I will ask you to look at what is Defendants' 35.

25 Is this a true copy of the award you received?

2243

1 A. Yes.

the 2 Q. And that award came from the Secretary of Defense of
3 United States?

would 4 THE INTERPRETER: Excuse me, counsel, interpreter
5 request if you could repeat the question.

6 BY MR. KLAUS:

the 7 Q. Was that award given to you by Secretary of Defense of

8 United States?

9 A. Ah, yes.

10 MR. KLAUS: I will ask to move Defendants' 35 into
11 evidence, Your Honor.

12 THE COURT: Is there any objection to the receipt
of
13 what is marked Defendants' 35?

14 MR. GREEN: Continuing objection.

15 THE COURT: All right. I will overrule that
objection
16 and receive Defendants' 35 into evidence over objection.

17 (Defendants' Ex. 35 received into evidence.)

18 MR. KLAUS: I ask to publish it to the jury, Your
19 Honor.

20 THE COURT: You may do so.

21 BY MR. KLAUS:

22 Q. Now, you were Minister of Defense at the time you
received
23 this, correct?

24 A. Yes.

25 Q. I will read what it says.

2244

1 " President of the United States of America
authorized

2 by Act of Congress 1942 has awarded Legion of Merit,
Degree of
3 Commander to General Carlos Eugenio Vides Casanova,
Minister of
4 Defense and Public Security.

5 " General Vides Casanova distinguished himself by
6 exceptionally meritorious conduct while serving as
Minister of
7 Defense and Public Security from April 1983 to January
1985.

8 During his tenure as Minister of Defense, General Vides
9 Casanova was instrumental in developing close and
harmonious
10 relations between United States Armed Forces and
Salvadoran

11 Armed Forces. Through his personal efforts, broad
12 institutional reform of the Salvadoran Armed Forces was
13 accomplished. He established firm policies on civil-
military
14 relations, vigorously supported high professional and
ethical
15 standards among the El Salvador Armed Forces officer
corps.

16 Due to his strategic vision and sound tactical instincts
as a
17 leader, the Salvadoran Armed Forces established an
environment
18 of security from terrorist interference and guaranteed the
19 political liberty in which the Salvadoran people twice
went to
20 the polls for historical affirmation of democracy in El
21 Salvador during 1984".

22 Where were you when you received this award?

John
United
23 A. In El Salvador. And it was given to me by General
24 Vessey, Chairman of the Joint Chief Of Staffs of the
25 States Army.

2245

1 Q. Now, you were visited in 1988 by Secretary of State
2 Schultz, is that correct?

3 A. I participated in the meeting that took place when he
came
4 to visit El Salvador.

5 Q. And did he correspond with you directly after that
meeting?

6 A. Yes, as he retired from Secretary of State he sent out
a
7 letter.

8 Q. I am going to ask you to look at Defendants' Ex. 16
and ask
9 you if you could identify it. Can you identify that?

10 A. Yes, it is a photocopy of the letter.

11 Q. Is that a true copy of the letter you received from
12 Secretary of State Schultz?

13 A. Yes. I have the original.

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

16 THE COURT: Is there an objection to what is
marked

17 Defendants' 16?

human

18 MR. GREEN: Objection, relevancy, no mention of
19 rights.

receive

20 THE COURT: May I see Defendants' 16? Thank you.
21 I will overrule the relevancy objection and

22 Defendants' 16 into evidence over objection.

23 (Defendants' Ex. 16 received into evidence.)

24 MR. KLAUS: I ask to publish it to the jury, Your
25 Honor.

2246

1 THE COURT: You may.

2 BY MR. KLAUS:

of

3 Q. I am going to read the letter. It is on the Secretary

date

4 State, Washington, addressed to "Dear Mr. Minister", the

5 is June 30, 1988.

to

6 " I would like to express my sincere appreciation

Salvador.

7 you for meeting with me during my recent visit to El

8 Our discussions were extremely informative and productive.

El

9 " For the last eight years, the armed forces of

task of 10 Salvador have been confronted with a terribly difficult
time 11 combatting a brutal communist insurgency and at the same
and 12 protecting a new Democratic process. I congratulate you
this 13 the armed forces for the steady progress made in the
enduring 14 professionalization and combat effectiveness. Much of
15 progress would not have been possible without your
16 personal commitment. Equally important has been your
institutions. 17 commitment to foster the growth of Democratic
that 18 " No one knows better than you, Mr. Minister,
for 19 many challenges will confront El Salvador as it strives
struggle, it 20 peace and democracy. Now, after so many years of
that 21 is more important than ever to persevere with the policies
United 22 have been so successful over the past several years.
and 23 States will remain committed to supporting those policies,
24 supporting El Salvador in the future.
25 " Sincerely yours, George P. Schultz."

military?

1 Now, when did you actually retire from the

2 A. From the Ministry of Defense?

3 Q. Yes.

Duarte

4 A. May 31, 1989, which is the date upon which President
5 completed his tenure and turned over power.

6 Q. Who did he turn over power to?

7 A. He turned it over to president Alfredo Cristiani.

the

8 THE INTERPRETER: The interpreter will spell
9 A-L-F-R-E-D-O, surname, Cristiani, C-R-I-S-T-I-A-N-I, of
10 party Arena, spelled as A-R-E-N-A.

11 THE WITNESS: I served the PDC. I served the
12 president. I didn't serve the party.

13 BY MR. KLAUS:

14 Q. Are you related to President Cristiani?

15 A. Yes.

16 Q. How are you related to him?

17 A. Yes, he is married to a sister of my wife.

became

18 Q. Okay. I see by your chronology December 1989 you
19 resident alien. Is that resident alien of the United

States?

20 A. Yes.

States

21 Q. Is that the date that you first moved to the United
22 permanently?

23 A. Yes.

you

24 Q. You weren't already residing in the United States when

25 became a resident, were you?

2248

1 MR. GREEN: Objection, leading.

2 THE COURT: Sustained.

3 BY MR. KLAUS:

4 Q. Now, before you retired, you received another award,
5 correct, from the United States?

6 MR. GREEN: Objection, leading.

7 THE COURT: Sustained.

8 BY MR. KLAUS:

9 Q. And that was on December 11, 1988 according to your
10 chronology.

11 MR. GREEN: Objection, leading.

12 THE COURT: Sustained.

13 Let me stop you for a second, Mr. Klaus.

14 A leading question is a question that supplies
the

15 answer, and this is direct examination, so you need to ask
16 questions where you do not provide the answer.

17 MR. KLAUS: Sorry.

18 BY MR. KLAUS:

19 Q. When did you receive that award?

20 A. In the year 1988, five or six days before retiring
from the

21 position of Minister of Defense.

22 Q. I am going to ask you to look at what is marked
Defendants'

23 36. Is this a true copy of the award you received?

24 A. Yes.

25 MR. KLAUS: I ask to move Defendants' 36 into
evidence,

2249

1 Your Honor.

2 THE COURT: Is there any objection to the receipt
of

3 what is now marked Defendants' 36?

4 MR. GREEN: Yes, Your Honor, same as the
continuing

5 objection, plus the time frame here is 1985 to 1988. This
is

6 after the time period in question.

7 THE COURT: I am going to overrule the objection
and

8 receive the exhibit into evidence for the reasons I
indicated

9 earlier in the conference at sidebar. So this would be

10 Defendants 36 into evidence over objection.

11 (Defendants' Ex. 36 received into evidence.)

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

13 THE COURT: You may.

14 BY MR. KLAUS:

15 Q. I am going to read page two.

16 " The president of the United States authorized
by Act
17 of Congress July 20, 1942 has awarded Legion of Merit
Degree of
18 Commander to Brigadier General Carlos Eugenio Vides
Casanova,
19 Minister of Defense Public Security, Republic of El
Salvador.
20 Brigadier General Carlos Vides Casanova, Army of El
Salvador
21 distinguished himself by superior performance as Minister
of
22 Defense, Public Security, Republic of El Salvador January
16,
23 1985 to December 12, 1988. Guided by the Constitution of
the
24 Republic and close collaboration with the duly elected
25 president and other members of the military high command,

2250

1 General Vides distinguished himself by providing inspired
2 leadership to the more than 50,000 uniformed service
members of
3 the Armed Services and Public Security Corps during
continuing
4 marxist-inspired guerrilla insurgency. General Vides'
efforts
5 have furthered the achievement of numerous national level

of 6 objectives during a critical period of time in the history

7 this nation to include institutionalizing --"

8 I am sorry.

history of 9 "-- during a critical period of time in the

removing 10 this nation to include institutionalizing democracy,

for 11 armed forces from the political arena, furthering respect

12 the rights of all citizens, and prosecuting the

professional 13 counter-insurgency war in a continually improving

General 14 manner. The singularly distinctive accomplishments of

El 15 Vides reflect great credit upon himself, Armed Forces of

16 Salvador and the Government of El Salvador".

at 17 Q. Who was the Secretary of Defense of the United States

18 that time?

19 A. It was Mr. Carlucci, different from the previous one.

20 Q. And who actually handed you this award?

chairman 21 A. To El Salvador came William J. Crowe, C-R-O-W-E,

22 of the Joint Chiefs of Staff.

23 Q. Now, during your tenure as head of National Guard and
24 Minister of Defense, did you ever travel to United States

to

25 meet with Government officials of the United States?

1 A. Yes.

2 Q. How many times?

3 A. Some seven, eight times, seven times, the dates appear
in
4 the report.

5 Q. Do you remember some of the people that you met with?

6 A. Yes, the first time I came, I came as director of the
7 National Guard, accompanying the president of the Junta
8 engineer Jose Napoleon Duarte.

9 Q. Do you remember what year that was?

10 A. It must have been before '93, '93. It must have been
'92,
11 before I was Minister of Defense. The dates are in the
12 reports. It says who I accompanied, and which commission.

13 Q. Do you remember who you met with then?

14 A. With some members of Congress a visit was made to the
15 Department of State. I don't recall the details of the
16 meeting, but I do recall that upon exiting the meeting,
there
17 was a press conference and President Duarte was asked if
he
18 believed that there could be free elections in El
Salvador.

19 MR. GREEN: Objection, hearsay.

20 THE COURT: Sustained.

21 BY MR. KLAUS:

22 Q. President Duarte spoke English, right?

23 MR. GREEN: Objection, leading.

24 THE COURT: Sustained.

25 BY MR. KLAUS:

2252

1 Q. Do you know if President Duarte spoke English?

2 A. Yes, he spoke English well, a lot better than I can
speak

3 it. He spoke a lot of English in the United States.

4 MR. GREEN: Objection, hearsay, nonresponsive.

5 THE COURT: Overruled.

6 BY MR. KLAUS:

7 Q. At any other time, did you meet with members from the
8 Department of State when you visited the United States?

9 A. Not that I recall.

10 MR. KLAUS: Your Honor, I have nothing further for
11 General Vides, but I would like to publish Exhibits 11 and
12,
12 which are the Legion of Merit awards.

13 THE COURT: You may, you may do that now. These
are
14 all exhibits offered and received?

15 MR. KLAUS: Yes, Your Honor.

16 THE COURT: All right. Let's just take a moment.

like to 17 MR. KLAUS: There is one other exhibit I would
18 exhibit, Plaintiffs' 542 previously admitted.

19 THE COURT: You may do so. You indicated you had
20 folders that you would want to pass out to the jury so
they
21 would be able to keep these exhibits in something. Do you
have
22 those now?

23 MR. KLAUS: Yes.

24 THE COURT: Maybe that would be a good time to
pass
25 them out.

2253

1 Ladies and gentlemen, we have a binder for you
that we
2 will get to you in a few moments or later today, but
perhaps
3 because these exhibits are loose, we will pass out
folders. If
4 you care to, you can put them in the folders and hold on
to
5 them.

6 What exhibit do we need to pass back?

7 MR. KLAUS: 542.

8 THE COURT: If you pass the whole exhibit, we will
take

would 9 off the last page, and get it back to you, 542. If you
we do 10 pass back 542, and we will get it back to you. Why don't
interrupting 11 that before we turn to Mr. Green so we are not
12 anybody in the examination.

13 THE COURT: Let me turn now to Mr. Green for
14 cross-examination

15 CROSS-EXAMINATION

16 BY MR. GREEN:

17 Q. General Garcia -- excuse me, General Vides, good
morning.

18 A. Good morning.

19 Q. You testified that there was a National Guard post in
San
20 Vincenti?

21 A. Yes.

22 Q. And San Vincenti is where Ms. Gonzalez was tortured?

23 A. Yes, where she allegedly says so.

24 Q. Do you deny that she was tortured?

25 A. I can neither deny it nor confirm it.

2254

was 1 Q. Now, the National Guard headquarters in San Vincenti
2 one of the five commands?

3 A. Yes.

4 Q. So, it is not one of these remote posts that you were
5 talking about, 160, 180 remote posts, correct?

6 A. No.

7 Q. In fact, it was one of the main headquarters for the
8 National Guard in El Salvador?

9 A. Ah, yes.

10 Q. And, in fact, it was 35, no more than 40 miles from
your
11 National Guard headquarters in San Salvador, correct?

12 A. Yes, 40 miles.

13 Q. And that would -- as you heard, General Garcia used to
14 commute from San Salvador to San Vincenti when he was
heading
15 the Army there, correct?

16 A. Yes, correct.

17 Q. And there is nothing that would have prevented you
when you
18 became minister -- excuse me, when you became director of
the
19 National Guard in October 1979 from driving 35 or 40 miles
from
20 that post?

21 A. Only if there are things that are more important such
as
22 there were to carry out.

23 Q. And I believe, General Vides, yesterday you talked
about
24 all the important things that you were doing when you were
25 director of the National Guard, correct?

1 A. Yes, some.

2 Q. When you talked about those, when you talked about,
you
3 know, fighting the war, when you talked about fighting the
4 subversives, when you talked about all these things, one
thing
5 I didn't hear you say that was important to you when you
were
6 director of National Guard was fighting abuses of human
rights
7 by your own guardsmen.

8 THE COURT: What is the question?

9 BY MR. GREEN:

10 Q. General Vides, yesterday when you were talking about
the
11 important things you were doing as director of the
National
12 Guard, you did not include punishing or investigating or
13 condemning abuses of human rights by your own National
14 Guardsmen?

15 A. Yes, it was done and we also have a copy of a report
that
16 includes more than one thousand names of people who were
sent
17 before the civilian courts for abuses.

18 Q. Okay?

19 A. Not specifically for torture.

number 20 Q. General Vides, yesterday I think you mentioned the

correct? 21 was not a thousand, but the number was seven hundred,

has 22 A. I would have to look. I don't know which one of you

assurances 23 it, I don't know who has the copy that came -- the

People 24 from the Ministry of Defense, I don't know who has it.

25 that have been remitted to court.

2256

one 1 Q. Okay. General Garcia, you just stated not a single

were 2 whether the number is a thousand or seven hundred cases

3 National Guardsmen, not a single one were sent to civilian
4 court for torture, correct?

5 A. Correct.

civilian 6 Q. And, so, by sending the seven hundred names or even
7 thousand names which is what you are saying today to

8 courts, that was not sending a message to the National
9 Guardsmen that they would have punished, prosecuted,

were 10 investigated or run out of the National Guard because they

11 engaging in acts of torture against unarmed civilians?

12 A. Directly to that, no.

13 Q. General Vides, getting back to the National Guard
14 headquarters in San Vincenti, you said you could drive to
that
15 place pretty easily, correct?

16 A. Yes, I could.

17 Q. But you did not between the time of October 16 or 19,
1979
18 when you became director of the National Guard until
December
19 26, 1979 when Neris Gonzalez began being tortured,
correct?

20 A. Yes, I made no visits.

21 Q. And if you had made such a visit, you might have
discovered
22 the human slaughter house?

23 A. It is possible.

24 Q. And because of the short distance between your
National
25 Guard headquarters in San Salvador and National Guard

2257

1 headquarters in San Vincenti, you didn't need a helicopter
to
2 get there, did you?

3 A. Neither did I need it nor did I have it available to
me
4 because there was only one civil helicopter.

5 Q. Civil helicopter or military helicopter?

6 A. Civil, civilian.

7 Q. So, in other words, let's say -- General Vides when
was the

8 Sumpul River massacre?

9 A. I don't have the exact date, but I have read of it in
the

10 communications that I have seen.

11 Q. Was it in 1980?

12 A. It is possible.

13 Q. And isn't it true that in the Sumpul River massacre
that

14 that was a massacre that was attributed to the National
Guard?

15 A. According to the reports, yes.

16 Q. And isn't it true that National Guard troops attacked
the

17 hamlet at the Sumpul River with artillery and fire from
two

18 helicopters?

19 A. The National Guard has never had helicopters nor
20 artillery. Their weapon was the G-3 rifle.

21 Q. General Vides, there were times when National Guard
22 conducted joint operations with the Army, correct?

23 A. Yes, there were.

24 Q. And the Army had at least two helicopters available to
it

25 in May of 1990, correct -- excuse me, strike that. Let me

1 withdraw the question.

2 And the Army had at least two helicopters
available to

3 it in May of 1980 when the Rio Sumpul, S-U-M-P-U-L,
massacre

4 occurred, correct?

5 A. That is possible.

6 Q. Okay. If Dr. Romagoza was initially captured by a
joint

7 operation of National Guardsmen and Army troops, at least
the

8 Army would have had access to a helicopter to transport
him

9 from where he was captured to the National Guard
headquarters

10 in San Salvador, correct?

11 A. For the Army, that is possible.

12 Q. And the Army would act on sometimes joint operations
with

13 the National Guard?

14 A. Correct, yes.

15 Q. Just like in the United States when -- Excuse me.

16 A. May I explain a little bit. When there was a combined
17 operation, the forces would be under the orders of the
general

18 staff of the armed forces and under the supervision of the
19 regional commander.

20 Q. And, so, it's entirely likely when Dr. Romagoza was

the
21 captured by a joint operation of the National Guard and
22 Army, that at least the Army troops that captured him or
23 participated in that operation would have access to a
24 helicopter so as to transport him into San Salvador for
further
25 questioning, correct?

