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

JUAN ROMAGOZA ARCE, JANE	)	Docket No.
DOE, in her personal capacity	)	99-8364-CIV-HURLEY
as Personal Representative of	)	
the ESTATE OF BABY DOE,	)	
	)	
	)	
Plaintiffs,	)	
vs.	)	West Palm Beach, Florida
	)	June 25, 2002
JOSE GUILLERMO GARCIA, an	)	
individual, CARLOS EUGENIO VIDES)	)	
CASANOVA, an individual, and	)	VOLUME 3
DOES 1 through 50, inclusive,	)	
	)	
Defendants.	)	
_____	)	x

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

APPEARANCES:

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

For Defendant: KURT KLAUS, ESQ.

Court Reporter: Pauline A. Stipes, C.S.R., C.M.

PAULINE A. STIPES  
Official Reporter  
U. S. District Court

1           THE COURT: Good morning, everybody. Are we all  
2 set and ready to proceed?

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

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

5           THE COURT: Good morning, ladies and gentlemen,  
6 please be seated.

7           Let me turn to the Plaintiffs and allow the  
8 Plaintiffs to call their next witness.

9           MR. STERN: The Plaintiffs call Alberto Alvarez.

10          THE COURT: Thank you, Mr. Stern.

11          Mr. Alvarez, if you would come up to the witness  
12 stand and make yourself comfortable.

13          I need to tell you the microphone has a short  
14 pickup range. If you pull that chair up to the desk  
15 there, you will be more comfortable and allow everyone to  
16 hear you.

17          Sir, would you raise your right hand?

18          ROBERTO ALVAREZ, PLAINTIFFS' WITNESS SWORN.

19          THE COURT: Mr. Alvarez, would you please begin  
20 by introducing yourself to the members of the jury? Would  
21 you tell them your full name, and would you spell your  
22 last name for the court reporter?

23          THE WITNESS: Roberto, middle initial T, Alvarez,  
24 A-L-V-A-R-E-Z.

25          THE COURT: Thank you, sir.

1                   You may proceed.

2                                   DIRECT EXAMINATION

3 BY MR. STERN:

4 Q.   Mr. Alvarez, where are you coming from to be with us  
5 today, where do you live?

6 A.   Washington, D.C.

7 Q.   What is your educational background?

8 A.   I got my basic law degree in Dominican Republic, and  
9 Master's in Georgetown University.

10 Q.   Are you a native of the Dominican Republic?

11 A.   Yes, I am.

12 Q.   Where is the Dominican Republic?

13 A.   In the Caribbean, the middle island between Cuba and  
14 Puerto Rico, shares the island with Haiti.

15 Q.   Thank you. How did you begin your career?

16 A.   Where?

17 Q.   In the Dominican Republic.

18 A.   I was a member of the foreign service of the Dominican  
19 Republic.

20 Q.   How long did you continue in that role?

21 A.   Five years.

22 Q.   What did you do after that?

23 A.   I applied for a position within the secretariat of the  
24 Organization of American States. I was selected and so I  
25 moved to Washington in 1971.

1 Q. Now, we had some testimony yesterday about the  
2 Organization of American States, OAS for short. Can you  
3 tell us what that body is?

4 A. The OAS is a regional international organization  
5 created under the charter of the United Nations which  
6 allows for regional organizations.

7 Q. And what is the region, what are the countries that  
8 are included in the Organization of American States?

9 A. The western hemisphere, the Americas.

10 Q. Does that include the United States?

11 A. Yes.

12 Q. Dominican Republic?

13 A. Yes.

14 Q. And El Salvador?

15 A. Yes. All three were founding members.

16 Q. Broadly speaking, what are the functions and  
17 responsibility of OAS?

18 A. Main responsibility, promote peace and security  
19 throughout the hemisphere.

20 Q. Does the OAS have any particular responsibility of  
21 human rights?

22 A. Yes. In order to promote peace and security, one of  
23 the main tenets is promotion of democracy and human rights.

24 Q. Are there any parts of the OAS or sub groups within  
25 the OAS that has a particular relationship with human

1 rights?

2 A. A special Orden was formed called American Commission  
3 on Human Rights, whose main responsibility was to monitor  
4 the observance of human rights on the hemisphere.

5 Q. You refer to that as the Inter-American Commission of  
6 Human Rights?

7 A. Yes.

8 Q. If I refer to it as the Interbody Commission, would  
9 that be acceptable?

10 A. Yes.

11 Q. Tell the jury how the Commission goes about monitoring  
12 human rights in the member countries of the OAS?

13 A. The Commission is composed of seven elected members.  
14 They do not represent individual countries, they represent  
15 all of the member states. The commissioners -- the  
16 Commission has its headquarters in Washington, D.C. It is  
17 authorized to receive complaints from throughout the  
18 Americas or all the member states of the OAS on human  
19 rights, specifically the human rights listed in the  
20 American Declaration of the Rights and Duties of Man, which  
21 was approved in 1948 when OAS was created, as well as in  
22 the American Convention of Human Rights which was approved  
23 later but of which El Salvador is a party, is a member  
24 country. And those two basic documents contain human  
25 rights which the Commission is asked to monitor.

1 Q. And what are some of the specific human rights that  
2 the Commission monitors?

3 A. The fundamental -- civil and political as well as  
4 economic, but the basic fundamental human rights, which are  
5 called fundamental human rights within the statute of the  
6 Commission, are the right to life, the right to liberty,  
7 not to be tortured, the right of freedom of association,  
8 freedom of speech, due process of law.

9 Q. I believe you refer to petitions received by the  
10 Commission; is that correct?

11 A. That is correct.

12 Q. Where do those petitions come from and how does the  
13 Commission handle them?

14 A. The Commission is authorized to receive complaints  
15 stemming from any individual group or institution, not only  
16 in the Americas but from any part of the world.

17 Q. So you are talking about individuals, people in anyone  
18 of the member countries of the OAS?

19 A. That is correct.

20 Q. How does an individual go about submitting a petition  
21 to the Commission?

22 A. Writing a letter in which it alleges a violation, a  
23 specific violation of the human rights, again, contemplated  
24 in either the American Declaration or the convention and  
25 stating when the violation occurred, where, and of course

1 that a member -- that the Government or someone acting on  
2 behalf of the Government was responsible for the violation.

3 Q. So the Commission deals only with alleged violations  
4 by states; is that correct?

5 A. That's correct.

6 Q. What does the Commission do when it receives one of  
7 these petitions?

8 A. It takes what are called the pertinent parts of the  
9 communication of the violation and it sends it to the  
10 government. The government has 180 days to reply, and to  
11 the denunciation.

12 Q. And what are some of the -- how does the procedure  
13 work after the denunciation is brought to the attention of  
14 the state?

15 A. If the government replies, which most governments do,  
16 the reply of the government is then sent to the petitioner  
17 and the Commission asks the petitioner to respond to the  
18 Government's reply.

19 Q. Does the Commission ever take it upon itself to make  
20 visits or investigations in member countries in relation to  
21 human rights?

22 A. Yes, it does.

23 Q. And in what circumstances does it do that?

24 A. Basically two circumstances. One when there is an  
25 egregious violation of human rights in a particular

1 individual case, it may ask the Government for permission  
2 to visit and investigate that individual situation, or in  
3 the second, which is the most common, is when a certain  
4 volume of communications are received which create a  
5 systematic pattern of violations which show that there is  
6 just a large number of violations of human rights that are  
7 being -- of the fundamental human rights that are being  
8 complained about in that particular country. In that case  
9 the Commission may decide, negotiates with the government  
10 the possibility of a visit.

11 Q. Tell us, if you would, about the pattern you refer to.  
12 What is the Commission looking for in order to determine  
13 whether a visit to a member country would be appropriate?

14 MR. KLAUS: Objection; relevancy.

15 THE COURT: I will overrule that objection. You  
16 may answer the question.

17 THE WITNESS: In the case, take for example of  
18 arbitrary detention, if the Commission starts receiving --  
19 and there is no magical number as such, it is just a large  
20 volume, it depends on the size of the country, depends on  
21 the nature of the violations -- but if the Commission  
22 starts receiving a certain large number of complaints  
23 about arbitrary detention, you start seeing in some cases  
24 that there are certain patterns that the complaints state  
25 that the people were detained, for example, by heavily



1 armed men, but not in uniform, that the allegations state  
2 that they were taken to specific places, so, you start  
3 seeing a pattern of the way the detentions are carried  
4 out.

5 BY MR. STERN:

6 Q. Could you tell us again the dates when you were  
7 employed with the OAS?

8 A. I was with OAS from 1971 until the end of 1978,  
9 December, '78, but I was with the Commission from '76  
10 through the end of '78.

11 Q. And during this period, did you participate in any  
12 on-site human rights inspection carried out by the  
13 Commission?

14 A. Yes, I did.

15 Q. And what countries did you visit in that regard?

16 A. Went to Panama, Nicaragua, and El Salvador.

17 Q. I want to ask you some questions about your visit to  
18 El Salvador with the Commission. When did that take place?

19 A. In January of 1978, somewhere between the 9th and 18th  
20 of January.

21 Q. And who from the Commission went on that visit?

22 A. The Commission appointed three of its members a  
23 special committee to visit El Salvador, along with the  
24 staff. I was a staff member, a staff attorney. There were  
25 several of us that prepared the visit of the special

1 committee.

2 Q. And what was your specific role on the visit?

3 A. I -- we opened an office -- among the many things that  
4 we did during the visit, we opened an office to receive  
5 anyone who had any complaints so that they could come and  
6 present the complaints, as well as a place where we could  
7 actually interview the people who had already sent us  
8 complaints so we could have a personal interview with those  
9 individuals.

10 Q. What was your title when you were on the staff?

11 A. I was staff attorney, senior specialist on human  
12 rights.

13 Q. I am going to go back and ask you more questions about  
14 your visit, but I want to move ahead for the movement.

15 After you completed the visit, did you attempt to  
16 summarize the findings of the Commission in El Salvador in  
17 some way?

18 A. Yes. We drafted the report on the human rights in El  
19 Salvador as a result of the visit.

20 Q. When was that report prepared?

21 A. The report was prepared between January and October,  
22 '78. The Commission approved it, the Commission in full  
23 approved it in November of 1978.

24 Q. And what happened with the report then?

25 A. It transmitted the report to the government of El

1 Salvador for its response.

2 Q. Did the government of El Salvador make a response?

3 A. Yes, it did.

4 Q. And when was that?

5 A. I believe it was in February, '79.

6 Q. And was that incorporated in the report?

7 A. When the Commission published the report somewhere  
8 around April, 1979, it included in the report the response  
9 of the government.

10 Q. And what happened to the report then, in terms of its  
11 further distribution?

12 A. By statute --

13 MR. KLAUS: Objection; lack of personal  
14 knowledge.

15 THE COURT: You may answer the question if you  
16 know yourself, sir.

17 THE WITNESS: Yes, I do.

18 THE COURT: You may.

19 THE WITNESS: The Commission is bound, when it  
20 publishes a report, to send it to the Secretary General of  
21 the OAS who is bound to transmit it to all of the member  
22 states.

23 BY MR. STERN:

24 Q. And when was the report transmitted to the member  
25 states of the OAS?

1 A. After the Commission sent it to the Secretary General  
2 in April of '79.

3 Q. And just by way of confirmation, El Salvador is one of  
4 the member states, is it not?

5 A. Yes, it is.

6 Q. Mr. Alvarez, can you confirm or do you have knowledge  
7 that the government of El Salvador received a copy of the  
8 OAS report that you helped prepare?

9 A. Well, it was placed -- the report itself was placed on  
10 the agenda of the general assembly. All of the member  
11 states have an annual meeting called a general assembly of  
12 the OAS, and so when the Commission published its report in  
13 April, '79, it was immediately placed on the agenda of the  
14 next general assembly which was going to be held in La Paz,  
15 Bolivia in October of that year.

16 Q. Do you know the date of October?

17 A. I believe it was around the 22nd of October.

18 Q. And what happened then?

19 A. Actually the general assembly of the OAS adopted a  
20 resolution on that report.

21 Q. And did -- are you aware that there was a change in  
22 the government of El Salvador certainly after October 15,  
23 1979?

24 A. Yes, I am.

25 Q. To your knowledge, did the new government that came

1 into power following October 15, 1979 acknowledge receipt  
2 of the OAS report that you helped to prepare?

3 A. Yes, so far as Resolution 446, I believe adopted at  
4 that general assembly of the OAS, stated among other things  
5 that the new government committed itself to fulfill the  
6 recommendations included in that report.

7 Q. And do you know who was the Minister of Defense of the  
8 new government that acknowledged receipt of the OAS report?

9 A. Yes.

10 Q. Who was that?

11 A. Colonel Garcia.

12 Q. Do you know who was the director general of the  
13 National Guard of the government that acknowledged receipt  
14 of the OAS report?

15 A. Yes.

16 Q. And who is that?

17 A. Colonel Vides.

18 MR. STERN: If I might approach the witness, Your  
19 Honor.

20 THE COURT: Yes.

21 BY MR. STERN:

22 Q. Mr. Alvarez, I hand you a copy of Plaintiffs' Exhibit  
23 393, which has been admitted into evidence.

24 Is this the OAS report that you have testified to just  
25 a few moments ago?

1 A. Yes, it is.

2 Q. I would like to go back and ask you questions about  
3 your on-site visit to El Salvador.

4 You started to tell us about some of the activities  
5 that you and other members of the Commission carried out  
6 when you got to El Salvador. Could you tell us more how  
7 you went about conducting the visit in El Salvador?

8 A. The Commission negotiates the terms of the visit,  
9 meaning that the Commission must be free to move about  
10 throughout the country. It must not be impeded in any way  
11 from meeting, interviewing anyone, visiting jails, meeting  
12 with all members of the government, the three branches of  
13 the government and so forth, so those are the basic  
14 parameters of the visit.

15 Q. Was the government of El Salvador when you visited  
16 aware of your presence?

17 A. Yes. Actually the government invited the Commission.

18 Q. And was there any publicity surrounding your visit?

19 A. Yes, considerable publicity. Among other things, the  
20 Commission on the first day of the visit published a press  
21 release announcing that we were in the country, and where  
22 its offices were located so if anyone wanted to present a  
23 complaint, they could come by.

24 Q. Now, you testified previously about petitions and a  
25 certain volume of petitions leading to a site visit. When

1 you went to El Salvador, did you have specific areas of  
2 interest based on petitions that the Commission had  
3 received?

4 A. Well, the Commission had received between 75 and 77, a  
5 certain volume of petitions relating more specifically to  
6 violations of the right to life, to physical liberty, to  
7 inhumane treatment. Those were the most egregious  
8 violations, although there were others as well.

9 Q. Did you have specific facilities or locations that you  
10 wanted to investigate?

11 A. In 1978, when we visited El Salvador, the Commission  
12 was still grappling with one specific complaint that it was  
13 receiving from El Salvador, but as well from other  
14 countries, which dealt with the unique type of violation  
15 which had to do with the kidnapping of an individual by  
16 security forces of the country or people acting on behalf  
17 of the security forces of the country, and kept in secret  
18 detention. This eventually came to be called  
19 disappearances as a legal term, but at the time it was  
20 called kidnappings or missing persons. And this is one of  
21 the violations that we were, the Commission wanted to  
22 investigate.

23 Q. And were there any particular locations that you  
24 wanted to look at?

25 A. From the complaints that the Commission had received,

1 it had three places where above all mentioned most  
2 frequently, the Treasury Police, National Police, and  
3 National Guard.

4 Q. Were there any facilities or locations of those  
5 organizations that were identified in the petitions you  
6 received?

7 A. Yes.

8 Q. And what were those?

9 A. All three.

10 Q. Geographically speaking, was there any, you know,  
11 building or facility, anything in particular?

12 A. The Commission -- most of the complaints referred to  
13 underground cells, so the Commission during the visit was  
14 looking for underground cells at these locations.

15 Q. How did you go about looking for those cells?

16 A. Well, the Commission visited all three places and it  
17 found some underground cells at the Treasury Police, I  
18 believe, with no one in them. And these underground cells  
19 had no windows, no ventilation, no electricity whatsoever.

20 Q. What city was the Treasury Police facility in which  
21 those cells were housed located?

22 A. In San Salvador.

23 Q. And you mentioned that you or other members of the  
24 Commission also visited the facility of the National Guard;  
25 is that correct?



1 A. That is correct.

2 Q. Was that facility in San Salvador?

3 A. Yes.

4 Q. And what did you find, if anything, at the National  
5 Guard facility in San Salvador?

6 A. We visited twice. When we first visited, the first  
7 time we did not find any secret cells.

8 Q. Did you have occasion to go back to the National Guard  
9 facility?

10 A. Yes, we did.

11 Q. Was that the headquarters of the National Guard in San  
12 Salvador?

13 A. Correct.

14 Q. Could you tell us the background that led to the  
15 second visit to the National Guard headquarters in San  
16 Salvador?

17 A. After we visited the headquarters of the National  
18 Guard the first time, we were in contact with several of  
19 the petitioners who sent us originally the communications  
20 and we told them about the results of our visit and about  
21 not having found any underground cells at the National  
22 Guard. We were told that there was someone in the country  
23 at the time, a medical doctor, who had been held at the  
24 National Guard, and who had been released because of  
25 contacts within the armed forces, who had been released,

1 and he had returned to the country and that he was willing  
2 to talk to us.

3 Q. Did you meet with this doctor?

4 A. Yes, we did.

5 Q. And what information, if any, did he give you?

6 A. When we --

7 MR. KLAUS: Objection; hearsay.

8 THE COURT: Sustained.

9 BY MR. STERN:

10 Q. Based on your visit with the doctor, how did you go  
11 about your second visit to the National Guard headquarters?

12 A. We were told that there were no underground cells at  
13 the National Guard, that the secret cells were on the third  
14 floor of a specific building.

15 Q. Did you undertake -- strike that.

16 When you went back to the National Guard the second  
17 time, how did that visit proceed? Did you let the National  
18 Guard know you were coming?

19 A. No. My boss, meaning within the staff attorneys, my  
20 boss, the executive secretary of the Commission had not  
21 been to the National Guard the first time, so we, after  
22 conferring with the three members of the committee, they  
23 authorized us to return to the National Guard with the  
24 excuse that my boss had not visited the National Guard the  
25 first time. But we did not announce that we were coming.

1 Usually the Commission announces when they are visiting.

2 We did not that time let them know we were coming.

3 Q. Perhaps you could help to set the scene for us. How  
4 were you received when you arrived unannounced at the  
5 National Guard headquarters on this visit?

6 A. When we arrived, there was tremendous surprise, and we  
7 were not allowed to go anywhere until the head of the  
8 National Guard, General Alvarenga came.

9 Q. Do you know why you were not permitted to move  
10 around -- strike that.

11 How did Mr. Alvarenga receive you?

12 A. He was surprised. He said we had already visited the  
13 National Guard before that, and explained that my boss had  
14 not, and that we wanted to see it again, a second time.

15 Q. Did Alvarenga accompany you on the visit?

16 A. Yes, he did.

17 Q. How did the visit proceed?

18 A. We had memorized the place where we were, and we had  
19 been taken to every respect of that building. And I  
20 remember General Alvarenga went into the bakery, and went  
21 into great detail about the bakery of the National Guard.

22 Q. Were you able to enter a building where you intended  
23 to investigate?

24 A. As we were walking around, we kept hearing a lot of  
25 sounds, metal clanging, coming from the building that we

1 wanted to go to, and eventually it was inevitable that we  
2 had to. After visiting every other location of the  
3 National Guard that we came to that building.

4 Q. And did you enter the building?

5 A. Yes, we did.

6 Q. And what did you see when you entered the building?

7 A. Particularly when we -- it was a three story building.  
8 Particularly when we got to the second floor, we  
9 immediately realized that this was a special unit of the  
10 National Guard because the members in that building were  
11 not wearing uniforms while everyone else up to that moment  
12 had been in full uniform of the National Guard. Their  
13 weapons were different from the ones that everyone had up  
14 until that moment and there was a lot of telecommunications  
15 equipment in that second floor.

16 Q. How were the weapons of these men different from what  
17 you had seen before?

18 A. Well, the weapons of the National Guard were more long  
19 weapons, rifles. These were more submachine guns.

20 Q. Were you given any explanation what these men were  
21 doing?

22 A. No.

23 Q. Did you speak to them at all?

24 A. No.

25 Q. How did you, then, proceed to make your investigation?

1 A. Again, remembering from where we had been told where  
2 the secret cells were, my boss and I, who had just  
3 spontaneously up to that moment developed a good cop, bad  
4 cop routine, saw the stairs that led up to the third floor  
5 and we immediately went up that staircase. General  
6 Alvarenga became furious at us, and said there was nothing  
7 up there, we had no right to go up there, we reminded  
8 him -- my boss reminded him that we had been invited by the  
9 government of El Salvador, and President Romero himself  
10 said we were free to visit any place within the country.

11 Q. Did you say you had no map of the area you were  
12 looking for?

13 A. No, we did not.

14 Q. How did you know what specific area you were looking  
15 for?

16 A. We had memorized where the secret cells were.

17 Q. You are referring to the third floor of the building?

18 A. That is correct.

19 Q. Are you able to draw us a map of the third floor where  
20 you went?

21 A. Resemblance of it, yes.

22 MR. STERN: Your Honor, may I have Mr. Alvarez to  
23 come down and draw a map?

24 THE COURT: Yes. Mr. Alvarez you may go to the  
25 easel and draw what you like to on that, but do not speak.

1 Draw it and then come back to the witness stand. Okay?

2 BY MR. STERN:

3 Q. Go ahead and draw a map of that.

4 A. (Witness complies.)

5 THE COURT: Mr. Alvarez, we have a handheld  
6 microphone and a pointer. If you can, you can take the  
7 stand and use the microphone there and we have the  
8 handheld, whatever is fine.

9 BY MR. STERN:

10 Q. Would you prefer to be seated, Mr. Alvarez?

11 A. This is fine.

12 Q. When you ascended to the third floor of the National  
13 Guard building, what did you do?

14 MR. KLAUS: Objection; relevancy and confusion.

15 THE COURT: I will overrule those objections.  
16 You may answer the question.

17 THE WITNESS: These are the stairs we came up,  
18 and we started the first, immediately trying to get our  
19 bearings as to where we were within that third floor. We  
20 were actually mainly looking for the secret cells.  
21 However, we realized that there were several other -- we  
22 had been told by Dr. Castro Quezada there were other rooms  
23 within this third floor. One of them, this particular  
24 room in here which had a one way mirror, we were told was  
25 used for photography and it had some electrical equipment

1 in it which we could not tell what they were.

2 Q. Did you ask for an explanation what that equipment  
3 was?

4 A. Yes, we did. And we were told they were used by the  
5 photographer. Later on the photographer came up, and we  
6 asked him, and he said he did not use those --

7 MR. KLAUS: Objection; hearsay.

8 THE COURT: I'll sustain the objection.

9 BY MR. STERN:

10 Q. Let me ask you another question, Mr. Alvarez.

11 Did the equipment you saw in that room appear to be  
12 photographic equipment?

13 MR. KLAUS: Objection; beyond the scope of his  
14 knowledge.

15 THE COURT: You may answer that if you have some  
16 knowledge of photographic equipment and feel you can. The  
17 point is, we don't want you to guess. If you feel you can  
18 answer the question, you may.

19 THE WITNESS: I do not know.

20 BY MR. STERN:

21 Q. Thank you.

22 Moving on to some of the other rooms, what did you see  
23 in the other rooms on the third floor?

24 A. One of these other rooms, I don't remember exactly  
25 which one, had a flag of one of the guerilla movements, and

1 we asked why the flag was there and General Alvarenga said  
2 it was a training piece to show what the colors of the  
3 guerilla movements were.

4 Q. Were there any areas of the floor visible to you that  
5 you haven't told us about yet?

6 A. No. Up to that moment these are the rooms we visited  
7 that were visible. We could not find the cells that we  
8 were looking for, we could not find the door.

9 Q. What did you do then?

10 A. Well, at one moment, sort of again, as we got our sort  
11 of bearings, we realized that the door leading to the cells  
12 had been blocked by metal cots, and I sort of surmised that  
13 that was the clanging that I had been hearing, that they  
14 were placing the cots in front of that entrance.

15 Q. Did you attempt to enter the area behind the cots?

16 A. We asked General Alvarenga to have one of his men  
17 remove the cots. There was a tremendous amount of tension.  
18 It was just my boss and I, and members of the unit were, of  
19 course, all armed, but they looked at each other, and  
20 General Alvarenga gave the order to remove the cots. They  
21 did, halfway, and we could see there was a door leading to  
22 the other side.

23 Q. So moving beyond the cots, am I correct you moved into  
24 the area containing the alcove of the area of the rooms  
25 six, seven, eight on the diagram?



1 A. That is correct.

2 Q. What did you see?

3 A. It was pitch black, no electricity. I asked for a  
4 flashlight, a flashlight was brought to me. I walked -- as  
5 I walked along this corridor, it is not as long as it  
6 seems, as I walked along the corridor, I could smell fresh  
7 paint in this area. I opened the door to this particular  
8 cell, which was probably about three feet by three feet.

9 It is important to note that we had in many of the  
10 communications that we had received prior to this moment,  
11 some of the communications described quite well what these  
12 cells looked like. I had in addition to Dr. Quezada's  
13 testimony, from the communications that we had received  
14 prior to the visit, I already knew about these cells as  
15 such. So as I opened the door, it was a large, heavy metal  
16 door to this cell, and I pointed the flashlight. I  
17 immediately closed the door because the roof, the ceiling  
18 and walls of the cell were covered with cockroaches, one  
19 cockroach next to another.

20 Q. Were you able to see any portion of the walls?

21 A. No. It was impossible to enter that, and keep it open  
22 for any amount of time. Then I proceeded to enter the  
23 other cells. These cells, again, are somewhat badly drawn,  
24 were about five feet by three feet. They also had metal  
25 doors and there were some small holes along the wall here

1 which allowed some sunlight to come into these, but very  
2 small amount of sunlight.

3 I again sort of realized that the cells had been  
4 freshly painted, and Dr. Castro Quezada told us if we found  
5 the cells, we would be able to find the initials and names  
6 of the people who had been in those cells in the back of  
7 the doors, the metal doors.

8 When I was in this cell and I closed the door, much to  
9 my amazement, because I expected everything to be painted,  
10 it seemed they had placed the door against the wall and had  
11 painted everything except the back of the door. There, as  
12 Dr. Quezada said, were the initials and names of some of  
13 the people who whose disappearance had been denounced to  
14 us.

15 Q. Did all the rooms have cockroaches?

16 A. Yes, not as many as number nine did, but yes, they  
17 did.

18 Q. What did you do then?

19 A. I visited seven and six and found all of the  
20 individuals, similar initials. I called my boss, Edmundo  
21 Vargus, who was at the other side, and told him it was  
22 important that he come over to the other side, which he  
23 did, and I showed him what I had found and we discussed  
24 what we should do.

25 Q. And what did you do?

1 A. We agreed we needed to have General Alvarenga come  
2 over to the other side and see the names and initials with  
3 us.

4 Q. Did you ask him to do that?

5 A. Yes, we did.

6 Q. How did he respond?

7 A. He sent over his second in command. The deputy of the  
8 National Guard come over and we showed him the backs of the  
9 doors with the names and went back to the other side.

10 Q. At some point before ending your visit, did you have  
11 occasion to enter room number ten as you have drawn it on  
12 the map?

