

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 8, 2002

Florida

12 )  
13 )  
14 JOSE GUILLERMO GARCIA, an )  
15 individual, CARLOS EUGENIO VIDES )  
16 CASANOVA, an individual, and ) VOLUME 7  
17 DOES 1 through 50, inclusive, )  
18 )  
19 Defendants. )  
20 \_\_\_\_\_ x

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

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16

17 APPEARANCES:

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

20 For Defendant: KURT KLAUS, ESQ.

21

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

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23

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PAULINE A. STIPES



1 THE COURT: All right. Ladies and gentlemen,  
we  
2 all have our computers coordinated and working. That is  
3 fine.

4 In the effort to get started, it occurred to me  
5 after the fact that I neglected to administer the oath  
to  
6 Mr. Icaza.

7 Now, we have had the benefit of having three  
8 court interpreters throughout the process, two of whom  
are  
9 Federally certified court interpreters.

10 As I understand it, there is a national  
11 examination given. The problem is, it has not been  
given  
12 in many, many years. We have a real problem in trying  
to  
13 have people be able to be certified under that.

14 We have had the benefit in our trial of  
15 Mr. Francis Icaza, who is the director of Advanced  
16 Translating Corporation. I need to administer the oath,  
17 and what I would do is administer the oath and make it  
18 retroactive, that is, everything translated is  
retroactive  
19 and move forward. Is that agreeable?

20 MR. KLAUS: That is agreeable.

21 THE COURT: Normally The Court does not  
interpret

22 the oath to others not Federally certified. I did not  
23 intend to do that because the other folks have received  
24 the oath as part of their certification. Again, is that  
25 agreeable to both parties?

1 (Interpreter sworn.)

2 THE COURT: Thank you very much.

3 Are we all set now and ready to proceed?

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

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

6 THE COURT: Ladies and gentlemen, please be  
7 seated.

8 Good morning, everybody. I hope you all had a  
9 nice weekend. Not too rainy.

10 As you know, when we stopped prior to our last  
11 recess, we are still in the Plaintiffs' case in chief,  
so

12 I am going to turn now, if I might, to Plaintiffs'  
counsel

13 and allow the Plaintiffs to call their next witness.

14 Mr. Stern?

15 MR. STERN: May it please The Court.  
Plaintiff's

16 call professor Terry Karl.

17 THE COURT: Professor Karl.

18 By the way, the pointer is on the witness stand  
19 if you want to remove that so it won't be in the  
20 professor's way.

21 Professor, would you please sit down and make  
22 yourself comfortable? I need to tell you the microphone

able

23 has a short pickup range. I think if you pull that  
24 closer, you will be more comfortable and you will be  
25 to sit back.



25 in 1986 where I am currently professor of political



1 science.

2 Q. You mentioned a couple areas of specialization  
3 already. Would you walk through them one by one in terms  
4 of your areas of expertise?

5 A. Well, I work on several things. I have been for 12  
6 years director for the Center of Latin America Studies in  
7 Stanford. In that capacity we are expected to know about  
8 areas in Latin America, particularly areas in the news or  
9 that are important where we may have to publicly  
represent  
10 the university.

11 My own, one of my own areas of specialty has been,  
12 really since 1979, Central America, and particularly El  
13 Salvador, which is the country I have written the most  
14 about in Central America.

15 Q. Does your expertise include politics and political  
16 history of El Salvador?

17 A. Yes, it does.

18 Q. Have you had an opportunity to study military  
19 institutions in El Salvador in the past generation?

20 A. Yes, I studied them extensively in part because of  
my  
21 own interest about how militaries rule in Latin America,  
22 but also because I have been requested to do so by  
members  
23 of the U.S. Congress, and by members of our Defense

24 Department.

25 Q. Would you tell us more about your relation to the

El 1 members of Congress and Defense Department in regard to  
2 Salvador, please?

center 3 A. Well, El Salvador, as you remember, was a major  
4 foreign policy issue in the early 1980's. It was a  
5 of a whole series of debates in the U.S. Congress. I was  
6 asked by the Chairman of the House Subcommittee on  
Congress 7 Hemisphere of Affairs -- this is a subcommittee in  
8 that looks at Latin America the most, and responsible for  
9 the region of Latin America. I was asked by the Chairman  
10 to advise him on what was happening in El Salvador in  
11 particular.

12 There was conflicting information. If I could go to  
13 El Salvador and try to find out for myself and begin an  
14 analysis what was happening in that country. I started  
15 going to El Salvador in the early 1980's and I have  
16 continued to go there over the last 20 years.

17 Q. What was the original reason for you going to El  
18 Salvador?

Actually. 19 A. Well, the original reason was several fold.

Duarte 20 I was working in Venezuela earlier and I met a number of  
21 Salvadorans living in exile, including Jos, Napoleon  
22 who became president of El Salvador. And their stories

23 began to interest me, and the fact they were returning in  
24 1979 made me feel I had some kind of an entre in terms of  
25 getting interviews.

1           And I was assistant professor of government at  
2 Harvard, and I was getting constant calls from the press,  
3 from Congress because of that position, and later on from  
4 immigration authorities, from immigration judges, et  
5 cetera, because there was really nobody who knew very  
6 about this country in the United States.

much

7           And I realized because of these calls that I wanted  
8 know more, and so I started to go under the auspices of  
9 Harvard, under the auspices of international affairs in  
10 Harvard, which sent me on my first trip.

to

11           And I did my first interviews. I subsequently went  
12 back a number of times through the '80's. I actually  
13 remember how many times I have been to El Salvador. And  
14 also began to investigate a series of events that  
15 in El Salvador.

don't

I

happened

16           I think the first serious investigations I did were  
17 along the Salvadoran/Honduran border. El Salvador  
18 with Honduras. And there was a series of peasant  
19 that happened around 1980, and my first trips were  
20 to look at the conflicting reports about those massacres.

borders

massacres

actually

people

21 Q. When you went to El Salvador, did you interview  
22 from Salvadoran society?

23 A. I did.

24 Q. Who in particular, what types of people did you  
25 interview?

1 A. I interviewed anybody who I could get to talk to me.  
2 I interviewed the leaders of the armed forces, many of  
the  
3 key colonels in the armed forces. I interviewed all  
4 presidents in El Salvador from 1982 to the present,  
5 actually. I interviewed the parties, heads of the  
parties  
6 of the right. I interviewed heads of the parties to the  
7 left. I interviewed church officials, I interviewed  
8 officials of the Lutheran Church which were very involved  
9 there. I interviewed Jewish aid agencies.

10 I interviewed peasants. I interviewed head of labor  
11 unions, I interviewed head of peasant associations, head  
of  
12 human rights groups. I actually interviewed members who  
13 were acknowledged participants in death squads. I  
traveled  
14 with all presidential candidates in El Salvador. I am  
sure  
15 I am forgetting somebody. I did extensive interviewing.

16 Q. Did you find people were generally willing to talk  
to  
17 you?

18 A. I was, I believe, the only -- certainly the only  
19 American academic there at the time. The only other  
people  
20 who were there were journalists, and journalists were not  
21 always welcome in El Salvador. In fact, more journalists

22 were killed in El Salvador than the entire Vietnam war.

23 They had difficulty getting information, particularly the

24 beginning. That eased up later.

25 Q. When you say the beginning?



repressive  
I  
it

1 A. Particularly 1980, '81, which was the most  
2 period of time in El Salvador. And I found because I was  
3 not writing something that would instantly appear in New  
4 York Times and Miami Herald, because I was gathering  
5 information that didn't come out right away, and because  
6 was gathering information for what I hoped would be  
7 articles or a book, I could say I am writing about this,  
8 this will come out, it can be confidential if you wish,  
9 can be with your name, if you wish.

can  
impact,

10 These are our normal practices as an academic, you  
11 do confidential interviews, you can guarantee  
12 confidentiality. But I think because I wasn't putting  
13 something outright away that would have an instant  
14 people were more willing to talk to me.

an

15 Q. Did you find interviews such as you described to be  
16 important knowledge for your research and writing?

knowledge.  
several

17 A. For me they are the fundamental piece of my  
18 I also have read thousands of declassified government  
19 cables, I read thousands of pages of books about El  
20 Salvador, histories of El Salvador, I read these in  
21 languages, both Salvadoran sources, American sources,

22 sources in other countries that wrote about El Salvador.

23           But for me the things that really taught me how  
people

24 saw this war, how they understood it, how they understood

25 their own actions, how they understood what was happening

1 around them really came from their own words.

2 Q. After you gathered all of the information you  
3 described, how did you go about assembling it and  
4 processing it so you can make scholarly conclusions?

5 A. Well, this was a very conflicting time, the  
6 information and reliability of the information was  
crucial.

7 Everyone would tell you something different depending on  
8 who you were talking to. So it became very important for  
9 me to corroborate evidence. In other words, to look for  
10 evidence that supported what somebody was telling me as  
11 opposed to what somebody else was telling me.

12 The other thing I did -- forgive me if this is a  
13 little academic, but one of the things we have to do in  
our  
14 training, we are forced by our training to test ourselves  
15 in our own biases, or our own opinions in a sense.

16 So I actually teach a course on this, about how not  
to  
17 be Christopher Columbus. If you remember, Christopher  
18 Columbus goes and he thinks he is going to the east, and  
19 finding Indian China, but comes to the Caribbean. He  
20 writes as if he is in Indian China, he tells everybody he  
21 is in Indian China. He won't see -- the evidence that he  
22 is not in Indian China is in his face. We have what we  
23 call rival hypothesis.

human

24           If you believe the military is committing civil

25   rights abuses, you have to have a hypothesis that the

1 military is not committing human rights abuses. And then  
2 you look for evidence from both sides to come up with a  
3 conclusion. That is how we are trained.

4 I had to look everywhere, and I had to go in places  
5 that were uncomfortable for me, I would say, and  
sometimes  
6 somewhat scary to find out if the information I was being  
7 given. And conflicting information I was being given, if  
I  
8 could find corroborating evidence.

9 Q. Does your expertise cover human rights in El  
Salvador  
10 in the periods from 1979 through '83?

11 A. Yes, it does.

12 Q. And what is that expertise based on?

13 A. Well, human rights expertise is based on a number of  
14 things. I teach a course on the global politics of human  
15 rights, and one of the things I do is try to understand  
and  
16 teach about patterns of violence, why violence has a  
logic,  
17 when it does have a logic, how do you know indiscriminate  
18 violence from direct violence, how do you know when a  
19 strategy is deliberate, when a strategy -- when there may  
20 be random violence in a society.

21 I also was asked by the immigration courts and  
22 immigration judges to help them with the issue of El

23 Salvador. I may need to back up and explain this.

24 Q. Please go ahead.

25 A. For our immigration judges, El Salvador was a shock,

1 because generally they dealt with primarily Mexicans, at  
2 least from Latin America, Mexicans coming across the  
border  
3 from Mexico looking for work, looking for a place to  
work,  
4 and suddenly they have Salvadorans coming across the  
5 border. And not necessarily looking for work, but  
telling  
6 quite horrible stories about what happened. They were  
7 tortured, fleeing terror, a massacre in their village, et  
8 cetera.

9 And these were scarcely credible to these judges.  
10 They say no, you are telling me that because you want to  
be  
11 here to work. And what happened is, they started  
12 contacting me and asking me whether the stories they were  
13 hearing were credible, because they had to rule on these  
14 stories about whether someone would stay or go back to  
the  
15 United States -- excuse me, El Salvador.

16 So I agreed to begin to track the patterns and  
17 practices of violence in El Salvador. I had in my office  
18 students who helped me. I had a quite huge detailed map  
of  
19 El Salvador and we would track who we could -- where we  
20 could see people dying, who was dying, what kinds of  
21 victims, who they said was killing them, so we would know  
22 where in the country people were dying, where people were

street, 23 being tortured, where you would find bodies on the  
patterns 24 where people were being decapitated, what kinds of  
25 we could see, and I had this huge map of different color



1 opinions that would track these?

2 I used that information, I took a number of trips to  
3 El Salvador, and I used that information in hundreds of  
4 affidavits I did for the immigration courts and  
5 subsequently affidavits I did for the -- for the Federal  
6 Court system in the United States. And eventually  
7 affidavit for the Supreme Court.

8 Q. In your work on human rights abuses, did you make  
9 efforts to assess human rights reporting that was coming  
10 out of El Salvador?

11 A. Yes, I did. Again, conflicting information, as  
12 always, and the problem is to find the information that  
13 fits with the most corroborating facts.

14 There were a number of people tracking violence in  
El  
15 Salvador at this time, or a number of organizations, and  
I  
16 wanted to see how they did it, and how -- if what they  
were  
17 finding accorded with information that I had.

18 So what I did was look at the reporting patterns of  
19 the U.S. Embassy, which is one source of tracking  
violence.

20 The U.S. Embassy had a way of tracking violence which  
they  
21 would then send back to the State Department. These were  
22 called Grim Grams.

23           What they did, they put a statistic on who was found  
24   that day, or that week in El Salvador, who was dead. The  
25   Embassy had a way of tracking reporting by reading

1 Salvadoran newspapers and cutting out or recording the  
2 deaths that were reported in the newspapers. So their  
way  
3 of tracking statistics was from the Salvadoran newspapers  
4 themselves, and then there were other ways from other  
5 groups.

6 Q. Did you also pursue reports of human rights abuses  
7 when you were in El Salvador on the ground there?

8 A. Yes, I did. The other thing I did is track the way  
9 human rights organizations -- at that time there was a  
there  
10 group called Americas Watch there, Amnesty was there,  
11 were several Salvadoran human rights organizations, a  
12 governmental one, non governmental one. I tried to see  
how  
13 all of them tracked statistics, how did they gather their  
14 information. For example, Tutela Legal, legal aid  
society,  
15 they would not track through newspapers, they would go  
out  
16 and find bodies, so they could only count a death by a  
body  
17 they found and recorded.

18 Now, they had an advantage over the U.S. Embassy  
which  
19 is that El Salvador is primarily Catholic country. As a  
20 Catholic country there are Catholic priests and dioceses  
21 and church workers all over the country. The Catholic

and

22 church workers or priests took it upon themselves to find  
23 bodies, people came to them and said Father, there is a  
24 body over there, or Father, there is a body over there,  
25 they began to get cameras, take pictures, record the

write 1 bodies, write descriptions of where they were found,  
2 descriptions of identifying clothing, a belt buckle, a  
3 piece of jewelry, descriptions of the clothes, et cetera,  
4 and they would send this back to the Archbishop's office,  
5 the central Catholic office.

they 6 I went out with the legal aid society to see how  
7 did this. I did --

8 Q. Did you see any victims of human rights abuses?

9 A. Oh, yes, oh, yes. In San Salvador we would get up  
10 early in the morning and the first place we go is to the  
11 city morgue. The reason we go to the morgue is people  
who 12 were killed, people who killed them would often drop them  
13 in front of the morgue.

of 14 One morning I came to the morgue, there was a pile  
15 bodies there, left there in front of the morgue, so they  
16 would take pictures of the bodies. And then as the  
people 17 in the morgue would separate the bodies, they take close-  
up 18 photos of the heads and injuries of people. These would  
--

would 19 We would also not just go to the morgue, but we  
in 20 go out and I wandered through the streets, particularly

until

21 the poor areas, because bodies were very seldom found

was

22 much later in the wealthier areas of El Salvador. This

23 really a war that it was the poor who died primarily in

24 this war.

25 You will hear of other famous cases, but it was

1 peasants, citizens inside San Salvador, et cetera, who  
2 died. And so bodies were found in Mejicanos, Santa  
Tecla,  
3 these poor areas. We would go there and find a body.  
4 Someone would say there is a body over there, we would  
take  
5 pictures, I would watch how the pictures were taken and  
how  
6 they were recorded.

7 I then followed through the whole process, because  
8 what happened after that, all these pictures were put in  
9 photo albums, big, big photo albums. So this person  
found  
10 here. There was very seldom identification on these  
11 bodies, so you didn't know who these people were.

12 And they weren't necessarily found where they were  
13 killed. They might be found in a body dump, in a morgue,  
14 actually miles away from where they were dumped. There  
15 were bodies dumped from helicopters, so they would be  
found  
16 somewhere else.

17 And so these were collected in these big books that  
18 the Archbishop office kept, and these books were provided  
19 in the offices of the Catholic legal aid services for  
20 family members to come and look through if they couldn't  
21 find somebody in their family.

22 So, I then would go where the books were kept, and I

23 would watch family members come in and go through these  
24 pictures looking for their son or their mother, father or  
25 their aunt or friend, or whomever. I would see them



1 occasionally identify somebody and say, here this person  
2 is. And then they go through the corroborating evidence,  
3 because people might be tortured, so their faces would be  
4 battered, identifications were not so easy. So you would  
5 see -- for example, I once saw a person not being sure  
6 someone was -- it was a mother, not being sure this was  
7 son because the face was battered. And they had a clear  
8 description of the belt buckle that the boy who had been  
9 killed was wearing, and so she could identify her son  
10 because she had given him the belt.

11 Q. In the early 1980's did you discuss the subject of  
12 human rights abuses in El Salvador with members of the  
13 Salvadoran military and government?

14 A. Yes, I did.

15 Q. And who did you have those discussions with?

16 A. I had those discussions with a number of colonels I  
17 met in a variety of ways. Unless it is necessary, I  
18 not to give those names because my discussions have been  
19 the basis of confidentiality, and we don't break that  
20 unless we are absolutely required to.

21 Q. Apart from the Congressional organizations that you  
22 mentioned, have you been in a position of advising any  
23 other governmental or international organizations on the

her

prefer

on

24 subject of Salvadoran military or human rights?

war  
25 A. During the early -- actually, through most of the

members  
they

1 I advised members of Congress. I took a number of  
2 of Congress on fact finding trips to El Salvador where  
3 would go themselves. I took the Chairman of the House  
4 Committee on Hemispheric Affairs, I took the Chairman of  
5 the Appropriations Committee.

the  
at

6 This was important because the Appropriations  
7 Committee decides on aid to El Salvador, on military and  
8 economic aid to El Salvador. I took a delegation from  
9 State of Massachusetts because I was teaching in Boston  
10 the time, and I took a delegation that included Senators,  
11 Congressmen and the Attorney General of Massachusetts.

movement  
subsequently  
office  
appointed

12 I did a number of those kind of -- they call them  
13 junkets. I did advising also in 1989. There was  
14 towards a peace agreement in El Salvador which  
15 occurred, was signed in 1992. That peace agreement was  
16 brokered, it was mediated by the Secretary General's  
17 of the United Nations, and the Secretary General  
18 his assistant Secretary General to show how important it  
19 was. He gave his number two man to the Salvadoran peace  
20 agreement, and I became a consultant with him.

21 Q. Without getting into details, have you published in

22 the area of the Salvadoran military rights in the 1980's?

23 A. Yes.

24 Q. Do you lecture in that area as well?

25 A. Yes, I do.

1 Q. Before we go into your opinions in detail, Professor  
2 Karl, I want to ask you a couple questions.

3 On the basis of your experience and materials that  
you  
4 have reviewed and told the jury about, have you formed an  
5 opinion as to whether in 1979 through 1983 in El Salvador  
6 there was a pattern and practice of human rights  
violations  
7 carried out by the Salvadoran military and security  
forces?

8 A. Yes, I have an opinion about this.

9 Q. And what is your opinion?

10 A. There was a pattern and practice of gross and  
11 systematic violations of human rights in El Salvador.  
12 These violations of human rights were among the highest  
in  
13 the world, and they are the second highest ever recorded  
in  
14 the history of Latin America.

15 Q. In 1979 through '83, the period you referred to, do  
16 you know who the Minister of Defense of El Salvador was?

17 A. Yes, I do.

18 Q. Who is that?

19 A. General Garcia.

20 Q. That is the General Garcia in our courtroom today?

21 A. Yes.

22 Q. And during that period who was the director of the

23 National Guard?

24 A. General Vides Casanova.

25 Q. Sitting in the courtroom today?

1 A. Yes.

2 Q. After 1983, do you know who became the Minister of  
3 Defense?

4 A. Yes, General Casanova.

5 Q. Have you formed an opinion as to whether in the 1979  
6 through 1983 time period Minister of Defense Garcia and  
7 director of the National Guard Vides Casanova knew or  
8 should have known of the practice of human rights abuses  
9 carried out by the military forces?

10 A. Yes.

11 MR. KLAUS: Objection; beyond the scope of her  
12 expertise.

13 THE COURT: One of the issues in this case,  
14 ladies and gentlemen, of course, is whether the

Defendants

15 knew or should have known that subordinates to them were  
16 engaging in human rights violations. I've indicated  
17 before that when someone is an expert, they are allowed

to

18 come into court and to give an opinion. Of course, it  
19 will be for the jury to decide whether to accept that  
20 opinion.

21 I am going to overrule the objection and allow  
22 the witness to testify to the opinion testimony.

23 MR. KLAUS: The second objection, based on

her

24 insufficient facts and data to render an opinion as to  
25 knowledge.



1 THE COURT: Well, let's back up for a second.  
2 The question really asks two aspects, whether someone  
3 actually knew or whether they should have known. All  
4 right. And I am going to allow counsel both on direct  
5 on cross, obviously, to deal with these issues, and it  
6 would be for the jury to decide whether the fact has  
7 established.

8 So I will overrule the objection and allow  
9 counsel to proceed.

10 BY MR. STERN:

11 Q. Do you have the question in mind?

12 A. Would you repeat it, please?

13 Q. Sure. Based on the research you have done and your  
14 own experience in El Salvador, do you have an opinion as  
15 whether in 1979 through 1983 Minister of Defense Garcia  
16 Director General of the National Guard Vides Casanova  
17 or should have known about the practice of human rights  
18 abuses carried out by military and security forces in  
19 period?

20 THE COURT: If I might, Mr. Stern, would it be  
21 helpful if you broke it up? I think it would be of  
22 assistance to both sides. You are talking about knew or

23       should have known.   Would you break that up?

24                   MR. STERN:   Certainly, Your Honor.

25

1 BY MR. STERN:

2 Q. Do you have an opinion as to whether General Garcia  
3 and General Vides Casanova knew about human rights abuses  
4 in that period?

5 MR. KLAUS: Same objection.

6 THE COURT: Let's break it up as to specific  
7 Defendants.

8 MR. STERN: Certainly Your Honor.

9 BY MR. STERN:

10 Q. Do you have an opinion whether '79 through '83  
11 Minister of Defense Garcia knew about the practice of  
human  
12 rights abuses carried out by military and security  
forces?

13 MR. KLAUS: Same objection.

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

16 THE WITNESS: I have reviewed thousands of U.S.  
17 cables and thousands of documents about El Salvador,  
18 including internal documents to the military of El  
19 Salvador, and it is my opinion that General Garcia, then  
20 Colonel Garcia, did know about human rights abuses.

21 BY MR. STERN:

22 Q. In terms of Minister of Defense -- strike that.

23 Would that also imply that you have an opinion about

abuses

24 whether General Garcia should have known about those

25 given the information available to him?

1 MR. KLAUS: Same objection.

2 THE COURT: Same ruling. You may proceed.

3 THE WITNESS: Yes, I have an opinion. I believe

4 that General Garcia also should have known about these  
5 human rights abuses.

6 BY MR. STERN:

7 Q. With respect to Director General of the National Guard

8 Vides Casanova, do you have an opinion as to whether  
9 General Vides Casanova knew about practice of human rights

10 abuses carried out by the military and security forces in  
11 1979 through 1983, and thereafter?

12 MR. KLAUS: Same objection.

13 THE COURT: Same ruling. You may proceed.

14 THE WITNESS: Yes, I have an opinion.

15 BY MR. STERN:

16 Q. And what is your opinion, Professor Karl?

17 A. My opinion is that he both knew and should have known  
18 about these abuses in El Salvador.

19 Q. And briefly, why is that?

20 A. I think you will see from my testimony that the  
21 evidence is overwhelming that there was massive repression

22 going on in El Salvador, including in the City of San

be

23 Salvador. And when you find bodies in places that would

on

24 the equivalent of the Sheraton here, City Place, F.A.U.,

25 the streets, et cetera, in the newspapers, on television,

1 it would be inconceivable not to know, in my view.

2 And when you find that people from every single U.S.  
3 Ambassador to two secretaries of state, to a personal  
visit  
4 from Vice President Bush tells them that this is  
happening,  
5 it would also be inconceivable.

6 Q. Based on your research and personal experience,  
7 Professor Karl, do you have an opinion as to whether  
8 Minister of Defense General Garcia had the power to  
prevent  
9 or curb human rights abuses in the 1979 to '83 time  
period?

10 MR. KLAUS: Objection. Beyond the expertise,  
and  
11 lack of sufficient data.

12 THE COURT: Overruled. You may proceed.

13 BY MR. STERN:

14 Q. Do you have an opinion on that subject, Professor  
15 Karl?

16 A. Yes. What a political science does is study power,  
17 that is what we do. My purpose in El Salvador was also  
to  
18 find out who had the power, and how that power was  
19 exercised. I think that General Garcia was probably the  
20 most powerful person in El Salvador when he was Minister  
of  
21 Defense.

Guard

22 Q. And what about Director General of the National

had

23 Vides Casanova, do you have an opinion as to whether he

24 the power to prevent human rights abuses in that period?

25 A. I do have an opinion.



1 MR. KLAUS: Objection; same basis.

2 THE COURT: Same ruling. You may proceed.

3 BY MR. STERN:

4 Q. What is your opinion, Professor Karl?

5 A. I think he had the power to prevent and stop the  
kinds  
6 of abuses that were going on in El Salvador.

7 Q. Do you have an opinion as to whether as Minister of  
8 Defense General Garcia took all necessary and reasonable  
9 measures to prevent human rights abuses in that period?

10 A. I do.

11 Q. What is your opinion?

12 MR. KLAUS: Again, objection; lack of  
foundation.

13 THE COURT: I am sorry?

14 MR. KLAUS: Same basis.

15 THE COURT: I will overrule the objection. You  
16 may proceed.

17 THE WITNESS: My opinion is that he did not  
take  
18 the most minimal reasonable actions to prevent human  
19 rights abuses from occurring or to punish the officers  
who  
20 were presiding over and ordering these abuses.

21 BY MR. STERN:

22 Q. And how about Director General of the National  
Guard,

human

23 Vides Casanova, do you have an opinion as to whether he  
24 took all necessary and reasonable measures to prevent  
25 rights abuses in the 1979, 1983 time period, and when he

1 became Minister of Defense in 1983, thereafter?

2 MR. KLAUS: Objection; same basis.

3 THE COURT: Same ruling. You may proceed.

4 BY MR. STERN:

5 Q. What is your opinion?

6 A. He did not take all reasonable measures. He did not  
7 take common sense measures to prevent human rights abuses  
8 or punish abusers.

9 Q. In your opinion did Garcia take all measures to  
punish  
10 abusers within the military and security forces?

11 MR. KLAUS: Objection. Lack of foundation,  
lack  
12 of sufficient data, and beyond the scope of her  
expertise.

13 THE COURT: Lack of foundation is not an  
adequate  
14 legal objection. What is missing that you think needs  
to  
15 be there?

16 MR. KLAUS: Basis of her opinion, data and  
facts  
17 relied upon to base an opinion.

18 THE COURT: All right. Because the witness has  
19 been qualified as an expert in this field, I will  
overrule

20 the objection, and you can treat this matter in your  
cross  
21 examination.

22                   You may proceed.

23   BY MR. STERN:

24   Q.   Do you have the question in mind?

25   A.   Yes.  I believe it was did General Vides Casanova --

1 Q. I believe the question was directed to Minister of  
2 Defense Garcia.

3 A. I am sorry.

4 Q. Is it your opinion he took all reasonable measures  
to  
5 punish offenders in the military and security forces in  
'79  
6 through '83?

7 MR. KLAUS: Same objection.

8 THE COURT: Same ruling.

9 THE WITNESS: Not any officer was punished for  
10 human rights abuses while Garcia was Minister of  
Defense.

11 BY MR. STERN:

12 Q. What is your opinion as to whether General Casanova  
13 took measures to punish offenders in the military and  
14 security forces in 1979 and '83 thereafter?

15 MR. KLAUS: Same objection.

16 THE COURT: Same ruling.

17 THE WITNESS: Not one single officer was ever  
18 punished for human rights abuses when Minister of  
Defense  
19 General Vides Casanova occupied that position.

20 BY MR. STERN:

21 Q. Professor Karl, I asked you questions about  
preventing  
22 human rights abuses and punishing offenders. In your

23 opinion is there a relationship between preventing and  
24 punishing human rights abusers?

25 A. Yes.

1 Q. What is that relationship?

2 A. If you do not prevent and punish abuses, you  
3 implicitly give a green light for those abuses to  
continue  
4 and many more people die and are tortured.

5 Q. Professor Karl, the jury has heard a great deal  
about  
6 human rights abuses in El Salvador in the 1979 and '83  
time  
7 period. I want to turn to you for background.

8 Why are these events taking place?

9 A. I will try not to teach you my whole course on  
Central  
10 America, but I think to make it as concise as possible,  
11 there is really two issues in El Salvador when this all  
12 occurs. One is the issue of poverty and equality. This  
is  
13 one of the poorest countries in Latin America. This is a  
14 country in which ten percent of the people own 78 percent  
15 of the assets of the land.

16 This is an extraordinary statistic. I know we have  
17 inequalities in the United States. This is a very  
18 different order of magnitude. This is a country where  
19 three-fourths of all children are malnourished. This is  
a  
20 country where the leading cause of death when I went  
there  
21 was diarrhea. This is a country where the caloric intake

22 of people, how much they had to eat was the second lowest  
23 in Latin America. Even Haitians ate better than  
24 Salvadorans at that time.

25 And those kinds of statistics, what they show is a



1 system, economic system that is simply not workable, that  
2 cannot provide the kind of education, health care and  
3 resources and food and bread and shelter and dignity that  
4 people need to have the most minimal life.

5 So, the kind of explosiveness that that was building  
6 in that for a variety of reasons is, I think, one piece  
7 of the story, enormous poverty and equality.

8 Q. Are there other pieces of the story you point to?

9 A. Yes. The second piece is, there are other countries  
10 that are terribly poor and terribly unequal, but they  
11 don't explode into civil war.

12 India, for example, has been a country for many,  
13 many years has terrible inequalities, terrible poverty, but  
14 until lately has been a relatively peaceful country.

15 I think the other factor is, when you have a  
16 military dictatorship, when you have military in control, and no  
17 ability to form political parties to represent you, no  
18 ability to form trade unions to help you better your  
19 situation, no ability to form peasant associations that  
20 can ask for a different standard of living, no ability to  
21 what we call here freedom of association, to associate with

own

22 people who can help you develop channels to defend your

you

23 interest, to try to change things in a peaceful way, if

24 combine huge in qualities and poverty with repressive

25 military dictatorships, what you do is choke off peaceful

1 ways to resolve conflict.

2 Q. What do you mean when you use the phrase military  
3 dictatorship?

4 A. What I mean simply is the military is the  
predominant

5 organization in the country, predominant power. More  
6 important than political parties, more important than

7 Congress, more important than the President, more  
important

8 than any other organization you can think of, because it  
9 has the power and can control and shape those other  
10 organizations.

11 That to the extent a Congress exists or elections  
12 occur or there is a civilian in the government, those  
13 people are there, the phrase we use is at the pleasure of  
14 the military. They are put in and taken out.

15 Q. As you look at El Salvador in the 20th century, what  
16 was the primary function of the military?

17 A. I think this is very important because the primary  
18 function of the Salvadoran military is very different  
from

19 our own.

20 Most militaries have as a primary function, at least  
21 in the beginning, protection and control of their borders  
22 against outsiders, so they learn to fight external wars.

23 In the case of El Salvador, this is a different

24 military. From the very beginning, particularly with the  
25 National Guard, the purpose of these security forces,

1 particularly the security forces, and by that I mean  
2 National Guard, Treasury Police and National Police, the  
3 three security forces, they were not aimed at any  
external  
4 control, they were aimed at controlling the poor in El  
5 Salvador, making sure peasants worked for landlords like  
6 they were supposed to. Making sure workers went to work  
7 and didn't demand minimal wages, did not have a formal  
way  
8 to organize.

9 These were from the earliest foundations, were  
10 security forces that were aimed at controlling their own  
11 people and keeping the economic system that I so briefly  
12 described in place.

13 Q. Professor Karl, to help assist with your testimony  
14 today, have you put together some slides to show the  
jury?

15 A. I have.

16 Q. Before you came to court today, did you look at  
those  
17 to make sure they accurately reflect your opinions?

18 A. Yes, I have.

19 Q. Have you prepared one of the slides on military  
20 government in the course of the 20th century in El  
21 Salvador?