2259

1 A. I do not think so.
2 Q. But you do know from the reports that there were
3 helicopters used in the Rio Sumpul massacre which occurred
in
4 May 1980?
5 A. I have read that. But no Hughes helicopter could fly
with
6 the doors open, only helicopters given by United States
later
7 on could. They could fly with the doors open.
8 Q. Yesterday you said there weren't any helicopters
available
9 for military use in 1979 and 1980, correct?
10 A. No, I said there were civilian helicopters, two. One
used
11 by the president for his campaign, and the other one used
by
12 the cartography section and they would loan those
helicopters
13 out, otherwise, there wouldn't be any helicopters to move.

brought 14 And the only time I remember that someone was
15 from the battle field by helicopter, and that was and a
16 Guadalupe, G-U-A-D-A-L-U-P-E, last name Martinez, she was
17 picked up by helicopter because she was wounded in the
18 battlefield and she was brought to the hospital and
National
19 Police, and, at that time, there were several military
20 helicopters.

21 Q. And this Ms. Martinez was a famous rebel leader,
correct?

22 A. That is so.

23 Q. And the military thought that she might have some
valuable
24 information?

25 A. It is not that we thought. It is that she was
captured in

2260

1 possession of all of the guerillas' documents. She was in
the
2 company of a child. It is in President Duarte's book if
you
3 need to recall some of the events.

4 Q. So you would agree, then, at least when there was a
serious
5 guerilla leader who had been captured, that helicopters
were

San 6 used to transport them from remote areas of El Salvador to

7 Salvador?

8 MR. KLAUS: Objection, relevancy without a time
frame.

9 THE COURT: I will overrule it. Let's go ahead.

10 A. At the time of this accident, yes, yes, but also, when
11 Commander Villalobos, V-I-L-L-A-L-O-B-O-S, Commander
Villalobos

12 requested a helicopter to go to the peace talks which I
went

13 unarmed, the helicopter was not provided to him. So it
would

14 have to be someone who was extremely important to move him
in a

15 helicopter.

16 Q. And when Dr. Romagoza was captured, it was not that he
was

17 very important, correct?

18 MR. KLAUS: Objection, beyond the scope of his
19 knowledge.

20 THE COURT: Sustained.

21 BY MR. GREEN:

22 Q. Isn't it true when people such as --

23 May I have a moment, Your Honor?

24 THE COURT: Surely.

25

1 BY MR. GREEN:

Merit

2 Q. Now, General Vides, you talked about some Legion of
3 awards, correct?

4 A. Yes.

that

5 Q. And when you received the one from April 1983 to 1985,
6 was during the first part of your tenure as Minister of
7 Defense?

8 A. Correct.

was

Salvador,

9 Q. And that was during the time that Professor Mauricio
10 tortured at the National Police headquarters in San
11 correct?

his

12 MR. KLAUS: Objection, goes beyond the scope of
13 knowledge.

knows

14 THE COURT: Well, the witness can answer if he
15 Professor Mauricio was tortured.

16 THE WITNESS: According to his statement.

17 BY MR. GREEN:

18 Q. Well, you know from the documents your own office
19 acknowledged that he had been captured?

document

20 A. Captured, yes, not tortured. Could you read the
21 if you would be so kind?

22 Q. I don't have it with me.

23 A. What we do is we acknowledge receipt that he is in
24 detention and under investigation.

25 Q. And that was only after there had been a series of
compose

2262

1 pagados, paid ads, by friends and family, correct?

2 A. Yes, in part.

3 Q. And until, during the first -- until that
acknowledgment,

4 as far as his friends and family were concerned, he was
5 disappeared?

6 MR. KLAUS: Objection, beyond his scope and
knowledge.

7 THE COURT: Sustained.

8 BY MR. GREEN:

9 Q. General Vides, when you received your first Legion of
Merit

10 award, did you say, no, you should change the time frame,
there

11 are people that were being tortured?

12 MR. KLAUS: Objection, argumentative.

13 THE COURT: Sustained.

14 BY MR. GREEN:

15 Q. Now, General Garcia -- excuse me, General Vides,
excuse me,

16 you said when you became Minister of Defense you wanted to

17 reform the National Guard?

18 A. Yes, I wanted to continue the process I had started at
the
19 National Guard which is under the orders I had received
from
20 the revolutionary Government Junta but there is something
21 important which I believe the jury should know, and it is
the
22 fact that one may issue an order, but 30 to 50 years of
23 military dictatorship cannot be changed by decree in the
minds
24 of the subordinates. And it is a process for which we
25 struggled and it is still continuing in our country.

2263

1 Q. General Vides, so you wanted to be part of this
reformation
2 process, correct?

3 A. Correct.

4 Q. Okay. When you came in in October of 1979, you had
been a
5 member of the El Salvadoran armed forces for more than 25
6 years, correct?

7 A. Approximately, yes.

8 Q. And by the time you left as Minister of Defense, you
had
9 been in a command position for 35 years?

post. 10 A. It depends on what you are referring to as a command
11 If it is a large unit such as a National Guard, now, as a
12 commander of a section and all the way up to deputy
director or 13 director of unit, yes.
14 Q. General Vides, when you were Minister of Defense, you
were 15 a general, correct?
16 A. Yes.
17 Q. So you had started out in the military academy?
18 A. Yes.
19 Q. You became a second lieutenant, a lieutenant, captain,
20 major, lieutenant colonel, colonel, and then general?
21 A. Yes, I received all of my ranks during the established
22 period of time complying with the corresponding
requirements.
23 Q. And, General Garcia, your military command and career
from 24 second lieutenant all the way up to general spanned 35
years, 25 correct?

2264

1 A. Yes, and there is a reason for which I stayed over
five 2 years.

were
3 Q. Well, sir, let me ask you about this 35 years that you
4 a military officer. There was not a single case of
5 insubordination to your orders during that entire 35
years,
6 correct?

7 MR. KLAUS: Objection, beyond the scope of his
8 knowledge.

9 THE COURT: I think that is implicit in the
question,
10 that is, is the general aware of any subordinate not
following
11 the general's orders in the 35 year period?

12 THE WITNESS: If any subordinate had not obeyed an
13 order, he would have been punished at the time,
punishments
14 that can go from 30 days under arrest and reports to
Ministry
15 of Defense, dismissal, et cetera.

16 BY MR. GREEN:

17 Q. General Vides, isn't it true there was not one single
act
18 of insubordination to your orders during your entire 35
year
19 career as military officer?

20 A. Not that I know of.

21 Q. General Vides, you were at the military academy in El
22 Salvador on a number of occasions, correct?

23 A. Correct.

24 Q. Both as a cadet, professor, and director?

25 A. Yes, as a section commander, instructor, as well as,

I was
Commander of
cadets
beyond
and
exposed

1 instruction you could also teach classes as a professor.
2 assistant to the director of the military school.
3 the company of cadets which was the next position upwards,
4 chief of instruction, and deputy director of the military
5 school, and interim director for a very short period.
6 Q. And, General Vides, you were exposed to students or
7 at that military academy from the years 1954 through 1957?
8 A. During my time as a cadet, yes.
9 Q. And then you were exposed to some cadets for years
10 1957, correct?
11 A. Correct, yes.
12 Q. So you would have been exposed to first year, second,
13 third year students during your graduating year of 1957?
14 A. Yes, and I knew other graduating classes, and I was
15 to them and I taught them.
16 Q. For instance, 1960 through 1966?
17 A. Yes.
18 Q. And from 1972 to 1976?
19 A. Yes.

20 Q. And that is a total of 16 Tandas that you were exposed
to?

21 A. Possibly more. And as Minister of Defense I graduated
the

22 rest of the Tandas in the armed force.

23 MR. GREEN: Your Honor, would this be an
appropriate

24 stopping time?

25 THE COURT: Sure, yes. Ladies and gentlemen, why
don't

2266

1 we stop at this point for the mid-morning recess. Let's
take a

2 15 minute break and we will come back and continue on with
the

3 cross-examination.

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

5 THE COURT: Court will be in recess for 15
minutes.

6 (Thereupon, a short recess was taken).

7 THE COURT: Mr. Marshal, would you bring in the
jury,

8 please.

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

10 THE COURT: Ladies and gentlemen, please be
seated.

11 As I look at the jury walking in with the folders, and

12 understanding there is a binder coming, I think we will
have to
13 get back packs for everybody.

14 All right. Now, when we stopped we were in
15 cross-examination. I will turn back to Mr. Green so he
might
16 continue. Mr. Green.

17 BY MR. GREEN:

18 Q. General Vides, I believe yesterday you were asked some
19 questions about whether there were infiltrators in the
20 military.

21 General Vides, I think you responded that later
you
22 realized that Major Denis Moran, M-o-r-a-n, and Lopez
Sibrian,
23 S-i-b-r-i-a-n, were infiltrators?

24 A. Yes.

25 Q. However, when you became Minister of Defense, you
promoted

2267

1 Major Denis Moran to Colonel, correct?

2 A. Yes, correct. The promotions are handed down by the
3 President of the Republic, and Minister of Defense
communicates

4 them that they have validity. And when I referred to the
fact

5 that I refer to this later, I refer to all of the reports
we
6 see 20 years later, and there is no problem now to know
who was
7 providing difficulties within the institution at the time.

8 Q. General Vides, in 1983 when you became Minister of
Defense,
9 that was approximately two years after the Sheraton
killings,
10 correct?

11 A. That is so.

12 Q. And those Sheraton killings were committed by
assassination
13 teams that were running out of the National Guard
intelligence
14 when you were the head of the National Guard, correct?

15 A. That is what investigations say.

16 Q. Okay. The Sheraton killings involve the killings of
one
17 Salvadoran and two Americans, correct?

18 A. Correct.

19 Q. And at the time of the Sheraton killings, Major Moran
was
20 your chief of intelligence?

21 A. Chief of the department, yes.

22 Q. And that is also called Section 2?

23 A. Yes.

24 Q. And Lopez Sibrian, the other person who was present at
the
25 time of the Sheraton killings, was number two in your

1 intelligence unit?

2 A. Correct.

3 Q. And the fact that the Sheraton killings had been
committed

4 by an assassination squad that was being run out of the

5 National Guard was brought to your attention well before
you

6 became Minister of Defense in April of 1983, correct?

7 A. Yes, that is what the information said but it is
necessary

8 to clarify in what form they were inside the National
Guard.

9 Just as we say for example here you may have a
very

10 high ranking spy within the CIA, not everyone knows that.

11 There are cases where 15, 20 years must go by
before

12 you find out that they were passing information on to the

13 enemy.

14 Q. General Vides, the Sheraton killings were one of the
most

15 widely publicized killings in El Salvador that occurred
between

16 1981 and 1983 when you became Minister of Defense?

17 MR. KLAUS: Objection to the form of the question.
He

18 is testifying not asking a question.

19 THE COURT: Yes, I think implicit at the end,
isn't

20 that correct, or would the witness agree with that.

21 THE WITNESS: Yes, it was one of the most
publicized.

22 BY MR. GREEN:

23 Q. In fact, your claim today that you learned of this 20
years

24 later is inconsistent with the fact that the trigger man

25 confessed well before you became Minister of Defense in
1983?

2269

1 MR. KLAUS: Objection, assumes facts not in
evidence.

2 THE COURT: The question is, does General Vides
know

3 that or does he believe that is true?

4 MR. GREEN: I will break it down.

5 BY MR. GREEN:

6 Q. Isn't it true the trigger man in the Sheraton killings
7 confessed well before you became Minister of Defense in
1983?

8 A. That is possible.

9 Q. You were director of the National Guard?

10 A. Yes.

11 Q. You didn't know who confessed to pulling the trigger
of the

12 two Americans and one Salvadoran in the Sheraton killings

13 before you became Minister of Defense?

14 A. Yes. They confessed under the legal process that they
15 faced in the judicial arena.

remove
16 Q. But you didn't do anything to either punish or to
17 Lopez Sibrian or Denis Moran?

Sibrian
18 A. They were under judicial process of investigation.

19 was released by order of the Supreme Court because a judge
20 allowed him to dye his hair; and if you look in President
21 Duarte's book, one of the commitments he made --

22 MR. GREEN: Objection to that. Hearsay.

has a
23 THE COURT: You asked the witness a question. He
24 right to answer that.

book,
25 THE WITNESS: If you look in President Duarte's

2270

crimes
1 you find one of the commitments he made, those types of

2 would be investigated. And in 1984, beginning of 1984,
the

3 unit for investigating criminal acts was created that
continued

4 investigating those cases.

5 BY MR. GREEN:

6 Q. General Vides, these murderers worked in your own

7 building.

8 THE COURT: Wait a minute. Stop, you are making
9 statements. You need to ask questions. Let me go back to
10 you.

11 BY MR. GREEN:

12 Q. Isn't it true these murderers worked in your building?

13 A. Yes, those that were found guilty, yes, as well as,
the
14 others.

15 Q. Okay. General Vides, yesterday you testified that
Major
16 Denis Moran would be the person from the intelligence unit
who
17 would conduct interrogations of prisoners?

18 A. Yes, he or other technical personnel from that
section.

19 Q. And he was under your command, correct?

20 A. Yes, under my command.

21 Q. So the interrogators who would interrogate prisoners
in the
22 National Guard headquarters were under your command,
correct?

23 A. Yes, correct.

24 Q. General Vides, when you became director of the
National
25 Guard, the National Guard had a bad reputation for human

1 rights, correct?

2 A. That is so.

3 Q. In fact, less than a year before you became director
of the
4 National Guard, the Organization of American States issued
a
5 report that specified that there were torture cells in the
6 National Guard headquarters.

7 THE COURT: Let me stop you for a minute. Can you
turn
8 that into a question?

9 BY MR. GREEN:

10 Q. General Vides, isn't it true that less than 12 months
11 before you became director of the National Guard in
October
12 1979, the Organization of American States issued a report
and
13 condemnation of torture cells that existed in National
Guard
14 headquarters?

15 A. Yes, I heard that from Mr. Alvarez, and the report is
16 correct.

17 Q. And Mr. Alvarez reported that he went to the National
Guard
18 headquarters twice. Isn't it true the first time he went
he
19 couldn't find the torture cells?

20 A. That is what he testified to. I have no proof of
that.

21 Q. Isn't it true that it was only after he went back a
second

torture 22 time and was obstructed that he was able to find the

23 cells?

24 MR. KLAUS: Objection, as to relevancy.

objection? 25 THE COURT: What is the legal basis of your

2272

1 MR. KLAUS: Relevancy, the date and time.

relevancy 2 THE COURT: I will overrule the objection on

3 grounds.

4 MR. GREEN: May I repeat the question?

5 THE COURT: Yes.

6 BY MR. GREEN:

second 7 Q. Isn't it true only after Roberto Alvarez went back a

find the 8 time to the National Guard headquarters he was able to

9 torture cells?

10 A. That is what Mr. Alvarez said during his deposition.

his 11 Q. And isn't it true that what Roberto Alvarez said in

American 12 testimony was also reported in the Organization of

13 States report on the torture cells?

14 A. Correct.

15 Q. Now, General Vides, isn't it true that yesterday you

Alvarez 16 testified that the torture cells referred to by Roberto
17 had been demolished?

18 THE COURT: You mean when General Vides came in as
19 Minister of Defense or head of the National Guard?

20 MR. GREEN: Yes, in October 1979.

I 21 THE WITNESS: Yes, it was one of the first actions
22 wanted to carry out to determine whether or not there was
such 23 existence of such cells. And the deputy director
accompanied 24 me to the location that they had already been demolished
by the 25 previous director general, not General Alvarenga,

2273

1 A-l-v-a-r-e-n-g-a, not General Alvarenga, but the previous
2 director general.

those 3 Q. General Vides, your testimony yesterday and today,
4 torture cells referred to by Roberto Alvarez had been
5 demolished. They no longer existed when you became
Minister of 6 Defense in 1979, correct?

7 THE COURT: You said Minister of Defense --

8 MR. GREEN: Excuse me. Let me rephrase the
question.

9 THE COURT: You mean head of the National Guard?

10 BY MR. GREEN:

11 Q. General Vides, isn't it true when you became director
of

12 the National Guard in October 1979, your testimony
yesterday

13 and today is that the torture cells referred to by Roberto
14 Alvarez had been demolished?

15 A. Yes, that is my testimony.

16 Q. General Vides, isn't it true that the torture cells
17 referred to by Roberto Alvarez in fact existed when you
arrived

18 at your command as Minister of Defense in October 1979?

19 A. Not to my knowledge, nor did they exist when I came
into

20 the National Guard.

21 Q. General Vides, knowing that torture had occurred in
your

22 own headquarters, isn't it true you never ordered an
23 investigation as to who was responsible for either having
24 torture cells or conducting torture?

25 MR. KLAUS: Objection, relevancy.

2274

1 THE COURT: Overruled.

2 MR. KLAUS: Can we have a date and time?

I

3 THE COURT: The question is never, at any time, so

4 will permit it.

5 A. True, from there backwards.

6 Q. And General Vides, because you never ordered an
7 investigation, you never punished anyone who was
responsible

8 for torture?

9 A. I never discovered anyone carrying out torture.

10 Q. That is because you never ordered an investigation,
11 correct?

12 A. Correct.

13 Q. General Vides, isn't it true that in a prior
proceeding you

14 testified that when you became minister -- excuse me, when
you

15 became National Guard director that you went to the
National

16 Guard Headquarters and you found evidence of torture,
murder

17 and kidnapping?

18 A. I don't recall, and it depends on the question that
may

19 have been asked.

20 Q. Directing your attention, and I will be glad to show
this

21 to you in a minute. Directing your attention to a prior

22 proceeding conducted October 19, 2000, page 1230, lines 12

23 through 15, do you recall being asked the following
question

24 and giving the following answer?

25 MR. KLAUS: Could I have a copy?

1 BY MR. GREEN:

2 Q. General Vides, in the prior proceeding do you recall
being

3 asked the following question and giving the following
answer:

4 " Mr. Vides, when you went to the National Guard
5 Headquarters you found evidence of brutality, did you not,
6 torture, murder, kidnapping?

7 A. Only the cells".

8 MR. KLAUS: Objection as to relevancy, prejudicial
9 effect outweighs probative value unless there is a time
period
10 established and when.

