

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 NORTHERN DIVISION

4 JUAN ROMAGOZA ARCE, JANE ) Docket No.  
5 DOE, in her personal capacity ) 99-8364-CIV-HURLEY  
6 as Personal Representative of )  
7 the ESTATE OF BABY DOE, )  
8 )  
9 Plaintiffs, )  
10 vs. ) West Palm Beach,  
11 ) July 3, 2002

Florida

12 )  
13 )  
14 JOSE GUILLERMO GARCIA, an )  
15 individual, CARLOS EUGENIO VIDES )  
16 CASANOVA, an individual, and ) VOLUME 6  
17 DOES 1 through 50, inclusive, )  
18 )  
19 Defendants. )  
20 \_\_\_\_\_ x

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

16

17 APPEARANCES:

18 For the Plaintiffs: JAMES GREEN, ESQ.  
19 PETER STERN, ESQ.  
20 BETH VANSCHAACK, ESQ.

21 For Defendant: KURT KLAUS, ESQ.

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

22

23

24 PAULINE A. STIPES



all  
1 THE COURT: Good morning, everybody. Are we  
2 set and ready to proceed.  
3 Let me double check.  
4 Mr. Marshal, madam courtroom deputy, would you  
5 bring in the jury?  
6 Is Professor Garcia here this morning?  
7 MR. GREEN: Yes, Your Honor.  
8 THE COURT: I wonder if we could ask him to  
come  
9 forward.  
10 (Thereupon, the jury returned to the  
courtroom.)  
11 THE COURT: Mr. Green, would you like the last  
12 couple of questions?  
13 MR. GREEN: What I thought I would do is a  
quick  
14 repeat.  
15 THE COURT: All right.  
16 MR. GREEN: Also, the translation on Article  
375,  
17 I must take some responsibility for it, my Spanish is  
not  
18 what it used to be, and I asked for a professional  
19 interpretation, and we have that blown up. I would like  
20 to go there at the beginning.  
21 THE COURT: Good. Good.

22  
courtroom.)

(Thereupon, the jury returned to the

23

THE COURT: Good morning, ladies and gentlemen.

24

We are happy to have all of the members of the jury

25

present. I am glad the baby is feeling well.

1                   When we stopped yesterday afternoon, as you  
know,  
2                   we were in direct examination of Professor Garcia, so I  
am  
3                   going to turn back to Mr. Green and allow him to  
continue.

4                   Mr. Green.

5 BY MR. GREEN:

6 Q.    Good morning, Professor Garcia.

7 A.    Good morning.

8 Q.    Before we recessed yesterday afternoon, you  
testified  
9                   about the Christian Democrat letter and General Garcia's  
10                  reaction to it?

11 A.    Yes.

12 Q.    In response, you read Army regulation -- or Army  
13                  Ordinance Article Number 375. I have asked that it be  
14                  blown up for the benefit of the jury.

15                 As a military command structure expert, could you  
16                 summarize what Article 375 means to you?

17 A.    This is the result of experience. You see, this  
18                 article is common to all Army ordinances around the  
world,  
19                 this is nothing unusual.

20                 And it is done mainly so a superior is unable to  
hide  
21                 his lack of efficacy as well as lack of action.

22 Q.    When you say efficacy, you mean lack of ability to

23 control?

24 A. Of course. Or his cowardess on certain occasions.

25 Shielding himself behind actions taken by his  
subordinates

1 that would prevent him from exercising effective command.  
2 That is why this article recommends to whomsoever has  
3 command over troops, that he must always be at the head  
of  
4 his subordinates, he must be the first to accept all  
risks,  
5 and he must have trained his subordinates and informed  
them  
6 that they must comply with his orders instantly and  
without  
7 complaint.

8 This is the essence of command.

9 Q. Professor Garcia, as a military command structure  
10 expert, under Salvadoran Army regulations can a military  
11 commander justify his failure to act because he is afraid  
12 how his troops, his subordinates will react?

13 MR. KLAUS: Objection; calls for a legal  
14 conclusion beyond his expertise.

15 THE COURT: I am going to overrule the  
objection.  
16 I think the jury understands that the witness is  
17 testifying within his area of expertise, and so I am  
going  
18 to limit the answer to that, that is, to allow the  
witness  
19 to give his opinion on these issues.

20 Now, of course, as I said before, ultimately it  
21 is going to be for the jury to decide whether to accept

22 that opinion testimony, but I will allow this as an  
23 opinion.

24 You may proceed.

25 MR. GREEN: May I repeat the question?



1 THE COURT: Yes.

2 BY MR. GREEN:

3 Q. Professor Garcia, as a military command structure  
4 expert under Salvadoran Army regulations, can a military  
5 commander justify his failure to act because he is afraid  
6 of how his subordinates will react?

7 A. No. Absolutely not.

8 Q. Professor Garcia, as a military command expert under  
9 Salvadoran Army regulations, can a military commander  
10 justify his failure to act or failure to command because  
11 he is afraid of political pressure from civilians?

12 MR. KLAUS: Objection; goes beyond the scope of  
13 his expertise. Misleading.

14 THE COURT: Okay. I am going to overrule that  
15 objection but let me come back to this again.

16 Ultimately in this case the jury is going to be  
17 asked to determine whether the Plaintiffs have  
18 established that one or both of the Defendants are liable. That is  
19 bare responsibility for what the Plaintiffs say happened  
20 to them.

21 The Plaintiffs are relying upon a doctrine, a  
22 legal doctrine called the Doctrine of Command  
23 Responsibility and I am going to talk to you in detail

to 24 about that later, but that Doctrine allows a commander  
if 25 be held liable for the acts of the subordinate officers

1 the commander knows or should have known that the  
2 subordinates are committing violations and the commander  
3 doesn't do anything to investigate or punish the  
4 subordinate officers who are engaging in those acts.

look  
by  
5 Now, ultimately the jury is going to have to  
6 at the law, that is, the law as explained by The Court,  
7 miss on what are the duties of an officer. You are  
8 allowed to consider the testimony if you find it to be  
9 credible and worthy of belief in making judgments about  
10 whether an officer had the ability to do those things.  
11 That is, had the ability to investigate, and so on, and  
12 the ability to punish.

13 Those ultimately are factual questions that the  
14 jury is going to have to decide. So I am going to  
15 overrule the objections and allow counsel to go forward  
16 understanding that ultimately the jury is going to have  
to  
of  
the  
17 decide this case on whether there has been a violation  
18 the law of command responsibility, not a violation of  
19 Salvadoran military code.

20 Okay. You may proceed.

21 BY MR. GREEN:

22 Q. Professor Garcia, under Salvadoran Army regulations,

because 23 can a military commander justify his failure to act  
24 of political pressure from civilians?  
25 A. It would have to be a commander who does not comply

country. 1 with his duties before his own institution and his

2 That would be impossible.

3 Q. Professor Garcia, is a military commander's duty to  
4 act independent of either fear of his own troops reaction  
5 or fear of civilian political pressure?

6 A. I do not understand the sense of the question.

7 Q. Let me rephrase it.

8 Professor Garcia, is a military commander's duty to  
9 act independent of either political pressure or fear of  
his  
10 troops' reaction?

11 A. Absolutely. Hence, the famous principle of command  
12 responsibility which is incorporated in the Nuremberg  
13 accords, and Tokyo accords, and incorporated in all of  
the  
14 military legislation all over the world.

15 Q. Professor Garcia, you testified earlier that  
Minister  
16 of Defense Garcia failed to order an investigation of the  
17 19 incidents listed in the Christian Democratic letter?

18 A. Yes.

19 Q. What else, if anything, should Minister of Defense  
20 Garcia have done besides order an investigation?

21 A. First he has legal responsibilities as assigned by  
the  
22 code of military justice which is the initiation of an

23 investigation.

24           In addition to that which are the obligations  
assigned

25 to him by the code of military justice, a commander faced

call  
the  
1 with such an incredible amount of allegations, he must  
2 to his headquarters the commanders of the regions where  
3 events took place, and investigate if they were aware of  
4 the barbarous acts that were taking place within their  
5 jurisdictions. Ask them if they had taken any measure to  
6 initiate investigation at their level as it is legally  
7 required.

their  
8 Order them to call in at their own level all of  
9 subordinates, and to perform the corresponding  
10 investigation face-to-face, because it was evident that  
11 something was happening beyond not only my control but  
12 beyond the control of all of the levels of command all  
the  
13 way down to corporal, that the disciplinary system that I  
14 was trying to impose had broken down, and that may not  
last  
15 but one minute and if I have any dignity in my command,  
if  
16 I cannot reimpose discipline on my troops, I should have  
--  
17 if I could not have done that, I should have stepped down  
18 from my command and allow a person with more capacity,  
more  
19 character and more willing to comply with the law to take  
20 over my position, because that is my duty before the  
Army,

my

21 the institution and to my country. And especially with

22 own principles and my own conscience.

have

23 Q. Professor Garcia, did Minister of Defense Garcia

24 the power to meet directly with the director of the

25 National Guard, Vides Casanova, concerning the 19



Guard

1 instances, some of which were involved with National  
2 that were specified in the Christian Democratic letter?

3 A. Yes.

duty

4 Q. If the Minister of Defense had information from a  
5 reliable source that members of the National Guard were  
6 committing torture, did the Minister of Defense have a

7 to go directly to the director of the National Guard?

8 A. Yes, that is demanded of him by the principle of  
9 command responsibility. It is his duty and his right.

chain

10 MR. GREEN: Mr. Stern, could you place the

of

11 of command chart? Could you hand the pointer in front

12 the witness box?

13 BY MR. GREEN:

14 Q. Professor Garcia, yesterday you pointed to the jury  
15 where the position of Minister of Defense was in this  
16 organizational chart.

17 A. Over here (indicating).

18 Q. You also pointed to the positions of National Guard  
19 and National Police, in between those positions is the  
20 general staff.

21 Based upon your readings of Salvadoran law, Army  
22 regulations, and your expertise about military command  
23 structure, did the fact that there was a general staff

24 position in that organizational chart in any way restrict  
25 Minister of Defense Garcia's duty and obligation to speak

1 directly to the directors of National Police and National  
2 Guard concerning the contents of the Christian Democratic  
3 letter?

4 A. No, there was no impediment at all. And remember,  
we,  
5 we mentioned these little lines here demonstrate the  
6 dependency relationship.

7 The event -- the fact that between the Minister of  
8 Defense and the National Guard there is an intermediary  
9 organization, based on military principle which is called  
10 the principle of command extension, that makes that a  
step  
11 or a stage so high as that of Minister of Defense may  
face  
12 some problems where below him the number of subordinates  
is  
13 a numerous one.

14 So you create an intermediary element to facilitate  
15 the command task, but in no way is the chain of command  
16 ever broken and the responsibility of the commander of  
the  
17 National Guard continues to depend directly on the  
Minister  
18 of Defense.

19 The fact is during his deposition, General Vides  
20 Casanova says that he depended or reported to the  
Minister  
21 of Defense and on some occasions met with him.

Air

22 Q. Professor Garcia, you talked about the number of  
23 people at the bottom of the chart. With respect to the

report

24 Force, Navy, National Police, National Guard and the  
25 Treasury Police, is that a large number of people to

1 directly to --

2 Let me withdraw the question.

3 Were there any impediments, any barriers to General  
4 Garcia speaking directly with General Vides Casanova?

5 MR. KLAUS: Objection; repetitive.

6 THE COURT: Sustained.

7 BY MR. GREEN:

8 Q. Did the director of the National Guard have a duty  
to  
9 know what was going on in his own headquarters?

10 A. Yes.

11 Q. Did the director of the National Guard have a duty  
to  
12 know what was going on in regional headquarters, such as  
13 that in San Vincenti?

14 A. Yes.

15 Q. Does a military commander have an obligation to  
insure  
16 that his troops do not commit human rights violations?

17 A. Yes.

18 Q. You testified that the defense minister -- Minister  
of  
19 Defense had various legal procedures -- strike that.

20 You testified that the Minister of Defense had  
various  
21 powers over military justice?

22 A. Yes, he is the head of the entire system of military

23 justice.

of

24 Q. Professor Garcia, what are the different components

25 military justice that were --

1 MR. KLAUS: Objection --

2 BY MR. GREEN:

3 Q. -- that were available to General Garcia and later  
to

4 General Vides Casanova when they were Minister of  
Defense?

5 A. Yes, if the judge would allow, I would like to refer  
6 to some of my documents that would allow me to be more  
7 precise what is set forth in the code of military  
justice.

8 Q. Yes, please.

9 MR. KLAUS: May I have copies?

10 THE COURT: Yes.

11 MR. GREEN: He has two pages of notes. We will  
12 be glad to provide them to defense counsel.

13 THE COURT: Let me stop you for a second. When  
a

14 witness refers to documents, those documents must be  
shown

15 to opposing counsel.

16 MR. GREEN: We understand that, Judge. He has  
17 notes to assist him with his testimony. We will be glad  
18 to provide those to opposing counsel for cross  
19 examination.

20 THE COURT: They need to be shown now.

21 MR. GREEN: May I approach the witness?

22 THE COURT: Yes.

23                   MR. KLAUS:  Could we impose on the court so I  
24   could have copies?

25                   THE COURT:  Yes, we could have copies made.



1 Let's proceed, and we will get those to you. Okay.

2 accordance

THE WITNESS: The responsibilities in

of

3 with the code of military justice in times of peace in  
4 accordance with Article 183, this provides the Minister  
5 of Defense with the responsibility of --

6 MR. KLAUS: Again, Your Honor, if I may, may I  
7 have a copy of Article 183?

8 THE COURT: Well, let me stop you one moment,  
9 please.

10 Let me stop you for a minute.

I

11 I will overrule that request at this time. As

we

12 said before, when a witness who is testifying refers to  
13 notes while testifying, certainly the opposing party has  
14 an absolute right to see those notes. In this instance

cross

15 will get a copy of them so counsel can have them for  
16 examination, so let's proceed.

17 MR. GREEN: These were documents provided by  
18 Defendants to Plaintiffs in discovery.

19 THE COURT: Let's go forward.

obligation

20 THE WITNESS: I am going to try and simplify it  
21 to make this -- the Minister of Defense has the  
22 obligation of creating or provoking the functioning of the

23       investigative military judges who are the ones who bring  
24       together the briefs or the summaries of an alleged  
crime.

25                   They also provoke the creation of the first

1 instance military justice -- judges who initiate this  
2 process when they receive the brief, and beyond creating  
3 courts marshal, the Minister of Defense can create  
4 marshal, ordinary, extraordinary and urgent. The  
5 courts marshal are convened by the military of defense  
6 order to try officers for crimes the punishment of which  
7 is beyond ten years imprisonment.

8 The extraordinary courts marshal are created by  
9 the Minister of Defense for the trial of generals  
10 in some crime. And beyond these extraordinary courts  
11 marshal -- the interpreter corrects himself -- in  
12 these extraordinary courts marshal allow the Minister of  
13 Defense to comply with the contents of Article 177 of  
14 Constitution that we were talking about yesterday.

15 Remember, the Constitution that said that in  
16 event of war or in the events of state of siege -- and I  
17 would remind you that from 1979 through 1983 a state of  
18 siege was in existence for the trial of crimes that  
19 place the stability of the nation and its institutions  
20 jeopardy, and for any crime that would affect the rights

21 of peoples or human rights, the Minister of Defense may  
22 immediately convene this court marshal, it is his  
23 authority to do so.

24           And this can be done in any part of the country  
25 as stated by the Constitution as well as by the code of

1 military justice.

2 The military code of justice provides him with  
3 the provision of creating -- allows him to create an  
4 urgent court marshal for those urgent events that take  
5 place during war time. The code of military justice  
6 therefore provides him with the power to judge over the  
7 entire territory of the country, to try any military  
8 officer at any rank.

9 And in Article 177 these powers are expanded  
and  
10 he may also try civilians, civilians who may be accused  
of  
11 placing the stability of the nation of violating human  
12 rights -- placing the stability of the nation in  
jeopardy  
13 or having violated human rights -- the interpreter  
14 corrects himself.

15 So under this summary of obligations, the state  
16 places in the hands of the Minister of Defense enormous  
17 power when it comes to administering military justice.

18 Article 198 --

19 Q. Professor Garcia, let me stop you there. I want to  
20 clarify two points.

21 First of all, what is a state of siege?

22 A. The Constitution of El Salvador says that it is a  
23 situation in which under -- in which the stability of the

24 nation is in danger, some constitutional guarantees are  
25 suspended. This must be proclaimed by the President of

the

1 country in agreement with the legislators. Must  
establish

2 it for a determined period of time.

3 And this is renewed in accordance or in agreement  
with

4 the legislature every 30 days. And throughout the entire

5 period of 1979 to 1983 it was renewed constantly and in  
the

6 absence of a legislature, it was renewed by the

7 dictatorship.

8 Q. Professor Garcia, you indicated that under Article  
9 177, once a state of siege is declared, the powers of the  
10 Minister of Defense are expanded to allow for the  
11 prosecution of both military and civilians for violations  
12 of human rights?

13 A. Yes, I said that.

14 Q. Would torture or rape by military or security forces  
15 of civilians constitute violations of human rights that  
16 would be prosecutable under Article 177?

17 A. Yes.

18 Q. This is power that the Ministers of Defense had in  
19 states of siege?

20 A. And those of war as well.

21 Q. Professor Garcia, when you are talking about Article  
22 177 and the expanded powers that the Minister of Defense  
23 has during war or states of siege, is this just another

24 power that Minister of Defense has in order to discipline  
25 and control his troops?



by  
1 A. It is a specific power to that position established  
2 law that will allow him to comply with control of his  
3 troops as well as to impose discipline upon them. And  
this  
4 is the obligation imposed upon him by law.

5 Q. Based upon your review of the depositions of the  
6 Defendants and the other evidence in this case, did  
General  
7 Garcia's Minister of Defense from 1979 to early 1983, or  
8 General Vides Casanova Minister of Defense in later 1983  
9 ever invoke the powers that they had under Article 177?

10 A. No.

11 Q. As a military command structure expert, should they  
12 have done so?

13 A. Yes.

14 Q. Professor Garcia, are you aware of the contents of  
the  
15 1979 report from the Organization of American States that  
16 described clandestine torture cells in the headquarters  
of  
17 the Salvadoran National Guard in San Salvador?

18 MR. KLAUS: Objection; relevance.

19 THE COURT: I will overrule the objection.

20 THE INTERPRETER: Interpreter requests the last  
21 part of the question be reread.

22 BY MR. GREEN:

--

23 Q. Are you aware of the contents of the 1979 report of

States 24 the report of 1979 from the Organization of American

25 that detail clandestine headquarters of the Salvadoran

1 National Guard?

2 A. Yes.

3 Q. What duty would a military commodore have to  
4 investigate or personally inspect the locations where the  
5 reported torture cells were?

6 A. He would have to do so immediately. I could not  
take  
7 charge of a command under such an accusation.

8 Q. When General Vides Casanova became head of the  
9 National Guard in October, 1979, was he aware of the  
10 reports of torture cells in the National Guard  
11 headquarters?

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

14 THE COURT: Sustained.

15 BY MR. GREEN:

16 Q. Did you review the deposition of General Vides  
17 Casanova that he gave in this case?

18 A. Yes.

19 Q. Based upon your reading of that deposition, when  
20 General Vides Casanova became head of the National Guard  
in  
21 October of 1979, was he aware of torture cells in  
National  
22 Guard headquarters?

23 MR. KLAUS: Objection. If he is going to refer

that

24 to the deposition, he needs to provide line and page

25 he is referring to.

1 THE COURT: I'll sustain that. I think if you  
2 are going to refer to a specific source, you need to  
cite  
3 the source.

4 MR. GREEN: If I may have a moment, Your Honor.

5 THE COURT: Sure, take your time.

6 MR. GREEN: Your Honor, I will return to this.  
7 It is in here.

8 THE COURT: All right.

9 BY MR. GREEN:

10 Q. When a commander receives word of a serious  
allegation  
11 of human rights abuse among his troops, what should he  
do?

12 A. The first thing he has to do is find out if that  
13 allegation is reliable. It will be reliable depending on  
14 the source from whence it comes or whatever knowledge he  
15 may have concerning the circumstances connected to that  
16 fact.

17 In the face of any reasonable doubt that this event  
18 has taken place, he must immediately order an  
investigation

19 to take place, because this is a very serious crime.  
This  
20 is a violation of human rights and from that moment the  
21 code of military justice begins to function with all of  
the  
22 articles that set forth the right of the Defendants to

23 defend themselves in a courtroom.

24 Q. If a military commander after conducting an initial

25 investigation or having an initial investigation  
conducted

1 determines that a full scale prosecution is not  
appropriate  
2 for a subordinate accused of human rights violations,  
what  
3 other steps can he take to insure the subordinate is  
4 prevented from committing human rights abuses again?

5 MR. KLAUS: Objection; overbroad, misleading  
6 because it is overbroad.

7 THE COURT: I will overrule the objection, and  
8 you may answer the question if you are able to.

9 THE WITNESS: There are times when the  
10 investigation does not provide us a sure accusation, but  
11 if I as a commander in face of the circumstances that  
12 surround this event, I get the feeling that something  
has  
13 been hidden from me because the general environment in  
14 which I move, my family members, newspapers, my  
neighbors  
15 all tell me that something is going on and that this  
16 investigation hasn't provided me with elements to judge,  
17 then I as a commander immediately go to the area where  
18 these events have allegedly taken place.

19 I meet there with my subordinate commander, be  
it  
20 from the guard or the police or whatever it is, and I  
tell  
21 him what my impressions are, and I tell him in that  
place

and 22 things are taking place that are being hidden from me

23 I will not tolerate this without his immediate relief of  
24 command.

order 25 But that will not be satisfying for me. I



1 that commander, the director of the National Guard, for  
2 example, to call in all of his subordinate commanders  
and  
3 in a firmer manner I express it also to them. I tell  
them  
4 that in their area of jurisdiction events taking place  
5 beyond the commander's control, their control and my  
6 control, and in the credible suspicion that this is  
7 actually happening, I will proceed to relieve of  
command,  
8 I will transfer all alleged guilty parties because I am  
9 not going to allow that this element of violation of  
human  
10 rights grows to become something that is degrading not  
11 only for my command but also for my country because I  
have  
12 powers in the highest conduction of command to transfer,  
13 to remove, to promote or not promote people involved and  
14 all other types of incentives that a commander has over  
15 his troops to reward or to punish real or alleged  
16 behaviors without violating the law.

17 Q. If human rights violations among subordinates occur,  
18 is it important for a commander to set an example of  
19 someone by either prosecuting them, reprimanding them or  
20 reassigning them?

21 A. Yes, in that order.

22 Q. You testified earlier that abuses might grow if not

23 properly addressed?

24 A. Yes.

25 Q. How would the abuses grow?

1 A. Well, if I as a commander do not take all of the  
2 measures I have already mentioned, I could give the sense  
3 to my subordinates that there is permission to do just  
4 about anything, that impunity will govern my command  
5 structure and that they may do within their respective  
6 areas of jurisdiction, they may do whatever they want  
7 because I don't make corrective action in a timely  
manner,  
8 violently to prevent at any cost that an allegation,  
9 accusation so grave as this covers me with shame.

10 Q. Professor Garcia, you use the word impunity. As a  
11 military command structure expert, what is the meaning of  
12 impunity to you?

13 A. The ability to commit crimes without the appropriate  
14 punishment.

15 Q. If a -- strike that.

16 What are the steps a commander should take if he  
17 learns that a facility under his command, such as the  
18 National Guard headquarters, are being used by his troops  
19 to commit torture?