13 A. Yes. At that point we knew we were also missing  
14 another cell, and it was this cell (indicating) and we had  
15 not realized that this was the other cell because there  
16 were lots of tires, truck tires, different, just piled  
17 right in this area right here. And that is when after  
18 visiting this area, we realized this was the location of  
19 the other cell, and we asked for the tires to be removed.

20 Q. Were you able to enter the cell?

21 A. Yes, we did.

22 MR. KLAUS: Objection; relevancy, confusion,  
23 confusing, and probative valued outweighed by prejudicial  
24 effect.

25 THE COURT: I will overrule all of those

1 objections. You may answer the next question.

2 THE WITNESS: Yes, the tires were removed and we  
3 went into this room which also was freshly painted. It  
4 had a toilet within the cell, and there was a ledge  
5 running along the wall next to the toilet that had pieces  
6 of newspaper cut in squares backed on top of one another.  
7 I took some of them in my hand, and that also created  
8 quite a bit of consternation.

9 BY MR. STERN:

10 Q. Did you get any explanation what the newspapers were  
11 for?

12 A. No.

13 Q. Did you have a surmise based on their positioning?

14 A. Yes.

15 Q. What was that?

16 A. That was used as toilet paper.

17 Q. Mr. Alvarez, before you left the third floor, did you  
18 ask Alvarenga, the head of the National Guard, why the  
19 names you had found appeared on the back of the door?

20 A. Yes, we did.

21 Q. And what did he say?

22 A. He curtly replied that there were enemies of the state  
23 everywhere.

24 Q. Would you please take your seat again, Mr. Alvarez?

25 Thank you very much.

1 I want to ask you some questions about the OAS report  
2 that you testified to previously.

3 MR. STERN: If I could have the lights dimmed and  
4 ask Mr. Green to move the easel over.

5 THE COURT: Let's hold on a second now.  
6 Let's try to figure where to put this. Are we  
7 going to be using the easel again?

8 MR. STERN: No, we are not.

9 THE COURT: You want to pull it by the legs. If  
10 not, the wheels will come off.

11 Move it out of the way completely if you can.

12 Thank you very much. Okay.

13 BY MR. STERN:

14 Q. Mr. Alvarez, is this the front page of the report you  
15 testified about previously?

16 A. Yes, it is.

17 MR. STERN: Could I have slide 2615 from the same  
18 document? I might ask you to refer to the written copy.

19 BY MR. STERN:

20 Q. This is the table of contents of the document. Can  
21 you summarize for us the various chapters that are  
22 contained in the report that you helped to prepare?

23 A. The introduction --

24 MR. KLAUS: Objection; leading, Your Honor.

25 THE COURT: I don't think that question suggests

1 the answer, so I will permit that question.

2 THE WITNESS: The table of contents begins with  
3 the introduction, all the background of the visit, the  
4 invitation, how it came about, the special committee, how  
5 it was organized, and so on. The actual, first chapter  
6 begins with all of the laws of El Salvador, the  
7 legislation, Constitution, and so on.

8 Then with chapter two, you begin focusing on  
9 specific rights that the Commission was investigating, the  
10 main rights about which we, the Commission, had received  
11 complaints. The right to life, humane treatment, physical  
12 liberty to a fair trial and due process of law, freedom of  
13 movement of assembly and association, freedom of speech,  
14 and the political rights, right to vote and to have free  
15 and fair elections, which had been another issue, one of  
16 the rights about which we had also received many  
17 communications beginning even before -- beginning in '72,  
18 the elections of '72.

19 BY MR. STERN:

20 Q. Focusing on the cells that you found in the National  
21 Guard headquarters in San Salvador, what were the rights  
22 most relevant to that investigation?

23 A. Well, precisely disappearances, because a person who  
24 is held incommunicado and without any acknowledgment on the  
25 part of the government that they have that person in their

1 hands allows the government to violate several -- has a  
2 potential of violating several human rights in addition to  
3 the right of a person to a free -- fair trial and due  
4 process of law in case there are specific charges against  
5 that person. The potential to torture that person  
6 increases significantly, and, of course, even the right to  
7 life, the most basic right is also threatened.

8 MR. STERN: Could I have page 2670?

9 BY MR. STERN:

10 Q. Mr. Alvarez, if you look at the bottom right-hand  
11 corner of the document, you have you will see a mark 2670.  
12 That is how I will be instructing our technician today.

13 MR. STERN: If you could get the top part of that  
14 blown up.

15 BY MR. STERN:

16 Q. Okay. What is this -- take a step back for a minute,  
17 Mr. Alvarez. I think you testified previously about the  
18 American Declaration.

19 Could you remind the jury what that is?

20 A. The American Declaration adopted in 1948 when OAS was  
21 created listed the basic human rights about which there was  
22 agreement at that moment by all of the member states.  
23 These are two articles, excerpts of two articles from that  
24 Declaration.

25 Q. Were these excerpts relevant to your analysis in

1 chapter three on the right to humane treatment?

2 A. Yes, sir.

3 Q. How so?

4 A. They address specifically rights about whose violation  
5 we had received complaints.

6 MR. STERN: If I could have the next numbered  
7 paragraph on the same page expanded, please.

8 BY MR. STERN:

9 Q. This passage that we put up on the screen,  
10 Mr. Alvarez, refers to denunciations alleging violation of  
11 the right to the physical, mental, moral integrity of  
12 various individuals, workers in the Catholic Church,  
13 campesino groups and labor relations, labor organizations.  
14 Is this a reference to the denunciations you testified  
15 about previously?

16 A. Yes.

17 Q. Can you remind us -- let me ask you a different  
18 question.

19 When one speaks of the physical, mental and moral --  
20 violation of the right to physical, mental and moral  
21 integrity of individuals, is that what we might commonly  
22 refer to as torture?

23 A. Yes.

24 Q. What are campesino groups, Mr. Alvarez?

25 A. These are farmers in the rural countryside.



1                   MR. STERN:  If I could have the next page of the  
2           document, please.  And I would like the page down to  
3           number four highlighted, please.

4  BY MR. STERN:

5  Q.  Heading A states the law of El Salvador.

6           Why was the law of El Salvador relevant to your  
7           report, Mr. Alvarez?

8  A.  Well, the Commission has to monitor, mandate to  
9           monitor the human rights, and as second line, if you will,  
10          of human rights, the first responsibility always falls on  
11          the soldiers of the government.

12          In this particular case we were interested, and it was  
13          important to note what the laws of El Salvador said  
14          concerning these specific rights.  In the case of torture,  
15          the Constitution of El Salvador in Article 168 expressly  
16          prohibited any form of torture.

17  Q.  Was that relevant to your analysis in the report?

18  A.  Fundamental.

19                   MR. STERN:  If I could have the next page of the  
20           document, please.  And I would like to have from  
21           subheading back down to number five highlighted, please.

22                   Thank you.

23  BY MR. STERN:

24  Q.  Again, you testified to us today about receipt of  
25          petitions by the Commission.  Does this paragraph on the

1 treatment -- is this paragraph on the treatment of  
2 detainees based on those petitions?

3 A. Yes, it is.

4 Q. Would you read the paragraph for us, please?

5 A. "Despite the existence of adequate legislation to  
6 protect the personal integrity of prisoners, many of the  
7 denunciations addressed to the Commission alleged that  
8 abuse and torture of detainees are common in El Salvador,  
9 especially when political prisoners are involved. In order  
10 to give a brief description of the physical and mental  
11 torture allegedly used, transcribed below is a study  
12 prepared by one claimant on the basis of allegations made  
13 by a number of individuals who had been released."

14 MR. STERN: Could I have the next page  
15 highlighted, please?

16 BY MR. STERN:

17 Q. The claim of the individual who had been released that  
18 is specified here related to what organ of the state,  
19 Mr. Alvarez?

20 A. This particular allegation involved the National Guard  
21 of El Salvador.

22 Q. Could you please summarize the methods that were set  
23 out by this individual in relation to the National Guard?

24 A. These two paragraphs here specifically talk about how  
25 the person was shackled to a metal cot and kept that way

1 for 24 hours a day with the exception of brief moments when  
2 they were taken to the bathroom.

3 Q. When the Commission received an allegation of this  
4 type, did it undertake to investigate or confirm the  
5 allegation in any way?

6 A. Yes. In addition to meeting with the complainants,  
7 specific individuals who had sent the petitions to the  
8 Commission, that's why we tried to visit the places where  
9 the complaints alleged the violations had taken place.

10 MR. STERN: Could I have the next page, please?

11 And I would like to have the portion of the page extending  
12 from numbered paragraph two down to the top of numbered  
13 paragraph three.

14 BY MR. STERN:

15 Q. Did the Commission also receive information on the  
16 diet of individuals held by the National Guard?

17 A. Yes, it did. And that is what this paragraph here  
18 addresses.

19 Q. Could you briefly summarize that for us, please,  
20 Mr. Alvarez?

21 MR. KLAUS: Objection; relevancy, prejudicial  
22 effect outweighs the probative value, lack of proper  
23 foundation.

24 THE COURT: I am sorry, the third one?

25 MR. KLAUS: Lack of proper foundation.

1 THE COURT: What do you mean by that?

2 MR. KLAUS: There is no time period. The time  
3 period is not relevant to this case.

4 THE COURT: I will overrule that objection. You  
5 may answer the question.

6 THE WITNESS: The paragraph here talks about the  
7 fact that diet consisted of tortillas and beans, served  
8 twice a day.

9 MR. STERN: If I could have the third paragraph  
10 down to the bottom of the screen, please, highlighted.

11 BY MR. STERN:

12 Q. Does this paragraph relate to the environment of those  
13 held in detention in the National Guard facility,  
14 Mr. Alvarez?

15 A. Yes, it does.

16 Q. Is this description consistent with the cells that you  
17 observed in the National Guard facility?

18 A. Yes.

19 MR. STERN: Could I have the next page, please?  
20 And if I could have numbered paragraph four, please.

21 BY MR. STERN:

22 Q. Does this paragraph relate to the hygiene of  
23 facilities where detainees were held in the National Guard,  
24 Mr. Alvarez?

25 A. Yes. As a matter of fact, this paragraph relates to

1 the detention of Dr. Castro Quezada, the physician who we  
2 talked to, and gave us the exact location of the secret  
3 cells, mention of five and a half months in prison. It  
4 talks about he was allowed to bathe once or twice during  
5 his entire detention, and there was no cleanliness at all  
6 within the cells.

7 Q. Focusing on the cells you saw yourself, cells number  
8 five, six, seven, eight, were there any bathroom  
9 facilities -- excuse me, not five, six, seven, eight --  
10 six, seven, eight, were there any bathroom facilities?

11 A. Yes, there was one toilet for six, seven, eight, nine,  
12 and one toilet for number ten.

13 Q. Was there any running water in the cells?

14 A. No.

15 Q. Was there any electricity?

16 A. No.

17 MR. STERN: Could I have paragraph five  
18 highlighted, please?

19 BY MR. STERN:

20 Q. During your on-site visit, did you receive information  
21 about torture practices by the National Guard?

22 A. Yes, we did.

23 Q. Would you please read this numbered paragraph five,  
24 Mr. Alvarez?

25 A. "The most common torture used among the National Guard

1 are electric shocks. Beatings are frequent during  
2 interrogations and are done with round or flat wooden  
3 clubs. It appears that the capucha or hood is used more  
4 among the National Police and other institutions."

5 Q. What is the hood that is referred to here?

6 A. A piece of cloth placed over the entire head of the  
7 detainee.

8 MR. STERN: Could I have the remainder of the  
9 page highlighted, please?

10 BY MR. STERN:

11 Q. Does this paragraph summarize the visit that you and  
12 your companion made to the National Guard headquarters  
13 unannounced, Mr. Alvarez?

14 A. Yes, it does.

15 MR. STERN: Could I have the next page up on the  
16 screen, please?

17 Could I have the top paragraph highlighted,  
18 please?

19 BY MR. STERN:

20 Q. Again, Mr. Alvarez, does this relate to the visit you,  
21 yourself, made to the National Guard headquarters?

22 A. Yes, it does.

23 MR. STERN: Could I get this portion and number  
24 paragraph seven highlighted together, please?

25

1 BY MR. STERN:

2 Q. When you were at the National Guard headquarters, did  
3 you inquire generally speaking what the -- what the cells  
4 were used for that you had discovered?

5 A. We asked General Alvarenga.

6 Q. And what did he say?

7 A. He said they were used for drunks and for explosives.

8 Q. Is that what is summarized here in paragraph seven?

9 A. Yes, it is.

10 MR. STERN: I would like to have 2694 of the same  
11 document, and could I get paragraphs five and six  
12 highlighted, please?

13 BY MR. STERN:

14 Q. The first paragraph states this con -- "These  
15 confinements in secret places are more serious than those  
16 in which the authorities admit they are holding in the  
17 individuals in custody."

18 Mr. Alvarez, why do you hold this being held in secret  
19 a particularly serious issue?

20 A. Because a person held incommunicado is liable to lose  
21 limbs, life, and that is why one of the reasons today the  
22 crime of disappearance is considered crime against  
23 humanity.

24 Q. That is a crime the Commission particularly concerned  
25 itself with?

1 A. Yes, it was.

2 MR. STERN: Could I go back to 2686, please? And  
3 could you please highlight the portion of the page  
4 beginning with the paragraph during its on-site  
5 observation and going down to the portion of the footnote?

6 Thank you.

7 BY MR. STERN:

8 Q. During your on-site visit, Mr. Alvarez, did you and  
9 the Commission visit any prison facilities?

10 A. Yes, we did.

11 Q. And what did you find at those facilities?

12 A. We visited, as I already said, the National Guard,  
13 National Police and Treasury Police, but we also visited  
14 other centers of detention which were used for what are  
15 called common criminals. Those are the ones in Santa Ana,  
16 San Vincenti, and Good Shepherd Womens Rehabilitation  
17 Center in San Salvador.

18 Q. The reference we have on the screen in reference to  
19 Bartolinas, what are those particular cells?

20 A. Bartolinas is a local Salvadoran term for cells.

21 Q. Is this description here based on your observation at  
22 the National Guard headquarters?

23 A. Yes, as well as the Treasury Police.

24 Q. Okay. Following up on your visit, did the Commission  
25 come to any conclusions regarding the things that it had



1 seen and found?

2 A. Specifically about the secret cells at the National  
3 Guard and about the individuals who had been held there,  
4 the Commission attempted -- the Commission negotiated with  
5 the government, tried to obtain the release of the  
6 individuals or at least to have the individuals sent over  
7 to court and be tried if the government thought that they  
8 were guilty of any crimes.

9 Q. And -- please continue. Are you finished with your  
10 answer?

11 A. Unfortunately the government denied knowing the  
12 whereabouts or having any one of the people involved in  
13 their hands.

14 MR. STERN: Could I have slide number 42, please?

15 BY MR. STERN:

16 Q. We've put up on the screen, Mr. Alvarez, passages from  
17 the OAS report that are headed by the phrase The  
18 Inter-American Commission on Human Rights resolves. What  
19 was the function --

20 MR. KLAUS: Objection. Could he identify it so I  
21 could find it in an exhibit?

22 THE COURT: Yes.

23 MR. STERN: Exhibit 393, page R2702 and  
24 continuing on to 2703.

25

1 BY MR. STERN:

2 Q. Within the context of the report, what is the function  
3 of this resolution language?

4 A. The Commission adopts not only reports on countries,  
5 but it also issues individual resolutions. In the  
6 particular case the secret cells and the individuals whose  
7 denunciations had been given to the Commission, it adopted  
8 a resolution, and this is the -- this is part of that  
9 resolution.

10 Q. Does a resolution have a legal significance?

11 A. The Commission is not a court. It is a semijudicial  
12 body created by the government state -- by the member  
13 states of the OAS, but its resolutions do have a tremendous  
14 importance, because the resolutions that the Commission  
15 issues depend on the observance of the member states. For  
16 that is what the basis of international law is. There are  
17 no enforcement mechanisms, and if the member states  
18 themselves do not abide by the resolutions adopted by  
19 international bodies created by the member states  
20 themselves, then the whole system becomes null and void.

21 Q. Could I ask you to read numbered paragraph eight,  
22 please, Mr. Alvarez? Page 98 of the report, numbered  
23 paragraph eight.

24 A. "These unjustified and prolonged detentions which have  
25 not been acknowledged by the government of El Salvador are

1 not only a serious violation of the right of the physical  
2 liberty of individuals, of the right to fair trial, of the  
3 right to protection against arbitrary arrest, and of the  
4 right to due process of the law, but may also provoke other  
5 crimes, particularly torture and assaults."

6 MR. STERN: Page 165 of the report itself,  
7 please.

8 BY MR. STERN:

9 Q. Did the Commission also come to conclusions regarding  
10 the human rights situation in El Salvador?

11 A. Yes, it did.

12 Q. What did it conclude?

13 A. There were a total of nine conclusions.

14 Q. Could I ask you to read numbered paragraph three,  
15 please?

16 A. Number three?

17 Q. Yes, please.

18 A. "The Security bodies have committed serious violations  
19 of the right to liberty in making arbitrary arrests. They  
20 have maintained secret places of detention where some  
21 persons whose capture and imprisonment have been denied by  
22 the government were deprived of liberty under extremely  
23 cruel and inhumane conditions."

24 Q. The first sentence refers to security bodies. Is the  
25 National Guard one of the security bodies to which the

1 report refers?

2 A. Yes, it is.

3 MR. STERN: Could I have slide 44, please?

4 BY MR. STERN:

5 Q. Does the report --

6 MR. KLAUS: Objection. Would you identify the  
7 page?

8 MR. STERN: Certainly. Page 167 of the report  
9 itself.

10 BY MR. STERN:

11 Q. Does the report also contain what are termed  
12 recommendations?

13 A. Yes, it does.

14 Q. And what is the particular function of those?

15 A. These recommendations are the suggestions of the  
16 Commission to the government so that it can continue to  
17 monitor and observe the progress in observing basic human  
18 rights.

19 Q. Could I ask you to read what we have on the slide,  
20 please?

21 A. Number five?

22 Q. If you could read --

23 A. Introduction. "On the basis of all of the foregoing  
24 and in fulfillment of its essential mission, the Commission  
25 believes it appropriate to make the following

1 recommendations to the government of El Salvador.

2 "That efforts be made so that denunciations about  
3 persons killed, arrested, tortured or missing following  
4 arrest be investigated and the authorities responsible for  
5 such acts be investigated, tried and punished."

6 Q. Mr. Alvarez, to your knowledge, were any persons  
7 responsible for any acts of detention investigated, tried  
8 or punished as recommended here in the report?

9 A. No.

10 MR. STERN: I have no further questions.

11 THE COURT: Why don't we stop at this point.  
12 Ladies and gentlemen, it is earlier than we normally  
13 would. Why don't we take a break for the mid-morning  
14 recess, and after that turn to Mr. Klaus for his cross  
15 examination.

16 Let's take a break for 15 minutes.

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

18 (Thereupon, a recess was taken.)

19 (Thereupon, trial reconvened after recess.)

20 THE COURT: Mr. Marshal, would you bring the jury  
21 in?

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

23 THE COURT: Mr. Green, who did you say the other  
24 witnesses would be today?

25 MR. GREEN: Father Schindler, and Lauren Gilbert.

1 THE COURT: So there will be other people?

2 MR. GREEN: It is going a lot faster.

3 THE COURT: I understand that.

4 Ladies and gentlemen, please be seated. Let me  
5 turn to Mr. Klaus, if I might.

6 Mr. Klaus, when you are ready, you may proceed.

7 CROSS EXAMINATION

8 BY MR. KLAUS:

9 Q. Good morning Mr. Alvarez.

10 A. Good morning.

11 Q. What do you do for a living now?

12 A. At the moment I am self-employed. I am in the  
13 restaurant business.

14 Q. And you left the employment of OAS, Organization of  
15 American States back in '78. What month was that?

16 A. December of '78.

17 Q. And what have you done since then?

18 A. I have worked in the field of human rights with other  
19 institutions, Amnesty International, and I have been in  
20 business.

21 Q. What years did you work for Amnesty International?

22 A. I have been on different missions with Amnesty  
23 International throughout the '80's.

24 Q. Do they pay you a per diem for that?

25 A. No, they do not.

1 Q. Now, going back to OAS, we talked about some of its  
2 goals, and its goals, you said, were to promote peace,  
3 security, democracy, human rights. And there were two  
4 basic resolutions adopted by them. One you refer to --  
5 what was the first one that was adopted in '48?

6 A. There were no resolutions adopted in '48. There was  
7 the charter of OAS, creation of the OAS itself as well as  
8 the American Declaration of the rights and duties of man.

9 Q. That was part of the enabling?

10 A. Correct.

11 Q. And that was adopted by the U.N., was that former OAS?

12 A. No. United Nations was created in '45. One of the  
13 articles allowed for creation of regional organizations,  
14 regional governmental organizations. OAS, created three  
15 years later in '48, was one of those regional government  
16 organizations.

17 Q. At that time the OAS adopted the American Declaration?

18 A. Correct.

19 Q. And then there was another adoption regarding human  
20 rights by the OAS. When was that adopted, and what was the  
21 title of that?

22 A. The American Convention of Human Rights. That was  
23 adopted in 1969, but did not come into effect until 1978.

24 Q. Each member nation of the OAS, did they have to  
25 individually adopt each convention?

1 A. When the member state accedes -- ratifies the charter  
2 of the OAS, it immediately adopts all of the basic  
3 documents around the charter, but the different treaties,  
4 it does not. It has to ratify each treaty individually.

5 Q. The treaty, the Human Rights Convention Treaty, was  
6 that adopted by the United States; do you know?

7 A. It has been signed by not ratified by the United  
8 States.

9 Q. It was signed by one of our presidents?

10 A. Yes, it was.

11 Q. Do you know who was president at that time?

12 A. I am not sure, I believe it may have been President  
13 Carter.

14 Q. It has not been ratified by Congress?

15 A. It has not been ratified by the United States.

16 Q. Okay. Now, if a country hasn't ratified that  
17 convention, does the OAS still consider that country bound  
18 by it?

19 A. Yes, it does, in terms of human rights. Is that your  
20 question?

21 Q. Yes.

22 A. Yes, it does. That is the first list of human rights,  
23 is the American Declaration adopted in '48.

24 Q. And that has been adopted by us, by the United States?

25 A. It does not require ratification because it is not a



1 treaty, it is a declaration.

2 Q. So by becoming a member of the OAS, and ratifying our  
3 membership, we have adopted everything that is in it?

4 A. It accepts the principles embodied in all  
5 declarations, including the American Declaration on the  
6 rights and duties of man.

7 Q. Now, El Salvador adopted the additional convention,  
8 correct? They were signature to that?

9 A. El Salvador ratified the American Convention on Human  
10 Rights.

11 Q. And you said you had an opportunity to visit other  
12 countries to investigate human rights violations, Panama  
13 and Nicaragua?

14 A. Correct.

15 Q. And that was between '71 and '78?

16 A. Panama in '77, and Nicaragua in '78.

17 Q. Now, you can only go to those countries if you are  
18 invited by the sovereign country?

19 A. That is correct.

20 Q. OAS was invited by Panama and Nicaragua to investigate  
21 complaints?

22 A. Yes. What happened was in 1977 the United States  
23 signed the treaties returning the Panama Canal. Those were  
24 signed in Washington, and during that all heads of states  
25 of the Americas came up to Washington and all of them

1 sought private interviews with President Carter, and most  
2 of them obtained them.

3           During those visits President Carter requested the  
4 leaders of the Americans to ratify the American Convention  
5 of Human Rights and to invite the Commission, and that was  
6 the origin of most of these invitations.

7 Q. Now, you refer to disappearances as unlawful,  
8 unannounced detentions of individuals?

9 A. Arbitrary detentions.

10 Q. Arbitrary detentions. And what are the  
11 characteristics of a disappearance?

12 A. They usually happen by heavily armed men, sometimes  
13 wearing the uniforms of security forces, but often times  
14 wearing civilian clothing, acting with the obvious  
15 complicity of the security forces of the country because  
16 there had been many instances where the complaints allege  
17 that there were security -- other members of other security  
18 forces around which did not try to stop these individual  
19 dressed in civilian clothes, and the people with lots of  
20 witnesses in many instances, and the Government denies  
21 holding these people in detention.

22 Q. And the Government doesn't communicate to anyone that  
23 they have these people in detention?

24 A. Correct.

25 Q. And they don't make their jails available for

1 inspections to determine who is being held in detention or  
2 not?

3 A. Correct.

4 Q. Are there other national organizations that routinely  
5 inspect detention facilities to see who is being held and  
6 to be able to contact their families and so?

7 A. Yes.

8 Q. What are some of those?

9 A. The United Nations also has Human Rights Commissions,  
10 and in certain cases where there are civil conflicts,  
11 internal wars, you have the International Committee of the  
12 Red Cross that also does that type of work.

13 Q. But in order for either one of those organizations to  
14 enter a sovereign country and inspect the detention  
15 facilities, they have to be invited by a governmental  
16 entity?

17 A. Yes.

18 Q. Do you know if at that time in '78, if any of the  
19 other or -- either one of those organizations were  
20 inspecting the jails of El Salvador?

21 A. I do not know about the United Nations. I believe  
22 that the International Committee of the Red Cross, if not  
23 at that moment in '78, eventually did come to El Salvador.

24 Q. Now, have there been disappearances reported in other  
25 countries that are members of the OAS?

- 1 A. Yes.
- 2 Q. Have they been reported in Argentina?
- 3 A. Yes.
- 4 Q. And during what time periods were they reported?
- 5 A. '75, '6 to '79, primarily.
- 6 Q. Are there any being reported now that you know of?
- 7 A. Not that I know of.
- 8 Q. In Paraguay?
- 9 A. Yes.
- 10 Q. And during what time periods?
- 11 A. Roughly the same years.
- 12 Q. '75 to '79?
- 13 A. Yes.
- 14 Q. In Colombia?
- 15 A. I do not know about Colombia.
- 16 Q. Chile?
- 17 A. Yes.
- 18 Q. And what years?
- 19 A. Beginning in '73 through '76, more or less.
- 20 Q. Canada?
- 21 A. No, not that I know of.
- 22 Q. Mexico?
- 23 A. I was not in charge of Mexico at the time. The other
- 24 countries I mentioned because I was working on those
- 25 countries specifically, so I cannot say from direct

1 knowledge, but I do know of the situation of human rights  
2 in Mexico during those periods. There were during this  
3 period.

4 Q. There were?

5 A. Some. Not on the scale of the other countries,  
6 however.

7 Q. During what time period?

8 A. Basically from the late '70's.

9 Q. To the present?

10 A. No.

11 Q. To the mid '90's?

12 A. There could have been throughout the '80's some  
13 disappearances in Mexico, and even to the early '90's.

14 Q. The Dominican Republic?

15 A. This is now based on personal knowledge, a few, a  
16 handful.

17 Q. During what time periods?

18 A. '60's, early '70's.

19 Q. Haiti?

20 A. I don't know.

21 Q. Panama?

22 A. Very few, but -- very few.

23 Q. What time periods?

24 A. '70's.

25 Q. Cuba?

1 A. I don't know.

2 Q. Venezuela?

3 A. I don't know.

4 Q. United States?

5 A. I don't know.

6 Q. Do you know if any dis -- if they have been termed  
7 disappearances, any of the detentions now going on in the  
8 United States?

9 A. No.

10 Q. But it would be termed a disappearance if someone was  
11 held arbitrarily, and what does arbitrarily mean to you?

