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

Florida

JUAN ROMAGOZA ARCE, JANE ) Docket No.  
DOE, in her personal capacity ) 99-8364-CIV-HURLEY  
as Personal Representative of )  
the ESTATE OF BABY DOE, )  
Plaintiffs, )  
vs. ) West Palm Beach,  
July 9, 2002  
JOSE GUILLERMO GARCIA, an )  
individual, CARLOS EUGENIO VIDES )  
CASANOVA, an individual, and ) VOLUME 8  
DOES 1 through 50, inclusive, )  
Defendants. )  
\_\_\_\_\_ x

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

APPEARANCES:

For the Plaintiffs: JAMES GREEN, ESQ.  
PETER STERN, ESQ.  
BETH VansCHAACK, ESQ.  
For Defendant: KURT KLAUS, ESQ.  
Court Reporter: Pauline A. Stipes, C.S.R., C.M.



1 THE COURT: Please be seated, ladies and  
2 gentlemen.

3 Let me just take a moment, if I might, because  
4 there is one thing I said I wanted to put on the record  
5 out of the presence of the jury and I didn't get the  
6 opportunity to do that last night. It dealt with  
7 Professor Karl's disclosure of the underlying basis for  
8 some of her opinions.

9 And as we discussed yesterday, Rule 703 as  
10 amended prohibits expert testimony from bringing out  
what  
11 would be inadmissible foundational information relied  
upon  
12 by an expert. However, the rule is quite explicit that  
13 facts or data that are otherwise inadmissible shall not  
be  
14 disclosed to the jury by the proponent of the opinion or  
15 inference unless The Court determines that their  
probative  
16 value in assisting the jury to evaluate the expert's  
17 opinion substantially outweighs their prejudicial  
effect.

18 I want the record to reflect in overruling the  
19 Defendant's objection, it was my ruling, and I now  
20 reaffirm the ruling, that the disclosure of the  
underlying  
21 information and its probative value did indeed and will  
22 indeed assist the jury to evaluate the expert's opinion

23 and it substantially outweighed its prejudicial effect.

24 In making this judgment, first, I determined

25 the -- and I looked at whether the foundational

before, 1 information was itself admissible. As I indicated  
upon 2 in large part Professor Karl has looked at and relied  
admitted 3 State Department cables, many of which have been  
4 into evidence without objection.

5 So that is an indication of someone looking at  
6 information that is itself admissible into evidence, and  
7 indeed has in fact been admitted, but we all realize in  
8 addition to that experts can look at data that  
themselves 9 would not be admissible, but as long as they are the  
type 10 of data which are normally relied upon by experts in  
that 11 field, and are reliable, they may be relied upon by the  
12 expert as a basis for the opinion.

13 Now, as I mentioned yesterday, when talking  
about 14 the meeting between the Secretary of State or the  
meeting 15 between the Vice President and General Vides, the  
witness 16 indicated that she had access to Government documents  
that 17 were generated at that time cataloging the dialogue and  
18 discussion that had taken place.

19 I think a strong argument can be made that  
those

803.8.

20 types of documents are themselves admissible under

21 And in addition to that, if The Court needs to make that

22 additional finding, it is my conclusion that their

23 probative value in assisting the jury to evaluate the

24 expert's opinion substantially outweighs any prejudicial

25 effect.

I  
Court  
are  
and  
you,  
to  
may

1           But I wanted to make that clear on the record.  
2           didn't think it was appropriate to say that in front of  
3           the jury, but I do think the rule requires that The  
4           make that finding.  
5           Now, I passed out what I marked as The Court's  
6           second draft on the command responsibility instruction.  
7           Let me tell you what I did so this will not confuse you.  
8           Yesterday we began to discuss the fact that if  
9           the Plaintiffs proceed under both statutes, that there  
10          some additional elements that obviously are different  
11          broader than torture. And what I did was omit that,  
12          because I thought that at a later time, depending on the  
13          Plaintiffs' decisions in this regard, it is going to be  
14          very easy to go back and add on the additional language.  
15          But I wanted to put the concept in front of  
16          that is, listing the elements as we discussed them  
17          yesterday, there are some stylistic changes, but simply  
18          have a draft and go from there.  
19          I have a copy of the defense proposed  
20          instruction, we may be crossing wires here, because we  
21          be proceeding along in the same direction. But if you

22 look at these and when we meet this evening we can again  
23 go back and talk about them.

24 MS. VanSCHAACK: We have a draft as well that  
we  
25 will circulate.



1 THE COURT: Wonderful.

2 Mr. Marshal, is our jury present?

3 Would you bring in the jury, please?

4 I wanted to make a suggestion, too. I think it  
5 would be helpful if we start referring to and labeling  
6 these documents in a special way, because at some point  
it  
7 is going to be necessary, or it may later become  
necessary  
8 for the appellate court to go back and be able to look  
at  
9 the document we were talking about, whether it is  
10 Plaintiffs' First Amendment, court's first, second,  
11 Defendants' first, second, and so on.

12 I suggest we keep it as simple as possible, but  
I  
13 really think it is important that the original document  
14 you file be labeled that way, even if you go back and  
15 write on it, so that should anyone else be trying to go  
16 back and track whatever progress is made or not made.  
17 They will be able to see the documents we were talking  
18 about. It gets very difficult if you don't do that.

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

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

22 When we stopped yesterday, we were in direct

23 examination of Professor Karl, so let me turn back to  
24 Mr. Stern and allow the professor to retake the witness  
25 stand.

1                   By the way, Mr. Marshal, I notice the  
microphone 2                   is sinking lower and lower.

3                   THE WITNESS: We do have a problem.

4                   THE COURT: Okay, good.

5                   Mr. Stern when you are ready, you may proceed.

6                   DIRECT EXAMINATION (RESUMED)

7 BY MR. STERN:

8 Q. Professor Karl, shortly before we concluded  
yesterday, 9 I asked your definition as a scholar in the area of  
10 politics and military, your definition of the word  
11 impunity. Would you please repeat that for us today?

12 A. Yes, impunity simply means that an organization or  
13 entity, because of its privileged position, exempts  
itself 14 from the law, so it means above the law.

15                   MR. STERN: Could I please have slide number 13  
16 on the screen, which is an excerpt from the deposition  
of 17 Ambassador Edwin Corr?

18                   MR. KLAUS: Give us the page number.

19                   MR. STERN: Page 91.

20 BY MR. STERN:

21 Q. Professor Karl, I will read this.

22                   "There was this brotherhood of military officers, it  
23 was really like these guys kind of went to the military

24 high school, to the academy and they worked in the same  
25 firm for the next 20 years. They all knew each other

very,

1 very well.

willing

2 "Did that mean when abuses came up, they were  
3 to cover for each other?

4 "Certainly, in some cases that was absolutely so.

concerned

they

5 "Did they do that in part because they were  
6 that they would be implicated for their own abuses if  
7 pointed the finger at others?

an

8 "I think that they knew if they did point the finger  
9 at others, that their other officers would view that --  
10 they would lose favor with the other officer. There was  
11 unwritten code no different than juveniles that you don't  
12 rat on people.

13 "And that inhibited the reporting of human rights  
14 abuses in the military, didn't it?

15 "Yeah."

16 Professor Karl, is Ambassador Corr's testimony  
17 consistent with your understanding of impunity?

18 A. Yes.

19 Q. And did that impunity extend to the military high  
20 command?

21 A. Yes.

22 Q. Including Minister of Defense?

23 A. Yes.

24 Q. And Director of the National Guard?

25 A. Yes.

of 1 Q. Professor Karl, are you familiar from your studies  
2 human rights abuse with the notion of a code of silence?

3 A. Yes, I am.

scholar, 4 Q. Could you tell us what that means to you as a  
5 please?

6 A. Code of silence is a term that we often use when an  
7 organization, often used in -- even in domestic police  
8 cases in the United States, in looking at any  
organization

9 that protects itself and its members, it is used in  
10 thinking about the police sometimes, military, the mafia,  
11 the fraternity, any group that might actually operate to  
12 protect each other by maintaining a code of silence.

to 13 Q. In your view does that phrase have some application  
14 the Salvadoran military in 1979 through 1983 time period?

15 A. Yes, it does.

hand 16 Q. If I may approach, Professor Karl, I am going to  
17 you a copy of Plaintiffs' Exhibit 557, which is in  
18 evidence.

19 Professor Karl, can you identify Exhibit 557 for us?

of 20 A. Yes. This is what is called a post reporting plan  
21 Ambassador Edwin Corr. He was Ambassador from 1985 to  
22 1988. Every year at the end of the year an Ambassador

is

23 writes a document that is a summation of the main issues  
24 that this Ambassador sees at the end of the year. This  
25 the post reporting plan of that Ambassador.



1 Q. What is the date on the document?

2 A. Sorry, I don't see it.

3 Q. If you look above the list of addresses.

4 A. Still don't see it. June, 1988. I can't read the  
5 day, I am sorry, on the copy I have. It is not a very  
6 clear xerox.

7 Q. Can you set in context for us briefly what was the  
8 political situation in El Salvador in June of 1988 with  
9 respect to human rights abuses by the military?

10 A. Yes. Ambassador Corr arrives in 1985 in El  
Salvador,  
11 and so he has not been there during the period that I  
12 talked about yesterday, which I called mass terror, or  
mass  
13 state terror. He has come in after the Bush visit, and  
14 when human rights abuses drop quite substantially.  
15 What happens in the period of time from the end of  
16 1987 on, even though human rights abuses continue the  
whole  
17 time, they start to rise quite sharply. In the end of  
'87  
18 and '88 -- and this is a memo in his annual report to not  
19 only the Secretary of State, but I believe this is  
20 circulated quite widely through the embassies, U.S.  
Mission  
21 in United Nations, goes to all the major Latin America as  
22 well.

23           He is reporting in the document his concern the fact  
24 that human rights once again, the same pattern of human  
25 rights that we saw earlier are reappearing.

on

1 Q. Professor Karl, does Ambassador Corr's name appear  
2 the document to denote his preparation of the document?

3 A. Yes.

4 Q. Where is that?

5 A. The end of the document.

6 MR. STERN: Could I ask for bates page 3816,  
7 first page of 557 on the screen, please? If you could  
8 highlight the portion under the dotted line.

9 BY MR. STERN:

10 Q. Professor Karl, can you read -- I realize we have a  
11 faded copy. Could you please identify for us what is --  
12 appears on the left-hand side of the screen here?

the

13 A. Yes. It says from the Embassy in San Salvador to  
14 Secretary of State Washington, D.C., immediate, and lists  
15 the Embassies that received this. Embassy in Lima,  
16 Managua, San Jos,, U.S. mission in Geneva. That is the  
17 mission of the United States. U.S. mission in United  
18 Nations in New York, and I don't quite -- I can't quite  
19 tell what the last one is.

20 Q. Do you attribute any significance to this particular  
21 distribution?

22 A. Yes, as a post reporting plan as I explained, and I  
23 think you can see that also in the subject matter,

fact 24 military's response to human rights accusations. The  
widely 25 that it is being circulated so widely and shared so

1 means that it is a very important memo, it is a memo more  
2 important than the ones that just go back and forth  
3 between, say, the Embassy and State Department. This has  
4 more weight than that.

reporting

5 Q. And what does the subject line state on this  
6 plan?

7 A. Post reporting plan, military's response to human  
8 rights accusations.

9 MR. STERN: I would like to go to the next page  
10 and ask the technician to highlight numbered paragraph  
11 three.

12 BY MR. STERN:

13 Q. Would you read this paragraph for us, please,  
14 Professor Karl?

used

15 A. "The number of officers who now advocate methods  
16 by the death squads of the past appears to be few and  
17 diminishing. The officer corps, however, circles its  
18 wagons when faced with human rights scrutiny, in part

from

19 a skeleton in the closet syndrome that keeps one officer  
20 from tattling on another for fear that each accused will  
21 become an accuser until all of the long buried secrets

are

22 unearthed. The skeletons not only include human rights

concerned

23 abuse but corruption. Those officers who are not

24 about hidden skeletons have nevertheless been inculcated

25 with a concept of corporate military honor that does not

1 permit any public admission of military wrongdoing no  
2 matter how grievous the crime and rejects all scrutiny by  
3 civilians."

4 Q. Professor Karl, does this passage shed any light on  
5 the definition of impunity that you testified about this  
6 morning?

7 A. I think this really is the definition of impunity in  
8 this statement. He is describing a code of silence in  
9 which officers will not tattle on each other, I think  
that

10 is the word he uses, because all of these secrets will  
come  
11 out. And that is the code of silence that I referred to  
12 earlier.

13 Q. Does that syndrome extend to the military high  
14 command?

15 A. Yes, it does.

16 Q. Including Minister of Defense?

17 A. Yes, it does.

18 MR. STERN: Could I ask the technician to  
19 highlight the next paragraph, please, number four?

20 BY MR. STERN:

21 Q. Would you please read this paragraph for us?

22 A. Yes. "The civilians in the Government have acceded  
to  
23 the military's desire for non interference in the El

contact

24 Salvador Armed Forces internal affairs by avoiding

25 with the military, generally out of an ingrained sense of



1 fear and a belief that to get involved would be of no use  
2 in any case. They do not enact laws that place limits or  
3 duties on the military, nor do they normally press for  
4 prosecution of military human rights offenders."

5 Q. Professor Karl, what, if anything, does this passage  
6 suggest to you about the relationship between civilian  
7 authorities and military in the area of human rights  
8 abuses?

9 A. There is no civilian control over the military,  
10 military is still the dominant force in the country, and  
11 civilians are afraid of the military.

12 MR. STERN: I would like to ask the technician  
to  
13 go to page 3820, and highlight numbered paragraph seven,  
14 please.

15 BY MR. STERN:

16 Q. Would you please read this paragraph for us?

17 A. I want to clarify when it says ESAF, that is El  
18 Salvador Armed Forces. I will read it as such.

19 Q. Thank you very much.

20 A. "The El Salvador Armed Forces normal reaction to a  
21 human rights accusation is to deny involvement, as  
happened  
22 in the November 1986 disappearance of 17 year old Miguel  
23 Angel Rivas. When the evidence of El Salvador Armed  
Force

24 involvement is stronger, as in the June, 1987 La Laguna  
25 neck cutting incident, or the May, 1987 Palitos Well

an  
El  
in

1 murders. The El Salvador Armed Forces tries to generate  
2 alternative explanation to the effect that the FMLN was  
3 responsible. When Bishop Rosa Chavez accused the First  
4 Brigade of the January, 1988 Canton Mel,ndez (Puerta Del  
5 Diablo) murders. The El Salvador Armed Forces responded  
6 with an expression of outrage, obviously intended to  
7 intimidate the bishop from further declarations of this  
8 sort. In all of these cases, as well as many more, the  
9 Salvador armed forces also responded by blocking any  
10 civilian attempts at internal investigation of the  
11 military. The El Salvador armed forces appears to have  
12 conducted some internal investigations, most noticeably  
13 the Melendez murders, but no resulting reports have ever  
14 been released. A report was released in the Las Hojas  
15 case, but it was clearly a piece of fiction that did not  
16 explain the legally recognized facts of the case.

17 Q. I would like to break this down and take it one step  
18 at a time.

do  
Forces

19 Based on this paragraph, what conclusions, if any,  
20 you draw about the response of the El Salvador Armed  
21 to accusations of human rights abuse?

murders,

22 A. First of all, the paragraph lists a number of

23 so there are a number of murders that are linked to the  
24 Salvadoran Armed Forces, and then after describing these  
25 murders, it describes Bishop Rosa Chavez meeting with his

1 denunciation -- excuse me -- of a particular murder which  
2 is the Canton Melendez murder.

3           The Ambassador goes on to say the investigation of  
the  
4 many murders are blocked by the El Salvadoran Armed  
Forces.

5 In the very few cases that there is any internal  
6 investigation at all, there are no released reports, so  
7 there is no way for anyone to know what happened in any  
8 possible internal investigations. And the one report  
that  
9 was released in the Las Hojas massacre was labeled by the  
10 Ambassador a piece of fiction.

11 Q. Did the Salvadoran military initially deny  
involvement  
12 in the human rights abuses that are set out in this  
13 paragraph?

14 A. I believe having reviewed all of those, and without  
15 going into detail about every incident, that the El  
16 Salvador Armed Forces denied involvement in every single  
17 one.

18 Q. Is the -- what this cable refers to as a normal  
19 reaction of the Salvadoran military consistent with your  
20 review of other information and documents about the  
21 military -- Salvadoran military handling of accusations  
of  
22 human rights abuse?

23 A. You are referring to the normal reaction of  
24 intimidating the messenger and not investigating these  
25 cases?

1 Q. What is set out in the cable.

2 A. Yes, yes, it is.

3 Q. In your opinion, was it within the power of the  
4 Minister of Defense to change the reaction of the  
5 Salvadoran military to such accusations of human rights  
6 abuse?

7 A. Yes.

8 Q. And in 1988 when this cable was written, who was the  
9 Minister of Defense of El Salvador?

10 A. General Vides Casanova.

11 Q. And if the pattern of responding to human rights  
12 abuses had been altered, do you believe that that would  
13 have had any affect on the occurrence of later human  
14 abuses?

15 A. Absolutely.

16 Q. How so?

17 A. Because when you have a series of murders, you don't  
18 investigate them, or you conduct only internal  
19 investigations in which no one can know what happened, no  
20 one can know what was done about them, you produce a

rights  
report

21 that is labeled by the Ambassador a piece of fiction, you  
22 blame these murders on another force when the evidence is  
23 clearly different from that, all of that is a signal. It

no

24 is a signal to your officers that they will be protected

25 matter what they do.



officers 1           And it is in my view a green light that these  
2           can go on committing the kinds of abuses that they do in  
3           the future, and that nothing will happen to them, they  
will 4           be protected.

5           Q.    Could that green light have been sent without the  
6           support of the Minister of Defense in your opinion?

7           A.    No.

8                   MR. STERN:  I would like to ask the technician  
to 9           go to page 3822 and highlight numbered paragraph nine  
down 10          to the end of the page.

11          BY MR. STERN:

12          Q.    And Professor Karl, we skipped a portion of the  
cable. 13          You have it in front of you, perhaps you could summarize  
14          the paragraph or two preceding this paragraph, if you are  
15          able to do that.

16          A.    Just one moment.  The cable is extremely long, and  
we 17          have skipped a section about, I believe -- I believe we  
18          skipped eight; is that correct?

19          Q.    Yes.

20          A.    My copy is not great.

21          Q.    Yes.  Preceding paragraph down at the bottom of the  
22          page number 3820 is entitled the officer corps.

23 A. Yes. Excuse me, my copy is not terrific here.

24 Paragraph eight before this is about the officer  
corps

25 blocking investigations, and gives a number of details

were  
six  
by

1 about which investigations were blocked, and how they  
2 blocked. And it lists, I believe -- it lists at least  
3 or seven cases of investigations that have been blocked  
4 the Salvadoran military.

we

5 Q. Could I please ask you to read paragraph nine that  
6 have on the screen now?

you

7 A. The list of cases above that refers to specific  
8 murders and gives another -- lists the neck cutting  
9 incident. Canton Melendez murders, a number of murders  
10 have seen on the cable.

above

11 And this is the paragraph that follows and it says:  
12 "The perpetrators may have been acting on orders from  
13 or may be otherwise protected, possibly by having  
14 incriminating evidence against superiors or by having  
15 commanders who feel they must protect their subordinates  
16 when they commit abuses -- if those abuses appear to have  
17 been committed in the name of defeating the subversives  
18 even without orders to do so. Whatever the reason, the  
19 commanders involved have refused to assist in civilian  
20 investigations into the crimes."

21 Q. How do you interpret this language in light of your  
22 definition of impunity?

23 A. This is again what I mean by code of silence or  
24 impunity. This is a description of perpetrators, the  
25 people who commit these human rights abuses, either

acting

officers,  
investigate

1 from orders from above or protecting their fellow  
2 or protecting their subordinates will not reveal what  
3 actually happened in these incidences, will not  
4 them, will not prosecute officers, and will not punish  
5 them."

continue

6 Q. If you don't mind, I would like to ask you to  
7 reading.

Karl

8 MR. STERN: And ask the technician to go to the  
9 end of the paragraph on the next page when Professor  
10 is finished the portion of the first sentence.

11 BY MR. STERN:

12 Q. Could you read beginning with he --

13 A. "Even the USAID funded special investigative unit",  
14 and I believe that is the SIU, that is -- those are the  
15 initials for a investigative unit that was set up in part  
16 to deal with murders of U.S. citizens that were occurring  
17 in El Salvador.

(SIU)

graduate  
been

18 "Even the USAID funded special investigated unit  
19 commanded by a lieutenant colonel military academy  
20 and staffed entirely by active duty policemen, has not  
21 granted access to witnesses, firearms, or unit personnel

22 lists to try to solve some of the crimes. Note, the SIU  
23 was one of the grievances listed by the military  
commanders  
24 in the fall of 1987. Since then police force cooperation  
25 with the SIU even on cases not involving the military has

units 1 decreased. It is evident that the commanders of the  
2 are responsible for the obstruction of justice and they  
3 apparently can count on at least silence from anyone of  
4 equivalent or higher rank."

draw 5 Q. Professor Karl, what conclusions, if any, do you  
6 from the references in the passage to the SIU's handling  
of 7 human rights investigations?

8 A. What I think Ambassador Corr is saying here is that  
9 there is an investigative unit offered to the Salvadoran  
10 military. There were in fact other investigative units  
11 that had been offered as well. That there is no  
12 cooperation with these units, that this unit cannot  
13 interview witnesses, cannot look at the evidence of  
14 particular crimes, and that the, the cooperation seems to  
15 be obstructed. And he says at the level of officers and  
16 that they can count on the silence of anyone of  
equivalent 17 or higher rank.

18 So the obstruction is, in my view, tacitly being  
19 proved, if not specifically being proved, by the higher  
20 ranks, by the highest officials in the military.

21 Q. In your opinion, Professor Karl, would those high  
22 officials include Minister of Defense Vides Casanova?

23 A. It would especially include General Vides Casanova

highest 24 because he was Minister of Defense, and he was the  
would 25 commander in charge of determining how other officers



1 deal with these kinds of investigations.

2 MR. STERN: Could I have the next paragraph  
3 highlighted, please, paragraph ten?

4 BY MR. STERN:

5 Q. Could you please read this paragraph for us,  
Professor  
6 Karl, entitled the Code of Silence?

7 A. This is entitled the code of silence, and it says  
"The  
8 solidarity of the officer corps in covering up the human  
9 rights violations does not imply that all officers commit  
10 violations or condone them. The officers corps tolerance  
11 of officers who order human rights violations is only a  
12 part of a syndrome of tolerance, of incompetence and  
13 willful misconduct by other officers. Not only has no  
high  
14 ranking officer ever been convicted of a human rights  
15 violation, none has been dismissed for ineptitude in  
combat  
16 or gross misuse of government funds or other corrupt  
17 practices. In essence, an officer who graduates from the  
18 military academy is practically guaranteed to make  
colonel  
19 no matter what he does, short of resigning or dying."

20 Q. In your opinion, Professor Karl, what affect, if any  
21 was there -- what affect, if any, did the code of silence  
22 have on the Salvadoran military's handling of human  
rights

23 abuses by its members?

24 A. In my opinion the code of silence is the reason why

25 there is -- is the reason why no officer is punished,

1 prosecuted, investigated. There are occasional internal  
2 investigations as you can see, but no single officer, as  
it  
3 says, no high ranking officer has been convicted of a  
human  
4 rights violation. And he is writing this in 1988 when  
5 there are thousands and thousands of dead people.

6 MR. STERN: I would like to ask the technician  
to  
7 go to page 3827 and highlight paragraph 15.

8 BY MR. STERN:

9 Q. Would you read the passage that we have on the  
screen,  
10 Professor Karl?

11 A. Yes. This is called optimism and it is referring to  
12 the Canton Melendez case that I spelled earlier.

13 Would you like me to identify what that case is?

14 Q. Yes. Please.

15 A. The Canton Melendez case is a murder, several  
murders  
16 that occurred on New Year's day. Two Salvadoran families  
17 were returning to their homes January 1st, I believe,  
1988.  
18 They were -- and they lived in Canton Melendez, that is  
the  
19 area where they lived. They were returning home with  
their  
20 families, there wives, two infants, and a 12 year old  
boy.

21           They were stopped -- eyewitnesses reported that they  
22           were stopped by members of the National Guard and the  
Army,  
23           that both men and the 12 year old boy were taken away,  
and  
24           that the bodies of all three, including the boy, were  
25           subsequently found in a ravine. They had been tortured  
as

1 well.

2 Q. Professor Karl, is the information you gave us about  
3 the Canton Melendez case based on your view of  
declassified  
4 United States documents that you looked at to prepare for  
5 your testimony today?

6 A. Yes.

7 Q. Could I ask you to read the passage on the screen?

8 A. "The immunity of the military from unwanted  
9 investigation and prosecution is well entrenched and will  
10 be difficult to eradicate. It does not mean, however,  
that

11 the military will not do anything about human rights  
12 violations when they break into public view. The  
Melendez

13 murders --" which is also called Puerta del Diablo  
murders,

14 that is because the bodies were found there. "The  
Mel,ndez

15 murder case is instructive. The reactions of the high  
16 commanders to accusations of military involvement in the  
17 murders demonstrated clearly that they did not have prior  
18 knowledge of the military role. National Guard Commander  
19 General Larios --"

20 MR. STERN: Go to the next page, please.

21 Highlight the portion down at the bottom.

22 THE WITNESS: "National Guard Commander General

23 Larios stated publicly only two days after February 1st  
24 discovery of the bodies that the National Guard, the GN,  
25 would investigate the matter fully, very probably not

1 knowing that an eyewitness recognized one of the  
2 perpetrators as a National Guardsman from San Jos,  
3 Guayabal, S-A-N J-O-S-E G-U-A-Y-A-B-A-L. One of the  
4 perpetrators --" excuse me, I am backtracking. "They  
5 would investigate this very probably not knowing that an  
6 eyewitness recognized one of the perpetrators as a  
7 National Guardsman from San Jos, Guayabal. Defense  
8 Minister Vides and Chief of Staff Blandon reacted  
9 to auxiliary Bishop Rosa Chavez's accusations of First  
10 Infantry Brigade involvement. Then began an internal  
11 investigation."

angrily

12 Q. There is more about this incident, but how do you  
13 analyze the material we read regarding the military's  
14 response to the Melendez murders?

Guard

15 A. Ambassador Corr's report says that the National  
16 commander was willing to investigate this until an  
17 eyewitness -- until they discovered that there was an  
18 eyewitness who reported that one of the murderers was a  
19 member of the National Guard. When this was reported --  
20 and remember, this is a joint operation, there is also a  
21 military man involved, too, so there is both the National  
22 Guard and Army.

23 When that is reported to General Vides by the bishop  
24 of San Salvador, this is an extremely important figure,

25 there is not an Archbishop I believe yet, there might be.



1 When Bishop Rosa Chavez reports this directly to the  
2 Defense Minister Vides, Minister Vides acts angrily about  
3 this, and reports earlier this phrase I read earlier that  
4 the bishop felt intimidated by this, that he should not  
5 have brought this message to General Vides.

6 Q. At the time General Vides reacted angrily to the  
7 accusation, had the military conducted any investigation  
8 into this incident?

9 A. No. The investigation hadn't started yet. This  
would  
10 have been the beginning of an investigation, so the  
bishop,  
11 who is, as I explained earlier, recipient of many of  
these  
12 stories of murder, and in this case an eyewitness is  
13 actually, I believe, brought to him. I am not quite sure  
14 that he met with the eyewitness.

15 In this case, he represents those eyewitnesses to  
16 Minister Vides, and that would be to ask him to start an  
17 investigation, to take this seriously, that there are two  
18 men and a boy dead, there are eyewitnesses that say it is  
19 National Guard and Army, to take it seriously and  
20 investigate this.

21 Q. I would like to have the last line of this page  
22 highlighted. We read that and go on to the next page.  
23 Could you read this, what begins paragraph 16, please?

24 A. "The eyewitnesses to the abduction of the victims --

25 the eyewitnesses to the abduction of the victims  
eventually

1 gave declarations in court but failed to mention the San  
2 Jos, Guayabal National Guardsman or identify any of the  
3 other assailants except a former guerrilla whom they knew  
4 as Tony. The judge then ordered General Vides to provide  
5 the names of the First Brigade soldiers patrolling the  
6 Canton Melendez area on the night of the incident, but  
7 Vides responded with a list of 450 names, 50 of which are  
8 Antonios, and The Court must now seek the cooperation of  
9 First Brigade Commander Colonel Campos Anaya, which is  
10 unlikely to be forthcoming."

11 Q. Professor Karl, faced with the evidence of the  
12 murders, how did the judge in this case respond?

13 A. The judge ordered General Vides to provide -- the  
14 eyewitnesses had reported that one of these people was  
15 named Tony. The judge ordered General Vides to provide  
the  
16 list of First Brigade soldiers who were actually  
patrolling  
17 in Canton Melendez at the time, so he asked for the list  
of  
18 who were the people there at the time.

19 Q. And how did General Vides respond?

20 A. General Vides gives them 450 names, 50 of which are  
21 named Antonio.

22 Q. Please go ahead.

23 A. For the investigating judge, there is really no way  
to

24 move forward on this given the fact that he has 50

25 Antonios, and not the Antonios who might have been in the

1 area at the time. And so what he is forced to do in his  
2 investigation is go below General Vides to the First  
3 Brigade commander, who is Colonel Campos Anaya.

4 The code of silence memo that we are reading from  
5 indicates earlier that Commander Campos Anaya will not  
6 cooperate, and so he is saying at both of these levels,

the

7 level of General Vides, and the level of the First

Brigade

8 commander there will be no cooperation around this

witness

9 identification which will make it very difficult to find  
10 out who actually committed the Canton Melendez murders of  
11 these two men and this boy.

12 Q. Professor Karl, are you able to identify any reason  
13 why General Vides was unable to cooperate with this  
14 investigation?

15 A. No.

16 MR. STERN: Could we have the next paragraph  
17 highlighted on the screen, please?

18 BY MR. STERN:

19 Q. Could you please read this for us, Professor Karl?

20 A. "No information has surfaced on what the military  
21 investigation turned up, but Minister of Defense Vides,  
22 after discussions with the Ambassador and other factors,  
23 has decided to transfer Campos Anaya possibly as soon as

24 July 1st. In addition, the number of incidents in which  
25 the First Brigade was implicated appears to have dropped

1 following the beginning of the military investigation.  
2 This suggests that while the high command will not make  
3 public its discovery of military misconduct, nor look for  
4 misconduct as a routine practice, it will attempt to  
5 correct those problems that surface in public."

effect  
the  
6 Q. Professor Karl, what, in your opinion, was the  
7 of General Vides' decision to transfer Campos Anaya in  
8 wake of this incident?

One  
9 A. Well, I think there is actually two points here.  
10 is that because this is so public and because it involves  
11 the bishop and U.S. Embassy now, because they are both  
12 involved in this case, and because it has -- it's come to  
13 the light of day, if I can put it that way, an  
14 investigation is started.

this  
in  
15 And what you see is that if an investigation is  
16 started, in fact there is evidence here that if you do  
17 investigate, abuses will in fact drop, because he says  
18 investigation started and the number of incidents, human  
19 rights abuses in which the First Brigade are implicated  
20 seems to go down as that investigation begins.

way  
21 That investigation is blocked because there is no

I

22 to identify the 50 Antonios in the end, but it also makes

23 think a very key point that the person who was the

not

24 commander on the scene, in this case, Campos Anaya, is

with

25 prosecuted, he is not punished, he does not cooperate



another 1 an investigation, and instead he is transferred to  
2 entity where he can continue the same sorts of practices  
3 that we have just seen in the murder of these two men and  
4 this 12 year old boy.

5 Q. Without the publicity that you refer to, do you  
6 believe that any investigation into these murders would  
7 have taken place?

