



1 THE COURT: Good morning, everybody. Madam  
2 marshal, would you bring the jury in, please?

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

4 THE COURT: Ladies and gentlemen, please be  
5 seated. I have to apologize, the matter we had scheduled  
6 at 8:30 went longer than we anticipated. We are all set,  
7 ready to proceed. Are we all set, computers hooked up?  
8 Fine. Let me ask Mr. Green to call the next witness.

9 MR. GREEN: Neris Gonzalez.

10 THE COURT: Ms. Gonzalez, would you come up to  
11 the witness stand?

12 Please sit down and make yourself comfortable,  
13 Ms. Gonzalez.

14 If you would begin by raising your right hand.

15 NERIS GONZALEZ, PLAINTIFF SWORN.

16 THE WITNESS: Yes, I will tell the truth, God  
17 help me.

18 (Witness testifying through interpreter.)

19 THE COURT: Ms. Gonzalez, the jury met you at the  
20 beginning of the case, but for the clarity of the record,  
21 would you state your full name, and would you spell your  
22 last name?

23 THE WITNESS: My name is Neris Amanda Lopez  
24 Gonzalez, N-E-R-I-S.

25 THE COURT: The last name you normally use is

1 Gonzalez?

2 THE WITNESS: Yes.

3 THE COURT: How do you spell that?

4 THE WITNESS: G-O-N-Z-A-L-E-Z, Gonzalez.

5 THE COURT: You may proceed, Mr. Green.

6 DIRECT EXAMINATION

7 BY MR. GREEN:

8 Q. Ms. Gonzalez, where do you live?

9 A. I live in Chicago.

10 Q. What do you do for a living?

11 A. I work at Ecovida Organization, an organization of  
12 which I am the founder and director and Ecovida works  
13 towards raising consciousness toward life and environment.  
14 We work for the Latin immigrant community, for the  
15 community, and also within the public schools.

16 Q. Ms. Gonzalez, do you speak English?

17 A. I am in the process of learning to speak English.

18 Q. Do you have a scholarship to learn English?

19 A. Yes, I have a two year scholarship.

20 Q. Now, to which university or college?

21 A. At the university of Illinois, Chicago.

22 Q. When will you begin your studies under that  
23 scholarship?

24 A. I began my first semester January 14, this year.

25 Q. Ms. Gonzalez, where were you born?

1 A. I was born at San Nicholas Lempa state. In the  
2 municipality of San Vincenti.

3 Q. Is that in El Salvador?

4 A. In El Salvador.

5 Q. And where did you live in El Salvador?

6 A. San Nicholas Lempa.

7 MR. GREEN: Mr. Stern, could you get the map and  
8 put it on the easel, please?

9 BY MR. GREEN:

10 Q. Ms. Gonzalez, would you point on the map where San  
11 Nicholas Lempa is?

12 A. My glasses, here.

13 San Nicholas Lempa is right here. San Vincenti is  
14 here, and this is my state. This is where I come from. I  
15 am a peasant origin.

16 Thank you.

17 Q. With whom did you live in El Salvador?

18 A. My parents.

19 Q. Could you describe your family?

20 A. We are a family of 12 siblings.

21 Q. How many brothers, how many sisters?

22 A. Seven sisters, and six brothers.

23 Q. Would you describe your home for the jury?

24 A. Yes. My district is an agricultural district. And it  
25 produces a great deal in terms of agriculture and seafood.

1 Because we are on the Seaside Highway and the lower area,  
2 low lands touch on the Pacific, and that is where we get  
3 seafood, and high lands is where the agricultural area is,  
4 cattle.

5 Q. Could you describe what your house was constructed of  
6 when you were growing up?

7 A. Yes. It was a humble home made of bamboo, two room  
8 home. There was a living room and a hallway. All houses  
9 have hallways.

10 Q. And how many bedrooms?

11 A. Two rooms. It is a country house.

12 Q. Could you describe your village?

13 A. Yes, Lempa has a great deal of agricultural  
14 production, cattle production and many cotton plantations.  
15 And the whole coastal area before you quite reach the sea  
16 is all cotton growing area.

17 There's, there's --

18 Q. Ms. Gonzalez, could you slow down a little bit?

19 THE INTERPRETER: If I may, I asked her to repeat  
20 the entire answer.

21 MR. GREEN: Please.

22 THE INTERPRETER: Would you ask her a question?

23 MR. GREEN: I asked her to describe her village.

24 THE WITNESS: Yes. San Nicholas Lempa is an area  
25 with a great many plantations, the coastal area, and the

1 area has a lot of coffee, and sugar cane, so that that is  
2 how our people makes its living, working with these  
3 products, reaping cotton and cutting sugar cane and  
4 picking coffee.

5 That is how they make their living. And my  
6 parents had a store, and we would slaughter animals for  
7 sale in the country. We would slaughter a cattle, and we  
8 had a small store kind of like for the whole district, and  
9 we would provide the food stuffs that the whole district  
10 would buy on credit, and they could pay later when they  
11 got paid.

12 BY MR. GREEN:

13 Q. Was there a church in your village?

14 A. Yes, we had a small church. It's like a shine, it  
15 didn't have a building, but it was built like with palm  
16 frons.

17 Q. Did you go to school?

18 A. Yes. I did nine grade in San Marcos Lempa.

19 Q. And how far was that from your house, your village?

20 A. I would walk an hour, about an hour, hour and a half  
21 in order to get to school.

22 Q. And then an hour or hour and a half to get back?

23 A. To come back, yes.

24 Q. Could you describe your typical day when you were  
25 growing up?

1 A. Yes. I was my parents third born. I had to work  
2 quite a bit. I was sort of my mother and father's right  
3 hand. We would bake bread, the store would sell bread and  
4 meet at the store in order to help my parents out  
5 financially. And after that I would go to school and then  
6 I would come back.

7 It was a beautiful district. Very gay. We didn't  
8 have electricity. It was a lovely community, we had fun  
9 games in the evening with children. That's how -- those  
10 are our entertainment, getting together with the children  
11 afterwards to play games after dinner.

12 Q. Did you go to church when you were a little girl?

13 A. Yes. My mother -- we are Catholic, and my mother  
14 taught us to go to church.

15 Q. As you grew up, did you stay active in the church?

16 A. Yes, I was -- as I became older, I became active.  
17 When I was a little girl I wanted to be in the chorus, but  
18 my mother wouldn't let me. When I grew up, yes, I was a  
19 very active young woman in the church.

20 Q. What kind of activities did you participate in the  
21 church?

22 A. I began participating in programs directed towards  
23 catechism, baptisms, and training for parents for  
24 confirmations and first communions. We had all these  
25 beautiful activities for our community.

1 Q. What kind of activities did you have for your  
2 community besides the things that you trained for?

3 A. We started a health and literacy program. We had two  
4 great projects. It was one of the needs our district had.

5 Q. And what were those needs?

6 A. Regarding the literacy program. I would like to tell  
7 why that literacy program came about, and I would also like  
8 to discuss why the need came up to have a health program in  
9 my district.

10 The literacy program came about because in the cotton  
11 plantations in 1977, 77, '78, I used to collect money from  
12 the ladies that would be given for survival at the store,  
13 and normally would go collect when they were being paid at  
14 the plantations. So I noticed that the guy was writing  
15 down the schedule, I guess we would call it when the  
16 peasants would take their bags of cotton over to be  
17 weighed --

18 Q. Are those the bags of cotton that the peasants picked?

19 A. Yes, the cotton they picked at the plantations, yes.

20 Q. Did they get paid for how much cotton they picked  
21 based on the weight of the cotton they picked?

22 A. Yes. The bags were hundred pound bags. I don't know  
23 what you call them here, but they would be like burlap bags  
24 which bags when they are full, they weigh 100 pounds.

25 I knew how to read and write, I could count, so I saw

1 that the scale would read 100, sometimes up to 110 pounds,  
2 so I saw at the counter would say only 50 pounds. And I  
3 said it is not 50 pounds. I was innocent. I would say it  
4 is not 50 pounds. And he said, oh, shut up, you don't  
5 know, you are a dumb peasant, go away.

6 So I said, wait a minute, this can't be. And I became  
7 worried. And on Sunday when our parish priest visited us,  
8 I said to him, Father, is it fair, it weighs 100 pounds,  
9 they give them credit for only 50 pounds? And I said, what  
10 is going on? I was sort of upset, and it hurt me to see.

11 So I said why don't we start a literacy program to  
12 teach them to count from one to 100. So we collected and  
13 bought paper and pencils and so we set a time for six p.m.,  
14 and that way everybody who wanted to learn to read, write  
15 and count could go there, and we started the literacy  
16 program.

17 And, of course, everybody was interested. It was a  
18 very interesting program and that is how all the peasants  
19 learned to count from one to 100, but I didn't think this  
20 was any great problem.

21 Q. Let's get to the great problem a little later.

22 You also mentioned that you were involved in health  
23 issues through the church?

24 A. Yes. We saw the literacy program was doing very well  
25 so we started a health program. As you can see from the

1 map, we saw the great need in our district. As you can see  
2 from the map, we didn't have a hospital nearby, we didn't  
3 have a clinic nearby and we needed treatment and we started  
4 the program for -- with health providers.

5 Health providers, and also mid wives to help with  
6 births. And there was a great program and we managed to  
7 get capable people through the Father, and we got people  
8 through the university. We had got medical students. The  
9 university had programs to do their social programs in the  
10 country.

11 And we started good health provider team, first aid,  
12 handling a simple wound, learning to give shots, because  
13 they were workers, they all worked with something called  
14 cuma, C-U-M-A, a curved type machete. They worked in the  
15 field. Any kind of light wound, we were there to help.

16 In San Nicholas we had a great deal of malaria, as  
17 they call it. We learned to give shots. We needed to  
18 inject the medication for the malaria, and it was a very  
19 pressing need. So this was a vital program that was very  
20 much needed in my district.

21 Q. Ms. Gonzalez, were you doing the literacy work and  
22 health care work under the church, with the church?

23 A. Yes. Yes. The church gave us room, a whole palm  
24 grove, beautiful palm grove area, and each person would  
25 bring a little stool to sit on and a little table because

1 we didn't have the funds, we didn't even have a table.

2 Q. Ms. Gonzalez, you mentioned earlier that the training  
3 you went into, the activities you participated in the  
4 church, you mentioned something about catechism?

5 A. Yes.

6 Q. Did you ever become a catechist?

7 A. Yes. I was a catechist, and I still am.

8 Q. And what is a catechist?

9 A. Well, what we catechisms are, we are leaders, we  
10 replace -- the district didn't have a steady parish priest.  
11 The priest comes every eight days, so we catechist are the  
12 ones who set everything up for the sacraments.

13 We teach, in terms of teaching children, we set  
14 everything up for the sacraments, and when the Father  
15 arrives, everything is ready. Everything is on the table,  
16 the church has been decorated, and when Father arrives, all  
17 he has to do is say mass, and carry out the other  
18 activities, such as baptisms. On Sunday we have baptism,  
19 another day we have confirmations, another Sunday we have  
20 first communions.

21 Q. When did you begin as a catechist?

22 A. Actively, really into it since 1977. In 1978 the  
23 programs really took off and really became large.

24 Q. When the programs took off and became really large,  
25 about how much time were you spending on these programs,

1 these activities every week?

2 A. We would usually put in about two hours every three  
3 days, because, of course, we had to work for a living and,  
4 of course, Saturdays and Sundays was a holiday because we  
5 had to carry out these activities because Father was  
6 coming.

7 Q. Did you work alone, or with others?

8 A. No, we were a team. There were quite a few of us,  
9 about ten or 12, and we were a committee. We were a basic  
10 pastoral committee.

11 Q. Did you report to anyone?

12 A. Yes. We had to report everything about the catechism  
13 and pastoral program to the parish priest, and, of course,  
14 also we had to tell him what we needed for our health and  
15 literacy programs because it was through him we got these.  
16 He would get us things that we needed to carry out our  
17 activities. And he also got us a book about when there is  
18 no doctor, a book that helped us out quite a bit in our  
19 district.

20 Q. Why did you spend so much time with the church?

21 A. This is my faith, it nourishes me. Culturally it made  
22 me feel good, and it is my hope, and it is like life. It's  
23 like a spiritual inspiration of faith. We were very happy  
24 in the community, very happy. In our parish, all of us who  
25 served God felt good serving God and serving our community.

1 Q. Ms. Gonzalez, did you ever go to any church sponsored  
2 training?

3 A. Yes, we had our pastoral trainings.

4 Q. And could you tell us about those pastoral trainings,  
5 where you were, and what you learned in these trainings?

6 A. We made our trainings very community oriented. We had  
7 our monthly trainings and we would have a closing ceremony  
8 at which all of the districts in the area would all come  
9 together. As you can see, we are kind of like a -- kind of  
10 like a bunch of districts all around the area. And our  
11 culture, and our custom was that always we would do this as  
12 a community, not individually. We would exchange the  
13 opportunity. It was an exchange.

14 Q. Where were these training sessions held?

15 A. At the church.

16 Q. Did you ever have any meetings or sessions at a place  
17 called El Paisnal, P-A-I-S-N-A-L?

18 A. Yes. Yes, El Paisnal is about 35 miles outside San  
19 Salvador.

20 Q. Could you point to the general direction of El Paisnal  
21 on the map?

22 A. Here it is. This is El Paisnal (indicating). From  
23 San Vincenti to here it is approximately 35 miles. That is  
24 where we would have our closing ceremonies and that is  
25 where all of the districts would all come together and we

1 would have a great big community meeting and we would all  
2 get together and join in. We would always do this almost  
3 twice a year.

4 Q. How many people were there?

5 A. Well, maybe we had approximately about 300 people.

6 Q. Was it just church workers, or were there other people  
7 there?

8 A. Yes, it was church workers, but also the community  
9 would come and accompany us altogether, because this is the  
10 celebration we had.

11 Q. Who was Rutilio Grande, R-U-T-I-L-I-O, G-R-A-N-D-E?

12 A. Rutilio Grande was the parish priest at the church of  
13 El Paisnal.

14 Q. And what do you remember about Rutilio Grande?

15 A. He was a priest, a parish priest, a Father. We would  
16 call him who was very, very committed to our community. He  
17 lived with the community. He was a very beautiful priest.  
18 I have great warmth and great memories of Father Rutilio.  
19 And we learned from him much of our spiritual faith.

20 Q. Who was Monsignor Romero?

21 A. He was our Archbishop.

22 Q. Did you ever meet him in person?

23 A. Yes, yes, he would come to the closing ceremony days,  
24 he would accompany us to the celebration. I believe it is  
25 about the second time he came because we invited him to

1 come, and he never said no. And we were very happy to have  
2 him there at these closing ceremonies.

3 Q. Have you ever met him any place other than El Paisnal?

4 A. Yes. He came to our district once, yes.

5 Q. Did you ever listen to his sermons or homilies?

6 A. Yes. They were greatly listened to, the homilies by  
7 Monsignor Romero, all the way into the farthest corner of  
8 our district. Everyone would listen.

9 Q. I know there was no electricity in your village?

10 A. No, we had no electricity.

11 Q. How were you able to listen to his homilies?

12 A. Yes, on the radio, with batteries, with batteries. We  
13 listened to them on the radio. I remember we had a radio,  
14 and the brand name was Televox, we would use batteries,  
15 four large batteries and we would all get together and we  
16 had -- we all get together and we all had -- usually we had  
17 about two radios, especially in my district, we only had  
18 two radios, and we all get together. So the whole  
19 community would all get together so we could all listen to  
20 Monsignor Romero's homilies every Sunday.

21 Q. Did you ever talk with Archbishop Romero by telephone?

22 A. Yes.

23 Q. Where did you have to go to speak with him by  
24 telephone?

25 A. To Tecoluca.

1                   THE INTERPRETER: The interpreter would have to  
2 spell for the record. Not necessary, she's got it.

3 BY MR. GREEN:

4 Q. Could you point out on the map where is Tecoluca?

5 A. Here it is, this is Tecoluca (indicating). This is  
6 the closest town from St. Nicholas to Tecoluca.

7 Q. And why did you speak with Archbishop Romero by  
8 telephone?

9 A. In 1978 to 1979 a great repression was growing upon us  
10 at that time and we were all very sad because after having  
11 such a happy, hard working, wonderful district, very  
12 beautiful, very beautiful, very community oriented, very  
13 happy, very gay, then there was this repression, this big  
14 repression, that suddenly this repression begins.

15 Q. Could you describe the repression?

16 A. Yes. We had the presence of the National Guard every  
17 day in our district. And in our people, our peasants, our  
18 culture was very polite, and the men always had the custom  
19 of taking their hats off in order to greet an authority.  
20 But for our peasants, for our men the response wasn't  
21 polite. The response was a blow with the butt of a rifle,  
22 a kick. It wasn't a greeting, that is what they got.

23 Q. When the local peasant men took off their hats as a  
24 show of respect, what was the response of the National  
25 Guard beginning in, say, 1978?

1 A. What they got was the blow with the rifle butt and  
2 some very rude words. And we were very surprised. These  
3 are the authorities, these are supposedly the authorities.  
4 And supposedly the National Guard was to take care of order  
5 in our community, but we didn't receive even the smallest  
6 sign of respect.

7 And we were very frightened, why? Yes, we were  
8 illiterate peasants, that is true, but we had some  
9 education, and we had the spirit, the spirit of God, and we  
10 were taught, our culture taught us, our grandmothers taught  
11 us to be respectful.

12 Q. What other kinds of repression did you begin to  
13 witness or experience?

14 A. When we found ourselves in a desperate situation and  
15 we had to have a consultation with Monsignor Romero, what  
16 can we do? Repression was growing and there was  
17 persecution against the leaders of the church. Church  
18 leaders began to disappear, families were being taken out  
19 of my district and this was massive repression daily.

20 I represented my district. I was the program  
21 coordinator, I had to do something for my people and that  
22 is why we had to speak to Monsignor Romero. And Monsignor  
23 Romero said, my child, let us have faith in God. You are a  
24 hard working people, a hard working community, let us not  
25 be afraid. God will take care of these people and lead

1 them to understand and lead them to respect you because we  
2 have been seeing far too much abuse by them. So we had to  
3 say, well, what do we do?

4 Q. And what did Archbishop Romero do in response to your  
5 telephone call to him?

6 A. Yes, he opened up a telephone line, a space in the  
7 offices of legal aid, Socorro Juridico so that people could  
8 report all of the abuses to human rights that we were  
9 suffering. So then he told us any violation, any abuse, my  
10 child, do not hesitate in calling because we will have  
11 space in the homilies in order to do the denunciations.

12 Q. When you talk about the denunciations, are you talking  
13 about the reports of abuses from the National Guard and  
14 other security forces?

15 A. Yes, on the road every day, on the road that goes from  
16 Tecoluca, San Nicholas Lempa, Santa Tecoluca, every day we  
17 find 15, 12, ten, eight cadavers, mutilated, mutilated.

18 Q. Did you report those to Archbishop Romero?

19 A. Yes.

20 Q. Let's go back a minute. You talked about going to  
21 this big meeting of church workers in El Paisnal?

22 A. Yes.

23 Q. How did you get there?

24 A. Well, there was this person who had a pick-up truck,  
25 we would all -- we raise a little money, everybody come up

1 with five colones in order to pay for the trip, kind of  
2 like a collection, and we pay for our transportation. And  
3 this was a pick-up truck, and we would go like a community  
4 goes. We always had our guitars, these were the guitars  
5 from our companions from the church and we would be singing  
6 all the way down the road, and it was very beautiful, yeah.

7 Q. When you went to El Paisnal, could you please describe  
8 the roads?

9 A. Yes, it was the coastal road, paved road.

10 MR. KLAUS: Objection as to relevancy. Is there  
11 a time period?

12 THE COURT: If you could establish the time  
13 period.

14 BY MR. GREEN:

15 Q. What years or -- year or years did you go to El  
16 Paisnal?

17 A. We went there in '78 at the end, and at the beginning  
18 of '79.

19 Q. And were there any problems at all with the paved  
20 roads?

21 A. With the paved roads, no.

22 Q. Were there any bridges that you crossed?

23 A. Bridges, bridges, yes, we crossed bridges because  
24 there are rivers. In my country there are many little  
25 rivers, so we have lots of bridges over rivers.

1 Q. Were there any problem with the bridges when you went  
2 from your time to El Paisnal?

3 A. No, no. It was normal. The road had no  
4 transportation problems. It was a very travelable highway.

5 Q. On the way from your town to El Paisnal, did you  
6 encounter any security check points?

7 A. Yes. Yes, we had to go through many National Guard  
8 check points and they pull you off your transportation, you  
9 know, the pick-up truck or the bus, public transportation,  
10 private transportation. They would stop the bus and they  
11 would search everyone.

12 From the moment we left the house we had to be sure to  
13 make the sign of the cross because we didn't know if any  
14 one of us was going to be taken off and disappeared,  
15 because at that time we were right in the middle of very  
16 serious repression.