20 A. Always the first step is to determine whether or not  
21 that information is reliable. I also have the obligation  
22 not to offend my subordinates with false accusations.

But

23 if I have a reasonable doubt --

24 Q. Let me stop you there, Professor.

You said you have a duty to determine whether the

1 information is reliable. If it comes from a reliable  
2 source, would you as a military commander require that it  
3 be proven before you would take measures to prevent human  
4 rights violations?

5 A. No.

6 Q. Please continue.

7 A. Then immediately I begin to act personally. There  
is  
8 nothing better in military -- in a military environment  
9 there is nothing better than personal action. The  
presence  
10 of the commander at the place where all kinds of events  
may  
11 take place is a deterrent, so I would immediately go to  
the  
12 place where such a thing has been alleged to have taken  
13 place.

14 I would meet with all parties involved. I would  
15 inspect even the smallest facility within that command so  
16 that -- so as to insure that the event does not continue  
to  
17 happen and I would immediately go forward with all of the  
18 other actions that I have listed earlier.

19 Q. Would you interview prisoners?

20 A. Yes. To determine whether they are legal prisoners,  
21 illegal prisoners, I would talk to them and ask them  
about  
22 the treatment they are receiving, and I would make sure

which 23 that they are completely free to speak to me and for

24 I would do this personally accompanied by no one.

25 Q. Was there any evidence in the record that you have

1 reviewed that General Vides Casanova ever interviewed a  
2 single prisoner?

3 A. There is no evidence. There are statements but I  
have  
4 been unable to prove them.

5 Q. Would it make any difference whether the torture  
6 facility is in his office building or in another National  
7 Guard headquarters 30 or 40 miles down the road?

8 A. Yes, it is different.

9 Q. Would you -- if you received reports that there was  
10 torture occurring in other National Guard headquarters,  
11 would you as director of the National Guard have a duty  
to  
12 investigate?

13 A. Yes, yes. I as director of the National Guard, I  
14 would do what I said earlier. I would go immediately to  
15 the place of the events.

16 Q. Professor Garcia, if a particular military unit is  
17 responsible for repeated abuses, should a military  
18 commander break up that unit?

19 A. He should restructure that military unit.

20 Q. Would that include breaking it up, sending people to  
21 other units?

22 A. To restructure means that I will carry out the  
23 transfers that are necessary throughout all hierarchies

finding

24 because if I am a commander, I have my own ways of

25 out who is the alleged ring leader, who is promoting



collaborate

1 discipline, who is always ready and willing to  
2 with my command. That happens in any organization.

rights

3 It is the principle of leadership, so anything that  
4 interferes with my command, even if I cannot prove a  
5 charge, and in such a sensitive arena that is human

as

6 violations, I use all of the legal measures that I have  
7 a military commander to stop their power, impose  
8 discipline, and if necessary, eliminate them because that  
9 cannot continue.

10 Q. Were there any logistical problems that would have  
11 prevented General Vides Casanova from knowing what was  
12 going on in his own National Guard headquarters?

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

15 THE COURT: The witness may answer if he knows.

16 MR. KLAUS: Lack of proper foundation, lack of  
17 proper predicate.

What

18 THE COURT: Those are too broad objections.

19 do you mean by that?

20 MR. KLAUS: How would he know? He has to lay a  
21 predicate for the source of this information.

22 THE COURT: I sustain that.

23 BY MR. GREEN:

24 Q. Professor Garcia, based upon your review of the  
25 Defendants' depositions in this case --

1 MR. KLAUS: Objection --

2 THE COURT: Let me hear the entire question if  
3 you would, please.

4 BY MR. GREEN:

5 Q. -- and the other documents and records that you  
6 reviewed, was there any evidence that General Vides  
7 Casanova had any logistical problems that would have  
8 prevented him from knowing about torture that was  
occurring  
9 in his own National Guard headquarters?

10 MR. KLAUS: Objection. Insufficient facts and  
11 data upon which to base an opinion on that question.

12 THE COURT: I will let you handle that on cross  
13 examination. I will overrule the objection.

14 MR. KLAUS: Secondly, again, with the  
deposition,  
15 if he is going to refer to the deposition, he is to be  
16 specific where in the deposition.

17 THE COURT: I take it counsel has elaborated  
and  
18 suggested there are other documents. I will let you  
19 handle that on cross examination.

20 BY MR. GREEN:

21 Q. Let me re-ask the question.

22 Professor Garcia, based upon your review of the  
23 depositions in this case from General Vides Casanova, and

in

24 General Garcia and the other evidence that you reviewed

25 this case, was there any evidence of any logistical

1 problems that General Vides Casanova would have had that  
2 would have prevented him from knowing about torture that  
3 was occurring in his own National Guard headquarters?

4 MR. KLAUS: Same objection.

5 THE COURT: Same ruling. You may answer the  
6 question.

7 THE WITNESS: No. He needs nothing for that.

My

8 headquarters is my house, where every day I show up six  
9 o'clock in the morning and I leave ten o'clock at night.

is

10 What logistical means, do I need in order to know what

a

11 going on in every single room in my house, all I need is  
12 good pair of shoes, so there is no logistics involved in  
13 this.

14 BY MR. GREEN:

or

15 Q. Would you occasionally make spot checks at two a.m.

16 four a.m.?

17 A. Yes, that is customary.

18 Q. Would you inspect the second floors and the third  
19 floors of your National Guard headquarters?

20 A. Yes, basement and surrounding areas.

21 Q. Were there any logistical problems that would have  
22 prevented General Vides Casanova when he was Minister of

to

23 Defense from driving three or four miles from his office

24 the National Police headquarters in San Salvador?

25 A. No.

1 Q. Would there have been any logistical problems that  
2 would have prevented General Vides Casanova from  
3 interviewing prisoners at the National Police  
headquarters  
4 in San Salvador in 1993 when he was Minister of Defense?

5 MR. KLAUS: The last part makes it really  
6 misleading. He said --

7 THE COURT: What is the legal basis of the  
8 objection?

9 MR. KLAUS: Misleading and confusing.

10 THE COURT: I will overrule that.

11 MR. KLAUS: Insufficient facts and data upon  
12 which to base the opinion.

13 THE COURT: I will overrule that and let you  
14 treat that on cross examination.

15 BY MR. GREEN:

16 Q. Professor Garcia, let me state the question so we  
17 don't get lost in the objection.

18 Professor Garcia, based on your review of the  
19 depositions and other evidence in this case, were there  
any  
20 logistical problems that would have prevented General  
Vides  
21 Casanova when he was Minister of Defense in June, 1993  
from  
22 driving over three to four miles to the National Police  
23 headquarters and interview prisoners?

24

THE COURT: You said June of '93.

25

MR. GREEN: Excuse me, Judge, I apologize.



1 BY MR. GREEN:

2 Q. Professor Garcia, based on the depositions and other  
3 evidence that you reviewed in this case, were there any  
4 logistical problems that would have prevented General  
5 Casanova when he was Minister of Defense in June, 1983  
6 driving over to the National Police headquarters in San  
7 Salvador to interview prisoners about possible torture?

Vides  
from

8 A. No.

9 Q. Professor Garcia, if a military commander issues  
10 orders to subordinates to respect human rights, but  
11 of abuses are not investigated or punished, do the orders  
12 have any value?

reports

13 A. No, military principles say that no order has any  
14 value if you do not control its compliance.

15 Q. If you do not enforce it?

16 A. Of course, by way of control, I insure its  
compliance.

17 MR. GREEN: May I just have one moment, Your  
18 Honor?

19 THE COURT: Surely.

20 BY MR. GREEN:

21 Q. Professor Garcia, you testified earlier about  
22 situations where you could not as a military commander

have

or

23 enough proof to actually discipline a particular officer

24 subordinate who was accused of human rights violations?

25 A. Yes.

1 Q. But as a military commander you had other options  
2 available to you?

3 A. Yes.

4 Q. Are you aware of any instances when General Garcia  
as  
5 Minister of Defense removed or transferred military  
6 officers with whom he disagreed?

7 A. Yes.

8 Q. Who were they?

9 A. He removed Colonel Majano, M-A-J-A-N-O. He removed  
10 Colonel Majano and 17 officers loyal to Colonel Majano  
from  
11 the revolutionary Junta.

12 Q. Were these the 17 officers who were attempting to  
13 reform the Salvadoran military?

14 A. They were those of the highest rank who were trying  
to  
15 do the reform, but there were many others involved as  
well.

16 MR. GREEN: I have no further questions.

17 THE COURT: I wonder if we might borrow now the  
18 notes of Professor Garcia so we could get copies made  
and  
19 provide them to Mr. Klaus for his cross examination.

20 Why don't we stop at this point for the  
21 mid-morning recess. It is a little earlier than we  
22 normally would do, but it would give Mr. Klaus an

prepare

23 opportunity to look at those notes in an effort to

24 his cross examination.

25 Let's take a recess for about 15 minutes, and

1 then we will come right back and move into the cross  
2 examination.

3 Let me allow the jury to step out.

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

5 THE COURT: Again, Professor, because we are  
6 stopping in your examination, may I ask that you not  
talk  
7 to anyone about your testimony until the cross  
examination  
8 and redirect are completed?

9 THE WITNESS: Yes, sir.

10 THE COURT: Gracias.

11 The court will be in recess for 15 minutes.

12 (Thereupon, a short recess was taken.)

13 (Thereupon, trial reconvened after recess.)

14 THE COURT: Mr. Marshal, would you bring in the  
15 jury, please?

16 MR. KLAUS: Your Honor, I don't know if this  
17 interpreter has been sworn.

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

19 THE COURT: Ladies and gentlemen, please be  
20 seated. Just before I turn to Mr. Klaus, Mr. Klaus, we  
21 have been joined by another interpreter and I wanted to  
22 let you know our other interpreter is also a Federally  
23 certified interpreter. I don't know that I actually

24 administered the oath to either of the prior  
interpreters.

25 I assume that everybody is Federally certified.

1 THE INTERPRETER: My colleague Anna Gomez is  
2 Federally certified, and I, on the other hand, am not.

3 THE COURT: Let me discuss that with counsel,  
and  
4 I will administer the oath retroactive.

5 MR. KLAUS: That is fine.

6 THE COURT: I think it is apparent we have had  
7 the benefit of having fine court interpreters doing  
8 simultaneous interpretation, and one reason we do this  
is

9 so each of the interpreters can spell each other. I  
want  
10 to thank them for the job they have been doing. We have  
11 been joined by a third interpreter. Let me proceed.

12 Let me turn to Mr. Klaus and allow him to cross  
13 examine.

14 MR. KLAUS: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. KLAUS:

17 Q. Good morning, Professor.

18 A. Good morning, sir.

19 Q. You prefer to be addressed as professor or general,  
20 which title do you prefer?

21 A. Colonel.

22 Q. Colonel. Is that what you prefer?

23 A. Yes, that is my title.

24 Q. Thank you, Colonel.

25 Most of the opinions you rendered regarding command



1 structure during your testimony here are universal  
2 principles and universal doctrines regarding command  
3 structure, correct?

4 A. Yes.

5 Q. And they apply essentially to all armed services all  
6 over our world?

7 A. Yes.

8 Q. I want to take time to go through and if I could  
9 have -- since I have that chart up there, let me go  
through  
10 that.

11 Do you know how many members of the armed forces,  
12 armed services of El Salvador there were, including in  
all  
13 those branches indicated on the command chart, during  
this  
14 time period from '79 to '83?

15 A. Yes.

16 Q. And how many?

17 A. Well, starting with the year '79, there were around  
18 13,000 members, and in the year '83, by then we had over  
19 50,000.

20 Q. So '79 there were 30 and grew to 50 by '83?

21 A. Yes.

22 MR. GREEN: Objection -- withdraw.

23 BY MR. KLAUS:

24 Q. And under the universal theories of command  
structure,

25 command responsibility, they would all be under the  
control

1 of Minister of Defense; is that correct?

2 A. Yes.

3 Q. Now, do you know how many letters containing  
4 allegations of human rights violations were received by  
5 Government of El Salvador during that time period?

the

6 A. I don't know the number, but I do know how many I  
7 to read.

had

8 Q. Well, if we heard testimony from a representative --  
9 Mr. McClintock from Amnesty International saying Amnesty  
10 International had issued 175 urgent actions, and the  
11 average response was 5,000 letters --

12 THE INTERPRETER: Can you repeat the last part.  
13 5,000.

14 BY MR. KLAUS:

15 Q. As a result of 175 urgent actions, 5,000 letters per  
16 urgent action were sent to the Salvadoran Government.

How

17 many letters would that make just from Amnesty  
18 International action received by the El Salvadoran  
19 Government regarding human rights actions? Do you want  
20 calculate it?

to

21 A. What is your question? I don't understand it.

22 Q. For the 175, for each 15,000 letters went to the El  
23 Salvadoran Government. Would that mean just based on

24 Amnesty International's actions 875,000 letters were  
25 received by the Government of El Salvador regarding human

1 rights abuses?

2 A. I didn't hear the deposition of Amnesty  
International.

3 I wasn't present in the courtroom then. But I can say  
that

4 under my command their staff charge of receiving all  
5 correspondence, selected and bring to me as commander the  
6 relevant ones, those that I should be reading.

7 All commands have a very high volume of  
correspondence

8 received. There are some things that go to the general

9 staff, there is others that go to logistics, to  
operations,

10 et cetera. The material is selected in each area, and  
then

11 it is sent to the commander of the general staff. The  
12 general staff commander will bring all those pertinent  
13 things to my attention. It is a random number.

14 Q. Okay. Do you know if the Minister of Defense during  
15 the period from January of 1980 to June of '83 had a  
staff

16 in place that screened the correspondence that was  
17 addressed to him?

18 A. I know the military -- I know of the qualifications  
of

19 the general, and I suppose he must have organized the  
20 commanding efforts. I have no reason to doubt that it  
21 wouldn't have been so. In 1989 the general was a very

22 prestigious person in the military because of his  
23 qualifications. I don't have a reason to doubt that he  
24 wouldn't have organized his command.

25 Q. Okay. So, you, from the research you did in  
preparing

1 for your testimony here, you weren't able to discern  
2 whether he actually had a staff to screen his  
3 correspondence or not? I am speaking of the Ministers of  
4 Defense.

5 A. It wasn't an important subject matter for me to  
6 discern on.

7 Q. Okay. Do you know how many officers were in the  
8 military service, everything under the Minister of  
Defense,  
9 how many officers there were during this time period?

10 A. In the whole Salvadoran military structure?

11 Q. Yes.

12 A. There must have been a total number from 200 to 250  
13 officers.

14 Q. And what do you consider an officer? What is the  
15 lowest rank you consider an officer?

16 A. Lieutenant would be.

17 Q. Did the amount of officers remain fairly constant  
18 during that time period even though the members of the  
19 armed services went from 30 to 50,000?

20 MR. GREEN: Objection. He said 13,000.

21 THE COURT: That is not a legal objection.

22 BY MR. KLAUS:

23 Q. Went from 30 to 50,000. I am sorry.

24 A. During a period of time?

25 Q. Yes, during the period from 1979 to 1983.



1 MR. GREEN: Objection. May we approach the  
2 Bench? There is a concern about a particular  
translation.

3 THE COURT: No, let's go ahead, if we can.  
Let's  
4 go ahead, if we can.

5 BY MR. KLAUS:

6 Q. During the period from 1979 to 1983?

7 A. It increased from year to year until we got to the  
8 number that we have established.

9 Q. The amount of officers, do you know if they  
increased  
10 correspondingly from 250, or did that amount remain  
11 constant during that time period?

12 A. Well, it did increase according to the increase in  
13 ranks. Each year the military schools have graduates.  
14 Some years larger number of graduates than others.

15 Q. Now, do you know if during that time period from '79  
16 to '83, was there a military school in El Salvador?

17 A. Yes.

18 Q. And were you familiar with the curriculum of the  
19 military school?

20 A. I had to become too familiarized with those.

21 Q. And do you know if during that time period the  
22 officers were trained to respect human rights?

23 A. There were courses related to that topic.

24 Q. Now, during that time period, did United States

25 Government assist in the training of enlisted personnel

in

1 the El Salvadoran military?

2 A. Yes.

3 Q. And did that training take place outside of the  
4 country, namely in Honduras?

5 A. Can you please repeat the question?

6 Q. Did the United States assist in training enlisted  
7 personnel of the El Salvadoran military during this time  
8 period?

9 A. Yes.

10 Q. And did that military training take place in  
Honduras?

11 A. Well, no, the military training, that occurred in El  
12 Salvador. Sometimes officers and subofficers were sent  
to

13 additional training in United States and Panama, and some  
14 officers, as General Garcia well knows, were sent to  
Chile

15 or other parts of South America. But the main bulk of  
16 instruction was given in El Salvador.

17 Q. And do you know if the United States instructors  
18 instructed the enlisted men to respect human rights?

19 A. I know what I was taught in courses in the United  
20 States, but I wouldn't know what was taught in courses in  
21 El Salvador.

22 Q. Did your research to prepare for your expert  
testimony

23 in this case include researching what the United States

24 instructors instructed the El Salvadoran Army on?

25 A. No.

1 Q. So you don't have knowledge of that?

2 A. It's impossible to know what is taught at each  
3 headquarters or each course, site, only the instructor  
4 would know that, or those receiving instruction. I can  
5 only tell you what I studied in courses in one year, one  
6 year of courses in the United States.

7 Q. Now, what's the primary duty of a military, of a  
8 country's military?

9 A. The first obligation is to serve the nation.

10 Q. Is it to maintain the security of the nation?

11 A. And to guard the borders from any attack from  
abroad.

12 Q. Now, during that time period, was El Salvador  
involved  
13 in a civil war?

14 A. Yes, starting in 1980.

15 Q. Was it threatened from forces outside its borders?

16 A. There was a potential threat, because in those times  
17 when we had an east/west confrontation, there were forces  
18 like the ones in Cuba and it was said that in Cuba they  
19 would send arms to the guerrillas that were operating in  
El  
20 Salvador. It was a potential external threat.

21 Q. And was there a threat from its southern neighbor,  
22 Nicaragua?

23 A. Well, a famous war between El Salvador and Nicaragua

24 because of futbol, that happened many, many years before.

25 Q. That wasn't between El Salvador and Nicaragua, it

was

1 between El Salvador and Honduras, right?

2 A. No, it was Guatemala. I said Nicaragua, pardon me.

3 Q. It was Honduras, correct?

4 A. Well, fine. Well, I am going to cover Central  
5 America. There was a revolutionary movement in  
Nicaragua.

6 The Sandinista movement, and it was said that perhaps it  
7 would reach over to El Salvador with military aid, and it  
8 was another potential threat.

9 Q. Okay. I would like to go to the letter from the  
10 Christian Democratic party that was referred to by the  
11 Plaintiffs' attorney dated January 31, 1980. Could you  
12 bring up Exhibit 499 and R3536.

13 Now, if I understand your testimony, you said in  
your  
14 opinion this is a letter that deserved a response from  
the  
15 Minister of Defense, correct?

16 A. Yes.

17 Q. Because of the gravity of the allegations and the  
18 credibility of the people who signed the letter, correct?

19 A. Yes.

20 Q. Now, this is a letter of members of a political  
party  
21 addressed to the governing body of the country, which was  
22 the members of the revolutionary governing Junta,  
correct?

23 A. Not only to them, but it was also addressed to the  
24 high command.

25 Q. And COPEFA. Do you know what the acronym COPEFA



1 stands for?

2 A. Which one?

3 Q. The third -- it is addressed to three --

4 A. COPEFA?

5 Q. Yes.

6 A. Yes.

7 Q. What was that group, what did it stand for?

8 A. The revolution of 1979 comes about by the efforts of  
9 lower ranking officers. And as a consequence all of the  
10 generals, high ranking generals disappeared from El  
11 Salvador's military ranks. This military revolutionary  
12 created this committee called COPEFA and they implemented  
13 the famous 1979 declaration, revolutionary declaration  
and  
14 they called in three Colonels to take command of the new  
15 revolutionary forces.

16 One of those, Colonel Majano, the other one Colonel  
17 Gutierrez, along with three civilians they make up the  
18 revolutionary Junta. The other one is Colonel Garcia at  
19 that time, at that time he was named Minister of Defense.  
20 They form a permanent committee to be consulted on some  
21 topics that would lead or promote the revolutionary  
22 process.

23 Q. Okay. And that is, COPEFA was the permanent counsel  
24 of the armed forces; is that correct?

25 A. Yes.

1 Q. Okay. And that was made up by the members of the  
2 October 15, 1979 revolution?

3 A. Yes, and they delegated the command to these persons  
4 that I had mentioned before.

5 Q. Okay. Now, was there -- in your research, and I  
know  
6 you consulted with Salvadoran legal documents including  
the  
7 Constitution of the republic of El Salvador, Army  
8 ordinance, military code of justice, the law of  
9 constitutional procedures, the penal code, the penal  
10 procedure code, the armed forces proclamation of  
11 October 15, 1979, the decree 50 and decree 507 --

12 THE INTERPRETER: Can you repeat the last?

13 BY MR. KLAUS:

14 Q. The decree 50 and decree 507. In your review of  
15 those -- and are they all Salvadoran legal documents that  
16 were in effect during this time period from 1979 to 1983?

17 A. The ones that I read were in effect at that time.

18 Q. Okay. Did you find in any of those legal documents  
a  
19 law or ordinance or requirement that the Minister of  
20 Defense consider letters from political parties?

21 A. It doesn't say in any legal document per se that a  
22 letter by an entity or a political entity has to be  
23 investigated, but what does have to be investigated is a

24 credible claim or complaint of some kind of violation.

25 This is what -- this is what the requirements call for.

1 It doesn't specifically say a letter by the Christian  
2 Democrats.

3 Q. Okay. And it is your opinion that this letter  
should  
4 have been investigated for the reasons we talked about  
5 before, correct?

6 A. Yes, sir.

7 Q. Okay. I would like to go through the letter with  
you  
8 so we have a clear understanding of it in its entirety.  
9 Can you highlight the first two paragraphs?

10 A. Yes.

11 MR. GREEN: Your Honor, may I give the witness  
12 the Spanish version?

13 THE COURT: Surely.

14 BY MR. KLAUS:

15 Q. This says the Christian Democratic party -- how many  
16 political parties were in existence in El Salvador during  
17 this time?

18 A. I don't know the exact number.

19 Q. Was it more than ten?

20 A. No, less than ten.

21 Q. Okay. So, "The Christian Democratic party, in  
22 analyzing the current situation, has arrived at the  
23 conclusion that it is necessary and urgent to present the

obtain 24 following position paper to the armed forces and to  
25 from the armed forces a clear and concrete response. In

the  
1 view of the relation between the matters discussed and  
2 success of the process of the social change that we have  
3 initiated."

about  
4 Now, they are talking about -- are they talking  
5 the process that they initiated -- they are talking about  
6 the revolution of October 15, 1979?

7 A. Yes.

8 Q. That happened about three and a half months before  
9 this letter was drafted?

10 A. Yes.

11 Q. And then goes on to say, "The political pact that we  
12 entered into at the beginning of this month had, as its  
13 foundation, the conviction shared by the armed forces and  
14 by the Christian Democratic party, of the necessity of  
15 structural changes and respect for human rights; if our  
16 common undertaking is to advance a revolutionary and  
17 democratic process, it is evident that this cannot  
succeed  
18 if human rights are systematically violated and there is  
19 produced in the country a climate of repression."

is  
20 Is the pact they are referring to, political pact,  
21 that referring to the formation of the Junta?