22 A. Yes, I have.

23 MR. STERN: Could we have slide 105 on the

24 screen, please?

25 MR. KLAUS: Excuse me. Before you show it,

from

1       what exhibit is it?

2                   MR. STERN:  It is not based on a particular  
3       exhibit.

4                   MR. KLAUS:  How can I find it?

5                   MR. STERN:  I will be happy to point it out to  
6       you.

7                   Any objection?

8                   MR. KLAUS:  No objection.

9                   MR. STERN:  Let's have slide 105, please.

10       BY MR. STERN:

11       Q.     Professor Karl, can you describe for us what this  
12       slide shows?

13       A.     I won't go through all the names in governments for  
14       you.  What you see here is that the Salvadoran military  
15       rules directly since 1932, and you see a whole list of  
16       military governments, military presidents that ruled from  
17       1932 all the way through the periods of time of interest

in

18       this particular case.

19                   There is just something I would like -- two things I  
20       would like to point out about this.

21                   The first is that there is a practice at different  
22       times in Salvadoran history of the military to invite  
23       civilians into the government, and that is what we call  
24       military civilian Juntas, or civilian military Juntas.

25    There is one in '48, one in 1960, '62, and another one  
that



1 happens in 1970. The only other thing I would like to  
2 point out about this is that this is actually, for  
someone  
3 like me who studies Latin America, this is an  
extraordinary  
4 slide, because even though it may seem Latin America is  
5 always under military rule to some people, it is actually  
6 not true.

7 This is the longest and most extensive military  
rule,  
8 I believe, in the history of Latin America. There may be  
9 one other case that is this continuous, but El Salvador  
has  
10 military rule through most of the 20th century  
11 uninterrupted, and this is highly unusual.

12 Q. Is there a reason why the list of dates begins in  
13 1932?

14 A. Yes, there is. 1932 is a very key date in El  
15 Salvador. It is a date of what all Salvadorans refer to  
as  
16 La Matanza, the massacre.

17 Q. Could you spell that?

18 A. M-A-T-A-N-Z-A. Matanza, massacre.

19 And this is the largest uprising of peasants with  
the  
20 participation of the then Communist party to date until  
the  
21 periods of time we are entering in in this trial. So  
1932

system 22 is the largest uprising against the kind of economic

23 that I described.

24 That uprising is put down by the Salvadoran military

called 25 in a very, very massive massacre, which is why it is

1 La Matanza. The uprising was probably several hundred  
2 peasants, but at the end somewhere between 10,000 and  
3 30,000 peasants were murdered in 1932. We don't know the  
4 statistics on this. The records in the library  
accessible  
5 to scholars have disappeared. Most -- between 10,000 and  
6 30,000 were dead.

7 Q. What was the consequence of this massacre?

8 A. I think this is very informant for all actors, for  
the  
9 right and for the left. For the military it taught them  
10 that terror works, that you actually can have a massive  
11 response when you do have some kind of uprising or  
protest.  
12 You can have a massive response, and with that massive  
13 response people will subsequently be quiet.

14 If you kill enough people, they will not rise up  
15 again, they will not try to organize themselves, and in  
16 fact El Salvador is relatively quiet. From the Matanza  
of  
17 1932, until 19 -- the very late 1970's.

18 Q. During this period of military rule, what was the  
19 relationship between the military and El Salvador's major  
20 landowners?

21 A. Well, I think you have probably heard testimony  
22 earlier about the famous 14 families, they were called

was 23 Laruatanza, the big families that controlled the land I  
El 24 talking about. The land is the source of the wealth in  
cotton 25 Salvador. Where the coffee is grown, cattle grazed,

1 is from, a little bit of sugar, and until recently it was  
2 the center of wealth in El Salvador.

3 That land, as I said before, was owned by a few  
4 families, virtually the huge majority of land in El  
5 Salvador, almost 80 percent. So there were these  
6 landowners that were extremely economically powerful.

7 After 1932, after the massacre, Matanza, landowners  
8 learned they couldn't rule without the military, and so  
9 what you see from 320 is a partnership, the way I think  
10 about it, kind of a bargain between the large landowners  
11 and the military.

12 When I say military, I am not talking about all the  
13 military, foot soldiers, average National Guardsmen, et  
14 cetera. What I am talking about is the officer core,  
which  
15 is very small.

16 My way of understanding power in El Salvador in this  
17 period of time, a small officer core, and a small group  
of  
18 individuals that literally cooperate with each other,  
19 bargain with each other, and have a kind of circulation  
20 between them. There are officers who marry into wealthy  
21 families, wealthy families who pay off officers to carry  
22 out tasks for them, such as helping maintain order on  
their  
23 particular plantation, for example.

24           So there is a kind of bargain or pact that goes on  
25 between the officer core and these very wealthy

1 individuals.

2 Q. Did that relationship between the landowners and  
3 military officers change over time?

4 A. It does change. I think in the very early period  
5 before 1932, it is probably correct to talk about the  
6 landowners as the dominant group.

7 From 1932 on you see a difference where the military  
8 officers become more and more important and more powerful  
9 so you get a kind of equalizing, but as soon as you get  
10 into a conflict situation, the military becomes more  
11 powerful because it is the military that has to deal with  
12 the conflict. That is from the period of time late '70's  
13 on.

14 Q. Professor, do you know whether General Casanova  
15 married into the wealthy landowners that you described?

16 A. Yes.

17 Q. Did he in fact?

18 A. Yes, he did.

19 MR. KLAUS: Objection; sufficient data, time  
20 period.

21 THE COURT: I will overrule the objection. You  
22 may proceed.

23 BY MR. STERN:

24 Q. What sort of opposition was there to this military  
25 rule that you described?





1 A. Well, there wasn't much for a long time.

chilling  
2 The thing about massacres, they have a great  
3 effect on opposition and on any political easternization.  
4 What you say is things are quiet until the end of the  
5 1960's. The end of the 1960's, a party you heard about,  
6 Christian Democratic party, is formed and headed by Jos,  
7 Napoleon Duarte, the man I met in exile in Venezuela.

You

8 see parties that are not military parties.

9 Back up a minute. It is important to understand El  
10 Salvador during this whole period had elections, and had  
11 political parties, but they were military run elections  
and  
12 military parties.

13 The first opposition comes with the formation of the  
14 Christian Democratic party, and subsequently -- that is  
the  
15 most important party. And subsequently formation of  
small

16 guerilla groups that do not believe the military will go  
17 peacefully and believe that they need to use armed  
conflict  
18 against the military to get it out of power.

19 Those groups start forming around 1970, the first  
one  
20 is 1970, and the others are after 1972.

21 Q. I want to ask you a question about that in a second.

this

22           Were there Communist parties on the scene during

23           period in the 20th century?

24           A.    There was a Communist party involved in the 1932

25           Matanza that organized peasants.  It was pretty much

1 destroyed in that massacre. And there was a small  
2 Communist party that existed in, like other countries in  
3 Latin America. The Communist party, however, was quite  
4 conservative in the sense that it was not in favor of  
5 conflict, it was actually the last party to move into  
6 conflict, partly because it is -- a prior experience had  
7 not been one that would make it want to do that again.

8 Q. Now, you mentioned the date of 1972, I think.

9 Did something of significance happen in that year?

10 A. Yes, in 1972 the military held elections, and I  
11 believe you heard about this as well, military held  
12 elections. Those elections had the party of Jos,  
13 Duarte, Christian Democratic party in collusion with a  
14 Ungo, U-N-G-O, and Guillermo, G-U-I-L-L-E-R-M-O. This  
15 a collusion of Christian democrats and social democrats  
16 that had run in the 1972 elections.

17 By all accounts Duarte and his running mate had run  
18 those elections. Duarte was beaten up, and went to  
19 Venezuela, which is where I met him. This is a very  
20 important moment in this story, very sad one for me since  
21 saw what happened afterwards, because it makes a great

armed

armed

Napoleon

man

was

in

I

part

22 of the opposition believe that peaceful change is not  
23 possible, that you must in fact move into armed  
opposition  
24 against the military because they are not going to permit  
25 elections.

1           So what you see after that is the beginning of other  
2 small armed groups. These are groups of young people who  
3 form cells and whose goal is to get rid of the  
4 dictatorship.

5 Q. In the '70's, in this period after 1972 that you  
6 described, what would you say is the breakdown among the  
7 opposition between groups that favored armed change as  
8 opposed to more peaceful reform?

9 A. Well, it depends on what moment you look at. In the  
10 period of time I'm talking about, there is also another  
11 election in '77. That election is also fraudulent, and  
12 every time there is a fraudulent election, there are more  
13 people that become convinced this way isn't going to  
work,  
14 having elections like this isn't going to work.

15           So I would say that there, really, until about the  
end  
16 of 1980 or 1981, you really have a quite small armed  
17 opposition. There is a very, very large peaceful,  
unarmed  
18 opposition, partly made up of Christian democrats and  
their  
19 supporters, partly made up, and very importantly made up  
of  
20 people who follow the teaching of the Catholic Church.

21           And again, this is primarily a Catholic country, so  
22 the church's teachings are quite important in this. You

called 23 begin seeing in the 1970's the formation of what are  
labor 24 Christian based organizations, peasant associations,  
25 unions, Christian Democratic party.

1           What is happening here is that the church in  
2           particular has begun to change its doctrine and instead  
of  
3           saying it is your lot to be poor, but life will be better  
4           in the next life, church people are saying, you have the  
5           right to bread, you have the right to dignity, you have a  
6           right to a roof over your head and you have a right to a  
7           decent wage, and you should not be passive. You need to  
8           organize yourself to take these rights.

9           And so you see all through the '70's these  
communities  
10          being formed which are Christian based that begin to form  
11          an opposition to the military. Now, this is a peaceful  
12          opposition, not an armed opposition, and based on forming  
13          what they call popular organizations or peasant  
14          associations or labor unions, et cetera.

15         Q.    What was the attitude of the military toward  
16          opposition groups?

17         A.    As these began to grow, the military grew very  
hostile  
18          with them. When I speak of the military, just to  
clarify,  
19          I am always speaking of the officer core, I am not  
speaking  
20          of the normal foot soldiers unless I make that clear.

21                The military saw this as a tremendous challenge to  
22          them and to their rule, because what you see in the '70's

23 is this increasing growing movement of people. You see  
24 organizations all over saying we can change this, we can  
25 change this.



1           Even though there are two fraudulent elections in  
'72  
2           and '77, these organizations continue. What happens is  
3           that around 1977, if you see that General Romero, there  
is  
4           a debate going on in the military. If you have all of  
5           these people against you, all these people saying we have  
6           to change, we need a democracy, we want land reform, we  
7           want to change economic system, we want decent wages, all  
8           these demands rising, the military has, officer core, an  
9           internal debate about what to do about this, how to  
10          confront this.

11          In the Romero Government, what I call the hard line  
12          faction, which is the faction that believes that the La  
13          Matanza worked once, the massacre worked once in 1932,  
14          let's do it again. That faction becomes predominant and  
15          that begins the state of repression in El Salvador, and  
16          given what happens later still at relatively low levels.

17          Q.   If I could ask to have the lights up, as I  
understand,  
18          you have a time line that you brought with you to help  
you  
19          explain these events?

20          A.   I do.

21          Q.   I would like to have that put up on the easel,  
please.

22          A.   This is -- in trying to make sense of this war and

23 everything that has happened --

24 THE COURT: Could I make a suggestion? We have

25 these energy efficient lights which means when we turn

1       them off, it takes five or ten minutes to turn on. Just  
2       so the jury is able to see the chart, it is a little  
3       early, but why don't we stop for the mid-morning recess.  
4       When we come back we will have light in the courtroom,  
and  
5       when we come back we will continue on with the  
professor's  
6       testimony.

7                Let's take a break for 15 minutes and when we  
8       come back, we will continue on with this testimony.

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

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

12               (Thereupon, a short recess was taken.)

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

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

16               THE COURT: Now we are all set and when we  
17       stopped, we were in direct examination. The professor  
was  
18       about to turn to the chart that had been placed up. I  
19       think the lights are up now so we can all see.

20               Let me turn to Mr. Stern and Professor Karl.

21               MR. STERN: Thank you.

22       BY MR. STERN:

23 Q. Professor Karl, beginning at the bottom of the time  
24 line you prepared, could you explain the events you put  
25 together?

is 1 A. The periods of time that I have been talking about  
2 prior to 1979 where this time line begins.

3 In the green area that you see there, I have located  
4 when Defendant Garcia is appointed Minister of Defense,  
5 that is right -- excuse me a minute.

6 That is right here (indicating). This is when Vides  
7 Casanova is appointed Director General of the National  
8 Guard. This is the period of time they actually take the  
9 positions they hold.

that 10 On the bottom what you see is the different times  
11 Mr. Neris Gonzalez is detained and tortured in the  
national 12 garrison of San Vincenti.

13 You see here in the second entry where Mr. Juan  
14 Romagoza is abducted and tortured by members of the  
15 National Guard and detained in the National Guard  
16 headquarters in San Salvador.

17 And the third entry on the orange section, 6/1/83,  
18 1983, when Mr. Carlos Mauricio is detained and tortured  
19 within the National Police headquarters in San Salvador.

20 That tells you where the people involved in that  
21 particular case are located in on the time line.

in 22 Up above I have tried to indicate important moments  
23 this early time frame and we -- the period of time I have

24 been talking about, about the origins of the war, and/or  
25 beginning of the opposition movement to military

1 dictatorship is in this period here, so we are just  
2 starting to get on the boards into 1979.

3 Q. Professor Karl, what is the item that is in the box  
up  
4 at the top left-hand corner of the time line?

5 A. It says -- this is on October 15, 1979, and it says  
a  
6 reformist coup occurs conducted by young officers. This  
is  
7 what you heard referred to as the first Junta, or the  
8 October Junta or the October revolution, or the  
revolution.

9 It is called many different things, and I call it the  
10 October 1979 coup.

11 Q. What was the nature of this coup?

12 A. This was a very important moment, because if you  
13 remember, before the break I was saying there were  
14 different factions in the military arguing about what to  
do  
15 about this rising opposition and how should they handle  
it.

16 And remember, the military is not just a military,  
the  
17 officer core is not just the officer core, it is the  
18 government. So all of the pressures of making decisions  
19 about how to deal with this huge unarmed opposition and  
20 this much smaller armed opposition is debated in the  
21 officer core.

the 22           And there are essentially two factions. There is  
23           faction of Romero that I showed you earlier had taken  
24           charge of the government and that was a faction that  
scenario. 25           believed in the Matanza scenario, the repression



1           In reaction to that, younger military officers, not  
2 the senior most commanders, but younger officers, there  
3 were a group who I will call as the reformers, I will  
4 constantly refer to them as the reformers, and that group  
5 actually leads a coup against the hard liners and takes  
6 over in 1979 and invites civilians into the government.

7           And you have a civil military Junta in 1979. When  
8 they take over, they announce a program which is based on  
9 distinguishing and ending human rights abuses creating  
10 human rights recision in an agrarian reform, and  
11 democracy in the country.

promoting

12       Q.    The chart shows Defendant Garcia becoming appointed  
13 Minister of Defense shortly after the coup in 1979. What  
14 were the circumstances in which Mr. Garcia was made  
15 Minister of Defense?

16       A.    General Garcia -- the coup is October 15, and  
17 October 16 he is made Minister of Defense. This is not a  
18 decision by the reformist officers, nor is it a decision

by

19 the civilians who entered the coup. He is appointed by a  
20 senior military commander and whose name is Gutierrez,  
21 G-U-T-I-E-R-R-E-Z, and that senior commander makes  
22 Garcia, he was then a colonel, makes General Garcia the  
23 Minister of Defense.

General

24 Q. Does that appointment have any significance for the  
25 events that followed?

the  
in  
in

1 A. It is very significant because he is not a part of  
2 reformist faction. He is not approved by the civilians  
3 the Junta, and what happens in the next period of time,  
4 this very short period of time, essentially almost a ten  
5 week period, is you see Minister Garcia from his position  
6 as Defense Minister begins to marginalize or push out the  
7 reformist officers who have conducted this coup.

is

8 So from his position as Minister of Defense, which  
9 the position that permits him to assign officers to  
10 different places, he quickly begins to move the reformist  
11 officers around to break up their group, and break up the  
12 people who are pushing for reform.

of

13 This is a very short period of time, and by the end  
14 December the people in this first Junta, this October  
15 Junta, are extremely upset by this huge increase in  
terror

16 that occurs in this period of time, so they take over  
17 thinking that they are going to do a reform, and suddenly  
18 this terror breaks out.

of

19 They argue with the Defense Minister and with other  
20 members of the high command asking them to stop the  
21 repression. The repression keeps rising in this period

22 time, and at the end of December all members, all members  
23 of this reformist Junta resign in protest. There are 11  
24 members in the cabinet, ten of them resign. The only  
25 person who does not resign is Minister of Defense,

General

1 Garcia.

2 Q. The resignations took place in December what year,  
3 Professor Karl?

4 A. 1979.

5 Q. In this initial period after becoming Minister of  
6 Defense, did General Garcia take any other steps in  
regard  
7 to human rights abuses?

8 A. Yes. This is an extremely important period of time  
9 because it sets the pattern for what follows.

10 General Garcia does two things. He uses from the  
11 position of Minister of Defense and uses his appointment,  
12 his power of moving officers around, as I said, to put  
the  
13 reformists in much lesser positions of power, and to move  
14 in the hard liners into stronger positions of power.

15 He also, when this first coup occurs, the junior  
16 officers actually arrest and detain senior military  
17 officers who have been involved in human rights abuses,  
and  
18 all of those senior officers are freed.

19 Q. How did General Vides Casanova become Director of  
the  
20 National Guard in this period?

21 A. He is appointed by Minister of Defense Garcia.

22 MR. STERN: I would like to put up on the  
screen

could

23 a document 542, which is already in evidence. If I

24 have slide 123 on the screen, please.

25

1 BY MR. STERN:

2 Q. Professor Karl, is this one of the documents you  
3 reviewed in the course of preparing for your expert  
4 testimony today?

5 A. Yes, it is.

6 Q. What is this document?

7 A. If you don't mind, I just would like to make a  
remark  
8 about these documents so I don't have to say it each  
time.

9 Q. Please.

10 A. These are U.S. Government cables that have been  
11 declassified through the Freedom of Information Act. In  
12 other words, you are seeing cables that were classified  
as  
13 secret or top secret or classified information that have  
14 been class -- have been declassified and are now  
available  
15 for scholars to peruse.

16 THE COURT: Ladies and gentlemen, we talked  
about  
17 this earlier, someone who has studied in an area  
obviously  
18 looks at lots of things. The professor has talked about  
19 the various sources that she has looked to in developing  
20 her opinions.

21 Now, it is permissible in presenting this type  
of

her  
jury

22 a witness to ask the witness to talk about the various  
23 items or sources that she has looked to in developing  
24 opinion. This information is able to be shown to the  
25 not for the truth of what is being stated.



1           In other words, here we have a cable that the  
2 professor has indicated is a State Department cable, so  
3 you are able to see that not for whether whatever is  
said  
4 in there is in fact true, okay, but so you will know  
what  
5 the professor has looked at in reaching her ultimate  
6 conclusions and opinions.

7           So this information may be received by the jury  
8 so that you can better understand how the professor  
9 ultimately arrived at the various opinions and  
conclusions  
10 that she will be discussing in her testimony, but you  
11 cannot consider this for the truth of what is stated in  
12 there.

13           Okay.

14           Of course, the reason for that is we don't have  
15 those people from the State Department here who can be  
16 cross examined to figure out how they learned what they  
17 learned, so on, so forth.

18           So you are able to look at this, but for that  
19 limited purpose, that is, in assessing how Professor  
Karl  
20 ultimately came to the various conclusions and opinions  
21 that she will discuss with you. So let us proceed.

22           MR. STERN: Your Honor, this exhibit and all of  
23 the documentary exhibits that Professor Karl will be

24     testifying about today have been admitted into evidence  
25     and will be available to the jury.

1 THE COURT: That is okay, but this particular  
2 exhibit at this point may not be considered for the  
truth  
3 of what is set forth in it, but only for the purpose  
that  
4 I have indicated.

5 If there is some other aspect of that, let's  
talk  
6 about it later today, and I will come back and speak to  
7 the jury.

8 But to the extent that it is being shown now,  
9 even if it is in evidence, it may be shown to the jury  
in  
10 assessing how did Professor Karl come to the conclusions  
11 that she had reached.

12 BY MR. STERN:

13 Q. Professor Karl, what is this document?

14 A. This is a U.S. Government cable, what we call  
redacted  
15 cable. Redacted. When they reclassify tables, as you  
see,  
16 they are blacked out in key portions, where they may not  
17 want you to know who a particular agent is, or may not  
want  
18 to identify somebody for guarding the identity of people.

19 So what I have done here is show you what the cable  
20 looks like, show you how much is blacked out, and then  
you  
21 will see a piece of the cable that I have blown up so you

22 can see the information that I relied on, and the  
23 information that was also flowing back and forth between  
24 the U.S. Embassy and Washington at the time.

25 Q. Professor Karl, would you please read the passage up

1 on the screen?

2 A. Yes. "In October 1979 Garcia helped plan the can  
you  
3 that toppled the Romero regime, and instead of seeking a  
4 seat on the Junta formed to rule the country, he chose to  
5 become Minister of Defense where he gained operational  
6 control of the armed forces and became, in effect, the  
7 power behind the throne, and was free to pursue his  
8 foremost goal preserving the cohesion of the armed  
forces.

9 Q. Professor Karl, based on the review of this  
document,  
10 what, if any, conclusions are you led to about General  
11 Garcia's role in the months following the October, '79  
12 coup?

13 A. Well, I should emphasize that this is only one  
14 document that I used to make my -- to form my opinions  
15 about the power that General Garcia had at the time of  
the  
16 October coup. I cannot show you my interviews, and I  
17 cannot show you a number of other documents, many of  
which  
18 are in Spanish, and I have chosen to show as part of my -  
-  
19 the information that I formed my opinion on U.S.  
Government  
20 cables which are more accessible, I think.

21 But what it shows, I think very clearly, is what was

person

22 the common understanding at the time, and continues, I  
23 think, to be the common both academic and other  
24 understanding, which is that General Garcia and the  
25 who occupied the position of the Minister of Defense was

1117

1 the power behind the thrown, as it says, was the person  
who  
2 had operational control. And by that I mean being able  
to  
3 shift officers around so that you could decide who you  
4 wanted to build up and give more appointments to, and who  
5 you might want to push out.

6 Q. In attempting to understand the events of late 1979,  
7 early 1980, and the following years, do you believe that  
it  
8 is important to have an understanding of the nature of  
the  
9 Salvadoran officer core?

10 A. Absolutely.

11 Q. And can you explain for us what -- how we should  
begin  
12 to understand what that officer core looks like, how it  
is  
13 made up, trained and so on?

14 A. Yes. If you look inside the El Salvadoran military  
at  
15 this time there is about 12,000 people in the military.  
As  
16 I said, the officer core is actually very, very small,  
and  
17 it is important to understand how small it is, even  
though  
18 it grows through the war periods, and particularly from  
19 19 -- the mid '80's on.

There 20 It's actually a very, very small officer core.  
is 21 is a study that takes place by General Fred Woerner who  
Woerner 22 a very noted general in the U.S. Army, and General  
23 goes down to El Salvador to look at the military and he  
24 presents some numbers so we could see the size of the  
25 military, the size of the officer core I am talking  
about.



1 I have reproduced his numbers.

2 Q. Is this commonly referred to as the Woerner report?

3 A. This is the Woerner report.

4 Q. What is the date?

5 A. November, 1991.

6 THE COURT: Mr. Stern, because this is a  
7 Government cable and because it is in evidence, I will  
8 change the ruling I made before and you may consider  
this  
9 particular exhibit for the truth what is set forth. In  
10 other words, it is a piece of evidence offered and is in  
11 evidence in the case.

12 So you may consider this particular piece of  
13 evidence for all purposes including the truth of what is  
14 set forth in it.

15 You may proceed.

16 MR. STERN: Could I have slide 130, please, an  
17 extract from the Woerner report, Exhibit 561.

18 BY MR. STERN:

19 Q. What is the significance of these numbers from the  
20 Woerner report, Professor Karl?

21 A. This is the numbers that he, General Woerner, U.S.  
22 General Woerner puts forth in the Woerner report showing  
23 the size of the officer core, it says field grade  
officers,  
24 and all officers here, military services, Army, Navy Air

Guard, 25 Force, and part about the security forces, National

1 National Police and Treasury Police.

would 2 What he does is, he gives you totals here, and I

3 like to try to explain what this means.

4 The total of all officers in the Salvadoran armed  
5 forces is 459, that is the total of all officers in the  
6 officer core. That includes both the military and the  
7 security forces.

and 8 The total of what are called field grade officers,

those 9 those are officers from the rank of major and above,

10 are the most important officers, is 106. Those are -- we  
11 are talking about a very small officer core, 450  
officers,

so 12 of which 106 are the senior or most important officers,

13 we are talking about a hundred people here. We are not  
14 talking a large group of people.

15 I think the other thing that is quite important in  
16 this slide, and I think you will find that the security  
17 forces in particular, meaning the police, National  
Police,

18 Treasury Police and the National Guard, figure very  
19 prominently in the case that you are looking at.

20 There are only 33 officers in the security forces,  
33.

21 So the numbers we are talking about are very, very small.

the

22 Q. Was there a sharp distinction between officers in

23 Army and Navy and National Guard and so on, respectively?

24 A. No. This is another thing -- this is very difficult

25 for someone who comes from the kind of military that we

me  
particular  
the

1 have in the United States to understand it. It confused  
2 quite a bit at first, because in El Salvador, unlike our  
3 armed forces, you are not actually assigned to a  
4 force. So in the United States you go into the Army, you  
5 stay in the Army, if you go into the Navy, you stay in  
6 Navy. In El Salvador, that is not the case.

Police  
the  
services.

7 In El Salvador you go into the armed forces, and you  
8 can be in the National Guard one moment, in the Army the  
9 next moment, Air Force -- you can be in the Treasury  
10 the next moment. And so there is a flow of the officers  
11 back and forth between services, a military officer in  
12 Army, and next minute in the Treasury Police. There is a  
13 flow between police and military and between the

14 So that means what is really key is the officer core  
15 itself, because they are the ones that move around, it is  
16 the unit, if I can put it that way, rather than any  
17 particular force.

in

18 Q. How were officers trained to join this officer core  
19 the Salvadoran military?

Salvador

20 A. Well, the training to become an officer in El  
21 was a extremely difficult and rigorous training.

22           What you saw is that officers entered the Escuela  
23 Militar, military school. Potential officers would enter  
24 the military school, and you have approximately anywhere  
25 from 120 to 140 men entering, and they are young, maybe

1 years old, entering the military school to become an  
2 officer.

3 They go through an extremely rigorous training. A  
4 very, very difficult training, and out of that training  
5 only 20 or 40 cadets are actually kept. If you think  
6 it, one out of every six people makes it as an officer,  
7 everybody else eventually has to leave. They may go into  
8 the armed forces, they may do something else, but they  
9 not a member of the elite officer core.

10 I have actually prepared a slide that might explain  
11 this.

12 Q. What is the nature of the slide you prepared?

13 A. It is a slide called the Tanda System, T-A-N-D-A.

14 Q. What is the Tanda System?

15 A. The Tanda System is the class you enter in military  
16 school. So if you are not part of a military service,

17 part of the officer core, what creates your bonds, your  
18 unity with a group is actually your graduating class. So  
19 you are from the class of 1957, or 1953, or 1966, et  
20 cetera. And anyone who graduates from that class has

21 through an extremely rigorous training of which five out  
22 six people don't make it, and you are one of the special

about

are

and

been

of

23 few with the other men you have trained with.

my

24 This forms extremely strong bonds. So the core in

the

25 view, the key to understanding the Salvadoran military,



really 1 key to understanding armed forces in El Salvador is  
2 this Tanda System, or the system of graduating classes.

3 MR. STERN: Could we have slide 109 on the  
4 screen, please, which relates to the Tanda System?

5 THE WITNESS: This shows what I am talking  
about.

6 You see entering the military academy, approximately  
120,

7 140 cadets, they come in at 16, most of them, most of  
them

8 come from lower class or poor backgrounds. This is very  
9 important, because if you make it as an officer, it is -

-

10 really, if you are poor, maybe the only mechanism to  
11 advance yourself in Salvadoran society.

12 Remember this is a society that is completely  
13 divided between rich and poor. If you are going to get  
14 out of poverty, if you make it through this system, you  
15 will be in the officer core, which is in an elite  
16 position, and you will have made your career, live,  
17 livelihood. You will be able to support your families,  
18 you will be able to live well. You become elite  
yourself.

19 This is the only mechanism of upward mobility in this  
20 society at the time.

21 Q. And what are the consequences of the means by which  
22 cadets are weeded out of the entering class from the

23 military academy?

24 A. As I said, only 20 to 40, depending on the size,

25 actually make it through this system. The training

1 program -- see I write harsh training creates fierce  
2 loyalty among Tanda members. Tanda is the graduating  
class  
3 from a outsider's point of view, someone not in the  
4 Salvadoran Army.

5 This training process which I have seen examples of  
is  
6 extremely harsh, extremely difficult, and what happens  
is,  
7 those officers who make it through feel tied to each  
other,  
8 they feel a brotherhood with each other, they become,  
they  
9 become -- well, one of the patterns I identified, they  
10 become Godfathers to each others children. They become  
11 members of each others wedding parties. They interact  
with  
12 each other socially. They live in a compound together,  
13 they go through this whole process together. And it is  
14 their community, what they know their friends, their  
15 brotherhood, and it creates these very strong bonds.

16 Q. Does the Tanda System have any affect on the  
attitude  
17 of Salvadoran officers toward civilian authority?

18 A. Yes, because remember, now, we are not talking about  
a  
19 military in the abstract, we are talking about a military  
through  
20 that is the government. So this military that goes

21 this process, this process of training officers is  
training  
22 them for not just military or security force positions,  
but  
23 for positions in the government, for running the huge  
24 enterprises, the state enterprises, for running the mine  
25 industries, for sometimes running some of the key  
economic

1 resources of the country. This is an elite position once  
2 you get into this.

of  
3 Q. Did the Tanda System have any affect on the effects  
4 the military as an institution?

5 A. Military is their home. Most of the officers don't  
6 know anything else but the military. I believe General  
7 Vides went into the military before he was 16, even, so  
you  
8 are talking about people who come into a graduating class  
9 when they are extremely young, go through an extremely  
10 harsh process, form a brotherhood with each other, live  
11 with each other, it becomes their home, becomes their  
12 community.

13 The other thing I think that is very important to  
14 point out, they are very separate from civilians. There  
is  
15 not much interaction with civilian life, and so they are  
16 separate in their facilities, they are separate in their  
17 housing, and they tend to -- you tend to see an attitude  
18 which I have --

19 MR. KLAUS: Objection. Goes beyond the scope  
of  
20 her expertise.

21 THE COURT: I will overrule the objection. You  
22 may proceed.

some

23 THE WITNESS: You tend to see an attitude of  
24 officers which is actually quite contemptuous of  
25 civilians.

1 BY MR. STERN:

2 Q. I want to return to the time line and ask you within  
3 this context, what was the effect on the military of  
4 pushing out reformers as you describe the process late  
'79,  
5 early 1980?

6 A. What happens from the Tanda System in the graduating  
7 class, you may have people of different tendencies. Some  
8 who might feel that the best way to deal with civilian  
9 opposition is to repress it, some who might think the  
10 opposition is too great, and it is time to open up the  
11 government a little bit.

12 And as I said, it is the reformists who take over in  
13 October.

14 From Minister Garcia's position as Defense Minister,  
15 the reformists are pushed out. If you go back and look  
at  
16 my time line, there is a series of events that are pretty  
17 important in this.

18 The first is really I think the most prominent  
19 assassination of the time, and that is in March, 1980.  
20 Remember, we are right at the beginning of 1980 now.  
21 The -- Minister Garcia is Minister of Defense, civilians,  
22 and the entire cabinet has resigned over repression --

23 MR. KLAUS: Objection; misstating facts.

24 THE COURT: I will allow you to handle that on

25 cross examination.



1           MR. STERN: Your Honor, if I might interrupt a  
2 moment. I am a bit concerned the jury members are not  
3 able to see the chart. I have two additional copies of  
4 the time line, might I be permitted to hand them to the  
5 jury so they might follow along?