11 THE COURT: Overruled.

12 A. Yes, one cell.

13 Q. It says cells here. That was your answer under oath,
sir,

14 correct?

15 MR. KLAUS: Your Honor, I ask if he is going to
ask him

16 to testify regarding a document, that he provide him with
a

17 copy of the document.

18 THE COURT: That can be done, but I think the
pending

question 19 question is, does the witness remember whether that
is 20 was asked and whether that answer was given. I think that
21 the question.

that, 22 THE WITNESS: Yes, yes, if it is written like
23 then that is the way it must have been.

24 MR. GREEN: May I have a moment?

see 25 THE COURT: Yes. Mr. Klaus, you are entitled to

2276

1 the document. Of course, you have seen the document, too.

2 MR. GREEN: No further questions.

redirect 3 THE COURT: Let me turn back to Mr. Klaus for
4 examination.

5 MR. KLAUS: Could I have that document?

6 REDIRECT EXAMINATION

7 BY MR. KLAUS:

8 Q. Do you remember being asked that question in a prior
9 proceeding?

10 A. At this time, I do remember.

the 11 Q. Let me read the prior question, this is page 1230 from
12 document that Mr. Green just referred to. It starts out:

13 " Guards headquarters, you had evidence of that,
did
14 you not, Mr. Vides? "
15 And your answer was:
16 " If I had seen it, no, if I had knowledge with
the
17 press, with the newspaper, yes.
18 " What investigation did you make in regard to
the
19 cells that you found that was three feet by five feet that
was
20 testified to by Mr. Roberto Alvarez? "
21 THE INTERPRETER: Could the interpreter be privy
to
22 what is written?
23 THE COURT: I think we have one copy. Do we have
24 another copy?
25 MR. GREEN: Yes, Your Honor. What is the page?

2277

1 MR. KLAUS: 1230.
2 THE COURT: Which line?
3 MR. KLAUS: Lines one through 22.
4 THE COURT: Do you know where we stopped? Are you
all
5 set?
6 MR. KLAUS: I will start again.

7 THE COURT: Okay.

8 BY MR. KLAUS:

9 Q. The first question was:

10 " Yeah, but when you took command of the National
11 Guard, you knew that brutality had occurred in your own
12 National Guard Headquarters, you had evidence of that, did

you

13 not? "

14 And your answer was:

15 " If I had seen it, no. If I had knowledge with

the

16 press, with the newspaper, yes.

17 Q. " What investigation did you make with regard to the

cells

18 that you found that was three feet by five feet that was

19 testified to by Mr. Roberto Alvarez? "

20 And your answer was:

21 " Nothing, my mission was to comply every day in

22 advance as possible and to continue and correct the
situations

23 that were wrong".

24 MR. KLAUS: Let me read that first.

25 THE INTERPRETER: Your Honor, I was trying to
finish.

2278

1 THE COURT: Okay.

2 MR. KLAUS: I didn't finish reading that part yet.

3 THE COURT: I think the interpreter is saying she
4 hasn't completed what you already read.

5 THE INTERPRETER: That is correct, Your Honor.

6 MR. KLAUS: Go ahead.

7 THE INTERPRETER: Now I have finished.

8 THE COURT: Okay.

9 BY MR. KLAUS:

10 Q. " If I did not take action and be able to punish the
ones

11 before then, I take that responsibility.

12 Q. " Mr. Vides, when you went to the National Guard
13 Headquarters you found evidence of brutality, did you not,
14 torture, murder, kidnapping?

15 A. Only the cells"?

16 A. That's correct.

17 Q. The inspection by Mr. Alvarez was done when, what
year?

18 A. From the information I have seen about a year before,
19 before I arrived, about 12 months.

20 Q. Was it done in 1997?

21 A. Yes, I have no knowledge of that, because I have
nothing to

22 do with the guard. I didn't have anything to do with
that.

23 But if the document has that date, then that is correct.

24 THE COURT: What was the date you just used?

25 MR. KLAUS: 1997.

1 THE COURT: '97?

2 MR. KLAUS: 1977, I am sorry.

3 THE COURT: And what is the question you are posing?

4 BY MR. KLAUS:

5 Q. Wasn't the investigation done in 1977 by Mr. Alvarez?

6 A. According to the document, yes.

7 MR. KLAUS: If I could have a minute, Your Honor, I want to refer to a Plaintiffs' exhibit.

8 THE COURT: Yes.

9 BY MR. KLAUS:

10 Q. Okay. I stand corrected. I am going to read from this in
11 evidence, Plaintiffs' Exhibit 393, I am reading from page
12 three
13 of the exhibit, and marked on the bottom with Plaintiffs'
14 number R2610. This is the report on the situation of
15 human
16 rights in El Salvador by the Organization of American
17 States,
18 and this is the document that Alberto Alvarez testified
19 about.

20 The third paragraph on that page says:

21 " A special committee appointed by the Inter-American

19 Commission on Human Rights conducted an observation in
loco in
20 the Republic of El Salvador between January 9 and January
18,
21 1978," so the inspection took place in 1978, correct?
22 A. I have no personal knowledge of that. If that is what
the
23 document says.
24 Q. Were you ever provided a copy of this report by any
member
25 of your Government when you became head of National Guard?

2280

1 A. No. I still haven't read it, because you haven't
given me
2 one either.
3 Q. Sorry.
4 A. That's the truth.
5 Q. Who was president of El Salvador when this report was
--
6 when the inspection was done, and when the report was
7 transmitted to El Salvador?
8 Who was head of the National Guard when the
inspection
9 was done, and when the report was transmitted to the
Government
10 of El Salvador?
11 A. General Alvarenga.

in

12 Q. What happened to General Romero and General Alvarenga

13 October 1979?

not

14 A. It is not for me to say, but they were dismissed, and

15 kicked out of the country. I would like to clarify, I did

16 participate in the coup.

17 Q. But, as a result --

officers

18 A. But, yes, the measures were taken and a number of

19 left.

head

20 Q. So, as a result of the coup, the President Romero, and

is

21 of National Guard went into exile outside of El Salvador,

22 that correct?

23 MR. GREEN: Objection, leading.

24 THE COURT: Sustained.

25 BY MR. KLAUS:

2281

exiled as

1 Q. Did, as a result of the coup, were those two men

2 a result of the coup?

3 A. Yes, and a few others, Minister of Defense, general of

4 staff, and a few commanders, and commander of the National

5 Guard who was Colonel before I arrived, Colonel Porletto.

inspect 6 Q. When you became head of the National Guard, did you

7 National Guard facilities, in October 1979?

8 A. That's correct.

Guard 9 Q. Did you find a three by five cell in the National

10 headquarters at that time?

are 11 A. That's the one I remember, not the other cells that

12 mentioned in the report.

detention 13 Q. When did you order the construction of the eight

14 cells?

15 A. Almost immediately after I took over.

the 16 Q. Were any of those former commanders, the president,

17 head of the National Guard, the Colonel that you just

misconduct 18 mentioned, were any of them punished for acts of

19 while they were in office?

20 A. No, not that I know of.

21 Q. Was that because they weren't in the country?

customarily 22 A. Well, because they weren't in the country, and

23 upon any coup, the one who had been in Government would be

can 24 taken out. No investigations had ever been made that I

25 recall.

Government
when
that

1 Q. And in October -- October 15 of 1979, the entire
2 that had been in power when this report was -- when the
3 inspection was done, and this report was prepared, and
4 this report was transmitted, were thrown out of office, is
5 correct?

6 MR. GREEN: Objection, leading.

question.

7 THE COURT: Sustained as to the form of the

8 BY MR. KLAUS:

when
to
coup?

9 Q. Were -- Was the entire Government that was in power
10 this report was prepared, when the inspection given rise
11 this report was done and when this report was transmitted,
12 thrown out of power as a result of the 1979, October 15,

maybe

13 A. That's my understanding. I couldn't say all of them,
14 a few of them remained but most of them left.

1977,
you

15 Q. So, this report describes conditions that existed in
16 at least a year and a half, a year and 10 months before
17 took office, correct?

18 MR. GREEN: Objection, leading again.

19 THE COURT: Sustained. Let me stop you. You are

redirect

20 supplying the answers, and you can't do that, this is

21 examination.

22 BY MR. KLAUS:

23 Q. Did -- This inspection was done in 1977, correct?

24 MR. GREEN: Objection, leading.

25 THE COURT: Sustained.

2283

1 MR. KLAUS: Never mind, Your Honor, no further
2 questions.

down,

3 THE COURT: All right. General, you may step
4 thank you, sir.

5 Let me turn back to defense.

this

6 MR. KLAUS: Your Honor, we are going to rest at
7 time.

8 THE COURT: Defense rests its case?

9 MR. KLAUS: Yes.

10 THE COURT: All right. Let me turn back to the
11 Plaintiffs.

like to

12 MR. GREEN: Your Honor, at this time we would
13 show the jury Mr. Romagoza's left arm where he was shot.

so

14 THE COURT: You may. Why don't you take a moment

determine 15 the doctor can leave his suit coat there and you can

16 how you are going to do that. Okay.

17 MR. GREEN: Doctor Romagoza --

his 18 THE COURT: Why don't you have the doctor fold up

of 19 sleeve, and when that is done, he can simply walk in front

20 the jury so the jury can see that.

to 21 Mr. Green, why don't you have the part that needs

The 22 be exposed, and show that to the jury. Hold on a moment.

23 doctor can just walk --

24 MR. GREEN: Your Honor, should I stay here?

so 25 THE COURT: That is okay. Let the doctor walk up

2284

1 all the members of the jury can see that.

2 (Plaintiff complies.)

Thank 3 THE COURT: Thank you, Mr. Green. All right.

4 you.

some of 5 MR. GREEN: Your Honor, Ms. Gonzalez can show

her 6 the burns and machete cuts on her arms. There is a cut on

7 breast --

8 THE COURT: Why don't we stop and allow Ms.
Gonzalez

9 to show the portion you described earlier, okay. Give Ms.
10 Gonzalez the opportunity -- maybe she wants to leave her
jacket

11 at the table and do exactly what Dr. Romagoza did.

12 MR. GREEN: We do have a photograph of the other
area.

13 THE COURT: Let's take it one step at a time.

14 If Ms. Gonzalez would just point to the area
where she

15 wants to draw the jury's attention to.

16 That is not working properly, take a minute.
Let's

17 make sure it is working properly.

18 If Ms. Gonzalez can point to the area she wants
to

19 draw the jury's attention to, and allow the jury to see
that.

20 (Plaintiff complies.)

21 THE COURT: No, no talking, just to point, if she
22 would, please.

23 Ms. Gonzalez, if she would walk up so all the
jurors

24 can see that.

25 Thank you. Everybody able to see?

1 Okay, Ms. Gonzalez, thank you.

2 MR. GREEN: Your Honor in terms of the other area
of
3 exhibition, if we could approach.

4 THE COURT: Could you pass it up and let me take a
look
5 at it?

6 MR. GREEN: There may be another way to handle
this
7 that would save time if we could approach sidebar.

8 THE COURT: Yes? Of course.

9 (Sidebar discussion on the record.)

10 MR. GREEN: I didn't expect to get through this
early.

11 THE COURT: I know.

12 MR. GREEN: We have a -- Ms. Gonzalez --

13 THE COURT: When do you think you will have that?

14 MR. GREEN: Poloroid did not come up, we could
bring
15 the digital camera or get it developed during lunch. She
is
16 willing to show the jury.

17 THE COURT: I don't think you should do that if
you can
18 avoid it. We are almost at 12 o'clock. We can adjourn a
19 little early if you want to do that, or go ahead and take
the
20 other testimony and simply present that after lunch.

21 MR. GREEN: This might be a good time to adjourn.

22 THE COURT: You want to do that?

23 MR. GREEN: Yes.

24 THE COURT: Good, let's do that.

25 (After sidebar.)

2286

1 THE COURT: Ladies and gentlemen, normally, we
have
2 been going until about 12:30, but maybe what we should do
is
3 break early today. Why don't we take a break until 1:30,
and
4 when we come back 1:30, I will go back to the plaintiff
and
5 take the last witnesses from the plaintiff in its rebuttal
6 case. We are moving along very much on schedule, and in
7 talking with the lawyers last night, we really feel we are
8 going to be able to complete all of the testimony today.
We
9 have been having some discussions regarding instructions,
and
10 our hope is what we will be able to do is come back in the
11 morning, have final argument, jury instructions and
literally
12 put the case in your hands. I think it would help
everybody if
13 we stop at the point, and we will get the final evidence
before
14 you and be able to move on.

back 15 Let's take a break until 1:30, and when we come
16 we will turn back to the plaintiff.
17 (Thereupon, the jury retired from the courtroom.)
am 18 THE COURT: Ladies and gentlemen, be seated. I
19 sorry, I forgot this. We had a question from the jury.
The 20 question was, if the general recalls, were those visits to
the 21 jail with President Duarte, were they announced visits, or
were 22 they surprise visits that the group would have just
arrived? 23 The question is were they announced visits?
24 Any objection to posing that question to General
25 Vides?

2287

1 MR. KLAUS: No, Your Honor.
2 MR. GREEN: No.
do 3 THE COURT: If that is all right maybe we should
4 that first and then move back over.
5 Just one other thing to ask you to think about
this. 6 In the jury instructions, one of the things we
have

7 been wrestling with in terms of how to put the concept
that
8 deals with the notion that just as though you could have a
9 commander who is not a commanding officer, as there were
in the
10 Bosnia war who had troops and authority and subject to the
act,
11 what the Plaintiffs have been grappling with is the
opposite of
12 that, and that is, if you have people who are not formally
13 members of the military, but acting independently or with
the
14 military, and I think the suggestion is here it has been
with
15 the military, can they, too, fall under either the Alien
Tort
16 Claim Act or the Torture Victim Protection Act? I think
17 clearly the answer is yes.

18 I want to draw your attention as to one way to
deal
19 with this, I will ask you to think about it. I haven't
really
20 finished it.

21 You remember the first element we set out under
the
22 Command Responsibility Doctrine is that the plaintiff was
23 tortured by a member of the military, and we added or
security
24 forces.

25 I would like to suggest we need to further expand
that

1 and it should read was military, security forces or
someone
2 acting in concert with the military forces, and then under
the
3 subordinate relationship, the way we define that, the way
to
4 handle that is to say a person who is not a member of the
5 military or security forces may nonetheless be considered
a
6 subordinate of a military commander if they are in fact
subject
7 to the authority of that person and he has effective
control
8 over them.

9 I think what that does, it reaches out, if you
will,
10 to the possibility that there could be a civilian who
somehow
11 has volunteered or put himself under the authority of the
12 military commander, which is what the Plaintiffs are
looking
13 at.

14 I will try to get the verbiage of that, but I
think
15 that is consistent with what we have been dealing with,
and
16 still puts in front of the jury the factual determinations
of
17 what we said before, that is, that the person really does
have

over 18 to be a commander, and really does have to have authority
19 that person, and actually has effective control over that
20 person irrespective of whether that person happens to be
21 wearing a uniform or has essentially joined in with the
22 military.

that 23 I thought maybe that is the way, and I will have
were 24 for you later, I think that encompasses the problem we
25 wrestling with last night.

2289

1 MR. KLAUS: I agree.

defense? 2 THE COURT: Does that sound all right to the

3 MR. KLAUS: That is accurate as far as the law is
4 concerned.

5 THE COURT: I will try to get the wording to you.
6 Scheduling, how are we doing?

afternoon 7 MR. GREEN: I think we will finish by the
8 break.

9 THE COURT: Good. Anything else?

10 MR. GREEN: Yes, we do have a draft verdict form.

Thank 11 THE COURT: I was going to ask you about that.

case 12 you so much. Thank you. Do you have a disc with that in

13 by any chance we have to change it?

14 MS. VAN SCHAACK: We can have a disc.

15 THE COURT: Okay. Thank you very much.

16 Let's take a break and we will reconvene 1:30.

17 (Thereupon, a recess was taken 12:15 p.m.)

18 (Thereupon, trial reconvened 1:30 p.m.)

sense 19 MR. GREEN: I have a slight problem, judge. I

digital 20 one of my co-counsel out during lunch to try to get a

gone 21 image printed and the place I sent her to, I guess, has

problem 22 out of business. She does have a digital camera. The

wondering if 23 is, she can't bring it into the courtroom. I was

brought 24 we could call down to security and allow that to be

25 in. It will take literally two minutes to show the jury.

2290

to 1 THE COURT: The only problem, we need to be able

2 have something in the record. How do we do that?

sometime 3 MR. GREEN: We can get that image printed out

4 this afternoon.

allowing 5 THE COURT: Does anyone have a problem with
6 the jury to look at whatever the image is on the camera?

movies 7 MR. KLAUS: No, as long as it doesn't have any
8 of Mr. Green's family.

security 9 THE COURT: I will convey a message to the
10 officers downstairs to allow the camera into the courtroom
and
11 Mr. Green will have the responsibility to make sure the
camera
12 is given back and taken out. They are very sensitive
about
13 that. For reasons I must admit, I don't understand.

14 Now, I need to also bring to your attention our
15 interpreter mentioned to me as he was going to lunch, a
couple
16 of the jurors who were walking stopped and asked a
question
17 that was not involved with the case, but I wanted to at
least
18 alert the parties. I don't know if we need to do anything
19 else, there was the instruction to ask jurors please do
not
20 talk with anybody associated with the trial about
anything, and
21 I know sometimes with the passage of time people become
more
22 comfortable or familiar, but I wanted to at least bring
that to
23 your attention.

24 Anything else you think we need to do?

question 25

MR. KLAUS: You are going to ask Mr. Vides the

2291

1 from the juror.

2 THE COURT: I thought I would do that first if
that is

3 okay. I will present that one question.

4 THE COURT: Mr. Marshal, when the camera comes up,
5 would you see that goes to Mr. Green?

6 THE MARSHAL: Yes, Your Honor.

7 THE COURT: Thank you.

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

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

11 THE COURT: Ladies and gentlemen, please be
seated. I

12 need to apologize to you. We moved very quickly when we

13 concluded the defense case and I forgot one of the jurors
had a

14 question of General Vides.