22 A. Well, it is an indirect reference to the Junta.

23 Q. Okay. And is it your opinion that a country -- no

24 country can maintain its stability or security if it  
25 continually represses human rights; is that correct?



1 A. That's correct.

two

2 MR. KLAUS: If you could go down to the next  
3 paragraphs, highlight them.

4 BY MR. KLAUS:

last

5 Q. "This position paper refers specifically to this  
6 point, in that it involves the action of the armed forces  
7 and the role that the armed forces should play in the  
8 process of change. First, we will set forth some factual  
9 considerations, and then we will move on to the analysis  
10 of these facts, in order finally to present our concrete  
11 views."

going

12 And that outlines what the rest of the letter is  
13 to be about, correct?

14 A. Yes.

begin

15 Q. Now, the next paragraph, the facts. Is where we  
16 the 18 -- description of the 18 -- 19 instances of human  
17 rights abuse, and goes on to say, "During the present  
18 we have been verifying events of a repressive character  
19 that form a pattern of behavior."

month

20 They are dealing with the month of January, 1980,  
21 correct?

22 A. Uh-huh.

23 Q. "We do not refer to all of these events, but only to  
24 those that our party has through various means been able  
to  
25 verify; nor do we refer solely to repressive actions  
taken

1 against members of our party, but also actions against  
2 citizens of no political party, and members of other  
3 groups, because we consider that human rights are  
inherent  
4 to the individual independently of how such person  
thinks."

5 That was one of the fundamental items in the  
6 proclamation, the initial proclamation, correct?

7 A. Yes.

8 Q. That people in El Salvador should have the right to  
9 think and believe the way they wish?

10 A. That was the hope of the revolution.

11 Q. Okay. Now, is there any -- I would like to draw  
your  
12 attention to some of the specific cases. I won't go  
13 through them all.

14 MR. KLAUS: Page 3539, 18 and 19 if you can  
15 highlight those two.

16 BY MR. KLAUS:

17 Q. These are instances where they actually name the  
18 alleged perpetrators?

19 A. One moment, I haven't found it.

20 Q. I am sorry.

21 A. Okay.

22 Q. And this is violations of human rights and by actual  
23 members of the military, correct?

24 A. Yes, yes.

25 Q. Where it says, "Colonel Servio Tulio Figueroa,

1 departmental commandante of Santa Ana, has declared  
2 publicly to his patrols that they should combat the PDC -  
- "

3 PDC is Christian Democratic party, correct?

4 A. Yes.

5 Q. "-- because it is subversive."

6 A. That is what it says.

7 Q. Okay. Was that against the orders of Colonel  
Garcia?

8 A. Well, there are some points -- there are some points  
9 as to one you have just chosen. That doesn't make a  
10 concrete allegation of a human rights violation, but I  
can

11 point out to you some that do.

12 Q. Okay. Let's go to the next one. Colonel Agir  
13 Benavides, departmental commandante of Chalatenango,  
14 refuses to communicate with the current mayor and  
governor  
15 of the department; by contrast he maintains close  
relations

16 with the representatives of the PCN and ORDEN."

17 Now, what was ORDEN?

18 A. It was an illegal paramilitary organization.

19 Q. By that time it had been outlawed and made illegal  
by  
20 the new Junta, correct?

21 A. It was one of the first decrees of the Junta, to  
22 designate the operations of that paramilitary group as

23 illegal.

24 Q. Okay. That was even contained in the proclamation,

25 correct?

1 A. Yes.

2 Q. "And they have released unleashed a wave of  
repression

3 in the department, especially in Las Vueltas, Arcato, San  
4 Jos, Las Flores, San Antonio La Cruz, and Nueva Trinidad.

5 In these operations there have been reports of murdered  
6 peasants, destroyed homes and stolen property. Major  
7 Cienfuegos, second officer of the barracks, was the one  
who

8 led the operation in Agua Caliente, and in that very town  
9 on January 30, the mayor, a member of the PDC Leopoldo  
10 Guevara was beaten by the Army."

11 That is a specific instance, correct?

12 A. Of a series of specific events.

13 Q. Okay. Is there any other ones that you want to  
bring

14 to our attention that were mentioned in these 19 events?

15 A. Yes, I could start with the first one, and then I  
16 could go on.

17 Q. Okay. If you want -- do you want -- if you want to  
18 summarize them, would it be fair to say these were  
actions

19 taken either by members of the military -- generally by  
20 members of the military against civilians, correct?

21 A. Yes.

22 Q. And all illegal?

23 A. Most illegally.

next 24

MR. KLAUS: Okay. Now, if we can go to the

25 paragraph and highlight that.



1 BY MR. KLAUS:

2 Q. "As we have said above, the events described here  
have  
3 been reported to the PDC through the party's own  
channels,  
4 for which person we are able to -- for which reason we  
are  
5 able to confirm the above accounts. The COPEFA,  
Permanent  
6 Counsel of the Armed Forces, was established in order to  
7 guard against any deviation from the process initiated on  
8 October 15. We consider that these events constitute  
such  
9 clear deviations that a serious crisis is developing in  
the  
10 process of change and democratization. This is one of  
the  
11 reasons for which the PDC feels obligated to point out,  
in  
12 order to prevent a situation such as the present from  
13 bringing the Government into total crisis."

14 Now, this is during the time period where there had  
15 been a revolt from within the Army, correct?

16 A. This is a period of time that comes about after a  
17 military revolution.

18 Q. Okay. Now, would there have been a breakdown in the  
19 chain of command and in the command structure because of  
20 the revolution, because of the military revolt?

21 A. No.

22 Q. Even though a group of young officers threw out all  
23 the generals, there is not a breakdown in command?

24 A. I already stated that the first thing the revolution  
25 does is to again constitute order in the commander, the

1 Junta, two military representatives, two colonels. And  
to  
2 command the security and military forces, they place a  
3 colonel, a reliable colonel.

4 COPEFA delegates in those officers and they place  
the  
5 command under reliable military colonels and they also  
6 maintain a state of alert to watch out -- they maintain a  
7 state of alert so that the principles of the revolution  
are  
8 strictly observed and this is what the party, the  
Christian  
9 Democratic party is promoting. They don't want these  
10 principles to be abandoned, and they had started to  
deviate  
11 from that.

12 Q. Now, it was the revolutionary government that  
13 appointed who was then Colonel Garcia to be Minister of  
14 Defense, correct?

15 A. Yes. And they did not restrict him in any of the  
16 legal powers that he possessed. I don't think he would  
17 have allowed it either.

18 Q. Okay. Also, the revolutionary government, as one of  
19 its first acts, it adopted and ratified all the laws that  
20 had been in existence, including the Constitution, the  
laws  
21 that I mentioned earlier, the Constitution of the  
Republic,

22 Army ordinance, military code of justice, the law of  
23 constitutional procedures, penal code, the penal  
procedure  
24 code?  
25 A. They were not replaced by other documents.

1 Q. Okay. But they were specifically ratified by the  
2 revolutionary government to remain in force?

3 A. There was no formal act to do so. It was just a  
fact.

4 Q. Okay. Now, if we can go down to the analysis. Now,  
5 this is the Christian Democratic party's --

6 A. Let me look for it.

7 Q. Right after paragraph 19.

8 A. I've lost my place.

9 Q. That is okay. Take your time.

10 A. Yes, I found it.

11 Q. Okay. Now, this is the author, at least of the man  
12 who signed this document, at least this is their  
13 analysis --

14 A. Yes.

15 Q. -- of the situation in the country described in the  
16 prior 19 paragraphs?

17 A. Yes.

18 Q. And they are saying that all items mentioned above,  
19 meaning human rights abuses, have three characteristics  
in  
20 common. "They implicate members of the security forces,  
21 especially the National Guard, the local commandantes and  
22 civilian paramilitary groups such as ORDEN.

23 "They occur in various locations in the country,  
24 presenting a generalized character.

span, 25

"And they all have occurred within a short time

1 that is within the present month of January, 1980, which  
2 coincides with the period of New Revolutionary Government  
3 Junta."

4 And then the analysis goes on further and says, "We  
5 are not unaware that acts such as those mentioned can be  
6 attributed to personal vengeance or the desire of certain  
7 individuals to hold onto power, but the characteristics  
8 that are revealed by analysis of the situation bring us  
to  
9 the conclusion that we are seeing a conscious strategy of  
10 destabilizing -- destabilization of the government,  
carried  
11 out for the fundamental purpose of preventing the  
12 realization of structural changes, so creating a  
13 generalized climate of repression in the country. It is  
14 obvious that such a strategy accords with the economic  
and  
15 political interests of the Right that --"

16 MR. KLAUS: Go to the next page, highlight the  
17 top.

18 BY MR. KLAUS:

19 Q. "-- having maintained a status quo for so many  
years,  
20 now feels itself threatened by the social changes that  
the  
21 armed forces proclamation of October 15, 1979, and the  
22 platform of the government provide for, and that this

23 government is committed to bring about."

24 Does that refer to elements of the military that

25 remained even after the revolution of October 15, 1979,



military

1 still remained in positions of command within the  
2 as well as paramilitary groups and other right-wing

groups?

in

3 A. It refers to civilian components that also remained  
4 their positions after the revolution, not only the

military

5 elements. It refers to ideologies of the political  
6 parties, but this does not by any stretch of the

armed

7 imagination eliminate the problem that members of the

8 forces were directly involved in abuses of human rights.

9 Q. Exactly, let's go to the next paragraph. You can  
10 highlight that.

be

11 "In view of all this, and bearing in mind that  
12 elements of the armed forces are involved in repressive  
13 acts, we are now presented with the problem of explaining  
14 the political responsibility for these acts, in order to

they

15 able to correct them. This point is extremely important,  
16 because since the success of the social changes requires  
17 the free participation of the people in those changes,  
18 cannot be carried out in a climate of repression."

19 So, again, they are referring to there are still  
20 members of the armed forces that want to maintain the  
21 status quo from 150 years to -- and repress any opposing

22 views, correct?

you

23 THE INTERPRETER: I apologize, counsel, could

24 repeat the final part of the question. 150 years.

25

1 BY MR. KLAUS:

2 Q. And repress any opposing views?

3 A. No. They don't say that.

4 Q. Well, they said that above, right? Go back to the  
5 top.

6 A. If you would allow me to tell you, I as a military  
7 commander are not concerned with the positions,  
ideological

8 political positions or the political confrontations for  
the

9 struggle for power that manifest themselves. What I am  
10 concerned with is the behavior of my subordinates,  
because

11 I have the command responsibility that is inherent to my  
12 function, that politicians have every right to have all  
the

13 fun they like with politics, but I as the commander of  
the

14 armed forces cannot ever become an instrument of any  
other

15 force, and I cannot allow that my members become involved  
16 in illegal activities. That is my mission.

17 Q. Well, wasn't that the whole purpose of the  
revolution,  
18 was to make military subordinate to a civilian force?

19 A. That was the purpose of the revolution.

20 Q. So you as a military commander, you are subordinate  
to

21 your civilian leaders, correct?

22 A. Yes.

23 Q. That was the whole purpose of this revolution,  
wasn't

24 it?

25 A. That was the purpose of the revolution.

1 Q. So you have to concern yourself with the politics,  
2 don't you?

3 A. I may become interested as a person but not as a  
4 military officer. We have demonstrated this in excess,  
5 that when we, the military officers, get involved in  
6 politics, those that end up suffering the consequences of  
7 that are the innocent people.

8 Q. Exactly. And wasn't that the root of the problem  
9 here?

10 A. That is why the revolution is carried out, that is  
why  
11 for political purposes a council is seated and that is  
why  
12 they appoint a military commander with power and prestige  
13 and experience to take over the military organization, to  
14 discipline it, to command it, to organize it and to lead  
it  
15 to the most noble purpose of that revolution and not to  
16 respond to interests of different factions.

17 Q. Exactly. Can that be accomplished -- I mean, could  
18 that have been accomplished in two and a half months in

El  
19 Salvador?

20 A. No, that was to be achieved in a progressive manner.

21 Q. Okay. Then the members of the Christian Democratic  
22 party, if you go down to, "Accordingly, two hypotheses

they

23 suggest themselves." They have as way of explanation,  
24 have two hypotheses of what is occurring or what could  
25 occur?

1 A. Yes.

2 Q. And the first hypothesis says, "If the armed forces  
3 maintain their hierarchal unity, and if the principle of  
4 vertical command structure is in operation -- was the

armed

5 forces hierarchy -- hierarchal unity maintained at that  
6 time?

7 A. No.

8 Q. Okay. And was the principle vertical command  
9 structure in operation at that time?

10 A. From the level of Minister of Defense and below it

was

11 in operation. The problem was upstairs in the military  
12 Junta, where you had two tendencies in a struggle and  
13 tendencies were led by well-known men.

those

14 Q. Okay. Let's go on, then. "The facts described

above

15 necessarily lead to the conclusion that the high command

of

16 the armed forces has a strategy that includes the wave of  
17 repression that is scourging the country. If this were

the

18 case, the government would stand for the principle of  
19 reforms with repression. This is an approach that not

only

20 contradicts the ideological principles of Christian  
21 democracy and its political practice over 20 years of

22 struggle, but also has shown itself in practice to be an  
23 increase in repression and a failure to carry out  
reforms.

24 The social change that we propose and that we have always  
25 struggled for is not totalitarian, but rather democratic



life. 1 and implies a devotion to democratic norms of social  
is 2 It is this that our parties has always defended and that  
of 3 the spirit of the movement of October 15, '79. The  
4 Christian Democratic party strongly affirms this scheme  
5 reforms with repression contradicts and violates the  
6 essence, the spirit and the letter of the political pact  
7 that the armed forces contracted with the political pact  
8 and that the armed forces contracted with the PDC."

9 So the hierarchy was not in place?

10 A. No. I didn't say that.

11 Q. Okay. I thought you did.

12 A. No, I didn't say that. If you like, I will repeat  
13 what I said.

armed 14 Q. Okay. I asked you if the hierarchy unity of the  
15 forces had been maintained during this time period.

Junta, 16 A. I told you that the division existed above the level  
17 of commander of the armed forces within the military  
18 and the high command, there were two tendencies and they  
19 both had a visible leader. One was Colonel Majano, the  
20 other was Colonel Gutierrez.

21 And unfortunately for El Salvador, the commander of  
22 the armed forces, which is to say Colonel Garcia, became

which

23 involved with the tendency led by Colonel Gutierrez,  
24 is the one that is being denounced by the Christian  
25 Democratic party in this letter.

was 1 And the tendency that Colonel Majano wanted, which  
2 more democratic, more for his country is defeated. He is  
3 later on eliminated. And not only he is eliminated, but  
4 also his main followers, all members of COPEFA.

5 Q. I want to go to the second hypothesis.

the 6 If the hierarchical unity is not maintained within  
7 armed forces and the principle of vertical command  
8 structure has been ruptured, this situation has resulted  
9 either from the disobedience on the part of the lower  
10 levels of command, or because the external command  
11 hierarchy structure has been infiltrated into the official  
12 and it is those external forces that order and carry out  
13 the strategy of the anti-democratic repression."

14 Has that happened at that time?

15 A. No.

a 16 Q. "Such a situation would present the grave danger of  
17 divided armed forces."

that 18 In your opinion were the armed forces divided at  
19 time?

20 A. It was divided at the upper structure.

21 Q. Okay. "And would strike against the necessary  
22 ideological, programmatic and strategic unity that is

23 required by the revolutionary democratic government; it  
24 would keep the government in a permanent state of --"

25 MR. KLAUS: If you go to the next page.

1 BY MR. KLAUS:

2 Q. "-- insecurity, permanently open to attack from the  
3 rear, and would even place at risk the very survival of  
the  
4 Army. For these reasons, the Christian Democratic party  
5 wants it to be clear that this situation too nullifies  
the  
6 agreed to pact, since a necessary condition for  
compliance  
7 with that pact is that the armed forces commit itself as  
a  
8 whole to carry the pact out.

9 "Whichever of these hypotheses is correct, the fact  
is  
10 that the present situation urgently requires correction,  
in  
11 order to allow realization of the program contained in  
the  
12 pact, because without such correction, the pact will  
remain  
13 mere words of no practical effect, and if the Christian  
14 Democratic party has accepted responsibility of being in  
15 the government, it is in order to produce facts, not  
words.

16 "In this regard, we note particularly that these  
17 actions occurred in this month and they present a picture  
18 of reversion to repressive and anti-democratic practices  
19 that had been kept in check since October 15."

20 MR. KLAUS: You can go onto the next paragraph.

21 BY MR. KLAUS:

22 Q. Then the Christian democrats make some proposals.

23 "In formulating our proposals, we start from the  
24 premise that the first hypothesis is not the correct one,  
25 because if it were, that would clearly imply the

1 groundlessness of the political pact and a complete  
2 redefinition of the government. Accordingly, our  
proposals  
3 intend to correct the situation described in the second  
4 hypothesis."

5 That is the hypothesis that sets forth that the Army  
6 itself is divided.

7 "Consequently, they relate to the field of both  
8 politics and military affairs. We will continue to  
insist  
9 that the solutions will have to be political-military in  
10 nature."

11 That is a dangerous mix, mixing politics and  
military.  
12 I mean dangerous for the population for the citizens, for  
13 the people of El Salvador?

14 A. This is not an empty document that doesn't consider  
a  
15 situation that was beginning to be perceived in El  
16 Salvador. This is not just empty considerations by a  
party  
17 that had supported the revolution.

18 Q. Of course not.

19 A. From the very beginning of the revolution two  
20 tendencies emerge.

21 Q. Let me ask you the question again --

22 THE COURT: You must allow the witness to  
answer

23 the question.

24 MR. KLAUS: It is not responsive.

25 THE COURT: Let's hear the answer.



1                   THE WITNESS: Two tendencies emerge. The  
danger  
2                   that was perceived in El Salvador at that time, as well  
as  
3                   in many countries in the Americas, is that communism  
were  
4                   to gain a beach head. That was the time when everyone  
5                   said if the Communists get in here, and that happens in  
6                   not only in El Salvador but in many nations of the  
7                   Americas and in my own country specifically, there is a  
8                   political military strategy that states that in order to  
9                   prevent Communists from getting a foothold in my  
country,  
10                  what I have to do is not only eliminate all the  
11                  Communists, but also all of those tendencies that  
12                  supposedly support communism.

13                  So, anyone who thinks that you have to help out  
14                  the poor, anyone who thinks you have to maintain  
Christian  
15                  principles for the people, he who cares at hospitals for  
16                  the needy, people of the cloth who proclaim -- religious  
17                  workers who proclaim the life of cries are at the very  
18                  least accomplices if not suspects.

19                  And in order for this idea not to be able to  
20                  progress, we will punish it, we will terrorize it, and  
if  
21                  necessary we will force them to disappear.

defeat 22                   And the other tendency is the only way to

23                   Communism is by way of long-term results, and this is by

24                   presenting a Democratic system, a wide spectrum of

institutions 25                   political opinion, correct functioning of the

1 of democracy, love for freedom and let he who is best  
2 followed by the people win in civilian contests.

States,

3 Now, that seems so natural in the United

4 it sounds that I am stating something that is very  
5 obvious. You are not going to get into gun battles in  
the

6 middle of the street or exercise violence against common

7 citizens just because they think in a different manner  
as

8 opposed to President Bush. You will try to win in a  
9 Democratic voting process.

10 Unfortunately, the violent tendency won in El  
11 Salvador. Not only in El Salvador but in the majority  
of

12 the countries. But it is being demonstrated over the  
13 long-term everyone who was involved in that particular  
14 violent tendency sooner or later will be captured by the  
15 long arm of justice, because the end will never justify  
16 the means. In my country fortunately those who

repressed

17 are now in jail.

18 THE COURT: Let me just stop and go back now to  
19 Mr. Klaus so he can ask his next question.

20 Mr. Klaus.

21 MR. KLAUS: If you go down and highlight under  
22 3.1.

23 BY MR. KLAUS:

24 Q. These are specific proposals by the authors of this

25 letter, correct?

penal

1 A. Yes.

2 Q. Okay. They include the, "Effective dismantling of  
3 ORDEN, supplementing the decree by application of the  
4 code to those who violate it. In this regard --"

5 A. Counsel, sorry, I haven't found it yet.

6 Q. I am sorry, under 3.1.

7 A. A page, I think I am missing a page.

8 MR. GREEN: Your Honor, if we have a moment, we  
9 will try to find a page.

10 THE COURT: Yes.

11 THE WITNESS: I don't have that point here. I  
12 just have 3.2, I am missing 3.1.

13 MR. KLAUS: I am missing 3.1 in my Spanish  
14 version, too.

15 THE WITNESS: I will follow the screen. Yes.

16 BY MR. KLAUS:

17 Q. Political field, these are proposals. "Effective  
18 dismantling of ORDEN, supplementing the decree by  
19 application of the penal code to those who violate it.

In

20 this regard, there must be issued a clear directive  
21 prohibiting meetings of members of ORDEN, which order  
22 should be read in every locality. At the same time,  
23 similar instructions will be given to all military

members 24 authorities so that they will proceed to disarm the  
the 25 of ORDEN, and in the event that they do not comply with

and 1 prohibition contemplated here, they should be arrested  
2 turned over to The Court.

3 "Dismantling of the PCN; for this, proceed at the  
4 national level with the immediate removal of all  
government 5 officials belonging to the PCN."

6 What is the PCN?

7 A. It was the party that had supported the dictatorship  
8 that was there before, that was combatted by the  
9 revolution.

10 Q. That was the party of Romero, the reposed military  
11 dictator, correct?

12 A. Yes, sir.

13 Q. "Especially justices of the peace, directors of  
14 officers of ANTEL."

15 What is ANTEL?

16 A. ANTEL is the national telecommunications entity that  
17 was under the control of the armed forces. Colonel  
Garcia 18 was director of ANTEL.

19 Q. And mayors?

20 A. Yes.

21 Q. "At the national level, decree the illegality of the  
22 PCN political party given its anti-democratic tradition.  
23 The assets of the PCN should pass to the state.

the

24 "Give a public demonstration that the activity of

25 Right that is proclaiming to follow the government and



1 carrying out concrete repressive actions will not be  
2 tolerated. For this we propose criminal prosecution of  
3 those persons who have made such declarations."

4 MR. KLAUS: Can you go back to the previous  
page  
5 on the bottom?

6 BY MR. KLAUS:

7 Q. Now, if the revolutionary Junta, and the  
proclamation  
8 of the armed forces didn't want people repressed or  
9 prosecuted for their beliefs, isn't part of these  
10 recommendations, these proposals proposed to do just  
that?

11 A. No.

12 Q. What about where it says make a political party  
13 illegal because it has a history of undemocratic  
tradition,  
14 isn't that prosecuting a party because of its beliefs?

15 A. It was a party that was never within the canons of  
16 democracy. It was the one that led the country to live a  
17 very perverse dictatorship throughout many years.

18 And the persecution is not the same thing -- not the  
19 same kind of persecution that this political party had  
when  
20 it was in power. It states here that it has to be taken  
to  
21 the civil courts, to the corresponding civil courts so  
that

22 they may be judged, and that is a right afforded by  
23 democracy.

24 MR. KLAUS: Let's go to the next page, if you  
can

25 highlight that. The top.

