



9-3-04 Trial Transcript

ACCOUNTABILITY  
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Also Present:

ALMUNDENA BERNABEU

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EXHIBITS

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45 and 46	728
224 and 225	728
123, 126, 226	732

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1 Friday, September 3, 2004 Fresno, California  
2 9:00 a.m.  
3 THE CLERK: Returning to Civil-F 03-6249, J. Doe

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4 versus Alvaro Saravia.

5 MR. Van AELSTYN: Good morning, your Honor. We would  
6 like to continue with Professor Karl.

7 THE COURT: Good morning.

8 THE WITNESS: Good morning, your Honor.

9 TERRY LYNN KARL,  
10 called as a witness on behalf of the Plaintiff, having been  
11 previously duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. Van AELSTYN:

14 Q. Good morning, Professor Karl.

15 A. Good morning.

16 Q. I would like to continue your testimony this morning. We  
17 had some discussion of a raid that took place at the San Luis  
18 Finca. I believe the date was May 7, 1980, and I believe  
19 there was some testimony about some documents that were seized  
20 during that raid.

21 What is the significance, in your view, of the raid  
22 at San Luis Finca and the materials that were seized there?

23 A. I think they are extremely significant, because the  
24 documents that are seized in San Luis Finca show that Monseñor  
25 Romero's assassination was part of a broader conspiracy to

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1 ensure that ultra rightists remained in power, that the  
2 hardliners that I talked about earlier remain in power. And  
3 they show that this effort to remain in power depended on  
4 sowing terror.

5 So what is important about this whole event and  
6 during the arrest is that it shows, in my opinion, that  
7 Archbishop Romero's assassination, which is a single act, is  
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8 actually a part and pattern of practice of state terror.

9 Q. And what are your sources for the information about the  
10 raid?

11 A. The sources that I use for assessing the raid are, first  
12 of all, that I have seen the documents, the ones that are --  
13 that are still in public existence, let me put it that way,  
14 that were taken; that I am relying on the testimony of  
15 Mr. Garay; the testimony of Ambassador White and a number of  
16 conversations with him; the Truth Commission Report; the  
17 Inter-American Commission decision, and a number of  
18 declassified documents as well.

19 I'm also relying on a number of U.S. press  
20 discussions of this raid and arrest that appeared in places  
21 like the New York Times, the Christian Science Monitor and the  
22 Washington Post, and most importantly for me, I'm relying on  
23 my own interviews of people who were involved with the process  
24 of both taking the documents, copying them and distributing  
25 them.

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1 And those documents, the whole group of them, I  
2 think, reveal, as a group, as part of the significance, first  
3 of all, the very close working relationship that exists, and  
4 that existed at the time, between members of the armed forces  
5 and the death squads.

6 They also -- this body of information, I think, shows  
7 very compelling evidence of the D'Aubuisson group's  
8 involvement in a number of illegal activities, including  
9 planning a coup, planning assassinations, the defamation of  
10 Monseñor Romero's character.

11 And finally, I also think these documents shed new  
12 light on the murder of Archbishop Romero.

13 Q. Well, let's turn to those documents. If we could have  
14 Exhibit 125, please. Professor Karl, what is Exhibit 125?

15 A. Exhibit 125 is a document in Spanish that was given to the  
16 military judge who was appointed to deal with the arrest at  
17 San Luis Finca. That judge's name is Miguel Antonio Mendez.

18 And in the process of El Salvador, you make a list,  
19 when you arrest people, of everyone who is arrested and  
20 everything that's found in their possession.

21 So this is the instructions to the Judge by the  
22 arresting officers, essentially, who are part of -- who are  
23 under the command of Colonel Majano, the reformist that I  
24 talked about earlier.

25 Q. And a member of the ruling junta?

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1 A. And a member of the ruling junta, that's right. So this  
2 is a list of the kind of documents they found. And it is also  
3 a list of the people there. And it is very revealing as a  
4 list, in my view.

5 Q. Let's begin with the people that were there first. Who is  
6 included on the list of those arrested?

7 A. I won't give all the names for reasons of time, and this  
8 is in the public record, but I want to note that there are 24  
9 people arrested.

10 12 of them are officers of the Salvadoran Armed  
11 Forces. And that includes Roberto D'Aubuisson and Captain  
12 Saravia.

13 12 of them are people that the Salvadorans would  
14 refer to as "nonofficers," if I could put it that way. And

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15 that is because the officer corps, as I explained, is so  
16 important in the way Salvadorans understand rank and status.

17 And the other 12, which are a series of names listed  
18 here, includes Amado Antonio Garay, the driver of the  
19 assassination, and it also includes a number of names of  
20 civilians and former nonofficers in various services.

21 Some of the names, for example, are a Fernando  
22 Sagrera, who is a civilian, and a very important link between  
23 Mr. D'Aubuisson and between wealthy land-owning families. He  
24 was a person of a different status than the officers  
25 themselves, different social status. He was Roberto

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1 D'Aubuisson's drinking partner and very close friend. And he  
2 was the one, because he comes from a land-owning background,  
3 was the most important link with a number of families that  
4 were financially supporting D'Aubuisson's activities.

5 Q. Professor Karl, you have testified about a number of  
6 documents that you have reviewed, declassified documents, et  
7 cetera. Are there any generalities that you can draw from  
8 this collection of names? Have you seen them before?

9 A. I have seen, particularly, the officers' names, the 12  
10 officers that I list, including Roberto D'Aubuisson, and  
11 Alvaro Saravia. Those officers' names appear over and over  
12 and over and over again in the declassified documents;  
13 identified every single one of them as members of death  
14 squads. And most importantly, they are linked to a series of  
15 murders, including murders of U.S. citizens at the Sheraton  
16 Hotel.

17 So the names are quite revealing. It's a group of

18 people who all know each other in different ways, who are all  
19 identified repeatedly as hardliners, some of whom, by the way,  
20 I have interviewed.

21 Q. If --

22 THE COURT: Which of this group are included in that  
23 description?

24 THE WITNESS: In that description, I would include,  
25 if you look from line 3 of this document, Roberto

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1 D'Aubuisson -- I'm going to say their last names. Cruz Reyes,  
2 Staben, S-T-A-B-E-N, Saravia, Alfredo Jiménez, Víctor Hugo  
3 Vega Valencia, Eduardo Ernesto Alfonso Avila, Frederico  
4 Chacón, Miguel Francisco Bennet Escobar, Rodolfo López  
5 Sibrián, Carlos Hernán Morales, Jaime René Alvarado y  
6 Alvarado.

7 Those are the most important ones. There are others  
8 included.

9 Let's see, did I give you 12 names?

10 THE COURT: I have 11. But there is 12. You gave us  
11 12.

12 THE WITNESS: That's right. They were the ones that  
13 all have military rankings above them, in front of them. And  
14 they end at the name of Señor Antonio Cornejo Hijo, so they  
15 stop, not including his name. So all of those names are given  
16 in the classified documents given repeatedly.

17 And also, some of those names appear on a list that  
18 Vice-president Bush takes to the High Command of the  
19 Salvadoran military in 1983, insisting in the name of  
20 President Ronald Reagan that they be sent out of the country  
21 and removed from officer status inside the Salvadoran

22 military.

23           So this is a group that is repeatedly mentioned in  
24 the declassified documents, repeatedly mentioned as a concern  
25 of the United States.

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1           And again, much of this is because some of them are  
2 directly involved and named in the declassified documents as  
3 killers of U.S. citizens in the Sheraton hotel.

4           THE COURT: And how was the request received?

5           THE WITNESS: The Bush request?

6           THE COURT: Yes.

7           THE WITNESS: The Bush request, as soon as  
8 Vice-president Bush went down and insisted and gave a list in  
9 a highly confidential set of meetings with the High Command,  
10 directly gave a list and basically also a deadline. Said if  
11 these people are not out of the military by such and such a  
12 day, which was a date prior to a discussion about renewal of  
13 U.S. aid, he said that the United States would no longer be  
14 able to guarantee assistance to the High Command.

15           What happened right afterwards is several individuals  
16 were moved for a short period of time outside of the country,  
17 including several of the individuals on this list.

18           And they were then subsequently brought back into the  
19 country and renewed their activities inside the country. So  
20 there was very little activity and there is actually a  
21 classified document that is sent to the U.S. government  
22 saying: Here are the results. Because Vice-president Bush  
23 asked for followup, he wanted to see what happened. And the  
24 followup document says: They are moving people around to



25 please us, but they are all coming back.

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1 And they actually -- there is a series of documents  
2 tracing their return and their involvement again.

3 These are also, by the way, people who are listed in  
4 the group of kidnappings, the kidnapping-for-profit ring and  
5 the baby robbers ring.

6 So these names, not every one of them, but all of  
7 these names are identified as death squads. And some come up  
8 in the murder of U.S. citizens. Some come up in the baby  
9 robbers and some come up in the kidnapping-for-profit ring.

10 BY MR. Van AELSTYN:

11 Q. Is there anything of significance in Amado Garay's  
12 testimony about the raid on San Luis Finca, in your view?

13 A. Well, I think that Garay is outside of the meeting. He is  
14 not inside the meeting. He is outside, holding D'Aubuisson's  
15 gun, according to his own testimony. But he is also outside  
16 with Nelson Morales, who is one of the people he named in his  
17 testimony as being involved in the assassination of Archbishop  
18 Romero.

19 And he sees some of these people as his social  
20 equals, if I could put it that way, but he also sees others as  
21 wealthier civilians involved in this.

22 Q. So there are some inside and some outside?

23 A. There is some inside and there is some outside.

24 Q. What was done with the 24 men when they were arrested?  
25 where were they taken?

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1 A. Well, they are all taken to different areas, which you can  
2 see on the document. The document identifies where they are  
3 taken. I think the most significant, for me, reading this  
4 document, they are broken up as groups.

5 But interestingly enough, if you look in the middle  
6 of the page, it says, Major D'Aubuisson and Captain Saravia  
7 are taken together to the Central Headquarters of the Treasury  
8 Police. So they are actually separated from the other group  
9 and are kept together.

10 And Mr. Garay goes, instead -- you see him down at  
11 the bottom -- he actually goes with a larger group of people  
12 which are the civilians. And if you remember, he testifies  
13 that he's in a room with them and kept with them for some  
14 time.

15 Now, what he says in his testimony is that they were  
16 actually never interrogated at all. They were kept together  
17 in a room and then eventually released.

18 We have no information, at least I have no  
19 information, about whether Major D'Aubuisson and Captain  
20 Saravia were interrogated or not.

21 Q. Do you draw any significance from the fact that they were  
22 separated from the others and taken to a different location?

23 A. Well, I think that one of the things that is important in  
24 this document is that they were repeatedly discussed together.  
25 It is very clear they were linked in some way. In my reading,

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1 it is very clear that they are linked in some way.

2 Not only are they taken together, but if you look on  
3 page 2 of the document, there is something that says,

4 "Evidence Number 7," "Prueba number 7," and that has a part A  
5 and a part B.

6 Part A is what we call the "Saravia diary." It is  
7 the book that says, "This book is the property of Saravia  
8 Alvaro Rafael," and then it is linked to a series of pages  
9 from the Hyatt Regency Hotel of Washington, and also a list of  
10 names.

11 So these documents, because of the way they are cited  
12 here, are -- and I have other evidence from this as well --  
13 are found together and are actually clipped together.

14 Q. The set B?

15 A. The set A and B.

16 Q. A was the diary - --

17 A. Of Mr. Saravia.

18 Q. -- which has previously been described as Exhibit 123 for  
19 identification purposes.

20 And then B is?

21 A. A series of pages on hotel stationery. And two lists of  
22 names of officers and important people. So those are linked  
23 together. That's another way that I can see that these two  
24 are being treated together, Mr. D'Aubuisson and Mr. Saravia.

25 Q. How do you get Mr. D'Aubuisson in here?

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1 A. Well, when we discuss the documents, I can show you why I  
2 think they are together.

3 Q. All right. Perhaps before we turn to that particular  
4 document, can you tell us if there is anything significant  
5 about any of the other documents that are listed on Exhibit  
6 125?

7 A. Well, this is a list, and again, let me just highlight  
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8 parts of it without translating the entire document. And I  
9 think that when you -- the titles of the documents actually  
10 speak for themselves.

11 Document number 3 is: 51 copies of a document  
12 entitled "How to Carry Out a Political Coup d'etat in  
13 El Salvador."

14 THE COURT: Is there any author?

15 THE WITNESS: No, there are no authors in these, but  
16 my interviews reveal that all of these documents were provided  
17 by Roberto D'Aubuisson. And, by the way, the declassified  
18 documents also repeat that.

19 The second document, which is Document number 4, is a  
20 document called "The General Organization of the  
21 Anti-communist Struggle in El Salvador."

22 This document, I have never seen, and I do not know  
23 anybody who has been able to produce a copy of it. However,  
24 in the interviews I did with the members of the governing  
25 junta, and -- well, with the members of the governing junta,

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1 the document, according to all of their descriptions, is an  
2 organizational chart of death squads. And it is an  
3 organizational chart of death squads, according to their  
4 description, to unify various death squad activities into one  
5 set of activities.

6 Document number 8 is called "F.A.N.," F.A.N., "A  
7 Political Alternative."

8 Q. What is the F.A.N.?

9 A. The F.A.N. is the party that Roberto D'Aubuisson is  
10 forming. I hesitate to use "party." It means the "Frente

11 Amplio Nacional." I hesitate to use the word "party" because  
12 it's very much conceived of as a party with a paramilitary  
13 arm, so it's not a party in the way we might think of them  
14 here.

15           So there is a document that is included that has been  
16 prepared that talks about what the F.A.N. is and how it is the  
17 new political alternative.

18 Q. Do you draw any significance from the fact that its title  
19 is in English rather than Spanish?

20 A. I don't know why that is, unless for anything to be in  
21 English, it means that they are showing it to English  
22 speakers. And it is, in other work I have done, the F.A.N. is  
23 trying to set up an organization that has support branches in  
24 Miami, San Francisco, and Washington D.C. And so it's likely  
25 that this is a document that will also go to supporters inside

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1 the United States.

2 Q. Were there any other documents of particular note on this  
3 list?

4 A. Another document, which is Document number 18, is called,  
5 "Knocking on the Door of the Barracks." There are 33 copies  
6 of that. Excuse me, that's Document 17.

7           And then there are a number of documents of Document  
8 18, which is called, "Classmates, Officers and Heads of the  
9 Armed Forces."

10           And the language that's used there, it's not really  
11 fully captured by my translation, but it is a way of  
12 organizing and going into the barracks to make sure that they  
13 are loyal to this group of people. That's what "knocking on  
14 the door of the barracks" means.

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15           And there is actually other information here,  
16 including, in evidence, 1, of a videotape. And I know from a  
17 number of sources, not only interviews, but declassified, that  
18 Roberto D'Aubuisson had prepared a series of videos which were  
19 being shown inside the barracks to soldiers as a way of  
20 getting them on his side.

21           So as a group -- oh, there is one more document I  
22 wanted to draw your attention to, and that's Document  
23 number -- it's the document that links -- it's Evidence number  
24 7A; that's the Saravia diary.

25           As a group -- and there are many other things that

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1 are of interest to me -- but as a group, it is a set of  
2 documents that reveals and revealed, in the opinion of  
3 virtually everybody who saw them, I actually don't know  
4 anybody who didn't think this, and that includes both U.S.  
5 government officials and others, that this was a meeting to  
6 plan a coup.

7 Q. Professor Karl, you mentioned the Saravia diary. Are you  
8 familiar with the declaration of Todd Greentree in this  
9 matter?

10 A. Yes, I am.

11           MR. Van AELSTYN: Your Honor, if I may approach, we  
12 have additional copies of that declaration, if you would like  
13 to refer to them.

14           THE COURT: Yes, you may.

15           Is it your opinion, Professor Karl, that the  
16 documents that are contained in the Exhibit 123 were all  
17 D'Aubuisson articles and documents?

18 THE WITNESS: I think that one of the documents which  
19 I will make reference to is actually written and produced by  
20 someone else, and I will show you why I think that in a  
21 moment.

22 But it is clear, in my view, not only from the  
23 documents here, but from my interviews with Roberto  
24 D'Aubuisson and my knowledge of how he actually envisioned  
25 what he wanted to do, and in my first -- first or second day

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1 of testimony, I had talked about how he was very influenced by  
2 the Taiwan model of organizing essentially what is a Fascist  
3 party. And I say that in the traditional sense of Fascism,  
4 not as an epithet.

5 But what we have here is his view, and there are  
6 other things that are included, including names of people he  
7 would like to be in governing positions. It's his view of how  
8 he thinks El Salvador should be governed and ruled.

9 So it is a party, a paramilitary apparatus. It's  
10 part of -- it's the actual operation of the ideology that I  
11 talked about earlier.

12 THE COURT: Thank you.

13 MR. Van AELSTYN: Could we have on the screen Exhibit  
14 123.

15 BY MR. Van AELSTYN:

16 Q. Professor Karl, Exhibit 123, we have had testimony about  
17 before. I believe you identified also as one of the -- as the  
18 declassified version of the Saravia diary.

19 A. That's right.

20 Q. What is contained in the declaration of Todd Greentree,  
21 but perhaps before I turn to that, let me just read a portion

22 of the Todd Greentree declaration.

23 He states in paragraph 5 -- strike that -- it's  
24 paragraph 4.

25 "In my first position with the State Department, I

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1 served as a Desk Officer in the Office of Central  
2 American Affairs in Washington D.C. I took this  
3 position shortly after the assassination of  
4 Archbishop Romero in San Salvador on March 24, 1980."  
5 And continue to paragraph 5: "I learned -- again  
6 shortly after taking up my position on May 7, 1980 --  
7 a raid by some of the reformist members of the  
8 governing junta in El Salvador, under the direction  
9 of Colonel Adolfo Majano, was conducted at a rural  
10 estate known as the San Luis Finca in San Santa  
11 Tecla, El Salvador."

12 He goes on to say at line 15: "A number of documents  
13 also were seized during the raid, and the originals  
14 of a number of those documents were provided to the  
15 U.S. Embassy in El Salvador. Included among those  
16 documents was a diary that stated on the cover:  
17 'This book is the property of Saravia Alvaro  
18 Rafael.'"

19 He goes on to state at the end: "Shortly after  
20 arriving at the Embassy, I personally located,  
21 identified and copied those original documents seized  
22 in the May 7, 1980 raid that had been maintained at  
23 the Embassy." And he attaches copies of documents.  
24 Have you had an opportunity to review these



25 documents?

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1 A. Yes, I have.

2 Q. Do they differ in any way from Exhibit 123, which was the  
3 declassified version of the Saravia diary?

4 A. Yes, they do.

5 Q. How so?

6 A. So the diary itself, in what I consider very consistent  
7 handwriting of Mr. Saravia, is the same.

8 what is different is that Mr. Greentree's collection  
9 of documents is more complete than any one I have ever seen.

10 And I should back up a moment to explain why I say  
11 that. I have seen this diary in the form exactly that it is  
12 in both the declassified and in Mr. Greentree's copy over and  
13 over.

14 Q. Professor Karl, you say both the form of the document is  
15 different and the content?

16 A. No. The form is the same. I'm sorry if I misspoke. The  
17 form and content of this diary is the same in every -- in both  
18 the declassified documents and the Greentree document with one  
19 exception.

20 And that exception is there is an extra piece of  
21 paper that is in the declassified document which is this piece  
22 right here, that is slipped in the diary as if it were a part  
23 of the diary, and yet just looking at it, you can see that it  
24 is not. It is not the same format. It does not have the  
25 dates like the diary does, et cetera.

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1 In Mr. Greentree's version, it is not inside the  
2 diary, but it is in a separate set of documents that accompany  
3 Mr. Saravia's diary.

4 Mr. Greentree's version is more complete than any  
5 version I have seen because it has the original Saravia --  
6 excuse me, not the original -- the Saravia diary.

7 And then it has a series of appendages which are  
8 listed on Judge Mendez's list of evidence. Now, some of those  
9 appendices or other pieces of evidence either have not been  
10 declassified or -- have not been declassified or for some  
11 reason they are not in the declassified -- in the pile of  
12 declassified documents.

13 So to be clear, the Saravia diary is the same in  
14 both, except for this page and several other pages that I  
15 would like to talk about that come from Mr. Greentree's copy  
16 that he Xeroxed in the basement of the U.S. Embassy.

17 Q. Okay. What is the significance of this page?

18 A. Well, this is an extremely important page. And the reason  
19 it's important is that --

20 Q. I'm sorry, Professor Karl, before we get there. I  
21 apologize.

22 Looking at the Greentree declaration, tab 1 appears  
23 to be the Saraviadiary.

24 A. That's right.

25 Q. And tabs 2, 3, 4 and 5 are the other documents you have

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1 referred to?

2 A. Right.

3 Q. And where does this document appear in the Greentree

4 declaration?

5 A. It appears in tab 3. So that in the declassified  
6 document, it's inside the Saravia diary. And in the Greentree  
7 version, it is in tab 3, appended to the Saravia diary, to be  
8 very clear.

9           These are three pieces of paper that are Xeroxed on  
10 the same page. Colonel Majano told me that they were Xeroxed  
11 on the same page because they were clipped together, so that  
12 was a way of showing that they had all come together with a  
13 clip. May I describe the document?

14 Q. Yes.

15 A. On the bottom right, it says, "Equipo Operacion Piña," and  
16 that means the "Operation Pineapple Team." Underneath that,  
17 it lists "Number 1, starlight; 1, 257"; and I actually cannot  
18 tell if that's a "257" or "253 - Robert's; 4, automatic guns  
19 and grenades." Then there is a line, and under that, it lists  
20 "one driver, one shooter, and four security men."

21           The second document that was attached to this is on  
22 the left-hand bottom. That is a list of names. And it  
23 includes some of the most prominent land-owning families of  
24 El Salvador. For example, the name Ricardo Sol Meza, the name  
25 Alfonso Salaverria. These are very, very prominent, these are

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1 families that are considered among what we once called the "14  
2 families," when I testified earlier.

3 Q. Now, Professor Karl --

4 A. There are a series of other names, as well, listed here.

5 Q. If I may, are these the papers that were referred to in 7B  
6 on Exhibit 125?

7 A. That's right.

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8 Q. Separate from 7A, which was the diary?

9 A. The diary. In other words, on the way the evidence is  
10 collected, and on -- in view of the way the evidence was  
11 collected and the way it's described in the document to the  
12 judge, and in view of Mr. Greentree's copy and the way that it  
13 was stored in the U.S. Embassy, these -- this piece of paper  
14 was not found slipped inside the Saravia diary, but in the  
15 declassified documents. It is actually slipped inside the  
16 Saravia diary.

17 Finally, there is a document at the top of the page,  
18 which is in a different handwriting, and while I'm not a  
19 handwriting expert, it is very recognizable to me as the  
20 handwriting of Mr. Saravia. And it lists a series of  
21 payments.

