

8-24-04 Trial Transcript

ACCOUNTABILITY
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2 9:00 a.m.

3 THE Court: Good morning.

4 THE COURT: Matter before the Court is Civil-F
5 03-6249, J. Doe versus Alvaro Rafael Saravia, motion for
6 default judgment.

7 MR. Van AELSTYN: Good morning, your Honor. May it
8 please the Court, my name is Nico van Aelstyn. I'm an
9 attorney with the law firm, Heller Erhman White & McAuliffe.
10 We represent the Plaintiff, J. Doe. With me this morning are
11 my colleagues, Russell Cohen --

12 MR. COHEN: Good morning.

13 MR. Van AELSTYN: Matthew Eisenbrandt, Center for
14 Justice and Accountability, and Almudena Bernabeu.

15 THE COURT: Good morning.

16 MR. Van AELSTYN: There are a couple of housekeeping
17 items we would like to address before getting into the
18 proceeding today.

19 First, with regard to exhibits, you will see on the
20 stand there, there are three binders of exhibits. We have
21 already prepared them with tabs. We did not submit them for
22 admissibility today. We will be offering them into evidence
23 with prospective witnesses, which we thought for the ease of
24 the matter, we would put them into the binders first.

25 Is that all right, your Honor?

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1 THE COURT: Yes, we can proceed that way. What I
2 would ask is that, for foundational purposes, if a -- an
3 exhibit is self-authenticating or it is certified an official
4 record, then we can use the exhibit itself. Otherwise, I

5 would like for you to offer the foundation for the exhibit so
6 that it complies with the Federal Rules of Evidence.

7 MR. Van AELSTYN: Not a problem, your Honor. We will
8 do that. If it's all right, we do want to use some of them as
9 demonstrative before we get to the actual witnesses who will
10 provide that foundation.

11 THE COURT: Since there is no jury here and no
12 opponent, I will permit you to do that. Otherwise, it would
13 have to be in evidence, if we had a jury here, before it could
14 be exhibited.

15 MR. Van AELSTYN: I understand, your Honor. It is an
16 unusual proceeding, without a jury or an adversary.

17 THE COURT: Right.

18 MR. Van AELSTYN: In light of that, it brings me to
19 the other housekeeping matter that I have that I wanted to
20 raise with you. Again, in recognition of the unusual nature
21 of the proceeding, the normal custom, of course, is that
22 witnesses are excluded from the courtroom until they offer
23 their own testimony.

24 And we would like to request, if it's all right with
25 your Honor, to have some of the witnesses be here. Many have

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1 traveled far in order to be here, and they would like to hear
2 the testimony of others. Because of the nature of the
3 proceeding, I don't think the testimony of one witness would
4 affect that of another.

5 THE COURT: The normal rule that underlies, and the
6 purpose of sequestration of witnesses, is to prevent the
7 influencing of one witness by another's testimony.

8 If you represent that issues of credibility are not
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9 implicated by the various witnesses' testimony and that there
10 shouldn't be any spillover or influence, then, since nobody is
11 making a request under the Federal Rules of Evidence for a
12 sequestration order, we simply won't issue one.

13 MR. Van AELSTYN: Thank you, your Honor. We
14 appreciate that. And I do make that representation, your
15 Honor. If there is any question in your mind or my mind, we
16 will sequester a particular witness, but I don't believe there
17 are any that would raise that issue.

18 Just to tell you what we plan to do this morning and
19 today, actually, I would provide an opening statement this
20 morning, and then we will have three witnesses today. The
21 Reverend Canon William L. Wipfler will testify first. Bishop
22 Thomas Gumbleton will testify following the Reverend Wipfler,
23 and in the afternoon, we expect the testimony of Amado Antonio
24 Garay. If his testimony should conclude before the day
25 concludes, we do have another witness that is prepared to

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1 testify today, but we are not sure how long it will go.

2 THE COURT: I had some preliminary questions that I
3 wanted to direct to you and this, I hope, will be helpful to
4 the proceedings, because the legal posture in which we
5 encounter the case, I think, at least requires that we confirm
6 that the procedure of requesting the Clerk's default was
7 followed in accordance with the requirements of the Federal
8 Rules of Civil Procedure. And the proof of service that was
9 filed with the Court January 9th of 2004, I want to ask you
10 about shortly.

11 The request to enter default that was filed April the

12 12th of 2004, does recount the service of the summons and the
13 complaint by substituted service and by the evidence that was
14 submitted with that.

15 And I want to note that the Clerk's entry of default
16 is of record, filed April 13th, 2004. And so that we are all
17 understanding the same thing and that we all recognize the
18 nature of that proceeding, that default was entered by the
19 Clerk of the Court and it was not reviewed before its entry by
20 the assigned judge.

21 And I want to confirm with you, Mr. Van Aelstyn, that
22 in the proof of service, as I understand it, and I'm referring
23 to the declaration of Mary Beth Kaufman in support of the
24 service, it is stated under oath that the Center for Justice &
25 Accountability, which is an institute that is located in San

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1 Francisco, California, had done background investigation to
2 locate the defendant, and he is named Alvaro Rafael Saravia in
3 the complaint. That is his name as a defendant. Although, at
4 least one report that is attached involving his presence in
5 Miami earlier in the 1990s uses the name "Saravia," but the
6 name "Moreno" -- and I can't tell whether that's a surname or
7 a given name is used.

8 Do you have any information on that?

9 MR. Van AELSTYN: Yes, your Honor. That is the
10 custom of naming persons in many Latin American countries and
11 Spanish cultures. The first surname -- both the surnames of
12 the mother and father are used.

13 THE COURT: Yes, I'm familiar.

14 MR. Van AELSTYN: Yes. And so Saravia is the surname
15 by which he is customarily known, and yet he does have the

16 second name, which is often omitted because people usually
17 don't use it. Some do, some don't, but usually not.

18 So, in fact, in our complaint, we did include Moreno,
19 but then referred to him throughout as "Mr. Saravia."

20 THE COURT: Thank you. And the Court's understanding
21 from reviewing the declaration is that, as of 2001, there was
22 a report that the defendant was in Miami, resident in Miami,
23 and that there were family members in Miami.

24 In other papers that I have read, there is the
25 report, and in Ms. Kaufman's declaration from the database

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1 searches, that the defendant then moved to California to 2401
2 Manor Oak Drive, Modesto, and that he, meaning the defendant,
3 was associated with two businesses, ALS Fashions, and if I'm
4 pronouncing it correctly, Aquarius. I don't know if that's
5 intended to be a G or Q, but the printed word is G, Aquarius
6 Enterprises.

7 And the owner, or at least the person in control of
8 the residence appears to be an Ines Olsson, who is also in
9 Ms. Kaufman's declaration, asserted to have some relation,
10 whether wife or significant other, to the defendant.

11 And the understanding that I gained from the
12 declaration is that the defendant conducted businesses, most
13 significantly an auto business, in the Modesto area. One
14 called Modesto Auto Mart and the other called Three Amigos
15 Auto Sales.

16 And what my question is, is to confirm with you and
17 for us to clearly understand, because the Court has an
18 independent duty to inquire into the matter of jurisdiction,

19 and personal jurisdiction is certainly waivable under the
20 Constitution and under the law, but in proceeding by way of
21 default, we want to be certain, at least by a preponderance of
22 the evidence, that this service at the Olsson residence was at
23 a place where the defendant resided by a person who was
24 apparently in charge, and then you can use the state law to
25 follow that with a service of a summons and complaint by mail

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1 at that place.

2 But I just want to confirm with you the additional
3 evidence that gives you the confidence to know that this was
4 the place of residence of the right Saravia.

5 MR. Van AELSTYN: Yes, your Honor. We have no doubt
6 about that. And I believe there are additional declarations
7 that were provided at the time to explain further the nature
8 of the substitute service that was performed in September and
9 October of 2003, in conformity with state law.

10 There were at least three attempts to serve
11 Mr. Saravia at that address, 2401 Manor Oak Drive, and that
12 the last time, the papers were served with Ms. Ines Olsson.

13 In speaking with the process server, who did submit a
14 separate declaration, as I recall, Ms. Olsson confirmed a
15 couple of things. First, that Mr. Saravia had lived there;
16 second, that she continued to accept mail for him there; and
17 three, she confirmed that he had operated businesses at that
18 address.

19 I believe she also raised some concern about him
20 owing her some money, but that's not relevant for the issues
21 of jurisdiction.

22 Given those factors and her confirmation of his
Page 8

23 residence there and, most importantly, that she continued to
24 accept mail for him there, and in concert with the separate
25 investigation that the Center for Justice & Accountability

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1 conducted in the Modesto area and what was told to them by
2 others in the community about Ms. Olsson and Mr. Saravia being
3 recognized in the community as having some kind of
4 relationship with each other, we are quite confident, your
5 Honor, that we did indeed conform with the state law
6 requirements for substitute service and that Mr. Saravia was
7 fully aware of the service of this complaint.

8 THE COURT: Was there any current information then
9 that was developed by your investigators as to the then
10 whereabouts of the defendant?

11 MR. Van AELSTYN: No, your Honor. We could not tell.
12 In addition to Ms. Ines Olsson, there was a second person at
13 the residence who also spoke to the process server, a young
14 man who said that he knew who Mr. Saravia was, but that he had
15 not -- this young man, I believe, was a student -- had not
16 seen Mr. Saravia for some weeks, I guess. I'm not sure.

17 But, no, we did not ascertain the immediate
18 whereabouts of Mr. Saravia. We did confirm to our
19 satisfaction that he had been there not long before and that
20 he continued to have communications and relations with those
21 at that address.

22 THE COURT: And did the owner or the person in
23 control, Ms. Olsson, confirm that Saravia had lived there?

24 MR. Van AELSTYN: Oh, yes, she did. Yes, she did.

25 THE COURT: And let me ask one more question. In

1 your investigation, was there any effort made to confirm that
2 the individual in Modesto whom you were seeking to serve is
3 the same Captain Saravia who was at one time a member of the
4 El Salvadoran Armed Forces?

5 MR. Van AELSTYN: Yes, we did, your Honor. We
6 confirmed that in part through the investigation that was also
7 conducted in Miami. The process servers and the private
8 investigators did meet with his relatives in Miami, his
9 ex-wife and his -- at least one of his two children there.

10 And they confirmed that it was indeed the same Alvaro
11 Saravia, who was a captain in the El Salvadoran Air Force and
12 who had left the family in Miami and then went to California.
13 They knew that he lived in Modesto.

14 THE COURT: Do his relatives -- meaning I take it now
15 from your statement that this is a former spouse?

16 MR. Van AELSTYN: No. I actually don't know if they
17 had achieved a divorce, but for all intents and purposes, they
18 lived separate.

19 THE COURT: They lived separate and apart?

20 MR. Van AELSTYN: Yes, your Honor.

21 THE COURT: And, apparently, he has children, and
22 none of these immediate family members reside with him in
23 California?

24 MR. Van AELSTYN: That's correct, your Honor. They
25 all reside in Florida. They all had once resided with him in

1 Florida and had not seen him since he had gone to California.

2 THE COURT: I may be getting ahead of myself, but let
3 me understand just chronologically. When the court proceeding
4 in El Salvador that was addressed to the defendant relative to
5 his responsibility for the assassination was convened, I
6 understood, but I didn't get the chronology completely
7 straight, as to whether the defendant was then in the United
8 States and was returned to El Salvador or whether he was not
9 extradited to El Salvador.

10 MR. Van AELSTYN: He was in the United States and in
11 Florida. He had been in the United States since 1985 or '86,
12 but he was in Florida. And the investigating judge in El
13 Salvador in, I believe, December of 1987, issued an
14 extradition request, which was served on the appropriate
15 authorities in the United States. And Mr. Saravia was
16 arrested and detained in the Miami Detention Center. And he
17 was held there for 14 months, pending the extradition request
18 in El Salvador as it worked its way through the courts in El
19 Salvador and as his habeas corpus petition worked its way
20 through the courts, both in El Salvador and in the United
21 States.

22 THE COURT: And then my understanding is due to the
23 reported inconsistency of testimony of the primary witness in
24 that case, the court in El Salvador did not proceed with the
25 criminal case to assign responsibility to the defendant for

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1 the assassination of the Archbishop.

2 MR. Van AELSTYN: Ultimately, the Salvadoran Supreme
3 Court issued an order that negated the extradition request.
4 They cited a number of things in their order, and you will

5 hear testimony during the course of this proceeding addressing
6 the issue of the -- shall I say, the veracities, supporting
7 nature of the evidence, supporting that determination by the
8 El Salvadoran Supreme Court.

9 THE COURT: And is there a court -- is the Supreme
10 Court in El Salvador like the Supreme Court of New York, a
11 trial court, or is it the court of last resort of highest
12 appeal?

13 MR. Van AELSTYN: The latter, your Honor. It is the
14 court of last appeal in El Salvador.

15 THE COURT: And so the proceeding, the criminal
16 proceeding against the defendant, was in an El Salvadoran
17 trial court?

18 MR. Van AELSTYN: That's right, your Honor. It was
19 in -- it's a little bit different, and you will actually hear
20 testimony from an investigating judge from El Salvador who
21 will describe the nature of proceedings there. Under their
22 civil law system, it is very different than here, of course.

23 THE COURT: All right. I didn't mean to get you off
24 track, but I wanted to confirm with you that we have, at least
25 by a preponderance of the evidence, the right individual and

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1 that we have valid service to confirm the default that has
2 been entered jurisdictionally, so that what we do here means
3 something.

4 MR. Van AELSTYN: I appreciate that, your Honor. We
5 are seeking a default judgment, which is different from the
6 entry of default by the Clerk, and we appreciate the magnitude
7 of what we are requesting.

8 THE COURT: All right. You indicated that you wished
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9 to make an opening statement. I don't know whether you are
10 going to touch on the law, but I think that we probably should
11 discuss the law as we get into the evidence before, though, we
12 start the evidence.

13 MR. Van AELSTYN: I do intend to, your Honor.

14 THE COURT: All right. Then you may proceed.

15 MR. Van AELSTYN: Thank you, your Honor.

16 On the quiet leafy grounds of a hospital for terminal
17 cancer patients in San Salvador, there is a chapel. It is
18 shortly after 6:00 p.m. on March 24, 1980, a warm evening, and
19 the doors to the chapel are open.

20 From outside, you can hear the words of the service,
21 a commemoration of the occasion of the first anniversary of
22 the death of Sarah de Pinto. Monseñor, as he was known then
23 and still known today, the Archbishop of San Salvador, Oscar
24 Arnulfo Romero, was celebrating a mass.

25 Monseñor stands at the alter facing the congregation

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1 and reciting the holy words that he has so many times before,
2 though, as always, adapting them a little to the circumstances
3 of that service. The bread and the wine are brought forward
4 to the alter.

5 At that moment, a car pulls up in the open drive in
6 front of the chapel. The driver bends forward in his seat to
7 inspect something on the floor of the car. Monseñor lifts the
8 chalice, raising it in his arms over his head in offering.
9 From the back seat of the car, a man with a rifle takes aim
10 and pulls the trigger.

11 The gunshot is deafening. There are screams, panic.

12 Monseñor had been struck in the heart. The car drives slowly
13 away as pandemonium breaks out in the small chapel.

14 (Excerpt of March 24 Homily is played as follows:
15 "This Eucharist is precisely an act of faith. In
16 Christian faith, we know that at this moment, the
17 consecrated bread becomes the body of Christ, who
18 offered himself for the world's redemption and in
19 this chalice, the wine transforms into the blood that
20 became the price of salvation.

21 "Let this immolated body and this blood sacrificed
22 for mankind nourish us and dedicate our bodies and
23 our blood to the suffering and pain just like Christ,
24 who did so not for himself but to offer concepts of
25 justice and peace to his people.

17

1 "Let us unite closely in faith and hope in this
2 moment of prayer for Doña Sarita and ourselves."
3 Monseñor is dead.

4 (Photographs were shown of the shooting scene.)

5 The news travels instantly from this small chapel,
6 through the religious community of San Salvador to a visiting
7 delegation of American church members, to the U.S. Embassy and
8 across the country, to his family, to the plaintiff, and to
9 the world.

10 (News clips were shown.)

11 The immediate impact within El Salvador was great.
12 The U.S. Embassy went on alert and evacuated personnel. One
13 week later, the country came to a standstill for the funeral.
14 The immense crowd included religious and political dignitaries
15 from around the world.

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16 This is a view of the plaza from the cathedral, the
17 crowd estimated at some hundred thousand, most unable to get
18 inside.

19 In the almost 25 years since this crime has taken
20 place, what do we know about it? As you can see, there were
21 recordings, pictures, eyewitnesses. The man who drove the
22 assassin to the chapel will testify here this afternoon.

23 From soon after the crime, it was known who did this
24 to Monseñor, those who made the arrangements for the gun, the
25 shooter and the car, the person behind this, those who wanted

18

1 him dead.

2 We know that our defendant, Alvaro Rafael Saravia,
3 was among this group. The evidence will show that Saravia
4 arranged for his personal driver to drive the assassin and
5 that he took the news of the success of the operation to his
6 superior, Major Roberto D'Aubuisson.

7 Saravia has never denied that he was involved.
8 Indeed, he admitted it to representatives of both the U.S.
9 government and the United Nations Truth Commission. Until
10 very recently, this man was living openly in Modesto, just a
11 few miles from here. Now he has run from this case.

12 You will hear from the investigating judge, who was
13 initially given the responsibility of investigating this
14 crime. You will hear how he, this judge, was forced to flee
15 the country just days after his investigation began, when the
16 government-sponsored death squad attacked him in his home.

17 Yet in almost 25 years, not a single person has been
18 held accountable for this crime, not in El Salvador nor

19 anywhere else. In fact, some of those behind this killing
20 rose to the highest positions of power in that country and
21 their influence is still being felt today.

22 This case begins a modest effort to counter impunity
23 with accountability, to clarify history and speak truth, not
24 silence it, and, it is hoped, to achieve some measure of
25 justice in this, one of the worst crimes in the Americas.

19

1 That it comes in a U.S. courtroom is dispiriting in
2 what it says about the Salvadoran legal system, and at the
3 same time, a beacon of hope, solidly grounded in U.S. law, one
4 that was supported by a landmark decision of the United States
5 Supreme Court just this last term.

6 who was Monseñor? The magnitude of this crime and
7 its impact on the plaintiff, on El Salvador, on the hundreds
8 of thousands of Salvadorans that have been disbursed from that
9 small country, including many here to Fresno, as well as its
10 impact on millions more around the world cannot be grasped
11 without understanding who Monseñor Romero was and the country
12 in which he lived and died.

13 (Photos were shown of the Monseñor.)

14 El Salvador is a small country of 5 million people,
15 about the size of Massachusetts. In the late 1970s, it was a
16 country where the division between rich and poor was among the
17 worst in Latin America. Landholdings remained concentrated in
18 the hands of a few, 14 families, it is said, and the vast
19 majority of the population works for peasant wages to tend to
20 the coffee crops of these few oligarchs.

21 An understanding between the military and the
22 oligarchs ensured that the power was maintained by the few at

23 the expense of the many. This understanding was implemented
24 by the security forces, both through outright government
25 repression and through death squad terror.

20

1 It is important to note here that the U.S. played a
2 complex role in all of this, often supporting the repressive
3 regimes with military aid, and at other times implementing a
4 foreign policy that emphasized human rights that succeeded in
5 reining in the violence. You will hear more about the U.S.'s
6 role from Ambassador Robert White, who was the U.S. Ambassador
7 to El Salvador at the time of the crime.

8 When opposition started to emerge to this order, the
9 powerful few in El Salvador stole elections and eliminated
10 their opposition. Torture, killings, disappearances: The
11 spread of terror were used in an effort to destroy any
12 attempts to organize for social change. They targeted
13 students, workers, professors, human rights activists, and
14 perhaps, most of all, the Catholic Church. This, in a country
15 that was overwhelmingly Catholic.

16 The Church there began to respond to these
17 conditions. Liberation Theology, which originated at a 1968
18 church conference in Medellin, Columbia, began to grow and
19 spread through Latin American. A significant portion of the
20 Church in El Salvador began to move from supporting the
21 powerful toward being a church of the people. Being "of the
22 people" meant that many in the Church began to work to combat
23 social injustice and poverty, to empower the poor and
24 disenfranchised, to organize communities and to document the
25 growing number of human rights abuses. And they were growing

1 at this time.

2 Monseñor Romero's own spiritual journey exemplifies
3 the journey of the Church in Latin America at this time. He
4 was a religious conservative at the time of his elevation to
5 Archbishop, considered to be quiet, bookish, and no threat to
6 the established order. He had served as a priest and a Bishop
7 in the Eastern provinces of El Salvador without earning the
8 ire of the particularly repressive landowners of that area.

9 This began to change shortly after his elevation to
10 Archbishop. In March 1977, Rutilio Grande, a priest and a
11 good friend of Monseñor Romero, was killed. This contributed
12 to Romero's increasing awareness of the growing human rights
13 abuses being committed in his land. And they were growing
14 during this time.

15 (Photographs of human rights abuses were shown.)

16 These are but a few representative photos of the
17 kinds of human rights abuses that were becoming commonplace.

18 Monseñor began to speak out about these abuses in his
19 weekly homilies. He broke the silence, naming the victims and
20 naming the perpetrators. These homilies were broadcast all
21 across El Salvador by the Church's radio station and were
22 heard by most of the country.

23 At his final homily on March 23, 1980, the "Voice of
24 the Voiceless," as he was known, took a bold new step. He
25 declared, "In the name of God, then, and in the name of this

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2 tumultuous, I implore you, I beg you, I order you, in the name
3 of God, stop the repression!"

4 So why did they kill the Monseñor? The evidence will
5 show in this proceeding that there were several reasons.

6 First, they silenced the leading advocate for human
7 rights in El Salvador. More than two-thirds of all the radios
8 in El Salvador were tuned to his weekly homilies and they were
9 the only source of information widely available of the human
10 rights abuses that were being committed, and he documented
11 them in his weekly homilies.

12 Second, they sought to silence all other critics of
13 the regime by creating an atmosphere of total fear. If they
14 could do this to the Monseñor, nobody was safe.

15 Third, they eliminated the possibility of a
16 nonviolent solution to the political and social crisis that
17 was gripping El Salvador at that time.

18 As Ambassador White described then before Romero was
19 killed and will again in this proceeding, Monseñor was the
20 only bridge between the polarized forces in that country.

21 The far right did not want a bridge, they wanted
22 chaos and total war. For them, the moderates were more
23 dangerous than the guerillas.

24 Finally, at killing Romero, they established impunity
25 for the powerful, thereby creating a sense of powerlessness

23

1 for all others. Monsenor's killers stood above the law; they
2 were the law. They wanted to send a message and they did.
3 They wanted chaos, violence and war, and they got that too.

4 The impact of the assassination soon became apparent

5 in an escalation of violence and an increasing polarization of
6 the society.

7 The first large scale massacre of this period took
8 place within two months of Romero's killing at the Rio Sumpul,
9 where more than 600 civilians were slaughtered by government
10 forces.

11 You will hear testimony of numerous other high
12 profile killings that soon followed Romero's. By the end of
13 the year, 1980, somewhere between 10,000 and 12,000 civilians
14 had been murdered in that small country. The rate of killing
15 went off the charts and no one was safe. If they could kill
16 Monseñor, they could kill anyone. And they did.

17 Before the year was out, the FMLN, the guerilla army,
18 was formed, and the country descended into full-scale civil
19 war. The mass migration of Salvadorans from that conflict
20 soon grew.

21 The legacy, then, is a paradoxical one. Romero is an
22 inspiration for many, as you will hear, as a symbol of hope
23 and nonviolent opposition. Yet at the same time, he is a
24 symbol of impunity. Indeed, his is the paradigmatic case of
25 impunity.

□

24

1 It is hoped that this proceeding will eliminate that
2 second aspect of his legacy.

3 We proceed here then with claims under the Alien Tort
4 Claims Act and the Torture Victims Protection Act. Both the
5 ATCA and the TVPA make actionable in U.S. courts certain
6 violations of International norms.

7 Let's address the TVPA first. The Torture Victim
8 Protection Act of 1991; included amongst the actionable

9 violations of law, are torture, but also extrajudicial
10 killings. And the TVPA defines extrajudicial killings as
11 follows:

12 The definition of extrajudicial killing, section
13 3(a): "For the purposes of this Act, the term
14 'extrajudicial killing' means a deliberate killing,
15 not authorized by a previous judgment pronounced by a
16 regularly constituted court."

17 Congress passed the TVPA in 1991. The U.S. Supreme
18 Court in the *Sosa v. Alvarez-Machain* decision of just a little
19 over a month ago, stated, quote, "The TVPA establishes an
20 unambiguous modern basis for federal claims of torture and
21 extrajudicial killing."