15 General Vides, this question, I think, deals with
your

16 testimony regarding visits you may have made with
President

17 Duarte to various jail facilities, and the juror's
question is

Duarte 18 as follows: Were the visits to the jail with President
19 announced visits.

that 20 THE WITNESS: I can't answer the question given

possible 21 the president had his own freedom of movement. It is

to be 22 that it was announced because almost always the corps had

to 23 ready to receive the president, but I have no knowledge as

gave 24 whether the office of the president or the general staff

25 any order.

2292

1 THE COURT: General, thank you very much.

want 2 Now, we are waiting for one other matter, do you

3 to hold off for a second or would you like to do something

4 else, Mr. Green?

witness. 5 MR. GREEN: I can call our first rebuttal

6 THE COURT: All right.

7 MR. GREEN: Professor or Colonel Jose Garcia.

8 THE COURT: Colonel Garcia. Please be seated.

oath 9 Colonel Garcia, you were previously sworn so the

I 10 need not be readministered. You are still under oath, but
if you 11 wonder if you would simply for the clarity of the record
12 would simply indicate your name, sir.

13 JOSE LUIS GARCIA, PLAINTIFF'S WITNESS PREVIOUSLY
SWORN.

14 THE WITNESS: Jose Luis Garcia.

15 THE COURT: Mr. Green. Thank you.

16 MR. GREEN: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. GREEN:

for 19 Q. Colonel Garcia, you have been sitting in the courtroom
20 the last few days for the testimony of generals Garcia and
21 Vides Casanova?

22 A. Yes.

23 Q. As a military command expert, did you hear or see any
24 evidence about how the chain of command actually
functioned in
25 the El Salvadoran armed forces between October 1979 and
June of

2293

1 1983?

2 MR. KLAUS: Objection, goes beyond the scope of
his
3 expertise. It is asking to interpret evidence.

question 4 THE COURT: I sustain the objection to that
5 and ask counsel to rephrase the question.

6 BY MR. GREEN:

command 7 Q. As a military command expert, how did the chain of
8 actually function in the El Salvadoran Armed Forces
between 9 September 1979, and June 1983.

10 MR. KLAUS: Objection, goes beyond the scope of
his 11 expertise as to what occurred during that time period in
El 12 Salvador.

13 THE COURT: Well, if the Colonel feels he studied
in 14 that area and read in that area sufficiently that he feels
15 comfortable in rendering his opinion, he may do so.

16 MR. KLAUS: I ask that he state the basis of his
17 opinion.

18 THE COURT: I will let you cross-examine on that.

19 MR. GREEN: May I reask the question?

20 THE COURT: Yes.

21 BY MR. GREEN:

command 22 Q. As a military command expert, how did the chain of
23 actually function in the El Salvadoran armed forces
between 24 October 1979, and June 1983?

25 A. Yes, in accordance with the testimony provided by the

1 gentlemen generals, in accordance with everything I have
read, 2 in accordance with my own personal experience at another
trial 3 in El Salvador and in accordance with long conversations I
held 4 with Colonel Majano, who is a personal friend of mine, the
5 military chain of command functioned without interruption.

6 Q. Colonel Garcia, what evidence do you base that opinion
on?

7 A. I base that upon the four elements of criteria that I
8 proffered earlier and most especially upon the testimony
9 provided by both generals.

10 Q. Can you provide the jury with some specific examples
as to 11 how the chain of command actually functioned?

12 A. Yes, in the case of the Ministry of Defense and its
chain 13 of command, there are very characteristic cases that
and 14 demonstrate the exercise of command by Mr. General Garcia
He 15 how the force in its entirety responded to that command.

16 said himself and stated that in fact he did do that within
a 17 period of 24 hours, he managed to occupy the entire
banking

18 system throughout the entire country in an environment
that was
19 certainly hostile and nevertheless no one placed any
opposition
20 in which there was general opposition about and, of
course, on
21 top of that when it was necessary for him to occupy areas
as a
22 result of the agrarian reform, which the troops performed,
and
23 without any sort of interference, and as pertains to the
24 National Guard, Mr. General Vides Casanova and he said
here,
25 and declared that at no time was there any insubordination
to

2295

1 his command, and that all of the orders that he issued
were

2 absolutely complied with.

3 Q. Colonel Garcia, did General Vides, when he was
director of

4 the National Guard have command authority over the
5 interrogators in the National Guard headquarters?

6 A. Yes, they reported to him up through the chain of
command.

7 Q. Was there any evidence that you are aware of that
there was

8 any interference in reporting to him up the chain of
command?

9 A. No, no, not that I know of, none.

10 Q. Colonel Garcia, did you have any observations about
the

11 choices facing General Garcia when he was Minister of
Defense

12 in May 1980?

13 A. Yes.

14 Q. What were his choices and what did he choose?

15 A. Yes, I believe on another occasion I have said that
there

16 were two trends within the armed forces. The danger was
that

17 communism could be part of the country. And then there
was one

18 sector within the armed forces that said that anything is
good

19 so long as we maintain power and that sector has no
opportunity

20 to gain ground. And there was another sector of the armed

21 forces that said, no, let us continue to maintain
democratic

22 procedures, let us maintain respect for the people because
that

23 will become our permanent solution.

24 Q. And Colonel Garcia, what do you call this second or
later

25 group?

1 A. I give it the name of the Democratic group.

that

2 Q. And who was perceived at the time to be the leader of

3 group from the military?

4 MR. KLAUS: Objection, over broad.

5 THE COURT: Let me hear the question again.

6 BY MR. GREEN:

leader

7 Q. And who was perceived in May 1980 to be the military

8 of the Democratic group that you were talking about?

9 A. Colonel Majano.

Defense

10 Q. And what was the choice facing then Minister of

11 Garcia concerning these two groups in May 1980?

his

12 MR. KLAUS: Objection, goes beyond the scope of

13 expertise.

please.

14 THE COURT: Let me hear the question again,

15 BY MR. GREEN:

Defense

16 Q. And what was the choice facing then Minister of

17 Garcia concerning these two groups in May 1980?

he

18 THE COURT: I will allow the witness to answer if

19 through his study and expertise feels confident to answer

20 this. We talked about this earlier.

21 THE WITNESS: Yes, I request that you reread the

22 question for me.

23 BY MR. GREEN:

24 Q. Colonel Garcia, what was the choice facing then
Minister of
25 Defense Garcia concerning these two groups in May 1980?

2297

1 MR. KLAUS: Same objection.

2 THE COURT: Same ruling. You may answer the
question.

3 MR. KLAUS: Objection, probative value outweighed
by

4 the prejudicial effect. Could I be heard sidebar?

5 THE COURT: No. I will permit this. Let's go
ahead.

6 THE WITNESS: Yes, it is clear, and General Garcia
7 himself has admitted as much in his deposition that he had
even

8 personal disagreements with Colonel Majano as pertains to
9 procedure. Above all, in the case of the funeral of
Colonel --

10 the interpreter corrects himself -- Monsignor Romero who
was

11 assassinated. These were two visible heads within the
armed

12 forces with different ideas on how to face one single
problem.

13 One group with procedures towards democracy. Another
group --

14 MR. KLAUS: Objection, move to strike, beyond the
area

15 of his expertise.

16 THE COURT: Let me stop for a minute.

17 Would you please go back to establish the ability
of
18 the witness to give an opinion in this area, has he
studied
19 this, written in this area?

20 MR. GREEN: Okay.

21 BY MR. GREEN:

22 Q. Colonel Garcia, have you spoken with Colonel Majano,
who is
23 the leader of the reformist group?

24 A. Yes, yes, in multiple opportunities, and I continue to
do
25 so to date.

2298

1 Q. Colonel Garcia, have you reviewed CIA and State
Department

2 cables and deposition testimony concerning May 1980 coup
3 attempt by the right-wing military officers?

4 A. Yes.

5 Q. Colonel Garcia, when then Minister of Defense Garcia
was
6 faced with a choice between siding with the reformists led
by
7 Colonel Majano, or siding with the right-wing officers
involved

Defense 8 in the plotting of the coup, which side did Minister of

9 Garcia go with?

10 MR. KLAUS: Objection, again, beyond the scope of
his 11 expertise.

12 THE COURT: The question is, do you have an
opinion on 13 that issue? Is that your question?

14 MR. GREEN: Yes.

15 THE COURT: Okay. I will permit that.

16 MR. KLAUS: Same objection.

17 MR. KLAUS: Also relevancy, objection upon
relevancy.

18 THE COURT: Overruled.

19 THE WITNESS: Well, the answer is in the facts.
20 Colonel Majano was expelled from the Junta, 17 of the most
21 important officers who also followed the Democratic order
were 22 also removed from their positions, and then Colonel Majano
is 23 exiled outside the country. When he returns, he is thrown
in 24 jail, and then, of course, he is forced to go into exile
25 again.

2299

1 BY MR. GREEN:

2 Q. What does all this tell you about Minister of Defense
3 Garcia's power within the chain of command?

4 A. Beyond his own expressions here General Garcia had
total
5 power within his chain of command from his position of
Minister
6 of Defense all the way down to the very lowest step within
the
7 armed forces.

8 Q. Did you hear any testimony about factionalism in the
El
9 Salvadoran armed forces?

10 MR. KLAUS: Objection --

11 MR. GREEN: -- That actually --

12 THE COURT: Wait a minute.

13 BY MR. GREEN:

14 Q. Did you hear any testimony about factionalism in El
15 Salvadoran armed forces that actually interfered with
General
16 Garcia's command authority?

17 MR. KLAUS: Objection, goes beyond the scope of
his
18 expertise and province of the jury, interpreting the
evidence
19 that he heard.

20 THE COURT: I will sustain it on the second
ground,
21 commenting on the credibility of another witness, and I
will
22 allow you to rephrase the question.

23 BY MR. GREEN:

24 Q. Do you have an opinion as to whether there was any
25 factionalism within the El Salvadoran armed forces that

2300

1 actually interfered with General Garcia's actual command
2 authority?

3 A. From the level of the Minister of Defense, all the way
down
4 to the last soldier in the armed force, there was no
5 interference, and the gentleman general exercised his
authority
6 to the fullest.

7 Q. Was there any factionalism that would have prevented
8 General Garcia or General Vides from ordering
investigations of
9 torture?

10 A. No.

11 Q. Given the magnitude of human rights violations being
12 reported and publicized in El Salvador between 1979 and
1983,
13 what is your opinion as to what a military commander
should
14 have done at a minimum?

15 A. Prevent, investigate, punish.

16 Q. Given the magnitude of human rights violations that
were
17 being reported or publicized during that time period would

18 simply giving a general speech about human rights be
enough to

19 fulfill their obligations as military commanders?

20 A. No, there is a saying at least in the majority of
armies

21 that goes " acts not words".

22 Q. The Defendants testified that they received Legion of
Merit

23 awards, are you familiar with Legion of Merit awards?

24 A. Yes.

25 Q. How are you familiar with them?

2301

1 A. Through officers in my country who also receive them.

2 Q. Can you give us a couple names that you are familiar
with

3 from your country who receive Legion of Merit awards from
4 United States.

5 MR. KLAUS: Objection, hearsay. Without a proper
6 foundation, how does he come to that knowledge?

7 THE COURT: What is the legal objection?

8 MR. KLAUS: Insufficient -- hearsay.

9 THE COURT: I'll sustain that and go back to the
other

10 side.

11 BY MR. GREEN:

12 Q. Do you know -- Who was General Galtierri?

think 13 THE COURT: No. So you understand my ruling, I
of 14 we are moving beyond what was established as the expertise
think 15 Colonel Garcia dealing with the command structure, and I
you 16 you are moving into a slightly different area, and I think
hearsay 17 need to establish that he has studied this area or has
18 sufficient background, and then we can go beyond the
19 issue. That is my concern.

20 MR. GREEN: Okay.

21 BY MR. GREEN:

you 22 Q. Colonel Garcia, what studies or other information have
23 as a military command expert undertaken to learn about the
24 significance or lack of significance of Legion of Merit
25 awards?

2302

1 MR. KLAUS: Objection, leading.

answer. I 2 THE COURT: I don't think that suggests the
3 will allow it.

that 4 A. Yes, I studied this problem because of the importance
5 it had in my country that some officers had received that

6 award.

7 Q. And why was that a problem in your country?

8 A. It was important because this award was also given in
my
9 country to officers who had violated human rights, who had
been
10 taken before the courts and some of them convicted and
some of
11 them are even at this time still in prison. It had a
certain
12 resonance in our country, because those who received it
said --
13 no, not those that received them said, the diplomats from
the
14 United States said --

15 MR. KLAUS: Objection, hearsay.

16 THE COURT: Yes, I am going to sustain that.

17 Let's go back to the study that was done, or the
18 efforts that Colonel Garcia expended to look at this issue
so
19 he might be able to talk about it.

20 BY MR. GREEN:

21 Q. Colonel Garcia, have you reviewed lists of people, of
22 military officers in Argentina who received this award?

23 A. Yes.

24 Q. And have you discussed the fact that certain military
25 officers have received this award and what that says about

1 their human rights record?

2 A. Yes.

3 Q. And why did you do that --

4 THE COURT: Let me stop you. I need more
information

5 as to whether or not Colonel Garcia is an expert in this

6 field. Kind of just develop that if you would. That is
what

7 the objection is, I think.

8 BY MR. GREEN:

9 Q. In determining how military commands actually work,
and in

10 your instruction on military command, what is the role or
11 function of awards?

12 A. Yes.

13 Q. What is the role or function of awards in a military
14 command structure?

15 A. Normally, the ones that you would take into account
are

16 those that reward for valor in combat situations. Those
are

17 the ones that have significance, and then you have others
that

18 are given from a diplomatic standpoint. As a result of
some

19 visit from some end of some tenure, as a commander, as a
20 minister, and to people who have provided some service.

21 MR. KLAUS: Objection, insufficient facts and data
to

22 comment on Legion of Merits given by the United States.

23 THE COURT: I don't think we have gotten to that
point
24 yet. Let me go back to Mr. Green and allow him to go
forward.

25 MR. GREEN: I have no further questions.

2304

1 THE COURT: Let me turn for cross-examination to
2 Mr. Klaus.

3 CROSS-EXAMINATION

4 BY MR. KLAUS:

5 Q. General Garcia -- Colonel Garcia, when was the first
time
6 you visited El Salvador?

7 A. In 1991.

8 Q. You weren't present during any of the time period we
have
9 been discussing during this trial, is that correct?

10 A. From '79 to '83, no, but the war continued.

11 Q. Have you ever spoken or discussed any matters with
General
12 Garcia or General Vides?

13 A. No, I have seen them for the very first time in this
14 courtroom.

15 Q. You never inquired as to them to get their views on
what

16 was going on during that time?

17 A. No, I had not the opportunity.

18 MR. KLAUS: Nothing further.

19 THE COURT: Redirect examination.

20 REDIRECT EXAMINATION

21 BY MR. GREEN:

22 Q. Colonel Garcia, did you ever read or watch the video

23 depositions that were taken of General Garcia or General
Vides

24 Casanova?

25 A. Yes, several times.

2305

1 Q. And that was before this trial?

2 A. Yes, of course.

3 Q. And you heard what they said over the last couple
days?

4 A. Yes.

5 MR. GREEN: No further questions.

6 THE COURT: Colonel, you may step down. Thank
you,

7 sir.

8 The Plaintiffs may call your next witness.

9 MR. STERN: The Plaintiffs call Professor Terry
Karl.

forward.

10 THE COURT: Professor Karl, would you come

SWORN.

11 PROFESSOR TERRY KARL, PLAINTIFFS' WITNESS PREVIOUSLY

still

12 Professor, the jury has met you before, you are

the

13 under oath, you need not be resworn, for the clarity of

14 record, would you state your full name.

Karl

15 THE WITNESS: Yes, Terry Karl, Terry with a Y, and

16 with a K.

and

17 THE COURT: All right. Let me turn to Mr. Stern

18 allow him to proceed.

19 DIRECT EXAMINATION

20 BY MR. STERN:

present

21 Q. Professor Karl, have you had an opportunity to be

Defendants,

22 in the courtroom during the past few days when the

23 General Garcia, General Vides Casanova, and their witness,

24 Ambassador Corr testified?

25 A. Yes, I have.

2306

1 Q. I would like to read you a passage of Ambassador

2 Corr's trial testimony, if I might.

3 This is from page 1887.

4 MR. KLAUS: This trial?

5 MR. STERN: Yes. Would you like a copy?

6 BY MR. STERN:

7 Q. Page 1887, beginning line five, Ambassador Corr was
asked:

8 " What is ERP and FAPO?

9 A. " FAPO was the group that broke away from the orthodox
10 Communist party and formed the first guerilla group. ERP
was

11 the first revolutionary Army of the people led by
Villalobos,

12 and they issued statements.

13 " And you moved into the period in the '80's that
was

14 extremely high violence. 1980 and '81 were just horrible
15 years. You talk about people having anxiety, there were
all

16 kinds of murders. You had the rise of death squads which
had

17 the roots in 1970's of fighting against-- from the
oligarchs as

18 they tried to strike back against some of the guerilla
violence

19 and you had the the streets of San Salvador constantly --
there

20 were demonstrations, protests and people shot in these

21 demonstrations. "

22 Lines five through 19.

23 Professor Karl, as a scholar in political
science, in

24 Salvadoran politics and military matters, do you have an

25 opinion as to the substance of Ambassador Corr's
testimony?

2307

1 A. Yes, I do.

2 Q. And what is your opinion?

3 MR. KLAUS: Objection, calls for a commentary.

4 THE COURT sustained.

5 BY MR. STERN:

6 Q. Professor Karl, in your opinion, what were the
7 characteristics of the violence that took place in the
periods
8 1979 through 1983 as carried out by the Salvadoran
military?

9 A. This violence was directed. It is not an amorphous
10 violence. It does not fall from the sky. Mass terror is
not
11 an accident. It is not a small number of people.

12 The testimony or some of the testimony that I've
heard
13 in the courtroom of Ambassador Corr, the statements you
just
14 read to me, in my opinion, give the view that there is
violence
15 everywhere, coming from all sides, and we don't know where
it
16 is coming from.

17 I don't think that is an accurate interpretation
of

18 what happened in El Salvador.