17 Q. In your department, in the area where you lived, was  
18 there any kind of armed conflict occurring in 1979?

19 A. No, in San Nicholas Lempa, no. It was a very  
20 commercial district, and there were many field workers.  
21 They were the ones who would cut the cotton.

22 Q. Ms. Gonzalez, when you would drive or ride from your  
23 village to El Paisnal, you mentioned you had some fear  
24 about people being taken and disappeared by the National  
25 Guard?

1 A. Yes, because of the National Guard check points,  
2 because in my district the presence there was the National  
3 Guard, there was no other security force there. It was  
4 only National Guard. There were posses, one in San  
5 Nicholas Lempa, and one in Tecoluca, and San Nicholas. So  
6 these were security forces, or security force, these were  
7 National Guard.

8 Ever since I was growing up and ever since I had use  
9 of reason, it has always been the National Guard in our  
10 district.

11 Q. Ms. Gonzalez, do you have any personal knowledge about  
12 people being seized at check points and then disappearance?

13 A. Yes.

14 Q. Would you tell the jury about that?

15 A. I am going to talk about my two girlfriends from the  
16 community of, the community of San Nicholas Lempa,  
17 Feldilina (phonetic) was a young woman, she was a student,  
18 she was a worker. She was in charge of reporting all of  
19 the abuses and all of the things that were happening to us  
20 on a daily basis in San Nicholas Lempa.

21 One day we were on the bus together and at one of the  
22 National Guard check points, they asked everyone to show  
23 their national identity card because we all had to carry  
24 our national identity card in our hands.

25 So the National Guard had this long list of names,

1 they always had the long list of names that was their  
2 presence. They had the list of names in a book, in a  
3 notebook. They had everyone get down, and the name of  
4 Feldilina was on the list. And they took her off the bus  
5 and set her to one side. When you see that someone is put  
6 to one side, that means they are going to be disappeared.

7 The following day she showed up dead. She showed up  
8 totally disfigured.

9 Q. When did that happen?

10 A. In '79, at the beginning.

11 Q. What affect did her death have upon you?

12 A. Upon me personally, it still affects me. Upon her  
13 disappearance and the way she showed up dead, her neck was  
14 cut, her throat was cut, her head impaled on a stick, and  
15 her body was off to one side of the head, disfigured.

16 Q. Ms. Gonzalez, I know this is difficult, but I need to  
17 ask you more questions.

18 A. Yes, that's all right.

19 Q. Do you know anyone else who complained about human  
20 rights violations and killed or retaliated against?

21 A. Yes. Marlene.

22 Q. Would you spell her name for the record?

23 A. M-A-R-L-E-N-E, Marlene.

24 Q. What happened to Marlene?

25 A. Marlene was also on one of the lists that the National

1 Guard had, and she was taken off the bus and on the  
2 following day she was dead.

3 Q. And what happened to her body?

4 A. I also went to pick her up. She was there spread  
5 eagle with her legs wide open and a bottle rammed up her  
6 vulva. She had a sign. The sign said, this is the way  
7 Communists die. And it had the letters GN, Guardia  
8 National, National Guard.

9 Q. Did this atmosphere of repression increase, or  
10 decrease in 1979?

11 A. It increased, it worsened, and it continued. The  
12 repression became more violent still, fear, darkness would  
13 come after six o'clock in the afternoon. We couldn't sleep  
14 anymore. We had to sleep with our little brothers and  
15 sisters close to us, just waiting for the knock on the  
16 door, the knocking in of the door and getting killed.  
17 Every day we had the National Guard presence in our  
18 district. The dogs would cry at night just hearing the  
19 presence of the National Guard at night.

20 Q. Ms. Gonzalez, you mentioned before you called  
21 Archbishop Romero or the Socorro Juridico?

22 A. Yes.

23 Q. Did you report the death of Feldilina?

24 A. Yes.

25 Q. Did you report the death of Marlene?

1 A. Yes, I made those reports.

2 Q. How many reports did you make in 1979?

3 A. Approximately, I would say from '78, end of '79, maybe  
4 in November, I don't remember very well, we may have  
5 approximately made more than 100 reports. Reports of grave  
6 issues. Reports on deaths, reports on disappearances,  
7 reports on cadavers, reports of the presence of the  
8 National Guard inside our homes.

9 Q. Ms. Gonzalez, you mentioned earlier that Archbishop  
10 Romero broadcast homilies?

11 A. Yes. It was the only means of information that we had  
12 in order to make our denunciations, to denounce these  
13 repressive actions, abuses, and violations of human rights.  
14 He was the only representative that we had in order to  
15 denounce these events.

16 Where could we go to provide a report on this, this  
17 type of violation, only the church, Monsignor Romero who  
18 was our representative. So that we could denounce these  
19 abuses, this massive repression and terror by the National  
20 Guard.

21 Q. Ms. Gonzalez, what happened in October, 1979? Could  
22 you take a second, please? What happened in October, 1979?

23 A. It was the Junta, the 15th of October, the Government  
24 Junta, the revolutionary Government Junta.

25 Q. Did you notice anything about the repression after

1 that?

2 A. Yes, and that is something I want to tell you about.

3 I want to tell you that after the installation of the  
4 Government Junta on the 15th of October of 1979, I want to  
5 tell you what our peoples suffered, our district suffered,  
6 especially my district.

7 Q. Go ahead.

8 A. After the 15th of October, repression increases. It  
9 was no longer groups of National Guardsmen walking through  
10 the district. It was now truckloads of Guardsmen and the  
11 repression would continue and continue. And we could no  
12 longer -- we could no longer stand it. We had fear of  
13 going outside walking, of getting on a bus. We had to go  
14 out, out of need we had to work, we had to eat, but we were  
15 always unsure as to whether we would return.

16 Q. Ms. Gonzalez, as a result of the complaints that you  
17 were making to the Archbishop or the Archbishop's office,  
18 did anyone in the national or security forces ever talk to  
19 you about those complaints?

20 A. I was under constant threat, from the beginning of '79  
21 and it increases in October, after October the threats  
22 increased. Threats from the National Guard. They were  
23 always around my house, looking at my house suspicious, and  
24 all we had in my house was that little business of ours,  
25 and the little first aid kit, and the book called Where

1 There Is No Doctor. And we were always under constant  
2 threat, and that is why I always had this finger pointing  
3 at me by the National Guard.

4 Q. Was there anyone in particular at the National Guard  
5 that was pointing a finger at you?

6 A. Yes. Sergeant Ramos from Tecoluca.

7 Q. Could you describe Sergeant Ramos?

8 A. Yes. He is a man that almost took every life in my  
9 district. He performed massacres and terror. There wasn't  
10 a night where they wouldn't come in, entire families, to  
11 hear the screams, the screams you hear when a family is  
12 being pulled away. And you hear the screams of the  
13 children, and on the following day you see the family all  
14 stretched out dead and then you find the footprints of the  
15 shoes of the National Guard.

16 Q. Were the footprints of the shoes from the National  
17 Guard different from the footprints of other shoes?

18 A. Yes. They were identifiable, they were the only ones  
19 who had military boots. And their uniform was cause of  
20 terror and fear. The uniform had a machete and also  
21 leggings, leggings, out of the shoe they have the leggings  
22 made out of leather going up the leg, and helmet, National  
23 Guard painted on the front and their rifles. It was  
24 terror. First we would see the uniform, and then we would  
25 see the same uniform and it was already a shock to see that

1 uniform and see the attitude which they killed and  
2 massacred.

3 THE COURT: Mr. Green, I think we are at a point  
4 where we ought to stop for the mid-morning recess. Why  
5 don't we take a 15 break and we will come back and  
6 continue on with the direct examination.

7 Let me allow the jury to step out.

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

9 (Thereupon, a short recess was taken.)

10 (Thereupon, trial reconvened after recess.)

11 THE COURT: Ladies and gentlemen, please be  
12 seated. We are in direct examination. Let me turn back  
13 to Mr. Green so he may proceed.

14 MR. GREEN: Thank you, Your Honor.

15 BY MR. GREEN:

16 Q. Ms. Gonzalez, before the break you were talking about  
17 Sergeant Ramos. Did you ever report Sergeant Ramos to the  
18 Archbishop's office?

19 A. Yes, I gave the report that I was being constantly  
20 threatened by finger pointing.

21 Q. And did Archbishop Romero --

22 MR. KLAUS: Objection; relevancy, unless there is  
23 a time frame.

24 THE COURT: Let us establish a time frame if we  
25 can.

1 BY MR. GREEN:

2 Q. Directing your attention to 1979. Did you report  
3 Sergeant Ramos' activities to the Archbishop's office?

4 A. Yes.

5 Q. About how many times?

6 A. Approximately some one hundred reports.

7 Q. How many times did you mention him by name?

8 A. All 100 times because he was the sergeant in Tecoluca,  
9 he was the one who directed the operations, and he was the  
10 one out on the operations with the National Guard.

11 Q. In any of Archbishop's homilies broadcast throughout  
12 the country, did he ever mention Sergeant Ramos of  
13 Tecoluca?

14 A. Yes.

15 Q. Did Sergeant Ramos ever say anything to you  
16 specifically?

17 A. Yes. I knew him very well because they would arrive  
18 at my house. We were known. Our family was very  
19 well-known, I was very well-known.

20 Q. What did Sergeant Ramos say to you about your  
21 activities?

22 A. He asked me if I was collaborating with the  
23 Communists, whether I participated with the Communists and  
24 he would say why are you collaborating with. Them, and I  
25 would say why are you saying that with such surety. I am a

1 hard working woman that you see working every day.

2 Q. In 1979 were you a Communist, terrorist or subversive?

3 A. No.

4 Q. Did you carry a gun, own a gun or use a gun?

5 A. No.

6 Q. How many times did Sergeant Ramos make these comments  
7 to you in 1979?

8 A. Many times. As I said earlier, he would come to my  
9 house, they would search my house. They found my book  
10 called Where There Is No Doctor, and that is where the  
11 entire suspicion time began. He said you are collaborating  
12 with the Communists. Why do you have the first aid kit  
13 here. And I said that belongs to the community. And we  
14 had a series of injections known as Cherochin, which is a  
15 medication for malaria.

16 Q. Do you know how to spell Cherochin? Excuse me, could  
17 you please spell it for the court reporter?

18 A. I am going to write it.

19 THE INTERPRETER: The interpreter will read for  
20 the record the writing of the witness, C-H-E-R-O-C-H-I-N.

21 BY MR. GREEN:

22 Q. Was Sergeant Ramos in uniform when he had these  
23 encounters with you?

24 A. All of them did. He was never by himself, he always  
25 moved around with ten or 12 Guardsmen.

1 Q. Did Sergeant Ramos ever threaten you?

2 A. Yes, on many occasions.

3 Q. What did he threaten you with?

4 A. He would always point at me with his finger.

5 Q. Did he say what was going to happen to you?

6 A. Yes. Yes. He said, one day you are going to  
7 disappear. He said to me -- he used some expressions, he  
8 said you are pretty, you are white skinned, but you are  
9 going to disappear.

10 Q. What was the particular expression he used to describe  
11 your white skin?

12 A. Chelita.

13 THE INTERPRETER: The interpreter will spell,  
14 C-H-E-L-I-T-A. Chelita.

15 THE WITNESS: I was a very thin young lady, I  
16 weighed about a hundred pounds. He was always saying I  
17 was going to disappear, and ever since then considering  
18 the experiences of my girlfriends, of all of the priests  
19 who had been killed, who had been massacred, I was very  
20 afraid.

21 BY MR. GREEN:

22 Q. Ms. Gonzalez, you mentioned priests getting killed.  
23 You mentioned earlier you had seen a priest up at El  
24 Paisnal, the gathering?

25 A. Yes. Father Rutilio was massacred, he was

1 assassinated by the National Guard.

2 Q. Was that Father Rutilio Grande?

3 A. Father Rutilio Grande.

4 Q. Bringing your attention to Christmas of 1979, what  
5 happened?

6 A. After the coup on the 15th of October, repression  
7 increased. The threats against me were even more constant  
8 throughout October and November. And finally in December,  
9 on the 26 of December, 1979, the threats from the National  
10 Guard became real.

11 Q. Now, Ms. Gonzalez, where were you when the threats  
12 became real?

13 A. I was delivering the meat, the beef to the market in  
14 San Vincenti because there was a sales post there, and I  
15 would take the beef there. I would deliver the beef to  
16 each one of the salesmen in the market. And as I was  
17 returning with some purchases I made for my store, I had  
18 some baskets, we buy over there using baskets. I had spent  
19 and invested some 500 colones on merchandise from the 3,000  
20 colones I collected from the marketplace from selling my  
21 beef, because I would deliver the beef, and then they would  
22 pay me.

23 As I was coming back, leaving at exactly 12 o'clock  
24 midday, leaving the market, the National Guard post there  
25 is a very few blocks, well, very few steps away, it is

1 almost across the street from the market. And then I was  
2 arrested by three National Guardsmen and one man in  
3 civilian clothes.

4 Q. Were the three National Guardsmen in uniform?

5 A. Yes.

6 Q. Did you recognize any of them?

7 A. No. I only recognized the one in civilian clothes,  
8 those from the National Guard I did not. The one in  
9 civilian clothes, yes.

10 Q. And what did they say to you?

11 A. I was walking along with my basket. We always have a  
12 basket in our hands, that's when I felt the three National  
13 Guardsmen grab me, two, one here at my arms, and the  
14 civilian standing -- the interpreter corrects himself --  
15 standing in front of me, and says she is a subversive, she  
16 is a member of the popular bloque, B-L-O-Q-U-E, popular,  
17 P-O-P-U-L-A-R.

18 They grabbed me, and the third Guardsman put his rifle  
19 right back here (indicating). They said to me you are  
20 coming with us, and that is when they took me into the  
21 offices of the National Guard post.

22 Q. Let's stop for a minute.

23 When they confronted you, was that in the public  
24 square?

25 A. Yes, at midday precisely, 12 o'clock on the dot. And

1 the women in the market said, why are you taking away the  
2 chelita girl? Why are you taking Neris away? She is a  
3 hard working woman. Because every three days I would be at  
4 the market with the beef, and I was working, because I like  
5 to work.

6 Q. You mentioned the word chelita. Is that referring to  
7 you as the fair skinned one?

8 A. Yes. My color, because the majority of us in El  
9 Salvador are dark skin and those of us that have a little  
10 fairer color skin are called chelitas, and in the  
11 marketplace, this is kind of like a term of endearment when  
12 someone likes you. I was very well-known, and I was --  
13 they loved me very much.

14 Q. Ms. Gonzalez, you mentioned that one of the men said  
15 that you were with the bloque popular. What is the bloque  
16 popular?

17 A. Well, that is a group of organizations that all come  
18 together, they all gather together, and what we do, we  
19 demand fair salaries, decent food, but more than anything,  
20 fair salaries. In this bloque, in this group of  
21 organizations we all come together, and it includes  
22 peasants, workers, union members, so that we can all have  
23 one voice, and that way we wouldn't fear that one person  
24 would be killed, because we were so many, and that way we  
25 could all gather together for a peaceful protest.

1           That is why we all got together, so we could demand  
2 fair salaries, and we could get decent food, because the  
3 food in the rural areas, beyond the fact that they would  
4 rob you at the scale, and the food was so offensive, they  
5 would give this plate of food to the workers with mice  
6 running around on top of the beans.

7           So beyond the fact that they were robbed at the scale,  
8 half of their work is robbed, the food was given with  
9 distaste -- with distain -- the interpreter stands  
10 corrected -- and on top of that repression.

11           We had this need to all come together, all of us, the  
12 church, the peasants, the workers, the unions, so that we  
13 could protest, so we could protest to the Ministry of  
14 Defense, the Ministry of Health, to tell them we want  
15 respect, we want fair wages.

16 Q.   Was the bloque popular a peaceful, or violent group?

17 A.   Peaceful.

18 Q.   At the time you were captured or seized by the  
19 National Guard in the square on December 26, 1979, had you  
20 been committing a crime or doing anything wrong?

21 A.   No, I was returning from doing my selling, from  
22 working, from working, you know, my business.

23 Q.   Where were you taken?

24 A.   To the National Guard, to the National Guard post in  
25 San Vincenti.

1           My arrest was visible.  Everyone, all of the women in  
2 the market were able to see.

3 Q.  Ms. Gonzalez, you mentioned there was a civilian with  
4 the three National Guardsmen?

5 A.  Yes.

6 Q.  Do you know why he was with the National Guard?

7 A.  The National Guard, the Guardsmen, the National Guard  
8 were always accompanied by these people who they call --  
9 they call them ORDEN, finger pointers or ears.  They were  
10 the ones who would carry information to the National Guard  
11 about what a leader was doing from the community, from the  
12 church, and in my case, from the church.

13 Q.  After you were taken to the National Guard  
14 headquarters, what happened?

15 A.  I hope I have the strength to tell you, ladies and  
16 gentlemen of the jury, what the National Guard did to me  
17 which after the -- after October of '79 when this gentleman  
18 took over the position of the Director of the Ministry of  
19 Defense and National Guard --

20           THE COURT:  Wait a minute, now, wait just a  
21 second.

22           Ms. Gonzalez, I think it would be more helpful to  
23 everyone if you would listen carefully to Mr. Green's  
24 question and try to respond directly to his question,  
25 understanding that he is going to be asking a question

1 after that.

2 Let me go back to Mr. Green and allow him to  
3 restate the question.

4 THE WITNESS: Okay.

5 BY MR. GREEN:

6 Q. Ms. Gonzalez, after you were taken to the National  
7 Guard headquarters, what is the first thing that happened?

8 A. I was taken to the National Guard post. They took me  
9 in the office, and they sat me down in that office. Then  
10 while I was sitting there, they were kind of interrogating  
11 me. It was a civilian. The National Guard turned me over  
12 to a civilian, well, you know, dressed. He had a tie on,  
13 he seemed rather prepared.

14 Q. Was he the same civilian, or different civilian than  
15 the one with the National Guardsmen in the square?

16 A. It was a different civilian. Inside the National  
17 Guard.

18 Q. How large was the office area where you were taken  
19 initially?

20 A. The National Guard posts are like houses, so the  
21 office was approximately some 15 feet, the office.

22 Q. Are you exact with your distances, or approximate?

23 A. Approximate. I cannot measure that.

24 Q. You were placed in the office and questioning you.  
25 What kind of questions were they asking you?

1 A. They were asking me what Sergeant Ramos was always  
2 asking me, you are a Communist collaborator, you are a  
3 subversive. You want to collaborate with us, and then  
4 about five o'clock in the afternoon or half past four, I  
5 don't remember the time very well, the National Guardsmen,  
6 the three, plus the National Guards captain, he lifts up  
7 the telephone and says --

8 Q. Who lifts up the telephone?

9 A. The National Guard captain, and he said, my director,  
10 we have more captured Communists.

11 Q. Were there any other people there besides you at the  
12 time?

13 A. At that time it was only me in the office.

14 Q. Did you later learn that there were other people or  
15 prisoners in the building?

16 A. Yes, yes. And then I want to go to the question, the  
17 statement made by the captain.

18 Captain stayed on the phone, and I did not hear who  
19 answered the other end, and then he said, yes, my director,  
20 we know what we are going to do, understood."

21 Q. Ms. Gonzalez, what happened next?

22 A. I was interrogated for two or three days,  
23 approximately. And during the interrogation, in order to  
24 get me to say whether I was collaborating with the  
25 subversives or the Communists, which are the words they

1 would use, they started to stick needles under my  
2 fingernails.

3 Q. Ms. Gonzalez, before we talk about the torture, what  
4 were you wearing when you were captured?

5 A. I was wearing a skirt with lots of elastic because I  
6 was pregnant. I was eight months pregnant. I have my  
7 elastic waist banded skirt and blouse. It was comfortable  
8 for my pregnancy.

9 Q. Was it obvious that you were showing?

10 A. Yes, yes, I was eight months.

11 Q. You mentioned just a minute ago that you heard the  
12 telephone ring and you heard one end of the telephone  
13 conversation?

14 A. Yes.

15 Q. While you were there, did you hear the telephone ring?

16 A. Yes. That is what I was saying.

17 Q. How many times would you hear the telephone ring?

18 A. Well, it was an office, so the phone was ringing all  
19 the time.

20 Q. What happened on the second day of your interrogation?

21 A. They started to torture me. I am a little bit to tell  
22 you what happened to me. They started to stick needles --  
23 the interpreter must correct -- pins under my fingernails.  
24 And with every torture they would ask me the same question.  
25 They would ask me what was the purpose of teaching the

1 peasants to count from one to 100.

2           And then after I heard the call, my body was just  
3 shaking with fear. When they started sticking the pins,  
4 they started slashing the tips of my finger with a gilet.