22 Plaintiff brings this action under the ATCA, in
23 addition to the TVPA. The Alien Tort Claims Act provides
24 jurisdiction for a claim of extrajudicial killing, as does the
25 TVPA, and also provides jurisdiction for a claim for crimes

25

1 against humanity.

2 Crimes against humanity are defined as an act
3 committed as part of a widespread or systematic attack
4 directed against a civilian population.

5 The ATCA grants federal district courts jurisdiction
6 over civil actions brought by an alien for a tort committed in
7 violation of the "law of nations" wherever it occurs.

8 In the *Sosa v. Alvarez-Machain* decision of just over
9 a month ago, the United States Supreme Court affirmed that the
10 ATCA does indeed provide jurisdiction for these kinds of
11 actions.

12 It stated, quote, "For two centuries we have affirmed
13 that the domestic law of the United States recognizes
14 the law of nations and incorporates them into the
15 federal common law."

16 It continues: "The position we take today has been
17 assumed by some federal courts for 24 years, ever
18 since the Second Circuit's decision in *Filartiga v.*
19 *Peña-Irala*."

20 "For purposes of civil liability," which is what we
21 are here to do today, "the torturer has become like a
22 pirate and slave trader before him: *Hostis humani*
23 *generis*, an enemy of all mankind, and the same
24 applies to those who engage in extrajudicial
25 killings."

26

1 Finally, the court stated, "Actionable violations of
2 international law must be a norm that is specific,
3 universal and obligatory."

4 There is no question that extrajudicial killings and
5 crimes against humanity constitute specific universal and
6 obligatory violations of international law.

7 Both the TVPA and the ATCA provide for damages to be
8 awarded, both compensatory damages and punitive damages.

9 Punitive damages are to be based upon the following
10 factors which have been derived from the case law, which is
11 actually fairly full at this time.

12 Six factors: The brutality of the act. We have
13 already seen, this was indeed a brutal act.

14 The egregiousness of the defendant's conduct. You
15 will hear evidence during this proceeding with regard to

16 Saravia's conduct in this brutal act.

17 The unavailability of criminal remedy. As we have
18 already discussed, there has been none in this case.

19 The international condemnation of the acts. The
20 collage of headlines from around the world testifies to that,
21 as does the large number of dignitaries from around the world
22 that attended the funeral.

23 Finally, perhaps most importantly, the last two
24 factors: Deterrence of others from committing similar acts,
25 and to redress the harm caused to the plaintiff, the country

27

1 and indeed the world.

2 As we discussed before, this is an evidentiary
3 hearing on plaintiff's application for default judgment. The
4 defendant has not answered the complaint. The allegations in
5 the complaint are, therefore, established.

6 And there are several key facts about Alvaro Saravia.
7 As we discussed, he was a captain in the Salvadoran Air Force.
8 He also was a close confederate of Roberto D'Aubuisson since
9 at least 1977.

10 Roberto D'Aubuisson was the founder of the ARENA
11 party in El Salvador and, as the evidence will clearly show,
12 he was the leader of the death squad responsible for the
13 assassination of Monseñor Romero.

14 Saravia was involved in planning and executing the
15 assassination. He provided and instructed the driver. He
16 reported on the job's completion to D'Aubuisson, and he paid
17 the assassin.

18 He has been determined to be responsible for this act

19 by the UN Truth Commission and the Inter-American Commission
20 on Human Rights, yet he has never been held legally
21 responsible.

22 This is a cable, your Honor, which we will submit in
23 evidence, that was sent by the Ambassador to El Salvador,
24 William Walker, in 1988, to the Secretary of State, back in
25 Washington D.C., reporting on the extradition issues that we

28

1 were discussing earlier and, in particular, the facts of the
2 Supreme Court's decision to counsel for Saravia, his habeas
3 corpus counsel in Miami at the time, in 1988.

4 Those attorneys representing Saravia, by the way, are
5 rumored to have been paid for by D'Aubuisson. Those attorneys
6 presented the judgment of the El Salvadoran court to the court
7 in Miami and, shortly thereafter, he was released.

8 This is language taken from that cable.

9 "The facts referred to here clearly links the Saravia
10 defense to an entire realm of coup plotters, death
11 squad chiefs, kidnappers, baby robbers, mad bombers,
12 car thieves and other assorted criminals. None,
13 however, has ever been convicted, and prosecution is
14 unlikely as long as D'Aubuisson and his backers are
15 free to manipulate the Salvadoran judicial system.
16 The U.S. Government must continue in good faith to
17 seek Saravia's expedition, but given what we are up
18 against, the odds are long of his being convicted in
19 the Salvadoran courts."

20 THE COURT: This is the Ambassador of El Salvador
21 faxing to the Secretary of State of the United States?

22 MR. Van AELSTYN: That's correct. This is a

23 declassified Department of State cable. You will see these in
24 the documents, and Ambassador White will describe these, to
25 the normal eye, illegible series of numbers and such at the

29

1 top. They refer to Zulu Time, which is a standard time used
2 by all embassies throughout the world so that the Secretary of
3 State is on the same time with all of the embassies.

4 These are confidential cables sent by the Ambassador
5 back to the Secretary of State. This language sounds over the
6 top. This sounds kind of wild, but this is the U.S.
7 Ambassador William Walker describing these facts and these
8 people. And indeed, as you will hear the evidence during this
9 proceeding, this language was actually not over the top. This
10 was not hyperbole.

11 But within weeks of this cable being sent, Saravia
12 was released from the detention center in Miami and he has
13 been free in the United States ever since that time.

14 As we stated, the liability against Saravia can be
15 established from well-pled facts. The only issue is the
16 determination of damages. The evidence concerning the damages
17 is great. We have already submitted nearly five dozen
18 declarations from witnesses who knew Monseñor and those who
19 did not, from those present at the killing and the funeral,
20 from religious workers, peasants and politicians, from Nobel
21 Laureates to religious leaders around the world. We will come
22 back to these declarations later in the hearing to describe in
23 more detail what these witnesses have said about Monseñor and
24 the impact of his assassination.

25 You will hear testimony from witnesses who will speak

1 to the nature of the crime, the environment in which it
2 occurred, and its impact within El Salvador and around the
3 world.

4 while nearly all of our witnesses will touch on the
5 impact that the killing had, the witnesses can be grouped into
6 three broad categories.

7 First, there are those witnesses who will describe
8 the crime and the defendant's culpability. These are two,
9 Amado Antonio Garay, the driver of the assassin, and Judge
10 Atilio Ramirez Amaya, the investigating judge.

11 Second, six witnesses will describe in greater detail
12 the context in which the assassination took place. The
13 Reverend Canon William L. Wipfler, John Cortina, Maria Julia
14 Hernández, Esther Chavez, Francisco Acosta, and Ambassador
15 Robert White.

16 Finally, witnesses will address the issue of the
17 impact on El Salvador and beyond of this killing. Padre
18 Walter Guerra, Bishop Thomas Gumbleton, the Reverend John
19 Fife, and two expert witnesses, Professor Terry Karl and
20 Professor Naomi Roht-Arriaza.

21 There is a broader purpose for this proceeding, your
22 Honor, in addition to the damages. This is a truly emblematic
23 case. There were thousands of victims in El Salvador, all
24 important. But the killing of Monseñor was paradigmatic, both
25 because of his high visibility and the blatant nature of his

1 killing. It was meant to send a message and it did.

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2 For that reason, achieving some small measure of
3 justice in this case is critical to starting a journey toward
4 a broader measure of justice. There are several ways in which
5 this case has a very real potential to do so.

6 First, this case represents the only means of holding
7 anyone accountable for this act. It is the only way for
8 Monseñor's relative to achieve any justice.

9 Second, it will have a deterrent effect on other
10 human rights abusers, who may think twice about spending their
11 retirement in the U.S. and it may prompt, we hope, the U.S.
12 government into acting against other human rights abusers that
13 have enjoyed a safe haven here.

14 Third, actions such as this represent the U.S.'s
15 contribution to the worldwide effort toward holding human
16 rights abusers accountable. It is an important and
17 complementary role, not an exclusive role. It is not the only
18 one that is being pursued around the world. There are others,
19 you will hear, in expert testimony, but it is the one we have,
20 it is the U.S.'s contribution.

21 Finally, this case can help to establish one of the
22 most important preconditions for societal reconciliation: The
23 channeling of vengeance into the rule of law through the
24 creation of historical record and the establishment of
25 historical truth.

32

1 Is this claiming too much in this proceeding, here in
2 a courtroom in Fresno, California? No. We are not dealing
3 with just one of the more 75,000 civilians that were murdered
4 during this terrible period of violence in El Salvador, we are

5 dealing with the one case that has come to represent them all.
6 Monseñor is that important.

7 Shortly before he died, Monseñor Romero said that if
8 he was killed, he would be resurrected in the people of El
9 Salvador. The evidence will show that, in many ways, this
10 statement cannot be denied. His legacy is great. His spirit
11 lives on.

12 It is the greatness of that person and that spirit
13 that gives the establishment of truth in this case and gives
14 the achievement of justice in this case the very real
15 potential to contribute to the growing movement from impunity
16 toward accountability, the movement toward real hope in Latin
17 America, the hope for justice.

18 Thank you, your Honor.

19 THE COURT: Relative to the law that you have cited,
20 you are proceeding under the Alien Tort Claims Act and under
21 what I understand to be a part of that Act. The Torture
22 Victims Protection Act is also subsumed within -- it has the
23 reference of being a stand alone public law, but it seems to
24 be referenced in 28 U.S.C. section 1350.

25 MR. Van AELSTYN: Well, yes and no, your Honor.

33

1 That's sort of one of the complex issues the Supreme Court
2 addressed in *Sosa v. Alvarez-Machain*. They do provide
3 independent grounds for jurisdiction, but the ATCA, you are
4 right, provides jurisdiction for violations of international
5 law.

6 The bases of those violations of international law
7 can be drawn from specific, universal and obligatory standards
8 of international law, which can include the TVPA. But it can

9 also include -- the bases for those violations can be found in
10 the Geneva Convention, the United Nations Declaration of Human
11 Rights, and other such universally recognized documents.

12 But, yes, in some sense, the TVPA can also stand as
13 an independent grounds for a violation that is actionable
14 under the ATCA. But, really, we refer to them as kind of
15 parallel bases, because they are independent of each other.

16 THE COURT: And to have standing under the Act, the
17 ATCA refers to an alien.

18 MR. Van AELSTYN: Yes, your Honor.

19 THE COURT: And we also have the understanding from
20 your papers that the cases have not all agreed on even which
21 law is used to determine the standing. In other words, we
22 have no specific definition in the statutes. We have cases in
23 the United States that interpret the statutes, and then we
24 have some reference to international choice of law principles
25 that would look to the law of, in this case, El Salvador. And

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1 then we have the status of the plaintiff, which has to be, I
2 think, determined to meet the requirements of the Act or both
3 laws.

4 MR. Van AELSTYN: Yes, your Honor. And we did brief
5 this material, and it is our strong belief that -- well, two
6 things.

7 First, that the Court -- there is case law to support
8 the Court's exercise of jurisdiction on the basis of standing
9 determined under U.S. law and need not go to the choice of law
10 analysis.

11 However, if the Court does choose to follow that line

12 of cases, that it does adopt a choice of law analysis, we have
13 submitted an expert declaration by a judge in El Salvador who
14 testifies that an action -- that the plaintiff in this case
15 would have standing under Salvadoran law in addition to U.S.
16 law.

17 So whichever analysis the Court applies from the
18 various cases that are out there, there is no question that
19 J. Doe in this case does have standing.

20 THE COURT: And the understanding from the papers
21 that I have is that the plaintiff is a sibling of the
22 decedent?

23 MR. Van AELSTYN: That's correct, your Honor.

24 THE COURT: And the -- under the U.S. law, which of
25 the case law do you rely on as establishing the status of both

35

1 as an alien and someone who is within the required degree of
2 relation to the decedent?

3 MR. Van AELSTYN: I believe -- first, your Honor, I
4 want to confirm that J. Doe is a close relative of Romero, but
5 the nature of his relationship is under seal and all of the
6 papers concerning the identity of J. Doe have been filed under
7 seal, in accordance with the Court's orders.

8 THE COURT: That's true. Now, in the Court's past
9 experience, usually in a trial, we do have, if you will, a
10 disclosure of the identity. If you are representing to the
11 Court that there is a clear and imminent threat or danger to
12 the plaintiff, then, of course, I suppose we would have to
13 have the submission of that in camera, which you have done.
14 You have filed one of your applications under seal and the
15 other not sealed.

16 But relative to the legal requirement to meet what
17 the law says is the minimum, we are going to have to have
18 jurisdictional facts for the basis of finding that the
19 plaintiff has standing.

20 MR. Van AELSTYN: Yes, of course, your Honor. You
21 know, I just realized, we filed this morning a declaration by
22 the plaintiff under seal which addresses all of these issues.

23 THE COURT: Oh, I haven't seen it.

24 MR. Van AELSTYN: Of course you haven't, your Honor.
25 I'm sorry. I thought it had been filed yesterday. It was

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1 filed this morning.

2 And if perhaps we could return to the subject after
3 you have had an opportunity to review those -- review that
4 declaration. We did -- I believe that all of the standing
5 issues have been addressed in that declaration.

6 THE COURT: All right. Well, on your representation,
7 I will, then, at the recess, read the declaration.

8 MR. Van AELSTYN: All right, thank you, your Honor.
9 I apologize. We should have done that yesterday.

10 THE COURT: All right. Well, then, in terms of the
11 way we are proceeding, the Court understands that your
12 position is that the allegations of the complaint relative to
13 liability have been established as true by the lack of a
14 response and opposition in the default process.

15 But relative to the elements to obtain a remedy that
16 you seek, you are going to, nonetheless, offer evidence, which
17 I think would be appropriate if you are going to ask for
18 judgment of the character that you've described.

19 MR. Van AELSTYN: Yes, your Honor. We entirely
20 agree. We recognize that a matter of this magnitude should
21 not rest upon a technicality of a default, so we do intend to
22 submit evidence to provide a sound foundation for a ruling in
23 favor of the plaintiff on the claims that have been brought.
24 THE COURT: All right. If you are ready, then you
25 may call your first witness.

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1 MR. Van AELSTYN: Thank you, your Honor. We are. We
2 call as our first witness, the Reverend Canon William L.
3 Wipfler.

4 THE COURT: Please come forward, Reverend.

5 WILLIAM L. WIPFLER,
6 called as a witness on behalf of the Plaintiff, having been
7 first duly sworn, testified as follows:

8 THE CLERK: Please state your name for the record.

9 THE WITNESS: William Louis Wipfler.

10 THE CLERK: Thank you. You may take the stand.

11 THE COURT: You may proceed, Mr. Van Aelstyn.

12 DIRECT EXAMINATION

13 BY MR. Van AELSTYN:

14 Q. Good morning, Father Wipfler.

15 If I may, can I approach the witness, your Honor?

16 THE COURT: You may.

17 BY MR. Van AELSTYN:

18 Q. I have provided to you two documents. The first, I
19 believe, is your resume, and the second, I believe, is a
20 declaration that you prepared earlier. Could you just take a
21 quick look at them to confirm if these are indeed what I
22 represented they are.

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23 A. (Witness examines the documents.) They are.

24 Q. Thank you. With regard to your resume, Father Wipfler,

25 where do you presently reside?

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1 A. I live in West Seneca, New York.

2 Q. What do you do there?

3 A. I'm retired, and presently a nonstipendiary associate
4 priest in St. Matthias Episcopal Church in East Aurora, New
5 York.

6 Q. The Episcopal Church?

7 A. Yes.

8 Q. Just running down your resume, what position did you hold
9 from 1992 through 1994?

10 A. I was the Associate for Human Rights at the Anglican
11 Office of the United Nations.

12 Q. And prior to that time, from 1989 to 1991, what position
13 did you hold?

14 A. I was deputy to World Mission at the national headquarters
15 of the Episcopal Church. I was special adviser to the
16 Presiding Bishop in matters of human rights.

17 Q. And from 1977 through 1988, which covers the period that
18 will be at issue in this matter, what position did you hold at
19 that time?

20 A. Director of the Human Rights Office of the National
21 Council of Churches.

22 Q. What is the National Council of Churches, Father Wipfler?

23 A. It's an ecumenical commission of 34 denominations of
24 Protestant churches plus a number of orthodox churches, as
25 well.

1 Q. And what was the Human Rights Office of the National
2 Council of Churches?

3 A. It had as its primary function a response to human rights
4 concerns on a worldwide basis. I happen to be -- my academic
5 work and my experience had been in Latin America principally,
6 so as a result, a great deal of emphasis in the beginning of
7 the work of that office was on Latin America and,
8 particularly, the crisis of Central America.

9 It involved gathering considerable amounts of
10 information about specific violations, and then presenting
11 them to entities of an international nature, like the
12 International Commission of Jurists, or Amnesty International,
13 or to committees of the Congress.

14 Q. You have testified in Congress?

15 A. I was present at many hearings and presented testimony
16 concerning violations of human rights in other countries, yes,
17 and also at the United Nations.

18 Q. And how did you gather the evidence concerning these human
19 rights violations?

20 A. There are a number of ways of doing that. One of those,
21 of course, was once the office was established, and even prior
22 to that, in my prior position, receiving an enormous number of
23 affidavits from church entities within the other countries
24 that were human rights organizations within those countries
25 that provided us with information.

□

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2 delegations that visited countries that had particularly
3 egregious reputations in regard to violations of human rights.
4 And doing on site investigations.

5 Q. And did you visit El Salvador during this period as part
6 of that work?

7 A. Yes, a number of times.

8 Q. I see that prior to your role as the Director of Human
9 Rights Office, according to your resume, from 1967 to 1977,
10 you were the Director of the Latin America Department of the
11 National Council of Churches; is that right?

12 A. Yes. I had two roles. One was a role of relating to
13 ecumenical organizations within Latin America. There were
14 many of those. Organizations, coalitions similar to the
15 National Council of Churches.

16 And in addition, we worked in social development and
17 other types of projects which involved relationships with
18 organizations that were attempting to improve the quality of
19 life of persons in those countries.

20 Q. You mentioned academic work in this area. You have a
21 doctorate; is that right?

22 A. I do, right. I have a Ph.D. and I have a Master's degree,
23 and my major field of study was the history of the Church in
24 Latin America, but I was particularly interested in the social
25 and political role of the Church and State/Church relations.

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1 Q. We would ask an obvious question now, Father Wipfler. Do
2 you speak Spanish?

3 A. Yes.

4 Q. You conducted your research in these countries in Spanish?

5 A. Yes.

6 Q. In the course of your work, did you come to know Monseñor
7 Oscar Romero?

8 A. Yes. I, actually, in 1976, I was responsible for the
9 preparation and presentation of a testimony before a committee
10 of Congress, International Affairs Committee in House, and at
11 that time, it was on El Salvador, Guatemala and Honduras, but
12 I paid the greatest amount of attention to El Salvador.

13 And a number of Salvadorans who were at that
14 particular hearing introduced themselves, and it began a very
15 rich communication between them and my office, providing me
16 with a lot of information about the problems that were arising
17 in El Salvador.

18 Q. And this was in 1976?

19 A. '76.

20 Q. I'm sorry to interrupt you, Father. Could you move the
21 mike to your left? Thank you. I would like to be able to see
22 you as you talk.

23 A. All right.

24 Q. Thank you. And how did you come, then, to know Monseñor
25 Romero?

□

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1 A. Well, one of the people who was writing to me was very
2 concerned about the role of the Church in El Salvador. He was
3 a fan of Archbishop Chavez, who was the prior Archbishop.

4 And when Archbishop Romero was elected, he wrote a
5 letter to me that expressed a considerable amount of concern
6 because he was afraid that it would be the end of a kind of
7 social concern, political concern that the former Archbishop
8 had shown. He felt that Archbishop Romero was two things, too

9 conservative to continue such a ministry because of his past,
10 and also too young.

11 I said, "He is only 60. We are going to have him
12 around for an awfully long time."

13 And that was the beginning of my knowledge of the
14 Archbishop. But when Father Rutilio Grande was murdered --

15 Q. When was that?

16 A. That was in, I must confess, I have lost the dates. I
17 think it was '78, but I'm not certain.

18 Q. I will represent to you that it was March 12, 1977.

19 A. Oh, '77. Within weeks of that, less than weeks, almost
20 immediately, some things must have been said by the Archbishop
21 that changed this man's mind. And he sent me a very warm
22 letter saying that the Archbishop's mood had changed, that he
23 had expressed such warm feelings about the outpouring of love
24 and concern that, undoubtedly, the ministry that Father Grande
25 was carrying on was an appropriate ministry and that he was

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1 really demonstrating -- Archbishop Romero, was demonstrating
2 an interest in the way in which that ministry had been carried
3 out.

4 I sent a letter in the name of the ecumenical
5 community in the United States expressing condolences to the
6 Archbishop, when I found that Father Grande was a friend,
7 expressing to him our concern about the murder.

8 Q. So what you heard about Monseñor's Romero's change of
9 heart came from your correspondence in El Salvador?

10 A. Mostly, yes. There were some other things that were
11 beginning to come to us, some writings, an article from

12 someone in El Salvador.

13 Q. So you then wrote a letter to Monseñor Romero to express
14 condolences?

15 A. I did. And I received a letter back expressing his
16 gratitude for our expression and concern, and inviting me, if
17 I were ever in El Salvador, to visit with him.

18 Q. When did you first do so?

19 A. The following year.

20 Q. In 1978?

21 A. Yes.

22 Q. And you met with the Monseñor Romero at that time?

23 A. Yes, but it brief. He was exceedingly busy, but was
24 equally warm -- a sense of warmth. And then one of our
25 colleagues created a great friendship with him, a man by the

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1 name of Dr. Jorge Lara-Braud. And a lot of communication was
2 occurring through Dr. Lara-Braud and our office, that he was
3 kind of an intermediary at times for me.

4 Q. Dr. Lara-Braud was with the National Council of Churches?

5 A. He was an Associate General Secretary, yes.

6 Q. You visited with Monseñor Romero in 1978 and subsequently
7 as well?

8 A. Yes.

9 Q. And can you identify Monseñor Romero, photographs of him?

10 A. Absolutely.

11 Q. Can you take a look at the first binder in front of you?

12 A. (Witness complies.) Yes.

13 Q. I'm sorry, not your declaration, but the binder, the stack
14 of binders there. The small one. I believe you looked at
15 this before.

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16 A. Yes, I did.

17 Q. Could you flip through this and tell me if you recognize
18 photographs of Monseñor Romero?

19 A. I do.

20 Q. Perhaps if you can quickly refer to the exhibit numbers,
21 Exhibit 2 is the first one.

22 A. Yes.

23 Q. And I will just make this point.

24 I'm not sure I made it before, your Honor. The
25 exhibit numbers, there are some gaps in the numbering. But

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1 all of the tabs do correspond with the actual numbers.

2 Exhibit number 4, is that Monseñor Romero, the next
3 page?

4 A. It is, yes.

5 Q. And who is that to his far left, do you know?

6 A. I'm sorry, I don't.

7 Q. All right.

8 A. But I know who is to his right.

9 Q. Who is that to his right?

10 A. That is the Archbishop -- oh, at that time Bishop, but who
11 then succeeded him as Archbishop.

12 Q. Rivera y Damas?

13 A. Rivera y Damas.

14 Q. And Exhibit 11?

15 A. Yes, that is the Archbishop.

16 Q. 12 and 13?

17 A. Also the Archbishop.

18 Q. 16 and 17?

- 19 A. Yes.
20 Q. 18 and 19?
21 A. That's right, Archbishop Romero.
22 Q. Exhibit 20?
23 A. Yes.
24 Q. Exhibit 24, 25?
25 A. Yes. Those are pictures at the time of the assassination.

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- 1 Q. 27 and 28?
2 A. I'm assuming 27 is, only because he is not quite visible
3 in it, but I know those pictures, yes.
4 THE COURT: All right, well, there is a legal
5 technicality here, Reverend. The law doesn't permit you to
6 assume. You may give your best estimate --
7 THE WITNESS: All right.
8 THE COURT: -- by recognizing the surroundings, other
9 persons, or the context of the photograph to be able to state
10 what you believe it to be.
11 THE WITNESS: Yes. I believe that that is Archbishop
12 Romero by the fact that it is -- there is a continuity in the
13 pictures as well. The context is clearly at the day of his
14 assassination.
15 THE COURT: Thank you.
16 BY MR. Van AELSTYN:
17 Q. Similarly, 29 and 30?
18 A. Also, yes.
19 Q. And 33 and 34?
20 A. Yes.
21 Q. Flip a few pages to 42 and tab 40.
22 A. 42, yes.

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23 (Photographs were shown.)

24 Q. Flipping a few more to tab 51, Exhibit 51.

25 A. Yes, that's him.

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1 Q. And 52 and 55, on the next pages?

