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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

HURLEY
Beach, Fl.

JUAN ROMAGOZA ARCE, et al.,)	Docket No.
)	99-8364-Civ-
Plaintiffs,)	
)	West Palm
v.)	July 18, 2002
)	9:30 a.m.
JOSE GUILLERMO GARCIA an individual)	
CARLOS EUGENIO VIDES CASANOVA,)	
)	
Defendants.)	
)	
-----x		

VOLUME 14
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.

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

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1 THE COURT: Good morning, everyone, please be
seated.
2 Before we begin, I would like to take a moment to
seek
3 your advice regarding the appropriate verdict form, and I
have
4 distributed to you two copies. The form that is labeled
5 "alternate one" is really a reflection of our discussion
last
6 night, but the form that is listed as "alternate two" is a
form
7 that was developed in light of our discussion last night.
8 Frankly, I think that it more appropriately addresses the
9 concerns that we had and it clearly allows simply one
finding
10 of compensatory damages. It also reflects that any
finding of
11 punitive damages is an individual finding, and there can
be
12 differences in that regard.
13 My advice would be that we ought to use alternate
14 two. I think it is the preferable approach. I think it
is the
15 easier approach and doesn't require the jury to double
back, if

16 you will, and look at how they responded to earlier
questions
17 as we would have had to do, and I think it does respond to
all
18 of the concerns we discussed last night.
19 Does anyone object to using alternate two?
20 MS. VAN SCHAACK: No objection.
21 MR. KLAUS: No objection.
22 THE COURT: I apologize to you for this, because
we
23 have spent a lot of time in attempting to develop the jury
24 instructions, and I wanted to make sure you had the final
form
25 as you were preparing your final arguments. However, in

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1 rereading the 11th Circuit's opinion in the earlier Ford
case,
2 and looking at how we had addressed those issues, I've
passed
3 out what is marked draft seven and there are just a couple
of
4 proposed changes but they deal with critical issues, so I
5 wanted to make sure that you were aware of them.
6 In stating the elements --
7 Let me double check. Is this an earlier version
of
8 draft seven -- let me take a moment, I thought maybe the

9 changes we placed in bold so you can absolutely make sure
you
10 are aware of them. Let me take a minute to make sure I
have
11 them in front of me.
12 If you would go to page seven and let me get
draft six
13 in front of me so I can be absolutely sure I am pointing
out to
14 you the changes. I don't think they are significant, but
I
15 want to make sure you are aware of them.
16 On page seven discussing the second element which
was
17 the superior subordinate relationship, in the sixth line
down
18 in that paragraph, it previously read open paren -- excuse
me I
19 am looking at what would be the fifth line, open paren
two,
20 close paren, the defendant slash military commander had
the
21 effective control over the persons accused of torturing
the
22 plaintiff, and it had a comma and said, "that is, the
defendant
23 military commander had the material ability to prevent the
24 torture," etc..
25 I've changed the word "material" to "actual"
which is

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1 what the 11th Circuit uses. I am looking at the majority
2 opinion in that decision which says, referring to the
earlier
3 cases from the international tribunals, these cases
emphasize,
4 nonetheless, that the command responsibility theory of
5 liability is premised on the actual ability of a superior
to
6 control his troops. A reading of the cases suggest that a
7 showing of the defendant's actual ability to control the
guilty
8 troops is required as part of the plaintiff's burden under
the
9 superior subordinate prong. So I have changed simply the
word
10 "material", and remember we talked about that that that is
a
11 somewhat of a pliable concept, and I used the word
"actual".

12 The only thing I have done there is this: I have
put
13 a period on the sixth line after the word "plaintiff"
because
14 it previously had a comma, and then said "that is", so I
put a
15 period and said "effective control means", and I kept the
same
16 language, that the defendant military commander had the
actual
17 ability as opposed to material ability to prevent the
torture
18 or prevent the persons accused of committing the torture.

19 In other words, and here is a change, it
previously

20 said to be able to invoke the Doctrine of Command
21 Responsibility. I tried to tie that down a little more to
what
22 we are really talking about. That is, in other words, to
23 establish effective control, because that is what we are
24 talking about, establishing that element of the Doctrine
of
25 Command Responsibility, and I kept the rest of it exactly
the

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1 same.
2 I think it is just a stylistic change but I
wanted to
3 make sure you were aware of it.
4 Does that cause any problem to either side?
5 MR. KLAUS: No objection.
6 MS. VAN SCHAACK: We spoke yesterday about the
word
7 "practical".
8 THE COURT: I was trying to remember where we had
9 that.
10 MS. VAN SCHAACK: It was going to be in lieu of
11 material.
12 THE COURT: I don't think it was here. I think it
was
13 somewhere else.

actual 14 MR. KLAUS: I think it was here. I requested

15 and said I would settle for practical.

"actual" 16 THE COURT: I think I need to use the word

clearly 17 since that is the word out of the case law and that was

18 discussed by the 11th Circuit.

19 Does the plaintiff want to lodge an objection to
20 that?

21 MS. VAN SCHAACK: Yes.

22 THE COURT: You would prefer the word "practical"
23 rather than "actual"?

practicality 24 MS. VAN SCHAACK: I think the concept of

tools to 25 captures the notion that you have the means, ability,

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1 do so. That is why we had originally composed that.

2 The concern, I think, is that the term "actual"
3 focuses too much on the specific perpetrators.

are 4 THE COURT: Okay. Let me take you back while we

so 5 discussing this, and I hesitated to do it because we spent

you 6 much time I didn't want to go back to what is really, if

draw 7 think about it, just the heart of the lawsuit. Let me
8 your attention to this.

with 9 In the sixth line down in that paragraph dealing
slightly 10 superior subordinate relationship, I think we have it
read 11 backwards and this is what I would like to suggest. As I
the 12 the Ford opinion, what you have to establish is is that
13 commander had the actual ability to control his troops and
the 14 because of that, he had the practical ability to prevent
15 activity or punish it. Am I making myself clear?

means 16 As I read the case law on effective control, it
because he 17 the commander had actual ability over his troops and
if 18 had that actual ability, you presume he has the capability
identify 19 he wants to to go out and investigate, to go out and
line 20 the perpetrators and punish the perpetrators. However, in
21 six we say "effective control means the defendant military
to 22 commander had the actual ability to prevent the torture or
23 punish the persons accused of committing the torture".

control the 24 The case law talks about actual ability to
practical 25 troops and because of that you then infer he has the

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that 1 ability to do those very steps if he wishes to exercise
2 ability.

that 3 Maybe that is not significant. As I look at it,
4 was a thought I had.

backwardness 5 MS. VAN SCHAACK: I guess I don't see the
6 that you are concerned about. My understanding the idea
of 7 effective control is very much the fact that you can
prevent it 8 or you can punish it.

that 9 THE COURT: If you are happy with the formulation
so 10 is there, I would like to leave it because we have spent
11 much time and you have prepared to go forward. The only
of 12 difference, if I understand, that we have is this question
13 whether we should change the word "actual" to "practical".

phrase 14 I am inclined to leave actual because it is the
15 and word consistently repeated in the 11th Circuit's
opinion.

plaintiff 16 Can everybody live with that without the
17 giving up its right on the objection to the word
practical, or 18 actual versus practical?

19 MR. KLAUS: Yes.

that
20 MS. VAN SCHAACK: I think I understand the changes
21 have been made.

a
22 THE COURT: Can I help you by giving you-- I have
23 copy of what that page looked like before. I thought we
were
24 going to have it in bold, and I think we just had a
25 misunderstanding. You have been very good about giving
that to

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1 me that way to help me focus on any changes.

2 MR. KLAUS: We are looking at draft number five or
3 draft number six?

4 THE COURT: When Ms. Van Schaack and her
colleagues are
5 finished with it, I would ask her to give it to you as
well.

6 MR. KLAUS: I have it.

7 MS. VAN SCHAACK: Thank you, your Honor, I see the
8 changes that were made, with the exception of the term,
9 breaking up of the sentence evens works better.

10 MR. KLAUS: I agree with the changes, your Honor.

11 THE COURT: Okay.

12 MR. KLAUS: Especially the word "actual".

are 13 THE COURT: Let me double check to make sure those

14 the only changes.

one of 15 Again, stylistic, remember on the top of every
16 these headings, we tried to relate it back to the element.
17 With failure to punish, we added element four so the jury
18 understands that is what it relates to.

19 Okay.

20 MS. VAN SCHAACK: Yes.

try to 21 THE COURT: What I thought I would do, again to
22 not interrupt people as best we can was to see if we can
delay

a 23 lunch until about one. I think that would give everybody
24 little more time, and, again, if Mr. Klaus has not
finished at

25 one, we would simply stop for the break and come back and

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1 finish it up after the break.

2 That is okay with everybody?

3 MR. KLAUS: That is fine with me.

final 4 THE COURT: Good. Are we ready to proceed to
5 argument?

6 MR. KLAUS: Just so I know, we are going to use
7 alternative two for the verdict form?

8 THE COURT: Yes, that is agreeable for both sides?

9 MR. KLAUS: And draft seven for jury instructions.

10 MR. GREEN: Subject to the objection.

11 THE COURT: Yes.

12 MR. GREEN: Your Honor, we did get the digital
printout
13 of the photograph. May I show it?

14 THE COURT: Yes, please. Uh-huh.

15 How do we mark that?

16 MR. GREEN: I can't remember the last
consecutively
17 numbered exhibit. I would guess it would be 942.

18 THE COURT: Whatever you have, would you mark it,
19 understanding this was a picture shown to the jury when
the
20 picture was actually shown in the digital camera.

21 Is there any objection to this going into
evidence?

22 MR. KLAUS: No, your Honor.

23 THE COURT: It will be received in evidence
without
24 objection.

25 One last thing, I didn't mention this
specifically

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1 yesterday, but we did talk about it sidebar, and I want to
2 caution everybody, I don't think it would be appropriate
to use
3 or refer to the picture of the cadets that was not offered
into
4 evidence. We want to be careful about that. Okay. The
5 marching cadets.

6 Okay. Are we all set and ready to proceed?

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

9 MR. GREEN: For the record, the exhibit number for
the
10 photograph of Ms. Gonzalez' cuts is 812.

11 THE COURT: Thank you very much.

12 (Plaintiffs' Ex. 812 received into evidence.)

13 MR. KLAUS: Your Honor, for the record, I reviewed
the
14 plaintiff's trial notebook and I don't have any
objections.

15 THE COURT: Okay. Again, I want to ask everybody,
16 please remember that the interpreters are using the
headphones

17 at times, and so they rely on you staying somewhat near
the

18 microphone, because that is how they are picking it up,
and I

19 would ask everybody to consciously slow down a little bit
just

20 so we can make sure we get a correct record. Mrs. Stipes
has

21 been doing a great job, but this is especially difficult.

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

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

24 You thought I was kidding when I said we might get you a
25 knapsack.

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1 Let me tell you what we have done.

2 As you know in this case, the evidence consists
of all
3 of the exhibits that have been received in the record. It
also
4 consists of whatever stipulations were agreed to by the
5 parties, and, of course, it includes all of the testimony
and
6 all of the deposition testimony that was read.

7 Now, what the lawyers have tried to do is,
without
8 being exhaustive, in other words, there are some exhibits
that
9 were introduced that are not in the binders or the
folders, but
10 we thought it would be helpful to you that if you had a
copy of
11 some of the exhibits that may be referred to. But we want
to
12 make sure you do understand that what has been given to
you is
13 not everything, and when you go back to begin your

14 deliberations, we are going to make sure that all of the
15 exhibits are sent back and sent back in boxes with folders
so
16 that should you need to retrieve them and study them again
you
17 will be able to find them, okay. So we are not just
trying to
18 load up on you with all of this, we thought it might be
helpful
19 to you, feel free to put those down on your chairs, it is
meant
20 to be an aid to you.

21 Okay.

22 Let me take a minute and tell you the schedule we
hope
23 to be able to follow today.

24 Because the party -- in this case the parties who
have
25 brought the lawsuit, the plaintiffs, because they have the

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1 burden of proving the case, the plaintiffs get the
opportunity
2 to begin final argument and then to close the final
argument,
3 what we thought we would do is start this morning and
begin
4 with the opening section of the plaintiff's final
argument. I

5 think both Mr. Green and Mr. Stern are going to
participate in

6 that, and then we will take the mid-morning break. When
we

7 finish that, we will turn to defense and Mr. Klaus. I
think

8 that will take us to lunch time. We may go later, if that
is

9 okay with you. We will stop for lunch between 12:30 and
one.

10 We will take a lunch break and we will come back and
finish up

11 any of the rebuttal argument, or any of the remainder of
Mr.

12 Klaus' and move into the jury instructions.

13 We have agreed to as much as possible stick to
the

14 schedule that we have been following so that everybody can
be

15 comfortable, listen, and, hopefully, absorb the arguments.

16 I want to thank you, if I can again, on behalf of
all

17 of the parties for the diligence and attention.

18 I am going to ask that you now give that same
19 attention and courtesy of that attention to counsel for
the

20 parties as they make their final arguments to you.

21 Let me begin, if I might, by turning to counsel
for

22 the plaintiffs and allow him to make the beginning portion
of

23 the plaintiff's final argument.

24 MR. GREEN: Good morning, ladies and gentlemen.
This

25 is a case about the duties of military commanders.

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El 1 As you know, now, these generals came to power in
that 2 Salvador in 1979. As you know, there was a rein of terror
3 was unleashed upon unarmed civilians in that country.

Dr. 4 You also heard testimony that these three people,
5 Juan Romagoza, Neris Gonzalez and Professor Mauricio were
generals 6 tortured, and tortured severely. We have shown these
7 are responsible for the acts of torture because as
military 8 commanders they command the troops who tortured these
people. 9

these 9 These generals are responsible because they knew
10 troops were torturing civilians.

in 11 They knew these troops were torturing civilians
12 their own headquarters, and they are liable because they
failed 13 to take reasonable measures to punish or prevent the
torture of 14 these unarmed civilians.

that 15 The evidence that you have seen and the evidence
16 you have heard show that they are legally responsible.

17 That is what we promised at the beginning of this
18 trial and that is what we have proved over the last four
19 weeks.

20 And what have the generals proven? They have
proven
21 themselves to be masters of deniability, deception and
22 dictatorship on a scale that is truly frightening.
Another
23 historical context, what they have denied, the scope of
their
24 denials is tantamount to the big lie. And as we shall see
when
25 we discuss the jury instructions, they used their denials
as a

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1 pretext for taking absolutely no actions to investigate,
2 punish, or prevent the massive state terror that was being
3 perpetrated against unarmed civilians in El Salvador.

4 This rein of terror involved tens of thousands of
5 deaths and tortures.

6 You saw these generals testify both in their
7 depositions and in their testimony here. You heard them
8 continue to deny knowledge of torture, deny knowledge of
9 abuses, but in the end, it is these generals' credibility
that

10 you must determine. Their liability as military
commanders
11 will turn on the credibility, believability of their
repeated
12 denials of torture in the face of overwhelming evidence to
the
13 contrary.

14 You heard cable after cable after cable. You
heard
15 Ambassador White telling these men about the terror that
was
16 being visited upon the people of El Salvador by their
troops,
17 by their machine of terror.

18 These three victims came to the United States and
19 sought refuge after they survived their ordeals. We come
to
20 you, the jury, because our country here has laws that say
21 torture victims can bring claims like this in federal
courts
22 such as this. International and United States law has
been
23 clear from at least World War II.

24 Torture is never allowed, never, not under any
25 circumstances. It is very rare that a jury of citizens in
this

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1 country can be called upon to hear evidence like this and
pass

as
2 judgment on torture and events in mass state terror such
3 this. You have a historical opportunity and you have
4 historical obligation to set the record straight, to tell
these
5 generals that what they did was wrong, and to say it
loudly and
6 clearly.

7 As Ambassador Haig -- excuse me, U.S. Secretary
of
8 State Haig said: " Torture is never allowed under any
9 circumstances. " You heard that over and over again. It
was
10 and is the cornerstone of United States policy, domestic
and
11 foreign. The history of this ban on torture comes from a
12 frightening period in the history of the world. When
World War
13 II ended, the full extent of the atrocities that were
committed
14 against civilians were uncovered. There were tribunals,
the
15 Tokyo Tribunal and Nuremberg Tribunal, and for the first
time
16 in military history, military leaders were tried and
convicted
17 for crimes against humanity, for crimes committed against
18 unarmed civilians, through torture, and other
degradations.

19 Unfortunately, the principles established at
Nuremberg
20 and Tokyo did not end torture and crimes against humanity,
did
21 not end crimes against unarmed civilians. These crimes

22 continued, continued through the 1970's, and through the
23 1980's. We are focusing on one period, and one period
alone,
24 from 1979 when these generals came to power, and June 1983
to
25 be exact when Professor Mauricio was released from his

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1 torture. That is the time period we are going to focus
on.

2 One of the other principles that arose from
Nuremberg
3 and from the Tokyo Tribunals is that military commanders
are
4 responsible for atrocities committed by troops under their
5 control. This is a legal doctrine known as command
6 responsibility. We will talk about that in a few minutes.

7 Let's talk about the military which these
generals
8 led. We have demonstrated to you that what we are talking
9 about in this military, what we are really talking about
is the
10 officer corps. This is a small group, only 106 men at the
11 time, and only 16, if you consider just the El Salvador
and
12 National Guard. These men trained together in the
National
13 Military School, lived together and knew each other very
well.

14 They were a brotherhood. They were not strangers. They
15 protected each other at every step of the way.

heard 16 You heard about the Code of Silence. You even

these 17 that from Ambassador Corr who came in to try to defend

denials, 18 men, he recognized it, he saw it, and I submit to you

years 19 denials, denials. This deniability that existed 20 some

these 20 ago continues to exist today. You heard the denials in

they are 21 generals' testimony. The only way to explain it is if

22 continuing to respect and honor a code that should be

the 23 discredited loudly and clearly by this jury. That code is

24 Code of Silence.

cover up 25 We cannot accept or allow Code of Silence to

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alone 1 or obstruct justice. It is a decision that you and you

people 2 can make. This is a historical opportunity for you 10

3 of this community.

terror 4 As you heard from Professor Karl, this rein of

5 against a civilian population was a deliberate strategy.
It
6 was a deliberate strategy to drain the sea. The rein of
terror
7 was directed against anyone who objected to or criticized
the
8 military's strangle hold on power. During these first few
9 years, this military campaign of terror spread
indiscriminately
10 among unarmed civilians.

11 Let's talk now about the three victims. And we
are
12 not talking about the kidnapping, the rape or torture of
13 soldiers who are fighting with weapons in a war. There
has
14 been no evidence established that any of these three
people
15 were armed or dangerous. What you did hear a couple of
times
16 in the voices of these two men, and it would slip out,
they use
17 the word subversibo, which means subversive. You could
hear
18 the hatred in their voice when they said that.