12 A. Without any right to use the legal process.

13 Q. Does it mean -- do characteristics include not being  
14 informed of the charges against you?

15 A. Correct.

16 Q. Not having an opportunity to seek counsel?

17 A. Correct.

18 Q. Not having an opportunity to communicate with people  
19 from the outside, meaning family members or being held  
20 incommunicado?

21 A. Correct.

22 Q. Not having an opportunity to go before an impartial  
23 judicial officer?

24 A. Yes.

25 Q. Who was -- did -- is a country represented in the OAS

1 represented by an Ambassador?

2 A. Yes.

3 Q. His title would normally be Ambassador from El  
4 Salvador or Ambassador from whatever country to the OAS?

5 A. Yes.

6 Q. Who was the Ambassador from El Salvador from '71 to  
7 '78?

8 A. I don't know their names. There were several.

9 Q. In '78 when the Commission was -- when the invitation  
10 was extended, who from El Salvador extended that  
11 invitation?

12 A. It was sent from a note through the government. Who  
13 signed it, I don't remember. I would have to look at the  
14 report and see. Usually it is sent by the foreign minister  
15 of that particular country, and may be transmitted through  
16 the Ambassador to the OAS, but usually signed through the  
17 Ministers of Foreign Affairs.

18 Q. Do you know if the invitation of the Commission came  
19 about through President Carter like the others you  
20 mentioned?

21 A. Well, the visits were public knowledge and the  
22 government of the United States at the time, the Carter  
23 administration made it public that they wished for  
24 particularly Central America countries to ratify the  
25 American Convention on Human Rights and to invite the

1 Inter-American Commission on Human Rights.

2 Q. But you don't know whether El Salvador invited OAS as  
3 a result of President Carters prompting?

4 A. I do not.

5 Q. It was an invitation from President Carter?

6 A. Yes.

7 Q. Do you recall the delegation that went?

8 A. Three members of the Commission out of seven, and the  
9 staff attorneys, we were three, plus the administrative  
10 staff, about four, additional, so it would have been a  
11 total of ten people.

12 Q. And did everybody, all ten of those people speak  
13 Spanish?

14 A. Yes, one exception. The U.S. represented -- U.S.  
15 member of the Inter-American Commission on Human Rights,  
16 Tom Faerer, he did not speak Spanish.

17 Q. And who were the other members. Tom Faerer. How do  
18 you spell that?

19 A. F-A-E-R-E-R. Carlos Dunshee de Abranches of Brazil,  
20 and Fernando Volio Jim,nez of Costa Rica.

21 MR. KLAUS: Head phones.

22 THE COURT: Let's see if we could fix that. Is  
23 there another headset?

24 The watch. Okay, no problem, just make sure we  
25 could take care of it.



1                   Let's go back to Mr. Klaus.

2   BY MR. KLAUS:

3   Q.   Who were the three staff attorneys?

4   A.   Mr. Eskenasi of Guatemala and I am not sure whether  
5   the other one was Robert Norris, I am not sure of the other  
6   member of the staff attorneys, and Dr. Edmundo Vargas  
7   Carreno, the executive secretary from Chile.

8   Q.   Does that make 11, then?

9   A.   It could have been.

10  Q.   Okay.  It's 24 years ago, almost, right?

11  A.   Yes.

12                   MR. KLAUS:  Could you bring up are 2616, 393?

13  BY MR. KLAUS:

14  Q.   Going back for a second, I found the invitation by the  
15  Government of El Salvador.

16                   MR. KLAUS:  Can you highlight the top paragraph?

17  BY MR. KLAUS:

18  Q.   Is this the invitation from the government of El  
19  Salvador?

20  A.   Yes.

21  Q.   And it is signed by -- if you go all the way to the  
22  bottom -- it is signed by their Ambassador to the OAS?

23  A.   Yes.

24  Q.   It referred to a note of the government of El Salvador  
25  inviting, back in 1977 inviting the Commission to come?

1 A. Yes.

2 MR. KLAUS: Thank you.

3 BY MR. KLAUS:

4 Q. If you were invited on September 14, 1977, why does it  
5 take a year to get down there?

6 A. No. We visited in January, '78, three months later.

7 Q. Okay. Who was head of the government when you  
8 visited?

9 A. General Romero.

10 Q. And who was the head of the National Guard?

11 A. General Alvarenga.

12 Q. Did you ever meet with either General Garcia or  
13 General Vides while you were there?

14 A. Not that I know of.

15 Q. Where did you set up headquarters?

16 A. It was one of the hotels, one of the main hotels, and  
17 I am not sure whether it was the Camino Real, but it would  
18 be here in the report.

19 Q. Somewhere in the City of San Salvador?

20 A. Yes.

21 Q. And you take a suite of rooms?

22 A. Took several rooms, yes.

23 Q. And you have an article placed in the paper so that  
24 the general populous knows that you are there?

25 A. Yes.

1 Q. And you receive complainants at the facility, correct?

2 A. Yes.

3 Q. Were there any -- were you contacted by any  
4 complainants that were afraid to come to the facility?

5 A. Yes, there were a number of people afraid to come.

6 Q. Did you go to the field to meet them?

7 A. Yes, we did.

8 Q. Were you prevented from meeting anyone by the  
9 Government of El Salvador at that time?

10 A. No.

11 Q. Were you prevented from viewing any facilities that  
12 you wanted to view at that time?

13 A. No.

14 Q. And, again, this was in January of '78?

15 A. Yes.

16 Q. Now --

17 MR. KLAUS: If I could have again 393, R2671, if  
18 you can highlight the top.

19 BY MR. KLAUS:

20 Q. This is again the part of the report where you make  
21 reference to the law of El Salvador. This is regarding  
22 human rights, correct?

23 A. Yes.

24 Q. These are the relevant portions of the laws in effect  
25 in El Salvador at the time you visited?

1 A. Yes.

2 Q. And if you can go to the bottom and highlight  
3 paragraph four -- I am sorry, bottom of paragraph four.  
4 Lower, yes.

5 BY MR. KLAUS:

6 Q. This paragraph refers to -- this is part of the laws  
7 of El Salvador, correct?

8 A. Yes.

9 Q. And does it say there that, "The lower court criminal  
10 judges of each district are responsible for surveillance of  
11 penal institutions, and refers to the articles", and that  
12 is the articles and laws of El Salvador, correct?

13 A. Yes.

14 Q. "Code of criminal procedure. They must visit the  
15 penal institution at least three times each year. Article  
16 692 of the criminal procedure, to determine how the  
17 prisoners are being treated and to verify they are not  
18 being subjected to illegal deprivation or isolation. They  
19 must make sure no person is being held illegally. Article  
20 691 of criminal procedure, inform the accused of the status  
21 of their case, and advise those sentenced with regard to  
22 the final ruling and the date on which their sentence will  
23 be completed."

24 And if you go to the next page.

25 "If he finds a sick prisoner", referring to the lower

1 criminal judge of each district, "He may order that he be  
2 transferred to a state health center or to a private  
3 institution. Article 701, code of criminal procedure."

4 Do you know if in fact the judges from the lower  
5 criminal court were actually carrying out their duties and  
6 responsibilities under the law of El Salvador at the time?

7 A. Many of the complaints alleged that writs of habeas  
8 corpus had been brought trying to determine the whereabouts  
9 of those whose disappearance had been alleged at the hands  
10 of security forces, and the complaints added that the  
11 judges tried to carry out their duties, but were not  
12 allowed to visit certain areas within specific certain  
13 detention areas of the National Guard and National Police  
14 and Treasury Police, that they were denied access.

15 Q. When you say writs of habeas corpus, they were writs  
16 brought by families of individuals --

17 A. Yes.

18 Q. -- that had disappeared?

19 A. Yes.

20 Q. Do you know if the building you inspected -- you can  
21 turn it off -- was still in existence after you left?

22 A. I believe so, yes.

23 THE COURT: Mr. Klaus, the building -- the  
24 building, National Guard building?

25 MR. KLAUS: Yes.

1                   THE COURT: All right.

2 BY MR. KLAUS:

3 Q. The building you inspected.

4 Do you know the street address of that building?

5 A. No, I do not.

6 Q. Have you been back to El Salvador since January of

7 '78?

8 A. Yes, I have.

9 Q. And when was that?

10 A. Last time was in March of -- February, March, 2000.

11 Q. Did you see if that -- you didn't go back to that

12 building, did you?

13 A. No, I did not.

14 Q. Did you do any inspections or anything when you were

15 there in March, 2000?

16 A. I interviewed people.

17 Q. Regarding what?

18 A. Regarding the disappearance of the people whose initials

19 we found in those cells.

20 Q. Were you ever able to match up -- did you find any

21 complete names in there?

22 A. Yes, there were some complete names.

23 Q. Were you able to locate those people?

24 A. One of them was the same doctor who had given us the

25 location of the secret detention cells on the third floor,

1 Dr. Alfredo Castro Quezada.

2 Q. And you found his name written there as he told you?

3 A. Yes.

4 Q. Anyone else?

5 A. There were initials of people whose detention had been  
6 denounced -- disappearance had been denounced to us, and  
7 whose detention was alleged to be in this particular place  
8 such as the initials of AGM, Ana Quadalupe Martinez, and  
9 there were others. YY -- the initials are all in a list  
10 which are included in the report.

11 I don't remember -- CM, which was Carlos Madriz, or  
12 maybe the full name or last name was also etched in the  
13 door, Madriz.

14 Q. Now, before you go, you negotiate the terms of the  
15 visit with the El Salvador and Government?

16 A. Yes.

17 Q. And you reach agreements, you, meaning the whole  
18 committee?

19 A. Yes.

20 Q. Reach an agreement as to the parameters of the visit  
21 and inspections?

22 A. Yes.

23 Q. Did they impede you at all, the government of El  
24 Salvador?

25 A. No.

1 Q. Did you take out an advertisement in the newspaper, or  
2 were you just able to get a news article printed?

3 A. Both.

4 Q. Did you ever have a meeting with President Romero  
5 while you were there?

6 A. Yes.

7 Q. And did you confront him with your preliminary  
8 findings?

9 A. No. First of all, I was not at that meeting with --

10 Q. Okay.

11 A. We split our functions. Some went to some visits, and  
12 others did not. The visit to President Romero was at the  
13 very beginning of the visit.

14 Q. So you didn't see him again before you left?

15 A. No.

16 Q. The diet described, tortilla and beans, that is not a  
17 uncommon diet for El Salvador, is it?

18 A. The amounts would be.

19 Q. The amount, or just the lack of diversity?

20 A. The amount of tortillas as well as the lack of  
21 diversity.

22 Q. But, I mean, that would be the main meal in El  
23 Salvador?

24 A. It would be part of the main meal.

25 Q. Tortilla and beans are probably served with every meal



1 served in El Salvador?

2 A. Yes.

3 Q. Okay. Were there disappearances reported in Honduras?

4 A. I don't know.

5 Q. And Guatemala?

6 A. Yes.

7 Q. And during what time period?

8 A. '60's, '70's, '80's.

9 Q. Now, when you visited El Salvador -- how many times  
10 have you been back there since '78?

11 A. About four times.

12 Q. And most recent was in 2000?

13 A. Yes.

14 Q. What were the conditions then in 2000?

15 A. In what respect?

16 MR. STERN: Objection, Your Honor; lack of  
17 relevancy.

18 THE COURT: I'll sustain the objection with  
19 respect to 2000 unless, unless, Mr. Klaus, unless you can  
20 show it is relevant to the lawsuit.

21 MR. KLAUS: I wanted to ask him if there are any  
22 reports of disappearances now.

23 THE COURT: You may do that.

24 BY MR. KLAUS:

25 Q. Have there been any reports of disappearances in El

1 Salvador in the last ten years?

2 A. None that I am aware of, but I don't know.

3 Q. To your knowledge is El Salvador a democracy now?

4 A. Yes.

5 Q. Do you know if there are kidnappings in El Salvador  
6 now?

7 A. Again, none that I am aware of.

8 MR. STERN: Objection, Your Honor.

9 THE COURT: Let me hear the question again.

10 MR. KLAUS: If there are kidnappings in El  
11 Salvador.

12 MR. STERN: At the present time.

13 THE COURT: What is the objection?

14 What would be the relevancy?

15 MR. KLAUS: I want to know if there are  
16 kidnappings now the way there were back then.

17 THE COURT: I am going to sustain the relevancy  
18 objection.

19 BY MR. KLAUS:

20 Q. When you visited Nicaragua in '78, who governed the  
21 country?

22 A. General Somoza.

23 Q. And were you unimpeded in their detention facilities?

24 A. Generally, yes.

25 Q. Were the conditions there worse, or better than in El

1 Salvador at the time?

2 A. In some respects better, and some other respects  
3 worse.

4 Q. And how were they better?

5 MR. STERN: Objection, Your Honor. I object on  
6 lack of relevancy grounds.

7 THE COURT: I'll overrule that and I will permit  
8 the question.

9 THE WITNESS: There were no disappearances to  
10 speak of, but there were a hell of a lot more killings.  
11 Forgive the language.

12 BY MR. KLAUS:

13 Q. Was El Salvador in the midst of --

14 Was Nicaragua in the midst of a civil war when you  
15 visited?

16 A. Yes, it was.

17 Q. Did you visit detention facilities from both the  
18 insurgence side and the government side in Nicaragua?

19 A. No. Only the government side.

20 MR. KLAUS: If I may have a minute.

21 THE COURT: Yes.

22 MR. KLAUS: Nothing further.

23 THE COURT: Mr. Klaus, thank you.

24 Let me turn back to Mr. Stern for redirect  
25 examination.

1

2

## REDIRECT EXAMINATION

3 BY MR. STERN:

4 Q. I have a few questions for you, Mr. Alvarez.

5 You testified that during your on-site visit you were  
6 not impeded by the government of El Salvador in  
7 investigations. Did the government of El Salvador offer to  
8 show you the secret cells that you discovered in the  
9 National Guard headquarters?

10 A. No, it did not.

11 Q. Do you believe you would have found them had you not  
12 received denunciations from individuals held there?

13 A. No.

14 Q. Opposing counsel asked you about the diet received by  
15 persons held in the detention cells. Did you have an  
16 opportunity to observe the effects of that diet on any  
17 individual?

18 A. Yes, I did.

19 Q. And what did you see?

20 A. In the case of Dr. Castro Quezada whom we met in  
21 January of '78, and who had been released from the cells at  
22 the National Guard where he had been detained for five and  
23 a half months, this was -- he had been set free in August,  
24 and we met him in January which was eight months later,  
25 seven months later. Dr. Castro Quezada when we met him, I

1 had never seen him before, but I realized this was a person  
2 who had gone through a traumatic experience. He was  
3 emaciated, is shrunken, hollow looking, and he said this  
4 was the result of the diet, and the malnutrition, as well  
5 as the parasites, the bad hygiene that was found in the  
6 cells.

7           The cockroaches at night would leave larva on the skin  
8 of the people found in the cells, and this was a source of  
9 diarrhea, illness in general.

10 Q.   And this man was himself a medical doctor?

11 A.   Yes.

12 Q.   Thank you.

13           MR. STERN: No further questions.

14           THE COURT: May Mr. Alvarez be excused from his  
15 subpoena?

16           Mr. Alvarez, you may be excused. Thank you for  
17 coming here.

18   (Witness excused.)

19           THE COURT: The Plaintiff may call your next  
20 witness.

21           MS. VanSCHAACK: The Plaintiffs call Father Paul  
22 Schindler.

23           THE COURT: Father Schindler, if you would come  
24 up to the witness stand and if you pull that chair up to  
25 the desk area, you will be more comfortable. If you would

1 raise your right hand.

2 PAUL SCHINDLER, PLAINTIFFS' WITNESS SWORN.

3 THE COURT: Sir, would you be good enough to  
4 introduce yourself to the members of the jury? Would you  
5 tell them your full name, and would you also please spell  
6 your last name for the court reporter?

7 May I stop you for a minute before we start.

8 I want to alert the lawyers we did have a  
9 question from one of the members of the jury, but I assume  
10 that question was answered during cross examination.

11 Okay. Forgive me, I wanted to double check with  
12 you.

13 Father, would you introduce yourself and put that  
14 information in the record?

15 THE WITNESS: My name is Father Paul Eugene  
16 Schindler. Schindler is S-C-H-I-N-D-L-E-R.

17 THE COURT: Thank you very much.

18 Let me turn to counsel.

19 DIRECT EXAMINATION

20 BY MS. VanSCHAACK:

21 Q. Good morning, Father Schindler.

22 A. Good morning.

23 Q. When did you first go to El Salvador?

24 A. I went to El Salvador in June, 1972.

25 Q. And what were the circumstances in which you went to

1 El Salvador?

2 A. The Cleveland Diocese has an agreement with the  
3 archdiocese in another diocese, San Miguel Diocese of El  
4 Salvador, to staff parishes in the diocese to assist the  
5 dioceses in El Salvador with clergy because of the shortage  
6 of clergy in El Salvador.

7 Q. Who did you work under while in El Salvador?

8 A. I worked under the Archbishop of San Salvador.

9 Q. Who is that?

10 A. When I first went down, Archbishop Chavez, and after  
11 that Archbishop Romero, and finally Rivera y Damas.

12 Q. And how long were you in El Salvador?

13 A. Approximately ten years, I went in January, '72 and  
14 came back January, '82.

15 Q. Originally, did you speak Spanish?

16 A. I didn't speak any Spanish at all before I went there.

17 Q. How did you learn Spanish?

18 A. I learned my Spanish in the street of La Vita, a  
19 suburb.

20 Q. You speak fluently now?

21 A. Yes, I do.

22 Q. You go back?

23 A. I usually go back every year. I go back in January to  
24 assist the priests and give the priest his opportunity for  
25 vacation time.

1 Q. Where did you attend seminary?

2 A. Seminary training was in the Diocese of Cleveland,  
3 Ohio. I have a four year degree in history, and five year  
4 degree in theology through the Catholic University of  
5 America and Seminary of St. Mary's in Cleveland.

6 Q. What year were you ordained?

7 A. I was ordained to the Catholic priesthood in 1967.

8 Q. Where are you based now?

9 A. St. Bernard's parish in downtown Akron.

10 Q. I want to ask you questions what you saw and  
11 experienced during that first ten year period. First,  
12 would you tell the jury where you were based?

13 A. I was the pastor of the Immaculada Concepcion, in La  
14 Libertad, or Port liberty, actually if you want to put it  
15 in English.

16 MS. VanSCHAACK: Mr. Green, would you set up that  
17 map so Father Schindler can show us where that is?

18 BY MS. VanSCHAACK:

19 Q. Father Schindler, is El Salvador primarily Catholic  
20 country?

21 A. Yes, I would say 95 percent.

22 Q. We have a map of El Salvador there. I am not sure you  
23 can reach.

24 THE COURT: We have a pointer.

25 BY MS. VanSCHAACK:



1 Q. If you would show the jury where La Libertad is  
2 located.

3 A. La Libertad is the port town of El Salvador. It was  
4 the major port for 154 years. The parish itself covered  
5 the territory from all along the departmental line, this  
6 yellow line up here, all the way up through Zaragoza, over  
7 to Tamanique, over here, and came down all the way over  
8 here, so we covered an area here about this size, 40  
9 churches, about 140,000 people in the parish.

10 Q. And was La Libertad on one of the main highways?

11 A. It was on the coastal highway, the Litoral, the  
12 coastal highway. Much like the Pan American Highway,  
13 Highway Number 2, and also at the intersection of the  
14 coastal -- highway that comes down from the capital, from  
15 San Salvador. Being the port town, it was the shortest  
16 distance to the capital, and that is why it was there.

17 MS. VanSCHAACK: Thank you, Mr. Green. We can  
18 remove that.

19 BY MS. VanSCHAACK:

20 Q. Would you describe to the jury what your work was  
21 while you were in El Salvador during that ten year period?

22 A. The work of the church, basically work with the people  
23 of the area that you are assigned to, basically sacramental  
24 work, baptisms, marriages, first communion. We had 40  
25 proximal churches, so we needed to form the community,

1 leadership of the community so they would be able to  
2 prepare children for the sacraments, first communion. Most  
3 of the areas I would go to I would go once a month. We do  
4 circuit riding, and so all of the baptisms of that month I  
5 would do, if there were communions or weddings. A lot of  
6 work we did was to prepare leaders in each of the  
7 communities so they could run the communities when we were  
8 not present.

9 Q. What is a catechist?

10 A. A lay leader who teaches catechism for the children.  
11 And adults also, not just the children.

12 Q. How would you identify these catechists within the  
13 community?

14 A. We were fortunate to have good vehicles and stuff to  
15 be able to visit all the communities, but basically we look  
16 for the leadership within the community, natural  
17 leadership, people that were respected by their peers, and  
18 we would train them in scripture, and train them in  
19 leadership, how to run a meeting, speak in public, and do  
20 all of the leadership things they had to do.

21 Q. How often did you travel to the outlying areas of your  
22 parish?

23 A. I was in every one of my communities at least once a  
24 month. Sometimes by Jeep, sometimes by motorcycle,  
25 sometimes we would have to walk, depending on the areas,

1 and the season.

2 Q. In '79 and '80, who was the head of the Catholic  
3 Church?

4 A. Archbishop Romero.

5 Q. Was he very visible within El Salvador?

6 A. He was the Archbishop, and right now there are ten  
7 dioceses. At that time there were six dioceses, but he was  
8 the Archbishop who would be the spokesperson for the church  
9 in the whole area.

10 Q. Did he, himself, issue his own sermons?

11 A. Archbishop preached every week at the cathedral and  
12 would be listened to by most of the people in the country  
13 almost every week. I would be up in the hillsides and you  
14 could hear the voice of the Archbishop on the radios.  
15 People would have their portable radios, even if they  
16 didn't have electricity. You could hear as you walk from  
17 various houses, people would gather listening to a homily  
18 every Sunday.

19 Q. Is a homily a sermon?

20 A. Yes, a homily is an explanation of the gospels to  
21 bring it down to the level of the people so that they could  
22 understand, and then apply it to their daily lives.

23 Q. Were these homilies or sermons also published in the  
24 newspaper of El Salvador?

25 A. The homilies were always recorded and published, and

1 commented on in the papers the next day.

2 Q. Did you, yourself, listen to his homilies?

3 A. Regularly. We would always, whenever we were free to,  
4 we would listen to the homilies.

5 Q. Did they influence your own sermons?

6 A. Again, being a foreigner in a foreign country, and  
7 under the political circumstances, we worked under the  
8 Archbishop, so we would follow his pastoral line. You have  
9 to be very careful as you preach so you would not be  
10 interpreted of preaching in a political way. So I would  
11 always quote the Archbishop regularly in my homilies.

12 Q. What did the Archbishop talk about in his homilies as  
13 a general matter?

14 A. The Archbishop was a teacher. When he was a young  
15 priest, he organized the radio of phonics schools in the  
16 San Miguel Diocese where he was ordained, and spent a lot  
17 of time teaching. When you have so many people, one of the  
18 ways to reach them is through the radio. He was a teacher,  
19 his homilies were teaching homilies. He would take the  
20 gospels, scripture readings we would use in liturgies and  
21 explain to people what the teachings of the gospels were,  
22 always to try to help them to imply into their -- in their  
23 daily lives of the people -- an understanding of how they  
24 should be living according to what the gospels were  
25 teaching.

1 Q. In particular, how did he tie the scriptures to the  
2 daily lives of El Salvadorans during that time?

3 A. Most of his homilies were an hour or longer, I preach  
4 eight minutes. The bishop, he would spend a lot of time  
5 preaching, and he would take -- he would take, and  
6 especially near the end, he would apply in his homilies  
7 what was happening in the country at the time.

8 If people had been disappeareds or people had been  
9 killed, he would express compassion to the families. He  
10 would -- if people disappeared, he would appeal to the  
11 perpetrators to release them, those that were kidnapped,  
12 and things like this.

13 He would always try to take the national reality and  
14 help people understand, you can't separate the gospel from  
15 daily life, and these are things happening in people's  
16 lives, and this is how the gospel touches them.

17 Q. Did you have your own church in El Salvador?

18 A. I was the pastor of the -- pastor in the port, but I  
19 had several churches. We took places like Tamanique,  
20 Tepultepeque, Chopioyon (phonetic). These are republics.  
21 And like the coastal line, you have places like Congajer,  
22 you have people living in the coastal area, and they have  
23 their own church buildings, people didn't have  
24 transportation like we do. We went to them.

25 MS. VanSCHAACK: Your Honor, could I approach to

1 show a photograph?

2 THE COURT: Surely.

3 BY MS. VanSCHAACK:

4 Q. Father Schindler, I am showing you a photo previously  
5 marked Plaintiffs' Exhibit 792. Would you examine that for  
6 a moment?

7 A. Yes.

8 Q. Do you recognize that photograph?

9 A. Yes.

10 Q. Did you take that yourself?

11 A. Yes.

12 Q. Does that represent the scene you were observing at  
13 that time?

14 A. Right.

15 MS. VanSCHAACK: I would like to move Plaintiffs'  
16 792 into evidence.

17 THE COURT: Is there any objection to 792?

18 MR. KLAUS: Relevancy, and no proper foundation.

19 THE COURT: Okay. I will overrule those  
20 objections and receive 792 into evidence but over  
21 objection.

22 (Plaintiffs' Exhibit 792 received in evidence  
23 over objection.)

24 THE COURT: You may proceed.

25 MS. VanSCHAACK: Could we project for the jury?

1 BY MS. VanSCHAACK:

2 Q. Father Schindler, would you describe what is in the  
3 photograph?

4 A. This is the front steps of the church of the Port La  
5 Libertad. Several young people in our church. The large  
6 words above the door of the church say no mataras, which  
7 means though shall not kill.

8 Q. Why did you put that sign up?

9 A. Many of the churches in the diocese had done it at the  
10 time, right after one of the archbishop's homilies where he  
11 appealed to one of the young soldiers of the military, that  
12 they should not be killing their own brothers and sisters  
13 in the country. And so the sign or the preaching became  
14 though shall not kill, and so we put the sign up.

15 Q. You mentioned that other churches also put signs up?

16 A. Many of the churches did the same thing.

17 Q. Did you remove that sign yourself?

18 A. No, I did not remove the sign. If you look into the  
19 picture and you see the green building on the back side of  
20 the church or the back side of the church, that is the  
21 cuartel for the National Guard of our time.

22 Q. What is the cuartel?

23 A. The military barracks, where the National Guardsmen  
24 slept and had their offices and jails. One night the power  
25 went off and the National Guardsmen came and tore the

1 banner off the front of the church.

2 Q. Father Schindler, you mentioned that the National  
3 Guard was present. Which military forces did you observe  
4 in La Libertad?

5 A. We were well secured in La Libertad, there were  
6 actually five forces. We had the National Guard that were  
7 there, we had the National Police in La Libertad. We had  
8 the customs police. We were a port city, we had a full,  
9 barracks full of policeman with the customs police. Being  
10 a port town, we had the marina for the sailers in the town,  
11 and the captain was the chief military officer, and the  
12 local police department or local police.

13 Q. Did each of these forces have a barracks or  
14 headquarters in your town?

15 A. Yes, there were five different sections. They were  
16 independently put together.

17 Q. And based on your observations, about how many  
18 individuals were stationed in La Libertad?

19 A. If you take something like the customs police, 40, 50  
20 at least because they had to do security on all of the  
21 warehouses and stuff. National Guard had anyplace from 20  
22 to 40, depending on how many patrols and what the security  
23 force. The National Police came in and out, and I would  
24 say they had about 20 at any given time. Local police was  
25 a small force, had about five, six policemen.