5 Q. Ms. Gonzalez, do you remember the exact days, exact  
6 times you were being tortured with each kind of torture?

7 A. I do not remember the exact hour or days. My body was  
8 trembling with fear.

9 Q. Ms. Gonzalez, were you during the first couple days of  
10 your torture, were you still wearing your dress?

11 A. Yes.

12 Q. And how long on the second day or how often on the  
13 second day did the torture sessions occur?

14 A. It was almost all day long.

15 Q. Was it the same person or persons who were torturing  
16 you on the first day?

17 A. No.

18 Q. Would you describe the people who were torturing you  
19 on the second day?

20 A. It was the National Guard, members of the guard.

21 Q. How do you know that?

22 A. Well, they are in uniform. It is their uniform.

23 Q. Where were you in the National Guard headquarters  
24 during the first couple days?

25 A. It wasn't a headquarters, it was a post, it was a post

1 of the National Guard. It is a civilian house where they  
2 rent, or I don't know how it is they do it, it is the post,  
3 it is the local post.

4 Q. Where in the National Guard were you during the first  
5 few days?

6 A. I was in the basement of the National Guard.

7 Q. Ms. Gonzalez, could you point on the map where San  
8 Vincenti is?

9 THE WITNESS: Your Honor, may I get up?

10 THE COURT: Yes, sure.

11 THE WITNESS: Here it is, this is San Vincenti  
12 (indicating).

13 BY MR. GREEN:

14 Q. Could you point for the ladies and gentlemen of the  
15 jury where San Salvador is?

16 A. It's here (indicating).

17 Q. And what is the distance between San Vincenti and San  
18 Salvador?

19 A. Approximately some 35 miles.

20 Q. Did you prepare a diagram of the National Guard  
21 building in San Vincenti?

22 A. Yes.

23 MR. GREEN: Mr. Stern, could you --

24 BY MR. GREEN:

25 Q. Ms. Gonzalez, would you point with the pointer, if you

1 would stay seated, where you were taken during the first  
2 couple days of your detention? Where in the building?

3 A. For example, the market was over here, and I was  
4 brought in through here (indicating).

5 Q. And where were you first -- where were you when you  
6 were first interrogated?

7 A. I was here (indicating), kind of like these small  
8 spaces, and I was over here in the office. These are  
9 offices, National Guard offices.

10 Q. And can you see and hear what is going on from one  
11 office across the area to the other office?

12 A. Yes, it is much like being here.

13 Q. Now, I notice there is a symbol of a telephone here?

14 A. Yes, here it is.

15 Q. Did you hear any other telephones from any other  
16 places inside the building?

17 A. Yes -- no, here, the telephones around here is what I  
18 was seeing in that office (indicating).

19 Q. Okay. Now, Ms. Gonzalez, how long were you kept in  
20 the office that first day?

21 A. Well, from 12, midday, and then I heard the telephone  
22 call approximately half past four or maybe five, maybe, and  
23 then night fell, and that was the saddest part for me.

24 Q. What happened at night fall?

25 A. My first tortures began.

1 Q. Where were you when your first tortures began?

2 A. At night they always bring me down over here  
3 (indicating), this is where the cars -- garage was, and  
4 they would bring me down here handcuffed.

5 I'm sorry, I am thinking about my pregnancy and my  
6 little boy. And they sit me here all night long.

7 Q. And what happened during the first couple nights?

8 A. That's when they started working on my fingernails and  
9 the wounds with the gilet, and the only question they ever  
10 asked me constantly was what was the purpose of teaching  
11 the peasants one to 100, what was the purpose, these  
12 programs, and I said the only purpose was to teach.

13 Q. Ms. Gonzalez, what happened the next day?

14 A. After that, they started to burn me with cigarettes on  
15 my arms, and I would like to show you the marks.

16 MR. GREEN: Your Honor, would the witness been  
17 permitted to show the burn marks? They are scarred over.

18 THE COURT: Yes. Let's start, first, let's go  
19 through with the testimony, if we might, and then at  
20 another time we will do that. Let's get the foundational  
21 testimony first.

22 BY MR. GREEN:

23 Q. They burned on your arms?

24 A. Yes, they burned me with cigarettes on my arms, and  
25 they would press a cigarette down to go out. What was the

1 purpose? Why, they would say.

2 Q. How many times would they do that to you -- how long  
3 were you tortured?

4 A. I was in all approximately for two weeks.

5 Q. How often would they burn you with cigarettes?

6 A. The cigarettes were at the beginning when they did the  
7 things with the pins and the gilet, and cigarettes. These  
8 were the first tortures.

9 Q. When you talk about the gilet, are you talking about  
10 razor blades?

11 A. No. It is one of those that people use to shave. In  
12 my country they come double edged, and they are sold in a  
13 small envelope. I don't know if you know them.

14 Q. What else did they do to you during the first few days  
15 of your torture?

16 A. After that they blindfolded me. They placed a  
17 blindfold over me made out of tape. I brought some to show  
18 you, but I left it in my purse. This was the tape and they  
19 put it over my eyes and wrapped it all around my head.

20 Q. Did you still have your clothes with you?

21 A. Maybe it was upon the third day they stripped me  
22 naked.

23 Q. What happened then?

24 A. They took me to this place (indicating).

25 Q. And could you point to the ladies and gentlemen of the

1 jury?

2 A. They took me here (indicating), the Matadero.

3 Q. Could you spell Matadero for the ladies and gentlemen  
4 of the jury?

5 A. M-A-T-A-D-E-R-O.

6 THE INTERPRETER: The interpreter would spell  
7 M-A-T-A-D-E-R-O.

8 MR. GREEN: To the interpreter translate  
9 Matadero.

10 THE INTERPRETER: The interpreter would  
11 translate, in English, Matadero is the slaughter house.

12 BY MR. GREEN:

13 Q. How did you know it was slaughter house?

14 A. It was written there in blood. It said the human  
15 slaughter house.

16 Q. Was this room locked?

17 A. I arrived, it was a very small room, and when they put  
18 me in, I was stunned. I couldn't touch my belly because my  
19 hands were behind my back, I was handcuffed. And I was so  
20 stunned when I began to see bits and pieces of human  
21 bodies, intestines, tongues, eyes, blood, coagulated blood  
22 all over.

23 Q. Were these human body parts?

24 A. Yes. There were many maggots, rats eating the body  
25 parts.

1 Q. What did they say when they took you to that room?

2 A. They said this is what's going to happen to you. This  
3 will happen to you.

4 All of the people that are trying, all the people that  
5 are working to teach these dumb peasants and to teach these  
6 Communists, this is what is going to happen to them. My  
7 body was trembling. I couldn't feel myself.

8 Q. How long were you there?

9 A. They left me there one night.

10 Q. Was anyone else in the room with you alive?

11 A. In that room at that time I was alone. And the  
12 maggots were crawling on me, and I couldn't do anything  
13 about it. And my son was -- I couldn't touch him. He  
14 would move, and I would feel him tightening up inside me.

15 Q. Did anything else happen that night?

16 A. Yes. I was constantly raped, and I would tell them,  
17 I'm pregnant. They would use foul language and that's what  
18 they would do. They would rape me and they would say --  
19 well, I don't want to say those words, foul words. And  
20 that's how they raped me for almost the entire two weeks,  
21 almost every night, I was roughly and violently raped. And  
22 my son was --

23 Q. What else -- what happened during the days?

24 A. After all of this, they applied the electric shocks to  
25 my breasts, close to my breasts using what they call the

1 alligators. Then they placed a hood on me full of lime --  
2 you make me remember my sneezing. The hood was  
3 asphyxiating me, and then they would take it off again.  
4 See, the lime makes you sneeze, it intoxicates you.

5 Q. How many times did they apply electro shock?

6 A. About twice or maybe more.

7 Q. And do you remember exactly how many times?

8 A. I don't remember.

9 Q. Where did they apply electro shock?

10 A. My breasts, close here to my breasts. I can't wear a  
11 bra any more.

12 Q. Did they ever try to do anything to your son who was  
13 in your stomach?

14 A. Yes, they kicked me.

15 Q. How many times?

16 A. Many times.

17 Q. What did they say when they were either kicking you or  
18 hitting you?

19 A. I was saying, my son, and they said, we don't care,  
20 and then they would say that word, foul word that they  
21 would use.

22 Q. Were you blindfolded during the entire time?

23 A. They would take the blindfold off so that I could see  
24 other things, other tortures.

25 Q. When you went to the human slaughter house, how could

1 you see the lettering?

2 A. I didn't have a blindfold on me, not yet, I didn't  
3 have a blindfold.

4 Q. When they took the blindfold off of you -- let me ask  
5 it a different way.

6 How many times, approximately, did they remove the  
7 blindfold from you?

8 A. Several times. Only when they needed me to -- well, I  
9 am about to explain that. At night they would leave it on  
10 all night long so they could rape me.

11 Q. And when would they take it off?

12 A. I'll explain these drawings that are there.

13 Q. Could you explain with the pointer?

14 A. I would like to explain. This here was a metal bed  
15 (indicating) and they would place me underneath that metal  
16 bed, and they would stand on top of it on the four corners,  
17 and my son was being squashed, and the metal pieces of that  
18 bed would dig into my belly.

19 Q. Did they ever put another cot on top of you?

20 A. Just this one was on top of me, on top of me.

21 Q. And what was beneath you?

22 A. The floor.

23 Q. How many men were on top of you when they did that?

24 A. There was always a group of five to six Guardsmen.

25 Q. And how many were actually on top of the bed going

1 back and forth?

2 A. Four, one on each corner.

3 Q. What did they say when they were doing that?

4 A. I said, my son, and they said, that is the way they  
5 die, and that is the way you will die, next to your son.

6 Q. Were they in uniform?

7 A. In uniform.

8 Q. Was this in a room that was near the Matadero?

9 A. This was the torture area. This is the room where all  
10 the bits and pieces of bodies were (indicating). This is  
11 where the bed was, the metal bed, over here was a water  
12 trough, frozen water. They would stick me in there every  
13 morning. Water with ice in it.

14 My body was wounded from the electric shocks, and to  
15 stick me in that water trough in the mornings and then they  
16 would dunk me under. My wounds, the pain of my wounds, the  
17 pain of my child, my son, physical and psychological  
18 torture.

19 Q. Ms. Gonzalez, when they were on the bed on top of you,  
20 were they moving the bed up and down?

21 A. Yes.

22 Q. Like a seesaw?

23 A. Yes. Like a seesaw.

24 Q. And you were telling them not to hurt your child?

25 A. Yes.

1 Q. What was the volume of your voice when you told them  
2 not to hurt your child?

3 A. My voice was trembling with fear. I was crying,  
4 trembling in fear and then I was crying. But they didn't  
5 have even the little, the least bit of respect for my son.  
6 Everything was so brutal, brutality.

7 Q. Ms. Gonzalez, what was the volume of the voice? Was  
8 it loud, or was it soft when you were telling them not to  
9 hurt your child?

10 A. My voice would rise and fall.

11 Q. Was it loud enough for the captain of the National  
12 Guard to hear you crying and yelling?

13 A. Yes, I assure you it could be heard. I assure you  
14 even the neighbors must have heard the screams. I was in  
15 the middle of a village, in a town, a town, San Vincenti.

16 Q. Were you bleeding or having any discharges?

17 A. Yes.

18 Q. Where was the blood coming from?

19 A. From all of the wounds that they caused, from the  
20 rapes. They were such brutes. The uniforms had very hard  
21 buttons, and the zippers on the uniforms were so hard, and  
22 the belts, the buckles were hard.

23 Q. Did any of the National Guardsmen say anything to you?

24 A. They didn't care.

25 Q. When you were captured, were you wearing any religious

1 symbols?

2 A. Yes, my chain with my little cross, crucifix.

3 Q. What happened to your cross?

4 A. They took everything from me. They took my  
5 merchandise, they took my clothes, they took my shoes,  
6 money, everything. I was naked, I had nothing. Watch,  
7 ring, I have always used my little rings, everything. I  
8 was completely naked.

9 Q. Ms. Gonzalez, were you ever taken to the bathroom?

10 A. During the first two days, yes. After that, no. I  
11 would urinate on myself. I was tied-up, I was handcuffed,  
12 and I would urinate wherever I was. I was in the middle of  
13 filth. It was an unhealthy environment.

14 I was thinking my pregnancy, my child. What  
15 infections was my child about to catch. The blows that he  
16 was receiving, I was feeling my own torture, but I could  
17 also feel the torture of my son, my little innocent son.

18 Q. Did they ever offer you food?

19 A. Yes.

20 Q. What would they do?

21 A. I was sitting on the floor with my hands behind my  
22 back always handcuffed. They brought a plate of food, a  
23 glass of nice cold refreshment, and they came over and  
24 said, here's the food, go ahead, eat, you and your son.  
25 And those words hurt me, because I couldn't do it.

1 Q. Why couldn't you eat?

2 A. I had my handcuffs on. I was handcuffed, my hands,  
3 this was torture, psychologically. See the food, not be  
4 able to eat it. See them laugh and see them mocking me, go  
5 ahead, eat, your son must be hungry.

6 Q. Did you ever see anyone else being tortured?

7 A. Just the National Guard, only National Guardsmen.

8 Q. Did you ever see another torture victim being  
9 tortured?

10 A. Yes. They told me I was going to see two movies, and  
11 I was going to like them. They took the blindfold off and  
12 that is when they brought me to this area here  
13 (indicating). This over here (indicating) was a boy,  
14 approximately 12, 15 years old. Took this boy, they placed  
15 him in front of me. They stabbed his eyes with a pair of  
16 pliers. They pulled the eye out and through it on my  
17 chest.

18 Q. What did they say?

19 A. That's the way these people die, and that's the way  
20 you are going to die.

21 Q. What happened to the boy?

22 A. I didn't see him after that. I didn't see that boy  
23 again after that. The boy was crying, and he was saying to  
24 me, and he wanted to cuddle close to me, saying my mommy,  
25 my mommy, but when they ripped his eyes out, he could no

1 longer scream or speak. I didn't see that boy again.

2 Q. Was it one eye, or two eyes?

3 A. One eye.

4 Q. Did you see any buckets?

5 A. Yes. This toilet area, we call them latrines, there  
6 were some men standing here (indicating), and they were  
7 standing there and they were going like this (indicating),  
8 and there were some objects that were hanging.

9 Q. When you said they were going like this, was that with  
10 their legs?

11 A. With their feet, they would lift their feet up one by  
12 one, and they would complain.

13 Q. And what else was there?

14 No, no, let's stay there first for a minute. Okay,  
15 excuse me.

16 A. These were persons, they were standing up.

17 Q. How many were there?

18 A. Three.

19 Q. You said they were lifting their legs?

20 A. Yes.

21 Q. Were there any other objects you saw near their legs?

22 A. Yes. Here you could see the feet, there were three  
23 persons, and they were three -- on each one of the persons  
24 there was an object hanging, and they would raise their  
25 feet going --

1 Q. Do you know what the object was that was hanging?

2 A. Later on I realized what was hanging from them.

3 Q. When did you see the three men lifting their legs with  
4 objects hanging from them? Was it at the beginning,  
5 middle, or near the end of your torture period?

6 A. Before coming here (indicating).

7 Q. Before going -- for the record, to where?

8 A. Before arriving here, to the slaughter house. All of  
9 this torture area here before that, the torture area here  
10 (indicating).

11 Q. You mentioned that there were a couple men the first  
12 couple days of torture and then there were different men in  
13 uniform who were raping you?

14 A. Yes.

15 Q. How many different groups of men were involved in this  
16 torture over this 14 day period?

17 A. Since I had a blindfold on, well, they were different,  
18 it wasn't the same ones. Very well organized. There was  
19 one group, another group, and another group.

20 Q. And understanding you had a blindfold on a lot of the  
21 time, how do you know that they were different men or  
22 different groups of men?

23 A. Because of the voices. It was the uniform. My  
24 blindfold on, I was crying, I was crying all of the time,  
25 and the leggings, the uniforms, you see them below. The

1 leggings are what they call that part that goes above the  
2 boots. It is the uniform.

3 Q. Ms. Gonzalez, you said you were crying all the time?

4 A. Yes.

5 Q. What affect, if any, did the tears have on your  
6 ability to see?

7 A. My blindfold was constantly -- well, when you cry,  
8 your blindfold becomes loose, it unsticks.

9 Q. For the record, you were pointing to underneath your  
10 eyes?

11 A. Yes. You have your blindfold and it will unstick  
12 here, and you can see under it, you can see.

13 Q. Okay. Ms. Gonzalez, you mentioned the three men who  
14 were lifting their legs.

15 A. Yes.

16 Q. What were they saying as they were lifting their legs?

17 A. They would say I -- they would complain, it was a  
18 moan.

19 Q. When you first saw them, you didn't know what the  
20 object was?

21 A. I knew they were persons, but I didn't know what the  
22 object was -- that was hanging from them was. I knew it  
23 was kind of like a bucket or something.

24 Q. Did there come a time when you learned what was  
25 actually happening to the three men that you witnessed?

1 A. Yes.

2 Q. When was that? How did you come to learn what was  
3 happening to those three men?

4 A. When I was told I was going to see the second movie,  
5 which was here (indicating) --

6 Q. Did you actually see a movie?

7 Excuse me, did you actually see a movie?

8 A. I saw the death, the assassination of this person.

9 Q. And --

10 A. That was the movie that they said they were going to  
11 take me to see.

12 Q. And could you describe what you saw?

13 THE COURT: Mr. Green, we are at a point where we  
14 need to take a break, and perhaps this is the appropriate  
15 time. Let us recess and adhere to the schedule we have  
16 been following before.

17 Let us take a break until quarter of two. We  
18 will come back at quarter of two and go back to the direct  
19 examination.

20 The Court will be in recess until quarter of two.

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

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

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

24 THE COURT: Mr. Marshal, would you bring in the  
25 jury, please?

1 I am passing out to counsel a third draft which I  
2 think represents our discussions last night. There are a  
3 couple stylistic changes that you could take a look at,  
4 but we will go back to these later this evening.

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

6 THE COURT: Ladies and gentlemen, please be  
7 seated. When we stopped for lunch, we were in direct  
8 examination. I will turn back to Mr. Green so he may  
9 continue.

10 BY MR. GREEN:

11 Q. Ms. Gonzalez, before we broke for lunch, I asked you  
12 some questions about the three men whom you saw in the  
13 toilet washing room area who were shifting leg from leg  
14 with an object hanging down. Was that object hanging down  
15 between their legs?

16 A. Yes. In the middle of their legs.

17 Q. Could you see everything that was happening to them at  
18 the time?

19 A. No. I could only hear the lifting of the feet and  
20 their moans saying ahh.

21 Q. Did there later come a time when you were being  
22 tortured that you learned what was happening with those  
23 three men?

24 A. Yes.

25 Q. Did you ever see another man with something hanging

1 from between his legs?

2 A. Yes. Yes.

3 Q. Do you remember exactly what day you saw that during  
4 the 12 or 14 days of your torture?

5 A. No. I cannot remember the days.

6 Q. Could you tell the jury what you saw?

7 A. I will speak of the torture of that man that you see  
8 there hanging.

9 THE COURT: Do we need to take a recess?

10 THE WITNESS: It is okay.

11 THE COURT: Take some water, and let's stop for a  
12 minute.

13 THE WITNESS: This man was hung. They made a  
14 noose, and his feet sort of touched the floor, and a first  
15 group of Guardsmen arrived, beat him and to kick him and  
16 they would hit him in his testicles. And I saw from the  
17 moment they hung him there, and they asked me, do you like  
18 to watch this movie?

19 And my son was moving around inside me and I felt  
20 he would come out through my mouth or below, and I started  
21 to scream and they started to slap me and they said, you  
22 have to watch.

23 And then after the first group that came through  
24 who had whipped him and kicked him in the testicles, later  
25 on another group arrived and his testicles was like this

1 and his penis was like this (indicating), and was  
2 completely destroyed. And his body was full of all of the  
3 whippings.

4 Q. Ms. Gonzalez, when you gestured, you gestured like  
5 this. How large, how swollen were his testicles?

6 A. They were completely disfigured, his testicles. And  
7 then they came in with a bucket with large rocks in it to  
8 tie it to his penis. And he began to scream, and he was  
9 screaming and then the one that was directed the torture  
10 ordered that a bandage be wrapped around his whole head,  
11 and then they brought him down. They struck him with a  
12 machete in his stomach. They opened his body up and they  
13 shoved my head inside and told me to eat this, and forced  
14 me to drink his blood.

15 Q. Ms. Gonzalez, did there come a time when you left the  
16 National Guard headquarters?

17 A. I was almost dead just thinking of my son, and my  
18 stomach was doing -- and then I fainted. I could stand it  
19 no longer. I just saw everything go dark, and I fainted.

20 Q. What is the next thing that you remember?

21 A. All I recall is that I fell. I was picked up by the  
22 Guardsmen and they tossed me into a truck where there were  
23 more bodies. That is as far as I remember. My child hurt.  
24 I could feel my physical torture, but just to look at my  
25 belly --

1 Q. Do you remember giving birth to your child?

2 A. No.

3 Q. Do you remember -- would you like to take a minute?

4 A. Yes, just a minute.

5 Q. Ms. Gonzalez, I need to ask you one or two more  
6 questions about your son.

7 Do you remember seeing your son when he was alive?

8 A. I never saw him.

9 Q. Did he live?

10 A. So they said. My mother told me, she said he lived a  
11 couple of months.

12 Q. Did there come a time when you began receiving medical  
13 treatment?

14 A. Yes. The church took me to a place to heal me, and I  
15 was told that I was at an ex-convent healing with doctors.  
16 I don't remember, I am told it was a period of six months  
17 healing, I don't remember. I lost track. It is  
18 approximate.