2 A. Also.

3 Q. And 57?

4 A. Yes.

5 Q. And 60?

6 A. Yes.

7 Q. Flipping several more pages, to Exhibit Number 73?

8 A. Yes.

9 Q. And 74?

10 A. Also.

11 Q. And 75 and 76 on the next page?

12 A. I will not say 76, because I didn't know him at that point
13 in his life. It looks like a picture of his youth.

14 Q. All right, thank you. Well, I will leave it at that.

15 Exhibit 77?

16 A. Yes.

17 Q. Do you know who that is with him in that photograph?

18 A. I'm sorry, I do not.

19 Q. And flipping towards the last pages, Exhibits 87 and 88?

20 A. Yes, those are pictures I'm familiar with.

21 Q. And Father Wipfler, just to continue here, in this second
22 binder there, you will see Tab Number 100.

23 A. Yes.

24 Q. Is that Monseñor Romero?

25 A. It is.

1 Q. Who is that next to him?
2 A. That's myself.
3 Q. And Exhibit Number 101?
4 A. Yes.
5 Q. That's Monseñor Romero?
6 A. That is.
7 Q. Who is holding the microphone?
8 A. I'm holding the microphone.
9 Q. All right. We will return to these photographs a little
10 later.
11 A. All right.
12 THE COURT: Are you offering these into evidence?
13 MR. Van AELSTYN: Yes, your Honor, we are.
14 THE COURT: All right. The Plaintiff's Exhibits 2,
15 4, 11, 12, 13, 16, 17, 18, 19, 20, 24, 25, 27, 28, 30, 33, 42,
16 51, 52, 58, 57, 60, 63, -- excuse me, 73, 74, 75, 77, 87 and
17 88, 100 and 101 are received in evidence.
18 (Plaintiff's Exhibits 2, 4, 11, 12, 13, 16, 17, 18,
19 19, 20, 24, 25, 27, 28, 30, 33, 42, 51, 52, 58, 57, 60, 73,
20 74, 75, 77, 87, 88, 100 and 101 were received.)
21 BY MR. Van AELSTYN:
22 Q. Father, if I could draw your attention to the period of
23 time of March 1980. Did there come a time in that period when
24 you became concerned about Monseñor Romero?
25 A. Yes. Particularly, in February. It was kind of a

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1 culmination. I had been reading a lot of material coming from
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2 the Archdiocese, Orientación, which is the bulletin of the
3 Archdiocese. I read that on a regular basis.

4 And I managed to have someone sending me all of the
5 transcripts of his sermons, and I had been reading them also.
6 They arrived in packages, and I made it weekend reading always
7 because they were so powerful and containing evidence that we
8 were beginning to use. Because we knew that the Legal
9 Assistance Office of the Archdiocese was doing such an amazing
10 job of gathering information for him.

11 Q. What kind of information?

12 A. It was information on the violations. And the thing that
13 was important about it, all of his sermons, was this amazing
14 balance, which was always present, of the presentation of the
15 violations of human rights from both the Armed Forces, the
16 death squads, which was like saying the same thing, in a
17 sense, because the death squads were usually off duty military
18 officers, combined with other people who liked to be part of
19 that kind of thing. And then the other materials that came.

20 But, finally, the thing that made us most worried, I
21 mean his heroism was clearly calling for some response, a
22 violent response, probably from the military or the death
23 squads. But then he wrote a letter to President Carter in
24 February asking for the ending of military assistance, because
25 it was only resulting not in resolving the problems, but

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1 adding to the violence and resulting in the deaths of the
2 people.

3 Q. A moment ago, Father Wipfler, you said in his sermons, he
4 cataloged human rights abuses of government forces and death

5 squads?

6 A. Oh, I'm sorry.

7 Q. When you said "balance"?

8 A. When I said "balance," I really meant that he referred to
9 those, but then he was also referring to the opposition's
10 violations as well. I mean he would talk about the abuse of
11 the police or the fact that some military men had been killed
12 or some lieutenant of one of the oligarchy had been killed,
13 that sort of thing.

14 So his balance was always very important to us,
15 because it was a demonstration of his concern about human
16 rights as human rights and not only who committed it and
17 choosing one side.

18 Of course, the incredible amount that was being done
19 by government forces was overwhelming in all of those
20 recountings of violations.

21 Q. Did that very balance then affect your reaction to
22 Monseñor's letter to President Carter?

23 A. It was always a piece of the background. Our concern --
24 my concern personally in the United States, and this may not
25 be relevant, but my concern was the amount of assistance that

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1 was going to forces that were really repressive all throughout
2 Latin America. And it was a great concern to me.

3 So that that piece was an important part of the whole
4 context that I was viewing as the Human Rights Director in the
5 National Council.

6 Q. And did you take any steps to act upon that concern in
7 March of 1980?

8 A. There are several different groups that were -- had been

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9 talking. And you have to understand that in the ecumenical
10 community, there was an enormous amount of communication going
11 on constantly between people who were observing and keeping
12 statistics on human rights problems.

13 We met at hearings. We compared the things that we
14 were learning. And I found out that Mr. Thomas Quigley, who
15 was at the U.S. Catholic Conference, had been thinking of
16 going to El Salvador.

17 And I also knew that the American Friends Service
18 Committee, which was a Quaker organization, wanted to have
19 someone going, and we discussed the possibility instead of
20 doing it on our own, each of us, to go together, as a
21 delegation.

22 And it was interesting was that we all wanted to do
23 the same thing. And we realized having a number of people
24 doing those things would be important.

25 We had three purposes when we finally went.

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1 Q. What were those three purposes?

2 A. Well, the first one was to express our great debt of
3 gratitude. And also, just as human rights advocates, the
4 sources that the Archbishop provided for us to understand the
5 situation in El Salvador. So we wanted to express real
6 gratitude to him for the kind of heroism that he was showing
7 in this struggle.

8 The second thing was to express, I guess the word is
9 "solidarity" with him about the ending of U.S. assistance,
10 because it was apparent that U.S. assistance was creating
11 problems in so many places at that particular moment.

12 And the third thing, we felt that if we were all
13 there, we could do a really intensive on-site investigation by
14 going to all of those organizations that we knew were there,
15 seeing the U.S. Embassy, getting, if we could, into major
16 government circles. We managed, when we did go in the
17 delegation, to see the Presidency, for example, not the
18 president, but to get into the Secretary of the Presidency.

19 Q. Father Wipfler, if I may, for just a moment, who were the
20 members of the delegation that went?

21 A. The Reverend Alan McCoy, who was the President of the
22 Conference of Major Religious Superiors of Men in the United
23 States. He was a Franciscan priest.

24 Mr. Thomas Quigley, who was the -- in the Office of
25 Justice and Peace of the U.S. Catholic Conference, the

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1 Bishop's conference in the United States.

2 Ms. Betty Richardson Nute, who was the Vice-President
3 of the American Friends Service Committee. Ronald Young, who
4 was their human rights officer at the Quakers, and I. I was
5 the fifth person.

6 Q. So there were five of you?

7 A. Yes.

8 Q. And each of you was acting in your official capacity?

9 A. Yes, we were.

10 Q. So you were not five individuals?

11 A. No, no, no. We were actually sent -- each of us received
12 the support of the organization that we belonged to.

13 Q. And how many denominations, then, of U.S. churches were
14 represented by that delegation of five?

15 A. For my organization, 34 Protestant and Orthodox churches,
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16 and the American Friends Service Committee was an entity in
17 itself, the Quakers, and the U.S. Catholic Conference.

18 Q. When did you arrive in El Salvador?

19 A. March 21st.

20 Q. Which was a Friday, right?

21 A. That's correct.

22 Q. And on Saturday, March 22nd, what did you do as a
23 delegation?

24 A. Well, on March 21st, in the evening, we were greeted by
25 the someone from the Archbishop's office, and then there are a

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1 number -- it was a rather informal meeting, but it was an
2 amazing informal meeting -- it was not supposed to have been
3 scheduled -- in which we talked about the general situation.

4 And then on Saturday, we started, because we knew it
5 wasn't until late afternoon that we would meet with the
6 Archbishop, we started to do some of the investigating that we
7 wanted to do, speaking with the experts from the Socorro
8 Jurídico.

9 Q. What is Socorro Jurídico?

10 A. It is the Legal Assistance Office that the Archbishop
11 created. And we spoke with Roberto Cuellar, who was the
12 Executive Director of that office.

13 And then we also spoke with Head of the Social
14 Ministries of the Archdiocese.

15 Q. Both of these offices are located at the Archdiocese
16 offices in El Salvador?

17 A. The office of Socorro Jurídico, the Legal Assistance
18 office, was in another place because it was more secure. They

19 were worried about the documentation they maintained, which
20 was very personal documentation of many people. The social
21 assistance office was in the Archdiocese.

22 Q. And did you come to meet with any of Monseñor Romero's
23 advisers?

24 A. All. Everyone who was there, the Chancellor of the
25 Diocese. Persons who ran his -- Orientación. And we were

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1 able to get further documentation, articles that the
2 Archbishop had written, that weren't only in Orientación, but
3 were in other magazines, and many of us came away with
4 recordings of his sermons.

5 Q. Which documented human rights abuses, as you said before?

6 A. The center of every sermon every Sunday, the heart of his
7 sermons, the sermon was constructed in a very brilliant way,
8 and I must confess, I have plagiarized the method in the past
9 myself.

10 Q. In your preaching, not in your testifying today?

11 A. In my preaching. And that is it would start with a
12 marvelous exegesis, a Biblical study for the readings of the
13 day. Would move to the way in which that was in reference to
14 the society and things that were happening in El Salvador, and
15 then to a catalog of everything that had occurred that week.

16 And his sermons were sometimes 30, 40 minutes, 50
17 minutes long, and people just hung on every word. And so
18 those sermons are kind of a treasure for many of us.

19 Q. We will return to that in a moment, Father Wipfler. You
20 mentioned you had a meeting with Monseñor Romero that
21 afternoon of March 22nd. Did you meet with him?

22 A. We did. We met with him at his office. And he was very

23 welcoming and very grateful that a delegation would have come
24 from a wide variety, particularly like the ecumenical nature
25 of the delegation.

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1 It was during that conversation that he -- we had
2 already had some evidence in the morning going into the Legal
3 Aid Office of how bad things were, but he was saying that the
4 moral fiber of the society was falling to pieces. And he
5 described some of the things that were being done, like the
6 cutting off of the fingertips of people and pouring acid on
7 their faces so that the victims could not be identified, and
8 bodies left nude and so on.

9 Q. Did he indicate that this was a worsening of the human
10 rights situation then?

11 A. He said it was getting deeper into the "barbarity," that
12 was the phrase he used.

13 Q. What else did he say during that meeting?

14 A. We went on to talk about the general situation. He
15 provided us with the names of other people who he felt were
16 important to see.

17 And then he did something which was very moving to
18 all of us. He asked Father McCoy to come celebrate mass the
19 next day with him.

20 Q. He was the Franciscan priest?

21 A. He was the Franciscan priest, yes, and he asked Tom
22 Quigley from the U.S. Catholic Conference to read one of the
23 scripture readings and asked me, a non-Roman Catholic
24 Protestant Episcopalian, to read one of the other readings.
25 And we felt that was a considerable honor, to be asked to

1 participate in his Sunday Mass.

2 Q. And did you then attend that Mass the next day?

3 A. We did. We -- that Mass was early in the morning on
4 Sunday.

5 Q. Where was it?

6 A. It was at the Basilica. There were major repairs being
7 done to the cathedral, so all of the activity of the Diocese
8 was done at the Basilica.

9 We arrived early. And it was already full. And
10 people were gathering in the streets because there were
11 loudspeakers just outside the church so that people could hear
12 the Mass and the sermon.

13 Q. Was that different from church services you had
14 experienced in the U.S.?

15 A. That was when attendance was falling off in churches and
16 one might find that there was lots of room to sit down in most
17 cases. In the Basilica, there were no chairs. The
18 congregation stood -- except for the elderly, there was some
19 pews left in the front, but the remainder of the church was
20 just an open space, and everyone stood.

21 Q. Throughout the entire service?

22 A. Throughout the entire service. And we happened to be the
23 dignitaries who were present for the event, so we sat toward
24 the altar. The altar was in the center, and we were on the
25 side, right facing the altar, within a few feet of the altar.

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1 Q. Did you hear Monseñor Romero's sermon that day, his
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2 homily?

3 A. I did.

4 Q. I would like to play for you a short excerpt from that
5 homily and ask you to identify it as his voice, if you can.

6 A. All right.

7 MR. Van AELSTYN: For the information of the Court,
8 this is Exhibit 92.

9 THE COURT: May we have the stipulation that the
10 court reporter doesn't have to attempt to take down what is on
11 the recorder?

12 MR. Van AELSTYN: Yes, your Honor. We can actually
13 provide the court reporter with a translation, which will be
14 represented as well.

15 THE COURT: All right. After this, then, we are
16 going to take the morning recess.

17 MR. Van AELSTYN: Very good, your Honor.

18 while our assistant is looking for it, I will point
19 out that Exhibit 92 in the binders contains the translation as
20 well as a copy of the audio. That might assist the court
21 reporter.

22 THE COURT: Thank you.

23 (The excerpt was played follows:)

24 "Did you notice what today's reading has said so
25 beautifully? 'You glorify the first exodus when I

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1 took you out of Egypt, when you crossed the desert.
2 what many wonders were made on that journey with
3 Moses! But glory no longer in that past. That has
4 already become history. I make things anew.' What a

5 beautiful phrase from God! It is God who makes the
6 new: It is God who goes with history.
7 "Now the exodus will be from another direction, from
8 Babylon, from exile. The desert through which they
9 are going to pass will flower like a garden, the
10 waters will gush forth symbolizing the passing of
11 God's pardon, of the people reconciled with God on
12 the way to Jerusalem, which is no longer exactly the
13 slavery of Egypt but rather the exile from Babylon,
14 and that is how history will continue to happen.
15 "Today El Salvador is living its own exodus. Today
16 we too are passing to our liberation through the
17 desert, where cadavers, where anguished pain are
18 devastating us, and where many suffer the temptation
19 of those who were walking with Moses and who wanted
20 to turn back and who didn't help. God desires to
21 save the people making a new history. History does
22 not repeat itself, even if the saying says, 'history
23 repeats itself.' Some things appear to be
24 repetition, but what is not repeated in history are
25 the circumstances, the opportunities to which we are

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1 witnesses in El Salvador. How dense is our history,
2 how varied from one day to another! One leaves El
3 Salvador and returns the following week and it seems
4 that history has changed so categorically. Let us
5 not rest our stability on wanting to judge things as
6 they once were judged. One thing yes: May we have
7 firmly anchored in the hour our faith in Jesus
8 Christ, God of history. That does not change; but he

9 has, as it were, the satisfaction of changing
10 history, playing with history: 'I make things anew.'
11 "The grace of the Christian, therefore, is to not be
12 braced on traditions that can no longer sustain
13 themselves, but to apply the eternal tradition of
14 Christ to present realities. Change in the Church,
15 dear brothers and sisters, above all for those of us
16 who have been formed at other times, in other
17 systems, we have to have; and we have to ask God for
18 that grace to adapt ourselves without betraying our
19 faith, to be understanding with today's times. God
20 makes things new and for this reason he corrected the
21 Israelites because they were pleased with the first
22 exodus but they didn't think that God was doing any
23 more wonderful things on a second exodus and that he
24 would do them even greater in the Christian Era as we
25 are seeing ourselves."

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1 BY MR. Van AELSTYN:
2 Q. Father Wipfler, was that the voice of Monseñor Romero?
3 A. It was, yes.
4 THE COURT: At this time, we are going to take the
5 morning recess. We will stand in recess until 11:00 a.m.
6 MR. Van AELSTYN: Thank you, your Honor.
7 (Recess)
8 THE COURT: Going back on the record in Doe versus
9 Saravia.
10 Mr. van Aelstyn, you may continue.
11 MR. Van AELSTYN: Thank you, your Honor.

12 BY MR. Van AELSTYN:

13 Q. Father Wipfler, we ended the morning session with an
14 excerpt from a homily that was preached by Monseñor Romero and
15 you identified his voice. Do you recall that homily as being
16 the one you heard on March 23, 1980?

17 A. Yes, absolutely.

18 Q. You also testified earlier about the structure of his
19 homilies. Can you tell us about that again?

20 A. Yes. There was always this marvelous use of the Biblical
21 readings for the day that were then applied to the
22 contemporary situation. It was always a very ingenious way.
23 I mean I think any preacher would want to have that ability to
24 be able to say, you know, here is scripture 2,000 years old
25 and it talks to this moment.

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1 Q. The portion that we heard was that --

2 A. It was that marvelous Biblical presentation about the
3 exodus and the return and how El Salvador is coming back from
4 its exodus, et cetera.

5 Q. And then there are other portions of his homilies
6 traditionally?

7 A. Yes, the two other parts are always the "catalog," as I
8 mentioned, I use that word, because that's exactly what it
9 was, of human rights violations, and then some conclusion that
10 was a moral demand or an ethical requirement or a statement
11 that said very clearly, so we, today, must act in a particular
12 way, because this is the Lord's command, et cetera.

13 Q. Father, I would like to play you the rest of Exhibit
14 number 92, which is an additional excerpt from that homily of
15 March 23, 1980.

16 A. All right.

17 Q. while this is setting up --

18 (The excerpt was played as follows:)

19 "And something very horrible, very important, on this
20 same day, Thursday the 20th, the peasant man Augustín
21 Sánchez was found, still alive. He had been captured
22 by 15 soldiers from Zacatecoluca, who handed him over
23 to the Treasury Police. Sánchez, the peasant, in a
24 notarized declaration given before witnesses, that he
25 was captured from the El Cauca plantation in the

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1 department of La Paz, when he was working on
2 affiliating members to the Salvadoran Communal Union,
3 Unión Comunal Salvadoreña. He was held for four
4 days, tortured without food or water, and with
5 constant beatings, asphyxiation, until the 19th of
6 March, when together with two other companions, they
7 were shot in the head, but luckily the bullet only
8 destroyed his right cheek and eye. Near death, he
9 was assisted by some peasants until a person of trust
10 would bring him to the capital. The peasant was
11 unable to sign this horrendous testimony because his
12 hands were crushed. This horrible scene was
13 witnessed by a person of recognized honor and there
14 are photographs that show the state in which this
15 poor peasant was picked up.

16 "We also have a still unconfirmed report of the
17 massive death of 25 peasants in San Pablo Tacachico.
18 At the last minute, before beginning Mass, the

19 confirmation of this terrible tragedy arrived. It
20 says that on Friday, the 21st of this month, a
21 military operation began from 6:00 in the morning on
22 the road from Santa Ana to San Pablo Tacachico. This
23 operation was carried out by soldiers from the
24 garrisons in Opico and Santa Ana together with the
25 Tacachico Treasury Police, who were even carrying the

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1 names of the people that they had on their hit list.
2 In this operation, they raided the hamlets of El
3 Resbaladero, San Felipe, Moncagua, El Portillo, San
4 José La Coya, Mogotes, and their respective villages
5 Los Pozos and las Delicias. At the same time they
6 registered everyone who was traveling by bus or on
7 foot.
8 "In the hamlet of Mogotes, municipality of Tacachico,
9 the repression was crueler, for the troops of
10 soldiers used two tanks to instill terror in the
11 inhabitants of this sector. In the raid that
12 occurred, they stole four radios and 400.00 colones,
13 they burned the house and all the belongings of
14 Rosalío Cruz who, along with his family, have been
15 left in the worst misery. They killed Alejandro
16 Mojica and Felix Santos - the first at his place of
17 residence, the second in a dry ravine. Both left
18 wives and children who are now orphans. Due to fear
19 of repression, they were buried in their respective
20 yards. They also took away Isabel Cruz and Santos
21 Urquilla to an unknown destination.
22 "One final fact, with which we want to express a

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23 special solidarity. Yesterday afternoon, the UCA,
24 the University of Central America, was attacked for
25 the first time and without any provocation. A large

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1 military team undertook this operation at 1:15 in the
2 afternoon with the National Police. They entered the
3 campus shooting, and a student who was there studying
4 mathematics, Manuel Orantes Guillen, was killed.
5 They tell me that various students have also been
6 disappeared and that their relatives and the UCA are
7 protesting the raid of a campus whose autonomy should
8 be respected. What they have not done in the
9 National University, without doubt due to fear, they
10 have done in the UCA, during which the UCA has shown
11 that it is not armed to defend itself and this has
12 been an outrage without any motive. We hope to give
13 more details of this which is a serious mark against
14 civilization and the rule of law in our country.
15 "Beloved brothers and sisters, it would be
16 interesting to analyze, but I don't want to abuse
17 your time, what significance there is in these months
18 of a new government that precisely wanted to draw us
19 out of these terrible situations. And if what it
20 wants to do is leave headless the organization of the
21 people and obstruct the process that the people want,
22 no other process can thrive. Without its roots in
23 the people, no government can be effective, much less
24 so when it seeks to impose itself by the force of
25 bloodshed and pain."

1 BY MR. Van AELSTYN:

2 Q. Father Wipfler, was that the voice of Monseñor Romero that
3 you heard on March 23, 1980?

4 A. It was.

5 Q. Was that representative of the kind of catalog of human
6 rights abuses that he made a note of?

7 A. I'm sorry to say, that particular day, there was another.
8 And, somehow, in the excerpt, it disappeared. There were two
9 other examples that were given of the torture of a policeman
10 and the death of a -- I think it was a member of the National
11 Guard, by the opposition. And he -- he lamented that equally,
12 along with these other abuses, which were principally from
13 officials.

14 So the balance is lost because there was a real
15 balance that Sunday as well.

16 Q. It sounded like there was applause at the portion there.
17 Is that right?

18 A. Yes, I happen to come from a very traditional religious
19 community. And I was rather startled by the fact that about
20 ten times during the sermon -- it's only happened once to
21 me -- but ten times during his sermon, at least, he was
22 applauded. And people, as I said, were on their feet. And it
23 was an amazing thing to see that kind of a response occurring
24 throughout this sermon.

25 Q. And you mentioned that there was usually a third portion

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1 of the sermon?

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2 A. Yes. The third portion is always this kind of ethical
3 obligation that everyone has, this need to fulfill the law in
4 our time, the law being the moral law of Christ, and that was
5 always there at the end of the sermon.

6 Q. If I may, we will play now the concluding portion of
7 Exhibit 92.

8 (Excerpt played as follows:)

9 "I would like to appeal in a special way to the men of
10 the army, and in particular, to the troops of the
11 National Guard, the police and the garrisons.

12 Brothers, you belong to our own people. You kill our
13 own brother peasants; and in the face of an order to
14 kill that is given by a man, the law of God should
15 prevail that says, Do not kill! (Applause) No
16 soldier is obliged to obey an order counter to the
17 law of God. No one has to comply with an immoral
18 law. It is time now that you recover your conscience
19 and obey its dictates rather than the command of sin.
20 The Church, defender of the rights of God, of the law
21 of God, of the dignity of the human person, cannot
22 remain silent before so much abomination. We want
23 the government to seriously consider that their
24 reforms serve for nothing when they come bathed in so
25 much blood.

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1 "In the name of God, then, and in the name of this
2 long suffering people, whose cries rise to heaven
3 each day more tumultuous, I beseech you, I beg you, I
4 command you in the name of God: Stop the repression!

5 "The church preaches your liberation just as we
6 studied it today in the Holy Bible. A liberation
7 that holds, above all, respect for human dignity, the
8 salvation of the common good of the people, and the
9 transcendence that looks above all else to God, and
10 from God alone derives its hope and its strength.
11 Let us now proclaim our faith in this truth."

12 BY MR. Van AELSTYN:

13 Q. Father Wipfler, do you recall being there that day?

14 A. I indeed do.

15 Q. And do you recall your reaction when you heard Monseñor
16 Romero speak those words at the end of his homily?

17 A. Yes. I turned to Mr. Quigley, who was sitting beside me,
18 and I said, "I don't think that the military is going to let
19 this one pass by."

20 we had talked about that whole issue of Nuremberg.
21 That was a conversation on the airplane and when we were going
22 down, and we had been talking about the fact that the whole
23 issue of guilt of the military is a very serious problem.

24 And later, immediately after this, I had said what I
25 said, that became another little issue of conversation before

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1 we went into the press conference with the Archbishop.

2 Q. Before you went to the press conference, how did the
3 service on that Sunday conclude?

4 A. Immediately went to the Mass after the sermon, and it
5 proceeded as usual, but then I was rather startled by the fact
6 that the Archbishop, unlike other situations where there is a
7 large congregation, Communion is given to a number of priests
8 and Communion is received by people coming to the altar rail,

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9 Archbishop Romero went out with several other priests, but he
10 was the only one that gave Communion. He gave Communion to
11 absolutely everyone in the congregation; it took more than a
12 half an hour. He walked through the church and gave Communion
13 to every single person in the church. I think a lot of them
14 would have felt cheated if it would have been by anybody else.