6           THE COURT: Is there any objection?

7           MR. KLAUS: No, Your Honor.

8           THE COURT: All right. You may.

9           Could I make a suggestion? Why don't we pick  
10 those up and let's get copies made so every member of  
the  
11 jury can have it. Let's do that, we will have it for  
you  
12 in a second.

13           MR. STERN: Thank you, Your Honor.

14           THE COURT: Let's go ahead. We will pass those  
15 out as soon as they are ready.

16           MR. STERN: Thank you.

17 BY MR. STERN:

18 Q. Would you continue explaining the events on the time  
19 line?

20 A. What happens in this period of time, then is this  
21 spiraling of repression. The act that I think was most  
22 shocking to Salvadorans was the murder of Archbishop  
Romero  
23 while he was saying mass. Remember, this is the Catholic

24 country. The Archbishop is the main religious figure in  
25 the country, and he is assassinated while he is saying

mass

1 on a Sunday.

El

2 The reason this is so shocking is that the issue in

what

3 Salvador is the tremendous rise of repression, that is

4 everybody is concerned about. Everybody is talking

5 about -- and Archbishop Romero, when he gave his Sunday

6 homilies, these are Sunday radio programs that he would

7 give every Sunday, and many, many Salvadorans would tune

8 in.

Salvador.

9 If you go to poor areas, the radios would be on and

10 everybody would be listening to Archbishop Romero. He

11 began to denounce very actively repression in El

that

12 The week before he was assassinated, he gave a homily

13 was directed at the soldiers of El Salvador.

to

14 And he said in his homily, if you are given orders

15 kill, put down your rifles, don't obey these orders. And

16 he said, I beseech you in the name of God, stop the

17 repression. That was the words he said.

in

18 He then was assassinated himself the next week, and

the

19 this kind of environment -- I will stop while they get

20 time line, if you don't mind.

officer

21 In this type of environment the debate in the

22 core gets more heated in that the reform insisting human  
23 rights violators be prosecuted and punished, be prevented  
24 from carrying out repression whether they are in the  
25 military or outside the military, and other military

1 officers feeling that this is the strategy that must be  
2 pursued in order to defeat the opposition.

3 Q. What other items do you have -- please summarize  
some  
4 of the successive events here that are indicated on the  
5 time line between 1980 and '81.

6 A. I won't go through all of them, but I want to point  
7 out May 7, 1980, you see an item which says death squad  
8 leader D'Aubuisson arrested with 23 coconspirators.

9 What is important in this, I think you probably  
heard  
10 about Roberto D'Aubuisson. You have it. D'Aubuisson is  
11 regarded by the left and right as a intellectual author  
and  
12 leader of death squad apparatus. He gets on television  
and  
13 reads out lists of names of people who are subsequently  
14 murdered.

15 So he is very much seen, is understood as the leader  
16 of at least one apparatus that is killing people without  
17 any due process, what we call extrajudicial killings.  
18 Roberto D'Aubuisson is caught in a room by other  
officers,  
19 in a room with other military officers, and it is clear  
20 evidence that something illegal is going on.

21 I can present that evidence if you like, but what is  
22 most important about this meeting is that the reformist

23 colonel who arrests them is subsequently transferred, put  
24 on administrative leave and then driven out of the Army.  
25 In fact there is an assassination attempt against him.

1 There is an attempt to assassinate him. That is Colonel  
2 Majano, M-A-J-A-N-O.

3 And Colonel Majano who is arrested is actually  
driven  
4 out of the Army. The people that he arrest, who are  
caught  
5 with evidence that indicates that they may be engaged in  
6 human rights abuses are freed and a very clear signal  
sent  
7 once again, if you go after human rights abusers, you  
will  
8 not advance in the military, you will in fact be out of  
the  
9 military.

10 And another signal is sent which if you are caught  
as  
11 a military officer in uniform with the leader,  
acknowledged  
12 leader of the death squads, you will be freed, and you  
will  
13 be protected.

14 Q. What happened to Major D'Aubuisson at that point?

15 A. Major D'Aubuisson is arrested briefly, he is  
16 subsequently released. I believe that General Garcia,  
17 Minister of Defense, remarks that it is not possible to  
18 hold people for more than 72 hours in detention.

19 Q. I want to go back to your remarks about Colonel  
20 Majano. Did the Woerner report address the impact on the

21 military of having Colonel Majano the reformer pushed  
out?

22 A. Yes, it did.

23 MR. STERN: Could I have slide 131 on the  
screen,

24 please?

25 THE COURT: Let me stop you for a minute,



1 Mr. Stern.

2 Is this, the Woerner report in evidence?

3 MR. STERN: It is.

4 THE COURT: Received by both sides?

5 MR. KLAUS: Yes.

6 THE COURT: All right. You may proceed.

7 BY MR. STERN:

8 Q. Could you please read for us the passage from the  
9 Woerner report, page 46 of the Woerner report?

Majano's

10 A. Yes, this says, "The reassignment of Colonel  
11 followers to non command positions and non influential  
12 roles scattered their numbers and their ability to  
13 further significant influence within the armed force  
14 institution. As a consequence no countervailing force  
15 presently exists within the armed force to oppose  
16 propensity of the more conservative officers to tolerate  
17 the use of excessive force and violence."

exercise

18 Q. In your opinion was General Garcia one of the more  
19 conservative officers referenced in this passage?

the

20 A. General Garcia at this time was considered one of  
21 more conservative officers certainly by General Fred  
22 Woerner.

23 I should add I discussed this report with him, and

that

24 some of the passages in it, and I think the main point

25 he is trying to convey here is that by isolating,

1 transferring and marginalizing the reformers, there was  
2 nobody inside the armed forces that could be a break on  
the  
3 tendency and propensities of the more hard line officers.

4 Q. Do you believe Colonel Majano and his followers  
could  
5 have been scattered without the support or acquiescence  
of  
6 General Garcia?

7 A. That would not be possible.

8 Q. And how about General Vides Casanova, do you believe  
9 that he also was one of the more conservative officers as  
10 referenced in the passage from the Woerner report?

11 A. General Vides Casanova -- both General Garcia and  
12 General Vides Casanova were the directors of the military  
13 school. General Vides Casanova also was -- I don't know  
if  
14 he was director or subdirector of the CEFA, the center  
for  
15 the studies of the armed forces.

16 In that center, when General Vides was there,  
probably  
17 the most prominent and leading professor was Roberto  
18 D'Aubuisson, who was in the military at that time. That  
19 school and place became a center of very hard line  
20 thinking. General Vides was very much identified with  
that  
21 school at that time.

22 Q. Would you please remind us again, what was the time  
23 period in which Colonel Majano's followers were scattered  
24 as the Woerner report phrases it?

25 A. Yes. If you look on the time line I've prepared, it

1 takes about ten weeks to actually push out of significant  
2 positions the reformers.

3 The final making ineffective of the reformist force  
4 actually happens in September of 1980. That is actually  
5 not on your time line. If you could follow -- in  
6 September, 1980, General Garcia as a Minister of Defense  
7 issues what is called general order number ten, and that  
8 order is an order of reassignment of the final reformist  
9 officers making them a negligible force in the armed  
10 forces.

11 Q. I want to turn back to general military repression.  
12 We will come back to other items on the time line.

13 As a political scientist engaged in the study of  
14 Salvadoran military, have you examined the reasons why  
the  
15 military forces carried out repressive activities towards  
16 civilians?

17 A. Yes, I have.

18 Q. And have you come to court today with a graphic to  
19 summarize your opinions on this subject?

20 A. Yes, I have.

21 MR. STERN: Could I have slide 107, please?

22 BY MR. STERN:

23 Q. Professor Karl, could you please explain to us your  
24 opinion why the military engaged in repressive activities

25 in the 1979 through '83 time period?

is  
1 A. Well, again, remember, this is the government, this  
2 a military dictatorship that has governed through most of  
3 the 20th century. It is a group of very small officers  
4 with a -- I would call a bargain or a partnership with a  
5 small group of wealthy landowners, plantation owners.

And

6 the goal of all officers that I have ever talked to from  
7 the reformist to the hard liners has been to guard what  
8 both sides might conceive of as the armed forces as an  
9 institution.

10 Even the reformers never wanted civilian control of  
11 the armed forces. They never wanted a system like ours  
12 where the military would be subordinate to civilians.  
13 Everybody I have ever interviewed in the officer core all  
14 wanted to preserve the dominance of the military  
15 institution in El Salvador, and the debate was how to  
16 preserve that dominance, in what way, what was the best  
17 strategy.

18 The reformers believed the best strategy over time  
19 would be to, actually to open up the society a bit and  
lead  
20 a reform. The hard liners, many of them believed that  
the  
21 best strategy would be to go back to what they knew and  
22 what had worked in 1932, which is what I call mass  
terror.

massive

23 That means confronting a potential or possible, or even  
24 existing armed uprising, which is quite small with  
25 repression against civilians that you may think are their



1 follow -- yours or their potential followers.

2 Q. What does the phrase drain the sea mean that we see  
on  
3 the slide?

4 A. These are phrases that I actually learned in El  
5 Salvador talking to Salvadoran military officers, to  
6 actually several colonels who talked to me about military  
7 strategy. It is actually a phrase from Mao Tse Tung in  
8 China, a phrase of thinking about warfare, and the idea

was

9 for some Salvadoran military officers, that if you were  
an

10 armed group, you were like a fish and the population  
around

11 you was the water, was the water of the sea. You were a  
12 fish in the sea.

13 So an armed group in El Salvador, and again, this is  
14 such a small country you can drive across this country in  
a

15 day, you can see it from the air, you can see the whole  
16 country, for armed groups trying to hide from a military,  
17 they have to hide inside a population, they have to get  
18 their food from somewhere, they have to get their water  
19 from somewhere, they have to exist in someplace. They  
20 can't run off in some jungle that is thousands of miles  
21 away or hundreds of miles away because the country is

just

22 too small.

23           So the belief of many Salvadoran -- some Salvadoran  
24 officers, the ones I call the hard liners, was that in  
25 order to defeat a small armed group, what you had to do

is

after 1 drain the sea. You didn't go after the fish, you go  
2 the water. If you took away the sea, the fish would be  
3 flopping around with no logistical support, they would be  
4 weak, and you could go in and get your fish.

5 Draining the sea actually meant the physical removal  
6 of what they perceived as civilian or popular support  
from 7 any armed groups. That is what draining the sea meant.

8 Q. Was this sphere of the motion approach or would you  
9 regard this as an actual strategy?

10 A. No. This is a strategy. This is part of a  
discussion 11 of military doctrine. This is something that was  
explained 12 to me by a number of Salvadoran colonels, it is a  
strategy 13 that at least some colonels, the hard line believed would  
14 permit them to defeat not only the armed opposition, but  
15 also, remember, there is this very, very big and much  
16 greater in size peaceful opposition, so this would allow  
17 them to remove this opposition and return to a period of  
a 18 status quo where they govern without any of these  
problems.

19 I think this was most graphically said to me by a  
20 colonel who told me in a 1983 interview, we were --

21 MR. KLAUS: Objection; hearsay.

I

22 THE COURT: I will overrule the objection, but

not

23 want to instruct the jury again, you may consider this

24 for the truth of what is being said but only so that you

25 will understand how Professor Karl ultimately arrived at

1 the various opinions and conclusions that she has been  
2 discussing.

3 So you may not consider this for the truth of  
4 what is being said, but for that limited purpose.

5 With that, you may proceed.

6 BY MR. STERN:

7 Q. What did the colonel say to you, Professor Karl?

8 A. We were having a discussion about what needed to be  
9 done in El Salvador, and there was a debate in the high  
10 command about what appropriate military strategy should  
be.

11 And this colonel, I asked him about the 1932 massacre, I  
12 asked him if there were any lessons from that, and he  
said

13 to me, you know, Mira Teresita, look, Terry, in 1932 we  
14 killed 30,000 peasants, and they were quiet for 50 years.  
15 All we are asking for is another 50 years.

16 Q. Did this strategy -- do you believe this strategy as  
17 you described it could have gone forward without support  
of  
18 the level of the military high command in El Salvador?

19 A. No.

20 Q. What is your basis for saying that?

21 A. Because what occurs in El Salvador in your time  
line,  
22 really, from the end of 1979, particularly through 1980  
and

23 1981, is a wide spread state terror. When I say state  
24 terror, it is directed from inside the state.

25 The pattern of it is too great. It is all over the

1 country, it is from the east to the west of El Salvador,  
it  
2 is from the north to the south, it is in some areas more  
3 than others, but it goes throughout the country.

4 It uses the same kinds of tactics. You find the  
same  
5 things happening, there are peasant massacres that happen  
6 in a number of places. You find that these things could  
7 not have happened without significant logistical support.  
8 They could not happen in a number of places with a number  
9 of barracks through both the security forces and the  
10 military armed forces without some kind of coordination,  
11 some kind of logistical support, some kind of strategy.  
It  
12 is just too widespread.

13 Q. Can you give us a sense of the scale of the terror  
you  
14 are describing?

15 A. Yes, I can.

16 As I said earlier, this is the largest state  
17 repression in the history of El Salvador. This is  
probably  
18 the second and highest period of mass murder of  
civilians,  
19 I am talking civilians, not talking about a war between  
two  
20 armed sides. Civilians. This is the greatest number of  
21 civilians to die in a short period of time in modern

22 history in Latin America with the exception of Guatemala.

23 This is the second highest.

24 We don't know how many people actually died in this

25 period of time, but the figures that were given in 1982

by



1 a Master Hinton, and figures that were given by General  
2 Garcia in an interview I read tends to place these  
numbers  
3 at this time about 30,000 civilians. 30,000 people who  
4 died in this period of time from the security forces and  
5 the armed forces.

6 Q. What is the specific time frame you are referring  
to?

7 A. I am referring to the time frame now when Ambassador  
8 Hinton gave those statistics. He was talking end of '79  
to  
9 '82, only in that short period in your time period.

10 We believe, and when I say we, most scholars believe  
11 that the total number of civilian deaths in El Salvador  
up  
12 to the peace agreement ranges in the 70,000 range, and  
13 although we can never quite verify, it is important that  
we  
14 can never quite verify that figure.

15 Some people estimate it may be 50, 55,000, other  
16 people estimate 70, 75,000, so we don't really know how  
17 many died in the total conflict.

18 Q. So in the 1980, '81 time frame, approximately how  
many  
19 civilian deaths would that amount to per month?

20 A. About a thousand per month in a very small country.

21 Q. Are there difficulties involved in being precise  
with

22 numbers like that?

23 A. Yes, there are. I explained what it meant to verify

24 how data was gathered. As I said, the Embassy gathered

25 data by reading the newspapers, but the problem with

that,

1 when they did their own self study, they came up with the  
2 conclusion that they had significantly under reported  
3 deaths.

State 4 There were two reasons for that according to the  
5 Department's own self study of its reporting. There were  
6 two reasons for that.

7 One is that the Embassy relied on what was actually  
8 reported in the newspaper. The newspapers were all  
9 extremely conservative, owned by extremely conservative  
10 forces, and they significantly under reported deaths,  
11 particularly in the countryside. Deaths in urban areas  
12 were easier to report, deaths in the countryside were not  
13 so easy to record.

14 The other reason the Embassy said it had under  
15 reported was not just its reliance on newspapers, but  
16 because --

17 MR. KLAUS: Objection; hearsay, Your Honor.

18 THE COURT: Okay. Here again, the jury is  
19 entitled to hear the information, not for the truth of  
20 what is being asserted, but to allow you to understand

how

21 it is Professor Karl ultimately came to the conclusions  
22 and opinions she has and will discuss, but it can be  
23 received for that purpose and that purpose only.

24 You may proceed.

THE WITNESS: There were a series of other

1 reasons that the Embassy decided that it had  
significantly  
2 under reported this, including difficulties of  
monitoring  
3 deaths for the U.S. Embassy official in more remote  
areas  
4 of El Salvador, not in San Salvador, but more in remote  
5 areas.

6 BY MR. STERN:

7 Q. In your study of the military and human rights  
abuses,  
8 have you done a comparison between El Salvador and other  
9 countries of Central or South America where repressive  
10 regimes existed?

11 A. Yes, I have.

12 Q. Have you come with a graphic that illustrates that  
13 comparison?

14 A. Yes, I have.

15 MR. STERN: Could I have slide 166, please?

16 MR. KLAUS: Objection; relevancy. Improper  
17 foundation. Insufficient data and support for forming  
her  
18 opinion.

19 THE COURT: Again, I will overrule that  
20 objection. I will let you handle it on cross  
examination.

21 I think the initial discussion of the professor's

to

22 background and area of study is sufficient to allow her

23 render the opinion. It will be subject to cross

24 examination and evaluation by the jury.

25 You may proceed.

1                   THE WITNESS: This is a graphic I am using  
2                   teaching global politics of human rights, and where I  
try  
3                   to explain what patterns are, numbers of deaths, et  
cetera  
4                   in different kinds of wars.

5                   The first column is El Salvador 1980 to '89.  
The  
6                   second column, Argentina 1976 to 1983, when there was  
what  
7                   is widely known as the dirty war in Argentina. And the  
8                   third one Chile, 1973 to 1990, during the militaryship  
of  
9                   Augusto Pinochet.

10                  These are three Latin America countries. The  
11                  sources that I use here are every one of these countries  
12                  had a Truth Commission to try to figure out how many  
13                  people died and who killed them. That was something  
that  
14                  happened in every one of these conflicts.

15                  This graph shows you an estimation of civilian  
16                  murders as a percentage of the total population using  
17                  statistics of the three Truth Commissions, the one in  
each  
18                  country. And as you can see the level of repression,  
19                  civilian murders in El Salvador is far, far greater than  
20                  it was in the other two military dictatorships in  
21                  Argentina and Chile.

22 BY MR. STERN:

23 Q. You testified earlier about your experience of  
seeing

24 dead bodies in various places in El Salvador in  
connection

25 with state terror. When you were in El Salvador, did you



1 also have an opportunity to witness victims of torture or  
2 speak with these victims?

3 A. Yes, I did.

4 Q. And what did that consist of?

5 A. First through following the photographs that I  
talked  
6 about that were being identified by family members, I  
later  
7 met with a camera crew and team from BBCN in England,  
which  
8 is the British Broadcasting Company, and I participated  
in  
9 and helped interview people who said they were victims of  
10 torture. They described their torture, they showed areas  
11 where they had been tortured, and this subsequently  
12 appeared on a documentary in England.

13 Q. As a scholar, how do you go about determining who  
was  
14 responsible for the killings of civilians and torture  
that  
15 you testified about?

16 MR. KLAUS: Objection. Beyond the scope of her  
17 expertise.

18 THE COURT: I will overrule the objection. You  
19 may proceed.

20 THE WITNESS: Well, we do as a scholar a number  
21 of things. We ask people who are responsible -- when I  
22 say people, I don't mean taking a public opinion poll,

but 23 that wasn't possible in these kinds of circumstances,  
24 we asked Embassy officials, I asked Embassy officials, I  
25 asked U.S. officials of all sorts. I asked heads of

1 different organizations from the right to the left in El  
2 Salvador, I asked military officers themselves.

3 I read books. I looked at who other reports  
4 attributed killings to. I had a number of personal  
5 experiences which permitted me to see who people in El  
6 Salvador were afraid of, who they were afraid was going  
7 to kill them or hurt them.

8 My very first trip to El Salvador, my very  
9 first night there I stood at a bus stop and a car of -- a  
10 police bus  
11 car drove up to that bus stop. We were waiting for a  
12 bus  
13 to come, and everybody at the bus stop ran away. I was  
14 the only one standing there. They saw the car and ran,  
15 I  
16 am sitting there thinking well -- and I realized they  
17 are  
18 terrified of this, they don't want to be where the  
19 police  
20 are.

21 BY MR. STERN:

22 Q. Have you formed an opinion as to who was responsible  
23 for killings of civilians and torture in the '79 through  
24 '83 time period, and in what proportion?

25 A. Yes, I have.

26 Q. What is your opinion?

are

22 A. My opinion is Salvadoran armed and security forces

in

23 responsible for the greatest number of civilian murders

24 El Salvador, as well as the torture.

25 Q. Apart from what you told us, what evidence would you

1 point to to support your opinion?

2 A. Well, I think that you can -- the evidence that I  
used  
3 to form my opinion were -- was a series of evidence. I  
4 looked at, as I said, I have examined hundreds and  
probably  
5 thousands of Government cables of the United States to  
see  
6 who they attributed responsibility to, and there is a  
7 consistent pattern in those cables of attributing  
8 responsibility to the armed and security forces. I have  
9 some examples of those cables.

10 MR. STERN: I would like to put up on the  
screen  
11 a portion of Exhibit 211 which is already in evidence.  
12 So, if I could have slide 127, please.

13 BY MR. STERN:

14 Q. What is Exhibit 211, Professor Karl?

15 A. This is a U.S. State Department memo that was  
prepared  
16 for the National Security Adviser who was then  
Briezinski.  
17 This memo was sent to Peter Tarnoff, who was secretary in  
18 his office. He has an attached memo by Peter Tarnoff to  
19 take to the National Security Adviser Briezinski.

20 And it says, "According to our Embassy, quote --"  
and  
21 he is quoting the Embassy now -- "there is no evading the

22 responsibility of the security forces and to a lesser  
23 extent the military for much and perhaps the majority of  
24 the violence."

25           This is -- I don't have the date on this. I am  
sorry.

1 Q. Professor Karl, are you familiar with someone named  
2 Edwin Corr?

3 A. Yes, I am. He was Ambassador from '85 to 1988.

4 Q. Do you know whether he gave testimony in this case  
by  
5 way of a deposition?

6 A. I believe he gave a deposition in preparation for  
this  
7 case.

8 Q. And have you reviewed his deposition testimony as  
part  
9 of your preparation for your testimony today?

10 A. Yes, I have.

11 Q. Did Ambassador Corr offer any evidence on  
12 responsibility for human rights violations in the 1979 to  
13 1983 time period?

14 A. Yes, he did. He was asked and answered questions  
15 about the response -- who was responsible for the  
violence.  
16 I prepared a slide on that.

17 MR. STERN: Could I have slide 102, please?  
This

18 is pages 39 through 40 of Ambassador Corr's deposition.

19 BY MR. STERN:

20 Q. What did Ambassador Corr testify to about the  
21 responsibility for the human rights abuses, Professor  
Karl?

22 A. This deposition was taken March 13, 2001, and

right

23 Ambassador Corr, former Ambassador in El Salvador, said  
24 there is consensus that the armed forces and disloyal  
25 especially through paramilitary groups and death squads



1 were responsible for the bulk of the human rights abuses  
2 and killing in the 1970's and '80's.

3 And the questioner goes on to say, does this  
sentence

4 reflect your current thinking on the topic, and  
Ambassador

5 Corr says, yes.

6 Q. Did the Truth Commission address the issue of  
7 responsibility for human rights abuses during the periods  
8 of 1979 until the end of the civil conflict?

9 A. Yes, it did.

10 Q. Have you reviewed what the Truth Commission had to  
say

11 on that subject?

12 A. Yes, I have.

13 Q. Have you come today with a graphic that summarizes  
the

14 Truth Commission finding with respect to that subject?

15 A. Yes, I have.

16 MR. STERN: Could I have slide 124 on the  
screen,

17 please?

18 BY MR. STERN:

19 Q. First of all, let me back up, Professor Karl.

20 In your work, do you regard the Truth Commission as  
an

21 important source of information and conclusions about  
human

22 rights violations in El Salvador?

23 A. Yes, I do.

24 Q. And can you tell us a little bit why you have that

25 opinion?

1 A. Well, the Truth Commission, I believe there has been  
2 testimony here about the Truth Commission. The Truth  
3 Commission was given a six month period, which was  
4 subsequently extended a bit under a U.N. mandate, United  
5 Nations mandate, to try to discover patterns of violence,  
6 to investigate key cases in the Salvadoran conflict, and  
7 try to identify who was killed and who killed them.

8 The Truth Commission was not investigating, this is  
9 important, it was not investigating deaths in war time by  
10 soldiers or armed rebels. In other words, the thousands  
11 Salvadorans who died in the Salvadoran armed forces, and  
12 there were thousands, and numbers of guerillas who died  
13 the armed conflict, or rebels who died in the armed  
14 conflict are not included in these figures. These are  
15 figures of civilians, of ordinary people, unarmed people  
16 who died in the conflict.

17 What the Truth Commission did -- since it was under  
18 U.N. mandate, there was an ability to reach out into the  
19 entire population through announcements, homilies, the  
20 priests, a whole network, announcements, and papers, it  
21 on the radio, if you have a complaint, if somebody is  
22 missing, somebody died, come tell us.

23           So the Truth Commission received a total of 22,000  
24   complaints of people who came forward. 7,000 of those  
were  
25   given in direct testimony, and others were handed over by

1 human rights organizations, by church groups, by  
2 individuals, et cetera who by court documents or whatever  
3 existed at the time.

4 So this is the biggest compilation, and yet not a  
5 total compilation of what we know happened in El  
Salvador.

6 I want to say one other thing about the Truth  
7 Commission, because its standards of evidence were so  
high,  
8 they would not count murders unless the bodies had been  
9 verified. So that meant that there were a number of  
10 deaths, some of which I personally investigated, that do  
11 not appear on the Truth Commission in its statistics or  
in  
12 its numbers because they did not personally either have a  
13 forensic team, have pictures of bodies, see bodies, et  
14 cetera.

15 All of these numbers are backed by proof of death or  
16 in the case of disappearance, proof that a person is  
taken  
17 and subsequently never appears again.

18 Q. Could you please walk us through the Truth  
19 Commission's analysis of the 22,000 complaints that it  
20 received?

21 A. These are the complaints between the years 1980 and  
22 1991 of the 22,000 -- there are more than 22,000. These

pie 23 are what are called pie charts, that means you build a

24 and slice it up based on what the numbers looked like.

they 25 This first group is based on the complaints that

1 receive who is the perpetrator, who killed somebody, who  
2 disappeared somebody, what uniform were they wearing, how  
3 do we identify these people and who are they.

4 Based on the 22,000 sample, what you see is that 60  
5 percent of the civilian murders now, or 60 percent of the  
6 murders or tortures that were reported to the Truth  
7 Commission were committed by the armed forces personnel.

8 That means that somebody was wearing a uniform that  
9 was identified and they were identified by witnesses with  
10 corroborating evidence.

11 25 percent is members of the security forces, that  
12 again means in uniform, police, Treasury Police, National  
13 Police, and the National Guard.

14 Those figures together, the 60 and 25 percent is 85  
15 percent of the complaints given to the Truth Commission

and

16 those 85 percent are all what we call the Salvadoran

armed

17 forces under a central command.

18 Q. Okay. What are the other slices of the pie that are  
19 on the circle you have been talking about?

20 A. 20 percent are what are called civil defense units  
21 that seem to have military escorts with them.

22 So, I don't know if you heard testimony about rural  
23 guards, but there are sometimes civilians who are armed  
24 paramilitaries. Essentially, if they are armed, if they

two

25 have a military escort, people in civilian clothes, but



1 National Guardsmen escorting them to the house where they  
2 take somebody, that is where they would appear. That is,  
3 about 20 percent of the complaints reported that.

4 Ten percent of the complaints are death squads, and  
5 that means people in civilian clothes, they cannot be in  
6 military uniform. And I should clarify that there are  
7 different kinds of death squads. There are death squads

in

8 uniform and death squads out of uniform, so these are

death

9 squads civilian, they cannot be attributed to any uniform  
10 force, and that is about ten percent of the complaints.

11 And this FMLN, that is the initials of the guerilla  
12 armed force that is fighting the military in El Salvador.

13 There were five percent of the complaints identified FMLN  
14 as human rights abusers. There were I believe 600

around

15 complaints about the FMLN, and they tended to center

government

16 killings and conflict zones of mayors and other

17 officials.

that

18 Q. Did the Truth Commission identify any individuals

19 they found to be identified in acts of violence against

20 civilians?

21 A. Yes, it did.

22 Q. Did it result in any prosecutions of those

23 individuals?

24 A. No, it did not.

25 Q. Why not?

1 A. The Truth Commission Report came out in '83. I have  
2 to back up.

3 There is a U.N. brokered peace agreement which is  
4 negotiated in '90 and '91 -- latter part of '80 -- '90,  
5 '91, and 92 there is a peace agreement signed between the  
6 Salvadoran Government and this force, FMLN. That peace  
7 agreement has in it provisions to disband the security  
8 forces, in other words, to break up and get rid of the  
9 Treasury Police, National Police, and the National Guard,  
10 and to create a new police force that is not tainted with  
11 human rights abuses.

the  
rights

12 Part of those provisions also were about cleaning  
13 armed forces -- cleansing the armed forces of human  
14 abusers.

15 When the Truth Commission came out and named actual  
16 perpetrators, this was after the peace agreement had been  
17 signed in '92, but before the first fully free and fair  
18 elections in El Salvador in '94, so there is a period of  
19 time, and in that period of time the Truth Commission  
20 report comes out.

names,

21 When that report came out, and because it named  
22 the government in power, which is a government of the  
23 right, is sufficiently upset by the naming of names that

the

24 the Congress, which is dominated by the reigning party,

25 party of Roberto D'Aubuisson passing an amnesty in 1993

1 which extends to all military officers who commit human  
2 rights abuses in this periods of time I am talking about.

3 There is, I believe, only one exception to that  
4 amnesty. In other words, that amnesty extends to all  
5 people, all officers involved in the Salvadoran conflict.  
6 The exception is military officers who ordered the murder  
7 of sixth Jesuit priests in 1989.

8 Q. Would that amnesty preclude claims of human rights  
9 abuse by the Plaintiffs who are in court today?

10 A. Yes, it would.

11 Q. And was there a previous amnesty of any sort in the  
12 late '80's?

13 A. Yes, there was an earlier amnesty in 1987 by  
President  
14 Duarte. The idea of that amnesty was if you forgave  
15 everybody, both FMLN and military, you gave everybody a  
16 blanket amnesty, maybe they would stop fighting. It  
didn't  
17 work, and the 1993 amnesty supersedes that.

18 Q. One question I want to come back to, there is an  
19 asterisk and note that the total percentage for persons  
20 reported to have committed violence exceeds 100 percent.  
21 How can that be?

22 A. Because certain acts actually fall into two  
23 categories. It may be, for example, that you have an

- 24 action such as the murder of the six members of the FDR -  
25 of the opposition, that involved actually several  
security

1 forces, and perhaps the military as well.

2           So you may have an action, a murder in which you  
have  
3 Army personnel, so it would appear in the armed forces  
4 personnel, but you also have National Guard personnel,  
and  
5 it would also appear in members of the security forces.

6 Q. Directing your attention to the right-hand side of  
the  
7 slide here, what is the significance, if any, in your  
view  
8 of the chart that shows when reported incidents took  
place?

9 A. Well, the importance of this, as you can see, is  
that  
10 the great bulk of human rights, of reported human rights  
11 abuses occurs from 1980 to '83, which is the period of  
time  
12 that the Defendants are respectably Ministers of Defense  
13 and head of the, Director General of the National Guard.  
14 And also the period of time where the three Plaintiffs  
were  
15 detained and tortured.

16           So it is in that period of time where the great  
number  
17 of abuses occurred.

18 Q. Professor Karl, are the Truth Commission findings  
you  
19 have been telling us about generally consistent with the  
20 rest of the research that you've done and your own

rights

21 experience on the topic of responsibility for human

22 abuses?

23 A. Yes, they are.

24 Q. I want to go on to a new topic, Professor Karl.

25 Based on your training as a political scientist, and



are  
1 someone who studies militaries and human rights abuses,  
2 you able to identify patterns or stages of repressive  
3 government activity?

study  
4 A. Yes. One of the things that those of us do who  
5 state terror, we try to understand patterns of terror,  
what  
6 is the logic to them, why some victims and not others,  
why  
7 some perpetrators and not others, why 75 percent  
8 occurring  
9 in '80, '83, and 25 percent occurring after '84 on, why  
10 is  
11 there a big change there. That is something we need to  
12 know.

13 And many of us use what is called a scale of terror,  
14 bipartisan  
15 which was developed by Freedom House, which is a  
16 think tank of both -- has very prominent Democrats and  
17 Republicans in the United States on the boards, and  
18 funded  
19 largely by Congress. It has developed what is called a  
20 scale of terror that helps us understand patterns, and I  
21 thought it might be helpful to show that.

18 Q. Have you put together a slide to explain this notion  
19 of scaled terror?

20 A. I have.

21 MR. STERN: Could I have slide 128, please?

22 BY MR. STERN:

23 Q. Could you please explain the scale of state terror  
24 that you prepared?

25 A. Yes. This is from Freedom House, and what you see

1 here, there are different levels of terror, I won't go  
2 through all of them. I want to point out the ones I  
think  
3 are most important.