22 One of those, for example, line 3, is "Amado," which  
23 is the way in -- the way Mr. Saravia would refer to Amado  
24 Garay, by the way he would call him by his first name, because  
25 there is a status difference there.

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1 Q. What is the name above Amado's?

2 A. Saravia.

3 Q. By the last name?

4 A. Right. So he refers to himself by the last name and the  
5 driver by the first name. This is my reading of these  
6 documents. But it is also, I might add, everyone else's  
7 reading that I have interviewed about these documents.

8 So what's important is that these three pieces of  
9 paper were found together. According to my interviews with  
10 the members of the junta -- and I should say that when these

11 documents were seized, they were given to Colonel Majano.

12 Colonel Majano Xeroxed these documents and gave a  
13 copy to every member of the governing junta, called them  
14 immediately into his office, and they sat down and studied  
15 these documents together.

16 I have interviewed, I believe, four members, or maybe  
17 five, of the junta. Four or five of the entire junta. Every  
18 one has the same impression, which is that when they saw this,  
19 they all said this is the document about the assassination of  
20 Archbishop Romero. In other words, they identified Operation  
21 Pineapple as the assassination of Archbishop Romero.

22 why is that so? It's because the equipment that was  
23 requested is the same. And it is very unusual type of  
24 equipment. In a death squad killing, you do not have a  
25 sharpshooter. You do not have weapons like this. You do

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1 usually have two cars, so you usually have the killers in a  
2 car and the security force for the killers who stay outside,  
3 watch, make sure they are okay, et cetera.

4 But this is a very unusual description of an  
5 operation. And in that sense, they very quickly and strongly  
6 felt that this was the -- these were the documents, the list  
7 of things that were going to be needed for the murder of  
8 Archbishop Romero, some of the financiers of that murder or  
9 the supporters or someone who was involved, and then, finally,  
10 a list of some of the payments that were actually made.

11 Q. Do you have any opinion as to whose handwriting is on the  
12 bottom as opposed to the top?

13 A. Yes. I am familiar with that handwriting. I think that's  
14 Roberto D'Aubuisson's handwriting.

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15 Q. How are you familiar with it, Professor Karl?

16 A. Well, I saw it quite a bit, actually, in the 1983  
17 campaign, but I have also seen a number of other documents  
18 that he has personally written.

19 Q. Were there any other documents in the Greentree documents  
20 that were of significance to this matter?

21 A. I should just say one other thing, if I may. That my --  
22 when I say I interviewed the junta, they were quite shocked by  
23 this, by the way, when they saw it, because they instantly  
24 believed this was Monseñor Romero's assassination.

25 And they, at this point -- at least the members of

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1 the junta and Colonel Majano -- did not fully understand from,  
2 in my opinion, the kind of threat that was growing inside the  
3 military in El Salvador. And when they saw this, they didn't  
4 expect to see this piece of paper. They didn't know who they  
5 thought had killed Monseñor Romero originally.

6 The other thing is that the U.S. Embassy declassified  
7 documents also repeat -- and I showed this and previously  
8 discussed this in Exhibit 164, as well as Ambassador White --  
9 that that is what this is.

10 That was an opinion shared by the U.S. Embassy and  
11 also by the members of the governing junta, that this reading  
12 that I gave of this document is also theirs.

13 Q. I would like to come back to that in a moment. But if we  
14 may, were there any other documents in the Greentree  
15 collection that bear on this matter?

16 A. Yes. There is a document that is in tab 4 of the  
17 Greentree affidavit.

18 Q. Does it appear in the declassified version of the diary?

19 A. It does not.

20 Q. Well --

21 A. According to what I have seen of the declassified. If it  
22 appears, it has not been declassified with the rest.

23 It is, in my view, if you look at --

24 Q. Which page in tab 4?

25 A. I think it's the eighth page, but they are not numbered.

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1 It's the eighth page in the way it was Xeroxed by  
2 Mr. Greentree.

3 Q. How does it appear at the top?

4 A. It appears -- it is at the top, "Prueba Cuba en  
5 Nicaragua." And that means "Evidence that Cuba is in  
6 Nicaragua." That's what it says.

7 Do we not have that?

8 Q. No, we don't have that.

9 A. May I translate this document or describe what's in it?

10 Q. Sure.

11 Your Honor, do you have a copy of this page?

12 THE COURT: I have the page that has the words that  
13 the witness just spoke at the top of it. It's handwritten.  
14 It appears to be a note pad. At the bottom it looks like the  
15 word F-R-E-U-T-R --

16 THE WITNESS: The bottom should say "New York."

17 THE COURT: At the very bottom on the right. I was  
18 looking at the left. Yeah, it says "San FR," then I can't  
19 read the next letter.

20 THE WITNESS: San Francisco and New York would be the  
21 bottom. I think I have a clearer copy.

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22 THE COURT: This exhibit hasn't been paginated, but I  
23 have that in front of me.

24 BY MR. Van AELSTYN:

25 Q. Is there anything significant on this document?

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1 A. I think there is something very significant, and I need to  
2 first refer back to Exhibit 125 in order to explain it.

3 MR. Van AELSTYN: Can we have Exhibit 125 up, please.

4 THE WITNESS: Exhibit 125 is a list of evidence that  
5 went to the judge.

6 MR. Van AELSTYN: Page 2.

7 THE WITNESS: Actually, it's page 3 at the top, the  
8 very first one. It says, "Evidence Number 10." And it  
9 describes a document of three pages which is entitled "In  
10 Relation to the Accusations Made By a South American Informant  
11 Against Monseñor Oscar Arnulfo Romero, Archbishop of San  
12 Salvador."

13 And after that, it says, "This informant is ready to  
14 give film and written proof within a period not exceeding 15  
15 days."

16 BY MR. Van AELSTYN:

17 Q. This is a document accusing Oscar Romero?

18 A. Well, let me say a little bit more about it, if I can.  
19 And then inside the pages -- this is in my view, the one you  
20 don't have on the screen.

21 Q. Back to the Greentree?

22 A. Back to the Greentree in tab 4. This is in Roberto  
23 D'Aubuisson's handwriting and is with the documents on hotel  
24 stationery as the same size, et cetera. And it translates --



25 I won't translate the whole document, but it translates,

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1 "Proof that Cuba is in Nicaragua," is the first line.

2 The second line says, "Romero P.C. Pendiente." That  
3 means Romero --

4 "P.C." (in Spanish) or "P.C." (In English) stands for  
5 "Communist Party." Partido Comunista.

6 And "pendiente" means "I'm waiting for this." It's  
7 "pending" is the best.

8 The document goes on, and I will not translate all of  
9 it, but it has another line which says "Support from the  
10 Southern Cone." That means South America, the southern part  
11 of South America.

12 And according to my interviews and an excellent book  
13 on the subject about the role of Argentinians inside  
14 El Salvador at this time, it is clear -- and I have  
15 interviewed one of the people involved in this operation who  
16 is Argentinian -- it is clear that there was an Argentinian  
17 support team that was helping Roberto D'Aubuisson in his  
18 activities.

19 This is a support team that came from the network  
20 that he developed inside the CAL, the Confederation of Latin  
21 American Anti-Communists that I identified earlier in my  
22 testimony. There were Argentinians helping him.

23 And this refers to, and I draw this conclusion from  
24 these two documents as well as my interviews, that there was a  
25 document being prepared that would accuse Archbishop Romero of

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1 being a member of the Communist party. That that document has  
2 never surfaced, but was being prepared by Argentinians. And  
3 it was going to be both a film version and a written version  
4 giving proof and denouncing him.

5 Now, this seems to be in process by the dates of  
6 these documents and when they occur, after Archbishop Romero  
7 has been murdered. So I don't know when they actually started  
8 this denunciation process or to try to identify him as a  
9 member of the Communist party. But at least following the  
10 assassination, at the very least, there was an effort to link  
11 him to the Communist party and to make him a member of the  
12 Communist party, something which, by the way, is patently  
13 false.

14 Q. If we could have up, briefly, Exhibit 122, please. If we  
15 could enlarge the lower portion?

16 Professor Karl, this was a cable that was sent from  
17 the U.S. Embassy in El Salvador dated May 8. We have  
18 discussed it previously, that reported on the raid, listing  
19 the officers, et cetera. If you could just briefly --

20 A. Right. This actually repeats the names that are on Judge  
21 Mendez's list. It talks about the raid itself. It says the  
22 same information I'm given about 24 people.

23 It lists 12 officers, including Roberto D'Aubuisson  
24 and Captain Garay. And the interesting thing about this  
25 document to me is the very last part of the comment. So

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1 that's the very last page at the very bottom.

2 And without reading it, it indicates that the United  
3 States is extremely worried about the documents that are found

4 on San Luis Finca.

5           It says that this is now a crisis, because Colonel  
6 Majano has moved against D'Aubuisson and has arrested him.  
7 And it says, in particular, "This was the second attempted  
8 coup against him," referring to Majano. "The Salvadoran  
9 military are now presented with evidence that they cannot  
10 ignore regarding the identity of the plotters."

11           It then goes on to say that there is a split in the  
12 military and "The question is whether Junta Member Colonel  
13 Abdul Gutierrez," who I previously testified was one of the  
14 Molina Group, "and Minister of Defense Colonel Jose Guillermo  
15 Garcia," who I also determine was one of the Molina Group,  
16 "can continue to paper over this problem or whether some high  
17 ranking officers will be forced out by the younger and more  
18 liberal officers."

19           So what this cable is indicating to the United States  
20 is there is a split in the military. This is a very decisive  
21 moment. And the issue is whether or not the hardliners are  
22 going to be forced out or the reformers are going to be forced  
23 out.

24           In other words -- and they believe, by the way, the  
25 comment, the one who made the comment, who wrote this, is

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1 Colonel Majano, and the younger officers will be able to force  
2 out the hardliners.

3 Q. Professor Karl, I would like to show you another document  
4 that --

5           Your Honor, has not been admitted into evidence as  
6 yet. May I approach the witness?

7           THE COURT: Yes, you may.

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8 BY MR. Van AELSTYN:

9 Q. I would like to identify this for identification purposes  
10 as the next exhibit in order, which I believe is Exhibit 224.

11 A. This is a declassified document that came in the way that  
12 I have previously testified the others have.

13 Q. What is the date of the document?

14 A. The document is dated --

15 Q. On the very first page?

16 A. "May 9th, 1980. Secret cable." And it's cited as "JRG";  
17 that refers to the "Revolutionary Governing Junta, "faces  
18 worst crisis yet."

19 Q. And this document was sent from whom to whom?

20 A. It is sent from the Secretary of State, who at the time is  
21 Ed Muskie, and it is sent to the Embassy of San Salvador --

22 Q. So did they --

23 A. -- to the Ambassador, it was sent to the Ambassador.

24 Q. Is this a response, then, to Exhibit 122, a cable from the  
25 Embassy to the Secretary of State dated the previous day, May

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1 8?

2 A. Right, exactly. It is a very important cable in that  
3 normal cable traffic doesn't have the Secretary of State in  
4 it. When the Secretary of State is answering something, it  
5 means that it is very, very important, that this is a crucial  
6 event.

7 And what this cable says, and I would turn you to --  
8 you don't have this on -- let me ask you to look at page 2 of  
9 the text of the cable.

10 It describes U.S. policy as being able to -- as

11 desiring to bring under control the violent left and right and  
12 to eliminate any violence or human rights violations  
13 associated with the armed forces, that that is what the U.S.  
14 is interested in doing.

15 And to this end, it says -- it describes actions  
16 taken against different groups. The last line is important in  
17 that second paragraph:

18 "We have considered links between the extreme right  
19 and the armed forces particularly dangerous because  
20 their persistent coup attempts threaten the very  
21 existence of the JRG," that refers to the  
22 Revolutionary Governing Junta, "and the continuation  
23 of its reform program, as well as tarnishing its  
24 image."

25 The third paragraph goes on to say, that, and I'm not

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1 reading it all, that:

2 "The evidence uncovered appeared conclusive as to the  
3 guilt of those detained, as well as to others  
4 implicated."

5 And then Secretary Muskie says, "We, therefore,  
6 believe that prompt and effective action to punish  
7 those detained is necessary."

8 Q. Professor Karl --

9 A. And then the cable has lots more details on it, but I  
10 think that's the key content for the purposes that we are  
11 talking about right now.

12 Q. And what happened? Were they detained or punished?

13 A. No, they were not. They were neither detained nor  
14 punished. All -- and actually, I think, in effect, what you

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15 see is that the coup that was being planned in El Salvador  
16 effectively is carried out, but in a different way.

17           And when I say that, what I mean is we have a series  
18 of documents at San Luis Finca which indicate a coup of  
19 hardliners to take over the government is the plan. They are  
20 arrested by a reformist military officer.

21           what happens, what you would expect then -- what I  
22 would expect, given these kind of documents, is they would be  
23 detained, arrested and charged. Instead, they are released,  
24 including Mr. D'Aubuisson and Mr. Saravia. They are released.

25 Q. When?

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1 A. They are released several days later. And within two  
2 days, Colonel Majano, who is the man who ordered their arrest,  
3 is removed from the High Command of the military. He is then  
4 threatened several times; his life is threatened. There is a  
5 bomb put in his car, there are other threats against his life,  
6 and by December 1980, he is out of the country.

7           So rather than have a victory, if I can put it that  
8 way, by reformist -- by a reformist military officer and his  
9 cohorts taking control of the Salvadoran military, instead,  
10 what we actually have is the replacement of reformers with  
11 hardline military officers.

12           And we have that, most importantly, through the  
13 actions of two other Colonels who are linked -- who are  
14 members of the Molina Group, which I explained earlier,  
15 included Mr. D'Aubuisson.

16 Q. And those two Colonels are the ones who were referenced in  
17 the May 8 cable?

18 A. That's right. Colonel Gutierrez and Colonel Garcia. They  
19 are referenced in the May 8th and May 9th.

20 MR. Van AELSTYN: If I could have just one moment?

21 THE COURT: Yes, you may.

22 Is this memo simply a statement of the current  
23 position of the Secretary of State? Is it an action memo or  
24 is it just to communicate the thinking that is currently  
25 applicable?

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1 THE WITNESS: There is actually action requested in  
2 the last page of the memo. Because there is a great worry  
3 about other military officers who are in positions of High  
4 Command that are believed to be hardliners, and the Secretary  
5 of State is suggesting that they be eased out. In other  
6 words, there be some way to remove them. So there is action  
7 at the end.

8 But there is -- it's clear that when this is written,  
9 these men are still in jail and Colonel Majano is still in  
10 command. So I think that there is no indication in the  
11 declassified documents that the Secretary of State or the  
12 Embassy expected that Colonel Majano would be forced out  
13 instead.

14 So the action is assuming that Colonel Majano is in  
15 command, and that not only these officers arrested, but other  
16 handliners could be pushed out as well. And in fact that's  
17 not what happens.

18 THE COURT: Is this when the war starts, following  
19 this?

20 THE WITNESS: The war starts later. At the point of  
21 time that this is happening, there is still no single guerilla

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22 army. There are five smaller armed factions, but there is no  
23 guerilla army in existence. That comes later.

24 So all of this is in a period of what I would call  
25 state terror and the disintegration of the old military

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1 authoritarian regime. There is no civil war yet.

2 And this San Luis Finca event is so important because  
3 now we have had the murder of Archbishop Romero, which has  
4 plunged the country into terror, and we also have this arrest  
5 that indicates to everyone there that this includes murderers  
6 of Archbishop Romero or people who were involved in some way  
7 of the murder of Archbishop Romero, and rather than being  
8 detained, they are being released.

9 We have the hardliners replace the reformists. And  
10 so this is one of the next most important events to plunge the  
11 country into civil war. We are not into civil war yet.

12 THE COURT: Who replaced Majano as the head  
13 commander --

14 THE WITNESS: Colonel Garcia stays as Minister of  
15 Defense and Colonel Gutierrez stays in the junta. They are  
16 both members of the Molina Group. But most importantly, there  
17 is an organization which is called "COPREFA" which is the  
18 organization of the High Command of the military.

19 And if you remember, I said it operates not just like  
20 a military, but like a government, and that's where they make  
21 their decisions.

22 The head of COPREFA is extremely important, and that  
23 is what Colonel Majano was. So he was not only in the  
24 government, but he is the head of COPREFA. He is replaced as



25 head of COPREFA. And the person who replaces him is Medrano's

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1 nephew.

2 Medrano is the original author of ORDEN, of the  
3 paramilitary organizations, et cetera. So he is actually  
4 replaced by a very known hardliner, which then takes over all  
5 the -- they are basically putting hardliners in all the main  
6 institutions of the military.

7 BY MR. Van AELSTYN:

8 Q. If I could have footnote 24 from Exhibit 98, this is the  
9 Truth Commission Report. And let's draw your attention,  
10 Professor Karl, to footnote 24, which states, quote:

11 "On 12 May, Majano lost his influence when Colonel  
12 Jaime Abdul Gutiérrez, of the conservative wing, was  
13 appointed President of the Revolutionary Government  
14 Junta by the armed forces and, as such, became their  
15 Commander-in-Chief."

16 A. That's right. So what happens is Majano is forced out of  
17 the junta, but he is also forced out of COPREFA. And these  
18 are two parallel organizations. One is the official  
19 government and the other is how -- is the military structure  
20 itself. And it essentially means that his influence is over.  
21 From this time on, he has lost all of his influence, and it's  
22 a question of time when he leaves the country.

23 This is the definitive moment when the hardliners  
24 take over the entire military and security forces of  
25 El Salvador.

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1 Q. And D'Aubuisson, at this point, is released?

2 A. D'Aubuisson is released, that's right.

3 Q. So five days after the raid on the San Luis Finca --

4 A. The story is really over in terms of the reformers. And  
5 the hardliners have taken over, including people who are, by  
6 evidence gathered here, implicated in the murder of Archbishop  
7 Romero.

8 Q. And Captain Saravia was among those arrested at the San  
9 Luis Finca?

10 A. He was arrested at San Luis Finca and he was subsequently  
11 released with Mr. D'Aubuisson and went to Guatemala right  
12 afterwards with Mr. D'Aubuisson.

13 Q. Is there any other evidence of Saravia's linkages to the  
14 assassination of Archbishop Romero?

15 A. I want to draw your attention to Exhibit 121. And I will  
16 follow it up with Exhibit 125. These are more declassified  
17 documents.

18 Exhibit 121 --

19 Q. What is the date of this document?

20 A. It's November 1980.

21 Q. So after the hardliners have come into power?

22 A. The hardliners have come into power. Majano is out of  
23 power. He is still in the country, by the way, but he is out  
24 of power.

25 And this is a document in which the political officer

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1 of the U.S. Embassy is reporting his interview with what he  
2 describes as a low ranking National Guard officer. And he is  
3 saying that this is a source that he's never met before, his

4 reliability cannot be judged.

5 And then the comment afterwards is regarding the  
6 assassination of Monseñor Romero.

7 "The source told the political officer that he  
8 participated in a meeting during which the  
9 assassination of Archbishop Romero was planned. He  
10 indicated that Major Roberto D'Aubuisson was in  
11 charge of the meeting and that it took place shortly,  
12 a day or two, before Romero was assassinated.  
13 According to the source, the participants drew lots  
14 for the task of killing the Archbishop. The, quote,  
15 winner, end quote, was an ex National Guardsman who,  
16 said the source, now lives in Ciudad Delgado. The  
17 officer said that the cartridge used in the  
18 assassination was his own."

19 And then he goes on to describe his relationship  
20 with Roberto D'Aubuisson, particularly a meeting in Guatemala.

21 This is a source who is extremely unhappy because he  
22 believes that D'Aubuisson is not acting in the full  
23 national -- because this is a split, actually, in the group  
24 here, and he is upset that D'Aubuisson is working so closely  
25 with wealthy salvadorans. So this is a memo that reports

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1 that.

2 And it is followed up --

3 Q. Professor Karl, if I may?

4 A. Sure.

5 MR. Van AELSTYN: Your Honor, I have another document  
6 that has not been previously marked, if I may approach.

7 THE COURT: Let me ask Professor Karl a question. If  
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8 we go back to the Saravia list that was part of Exhibit 123,  
9 at least, in one form that it was found, and then separate in  
10 the U.S. Embassy documents, I thought there that they were  
11 going to supply the weapon to the shooter; at least you might  
12 infer that from the supply list.

13 THE WITNESS: That's right.

14 THE COURT: So would this be consistent with what  
15 this unconfirmed source, at least as to reliability, the  
16 National Guard low ranking officer says? By "cartridge," I  
17 assume that means that the assassin used his own ammunition.

18 THE WITNESS: May I talk about the next document  
19 before I answer that?

20 THE COURT: Yes.

21 THE WITNESS: This next document --

22 MR. Van AELSTYN: Just a moment, Professor Karl.

23 THE COURT: There is one more question I would like  
24 you to think about, and that is how does that square with  
25 Garay's testimony that it was the decision, inferentially, of

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1 Saravia, D'Aubuisson and anyone else who was on their level,  
2 to bring in the assassin; they chose the shooter. Not -- they  
3 didn't do it by lot.

4 THE WITNESS: Right.

5 MR. Van AELSTYN: Your Honor, if I may just describe  
6 the document that Professor Karl has. We have provisionally  
7 identified it as the next in order, Exhibit 225, and it  
8 appears to be another declassified document dated April 23,  
9 1981.

10 THE WITNESS: This is a document from the Embassy

11 back to the Department of State, and it is actually a followup  
12 conversation with the same source that the November 1980  
13 declassified document refers to. It's called "Security Force  
14 Officer Comments on Sheraton Murders."

15 Just to situate the document, the Sheraton murders  
16 are murders in the Sheraton Hotel of two U.S. citizens. And  
17 so the interest of the United States in finding these  
18 murderers is extremely high, which is why there is so much  
19 being uncovered, because they are pushing very hard to find  
20 out who killed these two U.S. citizens who are working in the  
21 land reform and are representatives of the U.S. government  
22 through USAID.

23 So what is important in this document, this is an  
24 April 22nd conversation with a security force officer who  
25 gives details about the Sheraton killing. And it also says in

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1 the summary on -- this is number 2, "The officer described,  
2 for instance, some of the details of the planning and  
3 execution of the Archbishop Romero assassination."

4 If you look at number 5 --

5 BY MR. Van AELSTYN:

6 Q. On the second page of the document?

7 A. On the second page. And the whole document is quite  
8 interesting for a lot of reasons, but I'm going to just hone  
9 in on a few things.

10 where it says "Extreme Rightist Doings." "The  
11 officer gave" -- this is the source reporting, the  
12 Salvadoran officer -- "gave the political officer  
13 bits of information on anti-left activities sponsored  
14 or condoned by members of his service. He had

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15 participated in several of these activities until  
16 mid-1980. He said, for example, that he had  
17 participated in the dynamiting of the BPR  
18 Headquarters, the dynamiting of the Catholic radio,  
19 YXAS, and the dynamiting of the Central American  
20 University," which we have heard referred to  
21 repeatedly. He said, "He engaged in these activities  
22 under the activity of Captain Victor Hugo Vega  
23 Valencia," who is one of the officers arrested in San  
24 Luis Finca. "The officer said he ended his own  
25 participation after finding out his friends were

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1 being paid for their activities, while he had felt  
2 obligated to do these things out of conviction."  
3 And then, again, I'm moving through the document.  
4 "Number 6. Among the source's most interesting  
5 comments were those he made about the murder of  
6 Archbishop Romero. He repeated what he had said to  
7 Political Officer in November," and that is what I  
8 read earlier, so I won't repeat it.