19 MR. KLAUS: Objection, move to strike, commenting
on
20 his credibility.

21 THE COURT: Let's stop for a second. Each side
has the
22 right to bring forth witnesses who can give opinions, but
I
23 think ultimately the opinions need to deal with the facts,
and,
24 of course, a witness is free to say whether they think
that
25 fact is accurate or not and so on. That is how we need to
deal

2308

1 with these issues, okay.

2 Let me go back to Mr. Stern. I will overrule the
last
3 objection. Let's proceed.

4 BY MR. STERN:

5 Q. Thank you.

6 Have you finished your answer?

7 A. No. This is too pervasive, too systematic, involves
too
8 many logistics, too many trucks, too many arms, too much
9 equipment. It is all over the country, and there are

60, 10 somewhere, depending on whose figures you accept, between
11 and 75,000 people dead because of this violence.

12 MR. KLAUS: Objection, relevancy, and time period.

Let's 13 THE COURT: I will let you cross on that point.
14 go ahead.

15 BY MR. STERN:

16 Q. What time period are you referring to, Professor Karl?

the 17 A. I am referring to the time period of the entire war to
18 time of the peace agreements by that the beginning of the
19 repression until the peace agreements in 1992.

time 20 If you would like me to refer to the period of
21 1979 to 1983, the statistics of people who are murdered in
that 22 period of time is probably closer to 30 or 40,000.

23 Q. Professor Karl, who are the targets of this terror
that you 24 have described?

were 25 A. I testified earlier that the targets of this terror

2309

1 people who were against the military dictatorship and who
earlier 2 wanted to see change in this country. And I testified

because
educate
tried

3 that some of the key targets were people in the church
4 people in the Catholic church in El Salvador tried to
5 peasants, they tried to teach peasants to read, and they
6 to teach peasants to count from one to 100 so nobody would
7 cheat them. That was one group of targets.

why
as --

8 A second group of targets, and I have already
9 testified to this, is medical personnel. I talked about
10 that was so, why people who practiced medicine were seen

rebuttal.

11 MR. KLAUS: Objection, beyond the scope of

12 This is a repeat of her testimony.

go

13 THE COURT: I'll sustain it on this point. Let's
14 ahead and back to Mr. Stern for the next question.

15 BY MR. STERN:

testimony by
that

16 Q. Professor Karl, in your view, having heard the
17 Defendants and their expert that you heard, in light of
18 testimony, what were the reasons why the terror that you
19 described was taking place?

20 MR. KLAUS: Objection, asked to interpret their
21 testimony.

an
answer

22 THE COURT: I don't think it is. I think it is a
23 straight forward question asking for an opinion as to why
24 occurrence was happening. I will allow the witness to

25 the question.

2310

1 THE WITNESS: I think that officers in the
military
2 believed that people who wanted these kinds of changes
were
3 communist subversives, and I think they believed that the
way
4 to deal with that problem, whether people were carrying
guns or
5 whether people were totally peaceful and just trying to
change
6 their country was to drain the sea or engage in what they
call
7 total war against unarmed civilians.

8 Q. Professor Karl, are you able to be any more specific
about
9 who was carrying out this violence against unarmed
civilians in
10 El Salvador in the 1979 through '83 time period?

11 A. The bulk of the violence in El Salvador was ordered by
12 military and security forces, by officers in those forces,
by
13 officers in uniform, by officers operating out of regular
14 headquarters, by officers operating out of the
headquarters of
15 security forces. By that I mean, the National Guard,
National

16 Police, and Treasury Police.

17 Q. Professor Karl, what is the basis for the opinion that
you

18 just expressed to the jury?

19 A. The basis of my opinion is reading thousands of U.S.
20 cables, some of which I have presented here. It is based
on my

21 interviews over 20 years in El Salvador. It is based on
my

22 interviews with both military people and non-military
people,

23 and it is based on the findings of the Truth Commission
which

24 is the most serious study of violence in El Salvador that
has

25 yet taken place.

2311

1 Q. Does the Truth Commission contain any statistics or
2 numerical breakdown of the violence that occurred in El
3 Salvador in these years?

4 A. Yes, it does.

5 MR. STERN: Could I have slide 124 on the screen,
6 please?

7 BY MR. STERN:

8 Q. Professor Karl, is this a slide that you prepared
based on

9 information contained in the Truth Commission Report?

10 A. Yes, it is.

11 MR. KLAUS: Objection, this isn't rebuttal.

12 THE COURT: Sustained. Sustained, this is a
repetition

13 of testimony that has already been given.

14 MR. STERN: All right. Let's have the slide
taken off

15 the screen, please.

16 BY MR. STERN:

17 Q. Professor Karl, what did the Truth Commission state --

18 Let me give you a better question.

19 In what manner did the Truth Commission attribute
20 incidents of violence among various armed groups in El
Salvador
21 in the 1979 through '83 period?

22 MR. KLAUS: Objection, this is a repeat of her
23 testimony.

24 THE COURT: I will permit this. I don't recall
whether
25 it is or not. I will permit it since it goes to one of
the

2312

1 issues brought out by the defense on defense case. Let's
go

2 back.

3 BY MR. STERN:

4 Q. Do you have the question in mind?

5 A. Could you ask it again? I am sorry.

6 Q. Yes. Focusing on information contained in the U.N.
Truth

7 Commission Report, what attribution or breakdown of
8 responsibility for acts of violence in the 1980's were set
out
9 in the report?

10 A. I think that where I differ with some of the testimony
that

11 I've heard from the Defendants is --

12 MR. KLAUS: Objection, comment on the testimony.

13 THE COURT: Sustained.

14 Q. Confining yourself to your own opinions and
information
15 contained in the Truth Commission Report, are you able to
16 answer my question?

17 A. Yes, I am. The bulk of the murders in El Salvador by
every
18 knowledgeable observer and according to the Truth
Commission,

19 the figure is 85 percent, is committed by the military and
20 security forces in El Salvador. That means people who are
21 wearing uniforms, who are not death squads, but are the
formal
22 military and security apparatuses of this country.

23 Q. There was some testimony about death squads by the
24 Defendants and Ambassador Corr. In your opinion, what was
the
25 relationship, if any, between the official military and

1 security forces of El Salvadoran organizations that might
be

2 called death squads in the periods of 1979 to 1983?

3 A. The CIA cables in particular are very clear about
this.

4 There are assassination teams, which I would not call
death

5 squads, that are operating formally out of the
headquarters of

6 the security forces.

7 They are operating in the intelligence sections
of the

8 National Guard, National Police and Treasury Police. They
are

9 men in uniform in -- holding command responsibility in
this

10 military. They are officers that run operations of

11 assassination directly out of the headquarters.

12 MR. KLAUS: Objection.

13 THE COURT: I will overrule that objection.

14 MR. KLAUS: Insufficient basis.

15 THE COURT: I will overrule the objection. Let's
go

16 ahead. You may cross on this.

17 THE WITNESS: The relationship between those
groups,

18 and what we call the death squads, by death squads we
generally

in 19 mean people who are out of uniform so you cannot attribute
actually 20 quite the same way the proof or evidence of who they
21 belong to.

22 The relationship that has been found by the Truth
23 Commission and by a number of other investigations is that
uniform, 24 there are both these groups inside the armed forces in
groups 25 armed security forces in uniform, but there are also

2314

that 1 that involve some military officers, and some civilians
squad, 2 interact with each other in what I would call a death
rather 3 meaning that their killing operations are out of uniform
that 4 than in uniform. The relationship between those two is
military 5 some of the people in those death squads may be active
6 officers, or they may not be active military officers.

who 7 The important point is, in our understanding of
Salvador, 8 has actually committed the torture and murder in El
9 it is primarily people in uniform.

10 The people I would define as death squads, these
11 people in civilian outfits so we don't know who they
really are
12 is 10 percent according to the Truth Commission of the
murders
13 and assassinations in El Salvador.
14 Q. Professor Karl, in your opinion, were the bulk of the
human
15 rights abuses carried out by the Salvadoran military and
16 security forces in the '79 through 1983 time period the
work of
17 isolated individuals?
18 A. No. It was not isolated individuals. It was not
mentally
19 ill National Guardsmen. It was not a moonlighting
soldier. It
20 was not a single spy in the CIA. It was an organized
group of
21 military officers operating out of the headquarters, not
only
22 in San Salvador, but especially in San Salvador of the
23 securities forces, and operating primarily in the
intelligence
24 units of every security force, National Guard, National
Police
25 and Treasury Police.

2315

1 Q. Professor Karl, do you have an opinion based on your

when 2 knowledge and study as to whether General Vides Casanova,
1979 3 he was director of the National Guard in the period of
4 through 1983, should have known that individuals under his
the 5 command had carried out the murders that we refer to as
6 Sheraton killings?

7 MR. KLAUS: Objection, beyond the scope of her
8 expertise.

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

11 Q. Do you have an opinion?

12 A. Yes, I do.

13 Q. What is your opinion, Professor Karl?

14 A. My opinion, based on, again, reading probably
thousands of 15 U.S. cables, is based on the following information: Under
16 Secretary of State Motley writes to Secretary of State
George 17 Schultz that General Vides has an extensive --

18 MR. KLAUS: Objection, hearsay unless she produces
the 19 document.

20 THE COURT: This gets back to where we were before
21 about the witness disclosing the basis of the opinion.

22 The question simply was whether you did have that
23 opinion, and what was it?

24 THE WITNESS: Yes, I do have an opinion, okay.

25 THE COURT: And whether he should have known about

1 this.

2 Q. Leaving specific documents aside, can you give us your
3 opinion?

4 A. Yes, I think he should have known because, if you can
5 envision the National Guard with then Colonel Vides as
head of
6 the National Guard, the intelligence apparatus I am
talking
7 about is directly under him. It is located in the same
8 building. It involves a number of people. It involves
people
9 he has promoted that he advanced in their careers, and he
knew
10 well. So my opinion is that he should have known.

11 Q. Are you able to identify additional sources of
information
12 available to General Vides Casanova that would provide him
with
13 a basis for knowing about those murderers?

14 A. Yes.

15 Q. And what are those?

16 A. There are cables that show that --

17 MR. KLAUS: Objection reference to cables. Unless
she
18 can produce them.

19 THE COURT: I permit that, and I will put the
basis in

20 the record later. You may go ahead.

21 THE WITNESS: There are cables that I have
previously

22 shown that are reports from Ambassador Hinton, who was the
23 Ambassador in El Salvador in 1983.

24 MR. KLAUS: Objection, outside -- Never mind.

25 MR. STERN: Your Honor, I will be happy to show
some

2317

1 of the cables if that would be useful.

2 THE COURT: We have spent a lot of time on the
cables.

3 Why don't we see if we can't cut to the chase and get
whatever

4 testimony you want to get out that is admissible.

5 BY MR. STERN:

6 Q. Thank you, Your Honor.

7 Have you finished your answer?

8 A. There are cables that report -- U.S. Ambassador report
9 conversations with General Vides naming specific
individuals in

10 the intelligence agencies and stating that these people
are

11 murderers.

through
ability
its

12 Q. Professor Karl, in your opinion, in the period 1979
13 1983, did the Salvadoran military high command have the
14 to prevent violence being carried out by the members of
15 forces?

16 A. Yes.

17 Q. And why is that your opinion?

hard
seriously
there is

18 A. Because when the Salvadoran high command is pressured
19 enough by the United States, and when it is pressured
20 by the United States, particularly in the visit of Vice
21 President Bush, the violence drops immediately. When
22 a deadline that says you must do this, it drops.

23 To me that shows control.

points in

24 Q. You traveled to El Salvador in the -- at various
25 the period of 1979 through 1983, is that correct?

2318

1 A. That's right.

studied

2 Q. In your opinion, at that point in time, based on your
3 personal experience and items that you have read and
4 about, was El Salvador in a chaotic situation?

repression

5 A. El Salvador was in a repressive situation, but
6 and chaos aren't the same. I testified, and my experience
7 being there, that --

strike.
8 MR. KLAUS: Objection, nonresponsive, move to

9 THE COURT: Overruled.

10 THE WITNESS: I testified that in my experience of
11 being there, that San Salvador was a very normal place in
the
12 sense that you could go out, you could go to places to
eat.

13 You could have a normal life as long as you weren't one of
the
14 victims of repression. It was abnormal in the sense that
there

15 were bodies in the morgues. There were the bodies that I
16 testified about. There were statements in the paper of
all of
17 the violence etc., but in a sense of a chaotic situation,
in

18 which nothing is working and you can't function, that is
not
19 the way that the City of San Salvador was.

opinion,
20 Q. Professor Karl, to what extent, if any, in your

21 did the Civil War that existed in the country hinder the
22 military and security forces from preventing human rights
23 abuses being carried out by their members?

repression

24 A. I think it is important to understand that the
25 predated the Civil War. That there were already at least

1 10,000 people dead by the time an armed unified opposition
2 called the FMLN was formed, so something could have
certainly
3 been done before there was a full scale Civil War.

4 Once the full scale Civil War broke out, and
5 particularly once the FMLN built itself into a serious
fighting
6 force, which really isn't until the beginning of 1983,
until
7 that time I don't see that the Civil War really affected
the
8 ability to deal with the kind of torture and violence that
9 occurred.

10 Later, which is the period of time Ambassador
Corr was
11 serving, there is a full scale Civil War, but full scale
Civil
12 War in my view doesn't affect the fact that officers and
13 commanders can stop torture that is going on inside their
own
14 headquarters, that that Civil War does not affect what is
going
15 on inside the headquarters in San Salvador, and certainly
16 doesn't affect it until, I think one could argue, until at
17 least 1989.

18 Q. Professor Karl, over the course in 1980's in El
Salvador,

19 are you familiar with agrarian, elections and banking
reforms

20 that have taken place?

21 A. Yes, I am. I have actually written quite a bit on
this.

22 Q. In your opinion, what relationship is there, if any,
23 between those reforms and human rights record of the
Salvadoran

24 military and security forces?

25 A. Just because there are elections does not mean there
is not

2320

1 repression. Because the military permits elections, and
this

2 is something this military did throughout its history,
does not

3 mean that the kinds of repression that I have described is
4 somehow alleviated because people vote. The way they are
5 alleviated, Ambassador Corr said he, as an opposition
person,

6 would not have participated in those elections because he
would

7 have been afraid. I think in that sense, in my view,
there are

8 no free and fair elections in El Salvador until the full
range

9 of political opposition can participate in those
elections, and

10 that does not happen until 1994, after the peace
agreements. I

11 don't think you can have free and fair elections when
there is

12 no rule of law.

13 Q. In your opinion, Professor Karl, do the reforms in the
14 areas that I mentioned reflect a willingness on the part
of the

15 two Defendants here, General Garcia, and General Vides
Casanova

16 to reform the military itself?

17 A. I think those reforms have nothing to do with the
reform of

18 the military. What they show is the tremendous capacity
of

19 this military when it wanted to get something done. When
it

20 wanted to nationalize the banks, it could nationalize the
banks

21 in 24 hours. When it does want to hold an election, not
an

22 easy process, you have to line people up to vote, those
cards

23 have to be stamped to prove they vote, there is a
tremendous

24 logistical capacity in these things, these things show the

25 military and security forces had that logistical capacity,
and,

1 therefore, my opinion is if they wanted to apply that
2 logistical capacity to themselves, they could have.

3 Q. What is your basis for stating that over the course of
the
4 1980's, the military did not reform itself?

5 A. Well, simply stated, when General Vides stepped down
and
6 after years of what the military high command claimed was
the
7 professionalization of the armed forces, the next Minister
of
8 Defense and high command held hands in a meeting and
ordered
9 the murder of six Jesuit priests.

10 I don't think that is a professional military.

11 MR. KLAUS: Objection, no basis, goes beyond the
scope
12 of rebuttal.

13 THE COURT: Again, I will allow you.

14 MR. KLAUS: Relevancy.

15 THE COURT: I will allow you to cross on that.

16 And I want to come back here. The Defendants in
this
17 case, and I want to make sure the jury understand it.

18 I think I am going to change my ruling. I am
going to
19 sustain your objection. I am going to instruct the jury
to
20 disregard that.

21 It would be absolutely wrong to hold these
Defendants
22 liable if some successor person engaged in the murder of
the

here, 23 Jesuit priests. We must confine ourselves to the issues
to the 24 and I realize the last statement was made with reference
instruct 25 overall functioning of the military, but I am going to

2322

1 jury to disregard that.
2 Let's see if we can stay focused on the issues
that we 3 are going to deal with.
4 BY MR. STERN:
5 Q. Professor Karl, leaving aside any specific incidents
of 6 human rights abuse, at any time, do you have a basis to
point 7 to as evidence for your testimony that the Salvadoran
military 8 was not reformed throughout the course of the 1980's?
9 A. Yes, I do.
10 Q. And what is that?
11 A. In the peace agreements that were signed between the
two 12 competing forces, Salvadoran armed forces and FMLN, the
basis, 13 and most important part of those peace agreements was an
14 agreement to dismantle the repressive apparatus in El

rights

a

that

put

as,

they

15 Salvador. That meant dismantling and disbanding National
16 Police, Treasury Police, National Guard. It meant purging
17 officers from the military that had records of human
18 abuses, and 106 officers were removed from the military as
19 result of this.

20 Those actions and the reduction of the military
21 followed were essentially the same demands that had been
22 forward in 1979. It was the dismantling of those forces, I
23 think, and the decision of the competing parties, as well
24 all observers that these were non-reformable forces, that
25 could not be redeemed, they had to be dismantled.

2323

the

take

1 I think that is the most powerful evidence for
2 lack of reform in the military.

3 Q. In what year did the actions that you just described
4 place?

5 A. The decision to disband was in '92, in the peace
6 agreements. The disbanding of the police in the military
7 occurred over '93 and '94.

8 Q. Did the peace agreements make any provision for
reparations

9 to victims of human rights abuses during the 1980's in El
10 Salvador?

11 A. U.S. sponsored Truth Commission made a recommendation
to

12 the Salvadoran Government that victims of murder and
torture

13 should be compensated in El Salvador. It made a
recommendation

14 to that effect. The Salvadoran Government decided not
even to

15 have discussions on that issue, and there are no
reparations

16 available to any victim of murder or torture in El
Salvador

17 according to my knowledge.