1 THE WITNESS: 3.2?

2 BY MR. KLAUS:

3 Q. Right. No, not 3.2, yet. Still under 3.1.

4 "We propose these measures because we are convinced  
5 that it is urgently necessary to dismantle the repressive  
6 system that the Right has imposed on the country for 50  
7 years, and just as much because it is urgently necessary  
8 put a stop to the conspiracy that those elements are  
9 plotting against the current government.

to

10 "We note that the measures to be taken for social  
11 order with respect to the actions of the ultra-left are  
12 included in this document because --"

not

13 MR. KLAUS: Can you scroll down, A and B.

14 BY MR. KLAUS:

15 Q. "They will be the result of the political military  
16 strategy that a specific commission is now preparing.

17 "The armed forces and the PDC must reach an  
18 ideological, political and strategic unity, to be able to  
19 bring about, with concrete actions, a change in the  
20 repressive image that is currently projected by the  
21 government and so to reach a point where the people will  
22 support not only the social measures but also the  
23 measures to reestablish the authority of the state."

political

24           That last part where it says of the ultra-left, are  
25 they referring to the Communists?

measures 1 A. The ultra-left, those that would use violent

2 to attain in their political objectives.

that. 3 Q. Okay. Now go down to 3.2, and I think you have

4 A. Yes.

field. 5 Q. And these are proposals regarding the military

6 "Starting from the premise that the high command of  
7 the armed forces has the firm conviction to advance the  
8 democratic process and the agreed on social changes, we  
9 must take appropriate measure so that the decision will  
not

10 be violated by the intermediate and local level commands  
11 and by persons external to the armed forces.

12 "For this reason the revolutionary Junta and the  
13 military high command should communicate their decision  
to

14 all levels of the armed forces, especially in the  
security

15 forces, in such a manner that no one can claim ignorance  
of

16 the objective of this position and carry out or order  
17 actions contrary to the spirit of creating within the  
18 entire nation a positive image of the Army and of the  
19 government."

20 Then underneath, "We propose:

21 "A. That the revolutionary government Junta,  
together

precise

22 with the high command, call together all of the  
23 departmental commandantes, and in writing give them  
24 instructions as to how they should proceed, letting them  
25 know they will have to communicate such instructions to

1 their subordinates both orally and in writing, and in the  
2 event those orders are violated, they will be removed  
from  
3 their positions. Similarly, all officers and  
4 noncommissioned officers with command will have to  
confirm  
5 receipt of such orders in writing. The Minister of  
Defense  
6 will make sure every officer knows the content of the  
7 directive."

8 Do you know if that was done by Colonel Garcia?

9 A. He did not.

10 Q. In your research, you couldn't find that he did  
that?

11 A. I didn't find a trace of that. And even more so,  
the  
12 Social Democratic party is establishing what I had  
13 explained before, what had to be done under the armed  
14 forces.

15 Q. The Social Democratic party, we are talking about  
the  
16 Christian Democratic party, right?

17 A. Yes.

18 Q. Did you say Social Democratic party?

19 A. The Democratic.

20 Q. Christian Democratic party. Okay.

21 A. Christian Democratic party. It is changed position  
in

22 Spanish.

23 Q. It doesn't change from the Christian to the Social

24 Democratic party, does it?

25 A. No. I didn't say that.



1 Q. If you go to the next page.

2 "In the security and territorial forces, we propose  
3 that the same meetings be called and, in the presence of  
4 the Minister and Subsecretary of Defense, the orders are  
5 given to carry out the directive, a copy of which should  
be  
6 signed to confirm knowledge of it, and to then be  
forwarded  
7 to the cantonal commandantes."

8 Okay. And then it lists what the directives must  
9 contain.

10 MR. KLAUS: If you can scroll down.

11 BY MR. KLAUS:

12 Q. So the Christian Democrats are suggesting that  
Colonel  
13 Garcia should issue an order to all the armed forces  
14 containing these directives, "Express prohibition against  
15 beating or verbal mistreatment of any person in  
detention.

16 "Express prohibition against intervening to disperse  
17 meetings, demonstrations or other public actions, except  
18 with the express authorization of the high command or the  
19 director general of the security force.

20 "Express prohibition --"

21 A. Number, please, counsel? Number.

22 Q. Number three. "Express prohibition against  
arresting

political 23 any person on the mere grounds of membership in a

24 organization."

25 Number four. "In every arrest there must be present

1 at a minimum one officer in uniform."

2 Number five. "Every person detained for reasons of  
3 public political order must be permitted to make one  
phone  
4 call upon entering the security force that is holding  
him,  
5 such phone call to be paid for by the state."

6 Number six. "Every detained person will be turned  
7 over to the courts within a period provided by law, if  
8 there is a valid case."

9 Number seven. "In the case of expulsion of  
occupiers  
10 from factories, ranches or other places that have been  
11 taken, the order for such action can only be given by the  
12 high command."

13 Number eight. "Every officer and noncommissioned  
14 officer who sends false and misleading information to his  
15 superior will be punished or removed from his position,  
16 according to the gravity of the case."

17 "B. Make publicly known removals from office and  
18 exemplary changes of those members of the armed forces  
and  
19 security forces who have ostentatiously flaunted their  
20 repressive attitude contrary to the democratic objective  
of  
21 the state.

22 "Specifically we emphasize necessity of dismissing  
the

23 following persons:

24 "National Guard Post Commandante of Tejutepeque.

25 "National Police director of Ilobasco." And go on.

1           "National Guard Post Commandante of Ilobasco.  
2           "The Departmental Commandante of Chalatenango,  
Colonel  
3    Agir Benavides.  
4           "Captain Ciro Lopez of the National Guard.  
5           "Departmental Commandante of Chalatenango, Jesus  
6    Vargas.  
7           "Major Cienfuegos of the Chalatenango barracks.  
8           "Local commandantes of the following towns, Las  
9    Vueltas, Arcatao, San Jose Las Flores, San Antonio La  
Cruz,  
10   Nueva Trinidad, Nueva Concepcion, Agua Caliente, and  
11   Azacualpa of Chalatenango and Conchagua.  
12           "And National Guard Post Commanders of La Palma, San  
13   Ignacio, Citala, Tejutepeque, Comasagua and Cancasque."  
14           Do you know if any of those men were removed?  
15   A.    I have no information of the removal of any one of  
16   those.  
17   Q.    Okay.  And "Chiefs and officials --"  
18           MR. KLAUS:  If you can keep going down --  
19           THE COURT:  Mr. Klaus, we are at a point where  
we  
20   need to take a break for the luncheon recess.  Why don't  
21   we stop at this point.  Let's stick to our schedule and  
we  
22   will come back at quarter of two and continue with the  
23   cross examination.

24                    Let me allow the jury to step out of the  
25    courtroom.

1  
courtroom.)

(Thereupon, the jury retired from the

2 THE COURT: Colonel, you may step down. Thank  
3 you, sir.

4 Please be seated, ladies and gentlemen.

5 Let's take a moment for scheduling purposes,  
6 Mr. Klaus, may I ask you in terms of the cross  
7 examination, do you have a sense of how much longer you  
8 will be going?

9 MR. KLAUS: Probably about 45 minutes.

10 THE COURT: How about redirect?

11 MR. GREEN: No more than 15.

12 THE COURT: The next witness is Ms. Popkin?

13 MR. STERN: Yes, Your Honor.

14 THE COURT: Okay. How are we going to do with  
15 direct and cross. I know you were concerned, there was

a

16 issue of her availability.

17 MR. STERN: If the estimates are accurate, we  
18 stand a good chance of completing her this afternoon.  
19 That would be my goal, so she could go back to  
Washington.

20 THE COURT: Why don't we try to do that. I  
don't

21 want to limit anybody in terms of direct or cross. We  
are

22 moving along. Okay.

two

23                   Let's take a break and pick up at quarter of  
24                   and continue on with the testimony.  
25                   (Thereupon, a recess was taken at 12:30 p.m.)



1 (Trial reconvened after recess at 1:45 p.m.)

2 MR. GREEN: Judge, there is one brief matter.

3 During cross examination of Colonel Garcia, Colonel  
Garcia

4 initially testified in Spanish that there were trace  
mil,

5 T-R-A-C-E, M-I-L, 13,000. Mr. Klaus in his next  
question

6 said 30,000. The interpreter corrected Mr. Klaus from -  
-

7 instead of treinta, T-R-E-N-T-A, to T-R-A-C-E.  
Professor

8 Garcia entered yes.

9 I've spoken with Mr. Klaus and the interpreter,  
10 and I think we have agreed to correct the record to  
11 reflect --

12 THE COURT: Well, I think the record is  
correct.

13 The Colonel said whatever he said, and if you want to  
14 handle that on redirect, you can. I think you are  
right,

15 he said 13. I think Mr. Klaus misunderstood him, and  
16 thought he said 30.

17 I think that is how you should handle that.

18 MR. KLAUS: I thought he said 30.

19 THE COURT: I know you did. Mr. Green picked  
up  
20 on it, and waited, started to object and then it came  
out

21 the second time.

22 MR. GREEN: I will correct it on redirect.

23 MR. KLAUS: I will correct it.

24 THE COURT: All right. Right.

25 Was there some other matter you wanted to  
raise?

1 MR. GREEN: No, Your Honor, we do need to bring  
2 in Professor Garcia.

3 No, Your Honor.

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

5 THE COURT: Ladies and gentlemen, please be  
6 seated, when we stopped for the luncheon break, we were  
in  
7 cross examination. I will turn back to Mr. Klaus so he  
8 can proceed.

9 MR. KLAUS: Thank you, Your Honor.

10 If I could have the page where we were and  
11 highlight that.

12 BY MR. KLAUS:

13 Q. These again are proposals made by the members of the  
14 Christian Democratic party who authored this letter,  
15 correct?

16 A. Yes.

17 Q. They go on to propose and recommend that, under  
letter  
18 C, that, "Chiefs and officials who can be considered  
19 instigators, participants or abettors of possible  
20 infiltration by external command should be transferred  
out  
21 of the country as military attaches."

22 Does that refer to chiefs and officials who may be  
23 taking orders from people outside their chain of command?

24 A. Not necessarily.

25 Q. Okay. And D is, "The work of the Political Military

1 Commission should be accelerated with the goal that the  
2 armed forces may maintain public order in accordance with  
3 precise norms."

4 Then the letter goes on, "We cannot do less than  
5 insist on the fact that the entire nation is feeling an  
6 escalation of repression --"

7 A. One moment, counsel.

8 Q. I am sorry, this is after D, it should be on the  
last  
9 page.

10 A. Page, please?

11 Q. In the Spanish version it's page ten.

12 A. Yes.

13 Q. "We cannot do less than insist on the fact that the  
14 entire nation is feeling an escalation of repression to  
15 levels even more serious than in the times of the fascist  
16 PCN governments, and dismay spreads throughout the world  
to  
17 the point that there are some countries that are  
18 considering termination of diplomatic relations.

19 "This repressive situation cannot be ignored by the  
20 Government and even less can it shield itself behind  
21 silence, while throughout the entire country, at the same  
22 time as we are combatting the ultra-left, actions,  
threats,  
23 outrages, and vile murders are being carried out against

wrongful

24 the less fortunate sectors of the population. It is the  
25 obligation of the Government to put a stop to such

a  
1 behavior, and it is up to the armed forces to act in such  
2 way as not to destabilize the unity of the Government but  
3 so as to consolidate its authority and to be able  
4 rationally to achieve the kind of popular support that  
will  
5 isolate the ultra-left and restore social discipline."

6 MR. KLAUS: Go up.

7 BY MR. KLAUS:

8 Q. "Failure to create credibility for the democratic  
9 government will cause the process to shatter, resulting  
in  
10 polarization and the civil war that the nation seeks to  
11 avoid.

12 "We hope that the Revolutionary Government Junta,  
with  
13 the firm support of the chiefs and officers of the high  
14 command and of the COPEFA, as the institution designated  
by  
15 all of the officers to keep guard over the process, will  
16 exercise its function as general command of the armed  
17 forces out of conviction, and not from threats, and will  
18 implement the steps that our party suggests and other  
19 appropriate measures, in order to bring about renewed  
faith  
20 by the people in the government and in its Army, and a  
21 disposition to work together in good faith in order to  
move

22 beyond the crisis of violence, carry out the structural  
23 changes, and return to a just state of law."

24           Do you agree with the premise that without popular  
25 support, meaning support of the people of the citizens of



1 El Salvador, that any reforms were doomed to failure?

2 A. Yes.

3 Q. Now, one of the signatures of this letter was Jos,  
4 Napoleon Duarte, correct?

5 A. Yes.

6 Q. And within days or weeks after this letter was  
written

7 and delivered, he became a member of the Revolutionary  
8 Junta, correct?

9 A. Two months later.

10 Q. Okay. And he was appointed as President of the  
Junta

11 by the other members of the Junta, correct?

12 A. Correct.

13 Q. And he maintained Colonel Garcia as Minister of the  
14 National Defense during his government?

15 A. Yes.

16 Q. And Colonel Vides as commander of the National  
Guard?

17 A. Yes.

18 Q. Okay. I want to go back a little about command  
19 responsibility in general and the universally accepted  
20 principles under command responsibility.

21 Now, an Army or any organization is only as good as  
22 the people who are members of it, correct?

23 A. Yes.

orders 24 Q. If members of the military refuse to carry out  
25 and refuse to obey the laws and principles of command

1 structure and of the military code, the military would  
2 cease to function effectively, correct?

3 A. This is unheard of. If it was that way, it wouldn't  
4 be a military structure. A military structure could not  
5 function without discipline.

6 Q. Okay.

7 A. And then the commander would not be the appropriate  
8 person for that structure, if the person allows things to  
9 get to the extremes that you are exposing.

10 Q. Okay. Now, you read us a part of, I think it was  
11 Article 373 -- I am sorry, 375 of the military code of El  
12 Salvador that was in effect at that time.

13 A. I read the whole Article 375 of the ordinance.

14 Q. And essentially that says that a commander cannot  
use  
15 disobedience of his orders by subordinates as an excuse  
to  
16 relieve him from liability of what those subordinates do;  
17 is that correct?

18 A. Well, not of civil responsibility, but the command  
19 responsibility.

20 Q. Okay. So not of civil responsibility, like civil  
21 liability?

22 A. It is his military responsibility and he is subject  
to  
23 the justice code, military justice code and the  
ordinance.

command 24 Q. Okay. So if officers or enlisted men under my

25 are without my knowledge selling drugs, I would be

1 responsible as a commander under the military code for  
2 their illegal activities, correct?

and

3 A. I would be responsible of bringing those men to  
4 justice, civil justice, because it is about civil laws  
5 responding to them.

6 Q. Okay. But -- so, would I be responsible under  
7 military code, under this code for the illegal activities  
8 of my subordinates?

instances

9 A. Well, if I wouldn't bring to light of these  
10 before the justice system, I would become an accomplice  
11 I would be covering up for any citizen.

or

12 Q. Okay. But if I turn those same men over to civil  
13 authorities for prosecution, would that relieve me of my  
14 responsibility under the military code?

15 A. It doesn't free you from that.

16 Q. Okay. Okay. Are you being paid to testify as an  
17 expert for the Plaintiffs in this case?

18 A. Well, yes. I learned that after three expert  
19 witnesses hearings.

I

20 Well, in my country, I didn't charge the first time,  
21 didn't charge in El Salvador, and when I became a  
22 expert witness for the United Nations, I was told by them

military

23 that I should charge for my services, and the court would  
24 deem if my services were to be classified as an expert, I  
25 am military expert witnesses.

this

1 Q. Are you being compensated at \$50.00 an hour plus  
2 expenses to testify as an expert for the Plaintiffs in  
3 case?

4 A. I have been hired by lawyers of the Human Rights  
5 Committee of the United States as a consultant up to 100  
6 hours, yes, at \$50.00 an hour.

7 Q. Okay.

8 Now, when was the dirty war in Argentina?

9 A. In the year 1976 to the year 1983.

10 Q. And what was your position in the military at that  
11 time of Argentina?

because

12 A. I had just been released from military prison

13 I revolted against a dictatorship in my country. The  
14 dictatorship of General Lenusi (phonetic).

15 Q. Were you reinstated into the military during that  
16 time?

17 A. When democracy was returned to my country. When  
18 General Peron came back along with a Constitution, I am  
19 then designated as professor in the School of National  
20 Defense.

21 Q. So when were you in prison, from what year to what  
22 year?

23 A. Let me try to remember the year, because I was in  
24 several times, always because I was combatting the

from 25 dictators. This one, on this occasion it was in 1973,



1 '72 to '73.

you

2 Q. Okay. So when you were released in '73, what did  
3 do?

4 A. I had to earn a living. I wasn't getting paid.

5 Q. Okay. So is that when you took a job as director of  
6 the military school or teaching at the military school?

7 A. No, no. There was a dictatorship, so I had to  
8 establish a security company along with other colleagues,  
9 military colleagues of mine that had also suffered  
10 imprisonment.

11 THE INTERPRETER: The interpreter needs to  
12 clarify with the witness a word he used.

13 THE COURT: Yes.

14 THE INTERPRETER: That is fine. Thank you.

15 BY MR. KLAUS:

16 Q. What I want to know is what you did for a living  
17 between '73 and '83?

only

18 A. Well, thanks to my security company, that was the  
19 time in my life that I had money.

20 Q. Okay. Were you also a professor of national defense  
21 at the national defense school?

22 A. Yes.

23 Q. Did you have anyone under your command at that time?

the 24 A. No. When one is teaching, one only accounts with  
25 administrative staff.

1 Q. Now, even though you were in the military, you said  
2 you took part in a revolt. Isn't that a political action  
3 by a military officer?

4 A. No. It was a constitutional obligation to fight any  
5 dictatorship that would attempt against a Constitution.  
6 Any Argentinian citizen has that obligation of revolting  
7 against that.

Argentine

8 Q. At that time wasn't there a division in the  
9 military forces similar to the division in the El  
10 Salvadoran military forces?

11 A. No. It was something different.

12 Q. Well, didn't the group that you supported in the  
13 revolt want to reform the country and bring about  
14 democratic reforms and revolted against the fascist or  
15 dictatorship military? Is that what happened?

possibility

legitimate

16 A. No. We wanted the country to achieve the  
17 of being able to elect their own Government in a  
18 democratic process.

19 Q. And that the people that opposed you and imprisoned  
20 you were the dictator, dictator and members of the armed  
21 services that supported him, correct?

in

22 A. Yes, but we never got the civil population involved  
23 that dispute, much less persecute them for their beliefs.

24 This was in a dictatorship that ranged from the years '76  
25 to '83, the so-called dirty war and the terrorism that it

1 brought with it.

2 Q. If the civilian population wasn't involved, why did  
3 they call it dirty war? And why are we talking about the  
4 disappearances in Argentina during that time?

5 A. I didn't say that, I said something else. I said at  
6 the time I rebelled against the dictatorship, the  
7 population was beyond our military disagreements. The  
8 population only becomes a victim of the military  
9 dictatorship during the periods of 1976 to 1983, the  
10 period known as the dirty war, which was dirty precisely  
11 because of that.

12 Q. That is what I am asking you about.

Thank

13 MR. KLAUS: I don't have anything further.  
14 you.

15 THE COURT: All right. Redirect examination?

16 REDIRECT EXAMINATION

17 BY MR. GREEN:

18 Q. Good afternoon, sir.

19 A. I apologize.

20 Q. Would you do it again?

21 A. I would do it a thousand times.

22 Q. I want to clarify a couple things from your cross  
23 examination.

of

24 When Mr. Klaus initially asked you how many members

25 the El Salvadoran armed forces there were in 1979, you

1 answered 13,000?

2 A. Approximately.

3 Q. When Mr. Klaus asked you the next question he used  
the  
4 word 30,000, but the interpreter translated it as being  
5 13,000.

6 A. No.

7 Q. It was 13,000, correct?

8 A. In '79, yes. In addition, this all comes from the  
9 numbers as provided from the two generals that are  
present  
10 here today. I am only giving those numbers as a result  
of  
11 my review of the deposition.

12 Q. Professor Garcia, you were asked on cross  
examination  
13 about the number of Amnesty International urgent actions  
14 that were sent to the Salvadoran Government?

15 A. Yes.

16 Q. And I believe that there were 175 urgent actions  
17 during the time period in question?

18 A. I don't know, because I wasn't here when the  
gentleman  
19 from Amnesty International spoke.

20 Q. In any event, was there a centralized system for  
21 receiving and processing human rights complaints that was  
22 established by the Government of El Salvador between

23 December, 1979 and June, 1983?

24 A. No.

25 Q. Would that have been important in the exercise of



1 command responsibility?

2 A. In addition to my own command responsibility, the  
3 influx was so large that it was absolutely indispensable.

4 Q. You also gave testimony on cross examination about  
5 political confrontation at the highest level?

6 A. Yes, sir.

7 Q. What affect, if any, would those political  
8 confrontations on the level of the Revolutionary  
9 Governmental Junta have on the duty of the Minister of  
10 Defense to prevent human rights abuses by his troops?

11 A. At the level of Minister of Defense, it may have  
12 affected his personal and mental peace of mind, but as of  
13 my level, I may not allow all of this political  
14 confrontation be transmitted down to my subordinates.  
15 Because I know that the consequences of such an event  
16 would be in lack of discipline.

17 Military personnel must be committed to the duty of  
18 preparing for war, and have as a norm the respect for the  
19 population in general which in fact feeds them.

20 Q. Simply put, did the political confrontations that  
21 were occurring at some other level have any affect whatsoever  
22 on this man's duty as a Minister of Defense to maintain  
23 order and discipline in the ranks beneath him?

24

MR. KLAUS: Objection; redundant.

25

THE COURT: I will permit it. You may go

ahead.

forces 1 THE WITNESS: No, I believe that the armed  
2 of El Salvador were always a well organized force, well  
3 organized, well trained. It was famous throughout the  
4 region because of the conditions that existed in Central  
5 America.

one 6 It had demonstrated this during a war when no  
7 really gave any -- it demonstrated that during a war in  
8 which no one thought El Salvador was going to have any  
9 luck, and I think they always demonstrated order and  
an 10 discipline. And to think in any other manner would be  
11 insult to my comrades who were always recognized as  
12 officers of the highest class, and they never suffered  
13 lack of discipline under their command.

14 BY MR. GREEN:

National 15 Q. Professor Garcia, let's go down to the level of then  
16 Colonel Vides Casanova who is the director of the  
17 Guard.

18 A. Yes.

19 Q. What affects did the political confrontations on the  
20 level of the Revolutionary Governmental Junta have on  
21 Colonel Vides Casanova's duties to investigate and punish  
22 acts of torture being committed in his own National Guard  
23 headquarters?

24 A. None.

25 Q. Getting back to the Christian Democratic letter.

For

1 purposes of serving as notice to the Minister of Defense  
2 Garcia about human rights violations, does the political  
3 analysis of the Christian Democrats matter?

of  
4 MR. KLAUS: Objection. Goes beyond the scope  
5 his knowledge.

6 THE COURT: I will overrule the objection. You  
7 may answer the question.

8 MR. GREEN: May I repeat?

9 THE COURT: No. Let's go ahead.

10 THE WITNESS: No, I understood.

11 This letter clearly states the two levels to  
12 which the letter is addressed, and it sets forth some  
13 specific hypotheses. It says if the armed forces were  
not  
14 cohesive, and if they were not disciplined, it would  
then  
15 be a situation that would not be admissible.

16 BY MR. GREEN:

17 Q. Professor Garcia, did that letter serve as notice of  
18 19 violations, possible violations of human rights  
abuses?

19 A. Yes.

20 Q. Should Minister of Defense Garcia have investigated  
21 those 19 incidents regardless of the political analysis  
22 that was attached?

23 A. Yes.

24 Q. You indicated that the Salvadoran officers,  
Salvadoran

25 military was well trained and well disciplined?