9 But what is new in this version of the story, if you  
10 look on the final page, he repeated the story he said before,  
11 but he gives new details.

12 "Participants at the assassination planning session  
13 were D'Aubuisson, Soravia," which is misspelled,  
14 Amaya Rosa."

15 And then it says, "Comment." That means it's now the  
16 officer, the Political Officer in the Embassy commenting.

17 "Captain Alvaro Soravia and Lieutenant Amaya Rosa were

18 arrested with D'Aubuisson in March. The source said  
19 that Amaya Rosa at first did not accept his loss to  
20 Douglas." And that's referring to the fact that this  
21 so-called Douglas is the one who won the right to  
22 shoot Archbishop Romero, "but then grudgingly  
23 accepted at least the getaway car driver's role in  
24 the operation. The officer ended by saying  
25 emphatically that the weapon used to kill Romero was

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1 not a .22 caliber, but was instead a 9 millimeter.  
2 The source said, as he did in November, that he gave  
3 the bullets to the assassin."  
4 So this is a sort -- oh, let me read one more thing.  
5 "9. The Embassy officer who has this contact believes  
6 that his interlocutor reports accurately, but from  
7 his own curious and limited perspective. The data  
8 given has not been and may never be substantiated.  
9 Though much of what the Embassy officer has told may  
10 appear incredible to someone outside El Salvador, the  
11 events described and the alleged participants would  
12 raise few eyebrows here. Unfortunately, for 50  
13 years, the Salvadoran security forces have engaged in  
14 kidnapping, murder, bombings, torture and assorted  
15 mayhem at the service of the wealthy families; only  
16 the scale and atrociousness of the crimes this  
17 officer describes are out of the ordinary for the  
18 security forces."

19 Now, in order to answer the question you raised, sir,  
20 the last one first, other cables show that, and my interviews  
21 show, that claiming credit for being involved in the

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22 assassination of Archbishop Romero was actually a fund-raising  
23 tactic. If you could show you were involved in the  
24 assassination, you were more likely to get some financing for  
25 your activities or your death squad or whatever from sources

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1 of financing.

2 So what we see in the declassifieds are there are  
3 some people who claim credit for having the bullet, for  
4 wearing the bullet, for giving the bullet to their girlfriend,  
5 all kinds of things like that which are simply, in my view,  
6 not credible. And there are people claiming involvement.

7 what is credible, in my reading of the declassifieds,  
8 is that when the same name is repeatedly involved in a set of  
9 meetings. And what is also credible is that there was a  
10 meeting to decide to kill the Archbishop. And in that  
11 meeting, it was decided that a sharpshooter was necessary. In  
12 other words, not any old shooter could kill him. And when you  
13 look at the people involved in this, very few of them are  
14 actually sharpshooters.

15 So if there is a drawing for lots, the drawing for  
16 lots is the right to get the sharpshooter. It is not the  
17 right to kill the Archbishop himself, because this is always a  
18 plan to hide who is killing the Archbishop. This is,  
19 remember, the first major important political murder, and when  
20 I say that, of someone of a stature like this in El Salvador.  
21 So the idea is to kill him without anybody being able to know  
22 who exactly did the killing.

23 But I do think that we see people claiming credit for  
24 being involved in the killing and then later on in the



25 declassified documents, we see reports of that as the Embassy

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1 begins to realize that some of these details are -- that  
2 people are claiming credit so that they can actually raise  
3 money from landowners by saying they were involved in the  
4 assassination.

5 I'm not sure if that answered both of your questions.

6 THE COURT: Yes, I think so. Thank you.

7 BY MR. Van AELSTYN:

8 Q. Professor Karl, in your opinion, based upon your research  
9 concerning the death squad activities, is there any way to  
10 sort out the statements that may be braggadocio for  
11 fund-raising and some that may have some actual validity?

12 A. Yes. I think in my -- when I read these documents, I look  
13 for what I call a "core of consistency." And by that, I mean  
14 that in every document there are certain things that are  
15 consistent.

16 I also, by the way, never just rely on declassified  
17 documents. It's very important to me that I do my own  
18 research and investigation. And there are other testimonies  
19 available that I cited earlier, Mr. Garay's testimonies; there  
20 are some secret testimonies of Mr. Saravia. There are other  
21 things that I have had access to which helps me separate out  
22 the wheat from the chaff, if I could put it this way.

23 And I think that the core of consistency, in all of  
24 the declassifieds, my interviews, these other sources, that I  
25 have given, all have a core of consistency about the role of

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1 Roberto D'Aubuisson and the role of Mr. Saravia as his chief  
2 aide.

3 THE COURT: When you refer to secret testimony of  
4 Saravia, do you mean that in a technical sense, that this was  
5 a statement under oath?

6 THE WITNESS: May we hold that question for a bit,  
7 your Honor? It's -- there are testimonies of Mr. Saravia, but  
8 not under oath in a court of law.

9 THE COURT: All right. It would be hard to call it  
10 testimony then.

11 THE WITNESS: Right, excuse me.

12 THE COURT: Statements?

13 THE WITNESS: Statements, thank you.

14 BY MR. Van AELSTYN:

15 Q. When last week we were following the chronology, I believe  
16 you testified that your understanding was that following the  
17 San Luis Finca raid, D'Aubuisson and Saravia went to  
18 Guatemala?

19 A. That's right.

20 Q. Bring us up to date through the early 80s.

21 well, actually, if I may, before you do that, could  
22 we please have Exhibit 45 and then 46?

23 Can you identify Exhibits 45 and 46, Professor Karl?

24 A. I can identify the person in the pictures. That's Roberto  
25 D'Aubuisson.

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1 Q. And the date here is March 26, 1984, taken from Newsweek  
2 magazine. And if we could go back to the previous one.

3 A. The one that says "D'Aubuisson: I'm not an angel."

4 Q. Right, also from Newsweek. Do you know what these  
5 photographs are of, other than the individual, the context?

6 A. Yes. These are photographs of Roberto D'Aubuisson on the  
7 presidential campaign trail.

8 Q. So in March of 1984, he is running for president of  
9 El Salvador?

10 A. That's right. So --

11 Q. A few years after he had been arrested at the San Luis  
12 Finca?

13 A. That's right.

14 Q. How did he get there?

15 A. Well, very briefly, he goes to Guatemala, where he is put  
16 under the protection of a man called Mario Sandoval Alarcon,  
17 who is the godfather of death squads in Guatemala, which has  
18 the same operation of El Salvador going on at the time.

19 when he is there, he works on the design and the  
20 organization of the F.A.N., the political party that he  
21 found -- political party/paramilitary organization that later  
22 becomes the ARENA Party. That is the party that governs  
23 El Salvador today.

24 He returns to El Salvador, Mr. D'Aubuisson, with  
25 Mr. Saravia. I don't know if they actually came back

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1 together, but they both return to El Salvador from Guatemala.

2 Roberto D'Aubuisson becomes the President of the  
3 Legislature first, of the Constituent Assembly. And in that  
4 position, he brings Mr. Saravia to work in the security forces  
5 of the Legislative Assembly, and they are both working in the  
6 security forces of the Legislative Assembly through the '84  
7 campaign.

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8           Now, what is important about that is at the same time  
9 this occurs, a death squad starts operating out of the  
10 Legislative Assembly out of the Office of the President. This  
11 is the office of Roberto D'Aubuisson that is made up of  
12 members of the security guards, the security force of the  
13 Legislative Assembly. That is the assembly where Mr. Saravia  
14 is working.

15           Afterwards, there is a -- Mr. D'Aubuisson has wanted  
16 to be President for some time, and he actually wins an  
17 election in El Salvador with the United -- it is an interim  
18 presidential election. And he actually wins that election.

19           The United States is so upset that he might be the  
20 temporary president of El Salvador until the 1984 elections,  
21 that it actually intervenes very strongly, and the new  
22 president is appointed named Magana. So the United States  
23 actually opposes D'Aubuisson as President.

24           And instead of D'Aubuisson or Duarte, who are the two  
25 candidates of the interim presidential period, a third person,

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1 who actually doesn't even run in the elections and is the  
2 banker of the military, a civilian named Magana, is actually  
3 appointed president.

4           So this is now an effort of D'Aubuisson to become  
5 president, but also with the opposition of the United States.  
6 And these pictures in Newsweek are portraying that.

7           And he has Mr. Saravia with him in the Constituent  
8 Assembly, and there is very ample evidence of a death squad  
9 operating out of that Assembly at the time.

10           THE COURT: What was the process by which he became

11 initially the President of the Legislative Assembly?

12 THE WITNESS: There was a deal made, which is a  
13 political deal. It had actually nothing to do with the  
14 electoral results.

15 The United States, the Reagan Administration, felt  
16 that if Mr. D'Aubuisson became the president of the country  
17 with his very notorious reputation as a death squad organizer  
18 and leader, that it would be impossible to get military aid  
19 through the U.S. Congress.

20 At that point, a deal was made that he would take a  
21 lesser profile position, which was President of the  
22 Legislature, and Mr. Magana, who had not actually even been a  
23 candidate in the elections, was appointed president. So it  
24 was to give him a power base, but a less visible one, if I can  
25 put it that way.

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1 THE COURT: When he returned from Guatemala, then did  
2 they have public elections? Did he run for public office?

3 THE WITNESS: No. What he does is he forms the ARENA  
4 Party. He becomes a representative of the ARENA Party, and  
5 when ARENA wins control of the legislature, which happens in  
6 these interim elections, ARENA appoints him a head of the  
7 Constituent Assembly. That's the way the political system  
8 works there or worked at that time.

9 THE COURT: In this photograph, is he wearing a  
10 uniform?

11 THE WITNESS: No, the colors that he used all the  
12 time were red, white and blue, and he very often campaigned in  
13 that jacket.

14 If you notice, in the picture, ARENA is a party which

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15 presents itself with red, white and blue, and you can see on  
16 the side of the man behind him, the ARENA Party signature,  
17 which is on his sleeve.

18 BY MR. Van AELSTYN:

19 Q. This is during a campaign?

20 A. Yes. And that happens earlier.

21 The 1984 elections now is once again an election  
22 between Duarte and D'Aubuisson. D'Aubuisson is once again  
23 running for president.

24 The United States is again against his candidacy for  
25 the same reason as before, because they believe that if he

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1 becomes president, there will be no possibility of providing  
2 aid to El Salvador.

3 And so once again, he is running, but the United  
4 States is now giving a great deal of money to support the  
5 candidacy of Mr. Duarte.

6 THE COURT: Who votes in this election?

7 THE WITNESS: In this election -- well, that was a  
8 very controversial question. Because at the point of time we  
9 are talking about, violence has risen to the highest it has  
10 ever been. And I will give you some statistics later.

11 In this period of time, from 1980 to 1984,  
12 El Salvador is at a level of extremely high violence. State  
13 terror, primarily committed by the Salvadoran Armed Forces.

14 So voting in the elections under the conditions of  
15 state terror, there are no candidates participating at all  
16 from what I would call the center left or the left. Even  
17 though there is quite a constituency from them, there are no

18 candidates that represent that position.

19 And there is no one participating in the elections  
20 and voting from that sector if they have choice. There are  
21 people being taken to the voting centers, et cetera. So this  
22 is an election held under conditions of really extreme  
23 violence.

24 BY MR. Van AELSTYN:

25 Q. Professor Karl, very briefly, what is going on with the

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1 investigation of the assassination of Archbishop Romero during  
2 this period in the early 80s?

3 A. Well, in the early 80s, then, we have ARENA in control of  
4 the legislature, but ARENA is the new party now, that used to  
5 be the F.A.N., and is now the party/paramilitary organization  
6 of El Salvador.

7 ARENA is controlling the Assembly, but it also has  
8 very important control over some of the courts, particularly  
9 the Supreme Court and the public attorneys -- or Attorney  
10 General, Public Prosecutor's Office, excuse me.

11 So ARENA, appoints, as Public Prosecutor of  
12 El Salvador, Jose Francisco Guerrero. We have heard about him  
13 before. He was the representative who went to the CAL  
14 meetings with Roberto D'Aubuisson, the meetings of the network  
15 of extreme rightists that I talked about earlier, but he was  
16 also D'Aubuisson's personal lawyer. So the Public Prosecutor  
17 is D'Aubuisson's personal lawyer.

18 And what he does, essentially, is make sure that the  
19 investigation of Romero's assassination is quashed. And there  
20 has been previous testimony to show that judges, in general,  
21 are unwilling to take this case.

22           So if anyone was going to take it, it would have to  
23 be -- unwilling and unafraid to take this case, if anyone were  
24 to take it, it would have to be the Public Prosecutor, but the  
25 Public Prosecutor is Roberto D'Aubuisson's personal lawyer.

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1   Q. Did the Public Prosecutor, Jose Francisco Guerrero, submit  
2 any evidence to the court, the Fourth Criminal Court that had  
3 been investigating the Romero assassination at this time?

4   A. He does. And what is important is that he submits in  
5 August 1985 what is called the "Pedro Lobo confession." He  
6 submits this to the Fourth Criminal Court of El Salvador. And  
7 this is a confession that proves later to be fraudulent.

8           He gets the confession, the Pedro Lobo confession,  
9 from Roberto D'Aubuisson. It's a tape that is actually  
10 produced by Roberto D'Aubuisson.

11           It is a tape of a man whose name is Roberto Delbert  
12 Salazar Collier, and he is also called Pedro Lobo. He is a  
13 man who confesses to the murder of Archbishop Romero.

14           The problem is that when Archbishop Romero was  
15 murdered, Pedro Lobo was incarcerated as a common criminal  
16 inside jail in El Salvador, so he could not possibly have been  
17 the killer.

18           When it is revealed that he was incarcerated during  
19 this period of time, Pedro Lobo then says that he was offered  
20 \$50,000 to confess to being an accomplice in the murder of  
21 Archbishop Romero.

22           So the Pedro Lobo confession is produced by  
23 D'Aubuisson, given to his personal lawyer, who is Jose  
24 Francisco Guerrero. The personal lawyer is the Public



25 Prosecutor. And then he puts that in evidence and then it

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1 later proves to be fraudulent.

2 Q. If we could go back for a moment to Exhibit 45, the  
3 campaign photograph. I would like to draw your attention,  
4 Professor Karl, to page 129 of Exhibit 98, the Truth  
5 Commission Report.

6 THE COURT: while you look for that, I have to  
7 conduct a proceeding in another case. It won't take me long.  
8 Let's take the morning recess now, and we will resume about  
9 ten minutes of 11:00.

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

11 THE COURT: We will stand in recess until that time.

12 (Recess)

13 THE COURT: Back on the record in Doe versus Saravia.  
14 I apologize for the time. We will try to make it up at the  
15 noon hour in the other proceeding.

16 We are going to go on now with the testimony of  
17 Professor Karl.

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

19 BY MR. Van AELSTYN:

20 Q. Professor Karl, right before we left, I asked you to look  
21 at Exhibit 98, the Truth Commission Report. If I could have  
22 Exhibit 45 up again.

23 Did you have an opportunity to look at that during  
24 the break, Professor Karl?

25 A. Yes.

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1 Q. Did it refresh your recollection?

2 A. Yes. The testimony I gave about the Pedro Lobo  
3 confession, I would just like to add that that tape was  
4 produced for Roberto D'Aubuisson's campaign. In other words,  
5 the original tape was done to make it look as if the left had  
6 killed Archbishop Romero, which is what Pedro Lobo was  
7 confessing to.

8 The authenticity of that tape had been discredited  
9 during the campaign itself, so that when the Public  
10 Prosecutor, Mr. Guerrero, presented that tape, it had already  
11 previously been discredited, and it had already been  
12 identified as a false confession and publicly identified as  
13 such.

14 Q. Did that prosecution in 1985 make any progress against  
15 those responsible for the assassination of Monseñor Romero?

16 A. No, it made no progress. Eventually, another  
17 investigation is opened up, and we discussed that the other  
18 day.

19 That is the investigation that President Duarte  
20 appoints of the Special Investigative Commission. That  
21 includes the Mr. Lopez who Amado Garay testifies comes to meet  
22 with him, and that is the testimony that we talked about that  
23 results in the Supreme Court decision that is -- of  
24 El Salvador that is sent to the United States that cancels the  
25 extradition request from Mr. Saravia.

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1 THE COURT: The year of that?

2 THE WITNESS: That is in 1988. And that was on -- I  
3 testified, I believe my last day of testimony, in some detail

4 about that case.

5 So that what we have in the 1980s is blocked  
6 investigations, an investigation with false documentation  
7 presented by the Public Prosecutor, and false documentation  
8 that is already discredited.

9 Then we have President Duarte trying to open up  
10 another investigation in 1986. At some period during this new  
11 investigation, Mr. Saravia leaves El Salvador and comes to the  
12 United States.

13 It is that 1986 investigation that eventually leads  
14 to the request for extradition of Mr. Saravia. He is arrested  
15 and jailed in Miami. He -- and I, again, testified to this,  
16 he is -- his lawyer is provided by D'Aubuisson. He calls  
17 D'Aubuisson from jail.

18 I presented the Mariscos Tazumal fax that the  
19 administrative decision from the Supreme -- the administrative  
20 decision was faxed to the United States from, and we went over  
21 Ambassador Walker's cable talking about the obstruction of  
22 justice in this case. So --

23 Q. Professor Karl, at the time of the December 1988 decision  
24 of the El Salvador Supreme Court to negate and the  
25 investigation of Alvaro Saravia, was Jose Francisco Guerrero

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1 still the Public Prosecutor?

2 A. No. He had been elevated to President of the Supreme  
3 Court.

4 Q. The same Supreme Court, then, that issued that  
5 decision closing --

6 A. That's right. So he, at this point, when that decision is  
7 made, Roberto D'Aubuisson's personal lawyer is elevated to

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8 President of the Supreme Court, which subsequently makes the  
9 decision that is sent to the United States and that results,  
10 eventually, in Mr. Saravia's release from jail.

11 Q. So in 1988, he has been released from detention, no longer  
12 subject to extradition. What is his immigration status at  
13 that point in the United States and has that ever come up for  
14 review?

15 A. Yes. Apparently, his immigration status is not  
16 regularized. And so the next time we have documentary  
17 evidence of Mr. Saravia's -- at least I have documentary  
18 evidence of Mr. Saravia, is in a series of negotiation  
19 meetings that occur in 1990 around his immigration status.

20 MR. Van AELSTYN: Could I have Exhibit 165, please.

21 THE WITNESS: This is a document that I need to go  
22 over in some detail. This is a very important document.

23 It is sent in a much more secret way than other  
24 declassified documents. If you see on the top, it says,  
25 "Never sent as cable." That means this is delivered in a

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1 different way.

2 There are -- the way declassified documents work,  
3 some are sent as regular cables and others are sent in other  
4 more "back channel" ways, so that they don't appear as part of  
5 the regular cable traffic.

6 This is a, from the Embassy of the United States, and  
7 it is for Bernie Aronson, who, at that point, is Assistant  
8 Secretary of State for Latin American Affairs.

9 Q. Professor Karl, if I may just ask one question by way of  
10 clarification. It says here from the Legal Officer of the

11 Embassy, San Salvador. But the first sentence here says, "On  
12 May 14, legal officer met with Alvaro Saravia in the offices  
13 of Miami attorney Neal Sonnet"?

14 A. That's right.

15 Q. So the San Salvador officer is reporting on a meeting in  
16 Miami?

17 A. Yes. In my view, it is a very unusual event that officers  
18 from the Embassy would be meeting with somebody in Miami  
19 rather than in El Salvador.

20 Mr. Saravia is in the United States, and apparently  
21 this meeting did not take place in El Salvador, so I think  
22 that he probably preferred to have it in the United States,  
23 but I don't know that. It did not take place in the offices  
24 of Neal Sonnet, who was the attorney that had helped him on  
25 the extradition case. He was the attorney that was

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1 purportedly paid by the ARENA Party or by ARENA members of the  
2 party, and he was the attorney, very high priced attorney,  
3 that seemed -- and if you remember in the cable by Ambassador  
4 William Walker, he comments that this attorney is out of the  
5 price range of someone like Alvaro Saravia, and discusses the  
6 D'Aubuisson aid to Saravia while he is in jail in Miami.

7 So he is now out of jail. He is meeting in the legal  
8 offices of the same attorney. And he is offering, if you read  
9 this cable, to cooperate with the United States in developing  
10 key criminal investigations in El Salvador in return for a  
11 regularization of his immigration status, and for that of his  
12 family, and also for providing for their security.

13 If you look at number 2 on the memo, he says -- it  
14 says.

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15 "During this initial interview, Saravia was asked to  
16 provide information on the Romero assassination. He  
17 was asked to limit discussion only to what he could  
18 bear personal witness to. The following is a  
19 summation of the relevant points."

20 Part 3 is -- point 3 is the Romero Case.

21 "Saravia confirmed that D'Aubuisson gave the order to  
22 murder Archbishop Romero on March 24, 1980. He has  
23 no firsthand knowledge, however, on what meetings, if  
24 any, took place prior to March 24th to discuss the  
25 murder of Romero.

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1 "On the morning of March 24th, 1980, there was a  
2 meeting of ten persons, including Roberto  
3 D'Aubuisson, Captain Avila and 'Negro' Sagraera at a  
4 house in Escalon."

5 And I should say that "Negro" Sagraera is the same as  
6 Fernando Sagraera; that's his first name.

7 Q. Where is Escalon?

8 A. Escalon is the wealthy area of San Salvador.

9 "Captain Avila arrived for the meeting with a daily  
10 newspaper and pointed out that Romero would be giving  
11 a Mass that afternoon at the Church of Divine  
12 Providence. He suggested it would be a good  
13 opportunity to kill him.

14 "D'Aubuisson agreed and asked if a gunman could be  
15 found. One of the ten, only identified as the son of  
16 an ex-president of El Salvador, said he knew of a  
17 gunman and was ordered by D'Aubuisson to contact him.

18 "D'Aubuisson put Sagrera in charge of the operation,  
19 then left for San Miguel to attend previously  
20 arranged meetings.

21 "Sagrera, the gunman, and two others met in the  
22 parking lot of the Camino Real Hotel a half hour  
23 before the murder to finalize the plan. From this  
24 meeting the gunman went to the church and murdered  
25 Romero.

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1 "The gunman was paid 1,000 colones. Approximately  
2 U.S. \$200. Saravia does not know if the money came  
3 from D'Aubuisson.

4 "The weapon used was an M-16.