19 A person who is unarmed, who is helping the poor,
not a
20 teaching the poor, providing medical care to the poor is
they did
21 subversive. But these men saw them as that. And when
dehumanize
22 that, they allowed themselves and their troops to
23 and torture and kill and decapitate and rape and subject
24 unarmed civilians to tens of thousands of abuses.

25
inhumanity.

It is hard to understand the cruelty and

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1 It is almost difficult to comprehend how human beings can
be so

2 inhumane towards another human being.

3 Dr. Romagoza, as you know, was a physician
providing

4 medical care at a rural church in Santa Anita,
Chaletanango,

5 the northern part of the country, and while he was
treating

6 patients, armed soldiers from the National Guard in the
Army,

7 drove up, open fire, hit him in the foot. He was then
taken to

8 National Guard Headquarters in San Salvador the next
morning.

9 That was on or about December 13th, when he was actually
taken

10 to the National Guard Headquarters.

11 Once inside, he, like the other plaintiffs, were
shown

12 other victims of torture, other people being tortured.
They

13 asked Dr. Romagoza if he wanted to have the same thing
happen

14 to him? He was put on a table, beaten, interrogated and

15 threatened with additional torture. He was stuck with
needles,

iron 16 threatened with death. The next day he was chained to an
17 rod, naked, and wounded and interrogated again. You heard
18 about the electric shocks to parts of his body.

19 They would force him to regain consciousness by
20 kicking him or burning him with cigarettes. You saw some
of 21 the cigarette burn scars.

22 The next 22 days he was interrogated and tortured
23 every day. It was so bad, so bad that he wanted to die.
He 24 wanted them to end his misery.

25 During his detention, this defendant, General
then

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1 Colonel Vides Casanova was the Minister of Defense. He
was 2 physically present on two occasions. The first occasion
was 3 near Christmas in December 1980, approximately, maybe a
little 4 after Christmas. Sequencing when you are being tortured
is not 5 always precise, not sitting there with a watch, you are
not 6 sitting there with a calendar. You are stripped, stripped
7 naked, your clothing, humanity, and when you are blind
folded,

8 you are stripped, every part of your identity. He wanted
to
9 die.
10 General Vides knew -- Let me withdraw that.
11 Early during his torture Dr. Romagoza indicated
that
12 two of his uncles were Colonels in the El Salvador and
Armed
13 Forces, he said that hoping it would save his life, one
day
14 after saying that Dr. Romagoza was told how one day would
be
15 different from all the other days in the middle of the
16 detention, on that day the captains told him the big boss
was
17 going to come see him, and they referred to him as my
Colonel.
18 By their demeanor, he knew that Vides Casanova was going
to
19 come to the cell. He was chained to the floor when
General
20 Casanova arrived. From under the blindfold, he couldn't
see
21 his face, but he could see his shiney boots that were
different
22 from the other guardsmen, the pressed pants on a different
23 fabric, and a special belt buckle.
24 Vides Casanova apparently asked him questions
about
25 his uncles, pressing him to see if his uncles were aligned
with

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1 the armed opposition. General Vides Casanova showed
absolutely
2 no concern for this torture victim. Once he left, Dr.
Romagoza
3 had to endure days and days of more torture.

4 You watched Dr. Romagoza identify this man by
voice
5 and by sight. On the voice he said I'm 90 percent
positive.
6 On the visual identification when he was being carried out
7 after -- upon his release, he saw this man, General
Romagoza in
8 plain view. Dr. Romagoza himself was in plain view.
Shriveled
9 to 80 pounds being carried out in one of his uncle's arms.

10 If you are the head of the National Guard, and
you see
11 someone being carried out of your headquarters shriveled
to 80
12 pounds in someone's arms, you got to know.

13 You heard what happened to Dr. Romagoza's left
arm.
14 They took his ability to perform surgery from him. We
talked
15 about the shocks. We talked about him being taken to the
16 coffin room the last few days of his detention.

17 What we do know in this case is that this man
suffered
18 unspeakable horrors.

19 General Vides Casanova was there. He could have

20 stopped it but he didn't. He was part of it. He led the
21 torture machine.

22 Neris Gonzales is another survival victim. She
worked
23 with the church. Her crime was teaching peasants,
campasinos,
24 to count from one to 100. Who did that threaten? That
25 threatened the wealthy land owners who were cheating
workers.

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26, 1 What happened to her? She was seized at noon on December
the 2 1979 in the market, in broad daylight in front of all of
3 other people there by three uniformed guardsmen.

4 San Vincenti is about 35, 40 miles from San
Salvador.

5 This man General Garcia would commute there when he would
be 6 stationed at San Vincenti. It is not a long drive. It is
a

7 daily commute. During the detention, she was repeatedly
8 tortured. You heard about the repeated rapes, cigarette
burns,

9 electro shocks. The squalor. You heard about what was
called

10 the modadero, the human slaughter house. Body parts
11 everywhere. You heard about her being forced to hear the

12 screams, to hear the moans. You heard her being forced to
13 watch the young man with a bucket full of stones hanging
from
14 his testicles, swelling up, slitting open of her stomach -
- I
15 mean his stomach, her head being forced into the split
open
16 abdomen. Her being forced to drink the blood.

17 What kind of machine were these two generals
running?

18 She was pregnant, eight months pregnant. They repeatedly
raped
19 her every day, every night.

20 You saw machete marks which we showed you on the
21 digital camera yesterday we have printed out.

22 You can see scars, scar marks under here. This
is in
23 evidence. You can look at that back in the jury room.

24 You saw the cigarette burns. You saw the machete
mark
25 on her foot. You heard about the boy, his eye being
gouged out

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1 and parts and the eye falling on her. You heard about her
2 fainting.

3 Professor Mauricio, the third survivor, professor
of

4 agriculture, University of El Salvador. He was abducted
5 without cause June 19, 1983, by individuals dressed in
civilian
6 clothes forcing him into a van. He tried to hold on to
the
7 fender. He tried to resist the abduction. After his
8 abduction, the university and others launched a campaign
to
9 obtain his immediate release. Eventually, if I may get
the
10 board, the Ministry of Defense acknowledged that he was
being
11 held in detention.

12 What was these generals' response? Well, he
might
13 have been detained, but I have no proof of torture.

14 Ladies and gentlemen, you heard the proof of
torture.

15 Professor Mauricio is captured, brought to
National
16 Guard Headquarters strung him up with his hands behind his
17 back, and over his head, repeatedly hit him with the metal
bar
18 with rubber, inflicting injuries to his face and torture.

You
19 heard the testimony about his eye, he had no vision
before, and

20 he had problems after. He was given no food the first two
or

21 three days after detention. Dr. Romagoza was given
virtually

22 none. Professor Mauricio was denied the bathroom in

23 confinement. He was forced to stand for hours, failure to
do

24 so would result in additional physical abuse.

25 They claimed Professor Mauricio was a subversive,

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1 guerilla. He was not. All he was doing was teaching.

2 These victims were tortured right under these
3 generals' noses. These were not random acts committed by
rogue
4 soldiers in remote outposts, hundreds of miles from their
5 headquarters. These acts resulted under there eyes, 35,
40
6 miles from San Salvador. You don't need a helicopter to
check
7 it out.

8 This man, General Garcia knew that there was
9 repression going on. He grew up in San Vincenti. He was
10 assigned there from July 1978 to October 1979. He was
head of
11 the Army garrison. He was aware that there was repression
12 going on by the National Guard. He never reported it to
13 anyone. He said it is not my job, not my duty. I see
nothing,
14 I hear nothing is his motto. But he was not in command of
the
15 National Guard at the time. He claims not to have seen
16 decapitations. He claims not to have seen the bodies,
but,

denials

17 ladies and gentlemen, you need to determine whether his
18 are believable, are credible in light of all of the other
19 evidence in this case.

commander,

1978

20 Perhaps General Garcia, because he was Army
21 did not have command over the National Guard between July
22 and October 1979, when he became Minister of Defense.

a

23 Once he became Minister of Defense, and given his
24 knowledge about the repression that the National Guard was
25 visiting upon the people of the San Vincenti area, he had

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1 duty as a military commander to at least order an
2 investigation. He ordered nothing.

3 This is a damages case. This is a civil case.

tried

4 As you know by now, this is not a typical case

the

5 every day here in Palm Beach County or for that matter or

in

6 State of Florida, or for that matter in any Federal Court

7 the United States of America.

these

8 This is not a criminal case where we can send

proceeding.

9 defendants to jail. This is not an immigration

10 Nor is this your every day personal injury case,
where
11 someone gets hurt really bad in a car incident, gets
medical
12 treatment and sues for damages.
13 This is not an easy case when it comes to
damages.
14 This is a torture case, plain and simple. It is brought
under
15 federal statutes that allow victims of torture to seek
justice
16 in this nation against torturers and military commanders
17 wherever the commanders live. These men live here in
Florida.
18 That is the law, and you as jurors have chosen to uphold
the
19 law no matter how difficult it is. I am not going to
suggest
20 to you that your task is going to be easy, especially with
21 damages.
22 A jury trial such as this serves many functions.
One
23 function is to expose great wrong which has gone
unredressed.
24 The only remedy for the jury in our system is to determine
what
25 monetary damages these defendants should pay.

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1 Under our law, you can't relax here. You can't
find
2 haven here and avoid responsibility for what you did
there.
3 These victims have not sought money. They are seeking
4 justice. Your only response is if you find we have proven
our
5 case is to determine the amount of monetary damages. That
is
6 our law. That is your duty.

7 The difficulty for you, the injury here was
described
8 by Ms. Gonzalez. You can't bring back her baby boy with
any
9 amount of money. You can't do that. And how can you put
a
10 price on torture? How can you put a price on rape or any
of
11 the other degradations associated with these victims'
torture?

12 What amount of money can compensate Dr. Romagoza
for
13 not being a surgeon? What amount of money can you award
14 Professor Mauricio for losing his promising career? He
wanted
15 to be a dean.

16 What amount of money would compensate them for
being
17 forced into exile from a country they love, and what
amount of
18 money would be sufficient to punish these generals for
rein of
19 terror visited upon these plaintiffs, for the callus
of
20 indifference they have showed then and now to the victims

21 torturers and killers under their command?

going
is
punish
others

22 There are two types of damages Judge Hurley is
23 to instruct you on. One is punitive damages and the other
24 compensatory damages. Punitive damages are designed to
25 the defendant for his wrongful conduct and deter him and

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conduct
indifferent.

1 from committing similar misconduct in the future. You can
2 award punitive damages if you find that these generals'
3 was malicious, wanton or recklessly or callously

they
their

4 You heard the maliciousness in their voices when
5 said subversivos. You heard that. But what we have here,
6 really, beyond their maliciousness and in addition to
7 maliciousness, and remember that it is one of those four
8 standards. All you need to do is find one of the four
9 standards. I submit to you this is a case of callus
10 indifference.

were

11 They knew what the troops were doing. The bodies
12 everywhere.

13 You heard from Father Schindler. You heard about
the
14 impunity. You heard Father Schindler say outside his
church,
15 which is right next to the National Guard headquarters, he
put
16 no mataran, m-a-t-a-r-a-n, thou shalt not kill, that was
ripped
17 down by the National Guard, ripped down.

18 These men knew what was going on and did nothing.
19 They could and should have investigated. They could and
should
20 have ordered an investigation. They could and should have
21 punished. We can go on later when we talk about command
22 responsibility about the could have's and should have's.

23 In determining callus indifference, in
determining
24 maliciousness, and determining any of the other reasons
that
25 you can award punitive damages, Judge Hurley will instruct
you

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1 that you may consider the reprehensibility of the conduct,
2 nature and extent and harm to the plaintiffs.

3 There is no exact standard.

4 Judge Hurley will tell you that, there is no
exact
5 standard.

6 You are the conscience of the community and
conscience

7 of this nation.

8 The evidence, we submit, is overwhelming. It is
so

9 overwhelming that these generals were callously
indifferent in

10 failing to investigate, punish and prevent the rein of
terror

11 committed by their troops on the unarmed citizens of El

12 Salvador. One of them laughed when maggots from Dr.
Romagoza's

13 festering gunshot wounds were thrown on him for his
dinner.

14 You heard in terms of the reprehensibility, you
heard

15 about the stench of death, the smell of death, the body
parts.

16 This is reprehensible under any standard.

17 This is your discretion and we submit this is
your

18 duty.

19 Dr. Romagoza explained that his long thought
about the

20 fact that there has never been any justice for the victims
in

21 El Salvador. Unlike the many who were killed, he was
still

22 alive and one of the few who could tell this story. He
told

23 you it is not fair for me to remain silent. Scars cannot
be

24 erased with treaties and amnesty. We both, me and the

25 generals, now live in the U.S.. It would not be right
that

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1 people who violated human rights and human dignity to be
2 welcomed here.

3 Professor Mauricio talked about the importance of
4 seeking justice in this case. He turned to the generals

and

5 said I need an answer from General Vides Casanova why I
was

6 detained and tortured for no reason and why they did
nothing to

7 stop it or prevent it. Neither general gave him an
answer.

8 What they both gave you were denials, repeated
9 denials, repeated denials in the face of overwhelming
evidence

10 that United States Government officials were meeting with
them

11 on a daily basis, weekly basis, monthly basis telling them
12 about the tortures, killings, kidnappings, rapes and
massacres.

13 THE COURT: Mr. Green, the warning you asked for.

14 MR. GREEN: Yes, sir.

15 Let's talk about compensatory damages.

16 This is another kind of damages and these damages
are

17 awarded, and Judge Hurley is going to instruct you about
this
18 as well as full, just and reasonable compensation for all
of
19 the plaintiff's damages, no more and no less.

20 In determining compensatory damages, you should
21 consider emotional pain and suffering, mental anguish,
physical
22 disfigurement, physical pain. In evaluating the items,
you can
23 consider the physical torture including the methods used,
24 abuses suffered, mental abuse, including fright and
anguish.

25 Dr. Romagoza wanted to be put out of his misery.

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1 Neris Gonzales could only think about the eight month baby
boy
2 in her belly. Professor Mauricio suffered and suffered
and
3 suffered and continues to suffer. What amount of money
can
4 compensate Dr. Romagoza? He was tortured in such a way,
shot
5 so he could never practice his chosen specialty of
surgery.
6 You heard about the dedoschinos, d-e-d-o-s-c-h-i-n-o-s.
That
7 is what the torture is called when they tie wires around
the

8 ends of his fingers and make them lose sensitivity so he
can't
9 be a surgeon. To be a surgeon, you have to have touch.
If you
10 don't have touch, you can't feel, you can't operate.
11 Dr. Romagoza had to go into hiding as soon as he
was
12 released. He could not receive medical treatment at a
13 hospital. A medical colleague treated him once who was
afraid
14 to do so again. That friend was killed a year later. He
had
15 to self treat his infections, loss of blood, malnutrition.
16 Sorry, there are no medical records. When you either
treat
17 yourself or you are being treated in an atmosphere where
18 physicians, nurses, and medical personnel who treat
torture
19 victims are themselves persecuted for their treatment, I
am
20 sorry, we don't have those medical records for you.
21 What amount of money can you award Professor
Mauricio
22 for losing his promising academic career? What amount of
money
23 can you compensate a person for being forced into exile
from a
24 country they love?
25 You heard from Dr. Caddy. Ms. Gonzalez suffers
flash

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trust. 1 backs of her baby boy. They all suffer from a lack of

how 2 The judge is going to instruct you on the law and
3 you can interpret the evidence.

in 4 He already talked to you about some of the claims
5 this case. Probably the most important instruction he
will 6 give you is on the law of command responsibility.

the 7 Under this law, military commander is liable for
8 acts of another if, one, he was tortured by a member of
the 9 military or security forces or someone acting in concert.
You 10

national 11 heard about the torture of three plaintiffs; three
Romagoza, 12 guardsmen for Neris, Army and National Guard for Dr.
13 and National Police for Professor Mauricio.

14 These were all committed in National Guard
15 Headquarters, National Police Headquarters.

16 Number two, there was a superior subordinate
17 relationship between the military commanders and the
persons 18 who tortured the plaintiffs.

19 As we just said, these plaintiffs -- two of these
20 plaintiffs were captured by uniform guardsmen or Army

the 20 personnel, and a third was captured by secret police from
he 21 National Police who were dressed in civilian clothes, but
that 22 was taken to the National Police Headquarters. You heard
military 23 the El Salvadoran Armed Forces were organized like
a 24 anywhere, generals, colonels, major, captains, I will skip
25 couple ranks, sergeants to privates. You saw the

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You 1 organizational charts for the military and National Guard.
subordinates 2 heard about the hushed and respectful voices of
3 when the Director of the National Guard went to Dr.
4 Romagoza's torture chamber.

I 5 You heard the defendant General Garcia testify.

when Mr. 6 asked him, did you have actual or direct -- excuse me,

7 Klaus asked General Garcia, did you have actual or direct
center, 8 control over the people in National Guard detention

9 while you were Minister of Defense?

10 A. No.

answer 11 General Garcia was then asked, who did? His

the 12 was the director of the National Guard. The director of

13 National Guard at the time was General Vides Casanova.

saying 14 You saw 1980 United States Government cable

15 that General Garcia was the power behind the thrown.

detention in 16 As for Professor Mauricio, you saw the written
17 acknowledgment for the Minister's Office about the

18 the National Police Headquarters.

19 You heard Ambassador White testify that our whole
20 foreign policy was based on the belief that these men had
21 command responsibility and could exercise it.

is 22 The third element is -- of command responsibility

23 that the commander knew or should have known owing of the
24 circumstances at the time that the men were committing or
about

killings 25 to commit torture and/or extrajudicial killings. The

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1 are relevant to notice. The bodies were everywhere.

to 2 Judge Hurley will instruct you that we don't have

known 3 show that either of these defendants knew or should have

4 of these particular plaintiff's torture. We have shown
that to
5 Dr. Romagoza that this man knew of the torture. No matter
how
6 much these generals deny it then and deny it now, they
knew.
7 The torture was being committed right under their noses.

8 Father Schindler showed you the gruesome
photographs
9 of deaths, tortures and mutilations.

10 General Garcia called El Mozoto massacre a
novella, a
11 fairytale, and said he would deny it and prove it
fabricated.

12 He told that to United States Ambassador. You saw the
cable.
13 That is why the jury instruction reads knew or should have
14 known.

15 These men knew. Even if they didn't actually
know,
16 they clearly knew. Ambassadors were telling them. They
should
17 have known.

18 Jury instruction also says owing to the
19 circumstances. General Garcia's circumstances in San
Vincenti,
20 he grew up there. He commuted daily. It wasn't a long
drive.
21 You didn't need a helicopter. He admitted he knew about
the
22 repression when he was stationed there from 1978 to '79,
two
23 months before Ms. Gonzalez' torture.