1 Q. And what did the security forces do in town?

2 A. Each of them had their own -- each of them had their  
3 own jurisdictions. The National Guard would go out and  
4 patrol constantly out into the hillsides. National Police  
5 were, basically patrolled highways and set up roadblocks  
6 and checked traffic in and out of the port and stopped  
7 roadblocks in the area. The marina basically patrolled --  
8 they were in charge of the shipping that came in and out,  
9 and they had patrol boat stationed out there, in the port  
10 itself.

11 Q. You mentioned that the National Police manned  
12 roadblocks?

13 A. Yes.

14 Q. What were the roadblocks like? How would you describe  
15 them?

16 A. Usually they were groups, depending on how thorough  
17 they were, almost every night there would be roadblocks of  
18 people coming in and out of town. No one could come in or  
19 out of La Libertad. We were the coast of the highway and  
20 highway coming from the capital. You couldn't come across  
21 the town, there was a roadblock through the town, and  
22 sometimes a kilometer or two out.

23 And then there would also be roadblocks coming down  
24 from the capital. Anyone going up to the capital, to the  
25 port, they would stop the car. They usually stationed

1 usually around ten men, I don't know how many were in --  
2 but they would have some that stop a car, and two or three  
3 stationed 500 yards or 100 yards down in case somebody ran  
4 a roadblock to stop them.

5 Q. So when you visit your parishioners in the outlying  
6 areas, did you pass through the roadblocks?

7 A. Yes, we always stopped through the roadblocks.

8 Q. And what kind of communications equipment would you  
9 see?

10 A. Again, they would always carry, have one radio man  
11 with a large antenna behind his radio back pack. All of  
12 the caurtels themselves had radio towers on top of them.  
13 They call it towers of, communication towers.

14 Q. Did the members of the National Police, were they in  
15 communications with others on the walkie-talkies or radios?

16 MR. KLAUS: Objection; lack of personal  
17 knowledge.

18 MS. VanSCHAACK: I can rephrase the question.

19 THE COURT: All right.

20 BY MS. VanSCHAACK:

21 Q. Were there National Police members talking on the  
22 radios?

23 A. All the time. When I visit the caurtels and I try to  
24 keep good relationships with the police officers in our  
25 town, you would hear the radios, they would be in the back

1 room and sometimes in the main room.

2 Q. You mentioned you had contact in some of the caurtels.  
3 What were the circumstances in which you had that contact?

4 A. Well, first of all, so often in the areas there would  
5 be people that would disappear. The hour -- the most  
6 difficult hour was the hour of the morning. If my door  
7 bell -- people pounding on my door six in the morning meant  
8 people would disappear at night. They would come and say,  
9 Father, someone came in the middle of the night and took my  
10 son, or they would say the National Guards came, sometimes  
11 in uniform and sometimes plain clothes people, and I would  
12 say to them, well, have you go to the cuartel, or to their  
13 barracks to find why they have taken your son? And they  
14 usually would be afraid. I said you have to go, you have  
15 to show interest, the fact that you are concerned about  
16 your son.

17 Q. Why did you feel that was necessary?

18 A. Because it was very important that these military  
19 forces acknowledge they had them. If they acknowledged  
20 they had them, they would not end up dead or they would not  
21 disappear. I would tell them where the caurtels were, I  
22 would tell them to go and visit. And they would come back  
23 to me. If they did not get an acknowledgment, I would go  
24 with them, we would visit each place, and express my  
25 concern, my knowledge of the young person if I knew them,

1 from what town, what living area they had been in. If I  
2 had known them, I would usually acknowledge that I knew  
3 them, and I thought they were good people.

4 Then if there was no acknowledgment, then I would go  
5 to -- some of the towns people in town and you, you know,  
6 the fact that all of the caurtels had their own jails, what  
7 I would do is, I knew the people that would do the cooking  
8 and the people that would clean and people that worked and  
9 maintained those buildings, and I would know them and I  
10 would question, are you aware of who was in the jail, and  
11 they would tell me, this one is in this cell and that one  
12 in that cell.

13 Q. How did you know the cooks and janitors that work in  
14 the detention centers?

15 A. These are my parishioners, I am the pastor of  
16 everybody in town. I would know them, especially the cooks  
17 and so on.

18 Q. In addition to people being disappeared like this,  
19 were there other signs of violence within La Libertad?

20 A. There were -- constantly there would be, you know,  
21 people would disappear, there would be fights.

22 What do you mean?

23 Q. That is okay. Was there violence against -- were you  
24 ever involved in trying to locate particular individuals  
25 who had disappeared?

1 A. Yes. I had one young man that a lot of the -- if you  
2 would remember the picture that you just saw, a lot of  
3 young people, we did a lot of work with young people. They  
4 were the leaders of the future. Young people would sing in  
5 our choirs, young people would accompany me when I would go  
6 out, they would carry the baskets and such when we walk and  
7 so on. They were questioned by and stopped by the police  
8 and so on.

9 I had one young man picked up, and again he was coming  
10 from school, he was a high school kid coming from school,  
11 and his classmates had seen him arrested. And his mother  
12 come to me and I went to the cuartel and the commandante  
13 said they didn't have him and I would just keep going back.  
14 And I knew for a fact that they had him in one of the back  
15 jails. And finally they released him. And I said, why did  
16 you not acknowledge to me you had them? And they said, we  
17 are investigating, Father.

18 Q. In addition to telling you about people of their  
19 family who had been disappeared, did your parishioners  
20 describe other forms of violence that they had seen and  
21 request your help?

22 A. Many times people would disappear. We've had several  
23 of our catechists that were killed during those times. One  
24 of my community, Dominique, six of my catechists were  
25 killed. They would have people come into their homes and

1 take them out and kill them on the side of the street.

2 I had one instance where one of my catechists, he was  
3 a night guard at one of -- the World Health Organization  
4 had some areas in our area. They did malaria studies and  
5 things like that. He was the guard there so people  
6 wouldn't come and steal medicines, and so on.

7 And, of course, part of what his -- he would live  
8 there, he would stay there at night, sleep there at night  
9 and go back in the morning so he was -- one of the things  
10 that he was not allowed to do is have his family there, and  
11 often he would bring his kids to be there with him at  
12 night.

13 One time he heard cars coming in the middle of the  
14 night, so the kids were there with him, so he told them to  
15 hide, he didn't know who was coming. As the car stopped  
16 outside and they came to the door and he opened the door,  
17 and he was shot point blank, and his kids were in the back  
18 hiding and saw this.

19 This group of men that came in, they used it as a  
20 base, went out and arrested three other men in the area,  
21 and left them there. So --

22 Q. Did you ever document any of the violence you saw  
23 within your community?

24 A. We always would write up some kind of a record of what  
25 happened, if somebody would come and say so and so

1 disappeared, our parish team would always write up.

2 Q. And what would you do with those reports?

3 A. Again, we would take them to the Socorro Juridico,  
4 which is the human rights office of the Archbishop.

5 Q. How would you translate that?

6 A. Judicial help.

7 And then a lot of things that we did during my --  
8 especially my last year there, I was there, people would  
9 come to me and say, Father, there is a dead body out here,  
10 a dead body over here. I think the last year I was there,  
11 there were 30 some bodies I went out, identify, take  
12 pictures of and write up an account and take it to Socorro  
13 Juridico.

14 Q. Where would the parishioners find the bodies?

15 A. Usually along the side of the road. The one that was  
16 killed, his sons who were there were the ones -- as soon as  
17 we heard he had been killed, we spent some time the next  
18 day with the family and funeral and burial and so on.

19 MS. VanSCHAACK: I would like to approach the  
20 witness with another photograph.

21 MR. KLAUS: Objection; relevancy, probative value  
22 outweighed by prejudicial --

23 THE COURT: We haven't quite gotten there yet.  
24 Let's hear the next question.

25

1 BY MS. VanSCHAACK:

2 Q. Father Schindler, is this one of your photographs?

3 A. Yes.

4 Q. Did you take this yourself?

5 A. Yes, I did.

6 THE COURT: What is the number for the record?

7 MS. VanSCHAACK: Originally marked Plaintiffs'

8 789.

9 THE COURT: All right. And your question is?

10 BY MS. VanSCHAACK:

11 Q. Does this photograph accurately represent the events

12 that it depicts?

13 A. Yes, this was a very common event.

14 Q. Do you recall taking that photograph?

15 A. Yes, I do, very, very vividly.

16 MS. VanSCHAACK: I would like to move Plaintiff's

17 789 into evidence.

18 THE COURT: Can I see 789? Is there any

19 objection?

20 MR. KLAUS: Yes; relevancy and predicate as to

21 the time and place --

22 MS. VanSCHAACK: I could ask additional

23 questions.

24 MR. KLAUS: Probative value outweighed by

25 prejudicial effect, designed to emotions.



1           THE COURT: We are obviously dealing with very  
2     difficult issues, I think the jury understands that. I do  
3     think we need to establish the time and place if we could,  
4     first.

5     BY MS. VanSCHAACK:

6     Q.    Father Schindler, do you recall when you would have  
7     taken this photograph?

8     A.    This was taken in 1980, or '81. The exact time, it  
9     was in the last year that I was there.

10    Q.    And where was this photograph taken?

11    A.    It was taken about six kilometers up the road towards  
12    the capital by a place that is known as the dangerous curve  
13    and it was, again, people had come to me and said, Father,  
14    there is a body at the side of the road.

15           Most of the time when there were bodies there, they  
16    would come to me because they would be afraid to do  
17    anything. Many times the bodies usually had a sign on them  
18    that said, you know, if you bury this body, you will be the  
19    next to be killed.

20    Q.    And in general you took on the responsibility of  
21    burying the bodies?

22    A.    My responsibility was to go down, I would go to the  
23    local authorities and say there was a body there, and they  
24    would say take care of it, Father, and sometimes they would  
25    go with me.

1 MS. VanSCHAACK: Your Honor, I renew my motion to  
2 admit Plaintiffs' 789 into evidence.

3 THE COURT: All right. Now, I am going to  
4 overrule the objection. I will receive 789 into evidence  
5 over objection.

6 (Plaintiffs' Exhibit 789 received in evidence  
7 over objection.)

8 THE COURT: You may proceed.

9 MS. VanSCHAACK: Would you project 789?

10 BY MS. VanSCHAACK:

11 Q. Father Schindler, this is one of the bodies you found  
12 on the side of the road?

13 A. Right.

14 Q. Would you describe what condition the body was in?

15 A. This was on the side of the road down an embankment  
16 covered with vulture when I got there. We chased the  
17 vulture off. The body had its thumbs tied behind its back,  
18 and had been out in the heat most of the morning before I  
19 got there, before people had come in to me to acknowledge  
20 that the body was there.

21 We normally would take pictures, we would lay the body  
22 out and find a place to bury the body and mark it. We  
23 would write up the incident and take it to Socorro Juridico  
24 so if families were looking for disappeared members, they  
25 could try to identify them through the photo we took.

1 Q. Which position was this body when you found it?

2 A. This is how the body was found. We would lay it out.

3 I took the original pictures first.

4 Q. The body looks like hands are tied behind its back.

5 A. Thumbs are tied together, common way the normal  
6 National Guard -- they didn't have handcuffs, so they would  
7 tie the person with their thumbs so the hand becomes  
8 immobile and you can't use the hand with the thumbs tied  
9 behind it.

10 We would see people coming through town all the time  
11 accompanied by police or National Guard with the thumbs  
12 tied behind their back.

13 Q. You would see people in detention of security forces  
14 alive with their thumbs tied?

15 A. Yes.

16 Q. You mentioned you would take a photograph of the  
17 bodies you would find. Would you tell the jury what you  
18 would do with that photograph?

19 A. Again, we would take several photographs and write up  
20 a description of what we found. And there is over -- I  
21 would say over 30 bodies that last year that I was there  
22 that we found and then we would write up the report, take  
23 it to the Socorro Juridico, and they would put it in their  
24 files.

25 Q. And what would that organization do, if you know, with

1 the photographs?

2 A. What they do is keep them on file and people  
3 throughout the dioceses or whenever some family had someone  
4 disappear and were looking for them, they would come to the  
5 Archbishop and they would try to identify to the photos if  
6 they are any of the family members. We had two or three  
7 actually identify and come down, and we pick up the body  
8 and they took them.

9 You could not move the body without permission. They  
10 would get the permission from the local police force, and  
11 we would bury the bodies and mark them so we could tell  
12 them where they were.

13 Q. In addition to bodies on the side of the road, is  
14 there another location you would find bodies?

15 A. There was a notorious area in the port, and the port  
16 was not a battle zone. The port was very secure along the  
17 coast, a lot of movement. We were able to move freely.  
18 But there was one area called the Mirador. Mirador is  
19 Spanish for the look out. And it was down along the coast  
20 probably about close to 14 kilometers outside the port, and  
21 there was a drop off, almost a sheer cliff from the side of  
22 the road down to the ocean, about a 300 yard drop, a drop.  
23 And constantly bodies were thrown over the Mirador. The  
24 body when they throw it over to the side would go to the  
25 edge of the water and the tide would take it out and often

1 it would show up down the coast someplace several days  
2 later.

3 MS. VanSCHAACK: If I could approach the witness  
4 with another photograph. I have handed the witness a  
5 photograph previously marked Plaintiffs' Exhibit 797.

6 BY MS. VanSCHAACK:

7 Q. Would you examine 797 for a moment? Is that one of  
8 your photographs?

9 A. Yes, this is from the top of the Mirador.

10 Q. Does that accurately represent the scene at Mirador?

11 A. Yes.

12 THE COURT: Turn that off for a minute.

13 MS. VanSCHAACK: I would like to move the  
14 document previously marked Plaintiffs' 797 into evidence.

15 THE COURT: When was this photograph taken,  
16 Father?

17 THE WITNESS: Again, this was taken in 1980.

18 THE COURT: Any objection to the receipt of 797?

19 MR. KLAUS: No, Your Honor.

20 If I may, Your Honor, briefly the basis of my  
21 objection on the first one was the time period.

22 THE COURT: I understand that. We need times  
23 established on all photographs.

24 797 received without objection.

25

1                   (Plaintiffs' Exhibit 797 received in evidence  
2                   without objection.)

3                   THE COURT: You may proceed.

4 BY MS. VanSCHAACK:

5 Q. Father Schindler, what does this represent?

6 A. Taken from the top of the Mirador down, and in the  
7 picture -- I am looking for it, I can't see it right  
8 away -- there is actually a body down there. It is 300  
9 yards, you could barely see it. We knew there was a body  
10 there because you could smell it rather than see it.  
11 People would come and say there are bodies down there,  
12 Father, and we would go down and make an effort to bury the  
13 bodies, which is very difficult because there is no place  
14 down there, it is all rock to bury.

15 Q. Your parishioners would come visit you at the church  
16 and say they would see the bodies, they knew there were  
17 bodies?

18 A. Yes, they could see it. You could see it. You could  
19 barely -- I took the picture because there was a body down  
20 there, but I can't identify where it is right now.

21 Q. How would you get down that cliff?

22 A. With great difficulty. We would have to use ropes. I  
23 would take some of the boys and we would go and we would  
24 try to scale down. And many times we had to use ropes to  
25 go down sections that are so steep. What would happen, if

1 we had low tides, the body wouldn't be carried off, so they  
2 would be there for days and days, and then they would  
3 really be in terrible, rough shape.

4 Q. And what would you do when you first get down to the  
5 beach at Mirador?

6 A. The first thing I do is take pictures. One time we  
7 had five bodies down there, and we take pictures of all of  
8 them and degrees of their injuries, and where they were.  
9 And because we couldn't bury them, we would build a funeral  
10 pyre, I would get a load of fire wood, and throw it down,  
11 and I would build a funeral pyre. Often -- or throw  
12 rubbish over. Sometimes there would be cardboard we could  
13 use to build a funeral pyre.

14 MS. VanSCHAACK: I would like to show the witness  
15 another photograph.

16 THE COURT: Yes.

17 MS. VanSCHAACK: I show the witness Plaintiffs'  
18 804.

19 BY MS. VanSCHAACK:

20 Q. Father, did you take that photograph?

21 A. Yes.

22 Q. Do you recall when you took that photograph?

23 A. Again, 1980.

24 Q. Does that accurately represent the events that it  
25 seems to describe?

1 A. Yes, it does.

2 MS. VanSCHAACK: Your Honor, I would move the  
3 photograph previously marked 804 into evidence.

4 THE COURT: Is there any objection?

5 MR. KLAUS: No, Your Honor.

6 THE COURT: 804 will be received into evidence  
7 without objection.

8 (Plaintiffs' Exhibit 804 received in evidence  
9 without objection.)

10 MS. VanSCHAACK: John, would you project that for  
11 the jury?

12 BY MS. VanSCHAACK:

13 Q. Father Schindler, what does this photograph describe?

14 A. We have several young boys go down with me, we would  
15 take the bodies, pile the bodies and gather anything we  
16 could to build a funeral pyre. This has cardboard and any  
17 wood we could get up, than we would burn the body.

18 The reason we do that is so we could then the next day  
19 come back and gather up all the remains and put them in a  
20 bag and take them out. We couldn't carry the bodies out,  
21 they were in such decrepit shape, they would fall apart.

22 Q. How would you carry the bones off the beach?

23 A. Put them in plastic bags and take them up.

24 MR. KLAUS: Objection as to relevancy.

25 THE COURT: I will overrule the objection and



1 permit that.

2 THE WITNESS: We would put them in plastic bags,  
3 take them up and give them a decent burial.

4 BY MS. VanSCHAACK:

5 Q. Take the year 1980 in which these photographs were  
6 taken. Do you have an estimate how many bodies you would  
7 have removed from Mirador or from the side of the road?

8 A. I think 1980 eight different bodies, one time five.

9 Q. Was it made known to you that the military would dump  
10 these bodies off the cliffs?

11 A. Many times people would come --

12 MR. KLAUS: Objection to this; speculation.

13 THE COURT: Sustained.

14 BY MS. VanSCHAACK:

15 Q. In order to get through to Mirador, was it necessary  
16 to pass roadblocks?

17 A. All the time. You never went out through town in the  
18 evening or day without going through roadblocks.

19 Q. Would it be possible to sneak out to Mirador without  
20 passing through a roadblock?

21 A. Never.

22 MR. KLAUS: Objection; confusing.

23 THE COURT: Legal basis of the objection?

24 MR. KLAUS: Confusion.

25 THE COURT: I will overrule that objection.

1 BY MS. VanSCHAACK:

2 Q. Did you have to ask permission from anyone to go out  
3 to Mirador to rescue these bodies?

4 A. I would always get permission from the local  
5 authorities. I would go to the local police, National  
6 Guard, they would tell me to take care of it.

7 Q. Did you ever see any of the military authorities  
8 removing bodies from Mirador?

9 A. No.

10 MS. VanSCHAACK: Your Honor, I am at a good  
11 stopping point. I know it is a bit early.

12 THE COURT: That is all right. Why don't we  
13 stop. Ladies and gentlemen, let's take a break. We will  
14 stick to our normal schedule. Why don't we plan to pick  
15 up at quarter of two and we will continue on with the  
16 direct examination at quarter of two.

17 Let me allow the jury to step out.

18 (Thereupon, the jury left the courtroom.)

19 THE COURT: Father, you may step down. Thank  
20 you.

21 Could I ask the parties to be seated for just a  
22 minute?

23 Are there many more photographs being offered  
24 that the Plaintiffs seek to offer?

25 MS. VanSCHAACK: There are only two more.

1 THE COURT: Could I see those? Do you have them?

2 MS. VanSCHAACK: These have been previously  
3 marked 793 and 794.

4 THE COURT: Have you shown them to defense  
5 counsel as well? Would you do that?

6 MS. VanSCHAACK: Yes, sure.

7 THE COURT: Is there any objection to 793?

8 MR. KLAUS: Without a predicate, I don't know --

9 THE COURT: Assuming some relevancy or  
10 relationship, but any other objection?

11 MR. KLAUS: No, Your Honor. As long as it is  
12 relevant and has a proper predicate.

13 MS. VanSCHAACK: Father Schindler will testify  
14 these are two individuals that he took to the hospital  
15 after they had been attacked by the military.

16 MR. KLAUS: If he is going to say they were  
17 attacked by a military, then I object to that as hearsay,  
18 because I don't think he witnessed that personally.

19 THE COURT: Did he witness it himself?

20 MS. VanSCHAACK: He did not. Although I would  
21 argue in response to the hearsay objection the statements  
22 were excited utterances or dying declarations. One of the  
23 individuals had been shot through the face.

24 THE COURT: That is the young man?

25 MS. VanSCHAACK: The young man.

1           THE COURT: Let's do this, when we come back and  
2 before the jury is brought in, let's deal with whatever  
3 predicate needs to be established regarding a dying  
4 declaration.

5           Now, the lady, I assume it is a lady who is  
6 seated, looks like there are bandages on the legs, what is  
7 the story on that one?

8           MS. VanSCHAACK: She is the wife of the man with  
9 the bandages on the head. The two of them were attacked.  
10 The husband was shot in the face and left for dead, and  
11 she was escaping and shot in the feet. Her husband was  
12 able to drag her to the side of the road, found by one of  
13 the church workers.

14          THE COURT: The idea would be if you can  
15 establish proximity and connection, if one comes in, both  
16 comes in.

17          MS. VanSCHAACK: Correct. The story was told by  
18 the husband riding in the truck with him.

19          THE COURT: He sustained the wound from which he  
20 died?

21          MS. VanSCHAACK: He did not, remarkably he  
22 survived.

23          THE COURT: But the statements that he made he  
24 was under fear that he was about to die?

25          MS. VanSCHAACK: Yes, it was anticipated that he

1 would die.

2 THE COURT: Let's deal with that before the jury  
3 comes in and see where we are. If you would remind me of  
4 that, let's do that before we bring the jury in.

5 Okay. Let's take a break and we will pick up.

6 I want to give you the other -- I know you are  
7 keeping these as part of the record, let me give you back  
8 seven, eight, nine.

9 MR. GREEN: Your Honor, one matter, I am not sure  
10 when Ms. Gilbert is going to arrive. I may need to be  
11 waiting for her out there and come in during the court's  
12 session.

13 THE COURT: That is no problem.

14 MR. GREEN: Number two, in light of what we  
15 discussed the other day about not opening the door to the  
16 churchwomen, we have redacted a reference on the second  
17 paragraph of page 29 of the United Nations Truth  
18 Commission Report, and I think the third paragraph on page  
19 62, page 66 of the United Nations Truth Commission Report  
20 and would be perfectly willing to substitute that redacted  
21 Truth Commission Report for the entire Truth Commission  
22 Report since nothing has been published to the jury.

23 THE COURT: Let me leave that with you. You are  
24 all going to talk because there was a proposal, I think,  
25 placed on the table by the Plaintiffs, and I forgot to ask

1 you what the resolution of that was.

2 So, let's be aware of that, and come back and  
3 deal with that this evening, whether this redacted version  
4 is acceptable to the defense or how you want to handle  
5 that.

6 MR. KLAUS: I want to see. I don't know offhand  
7 what this is exactly.

8 THE COURT: I understand. Maybe you can look at  
9 it and see if that meets everybody's concerns.

10 MR. GREEN: Ms. Gilbert will be testifying about  
11 the Truth Commission Report but nothing about the  
12 churchwomen aspect.

13 THE COURT: Fine.

14 MR. KLAUS: If what they are saying is everything  
15 in it about the churchwomen is going to be redacted, that  
16 is fine.

17 THE COURT: That is acceptable to the defense?

18 MR. KLAUS: Yes.

19 MR. GREEN: If we could withdraw --

20 THE COURT: Sure. Why don't we do that later  
21 this evening. The point is, you will not go into that in  
22 direct examination. So everybody understands there is a  
23 redacted version that omits those events.

24 MR. GREEN: If we could have a jury instruction  
25 to the contrary -- to the effect that a small portion of

1 the Truth Commission Report has been redacted by agreement  
2 of the parties.

3 THE COURT: Good. Why don't we talk about that,  
4 and we will decide how to handle that. I assume nobody  
5 is -- it is a multi page document, probably nobody is  
6 going to be looking through it.

7 MR. KLAUS: I don't think we have to mention the  
8 redactions, there are redactions in a lot of the exhibits.

9 THE COURT: Let's come back to that and talk  
10 about it this evening and decide how to handle it and what  
11 the approach will be. Let's take a break and we will  
12 reconvene at quarter of two.

13 Thank you.

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

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

16 THE COURT: Before we bring the jury in --  
17 Mr. Caldwell, would you tell the jury we are going to be  
18 with them in a few minutes?

19 Let's first discuss the admissibility of the two  
20 pictures that we talked about before the luncheon break.

21 MS. VanSCHAACK: There are two events I would  
22 like Father Schindler to offer testimony, both of those  
23 involved parishioners who survived attacks by the  
24 military.

25 THE COURT: Let's cut to the quick on this. You

1 can ask leading questions. The first thing we are looking  
2 at to discern whether the appropriate foundation can be  
3 established for the admissibility of the photographs.

4 BY MS. VanSCHAACK:

5 Q. Father Schindler with respect to the couple you found,  
6 would you describe the condition they were in when you  
7 found them?

8 A. Again, both of them I thought were near death. The  
9 wife less, but the husband, you know, he was almost to the  
10 point of -- almost to the point of being lethargic. He was  
11 losing consciousness, trying to keep him from dying, and my  
12 concern was, what happened, tell me what happened. I went  
13 out to anoint him.

14 THE COURT: Let's stop for a minute.

15 Father, would you stop for a second and just  
16 describe what it was you observed when you saw this  
17 couple? And I take it it is a man and woman that you came  
18 across.

19 THE WITNESS: Yes, right.

20 THE COURT: Where are they when you see them?

21 THE WITNESS: They were found at the side of the  
22 road.

23 THE COURT: Okay. What did you observe when you  
24 saw them?

25 THE WITNESS: The woman had been dragged, her



1 legs had been shot up, the man had a bullet in the back of  
2 his head. I thought, you know, they were going to die.  
3 That is why the people came to get me, so I would be there  
4 before they die. They were a concern of the people that  
5 they were dying, and again, almost to the point of being  
6 unconscious.

7 THE COURT: Let me go back.

8 BY MS. VanSCHAACK:

9 Q. Are you aware of where these two individuals are now?

10 A. After we got them to help, actually, they came back to  
11 the area where they lived. I saw them about two years  
12 later. That was the last time that I was aware of where  
13 they were.

14 Q. What was the significance -- you mentioned you had  
15 anointed them. Would you describe what that means?

16 A. They were close to death, and they wanted a sacrament  
17 of the anointing of the sick, extremunction.

18 THE COURT: I missed what you said, Father.  
19 Start over. You come upon the couple, you described the  
20 wounds that you discerned with the man.

21 THE WITNESS: Right.

22 THE COURT: What do you do?

23 THE WITNESS: We anointed them right away.

24 THE COURT: Did you do that?

25 THE WITNESS: I did that, and I tried to nurse

1 his wounds. Actually both.

2 THE COURT: For the record, when you say anointed  
3 him, you are applying the sacrament of extremunction which  
4 is for the dying?

5 THE WITNESS: Yes.

6 THE COURT: Would that be perceived by someone in  
7 the Roman Catholic faith as an indication that you were  
8 applying this sacrament and it is something that is done  
9 only when people are perceived to be on the verge of  
10 death?

11 THE WITNESS: Especially the Salvadorans, because  
12 many times I would want to anoint the people who are sick  
13 and they would say I am not dying, Father. If he didn't  
14 feel he was dying, he wouldn't want the sacrament.