5 "Part 4 of the comment of the officer: There are  
6 some contradictions between Saravia's version and  
7 that given earlier by Garay, the alleged chauffeur.  
8 Amado stated that Saravia" -- "Amado stated he took  
9 Saravia to D'Aubuisson's house after the murder,  
10 where he overheard Saravia report the success of the  
11 mission. D'Aubuisson claimed that at the time when  
12 Saravia allegedly was reporting to him, he,  
13 D'Aubuisson, was outside of San Salvador.

14 D'Aubuisson could be telling the truth and still be  
15 guilty of ordering the murder.

16 "5. It is hardly plausible that the murder of Romero  
17 was decided on the spur of the moment. Saravia,  
18 however, could be telling the truth when he says he  
19 was not aware of any prior planning; he was asked to  
20 limit discussion to facts he could attest to. It is  
21 more probable that the decision to kill Romero was

22 made elsewhere, but the details of when and how were  
23 left to D'Aubuisson. Avila's suggestion was merely  
24 opportune."

25 Q. Could you address a couple of the discrepancies that have

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1 appeared here?

2 A. Yes. In the first instance, this is a description, like  
3 all other confessions, or what I call "death squad  
4 confessions," which I mentioned earlier, that there is always  
5 a pattern of attempting to distance one's own personal  
6 involvement. So the kinds of confessions, the interviews that  
7 I have had: "I know, I saw, I drove," but one's own personal  
8 involvement is not highlighted in any of these confessions. I  
9 only know of one case where somebody actually confessed to  
10 what he personally did in these.

11 So what is notable in this is Mr. Saravia is telling  
12 a story in which he has knowledge but he doesn't personally  
13 appear as the person who sent his driver, for example.

14 So that's one of the discrepancies in the story.  
15 That's a common pattern, in my view.

16 Q. And the discrepancy about the alleged conflict in  
17 testimony between himself and Amado Garay?

18 A. Well, Amado Garay says that he was working for Saravia,  
19 that he left from Saravia's home, that he drove the gunman,  
20 that he returned to Saravia's home, so all of that would  
21 implicate Mr. Saravia very, very deeply in this story, and he  
22 is not telling that story in the same way.

23 Q. No. I'm talking about the conflict that the officer  
24 recording this document notes between regarding the report to



25 Roberto D'Aubuisson of the mission's success.

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1 A. Oh, I'm sorry.

2 The Garay's testimony is that -- of that mission's  
3 success actually is reported several days later. And so there  
4 actually isn't an inconsistency. It's not clear from this  
5 report here when that actually took place. So it is not  
6 necessarily an inconsistency.

7 Q. Is there anything else in this document that you found  
8 noteworthy?

9 A. Yes. I would like to point out a couple of other things.

10 On point 7, it says that: The details are incomplete  
11 and would be expanded only after reaching an  
12 agreement with Saravia as to his immigration status  
13 and ability to safeguard his family."

14 It talks about additional information that he might  
15 be able to provide, and I think the relevant part here is we  
16 might be able to provide information -- he might be able to  
17 provide information on how the Salvadoran court decision in  
18 his extradition proceedings was manipulated.

19 It might be that the current President of the Court,  
20 Mauricio Gutierrez, this is the man that replaces  
21 D'Aubuisson's personal attorney, Guerrero, it might be that  
22 the current President of the court, Mauricio Gutierrez, was  
23 involved in that decision.

24 Gutierrez is certainly D'Aubuisson's man and was a  
25 member of the previous court.

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1           Then I would like to draw your attention to part 9  
2 where it says.

3           "Next steps: If we are to exploit Saravia's full  
4 potential to clear up missing pieces of the Romero  
5 assassination, and possibly other cases, we will have  
6 to come to an understanding with him. We are asking  
7 him to provide testimony which will implicate, by  
8 eyewitness testimony, D'Aubuisson in murder.  
9 D'Aubuisson could resort to threats or use of  
10 violence against Saravia and his family. Saravia  
11 believes that his life will be in danger as soon as  
12 D'Aubuisson is aware of his cooperation."

13           And then it repeats his concerns about his  
14 immigration status.

15           If I could draw your attention to point 10.

16           "Our first step would be to delay Saravia's June 14th  
17 hearing before the immigration judge. This should  
18 not be difficult to arrange." And then it says,  
19 "Comment: Done.

20           "The additional time will enable us to work with  
21 Saravia and develop his information; it will also be  
22 proof of our good faith. The next steps should be  
23 discussed with immigration, but could include not  
24 opposing the asylum request for his family and  
25 working out an appropriate security arrangement. If

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1           we agree to legitimize his immigration status, it  
2 should be our last act after we are certain that he  
3 has cooperated fully with us."

4                   And then it goes on to talk about the deal in the  
5 making. His immigration status is not regularized, to my  
6 knowledge, to this date, so --

7 Q. Professor Karl, this is contained in a communication from  
8 the legal officer of San Salvadoran to Bernie Aronson?

9 A. That's right.

10 Q. The Assistant Secretary of State?

11 A. That's right.

12 Q. What happens after this document is sent, based upon the  
13 materials that you have reviewed?

14 A. Okay. Then we can turn to regular cable traffic. So this  
15 is the back channels detailed cable.

16                   And if you could turn to Exhibit 97. This is a  
17 regular cable which repeats some, but not all, of the  
18 information in the cable I previously read.

19 Q. This is addressed to the Secretary from Bernard Aronson?

20 A. This is to the Secretary of State.

21 Q. It's been kicked up a level?

22 A. It's been kicked up a level, exactly. And it's called  
23 "Discussions with D'Aubuisson Accomplice."

24                   I think that what is most important is this is  
25 following a much higher level.

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1                   It says, "We have been in contact with Alvaro  
2 Saravia, formerly an accomplice of ultra rightist  
3 Salvadoran politician, Roberto D'Aubuisson."

4                   I'm taking this from paragraph 1. And, again, I'm  
5 not going to repeat things that have already been read. But  
6 let me just say that this cable says to the Secretary of the  
7 United States:

8 "Saravia has already told us that he was present when  
9 D'Aubuisson ordered the 1980 assassination of  
10 Archbishop Romero. While unsurprising, Saravia's  
11 story is convincing. We believe that Saravia knows  
12 more about the Romero case and may have additional  
13 information about D'Aubuisson's involvement in death  
14 squads and kidnapping-for-profit."

15 And then if I could just read one more bit of this  
16 cable, the next paragraph.

17 "Obviously, we would prefer that his information be  
18 used in Salvadoran prosecution, but there is little  
19 prospect for this time. D'Aubuisson appears to have  
20 significant control on the Salvadoran judiciary."

21 The rest of the statements repeat what I read from  
22 the previous cable.

23 THE COURT: What is the date of this communication?

24 MR. Van AELSTYN: I believe it is undated.

25 THE WITNESS: It is undated.

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1 THE COURT: Is there a stamp or anything on it?

2 THE WITNESS: There is a stamp.

3 MR. Van AELSTYN: The stamp --

4 THE COURT: 9/23/93.

5 THE WITNESS: That's the declassified stamp. That  
6 just shows you it was part of the declassified documents. It  
7 is a top secret document, and there is no statement of a date.

8 BY MR. Van AELSTYN:

9 Q. Could we have Exhibit 95, please.

10 THE COURT: There is a date right there.

11 MR. Van AELSTYN: Yes, that also was --

12 THE COURT: Looks like --

13 MR. Van AELSTYN: May 5, 1990. That is part of the  
14 declassification process. So, again, we don't know if that is  
15 an accurate date or not.

16 If you go to the next page, please.

17 THE WITNESS: I don't have a copy of this up here  
18 with me.

19 Exhibit 95 already notes that there have been several  
20 conversations, and that they are asking the FBI to participate  
21 in the interrogation of Mr. Saravia.

22 So in this document, as well, Mr. Saravia says that  
23 he was D'Aubuisson's personal and private secretary. So he  
24 does not identify himself as Chief of Security. He identifies  
25 himself in this document as D'Aubuisson's personal and private

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1 secretary.

2 But this is also further documentation that he was an  
3 official of the Security Forces of the Constituent Assembly in  
4 1983 and 1984.

5 My previous testimony said that that is the same  
6 force that a death squad was operating out of in the  
7 Constituent Assembly. So they do note that in the document as  
8 well.

9 And if I could turn to page --

10 Q. The next page of Exhibit 95?

11 A. The page prior.

12 Q. Yes.

13 A. Yes, thank you. And if you could -- thank you.

14 One of the concerns is that they would like to find  
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15 out who is threatening U.S. officials as well. And so the  
16 rest of this document is about targeting U.S. officials.

17 There is a plot -- the first one is a plot to  
18 assassinate the Ambassador to El Salvador from the United  
19 States. This is the Ambassador during the Reagan and Bush  
20 period -- the Reagan period.

21 And D'Aubuisson blamed U.S. intervention on his  
22 defeat in the '84 elections. He is very angry because the  
23 United States funded the candidacy of Duarte, and there are a  
24 number of reports that D'Aubuisson is going to kill the U.S.  
25 Ambassador.

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1 As a result of these reports, which are taken  
2 extremely seriously by the United States, the United States  
3 sends General Vernon Walters to speak to D'Aubuisson about  
4 the -- about this charge that he is trying to assassinate the  
5 United States.

6 There is also charges about drive-by shootings at the  
7 U.S. Embassy.

8 And if I could draw your attention also to the  
9 declaration of California Representative George Miller.

10 Q. It was submitted in this case?

11 A. Yes, it was submitted in this case. Representative Miller  
12 testifies in his declaration, he says that he is warned by  
13 U.S. officials that Roberto D'Aubuisson is sending a security  
14 man to, quote, and this is his language, "investigate  
15 Representative Miller for the positions he is taking inside  
16 the U.S. Congress."

17 And they warn Representative Miller that actually he

18 is in danger. They also say that he should not go to  
19 El Salvador. He cancels a trip to El Salvador.

20 So now they are asking Mr. Saravia to also try to  
21 shed light on these attacks against U.S. Embassy and U.S.  
22 officials.

23 Q. To your knowledge, Professor Karl, what became of these  
24 negotiations with Mr. Saravia in May, approximately, of 1990?

25 A. Well, I think what is especially important is that

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1 Mr. Saravia is, to my knowledge, his immigration status is  
2 never regularized, and that was supposed to be according to  
3 these cables, the last act of a series of negotiations. So  
4 that does not occur. And that means that Mr. Saravia's  
5 immigration status is irregular.

6 Q. Has there been any prosecution of Roberto D'Aubuisson or  
7 Mr. Saravia, to your knowledge?

8 A. There has not been any prosecution, but there has been  
9 further attempts to discover what happened in the Romero  
10 assassination from Mr. Saravia.

11 Q. What were those?

12 A. Those attempts came in the process of some -- some  
13 background, if I may.

14 In 1992, the -- both sides in the Salvadoran Civil  
15 war signed a peace agreement that was sponsored by the United  
16 Nations and negotiated from the Secretary General's office of  
17 the United Nations.

18 Q. What was the date of the agreement?

19 A. January 1st, 1992.

20 Q. So approximately six months after these meetings with  
21 Mr. Saravia?

22 A. That's right. So there is a peace agreement now that has  
23 been signed in El Salvador. Mr. Saravia is in the United  
24 States at the time, as far as we know.

25 When the peace agreement is signed, the peace

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1 agreement establishes what is called the "Truth Commission,"  
2 and that is a commission which is charged with investigating  
3 not all crimes in El Salvador, because there are far too many,  
4 but a number of murders, assassinations, death squad killings,  
5 formal military killings of civilians, et cetera.

6 And it conducts an investigation of these. As part  
7 of this investigation, Mr. Saravia is interviewed in New York  
8 for the Truth Commission, and he has an attorney with him,  
9 although it is no longer the same high-priced attorney that he  
10 had in Miami.

11 So he is now operating in a different way. He gives  
12 a secret -- he gives a series of statements to the Truth  
13 Commission in secret. Those statements are recorded. There  
14 are summaries of them and there are transcripts of them, and I  
15 have seen most of them. Not all.

16 Q. Okay. Is there anything of particular note that you want  
17 to mention about these documents before we move on?

18 A. Well, I think I would just like to say that in those  
19 testimonies, they are the fullest statements that I have seen  
20 of Mr. Saravia's discussion of the Romero assassination.

21 And in those statements to the Truth Commission,  
22 accompanied by his lawyer, given in New York City, Mr. Saravia  
23 states that Roberto D'Aubuisson brought arms, including arms  
24 for death squad assassinations, and for this particular



25 action, that he introduces them clandestinely into El Salvador

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1 to Guatemala in the United States.

2 He testifies as to how the videos are made to be  
3 shown in military barracks. He testifies to the group  
4 receiving money and to some of the financiers behind the money  
5 that they were raising.

6 Mr. Saravia says that he, Mr. Saravia, knew who  
7 provided the red Volkswagen to be driven to the assassination  
8 of Archbishop Romero.

9 He says -- Mr. Saravia says that he -- again,  
10 Mr. Saravia -- participated in a meeting the day after the  
11 assassination, and present in that meeting was this President  
12 of the Supreme Court, Francisco Guerrero. So it was a meeting  
13 about the assassination.

14 Q. He was not the President of the Supreme Court at that  
15 time, was he?

16 A. He was not President of the Supreme Court at the time this  
17 testimony is given. But at the time the meeting occurred,  
18 Mr. Saravia -- at the time Mr. Saravia gets -- Mr. Guerrero  
19 gets to Mr. Saravia's attention, he knows him as President of  
20 the Supreme Court.

21 Q. I see.

22 A. So just to be clear, he was not President of the Supreme  
23 Court when Mr. Saravia says that Mr. Guerrero took part in  
24 these meetings. But Mr. Saravia identifies him as President  
25 of the Supreme Court, and that's because he says in the

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1 testimony that he knows that he is the person -- Mr. Guerrero  
2 is the person who helped intervene in his extradition hearing.

3 So that is how he knows of him so well. That's one  
4 of the ways he knows him and that's the way he identifies him  
5 in these testimonies.

6 He says that the plan to murder the Archbishop was  
7 widely known among a group of landowners who helped to pay for  
8 it. That the Archbishop's murder actually helped them a great  
9 deal, this group, because it permitted them to continue fund  
10 raising. It gave them a lot of prestige among the landowners  
11 because they had been involved in the assassination of  
12 Archbishop Romero.

13 And he repeats something that I have found out from  
14 other sources, that because there is so much prestige  
15 associated with the murder of Archbishop Romero in this  
16 particular group, that a number of people are claiming credit  
17 for being involved in it who weren't actually involved.

18 And, finally, he also confirms, once again, that he  
19 calls Mr. D'Aubuisson from prison in Miami, that he gets his  
20 lawyer from Mr. D'Aubuisson. He says that ARENA women raised  
21 \$250,000 to help his family while he, Mr. Saravia, is in jail  
22 in Miami. And he once again says that he was freed through  
23 the efforts of the President of the Supreme Court,  
24 Mr. Guerrero.

25 Q. Okay. Professor Karl, do you have any opinion with regard

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1 to the impact of Monseñor Romero's assassination?

2 A. I do.

3 Q. And what is that?

4 A. I think that there are a number of ways you can measure  
5 the impact. I should say that I do not feel qualified to talk  
6 about his theological impact or his religious impact inside  
7 the Church.

8 But we look for what we call "cultural indicators,"  
9 for example. So the fact that there are plays about  
10 Archbishop Romero that are in -- that are put on in France and  
11 in Germany and the United States, in Latin America, in Spain.  
12 The fact that there are novels about him. The fact that there  
13 are at least nine biographies that I know of about him. The  
14 fact that he has thousands and thousands of entries on the  
15 Internet and depending on whether you enter his complete name  
16 or not, you get a difference in those numbers, but at least  
17 14,000 entries.

18 The fact that there is a requiem written in his honor  
19 from Harvard University. The fact that there is a major  
20 Hollywood film starring Raul Julia called "Romero."

21 The fact that there are medical clinics, community  
22 centers, bearing his name, including one here in Fresno called  
23 the Archbishop Romero Center.

24 The fact that there are academic scholarships  
25 carrying his name, including the Oscar Romero Sage Scholars

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1 Program at the University of California at Berkeley.

2 All of those are indicators of the reach of  
3 Archbishop Romero and his importance.

4 Q. So, without doubt, it appears that his importance is  
5 great.

6 what was the impact of the killing of this important  
7 man?

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8 A. I think that the killing of Archbishop Romero was one of  
9 the most important events provoking a civil war in  
10 El Salvador. It's very important that when this occurs, there  
11 is no civil war, and there is an ability to stop the violence  
12 in El Salvador.

13 In my view, as a political scientist, a bridge  
14 person, somebody who could try to build consensus within the  
15 moderate right, the center and the moderate left, could in  
16 fact have avoided a civil war in El Salvador.

17 So the fact that that bridge, which I, Robert White,  
18 and others, identify as Archbishop Romero, as the most  
19 important person who could have been a bridge to come up with  
20 an agreement that would have had a nonviolent solution to  
21 El Salvador's problems or a non civil war solution to  
22 El Salvador's problems, the fact that that bridge is removed,  
23 means that El Salvador starts to descend into civil war.

24 Q. And how did that happen and how fast does that happen?

25 A. It happens very fast. It happens very fast. Let me give

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1 you some examples of how fast it happens.

2 The first thing that happens is the importance of the  
3 arrest at San Luis Finca of the coup plotters that also  
4 have -- that are also implicated by their papers in the  
5 involvement and murder of Archbishop Romero.

6 Because of that event and because the reformists are  
7 pushed out of the military and the hardliners take over, it  
8 means that there is no countervailing force inside the  
9 military to stop the state terror that is being launched by  
10 hardline Salvadorans.

11 Q. And does that level of terror increase?

12 A. That level of terror increases quite dramatically. But  
13 prior to showing you that exactly in statistics, there is a  
14 couple of other pieces that I think will show why that's so.

15 So his murder removes the bridge. It is one of the  
16 pieces that removes the countervailing force inside the  
17 military of a more reformist or moderate way of dealing with  
18 the problems of El Salvador.

19 But it also helps to destroy the center and -- which  
20 was one of the goals. And I had testified that earlier, that  
21 that was Roberto D'Aubuisson's goal, to tar the center and to  
22 identify it as Communist so it would in fact not be able to  
23 act as a political center.

24 But furthermore, it is one of the most important  
25 events unifying the left. And it's important, again, that

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1 there is no unified armed or unarmed left at this time.

2 Q. This time being the --

3 A. The murder of Archbishop Romero.

4 So what happens, first, in the unarmed, or the  
5 nonviolent left, his murder results in the unification less  
6 than one month later, in April 1980, of what is called the  
7 "Frente Democratico Revolucionario," or the FDR, which is the  
8 first organization in the history of El Salvador to unite all  
9 factions of the unarmed left and much of the center.

10 So what this shows is it reflects the extent to which  
11 the actions of military hardliners had actually destroyed the  
12 center already and driven moderates of the center to ally with  
13 the left. So it actually pushes some of the center to the  
14 right and the rest of the center to the left, and destroys the

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15 center. It further polarizes the country.

16 And Archbishop Romero actually becomes their rallying  
17 cry. It is actually his murder that ends up splitting the  
18 center and making the unification of the left -- he becomes  
19 the rallying cry for the unification of the unarmed left.

20 What is important about this is the FDR is formed and  
21 there are six civilian leaders of the FDR. They are all  
22 subsequently murdered by the Salvadoran military and security  
23 forces on one day.

24 Q. On one day, all --

25 A. On one day. And, therefore, not only destroyed the bridge

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1 that might be able to be the bridge in the series of  
2 negotiations, but you have also destroyed the moderate and  
3 unarmed left that would have been the negotiators.

4 And so that means that those two pieces are not  
5 there, and they are critical for any avoidance of civil war.

6 Q. Approximately when were the six FDR leaders killed?

7 A. November or October 1980.

8 Q. Is there anything else going on on the left at that time?

9 A. Yes. The other thing that is happening at this time, and  
10 again, I believe this is very much linked to the destruction  
11 of the center and the kinds of events that were catalyzed by  
12 Archbishop Romero's murder, the five armed factions that I  
13 discussed earlier unite for the first time and form the Frente  
14 Farabundo Marti para La Liberación, or what is called the  
15 "FMLN."

16 This is the first guerilla army united under a single  
17 command. This is a formation of an opposition army with many

18 new recruits now because they are being -- people are running  
19 to them not only because of the assassination of Archbishop  
20 Romero, but because of the huge state terror that is now going  
21 on in the country. They are actually recruiting on this  
22 basis. And so you have a very rapid growth of an armed army  
23 on -- of opposition.

24 So now we have two armies in El Salvador. One is the  
25 Salvadoran military and security forces. The second is the

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1 FMLN. And now we are descending basically into a state of  
2 civil war. So we have moved, catalyzed by his assassination,  
3 from widespread social conflict to a state of civil war.

4 Q. Before the year is out?

5 A. Before the year is out.

6 Q. And what were the costs of that war?

7 A. I don't really even know where to begin.

8 The war resulted, depending on how you -- whose count  
9 you accept, in somewhere between 75,000 and 85,000 deaths.  
10 75,000 is the statistic that is generally used by  
11 organizations like USAID. The World Bank uses 80,000. The  
12 Salvadoran Church uses 85,000, but they include people who  
13 have been disappeared. For example --

14 Q. Professor Karl, if I may back up for a moment. Are these  
15 total deaths during the war combatants?

16 A. No, this is only the death of civilian noncombatants. We  
17 have no knowledge of how many combatants have died. So the  
18 total I am giving you, these numbers are civilians. They do  
19 not, in general, include people like Pedro N. Martinez.

20 Q. Who was that?

21 A. That is the man -- and I want to correct the record. I

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22 called him Nelson Martinez, and his name is Pedro N. Martinez.  
23 He is the man that we saw in the photos carrying Archbishop  
24 Romero's body out of the church after he has been murdered.  
25 He is the man wearing the tie. His name is Pedro N. Martinez,

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1 and somebody who has been disappeared, meaning he has been  
2 taken by a group of men and his body has never been found,  
3 someone like him, we have no accurate count.

4 Q. And so the number of disappeared may or may not be  
5 included in the estimates of civilian deaths?

6 A. Right. And those estimates, as I said, range from 75,000  
7 to 85,000. This is in a country of approximately 5 million  
8 people.

9 One of the things I would like to say is that the  
10 beginning of this massive state terror, because the  
11 overwhelming majority of civilians are murdered by the  
12 Salvadoran security -- military and security forces and the  
13 death squads, and I will show you some evidence in a moment of  
14 that.

15 But what is so important is that Archbishop Romero is  
16 murdered on March 24th.

17 In February, the statistics for deaths in  
18 El Salvador -- and I want to say that all of these statistics  
19 have to be taken as broad indicators, because it was  
20 impossible to gather fully accurate statistics under these  
21 conditions. But in February 1980, before Archbishop Romero's  
22 assassination, there were 230 deaths recorded by the Catholic  
23 Church in El Salvador by the Office of the Archdiocese.