18 Q. Professor Karl, in the period 1979 through 1983, to
what

19 extent, if any, did the Salvadoran civilian Government
have

20 control over the military and security forces as a
political

21 matter?

22 A. The notion that a civilian Junta, or a civilian
president,

23 whether it is President Magana or President Duarte, M-a-j-
a-n-a

24 or D-u-a-r-t-e, is not a notion that any El Salvadoran
would

25 accept. It is not a notion that you would find in any
academic

the
Government

1 journal or anything that appears in any serious form in
2 body of cable traffic that we have from all U.S.
3 agencies.

it is
that
to to

4 What we see is that it is very clear from the way
5 United States and other actors deal in El Salvador, that
6 the military that it is the power and Minister of Defense
7 is considered power behind the thrown, the person you go
8 get things done in El Salvador.

rights

9 Q. Professor Karl, in your work in the area of human
10 and policies, do you study the manner in which Governments
11 respond to accusations of human rights abuses?

12 A. Yes, I do.

identify

13 Q. And in studying those reactions, are you able to
14 certain patterns that can be said to characterize the
15 responses?

16 A. Yes, I do, and I teach this as well.

repeat of

17 MR. KLAUS: Objection, your Honor, this is a
18 her testimony. It goes beyond rebuttal.

did

19 THE COURT: It sounds to me this is a matter we

20 cover on direct. Is there something specific you are
leading

21 up to?

22 MR. STERN: If I might have a moment, Your Honor.

23 THE COURT: Surely, yes, of course. I said
covered on

24 direct. I meant covered on the Plaintiff's case in chief.
Let

25 me go back to Mr. Stern.

2325

1 BY MR. STERN:

2 Q. If I am correct, Professor Karl, you gave some earlier
3 testimony on the notion of deniability on the part of
human
4 rights abusers, is that correct?

5 A. That's right.

6 Q. Over the course of the past few days without
commenting on

7 specifics, have you been exposed to new information and
ideas
8 that are relevant to your views in that area?

9 A. Yes.

10 Q. And how do you -- how does that affect the opinions
that
11 you hold on the subject that you testified about earlier?

12 A. May I ask for -- am I allowed to comment on testimony
or

13 not?

14 THE COURT: No.

15 THE WITNESS: I am not?

16 THE COURT: No. You can give an opinion on
question,

17 but I am concerned about this question, too.

18 THE WITNESS: Could you repeat your question?

19 BY MR. STERN:

20 Q. Sure. My question, Professor Karl, is, how do you
analyze

21 patterns of deniability that you have studied in the early
part

22 of the 1980's in El Salvador?

23 MR. KLAUS: Objection, covered in their case.

24 THE COURT: I do think we covered this, but if
this is

25 a lead up to something dealing with rebuttal.

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1 MR. STERN: I think we may have covered it.

Thanks

2 very much.

3 THE COURT: Okay.

4 MR. STERN: No further questions.

5 THE COURT: Let me turn to Mr. Klaus for

6 cross-examination.

7 MR. KLAUS: No questions, Your Honor.

much. 8 THE COURT: All right. Professor, thank you very
9 Thank you.
10 Let me go back to the Plaintiffs.
how to 11 MR. GREEN: May I consult with co-counsel about
12 operate this camera?
before 13 THE COURT: Yes, and I wonder if I could see it
14 you show it.
a 15 Ladies and gentlemen, the Plaintiffs tried to get
that 16 photograph but we are not able to do it, and we decided
clear 17 the digital camera, assuming for a moment that it shows
to 18 and you are able to see, the thought was we would be able
sure 19 show you the evidence on the digital camera. Let's make
20 it is able to be seen.
21 MR. GREEN: One second, Your Honor.
22 May I approach?
23 THE COURT: Yes. May I see that for a second?
any 24 Thanks very much. I want to be sure not to touch
25 buttons.

person
1 Are the parties willing to stipulate as to the
2 depicted?
3 MR. KLAUS: They want to represent who it is.
4 MR. GREEN: This is from Ms. Neris Gonzalez.
5 MR. KLAUS: May I approach?
6 THE COURT: Yes, let me allow the lawyers to see
it.
7 MR. KLAUS: I don't want to touch anything,
either.
8 THE COURT: Are the parties willing to stipulate
to
9 identity?
10 MR. KLAUS: Yes.
11 THE COURT: Ladies and gentlemen, the parties are
12 willing to stipulate that the picture being shown to you
is a
13 picture of Ms. Gonzalez' body, and let me allow Mr. Green
to
14 pass that among the jurors so they could see it or
however.
15 MR. KLAUS: Does he want to ask Ms. Gonzalez to
16 identify it?
17 THE COURT: I don't think that is necessary if
both
18 parties are willing to stipulate that is Ms. Gonzalez.
19 I don't mind you passing the camera among the
jurors.
20 MR. GREEN: Just don't touch that button there.
21 THE COURT: The button on the top you want to
avoid.

foot 22 MR. GREEN: Your Honor, she has a scar on her
23 from the machete, as well. That will show it.
24 THE COURT: All right. Without getting into any
well 25 testimony, if you want to put a chair in the middle of the

2328

1 of the court, Ms. Gonzalez can remove her shoe.
2 MR. KLAUS: I would ask the court to strike the
last 3 comment.
4 THE COURT: I grant the motion to strike the last
5 statement.
6 A JUROR: Your Honor, it went off.
7 THE COURT: All right. We won't hold you
responsible.
8 Hold on a second, and let me allow Ms. Gonzalez,
if
9 she needs to, to point to the area. Does Ms. Gonzalez
need to
10 take her stocking off?
11 Let me allow the jurors from the back come up
front.
12 If you need to step up front, please feel free to do that.
13 (Plaintiff complies.)
14 THE COURT: Does anyone else need to step around?
Are

15 you all set?

16 Let me turn to counsel for the Plaintiffs.

17 MR. GREEN: Plaintiffs conclude their
presentation.

18 THE COURT: Plaintiffs rest their case?

19 MR. GREEN: Yes.

20 THE COURT: Ladies and gentlemen, we have reached
a

21 very significant milestone in the case.

22 You remember when we were talking in the
selection

23 process of the jury, we were talking about the fact there
are

24 really four stages of the trial, four stages of the trial.
I

25 think when most of us think about trials, we think of the
first

2329

1 stage, which is really the presentation of the evidence,
and we

2 have the evidence presented by the parties on both sides.

3 You remember the jury instruction I gave you
talked

4 about to be a fair juror, you had to consciously suspend

5 judgment until two other things happened. First, you will
and

6 you have had the opportunity to hear the attorneys on both

what
you is
issues,
arguments

7 sides talk to you about the evidence. I mention to you
8 the lawyers say is not evidence, and what they argue to
9 not binding upon you. We certainly hope that it will be
10 helpful to you in analyzing the case, to understand the
11 to understand the evidence, and so on.

12 Our plan is that we would have those final
13 tomorrow.

are
to
about
written

14 The third part of the trial before you begin your
15 deliberations is the instruction on the law. What exactly
16 the claims, and what are the legal principles that apply
17 those claims, and you heard a lot about that. We talked
18 that as we have gone along. I am hopeful I will have a
19 copy of the jury instructions for each one of you, and, of
20 course, at that point we put the case in your hands.

21 The fourth part of the trial to begin your
22 deliberations and give us your verdict.

23 Now, what I would like to suggest is, tomorrow I
24 thought maybe I would ask Mr. Caldwell to meet with you in
the
25 morning and we could take lunch orders and arrange to have

allow
could
will
we
before

1 lunch brought in at a certain point that I think would
2 the arguments to go forward. We will take a break so you
3 have lunch, and you can stretch a little bit, and maybe we
4 reduce the lunch hour a little bit, but I have a feeling
5 will have the case in your hands by mid-afternoon, maybe
6 then.

progress. I

7 That is where we are. We made remarkable
8 thank the lawyers on both sides. I appreciate the way
9 have cooperated. This is a difficult and very important
10 for all parties. We are so thankful to you. You have
11 dedicated. You have been with us all the way through,
12 sometimes at personal inconvenience at home, and
13 else. We really appreciate it.

not
or

14 Now, you want to be super careful, you want to
15 talk with anybody, please don't let anyone talk with you
16 near you or anything else.

people
them, and

17 I want you to be extra careful, even if you see
18 connected with the trial, make sure you don't talk to

19 it is the whole concept that as judges of the facts of
this
20 case you will be able to evaluate the evidence and decide
the
21 case based on the evidence here and the law as I will
explain
22 it.

23 Now, why don't we stop at this point. This will
give
24 me an opportunity to go back, and we have been meeting
every
25 night talking about the jury instructions, I think we are
99

2331

1 percent there, but it is so important that the lawyers
know
2 what are the jury instructions so as they are talking to
you
3 about the evidence, they can relate that to the
instructions of
4 law that is given.

5 Let me ask you to be careful about media
coverage, the
6 newspapers, if you want to read them bring them in and run
them
7 by Mr. Caldwell in the morning, and we will get them back
to
8 you.

9 Have a nice night, and we will see you tomorrow

10 morning 9:30.

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

12 THE COURT: Please be seated. Any motions to be
made
13 by either side before the court?

14 MR. KLAUS: Your Honor, I would like to reserve my
15 motions. I have a motion for judgment as a matter of law
based
16 on lack of proof of one of the elements, command
17 responsibility.

18 THE COURT: When would you like to make that
motion? I
19 want to make sure there is no adverse appellate
consequences.

20 That is all.

21 MR. KLAUS: I will make it now.

22 THE COURT: Could you use the lectern.

23 MR. KLAUS: Under the third or fourth element in
the
24 command responsibility instruction, even as proposed by
the
25 Plaintiffs, there has to be a showing of knowledge of the
acts

2332

1 alleged by the Plaintiffs on behalf of the Defendants.
There

2 hasn't been any evidence offered that they knew of these
acts

3 until now -- until this case was filed. That is the basis
of
4 my motion. As a matter of law -- I know usually matter of
5 knowledge is for a trier of fact, but here when there is
total
6 absence of any evidence of their knowledge of what
happened to
7 these people contemporaneously of when it happened or
shortly
8 thereafter, they could have fulfilled any of their duties
under
9 command responsibility demands judgment as a matter of law
for
10 them.

11 THE COURT: All right. I don't think I need
additional
12 argument on that point.

13 I think you misunderstand the requirements.

14 In looking at the elements of command
responsibility,
15 in the course of our discussions about jury instructions,
we've
16 referred to elements one and two being specific to the
17 Plaintiffs in this case, and elements three and four being
18 really generic requirements.

19 Now, the first element at least as it was
originally
20 written, and we've talked about changing it slightly is
that as
21 a matter of fact, the plaintiff in this case, each of the
22 Plaintiffs would have to establish that they were in fact
23 tortured by either a member of the military, a member of
the

24 security forces, or -- and I had proposed perhaps a third
25 alternative by somebody acting in concert with the
military or

2333

1 security forces.
2 The second element that has to be established is
that
3 there was, in fact, a superior subordinate relationship
between
4 a specific defendant, that is, between General Garcia or
5 General Vides and the person who actually committed the
6 torture, but I don't think the law requires, as a matter
of
7 fact, we had a sentence, and I think it is still in here,
if it
8 is not, it probably needs to be, that there does not have
to be
9 proof that General Vides or General Garcia actually knew
that
10 someone under his command had tortured Professor Mauricio
or
11 Ms. Gonzalez, or Dr. Romagoza.

12 The theory, as I understand it, is that the
torture of
13 civilians by members of the military was so wide spread,
so
14 claims the Plaintiff. Now, I understand this is a
disputed

15 issue of fact, but that the Plaintiffs are claiming that
it was
16 so wide spread, that either the Defendants actually knew
or
17 should have known that their subordinates were committing
acts
18 like this, torture, extra judicial killing, and that they
19 failed to take appropriate steps either to prevent or
punish
20 for these acts.

21 And I think the classic example would be that if
it
22 had been brought to a commander's attention that troops
under
23 his command had engaged in an act like the massacre at El
24 Mozote, and if the commander did not take appropriate acts
to
25 investigate and punish, if those troops turned around and
did

2334

1 the same or something similar, someone involved in the
second
2 event would be able to claim that the commander was
responsible
3 because having been given appropriate information, the
4 commander did not investigate, did not punish, and,
thereby,
5 did not deter the troops under his command from continuing
in

6 that conduct.

7 I think that is the classic application where a
8 commander becomes liable for matters that he may not have
had
9 personal knowledge over, but where the law presumes that
he had
10 knowledge because he had the initial knowledge.

11 Now, as I said before, I realize all of this is
12 contested and certainly that is what you are going to
argue to
13 the jury. But looking at the evidence as I must on this
type
14 of a motion, that is, looking at the evidence in the light
most
15 favorable to the non-moving party, because what you are
asking
16 me to do is take the case away from the jury, I think that
17 there is certainly evidence before the jury that would
allow
18 the jury to evaluate each one of these elements, and there
is
19 sufficient evidence which if found to be credible by the
jury
20 would support those verdicts.

21 So, for all of those reasons, I am going to deny
the
22 motion for judgment as a matter of law.

23 Are there any other motions at this time?

24 MR. KLAUS: I want to renew my motion regarding
25 Professor Mauricio on the statute of limitations.

ruling, 1 THE COURT: You may. I will adhere to my prior
motions 2 and if it is easier for you, can we all agree whatever
renewed, 3 have been made by either side prior to this time are
appellate 4 and I will adhere to my prior rulings so for whatever
sides? 5 concerns they are preserved. That is agreed by both

6 MR. GREEN: You are going to adhere to your prior
7 ruling on de jure command responsibility?

8 THE COURT: I am not quite sure how I ruled on
that.

9 MR. GREEN: You denied our motion on summary
judgment.

10 THE COURT: Yes. I think what you have both
presented 11 in a classic sense is a jury trial, and I am sure as we
have 12 all listened to all of the issues that have been
presented, I 13 am sure that every single one of us has reflected on the
fact 14 that we sit in a courtroom where both sides have put forth
15 their views calmly, with order, and that ultimately 10
citizens 16 are going to be asked to resolve these issues, and that is
our 17 justice system as it works.

18 Why don't we take a break for 15 minutes, and my
hope
19 is that I am going to have what I think is marked draft
six of
20 the jury instructions, and I would tell you and ask you if
you
21 would to take a look at the elements -- everything is in
bold
22 that is new, so you can immediately focus on that, but the
23 things I think we need to talk about are very, very
critical
24 deal with whether the command responsibility changes that
we
25 talked about, whether they are adequate, and I would like
to

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1 also ask you to take a closer look at the punitive damage
2 instruction which is somewhat new, and I tried to draft it
3 having looked at the language that comes from some of the
cases
4 in this field of human rights abuses, and so on, and just
to
5 make sure we have covered the appropriate language, that
we
6 haven't inadvertently lowered the bar on punitives, I
don't
7 think we have, but I want you to look at that.
8 Let's take a 15 minute break, we will come back
and

9 deal with these issues.

10 (Thereupon, a short recess was taken.)

11 THE COURT: For the record, I am looking at what
is
12 marked draft six and going to page five, I believe that is
the
13 deposition instruction we talked about yesterday, and I
think
14 that is exactly from the Plaintiffs' recommendation.

15 Is that okay for both sides?

16 Page five, in bold, and says depositions.

17 MR. KLAUS: No objection.

18 THE COURT: All right. The next section that is
new is
19 entitled claims in this case and you remember we talked
about
20 the fact that we wanted people to understand that people
have
21 separate claims, what they were, and they were allowed by
22 federal law. The intent is that we outline what the
claims
23 are, that is, the claims are essentially all the same.
There
24 are three separate cases we really tried together, and, of
25 course, two of the Defendants are suing both Defendants.
One

2337

1 of the Defendants is suing only General Vides.

jury 2 The last paragraph to that is from the standard
3 instructions about trying all of these claims separately.

4 Anybody have a problem with that?

5 MR. KLAUS: No.

6 MS. VAN SCHAACK: That is fine.

and I 7 THE COURT: The next is command responsibility,
8 passed out two things, one is a total alternate, a
definition

9 under element two. When I say that, it is meant to be a
10 restating of what we had titled superior subordinate
11 relationship.

and 12 My own preference is for what is in draft six,
remember 13 what I tried to do is simply take what we had and you
the 14 when we were talking about the -- well, I was going to say
to 15 Alien Tort Claims Act, but that is separate, when we began
Command 16 discuss how do we deal with applying the Doctrine of
applied 17 Responsibility? If you happen to have somebody who is not
18 formally a member of the military, can this doctrine be
the 19 to them to hold a commander liable? I think we all agreed
tried 20 answer to that is yes, if those conditions are met, so I
someone 21 to change element one simply to indicate you can have

of
the
22 who is not formally a member of the military, and in terms
23 defining the superior subordinate relationship, I've added
24 sentence that is in bold.

25 Now, I haven't used the word de jure or de facto,

2338

convey,
somebody,
of
1 because they are legal terms, and I don't think they
2 but clearly what we are talking about is an example, one
3 example of where you have de facto authority over
4 that is authority in fact as opposed to the -- some sort
5 authority imposed by law.

currently
6 Does anyone object to the way draft six is
7 worded on this? Is it acceptable to you, or do you have a
8 preference?

seven
9 MR. GREEN: One minor typo at the bottom of page
10 where it says the second line from the bottom, says may
11 nonetheless --

12 THE COURT: Be, should be.

13 MR. GREEN: I will let Ms. Van Shaack lead.

amount
14 MS. VAN SCHAACK: Your Honor, we appreciate the

the 15 of work you have put into this. I am inclined to agree
16 language in draft six with its simplicity in a way does a
17 better job of capturing the concept we have been
discussing. I
18 am worried about the alternative. We have more about de
jure
19 and de facto, a lot of legalees.
20 THE COURT: That is my thought. When you all
talk
21 about the facts, it is getting the concept across. The
fact
22 that somebody does not wear a uniform does not mean that
23 somebody is outside command responsibility if two elements
are
24 satisfied. We want to keep it as simple as we can, and
make
25 sure it is accurate.