15 THE COURT: Did he ask for the sacrament?

16 THE WITNESS: No, he didn't directly ask for it.  
17 He might have asked the people. They came to get me to  
18 anoint him.

19 THE COURT: What was your impression, that he  
20 understood what it was you were doing?

21 THE WITNESS: I think he understood.

22 THE COURT: All right. Back to counsel.

23 BY MS. VanSCHAACK:

24 Q. Were the husband and wife still scared and terrified  
25 by what happened to them?

1 A. I think so. Not only them, when one of our church  
2 workers found them, she took them to the closest house.  
3 Everybody was frightened because they thought they were  
4 going to come back and kill them. Everybody was  
5 frightened. They were frightened, they thought they were  
6 going to die. The people didn't want them there because  
7 they thought they would be killed with them. Everybody was  
8 frightened, sense of hysteria is all over the place.

9 MS. VanSCHAACK: Your Honor, I think we  
10 established --

11 THE COURT: Without arguing, any other questions?

12 MS. VanSCHAACK: Not at this time.

13 THE COURT: Cross examination?

14 MR. KLAUS: None, Your Honor.

15 THE COURT: Well, then what happened?

16 THE WITNESS: We got them into our truck and took  
17 them up to the clandestine hospital where we had taken the  
18 guy the day before.

19 THE COURT: Did the man make some statements to  
20 you?

21 THE WITNESS: I constantly talked to him.

22 THE COURT: When was he making these statements  
23 to you?

24 THE WITNESS: When we were driving, I thought he  
25 was going to die, and I kept, what happened, who did this,

1 where did it happen, what happened.

2 THE COURT: In general what did he say to you?

3 THE WITNESS: He told me in the evening, military  
4 patrol in uniform had come. He had been working as a  
5 union organizer in that area.

6 THE COURT: I will stop you there, Father. The  
7 point is, the gist of the comments were, the gist was that  
8 the wounds that he was suffering from had been inflicted  
9 by the military?

10 THE WITNESS: Right.

11 THE COURT: All right. Okay. In talking to him,  
12 did he indicate to you the approximate time the wounds had  
13 been inflicted?

14 THE WITNESS: That happened the night before. He  
15 had been shot in the head and was knocked out. When he  
16 came to, he found his wife -- he put the tourniquets on  
17 her legs and dragged her for almost three hours. They  
18 exhausted, he was hurting, she was hurting, and they got  
19 to the side of the road where one of our team members  
20 found them.

21 THE COURT: Okay.

22 THE WITNESS: I don't know the exact time. He  
23 said it was about three hours it took him to drag her to  
24 the road closest to the road to his house.

25 THE COURT: Is it your belief today this

1 gentleman is in El Salvador?

2 THE WITNESS: I don't know.

3 THE COURT: You lost contact. You saw him a  
4 couple years later?

5 THE WITNESS: I saw her, not him. Her legs had  
6 been reconstructed at this hospital, at the clandestine  
7 hospital. We commented how well she could walk after her  
8 legs had been so ripped apart.

9 THE COURT: Okay.

10 THE WITNESS: That was the last time I had seen  
11 her.

12 THE COURT: Thank you so much. Any questions by  
13 the Plaintiffs?

14 MS. VanSCHAACK: No.

15 THE COURT: Any questions by the defense?

16 MR. KLAUS: On the picture, the tourniquets, they  
17 were applied by her husband?

18 THE WITNESS: Her husband did those. I did not  
19 do tourniquets, I applied the gauze. I always carried it  
20 because we had so many people hurt, we carried in our mass  
21 kit. I use -- it was like an antibiotic that I always  
22 use. A lot of times people have infections and I had  
23 gauze pads, I put the antibiotic on there, cream, just to  
24 try to keep infection from spreading so I could get them  
25 up to some help.

1           THE COURT: Did the gentleman say anything else  
2 to you regarding his physical condition?

3           THE WITNESS: Well, he thought he was going to  
4 die.

5           THE COURT: Did he say that to you?

6           THE WITNESS: Yes, I think so. I can't remember  
7 the exact full conversation. We all presumed he was going  
8 to die.

9           THE COURT: Let me stop you for a minute, Father.  
10 To the best of your remembrance and understanding, you did  
11 apply the sacrament. As you are thinking about it now,  
12 did he indicate to you that he felt he was going to die?

13          THE WITNESS: Again, to the best of my  
14 remembrance, I cannot say the words he said, all right,  
15 but I think the presumption was he was dying, and I was  
16 trying to keep him from dying.

17          THE COURT: To try to hone in on this, it is so  
18 difficult so many years later, is this the perception on  
19 your part or something you perceived was his presumption?

20          THE WITNESS: It is the presumption I thought he  
21 was going to die. In my lap is where he was, I was  
22 driving and trying to keep him --

23          THE COURT: Okay. Argument?

24          MS. VanSCHAACK: We established excited utterance  
25 exception to the hearsay rule and dying utterance to the

1 hearsay rule.

2 THE COURT: Excited utterance is what rule?

3 MS. VanSCHAACK: 803.2, and dying declaration,  
4 804(b)(2).

5 THE COURT: Okay. Why is this a dying  
6 declaration from your point of view?

7 MS. VanSCHAACK: The fact that the declarant  
8 allowed the sacrament to be administered to him implies he  
9 felt he was close enough to death to be wanting to end  
10 death with the sacrament rather than without the  
11 sacrament. And the priest had been brought to him to  
12 administer that, and there was a possibility that he would  
13 die, there was no time for reflection about what he was  
14 saying, he wanted to die with the truth on his lips,  
15 essentially which is the source to the exception of the  
16 hearsay bar.

17 THE COURT: Anything further?

18 MS. VanSCHAACK: With respect to excited  
19 utterance exception, there are a number of cases where  
20 victims give statements up to several hours after the  
21 crime happens to detectives. Those statements are allowed  
22 to come in on the grounds that the victim did not have  
23 time to deliberate or reflect on what would happen, and  
24 was speaking the truth about what happened to the sense of  
25 excitement or terror they were feeling.

1 THE COURT: All right. Argument by the defense?

2 MR. KLAUS: Frankly, Your Honor, I don't think it  
3 meets the test for statement under belief of impending  
4 death because of what Father Schindler said, but to be  
5 honest, it probably meets exciting utterance exception.

6 THE COURT: You think it does?

7 MR. KLAUS: If this wasn't a stressful situation,  
8 I don't know what would be.

9 THE COURT: Do you object to the admission of the  
10 statement?

11 MR. KLAUS: Of his statement?

12 THE COURT: What he said is the cause of the  
13 wounds. That is where we are going, obviously.

14 MR. KLAUS: I have my objection as hearsay, but I  
15 think it meets the exemption under excited utterance, so I  
16 withdraw my objection based on that.

17 THE COURT: You do withdraw your objection?

18 MR. KLAUS: Yes. I agree that it meets the  
19 exception to the hearsay rule. I guess I withdraw my  
20 objection.

21 THE COURT: All right. So there is nothing for  
22 The Court to rule upon?

23 MR. KLAUS: No.

24 THE COURT: All right. Fine.

25 MR. GREEN: One thing, briefly, Judge, I will be



1       needing to go out.

2               THE COURT: That is all right. Don't worry about  
3 that. I think the jury will understand that.

4               MR. GREEN: The second thing, Judge, I believe  
5 the jury did have a question which you said was answered.

6               THE COURT: Yes, the question was, and it was to  
7 Mr. Alvarez, what year was Mr. Alvarez at the National  
8 Guard to investigate the second time, and that was clearly  
9 asked by Mr. Klaus on cross.

10              Now, during the lunch hour there is another  
11 question for Mr. Alvarez, and I think I need to explain to  
12 the jury first, they ought to hold off until you ask all  
13 of the questions because many times something maybe on  
14 their mind does get covered, but secondly, if they do have  
15 a question, it is important they do it before the witness  
16 leaves.

17              Mr. Alvarez obviously has left. Let me read to  
18 you the question regarding Mr. Alvarez. It says, question  
19 for Mr. Alvarez. You had said that you had interviewed  
20 people who were very scared to come and see you in the  
21 first place. Do you know of any them being killed after  
22 talking to you or of anything else happening to them as a  
23 result of talking to you possibly as a form of punishment?

24              I will simply explain to the jury that  
25 Mr. Alvarez is gone. If anybody does have a question, it

1 is important the jury ask those before the witness leaves.  
2 Okay?

3 MR. KLAUS: Fine.

4 THE COURT: All right. Mr. Marshal, would you  
5 bring in the jury, please?

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

7 THE COURT: Ladies and gentlemen, please be  
8 seated. When we stopped for lunch, we were in direct  
9 examination of Father Schindler, but I wonder if I might  
10 take a second. One of the members of the jury indicated  
11 that they had a question for Mr. Alvarez, and let me take  
12 a second, if I can, to review how we need to handle these  
13 because we want to make sure if there are questions, that  
14 we are able to try to get them answered for you.

15 My suggestion would be that you wait and allow  
16 the lawyers on both sides to ask their questions, and I  
17 say that because there was an earlier question and it is a  
18 good example of where it may have been touched upon in  
19 direct, but it was certainly then touched on in cross, and  
20 that is why I didn't put it to the witness.

21 On the other hand, will you make sure if you did  
22 have a question, something you didn't understand or wasn't  
23 asked and answered, you want to get the answer to it,  
24 raise your hand and let me know you do have that question  
25 before the witness leaves. Once the witness is gone, we

1 don't have the ability to call them. I will give you  
2 plenty of time to write it out, but we can keep the  
3 witness here to pose that question to the witness.

4 Let me turn back to Ms. VanSchaack, and she will  
5 start with the remainder of her direct examination.

6 MS. VanSCHAACK: Thank you, Your Honor.

7 BY MS. VanSCHAACK:

8 Q. Good afternoon, Father.

9 A. Good afternoon.

10 Q. You testified about many times you had seen dead  
11 bodies and photographed them and documented them. Did you  
12 ever come across parishioners who survived attack by the  
13 military?

14 A. Twice I did.

15 Q. Why don't you tell us about one of those events?

16 A. The first one was in, again, around 1980. I got one  
17 of those early morning wakeups and people come from the  
18 area of Congrejera Zomafredo (phonetic), down -- again, the  
19 jury probably doesn't know, but it was a long way away, the  
20 litoral, about 35 minutes from where I was by car.

21 And they said that during the night they heard  
22 gunshots, the people that came, and there was -- they had  
23 gone out and found two people in the road, both of them had  
24 been shot. One was dead, but one was still living, and  
25 they had, again, out of fear taken the person, put him in a

1 culvert under the road. They hid him there and came and  
2 got me.

3 Q. What condition was the injured person in when you  
4 arrived at the scene?

5 A. I went out to the spot, they wouldn't go with me, they  
6 told me where it was, they were afraid. The person was in  
7 the culvert under the road, and found them still living,  
8 but barely living.

9 Q. How had he been injured.

10 A. He had been shot in the face, and the bullet hit his  
11 cheekbone and across the cheekbone and ended up in the  
12 other side of the face and across his nose and it was  
13 lodged there. He was bleeding profusely and still living,  
14 losing a lot of blood.

15 Q. What did you do next?

16 A. Put the man in my car and drove him up to the capital,  
17 up to the arbipado (phonetic).

18 Q. Why did you go to the arbipado?

19 A. Because there are so many stories with people being  
20 killed in the hospitals. There were hidden hospitals where  
21 they take people who are injured and could be thought to  
22 have been injured by the military, and being afraid to take  
23 them to the hospital, they would take them to these places  
24 where they would try to treat them medically. I went to  
25 the arbipado, to the Archbishop's offices, and led us to

1 the place where he was treated.

2 Q. What happened to him?

3 A. I thought he was going to die, he had been bleeding,  
4 barely holding on to life. I talked to him the whole time  
5 we went up, who did this, what happened, why. I didn't  
6 think he was going to live on the way up there.

7 Q. What did he tell you?

8 A. He told me he had been taken off, by a military  
9 roadblock, off a bus, and taken to a military base in  
10 Zacatecoluca. One of the three men were killed at the  
11 base, he and this other man were brought back to the spot,  
12 taken off the bus -- and this is several days after they  
13 were taken off the bus -- and they were shot and left for  
14 dead. That is what he told me.

15 Q. You mentioned there were two incidents?

16 A. The very next day in the same area we had, one of our  
17 team members was out visiting one of our communities to  
18 work with the women on first communion and she came across  
19 two people on the side of the road, both of them had been  
20 shot. One was a man and one was his wife.

21 Q. And what did she do?

22 A. She took them to the closest neighbor that they could  
23 find and asked them to hold them. She was riding a motor  
24 bike, she couldn't take them -- she couldn't lift them.  
25 She went to the neighbor, got an ox cart and took them to

1 the neighbor and had the neighbors take care of them and  
2 came and got me with my truck and took them to the same  
3 hospital.

4 Q. You loaded them into the truck?

5 A. Yes. And then again took them.

6 Q. How had they been injured?

7 A. Both of them had been shot. On the way -- I had put  
8 the woman in the back of the truck, and put the man in the  
9 truck seat next to me, and I talked to them all the way up  
10 to the hospital.

11 Q. Where had the man been shot?

12 A. He had been shot in the back of the head. The bullet  
13 hit the bone in the head and went down into his shoulder,  
14 so -- he had been knocked out at the time. His wife who  
15 was there with him when the patrol came through, and what  
16 he told me, during the night military patrol of about 30  
17 men came in uniform. He had been working as a union  
18 organizer. She ran a -- they shot her in the legs, they  
19 shot her legs up.

20 They questioned him, put him on the ground and shot  
21 him in the back of the head. The bullet knocked him out.  
22 He woke up after they left. He found his wife, he  
23 tourniqueted her legs and dragged her about three hours to  
24 the road where our staff member had found her.

25 Q. Did you think this man was going to die?

1 A. Again, I thought the same thing. I thought, you know,  
2 here he is, almost in the state of shock as it was. I  
3 anointed him, which is a Catholic rights for the dying, and  
4 took them up to the capital, to the same hospital I had  
5 gone the night before.

6 MS. VanSCHAACK: Your Honor, I would like to show  
7 the witness two exhibits.

8 THE COURT: You may.

9 MS. VanSCHAACK: I have handed the witness  
10 Plaintiffs' Exhibit 793 and 794. Your Honor, I would like  
11 to move these into evidence.

12 THE COURT: I am sorry, could you give me the  
13 numbers again?

14 MS. VanSCHAACK: 793 and 794.

15 THE COURT: Is there any objection to the  
16 exhibits marked Plaintiffs' 793 and 794?

17 MR. KLAUS: No, Your Honor.

18 THE COURT: Each of those exhibits will be  
19 received into evidence without objection.

20 (Plaintiffs' Exhibits 793 and 794 received in  
21 evidence without objection.)

22 BY MS. VanSCHAACK:

23 Q. Would you examine those photographs from your personal  
24 collection?

25 A. Yes.

1 MS. VanSCHAACK: John, could we have 793?

2 BY MS. VanSCHAACK:

3 Q. Father Schindler, what does this photo depict?

4 A. This is the young man sitting in my Jeep.

5 THE COURT: Father, can I stop you for a second?

6 You talked about two individual men. Is this the man of  
7 the husband and wife, or the first gentleman?

8 THE WITNESS: This is the man of the husband and  
9 wife. The actual picture will show the head of the wife  
10 in the back. That is too bright behind that. That is the  
11 man and wife, this is the one that was shot in the back of  
12 the head.

13 BY MS. VanSCHAACK:

14 Q. Looks like some medical care had been administered.

15 A. Again, we always carry with us some type antibiotic  
16 cream and gauze in my mass kit because so often I would go  
17 to places and people would be hurt and I try to help them.  
18 I put the gauze on, the cream and gauze on to stop the  
19 infection. You could see the blood is pretty much dried.  
20 I stuffed the wound with the antibiotic cream and put the  
21 gauze over it to keep any kind of infection.

22 MS. VanSCHAACK: Could we have 794?

23 BY MS. VanSCHAACK:

24 Q. What is this photograph?

25 A. This is his wife, and these are her legs shot up.



1 They are swollen. And you could see on the bottom where  
2 they are ripped apart. I put gauze on it and put the gauze  
3 on it, and the cream to try to keep the infection from  
4 spreading.

5 Q. Did you place the tourniquet on each leg?

6 A. No. They were tourniqueted by her husband as he  
7 dragged her. She was out bleeding and put the tourniquets  
8 on and dragged her to the side of the road where our team  
9 member found them. She is in the back of the truck, in the  
10 bed of the truck sitting there. We put the gauze on it.

11 Q. Did this couple survive; do you know?

12 A. Yes. Actually about two years later I ran into her.  
13 They both survived and they were treated and the bullets  
14 removed and I ran into her about two years later. I  
15 haven't seen them since.

16 Q. Was she able to walk?

17 A. They rebuilt her legs and she is able to walk. It is  
18 miraculous the work that was done.

19 Q. You testified earlier about catechists and other  
20 church workers terrified by violence by the military.

21 A. Yes.

22 Q. Did you ever feel threatened?

23 A. I didn't feel threatened. Maybe I am naive, being a  
24 gringo and a priest, although they did kill 16 Catholic  
25 priests and an Archbishop. I felt being a gringo was

1 immunity, they would never want entanglement with the  
2 American Government, we were citizens.

3 Q. Even given that, with this risk, why did you stay in  
4 El Salvador during this period?

5 A. Again, the reality that we were there to help the  
6 people, and after awhile you begin to become one of them,  
7 you live with them and die with them. I always felt if I  
8 did die, that is what I was called to do. I did not have a  
9 martyr's wish, I am not that kind of a person.

10 Again, we worked with the people, and we've always  
11 felt that is where God wanted me to be, with my own stamina  
12 and energy I was able to do the work I had to do there.

13 Q. Why did you leave the country in 1981?

14 A. Again, part of the Cleveland Diocese and mission. We  
15 have five priests in El Salvador and several volunteers and  
16 religious women is to help not only to share our priests  
17 with the Diocese or the people in El Salvador, but to  
18 prepare people to work with the Americans here in the  
19 United States. Normal turnover time is seven years. I was  
20 actually there for ten years, and the idea was we would  
21 learn the culture and people and come back here, work with  
22 the Latin Americans here understanding them in their own  
23 culture to make the transition from the Latin American  
24 culture to the North American culture.

25 MS. VanSCHAACK: I have no more questions, Your

1 Honor.

2 THE COURT: All right.

3 Cross examination, Mr. Klaus?

4 MR. KLAUS: Yes, thank you.

5 CROSS EXAMINATION

6 BY MR. KLAUS:

7 Q. Good afternoon, Father.

8 A. Good afternoon.

9 Q. How did the Cleveland Diocese develop the relationship  
10 with the Diocese of El Salvador?

11 A. Again, the Holy Father asked the American bishops to  
12 share personnel with Third World bishops.

13 Q. You mean the Pope?

14 A. The Pope, yes. Our bishop made contact with the  
15 bishop in the San Miguel Diocese and then the archdiocese,  
16 we staffed three parishes in El Salvador. At that time it  
17 was two in the San Miguel Diocese, and one in the San  
18 Salvador Diocese.

19 Q. And --

20 A. Our bishops would make contact between the bishop, and  
21 they would sign a contract. Basically our bishop would  
22 assign personnel, and we would work under the Diocese that  
23 we were working in in El Salvador. We have been there for  
24 30 years now as far as the Cleveland Diocese, since '67,  
25 '68.

1 Q. I was going to ask you that, were you one of the first  
2 ones, but you weren't?

3 A. I was not one of the first ones. I was the sixth or  
4 seventh priest down there. Over the years we have had  
5 close to 60 people from our Diocese work in El Salvador and  
6 then return to the Diocese.

7 Q. And right. Now you have how many priests?

8 A. At the present time we have five priests, and we have  
9 four lay volunteers right now, that is all, and one  
10 religious woman.

11 Q. How many priests in the Cleveland Diocese?

12 A. Cleveland Diocese has around 600 priests.

13 Q. Has that been constant from '67 to present?

14 A. Yes. Roughly, yes, I think since that time we  
15 probably have 50, 60 priests less than we did then, but it  
16 is pretty much constant.

17 Q. How many priests were in El Salvador at that time  
18 between '72 and '82 -- including you guys --

19 A. Other missionary priests, they said half the priests  
20 in El Salvador were missionaries, and I think there are 250  
21 priests in the whole country.

22 Q. In the greater Cleveland area, what is the greater  
23 population?

24 A. Greater Cleveland Diocese, 1,900,000 people.

25 Q. And the population in El Salvador at the time?

1 A. Four and a half to five million people.

2 Q. An overwhelming percentage of them are Catholic?

3 A. 95 percent of the people in El Salvador are Catholic,  
4 yes.

5 Q. It is clear to say it was under staffed?

6 A. Yes, that is why we were there.

7 Q. And you were there -- one of the things you did was to  
8 train catechists like you said?

9 A. Yes.

10 Q. And you were able to perform -- could they say mass?

11 A. No. They could not say mass or any of the sacraments.  
12 They would prepare people -- we became almost  
13 sacramentalizers. They would train the catechist to  
14 prepare every time I would baptize a child, and I would do  
15 14 hundred baptisms a year, the parents would receive three  
16 talks, Christian parenting, they were done by the  
17 catechists, we would train the catechists to prepare the  
18 people.

19 When the people were prepared, we would baptize their  
20 children. When children receive first communion, we have  
21 our catechists teach the children about Eucharist, which is  
22 the basic sacrament, body and blood of our Lord. We work  
23 with the children. We have catechists working with the  
24 children, and work with the parents, so we would always  
25 work -- the work of the catechist was to teach, prepare,

1 and we would celebrate with them.

2 Now, a lot of times, like if I would be in a community  
3 one time a year, one time a month. The other times the  
4 catechists would run a communion service, not mass. They  
5 would come to the port, they would receive a PIX container  
6 in which they take the blessed sacrament and have a  
7 celebration of the word, and give communion. They would  
8 not say mass.

9 Q. They could administer the host?

10 A. They could give the host to the people, yes.

11 MR. KLAUS: Could I set up the map?

12 BY MR. KLAUS:

13 Q. Now, the Diocese that you were attached to ran from  
14 where to where?

15 A. The Diocese of San Salvador, which included the  
16 department of La Libertad, which follows along this line,  
17 and department of San Salvador, which is this area up here.  
18 Those two departments were part of the Diocese of San  
19 Salvador.

20 Q. Which included the capital?

21 A. The capital. Nueva San Salvador and all those  
22 different areas.

23 Q. Now, this is a topographical map, also?

24 A. Right.

25 Q. And so I want the jury -- this area, this is along the

1 coast?

2 A. Correct.

3 Q. This is a flat coastal plane?

4 A. Yes.

5 Q. These are mountains?

6 A. Yes.

7 Q. And they go to how high?

8 A. I think around 4,000 feet is the highest that you get  
9 to.

10 Q. They are pretty steep?

11 A. Yes. We walked a lot of paths, a lot of those trails  
12 up and down all those mountains.

13 Q. Are they forested?

14 A. Not too forested, no. Many of them were milpas or  
15 corn fields. They would plant up and down the hills, corn  
16 fields. The lower sections were all cotton. When you get  
17 up on the hillsides, you are doing corn fields, all along  
18 in here are corn fields, and mostly that, and up in the  
19 upper sections are coffee, the mountains. We didn't cover  
20 the mountains, we covered the section down here.

21 Q. The higher mountain around --

22 A. Higher mountain around the volcano, right there.

23 Q. That height is 1893, that is meters?

24 A. Yes.

25 Q. That is about 6,000 --

1 A. That is the top of the volcano, I don't think they  
2 go -- I think Zaragoza was not higher than 2000 feet.

3 Q. So the jury has an understanding, most of the people  
4 lived in the central part of the country?

5 A. Most of the people lived down along the coast. The  
6 capital had heavy population. These are the farm areas,  
7 they pick cotton and sugar cane. You find in a place like  
8 Congrejera here, there is over 2000 people that live in  
9 this area alone. San Alfredo and Congrejera were about  
10 2000 people.

11 Q. And La Libertad, the actual province?

12 A. The department of La Libertad is up here, Santa  
13 Tecla -- Nueva San Salvador.

14 Q. Is that in La Libertad?

15 A. Yes.

16 Q. Is that where the university is located?

17 A. Which university?

18 Q. University of El Salvador.

19 A. University is in the capital, near Delgado, I believe.  
20 The Catholic university is right here. Those are the two  
21 universities I am aware of.

22 Q. Now, the 140,000 people that lived within La  
23 Libertad --

24 A. Were mostly in this area. The town itself had about  
25 15,000 people, but the department -- the jurisdiction of La



1 Libertad had something like 15,000 people and 21,000 people  
2 in the hillsides. But then you have the jurisdiction of  
3 Zaragoza, that was about 4,000 -- 7,000 people, and then  
4 its jurisdiction was around 20,000 people. San Jos, Nueva  
5 was about 3,000 people, and jurisdiction 15,000 people.  
6 Tamanique 4,000 people, but its jurisdiction, you see it  
7 all the way down the coast, and you see the roads all  
8 around these.

9       The only times we walk a lot. We walk between -- when  
10 we come across this, we go up and down, but all had access  
11 roads coming up, which made our work a lot easier. Every  
12 month we got into all those areas.

13 Q. Were the roads paved?

14 A. No, they are not paved. I don't think they are paved  
15 yet.

16 Q. You had a four wheel drive?

17 A. Yes, and motor bikes. We rode motorcycles also.

18 Q. With a pretty high clearance?

19 A. Yes, dirt bikes. They go easier and they go anyplace.

20 Q. Did each one of the towns have its own Army barracks  
21 or National Guard barracks or both?

22 A. No. They always had a National Guard post. Security  
23 for the campos was National Guard, you would find a  
24 National Guard in Zaragoza, Tamanique was under the  
25 jurisdiction of La Libertad. The post actually work in the

1 port, all the military people were here, and outposts at  
2 times in different areas.

3 Q. Would they have their own local police there?

4 A. Yes, every town had the local police. The way you  
5 would call it a police department, yes.

6 Q. How many people lived in Lourdes?

7 A. I can't tell you that. That was not part of my  
8 parish. My parish ended here above Hiquala (phonetic), and  
9 we did not take care of San Jos, Nueva. This is a  
10 departmental line, this yellow line. Departmental line.  
11 So I couldn't tell you how many people were there.

12 Q. That was someone else's?

13 A. There are parishes, most of the places like Tamanique  
14 has a parish, Tepecoyo, Lourdes, actually Lourdes is a  
15 canton of Colon. The parish is actually in Colon, and the  
16 priest would take care of Lourdes, too, which is larger  
17 than Colon. That was the old city. This is more  
18 developed, intersection and flat area. A lot more movement  
19 in that area.

20 Q. Can you show us where you found the man and couple?

21 A. Both of them were here, Hacienda Alfredo. The man  
22 shot here, and the man and woman down in the section down  
23 in here.

24 Q. There is no road?

25 A. There is roads going in there, all the areas have

1 roads going in. Dorothy was going -- the team members were  
2 going in on their bike, we go with a pick-up truck. We  
3 didn't have enough vehicles, so we used motorcycles to go  
4 in a lot of places if we were just doing one man things.  
5 If I was just going in to teach or to do a class or  
6 something like that, I would go in with a bike rather than  
7 with a truck. But if I was going in with some of the young  
8 people, we were going to have mass and do other things, we  
9 would take the pick-up trucks.