8 A. No.

future 9 Q. And from the prospective of having an affect on  
of 10 human rights abuses, how do you evaluate the sufficiency  
11 the transfer of Campos Anaya?

12 A. I think there is significant evidence that the  
13 transfer of officers from -- of abusers, of human rights  
14 abusers, or people who cover-up human rights abuse merely  
15 transfers the pattern of that commanding officer to  
another 16 entity.

17 So we can see in the pattern of transfers in El  
18 Salvador that I have personally looked at, when a person  
19 linked to human rights abuses in the National Guard is  
20 subsequently transferred to the Arce Battalion, or La  
Cato 21 Battalion, or some other battalion, the same human rights  
22 abuses tend to occur, same commander with the same

be

23 practices, with the same sense that that commander will

of

24 protected and never punished or convicted for the kinds

25 abuses that that commander was involved in in the first

1 place that that commander was located.

2 So the transfer process is not a process which can  
3 lower human rights abuses unless they are transferred  
4 entirely out of command positions completely, and that is  
5 not generally the case.

6 Q. Apart from what you just told us about, are there  
7 additional steps that in your view General Vides Casanova  
8 could have taken to address this situation with a -- with  
9 the intention to reduce future human rights abuses?

10 A. Absolutely. From the very beginning when the bishop  
11 walks in and says, I have evidence, Minister of Defense,  
12 that these two men and this boy was killed by the

National

13 Guard or by a member of the First Brigade, he could have  
14 said, thank you, Father, for bringing this to my

attention.

15 We will do an immediate investigation, we will look at

the

16 evidence, we will protect the witnesses, we will start a  
17 serious investigation. We will share that investigation  
18 with you. We will ask you as the Catholic Church that

has

19 the roots into the community to help us with the  
20 investigation. I will go in the records to find the  
21 Antonios in Canton Melendez that night. I will give a

22 direct order to my subcommander Campos Anaya to tell me

who

23 was there, to tell me the names of the men who were  
24 patrolling.

25 It could have looked completely different,  
completely

1 different.

2 MR. STERN: If I could ask the technician to  
take

3 the document off the screen, and I will move on to  
another

4 topic.

5 BY MR. STERN:

6 Q. Professor Karl, in your study of military  
institutions

7 and human rights abuses, do you examine patterns of  
8 promotion among military members and officers?

9 A. Yes, I do.

10 Q. And in your view, what affect is there, if any, of  
11 promotions on efforts to reduce military human rights  
12 abuses?

13 A. Well, I testified yesterday that it is very  
important

14 who rises in the military structure in the officer corps  
15 and who falls. If you -- as I testified General Garcia  
16 did, if you take the people with cleaner records and  
17 reformers, and push them out of the armed forces, and  
push

18 them out of positions of command, and ultimately push  
their

19 leader out of the military entirely, you send a message  
20 that those people who are clean and who will investigate  
21 other officers will not make it in this military. They  
22 will not make it.

23           If you then couple that with the active promotion of  
24           people who are linked repeatedly to death squad  
activities,  
25           to torture, to murder inside -- to commanders who are

if 1 linked to civilian murders, to carrying out atrocities,  
2 you promote those people, you are sending a message to  
3 everyone else, this is how you get ahead in the military,  
4 you commit these abuses, and you will rise. You will get  
5 rewarded for these kinds of killings.

6 Q. Have you looked for patterns of promotions among  
7 military officers during the time period when General  
8 Garcia was Minister of Defense?

9 A. Yes, I have.

10 Q. Have you done the same with the period when General  
11 Vides Casanova was Minister of Defense after 1983?

12 A. Yes, I have.

13 Q. Briefly, what are the documents and information you  
14 looked at to help you form your conclusions in this area?

15 A. I looked at a range of documents, I looked at  
cables.  
16 CIA monitored these promotions very carefully, so it  
17 reports on the promotion patterns of Salvadoran military  
18 officers. Many of these are public so you can read about  
19 them at the time.

20 If you read the newspapers, if you read the  
ceremonies  
21 that go on inside the military, you can see which  
officers  
22 are being promoted, and you can have their names and  
follow

23 their careers and see how they do.

24 I have looked at studies. There was a significant

25 study that was prepared for the U.S. Congress which is



1 called Barriers To Reform, which tracked the career paths  
2 of a number of officers so we could see who was promoted,  
3 who was not promoted, where they were promoted to, what  
the  
4 transfer patterns were.

5 Q. Focusing for the moment when General Garcia was  
6 Minister of Defense, are there promotions that you regard  
7 as significant with respect to the issue of human rights?

8 A. Yes.

9 Q. And can you name the individuals whose promotions  
you  
10 have in mind?

11 A. Yes, I can. There are many of them in General  
12 Garcia's -- the promotions that occurred under General  
13 Garcia, I have taken three. We would be here for a long  
14 time if we did all of them, I have taken three. A man  
15 named Nicholas Carranza, C-A-R-R-A-N-Z-A. Denis Moran,  
16 that is D-E-N-I-S, M-O-R-A-N. And Francisco Paco, P-A-C-  
O,  
17 Moran, M-O-R-A-N.

18 MR. STERN: I would like to ask the technician  
to  
19 put up on the screen slide 68, which is a portion of  
20 Exhibit 190 which is in evidence.

21 BY MR. STERN:

22 Q. Professor Karl, I am not going to ask you many

on

23 questions about this. Can you identify Carranza's name

24 this document?

25 A. Yes. After the words Minister of Defense in the

1 middle, Nicolas Carranza, sub-Minister of Defense, that  
2 makes him number two man under General Garcia.

3 Q. Is that the position he was promoted to when General  
4 Garcia was Minister of Defense?

5 A. Yes.

6 Q. What does this document tell us about sub-Minister  
7 Defense Carranza?

8 A. This is defense intelligence reporting the  
9 satisfaction of many military officers with assassination  
10 of leaders of the revolution Democratic front, which is  
11 what we call the FDR. Those were the six leaders that  
12 murdered in the Jesuit high school when they were having  
13 meeting. These are the six peaceful political leaders of  
14 the unarmed opposition murdered in 1980. This is a  
15 from the defense, intelligence report about what the  
16 reaction was of officers after those murders.

17 Q. And what, in particular, does this document tell us,  
18 focusing on the sentence in which Carranza's name is  
19 indicated?

20 MR. KLAUS: Objection. The document speaks for  
21 itself.

22 THE COURT: Let me hear the question again,  
23 please?

of

were

a

report

24                    Would you state the question again, please?

25    BY MR. STERN:

1 Q. Could I ask you to read the sentence that includes  
2 Carranza's name, please?

3 THE COURT: You may do so.

4 THE WITNESS: Referring to the statement that  
5 military officers were pleased with the assassination.

It

6 then goes on to say, "These feelings were expressed by  
7 several middle level Army officers on November 28, 1980

in

8 the presence of Colonel Jos, Garcia Merino, Minister of  
9 Defense, and Nicholas Carranza, sub-Minister of Defense,  
10 and both Garcia and Carranza indicated they supported

this

11 line of thinking. From the comments of all those

present

12 during this conversation, it was clear that Garcia,  
13 Carranza, and the other officers present accepted as a  
14 fact the military officers were responsible for the  
15 assassination of the six FDR leaders."

16 BY MR. STERN:

17 Q. Just briefly, are you familiar with other evidence  
18 relevant to Colonel Carranza in the area of human rights?

19 A. Yes. Colonel Carranza is one of the people most  
20 frequently mentioned in the CIA cables. His name is  
21 repeated over and over. It is also repeated in the

studies

22 I mentioned earlier, over and over. The reason is, he is

23 reported over and over by CIA as number one man  
24 coordinating assassination squads operating out of the  
25 National Guard, Treasury Police and National Police.

promoted

1 Q. Professor Karl, what position was Denis Moran  
2 to under Minister of Defense Garcia?

3 A. I believe he was made head of intelligence of the  
4 National Guard.

5 Q. In that capacity, was he implicated in any human  
6 rights violations by the Truth Commission?

7 A. Yes, he was. I believe you heard about him, he was  
8 one of the people implicated in the murders of the two  
9 Americans murdered at the Sheraton.

10 MR. STERN: I would like to put slide 55 on the  
11 screen, please. Part of Exhibit 144 in evidence.

12 BY MR. STERN:

13 Q. Professor Karl, who was Francisco Moran?

of

--

being

14 A. Francisco Moran, also referred to as Paco Moran, was  
15 appointed as director of the Treasury Police by Minister  
16 Defense Garcia and he also was implicated in a number of  
17 by U.S. intelligence cables and other information, he was  
18 director of the Treasury Police when the FDR murders  
19 occurred, and the Treasury Police were identified as  
20 the key force that surrounded the Jesuit high school when  
21 these political leaders were taken out.

also

22 He was -- so he was the director at the time. He

the 23 was implicated in a number of human rights abuses, and  
which 24 most -- the one the evidence was most compelling for,  
25 I believe is in the Truth Commission, is what is referred



1 to as the Soyapango Massacre, S-O-Y-O-P-A-N-G-O -- excuse  
2 me, S-O-Y-A-P-A-N-G-O.

3 Q. Thank you.

4 And what does the portion of the Exhibit 144 that we  
5 have on the screen suggest to you about suing Francisco  
6 Moran on the human rights abuses?

7 A. This is a cable sent April 11, 1981, political  
officer  
8 is the political officer of the U.S. Embassy, officer in  
9 charge of the U.S. Embassy. "Political officer asked  
what  
10 had prevented Moran's scheduled departure in January.  
The  
11 person is redacted or deleted. The name is deleted.  
12 Whoever answered that he could not understand what ties  
he,  
13 Moran could have that remained strong enough to allow him  
14 to hang on. He said one word from the defense minister  
and  
15 Moran would go. Why that word wasn't said was a mystery  
16 to -- redacted name. He supposed that there might be a  
tie  
17 between Garcia and Moran that prevented the former from  
18 ousting the latter."

19 Q. In your opinion would Carranza, Denis Moran and  
20 Francisco Moran have received the promotions they did if  
21 the Minister of Defense Garcia had not supported those  
22 promotions?

23 A. No.

24 Q. I want to turn to promotion activity under General

25 Vides Casanova when he was Minister of Defense.

General 1 Are there individuals who were promoted under  
human 2 Vides Casanova that you could point to in relation to  
rights abuses?  
General 3 A. Yes. These promotions that occur in 1983 when  
4 Vides takes over from General Garcia -- just to clarify  
5 something, the promotions I talked about earlier were in  
6 the key intelligence places, very key points of power.  
7 Carranza as the second in command, and the other as head  
of 8 the Treasury Police, and another in National Guard  
9 intelligence, these are very, very important positions.  
10 And these are positions that the United States is  
11 repeatedly identifying murder squads coming out of the  
12 headquarters in these particular sections.  
13 So there is a great deal of pressure on Minister  
14 Garcia to change these, and subsequently, when minister -  
15 when General Vides becomes minister, the hope is that  
these 16 names will no longer appear in the promotion structure.  
17 Q. Did they appear in the promotion structure?  
18 A. Yes, they do.  
19 Q. Could you name the individuals that you have  
20 identified whose promotions under General Vides Casanova  
21 are relevant to the human rights abuse?  
22

23 A. A number of names. Nicholas Carranza, once again.

24 Denis Moran, once again. I have spelled them. A Colonel

25 Staben, S-T-A-B-E-N. A Colonel Ponce, P-O-N-C-E, a

Colonel

1 Monterrosa M-O-N-T-E-R-R-O-S-A, and a -- I am not quite  
2 sure of rank, I think Lieutenant Colonel Pozo, I am not  
3 sure of the rank, P-O-Z-O.

4 Q. You talked about Colonel Carranza. What position  
did  
5 he hold under Minister of Defense Vides Casanova?

6 A. Because of pressure, Carranza was eventually moved  
out  
7 of his position under General Garcia and given a position  
8 in ANTEL, which is the telecommunications system, which  
is  
9 where much of the surveillance was taking place.

10 After this period of time when General Vides  
Casanova  
11 becomes Minister of Defense, he is brought back and he is  
12 made the head of the Treasury Police.

13 Q. How about Denis Moran, what position did he hold  
under  
14 Minister of Defense Vides Casanova?

15 A. May I make a correction? I misspoke when I gave the  
16 name Pozo. He was not promoted in the list of  
promotions.

17 Excuse me for that.

18 I am sorry, your question?

19 MR. STERN: Let me ask the technician to put up  
20 slide 143, a passage from Exhibit 565, which is in  
21 evidence.

22 BY MR. STERN:

23 Q. I want to ask you a few questions about Denis Moran.

24 I can't remember if you told us what position he held  
under

25 General Vides Casanova.

1 A. Under General Vides Casanova -- excuse me, under  
2 General Carranza, Denis Moran was head of the National  
3 Guard intelligence, under General Casanova.

4 THE COURT: You said under General Carranza.

5 THE WITNESS: No, no. I am sorry, excuse me.

6 THE COURT: Okay.

7 THE WITNESS: Under General Garcia Colonel  
8 Carranza was promoted to sub-secretary of defense, that

is

9 the second in command. When General Vides became

Minister

10 of Defense, Carranza was made director of the Treasury  
11 Police, just to be clear on that.

12 Under General Garcia, Denis Moran was the head

of

13 the National Guard intelligence section. When General  
14 Vides comes in, he promotes him to a full colonel, so he  
15 changes his rank.

16 BY MR. STERN:

17 Q. Maybe I could help to keep things straight here.

18 Professor Karl, to prepare for your testimony today, did

here

19 you put together a slide that explains your testimony

20 today?

21 A. I did.

screen?

22 MR. STERN: Could I have slide 108 on the

23 BY MR. STERN:

24 Q. Professor Karl, are these the individuals you have

25 been referring to?



1 A. Yes, they are.

2 Q. Let's focus on Denis Moran, during the tenure of  
3 General Vides Casanova, what position does he assume?

4 A. He takes the rank of full colonel.

5 MR. STERN: We will come back to the slide but  
6 could I have slide 143 on the screen, please?

7 BY MR. STERN:

8 Q. Could you read the passage from Exhibit 565 that we  
9 have on the screen, please?

10 A. Yes, this is a CIA cable entitled Reluctance of the  
11 Salvadoran Minister of Defense to prosecute military  
12 officers for alleged human rights violations. Dated  
13 1983. This is after that promotion has taken place.

July,

14 MR. KLAUS: I object to the title, and move to  
15 strike it.

16 THE COURT: I am sorry, what are you objecting  
17 to?

on

18 MR. KLAUS: The title. It is improper comment  
19 the evidence. The cable is not titled that.

20 THE COURT: All right. Well, I think everybody  
21 understands that.

22 MR. KLAUS: Prejudicial effect outweighs its  
23 probative value.

24 MR. STERN: I would be happy to hand a copy of

25      this, in fact that is the title that appears on the  
cable.

1 THE COURT: The heading at the top is the title  
2 on the cable?

3 MR. STERN: It is what appears on the subject  
4 line, Your Honor.

5 MR. KLAUS: I stand corrected.

6 THE COURT: All right. Let's go ahead.

7 BY MR. STERN:

8 Q. Would you read this passage?

9 A. "Comment: It has become increasingly evident that  
10 General Vides has no intention of pursuing the issue to  
11 human rights abuses by the armed forces as was  
demonstrated

12 by his appointment of Lieutenant Colonel Denis Moran, a  
13 well-known right is implicated in the 1981 murders of the  
14 two U.S. citizens in the Sheraton Hotel to head the  
15 engineer instruction center, CEFA.

16 Q. How do you interpret U.S. evaluations --

17 THE COURT: Mr. Stern, we need to stop for a  
18 moment. It is early, but why don't we stop for the  
19 mid-morning recess. I will ask to mark the question,  
and

20 go back to where you are and reformulate that question.

21 One of our jurors needs a break.

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

23 THE COURT: Ladies and gentlemen, we will take  
a

24 break and pick up where we are.

25 (Thereupon, a short recess was taken.)

1 (Thereupon, trial reconvened after recess.)

2 THE COURT: Ladies and gentlemen, please be  
3 seated. When we stopped, we were in direct examination.  
4 I will turn back to Mr. Stern and allow him to proceed.

5 BY MR. STERN:

143

6 Q. Before we broke, I think we were looking at slide  
7 which is from 565.

8 Professor Karl, what, if any, conclusion do you draw  
9 from this cable about the promotion pattern of General  
10 Vides Casanova in 1983?

earlier

11 A. This is one of the cables I was talking about

these

12 when I was talking about Vernon Walters and Secretary of  
13 State Schultz and later Vice President Bush. It was

inside

14 kind of reports that brought the tremendous concern

15 the United States that General Vides would not in fact

-

16 clean up --I think the word they used was not clean up -

17 would not clean up his own house, and this was an

18 indication. The Moran case was particularly upsetting to

U.S.

19 the United States because it did involve murder of two

20 citizens.

21 Q. I want to move beyond promotions to other personnel

22 actions.

23                   MR. STERN:   Could I have up on the screen 139

24    which is from Exhibit 201, please?

25   BY MR. STERN:

1 Q. Professor Karl, could you identify and read for us  
the  
2 passage we have on the screen?

3 A. Yes, this is a memorandum to Ambassador Hinton, who  
is  
4 the Ambassador in El Salvador, regarding a discussion  
with  
5 Minister of Defense September 28, 1984. Minister of  
6 Defense would be General Vides.

7 Q. What does it say?

8 A. "Vides told me Lopez Sibrian was really a good guy.  
I  
9 said that is crazy, he was a murderer and guilty as hell,  
10 and nobody like that could be a good guy. We would not  
11 rest until we saw Lopez Sibrian and the others punished  
12 however long it took, and Vides could count on that."

13 Q. We have had some testimony about Sibrian in this  
case.

14 What human rights incident was he involved in briefly?

15 A. He was involved in the Sheraton murders as well.

16 MR. STERN: Could we go on to slide 140,  
please,

17 from Exhibit 200?

18 BY MR. STERN:

19 Q. We've put on the screen a passage from a CIA  
document.

20 Could you read the passage we put up there, Professor  
Karl?

21 A. Yes, this is a document in May, 1983, and it is part

22 of the series of cables I mentioned earlier that are  
23 expressing concern to Washington about the protection of  
24 human rights abusers.

25 "Captain Eduardo Avila Avila, a Salvadoran rightist



in  
Salvador  
in

1 armed forces officer alleged to have been a conspirator  
2 the assassination of two U.S. citizens in the San  
3 Sheraton Hotel currently spends most of his time living  
4 Uruguay, but is able to visit in El Salvador frequently.  
5 When in El Salvador, Avila resides at a private home in  
6 Santa Tecla adjacent to the National Guard headquarters.  
7 The private home is in fact a National Guard safe house  
8 which is protected by the armed guards provided by the  
9 National Guard and Civil Defense."

of

10 Q. Based on this, do you believe that if the director  
11 the National Guard had wanted to apprehend Mr. Avila, he  
12 would have been able to do that?

13 A. Yes, I do.

screen

14 MR. STERN: Could we have slide 142 on the  
15 which is another excerpt from 565?

16 BY MR. STERN:

we

17 Q. Could I ask you to read the portion of the document  
18 have on the screen?

the

19 A. This is the same cable from July, 1983 that we saw  
20 earlier. The CIA cable reporting on the reluctance of  
21 Minister of Defense to prosecute military officers for

22 human rights abuses.

23 "Vides confided that while he did not doubt that

24 Captain Figueroa, F-I-G-U-E-R-O-A, was guilty of

25 supervising the Sonsonate Massacre, S-O-N-S-O-N-A-T-E, or

that  
1 that detachment of troops were involved. He preferred  
2 the incident be forgotten since any public mention of the  
3 case could only adversely affect the image of the armed  
4 forces. Vides added that he had no intention of allowing  
5 the prosecution of Colonel Elmer Gonzalez Araujo,  
6 A-R-A-U-J-O, Sonsonate departmental commander. Although  
7 Vides opined that Gonzalez may have ordered the massacre  
of  
8 the peasants, Vides stressed his view that prosecution of  
9 the military officers would damage the moral of the armed  
10 forces as a whole and the officer corps in particular and  
11 would be used as a propaganda issue by leftist  
insurgents."

12 Q. Professor Karl, how do you interpret the manner in  
13 which this cable that indicates the way Colonel Vides  
14 Casanova handled Colonel Araujo?

15 A. The matter of Sonsonate was a massacre of peasants.  
16 In this case General Vides is reported by CIA to have  
said  
17 that he recognizes that this massacre was carried out by  
18 his forces and that he recognizes who was involved. He  
19 even says that Gonzalez Araujo may have ordered the  
20 massacre of peasants, but it would damage the moral of  
21 armed forces, particularly the officer corps if anything  
22 were done about this.

take

23 MR. STERN: If I could ask the technician to

24 that off the screen.

25 BY MR. STERN:

1 Q. Professor Karl, I want you to make use of the rifle  
2 hypothesis approach. From your perspective as a scholar  
of  
3 Salvadoran military and politics, do you have an opinion  
4 whether as a practical matter General Garcia and General  
5 Vides Casanova had command over their troops such that  
they  
6 could prevent human rights abuses or punish offenders?

7 A. Yes, I do.

8 MR. KLAUS: Objection; beyond the scope of her  
9 expertise.

10 MR. STERN: I would be happy to lay some  
11 foundation, Your Honor.

12 THE COURT: Would you, please.

13 BY MR. STERN:

14 Q. Professor Karl, in preparation for your testimony  
15 today, have you reviewed deposition transcripts from the  
16 Defendants in this case?

17 A. Yes, I have.

18 MR. STERN: If I could have slide 138 on the  
19 screen, please. Page 99 from General Garcia's  
deposition.

20 BY MR. STERN:

21 Q. Could you read the deposition portion we have up  
22 there?

23 A. Yes, I can.

24 "And that is how the soldiers were trained to go up  
25 and down the chain of command?

1 "Yes.

chain

2 "A military cannot function without an effective  
3 of command?

4 "That is the way throughout the world."

screen,

5 MR. STERN: Could I have slide 137 on the  
6 please? This is page 45 from General Vides Casanova's  
7 deposition.

8 BY MR. STERN:

9 Q. Would you read that passage for us?

10 A. "Let's say in your 35 years as military officer and  
11 military commander, did any subordinate fail to obey your  
12 command?"

recall."

13 The answer of General Vides, "No, not that I

at

14 MR. STERN: Could we have slide 145 on the  
15 screen, please? This is from an exhibit that we looked  
16 previously in this case.

17 BY MR. STERN:

18 Q. Could I ask you to read the first paragraph, please,  
19 Professor Karl?

20 A. Yes. This is a CIA cable December 17, 1980. "The  
21 military is more unified and its chain of command more  
22 consolidated than at any time since the coup of October,

all 23 1979. The Defense Ministry retains complete control of  
other 24 military affairs and has significant veto power over  
25 Government policy."



we've  
prepare  
whether  
to

1 Q. Based on the deposition testimony and documents  
2 just looked at and other materials you reviewed to  
3 for your testimony today, do you have an opinion on  
4 practically speaking the Defendants would have been able  
5 prevent human rights abuses or punish offenders had they  
6 chosen to do so?

7 A. Yes, I do.

8 Q. What is your opinion?

prosecute

9 A. My opinion is if they had made the choice to  
10 officers, to do investigations, to punish and move out of  
11 the military the people who were committing these  
12 widespread human rights abuses, if they had made this  
13 choice, they could have done so.

14 MR. KLAUS: Objection, Your Honor; beyond the  
15 scope of her expertise.

16 THE COURT: I will overrule the objection.

17 MR. KLAUS: Prejudicial effect outweighs  
18 probative value.

19 THE COURT: Overruled.

20 BY MR. STERN:

21 Q. Professor Karl, in the 1979 through '83 time period,  
22 were there political divisions or factions in the  
military

23 as an institution?

24 A. Yes, I think I've already testified about the

25 factions, reformist versus the hard liners.

1 Q. In your opinion, what affect, if any, did those  
2 factions have on the Salvadoran military's prevention of  
3 human rights abuses or punishment much offenders?

4 A. I think those factions had no affect on the ability  
of  
5 the Salvadoran high command and Ministers of Defense to  
6 punish or prosecute or prevent human rights abuses.

7 MR. KLAUS: Objection, move to strike, beyond  
the  
8 scope of expertise, prejudicial effect outweighs  
probative  
9 value.

10 THE COURT: Let's go back a minute to deal with  
11 the issue whether the professor in the course of  
studying  
12 the issues she studied has in fact studied the capacity  
of  
13 the high command to act or the impact, if any, of the  
14 various views that were held within the military,  
whether  
15 that is something she studied as part of her overall  
area  
16 of training and so on.

17 BY MR. STERN:

18 Q. As part of your training and experience you built up  
19 over the years, Professor Karl, have you studied the  
20 Salvadoran military as a political institution?

21 A. Yes, I have.

or

22 Q. Have you studied existence of political sub-groups

23 factions within that group?

24 A. Yes, I have, quite substantially.

25 Q. Have you studied patterns of rights abuse in El

1 Salvador?

2 A. Yes, I have.

3 Q. Have you studied relation, if any, between the  
4 military factions and human rights abuses?

5 A. Quite extensively.

6 Q. And is the study that you just identified the basis  
7 for the answer you gave previously in response to my  
8 question?

9 A. Yes. It is based on my own studies, and studies  
10 carried out by the U.S. military as well.

11 Q. Professor Karl, you were in El Salvador in 1979  
12 through 1983; is that correct?

13 A. I was not there in 1979, I was there in the early  
14 1980's.

15 Q. Thank you. I stand corrected.

16 During your visits, were you able to observe what  
one  
17 might call the general conditions of life in El Salvador,  
18 such matters as travel and communications, and how one  
19 moved throughout the country?

20 A. Very much so.

21 Q. And did you also look at human rights abuses in that  
22 time period?

23 A. Yes, I did.

24 Q. Based on your personal experience and your study,  
what

of 25 relationship, if any, do you see between the conditions

1 life that you experienced and human rights abuses carried  
2 out by the military?

3 A. I am not sure I understand your question.

4 Q. Based on what you saw happening in El Salvador, do  
you  
5 have an opinion as to whether those conditions of life  
6 would have made it harder or easier to enforce human  
rights  
7 norms throughout the country?

8 A. Especially in the early years, and really almost  
until  
9 1989, the City of San Salvador, which is where I returned  
10 every night, and had to spend most of my time, that was  
the  
11 only safe place to sleep, actually, the City of San  
12 Salvador was a remarkably calm place.

13 The kinds of -- it was a remarkably normal place in  
14 the sense that you went out to dinner, you went to -- you  
15 went to the movies, you went to -- you went shopping, you  
16 did the things that I do, and what was abnormal about it  
17 was that in doing those things, you might see an act of  
18 violence, or you might see a generalized fear when the  
19 police drove up or the National Guard drove up.

20 I think I explained some of those things, but it was  
21 surprisingly normal in terms of your ability to move  
around  
22 the city and to go places, including a number of times I

23     drove to the Honduran border and back in a day.  It was  
24     surprising -- one was surprisingly able to do those  
things.

25     Q.    In your visits to El Salvador, did you go to any



1 facilities of the Salvadoran security forces?

2 A. Yes, I did.

3 Q. Where did you go?

4 A. I went into the National Police headquarters.

5 Q. And how did the National Police headquarters appear  
to  
6 you?

7 A. Well, it appeared normal in the sense it was an  
8 operating police headquarters.

9 MR. KLAUS: Objection; relevancy, time frame.

10 THE COURT: I will overrule the objection.

11 BY MR. STERN:

12 Q. When did you visit it the National Police  
13 headquarters?

14 A. I believe 1982, or '83.

15 Q. Have you finished your answer?

16 A. Yes. Again, it was a place that was surprisingly  
17 normal. Looked like entering police headquarters.

18 MR. STERN: Could I have slide 118 on the  
screen?

19 THE WITNESS: I should clarify, I was only on  
the  
20 entrance and first floor, I did not see the entire  
21 building.

22 MR. STERN: I would like to have slide 118,  
23 please, which is a passage, pages 116 through 117 of

24 Ambassador Corr's deposition. I will read this for you.

25 BY MR. STERN:

1 Q. "let me ask you whether as a practical matter there  
2 were means available to Vides Casanova to investigate and  
3 uncover relevant facts on human rights abuses that  
existed  
4 within the military that he was in charge of?

5 A. Yeah, I would say that certainly there was. I mean  
--  
6 but I would also say the capacity of that, I mean the way  
7 things were then, he would have had to have given them  
8 instructions because of the culture there, would have to  
9 have been something come to him that caused him to say,  
10 look, damn it, I want to get to the bottom of this. In  
11 that case, he would give that instruction.

12 "Do you know whether or not he ever did that?  
13 "I can't say with any certainty whether he did or  
did  
14 not."

15 Q. Focusing your attention, for a moment, Professor  
Karl,  
16 on the second line of the question which refers to means  
17 available to Vides Casanova to investigate and uncover  
18 facts, briefly in the 1979 through '83 time period, did  
the  
19 United States provide military aid to El Salvador?

20 A. Yes, it did.

21 Q. And in your view, what affect, if any, did that aid  
22 have on the ability of the Salvadoran military and  
security

23 forces to investigate human rights abuses and uncover  
24 relevant facts?

25 A. I think that that aid provided them, to the extent

1 that they actually needed any substantial material  
2 assistance, it provided them with the assistance of  
3 actually -- I have prepared a slide on this, I don't know  
4 if you would like to see it.

5 Q. Let's look at that briefly.

6 MR. STERN: Could I have slide 165, please?

7 BY MR. STERN:

8 Q. Could you tell us what this slide is about,  
Professor  
9 Karl?

10 A. Yes. This is a slide comparing U.S. military aid to  
11 El Salvador. The first column is from 1946 to 1979, so  
it  
12 covers the period of time before the conflict that we are  
13 looking at.

14 The next one is years 1980 to '83, in that  
particular  
15 period. And I am only looking at military aid, I am not  
16 looking at economic support funds or economic aid, which  
is  
17 another question. This is aid that goes directly to the  
18 Salvadoran military for military use. It is composed of  
19 trucks, communications equipment, helicopters, helicopter  
20 training, maintenance teams, the training of officers,  
21 arms, personnel, et cetera.

22 So it comprises a number of things, as you can see,  
if

23 you take the 33 year period beforehand, and take the four  
24 year period from 1980 to '83, U.S. military aid increased  
25 quite substantially. And right after this El Salvador

1 becomes the third largest recipient of U.S. aid after  
2 Israel and Egypt.

3 Q. In your view did that have any affect on the ability  
4 of Salvadoran military to enforce human rights forms  
5 against its members?

6 A. Yes. To the extent that abuses happened outside San  
7 Salvador, if you needed a truck to get somewhere, or a  
car,  
8 or to call somebody, to find out what was happening in  
9 Sonsonate or El Mozote, or any of these places where  
10 massacres were being reported, that material equipment  
was  
11 available.

12 MR. STERN: If I could have the technician take  
13 that slide off, please.

14 Let's go back to slide 118, please.

15 BY MR. STERN:

16 Q. Professor Karl, do you have an opinion on whether,  
17 based on the incidence and documents that you have  
18 reviewed, General Vides ever gave the instruction to get  
to  
19 the bottom of matters that Professor -- excuse me --  
20 Ambassador Corr is talking about here?

21 A. I have no knowledge that General Vides ever did that  
22 and I also think the Ambassador is saying here that this  
is  
23 a choice, look, damn it, I want to get to the bottom of

24 this, it's a choice.

25 Q. Professor Karl, in your work as a political  
scientist,



1 are you familiar with the word the notion of deniability?

2 A. Yes, I am.

3 Q. What does that mean to you?

4 A. Deniability is a pattern that we use to describe  
5 actions in political science, and it means that when you  
6 don't -- when you want to deny something happens, you  
7 actually go through a scale of events.