24 Q. When you say deaths, do you mean death squad killings?



25 A. Murders of civilians, what we call political killings.

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1 Q. Approximately 230 in the month before?

2 A. 237 in the month of February 1980.

3 Archbishop Romero is killed on March 24th. And by  
4 June, the numbers of murdered are running about 1,000 a month,  
5 which is an extraordinary statistic in a country this small.

6 I can give you some sense of the scale of this, if I  
7 may have Exhibit 160. I just want to show you that these --  
8 this is what's called a "Scale of Terror." This is how we  
9 measure terror.

10 And without going through the whole thing, what is  
11 important is the highest levels, the orange and red, the  
12 level --

13 Q. Level VIII terror?

14 A. Levels VI through VIII. And what happens after the murder  
15 of Archbishop Romero is we actually are moving up the scale,  
16 we are moving towards the red, and very, very quickly.

17 So that change in monthly statistics from 237 to  
18 1,000 from February to June is actually a rapid shooting up  
19 toward the red in the Scale of Terror. And so we are moving  
20 in what we call mass -- a situation of mass state terror.

21 If I may have Exhibit 161, Please. This is from the  
22 U.N. Truth Commission, which I talked about earlier. What I  
23 want to point out here is not only are the numbers rising, but  
24 the type of state terror has changed dramatically.

25 These are some important events that I have put on

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1 this. And what I would like to just highlight on this, you  
2 can see the Romero assassination. What I would like to  
3 highlight is San Francisco Guajoyo, Rio Sumpul, and a number  
4 of others, El Mozote, for example, Los Hojas, all of those are  
5 massacres.

6 Rio Sumpul, for example, the estimate ranges,  
7 depending on whose testimony you accept on this, or whose  
8 statistic you accept on this, between 600 and 800 people  
9 massacred at that one massacre.

10 El Mozote ranges between 700 and 1,000, again,  
11 depending on the names and records you examine.

12 So we have moved from killing people in operations,  
13 meaning that you move in a house and you kill one or two  
14 people, to now massacres that are happening with great  
15 regularity and are occurring throughout this period. We are  
16 moving to an absolutely different level of terror.

17 If I may have Exhibit 156, please. This is a pie  
18 chart that I made to show how the -- what the compilation of  
19 the complaints given to the Truth Commission is. The Truth  
20 Commission, after the Salvadoran Peace Agreements, asked  
21 Salvadorans to come forward and actually file a complaint with  
22 them.

23 There was a great deal of fear at this time because  
24 the regular army and security forces had not been disbanded at  
25 all and were still in power. So there was a great deal of

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1 reluctance to come forward. And yet the Truth Commission was  
2 able to gather 22,000 complaints.

3 I have shown you those complaints based on the

4 testimony of who people say took their loved ones or the  
5 people who were disappeared, murdered, et cetera. So these  
6 complaints are categorized by who they identify as the  
7 perpetrator, if I can put it that way.

8           And if you see under Persons Reported to Have  
9 Committed the Violence, 60 percent are armed forces personnel.  
10 That means they are identified in uniform.

11           20 percent military escorts and civil defense units.  
12 That means military escorts are again in uniform. Civil  
13 defense units is the old ORDEN or the paramilitary, and those  
14 people are often recognized by villagers because they live in  
15 the community and they know them.

16           25 percent are members of the security forces.  
17 Again, that means the security forces and not the regular  
18 armed forces. And that's, for example, the police, the  
19 Treasury Police, the National Police, for example, or the  
20 National Guard. They are not considered the Salvadoran army  
21 or Air Force.

22           And then, finally, 10 percent are death squads, which  
23 are a description of armed men in civilian clothes.

24           And finally, 5 percent are people who are recognized  
25 or identified as the FMLN, which is the guerilla army that is

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1 formed in opposition to the government.

2           The other thing that I want to show is that between  
3 1980, the assassination of Archbishop Romero, and 1983, ending  
4 with 1983, which is the visit of Vice-president Bush reading  
5 the riot act to the Salvadoran High Command, that is when the  
6 overwhelming number of abuses occur.

7           And when I say that, I want to be very careful,  
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8 because El Salvador is still, '84, '85, '86, '87, '88, '89,  
9 '90, '91 and '92, and significantly past the peace agreements,  
10 one of the leading human rights abusers in Latin America.

11 So it moves from massive state terror to what we call  
12 targeted state terror. It's still state terror, but it's a  
13 lower level.

14 Q. How does that level of terror that exists in El Salvador  
15 compare with that we are familiar with in other Latin American  
16 countries?

17 A. May I have Exhibit 154, please. The compilation of deaths  
18 shoots up enormously, again right after Archbishop Romero's  
19 assassination. It goes from a little over 1,000 in 1979 to  
20 11,895 in 1980. So that's a huge increase, again, in just  
21 that period of time.

22 If you take the estimates of the civilian murders,  
23 which I have done here, and you compare them by population to  
24 two other military authoritarian regimes, which are quite well  
25 known for their violation of human rights -- one is the

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1 Pinochet government, Chile, 1973 to 1990. That's the one on  
2 the far right. The other one is the Argentinian military from  
3 1976 to 1987 -- and you compare them on a per capita basis, if  
4 I can say that, and you look at the estimates of civilian  
5 murders, you will see that even though Chile and El Salvador  
6 are often better known as cases, El Salvador has had a far,  
7 far, far greater number of murders.

8 This is one of civilian murders. This is one of the  
9 most egregious examples of state terror. It is one of the  
10 probably two most egregious examples of state terror in the

11 history of Latin America.

12 Q. In addition to the violence, were there other costs  
13 associated with this period of conflict in El Salvador?

14 A. Again, there is tremendous economic and societal  
15 destruction.

16 I was trying to give you just some indicators of it,  
17 because it is very difficult to measure the loss to a country  
18 of a decade of civil war. It usually involves generations of  
19 loss from a development point of view. So a country is  
20 actually pushed backwards and dedeveloped during civil war,  
21 and it's very hard to give exact numbers of that. But I would  
22 like to point out some numbers that might give an indication.

23 Infrastructure damage was estimated by USAID as \$2.2  
24 billion alone. And by that, I mean damage to schools,  
25 hospitals, clinics, roads, energy plants, factories, et

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1 cetera. That was also the estimate that was used by the United  
2 Nations Development Program. You can also --

3 Q. \$2.2 billion?

4 A. In a country of 5 million people, that's right.

5 If you look at the pattern of public expenditures,  
6 you can also see some of the impacts of this. And I have  
7 taken this from a normal set of statistics that come from the  
8 IMF, the International Monetary Fund, the government of  
9 El Salvador, the World Bank, et cetera, these are our normal  
10 sources, and I would like to give, again, some indication of  
11 what this has meant to El Salvador.

12 First of all, health expenditures in El Salvador by  
13 the end of the war were only a third of Latin American  
14 averages. In other words, they couldn't spend any money on

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15 health at a time when so, so many people were dying. A third  
16 of the average.

17 The country's domestic investment, which is so  
18 important, because without domestic investment, you can't  
19 grow, drops from 22 percent of gross national product to 12  
20 percent between the years 1979 and 1989. This is a huge drop.  
21 And it means that the future of the economy is jeopardized.

22 Per capita income, which is already extremely low,  
23 drops by 25 percent. The literacy among adults becomes almost  
24 twice the average in Latin America. Infant mortality is much  
25 higher than the average of Latin America.

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1 And the military expenditures in El Salvador, which  
2 is money that cannot be used for welfare, are the highest in  
3 Latin America during this period, with the exception of  
4 Nicaragua.

5 Q. Professor Karl, you -- in discussing all of this monetary  
6 reflection of the conflict, you mentioned before that you did  
7 review the declaration of Representative George Miller.  
8 Didn't he discuss U.S. aid to El Salvador at this time?

9 A. Yes. And what is very striking is El Salvador, at this  
10 point in history, is the third largest recipient of U.S. aid.

11 Q. Are there any approximations of the amount of U.S. aid  
12 during this period?

13 A. I think -- I actually don't remember his actual number,  
14 but I believe it's about \$6 billion, and it comes out to about  
15 a million dollars a day during the conflict.

16 So what is extraordinary is that with all this money  
17 pouring in, you have all this tremendous economic and societal

18 loss.

19           And that continues, by the way. Because the war is  
20 over, the patterns of violence continue in the country, so  
21 that El Salvador today has one of the highest homicide rates  
22 in the world, one of the highest murder rates in the world,  
23 and is now one of the most violent countries in the world.

24 Q. To what extent, in your opinion, are those levels of  
25 violence still related to state terror --

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1 A. Well --

2 Q. -- or political violence?

3 A. I think two points here. One is there has been a profound  
4 psychological disruption of the population in El Salvador. A  
5 number of people have been displaced.

6           And the numbers are extraordinary here. This is a  
7 country in which one-third of the population was displaced  
8 from its home. 600,000, at least, in internal refugee camps.  
9 They are called "internally displaced." Those numbers come  
10 from the United Nations.

11           And probably, we don't know the exact number because  
12 so many are illegal, but at least a million people who leave  
13 the country, most of them coming to the United States.

14           So there is this tremendous disruption of the  
15 population and a tremendous psychological disruption for those  
16 who come here or stay behind.

17           And what is important in that is that we see the same  
18 pattern in that psychological disruption. The kind of cruelty  
19 you see in El Salvador is extremely difficult to describe.  
20 The kind of cruelty that I have personally seen in  
21 El Salvador.

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22 I described events in my previous testimony about  
23 people being tortured. I described seeing a woman with her  
24 left breast cut off. I described graphic pictures of torture.  
25 I think we identified pictures of death squad killings. I

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1 showed pictures of El Playon, the body dumps. I have  
2 personally viewed numbers of people who have been tortured and  
3 interviewed them.

4 The inability of family members to even identify  
5 their -- the bodies of their loved ones, because their faces  
6 are smashed. The inability of people to cope with the  
7 condition of their son or their daughter or their mother or  
8 their father who is missing body parts, whose legs are cut  
9 off, whose thumb may be cut off, whose tongue may be cut off,  
10 all of those things has led to what psychologists call a  
11 constant problem of disassociation; very high incidences of  
12 psychosomatic complaints; nightmares, fear of being  
13 recognized; constant reliving of trauma; memory problems; and  
14 a profound sense of loss that affects every single Salvadoran  
15 that I have ever interviewed and certainly every single one  
16 that has testified in this court.

17 There are people who testified in this court, like  
18 Father Jon Cortina, who did not say that virtually every  
19 single priest that he has worked with in his life in  
20 El Salvador is now dead.

21 So there is a profound set of psychological  
22 dislocations as well, and a profound fear that affects the  
23 ability of Salvadorans to come forward and testify. It is a  
24 very brave thing to do, if I can put it that way. People are



25 very afraid to do this because of their experiences in

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1 El Salvador.

2 Q. And are these fears today entirely psychosomatic?

3 A. No, they are not entirely psychosomatic.

4 If I may, my own research in El Salvador continues,  
5 really, through the year 2000, and I would like to say one or  
6 two highlights to show that people have reason to still be  
7 afraid.

8 In 1995, it was clear that there were still death  
9 squads operating out of the new National Civilian Police,  
10 which is the reformed police after the peace agreements; a  
11 death squad that called itself the Black Shadow Death Squad.

12 In 1997, that death squad was operating directly out  
13 of the Public Security Ministry, which is the public  
14 intelligence agency of the National Civilian Police.

15 This, by the way, has been widely reported in the  
16 U.S. press, including one report by the Chicago Tribune about  
17 how the Black Shadow has threatened to execute six judges, and  
18 that one of those jurists who was threatened to be killed  
19 tried to resign, but his resignation was rejected by the  
20 Supreme Court and all six have subsequently demanded  
21 protection. And the Black Shadow continues to appear.

22 There is also another death squad that appears in  
23 1996 that calls itself the Major Roberto D'Aubuisson  
24 Nationalist Force in its communiques. And it threatens to  
25 execute foreign journalists, any dissidents inside ARENA and

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1 what it calls "false nationalists."

2 And it is the one that the U.S. Embassy has  
3 identified in bombing, actually, the house of the President of  
4 El Salvador during the split in the ARENA Party.

5 And I think further evidence of fear and reason to  
6 fear is that the governing party is ARENA to this date. In  
7 1997, when Mr. Calderon Sol became President of ARENA, he went  
8 to the grave of D'Aubuisson to pay respects to the grave.

9 And he said the following. This is in 1997, the last  
10 time that I was able to follow this as closely inside the  
11 party. He said, quote, "Roberto, we know you never died."  
12 And he is standing in front of the tomb of Roberto  
13 D'Aubuisson. He is, by the way, surrounded by TV cameras, so  
14 this is all on television and being shown all over  
15 El Salvador. He says, "Roberto, we know you never died. You  
16 live on in all of us."

17 So on television, the President of El Salvador is  
18 paying homage to the man who is repeatedly identified as the  
19 murderer of Archbishop Romero.

20 Q. Calderon Sol became the President of El Salvador?

21 A. That's right.

22 Q. What does this tell us about the institutions of  
23 government in El Salvador?

24 A. Well, I think that the Supreme Court and the way that it  
25 is -- I think that there is real -- there is de jure and de

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1 facto power in El Salvador. That the messages that are  
2 constantly being sent is that Roberto D'Aubuisson is the  
3 founder of the party in government. He is an honored person.

4 He is considered, if I may, a hero to them. They always pay  
5 homage to his tomb.

6 It means that the Legislature, where there has been a  
7 death squad operating, the Supreme Court, which has been  
8 manipulated, the governing party, all of this, sends the  
9 signal that something is still not right in the country of  
10 El Salvador.

11 And I think that what is so important about this, if  
12 I may say, in conclusion to my testimony, is that  
13 El Salvador's civil war is framed by two extraordinarily  
14 important murders. And when I say that, I'm speaking as  
15 political murders. Obviously, every murder in El Salvador is  
16 important. But two extraordinarily important murders.

17 The catalyst for civil war, one of the main catalysts  
18 is the murder of Archbishop Romero. But when this occurs, the  
19 people who carry it out try to hide their responsibility by  
20 using death squads. They try to show El Salvador that, look,  
21 you -- we can kill an Archbishop; we can kill anyone. But  
22 they do that in a secret way, trying to disassociate  
23 themselves from the military High Command, trying not to show  
24 the links with the military.

25 The civil war in El Salvador ends. The catalytic

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1 event to end it is in 1999, November 16th, with the murder of  
2 six Jesuit priests.

3 But this time, when these priests are killed, the  
4 decision to murder them is taken inside the High Command, with  
5 members of the High Command holding hands and making a  
6 collective decision to kill six Jesuit priests. To do it  
7 inside the institution, not to bother with the death squad.

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8           It has -- this murder of six Jesuits who were the  
9 colleagues of Father Cortina, who testified here, and who only  
10 wasn't murdered because he was not at the home where he  
11 sleeps, where the priests sleep.

12           If I may have Exhibit 101. This murder of the six  
13 Jesuit priests -- this is a picture that was shown earlier, in  
14 which you see Archbishop Romero, but you also see one of the  
15 priests that was murdered, Father Ellacuría.

16 Q. This is the photograph that the Reverend Wipfler showed to  
17 us in the press conference following Monseñor Romero's final  
18 homily?

19 A. That's right. So this is a civil war that is framed by  
20 the murder of priests. The priests that were murdered on  
21 November 16th, 1989, their murder so significantly shocked the  
22 United States that it led to what was going to be the clear  
23 removal of U.S. military aid unless the Salvadoran government  
24 began to negotiate a peace agreement. So it is this event  
25 that catalyzes the peace agreement in El Salvador.

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1           Several of the priests who were murdered, including  
2 Father Ellacuría in this picture, had been offered Tinker  
3 visiting professorships at Stanford University, where I teach.  
4 And I called them personally on November 14th, because I had  
5 grown so acute in my understanding of pattern and practice  
6 that I knew they were going to die.

7           So I called Father Ignacio Martin-Baro up, and I  
8 pleaded with him to leave the country. I told him that we had  
9 visiting professorships for them. They were the President and  
10 the Rector of the Central American University, the UCA. I was

11 so sure that they would be murdered, I asked them to leave.  
12 And they said that, like Monseñor Romero, they needed to stay  
13 in El Salvador.

14 And after they were killed, I thought about their  
15 decision. And I thought about something that Father  
16 Martin-Baro said to me in trying to encourage me in my own  
17 work, which has been very difficult, in El Salvador.

18 He said, "The worst thing that could happen is not  
19 that Monseñor Romero was killed, but the very worst thing that  
20 could happen would be if he continued to die over and over  
21 again because the truth would be buried with him."

22 MR. Van AELSTYN: Thank you, Professor Karl. I have  
23 no further questions.

24 THE COURT: Thank you, Professor Karl. You may step  
25 down. I said we would try to make up a little time.

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1 MR. Van AELSTYN: I have a couple of housekeeping  
2 matters, your Honor, if we could address those. There are a  
3 number of exhibits that have not been admitted into evidence  
4 that we would like to request their admission.

5 The first are those Exhibits 98, 99 and 158, for  
6 which we submitted a written request that they be admitted  
7 into evidence as self-authenticating documents. These are the  
8 United Nations Truth Commission Report of March 15, 1993, and  
9 that is Exhibit 98.

10 Exhibit 99 is the Inter-American Commission of Human  
11 Rights Decision in the matter of Monseñor Romero's killing.

12 And also Exhibit 158, which was a report of a  
13 Congressional caucus concerning violence in El Salvador.

14 And as I mentioned, these are the subject of a

15 written request for their admission into evidence as  
16 self-authenticating documents under the public records  
17 exception to the hearsay rule, 803(8)(C).

18 And then there are a few others. Would you like for  
19 me to go through them all right now?

20 THE COURT: Let's focus on these first three. In one  
21 area, there was a request for judicial notice of some of these  
22 documents.

23 And under 201(b) of the Federal Rules, "A judicially  
24 noticed fact must be one not subject to reasonable  
25 dispute, in that it is either generally known within

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1 the territorial jurisdiction of the trial court; or  
2 two, capable of accurate and ready determination by  
3 resort to sources whose accuracy cannot reasonably be  
4 questioned."

5 And what is often the case, courts are asked to take  
6 judicial notice of proceedings of other courts, of documents,  
7 pleadings, of commission reports. And what I believe the law  
8 requires is that without the indisputable, if you will, nature  
9 of the contents, we can take notice that these are officially  
10 constituted, in the case of the Truth Commission, a report by  
11 the agency that authorized, ordered and implemented its  
12 preparation and completion.

13 As to the other two, the Inter-American Commission,  
14 and the report of the -- I believe was that a Congressional  
15 committee?

16 MR. Van AELSTYN: Congressional caucus.

17 THE COURT: Congressional caucus. Again, those are

18 reports that are conducted by government. It does not  
19 necessarily establish the truth of everything that's in those  
20 reports. It doesn't establish, quite frankly, the  
21 admissibility that is everything -- that is of everything in  
22 the reports.

23 And so there are hundreds of pages of materials here.  
24 And what I think is preferable is that for the foundation  
25 under 803(8), I need to be provided with the circumstances of

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1 the report's preparation, the agency and authority that was  
2 preparing it, to determine if we will be able to qualify in  
3 the following respect.

4 The rule specifically calls for: "Records, reports,  
5 statements or data compilations in any form of public  
6 offices or agencies, setting forth activities of the  
7 office or agency, matters imposed by and pursuant to  
8 a duty under law to report; excluding in criminal  
9 cases, matters observed by police officers and law  
10 enforcement personnel, or in civil actions or  
11 proceedings, and against the government in criminal  
12 cases, factual findings resulting from an  
13 investigation made pursuant to authority granted by  
14 law," which I think we are getting very close to that  
15 subsection C, if you will, exception to the public  
16 report admissibility exception to the hearsay rule.

17 In other words, it's an exception to the exception.  
18 And so I do have some concern about the overall admissibility  
19 of these and I don't think we have time, if we took the whole  
20 day on it, to go through every document and every entry.

21 And so what I will do is I will take judicial notice  
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22 of the existence of these reports and that they are in fact  
23 true and authentic copies of the reports prepared by those  
24 agencies.

25 And if there is a foundational statement, I would

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1 like you to supplement the exhibits to provide the  
2 foundational statement about who the author of the report is,  
3 under what authority -- second, under what authority the  
4 report was promulgated; third, a brief description of the  
5 circumstances concerning the mechanics of reporting, in other  
6 words, how information was gathered, how information was  
7 verified, what was done to assure the reliability and/or  
8 accuracy of the contents of what is contained in the reports,  
9 and then I will have a better ability to determine the  
10 applicability of the 803 subsection 8 exception and the sub C  
11 exception to the exception.

12 MR. Van AELSTYN: I appreciate that, your Honor. We  
13 will be very happy to provide the foundational material in  
14 writing, I assume it would be the preference of the Court.

15 THE COURT: I think that would be most appropriate.

16 MR. Van AELSTYN: Is there a time by which the Court  
17 would like to receive that?

18 THE COURT: Again, I will let you set the time that  
19 it will take you to do it. In other words, I would like to  
20 have it as soon as possible, but I recognize that you are away  
21 from your law offices and the equipment you need to prepare  
22 it.

23 And so I will let you tell me what would be a  
24 reasonable time to provide it.



25

MR. Van AELSTYN: All right, your Honor, if we may,

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1 we will get back to you on that.

2 THE COURT: Yes.

3 MR. Van AELSTYN: There are a few other exhibits that  
4 have been marked for identification thus far only. First, we  
5 have Exhibits 45 and 46.

6 THE COURT: Those are the photos.

7 MR. Van AELSTYN: Of Roberto D'Aubuisson.

8 THE COURT: Those are received in evidence.

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

10 (Plaintiff's Exhibits 45 and 46 were received.)

11 MR. Van AELSTYN: And we have the two new  
12 declassified documents, which were identified as Exhibits 224  
13 and 225, and which Professor Karl identified as being part of  
14 the same set.

15 THE COURT: Those can come in under the same  
16 exception, the public records exception. Those are U.S.  
17 government documents. Those are received in evidence.

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

19 (Plaintiff's Exhibits 224 and 225 were received.)

20 MR. Van AELSTYN: And, lastly, we would like to  
21 return to an issue touched on --

22 THE COURT: Again, not necessarily for the truth of  
23 what underlies the statements by Captain Saravia and others  
24 that are reported to, but the fact that that was information  
25 that the government was generating, and it was using to

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1 conduct its business.

2 MR. Van AELSTYN: Understood, your Honor, and we  
3 agree.

4 The last category are a couple of documents that  
5 were -- we touched on this before, that came to us, again,  
6 through the same declassification process, in the case of  
7 Exhibits 123 and 126.

8 123 is the Alvaro Saravia diary. 126 is the English  
9 translation of that diary that was prepared by the U.S.  
10 Embassy and was maintained by the Library of Congress.

11 And in addition to that, we have those versions of  
12 the documents seized at the San Luis Finca, that were  
13 delivered to the United States Embassy and came into the  
14 possession then of Todd Greentree, in accordance with his  
15 declaration that has been submitted to the Court.