24 THE COURT: Mr. Green, the second warning.

25

MR. GREEN: Thank you, Your Honor.

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1 THE COURT: Sure.

2 MR. GREEN: The last element, these men failed to
take
3 all reasonable steps to investigate and fail to punish
after
4 they have done so. All we have to show either or. We
don't
5 have to show both. I believe we have shown both.

6 If you don't investigate or punish, you don't
7 prevent. If you don't investigate or punish, you don't
8 prevent. There are no consequences. Not investigating,
not
9 punishing gives impunity, a green light, a green light for
10 abuses to continue. There were no investigations. What
you
11 heard about were promotions. Instead, there were
promotions.

12 Anyone who wanted reform like Colonel Majano was
13 booted out. General Vides Casanova, we know he never
ordered
14 an investigation for who was responsible for the torture
cells
15 in the National Headquarters. He was ordered to do so.
16 Admitted yesterday he never did so.

17 Judge Hurley will instruct you on the failure to

there
what
victim
maggots

18 investigate is another way to show failure to punish. If
19 is torture by a reliable source and you don't investigate,
20 kind of message do you send to the troops? What kind of
21 message to torturers? You can get away with rape, murder,
22 decapitation. You can get away with torture. We do know
23 General Vides Casanova walked into a room with a torture
24 suffering in front of him and laughed at jokes about
25 for for dinner and did not stop the torture.

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1 What kind of human being would allow that?
2 By the way, doesn't matter whether there was one
3 torture cell or eight cells. One is too many.
4 I see nothing, I hear nothing, I do nothing is
their
5 motto, and it is the opposite of command responsibility.
It is
6 dereliction of duty at the highest level.
7 Let's now look at some of the visual evidence
that was
8 presented in this trial.
9 MR. STERN: I am going to talk to you about visual
10 evidence and other forms of evidence.

11 What these defendants, the generals knew or
should
12 have known 20 years ago does not require second guessing.
It
13 requires us to look together at the evidence, which is
what we
14 have done over the course of this trial.

15 The wrongs of 20 years ago were plain for all to
see
16 back then. We've retrieved them and brought them to you
for
17 you to see now.

18 People saw these wrongs, they wrote about them,
they
19 remembered them, and they come here and told you about
them.
20 Then and now.

21 These generals denied what was happening then and
22 they've denied it now.

23 You, the jury, now have a chance to hold them
24 responsible for what happened then, what happened to Juan
25 Romagoza, Neris Gonzalez, and Carlos Mauricio.

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1 As Judge Hurley will explain, and as Mr. Green
2 mentioned, we need to show that the generals knew or
should
3 have known that their subordinates were committing or
about to

shown 4 commit acts, torture and extrajudicial killing. We've
5 that and here is how.

through 6 The first step is to establish that in 1979
7 1983, there was a rein of terror directed of the
Salvadoran 8 Military Security Forces, the men under the command of
these 9 generals against unarmed civilians. There is overwhelming
10 evidence of this.

11 Listen to the people who were there then, who
come to 12 you during the trial to tell you about it. Look at the
records 13 they created.

14 The first is U.S. Ambassador Robert White who was
on 15 the scene in 1980.

16 Could I have slide number 63, please, if we can.
I 17 would link to leave the lights on.

18 Ambassador White reported to Washington that the
19 Military and Security Forces were carrying out a wave of
20 terror. What can we do, he asked, we, meaning the United
21 States. Engaged the security forces to go after the left
wing 22 guerillas and stop torturing and killing any youth between
14 23 and 25 because they may be involved with labor unions,
church 24 organizations, et cetera.

he 25 This is what Ambassador Robert White saw and what

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1 was telling his embassy.
2 What else was he telling the embassy?
3 Could I have slide 68, please.
4 He told the people back in Washington that the
leaders
5 of the Salvadoran security forces and their men carried
out
6 political assassination killing six leaders of the FDR, an
7 important political party in November 1980. And U.S.
Defense
8 intelligence report that Ambassador White saw when he was
at
9 his post, the U.S. Government's representatives noted that
10 military officers were pleased by the assassinations.
This
11 cable singles out Colonel Jose Garcia Moreno, Minister of
12 Defense, defendant in this case indicating that he, among
13 others, supported this line of thinking. This is what
people
14 saw and what they thought at the time 20 years ago.
15 What else did Ambassador White tell you?
16 Could I have slide one 27, please.
17 Ambassador White told his superiors in
Washington, and

the
18 they reported back what he said, there is no evading of
19 responsibility of the security forces and to a lesser
extent
20 the military, for as much the majority of the violence,
this is
21 violence we had testimony about amounted to unarmed
civilians
22 being killed at the rate of a thousand per month.

23 This is a wave of violence, a wave of terror
directed
24 by the military and security forces.

25 It wasn't just Ambassador White who saw the
terror and

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1 reported on it. Every single U.S. Ambassador in 1979
through
2 '83 time period saw this, reported on it, and you have
seen
3 evidence of that.

4 Who else witnessed this rein of terror? Among
them
5 was Father Paul Schindler who also came to testify to you.
6 What did he see? He saw the National Guard leading people
7 through the streets with their thumbs tied behind their
back,
8 the signature of the National Guards, and he showed you
9 pictures that he took himself of dead bodies with the
thumbs

10 tied behind the back.

we put 11 What other evidence do we have? What else have
12 before you during this trial?

Nations 13 The Truth Commission Report prepared by United
about 14 in 1992 was a very important source. You heard a lot
15 it. The Truth Commission tells us who was responsible for
16 these acts, and what was going on.

17 Could I have slide one, please.

and 18 The Truth Commission lists murders and massacres,
19 attributes them to the Salvadoran military and security
are 20 forces. We are not talking about isolated incidents. We
of 21 talking about a pattern of violent, extremely visible acts
the 22 massacre against large numbers of people carried out by
23 military and security forces.

to? 24 And who specifically do we attribute these acts

25 Could I have slide 124, please.

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The 1 The Truth Commission helps us to understand this.

violence,

2 Truth Commission breaks down who was committing the
3 over 22,000 reports received by the Truth Commission.

acts

4 How were those sorted out? How were those
5 classified? As you can see, in total, 85 percent of the

Forces

6 of violence are attributed to uniform members of Armed

Truth

7 and the security forces. This is the testimony of the

8 Commission.

this?

9 Why would the military and security forces do

helps

10 We had testimony about this. The Truth Commission also

11 us to understand.

12 Slide 152.

opponents as

13 The Truth Commission draws to the mind set of the
14 military and security forces that viewed political

this was

15 subversives and enemies. All complaints indicate that

16 the origin of the violence. It lay in the military and

17 security forces.

the

18 This is what Professor Terry Karl referred to as

first get

19 strategy of draining the sea. To get to the fish you

they

20 rid of the water. The water is the unarmed civilians, you
21 terrorize them, you brutalize them so they are so scared

That

22 won't even think of resisting opponents of the regime.

23 included Neris Gonzalez, doctors like Juan Romagoza, and
24 teachers like Carlos Mauricio.

draining 25 You have before you the practical results of

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1 the sea.

Yes, 2 Terrorizing unarmed civilians include torture?

3 it did.

4 Could I have slide 135, please.

5 Again, U.S. Government's cables provide eloquent
6 testimony on this subject.

torture 7 In July 1984, the embassy reports the use of

8 for interrogation purposes has been a regular albeit
9 unquantifiable practice by some members of the Salvadoran
10 security forces.

practices, 11 The cable goes on to describe in detail the

If 12 torture carried out by the military and security forces.

can it 13 the United States Government knew this at this time, how

didn't 14 be that the Salvadoran high command and these defendants

Edwin 15 know? Even the defendants, the general's own witness,

of 16 Corr admitted that between 1979 and 1983 there was a lot
17 torture.

in 18 The pattern and practice of human rights abuses
19 1979 through 1983 is indisputable.

Vides 20 Is there any way that General Garcia and General
answer 21 Casanova can claim that they didn't know about it? The
22 to that is no.

23 Could I have slide number 98, please.

defendants 24 There were many, many ways in which the
25 should have known about the torture their troops were
carrying

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1 out. They could have seen the bodies in the streets.

that 2 Defendant's own witness, Edwin Corr, testified

have 3 one would have to have been a dunts, blind or deaf not to

military. 4 known about human rights abuses carried out by the

every 5 Why? Because in his words, they stacked the bodies up

6 day.

or 7 Now, no one has ever claimed that General Garcia

rose
for
8 General Vides Casanova was a dunts. To the contrary, they
9 to the top of a military apparatus that ruled El Salvador
10 generations, much less were they blind or deaf. You heard
11 about their intelligence apparatus, they knew.

have
that
12 The press reported on these abuses as well. You
13 seen actual examples of the types of paid advertisements
14 friends and family of human rights victims put in
Salvadoran
15 newspapers to ask where people were, where they had been
taken,
16 what had become of them.

you
that
17 Carlos Mauricio's friends ran ads like that, and
18 have seen them. These ads were so common, so numerous
19 their presence on the same pages as the speeches that the
20 defendant submitted to you to try to explain what they
have
21 done. They are everywhere. How can the generals claim
they
22 didn't know what was going on? All they had to do is open
the
23 newspaper.

generals
24 International organizations also told the
25 what was going on.

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1 You heard from Michael McClintoch from Amnesty
2 International. He came to testify what his organization
was
3 doing to help torture victims. He testified that Amnesty
4 International members sent hundreds and hundreds of
letters
5 specifically to military commanders including General
Garcia,
6 including General Vides Casanova. We've seen examples.
We
7 have seen responses from General Vides Casanova. These
urgent
8 actions specifically drew attention to torture. They were
9 designed to stop torture.

10 You also heard testimony from Roberto Alvarez,
11 Organization of American States, an important
international
12 organization, of which United States and El Salvador were
13 members.

14 Although the National Guard tried to keep him
away,
15 Roberto Alvarez found secret detention cells in the
16 headquarters of the National Guard. He wrote about them
and
17 put that information in his report along with the
Salvadoran
18 security system. That report was submitted to Government
of El
19 Salvador around the time the defendants assumed their
positions

20 of power in this case.

21 These were major reports, serious serious
22 accusations. How could the generals claim they didn't
know?

23 You've also seen perhaps more than any other
source
24 the efforts of U.S. Officials to tell these generals about
what
25 was going on in their own country.

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1 Could I have slide 51, please.

2 Every ambassador tried to address this issue.
Every
3 ambassador tried to tell the generals what was going on.
4 Ambassador White stated that the torturing and killing of
5 unarmed civilians by the security forces has gone way
beyond
6 any conceivable justification.

7 After this conversation, is there any way General
8 Garcia could not know what his troops were doing? No.
And so
9 it went year after year.

10 You have heard testimony this week from General
Vides
11 Casanova that only recently did he learn that men directly
12 under his command, men named Moran and Lopez Sibrian were

section
13 involved in the assassination work of the intelligence
14 in the National Guard that resulted in the killing of two
15 Americans and Salvadoran labor leader at the Sheraton
Hotel.
16 But the cable traffic proves that isn't so.
17 Could I have slide 139, please.
18 This is a 1984 cable.
19 U.S. Representative is having a conversation with
20 General Vides Casanova, then Minister of Defense. The
21 representative reports: " Vides told me that Lopez Sibirian
is
22 really a good guy. I said that is crazy. He was a
murderer,
23 and guilty as hell. Nobody like that would be a good guy.
We
24 would not rest until we saw Sibirian and the others
punished
25 however long it took, and Vides could count on that. "

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1 He knew what the men directly under him in the
2 National Guard intelligence section were doing.
3 What have the generals come to you to say? How
have
4 they tried to explain their actions? What have they said
about
5 reports of human rights and torture?

6 They have refused to knowledge any valid reports
of
7 torture. They have carried out massive pattern of denial.
8 This is really nothing new. The Truth Commission
9 reported that General Garcia denied numerous massacres.
In
10 fact, we showed you a cable -- 141, please -- in which
General
11 Garcia denied the Morasan massacre. In a discussion with
12 Ambassador Hinton, when warned that he better be ready to
13 respond, Garcia was his usual cocky self. I'll deny it
and
14 prove it fabricated.
15 General Vides Casanova similarly is identified by
the
16 Truth Commission as having denied facts of an abduction of
17 students in an area near the university.
18 Professor Terry Karl has helped us to explain
this
19 pattern of denial. She called it deniability and works
like
20 this.
21 First, you deny that a massacre occurred. When
the
22 evidence of the massacre is overwhelming, you state that
the
23 figures were exaggerated. When the figures are pinned
down,
24 you can no longer deny them, you attempt to attribute
25 responsibility to somebody else. When it is crystal clear
that

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will
in
incident to
goes

1 the responsibility is yours and yours alone, you say you
2 launch an investigation, probably finding someone involved
3 the incident or related to someone involved in the
4 head up the investigation, which, not surprisingly, never
5 anywhere.

years.
post
Edwin

6 This pattern of deniability has been clear for
7 We've spent a lot of time in this case looking at a 1988
8 reporting plan authored by the defendant's own witness
9 Corr. It is what we call the code of silence memo.

the

10 In this memorandum you can see in one paragraph
11 entire pattern of deniability laid out in 1988 that has
12 continued to play itself out in this courtroom.

13 Could I have the power point slide, please.

the
reaction
happened
Angel

14 Here is what Ambassador Corr wrote. Starting off
15 first sentence, ESAF, El Salvador Armed Forces normal
16 to a human rights accusation is to deny involvement as
17 in the November 1986 disappearance of 17 year old Miguel
18 Rivas.

19 Here is the first step, denial.

20 What have the generals in our case said about
21 accusations of human rights abuses, specifically, torture
22 brought before you by our plaintiffs?

23 Could I have the next statement, please.

24 Here is what General Garcia said: " Do you
acknowledge
Armed 25 that people were tortured in detention facilities of the

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1 Forces of El Salvador while you were Minister of Defense?

2 A. " No. I have never had any proof of that. "

3 It is a denial.

4 Could I have the next slide, please.

5 Here is what General Vides Casanova had to say
playing
6 out in full detail the pattern identified many, many years
ago
7 by Edwin Corr.

8 Q. " Could someone have been tortured on the 10 acres of
the
9 National Guard headquarters without you knowing it in
December
10 of 1979?

11 A. " I think it could have happened without one knowing
about

12 it, but I was never aware of a single act of torture
during my

13 tenure at the National Guard. "

14 How could he not be aware of it when U.S. Embassy
was

15 aware of it? These are his own troops, his own
headquarters.

16 What is the next step in the pattern of denial?

17 Ambassador Corr's memo states when evidence of
ESAF

18 involvement is stronger -- perhaps I could have the next
19 slide.

20 As in the June 1987 neck cutting incident or the
May

21 1987 murders, ESAF tries to generate an alternative
explanation

22 to the affect that the FMLN was responsible. What did
General

23 Garcia say?

24 Q. " To whom would you attribute the deaths of the people
whose

25 bodies were found on the street?

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1 A. " Right, it could be from several sources in El
Salvador as

2 we have already stated the state of violence was
exaggerated

3 and when a dead body would show up on the street even with

4 marks that would indicate that that death had been caused
by a
5 death squad. It was possible. This is without proving it
that
6 it could have been done by another group that didn't
belong to
7 a death squad".

8 Exactly as Ambassador Corr stated General Garcia
tries
9 to generate an alternative explanation.

10 Could I have the next slide, please.

11 What is the next stage? Well, a pseudo
12 investigation. In all these cases as well as many more
the El
13 Salvador Armed Forces also responded by blocking any
civilian
14 attempts of the internal investigation of the military,
the
15 Armed Forces appears to have conducted some internal
16 investigations most notably in the Melendez murders, but
was no
17 resulting reports -- facts of the case.

18 General Garcia was asked.

19 Q. " What was your procedure if you received a complaint
about
20 someone being tortured who was being held in detention?

21 A. " To investigate it.

22 Q. " Did you ever receive complaints of any of these three
23 plaintiffs being tortured?

24 A. " No.

25 Q. " Did you ever receive complaints of anyone else being

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1 tortured?

2 A. " No. "

3 What happened in this courtroom goes beyond even
the
4 pattern of deniability identified by Ambassador Corr,
because
5 the plaintiffs never admitted that the abuses occurred.

6 There is nothing to investigate if you don't
7 acknowledge that there is a problem. Not only did the
8 defendants not set evidence of investigations before you,
they
9 didn't explain why they would have needed to conduct an
10 investigation.

11 They go beyond the pattern of deniability,
identified
12 by Ambassador Corr. The same with General Vides Casanova.

13 Could I have the next slide, please.

14 Q. " What would you do when you received or if you
received a
15 complaint regarding torture of a detainee at one of the
16 outposts?

17 A. " I do not recall having received complaints of that
18 nature. "

19 Once again, response is total denial.

20 Deniability is a pattern that overshadows
everything

21 in this case.

22 In your deliberations you consider what the
generals

23 have said and done at every step of the way. You should
also

24 consider what they have denied.

25 What else do we need to show you? We need to
show you

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1 that the commander failed to take all necessary and
reasonable

2 measures to prevent torture and/or extrajudicial killing
or

3 failed to punish subordinates after they had committed
torture

4 or extrajudicial killing.

5 Failure to prevent human rights abuses, failure
to

6 punish human rights abuses, are these two things related?
Of

7 course they are. As Professor Karl identified, there is a
8 notion of a green light. They are very closely related.

9 Failure to punish sends a message to offenders
and to

10 potential offenders that they will not be held responsible
for

11 their acts.

12 That is in itself a failure to prevent. By
giving the
13 green light through a failure of punishment, you send the
14 signal that it is okay. You failed to prevent.

15 How does one prevent human rights abuses? As
we've
16 heard, much of this has to do with messages that are sent
to
17 troops.

18 In this trial, we presented to you a lot of
evidence
19 about what the message is that these generals were
conveying
20 that went to their troops. Let's look at examples.

21 First, to promote an officer is to approve his
getting
22 conduct. He is getting a better job, obviously, he is
everybody
23 the message that he is doing something right, and
to
24 else is getting that message, too. We presented evidence
General
25 you -- slide 108, please -- that General Garcia and

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1 Vides Casanova approved the promotion of known human
rights
2 abusers.

3 These are men repeatedly identified in U.S.
Cables as

4 human rights abusers. It was well-known.

5 Now, this notion of sending a message through
6 promotion may seem complicated but it is not.

7 Could I have slide 143, please.

8 We will show you, as we did during the trial, a
9 concrete example of exactly how it works.

10 This is a cable from United States Embassy
official,

11 and it shows exactly the logic, exactly the pattern we
12 identified.

13 " Comment: It has become increasingly evident
that

14 General Vides has no intention of pursuing the issue. "

15 That is General Casanova here in this courtroom.
As

16 was demonstrated by his appointment of Lieutenant Colonel
Denis

17 Moran a well-known rightist implicated in the 1981 murders
of

18 two U.S. Citizens in the Sheraton Hotel to head the
engineer

19 instruction center.