10 Q. You said it took about 30 minutes?

11 A. About 35 minutes to get out here. It is a paved  
12 highway, like the Pan American Highway.

13 Q. It is a good highway?

14 A. Excellent roads. Now they are better. I think that  
15 is, the Japanese have done a lot of repaving all those  
16 different areas.

17 Q. What Japanese -- they have investments there?

18 A. Yes. Japanese are the ones that put in the airport,  
19 and that is the major airport, and so they -- again, the  
20 development of businesses and factories. There are a lot  
21 more people down there now, development of factories and  
22 more work down there, and more people moving down there.  
23 Large houses, two, 300 houses going in those areas.

24 Q. Around the airport, and in between the airport and  
25 capital?

1 A. And the capital, right.

2 Q. Thank you.

3 A. There was a four lane highway running from the airport  
4 to the capital. Super highway.

5 Q. Even back then?

6 A. Even back then.

7 Q. When you were there, who was the president when you  
8 first arrived?

9 A. A man named Molina, I believe, Colonel Molina. He had  
10 just -- I arrived in '72, so I believe it was Colonel  
11 Molina and not long after that there was a Colonel Romero.

12 Q. Were you there for the popular election when Napoleon  
13 Duarte was elected?

14 A. Yes. Yes.

15 Q. Was there sentiment among your parishioners that  
16 Napoleon Duarte won --

17 A. No, that was before I was there. That coup -- I  
18 arrived in June of '72, and I guess elections were earlier  
19 that year, and the coup had taken place, and Colonel Molina  
20 was in power when I got there, and Duarte was out of the  
21 country, Venezuela, I believe.

22 Q. Now, conditions of personal safety for your  
23 parishioners, did that improve, or disintegrate during your  
24 tenure, or stay about the same?

25 A. I would say about the same, yes. You know, the poor

1 people have no personal security whatsoever.

2 Q. They were victimized on a regular basis?

3 A. Well, you know, you say victimized, what do you mean  
4 by victimized?

5 Q. They were victims of --

6 A. Party, institutional violence, yes.

7 Q. Violence by, by both guerrillas, by military, by  
8 common criminals?

9 A. Again, see, our area was pretty much free. You talk  
10 about guerrillas. We didn't have any fighting. This is a  
11 very secure area. Most of the fighting was done during the  
12 wars. We didn't have guerrillas. I don't say you have a  
13 lot of victimization because of that. Of course, the -- I  
14 can't say there wasn't people being taken advantage of and  
15 robbed, stuff like that in those areas. That is always  
16 around.

17 Q. Now, besides training religious teachers, you also  
18 participated and it was one of your missions to help El  
19 Salvadorans become more independent, correct?

20 A. Well, that was all part of training them to be  
21 leaders. When you train a person, and they are have  
22 aggressive people, very quick learners, and they do become  
23 very dependent once they learn the skills. We would do  
24 leadership training, how to speak in public to help them to  
25 lead celebrations of the word, and things like that, yes.

1 Q. And you would help them build churches?

2 A. Yes, I think I built 11 churches all while I was down  
3 there. We would never use mission money for the buildings.  
4 Our philosophy was, if we had mission money, we would use  
5 it for training courses, providing materials for  
6 catechists, things like this. So they would raise their  
7 own moneys, build their own buildings, and build their own  
8 churches. During the ten years we were there, we built 11  
9 separate churches.

10 Q. And you helped those people develop skills and  
11 confidence to do that?

12 A. Right. Right.

13 Q. Prior to you being there, they were afraid or why --

14 A. Well, a lot of it, they didn't have the education, the  
15 skills, the life skills almost. When I first came, the  
16 priest that was there before we came there, and I was one  
17 of the first ones in our team that took over that parish.  
18 They had one pastor, and he would get to most of the areas  
19 once a year, and that was during fiesta times.

20 One thing the church does is build a sense of hope of  
21 people, you are made in God's image, and if you are made in  
22 God's image, God can work through you, and you can do good  
23 things, you could work miracles. If you can prevent  
24 somebody from dying by taking care of the sickness, you  
25 perform a miracle. Father Bill Gibbons was a doctor, so he

1 would teach courses on midwife's, and the mal de ojo, evil  
2 eye. They would -- the child would die within seven days  
3 of birth, and they say they had given them the evil eye,  
4 and they would die because somebody cut the umbilical cord  
5 with an unsterile knife. If you teach the midwife's, you  
6 are saving a lot -- when I went down, one died -- one out  
7 of seven at birth, and three out of seven at the age of  
8 seven. We would do along with our catechitical stuff, we  
9 would teach hygiene, and put in latrines, and all of the  
10 human promotion, we call it.

11 Q. Nutrition?

12 A. Nutrition. I think we had over 30,000 children in  
13 milk programs, and you had to organize all that. How do  
14 you distribute it, where do you warehouse it so people can  
15 get the help.

16 Q. Have things improved?

17 A. In the parish -- part of our goal is the work horse is  
18 out of a job, and, so, out of the three original parishes  
19 that we have, we have given two back to their own Dioceses  
20 and taken on new parishes. We felt the parish was  
21 developed enough that the native clergy could come back and  
22 work with the people, with the leaders we formed and  
23 continue. And we no longer are in the parishes, Ovenyon  
24 (phonetic) and Zaragoza, and now we are turning the port  
25 over shortly.

1 Q. How many Dioceses are in El Salvador?

2 A. When I was there there were six, there is ten, Holy  
3 Father established other dioceses to bring the Bishops  
4 closer to the people.

5 Q. And your Diocese is involved with three at any given  
6 time?

7 A. Two of the Dioceses, San Miguel and San Salvador.

8 Q. Did you have an assistant pastor or local pastor with  
9 you?

10 A. We worked in teams, so, I was the pastor officially,  
11 but we worked as a team. We would have two priests,  
12 religious, we had a pastoral team of religious and lay  
13 volunteers also that worked with us.

14 Q. Did you have another priest?

15 A. There was another priest, yes, two of us.

16 Q. Was he a local priest?

17 A. No. From Cleveland also.

18 Q. What was his name?

19 A. Father Kenneth Myers.

20 Q. Did he stay the whole ten years?

21 A. Ken stayed for 29 years.

22 Q. 29?

23 A. 29. When I went back to Cleveland, Ken asked our  
24 bishop if he could stay there. He excommunicated,  
25 cardination means you are obedient to a bishop. And asked



1 if he could transfer his obedience to San Salvador. Ken  
2 was there for -- Ken died about four months ago.

3 Q. Sorry.

4 A. But Ken and I were there for the first nine years  
5 together.

6 Q. And you both had the parish of La Libertad?

7 A. Yes, and Zaragoza. And we would cover Comasagua and  
8 Tepultepeque, because there were not enough native clergy.

9 Q. Did you have any members of your parish become priests  
10 and come back to that Diocese?

11 A. Yes, we had young men from our parish, one of the  
12 priests that was working in La Libertad was a young boy we  
13 worked with was ordained about two years ago and he was  
14 working in the parish. After his ordination he worked a  
15 year in La Libertad, and the bishop put him in another  
16 parish. Out of all of our Cleveland areas, we had nine  
17 priests ordained. A lot. We educated them, and they are  
18 able to get into the seminar. They come from the poor  
19 areas, a lot of Catholics, so many of the young people  
20 don't have the education. If you get them the education,  
21 they can go through the system.

22 Q. You were saying that during the time you were there,  
23 that La Libertad was a secure area?

24 A. Right. It was a port town.

25 Q. That is the hub of commerce in El Salvador?

1 A. Because it was the port town, we get four, five ships  
2 in a day, and transport to the capital. You had to be  
3 secure. Roadblocks would be here and here, and watch the  
4 capital road.

5 Q. Could you show us where Mirador was?

6 A. La Mirador was right around here (indicating). You  
7 can't see, it has that symbol in front of it. But come  
8 very close -- the cliffs came all the way down to the ocean  
9 edge and dropped right off. As you go out past Santee  
10 (phonetic), you have tunnels, five tunnels because the  
11 cliffs come so close, like the White Cliffs of Dover. So  
12 the Mirador was about right here (indicating).

13 Q. That is accessible from the northwest?

14 A. This is going to be west, this is north. Coast runs  
15 east/west.

16 Q. So that was accessible from the west, also?

17 A. Correct. But it is unique, though. A lot of times  
18 when we would have people arrested over here (indicating),  
19 or taken or arrested over here, we found the bodies here at  
20 Mirador. That means that they had to go through the town.

21 Q. You had people missing to the east of La Libertad  
22 showing up to the west?

23 A. Showing up to the other side, right.

24 Q. The only way --

25 A. The only way to get through is accessibility through

1 the other side of town, and it would happen, we see the  
2 bodies on the other side of town.

3 Q. Did you feel the effects of the civil war while you  
4 were there besides the violence you expressed where  
5 electricity was interrupted?

6 A. Occasionally, yes, but, you know, you learn to live  
7 with that. In our house we put in a plant. It was simple  
8 to get a generator. When the electricity went out, we  
9 threw the switch. Around the town people were accustomed  
10 to have power outages, they had reserve systems.  
11 Electricity goes out at night, and you have to understand  
12 the way people live. They live outside the structure, so  
13 they don't have electricity, they go to bed when the sun  
14 goes down, and get up when it is light. Most of us would  
15 learn to adapt to our water system. We had a pump, and we  
16 would have our generator, and things like that we would  
17 throw on until the power came back on.

18 MR. KLAUS: Nothing else. Thanks.

19 THE COURT: Thank you. Redirect examination?

20 MS. VanSCHAACK: I have no more questions.

21 THE COURT: May Father Schindler be excused?

22 MS. VanSCHAACK: He may.

23 THE COURT: Father, you may be excused.

24 (Witness excused.)

25 THE COURT: Let me allow the Plaintiffs to call

1 your next witness.

2 MR. STERN: Mr. Green is going to meet our next  
3 witness. At this time I think it would be appropriate to  
4 show our videotape.

5 THE COURT: That would be all right.

6 It is earlier than we normally would, but maybe  
7 this would be a good time to take the mid-afternoon break.  
8 That would allow the parties to set up the television or  
9 if the witness is here, I will let you decide what you  
10 want to do, and we will come back and handle that.

11 Ladies and gentlemen, why don't we take the 15  
12 minute break and come back and deal with the next witness  
13 or remainder of the videotape testimony.

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

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

17 (Thereupon, a short recess was taken.)

18 (Thereupon, trial reconvened after recess.)

19 THE COURT: I wonder if we could move the  
20 television back a little bit. Mrs. Stipes needs to be  
21 able to see that.

22 This is a continuation of the deposition that was  
23 taken of General Vides; is that right?

24 MR. STERN: That is correct.

25 THE COURT: Okay. Mr. Klaus, do you need

1 anything?

2 MR. KLAUS: In reviewing the rule last night, I  
3 saw there is a provision for whoever is submitting the  
4 videotape can provide the transcript also, so maybe  
5 Mrs. Stipes doesn't have to transcribe it.

6 THE COURT: Well, that can be done, but where it  
7 needs to be done is designations need to be clear in the  
8 transcript what parts were played and what parts were not.  
9 I take it we don't have a transcript with those  
10 delineations in it.

11 MR. STERN: We do have that, Your Honor. We are  
12 able to provide that. Having Ms. Stipes transcribe now  
13 would double check. The designations on paper are the  
14 same of what is on the video.

15 THE COURT: Let's do what we have been doing, so  
16 it is clear.

17 (Video continued)

18 BY MR. GREEN:

19 Q. Do you remember being called together with other  
20 members of this level of command right here and being  
21 briefed on the 19 incidents that were described here?

22 A. Specifically that incident I do not recall. And not  
23 even the list, it is the first time I have even seen that  
24 report.

25 Q. I am going to show you what has been marked as

1 Plaintiffs' Exhibit 12. Is that a letter to the high  
2 command and the chiefs of staff and the Junta dated  
3 January 30, 1980?

4 A. The COPEFA was an organization of young officers as  
5 well after the coup, yes.

6 Q. Did the Minister of Defense at the time, General  
7 Garcia, ever hand you a copy of that letter which is  
8 Plaintiffs' Exhibit Number 12?

9 A. Yes, it's possible, but I do not recall.

10 Q. Was there any torture going on in National Guards  
11 facilities in 1980?

12 A. No, not that I know of. I prohibited and tried by all  
13 possible means to prevent that to the best of my ability.

14 Q. Was there any torture going on in military -- strike  
15 that.

16 Was there any torture going on in National Guard  
17 facilities in 1981?

18 A. No.

19 Q. Would your answer be the same for 1982 and 1983?

20 A. Yes.

21 Q. Did you ever visit the detention cells within the  
22 National Guard headquarters in San Salvador?

23 A. This one, yes, but not one that there was anyone  
24 detained in there. Because normally there would be people  
25 who were directly identified as subversives and it is not

1 convenient for one to be present in those situations.  
2 There was surveillance or supervision and control by the  
3 deputy director who was the person who was in charge of all  
4 of that.

5 Q. Wait a minute. It is okay for the subdirector to go  
6 into the detention cell but not the director, you, the  
7 director?

8 A. I could have gone, but it was a function that  
9 corresponded specifically to the deputy director. Let's  
10 say yes, there were thousands of problems, all very  
11 important.

12 Q. But you were getting complaints about torture in  
13 National Guard detention cells from the United States  
14 Embassy?

15 A. The Embassy did not speak to me. The Embassy would  
16 speak to the foreign ministry or they would speak to the  
17 Junta or maybe with the Ministry of Defense.

18 Q. Well, did the Minister of Defense, did the Junta, or  
19 did the foreign ministry get you on the telephone and say  
20 we got another complaint about torture going on at the  
21 detention cells in the headquarters of the National Guard?

22 A. No one was being tortured.

23 Q. Well, how do you know if you didn't go there and look  
24 at people who were being detained?

25 A. That could only have been achieved if I remained 24

1 hours a day in the cell, I would have done nothing else.

2 Five minutes I am out, someone could do something.

3 Q. Isn't it true that the Inter-American Rights  
4 Commission reported the existence of clandestine cells in  
5 the national headquarters, National Guard headquarters?

6 A. Yes, it seems to me there was a cell that was shut  
7 down as of the first day that I arrived.

8 Q. Where was that cell?

9 A. I couldn't locate exactly where, but it was in one  
10 part of this building up here.

11 Q. How would a civilian whose family member had been  
12 killed or abducted by military personnel go about reporting  
13 the incident?

14 A. Well, they could present that to the corresponding  
15 authorities, the Minister of Justice, the Minister of  
16 Defense. The majority of those things would come out in  
17 the newspapers, campos pagados.

18 Q. Paid ads?

19 A. Paid ads, yes, newspaper publications, things like  
20 that.

21 Q. Did you ever read the campos pagados, paid ads?

22 A. Sometimes, yes, but that is not what I was doing.

23 Q. Why would people take out paid ads in the newspapers  
24 if there was a working functioning way of complaining to  
25 you or the Minister of Defense about disappearances and



1 other human rights violations by the Salvadoran military?

2 A. Yes, but what they were interested in was winning the  
3 international campaign of affecting the prestige of the  
4 Army and assisting the guerillas. There are 16,000 dead  
5 soldiers from that conflict and human rights has made no  
6 investigations concerning people who are complying with the  
7 law.

8 Q. Isn't it true the Christian Democrats began resigning  
9 in March of 1980 from the Junta because the human rights  
10 violations continued to occur both in the military and the  
11 National Guard?

12 A. That is what they stated.

13 Q. And they did it in writing?

14 A. But they should have exercised the command that they  
15 had, not run away.

16 Q. Did Archbishop Romero discuss findings made by the  
17 Socorro Juridico of military abuses in any of his homilies?

18 A. It is possible, but I don't recall.

19 Q. Did forces of the military and/or security forces raid  
20 the offices of Socorro Juridico in or about July 4th, 1980?

21 A. I don't know if they raided it or whether they went to  
22 supervise the building, searching for anything the law  
23 authorized, but I do not recall the specific results.

24 Q. Isn't it true that the military and/or security forces  
25 seized records, complaints that people had made about

1 military abuses?

2 A. That is not of my knowledge.

3 Q. If the military or security forces had seized records  
4 of abuses that were made in the form of complaints to the  
5 Socorro Juridico, would that have been proper?

6 A. Take the files?

7 Q. Yes.

8 A. I believe not.

9 Q. How about read the files?

10 A. They could have confiscated and turned them over to  
11 the jurisdiction of a tribunal or court. To my knowledge,  
12 no.

13 Q. Why would they have done that?

14 A. Did what?

15 Q. Seizing records of complaints.

16 A. I have no knowledge that they did confiscate the  
17 documents.

18 Q. If they had seized the documents, what reasons would  
19 justify their seizing the documents?

20 A. That is a supposition. I would not know what reasons  
21 someone may have had to do something like that or to do  
22 that.

23 Q. Isn't it true in July of 1980 the National Guard  
24 maintained a surveillance over the people who were entering  
25 and exiting the Socorro Juridico offices?

1 A. It is possible, but I have no specific proof.

2 Q. Did you tell Ambassador White that the National Guard  
3 was maintaining surveillance over the Socorro Juridico  
4 offices on a 24 hour a day basis?

5 A. Not that I recall.

6 Q. As director general of the Salvadoran National Guard  
7 during 1979 to 1983, you were made aware of incidents of  
8 torture and/or extrajudicial killing committed by members  
9 of the Salvadoran National Guard as reported to you by  
10 Ambassador Robert White or other United States officials?

11 A. No.

12 Q. As director general of the Salvadoran National Guard  
13 during 1973 to 1983, you were made aware of incidents of  
14 torture and/or extrajudicial killing committed by members  
15 of the Salvadoran National Guard during the Romero regime  
16 as reported in 1980 by the special commission established  
17 to investigate the fate of the disappeared?

18 A. Yes. I was not informed about that directly. I could  
19 have found out, but I was not informed directly.

20 Q. I am asking you, were you aware of such accusations  
21 from any source. I am not asking whether they were proven.  
22 I am asking were you aware of any of the accusations about  
23 violations of human rights by the Salvadoran military from  
24 any source?

25 A. On human rights, tell him, yes. But not the way he

1 says it is, you know, abduction and all of this  
2 extrajudicial killing, not the way he is saying it.

3 Q. How?

4 A. How the human rights?

5 Q. Yes.

6 A. Yes, for example, a violation of human rights may have  
7 been to have beaten someone. But to abduct, torture and to  
8 kill extrajudicially, that is different. In that form in  
9 that way I had no knowledge.

10 Q. So you never got any information from Ambassador White  
11 about that?

12 A. Not that I recall.

13 Q. Did Vice President George Bush visit El Salvador in or  
14 around December, 1983?

15 A. Yes.

16 Q. Were you present at any meetings with him?

17 A. Yes.

18 Q. Let's talk about some of those details.

19 Isn't it true he had a list of individuals whom the  
20 United States wanted removed from the command of the armed  
21 forces?

22 A. It is my understanding that he spoke about that with  
23 President Magana. And as President Magana says, he was  
24 given those names by way of somebody else later on.

25 Q. Isn't it true as a result of that list, a number of

1 people, individuals in El Salvadoran armed forces were  
2 removed from command positions?

3 A. Yes, yes. I don't recall, four or five persons by  
4 instructions of the president, that he was expecting to  
5 receive some sort of proof against these people in order to  
6 be able to act. But according to the statements that he  
7 gave last year, he is still waiting and they never have  
8 really given him anything, like the majority of all of  
9 those accusations.

10 Q. Isn't it true that when Vice President George Bush  
11 visited El Salvador in 1983, that he demanded on behalf of  
12 the United States that the Salvadoran government curb human  
13 rights abuses by the members of the Salvadoran military and  
14 security forces?

15 A. I have no proof of that. You'd have to ask the  
16 president.

17 Q. Which president?

18 A. Magana.

19 Q. Well, what action, if any, did you take as a result of  
20 Vice President George Bush's visit?

21 A. The persons, the names of whom the president gave me,  
22 they were transferred out of the country, abroad.

23 Q. And without proof?

24 A. Yes.

25 THE COURT: Does that conclude the deposition

1 from the Plaintiffs' perspective?

2 MR. STERN: It does, Your Honor.

3 THE COURT: Let me turn to the defense. Does the  
4 defense want any part of the deposition played?

5 MR. KLAUS: No, Your Honor.

6 THE COURT: Thank you.

7 Let me allow the parties, then -- we will move  
8 the television, if we can, out of the well of the  
9 courtroom. Our marshals will help us do that. And then  
10 you may call your next witness. Hold on if you would  
11 while we get these things straightened out.

12 Thank you very much. Let's be careful of the  
13 lectern.

14 MR. GREEN: Your Honor, may I approach the court  
15 reporter with a word list?

16 THE COURT: Yes. Mr. Green, please reposition  
17 the lectern where you would like to have it and let me  
18 allow the Plaintiffs to call their next witness.

19 Who is the next witness?

20 MR. GREEN: Lauren Gilbert.

21 THE COURT: Would you ask Ms. Gilbert to step in?

22 Ma'am, would you come up to the witness stand and  
23 please sit down and make yourself comfortable.

24 Ma'am, the microphone has a short pickup range.  
25 If you pull that chair up to the desk area, that would be

1 more comfortable.

2 Would you raise your right hand?

3 LAUREN GILBERT, PLAINTIFFS' WITNESS SWORN.

4 THE COURT: Would you be good enough to begin by  
5 introducing yourself to the members of the jury? Would  
6 you tell them your full name, and would you spell your  
7 last name for the court reporter?

8 THE WITNESS: Yes, my name is Lauren Gilbert,  
9 G-I-L-B-E-R-T.

10 THE COURT: L-O-R-E-N?

11 THE WITNESS: L-A-U-R-E-N.

12 THE COURT: Just so we get that correct.  
13 Counsel you may proceed.

14 DIRECT EXAMINATION

15 BY MR. GREEN:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Where do you live?

19 A. I live in Miami, 2242 Southwest 25th Avenue.

20 Q. And what do you do for a living?

21 A. I am a professor at St. Thomas University School of  
22 Law.

23 Q. And before that, what were you doing?

24 A. Prior to that I was an attorney with -- I was with the  
25 Catholic Legal Immigration Network, most recently field

1 office attorney. Prior to that I was managing attorney at  
2 the Florida Immigrant Advocacy Center.

3 Q. Were you working before your last position under the  
4 auspices of the Catholic Church?

5 A. Yes, I was.

6 Q. Ma'am, were you involved in United Nations Truth  
7 Commission Report on El Salvador?

8 A. Yes, I was.

9 Q. In what capacity?

10 A. I was an investigator for the United Nations Truth  
11 Commission for El Salvador. Prior to that I was a  
12 consultant at the Inter-American Institute for Human Rights  
13 in Costa Rica. I worked with Roberto Cuellar who is the  
14 director and former legal adviser to Archbishop Romero.

15 Q. Where is the Inter-American Institute?

16 A. San Pedro Costa Rica, right outside of San Jos,.

17 Q. When was the Truth Commission for El Salvador  
18 established?

19 A. Well, the Truth Commission was established as part of  
20 the peace process in April of 1991. It actually came into  
21 effect in January of 1992 with the adoption of the  
22 Salvadoran Peace Accords by the two parties of the  
23 conflict, Salvadoran Government and FMLN, the rebels.

24 Q. Were there any other countries that participated in  
25 that peace process?



1 A. Yes, there were a number of other countries. I  
2 know -- I remember, let's see, Spain, Venezuela, a number  
3 of other South American countries were served as --  
4 assisted in the process as advisers to the parties.

5 Q. What exactly is a Truth Commission generally?

6 A. A Truth Commission is basically an entity that is  
7 established subsequent to the end of either hostilities  
8 among warring parties, or at the end of long period of  
9 conflict within the country. And the purpose of the  
10 commission is to investigate serious crimes and violations  
11 of human rights that were committed during the course of  
12 the civil conflict.

13 Q. Have there ever been any other Truth Commissions?

14 A. Well, the Salvadoran Truth Commission was really the  
15 model for other commissions. Subsequently there was a  
16 Guatemalan Truth Commission, there was also a South African  
17 Truth Commission, there was a Honduran Commission that was  
18 in many ways similar to the Salvadoran Truth Commission,  
19 but the Salvadoran commission served as a model for the  
20 other Truth Commissions.

21 Q. How did United Nations get involved in the Truth  
22 Commission?

23 A. Well, the United Nations was concerned about the  
24 conflict in El Salvador, that the conflict between armed  
25 forces of El Salvadoran, the rebels, and so they directly

1 became involved in trying to negotiate a peaceful  
2 resolution of the conflict and bring about peace and  
3 democracy in the country through a series of negotiations  
4 which they oversaw.

5 Q. What was the mandate of the Truth Commission?

6 A. The mandate of the Truth Commission had sort of a  
7 number of parts. One of the most important aspects was to  
8 investigate serious, serious acts of violence that had  
9 occurred during the course of the civil conflicts that were  
10 committed either by the Government or by the FMLN.

11 The other part of the mandate was to make  
12 recommendations to assure there -- that these types acts  
13 would never happen again and recommendations for the  
14 restructuring of society following the resolution of the  
15 conflict.

16 Q. Were there any concerns that were expressed in the  
17 Truth Commission mandate about impunity for human rights  
18 violations on the part of the armed forces?

19 A. Well, the concern was that it was necessary to clarify  
20 the truth of what had happened in El Salvador, because  
21 without a full accounting of the truth of what had  
22 happened, that both the military and FMLN would be free to  
23 operate with impunity in the future, and truth was  
24 essential to insure there would be no impunity.

25 Q. What is your understanding what the word impunity

1 means?

2 A. I think impunity basically means that the Government  
3 or person is free to act without fear of any legal  
4 consequences because the Government does not provide any  
5 means of prosecuting these types of offenses. And it  
6 basically means the Government is free to operate, or  
7 individuals are free to operate without fear for any legal  
8 consequences for their actions.

9 Q. What types of violence was the Truth Commission  
10 charged with investigating?

11 A. Well, basically there were two -- there -- the Truth  
12 Commission talks about investigating grave acts of  
13 violence, because there was a concern both with abuses that  
14 had been committed by the Government, which were human  
15 rights abuses, as well as abuses of humanitarian law which  
16 both sides had committed during the course of the conflict.

17 So, basically, what the Commission wanted to focus on  
18 were both serious acts of violence that had a tremendous  
19 impact on society, that had really sort of shaken the  
20 society to its core.

21 They also looked at the types of abuses that were  
22 systematic, that maybe in and of themselves they had not  
23 had a tremendous impact, but together, that they were sort  
24 of exemplary cases of the types of abuses that had been  
25 committed throughout the course of the war.

1 Q. By systematic, do you mean patterns and practices?

2 A. Patterns, practices, examples of typical patterns of  
3 violence, such as forced disappearances, extrajudicial  
4 executions, torture, those were some of the -- sort of  
5 their major concerns.

6 Q. What was the Commission's time frame? What time  
7 period of acts was the Commission looking at?

8 A. Basically the Commission was given a six month mandate  
9 to both investigate these crimes as well as to issue its  
10 report.

11 Q. How long did the Commission actually take to  
12 investigate and issue its report?

13 A. Well, the Commission took -- actually took the six  
14 months to conduct its investigation in El Salvador. It  
15 began its mandate on July 15, 1992, and all of the  
16 investigators were taken out of El Salvador by mid January,  
17 1993. So the investigation on the ground in El Salvador  
18 was completed within the six month time frame.

19 After that six month period, the staff of the Truth  
20 Commission basically went to New York City to the United  
21 Nations where they completed the preparation of the actual  
22 report.