19 Doctors who help me to heal from my wounds, my vulva  
20 was destroyed because of the constant rapes, and because,  
21 well, I don't know how my son came out. I was in treatment  
22 until I recovered to return to my normal state.

23 Q. Did you -- when you returned to your normal state, did  
24 you continue in your work as a catechist?

25 A. Yes. I had to go to other communities because I could

1 not remain in my community. I was afraid. I was afraid  
2 that my entire family would be massacred because part of my  
3 treatment the doctors told me was that I had to have some  
4 contact with my community to begin -- recover my senses.

5 Q. Did you continue to work in the communities?

6 A. Yes, later on, yes. I continued to work after I got  
7 better.

8 Q. What kind of work did you do?

9 A. Always working with the base communities.

10 Q. What were you teaching? What kind of work were you  
11 doing with the base communities?

12 A. Later on we were working with the peasant  
13 associations. We were creating the women's cooperative  
14 projects. We were working on the bakery projects, and the  
15 soap projects. See, there is a seed in my country that we  
16 collect and use it to make soap, self sustaining projects  
17 which are in order for people to be able to survive.

18 Q. During this time after your initial recuperation, did  
19 there continue to be repression in El Salvador?

20 A. Repression always continued. We always lived under  
21 repression. We always lived out of fear, fear of going  
22 outside, fear of working, fear of taking a bus.

23 Q. Did you subsequently come to the United States?

24 A. I came here in '97.

25 Q. Were you able to get treatment, psychological

1 treatment for torture when you were in El Salvador?

2 A. No. I was searching for help with my psychology  
3 professor. You see, I was studying at the Lutheran  
4 University as a social worker. When I managed to find my  
5 psychology professor, he said to me, Neris, he said, I have  
6 to study an additional ten years in order to be able to  
7 have a treatment to provide to the victims of torture,  
8 because I am but a family psychologist, families, but I  
9 cannot treat your case.

10 Q. Was this the psychologist in El Salvador?

11 A. Yes, in San Salvador.

12 Q. Ms. Gonzalez, when you began your initial recuperation  
13 for six months after you were released from the National  
14 Guard post in San Vincenti, did you file any kind of  
15 complaint or lawsuit in El Salvador?

16 A. Yes, I took my testimony to the Truth Commission in El  
17 Salvador.

18 Q. And when was that?

19 A. I think it was towards the end of '92, maybe '93, '93,  
20 during the process of the peace negotiations, the Truth  
21 Commission came.

22 Q. Ms. Gonzalez, in 1992 at the United Nations Truth  
23 Commission, were you able to show your face?

24 A. Yes, I gave my testimony, and the secretary who was  
25 taking down my testimony, she fainted, and another young

1 man continued in order to go on, and I went on with my  
2 testimony.

3 Q. Ms. Gonzalez, when you gave your testimony, were you  
4 wearing a mask?

5 A. A mask?

6 Q. Were you wearing a mask?

7 A. No.

8 Q. Ms. Gonzalez, were you able to file any kind of  
9 complaint or lawsuit from January of 1980 until the time  
10 you went to the United Nations Truth Commission in 1992?

11 A. No. I gave my testimony and I said who had tortured  
12 me, but I have not done that, this is the first time.

13 Q. As you sit here today, do you know the names of the  
14 men who actually physically tortured you?

15 A. No. I never knew the names of the National Guardsmen.  
16 The only name I ever knew were the names of Sergeant Ramos,  
17 and the civilian who was there.

18 Q. Neither of them ever physically, actually tortured  
19 you?

20 A. No. It was just the other Guardsmen. It was groups,  
21 it was groups of five for so many hours.

22 Q. From January of 1980 until you testified before the  
23 United Nations Truth Commission in 1992, were you afraid of  
24 filing any kind of lawsuit or complaint against the  
25 National Guard?

1 MR. KLAUS: Objection; leading.

2 THE COURT: Sustained.

3 MR. KLAUS: Move to strike.

4 THE COURT: Grant the motion to strike.

5 THE WITNESS: We were always afraid. We could  
6 not make any legal representations in my country.

7 BY MR. GREEN:

8 Q. Ms. Gonzalez, I need to ask you the question that  
9 different way.

10 A. Okay.

11 Q. Was there a reason, or were there reasons why you did  
12 not file any complaints or lawsuits in El Salvador between  
13 January, 1980 and when you testified before the United  
14 Nations Truth Commission in 1992?

15 A. In my country you cannot present any of these types of  
16 actions. There is no system where we can take or make this  
17 type of denunciation, we don't have one. You cannot do  
18 this.

19 Q. Do you remember what happened to your friends  
20 Feldilina and Marlene?

21 A. Yes.

22 Q. What affect did what happened to them have on your  
23 ability to file a complaint or a lawsuit?

24 A. Fear, terror. We could make no denunciation.

25 Q. Ms. Gonzalez, you testified earlier that Monsignor

1 Romero would broadcast homilies about the repression that  
2 was occurring in various places in El Salvador?

3 A. Yes. He was the only representative we had to make  
4 this kind of denunciation. He was the only one we had in  
5 order to -- in order to unburden ourselves. It was the  
6 only voice we had in order to denounce all of the massacres  
7 and fear. We were proud to have an Archbishop who would  
8 denounce all types of violations to human rights.

9 Q. And what happened to Archbishop Romero?

10 A. I found out later, I was going to my treatment process  
11 of healing my wounds, he was killed on the 24th of March of  
12 1980.

13 Q. Was that approximately three months after you were  
14 released from your torture?

15 A. Yes. For me it was about two weeks, they say, well,  
16 from the 26th of December, it was into January, they say it  
17 was in the first weeks of January when they found me in the  
18 dead body dumpster in 1980.

19 Q. Ms. Gonzalez, you mentioned that you first became a  
20 catechist in 1977?

21 A. Yes, actively, now with projects and the person  
22 responsible for the team.

23 Q. Ms. Gonzalez, are you still working as a catechist in  
24 Chicago?

25 A. Yes, I continue to do so at the Holy Trinity Church.

1 Yes, I am working on preparing for the first holy  
2 communion. I am also working on a program for first  
3 confirmations. Here confirmations are done 13 and 14, in  
4 my country they do them with little children. Now I am  
5 doing preparation of the parents.

6 Q. Ms. Gonzalez, you testified a few minutes ago that  
7 your psychologist in El Salvador said --

8 THE COURT: Let me ask you to ask the question if  
9 you would, without the lead-in.

10 BY MR. GREEN:

11 Q. Ms. Gonzalez, are you undergoing treatment for torture  
12 here in the United States?

13 A. Yes, I am at the Kovler Center. It is a center for  
14 survivors of torture, and I have been in this treatment for  
15 four years now. And thanks to this treatment, I am able to  
16 come here and say what happened to me because before I  
17 could not speak. This is a center that is in Chicago, and  
18 that is why I live in Chicago, because I am undergoing this  
19 treatment.

20 Q. Ms. Gonzalez, is your daughter here in the courtroom  
21 today?

22 A. Yes.

23 Q. Have you ever told her about what happened to you back  
24 then?

25 MR. KLAUS: Objection; relevancy.

1 THE COURT: Sustained.

2 MR. GREEN: May I have a moment?

3 THE COURT: Yes.

4 MR. GREEN: I have no further questions, Your  
5 Honor.

6 THE COURT: Mr. Green, thank you.

7 Ms. Gonzalez, do you need a break, or are you  
8 ready to have the cross examination?

9 THE WITNESS: That's okay, yes.

10 THE COURT: Mr. Klaus, let me turn to you for  
11 cross examination.

12 CROSS EXAMINATION

13 BY MR. KLAUS:

14 Q. Ms. Gonzalez, what's your date of birth?

15 A. 7/15/55.

16 Q. When this happened to you in 1979, did you have  
17 children already?

18 A. I had my two daughters.

19 Q. Were you married at the time?

20 A. I was accompanied by my companion who is also  
21 disappeared.

22 Q. Were you married?

23 A. Yes, I was married the first time, and then there was  
24 the father of my son who was killed in my belly, and my  
25 second daughter is from my ex-husband who to this day is

1 still disappeared.

2 Q. You had one daughter with your husband, correct?

3 A. Yes.

4 Q. The first daughter was with another man?

5 A. Yes. My first marriage when I was 17 years old and  
6 then as a result of domestic difficulties I divorced him.

7 And then there was my second with whom I had my second  
8 daughter and my son, my son they killed, who is now  
9 disappeared. I have never seen my son's face, and I  
10 haven't seen my husband's face, either.

11 Q. Father Grande, do you know when he was killed?

12 A. The 12th of March, 1978. Rutilio Grande, right?

13 Q. Yes.

14 A. Okay.

15 Q. You had a small shop, correct, in '79?

16 A. Yes, we had a small business.

17 Q. When you say we, is that your family?

18 A. Yes, my mother and my father. I would manage the  
19 business.

20 Q. After the peace of '92, '93, was there a Human Rights  
21 Commission set up in El Salvador?

22 A. Yes. Truth Commission.

23 Q. After the Truth Commission?

24 A. Before.

25 Q. No, after.

1 A. We only had the Truth Commission.

2 Q. Is there a Human Rights Commission in El Salvador now?

3 A. Yes, yes, there is. They always has been a Human  
4 Rights Commission. Governmental and non Governmental.

5 Q. Is the Human Rights Commission set up by the  
6 Government, are they paying reparations to victims of the  
7 repression?

8 A. I don't know.

9 Q. How did you come to bring this lawsuit?

10 A. At the Kovler Center.

11 Q. Did someone approach you and suggest it?

12 A. Well, the personnel, the staff at Kovler Center, they  
13 told me there was a place where you could present this  
14 because -- and I decided, I thought maybe it would serve as  
15 therapy, maybe it is my best therapy to be able to denounce  
16 this here, what I could not do in my country. I could do  
17 it here.

18 Q. Is there something that kept you from reporting this  
19 to the Human Rights Commission, after the Truth Commission,  
20 after the Peace Commission in 1972 -- 92, sorry?

21 A. There is fear in my country, there is great fear in my  
22 country. There is nothing we could do. We live under  
23 constant threat, fear of dying, fear of being killed. We  
24 live under this fear.

25 Q. Even in 1997 when you left?

1 A. Yes. I was already suffering from many, many  
2 nightmares. I have lived with my memories of torture an  
3 entire lifetime. Every day it would grow. That's how I  
4 came here to Chicago seeking treatment.

5 Q. Did you know of anyone who received reparations or  
6 compensation from the Human Rights Commission in El  
7 Salvador during the last ten years?

8 MR. GREEN: Objection; assumes facts not in  
9 evidence.

10 THE COURT: Overruled.

11 THE WITNESS: I don't understand the question.

12 BY MR. KLAUS:

13 Q. Do you know anyone in El Salvador who received  
14 compensation from the Human Rights Commission in El  
15 Salvador during the last ten years?

16 A. Don't know what compensation is.

17 Q. Reparations.

18 THE INTERPRETER: The interpreter would request  
19 permission to explain the term.

20 THE WITNESS: That couldn't possibly get in my  
21 head, that is far too offensive. Pain, torture cannot be  
22 purchased with money, and I am offended.

23 BY MR. KLAUS:

24 Q. Sorry?

25 A. I cannot compare pain, Mr. Klaus, money or the

1 torture. There is no price for torture. My son has no  
2 price.

3 Q. Did your lawyers explain to you what you are seeking  
4 in this case?

5 MR. GREEN: Objection; attorney/client privilege.

6 THE COURT: Overruled.

7 THE WITNESS: I --

8 THE COURT: Let me stop you for a second.

9 Ms. Gonzalez, what the lawyer is asking you is, did your  
10 lawyers explain to you that you are seeking money damages  
11 in this case?

12 THE WITNESS: No, we are not looking for  
13 monetary. That is why I feel so bad. I cannot compare  
14 that with money and the pain of torture.

15 THE COURT: All right. Let's stop there and  
16 let's go to the next question.

17 MR. KLAUS: I don't have anything further.

18 THE COURT: Let's go back for redirect  
19 examination, Mr. Green.

20 MR. GREEN: May I just have one moment?

21 THE COURT: Surely, yes, of course.

22 REDIRECT EXAMINATION

23 BY MR. GREEN:

24 Q. Ms. Gonzalez, what is it that you are seeking through  
25 this lawsuit?

1 A. To tell the truth, to denounce and to say what  
2 happened to me, to tell of my torture. And this I've had  
3 with me for more than 20 years. Not being able to say and  
4 I feel I am screaming, and you don't know how it is, but  
5 now I have been able to tell my story, my pain.

6 I would like to tell you that this that I have told  
7 you is the best offering I can make to my son, to tell you  
8 and to tell you of my suffering, of my torture with which I  
9 have lived for a very long time.

10 MR. GREEN: I have no further questions.

11 THE COURT: Thank you, Mr. Green.

12 Ms. Gonzalez, you may step down.

13 THE WITNESS: Just a moment, Your Honor.

14 (Witness excused.)

15 THE COURT: Yes. Ladies and gentlemen, it is a  
16 little earlier than we would normally take the afternoon  
17 break, but why don't we stop at this time for a break and  
18 we will come back and turn back to the Plaintiff for the  
19 next witness.

20 Why don't we take a 15 minute break. We will  
21 take another break later in the afternoon.

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

23 (Thereupon, a recess was taken.)

24 (Thereupon, trial reconvened after recess.)

25 THE COURT: Mr. Green, it occurred to me that

1 during the testimony of Ms. Gonzalez you asked to be able  
2 to have Ms. Gonzalez show the scars to the jury, and I  
3 asked you to wait until another point in her testimony. I  
4 didn't mean to preclude you from doing that. You have a  
5 right to show that to the jury, and if Mr. Klaus wants to  
6 ask questions, you may do that.

7 How do you propose to do that? Where are the  
8 scars? Can Ms. Gonzalez just remove her jacket? How did  
9 you want to do that?

10 MR. GREEN: Your Honor, may I confer with her?  
11 My inclination is not to.

12 We are okay, Judge.

13 THE COURT: All right. All right. I wanted to  
14 make sure you understood you could do that.

15 MR. GREEN: I appreciate Your Honor bringing it  
16 up.

17 THE COURT: No, it slipped by me.

18 Are we all set and ready to proceed?

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

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

21 THE COURT: Ladies and gentlemen, please be  
22 seated. Let me turn to the Plaintiffs and the Plaintiffs  
23 may call your next witness.

24 MS. VANSCHAACK: The Plaintiffs call Dr. Glen  
25 Caddy.

1 THE COURT: Dr. Caddy.

2 Doctor, please come up and make yourself  
3 comfortable. The microphone has a short pickup range.  
4 After you are seated, if you would pull that chair up. We  
5 have a problem in that the baffle is falling apart. I  
6 think it is going to be disturbing to you and the jury and  
7 the court reporter, if you could pull that up, it would  
8 cover the microphone.

9 Doctor, if you would begin by raising your right  
10 hand, sir.

11 GLEN CADDY, PLAINTIFFS' WITNESS SWORN.

12 THE COURT: Doctor, would you please begin by  
13 introducing yourself to the members of the jury? Would  
14 you give them your full name, and would you please spell  
15 your last name for the court reporter?

16 THE WITNESS: Certainly, Your Honor.

17 Good afternoon, ladies and gentlemen. My name is  
18 Dr. Glen Ross Caddy, C-A-D-D-Y.

19 THE COURT: Thank you. Ms. VanSchaack.

20 DIRECT EXAMINATION

21 BY MS. VanSCHAACK:

22 Q. Good afternoon, Dr. Caddy.

23 A. Good afternoon.

24 Q. Have you been asked today to give testimony on the  
25 scope of the nature of the psychological harm they have

1 experienced?

2 A. I have.

3 Q. What field do you practice?

4 A. I practice in clinical psychology and forensic  
5 psychology.

6 Q. Would you tell the jury what forensic psychology is?

7 A. Interface area between sciences and legal system.

8 Forensic psychologists specialize in understanding  
9 questions that are of interest to the legal system.

10 Q. Would you describe your relevant qualifications to  
11 give expert testimony in this case?

12 A. I hold a Ph.D. from the University of New South Wales  
13 in Sydney, Australia, that was awarded in 1973. I  
14 subsequently become Board certified in four subspecialties;  
15 clinical psychology, behavioral medicine, forensic  
16 psychology, and human sexuality. In three of the Board  
17 certifications I hold fellowship status. There is no  
18 fellowship status currently available in the Academy of  
19 Human Sexology.

20 I published four books, around 90 manuscripts dealing  
21 with a variety of issues in behavioral psychology. I have  
22 had significant experience dealing with problems of trauma  
23 involving war crimes, involving instances of war.

24 I have had substantial experience over the years in  
25 studying extreme trauma and have been consultant to the

1 Veterans Administration in this country. I've also engaged  
2 in significant consultations in high levels of trauma.

3 I was a consultant to the Delta 191 crash in Dallas,  
4 Texas. I was a consultant on cases involving the Sunset  
5 Limited crash into the bijou into Louisiana, and a number  
6 of other really high trauma matters.

7 I've also worked in cases of everything from prison  
8 rape to rape to disassociate disorder or extreme emotional  
9 distress. I've published in some of those areas. And in  
10 1995, '96, I was the anxiety disorders Task Force chair of  
11 a treatment statistical manual on mental disorders joint  
12 commission.

13 So for a variety of reasons I have a lot of background  
14 and experience in matters of anxiety disorders and trauma.

15 Q. Thank you.

16 Have you spent any time in the military?

17 A. Yes, I did.

18 Q. What were your duties in that capacity?

19 A. I was a young military officer in the Australian Army,  
20 and I spent a total of six years in the military. Towards  
21 the end of my time as an active officer I was seconded to  
22 work for the Australia Intelligence Organization, akin to  
23 the United States CIA. While during some of that work I  
24 was involved in work in Cambodia and Laos.

25 I was never personally in a fire fight, but I was in a

1 war zone and I was in hot circumstances in a number of  
2 occasions.

3 Q. You mentioned in your brief introductions you've  
4 worked on a number of cases. Have you given expert  
5 testimony before?

6 A. I have given expert testimony on all of those cases  
7 that I have previously described and many other cases.

8 Q. And do you testify on behalf of both plaintiffs and  
9 defendants?

10 A. I have been hired by both plaintiffs and defendants,  
11 yes.

12 Q. I would like to ask for your opinion about the nature  
13 and scope of the harm suffered by these Plaintiffs in a  
14 moment, but, first, would you describe for the jury how you  
15 reached this opinion?

16 A. In each of these cases, I have spent a substantial  
17 amount of time examining these three Plaintiffs. In total  
18 my amount of time in each case is between 20 and 25 hours,  
19 not including other research as well as that examination.  
20 I've also reviewed record material from either physicians  
21 who provided treatment services to them and/or record  
22 material made available to me.

23 I have also spoken to the spouses and/or relatives of  
24 several of the Plaintiffs. And in addition I have engaged  
25 in some formal psychological testing, selected

1 psychological testing of the Plaintiffs.

2           And finally, I have also sought to understand the  
3 framework, the cultural and social framework of these  
4 individuals by doing a significant amount of background  
5 reading and work to understand more about the framework of  
6 El Salvador, especially during the period of the 12 year  
7 war.

8 Q. Do you maintain a clinical practice as well in which  
9 you see patients?

10 A. Yes, I do.

11 Q. How would you describe differences between examination  
12 in a treatment capacity, an examination in a forensic and  
13 valuative capacity such as you entertained in this case?

14 A. Well, these days, especially with the insurance  
15 industry and managed care, distinctions have become even  
16 greater, but in essence, clinically, when I or a clinician  
17 undertakes examination of a person, the purpose of that  
18 examination tends to be focused on exactly what is wrong  
19 with the here and now issues, and development of the  
20 appropriate treatment planning in order to implement change  
21 if that is required in a patient suffering from, whether it  
22 be a rather every day state of distress or some profound  
23 distress.

24           In the case of forensic practice, the task of an  
25 evaluation is really quite different. There the focus is

1 not on treatment planning, but on understanding the entire  
2 context of the person's emotional functioning, background  
3 and their life, and to look at an event or series of  
4 events, in this case the events of torture that may have so  
5 profoundly impacted an individual in order to look at the  
6 impact of that psychologically subsequent to the event.

7           And then to look at the adaptive functioning or  
8 difficulties in adaptive functioning and any emotional  
9 disturbance through to emotional crisis that is emerged in  
10 the individual subsequently.

11 Q. Did you use an interpreter when you conducted this  
12 evaluation?

13 A. In the case of Mrs. Gonzalez, I did. In the case of  
14 the other two Plaintiffs, I did not.

15 Q. How can you be sure that you were understanding the  
16 symptoms and issues that Ms. Gonzalez had if you were  
17 working through an interpreter?