20 Look at the message being identified. It is
clear to

21 all that by appointing Denis Moran to a significant
position,

22 General Vides is sending the message that he has no
intention

23 of pursuing human rights abuses. If it is clear to the
CIA,

24 don't you think it is clear to the members of the
Salvadoran

25 military?

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of 1 Just as fundamental as promotions is the matter
2 investigation.

with 3 In the course of this trial, you became familiar
4 the word impunity.

5 Impunity means never having to answer for your
6 crimes.

to 7 It means no matter what you do, you are not going
8 be held accountable for that. The way that works is never
9 being investigated, never being punished, this was the
system
10 of impunity being provided over by General Garcia and
General
11 Casanova.

12 Could I have slide three, please.

legal 13 Ms. Margaret Popkin, an expert on Salvadoran
14 system came to testify about what this all means.

1983 15 She testified that in the period of 1979 through
16 no military officer or enlisted man was convicted of a
human
17 rights crime. No convictions. She testified that the
reason

18 for this is that the military simply refused to
investigate

19 human rights crimes committed by its members.

20 Failed to turn over its members to civilian
courts for

21 trial as it was required to do under law.

22 The court system was never permitted to function
23 because the military, these generals' military refused to
give

24 up its own.

25 She identified specific steps that could and
should

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1 have been taken by the military to investigate human
rights
2 crimes.

3 Could I have slide 38, please.

4 All of these things could have been done. It was
5 plain to see. The fact that it didn't happen was a
choice, a

6 choice by individuals at the highest level, a chase by the
7 generals not to expose the military to embarrassment, not
to

8 turn over the military. This occurred on a scale large as
well
9 as small.

10 Could I have slide 126, please.

11 Choose perhaps the most widely known and
horrendous
12 massacre during the course of the entire 1980, El Masote
13 massacre.
14 The Truth Commission concludes, massacres of the
15 peasant population were common. There is no evidence that
any
16 effort was made to investigate them. The -- dropping down
to
17 the last sentence. In this case, we cannot accept the
excuse
18 that senior commanders knew nothing of what happened. You
19 shouldn't accept that excuse either and you shouldn't
accept
20 the failure to investigate. That is clear from the
evidence.
21 How did this work in practice? We've talked a
lot
22 about the code of silence.
23 Could I have slide 120, please.
24 This was the basis for the impunity enjoyed for
so
25 many years by the Salvadoran military.

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1 The code of silence means human rights abuses are
2 tolerated. It means that no officer is ever dismissed for
3 abuses ineptitude or corruption.

4 The code of silence flies in the face of command
5 responsibility. It is the embodiment of the principle
that I
6 see nothing, I hear nothing, and I do nothing.

7 The code of silence could not have existed unless
8 these men honored and kept it. They kept it for many
years.
9 They kept it today during this trial in this courtroom.
Their
10 silence has been maintained. You can break the code of
silence
11 by assigning responsibility to them after so many years.

12 What, in practical terms, should the generals
have
13 done to address human rights problems? We've provided you
with
14 evidence and testimony about this in very specific detail.

15 Could I have slide five, please.

16 Here are specific steps.

17 I submit to you that they are not ideas that
become
18 evident only after 20 years. You don't have to read a
thousand
19 U.S. Government cables. You don't have to have a Ph.D. to
20 figure out these principles. They really are common
sense.
21 For someone in the military who wants to solve
the
22 problem of human rights abuse, I submit to you they are
23 self-evident.

24 First, repeatedly and publicly denounce human
rights

25 abuses. The generals could have done that, they didn't.

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1 Two, demand immediate reports of all civilian
deaths
2 and detainments and punish officers failing to make such
3 reports. The generals could have done that, they didn't.
4 Issue precise written instructions that the
officers
5 will be removed if human rights abuses are committed under
6 their command. The generals could have done this, they
7 didn't. This doesn't mean issuing boiler plate speeches
on
8 national holidays, doesn't mean including one page on
human
9 rights in a pamphlet you give to the soldiers. It is more
10 specific. It is directive, has to be meaningful.
11 Inspect sites of alleged human rights abuses.
12 Generals could have done that, they didn't.
13 Respond to specific requests to stop violence.
We
14 talked about the Christian Democratic Letter. We saw the
facts
15 set out in detail in that letter. We saw the specific
requests
16 of the members of the Christian Democratic Party to
address the
17 human rights problems. They gave the generals all the

18 information that was needed to solve the problems. The
19 generals refused to act on it.

The 20 Cooperate fully with civilian investigations.

21 generals could have done that, they didn't.

wasn't 22 Protect witnesses to human rights abuses. That

23 done.

units 24 Set up functioning and independent investigation

25 for human rights abuses. That wasn't done.

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facts 1 Request help of outside investigators to uncover

2 regarding human rights abuses. That wasn't done.

you 3 Remember what Ambassador White said, what would

been 4 have done if the generals asked? He said I would have

all 5 delighted but that request never came. Publicly remove

human 6 known human rights abusers from the military. Turn all

for 7 rights abusers especially officers over to civilian courts

8 trial and punishment. That never happened.

who 9 Actively seek trial and conviction of officers

10 committed human rights abuses.

11 That could have happened but it didn't.

12 Let me go back and ask again, is all of this only
13 clear now in 20/20 hindsight, after all the study and
14 preparation has gone into this case, or was it clear then

when

15 events were happening, was it clear to people on the
scene? I

16 submit to you it was and I want to show you two final
17 examples.

18 The first comes from an unlikely source. Could I
have

19 slide 60, please.

20 This is a U.S. Government cable reporting a
21 conversation between an embassy officer, and Colonel
Mauricio

22 Vides Casanova, the brother of the defendant General Vides
23 Casanova.

24 In the portion of the cable attributed to Colonel
25 Mauricio Casanova, it states he admitted obviously
security

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1 forces and the Army, too, were guilty of a large number of
2 abuses attributed to them, but he said up to now the
military

3 high command felt the benefits outweighed the
disadvantages,

4 and look at what he said next, look at how clearly he
5 identifies what could and should happen to solve the
problem.

6 Rightist violence condoned or organized by the
7 military could be stopped quickly, he said, by making
examples
8 of three of our officers who are guilty of much of the
death
9 squad activity. No one has been charged, demoted, or even
10 reprimanded; and until some step against this violence is
11 taken, he predicted it would go on and on.

12 The testimony, documents in this case make it
clear
13 that no one ever was charged or demoted or even
reprimanded for
14 the acts of violence that took place under the command of
these
15 generals and, unfortunately, precisely as Colonel Mauricio
16 Casanova predicted, the violence did go on and on. What
this
17 Colonel said could have happened and should have happened
18 didn't happen, and it didn't happen because these two
generals
19 didn't have the will to make it happen.

20 I want to show you another example. This is a
21 document that I think will be fresh in your mind.

22 Could I have slide 121, please.

23 This is a document that Edwin Corr was examined
about
24 on Monday. It is a response to a very detailed and
graphic
25 account of torture taking place in the headquarters of the

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which
think you

1 National Police in San Salvador. If you read that cable,
2 you will have a chance to do in your deliberations, I
3 will find that it is strikingly uncannily similar to the
4 defendant, Carlos Mauricio, in this case.

the
complicated,
what

5 What I want to focus on response, the author of
6 cable Secretary of State Haig sets out, it is not
7 takes up one paragraph, and it is really the essence of
8 should have happened but didn't happen.

and

9 U.S. Government urges you, talking to the embassy
10 passing along this message to the Salvadoran Government
11 including General Garcia, specifically, mentioned by name
12 Edwin Corr stated had he received this cable he would have
13 taken it to General Garcia personally.

the
give

14 What does the cable say should be done? U.S.
15 Government urges you to move immediately to discipline and
16 remove from command those responsible and to close down
17 places where abuses occur. To this end, Government of El
18 Salvador should free the victims, jail perpetrators and

19 operation maximum publicity.

U.S. 20 It is all here. It is all right here in 1980 in
21 Government cable, the gist of which was transmitted to the
22 Salvadoran Government.

torture 23 " Discipline, remove from command, close down
24 centers, free the victims, jail the perpetrators and give
25 maximum publicity to the operation. "

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that 1 This is decisive action. This is not something
2 can be achieved solely by an order. That is after the
fact.

not 3 Passages that I've quoted are from this document,
4 on the screen, from this document. If you note down the
5 exhibit number, you can take a look at it in the binder in
the 6 jury room. It is here in the cable. It encapsulates the
7 message that we have been giving you in this trial.

was 8 Ambassador Corr when questioned about these steps
9 admitted that they were commonsensical. He admitted there
10 no action outside San Salvador required in order to take
these

11 steps, didn't involve any problem of regional command,
didn't
12 involve any logistics, didn't have anything to do with
13 guerillas at all. All that was required was the will to
carry
14 out these steps.

15 THE COURT: Mr. Stern, the warning.

16 MR. STERN: The cable, Ex. 554, which you will be
able
17 to look at, states the decisive action is necessary to
deal
18 with the situation, to stop the torture and stop the
abuses.
19 No decisive action was ever taken by these generals.

20 They didn't have the will to do it. They failed
to do
21 their duty as military commanders.

22 Their failure led to the torture of these three
23 individuals.

24 I want to leave you with a couple questions to
think
25 about as you think of what the defendants are going to
tell you

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1 in this proceeding.

2 Ask yourself how they can explain the
overwhelming

3 evidence of repression, including the torture of unarmed

4 civilians that was carried out on a vast scale by
uniformed
5 members of the military and security forces.
6 Ask yourselves how they can claim not to know
about
7 torture and murders carried out by their subordinates when
the
8 evidence of these abuses was overwhelming and plain for
all to
9 see, everyone from a priest in the seaside village in El
10 Salvador to members of the U.S. consulate. Ask yourself
how
11 they can still deny torture of unarmed civilians after all
this
12 evidence and after all these years by their subordinates
that
13 so many others have acknowledged, and ask yourselves how
they
14 can explain their failure to act to prevent these abuses
or
15 punish offenders when there were so many concrete steps
16 available to them and that others pointed out.

17 THE COURT: Mr. Stern, thank you.

18 Ladies and gentlemen, I think we need to take the
19 mid-morning break. We are a little bit late than we would
20 normally do it. Let's take a 15 minute break, and we will
turn
21 to Mr. Klaus so we might hear his final argument as well.

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

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

24 (Thereupon, a short recess was taken.)

bring

25 THE COURT: Mr. Caldwell, Mr. Marshal, would you

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1 in the jury, please.

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

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

4 Let me turn now, if I might, to Mr. Klaus who
will

5 give the final argument on behalf of the defendants.

6 Mr. Klaus.

7 MR. KLAUS: Thank you.

8 First I would like to thank you for filling one
of

9 your highest civic duties and participating here as a
juror

10 sitting in judgment of the issues and the facts in this
case

11 and what Mr. Green says, it is a very difficult case. It
is a

12 rather unique case, not a common case, not a simple
personal

13 injury case, but, nevertheless, it is a legal case and you
are

14 going to be asked to determine legal issues and to render
a

15 judgment based on the law.

16 You are not going to be asked to judge the
history of

nature 17 El Salvador. You are not going to be asked to judge the
18 of the war in El Salvador.

19 You are going to be asked to make a determination
if 20 these two men are legally responsible for what was
suffered by 21 these three individuals.

22 We are not going to contest that these people
23 suffered. We don't know the particulars of what exactly
24 happened. We only know their testimony. There is no
doubt 25 these people suffered. The question is going to be
whether my

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1 clients are responsible for it, are legally responsible
for 2 it.

3 The judge is going to instruct you and you heard
4 throughout the trial references to the Doctrine of Command
5 Responsibility. The Doctrine of Command Responsibility
wasn't 6 created at Nuremberg. It is not a result of the Nuremberg
or 7 Tokyo trials. Doctrine of Command Responsibility existed
since 8 the dawn of armies, since the Roman times when the
commander

could
military
during
applied.
look
and
of
who
was
horrible

9 led his troops to do what they weren't supposed to do, he
10 be held responsible. It has been the cornerstone of
11 discipline.
12 It evolved over the years and came to forefront
13 Nuremberg. I would like to speak about the principle of
14 command responsibility, where it is applied and not
15 It is very often applied by victors in a war where they
16 back to punish people over whom they have been victorious
17 hold them responsible for acts they feel outside the rules
18 war. It is used against people who have violated what are
19 human norms, or let their troops do that when they were in
20 command of. It was applied at Nazi's at Nuremberg, Nazi's
21 ordered horrible atrocities to be committed against Jews,
22 against other ethnic groups, against prisoners of war. It
23 applied against generals in the Japanese Army for the
24 atrocities their troops were ordered to do under their
25 command.

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1 It wasn't applied against the United States for
2 bombing Hiroshima or Nagasaki, maybe it would have
applied.
3 There were a lot of extrajudicial killings in those
bombings.
4 It wasn't applied there. It may have been applied or
reason
5 behind why we being taxpayers of America compensated the
people
6 of Japanese descent who were interned at World War II.
Just
7 because they were Japanese descent even though they were
8 Americans, they were compensated by us, they were
compensated
9 by us, our Government.

10 It was applied in Viet Nam, against Lieutenant
Calle
11 for the Melie massacre when he ordered the troops to shoot
down
12 women and children. Wasn't applied against Senator Bob
Carey
13 when he admitted he may have done the same thing in Viet
Nam.
14 It wasn't applied against Medina who was Calle's commander
or
15 applied against Westmoreland who was the Commander in
Chief in
16 Viet Nam, even though there were plenty of atrocities. It
17 wasn't applied against the people who flew over Cambodia
and
18 bombed and killed innocent civilians.

19 It wasn't applied in Korea against -- I don't
know if
20 you read or seen of it lately, against the massacre that

and
Troops, it
cases.
here
was

21 occurred when refugees were trying to escape North Korea
22 gunned down, explanation I heard by mistake by U.S.
23 wasn't applied there, but it has been applied in other
24 It was applied in Haiti and that case was tried
25 under this Act where a Haitian officer, military officer

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his
an
troops
--
wars in
military
different

1 held responsible for atrocities committed by troops under
2 control, under his orders that committed this.
3 It is a lot easier to prove a case where you have
4 example of an order, of a military officer ordering his
5 to do something that goes against international law and
6 generally accepted laws, like to commit torture, to commit
7 to slaughter people. It has been applied to the recent
8 the Balkins, in Bosnia, Croatia, in Chetnia, where
9 commanders carried out genocide against people of
10 ethnic or religious groups and their own.

courts 11 Those people have been tried in international
Rwanda 12 set up in the Hague. It has been applied to leaders in
ones 13 where there were ethnic massacres, probably the largest
14 ever, and it is going to be applied here in this case.
in 15 It hasn't been applied where -- it wasn't applied
16 the recent beating case of a black youth by an officer of
applied 17 Englewood Police Department in California. It wasn't
station by 18 where the man in New York was tortured in the police
case 19 police officers. It wasn't applied in the prison guard
some 20 here where we had a prisoner beat to death recently by
21 guards.
22 It wasn't applied to the Rodney King beating in
23 California.
when 24 It wasn't applied in Miami back in 1978, '77,
25 Arthur McDuffie was beaten to death by some white police

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to 1 officers. It wasn't applied when Mr. Mercado was beaten
2 death in Miami by some police officers.

3 I read in the paper this morning about a deputy
from
4 the Palm Beach Sheriff's Department who was just arrested
for
5 shooting a woman. It wasn't applied there.
6 MR. GREEN: Objection, improper argument.
7 THE COURT: What is the legal basis?
8 MR. GREEN: Improper argument, he is referring to
local
9 events.
10 THE COURT: We are going outside the evidence, and
that
11 is the basis of the objection. I am going to sustain the
12 objection. We need to confine ourselves to the evidence
in the
13 case.
14 MR. KLAUS: It is being applied here, the Doctrine
of
15 Command Responsibility.
16 There is no doubt that what happened in El
Salvador
17 was horrible, that what happened to these people was
horrible.
18 It was a horrible war. It was a dirty war. But in order
to
19 prove this case, their case, they are going to have --
they are
20 going to have to show you things. They are going to have
to
21 prove things. They have to provide proof, not just to
show
22 it.
23 The burden of proof is on the plaintiffs. It is
on

24 them to come forward and prove by a preponderance of the
25 evidence all the elements of command responsibility that
the

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1 judge will explain to you.

2 I would like to go through each individual case
and
3 the elements that are required for the plaintiffs to prove
and
4 see if they've met their burden.

5 The elements of command responsibility are the
6 plaintiff -- and you have to consider each case
individually.

7 This isn't a matter of there were atrocities. These
people
8 suffered atrocities. The generals didn't do enough to
stop the
9 atrocities, therefore, they are responsible for the
atrocities
10 these people suffered. That is not what this case is
about.

11 It is are these individual men responsible for these
12 individuals, not what happened in El Salvador.

13 There are four elements that the plaintiffs are
14 required to prove.

15 The first two elements deal specifically with
these

16 plaintiffs and these generals. First, the plaintiffs were
17 tortured by a member of the military, security forces or
18 someone acting in concert with the military or security
19 forces.

20 Second, that means that they have to prove that
it was
21 someone, either in the military, in the security forces,
or
22 someone acting in concert with them, together with them
who
23 actually tortured each one of these individuals.

24 They have to prove that there was a superior
25 subordinate relationship that existed between the
defendant,

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1 meaning either General Vides or General Garcia, and the
person
2 who tortured the plaintiff.

3 Now, there is an explanation on what the court
means,
4 what the law means by a superior subordinate relationship.
It
5 doesn't mean that just because they wore a uniform that
they
6 were their subordinates. It means and the judge will give
you
7 the explanation and you will have these instructions with
you

8 to read it. It means these men had to be in actual
control, be
9 able to exercise actual control over the individuals who
10 actually committed the torture.
11 Neither one of these men are even accused of
actually
12 committing the torture.
13 Neither one of them are accused of having ordered
the
14 torture.
15 They are trying to prove their case by saying
they
16 knew or should have known about these acts, that these
acts
17 were going to happen, that it was likely these acts were
going
18 to happen, and they didn't do anything to prevent them,
they
19 didn't do thinking that was reasonable under the
circumstances
20 to prevent these acts from happening.
21 Now, we all know what it is like to try to
control
22 people that we have control -- that we supposedly have
control
23 of, like our children.
24 Very often our children do things that we don't
25 approve of that are wrong, that they know are wrong before
they

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1 do them, and they do them anyway. Should we be
responsible for

2 that?

3 That is the kind of question you will have to
answer

4 here.

5 Should the police chief be responsible for that
6 officer beating the guy on the side of the road?

7 Should the police chief or sergeant or lieutenant
or

8 should the captain or should the Colonel or should the
chief be

9 responsible for Rodney King being beaten?