16 So there are three documents, then, that we would  
17 seek to have admitted. Exhibits 123 and 126, which were  
18 declassified versions of the Saravia diary, and then those  
19 documents appended to the declaration of Todd Greentree, which  
20 came from the same source, the United States Embassy in San  
21 Salvador.

22 THE COURT: There are levels of difficulty with  
23 these. I recognize that the diary is reputed to be, through  
24 its collection by the government, what it purports to be,  
25 although I believe, if my memory serves me, that one witness

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1 testified about recognizing handwriting of some portion of  
2 that diary.

3 And you do not have to be a handwriting expert, if

4 you are familiar foundationally with the handwriting, and I do  
5 believe that Professor Karl said that she had seen lots and  
6 lots of known handwriting of both D'Aubuisson and Saravia and  
7 was, therefore, able to recognize the similarity. And I  
8 believe that for authenticity purposes, that that qualifies  
9 those portions that she looked at.

10 I don't think it's a public record. And in terms of  
11 authenticating it, it comes in through an American Embassy  
12 custodian, who is an ambassadorial officer, at least, of the  
13 U.S. government.

14 And I think that we can take cognizance that this is,  
15 if you will, official information and material that's been  
16 maintained in the regular course in the time it was collected  
17 by the U.S. government, and it is potentially incriminatory  
18 and representative of admissions by the persons whose writing  
19 appears in it to the extent it's been identified and only to  
20 that extent.

21 And so I think it's going to be a limited purpose for  
22 which those documents are received. They will be received as  
23 representative copies of the diary that was provided to the  
24 U.S. Embassy. Although I will say that the chain of custody  
25 is a little fuzzy as to how it gets from -- I'm assuming that

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1 it was the National Police or some other agency then who  
2 effectuated the arrests of the ten, and then picked up the  
3 documents. And then all we know is that somehow those  
4 documents got to the U.S. Embassy. And there was some  
5 testimony about a source, but that source wasn't, to my  
6 understanding, the person who actually delivered the  
7 documents.

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8 MR. Van AELSTYN: Your Honor, if I may?

9 THE COURT: Yes.

10 MR. Van AELSTYN: I believe the testimony of  
11 Ambassador White, as well as that of Professor Karl, whose  
12 information was based on interviews with those persons, so it  
13 is one step removed, but Ambassador White did testify that the  
14 materials, the documents were delivered to him by Colonel  
15 Majano.

16 And there is quite a deal of evidence in the record  
17 that the raid on the San Luis Finca was conducted by members  
18 of the First Brigade of the Salvadoran army under the  
19 direction of Colonel Majano.

20 So while we don't have direct testimony concerning  
21 how those documents got from the soldiers at the finca who  
22 seized them to Colonel Majano, their authorizing officer, that  
23 link we don't have direct testimony to, I acknowledge. But  
24 what we do have --

25 THE COURT: But it goes to its weight, not its

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1 admissibility.

2 MR. Van AELSTYN: And the chain of custody does get  
3 you from Colonel Majano, who was the officer who authorized  
4 the operation in the first place, to the U.S. Embassy.

5 THE COURT: All right. I believe that that is a  
6 sufficient authentication for chain of custody. And again, I  
7 will give those documents such weight as the testimony would  
8 indicate they would deserve.

9 The points where what appear to be admissions are  
10 identified will have greater weight than, quite frankly, other

11 portions of the diary that are translated that do not have any  
12 support or other foundation other than that they are part of  
13 the diary that came from the source that has been identified.

14 with those limitations and for those limited  
15 purposes, Exhibits 123, 126 -- and the other declaration with  
16 the attached exhibits of Todd Greentree is which exhibit  
17 number?

18 MR. Van AELSTYN: That would be 226, I believe, to be  
19 next in order.

20 THE COURT: 226 are received in evidence for those  
21 limited purposes.

22 (Plaintiff's Exhibits 123, 126, 226 were received.)

23 MR. Van AELSTYN: We are ready for our next witness.

24 THE COURT: We will take the noon recess at this  
25 time. The court reporter needs a break. We will stand in

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1 recess until 1:30 p.m.

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

3 (The lunch recess was taken.)

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1

AFTERNOON SESSION

2

1:30 p.m.

3

THE COURT: Going back on the record in Saravia.

4

Mr. Cohen, you may call the next witness.

5

MR. COHEN: Thank you, your Honor. We would like to

6

call Professor Naomi Roht-Arriaza.

7

NAOMI ROHT-ARRIAZA,

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 for the record.

11

THE WITNESS: Naomi Roht-Arriaza.

12

DIRECT EXAMINATION

13

BY MR. COHEN:

14

Q. Good afternoon, Professor.

15

A. Good afternoon.

16

THE COURT: Good afternoon.

17

BY MR. COHEN:

18 Q. Professor Roht-Arriaza, do you have a copy of your CV with  
19 you?

20 A. I do.

21 MR. COHEN: Your Honor, if I could provide one to the  
22 Court as well?

23 THE COURT: Yes, you may.

24 BY MR. COHEN:

25 Q. Professor, can you tell me your current occupation?

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1 A. I'm a Professor of Law from the University of California,  
2 Hastings College of the Law.

3 THE COURT: If you would, Professor, bring that  
4 microphone just the whole thing, closer to you so the court  
5 reporter can hear you.

6 BY MR. COHEN:

7 Q. Could you repeat that first answer?

8 A. Professor of Law, University of California, Hastings  
9 College of the Law, in San Francisco.

10 Q. And for how long have you been a Professor of Law?

11 A. Since 1992.

12 Q. In your current title, when you say "Professor of Law," is  
13 that a designation?

14 A. Yes, it is. Full professor.

15 Q. Is that a tenured position?

16 A. Yes, it is.

17 Q. What positions have you held prior to being a tenured  
18 Professor of Law at Hastings?

19 A. I was an associate professor before that. Before that, an  
20 assistant professor. Before that, I held a Fellowship at  
21 University of California Berkeley in International Law.

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22 Q. When were you promoted to full Professor of Law at  
23 Hastings?

24 A. 1997.

25 Q. What are the courses you teach at Hastings?

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1 A. I teach International Human Rights Law. I teach a seminar  
2 in Accountability For Human Rights Violations, and I also  
3 teach Torts.

4 Q. Why don't we talk a little bit about your educational  
5 background, starting with the last degree that you achieved.

6 A. Well, my J.D. is from the University of California  
7 Berkeley, Boalt Hall. I also had a Masters in Public Policy,  
8 also from the University of California Berkeley. My B.A. is  
9 from the University of California Berkeley.

10 Q. Let me ask you about the areas of your research.

11 A. Well, since about 1990, I have concentrated my research on  
12 accountability for past human rights violations, with an  
13 emphasis on Latin America, but also some comparative work in  
14 other regions. Also transnational prosecutions, transnational  
15 judicial proceedings in cases of human rights violations,  
16 other related areas in the human rights field.

17 Q. And can you tell me about your publications in these  
18 areas? Have you published any books?

19 A. I published one book. I have another book forthcoming.  
20 The first book is entitled, "Impunity and Human Rights in  
21 International Law and Practice." That was published in 1995,  
22 by Oxford.

23 I have a book forthcoming in December. The name of  
24 it is, "The Pinochet Effect: Transnational Justice in the Age



25 of Human Rights," and that will be published by University of  
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1 Pennsylvania Press.

2 Q. And in the area that we are going to be talking about  
3 today, impunity, accountability, amnesty, have you written  
4 articles in this area as well?

5 A. Yes, I have. I have written a large number of articles in  
6 this field. Probably the most relevant to this discussion is  
7 an article -- well, several. Old article, 1995, it is the  
8 second one down. "Truth as Justice: Investigatory  
9 Commissions in Latin America." One of the major focuses of  
10 that article was the El Salvadoran Truth Commission.

11 Also an article on "The Developing Jurisprudence on  
12 Amnesty" in the 1998 Human Rights Quarterly, which looked at  
13 amnesty laws in a number of countries, with a focus on Latin  
14 America, although not exclusively.

15 A number of articles on Processes of Accountability,  
16 which also look at what governments can, should and must do in  
17 the wake of past human rights violations.

18 Those would probably be the most relevant.

19 Q. And in addition to the books and these articles that you  
20 have mentioned, have you been involved in other professional  
21 activities bearing on these subjects?

22 A. I have. I have participated in numerous conferences, both  
23 conferences involving governments, nongovernmental  
24 organizations, United Nations personnel, the development of  
25 guidelines within the U.N. Human Rights Commission on impunity

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1 as well as on reparations for victims. I have been involved,  
2 given a large number of public talks on the subject.

3 Q. Thank you. Professor, you mentioned that one of your  
4 articles dealt with the subject of El Salvador and, in  
5 particular, the amnesty. Do you have any other specific  
6 experience with El Salvador?

7 A. I was in El Salvador for the trial of the military  
8 officers accused of killing the six Jesuit priests and their  
9 housekeeper and their daughter that was referred to in earlier  
10 testimony. I was a trial observer as part of a delegation of  
11 the Lawyers Committee -- what was then the Lawyers Committee  
12 For Human Rights in New York, and prepared a report for the  
13 San Francisco Bar Association on that proceeding.

14 THE COURT: What was the proceeding in New York?

15 THE WITNESS: No, the Lawyers Committee was based in  
16 New York. The proceeding was in El Salvador.

17 THE COURT: You were there as a trial observer?

18 THE WITNESS: As a trial observer. There were trial  
19 observers from all over the U.S., as well as all over Latin  
20 America, because it was a very well known case. And the  
21 soldiers, the lower ranking soldiers up to the level of  
22 Colonel were the accused.

23 THE COURT: Was it a criminal trial?

24 THE WITNESS: Yes, it was a criminal trial.

25 THE COURT: With a jury or without?

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1 THE WITNESS: With a jury, but with a very different  
2 conception of what a jury is and what a jury is supposed to do  
3 than what we have here.

4           The jury listened to written testimony that was read  
5 into the record by the judge. Asked no questions. There were  
6 no live witnesses. And the jury was asked to come to a  
7 conclusion without any jury instructions, any rules, were  
8 asked to come to a conclusion based on what their heart told  
9 them. So it was a rather different proceeding.

10           THE COURT: Thank you.

11 BY MR. COHEN:

12 Q. Can you tell me in what language do you conduct your  
13 research and studies?

14 A. Mostly in Spanish.

15 Q. Let me ask you a question about professional  
16 organizations. Can you tell me some of the organizations that  
17 you participate with?

18 A. Well, I'm on the board of a number of human rights  
19 organizations and have been over the years.

20           I am part of the National Advisory Board of Human  
21 Rights Advocates. I'm on the Advisory Board of the Notre Dame  
22 Center For Human and Civil Rights.

23           I have been on task forces set up through what was at  
24 the time the Lawyers Committee For Human Rights in New York on  
25 specific areas of international law.

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1           I'm on the Legal Advisory Board for the Center of  
2 Justice & Accountability in San Francisco.

3 Q. Let me ask you about the last one you mentioned, the  
4 Center for Justice & Accountability. What are your  
5 responsibilities on that board?

6 A. The Legal Advisory Board of CJA is basically there as a  
7 group of experts that can provide expertise to the lawyers of

8 the staff of the Center on specific questions of law.

9 And I think my particular expertise is on sort of  
10 comparative aspects of criminal law and criminal procedure,  
11 especially in Latin America, although not exclusively.

12 Q. Is this a board that meets regularly?

13 A. No.

14 Q. And are you remunerated in any way for your participation  
15 on that board?

16 A. No.

17 MR. COHEN: Your Honor, at this time, I would like to  
18 ask the Court that Professor Roht-Arriaza be accepted as an  
19 expert witness to testify today to the issues that are within  
20 her expertise, which I would put forth are aspects of  
21 international and national law regarding obligations to  
22 achieve accountability for past human rights violations; the  
23 range of mechanisms for achieving accountability, including  
24 truth commissions, criminal prosecutions, civil liability and  
25 other mechanisms; amnesty laws from a comparative perspective,

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1 and the role of national courts in Latin America in applying  
2 human rights law to obtain justice for past violations.

3 THE COURT: All right, the understanding the Court  
4 has of the proffer of Professor Roht-Arriaza, I find that she  
5 is qualified in the fields of international and national law  
6 that concern the areas of accountability for human rights  
7 violations, although in this proceeding, we are focused on a  
8 trial that concerns the wrongful death of an individual under  
9 applicable laws, the Alien Tort Claims Act, and the Torture  
10 Victim Protection Act, which, although certainly grounded in

11 such legal principles, are more specifically directed to those  
12 who are seeking compensation for the deprivation of the life  
13 of the victim. And I do not understand that society, at  
14 large, is or has standing to be a party to this proceeding.

15 I find that Professor Roht-Arriaza is qualified to  
16 offer opinion testimony on the international and national law  
17 systems or mechanisms that relate to accountability, whether  
18 it is civil or criminal, in the justice system of El Salvador,  
19 its courts, and the comparative significance or ramifications  
20 of, in issues of choice of law, the United States justice  
21 system compared with the El Salvadoran justice system.

22 And I further find that the Professor is qualified to  
23 offer opinion testimony about the composition, function and  
24 effect of truth commissions, and the operation, function, and  
25 competency of courts in the country of El Salvador.

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1 And I do want to ask a foundational question by way  
2 of voir dire.

3 Do you have a time frame in which you have been  
4 studying El Salvadoran justice, its laws and its court system?  
5 And, if so, the second question is: what is the span of time  
6 that your study and that your personal knowledge encompasses?

7 THE WITNESS: I first began studying the question of  
8 accountability for past human rights violations in 1989. I  
9 published an article in the California Law Review looking at  
10 the international law that applied to the question of what a  
11 government -- successor government has to do in terms of  
12 dealing with past human rights violations.

13 Since that time, I have focused a good deal of my  
14 scholarly attention on the question of what different

15 governments in Latin America, especially, but also  
16 encompassing that to some degree in Europe, have done in the  
17 wake of past human rights violations, both in terms of  
18 prosecution, but also in terms of civil justice, compensation  
19 systems, truth commissions, and a series of other mechanisms.

20 So I would say from 1989 to present.

21 THE COURT: To present?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 All right. You may proceed.

25 MR. COHEN: Your Honor, just so it is clear to the

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1 Court, we are not putting forth Professor Roht-Arriaza as an  
2 expert on the domestic laws of El Salvador. We are putting  
3 her forward as an expert on international law and the  
4 implementation of some of those principles in the amnesty law  
5 in El Salvador and in the mechanisms for achieving  
6 accountability under the laws that have been implemented in  
7 El Salvador.

8 THE COURT: All right. Well, we will take it  
9 question by question.

10 MR. COHEN: Your Honor, one additional area in which  
11 I had asked that Professor Roht-Arriaza be qualified as an  
12 expert would be in the area of amnesty laws from different  
13 countries. And if you mentioned that, I apologize, I didn't  
14 hear that.

15 THE COURT: I intended to mention it; I may not have.

16 Again, what would be helpful to the Court, because it  
17 is ultimately for the Court to determine what expert testimony

18 is and is not helpful, what would be helpful to the Court  
19 would be any amnesty law that we heard testified to in this  
20 court that was applied to the alleged perpetrators of the  
21 murder of Archbishop Romero, and what the consequence in terms  
22 of a practical meaning and effect of amnesty for those persons  
23 is as it relates to, first, criminal prosecution within the  
24 courts of El Salvador; and, second, the seeking and obtaining  
25 of any civil remedy in the courts of El Salvador; and

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1 comparatively, third, and most importantly, the relationship  
2 of the availability or nonavailability of remedies in  
3 El Salvador to the relationship and availability of remedies  
4 in the United States courts over the same period of time.

5 You may proceed.

6 MR. COHEN: We will address each of those questions,  
7 your Honor.

8 BY MR. COHEN:

9 Q. Professor, can I ask you what you have done to prepare to  
10 testify today?

11 A. I looked at a number of documents. I looked at the  
12 amnesty law in El Salvador itself. I looked at the  
13 Inter-American case involving Monseñor Romero. I looked at  
14 some background material on the Salvadoran justice system and  
15 the Salvadoran Truth Commission.

16 I looked at the Truth Commission findings on the  
17 judicial system and the availability of judicial remedy at  
18 that time in El Salvador.

19 I have read the complaint. I looked back over some  
20 Salvadoran court cases that are pertinent to the question of  
21 the amnesty law.

22 Q. Thank you. Is there an understanding, Professor, of  
23 impunity as a specific problem to be addressed under  
24 international law?

25 A. Yes, there is.

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1 Q. Could you explain that?

2 A. The definition of impunity is the nonaction by government  
3 in light of evidence that crimes have been committed, almost  
4 always by people in positions of power, whether that be  
5 governmental or nongovernmental.

6 So it's the complete lack of action by the judicial  
7 system and by other organs of government in the face of  
8 evidence that serious crimes have been committed.

9 And this is usually a problem where you have a  
10 government that is either engaging in or allowing a campaign  
11 of massive human rights violations to take place.

12 One of the contexts in which massive human rights  
13 violations take place is a context in which those who are  
14 perpetrating those violations are perfectly sure that nothing  
15 will ever happen to them. That is the context in which the  
16 discussion of impunity is taking place on an international  
17 level.

18 Q. And would legal accountability be the answer to impunity?

19 A. Yes. The development of law in this area has been an  
20 increasing insistence that the problem of impunity is at the  
21 root of many of the continuing problems of violations of human  
22 rights, and that until the problem of impunity is  
23 satisfactorily dealt with, it will not be possible to move to  
24 a situation of a government under rule of law, basically.



25 Q. When do these accountability and impunity concerns

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1 typically arise?

2 A. Well, the most typical case has been so-called  
3 transitional justice. In other words, situations where there  
4 has been a period of massive human rights violations. There  
5 is then either a negotiated settlement or a change in  
6 government and a new period begins.

7 And then the new government needs to face the  
8 question of what to do about those people who are often either  
9 well known or fairly -- it's fairly easy to find out who they  
10 are. They are often people who were in positions of power in  
11 the prior regime.

12 And the question is what to do about those people.  
13 So the question has come up most often where you have this  
14 moment of transition. Either, as in El Salvador, as a result  
15 of a peace accord, or in other places as a result of either a  
16 decision by the military to step down, as in Chile or Uruguay,  
17 and an overwhelming social demand for the military to step  
18 down, as in Argentina.

19 Situations in Eastern Europe, where you have no  
20 violent revolutions that lead to a change in government,  
21 negotiated into Apartheid in South Africa, so these have been  
22 the places where this issue has been most salient.

23 Q. What sorts of options do these states have to address the  
24 issue of accountability?

25 A. There are a wide range of options. The range has gotten

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1 wider over the last 20 years or so.

2           One fairly straightforward option is criminal  
3 prosecution. We now have, within criminal prosecution, a  
4 number of options: National courts, international courts,  
5 like the Tribunal on the former Yugoslavia, hybrid courts that  
6 are part national, part international, like the special court  
7 in Sierra Leon.

8           There are also a series of noncriminal  
9 prosecution-based mechanisms. Civil liability, either against  
10 the state and/or against the perpetrators. Truth commissions,  
11 which are official temporary investigative bodies that are set  
12 up with a specific purpose in mind and a specific time of  
13 making a record of what has happened in the past. Reparations  
14 programs involving both monetary compensation, but also, for  
15 example, reinstatement of jobs, reinstatement of pensions,  
16 clearing the person's good names. Often people who were  
17 killed were accused of being subversives.

18           Commemorations of all sorts, monuments, changes in  
19 educational policy, reform of police courts. Military  
20 jurisdiction issues, for instance.

21           All of this comes within this panoply of possible  
22 ways of dealing with past human rights violations that have  
23 been developed over time.

24 Q. In your opinion, why is it important for states to  
25 implement some or all of these mechanisms?

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1 A. Well, there are several reasons. I will start with the  
2 narrower and move to the broader.

3           The narrower reason is what we have seen, and what

4 social science research, as well as legal research, tends to  
5 show is that if you don't deal with these issues, the same  
6 patterns tend to reemerge over time.

7 This is everything from you get torture within the  
8 police department, within a fairly short period of time,  
9 because it's the same people, it's the same methods, and they  
10 don't see any reason why they should stop doing what they did  
11 under the old regime. So you have those sort of problems.

12 You have broader problems, in the sense that what  
13 impunity does is it creates a situation where some people are  
14 above the law. Some people are subject to the law. Other  
15 people aren't.

16 It is impossible to build a society based on rule of  
17 law under those circumstances for a number of reasons. People  
18 don't believe in the law. People think that, you know, the  
19 courts, the law, the sort of organization of the new  
20 government is trying to set up is counterfeit because it's not  
21 dealing with the fundamental problem.

22 You have problems of victims feeling excluded from  
23 the new dispensation because no one is taking into account  
24 what has happened to them. And so it's impossible really to  
25 build a full democracy without some kind of accounting for

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1 what has happened in the past. That has increasingly been the  
2 teaching.

3 Another aspect of it is if there is no official  
4 attempt to deal with these problems, people do tend to take  
5 them into their own hands. And so you have problems of  
6 private vengeance and of vendettas that happen because there  
7 is really no socially acceptable channel for dealing with

8 these issues. And so you get these cycles of violence that go  
9 around.

10 And one of the teachings that I think we have come to  
11 over the last ten years is if you don't break this cycle of  
12 impunity, that is what it will be. The peace agreement or the  
13 transitional government or the new government will be merely  
14 an interlude between and before the next cycle of violence.  
15 And it's necessary to confront the issues of past violations  
16 in order to move past that in some way.

17 Q. Let me ask you specifically about one of the methods for  
18 confronting these past violations, truth commissions. What  
19 are truth commissions and how are they created?

20 A. Truth commissions, as I mentioned, are official bodies.  
21 They are created for the purpose of investigating the overall  
22 pattern of violations in a certain place during a certain time  
23 period.

24 So a truth commission will always have a limited  
25 existence, a limited mandate. Part of its mandate will be to

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1 investigate and to come to conclusions about both the causes,  
2 the pattern, the extent, the attribution, overall, of the past  
3 human rights violations. Almost always, truth commissions, as  
4 well, will include recommendations for what to do in order to  
5 avoid a repetition of these kinds of patterns of violations.

6 They can be brought into existence through an  
7 Executive act, through a Legislative act or, as was the case  
8 in El Salvador, through an internationally supervised accord.

9 Q. Let me ask you specifically about the Truth Commission in  
10 El Salvador. Are you familiar with its composition and

11 structure?

12 A. Yes, I am.

13 Q. What can you tell us about how it was created?

14 A. 1992, there were a set of peace accords that were signed  
15 in Mexico, they are called "Chapultepec Accords."

16 One of the provisions of those accords -- and these  
17 were peace accords between the FMLN, which was the overall  
18 guerilla group, and the government of El Salvador -- they were  
19 peace accords that were negotiated with the help of the U.N.  
20 Secretary General and they were signed under U.N. auspices,  
21 but they were accords between the government of El Salvador  
22 and the FMLN.