15 Q. How did that Communion portion of the service end?

16 A. This is a very hard part for me. He came back. Excuse
17 me.

18 Q. Take your time.

19 A. He came back from giving Communion. I am not a Roman
20 Catholic. I had not presented myself for Communion when
21 the -- when Mr. Quigley did. And I had my eyes closed. I was
22 praying for the Church and for the people.

23 And I heard a voice. And he said -- it was
24 Archbishop. He said, "Would you like to receive Communion,
25 Father?"

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1 And I said, "Yes." And he gave me Communion.

2 And I was very moved. It was an incredible gesture,
3 in terms of doing it publicly. It was not part of the
4 tradition at that moment.

5 And I only realized later, when I was preaching a
6 sermon later that week at home, that I was the last person
7 ever to receive Communion from the Archbishop, because he died
8 before he finished the Mass the next day. And that's always
9 been a very important treasure in my life.

10 Q. After the service, what did you do?

11 A. We went from the Basilica proper into a very large

12 auditorium. And the thing that was quite surprising to me was
13 that he actually had a press conference in which he was
14 totally open to the press regarding everything he had said in
15 his sermon and other things that had happened during the week
16 and so on.

17 And it was a very powerful press conference, because
18 there was a lot of the pro government press present, and they
19 raised some very harsh questions with him insinuating a lot of
20 things about his political stance and so on. And I was very
21 moved by the ease with which, and the loving way in which he
22 responded to all their questions. It was a very calm
23 presentation of what he felt were the issues of justice that
24 needed to be presented.

25 Q. Could you turn again to Exhibit Number 100 in the larger

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1 binder.

2 (A photograph was displayed of the Monseñor.)

3 I believe you have it on the screen in front of you.

4 A. Yes.

5 Q. Was this at that press conference?

6 A. Yes, that was at the press conference.

7 Q. And Exhibit 101, this was at the same press conference?

8 A. Yes, it was.

9 Q. Can you identify the persons in this photograph?

10 A. Yes. The person to the far right, I don't know who that
11 is, with his hands up in front of his face.

12 The person sitting in the white in the shirt next to
13 me, to my left, picture's right, is Mr. Quigley, Thomas
14 Quigley of the U.S. Catholic Conference, and I, and then
15 Archbishop Romero.

16 And, tragically, the person sitting next to
17 Archbishop Romero is Father Ignacio de Ellacuria, who was the
18 President of the University of Central America, and who was
19 murdered with -- along with the six Jesuits and their
20 housekeeper and her child in 1989.

21 And I must confess that when I took this picture out
22 to send it to you, I was suddenly shocked by the fact that
23 this is a picture of death in a terrible way, because the
24 poster on the wall up above is a poster of the six priests who
25 were murdered up to that day. Father Rutilio Grande up on the

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1 left, but then the other five are all priests who had been
2 murdered, and Father de Ellacuria and the Archbishop.

3 Q. You mentioned that Monseñor Romero responded to these
4 rather aggressive questions from some of the reporters. How
5 did he respond?

6 A. Every one of his responses was kind of an -- he had this
7 amazing ability, and he had expressed it the day before as
8 well, this amazing ability to kind of place people in the way
9 he answered, place people in the context from which they
10 seemed to be making their statements. And he was willing to
11 be charitable about the fact that they came from a different
12 position than he did.

13 So he responded with great clarity and explained
14 things and there was no arrogance or aggressiveness on his
15 part as he answered.

16 Q. Did he back down from his call at the end of his sermon?

17 A. No. That was probably the main subject of that press
18 conference, and they asked him didn't he think that was asking

19 for treason and so on, and he was very firm on the fact that
20 the law of God is the supreme law and not the law of an
21 officer on the line.

22 Q. And after the press conference, what did you do?

23 A. We had lunch with him, and then following lunch -- and
24 that was, I must say, a relaxed, much lighter situation than
25 all of the preceding things.

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1 And then we went on to visit other human rights
2 groups and we -- one, in particular, was very important. In
3 the afternoon, we went to a refuge that had been established
4 by the Archdiocese in a building which, after 24 years, I
5 think was an old school, a school that had been there.

6 And all the rooms had been converted into rooms with
7 cots and so on. And it was a refuge for people from the
8 countryside who were frightened out of the countryside by the
9 armed forces and who had lost family, some of them still
10 carrying terrible wounds. And a shipment of new people came
11 in that afternoon; two Sisters brought them to the refuge.

12 Q. Salvadoran nuns?

13 A. No. Both of them were U.S. nuns, Moira Clark and Dorothy
14 Kazel, who were murdered that year. And at the end of the
15 year, in December, four women, religious, were murdered by the
16 military and on their way back from the airport, and two of
17 them were the two of the women that we met. One was a
18 Maryknoll nun and the other an Ursuline nun.

19 Q. And they had brought some people in from the countryside?

20 A. Yes, in bad shape.

21 Q. Where did you go after the refuge?

22 A. I'm not certain, but I believe that was when we went once

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23 again to try and meet with some of the people who were
24 involved in gathering documentation on the human rights
25 problems.

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1 Q. You mentioned Socorro Jurídico before?

2 A. Yes.

3 Q. Is that one of the places you went?

4 A. We went there the next morning, on Monday, the 24th. And
5 because Roberto Cuellar, who was the director of Socorro
6 Jurídico, felt we needed to see the form in which they
7 maintained the documentation.

8 Q. And what was that form?

9 A. There were affidavits that were quite explicit, very
10 powerful affidavits. And written in some cases by people who
11 were the victims; in other cases, by their family members.

12 But the thing that was the most shocking -- I had
13 been doing human rights for a long time. I had never seen
14 such violent, grizzly, horrendous pictures of the victims,
15 whose bodies were so mutilated, it was hard to believe it
16 could have been done by other human beings. It looked like it
17 had been done by animals.

18 Q. Could I have you turn to Exhibit 68 in the binder, please,
19 in the small binder.

20 A. (Witness complies.) Yes.

21 Q. Is this photograph representative of the kind of
22 scrapbooks you made reference to a moment ago?

23 A. It is. And the one on the right, number 68, that other
24 one also. 68 is representative of hundreds of pictures that
25 were in the collection that he had.

1 Q. You don't know the circumstances of this particular
2 photograph, but this is representative of others that you have
3 seen?

4 A. Absolutely. Common.

5 MR. Van AELSTYN: We would like to move Exhibit 68
6 into evidence, your Honor.

7 THE COURT: All right. Exhibit 68 will be received
8 in evidence. And did you wish to admit, we have referred to
9 five other exhibits, we have had excerpts from 92 and 93,
10 those are the excerpts. You have, I think, 100 and 101 are
11 already in evidence. Those are photos.

12 MR. Van AELSTYN: Yes, your Honor, but we would like
13 to move, as well, 92 and 93 at this point.

14 THE COURT: Exhibits 92, 93 and 68 are received in
15 evidence.

16 (Plaintiff's Exhibits 92, 93 and 68 were received.)

17 MR. Van AELSTYN: Thank you, your Honor.

18 BY MR. Van AELSTYN:

19 Q. Did you meet with any other human rights activists that
20 afternoon, Monday, March 24?

21 A. Yes, we had the opportunity, through Roberto Cuellar and
22 Socorro Jurídico, they arranged for us to go to the Human
23 Rights Commission, El Salvador Human Rights Commission to meet
24 with Marienella Garcia Rilla, because they felt that her
25 analysis of the political situation was so on the point and

□

1 she had a sense of what was really the dynamic that was
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2 occurring in the country at that time. And so we arranged to
3 go there right after lunch.

4 Q. Did you meet with her?

5 A. We did, indeed, and several members of her staff as well.

6 Q. Did you view similar scrapbooks there?

7 A. Yes. That seemed to be everybody's evidence.

8 Q. While you were there, did she receive a telephone call?

9 A. Yes, she did. And it was for us, actually. It was from
10 Roberto Cuellar to her. And to advise us that the Bishop had
11 been shot while celebrating Mass, and that they were taking
12 him to the hospital, but they didn't say that he had already
13 died. He just knew that they were going to the Policlínica,
14 the Policlínica, and we decided we wanted to be there as well.

15 Q. Did you go?

16 A. The whole delegation went, yes.

17 Q. To the Policlínica?

18 A. Yes.

19 Q. What did you find there?

20 A. When we arrived, people were all gathered. There were
21 lots of nuns and priests who were there. Some American
22 priests who we had not met before, we met them at that moment,
23 and we were really shocked to learn that the doctors had
24 already announced that he was dead on arrival.

25 Q. What did you do then?

□

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1 A. We asked one of the -- well, we were there. We received a
2 lot of symbolic things. They knew we were a delegation that
3 was going to be returning to the States. They gave us some
4 pictures of the Archbishop, and the chancellor had those with

5 him.

6 And one of the pictures that you showed, I have the
7 original of that one. That one over there in the corner.
8 Yes, the large one. Because the priest who had taken that
9 picture happened to have a color copy of that and he gave that
10 to me and it's been hanging in my house ever since.

11 Q. It was a regular photograph?

12 A. No, it was an 8 and a half by 11 blown up photograph of an
13 original negative, yes.

14 And we asked one of the American priests to take us
15 to the Embassy because we had already had a very brief visit
16 with the Ambassador the day we arrived to let him know we were
17 there, and we wanted to go back and raise serious questions
18 about the military assistance that was being considered.

19 Q. What time of the day was it?

20 A. It was at night. By this time, it was about 7:30, 8:00
21 o'clock.

22 Q. Was it dark?

23 A. Pardon?

24 Q. Was it dark?

25 A. It was quite dark. And, unfortunately, our driver didn't

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1 realize that the Marines at the Embassy were on a high state
2 of alert and drove up and suddenly we encountered about six
3 Marines with machine guns and a rather scary moment, but the
4 Ambassador, they telephoned in and the Ambassador let us come
5 in.

6 Q. Did you meet with the Ambassador?

7 A. We did. We sat with him, and this was not the Embassy,
8 this was the Embassy residence, and we sat with him, and he

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9 was very sympathetic. He had been at Mass that day before, on
10 Sunday.

11 Q. What was his name?

12 A. Ambassador Robert White.

13 And he had been at Mass, and had started to express
14 his sympathies for the Archbishop's feelings about the
15 terrible human rights situation. And he said -- he used the
16 phrase, "I was very moved by that sermon." And by the
17 closing, of his kind of demand to the soldiers to stop the
18 repression.

19 And he was immediately interrupted by another person
20 who was there who was his Chief of Mission, Deputy Chief of
21 Mission person, who kind of sits in for the Ambassador when he
22 is gone. And he said something very surprising that upset us,
23 the way he put it. He said, "well, now, don't jump to
24 conclusions about who did this." He said, "You know, there is
25 a Pol Pot left among the military who -- among the rebels who

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1 would like nothing better than to defame the military and
2 claim that the military did this. And he interrupted the
3 Ambassador over and over again and we finally figured there
4 was not much to be done, because he was so firm about this
5 position, that we left the Embassy and went back to our hotel.

6 Q. Had you ever met Ambassador Robert White before that day?

7 A. Yes, I did. I had done an investigation in Paraguay on
8 the human rights situation in Paraguay. And I went with David
9 Helfeld, who is the Dean of the School of Law in Puerto Rico.
10 We were the two investigators. And we had gathered an
11 enormous amount of material in Paraguay. And we were afraid

12 that the documentation we had would be seized when we went to
13 the airport.

14 We had one final -- we had already met with
15 Ambassador White. He was the Ambassador to Paraguay from the
16 United States. And we went back to the Embassy to tell him
17 about our quandary about the problem with the documentation.
18 And he said, "No problem. Bring it to the Embassy and we will
19 meet you in the VIP lounge at the airport and we will give you
20 back your documentation and take you -- take you to the
21 airplane."

22 So we had a very warm relationship with him there.
23 And one of the things, as a matter of fact, that is related to
24 this case is that Joel Filartiga had been murdered by an
25 interrogator in Paraguay, and that interrogator was living in

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1 Brooklyn at one point after. And Paraguayans came to my
2 office, very frightened, that the secret police person from
3 Paraguay was there, his name was Washington Peña-Irala, and I
4 talked to a lawyer friend, Peter Weiss, and it was Peter
5 Weiss, who developed the alien tort case that was the first of
6 the cases in which a foreign criminal was tried in the United
7 States.

8 And so it was a rather -- it was a circle that was
9 rather significant for me.

10 Q. After that evening on Monday, March 24, what did you do
11 during the rest of your time in El Salvador? How much longer
12 were you there?

13 A. We decided we would continue what we were doing and we
14 continued our investigation because we hadn't finished. We
15 felt it was inconclusive at that moment. We hadn't talked to

16 certain other people. We did that work and then, finally, the
17 delegation left on the 26th.

18 Q. Was there any service that you attended before you left or
19 any kind of memorial?

20 A. Yes. On the day after the murder, in the morning, there
21 was a kind of preliminary public wake. And the body of the
22 Archbishop was in the Basilica. And the public was informed
23 that there would be a visitation, very much as happens always
24 with dignitaries, and the whole delegation went and they were
25 really impressed by seeing the thousands of people who filed

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1 by the coffin to pay last respects, people from every walk of
2 life.

3 And for a short period of time, Marianella Garcia
4 Villas and Herbert Anaya, who was a member of her staff, stood
5 with me at the coffin, and within a comparatively short period
6 of time, Marienella had been murdered, and Herbert Anaya had
7 been murdered, as were two other of the successors in the
8 Human Rights Office.

9 Q. You then returned to the United States?

10 A. We did, yes.

11 Q. What did you do upon return?

12 A. Well, actually, just before my return, I failed to mention
13 this, the night of the murder, after we got back from the
14 Embassy, I called a colleague at the National Council of
15 Churches, and I said there will be an official funeral on Palm
16 Sunday, the 30th. And I wanted him to begin to pull together
17 the highest level denominational representation he could to go
18 as a delegation to the funeral.

19 And the person was the man I mentioned before,
20 Dr. Jorge Lara-Braud, who was the Associate General Secretary
21 to Council. He began that process. I went back to continue
22 it in order to get the best representation we could get. And
23 on the Friday before the funeral, we had a service at the
24 Inter-Church Center in Manhattan. That was the headquarters
25 of four denominations, the National Council of Churches, the

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1 United States Office of the World Council of Churches, and
2 other groups. And we had a service. And it was filled;
3 people stood in the hallways and in the aisles for the
4 service, and it was a very moving time, to see the numbers of
5 people who came to pay respects.

6 Q. Father Wipfler, as you sit here today, 24 years later, I
7 would ask you how this experience has affected you as a
8 religious person and as a human rights activist?

9 A. I think that it was clear that the delegation, everybody
10 in the delegation was extremely moved by the events that we
11 experienced.

12 But beyond that, I personally had kind of committed
13 myself as I was returning and then when I got back, to really
14 a greater engagement at the level of not allowing things to
15 occur without following through on them. You know, you get
16 busy in an office, the administrative stuff, and you let stuff
17 slide between the cracks. And I just would not -- I was
18 determined not to allow that to happen in the future.

19 And one of the things that occurred as a member of
20 the human rights staff or head of the office, is I traveled a
21 great deal. And I was, from that point on, extremely moved
22 and impressed by the place that Oscar Romero held all

23 throughout Latin America. I mean you could go to some small
24 community and find a picture of Romero in a home or in a
25 public office, in a church.

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1 Q. In El Salvador?

2 A. No, no. All over Latin America. Every place I went. As
3 a matter of fact, there were pictures that were beginning to
4 appear long before the official process began from El Salvador
5 to ask for the possible canonization of Archbishop Romero as a
6 saint, modern saint. There were photographs that would appear
7 and then beneath there was a title that said, "Saint Romero of
8 the Americas."

9 Q. In Spanish?

10 A. "Santo Romero de las Americas." But they were everywhere,
11 and people who you didn't expect had them up, and he was
12 becoming already an icon in that sense.

13 But one of the other things that was even more
14 surprising was to get out of the Latin American context --

15 Q. You were continuing to travel widely as part of your human
16 rights work?

17 A. Yes. During the years that I was the director for the
18 council, I traveled to 40 countries around the world, most of
19 them, unfortunately, countries where there were terrible human
20 rights violations occurring, but other places, Europe, and
21 Asia and Africa that weren't necessarily.

22 But one of the things that surprised me was the way
23 that Romero became a hero in other places. Japan is a very
24 stratified country, and -- but a person who is the head of --
25 the doctor in charge of St. Luke's Hospital, which is the

1 largest hospital in Tokyo, said from his exalted position
2 there, he said, "You know, the thing that is most marvelous
3 about Archbishop Romero is that in spite of the fact he was
4 prevalent in the Church, he realized the responsibility of
5 being the "Voice of the Voiceless," and he picked up that
6 phrase. That took me by surprise.

7 But to have Muslims in the Middle East refer to him,
8 when they found out that I had been related in some way --

9 Q. You had such an experience?

10 A. I did. A Palestinian leader said to me one day, he said,
11 "I realized from reading as much as I have read about
12 Archbishop Romero, that the greatest weapon for justice is
13 truth." And it was a phrase that I put over my desk, as a
14 matter of fact.

15 Q. Was this a Palestinian Christian?

16 A. No, it was a Palestinian Muslim. And he just became a
17 symbol of what truth needs to be raised in order for justice
18 to be fulfilled.

19 Q. And has justice been fulfilled in the case of Monseñor
20 Romero, in your view?

21 A. No, it has never been. I think that that's one of the
22 great tragedies of that case, and of so many cases in so many
23 places. I think that impunity has become a sin of the -- I'm
24 not sure in a court of law you use that word, but I still
25 consider it to be a sin and a terrible immorality. The ease

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1 with which the perpetrators of crime forgive themselves by
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2 having these amnesties that they always put in place just
3 before they leave power. And I think it's a horrendous thing
4 to have happen. And in some way, international law has to
5 reach a stage, and I think as steps occur in a court like
6 this, where people say, enough, that the person who commits
7 the crime can't forgive himself.

8 Q. Does this proceeding today have any significance for you?

9 A. Yes. For me, it's one more step in the search for justice
10 that I think has to be constantly carried on, and there has
11 never been justice in the case of Archbishop Romero.

12 Q. It's been 24 years, Father wipfler. Do you think justice
13 can be done today?

14 A. I don't think there is a statute of limitations on
15 justice. And I think that any court has to be willing to
16 accept the fact that 24 years or 50 years or whatever it may
17 be, if justice can be served, then the court has to serve
18 justice.

19 Q. Thank you, Father wipfler. I have a couple of
20 housekeeping matters for you. Previously I asked you to
21 identify your resume and a declaration that you prepared. You
22 identified them as such. If I could ask you to turn to
23 Exhibit B of your declaration. It's an article.

24 A. Yes.

25 Q. What is that article?

□

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1 A. That was the article that was written by Dr. Jorge
2 Lara-Braud during and upon his return from the funeral, the
3 official funeral of Archbishop Romero.

4 Q. Was that the colleague that you called from San Salvador?

5 A. Yes, that was the colleague I called.

6 Q. And Exhibit C, what is that?

7 A. That's an article that I was invited on April 1st, after
8 the events of the funeral and so on, I was asked to write an
9 article by Christianity -- editor of Christianity in Crisis,
10 which is the journal that was founded by Dr. Reinhold Niebuhr,
11 a great theologian. And they asked me if I would write -- put
12 a context for the death of Archbishop Romero. And I wrote
13 that article, "El Salvador, Reform as a Cover For Repression."

14 MR. Van AELSTYN: Your Honor, I would like to move
15 into evidence Father Wipfler's resume and declaration.

16 THE COURT: Let's mark the resume as plaintiff's next
17 in order. What is that?

18 THE CLERK: 219.

19 THE COURT: 219 for identification is received in
20 evidence.

21 (Plaintiff's Exhibit 219 was received.)

22 THE COURT: And the next exhibit, which is a
23 declaration, will be marked as Exhibit 220. You are offering
24 that in evidence?

25 MR. Van AELSTYN: Yes, your Honor.

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1 THE COURT: And so that we have an identification of
2 the purpose, the articles, of course, are expressions of the
3 views and the thoughts of Reverend Wipfler. Would those be
4 cumulative of or independent from what he has expressed here
5 today?

6 MR. Van AELSTYN: Those in the declaration are a
7 little bit cumulative and a little bit redundant to what he
8 has testified here today consistent with the declaration, I'm

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9 confident, but much of it is in addition to his testimony.

10 THE COURT: All right. And I do respect your views,
11 Reverend Wipfler, on such things as the statute of limitations
12 and on standing because the law still requires that there be a
13 basis for the responsibility that this proceeding seeks to
14 impose and that is less than clear in the United States
15 courts, including the Supreme Court, are working on it. Thank
16 you.

17 THE WITNESS: Thank you.

18 MR. Van AELSTYN: Thank you. I have no further
19 questions for Father Wipfler.

20 THE COURT: All right. You may step down, Father.
21 Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: You may call your next witness.

24 MR. Van AELSTYN: Your Honor, I see that we are about
25 ten to noon. Your normal recess is at noon.

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1 THE COURT: We normally take an hour and a half for
2 the reporter at noon, but if you wish to recess, we can recess
3 early and we can come back a little early.

4 MR. Van AELSTYN: That would be my preference if
5 that's all right.

6 THE COURT: We can do that. Let's recess now and why
7 don't we resume at 1:15.

8 MR. Van AELSTYN: Thank you, your Honor. Yes.

9 THE COURT: We will stand in recess until 1:15.

10 (The lunch recess was taken.)

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1 AFTERNOON SESSION

2 1:30 p.m.

3 THE COURT: Back on the record in Doe versus Saravia.
4 Mr. Van Aelstyn, you may call your next witness.

5 MR. Van AELSTYN: Thank you, your Honor. We call as
6 our next witness Amado Garay.

7 AMADO GARAY,
8 called as a witness on behalf of the Plaintiff, having been
9 first duly sworn, testified as follows:

10 THE CLERK: Please state your name.

11 THE WITNESS: Amado Garay.

12 THE CLERK: Thank you.

13 THE COURT: You may be seated. Can you spell your
14 name for us, please.

15 THE WITNESS: A-M-A-N-D-A -- I'm sorry, to the last
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16 one, O. Garay is G-A-R-A-Y.

17 THE COURT: Thank you. You may proceed.

18 MR. Van AELSTYN: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. Van AELSTYN:

21 Q. Mr. Garay, where are you from?

22 A. El Salvador.

23 Q. Where in El Salvador?

24 A. Quezaltenpeque.

25 Q. I'll spell that for you. Q-U-E-Z-T-A-L-T-E-P-E-Q-U-E.

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1 And where is Quezaltenpeque?

2 A. In like 20 miles away from the capital.

3 Q. The capital of San Salvador?

4 A. Yes, sir.

5 Q. And did you grow up in Quezaltenpeque?

6 A. Yes, sir.

7 Q. Mr. Garay, we will try to wait for me to finish a question
8 before you answer to assist the court reporter. We will try
9 to slow down and speak clearly. I need to do it as much as
10 you do.

11 A. Yes, sir.

12 Q. So you grew up in Quezaltenpeque?

13 A. Yes, sir.

14 Q. What kind of schooling did you have?

15 A. Well, I went to high school, but I didn't finish.

16 Q. Okay. Did you serve in the army?

17 A. Yes, sir, I did.

18 Q. When did you enter into the army?

- 19 A. When I was 18 years old.
- 20 Q. Were you drafted or did you volunteer?
- 21 A. I got drafted from the army.
- 22 Q. Was that normal, for 18-year-olds to be drafted?
- 23 A. Yes, sir.
- 24 Q. And how many -- how long did you serve in the army?
- 25 A. Well, I served three years.

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- 1 Q. And was that the normal period to serve in the army?
- 2 A. No, sir, at that time it was a year and a half.
- 3 Q. So you signed up for another year and a half?
- 4 A. Yes, sir. Actually, I didn't sign up. Just I, you know,
- 5 you don't have to sign again. You just keep going.
- 6 Q. Did you enjoy being in the army?
- 7 A. Well, I wasn't really enjoying it, but I preferred to
- 8 be -- (The witness became emotional.)
- 9 Q. It's all right, Mr. Garay, take your time.
- 10 A. I preferred to be in the army because --
- 11 Q. Would you like some --
- 12 A. The life I have with my mother, it wasn't that nice. I
- 13 preferred to be in the army. Even though the army was hard,
- 14 it was not easy in that country to have to be in the army.
- 15 It's hard. You have to be -- I preferred to be in the army to
- 16 being in my house.
- 17 Q. Okay.
- 18 A. And the reason I prefer to be in the army, because I
- 19 didn't have a good life with my mother.
- 20 Q. You were three years in the army?
- 21 A. Yes, sir.
- 22 Q. Before you entered the army, when you were a boy, what did

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23 you want to be when you grew up?