10 MR. GREEN: Objection, outside the evidence.

11 THE COURT: I will sustain the objection.

12 MR. KLAUS: You are going to be asked to determine
13 whether these men should be responsible for what people
14 supposedly under them did.

15 We don't know who did the acts. We don't know.
They

16 haven't proved that the people -- they haven't met the
burden

17 of the first element that these people were under their
18 command. They haven't met that there -- they haven't
proven

19 that there was a superior subordinate relationship, in
other

20 words, that these men could have stopped what they were
doing.

21 It would have required what the torturers were doing. It
would

22 have required them to be present.

at
23 Most of the testimony said these things happened
happened
24 night. These things happened -- with Ms. Gonzalez, it
25 in a basement, with Mr. Romagoza it happened at several

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happened at
1 different locations, and with Professor Mauricio it
2 the National Police Headquarters. The National Police
3 Headquarters you will see from the letter was under the
4 direction of the National Police, that was Colonel Flores.
It
5 wasn't under the command of either one of my clients.

my
6 Now, unless they can show there was an actual --
clients'
7 clients had actual control, you have to find in my
8 favor.

9 They tried to show that by, hey, these guys were
10 wearing uniforms. They had to be under your control.

of men
11 The examples I have given you, there are plenty
you
12 in uniform that do things that they know are wrong that
13 can't hold their commanders responsible for.

14 The last two elements are general elements
meaning
15 that they apply to all circumstances, not just to these
facts,
16 not just to these circumstances.
17 That is, that -- and that is what they have been
18 talking about. Their case is focused on that proof, the
proof
19 there was a pattern of atrocities. There was a pattern of
20 human rights abuse. There was a pattern of torture and
that
21 element says that the plaintiffs have to prove the
defendant
22 military commander knew or should have known owing to the
23 circumstances of the time that his subordinates had
committed,
24 were committing, or about to commit torture and/or
25 extrajudicial killing.

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1 Now, they tried to prove this through the cables,
2 through the newspaper articles, through saying the bodies
were
3 piled in the street. I think it is important that you
look at
4 when that evidence was developed and remember when these
events
5 allegedly happened.

1979,
men
have
Guard
present
was
control
there
New
to
be
really
has
to

6 Ms. Gonzalez claims she was tortured in December
7 two months after the coup, two months after the entire
8 Government in El Salvador changed. Two months after these
9 took their first positions of leadership. For them to
10 known what was happening on a daily basis in the National
11 Headquarters in San Vicente they would have had been
12 there. They would have to have daily contact with what
13 happening in San Vicente.

14 Even with that, they may not have been able to
15 what was happening, because in the instances I gave you
16 are officers on active duty, the torture that happened in
17 York City happened right in the headquarters --

18 MR. GREEN: Objection, outside the evidence.

19 THE COURT: I think counsel certainly has a right
20 use hypotheticals or examples, but I do think we need to
21 careful about getting into other events over which there
22 has been no evidence in the case.

23 So, I am going to sustain the objection. Counsel
24 a right to use other examples, but I would ask that we try
25 stay confined to the evidence if we can do that.

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1 MR. KLAUS: You don't leave your common sense and
2 knowledge at home when you come here. You are permitted,
you
3 are encouraged to use your common sense, to use the
knowledge
4 you have accumulated over the years to make the decisions
that
5 you are asked to make here, and I ask you to apply your
common
6 sense to this case.

7 For my clients to have control over the
individuals in
8 San Vicenti, they would have had to have been there. They
9 would have had to have been essentially looking over their
10 shoulders and your common life experience tells you that.

11 If what happened to Ms. Gonzalez happened in
1979, not
12 a single one of those cables had been issued. There
wasn't any
13 cables from Ambassador White until March of 1980 when he
took
14 his post, so, his analysis can't be attributed to
providing
15 knowledge to these guys of atrocities. It can't.

16 Examples of evidence that -- or things and events
that
17 happened after these events can't be used to imply
knowledge --

18 that they had knowledge about those things beforehand.

19 They can't be said to know about the horrible
massacre

20 of El Masote in 1979 or '80 when it didn't happen until
1981.

21 So I use those examples. They had to know these
22 things were happening. It doesn't make any sense.

23 The last element is the defendant military
commander

24 failed to take all necessary and reasonable measures to
prevent

25 torture and/or extrajudicial killing or failed to punish

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1 subordinates after they committed torture and/or
extrajudicial

2 killing.

3 These acts were never reported. Their own
testimony

4 said they were never reported. I don't know how they
could

5 punish events that they didn't know happen.

6 Now, they would like you to believe that because
they

7 didn't punish what happened at El Masote, they didn't
punish

8 what happened with the FDR killings, that there is no way
they

9 were going to punish these events. Well, they couldn't
punish
10 events that they didn't know about. Their testimony, they
11 never reported these things, and probably for good reason,
12 probably for good reason they didn't.

13 People were afraid. You heard Ambassador Corr
say,

14 look, there were free elections in '82, but if I was
opposition

15 party, I wouldn't have participated. I would have been
afraid,

16 and that was the nature of the circumstances there. Those
17 weren't circumstances created or controlled by my clients.

18 That was a war. There were circumstances beyond the
control of

19 any individual.

20 You heard Ambassador Corr say and Ambassador
White, it

21 was beyond the control of the United States, who was the

22 greatest power in the world at the time, it was beyond

23 anybody's control. It was a war being fought out.
Horrible

24 things were happening. Doesn't excuse acts of torture,
doesn't

25 excuse everything that we know is wrong.

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1 My clients knew it is wrong. Everybody knows
that

they 2 torture is wrong, but they couldn't punish an act that
3 didn't know about.

later 4 Failure to punish acts that may have happened
5 can't be used to impugn that they wouldn't have punished
these 6 acts if they knew about them.

out, 7 Both generals testified if they would have found
they 8 if there would have been a report to them of this torture,
9 would have investigated it. There wasn't. There wasn't a
they 10 report of this torture, not until now. The first time
with 11 heard about these cases was in 1999 when they were served
12 the papers.

brought 13 I would like to respond specifically to things
14 up in the plaintiffs' closing arguments.

15 Number one, the Truth Commission. The Truth
16 Commission is a document that was prepared pursuant to the
guerilla 17 Peace Accord pursuant to peace worked out between the
18 factions and the Government of El Salvador.

how 19 You heard about the nature of the investigations,
20 the investigations were carried out. When I asked Ms.
Popkin 21 about the case where the two students were kidnapped by --
22 supposedly, kidnapped by two National Guardsmen and turned
over

you 23 to civilians and then they disappeared, I asked her, did
No, 24 try to find out who the guys who did the kidnappings were?
to 25 that wasn't the focus of our investigation. If you want

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1 find out the truth, you need to find out who did the act.
They 2 They wanted to blame General Vides, they did.
he 3 claimed when the families came to General Vides, he said
heard 4 didn't have any knowledge what happened. Of course, he
5 didn't. No one told him what happened at the time. He
an 6 it from those people. And then to do an investigation of
the 7 event like that and not try to find out who actually did
8 kidnapping, what kind of investigation is that?
I ask 9 When you go through the Truth Commission report,
the 10 you, you got a lot of stuff, take your time. You have all
because, 11 time in the world -- well, take your time and read it,
history 12 you know, the truth is in there, everybody -- you know,
13 is a matter of prospective. It is easy -- not easy, but

know
not
14 historians write from their prospective. People actually
15 what happened are the people who were there, but they are
16 usually the ones writing the history books. It is written
17 based on what people tell people.

she
to
whose --
18 Research, you heard Professor Karl explain how
19 does her research, how she found out things. She talked
20 different people. I ask you to weigh the evidence by
21 who gave it and what they base it on.

all
you.
22 Ambassador White was there. Ambassador White was
23 there at the worst time, and at his initial assessment,
24 those cables are in the notebook that the plaintiffs gave

25 I ask you to take your time and read them.

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ask
term
was,
1 They talked about Colonel Moran and you heard me
2 General Vides was Colonel Moran an infiltrator, which is a
3 we heard a few times, and he said, yeah, apparently, he
4 because at that time he was Colonel and head of the
5 investigations for the National Guard.

6 He didn't know he was part of the coup, part of
the
7 coup engineered by Major D'Abuisson. He didn't know that
at
8 the time, that came out years later.

9 We didn't know about Mr. Hanson being a spy in
the CIA
10 until 16 years after he was a spy.

11 MR. GREEN: Objection.

12 THE COURT: Well, the jury heard the evidence, and
the
13 jury will make its own judgment as to whether that has
been
14 established by the evidence; so, let us proceed.

15 MR. KLAUS: The whole nature of an infiltrator and
spy
16 is that he doesn't make his presence known, he goes
undetected
17 and usually causes severe damage.

18 This was a guy that was supposed to be
investigating
19 complaints of human rights abuses and here he was part of
the
20 death squad movement that was committing them. That is
when
21 Ms. Karl talks about acts being perpetrated out of the
22 headquarters of the National Guard, yeah, by a guy like
that,
23 who was working with people outside the Armed Forces to
commit
24 these acts.

25 You heard Colonel Garcia speak about the chain of

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1 command, how even though there was a coup, the chain of
command
2 was still in effect. How could the chain of command be in
3 effect when there is a coup. When within the armed
services he
4 claims there is a chain of command, the chain of command
is
5 broken, between 40 and 70 of the top officers, when there
were
6 only 106 officers in the military at the time were thrown
out.
7 The president was thrown out of the country. The head of
the
8 National Guard, Minister of Defense, in 1979 were all
thrown
9 out of the country, how could the chain of command remain
10 intact when you take the people -- half of the chain of
command
11 out?

12 The idea the military functioned the way ours
does or
13 anyone in the military does is ludicrous.

14 There is evidence of several attempted coups.
There
15 is evidence of fights and divisions within the military
all
16 during that time. So the idea that the Minister of
Defense

chain 17 would give an order and it be carried out right down the
18 of command during this time is ludicrous.
cable. 19 I ask you to look closely at Ambassador Corr's
20 He lays out his analysis not just at that time, but how he
saw 21 the whole conflict of all of the events in El Salvador,
about 22 the code of silence, and how that affected the chain of
23 command. No one wanted to be a rat. So if you were the
24 sergeant at San Vicenti, and there were people being
tortured 25 there, it is highly unlikely that you would go up the line
and

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1 tell your commanders. That is what the code of silence is
2 about. We have seen that here in our country.
3 You heard that the procedure for punishing
4 perpetrators was to hand them over to the civil courts.
You
5 heard Professor Popkin testify that the civil courts
weren't
6 working. You heard Ambassador Corr testify that the civil
7 courts weren't working.
8 Now, Professor Popkin led you to believe the
civil

9 courts weren't working because they were intimidated by
the
10 military. They weren't working for a lot of reasons and
they
11 hadn't worked for a long time for a lot of reasons.
12 There was corruption, there was fear, there were
13 threats from the right wing and the left wing. You heard
about
14 the Christian democratic letter signed by Napoleon Duarte
who
15 two months later was president of the junta. Those
reforms
16 were put into affect.
17 These men did everything they could to carry out
the
18 reforms called for the by the coup of October 15, '79.
They
19 did everything they could to carry out the reforms
requested in
20 the Christian Democrat's letter. Napoleon Duarte joined
the
21 Government. He was the first elected president. He was
their
22 commander in chief.
23 The plaintiffs would like you to believe that
this was
24 a -- that these things could have been cured right away,
that,
25 yeah, if what General Vides' brother said, yeah, if we
removed

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1 three officers, there wouldn't be any human rights abuses.
2 That flies in the face of what they are saying
out of
3 the other side of their mouth. This is so all pervasive
that
4 it is going on all over by everyone.
5 There is a lot of confusion about the history of
El
6 Salvador, and what I ask you to do, and what the court is
going
7 to instruct you to do, is to look at the facts that
pertain to
8 this case to see and hold the plaintiffs to their
9 responsibility whether they have proved these elements as
10 explained to you.
11 I'm glad that they have the opportunity to seek
12 justice here. I am glad that our courts are open, that
they
13 provide people an opportunity to seek justice and Ms.
Gonzalez
14 says she doesn't want any money for this. She just wants
the
15 opportunity to express to tell us what happened.
16 I -- You know, I think justice needs to be done
here
17 and I don't think the parties that are responsible for
this,
18 for what happened to these people, are here. I don't know
if
19 it should be the Government of El Salvador because if you
want

20 to believe the plaintiff's case, it is the whole
Government of
21 El Salvador that is responsible, the whole military that
is
22 responsible for what happened to them, or if it should be
the
23 people who actually did the torturing, but I can tell you,
it
24 shouldn't be these two men who were doing the best they
could
25 to institute all the reforms that led that country to a

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1 democracy.
2 These men are more like the Jefferson and Adams
of El
3 Salvador then they are the Adi Amen and Adolph Hitlers
that
4 they are being painted by the plaintiffs. These men led
the
5 reforms. They did everything in their power to rein in
6 undisciplined corrupt military, to move a country forward
into
7 a democratic form of Government with rights and freedoms
for
8 all their people.
9 And as a result of their efforts, that country is
a
10 democracy now.

11 It is not the safest place in the world, but they
have
12 open, free elections.

13 There is a former member of the guerillas Mayor
of San
14 Salvador. There has been great strides in protecting
political
15 freedoms. And as a result of what they did and their
efforts,
16 they weren't -- and even after all these cables, you saw
the
17 letter from Secretary of State Schultz to Mr. Vides,
Secretary
18 of State Schultz is Secretary of State, all the
ambassadors
19 work for the Secretary of State, for him to send a letter,
20 bottom line, there is probably a lot more cables that we
21 haven't read. His bottom line was to commend him on the
great
22 job he did for bringing about democracy in that country
and for
23 behaving professionally and ethically.

24 Both the Legion of Merit awards, all three of
them,
25 two received by General Vides and one received by General

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1 Garcia at the end of their careers. It is not just the
award,

2 it is the wording of the award that goes along with it
that is
3 important. That is our Government assessment. This is a
4 Government that has been involved from day one in
everything
5 that happened in El Salvador during that time. Their
final
6 assessments were that these men did whatever they could
and did
7 it in a professional manner to bring about the needed
changes
8 in that country.

9 I ask you to hold the plaintiffs to their burden
of
10 proof and to make the proper findings, in which case that
my
11 clients weren't responsible, weren't personally
responsible for
12 what happened to these people.

13 Thank you.

14 THE COURT: Mr. Klaus, thank you.

15 Let me turn, if I might, then, to Mr. Green for
the
16 closing portion of the plaintiff's final argument.

17 MR. GREEN: This will be the last time I can speak
with
18 you before you receive the instructions of law from Judge
19 Hurley and begin your deliberations.

20 This case based upon the argument that you just
heard
21 turns on one thing and one thing alone. If the defendants
deny
22 torture in the face of overwhelming evidence to the
contrary,

23 that itself is a failure of command because from that
knowledge
24 of the torture springs the duty to act, take effective
measures
25 to investigate, punish and prevent.

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1 If, as here, the defendants deny knowledge, they
admit
2 that they took no steps to punish or prevent abuses
because in
3 their own words, there was nothing to prevent or punish.

4 There was nothing to investigate.
5 If they take no steps to punish or prevent, then
they
6 cannot show that their commands to punish or prevent were
not
7 effective.

8 This case turns on these defendant's own denials.
9 This deniability, this code of silence pervades their
entire
10 defense here and their entire conduct during the years
from
11 1979 to 1983.

12 Defendants are wrong on the facts, on their
actions
13 and inactions and on their history.

14 They try to wrap themselves as being Jeffersons
and

15 Adames and not Adi Amen or Adolph Hitler. We have not
16 suggested that they are Adi Amens or Adolph Hitlers. We
have
17 suggested and we have established that they were state
18 terrorists. They allowed a massive rein of terror to take
the
19 lives of tens of thousands of people. These lives of
unarmed
20 civilians need not and should not have been taken. There
was
21 no reason, you don't attack large members of the unarmed
22 civilian population merely because they oppose or resist
by
23 peaceful means, by their works, by their beliefs a
military
24 dictatorship.

25 Mr. -- The defendants contend that there must be
a lot

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1 of cables out there that we haven't read. The defendants
have
2 the same access to the same cables that we have. We
shared all
3 of these documents with them. That statement that there
must
4 be other documents that we haven't seen is just another
part of
5 the denial, deniability.

6 United States officials who were on the front
lines in
7 El Salvador during the time in question wrote the cables
that
8 you have read time and time again. They met these men,
they
9 knew these men, and you saw the cables about what they
knew,
10 and what they believe.

11 Our own United States officials, our U.S.
Ambassador
12 appointed by President Reagan said while Garcia talks a
good
13 game, I no longer trust him or believe him. Ambassador
Hinton,
14 cable traffic, 1982. The Judge will instruct you-- they
also
15 claim, well, we can't be responsible because we weren't
16 physically present.

17 That is not the law. You will hear Judge Hurley
18 instruct you on the law.

19 We do not have to prove that these generals knew
of
20 the specific acts of torture. We do not have to prove
that.
21 We don't have to prove that they knew about it. We don't
have
22 to prove that they were physically present.

23 That would be page eight of the instruction.

24 " The plaintiff does not have to prove that the
25 defendant military commander knew or should have known of
the

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1 plaintiff's torture"; rather, all we have to show in order
to
2 establish the knowledge of it is that the plaintiff
established
3 by a preponderance of the evidence that the military
commander
4 knew or should have known that his subordinates had
committed,
5 were committing, or were about to commit acts of torture
or
6 extrajudicial killing.

7 The knowledge was everywhere, the bodies were
8 everywhere.

9 Even Ambassador Corr stated that.

10 There is no difference in history. The
historical
11 facts have been proven. Even their own expert has
acknowledged
12 the historical facts established in our case. You would
have
13 had to have been a dunts, deaf or blind not to know about
the
14 atrocities being committed by the security forces.

15 Even Ambassador Corr, you saw the cable, you saw
the
16 deposition excerpts, admitted, even though he was trying
to
17 help out General Vides, admitted that the security forces
were

18 responsible for most of the atrocities.

19 Defendants also argue that they couldn't punish
events
20 that they didn't know about. Well, we do know General
Vides
21 knew about at least one act of torture. He could have
stopped
22 it. He could have prevented it. We also know he knew
about
23 acts of torture that were committed in the torture cells
in
24 National Headquarters. General Vides -- he said General
Vides
25 was ordered to conduct an investigation. General Vides
said he

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1 never conducted an investigation. If you don't conduct an
2 investigation, find out who is running the torture cells,
you
3 don't punish them and remove them. You turn on the green
light
4 and continue and continue and continue.

5 And they claim what happened to Neris Gonzalez
took
6 place two months after this man assumed Minister of
Defense and
7 this man assumed position of Director General of the
National
8 Guard.