23 One of the provisions of those accords was a creation  
24 of an investigative commission, which was called a "Commission  
25 on the Truth," that was charged with looking into the

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1 notorious crimes that had taken place during the earlier  
2 government and establishing the truth about those crimes.

3 The Truth Commission was composed of three  
4 individuals. There were three commissioners. There was a  
5 thought at the time in El Salvador that they had to be  
6 foreigners, that there was nobody in El Salvador which was  
7 trusted enough by both sides to be able to do this. And so  
8 that's why they turned to three non-Salvadorans.

9 One of them was Professor Thomas Buergenthal, who was  
10 at the time -- had been a judge on the Inter-American Court,  
11 was a Professor of Law at George Washington; is now the U.S.  
12 Judge on the International Court of Justice. Belisario  
13 Betancur, C-U-R at the end, who was an ex-president of  
14 Columbia, and Reinaldo Figueredo Planchart, who was an ex

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15 Foreign Minister of Venezuela, were the three commissioners.

16 The -- for a similar reason, the staff of the Truth  
17 Commission was also entirely international. There were no  
18 Salvadorans on the staff of the Commission either.

19 There were about 60 people, if I recall, on staff,  
20 but they were all non-Salvadorans in order, also, to make  
21 clear to everyone in El Salvador that this was an impartial  
22 commission and had no personal stake, basically, in any of the  
23 findings of the Commission or of any of the Commission's work.

24 They were given six months and that was later  
25 extended. And they were to look into, as I say, the most

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1 "representative and notorious," I believe were the words that  
2 were used, violations of human rights during the period of  
3 conflict.

4 Q. Professor Karl testified earlier today that they received  
5 22,000 complaints. Among the cases that were investigated,  
6 what was the number, do you know?

7 A. 32.

8 Q. 32?

9 A. They had the difficulty of having six months to work and  
10 22,000 cases, and so they obviously couldn't exhaustively  
11 investigate all of these cases.

12 The way they decided to deal with that difficulty was  
13 to focus on emblematic cases. So the cases they chose were  
14 either ones that demonstrated a common pattern or ones that  
15 had been of particular resonance within El Salvador, had  
16 created the largest -- had repercussions within El Salvador.  
17 And so that's how they came at these 32.

18                   They also tried to look at violations both by the  
19 FMLN and by the government and death squads. Although as we  
20 saw from Professor Karl's testimony, there was much more  
21 evidence of violations by the government and associated death  
22 squads than by the FMLN. So they were in some part driven by  
23 that.

24 Q. After they selected their cases, do you know how they went  
25 about investigating these cases?

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1 A. They had, as I said, they had about a staff of 60 people  
2 who were dedicated to doing their own investigation. They  
3 also took testimony in camera. They decided not to do public  
4 hearings because they felt that there was still so much fear  
5 in the country that if the hearings were public, nobody would  
6 agree to come forward. So they took testimony in camera, both  
7 from the victims of the violations, from people who were  
8 witnesses, and also to some degree from people in the  
9 military.

10                   They decided early on that, first of all, they were  
11 not a court; but, second of all, that there had to be some  
12 indicia of reliability of their findings. And so they  
13 basically decided that they were not going to find that  
14 anything was a fact unless they had at least two different  
15 sources of corroboration.

16                   They also decided that they would use prior  
17 investigations. For example, there had been a large number of  
18 investigations into violations of human rights by U.N. bodies,  
19 by the Inter-American Commission of Human Rights, by Amnesty  
20 International, by a host of human rights groups. They decided  
21 that they would use that material as background and as further

22 corroboration, but that they would never find a fact based  
23 just on that prior investigative work; that they needed to go  
24 do it themselves, basically.

25 And they had several levels at which they decided

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1 that they would find facts. They had, basically, sort of an  
2 overwhelming degree of evidence, a substantial degree of  
3 evidence, and then some evidence.

4 And they decided that in order to assure the  
5 Salvadorans as well as the U.N. community, which was also  
6 overseeing this process, that they had sufficient indicia of  
7 reliability in what they were doing that they had to find that  
8 there was either overwhelming or, at the very least,  
9 sufficient evidence in order to make this a finding of fact  
10 that would go into their report.

11 And that was basically how they worked.

12 There is one other step, though. The Commission  
13 decided early on that part of their mandate involved naming  
14 the names of people who had committed these crimes, at least  
15 as far as they -- you know, when they had really good evidence  
16 about individuals. In some cases they never got sufficient  
17 evidence about individuals, they only got information about  
18 the crime. But where they did have sufficient evidence that  
19 pointed to a given individual, they were going to name that  
20 individual.

21 Now, this, even though it was not a criminal  
22 proceeding, raised due process concerns. And so in order to  
23 deal with those concerns, they decided that before they made  
24 the report public, they would advise those people who were to



25 be named in the report that they were planning to name them,

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1 and invite them to come before the Commission and, in essence,  
2 give their side of the story.

3 And they did modify some of the things they said  
4 based on what people said when they came forward in that  
5 context.

6 So there was an opportunity for anyone who was to be  
7 named in the report to come forward and contest the proposed  
8 findings of the Commission.

9 Q. Was the Romero case one of the cases they investigated?

10 A. Yes, it was.

11 Q. Was Alvaro Saravia one of the individuals that they named?

12 A. Yes.

13 Q. Let me ask you, this methodology that you described, was  
14 that typical of other truth commissions?

15 A. Truth commissions have run the gamut. Some truth  
16 commissions have held public hearings and have used the  
17 findings that they have gotten from the public hearings.

18 The others have done the same kind of in camera  
19 investigation, but have not been nearly as explicit in setting  
20 out their methodology.

21 One thing that distinguished the Salvadoran  
22 commission was that they were very careful to lay out what  
23 their methodology was, in part, as I said, because they did  
24 name names. And so they thought it was very important that  
25 they both have an adequate basis and be seen to have an

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1 adequate basis for their findings.

2 Q. Without referencing any particular case that they  
3 investigated, in general terms, can you tell us what the  
4 recommendations of the Truth Commission were?

5 A. Well, there were a number of recommendations in different  
6 areas. They ranged from things like social reparations,  
7 creating a monument, a day of remembrance, helping to find the  
8 bodies of people, to structural reforms of both, you know, the  
9 military, the police system, and especially the justice  
10 system. I will come back to that in a second.

11 They also recommended reparations for victims. They  
12 recommended that those people be named in the report not be  
13 allowed to hold positions of military or political power for a  
14 period of time.

15 Q. Let me ask you in particular about the national reports,  
16 the judiciary. Was that a specific problem the Truth  
17 Commission addressed?

18 A. It was. The Truth Commission saw the inoperative nature  
19 of the judicial system as one of the key problems in  
20 El Salvador.

21 Perhaps we could look at what the Truth Commission  
22 said, number 5?

23 MR. COHEN: If you could put up slide 5, please.

24 THE WITNESS: This was talking about the shortcomings  
25 in the judicial system. And the Truth Commission said that

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1 the glaring inability of the judicial system to investigate  
2 crimes, to enforce the law, to apply the law to acts of  
3 violence, part and parcel, that were committed under the

4 direct or indirect cover of the public authorities was part  
5 and parcel of the situation.

6 So they were very, very critical of the judicial  
7 system in general. They were particularly critical of the  
8 Supreme Court and of the President of the Supreme Court, and  
9 in several particular cases accused the President of the  
10 Supreme Court not simply of inaction, but of complicity in  
11 covering up the crimes.

12 (Referring to Exhibit 98, page 178).

13 Maybe we can go to the next one.

14 BY MR. COHEN:

15 Q. Slide 6.

16 A. The judiciary was still run by people whose actions were  
17 part of the situation. There had been at that point no  
18 judicial reform. It was the same court system that had been  
19 in place when the violations took place that was in place at  
20 the time.

21 And so the Truth Commission faced a dilemma, because  
22 their feeling was if they recommended prosecutions in these  
23 cases, the prosecutions would go to the very same judicial  
24 system that was part of the problem. And that rather than  
25 providing justice, bringing these cases before the existing

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1 court system would simply, yet again, confirm the inoperative  
2 nature of the justice system and the high degree of impunity  
3 that existed at the time.

4 So they did not recommend prosecutions. What they  
5 did recommend was that the courts be totally changed, be  
6 cleaned out from top to bottom, starting with asking for the  
7 resignation of the entire Supreme Court. But also

8 recommending changes in the way judges were appointed, in the  
9 way judges were promoted.

10 Changing the existing system under which the Supreme  
11 Court had, in effect, political control of all the lower  
12 courts, and the career of a lower level judicial official  
13 depended on how well they got along with, basically, their  
14 superiors. So they thought that had to be changed.

15 They wanted changes in the way the public prosecution  
16 system worked. So a lot of their recommendations were fairly  
17 detailed. And they went into the question of how to transform  
18 this judicial system, which, as it then existed, was not going  
19 to be able to do justice in any of these cases.

20 And those are the quotes that you have up there.  
21 There is a lot more like that in the report. There is a large  
22 section on the reforms of the judiciary.

23 Q. Do you know if any of these changes that the Truth  
24 Commission recommended, do you know whether they were  
25 implemented in El Salvador?

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1 A. In general or with respect to the judiciary?

2 Q. With respect to the judiciary.

3 A. Some of them were. The Supreme Court refused to resign  
4 and absolutely rejected everything the Truth Commission said.

5 However, the next time the legislature had to appoint  
6 the judges of the Supreme Court, who are not life  
7 appointments, they had to be reappointed by the Legislature,  
8 none of the members of that court were reelected. So there  
9 was some change at the top. The Supreme Court did change.

10 They also eventually, although this took quite a long

11 time, but by the end of the 1990s, they had also changed the  
12 process for selection of judges, so there is now an  
13 independent judicial council.

14 So to that extent, the recommendations of the Truth  
15 Commission were eventually implemented.

16 In terms of a more thorough going kind of reform of  
17 the judicial system, it's been very much more a mixed bag.

18 There have been changes to the criminal procedure  
19 laws. There have been changes to the way public prosecutors  
20 are appointed, but they haven't really resulted in practice in  
21 a whole lot of changes in the way investigations or trials are  
22 run.

23 In other words, the formalities have changed, but the  
24 underlying ability of the system to provide relatively quick,  
25 just, fair and effective procedures, it's hard to see. It's

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1 hard to see that there has been a lot of change.

2 Q. Let me go back a little bit and ask about the release of  
3 the Truth Commission's report.

4 A. Yes.

5 Q. When was that?

6 A. That was in 1993, March, I believe.

7 Q. And following the release of that report, what was the --  
8 you've told us about the response of the judiciary, but what  
9 was the general response in El Salvador?

10 A. Well, the response of the government was furious. The  
11 government had not expected the Truth Commission to name  
12 names. The government had expected a sort of "plague on all  
13 your houses" kind of report, and it was impossible for the  
14 Truth Commission, given the evidence they had before them, to

15 do that.

16           So the government at the time totally rejected the  
17 Truth Commission's findings. And the clearest indication of  
18 the official reaction to the report was that five days later,  
19 the Legislature of El Salvador passed a sweeping amnesty law.  
20 And that was the end, basically, of the discussion about the  
21 Truth Commission's report.

22 Q. Had there been prior amnesties in El Salvador?

23 A. There had been a number of prior amnesties in El Salvador,  
24 none of them as sweeping as the 1983 amnesty law. There was  
25 an amnesty for political prisoners in the early 1980s; I

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1 think, '83.

2           There was another amnesty in 1987. It is interesting  
3 to note that that 1987 amnesty specifically excluded the case  
4 of Monseñor Romero. It was the only case that was excluded in  
5 that amnesty law.

6           There was then an amnesty in 1992, within the context  
7 of the peace accords. That amnesty was designed to allow  
8 members of the guerillas, or the FMLN to come back into the  
9 country without being immediately arrested.

10           It excluded from its provisions anyone who should be  
11 named in the Truth Commission Report. In other words, the  
12 exclusion was for whoever the Truth Commission should decide  
13 to name.

14           The 1993 amnesty law, which was the one that was  
15 passed five days after the Truth Commission Report, contained  
16 none of these exclusions and, indeed, by implication, rejected  
17 all of these exclusions. It was an absolutely sweeping law.

18 Q. Let me ask you about the scope of it, and perhaps it would  
19 help if we looked at it.

20 Rob, can we have slide 1, please.

21 Your Honor, the certified English translation of the  
22 amnesty law is contained at tab K of Plaintiff's Request For  
23 Judicial Notice and Determination of Foreign Law that was  
24 filed with the Court yesterday. We have additional copies  
25 here.

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1 THE COURT: You better give me a copy because I don't  
2 see it.

3 MR. COHEN: Your Honor, a certified translation is at  
4 tab K.

5 BY MR. COHEN:

6 Q. Professor, if I could ask you about the scope of this  
7 amnesty.

8 A. Yes. Well, as you can see, a broad, absolute and  
9 unconditional amnesty. Anyone who participated in political  
10 crimes, crimes with political ramifications, or common crimes  
11 committed by no less than 20 people. That last one, refers to  
12 massacres, basically. Any time before January 1st, 1992.  
13 Covers direct or indirect perpetrators. Covers accomplices in  
14 the above mentioned crimes.

15 The only ones excluded are people who have been  
16 convicted of kidnapping-for-profit, basically. Yes.

17 Q. Let me ask you about "political crimes," that's the term  
18 used in Article 1. Would that cover the Romero assassination?

19 A. Yes. Yes. There is also a subsequent one that talks  
20 about -- Article 2, that talks about anything that is a  
21 consequence of, resulting from, the armed conflict, without

22 taking into consideration political condition, militancy,  
23 affiliation or ideology.

24 I read that as trying to make absolutely sure that  
25 anything that could conceivably be connected in any way to the

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1 period of conflict, including Monseñor Romero's assassination,  
2 would be covered.

3 Q. Maybe we can turn to slide 2. Professor, if I could ask  
4 you about Article 4.

5 A. Uh-huh.

6 Q. Could you tell me something about Article 4.e, and why  
7 that clause is significant?

8 A. Well, it is the only amnesty, at least in Latin America,  
9 that I know about, that explicitly extinguishes civil  
10 liability.

11 In other words, there are other amnesty laws in Latin  
12 America, which might, by implication, cover civil liability  
13 because of the connection in civil law between criminal  
14 prosecution and the awarding of damages to victims.

15 In other words, in most civil law countries, the  
16 traditional way damages go to victims is through a finding  
17 subsequent to the finding of criminal guilt. So if you have  
18 no investigation into criminal guilt, then, ipso facto, you  
19 can't have a determination on damages.

20 Theoretically, under Salvadoran law, that would also  
21 apply; nonetheless, you have this explicit extinguishing of  
22 civil liability provision, which I read, again, as a way of  
23 the Legislature saying, you cannot, under any circumstances,  
24 through whatever novel legal theory or whatever tort theory,



25 go around this amnesty law.

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1 And, as I say, to my knowledge, that's unique, at  
2 least in Latin America.

3 Q. You said earlier that the Romero assassination would be  
4 covered by the amnesty. Are you aware of any judicial  
5 decisions determining that?

6 A. Specifically in the case of Romero?

7 Q. In the case of the assassination.

8 A. Well, there was an attempt, as Professor Karl talked about  
9 this morning, to reopen the case. The -- all those attempts  
10 have been unsuccessful. There have been, to my knowledge, a  
11 number of attempts to open this case again.

12 The case was initially dismissed by the Supreme  
13 Court. There was one decision in which Garay's testimony was  
14 thrown out because it came seven years after the fact, when  
15 the reason that it came seven years after the fact was because  
16 the Public Prosecutor refused to interview him for seven  
17 years.

18 There was then a subsequent attempt to reopen it in  
19 the context of the amnesty law. And basically, the Supreme  
20 Court said the amnesty law is constitutional. You cannot  
21 reopen.

22 My understanding is that every attempt to reopen this  
23 case has met with either the objection that the case is  
24 already closed and, therefore, is res judicata, or a  
25 determination that, well, even if it isn't closed because it's

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1 res judicata, it's closed because the statute of limitations  
2 has now run.

3 So my understanding is it has been absolutely  
4 impossible to even reopen the investigative case.

5 THE COURT: Is there a citation that is objectively  
6 verifiable for the Supreme Court decision's holding?

7 THE WITNESS: Well, there is -- a lot of this I'm  
8 taking from the Inter-American Commission case, which does  
9 have a cite, I believe, and I can get you that in a second, as  
10 to where exactly --

11 MR. COHEN: Your Honor, if I could help the Court, it  
12 would be -- perhaps the witness could look at a footnote 100  
13 of the Inter-American Commission decision, which is Exhibit  
14 99, and is also attached as Exhibit N to Plaintiff's Request  
15 For Admission Into Evidence.

16 THE COURT: M, as in "man"?

17 MR. COHEN: N, as in "Nancy."

18 THE COURT: All right.

19 MR. COHEN: It's page 699 at the top, and it's  
20 footnote 100 to paragraph 98.

21 THE WITNESS: This was the 1993 ruling.

22 There were also a number of attempts after the  
23 amnesty law was passed to challenge its constitutionality.  
24 There was an early attempt where the Supreme Court basically  
25 said, This is a political question, it's nonjusticiable, and,

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1 therefore, we are not going to enter into discussion in any of  
2 these cases.

3 There is a subsequent Supreme Court decision from

4 2000, where they reaffirm that the amnesty law is  
5 constitutional, but they say, It is possible in individual  
6 cases for a judge to consider whether or not the particular  
7 case involves a violation of fundamental rights, and if there  
8 is a violation of fundamental rights, then the amnesty should  
9 not be applied.

10 My understanding is that in order for that to happen,  
11 the Public Prosecutor would have to ask a court to not apply  
12 the amnesty.

13 The Public Prosecutor's office has taken the position  
14 that these are not cases involving violations of fundamental  
15 rights. They are simple murder cases. And that, therefore,  
16 they do not fall within this exception. And that, what's  
17 more, even if they did fall within this exception, even if the  
18 amnesty does not block prosecution, the statute of limitations  
19 is ten years. The statute of limitations has run, and there  
20 is no tolling provision.

21 THE COURT: Is that a Salvadoran statute of  
22 limitations?

23 THE WITNESS: Yes. Give me a second.

24 THE COURT: The concept of tolling is not recognized  
25 under Salvadoran law?

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1 THE WITNESS: There is nothing in the Salvadoran  
2 Penal Code that talks about tolling. This is a civil law  
3 system. A judge could not, without something in the code,  
4 decide to toll it.

5 BY MR. COHEN:

6 Q. Just to clarify, these two decisions of the Supreme Court  
7 you mentioned examining the amnesty law, those were not in the

8 case of Alvaro Saravia?

9 A. No, no, no. Those were general facial challenges to the  
10 constitutionality of the amnesty law.

11 Q. But the decision that was set out at paragraph 98 of  
12 the Inter-American Commission --

13 A. That's specific to Saravia. That one is specific to  
14 Saravia.

15 Q. Let me ask you whether the amnesty law has been considered  
16 by any other judicial bodies outside of El Salvador.

17 A. It's been considered by the Inter-American Commission for  
18 Human Rights.

19 Q. Maybe you could tell us something about that Commission.

20 A. The Inter-American Commission is a body of the OAS, the  
21 Organization of American States. It was set up back in the  
22 1940s and given its current Constitution in 1965.

23 It's composed of seven international experts in their  
24 individual capacities who are elected by the state -- member  
25 states of the OAS. They serve periodic terms; I believe they

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1 are five years.

2 They have a number of different responsibilities.  
3 One is general control over the situation of human rights in  
4 OAS countries, so they issue general reports on human rights  
5 conditions in one or another country. They can, in that  
6 capacity, carry out on-site visits to the countries, and they  
7 did so several times in the case of El Salvador.

8 They also have certain responsibilities with regard  
9 to Inter-American treaties. Most specifically, they are able  
10 to hear individual complaints of violations of the American

11 Convention on Human Rights and the American Declaration on the  
12 Rights and Duties of Men.

13           When they receive an individual complaint, they have  
14 staff that can investigate. They usually do not go on-site to  
15 investigate. But they can use the on-site investigations that  
16 have been done in the general country context.

17           And they come to what are basically findings of fact  
18 and conclusions of law as to whether or not the state -- and  
19 the complaints are always and only against the state -- has  
20 violated provisions, in this case, of the American Convention.

21           They can then, if they so choose, and if the state  
22 does not comply with the recommendations of the Commission,  
23 they can either publish their report or -- and/or they can  
24 forward the case to the Inter-American Court of Human Rights  
25 for a determination of damages for the victims against the

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1 state. It's entirely discretionary whether they go forward to  
2 court. That's sort of the general outline.

3 Q. Now, Professor, you mentioned that the Inter-American  
4 Commission has considered the Salvadoran amnesty?

5 A. Yes, several times, as a matter of fact.

6 Q. And can you tell us what they said about it?

7 A. They said it's unlawful under the American Convention of  
8 Human Rights for a number of reasons.

9           First, is the violation of Article 2 of the American  
10 Convention, which talks about domestic legislation and having  
11 to have domestic legislation that is in line with the  
12 provisions of the Convention.

13           Second, they have said that it's a violation of  
14 Article 8 of the American Convention of Human Rights, which

15 talks about the right to a hearing before a fair and  
16 independent tribunal.

17 And, third, they have said it's a violation of  
18 Article 25 of the American Convention of Human Rights which  
19 talks about the right of everyone to judicial protection.

20 And so by not allowing the victims of human rights  
21 violations to initiate any kind of criminal or civil  
22 investigation, they are being denied the right to judicial  
23 assistance and judicial protection.

24 So those have been the grounds on which the  
25 Inter-American Commission has found the Salvadoran amnesty law

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1 a violation of the American Convention. And, indeed, soon  
2 after the law was passed, the Inter-American Commission sent a  
3 letter to the president of El Salvador saying, You are in  
4 violation, while it was still within the same presidential  
5 period, and so it was possible to repeal the law.

6 To my knowledge, there are at least three cases out  
7 there. There is the Los Hojas massacre case, there is the  
8 case of Monseñor Romero, and there is the Jesuit case.

9 In all three, the Inter-American Commission has found  
10 that the Salvadoran amnesty law is a violation of the American  
11 Convention and has asked the government of El Salvador to  
12 modify or repeal the law.

13 THE COURT: You have said that one of the remedies  
14 available before the Inter-American tribunal, if that's the  
15 right word to call it, is that -- it's a commission, I  
16 guess -- that claims for damages or reparations to be  
17 responded to by the state can be brought.

18 And was such a claim brought on behalf of Archbishop  
19 Romero?

20 THE WITNESS: No. The Inter-American Commission did  
21 not forward this case to the Inter-American court. The  
22 Commission, on its own, cannot do more than request that the  
23 state provide remedies. It cannot impose remedies, per se.  
24 It's only the court that can impose remedies.

25 And the case never went to the court for a number of  
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1 reasons having to do with the jurisdiction of the court over  
2 El Salvador for these kinds of violations. I mean there is a  
3 jurisdictional problem in going forward.