18 A. Well, it was clear to me that Mrs. Gonzalez's command  
19 of English and my command of Spanish was somewhat of a  
20 problem. The reality is that the interpreter who was used  
21 was not only a certified interpreter, but a certified  
22 interpreter who worked on many cases dealing with torture  
23 victims. It was also the case that we worked very slowly  
24 in order to make sure that there was -- that if I did have  
25 any ambiguity with respect to a response, if the response

1 didn't seem to be directly related to my question, or even  
2 if it did, but I was getting other perspective, either  
3 through the body language, or just through having a sense  
4 of what was being discussed. Then I would pursue more  
5 questioning. And in fact the process with the interpreter  
6 probably added about 50 percent time at least to the  
7 examination process.

8 Q. And do you have experience working through  
9 interpreters in this fashion?

10 A. I do. I have examined -- early last year I examined a  
11 man who is a Russian who was involved in a very serious  
12 motor vehicle accident. He had no English whatsoever. I  
13 have also examined an Italian woman who was visiting South  
14 Florida and brutally raped, and she had some English, but  
15 an interpreter was used to facilitate.

16 And I have also done some cases that involve the  
17 Department of Naturalization and Immigration where I was  
18 asked to look at specific issues where, although there was  
19 some communication skills that the person had, an  
20 interpreter became a part of that process also.

21 Q. You mentioned earlier that you performed a number of  
22 psychological tests with the Plaintiffs. How did you  
23 choose which tests to administer?

24 A. I made the decision on several criteria. The  
25 principal criteria was given what I was told to be the

1 nature of the experiences that these people had, clearly a  
2 number of the instruments therefore were designed to look  
3 at really extreme emotional distress. And so some of those  
4 instruments were based on the assumption that I was going  
5 to find serious anxiety issues, perhaps even post-traumatic  
6 states, that I may find depression. And with that thought  
7 in mind, I selected instruments that might best tap some of  
8 those areas.

9 In addition, I also selected some instruments that  
10 would give me a broad array of perspective and I -- there  
11 is one instrument, for example, called the SCL-90 which  
12 measures 90 different dimensions of potential mental  
13 illness. It is a very global instrument, and allows me to  
14 tap in the normal course of examination, one may not  
15 remember or think to tap all of them.

16 And then there was another approach I used in addition  
17 which was with an instrument called the Minnesota  
18 Multiphasic Personality Inventory, and that is an  
19 instrument that is not only the most, singularly most  
20 researched psychological test instrument, looking at  
21 psychopathology, looking at abnormal behavior, but it is  
22 also an instrument that is useful because it has internal  
23 checks on validity and reliability, and therefore allowed  
24 me to have somewhat of an internal opinion from that  
25 instrument on things like credibility, consistency,

1 reliability of the self reported material that was being  
2 generated in that test protocol.

3 Q. And what did the indices of reliability tell you about  
4 the testing that you undertook?

5 A. They told me that in all instances, in all three cases  
6 the instruments were internally consistent. They did not  
7 show criteria that disrupted some of the faking scales on  
8 the instrument. They didn't give me indications of any  
9 lying or deception.

10 They also showed an internal consistency with respect  
11 to the clinical findings, that is, they didn't show  
12 disturbance that I was not also seeing when I examined the  
13 patient.

14 Q. Are there limits to what these types psychological  
15 tests can reveal in an evaluation like you conducted?

16 A. Yes, there are. I would never choose to use tests in  
17 the absence of a comprehensive clinical examination.  
18 Sometimes people in my field try to do that, and I think it  
19 is folly.

20 I saw the tests as being useful, as giving me another  
21 way of looking at the same individual to take perspective  
22 from what in my field would be called psychometric  
23 analysis. Another way of looking at the psychopathology  
24 that was being reported, and that other way, in the case of  
25 testing, involves comparing an individual with literally

1 thousands of other people, in some instances, hundreds of  
2 thousands of people who have taken the examination, that  
3 same test. And for comparison purposes looks at how that  
4 person scored on that instrument by comparison with both  
5 people who are judged to be psychologically normal, and  
6 people who are judged to be clinically disturbed one way or  
7 another on those instruments.

8 Q. You also testified that you spoke with therapists and  
9 physicians and family members. Why was that important for  
10 your evaluation?

11 A. Well, it was important for several reasons. The  
12 therapists who I spoke to allowed me to have perspective on  
13 how they perceived the patient they were treating, which  
14 was in essence a different look than what I was looking at.

15 They had the advantage of some longitudinal contact  
16 over a number of occasions. They also had the advantage of  
17 being able to talk to me about the directions that they saw  
18 the therapy going, what they were trying to accomplish.

19 And they also had the opportunity to express to me  
20 their view of what the limits of the responsiveness to  
21 therapy was in any of the cases, in their cases. So that  
22 gave me sort of a look at issues about prognostication,  
23 prospects of continued emotional growth, strength and  
24 improvement of these individuals through the eyes of the  
25 clinical staff providing care.

1           The opportunity to look at more aspects of personal  
2 relations, for example, in the case of both -- both in the  
3 case of Doctor -- excuse me -- when I was examining both  
4 Mrs. Gonzalez and also Professor Mauricio, I had the  
5 advantage of also talking to in one case the husband, and  
6 in the other case the wife of these two people.

7           Now, these spouses afforded me a level of close  
8 experience of in essence day-to-day information about what  
9 it is like living with these people. A perspective that  
10 while I could imagine because of my clinical experience, I  
11 could not know. And so these individuals proved very  
12 helpful in further offering me perspective that ultimately  
13 became integrated in my overall opinions about those  
14 individuals.

15 Q.   Dr. Caddy, I would like to ask you a series of  
16 questions about what torture does to an individual  
17 psychologically. Are there consistent psychological and  
18 physical conditions found in victims of torture?

19 A.   There tend to be, yes. Overall, from a psychological  
20 point of view, in terms of looking at abnormal  
21 symptomatology and formation of mental illness, torture  
22 overall has four elements to it.

23           It routinely induces extreme depression. It routinely  
24 induces high anxiety states. Sometimes those anxiety  
25 states become so profound that a condition known as

1 dissociative illness or dissociative disorder takes place,  
2 and fourthly, commonly, we see post-traumatic stress  
3 disorder emerge even in torture victims. And in fact, in  
4 my view, torture often provokes such an extreme level of  
5 post trauma state that it might be appropriate to use the  
6 term global trauma.

7       In addition, there are also specific psychopathologies  
8 that often follow from different types of torture. For  
9 example, sexual torture is much more likely to provoke very  
10 specialized problems that may then ultimately require a  
11 diagnosis as part of an outcome of assessment.

12 Q. You mentioned four conditions that are associated with  
13 torture survivors. I would like to talk more one by one.

14       The first condition you mentioned was depression.  
15 Would you describe for the jury what depression means in a  
16 psychological context?

17 A. When I am talking about clinical depression, I am not  
18 talking about a bad hair day. I am not talking about  
19 simple sadness. I am not talking about bereavement. I am  
20 not talking about the things we all experience when our  
21 life is not going the way we want it to.

22       Major depressive illness is defined in the Diagnostic  
23 and Statistic Manual of Mental Disorders as if it is  
24 protracted or recurrent, as the term is used, as involving  
25 what is called major depressive episodes. And major

1 depressive episodes, in order to meet the criteria, have to  
2 last at least two weeks, and in the case of recurrent major  
3 depression, that two weeks may extend for years.

4         In those instances, there is a sense of despair,  
5 commonly patterns of hopelessness, tremendous loss of  
6 energy, sometimes to the point of an inability to get out  
7 of bed. Issues of confusion and problems of focus and  
8 difficulties with memory. The sense of loss of sense of  
9 worth, and loss of confidence in the ability to function  
10 are central to major depressive illness.

11         And in the case of torture survivors, one of the  
12 interesting things in the depression cycle is often other  
13 problems around self degradation, in part because of what  
14 happened to them. Especially when the torture is profound  
15 and sexually focused, but also a sense of degradation and  
16 guilt because in a paradoxical sense they survive when so  
17 many others didn't. And often that provokes a great deal  
18 of guilt which further contributes to their sense of  
19 degradation.

20 Q. Dr. Caddy, did all of the Plaintiffs show signs of  
21 major depression?

22 A. All of them did.

23 Q. How would you describe that?

24 A. In one way or other, I think the three Plaintiffs have  
25 shown major depressive illness that continues through to

1 the present day, but in different degrees.

2 ...

22 Then we have the other elements of depressive state  
23 moving up the scale somewhat in Mrs. Gonzalez. We have a  
24 hideous paradox.

25 On the one hand this woman is a consummate humanist in

1 the sense she has spent almost all of her life trying to do  
2 things for other people, and yet paradoxically one of her  
3 greatest single elements of distress is she finds it  
4 extremely difficult to trust people. And the issue of  
5 trust, and trust of others is really profound in torture  
6 victims. It's above all else the element that separates  
7 torture victims from other trauma victims.

8 I will be happy to talk about that more later, but in  
9 her case here is a woman who has a great difficulty  
10 trusting people and yet she wants to love people. And the  
11 conflict there is one of multiple elements of difficulty  
12 that she has with an ongoing sense of depression. ...

22 Q. The second condition that you mentioned was recurrent  
23 anxiety disorder. Would you describe how that functions?

24 A. When people are extremely traumatized, the autonomic  
25 nervous system, that part of the nervous system that seems

1 to operate without our will, whether it be dramatic  
2 increases in heart rate, increases in brain activity,  
3 pupilaric constriction, changes in the pupils, changes in  
4 blood pressure, changes in skin conductions. All of those  
5 things change.

6       One of the things we have in common with our animal  
7 species predecessors is an automatic arousal with respect  
8 to flight or fear. If that is extreme enough, or  
9 alternatively, if one is exposed to it over a protracted  
10 enough period of time, there are legitimate changes that  
11 occur both in the way our brains process information with  
12 some of the newer chemistry, the changes, and also the way,  
13 the learning systems, the software, if you like, in our  
14 brains start to change in anticipation.

15       Hence, for example people who are high in anxiety  
16 often function the way a dog that has been beaten do. They  
17 react to things by anticipatory anxiety, by anticipatory  
18 worry, by caring, by having trouble standing up and dealing  
19 with the world in confidence.

20       Anxiety disorders broadly relate very closely to other  
21 stress conditions, but it is often the anticipatory anxiety  
22 that makes the quality of their experiences always  
23 compromised. And in some instances, an element of that  
24 anxiety becomes specific phobic disorder where a person  
25 becomes so traumatized by certain stimuli that they become

1 truly phobic and tremendous hyperarousal occurs.

2 I am sure we can all understand that in the concept of  
3 knowing somebody who might be afraid of big dogs, and they  
4 become hysterical when they are around a large dog. Well,  
5 in these cases there is tremendous hyperarousal of an  
6 anxiety nature that all of these people experience in one  
7 way or another.

8 So much so, for example, let's take again Professor  
9 Mauricio. He reported being pulled over in a routine  
10 traffic stop in Chicago a couple years ago and being  
11 absolutely terrified by the traffic stop, not because he  
12 had done anything particularly wrong, but because the  
13 police officer scared him by walking towards his car,  
14 because it triggered images going back to people in  
15 authority and control.

16 For that same reason, none of these people watch  
17 television shows with any violence on them, and to the  
18 point in Professor Mauricio's case where he and his wife  
19 got rid of the television entirely.

20 What people who suffer anxiety states tend to do is  
21 protect them from the anxiety as much as they can. Some  
22 people self medicate with alcohol, some people self  
23 medicate with drugs, some people take prescriptive  
24 medication, some people cope and try and avoid.

25 But anxiety in relatively high fashion is a component

1 of the life of all of those people. Even today in some  
2 instances, nearly 25 years after the experience of the most  
3 extreme trauma, because it is also important to know that  
4 not only did these people experience torture, but in some  
5 instances they also experienced heighten anxiety over a  
6 very protracted period of time with fear of detection, fear  
7 of arrest, and then difficulties in coping.

8         So although they have experienced torture in one way  
9 or another, they have also experienced a great deal more  
10 that made the task of adaptation, reestablishment of  
11 normalcy that much more difficult.

12 Q. You also mentioned the condition of disassociation as  
13 found in torture survivors. How would you describe that  
14 condition?

15 A. Diagnostically, dissociative disorders come at the  
16 extreme end of the anxiety dimensions, and dissociative  
17 disorders typically involve one of three states, one of  
18 three conditions. One is called fugue state, one  
19 disassociation into multiple or dual personality, and the  
20 third one is psychogenetic amnesia.

21         What happens is the level of terror that the person  
22 experiences becomes so profound that they simply  
23 psychologically cannot process the information and the body  
24 attempts to help them protect themselves from the gravity  
25 of the stimuli to which they are being exposed, and it does

1 so either by simply shutting out the capacity to process,  
2 hence amnesia. The material never gets into long-term  
3 memory, and hence they have blocks and gaps in memory.

4 Or, two, if it does go in, the individual processes it  
5 in such extreme ways that they have emotional splits. Not  
6 all the way through to schizophrenia, perhaps, but into  
7 multiple personality disorder, whereby fragmenting some of  
8 their own functioning, they attempt to cope with just  
9 extreme distress.

10 Every multiple personality disorder patient I have  
11 examined, and I actually published articles on it, had  
12 profound child abuse to the point in many instances torture  
13 within their own family. But people who suffered profound  
14 deliberate distress at the hands of other people, people  
15 who are torture victims often show elements and sometimes  
16 full blown features of dissociative illness. It is a  
17 extremely serious and very difficulty problem to treat.

18 Q. Dr. Caddy, Ms. Gonzalez testified this afternoon there  
19 were several periods of time after her release during which  
20 she has no memory. Is it your opinion she was in a  
21 dissociative state during these times?

22 A. It is. It is my view that there are in fact two  
23 possible explanations for the experience that she reported  
24 to me. One of them would have been head injury resulting  
25 in brain trauma that resulted in her inability to process

1 information because she was unconscious, and thereafter  
2 because she was not functioning properly from an organic  
3 standpoint.

4 I do not consider that to be irrelevant in her case,  
5 but I do not consider it to be the principal cause of her  
6 difficulty because as best she can construct it, it seems  
7 from my examination that her inability to process  
8 information lasted more than five months. In fact, an  
9 event as extreme as the death of her baby appears to have  
10 occurred within two months of her release from prison, and  
11 yet she has no memory of that.

12 All of the information she has for some five months  
13 comes from the information others subsequently gave her,  
14 and that does not appear to me to meet a clinical example  
15 of specific organic assault or brain injury. It is much  
16 more consistent with what you expect to see in dissociative  
17 states.

18 There is also some further evidence of this lady  
19 experiencing dissociative states at another occasion  
20 subsequent to this, and she gets close to disassociation  
21 whenever the levels of stress build, and that is also  
22 consistent with what you see in patients who have coped  
23 with some of the consequences of profound stress by  
24 dissociative or dissociative related trauma.

25 Q. Did Dr. Romagoza and Professor Mauricio experience

1 disassociation?

2 A. Both of them at the time of their torture exhibited a  
3 number of signs of dissociative states.

4 Professor Mauricio appears to have shown less  
5 indications of protracted dissociative states than  
6 Dr. Romagoza, and both of these men today appear to show  
7 less disassociation than Ms. Gonzalez.

8 Q. Finally, Dr. Caddy, you mentioned the term  
9 post-traumatic stress syndrome.

10 A. Yes, I did.

11 Q. Would you give us a brief description what that shows?

12 A. I think we have an overhead on that.

13 Q. Would that be helpful to you?

14 A. It would.

15 Q. Would you tell the jury where the slide we will show  
16 comes from?

17 A. I prepared a slide that I think would be helpful to  
18 you in understanding what is a reasonably complex set of  
19 symptom patterns in this condition called post-traumatic  
20 stress disorder. The slide comes out of the diagnostic  
21 criteria of this particular text here, which is Diagnostic  
22 and Statistical Mental Disorders. This is volume four  
23 published by the American Psychiatric Association.

24 Basically --

25 Q. You want the slide?

1 A. Yes. Basically before I talk about the criteria,  
2 post-traumatic stress disorder is generally regarded as  
3 perhaps the most common extreme human response to stress.  
4 It may have elements of disassociation in it. It is my  
5 professional view that disassociation is often even more  
6 extreme than post-traumatic stress disorder.

7 It is also my view though it does not yet appear in  
8 the Diagnostic Manual, the field is moving in the  
9 direction -- the professional field, those of us who focus  
10 specifically on post trauma states tend to argue there is  
11 room at the high end for a more global post trauma state  
12 than simply the condition known as post-traumatic stress  
13 illness or post-traumatic stress disorder.

14 Post-traumatic stress disorder as a term has been  
15 around since the early -- middle 1960's, and it became  
16 termed PTSD largely, initially in veterans circles, United  
17 States Veterans Administration.

18 I have done a significant amount of consulting with  
19 the VA, and with Vietnam vets on PTSD issues, but clearly  
20 it has a history that goes back, though it wasn't called  
21 that, it was called war neuroses during the Second World  
22 War, and towards the end of the First World War. But in  
23 fact there is literature going back for thousands of years  
24 talking about extreme trauma in response to profound  
25 violence.

1           In order to qualify for the diagnosis post-traumatic  
2 stress illness there is basically a series of criteria.  
3 And what you see in front of you is the criteria for  
4 post-traumatic stress disorder. As you see under condition  
5 A, in order to qualify for the diagnosis, one has to either  
6 have been exposed -- well, to a dramatic traumatic event  
7 where the person either experienced or witnessed or was  
8 confronted with the event or events that involved actual  
9 death or threatened death or serious injury, or the threat of  
10 physical integrity to self or others.

11           Now, interestingly, it is quite possible for a person  
12 to never have been actually exposed to a profound threat  
13 themselves, but to have suffered the observation of extreme  
14 threat to others and still develop post-traumatic stress  
15 disorder.

16           I treated a woman several years ago whose five years  
17 old son ran out on a roadway to get a ball, and she was  
18 standing on the edge of the curb and he was killed and  
19 dragged 160 feet. I assure you this woman suffered  
20 post-traumatic stress disorder, although her personal  
21 integrity was not at risk.

22           Second, a person's response involved intense fear or  
23 helplessness or horror.

24           In instances of torture, one of the features that so  
25 provoke the massive acceleration of the arousal systems

1 within us, the autonomic nervous system, is not simply the  
2 physical pain, but it is the presumptive threat of imminent  
3 death.

4 In the case of Mrs. Gonzalez, while in captivity at  
5 the Army headquarters she has been able to calculate 22  
6 days of captivity during which from the time of her arrest  
7 until the time that she first realizes it, she expected to  
8 be killed every day.

9 In the case of Dr. Romagoza, he, too, on multiple  
10 occasions throughout the time of his captivity expected  
11 that he was going to be killed. In fact, he interprets his  
12 present life either to the jamming of a weapon or to an act  
13 of God or perhaps both. His two days spent in a coffin  
14 were moments of imminent expectation of death just as some  
15 of his earlier experiences, and in many respects at least  
16 for the first five to six days of his captivity, Professor  
17 Mauricio had the same expectations.

18 The heightened arousal responses that come from the  
19 imminent expectation that another human being or other  
20 human beings after they finish hurting you will kill you is  
21 a very different experience than the expectation of being  
22 released after you have been roughed up as may be true, for  
23 example, of even a particularly strenuous police beating  
24 that may occur in this country.

25 Q. Dr. Caddy, what are the symptoms associated with PTSD,

1 as you call it?

2 A. Well, you then go into the categories that follow.  
3 Firstly, the traumatic experience or events are  
4 persistently re-experienced in one or more of the following  
5 ways, and that reexperience is an inability to turn off the  
6 experience. Different people, different levels of post  
7 trauma states result in different levels of intrusive  
8 reexperience.

9 Some individuals 20 years after an event will only  
10 reexperience the phenomena occasionally when something  
11 reminds them of it. Other patients, and torture victims  
12 are disproportionately likely to experience the phenomena  
13 over and over and over again because their emotional  
14 stability has been made so fragile by the traumatic  
15 experiences.

16 Q. To interrupt you briefly, all of the Plaintiffs  
17 testify that they experience flashbacks. Is this the  
18 phenomena you are describing?

19 A. Yes, flashbacks involve intrusive, typically visual,  
20 but sometimes auditory, meaning through the hearing,  
21 sometimes olfactory, sense of smell, sometimes tactile,  
22 meaning feeling of touch, images, sensation also of events  
23 that were profoundly traumatizing to them.

24 ...

9 So, in the reexperiencing, there are recollections of  
10 the event, images, and perceptions. There are also very

11 common massive sleep disruption in post trauma states,  
12 because sleeping produces dreaming, and dreaming produces  
13 nightmare experiences, night terror, it is called in post  
14 trauma research where often a person will wake up, bolt  
15 upright, believing they are right back in the situation,  
16 their heart racing, their palms sweating, and breaking down  
17 into tears and part from relief they are not in the  
18 situation, and partly because they can't get away from it.