9 Ladies and gentlemen, this man here, General
Garcia,
10 knew about the repression that was occurring by the
National
11 Guard. He admitted this in his own testimony in the area
of
12 San Vincenti where Neris Gonzalez was captured and
tortured,
13 and while he may not have been in command at the time he
first
14 learned about it, he was certainly in command by October
1979
15 when he went from San Vincenti to San Salvador to be
Minister
16 of Defense. At that point, he assumed command over the
17 National Guard.
18 You saw the chain of command, Minister of
Defense,
19 general staff, National Guard, National Police, and to the
20 military branches, that is a chain of command.
21 Professor Garcia, perhaps the foremost expert on
22 military command responsibility explained to you what a
chain
23 of command is. He explained what subordinates is. There
is a
24 general, colonel, major, and other people under your
command.
25 Everyone underneath you is your subordinate. A private is
a

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1 subordinate to a general. A captain is a subordinate to a
2 general, a major, a lieutenant colonel, a colonel. They
are
3 all subordinates. Chains of command work like that
4 everywhere. In military everywhere. I believe it was
General
5 Garcia who admitted that in his deposition testimony.

6 This was a chain of command. This was a military
7 chain of command that functioned like chains of command
8 everywhere.

9 There were no logistical or communications
10 difficulties. Even Ambassador Corr admitted that. There
were
11 telephones. You didn't need a helicopter to fly from San
12 Salvador to San Vincenti.

13 You didn't need a helicopter to fly from the
National
14 Guard headquarters in San Salvador to the National Police
15 Headquarters in San Salvador. This torture was occurring
right
16 under their noses.

17 This torture was not occurring in remote outposts
18 hundreds of miles from their headquarters, from their
offices,
19 this was right under their noses.

20 In not one cable did either of these generals
complain
21 that the code of silence was in any way interfering with
their
22 ability to investigate, punish, or prevent. They were
part of

code 23 the problem. They were the problem. They protected the
24 of silence. They perpetuated deniability that has led to
the
25 big lie that has been presented to you today and
throughout the

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1 past four weeks.
2 Mr. Klaus talked about the burden of proof. As I
said
3 earlier, this is not a criminal case where we are trying
to
4 send these gentlemen to jail. In a criminal case, you
start
5 out with presumption of innocence, and prosecution has to
prove
6 its case not like this, but prove its case beyond and to
the
7 exclusion of a reasonable doubt.
8 This is a civil case. All we can do is ask that
you
9 do your duty and award damages. Where it is a civil case,
10 where money is involved, the burden of proof is what Judge
11 Hurley will instruct you, it is called a preponderance of
the
12 evidence. All we have to do is tip the scales slightly
and we
13 win. All we have to show is that it is more likely than
not

14 that these defendants knew, that they could and should
have
15 done various things to correct what their subordinates
were
16 doing, that they were subordinates, that they were wearing
17 uniforms. That is not all we have to show, they were
wearing
18 uniforms. This occurred at the National Police
Headquarters.
19 I will talk to you about how the chain of command worked
and
20 how they had to investigate, prevent and punish.
21 Getting back to the knowledge element, as I said,
we
22 don't have to prove that these generals knew about Dr.
23 Romagoza's torture, even though we established that. We
don't
24 have to show that they knew about Neris' torture and
Professor
25 Mauricio's torture. We have shown that at least General
Vides

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1 knew that Professor Mauricio was being detained in the
National
2 Police Headquarters but the Judge will instruct you that
the
3 plaintiffs do not have to prove that the defendants knew
or

4 should have known of the plaintiff's torture. All we have
to
5 show is that they knew or should have known that
subordinates
6 had committed, were committing, or were about to commit
acts of
7 torture and/or extrajudicial killing. We submit that that
8 evidence is overwhelming.

9 Regarding the effective control, page eight of
the
10 jury instructions, you will see this, Judge Hurley will
hand
11 you the jury instructions. On page eight, it says at the
top
12 here, a military commander cannot escape liability where
his
13 own action or inaction causes or significantly contributes
to a
14 lack of effective control over his subordinates.

15 You heard extensive testimony from Professor
Garcia
16 why we have a chain of command, why we entrust tremendous
17 destructive capacity, capability in military commanders,
and
18 why when we as a society entrust destructive capability in
the
19 hand of military commanders, that we insist on strict
military
20 discipline. And the cornerstone of discipline is
21 responsibility. And the cornerstone of military
discipline is
22 command responsibility. Duty of a commander to keep his
ears
23 open, his eyes open and to protect unarmed civilians.

blind 24 He can't avoid his responsibility by taking a
indifferent 25 eye, by being willfully blind, by being callously

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can't 1 to wrongs occurring everywhere by his subordinates. He
2 do that.

gentlemen 3 Let's look at the actual powers that these
4 had beyond just the paper chain of command.

comes 5 Regarding the National Guard headquarters, this
Mr. 6 out of General Garcia's own words, when he was asked by

control 7 Klaus on direct examination: " Who had direct or actual
8 over the people in the National Guard Detention Center"?

End 9 quote. General Garcia testified the Minister of Defense,
the 10 minister -- excuse me, testified it was the Director of
11 National Guard.

12 Let me start over again, I am sorry about that.

13 When I asked -- excuse me, when Mr. Klaus asked
14 General Garcia who had actual or direct control over
people in 15 the National Guard Detention Center, he answered, General

16 Garcia answered, the Director of the National Guard. The
17 Director of the National Guard at the time was this
gentleman,

18 Vides Casanova.

19 You saw the cables, General Garcia is the power
behind
20 the thrown. General Garcia admitted on cross-examination
that
21 he had total capability as far as the Armed Forces were
22 concerned. He acknowledged his own power, his own total
23 capability, his own effective control.

24 General Vides stated that there was not a single
act
25 of insubordination to him and his 35 years of military

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1 commander. That is actual control.

2 General Garcia, when we saw him faced in May of
1980
3 with a choice between the rightists and the reformists
under
4 Colonel Majano, he made a choice. Colonel Majano wanted
to
5 reform the military, bring about democracy and human
rights
6 abuses, and he had 17 reformists officers with him. When
7 General Garcia made his choice, he allowed the release of
the

8 rightists leaders and expelled from the military Colonel
Majano
9 and the 17 reformist officers. That is actual control.
That
10 is actual power.
11 They also talk about their own inaction. They
chose
12 never to punish a single officer, not one, never, during
1979
13 to '83 time period. Not one.
14 The actual control when it is occurring right
under
15 your noses, you have actual control. You can't close your
16 eyes, you can't close your ears. You can't take I see
nothing,
17 I hear nothing attitude as a military commander.
18 The torture here was orderly. It was controlled
and
19 it was prolonged. There was no chaos in any of the
torture
20 chambers. The torturers knew how to terrorize people.
21 Ambassador White's cable -- excuse me, Ambassador
22 White's testimony made clear the cornerstone of our United
23 States foreign policy in 1980, right after these men
assumed
24 command responsibility was that these men, in fact, had
and
25 could exercise command responsibility.

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1 They were directly confronted in the Christian
2 Democrat's letter of January 31, 1980 with 19 specific
acts of
3 abuse and atrocities. They were asked to get rid of at
least
4 10 specifically named troops. They were asked to make a
number
5 of specific reforms. They made absolutely none of them,
zero.

6 The defendants suggest, well, we can't judge defendants by
7 history because of what they didn't know.

8 Sometimes post event acts, and again with the
January
9 31, Christian Democratic Letter of 1980, that is less than
a
10 month after Neris Gonzalez was released. You can tell
what
11 their attitudes were at the time by how they responded
later.

12 Post event document such as January 31, 1980
Christian
13 Democratic Letter tell us a lot about what their attitudes
14 toward torture and atrocities being committed by their
troops
15 was. Their attitude, don't investigate, don't punish,
don't
16 prevent.

17 The green light had already been turned on when
18 Minister of Defense Garcia accepted his appointment in
October
19 1979, and we submit it had already been turned on when he
was
20 head of the Army garrison in San Vincenti in July 1978 to

21 October 1979.

case
is
banking

22 But the most important bit of evidence in this
23 about these defendant's actual control was what they claim
24 the highlight of their military career, and that is the
25 reform.

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Garcia,
Banking
with
States
progress
do
and
lightening
He

1 Let there be no doubt that these men had actual
2 control. Let there be no doubt that this man, General
3 when he had the will to do something, he could do it.
4 reform wasn't popular with the rightist, was not popular
5 the oligarchy, but he was under pressure with United
6 Government to implement reform, to show some kind of
7 in El Salvador. And he accepted it. When he decided to
8 something, he did it. He claimed he did it for agrarian
9 reform. We may disagree about that. He did it in
10 speed, 24 hours, hundreds of banks throughout El Salvador.

what 11 takes great pride in that. That is fine, but that shows
12 he could do when he had the will to do it.

Casanova 13 What we didn't hear from either General Vides
14 or General Jose Garcia concerning a will to provide
meaningful 15 reforms on human rights. Mr. Stern went down the list of
16 failures to prevent, failures to investigate, failures to
17 punish. You also saw the diagram there with the
promotions.
18 You don't promote human rights abusers, you punish them.

When 19 you promote human rights abusers, you are brightening the
green
20 light. You are sending another signal that human rights
abuses
21 will be continued to be tolerated and in fact encouraged
as
22 part of this rein of terror, as part of the massive state
23 terror.

kind 24 The ends do not justify the means. Seems to be
25 of the argument that Ambassador Corr and these generals
were

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1 making in this case. Oh, ignore us for the repression,
ignore

years, 2 us for the atrocities, there were some reforms, and 10
3 12 years, 13 years later there were the peace accords, and
4 Truth Commission reports, forgive us for the sins of
70,000 5 deaths, 80,000 deaths. Forgive us for the tortures of the
Juan 6 Romagoza's, and Neris Gonzalez', and Professor Mauricio's.
The 7 ends do not justify the means.

8 Torture is never permitted under any
circumstances, 9 never. Neither anti-communism nor pro democracy justify
10 torture.

11 Al Haig, four star general, former commander of
NATO, 12 Secretary of State under President Reagan said torture is
never 13 justified in the name of victory or in any name.

14 Let's go back a little bit to the history of the
15 Doctrine of Command Responsibility.

16 Ladies and gentlemen, in 1945 Japanese General
17 Yamashita, Y-a-m-a-s-h-i-t-a, commander of the Japanese --

18 MR. KLAUS: Objection, outside the scope of the
19 evidence.

20 THE COURT: Sustained.

21 MR. GREEN: In connection with the solemn duty of
22 soldiers the following words were uttered --

23 MR. KLAUS: Objection, outside the scope of
evidence.

24 THE COURT: Let's go ahead if we can.

charged

25

MR. GREEN: The soldier be he friend or foe is

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very

1 with the protection of the weak and unarmed. It is the

sacred

2 essence and reason of his being. When he violates this

the

3 trust he not only profanes his entire cult but threatens

4 fabric of international society.

5 May I have a moment, Your Honor?

6 Let's look at these words. The beginning of my

7 cross-examination of General Garcia I broke this down into

8 three parts.

the

9 These are not my words. These are the words of

10 General Douglas McArthur that were uttered in 1945 about

11 duty of a soldier and duty of a military commander.

words,

12 I asked General Garcia if he agreed with these

13 and he said that he did.

those

14 We submit that by his actions and inactions and

these

15 of General Vides Casanova an as well, that they profane

civilians.

16 words through their rein of terror against unarmed

as
17 They breached their sacred duty, not just as soldiers, but
18 military commanders.
these
19 Archbishop Romero in his last homily said to
20 generals and the soldiers under them. " I beseech you,
stop the
21 repression. " That was in March 1980. Then he was gunned
down.
of
22 These three torture victims are three of the tens
23 thousands of victims of the repression in El Salvador. On
24 behalf of these three victims, we beseech you to tell
these
25 generals loudly and clearly that what they did was

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duties as
1 reprehensible. These generals breached their sacred
the
2 military commanders, their callus indifference threatens
3 very fabric of international society.
4 We urge you to send a message.
5 Thank you.
6 THE COURT: Mr. Green, thank you.
your
7 Ladies and gentlemen, let us break now, and with
is
8 permission I would like to shorten the luncheon break. It

break
9 10 minutes of one. Why don't we agree that you take a
10 until 25 minutes of two. I want to give you a 45 minute
11 break. Lunch has arrived and is available in the jury
room;
12 and if you would like to stretch your legs, and what we
will do
13 is, at the end of that time, at the end of 45 minutes,
let's
14 come back and I will discuss the law with you and then we
will
15 put the case in your hands for your decision.

16 We will be in recess for 45 minutes.

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

18 THE COURT: Court will be in recess for 45
minutes.

19 (Thereupon, a recess was taken 12:50 p.m.)

20 (Thereupon, court reconvened 1:40 p.m.)

bring
21 THE COURT: Mr. Caldwell, with would you please
22 in the jury.

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

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

25 Ladies and gentlemen, we understand that you
fully

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1 appreciate the responsibility that is so special and so

the
case.
have

2 uniquely yours as a member of the jury in terms of judging
3 credibility of the witnesses that have testified in the
4 We watched you and watched the attention, diligence you
5 brought to this task throughout the trial.

it is
understand
your
me
what
have
obligation is

6 Now, you have listened to the law, and sometimes
7 people say, okay, I understand that, I want to make sure
8 terribly important that you understand the law and
9 it accurately, and so if you get back in the jury room in
10 deliberations, if you have any problem with it as you are
11 attempting to apply the law, please don't hesitate to let
12 know and I will be happy to address it. As I was saying,
13 you need to do is decide what are the facts, and when you
14 decided what are the facts, then, of course, your
15 to apply the law faithfully to those facts.

law

16 Now, I am going to explain to you the rules of
17 that you must follow and apply in deciding this case.

back
refer
whether

18 As you know, when I have finished, you will go
19 into the jury room to begin your discussions or what we
20 to as your deliberations. In deciding the case, you must
21 follow and apply all of the law as I explain it to you

when we 22 you happen to agree with that law or not. You remember
about 23 were going through the jury selection process we talked
under 24 this aspiration of wanting to see ourselves as a nation
really 25 law, and I mentioned to you then that that aspiration

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is the 1 does become a living reality in the jury room because it
2 jury's obligation to take the law as passed by our elected
3 representatives and to faithfully apply it.

in 4 Now, you must not let your decision be influenced
5 anyone. any way by either sympathy or prejudice for or against

that 6 Sympathy is a wonderful human emotion, but you understand
ask 7 in the jury process, the verdict process, what we really
8 you to do is to evaluate the evidence and you decide what
9 evidence, and what facts have been established to you and
apply 10 the law to it.

formed 11 Prejudice, somebody having views that have been
does 12 irrespective of evidence, strong views, we know that that

search 13 exist in our world, but I say to you that you need to
can 14 your hearts and consciences to make sure that prejudice
15 play no role in your decision regarding the facts and the
16 verdict in this case.

only 17 Now, in your deliberations, you should consider
18 the evidence that has been presented.

19 Now, what is that?

whether 20 Well, it is the testimony of the witnesses,
us 21 they were here in person or whether they were presented to
all 22 by deposition either by video tape or having been read and
23 of the exhibits that have been offered, doesn't make any
been 24 difference which side offered it, but anything that has
then, of 25 received into the record is part of the evidence, and

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consider 1 course, any of the stipulations that the lawyers may have
2 agreed to as we went through the trial. But as you
evidence, 3 the evidence, both direct evidence and circumstantial

and
common
4 please remember that you have the right to make deductions
5 you have the right to reach conclusions that reason and
6 sense lead you to make.

two
7 I mention that we tend to divide evidence into
8 categories, direct evidence and circumstantial evidence.

9 Let me take a second and talk about that.

is the
fact,
saw,
evidence.
10 What is direct evidence? Well, direct evidence
11 testimony of someone who asserts actual knowledge of a
12 for instance, eye-witness. If someone said this is what I
13 this is what I heard, that is an example of direct

being
are,
example of
14 Now, you need to decide, first, is it witness
15 truthful when you say that to you, and secondly, if they
16 how is their memory? In other words, are they accurately
17 recounting for you what really happened? That is an
18 direct evidence.

19 Now, the other kind of evidence is called
20 circumstantial evidence and what is that?

facts
that is
21 Circumstantial evidence is proof of a chain of
22 and circumstances tending to prove or disprove any fact
23 in dispute.

example of
24 When I think of circumstantial evidence, an

night, 25 it, I think of the person who gets ready to go to bed at

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1 and they look out the window, and it is a beautiful, clear
2 night, okay. They go to bed and they are a sound sleeper,
so 3 they don't hear anything, they don't see anything. No
direct 4 evidence, but when they walk up the next morning, they
look out 5 that have same window and they see puddles all over the
ground, 6 circumstances, they look at the hood of the car, there is
water 7 beaded on the hood of the car, circumstances, and from
this 8 they conclude that it probably rained last night.

9 Now, here is the point, the law makes no
distinction 10 between the weight you may give to either direct or
11 circumstantial evidence. They are both good kinds of
evidence, 12 and it is up for you the jury to decide the weight that
you 13 would give to the evidence. I've said this before to you
and I 14 know you understand that anything the lawyers have said in
the

15 case is not evidence. And except for my instructions to
you on
16 the law, you should disregard anything that I may have
said at
17 any time during the trial in arriving at your decision
18 concerning the facts.

19 One of the great strengths in our justice system
is
20 that we divide decision making. The decision on what the
21 verdicts should be in this case, those decisions are in
your
22 hands and your hands alone.

23 Now, it is your own recollection and
interpretation of
24 the evidence that controls.

25 When I said to you that you must consider all of
the

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1 evidence, I did not mean to say that you must accept all
of the
2 evidence as true or accurate. You should decide whether
you
3 believe what each witness had to say and how important
that
4 testimony was. Remember this, in making that decision,
you may
5 believe or disbelief any witness in whole or in part;
also, I

about 6 want you to know, that the number of witnesses testifying
7 any particular dispute is not controlling.

any 8 In deciding whether you believe or do not believe
that 9 witness, I would like to suggest that as you think about
For 10 witness' testimony, you ask yourselves a few questions.

telling 11 example, did the witness impress you as someone who was
to 12 the truth? Did the witness have any particular reason not
in 13 tell the truth? Did the witness have a personal interest

14 the outcome of the case? As you listen to the witness'
you to 15 testimony and thought about it, did the witness seem to
and 16 have a good memory? Did the witness have the opportunity
the 17 the ability to observe accurately the things about which

18 witness testified here in the courtroom? Did the witness
go 19 appear to understand the lawyer's questions clearly and to
testimony 20 ahead and answer them directly? Did the witness'
case? 21 differ from other testimony and other evidence in the

22 You should also ask yourselves whether there was
evidence 23 evidence tending to prove that a witness testified falsely
24 concerning some important fact or whether there was
or 25 that at some other time the witness said or did something

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1 failed to say or do something that was different from the
2 testimony of the witness that was given here in the
courtroom.

3 You want to keep in mind, of course, that a
simple
4 mistake by a witness does not necessarily mean that the
witness
5 was not telling the truth as he or she remembers it,
because,
6 after all, people naturally tend to forget some things or
they
7 remember other things inaccurately.