8 So, for example, let's say a massacre occurs,  
9 deniability means you say no, it just didn't occur, it  
10 didn't happen. And then somebody comes in and says,

well,

11 yes, it did. There are 200 dead peasants. And you say  
12 that is exaggerated, there is only 150 dead peasants,

that

13 is to minimize. And somebody says, well, it is dead, so  
14 happened.

it

15 And the next stage of deniability is we didn't do

it,

16 the other side did it. It must have been them, we didn't  
17 do this. And somebody says we have proof it was the  
18 National Guard or First Brigade that did this. And you  
19 say, well, okay, I will look into it, I will do an  
20 investigation. And then you either don't do an  
21 investigation or you do what my mom always called the fox  
22 is in the hen house. You put someone in charge of the

that

23 investigation that you know not will uncover anything

24 might be uncomfortable for you.

25 And it continues like that, a pattern of trying to

1 deny that the responsibility for something is actually on  
2 your shoulders, and responsibility to act on that is on  
3 your shoulders.

4 Q. Are you able to identify instances in which in your  
5 view Minister of Defense Garcia and Director General of  
the  
6 National Guard Vides Casanova engaged in such  
deniability?

7 A. Yes, I am.

8 MR. STERN: May we have slide 133 on the  
screen,  
9 please? An extract from the Truth Commission Report.

10 BY MR. STERN:

11 Q. Just without reading anything yet, Professor Karl,  
12 could you identify for us what this slide that you  
prepared  
13 consists of?

14 A. These are the findings of the Truth Commission which  
I  
15 believe you heard about.

16 This is a description of the case that was being  
17 investigated, the facts of the case as determined by the  
18 Truth Commission and the findings of the Truth Commission  
19 with regard to each case.

20 Q. I want to go through these summaries and simply  
21 identify where the names of General Garcia or General  
Vides  
22 Casanova appear.

23           Could you please read the portion of the right-hand  
24 most column in the case of the abducted students, which I  
25 think we have heard some testimony about in this case

1 already?

2 A. Yes, these are the students abducted from the U.S.

3 Embassy. The Truth Commission finds on page 101, "By

4 denying that the students had been arrested and failing  
to

5 act quickly to investigate the incident and identify

6 precisely who was responsible, then Colonel Eugenio Vides

7 Casanova, Commander of the National Guard, was guilty at

8 the least of complicity through negligence and of

9 obstructing the resulting judicial investigation."

10 Q. Could you read the conclusion of the Truth  
Commission

11 in regard to the Rio Sumpul massacre?

12 A. Yes, this is a massacre in 1980, one I looked into  
of

13 over 300 civilians.

14 "The Minister of Defense of El Salvador, General  
Jos,

15 Guillermo Garcia, denied that the massacre had occurred.  
A

16 year later in an interview, he admitted that a number of  
17 people had died in a clash on 14 of May 1980 at the  
Sumpul

18 River, but said the number of deaths had been greatly

19 exaggerated.

20 "The commission believes the Salvadoran military  
21 authorities were guilty of a cover-up of the incident."

22 MR. STERN: Could I have slide 134, please?

23 BY MR. STERN:

24 Q. Does the summary of the -- that we see on the top of  
25 the screen here, relate to the Sheraton killings that we

Karl? 1 have had some testimony about in this case, Professor

2 A. Yes, it does.

3 MR. STERN: May we have slide 136, please.

4 BY MR. STERN:

on 5 Q. Could you please read the Truth Commission findings

6 the El Mozote case which occurred December 10 through 11,  
7 1981?

8 A. This is called the massacre of El Mozote.

9 M-O-Z-O-T-E. December 11, 1981 in which more than 500  
10 villages were massacred by the Atlacatl Battalion.

11 "There is full evidence that the General Jos,  
12 Guillermo Garcia, then Minister of Defense, initiated no  
13 investigations that might have enabled the facts to be  
14 established. The high command also took no steps  
15 whatsoever to prevent the repetition of such acts with  
16 the result that the same units were used in other operations  
17 and followed the same procedure."

18 Q. Would you read the El Calabozo incident?

19 A. This is El Calabozo August 22, 1982 where over 200  
20 individuals were killed by the same Battalion. "Although  
21 the massacre was reported publicly, the Salvadoran  
22 an authorities denied it. Despite their claim to have made

an

23 investigation, there is absolutely no evidence that such

24 investigation took place.

Garcia

25 "The Minister of Defense General Jos, Guillermo



1 said that an investigation had been made and that no  
2 massacre had occurred. He repeated this assertion in a  
3 interview with the Commission."

4 Q. Professor Karl, among these massacres, do you  
believe  
5 that the El Mozote massacre has some significance?

6 A. Yes, I do.

7 Q. I would like to ask you questions about that.

8 MR. STERN: I would like to ask the technician  
to  
9 put on the screen page 0264 from Exhibit 32, which is  
the  
10 Truth Commission's account of the El Mozote massacre.

11 If I could have a portion of the document  
12 underlined heading blown up, please.

13 MR. KLAUS: What page is this?

14 MR. STERN: 115.

15 BY MR. STERN:

16 Q. Could you read the Village of El Mozote that appears  
17 in the Truth Commission Report?

18 A. Yes. "On the afternoon of the 10th of December, 19  
--

19 MR. KLAUS: I object, Your Honor. Its  
probative  
20 value is outweighed by prejudicial effect, lack of  
21 personal knowledge and lack of foundation.

22 THE COURT: Let me stop for a second.

23                   Is this a document that is already in evidence?

24                   MR. KLAUS:  Yes.  Except for -- I reserved my

25  objections.  I didn't object to authenticity.  I didn't

relevancy

1 object to admissibility except I reserved as to  
2 and probative value outweighs prejudicial effect.

3 THE COURT: I will overrule on those grounds,  
4 both as to relevancy and whether prejudicial effect  
5 outweighs any probative value.

6 You may proceed.

7 BY MR. STERN:

8 Q. Would you read the passage on the screen?

9 A. "On the afternoon of December 10, 1981, units of the  
10 Atlacatl Rapid Deployment Infantry Battalion, BIRI,  
11 B-I-R-I, arrived at the village of El Mozote, Department  
of  
12 Morazan after a clash with the guerillas in the vicinity.

13 "The village consisted of about 20 houses situated  
on  
14 open ground around the square. Facing onto the square  
was

15 a church and behind it a small building known as the  
16 convent used by the priest to change into his vestments  
17 when he came to the village to celebrate mass. Not far  
18 from the village was a school, the Grupo Escolar.

19 "When the soldiers arrived in the village, they  
found  
20 in addition to the residents other peasants who were  
21 refugees from the surrounding areas. They ordered  
everyone

lie

22 out of the houses and into the square. They made them  
23 face down, searched them and asked them about the  
24 guerillas. They then ordered them to lock themselves in  
25 the houses until the next day, warning that anyone coming

1 out would be shot. The soldiers remained in the village  
2 during the night.

3 "Early next morning, December 11, the soldiers  
4 reassembled the entire population in the square. They  
5 separated the men from the women and children and locked  
6 everyone up in different groups in the church, the  
convent  
7 and various houses.

8 During the morning they proceeded to interrogate,  
9 torture and execute the men in various locations. Around  
10 noon they began taking out the women in groups,  
separating  
11 them from their children and machine-gunning them.

Finally  
12 they killed the children. A group of children who had  
been  
13 locked in the convent were machine-gunned through the  
14 windows. After exterminating the entire population, the  
15 soldiers set fire to the buildings.

16 "The soldiers remained in El Mozote that night. The  
17 next day they went through the Village of Los Toriles,  
18 situated two kilometers away. Some of the inhabitants  
19 managed to escape. The others, men, women and children  
20 were taken from their homes, lined up and machine-gunned.

21 "The victims at El Mozote were left unburied.  
During  
22 the weeks that followed the bodies were seen by many  
people

23 who passed by there."

24 Q. Did words of the events that occurred at El Mozote

25 leak out to various people?

1 A. Yes. Massacres at El Mozote were widely reported in  
2 New York Times and Washington Post, reporters from those  
3 papers went to see the bodies and the site, and I later  
4 went to the site.

5 Q. Did U.S. Ambassador to El Salvador Hinton also  
become  
6 aware of reports of the El Mozote massacre?

7 A. Yes, he did.

8 MR. STERN: Could I have slide 144 on the  
screen,  
9 please, from Exhibit 103 which is in evidence.

10 MR. KLAUS: What number is it?

11 MR. STERN: 103.

12 BY MR. STERN:

13 Q. What does this cable relate to, Professor Karl?

14 A. Ambassador Hinton becomes aware of two massacres at  
15 the same time according to his cables. This is February  
16 1st, 1982, and he is informing U.S. Secretary of State  
17 about them. One is the massacre of El Mozote, and the  
18 other is the murder of -- in the City of San Salvador of  
17  
19 people, and, so, he is in this cable referring to both of  
20 those.

21 Q. And what does Ambassador Hinton conclude about the  
22 reporting practices of General Garcia?

23 A. He explains that he was warned earlier by the Under

24 Secretary of State Buckley that if there were more  
25 massacres like this, and more human rights abuses like



way  
now  
and

1 this, that aid would be jeopardized, there would be no  
2 to get aid through Congress. And he is reporting that  
3 we have two massacres, one in the City of San Salvador  
4 one at El Mozote.

to  
no

5 And he says, "As I have said before, we are hostage  
6 malevolent forces seemingly beyond our control", talking  
7 about U.S. control. "While Garcia talks a good game, I  
8 longer trust him or believe him."

screen

9 MR. STERN: Could I have slide 117 on the  
10 which is from Exhibit 333.

11 BY MR. STERN:

12 Q. This cable dated February 2nd, 1982 refers to the  
13 alleged Morazan massacre. Is that the massacre at El  
14 Mozote?

15 A. Yes.

16 Q. Could you read that?

next  
York

17 A. This is a cable Ambassador Hinton sends back the  
18 day. He says, "In this connection, I, Ambassador Hinton,  
19 said reports published in the Washington Post and New  
20 Times about alleged Morazan massacre and the incident of  
21 night before last caused great concern." The incident of

22 the night before last is the massacre of 17 people in San  
23 Salvador, which is what he is referring to.

24 "He, General Garcia, said the Morazan business was a  
25 novela which means fairy deal. Pure Marxist propaganda

1 devoid of foundation."

El

2 THE COURT: Professor Karl, at the top it says  
3 Mozote. What is the difference between El Mozote and  
4 Morazan?

town,

5 THE WITNESS: El Mozote is the name of the  
6 Morazan is the province. They are the same massacre.

7 THE COURT: When they talk about the Morazan  
8 business, do you read that as El Mozote?

9 THE WITNESS: Yes, I do.

which

10 MR. STERN: Could I have slide 141, please,  
11 is from Exhibit 713?

12 BY MR. STERN:

13 Q. Professor Karl, does the Morazan massacre that is  
14 indicated here also refer to El Mozote?

15 A. Yes, it does.

Ambassador

16 Q. Does this cable record an exchange between  
17 Hinton and Minister of Defense Garcia regarding that  
18 massacre?

19 A. Yes.

20 Q. Would you read what it states?

Morazan

21 A. "I warned Garcia to be ready to respond to the

it

22 massacre story. He was his usual cocky self. I'll deny

23 and prove it fabricated."

24 MR. STERN: Could I have slide 116, please,

25 excerpt from the Truth Commission.

1 BY MR. STERN:

2 Q. Would you read the findings of the Truth Commission  
3 for us, please?

4 A. "There is full proof that on 11 December, 1981, in  
the  
5 village of El Mozote, units of the Atlacatl Battalion  
6 deliberately and systematically killed a group of more  
than  
7 200 men, women and children, constituting the entire  
8 civilian population that they found there the previous  
day  
9 and had since been holding prisoner.

10 "Although it received news of the massacre, which  
11 would have been easy to corroborate because of the  
12 profusion of unburied bodies, the armed forces high  
command  
13 did not conduct or did not give any word of an  
14 investigation and repeatedly denied that the massacre had  
15 occurred. There is full evidence that General Jos,  
16 Guillermo Garcia, then Minister of Defense, initiated no  
17 investigations that might have enabled the facts to be  
18 established."

19 MR. STERN: Could I have slide 126, the final  
20 passage from the Truth Commission Report?

21 This is from bates R275.

22 BY MR. STERN:

23 Q. Could you read this passage of the Truth  
Commission's

24 finding on El Mozote?

25 A. "Massacres of the peasant population were reported

1 repeatedly. There is no evidence that any effort was  
made  
2 to investigate them. The authorities dismissed these  
3 reports as enemy propaganda. Were it not for the  
4 children's skeletons at El Mozote, some people would  
still  
5 be disputing that such massacres took place.

6 "Those small skeletons are proof not only of the  
7 existence of the cold-blooded massacre at El Mozote, but  
8 also of the collusion of senior commanders of the armed  
9 forces, for they show that the evidence of unburied  
bodies  
10 was there for a long time for anyone who wanted to  
11 investigate the facts. In this case we cannot accept the  
12 excuse that senior commanders knew nothing of what  
13 happened."

14 Q. Professor Karl does the El Mozote incident -- and we  
15 looked at a number of documents regarding that incident,  
16 illustrate a pattern of deniability or denial on the part  
17 of the Salvadoran military high command regarding human  
18 rights abuses?

19 A. Yes.

20 Q. Would that include Minister of Defense Garcia?

21 A. Yes, because after this was widely reported,  
Minister  
22 of Defense Vides Casanova promoted the -- both the  
23 operational commander and the commander who carried out,

24 who was in charge of this massacre.

25 MR. STERN: If I could have that screen --

slide



1 taken off the screen and lights brought up, please.

2 BY MR. STERN:

3 Q. Professor Karl, we had some testimony about this  
4 before. In your opinion, having studied Salvadoran  
5 politics and military and human rights abuses, what could  
6 Minister of Defense Garcia and Director General of the  
7 National Guard Vides Casanova have done to address the  
8 issue of human rights abuses to prevent such abuses, and  
9 punish offenders?

to

10 A. There were so many things they could have done to  
11 prevent all of those murders, so many things they could  
12 have done.

together

13 Q. By way of a list of such items, have you put  
14 some kind of a graphic to assist you with your testimony?

15 A. Yes, I have.

16 MR. STERN: If I could ask Mr. Green to put up  
17 the easel.

18 I am hoping that will be visible to everybody.

19 BY MR. STERN:

20 Q. We will have you read the items.

21 A. Yes.

how

22 Q. Could you read the first bullet point and explain  
23 this summarizes your testimony?

24 A. In going over all of the evidence that I have gone  
25 over, all of the documents, all of the testimony, all of

in 1 the U.S. cables, all of the internal information I found  
2 El Salvador, I have tried to identify different points  
3 where the choices of commanders would have made a  
4 difference, and the first one that I think would be --  
and 5 would have been a very important action is the repeated  
6 public denunciation of human rights abuses.

7 That is, not just giving speeches that we support  
8 human rights or talking on the day the soldier, you know,  
9 human rights is a good thing, but repeated public  
I 10 announcements that I as commander of the armed forces, or  
11 as Minister of Defense will not tolerate human rights  
12 abuses in forces under my command, and to make those  
public 13 and available for all to see.

14 Q. In your opinion did Minister of Defense Garcia and  
15 Director of the National Guard Vides Casanova take the  
16 steps that you described?

17 A. No, they didn't. They failed to do so.

18 Q. Could they have done so as a practical matter?

19 A. They could have done so.

20 Q. Moving on to the second bullet point, how does this  
21 summarize your testimony?

22 MR. KLAUS: Your Honor, I object to the failed

23                   THE COURT: Right, I sustain that. Let's  
24    dispense with that stuff, if we can.  
25  BY MR. STERN:

1 Q. Is it your testimony that the Defendants failed to  
2 carry out the steps that you just described?

3 A. The second one --

4 THE COURT: I sustain that. Would you remove  
5 that, please? We want to reduce the theatrics if we  
can.

6 BY MR. STERN:

7 Q. Focusing on the second bullet point, Professor Karl,  
8 what does that refer to?

9 A. That says demand immediate reports of all civilian  
10 deaths and detainments and punish officers for failing to  
11 make such reports.

12 Q. Why was this important in your view?

13 A. This is important because if you know who is being  
14 detained in the National Police headquarters or National  
15 Guard headquarters, or Treasury Police headquarters, if  
you  
16 must make a report as a soldier or policeman that you  
have

17 detained this person, and that they are inside these  
18 headquarters, this is extremely important for reducing  
the  
19 incidence of torture. It is an accountability mechanism.

20 Q. And in your opinion did General Garcia and General  
21 Vides Casanova practice that accountability mechanism?

22 A. No.

23 Q. As a practical matter do you believe they could have

24 done so?

25 A. Yes, I do.

1 Q. What is the third bullet point?

2 A. They could have issued clear, written and precise  
3 instructions that officers would be removed from their  
4 commands if human rights abuses were committed under  
their  
5 command. In other words, they could have held their  
field  
6 officers, the hundred field officers under them  
responsible  
7 for any human rights abuses under their command, and they  
8 could have said if these abuses happened, we will remove  
9 you, the commander.

10 Q. Why would that have been significant?

11 A. Because that would have meant that the local  
12 commanders would have known that their careers were on  
the  
13 line, that they were responsible for the action of their  
14 troops. That would mean they would make sure their  
troops  
15 behaved, and if their troops did not behave, they would  
not  
16 do the example of Campos Anaya who hide what they do or  
17 even the example of Vides --

18 MR. KLAUS: I object; probative value  
outweighed  
19 by prejudicial effect. This whole graph --

20 THE COURT: I will overrule that. I will  
permit  
21 it.

22                   MR. KLAUS: I move to strike this graph and her  
23 testimony regarding this graph on the same basis.

24                   THE COURT: Let's just go back here again.

25                   As I mentioned at the outset, if a person by



and 1 virtue of their background, training, work experience  
2 study has studied an area, and I think the professor has  
3 testified to the jury about her background and training,  
4 and, of course, the jury is going to have to evaluate  
5 that, she is able to come to court and offer opinions.

6 I take it that the testimony that is sought to  
7 be -- being elicited now, although not being phrased as  
8 this is my opinion, but the professor is being asked to  
9 indicate in her opinion what measures could have been  
10 taken that in her opinion would have had some impact on  
11 human rights abuses taking place.

12 Now, the professor has indicated what she has  
13 studied, not only in terms of El Salvador and other  
14 countries, so it would be for the jury to decide whether  
15 the opinions regarding these issues are credible and so  
16 on, as the jury would evaluate any witness, so I  
overrule 17 the objection.

18 Now, we are coming back to the thing of having  
19 the graph up before the statement is made, but I think  
20 counsel indicated that these are graphs and charts that  
21 the professor has made, and I don't think there is a  
22 problem in that as long as it is quite clear that the  
23 professor is the person who is testifying and I think  
that

24 is clear.

25 So let's go ahead, if we can.

1 MR. STERN: Thank you, Your Honor.

2 BY MR. STERN:

3 Q. Had you finished your answer in regard to removing  
4 human rights offenders under the command --

5 A. I think I did.

6 Q. The next bullet points refers to inspections of  
7 alleged human rights abuses. In your opinion would  
8 inspecting human rights abuses have any impact on the  
9 occurrence of additional abuses?

10 A. Yes, absolutely. If you don't go to a site and find  
11 out if it is true, that there are 200 or 500 dead people  
12 there, that means that there is no investigation of that  
13 site and there is no ability to evaluate -- to do two  
14 things. In my view, one is to evaluate information that  
15 comes in that reveals the same pattern, and that might

16 it likely that there is another peasant massacre that  
17 have occurred, but it also means that you don't have the  
18 evidence that you need to know what happened in a place.

19 If there is a report of a massacre and you don't go  
20 the site, even if your own commanders are telling you  
21 is no massacre, but everyone else is telling you there is  
22 massacre, how could you evaluate what happened and who to

later

make

would

to

there

a

23 hold responsible?

24 Q. Based on your analysis in 1979 through '83, did

25 General Vides Casanova inspect sites of human rights

1 abuses?

the

2 A. I know of no case where either went to the site of  
3 massacre in order to investigate that massacre.

have

4 Q. In your opinion as a practical matter could they  
5 done so?

6 A. They could have done so.

7 Q. The next bullet point refers to request to stop  
8 violence. I believe you testified about this before.

9 In your opinion does this bear some relation to  
10 addressing human rights issues?

requests

11 A. Yes, it does. If you are getting notices from the  
12 Christian Democratic party or political figures that here  
13 is a list of incidents that happened, and they request  
14 quite specifically, will you please go and investigate  
15 this, will you look at this, will you remove this  
16 commander, if you don't at least respond to these

of

17 and say this is the reason why we are or are not doing  
18 whatever it is you've asked, it means that you are first

you

19 all less likely to get more reports, because people begin  
20 to see it makes no difference if you tell them, because  
21 will not be responded to.

appear

22 The lists, the allegations, the reports are --

23 to be not taken seriously by these commanders, so it  
24 affects the whole reporting process of abuses of rights.

25 Now, people did continue to inform about rights all

instances 1 the time, but there are not in the most important

2 where I've looked at where lists of abuses occur and  
3 specific requests made, I have seen no response.

4 Q. In your opinion, as a practical matter could General  
5 Garcia and General Vides Casanova have made responses to  
6 such requests?

7 A. Yes.

8 MR. KLAUS: Objection. Could I be heard  
sidebar?

9 THE COURT: Yes, of course.

10 (Sidebar discussion on the record.)

11 MR. KLAUS: Your Honor, she is testifying in an  
12 area she is not qualified to testify in. She is  
13 testifying regarding military command, military  
structure,  
14 practices and procedure. She is not an expert on  
military  
15 command structure or procedure. This regards military  
16 commanders should have done things with their  
17 subordinates. This is beyond the scope of her  
expertise.

18 THE COURT: I will be happy, if you want to  
voir

19 dire her on this, I will be happy to let you do it. I  
20 thought she has qualified in this area in that she  
stated

21 she has study the area of human rights abuses throughout

22 the world and specialized in Latin America.

23 She talked about studying command structure and

24 military apparatus in El Salvador, and as I understand  
it

25 now, and what I take this to be is simply her opinion



1 testimony as to measures she felt or feels could have  
been  
2 taken that she is of the opinion that would have had a  
3 demonstrable impact in halting or minimizing human  
rights  
4 abuses.

5 Now, as I say, I suppose all of this can be  
cross  
6 examined, but if somebody can say, you know, some of  
this  
7 looks like pretty common sense stuff, but, I assume she  
is  
8 prepared to say she looked at what other people have  
done  
9 or what commanders generally do, so on, so forth.

10 I admit, I think you can perhaps get -- move  
from  
11 an area, generalized area or specialized area like study  
12 human rights abuses and getting into how a particular  
13 military operates, but I think she indicated she studied  
14 this area with respect to promotions and who is  
involved,  
15 and normal steps.

16 I don't think this is outside her realm of  
17 expertise.

18 MR. STERN: I think The Court is exactly right  
on  
19 that.

20 THE COURT: Again, I will be happy to voir dire

21 her now if you feel she doesn't have the background or  
22 cross examine later.

23 MR. KLAUS: I will deal with it in cross  
24 examination.

25 (After sidebar.)

1 BY MR. STERN:

2 Q. Professor Karl, in your opinion did General Vides  
3 Casanova and Colonel Garcia cooperate fully with civilian  
4 investigations with human rights abuses?

5 A. No.

6 Q. Could they have done so?

7 A. Yes.

8 Q. In your opinion did they take steps to protect  
9 witnesses to human rights abuses?

10 A. No.

11 Q. And what is your basis for saying that?

12 A. My basis for saying that is both my own interviews  
and  
13 the consistent reports of witnesses being afraid to  
14 testify, some of which actually appeared, I believe, are  
in  
15 some of the material that we've shown.

16 There is a consistent pattern of witnesses being  
17 afraid to identify military and security officers in  
18 seeking in particular the protection of the church for  
the  
19 things that they have witnessed.

20 There was one eyewitness in the massacre of El  
Mozote  
21 that was described to you, and that eyewitness was  
spirited  
22 out of the country and actually brought to the United

23 States because she was far too terrified to say anything.

show

24 And there are consistent incidents like that that

25 that people are afraid if they actually witness something

1 or bear witness to something, that they will be injured  
2 themselves.

3 There is also a pattern in the over 200 political  
4 asylum applications which I reviewed the people cite the  
5 reason they want to come to the United States they have  
6 witnessed something and they are afraid as a witness some  
7 harm would come to them.

8 Q. In your opinion as a practical matter could General  
9 Garcia and Casanova have taken steps to protect  
witnesses?

10 A. Yes.

11 Q. We had some testimony earlier when we spoke of the  
12 code of silence, June, 1988 memo about investigative  
units.

13 In your opinion, is there a relationship between  
14 setting up investigative units and improving human rights  
15 record of the military?

16 A. I think we saw this morning in some testimony that I  
17 presented that even the thought that an investigation  
might  
18 move forward actually led to a diminishing of human  
rights

19 abuses in the case of Canton Melendez murders, the murder  
20 of the two men and 12 year old boy. There was a thought  
21 that an investigative mechanism might happen already met  
22 that subordinate officers were more afraid to continue  
23 those practices. Yes, I think there is a very direct

24 effect.

up  
25 Q. In your opinion did General Garcia and Casanova set

1 investigative units to look into human rights abuses?

2 A. No.

3 Q. Could they as a practical matter have done so?

4 A. Yes.

5 Q. Do you have an opinion whether General Garcia and  
6 General Casanova requested help from anyone outside the  
7 military to investigate human rights abuses?

8 A. I do not believe they did.

9 Q. Do you believe as a practical matter they could have  
10 done so?

11 A. Yes. They were offered help in a number of cases  
from

12 U.S. officials and eventually there was an investigative  
13 unit that was set up with U.S. help. I think we also saw  
14 some of that in the cables this morning, that was a  
15 investigative unit that subsequently had no access to  
16 witnesses.

17 Q. Is it your testimony as a practical matter they  
could  
18 have set up that kind of unit?

19 A. Yes.

20 Q. We had some testimony earlier about promotions and  
21 personnel actions.

22 In your opinion is there a relationship between  
23 removing human rights abusers and preventing future  
abuses?

24 A. In my view promotions are green lights to abuse, and  
25 removing abusers from the armed forces and positions of



1 command is a clear red light this won't be tolerated and  
2 must be stopped.

3 Q. In your opinion did General Garcia and Casanova take  
4 steps to remove officers from the military?

5 A. No single officer was ever punished or prosecuted  
for  
6 the abuses that occurred when these two gentlemen were  
7 Ministers of Defense.

8 Q. As a practical matter, would it have been possible  
in  
9 your opinion to remove such abusers from the military?

10 A. Yes.

11 Q. What about turning over officers in particular and  
12 soldiers who were suspected of human rights abusers to  
the  
13 civilian courts for trial and punishment? Is it your  
14 opinion that took place from 1979 through '83?

15 A. No.

16 Q. As a practical matter do you think it would be  
17 possible for General Garcia and Casanova to effectuate  
that  
18 transfer?

19 A. Yes.

20 Q. You already testified to trials for human rights  
21 abusers. What is your opinion as to the effect, if any,  
of  
22 failure to try and convict human rights abusers on future

23 occurrences of human rights abuse?

24 A. Well, I've already testified that no single officer

25 was ever held accountable during this period through

1 prosecution and later conviction for any abuses committed  
2 either by themselves or under their command.

3  
prosecutions

I think that the failure in 1979 to begin

4 that I testified to earlier, the continued failure to  
5 prosecute or punish in 1980, 1981, that every year there  
is

6 a failure to do that, there is a clear signal being sent  
7 which is if you, if you, if you commit human rights  
abuses,

8 if you kill innocent civilians, if you carry out the  
kinds

9 of patterns of repression that I testified to like  
murders

10 and tortures, you will be protected, and you will advance  
11 in this military.

12 Q. As a --

13 A. That is again a green light.

14 Q. As a practical matter is it your opinion that  
General

15 Garcia and Casanova could have sought to try and convict  
16 such officers?

17 A. Yes, I think it was their choice not to.

18 Q. Professor Karl, what is the cumulative effect of the  
19 failures that you identified in reference to the summary  
20 report?

21 A. Cumulative effect is that the country's highest  
22 commanders failed to prevent or punish the kinds of human

and 23 rights abuses that were occurring that I testified to,  
24 that in my opinion as a result of that, there are  
thousands  
25 and thousands of people dead who did not have to die and

1 there are thousands and thousands of people who have been  
2 tortured who did not have to be tortured.

3 MR. STERN: I have no further questions, Your  
4 Honor.

5 THE COURT: I wonder if it would be a good idea  
6 to take the luncheon break early today and come back  
after  
7 lunch and begin cross examination, that way we wouldn't  
8 interrupt Mr. Klaus as he got started on his cross.

9 MR. KLAUS: That would be fine.

10 THE COURT: Why don't we do that.

11 Ladies and gentlemen, why don't we plan to take  
a  
12 break, and why don't we come back at 1:30. When we come  
13 back, we will go over to Mr. Klaus and begin cross  
14 examination.

15 So we will be in recess -- actually, why don't  
we  
16 say 1:35 -- 1:30, that is okay. That is fine.

17 Let's take a break until 1:30, and we will  
start  
18 cross examination.

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

20 THE COURT: Is there anything we need to  
discuss  
21 before we break for lunch?

at

22 All right. We will be in recess and reconvene

23 1:30.

24 MS. VanSCHAACK: One quick thing. We have our

25 draft instruction we can provide to The Court.

1 THE COURT: Thank you.

secretary

2 MR. KLAUS: Your Honor, I will have my  
3 type it on Friday.

4 THE COURT: That would be fine. Thank you very  
5 much.

6 The Court is in recess.

7 (Thereupon, trial was recessed at 12:10.)

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

9 THE COURT: Mr. Marshal, would you bring in the  
10 jury, please?

11 MR. KLAUS: Your Honor, I would ask the  
12 Plaintiffs to put the sign away.

13 THE COURT: Sure. Would you like them to pass  
14 the fail sign to you?

15 MR. STERN: That was a waste.

about

16 THE COURT: I want to tell you, in thinking  
17 that, that is where we cross from demonstrative exhibit  
18 argument. Clearly that is permissible in argument, but  
19 think line drawing, that is where we need to stop at  
20 stage.

to

I

this

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

22 THE COURT: Please be seated, ladies and

23 gentlemen. When we stopped, we just completed now the  
24 direct examination so let me turn, if I might, to  
counsel  
25 for the defense, Mr. Klaus, so he might conduct the  
cross



1 examination.

2 MR. KLAUS: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. KLAUS:

5 Q. Good afternoon, Professor Karl.

6 A. Good afternoon.

7 Q. You are a student of and a teacher of Latin America?

8 A. That's right.

9 Q. That refers to Central and South America?

10 A. That's right, and the Caribbean.

11 Q. And the Caribbean?

12 A. Yes, the Caribbean.

13 Q. What happened in El Salvador from the '70's through  
14 the '90's, a transition to democracy?

15 A. Yes, it was. It still is in transition, I would  
16 argue, but yes, it was.

17 Q. Democracy is a living thing. Is the United States  
18 still in transition, or are we pretty much there?

19 A. I am only smiling because I write about how to  
define

20 transitions to democracy. There is a point where you  
call

21 something a democracy, but it is still evolving. We are  
22 not transitioning to democracy, I don't think, here.

23 Q. One of the characteristics is that it constantly  
24 changes as the will of the people expresses itself?

25 A. That is what it is supposed to do.

student 1 Q. Now, when would you say, in your opinion, as a  
2 and teacher of El Salvador in particular, when you would  
3 you say that transition began?

the 4 A. In El Salvador towards democracy, I actually think  
5 transition begins with the peace agreements in 1992.

6 Q. That is when it begins?

elections 7 A. Well, this is a debatable issue. There are  
elections 8 in El Salvador throughout its history, and those  
9 acquire different kinds of meaning, but I think the first  
Salvador 10 time there is a fully free and fair election in El  
11 is 1994 election, and I think that the basis of that was  
12 the peace agreements of 1992.