23 Q. How long did it take from June -- excuse me, July 15,  
24 1992 to actually complete the report?

25 A. The report came out in mid March of 1993, so it was

1 about eight months that it took to complete the report from  
2 the beginning of the mandate until the report was actually  
3 issued.

4 Q. In terms of acts of, I think you indicated serious  
5 acts of violence or systematic patterns and practices of  
6 human rights abuses, what time frame did you actually look  
7 at in terms of the beginning period and to the end period?

8 A. Basically the mandate was to cover the period from  
9 1980 until 1991. That was the period that would be  
10 investigated.

11 Q. In conducting its investigation, and in preparing its  
12 report, what body of law did the Commission rely upon?

13 A. The Commission mainly relied on international human  
14 rights law and international humanitarian law, and they  
15 relied on those specific treaties that El Salvador was a  
16 party to.

17 Q. Treaties that were binding on El Salvador?

18 A. Correct.

19 Q. Ratified by El Salvador?

20 A. That's correct.

21 Q. For example, can you remember any of the specific  
22 international treaties that El Salvador had ratified and  
23 were binding upon El Salvador during the period beginning  
24 in 1980?

25 A. International Convention on Civil and Political

1 Rights, Inter-American Convention on Civil and Political  
2 Rights. Let's see. The Geneva Convention, obviously on  
3 humanitarian law and the law for it.

4 Q. Can you provide examples of the rules and laws  
5 contained in the treaties and international agreements?  
6 Some of the prohibitions?

7 A. They protected the right to life, right to be free  
8 from torture and other types of inhumane treatment. The  
9 right to protect people against extrajudicial executions.  
10 They provide guarantees of fair trials. Freedom from  
11 torture is fundamental. And those are mainly the  
12 conventions that deal with issues relating to human rights.

13 Q. Who made up the Truth Commission?

14 A. Well, the Truth Commission consisted of three sort of  
15 renowned and respected individuals, Thomas Bergenthal, who  
16 is a professor of human rights at the University, George  
17 Washington University, Washington D.C. He is considered  
18 one of the experts on international human rights.

19 And Belisario Bethancourt, President of Colombia, and  
20 Reynaldo Figueredo, former minister of Venezuela, and he  
21 was also a member of Congress for Venezuela.

22 Q. Who selected these three commissioners?

23 A. The commissioners were selected by the parties of the  
24 conflict, Salvadoran Government and FMLN.

25 Q. Rebels?

1 A. Rebels.

2 Q. Why were all three commissioners foreigners, not  
3 Salvadorans?

4 A. There was a concern for the safety of any Salvadoran  
5 who would be named to the Commission. There was also a  
6 concern with impartiality, which was the major concern with  
7 the Government and the rebels, that they wanted to  
8 guarantee that the persons responsible for the  
9 investigations would be impartial and outside experts.

10 Q. Was there a staff that these three commissioners set  
11 up to assist them in the investigation in El Salvador, in  
12 the subsequent preparation of the report?

13 A. Yes. Basically the staff consisted of the executive  
14 director Patricio Valdes from Argentina and a number of  
15 investigators, none of whom were Salvadoran, and none of  
16 whom had been directly involved in the sort of conflict in  
17 El Salvador. They were generally -- many of them were  
18 lawyers from other parts, from the United States and a  
19 number of different Latin American countries. There were  
20 social workers, there were forensic experts, and they were  
21 all basically responsible for the investigation of specific  
22 cases.

23 Q. Did you indicate that there were some forensic  
24 specialists that were on the staff?

25 A. Yes, yes, there were.

1 Q. What different kinds of forensic specialists were  
2 there?

3 A. Well, there were a number of forensic specializes from  
4 Argentina, because Argentina following -- there had been  
5 sort of a similar investigation into human rights abuses in  
6 Argentina, and a number of people trained by forensic  
7 experts had been involved in exhumations of bodies in  
8 Argentina and Chile. And people who came to El Salvador  
9 were people who had tremendous experience in the exhumation  
10 of bodies as a result of major human rights abuses.

11 Q. On a day-to-day basis during the course -- were you in  
12 El Salvador during the six month period of the  
13 investigation?

14 A. I was there from the very beginning of September  
15 through mid January when we were all pulled out of El  
16 Salvador. So I was not there at the very, very beginning,  
17 but I started shortly thereafter.

18 Q. What would you do on a day-to-day basis as an  
19 investigator initially? And later you said you were master  
20 reviewer, or coordinator?

21 A. Basically when I started at the beginning of  
22 September, I was basically assigned a number of specific  
23 investigations. Part of my job was to investigate specific  
24 cases that the Truth Commission had decided were important,  
25 that it had a tremendous impact on the society.



1           In addition to investigating specific cases, I also  
2 was involved in taking the testimony of the persons of  
3 Salvadorans who had come forward to tell their stories, to  
4 report specific abuses that had been committed against them  
5 or against members of their family and, so, initially  
6 taking testimony, working on specific investigations.

7           And over time, about midway through the mandate of the  
8 Commission, they restructured the Commission and I was -- I  
9 was made basically a master case reviewer. My job was to  
10 look at all of the cases that we had begun to investigate  
11 and which were the cases we felt we had sufficient evidence  
12 to go forward and produce -- include the cases in our final  
13 report.

14 Q.   As an investigator and master reviewer, did you ever  
15 rely upon other experts, like forensic anthropologists,  
16 other types experts?

17 A.   Yes, we did. I was not directly involved -- well, in  
18 my own investigations I was not involved with some of the  
19 major massacres like El Mozote. We relied on experts, we  
20 turned to people with particular expertise in the history  
21 of El Salvador. I think that was mainly --

22 Q.   Ms. Gilbert, did you investigate Las Hojas?

23 A.   Yes, I did.

24 Q.   Would you tell the jury about Las Hojas, what you did  
25 in the course of your investigation?

1 A. Las Hojas was one of the massacres that had taken  
2 place in -- if you could give me a minute -- in one of the  
3 western departments of El Salvador. If I could take a  
4 minute.

5 Q. Sure.

6 A. I have my Spanish version which I am more familiar  
7 with than the U.N. version.

8 Q. I believe page 76, upper right-hand corner of the  
9 English version.

10 A. That was a massacre that took place in the department  
11 of Sonsonate, which is in the western part of El Salvador.  
12 A massacre of indigenous community, a small community where  
13 the civil defense came in one night and basically fingered  
14 a number of specific individuals and dragged them out of  
15 their homes and took them on a march to the edge of a river  
16 where they were all shot.

17 The action was part of a larger military operation  
18 where basically there had been a decision by the military  
19 to go into this community to identify people that they  
20 considered to be subversive and to kill them.

21 And basically what my investigation consisted of, we  
22 began by reviewing in detail the legal proceedings of the  
23 case, and there were huge volumes of documents from the  
24 judicial case, so we started off by reviewing those, by  
25 identifying specific people who had been identified as

1 involved in the massacre, specific members of the military  
2 who testified as to the military operation.

3 And subsequent to that, I actually went into the  
4 community where the massacre had taken place and  
5 interviewed a number of the survivors of the massacre from  
6 the indigenous community.

7 And I also went into -- basically went up into the  
8 hills, and civil defense patrol that fingered the people  
9 massacred were still living in the same community with the  
10 people, survivors of the massacre, and specifically  
11 interviewed members of the civil patrol regarding their  
12 involvement of the massacre, and many of them basically  
13 sort of admitted -- they did not directly admit to their  
14 involvement, but when they were accused -- when other  
15 people's names were mentioned, they specifically identified  
16 other members of the community who had been involved.

17 Q. Let me stop you for a second. What was the date of  
18 the Las Hojas massacre?

19 A. February 22, 1983.

20 Q. Which force from the El Salvadoran armed forces or  
21 security forces was responsible for that?

22 A. It was actually the armed forces, it was the armed  
23 forces, the military.

24 Q. And you mentioned civil defense?

25 A. Right.

1 Q. What was the civil defense as distinguished from the  
2 military forces?

3 A. Members of the civil defense were not specifically a  
4 part of the military or any specific police force, so they  
5 weren't part of the National Guard or policia de Hacienda.  
6 They were people in the community who were hired as  
7 informants to the military and to the police and who would  
8 basically inform on any specific activities that were  
9 occurring within the community that they felt the military  
10 should be concerned about.

11 And many times, I think what we realized from the  
12 investigation, these were often sort of family disputes  
13 among members of the civil defense and this particular  
14 community that were then blown up to be somehow related to  
15 the civil war, although Sonsonate where the massacre  
16 occurred was not an area where the rebel presence, but the  
17 military targeted these people of being members of the  
18 rebels even though there was absolutely no evidence  
19 whatsoever of any involvement in the, you know, the rebel  
20 forces. It was a very conservative department.

21 THE COURT: Professor, I wonder if you could slow  
22 down a little bit. They are having a little bit of  
23 trouble keeping up with you, and some of the names are  
24 different. If you could consciously slow down, I think it  
25 would help.

1                   Mr. Green, you may proceed.

2   BY MR. GREEN:

3   Q.   Ms. Gilbert, was this an example of extrajudicial  
4   killings?

5   A.   Yes, it was.

6   Q.   Was this subsequently memorialized in the United  
7   States Truth Commission Report?

8   A.   Yes, it was.

9   Q.   And were you involved in investigations of any  
10   enforced disappearances?

11   A.   Yes, I was. I specifically was responsible for the  
12   investigation into the case of Ventura and Mejia who were  
13   two law students in El Salvador who had been involved in a  
14   political protest. As they were -- after the protest, they  
15   were passing by U.S. Embassy, they were stopped and  
16   detained by members of the National Guard who took them  
17   into, behind the walls of the U.S. Embassy and detained  
18   them there for, I think it was somewhere between a half  
19   hour and an hour. And, and then basically an unmarked car  
20   came onto the premises of the U.S. Embassy, the two boys  
21   were put into the trunk of the car, and they were driven  
22   away and they were never seen again.

23   Q.   Did the Commission make any findings with respect to  
24   who was responsible for this enforced disappearance?

25   A.   This was one of the cases where General Vides Casanova

1 was specifically named as responsible, because at the time  
2 he was the head of the National Guard. Immediately after  
3 the boys were disappeared, when they did not return home,  
4 there was an immediate investigation. Family members and  
5 an attorney went to the National Guard, they spoke with  
6 Vides Casanova, and basically he denied any knowledge of  
7 the incident, and refused to conduct an investigation.

8 Q. And is that finding contained in the United Nations  
9 Truth Commission?

10 A. Yes. And General Vides Casanova was specifically  
11 named as responsible for not having conducted an  
12 investigation.

13 Q. Did you ever have any problem as an investigator,  
14 later as a reviewer obtaining information from live  
15 witnesses?

16 A. Well, the mandate of the Truth Commission specifically  
17 provided that the Government was to open its doors to us  
18 and allow us to investigate, to review government  
19 documents, so the mandate provided us with broad powers of  
20 investigation. The fact was it was often much more  
21 difficult and a great deal of resistance.

22 The commitment of the parties would be that if people  
23 could be called to be interviewed, and they had to report  
24 to be interviewed by the commissioners and staff of the  
25 Commission, there were number of instances where members of

1 the military refused to present themselves for questioning.  
2 And, and also it was difficult in order to obtain specific  
3 government documents.

4 Q. Were there any rules of evidence?

5 A. Yes, there were. Basically what the commissioners  
6 did, they established sort of a standard of proof, because  
7 the concern was that they did not want to include anything  
8 in the Truth Commission Report unless there was -- unless  
9 there was very clear evidence that certain offenses had  
10 been committed. So they established three tiers of proof.

11 Basically the highest tier was overwhelming evidence  
12 that the crime had been committed. It -- it is in some  
13 ways equivalent to beyond a reasonable doubt.

14 The next standard was substantial evidence that a  
15 crime had been committed.

16 And the final standard was sufficient proof, which was  
17 basically kind of a preponderance of the evidence, more  
18 likely than not that a crime had been committed. These  
19 were the standards that were applied.

20 The commissioners would not include any piece of  
21 evidence in the report unless there was corroboration. So,  
22 if very compelling evidence was provided by one witness,  
23 that would not be sufficient to include findings in the  
24 report. There had to be corroboration for specific  
25 evidence to be included. And basically there was an

1 agreement that they would not specifically name names  
2 unless they met the substantial standard of proof standard.

3           So it is hard -- I don't know if there is a real  
4 equivalent in sort of U.S. law, but it basically had to be  
5 substantial proof, not the overwhelming standard, sort of  
6 clear and convincing, I guess would be the equivalent  
7 standard.

8           THE COURT: Mr. Green, we have been taking one  
9 mid-afternoon recess, but we did a little bit earlier.  
10 Why don't we stop and take a brief recess. Probably not  
11 more than ten minutes, just to give an opportunity to  
12 stretch, and then we will come back with the professor and  
13 continue on with the direct examination.

14           Let's take a ten minute break.

15           Professor, let me come back to you again. If you  
16 can, if you can slow down a little bit more. I tell you  
17 why. We have a simultaneous translation going on, and the  
18 reporter is trying to keep up with you, and we want to  
19 make sure our interpreters are able to do it.

20           Let's take a ten minute break to let everybody  
21 stretch, and we will come back and get back into the  
22 direct testimony. Okay?

23           (Thereupon, a short recess was taken.)

24           (Thereupon, trial reconvened after recess.)

25           THE COURT: Ladies and gentlemen, please be



1     seated. Give us a minute. We are going to make sure all  
2     the equipment is all set and ready to go.

3             THE COURT: Mr. Green, when you are ready, you  
4     may proceed.

5             MR. GREEN: Thank you, Your Honor.

6     BY MR. GREEN:

7     Q. Before we broke, we were talking -- you were talking  
8     about the three tiers of proof, substantial --

9     A. Overwhelming, substantial and sufficient. Basically,  
10    overwhelming proof basically was comparable to the criminal  
11    standard of beyond a reasonable doubt. Sufficient proof to  
12    convict a person of a criminal offense. That was sort of  
13    the overwhelming, highest.

14            Substantial is comparable to clear and convincing  
15    evidence, probably around 70, 75 percent.

16            And sufficient proof is similar to the preponderance  
17    of the evidence standard, which means there has to be more  
18    than 50 percent in order to find there was sufficient  
19    evidence.

20    Q. Did you review any kind of documents during the course  
21    of your duties as an investigator and later as a  
22    coordinator, master reviewer?

23    A. Yes, yes, I did.

24    Q. What types of documents did you review?

25    A. Let's see. Generally we received evidence from people

1 who came to the Commission to tell their stories. In  
2 addition to those direct testimony that were provided were  
3 also documents from a number of different human rights  
4 groups from around the country who provided their own  
5 reports and investigations conducted during the course of  
6 the civil war.

7 We also, basically in every case that was  
8 investigated, the first thing that we were told we needed  
9 to do was review the legal record, and so we gathered legal  
10 records for all of the cases where there was any attempt to  
11 investigate the case. And we reviewed the records from  
12 beginning to end going through them with a fine tooth comb.

13 And the other documents we reviewed were the State  
14 Department and CIA and Department of Defense documents that  
15 had been provided to us to facilitate our investigations.

16 Q. Did you review the service records or the personnel  
17 files of El Salvadoran military and security officers?

18 A. I did not specifically. What the Commission did, it  
19 actually set up a system where there was one staff member  
20 who was specifically responsible for reviewing all of the  
21 military records of anyone who had been in the armed forces  
22 or in the various police forces. But I did not  
23 specifically review those records, no.

24 Q. Did the Truth Commission staffers receive any  
25 resistance in collecting documents, obtaining documents

1 during your investigation?

2 A. Yes. It was very difficult despite the broad mandate  
3 of the Commission and the agreement by the government to  
4 open its files. It was often difficult to obtain that type  
5 information from them.

6 Q. Were there any legal records available for the Las  
7 Hojas massacre?

8 A. There was the legal file on the case because there had  
9 been investigation into the case, but there had never been  
10 any -- there had never been any specific convictions, but  
11 there were the criminal files that were stacked about that  
12 thick (indicating).

13 Q. No discipline, punishment of the military personnel  
14 involved?

15 A. No. No.

16 Q. Were there ever any witnesses, either at your level or  
17 other levels of this investigation, who asked that their  
18 names and identifiers be kept confidential?

19 A. There were a small number of witnesses from El  
20 Salvador who agreed to provide information to the Truth  
21 Commission only on the condition that their confidentiality  
22 be absolutely protected, because they were people who were  
23 in fear of their lives. So there were a small number of  
24 Salvadoran individuals.

25 In addition to the Salvadoran individuals, there were

1 a number of U.S. Government officials who assisted in the  
2 investigation, members of the State Department, members of  
3 the CIA, members of the Department of Defense who assisted  
4 us in providing information that we usually, you know,  
5 gathered from the U.S. Government documents that had been  
6 declassified.

7 Q. Could you offer protection, witness protection to  
8 witnesses?

9 A. Not really. The extent of the protection was the  
10 moral weight of the Catholic Church, but that was it. And  
11 so there were a number of individuals who were very much in  
12 fear of their lives.

13 Q. When you went down to try to locate witnesses or track  
14 down witnesses, what role, if any, did the Catholic Church  
15 provide in assisting you in that mission?

16 A. Well, the Catholic Church I think was a very powerful  
17 moral force throughout the Truth Commission's work and  
18 there were a number of instances where they facilitated us  
19 contacting specific individuals where people had come to  
20 the Archbishop, to the auxiliary Archbishop and provided  
21 information to them. And the Archbishop, I think they felt  
22 the work of the Truth Commission was so fundamental, even  
23 though their lives were at risk, it was important to  
24 cooperate with the Truth Commission and assist the Truth  
25 Commission in their investigations.

1           And there was one specific case I was indirectly  
2 involved with involving the investigation into the murder  
3 of Archbishop Romero where there was a secret witness who  
4 the archdiocese arranged for the investigator to meet with.  
5 It was under such a cloud of secrecy, the only people who  
6 knew about it were that investigator, executive director  
7 and the three commissioners. No one ever knew who that  
8 witness was.

9   Q.   You talked earlier about the three tiers of proof, and  
10 you indicated you wouldn't -- none of those findings, none  
11 of those recommendations would be made unless there was at  
12 least corroborating evidence?

13   A.   That is correct.

14   Q.   Could you tell the ladies and gentlemen of the jury  
15 exactly what you mean by corroborating evidence?

16   A.   Basically there had to be two sources of independent  
17 evidence corroborating a specific incident. So if we had  
18 testimony from one individual, for example the individual  
19 who testified under this veil of secrecy through the  
20 Catholic Church, although he provided critical evidence in  
21 the case of Archbishop Romero, that was not sufficient to  
22 conclude who committed the assassination. There had to be  
23 other evidence by specific witnesses which was preferred,  
24 but also it could be through circumstantial evidence that  
25 that also could be used to corroborate another individual's

1 testimony. But generally that the goal was always to have  
2 at least two people, two specific witnesses who could  
3 testify as to a particular incident.

4 Q. Did you as a staffer make the final decision as to  
5 which incidence met either the sufficient, the substantial  
6 or the overwhelming tier of proof categories?

7 A. No. That decision was made by the three  
8 commissioners. Basically the way we operated was we were  
9 assigned to specific cases, we would prepare very detailed  
10 reports that would include sort of footnote the specific  
11 evidence that we had regarding the findings that we had  
12 reached. Those specific reports were then taken by the  
13 commissioners and by their three advisers and reviewed to  
14 determine what could be concluded and where we did not have  
15 sufficient evidence.

16 And so they were the ones who made the ultimate  
17 decision whether, you know, whether they could reach  
18 certain conclusions and certain findings regarding who was  
19 responsible for what particular offenses.

20 Q. Those three commissioners were the gentleman from --

21 A. Belisario Bethancourt, Thomas Bergenthal and Reynaldo  
22 Figueredo --

23 Q. Former --

24 A. -- former foreign minister of Venezuela, member of  
25 Congress, and Professor Thomas Bergenthal, who is one of

1 the leading human rights experts in the worlds.

2 Q. Professor Gilbert, you have the United Nations Truth  
3 Commission Report before you, correct?

4 A. Yes, I do.

5 Q. That has been admitted into evidence in this case,  
6 correct?

7 A. I understand that it has.

8 Q. Could you go through -- we are going to show this to  
9 the jury later. The table of contents, just give the  
10 ladies and gentlemen of the jury a sense of how the Truth  
11 Commission Report and recommendations are structured.

12 A. Okay. Basically the report starts off with sort of a  
13 broad introduction that talks about the context in El  
14 Salvador, civil war and resulting human rights abuses  
15 committed by the government and violations of the rules of  
16 war and the abuses committed by the FMLN. That is a broad  
17 introduction.

18 The next section deals with the mandate of the Truth  
19 Commission, and what it does is talks about the context in  
20 which the mandate was agreed upon by both the government  
21 and the rebel negotiators. It talks about specifically  
22 what the role of the Truth Commission was to do, which was  
23 to investigate specific violations of human rights and  
24 other serious crimes and to make recommendations so that  
25 these types events would never occur in the future.

1           It also goes on to talk about the specific law that  
2 the commissioners were to apply being both international  
3 human rights law as well as regional human rights  
4 conventions as well as rules of war, Geneva Conventions and  
5 methodology, which is what we are talking about the  
6 different standards of proof and how they would go about  
7 investigating the different cases, and how they would go  
8 about corroborating evidence.

9           It also goes on to talk about the decision of the  
10 commissioners to name names, because there was a lot of  
11 pressure not to name specific individuals having been  
12 responsible for violations of human rights and violations  
13 of humanitarian law, but their feeling was this had to be  
14 more than an academic report and the only way to bring  
15 about fundamental change in society was by naming specific  
16 individuals, if they had at least substantial evidence that  
17 they had been involved in specific incidents.

18           And so that -- that section talks about the  
19 methodology.

20           The next section is the chronology of the violence,  
21 which basically breaks down the entire period from 1980  
22 until 1991 into sort of several key periods that marked  
23 kind of specific patterns of violence within the country.  
24 So they talk about the violence that occurred between 1980  
25 and 1983, where there was kind of a move toward systematic



1 violations of human rights and attack on civilian  
2 population.

3           And look at the next period, which is 1983 to 1987,  
4 where it became less widespread, but more systematic and  
5 targeted --

6 Q.   Excuse me.  When you say less systematic and more  
7 targeted --

8 A.   Basically the first period was, 1980 to '83 period was  
9 marked by widespread violence, by --

10           MR. KLAUS:  I object at this point.  The report  
11 speaks for itself.  It is in evidence.

12           THE COURT:  Well, I think that either side can  
13 publish any portion of the report that they like, and I  
14 assume -- and I want you to help me out, Mr. Green -- is  
15 the professor being tendered as an expert, or as a fact  
16 witness?

17           MR. GREEN:  As a fact witness.  I am trying to  
18 lay out right now for the jury the structure of the report  
19 and Professor Karl will go into some of the more details  
20 about the report later on.

21           THE COURT:  Okay.  So the professor is talking as  
22 a fact witness, as somebody who participated in the Truth  
23 Commission, gathering of the information and now the  
24 structure of the report?

25           MR. GREEN:  Yes, Your Honor.

1           THE COURT: Okay. I will overrule the last  
2 objection. No question ultimately the report is in  
3 evidence, and as I said before, either side can publish  
4 it, but I will overrule that last objection.

5           Let's proceed.

6           THE WITNESS: The first period was the 1980 to  
7 1983 period, which was the period involving  
8 institutionalization of human rights abuses, and use of in  
9 a sense widespread violence against civilian population.  
10 That was --

11          MR. KLAUS: Objection; goes beyond the scope of  
12 knowledge. She is testifying as an expert.

13          THE COURT: Right, I sustain that objection.

14 BY MR. GREEN:

15 Q. Ms. Gilbert, instead of breaking it down to time  
16 periods and differentiating between the time periods --

17 A. Basically broken down into three periods, basically  
18 that was, the chronology was to break down the kind of the  
19 violence into different time periods and classify them.

20          The next, which is the bulk of the report, deals with  
21 specific cases that were investigated, and it basically  
22 breaks them down into types of cases. So there is a  
23 general overview of the cases, and then it goes through a  
24 number of cases, involving violence against -- violence  
25 committed by members of the armed forces and other

1 government agents, and then breaks it down further, has a  
2 number of reports dealing with extrajudicial executions.

3 Then there are a number of specific reports dealing  
4 with disappearances, which is where the Ventura/Mejia case  
5 I discussed fits.

6 And then there is another section that deals with  
7 massacre of peasants by the armed forces. Discusses Mozote  
8 case and other major massacres. And another section that  
9 deals with assassinations by members of the death squads.  
10 And then following that there is the final section, I  
11 believe -- the final section of that part deals with abuses  
12 that were committed by the FMLN, the rebel forces, and  
13 deals with the execution of the mayors and other  
14 extrajudicial executions.

15 And following reports of abuses committed by the  
16 government and FMLN, there are series of recommendations  
17 that deal with specific measures that the commissioners  
18 recommended be taken to insure that this type impunity  
19 should never happen again.

20 And finally there is an epilogue, and that is the main  
21 volume one of the report. And then there are also annexes  
22 including -- the first one deals with the Mozote Massacre.

23 And the second volume is a listing of everyone who  
24 provided testimony regarding specific cases to the  
25 Commission, because the commissioners were not able within

1 the six month mandate to investigate all of the cases  
2 involving abuses committed by either side. And so the  
3 compromise was to at least provide a list of the victims  
4 who had been -- whose family members had given testimony,  
5 or who themselves had given testimony before the  
6 Commission.

7 And it also lists persons who were, disappeared  
8 persons, as well as members of the armed forces and members  
9 of the FMLN who were killed as part of the conflict.

10 Q. You just talked about the various lists. How many  
11 complaints did the United States Truth Commission receive?

12 A. The Commission itself received approximately 7,000  
13 complaints. Overall, if you include all of the complaints  
14 provided to us by other human rights organizations, I  
15 believe there were somewhere around 22,000 complaints  
16 overall, but the number of specific complaints received by  
17 the staff of the Commission was about 7,000.

18 Q. Do you recall the breakdown of complaints by type,  
19 say, for instance extrajudicial killing, disappearances,  
20 and torture?

21 A. Let's see. I think the overwhelming majority were  
22 extrajudicial executions. I think there are about 60  
23 percent extrajudicial killings, 25 percent were  
24 disappearances, 20 percent involved torture. These were  
25 all by the armed forces. And then there are about five

1 percent offenses committed by FMLN.

2 Q. What percentage committed by the El Salvadoran armed  
3 forces and security forces versus rebels?

4 A. 85 percent by government, and five percent by FMLN,  
5 and remaining by death squad.

6 Q. Did the Commission identify specific perpetrators?

7 A. Yes, they did.

8 Q. When you identified people, what tier of proof -- what  
9 level of proof was required before you as the United  
10 Nations Truth Commission would identify them by name?

11 A. In order to specifically identify someone as having  
12 committed -- as having committed an offense, committed a  
13 serious crime in the report, they had to basically satisfy  
14 the substantial evidence standard. There had to be clear  
15 and convincing evidence that they had been involved and  
16 responsible for the offense for which they were  
17 investigated.

18 Q. So if you had sufficient evidence as to the lowest  
19 tier you mentioned, but not enough to constitute either  
20 substantial or overwhelming, you would not identify?

21 A. No. We would not have named their names.

22 Q. And if you did name a perpetrator specifically, what  
23 protections, what opportunities did he or she have to  
24 either counter the findings and recommendations or present  
25 other evidence?