8 So, if you do conclude that a witness has in fact
made
9 a misstatement, then you need to consider whether that
10 misstatement was simply an innocent lapse of memory or was
it
11 an intentional falsehood and the significance of that may
12 depend on whether it has to do with an important fact or
only
13 with an unimportant detail.

14 Now, we've talked about this before, but you
probably
15 noticed that most of the witnesses were limited to telling
you
16 what they say they saw or what they say they heard. We
call

17 that kind of a witness a fact witness. But you did know
that
18 some witnesses were allowed to come into the courtroom
and,
19 essentially, to tell you what they thought, to give you
and to
20 express to you their opinions, and that kind of a witness
is
21 classified as an expert witness, and I want to talk to you
for
22 just a moment about expert witnesses.

23 When knowledge of a technical subject matter
might be
24 helpful to the jury, a person having special training or
25 experience in that technical field is permitted to state
an

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1 opinion concerning those technical matters. Merely
because
2 such a witness has expressed an opinion, however, does not
mean
3 that you must accept the opinion. The same as with any
other
4 witness, it is up to you to decide whether to rely upon
that
5 opinion.

6 Now, I've talked a little bit about how you
fulfill
7 this responsibility that is so unique to the jury and that
is

8 judging the credibility of witnesses. Let's turn now to
some
9 of the other concepts in the case and I would like to talk
to
10 you for a second about the burden of proof in this type of
11 proceeding.

12 In this case, each party asserting a claim or a
13 defense has the responsibility to prove every essential
part of
14 the claim or defense by what is called the preponderance
of the
15 evidence, the preponderance of the evidence. Sometimes
this is
16 called the burden of proof or the burden of persuasion.

But
17 what does it mean? Well, here is what it means.

18 A preponderance of the evidence simply means an
amount
19 of evidence that is enough to persuade you that a claim or
20 contention is more likely true than not true. More likely
true
21 than not true.

22 Now, when more than one claim is involved, you
should
23 consider each claim separately. But in deciding whether
any
24 fact has been proved by a preponderance of the evidence,
please
25 remember, you may consider all of the testimony of all of
the

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you
in
part of
you
contention.

1 witnesses regardless as to who may have called them, and
2 may consider all of the exhibits that have been received
3 evidence regardless as to which party may have produced or
4 offered the exhibit.

5 If the proof fails to establish any essential
6 a claim or contention by a preponderance of the evidence,
7 should find against the party making that claim or

like
want to
has
sworn
advance of
You
placed
videographer

8 Now, I want to stop for just a second and I would
9 to talk to you about the testimony that was received by
10 deposition, and, again, we've talked about this, but I
11 refresh your recollections on this.

12 During the trial of this case, certain testimony
13 been presented to you by way of deposition consisting of
14 recorded answers to questions asked of a witness in
15 the trial by the lawyers for the parties in this case.
16 know that when the deposition was taken, the witness was
17 under oath, and, of course, a court reporter, or
18 was present to record the testimony.

19 Now, the deposition taken under oath may have
been
20 presented in writing or video recording played on a
television
21 set. This testimony is entitled to the same consideration
and
22 is to be judged as to its credibility and weighed in the
same
23 way as if the witness had testified live from the
witnessstand.
24 Now, let's take a moment or two and let's look at
what
25 are the contentions in this case. And I think everybody

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1 understand that, although we have had one trial, we really
have
2 had three separate cases that have been consolidated for
3 purposes of judicial economy.
4 Each plaintiff in this case, Dr. Romagoza, Ms.
5 Gonzalez, Professor Mauricio, each plaintiff has their own
6 claim that has been brought and each plaintiff is pursuing
an
7 individual claim for monetary damages, grounded on the
8 allegation that that particular plaintiff was a victim of
9 torture, and that one or both of the defendants is
responsible
10 under what is called the Doctrine of Command
Responsibility.

there 11 Now, I want you to know, and I say this because
I 12 was some discussion of this during the jury selection but
13 want each one of you to know that federal law permits the
United 14 bringing of these cases in the federal courts of the
15 States.

with 16 Now, I would like to review each of the claims
17 you.

being 18 As you know, first we have the claim that is
19 brought by Dr. Romagoza. In that particular claim, Dr.
General 20 Romagoza is bringing a claim against General Garcia and
December 21 Vides for torture that the doctor alleges occurred on
it is 22 12, 1980, and thereafter. So that is the first claim and
23 a claim by Dr. Romagoza as to both defendants.

24 The second separate claim that is brought in this
25 lawsuit is Ms. Gonzalez' claim. This is the claim of the

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1 plaintiff Neris Gonzalez who brings a claim against both
2 defendants, General Garcia and General Vides, on the
allegation

and
then,
June
together,
and
each
relates
the

3 that she was the victim of torture on December 26, 1979,
4 thereafter. So that is the second separate claim and
5 finally, there is Professor Mauricio's claim. Professor
6 Mauricio has brought a claim against General Vides alone
7 alleging that Professor Mauricio was a victim of torture
8 18, 1983, and thereafter.

each
relates
the

9 Now, although these claims have been tried
10 each claim is separate from the others, and each plaintiff
11 each defendant is entitled to have you separately consider
12 claim as it affects that party. Therefore, in your
13 deliberations, you should consider the evidence as it
14 to each claim and each party separately as you would had
15 claim been tried before you all by itself.

claims are
both of
what is

16 Although we have three separate claims, the
17 identical in that the claims seek to hold either one or
18 the defendants liable for acts of alleged torture under
19 called the Doctrine of Command Responsibility.

20 Let me take a second and talk with you in greater
21 detail about this particular doctrine.

commander

22 This is the doctrine that makes a military
23 liable for the acts of his subordinates. Even where the

are 24 commander did not order those acts when certain elements
the 25 proven to hold -- to hold a military commander liable for

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1 acts of another under the Doctrine of Command
Responsibility,

2 the plaintiff must prove all of the following acts or
elements 3 by a preponderance of the evidence.

4 Now, what I just said is, the party bringing the
claim 5 has the burden of proving the claim, so these are the
elements 6 that must be proven by each plaintiff with respect to the
7 individual claim that is brought against each defendant.

8 And, in order to prevail on a claim which is
grounded 9 on this Doctrine of Command Responsibility, all four of
the 10 elements must be established. So let's talk about what
are the 11 elements.

12 The first element that each plaintiff would have
to 13 establish is that that particular plaintiff was tortured
by a 14 member of the military, security forces or by somebody
acting

15 in concert with the military or security forces.

16 Second, that A, what is called a superior
subordinate

17 relationship existed between the individual defendant
military

18 commander, and the persons, person or persons who tortured
the

19 plaintiff.

20 Now, I am going to come back to that and I am
going to

21 define for you in greater detail what is meant by a
superior

22 subordinate relationship.

23 But the second element requires that there be a
24 superior subordinate relationship between the individual
25 military commander and the people who actually committed
the

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1 torture.

2 Now let's turn to the third element.

3 The third element is that the defendant military
4 commander knew or should have known owing to the
circumstances

5 of the time that his subordinates had committed, were

6 committing, or were about to commit torture and/or

7 extrajudicial killing. And I am going to define that in a

8 moment.

9 And the fourth element is that the defendant
military
10 commander failed to take all necessary and reasonable
measures
11 to prevent torture and/or extrajudicial killing or failed
to
12 punish subordinates after they had committed torture
and/or
13 extrajudicial killing.

14 Now, let's go back, and we are going to pull this
15 apart and look at some of these terms and what is meant by
16 them.

17 Let me talk first about this concept of a
superior
18 subordinate relationship.

19 The second element required the plaintiff to
establish
20 that a superior subordinate relationship existed between
the
21 particular defendant military commander who is the
defendant
22 who is being sued and the persons who tortured the
plaintiff.

23 Now, to establish this second element, that is,
the
24 existence of a superior subordinate relationship between
the
25 defendant military commander and the persons accused of

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1 torturing the plaintiff, the plaintiff must prove by a
2 preponderance of the evidence that, number one, the
defendant
3 military commander held a higher rank than or had
authority
4 over the persons accused of torturing the plaintiff. And
5 second, that the defendant military commander had
effective
6 control over the persons accused of torturing the
plaintiff.

7 Effective control, what does that mean?
8 Effective control means that the defendant
military
9 commander had the actual ability to prevent the torture or
to
10 punish the persons accused of committing the torture. In
other
11 words, to establish effective control, a plaintiff must
prove
12 by a preponderance of the evidence that the defendant
military
13 commander had the actual ability to control the persons
accused
14 of torturing the plaintiff.

15 A person who is not a member of the military or
16 security forces may, nonetheless, be a subordinate if that
17 person placed himself under the authority of a defendant
18 military commander, and the military commander had
effective
19 control as I have defined that concept over the non-
military
20 actor.

21 In other words, the fact that somebody is not a
formal
22 member of the military, that doesn't end the discussion,
23 because somebody who is not a formal member of the
military,
24 somebody who may not wear a military uniform can still be
a
25 subordinate of a military commander if, number one, that
person

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1 placed themselves under the authority of the military
2 commander; and two, if the military commander had
effective
3 control over that person, that is, had the actual ability
to
4 control them.

5 A defendant military commander cannot escape
liability
6 where his own actions or inaction causes or significantly
7 contributes to a lack of effective control over his
8 subordinates.

9 Now, whenever I use the word subordinate in these
10 instructions, it refers to a person who was in a
subordinate
11 relationship as I have already defined that with a
12 defendant/military commander.

13 Let me turn, then, to the third element. The
third

14 element, let me read it for you again. It is that the
15 plaintiffs must prove by a preponderance of the evidence
that
16 the defendant/military commander knew or should have known
17 owing to the circumstances of the time that his
subordinates
18 had committed, were committing, or were about to commit
torture
19 and/or extrajudicial killing.

20 The plaintiff may establish this third element,
that
21 is, the element of knowing or should have known by either
one
22 of two ways. First, by proving by a preponderance of the
23 evidence that the defendant/military commander actually
knew
24 that his subordinates had committed, were committing or
were
25 about to commit torture and/or extrajudicial killing.

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1 Second or alternatively, a plaintiff may satisfy
this
2 element by proving by a preponderance of the evidence that
in
3 light of the circumstances at the time, the
defendant/military
4 commander should have known that his subordinates had

torture 5 committed, were committing, or were about to commit
6 and/or extrajudicial killing.

not 7 With respect to this element, the plaintiff does
8 have to prove that the defendant/military commander knew
or 9 should have known of the plaintiff's torture, rather, the
10 knowledge element would be satisfied if the plaintiff
proved by

11 a preponderance of the evidence that the
defendant/military
12 commander knew or should have known that his subordinates
had
13 committed, were committing, or were about to commit
torture
14 and/or extrajudicial killing.

15 In other words, the military commander does not
have
16 to know the name of the precise victim. This element can
be
17 satisfied if the plaintiffs establish that the
18 defendant/military commander knew or should have known
that his
19 subordinates had committed, were committing, or were about
to
20 commit torture and/or extrajudicial killing.

21 Now let me turn to the fourth element. You
remember
22 that is that the defendant/military commander failed to
take
23 all necessary and reasonable measures to prevent torture
and/or
24 extrajudicial killing or failed to punish subordinates
after

25 they had committed torture and/or extrajudicial killing.

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1 A plaintiff may establish this fourth element by
2 proving by a preponderance of the evidence that the
3 defendant/military commander failed to take all necessary
and
4 reasonable measures to prevent acts of torture and/or
5 extrajudicial killing or to punish those responsible for
6 committing acts of torture and/or extrajudicial killing.

7 Failure to punish may be established by proof
that the
8 defendant/military commander failed to investigate
reliable
9 allegations of torture, and/or extrajudicial killing by
10 subordinates, or failed to submit these matters to
competent
11 authorities for investigation and prosecution.

12 I've used two terms and they may be obvious, but
I
13 would like to take a minute and define them for you. And
they
14 are the terms torture and extrajudicial killing.

15 Let's discuss first the concept of torture. What
is
16 included under that phrase?

17 The term torture means, first, any act directed

18 against an individual in the offender's custody or
physical
19 control by which severe pain and suffering, other than
pain and
20 suffering arising only from or inherent in or incidental
to
21 lawful sanctions, whether physical or mental is
intentionally
22 inflicted on that individual for such purpose as obtaining
from
23 that individual or a third person information or a
confession
24 punishing that individual for an act that individual or a
third
25 person has committed or is suspected of having committed,

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1 intimidating or coercing that individual or a third person
or
2 for any reason based on discrimination of any kind; and,
3 second, mental pain or suffering refers to prolonged
mental
4 harm caused by or resulting from, A, the intentional
infliction
5 or threatened infliction of severe physical pain or
suffering,
6 B, administration or application or threatened
administration
7 or application of mind altering substances or other
procedures

8 calculated to disrupt profoundly the senses or the
personality;
9 C, threat of imminent death; or, D, the threat that
another
10 individual will be imminently subjected to death, severe
11 physical pain or suffering, or administration or
application of
12 mind altering substances or other procedures calculated to
13 disrupt profoundly the senses or the personality.

14 Now let me turn to the concept of extrajudicial
15 killing. What does that mean?

16 The term extrajudicial killing means a deliberate
17 killing not authorized by a previous judgment pronounced
by a
18 regularly constituted court affording all the judicial
19 guarantees which are recognized as indispensable by
civilized
20 people. This term, however, does not include a killing
that,
21 under international law, is lawfully carried out under the
22 authority of a foreign nation.

23 When you look at the verdict form, and I am going
to
24 talk to you in a moment, you will see that the first
question
25 that is put forth it asks you whether you find that a

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General
Command

1 particular defendant, whether it be General Garcia or
2 Vides, is legally responsible under the Doctrine of
3 Responsibility for the torture that has been alleged by a
4 particular plaintiff.

move on

5 Now, if you answer yes to that, then you would
6 to discuss the issue and respond to the issue of damages.

reach

7 If you answer no to that, obviously, you do not
8 the issue of damages.

so

9 Let me talk with you about the concept of damages
10 you are aware of these issues.

proved
just
damages

11 If you find that a particular plaintiff has
12 each of the elements of command responsibility as I have
13 outlined them, then you must determine the amount of
14 that would be appropriate.

15 The law permits two kinds of damages.

compensatory
damages.

16 The first type is what is referred to as
17 damages. The second type is what we call punitive

would
damage.

18 Let me put punitive damages aside for a minute, and I
19 like to talk to you about the concept of compensatory

you

20 In considering the issue of compensatory damages,

21 are instructed that you should assess the amount you find
to be
22 justified by a preponderance of the evidence as full,
just, and
23 reasonable compensation for all of the plaintiff's
damages, no
24 more and no less. Compensatory damages are not allowed as
25 punishment and must not be imposed or increased to
penalize a

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1 defendant. Also, compensatory damages must not be based
on
2 speculation or guesswork because it is only actual damages
that
3 are recoverable.

4 On the other hand, compensatory damages are not
5 restricted to actual loss of time or money. They cover
both
6 the mental and physical aspects of an injury, tangible and
7 intangible. Thus, no evidence of the value of such
intangible
8 things as physical or emotional pain and mental anguish
has
9 been or need be introduced. In that respect, it is not
the
10 value you are trying to determine but an amount that will
11 fairly compensate the plaintiff for those claims of
damage.

12 Ladies and gentlemen, there is not an exact
standard.

13 There is no exact standard to be applied. Any such award
14 should be fair and just in light of the evidence in the
case.

15 You should consider the following elements in
16 determining the amount of compensatory damages to the
extent

17 that you find them proved by a preponderance of the
evidence.

18 Number one, emotional pain and suffering.

19 Number two, mental anguish.

20 Number three, physical disfigurement.

21 Number four, physical pain.

22 In evaluating these items, you may consider the
23 following factors:

24 Physical torture including methods used or abuses
25 suffered.

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1 Mental abuse including fright and anguish.

2 The length of time torture was endured.

3 The length of detention.

4 The victim's age or other limiting physical or
5 emotional characteristics.

6 Let me move now to the second type of damages,
what we

7 call punitive damages.

8 In addition to compensatory damages, you have the
9 discretion to award what are called punitive damages.

10 Unlike compensatory damages, which are imposed to
11 reimburse a plaintiff for his or her injuries, punitive
damages
12 are designed to punish a defendant for his wrongful
conduct and
13 to deter him and others from committing similar misconduct
in
14 the future.

15 In the context of international law violations,
16 punitive damages may be awarded to punish heinous conduct
and
17 to reinforce the consensus of the community of human kind
that
18 horrific abuses will not be tolerated.

19 A punitive award in this context may be made if
you
20 find that the defendant's conduct was malicious, wanton,
or
21 recklessly or callously indifferent.

22 In assessing punitive damages, you may consider
the
23 following element:

24 Number one, the reprehensibility of the
defendant's
25 conduct.

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plaintiff

1 Two, the nature and extent of harm to the
2 that the defendant's conduct caused or was intended to
cause.

3 Three, the wealth of the defendant.

4 On the latter element, while you may consider the
5 financial resources of a defendant in fixing an amount of
6 punitive damages, I instruct you that the burden is upon
the
7 defendant to show that his financial circumstances warrant
a
8 limitation of any award.

9 Should you decide to award punitive damages to
any
10 plaintiff, in your computations you should determine the
amount
11 which is appropriate to punish the defendant for the
injuries
12 to the plaintiff in this lawsuit and to deter others from
13 engaging in similar conduct in the future.

14 There is no exact standard for fixing the amount
of
15 punitive damages. Any award that you make should be fair
in
16 light of the evidence in the case.

17 Let me turn now and I would like to talk about
your
18 deliberations.

19 I want to mention, first, the fact that I have
given

20 you instructions concerning the issue of the plaintiff's
21 damages should not be interpreted by you in any way that I
22 believe that a plaintiff should or should not prevail in
this
23 case. You understand that my obligation is to explain the
law
24 to you so you fully understand all of the options that are
at
25 your disposal.

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1 Please remember that any verdict you reach in the
jury
2 room, whatever that verdict is, it must be unanimous.

3 In other words, to return a verdict, every single
4 member of the jury must agree with that particular
verdict.

5 I wanted you to know that your deliberations will
be
6 secret. You will never have to explain how you have
arrived at

7 your verdict to anyone. Each one of you took an oath in
which
8 you promise to decide this case based only on the evidence
that

9 you found to be believable and on the law as I have
explained
10 it to you. And we rely on each of you to conduct your
11 deliberations and to reach your verdicts, whatever that
verdict

ever
must
that
12 might be, consistent with your oath, and so no one will
13 ask you how did you arrive at a particular verdict, but I
14 tell you, there is a procedure that allows us to insure
15 the verdict was unanimous.

will
16 In other words, at the end of the case, we may we
17 ask you, was this your individual verdict? Okay.

jurors
18 Now, ladies and gentlemen, it is your duty as
19 to discuss the case with one another in an effort to reach
20 agreement if you can do so. Each of you must decide the
case
evidence
21 for yourself, but only after full consideration of the
22 with the other members of the jury.

the
for
that
23 Ladies and gentlemen, while you are discussing
24 case, do not hesitate to re-examine your own opinion and,
25 that matter, to change your mind if you become convinced

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solely
case
1 you were wrong, but do not give up your honest beliefs
2 because others may think differently or merely to get the

3 over with.