13 Q. Now, during that time period, and not only in Latin  
14 America, but all over the world, the cold war still  
15 existed, right, in the '70's?

16 A. Absolutely.

17 Q. And up through the '80's?

18 A. Right.

19 Q. And El Salvador played a role in the cold war,  
20 correct?

21 A. Yes, it did.

late 22 Q. Now, in that whole region, things happened in the

23 '70's, can you explain what happened in Nicaragua?

is

24 A. There was an overthrow of the Somoza Dynasty, which

25 a long family dynasty that ruled in Nicaragua since about

1 the 1930's, I believe, and the overthrow of the Somoza  
2 Dynasty of what was a military National Guard form of  
rule  
3 was replaced by the Sandinista Revolution, which is the  
4 Marxist-Leninist revolution in its most important form.

5 Q. And why is that important to the history of El  
6 Salvador?

7 A. Well, I think depending on who you were in El  
8 Salvador, you either took that as a very frightening sign  
9 of something that could happen to you, that your military  
10 dictatorship could change into a Communist revolution.

If

11 you were a Marxist-Leninist in El Salvador, I imagine it  
12 would be a hopeful sign.

13 Q. Now, the leader of the Sandinistas at that time was  
a  
14 Catholic priest?

15 A. No. One of the important Sandinistas was a Catholic  
16 president. I don't know that he was the leader.

17 Q. Was isn't he the first president under Sandinistas?

18 A. I haven't reviewed Nicaragua for the purpose of this  
19 case, and I actually don't remember who the first  
president  
20 was.

21 Q. Who are we speaking about? Do you remember the  
22 person's name?

23 A. Not at the moment, I'm sorry.

24 Q. Was it Daniel Ortega?

25 A. Daniel Ortega was the president, but he was not a

1 priest.

2 Q. Had he been a priest before?

3 A. No. He had never been a priest. I think that is  
part  
4 of our confusion here.

5 Q. Okay.

6 A. I believe he was the first president and remained  
the  
7 president.

8 Q. Was the United States -- what was the United States'  
9 perception of the danger in El Salvador at that time, in  
10 the late '70's?

11 A. In the late '70's, there was a great deal of concern  
12 in Central America, in several countries of Central  
America  
13 that there might be an opposition which would have  
14 Communists in it.

15 Q. And especially after the Sandinistas victory in  
16 Nicaragua, what was the United States' attitude?

17 A. Well, I think it was initially complicated because  
the  
18 United States actually supported the forces that were  
over  
19 throwing the Somoza Dynasty. The United States was in  
20 favor of military -- actually National Guard rule in  
21 Nicaragua, and there was a hope that in the breakdown of  
22 that rule, there would be a transition to a kind of

23 democracy that we could work with.

24           Instead, that is not what happened in Nicaragua, and

25 there is a period of time in '79 and '80 in particular --



1 '78, '79, and '80 where there is a clear struggle inside  
2 Nicaragua to see which forces are going to emerge as the  
3 most important ones. In the end the faction led by  
Daniel  
4 Ortega, who you mentioned, won, and he was a  
5 Marxist-Leninist.

6 Q. Are you saying the United States supported  
Sandinistas  
7 during that struggle?

8 A. The United States supported the end of the Somoza  
9 Dynasty, and this is quite controversial later in 1991,  
in

10 the writings of Jean Kirkpatrick who became an official  
in  
11 the Reagan Administration, but the United States in fact  
12 did support the end of the Somoza Dynasty. It did not  
13 support a Communist or Marxist-Leninist government to  
14 follow, but did support end of military rule.

15 Q. Didn't the United States try to broker and negotiate  
16 settlement between Somoza regime and Sandinistas?

17 A. Initially it tried to do that, and gave up on the  
18 Somoza regime. That is what is Somoza, to try to have a  
19 Somoza regime without Somoza, and moved toward trying to  
20 have a transition of democracy with all kinds of forces  
21 from left to right that were opponents of the Somoza  
22 dictatorship. There was a widespread operation of that  
23 dictatorship, and did it support negotiations. It did

24 quickly drop negotiating process with Somoza and his  
25 representatives.

1 Q. How many people were killed in that conflict?

2 A. I'm sorry, I don't recall right now. Not nearly as  
3 many as in the final count of deaths in El Salvador.

4 Q. How long was that conflict in Nicaragua?

5 A. That conflict, again, depending on when you date it.

6 Q. When would you date it?

7 A. Well, the earliest beginnings of that conflict is  
8 actually in the 1930's, so, again, depends on how you

want

9 to date it. But the Sandinista revolution and downfall

of

10 Somoza was actually relatively peaceful. It doesn't mean  
11 there wasn't violence, but there weren't a great deal of  
12 deaths.

13 The National Guard collapsed very, very quickly, and  
14 in quite a surprising way to observers from outside, it  
15 really came apart very quickly. The most significant, I  
16 think, conflict, actually begins after that, and begins

not

17 only inside Nicaragua, but the United States also had a  
18 policy of sporting a military force fighting the  
19 Sandinistas which is called the Contras. And in that  
20 period of time there is conflict between the Sandinistas  
21 and Contras.

22 Q. And the United States supported the Contras?

23 A. United States supported Contras, that is right.

24 Q. Going back to El Salvador, we talked about Napoleon  
25 Duarte. Is he the first freely elected president of El

1 Salvador?

2 A. Not in my view. In my view, elections are only free  
3 and fair when all significant parties can take place.

And

4 in the 1984 elections, which is the elections that Jos,  
5 Napoleon Duarte was elected in, there were not conditions  
6 for any party to the left of the Christian Democratic

party

7 to participate in those elections due to the kind of

terror

8 that I testified to earlier.

9 Q. Weren't they invited to participate by the

Government,

10 by the military? Wasn't everyone invited to participate?

11 A. Everybody was invited to participate, but in 1983,

leaders

12 before the elections, and during that process, the

13 of the unarmed opposition, the FDR that had returned to

the

14 country were rounded up and murdered again.

15 And so there was a very strong sense from the

16 political parties in the opposition to the left of the

to

17 Christian Democratic party that it was not safe for them

18 participate. There were also electoral -- in order to

19 qualify as a party to participate in the elections, you

20 needed to present lists of your supporters, and none of

21 these parties felt that they could present a list of

names

22 in the context of the terror that I described earlier.  
23 They were worried about the safety of their supporters.  
24 Q. Can you give your opinion as to the roots of the  
25 conflict in El Salvador?

1 A. Well, I believe I testified earlier that I believe  
2 this conflict happened, and I am simplifying greatly for  
3 reasons of time.

4 Q. Yes.

5 A. For two reasons. One had to do with the poverty and  
6 inequality that I discussed earlier that is rooted in  
7 issues of how the resources of the country is utilized.  
8 And in this case it is an agrarian society, so one of the  
9 key issues is utilization of land.

10 And the other reason I gave was that the -- there  
was  
11 a military dictatorship which simply would not permit the  
12 kind of expression, freedom of association, political  
13 activity that would have changed opposition entirely in a  
14 peaceful direction.

15 And I also testified that there were two electoral  
16 frauds by the military in 1972 and 1977, and both of  
those  
17 tended to make the opposition believe that participating  
in  
18 elections was not going to be a way that they could use  
to  
19 try to change the society.

20 Q. And the country became more and more polarized along  
21 those lines?

22 A. Each time that the avenues for peaceful change were  
23 shut off, the country became more polarized, yes.

24 Q. Now, Napoleon Duarte when he was robbed or cheated  
out

25 of the election in '72, when did you meet him in  
Venezuela?



around

1 A. I don't exactly remember the year, but probably  
2 1975. 75, or 76.

3 Q. And were you an undergraduate then?

4 A. No, I was working on my -- I was working on a book  
5 about Venezuela, which was my doctorate.

6 Q. Did you meet any other exiles from El Salvador in  
7 Venezuela at that time?

8 A. Venezuela had, not any more, it had two leading  
9 political parties, one Venezuela Christian Democrats, who  
10 were related by being affiliated in the same affiliation  
11 with the Salvadoran Christian Democrats. There was a  
great  
12 deal of linkages back and forth between those two  
parties.

13 Venezuela had a Social Democratic party, and the  
14 Social Democrats had strong links with that party, so  
there  
15 was considerable -- there was considerable movement  
16 throughout this whole area. And if we had a map, you  
could  
17 see it, Venezuela, Costa Rica, El Salvador, there was a  
18 circulation of people going back and forth from parties  
19 that they believed may support them. Venezuelans were  
20 quite involved in the conflict in El Salvador throughout  
21 the whole process.

22 Q. Had Napoleon Duarte attempted to come here and  
obtain

23 residency here during that time?

24 A. You know, I actually don't remember. He credits, or

25 credited to me his -- he believes his life was saved

1 because of the interaction of Father Hesberg who was at  
2 that time president of the university of Notre Dame in  
the  
3 United States, and he had quite a strong relationship  
with  
4 Father Hesberg. He came several times, I think he was  
here  
5 for a short period of time. I don't know what he sought  
to  
6 do.

7 Q. He was a graduate of Notre Dame?

8 A. I think that is right.

9 Q. He was trained as an engineer; is that right?

10 A. That's right.

11 Q. Now, what significance is the October 15, 1979 --  
what

12 would you -- how would you describe that? What would you  
13 describe that as?

14 A. Well, some people call it a coup, some people call  
it

15 a revolution. I explained in my testimony it was these  
16 junior officers who initially were hoping to deal with  
the  
17 problem of growing repression by a program of preventing  
18 and punishing human rights abusers, changing the way the  
19 resources in the country were utilized. And on the basis  
20 of those two actions, hopefully transitioning El Salvador  
21 towards a more open political system.

22           Whether they meant democracy as some of us may mean  
23   it, I am not sure.  And I also think there is one thing  
24   that held what I called the reformers and the hard liners  
25   together, which is at no time and at no interview that I

1 have ever had did any, even the reformers, talk about  
2 civilian control over the military. So it was a  
3 complicated story of reform, but always with the military  
4 staying autonomous in a way from civilian control.

5 Q. When that coup or revolution happened, did they --  
did  
6 the leaders publish a proclamation?

7 A. Yes, they did. I believe they published two.

8 Q. And what was that called?

9 A. Well, if I remember correctly, there is a Primera  
and  
10 Segundo Proclamac, the proclamation. I don't remember  
that  
11 exact title.

12 Q. Do you know what that set forth?

13 A. Yes, set forth a program of reform I talked about,  
14 talked about democracy. I believe agrarian reform was in  
15 there as well.

16 Q. Are you familiar with that document?

17 A. Yes, I read it quite a long time ago, but I have  
read  
18 it before. I might need a copy in front of me if you are  
19 going to ask me about it.

20 MR. KLAUS: Your Honor, this is an agreed to  
21 exhibit. On the exhibit list it is referred to as  
22 Plaintiffs' 336. I will have to relabel it. I also  
made

23 copies for the jury.

24 THE COURT: All right. Has it already been

25 offered into evidence?

1 MR. KLAUS: Yes.

2 THE COURT: It is in evidence, okay.

3 BY MR. KLAUS:

4 Q. Is this the document that you remember?

5 A. Yes, yes, it is.

6 Q. And I ask you to read from letter.

7 A. This is the proclamation of the armed forces of the  
8 Republic of El Salvador, October 15, 1979, and it says,  
"A.

9 The armed forces of El Salvador are fully conscious of  
10 their sacred duties toward the Salvadoran people --"

11 THE COURT: Let me stop you a second. We are  
12 short three copies. Let's see if we can't get those  
13 copies.

14 Is it a multi page document?

15 MR. KLAUS: Yes.

16 Let's take a second. I wonder if we could  
borrow

17 one of them, and we will make copies and maybe the jury  
18 could share that.

19 Do we have another one? We are all set.

20 Let's go back and let me allow the professor to  
21 pick up.

22 THE WITNESS: Number A. "The armed forces of  
El

23 Salvador are fully conscious of their sacred duties  
toward

24 the Salvadoran people and sympathize with the clamor of  
25 all of the people against a Government that has, one,



1 violated human rights of the population.

public

2 "Two, fomented and tolerated corruption in  
3 administration and the justice system.

social

4 "Three. Created a veritable economic and  
5 disaster.

6 "Four. Profoundly discredited the country and  
7 the noble armed institution."

8 Q. Now, when this revolt happened, this was General  
9 Romero, was he a general?

10 A. I think there was no rank of general at that time, I  
11 think he was a colonel.

12 Q. He was the head of the country?

13 A. He was indeed.

14 Q. He was the military dictator?

15 A. That is right.

16 Q. These young officers threw him out?

17 A. That is right.

18 Q. Did they throw anyone else out? Did they throw 45  
19 members of the high command out?

20 A. I am sorry, how many members?

21 Q. 45 officers.

22 A. They arrested a number of senior officers for human  
23 rights abuses, I am not sure if the number is 45.

24 Q. But there were a number of, I guess Romero supporters?

25 A. There were Romero supporters that were not all

1 officers.

2 Q. That were removed by these people?

3 A. That were removed by the junior officers, right?

4 Q. Go ahead under B.

5 A. "B. The Armed Forces are convinced that the  
problems  
6 mentioned are the product of antiquated economic, social  
7 and political structures that have prevailed in the  
country  
8 which do not provide the majority of the inhabitants with  
9 the minimal conditions necessary for them to realize  
10 themselves fully as human beings. Moreover, the  
corruption  
11 and incapacity of the regime have caused mistrust on the  
12 part of the private sector resulting in millions of  
colones  
13 in capital flight --" colones is the currency of El  
14 Salvador "-- millions of colones in capital flight --"

15 Q. Intensifying?

16 A. "-- intensifying the economic crisis of the expense  
of  
17 popular sectors."

18 Q. Would you agree with that analysis in A and B?

19 A. Yes, I would.

20 Q. Go ahead to C.

21 A. "C. The armed forces are well aware that recent  
22 governments, products as they were of scandalous  
electoral

23 frauds, have adopted inadequate programs of development.  
24 Those timid programs of structural change that have been  
25 attempted have been obstructed by the economic and

1 political power of conservative sectors, which have  
2 consistently defended their ancestral privileges as  
3 dominant classes, endangering in the process the more  
4 socially progressive and conscious sectors of capital,  
5 which have shown an interest in achieving a form of  
6 economic development that would be more just toward the  
7 population."

8 Q. Would you agree with that?

9 A. I am not sure I would state my own understanding in  
10 quite that way.

11 Q. How would you differ with what the reformers wrote?

12 A. At the time that this is occurring, the economic  
13 structure of El Salvador as I understand it -- I may have

a

14 different understanding than what they had in mind. I

15 don't actually know what they had in mind. But, as I

of

16 understand it, there was such a highly concentrated form

17 capital in -- I've testified to this -- in the hands of a

18 very small group of people that the notion of -- how do

19 they call it, I think socially progressive and conscious

20 sectors of capital.

because

21 I am not quite sure what they refer to there,

they

22 this is really in general a very monolithic group, and

most 23 are not only based in land, but they also tend to own  
not 24 of the real estate, they tend to own the banks that are  
25 in the hands of the state. They tend to own most of the

1 resources of the country. So there is very little of  
what  
2 we would consider a kind of middle sector. There is  
some,  
3 but it is quite small and so I am not sure I would make  
the  
4 kind of distinction that they do, but that is probably --  
5 Q. That wasn't uncommon throughout Latin America,  
6 correct? There is a small number of people that control  
7 most of the wealth in most Latin America countries,  
8 correct?  
9 A. Not this --  
10 Q. At that time.  
11 A. Not this small, and not this much wealth. El  
12 Salvador, if you compared all Latin America countries,  
this  
13 is a smaller group of people owning the wealth, and they  
14 own a larger percentage of the wealth, all of Latin  
15 America, and even today have real problems of  
concentration  
16 of wealth and extreme poverty. But the degrees are  
17 different in each country. El Salvador is or was at this  
18 time on the extreme end of not very good scale, if that  
is  
19 clear.  
20 Q. At this time, I am talking about in the '70's, early  
21 '80's, how did it compare with Peru at that time?  
22 A. I would imagine, my best guess --

23 Q. I am not asking you to guess. I am asking as an  
24 expert.

25 A. I don't have the statistics of Peru in front of me

of



1 1979.

2 Q. How would it compare to Jamaica?

3 A. Don't have the statistics of Jamaica in '79.

4 Q. You are saying El Salvador is on the outer edge of  
the  
5 disparity and income and distribution of wealth?

6 A. Yes, yes.

7 Q. At that time, who was worse than El Salvador, and  
who  
8 was better, meaning nations in Latin America, your area  
of  
9 expertise?

10 A. Well, I think I would need to have the statistics  
from  
11 1979 to answer that confidently. In general Brazil tends  
12 to be the worse over a very long period of time, but I am  
13 not confident to say that in 1979 without having reviewed  
14 the statistics.

15 Q. But you are able to say El Salvador was one of the  
16 worst?

17 A. Yes, I am.

18 Q. How many were worse than El Salvador; do you  
remember?

19 A. I don't remember.

20 Q. Well, when you were preparing for your testimony,  
did  
21 you -- if you are able to say they are the worst, you  
must

22 have been able to see some worse?

23 A. I definitely saw some worse.

24 For example, El Salvador had the second lowest  
caloric

25 intake in the entire region of Latin America. The worst

1 was Bolivia.

2 Q. And the measures that you mentioned in your direct  
3 testimony were caloric intake. What about infant  
4 mortality, commonly accepted measures, correct?

5 A. Right.

6 Q. So they were in the bottom ten, let's say, overall?  
7 If you measured up all of those categories.

8 A. Again, I would be more comfortable reviewing  
9 statistics of 1979 before I made any statements about  
10 ranking.

11 Q. But --

12 A. I did review for the caloric intake, I am confident  
of  
13 that. I have not reviewed 1979 statistics lately.

14 Q. You are confident in your testimony that they were  
one  
of  
15 of the worst countries in Latin America for distribution  
16 wealth and poverty?

17 A. Yes. In a region in which this is a big problem, El  
18 Salvador does not perform well.

19 Q. But, again, you can't tell me who was worse and who  
20 was better?

21 A. I can tell you on caloric intake, Bolivia was worse.  
22 Again, I have not reviewed the information. I would be  
23 happy to get that.

24 Q. Do you have it with you?

25 A. No, but it is available, I am sure.

1 Q. All right.

2 A. There are reports from the World Bank and from the  
3 International Monetary Fund and all kinds of  
organizations  
4 that track these statistics, so it would be possible to  
5 compare El Salvador in 1979 with whatever countries that  
6 they actually have the statistics on.

7 Q. The U.N. keeps records of these things?

8 A. The U.N. does also.

9 Q. OAS?

10 A. Not so much. That would not be a source I would  
11 normally use.

12 Q. Let's go back to D.

13 A. "The armed forces are firmly convinced that the  
14 conditions mentioned are the fundamental cause of the  
15 economic and social chaos and the violence we are  
suffering  
16 at the moment. These conditions can only be overcome  
17 through the arrival in power and Government that will  
18 guarantee the installation of a genuinely Democratic --"  
I  
19 think regime. My copy is not very good.

20 Q. No, I don't think anyone's is. I think that is what  
21 it is. The Spanish copy is attached at the back if you  
22 want to confirm that. It is probably just as bad.

23 A. Also too small for me to read.

24 Q. Does this indicate that they were interested in  
25 installing a democracy?

1 A. This indicates that the Majano faction, the  
reformist  
2 who led the coup against the Romero regime, that is the  
3 group that was later pushed out of the armed forces, that  
4 they in fact were interested, yes.

5 Q. Go ahead.

6 A. "Toward that end, the armed forces whose members  
have  
7 always been identified with the people, hereby on the  
basis  
8 of the Right of Insurrection that all peoples have when  
9 governments fail to uphold the law, depose the government  
10 of General Carlos Humberto Romero, and will immediately  
11 form a revolutionary governing Junta composed in its  
12 majority of civilians whose honesty and competency is  
13 beyond all doubt. Said Junta will assume state power  
with  
14 the goal creating the necessary conditions under which  
all  
15 Salvadorans can have peace and live with the dignity that  
16 befits human beings.

17 "While establishing the conditions necessary for the  
18 holding of genuinely free elections in which the people  
can  
19 decide its future, it is an unavoidable necessity, in  
view  
20 of the chaotic political situation in which the country  
is  
21 living, to adopt an emergency program containing urgent

at 22 measures aimed at creating a climate of tranquility and  
23 establishing the basis that will sustain the profound  
24 transformation of the economic, social and political  
25 structures of the country."



spoken

1 Q. Okay. Now, who besides Colonel Majano have you  
2 to that was a member of this reformist movement?

3 A. You want the names?

4 Q. Yes.

5 A. I have interviewed Colonel Majano. I interviewed a  
6 long time ago Ren, Guerra y Guerra. I interviewed -- I  
7 have to consult my notes, but I interviewed other  
officers  
8 who were involved in this.

9 Q. Who were the members of the first revolutionary  
10 governing Junta that these reformers appointed?

11 A. You mean who were the civilians that they brought  
into  
12 the Government?

13 Q. That they formed. It says will immediately form a  
14 revolutionary governing Junta.

15 A. Again, I don't have the list of everybody, but if  
you  
16 would like to share it with me, that would be good. I  
17 certainly remember the rector of the university, I  
believe  
18 Majorca was in the Government.

19 Q. Are these the names, Colonel Gutierrez?

20 A. Not a civilian.

21 Q. No?

22 A. You want all the names?

23 Q. Yes.

24 A. Colonel Gutierrez.

25 Q. Rom n Quiros?

1 A. Yes.

2 Q. Colonel Majano?

3 A. Yes.

4 Q. Dr. Guillermo Ungo?

5 A. Yes.

6 Q. Mario Audino?

7 A. Andino, it should be, I believe.

8 Q. A-U-D-I-N-O.

9 A. No. I believe it should be Andino.

10 Q. A-N-D-I --

11 A. A-N-D-I-N-O, yes.

12 Q. Now, was this Junta that appointed Colonel Garcia as

13 Minister of Defense, correct?

14 A. No.

15 Q. No?

16 A. No.

17 Q. What was the Junta?

18 A. Colonel Garcia, according to the interviews that I

19 have conducted, was appointed by Colonel Gutierrez in a

20 meeting when none other of the civilian and/or even

21 military personnel were present. And he was -- the civil

22 military Junta was told he would be Minister of Defense.

23 Q. Told by who?

24 A. By Colonel Gutierrez. Colonel Gutierrez, it is a

25 civil military group, and in this group Colonel Gutierrez



1 is the senior commander. It is he that chose Colonel  
2 Garcia as Minister of Defense.

3 Q. This was the day after the revolt, right?

4 A. That is right.

5 Q. The revolt was the 15th, this document was printed  
in  
6 the newspaper on the 15th?

7 A. That is right.

8 Q. The next day --

9 A. Colonel Gutierrez tells the other members of the  
10 Junta, according to my interviews with them, that then  
11 Colonel Garcia would become Minister of Defense.

12 Q. Could that have been done without the Junta's  
13 approval?

14 A. Yes.

15 Q. Do you think it was done without the Junta's  
approval?

16 A. Yes.

17 Q. This was a Junta just formed, just completed a  
revolt,  
18 just deposed the military dictator of the country, just  
19 imprisoned his main supporters, and they didn't make the  
20 decision. You are saying somebody contrary to theirs  
made

21 the decision to a point --

22 A. I don't think it is clear whose decision was whose.

23 Colonel Gutierrez was the most senior person in the

24 military, that was in a military civilian Junta. I  
25 testified bringing civilians into these Juntas was a

1 practice that happened before, but they always served at  
2 the pleasure of the military. So that it is the senior  
3 military commander in this Junta that has the most say.

4 This does not occur by vote. They don't sit around  
5 and vote about who is going to have which position.

6 Q. Were you in El Salvador when this coup happened?

7 A. No, I was not.

8 Q. Who did you interview regarding what exactly  
happened?

9 A. I interviewed -- I believe I interviewed almost  
10 everybody on your list except Mr. Quiros.

11 Q. You interviewed Colonel Gutierrez?

12 A. I did talk to Colonel Gutierrez.

13 Q. You liken this coup to other coups that had occurred  
14 back in the '60's and 50's, correct?

15 A. In the sense that there is a pattern several times  
in

16 El Salvador history where military officers invite  
17 civilians into the Government, yes. In that sense it is  
18 similar.

19 Q. How is it dissimilar?

20 A. It's dissimilar because in these other situations,  
the

21 level of human rights abuses is not as high as they  
started

22 to be in 1977 under Romero. And as they completely

23 spiraled enormously after 1979, so it is different in the

24 sense that the level of abuses conducted by the state are  
25 higher in this period than they are in the 1962 period or



1 in the '48 Government that also invited civilians in.

2 Q. Isn't the end result different? The main  
difference,

3 the end result that led to a democracy?

4 A. The main difference in my view is that it resulted  
in

5 the worst repression in El Salvador history, and the  
6 greatest number of civilian deaths.

7 Q. But it also led to a democracy?

8 A. Again, in my view, it is the negotiations to end the  
9 civil war, the ones that I mentioned earlier brokered by  
10 the United Nations that create the condition for  
democracy.

11 The reason I believe that is the key moment is that the  
12 U.N. negotiations to end the civil war resulted in a  
13 agreement to disband the National Police, Treasury  
Police,

14 National Guard, to shrink the size of the military, and  
to

15 purge from the officer corps all officers who had been  
16 lined or where you could show that extensive human rights  
17 abuses occurred under their command.

18 In that agreement 106 senior officers were removed  
19 from the armed forces. I think that agreement and the  
20 other provisions of that agreement were the reason why El  
21 Salvador could have two years later in 1994 the first  
fully

22 free and fair elections in its history.

23 Q. In the 1948, 1950 civilian Junta, was there a  
24 proclamation or document similar to this one?

25 A. I don't remember.

1 Q. In 1960 to '62 military civilian Junta, was there a  
2 declaration like this?

3 A. Again, I don't remember.

4 Q. Let's go back to reading starting with the elements  
of  
5 the emergency program.

6 A. "The elements of this emergency program are the  
7 following:

8 "Number one. Stop the violence and corruption.

9 "A. Dissolving ORDEN and combatting extremist  
10 organizations that violate human rights.

11 "B. Eradicating corrupt practices in public  
12 administration and the justice system."

13 Q. Number two?

14 A. "Guarantee the protection of human rights.

15 "A. Creating a propitious climate for the holding  
of  
16 genuinely free elections within a reasonable time frame.

17 "B. Permitting the formation of political parties  
18 representing all ideologies in a manner which will  
fortify  
19 the democratic system.

20 "C. Granting a general amnesty to all political  
21 prisoners and exiles.

22 "D. Recognizing and respecting the right of  
laborers  
23 to organize and form unions.

24           And E. Stimulating free expression of thought in  
25   accordance with prevailing ethical standards."

1 Q. Number three?

2 A. Number three. Adopt measures conducive to an  
3 equitable distribution of national wealth, increasing at  
4 the same time the gross national product.

5 "A. Creating a solid basis for initiating a process  
6 for agrarian reform.

7 "B. Furnishing greater economic opportunities for  
the  
8 population by means of reforms in finance, the tax  
system,  
9 and foreign trade.

10 "C. Adopting measures for the protection of  
11 consumers, counteracting the effects of inflation.

12 "D. Implementing special development programs  
13 designed to increase national production and create  
14 additional sources of employment.

15 And E. "Recognizing and guaranteeing the basic  
right  
16 to housing, food, education, and health of all  
inhabitants  
17 of the country."

18 Q. Were these lofty goals in your opinion?

19 A. Yes.

20 Q. And number four?

21 A. "Number four. Pursue a constructive foreign policy.

22 "A. Reestablishing relations with Honduras as  
quickly

23 as possible.

24 "B. Strengthening ties with the people of Nicaragua

25 and their Government.

1 "C. Tightening our ties with the peoples and  
2 governments of our fellow republics, Guatemala, Costa  
Rica  
3 and Panama.

4 "D. Establishing cordial relations with all  
countries  
5 that are disposed to aid the struggles of our people and  
6 respect our sovereignty.

7 "E. Guaranteeing the fulfillment of existing  
8 international commitments. To achieve accelerated  
9 implementation of these measures which the Salvadoran  
10 people has, with all justice, demanded, the revolutionary  
11 governing Junta will assemble a cabinet, formed by honest  
12 and capable individuals, representing diverse sectors of  
13 society, who will apply all of their patriotism to the  
14 performance of their vital roles.

15 "In this moment of genuine national emergency, we  
make  
16 a special appeal to the popular sectors and to socially  
17 progressive sectors of private capital to contribute to  
the  
18 creation of a new epoch for El Salvador guided by the  
19 principles of peace and respect embodied in the human  
20 rights of all citizens."

21 Q. Now, the first Junta, how long was that in power?

22 A. The first Junta is replaced by the second Junta in  
23 January, so it is from October 15, to the beginning of

24 January.

25 Q. And the members of the second Junta were the  
Christian



1 Democrats, Dr. Antonio Morales Erlich?

2 A. That is right.

3 Q. Dr. Hector Dada Hirizi, H-I-R-I-Z-I?

4 A. That's right.

5 Q. Independent Dr. Jos, Rom n Avolis, a very --

6 A. Avalos.

7 Q. A-V-A-L-O-S?

8 A. That's right.

9 Q. Colonel Majano?

10 A. That's right.

11 Q. And Colonel and Engineer Gutierrez, Jaime Gutierrez?

12 A. That is right.

13 Q. The only members that remained were Majano and

14 Gutierrez?

15 A. Military members. All civilian members resigned

16 presenting a demand that the Army stop -- that the Army

17 high command stop the repression that is beginning, and I

18 believe they also circulated a petition asking for the

19 removal of the then Minister of Defense Garcia.

20 Q. Do you have that petition?

21 A. Do I have it?

22 Q. Yes.

23 A. No, I don't.

24 Q. Are you referring to the letter by the Christian

25 Democrats?



1 A. No, I am not.

2 Q. Now, Dr. Erlich was a Christian Democrat?

3 A. Yes. He was one of the founders of the Christian  
4 Democratic party.

5 Q. Was Dr. Arisi (phonetic)?

6 A. I am sorry, I don't remember.

7 Q. Now, did that, did the second Junta, did they invite  
8 Napoleon Duarte to come back to the country?

9 A. Yes, they did.

10 Q. And then in March, 1980 there was a third Junta?

11 A. That's right.

12 Q. Wherein Dr. Arisi was replaced by Napoleon Duarte?

13 A. I believe that is right.

14 Q. And that Junta lasted until December of 1980,  
correct?

15 A. I believe that is right, yes.

16 Q. And its five members were Napoleon Duarte, Dr.  
Avalos,

17 Colonel Majano, Colonel Gutierrez, and Dr. Erlich?

18 A. That's right.

19 Q. Now, the Junta was by law the president of the  
20 country, the head of the country at that time, correct?

21 A. It depends if you mean legal power or real power.

22 Q. I mean legally.

23 A. Legally, this was the body that was to govern the  
24 country. This group of military men with the civilians

25 that they had brought in.

1 Q. Now, also during that time was the escalation of  
2 violence that we saw in your charts?

3 A. That's right.

4 Q. And that started in '79, the end of '79?

5 A. Yes. Actually it had already started under the  
6 minister -- under, excuse me, President Romero. It was  
at  
7 much lower levels, and really breaks out in the end of  
'79.

8 The worst years in El Salvador are 1980 and '81, when  
about  
9 a thousand people a month are dying in those years. A  
10 thousand -- again, let me clarify, I am talking about  
11 civilians, unarmed civilians, I am not talking about  
12 soldiers or people dying as a result of armed conflict  
13 between two armed groups.

14 Q. Let me ask you about that. Does El Salvador have a  
15 history of violence?

16 A. Not like this. Not like what I have described.

17 Q. When is the last time you have been in El Salvador?

18 A. Probably about a year ago.

19 Q. You keep current on El Salvadoran news?

20 A. Yes, I do. As much as I can. I don't visit it as  
21 much as I used to.

22 Q. Is there any particular reason why not?

23 A. I am writing a book on something else, and so I am

24 spending my time in another place.