19       Acting or feeling as if the events were recurring.

20       In this instance it can move all the way into  
21 hallucinatory phenomena where they can smell the  
22 experience, for example.

23 Q. Dr. Caddy, according to this diagnostic chart, the  
24 next set of symptoms associated with a post-traumatic state  
25 is this idea of avoidance of stimuli. Could you describe

1 that?

2 A. Yes, just let me make the point on the number five  
3 here, under B, physiological reactivity is very important  
4 in this because any, what are called cues or stimuli that  
5 provoke recollection of the events can hit people at  
6 entirely unexpected times. And just when they think they  
7 are having a good day, they can have a bad moment which  
8 then runs ruins the rest of their day. And they cannot  
9 predict it will happen, it takes away the confidence of any  
10 ability to have freedom.

11 Now, back to your question, the third criteria  
12 involves persistent avoidance of stimuli associated with  
13 the trauma. Numbing of general responsiveness, and there  
14 you often have active efforts on the person's part to try  
15 to avoid stimuli indicative of the area of distress.  
16 Choosing to get rid of a television because you cannot  
17 watch television without risking having images coming back  
18 to you. Efforts to avoid activity, people or places,  
19 inability to recall important aspects of the trauma. There  
20 some of what you are experiencing is not so much avoidance  
21 of the stimuli, but the disruption of the stimuli into  
22 memory.

23 Not full blown disassociation, perhaps, but sometimes  
24 an active effort to repress or push it out of memory.

25 Often reduction of interest in significant activities

1 in daily living, just withdrawing from life to a fair  
2 degree, at least certain aspects of life, not necessarily  
3 all life, but certain aspects of it.

4 ...

7 Similarly in the case of all three Plaintiffs broadly  
8 concerns about trusting and yet all of them being dutiful,  
9 socially oriented individuals previously leading to a  
10 conflict in the sense of who they are as human beings, and  
11 what they can believe in.

12 Sense of foreshortened future is a very common aspect  
13 in post-traumatic states....

18 So those criteria -- I think we have another one.

19 Q. Yes, indeed. You have the next slide?

20 A. Then we go on to criteria number four, persistent  
21 symptoms of increased arousal not present before the trauma  
22 as indicated by two or more of the following: Difficulty  
23 falling or staying asleep. Every one of these Plaintiffs  
24 has had sleep difficulties that have lasted from the time  
25 of their initial trauma to the present day. None of them

1 are insomnia free.

2 ...

9 Just to use a further example from Professor Mauricio,  
10 his wife is stunned by the fact on the one hand she  
11 recognizes her husband is a very bright man, but he is just  
12 exceptionally forgetful. He will walk through metal  
13 detectors with a camera over his shoulder and appear not to  
14 consider what he is doing. Multiple examples, she gave me  
15 of being simply not focused.

16 Hyper vigilance. Very common element is this tendency  
17 to be always on guard, and related to that is an  
18 exaggerated startle response.

19 We all know, I think, somebody who -- most of us know  
20 somebody who if the phone rings next to them will sort of  
21 react. That doesn't define PTSD, but it is an index of an  
22 exaggerated startle response. Very commonly PTSD  
23 individuals experience extreme startle responses, because  
24 their nervous system is so readily hyperaroused, it takes  
25 little to trigger an arousal mechanism.

1           And, of course, duration lasting more than a month,  
2 certainly in this case, and that in this particular  
3 instance, we would be talking about a chronic condition  
4 with a longevity that has taken us all the way through to  
5 the present time.

6           Now, I am not suggesting in my diagnosis of PTSD that  
7 this condition is as profound today as it was 20 years ago,  
8 and in all instances it is clear that there has been a  
9 significant reduction in the intensity range and scope of  
10 the symptomatology of these individuals. Yet in one way  
11 or another each of them continue to show features of this  
12 condition and in particular all three of them continue to  
13 show significant flashback responses.

14           Dr. Romagoza, for example, reports daily flashback  
15 phenomena that he cannot get away from.

16 Q.   Thank you.

17           Dr. Caddy, earlier you mentioned that these present  
18 day diagnoses of depression anxiety, disassociation and  
19 PTSD were to some in your field too limited when confronted  
20 with an individual confronting a great trauma. Could you  
21 elaborate?

22 A.   Well, as we study profound stress responses, it  
23 becomes clear that some individuals experience a composite  
24 of post-traumatic stress disorder, extreme anticipatory  
25 anxiety states and profound depression to the point of

1    debilitation, and in some instances they do have  
2    significant periods of time after being exposed to extreme  
3    trauma.

4            It is the thought of some of us in the field that what  
5    we are really looking at is probably better described not  
6    as post-traumatic stress disorder, but as global stress  
7    responding because the dimensionality of their stress is so  
8    broad.

9            It is that sort of global responding that we are prone  
10   to see in torture victims, especially when the torture has  
11   been of a protracted nature, and when the expectation of  
12   death is a recurrent daily feature of that protracted  
13   period of torture. It just destabilizes people so  
14   profoundly. Not to the point of emotional total collapse  
15   in everybody, but to the point of really changing all of  
16   us, and some to the point where the recovery potential is  
17   very, very limited.

18   Q.   Dr. Caddy, you testified earlier that there were some  
19   commonalities among psychological responses between victims  
20   of trauma generally, and victims of torture. You also  
21   mentioned there were differences. Could you elaborate on  
22   the differences?

23   A.   Most of us grow up to believe -- most of our  
24   experiences coming out of the family lives that we come out  
25   of, we have an expectation that it is generally going to be

1 a fair world, and that people are probably going to be  
2 generally nice to us or at least at best indifferent.

3 Torture is an entirely different experience from other  
4 trauma.

5 When I do work on a plane crash like Delta's 191, or  
6 when I do work dealing with a woman who is almost burnt to  
7 death after a tractor-trailer crash, a tanker crash on  
8 I-595 that occurred in Fort Lauderdale several years ago,  
9 or when you look at a Vietnam vet. You are looking at  
10 people who by and add large did not anticipate that the  
11 events to which they were subjected were being maliciously  
12 imposed by somebody at extremely close range to them, you  
13 know.

14 The Delta pilot didn't drive the plane into the  
15 ground.

16 Torture is the most severe way that a human being can  
17 be subjected to the worst in another human being, and when  
18 it occurs, as it always does, under profound powerlessness,  
19 under mockery, under degradation, under violence, with  
20 almost non describable rejection of the humanity of the  
21 victim, it can really change an individual.

22 It can change an individual's sense of the ability to  
23 ever have comfort in trusting other people. It changes  
24 one's view of the justice of the world in a way that is  
25 probably more profound than pretty much anything else can.

1 And it is that distinction in torture that undermines at  
2 the extreme level what lesser brutality might do to any of  
3 us.

4 It's also in my view -- there is a distinction to be  
5 made between perhaps a person who is captured and subjected  
6 to torture by an individual while they are being, say, held  
7 hostage, versus torture in which a group is involved,  
8 because by the time you have a crowd of people all prepared  
9 to rape a woman, all prepared to rip out the fingernails  
10 out of a man, all prepared to take the two teeth out of the  
11 front of a woman's face, or to subject a man to sexual  
12 assault with a broom handle, or to bounce a bed on an eight  
13 month old pregnant woman's belly, we are not looking at  
14 simply accidental events.

15 And the victim is going to interpret that in their own  
16 unique way, but the unique way they will respond to it  
17 changes their view of other human beings and their sense of  
18 being able to trust. And what we see in these three  
19 Plaintiffs, not in identical fashion, but in their own  
20 unique ways is that loss of a sense of comfort in freely  
21 trusting.

22 Q. Dr. Caddy, would you give a brief synopsis of your  
23 diagnoses with respect to each of the three Plaintiffs in  
24 this action?

25 ...

25 Q. Dr. Caddy, how has the loss of her son impacted

1 Mrs. Gonzalez?

2 A. It is a combination of two things as far as I am  
3 concerned. One of the elements is the loss, the other  
4 element is the confusion around the loss.

5 If you lose a baby and you actually are there for the  
6 event, good, bad or indifferent, you have a sense of  
7 closure or you get closure over time. She wasn't there for  
8 the event. She may have been there physically, but her  
9 mind was not there. She never got to see the -- though  
10 clearly she did see, she has no memory, she has no  
11 cognizance, so this baby is a fantasy for her.

12 It is also a baby that she feels incredibly guilty  
13 about. If she has pain of guilt at some absolutely  
14 irrational level, she perceives but for her arrest, but for  
15 her torture, but for her son would be alive and well today,  
16 and so in some respects, just as you have irrational  
17 concepts like survivor guilt, so too you have irrational  
18 concepts about responsibility for the non-responsible.

19 This loss has impacted her such that every time she  
20 sees children, not ever knowing what her child looked like,  
21 she is looking in the faces of little children to find what  
22 her child or her boy may have looked like. It is a  
23 recurrent theme that is one of the obsessions that is part  
24 of the post trauma state.

25 Q. One last question, Dr. Caddy.

1           What is your long-term prognosis for the Plaintiffs?

2   A.   I suppose we have to define that in terms of what our  
3   expectations are. I believe that in their own way, each  
4   one of these people can benefit substantially from really  
5   high quality professional care.

6           Mrs. Gonzalez has access to skilled professional care  
7   through the Kovler Center, which is a specialized trauma  
8   center in Chicago, and she is receiving treatment. And  
9   that treatment seems to be offering her progressive hope.

10          But in the case of a more than 20 year surviving  
11   torture victim who has had chronic mental illness over that  
12   entire period, the prognosis has to be defined in terms of  
13   relative improvement rather than symptom elimination. I  
14   think that to a lesser degree, that is probably true of the  
15   other two Plaintiffs as well.

23          ...

7           And, of course, one of the things that is true of both  
8   of these males who are Plaintiffs here is they do come from  
9   a culture which really tends to devalue for a man, at  
10   least, professional mental health attention, hence,  
11   Dr. Romagoza is more prone to want to look to doing  
12   anything he can physically but only recently in the last  
13   couple of years has he become involved in trying to do  
14   anything from a mental health standpoint.

15          ...

23   Q.   Thank you.

24 MS. VanSCHAACK: Your Honor, I have no more  
25 questions.

1           THE COURT: Let me turn to Mr. Klaus for cross  
2 examination.

3           Counsel, when you are ready, you may proceed.

4           MR. KLAUS: Thank you.

5                           CROSS EXAMINATION

6 BY MR. KLAUS:

7 Q. Dr. Caddy, is the Kovler Center the most recognized  
8 center for treatment of torture victims?

9 A. I don't know that it is the most recognized. In the  
10 United States it is one of the premier centers for torture  
11 treatment in the country.

12 Q. How many other centers are there that specialize in  
13 that in the United States?

14 A. I am aware of various research centers at various  
15 universities where torture survivors are welcomed as part  
16 of research protocols, but I am not aware of any other  
17 specific funded mental health clinic that defines itself as  
18 focusing on torture victims in this country.

19 I believe there are several, I simply don't know of  
20 them.

21 Q. That is the only one you know of that provides that  
22 therapy, correct --

23 A. Yes.

24 Q. -- focused on torture victims?

25 A. Yes.

1 Q. How much of your income comes from preparing for and  
2 participating in litigation as an expert witness?

3 A. A good question. I am a forensic specialist, so as a  
4 forensic psychologist I am much more likely than a  
5 clinician being involved and asked legal questions and come  
6 to court.

7 Approximately 60 percent of the work I do in one way  
8 or another connects to legal questions, while only a small  
9 percent of that 60 percent involves income directly in the  
10 courtroom. Much of that 60 percent of my time would  
11 involve income that was related one way or another to court  
12 related matters.

13 Q. You come as a medical -- as a psychological expert to  
14 participate in a legal proceeding, correct?

15 A. Yes, though often I don't give testimony. Often I am  
16 involved in cases whether I give testimony or not.

17 Q. And what are your fees for forensic psychology?

18 A. My fees for forensic services, \$250.00 an hour.  
19 Evaluative services, consultations with attorneys,  
20 preparation of reports and research, my fee, testimony,  
21 \$350.00 an hour.

22 Q. Do you have a fee for background research?

23 A. Normally my fee for background research is the same as  
24 my general consulting fee. In this particular case because  
25 there was a significant amount of background research I

1 did, the firm who hired me asked -- requested if I would  
2 reduce my fee for background research, and I agreed to do  
3 so, and I charged \$150.00 an hour for the hours of work  
4 that I did in background research in this case.

5 Q. And who hired you in this case?

6 A. I was hired by the firm of Morrison and Forester.

7 Q. And what is your bill to date total?

8 A. I do not know. I have been paid for all of the  
9 services I rendered except for services of the last several  
10 days.

11 Q. And how much have you been paid?

12 A. Somewhere in the vicinity of probably 22 to  
13 \$25,000.00.

14 Q. Are you a U.S. citizen?

15 A. No, I am not.

16 Q. You are Australian?

17 A. I am an Australian citizen.

18 MR. KLAUS: Nothing further. Thanks.

19 THE COURT: Okay. Redirect examination?

20 MS. VanSCHAACK: Nothing further.

21 THE COURT: May Dr. Caddy be excused from his  
22 subpoena?

23 MS. VanSCHAACK: He may.

24 THE COURT: Doctor, you may step down and be  
25 excused. Thank you.

1 (Witness excused.)

2 MR. GREEN: Plaintiffs rests.

3 THE COURT: Plaintiffs rest their case.

4 Would this be a good time to stop for the day?

5 All right. Ladies and gentlemen, you remember  
6 that at the very beginning of the case I mentioned to you  
7 that --

8 Thank you, Doctor.

9 -- that there are various stages in the  
10 proceedings, and we talked about the first part of the  
11 case is the Plaintiffs' case in chief. We obviously have  
12 reached a significant point in that, and the Plaintiffs  
13 have rested their case in chief. And at this point we  
14 will turn to the defense for presentation of the defense  
15 case, and so we will begin that tomorrow morning at 9:30.

16 Again, I want to ask you, as I know you have  
17 been, and I need to express to you the thanks of the  
18 parties on both sides for how diligent you are being, but  
19 I ask you to keep that in mind. You want to be sure that  
20 you don't talk to anybody about the case, don't let anyone  
21 talk with you. And you want to avoid any media coverage  
22 of the case. With respect to newspapers, if you bring  
23 them in and run them by the courtroom deputy, we will get  
24 them right back to you. See you again tomorrow morning at  
25 9:30, again. Thank you all.

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

2 THE COURT: Why don't we take a ten minute break  
3 or so, then let's come back. If there are any motions  
4 that need to be made, let's consider those at that time,  
5 and then continue on, if we can, with our discussion on  
6 jury instructions and any other matters that need to be  
7 raised.

8 I think we have a motion in limine that we are  
9 going to need to talk about relatively soon.

10 Let's take a ten minute break.

11 The Court is in recess.

12 (Thereupon, a short recess was taken.)

13 (Thereupon, trial reconvened after recess.)

14 THE COURT: Mr. Klaus, let me turn to you for any  
15 motions you need to make at this time.

16 MR. KLAUS: I have a motion --

17 THE COURT: Would you go to the lectern?

18 MR. KLAUS: I am sorry.

19 THE COURT: That is all right.

20 MR. KLAUS: I have a motion for judgment as a  
21 matter of law as to Professor Mauricio as to the statute  
22 of limitations under the Alien Torture Victim Protection  
23 Act.

24 THE COURT: Under the what?

25 MR. KLAUS: Torture Victim Protection Act.

1 THE COURT: TVPA?

2 MR. KLAUS: Yes. Section 2-C, statute of  
3 limitations reads no action shall be maintained under this  
4 section unless it is commenced within ten years after the  
5 cause of action arose.

6 His cause of action arose in 1983, suit wasn't  
7 filed until 1999. He hasn't set forth any reason why  
8 there shouldn't be any equitable tolling of the statute.  
9 His reason for not bringing suit was he didn't know he  
10 could.

11 There is no legally sufficient evidentiary reason  
12 why judgment on the pleadings -- judgment as a matter of  
13 law shouldn't be granted pursuant to Federal Rules of  
14 Civil Procedure 50-A.

15 THE COURT: Is that your motion?

16 MR. KLAUS: That is my motion on Mauricio.

17 THE COURT: Why don't you go ahead.

18 MR. KLAUS: I have the same motion as to  
19 Mister --

20 THE COURT: Thinking about it, maybe this would  
21 help in terms of the clarity of the record. Obviously  
22 there are different issues as to each Plaintiff. Why  
23 don't I let you stop and turn to whoever would like to  
24 respond. Give me just a minute, if you would.

25 Go right ahead. Who would like to respond?

1 MR. STERN: Your Honor, last year --

2 THE COURT: Mr. Stern, would you be good enough  
3 to use the lectern?

4 MR. STERN: Certainly, Your Honor.

5 In 2001, Your Honor, the Plaintiffs filed --  
6 excuse me, the Defendants filed a motion for judgment on  
7 the pleadings. I think also a motion for judgment as a  
8 matter of law on the statute of limitations issue with  
9 respect to all Plaintiffs, and at that time -- this is an  
10 issue that came up at the pretrial conference, but at that  
11 time The Court ruled that Defendants' motion was not well  
12 taken because equitable tolling applied and the statute of  
13 limitations was tolled by virtue of the existence of civil  
14 war, hostilities in El Salvador until the date -- until  
15 1992 when those hostilities were ended by formal Peace  
16 Accords.

17 Those -- our position just hearing the motion,  
18 there isn't anything there that wasn't previously, and  
19 equitable tolling applies to all Plaintiffs and the motion  
20 should be denied.

21 THE COURT: Let me see if I understand your  
22 argument.

23 There has been testimony in the record regarding  
24 the state of affairs in El Salvador from 1979 onward, and,  
25 of course, there has been testimony regarding the

1 cessation of hostilities, negotiated trust in 1992  
2 followed by elections, free elections in 1994.

3 Assuming for a moment that equitable tolling  
4 applies, is it your view that the starting date for the  
5 statute of limitations would be 1992?

6 MR. STERN: Focusing on the existence of the El  
7 Salvadoran civil war, yes. I mean, I think there are a  
8 variety of grounds which one could point to equitable  
9 tolling in this case, Your Honor.

10 THE COURT: I understand that. I take it what  
11 you are saying is while there may be other grounds that  
12 one could look to and urge as a basis for equitable  
13 tolling, your view is if you look at 1992 when there seems  
14 to have been a very significant change in circumstances in  
15 El Salvador, and assume you have a ten year statute of  
16 limitations, the lawsuits that were filed, and I believe  
17 they were filed in 1999, would clearly come within that  
18 ten year time frame; is that your position?

19 MR. STERN: That is correct. In the line of  
20 argument we have been discussing, yes.

21 THE COURT: Anything else you want to mention?

22 MR. STERN: Not specifically to the points that  
23 counsel has made. If The Court wants us to pursue that,  
24 we could do that in writing. The Court essentially -- I  
25 don't know if this is a precisely accurate way to put

1 it -- but took judicial notice of the fact that this  
2 conflict existed and found that tolling applied, and we  
3 don't think there is anything raised by the other side  
4 that would affect the legal ground for The Court's order  
5 in the 2001 finding that the statute of limitations, which  
6 would be an affirmative defense on which the Defendants  
7 bear the burden, would affect that judgment.

8 THE COURT: All right. Thank you.

9 Let me go back to Mr. Klaus. Anything further on  
10 that?

11 MR. KLAUS: We have evidence now that we didn't  
12 have then that Mr. Mauricio was here in the country, he  
13 was here from '84 or '85, and he was in university, he was  
14 working, all the remedies that he seeks in -- by filing  
15 the suit in 1999 were available to him then.

16 THE COURT: What is the evidence regarding  
17 Professor Mauricio being in the United States?

18 MR. KLAUS: His testimony.

19 THE COURT: Would you summarize it for me?

20 MR. KLAUS: He arrived here in, I think the early  
21 '80's, and he was living in -- first he worked as a  
22 dishwasher, and he worked in the lab in the university,  
23 and he went back to school and I think he had access to  
24 media, access to lawyers, access to anything anyone  
25 residing in the United States had at that time.

1           THE COURT:  Would you help me out in terms of  
2 what the evidence shows about General Garcia and General  
3 Vides being in the United States?

4           MR. KLAUS:  It doesn't show anything yet, we  
5 don't have anything on that yet.  I don't think that is  
6 that relevant.  They could have sued them if they are  
7 still in El Salvador.  There are provisions in the Rules  
8 of Civil Procedure to sue someone in a foreign country.  
9 There is a myriad of cases where someone residing in the  
10 United States or people who don't reside in the United  
11 States making use of United States courts to sue companies  
12 or individuals who reside elsewhere.

13           There are provisions for serving people in  
14 foreign countries through their Embassies, and even if  
15 they weren't here, I don't think that is the most relevant  
16 factor to be considered.  He could have served them in El  
17 Salvador if they were there, Switzerland if they were  
18 there or Australia if they were there.