1 A. Yes.

2 Q. Based upon the evidence that you reviewed and the  
3 depositions that you read, given that discipline, was  
there  
4 any evidence to indicate that these two men lacked the  
5 power to effectively discipline their troops for engaging  
6 in human rights abuses?

7 A. No, no way.

8 Q. In other words, the fact that they had disciplined  
and  
9 they were able to enforce their orders if they wanted to?

10 A. Yes.

11 Q. No doubt in your mind?

12 A. No.

13 MR. GREEN: No further questions.

14 THE COURT: May the Colonel be excused from his  
15 subpoena?

16 MR. GREEN: May I have one moment on that?

17 THE COURT: Yes.

18 MR. GREEN: No, Your Honor, not at this time.  
We  
19 may want to call him in rebuttal.

20 THE COURT: Colonel, I am going to allow you to  
21 step down, but the attorneys for the Plaintiffs have  
asked  
22 that you remain available in that there may be a  
23 possibility that they might wish to recall you as a

24 witness in what is called the rebuttal phase of the  
case.

25 So I will ask counsel to talk with you and make those



1 arrangements if that is acceptable.

now?

2 THE WITNESS: Would you like to speak to me

to

3 THE COURT: No. I think they may want to talk

come

4 you. There is a possibility that they may ask you to

5 back and testify again.

6 THE WITNESS: It will depend on the dates.

7 THE COURT: All right. Thank you. Thank you

8 very much.

9 THE WITNESS: Gracias.

10 THE COURT: Gracias.

11 (Witness stepped down.)

12 The Plaintiffs may call your next witness.

13 MR. STERN: May it please The Court, the

14 Plaintiff will call Margaret Popkin.

the

15 THE COURT: Ms. Popkin, would you come up to

16 stand? And I think you will be more comfortable if you

17 pull that chair up to the desk area.

18 THE WITNESS: Okay, thank you.

raising

19 THE COURT: Ma'am, if you would begin by

20 your right hand, please.

21 MARGARET POPKIN, PLAINTIFFS' WITNESS SWORN.

22 THE COURT: Ma'am, would you please begin by

23     introducing yourself to the members of the jury?  Would  
24     you tell them your full name, and would you please spell  
25     your last name for the court reporter?

1 THE WITNESS: My name is Margaret Popkin,  
2 P-O-P-K-I-N.

3 THE COURT: Thank you, ma'am.  
4 Counsel you may proceed.

5 MR. STERN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. STERN:

8 Q. Good afternoon, Ms. Popkin.

9 A. Good afternoon.

10 Q. Ms. Popkin, without getting into details, have you  
11 come to court prepared to state your expert opinion as to  
12 whether the Salvadoran judicial system -- strike that.  
13 Excuse me. To state your expert opinion on the  
14 Salvadoran's judicial system handling of human rights  
15 abuses during the 1983 time period?

16 A. Yes, I have.

17 Q. Are you going to offer expert testimony on the  
18 ability of the Salvadoran judicial system in 1979 through '83 to  
19 provide justice to human rights abuses?

20 A. Yes.

21 Q. What do you do for a living?

22 A. Executive director of the Due Process Law Foundation  
23 to in Washington, D.C. This is an organization established  
24 working on promoting modernization and reform of justice

25 systems in the Americas.

Law 1 Q. What is your responsibility at the Due Process of  
2 Foundation?

3 A. I have a number of responsibilities for overall  
4 management of the organization, but I also develop  
5 projects  
6 to work with courts, other institutions in the justice  
7 taken  
8 sector in specific countries in Latin America and  
9 regionally to help them learn about reforms that have  
10 system,  
11 place in other countries, and ways that human rights  
12 protections have been implemented into the justice  
13 training, research, and other matters of that kind.

14 Q. Is El Salvador one of the countries that is covered  
15 by  
16 the mandate of the Due Process of Law Foundation?

17 A. Yes, it is.

18 Q. Can you give us one or two examples of the specific  
19 types of programs that you are involved with?

20 A. We have done seminars on criminal justice reforms on  
21 Americans to exchange experiences of reforms in different  
22 countries, and done a number of programs on judicial  
23 independence and efforts to make the justice system to  
24 operate with greater impartiality and independence.

25 Q. How long have you been at the Due Process of Law  
26 Foundation?

23 A. I have been in the current job for two and a half  
24 years.

25 Q. What did you do prior to that?

1 A. Program director for Africa and North America at the  
2 Robert F. Kennedy Human Rights, Washington, D.C.

3 Q. What kind of activities were you involved in there?

4 A. I worked on a variety with human rights groups in  
5 different countries, including El Salvador, Guatemala, as  
6 well as some countries in Africa, sometimes developing  
7 conferences, research projects observing human rights  
8 cases, how they were handled and helping with those.

9 Q. At the Robert F. Kennedy Center and in your current  
10 job, are you involved in writing reports on various  
issues  
11 relating to the justice systems and these countries?

12 A. Yes. I have written a number of reports on the  
13 justice systems in Latin America.

14 Q. Before we get into your opinions, I would like to  
take  
15 a step back and ask you about your background and  
16 qualifications that assist -- will give you the  
experience  
17 you need to assist The Court. What is your educational  
18 background?

19 A. I have a law degree from the University of  
California,  
20 Berkley in 1979.

21 Q. Am I correct you spent a number of years living in  
El  
22 Salvador?

23 A. That is right. I lived there from early 1985 to the  
24 end of 1993.

25 THE COURT: Ms. Popkin, if you pull that chair



will 1 up, and don't hesitate to adjust the microphone. You  
2 be much more comfortable in testifying.

3 THE WITNESS: There.

4 BY MR. STERN:

5 Q. What were you doing in El Salvador from '85 through  
6 '93?

7 A. During most of that time I worked at the Central  
8 America University Human Rights Institute as deputy  
9 director.

10 Q. Could you tell us about the institute that you  
11 mentioned at the University of Central America?

12 A. Yes, it was founded in 1985, which is when I started  
13 working there, to be an academic institution looking at  
14 human rights, the first of its kind in El Salvador. And  
we 15 carried out a number of different programs.

16 I was particularly involved in investigation of  
human 17 rights abuses and following how the legal system -- how  
the 18 justice system handles human rights abuses or violations.  
19 And this was primarily in two perspectives. One, how  
20 people who were arrested and suspected subversives were  
21 treated and how the justice system dealt with mostly  
22 members of the military who were suspected of human  
rights

23 abuses.

the 24 Q. More generally, can you tell us about the role of

of 25 University of Central America in El Salvador? What kind

1 an institution is that?

2 A. Jesuit run institution, and played a very important  
3 role in the period I was there, 1980's. The public  
4 university had been closed in the early 1980's, but the  
5 Central America University, known as UCA, U-C-A, remained  
6 open and tried to play a positive role in looking for a  
7 peaceful solution to the armed conflict in encouraging  
8 negotiations between the parties of the conflict, and in  
9 preserving one of the few spaces in the country where  
there  
10 could be a fairly open debate about what was going on in  
11 the country.

12 And it also was very involved in efforts to protect  
13 the civilian population which was affected by the war.

14 Q. Could you tell us a little bit about the origins of  
15 the institute that you worked at and that you mentioned  
16 began in 1985?

UCA  
17 A. Well, again, it was proposed by the Jesuits at the  
18 because of the -- they felt there was a need for a new  
19 institution coming from an academic perspective to take a  
20 look at the human rights situation in the country. The  
21 founder was Segundo Montes.

22 Q. Would you spell Mr. Montes' name?

23 A. S-E-G-U-N-D-O, Montes, M-O-N-T-E-S.

carried

24 Q. And what were the specific activities that you

Rights

25 out in your role as the deputy director of the Human

1 Institute at the UCA?

2 A. I carried out a number -- primarily my role -- my  
3 substantive role was in research, and that meant field  
4 investigations where I would go out and interview victims  
5 of abuses, witnesses, those -- sometimes members of the  
6 military security forces, lawyers, judges,  
representatives  
7 of the U.S. Embassy who worked on human rights issues. A  
8 whole spectrum of different people.

9 These violations would be -- we would find out  
either  
10 from the victims themselves or from newspaper reports.  
In  
11 some cases there were reported abuses committed by the  
12 guerillas which we investigated to the extent of our  
13 ability.

14 I also followed legal proceedings in cases in which  
15 there were legal proceedings to understand how the  
justice  
16 system functioned and the extent to which human rights  
17 standards were being complied with to identify the  
18 problems. We prepared reports both internally for the  
UCA,  
19 and also sometimes prepared reports for human rights  
groups  
20 in the United States.

21 We also did training on human rights issues with a

country. 22 number of different kinds of groups throughout the

23 Q. I would like to take a couple of the items you

24 mentioned and focus on them in detail.

25 What type of interviewing of prisoners did you do?

1 A. During a period of time, mostly from 1985 to 1987, I  
2 interviewed prisoners. I tried to interview them very  
soon  
3 after they arrived in the prison to get an understanding  
of  
4 how they had been treated in the security forces in terms  
5 of any physical mistreatment, and whether the laws that  
6 were then in effect were being complied with.

7 Q. When you say prisoners, are you referring to any  
type  
8 prisoner in the Salvadoran justice system?

9 A. Yes, I am. At that time there was a specific  
10 designation of political prisoners which referred to  
people  
11 who were arrested because they were suspected of being  
12 involved in subversive activities, of some way or another  
13 of supporting the FMLN.

14 Q. What about members of the military, who did you  
15 interview and what did you discuss with the people that  
you  
16 met with?

17 A. Well, it varied. Sometimes we talk to members of  
the  
18 military about reports of abuses during military  
19 operations, sometimes they were widespread, large scale  
20 detentions of peasants in certain areas. Other times I  
21 recall once interviewing the then head of the National  
22 Police, Colonel Lopez Nuila, about the reports of torture

National

23 by many of the suspects who had spent time in the

24 Police headquarters.

25 Q. Were you also -- did you also have an opportunity to



1 observe legal proceedings in Salvadoran courts?

2 A. Yes. In a few cases for human rights crimes it  
3 actually did get to the courts. I should clarify, the  
4 cases involving political prisoners were handled in  
5 military proceedings, were not open to the public.

6 Q. Just generally speaking, how do you feel that the  
7 experience you described for us just now prepares you to  
8 testify as an expert today on the subjects that you are  
9 going to be talking about?

10 A. Well, I feel through my research, investigations in

El

11 Salvador, I have gained a great deal of expertise about

how

12 the Salvadoran legal system functioned from -- during the  
13 time in question, 1979 to 1983, as well as later on. And  
14 also how it -- what the laws were as well as what the  
15 actual practice was.

16 Q. I think you mentioned that you had a chance to do

some

17 field work going outside into areas outside of San

18 Salvador. What did that involve?

19 A. Well, it involved often going to remote parts of the  
20 country. Sometimes under military control, other times  
21 areas in which the guerrillas were present, in trying to  
22 find the people who had been victims of abuses, or  
23 witnesses to this, to try to find out what happened.

24           It was not a simple matter during the war to get  
25 people to speak to us and explain what had happened, but

1 that is what we would try to do. And also try to talk to  
2 as many people as possible to get full and complete and  
3 accurate a picture as we could.

4 Q. Did you see what you perceive to be human rights  
5 abuses in El Salvador?

6 A. One instance we were going out to a village that had  
7 reported problems and myself and another human rights  
8 worker, also from the United States, we came across a  
group  
9 of villagers and said to us they were so glad we had  
10 arrived, the military was carrying out an operation and  
11 taken one of the villagers aside, and was beating him,  
and  
12 could we do something.

13 So we sort of got up our courage and walked up to  
the  
14 lieutenant who was in charge of the operation, and asked  
15 him what was going on, and explained our understanding of  
16 the law, and were able to convince him to release this  
17 person. And we were able to take the person who had been  
18 being beaten into San Salvador where he received medical  
19 treatment for his wounds.

20 Q. While you were at the institute, did you also have a  
21 chance to meet with judges and lawyers in the Salvadoran  
22 legal system?

23 A. Yes, I spoke with a number of judges, and lawyers.

in

24 Q. What did that involve? What were you talking about

25 particular?

on  
1 A. Sometimes about specific cases, and what was going  
2 in the specific cases, and why they were being treated in  
3 particular ways. Other times about patterns and  
practices.

1985.  
4 Q. You mentioned that you arrived in El Salvador in  
5 Did your research and study also cover the earlier period  
6 beginning in 1979?

7 A. Yes, it did extend backwards to the end of 1979,  
8 partly because from the time I arrived in El Salvador, I  
9 was doing research on some cases that came from that era,  
10 and when I left El Salvador, I was able to remember --  
11 received grants on writing a book about the Salvadoran  
12 justice system, and in that research, I extended back to  
13 that period as well.

the  
14 Q. Let's talk about your book for a minute. What is  
15 name of the book?

Rule  
16 A. Peace Without Justice, Obstacles Of Building The  
17 Of Law In El Salvador.

18 Q. When was it published?

19 A. 2000.

20 Q. What was the process you submitted the book for  
21 publication and had it accepted?

22 A. After I had written the first draft of the book and

to

23 sent it out to publishers, Penn State University Press,  
24 which is the press that published the book, sent it out  
25 several reviewers, academics in the field to see whether

1 they should publish it.

2 Q. Broadly speaking, what is the subject matter of the  
3 book?

4 A. The subject looks at the Salvadoran legal system,  
5 particularly the criminal justice system before, during  
and  
6 after the war and efforts to reform it during that  
period.

7 Q. Does the book address justice system's handling of  
8 individuals in the military who were alleged to have  
9 committed human rights abuses?

10 A. Yes, it does.

11 Q. Were you involved in any way in the process that led  
12 to the end of the Salvadoran conflict in the early  
1990's?

13 A. Well, it is part of my institution, we were called  
14 upon to consult on several issues that related to human  
15 rights and need to reform in the justice systems, both of  
16 those were topics in the negotiating agenda.

17 Q. Ms. Popkin, when were you asked to serve as an  
expert  
18 witness on behalf of the Plaintiffs in this case?

19 A. I believe early 2001.

20 Q. What were you asked to do?

21 A. I was asked to provide expertise of the Salvadoran  
22 criminal justice system, law and practice.

I

23 Q. I want to begin to ask you about your opinions, and  
24 have a couple graphics to put up for you. Let me first  
25 explore one other issue.



military 1 Professor Garcia testified this morning about  
2 courts and courts marshal, and other procedures available  
3 to the military, to military commanders. That is not  
what 4 I want to ask you about.

5 My questions for you concern the role of the  
criminal 6 justice system in handling members of the military and  
7 security forces accused of human rights crimes. Does  
that 8 make sense to you, that distinction?

9 A. Yes, it does.

10 MR. STERN: Thank you, Mr. Green. If I could  
11 have the first large board, please.

12 BY MR. STERN:

13 Q. Are you able to see that, Ms. Popkin?

14 A. Yes, I can.

15 Q. Feel free to refer to the board.

16 I want to ask you in general terms, what is your  
17 expert opinion on how the Salvadoran criminal justice  
18 system handled cases of human rights abuse carried out by  
19 members of the military and security forces?

20 A. Well, mostly it didn't handle them, and in the  
21 cases -- in the few cases where there was a great deal of  
22 pressure from the United States, only the very lowest  
23 levels involved in those cases were ever prosecuted.

24 Q. When you say the justice system didn't handle those  
25 cases, what exactly did you mean by that?

1 A. Well, it wasn't able to in large part because the  
2 military prevented it from carrying out investigations  
and  
3 being able to proceed with prosecutions.

4 Q. Would you read the first bullet point on the board  
5 there?

6 A. "Military failed to carry out initial investigations  
7 of human rights crimes committed by its troops."

8 Perhaps I should explain to avoid confusion. As  
9 Colonel Garcia explained earlier, Salvadoran Constitution  
10 and military justice code contain provisions that  
authorize

11 military to establish military courts for certain kinds  
of  
12 international crimes, including some human rights crimes.  
13 But as I believe he also explained, military didn't set  
up  
14 those special procedures.

15 So what was supposed to happen under the law in  
effect  
16 during this period was that the military, when they  
learned  
17 or had reason to suspect that a crime had been committed  
18 within the troops, was supposed to carry out an initial  
19 investigation.

20 Q. Okay. That is something you will offer testimony  
21 about today?

22 A. Yes.

23 Q. Could you read the second bullet point?

24 A. "Military failed to turn over human rights abusers

to

25 the security forces to civilian courts."

the 1 Q. Was turning over those abusers an obligation that  
2 military had?

3 A. Yes.

4 Q. Could you read the third?

5 A. "Military intimidated judges, witnesses and juries."

6 Q. And what did that entail, specifically?

7 A. Death threats against people who were serving as  
8 judges or potential witnesses or jurors.

9 Q. And could you read the fourth bullet point for us,  
10 please?

enlisted 11 A. "During 1979 to 1983, no military officer or  
12 man was convicted of a human rights crime."

13 Q. Was that the net result of the other bullet points  
14 that you read for us?

15 A. Yes, yes.

so 16 Q. I am going to get into the issues in more detail  
17 later. If I could have the second large board, please,

your 18 I could have you review the second general opinion of  
19 testimony.

20 Could you read the first line, two lines in all  
21 capital letters, please?

22 A. "The Salvadoran justice system was incapable of  
23 providing justice to victims of human rights abuses."

points

24 Q. And I would like you to walk through the bullet

25 and explain in brief your opinion on this subject.

1 A. "First, the justice system was unable to resist  
2 military intimidation. The threats that came from  
members  
3 of the military made it impossible for judges and others  
4 involved in the justice system to go forward with  
5 investigations."  
6 Q. And what is the second bullet point?  
7 A. "Lawyers were unwilling or unable to bring cases for  
8 violation of human rights. Lawyers were intimidated,  
9 obstructed in their work. They were not allowed access  
10 often to installations or witnesses or other information.  
11 Victims feared reprisals if they brought a case against  
12 their torturers. Someone who had been released after  
being  
13 tortured and in prison, but particularly someone who had  
14 been released was very afraid of what would happen, and  
the  
15 idea of standing up and formally accusing their torturers  
16 in court was something that was not possible to do at  
that  
17 time with the risk of reprisals of being tortured again  
or  
18 killed were very real."  
19 Q. And the last point?  
20 A. "Totality of this, I am not aware of any single case  
21 being brought for someone having been tortured during  
this  
22 period."

23 Q. In El Salvador?

24 A. In El Salvador.

25 Q. Thank you.



1 I want to explore now in more detail the basis for  
2 your opinions.

3 In the 1979 through 1983 time period, Ms. Popkin,  
was  
4 it against Salvadoran law for members of the military and  
5 security forces to torture civilians?

6 A. Yes, it was.

7 Q. Was it also against the law for members of those  
8 forces to kill civilians without justification?

9 A. Yes, it was.

10 MR. STERN: If I could ask Mr. Green to take  
down  
11 the easel, and I would like to ask the first slide to go  
12 up, number 34, please.

13 BY MR. STERN:

14 Q. I want to ask you some questions, Ms. Popkin, about  
15 what under Salvadoran law was supposed to happen in the  
16 event that a member of the military or security forces  
was  
17 accused of human rights crime.

18 To begin with, the first bullet point on this slide  
19 states that the security forces, National Guard, National  
20 Police and Treasury Police, were auxiliary organs for the  
21 administration of justice, for the investigation of  
crimes

22 pursuant to the Code of Criminal Procedure, Article 11.

23 What is the significance of that provision?

24 A. Well, first of all to explain, in this period the  
25 Salvadoran criminal justice system wasn't set up like our

1 system here and relied on an investigating judge to carry  
2 out investigations. They had overall responsibility. Of  
3 course the judges didn't have the practical ability to go  
4 out and carry out investigations, they were supposed to  
5 rely on auxiliary organs or bodies to carry out the  
6 investigations.

National  
part  
7 At that time those auxiliary bodies were the  
8 Guard, National Police and Treasury Police which were  
9 of the military.

10 Q. And would the crimes that the auxiliary organs were  
11 supposed to investigate include human rights crimes?

12 A. Yes, this was all crimes.

National  
13 Q. Okay. So the net effect of this Code of Criminal  
14 Procedure, Article 11 is that the National Guard,  
15 Police and Treasury Police were responsible for  
16 investigating human rights crimes; is that correct?

17 A. That is correct.

18 Q. Would that include crimes by the members of those  
19 forces?

20 A. Yes, it did.

21 Q. Could you tell us a little bit more about the  
22 investigative role of the National Guard, National  
Police,

23  
organizations

and Treasury Police? Were those -- did those

24 function in the manner of, say, American police forces?

25  
they

A. No, not at all. Particularly in this period when

1 were so involved in what we've already heard about, the  
2 war -- efforts against subversives in looking for people  
3 who might be trying to restabilize the Government, and so  
4 they had this kind of schizophrenic role.

5           And certainly what they were most involved in was  
this  
6 anti subversive counter insurgency war, but at the same  
7 time they had the responsibility to investigate all  
crimes  
8 including ones carried out by their colleagues in the  
9 military. It was a very, very different situation than  
our  
10 police here.

11 Q. I want to ask you more questions about the specific  
12 responsibilities of the auxiliary organs, National Guard,  
13 National Police and Treasury Police.

14           MR. STERN: I would like to keep that slide on  
15 the screen if I can. Perhaps we can set up the easel  
here  
16 in front of counsel table and if co-counsel can bring  
out  
17 the small board there.

18           Well, this may not work since the witness needs  
19 to see.

20           THE WITNESS: I can see it.

21           MR. KLAUS: I can't see it.

22           MR. STERN: I can't see it, either. We will do

23 things one at a time now.

24 If I could ask the technician to kill the slide

25 for a moment. Okay. Great.

1 Thank you.

2 BY MR. STERN:

3 Q. Ms. Popkin, does the Criminal Procedure Code of El  
4 Salvador spell out in further detail what the auxiliary  
5 organs, that is National Police, National Guard and  
6 Treasury Police, are supposed to do to investigate human  
7 rights crimes, all crimes by members of those forces?

investigate  
8 A. Yes. It spells out what they are to do to  
9 all crimes, including crimes -- including human rights  
10 crimes.

11 Q. Thank you.

is  
12 The first passage from the Criminal Procedure Code  
13 Article 137. Could you read that passage, and explain to  
14 us its significance?

15 A. "Article 137, duties. The auxiliary organs referred  
16 to in Article 11 have the duty of assisting the  
17 administration of justice in the investigation of crimes  
18 trying to identify those presumed responsible to place  
them

elements  
19 at the disposition of the judges together with the  
20 of the proof and proceeds of the crime that they may have  
21 seized. Thus, when they learn of the commission of a  
22 crime, they should proceed to investigate it to obtain  
23 information and collect evidence."

24 Q. Could you boil this down for us? What were the  
25 auxiliary organs supposed to do when they encountered a



1 crime?

2 A. Basically the National Police, National Guard or  
3 Treasury Police had to assist by identifying the  
suspects,  
4 taking them before The Court and taking also whatever  
5 evidence they had been able to put together about the  
6 crime. And the obligation came upon them when they  
learned  
7 of the commission of a crime.

8 Q. Now we have another passage up on the board, Article  
9 140 from the Criminal Procedure Code. Could you please  
10 read that for us and explain its significance?

11 A. "Article 140. Obligation to inform judge. As soon  
as  
12 the auxiliary organs learn of the commission of a crime  
13 against life or personal integrity or any other crime  
that  
14 causes serious social scandal, they should communicate it  
15 to the appropriate judicial authority."

16 Q. What did that mean, if you could give us your  
17 interpretation of the obligations of the National Police,  
18 National Guard, and the Treasury Police under this  
19 provision?