4 When I talk about mass terror or state terror that  
is  
5 unleashed in El Salvador after 1979, the period of time  
we  
6 are talking about, I am talking about what is called  
level  
7 eight terror. And definition there of Freedom House is  
8 mass state terror, torture, murder and disappearance  
9 threatens the entire population, numerous large scale  
10 massacres of civilians carried out by military and  
security  
11 forces.

12 So this is again state terror, state directed terror  
13 at a level that is widespread throughout the country and  
14 threatens the entire population.

15 Q. And do the colors on that arrow bear some relation  
to  
16 the levels of terror that the scale refers to?

17 A. Yes, it does. Mass state terror, for example, one  
of  
18 the ways you recognize it, you see large scale massacres,  
19 you find mass graves, large numbers of people disappear,  
20 not just a person here, and a person there, but large  
21 numbers of people, so this is what we call mass state

22 terror.

23       It is also usually not necessarily confined to a

24 single place, but may be throughout a country, throughout

25 region, et cetera.

a

1 Q. Have you applied these scales of terror on a  
2 chronological basis to El Salvador in early 1980's?

3 A. Yes, I have.

4 Q. And have you come today with a board to help you  
5 explain how this scale of state terror applies in El  
6 Salvador?

7 A. I have. I would like to add one more thing before I  
8 turn to the board. It is just to make the distinction  
9 between mass state terror and what we call targeted  
terror.

10 There is different kinds of targeted terror, let me  
11 say level six, level four there, that is a different kind  
12 of terror. That is a kind of targeted terror where you  
go  
13 after specific groups of people.

14 Let's say you don't like what the church is doing,  
so  
15 you go after church workers, that is what we call a  
target.

16 And you pick a particular group, say you don't like a  
17 particular reason and religion, and you go after them.  
Or

18 a particular race, and you go after them. That is much  
19 more targeted into a group.

20 And there is another level called highly targeted  
21 terror. And that means, let's say instead of wiping out  
22 all trade union leaders, you pick a trade union leader in

23 the biggest trade union, and it signals that person out.

24 So terror changes its profile.

25 THE COURT: Mr. Stern, I think we are at a time

1       where we ought to break for the luncheon break. Why  
don't       2       we take a break until quarter of two and we will come  
back       3       and turn back to the Plaintiffs for the conclusion of  
the       4       direct testimony.

5               So we will be in recess until quarter of two.  
6               (Thereupon, the jury retired from the  
courtroom.)

7               THE COURT: Is there anything we need to  
discuss     8       before we break for lunch?

9               MR. STERN: I don't think so.

10              MS. VanSCHAACK: One small thing. We filed  
this       11       morning proposed instructions, and motion in limine.

12              THE COURT: All right. The motion in limine,  
13       does that have to be taken up before this evening?

14              MS. VanSCHAACK: No.

15              THE COURT: All right. The other side has a  
16       copy?

17              MS. VanSCHAACK: Yes.

18              (Thereupon, a recess was taken at 12:30.)

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

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

22              I wanted to, just before we bring in the jury,

23 take a second. The first issue deals with the fact that  
24 in this case there are a number of documents that came  
25 into evidence without objection, and therefore are in



1 evidence, and they were subject, I think to objections  
or  
2 possibility of an objection if it were determined that  
the  
3 document was either not relevant or perhaps cumulative.

4 Now, of course, the first issue would be  
whether  
5 those documents are hearsay or whether they constitute  
an  
6 exception to the hearsay rule, and I suppose the  
argument  
7 would be that government cables, probably, fall under  
the  
8 rubric of public documents prepared by governmental  
9 officials in the conduct of their business and there is  
a  
10 presumption of the admissibility unless they are deemed  
11 somewhat untrustworthy.

12 We never got to that because the parties  
13 stipulated to the admissibility of the documents.

14 Now, the reason I raise this, obviously, if a  
15 document is in evidence, whether it is an exception to  
the  
16 hearsay rule or hearsay, but if it is in evidence,  
clearly  
17 it can be considered, it is in evidence, it is that  
18 simple.

19 The professor in her testimony, though, is in a  
20 sense indicating the various sources of her information,

21 some of which are clearly in evidence, and therefore may  
22 be considered substantively by the jury. Some of the  
23 sources of her information, for instance conversations  
24 with the colonel you mentioned, and various other people  
25 and other documents, certainly can be referred to, but

the 1 that is simply for the jury to consider in evaluating  
2 professor's ultimate conclusion.

other 3 I take it you all are happy with that. In  
4 words, there is no problem in that regard. There have  
5 been objections, but you both agree when the document  
6 itself is in evidence, there is no problem with the jury  
7 considering it as to the truth of the matter asserted?

8 MR. KLAUS: Correct.

9 MR. STERN: Yes, Your Honor.

about 10 THE COURT: The second issue I am concerned  
11 is the question put to Professor Karl regarding whether  
knew 12 she had an opinion as to what General Garcia actually  
13 and what General Vides actually knew. 704(b) prohibits  
that 14 that type testimony in a criminal proceeding. Why is  
15 testimony admissible in this proceeding? How can an  
16 expert conceivably have an opinion on what was in  
someone 17 else's mind?

18 She may have an opinion, but how can it be a  
19 legitimate expert opinion? I don't have any problem  
with 20 should have known, because we talked about that source  
of 21 information, but what about the problem of what was

22 actually known by the person?

23 MR. STERN: Well, I think, Your Honor, what the  
24 expert witness is speaking to is evidence of direct  
25 messages conveyed to the Defendants that would under any

1 reasonable circumstances constitute --

2 THE COURT: That is should have known. There  
may  
3 be lots of bases under which somebody would say so and  
so  
4 should have known it. Former Vice President spoke to  
him,  
5 I read cables from the Ambassador saying they spoke to  
6 this person, the numbers, the Truth Commission reports,  
7 the newspapers that were being circulated at the time,  
and  
8 so forth.

9 There may be a host of circumstances that one  
10 looking back on it would say somebody in power having  
11 governmental responsibility absolutely should have known  
12 that this was taking place. But I am concerned about  
this  
13 one issue of being able to render expert opinion as to  
14 what is in the mind of someone, what they actually knew  
as  
15 opposed to what they should have known.

16 MR. STERN: Well, I think I would draw a  
17 distinction between the various types of circumstantial  
18 evidence that The Court refers to, visibility of abuses,  
19 numbers of abuses, newspaper advertisements on one hand,  
20 and testimony, which there has been a fair amount of  
both  
21 in person, for example through Ambassador White and

that  
rights

22 through cables in which we have quite direct evidence  
23 the Defendants were told by individuals, particularly in  
24 United States government, about the extent of human  
25 abuses, that seems to me to go well beyond a should have

1 known notion --

2 THE COURT: I am asking you about, and I want  
to  
3 you reflect on this for a minute. Again, both sides  
have  
4 worked so hard to have a trial as much free of error as  
we  
5 can have it, and I am concerned about eliciting expert  
6 testimony about what somebody actually knew. Short of  
7 someone saying I had a conversation with so and so, and  
8 this is what they told me, clearly they knew it, they  
told  
9 it to me.

10 Short of that, is this something that is the  
11 legitimate subject matter of expert testimony? I point  
12 out to you it is absolutely prohibited on the criminal  
13 side by 704(b). I am concerned about it coming in, and  
it  
14 came in -- my recollection is there was an objection to  
15 that testimony. I simply want to ask you to think about  
16 that for a minute. I am not sure that is legitimate  
17 expert testimony.

18 I am not sure that is a legitimate subject area  
19 for expert testimony, and I am not talking about the  
20 should have known, because I think clearly that is  
21 something that an expert could look at and could talk  
22 about all of the sources and so on. And I -- as I say,  
in

you

23 looking at the rule, it absolutely prohibits it on the  
24 criminal side, so you couldn't get someone up and say,  
25 know it is my opinion that this person knew they were



1 joining a criminal conspiracy, you just can't do that.

2 Now, I suppose someone would argue the fact  
that

3 the rule is worded to prohibit it in criminal  
proceedings

4 leaves the door open for civil proceedings, but I am  
5 concerned about whether that is a legitimate area for  
6 expert opinion.

7 MR. STERN: I confess, I haven't looked into  
this

8 precisely with this issue in mind, but it seems to me  
that

9 if, for example, Professor Karl is reading a variety of  
10 cables in which the Ambassador through time and  
repeatedly

11 make the statement that they have directly informed the  
12 Defendants about human rights abuses, that it would be  
13 consistent with her expertise, experience and the type  
of

14 function that she plays in interpreting information for  
15 the jury in passing along the benefit of her experience  
to

16 the jury.

17 For her to say that based on the cables that I  
18 reviewed, and the testimony that I have heard, I know  
that

19 it is my opinion that the Defendants did receive direct  
20 notice from people such as the Ambassador.

you  
that.  
the  
that

21 THE COURT: I don't have a problem with what  
22 just phrased, there is no question somebody can say  
23 See, that is a review of evidence, but it takes a step I  
24 think a little bit beyond it. It is, for instance, is  
25 receiver of that information crediting it, concluding

1 it is true, and arriving at the conclusion, yes, it is  
2 true, subordinates in this military structure are in  
fact  
3 committing human rights abuses. That is in a sense the  
4 question and answer being elicited.

5 The professor gave her opinion that General  
6 Garcia and General Vides actually knew that their  
7 subordinates were in fact committing these human rights  
8 abuses. That is the only thing I am concerned about.

9 MR. STERN: Well, I don't mean to quibble. It  
10 seems to me -- I am not 100 percent sure on what the  
11 distinction would be between having solid evidence that  
12 the expert can testify about as to direct notice versus  
13 knowledge on the part of the Defendants. I don't know  
if  
14 there is some extra step involved in knowing something  
15 that is different from receiving direct notice, and it  
is  
16 really only the notice.

17 THE COURT: How close are you to finishing your  
18 direct?

19 MR. STERN: We have a substantial way to go,  
Your  
20 Honor.

21 THE COURT: Would you think about this? Let's  
22 come back to it and deal with it before we turn to  
cross,

he

23 because if I am going to strike that one aspect of the  
24 testimony, I think Mr. Klaus needs to know that before  
25 goes into it on cross examination.

1                   And I would like to ask you to take a look at  
the  
2                   rule and reflect on it. I am troubled by that one piece  
3                   of testimony, and I think we want to be very careful  
about  
4                   that.

5                   MR. STERN: That is fine, Your Honor.

6                   THE COURT: Okay. Are we all set and ready to  
7                   proceed?

8                   MR. KLAUS: Yes, Your Honor.

9                   THE COURT: All right. Let's bring in the  
jury.

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

11                   THE COURT: Ladies and gentlemen, please be  
12                   seated. When we stopped for lunch, we were in direct  
13                   examination.

14                   Mr. Stern, do you need the last question read  
15                   back?

16                   MR. STERN: I think I have it in mind, and  
there  
17                   is one question I want to ask before.

18                   THE COURT: Sure, go ahead.

19 BY MR. STERN:

20 Q. Let me clear up what would have been a poorly stated  
21 question on my part, Professor Karl.

22                   I asked you about amnesty in El Salvador in 1983  
that

23 would preclude human rights victims, such as human rights  
24 in this case, from pursuing claims in El Salvador. You  
25 remember I asked you questions about that?

1 A. Yes, I remember.

2 Q. Did that amnesty apply to El Salvador only?

3 A. That applies only to El Salvador. That amnesty is  
not  
4 applicable here in the United States.

5 Q. Before we broke for lunch, Professor Karl, you had  
6 begun to testify about a scale of terror applied  
7 chronologically in El Salvador.

8 MR. STERN: If I could ask Mr. Green to put up  
on  
9 the easel the next board.

10 BY MR. STERN:

11 Q. Keeping in mind the significance of the color scheme  
12 here, recalling the slide that we had up on the screen  
13 previously, would you please explain to us what is going  
on  
14 here, Professor Karl?

15 A. Yes. I'm indicating the patterns of violence, the  
16 patterns of terror, and before we broke, I indicated that  
17 there was something called mass terror and defined mass  
18 terror.

19 That is the red orangy color. Targeted terror is  
this  
20 yellow and slightly -- this might be highly targeted  
21 terror, and mass terror. And what I am trying to show is  
22 drop off again from mass terror back to targeted terror.

23           And so this is my, based on the statistics that I  
have

24    reviewed and all of the information I have in El  
Salvador,

25    this is the pattern of killings and human rights  
violations



1 that I see in El Salvador.

2 Q. What is the text that appears below the bar with the  
3 colors on it?

4 A. I am trying to show here, this is 1979, October,  
when  
5 General Garcia begins Minister of Defense and General  
Vides

6 Casanova becomes -- pardon --

7 MR. KLAUS: Excuse me.

8 THE WITNESS: When general Vides Casanova  
becomes  
9 general of the National Guard.

10 That is 1979 here. What you see is -- and  
11 remember I testified that there was a military  
government  
12 that came into power here (indicating) that started the  
13 beginnings of repression against opposition forces. And  
14 again, I am not talking about war, I am talking about  
15 unarmed people who are being killed.

16 And as you can see, we move into a period of  
17 targeted terror. This is the October 1979 coup of the  
18 junior officers who are reformists. They are moved out  
of  
19 the military in various ways or marginalized in  
different  
20 ways, pushed out by additions of power by about here,  
and  
21 here we move into what I would call mass terror.

22 Q. And approximately when does the color scheme go from  
23 orange to yellow, bright red to orange, further to the  
24 right of the color band?

25 A. The extremely bad years in El Salvador, mass terror

1 years are 1980 and '81.

2 Q. And what does the color scheme turn into yellow?

3 A. The worst two years are '80, '81. '82 is also quite

a

4 bad year and a year I would consider mass terror. By

that

5 I mean thousands and thousands of civilian deaths,

perhaps

6 nine or 10,000 a year in these two years.

7 In '82, '83 there is a slight diminishing, but I

would

8 consider that periods of mass terror. And as you can

9 hopefully see, in 1984, the color changes. There is

quite

10 a significant change in the pattern of violence in El

11 Salvador, and that moves back to what I would call

targeted

12 terror.

13 Targeted terror means once again there is a specific

14 group that is getting targeted rather than this general

15 killing of civilians who might -- who may or may not be

16 sympathizers of the opposition.

17 Q. What are the items that appear above the color band

on

18 this graphic?

19 A. If you still have your time frame, I am trying to

show

20 you the relationship of events to each other. And what

you

period

21 see is that in that red orange period, which is the  
22 of mass terror, one of the key indicators that we have of  
23 mass terror is -- as I say, massacres, it means you have  
24 significant numbers of massacres where not just an  
25 individual is being murdered, not just an individual

1 torture, but you are having possibly hundreds of people  
2 killed, and a series of massacres.

3 So what you see in that red period of time are not  
4 only certain key murders that you may have heard about,  
the  
5 abduction of the students from the parking lot of the  
U.S.

6 Embassy. You see also what we would call massacres, the  
7 Rio Sumpul massacre, which is one I personally  
8 investigated. San Francisco Guajoyo, Rio Sumpul, R-I-O  
9 S-U-M-P-U-L massacre, and San Francisco G-U-A-J-O-Y-O.

10 You also have the murders that I believe there was  
11 testimony here already of the FDR killings. The FDR, by  
12 the way, is an unarmed opposition that is in alliance  
with  
13 the armed opposition, so it was often called FDR FMLN, if  
14 you will.

15 And this is the killings of six major leaders of the  
16 unarmed opposition who are taken out of a Jesuit high  
17 school and subsequently tortured and murdered.

18 The Sheraton killings in 1981, January, which I  
19 believe you also heard testimony about and was  
particularly  
20 upsetting to the U.S. Embassy because it involved the  
21 killing of two Americans who were very well-known to  
people  
22 in the U.S. Embassy.

L

23           There was a personal face on this.   El Junquillo, E-

24   J-U-N-Q-U-I-L-L-O killings, a killing of a number of

And

25   people.   El Mozote, El Calobocho.   E-L C-A-L-O-B-O-Z-O.

S. 1 Las Hojas -- there is a misspelling there, L-A-S H-O-J-A-

2 Those are all massacres.

3 Q. Apart from the obvious fact that numerous people are  
4 killed in these massacres, do you attribute any  
5 significance to the fact that these massacres are going  
on 6 in a relatively concentrated period of time?

7 A. Yes. I think this is part of what is for me  
8 corroborating evidence about a strategy of terror. In  
9 other words, when you have a number of massacres that  
occur 10 around the country in different places, aimed at -- and  
11 most of the massacres are aimed at peasants, they are  
aimed 12 at people in rural areas, farm workers, landless, those  
are 13 the people who die in the massacres, that is part of a  
14 strategy of draining the sea.

15 That means, these are people rightly or wrongly as  
16 being some kind of support for an armed group, although  
17 they are not armed themselves in any way.

18 Q. Professor Karl, are you able to give us an  
explanation 19 as to why in the approximately 1984 time period mass  
terror 20 gives way to a more targeted form of terror?

21 A. Yes, I am.

22 Q. Can you give us your explanation, please?

23 A. This is a very important change in human rights

24 abuses. It is one from thousands of people dying to

25 hundreds of people dying. That is the difference. And I



1 think there are really two explanations for why that  
2 change.

3 The first one is simply that terror works. If you  
4 kill people, and you are worried about an opposition, and  
5 you are killing people all around the country, you find  
6 that it gets harder to find or discover people who may be  
7 meeting in Christian based communities or peasant  
8 associations or labor unions. People will be reluctant  
9 to get into that kind of activity because of what they see  
10 happening around them.

11 In that sense terror works. It is extremely  
12 chilling to any associational or political activity. Even you  
13 would find reluctance of people to go to church, anything that  
14 find reluctance of people to go to church, anything that  
15 would put you out in the public, to make you someone  
16 grabbed on the street or seen as a subversive, whatever.  
17 That is the first reason I would give.

18 Q. Are there additional reasons you would point to?

19 A. Yes. There is a very important series of events  
20 that happens between 1983 and 1984 that I think has a  
21 significant, very important and actually very definitive  
22 impact on mass terror in El Salvador.

23 Q. And what is that?

A. In 1983, in April, General Garcia steps down as

him

24 Minister of Defense and General Vides Casanova replaces

25 as Minister of Defense. In the cables that I reviewed in

1 the United States -- both the State Department and CIA  
2 cables, which are quite extensive at this moment. There  
is  
3 a great deal of hope that that change will mean that  
4 General Vides will stop the kinds of repression that is  
5 going on. That he will rein in, is the language they use  
6 in the cables, and try to take some actions to prevent  
the  
7 kinds of killings that are occurring at this time.

8 So there is a lot of hope attached to the General's  
9 promotion to the General's taking the position of Minister  
10 of Defense.

11 What happens in April, 1983, there are a series of  
new  
12 appointments made inside the Salvadoran military  
assigning  
13 colonels to new positions, and those are extremely  
14 distressing to the U.S. Embassy and State Department in  
15 general because they indicate to the Embassy, according  
to  
16 the tables and the interviews -- the cables I have seen  
and  
17 interviews I have done, that there is not going to be a  
18 move to try to curb the human rights abuses, but instead  
19 given the nature of the appointments which are extremely  
20 hard line individuals, many of whom who have been clearly  
21 associated with human rights abuses, given that there is  
a

General

22 feeling that General Vides -- there is a fear that

23 Vides will not act to curb these human rights abuses.

24 Q. Did the United States do anything to express its

25 concerns on this score?

1983

to

the

a

core

if

Salvador.

1 A. Yes, it did. There is a series of events that  
2 happened at this time, and I am going through the year  
3 now. There is a series of visits from the United States  
4 the Salvadoran armed forces, and specifically cables that  
5 track visits and discussions with General Vides.

6 There is a visit from General Vernon Walters from  
7 United States to deliver the message that -- he delivers  
8 very simple message. He says, according to the cables,  
9 that he is trying to explain to the Salvadoran officer  
10 in particular the United States cannot continue to give  
11 military and economic aid, Congress will not provide it  
12 there are mass killings at this level.

13 This is not something that would make it through the  
14 Congress in an appropriations bill. There is too much  
15 opposition in Congress to what is happening in El  
16 General Vernon Walters comes down and says, you have to  
17 lower the human rights abuses or we would not provide you  
18 with the kind of assistance you might need to defeat this  
19 armed opposition to you. He is the first visit.

20 Q. Were there other representatives of the U.S.  
21 government who similarly sent this message to the

22 Salvadoran high command in 1983?

23 A. Well, what you see at this time is a drum beat of

24 messages. You see first, I believe Vernon Walters is

25 first, new Ambassador, Pickering is giving these messages

1 as well, and then he proceeds to start to send messages  
2 back to Washington. He is simply not being believed.  
When  
3 he says aid money will not get through Congress, he is  
not  
4 being believed by Salvadoran military officers, by  
members  
5 of the officers core, because they believe the United  
6 States would continue to fund them.

7 MR. KLAUS: Objection; beyond her expertise.

8 THE COURT: I will overrule the objection. I  
9 want the jury to understand this information cannot be  
10 considered for the truth of the matter asserted, but you  
11 may consider this in understanding how Professor Karl  
12 ultimately arrived at the opinions and conclusions that  
13 she is putting before you.

14 You may proceed.

15 MR. KLAUS: Your Honor, I have another basis  
for  
16 the objection, 703(b). She is testifying as to beliefs  
of  
17 certain people without a procedure foundation, without a  
18 basis of data or information to base her opinion on.  
And  
19 to give an opinion on someone's beliefs is beyond the  
20 scope of her expertise and violation of 703(b).

21 THE COURT: You mean 704(b)?

22 MR. KLAUS: 704-B.

23 THE COURT: Well --

24 MR. STERN: I may be able to rephrase.

25 THE COURT: Let me let you go back.



1 I suppose to the extent that one refers to a  
2 particular individual, there needs to be some indication  
3 that the professor has either talked to that person or  
4 read something that the person has written or has some  
5 other basis from which to conclude that that is the  
6 person's conclusion, and that she has used that  
ultimately  
7 in arriving at her opinions.

8 BY MR. STERN:

9 Q. Let me take this from another angle, Professor Karl.  
10 Did Secretary of State Schultz make a trip to El Salvador  
11 in 1983?

12 A. Yes.

13 Q. Have you reviewed documents and cables in connection  
14 with that visit that he took?

15 A. I reviewed documents and cables, and I talked to the  
16 secretary about the trip.

17 MR. STERN: If I could have on the screen, I  
18 would like to ask you questions about Exhibit 559, which  
19 is in evidence.

20 If I could ask the technician to put up page  
3842  
21 of Exhibit 559.

22 And let me ask the technician to highlight the  
23 top portion of this. Underline the first three lines of  
24 the document, above that, please.

Could we go back and get the very top? Yes,

1     thank you.

2     BY MR. STERN:

3     Q.    Professor Karl, what does this line refer to in the  
4     context of the document?

5     A.    These are notes that were prepared by the Under  
6     Secretary of State Tony Motley for the Secretary of State  
7     Schultz preparing him for his conversation with General  
8     Vides Casanova which was to take place, which was  
scheduled  
9     to take place October 24, 1983.  These are what are  
called

10    talking points in the language of the State Department.  
11    These are the notes that are prepared and that are then  
12    agreed upon as the basis of a conversation that the  
13    Secretary of State will hold with General Vides Casanova.

14                 MR. STERN:  Could I have item two under the  
15    heading key objectives highlighted, please?

16    BY MR. STERN:

17    Q.    Could you read this passage for us?

18    A.    Yes.  "As one of the key objectives of the  
19    conversation with General Vides Casanova, Under Secretary  
20    of state is saying stress frankly the need for Vides to  
21    move against death squads and officers who commit  
abuses."

22    Q.    What is the significance of that in your view?

23    A.    This is listed as one of the key objectives of this

24 meeting. It is something the United States thinks is  
25 extremely important in this moment in time, which is

1983.

1                   MR. STERN: I would like to go back or go to  
2 another passage on the same page and ask the technician  
3 highlight item one under the heading bear in mind.

4 BY MR. STERN:

5 Q. Could you read this for us?

6 A. Yes, this says, "Bear in mind, some officers in the  
7 Army and police forces are members of death squads."

8 Q. And what does this tell you about the U.S.'s  
9 of human rights abuses by the Salvadoran military at this  
10 time?

11 A. The purpose of these instructions is to inform the  
12 Secretary of State who is dealing with all kinds of  
13 countries, this isn't the only country he deals with,  
14 he is having this conversation with General Vides, he  
15 to bear in mind that in the armed and security forces are  
16 officers in both the Army and police who are members of  
17 death squads. He needs to know that that is the basis of  
18 information that the United States is operating upon.

19 Q. Okay. Turning to the next page --

20                   MR. STERN: I would like to ask the to/from  
21 subject lines highlighted, please.

22 BY MR. STERN:

23 Q. Professor Karl, who is the secretary?

24 A. Secretary is Secretary of State Schultz.

25 Q. And who is Tony Motley?

1 A. Under Secretary of State for Latin America affairs.

2 Q. And this is a memo between Secretary Schultz, a  
3 meeting between Secretary of State and General Vides  
4 Casanova?

5 A. On October 24, yes.

6 Q. I would like to highlight number two. Would you  
read  
7 this for us?

8 A. Yes. "Stress the need for Salvadoran assistance and  
9 keeping the aid flowing by strong action on human rights,  
10 eliminating the death squads and the prosecution of those  
11 responsible for violations."

12 And then there is a phrase that says talking points  
13 attached", which means there are points that will be very  
14 specific that will be the suggestive instructions to the  
15 Secretary of State in his conversation with General  
Vides.

16 Q. In light of your previous testimony about the U.S.  
17 posture toward El Salvador in 1983, how do you interpret  
18 this paragraph?

19 A. What is happening in the U.S. Congress at this time  
is  
20 a great deal of upsetness about aiding the Salvadoran  
21 military because of the high level of human rights  
abuses.  
22 The Secretary of State and administration that he

but 23 represents would like to continue this aid if they can,  
if 24 they do not feel like they are able to continue this aid  
25 human rights abuses stay as high as they are.



which  
1           And so the purpose of Secretary Schultz's visit,  
2 follows upon other meetings of the Ambassador of Vernon  
3 Walters, I believe Gene Kirkpatrick was there in the  
early  
4 part of 1983 as well, is to emphasize to General Vides,  
5 which is who this meeting is with, that in order to keep  
6 assistance flowing, something must be done about the high  
7 level of human rights abuses.

8           MR. STERN: I would like the technician to go  
to  
9 the next page and highlight the first full paragraph,  
10 please.

11 BY MR. STERN:

12 Q.    Would you please read this paragraph, Professor  
Karl?

13 A.    Yes, this is the subject -- under Secretary of State  
14 memo again to Secretary Schultz informing him of the  
15 following. "The Salvadoran military does not take as  
16 credible our threat to cut them off or even to reduce the  
17 level of aid as a result of the lack of progress in human  
18 rights. Vides returned from Magana's June trip to  
19 Washington saying that no one mentioned human rights to  
20 him."

21 Q.    If I could stop you for a moment. Who is Magana?

22 A.    Magana is the civilian president at the time who is

23 he is -- he was the banker of the military, many military  
24 officers, and he was appointed president in 1982.

25 Q. In the context of this document, what does the

1 representation about General Vides that you read mean for  
2 the U.S. position?

3 A. Well, it means -- the United States is concerned  
that  
4 General Vides was in Washington with President Magana,  
and  
5 during that visit, since he did not -- he did not state  
6 according to the Under Secretary of State that people  
7 mentioned human rights abuses to him, he did not feel any  
8 pressure from the United States to do anything about  
them.

9 Q. Thank you.

10 Could you read the rest of the paragraph, please,  
11 beginning with their perception?

12 A. Speaking of the officer core here of the Salvadoran  
13 military, he says, "Their perception is that the  
14 administration speaks with two voices concerning the  
human  
15 rights situation. State Department hectors them about  
16 human rights while the Department of Defense and the  
White  
17 House cognisant that the Salvadorans are fighting our war  
18 for us act forcefully to increase funding levels and to  
19 send in the fleet."

20 Q. Could we have the next paragraph? Would you read  
that  
21 for us?

22 A. "It is important that you put an end to this

we

23 misperception and tell Vides in no uncertain terms that  
24 do not believe that the government of El Salvador can win  
25 the war unless they have the support of the population,

1 that the United States will not support a solution which  
2 merely returns El Salvador to the status quo ante, and  
3 that we cannot guarantee further funding from Congress  
4 unless they take bold measures to place their own house  
in  
5 order."

6 Q. Professor Karl, what do you believe was the  
7 misperception that was suggested in this document on the  
8 part of the Salvadoran military?

9 A. The misperception is what the Under Secretary of  
State  
10 Tony Motley says in the previous paragraph, that the  
belief  
11 that the United States isn't serious about this, that the  
12 U.S. government is not serious about this, and as long as  
13 the U.S. government is not serious about this, that there  
14 will be no action.

15 In other words, there is no action that is going to  
be  
16 taken from the military themselves but that it is  
necessary  
17 for the military to understand clearly that this is  
really  
18 a condition for U.S. aid.

19 Q. How do you interpret the phrase, place their own  
house  
20 in order, in the last sentence of this paragraph?

21 A. Well, given that he is talking about military  
officers

22 in death squads, that he is talking about bearing in mind  
kinds 23 that there are military officers that engage in these  
serious 24 of practices, and given that he is talking about a  
25 effort to curb human rights abuses, my understanding is

1 that he means dealing with human rights abuses that are  
2 being committed by the armed forces and security forces,  
3 and making sure that the armed forces and security forces  
4 stop those abuses. It is cleaning your own house.

5 Q. If I could ask the technician to go to page 3846 and  
6 highlight the second numbered paragraph, please. The  
7 entirety of the material under numbered paragraph two.

8 Is this another one of the talking points for  
9 Secretary Schultz to use on his visit?

10 A. This is the talking points that are specifically  
11 addressed to human rights. There are other issues on the  
12 table as well in this meeting, but these are the ones  
13 specifically address human rights issues.

14 Q. Would you be able to read this material for us,  
15 Professor Karl?

16 A. Yes. Number two. "Stress the need for Salvadoran  
17 assistance in keeping the aid flowing by strong action on  
18 human rights, eliminating the death squads and the  
19 prosecution of those responsible for violations. There

20 specific actions which Vides could take which would

21 the administration's position on the hill --" by that

22 mean Congress "-- by allowing him moderate Democrats and

23 Republicans to support security assistance for El

that

are

enhance

they

24 Salvador."

25           And then he lists the specific actions.



actions? 1 Q. Would you continue, please, with the specific

2 A. "Many in the death squad are on active duty in the  
3 various branches of the security forces. In addition,  
the

4 Security forces must have knowledge of their own -- of  
many  
5 of their activities."

6 The second bullet point is, "A captain wanted in the  
7 case of the murdered AIFLD labor advisers is in San  
8 Salvador and in contact with Army officers despite Vides'  
9 promise to -- it says to take, arrest him as a deserter."

10 Q. Do the AIFLD labor advisers have some connection to  
11 what we heard testimony about the Sheraton killings?

12 A. Those are the Sheraton killings. A field adviser is  
13 the adviser who was murdered in the Sheraton.

14 Q. Could you continue?

15 A. "We have evidence that a major in the Treasury  
Police  
16 tortured the suspect who confessed, wrongly it turns out,  
17 in the Schelberger case."

18 This is a mention of a specific case in which a  
19 suspect was tortured to get his confession. He confessed  
20 but turns out it was a false confession.

21 "Finally, no action has been taken against officers  
22 involved in human rights abuses in the field, including  
at

in

23 the Las Hojas cooperative where at least 18 innocent men  
24 were murdered by an Army unit in February. The officer  
25 charge has been given another command."

1 Q. Professor Karl, on the basis of this passage, what  
2 conclusion, if any, do you draw about the level of U.S.  
3 knowledge regarding human rights abuses by the Salvadoran  
4 military and security forces?

5 A. U.S. has extensive knowledge what is going on. It  
is  
6 also clear from the cables that I have remembered that  
the  
7 United States has not only extensive knowledge of what is  
8 going on on the ground in El Salvador, but also has  
9 informants that are providing information to the United  
10 States.

11 So Under Secretary Motley is sharing this  
information  
12 with the Secretary of State in order to prepare him for  
the  
13 visit, and this is a summary of the specific actions that  
14 he is -- that the Secretary of State Schultz will later  
15 give in his meeting with General Vides as the actions  
that  
16 General Vides could take.

17 Q. Again, focusing on the passage, what conclusion, if  
18 any, do you draw about the U.S.'s belief in the  
Salvadoran  
19 military's ability to address human rights issues given a  
20 willingness to do so?