4 Remember, in a very real way, you are judges in
this
5 case. You are the judges of the facts and your only
interest
6 is to seek the truth from the evidence that has been put
before
7 you.

8 Now, when you go back into the jury room, the
very
9 first thing you need to do is to select one of the members
of
10 the jury who will act as your foreperson. It is the
foreperson
11 who presides over the deliberations and who will speak for
you
12 here in the courtroom.

13 Now, we've prepared three verdicts for you, three
14 verdict forms. And we've done that because there are
three
15 plaintiffs and, as I mentioned to you, each plaintiff's
case is
16 individual and separate from the other two plaintiffs.

17 Let me use those simply for the purpose of
explaining
18 the verdict form prepared for Dr. Romagoza, because the
verdict
19 form is identical for Ms. Gonzalez and Professor Mauricio.

20 You remember Professor Mauricio has a claim only
as to
21 General Vides.

22 The first question says, do you find the
defendant,

the
23 General Jose Guillermo Garcia is legally responsible under
24 Doctrine of Command Responsibility for the torture of Dr.
Juan
25 Romagoza? One line for yes, one line for no.

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and,
1 The foreperson would check the appropriate line
claim
2 as I said before, if it is no, you would move on to the
is
3 against General Vides. If it is yes -- Excuse me. If it
next
4 no, you simply move on to the next question, because the
5 question is the very same question in terms of Dr.
6 Romagoza's claim against General Vides.
answered
7 Now, then the instruction says if you have
would
8 yes to either question one or question two, then, please,
9 you move on to the question of damages.
obviously,
10 If you answer no to questions one and two,
one
11 you don't get to damages. But if you answer yes to either
says,
12 or two, then you go to damages, and the next question
the
13 would you tell us the total amount, one hundred percent of

14 compensatory damages, if any, suffered by Dr. Romogoza as
a
15 result of the torture. And there is a dollar sign and a
line.
16 And then you move on to question four, which is
the
17 issue of punitive damages. And you understand that is a
18 discretionary decision. It is up to the jury to decide
whether
19 punitive damages are appropriate; and if so, how much, and
in
20 this instance, there is a line for General Garcia and a
line
21 for General Vides, and it says to you that you would only
award
22 punitive damages against a particular defendant if you had
23 answered yes and found that that particular defendant was
24 responsible under the Doctrine of Command Responsibility.
In
25 other words, if you said no, that that person was not

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1 responsible, you would not award any damage whether it be
2 compensatory or punitive. And then it says, so say we
all,
3 and, again, that underscores the fact that every single
member
4 of the jury agrees with this verdict, and then we need to
ask

5 the foreperson if you would please date the verdict form
and
6 sign it, and I apologize, maybe this is a comment on our
7 illegibility of our writing these days but there is a line
that
8 says would the foreperson please print his name so we know
who
9 is the foreperson.

10 Now, I've said when you go back to the jury room,
it
11 may take us a minute to gather these things but we will
send
12 back every single exhibit that has been offered and
received,
13 and I think you understand that means they will duplicate
to
14 some degree what you have in your binders and folders, but
we
15 will make sure everything offered and received goes back
to the
16 jury room.

17 We are going to send back for each one of you a
copy
18 of these instructions and we will send back one copy of
the
19 verdict form for each plaintiff.

20 I neglected to mention this but let me come back
21 again, you understand that not only are the plaintiffs
separate
22 but so are the defendants. In evaluating a claim, you
need to
23 evaluate a plaintiff's claim against a particular
defendant, in
24 considering that, you shouldn't consider what you have
done

decide 25 with the first plaintiff, decide that all by itself, and

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1 whether that plaintiff has a second claim against a second
2 defendant. You need to look at those individually.

3 Now, I want you to know that in all of your
4 deliberations there will always be a marshal on guard
outside

5 the jury room. And you've had a chance to meet Mr.
Caldwell,

6 and some of other folks who work with the court, and our
7 security officers. We are very fortunate. We have
wonderful

8 people who are assisting, but I need to make sure you
9 understand that they cannot in any way help you in
arriving at
10 your decisions.

11 Now, if you have a question, the way to handle
that is

12 write the question out, just knock on the door. The
marshal

13 will be outside and we will either send you a written
response

14 or, alternatively, I will ask you to come back into the
15 courtroom and we will talk about whatever the issue is.
If by

16 chance you have taken some preliminary votes, which is

note 17 perfectly okay, will you be absolutely sure that on any
18 you send out you do not tell us what is the numerical
19 division.

20 The reason for that is, it simply is none of our
21 business. That is a matter for you, the jury, in your
22 deliberations.

that 23 Now, I have to underscore this because I gave
back, 24 instruction to a jury not too long ago, and I got a note
divided 25 and the note in the body of the text did not say we are

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two 1 one way or the other, however, under the note were these
rocket 2 little groups of signatures, and you didn't need to be a
3 scientist to figure out what was the division of the jury.

any 4 I would suggest to you only the foreperson sign
respond 5 note and, as I say, just knock on the door and we will
6 to you.

retire 7 Ladies and gentlemen of the jury, you may now
8 to consider your verdict.

2:40 9 (Thereupon, the jury retired to consider their verdict

10 p.m.)

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

12 Now that the jury has retired, but before the
jury has

13 had an opportunity to begin their deliberations, I ask
counsel

14 for the plaintiffs if you have any additional objections
to the

15 instructions of law as given by the court other than those
16 which you have already placed in the record?

17 MS. VAN SCHAACK: Your Honor, in addition to our
18 objection as to the presumption language several days ago,
and

19 language switched this morning, a typographical error page
9,

20 fourth line down, it should read "or to punish those

21 responsible for committing acts of torture and/or
extrajudicial

22 killing".

23 THE COURT: Did I say or?

24 MS. VAN SCHAACK: You said and/or. I noticed you

25 caught a couple.

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1 THE COURT: I did. It says "there is not exact

2 standard". It is "there is no exact standard".

3 May I pose the same question to counsel for the
4 defense?

5 MR. KLAUS: No objection.

6 THE COURT: Could I ask your assistance, if you
would,
7 in meeting with Mr. Caldwell simply to gather up all of
the
8 evidence so we send that back.

9 Everyone has seen the verdict forms. There is no
10 problem on those?

11 MR. KLAUS: Just that the last one included both
Garcia
12 and -- I imagine if they come back with a verdict for
Professor
13 Mauricio, you included both.

14 THE COURT: On Professor Mauricio, there is a
mistake
15 in the language. On Professor Mauricio's claim, it only
16 alleges -- you are right. It has a claim against -- that
is in
17 error. The claim is only against General Garcia --

18 MS. VAN SCHAACK: Only Vides.

19 THE COURT: Excuse me, we need to remove the
section on
20 General Garcia, question one, we need to renumber them and
21 change the explanation. In other words, it would say if
you
22 answered yes to question one.

23 These are the problems of cut and paste. That
was

one. 24 appropriate for the other verdict form but not for this

25 Will that satisfy your concern?

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like 1 MR. KLAUS: Sure, I don't care if you leave it
2 that.

We 3 THE COURT: No. We absolutely should not do that.
4 made a point of telling the jury that Professor Mauricio
only 5 has a claim against General Vides. I will go over these
again 6 and I will give you both a chance to look, and if they are
okay 7 we will send them back to the jury.

8 Anything else we need to discuss?

within 9 MR. KLAUS: Do you want us to stay here or be
10 ear shot?

with 11 THE COURT: Two things, I would like you to meet
12 Mr. Caldwell in person, designate someone from both sides
to do 13 that to send the exhibits back. I don't have a problem
with 14 you being nearby, but we ought to be within 10 minutes or
so so

give 15 if there is a question we can respond to it. If you would
gather 16 a cell phone number or something to Mr. Caldwell, we can
17 and maybe as we go along, we may get some sense as to how
18 quickly the jury might be in a position to give us their
19 responses.

the 20 We will be in recess, then, pending the call of
21 jury.

22 MR. KLAUS: Are you going -- if we don't hear from
23 them, are you going to call them back in at five?

jury, I 24 THE COURT: Yes, if we have not heard from the
like 25 will bring the jury in at five to find out what they would

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at 1 to do and also to make sure if the jury wishes to go home
not 2 that time that the other instructions that are given about
of 3 reconvening and beginning deliberations until every member
if 4 the jury is present. And any suggestion you might have,
at 5 there are other special precautions that we ought to take
6 this time.

7 Okay.

8 (Thereupon, a recess was taken.)

9 (Thereupon, court reconvened 3:25 p.m.)

10 THE COURT: Ladies and gentlemen, we have a couple
11 notes from the jury, and I want to discuss them with you.

12 I want the record to reflect although the three
13 plaintiffs are present, General Vides and General Garcia
are
14 not present.

15 Mr. Klaus, have they left for the day?

16 MR. KLAUS: Yes. I waive their presence.

17 THE COURT: All right.

18 THE COURT: The jury initially asked to take a
smoke
19 break, but I want to share the next one. It says: "The
jury
20 request that it will not deliberate on Friday due to many
prior
21 commitments".

22 I said earlier, I would like to accommodate the
jury's
23 desire considering scheduling, and so on. I am concerned
-- We
24 do not know how long the jury deliberations would be, but
I am
25 concerned about breaks, not only because there is a
temporal

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but
might
they
they
wanted to
lose
has a
to, I
you

1 issue about people remembering things, and what have you,
2 the other possibilities of other things occurring that
3 impede the process. My inclination was to ask the jury if
4 could to rearrange those commitments, if there is any way
5 could, and we think it is very, very important, but I
6 talk with you and get your advice first. We don't want to
7 anybody, and I suppose if it came down to saying somebody
8 doctor's appointment or something, we are going to have
9 guess, accede to it.

10 I don't know what thoughts you all have or how
11 think we should address this.

12 MR. GREEN: I agree with Your Honor.

in
13 MR. KLAUS: I agree, I don't know whether to do it
14 the form of a request or order.

15 THE COURT: What I would like to do is say we've
16 discussed this, and we would very much like to ask them to
17 see
18 it
19 begun
20 their deliberations that they be ongoing in those

that 20 deliberations; and if there is an absolute impossibility,

21 they let us know.

do you 22 Would that be an acceptable way to approach it,

23 think?

24 MR. KLAUS: Yes.

agree 25 THE COURT: Let me write that out just so we all

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1 on the wording.

the 2 Let me read this to you and see if this conveys

3 sense of what we want to say.

4 " We are concerned about the second request.

feel 5 Now that the jury has begun its deliberations we

6 it is very, very important that the jury continue its

necessary", 7 deliberations into Friday. " I was going to say "if

the 8 but they understand that. " Therefore, we ask you take

know 9 necessary steps to reschedule prior commitments and let us

10 if this is impossible. "

11 Is that an appropriate response?

12 MR. GREEN: Yes.

13 THE COURT: Mr. Caldwell, would you send that back
to
14 the jury. Let me keep the original.
15 The jury has said their normal working hours will
be
16 9:30 to 4:30 on Monday, and they would like to stop today
17 4:30.
18 Why don't we wait to see what kind of a response
we
19 get from that and we will move on.
20 Obviously, the jury is planning to spend a good
deal
21 of time, and they are trying to map out what their time
would
22 be. That is not unusual with the trial that has taken as
long
23 as we have. They are being diligent and maybe Friday is
not a
24 major problem. I wonder if I could see counsel sidebar.
25 (Sidebar discussion on the record.).

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1 THE COURT: There is nothing I can do about this,
but I
2 want you to be aware, two news services have asked for the
3 names and addresses of the jurors, and my concern is the
longer
4 the jury is out there, the possibility of somebody doing

and
5 something, now, I just haven't responded to those requests
6 I don't intend to. I want you to know why I am really
7 concerned about a recess on Friday, aside from the fact
that
8 obviously everybody is waiting, so on, so forth, I am
worried
9 about something that could be done that would really
either
10 cause us to lose a juror or something else. There is only
so
11 much we could do.

12 I am not for a minute suggesting that we
sequester the
13 jury. I don't think there is a need for that, but I am
very,
14 very concerned about where we go from here. That is all.

15 MR. GREEN: There have been some fairly aggressive
16 media requests to my office, which I said I am not going
to
17 talk about it until after the verdict, especially during
the
18 first week.

19 THE COURT: It is not unexpected. This is a
serious
20 case and probably being reported in some areas more
regularly
21 than others. I understand there are news services outside
the
22 country following the case, too. I am concerned about
somebody
23 going to a juror's home, or what have you, to be candid.
I
24 never researched whether they are public record or not. I

door 25 think they are but I don't want to do anything to open the

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1 to us losing a juror or something else.

I've 2 MR. GREEN: Judge, there is one other matter.

think 3 discussed it briefly with one of the marshals. I don't

this, 4 it was a security threat and Dr. Romagoza did not witness

of 5 but Professor Karl felt that she observed a threat by one

Dr. 6 the people in the defendant's party said yesterday towards

7 Romagoza. A gesture, and I don't -- I talked with Dr.

8 Romagoza, he is fine.

9 THE COURT: He feels all right about it?

some 10 MR. GREEN: He is fine. In light of the jury --
11 request for juror names and addresses that does cause me

12 concern especially given the history of the case.

but I 13 THE COURT: I didn't witness it in the Ford case,

only 14 read about it afterwards, apparently, there was yelling,

know 15 there I think it was against the generals, and you should

we 16 there are a couple federal police officers downstairs and

17 tried to say to everybody, you know, especially on
closing, and
18 at the very beginning to ask them to be careful in either
19 escorting the jury to their cars and, if necessary, the
subject
20 parties. I don't want anybody on either side to be the
21 of anything, and I know sometimes in a case, you know,
closer
22 sometimes final arguments or something, emotions can get
23 to the surface because cases getting examined in certain
24 context, but I want you to let me know if there is any
problem
25 at all on either side.

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1 Again, I appreciate everything you are all doing
to
2 kind of regulate to the degree that you can.
3 Please let me know if there is anything at all.
4 MR. GREEN: Given that gesture, speaking for the
the
5 plaintiffs, we don't want to do anything that would risk
6 jury.
7 THE COURT: No, I don't either. I am worried
about
8 it.
9 MR. KLAUS: I am worried you are going to get a
lawsuit

10 tomorrow from the media asking for the names.

If 11 THE COURT: We will take it one step at a time.

12 that happens, we will try to deal with that.

serious 13 You have all seen this where in any kind of a

have 14 trial the next thing is interviewing the jurors and what

15 you, and so on, and the press takes the view they have no
could 16 restraints on them at all. There are restraints where it

We 17 be obstructing justice but I don't want to get into that.

18 want to try to get a verdict.

19 MR. GREEN: We don't want to sequester the jury.

response 20 THE COURT: No. No. We will see what kind of

from 21 we will get and maybe that will be enough. We will go

22 there.

23 (After sidebar.)

24 (Thereupon, a recess was taken.)

seated. 25 THE COURT: Ladies and gentlemen, please be

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note 1 I want to share with counsel that the jury sent a

2 indicating they had been able to change whatever the
3 commitments were and they will begin deliberations
tomorrow
4 morning 9:15, and we got a note from the jury indicating
they
5 were waiting for their copy of the jury instructions, that
was
6 as the jury instructions were being delivered.

7 Are we all set to bring the jury in and give them
the
8 instructions?

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

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

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

12 I want to share with counsel that an oral
question has
13 been sent via Mr. Caldwell, I think just as the jury was
14 leaving the jury room regarding the notebooks, and whether
the
15 notebooks, the binders could be taken home.

16 We are going to ask you not to do that and the
reason
17 is, and I realize there is a lot of material, but we want
to be
18 extra careful that whatever deliberations take place that
they
19 be done in the jury room when everybody is present. I
know
20 that is kind of like a homework assignment of doing it on
the
21 side, but we want to be very, very careful, and I know you

heart 22 understand how sensitive this is. We are really into the
23 of your deliberations now.

made to 24 I want to thank you for the efforts that were
that 25 cancel the appointments that some of you had for tomorrow

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know we 1 would allow deliberations to go forward. I want you to
your 2 all very much appreciate that. We don't want to hurry
and 3 deliberations in any way. Obviously, if the jury has not
need 4 resolved the case, we would stop a Saturday and Sunday,
to 5 then as you discussed resume deliberations on Monday but I
you 6 to ask you to be very, very careful. Please do not talk
7 anybody about the case. Do not allow anyone to talk with
8 about the case. If you are approached by anyone, you must
9 alert them that you are a juror, that you are under the
10 instructions of the court not to talk with anyone, and if
11 anyone persists in that, I want you to report it
immediately to
very, 12 me and I will take care of that. Okay. I want you to be
13 very careful in that regard.

14 Now, my understanding is the jury plans to
reconvene
15 9:15 in the morning, and I would only ask that you be
extra
16 careful, that is, you do not begin your deliberations
until all
17 of the members of the jury are present. Okay. If you
take a
18 break, I know there are smokers on the jury, but if you
take a
19 break, which is fine, will you make sure no one talks
about the
20 case during the break and that all the discussions take
place
21 inside the jury room.

22 Now, if you would like to break and go for lunch
as a
23 group tomorrow, we can make those arrangements. You tell
Mr.
24 Caldwell, we will make the arrangements. If you want
lunch
25 ordered and sent in, we can make those arrangements, too.
Mr.

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1 Caldwell will check with you at some point in the morning
to
2 make sure we have enough time to make the appropriate
3 arrangements.

there
the
room

4 The only thing I ask you to be careful about is,
5 never be any discussion with anyone about the case outside
6 jury room and wait until everybody is back in the jury
7 before you begin your discussions anew.

8 Have a nice night, see you all tomorrow.
9 (Thereupon, the jury retired from the courtroom.)

discuss

10 THE COURT: Is there anything else we need to
11 before we recess for the evening?

12 MR. KLAUS: 9:30?

would
say,
need a
minutes
your
there are

13 THE COURT: I think, frankly, that if you want, I
14 think you should feel comfortable in not coming until,
15 around 10 or so. I would imagine the jury is going to
16 while to get started, but if you would be available 10
17 from the courthouse until 10 on. Again, if you will be in
18 office, that is fine. If we can get back together if
19 any questions and respond to any issues.

20 MR. KLAUS: I gave my cell number to Mr. Caldwell.

the

21 THE COURT: Good. We will be in recess pending
22 call of the jury.

23 (Thereupon, a recess was taken 4:35 p.m.)

24

25

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