24 A. I wanted to be a priest.

25 Q. You did?

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1 A. Yes, sir.

2 Q. Did you ever try to become a priest?

3 A. Yes, I went for six months.

4 Q. To a seminary?

5 A. Yes, to a seminary.

6 Q. After you left the army, what did you do?

7 A. I went to work in the florist place, flowers, florist.

8 Q. And was that in Quezaltenpeque?

9 A. Yes, sir.

10 Q. Did you get married?

11 A. Yes, I did, after like 20 years old. 23 years old, when I
12 got married.

13 Q. Okay. Was that to a young woman in Quezaltenpeque?

14 A. Yes, sir.

15 Q. And did you live together as man and wife?

16 A. Yes.

17 Q. And you worked in Quezaltenpeque?

18 A. Yes, I worked in Quezaltenpeque, and I started to work in
19 a place Correnca, C-O-R-R-E-N-C-A, Correnca. Approximately
20 five years.

21 Q. You worked there for approximately five years?

22 A. Yes, sir.

23 Q. And did there come a time when you began some other kind
24 of work?

25 A. Yeah, because the money I was making, I was giving to my

- 1 ex-wife, like a check every day, every time I receive a check.
2 Q. You say "ex-wife" now, but you were married then?
3 A. I was married at that time, yes.
4 Q. So you were giving her the money from your job?
5 A. Yes.
6 Q. And what were you --
7 A. And the reason was we were trying to save money, because
8 we wanted to have a business. You have to work hard and save
9 as much as we could. And when my wife had enough money to
10 have a business, we start to have a business in like, a
11 butcher -- butcher?
12 Q. Butcher shop?
13 A. Butcher shop. And you know, but in the long run, the
14 business started to go down because of the situation, the
15 place was going down, not too many people want to go to buy,
16 to the supermarket, and we decided to put a little restaurant,
17 a pupusa.
18 Q. A pupusa?
19 A. Do you want the spelling?
20 THE REPORTER: Yes, please.
21 THE WITNESS: P-U -- I'm sorry. P-U-P-U-S-A.
22 BY MR. Van AELSTYN:
23 Q. Was this restaurant known as a "pupuseria"?
24 A. Yes, sir.
25 Q. What kind of customers did you have at the pupuseria?

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- 1 A. Normal customers. Once in a while, we would have a couple
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2 guys, they were the police, National Police.

3 Q. Who were these two National Police guys?

4 A. Yeah, the one is Nelson Morales and the other one was
5 Nelson Garcia.

6 Q. How did you come to know them?

7 A. Well, they were police, local police. And --

8 Q. Local police or National Police?

9 A. Well, National Police, but they were working just in the
10 place, Quezaltepeque.

11 Q. I see. And how did you come to know them?

12 A. Because normally, in those countries, you have to be nice
13 to the people -- when you want to progress in your life, you
14 want to have business, you have to give money to those people
15 in order to make them work and go with your dreams, whatever
16 you have, and they don't -- you have to give things, like you
17 put in their pocket to make them happy, like give money,
18 invite them to eat.

19 And at that time, working within the restaurant, I
20 used to have a little truck. And what they needed was they
21 said even though I would need the truck to go to do something,
22 like business, they said they need a truck if they want to do
23 something.

24 And they take my truck and drive it away anyway. In
25 order to keep going with my business, because -- and when you

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1 have some goals in your mind you want to reach, you have to
2 keep the police in your pocket, like give them money or do
3 something for them in order to make the policemen, make them
4 happy.

5 And as I was starting to do this, I met these guys.
6 I say my friend. Not really. They were my friend, but you
7 know, they weren't my friend. Once in a while, they used to
8 go to eat in my restaurant.

9 And in the long run, like maybe three weeks, one
10 month, I don't really specific tell you exactly how long after
11 I have my restaurant, Nelson Morales asked me if I want to be
12 a driver. And I said, but I didn't like too much to say yes
13 because I saw him always with weapon, with guns, you know.

14 Q. Was he in uniform?

15 A. No, sir. He was civil clothes.

16 Q. Did he ever come by in uniform?

17 A. No.

18 Q. How did you know he was National Police?

19 A. Because, like I said before, you know, when you meet those
20 people on the street, you have to be nice to them. Say, they
21 stop you for any reason, even though there is no reason, you
22 have to, you know, you give something to them in order to --

23 Q. How did you know he was a national policeman if he was not
24 in uniform?

25 A. Because before, when he used to stop me, he was in

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1 uniform.

2 Q. I see. So I'm sorry I interrupted you. He offered you --
3 he asked you if you wanted to work as a driver?

4 A. Yes. He asked me if I want to work as a driver and I
5 said, "Hmm, no. I doing good with my business and I want to
6 have my wife to keep going with my business."

7 And he said okay. He come back to us next day. He
8 said, "You know what? I talked to my boss and I explained to

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9 him that you were a soldier. You have obligation to go with
10 us, whatever we have to do."

11 And I said, "Gee, you know, I don't want to go."

12 "Oh, you don't want to go?" It was like a threat to
13 me. It was like if I didn't go, they would kill me.

14 Q. Is that what you understood?

15 A. That's what I understand. It isn't easy to describe, the
16 language of the people. You know, anybody living over there,
17 they know exactly what they are talking about. And you have
18 to understand those kind of situations, because it is
19 different, different lifestyle.

20 I said, "Okay, I will go with the driving." They
21 come by to pick me up. I get to the place, to the house.

22 Q. To what house?

23 A. It was in El Salvador, in the capital.

24 Q. San Salvador?

25 A. San Salvador, yes. And I went to the house, and they

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1 didn't introduce me the leader to the place because he wasn't
2 there. Like I went later, they introduced me to this guy. It
3 was Captain Alvaro Saravia.

4 MR. Van AELSTYN: Could I have Exhibit 43, please.

5 No.

6 THE WITNESS: No.

7 MR. Van AELSTYN: Just a moment.

8 BY MR. Van AELSTYN:

9 Q. Exhibit 44, do you recognize that man?

10 A. Absolutely, sir. That's the one they introduced me.

11 Q. And what was his name?

12 A. Alvaro Saravia, Captain Alvaro Saravia.

13 Q. Thank you. You said it was about a week after you first
14 went to Captain Saravia's house that you met him?

15 A. Yes, sir. Yes, sir.

16 THE COURT: How did you know he was a captain?

17 THE WITNESS: Because when they introduced me, they
18 said, "This is my captain, Alvaro Saravia."

19 THE COURT: Did he wear a uniform?

20 THE WITNESS: No, sir.

21 THE COURT: Thank you.

22 THE WITNESS: You are welcome.

23 THE COURT: You may continue.

24 MR. Van AELSTYN: Thank you, your Honor.

25 BY MR. Van AELSTYN:

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1 Q. One week later, you said this happened. Were you going
2 back to Quezaltepeque?

3 A. Yes, sir.

4 Q. So were you going back and forth from Quezaltepeque to
5 his house?

6 A. Yes.

7 Q. And did there come a time when you began to work more
8 regularly as a driver?

9 A. Yes, sir. What happened is after they introduced me with
10 him, I didn't see anything unusual until after a week. I
11 find out that they -- (Witness becomes emotional again.) Sorry
12 about that.

13 I start to see them carry weapon, and I feel like,
14 can be scared. And Alvaro Saravia told me that I going to
15 drive the people when they tell me they need a driver for

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16 somewhere else, to go some places, that I going to drive for
17 them, wherever they go. "Whenever I tell you to go, night,
18 day, whatever time, you know, you go."

19 Q. Where were you living if it didn't matter the time or day?

20 A. Well, I was, on and off, living in his house.

21 Q. At Captain Saravia's house?

22 A. Yes, sir.

23 Q. So there was a room for you to sleep in there?

24 A. Yes, there was a room where we were sleeping there.

25 Q. You say "we." Who else was there?

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1 A. Nelson and -- Nelson Morales and Nelson Garcia.

2 Q. And who else was there at the house?

3 A. Well, actually, there were more people, but the people, I
4 didn't recognize them, who they were, because they were
5 outside, like security guards or something, bodyguards, out
6 from his house.

7 Q. So there would be periods of several days in a row that
8 you would sleep at that house; is that what you are saying?

9 A. Yes. Yes, sir.

10 Q. And you shared a room with Nelson Morales and Nelson
11 Garcia?

12 A. No.

13 Q. No?

14 A. We have a little room, each of us.

15 Q. Did you spend time socializing with those two?

16 A. Yes, yes, sir.

17 Q. What kind of things did they talk about?

18 A. Well, nothing unusual, just, you know, once in a while

19 that they would be proud for what they were doing.

20 Q. What kind of things were they doing?

21 A. Like kill people.

22 Q. Do you remember any?

23 A. Yes. I remember one day, Nelson Garcia, he come to me and
24 said that he killed somebody in the movie theater. And he
25 said he went inside and seen the guy he was looking for, boom,

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1 boom, killed right there. And he walked out from the movie
2 theater where he was. And he was telling me, you know, like
3 something cool. And when he mentioned the name, I knew it was
4 my cousin.

5 Q. The person that he shot?

6 A. They didn't know that he was my cousin. I was quiet
7 because I didn't want them thinking --

8 THE REPORTER: You will have to slow down and speak
9 up a little bit.

10 THE WITNESS: I have to keep quiet and don't say
11 anything, that he was my relative, in order they don't think I
12 was trying to get even because they killed my relative.

13 THE REPORTER: Thank you.

14 THE WITNESS: You are welcome.

15 BY MR. Van AELSTYN:

16 Q. Did you ever hear the term "esquadrones de la muerte"?

17 A. Yes, sir.

18 Q. What did you understand that term to mean?

19 A. Yes, sir. You want me to explain?

20 Q. Yes, please.

21 A. Yes, it was a group of people, was looking for supposedly
22 enemy that they have, because what they were doing is looking

23 for people to kill them, to kill them. That's why they're
24 called "esquadrones de la muerte."

25 Q. Is that, in English, "death squad"?

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1 A. Yes, death squad.

2 Q. You said the people that were enemies, what kind of people
3 did they -- did they ever describe who were the enemies?

4 THE COURT: Why don't we foundationally identify
5 "they"?

6 MR. Van AELSTYN: Yes, I'm sorry.

7 BY MR. Van AELSTYN:

8 Q. Let's go back to your conversations with Nelson Morales
9 and Nelson Garcia. Did they ever identify whom they thought
10 were enemies?

11 A. Not really, sir.

12 Q. Did anybody else at Captain Saravia's house?

13 A. Well, I don't remember how long ago, but he mentioned
14 something that the priests, they were the worst enemy they
15 have.

16 THE COURT: Who mentioned that?

17 THE WITNESS: Captain Alvaro Saravia.

18 THE COURT: That priests were the worst enemy they
19 had?

20 THE WITNESS: Yes, sir.

21 THE COURT: Who was it that told you about the death
22 squads?

23 THE WITNESS: Well, I find out with the time I start
24 to work there because they start to introduce me, little by
25 little, who they were. They didn't want to shock me at the

1 same time because they were afraid, I guess, you know.

2 THE COURT: Was Nelson Morales a member of a death
3 squad?

4 THE WITNESS: Yes, sir.

5 THE COURT: Was Nelson Garcia a member of a death
6 squad?

7 THE WITNESS: Yes, sir.

8 THE COURT: And not at first, but later, they told
9 you that?

10 THE WITNESS: No, they didn't mention anything
11 "esquadrones de la muerte."

12 THE COURT: How did you know that those two
13 individuals were death squad members?

14 THE WITNESS: Because common sense. And the way I
15 was in that time, they said, "Okay, drive those guys to
16 take" -- they will tell you where to go. When you get to the
17 place, they said, "wait over here." They go to a place where
18 they want to go and they come back and say, "It was easy, we
19 killed those people, no problem."

20 THE COURT: Now, the people that you would transport,
21 was that Nelson Morales and Nelson Garcia or was it other
22 persons?

23 THE WITNESS: Other persons, like high grade, like
24 maybe a colonel or captain or lieutenant.

25 THE COURT: Was it the high grade people who were

1 doing the killing?

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2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 You may continue.

5 MR. Van AELSTYN: Thank you.

6 BY MR. Van AELSTYN:

7 Q. Did you ever drive Nelson Morales and Nelson Garcia on a
8 job like that?

9 A. It was sometime they used to take Nelson, sometimes Nelson
10 or somebody else, you know, I can't recognize their face,
11 because their maybe I see those once in a while. But Nelson
12 was the one that focused in my mind because he was all the
13 time in my restaurant.

14 Q. Nelson Morales?

15 A. And Nelson Garcia.

16 Q. Nelson Garcia?

17 A. Both of them.

18 Q. Both of them?

19 A. Yes.

20 Q. When you would go on one of these jobs and they would tell
21 you where to go, were they carrying weapons?

22 A. Yes. They carrying a big weapon.

23 THE COURT: Let's try to be specific here.

24 THE WITNESS: Yes, sir.

25 THE COURT: Did you ever drive the two Nelsons to a

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1 job where they said, then, when they returned to your vehicle
2 that they had killed someone?

3 THE WITNESS: Yes, actually, I did, but not together.

4 THE COURT: Not together?

5 THE WITNESS: No, maybe once today and maybe a week
6 later, the other one, the other Nelson, and different times, I
7 did, for them.

8 THE COURT: Would, on these missions, when you were
9 driving, would there be one killer or more than one that you
10 carried in your car?

11 THE WITNESS: Actually, I will tell you the way I saw
12 the thing. What happened is they would get out of the car in
13 a group. And over there, somebody -- one of them get into the
14 place where they kill the people and the rest stay there, like
15 a security guard. And I don't know who went inside because --

16 THE COURT: You didn't see, you weren't there?

17 THE WITNESS: No.

18 THE COURT: But how many persons would you carry in
19 your car on those occasions?

20 THE WITNESS: Like three or four, sir.

21 THE COURT: Three or four at the same time?

22 THE WITNESS: Yes.

23 THE COURT: What kind of car did you drive?

24 THE WITNESS: Jeep.

25 THE COURT: Was it an enclosed Jeep or open Jeep?

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1 THE WITNESS: In the back was halfway closed. The
2 rest was open. That way, they would carry their weapon like
3 this. Cover it up in the half.

4 THE COURT: Was it military type Jeep?

5 THE WITNESS: Not specifically military, but kind of
6 type.

7 THE COURT: Same type. And did you always use the
8 same vehicle or different vehicles?

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9 THE WITNESS: Different vehicles.

10 THE COURT: Different vehicles?

11 THE WITNESS: Yes.

12 THE COURT: Where did you obtain the vehicles, at
13 Saravia's residence or someplace else?

14 THE WITNESS: Most of the time, I did at Saravia's
15 residence.

16 THE COURT: You may continue.

17 MR. Van AELSTYN: Thank you.

18 BY MR. Van AELSTYN:

19 Q. I draw your attention to the day of March 24, 1980. Where
20 were you in the afternoon of that day?

21 THE COURT: Let's ask him how he remembers that day
22 first.

23 BY MR. Van AELSTYN:

24 Q. How do you remember that day?

25 A. Well, actually, I can't tell you the day that you describe

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1 me right now, I don't really -- I don't know the date where it
2 was. Honestly, it wasn't, because in that time, I kind of
3 lost the time, the date, the month, because I was trying to
4 concentrate how to get out to the (unintelligible). I didn't
5 want to be there. And that's why I was hoping -- I didn't
6 care about the time, I didn't care about the date, anything
7 like this. Just to get out of there.

8 Q. You didn't want to work for Captain Saravia anymore?

9 A. No, I didn't. I didn't even in the beginning. I didn't
10 want to work there. But I have to do it, whatever they
11 ordered to do, because they don't ask you, they order. The

12 first time they ask you, you say no. Then you receive an
13 order, even though you are not in the army. By you being in
14 the army, you have such an obligation, they -- the army
15 people.

16 Q. Do you recall ever driving for a job that concerned the
17 killing of anybody at a church?

18 A. Yes, sir.

19 Q. Do you recall when approximately that was?

20 A. No, I don't recall what day it was. As a matter of fact,
21 I don't remember the date and the time. Just, I remember that
22 it was still like a little clear. It wasn't dark, it wasn't
23 completely day, just, you know, like dark.

24 Q. Was it dusk, late in the afternoon?

25 A. No, not dusk. It's like the day start to go down like

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1 start in the evening, like getting close to the dark.

2 Q. And what do you remember happened at that time of the day?

3 A. Well, at that time, I remember Alvaro Saravia told me that
4 I going to drive that night, and we are going to go to a place
5 called Japanese Marañon --

6 Q. Say it in Spanish.

7 A. Marañon Japanese, and it's a tree. And it's called
8 Marañon Japanese.

9 THE COURT: Can you spell it?

10 THE WITNESS: Marañon, M-A-R-A-N-J-O-N [sic].
11 Japanese, is like a "Japanese."

12 MR. Van AELSTYN: I believe, your Honor, the
13 translation is Japanese Cashew tree, which is a kind of tree
14 that's recognizable in El Salvador.

15 BY MR. Van AELSTYN:

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16 Q. So where were you when Captain Saravia came to you?

17 A. I was at his house.

18 Q. Did you go with him?

19 A. Yes, I did.

20 Q. Did anybody else go with you?

21 A. Yes. They were Captain Alvaro Saravia, Nelson Garcia,

22 Nelson Morales, and somebody else that I didn't see them.

23 They were behind us, like behind us.

24 Q. In a different car?

25 A. Different car, like a Cherokee with a bulletproof.

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1 Q. Bulletproof window?

2 A. Yes.

3 Q. What kind of car were you in?

4 A. I was like a normal car. I can't exactly tell you what

5 kind of car, but it was a normal car. Nothing, you know.

6 Q. And where did you go?

7 A. Well, we went to the place that they called Marañon

8 Japanese, the house that have that kind of tree.

9 Q. What else can you remember from the house besides the
10 trees?

11 A. Beside the tree, just I remember there was a gate. This
12 is the street. This is the gate. The entry was like this and
13 you have flat and then like this is the house.

14 Q. The driveway went up from the gate to the house?

15 A. Like a little hill, and then flat like this and then the
16 house.

17 Q. What did you do when you got there?

18 A. Well, when I got there, we go to the gate. There were

19 Nelson and -- Nelson Morales and Nelson Garcia and somebody
20 else that I didn't see them before. And suddenly, Captain
21 Saravia get out to the house where he was.

22 Q. He came out of the house?

23 A. Yes, sir, with the -- with a tall guy with beard, nice
24 appearing guy, nice looking guy. And he told me that I going
25 to drive for this guy. He told me he is going to tell me

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1 where to go.

2 Q. Who said that?

3 A. Alvaro Saravia.

4 THE COURT: Did you say the tall guy had a beard?

5 THE WITNESS: Yes, sir.

6 BY MR. Van AELSTYN:

7 Q. Did Captain Saravia say anything to the tall man with the
8 beard?

9 A. He said something like, "It's better to shoot in the head
10 because maybe he have a bulletproof vest. You have to be sure
11 he get killed."

12 Q. Did he say anything else to the man with the beard?

13 A. No, just I remember he told me to follow his instructions
14 how to get to the place and he said that he -- we are going to
15 have some protection there, they were going to have a vehicle
16 behind us protecting us. And I didn't see anything because I
17 start to like get nervous and start to driving.

18 Q. Did you get back in the car that you drove to that house
19 in?

20 A. No. It was another, like a Volkswagen car, like a red
21 car.

22 Q. A red Volkswagen?

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23 A. Yes, sir, red Volkswagen.

24 Q. Had you seen that car before?

25 A. No. No. And I was following the instructions. When we

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1 were close to the big gate, and when I saw the big gate and
2 inside the gate was like a long path. And he said "Go to the
3 gate." I start to go. He said, "Stop in front of the
4 church."

5 And but I didn't understand -- but I didn't know
6 exactly what he mean "in front of the church." I asked, "Stop
7 in front of the church?"

8 But he said, "No, drive in in front of the church,
9 the door, the front door." And when I stopped in the front
10 door to the church, he say, "Look like you are fixing
11 something in the car."

12 And I bent over like this and I start to take a
13 rubber band on a (unintelligible) and I took it off and put it
14 back. And when I was putting it back, I heard a big explosion
15 behind me.

16 And the guy said, "Relax. Just go slow and get out."
17 when we are getting to this place. And that's what I did.

18 And I start to drive, but I think this guy didn't
19 know how to go back to the place because I didn't know either
20 and I got lost. We were lost in the car an hour, hour and a
21 half.

22 And suddenly, I think they have a little radio, like
23 a two-way radio, and they start to talk in the radio, and they
24 tell them where he was and they start to give the direction
25 how to go back to the place, to the house, the Marañon

1 Japanese.

2 MR. Van AELSTYN: Could I have Exhibit 107, please.

3 BY MR. Van AELSTYN:

4 Q. Do you recognize this location?

5 A. Yes, sir. That's exactly where I thought when I was
6 getting to the gate. The gate was over here.

7 Q. On the left side of the picture? Where is the gate?

8 A. This over here. It's not anywhere else.

9 Q. Were the photographers standing behind the photographer at
10 the gate?

11 A. Well, you see the car over there. I think it's a car.

12 Q. The lower right-hand corner?

13 A. Yes, the gate is probably like right there.

14 Q. And behind that car somewhere?

15 A. Yes.

16 Q. And did you drive, then, to the front of the building on
17 the left?

18 A. Yes, sir.

19 MR. Van AELSTYN: Could I have Exhibit 108, please.

20 BY MR. Van AELSTYN:

21 Q. Do you recognize that?

22 A. Absolutely. I recognize the church.

23 Q. That's the church?

24 A. Yes.

25 Q. Did you see anybody inside the church?

□

1 A. Yes, I saw a lot of people sitting down in the bench with
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2 the church house. And all the way to the end was a priest
3 saying something, you know, what they do say with all the
4 people. And that's when it happened. I heard the guy shoot
5 the priest.

6 Q. Could you hear the priest?

7 A. Yes, I did.

8 THE COURT: Can you estimate distance?

9 THE WITNESS: The distance from the car to the
10 church?

11 THE COURT: Yes.

12 THE WITNESS: From the door to the car, approximately
13 like maybe 25 feet.

14 THE COURT: And then how much farther was it inside
15 the church, if you could tell, to where you saw the priest
16 standing?

17 THE WITNESS: I can say approximately, maybe like a
18 hundred yards.

19 THE COURT: That would be 300 feet?

20 THE WITNESS: 300 feet, something like that.

21 THE COURT: You may continue.

22 MR. Van AELSTYN: Thank you.

23 BY MR. Van AELSTYN:

24 Q. What happened when you got back to the house with the
25 Marañon Japanese trees?

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1 A. We got to the car. We went over there. We met Alvaro
2 Saravia. And he said, "I seen -- I think you killed the guy
3 because the news said he died instantly."

4 Q. Who said that?

5 A. Captain Saravia; he was listening the news inside the
6 house.

7 Q. At the house with the Marañon Japanese?

8 A. Yes.

9 Q. And he said that to whom?

10 A. To the shooter.

11 Q. Did the shooter say anything?

12 A. No, he didn't say anything. He didn't say anything.

13 THE COURT: When you heard the explosion in the car,
14 did you turn to see what the noise was?

15 THE WITNESS: No. Because I kind of figured out, you
16 know, what. Besides, I saw this guy get into the car with a
17 big rifle; I assumed they were going to do something like
18 that.

19 THE COURT: You did see a rifle?

20 THE WITNESS: I saw it when he was getting into the
21 car with the rifle.

22 THE COURT: When you were leaving the residence to go
23 to the church?

24 THE WITNESS: No, I didn't see it any more.

25 THE COURT: I'm -- I want you to go back in time

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1 before you drove to the church.

2 THE WITNESS: Yes, sir.

3 THE COURT: When you began to drive and when the tall
4 man with the beard first got into the car with you, did you
5 see any weapon at that time?

6 THE WITNESS: Yes, sir, I did.

7 THE COURT: What was the weapon?

8 THE WITNESS: It was a long weapon. I can't say the
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9 name exactly.

10 THE COURT: Did you use weapons in the army when you
11 were in the army?

12 THE WITNESS: Yes.

13 THE COURT: Did you carry a rifle or a submachine
14 gun?

15 THE WITNESS: Sometimes we carry a heavy weapon, like
16 a carbine, M-3.

17 THE COURT: Yes. And how did the weapon you saw
18 compare to the weapon you carry?

19 THE WITNESS: It was a long weapon with a mirror,
20 like a telescope.

21 THE COURT: Telescopic sight?

22 THE WITNESS: Yes, sir.

23 THE COURT: When you drove back to the house, I can't
24 pronounce the house, but the Japanese cashew tree house, when
25 you got back there, did you see the weapon again?