21 A. The United States clearly, in my view, believes that  
22 General Vides can in fact do something about the specific

do 23 events, that he has the authority and responsibility to  
to, 24 so, that he is the person that you direct these issues  
25 and that you share this information with him and in doing

1 so, he has the power to act upon them.

anything,

2 Q. And, again, based on this passage, what, if

Salvadoran

3 do you take away in terms of the U.S. belief in

4 military's willingness to pursue human rights abusers?

5 A. Well, I think there is a very clear message in here

6 that unless aid is tied to the lowering of human rights

7 abuses, these actions are not likely to occur. In other

8 words, what perceives all of this is a drum beat of

9 messages to lower the human rights abuses, they are not

to

10 being lowered, and the sense is that United States needs

11 get more aggressive and say very specifically, and say if

aid.

12 you do not lower human rights abuses, you will not get

to

13 MR. STERN: I would like the technician to go

14 the next page and highlight the third and fourth circle

15 points.

16 Thank you.

17 BY MR. STERN:

18 Q. Could you read these for us, please?

battle

19 A. Yes. The first one says, "Stress that we know that

20 there are specific steps Vides can take to make the

21 easier, that is the battle to keep aid flowing to El

22 Salvador. First and foremost, he must move to break the

cannot  
23 death squads. Many of the members are in the Security  
24 forces. With his elaborate intelligence network, he  
25 fail to know who is doing what."

1 Q. Professor Karl, what do you understand the reference  
2 to General Vides's elaborate intelligence network to  
mean?

3 A. The United States had intelligence agents operating  
in  
4 El Salvador at the time. It's clear in my view,  
5 particularly from my reading of the CIA cables, that the  
6 United States knows a great deal about what is going on  
and  
7 who is doing it.

8 The United States also clearly, from the cables  
9 leading up to this, do not believe that General Vides  
will  
10 do anything about this unless he is pushed specifically  
by  
11 tying aid to human rights abuses.

12 And they also believe that he has the capacity to do  
13 this, not only because he is Minister of Defense, but  
14 because he has what they refer to as an elaborate  
15 intelligence network which will allow him to know which  
16 officers are committing human rights abuses and which  
ones  
17 are not. In other words, who are the bad apples that are  
18 carrying out murders and tortures against civilians.

19 MR. STERN: Could we have the next two bullet  
20 points highlighted, please?

21 BY MR. STERN:

Karl?

22 Q. Could you read these passages for us, Professor

23 A. Yes. He, refers to General Vides, these are more

24 talking points for Secretary Schultz to convey to General

the

25 Vides, "The advantages of cutting human rights abuses,



he 1 positive things that could happen if you did that. Here  
2 says he can turn around the entire labor movement in the  
3 United States by arresting Lieutenant Lopez Sibrian and  
4 Captain Avila who are both suspects in the AIFLD case.  
5 Captain Avila is regularly in San Salvador, we both know  
6 it."

7 Q. Does this paragraph suggest to you that the United  
8 States -- strike that.

9 Based on this paragraph, what confusion, if any, do  
10 you draw about whether the United States thought that  
11 General Vides could apprehend the murderers in the  
Sheraton 12 case?

13 A. It's to me --

14 MR. KLAUS: Objection, Your Honor. Again, goes  
15 beyond --

16 THE COURT: I sustain the objection.

17 BY MR. STERN:

18 Q. Professor Karl, who is Captain Avila?

19 A. Captain Avila was found in the Truth Commission, but  
20 much earlier than that, particularly through intelligence  
21 investigations operations by the United States, and also by  
22 that were sponsored by the U.S. labor movement, he was  
23 found in all of these investigations to be the captain in

24 the -- implicated in the Sheraton murders, the murders in  
25 the Sheraton Hotel.

1 Q. Based on this paragraph, what view do you have as to  
2 whether the United States thought that General Vides  
could  
3 apprehend Captain Avila in San Salvador?

4 A. A --

5 MR. KLAUS: Again, Your Honor, objection. Same  
6 basis.

7 THE COURT: Well, as I understand it the  
question  
8 that is being asked is how Professor Karl interprets  
these  
9 documents ultimately to reach her own conclusions. If  
10 that is what the question is, I will permit it. But the  
11 jury has to understand that is what the question is.

12 And I want to go through this again, that this  
is  
13 not being admitted for the truth of what is in these  
14 documents, but simply to allow you to ultimately  
15 understand how it is Professor Karl comes to the  
16 conclusions and reaches the opinions that she is  
17 testifying to.

18 BY MR. STERN:

19 Q. Do you have the question in mind?

20 A. I am sorry, would you repeat it?

21 Q. I am not sure I can. I will try to rephrase it.

22 What conclusion, if any, did you draw about what the  
23 United States thought General Vides could do in terms of

24 catching Captain Avila?

25 A. There are intelligence cables of the time, there is

1 one that I was going to show later in my testimony  
actually  
2 today, which report that Captain Avila is living in a  
safe  
3 house of the National Guards right next to National Guard  
4 headquarters, that they know where he is, he is really  
5 under the protection of the National Guard.

6 Now, because of that, those intelligence cables, and  
7 that is the information that Tony Motley has which he is  
8 making available to the Secretary of State, to Secretary  
9 Schultz, he is saying that Captain Avila is regularly in  
10 San Salvador and we both know it. He is suggesting in  
the  
11 conversation between Secretary of State Schultz and  
General  
12 Vides, look, we both know he is here, we have this  
13 information.

14 Q. Could you read the next bullet point?

15 A. Again, he refers to General Vides, "He can  
discipline  
16 officers involved in human rights violations and this  
means  
17 more than simply a transfer to another unit. In the Las  
18 Hojas case, at Las Hojas there is ample evidence that an  
19 Army unit killed innocent civilians yet nothing has  
20 happened. He must follow up on earlier incidents at La  
21 Florida and Santa Elena. These are two other instances  
in

22    which the United States has evidence of civilians being  
23    murdered by actions of the Salvadoran military and  
officers

24    involved in these murders."

25    Q.    Professor Karl, based on this paragraph, what

1 conclusion, if any, do you draw about General Vides'  
2 ability to discipline officers involved in human rights  
3 violations?

4 A. It is clear that the United States believes that he  
5 has the responsibility --

6 THE COURT: Let me stop you. The question was,  
7 what conclusions do you draw about General Vides'  
ability  
8 to discipline?

9 THE WITNESS: Sorry. That he has the  
10 responsibility and authority and position in command to  
11 discipline these individuals.

12 BY MR. STERN:

13 Q. And based on the paragraph that you just read, can  
you  
14 spell out the basis for the opinion that you have just  
15 given us, Professor Karl?

16 A. Well, one of the things that you see when you look  
and  
17 examine the -- how military officers are moved around, if  
18 you have a roster of the officer core, and you look at  
how  
19 they have been transferred in this period of time, which  
is  
20 something I have done, so if you look at, for example,  
the  
21 pattern of transfer or promotion of Lieutenant Lopez  
22 Sibrian, and if you take any individual, you see how they

23 are moved around.

24           And if you remember, I explained that you can move  
an

25 officer from one service to another, you can move him  
from



1 the police to the military and back to the police, and  
you  
2 can move him from the Army to the National Guard. You  
can  
3 move these people around. There is a -- the Minister of  
4 Defense makes the recommendations about these transfers  
and  
5 changes in position of military officers, and this is  
6 saying that it is not sufficient to take somebody  
7 implicated in the murders of civilians in one place and  
8 just give that person the command in another place.

9 MR. STERN: Could I have the next two bullets  
10 points, please?

11 BY MR. STERN:

12 Q. Professor Karl, could you read these final two  
bullets  
13 points for us, please?

14 A. These are other actions in the talking points that  
15 Secretary Schultz is being prepared to ask General Vides  
to  
16 do. "He can discipline the Treasury Police major who  
17 threatened an American correspondent and tortured a  
18 fraudulent confession out of a suspect in the Schelberger  
19 case. And he can also emphasize strongly that when  
20 Salvadoran soldiers are killed because they do not have  
21 adequate weapons or enough helicopters, they have men  
like  
22 Lopez Sibrian to thank."

off 23 MR. STERN: If the technician could take that  
24 the screen, please.  
25

1 BY MR. STERN:

2 Q. Following the visit to El Salvador of Secretary of  
3 State Schultz, did any member of the United States  
4 government travel to El Salvador in the late 1983 time  
5 frame?

6 A. Yes. Vice President George Bush went to El Salvador  
7 in December, 1983 following the visit of Secretary  
Schultz.

8 Q. And briefly, what significance do you attribute to  
9 that visit in the pattern of human rights violations in  
El  
10 Salvador in that time frame?

11 A. Well, as I said, there is a crisis in Congress over  
12 aid. Congress does not want to continue aiding this  
13 military with abuses this high. There is a series of  
14 visits by U.S. officials, and each one is more important  
15 than the other. The Secretary of State's visit occurs in  
16 October, October 24. He has a conversation with General  
17 Vides. His -- he comes back and recommends that that  
visit

18 is not enough, that there must be a further visit of  
19 somebody even higher than him to drive home the message  
to  
20 General Vides and the Salvadoran officer core that unless  
21 they cut human rights abuses, U.S. aid will stop.

22 Q. And what is the result of that visit?

23 A. This is a visit that is quite extensively prepared

24 for, it is a visit considered crucial whether or not the  
25 United States will stay in El Salvador or will leave. So

1 what you see are in the cables and government documents,  
2 there is extensive preparation for the Vice-president's  
3 visit, and extensive summaries of what happens during  
that  
4 visit including actual note taking by Ambassador  
Pickering  
5 at the time, where he takes notes in the meeting between  
6 the Vice President and General Vides.  
7 And then there are extensive follow-up cables after  
8 this visit, so this is probably one of -- it may be the  
9 best documented visit I have ever studied of a senior  
U.S.  
10 official going down to a third world country with a clear  
11 agenda in mind.  
12 And what you see in these -- in this visit is, you  
see  
13 a series of talking points that actually parallel very  
much  
14 the talking points that the Under Secretary of State Tony  
15 Motley prepared for Secretary Schultz.  
16 In other words, there are very, very extensive  
talking  
17 points, but not just that the visit is organized in a way  
18 that is very different, Vice President Bush goes down, he  
19 has a 30 minute courtesy meeting with the President,  
20 President Magana, and has a 40 minute meeting with  
General  
21 Vides and two other officials who join him, two other

22 officers who join General Vides.

23 And there is a subsequent longer meeting in which

24 members of the high command officer core are invited in

25 after the meeting with General Vides to hear the message

of

1 Vice President Bush from the United States side.

2 I believe the people in the room are Vice President  
3 Bush, I think under Secretary of State Tony Motley was  
4 there, if my recollection is correct, I know Ambassador  
5 Pickering was there and was the note taker in this  
meeting,  
6 in these series of meetings.

7 That -- those meetings have a very clear agenda.  
8 There are specific requests from the Vice President that  
9 the level of human rights abuses in El Salvador must be  
10 cut. There is a specific statement to General Vides and  
to  
11 the military high command.

12 There is actually a quote in the document themselves  
13 where he says this is reality. We really mean this, this  
14 is a last chance here. That is not a quote, that is what  
I  
15 added then. He says this is reality. He pulls out a  
16 letter that is written by President Reagan stating that  
17 these -- the great concern that the United States has  
about  
18 these massive levels of human rights abuses.

19 MR. KLAUS: Objection. If she is going to  
refer  
20 to documents, could she produce the documents?

21 THE COURT: I will overrule that objection.  
You  
22 may proceed.

23 THE WITNESS: Umm --

24 BY MR. STERN:

25 Q. Let me ask you a question, Professor Karl.



1           Were demands made of the Salvadoran military high  
2           command and in particular Defense Minister Vides Casanova  
3           by Vice President Bush at that meeting?

4           A.    Yes.

5           Q.    And what was the nature of the demands?

6           A.    They parallel the demands we saw before.  The United  
7           States was interested in capturing, trying and convicting  
8           killers of the two U.S. citizens of the Sheraton case.  
9           That was a major issue in the talking points and notes  
10          taken about the meeting itself.

11          The United States was extremely concerned about  
12          torture and false confessions.  President -- Vice  
President  
13          Bush said that he wanted specific instructions to go out,  
14          that there could be no more torture, no more arbitrary  
15          detention, that these would be specific written orders,  
is  
16          what the note taker, the Ambassador's note taking says.

17          They also ask for a dismantling of the death squads.  
18          And a -- there is a specific request that -- I wouldn't  
say  
19          request, actually this is stronger than a request, this  
is  
20          very clear that if these actions are taken, you will be  
21          rewarded, and if these actions are not taken, we will not  
22          support aid in Congress.

23          And so their is a very specific statement in these

24 that any officer linked by name to murderous death squad  
25 activities be removed from the armed forces.

are  
1           The argument, they are not asking for proof, they  
2           not asking for even trials at this point, they are saying  
3           if officers are linked to death squads, and death squads  
4           that operate out of the headquarters of security forces,  
5           they must be removed from the armed forces, and that is  
6           also in this document.

7           The United States is sufficiently worried about this  
8           issue that Vice President Bush gives General Vides a  
9           deadline of January 10, 1984 to fulfill these objectives.

10          Q.    Was that deadline met?

11          A.    Was it met with all of the objectives, do you mean?

12          Q.    Were the objectives filled by the deadline?

13          A.    No.  I want to add one more thing.  The notes also  
14                indicate that after the meeting with General Vides, and  
15                after the meeting with the military high command,  
16                Ambassador Pickering will provide a list of military  
17                officers that United States has linked to death squad  
18                activities, these are officers in the Army and all three  
19                security forces.

20                It would give -- Ambassador Pickering will give  
21                General Vides specific names that must be removed from  
the  
22                armed forces.

23          Q.    What was the consequence of the Bush visit, and  
24                demands that were made there?

25 A. There's a -- there are several things that happen

1 after this. Vice President Bush personally requests --  
2 this is in the cables -- the CIA to report back to him  
what  
3 was actually done and what was not done after this visit.  
4 There is an inconsistency in those reports, some say two  
5 military officers were transferred, and others say three  
6 were, somewhere between two and three military officers  
7 according to U.S. intelligence are transferred.

8 The reports afterwards say that these transfers from  
9 one position to another did occur, however, they also  
note  
10 that the people who replaced the officers who were  
11 transferred away from their command were other hard  
liners,  
12 people who were of the same thinking or faction in the  
13 armed forces.

14 Q. The Bush visit took place?

15 A. December, 1983.

16 Q. And following the Bush visit, did human rights  
abuses  
17 as measured by numbers of extrajudicial killings and  
18 incidents of torture drop in El Salvador?

19 A. Yes, they dropped quite substantially. If you  
20 remember that scale I had when you change from red to  
21 yellow, that is the drop.

22 MR. STERN: If I could ask Mr. Green --

Let's

23 THE COURT: Let me stop you for a moment.

24 stop at this point for the mid-afternoon recess. I will

25 allow the jury to step out.

1 Ladies and gentlemen, I need to talk to the  
2 lawyers about something, and this may be longer than our  
3 normal 15 minute break. I want to make sure Mrs. Stipes  
4 gets a break as well.

5 Let me allow you to step out and we will come  
6 back.

7 We will take a 15 minute break.

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

9 THE COURT: Professor, if you would like to  
step  
10 down, please feel free to do that.

11 MR. GREEN: Judge, we may have resolved the  
issue  
12 that you raised.

13 THE COURT: Give me just a minute.

14 Let me just come back to this again. I am  
15 concerned about the state of our record. We've talked  
16 repeatedly through -- especially through Professor  
Karl's  
17 testimony and other experts as well, about the fact that  
18 experts often look at information that might not be  
19 admissible itself, but as long as it is the type of data  
20 that is generally looked at by experts in the field, it  
21 may be admissible.

22 Now, that is, the opinions may be admissible  
and

23 the data may be relied upon.

24 Rule 703 states that facts or data that are

25 otherwise inadmissible shall not be disclosed to the

jury



1 by the proponent of the opinion or inference unless The  
2 Court determines that their probative value in assisting  
3 the jury evaluate the expert's opinion substantially  
4 outweighs their prejudicial effect.

5 In this case it is the Plaintiff eliciting all  
of  
6 this underlying testimony, and I don't think you can do  
7 that.

8 Now, what makes it difficult in this case is  
that  
9 much of this testimony, that is, much of the underlying  
10 foundation, if you will, consists of cables that's  
already  
11 in. Now, I don't know if that is true of this last  
batch  
12 of information regarding Vice President Bush's meeting  
and  
13 Secretary Schultz's meeting with General Vides and other  
14 people. Is that underlying information in evidence?

15 MR. STERN: The Motley cable that we reviewed  
in  
16 detail is in evidence.

17 THE COURT: What about the Vice President's,  
the  
18 business of talking about deadlines and giving lists of  
19 officers, and so on, is that in evidence?

20 MR. STERN: There is not a document  
corresponding

is

21 to that in evidence, Your Honor. What I would suggest

22 that that is information that is integral to Professor

the

23 Karl's opinion, and she is using it to explain why in

24 larger scheme of things she has the opinion that human

25 rights abuses dropped in the early 1984 time frame.

1           It is important to our case that we establish  
2           that when the U.S. put enough pressure on the Salvadoran  
3           military, Salvadoran military could and did respond by  
4           lowering the level of abuses. That really is what this  
5           all about, and that is why we are using it.

6           THE COURT: I understand that, of course, one  
7           the issues in the case is going to be, first, factually  
8           whether human rights abuses were in fact being committed  
9           by members of the military, and I use that in a broad  
10          sense.

11          The second question, of course, is, whether  
12          General Vides Casanova or General Garcia knew or should  
13          have known.

14          The difficulty is that we are listening to a  
15          recitation of, it seems to me highly significant events,  
16          discussion by a former Vice President, later President  
17          the United States with a particular Defendant and that  
18          being reported as absolute fact.

19          And although the jury is told you can't receive  
20          that for the truth of the matter asserted, only to  
21          evaluate how the professor reaches her conclusions, this  
22          is a situation, seems to me, where the underlying

premise,

all 23 underlying data almost undertakes and becomes a store  
24 unto itself and the opinion becomes secondary.  
it 25 I don't think you can bring that out. I think

1200

as  
1 has to be the other side unless it is in evidence. And  
2 I said before, that makes it very difficult in this case  
3 because we have a bundle of cables, and what have you  
that  
4 both sides have agreed to put in evidence.

5 I wanted you to look at 703. There have been  
6 objections, and I have overruled those objections, and  
as  
7 I am thinking about it, I think I may be in error. The  
8 objection has not been that you are not entitled to  
raise  
9 this. I don't think the objection is specific enough.  
10 The objection has been there is not a foundation or  
11 something else.

12 I want to point out the rule does not allow you  
13 to do what it is you are doing. You are bringing out  
the  
14 foundation which it is not admissible. Not only that, I  
15 suggest to you the foundation has such probative force  
16 itself that it is very hard, I think, for a juror to sit  
17 there and say, gee, they are talking about this for ten,  
18 15 minutes, but I am only supposed to be thinking about  
19 this as to whether the professor's ultimate conclusion  
is  
20 correct.

21 You see what I mean? I think it takes over  
that.

22 I think that is the reason the rule doesn't allow the  
23 proponents to bring that out.

24 MR. STERN: I think the language of the rule  
has  
25 to do with undue prejudice. I understand The Court's

1 concern on that point. I think it does enable us to  
make  
2 reference to underlying facts, even if not in evidence,  
in  
3 order to highlight the nature of the expert's opinion so  
4 long as there is no undue prejudice. And I think given  
5 our purpose for this, I would submit there is no  
prejudice  
6 involved.

7 THE COURT: If of a type reasonably relied upon  
8 by experts in a particular field in forming opinions or  
9 inferences upon the subject, the facts or data need not  
be  
10 admissible in evidence in order for the opinion or  
11 inference to be admissible -- to be admitted. Facts or  
12 data that are otherwise inadmissible shall not be  
13 disclosed to the jury by the proponent of the opinion,  
in  
14 other words, by the Plaintiffs, unless The Court  
15 determines that their probative value -- that their  
16 probative value in assisting the jury to evaluate the  
17 expert's opinion substantially outweighs their  
prejudicial  
18 effect.

19 I don't think that is the case here. So I am  
20 going to ask you to desist from doing that in this  
21 instance.

22 Now, let me go back to the matter that I raised

all 23 with you earlier. And Mr. Green I think indicated you  
formulated 24 have had a chance to look at that and may have  
25 a view. I don't know if you had the opportunity to talk



1 with Mr. Stern, and I would like to give you that  
2 opportunity if you need to for a moment.

3 MR. GREEN: May I confer with Mr. Stern?

4 MR. STERN: Your Honor, if I could ask for some  
5 clarification on the ruling that was just given.

6 I understand that in some instances we may be  
7 talking more directly about a particular document or  
8 meeting than in other cases, and I understand The  
9 concern about the testimony regarding Vice President  
10 Bush's visit.

Court's

for

11 However, I think -- I guess I would be asking  
12 some guidance candidly because we are dealing with  
13 historical events, and it is difficult to identify, even  
14 though we have a wide range of materials in evidence, I  
15 think it would unduly constricting on an expert like  
16 Professor Karl to insist in this instance this standard,  
17 meaning 703, means she could not refer to materials that  
18 are not in evidence.

latitude

19 When we look at a historical backdrop, there  
20 would not be much left for her to talk about, I would  
21 submit. It would be helpful for me to know whether I  
22 understand the standard. Am I going to have some  
23 to have her discuss historical events that do not entail

is

24 discussion of a specific document or conversation that

25 not in evidence?

1                   THE COURT: It is hard for me to generalize on  
2 this, but I think you can see when we are talking about  
a  
3 specific meeting and about what took place, who said  
what  
4 to whom, we don't have the Vice President or the  
President  
5 here to say yes, that is right, or Secretary Schultz to  
6 say, yes, indeed I did say to General Vides A, B, C, and  
7 so on.

8                   They are not here, and yet that is being  
9 presented as though it factually took place. And I  
think  
10 it is fairly clear that Professor Karl is convinced that  
11 it took place, as she pointed out, A, she read the  
12 telegrams and cables and talked to people, including  
13 Secretary Schultz and others, and she indicated she  
looked  
14 at Ambassador Pickering's notes and things like that.

15                   I suppose the more specific we become, when we  
16 are talking about a particular event, it looms up in a  
17 greater focus, sharper, clearer focus, when you have an  
18 expert as Professor Karl talked about, and she looked at  
19 the fact there has been a massacre here, and in this  
part  
20 of the country, and so on. She is referring to  
historical  
21 events and giving her conclusion this suggests state

so

22 terror, wide spread, coordinated, logistical points and

23 on.

I

24 I am sorry, I can't be more specific with you.

25 am concerned about what is happening. I think the last

1 exchange is a classic example where the inadmissible but  
2 nonetheless reliable data that an expert can look at can  
3 almost take over her opinion.

4 MR. STERN: Two final points.

5 First of all, it is brought to my attention,  
6 something I meant to bring out and skipped over, we have  
7 an admission from Ambassador Corr in his deposition,  
which  
8 would come in as a party admission since he is a  
retained  
9 expert, which speaks to the issue that Professor Karl is  
10 testifying about.

11 THE COURT: I don't think that is an admission  
of  
12 a party opponent. I don't think that is admissible.

13 Now, there is no objection to the last  
reference  
14 to Ambassador Corr, clearly he will be here to testify.  
I  
15 don't think a party's expert comes in as admission of a  
16 party opponent. Look into that.

17 MR. STERN: What I propose to do is put up the  
18 deposition transcript from Ambassador Corr which I think  
19 will hit the point that The Court is raising here and  
help  
20 us establish that was in fact the function of Vice  
21 President Bush's visit.

22 The other thing, I did in preparation for this

23 type of testimony pull a recent Southern District of New  
24 York case that speaks to this requirement under Rule  
703,  
25 and quite similar to ours, deals with an expert  
testifying

1 about a code of silence existing in a police force.

2 And in that case the party offering the expert  
3 was permitted to explore through the expert facts  
relating  
4 to this code of silence, and to highlight a number of  
5 discrepancies, even though those might not have been in  
6 evidence.

7 THE COURT: I will be happy to look at that.  
8 Maybe I will do that during the break if you give it to  
9 me.

10 Why don't we go back to the other issue, and  
this  
11 is the issue that I think Mr. Green was about to say  
that  
12 you've reached some view on.

13 MR. STERN: Please go ahead. Mr. Green has  
been  
14 writing while I was asking questions.

15 MR. GREEN: In this case the Plaintiffs are  
16 seeking to hold General Vides and Casanova liable under  
17 the Doctrine of Command Responsibility. Under this  
18 Doctrine, the Defendants can be found liable among other  
19 things that they actually knew of abuses being committed  
20 by their subordinates or should have known about the  
21 abuses.

22 I think Your Honor inquiring about this drew a  
23 distinction between actual knowledge and propriety of

24 Professor Karl testifying about the Defendants actual  
25 knowledge based on what they should have known and based



1 on the evidence.

2 I have gone back and done research in the  
section  
3 1983 police misconduct area, and there are two strains  
of  
4 cases. One is that an expert's credibility assessment  
of  
5 particular parties or witnesses are not admissible.

6 The other line of cases is that expert  
testimony  
7 that a defendant or defendants were deliberately  
8 indifferent is admissible. However, to avoid possible  
9 error or trying to get in -- I am not sure what we could  
10 argue as Mr. Stern did, this is much closer, we have  
11 actual evidence that an Ambassador and other witnesses  
12 specifically told these Defendants about the abuses,  
13 specifically placed them on actual notice about the  
14 abuses.

15 Rather than getting into that, I think the  
16 Plaintiffs are prepared to an instruction to the jury  
that  
17 would basically strike Professor Karl's testimony that  
18 these Defendants actually knew about the abuses with the  
19 understanding that is a question ultimately for the jury  
20 to decide, but advising the jury that they could  
consider  
21 her testimony that the Defendants should have known  
about

22 the abuses.

23 I have prepared in my --

24 THE COURT: Let me take a moment. What is the

25 view on the other side on this?

1           MR. KLAUS: I don't think she can testify what  
2 they knew or didn't know. I move to strike it.

3           THE COURT: Okay. Let's go back for a second  
and  
4 as the parties are aware here, Rule 704(a) removed what  
5 was a barrier that existed for a long time and it said  
6 that you couldn't get a witness to get up and give an  
7 opinion about an ultimate issue in the case.

8           Now, the commentators on this have simply said  
9 that what this really does, it shifts the focus and  
makes  
10 you look at whether the testimony by the witness would  
11 otherwise been admissible.

12           So, the objection is not simply because it  
13 happens to deal with an ultimate issue, did General  
Vides  
14 or General Garcia actually know what was happening or  
15 should have known. It is not objectionable on that  
basis.

16           Now, it seems to me that reaching an opinion  
17 about what someone should have known, despite the fact  
18 that that happens to be one of the ultimate issues in  
the  
19 case, is legitimate because it calls upon the witness to  
20 go into those areas of expertise that she has developed.

21           For example, it calls upon her evaluation about  
22 the reported incidents, and where they were taking  
place,

23 what were the numbers, what was the size of the officer  
24 core, where were the various garrisons that were  
25 supposedly involved. All of those other things that

1 someone looking back after the fact could make an offer,  
2 an opinion about whether if all this was happening,  
should  
3 someone who is in command have been aware of what was  
4 taking place.

5 I think that is a legitimate area where someone  
6 can render an expert opinion because it is based on a  
7 study of a very complex structure, a study of a country  
8 that the jury may not be aware of both in terms of size  
9 and other demographics, and all of the other things that  
10 Professor Karl has talked about.

11 It seems to me, though, that is not true when  
you  
12 turn to the expert and say, can you say and offer an  
13 opinion as to what was in the mind of this particular  
14 person. First and foremost, I don't think that is the  
15 subject of any field of expertise. I think Professor

Karl  
16 would be the first person to say she doesn't have a  
17 crystal ball, she doesn't know with any certitude what

was  
18 in the mind of General Garcia or General Vides. I  
suspect  
19 she would tell us without hesitation as to her opinions  
20 regarding what the evidence shows was said to General  
21 Garcia or General Vides, because she studied these  
cables,  
22 and she has studied all the other various documents.

23                   So I think the question that was posed is  
24                   probably an improper subject area in that it is really  
not  
25                   the subject of expert testimony because it is asking the

1 witness to give her opinion as to what was in somebody's  
2 mind.

3           Its prejudicial impact, it seems to me,  
outweighs  
4 its probative value, Professor Karl is an enormously  
5 impressive witness, credentialed, spent a lot of time  
6 studying in this area, so for someone with that kind of  
7 background and character to give that kind of opinion  
8 certainly can have a prejudicial impact.

9           Does it outweigh the probative value? I think  
it  
10 does. I don't think Professor Karl is calling upon her  
11 expertise and background when she offers that particular  
12 opinion. I think that is simply an opinion that someone  
13 reaches looking at all of the information. I don't  
think  
14 it is the kind of opinion that an expert -- I think you  
15 verge beyond what is really legitimate expertise, and  
you  
16 reach surmise about what you think somebody may have  
17 known.

18           So, what I am going to do is, I am going to  
19 explain to the jury there are two issues in this case,  
and  
20 that Professor Karl has offered an opinion on both. I  
am  
21 allowing the opinion regarding what in her view the  
22 Defendants should have known, and the jury can evaluate

23     that, but I am going to strike the opinion testimony  
24     regarding what was actually in their mind, what was  
25     actually in their mind.



1           Now, having said that, and this is why I wanted  
2           to do it before you concluded your direct, I have a  
3           feeling you elicited that opinion in a sense a short  
form  
4           of going through the other areas as you suggested when  
you  
5           started to say, wait a second. I asked that because as  
6           the professor indicated, she is aware, at least is  
relying  
7           on what she believes was said by Secretary Schultz, or  
8           what she said was said by the Vice President or what was  
9           said in the various cables or what the various  
Ambassadors  
10          reported. And it is hard when you look at all of that  
to  
11          say somebody should have known something.

12                 I think there is a difference, though, in  
13           pointing out factually what they believe what is their  
14           opinion what was made known to someone, and whether the  
15           other person on the other side comprehended, concluded  
16           that it was true and actually possessed the knowledge.

17                 Now, having said that, I think we come the full  
18           circle because we are back into how far can you go in  
19           looking at the underlying facts that the expert relies  
20           upon to conclude or establish her opinion that someone  
21           should have known something.

22                 Now, again, if the cable is in evidence, we've

of 23 agreed that that is there. That is there for the truth  
refer 24 the matter asserted, and certainly the professor can  
25 to the fact that she looked at that cable.

1 I would like very much take a look at the case  
2 that you refer to regarding allowing someone to testify  
3 to the specific instances and concluding that there was  
4 code of silence and so on, so forth. Let's talk about  
5 that before we start up again. Okay.

6 Do you have that case?

7 MR. STERN: I do, Your Honor.

8 MR. GREEN: Judge, in terms of excluding  
9 Professor Karl's opinion that the Defendants actually  
10 knew, the Plaintiffs would request that you give the  
11 instruction in such a way as to not minimize the flip  
12 of her testimony that the Defendants should have known.

13 THE COURT: No. I am going to tell the jury  
14 they absolutely may consider that. I will say no one  
15 knows for certain what is in someone else's mind unless  
16 they tell you I talked to so and so. And I don't think  
17 the professor has given that kind of testimony, and I  
18 ask you them to disregard what did someone actually know  
19 and, you know, and that does not in any way stop either  
20 side from exploring what was said.

21 Now, I do want to look at this case before we  
22 too far into the specifics of that.

as

a

side

that

will

get

23                   MR. GREEN: I did draw distinction between  
24                   credibility testimony of an expert and deliberate  
25                   indifference. There is another line of cases, I don't

1 have it here, dealing with admissibility of historians.  
2 This provides a lot of voting rights litigation to go  
back  
3 and opine as to whether there was intent to discriminate  
4 when a particular voting scheme was established 50 years  
5 ago, 100 years ago. I realize -- we wanted a clean  
record  
6 for appellate purposes.

7 THE COURT: No. I understand. I want to say I  
8 think both sides have worked so hard to try to do this.  
I  
9 think we all understand that the issues in this case are  
10 so significant to both sides, and the last thing anybody  
11 wants is for either side to have to relive this case.  
12 This has been a monumental effort to bring this case  
13 forward, and I want to thank both sides for everything  
14 that has been done to try to make sure we have as an  
15 errorless trial, if there is such a thing, because it is  
16 very, very tough.

17 And I think that sometimes these issues are  
just  
18 not as clear as they seem to be until you get to the  
19 middle of them and then you begin to see some of the  
20 problem areas. Let me pick up this case, you are going  
to  
21 make a copy of it.