20 A. Well, they didn't just have a passive obligation to  
21 investigate when they were asked to by the courts, but  
they  
22 also had an obligation to investigate on their own in  
case

23 of serious crimes and also advise the Court of the  
24 commission of this crime, to bring it to the attention of  
25 The Court.

1 Q. Thank you.

down

2 MR. STERN: If I could ask Mr. Green to take

3 the easel, put the board in front of counsel table here.

4 If I could have the previous slide on the screen.

5 BY MR. STERN:

carry

6 Q. Now, I want to move out of the realm of theory and

7 into the realm of practice. In actual practice, did the

8 National Police, the Treasury Police, National Guard

Procedure

9 out their obligations under the Code of Criminal

10 as you explained them?

11 A. No. Not in any kind of regular basis.

12 Q. Can you --

13 A. Particularly not in human rights cases.

14 Q. Not in human rights cases?

15 A. No.

within

16 Q. Were there any other agencies or organizations

17 the Salvadoran Government that in practice were able to

18 conduct investigations into such crimes?

National

19 A. No. At that time the auxiliary organs of the

20 Police, National Guard and Treasury Police were the only

21 organizations with the authority and power to carry out

22 these investigations.

23 Q. What about the prosecutors in El Salvador, were they  
24 able to do anything in that regard?

25 A. They had a very -- at that time, under the criminal

1 procedure law and effect, their role was minimal,  
2 non-existent in the early investigation stages.

3 Q. How about the courts themselves, do they have the  
4 practical ability to compel military to produce evidence  
5 and witnesses?

6 A. No, they didn't.

7 Q. I want to spend a little more time on this.

8 What is your basis for stating that the military did  
9 not carry out -- strike that -- that the auxiliary  
organs,  
10 National Police, National Guards and Treasury Police, did  
11 not carry out their responsibilities under the Code of  
12 Criminal Procedure?

13 A. Well, this is talking specifically about human  
rights?

14 Q. That is correct.

15 A. The fact that almost none of these cases made it to  
16 the courts is a strong indication. They simply were not  
17 investigating these cases and providing information to  
the  
18 courts. The exceptions, very few cases that got into the  
19 judicial system because of U.S. pressure tend to prove  
the  
20 rule.

21 Q. So in the typical case in which a member of the  
22 military or security forces was accused of a human rights

23 crime, what happened in terms of any sort of  
investigation?

24 A. As far as one could see, nothing happened in most  
25 cases, the vast majority.

countries

1 Q. Have you studied judicial investigations in  
2 in Latin America and El Salvador?

3 A. Yes, I have.

4 Q. And have you come to any kind of conclusions as to  
5 what are some of the appropriate steps that an  
6 investigative body should carry out when it is faced with  
a  
7 human rights crime?

8 A. You mean the police to carry out?

9 Q. That is correct, yes.

10 A. Well, there is a number of steps that you carry out,  
11 not just in Latin America, but anywhere, securing crime  
12 scenes, identifying witnesses, taking statements. The  
13 whole series of steps that we carry out here in the  
United  
14 States.

15 MR. STERN: Could I have slide 38 on the  
screen,  
16 please?

17 BY MR. STERN:

18 Q. I think this slide summarizes a number of the points  
19 that you have been making. I would like to walk through  
20 them one by one. Could you please read the first bullet  
21 point for us, please, and explain why you think this is  
22 important?

23 A. I would like to clarify that this slide is talking

auxiliary 24 about the military in general, not just about the

25 organ security forces.



1 Q. Thank you.

2 A. So it is suggesting some of the things that the  
3 military could have done but didn't do to investigate  
human  
4 rights abuses when there were accusations against its  
5 members.

6 First, identifying individual troops that committed  
7 abuses.

8 Finding out which officers were in command of those  
9 troops.

10 Identifying witnesses.

11 Interviewing the troops who were accused of  
committing  
12 abuses and the witnesses to those abuses.

13 Reviewing log books and other records of military  
14 missions.

15 Removing those responsible from positions of  
command.

16 Turning over suspected human rights abusers to the  
17 civilian justice system.

18 Q. Why is it necessary to take steps such as these?

19 A. Colonel Garcia outlined reasons earlier, but in  
terms  
20 of the legal system, if the military doesn't do these  
kinds  
21 of things, it is virtually impossible for the justice  
22 system to investigate human rights crimes. It doesn't  
have

has 23 the capacity to go inside and get this information, it

24 to rely on the military's cooperation.

could 25 Q. Was there any party apart from the military that

1 play this role from '79 to '83?

2 A. No, there wasn't.

3 Q. Is it your expert opinion that Salvadoran military  
did

4 not take the steps outlined on the screen?

5 A. No. They did not take those steps.

6 Q. Do you know, Ms. Popkin, whether the revolutionary  
7 Junta that came into power in 1979 did anything to  
respond

8 to a human rights report by the Organization of American  
9 States that came out in 1979?

10 A. Yes, it did. When the Revolutionary Junta came into  
11 power in 1979, two of its first acts were, one, to call  
for

12 the dissolution of ORDEN, and secondly to form a second  
13 commission to investigate the whereabouts of persons who  
14 had been disappeared for political reasons or who might  
15 being held in clandestine detention.

16 Q. What was the second item that you mentioned, could  
you  
17 please tell us a little more detail what that involved?

18 A. Well, the Inter-American Commission of Human Rights  
19 report had discussed the cases of a number of prisoners,  
20 political prisoners being held in clandestine cells  
within

21 the security forces. So the mandate of the Commission  
22 called for it to look -- to look -- to try and find  
people

23 in the situation.

24 Q. Was this a commission set up by the new government?

25 A. It was set up by the Junta and appointed three

Attorney 1 respected Salvadoran lawyers, one a member of the  
2 General and member of the Supreme Court and one a  
3 well-known lawyer.

4 MR. STERN: If I could have slide 35, please.

5 BY MR. STERN:

6 Q. This slide is headed the Report Of The Special  
7 Investigative Commission On Political Prisoners And  
8 Disappeared Persons.

9 Is this the commission you are referring to?

10 A. Yes, it is.

11 Q. Could you read the quoted passage at the top of the  
12 page from the Commission's report?

13 A. "For the purpose of punishing those responsible for  
14 that shameful chapter in our history, to serve as an  
15 example to future generations and provide relatives of

the

16 victims of these acts the remedy to which they are  
17 entitled, as well as to satisfy the justified popular  
18 demand that justice be done, we proceed to formulate the  
19 following recommendations."

20 Q. What are the acts that are referred to in the quoted  
21 passage of the report?

22 A. Well, it is referring to the acts of carrying out  
23 political disappearances, to hold people in prolonged  
24 secret detention.

25 Q. To the types of --

1 A. Including in that secret detention torture.

2 Q. Did that include the types of activities that were  
3 highlighted in the 1979 OAS report?

4 A. Exactly.

5 Q. And what did the report of this commission recommend  
6 be done?

7 A. Made a series of recommendations. You want me to go  
8 through them?

9 Q. Yes, please.

10 A. First, that the new Government should undertake  
11 prosecutions consistent with applicable law of the  
military  
12 leaders of the last two governments, including the two  
13 former presidents.

14 That it should prohibit detention centers in the  
15 facilities of the military and security forces. All  
16 persons should be remanded to public prisons under the  
17 authority of the Ministry of Justice, not the security  
18 forces.

19 That the military committee to assist investigating  
20 detainees who might be in security forces facilities and  
21 determining the whereabouts of individuals who  
disappeared  
22 for political reasons and finally provide compensation to  
23 families of persons who disappeared for political  
reasons.

24 Q. At the time the report was issued in 1980, did it  
25 become a public document?



1 A. Yes, it did.

2 Q. Was it regarded as a significant statement of  
demands

3 on the new government?

4 A. I understand it was regarded as a significant  
5 statement but rapidly rejected by the military.

6 Q. What, if anything, did the military do in response  
to

7 the recommendations made in this report?

8 A. I don't believe that they did anything.

9 Q. You mentioned earlier several cases in which  
10 investigations took place due to foreign pressure?

11 A. Right.

12 Q. Can you point us to an example of one of those cases  
13 that you are familiar with?

14 A. One of the cases which took place, murders that took  
15 place in January, 1981 involved the killing of the then  
16 head of the Salvadoran Agrarian Reform Institute, Jos,  
17 Rodolfo Viera, and two advisers of the Free American  
18 Development known as AIFLD.

19 Q. Where did this take place?

20 A. In the cafeteria of the Sheraton Hotel in El  
Salvador.

21 Q. Is this commonly referred to as the Sheraton  
killings?

22 A. Right.

23 Q. Could I have the slight --

24                   MR. KLAUS: Prejudicial effect outweighs the  
25   probative value.

1                   THE COURT:  Let's do this, why don't we take a  
2                   break for the mid-afternoon recess.  We need to take a  
15  
3                   minute break.  Why don't we do this, and we will come  
back  
4                   and continue on with Ms. Popkin's testimony.  Let me  
allow  
5                   the jury to step out.

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

7                   THE COURT:  Ms. Popkin, you may step down if  
you  
8                   like.

9                   Mr. Klaus, what is the objection?

10                  MR. KLAUS:  I don't know if they want to put it  
11                  up for you to see, but I object to it.  I have a copy of  
12                  it here.

13                  THE COURT:  All right.

14                  MR. STERN:  Could we have slide 36, please?

15                  MR. KLAUS:  Contains conclusions that aren't  
16                  based on sufficient facts or data.  No predicate for the  
17                  conclusions found in there, and its prejudicial effect  
18                  outweighs its probative value.

19                  I don't think -- this goes beyond the scope of  
20                  her expertise as to what investigations showed or didn't  
21                  show.

22                  THE COURT:  Okay.

23 MR. STERN: Your Honor, if I might respond.

24 THE COURT: Let me take a minute if I might and

I

25 will be happy to hear Mr. Stern.

1 I have had this concern and I have never quite  
2 seen this done before.

3 The witness needs to be the font of  
information,  
4 if you will, and I think it is probably reasonable to  
5 conclude that the witness has worked with counsel in the  
6 preparation of these charts so that the witness in  
giving  
7 her testimony is using the chart as a synopsis, if you  
8 will.

9 But I am a little bit concerned because rather  
10 than have the witness give the testimony, the charts are  
11 going up, and the witness is reading off the charts what  
12 the charts say. There have been no objections, and I  
13 haven't said anything about this. I am concerned about  
14 how this looks and will look, by the way, to an  
appellate  
15 court looking at this process.

16 Obviously the witness -- and there has been no  
17 objection to her expertise, so she is able to testify.

18 Now, let's just take this along the normal  
route.  
19 If a witness were asked for an example that she had  
20 studied, a scenario, factual situation that she had  
21 studied that led her to the various conclusions and  
22 opinions that she was giving, certainly she would have  
the

23 right to refer to her analysis of a particular  
situation,

24 like the Sheraton Hotel killings, and so on.

25 Now, I don't know -- you know what -- and there

1 has been testimony by Ms. Popkin that she did study  
events  
2 prior to her arrival and in fact dealt with cases that  
had  
3 their origin before her arrival in 1985. But assuming  
4 just for the sake of discussion that the Plaintiffs can  
5 lay out the proper predicate, that is, Ms. Popkin has  
6 looked at this and studied the material available, so  
on,  
7 so forth, seems to me that this is within the general  
8 field of expertise that she has -- she has spoken about.

9 Now, does its prejudicial value outweigh its  
10 probative value? I don't think so. The problem, of  
11 course, is that these are always difficult lines to  
draw.

12 In the typical murder case, for example, I think we  
13 recognize that you can't sanitize a case like that to  
the  
14 extent that you take away from it the fact that you are  
15 dealing with an illegal death. And I think we also  
16 realize that you can go overboard by trying to introduce  
17 excessively gruesome photographs. So trying to find  
that  
18 line is always difficult.

19 Now, in this case, of course, I suppose the  
20 thrust of this testimony is that there was a judicial  
21 system or a justice system in operation, in existence  
but

22 not in operation, and for various reasons it simply was  
23 incapable of dealing with these kinds of issues.

24 It seems to me that understanding that that is  
25 the premise of the testimony, that one can then look at



of 1 particular examples, and I would think that the murder  
2 the union leader with the two American advisers is  
3 probably a pretty good example of a clearly identified  
4 crime.

5 And then looking as to what happens or doesn't  
6 happen when something of that magnitude takes place, I  
7 assume that is why counsel is looking at it. So I don't  
8 think its prejudicial impact outweighs any probative  
9 value. It clearly deals with serious acts of violence,  
10 flagrant acts of violence which took place right in the  
11 capital, in a hotel cafeteria as these folks were  
meeting  
12 during the advisers visits to El Salvador.

13 I would tell you, I am a little bit concerned  
14 about the process.

15 Now, you know, I've seen all kinds of ways of  
16 doing that, that is, when the statement is made, some  
17 people have the ability, I don't know what they do, they  
18 move something, and the synthesis of the remarks come up  
19 there. But I will leave that with you.

20 There has been no objection to it, but I am a  
21 little bit concerned about making the record very clear  
22 that it is Ms. Popkin's testimony, and whatever is here  
23 are things she assented to and thought up, and that she  
is

little

24 not being led through testimony by counsel. I am a

25 bit concerned about that.

and  
1 MR. STERN: I appreciate The Court's remarks,  
2 I will try to handle this better. Just to address, I  
3 think the specific issue of prejudice, our concern with  
4 the Sheraton incident has not to do with the murders,  
but  
5 with the investigation.

6 THE COURT: I understand that.

7 MR. STERN: The Sheraton killings are dealt  
with  
8 in detail in the Truth Commission. I intend to go  
through  
9 what the Truth Commission has to say about that.

10 Ms. Popkin has reviewed many materials  
available  
11 to the Truth Commission, including Salvadoran legal  
12 documents that substantiate the Truth Commission's  
13 finding. She is extremely familiar with this incident  
14 based on the Truth Commission and also on what lies  
15 underneath the Truth Commission.

16 Perhaps what I ought to do is go through the  
17 Truth Commission and get her to testify about the issues  
18 there in general, and summarize by way of this graphic  
19 after we have had all of her testimony out in the open.

20 THE COURT: I want to come back to what we  
talked  
21 about yesterday because this is a difficult area. It is  
22 at odds with everything else we allow fact witnesses to

23 do. But when someone brings in an expert, certainly the  
24 person offering the expert and unquestionably the person  
25 cross examining the expert has an absolute right to look

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upon 1 at and probe those things that the expert is relying  
2 to ultimately form their opinions.

this 3 So if an expert, for example, has looked at  
4 particular incident, and has evaluated, first, how  
5 flagrant it was, its location, the nature of the people,  
6 the status, who the people were who were murdered, and  
7 what did or did not happen afterwards, now, somebody may  
8 be wrong, and parties can point that out if the facts  
that 9 the expert is using have been misinterpreted.

go 10 But I think both sides clearly have a right to  
being 11 into that, and I think case law tells us that is not  
12 offered for the truth of the matter asserted, but rather  
has 13 to allow the jury to understand what it is the expert  
when 14 looked at in formulating this final opinion. Because  
15 you get down to it, it is the opinion of the expert that  
16 is being offered here, and the opinion, I assume is,  
17 although there was a nominal justice system, it was not  
18 operating or processing allegations of human rights  
so 19 abuses, and I think that is the thrust of what we heard  
20 far.

21 MR. KLAUS: Your Honor, the basis of my

any 22 objections here, there is insufficient -- hasn't been  
23 sufficient facts or data offered for her to form these  
the 24 opinions and the prejudicial effect comes out because  
opinions 25 information and facts she is using to base these

the  
1 on didn't exist at the time, they weren't available at  
2 time. So it is very easy to go and get information from  
3 ten years after an event, that post event  
investigations.

4 They are trying to use this to show my clients didn't  
5 investigate in 1981.

6 None of that information was available in '81,  
7 didn't come out until many years later. That is where  
8 they are prejudiced by it. Not so much the information  
9 comes out, and later that is what several investigative  
10 bodies may have concluded, but that wasn't available to  
my  
11 clients at that time. That is where the prejudice comes  
12 in.

13 THE COURT: Okay. Let's go back to this again.  
14 I hear what you are saying. In other words, if a  
15 commission, the Truth Commission or some other  
16 governmental commission after the fact, many years after  
17 the fact, going back and looking at things may have come  
18 to some conclusion. But I assume what the Plaintiffs  
are  
19 attempting to show is, here is this extraordinary event,  
20 flagrant event, and the question becomes, was there an  
21 investigation, what was done, was anyone from the civil  
22 authorities brought in, did the military institute an  
23 investigation, and so on.

24                   And I think you too can bring out on cross

25                   examination that, you know, with the passage of time,

with



1 the bringing in of greater stability to the country,  
2 obviously some things may have been available later that  
3 were not available at the time. I suppose the  
Plaintiffs  
4 sort of on the contrary situation take the view you will  
5 never know any of that if no investigation is conducted.

6 I don't know what the testimony is on that, we  
7 have to wait and hear. And I agree there needs to be an  
8 establishment that Ms. Popkin has in fact studied this  
9 issue, she read the literature on it, so on, so forth.  
10 And I am sure counsel is going to get into that as he  
11 tries to use this particular incident as an example of  
his  
12 general thesis.

13 So I am overruling the objections that have  
been  
14 made with the observations that I also made regarding  
the  
15 process that is being followed.

16 Let's take a break. Let's take a 15 minute  
17 break, come right back and move back into Ms. Popkin's  
18 testimony.

19 MR. KLAUS: So I understand, that shouldn't be  
20 published until the foundation is raised?

21 THE COURT: I think that is an appropriate way  
to  
22 handle this, yes.

23

MR. STERN: Thank you, Your Honor.

24

(Thereupon, a short recess was taken.)

25

(Thereupon, trial reconvened after recess.)

1 THE COURT: Ms. Popkin, could I ask you to slow  
2 down? I think the interpreters are having difficulty  
3 staying up with you.

4 THE WITNESS: All right.

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

6 THE COURT: Ladies and gentlemen, when we  
stopped  
7 we were in direct examination. Let me turn back to  
8 Mr. Stern and allow him to proceed.

9 BY MR. STERN:

10 Q. Ms. Popkin, what is your basis of knowledge  
regarding  
11 the Sheraton killings?

12 A. A number of sources. Different human rights  
reports,  
13 Truth Commission reports, some of the records from the  
14 court proceedings themselves, interviews with some of the  
15 lawyers involved with U.S. Embassy officials, and  
basically  
16 that.

17 Q. In your past experience and in order to prepare for  
18 your testimony today, have you reviewed these materials?

19 A. Yes, I have.

20 Q. In particular, what court records have you reviewed  
21 regarding the Sheraton killings?

22 A. Some of the records, those from the National Guard,

the  
23 two National Guardsmen who were tried and convicted of  
24 murders. These were members of the G-2, the intelligence  
some 25 section of the National Guard at the time. As well as

1 military officers, and U.S. Embassy officials.

2 Q. Are you able to tell us what the names of the  
3 individuals were that you spoke with regarding the  
Sheraton  
4 killings?

5 A. Well, I spoke with a number of different  
individuals.

6 I spoke with the lawyer who was the private prosecutor in  
7 the case, who was hired to represent basically the  
victims,  
8 Jos, Maria Mendez.

9 Q. Would you spell that?

10 A. J-O-S-E. M-A-R-I-A, M-E-N-D-E-Z.

11 I spoke with some of the U.S. Embassy officials  
12 working on the investigation of the case. This is quite  
a  
13 long time ago. I believe one of those was Carlos Correa,  
14 C-O-R-R-E-A.

15 Q. Who was Mr. Correa?

16 A. He was a lawyer from the Department of Justice who  
had  
17 been seconded to the Embassy to help with the  
18 investigation, prosecution in cases involving the deaths  
of  
19 U.S. citizens.

20 Q. What does it mean for him to be seconded?

21 A. He was sent down to the Embassy to help out for a  
22 period of time while he was still working for the

23 Department of Justice.

24 I have spoken with some people in a field, I don't

25 remember the name for a moment.

1 Q. We are going to get into this.

2 What is AIFLD?

3 A. American Institute For Free Labor Development. It  
was  
4 the international branch of AFL/CIO.

5 Q. What is the relationship to the killings?

6 A. Michael Hammer and Mark Pearlman killed along with  
7 Mr. Viera were in El Salvador on behalf of AIFLD. They  
had  
8 gone down to be advisers on the agrarian reform effort.

9 Q. Did AIFLD become involved in the investigation of  
the  
10 murders?

11 A. Very much so. In fact, they were instrumental in  
the  
12 investigation.

13 Q. Continue to discuss the sources of your knowledge  
14 about this. Did the Truth Commission Report mention the  
15 Sheraton killings?

16 A. Yes, it did.

17 Q. Have you reviewed that portion of the Truth  
Commission  
18 Report?

19 A. Yes, I have.

20 Q. Do you find that portion of the Truth Commission  
21 Report to be generally reliable and consistent with your  
22 knowledge?

23 A. Certainly consistent with my knowledge of the case,  
24 yes.

25 Q. Did you address the Sheraton killings in your  
recently



1 published book?

2 A. Yes, I did.

3 Q. Any other sources of knowledge about these murders  
4 that you haven't told us about?

5 A. There were a number of reports written by  
6 international human rights organizations. It was a  
7 notorious case, well followed internationally and in El  
8 Salvador.

9 Q. How about cable traffic between the U.S. Embassy in  
10 San Salvador and the Department of State in Washington,  
11 have you reviewed any cables that relate to the Sheraton  
12 killings?

13 A. Yes, I have seen some of those cables as well. It  
was  
14 also of great concern to the U.S. Government because of  
the  
15 death of U.S. citizens.

16 Q. Okay. I want to focus on the investigation. Could  
17 you please tell us in basic terms what happened and goes  
by  
18 the name of the Sheraton murders?

19 A. On the evening of January 3, 1981, the three victims  
20 were having -- were having a meal in the coffee shop of  
the  
21 Sheraton Hotel when apparently -- apparently the target  
of  
22 the three was the Salvadoran, Mr. Viera, who was head of

23 the Agrarian Reform Institute. Agrarian reform which had  
24 begun in March, 1980 was very, very controversial, so he  
25 had been singled out as someone who certain forces in the

1 country were interested in killing.

2 Q. Would you mind spelling his name for us?

3 A. V-I-E-R-A.

4 Q. Thank you.

5 What happened then?

6 A. Well, I can't remember exactly who spotted the  
victims  
7 there, but there were three people who were primarily  
8 involved in ordering the killing according to the report  
of  
9 the Truth Commission and other information. One of them  
10 was Lieutenant Rodolfo Lopez, L-O-P-E-Z, Sibrian,  
11 S-I-B-R-I-A-N. He was the secretary in command of the  
12 intelligence section of the National Guard in San  
Salvador.

13 The other was Eduardo Avila, A-V-I-L-A. And Hans  
14 Christ, who is not a member of the military.

15 Lieutenant Lopez Sibrian apparently knowing -- once  
he  
16 had the information that Viera and these other  
individuals  
17 were in the Sheraton Hotel, ordered two members of the  
18 National Guard to actually carry out the killing, two  
19 members who came in civilian clothes, members of the  
20 intelligence section office carried out their functions  
out  
21 of uniform.

22 They were provided weapons to do this. They didn't

23 use the standard weapons of the National Guard, and they  
24 were helped to escape by these individuals.  
Interestingly,  
25 the head of the intelligence section of the National  
Guard,

1 Major Denis Moran, M-O-R-A-N, was also at the Sheraton  
2 Hotel that night with another group of people, and one of  
3 the two guardsmen who was convicted for the murders was  
4 actually his bodyguard or driver, I think his bodyguard.