19           THE COURT:  What is your view as to the 1993  
20 amnesty granted by the Congress?

21           MR. KLAUS:  It is a criminal amnesty, not civil.  
22 Protections from criminal sanctions, not civil sanctions.

23           THE COURT:  So your view is that the time frame  
24 would run from when Professor Mauricio came to the United  
25 States, and whatever his testimony was on that, a ten year

1 time frame forward, and it is your view that that would  
2 have expired before the lawsuit was filed?

3 MR. KLAUS: Yes. Well, if there is any equitable  
4 tolling available to him, it would have been -- the  
5 equitable tolling period would have ended when he came to  
6 the United States, when he started residing in the United  
7 States.

8 I don't have a problem with the equitable tolling  
9 period from the time he was in El Salvador, understanding  
10 and given what was going on there, without being in the  
11 United States, he didn't have access to United States  
12 courts given the testimony.

13 THE COURT: I understand that the evidence has  
14 not been adduced as yet regarding General Vides and  
15 General Garcia. What would that evidence be when it is  
16 adduced?

17 MR. KLAUS: They came in and out of the United  
18 States all during '70's and '80's.

19 THE COURT: When did they become permanent  
20 residents, General Garcia and Vides, in the United States?

21 MR. KLAUS: He said he resided here in 1989, but  
22 even if he didn't reside here, he was available. He was  
23 available for the Truth Commission and appeared before  
24 them.

25 THE COURT: General Vides in 1989. And what

1 about General Garcia?

2 MR. KLAUS: The same year. That is when you  
3 became permanent residents, or when you moved here?

4 General Vides had substantial ties here way  
5 before that. He had family living here, his daughter -- I  
6 know one of his daughters lived here, and so did General  
7 Vides. There is testimony that General Vides -- I don't  
8 know if there is testimony yet, but they had been in and  
9 out of the country.

10 THE COURT: When was the lawsuit filed on behalf  
11 of Professor Mauricio?

12 MR. KLAUS: 1999.

13 THE COURT: What date?

14 MR. GREEN: I believe May, Your Honor.

15 THE COURT: What date in '99?

16 MR. KLAUS: Let me see.

17 MR. GREEN: I believe it was May 11.

18 THE COURT: Thank you. It was a Thursday  
19 afternoon, I remember.

20 MR. KLAUS: The initial complaint says May 13,  
21 '99. It is handwritten on there. It is dated May 12.  
22 But it didn't include -- it didn't include Mr. Mauricio,  
23 Professor Mauricio. It was filed one Romagoza Arce, Jane  
24 Doe, and I don't know when Mr. Mauricio was added. I have  
25 to check.

1           He wasn't a plaintiff in the original lawsuit.  
2 He wasn't added until the final amended -- the Second  
3 Amended Complaint, which was dated February 17, 2000.  
4 That is when he was added as a plaintiff. So he wasn't in  
5 the initial lawsuit, and even his testimony says he joined  
6 this lawsuit when a friend told him about it in San  
7 Francisco. That is what the testimony indicates.

8           I don't know when that was actually filed, but my  
9 copy is dated February 17, 2000. That is the first time  
10 he is named as a plaintiff. They may be referring to him  
11 as the John Doe in January -- the January 5, 2000  
12 Complaint that was filed -- the First Amended Complaint.

13           THE COURT: Will you get for me, please,  
14 Professor Mauricio's testimony before he came to the  
15 United States? Do you have that?

16           MS. VanSCHAACK: Your Honor, page 627 of the  
17 transcript, it appears it is June, 1983.

18           THE COURT: Do the parties have the date of the  
19 Peace Accord?

20           MS. VanSCHAACK: January 1st, 1992.

21           THE COURT: Again, for the record, could I have  
22 the dates again when General Vides and General Garcia came  
23 to the United States and established residence?

24           MR. STERN: In a prior proceeding there was a  
25 stipulation on the record on that specific point that I am

1 prepared to read at this point.

2 THE COURT: Let me stop for a minute.

3 MR. KLAUS: They became residents in August --  
4 let me make sure through the interpreter. Did you become  
5 residents in August, '89?

6 THE DEFENDANT: Yes.

7 MR. KLAUS: Did you become a permanent resident  
8 before you moved here, or move here and start living here  
9 before you became a permanent resident?

10 THE DEFENDANT: My wife and children, August.

11 MR. KLAUS: August is when you moved?

12 THE DEFENDANT: Yes.

13 MR. KLAUS: August, '89?

14 THE INTERPRETER: General Garcia moved here in  
15 '89, doesn't remember the month, that is when he came  
16 here.

17 MR. STERN: The date stipulated as to General  
18 Garcia obtaining permanent residency was October, '89.

19 THE COURT: October for General Garcia?

20 MR. KLAUS: Yes. Professor Mauricio's claims are  
21 only against General Vides.

22 MR. STERN: That is correct.

23 THE COURT: Thank you for that.

24 Let me turn to the other side and ask you, again,  
25 if you would, please, to address this. The statute has a

1 ten year statute of limitations. The statute being  
2 Torture Victim Protection Act has a ten year statute of  
3 limitations, meaning a claim must be brought within a ten  
4 year period, and there is a concept of equitable tolling.

5 Let's agree for the sake of discussion that the  
6 time period would begin to run either in 1989 when General  
7 Vides moved to the United States, and was available in the  
8 United States. One might argue that the time period  
9 should be tolled even further until 1992 because of the  
10 need to gain evidence and the ability to litigate without  
11 fear of reprisal, and so on.

12 Now, that having been said, let's for the sake of  
13 discussion assume that the time period began in 1992,  
14 January 1 of '92. I take it it is your view, first, that  
15 is the time period and that if that is the time period,  
16 the commencement of the limitations period that the  
17 lawsuit -- well, that you believe the lawsuit would be  
18 timely filed, but would it have been timely filed because  
19 Professor Mauricio joins the suit on February 17, 2000,  
20 which would be within the ten year period? Is that  
21 basically your argument?

22 MR. STERN: Subject to double checking, my  
23 recollection is that Professor Mauricio was named -- he  
24 filed suit in May of 1999 under the name of John Doe. We  
25 had some confidentiality concerns, and I don't believe

1 that his name was listed, although -- I want to double  
2 check the very first Complaint that we filed with -- in  
3 candor, I don't have it with me here, but my recollection  
4 is that he was -- the Plaintiff along with others who  
5 filed suit at that time. So I think --

6 THE COURT: Let's assume for the sake of our  
7 discussion that he did not. It is February 17, 2000, does  
8 that make a difference?

9 MR. STERN: Not if the statute of limitations is  
10 tolled until 1992, Your Honor. I think in that regard it  
11 is very relevant that in its prior order on this subject  
12 in June, 2001, The Court specifically pointed out one  
13 basis for equitable tolling until 1992 as being that  
14 Plaintiffs had friends and loved ones in El Salvador who  
15 may have feared retaliation if any kind of litigation had  
16 been initiated.

17 And we have had testimony that Professor Mauricio  
18 and others have had family members in El Salvador on an  
19 ongoing basis. Our initial position is that the statute  
20 of limitations should be tolled until 1992. We have other  
21 arguments -- I am prepared to read the legislative history  
22 of the Act -- I will stop there if The Court wants me to  
23 with what I have said thus far.

24 THE COURT: All right. Mr. Klaus?

25 MR. KLAUS: He wasn't named in the initial

1 Complaint. I've looked at the initial Complaint.  
2 Dr. Romagoza, Jane Doe and Baby Doe are the only people  
3 named.

4 I think the last trial we talked about the  
5 statute starting when they were here, because that is when  
6 they were available. If it starts then, it is too late  
7 for him, ten years have passed. There is no basis for  
8 equitable tolling. They are both residing here, they are  
9 both permanent residents here. I don't think there is a  
10 basis to equitably toll -- equity is a two way street,  
11 equity needs to be done to both sides. If anyone relies  
12 on equity, it has to be equitable.

13 They have a right to have a life, also, and it  
14 has been a long time.

15 THE COURT: It is clear that the statute of  
16 limitations serves important societal interests. The  
17 difficulty I have on taking evidence, issues becoming  
18 stale, things of that nature are obviously very  
19 significant. And yet at the same time, I think it is  
20 recognized that statute of limitations can be tolled.

21 Courts have held that the Torture Victim  
22 Protection Act's ten years statute of limitations period  
23 can be equitably tolled where either first the Defendants'  
24 own wrongful conduct prevented the Plaintiff from  
25 asserting the claim, or two, extraordinary circumstances

1 outside the Plaintiffs' control made it impossible to  
2 timely assert the claim.

3 The testimony in this case, seems to me, and the  
4 stipulation that was just entered into really puts forth  
5 these dates that I think are significant. The testimony  
6 indicates that Professor Mauricio was abducted June 13,  
7 1983 and remained a captive for a period of time  
8 thereafter. So certainly that is a significant date.

9 The testimony also indicates that Professor  
10 Mauricio moved to the United States in August of 1983 and  
11 the parties agree that the Peace Accord that was  
12 negotiated under the auspices of the United Nations took  
13 effect January 1st, 1992. Of course, there has been talk  
14 there was a interim period, and that free elections took  
15 place in 1994.

16 Now, there has also been -- just as a footnote to  
17 this -- a discussion, and I think at least a couple of the  
18 witnesses mentioned that in that transition period the  
19 party in power, and the suspicion is it was in reaction to  
20 the Truth Commission's naming names in its report, that  
21 the Salvadoran Congress enacted an amnesty.

22 And the parties pointed out, and I don't know if  
23 there is agreement on this, it was an amnesty for criminal  
24 action against any person because of acts that had taken  
25 place prior to that. Of course, this is a civil action.

1           Now, it is my view, and it would be the ruling of  
2 The Court that the earliest possible date that one could  
3 look to for the limitations period to begin to run would  
4 be January 1st of 1992. And frankly, I say that even with  
5 some hesitation, because it is clear in the record from  
6 the testimony thus far that there was a transition period,  
7 and that it was not until 1994 when general elections were  
8 held that a Government was put in place by that process.

9           Now, I say that because it seems to me in this  
10 case The Court has to look at the evidence, and I realize,  
11 by the way, that at this juncture I am looking at the  
12 evidence in the light most favorable to the non moving  
13 party, as I think I must, but the evidence discloses,  
14 first, a state of civil war in the country. It discloses  
15 a time of heightened repression in an effort to deal with  
16 that civil war. It discloses a concerted effort  
17 throughout the country in which individuals were being  
18 apprehended, abducted, and so on.

19           Now, the argument that has been advanced to The  
20 Court is that the statute of limitations should begin to  
21 run, that is, it could be equitably tolled, and defense  
22 agrees with that, but it should begin to run in August,  
23 1989 when General Vides was in the United States and  
24 susceptible to service of process.

25           I disagree with the defense that it is

1 conceivable that it could have started before that. I  
2 think service of process is critical, and that means  
3 service within the United States.

4 Now, certainly the argument can be made when  
5 General Vides moved to the United States, he was  
6 susceptible to service of process, and Professor Mauricio  
7 was here. But it seems to me to take that suggestion  
8 seriously is to overlook all that has been developed in  
9 the Plaintiffs' case in chief in terms of what was the  
10 nature of the problem.

11 The suggestion is that there was -- I say  
12 suggestion. Looking at the evidence in the light most  
13 favorable now to the Plaintiffs, as I must, the evidence  
14 discloses that there was an effort designed and being  
15 implemented at the highest levels of Government to deal  
16 with various situations. And I understand that depending  
17 on someone's point of view, it was either to maintain the  
18 military in control or alternatively to deal with a  
19 perceived Communist threat.

20 But it seems pretty clear, no matter what stance  
21 one takes on it, it seems very clear that there were  
22 extraordinary numbers of casualties to the civilian  
23 population, and undoubtedly to the military population  
24 during this time frame, and there was in fact a state of  
25 armed conflict in El Salvador.

1           Now, bearing in mind that General Vides held one  
2 of the most important positions in his country, first as  
3 the Director General of the National Guard, and then  
4 ultimately as the Minister of Defense, and also bearing in  
5 mind the testimony regarding the nature of the military in  
6 El Salvador, it is cohesiveness, the fact that from the  
7 Plaintiffs' point of view, what was happening in San  
8 Salvador was being directed by the military.

9           It seems to me that it is unrealistic to suggest  
10 that the mere presence of General Vides here, while the  
11 military remained in power, where people either associated  
12 with, related to or close to the Plaintiff would be  
13 subject to reprisals. We are talking about the ability to  
14 gather evidence and take other actions that would be  
15 appropriate to maintaining a lawsuit.

16           I think when you look at all of that, and you  
17 consider this concept of equitable tolling, and as  
18 Mr. Klaus says it was an equitable principle. It has  
19 limitations on both sides, but I think looking at that, it  
20 would be The Court's ruling that under the facts and  
21 circumstances of this particular case, the earliest date  
22 upon which the limitations period should begin to run  
23 would be January 1 of 1992.

24           Now, I want to say that I do believe an argument  
25 could be made that that should not be the concrete date

1 because clearly in January, '92, with the negotiation of  
2 the Peace Accord, there has to be a time period for the  
3 transition to take place. And I think the parties have  
4 pointed out that was roughly a two year period before the  
5 first general elections were held.

6 But looking at January 1, 1992 as a starting  
7 date, clearly the case in terms of Professor Mauricio has  
8 been timely filed. I do agree with the Plaintiffs, one  
9 has to be careful when you are looking back. What we have  
10 here, really are three separate lawsuits that have been  
11 filed, and Professor Mauricio seems to me joined on  
12 February 17 of 2000.

13 But taking that to be the case, I think he is  
14 within the ten year period, so I am going to deny the  
15 Defendants' motion for judgment as a matter of law on  
16 Professor Mauricio's claim against General Vides.

17 Let me turn now to the second motion from the  
18 defense.

19 MR. KLAUS: This act provides for damages.  
20 Ms. Gonzalez testified today she is not seeking damages.  
21 I move as a matter of law a judgment on behalf of the  
22 Defendants regarding Ms. Gonzalez.

23 THE COURT: Okay. Let me turn to the Plaintiffs.

24 MR. GREEN: Your Honor, what she said is that  
25 damages could not compensate her for her torture, and she

1 has joined the lawsuit, she is seeking damages, and it is  
2 traditionally the function of counsel to request what  
3 counsel considers to be a reasonable amount of damages.

4 THE COURT: Well, that is not how I understood  
5 Ms. Gonzalez's testimony, but I took Ms. Gonzalez's  
6 testimony, frankly, to be somewhat in the sense of saying  
7 that the losses that she discussed, that the injuries and  
8 torture that she testified to simply could not be  
9 compensable by any amount.

10 You remember Mr. Klaus asked about, what about  
11 your lawyers, and there was an objection about  
12 attorney/client privilege, and I don't think that is  
13 covered by attorney/client privilege, because obviously  
14 Ms. Gonzalez's lawyers were acting as her agents when they  
15 were seeking money damages when there are prior  
16 conversations, and I do think prior conversations are  
17 privileged.

18 The agents are stating publicly to the world  
19 there is a request for damages. Now, the jury is going to  
20 have to be the deciding person as to whether Ms. Gonzalez  
21 is entitled to damages, and whether there is some conflict  
22 between what is said, or misunderstanding or something  
23 else. I think a party has a right to pursue their claim  
24 for damages unless they formally turn around and say and  
25 instruct their lawyers to withdraw that pleading.

1           I don't think it is an issue of judgment as a  
2 matter of law, and there are also cultural issues involved  
3 here, as well as language issues, and trying to take  
4 account for all of those things, the lawyers are going to  
5 have to handle that with the jury and make their own  
6 discussion with the jury on that.

7           I think that clearly a client acts with the  
8 assistance and advice of their lawyer, and at this point,  
9 at this point, there are in fact pleadings asking for  
10 monetary, compensatory and punitive damages on behalf of  
11 each of the Plaintiffs. And, again, employing the  
12 standard of looking at the evidence in the light most  
13 favorable to the non moving party, I don't take what  
14 Mrs. Gonzalez said as a statement that she is instructing  
15 her lawyer to withdraw that claim on her part.

16           I must admit there is a little bit of ambiguity  
17 on the issue -- I say the issue -- as to whether she  
18 really wants monetary damages, and you all can talk to the  
19 jury about that. Clearly there is a request for monetary  
20 damages, and I think that has to stand at this point.

21           Okay. Let's go to the next motion.

22           MR. KLAUS: No more motions.

23           THE COURT: Okay. Let's go back, if we can,  
24 let's go back to the jury instructions. I would like to  
25 see if we can't complete this. I've passed out what is

1 The Court's third draft.

2 Without wanting to go backwards, the elements, I  
3 think, reflect our discussions of yesterday. The  
4 definition of superior subordinate relationship I think  
5 reflects our discussions.

6 There is a slight stylistic change. I added  
7 numbers in terms of the two items that have to be  
8 established there, but I think everything else accords  
9 with our discussion. I may be wrong, but I thought we had  
10 concluded -- no, we hadn't. I think when we stopped, we  
11 were about to deal with this concept of actual or  
12 constructive knowledge, the third element.

13 Does anyone have any comments on that?

14 MS. VanSCHAACK: Your Honor, because the second  
15 element, the notice element concerns whether or not a  
16 Defendant commander has been placed on notice that his  
17 subordinates are committing abuses --

18 THE COURT: You said second, you meant third?

19 MS. VanSCHAACK: I apologize, third. It is that  
20 notice that triggers the Defendant commander's duty. In  
21 the formulation of the third and fourth elements, we added  
22 and/or extrajudicial killing after each mention of  
23 torture, and I think that would be appropriate in each of  
24 these two explanatory paragraphs as well.

25 THE COURT: Yes. Do we both agree?

1 MR. KLAUS: That is fine with me.

2 THE COURT: You know, I added that a couple  
3 places, so I will do that.

4 We need to add it at the bottom on the last line;  
5 is that right?

6 MS. VanSCHAACK: That is right. I think there  
7 are two instances in which torture appears.

8 THE COURT: I will take care of that. I will add  
9 it on the fourth line and on the seventh line.

10 MR. KLAUS: And also under the failure to prevent  
11 or punish.

12 MS. VanSCHAACK: I agree.

13 THE COURT: Sticking with the active or  
14 constructive acknowledge issue. Any comments?

15 MS. VanSCHAACK: In the Plaintiffs' submission  
16 with respect to this explanatory text --

17 THE COURT: Which submission, two?

18 MS. VanSCHAACK: Yes, it would be in two. We had  
19 requested a sentence to the effect that the Plaintiffs do  
20 not have to prove that the Defendants knew or should have  
21 known that they themselves would be targeted for abuse.  
22 We included this --

23 THE COURT: Let me stop you for a minute so we  
24 can all find that. I am looking at your second  
25 submission. Where is it in there; do you know?

1 MS. VanSCHAACK: Under knew or should have known,  
2 begins with the Plaintiffs do not have to prove -- our  
3 intent was to respond to an apparent confusion among the  
4 jury in Ford, that jury members asked at least three  
5 questions in this regard. Is it necessary to show that  
6 the churchwomen themselves were being targeted, or is it  
7 enough that individuals like them were being targeted.

8 In particular, page 2544, there was a question in  
9 this regard, and to head these potential questions off at  
10 the pass, it may make sense to include language directly  
11 in the instructions that the jury would have with them as  
12 they deliberate, because there was clear confusion.

13 And I don't think there is the question of the  
14 law, we have the Hilao case in which there was a class of  
15 10,000 persons. Marcus should not have known that each  
16 individual person tortured and detained and a member of  
17 that class was in fact going to be, so it is more a matter  
18 of clarity for the jury.

19 THE COURT: Mr. Klaus, what is your view of that  
20 suggestion?

21 MR. KLAUS: Where are you suggesting we put that?

22 MS. VanSCHAACK: I would add it here. We  
23 suggested language that said the Plaintiffs do not have to  
24 prove that the Defendants knew or should have known of the  
25 torture of these specific Plaintiffs, rather, it is enough

1 that the Defendants were aware of or should have been  
2 aware of a pattern or practice of abuses perpetrated by  
3 their subordinates that were similar to those suffered by  
4 the Plaintiffs.

5 MR. KLAUS: I agree to placing the first sentence  
6 at the end of actual or constructive, presumed knowledge,  
7 element number three, but I won't agree to the second  
8 sentence. And I think it is extra, unnecessary.

9 THE COURT: Well, let me ask you to think about  
10 this for a minute. You want to think -- I hear what you  
11 are trying to do and I think the intent is a laudable  
12 intent, because it is clear the jury in Ford was having  
13 difficulty in terms of focusing what is it you are talking  
14 that people have to know.

15 You see, that is why yesterday I thought it was  
16 significant and helpful when we tied element one and  
17 element two to the specific Plaintiffs in this case, but  
18 element three is obviously a more generic statement. And  
19 what you say in element three is first this knowledge  
20 requirement can be satisfied if you show the commander had  
21 actual knowledge that his troops were committing torture,  
22 or B, if you prove he had constructive knowledge because  
23 of everything that was known, he should have known it, and  
24 we impute it to him.