22 MR. STERN: I only have the first page --

23 THE COURT: What is the cite to it?  
24 MR. STERN: 151 F. Supp 2nd, 313.  
25 THE COURT: Second or third?

1 MR. STERN: F. Supp 2nd, 2001 case from the  
2 Southern District of North --

3 THE COURT: Are you sure that is not third?

4 MR. STERN: F. Supp 2nd. District Court case,  
5 and relevant language is at footnote 36, page 356.

6 THE COURT: Thank you very much. Let's take  
that  
7 15 minute break.

8 (Thereupon, a short recess was taken.)

9 (Thereupon, trial reconvened after recess.)

10 THE COURT: Mr. Stern, do you have the footnote  
11 in the case that you referred to Catt versus City of New  
12 York?

13 MR. STERN: I do, Your Honor.

14 THE COURT: Could I look at it for a minute?

15 MR. STERN: Yes.

16 MR. KLAUS: For the record, Your Honor, I saw  
it  
17 before, briefly, but --

18 THE COURT: Here is what I think the rule is,  
and  
19 how it has changed.

20 As the parties are aware, this particular rule  
of  
21 evidence was amended by the 2000 amendments, and what  
this  
22 does, it effectively prohibits the person eliciting the

23 testimony to go into what would be otherwise  
inadmissible

24 foundational information unless The Court concludes that

25 it is sufficiently trustworthy.



about  
the  
by  
that

1                   Now, let's go back to what we were talking  
2                   earlier, because I think that is helpful in analyzing  
3                   testimony regarding the meeting with the Vice President,  
4                   Vice President Bush. The testimony has been before that  
5                   scholars in this field to the degree to which they can  
6                   utilize studies and rely upon cables that are generated  
7                   the Government, and we talked earlier about the fact  
8                   public records are deemed to be an exception to the  
9                   hearsay under Rule 803.8.

by  
other

10                   There is a presumption that records generated  
11                   public bodies are admissible unless, of course, the  
12                   side shows they are really not trustworthy.

at  
who

13                   We are talking about in this instance looking  
14                   records purportedly taken by United States Ambassador  
15                   is sitting in on the meeting and who is recording the  
16                   dialogue going on during the meeting for the records of  
17                   the State Department.

18                   It would seem to me that that clearly is a  
19                   trustworthy basis and if we had the record itself, that  
20                   is, if we had Ambassador Pickering's notes here

to

21 themselves, they would probably qualify as an exception

a

22 the hearsay under Rule 803.8, so it seems to me that is

into

23 classic example of where the proponent is able to go

24 the underlying facts because they are adequately

25 trustworthy.

1           Now, by the same token, the Catt case is an  
2           example of where a sociologist went out and apparently  
3           conducted lots of interviews and came to court prepared  
to  
4           give the opinion that there was a code of silence, so  
on,  
5           so forth.

6           When you think about it, we've had a little bit  
7           of the testimony like that regarding the Tanda System,  
8           none of the people who go through this whittling out  
9           process where people are admitted into a military  
academy  
10          but knowing that a small fraction of people are going to  
11          survive this end process and will be admitted to this  
12          elite core of officers and the bond that that creates.

13          It seems to me, just as the trial judge did in  
14          the Catt case, The Court concluded because of the number  
15          of interviews, number one, it was appropriate to go  
16          through a few of them because their number suggested  
their  
17          trustworthiness. That is if you talk to a lot of folks  
18          and are getting the same results, it is reasonable to  
19          conclude that one or two were consistent with the  
overall  
20          pattern, that gave an indication of trustworthiness.

21          And also you didn't have someone just walking  
22          into the courtroom postulating a theory that you  
couldn't

23 show that it had some foundation, some basis.

24                   So I think what The Court has got to look at  
is,

25 as we move into these situations, there has to be some

1 showing that the underlying basis is sufficiently  
2 trustworthy that would allow the proponent to go into  
3 that. If it is not, certainly the expert is entitled to  
4 rely on whatever an expert normally relies on, give  
their  
5 opinion, and then it is up to the opponent when they are  
6 cross examining and whether they open the door and go  
into  
7 it, and we go into detail.

8 In thinking again about the testimony regarding  
9 testimony with Secretary Schultz or Vice President Bush,  
10 seems to me they are such powerful examples, and yet in  
11 further reflecting upon it, I think those are also  
classic  
12 examples where there is a sufficient indicia of  
13 trustworthiness, it is not somebody having a verbal  
14 conversation with someone, where they may misunderstand  
15 something, but looking at a written record, and a record  
16 prepared contemporaneously by government officials for a  
17 purpose of conducting their activities and maintaining  
18 records in the archives of the State Department. We are  
19 on sound footing, but we should be aware of the 703 and  
20 the limitations it imposes on this.

21 MR. STERN: Yes. Thank you, Your Honor. I  
will  
22 be fully aware of that.

23 THE COURT: Okay. Thank you.

24

Let's bring in the jury.

25  
courtroom.)

(Thereupon, the jury returned to the

1           THE COURT: Ladies and gentlemen, please be  
2 seated. I have had a chance to talk with counsel, and  
3 before we continue on with Professor Karl's testimony, I  
4 want to stop for a moment and I want to talk with you  
5 about one piece of that testimony.

6           One of the issues that the jury is going to  
7 to determine in this case is whether either or both of  
8 Defendants actually knew or should have known owing to  
9 circumstances at the time that his subordinates had  
10 committed, were committing or planned to commit acts of  
11 violence against civilians.

12           Now, you've heard Professor Karl's testimony  
13 regarding her background and how she developed her  
14 interest and her experience and training in this field.  
15 And one of the things that I am going to tell you, when  
16 someone who by virtue of their training or academic  
17 experience and so on develops an expertise, they are  
18 allowed to come into court, and unlike other witnesses,  
19 they are allowed to give you their opinions as to  
20 various  
21 issues.

22           But the jury instruction goes on and says to  
you  
to  
like any other witness, of course, it is up to the jury

23       decide whether they accept or rely upon the expert's  
24       testimony.

25                   Professor Karl has been testifying for a long



1 time today, but I wanted to focus on two areas of  
2 testimony. At one point the professor was asked whether  
3 she had an opinion as to what General Garcia actually  
knew  
4 regarding his troops. She was also asked if she had an  
5 opinion as to what he should have known regarding the  
6 activities of his troops, his subordinates.

7 The very same two questions were asked of  
8 Professor Karl regarding General Vides Casanova. That  
is,  
9 what did he actually know, did she have an opinion about  
10 that, and she said yes. And did she have an opinion  
about  
11 what he should have known regarding the activities of  
his  
12 troops.

13 Okay.

14 Now, the questions about what each Defendant  
15 should have known, I am allowing that to stand and that  
is  
16 a matter for you, the jury, to make an ultimate decision  
17 down the road. Okay. You can evaluate that testimony  
and  
18 make your own judgments on that.

19 When you think about it for a moment, though,  
20 what somebody actually knew, unless you talk to somebody  
21 and they tell you what they know or you overhear them  
22 saying something, really, no one has a crystal ball

answer

23 getting into somebody else's mind. That is not a proper

24 subject of expert testimony, and I am striking that

25 as to what General Garcia actually knew or what General

1 Vides Casanova actually knew.

2 That is not a proper area of expert testimony.

3 Now, having said that, and I mention this to  
4 counsel for the Plaintiff, I am allowing the Plaintiffs  
to

5 adduce testimony as to what the evidence shows may have  
6 been said, that is, what someone else may have said to  
7 General Garcia or General Vides Casanova, but I am  
8 striking simply the opinion testimony that was given as  
to

9 what Professor Karl's opinion was regarding what General  
10 Garcia actually knew, or what General Vides actually  
knew.

11 Does every member of the jury understand that?  
12 And can you assure us all that you will follow that  
13 instruction and disregard that testimony and not  
consider  
14 it in whatever verdict you render in the case? Can  
15 everybody do that?

16 For the record, everyone is shaking their head  
17 yes.

18 Okay, fine.

19 With that now let me go back to Mr. Stern and  
20 allow him to proceed.

21 Thank you.

22 MR. STERN: Thank you very much, Your Honor.

23 BY MR. STERN:

24 Q. Professor Karl, earlier you mentioned Edwin Corr.

25 Would you remind us who Edwin Corr was?

1 A. Yes, Ambassador between 1985 and 1988.

2 Q. Have you reviewed testimony that Ambassador Corr  
gave

3 in this proceeding?

4 A. Yes, I have.

5 Q. I would like to read a passage from page 77.

6 "Question. My question is in 1983, when Vice President  
7 Bush visited El Salvador, isn't it true he told the  
8 Salvadorans that the United States would -- isn't it true  
9 he threatened to suspend assistance as it says here if

the

10 Salvadoran Government didn't reduce the level of human  
11 rights abuses?

12 "Yes, I think absolutely."

13 Professor Karl, is that testimony Ambassador Corr  
gave

14 consistent with your view of the subject?

15 A. Yes, it is.

16 Q. Would it be fair to say in late 1983 the United  
States

17 put pressure on the Salvadoran military to reduce human  
18 rights abuses?

19 A. Very significant pressure.

20 Q. And in -- by early 1984, did the level of human  
rights

21 abuses in El Salvador decline?

22 A. Yes, they declined and they stayed low, really

23 until -- or stayed lower, really, until about 1987, 1988.

24 MR. STERN: If I could ask Mr. Green to bring

25 back the board and just -- we don't need the easel, if

you

1 could just put it here.

2 BY MR. STERN:

3 Q. Do you have this particular board in front of you,  
4 Professor Karl?

5 A. Yes, I do.

6 Q. My question to you is: In your opinion as an  
expert,  
7 what connection is there, if any, between U.S. pressure  
in  
8 late 1983 that you testified about and a decline in the  
9 level of human rights abuses in El Salvador in 1984?

10 A. Well, I think I said that there were two key reasons  
tends  
11 why human rights abuses dropped. One was that terror  
the  
12 to work, and the other is that significant pressure by  
13 United States actually meant that the high command and  
14 General Vides understood that unless human rights abuses  
15 were dropped, unless they were curbed, there would be no  
16 more financing of the war in El Salvador. Subsequently,  
17 those abuses do drop.

18 Q. Based on that correlation, what, if anything, do you  
19 conclude about the ability of Minister of Defense Vides  
20 Casanova in that time period to prevent human rights  
abuses  
21 in El Salvador?

22 A. I think that when pressure is put on Salvadoran --  
the

23 highest commanders of the Salvadoran armed forces to  
24 diminish human rights abuses, and that pressure was  
25 extremely strong as it was in this case, the fact that  
they



1 can diminish human rights abuses relatively quickly means  
2 they had the capacity to do so even without that  
pressure,  
3 and that human rights abuses in a sense, or the pattern  
of  
4 human rights abuses in El Salvador is a bit like a  
spigot.

5 You can turn them on, and you can turn them off.

6 And I think my own understanding of the pattern of  
7 violence in El Salvador is that violence breaks out and  
8 very high for specific reasons at specific moments. It  
is  
9 then reduced because of pressure, it then proceeds to go  
up  
10 again later precisely because there is another political  
11 issue in this case whether or not to negotiate an end to  
12 the civil war, which means that you can turn the spigot  
13 again.

14 Q. Is it your testimony when he was Minister of  
Defense,  
15 General Vides Casanova was one of the persons who could  
16 turn human rights abuses on and off?

17 A. I think when suddenly the pattern of human rights  
18 abuses changes, when the riot act is read to Salvadoran  
19 officers, and to particularly the Minister of Defense who  
20 is the chief commander at the time, and when subsequently  
21 there is a drop in human rights abuses, it means that  
some

that

22 message went out in the Salvadoran armed forces to say

23 this must drop.

24 I also think, however, that the apparatus and the

25 military officers that were committing these abuses were

transfer 1 still in place, so the abuses drop, but the actual  
2 of people or the movement of commanders out of the armed  
3 forces, and the cleansing of the forces, the putting your  
4 house in order really does not happen, so the capacity to  
5 escalate violence again stays in place.

Minister 6 Q. Does your conclusion about the ability of the  
7 of Defense of El Salvador to have an affect on the level  
8 human rights abuses carried out by military and security  
9 force troops also apply to General Garcia when he was  
10 Minister of Defense in the '79 through '83 time period?

11 A. Yes.

of 12 Q. I want to ask you some questions about the targets  
13 violence during the early 1980's.

14 You testified that in a regime of targeted terror  
15 there are certain individuals or groups who are the  
subject 16 of terror; is that correct?

17 A. That's right.

of 18 Q. Between 1979 and 1983, can you identify for us some  
19 the groups that were subjected to terror in this fashion?

20 A. Yes, I can. There is a clear, according to my own  
rights 21 research, and really all of the -- the body of human

and 22 investigation in El Salvador, there are certain groups  
the 23 people who are targeted. These tend to be people that  
the 24 military officers believe are sympathetic to the FMLN,  
25 armed opposition. This is their belief that these people

1 are sympathetic.

2 MR. KLAUS: Objection. Beyond the scope of her  
3 expertise.

4 THE COURT: I will overrule the objection. You  
5 may proceed.

6 THE WITNESS: And feeling that certain kinds of  
7 actions, for example, pushing for a land reform, pushing  
8 for higher minimum wages, pushing for schools, pushing  
for  
9 rights in El Salvador, pushing for democracy, pushing to  
10 an end toward military rule, those kinds of issues,  
there  
11 are certain groups, unarmed groups that are out in the  
12 lead in that.

13 It means that throughout the war from mass  
terror  
14 and also targeted terror, there are certain groups that  
15 are particularly sought after and particularly hit by  
16 human rights violations.

17 Those groups include labor unions, labor union  
18 leaders, peasants who are involved in an agrarian  
reform,  
19 particularly Catholic or Christian based communities,  
and  
20 Catholic activists, although also later Lutheran and  
21 Protestant activists inside El Salvador. They include  
22 particularly medical personnel and also includes  
teachers

23 and professors in both universities in El Salvador, but  
24 particularly the National University of El Salvador.

25 Q. I want to focus on one of the groups you mentioned,

believe 1 religious workers. Based on your study, why do you  
or 2 that the people affiliated with a religious organization  
3 religious workers were targeted during the 1979, '83 time  
4 period?

5 A. One of the things that struck me most in my own  
6 interviews in El Salvador was the anger and virulence  
that 7 some colonels and landowners felt toward some members of  
8 the Catholic Church. And as I tried to understand that,  
it 9 was because they blamed leaders in the Catholic Church  
for 10 actually stirring up problems, for teaching peasants that  
not 11 they had the right to a better life in a sense, and for  
12 necessarily teaching a more traditional Catholic doctrine  
in 13 which life may be bad now, the next life will be better,  
14 a sense there was a sense that you can better your life.

15 The phrase that the Christian based communities used  
16 was pan, trabajo, dignidad, which means bread, work, and  
17 dignity. And this was a sense that you could better  
18 yourself.

19 And there was anger towards Catholic activists and  
20 church workers, people who -- catechisms, they were  
called,  
21 who would work with, particularly in the rural areas, but

22 also in the urban poorer areas, to encourage people to  
23 better their lives economically or pushing for a  
democracy.

24 Q. And how about teachers and other people involved in,  
25 professors, or teachers, what do you believe was the  
basis



1 on which they were targeted for repression by the  
military  
2 and security forces?  
3 A. I think one of the real centers of anger towards  
4 teachers, partly because teachers are an important force  
in  
5 communities, and particularly in rural and poor  
6 communities, just like religious workers are, but also  
7 because in the National University of El Salvador, where  
I  
8 believe Professor Mauricio taught, this was a center of  
9 agrarian reform. It was an area in which the agronomists  
10 were involved in thinking about how El Salvador's land  
11 could be better utilized so you wouldn't have the kinds  
of  
12 poverty and inequality that I testified earlier, and this  
13 was seen, then, as a major target.  
14 Indeed, the National Guard invaded the University of  
15 El Salvador and closed it down in, I believe July,  
killing  
16 about 50 people in that invasion.  
17 They subsequently actually targeted professors at  
the  
18 University of El Salvador killing I believe eight in a  
19 several month period, in a short period, and arresting  
20 according to the investigation that I did, twice around  
21 professors who were being targeted in El Salvador. They

were

22 also came back and targeted other professors later who

23 also subsequently murdered at the University of El

24 Salvador.

25 Q. Were doctors and health workers the subject of

1 targeted repression by the military '79 through '83?

2 A. Yes, they were.

3 Q. And what would you point to by way of a basis for  
that  
4 particular targeting?

5 A. I think there was a contradiction between the oath  
6 that doctors and health workers take, which is to help  
7 people who are wounded or hurt, no matter who they are,  
or  
8 what they have been involved in, and the military mind  
set  
9 which said that anything that looked like you were  
helping  
10 anybody who may or may not be sympathizer of the  
opposition  
11 meant that you too were subversive.

12 And so what we saw is that hospitals were invaded a  
13 number of times by military personnel who actually went  
in  
14 the hospitals and took people out of beds, killed them.  
15 Doctors were targeted, there were a number of campos  
16 pagados, these are paid newspaper ads in El Salvador that  
17 would publish lists of doctors who were murdered, lists  
of  
18 nurses who were murdered, lists of hospitals that had  
been  
19 invaded by the military.

20 So the fact that medical personnel might treat  
21 somebody who is dropped at the hospital, and that person

22 that they are treating might be suspected of being a  
23 subversive meant that the military then also targeted the  
24 medical personnel.

25 Q. In the cables that you reviewed to prepare for your

1 testimony and in your interviews, did you encounter  
2 instances of torture carried out by the Salvadoran  
military  
3 security forces?

4 A. Yes, I did.

5 Q. I would like to show you a portion of Exhibit 552,  
6 which is in evidence.

7 MR. STERN: If I could have slide 122 on the  
8 screen, please.

9 BY MR. STERN:

10 Q. What is the document that has been put on the  
screen,  
11 Professor Karl?

12 A. This is a U.S. Government cable to the Secretary of  
13 State, to the Deputy Chief of Mission of El Salvador.  
That

14 is the second person under the Ambassador.

15 Q. What is the date?

16 A. December 20, 1980.

17 Q. Would you please read the passage we have put on the  
18 screen.

19 A. Yes, it says, "Dozens of young people are being held  
20 at El Zapote Barracks, Z-A-P-O-T-E, the  
telecommunications

21 school across the road from Casa Presidencial." That  
means

22 presidential palace, and it is on the screen for  
spelling.

with  
23 "There they are subjected to beatings, torture with  
24 electric implements and in bathtub like tanks of water  
25 electric current. While the young man was there, six

1 soldiers gang raped a young woman who had been arrested  
2 that day.

3 "Summary executions have been carried out here for  
4 many months, but this is the first detailed story we have  
5 heard of torture of prisoners."

6 Q. Having looked at the cable, who is the young man in  
7 the cable?

8 A. I am not sure I remember.

9 Q. Would you like to look at the document?

10 A. I only have a part of it.

11 Q. Is the identity of the man significant to your  
12 knowledge of the existence of torture?

13 A. No, it is not. What is significant in this cable is  
14 that this is taking place in the center of San Salvador,  
in  
15 a place right across the street from the presidential  
16 palace. It would be like across the street from the  
White  
17 House.

18 MR. STERN: Could I have slide 164 on the  
screen,  
19 please?

20 BY MR. STERN:

21 Q. Based on Exhibit 379 also in evidence.

22 What is this next document, Professor Karl?

23 A. This is a document -- there are constant series of

24 reports being prepared for the U.S. Congress for both the  
25 Senate and House of Representatives. This is a document



1 November, 1983, a report to the Senate committee on the  
2 foreign relations on the situation in El Salvador it is  
3 called.

4 Q. Would you read the passage?

5 A. "The human rights situation remains one of the most  
6 difficult and serious problems, especially because the  
7 security forces continue to be the principal violators.

At

8 a meeting with chiefs of the military and other security  
9 forces, armed forces Chief of Staff Colonel Reyes Mena  
10 boldly stated that he had no knowledge of the

paramilitary

11 death squads and attributed the publicity surrounding

them

12 to Marxist-Leninist propaganda. He also denied any  
13 acknowledge of torture as well as any increase in human  
14 rights abuses. He was supported on these contentions by  
15 heads of the National Police and the Treasury Police. In  
16 contrast, during a visit to the Mariona Prison, the  
17 approximately 300 political prisoners indicated they had  
18 been tortured by military and security force personnel  
19 before being taken to the prison. Many of them have been  
20 in the prison for long periods of time without trial."

21 Q. What is the significance of this statement about  
22 torture in El Salvador in 1979 to '83?

23 A. Mariona Prison is a prison where political prisoners

political 24 were detained or people who were perceived to be  
25 prisoners. I and many others were in those prisons and

Mariona 1 able at different times to interview prisoners, the  
2 prisoners in the three studies that I know of that  
3 interview prisoners all came up with the same conclusion,  
4 which was a full 100 percent of all prisoners that were  
5 being held in Mariona for political crimes had been  
6 tortured.

7 As you can see, the officers referred to in this  
8 cable, Armed Forces Chief of Staff, and the head of the  
9 National Police and Treasury Police are denying that  
10 torture takes place, and these human rights abuses exist.

on 11 Q. I will show you a passage from another cable based  
12 Exhibit 334, which is also in evidence.

13 MR. STERN: Could I have slide 135, please?

14 BY MR. STERN:

15 Q. This is based on a cable dated July 6th, 1984.

on 16 Could you please read the passage that we have put  
17 the screen?

the 18 A. Yes. I should say that this is from the office of  
19 Secretary of State of the United States to the Salvadoran  
20 Embassy, so the cable traffic is going from Washington to  
21 El Salvador now.

22 "The use of torture for interrogation purposes has  
23 been a regular, albeit unquantifiable, practice by some

human 24 members of the Salvadoran security forces as the 1983  
report 25 rights report states." And that is the human rights

the  
as  
is

1 of the State Department. "During 1983 elements within  
2 security forces used psychological and physical torture  
3 arbitrary punishment or to extract information from those  
4 suspected of assisting the armed guerilla movement. It  
5 believed that torture almost exclusively occurred during  
6 the initial stages of detention. Electric shock, severe  
7 beatings and deprivation of food, water and sleep are the  
8 most frequently mentioned types of coercion. There is  
9 evidence that the use of torture often has been prolonged  
10 and extreme. It is not possible to establish the  
11 prevalence of torture because values and systematic means  
12 for documenting cases do not exist.

13 "One of our major human rights goals in El Salvador  
14 (as elsewhere) is to eliminate the use of the torture  
15 wherever it is practiced."

16 Q. Did the Truth Commission address the existence of  
17 torture as a practice of the military and security forces  
18 in El Salvador?

19 A. Yes. It found in the 22,000 complaints that it  
20 reviewed or personally -- 7,000 personally testified to  
in  
21 front of the Truth Commission, it found that about 20  
22 percent of the complaints involved torture. The Truth  
23 Commission concluded from this that this was a very low

24 estimate because people who had died or who had been  
25 murdered were not counted as people being tortured. In

1 other words, they were counted as murder victims rather  
2 than torture victims.

3 Q. Based on your review of cables and interviews you  
4 conducted, are you able to compile a list of some of the  
5 torture tactics or devices that were used by the military  
6 and Security forces?

7 A. Yes, I can.

8 Q. Did you prepare a slide to set out some of those  
9 tactics in preparation for your testimony today?

10 A. Yes, I did.

11 MR. STERN: Could I have slide 151, please?

12 MR. KLAUS: Objection. Unnecessarily  
cumulative,  
13 waste of time.

14 THE COURT: I will overrule that objection.  
You  
15 may proceed.

16 THE WITNESS: This is a list of the types of  
17 torture that I found either in human rights reports in  
18 U.S. cables or in my own interviews with victims of  
19 torture. And as you can see, they involve severe  
20 beatings, death threats, choking, electric shock  
21 treatment, smothering people with a hood, which is  
called  
22 a capucha, drugging people.

23 There are many reports being given something  
that

Rape, 24 made them hallucinate, feel funny, talk, et cetera.  
25 and other forms of sexual violence was very common,



sexual  
water,  
is  
at  
them,  
1 particularly with females. Being forced to witness  
2 assault was another form of torture. Submersion in  
3 burning people with cigarettes, mock executions. That  
4 when you put a gun to somebody's head or else point it  
5 them and say now you are going to die, and you shoot  
6 but there is no bullet in the gun. And particularly  
7 deprivation of food, water and sleep.

8 BY MR. STERN:

reviewed,  
9 Q. In the cables and other information that you  
10 do you find recurring patterns of some of these devices?

11 A. Yes. I think that one of the things I saw in trying  
12 to identify these patterns is that the same forms of  
13 torture would be used in different places. For example,  
14 you find them in the Treasury Police headquarters in San  
15 Salvador, but you also find them out in San Miguel,  
another  
16 town in the eastern part of El Salvador. So you would  
see  
17 a repetition of types of torture taking place around  
places  
18 in El Salvador.

19 Q. What would you find in relation to those?

20 A. I find that when you see torture in a geographic  
area,

and

21 that torture is not an isolated incident but a pattern

22 practice of the military or security forces that are

23 engaging in this.

24 Q. Okay. I would like to put up portions of another

25 cable based on Exhibit 553, which is in evidence.

1 MR. STERN: Could I have slide 147, please?

2 BY MR. STERN:

3 Q. What is this document, Professor Karl?

4 A. This is a story of a torture that took place in June  
5 of 1982. I should add that it is a particularly  
upsetting  
6 story. It was a technically upsetting story for the U.S.  
7 Embassy officials that I interviewed because they knew  
the  
8 person who had been tortured. And any time Embassy  
9 officials knew somebody, it just made the reality of  
these  
10 stories -- it made them much more real to people inside  
the  
11 Embassy.

12 Francisco Castro was a worker for I believe the  
Green  
13 Cross, which is the Salvadoran version of the Red Cross.  
14 He was somebody who drove ambulances, and so he had been  
in  
15 frequent contact with people in the Embassy. He was  
16 captured and this is his account of what happened to him.

17 Q. Could you read what we have on the screen, please?

18 A. "May 19 at midday armed men in civilian dress  
captured  
19 Castro and two female teachers as they were leaving the  
20 elementary school where they worked. The men took them  
21 blindfolded with their thumbs tied by car to National

22 Police headquarters in downtown San Salvador. Police  
23 released one of the two women they captured with him  
24 because she was eight months pregnant. The other spent a  
25 week in a basement cell while Castro says police agents

1 coerced her into having sex with them under threat of  
2 torture and death.

3 "Castro spent six days in a basement cell where ICRC  
4 representatives visited him on two occasions. He spent  
5 three more days in a closed third floor cell located off  
6 concealed passageway. Police commandante tortured him  
7 interrogated him on those three days in an adjacent six  
8 room sound proofed torture chambers. The ICRC did not  
9 visit him there."

a

and

please?

10 MR. STERN: Could I have the next slide,

11 BY MR. STERN:

12 Q. Would you please continue?

13 A. "Castro described three tortures he underwent each

on

14 a different day and in a different room. Throughout his  
15 torture he received frequent blows to the body and sharp  
16 cuffs to the ears which left him dizzy. The commandante  
17 called the first torture the racker. Castro described it  
18 as a classic inquisition type wheel rack. His body was  
19 strapped hands and feet in traction while the wheel  
20 rotated, causing severe joint and muscle strain and loss

of

21 circulation. He said the commandante called the second  
22 torture the Carter, after ex-president Jimmy Carter. His

23 hands and feet were bound to ropes on pulleys attached to  
24 the walls, while his testicles were tied to a wire on a  
25 pulley attached to the ceiling. By controlling the ropes

and  
1 and wires, the torturer regulated the amount of tension  
2 body weight placed on his testicles until they were  
3 crushed. The third torture apparently lacked a name.  
With  
4 thumbs tied behind his back, a sack containing lime was  
5 secured over his head. Several strong blows to the  
stomach  
6 caused him to inhale, searing the air passages and lungs  
7 with lime."

8 MR. STERN: If I could ask the technician to  
take  
9 that off the screen, please.

10 BY MR. STERN:

11 Q. Professor Karl, another subject you have considered  
in  
12 preparing to render expert testimony is whether the  
13 Defendants in this case should have known about human  
14 rights abuses committed by their troops in the 1979  
through  
15 '83 time period?

16 A. Yes.

17 Q. And have you in preparing to give your testimony  
18 reviewed the deposition transcripts of the Defendants in  
19 this case?

20 A. Yes, I have.

21 Q. I want to read you some very brief passages of  
22 deposition transcript from General Garcia's deposition

23 under oath taken January 31, 2001. This is page 47.

24 "So, is your answer that you -- that, number one,  
that

25 it would be important for you to remember and act upon a



1 complaint of alleged torture from representative from  
2 United States Government?

3 "I do not recall having received a specific  
complaint  
4 of that type.

5 "Okay. But if you received a specific complaint of  
6 that type, would that have been important for you, number  
7 one, to remember, and number two, act upon?

8 "I would have to know what kind of knowledge it is,  
9 what kind of information it is. I cannot answer to  
things  
10 that I don't know, that I don't recall, that I have no  
11 knowledge of."

12 I would also like to read you a brief passage from  
13 Defendant General Vides Casanova's deposition taken  
14 February 1st, 2001. Page 26.

15 "Why was it important to improve the image of the  
16 National Guard?

17 "Well, with the National Guard -- well, when all of  
18 the subversive movements started throughout the country,  
it

19 also had to participate, I believe -- yes, it  
participated

20 in providing security to the urban area. They were  
better

21 prepared for the rural area. And it is possible they  
22 committed certain abuses. I have no proof of that, but  
it

23 was rumored, it was said, so it is possible."

24 Professor Karl, based on the documents and  
information

25 that you reviewed, and interviews you carried out, are  
your

1 findings consistent with the deposition testimony of the  
2 Defendants in this case?

3 A. No. They are not.

why

4 Q. And can you spell out for us in a bit more detail  
5 you don't believe that they are consistent with your  
6 findings?

7 MR. KLAUS: Objection. Commenting on the  
8 Defendants' credibility.

9 THE COURT: Well, I think the question, though,  
10 that was asked, is simply to point out how her findings,  
11 how the professor's findings would differ, and why her  
12 findings were different. Is that the question?

13 MR. STERN: That is correct, Your Honor.

14 THE COURT: You may answer that question.

human

15 THE WITNESS: Having reviewed U.S. Government  
16 cables and having studied hundreds, if not thousands of  
17 these cables, and having been in and out of El Salvador  
18 during this time, my opinion is that the evidence of  
19 rights abuses was so overwhelming that it would not be  
20 possible to not have them brought -- to not have been  
21 aware of them.

22 BY MR. STERN:

in

23 Q. Professor Karl, did Ambassador Corr give testimony

24 his deposition on the issue of --

25 THE COURT: Let me go back again, though. I

earlier,  
the,  
she  
everything

1 think that answer runs afoul of what we discussed  
2 that the professor cannot give an opinion as to what  
3 either general actually knew. I am going to ask you to  
4 limit yourself to the professor's opinions as to what  
5 thinks they should have been known in light of  
6 that she observed or studied and so on.

7 Let me ask you to go back and rephrase that  
8 question.

9 MR. STERN: Let me move on to another question.

10 THE COURT: Surely. I will strike the last  
11 answer and ask the jury to disregard that.

12 Let's go ahead.

13 BY MR. STERN:

14 Q. Are you aware of whether Ambassador Corr gave  
15 testimony on the knowledge of the U.S. Government  
regarding  
16 incidents of torture in the 1979 to 1983 time period?

17 A. Yes, I am.

18 Q. And did Ambassador Corr also give testimony on  
whether  
19 members of the Salvadoran Government and military should  
20 have been aware similarly of such torture?

21 A. Yes, he did.

screen,  
22

MR. STERN: Could I have slide 30 on the

23 please?

24 MR. KLAUS: Objection, Your Honor. Under Rule

25 703. I think her comment on Ambassador Corr's testimony

1 is, prejudicial effects outweighed by probative value.

2 His testimony is what it is.

3 THE COURT: Well, I think the question is is  
one

4 expert witness allowed to testify as to why they might

5 disagree with the conclusions of someone else, and I  
think

6 the answer to that is yes. Obviously, the jury is going

7 to hear all of the witnesses, and the jury is going to

8 have to make their own judgment call as to what evidence  
9 is believable. And if it happens to be opinion  
evidence,

10 which expert is believable.

11 But I think one expert can testify regarding  
the

12 differences and why one may conclude something one way,

13 and another the other. So I will overrule the objection

14 and allow you to proceed.

15 MR. STERN: Could we have slide 30 on the  
screen,

16 please?