5 Q. So when exactly did the murders take place?

6 A. It was the night of January 3, 1981. I think  
sometime  
7 between ten and 11 o'clock.

8 Q. Was there an investigation into the murders?

9 A. There was, but didn't start to get anywhere  
initially.

10 However, because two of the victims were U.S. citizens  
and

11 members of AIFLD, that organization took up the case and  
12 did its own investigation and with the support of the  
U.S.

13 Embassy put a great deal of pressure on the Salvadoran  
14 military and particularly the National Guard to carry out  
15 some kind of investigation. So there wasn't an adequate  
16 immediate investigation, but over time there was some  
17 investigation of the case.

18 Q. Are you aware of whether before AIFLD, the American  
19 labor group, became involved there was any attempt by the  
20 Salvadoran National Guard to investigate these murders?

21 A. I am not aware that there was immediately.

22 Q. What happened then, after AIFLD, the American labor  
23 group got involved?

24 A. Well, eventually, once they had come up with  
25 information that it was clear that this had been done,

1 carried out by members of the National Guard, an  
2 investigation was undertaken under the officer who was  
3 placed in charge, Major M-E-D-R-A-N-O, Medrano, and there  
4 were statements taken from different members of the  
5 National Guard including from the two who were eventually  
6 prosecuted and convicted for actually carrying out the  
7 killings.

8 Q. How did AIFLD conduct an investigation into these  
9 murders?

10 A. I don't know the details. They used sources, they  
11 talked to a lot of people, they carried out an  
12 investigation. I think just trying to gather all the  
13 information they could. There were obviously witnesses,  
14 this was carried out in a public place, in a hotel where  
15 there were people present who could identify the other  
16 people who had been present that evening.

17 Q. At what time did the AIFLD investigation take place?

18 A. In 1981 -- in 1982, I believe.

19 Q. And do you know whether the information that AIFLD  
20 learned in the course of its investigation was  
transmitted

National 21 to the Salvadoran Government and specifically the  
22 Guard?

23 A. I don't know exactly what form, but the findings  
were

24 made available to the Salvadoran Government and to the  
25 National Guard.



1 Q. And approximately what time frame was that  
information

2 transmitted to the Salvadoran Government and National  
3 Guard?

4 A. Well, I have to assume it was before August of 1982,  
5 because I have seen statements, investigative statements  
6 taken in August of 1982.

7 Q. Please tell us about those investigative statements.

8 A. Well, initially there were statements taken inside  
the

9 National Guard, some of them, and there were also  
10 statements taken from the employees of the Sheraton Hotel  
11 and other witnesses. But the statements from members of  
12 the National Guard describe how two members of that unit  
13 were selected to go -- for this particular mission to go  
14 with Lieutenant Lopez Sibrian to the Sheraton Hotel, kill  
15 Mr. Viera and the two U.S. citizens who were with him.

16 Q. This is testimony from whom?

17 A. From a series of members of the National Guard. You  
18 want actual names?

19 Q. I don't think that is relevant. But they were  
members

20 of the National Guard?

21 A. Members of the National Guard, members of the  
22 intelligence section of the National Guard who were on  
duty

23 in January of 1981.

24 Q. Do you know what the legal procedural setting was in  
25 which the statements were given?

taken  
down

1 A. The initial statements, extrajudicial statements  
2 by members of the National Guard, they are like police  
3 statements in the U.S., interview a witness and write  
4 what they said. And in some cases there are also  
5 subsequent statements from September of 1982 that were  
6 taken before a judge.

own

7 Q. Based on those statements, are you aware of whether  
8 the National Guard carried out any investigation of its  
9 in regard to the murders?

believe,  
to

10 A. Well, this was -- at that time the investigation of  
11 the National Guard, it is not clear there was any prior  
12 investigation, there are some allegations that, I  
13 at least one of the trigger men said they were told not  
14 be concerned, they would be protected.

attempt

15 Q. What I should have asked you is, based on the  
16 statements, did the National Guard or the military  
17 to prosecute any individuals for the crimes?

18 A. Well, the statements were then turned over to the  
19 courts.

20 Q. And what happened then in terms of the investigation  
21 and prosecution?

22 A. The only -- well, originally, these statements

23 identified not only the two National Guardsmen who were  
24 actually the trigger men, but Lieutenant Lopez Sibrian,  
25 Captain Avila and Hans Christ involved in this and left

involvement 1 open the question of the possible knowledge or  
2 of Major Moran.

3 The judicial investigation eventually led to a trial  
4 that didn't occur until February, 1986 against the two  
5 trigger men who were convicted. However, Lieutenant  
Lopez 6 Sibrian was the -- the proceedings against him came to an  
7 end in late 1983. After he had been allowed to change  
his 8 appearance, a witness who was trying to identify who he  
9 had seen was unable to recognize him.

10 Q. Now, remind us again, who is Mr. Lopez Sibrian?

11 A. The secretary in command, number two in the  
12 intelligence section of the National Guard from, I  
believe, 13 1980 until at least 1983. And he was the one who gave  
the 14 direct order, apparently, to the, to the members of the  
15 National Guard who were in the intelligence section to  
16 carry out this particular mission.

17 Q. And what were the details of his identification in  
the 18 legal proceedings that you mentioned?

19 A. I am sorry?

20 Q. Well, I believe you mentioned something about  
changing 21 identity.

22 A. I believe he was wearing a wig that changed what his  
23 hair looked like at the time.

24 Q. At what time?

25 A. At the time he was brought to court for the witness

1 identification.

2 Q. And approximately what time frame was that?

3 A. I don't recall. I would assume also 1982, but I  
don't  
4 have the exact time.

5 Q. During this period are you aware whether the United  
6 States applied pressure on the government of El Salvador  
7 and National Guard to move forward with its  
investigation?

8 A. Yes. The United States applied a great deal of  
9 pressure about this case. It was of great concern.

10 Q. I believe you mentioned that the Truth Commission  
11 Report deals with the Sheraton killings; is that correct?

12 A. Yes, it does.

13 Q. Are you familiar with that account of the murders in  
14 the Truth Commission report?

15 A. Yes.

16 Q. Okay.

17 MR. STERN: Could I have document -- page 293  
of  
18 Exhibit 32, please. 0320293. And if I could ask the  
19 technician to enlarge the three paragraphs under the  
20 heading summary of the case.

21 Actually, let's do the first two paragraphs  
22 first.

23 BY MR. STERN:

24 Q. Would you please read these paragraphs for us,  
25 Ms. Popkin?



1           MR. KLAUS: I object. This is unnecessary,  
2           needless presentation of cumulative evidence.

3           THE COURT: Well, let me back up for a minute.  
4           The report is in evidence, is it not?

5           MR. STERN: That is correct, Your Honor.

6           THE COURT: I think either side has a right to  
7           publish anything in evidence, so I will permit that.

8           THE WITNESS: "On the night of January 3, 1981,  
9           in the Sheraton Hotel in San Salvador, two National

Guard

10          agents killed Jos, Rodolfo Viera Lizama, President of

the

11          Salvadoran Institute for Agrarian Reform, ISTA, and  
12          Michael Hammer and Mark David Pearlman, United States  
13          advisers from the American Institute for Free Labor  
14          Development, AIFLD.

15                 "The actual murderers, Santiago Gomez Gonzalez  
16          and Jose Dimas Valle Acevedo, who were National Guard  
17          agents, were convicted and later released under the 1987  
18          amnesty act. The other individuals involved in planning  
19          and ordering the murders, Lieutenant Rodolfo Isidro

Lopez

20          Sibrian, second in command of the intelligence section

of

21          the National Guard, Captain Eduardo Ernesto Alfonso

Avila,

22          and businessman Hans Christ, were never convicted."

23 Q. Thank you.

24 MR. STERN: Could I have the next two  
paragraphs,

25 please?

1 BY MR. STERN:

2 Q. Ms. Popkin, could I ask you to read these two  
3 paragraphs, please?

4 A. "The intelligence section of the National Guard had  
5 planned to eliminate Viera months before his murder.  
6 National Guard agents carried out the murders in the  
7 manner  
8 characteristic of the death squads.

9 "Lieutenant Colonel Mario Denis Moran Echeverria,  
10 then  
11 chief of the intelligence section of the National Guard,  
12 covered up information about the murders, and Judge  
13 Hector  
14 Enrique Jimenez Zaldivar allowed one of the suspects to  
15 disguise himself so as to conceal his identity.

16 Q. If you could go to the next page, please, the first  
17 two paragraphs under the heading the murders of Viera and  
18 Hammer and Pearlman. Read, please.

19 MR. KLAUS: Could he please identify a page,  
20 please?

21 MR. STERN: Page 145 of the Truth Commission  
22 Report.

23 MR. KLAUS: Thank you.

24 BY MR. STERN:

25 Q. Would you read these paragraphs?

26 A. "It is not clear whether those who planned the  
27 murders

there 24 set the specific place and time in advance. However,  
25 is full evidence that they did take advantage of the

1 unexpected opportunity in the Sheraton Hotel to murder  
2 people who were a previously selected target.

3 "On the night of January 3, 1981, Lopez Sibrian  
4 ordered Valle Acevedo, a National Guard agent, to  
accompany  
5 him to the home of businessman Hans Christ. Lopez  
Sibrian  
6 was carrying a nine millimeter pistol and submachine gun  
7 obtained from the National Guard depot. At approximately  
8 ten p.m., Christ, Lopez Sibrian and Avila arrived at the  
9 hotel and went to eat in the hotel restaurant."

10 MR. STERN: If I could have the next two  
11 paragraphs, please.

12 BY MR. STERN:

13 Q. Could I ask you to read those paragraphs for us?

14 A. "Viera, Hammer and Pearlman arrived sometime after  
ten  
15 p.m. They went into the restaurant where Christ, Avila  
and  
16 Lopez Sibrian were sitting. Since the restaurant was  
full,  
17 they asked for somewhere more private. An employee  
18 recommended the Americas room, which is spacious. Christ  
19 recognized Viera and commented to Avila, look, there's  
that  
20 son of a bitch. Avila said that someone in the group  
21 commented that he had grown a beard and that it would be

Lopez

22 good if he were dead. Avila also mentioned that when  
23 Sibirian saw Viera, he said that was a good opportunity to  
24 kill him. At least one of the three left the table and  
25 watched where Viera's group was going.

1           "Movements later Lopez Sibrian, Avila and Christ  
left           2           the hotel, went to the parking lot and got into a car.  
3           There they told Valle Acevedo to kill the President of  
ISTA           4           and the other two, but he refused to do the job alone.  
5           Lopez Sibrian got out of the car, went back o the parking  
6           lot and went over to Nation Guard agent Gomez Gonzalez,  
who           7           was watching Moran's vehicle. Lopez Sibrian told him to  
go           8           with him. When Gomez Gonzalez replied that he could do  
9           nothing without Major Moran's authorization, Lopez  
Sibrian       10          went into the hotel, returned immediately and told Gomez  
11          that Moran had authorized him to accompany him."

12       Q.    Ms. Popkin, was Mr. Lopez Sibrian an officer in the  
13       Salvadoran National Guard?

14       A.    Yes, he was a lieutenant.

15       Q.    Do you know what section of the National Guard he  
was       16       part of?

17       A.    Intelligence section. He was number two in the  
18       intelligence section.

19       Q.    The previous passages Colonel Moran Echevarria  
20       appeared. Is that a name that is referred to as Denis  
21       Moran?

22       A.    Yes, that is the same person.

23 Q. And do you know whether Mr. Moran was an officer in  
24 the Salvadoran National Guard?

25 A. He was a major at that time in the Salvadoran  
National



1 Guard, and he was the -- he was commander of the  
2 intelligence section, number one.

3 MR. STERN: Could I have the last two  
paragraphs

4 of this page, please?

5 BY MR. STERN:

6 Q. Could you please read those paragraphs for us,  
7 Ms. Popkin?

8 A. "Lopez Sibrian and Gomez Gonzalez then walked toward  
9 Sibrian's vehicle in which Valle Acevedo, Christ and  
Avila

10 were sitting. Lopez Sibrian ordered Valle Acevedo and  
11 Gomez Gonzalez to accompany Christ to the hotel and kill  
12 the three men there. He also gave Gomez Gonzalez the  
nine

13 millimeter Ingram submachine gun, while Avila gave Valle  
14 Acevedo another 45 millimeter submachine gun and a khaki  
15 sweater to conceal the weapon. Christ told them that he  
16 would identify the men.

17 "The two National Guard agents entered the hotel  
18 behind Christ who showed them where Viera, Hammer and  
19 Pearlman were sitting. They waited only a few moments,  
20 then Valle Acevedo and Gomez Gonzalez opened fire on  
Viera  
21 and his two companions. There is sufficient evidence  
based

22 on the wounds received and --"

23 MR. STERN: Could we go to the top of the page,  
24 please?

25 THE WITNESS: "-- the place where the bodies

Pearlman 1 were, that in addition to Viera, both Hammer and  
2 were a target of the gunmen."  
3 Q. Could you continue?  
4 A. "The two gunmen left the hotel immediately and  
escaped  
5 in Lopez Sibrian's vehicle to a house near the auxiliary  
6 funeral service, followed by Avila in his vehicle. There  
7 they returned the weapons to their respective owners and  
8 Lopez Sibrian then ordered them to return to National  
Guard  
9 headquarters. After the murders of Viera, Hammer and  
10 Pearlman, it became known in National Guard that members  
of  
11 Section II, including Valle Acevedo and Gomez Gonzalez,  
had  
12 committed the murders."  
13 MR. STERN: Could I have the next two  
paragraphs  
14 highlighted, please? Thank you.  
15 BY MR. STERN:  
16 Q. Would you read these two paragraphs?  
17 A. "On February 14, 1986, five years after the murder,  
18 the two agents were convicted and sentenced to 30 years  
in  
19 prison. On December 19, 1987, they were released under  
the  
20 Amnesty Act. The case against Avila was dismissed for  
the

21 same reason.

of

22 "The seven years of investigation into the murders

23 Viera, Hammer and Pearlman are well documented elsewhere

24 and there is no need to review them here. However, two

by

25 aspects of the incident warranted careful consideration

1 the Commission."

2 Q. Ms. Popkin, were Sibrian and Moran, the two officers  
3 that you identified, ever convicted of any crime in  
4 connection with the Sheraton killings?

5 A. Not in connection with the Sheraton killings.

6 Q. Was any officer of the Salvadoran military forces  
ever  
7 convicted of the Sheraton murders?

8 A. No.

9 MR. STERN: If I could have the next two  
10 paragraphs.

11 BY MR. STERN:

12 Q. Would you please read these two paragraphs regarding  
13 Major Moran?

14 A. "The role of Major Moran. There is substantial  
15 evidence that Major Moran, then chief of intelligence of  
16 the National Guard, learned after the murders that his  
17 second in command, Lopez Sibrian, had ordered two guards  
in

18 the unit he commanded to carry them out. Moran also  
19 neglected to inform the appropriate authorities of those  
20 facts.

21 "It is also clear that Moran's role in the murders  
was  
22 never properly investigated. One of the convicted guards  
23 said Major Medrano, who headed the military investigation

so

24 of the case, told him to blame Lopez Sibirian apparently

25 as not to implicate his superior, Moran. Furthermore,

1 there is no indication that when the Commission for the  
2 Investigation of Criminal Acts reopened the case in 1985,  
3 it investigated Moran's role in the murders, even though  
it  
4 had received evidence that Moran participated in the  
5 meeting of the intelligence section of the National Guard  
6 on January 3 when the murder may have been planned. The  
7 Commission for the Investigation of Criminal Acts was  
also  
8 given evidence that on January 5, Moran received payment  
9 for completing a, quote, job."

10 MR. STERN: Could you highlight the next  
11 paragraph, please?

12 BY MR. STERN:

13 Q. Would you please read this paragraph regarding  
14 Mr. Lopez Sibrian's role in the murders?

15 A. "Although the testimony gathered by the Medrano  
16 commission shed new light on Lopez Sibrian's role in the  
17 murders, there is full evidence that Judge Jimenez  
Zaldivar  
18 cooperated actively with Lopez Sibrian by allowing him to  
19 disguise himself so that it was impossible for a key  
20 witness to recognize him. The next day Judge Jimenez  
21 Zaldivar ordered Lopez Sibrian released for lack of  
22 evidence."

23 Q. Ms. Popkin, did the Truth Commission make any  
findings

24 regarding the Sheraton murders?

25 A. Yes, it did.



1                   MR. STERN: Could I have the next page on the  
2 screen, please? And if I could have that entire portion  
3 highlighted.

4 BY MR. STERN:

Truth  
5 Q. Would you please read for us the findings of the  
6 Commission on these murders, Ms. Popkin?

7 A. "The commission finds the following:

1981,  
8 "One, there is full evidence that on January 3,  
9 Jos, Dimas Valle Acevedo and Santiago Gomez Gonzalez  
killed

Pearlman  
10 Jos, Rodolfo Viera, Michael Hammer and Mark David  
11 in the Sheraton Hotel.

12 "Two. There is full evidence that Lieutenant Lopez  
13 Sibrian was involved in planning the operation to murder  
14 Viera, Hammer and Pearlman and in ordering two members of  
15 the National Guard to carry it out. He also gave a  
weapon

16 to Gomez Gonzalez and helped the killers escape from the  
17 scene of the crime.

18 "Three. There is full evidence that Captain Eduardo  
19 Avila was involved in planning the murder operation and  
20 collaborated with Lopez Sibrian in carrying it out.

Christ  
21 "Four. There is sufficient evidence that Hans

assisted

22 was involved in planning the murder operation and

23 in carrying it out.

24 "Five. As to the role of Lieutenant Colonel Mario

covered

25 Denis Moran, there is substantial evidence that he

1 up the murders by neglecting to report the facts.

2 "Six. There is full evidence that Judge Hector

3 Enrique Jimenez Zaldivar cooperated with the main  
suspect,

4 Lopez Sibrian, hindering his identification which would

5 have led to the institution of criminal proceedings."

6 Q. In light of the facts discovered by the Truth

7 Commission and given as you testified pressure from the

8 United States to proceed with this investigation, what do

9 you conclude as an expert about the willingness of the

10 Salvadoran military to investigate human rights crimes?

11 A. There was no willingness to investigate these  
crimes.

12 Q. Are you aware of any practical reason why the  
National

13 Guard or the Salvadoran military would have been unable  
to

14 carry out timely investigation of these murders?

15 A. No, I am not.

16 Q. Are you aware of any reason why the Salvadoran

17 National Guard or military forces would, had these facts  
18 been available to them, been unable to prosecute and  
punish

19 individuals in the military responsible for the killings?

20 A. I am not aware of any reason why they could not have  
21 turned over the suspects involved in the case and  
assisted

22 in the prosecution, in providing information and  
evidence.

23 Q. At the time that the murders -- the Sheraton murders  
24 took place, do you know who was the director of the  
25 National Guard?

1 A. General Vides -- then colonel, I believe -- Vides  
2 Casanova was head of the National Guard at that time.

3 Q. Is that the General Vides Casanova in our courtroom  
4 today?

5 A. Yes, it is.

6 Q. Do you know at that time in '81 who was the Minister  
7 of the Defense in El Salvador?

8 A. Then Colonel Garcia was Minister of Defense at that  
9 time.

10 Q. Is that the Colonel Garcia with us today?

11 A. Yes, it is.

12 Q. As a legal scholar, does the existence of this type  
of  
13 crime carried out by members of the intelligence section  
of  
14 the National Guard lead you to any other conclusions  
about

15 the role of death squads in the Salvadoran military?

16 A. I am not sure I understand the question.

17 Q. Well, you mentioned that you had dealt with the  
18 Sheraton killings in your book. What is the significance  
19 of the killings for you as somebody studying and trying  
to  
20 understand the Salvadoran legal system?

21 A. Well, I think the significance is that this case  
22 illustrates, perhaps more clearly than any other that has  
23 been documented, how the intelligence sections of the

squad

24 security forces were places where the so-called death

25 operations were being run out of. And I don't know if I

1 could read a bit more from the Truth Commission Report on  
2 that aspect.

3 Q. Did the Truth Commission address the issue of death  
4 squads being run out of intelligence sections?

5 A. Yes, they did.

6 Q. What did the Truth Commission have to say about  
that?

7 A. May I read?

8 Q. What page are you reading from?

9 A. 136.

10 Q. 136?

11 A. Yes.

12 Q. Please go ahead.

13 A. Captioned death squads --

14 Q. Excuse me, I think we have that on the system.

15 MR. STERN: If I could have R285 on the screen.

16 Highlight the second -- yes, those two paragraphs,  
please.

17 BY MR. STERN:

18 Q. Is this the passage that you began to read?

19 A. Yes.

20 Q. Thank you. Go ahead.

21 A. "In many armed forces units, the intelligence  
section,

22 S-II, operated on the death squad model. Operations were

23 carried out by members of the armed forces usually  
wearing

24 civilian clothing, without insignias and driving unmarked  
25 vehicles.



1           "The Salvadoran armed forces also maintained within  
2 the joint staff under Department Five, civilian affairs,  
a  
3 secret, clandestine intelligence unit for surveillance of  
4 civilian political targets, which received information  
from  
5 the S-II sections of each military unit or security  
force.  
6 The purpose of this unit was to obtain information for  
the  
7 planning of direct actions that included the, quote,  
8 elimination of individuals. In some cases, such plans  
were  
9 transmitted as actual orders to operational units in the  
10 various security forces or the armed forces themselves."

11 Q. Was there another passage from the Truth Commission  
12 report you wanted to draw our attention to, Ms. Popkin?

13 Let me stop and ask you --

14 A. Just continuing, if I may.

15 Q. Please go ahead.

16 A. There is an example.

17 Q. If we could have the next paragraph.

18 A. Yes. Okay.

19           The Truth Commission used the National Guard  
20 intelligence section as an example of how the death  
squads  
21 operated in this way.

Commission 22 "Testimony and information received by the  
23 on the Truth from former members of the S-II section of  
the 24 National Guard show that the murder of Rodolfo Viera,  
25 President of the Salvadoran Institute of Agrarian Reform,

1 ISTA, and two United States advisers in January, 1981 was  
2 not an isolated event. Members of this section, with the  
3 complicity of economically influential civilians,  
operated  
4 as a death squad dedicated to eliminating political  
5 opponents and people considered to be supporters of the  
6 armed left-wing."

7 There is one more paragraph.

8 Q. One more paragraph, please.

9 A. "A group of extreme right-wing civilians that  
included  
10 Hans Christ, Ricardo Sol Meza, Constantino Rampone, and  
11 Ernest Panama acted as, quote, advisers to the S-II  
section  
12 of the National Guard and influenced its work. They  
often  
13 visited headquarters to meet with the chief of Section  
II,  
14 Major Mario Denis Moran, and his second in command,  
15 Lieutenant Isidro Lopez Sibrian. On various occasions  
they  
16 provided money and weapons. There is also evidence and  
17 testimony that Argentine nationals frequented S-II  
18 headquarters and were commissioned by the above-mentioned  
19 group of civilians to carry out assignments that included  
20 murders."

21 Q. The headquarters mentioned in that paragraph is the  
22 headquarters of what?

in

23 A. Referring to the headquarters of the National Guard

24 San Salvador.

25 Q. Do you know whether that is the National Guard

1 headquarters where the director general of the National  
2 Guard General Vides Casanova had his offices?

3 A. Yes, the same building.

4 Q. Ms. Popkin, what was the -- I asked you questions  
5 about whether any military or security force officers  
were

6 ever convicted in connection with the Sheraton killings.

7 More broadly, are you aware of whether any Salvadoran

8 military or security force officer was convicted in

9 connection with the human rights crimes during the period

10 of 1979 through 1983?