2339

1 MR. KLAUS: No objection.
2 THE COURT: Okay for both sides? All right.
3 Here is the next, and this is a major change, I
want
4 to make sure you've looked at it. In draft five we have -
- I
5 don't have draft five in front of me -- yes, I do. We had
an
6 instruction on punitive damages, and you remember, we had
a

7 discussion about adding the terms callous indifference as
one
8 of the requirements, an alternative requirement.

9 The plaintiff gave some language on punitive
damages,
10 really, the plaintiff -- when you look at it, the
Plaintiffs'
11 chief request was the callous indifference recommendation,
and
12 defense seemed to say that they could live with what the
13 plaintiff was asking for as long as we simply repeated
14 callously indifferent in the next sentence. That is the
15 definitional sentence that said an act is wanton, reckless
or
16 callously indifferent if it is done in such a manner.

17 This instruction in draft six is what we have
been
18 able to pull out of some of the cases that have dealt with
19 human rights violations as opposed to the 1983 cases,
because I
20 think that is where some of the other language came from.
And
21 I would simply draw your attention -- there may be other
things
22 here, too, but I think the critical words are in the
eighth
23 line from the top, that is, that the conduct must be
malicious,
24 wanton or recklessly indifferent.

25 Now, let me tell you what my concern was. I want
to

1 be careful that we don't somehow slip into having a lesser
2 standard. We didn't mean to be lesser. We all understood
it
3 to be conforming with the generally used language about
4 punitive damages. I don't think either side would want to
get
5 something that is wrong and then later if the jury should
6 return punitives have someone come back and say wait a
second,
7 we didn't employ the right standard.

8 Some of these things, it is hard to figure out
what
9 they really mean, except we know it really has to be
10 extraordinarily bad. I don't have any preference. I
think,
11 frankly, draft six is more accurate in terms of human
rights
12 issues, and in the language that is traditionally used,
but I
13 could certainly live with draft five as you have proposed,
14 although I have reservations about the concept of callous
15 indifference. I think indifference is what everybody
agrees
16 needs to be there, and then the concept of finding the
right
17 adjective.

18 I think we would be all right in reckless because
when
19 you go to some of the punitive damage cases, that pops up.

Section 20 MR. GREEN: Reckless indifference pops up in
of 21 1983 and Title Seven and various other civil rights kind
for 22 cases. However, callous indifference is an accepted basis
we 23 punitive damages under many equally valid authorities, and
Defendants' 24 feel that callous indifference better describes the
25 failure to exercise their command responsibility than does

2341

1 reckless.
2 THE COURT: What do you think of reckless and
callous.
3 MR. GREEN: Reckless or callous.
4 THE COURT: No. Reckless and callous.
5 MR. GREEN: Reckless is where I act recklessly.
6 Let me withdraw that, judge.
7 THE COURT: No, think about it, the touchstone of
what
8 you are focusing on is the failure to act.
9 MR. GREEN: Right.
10 THE COURT: It is turning a blind eye to
something, and
11 as I hear that, when you say callous indifference, it is
like

that 12 somebody having been so hardened or immuned to the claim,

13 they don't bother looking into it.

when 14 MR. GREEN: Correct, or they don't bother acting

15 they know there are a series of bad acts.

reckless is 16 THE COURT: I think reckless or callous and

receive 17 someone who is -- in whom authority is reposed, they

the 18 information, they don't act, and given the significance of

failure not 19 information or the reliability of the reporter, the

reckless 20 to do something when presented like that is literally

going 21 because you are just simply running the risk that it is

22 to occur again and again and again.

sure 23 Now, as I said before, my only concern is making

on 24 whatever the verdict is, that it is going to be defensible

25 appeal. I am concerned about concept of just callous

2342

that 1 indifference because the one thing we want to make sure is

2 we have not inadvertently used flowery language that an

is not 3 appellate court would say when you really examine it, it
4 much more than negligence, that is my concern.

-- 5 MR. GREEN: Judge, normally, I would agree to you
6 excuse me, normally agree with you. Sorry, it has been a
long 7 trial.
8 When I am reckless, say I am a police officer,
and 9 talking about excessive force, continuum of force, a
suspect 10 has pushed me as a police officer, and I can either use my
11 PR-24, my side baton or some other physical force or I can
pull 12 out my gun and shoot him. If I pull out my gun and shoot
him, 13 along the continuum force, that is a reckless act.
Callous 14 indifference I think is more appropriate in the context
where 15 there is a failure to act. Reckless indifference is where
I 16 act but I'm indifferent to the consequences of my act.
Callous 17 indifference is where I am indifferent -- or uncaring
about 18 about the consequences about my failure to act, and I do
think 19 that is a fundamental distinction.

20 I realize callous indifference, while a valid
basis 21 for punitive damages under Smith, and the 7th Circuit case
and 22 a couple other cases, is only mentioned in a hand full of

23 cases. We think it more appropriately applies to the
24 Plaintiffs' theory against the generals in this case.

25 THE COURT: Okay. I hear your position on it.

2343

1 Let me approach this this way, then.

2 In terms of the menu before us on punitive
damages,

3 does anyone have a preference as to which approach, and
then we

4 can deal with the words we put in.

5 When I say that, I am looking at what is before
us in

6 draft six. What was before us in the Plaintiff's revision
of

7 draft five, and draft five.

8 Does anyone have a strong feeling what we should
start

9 from?

10 MR. GREEN: Judge, if you could say recklessly or
11 callously indifferent.

12 THE COURT: In which draft?

13 MR. GREEN: Draft six.

14 THE COURT: You could go with draft six. You want
15 reckless and callous in the disjunctive?

16 MR. GREEN: Yes.

view of 17 THE COURT: Without changing it, what is your
18 draft six? Do you think that is an appropriate --
19 MR. KLAUS: That is fine with me. If they want it
--
20 What I understand, they want wanton, recklessly
or
21 callously indifferent.
22 THE COURT: Right now-- Look at line eight. Right
now
23 it reads if you find that the Defendants' conduct was
24 malicious, wanton or recklessly indifferent.
25 MR. KLAUS: Right, they want a comma after wanton,

2344

1 recklessly or callously indifferent.
2 MR. KLAUS: That is okay with me.
3 THE COURT: Right, is that correct?
4 MR. GREEN: That is right.
5 THE COURT: Malicious, wanton, comma -- if you
find
6 that it was malicious or wanton -- should it be malicious
or
7 wanton or --
8 MR. GREEN: It could be any one of those four. If
it
9 was malicious, you could get punitive damages. If it were
10 wanton, you could get punitive damages.

malicious 11 THE COURT: I guess what I am asking you, is
12 an adjective that it is maliciously indifferent, wantonly
13 indifferent?

14 MR. GREEN: No.

15 THE COURT: So if you find that the conduct was
16 malicious, that someone did it.

17 MR. KLAUS: With malice.

18 THE COURT: With malice, that is enough?

19 MR. GREEN: That is all you need.

20 THE COURT: Or wanton.

conduct 21 So you would have it read that the Defendants'
22 was malicious, wanton or recklessly or callously
indifferent.

23 MR. GREEN: Correct.

24 THE COURT: Or recklessly or callously
indifferent.

25 Does defense have any objection to that?

2345

same if 1 MR. KLAUS: No, Your Honor. Doesn't it read the
2 you say recklessly or callously indifferent?

3 THE COURT: You want malicious, wanton or
recklessly or
4 callously indifferent?

5 MR. KLAUS: Yes, I don't think that changes the
6 meaning.

7 MR. GREEN: I think the comma after wanton and
then or
8 recklessly or callously indifferent reads better and more
9 appropriately describes the separate basis, separate
standards
10 for awarding --

11 THE COURT: This is what makes people look at
lawyers
12 and question what it is we are doing, but I think this is
13 significant. It is a comma, but it has to be after
wanton,
14 malicious, wanton, recklessly or callously indifferent.

15 MR. GREEN: Yes.

16 THE COURT: Can everybody agree with that? Can
you
17 live with that?

18 MR. KLAUS: I am not a grammar expert.

19 THE COURT: I don't pretend to be one either. I
want
20 to make sure I am giving an instruction to which neither
party
21 objects.

22 MR. KLAUS: I want to make sure it says what we
want it
23 to say, and I can see in here malicious stands alone,
wanton
24 stands alone, or recklessly indifferent stands alone; and
in
25 order to make callously indifferent stand alone, we have
to add

1 the second or.

So

2 THE COURT: I think that has been the suggestion.

3 it would read --

punitive

4 Let me go through it again. It would say a

the

5 damage award in this context may be made if you find that

6 Defendants' conduct was malicious, wanton or recklessly or

7 callously indifferent.

after

8 MR. KLAUS: With a comma after wanton, and comma

9 recklessly or callously indifferent.

It

10 THE COURT: There is no comma after recklessly.

11 says or recklessly or callously indifferent. Recklessly

12 defines the indifference.

- no,

13 MR. KLAUS: I don't know if it calls for a comma -

14 okay. The word callously will go first. Okay.

15 THE COURT: Let me read it to you one more time.

16 Was malicious, wanton, or recklessly or callously

17 indifferent.

to

18 Neither party objects to that. It is acceptable

19 both parties?

20 MR. GREEN: Plaintiffs accept.

21 MR. KLAUS: No objection.

22 MS. VAN SCHAACK: Your Honor, I noticed we
drafted an

23 instruction on Alien Tort Claims Act versus Torture Victim
24 Protection Act. Frankly, it doesn't change what the jury
25 does. I want to be clear that Professor Mauricio and Ms.

2347

1 Gonzalez are proceeding under the --

2 THE COURT: I thought we made it clear last
night.

3 The difference is that Professor Mauricio and Ms.
Gonzalez,

4 their claims are only under the Alien Tort Claims Act, and
they

5 have agreed to limit the act for which they are seeking
damages

6 to torture.

7 Dr. Romagoza is proceeding under the Torture
Victim

8 Protection Act, and his claim would be for torture.

9 That is agreeable to both sides and everybody
10 understand that?

11 MR. KLAUS: That is my understanding.

12 THE COURT: Okay, all right. Let's go back,
anybody

13 have any comma, criticism, suggestion regarding the jury
14 instructions?

15 MR. GREEN: Judge, I have never done this before
but I
16 have no objections. I regret to say I have no objections.
It
17 is hard for me to do that.

18 THE COURT: Well, I don't regret to hear that.
How
19 about from the defense, any thoughts or criticisms?

20 MR. KLAUS: Number three, could we change the
wealth of
21 the defendant to lack of wealth of the defendant?

22 THE COURT: I am sorry, what page are you on?

23 MR. KLAUS: 12 --

24 No, judge, I am only joking.

25 I am happy to say I don't have any objection.

2348

1 THE COURT: Good. Both sides have been helpful
and

2 thank you for what you have provided. That has brought to
us

3 where we are.

4 I would like to talk to you about the verdict
form,

5 and I haven't had a chance to study it that closely.

6 I want to be clear, do both parties agree we have

and 7 adequately addressed de jure and de facto command issues,
in a 8 although we have not used the terms, we dealt in concepts
plaintiff of 9 way we put those concepts before the jury? Is the
10 that mind?

11 MR. GREEN: Yes, sir.

12 THE COURT: How about defense?

the 13 MR. KLAUS: Intellectually, we have dealt with it
14 best way possible.

of 15 THE COURT: Okay. Now, does everybody have a copy
16 the proposed verdict form?

17 MR. KLAUS: Yes, sir.

18 MS. VAN SCHAACK: Your Honor, we may not have.

19 Okay, we do.

of 20 THE COURT: Let me raise this issue with you. Two
and 21 the Plaintiffs have claims against two of the Defendants,
should 22 please understand, I am not suggesting what the verdict
23 be or anything else, but we need to think these things
24 through.

against 25 If a plaintiff should prevail in its claims

1 both Defendants, how do we deal with preventing double
recovery
2 under both compensatory and punitive damages, and, by that
I
3 mean, let us assume that a plaintiff did establish that
they
4 had been tortured and that both Defendants were liable,
and so
5 they then establish to the jury's satisfaction that the
amount
6 of compensatory damages was X amount, how do we determine
that
7 this is the amount only with respect to General Garcia as
8 opposed to General Vides?

9 I understand we have separate verdicts, but, for
indeed
10 instance, if someone says a particular plaintiff was
reasonable
11 tortured, and when you look at it, X amount is the
both
12 amount for compensatory damages, if they were to find that
the
13 Defendants share that responsibility, do we leave it to
a
14 jury to allocate the amount so that -- in other words, if
\$100,000,
15 jury concluded that injuries were worth, for example,
if
16 that they did not return 100,000 here, and 100,000 there,
50,000
17 their view was it was just 100,000, as opposed to saying

figure, 18 here or 50,000 there, or some other division of that

19 does that present any kind of a problem?

the 20 MR. GREEN: We don't think so the way we set out

21 verdict form.

with 22 If the Defendants wanted us to combine, at least

damages, and 23 Dr. Romagoza and Ms. Gonzalez, the total amount of

would 24 have the Defendants be jointly and severally liable, that

that. If 25 be fine with us. I don't think they would want to do

2350

1 they want to do that, they could do that.

me, in 2 THE COURT: The only other thing that occurs to

jury 3 State Court we allocate responsibility because we ask the

liable, 4 to tell us as between multiple Defendants if they are

5 what is the percentage.

it. 6 I don't know that we even do that, or how you do

but I 7 It sounds to me it would be joint and several liability,

8 don't know, I haven't thought about this.

9 Mr. Klaus, have you thought about that at all?

10 MR. KLAUS: Well, the way it is written, it asks
to
11 find the total amount of compensatory damages under both
12 Defendants. What I am worried about what if they come
back
13 with a different amount, they find against both Defendants
and
14 come back with a different amount for the total amount.
That
15 is inconsistent on its face.

16 THE COURT: Well, not necessarily. I think you
would
17 indulge the presumption that the jury meant do what it
did, and
18 if we said to the jury -- I thought seriously about having
19 separate verdict forms for each plaintiff to underscore
the
20 fact that we have three separate claims and they are
separate
21 so that if the jury divided the moneys a certain way, if
the
22 jury got to that, we would honor that. We would assume
the
23 jury knew exactly what they were doing. We have one form,
and
24 they specified amounts. I don't think that would create a
25 facial --

1 MR. KLAUS: It says the total amount of
compensatory
2 damages. My understanding that would include all
compensatory
3 damages, whether they were suffered at the hands of
General
4 Garcia or at the hands of General Vides, and if they
couldn't
5 be inconsistent because it calls for a finite, total
amount.

6 What I suggest is that we have them find once a
total
7 amount of damages, and then ask them to allocate it like
we do
8 in the State cases, otherwise, I think there may be a
9 misunderstanding, and there may be confusion.

10 MR. GREEN: There is no comparative fault
principle,
11 but I do think this verdict form, and we are open to other
12 suggestions from either the Defendants or the court,
clearly
13 specifies Juan Romagoza against Guillermo Garcia, and Juan
14 Romagoza against Vides Casanova, what are the damages?

15 I think the way we broke it down in the verdict
form
16 addresses these concerns. We could very easily just add.

17 MR. KLAUS: If they want to do that, I don't mind
if
18 they wanted to add each of the Defendant's name under
number
19 two, under each verdict, if they want to add -- in other
words,
20 it would read under the first one, it would read what do
you

21 find to be the total amount of compensatory damages
suffered by
22 Dr. Juan Romagoza as a result of his torture against
General
23 Jose Guillermo Garcia.
24 MR. GREEN: I don't think we have any problem
with
25 that in principle. I need to figure out where to put the
--

2352

1 MR. KLAUS: So it is clear that is not just the
total
2 amount, but the total amount against that defendant.
Unless it
3 is clear to everybody else that is what it means and it is
just
4 me that is not clear.
5 THE COURT: Let me suggest how you could handle
that.
6 I think it is what Mr. Green referred to a moment ago, and
7 probably in two restate on the Plaintiffs' claim against
8 General Garcia, what do you find to be the total amount of
9 compensatory damages, if any, suffered by Dr. Romagoza as
a
10 result of the torture? And the presumption would be if
the
11 jury answered this question as to General Garcia and the
same

12 question as to General Vides, that those amounts are
separate
13 and distinct, and the jury knew what it was doing, and
that any
14 allocation, however it has been done, has been done by the
15 jury.

16 MR. KLAUS: I think if that is put in here, that
is
17 fine.

18 THE COURT: The point you make is if there were a
line
19 that somehow gave the total amount of damages, and then
when
20 you added somehow what was attributable to General Vides
and
21 General Garcia, and it exceeded that amount, you would
have an
22 argument there was facial inconsistency.

23 MR. KLAUS: The way it reads to me now I would
have an
24 inconsistency if the total amounts came out different
because
25 even though it is under the heading versus Jose Guillermo

2353

1 Garcia, and versus General Vides Casanova, it says the
total
2 amount of compensatory damages suffered.

3 THE COURT: Let me put this to you. Looking at
the

of
a
4 second question, what do you find to be the total amount
5 compensatory damages, if any, suffered by Dr. Romagoza as
6 result of his torture for which the defendant General Jose
7 Guillermo Garcia should be held accountable?

8 MR. KLAUS: Yes, something akin to that.

it
9 MR. GREEN: Either one would be okay. We think
10 would be clearer if we prefaced each one of the damage
11 interrogatories as Mr. Klaus just suggested. For
instance,
12 number two, as to Dr. Romagoza's claim against General
Garcia,
13 what do you find to be the total amount of compensatory
damages
14 suffered by Dr. Romagoza as a result of the torture, and
do
15 that for punitive damages and compensatory damages.

16 THE COURT: Let me tell you, anything we can do to
make
17 it clear that you are talking about individual liability.
That

18 is why I say for which General Garcia can be held
accountable,
19 and then no one can come back and say the jury didn't
20 understand what they were doing. They understand this is
a
21 judgment against General Garcia, if they render a judgment
22 against General Garcia. If they tell us no, then they
tell us
23 no. My concern is that we not have a verdict form that
people

24 can pick apart and say it wasn't clear.

25 While we all know on the claim of someone against

2354

lay it 1 someone else, those are the damages, I would rather you
2 out that you are saying we find this defendant should be
3 responsible for this amount of money.

do 4 MR. GREEN: That is fine for the Plaintiffs. We
5 have other language.