17 BY MR. STERN:

18 Q. "Question. With regard to the incidents of torture  
19 that we have just looked at in these cables, it seems  
clear

20 that the U.S. Embassy was aware of the practice of  
torture

21 carried out by the military and security forces against

22 civilians in 1979 through 1983; is that correct?

23 "Certainly. They couldn't have sent the cables if  
24 they weren't aware of it.

25 "Do you believe the same information was available

to



1 the Government of El Salvador?

of

2 "I think that the information came to the attention

same

3 the top levels of the Government of El Salvador in the

4 way but probably perhaps in a greater extent as it was

5 coming to us.

6 "Are you saying that information about the existence

7 of incidents of torture against civilians by the military

8 and security forces was available to the Government of El

9 Salvador?

10 "Yes."

that

11 Professor Karl, do you agree with the statements

12 Ambassador Corr gave in deposition?

13 A. Yes, I do.

General

14 Q. With regard to the grounds on which Defendants

15 Garcia and General Vides Casanova should have known about

16 incidents of torture in the '79 through '83 time period,

17 have you put together a slide to summarize some of those

18 grounds?

19 A. Yes, I have.

20 MR. STERN: Could we have slide 98 up on the

21 screen, please?

22 BY MR. STERN:

23 Q. With reference to the bullet points on the slide,

24 Professor Karl, could you please explain why you believe

25 Generals Garcia and Vides Casanova --

1 MR. KLAUS: Objection; leading.

2 THE COURT: Let me hear the whole question, if

I

3 might.

4 BY MR. STERN:

opinion

5 Q. Professor Karl, does this slide set forth your

let

6 regarding whether Generals Garcia and Vides Casanova --

7 me strike the issue of whether they knew. Does it set

8 forth your opinion as to the grounds on which they should

9 have known about human rights abuses committed by their

10 troops?

11 A. Yes, it does.

12 Q. Would you please explain for us the items you have

13 listed for us here?

think

14 A. The first one is dead bodies in the streets. I

15 I testified that I, as a foreigner, could walk around San

16 Salvador and find bodies.

17 In the beginning in San Salvador there were a lot of

were

18 bodies. They were piled in front of the morgue, they

19 in the national university, they were in the McDonald's,

20 they were in the Sheraton.

21 Q. Did you see some of these bodies yourself?

22 A. Yes, I did. Yes, I did.

from

23           They were in the fanciest shopping center across  
24   the El Camino Real Hotel. It was not hard to see these  
25   bodies. The parallel would be having bodies at F.A.U. or

1 at City Place here or right around the courthouse, or at  
2 the Four Seasons Hotel. You saw them, you saw them, they  
3 were there.

4 Q. What about Salvadoran press reports of human rights  
5 abuses?

6 A. Well, I think I have testified already there were  
what  
7 are called campos pagados, C-A-M-P-O-S, P-A-G-A-D-O-S,  
and  
8 these are announcements in the paper daily of, sometimes  
9 daily, there were always announcements in the paper, you  
10 would open up the paper, even the papers that were most  
11 sympathetic to the military, there were pictures of  
people  
12 who are dead every single day dead. You see the photos,  
13 this person found here, and this person found here.

14 I think the thing that was personally most, I  
suppose  
15 most memorable to me besides the actual bodies that I saw  
16 is that I was sitting in my hotel, El Camino Real in San  
17 Salvador one night, it was during a state of siege, so I  
18 could not go out. It was dangerous to go out, there is  
19 actually no activity outside, there is calm, but there  
are  
20 occasional states of siege, and you did not wander around  
21 at night.

22 I was sitting in my room, this was in 1983, watching

23 television, and the program on the screen faded off the  
24 screen and instead a video, like a homemade video came on  
25 the screen of a man who said mi amo Santiago Hernandez,

my

in

1 name is Santiago Hernandez, son Comunista, I am a  
2 Communist. He began talking about how he was being held  
3 the people's prison and he awaited the justice of the  
4 people. He testified he was trained in Russia, he  
5 testified to all kinds of things.

as

6 And that picture faded off the screen. I am in my  
7 hotel room in El Salvador. It faded off the screen and  
8 three other testifies that followed him. I turned the  
9 channel at the time, and this was on the other channels  
10 well. This is on all the television channels, these were  
11 death squad confessions.

12 MR. KLAUS: Objection. Lack of sufficient data  
13 or basis for the conclusion.

14 THE COURT: Well, I will allow the witness to  
15 explain the basis of why she reached that conclusion.

16 BY MR. STERN:

17 Q. Let me ask the questions in a different order.

18 Professor Karl, do you know what happened to  
19 Mr. Hernandez?

20 A. Yes, I do.

21 Q. What happened to him, and how do you know it?

22 A. His body was found the next day with the other three  
23 people on television. He had been tortured, murdered and  
24 his body had been mutilated after he was dead.

25 Q. Did you see his body?



1 A. Yes, I did.

2 Q. Can you go back and fill in anything more you wanted  
3 to add about his appearance on television?

4 A. You could only see him from the waist up. He had  
5 clearly been beaten, at least that was my impression. He  
6 was afraid. I subsequently interviewed people about  
this.

7 I also saw the tapes of this again and I asked many  
people  
8 why he had confessed to what he had confessed since his  
9 family told me that to their knowledge he had never left  
10 the country of El Salvador, so they did not know how he  
11 could be testifying to being trained in Russia.

12 According to the confessions of people who were  
13 engaged in death squads, they have stated that people  
would  
14 confess to things no matter what it was either to try to  
15 have a less painful death --

16 MR. KLAUS: Objection; hearsay, prejudicial  
17 effect outweighs probative value if that is the basis  
for  
18 it.

19 THE COURT: All right. We are obviously  
dealing  
20 with very difficulty areas, but we've talked earlier  
about  
21 Rule 703, and I am finding that, as I indicated earlier,

allow 22 there is a sufficient basis to go forward, so I will

explicit 23 the professor to go forward, and I will make the

24 finding later in the record in this regard.

25 Let's go ahead.

1 BY MR. STERN:

2 Q. Just briefly, did you want to finish your account of  
3 the incident with Mr. Hernandez?

4 A. The most important thing for our purposes, this was  
5 television, it was brought to my --

6 MR. KLAUS: Objection.

7 THE COURT: I will overrule that, the witness

8 allowed to give an opinion if that is a factor that she  
9 found to be significant and relates to the issues here.  
10 She may state that.

11 You may proceed.

12 BY MR. STERN:

13 Q. Were you finished with your answer?

14 A. So the types of human rights abuses that I saw in El  
15 Salvador were very visible, they were reported in the  
16 newspapers, they were on television.

17 Q. What about the third bullet point you have there?

18 A. These are international organizations told them,  
19 Organization of American States, I think the Inter-

American

20 Commission on Human Rights told them, human rights  
21 organizations reported, and I think they also sent what

are

22 called urgent action notes to the Salvadoran, highest  
23 levels of the Salvadoran Government reporting murders and

and 24 abuses. Salvadoran political leaders told the military

25 over and over again.

1           There is a well-known letter I understand you have  
2    seen from the Christian Democratic party detailing 19  
3    incidents of torture. There are other accounts as well.  
4    And then U.S. officials told them.

rights,  
them?  
5    Q.    In your view as a scholar in the area of human  
6    was the visibility of these abuses characteristic of

in  
used  
7    A.    Yes. One of the things that surprised me, actually  
8    El Salvador, one of my first visits there, I was more  
9    to other countries where the kinds of human rights abuses  
10   that occurred were called disappearances, and people  
11   literally disappear, you wouldn't know where they were,  
12   wouldn't see them, they were not visible, in other words.

13           The difference in El Salvador is that these types of  
14   human rights were very, very visible, and they were in my  
15   view supposed to be visible. It was part of the strategy  
16   of terror. So, for example, if you went into a rural  
17   village and a land reform leader had been killed, what  
18   would see is his mouth would be stuffed with dirt, he  
19   have branches maybe around him to show this was a death  
20   that had to do with land, and he would be left at the  
well

21 where everybody would see him. They wouldn't disappear  
22 him, in other words, they would leave him where everybody  
23 could see him.

24 And we actually began to call this the symbolism of  
25 death. You could tell where people were left, how

visible

1 they were, what kinds of symbols were left around them,  
2 what this was all about, why it was there. It was an  
3 extremely visible repression, not the least visible time  
4 that happened in a country like Argentina.

5 Q. There is a quote on the Truth Commission which says  
it  
6 is impossible to blame this pattern on conduct of local  
7 commanders and to claim that senior commanders did not  
know  
8 anything about it.

9 That is a finding with which you agree?

10 A. Yes.

11 Q. I wanted to show you and ask for your comment a  
series  
12 of passages from Ambassador Corr's deposition in this  
13 regard.

14 MR. STERN: Could I have slide number 91,  
please?

15 BY MR. STERN:

16 Q. "In the period of '79 through '83, do you have an  
17 opinion as to whether Vides Casanova was aware of  
incidents  
18 of torture, extrajudicial killing and arbitrary detention  
19 carried out by the members of the military and security  
20 forces against civilians?

21 "One would have had to have been a dunce, blind or  
22 deaf not to have known that these kind of things  
occurred.

23 They stacked the bodies up every day."

24 MR. STERN: Could I have slide number 93,  
please?

25



1 BY MR. STERN:

2 Q. "Was the Minister of Defense aware of the torture of  
3 civilians by the Salvadoran military and security forces?

4 "As I have answered earlier questions, no one could  
5 not be aware of these kinds of things. The Minister of  
6 Defense certainly was probably getting people coming to

him

7 with reports very similar to someone coming and reporting  
8 to someone in the Embassy, so they had to be aware."

9 MR. STERN: Could I have slide 99?

10 BY MR. STERN:

11 Q. "Leaving aside for the moment what could or could  
12 not

12 be done about the situation, it is your testimony that  
13 General Garcia was aware of such incidents of human

rights

14 violations carried out?

15 "Sure, no one could be in El Salvador and not be

aware

16 of that. We were telling him about it, I'm sure."

17 MR. STERN: Could I have slide 32, please?

18 BY MR. STERN:

19 Q. "Ambassador Corr, how do you reconcile General  
20 Garcia's testimony with the testimony you have just

given?

21 "Well, that is his testimony. My opinion is that it  
22 would be very hard to have lived in El Salvador in those

El

23 times and not know there was some torture and there were  
24 atrocities. It would be very, very difficult to live in

that

25 Salvador at that time and particularly in the position

1 he was in and not to have been aware some of these things  
2 had happened. Even seeing the results and listening to  
3 things that people said to him."

4 MR. STERN: Could I have slide 101, please?

5 BY MR. STERN:

6 Q. Continuing from the deposition of former Ambassador  
to  
7 Ambassador Edwin Corr.

8 MR. KLAUS: May I have the page number?

9 MR. STERN: 125.

10 BY MR. STERN:

11 Q. "Do you believe that Vides Casanova in the period of  
12 1979 through '83 never encountered proof of any incident  
of  
13 human rights abuse by the National Guard?

14 "It would be hard to believe that he didn't have  
some  
15 pretty good indications, fairly strong that -- be hard to  
16 deny he could not have come to conclusion with some of  
17 these things being said where there is so much smoke,  
there  
18 has to be fire."

19 MR. STERN: Finally, slide 100, page 123  
through  
20 124 of Ambassador Corr's deposition.

21 BY MR. STERN:

22 Q. "Ambassador Corr, can you give me an explanation as  
to

incidents 23 why General Vides Casanova would not acknowledge  
24 of human rights abuse carried out by the members of the  
25 National Guards in 1979 to '83?

1 "No. I can't give you an explanation of that.

2 "Is his statement under oath consistent with your  
3 knowledge about what happened in those years, that the  
4 abuses were rumored but never proven?

5 "No."

6 Professor Karl, does Ambassador Corr's deposition  
7 testimony cause you to change your opinion in any regard,  
8 or does it affect it in any way?

9 A. No. I think that Ambassador Corr and I share the  
same  
10 opinion.

11 MR. STERN: I want to move on to another topic  
if

12 I could have that slide taken off and the lights turned  
13 up, please.

14 BY MR. STERN:

15 Q. Professor Karl, as a scholar in the area of  
political  
16 science and human rights, are you familiar with the word  
17 impunity?

18 A. Yes, I am.

19 Q. And what is your definition of impunity?

20 A. Impunity means --

21 MR. KLAUS: Objection; relevancy.

22 THE COURT: I will overrule the objection. You  
23 may proceed.

24 BY MR. STERN:

25 Q. Let me ask you this question, Professor Karl: In  
the

1 field of human rights, does the notion of impunity play a  
2 significant role?

3 A. Yes, it does.

4 Q. And what does the phrase impunity or the word  
impunity  
5 signify to you?

6 A. Impunity means that some group exempts itself from  
the  
7 normal laws and rules of a country or the laws and rules  
of  
8 humanity. In other words, it is above the law, it is a  
9 group because of its position of privilege says these  
laws  
10 don't apply to me, and therefore, it sets itself above  
11 those laws.

12 Q. In your opinion in the time period of 1979 through  
13 1983, did the Salvadoran military have impunity?

14 A. Yes, it did.

15 Q. What does that mean in practical terms?

16 A. In practical terms, it means that not one single  
17 officer was ever prosecuted or punished for the kinds of  
18 human rights violations and abuses that I have been  
talking  
19 about that numbered in the thousands.

20 Q. How long did this impunity for the Salvadoran  
military  
21 last?

because

22 A. Well, this impunity, really, is still in place  
23 there is an amnesty as I testified to earlier in El  
24 Salvador. But the first officer who was ever prosecuted,  
25 ever, for human rights abuses, specifically for human



1 rights abuses, is not until 1991, which is long after the  
2 generals have left the country, I believe, and moved to  
3 Florida.

4 Q. How do you account for the existence of this culture  
5 of impunity that you testified about -- strike that.

6 How do you account for the existence of impunity as  
a  
7 characteristic of the Salvadoran military in 1979 through  
8 '93?

9 A. Well, I think to understand impunity in El Salvador,  
10 it is important to go back and remember what I call the  
11 TANDA System, T-A-N-D-A. That is the system of  
graduating  
12 classes in the military that I talked about, which means  
13 that you have a graduating class of just a few officers,  
14 just one out of six that make it through this tough,  
tough  
15 process, and that is your cohort, that is your group,  
that  
16 is your brotherhood. And I think that impunity is linked  
17 very closely to that military structure.

18 Q. Before we get into further questions about the  
19 relationship between the TANDA System and impunity, what  
do  
20 you think is the relation of military commanders in a  
21 setting of impunity?

22 A. Well, it is the decision, it is a choice of military

23 commanders when they have knowledge that human rights  
24 abuses may have been committed by some of their  
25 subordinates. It is a choice whether to prosecute and

going  
in

1 punish somebody, you make an actual choice, yes, I am  
2 to do it, or no, I am not. And so impunity cannot exist  
3 a structure, a structure cannot set itself above the law  
4 unless the top authorities make the choice that no one is  
5 going to be prosecuted or punished.

Defense

6 Q. Is that a choice that you believe Minister of  
7 Garcia made during 1979 to '83?

one  
of

8 A. While I don't believe that I can testify to his  
9 thought processes, if I understand the judge correctly,  
10 what I can say is while he was Minister of Defense, not  
11 single military officer was ever prosecuted or convicted  
12 any of the human rights violations that were occurring  
13 during this time. And according to the figures of the --  
14 of Ambassador Hinton, we are talking about at least  
30,000  
15 dead civilians.

16 Q. In regard to the National Guard and Director General  
17 of the National Guard, General Vides Casanova, would your  
18 answer be the same?

19 A. My answer would be the same.

20 Q. Did you prepare a slide today to explain to us the  
21 relationship between the Tanda System and this notion of  
22 impunity that you have been talking about?

23 A. Yes, I did.

24 MR. STERN: Could I have slide 110 on the  
screen?

25

1 BY MR. STERN:

2 Q. You testified earlier about the small size of the  
3 military and the Tanda System. In your view does the

Tanda

4 System help sustain impunity for the Salvadoran military?

5 A. In my opinion the Tanda System is one of the key

bases

6 for impunity. The graduating class is your group, that

is

7 who you belong to, you don't belong to the military,

8 National Guard or any service, you belong to this group.

9 You are trained with them. There is a law in El Salvador

10 that you can --

11 MR. KLAUS: Objection; beyond the scope of her  
12 expertise.

13 THE COURT: I will overrule the objection. You  
14 may proceed.

15 THE WITNESS: There is a law in El Salvador

that

16 military officers serve for 30 years. If you remember,  
17 some of the officers come in at a very young age, 16, so  
18 it means by the time you are 46, you and your graduating  
19 class, brotherhood, these bonds that I talked about  
20 before, are quite deeply cemented.

21 The other thing is that you as an officer need

to

22 think about what you will do when you get out of the

and

23 service, since there is a mandatory retirement clause,

24 so what happens, in my opinion, is that this sets up a

of

25 dynamic where graduating classes essentially take care

1 each other, they operate as a brotherhood to make sure  
2 that they all advance together, that they are all fine,  
3 and that by the time they rotate out of the services,  
they  
4 are all taken care of.

5 BY MR. STERN:

6 Q. Did this system rely on higher military commander  
such  
7 as Minister of Defense, or Director General of the  
National  
8 Guard going along with the system?

9 A. Oh, absolutely.

10 Q. Do you believe the system could have been sustained  
11 without the cooperation of those individuals?

12 A. No, I don't.

13 Q. Are there any other items on the slide that you  
wanted  
14 to testify about in regard to the relationship between  
the  
15 Tanda System and impunity?

16 A. One of the things that happens in this system, and  
17 this is one of the findings, there are several major  
18 studies by the Defense Department in the military of the  
19 Salvadoran military that take place over these years.

This  
20 structure is a structure in which the entire graduating  
21 class rises and falls together, if I could put it that  
way,

22 so the particular performance of the group depends on the  
23 brotherhood of the group itself.

24           What this means is that some members of the Tanda,  
of  
25 the officer core, engage as -- there is quite a bit of



1 documented evidence of this including in the U.S. court  
2 system engaging in acts of corruption. And what the  
United States Defense Department and military studies contend is  
3 that this brotherhood, this rotating system, this  
4 graduating class, the fact that you are mandatorily  
retired 5 when you are still pretty young --  
6

7 MR. KLAUS: Objection; 703.

8 THE COURT: What is the basis of your  
objection? 9

10 MR. KLAUS: She is relying on data,  
inadmissible 11 data that probative value outweighed by prejudicial  
12 effect. If she wants to offer an opinion --

13 THE COURT: Let me hear the question.

14 MR. STERN: Perhaps we could have the question  
15 read back.

16 (The court reporter read the record.)

17 MR. STERN: Let me ask a different question.

18 BY MR. STERN:

19 Q. In your opinion, Professor Karl, was corruption a  
20 feature of the Salvadoran military?

21 A. Yes, it was.

22 Q. And can you tell us in general terms, what form did  
that corruption take?

I

23 A. Well, I can tell you in specific terms the ones that

24 personally investigated and reported to the U.S.  
Congress.

25 There were -- there was something called for example GOES

1 soldiers. GOES soldiers were battalions made up, they  
2 didn't exist, but a military commander might collect the  
3 salary for every GOES soldier, so you would collect the  
4 salaries for soldiers that didn't exist.

5           There were other forms of corruption that I  
personally  
6 investigated. There was a great issue, at the time there  
7 was a charge that Salvadoran military officers were  
selling  
8 U.S. aid that was supposed to go to the poor in El  
9 Salvadoran be provided as a -- as aid to the poor in that  
10 country, and the food packages said a gift from the  
people  
11 of the United States from them. This was supposed to be  
12 food aid and not sold. I personally investigated in the  
13 eastern --

14           THE COURT: Let me stop you. Let's move on to  
15 another area.

16 BY MR. STERN:

17 Q. Professor Karl, in your view, what, if any,  
connection  
18 between corruption in Salvadoran military and impunity  
for  
19 human rights abuses that you talked about?

20 A. If you think about the brotherhood and graduating  
21 class and the notion that people rose and fell together,  
22 there were a series of things going on in your graduating

could

23 class that some people may have engaged in, and those

24 involve human rights abuses or could involve corruption.

25 What happened is that the norm and the ethic of this

1 was really an ethic of not ratting on your fellow  
2 brotherhood, of not informing when you saw something that  
3 might not be proper, and of protecting your fellow  
4 officers. This is by the way one of the key conclusions  
of  
5 the Woerner report.

6 Q. Could I have slide 111?

7 MR. KLAUS: Objection to reference to the  
Woerner  
8 report.

9 THE COURT: I will overrule that objection and  
10 allow you to proceed.

11 BY MR. STERN:

12 Q. What I would like to put on the screen is a passage  
13 from the Woerner report. This is page 43 of the Woerner  
14 report, 43, and 44.

15 Could you read this passage for us, Professor Karl?

16 A. Yes, this is the report that was done by U.S.  
General  
17 Fred Woerner in his report on the Salvadoran military.

He  
18 says, "The armed forces as an institution has  
demonstrated  
19 a remarkable capacity for tolerating unprofessional and  
20 improper conduct which does not threaten the institution.  
21 This tolerance has made the institution reluctant to  
22 admonish its own for errors of professional judgment,

acts

with  
23 of violence and impropriety, retirement, reassignment and  
24 at worst institutional exile are the means for dealing  
25 those who fail to adhere to accepted standards of

its  
imposing  
1 institutional conduct. Thus the armed forces protects  
2 own ignoring, suppressing, covering up or at most  
3 minor punishment."

violence  
4 Q. Professor Karl, in your opinion does acts of  
5 referred to in the Woerner report include human rights  
6 abuses?

7 A. Yes.

8 Q. And does that include corruption?

9 A. Yes, it does.

in  
10 Q. And does this statement in the Woerner report refer  
11 your opinion to the military of high command of the  
12 Salvadoran military?

13 A. Yes, it does.

14 MR. KLAUS: Objection. The report speaks for  
15 itself.

16 THE COURT: I'll sustain the objection.

17 BY MR. STERN:

18 Q. In your opinion, Professor Karl, do the statements  
19 being made by the Woerner report in regard to the armed  
20 forces being an institution also apply to the Salvadoran  
21 military high command?

22 MR. KLAUS: Objection; speaks for itself.

23 MR. STERN: My question had to do with her

Karl's 24 opinion as to whether these statements -- Professor  
of 25 opinion whether these statements applied to the members



1 the military high command.

2 THE COURT: I am going to sustain the  
objection.

3 BY MR. STERN:

4 Q. Professor Karl, you testified that in your view  
5 impunity extended generally to the Salvadoran military in  
6 the early 1980's; is that correct?

7 A. That is correct.

8 Q. And do you know whether other individuals who  
studied  
9 this field share your opinion?

10 A. Yes, they do.

11 Q. Have you reviewed the deposition testimony of  
12 Ambassador Corr in this regard?

13 A. Yes, I have.

14 Q. And was that one item that you used by way of  
15 reference in formulating your own opinion?

16 A. Yes, I did.

17 MR. STERN: Could I have slide 106 -- excuse  
me,  
18 104?

19 BY MR. STERN:

20 Q. Could you read this passage from Ambassador Corr's  
21 deposition?

22 A. "Is it the fact that as of June of 1988, quote, not  
23 only has no higher ranking officer ever been convicted of

24 human rights violation, none has been dismissed from in -

-

25 for ineptitude in combat or gross misuse of Government

1 funds or other corrupt practices?

2 "To my knowledge, that is correct."

3 MR. STERN: Could I have slide 114, please?

4 BY MR. STERN:

5 Q. Would you mind reading the passage on the screen for  
6 us?

7 A. "Is it your testimony that impunity existed for the  
8 officer core of the military up until 1986?

9 "Yeah, we were unable to prosecute an officer on a  
10 human rights crime, we were unable to have a prosecution  
of  
11 an officer for a crime of disobeying orders on human  
rights  
12 until that time."

13 Q. Professor Karl, is Ambassador Corr's opinion  
14 consistent with your own?

15 A. No. In 1986 there was a prosecution of a Salvadoran  
16 military officer from -- for engaging in what was called  
17 kidnapping for profit. This was kidnapping the sons and  
18 daughters of wealthy Salvadorans and ransoming them back  
to  
19 the families. In my view, this isn't a human rights  
abuse,  
20 it is a criminal act. And so I would actually not count  
21 this as breaking impunity.

22 When I am testifying about impunity, I am talking  
23 about holding people accountable for the murders of

24 civilians in the way that I have described earlier.

25 Q. Thank you.

1                   MR. STERN: Your Honor, I am about to start on  
2 another document. This might be a reasonable time to  
3 break.

4                   THE COURT: Right. We are at a time where we  
5 agreed to stop.

6                   Ladies and gentlemen, I'll talk with the  
lawyers  
7 tonight regarding our schedule, and I will be back with  
8 you in that regard. I wanted to ask you, I know you  
know  
9 where we are in the case, we've moved substantially into  
10 the case, and I want you to be so careful, please don't  
11 talk to anyone about the case, don't let anyone talk  
with  
12 you. Please avoid any media coverage that there might  
be.

13                   What I am asking you to do, before reading any  
14 newspaper, will you bring it in, and just run it by our  
15 courtroom deputy? We will get it right back to you.  
And  
16 we want to be so careful, whatever you look at to decide  
17 the case is something that has been presented here in  
18 court in front of everybody subject to the process you  
19 have been watching, okay?

20                   Have a nice night. See you all tomorrow  
morning  
21 at 9:30.

22  
courtroom.)

(Thereupon, the jury retired from the

23

THE COURT: Professor, you may step down.

24

Ladies and gentlemen, please be seated. We

25

agreed this evening that we would begin to take a look

at

1 the proposed instruction on command responsibility.  
2 Before turning to that, are there any other matters that  
3 the Plaintiff has that you would like to put on the  
agenda  
4 for the evening?

5 How about the defense?

6 MR. KLAUS: They filed a motion in limine, Your  
7 Honor. Nothing special for me.

8 THE COURT: Okay.

9 MR. KLAUS: Just the witness.

10 THE COURT: Why don't I turn to the Plaintiffs.  
11 My sense is we slowed down today, but understanding  
where  
12 we are right now, counsel, what is your best view of  
where  
13 we are in a target to conclude the Plaintiffs' case in  
14 chief?

15 MR. STERN: We have slowed down a little bit,  
but  
16 we are making good progress. I expect to finish my  
17 examination tomorrow morning and based in some part on  
the  
18 length of the cross exam, I think it puts us on target  
to  
19 finish probably sometime on Wednesday, perhaps at the  
end  
20 of Wednesday.

21 THE COURT: So we are moving to the end -- puts

22 us about a day behind. The witnesses tomorrow would be  
23 Professor Karl -- is Ms. Gonzalez going to be the next  
24 witness?

25 MR. GREEN: Yes. I am not sure how to address



1 this, this is going to be very difficult testimony given  
2 what happened to her.

3 THE COURT: Well, I think what we should do is  
4 simply -- we have had our own discussions about this. I  
5 think what we should do is try to take recesses if we  
need  
6 to, but try to deal with the testimony as best we can,  
7 understanding that we are dealing with very, very  
8 difficult issues.

9 And again, I know that everybody understands  
the  
10 enormous effort that has been placed into the case by  
both  
11 sides, and it is very difficult trying to look back at  
any  
12 traumatic event, and to clinically look at it and  
describe  
13 it and go through it, because I think one of the things  
14 that has been obvious to everybody, and some of the  
15 witnesses have talked about it, Professor Mauricio and  
16 others in repeating there is a reliving of the events.

17 We want to not have this -- sounds trite to say  
18 this, but we don't want to make this extra difficult for  
19 anybody, but we want very much on all sides to have a  
20 trial that will be fair, and we don't want to have any  
21 severe emotionalism that would put the trial in  
jeopardy.

about. 22 That is something we all, I know, are so concerned  
a 23 And so I would simply suggest that if we get to  
24 point where we need to take a recess, that we do that to  
move 25 give everybody a chance to regroup and to be able to

1 forward.

2 I want to mention, too, that these matters are  
3 difficult for everybody and I wanted to mention to those  
4 of you who have been here throughout the trial how  
5 appreciative we all are for the sense of decorum you  
6 maintained as well. We want to do everything we can  
7 allows the jury to take in the facts, to listen to the  
8 testimony and make the judgments that need to be made,  
9 so that calls upon all of us, I think, to exhibit  
10 restraint and care because we want to make sure the  
11 who are here and who have waited so long to bring these  
12 issues on both sides, that they can have them resolved  
13 the appropriate atmosphere, and I think that means we  
14 have to work toward that.

15 I am going to ask the parties on both sides to  
16 attentive, and if we need to take breaks, we need to do  
17 that. We have kind of had a schedule that we have been  
18 following, but if we need to deviate from the schedule,  
19 let's do it, because the goal is so much more important.  
20 And we are within shooting distance of -- bad metaphor,  
21 and forgive me -- we are within striking distance of

have

that

and

folks

in

all

be

trying

22 concluding the trial, and we made great efforts of

the

23 to have the right type of atmosphere that would allow

24 jury to listen to what is very, very difficult testimony

25 to be able to assess it, and that is the goal we want.

they  
make

1                   We want the jury to be able to hear whatever  
2                   need to be able to hear so they could evaluate it and  
3                   their appropriate judgments.

4                   I have a couple other matters I want to talk to  
5                   you about in light of that.

6                   Let me go to Mr. Klaus, if I can, for a second,  
7                   because assuming that the Plaintiffs finish on Wednesday  
8                   evening, that means that you would start on Thursday.  
9                   Does it sound like there would be three days for the  
10                  presentation of the defense, or is it still too hard --  
11                  obviously some of that will depend on cross examination  
as  
12                  well.

13                  MR. KLAUS: I think three days.

14                  THE COURT: Okay.

15                  MR. KLAUS: I suspect a half day direct with  
each  
16                  of my witnesses, and I expect a half day to cross.

17                  THE COURT: What that means is, we may get to  
18                  final arguments during the week of the 15th, if not, we  
19                  will move into the 22nd. We have to stay loose on that  
20                  and see how we are doing.

21                  MR. KLAUS: Your Honor, I wanted to be sure, if  
22                  we get to -- if the case goes to the jury Wednesday or  
23                  Thursday, the 17th or 18th, we will stay in session for

24 Friday?

25 THE COURT: Yes. In other words, there is no

1 problem with the jury deliberating on Friday. My  
problem  
2 is, I need to make sure I have given the jury  
instructions  
3 before Friday because I have a full day scheduled for  
4 Friday. I can interrupt that to respond to questions or  
5 take a verdict, but that is the difficulty.

6 MR. KLAUS: Okay. I just want to know for  
7 scheduling.

8 THE COURT: Okay. I think it is too early to  
9 discuss this, but I do think it would be helpful for you  
10 to think along these lines so you can prepare. How much  
11 times are the parties requesting for final arguments?  
12 Have you given thought to that? How much time are the  
13 Plaintiffs requesting?

14 MR. GREEN: Your Honor, I expect we would be  
15 asking anywhere from two to three hours.

16 THE COURT: That is not an unreasonable request  
17 given the length of the trial and so on. What does  
18 defense think, have you given thought to final argument?

19 MR. KLAUS: An hour, hour and a half.

20 THE COURT: Well, we need to agree on the outer  
21 limit, understanding if you don't need that time, you  
22 don't need to use it. I want to give you the time you  
23 need. Three hours sounds like an awfully long time,  
but,

24     you know, it is so important that you be able to discuss  
25     the facts and the law. I think sometimes lawyers feel



1 rushed, that they don't have enough time to do that.

2 I have been thinking more in terms of a couple  
of  
3 hours, but why don't you give a little more thought to  
4 that, and as you begin crafting your arguments, if you  
see  
5 you need more time, you want to remember the normal  
court  
6 day is roughly six hours, and we need to take the breaks  
7 we've been taking, so why don't we come back to that.

We  
8 are talking some period of time two to three hours, and  
9 let's talk a little more and we will get a more definite  
10 figure.

11 MR. GREEN: Your Honor, even in capital cases I  
12 have never spent more than an hour and a half. I want  
to  
13 give Your Honor an outside figure.

14 THE COURT: Yes, I understand that. As you  
begin  
15 to put it together, you will get a better sense of that.

16 I am wondering whether we need to talk about  
17 allocating seating or whether we need to consider moving  
18 to a larger courtroom for final argument. I would ask  
you  
19 folks to think about that. I want to make sure if  
General  
20 Garcia or General Vides wish to have family members  
21 present, that seating is available.

22                   So we could allocate seating here in the  
23                   courtroom or we could give thought to perhaps moving to  
24                   larger courtroom for final argument. I hesitate to do  
25                   that because you have located the equipment you need,

a

and

1 there is a sense of this is where we've conducted the  
2 proceeding, but I ask you to think about that.