11 A. From 1979 through 1983, no Salvadoran officer was  
12 convicted for human rights crime.

13 MR. STERN: Could I have slide 37 on the  
screen,

14 please?

15 BY MR. STERN:

16 Q. Does this slide reflect the testimony that you have  
17 just given regarding the lack of officers convicted in  
the

18 relevant time period, Ms. Popkin?

19 A. Yes, it does.

20 Q. Can you tell us whether any enlisted man was  
convicted

21 of a human rights crime in El Salvador during the period  
of

22 '79 through '83?

for

23 A. During that period no convictions for enlisted men

24 human rights crimes, either.

25 Q. You previously stated your opinion that victims of

1 human rights abuses at the hands of the military and  
2 security forces in the 1980's would have faced barriers  
in  
3 seeking justice in El Salvador. What are your reasons  
for  
4 stating that opinion?

5 A. I am sorry, could you repeat the question?

6 Q. Maybe I could have that slide taken off the screen,  
7 please.

8 Ms. Popkin, was the Salvadoran justice system able  
to  
9 facilitate or handle claims by victims of human rights  
10 abuses in the 1979 to 1983 time period?

11 A. No. It was totally unable to do so during that  
12 period.

13 Q. Why was it unable to do so?

14 A. For some of the reasons we already discussed,  
because  
15 it was very much intimidated and manipulated by the  
16 military who were responsible for the human rights  
17 violations. There simply weren't lawyers who were ready  
to  
18 bring those cases, victims were afraid to try to do so  
with  
19 good reason, and had no reason to believe that they would  
20 succeed.

21 Q. In your opinion would it have been possible for  
22 victims of human rights abuses in that period to obtain

23 documents or witnesses to help with their case?

24 A. It would have been extremely difficult, if not

25 impossible.



1 Q. Why would it have been so difficult?

2 A. Witnesses were not willing to come forward. They  
3 didn't want to risk their lives taking on the military  
4 during that period, and documents -- there really wasn't  
5 documentary records that could be obtained that would  
have  
6 been helpful.

7 Q. Your testimony that you have just given includes  
8 victims of torture at the hands of the military security  
9 forces?

10 A. Yes.

11 Q. Are you aware of any victim of torture at the hands  
of  
12 the military or security forces in 1979 through 1983 who  
13 pressed a human rights claim in El Salvador?

14 A. I am not aware that anyone did so during that time  
15 period.

16 MR. STERN: Thank you. I have no further  
17 questions.

18 THE COURT: Thank you. Let me turn to Mr.  
Klaus.  
19 Cross examination?

20 MR. KLAUS: Thank you.

21 CROSS EXAMINATION

22 BY MR. KLAUS:

23 Q. The individuals mentioned, Sibrian, Lieutenant  
Sibrian

24 and Major Moran, they were both associates of Roberto  
25 D'Aubuisson; is that correct?

1 A. I actually don't know that.

2 Q. Well, when you researched your book, did it uncover  
3 the connections between them?

4 A. My book was about the justice system. I refer to  
the  
5 Sheraton case in terms of the legal proceedings. I  
didn't

6 get into the history of the death squads and that.

7 Q. Okay. Well, if that is being perpetrated by a death  
8 squad, and one of your premises here today is that  
members

9 of the armed services were -- National Guard in  
10 particular -- were responsible for these crimes, these  
11 atrocities, wouldn't it be important to know why and who  
12 was the motivator, and who was the instigator behind the  
13 murders?

14 A. The death squad actions that were carried out by the  
15 National Guard, that information comes from the National  
16 Guard itself, and has to do with particular cases. My  
17 understanding is that the death squads were not something  
18 run by a single person, there were many officers, and  
some

19 civilians involved in death squads. And again, I said, I  
20 am not an expert on who was connected to whom.

21 What I am looking at is the particular cases, and  
also

22 what the Truth Commission said about the way these things

23 operated.

24 Q. Weren't those two men with Major D'Aubuisson when he

25 was arrested in May, 1980 for plotting a coup?

1 A. They may well have been. I am not an expert on that  
2 information is what I am saying.

3 Q. Go back to the Truth Commission.

4 MR. KLAUS: If I could have R284. Let me see.

5 Let me have R285. And down toward the bottom -- let me  
go

6 over to R2 -- I am sorry, R286. And under findings, if  
7 you can highlight the first paragraph under findings.

8 BY MR. KLAUS:

9 Q. Are you familiar with this passage?

10 A. I have seen it, yes.

11 Q. That is under the death squad part you just read  
from?

12 A. Uh-huh.

13 Q. And this describes -- says, "Because of the  
14 clandestine nature of their operations, it is not easy to  
15 establish all links existing between private businessmen  
16 and the death squads. However, the Commission on the  
Truth  
17 has absolutely no doubt that a close relationship  
existed,

18 or the possibility that businessmen or members of moneyed  
19 families may find the need and might be able to act with  
20 impunity in financing murderous paramilitary groups, as  
21 they have in the past, poses a threat to the Salvadoran  
22 society."

23 This is a record printed in 1990?

24 A. 1993.

25 Q. They are talking about things that happened back at

1 that time, '80 to '91?

2 A. Yes.

3 Q. The next paragraph.

4 MR. KLAUS: If you can highlight that.

5 BY MR. KLAUS:

6 Q. We have been through this part before.

7 "At the same time it must be pointed out that the  
8 United States Government tolerated, and apparently paid  
9 little official heed to the activities of Salvadoran  
10 living in Miami, especially between 1979 --

exiles

11 THE COURT: Wait a minute everybody. Slow

down.

12 BY MR. KLAUS:

13 Q. "-- and 1983. According to the testimony received  
14 the Commission, this group of exiles directly financed

by

and

15 indirectly helped run certain death squads. It would be  
16 useful if other investigators with more resources and  
17 time were to shed light on this tragic story so as to  
18 insure that persons linked to terrorist acts in other  
19 countries are never tolerated again in the United

States."

20 Now, does this refer to external commands that  
21 influenced portions of the military?

22 A. I believe this paragraph refers to people in the

23 private sector. As I read before in the other paragraph  
24 coming into the National Guard headquarters and a meeting  
25 with Lieutenant Lopez Sibrian and Major Moran about



1 potential death squad actions.

2 Q. During that time there were serious divisions within  
3 the military; is that correct?

4 A. There may well have been. Again, I am not an expert  
5 on what the situation was in the military. I heard the  
6 testimony before, yes.

7 Q. Could that have been one of the problems in the  
8 military or National Guard or what you refer to early on  
in  
9 your testimony as the groups charged with the duty of --  
10 the investigative branches of the judicial system, could  
11 that have been a problem -- caused the problem with their  
12 ability to investigate or carry out their duties?

13 A. I am sorry, I don't understand the question.

14 Q. I am sorry, it got a little away from me there.

15 The fact that there was great divisions within the  
16 military and the security forces, could that have  
affected  
17 their ability to carry out their duties under the  
judicial  
18 code?

19 MR. STERN: Objection, Your Honor. Assumes  
facts  
20 not in evidence.

21 THE COURT: That is all right. You may answer  
22 the question if you are able to.

grasping 23

THE WITNESS: I am still having trouble

24 the relationship you are proposing.

25

1 BY MR. KLAUS:

2 Q. I will go back.

3 When you started your expert testimony, you testified

4 that one of the reasons the judicial system was ineffective

5 at prosecuting violators of human rights is that the

6 investigative branch, which includes the branches of the

7 military, didn't do their job?

8 A. Right. Branches of the security forces.

9 Q. Branches of the security forces, which all come  
10 under --

11 A. Military at the time.

12 Q. Under the Minister of Defense?

13 A. Right.

14 Q. Could one of the causes of not being able to do their

15 job be because there was so much division in the military?

16 A. I don't think the problem was division in the military

17 in this case. I think the problem was they were engaged

18 other activities. As I suggested before, they were doing

19 what they considered to be tracking subversives, carrying

20 out also apparently illegal actions such as ones we have

21 been talking about.

22 I think the problem was what the focus was, and the

23 focus was on these other aspects, and not on trying to  
24 achieve justice. And I don't think they had any interest  
25 in investigating themselves.

1 Q. Weren't they also busy fighting a war?

2 A. That is what I am saying. They were fighting a war,  
3 and part of it was to some extent -- well, the security  
4 forces were involved in looking for suspects, people they  
5 suspected of being involved in subversive activities who  
6 they thought were in some way aiding what came to be an  
7 armed conflict, although in the early stages hadn't risen  
8 to that level.

9 That was their priority. They were not interested  
in  
10 carrying out investigations of human rights crimes  
in  
11 particularly when those implicated were their colleagues  
12 military or closer to home, their colleagues in the  
13 National Guard in this case.

14 Q. In your position now do you also investigate -- is  
15 your responsibility in the area just South and Central  
16 America?

17 A. Our mandate covers all of the Americas, thus far we  
18 are a young institution, we focus on Central and South  
19 America.

20 Q. Have you investigated any unlawful detentions in the  
21 United States in the last six months?

22 A. I am not investigating unlawful detentions anywhere  
at  
23 this point. That is not the nature of our work.

24 Q. Okay. In all of your research, you didn't find out  
25 that those two men were connected with Roberto  
D'Aubuisson?

the  
things

1 A. I may have remembered that somewhere. That is not  
2 focus of my research or work. Tried to only assert  
3 I am quite confident about.

4 MR. STERN: Can you go to, I think it was R295.

5 And under investigation, can you highlight that?

6 BY MR. STERN:

"The  
there

7 Q. Now, this is from the Truth Commission and says,  
8 seven years of investigation of the murders of Viera,  
9 Hammer and Pearlman are well documented elsewhere and  
10 is no need to review them here. However, two aspects of  
11 this incident warranted careful consideration by the  
12 Commission."

read,  
it

13 And then underneath that are the parts that you  
14 you neglected to read that. There was an investigation,  
15 was a seven year investigation, right?

16 A. Actually, I did read that part. Yes, there was a  
17 seven year investigation.

18 Q. At the end there were the two enlisted men that were  
19 convicted?

kinds  
to

20 A. There was an investigation that stalled, had all  
21 of problems that could take an inordinate amount of time

22 go into the details and revived in 1958 with the  
23 establishment of the new commission to create criminal  
24 acts.

25 Q. And that led to?



1 A. Trial and conviction of two trigger man.

2 Q. And the trial of Sibrian who was acquitted?

3 A. No, he was not acquitted. There was no trial of  
him.

4 His case was dismissed because he had been allowed to  
5 change his identity, to obscure his identity.

6 Q. Was that an in court identification? I thought you  
7 described the judge let him put a wig on.

8 A. Because judges in El Salvador carried out the  
9 preliminary investigation, it was a preliminary  
proceeding,

10 it was not a trial. It was an investigative phase,  
initial

11 phase of the proceeding, when you decide there is enough  
12 evidence to take someone to trial.

13 Q. So it was the judiciary's duty and responsibility to  
14 carry out the investigation during that time period?

15 A. Judiciary with the assistance of the security  
forces.

16 Q. Security forces, and whatever were supposed to do  
the  
17 investigations at the judiciary's request?

18 A. And also on their own initiative, yes.

19 MR. STERN: Okay. If I can have a second.

20 THE COURT: Yes, surely.

21 MR. KLAUS: Nothing further, Your Honor.

22 THE COURT: All right.

23                   Let's turn back to Mr. Stern for redirect  
24   examination.  
25

1 REDIRECT EXAMINATION

2 BY MR. STERN:

3 Q. Ms. Popkin, did the Truth Commission conclude that a  
4 death squad was being run out of the intelligence unit of  
5 the National Guard?

6 A. Yes, it did.

7 MR. KLAUS: Objection.

8 THE COURT: Legal basis of the objection?

9 MR. KLAUS: If she can point to a page.

10 THE COURT: What is the legal basis of the  
11 objection?

12 MR. KLAUS: Not sufficient facts or data to  
base  
13 her opinion on.

14 THE COURT: All right. I will overrule that  
15 objection, and you may proceed.

16 BY MR. STERN:

17 Q. Would you like the question back? Do you have the  
18 question in mind?

19 A. Why don't you repeat it.

20 Q. Did the Truth Commission conclude that a death squad  
21 was being run out of the National Guards' intelligence  
22 section?

23 A. Yes, they did.

24 Q. And did members of that death squad in collaboration

of

25 with members of the National Guard carry out the murders

1 the three individuals who died in the Sheraton killings  
2 according to the Truth Commission?

3 A. Well, the members of the death squad included  
members  
4 of the National Guard as well as some individuals outside  
5 of it, yes. And they were the ones that the Truth  
6 Commission found to have been responsible for these three  
7 murders at the Sheraton Hotel.

8 Q. Opposing counsel asked you questions about the  
9 possible involvement of outside individuals in this  
10 incident. Does the involvement or lack of involvement of  
11 individuals from outside the National Guard affect at all  
12 your conclusions about the type of investigation that the  
13 National Guard should have carried out into the murders?

14 A. Not at all, no. They still had the responsibility  
to  
15 carry out the investigations.

16 Q. Why did the investigation into the Sheraton killings  
17 take seven years?

18 A. Because of the obstruction, lack of cooperation, the  
19 cover-up that was taking place at all different levels,  
20 primarily from inside the National Guard itself, clearly  
at  
21 times with the collaboration of the judiciary.

22 Q. In your opinion, without the involvement of the  
United

ever

23 States, would an investigation of the Sheraton murders

24 have taken place?

25 A. It is clear that no investigation of these murders

the  
1 would have taken place without the pressure coming from  
2 United States, from AIFLD, and from the U.S. Embassy.

3 Q. Is that because two Americans were murdered in that  
4 incident?

5 A. Exactly. During this period the only cases that had  
6 any kind of investigation were ones which the United  
States  
7 Embassy got deeply involved and those are primarily cases  
8 of United States citizen victims.

9 Q. Ms. Popkin, opposing counsel asked you questions  
about  
10 the impact of civil war on investigations.

11 In your view, is the search for subversives, as you  
12 phrased it, a sufficient explanation for why the security  
13 forces failed to investigate human rights crimes?

14 A. No. It is stating the reality of what they were  
15 doing, and what they were dedicating their time to. But  
16 they still had the legal obligation to be carrying out  
17 investigations of crimes including human rights crimes.  
18 There was no other body authorized to do it at the time.  
19 They had the legal obligation and authority to do that.

20 Q. In your opinion did the security forces carry out  
21 their legal obligations to investigate human rights  
crimes?

22 A. They did not.

23 MR. STERN: I have no further questions.

24 THE COURT: May Ms. Popkin be excused from her  
25 subpoena?



1 MR. STERN: Yes, Your Honor.

be

2 THE COURT: Ms. Popkin, you may step down and  
3 excused from your subpoena.

4 (Witness excused.)

to

5 MR. STERN: Your Honor, I have another witness  
6 call. Our next witness has an extensive body of  
7 testimony. In light of the lateness of the hour, I  
8 pose to begin fresh on Monday.

would

9 THE COURT: I think that makes sense. It is  
10 another bad night, it may be raining out there. I want  
11 people to drive carefully when they leave.

this

12 Before we do that, I would like to turn, one of  
13 the members of the jury had a question, and I raised  
14 with counsel, we didn't have a chance to discuss it.

Let

15 me respond to it if I might, and if we need to talk  
16 it again, I will be happy to do that.

about

17 One of the members of the jury posed this  
18 question and the question is, what is the difference  
19 between a document that is objected to and the objection  
20 is overruled. In other words, it is received into  
21 evidence. What is the difference between that kind of a  
22 document and a document that is received into evidence

23 without objection. I think is what the question meant.

24 And the answer is, there is no difference, any

25 document that is received into evidence, whether it

comes

the 1 in without objection or if an objection is overruled,  
2 document is evidence.

objection 3 Now, when something is offered but it is not  
4 received into evidence, okay, in other words, an  
5 is sustained, that document is not in evidence, so, that  
6 document is not considered.

in 7 So bottom line is, we have documents that are  
8 evidence, and it makes no difference whether they were  
9 offered -- whether they were objected to or not. The  
if 10 question is, are they in evidence. On the other hand,  
11 by chance something was offered and not received, it is  
12 not part of that body of that information that the jury  
13 may consider.

once 14 The juror has followed up and said the question  
15 is a document received over objection. The answer is  
question 16 it is in evidence, it is before the jury. So the  
no 17 is whether it was objected to or not objected to makes  
is 18 difference. Once the document has been received, that  
19 part of this, if you will, core of information that the  
20 jury could look to.

trial 21                    You remember I mentioned at the end of the  
22                    the jury is going to take back to the jury room all of  
the 23                    documents that have been received into evidence. But in  
24                    looking at this body of information, the jury can  
consider 25                    all of the testimony that has been offered and received,

1 all of the documents, all that consists of the evidence.  
2 And by the way, in addition to that would be any  
3 stipulations that the lawyers have reached. It seems to  
4 me we have had one or two stipulations.

5           So in this case the evidence will consist of  
any  
6 of the testimony, whether it has been live or by  
7 deposition, okay, it will consist of all of the  
documents  
8 actually received, and then any stipulations. So there  
9 probably are going to be three sources of information  
that  
10 the jury can look to in resolving these issues.

11           Now, I know everybody realizes this, and I want  
12 to take a minute if I can and express to you really on  
13 behalf of all the parties on both sides, how enormously  
14 thankful we are to you, the jury.

15           Ms. Essler's example today, we weren't sure she  
16 was really going to be with us, and frankly we would  
have  
17 had understood had she felt she couldn't be with us.  
But  
18 I think it suggests the commitment that all of you have  
to  
19 the case, and we are so very, very thankful.

20           Now, I want to remind you about the general  
jury  
21 instructions, and remember the thing that was so

22 important, to be a fair juror, you really have got to  
23 suspend judgment until you heard all of the evidence,  
24 until you have a chance to listen to the lawyers at the  
25 end of the case when they make their arguments to you,

1 and, of course, until you know exactly what is the law  
2 that governs this kind of a case.

3 Now, I think you understand with a case dealing  
4 with the kinds of issues, accusations and allegations  
that  
5 we are dealing with, it is understandable that there  
might  
6 be interest in the community, and I ask you to be so  
7 diligent, so careful to avoid reading any newspaper  
8 articles that would have anything to do with the case or  
9 seeing anything on it on T.V., radio, any other kind of  
10 media. I really ask you to be so diligent in that  
regard.

11 Now, have a nice holiday. Remember, we are not  
12 going to meet tomorrow nor Friday, okay? And we will  
13 gather on Monday. And I've talked with the lawyers last  
14 evening, I don't know how we went today, we may have  
15 fallen a little bit behind, but I think our hope is, and  
16 the Plaintiffs have indicated, and I will go back to  
17 Mr. Stern and Mr. Green to see if they have any  
different  
18 views, but the Plaintiffs were hoping that they might be  
19 able to conclude their case by Tuesday, the 9th. So  
20 Monday and Tuesday.

21 And then we will move into defense case on  
22 Wednesday, Thursday, and Monday which looks like we may  
be

23 hearing final arguments on Tuesday the 16th if  
everything  
24 moves on schedule. And I think everybody understands  
that  
25 those are estimates. We will take whatever time we need



1 to take, but I think the lawyers have indicated that  
that  
2 is at least what the schedule looks like now.

3 Mr. Green or Mr. Stern, does that seem to be  
4 about where we are in the Plaintiffs' case?

5 MR. STERN: I would say approximately, to be on  
6 the safe side, we might extend into Wednesday.

7 THE COURT: When lawyers say approximately,  
that  
8 is the hedge word you listen for.

9 Clearly today some of the testimony, we were  
10 doing translation, and so on, and so that gets a little  
11 bit behind, I think we all understand that. Again, I  
want  
12 to thank the lawyers on both sides for the way they have  
13 been cooperating with each other in terms of exhibits,  
the  
14 way the technicians are able to show things and make  
that  
15 available that has helped us tremendously.

16 Ladies and gentlemen, have a nice weekend. We  
17 will see you Monday and start right at 9:30.

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

19 THE COURT: I don't want to hold you up, I know  
20 some of you have travel plans. From the Plaintiffs'  
point  
21 of view, are there any things we need to put on the

the

22 agenda? I know we have jury instructions, but I thought

23 we would do that on Monday if that is okay. Anything

24 Plaintiffs need to talk about?

25 MR. STERN: I don't believe so.

1 THE COURT: From the defense point of view?

2 MR. KLAUS: Just their witness schedule.

3 THE COURT: Do we know the witnesses for  
Monday?

4 MR. GREEN: Professor Karl, and possibly  
5 Ms. Gonzalez.

6 THE COURT: Okay. Let me go back to you for a  
7 second, the approximately. Have we fallen very far  
behind  
8 today?

9 MR. STERN: No, I don't think so. It is a  
10 question whether Professor Karl and Ms. Gonzalez and  
11 Dr. Caddy will take a full day each or something less.  
I  
12 would say two days is possible, some of the third day is  
a  
13 more conservative estimate.

14 THE COURT: I really think defense needs to  
know  
15 as we get closer to Tuesday so defense can make  
16 adjustments regarding any defense witnesses and so on.  
I  
17 think it is helpful to know the idea of finishing on  
18 Tuesday evening may be open to question and we have to  
go  
19 back and take another look on that.

20 MR. KLAUS: It doesn't affect me whether they  
21 finish Monday, Tuesday, Wednesday or Thursday.



1 beginning, end or middle.

regarding

2 THE COURT: Was The Court's instruction

3 the question all right with you? I still don't quite

line

4 understand the distinction he was drawing, but bottom

5 is, it is whatever is in evidence the jury can consider

6 and doesn't make any difference whether it came in with

7 objection or without objection or over objection.

object

8 MR. KLAUS: Maybe it would help them if you

9 explain that if an objection is sustained, and the

10 or document doesn't come in they are not to consider it.

you

11 THE COURT: I will go over that. Maybe you are

12 right, maybe those are things that you hear and doesn't

13 make sense until you see the process taking place and

14 try to figure what is going on.

in

15 Thank you all. If anyone is leaving anything

16 the courtroom, feel free to do that. We will reconvene

17 Monday morning at 9:30.

is

18 MR. STERN: We have a question among ourselves

19 what The Court envisions on Monday. Is that exchange of

20 new drafts or submission of some kind?

21 THE COURT: Here is what I thought we would do.

22 Thank you. That is a good point. This would be a good

23 time over the weekend maybe for folks to take a look at,  
24 but I would like to start out and see if we can't deal  
25 with the command responsibility instruction so we can

get

1 that under our belts and move on beyond that.

2 I think the easiest way to do it is if somebody  
3 does some drafting over the weekend to hand out a hard  
4 copy on Monday morning to the other side, and I would

like

5 to get a copy, too. And why don't we plan on Monday we  
6 are going to begin by addressing the jury instructions,  
7 and we will work topic to topic as we go along. Defense  
8 should feel free to do the same thing.

9 Why don't we agree the first major issue we are  
10 going to deal with is command responsibility. Let's see  
11 if we can't get that out of the way, and look at

whatever

12 other proposals people have, any other special jury  
13 instructions or anything else.

14 Is that all right with everybody?

15 MR. STERN: Yes.

16 MR. KLAUS: Yes.

17 THE COURT: Okay. We will be in recess until  
18 Monday, 9:30.

19 (Thereupon, trial was recessed at 4:50 p.m.)

20

21

22

23

24





1		I N D E X			
2		WITNESSES FOR THE PLAINTIFFS			
3		Direct	Cross	Redirect	Recross
4	JOSE GARCIA		924	975	
5	MARGARET POPKIN	982	1045	1054	
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