25 Now, we don't want to muddy the waters, but I

1 think what you are going beyond and saying, then, is,  
2 having said that, you don't have to show that the  
3 commanders were aware that this particular Plaintiff was  
4 tortured.

5 Now, you are saying you are willing to accept  
6 that, but I think that second sentence really in a sense  
7 reinforces the appropriate elements. And I know you may  
8 be leary of this thing of pattern and practice, and maybe  
9 that overstates it, but I think what you are saying is,  
10 rather, it is enough that the Defendants were aware of or  
11 should have been aware of --

12 MS. VanSCHAACK: Your Honor --

13 THE COURT: Let me finish for a second.

14 -- that they were aware of or should have been  
15 aware of, that their subordinates had committed, were  
16 committing or with about to commit acts of torture similar  
17 to those suffered by the Plaintiffs.

18 It seems to me that simply reinforces the  
19 requirement, you see, in element three. You don't want to  
20 detract from it. On the other hand, you want to clarify  
21 that there is no requirement that a military commander  
22 knew that Ms. Gonzalez, for example, or Professor Mauricio  
23 were in fact the subject of those tortures.

24 MR. KLAUS: Well, then, if you want to take out  
25 the third sentence, beginning with alternatively, because

1 otherwise it is redundant, that is what that sentence is  
2 designed to inform the jury of. In light of the  
3 circumstances at the time, they should have known their  
4 subordinates --

5 THE COURT: No. Wait a minute now. That isn't  
6 redundant. That is what I am saying, the purpose of that  
7 definition, when you think about it, is to say this  
8 particular element, the knowledge element can be satisfied  
9 in one of two ways. Either one is adequate.

10 You can prove that a commander actually knew that  
11 his troops were committing acts of torture, killing, or,  
12 if you can't prove that, you can prove that the commander  
13 should have known that his troops were doing that because  
14 of, and then you get into the circumstances, widespread  
15 publicity, number of deaths and various other things.

16 So you don't want to remove those two, those are  
17 the heart of the element. What the Plaintiffs want to do  
18 is simply clarify in satisfying either one of those you do  
19 not have to prove that the military commander had to know  
20 that this specific Plaintiff was being tortured.

21 MR. KLAUS: I agree with that. What is covered  
22 in light of the circumstances includes pattern and  
23 practices of abuses. It includes that -- that is included  
24 in that.

25 THE COURT: Okay. Here is how I am going to

1 handle that, then. I am going to add as a last sentence  
2 the Plaintiffs, however, do not have to prove that the  
3 Defendant military commander knew or should have known of  
4 the torture of the specific Plaintiff, rather it is enough  
5 if the Plaintiff proves that the Defendant military  
6 commander was actually aware of or should have been aware  
7 of -- should have been aware that his subordinates had  
8 committed, were committing, or were about to commit  
9 torture and/or extrajudicial killing.

10 MR. KLAUS: Okay.

11 THE COURT: Let me let you take a look at it, and  
12 see what you think.

13 MR. KLAUS: That is fine. I just think -- you  
14 are going to leave alternatively?

15 THE COURT: I think you have to leave that  
16 because that is the second way of proving the element.

17 MS. VanSCHAACK: Just to explain the origins of  
18 that term pattern and practice, that comes from Judge  
19 Barkett's occurrence. She writes at page 40, case law  
20 consistently asserts commanders with executive  
21 responsibility should know or should have known practice  
22 of abuse. She is relying on the war crimes tribunals.

23 THE COURT: I understand that. The only thing  
24 is, we said the same thing without using the words pattern  
25 and practice. We talked about that they were doing it,

1 had done it, were doing it, or were going to do it. I  
2 think we ought to stick with the same language. I agree  
3 with you, it is different ways of saying exactly the same  
4 thing.

5 Okay. Let me make a note of that. Okay.

6 Anything else on actual or constructive  
7 knowledge?

8 Okay. Let's move on to failure to prevent or  
9 punish.

10 MS. VanSCHAACK: Just a small textual change  
11 before a substantive suggestion. Earlier in the  
12 instructions we removed the word "the" in front of acts of  
13 torture to imply it is not the acts of torture that are  
14 the subject of suit, but rather torture being committed by  
15 subordinates. I ask that we follow that practice here.

16 THE COURT: What you are saying, elements three  
17 and four are generic?

18 MS. VanSCHAACK: That is right.

19 THE COURT: Any objection to removing the article  
20 "the"?

21 MR. KLAUS: No. Are you going to remove the word  
22 "acts".

23 THE COURT: I may take out acts. Any objection?

24 MS. VanSCHAACK: No.

25 MR. KLAUS: Adding extrajudicial.

1 THE COURT: Yes, we have to.

2 Anything else from the Plaintiff on this?

3 MR. KLAUS: In both spots you are going to remove  
4 the article?

5 THE COURT: Yes, both spots.

6 MS. VanSCHAACK: On a more substantive front, in  
7 your original draft version you had two instances listed  
8 which would constitute a failure to punish. The first was  
9 a failure to initiate or undertake disciplinary action,  
10 and I think the suggestion there was that was some sort of  
11 internal action.

12 And the second point being failure to submit the  
13 matter to competent authorities which would imply an  
14 external source. I thought the concept that a commander  
15 has a duty to do his own investigation is not simply a  
16 matter of forwarding a case to an external authority makes  
17 sense.

18 So, one way of handling that would be to include  
19 some mention of investigation prior to the term submit.  
20 In other words, proof that the Defendant military  
21 commander failed to investigate the matter or to submit it  
22 to the competent authorities, because I think failure to  
23 investigate in and of itself constitutes a violation of  
24 that failure to punish prong of the doctrine.

25 In other words, you can't simply absolve

1       yourself --

2                   THE COURT:   You want the words investigate and?

3                   MS. VanSCHAACK:   The commander has a duty to  
4       investigate.

5                   THE COURT:   I think Professor Garcia testified in  
6       his view a military commander's first obligation is to  
7       assess the reliability of the report and if the commander  
8       feels that the report has -- I would suspect it means  
9       minimal reliability, it can come because of who is telling  
10      it to you, what have you, so on, you need to go out and  
11      take a look at it.

12                   And if in fact you conclude that there are  
13      grounds to go forward, then you move on to the discussion  
14      about the ordinary or extraordinary court marshal or  
15      something else.   And I suppose you could get to some point  
16      where it goes outside the military, and this is wide  
17      enough that it would encompass all of that, it is the  
18      investigator.

19                   MS. VanSCHAACK:   Correct.

20                   THE COURT:   Any objection to adding investigate?

21                   MR. KLAUS:   No.

22                   THE COURT:   All right.   The sentence will read  
23      failure to punish may be established -- failure to punish  
24      may be established by proof that the Defendant military  
25      commander failed to investigate and submit.

1 MS. VanSCHAACK: I think or submit probably  
2 captures the concept better.

3 MR. KLAUS: Okay.

4 THE COURT: Investigate or submit.

5 You know, I paused on that because I suppose one  
6 could also argue that the duty to investigate is an aspect  
7 of the prevention. But as you point out, it is also the  
8 preliminary step in a determination as to whether  
9 punishment is appropriate. You've got to identify the  
10 perpetrator before you start talking about anything else.

11 Okay.

12 Any other comments on failure to prevent or  
13 punish from the Plaintiffs' point of view?

14 MS. VanSCHAACK: I brought up something  
15 yesterday, a sentence that had been a part of the Ford  
16 instructions under the effective command definition that  
17 we put to the side because there is a question where it  
18 belonged in the explanatory text. And that sentence read  
19 in the Ford instruction is a commander cannot escape  
20 liability for his own action or inaction causes or  
21 significantly contributes to a lack of effective command  
22 over his subordinates.

23 I submit that still makes the most sense under  
24 our explanatory text under element two. That is where the  
25 concept of subordination is discussed. That sentence, if

1 I understand the rationale in the Ford case --

2 THE COURT: Can you read the sentence again?

3 MS. VanSCHAACK: A commander cannot escape  
4 liability where his own action or inaction causes or  
5 significantly contributes to a lack of effective command  
6 over his subordinates.

7 In other words, if a defense is raised I did not  
8 have command over my subordinates, that is not a valid  
9 one. If it is the commander's own inaction or willful  
10 blindness or purposeful distancing is a result of that.

11 THE COURT: What is the Defendants' view of that?  
12 I thought you had a slightly similar statement in your  
13 last paragraph, and maybe it is different because your  
14 last paragraph seems to deal more with the duty to  
15 investigate.

16 MR. KLAUS: Well, my last sentence has to do with  
17 the impede or frustrate an investigation. I don't mind  
18 putting that in.

19 THE COURT: Hold on a second, if you would. Your  
20 paragraph really says that a commander may fulfill his  
21 duty to investigate by delegating that responsibility to a  
22 responsible subordinate and the commander has a right to  
23 assume that the subordinate properly instructed is going  
24 to go out and fulfill his obligation.

25 On the other hand, if the commander impedes or

1 frustrates that investigation, then he has not fulfilled  
2 his duty to investigate. If you say to a particular  
3 subordinate go out and do this, and you somehow block all  
4 roads so the subordinate can never achieve his goal, you  
5 cannot claim you have done investigation. I think that is  
6 slightly different.

7 Can you read the sentence one more time?

8 MS. VanSCHAACK: A commander cannot escape  
9 liability where his own action or inaction causes or  
10 significantly contributes to a lack of effective command  
11 over his subordinates.

12 It is a slightly different concept.

13 THE COURT: Yes, I think what you are saying is  
14 that a commander cannot claim that he didn't have  
15 effective control if he by his own actions has given up  
16 the capacity to exercise effective control.

17 MS. VanSCHAACK: That's right.

18 THE COURT: Would you draft that sentence the way  
19 you want it, and let's take a look at it when it is on  
20 paper? But it clearly is talking about this concept of  
21 whether you did or didn't have effective control because  
22 the requirement that you have effective control is  
23 obviously a very important one. So we need to look at  
24 that and make sure it is a correct concept and where to  
25 put it.

1 MS. VanSCHAACK: It is in our second version  
2 after the heading effective command, it is the last  
3 sentence, and I think we had it in bold.

4 THE COURT: You do. You do. Yes. Okay. We  
5 have it in writing, then. Let's hold on to that for a  
6 minute.

7 How about the Defendants' request, the last --  
8 the last paragraph. Do you still want this, Mr. Klaus?

9 MR. KLAUS: No. No, I don't think we need it.  
10 They may want it.

11 MS. VanSCHAACK: I don't think it is necessary.

12 THE COURT: Okay. If it is not requested, let's  
13 put it to the side. If someone does ask for it, as the  
14 evidence goes forward, we can always come back and discuss  
15 it.

16 What I am talking about now for the record is the  
17 last paragraph in what is marked Defendants Number 1.  
18 That is what I was talking about before, the duty to  
19 investigate when that duty may be delegated, and how that  
20 duty, even where there is a delegation, how that could be  
21 frustrated and therefore not be an appropriate delegation.

22 The Defendant doesn't want that, so we will put  
23 that aside.

24 Okay. Let's go back to the Plaintiffs' request  
25 dealing with effective control. Assuming for a minute

1 that were changed to read as follows: A military  
2 commander cannot claim lack of effective control if his  
3 own action or inaction causes or significantly contributes  
4 to a lack of effective control over his subordinates.

5 What does the defendant say?

6 MR. KLAUS: I am looking at what we had in the  
7 last case, says the same thing. Seems more readable to me  
8 where it would say, looking at The Court's first draft on  
9 page nine, a commander cannot, however, be excused from  
10 his duties where his own actions cause or significantly  
11 contribute to the lack of effective control.

12 THE COURT: It is the same thought, but we are  
13 talking about -- I think we come back to this because the  
14 Eleventh Circuit has underscored the fact that  
15 establishing that the commander had the ability to control  
16 those troops is just critical.

17 Now, I think what the Plaintiff is saying is,  
18 conceding that point is true, can a commander later turn  
19 around and say wait a second, I didn't have effective  
20 command of my troops, if the basis of that is that the  
21 commander himself has done something to impair his ability  
22 to exercise effective command or control.

23 MR. KLAUS: It is a little bit scary. What  
24 happens when President Bush has elective surgery, does he  
25 give up effective control of the country? He delegates it

1 to someone else, are we getting into delegating.

2 THE COURT: No. I think that is a separate  
3 issue.

4 The real issue, you see, is when someone says I  
5 didn't know what they were doing out in that province  
6 because I didn't answer the phone when they called. I  
7 don't think you can -- I think that is what the Plaintiff  
8 is saying, that you can't unilaterally take actions  
9 effectively to divest yourself of responsibility that  
10 reposes in you and nobody else. I think that is what they  
11 are saying.

12 MR. KLAUS: I don't have an objection to it. If  
13 that is the law --

14 THE COURT: Well, that is what I am asking you.

15 MR. KLAUS: I recognize what the word is. The  
16 wording --

17 THE COURT: Do you believe that is a correct  
18 statement of the law?

19 MR. KLAUS: Yes. I don't think a commander can  
20 say I don't have control because he voluntarily does or  
21 doesn't do something that hurts his control.

22 THE COURT: All right. I am going to change that  
23 slightly then and I will put it in and I will add it in  
24 the fourth draft. I will try to keep the language in  
25 terms of effective control, that is what we have been

1 using, and if you think that there is a better or more  
2 readable version of that somewhere else, why don't you  
3 pull it out and let's take a look at it, and we will go  
4 back to this again. Let me see where we wanted to put  
5 that. That goes under element two.

6 MR. KLAUS: You want it as the last sentence on  
7 element two. That is fine, that is where it should go.

8 THE COURT: Okay. Does that finish command  
9 responsibility?

10 MS. VanSCHAACK: One tiny thing, bearing in mind  
11 it is after six, formulation of element one, Plaintiff  
12 would request the addition of or security forces after  
13 military --

14 THE COURT: Any objection?

15 MR. KLAUS: No.

16 THE COURT: Okay. Why don't we stop. Before we  
17 do that, though, let's take a second. The Plaintiff has  
18 rested, which means we will start the defense case  
19 tomorrow, Thursday, I assume tomorrow is Thursday. Is  
20 your view still you may finish, understanding you don't  
21 control cross examination, but that the goal would be  
22 Wednesday?

23 MR. KLAUS: Yes, but I figure Tuesday. General  
24 Garcia will be first. I am assuming we will go all day,  
25 direct and cross, and Ambassador Corr Monday, and General

1 Vides Tuesday and Wednesday morning I may recall the  
2 Plaintiffs and -- I would suspect that Thursday we could  
3 do our closings and get it to the jury.

4 THE COURT: Well, first, obviously, you will take  
5 the time, whatever you need. I think perhaps it is too  
6 early, but I want to point out to you that if in fact  
7 defense concludes on Tuesday or Wednesday, it would allow  
8 us, trying to give everybody a little bit of elbow room,  
9 it would allow us to have final arguments on Tuesday. If  
10 we can't do that, we will need to go over to Monday the  
11 22nd.

12 And I think it is too early, we have to see  
13 direct and cross, and how we move along. And we've agreed  
14 no matter where we are, we would stop for Ambassador Corr.  
15 That is agreed on both sides?

16 MR. GREEN: Yes.

17 MR. KLAUS: I don't know if they are going to put  
18 on a rebuttal case.

19 THE COURT: That is a question. I know two  
20 witnesses have been asked to remain available, and I want  
21 to point out to you there is kind of a narrow window  
22 there, and as we get closer to Wednesday and Thursday, all  
23 that would do is push us over to final arguments the  
24 following Monday, and maybe that is not such a bad idea  
25 because it would give us time to take a final look at the

1 instructions, and give everybody the weekend to kind of go  
2 over their own final arguments, and what have you.

3 Let's see where we are. Those are the options.  
4 It is too early to tell right now. Thank you all.

5 MR. GREEN: Your Honor, there is one matter, and  
6 that is our motion in limine.

7 THE COURT: Yes, yes, forgive me. We need to  
8 deal with that. We really need to deal with that today.

9 Mr. Klaus, do you oppose the motion in limine?

10 MR. KLAUS: Yes. They want to exclude their  
11 certificates. They are governmental documents, they are  
12 subject to the hearsay rule. They are under seal. Copies  
13 are under seal, they are governmental documents, just like  
14 the cables, better than the cables.

15 THE COURT: What is the response on the other  
16 side?

17 MS. VanSCHAACK: Motion in limine is not the fact  
18 that they constitute hearsay, the fact that they  
19 constitute government documents are not relevant. The  
20 award themselves is character evidence, character is not  
21 at issue.

22 The second grounds, awards are not relevant to  
23 any issue in this case. In a criminal case in which  
24 character evidence is allowed under 401, such awards and  
25 commendations are generally not admissible on the grounds

1 that they are irrelevant in defense of, for example,  
2 police officers in a brutality case. And we cited a  
3 number of cases in that regard in our motion.

4 MR. KLAUS: If I can respond.

5 THE COURT: Yes.

6 MR. KLAUS: They raised the issue of the visit by  
7 Secretary of State Schultz, they raised incidents by U.S.  
8 Government officials, by their visits with government  
9 officials, and they raised criticism by members of the  
10 Department of State. And it is relevant that the same  
11 government who they are trying to say is criticizing what  
12 these men were doing is praising what these men are doing.

13 It does not go to prove character, goes to prove  
14 general confusion about what was going on in El Salvador,  
15 and dependent on whose perspective what was happening.  
16 That is what this whole case is about. Whose perspective  
17 history the jury is going to believe, and this rounds the  
18 perspective versus their perspective of history. This  
19 gives their perspective of history. They are entitled to  
20 rely on the government document the same as they are.  
21 This is a document indicating what these guys did and  
22 didn't do.

23 THE COURT: When do you intend to reach that  
24 issue in your presentation?

25 MR. KLAUS: Sometime during his testimony. I am

1 probably going to go through his career chronologically,  
2 and what happened, and that is the culmination of his  
3 career, that came after he retired, General Garcia.

4 MS. VanSCHAACK: Nothing in the text of those  
5 awards are relevant to the command responsibility. They  
6 can only be admissible for some purpose of proving that  
7 the Defendants acted in conformity with the sort of  
8 pronouncements within those awards. The fact that the  
9 United States Government saw fit to issue a political  
10 award to the two Defendants is not relevant whether or not  
11 they exercised their command responsibility in these two  
12 particular cases.

13 MR. KLAUS: I disagree. The awards speak for  
14 themselves.

15 THE COURT: Well, I want to go back and read the  
16 case law. You know, the first thought is that it candidly  
17 doesn't make any difference, no matter how high the office  
18 of someone in the United States awarding an award or medal  
19 or commendation if the person receiving it was in fact  
20 condoning acts that would be violative of human rights  
21 laws, and the laws of nations, and so on.

22 Having said that, and I told you this the last  
23 time when the lawyers on both sides kind of opened the  
24 doors and allowed in a lot of this, that it seemed to me  
25 that it did simply present the picture, because -- and

1       there has been some suggestion of this in the trial  
2       already, that our Government, that is the Government of  
3       the United States may have been a slightly divided  
4       approach, that is, the State Department may have had one  
5       view whereas the Defense Department understanding that  
6       it's concern was very much with the state of the war and  
7       the success of the war, and making sure that El Salvador  
8       did not become a second Cuba, if you will, that the  
9       Defense Department had a different approach, and a  
10      different sensibility to what was happening.

11               Let me read the cases again, and let's talk about  
12      this before you raise it with General Garcia.

13               MR. KLAUS:  It is not really the award itself, it  
14      is the proclamation that goes along with it.  That is  
15      specific language for each one.

16               THE COURT:  I understand it.  While one party  
17      might call the language boiler plate, it is specific  
18      language, issued by the Secretary of Defense in one  
19      instance -- President Reagan.  Let me look at this and  
20      think about it, and let's discuss it again before it is  
21      mentioned to the jury.

22               MR. KLAUS:  Okay.

23               MS. VanSCHAACK:  Thank you, Your Honor.

24               MR. STERN:  We talked at one point about  
25      distributing jury binders, and I think we are still of the

1 mind we would like to do that. I have submitted a copy of  
2 what we have put together to opposing counsel, and I  
3 haven't had a chance to get any comments.

4 THE COURT: I sort of think we are beyond that  
5 stage. What would be in the binder?

6 MR. STERN: Several of the key documents.

7 THE COURT: Why don't we talk about that  
8 tomorrow. You have them all assembled and everything?

9 MR. STERN: Yes, Your Honor.

10 MR. KLAUS: I thought the purpose of it, they  
11 were going to have them while --

12 THE COURT: That is what I thought, we would have  
13 them so people could look at them. Let's talk about it.  
14 We will put it on the back burner and come back to it.

15 Let's be in recess, and we will come back  
16 tomorrow morning at 9:30. The Court is in recess, thank  
17 you.

18 (Thereupon, the trial was recessed at 6:30.)

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I N D E X

WITNESSES FOR THE PLAINTIFFS

	Direct	Cross	Redirect	Recross
NERIS GONZALEZ	1533	1596	1600	
GLEN CADDY	1603	1644		