25 Q. Do you read, regularly read El Salvadoran  
newspapers?

1 A. I do. I get over the Internet excerpts from news in  
2 Spanish.

3 Q. What is the murder rate in El Salvador now?

4 MR. STERN: Objection, Your Honor; lack of  
5 relevance.

6 THE COURT: I will permit it. You may answer  
the  
7 question, if you know.

8 THE WITNESS: It is extremely high.

9 BY MR. KLAUS:

10 Q. Over 20 people a day?

11 A. I don't know the exact statistics, but, both -- but  
El  
12 Salvador, like every other country I studied that has had  
a  
13 civil war, the levels of violence -- including our own,  
by  
14 the way -- this also happened after the United States  
Civil  
15 War, when you have lots of young men who fought in a war  
16 and never been to school. They continue to use the only  
17 way they know to make a living, which is usually robbing  
18 somebody.

19 So a number -- one of the things I am actually  
writing  
20 about right now is how both former officers, former  
21 soldiers, foot soldiers, and former guerillas are  
actually

22 part of armed bands, bands that may include soldiers, and  
23 their former opposition, they rob, they kill, et cetera.

24           It is a continuation, once you had a war, that is  
what

25 people, particularly young people who have never been to



1 school, and I should add soldiers on both sides were  
2 extremely young, that is what they know, so once you have  
a  
3 level of violence like this in a society, it becomes  
very,  
4 very difficult to readjust that society back to a  
healthier  
5 way of resolving issues, conflicts, and making a living.

6 Q. Is there -- do they have the problems like in  
7 Colombia, kidnappings and street violence?

8 A. Street --

9 MR. STERN: Same objection; lack of relevance.

10 THE COURT: Same ruling. You may answer the  
11 question.

12 THE WITNESS: Street violence, I haven't been  
13 following very closely patterns of kidnappings. I  
should  
14 add that I study political violence, and not common  
15 crimes. So when political violence turns into what I  
16 consider common crime, it is -- that is really when my -  
-  
17 when my interests probably move elsewhere.

18 MR. KLAUS: I want to go to -- I am going to  
ask  
19 if you can bring up Plaintiffs' Exhibit 157, page R906.

20 BY MR. KLAUS:

21 Q. This is the initial analysis by Ambassador White  
when

22 he took office in March of 1980. Are you familiar with  
23 this?

although

24 A. I believe I reviewed this at one point, yes,  
25 it has been some time.

page

El

1 MR. KLAUS: If you can just go to the first

2 905. If you can highlight the first paragraph.

3 BY MR. KLAUS:

4 Q. And this is his, identifies this as his summary of

5 Salvador at the time.

6 What is he referring to when he says El Salvador is  
7 not in imminent danger of being lost?

8 A. Well, since this is the cold war, my inference, only  
9 an inference would be lost to the Communists is probably  
10 what he is referring to.

11 Q. Does he mean lost, by Nicaragua was lost?

12 A. I think you would probably have to ask him that.

13 Q. In your opinion, is that what he is referring to?

14 MR. STERN: Objection, Your Honor; lack of  
15 foundation.

16 THE COURT: Well, the witness may answer if she  
17 knows, if she feels she can. If she can't, she can tell  
18 us.

19 THE WITNESS: The only way I analyze documents,  
20 usually with the ones that came before and the ones that  
21 came after. I really need to see this in some kind of  
22 context, I actually don't know what he was talking about  
23 in previous documents, and I am not comfortable about  
24 speculating on his intentions in this one.



1 BY MR. KLAUS:

cable

2 Q. This is his initial analysis, this is his first

3 from his new position in El Salvador, so I don't think he

4 would have any prior documents.

5 MR. KLAUS: Anyway, go down to number three,

6 please. Highlight that.

7 BY MR. KLAUS:

8 Q. If you could read that for us.

of

9 A. "In El Salvador the rich and powerful have

10 systematically defrauded the poor and denied 80 percent

11 the people any voice in the affairs of their country. A

principal

12 revolution is now underway and we are one of the

13 actors. There is no stopping this revolution, no going

and

14 back. We can influence the course of events, however,

15 try to guide it into channels which will benefit the

Nicaragua

16 Salvadoran people, provide an alternative to the

17 model for --"

18 MR. KLAUS: Go to the next page and highlight

19 that.

and

20 THE WITNESS: "-- for Guatemala and Honduras

21 safeguard our security interests in Central America and

22 the Caribbean."

23 BY MR. KLAUS:

24 Q. Do you agree with this situation there?

25 A. I think one pattern I have seen in the cables of all

1 Ambassadors, they come in optimistic about the United  
2 States' ability to influence events. They also come in  
3 with one set of understanding and every single one of  
them  
4 left with quite a different set of understandings.

5 So I think that this was probably an overly  
optimistic  
6 assessment from the time.

7 Q. So you wouldn't agree with this assessment?

8 A. Well, I would agree that the rich and powerful  
control  
9 most of the resources. I would also agree that the  
United

10 States has influence over what happens. I am not sure I  
11 would be as confident that that could be channeled in the  
12 ways that he seems to indicate.

13 Q. Would you agree that a revolution was underway in El  
14 Salvador at that time?

15 A. Yes, I think I would.

16 MR. KLAUS: Okay. If you could go on to number  
17 four. Highlight as much as you could.

18 BY MR. KLAUS:

19 Q. And if you could read that.

20 A. "The main players in this revolution are the extreme  
21 or ultra-right made up largely of reach landowners, their  
22 private armies and certain high military officers.

23 "The regular Army and the security forces, National

24 Guard, National Police, and Treasury Police.

25 "The Christian Democratic party, the only party



1 represented in the Government.

the

2 "The United States Embassy and its visible symbol,  
3 American Embassy.

4 "The church, Archbishop Romero and the Jesuits,  
5 conservative forces in the church exist but wield no  
6 measurable influence.

7 The popular organizations, the three action oriented  
8 pressure groups ranging from the leftist but responsible  
9 FAPU to the wild-eyed, lunging, LP-28, which occupies  
10 Embassies and public buildings.

relatively

11 "And the three far left guerilla groups, underground  
12 mirrors of the popular fronts, managing from the  
13 disciplined FARN to the murderous ERP."

14 Q. If you could keep going.

15 A. "There are potential players which are not now --  
16 there are potential players which are not now taking an  
17 active role.

popular

18 "Other parties of the center left without much  
19 support but with some competent leaders.

20 "Businessmen's organizations such as ANEP,  
21 entrepreneurs but big landlords as well, and ASI,  
22 industrialists and exporters which could influence the  
23 moderate, sensible elements of the private sector to

24 cooperate with the Government, especially by encouraging  
25 investment, reopening factories, et cetera."

1 Q. Would you agree these are the major players in the  
2 revolution, or would you add more or take some out? If  
so,  
3 which ones?

4 A. I am not sure he mentioned labor unions. I believe  
I  
5 would put labor unions and peasants associations there.  
I  
6 would also characterize these actors somewhat  
differently,  
7 some of them.

8 Q. Now, regarding labor unions, are -- the AFL/CIO  
9 eventually sent people down there. The two Americans  
that  
10 were murdered at the Sheraton were representatives,  
11 financed by the AFL/CIO from the United States?

12 A. That is correct.

13 Q. AFL/CIO United States chapter funneled a lot of  
money  
14 there to try to help organize labor unions?

15 A. That's right.

16 Q. And that became a -- as you are pointing out here,  
17 Ambassador White maybe missed or whatever, didn't  
include,  
18 but that became a major player in political social  
economic  
19 dynamics of the country during the revolution, correct?

20 A. Well, labor unions were one of the first groups to  
be

early 21 repressed, and most labor unions were murdered in the  
22 1980's, particularly this 1980 period.  
23 And so the unions actually became much less active  
as 24 a result of this. The AFL/CIO came in as part of a plan  
to 25 rebuild unions in a way that was probably more  
sympathetic

those  
as

1 to the way the AFL/CIO would have liked to have seen  
2 unions, so it was trying to extend its own affiliations  
3 well.

4 Q. They wanted to train leaders?

5 A. They wanted to train leaders. There was a very  
6 massive and continuous repression against labor union  
7 leaders in El Salvador, and so they continuously were  
8 disappeared or murdered or tortured. And so the AFL/CIO  
9 believed that it could come in and try to train new  
10 leadership to participate in the political -- in what it  
11 hoped to be a political process in El Salvador.

it.  
12 Q. Could you go onto the next paragraph? I will read

extremists  
our

13 "The Government has beleaguered, attacked by  
14 and moderates on both the left and the right. Without  
15 constant and visible support, the Government would fall  
16 within a matter of days."

17 Do you agree with that?

18 A. No, I don't.

19 Q. Now, at that time in March, 1980, who was our  
20 president at the time?

21 A. Our president was Jimmy Carter.

22 Q. And Ambassador White served at his pleasure?

23 A. That is right.

24 Q. How much aid were we giving to El Salvador in 19 --

25 how much had we given El Salvador in 1979; do you know?

show

1 A. I don't remember the exact statistics. I could  
2 certainly find them, because I made a chart on aid to  
3 the increase, but we weren't really giving that much aid  
4 until 1980.

5 Q. Now, in November of 19 -- when was our presidential  
6 election?

7 A. November --

8 Q. 1979?

9 A. No. No. 1980. Ronald Reagan takes office in  
10 January, 1981.

11 Q. Do you know how much aid we gave in 1980?

12 A. I don't remember the numbers. Again, I had the  
13 composite statistics for you from '80 to '83, and I would  
14 be happy to go back and look at my --

15 Q. Let me ask you this: Are you familiar with the book  
16 by Philip Williams and Knutt Walker, Militarization and  
17 demilitarization in El Salvador, transition to democracy?

18 A. Yes, I am.

this

19 Q. I am going to look on page 133, and table 61. Is  
20 figure consistent with your -- does this refresh your  
21 memory 5.9 million dollars in military aid during 1980?

22 A. Is there a chance I could look at the table?

23 Thank you.

dollars 24 Q. Remember your graph that had about 200 million

25 in military aid?



1 A. Mine is composite, three years.

2 Q. Yes, I want to try to separate out the years. That  
3 agrees with your total of approximately 200 million  
dollars  
4 aid between '80 and '83?

5 A. Uh-huh.

6 Q. But that aid really didn't start in significant  
7 numbers until '81, correct?

8 A. That's right.

9 Q. Okay. And was one of the reasons that was that  
10 President Carter, the Carter administration was  
11 disappointed in the human rights record of El Salvador;  
if  
12 you know, or if you have an opinion?

13 A. You mean why the aid statistics were low -- were  
14 relatively low in '79 and '80?

15 Q. Yes.

16 A. I actually don't remember why they were low in '79  
and  
17 '80. El Salvador had not really been on the U.S. radar  
18 screen. It was not a country that United States paid  
very  
19 much attention to. The ability of the United States to  
20 respond to some kind of crisis, there is always a lag  
time,  
21 so if you remember, October revolution is at the end of  
22 '79.

been

23 I think any administration, whether it would have  
24 Carter, President Carter or President Reagan would have  
25 needed some gearing up time, and by the time President

1 Reagan comes in El Salvador is very clearly a  
consideration

2 for foreign policy makers in the United States.

3 Q. And due to what had just happened in Nicaragua, all  
4 the countries surrounding Nicaragua became an interest of  
5 focus for us, correct?

6 A. It is not just Nicaragua, there is also a war going  
on

7 in Guatemala, next door.

8 Q. Okay. And there are problems in Honduras?

9 A. Less so. The United States most focused on  
Nicaragua

10 and Guatemala and El Salvador. El Salvador eventually  
11 becomes in my view the primary problem, although

Nicaragua

12 stays there, and the United States eventually establishes  
13 military installations in Honduras. So it also becomes,  
14 from the point of view of U.S. administration, an  
important  
15 part of this story.

16 Q. So does the figure of 5.9 million dollars for the  
year

17 1980, does that refresh your memory?

18 A. That sounds that that could be right, yes.

19 Q. So, during the next two years, '81, '82 --

20 A. As you see from the chart you showed me, it goes --  
21 continues to go way up.

22 Q. And that referred to military aid?

23 A. That is right.

24 Q. So you didn't agree that if we didn't -- without

25 constant and visible, support the Government of El  
Salvador

1 would fall within a matter of days, you don't agree with  
2 that?

3 A. No. I don't agree with that.

4 Q. Do you agree with Ambassador White's statement that  
5 the Government, meaning the Junta -- is that what he is  
6 referring to?

7 A. Yes, he must be referring to the Junta.

8 Q. -- is being attacked by extremists and moderates on  
9 both the left and the right?

10 A. I think that what Ambassador White later came to  
11 understand from analyzing all of his cables, and from his  
12 testimony here in this courtroom, when he wrote this, he  
13 was not as aware, as he subsequently became aware, that  
14 extremists that he was talking about were actually inside  
15 the armed forces.

the

16 And so when he talks about the Government, meaning

the

17 Junta, and the Junta is dominated by military officers,

he

18 originally believed that there were forces outside on

both

19 sides. I think you can see from studying his cables and  
20 also from his testimony here, by the time he leaves El  
21 Salvador, he is most worried about the armed forces and  
22 security forces treatment of its own population, and they  
23 are inside the Government, if I can put it that way.

24 Q. Okay. Well, he refers to that in the next paragraph  
25 of this cable.

that 1 MR. KLAUS: If you could move down and blow  
2 up.

3 BY MR. KLAUS:

forces, 4 Q. Where he talks about elements of the security  
5 torture, killing campesinos, that is what he is referring  
6 to, correct? Elements within the security forces, within  
7 the armed forces?

that 8 A. I think he is referring to that, but I also think  
9 in his time of being in El Salvador, what he begins to  
10 understand is right-wing violence is violence that is  
11 coming from inside the Salvadoran armed and security  
forces 12 and directed from there.

El 13 Q. When did you -- when was the first time you visited  
14 Salvador?

15 A. I believe it was 1981, beginning.

16 Q. So that was pretty much during the height of the  
17 violence?

18 A. It was very much during the height of the violence.

19 Q. Now, did you have the opportunity ever to interview  
20 General Garcia?

21 A. I never did. He was the Minister of Defense at the  
22 time, and he was the hardest person to actually get an

23 interview with in the country.

24 Q. Did you try to get an interview with him?

25 A. I did.



1 Q. And who did you speak to in order to get an  
interview?

2 A. I actually don't remember.

3 Q. So there was someone in between you --

4 A. I apparently didn't ask the right person, I can tell  
5 you that, because I never did get the interview.

6 Q. Did you ask Napoleon Duarte to get you an interview  
7 with him?

8 A. No. I never would have done that. I don't think  
9 Napoleon Duarte had influence over General Garcia.

10 Q. At that time he was president of the Junta?

11 A. Yes, but at least in his conversations with me, he  
did

12 not feel like he had any ability to ask the military for  
13 favors that might involve say an interview with me. I  
14 never asked him to do that, and I am quite clear from my  
15 conversations with him that he did not feel he was the  
16 senior partner in any discussions with the military.

17 Q. Now, was the military divided at that time, was it  
18 fragmented at that time? Obviously in late '79 it was  
19 because there had just been a coup within the military.

20 A. I don't think I would use the word fragmented. I  
21 talked earlier about factions in the military, that there  
22 were different groups, hard liners and reformists who  
felt

23 differently about a variety of issues. There are some

24 who -- in my own mind I think of them as the status quo  
25 hard liners, nothing is going to change. The group that

I

1 call the repression with some reforms group, and then the  
2 reformers who -- whose proclamation you heard and who  
3 actually had a different program.

4 Q. Were all those officers united by the Tanda System?

5 A. Yes, they were, and by a chain of command.

6 Q. In your opinion did the Tanda System override any of  
7 their political differences?

8 A. There is one instance where I can say not entirely,  
9 because Colonel Majano is a member of a Tanda, and yet he  
10 and the reformist officers, as I testified before, he is  
11 the head of the reformist faction. He is removed from

his

12 command, he is eventually dismissed from the military.  
13 Somebody tries to below him up, I believe once or twice,

I

14 am not sure. And he is forced to leave the country.

15 So that is the only instance that I am aware of  
16 where -- that is the pushing out of the reformers where

the

17 Tanda System didn't seem to protect everybody.

18 Q. Okay. Didn't Colonel Majano resign in December of  
19 1980?

20 A. I don't know what the actual formal -- his actual  
21 formal status was of leaving the military. I know it  
22 matters how you do leave the military in terms of your  
23 pension, your opportunities, et cetera. So I don't know

24 exactly what the legal status he had when he left, but it  
25 is clear to me that given the pattern of demotions that

with  
death  
his

1 occurred after he discovered military officers meeting  
2 Roberto D'Aubuisson, who is the reputed leader of the  
3 squads, after that moment his career was finished, and  
4 time in the Army was finished.

human  
make

5 Q. What other officers -- I know you made a list of  
6 officers that were promoted that in your opinion were  
7 rights abusers, that were promoted by either Minister of  
8 Defense Garcia, or Minister of Defense Vides. Did you  
9 a list of these young officers who were removed from the  
10 military?

11 A. Yes, I did.

12 Q. And who were they?

13 A. I don't have all the names of them now. They were  
14 removed in 1980. But --

15 Q. Well --

16 A. I am trying to remember the number.

17 Q. Colonel Majano was still a member of the Junta until  
18 December, 1980, correct?

19 A. I don't believe that is correct.

20 Q. Didn't he resign in December, 1980?

21 A. From the Junta?

22 Q. Yes.

23 A. September --

24 Q. Sometime --

25 A. September, 1980 is the general order that Mr. Garcia

1 gives that transfers and removes the reformists from  
2 positions of authority. I would have to check whether  
3 Colonel Majano went in that general order or later. I'm  
4 not quite sure.

5 Q. Well, he wouldn't have --

6 A. I am not sure if it was September or December.

7 Q. He wouldn't have gone in order by Colonel Garcia, he  
8 would have had to approve an order by Colonel Garcia,  
9 correct, for him to take effect?

10 A. Colonel Majano would have to approve an order from  
11 Colonel Garcia?

12 Q. Yes.

13 A. No. No.

14 Q. Isn't that the way it worked?

15 A. No. Garcia was Minister of Defense, he is the  
person  
16 in charge of, and has the legal authority for putting  
17 people -- for transferring people, putting them on  
18 administrative leave, et cetera, so he is also the  
person,  
19 I believe, who recommends promotions and demotions.

20 Q. That is what I mean. He may recommend them, but  
they

21 have to be approved and implemented by the ruling Junta?

22 A. No. By the Army high command.

23 Q. Doesn't the President have to sign the orders?

24 A. I think I've already testified that while the  
25 President of the country may have to sign the orders, the



1 civilian members of the Junta and the civilian Presidents  
2 that follow do not have the power to change the military  
or  
3 change any of the wishes of the military. Colonel  
Majano,  
4 it is my understanding is -- he had to obey the orders of  
5 people who were senior to him in the hierarchy of the  
armed  
6 forces, and he did obey those orders.

7 In other words, he never disobeyed a direct order  
from  
8 any of his superiors, Colonel Gutierrez, and my  
9 understanding is Minister Garcia.

10 Q. And when he resigned, he left the country, right?

11 A. Yes, he did. There were several, as I said,  
12 assassination attempts against him, one, I believe,  
13 involved his family, and he subsequently left the  
country.

14 Q. In your opinion, were those assassination attempts  
15 masterminded or orchestrated by Colonel D'Aubuisson?

16 A. I do not know who masterminded those. There was  
never  
17 any direct evidence that I saw that is corroborated  
18 anywhere that can attribute the responsibility that I  
have  
19 seen that can attribute -- that can tell me in any way,  
20 that is convincing to me who tried to kill Colonel  
Majano.

21 Q. Colonel D'Aubuisson, we mentioned his name a few

22 times?

23 A. He was a major.

24 Q. Okay. Was he one of the officers removed by the  
young

25 reform officers?

I  
1 A. You know, I don't exactly remember the circumstances  
2 of his removal. I've interviewed him quite extensively.  
3 actually traveled with him on his presidential campaign,  
4 and in his interpretation, I have not corroborated this  
5 again, but in his interpretation, he wanted to be outside  
6 the military. That he later becomes the founder of the  
7 rightist political party called Arena, and he is an  
8 extremely influence man.

Salvadoran  
9 He is an ideologue in many ways, very charismatic,  
10 somebody who had a great deal of influence over  
11 military officers, as well as some civilians. He had a  
12 great deal of -- I think he had some popular support in  
the  
13 countryside, and he, I think, was interested very early  
on  
14 in participating in the Salvadoran story in a different  
15 way.

16 Q. What do you mean in a different way?

17 A. Well, he used to teach in the Centro de Estudios de  
la  
18 Fueza Armada, which is the Center For Studies of the  
Armed  
19 Forces.

20 Q. Is that the military college of El Salvador?

21 A. That is not the Escolar Militar. That is a separate  
22 entity. I believe he taught there when General Vides was

23 the deputy director of CEFA. He was -- now, this is my  
24 impression, he was a very charismatic leader, he was  
25 somebody who could involve others in his visions of how

E1

1 Salvador should look. He was an extreme, extreme  
rightist.

2 He was the person who would go on television and read  
lists

3 of names, and they would appear dead.

4 Q. The television, the thing you described where you  
saw

5 someone confess on television --

6 A. Well, that is a different story. Actually, that was  
7 much later, and that is after Roberto D'Aubuisson. At  
that

8 point I believe was the head of the Congress, and so he  
was

9 not at that point reading death lists.

10 There was a death squad that actually operated out  
of

11 the Congress of El Salvador at the time, but he was not  
12 personally going on television and reading this list in  
the

13 1980 period.

14 Q. In the 1980 period, he was generally -- in your  
15 opinion, was he the leader of the death squads?

16 A. He was clearly involved in death squads. There  
were,

17 according to the CIA analysis of death squads at the  
time,

18 CIA constantly places the responsibility for the  
formation

19 and direction of death squads on Major D'Aubuisson and  
20 Colonel Carranza, who I talked about earlier, who was the

21 second in command under General Garcia. He was the  
22 sub-secretary of defense.

23 Q. Wasn't Major D'Aubuisson credited with masterminding  
24 the assassination of Archbishop Romero?

25 A. Yes, he was. He was not the trigger person, but he

one  
1 was pointed to in the Truth Commission report as being  
2 of the masterminders of the assassination of Archbishop  
3 Romero.  
4 Q. Didn't he try to topple the leaders of the military  
5 and Junta sometime in 1980?  
6 A. In 1980, he is in -- I believe March of 1980, it is  
on  
7 the timeline I handed you, he is found in a house with --  
I  
8 think the number I put on there is 23 military officers  
in  
9 that house, and found with them are supplies and lists of  
10 supplies that include false license plates, ski masks,  
11 false identities, certain kinds of armaments and  
equipment  
12 that was routinely used by death squads.  
13 There were also -- there are two interpretations of  
14 that event. I don't think they are actually mutually  
15 exclusive.  
16 One is that Roberto D'Aubuisson and the officers he  
17 was meeting with at the time wanted to push El Salvador  
18 into a -- wanted to -- it was already in what I call mass  
19 state terror, but they wanted to block any efforts at  
land  
20 reform, which is a different issue.  
21 The other interpretation that this was the nexus  
22 between and that the people in that room were the key

23 military officers that had set up death squads inside the  
24 Treasury Police, National Police, et cetera.

25           So that meeting was considered very important to all



1 observers in El Salvador because it had in one room the  
2 officers that subsequently, we know, became leading human  
3 rights abusers. The Sheraton killers were there, the El  
4 Calabozo, the leaders of many of the massacres I have  
5 talked about were also in that room at the time. This is  
6 in 1980.

7 That is the group of people, those military officers  
8 with Roberto D'Aubuisson, with Colonel Majano the  
9 reformists tried to arrest. It was at that time that he  
10 was overridden by general -- by then Minister of Defense  
11 Garcia who released all of the people that were found  
12 the ski masks and false I.D.'s and everything. Roberto  
13 D'Aubuisson was released, all the military officers were  
14 released, and I believe a day or two later Colonel Majano  
15 was relieved of that command.

with

16 Q. Well, no, that was --

we

17 THE COURT: Mr. Klaus, we are at a point where  
18 need to take a break for the mid-afternoon recess, why  
19 don't we stop and take a 15 minute break and come back  
20 move on to the cross examination.

and

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

22 (Thereupon, trial reconvened after recess.)

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

24 jury, please?

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

me  
1 THE COURT: We are in cross examination. Let  
2 turn back to Mr. Klaus and allow him to proceed.

3 BY MR. KLAUS:

the  
4 Q. Professor, we were speaking about the meeting with  
5 23 officers and Roberto D'Aubuisson. When did that  
meeting  
6 take place?

7 A. It took place in May. I believe I said March, but  
8 May.

9 Q. May, 1980?

10 A. May, 1980, that's right.

11 Q. And prior to that, and after that, Major D'Aubuisson  
12 used to publish on the television lists of individuals?

13 A. Actually the beginning, 1979 and 1980 period, he  
14 would -- he had been in the telecommunications area, and  
in  
15 a place called Anasel (phonetic) as well, which gave him  
16 access to lots of records.

17 And he used these records to identify people that he  
18 thought or that his cohorts thought were subversives. He  
19 would read these on television and afterwards those  
people  
20 who hadn't fled would be found dead. And this was an  
early  
21 tactic.

were

22 Q. Do you know if any of the three Defendants names

23 on any of those lists published by Roberto D'Aubuisson?

24 THE COURT: You said Defendants.

25

1 BY MR. KLAUS:

2 Q. Plaintiffs, I am sorry.

3 A. I don't know.

4 Q. Do you have access to the lists?

5 A. No. They were on television, I have seen a tape. I

6 was not in El Salvador during this period when this

7 happened, but there were tapes made of a number of Major

8 D'Aubuisson's pronouncements at the time, and so you

could

9 see them.

10 There were also, as these and other death lists

11 appeared, there were people publishing notices in the

12 newspaper if their name appeared on one of the lists,

that

13 they were not in fact -- or a name like theirs, they were

14 not the person you were looking for. There would be

people

15 afraid and say I am not the person named here, so don't

16 come after me.

17 Q. And he also had access to, almost open access to

18 military establishments, is that correct, during that

time

19 period?

20 A. He worked very closely with, with officers serving

in

21 the armed forces, and in the security forces, so he was

in

22 fact in and out of contact with military officers at all

23 times. And when I -- I actually went on some of his  
24 campaign in 1983 or '4, and in that campaign I noticed  
that  
25 he knew lots of people around the country. So he clearly

1 did know officers.

2 Q. And would he --

3 A. He had taught many of these officers. As I  
testified

4 before, he had been the professor of many of these  
5 officers.

6 Q. He would travel from barracks to barracks, command  
7 station to command station?

8 A. No. No. When I traveled with him, he was giving  
9 speeches. He wanted to be the President, and he would  
give

10 these campaign speeches, usually carrying a watermelon  
that

11 he would use and his testimony, he did not like Christian  
12 Democrats, and the color of their party is green, so he  
13 would walk around campaigning with the watermelon.

14 And he would slice it in half, and say this is a  
15 Christian Democrat, green on the outside, and red on the  
16 inside. The times I knew him, he was a campaigner. I  
17 never saw him go in and out of barracks.

18 Q. Did he have a reputation of, prior to your  
involvement

19 with his campaign or observation of his campaign, was --

20 A. I was not a consultant. I want to be clear about  
21 that.

22 Q. You were an observer?

23 A. I was an observer.

24 Q. Prior to that in '79 to '82 or up until when you met  
25 him, did he have a reputation of inciting members of the



1 military to commit acts of violence against the civilian  
2 population?

clearly

3 A. I think that when he was in the military. He

I

4 had a group of military officers that he worked with. As

squads

5 testified in my testimony, there were military death

6 located in the headquarters in San Salvador, particularly

7 in the intelligence units of the National Guard, the

to

8 Treasury Police, and the National Police. And he seemed

whose

9 have -- at least in the Congress he had an assistant

military

10 name was Regalado who was also separate from those

11 death apparatuses, or repressive apparatuses. He also

another

12 seemed to have located in the constituent assembly

13 apparatus that was primarily civilian, I believe.

14 Q. Who financed his operations?

15 A. I don't personally know the answer to that.

16 Q. Do you have an opinion?

from

17 A. I have an opinion on that, yes. My opinion comes

18 the investigations in the Sheraton murders and some other

Commission

19 information that came to light during the Truth

20 investigations. His operations -- the operations that

were

21 he -- that the Sheraton murders, the Sheraton murders

22 financed by two wealthy Salvadorans who lived at the time

23 in Miami. I don't know if they are still there.

24 Q. Did they live on Key Biscayne?

25 A. I don't know their address.

1 Q. Do they still live here?

2 A. I don't know the answer to that, either. They were  
3 implicated in the Truth Commission Report and gives their  
4 names. There was a subsequent effort to find out to the  
5 extent that there was any external financing that didn't  
6 come from inside the military itself. There was an  
effort  
7 to try, by the CIA to try to cut off some of that  
financing  
8 that might have been coming from Florida.

9 Q. Now, May of 1980 meeting where there were 23  
officers,  
10 were either General Garcia or General Vides present?

11 A. Not to my knowledge.

12 Q. Okay. And there were several officers arrested  
after  
13 that meeting, correct? During the meeting?

14 A. During the meeting Colonel Majano, the reformer, or  
15 the man who was leading the reform faction, received  
16 information that this meeting was actually going on. It  
17 was at a farmhouse that was named Finka San Luis  
18 (phonetic), and at that farmhouse -- he raided that  
19 farmhouse and found these military officers there with  
20 Roberto D'Aubuisson with a number of documents as well,  
21 including a plan to make, I believe Minister Vides  
Casanova  
22 the Minister of Defense after General Garcia.

23 Q. Okay. Was the plan -- did Colonel Majano indicate  
24 this was a coup that was about to happen, that this was a  
25 planning of a coup?

it  
quite  
the

1 A. Colonel Majano, this is in May, and as I testified,  
2 took about ten weeks to marginalize or push out the  
3 reformers in the most important positions. He hadn't  
4 realized until this event, which I think was quite  
5 significant from his point of view according to my  
6 interviews with him, he didn't realize how serious the  
7 senior officers were about removing the reformers from  
8 armed forces.

I  
other  
them,  
security

9 He received his orders from the general command, and  
10 think he still was under the impression that if he could  
11 catch a group of military officers with such damning  
12 evidence of involvement in extrajudicial killings and  
13 illegal operations of many sorts, if he could arrest  
14 that he would then be able to cut off the head of the  
15 apparatus that was operating primarily out of the  
16 forces and some out of the military.

17 Q. Was Roberto D'Aubuisson, and those under his  
18 influence, are those who thought like him, was it one of  
19 their goals to bring about the collapse of the civilian  
20 Junta, military collusion?

21 A. You know, there is a lot of people who thought the

from

22 same in El Salvador, so there were a number of people

23 Roberto D'Aubuisson to, according to the CIA cables,

24 Carranza, Colonel Garcia who shared the thinking that it

25 was important to get rid of the armed -- excuse me --

1 unarmed opposition.

2           And you have seen cables that I showed you about  
3 sharing a line of thinking. There were differences, I  
4 believe, in this group about what to do about other  
issues,

5 so there was a -- in my opinion, there was a general  
6 consensus about the need to repress, but there was not a  
7 consensus about, for example, whether or not there should  
8 be a land reform.

9 Q. Let me ask you again, number one, do you have any  
10 cables that indicate General Garcia wanted to remove the  
11 Junta and restore military dictatorship?

12 A. I think I have testified that I don't think the  
13 military was out of power.

14 Q. Okay.

15 A. That from my analysis, the military is in power,  
16 really, until -- is the predominant force in the country  
17 all through this time of civil military rule, and that  
the  
18 civilians who were there, including President Duarte,  
serve  
19 at the pleasure of the military. So the civilians are  
not,

20 even if they formally occupy the presidency, even if they  
21 have a formal position as President, they do not have  
22 civilian control over the armed forces, and they do not

armed

23 have the power to move or order people around in the

24 forces, that simply is not the case.