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1 THE WITNESS: No, I didn't. And I'm not sure if the
2 guy left the weapon in the car or later on they took it out.
3 I don't know exactly what happened. Because after we got out
4 to the car, you know, the Captain Saravia got out to the house
5 and he said, you know, what I said before, you know, "I think
6 you killed the guy because the news said that it was
7 instantly." And the guy, the shooter didn't say anything. He
8 stayed quiet.

9 Now, I want to back up a little bit. When we were in
10 the car, he said, "I can't believe it, I'm going to shoot a
11 priest."

12 BY MR. Van AELSTYN:
13 Q. The man in the back seat said that?
14 A. Yes, sir.
15 Q. Was that before the shooting?
16 A. Before the shooting.
17 Q. What kind of tone of voice did he say that with?
18 A. Well, I not going to be able to recognize that voice, but
19 now what kind of a voice, because right now, it sound like a
20 normal voice, like anybody.
21 Q. Did he have an accent?
22 A. No, no, he didn't.
23 Q. Salvadoran, Spanish?
24 A. Yeah, yeah.
25 Q. Do you recall what he said in Spanish?

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1 A. He said in Spanish, "No puedo creerlo que voy a matar a un
2 sacerdote."
3 THE REPORTER: I don't know how to report that,
4 Counsel.
5 THE WITNESS: Do you want me to say it in English?
6 THE COURT: You just said words in Spanish the court
7 reporter doesn't recognize and can't record. You can
8 translate for us.
9 THE WITNESS: He said, like I said before, "I can't
10 believe I'm going to kill a priest."
11 THE COURT: And this man was not dressed in any kind
12 of a uniform?
13 THE WITNESS: No, no. He was in normal clothes.
14 BY MR. Van AELSTYN:
15 Q. If I could bring you back to that moment.

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16 Could we have Exhibit 109, please. Do you recognize
17 this?

18 A. Yes, sir.

19 Q. What is it?

20 A. This is the church where we were in front of the church,
21 the same church where we were before.

22 Q. Do you still have a sense of the estimate of the distance?

23 A. Yeah, I can -- I can't picture anything else, just the one
24 I brought with me in my mind at that time.

25 Q. Did it seem far, close?

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1 A. For me, it was a little far. I thought it was kind of
2 far.

3 Q. Okay.

4 THE COURT: Let me ask you a question.

5 THE WITNESS: Yes.

6 THE COURT: Based on your experience, could you make
7 that shot yourself?

8 THE WITNESS: I wouldn't be able to answer that
9 question because I never been doing it.

10 THE COURT: You never had a sniper type of a weapon?

11 THE WITNESS: No, sir, never. I'm not going to tell
12 you, oh, I can do it or no, I can't do it. Actually, I can't,
13 to tell you exactly.

14 THE COURT: But it was a long shot?

15 THE WITNESS: Yes, sir.

16 THE COURT: And it was more than your MP-3 would make
17 with accuracy?

18 THE WITNESS: Yes, sir.

19

THE COURT: You may continue.

20

MR. Van AELSTYN: Thank you.

21

BY MR. Van AELSTYN:

22

Q. You mentioned before that Captain Saravia said to you

23

something about there being protection. Did you see any other

24

cars at the time of the drive to the church?

25

A. No, sir, I didn't.

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1

Q. Okay. Did you understand that there were others?

2

A. I assuming to my mind that probably we would have some

3

protection when that happened, but I wasn't sure because I

4

didn't see anybody.

5

Q. What did you do after the conversation at the house with

6

the Japanese cashew nut trees?

7

A. We drive -- when I say "we drive," me and this man, Nelson

8

Morales and Nelson Garcia, Captain Saravia and myself, we

9

drove back to the house.

10

Q. The house, Captain Saravia's house?

11

A. Captain Saravia's house.

12

Q. Did you go in the red volkswagen?

13

A. No, I didn't even see the red volkswagen. Just, I drove

14

in the Cherokee, and we went back to the house.

15

Q. Did you ever see the red volkswagen again?

16

A. Actually, when I was driving by one day, there was an

17

empty lot, I saw a car burning up, it was already burning, you

18

know --

19

Q. It was burning or was burned?

20

A. Was burned, yes. And some guy was -- I think it was

21

Captain Saravia, what he told me, "That's the car that we were

22

driving in that time we shoot." And but before, I remember

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23 now -- sorry for backing up -- you know, I remember just a
24 little. He told me that he is going to give me that red car,
25 the Volkswagen, the one we used.

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1 Q. Captain Saravia said that?

2 A. Yes, that he was going to give me that car. But I never
3 thought why he was trying to give me that car.

4 THE COURT: And you say that on another occasion, you
5 were driving Captain Saravia?

6 THE WITNESS: Yes, sir.

7 THE COURT: And you saw a burned car?

8 THE WITNESS: Yes, after those things happened.

9 THE COURT: Yes, this is after the event.

10 THE WITNESS: Yes, sir.

11 THE COURT: And Captain Saravia then told you that's
12 the car you drove?

13 THE WITNESS: Yes. That's the red car.

14 THE COURT: At the time of the shooting?

15 THE WITNESS: Yes.

16 THE COURT: All right.

17 BY MR. Van AELSTYN:

18 Q. Did you ever see the tall man with the beard who fired the
19 gun? Did you ever see him again?

20 A. No, sir, only that time that thing happened.

21 Q. Do you know who he was?

22 A. No, sir, I never seen him before.

23 Q. Did Captain Saravia or any of the other gentlemen identify
24 him to you?

25 A. I guess the other people, they wouldn't be able, I guess,

1 I assume myself, they wouldn't be able to recognize him, just
2 Captain Saravia, because he is the one that controlled the
3 situation and he know what he's doing.

4 Q. So what did you and Captain Saravia, Nelson Morales and
5 Nelson Garcia do when you got back to Captain Saravia's house
6 after the shooting?

7 A. After the shooting, when we got to the house, Alvaro
8 Saravia, he said, "You are going to sleep in that house."

9 Q. In that house or --

10 A. In Alvaro Saravia's house. Captain Saravia said, "You are
11 going to sleep in other house," and I don't remember what
12 house, I just remember that we got there, we sleep in the
13 house that night. And that's what I can --

14 Q. So you went to a different house from Captain Saravia's?

15 A. Yes.

16 Q. Did you go to Captain Saravia's house first?

17 A. Yes.

18 Q. Were there other people there at the time?

19 A. Just the people that were with me.

20 Q. Did you all do anything at Captain Saravia's house when
21 you first got there?

22 A. No. Only he said we are going to sleep in another house.

23 Q. Okay. And you then left to go to another house?

24 A. Yes, sir.

25 Q. Did you ever come to know who it was that was shot that

1 evening?

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2 A. No, sir. I never find out what. And I didn't think about
3 who could be doing the shooting at this time. I never
4 recognized the guy. I never saw him again.

5 THE COURT: I think the question was different from
6 that. The question is: Did you ever learn who the victim of
7 the shooting was?

8 THE WITNESS: No, sir.

9 THE COURT: You don't know who the person was who was
10 shot?

11 THE WITNESS: No, sir.

12 THE COURT: But you think it was a priest?

13 THE WITNESS: Yes, after the shooting, I find out
14 that he was not just a priest, he was Monseñor.

15 THE COURT: Did you ever learn his name?

16 THE WITNESS: Monseñor, famous name, famous, famous,
17 Monseñor -- I don't remember right now of his name. Oscar
18 Romero, Monseñor Romero.

19 BY MR. Van AELSTYN:

20 Q. Do you recall when you learned the identity of the victim?

21 A. Yes, I think it was like questioning in my mind with that
22 happening, the next day, I start to make a comment, I find out
23 with the news, and I find out it was Monseñor Romero who was
24 killed at that time.

25 Q. Do you recall where it was that you slept that night?

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1 A. No, sir.

2 Q. Had you been to this house before?

3 A. Not that I recall.

4 Q. And who was there with you, if anybody?

5 A. I think it was like a servant open the gate that we go
6 through with the car, and then we go inside, you know.

7 Q. We went inside. Who was the "we"?

8 A. Nelson Morales, Nelson Garcia and myself.

9 Q. Was Captain Saravia with you?

10 A. No. No.

11 Q. And the three of you stayed at that house that night?

12 A. Yes, sir.

13 Q. How long -- did you stay there any other nights?

14 A. No. We didn't stay there.

15 THE COURT: Were you told anything when you drove
16 back to the Saravia residence before you went to the other
17 house, were you told anything about what to say or do?

18 THE WITNESS: No, sir. They didn't say anything.
19 They had no comment, no nothing.

20 THE COURT: And when you got to the other house, did
21 you and the two Nelsons discuss what had happened?

22 THE WITNESS: No, everybody be quiet.

23 THE COURT: So when was the first time, if you did,
24 that you talked to anybody about what had happened?

25 THE WITNESS: Well, I didn't talk to nobody about

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1 what happened.

2 THE COURT: When did you leave El Salvador?

3 THE WITNESS: I cannot tell you exactly when I left
4 El Salvador, because --

5 THE COURT: Can you relate the time in months or
6 years following this event?

7 THE WITNESS: No, sir, I can't tell you exactly the
8 time, the year. Just the time maybe. It was at 3:00 o'clock

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9 in the morning. That's why I remember, because my ex-wife
10 told me. My wife at the time, she said, "My brother's going
11 to Nicaragua," and I told her I would like to join him because
12 I want to try to find opportunity to leave here, I don't want
13 to be here, and the way -- and I took the opportunity to go
14 with him to Nicaragua.

15 THE COURT: And can you estimate the time from the
16 event when you drove when the priest was shot to the time you
17 left with your wife's brother for Nicaragua, estimate?

18 THE WITNESS: well, before this thing happened, we
19 were a group of people that Roberto D'Aubuisson organized to
20 go to -- I don't know how to say in English, "finca."

21 BY MR. Van AELSTYN:

22 Q. Farm or ranch?

23 A. Farm. And before this thing happened, okay. I was like a
24 lot of people, they said we are going to have a meeting in la
25 finca, the ranch, and we were a lot of people there, everybody

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1 is civilian, dressed in civilian.

2 And was Alvaro Saravia and Colonel Roberto
3 D'Aubuisson, they went inside a big room, like a meeting room.

4 Q. You mentioned Roberto D'Aubuisson. Do you recognize this
5 photograph?

6 A. Yes, I recognize it like I recognize myself.

7 Q. That is Roberto D'Aubuisson?

8 A. Yes.

9 Q. This is Exhibit 43, your Honor. Thank you.

10 So there was a time -- to bring you back --

11 A. Yes, sir.

12 Q. -- that you were at a big meeting at a finca, a farm, with
13 Roberto D'Aubuisson and Alvaro Saravia?

14 A. All I remember is captains, colonels, big people, and have
15 the whole meeting there.

16 Q. This was out in the country, not in the city?

17 A. Out in the country, yes. Yes.

18 Q. And what happened? Tell us about it.

19 A. Well, what happened is, in that time, when Roberto
20 D'Aubuisson and Captain Saravia went to join the rest of the
21 people who were inside right in the room, Alvaro Saravia --
22 no, Roberto D'Aubuisson, he give me his .45 millimeter, and he
23 says, "Keep it with you."

24 And I, you know, I put -- I keep it with me.

25 And like maybe half an hour later, two big truck was

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1 coming inside to the finca, San Luis -- now I remember the
2 name, it was Finca San Luis -- two big truck, army truck
3 style, with soldiers in the back. Full of soldiers, both of
4 them, in the trucks.

5 And everybody jumped to the truck and go around,
6 point at us and said, "Nobody move, nobody have any intention
7 of doing anything." And nobody didn't move.

8 And he start to get the weapons from us. I say "from
9 us," because I had the .45 millimeter with me that Roberto
10 D'Aubuisson give it to me.

11 And they put everybody in the truck where the
12 soldiers were coming. And behind the two trucks -- no, behind
13 the big truck, yeah, the big truck, was a night truck full of
14 soldiers like pointing, where if you have any intention to
15 escape, they were going to shoot, I don't know, but they was

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16 behind us, all the way to get to the cuartel -- barracks, with
17 like a lot of soldiers.

18 Q. A barracks?

19 A. Yes.

20 Q. And the name was?

21 A. San Carlos.

22 Q. And what happened at the San Carlos barracks?

23 A. What happened were we got there and everybody got off of
24 the truck and they put us in a room, different, different, and
25 they -- put the different people in different rooms. And we

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1 were there, I can't tell you exactly how long, but I guess
2 like a week or so. And we got released from there.

3 Q. Were you ever brought in front of a judge?

4 A. At that time?

5 Q. Yes.

6 A. No.

7 Q. Were you ever interrogated?

8 A. No.

9 Q. You were just left in the room at the San Carlos barracks?

10 A. No, yes. Well, actually, Captain Saravia, Colonel Roberto
11 D'Aubuisson wasn't there, just the other people. After we
12 were released from the barricade.

13 Q. Barricade -- barracks, I'm sorry?

14 A. Barracks. After we got out of there, we went to Captain
15 Saravia. He mention, "If any of you escape or trying to
16 escape, you will get killed. If you escape, we will look for
17 you until we find you."

18 Q. Captain Saravia said that to you?

19 A. Captain Saravia said that to everybody who was there.

20 Q. What did you do after that?

21 A. I was wanting to escape, but I was afraid that they would
22 find me and kill me in the way Captain Saravia said. But I
23 was taking chances so at least if I have an opportunity to
24 escape and maybe they won't find me, because he mentioned
25 something about Mexico. "If you leave to Mexico, we will find

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1 you and we will kill you."

2 And but still I was thinking in my mind to escape,
3 planning how to escape from there. And as it happened, my
4 wife's brother, he went to Nicaragua. He was to leave from
5 there at 3:00 o'clock in the morning to take the ships all the
6 way to Nicaragua. And I called him and I said, "Do you think
7 it's possible to go with you?"

8 And he said, of course. And I go with him, and I
9 took the ships going to Nicaragua.

10 Q. And did you ever work for Captain Saravia again after
11 that?

12 A. No, sir.

13 Q. Did you ever see him again after that?

14 A. No, sir.

15 THE COURT: How long, if you can remember, by
16 estimate -- we still haven't answered that question -- was it
17 from the time of the shooting incident we have talked about --

18 THE WITNESS: Yes.

19 THE COURT: -- of the priest, until the time when all
20 the trucks came and you were held for a week?

21 THE WITNESS: Yes, sir.

22 THE COURT: About how long between that? Months,
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23 years?

24 THE WITNESS: Like I say, like approximately like a
25 week or so.

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1 THE COURT: It was a week after the shooting?

2 THE WITNESS: Oh, okay. No. Hmm, I feel like
3 something like a week after the shooting, yeah.

4 THE COURT: So it was close in time?

5 THE WITNESS: Yes.

6 THE COURT: You then wanted to leave the country?

7 THE WITNESS: I had been planning it since the
8 beginning, but I didn't have the opportunity, because when you
9 want to do something in that place, you have to do it right in
10 order to not get caught by those people. They will not mess
11 with you.

12 THE COURT: So if I have understood your testimony
13 correctly, it was approximately two weeks until you were held
14 in the barracks for a week?

15 THE WITNESS: Yes.

16 THE COURT: And then after that, how long was it
17 until you told your brother-in-law you wanted to leave for
18 Nicaragua?

19 THE WITNESS: Actually, I can say maybe like two
20 weeks later.

21 THE COURT: So within approximately a month after the
22 shooting of the priest, you left El Salvador?

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 THE WITNESS: You are welcome.

1 BY MR. Van AELSTYN:

2 Q. Do you feel confident about those estimates of time?

3 A. Well, I'm still not quite sure that I estimate the time
4 because like I say, you know, I didn't think about, okay, one
5 week, a week ago this thing happen. Just try to live day to
6 day. I'm not really can't tell you specifically, but
7 approximately, like, the Honor said, you know, approximately,
8 rough guess, like a week, week and a half, something like
9 that.

10 Q. You identified Roberto D'Aubuisson and said he had been at
11 the San Luis Finca where that event took place. Had you seen
12 him before that day?

13 A. Well, going back, when I was with them, one day, Captain
14 Saravia told me that, "We are going to pick up Roberto
15 D'Aubuisson at the airport."

16 Q. At the airport or take him to the airport?

17 A. No, pick him up from there. Because he was waiting for us
18 over there at the airport. And we drove there; they took us
19 with him. That was the first time with Roberto D'Aubuisson.
20 And I drove for him on that date. I took him to his house.

21 Well, actually, to be honest, I wouldn't say his
22 house, because I never met any house that it was a specific
23 house. He was, you know, jumping all over the place and
24 didn't have any specific place to say, "Oh, this is my family,
25 my wife," never. Never find out something like that.

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1 Just drive for him to take him some places, to pick
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2 it up. When I went to pick it up to the airport, and I drove
3 him to a house. I don't remember the house. So many houses,
4 they are kind of confused in my mind and I can't describe it.

5 Q. So you drove Roberto D'Aubuisson to more than one house on
6 more than one occasion; is that what I understand?

7 A. Like three times.

8 Q. Okay.

9 A. Because now that you mentioned those things, sir, I
10 remember that one day, I went with the Captain Saravia and
11 like a house look like a castle, beautiful house. It was a
12 long, long driveway, have a big gate, white gate, long, long,
13 long driveway. And it was a big house, and they have a
14 meeting at that place. And it is when after the -- what
15 happened with the priest, Alvaro Saravia told the Colonel
16 Roberto D'Aubuisson, "mission cumplida," like "mission
17 completed."

18 Q. "Mission completed"?

19 A. "Mission completed."

20 Q. This was sometime after the shooting of the priest?

21 A. Yes, sir.

22 Q. What happened? Start at the beginning of that. Did you
23 take -- how did you get to be at this house that looked like a
24 castle?

25 A. Because I was in Captain Saravia's house, and I drove

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1 Captain Saravia to the place, and it was in the city.

2 Q. In the city of San Salvador?

3 A. Yes, sir. And I drove him to the house. And go inside.

4 And they went inside the house, but before they go inside the

5 house, Colonel Roberto D'Aubuisson get out to the house and he
6 say -- and Captain Saravia told him, "Mission completed."
7 Q. And this was sometime shortly after the priest?
8 A. Yes, like two, three days or so.
9 Q. Did you understand what they were talking about?
10 A. Absolutely, yes. Because the major thing was to have done
11 with the priest, was I find out those things later, when the
12 time was coming along, he was like for them the worst enemy
13 they have. And that's why I said, I drove for the Colonel
14 like three times, and I -- like three times.
15 Q. Did Roberto D'Aubuisson say anything after Captain Saravia
16 had saluted and said, "Mission completed"?
17 A. As a matter of fact, he did. I remember he said, "You
18 shouldn't have done that. You should have waited."
19 Q. Captain Saravia say anything to that?
20 A. He just move his shoulder and didn't say anything.
21 Q. Do you remember anything else from that meeting?
22 A. No, because they went inside, they talked, you know, and
23 they told me wait over there waiting for them and we were
24 playing pool in the recreation they have.
25 Q. You say "we." Who was --

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1 A. Nelson Morales and the people used to be there, like a
2 security guard.
3 Q. And your bosses were inside of the meeting?
4 A. Yes.
5 Q. You mentioned that at the San Luis Finca, Roberto
6 D'Aubuisson gave you his gun to hold?
7 A. Yes.
8 Q. Was that unusual?

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9 A. I don't know how to put it, but that time, he give me the
10 gun to hold it. I don't know how to explain you it was
11 unusual, but he gave me the gun to hold it.

12 Q. He must have trusted you?

13 A. I guess so.

14 MR. Van AELSTYN: One moment.

15 (Counsel conferred off the record.)

16 MR. Van AELSTYN: Your Honor, I would like to move
17 into evidence the five photographs that Mr. Garay identified,
18 numbers 107, 108 and 109, which were photographs of the
19 chapel, and photographs Exhibit numbers 43 and 44, which were
20 identified by Mr. Garay as photographs of Alberto Saravia and
21 Roberto D'Aubuisson.

22 THE COURT: Exhibits 107, 108, 109, 43 and 44 are
23 received in evidence.

24 (Plaintiff's Exhibits 107, 108, 109, 43 and 44 were
25 received.)

□

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1 THE COURT: I would like to ask the witness some
2 questions about his status.

3 MR. Van AELSTYN: Of course, your Honor.

4 THE COURT: Your name is pronounced?

5 THE WITNESS: Amado Garay.

6 THE COURT: Garay. Mr. Garay, are you receiving any
7 form of compensation for giving testimony today?

8 THE WITNESS: No, sir.

9 THE COURT: You are testifying for what reason?

10 THE WITNESS: well, the reason is because the people
11 doing what they are doing right now, they are great people.

12 That's in my heart, that's what I feel. And if I know how to
13 help them to get over with those things, that's why I doing
14 this thing. There is no other reason behind. They haven't
15 even mentioned anything about recompensation or anything else.

16 THE COURT: All right. And so did you say that you
17 were being helped or that you are helping people? I heard you
18 say --

19 THE WITNESS: Yeah, what I mean by that is these
20 people are trying to find out the killer to make justice for
21 this thing happening in that time.

22 THE COURT: All right. These people are in search of
23 the truth?

24 THE WITNESS: Yes, sir.

25 THE COURT: That's your understanding?

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1 THE WITNESS: Yes, I understand that, yes.

2 THE COURT: And how did you reach the United States
3 from Nicaragua?

4 THE WITNESS: From the name this guy is, he find me,
5 Lopez and Lopez. He is a good guy also. Honest. He find me.

6 And the people, the other side -- what I mean, the
7 bad guy side, like Roberto D'Aubuisson people, they were
8 trying to find me in order to kill me and, you know, get even
9 with me.

10 THE COURT: Let's slow down.

11 THE WITNESS: Yes.

12 THE COURT: Was your understanding that after you
13 left --

14 THE WITNESS: Yes.

15 THE COURT: -- El Salvador, that D'Aubuisson and
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16 Saravia were trying to have you killed?

17 THE WITNESS: Yes, sir.

18 THE COURT: That's what you believed?

19 THE WITNESS: Yes.

20 THE COURT: Nobody ever told you that specifically?

21 THE WITNESS: One person told me, "One person is
22 looking for you." And I assume immediately, like fear, like
23 oh, shit, you know. And this is why I start to push Mr. Lopez
24 and Lopez to help me to get out of this mess, and he has in a
25 way to find out to bring me over here.

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1 THE COURT: All right. And was it your understanding
2 that Mr. Lopez was connected to the opposition to D'Aubuisson
3 and Saravia in El Salvador?

4 THE WITNESS: This is my understanding, sir.

5 THE COURT: And if you know, was that a political
6 party? Was it a military group or was it something else?
7 Some organization?

8 THE WITNESS: In that time?

9 THE COURT: In that time.

10 THE WITNESS: In that time, it was like a political
11 thing. D'Aubuisson, he wanted to become the president.

12 THE COURT: All right. This was the, if you will,
13 the opposition political organization, whatever it was, in El
14 Salvador, that was opposing D'Aubuisson and Saravia, their
15 regime?

16 THE WITNESS: I don't understand quite your question,
17 sir. Sorry.

18 THE COURT: Did you understand that Colonel

19 D'Aubuisson and Captain Saravia were associated with the El
20 Salvadoran government in some way?

21 THE WITNESS: Yes, in some way, yes, sir.

22 THE COURT: And the people, Mr. Lopez, that he
23 represented, who you believe were trying to help you, they
24 were an opposing political group, if you will?

25 THE WITNESS: Yes, sir. That is my understanding.

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1 THE COURT: All right. Who were trying to either
2 bring a new government to power in El Salvador, to change who
3 was in power; is that correct?

4 THE WITNESS: Well, and I didn't know exactly what
5 was his purpose or what he was doing in El Salvador. Just I
6 know that he is the opposite from the Roberto D'Aubuisson and
7 Alvaro Saravia.

8 THE COURT: And did he tell you that you were in
9 danger?

10 THE WITNESS: Yes.

11 THE COURT: And was it then your belief, your state
12 of mind, that you were in danger?

13 THE WITNESS: Yes, sir.

14 THE COURT: You were afraid?

15 THE WITNESS: Yes, sir.

16 THE COURT: And Mr. Lopez got up to the United
17 States?

18 THE WITNESS: Yes, sir.

19 THE COURT: How long ago was that?

20 THE WITNESS: Maybe 16 years ago.

21 THE COURT: And at the present time, you don't have
22 to tell us anything specific about where or any names of

23 anything, but what is your general status at this time? Are
24 you legally within the United States?

25 THE WITNESS: Yes, sir.

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1 THE COURT: And do you have any kind of occupation
2 that you follow?

3 THE WITNESS: Yes, sir.

4 MR. Van AELSTYN: Your Honor, I would suggest that we
5 not define the occupation.

6 THE COURT: No, I'm not going to. I understand the
7 constraints. I am simply satisfying myself as to his
8 understanding. Do you have any understanding that, based on
9 whatever your status is, that there is any benefit that you
10 will receive from testifying here today?