6 THE COURT: Go ahead. Be happy to hear it.

to 7 MR. GREEN: Question number two, what do you find
8 be the total amount of compensatory damages, if any,
suffered 9 by Dr. Romagoza as a result of his torture that is a
10 attributable to the acts or omissions of General Garcia?

Guillermo 11 MR. KLAUS: Or just for which General Jose
12 Garcia is legally responsible. How about that?

13 MR. GREEN: That is fine.

put 14 MR. KLAUS: Instead of question mark after torture
15 a comma and say for which --

The 16 THE COURT: Let me come back here for a second.

question, 17 first question when you look at it is the threshold
18 and the threshold question is, has the plaintiff proven by
a 19 preponderance of the evidence that a specific defendant is
20 accountable and responsible for that torture? The second
21 question simply says if you answered question one yes,
then 22 would you tell us what is the amount? And I think what we
are 23 trying to do is figure out some sort of allocation or to
24 attribute to the jury that they have allocated the amount.

25 MR. KLAUS: Exactly, we are trying to avoid the

2355

reads 1 confusion that they find the total amount. The way it
2 now, it says total amount of compensatory damages, and the
way 3 it reads to me, it would have to say the same under both
number 4 two and number five or there would be an inconsistency.
It is 5 the same act, the same injuries. It deserves the same
amount 6 of compensation. It needs to be attributed between each
7 defendant. That is my understanding of what compensatory
8 damages are.

9 THE COURT: Let me turn to the defense, what is
your
10 view whether there would be joint and several liability if
the
11 jury did find that both defendants were liable?
12 MR. KLAUS: I would say yes. That is appropriate.
And
13 then we have more confusion.
14 MR. GREEN: Punitive damages can be different.
15 THE COURT: Yes, absolutely. Here is what I am
16 thinking. If we have an on the record agreement that
should
17 there be a verdict against both Defendants that any
18 compensatory damage award would be joint and several, and
we
19 won't add them together.
20 MR. GREEN: That is fine, but I think the way
these
21 jury instructions or this verdict form is currently
worded, a
22 jury could conceivably award separate damages -- the way I
read
23 it, they are asking the jury how much compensatory damages
did
24 Dr. Romagoza suffer attributable to General Garcia?
25 THE COURT: Well, if we can come to an agreement
on

the
whatever
has

1 this and you can point this out to the jury, if we agree
2 second question asks them to write the total figure of
3 that figure is of compensatory damages that the plaintiff
4 suffered because of the torture.

5 MR. KLAUS: Then we can do away with number five.

should

6 THE COURT: Wait a minute. And that if the jury
7 find that both Defendants are liable, the amount on two.

8 MR. KLAUS: Would be shared jointly and severally.

saying

9 THE COURT: I hear what you are saying. You are
10 we really ought to remove question five. That might have
11 some benefit.

12 MR. KLAUS: If we agree they would be jointly and
13 same severally, even if they only find one, it would be the
14 amount of damages.

15 THE COURT: We agree punitives are individual.

16 MR. KLAUS: Yes.

Florida

17 THE COURT: Hold on a second. Looking at the
18 total standard jury instruction, and it says: " What is the
19 amount, open paren, one hundred percent of any damages
20 sustained by the claimant and caused by the incident in
21 question. " That is what we said.

22 MR. KLAUS: I think one hundred percent makes it
23 clearer.

The 24 THE COURT: I do, too. What about adding that?
the 25 suggestion that there be an agreement that if by chance

2357

would be 1 jury were to find any defendant responsible any award
two 2 joint and several, and if that is the agreement, question
amount, 3 should be slightly changed to say what is the total
if 4 open paren, one hundred percent, of compensatory damages
5 any, suffered by Dr. Romagoza.

five 6 And I am just thinking about it, you can't omit
7 because there is the possibility that the jury would say
we 8 General Garcia is not liable, and so we need to go to --
9 need to go to the claim against General Vides.

10 MR. KLAUS: What we can do --

and 11 THE COURT: I wonder if we should have a preface
12 say you answer this only if you have not answered question
13 two.

14 MR. KLAUS: We can put two at the very end.

think 15 THE COURT: Before we get to where we put it,

16 about this. What if we left question five in, but with a
17 statement that you are to respond to this only if you have
not
18 responded to question two.

19 MR. KLAUS: That is fine.

20 MR. GREEN: May I have a moment?

21 MR. KLAUS: Just in the instructions it would be
under
22 number four, under the instructions after Casanova, it
would
23 say if you haven't answered question two, please continue
to
24 question five.

25 THE COURT: It would say this: " If you answered
yes

2358

1 to the above question, and you entered a figure on
question
2 two, skip question five. If you answered yes to the above
3 question but you did not enter a figure on question two,
please
4 answer question five".

5 MR. KLAUS: That is fine with me.

6 THE COURT: The theory being we would only get one
7 figure on compensatory damages if both Defendants are
found

not
General
would
compensatory

8 liable. On the other hand, if General Garcia was found
9 liable, but there were a finding of liability against
10 Vides, the jury would answer that question, and again it
11 ask for the total, one hundred percent, of any
12 damages.

the
are
up
hundred

13 Do you mind when I explain this to the jury that
14 liability for compensatory is joint and several, and so we
15 not asking the jury, and the jury should not itself split
16 the amounts. In other words, when we ask them for one
17 percent, that is what we are asking for, the total figure.

lay

18 MR. GREEN: That sounds reasonable. Could you
19 that out again?

go
with,
their
the

20 THE COURT: At some point, I am going to have to
21 explain the verdict form, and what I thought I would do is
22 through the verdict form and simply say to the jury that,
23 first, I have no view as to what they should come back
24 however, I need to go through this so they understand
25 options. They must understand that question two asks for

1 total amount of damages. Should the jury find both
Defendants
2 guilty, there is what is called joint and several
liability,
3 and that means both Defendants are responsible for the
amounts
4 set forth in line two.

5 MR. GREEN: Right.

6 THE COURT: On the other hand, if the jury does
not
7 respond on line two, but answers on line five, only in
that
8 instance General Vides would be responsible for that
amount,
9 because that pertains exclusively to him.

10 MR. GREEN: If you explained it that way, the
current
11 verdict form would be fine.

12 THE COURT: I think we need to make minor changes,
but
13 the current form is fine.

14 MR. GREEN: May I have a moment?

15 THE COURT: Yes. And it will go without saying
the
16 jury if they found no liability, they don't get to
damages, but
17 damages are predicated on finding of liability.

18 MR. GREEN: Judge, I have conferred with my
19 co-counsel, and we believe that the court instructing the
jury

20 as to joint and several liability should be fine.

is

21 THE COURT: Okay. Now, the only thing I might do

Dr.

22 divide the verdict form up so there is a verdict form for

form

23 Romagoza, a verdict form for Ms. Gonzalez, and a verdict

what

24 for Professor Mauricio, and I think that only underscores

25 we are telling the jury that we have really tried three

2360

1 separate cases together, but I think the form is good.

this

2 I will make those changes and get you a copy of

3 as fast as I can.

for you

4 I hope I will have it for you-- I will have it

5 at some point in your argument.

6 Do you have a disc with this on it by any chance?

that.

7 If not, don't worry about it. We can change

8 That is not a problem.

discuss

9 Does anybody have anything else we need to

10 before we discuss final argument?

be

11 MR. GREEN: When you change the wording, it will

12 what do you find to be the total amount --

13 THE COURT: Open paren 100 percent.

14 MR. GREEN: Okay.

15 THE COURT: And we need to make sure the
directions are

16 clear as to where you skip and where you go.

Your 17 MR. STERN: Two small things with the exhibits,

18 Honor. We talked about the jury binders, and we are going
to

19 come to court tomorrow with the binders. The binders do
not

20 contain all of the exhibits that we put into evidence just
for

21 purposes of space. We did not set things up that way, so
I

22 guess there are two things to mention. One is that we
would

23 propose to give each juror a separate spiral copy of the
Truth

24 Commission Report. And to include that would take up too
much

25 room. I talked to opposing counsel and he doesn't have a

2361

1 problem with that.

2 THE COURT: Good.

3 MR. STERN: I would appreciate if the court would

4 remind the jury that there are exhibits in the bin that is
not

is not 5 in the binder. It reflects selection on our part but it
6 the universe of the exhibits.

again 7 THE COURT: I will do that, and I will tell them
8 that everything that has been offered will go back in the
jury 9 room, and they are free to look at everything, but you put
this 10 together on both sides for the jury's convenience, and,
you 11 know, they are free to look at everything, and doesn't
make any 12 difference who offered it. It is in evidence, and so on.

on the 13 My suggestion would be that you put the binders
everyone 14 chairs in the morning. I ask you double check it so
15 has seen the binders on both sides, and we will do that.

sure 16 MR. KLAUS: The only other thing, I want to make
record, 17 we are all marked, our exhibit lists are marked for the
18 the ones that are in are marked.

both 19 THE COURT: Why don't you hold off, and why don't
will ask 20 sides have a chance to do that. And one other thing I
like 21 you to do, when I finish the jury instructions, I would
we 22 you to sit down and physically go through the exhibits so
offered 23 are sure whatever goes back into the jury room has been

binders 24 and received into evidence. And you will check the
evidence. 25 first to make sure they have everything in there in

2362

asked 1 Now, my notes indicate that the plaintiff has
you 2 for 135 minutes for argument. Have you thought about how
3 like to divide that?

which 4 MR. GREEN: Yes, Your Honor an hour and a half,
5 would be 90 minutes, plus 45 minutes for rebuttal.

about 6 THE COURT: How about the 90, have you thought
that 7 that? If we start 9:30, and we have generally been --
8 would bring us right into the 11 o'clock break. Does that
9 sound okay with you?

10 MR. GREEN: Yes, Your Honor.

all 11 THE COURT: How about those 90 minutes, are you
12 yourselves going to divide those up?

13 MR. GREEN: I would appreciate a warning after 37
14 minutes.

15 THE COURT: Okay. You want a warning at 37?

The 16 MR. GREEN: Yes, we are going to divide it 50/50.

17 first part of the argument.

18 THE COURT: Okay, who is going to be speaking for
the

19 second part?

20 MR. STERN: I will.

21 THE COURT: Do you want a warning?

22 MR. STERN: 37 minutes as well.

23 THE COURT: You want a two minute or five minute
24 warning? Sometimes people ask, sometimes they don't.

25 MR. STERN: I would appreciate a warning at two

2363

1 minutes.

2 THE COURT: Okay. Mr. Green, do I understand you
want

3 the an eight minute warning just before the end, and Mr.
Stern,

4 you would like a warning at 43 minutes or so. All right.

5 MR. STERN: That is fine.

6 THE COURT: Who is going to do the closing? Mr.

7 Green?

8 MR. GREEN: Yes.

9 THE COURT: Do you want a warning at any point in
10 that?

11 MR. GREEN: 37 minutes, I am used to the eight
minute

12 warning in appellate arguments.

13 THE COURT: Mr. Klaus, do you want a warning at
any

14 point?

15 MR. KLAUS: Five minutes.

16 THE COURT: Okay. Now let's see if we can pace
this

17 through. If we start 9:30, and we do the first part of
the

18 Plaintiffs' argument, that would take us to about 11, and
we

19 take the mid-morning break, say we come back 11:15, and we
have

20 been going until about 12:30. That is an hour and 15
minutes.

21 Is that an acceptable place for you to pause, Mr. Klaus?

22 MR. KLAUS: Yes, I would imagine I will probably
be

23 finished. I am not sure about those times.

24 THE COURT: We will be pretty close to it. We
have

25 almost everything ironed out.

2364

1 That would give you an hour and 15 minutes, if
you

2 need more --

3 MR. KLAUS: We will go on after lunch.

4 THE COURT: If you are a little close, I would
defer
5 lunch to you, but I don't want to put that burden on you.
Do
6 you mind if we break?
7 MR. KLAUS: No.
8 THE COURT: I was thinking about a 45 minute for
lunch,
9 the jury has time for lunch, and take a walk if they want
to.
10 Come in 1:15, and do concluding portion, because we have
11 another 45 minutes, and also the concluding portion of
12 Mr. Klaus' final argument, whatever that amount will be,
and we
13 will move in -- we will take another break and do the jury
14 instructions.
15 Sounds to me like we probably won't put the case
to
16 the jury until mid-afternoon.
17 Okay. Anything else we need to talk about?
18 MR. KLAUS: And then just report 9:30, if they
don't
19 come back tomorrow, we will go until five tomorrow with
the
20 jury?
21 THE COURT: Well, this is what I have done in the
past
22 and I think there is some value in it.
23 I take the view we've set the time frame for the
jury
24 and the jury has adhered to it. We will tell them we will
do

evening, 25 what they want. If they want to deliberate into the

2365

other 1 that is fine, however, they need to be sensitive to the

go 2 jurors. They have young children at home. They usually

come 3 home. If they have not arrived at a verdict, they will

4 back Friday and continue on with the deliberations.

5 I just don't know where we will be on that.

tomorrow 6 MR. KLAUS: If the jury agrees to go later

7 night, that is fine with me. If they don't, that is fine.

8 THE COURT: They may say we are very, very close.

jury 9 Things like that happen, fine. I don't want to have the

10 feel they are being pressured to do anything, either.

choices up 11 MR. KLAUS: I agree. We should leave those

Friday. 12 to them. I just want to know if they pick up 9:30 on

meet 13 THE COURT: Sometimes the jurors say they want to

14 at nine. We will do what they want to do. But they can't

15 deliberate until everybody is present.

will 16 MR. GREEN: I have one slight -- I don't think it

17 be a problem. I have a doctor's appointment 9 o'clock on
18 Friday morning, and I should be able to be available by
19 telephone by 9:45 or 10 o'clock.

20 THE COURT: Sure. If there is a jury question,
can
21 someone else sit in for? You. You have a great team on
your
22 side, maybe other people can help out, if you would be
23 available by telephone in case they need to talk with you.
I
24 don't think that is going to be a problem.

25 Okay. I want to take a moment, if I can. This
case

2366

1 has been long in the coming, and I know that, I know you
were
2 distressed originally that the case was not moving
quickly,
3 being brought to court more quickly. I know just the
pendency
4 of these cases cause enormous anxiety. But I said, I felt
5 strongly that we needed to have the decision of the 11th
6 Circuit in the Ford case so that if the law had been
improperly
7 given, that nobody in this case would have to relive it
because
8 it -- had it been simply inadvertently repeated.

9 Now, the case has gone, I think, remarkably
smooth,
10 and I really mean that because of the way the lawyers have
11 worked together. I can't think of a case that I have ever
12 tried where the issues have been more serious, and more
deeply
13 felt on both sides. I want to thank you for the way in
which
14 the case has been tried because although these issues are
most
15 important issues that could be considered by any jury, the
case
16 has truly been handled in a professional, calm and
diligent
17 manner, and the issues are before the jury. We are going
to
18 have to get their judgment, but I want to thank the
lawyers on
19 both sides for the way you have conducted yourselves.
20 I want to express my appreciation for the people
who
21 have been monitoring the trial and attending. I said
before we
22 are in a very small courtroom, and we talked about maybe
moving
23 the proceeding to a larger courtroom. One of the benefits
is
24 the acoustics are good. Just in terms of the looking at
the
25 evidence, this court lends itself a little better for
that, but

each
like
by
that
questions

1 I think the other problem we've seen, we are so close with
2 other, we can almost hear each other breath and things
3 that. I want to thank the members of the public for the
4 restraint and sense of decorum that has existed. I think
5 doing that you have allowed the parties the opportunities
6 they have sought to present these issues, and lay the
7 out, and so we move into that next stage.

moved a
seating. I
reserve

8 Now, one other thing I want to mention. We've
9 couple other benches in to try to assure some extra
10 want to check with both sides, is it appropriate we
11 seating for family members on both sides?

people,

12 MR. KLAUS: General Garcia needs space for five
13 requests it. And General Vides would like space for three
14 people. That is a total of eight.

reserving

15 THE COURT I don't know how many the benches seat.
16 What I was going to suggest, what do you think about
17 the first row on either side to be allocated for the
18 parties?

on

18 The plaintiff the first row on the left side, and defense
19 the right side, and have seating for the press, and allow

20 remainder for general public seating. Would that be
21 agreeable?

22 MR. GREEN: Your Honor, I think yesterday I
indicated

23 based on my rough calculations we would request 11. We do
have

24 three Plaintiffs, and we have three co-counsel and a law
clerk,

25 summer clerk who have been actively participating in the
case.

2368

1 THE COURT: Let me take a look at the seating in
the

2 morning. I want to get with the marshal. At a minimum,
we

3 will reserve those rows, and we will try to do addition to
that

4 to make sure there is adequate seating. We haven't had a
5 problem in terms of being able to accommodate people.

There

6 may be additional people tomorrow, and I want to make sure
7 family members and people associated with the parties on
both

both

8 sides have adequate seating.

9 All right. The court will be in recess, and we
will

10 reconvene tomorrow morning 9:30.

11 (Thereupon, a recess was taken 4:30 p.m.)

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2369

1 CROSS-EXAMINATION

2253 2 BY MR. GREEN:.....

3 REDIRECT EXAMINATION

2276 4 BY MR. KLAUS:.....

2292 5 JOSE LUIS GARCIA, PLAINTIFF'S WITNESS PREVIOUSLY SWORN....

6 DIRECT EXAMINATION

2292	7	BY MR. GREEN:.....
	8	CROSS-EXAMINATION
2304	9	BY MR. KLAUS:.....
	10	REDIRECT EXAMINATION
2304	11	BY MR. GREEN:.....
	12	PROFESSOR TERRY KARL, PLAINTIFFS' WITNESS PREVIOUSLY
2305	13	SWORN.....
	14	DIRECT EXAMINATION
2305	15	BY MR. STERN:.....
2235	16	(Defendants' Ex. 61-B received into evidence.).....
2243	17	(Defendants' Ex. 35 received into evidence.).....
2245	18	(Defendants' Ex. 16 received into evidence.).....
2249	19	(Defendants' Ex. 36 received into evidence.).....
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CERTIFICATION

"I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Official Reporter

Date