25 In El Salvador until after the security forces are



1       disbanded and the U.N. brokered peace agreements and the  
2       human rights abusers are purged from the officer corps,  
and  
3       that is not until the peace agreement, that is in the  
4       '90's.

5               So there is no, from my analysis, and I must say  
that  
6       I had very extensive conversations with Jos, Napoleon  
7       Duarte since I knew him quite well, there is no sense  
that  
8       any civilian President had the power to remove a military  
9       officer, ever.

10      Q.    Okay.  Well --

11      A.    Regardless of whatever legal description of the  
office  
12      of the presidency existed.

13      Q.    And regardless of what all the U.S. cables say  
14      referring to the Junta and El Salvadoran Government  
versus  
15      the military and analysis that includes that there was an  
16      attempt by people like Roberto D'Aubuisson, and  
apparently  
17      those 23 officers to destabilize the Government?

18               MR. STERN:  Objection; compound, Your Honor.

19               THE COURT:  I will permit the question.

20               THE WITNESS:  Could you break the question  
down?

21      BY MR. KLAUS:

saying

22 Q. Now, there has been a lot of referencing various  
23 cables to the El Salvadoran Government which you are  
24 it served at the pleasure of the military?

25 A. The Government, the Junta has both military officers

1 and civilians.

2 Q. The only military officers in it were Gutierrez and  
3 Majano?

4 A. And Gutierrez is the commander general of the armed  
5 forces. He is the single most powerful commander of the  
6 armed forces. He is in the Government but he is also  
7 above -- excuse me. He is legally above Colonel Majano,  
8 and he is the person who puts Minister Garcia in his  
9 position as Minister of Defense.

10 Q. And he is --

11 A. So when I say that, he has the command authority  
over  
12 Colonel -- excuse me, Colonel Majano at the time.

13 Q. And over Colonel Garcia, correct?

14 A. Once he appoints Colonel Garcia as Minister of  
15 Defense, the authority devolves down to Colonel Garcia  
for  
16 the actual running of the armed forces, and for the  
17 movement of officers, the transfer of officers, putting  
on  
18 administrative leave, the kinds of things I testified to  
19 earlier.

20 Q. Well, if Roberto D'Aubuisson clearly opposed the  
21 Christian Democrats, and you are saying the military  
spoke  
22 as one voice, why were the Christian Democrats included  
in

23 the government?

24 A. I don't think I said the military spoke as one  
voice.

25 I think I said the military has one command, which is

1 different. My testimony is there are factions in the  
2 military. Even when there are factions, when Colonel  
3 Gutierrez, a hard liner, orders Colonel Majano,  
reformist,  
4 to do something, Colonel Majano does it. So my testimony  
5 is that those factions are not relevant to the command  
6 structure of the armed forces.

7 Q. Okay. So, even though there was a clandestine  
meeting  
8 with 23 officers in attendance, and not attended by  
General  
9 Vides or General Garcia, that that didn't indicate any  
10 important division within the military to you?

11 A. That indicated that 23 officers were caught in a  
room  
12 with a great deal of evidence that I think reasonable  
13 people would consider very incriminating evidence. I  
14 repeated some of that like the false I.D.'s, and ski  
masks,  
15 and licenses, and all of that.

16 It also indicates that when Colonel Majano tries to  
17 arrest those officers, and tries to put them in jail and  
18 find out exactly what is going on, when he elicits  
19 testimony from some of those officers according to his  
20 interview with me, when those officers confess to being  
21 involved in egregious human rights abuses, rather than  
22 support Colonel Majano's arrest of those people, Minister

of

23 of Defense Garcia releases Roberto D'Aubuisson and the  
24 military officers involved, and he changes the position  
25 Colonel Majano within the armed forces in a process that

1 begins to move him out.

2 Q. Why was it important to the United States to avoid  
the  
3 collapse of the civilian military collusion?

4 A. The United States believed -- Ambassador at the time  
5 is Ambassador White. He believed that it was important  
to  
6 bring new forces into the Government. It was very much a  
7 part -- it was very much as a result of U.S. pressure  
that

8 Jos, Napoleon Duarte was able to return to El Salvador  
and  
9 actually be in the Junta. Military officers, and the  
ones

10 I interviewed, and I interviewed a number of colonels  
11 thoroughly -- not only thoroughly disliked but thoroughly  
12 were opposed to the Christian Democratic party.

13 But once the United States said that this party is  
in  
14 a sense our ally, this is the party that we aided the  
most,

15 we gave the most financial aid to, we tried to help build  
16 up, the United States was doing this at a time when  
17 probably the largest number of mayors and government  
18 officials that were being killed by the military and  
19 security forces were Christian Democrats.

20 So the military is tacitly accepting Jos, Napoleon  
21 Duarte because he is being thrust on them, and the party

22 am talking about is killing Christian Democrats all over,

23 this leads to a split in the Christian Democratic party.

24 Many people in the Christian Democratic party opposed

Jos,

25 Napoleon Duarte staying in the Government.



1 Q. And the other Christian Democrat was part of the  
2 government, too?

3 A. I think Morales Erlich, I am not sure.

4 Q. Yes.

5 A. He was the --

6 Q. Founder?

7 A. Second founder with Jos, Napoleon Duarte with the  
8 Christian Democratic party, and they very much wanted to  
be  
9 in the government. They very much wanted to be in power  
in  
10 El Salvador.

11 The first time I ever met Jos, Napoleon Duarte, he  
12 said my -- me llamo Jos, Napoleon Duarte. I voy a ser el  
13 proximo Presidente de El Salvador. He said I am going to  
14 be the next president of El Salvador. I thought there  
was  
15 a nut running around this party saying he was Napoleon,  
and  
16 going to be President. What I learned, he wanted to be  
17 president more than anything else.

18 Q. Now, after the reformers, the coup of October --  
they  
19 said one of their goals was to have free elections.  
There  
20 was an election held in March of 1982?

21 A. That's right.

22 Q. And that was an election to elect constitutional

23 assembly?

24 A. Members of the constituent assembly, that is right.

25 Q. And they were charged with a duty to draft a new

1 Constitution?

2 A. That is right.

3 Q. And one of the first things they did, they elected a  
4 President or appointed a President -- they elected a  
5 President?

6 A. They did elect a President. They were about to  
elect

7 a President. The way the constituent assembly -- the  
8 way -- 1982 elections, the results of those elections  
were

9 that the party of Roberto D'Aubuisson, who we have been  
10 talking about, the right is leader of death squads, they  
11 had control of the constituent assembly, so they would  
have

12 elected Roberto D'Aubuisson.

13 This is at a time I testified the issue of aid to El  
14 Salvador was extremely controversial in the United  
States.

15 The United States made clear if the leaders of the death  
16 squad were made the leaders of the constituent of the  
17 assembly, this is not something that would help aid to El  
18 Salvador.

19 So there was a great deal of pressure on the  
20 Salvadoran military to find a solution to this, and as a  
21 result of the bargaining that went on, the President of  
the  
22 constituent assembly actually became somebody who wasn't

President

23 involved in the elections at all. It became this

24 Magana that I testified to earlier. He was known as the

25 military's banker, because he had given mortgages to so

from 1 many of the military officers, and he became President

2 1982 until the elections of 1984.

3 Q. Okay. It was his -- he became president on a  
4 temporary basis after he agreed not to run for election  
5 again, right?

6 A. That is right.

7 Q. And that there would be a direct election of a  
8 President in 1984?

9 A. That's right.

10 Q. And in 1984, there was a direct election and that is  
11 when Napoleon Duarte was elected?

12 A. There was an election, as I explained, that included  
13 Christian Democrats and all parties to the right. The  
14 conditions of that election did not permit other groups

to

15 participate in those elections, and it was that election  
16 that resulted in -- the 1984 elections resulted in Jos,  
17 Napoleon Duarte assuming the presidency.

were

18 Q. What do you base your opinion that other parties  
19 not allowed -- were other parties not allowed to  
20 participate in the 1982 election or --

21 A. I think I testified that according to the electoral  
22 laws, to qualify for the elections you needed electoral  
23 lists, you needed to provide lists of your supporters,

you

able

24 needed to campaign in the elections, you needed to be

25 to find somebody who would printed your picture and your

1 campaign slogan. You needed time -- you needed some  
2 television station or newspaper that wouldn't be afraid  
to  
3 put a social democrat's picture on the -- you know, in  
the  
4 newspaper.

5           And this was a time when even Christian Democrats  
who  
6 were being backed by the United States were being  
murdered.

7 So, given the fact that the unarmed opposition leaders  
had  
8 been surrounded in this Jesuit high school and murdered  
by  
9 members of the security forces and the National Guard,  
10 given the fact that the subsequent FDR leaders who  
emerged  
11 were also murdered, given the fact that anybody likely to  
12 be a candidate would be murdered, the parties, Social  
13 Democratic party, the other party, there were other  
smaller  
14 parties, Communist party, all of these parties did not  
feel  
15 that they could participate in these elections, that they  
16 could campaign or they could possibly give over to a  
17 government apparatus controlled by the military the list  
of  
18 their supporters.

19           This is -- there is a massive repression going on in

to  
of

20 this country. There are, as I think I testified, prior  
21 the '82 constituent assembly, a thousand murders a month  
22 people who are even suspected of being involved in  
23 political activity, so these are not actually the best  
24 conditions for an election.  
25 Q. So, they were afraid to participate?



1 A. They were afraid to participate, that is right.

2 Q. The guerillas. You did a comparison with the deaths  
3 in Argentina and the deaths in Chile. The disappearances  
4 and deaths, and how El Salvador during that time period,  
5 almost half percent of their population died?

6 A. 20 percent of their population fled the country.

7 Q. So that -- that displaced a million people roughly,  
8 right?

9 A. Easily.

10 Q. Okay. And they weren't all rich landowners that  
moved  
11 to Key Biscayne?

12 A. No. No.

13 Q. Okay. But a lot of them were?

14 A. There are not millions of rich landowners, there are  
15 only a few. Most Salvadorans who fled the country  
entered

16 the United States illegally, or legally, depending on  
what

17 their particular status was in this period from the early  
18 '80's that I testified is the mass repression. That is  
the

19 period of time when I started documenting patterns of  
20 repression because it was such a crisis for the  
immigration

21 authorities.

22 Q. They traveled through Guatemala, Mexico?

ways 23 A. That is right, or they would fly. There are many

24 for people to come into the United States.

25 Q. Now, isn't it true during the El Salvadoran  
conflict,

1 there were armed insurgents, armed guerillas, and armed  
2 organized opposition to the military?

3 A. Yes.

4 Q. But in Argentina and Chile there wasn't an armed  
5 organized opposition to the military and wasn't an armed  
6 opposition to the organized Chile at that time?

7 A. No. Stronger in Argentina, less strong in Chile at  
8 the time that the military took over. But in all three

of

9 the countries, El Salvador, Argentina and Chile, the

armed

10 groups were initially relatively small.

11 Q. You are saying there were armed groups in Argentina  
12 and Chile?

13 A. Absolutely.

14 Q. What about in Peru?

15 A. Also.

16 Q. Did you do a comparison with Peru?

17 A. I did a comparison at one point between -- let's

see,

18 I wrote something I think at some point between comparing  
19 patterns of conflict between El Salvador and Peru.

20 Q. There is a large armed group in Peru?

21 A. Peru is a bigger country, much easier for guerillas

to

22 hide. There is lots of places to go, and also indigenous  
23 population. The opposition is rooted in Indians,

24 indigenous people.

25 That is not the case in El Salvador. There is quite

a

1 lot of difference between these two countries.

2 Q. I want to go to impunity.

3 Did the guerillas act with impunity?

4 A. Impunity actually refers, in the way that I am using  
5 it, to when state officials become murderers. Impunity  
6 means that the very organizations that are supposed to  
7 protect you are in fact killing you.

8 So if you say act with impunity meaning that no one  
9 can stop them, if you are using it that way, yes, the  
10 guerillas were able to operate without anybody being able  
11 to defeat them in that sense. But if you use it in the

way

12 that I have been using it in this particular case, I am  
13 talking about a state apparatus which fails to carry out  
14 what it is supposed to, which is the police are there to  
15 serve and protect. Security forces are there to serve

and

16 protect. The Army is there to serve and protect.

17 But when it turns on its own people, there is no law  
18 you can go to. That is what impunity means, above the

law.

19 That means when the law breaks the law, if I could put it  
20 that way, where do you go? When the police are the  
21 killers, who do you report it to?

22 Q. But the guerillas acted outside the scope of the

law?

23 A. Absolutely. And they set up in the zones much later

24 in the conflict. Not in the period we are talking about,  
25 but the guerillas moved from being a small force to a

much

end  
territory,  
1 larger, much more military successful force. So by the  
2 they are strong enough to force a negotiated settlement,  
3 and by that time they actually control pieces of  
4 and they have set up their own governing structure.

5 Q. What were the tactics of the guerillas?

6 I know you talked about the draining of the sea.

7 A. That is the military.

8 Q. What were the tactics of the guerillas?

9 A. Well, the early tactics of the guerillas, they were  
10 find  
11 groups  
12 ransom  
13 very small groups initially, and early tactics were to  
14 ways to finance themselves, so the earliest guerilla  
15 that formed in the 1970's would do a number of things.  
16 They would kidnap the child of a wealthy family and  
17 that person off. They would engage -- one group in  
18 particular which had, I think, the worst human rights  
19 record, called the ERP would engage in occasional  
20 assassinations of what they would see as a political  
21 opponent. At one point they assassinated the leader of  
22 another guerilla group.

23 So those were the kinds of tactics that you saw much  
24 later when there is an actual war going on, and not just  
25 state repression, but again, later down the road when  
26 there

is  
23 is an actual war, I believe it was in '85 or '86, which  
24 again past the time frame we have been concentrating on,  
25 the guerillas started to -- one guerilla force, the same



1 one that has the bad human rights record began to  
2 assassinate mayors in Arena, mayors or Christian  
Democratic  
3 mayors in areas of what we call zones of conflict.  
4 Q. The first major offense, the first final offensive?  
5 A. I call it the so-called final offensive. Not very  
6 final.  
7 Q. The first --  
8 A. Not even -- it wasn't that much of an offensive. It  
9 was offensive, not so much of an offensive.  
10 Q. Okay. That was in when, in January?  
11 A. That is January of 1981.  
12 into These small guerilla groups don't actually unite  
13 a single armed force until the very end of 1980, and that  
14 is when this repression is already in quite full swing.  
15 Q. Now, when they united, they had a meeting in Cuba,  
16 right?  
17 A. Yes, they did.  
18 Q. And that is when they signed a pact?  
19 you A. That is when they became what those initials are,  
20 see the FMLN, there were five guerilla groups. They were  
21 small, they were all led by people who had different  
22 big strategies and tactics. One wanted an insurrection, a

one

23 uprising, the other wanted prolonged guerilla warfare,  
24 wanted an urban revolution, the other wanted a rural  
25 revolution. They all had different strategies.

1           They couldn't cooperate with each other, and they  
2 also, as I said, had actually engaged, at least one group  
3 engaged in the practice of assassinating the leaders of  
4 other groups. In the midst of the repression going on,  
5 there was considerable pressure on them to form a single  
6 unit because the military is looking for them all over.  
It  
7 is trying to drain the sea, as I said, and so they need  
to  
8 operate, according to my interviews with guerilla  
leaders,  
9 they felt they needed to operate in a more consistent  
way.  
10 They are small, they are not very organized, they don't  
11 have a command center.

12           So they go to a meeting in Cuba, and at that meeting  
13 it is a quite well reported meeting, they unite, and form  
14 what is called the FMLN.

15 Q.   And they received aid and support from Nicaragua and  
16 from Cuba and from other Communist countries?

17 A.   They received some aid from Cuba, more logistical  
18 support from Nicaragua. Nicaragua is an extremely poor  
19 country, and large amounts of aid were really not so  
20 available in Nicaragua. But what they did is they would  
21 run across the border and seek safe haven in Nicaragua  
22 where they could operate without having to worry about  
23 armed forces trying to capture them.

24 Q. And aid from other Communist countries would come  
25 through Nicaragua, correct?

1 A. There was some aid coming through Nicaragua, but the  
2 aid that gets to them -- well, it actually enters in a  
3 number of ways, doesn't just come through Nicaragua, gets  
4 through Honduras as well. It goes through allies of the  
5 United States.

6 The main way that the FMLN actually got its weapons  
in  
7 the area that I did interviews in, was they actually  
bought  
8 their weapons or often bought them from the Salvadoran  
9 military. There is a lot of --

10 Q. Corruption?

11 A. -- corruption going on, yes.

12 Q. So there were people in the military fighting  
against  
13 the guerillas, but selling them weapons at the same time?

14 A. Yes. There were officers selling them weapons. The  
15 officers in general until later were not necessarily out  
16 leading troops. The people who died in the Salvadoran  
17 military were by and large not military officers. There  
18 were some deaths of officers, but extremely rare. It was  
19 actually the foot soldiers who died.

20 Q. That is that way in most military?

21 A. Right.

22 Q. Going to --

23 MR. KLAUS: If you can bring up Plaintiffs'

24 Exhibit 559 from Tony Motley to Secretary of Defense  
25 Schultz.

1 THE WITNESS: No. Secretary of State, and Tony  
2 Motley is sub-secretary, under secretary.

3 MR. KLAUS: If you would bring that up to page

--

4 Exhibit 559, R3842.

5 BY MR. KLAUS:

6 Q. Now, this meeting took place in Washington, D.C.,  
7 didn't it?

8 A. Actually, that is right, it did take place -- I  
9 misspoke, it did take place in Washington, D.C.

leaders

10 Q. And during this time period, from '79 to '83,  
11 in our country often met with leaders of El Salvador,  
12 correct?

to

13 A. More that -- this became an issue in Congress, the  
14 more contact there was, there were Congressional junkets  
15 El Salvador, there were Salvadorans coming to the United  
16 States as well.

17 Q. Well, we had --

18 A. Yes, that is correct.

19 Q. We had always tied our aid to El Salvador to human  
20 rights, correct?

21 A. No.

22 Q. Their compliance with human rights?

23 A. No.

24 Q. From the Carter administration forward, that is not  
25 correct?



1 A. There was not -- there was a widespread belief of  
the  
2 Salvadoran military officers that I interviewed that with  
3 the change from a Democratic to a Republic  
administration,  
4 that any ties of military aid would -- were not serious  
or  
5 credible. In fact, I believe that it was President  
Carter  
6 who actually -- he cut aid at one point, and actually  
7 restored aid to El Salvador regardless of human rights  
8 abuses, and that is the pattern that President Reagan  
9 continued.

10 Q. But there was legislation passed?

11 A. There was legislature later tying aid -- there was a  
12 concern with the number of abuses and killings, and with  
13 the publicness of certain killings, as that concern rose,  
14 aid was in fact tied, more supplies explicitly by the  
15 Congress to certain kinds of performance on human rights.

16 Q. Now, I wanted to go to page 3845. Again, this is  
17 recommendations to Secretary Schultz for an agenda for  
his  
18 meeting with Minister of Defense Vides, correct?

19 A. That's right.

20 Q. And under talking points, halfway down.

21 MR. KLAUS: If you can enlarge that.

22 BY MR. KLAUS:

23 Q. It says one of the things that Mr. Motley recommends  
24 to Secretary Schultz is to, "Reassure Vides that the  
25 administration is attempting to obtain the full funding

of

1 the 86 million for this fiscal year, and explain that  
2 Congress has funded El Salvador until November and is  
3 currently considering the funding level for the remainder  
4 of the year. Note that one reason for your trip is to  
use  
5 the occasion to make the case to the media against cuts  
in  
6 the economic and military aid against provisions linking  
7 aid to specific steps taken by the Government of El  
8 Salvador."

9 If you can go back to the top where it says  
discussion  
10 of objectives.

11 "Express the administration's commitment to secure  
12 resources to allow the government of El Salvador to  
conduct  
13 the war."

14 Did the United States make a commitment and keep a  
15 commit to the government to fight the war?

16 A. Keep its commitment in terms of military assistance?

17 Q. Yes.

18 A. Yes.

19 Q. If you can go on to page 3846 down under talking  
20 points. Is this one of the things recommended to  
Secretary

21 Schultz, commend Vides on his personal actions to stress  
22 respect including --

23 A. Stress respecting the rights of non combatants while  
24 in the field.

25 Q. Okay. Why would Mr. Motley want Secretary Schultz  
to

1 commend Vides on his personal actions to stress respect  
for  
2 rights of non combatants while in the field?

3 A. Well, I think two reasons. The first is that every  
4 diplomatic visit, always, and you will see this is a  
5 pattern in every single talking point, you always begin  
by  
6 saying something nice. You always begin by looking for  
7 some common ground that you can meet this person with.

8 The second reason is, if you remember, I testified  
9 about a series of massacres culminating in the massacre  
of  
10 El Mozote, that was the massacre of the men, women and  
11 children, entire village of El Mozote. That massacre  
12 became a very huge issue because the Salvadoran military  
13 had denied it, and because the proof emerged over and  
over  
14 again about that massacre.

15 So there was great pressure coming from the United  
16 States as soon as the -- that was in 1981. There was  
great  
17 pressure to not have massacres of that size and scale,  
18 large massacres again, to have it happen again. And what  
19 you saw repeatedly, and I particularly saw this in my  
20 interviews with what is called the Milgroup, U.S.  
military  
21 officers who are advising the Salvadoran military. They  
22 felt very, very strongly that the Salvadoran armed and

the  
23 security forces could not win the war if it waged war on  
24 its own people, that it would never have support to win  
25 war.

and  
hearts

1           So there was a very strong push from the Milgroup  
2           from U.S. military advisers to what they called win  
3           and minds. They called it a winning hearts and minds  
4           program. You had to treat the non combatants better.

5           And I think that is what this refers to. So you see  
6           and you do see as I testified a falling off of the large  
7           scale massacres and mass terror subsequently. So this is  
8           all part of that effort to stop the level of high terror,  
9           high mass state terror, and reduce it in a way that is  
10          consistent with the U.S.'s objectives, which was to win  
the  
11          war in El Salvador against the insurgents.

12          Q. Do you think Secretary Schultz would have commended  
13          Minister of Defense Vides if he didn't deserve it?

every  
State,  
are  
routinely

14          A. I think this is a diplomatic statement. I think  
15          meeting between diplomats, particularly Secretary of  
16          starts out with these kinds of actions. I think there  
17          all kinds of commendations that the United States  
18          engages in, words, thanking you, medals, all different  
19          kinds of diplomatic practice in countries.

20          And that is what diplomats do when they have these  
21          kinds of meetings, when you see the entire memo, and we

It

22 have seen it. We have gone through it in my testimony.

23 is clear the purpose of the meeting is to make clear to

clear

24 Minister of Defense Vides that the United States has

25 evidence that there are human rights abusers and death



1 squads operating in the military and security forces.

2 So I think when you take the memo in its entirety,  
3 that is really what is so striking about the memo,  
4 otherwise in all diplomatic cables you will see language  
5 like this, I believe. Not all, but in many diplomatic  
6 cables you will see language like this.

7 Q. If you can go to page 3848. I am trying to cover  
the  
8 points that weren't covered in your direct.

9 A. Sure.

10 Q. Down the bottom, talking points, the last two. And  
11 this is more talking points recommended that Secretary  
12 Schultz talk to Minister of Defense Vides about. Ask if  
13 the U.S. training has emphasized the right priorities,  
and  
14 if he would suggest any modifications. Question Vides  
15 regarding plans for reinstating an amnesty program.

16 Does that refer to overall amnesty for everyone in  
El  
17 Salvador, guerillas and military?

18 A. I don't know what he is referring to right there.  
19 There was, as I testified earlier, that -- in 1987 there  
20 was a general, the first general amnesty, and then in  
1992,  
21 '93 -- excuse me -- there was a second amnesty.

22 I am not sure exactly what he is referring to there,

is

23 and whether that amnesty would extend to everybody if he

24 recommending one. I am not sure what he means there.

25 Q. Okay. Had there already been an amnesty granted at

1 one point or offered -- hadn't there been one offered by  
2 Napoleon Duarte?

3 A. He offered one in 1987. Napoleon Duarte believed if  
4 you forgive everybody's human rights abuses on both  
sides,

5 that would be a pre condition on ending the war. He  
6 periodically either suggested or pushed this particular  
7 means of trying to get a negotiated settlement for the  
war.

8 Q. Okay. Now, one of the things that President Magana  
9 did was form a human rights commission in El Salvador; is  
10 that correct?

11 A. That's right.

12 Q. And what exactly was that?

13 A. That was called Governmental Human Rights  
Commission.

14 Q. And what was its function?

15 A. It had the function of ostensibly investigating  
human  
16 rights.

17 Q. Human rights violations?

18 A. Excuse me, human rights violations.

19 Q. Did it offer reparations that had human rights  
20 violated?

21 A. I believe since it was a government agency --  
22 actually, I don't know the answer to that. I am not sure  
23 about that.

24 Q. Would it investigate -- would it receive complaints  
25 and then investigate complaints, is that the way it was

1 supposed to operate?

2 A. It was supposed to operate that way. Because it was  
3 the governmental human rights agency, it was feared by  
4 people who had been victims of the government, and so it  
5 didn't ever operate in the way that one would hope, or

that

6 I would hope a government human rights agency could  
7 operate.

8 Q. So people were afraid to come forward and complain  
9 that they had been abused?

10 A. You see a constant pattern with both -- I should say  
11 with both governmental and non governmental  
organizations.

12 It was very frightening to make a report or complaint of  
13 anything that happened to you in El Salvador, anything.  
14 Because when you have violence coming from the  
government,  
15 you don't know really who you could trust. And you are  
16 always afraid to make complaints.

17 You see, it is even in the church, which I think had  
18 the -- the Catholic Church, and the Lutherans who had  
quite  
19 an extensive reach into the population, even where people  
20 trusted their religious authorities, they were very, very  
21 afraid to come forward.

22 This was a problem. It was compounded by the fact  
23 that since this was a Government agency, and since the

24 trust for Government agencies had collapsed among large  
25 numbers of people who had been victimized by agents of

the

1 state, it did not function in the way that it -- it  
2 actually never, I think, had the possibility of  
functioning

3 the way that one would hope a commission to investigate  
4 human rights could.

5 Q. Were there later Human Rights Commissions formed in  
El Salvador?  
6

7 A. I believe that the only two -- the two most  
important  
8 ones were the Legal Aid Society that you heard about  
which  
9 was of the Catholic Church, and the Governmental Human  
10 Rights Commission. There may have been one other, I  
don't  
11 remember.

12 Q. Isn't there one now?

13 A. Yes, the peace agreements established -- this is in  
14 19 -- in the 1992 peace agreements, it established an  
15 ombudsman person's office. There is an office you can go  
16 to with complaints about people who may violate your  
17 rights.

18 Q. And don't people receive reparations and  
compensation  
19 for having their human rights violated?

20 A. Yes, but that is part of the negotiated settlement  
21 after the civil war. That is not my understanding of  
22 anything that ever happened before the civil war.

23 Q. Okay. Someone who suffered during the civil war,  
24 human rights violation, is able to petition the human  
25 rights --



1993

1 A. Only if you can investigate a human rights violation  
2 that was not exempt -- that has been exempted from the  
3 amnesty. In other words, anything before 1993 is not a  
4 part of the investigative apparatus of that, and there  
5 is -- my understanding is they are focusing on complaints  
6 that happened after 1993.

7 Q. Well, '93 amnesty only applies to criminal charges,  
8 correct?

9 A. '93 amnesty applies to all criminal charges with the  
10 exception of the murder of the six Jesuit priests.

11 Q. So, civilly someone can go, someone from El  
12 Salvador --

13 A. No. I believe amnesty does not permit civil  
damages,  
14 either. I am not an expert on this. I would --

15 Q. So you don't know?

16 A. I don't know.

17 Q. There is in existence today a Human Rights  
Commission

18 which does pay compensation to victims of human rights  
19 violations?

20 A. I don't know what the reach of that commission is.  
I  
21 have never investigated that commission. And I stopped  
22 looking at human rights abuses in El Salvador in about  
23 1994.

24 Q. Okay. Now, the fact finding from the U.N. Truth  
25 Commission, that was the investigative period only lasted

1 six months, correct?

2 A. I think they extended the mandate a bit. There were  
3 so many complaints, and the startup costs were so  
difficult  
4 in El Salvador that I believe they extended it longer  
than  
5 six months.

6 Q. Do you think as a result of our experience, United  
7 States experience, and the total experience of El  
Salvador,  
8 that if something similar were to happen today, that we  
9 would request a peace keeping force, that it would be  
10 played out on a more international scale rather than us  
11 trying to provide aid to one side in a conflict?

12 A. I am not sure I understand the question.

13 MR. STERN: Objection, Your Honor.

14 THE COURT: I sustain the objection.

15 BY MR. KLAUS:

16 Q. What effect has our experience in El Salvador had on  
17 our foreign policy --

18 MR. STERN: Objection; lack of relevance.

19 BY MR. KLAUS:

20 Q. -- regarding Latin America?

21 THE COURT: I am going to sustain the objection  
22 to that.

23 MR. KLAUS: If I could have a minute.

24

THE COURT: Surely.

25

1 BY MR. KLAUS:

2 Q. I want to ask you about the code of silences. What  
3 would have happened, in your opinion, if Colonel Garcia  
or

4 the Minister of Defense Garcia had attempted to  
discipline

5 by either imprisoning, trying in a military tribunal or  
6 removing from office any of these alleged military  
officers

7 that had allegedly committed human rights violations?

8 A. I think human rights violations would have dropped  
9 significantly. I think they would have -- I think the  
10 example of an officer being punished for murder,  
11 decapitation, torture, the kinds of things I have been  
12 testifying to would have immediately sent a message to  
the

13 rest of the abusers in the Salvadoran military that this  
14 was not acceptable behavior, and it would be punished. I  
15 think abuses would have dropped.

16 Q. Do you think it may have destabilized the military  
17 further?

18 A. No, I don't. I think -- some of this is  
retrospective

19 analysis.

20 Q. Everything here is retrospective.

21 A. Right, but I think my own feeling is, or my own  
22 opinion is there were -- if you remember, I said at one

a

23 point using General Woerner's statistics, I talked about

24 small officer corps. There were 459 total officers, and

ad

25 about a hundred senior officers, field commanders. The

1 hoc commission of the United -- established by the U.N.  
2 peace agreements reviewed the records of all Salvadoran  
3 officers, and eventually purged from the officer corps  
4 officers, which was about a quarter to a third of the  
5 existing number at the time.

6 My own information and my own understanding of El  
7 Salvador has always led me to believe that the number of  
8 human rights abusers that were in the Salvadoran officer  
9 corps never comprised the entire officer corps, that it  
10 would always have been possible to marginalize them, push  
11 them out and punish them like the reformers were  
12 punished -- excuse me, pushed out.

13 And that had the senior commanders of the armed  
14 forces and security forces taken that road, and again, this is  
15 my opinion, I believe that had they taken that road early  
16 on, the numbers of murders and human rights violations would  
17 have been very, very much smaller.

18 And I also think there was a chance that the  
19 Salvadoran military, had they taken that road, might have  
20 won the war. I think one of the main reasons, and this  
21 is from my own investigation, the Salvadoran military did  
22 not win this war and needed to negotiate a settlement is that

23 it just killed too many people.

24 One time I was in the guerilla zones interviewing --

25 they were boys, actually, they were 14 to 18, as were the



would  
my

1 soldiers, by the way, when I interviewed them, and I  
2 ask them, why are you here, what do you believe in, what  
3 are you doing here. The answer was constant. My papa,  
4 mama, they killed my mother, they killed my grandmother,  
5 they killed my sister.