11 THE WITNESS: well, the benefit I feel I'm receiving
12 is the government of the United States give me the protection.
13 That's why I'm here. Not unlike any other citizen because I
14 work like a regular citizen, I pay my taxes. I work normally
15 like anybody else.

16 THE COURT: All right.

17 MR. Van AELSTYN: Your Honor, I do have a few follow
18 up questions.

19 THE COURT: You may.

20 BY MR. Van AELSTYN:

21 Q. Mr. Garay, do you understand myself to be a representative
22 of the U.S. government?

23 A. Not really.

24 Q. I would like to show you a couple of exhibits.

25 Your Honor, may I approach the witness to show him?

1 THE COURT: Yes, you may. While you are showing him
2 that exhibit, I'm going to ask a question.

3 In the 16 years you have been here, have you had any
4 contact with Captain Saravia?

5 THE WITNESS: No, sir.

6 THE COURT: How about D'Aubuisson?

7 THE WITNESS: No, sir.

8 THE COURT: All right. You may continue.

9 MR. Van AELSTYN: Your Honor, may I ask questions
10 from here?

11 THE COURT: Yes, you may.

12 MR. Van AELSTYN: Thank you.

13 BY MR. Van AELSTYN:

14 Q. Mr. Garay, I'm showing you what has been marked as Exhibit
15 Number 110. You might want to put it up. I'm going to turn
16 now, it's a multiple page document in Spanish, but I would
17 like to turn to the last page, and ask you to see if you can
18 identify any of these signatures. Please look at the ones
19 here, the hard copy. It's a little easier to see.

20 A. This is mine.

21 Q. That is your signature?

22 A. Uh-huh.

23 Q. All right. And I would like to show you now what has been
24 marked as Exhibit Number 111, and again, turning to the last
25 page, there are a number of signatures on the two last pages

1 here. Do you recognize any of them?
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- 2 A. This one is mine.
- 3 Q. That is your signature there?
- 4 A. Uh-huh.
- 5 Q. On this page in the upper right, it looks like a 78 or 28,
6 is that the page on the screen here?
- 7 A. The left side.
- 8 Q. The lower left side, that is your signature?
- 9 A. Yes, sir.
- 10 Q. Do you recall when you signed these two documents?
- 11 A. No, sir.
- 12 Q. Do you recall where you signed them?
- 13 A. No, sir.
- 14 Q. Do you recall -- let me ask you this.
15 when Mr. Lopez y Lopez found you, where did he take
16 you, if he did?
- 17 A. Well, actually, he didn't. He brought me to United
18 States.
- 19 Q. He brought you to the United States?
- 20 A. Yes, sir.
- 21 Q. Did you -- let me ask you this.
22 Have you ever appeared in front of a judge before?
- 23 A. Yes, sir.
- 24 Q. Do you remember when approximately?
- 25 A. No, sir.

□

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- 1 Q. Do you remember where approximately?
- 2 A. Yes, sir.
- 3 Q. Where?
- 4 A. In El Salvador.

- 5 Q. In El Salvador?
- 6 A. Yes.
- 7 Q. What did you do?
- 8 A. I testified the same thing I doing now.
- 9 Q. About these same events?
- 10 A. Yes, sir.
- 11 Q. Did you then sign statements?
- 12 A. I don't recall.
- 13 Q. All right. And did Mr. Lopez y Lopez have anything to do
- 14 with your appearing in front of the judge in El Salvador?
- 15 A. He didn't appear.
- 16 Q. Okay.
- 17 A. In court, no.
- 18 THE COURT: Did he, to your understanding, arrange
- 19 for your appearance in any way in El Salvador before the
- 20 court?
- 21 THE WITNESS: Yes.
- 22 THE COURT: Mr. Lopez y Lopez did?
- 23 THE WITNESS: Yes, sir.
- 24 BY MR. Van AELSTYN:
- 25 Q. Was that before or after you came to the United States?

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- 1 A. Was after, was here. I was here already in the United
- 2 States.
- 3 Q. And then you went back to El Salvador?
- 4 A. Yes, sir, yes.
- 5 Q. Are you sure of that?
- 6 A. Yes, sir.
- 7 Q. Okay.
- 8 A. Yes, sir.

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9 THE COURT: Do you know what the outcome of that
10 proceeding was before the El Salvadoran court?

11 THE WITNESS: No, sir. I just, like --

12 THE COURT: You just gave your testimony under oath
13 and signed the affidavits and that's all?

14 THE WITNESS: Yes, sir.

15 THE COURT: Not anything else? Nobody told you what
16 was happening?

17 THE WITNESS: No.

18 THE COURT: Did anybody tell you why you were going
19 to testify?

20 THE WITNESS: No, sir.

21 THE COURT: Did you know what the nature of the case
22 in El Salvador was?

23 THE WITNESS: Yes, through myself, they tried to find
24 out how this happened, who the guilty people, who the criminal
25 people who did this thing.

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1 THE COURT: If you remember, you have been questioned
2 here by an attorney, one attorney. Do you remember whether
3 you were questioned by one attorney or more than one attorney
4 in the Salvadoran court?

5 THE WITNESS: When I was in the court?

6 THE COURT: When you were in the court just like
7 right now, on the stand, giving testimony.

8 THE WITNESS: I think just one.

9 THE COURT: And did that questioner who was asking
10 the questions, did the questions posed challenge you? were
11 they hostile type of questions or were they questions that let

12 you tell your story?

13 THE WITNESS: They let me tell the story.

14 THE COURT: And after you told your story, did
15 somebody else then question you --

16 THE WITNESS: No, sir.

17 THE COURT: -- to try to challenge anything you had
18 said?

19 THE WITNESS: No, sir, no.

20 THE COURT: All right.

21 BY MR. Van AELSTYN:

22 Q. Mr. Garay, do you know if the person asking you questions
23 was a lawyer or a judge?

24 A. I wouldn't be able to tell you specifically he was a
25 lawyer or the judge. I don't think so he was the judge; he

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1 was somebody that stand up like you.

2 Q. And there was a separate person sitting, perhaps raised
3 up?

4 A. Yes, sir.

5 Q. Okay. Were there other people present?

6 A. No, not too many.

7 Q. Has anybody -- have I paid you any money to appear here
8 today?

9 A. No, actually, I have been spending money in order to help
10 you, to help you with your case. For example, little things,
11 but for me coming, because I don't have money. I drive my
12 motorcycle, buy my own money for the parking lot, you know,
13 you don't have to pay me anything about it. I don't even
14 expect anything like this.

15 MR. Van AELSTYN: Your Honor, I would like to request
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16 that Exhibit numbers 110 and 111 can be moved into evidence on
17 the basis of his identification of his signature.

18 THE COURT: All right. Based on the signature, the
19 documents, have you read Exhibits 110 and 111?

20 THE WITNESS: No, sir.

21 THE COURT: Why don't you just, if you would, please,
22 look at them and see if you recognize what the writing says.
23 Do we have translations of these exhibits?

24 MR. Van AELSTYN: Yes, your Honor, there are
25 translations accompanying the exhibits which we represent are

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1 good translations. Let me find them for you. This is Exhibit
2 110, this is Exhibit 111.

3 THE COURT: Let's confirm that he recognizes that
4 this is something that he signed and that he's familiar with
5 its contents, and does he attest that it's true and correct
6 and his signature.

7 BY MR. Van AELSTYN:

8 Q. Mr. Garay, I will ask you. You've identified your
9 signature. Can you attest to the truth of the document or
10 only to the truth of the signature?

11 A. Well, only to the truth to the signature, this one over
12 here, for example.

13 Q. You are referring to the first page of Exhibit number 110
14 on the margin there is a signature. That is yours?

15 A. Uh-huh.

16 Q. Okay. Do you recall why you signed on the side of the
17 page?

18 A. No. It's like you give me some paper: Here, I want you

19 to sign over here. You sign this, you sign it.

20 No, I don't -- I recognize my signature, but I don't
21 really exactly know what I signed because I want to get over
22 with, you know.

23 THE COURT: All right. Let me ask this. In Exhibit
24 111, if you turn the page, there appears to be a drawing.

25 THE WITNESS: Uh-huh.

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1 THE COURT: Is that the shooter?

2 THE WITNESS: It's familiar to me.

3 THE COURT: You gave someone a description and then
4 an artist produced this --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- drawing from your description of the
7 shooter?

8 THE WITNESS: Yes, sir. Yes, they did.

9 THE COURT: At the time that you signed it in
10 Spanish, did you read the document that accompanies this
11 drawing?

12 THE WITNESS: No.

13 THE COURT: You didn't read it, you just signed it?

14 THE WITNESS: Yes, sir.

15 THE COURT: Do you know what the document contains?

16 THE WITNESS: That's, I assume, the declaration I did
17 in the court.

18 THE COURT: Your declaration of events that occurred?

19 THE WITNESS: Yes.

20 THE COURT: In connection with the shooting?

21 THE WITNESS: Yes, sir.

22 THE COURT: But you didn't read it to know that?

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23 THE WITNESS: No, sir.

24 THE COURT: All right.

25 MR. Van AELSTYN: I don't think I have --

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1 THE COURT: I don't think there is a foundation for
2 Exhibits 110 and 111. We can leave them marked for
3 identification, but he is not familiar with their contents and
4 to hear him just testify, they are not his words.

5 MR. Van AELSTYN: That's right, your Honor.

6 THE COURT: Unless you have -- you may have a further
7 foundational witness, but he can't lay the foundation, other
8 than he's identified his signature.

9 MR. Van AELSTYN: That's correct, your Honor. He's
10 identified his signature, but he cannot attest to the words
11 there.

12 THE COURT: Right, either to their content or their
13 truth?

14 MR. Van AELSTYN: Right.

15 THE COURT: All right.

16 MR. Van AELSTYN: I have no further questions at this
17 time.

18 THE COURT: Thank you, Mr. Garay. You may step down.

19 THE WITNESS: Thank you.

20 BY MR. Van AELSTYN:

21 Q. Mr. Garay, I see you looking. Is there any final words
22 you like to say?

23 THE WITNESS: No, I would just like to go to the
24 bathroom.

25 MR. Van AELSTYN: Thank you very much, Mr. Garay.

1 THE COURT: You may call your next witness.

2 MR. Van AELSTYN: Thank you, your Honor. Plaintiff
3 calls Bishop Thomas Gumbleton to the stand. My cocounsel will
4 handle this witness, your Honor.

5 THOMAS GUMBLETON,
6 called as a witness on behalf of the Plaintiff, having been
7 first duly sworn, testified as follows:

8 THE CLERK: Please state your name for the record.

9 DIRECT EXAMINATION

10 BY MR. COHEN:

11 Q. Good afternoon, Bishop Gumbleton. Please state your name
12 for the court reporter.

13 A. Thomas John Gumbleton, G-U-M-B-L-E-T-O-N.

14 THE COURT: Thank you. You may proceed.

15 BY MR. COHEN:

16 Q. Where do you live, Bishop Gumbleton?

17 A. Detroit, Michigan.

18 Q. Bishop Gumbleton, can you tell me a little bit about your
19 background and what you do there?

20 A. I am a Bishop in the Archdiocese, Catholic Archdiocese in
21 Detroit. I'm also a Pastor of an inner city parish in
22 Detroit, and I'm also engaged in many peace and justice
23 activities within the Diocese and throughout the country.

24 Q. Bishop Gumbleton, when were you ordained to the
25 priesthood?

□

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1 A. June 2nd, 1956.

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2 Q. And when were you elevated to Bishop?

3 A. May 1st, 1968.

4 Q. And you said that you are a Pastor of an inner city church
5 in Detroit. Can you tell us a little bit about that?

6 A. It's on the west side of the city of Detroit, about a mile
7 and a half from the downtown area. It's in an area that is a
8 high poverty area. Got many social problems that often are
9 associated with inner cities in this United States.

10 It's mostly an African American community. And a lot
11 of our work is outreach work. We serve a meal to about 300
12 people every day. And we have two schools connected with the
13 parish, and take care of all the needs that the people in the
14 inner city have, when they come to the door, can't pay their
15 bills and that sort of thing.

16 Q. What is the name of the parish?

17 A. St. Leo.

18 Q. And how long have you been at St. Leo?

19 A. Since August of 1983.

20 Q. Bishop Gumbleton, you also mentioned that you were also
21 involved in a number of peace and justice organizations.
22 would you tell me a little bit about that, please.

23 A. Well, the organizations that I became active in go back to
24 the 1960s. First group I was connected with in some way was
25 Clergy and Laity Concerns; C-A-L-C, CALC was the acronym.

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1 That wasn't a membership organization, but I was connected
2 with them in the efforts to end the Viet Nam war from 1967
3 until it finally ended, our participation, in '73.

4 Q. What other organizations --

5 A. Oh, yes. Well, I was the President of Bread For the world
6 which is an organization which was started by a Lutheran
7 minister, Arthur Simon (phonetic). And the first president of
8 that for six months or so was Eugene Carson Blake, who was a
9 retired head of the World Council of Churches, but his health
10 became very -- deteriorated quickly.

11 And I became the president of that organization
12 shortly after it started in 1974. And that was an
13 organization that tried to influence public policy regarding
14 the problem of hunger in the world. And it wasn't a relief
15 organization, but a public policy -- trying to influence
16 public policy to develop U.S. policies that would alleviate
17 the problem of world hunger.

18 I also was, at the beginning of a peace organization
19 in the United States called "Pax Christi USA," Latin word,
20 P-A-X, two words, capital C-H-R-I-S-T-I, Pax Christi. And
21 that was an organization connected with the international Pax
22 Christi movement, which is recognized by the Vatican as the
23 Catholic peace movement in the world. And we started it, the
24 U.S. section, in 1972, and I was the founding president of
25 that organization.

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1 Q. For how long were you president of Pax Christi?

2 A. 14 years.

3 Q. Do you still have a role with that organization?

4 A. Yes, I'm very much involved with it still.

5 Q. Maybe you can tell us a little bit more about what
6 specific activities Pax Christi took on?

7 A. It's an organization that began in Europe, France, in
8 1945, by a Bishop there. The Bishop of Tarees, the city of

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9 Tarees, T-A-R-E-E-S.

10 And he had been a prisoner during world war II
11 because he resisted the occupation of France, and was in
12 prison with other resisters under the Bataan government in the
13 southern part of France.

14 And after the war, he determined that one of the most
15 important things he could work on was to bring about
16 reconciliation between Germany and France, because those two
17 nations, both of which were in name, at least, Christian
18 nations and even a high percentage of Catholics had gone to
19 war with each other three times in three generations, and it
20 just seemed like this was wrong. And he was determined to
21 bring about reconciliation, and so he contacted bishops in
22 Germany and he began this group they called Pax Christi.

23 It spread quickly through western Europe and later
24 on, the United States, Great Britain. It's now in Japan,
25 Latin America, other parts of Asia, South Africa, other parts

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1 of Africa. So it's a truly international organization that
2 works to bring peace.

3 And in order to have peace, you must work for
4 justice, and so many of the things we do are attempts to bring
5 about justice in the world in order to build the foundation
6 for a truly peaceful world.

7 Q. If you can help us understand, can you give us some
8 examples of these activities?

9 A. Well, they would be connected with human rights efforts to
10 prevent (inaudible) human rights for people, which would
11 include such things as being in opposition to, for example,

12 the School of the Americas, where we have trained many of the
13 people. For example, the ones actually who killed the Jesuits
14 were the leaders of that group. The Jesuits in El Salvador in
15 1989 were trained in the School of the Americas.

16 And so I participated in trying to close that school,
17 and in order to eliminate that kind of international problem
18 concerned with human rights.

19 I have also participated in many demonstrations. I
20 have testified in Congress regarding the foreign assistance
21 programs of the United States, tried to do lobbying -- I
22 should say, not too much testifying, but lobbying with the
23 Congress, trying to develop better trade programs that -- at
24 least from our perspective. Developed NAFTA and CAFTA and
25 FTAA, all of those trade programs to try to make them programs

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1 that truly work for the benefit of the poor in these other
2 countries. So those would be works of justice that we are
3 involved in.

4 We also have tried very hard to hold the United
5 States accountable to the nonproliferation treaty, which we
6 have committed ourselves to eliminate nuclear weapons from the
7 world. Article 6 in that treaty calls upon the United States
8 to get rid of its nuclear weapons and all the other
9 nuclear-armed nations to do the same thing. And so we have
10 been trying to stop the further development of nuclear weapons
11 by the United States, by the other nuclear-armed states and by
12 other states now where these weapons are proliferating. So a
13 lot of our activity has been to stop the development of
14 nuclear arms.

15 Q. To what extent have these activities with your

16 organizations and with your church ministry work involved
17 Central America?

18 A. I became aware of some of the problems in Central America
19 in the late 1970s through a friend of mine whom I met at that
20 time, Father Miguel Espe Soto, a Maryknoll priest who is from
21 Nicaragua, and was working with the people in opposition to
22 the Somoza government in Nicaragua.

23 And after the revolution there, in 1979, he became
24 the foreign minister of that country, and so I was working
25 with him and other people in Nicaragua in the government and,

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1 well, the ordinary people out in the villages and so on, to
2 try to make successful their revolution, which was truly a
3 revolution trying to bring about the uplifting of the poor in
4 that nation, and so I was connected there.

5 And then from there, I began to become more aware of
6 the situation in El Salvador, Guatemala, Honduras, and
7 gradually, I got involved in each of those countries and
8 usually, it was connected with wherever the United States was
9 involved in some way.

10 And had, for example, in 1954, the overthrow of the
11 Ardens government in Guatemala and then continued to support
12 the military dictatorships over the next 40 years that brought
13 about the death of over 200,000 people.

14 And so I was involved in efforts with the struggles
15 of the poor in Guatemala to get justice for themselves, and
16 the civil wars that were going on in Guatemala from 1954 until
17 1996, actually.

18 And in El Salvador, I began to work with

19 organizations for the Going Home Campaign where people from
20 the United States, and I joined them, would accompany
21 Salvadoran people who had fled because they were -- their
22 villages were attacked and many of them had fled across the
23 border to a refugee camp in a place called Mesa Grande.

24 And I visited there and walked back with the people
25 to their villages across the border. And, of course, they

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1 were walking right into the face of opposition, and of brutal
2 opposition, but they were determined they were going to
3 reestablish their own life in their own country because they
4 had come to the conclusion that they did not want to raise
5 their children in refugee camps. They knew that this was not
6 good.

7 And so we went with them to give some kind of
8 protection. The fact that there were international people
9 accompanying them prevented the military from attacking them
10 quite as readily as they would otherwise.

11 Q. When was that?

12 A. That would have been in the middle 80s that this was
13 happening, and then I also am connected with the SHARE
14 Foundation, which is an organization that continues to try to
15 bring about the development for the people of El Salvador. I
16 was down there many times during the civil war, especially
17 when something would happen, for example, one particular
18 occasion, a village was attacked, bombed, and it was clearly
19 done by the military. They wanted people to come down to get
20 evidence of who did it and so on, so I went with a small group
21 of people to do that.

22 And, in other situations like that that would come
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23 up, I would travel there to be with the people, to try to
24 gather information, to bring it back.

25 And then through all of this, to become knowledgeable

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1 about what was happening, how the U.S. was influencing this by
2 providing over a million dollars a day in military assistance,
3 and as we heard earlier in the testimony this morning, it was
4 being used, as Archbishop Romero said, you are sending arms
5 down here that the -- are being used to kill the poor. We
6 need to stop that.

7 And so together with many other people in this
8 country, I tried to work to end or change U.S. policy. Again,
9 this was part of or a great part of the work we were trying to
10 do.

11 Q. Let me ask you a question, Bishop Gumbleton, about the
12 connection between your work with these organizations and your
13 religious faith.

14 A. I see it as flowing very directly from my religious faith
15 and the commitments I have as a priest, a Bishop. And that is
16 because of the theology of the Catholic Church about itself,
17 that we are to be a church that has involved in the
18 transformation of the world.

19 In the 1960s in the Catholic Church, we had what we
20 called the "Universal Council," all the bishops of the church
21 coming together and developing teaching documents. And one of
22 them was called the "Pastoral Constitution on the Church in
23 the Modern World." Makes it very clear that the work of the
24 Church is to try to transform this world into as close an
25 image of the reign of God as possible. And that's why we are

1 here.

2 And so as bishops in the Senate in 1971, said that
3 action on behalf of justice and participation in the
4 transformation of the world are constituent dimensions in the
5 preaching of the gospel. And so for me to preach the gospel,
6 the only way you do it is by doing action for justice and
7 participating in the transformation of the world.

8 This is very clear teaching that has come out of
9 recent or been recent teaching in the Church through Papal
10 cyclical, through the council and through bishops. So I have
11 been committed to that kind of teaching and to making my life
12 conform with that.

13 Q. would that ever involve disobeying the law?

14 A. Yes. On a number of occasions, I have come to the
15 conclusion that a particular law would be important to violate
16 it as a way of trying to demonstrate how that law is evil.
17 And this would be, well, opposing, for example, the tests of
18 nuclear weapons that are done in the Nevada desert. And so on
19 occasions, I have been there, crossed the line where you are
20 not supposed to cross the line to try to show that this is
21 wrong, we have to oppose the further development of such
22 weapons, it is wrong for the U.S. to be doing this legally and
23 morally, and so I have been there.

24 I have been to Strategic Air Command Base, naval base
25 in southern Georgia. The Livermore Laboratories in northern

1 California. Oakridge, I was just at Oakridge, Tennessee a
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2 couple of weeks ago on Hiroshima Day, because that's the place
3 where the Hiroshima bomb was just developed, and it is a place
4 where we are now making new nuclear weapons against our own
5 law and against the moral law. So I go to places like that to
6 try to demonstrate the immorality in what is happening.

7 Q. Have you ever been arrested for your activities?

8 A. Yes, on a number of times.

9 MR. COHEN: Your Honor, I'm wondering when you would
10 like to take the afternoon break?

11 THE COURT: That time is now. We will stand in
12 recess until about 15 minutes after 3:00.

13 (Recess)

14 THE COURT: Back on the record in Doe versus Saravia.
15 You may continue.

16 BY MR. COHEN:

17 Q. Bishop Gumbleton, let me ask you if you have ever met
18 Archbishop Romero in person?

19 A. No, I did not have that opportunity.

20 Q. When did you first learn about him?

21 A. I learned about him in the very late 70s, after he became
22 the Archbishop of San Salvador, and then got to know a lot
23 more about him after his assassination and, in a sense, I
24 guess I got to know him as he fulfilled what was almost a
25 prophecy he made that "If, in fact, they kill me, I will rise

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1 again among the Salvadoran people," and so it was after I
2 started going to Salvador, it was almost an experience of
3 getting to know him because he seemed so present everywhere
4 you went in that country.

5 Q. Were there people in the United States who shared with you
6 their experiences of knowing Archbishop Romero?

7 A. Oh, yes. Well, in fact, when he was assassinated, there
8 was a group of Catholic Bishops that were in El Salvador at
9 the time, among whom was the President of our Conference,
10 Archbishop John Quinn, from San Francisco. So he was there
11 when the assassination took place and was also present for the
12 funeral.

13 And I remember his speaking about that experience and
14 how profoundly he was affected by it, by his meeting with
15 Archbishop Romero. And indeed, as the Archbishop of San
16 Francisco at the time, he was very deeply involved in trying
17 to develop a relationship between his Archdiocese and the
18 Archdiocese of San Salvador.

19 So he spoke about that relationship and about his
20 efforts and about the Archbishop, and I heard what he said and
21 was much influenced by that.

22 And then other people who had -- Salvadoran people
23 whom I have come to know who knew the Archbishop firsthand
24 have expressed to me many, many times how much of an effect he
25 had on their lives and how much of a loss it was when he was

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1 murdered.

2 Q. Did you know Sister Dorothy Kazel?

3 A. Yes, I did. I developed a friendship with her, actually,
4 in 1980. I first met her when I was giving some conferences
5 at Maryknoll, New York. It's the headquarters of the
6 Maryknoll Priests and Sisters, two separate headquarters, in
7 New York. And I had an opportunity during that summer of
8 1980, when she was in the States, to visit with her. And then

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9 I corresponded with her until she was killed on December 2nd.

10 Q. Can you tell the Court anything about the events of her
11 death?

12 A. Yes, they are well known, where she, together with Jean
13 Donovan (phonetic), a lay volunteer that was working in the
14 parish where Sister Dorothy was working in El Salvador and
15 then the two Maryknoll sisters, Eda Ford and Moira Clark, they
16 were returning from a trip to Nicaragua. And after they
17 landed at the airport and were driving, driving back to their
18 villages, their car was sidetracked or pushed off the road,
19 actually, and they were taken out and brutalized and murdered.

20 Q. Bishop Gumbleton, what was the impact on you of what you
21 were learning about Archbishop Romero and El Salvador at this
22 time?