1 A. In order to be able to name names, the commissioners  
2 decided that the person would have the opportunity to come  
3 before the commissioners and to meet with them and to be  
4 able to respond to the specific allegations that were being  
5 made against them. So in every case where the  
6 commissioners contemplated naming names, those individuals  
7 were invited to meet with the commissioners, they were told  
8 that they were involved in an investigation, and given an  
9 opportunity to respond to the commissioners.

10 MR. GREEN: May I just have one moment, Your  
11 Honor?

12 THE COURT: Surely.

13 BY MR. GREEN:

14 Q. Did the United Nations Truth Commission Report name  
15 General Vides Casanova as being a perpetrator?

16 A. Yes, it did.

17 Q. Was he given an opportunity to be heard by the United  
18 Nations Truth Commission?

19 A. Yes, he was.

20 Q. Did the United Nations Truth Commission name this man,  
21 General Garcia, as a perpetrator?

22 A. Yes, it did.

23 Q. Did it give General Garcia an opportunity to respond?

24 A. Yes, it did.

25 Q. Ms. Gilbert, what was the Commission's primary

1 recommendation?

2 A. Its primary recommendation, basically I think probably  
3 the most important recommendation was that anyone who had  
4 been named as having been involved in any of these serious  
5 violations of human rights should step down from their  
6 office within the military.

7 Q. In terms of the form of government, civilian versus  
8 military, did the United States Truth Commission have a  
9 recommendation?

10 A. Well, the Truth Commission strongly supported the  
11 establishment of a democratic form of government. The  
12 whole peace process was centered around a transition from  
13 the involvement of the Salvadoran military in all aspects  
14 of government life to one of the role where the military  
15 was subordinated to the civilian government. And also  
16 recommended restructuring of the various police forces, and  
17 disbanding of the various police, National Police, National  
18 Guard, and hacienda police and establishment of a civilian  
19 police report.

20 The most important aspect was establishment of a  
21 civilian government not under the control of the armed  
22 forces or various police forces.

23 Q. Why was that the Truth Commission's primary  
24 recommendations?

25 A. Well, the Truth Commission did not consider itself --

1                   MR. KLAUS:  Objection; beyond the scope of her  
2                   knowledge.

3                   THE COURT:  Sustained.

4                   BY MR. GREEN:

5                   Q.  You indicated that the Truth Commission recommended  
6                   that the security forces be disbanded?

7                   A.  Yes, it did.

8                   Q.  What was the basis for the Truth Commission's  
9                   recommendation that the security forces, National Guard,  
10                  National Police and Treasury Police or hacienda police be  
11                  disbanded?

12                  A.  Because the various police forces had been responsible  
13                  for some of the worst human rights abuses against the  
14                  civilian members of society.  Armed forces had been  
15                  involved in massacres of civilians, but on a day-to-day  
16                  basis it was the police forces that had been involved with  
17                  the abuses on a day-to-day basis throughout the country.

18                  Q.  Were there any other recommendations, say, the  
19                  judicial system?

20                  A.  The commissioners recommended that there were serious  
21                  problems within the judicial system that needed to be  
22                  restructured.  I think the problem --

23                  MR. KLAUS:  Again, Your Honor, objection.  Beyond  
24                  the scope of her knowledge.  She is testifying as an  
25                  expert.



1 THE COURT: Sustained.

2 BY MR. GREEN:

3 Q. Are you -- strike that.

4 Did the Truth Commission make recommendations whether  
5 anyone should be granted amnesty in El Salvador for human  
6 rights abuses?

7 A. Absolutely not.

8 THE COURT: Can I stop you for a second? Only so  
9 we can understand, Professor, what you just said. Did the  
10 Commission make a recommendation about amnesty?

11 THE WITNESS: No, they did not. They did not  
12 feel that they could make -- because there were so many  
13 problems within the judicial system, they did not feel  
14 they could make a recommendation regarding prosecution of  
15 the persons named in the report because they could never  
16 be fairly prosecuted.

17 THE COURT: We want to be sure we understood  
18 whether they did not make a recommendation or absolutely  
19 not, no amnesty.

20 THE WITNESS: They did not make any  
21 recommendation whatsoever as to amnesty.

22 BY MR. GREEN:

23 Q. Did the Truth Commission contemplate anyone being  
24 granted amnesty in El Salvador?

25 A. No. Never contemplated there be amnesty.

1 Q. Did the El Salvadoran legislator grant any --

2 MR. KLAUS: Objection. Beyond her knowledge.  
3 She is not qualified as an expert.

4 THE COURT: I sustain the objection.

5 BY MR. GREEN:

6 Q. Do you have any personal knowledge as to whether the  
7 Salvadoran legislature passed any kind of amnesty for human  
8 rights abusers?

9 A. Yes. I know within a matters of weeks, if not days,  
10 within the issuance of our reports in March, Congress  
11 passed a broad amnesty law affecting almost every single  
12 person named in the Truth Commission Report.

13 Q. Including these two generals?

14 A. Correct.

15 Q. When you talk about the Congress, you are talking  
16 about Salvadoran Congress?

17 A. Right. I am talking about the Congress of El  
18 Salvador.

19 MR. GREEN: No further questions, Your Honor.

20 THE COURT: All right. Cross examination?

21 CROSS EXAMINATION

22 BY MR. KLAUS:

23 Q. Professor Gilbert, you are not related to Dave  
24 Gilbert, are you?

25 A. No, I am not.

1 Q. Okay. When you just answered whether the Truth  
2 Commission contemplated amnesty that was passed by  
3 Salvadoran legislature, what was your answer?

4 A. No.

5 Q. But there is reference to it in the report. As a  
6 matter of fact, in the part that you were investigator of,  
7 in the Las Hojas section -- I will get you the page.  
8 Starts on page 76 of the version I have.

9 A. What specific section?

10 Q. And on page 79, the second full paragraph where it  
11 refers to Colonel Elmer Gonzalez Araujo, and filed remedy  
12 of habeas corpus with the Supreme Court which it was not  
13 certain that the national assembly would approve the  
14 Amnesty Act October 27, 1987.

15 July, 1988 the Supreme Court held that the Amnesty Act  
16 should apply to the Las Hojas case, that was back before  
17 the investigation started, and dismiss the case against all  
18 defendants?

19 A. That was a previous amnesty that had been passed  
20 during the --

21 Q. In '87?

22 A. In '87.

23 Q. Okay. So those figures, those names that were named  
24 in your investigation of the Las Hojas had been granted  
25 amnesty by the El Salvadoran legal system, or at least

1 Colonel Araujo?

2 A. Yes, Colonel Araujo had been granted amnesty by the  
3 Salvadoran judiciary.

4 Q. And says here dismissed case against all defendants,  
5 amnesty should apply to Las Olas?

6 A. Yes.

7 Q. Did it apply to all the defendants in that case?

8 A. Yes, it did.

9 Q. Now, regarding those names specifically, would you say  
10 that they were afforded due process regarding this --  
11 before their names were named in here, before the findings  
12 were published?

13 A. Well, the Commission was not -- did not conduct sort  
14 of a judicial investigation, and it was not a judicial  
15 determination. I think that because it was issuing a  
16 report and not specifically calling for the prosecution of  
17 any particular individuals, you know, it came up with a  
18 standard of proof that would guarantee that people's rights  
19 would be protected. But it was not certainly comparable to  
20 what you would have in an actual criminal case.

21 Q. They weren't afforded due process, correct?

22 A. Well, if you think of due process in the terms of  
23 right to confront witnesses.

24 Q. As a lawyer you know what I mean by due process.  
25 These people who are named in the report weren't afforded

1 due process as you understand it as a lawyer, correct?

2 A. I mean -- under U.S. definition of due process, in  
3 terms of bill of rights --

4 Q. Under the definition promoted by the Organization of  
5 American States, due process.

6 A. It was not a judicial investigation. It was an  
7 attempt to determine the truth about what happened in El  
8 Salvador.

9 Q. Yes or no, were they afforded due process as defined  
10 by the Organization of American States and American  
11 Declaration?

12 MR. GREEN: Objection; no context, Judge.

13 THE COURT: What is the legal objection --  
14 Wait a minute, Professor.

15 What is the objection?

16 MR. GREEN: Relevance.

17 THE COURT: I will overrule that objection. You  
18 may answer the question.

19 MR. GREEN: Objection; no predicate.

20 THE COURT: That is not a legal objection. What  
21 do you mean -- you have to be more specific.

22 MR. GREEN: No foundation as to whether she knows  
23 the standard of OAS or criminal versus civil finding.

24 THE COURT: Okay. You can rephrase that.

25

1 BY MR. KLAUS:

2 Q. They weren't permitted to confront and cross examine  
3 their witnesses?

4 A. No. The witnesses were in fear for their life in many  
5 cases, but they were given an Opportunity to speak before  
6 the commissioners.

7 Q. How was General Vides contacted regarding the two men,  
8 that case? Do you know if he was contacted?

9 A. I know he was contacted. He was interviewed at a  
10 hotel in El Salvador and given the opportunity to discuss  
11 the various cases where he had been implicated.

12 Q. You think he was interviewed at a hotel?

13 A. I know he was interviewed, I was in the room.

14 Q. Was he interviewed about those men?

15 A. I believe he was.

16 Q. When was that?

17 A. It was -- I think it was probably in early January of  
18 1993.

19 Q. And when you are talking -- did you draft the reports  
20 that you investigated? Were they drafted by you?

21 A. Yes, I did the initial drafting, but they were usually  
22 much more detailed reports. They were probably anywhere  
23 from 20 to 60 pages. And then the commissioners would take  
24 the reports and review them, and based on the evidence in  
25 the reports, they were boiled down to, basically to only

1 focus on the evidence that was -- that met the  
2 commissioners' standards. And then they would meet with me  
3 regarding specific pieces of evidence.

4 Q. The section on Ventura and Mejia, did you draft that?

5 A. I drafted the initial report, not the final report.

6 Q. But you reviewed that with the commissioners as it was  
7 being drafted. Did you have input into the final draft?

8 A. I believe -- yes, I think it came back with a final  
9 report and I had a chance to go over it before it was  
10 included.

11 Q. Okay. Did you agree with these findings, looking at  
12 page 101 under the heading the Commission made the  
13 following findings?

14 A. Yes, I did.

15 Q. Paragraph three, "By denying that the students had  
16 been arrested and failing to quickly investigate the  
17 incident and identify precisely who was responsible, then  
18 Colonel Eugenio Vides Casanova, commander of the National  
19 Guard, was guilty at the least of complicity through  
20 negligence and obstructing the resulting judicial  
21 investigation".

22 A. Yes, I do agree with that.

23 Q. What did the judicial investigation consist of?

24 A. I would have to refresh my recollection. I know there  
25 was -- when the boys did not return after the protest,

1 they -- a number of people had seen them at the scene, a  
2 lawyer was hired who I believe filed a habeas action. He  
3 specifically went to the National Guard headquarters and  
4 spoke with General Vides Casanova, who basically denied any  
5 involvement in the disappearance even though there were  
6 witnesses who had seen the National Guard detain Ventura  
7 and Mejia. But they were never found, even though the  
8 habeas was filed.

9 Q. Was anyone able to identify the members of the  
10 National Guard who were stationed there that day?

11 A. I don't recall, but they were identified by their  
12 uniforms.

13 Q. According to witnesses?

14 A. According to witnesses, including a member -- someone  
15 at the U.S. Embassy.

16 Q. Okay. So whoever was there was wearing National Guard  
17 uniforms according to your investigation?

18 A. Yes, they were the people who actually guarded that  
19 area of the Embassy.

20 Q. Was inquiry made as to who those men were?

21 A. I don't recall.

22 Q. Well, wouldn't it be important to know who the actual  
23 men were who apprehended the two victims and handed them  
24 over to men in civilian clothing?

25 A. There had been witnesses, also. There was a member,



1 someone who worked at the State Department who was one of  
2 our confidential witnesses. I don't even know who that  
3 person was, but who specifically provided evidence to  
4 Professor Bergenthal's assistant that they were members of  
5 the National Guard. I was not made privy to any  
6 information regarding specific identities of the National  
7 Guard members.

8 Q. This is your investigation?

9 A. Yes, it is was, but certain confidential information  
10 from certain confidential witnesses that were dealt at  
11 diplomatic level, the only people who had access were the  
12 commissioners and one of the commissioners assistants. He  
13 dealt directly with the U.s. government.

14 I went as far as I could in the investigation and  
15 turned my investigation over to the commissioners and they  
16 did subsequent investigations on which they based their  
17 ultimate conclusions.

18 Q. Well, I am going to ask you the same question. Isn't  
19 it important, or wouldn't it be important to a full  
20 investigation and a truthful investigation, an  
21 investigation mandated to find out the truth what happened,  
22 to find out who the actual men were who abducted these men,  
23 abducted Mr. Ventura and Mejia?

24 A. We went as far as we could. We had multiple witnesses  
25 who had seen the National Guards detain them and bring them

1 into U.S. compounds.

2 Q. And what about some men in civilian clothing -- I will  
3 read what it says. It says, "According to witnesses  
4 members of the National Guard --" page 101 under summary of  
5 the case.

6 "According to witnesses, members of the National Guard  
7 handed the students over to some men in civilian clothing  
8 who drove off with them in a private car. Despite the  
9 judicial investigation and remedies carried out since that  
10 date, the students' whereabouts are still unknown."

11 So, wouldn't it have been important to identify that  
12 some men and National Guard if you wanted to get to the  
13 truth of the disappearances of Mr. Ventura and Mr. Mejia?

14 A. Well, this was typical of the methodology of the  
15 relationship between the police and the death squads. This  
16 appeared to us to be a death squad disappearance --

17 THE COURT: Professor, let me stop you for a  
18 second so you could listen to the question. I think the  
19 question is simply would it have been useful to you to,  
20 for instance, look at the roster or what have you so you  
21 would have known the actual names of the members of the  
22 National Guard who might have been stationed there.

23 If you could have gotten that, would that have  
24 been something you thought might have been helpful to you?

25 THE WITNESS: Certainly, if we could have had

1 access to that information, it would have been helpful.

2 BY MR. GREEN:

3 Q. Why wouldn't you have access to that information?

4 A. Because it was very difficult to get the members of  
5 the military and police to turn over their documents. That  
6 was one of the obstacles that the Truth Commission was  
7 dealing with every day.

8 Q. The Truth Commission had a mandate agreed to by all of  
9 those organizations, by the rebels, guerillas, by all the  
10 branches of the military, and was that brought to anyone's  
11 attention by you in this investigation, this specific  
12 investigation?

13 THE COURT: Let me stop you. What is your  
14 question?

15 BY MR. KLAUS:

16 Q. Was the obstruction brought to the attention of any of  
17 those authorities or your superiors while you were carrying  
18 out your investigation?

19 A. I think that the focus of the investigation was -- we  
20 knew that they had been brought onto the U.S. ground, and  
21 so the focus of the investigation was being able to  
22 identify U.S. government witness who had witnessed the  
23 National Guard handing them over to the plain clothesmen.  
24 We did not specifically -- we did not specifically focus on  
25 identifying the members of the National Guard.

1 Q. But if you are trying to find out the truth, that is  
2 the purpose of an investigation, that is the mandate of the  
3 Truth Commission, to find out the truth about the  
4 complaints, accusations about violence in El Salvador from  
5 1980 to 1991, correct?

6 A. Yes.

7 Q. You are investigating a disappearance, a kidnapping,  
8 correct?

9 A. That is correct, disappearance.

10 Q. Focus of the investigation wasn't on identifying the  
11 kidnappers, is that what you are telling me? Is that true,  
12 the focus was on the witness --

13 A. The focus was identifying involvement of specific  
14 members of the -- members of the National Guards in the  
15 disappearance. The focus was not on the specific  
16 individuals, but rather on the involvement of the National  
17 Guard in the disappearance.

18 Q. So you wanted to target it was National Guardsmen, but  
19 didn't matter which National Guardsmen it was, correct?

20 A. At that point it was -- it would have been difficult  
21 to obtain that information.

22 Q. Well, the truth is difficult to obtain, right?

23 A. We were given a six month mandate to investigate all  
24 of the grave acts of violence in El Salvador. We were very  
25 limited in terms of what we were able to accomplish within

1 that specific period of time. And we were each assigned a  
2 substantial number of cases where we took them as far as we  
3 could given the six month mandate we had to complete our  
4 field investigations.

5 Q. Were you aware there had been general orders issued  
6 that human rights were to be respected, that people weren't  
7 to be kidnapped, that people weren't to be arbitrarily  
8 detained? Were you aware those orders were in existence at  
9 the time this kidnapping took place?

10 A. This was during a time of one of the worst periods of  
11 abuses in the countries history. Any orders that may have  
12 existed were meaningless under the circumstances. This was  
13 really during one of the worst periods of attacks against  
14 civilians that occurred throughout the civil war. Any  
15 specific orders that went out were obviously meaningless.

16 Q. That is your opinion. You are giving me an opinion  
17 now, right?

18 A. Well, it was a period -- it was one of the darkest  
19 periods of the civil war in El Salvador, that period. So  
20 it is very difficult to believe that any -- there were any  
21 orders that specifically intended members of the police to  
22 follow international human rights law.

23 Q. Was there any indication in your investigation that  
24 Colonel Vides Casanova had given orders to the witnesses --  
25 the members of the -- the alleged members of the National

1 Guard to kidnap these two men?

2 A. There was no evidence that he had given orders, but  
3 there was evidence that he refused to cooperate in the  
4 investigation immediately after the disappearance took  
5 place. They were basically identified as having  
6 disappeared, almost immediately after the incident took  
7 place, they immediately went to the National Guard. There  
8 was a time where they may have been alive where nothing was  
9 done to assure their rescue.

10 Q. And --

11 THE COURT: Mr. Klaus, I am sorry. Again,  
12 looking at the clock, we are at a point where we need to  
13 stop for the evening recess. Why don't we stop at this  
14 point and come back in the morning and allow you to move  
15 forward with your cross examination.

16 MR. KLAUS: Thank you, Your Honor.

17 THE COURT: Okay. Ladies and gentlemen, can I  
18 ask you to reflect on the general jury instructions. I am  
19 going to ask you, please be very careful, don't talk to  
20 anybody about the case. Please do not let anyone talk to  
21 you. I will ask you to be especially sensitive to  
22 newspapers, please, if you would avoid them just during  
23 the trial, and run them by Mr. Caldwell as you did this  
24 morning. I appreciate you doing that, and we will get  
25 them back to you.

1           I do want to tell you that having talked with the  
2 lawyers last night, I think the parties believe that we  
3 are moving forward at a faster pace than people had  
4 originally contemplated. It is still too early to come up  
5 with any more definite dates, but I wanted to let you know  
6 that. And I think as we move along further, I will talk  
7 to you again how we are moving to keep you abreast of  
8 that. I think we are moving along and it is obviously  
9 thanks to the cooperation of the lawyers on all sides as  
10 we have moved along.

11           Let's stop at this point, and we will convene  
12 tomorrow morning at 9:30, and we will continue on with  
13 Professor Gilbert's testimony at that time.

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

15           THE COURT: Professor, because you are testifying  
16 on cross now, may I ask you not talk with anybody about  
17 your testimony until you finish cross and redirect?

18           THE WITNESS: That is fine.

19           THE COURT: Thank you so much. We will start at  
20 9:30.

21           (Thereupon, the jury left the courtroom.)

22           MR. GREEN: Your Honor, if we could take up that  
23 matter in a moment?

24           THE COURT: All right.

25           MR. GREEN: I believe Ms. Gilbert is studying for

1 the Florida Bar, and has parenting responsibility that may  
2 make it difficult for her to be here in the morning. If  
3 we could take another witness and bring her back for cross  
4 examination.

5 THE COURT: Mr. Klaus, would you mind if we  
6 continue the cross examination?

7 MR. KLAUS: No problem.

8 THE COURT: Let's talk so we could agree on the  
9 scheduling for the professor.

10 What time is good for you.

11 THE WITNESS: 2:30 will be ideal for me.

12 THE COURT: Let's talk about the schedule and see  
13 if we can't work around that, I think we can.

14 What are the Plaintiffs' witnesses for tomorrow?  
15 Who would they be?

16 MR. GREEN: Carlos Mauricio.

17 THE COURT: Okay.

18 MR. GREEN: That is all we have planned for  
19 tomorrow.

20 THE COURT: What is your sense the length of his  
21 testimony.

22 MR. GREEN: I would say at least three hours on  
23 direct. I don't know how long cross would be.

24 THE COURT: Well, it may be that we would be  
25 finished direct and cross before 2:30. Is there some



1 other witness you were planning to call?

2 MR. GREEN: Professor Garcia is not arriving  
3 until Saturday.

4 THE COURT: Who would be your next witness?

5 MR. GREEN: Mr. McClintock from New York and  
6 Ms. Popkin from Washington, D.C. are not planning to be  
7 here until Tuesday.

8 THE COURT: Do you have anybody else you would  
9 have testify tomorrow?

10 MR. GREEN: No, Your Honor. We are trying to  
11 compress everything as much as possible.

12 THE COURT: No. I appreciate how much you have  
13 done. I am trying to think how you would handle that. It  
14 is conceivable that Professor Mauricio's testimony might  
15 be longer. I am thinking about the cross examination that  
16 Mr. Klaus had for Dr. Romagoza, it was not terribly long.  
17 Will your cross examination be extensive?

18 MR. KLAUS: It will be longer than the doctor.

19 THE COURT: All right. Why don't we do this.  
20 Why don't we start with the professor's direct testimony  
21 in the morning and why don't we agree no matter where we  
22 are, we will stop at 2:30 so we can complete Professor  
23 Gilbert's cross examination, and we will come back and go  
24 into direct examination or handle the cross examination of  
25 Professor Mauricio tomorrow.

1           Mr. Klaus, do you have a sense of the length of  
2 cross examination that you have for Professor Gilbert.

3           MR. KLAUS: At least another hour. Have I gone  
4 an hour now?

5           THE COURT: No, but it sounds to me that would  
6 pretty much take care of tomorrow.

7           MR. GREEN: We are a half day to almost a full  
8 day ahead of where we thought we would be.

9           THE COURT: That is fine, good.

10          Professor, let me ask you to step down.

11          MR. KLAUS: If it is convenient for her to come  
12 later, we will finish with Professor Mauricio and take her  
13 at three o'clock.

14          THE COURT: Could you come at 2:30, and we will  
15 try to get you on and off, and we may try to take and  
16 finish Professor Mauricio, that would be better for both  
17 sides.

18          Why don't we aim at 2:30, 2:30, three.

19          THE WITNESS: I will be here at 2:30:

20          THE COURT: Thank you so very much.

21          Okay. Why don't we do as we have done in the  
22 past -- let me let the professor step down.

23          From the Plaintiffs' point of view, any matters  
24 we need to put on the agenda?

25          MR. STERN: One small matter regarding an

1 exhibit.

2 THE COURT: How about the Defendants' point of  
3 view?

4 MR. KLAUS: No, Your Honor, unless you want to  
5 talk about jury instructions.

6 THE COURT: I would like to defer that until next  
7 week. I hope to have a draft for you by then. I do want  
8 to talk to you about the instructions.

9 Why don't we talk about the exhibit issue first.

10 MR. STERN: It is a small matter. I realized  
11 when Mr. Alvarez was on the stand I neglected to request  
12 that the drawing he made for the jury be entered into the  
13 evidence as an exhibit. With The Court's permission, I  
14 would like to do that.

15 THE COURT: Would there be any objection to  
16 marking and receiving into evidence the drawing done by  
17 Mr. Alvarez?

18 MR. KLAUS: No.

19 THE COURT: How would you mark that, Mr. Stern?  
20 What would be your next exhibit number?

21 MR. STERN: 810.

22 THE COURT: All right. Plaintiffs' 810 received  
23 into evidence without objection.

24 (Plaintiffs' Exhibit 810 received in evidence  
25 without objection.)

1 MR. STERN: Thank you, Your Honor.

2 THE COURT: Why don't you mark it, and we will  
3 put it aside, and that will be in evidence.

4 I wanted to talk with you for just a second, and  
5 I think one of the aims we ought to have is try to tailor  
6 the jury instructions so they are as tailored to the case  
7 as can be. And I am thinking about Judge Barkett's  
8 concurring opinion where she pointed out in the Ford case  
9 the instructions dealt primarily with de jure as opposed  
10 to someone acting under de facto authority, and pointed  
11 out there is that distinction. And in the Bosnian  
12 situation there were people who did not hold structured  
13 office but clearly were acting with de facto power, and  
14 they are subject to command responsibility.

15 Since it is clear in this case that both  
16 Defendants are general -- were general officers, does it  
17 make sense that the instructions continue to be structured  
18 dealing with de jure authority without having a full  
19 exposition of scenarios of command responsibility?

20 MS. VanSCHAACK: I think that is right.

21 THE COURT: Does that make sense to everybody?

22 MR. GREEN: Yes, but I would like to confer with  
23 co-counsel.

24 THE COURT: Surely. Why don't I do this, why  
25 don't we draft a draft that goes along those lines and

1 simply meant to be a draft, and we will look at it and if  
2 it is to cover other scenarios, fine. But I think we need  
3 to draft jury instructions so they are aimed as much at  
4 the facts of this case as possible and clear cut and  
5 understandable as they can be. We can get lost in some  
6 things that are interesting, but I think we all agree have  
7 no application to the facts of the case, and that was the  
8 impression I had that you had done as well in your drafts.

9 MR. GREEN: Right.

10 MS. VanSCHAACK: Your Honor, you asked for a  
11 disk. Would you like --

12 THE COURT: I would appreciate it if you have it,  
13 especially for the May 14th or whatever the May submission  
14 you gave me.

15 MR. GREEN: I don't think there is disagreement  
16 as to the de jure instruction. We are talking about  
17 tailoring it to a particular nuance in this case.

18 THE COURT: Fine, no problem. We have lots of  
19 time on that, and I think we all agree that is a -- that,  
20 as in the Ford case, that becomes the crucial instruction  
21 so we want to spend some time on that, and you undoubtedly  
22 have others, but that is the important one.

23 Okay. Anything else?

24 Why don't we recess and we will reconvene  
25 tomorrow morning at 9:30.

1           May I also remind everybody that we are not going  
2 to be sitting on the following Monday. So what we have is  
3 essentially a two day week next week, the 2nd and the 3rd,  
4 and come right back and sit for the full week on the week  
5 of the 8th. Okay.

6           MR. KLAUS: If I may, Your Honor, do you think  
7 you will be finished the week of the 8th?

8           MR. GREEN: Yes, we will be finished. If we  
9 continue as we are proceeding, I believe that we will be  
10 finished by Tuesday of that week.

11          THE COURT: Why don't we do this, why don't we  
12 agree tomorrow, with that under our belt, and see what we  
13 cover tomorrow, before we adjourn let's take time to sense  
14 out where we are and try to pinpoint if we can, because it  
15 will help both sides getting ready for other witnesses.  
16 And let's plot where we think we will be, and again, it is  
17 an estimate, but it is for planning purposes.

18          All right. We will recess and reconvene at 9:30  
19 tomorrow morning.

20          (Thereupon, trial recessed at 5:15 p.m.)

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## I N D E X

## WITNESSES FOR THE PLAINTIFF

	Direct	Cross	Redirect	Recross
ROBERTO ALVAREZ	350	393	415	
PAUL SCHINDLER	417	470		
LAUREN GILBERT	498	533		

## E X H I B I T S

Plaintiffs' Exhibit 792	425
Plaintiffs' Exhibit 789	437
Plaintiffs' Exhibit 797	441
Plaintiffs' Exhibit 793	466
Plaintiffs' Exhibit 794	466
Plaintiffs' Exhibit 810	550