6 These were kids, they hadn't gone to school, they  
7 didn't know what Marxism, Leninism was. They received  
8 violence, somebody died next to them, somebody had been  
9 tortured, and they ran away to join the guerillas. And I  
10 think that is one of the main reasons the guerilla force  
11 grew from small armed opposition to the type of Army that  
12 eventually became which was able to force a negotiated  
13 settlement, and eventually able to force the settlement  
14 that did what was necessary all along, which was to  
abolish  
15 the security forces that were carrying out these acts and  
16 get rid of the military officers that were murdering  
17 civilians.

18 Q. This was a war for the hearts and minds of the El  
19 Salvadoran people, correct?

20 A. Yes, it was.

21 Q. And in your opinion, it was the guerillas that won  
the  
22 hearts and minds of the Salvadoran --

23 A. No. That is not what I said. I don't think either

24 the guerilla and Army ended up winning hearts and minds  
25 very much. I think what happened in El Salvador at the

end

1 is that people wanted peace.

2 When you have a country in which thousands and  
3 thousands -- this is such a small country, it is five  
4 million people. A million of them, 20 percent, somebody,  
5 everybody knows, flees violence. Thousands of them are  
6 dead. There is not a Salvadoran I know that does not  
7 somebody who is dead.

8 That when you have that kind of violence, in the end  
9 everybody wants -- not everybody, but most people want  
10 peace. And what we saw to the extent that we were able  
11 survey public opinion, which was not an easy thing to do  
12 the time of conflict, but we did try to carry out a  
13 of academic surveys about what people wanted in El  
14 Salvador. By the end of the '80's, they just want this  
15 to end.

16 Q. Now, during that time period, didn't the FMLN have a  
17 tactic to destroy the infrastructure of the government,  
18 the country, they blew up dams, blew up bridges?

19 A. The first big action of the FMLN was in 1981, I  
20 believe, and it was the blowing up of the Puente Del Oro,  
21 if I recall, which is a big span bridge over the Lempa  
22 River, the Rio Lempa. It was the biggest and most modern

end

23 bridge in El Salvador, and they blew it up towards the

24 of 1981, I believe.

25 Q. And that divided El Salvador from east and west?

1 A. Well, not entirely. You could go, but you had to  
2 travel on a -- there was a substitute bridge that was put  
3 there which you could cross, it just was on pontoons,  
like,  
4 and you could cross it, but it wasn't the elegant span  
5 bridge of the Puente Del Oro, which was the beautiful  
6 bridge, actually.

7 Q. Didn't the guerillas bomb the railroad so often they  
8 had to discontinue railroad service in the country?

9 A. I actually don't know about that. I never I -- by  
the  
10 time I was in El Salvador, railroads were not an  
important  
11 way to get around. That could be true, I don't know.

12 Q. They weren't running, were they?

13 A. I don't know. I know about the bridge, I crossed  
the  
14 substitute bridge, I interviewed people about the other  
15 bridge.

16 Q. Wasn't it the FMLN tactics to destroy crops, prevent  
17 the harvest and destroy the cash crops and food crops?

18 A. As FMLN became a bigger force and as it began to  
19 occupy territory, it would in areas that it controlled,  
it  
20 would do one of two things. It would either extract from  
21 plantation owners essentially money to permit them to  
22 plant. In other words, by this point there are guerilla

are

23 occupied zones, there are Army occupied zones, and what  
24 considered zones of conflict, which is zones that Army  
25 control in the day, and guerillas control at night.

1 Q. By what time?

2 A. Where this starts becoming important, the extraction  
3 and destruction of crops, probably 82, '83, if I am  
4 correct. So this is later. And then it becomes the more  
5 powerful, the FMLN becomes, the more territory -- the  
6 there is actually guerilla controlled zones that are  
7 permanent enough where Government's are -- their own  
8 Governmental structures are set up, and where they  
9 negotiate with landowners to plant or not to plant.

more  
witnessed

10 I should say these negotiations, I actually  
11 some of them, are very complicated because coffee takes  
12 about five years to actually produce the coffee. So you  
13 need to negotiate with the landowner with a certain  
14 of security to make it worthwhile to invest the money to  
15 plant the coffee.

degree

16 These were actual negotiations that went on in  
17 guerilla zones or conflict zones, and this became part of  
18 the financial resources of the guerillas, extraction of  
19 this money.

either

20 Q. What about the disruption of growing food crops?

21 A. Everything. By the time the war became this  
22 widespread in the late '80's, food crops disrupted, the  
23 major export crops of El Salvador no longer taking place,

in 24 the country is in what I consider a full scale civil war  
25 the late '80's. And so by then the normal operations of



1 the economy have come to a halt.

2 Q. Now, during the time period from '79 to '83, were  
3 there any other coup attempts within the Army besides the  
4 one we talked about with Roberto D'Aubuisson? Do you  
know  
5 of any?

6 A. There was a strong disagreement in the armed forces  
in  
7 1983 with some officers objecting to Minister of Defense  
8 Garcia's -- excuse me, yes -- Minister of Defense  
Garcia's  
9 conduct of the war. This was not an issue of human  
rights  
10 abuses, this was an issue of how to conduct the war.

11 By 1983 FMLN had gotten strong enough that it had  
12 become a real armed force, and operating like a real  
Army,  
13 no longer small armed groups. And the debate inside the  
14 Salvadoran officer corps how the war should be conducted  
15 was a very, very intense debate.

16 And I believe that in 1980 -- actually, I don't  
17 remember the month, that in early 1983, probably January,  
I  
18 am not sure of the month, that a Colonel Ochoa said that  
he  
19 did not agree with the conduct of the war and there was a  
20 dispute in the armed forces about how the war should be  
21 conducted.

in

22 I also believe that General Vides was the mediator

as

23 a discussion about how the war should be conducted, and

24 a result of that discussion, he subsequently became

25 Minister of Defense.

down 1 Q. And Minister of Defense Garcia was forced to step  
2 because of that?

3 A. Minister of Defense Garcia stepped down on the, I  
4 believe the 30 year of his time in the armed forces. He  
5 was -- I believe that is correct, that it was actually  
6 retired on the day -- if you remember, I said there was a  
7 30 year cap. I believe he retired on that day.

8 Q. But he was forced to retire because of this power  
9 struggle with Ochoa about how -- wasn't Ochoa commander  
of 10 the Air Force?

11 A. No. Bustillo was commander of the Air Force.

12 Q. Wasn't there a problem with him, Bustillo?

13 A. Bustillo was part of the faction with Ochoa that  
14 wanted to conduct the war differently, and so the United  
15 States Milgroup also wanted to conduct the war  
differently.

16 There is a great deal of criticism that you see not only  
in 17 U.S. cables, but I was in El Salvador at that time, I did  
18 interviews about this event. There was a dispute about  
how 19 the war should be conducted.

20 There was a great deal of criticism against the  
21 Minister of Defense because the U.S., the phrase they  
used 22 was that Minister Garcia was fighting a nine to five war,

23 that they would go out, fight, and retreat, and guerillas  
24 would take the zone, they called it -- there was a great  
25 deal of criticism of corruption that was going on in the

1 armed forces at the time of the nine to five war  
mentality.

2 Nobody was taking seriously the fact that the guerillas  
had

3 become a serious Army.

4 And so Colonel Ochoa and Colonel Bustillo, and other  
5 colonels agreed with the U.S. analysis of how the war  
6 should be conducted.

7 And I want to emphasize this is not an issue  
regarding

8 human rights at all, this is an issue regarding how the  
war

9 should be conducted.

10 In that dispute, my understanding is that then  
11 National Guard Director Vides Casanova went to talk to  
12 Colonel Ochoa, and he also talked to Colonel Bustillo and  
13 others, that the agreement was that Minister of Defense  
14 Garcia would go. And they made that agreement in early  
15 1983, but as part of a, what we call a face saving  
measure,

16 he would be permitted to retire on the day of his 30 --  
the

17 day that his service was formally over.

18 Colonel Ochoa -- and in my interviews, Colonel Ochoa  
19 and Colonel Bustillo were also afraid that Minister of  
20 Defense Garcia was going to extend his time in the  
military

21 and essentially extend his period of command, and that

22 would have been a violation of the rules of the military  
23 institutions.

24 So, I believe that Colonel Vides Casanova negotiated

a

25 resolution to that conflict about how the war would be

run,

1 that he then himself became Minister of Defense, and that  
2 the conduct of the war, how the war was conducted changed  
3 after that.

4 Q. You mentioned about General Vides being married to  
one  
5 of the 14 families. What family did he marry into?

6 A. I believe he married into the Llach family.

7 Q. Is that the family of President Christiani?

8 A. I am sorry, I don't remember. I really don't  
9 remember. I think I might be a little tired. I don't  
10 remember if it is the family of Christiani or not. I  
11 should -- I think his wife and President Christiani's  
wife  
12 are sisters now that you mention it. I don't want to be  
in  
13 legal testimony on that issue.

14 Q. But you wanted to testify that he married into a  
rich  
15 family. Do you know what family?

16 A. I was asked that question, sir.

17 Q. I know.

18 A. And I believe it is the Llach family.

19 Q. How do you spell that?

20 A. L-L-A-C-H.

21 MR. KLAUS: Nothing further.

22 THE COURT: Thank you, Mr. Klaus.

23 Let me turn back to Mr. Stern for redirect

24 examination.

25 MR. STERN: Thank you.



1 REDIRECT EXAMINATION

2 BY MR. STERN:

3 Q. Professor Karl, I have a few questions for you.

4 Mr. Klaus asked you questions about the proclamation  
5 of the armed forces dated October 19, 1979. Do you  
recall  
6 that?

7 A. Yes, I do.

8 Q. Would it be correct to say that this proclamation  
9 revealed certain ideals that the authors held?

10 A. Yes.

11 Q. What are some of the ideals?

12 A. I read the proclamation. They wanted more  
democracy,  
13 they wanted agrarian reform, they wanted to curb and  
14 control human rights abuses. There is quite an important  
15 section on human rights abuses. These are the kinds of  
16 things that reformist military officers and civilian  
allies  
17 who wrote that proclamation wanted.

18 Q. During the period of time that General Garcia was  
19 Minister of Defense, from '79 through '83, do you believe  
20 his conduct was consistent with the ideals expressed in  
the  
21 proclamation?

22 A. No.

23 Q. Why do you say that?

24 A. Because you can't have democracy without respect for  
25 human rights. You cannot have a democracy without the

rule

1 of law, it is not possible. You can have elections, and  
2 Central America has always had elections, but you cannot  
3 have elections that are meaningful and make a real choice  
4 for people if the candidates are being killed, afraid to  
5 sign a party list, afraid to go to a meeting, afraid to  
go  
6 to an organization, and there are so many people dead.

7 So for me, the way to democratize a country in my  
own  
8 work, and I study transitions to democracy, I have  
written  
9 extensively on this, not just with El Salvador, is you  
must  
10 create the conditions by establishing a rule of law.

11 the rule of law is the fundamental condition for  
That  
democracy.  
12 And the rule of law must be established first and  
foremost  
13 by making sure that those who are sworn to uphold the law  
14 and defend the law are the first people to obey the law.

15 So the rule of law means the very first thing you  
must  
16 do is make sure your police, your military, that the  
people  
17 with guns who are official, who are the state, are the  
law  
18 abiders. Without that, you cannot have democracy.

19 Q. During General Vides Casanova's term as Director of

in

20 the National Guard, from 1979 through '83 and thereafter

21 1983, when he assumed post of Minister of Defense, do you

the

22 believe his actions were consistent with the ideals of

23 proclamation of October 15, 1979?

24 A. No.

25 Q. Why do you say that?

1 A. For the same reason I answered earlier. The single  
2 most important thing to do to democratize El Salvador was  
3 to lower the level of repression and establish the rule  
of  
4 law. And the single greatest violators of the rule of  
law  
5 were inside the armed and security forces.

6 Q. On direct examination in connection with the  
7 proclamation I think you were asked about some military  
8 officers who were kicked out of the military or out of  
9 office at the time of the October 15, 1979 events. Do  
you  
10 recall that?

11 A. Yes, I do.

12 Q. And can you tell us what, if anything, later on  
13 happened in terms of whether they rejoined the military?

14 A. These were the supporters of President Romero who  
had  
15 been arrested, many of them, in the October 15 change in  
El  
16 Salvador, the coup or the revolution. And some of those  
17 left the country, all were freed, I believe, and some  
left  
18 the country. None were ever tried and convicted.

19 Q. Is it your opinion that General Garcia, who became  
20 Minister of Defense after October 15, 1979, had anything  
to  
21 do with the way those officers were handled?

charge

22 A. Yes. Those officers were freed when he was in  
23 of the armed and security forces.

Majano.

24 Q. We have had a lot of testimony about a Colonel

Majano

25 Would it be fair to say that in the military Colonel

with 1 was the officer identified more closely than any other  
2 the ideals of the proclamation of October 15, 1979?  
3 A. Yes. I actually believed he authored some of it.  
4 Q. Can you tell us briefly what happened to Colonel  
5 Majano in 1980?  
6 A. Colonel Majano joined the first Junta, and he stayed  
7 officially in the Junta until, I believe, December, 1980.  
went 8 He was removed from his command in May of 1980 when he  
9 to arrest the officers at this farmhouse that we've  
talked 10 about who were meeting with Roberto D'Aubuisson, these 23  
11 officers in a room with the ski masks, and false I.D.'s,  
12 and all these things.  
was 13 He was removed from his command at that point. He  
14 subsequently marginalized. I believe he was put on  
15 administrative leave. I don't remember the legal  
16 mechanisms that Minister of Defense Garcia used to  
17 marginalize him to any position of command in the armed  
18 forces.  
whether 19 He eventually, I believe, and I don't remember  
20 he was asked to resign, he resigned or was simply forced  
21 out. As I said, there were assassination attempts  
against 22 him, and he eventually left the country.

23 Q. Is it your testimony that Minister of Defense Garcia  
24 had a hand in forcing Colonel Majano from power?

25 A. Minister Garcia was the person charged with



1 transferring and breaking up the group of junior officers  
2 that -- and Colonel Majano that led the '79 -- October,  
'79  
3 coup, and that produced that proclamation. He is the  
4 person who broke up that faction and who the Woerner  
5 report, the consequences of which the Woerner report says  
6 is without that faction in the military, there was no  
7 countervailing force against state terror.

8 Q. We also had a lot of testimony about an individual  
9 named Roberto D'Aubuisson. From what source or sources

did

10 Major D'Aubuisson staff his death squads?

11 A. Death squads were staffed from the armed and  
security

12 forces.

13 Q. Are you referring to active duty?

14 A. Active duty officers as well what are called  
cashiered

15 officers. He used active duty officers under the command  
16 of Minister Garcia or Minister Vides, but he also used  
17 retired officers, so he used both.

18 Q. Did any of this activity of Major D'Aubuisson take  
19 place in actual -- in use military installations?

20 A. Yes, according to the CIA cables. The ally of  
21 D'Aubuisson was Colonel Carranza, and he is the person I  
22 explained in the promotions, the person who oversaw the  
23 assassination squad of military personnel in service. In

24 other words, active military personnel from the National  
25 Police headquarters, National Guard headquarters, and

1 Treasury Police.

staffed

2 Q. In your opinion, could Major D'Aubuisson have

3 his operations as you testified without the knowledge of

4 members of the military high command?

number

5 A. No. If I may give an example. If you take the

6 of officers that the Woerner report said existed in the

7 National Guard, there were 16 officers, there are only 16

8 officers in the National Guard. It seems to me when you

of

9 have 16 officers -- I suspect that includes the Director

10 the National Guard -- if you only have 16 officers, or if

11 you have a total of only 33 officers, senior officers in

12 the security forces, that you can find out who is doing

13 what.

14 And if those people are found in a room with Roberto

15 D'Aubuisson, and with all of these things, you even have

16 evidence of what they are doing. And if they repeatedly

these

17 are reported to you, then you can find out who among

18 33 officers are doing this. And you can without any

19 evidence, without anything else, you can begin to

20 marginalize them, to push them out in the same way the

21 reformists were. It is not hard, it wasn't hard.

22 Q. When you say 16 officers, are you referring to 15

23 field officers?

24 A. Yes, 15 field officers.

25 Q. One or two more questions about Major D'Aubuisson to

1 put things in perspective.

rights 2 Was Major D'Aubuisson the only source of human

3 abuses here -- let me put it a different way. If someone

4 could have waved a wand and gotten rid of Major

have 5 D'Aubuisson, is it your opinion that El Salvador would

6 still have a major human rights problem?

and 7 A. The United States constantly tried to wave a wand

he 8 get rid of Major D'Aubuisson. It is my opinion even if

were 9 weren't here, these would have continued because they

10 operating out of the headquarters out of the armed forces

11 and security forces.

12 Q. Were killings taking place by uniform members in the

13 field and other locations throughout the country?

of 14 A. Yes. The cables I presented give numerous examples

15 that.

16 Q. In the cables that you looked at, regarding

17 conversations between United States Ambassador and

18 Salvadoran officials, when human rights is an important

19 topic on the agenda, and when Ambassador White or

20 Ambassador Hinton wants to discuss that subject, can you

21 identify the individual that the Ambassador seeks out to

22 discuss those issues with?

23 A. Yes. It is the Minister of Defense.

24 Q. In the 1979, '83 time period, who was that?

25 A. Minister of Defense General Garcia.

1 Q. And after 1983, who is that?

2 A. General Vides Casanova.

3 Q. In your opinion is there -- strike that.

4 With respect to military matters or human rights  
5 abuses, is there anybody in the military, in your  
opinion,

6 with greater power than the Minister of Defense?

7 A. No. Minister of Defense is the most powerful person  
8 and also the most powerful person not just in terms of  
the

9 responsibilities of that person, but in terms of the real  
10 power that that person held.

11 MR. STERN: No further questions.

12 THE COURT: May Professor Karl be excused from  
13 her subpoena?

14 MR. STERN: No, Your Honor.

15 THE COURT: Subject to recall?

16 MR. STERN: That is correct.

17 THE COURT: Professor, I will let you step  
down,

18 but you understand there is the possibility that the  
19 Plaintiffs may ask you to testify again in the rebuttal  
20 phase if that becomes necessary.

21 THE WITNESS: Yes, sir. Thank you.

22 THE COURT: Thank you very much.

23 THE WITNESS: Thank you.

24

(Witness stepped down.)

25

THE COURT: Ladies and gentlemen, let us stop

and



1 continue on tomorrow.

because

2 Now, I wanted to take a moment, if I can,  
3 remember I mentioned at the very beginning of the case,  
4 there is an instruction that I really think is a tough  
5 instruction to follow because it does go against  
6 everything we normally do. I think most of us when we  
are  
7 engaged in any task, as we go along and gathering  
8 information, there is a very natural tendency to start  
9 drawing conclusions and say even though they are  
10 tentative, this is where I am leaning.

the

11 Remember I mentioned to you to be a fair juror,  
12 you have to consciously say to yours, I have to suspend  
13 judgment, because I want to wait until I heard all of  
14 evidence, until I heard the lawyers argue, and know what  
15 the law is. I ask you to bear that in mind.

16 I want to ask you also to be very careful  
17 regarding newspapers and any other form of media. With  
18 respect to the newspapers, just please avoid them and  
19 bring them in, run them by the courtroom deputy and we  
20 will get them back to you so you could stay a breast of  
21 other matters.

22 We will start tomorrow morning at 9:30. I want  
23 to tell you, when I spoke to the lawyers last night,

24     although there was a sense we had fallen a little bit  
25     behind, I think the Plaintiffs hope was they might be

able

1 to conclude their case tomorrow afternoon.

2 Now, I am not sure, because I think the  
3 examination has taken longer than we anticipated. I

will

4 talk to the lawyers again, but that is where we are. We  
5 really are moving forward in the case, and we hope we

will

6 begin presentation of defense case probably on Thursday.

7 We will have to wait and see, but we are making  
tremendous

8 progress.

9 And I want to ask you to be every so careful,  
10 please don't let anybody talk to you, you want to avoid  
11 talking with anybody about the case and we will all meet  
12 tomorrow morning at 9:30.

13 Let me allow the jury to step out.

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

15 THE COURT: Ladies and gentlemen, why don't we  
16 take a ten minute break and let's come back and again  
17 focus on the command responsibility instruction and any  
18 other issues we need to discuss and we will see what we  
19 can accomplish.

20 Let's take a break for about ten minutes.

21 (Thereupon, a short recess was taken.)

22 (Thereupon, trial reconvened after recess.)

if

23 THE COURT: I would like to clarify one point,

24 I might. This refers to exhibits that were offered and

by

25 received into evidence. And as the parties are aware,

1 mutual agreement a number of exhibits were offered and  
2 received, essentially without objection, but subject to  
3 later objections regarding whether they were cumulative  
4 irrelevant and a couple other objections were in fact  
5 voiced as to one exhibit today.

6 Now, my notes indicate Plaintiffs' 713 is in  
7 evidence without objection, and I only mention that  
8 because someone referred to some exhibit today, then  
9 referred to 713, and we want to double check that it is  
10 evidence, and I believe it is.

11 Does that jell with your notes on that issue?

12 MR. STERN: It does, Your Honor. It is on the  
13 stipulation that we filed.

14 THE COURT: Good. Good.

15 MR. KLAUS: 713.

16 THE COURT: 713 is in evidence.

17 Now, there is one other I want to ask you  
18 about.

19 I think this is one, the declaration, Mr. Klaus, that  
20 passed out today, and I think you referred to it as 339  
21 Plaintiffs' 336.

22 MR. KLAUS: Plaintiffs 339 on the stipulation,  
Your Honor.

23                   THE COURT: Let me take a second. 339 on the  
24           Plaintiff's exhibit list is something called article  
25           entitled Proclama -- and I won't go from there. Is that

1 the exhibit we are referring to?

2 MR. KLAUS: Yes.

3 THE COURT: That is not in evidence at this  
time.

4 My suggestion would be if you intended for it to be in  
5 evidence, we ought to correct the record so the record  
is

6 clear that it is offered and received. I don't think it  
7 makes any difference whose sticker is on it, but we want  
8 to be sure it is in evidence.

9 MR. STERN: I think it is a Defendants'  
exhibit.

10 We would agree we would not object to the admission into  
11 evidence, but I don't think it was formally moved into  
12 evidence.

13 THE COURT: No, I don't think it was. We can  
14 certainly change it and put it in as a Defense Exhibit.  
15 Is it in the Defense exhibit list?

16 MR. KLAUS: Yes. It was wrongly marked  
17 Defendants' 339. It is Plaintiffs' 339.

18 THE COURT: Could I suggest we put it in as 339  
19 and leave it as such? It is passed out, and I don't  
think

20 it makes any difference at all.

21 MR. STERN: I think that is acceptable.

22 THE COURT: Good. Plaintiffs' 339 is in  
evidence

23 without objection.

24 (Plaintiffs' Exhibit 399 received in evidence

25 without objection.)



1 THE COURT: And the record will reflect that  
2 the --

3 MR. KLAUS: If we could go back to 713.

4 THE COURT: Yes.

5 MR. KLAUS: I don't see it on the stipulation.  
6 It may have come into evidence with Ambassador White or  
7 so.

8 THE COURT: I am sorry, I can't tell you by  
what  
9 person it came in. My notes reflect it is in evidence.  
10 My suspicion is it came in when all of those numbers are  
11 read.

12 MR. KLAUS: Okay. That is an earlier  
13 stipulation. Fine.

14 THE COURT: Okay, good.

15 I think as I mentioned earlier, it is terribly  
16 important before we get morassed in the paperwork that  
we  
17 mark these things and refer to them in a way that will  
18 help us all and keep the appellate record clear as to  
what  
19 we are looking at. And I intend to file, if you will, a  
20 copy of these documents so it is clear.

21 The first complete document is referred to and  
is  
22 marked Court's draft number one. That's followed up by,  
I

23 think, the Plaintiffs' -- let me say this is without  
24 prejudice, obviously, to filing other documents. The  
25 Plaintiff has filed other documents that we will need to

1 get to at some point.

2 The Plaintiff came in and filed a proposed  
3 revision to that, and if it is all right with you, I  
would

4 like to refer to that as Plaintiffs 1. Okay. And I say  
5 that because we now have Plaintiffs' 2.

6 MS. VanSCHAACK: You are about to get 3.

7 THE COURT: Okay, I was afraid of that.

8 Now, let me make sure I have this altogether.  
I

9 think I have taken my copy apart because Plaintiffs' 1  
has

10 the original cover page. What I was marking and using  
as

11 Plaintiffs' 1, it is about to it, where the original  
12 language was set forth, and the revisions in bold. I  
13 found that easier to use.

14 I will mark that copy Plaintiffs' 1, and to aid  
15 us today so that we -- I thought it would be easier, I  
16 asked that Mr. Klaus' propose revision also be typed so  
we

17 could look at it to see if we can't conclude our  
18 discussions on command responsibility.

19 Could I ask that you use Court's exhibit --  
20 Court's draft two as the beginning point of our  
21 discussion? I would like to suggest that we put aside  
for

are 22 a moment the statutes that are being relied upon. We  
we 23 going to have to go back and address that. And I think  
24 really are going to have to discuss that in depth as to  
jury 25 whether we are going to present both statutes to the

1 and get separate awards under those statutes, and talk  
2 about that.

3 In other words, it is clear to me that the  
4 parties are concerned about certain limitations or  
5 problems that may exist under one but not the other, and  
6 if that is the case, we need to make sure we thought  
7 through how to protect those issues, and obviously not  
8 have double recovery, if there were to be a recovery,  
but  
9 we can talk about that.

10 My suggestion is we start by putting the  
statutes  
11 aside and simply deal with the instruction on command  
12 responsibility. I want to look at and add to the  
13 instruction the theoretical basis of the doctrine, that  
is  
14 a commander has an affirmative obligation to do various  
15 things to protect civilians and others who are within  
the  
16 zone of his authority, physical jurisdiction. But let's  
17 look at this as it is.

18 Does any party have any problem with the  
elements  
19 of the claim?

20 MS. VanSCHAACK: You are referring to points  
one  
21 through four?

tried

22 THE COURT: Right. Let me tell you what I

23 to do is to stay as close to the Eleventh Circuit's

24 formulation of the doctrine, because clearly that is the

that

25 safest route. And that is one where we have a court

1 has looked at it, and has approved the elements, and I  
2 think these are the elements as set forth.

3 MS. VanSCHAACK: Your Honor, I had an  
4 observation. With respect to elements three and four, I  
5 think it is important to formulate each of those  
6 elements  
7 in terms of torture or other similar abuses happening in  
8 the field. In other words, it is not necessary that the  
9 Defendant commander knew or should have known that this  
10 particular act of torture was going to be committed or  
11 had  
12 been committed.

13 THE COURT: That is a separate concept. I hear  
14 what you are saying, and that was addressed in some of  
15 the  
16 other jury instructions that said we are not talking  
17 about  
18 a Defendant knew that this particular person was  
19 tortured.  
20 We are talking about a theory that, sort of like  
21 vicarious  
22 liability, that says if you don't take these actions,  
23 and  
24 someone can establish that they were then tortured, that  
25 there can be liability.

26 Let's put that aside. I don't think that is  
27 included under the elements.

28 MS. VanSCHAACK: Your Honor, sorry to belabor

remove

22 this. In point four, the use of the word "the" implies  
23 that it was relevant to the action. I think if you  
24 the word "the" it would make it more general, failed to  
25 punish subordinates after they had committed acts of



of 1 torture, by saying punish the subordinates or the acts

2 torture.

3 THE COURT: Any objection to that, Mr. Klaus,  
4 that the article be removed?

5 MR. KLAUS: No, I left it out of mine.

6 THE COURT: That is in item four.

7 MR. GREEN: Judge, may I speak about one minor  
8 matter in item three?

9 THE COURT: Yes.

10 MR. GREEN: Actually, I agree with some of  
11 Mr. Klaus' proposed language, where we are talking about  
12 plan to commit torture, and Mr. Klaus --

13 THE COURT: Let me get Mr. Klaus's. Okay, I am  
14 with you.

15 MR. GREEN: Paragraph two --

16 THE COURT: Where are you on the draft, The  
17 Court's draft?

18 MR. GREEN: Paragraph three, command  
19 responsibility. The last sentence or plan to commit  
20 torture.

21 THE COURT: Yes.

22 MR. GREEN: Mr. Klaus, or the Defendants have  
23 proposed or were about to commit torture.

24 MS. VanSCHAACK: Your Honor, that is the

25 formulation used by the ICTY. I pulled up one of the

1 cases here, was about to be committed was the  
formulation

2 they use.

3 MR. KLAUS: That is what was used in the prior  
4 case, Your Honor.

5 THE COURT: Okay. That differs from the  
language

6 in the Eleventh Circuit. Conceptually, I don't think  
7 there is a real difference. Obviously one talks -- it  
is

8 time frame they are referring to. Did it in the past,  
are

9 doing it now or will do it in the future, but I simply  
10 point out, the language that is in the instruction is  
from

11 the Eleventh Circuit's opinion.

12 MR. GREEN: We understand that. We agree with  
13 the Defendants were about to commit torture. Sounds, I  
14 think, easier to a jury.

15 MR. KLAUS: Your Honor --

16 THE COURT: Do you have any objection since it  
is

17 your suggestion?

18 MR. KLAUS: No, not at all.

19 THE COURT: All right. Let's change that.

20 MS. VanSCHAACK: One more element.

21 THE COURT: Let me stop you for a second.

22 The third element of the command responsibility

military 23 doctrine presently reads that the Defendant slash  
24 commander knew, or should have known, owing to the  
25 circumstances at the time, that his subordinates had

torture. 1 committed, were committing, or planned to commit  
2 Both parties agree that plan is to be removed, and in  
3 place of that we are going to insert the words were  
about, 4 so it will read had committed, were committing, or were  
5 about to commit torture.  
6 Is that agreeable to both sides?  
7 MR. GREEN: Yes, subject to the addition of  
other 8 theories.  
9 THE COURT: Is that agreeable without question  
to 10 both sides?  
11 MR. KLAUS: Yes.  
12 MR. GREEN: Were about, yes.  
13 THE COURT: Okay. Let's go back. Any other  
14 issues that need to be raised on the elements?  
15 MS. VanSCHAACK: With respect to three and  
four, 16 I think it would more accurately reflect the way the  
17 Doctrine operates if we include after the word torture  
in 18 each instance some other catchall phrase that will reach  
19 other abuses.  
20 THE COURT: Let's put that aside. I hear you.  
21 Clearly if we are going to get under the Alien Tort  
Claims

22 Act, we are going to need to address that.

think

23 MS. VanSCHAACK: Your Honor, I am sorry, I

have

24 that remains the commander is on notice, it wouldn't

25 to be only acts of torture.

1 THE COURT: I am going to limit it to torture  
as 2 defined under the Act, or extrajudicial killing.

3 MS. VanSCHAACK: Then we should add in  
4 extrajudicial killing, and/or extrajudicial killing.

5 MR. KLAUS: I don't have an objection to that.  
I 6 don't think it is indicated by the evidence here. If  
they 7 are trying to say because my clients may have been on  
8 notice or had knowledge of extrajudicial killings that  
9 that put him on knowledge of torture, that is fine.

10 MS. VanSCHAACK: That is fine.

11 THE COURT: So implement, then, we are talking  
12 about.

13 MR. KLAUS: We can put it after everywhere  
14 torture appears --

15 THE COURT: Torture and/or extrajudicial  
killing.

16 MS. VanSCHAACK: Or extrajudicial killing.

17 THE COURT: And/or.

18 MR. GREEN: Or.

19 THE COURT: Is that acceptable?

20 MR. KLAUS: It is acceptable, less confusing.  
I 21 think it is more appropriate to put and. In this case,  
I 22 don't think -- in this case, under number two, I don't

23 think it needs to be added because there is not an  
24 allegation of an extrajudicial killing.