23 A. Well, it influenced my -- I would say my spiritual
24 development. Because I had already begun to undergo what I
25 would call a conversion from an acceptance of violence as a

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1 way to bring about justice.

2 You know, in the Catholic Church we had what we
3 called a "theology of justifying violence" or "just war," and
4 I had accepted that. But then through my experience of the
5 antiwar movements and all, I came to realize that violence
6 never really resolved any problem and it always begets more
7 violence.

8 So I was moving toward becoming what we call
9 "pacifist" or someone committed to active love or nonviolence.
10 And the example of Archbishop Romero certainly had a major
11 influence on my thinking and on my spiritual development and I

12 had used his words many, many times, reflected on them, what
13 he wrote and his homilies and so on, and I have come to know
14 many of them very well and use them in my own talks and
15 homilies.

16 I take his words sometimes when they are appropriate.
17 I have used them especially in talking with young people and
18 trying to influence their thinking in bringing them to an
19 understanding of nonviolence is a very important part of
20 Catholic teaching.

21 And I do that especially in the Catholic Church. A
22 Bishop has the responsibility to do what we call
23 "confirmation" ceremonies, and that's with teenagers that we
24 do it, and young people, 13, 14, 15. And I very often use the
25 example of Oscar Romero as someone for them to emulate and to

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1 use. Confirmation makes you somewhat responsible for giving
2 witness. Well, "martyr" means witness, and Archbishop Romero
3 is the supreme witness, and I have offered him as an example
4 to young people many, many times.

5 Q. What, in particular, about Archbishop Romero do you tell
6 young people in their confirmation classes?

7 A. Well, I recount how he was murdered, and what he had said
8 two weeks before that happened, when he was being interviewed
9 by a reporter, and was warned, you know, about being on the
10 death lists. And in effect, the reporter was saying to him,
11 "You know, why don't you leave? They are going to kill you.
12 Your name is on the list."

13 And he responded, in this interview, he said, "Of
14 course, I have been threatened with death many times, but I
15 don't believe in death without resurrection. So even if they

16 kill me, I will rise again in the Salvadoran people."

17 So that is a person of supreme faith and, you know,
18 just a marvelous example in serenity, even in the face of
19 danger and death.

20 But then he goes on. In that same interview, he
21 says, "As a shepherd, I'm obliged by Divine mandate to give my
22 life for those I love." And then he says, "That is for those
23 who may be going to kill me." He said the first ones he
24 thinks of when he says, "I'm obliged to give my life for those
25 I love." First ones he named, his enemy.

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1 That's what we call the gospel message of enemy love
2 or nonviolence. And at the end of the interview, he says to
3 the reporter, "In fact, you may tell them if they do indeed
4 kill me, that even now I forgive and bless those who did it."

5 And so you have just an extraordinary example of
6 someone who is saying I totally accept and will give my life
7 for the teaching of Jesus that you must lay down your life for
8 those you love and you must love even your enemies, not just
9 your friends.

10 And so it's, I think, an extraordinary example of the
11 model that he is for us, for -- I mean within the Church, but
12 I think model, how you ultimately can bring peace to the
13 world.

14 Q. Bishop Gumbleton, if I could ask you to turn up Exhibit
15 112. And the exhibits should be tagged.

16 Your Honor, do you have it there?

17 A. Yes.

18 Q. Can you tell me what it is?

19 A. I have it in my pocket, actually. It's a leaflet that was
20 published by the Romero Center, the Archdiocese of Detroit,
21 which I picked up many, many years ago, and I have carried it
22 with me over the years, and you can see it's kind of fragile.
23 But it has excerpts from his homilies, from talks that he
24 gave, his writings, and on various topics. And that's in fact
25 where the excerpt from that interview appears and I learned it

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1 from here.

2 There is also a very powerful one in there about
3 poverty and the need for the Church, and especially its
4 representatives, its ordained ministers and religious leaders,
5 to be identified with the poor and to really be a church of
6 the poor. That's what he was leading in the El Salvador, he
7 was leading that church to be a church of the poor.

8 But he said you pay a price. If you really become
9 one with the poor, then you have to expect to experience what
10 the poor experience. And he said what's it mean to be a poor
11 person in El Salvador? It's to be disappeared, to be
12 tortured, to be killed, have your body found in a ditch.

13 And that's really what was happening to the poor.
14 And when it began to happen to the priests and the religious,
15 it was almost as though Archbishop Romero was saying now we
16 really are a church of the poor, because we are experiencing
17 what they experienced.

18 And again, to me, that's an extraordinary example for
19 the whole Catholic Church, for the whole Christian Church, I
20 guess, or anyone who wants to hear it. I think it's a
21 marvelous example of how solidarity with the poor and
22 identification with the poor is what we need to do in order to

23 enter into their struggle to be liberated or freed.

24 Q. Bishop Gumbleton, you mentioned an interview with Oscar

25 Romero taken just a few weeks before his death. Is that

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1 reprinted in this pamphlet?

2 A. Yes, it's what's in the middle of your exhibit.

3 Q. You are pointing to the middle column on the first page of
4 Exhibit 112?

5 A. Right. It's the words I said a few minutes ago, where he
6 talks about "I have often been threatened with death, but as a
7 Christian, I do not believe in death without resurrection, so
8 even if they kill me, I will rise again."

9 To me, that was like a prophecy, because it has
10 happened.

11 Q. And what can you tell the Court about the Romero Center
12 for Spirituality and Justice?

13 A. Well, this is an example of what has happened, I think, in
14 many states. I have given talks at a variety of religious
15 centers, spirituality centers, retreat centers that now have
16 the name Romero Center, Romero House for Spirituality, Romero
17 Retreat Center.

18 So this was one that was established in Detroit and
19 became a retreat center where people go to do prayer,
20 reflection, and so on, so it was named for Oscar Romero
21 because he is thought of as such a model for the Church.

22 So people throughout the United States who have heard
23 about him and who want to raise him up as a model, example,
24 name things after him. And so that's very common throughout
25 the country.

1 Q. Now, following the assassination in 1980, you mentioned
2 earlier that you had a number of trips to El Salvador. Did
3 you have an opportunity to observe how conditions in that
4 country have changed after that time?

5 A. Yes. Well, I experienced regularly how the violence kept
6 escalating. I started to go there in the middle 80s, I guess
7 it was, and the last time I was there was very shortly before
8 the, what they call the final drive of the revolutionary
9 movement. And that then finally ended in sort of an impasse
10 and peace negotiations really started in earnest.

11 But I was there many times and, as I say, I
12 experienced a continuing escalation of violence and also saw
13 U.S. participation in that, which made me more determined than
14 ever to try to change our public policy.

15 I, on one occasion, when we were being held at a road
16 block by salvadoran military, U.S. military came and were
17 armed, which, you know, was against our law, but they were
18 there, and they were among those who were preventing us from
19 moving forward, so there was an ever deeper involvement of the
20 U.S. military and the U.S. government in what was happening,
21 and as that violence escalated, we were more deeply involved
22 in it.

23 Q. Did you see any of that escalation of violence connected
24 at all to the assassination of Archbishop Romero?

25 A. As I look back on it, I can see, yes, that he was one who

1 people had thought was, you know, that they would never dare
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2 to kill him. And when they did dare to kill him, it seemed
3 like everybody was vulnerable, and who can stand up against
4 the military and the elite for whom the military worked? Who
5 could stand up against them? They could do whatever they
6 want.

7 And so it seems to me that that -- it did escalate,
8 partly because of the fact that he was assassinated.

9 Q. In your experience, was there anybody in El Salvador who
10 was stepping into the role that Archbishop Romero played after
11 his assassination?

12 A. No. There really wasn't. No one single person who could
13 take his place. The person who succeeded him as the -- when
14 he was assassinated was Archbishop Rivera y Damas, but this
15 seems to be very cruel and inept on the part of Holy Seat, the
16 Vatican, because they never made him the Archbishop. He was
17 the administrator of the Diocese, which meant that he could be
18 removed easily at any time.

19 And so he never had, in a sense, the stability that
20 Archbishop Romero had. He was a close associate of the
21 Archbishops and he certainly had a lot of the same
22 convictions, but he wasn't to speak out as boldly because
23 there were many pressures against the Church, and the Papal
24 Nuncio in El Salvador would be speaking against what
25 Archbishop Romero was doing would certainly speak against

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1 Rivera y Damas, and so they might convince the people of Rome
2 to remove him.

3 And once you are actually installed as the
4 Archbishop, I guess to put it in sort of secular terms, you

5 can't be removed without cause. When you are the
6 administrator, you are like an at will employee. So he didn't
7 have the status to be the spokesperson, even if he would have
8 had all the courage and the conviction that Archbishop Romero
9 had. So he couldn't do it for a long time.

10 And then the Jesuits certainly through the University
11 of Central America in San Salvador, were giving strong
12 leadership, but there was no one person who could be the
13 spokesperson for all of the poor throughout the whole country
14 like Archbishop Romero was. He was truly, as we heard before,
15 the "Voice of the voiceless." And no other person had that
16 voice. So it was a tremendous loss.

17 Q. In your congregation, in 2004, are the messages of
18 Archbishop Romero, his teachings, still relevant today?

19 A. Because his teaching was so clearly a teaching about how
20 to overcome injustice, oppression, repression, violence, and
21 to bring peace through justice, and that was his teaching.

22 Well, obviously, I could say we need it in the city
23 of Detroit, where we have terrible disparity between rich and
24 poor. There is a situation of injustice. We need it through
25 all our country, but we need it internationally, too, and so I

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1 can certainly preach to the people of St. Leo Parish in
2 Detroit a message that flows from Archbishop Romero that
3 applies to their lives and applies to the lives of people
4 throughout our nation. So I find him very, very pertinent.
5 His message is still very timely and very powerful.

6 Q. And what do you see as his lasting theological impact?

7 A. His lasting theological impact?

8 Q. Yes.

9 A. I think he helped to give a reality to the teaching that I
10 identified earlier, from our Second Vatican Council, from
11 Senates and bishops, from pastoral letters from bishops of the
12 United States.

13 All of those teachings, you can read them and they
14 can have some affect on you, but when you see someone who is
15 actually living them, it makes the teaching much more
16 concrete, much more real.

17 And when I spoke earlier about the teaching of the
18 Church identifying with the poor through the Pastoral
19 Constitution on the Church in the Modern world, the opening
20 sentence of that is, "The joys and the hopes, the griefs and
21 anxieties of people everywhere, especially the poor and the
22 oppressed, these are the joys, the hopes, the griefs and the
23 anxieties of the Church."

24 Well, that's a nice statement, but you don't see it
25 lived out very well. But you do in Archbishop Romero. The

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1 joys and hopes, the griefs and anxieties of the poor were his,
2 and so he exemplified in a very dramatic way that teaching,
3 and that whole document goes on, as I said before, to proclaim
4 that the role of the Church, as we understand ourselves, is to
5 bring about the transformation of the world, to as close as
6 image of the reign of God as possible.

7 Those weren't just words for him. He was doing that.
8 Helping to transform the society in which he lived, and that
9 was his hope, to make it as close an image of the reign of
10 God, where there would be justice, where people would be able
11 to have a full human life, where people would be able to live

12 in peace, so he made very concrete, very real, but it was a
13 teaching that otherwise could be theoretical and abstract.

14 And so he had tremendous impact on me. I know on
15 many other bishops in this country, many other priests,
16 religious and lay people throughout the country. His message
17 has been heard.

18 And every year, when it comes to March 24th,
19 throughout the United States, you will find groups, church
20 groups, individuals and others, just organizing in various
21 ways to memorialize him on that day of his assassination. And
22 to raise up his example as something that we need to follow
23 today.

24 Q. And are you making plans for March 24th, 2005?

25 A. Yes. Well, that would be a special anniversary because

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1 it's the 25th. And so we have already begun to organize to
2 have delegations go from the Detroit area, but I know it will
3 go from all over this country, for March 24th, 1980, and then
4 December 2nd, 1980, those two days are going to be very
5 important next year. And I'm sure we will see large numbers
6 of people going in delegations to El Salvador from the United
7 States and around the world. It will be international, for
8 sure.

9 MR. Van AELSTYN: Well, thank you, Bishop Gumbleton.
10 Unless your Honor has further questions?

11 THE COURT: No, I don't.

12 Thank you very much, Bishop. You may step down.

13 MR. Van AELSTYN: Your Honor, can we move Exhibit 112
14 into evidence?

15 THE COURT: Received in evidence.
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16 (Plaintiff's Exhibit 112 was received.)

17 MR. COHEN: I notice it's 20 to 4:00. We don't have
18 the translator available this afternoon. If it please your
19 Honor, we could have a discussion about the standing issue we
20 raised this morning but if I could ask the Court we do that
21 either in chambers or in a closed courtroom so that we don't
22 reveal any of the details in the declaration filed under seal.

23 THE COURT: Yes, we can do that. What I wonder is
24 this. I wonder if the witness is available, I don't know
25 whether our court interpreter is available. Let me have our

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1 courtroom deputy clerk see. We can at least get some -- we
2 can recess a little early to discuss the legal issues, but if
3 you get the witness started.

4 (Pause in the proceedings)

5 THE COURT: Back on the record. It appears that our
6 court interpreter is not available now. And so unless you
7 have a different witness you could put on for at least a half
8 an hour.

9 MR. Van AELSTYN: Your Honor, we have the deposition
10 testimony, the -- of Ambassador Robert White. We planned to
11 play that tomorrow, but we could start that now.

12 THE COURT: All right. Let's get started with it
13 then.

14 MR. Van AELSTYN: Thank you. I apologize, your
15 Honor. Your Honor, we have been informed that Court runs
16 until 4:00 o'clock, is that right, or 4:30?

17 THE COURT: 4:30.

18 MR. Van AELSTYN: My mistake. We thought it ran

19 until 4:00.

20 THE COURT: Apparently there was a miscommunication.
21 Normally 9:00 to 12:00, 1:30 to 4:30, and if we can finish a
22 witness, we can sometime go a little longer, but we normally
23 shut down the proceedings because the HVAC in this building
24 goes down at 5:00. But, yes, those are our normal hours of
25 operation for trial.

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1 MR. Van AELSTYN: Well, thank you, your Honor. I
2 apologize. There was a misunderstanding, and I do appreciate,
3 not being from Fresno, shutting down when the HVAC shuts down.

4 THE COURT: It's going to be warming up, we hear. We
5 can put on the record now that for the videotape of Ambassador
6 Robert White's videotaped deposition, we will, because we are
7 going to have both the tape played and the deposition
8 transcript, which is certified as true and accurate, we will
9 relieve the court reporter of having to take down the
10 testimony as it plays on the audio portion of the videotape.

11 THE REPORTER: Thank you, your Honor, and Counsel.

12 MR. Van AELSTYN: Thank you. Your Honor, I
13 apologize, there is one omission I made this morning. I may
14 as well take this moment to address. That is, I neglected to
15 introduce the rest of our team here this morning.

16 Clare O'Hoyne --

17 MS. O'HOYNE: Hello.

18 MR. Van AELSTYN: -- is our paralegal. And
19 Mr. Robert Ortiz has been the wizard with the electronics. He
20 has been helping us.

21 THE COURT: Good afternoon.

22 MR. Van AELSTYN: And Professor Patty Blum, who is
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23 our cocounsel.

24 THE COURT: Good afternoon to you, Professor Blum.

25 MR. Van AELSTYN: I'm afraid I took the wrong moment

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1 to introduce Mr. Ortiz. He has been invaluable, actually.

2 AMBASSADOR ROBERT WHITE,
3 called as a witness on behalf of the Plaintiff by way of
4 videotaped deposition presented testimony to the Court.)

5 THE COURT: I think we have reached the point in time
6 where we will complete and conclude today's testimony. Let me
7 ask as a matter of inquiry what you make of the reports that
8 were received by the Ambassador. One of them indicated that
9 the shot was either from a flash or fired at pointblank range
10 by a .22 caliber weapon, and then we have this other report
11 that a National Guardsman who had his own cartridge, which I
12 assume would be the bullet that was used in the murder weapon.

13 What corroboration or lack of corroboration has there
14 been to those U.S. government reports?

15 MR. Van AELSTYN: Your Honor, two things.

16 First, Professor Terry Karl will be testifying
17 tomorrow, will be addressing a great deal of these. She has
18 studied a lot of these declassified cables as well as the
19 deposition of Ambassador White and she has formed an opinion
20 that gathers together these various sources of information.

21 The second point I would make is, as Ambassador White
22 himself testified there, the first report -- he didn't seem to
23 give a great deal of credence to, but that was received very
24 soon after the event itself, and I don't think he gave much
25 credence to those initial reports.

1 The second one, concerning D'Aubuisson, he did
2 testify that he thought that the essentials of it were
3 correct, but no doubt, the courts had enhanced his own
4 importance and that he understood it in the other sources of
5 information that the embassy had, the CIA, the Defense
6 Intelligence Agency, other staff members, and as he was
7 testifying there, that he gathered together the various
8 different sources of information in a meeting and brought
9 together the different sources of information to reach a
10 conclusion, that it may be different from the particulars from
11 any one source of information that the embassy had at his
12 disposal.

13 THE COURT: All right. I understand from your
14 statement that you are going to have someone who is addressing
15 these factual variations --

16 MR. Van AELSTYN: Yes, your Honor.

17 THE COURT: -- of the anecdotal evidence that was
18 collected.

19 Let me direct now to you some questions that pertain
20 to law so that we can, in the course of the proceedings, have
21 you have the opportunity to address them and I will give you
22 time to do that, because we will have the evening and
23 additional time as you are presenting evidence.

24 The standing issues, and again, not having done any
25 legislative historical research on the Alien Tort Claims Act

2 judicial eye, looking at the statute, that the Torture Victim
3 Protection Act is, in effect, a supplement or an
4 amplification. It would be, if you will, doesn't seem to be a
5 stand alone law, but rather, is not expressly incorporated
6 into the Alien Tort Claims Act, but because apparently a
7 section of it.

8 And so just in terms of legislative analysis, I think
9 it would be helpful to know, because 2(a)2 of the Torture
10 Victim Protection Act talks about the individual who asserts a
11 claim for extrajudicial killing to be either the individual's
12 legal representative or as any person who may be a claimant in
13 an action for wrongful death.

14 I do not understand, and you will need to correct me
15 thinking at this time, that the plaintiff seeks to qualify as
16 a legal representative, in other words, there is no order
17 appointing the plaintiff as a legal representative, or the
18 plaintiff does not purport to assert any status as what the
19 law would understand a legal representative to be.

20 And that would then leave the second subsection of
21 the standing section, a person who may be a claimant in an
22 action for wrongful death, and we know that there has not been
23 a claim for wrongful death filed in the country, if you will,
24 of origin, where the act arose.

25 In other words, as the Supreme Court talks about in

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1 the recent case, analyzing a different issue, not under the
2 Torture Victim Protection Act, but under the Tort Claims Act,
3 talking about whether the CAI could have authorized agents to
4 effectuate an extra-territorial kidnapping in Mexico, then to

5 bring the doctor from Mexico here who was thought to be
6 complicit in the murder of the DEA agent, there the analysis
7 was the arising in, if you will, in terms of proximate cause
8 where they said, yes, the American direction and the American
9 planning, if you will, of the mission occurred in the United
10 States, but the operative conduct that give rise to the claim
11 occurred in Mexico, where the asportation, the detention, and
12 then ultimately the removal of the doctor from Mexico was
13 effectuated by the Mexican agents who were apparently
14 acknowledged to be acting for the DEA in that case.

15 Now, here, I understand one of your arguments to be,
16 and I want you to confirm it, that in the Salvadoran justice
17 system, there is no, if you will, independent claim for
18 wrongful death arising out of criminal activity, but rather,
19 the claim must be advanced in the context of a criminal
20 prosecution. That's the declaration of the professor, I
21 think, that I read.

22 MR. Van AELSTYN: That's correct, your Honor.

23 THE COURT: That has been translated from Spanish.
24 And what that means is that, although I don't fully understand
25 the procedural niceties of it, that there has to be a judicial

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1 declaration of criminal complicity, in other words, a finding
2 of culpability would be the equivalent of a finding of guilty
3 under our justice system and from that it can devolve, I don't
4 know how it is part of sentencing or how procedurally it is
5 effectuated, but that's how a civil recovery can occur.

6 Now, I further understand, and again, you will need
7 to correct me, that your claim is this witness went to El
8 Salvador, that a criminal case was sought to be initiated.

9 There was an effort to extradite Captain Saravia from the
10 United States when he was in Miami, and your claim is that the
11 El Salvador court system was ineffectual, for whatever reason,
12 whether it was corruption, whether it was something else, to
13 enable the criminal case to proceed, which leaves you without
14 that remedy.

15 MR. Van AELSTYN: The essentials of what you have
16 just stated, your Honor, are exactly what we are arguing.
17 That there is a prerequisite for a criminal prosecution and a
18 criminal finding before a civil action can give rise in El
19 Salvador, under Salvadoran law. And that there is no
20 opportunity for a criminal prosecution in El Salvador. There
21 was one in 1987 and 1988 and it was aborted and you will hear
22 more testimony with regard to the nature of the abortion of
23 that process, and the availability of redress in the criminal
24 legal system in El Salvador then and today.

25 THE COURT: All right. Then the question turns to

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1 what law do we choose to apply in defining the wrongful death
2 claim. And they did look, the Supreme Court looked in that
3 case to local California law, where that was where the mission
4 had originated, and I don't know, I think, but I'm not sure,
5 that you would be arguing for the application of United States
6 and specifically the local law of the state, because there is
7 no federal wrongful death claim, obviously, nor none developed
8 under federal common law, so you would have to look to state
9 law for that basis in the individual who pursues the wrongful
10 death claim.

11 MR. Van AELSTYN: That's correct, your Honor. And as

12 I argued before, in the alternative, one could conduct a
13 choice of law analysis, as some courts have done, and look to
14 the wrongful death statutes of the home country here. And
15 were a wrongful death action possible in El Salvador, if the
16 prerequisite of a criminal prosecution had been conducted, if
17 that were to -- if that prerequisite were met, then the
18 affidavit that we submitted by the judge, I believe, from El
19 Salvador, states that the plaintiff in this action would have
20 standing to bring a wrongful death action in El Salvador,
21 again, assuming that prerequisite.

22 THE COURT: We will need to understand that, because
23 as I understand it the law, do we apply the laws that existed
24 in 1980? Do we apply it when the hypothetical wrongful death
25 case would have been filed or do we apply it when this case

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1 was filed?

2 MR. Van AELSTYN: That's a level of complexity that I
3 will desist, if you will permit me in responding to at this
4 moment.

5 THE COURT: Yes, I'm going to give you some time to
6 respond to it, but I think we need to face it.

7 MR. Van AELSTYN: Agreed.

8 THE COURT: And if we do look to the law of the
9 United States, a state of the United States, the general
10 understanding, at least currently, is that for, without
11 disclosing something that's confidential, the standing you
12 wish the plaintiff to assert here, foundationally, it would
13 have to be established, I believe, that the decedent died
14 without parents or issue.

15 MR. Van AELSTYN: I believe that is correct, your
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16 Honor, and we will, again, confirm that when we provide a more
17 complete response.

18 THE COURT: All right. And then we turn to the issue
19 of the statute of limitations, which the longest, as I
20 understand it, is ten years. Absent grounds for tolling,
21 which the case law -- because the statutes don't really speak
22 to them, except there are, in cases interpreting the torture
23 victims protection act, where plaintiffs are prevented from
24 asserting claims by wrongful conduct on the part of the
25 defendant. That has been a kind of case where tolling

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1 applies. I don't think that's the argument being made here.
2 But you can let me know.

3 And then the second basis for tolling has been where
4 extraordinary circumstances beyond the plaintiff's control
5 made it impossible to file the claims on time, and, for
6 instance, where a state of war has closed the courts down in a
7 jurisdiction. That's an example that has been used in these
8 cases.

9 And so again, I am inferring that your theory here is
10 that if the justice system was incompetent to, in effect, give
11 fair consideration to the case, which is a very -- that's
12 quite a consequential determination to ask a court to make
13 about the court system of another nation, that would be such a
14 circumstance.

15 And so we need to be able to look at the evidence as
16 to the time that that exigency operated, because again, we
17 have the 24-year period we have to find tolling for for this
18 action to succeed.

19 MR. Van AELSTYN: We understand and we are prepared
20 to do that.

21 THE COURT: All right. Those, again, are some of the
22 questions that I would like you to be prepared to address, and
23 so that we can pinpoint the evidence, and see if we can reach
24 a resolution as to the applicable law.

25 That's all I have for today, unless you have anything

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1 further.

2 MR. Van AELSTYN: No, thank you, your Honor.

3 THE COURT: Then at this time, we will stand in
4 recess until 9:00 a.m. tomorrow morning. Good night.

5 (The proceedings were adjourned at 4:45 p.m.)

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8-24-04 Trial Transcript

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