3 MR. GREEN: Your Honor --

4 THE COURT: It is clear to me that given the  
5 number of people who have been present, and I suspect  
6 may want to be present that the seating in this room is very  
7 tight and might not be adequate. But I will ask you to  
8 think about it, and why don't we come back and as you  
9 reflect on it, maybe there are other possibilities I  
10 haven't thought of, and you could suggest.

11 MR. GREEN: I do have one suggestion. I think  
12 we could probably squeeze another five or six chairs into  
13 the courtroom.

14 THE COURT: I think we might be able to do that  
15 without a problem. I am not sure that is going to be  
16 adequate. Again, why don't we talk about it and allow  
17 the lawyers to consult with their clients. I think it is  
18 important that there be adequate seating for people who  
19 want to be here. Okay.

20 I know we have a motion in limine that has been  
21 asking filed. That is, the Plaintiffs have filed a motion  
22 The Court to take a look at whether the defense would be

23     able to offer evidence on a certain issue, but I would  
24     suggest to you that probably is really not going to come  
25     up until we move to the defense case, and so if it is

1 agreeable with everybody, I suggest we put that aside.

thinking

2 I think the touchier issue we need to be

Plaintiffs

3 about is the proposed jury instruction on command

4 responsibility. I wondered without asking the

Tort

5 whether they reached a final decision, we talked before

6 about whether the Plaintiffs were going to pursue claims

7 under the Torture Victim Protection Act and the Alien

8 Claims Act. Have the Plaintiffs reached any final

9 decision on that?

10 MR. GREEN: We are going to proceed under the

11 Alien Tort Claims Act, and TVPA.

12 THE COURT: I want to mention one thing to you,

an

13 and I know you thought about this undoubtedly, and I say

14 it only because we have two potential jurors who raised

by

15 issue. When you think about it, all you are doing is

16 adding some extra bases, extra incidents that if found

17 a jury would allow as a basis of recovery. It does seem

18 anomalous, doesn't it, that what is being suggested is

19 there is a broader basis or bases for people who are not

20 citizens of the United States as opposed to people who

fact.

21 have gained citizenship? But that appears to be the

22 And I only mention that in terms of what we saw

23 by the two folks who just had general concerns about the  
24 whole process, and existence of the law in general. I  
25 don't think The Court actually gets into specifying -- I

1 think what ultimately is going to happen, if the  
2 Plaintiffs elect to proceed on both statutes, is just as  
3 to particular Plaintiffs there will be additional  
factors  
4 that a jury may consider.

5 But any decision, for instance, regarding  
6 compensatory damages would be undifferentiated, would be  
7 one line, and any decision regarding punitive damages  
8 would be one line. At least that is usually the case.

9 I am asking you to give extra thought to that.  
10 Personally having reflected on it, I don't think it is  
11 wise to pursue both claims simultaneously, because I  
can't  
12 for the life of me believe it would make any difference.  
13 But I leave that with you, because I think that is a  
14 decision that is solely within the Plaintiffs' right to  
15 decide.

16 And if the Plaintiffs do decide, it simply  
means  
17 that with respect to individual Plaintiffs, we are going  
18 to need to specify what may be the basis of recovery.

In  
19 other words, where it is pain and suffering to one  
20 person,  
21 it might be pain and suffering plus other factors as to  
22 somebody else.

23 So, let me leave that with you and we can talk

23 about it and talk about that later.

24 MR. GREEN: Judge, to respond, we have had

25 serious discussions about it, and part of our decision

may



1 turn on resolution of the exhaustion issue. And the  
2 Defendants have raised that as an affirmative defense,  
3 part of one statute, and not part of the other. That is  
4 frankly one of our concerns. I think we can streamline

--

5 THE COURT: We need to talk more -- we need to  
6 talk less cryptically about that because we may need  
7 jury answers if that is your concern, and we need to be  
8 sure we have thought that through. So whatever answers  
9 you need you are going to get from the jury on that. I  
10 don't know.

some

11 MR. GREEN: We don't need any answers from the  
12 jury as far as the ATCA claim.

13 THE COURT: Okay. Let's come back to that at a  
14 later time. I assume you are having some discussions  
15 the defense on some of those issues, maybe not.

with

16 I think we agreed the last time we met that we  
17 would use the proposed instruction that began on page  
18 as a basis, and then allow either side to start drafting  
19 from that. And the Plaintiff has done that and

five

submitted

if

20 its proposal on command responsibility. And I thought,  
21 you have a different way of suggesting, I would be happy

to

22 to hear you, but I thought it might be helpful to turn

23 the Plaintiff and allow you to outline for us where the

so

24 proposal differs from that which was earlier submitted

25 that we can all be focused on that, and then we will go

1 back and deal with those proposed changes one by one.

2 Ms. VanSchaack, did you want to do that?

3 MS. VANSCHAACK: I will be happy to.

4 As you see when you have a chance to digest  
what

5 we filed this morning, the majority are minor structural  
6 or textual changes that were to responded to a  
readability

7 on the issues, and parallelism between the order. You  
8 introduce the four elements and the order in which the  
9 explanatory text proceeds.

10 There are those set of changes I doubt would be  
11 problematic, and we could look at them one by one if we  
12 want. There were three more substantive proposals that  
we  
13 included within our filing.

14 THE COURT: Could I suggest, why don't we go  
15 through them, and point out where the proposal differs  
16 from the other. Let's mark them as we go along, and we  
17 will go back and talk about them one by one.

18 MS. VANSCHAACK: Exhibit B to our filing is  
sort  
19 of a red line version of your instruction.

20 THE COURT: I am not sure I have that. Let me  
21 see if I do.

22 Okay. Great.

23 MS. VANSCHAACK: Proceeding in the first

24 paragraph, we added reference to the Alien Tort Claims  
25 Act, which is contingent on our discussions on this  
point.

1 THE COURT: Right. Hold on a second, if you  
2 would.

3 Let us operate for the sake of today's  
discussion  
4 on the assumption that the Plaintiffs will pursue  
remedies  
5 under both acts, and I think we all understand that  
should  
6 the Plaintiffs ultimately elect to drop the Alien Tort  
7 Claims Act, we simply go back and cross out whatever is  
8 appropriate. But using what you refer to as Exhibit B,  
9 does defense have any objection to the first two  
changes?

10 MR. KLAUS: No.

11 THE COURT: That is the insertion of Alien Tort  
12 Claims Act, and the fact that it allows victims of  
torture  
13 and other violations.

14 MR. KLAUS: Right. I don't know about the top  
15 heading, though.

16 THE COURT: We will deal with that later, that  
is  
17 sort of icing on the cake. We will go back and work on  
18 that.

19 The next proposal is making it plural, the two  
20 acts, that is okay.

21 MS. VanSCHAACK: Likewise throughout that  
22 instruction we made that torture and other violations

23       which will change if we end up proceeding under the  
24       Torture Victim Protection Act.  There are several times  
in  
25       the instruction in which the term war crimes was used, I

only  
also

1 have replaced that with torture and other violations  
2 because the term war crimes is a colloquial term and  
3 a very specialized term.

4 THE COURT: Where does that come from?

5 MS. VansCHAACK: Generally violations of the  
6 Geneva convictions, and only applicable in war.

first

7 THE COURT: Where did that come from in the  
8 place; do we know?

9 MS. VansCHAACK: With all due respect, from  
you.

10 THE COURT: Okay, good. The point is we need  
to  
11 be more specific.

12 Let's go back, the Torture Victim Protection  
Act  
13 deals with explicitly torture?

14 MS. VansCHAACK: That's right, and  
extrajudicial  
15 killing, which is not a claim in this suit.

16 THE COURT: The abuses of, human rights abuses  
17 comes from what?

18 MS. VansCHAACK: That is only relevant if we  
19 proceed under the Alien Torture Claims Act as well. If  
we  
20 talk about element or torture punishment element, we  
look

21 at abuses more broadly, abuses, extrajudicially killed  
or  
22 arbitrarily detained will go to whether a commander was  
on  
23 notice that subordinates were committing abuses more  
24 broadly.  
25 Where the instructions talk about the  
allegations



with  
to  
1 of the claims or Plaintiffs in general, we can stick  
2 torture if we decide to proceed under the TVPA, but we  
3 still need to refer to abuses more broadly because it is  
4 that pattern or practice of abuses by subordinates that  
5 places the Defendant commander on notice that he needs  
6 act to prevent those abuses and/or to punish them.

7 THE COURT: I want to come back to you and ask  
8 you to think about this for a minute.

9 I know you have been thinking about it, and I  
10 know there may be other issues that are pushing you to  
11 pursue the Alien Tort Claims Act, but when you water  
this  
abuses,  
12 down from going from torture to other human rights  
13 that obviously covers a broad spectrum, some far less  
14 serious, some perhaps far more serious than torture. It  
15 is just a wider spectrum, and I am concerned about what  
we  
16 do when we do that.

17 MS. VanSCHAACK: I will admit, Your Honor, we  
are  
18 grappling with what term to use that keeps us within the  
19 same type abuses. Like torture, we are not talking  
about  
20 violations of freedom of speech, so-called other human  
21 rights abuses. If you have suggestions or the  
Defendants

22 have suggestions.

23 THE COURT: No, I don't. But we talked about

24 this the other day, that detaining somebody even  
minimally

25 is technically a human rights abuse if it is done  
without

are  
1 due process, so on, so forth. And that is not what we  
2 talking about at all in this case, and it seems to me to  
3 trivialize the very serious allegations that are made.

4 I realize we are getting caught in this because  
5 of the need to look at two separate statutes, so one  
6 seemingly broader than the other.

7 Okay.

the  
8 MS. VanSCHAACK: I think it is important for  
9 jury to understand that evidence, say a peasant massacre  
10 or individuals being extrajudicially killed is still  
11 relevant to their determination whether or not the  
12 commander had knowledge of abuses by subordinates.

13 THE COURT: I don't think anyone is going to  
14 question that.

of  
15 MR. KLAUS: How about and/or other violations  
16 international law?

17 THE COURT: I think that is too broad, I think  
18 that is too broad, okay. Let's mark that, it is  
something  
19 we need to think about.

changes  
20 MS. VanSCHAACK: The next sort of set of  
21 are on page two.

22 THE COURT: I am still looking at the second

23 element here.

24 MS. VanSCHAACK: One textural change we made is

25 there were several times within the draft instruction

when

1 the language of the criminal law was employed, there was  
2 discussion about crimes and guilty knowledge, and this  
and  
3 that, and it is our suggestion that these terms --

4 THE COURT: No. Let me stop you for a minute.  
5 The first element that the Defendant commanders, where  
6 does that come from?

7 MS. VanSCHAACK: That is also from your draft.

8 THE COURT: Is that out of Ford versus Garcia?

9 MS. VanSCHAACK: I have a feeling that  
10 terminology is used in this context.

11 THE COURT: Is it?

12 MS. VanSCHAACK: Yes, I am fairly certain it  
was  
13 in the Ford v Garcia instruction as well.

14 MR. KLAUS: No, it wasn't in your draft either,  
15 Your Honor.

16 THE COURT: Hold on a second, if you would.

17 MS. VanSCHAACK: It does appear in the Ford  
18 instruction, the term Defendant commander was employed  
in  
19 some cases and in other cases it said commander, and  
other  
20 places it said Defendant, so there is inconsistency  
there.

21 THE COURT: I wonder if we should take the  
22 elements out of Ford versus Garcia, the first element

23 being the existence of a superior subordinate  
relationship

24 between the commander and perpetrator of the crime. And

25 maybe even break this up further, and that is, the first

1 element being that the human rights or the torture  
2 complained of in this case was in fact committed by  
3 subordinates of the Defendants.

4 MS. VanSCHAACK: So you are proposing moving  
the  
5 fourth element up to the first element? You have that  
6 particular element, but it is listed as number four here  
7 and listed as number one in the Ford instruction.

8 THE COURT: Wouldn't you think that would be  
9 element number one, the first thing that happens, that  
is,  
10 the Plaintiffs have to show that what they contend  
11 happened to them was caused by people who were  
12 subordinates of the Defendants?

13 MS. VanSCHAACK: Yes, I understand that.

14 THE COURT: And that is -- let me stop for a  
15 second. Wouldn't we all agree the first element that  
has  
16 to be established here is that the torture complained of  
17 by the Plaintiffs was in fact inflicted by a member of  
the  
18 military of El Salvador?

19 MS. VanSCHAACK: That's right.

20 THE COURT: We are using that in the broad  
sense  
21 to include, as most of the witnesses have, security  
force  
22 as well as -- so it would be a generic term?

23 MS. VanSCHAACK: Uh-huh.

24 MR. KLAUS: Why can't we use what was used in  
the

25 Ford case?



1 THE COURT: What was used there?

2 MR. KLAUS: That persons under the Defendants'  
3 effective command. I think they should be described as  
4 people under the effective command, because even if they  
5 weren't actual members of the military or whatever, they  
6 would still have to be, they could be under their  
7 effective command.

8 THE COURT: Hold on just a second.

9 In this case are the Defendants conceding that  
10 each of the Plaintiffs was in fact tortured?

11 MR. KLAUS: No.

12 THE COURT: So the first element that has to be  
13 established is that the Plaintiffs did in fact suffer  
14 torture at the hands of a member of the Salvadoran  
15 military.

16 MR. KLAUS: At the hands of someone under the  
17 effective command --

18 THE COURT: Well, isn't the first element that  
19 they were tortured?

20 MR. KLAUS: Right.

21 THE COURT: The second element is that the  
22 torturers were subordinates or had a subordinate  
23 relationship to the Defendant commanders.

24 MR. KLAUS: They have to be under their  
effective

25      command.    So what I am saying -- if you want to make a

1 simple first element that the Plaintiffs were tortured,  
2 then element number two, that they were tortured by  
people  
3 under the effective command of the Defendants, I don't  
4 know if you are going to say one of the Defendants or we  
5 are going --

6 THE COURT: Do you have a draft of those  
7 elements?

8 MR. KLAUS: I am taking them from the Ford. I  
9 will write a draft.

10 THE COURT: All right. Would you prepare a  
draft  
11 of the elements the way you think they should be set  
12 forth?

13 MR. KLAUS: Okay.

14 MS. VanSCHAACK: I think what we do agree, the  
15 element marked the third element in your proposed  
16 instruction should be the first element. Namely that  
the  
17 Plaintiffs were victim of torture. And the second  
element  
18 would be subordination element. That is the element  
19 marked in your draft as the fourth element, we will make  
20 that second, and knowledge would be third, and then  
21 failure to prevent or punish four.

22 THE COURT: Where in your judgment does the

you

23 concept of effective command come into play? How have

24 brought that in?

25 MS. VanSCHAACK: We have a separate section

1 marked effective command that is drawn from the Ford v  
2 Garcia Eleventh Circuit opinion.

3 THE COURT: That is an element that has to be  
4 established.

5 MS. VanSCHAACK: I think it is a gloss on what  
6 you marked as the fourth element. Subordination prong.

I

7 think it is more of an explanation of what that element  
8 entails.

9 THE COURT: I think you are right on that. Do  
10 you agree on that, Mr. Klaus?

in

11 MR. KLAUS: No, I think it has to be included

whatever

12 the initial element. I don't see any problem with

13 including it in -- that the persons who committed

14 acts are under the effective command, and then go on to

15 explain what effective command is afterwards.

fundamentally.

16 THE COURT: Okay. Would you draft the elements

17 the way you think they should be done, because when you

18 think about it, you are not in disagreement

subordinate

19 The Plaintiffs agree that the definition of a

by

20 relationship is one that contemplates effective command

torture

21 the commander over the subordinates committing the

22 or human rights violation. So it is a question of where  
23 do we put it.

24 So if you write that out and draft it and get  
it

25 in, let me take a look at it. Okay?

1 MR. KLAUS: Yes, sir.

instruction

2 MS. VanSCHAACK: I think the way the

recitation

3 is structured is a good one. You have a simple

4 of elements and each element has a broader explanation.

is

5 THE COURT: It is a definition. In a normal  
6 criminal instruction you say someone knowingly and  
7 willfully did something. You turn around in a second  
8 paragraph, and say when we use the word willfully, this

is

9 what it means. If effective command as I understand it

but

10 the expanded definition of what it means to have a  
11 commander subordinate relationship, it is just styled,

that

12 clearly it has to be in here. We all agree that is very  
13 significant, and we know from the last case that was a  
14 very important issue to the jury. So it is important  
15 it be here.

back

16 Okay. Let's put that aside and we will come  
17 to it.

next

18 Let me see. I've lost track of what is the  
19 page. Is it the one that says guilty or presumed  
20 knowledge?

21 MS. VanSCHAACK: In this paragraph we have

the  
22 suggested the replacement of the word guilty. I started  
23 to explain our thinking on that. Namely we don't want  
24 jury to be confused as to the burdens of proof in this  
25 case. And there was language in the draft instruction



1 from The Court talking about guilt and crimes, and this  
2 and that, and we've replaced those throughout with more  
3 neutral terms just so the jury isn't confused about what  
4 the burden of proof is.

5 It is not a criminal case, this is a civil  
case.

6 In terms of the title of that next paragraph, the idea  
of  
7 actual or presumed knowledge, I think does a better --  
8 better explains the two part knowledge standard that has  
9 been such a central feature of today's testimony, that  
the  
10 Defendant could have either actual knowledge or should  
11 have had knowledge to be placed on notice that he must  
act  
12 to prevent or punish abuses. I have proposed that two  
13 part standard in the title of the paragraph.

14 And then elsewhere --

15 THE COURT: Hold on a second, if you would.

16 Let's change requisite to require, okay?

17 MS. VanSCHAACK: Yes, I agree.

18 THE COURT: I would like to suggest we change  
19 this. It seems to me what you are really saying is that  
20 the Plaintiffs can prove this particular element by  
21 proving either of two states of mind. If you prove --  
you  
22 can satisfy the requirement, the Plaintiff can satisfy  
it

whatever 23 by proving by a preponderance of the evidence, or  
24 the word we use, greater weight, that a Defendant had  
25 actual knowledge or alternatively.

1           It can be, this prong can be established by  
2     proving that a Plaintiff owing to the circumstances,  
given  
3     all of the information and so on, that was at the --  
that  
4     the -- was at the Plaintiffs' disposal, that he should  
5     have known that this was taking place.

6           Now, I say that because in this case, and  
again,  
7     it is going to be for the jury to decide, and I realize  
we  
8     have not had the opportunity to hear General Vides'  
9     testimony on this, but, for example, Dr. Romagoza has  
10    testified that he believes that General Vides literally  
11    was present in the room in which he had been tortured,  
and  
12    that the general uttered statements that might be  
13    interpreted as condoning the torture.

14           And, then that is followed up by testimony  
having  
15    seen the general when he was leaving. Again, that might  
16    be interpreted as condoning what had taken place. It  
17    would seem to me if that is credited by the jury, that  
18    that would constitute actual knowledge of the torture.

19           On the other hand, the alternate, but  
nonetheless  
20    equally acceptable way of establishing that prong.

Would

that 21 be to show if someone -- that they should have known  
that 22 it was taking place because of all of the information  
23 was available to them.  
isn't 24 That is really what you are trying to say,  
25 it?

1 MS. VanSCHAACK: It is. Would it be your  
2 suggestion that we spell that out along the lines that  
it  
3 is --

4 THE COURT: I think you should give that  
another  
5 try. I will do the same. And I know it is tough for  
6 lawyers to do. You all have stepped yourself -- we  
ought  
7 to get rid of the legalese, and use as much  
8 straightforward English as we can so people know what we  
9 are talking about. I know it is tough here, we are  
going  
10 to have to get the right numbers because this as it is  
11 drafted talks about what was the first element.

12 MS. VanSCHAACK: That is right. We have to  
13 reorder this.

14 THE COURT: Could I suggest we try to do it  
that  
15 way? I think that is what you are trying to say.

16 MS. VanSCHAACK: I think that is right. We can  
17 draft some language along those lines.

18 THE COURT: And notice we go to and change of  
19 guilty to actual or presumed knowledge, why don't we  
20 change it to -- presumed is right, but why don't we  
change  
21 it to know or should have known.

22 MS. VanSCHAACK: That is fine.

23                   MR. KLAUS:  Why don't we just change it to  
24   knowledge?

25                   THE COURT:  Well, because I think there are two

1 different concepts. I think actual or presumed is  
2 accurate, you see, and simplified saying knew or should  
3 have known does the same thing. I don't think it makes  
4 big difference.

5 MR. KLAUS: I think we should try to be  
6 consistent. If the words are in the elements, we should  
7 use them in the explanation.

8 THE COURT: I do, too. I think that makes  
9 sense.  
10 Okay.

11 The next one would be acts of omission. Let's  
12 take a look at that.

13 It seems to me this goes back to what Mr. Klaus  
14 said and what I think Ms. VanSchaack has tried to do,  
15 and  
16 that is rather than using a standard conduct or  
17 description, you refer to a specific element. We want  
18 to  
19 make sure we have the right number.

20 MS. VANSCHAACK: That is right. The other  
21 change  
22 we made within the first sentence is just a slight  
23 restructuring. With all due respect, it was a tiny bit  
24 circular, so we tried to make it more to the point,  
25 which  
26 is to say this element is satisfied where there is  
27 evidence that the military commander failed to take all

the 23 necessary and reasonable measures to prevent or punish

24 commission of abuses.

25 And that terminology, failure to take all



1 reasonable and necessary measures is drawn from the  
2 statute of the International Criminal Tribunal for the  
3 former Yugoslavia, and adopted by the Eleventh Circuit  
in  
4 Ford.

5 THE COURT: Where do they do that?

6 MS. VanSCHAACK: That was a point on appeal by  
7 the Plaintiffs in Ford, that the language all necessary  
8 and reasonable measures established is too high a  
9 standard, and the Eleventh Circuit in a short paragraph,  
10 if I recall, looked at the statute of the two war crime  
11 tribunals, and concluded that was the prevailing  
statutes.

12 So we kept it here, and I just replaced --

13 THE COURT: Let me go back. I want to make  
sure  
14 I understand the standard that that referred to.

15 This refers to the failure to prevent the  
16 commission of these offenses, tortures or abuses by  
17 failing to punish subordinates after the commission?

18 MS. VanSCHAACK: It encompasses both. In a way  
19 there are two ways which a Defendant commander can fail  
to  
20 discharge his duty. The first is to fail to prevent  
21 abuses going forward, and the second is to fail to  
punish  
22 those abuses that have already occurred.

23                   As we discussed today, there is a convergence  
24           that happens there where failure to punish also operates  
25           as failure to prevent. What the first sentence is

trying

1 to set out, there are two alternative ways to consider  
2 whether or not a Defendant commander has fully  
discharged  
3 his duty under the doctrine, has he failed to prevent  
4 those abuses or failed to punish those abuses. The  
juris  
5 prudence of the War Crimes Commission is clear that the  
6 commander has a duty to do both.

7 THE COURT: It is interesting, because it seems  
8 to me in the Ford case we got caught up in the issues of  
9 failure to investigate and punish, understanding that  
they  
10 could be different, and that there was an obligation to  
do  
11 both. That the investigation was the first step. You  
had  
12 to find out who was committing these acts, and if you  
were  
13 successful in that regard, then there obviously was  
14 according duty to punish those people that you concluded  
15 had committed the act.

16 MS. VanSCHAACK: That is right. And the  
central  
17 feature of that trial was the question whether or not  
the  
18 Defendants had adequately discharged their duty to  
punish  
19 the perpetrators of that particular act. There was a  
lot  
20 of testimony about whether or not the investigation was

21 sufficient, prosecution was sufficient, whether the  
22 investigation went high enough up the chain of command.

23 MR. KLAUS: No. What it was really about, the  
24 investigation was delegated.

25 THE COURT: Yes, that is right. Or that it was

stepping 1 stopped at some point by Duarte or somebody else  
2 in and setting up a blue ribbon commission.

3 What is defense view of the acts of omission  
4 revision to that section?

5 I would like to suggest, if I can, and this is  
6 probably just style, I think it should say the second  
7 element of this prong may be satisfied where the  
8 Plaintiffs proved by a preponderance of the evidence or  
9 greater weight that a military commander -- and I think  
we 10 probably need to make it less generic, by greater weight  
11 of the evidence that the Defendant, that a Defendant  
slash 12 military commander failed to take all necessary and  
13 reasonable measures to punish.

14 MS. VanSCHAACK: And I think we would want to  
15 include prevent as well since it is a two part standard.

16 MR. KLAUS: I go back to look at the  
17 International Criminal Court statute, that is referred  
to, 18 that is what we used for the foundation last time, that  
is 19 the state of the law.

20 What that says is military commander. We can  
use 21 the Defendant failed to take all necessary and  
reasonable

22 measures to prevent or repress the commission --

23 THE COURT: Let me suggest this is what you are

24 really saying. You are saying that the commanders  
failed

25 to take all reasonable measures to punish and thereby

1 prevent. Isn't that what you are saying?

2 MR. KLAUS: No. I am saying either to prevent

--

3 it is two separate things. If you take the measures to  
4 prevent it, obviously in this case, you know, they are  
5 saying it wasn't prevented.

6 THE COURT: Let me come back to the facts as I  
7 are suggested so far by the evidence. The Plaintiffs  
are

8 suggesting there were massive, massive human rights  
abuses

9 of the highest order, killing of human beings,  
civilians,

10 and the Plaintiffs are saying that no one, no officer  
was

11 ever punished, accused or punished, but certainly not  
12 punished for any of these offenses.

13 And the testimony has been that it was that  
14 failure to pinpoint and punish somebody that effectively  
15 gave the green light for other members of the security  
16 forces to engage in subsequent acts. Now, isn't that  
what

17 the Plaintiffs are saying here, that it was the failure  
to  
18 punish and thereby prevent -- the failure to punish for  
19 earlier human rights abuses, earlier torture that led to  
20 the tortures in this case?

21 MS. VanSCHAACK: I think our effort has been to

abuses

22 establish more broadly not only failure to punish abuses

23 after the fact but failure to intervene before such

at

24 happened. And in particular Professor Garcia testified

25 length about various other options in terms of educating



1 troops, creating a system of reporting, et cetera, that  
2 would have enabled individuals within the chain of  
command  
3 of the Salvadoran military forces to prevent the  
4 atrocities before they even occurred.

5 We tried to present evidence of both prongs of  
6 the acts of omission element, both there was a failure  
to  
7 prevent abuses before they happened, and after the fact  
8 there was a failure to punish them. It happens that  
9 today's testimony tends to focus on failure to punish  
10 after the fact.

11 But Professor Garcia did testify about other  
12 measures, ex ante, before things happened, that would  
have  
13 ideally prevented these abuses from happening at all.

14 THE COURT: Okay.

15 MS. VanSCHAACK: So we would prefer to have  
both  
16 options presented as to how this prong can be satisfied,  
17 this prong of the Doctrine of Command Responsibility can  
18 be satisfied. And I have the language of the ICC  
statute  
19 in front of me, and it does include preventing before  
the  
20 fact and punishing after the fact, and they are  
21 intertwined. And this green light theory exemplifies  
22 that, there are two separate duties on the part of the

23 Defendant, and the evidence has tried to -- we have  
tried

24 to adduce evidence on both aspects of that.

25 THE COURT: What does the Torture Victim

1 Protection Act say?

not

2 MS. VanSCHAACK: Unfortunately that Act does  
3 set forth a precise standard for command responsibility.  
4 Legislative history indicates that individuals can be  
5 under the Torture Victim Protection Act, under the  
6 Doctrine of Command responsibility, and they cite the  
7 Amashta (phonetic) case and Marcus case and other  
8 responsibility cases we've talked about.

sued

command

known

where

to

9 It does say, if I remember it correctly, that  
10 knowledge is either actual knowledge or should have  
11 idea, and a defendant can fail to discharge his duty  
12 he fails to either prevent or punish, but we can go back  
13 to look at the precise text of that legislative history  
14 be sure.

responsible

in

for

15 THE COURT: Well, seems to me what the Eleventh  
16 Circuit pointed out is that the legislative history  
17 clearly indicates an intention to hold people  
18 for human rights violations, war crimes, and that it is  
19 that context that the Doctrine of Command Responsibility  
20 has been found to exist in the statute, or be a basis

21 liability.

22 And The Court goes on and indicates that in

23 looking at what this doctrine is and how it has been

24 employed, it is appropriate to look at the tribunals  
that

25 were set up for the former Yugoslavia or the atrocities

1 committed as to how they have understood the doctrine.

2 MS. VanSCHAACK: That is right.

3 THE COURT: You think punish or prevent is an  
4 acceptable way to handle that?

5 MS. VanSCHAACK: I do.

6 THE COURT: Okay.

7 MR. KLAUS: Or submit to competent authorities  
8 for investigation and prosecution.

9 THE COURT: You need to use the microphone,  
10 Mr. Klaus, if you would, only because the interpreters  
are  
11 listening through headphones.

12 MR. KLAUS: Has to be all three elements,  
13 to punish, failure to prevent, or the failure to submit  
to  
14 a competent authority for investigation and prosecution.

15 THE COURT: Let me take a look at what we had  
16 originally.

17 Does the plaintiff object to submitting the  
18 matter to competent authority for investigation and/or  
19 prosecution?

20 MS. VanSCHAACK: We set forth the basic  
standard,  
21 and then there is the discussion of forwarding  
22 investigation to other authorities and it does indicate  
23 that if you fail to submit the matter to the competent

24 authorities, that will constitute violation of this  
prong.

25 So at the risk of making the first sentence ten

separated 1 lines long, it may make better sense to keep it  
2 as we have, where the first sentence is a basic  
3 explanation of the prong, and second sentence set forth  
4 ways in which that prong can be violated or can be not  
5 adhered to and one of those is failure to submit the  
6 matter to competent authorities. So I think that is in  
7 here in the language that we've got.

8 In fact, it goes farther than that, there is a  
9 discussion here of failure to take disciplinary action  
as 10 well. The idea is you must do something internally or  
you 11 must forward the investigation to the competent  
12 authorities, and we've added a proposed third option  
which 13 indicates that the Doctrine of Command Responsibility  
14 requires that the commander insure that any subsequent  
15 investigation is a credible one.

16 And that is drawn from the juris prudence of  
the 17 Tokyo Tribunal in which there were a number of instances  
18 where the Defendants forwarded investigation or  
delegated 19 responsibility to investigate and not follow-up on it,  
and 20 the result was a sham investigation, and Tokyo Tribunal  
is 21 clear that it did not satisfy it.

your

22                   THE COURT: Let's do this, let's go back and do  
23                   some drafting. I will do the same as well. I think  
24                   comments have been very helpful, and let's go back and  
25                   take another look at Ford versus Garcia, and the



1 principles that are set forth there.

2 I really think it would be helpful, if it is  
3 possible, to have the Plaintiffs have a candid but  
4 confidential discussion with the defense regarding some  
of  
5 their concerns to see if we can't somehow, number one,  
6 limit the statutes that we are proceeding under to get  
7 away from the anomaly of having different elements as to  
8 different Plaintiffs, some of which are far less  
9 significant than -- for instance the generic concept of  
10 torture, and the types of things we have been  
discussing.

11 And I think what would allow us in the elements to  
specify  
12 absolutely what we are talking about, so we are not  
using  
13 broader and perhaps more amorphous phrases, like human  
14 rights violation, when we are really talking about  
severe  
15 torture and things like that.

16 Let's stop. I promised Mrs. Stipes I won't go  
17 beyond six, but what I would like to do is make a target  
18 tomorrow to round out the command responsibility  
19 instruction if we can, or at least get some drafts that  
20 would allow us to reflect on it, and we will move on to  
21 some other things that we need to put in the jury  
22 instructions.

23 MS. VanSCHAACK: Thank you.

24 THE COURT: How about the defense, anything  
else

25 we need to raise?

1 MR. KLAUS: No.

2 THE COURT: Can I have the draft in the  
morning?

3 MR. KLAUS: Well, it will be handwritten.

4 THE COURT: That is okay, no problem, but I  
5 really think it would be helpful to have your thinking

on

6 that. It is so tough when someone is just

7 extemporaneously making suggestions. At some point when

8 we get to the tough things, we need to go back and look  
at

9 the other source document, and make sure we are bringing  
10 these things forward.

11 MR. KLAUS: What I did, I worked from yours  
like

12 we agreed and crossed things out.

13 THE COURT: All right. Let's be in recess and  
we

14 will reconvene tomorrow morning at 9:30.

15 (Thereupon, trial was recessed at 6:00 p.m.)

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1		I N D E X			
2		WITNESSES FOR THE PLAINTIFFS			
3		Direct	Cross	Redirect	Recross
4	TERRY KARL	1069			
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