25 MS. VanSCHAACK: That is right, I agree.



1 THE COURT: I didn't hear what you said.

2 MR. KLAUS: In this case under element number  
3 two, it doesn't need to be added, there is not an  
4 allegation of extrajudicial killing, but under three and  
5 four, I accept their argument that evidence of an  
6 extrajudicial killing may be used to put them on notice.  
7 To kick in the notice part of it, knowledge part of it.

8 And I don't know if it would be more confusing,  
9 but it is more accurate to put and/or, because it  
doesn't  
10 have to be torture and extrajudicial killing, but it  
could  
11 be torture -- it could be and or it could be or.

12 THE COURT: What is the view on this side?

13 MR. GREEN: Whatever The Court wants to do. I  
14 think or is simpler. If you want to put and/or that is  
15 fine.

16 THE COURT: Let's strike the semicolon, says  
17 torture and, so it would read and/or extrajudicial  
killing  
18 semicolon and.

19 So the four -- let me go back now. The third  
20 element will now read the Defendant slash military  
21 commander knew, or should have known, owing to the  
22 circumstances of the time, that his subordinates had  
23 committed, were committing or were about to commit  
torture

24 and/or extrajudicial killing, semicolon, and --

25 Now, before I move to the next one, is that

1 wording acceptable to both sides?

2 MS. VanSCHAACK: Yes.

3 MR. KLAUS: Yes.

4 THE COURT: Let's go to the fourth element and  
5 the change would be the same, where it says acts, it  
says  
6 acts of torture and/or extrajudicial killing.

7 MS. VanSCHAACK: That is right, in both  
instances  
8 in which the word torture is mentioned, second and third  
9 line.

10 THE COURT: Let me read the fourth element,  
then,  
11 as amended. That the Defendant slash military commander  
12 failed to take all necessary and reasonable measures to  
13 prevent acts of torture and/or extrajudicial killing or  
14 failed to punish the subordinates after they had  
committed  
15 acts of torture and/or extrajudicial killing.

16 MS. VanSCHAACK: Except we agreed I thought to  
17 excise the "the" after subordinates.

18 THE COURT: We did.

19 MS. VanSCHAACK: Sorry, before subordinates.

20 THE COURT: No. The word the is not removed  
from  
21 before the word subordinates.

22 Let me come back to that. With that exception,

23 is that acceptable to both sides?

24 MR. KLAUS: Yes.

25 MR. GREEN: Let me have a second, Judge.

1 THE COURT: Let me read it to you. That the  
2 Defendant slash military commander failed to take all  
3 necessary and reasonable measures to prevent acts of  
4 torture and/or extrajudicial killing, or failed to  
5 punish -- it presently reads the subordinates after they  
6 committed acts of torture and/or extrajudicial killing.

7 Putting aside the issue of whether the article  
8 the should be before subordinates, is that wording  
9 acceptable to both sides?

10 MS. VansCHAACK: Yes.

11 MR. KLAUS: Yes.

12 THE COURT: Let's talk about the article the.

13 MS. VansCHAACK: The same theory removing the  
14 "the" with each act of torture, we are not referring to  
15 precise subordinates.

16 THE COURT: You are not referring to specific  
17 subordinates who may have inflicted injury on one or

more

18 of the Plaintiffs?

19 MS. VansCHAACK: That is right.

20 THE COURT: Any objection to removing article

the

21 in the fourth element?

22 MR. KLAUS: No.

23 THE COURT: All right. We will remove that.

24 Give me a second, if you would.

Does anyone else have any other comments,

1 criticisms, suggestions up to effective control?

2 MR. KLAUS: You said you were going to add  
3 additional language.

4 THE COURT: I would like to think about that,  
and  
5 I will give it to you before I do it. I think it would  
be  
6 helpful to explain where the doctrine comes from or why  
it  
7 exists, what is the premise of it.

8 Let's go to effective control, which is the  
9 second element.

10 MR. KLAUS: I don't have any objection to the  
top  
11 part as it reads now under command responsibility.

12 THE COURT: Okay. How about to effective  
13 control? What I've tried to include here, I am not sure  
14 about the language, but seems to me the case law tells  
me  
15 there are two elements, and one element, as you think  
16 about it, is almost taken for granted, and that is that  
17 there is a hierarchy.

18 So, clearly the first -- one of the cases, I  
19 think one of the tribunals in the Haig talks about the  
20 effective control being the threshold, but clearly what  
21 they are saying is, the first requirement is that you  
have  
22 a commander so the person have a rank that is either

people 23 higher or a position of authority. You could have  
24 who are all sergeants, theoretically, but one can be  
25 designated as the lead person.



1                   So it is not necessarily just the rank itself,  
it  
2                   is rather the investing of that person with command  
3                   authority. So first you have to show they have command  
4                   authority, and secondly, they have to have this ability  
of  
5                   effective control, the ability to control the people who  
6                   are actually perpetrating the torture or the  
extrajudicial  
7                   killing.

8                   MR. KLAUS: I don't have any objection to  
9                   effective control as it appears.

10                  THE COURT: How about from the Plaintiffs?

11                  MS. VanSCHAACK: In the Court's original  
12                  circulated draft there was language about the  
presumption  
13                  that is identified by the Eleventh Circuit.

14                  THE COURT: My view is, and let me talk to you  
15                  about it, my view is that The Court ought not to give  
16                  that. I alluded to that earlier. I think what The  
Court  
17                  was talking about, you remember the argument that was  
made  
18                  to the Eleventh Circuit was that the instructions in  
Ford  
19                  improperly allocated burdens of persuasion or burdens of  
20                  production, so on, so forth.

21                  And The Court looked at it and ultimately

and

22 concluded no, in the final analysis, when all is said

23 done, it is the Plaintiff who has to prove all of these

24 elements.

25 Now, The Court in Ford did say just like in a

1 Title Seven case, if you were analyzing it for summary  
2 judgment, you may well have a situation where the  
3 Plaintiff has established a prima facie case which gives  
4 rise to a presumption, requires the other party to come  
in  
5 with something. But the Eleventh Circuit, I think I  
6 mentioned this the other day, there was a judge who in  
the  
7 course of instructing the jury in a Title Seven case  
went  
8 through the whole burden shifting burdens, so on, so  
9 forth. When the appellate court looked at that, they  
said  
10 wait a minute, that is far too confusing. Once you get  
11 past summary judgment, you never get into that.

12 And that is the holding in Dudley versus  
Wal\*Mart  
13 on page 2296, 166 Fd.3rd 1317, and that is where The  
Court  
14 says after talking about the burden that may come into  
15 play -- excuse me, the presumption that may come into  
16 play, we previously have held that jury instructions are  
17 not to address the ultimate burden of persuasion --  
excuse  
18 me -- jury instructions are to address the ultimate  
burden  
19 of persuasion only, and should not necessarily confuse  
the  
20 jurors with which party had the burden of production at

21 trial.

22 I think the presumption you are referring to is

23 clearly burden of production. If summary judgment you

24 showed someone is a de jure commander, they are in

command

25 of their troops, the burden would go to the other side.

I

1 think we are beyond that.

2 MR. KLAUS: Page 15 on the Eleventh Circuit  
3 opinion, it says, thus we did not decide the issue. We  
4 note that nowhere in any international tribunal decision  
5 that the ultimate burden of persuasion --

6 THE COURT: You have to use the microphone  
7 because the interpreters are listening through head  
8 phones.

9 MR. KLAUS: Page 15 of their opinion, of the  
10 Eleventh Circuit in the Ford case, thus, although we did  
11 not decide the issue, we note that nowhere in any  
12 international tribunal decision have we found any  
13 indication that the ultimate burden of persuasion shifts  
14 on this issue. The prosecutor, the plaintiff shows that  
15 the plaintiff possesses de jure power over the guilty  
16 troops, so I don't think it should be in there.

17 THE COURT: Let me turn to Ms. VanSchaack. If  
18 you have a different view, I would like to hear you. I  
19 understand why you would like it, I don't think The  
20 should give the instruction.

21 MS. VANSCHAACK: To be clear, I don't think the  
22 presumption language the Plaintiffs have proposed is  
23 similar to a Title Seven, give and take, back and forth,  
24 which I agree is a very complex doctrine, a complex

25      evidentiary framework. We have to acknowledge that the

1 ICTY -- Yugoslav tribunal has identified a legal  
2 presumption, and that presumption was likewise  
identified  
3 by the Eleventh Circuit. If it is to have any meaning  
in  
4 a jury trial where it is not a judge constantly  
filtering  
5 evidence over the course of a trial, I think it has to  
be

6 instructed to the jury.  
7 Federal Rule of Evidence 301 acknowledges there  
8 are situations in which a legal presumption will be  
9 included within the jury instructions, and that is often  
10 the case where the presumption has as basis some  
important  
11 policy, and some recognition which party has superior  
12 access to proof.

13 And including in the jury instructions a  
neutral  
14 articulation of that presumption, namely where there is  
15 evidence that an individual exercises formal command,  
that  
16 gives rise to a presumption that that individual  
exercises  
17 effective command as defined in those instructions, I  
18 think is appropriate in this particular situation.

19 We are not asking for an elaborate back and  
forth  
20 shifting of the burden of production, this and that,  
just

in 21 identification of that presumption that was identified  
22 the international tribunals and ratified by the Eleventh  
23 Circuit.  
24 THE COURT: Okay. In the Eleventh Circuit's  
The 25 opinion in Ford versus Garcia, speaking to this issue,



in  
Eleventh  
who  
effective  
that

1 Court referred to the international tribunals decision  
2 the Delice case, D-E-L-I-C-E case, and there the  
3 Circuit said Delice indicates de jure over the troops  
4 perpetrated the crime is prima facie evidence of  
5 control which accordingly can be rebutted only by the  
6 defense putting forth evidence to the finder of fact  
7 the Defendant lacked this effective control.

8 Earlier, at the beginning of that paragraph The  
9 Court said that the tribunal, referring to the  
10 international tribunal and the Haig, said that de jure  
11 authority over the guilty troops results only in the  
12 presumption of effective control.

13 In other context, and then going back now,  
14 talking about its own prior case law, The Court has  
15 indicated that a presumption shifts the burden of  
16 production with respect to the element it concerns, but  
17 not the burden of persuasion. And, of course, the  
burden  
18 of persuasion talks about who ultimately has the  
19 responsibility to prove the claim that has been made.

20 Now, having discussed this, having cited Delice  
21 again, The Court went on to indicate that the passage  
that

22 I referred to earlier, where The Court said trial courts  
23 ought not to instruct the jury regarding burdens of  
24 production, that that is overly confusing.

25 So I am going to take that the Plaintiffs have

1 asked for the language that is set forth in the document  
2 marked Plaintiffs' 2, and I am referring particularly to  
3 this language "where a military commander exercises  
formal  
4 command over his subordinates, this gives rise to a  
5 presumption under law that the commander exercises  
6 effective control over his subordinates."

7 So the Plaintiffs have asked for that. I am  
8 going to deny that request relying on the Eleventh  
9 Circuit's holding in Ford versus Garcia finding that the  
10 presumption that is being discussed refers to a burden  
of  
11 production and not the burden of persuasion, that it  
would  
12 be inappropriate to give this instruction to the jury,  
so  
13 the record will be clear that it has been asked for and  
14 denied.

15 Okay.

16 MS. VanSCHAACK: Your Honor, there is one  
related  
17 point. When we began our discussions about the Doctrine  
18 of Command Responsibility, you indicated and all parties  
19 agreed the idea was to create an instruction that was  
20 tailored to the facts of that particular case. And at  
21 that time you asked both parties are we in a de facto  
22 versus de jure situation. We all agreed we were in a de

23 jure situation.

24                   However, in light of some comments that the

25 defense has made in addition to the tone and direction

are  
1 that the cross examination seemed to be moving in, we  
2 under the impression there may be a shifting of that  
3 agreement at this point, and so we would like to  
consider  
4 whether or not the jury should be instructed on the de  
5 facto command in addition to de jure command.

6 THE COURT: Why don't you reserve on that. If  
7 you conclude ultimately that should be made, let's keep  
8 the door open to that.

9 MS. VanSCHAACK: Thank you.

10 THE COURT: But, I suppose -- it is hard, isn't  
11 think  
12 it, to get a grip on this, because normally when you  
13 about it, when you talk about de jure versus de facto  
14 command, the factors that come to mind are the people in  
15 Bosnia who seemingly had no rank, at least no recognized  
16 rank, but without question were leading groups of  
people,  
17 armed groups, and were executing state policy.

18 In our case, there really has been no conflict  
at  
19 all. There is no question that General Garcia was in  
fact  
20 the Minister of Defense of the country, and there  
21 certainly is no question General Vides held legitimate  
and  
office in the country. We have had some discussions,

22 it may get, may get broader as we go along, whether you  
23 have some other programs, that is, people outside the  
24 military, outside the active military who are  
25 participating in death squads.

1                   And I suppose you get then into the situation,  
it  
2                   is sort of the flip, if you will, of the Bosnian  
3                   situation, because what you are suggesting is, is it  
4                   possible that you could have a legitimate military  
5                   commander who exercises de facto control over units that  
6                   are not within the military, but are acting and somehow  
7                   fulfilling orders, state directed orders, and I think  
you  
8                   are going to have to simply wait and look at the  
evidence  
9                   on that.

10                   MS. VansCHAACK: To be clear, Your Honor, that  
11                   second scenario is exactly the scenario I had in mind.

12                   THE COURT: I understand it. I understand it.  
13                   And I think you probably are going to have to wait on  
14                   that, because obviously we haven't gotten into the  
defense  
15                   case, and a lot of this has to do ultimately with what  
16                   does the whole case look like. In other words, what is  
17                   the body of evidence that has been presented to the  
jury,  
18                   because when all is said and done, there needs to be  
jury  
19                   instructions that deal with this body of evidence that  
has  
20                   been adduced.

21                   If the jury finds A, what is the instruction  
that

22 deals with that, if the jury finds another factual  
23 scenario, what is the jury instruction that deals with  
24 that?

25 Do you feel comfortable waiting on that for



1       awhile and making a judgment call?

2                   MS. VanSCHAACK: We do.

3                   MR. GREEN: Your Honor, in preparing for the  
4       cross examination of General Garcia, I reviewed his  
5       deposition testimony in which he was attempting to

shrink

6       his de jure command powers, where he was only a weigh  
7       station of information going up to the Junta or down to  
8       the lower command post, and what I think we've heard

both

9       in terms of the cross examination, but also in terms of  
10      some of the affirmative evidence that was presented by

the

11     Plaintiffs, is that he was the power behind the throne.  
12     The real power. That he may very well have had

effective

13     command, de facto command that exceeded what he claims  
14     had in terms of de jure powers.

he

15                   THE COURT: Well, that is another nuance. If  
16     that becomes appropriate, we want to make sure we have a  
17     jury instruction that correctly states the law.

indicated

18                   I think Judge Barkett was concerned and  
19     that in her concurring opinion that the jury

instructions

20     that were given in Ford only dealt with one scenario,

and

21     recognized you could have a broader concept. Let's see

22 what develops, and we will come back to that if we have  
23 to.

24 MR. KLAUS: Regarding that, Your Honor, I think  
25 the way to deal with that is to be more generic in the

troops. 1 instructions. You don't have to refer to them as

2 You only have to refer to people under his effective  
3 command. That is the real issue, doesn't matter if they  
4 are wearing a uniform, it only matters if they are under  
5 his command. Whether they are enlisted, resigned --  
6 doesn't matter if they are de jure or de facto, but the  
7 instruction has to cover both.

8 THE COURT: That may be a way to handle it.  
9 Maybe it doesn't make any difference to say whether  
10 someone is in uniform or not, in the active military or  
11 not, it is a factual issue, was that person in fact  
12 subject to someone's authority, and did the superior  
13 actually have effective control over them.

14 If you find that is an acceptable statement of  
15 the law on it, that is one way to approach it.

16 Let's put it aside. I think it requires some  
17 drafting, and I don't think it is helpful to try to  
draft  
18 verbally. I think it is important to put everybody on  
19 notice, what everyone is thinking about, but we are  
going  
20 to have to tackle that. Okay.

21 Let's go back to the concept of effective  
22 control, and let's go to the Plaintiff. The Plaintiff  
is  
23 indicating that the Plaintiff desired the presumption as

the 24 part of the presumption of effective control. Now, is  
to 25 remainder of the effective control set forth acceptable

1 both parties?

One

2 MS. VanSCHAACK: I have three small things.

rather

3 is a suggestion for clarity in the titles of each of the  
4 subheadings be lined to the original element. We could  
5 call this section superior subordinate relationship  
6 than effective control.

goes

7 THE COURT: Let me stop you there for a minute.

effective

8 I think that makes sense, because what we are  
9 saying is this defines what has to be established to  
10 establish the superior subordinate relationship, and

but

11 back to the concern Mr. Klaus had the other day. He  
12 wanted to insert the words effective control or

13 command in the second element and we talked about it,

14 we said that at least one other way to do it was to have  
15 definitional sections.

you

16 So I think by titling that, it ties it in, if

define.

17 will, to the element that we are trying to further

18 Do you have any problem with that, Mr. Klaus?

19 MR. KLAUS: No.

20 THE COURT: So we won't call this effective  
21 control, we will call it superior subordinate

22 relationship. And might even put hyphen element two,  
23 something like that.

24 MS. VanSCHAACK: That will be useful so they  
know

25 what they are referring back to.

would.

1 THE COURT: Give me just a second, if you

2 MR. KLAUS: I would ask that it be entitled

3 effective command. That is what the Eleventh Circuit

4 talks about.

5 THE COURT: Give me just a minute if you would.

6 Let me tell you why I used the word control rather than

7 command.

8 MR. KLAUS: I agree with control.

9 THE COURT: Okay. Okay. I am going to head

the

10 section, though, superior dash subordinate relationship,

11 open paren, element number two. I will also explain to

12 the jury what I am doing now, this is the definition of

13 what must be established in order, or what must be

proven

14 in order to satisfy element two. And what you have to

15 prove are two separate things.

16 A, that someone occupied a higher rank or

17 position of greater authority, and secondly, that is as

a

18 matter of fact that that person had effective control

over

19 the person committing, and we are going to say torture

20 and/or extrajudicial killings. Can you all live with

21 that?

22 MR. KLAUS: Yes.

23

MS. VanSCHAACK: Yes.

24

THE COURT: Acceptable to both sides?

25

MR. KLAUS: Yes.



1 THE COURT: Okay.

2 MR. KLAUS: The only other change under that  
3 heading, the last line where it says superior to control  
4 the troops, I would say superior to control either the  
5 persons or the wrongdoers --

6 THE COURT: Is persons okay?

7 MS. VanSCHAACK: I am sorry, I missed that.

8 THE COURT: Take a look at the last sentence  
9 under that, what used to be effective control. He wants  
10 to remove the word troops and put in the word persons.  
11 Seems to me that is consistent with what the Plaintiffs  
12 are talking about earlier. It is potentially possible  
13 that a fact finder can conclude that the people doing  
this  
14 may have been people other than troops, other than  
active  
15 members of the military.

16 MS. VanSCHAACK: What about using the term  
17 subordinates, and then relates back to the title in the  
18 second element?

19 THE COURT: That is another way, too.

20 MR. KLAUS: If we are going to do that,  
21 everywhere person is used, I would want subordinates to  
be  
22 used. That is putting greater burden on the Plaintiff,  
23 which is fine for me.

what 24 THE COURT: Well, seems to me, going back to  
these 25 we talked about yesterday, I think you want to keep

1 things understandable. We are talking about people  
doing 2 things. You are talking about somebody having control  
3 over other people. I think the more we back ourselves  
4 into what are terms of art, subordinates, we are using  
the 5 term to define the term, and I don't think that is  
6 helpful. I don't think it makes a difference.

7 MS. VanSCHAACK: Perhaps we could stick with  
8 subordinates or persons now.

9 THE COURT: I would like to stick with persons,  
10 if you don't mind. I think it is more readable and  
11 understandable.

12 Okay, let's move on. Can everybody live with  
13 that for the time being?

14 MR. KLAUS: Yes.

15 MS. VanSCHAACK: Could I raise one more?

16 THE COURT: Yes.

17 MS. VanSCHAACK: In the Ford instructions there  
18 was a sentence that said commander cannot escape  
19 responsibility where his own action or inaction causes  
or 20 contributes to his inability to command subordinates.  
And 21 the Eleventh Circuit left that untouched. We would  
22 request that be retained in this version.

that. 23 THE COURT: The question is where do we put  
24 MS. VanSCHAACK: Okay. That is true.  
Klaus 25 THE COURT: I say that because I think Mr.

be  
1 added that under failure to punish. Maybe it needs to  
2 separate, I don't know. Let's put that aside and come  
3 back to it.

4 Let's look to actual or constructive, that is,  
5 presumed knowledge. How about the heading, can you live  
6 with the heading?

7 MR. GREEN: Judge, one minor thing, going back.

8 THE COURT: Yes.

9 MR. GREEN: I am sorry to do this. On the  
10 Court's second draft, page two, second line where it  
says  
11 prevent the acts of torture, and it says and to punish,  
we  
12 would request or to punish.

13 THE COURT: Let's read it for a minute.

14 Had effective control over the persons  
committing  
15 acts of torture and/or extrajudicial killing.

16 MS. VanSCHAACK: Actually, Your Honor, I think  
it  
17 makes more sense, even though this sounds like a  
18 contradiction, to leave torture. When we are talking  
19 about subordinate/superior relationship, we are talking  
20 about what happened to these precise Plaintiffs. When  
you  
21 are in the realm of notice or failure to prevent or  
22 punish, then the acts that were happening more broadly

23       become relevant.

24                   I do think you have to show the individuals who

25       committed the actual torture adhere to this  
subordination

1 definition. Does that make sense?

on

2 THE COURT: It does. Let's go back and focus  
3 it because maybe we need to go back to the elements and  
4 clarify them.

5 MS. VanSCHAACK: I think the elements are okay.  
6 We only changed three and four, and two only lists  
7 torture, which is the claim that we are dealing with.

make

8 THE COURT: Well, let me come back to you to  
9 sure I understand your view of this and make sure you  
10 are  
11 correct.

element

11 You know, when you think about this, maybe this  
12 is why you don't need any type of causation instruction,  
13 because you are covering it effectively here. You read  
14 the second element as an element of specificity to what  
15 happened to a particular Plaintiff. So what you are  
16 saying is, the first element is that the Plaintiff was  
17 tortured by a member of the military. The second  
18 is that a superior/subordinate relationship existed  
19 between the Defendant military commander and the person  
20 who tortured the Plaintiff. That is what you are really  
21 saying.

22 MS. VanSCHAACK: That is right.

23 THE COURT: I think we ought to change that if

24       you all agree that is what it is supposed to mean.

25                   MS. VanSCHAACK: I think the way we left the



1 second element is correct.

and

2 THE COURT: I think you need to pull it down

what

3 make it more specific if that is what you are saying,

4 you understand it to be, because I am not sure, frankly,

5 that I understood it to be that way, and I am wondering

6 whether the jury would.

7 MS. VanSCHAACK: I think you have it correct

8 whether you understood it or not, because you do say the

9 person committing the torture.

10 THE COURT: I hear you, but I think that is too

11 fine a point.

saying,

12 Do you agree with what the Plaintiffs are

13 Mr. Klaus, that is, what ties this to this particular

are

14 case, that is, when you look at this formulation, you

15 saying first that the Plaintiff, a specific Plaintiff in

16 this case was in fact tortured by a member of the

17 military. The second element is that a subordinate --

18 superior/subordinate relationship existed between a

was

19 specific Defendant in this case and the Plaintiff who

20 tortured?

to

21 MR. KLAUS: Yes, that is what I understand it

22 read.

23                   THE COURT:  Okay.  I will change the second  
24    element in this fashion.

25                   MS. VanSCHAACK:  I want to hear --

1 THE COURT: Let me run it by you for a minute.  
2 "That a superior/subordinate relationship existed  
between  
3 the military commander and the person who tortured the  
4 Plaintiff."

5 MS. VanSCHAACK: That's fine.

6 THE COURT: And the person is person, open  
paren,  
7 his, close paren.

8 MR. KLAUS: Okay.

9 MS. VanSCHAACK: Yes.

10 THE COURT: Let me take a second. Do both of  
you  
11 agree, though, with that concept? By that I mean the  
12 point you are putting across, the second element really  
13 ties in the Plaintiff must show that a Defendant in this  
14 case had a superior/subordinate relationship over the  
15 person who actually committed the torture against this  
16 Defendant.

17 MR. KLAUS: Yes.

18 THE COURT: This Plaintiff, rather.

19 MR. KLAUS: Oh, yes.

20 MS. VanSCHAACK: Yes.

21 THE COURT: Both sides agree to that?

22 MR. KLAUS: In light of that and in light of  
the

23 earlier comments, we may want to change element one that

24 the Plaintiff was tortured by a person under the command  
25 or under the -- of -- because it doesn't have to be a

1 member of the military, it could be anybody under his  
2 command, and that is the whole point. That is the point  
3 in the Eleventh Circuit.

4 THE COURT: I hear you. Well, let me stop you  
5 for a second. We can engage in the theoretical  
6 discussions, but let's think about what the proof from  
the  
7 Plaintiffs' point has been on this. The proof from the  
8 Plaintiffs' point is that they were in fact -- of  
course,  
9 I haven't had the opportunity to hear Ms. Gonzalez's  
10 testimony, but Dr. Romagoza, Professor Mauricio have  
both  
11 testified that they were apprehended and were tortured  
by  
12 members of the military and they say that by virtue of  
the  
13 boots that were being worn, the facility in which the  
14 torture was administered and so on.

15 So this isn't the kind of situation where you  
16 might have people and have no idea of who they are or  
17 anything else. So I wonder whether we really need that.

18 MR. KLAUS: Okay. That is their choice.

19 THE COURT: I think you are right. Why don't  
we  
20 leave it as it is subject to everybody rethinking these  
21 things as we go along.

this

22 I have to tell you we are pleased with it at

can

23 time that gives me pause. I think that is the best we

24 do, because I think we have to wait and see how the

25 evidence develops.

we  
1                   Now, let me come back again, when we stopped,  
2                   were looking at the point Mr. Green had raised dealing  
3                   with the second page. And Mr. Green, would you help me  
4                   out again? What is it you were concerned about?

5                   MR. GREEN: Duty to either prevent or punish as  
6                   opposed to prevent and punish.

7                   MS. VanSCHAACK: It is formulated in the  
8                   disjunctive.

9                   MR. KLAUS: No objection changing and to or in  
10                  the second line.

11                  THE COURT: Okay. Changing and had to or. And  
12                  the last line reads torture and/or extrajudicial  
killing?

13                  MS. VanSCHAACK: No, just torture.

14                  THE COURT: Just torture.

15                  MS. VanSCHAACK: The same theory there must be  
16                  that relationship with the actual perpetrator.

17                  THE COURT: That is right. Going back,  
18                  Ms. VanSchaack, you indicated on the first line, second  
19                  page it should not say and/or extrajudicial killing?

20                  MS. VanSCHAACK: That is right.

21                  THE COURT: Let me read it to you one more time  
22                  and I will have a new draft of it for you.

23                  To prove the second element, that is, that a  
24                  superior/subordinate relationship existed between the

25 Defendant military commander and the persons committing



1 the torture, I only want to ask whether we should change  
2 that to the persons torturing the Plaintiff.

3 MS. VanSCHAACK: Either way.

4 THE COURT: The Plaintiff must prove by a  
5 preponderance of the evidence that the Defendant slash  
6 military commander held a higher rank than or a position  
7 of authority over the person -- now says committing the  
8 torture or torturing the Plaintiff, and had the  
effective  
9 control over the persons committing acts of torture,  
that  
10 is had the material ability to prevent the acts of  
torture  
11 or to punish the persons committing the acts of torture.  
12 In other words, to be able to invoke the Doctrine of  
13 Command Responsibility, a Plaintiff must prove by a  
14 preponderance of the evidence that the Defendant  
military  
15 commander had the actual ability of a superior to  
16 control -- now says troops, whether to be consistent we  
17 should say person.

18 MR. GREEN: Since.

19 THE COURT: Person committing the acts of  
20 torture.

21 MR. GREEN: Judge, in the interest of brevity I  
22 am not sure that we need actual abilities of a superior,  
23 instead military commander had the actual ability to

24 control.

25 THE COURT: You want to strike out the words of

a

1 superior?

2 MR. KLAUS: That is fine.

3 THE COURT: Is that okay?

4 MR. KLAUS: Yes.

5 MS. VanSCHAACK: If we want to be more brief,  
the  
6 last sentence is more redundant.

7 THE COURT: It is, but I think it needs to be  
8 there. It is out of the Eleventh Circuit's opinion. I  
9 hear you.

10 We need to stop. We made headway. I will get  
11 another draft for you, we will do constructive knowledge  
12 and I want to stop for a second and ask you to think  
about  
13 this.

14 We talked about whether the Plaintiffs want to  
15 pursue their rights under both statutes, and in the  
course  
16 of discussing this, I think we recognized the Alien Tort  
17 Claims Act is broader than the Torture Victim Protection  
18 Act. And there may be other reasons, and I think we  
need  
19 to have a discussion about the difference people see in  
20 the statutes or other aspects.

21 But if there are differences, in other words,  
if  
22 there are significant differences, how do we handle  
that?

another 23 Do we simply in talking about one Plaintiff versus  
24 indicate that there are additional factual matters that  
25 might be considered, in other words, lesser torts than

1 torture?

2           And do we handle that simply by having a  
3           compensatory damage line obviously separate for each  
4           Plaintiff, but indicating for Plaintiff A you are only  
5           able to consider these acts, whereas for Plaintiff B you  
6           might be able to consider a broader range of acts with  
7           compensatory damage line? Or does it make sense if  
8           are serious differences to literally have awards made  
9           under both sections telling the jury that The Court  
10          later reserve the right to go back to prevent a double  
11          recovery?

12           Now, one of the issues we are going to need to  
13          talk about, for instance, are punitive damages available  
14          under both statutes. If there is a doubt, would it make  
15          sense to go ahead and have the jury address that issue  
16          later discuss it and zero it out if The Court concludes  
17          that they are not recoverable under the Torture Victim  
18          Protection Act, but they may be recoverable under the  
19          Alien Tort Claims Act?

20           Those are some of the things we need to talk  
21          about. I think I said this before, and I think you  
22          understand this, it would be a heck of a lot easier and  
23          simpler to proceed under one statute, but there may be

24 compelling reasons that don't allow you to do that.

25 If those reasons are compelling in order to

1 preserve those issues so an appellate court can  
safeguard  
2 something on one side that might not be recoverable  
under  
3 another, do we have to segregate it or allow the jury to  
4 address it. If we do, how do we prevent issues  
preventing  
5 double recovery, and how do we get to that.

6 We need to talk about that. This is something  
we  
7 haven't explored, but we have to tackle it at some  
point,  
8 and we have to do it in a way that allows us to see what  
9 the jury has done and preserve those issues.

10 Let's stop and we will pick up. Where are we  
11 tomorrow? Is it reasonable to think we are going to  
12 finish the Plaintiffs' case tomorrow?

13 MR. GREEN: Ms. Gonzalez will be two to three  
14 hours on direct. I don't know how much cross there will  
15 be. Dr. Caddy will be anywhere from an hour and a half  
to  
16 two hours.

17 THE COURT: Are those the last two witnesses?

18 MR. GREEN: Yes.

19 THE COURT: Okay.

20 MR. GREEN: There may be a very short reading  
of  
21 testimony from a prior proceeding, but I don't think we

a

22 are going to have to do that. That would take less than

23 minute.

24 THE COURT: Okay. Anything else of a crisis

25 nature we they had to deal with? I know we have the



1 motion in limine we have to address.

2 Let's stop and let's meet tomorrow. Thank you.

3 (Thereupon, trial was recessed at 6:15.)

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WITNESSES FOR THE PLAINTIFFS

3

Direct    Cross    Redirect    Recross

4

TERRY KARL

1385

1481

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E X H I B I T S

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Plaintiffs' Exhibit 399

1492

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