4 THE COURT: I was going to ask you whether the court,  
5 wherever it sits, would have jurisdiction if El Salvador  
6 didn't consent.

7 THE WITNESS: No. El Salvador, at the time, was not  
8 a -- okay, let me step back for a second.

9 In order for the court to have jurisdiction, the  
10 state has to specially accept the jurisdiction of the court.

11 The state of El Salvador only very belatedly accepted  
12 the jurisdiction of the Inter-American court. I believe it  
13 was in 1996, and it did so in express provision that said that  
14 any violation that took place before 1996, in other words,  
15 before the date in which they excepted the competence of the  
16 court --

17 THE COURT: It excepted all of them?

18 THE WITNESS: It excepted all of them. So there is  
19 no way you could bring the case before the court basically.

20 BY MR. COHEN:

21 Q. Does the Inter-American Commission have any requirement of  
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22 exhaustion of domestic remedies before hearing a case?

23 A. It does. It cannot hear a case until it finds that  
24 remedies have been exhausted.

25 Q. And do you know what it found in that regard in the Romero

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1 case?

2 A. It found that domestic remedies had been exhausted.

3 THE COURT: Had been?

4 THE WITNESS: Had been, yes.

5 THE COURT: What year was that?

6 THE WITNESS: 2000? Yes, April 13, 2000.

7 BY MR. COHEN:

8 Q. Does the decision of the Commission have any effect on the  
9 amnesty in place in El Salvador on a person charged or a  
10 person being investigated under the laws of El Salvador?

11 THE COURT: That's been answered, hasn't it? She  
12 just said that El Salvador didn't accept the jurisdiction of  
13 the Inter-American court and, therefore, that tribunal could  
14 not affect anybody in El Salvador.

15 MR. COHEN: I apologize, your Honor, it has been  
16 answered. Thank you.

17 BY MR. COHEN:

18 Q. Let me ask you this question about the amnesty. Does it  
19 have any force beyond the state of El Salvador?

20 A. No. Well, there is several ways to answer this. By its  
21 terms, the amnesty is directed to what the Salvadoran courts  
22 should do. It tells the Salvadoran courts how to deal with  
23 these cases. That's what Article 4 of the amnesty law that we  
24 saw is about.



So on its terms, by its own terms, it applies to

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1 Salvadoran judges.

2 It is also the case that there are certain kinds of  
3 human rights violations, like the ones at stake here, that,  
4 under international law, cannot be amnestied.

5 And so, for example, you have the Inter-American  
6 Commission saying notwithstanding this amnesty, the state  
7 should investigate because the amnesty law is unlawful.

8 There have been similar findings by the U.N. Human  
9 Rights Committee. The results are a more general corpus of  
10 international law that says that certain crimes that are also  
11 human rights violations cannot be amnestied, crimes against  
12 humanity, being one of those.

13 There are also a number of decisions by national  
14 courts where this issue has come up that have absolutely  
15 uniformly, without -- I can't find a single exception -- found  
16 that domestic amnesty laws like this one in circumstances that  
17 have to do with grave violations of human rights do not need  
18 to be and, indeed, should not be taken into account by judges  
19 in other courts in other countries.

20 Q. Professor, let me change topics here, and ask you about  
21 crimes against humanity. You mentioned that you reviewed the  
22 complaint in this case. Perhaps you can explain to the Court  
23 what are crimes against humanity.

24 A. Well, basically, they are a list of very serious crimes  
25 carried out under a specific set of circumstances. The very

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1 serious crimes include murder, extermination, forced  
2 disappearance, enslavement, deportation. There is a long  
3 list.

4 what distinguishes a crime against humanity from  
5 so-called garden variety murder or garden variety enslavement  
6 is the context.

7 Crimes against humanity have several additional  
8 attributes. One, they have to be either widespread or  
9 systematic. They have to be an attack against a civilian  
10 population. There is an idea that it's an attack that's aimed  
11 at more than one person, that's aimed at sort of a  
12 collectivity. They have to be part of a plan or a policy of  
13 some sort. It does not have to be a state plan or policy, but  
14 it does have to be state or organization. It can't be random,  
15 basically.

16 And some definitions add that there has to be an  
17 identifiable group of victims, either political opponents,  
18 ethnic -- a specific ethnic political or political group. A  
19 group that is perceived as playing a certain leadership role.  
20 Something that distinguishes, all right, the people who are  
21 being targeted.

22 Q. And when did this concept of crimes against humanity  
23 emerge in international law jurisprudence?

24 A. Well, basically, and most clearly, starting with the  
25 Charter of the International Tribunal at Nuremberg. There has

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1 been subsequent development since then, and if you could help  
2 me -- if I could see --

3 MR. COHEN: Could we have slide 3, please.

4 THE WITNESS: Here we go. Charter of the  
5 International Military Tribunal at Nuremberg had three counts:  
6 Crimes against peace, crimes against humanity, and war crimes.

7 Crimes against humanity were basically, as I said,  
8 murder, extermination, et cetera, carried out against a  
9 civilian population. And there are other -- a couple of other  
10 clauses in there.

11 Since then, there have been a number of places,  
12 times, when crimes against humanity has been both referred to  
13 and expanded on.

14 Before you even get to the Convention on  
15 Nonapplicability and Statutory Limits, there is a General  
16 Assembly Resolution of the United Nations, in essence,  
17 enshrining the charter, the definitions that are in the  
18 Nuremberg Charter as international law. That's 1946.

19 There is then -- the next is actually the Principles  
20 of International Cooperation, which is in 1973, which is also  
21 a General Assembly U.N. Resolution.

22 There is then the Convention on the Nonapplicability  
23 of Statutory Limits to War Crimes and Crimes Against Humanity.  
24 That's 1968.

25 Then more recently, there is the Statutes of the

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1 International Criminal Tribunal for the Former Yugoslavia and  
2 the International Criminal Tribunal for Rwanda.

3 what's interesting about those is not only both  
4 statutes have as one of the crimes within the jurisdiction of  
5 the tribunal crimes against humanity, but that there is a  
6 Secretary General's report that accompanies the statutes that  
7 basically says we are only using crimes that are already

8 clearly established in customary international law as the  
9 basis of these tribunals.

10 So there is an understanding by the Security Council  
11 which is creating these tribunals that the crimes that are  
12 encompassed within what the tribunal can look at are all  
13 crimes that are not new, are not made up, are not in any way  
14 controversial, are clearly established customary international  
15 law. That's 1993 and 1994.

16 Then most recently, you have the Rome Statute of the  
17 International Criminal Court. Article 7 of the Rome Statute  
18 has the most recent definition of crimes against humanity as  
19 "widespread or systematic attacks on the civilian population  
20 with knowledge of the attack." That's what the definition  
21 says.

22 And then, within that, there is, again, this long  
23 list of crimes; the first one on there is murder.

24 Q. Has the United States agreed to submit to the jurisdiction  
25 of the International Criminal Court?

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1 A. No, it has not. The United States objects quite  
2 strenuously to the jurisdictional provisions of the  
3 International Criminal Court, and for that reason will not  
4 become a party to it.

5 However, it is important to note that the substantive  
6 articles, in other words, the crimes that come within the  
7 definition -- within the jurisdiction of the International  
8 Criminal Court are not in any way objectionable to the U.S.,  
9 and indeed, it was the U.S. delegation -- and I say this  
10 because I was there -- the U.S. delegation was the primary

11 drafter of Article 7.

12           Beyond that, the United States delegation insisted on  
13 the creation of elements of crimes which would help  
14 prosecutors in figuring out how exactly they were supposed to  
15 prove each element of the crimes that are within the  
16 jurisdiction of the ICC.

17           There is an extensive discussion of crimes against  
18 humanity within the elements of crimes and that, again, my  
19 understanding is it was largely drafted by the U.S. delegation  
20 by State Department lawyers.

21 Q. Now, could a single murder fall within the definition of a  
22 crime against humanity?

23 A. Yes. Yes. As long as the contextual requirements are  
24 met. The best case that I can think of is the International  
25 Tribunal in former Yugoslavia, which, if we could turn to

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1 slide 4, has that.

2           Basically, the question is if you have a single act,  
3 the single act must be somehow linked to the definition of  
4 crimes against humanity.

5           So in other words, if you had a systematic attack,  
6 which would be the case here, for instance, all right, where  
7 you're systematically, the state is going after or the state  
8 and its associates, is going after people who are perceived as  
9 the middle, who are perceived as being able to serve as the  
10 fulcrum in a negotiating process. Then a single act within  
11 that context, if you can show that it's part of a context,  
12 it's part of this policy or plan of systematic attack, then it  
13 would qualify clearly as a crime against humanity. And that's  
14 what the Prosecutor versus Msksic case says. There are other

15 similar cases like that. But they all agree -- I can't think  
16 of a single case that does not come to that conclusion.

17 Q. Professor, let me ask you, in your opinion, what impact  
18 does this case, brought in the United States, under the Alien  
19 Tort Claims Act, have in El Salvador?

20 A. Well, I think there are a number of ways you can look at  
21 the impact. One of the things that's interesting about  
22 looking at transnational prosecutions is that they -- people  
23 are very aware of them in the country where they take place  
24 much more so than, for example, people here are.

25 So there is, or at least potentially can be, an

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1 enormous impact within the country. The reason I say this is  
2 because I have looked at what happens in other situations  
3 where you have an outside legal proceeding, and then you go  
4 and you look at what happens inside a country, and what you  
5 see is that these outside proceedings really can catalyze a  
6 change in the domestic legal context.

7 Let me give you an example. I spent a lot of time  
8 working on Chile and Argentina. That's what the 2004 book is  
9 about. Chile has an amnesty law. The amnesty law looked just  
10 about as airtight as the Salvadoran amnesty law does. It  
11 didn't allow for any exceptions, et cetera. The courts had  
12 pretty much uniformly interpreted it, number one, as  
13 constitutional, and number one, as precluding any  
14 investigations.

15 Then you have the arrest and detention of General  
16 Pinochet in London, and you have the British House of Lords  
17 decision, you have the Spanish decision.

18 During that time, you start to get the first  
19 complaints. The very first one is filed two months before  
20 Pinochet's detention, but you go from having one complaint to  
21 having 235 complaints against Pinochet in a very, very short  
22 period of time after he's detained in London.

23 why? I did a lot of interviewing trying to figure  
24 out the answer to that question. There were several pieces to  
25 it. One, victims and victims' lawyers start seeing that maybe

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1 there is some possibility of doing some here, and they become  
2 much more assertive in bringing domestic cases.

3 Number two, the judges change their attitude from a  
4 sense that we shouldn't touch this because it's too  
5 controversial.

6 Two things happen. One, the judges start saying,  
7 wait a minute. Why is this judge on the other side of the  
8 world looking at this case? We should be looking at these  
9 cases. These are our cases; it's our responsibility. And  
10 they start becoming much more assertive of their own role as  
11 judges, in part pushed by this idea that, wait a minute, why  
12 is this happening somewhere else, this is our case. These are  
13 our cases. That's one thing.

14 Two, the legitimacy of seeing that courts in other  
15 countries take this seriously, think these are serious crimes,  
16 think these are crimes that something has to be said about,  
17 that are worthy of, you know, considering, of spending time  
18 on, of assessing damages on, changes the view of the domestic  
19 judges from one that says these are, you know, old news, these  
20 are cases that are basically dead, to thinking, well, wait a  
21 minute, this is unfinished business.

22           And so you really see a change in the way the courts  
23 start dealing with these past human rights violation cases,  
24 you know, triggered by the idea that this is going on and that  
25 foreign courts, and that foreign courts of some prestige in

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1 the Chilean case, the British House of Lords seems to think  
2 that these are viable causes of action, and that they are  
3 worth looking into.

4           So you really do see a change. And I think I have  
5 seen this pattern now in Chile. I have seen it in Argentina.  
6 I have seen it to some extent in Chad in Africa.

7           I mean I think you can say that this is something  
8 that is likely to happen; however, what time frame, I don't  
9 know, but likely to happen.

10           And it makes the transnational case, the outside  
11 cases, much more important. Because it's not just about the  
12 effect here in the U.S., which I think is also substantial,  
13 and you have a huge Salvadoran community here, but in addition  
14 to that, the effect in-country can be very substantial and  
15 much more than you would think in the sense of once you  
16 unblock, that takes on a life of its own and you start getting  
17 more and more of a willingness to look at these cases.

18           MR. COHEN: Thank you, Professor. I have no further  
19 questions.

20           THE COURT: Let me ask you, Professor.

21           THE WITNESS: Yes.

22           THE COURT: The amnesty law that we have heard you  
23 discuss was effective in -- I want to be as clear as I can on  
24 this date, I know that you referred to it -- which tab was



25 that, K?

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1 MR. COHEN: K, your Honor.

2 THE WITNESS: K.

3 THE COURT: Let me get K here.

4 THE WITNESS: Yes.

5 THE COURT: And this was March 22nd, 1993.

6 THE WITNESS: Yes.

7 THE COURT: Would it be a fair interpretation of El  
8 Salvadoran law that you understand what the effective date of  
9 the statute means?

10 THE WITNESS: Yes.

11 THE COURT: Would that be the effective date of this  
12 statute?

13 THE WITNESS: 1983, yes.

14 THE COURT: All right. Are you able, within your  
15 international expertise, to opine, going through the panoply  
16 of remedies, and I am concerned more about the judicial  
17 remedies that would be actually available.

18 Because as I understand it, as laudable and important  
19 as their functions are, the commissions are really the last  
20 resort. That's all that's left when the justice system  
21 doesn't work and when the government won't take any civil or  
22 criminal responsibility.

23 THE WITNESS: That's true.

24 THE COURT: And so that's the prelude to the  
25 question. The question is: In your legal judgment, was the

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1 ability to pursue a claim in a Salvadoran court for redress  
2 under the criminal law effectively foreclosed by the enactment  
3 of the law on general amnesty for the consolidation of peace?

4 THE WITNESS: My answer would be that the combination  
5 of the law itself, the way it's been interpreted by the  
6 Supreme Court and the way it's been interpreted by the Public  
7 Prosecutor, forecloses any possibility of being able to bring  
8 this case.

9 THE COURT: And if you can provide me, I don't know  
10 if you can, with dates as to when those interpretations of  
11 this law occurred, that would be helpful.

12 THE WITNESS: Yes. I can give you the Supreme Court  
13 decisions now. Probably have to look a little bit.

14 THE COURT: That was footnote 100 in the Truth  
15 Commission Report.

16 THE WITNESS: Yes, there is a footnote, it's 100 in  
17 the Inter-American Commission.

18 THE COURT: It says March 31st of 1993.

19 THE WITNESS: Right.

20 THE COURT: But that only referred to --

21 THE WITNESS: Saravia.

22 THE COURT: Saravia.

23 THE WITNESS: That refers only to Saravia. There are  
24 two other challenges to the amnesty law. They are both facial  
25 challenges, so they are not concerned with the Saravia case

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1 per se, although they are preclusive in that case.

2 The first one is a 199 -- I believe it's 1993 case,  
3 which is the case where the Supreme Court finds the amnesty

4 law constitutional, and what's more, finds that it can't  
5 challenge -- it can't even consider, even hear a challenge to  
6 the constitutionality of the law because the -- let me see if  
7 I can phrase this right, because the Salvadoran legislature is  
8 plenipotentary and, therefore, the judiciary has no role in  
9 determining whether or not the law is constitutional or not,  
10 and, therefore, it is a nonjusticiable political question.  
11 That's the first Salvadoran Supreme Court decision.

12 THE COURT: Do we have a date for that?

13 THE WITNESS: I will.

14 THE COURT: While you are looking for that answer, I  
15 infer that the branches of government are not coequal in  
16 El Salvador.

17 THE WITNESS: Let me put it this way. My  
18 understanding is that the Salvadoran Supreme Court's  
19 interpretation of its own role within the constitutional  
20 separation of powers varies substantially from our  
21 understanding of the coequal nature of the branches of  
22 government. That's the best way I can answer.

23 THE COURT: From your answer, it would suggest that  
24 constitutional law doesn't exist in El Salvador to the extent  
25 that the court can't determine the legality of laws, which is

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1 what constitutional law is.

2 THE WITNESS: Well, by year 2000, that has changed.  
3 The reason I'm hesitating is because I think that was the case  
4 at that time. I think by the year 2000, there is a slightly  
5 greater appreciation of the independent role of the judiciary  
6 in interpreting constitutions. That's the only reason I'm  
7 hesitating. I think at the time of that initial decision,

8 that's absolutely right. I'm not sure I could say that now  
9 because I do think there has been some evolution. I just  
10 think it's a minimal evolution.

11 Clearly, you know, at the time of this first  
12 decision, what the court is saying, is it's none of our  
13 business, we can't oversee an act of the legislature. That,  
14 at least, varies substantially from my understanding of what  
15 constitutional control looks like. Yet that is clearly what  
16 they say. Now, by 2000, that has changed. You know, I can  
17 probably --

18 THE COURT: If you don't mind, let's stay on the  
19 track of trying to get these dates.

20 THE WITNESS: I would be happy to. Do you want me to  
21 look through?

22 THE COURT: Maybe that may not be the most productive  
23 use of your time on the witness stand, if you are going to  
24 have to look through voluminous data, but let me understand --

25 THE WITNESS: I would be happy to get it to you if

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1 you could give me a couple of minutes.

2 THE COURT: Yes, that will be fine.

3 As of the time that the murder occurred, the  
4 understanding that has been gained from the testimony of an  
5 expert judge and a political scientist, is that in El Salvador  
6 in the 1980s, the judiciary had what would traditionally be  
7 Executive functions in this judicial system, that of the  
8 United States, of, one, investigation, of, two, in effect,  
9 becoming an aid or of assistance to the prosecutor, and which  
10 would deprive a judge of immunity, which would raise all kinds

11 of concerns under our judicial system, and actually gathered  
12 evidence, acted as a judge would act as a repository for  
13 evidence, would make decisions not to turn evidence over to  
14 what we normally think of as the Executive, meaning the  
15 prosecutor, and whatever force, whether it's a police force,  
16 whether it's the Attorney General or some other law  
17 enforcement agency.

18 But in other words, many of those slides talk about  
19 the judiciary enforcing the law, and that is not, under  
20 American jurisprudence, a function that the judiciary engages  
21 in. There is no law enforcement whatsoever under the  
22 separation of powers.

23 And so my question relates specifically to, was there  
24 a change of that role of the court sometime in the 80s or in  
25 the 90s? We are concerned here with a ten-year statute of

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1 limitations.

2 THE WITNESS: There was a change in the late 1990s to  
3 some extent. In other words, the system that you are  
4 describing is a classic inquisitorial system where you have an  
5 investigating magistrate. The investigating magistrate plays,  
6 in essence, the role of the prosecutor. The judge finds the  
7 evidence. The judge decides what evidence to admit. The  
8 judge decides whether to indict. The judge decides whether an  
9 arrest order is forthcoming, and then the same judge tries the  
10 case and sentences.

11 That system was changed to a certain extent in the  
12 late 1990s in order to create a system that looks a little bit  
13 more like what we are used to, where the prosecutor actually  
14 has more of a role in providing the judge with evidence. And

15 they also divided the investigative phase from the sentencing  
16 phase, so you have a different judge during one and during the  
17 other.

18 Now, how has that made it possible to bring effective  
19 prosecutions in El Salvador? I think the answer to that has  
20 to be no. There have been no, to my knowledge, at least, and  
21 I follow this rather closely, there have been no successful  
22 prosecutions of any case that involves human rights violations  
23 from the pre-peace accord era at all.

24 THE COURT: You may not be the right witness to ask  
25 this next question of, but I heard you testify now that there

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1 was an interpretation that there is not an exhaustion  
2 requirement in, if you will, the country of origin, where the  
3 crime is venued in the sense that that's where it occurs. And  
4 I wondered when that principle of law, if it is a principle,  
5 was established.

6 THE WITNESS: I'm not quite sure what you are  
7 referring to, the nonexhaustion.

8 THE COURT: Well, by nonexhaustion, I understood by  
9 the questioning, and maybe I misunderstood Mr. Cohen's  
10 question. I thought his question was is it under the  
11 Inter-American Commission investigations necessary that a case  
12 be pursued in the judicial system of the nation of origin, and  
13 I say where the crime originates. And the answer to that is  
14 no?

15 THE WITNESS: No, the answer is yes, absolutely.

16 THE COURT: That didn't change?

17 THE WITNESS: No, that's an Inter-American Commission

18 requirement, just so we are clear. In order for the  
19 Inter-American Commission to even look at this case, they had  
20 to, as an initial matter, find that it was impossible to bring  
21 the case in El Salvador, and that, therefore, domestic  
22 remedies had been exhausted. And I will say that the  
23 Salvadoran government did not contest that finding.

24 THE COURT: Okay. And the date of that finding?

25 THE WITNESS: 2000 -- April 13th, 2000.

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1 THE COURT: All right. Do you know under  
2 international law between the period of March 31st of 1993 and  
3 2003, assuming for the purposes of my question that Saravia  
4 was in the United States, where he is believed to be, in the  
5 Central valley of California, do you know of any principle in  
6 international law that would have barred bringing this case  
7 against him in that time frame?

8 THE WITNESS: In the United States?

9 THE COURT: In the United States.

10 THE WITNESS: I mean I suppose the problem would be  
11 you would have to know he was here. Wait, let me try to  
12 understand you. Bringing the case under U.S. law or bringing  
13 the case --

14 THE COURT: Just as it has been brought?

15 THE WITNESS: Just as it has been brought.

16 THE COURT: Yes.

17 THE WITNESS: I think there might have been a period  
18 early on when it was not clear whether or not the Salvadoran  
19 judicial system would open up. I think fairly soon it was  
20 clear that it wouldn't, but aside from that, I can't think of  
21 any --

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22 THE COURT: Well, that's what I'm trying -- and why  
23 I'm asking about these dates. That's what I'm trying to  
24 ascertain. And again, I don't want to put you unfairly on the  
25 spot if you haven't considered it previously.

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1 THE WITNESS: Uh-huh.

2 THE COURT: But if you had any such knowledge, if  
3 some rule, some case, anything that in international law or  
4 Salvadoran law would be applicable, then I would like to know  
5 about it.

6 THE WITNESS: There would, under international law,  
7 not be any international law reason why one could not bring a  
8 case here. Now, are you referring -- you are referring to  
9 criminal or civil or whatever?

10 THE COURT: Well, as I understand it, it's got to be  
11 criminal. Because is it your understanding it's still the  
12 case in El Salvador that no civil remedy can be obtained; it  
13 is not available without the criminal prosecution and the  
14 affixing of criminal responsibility, because it is absolutely  
15 incidental to the finding of criminal liability by which the  
16 damage remedy arises, the civil compensation remedy under El  
17 Salvadoran law? That is my understanding and if that's wrong,  
18 I need to know.

19 THE WITNESS: No, that's right. I mean the only way  
20 you would have brought this case in El Salvador would have  
21 been as a criminal prosecution.

22 There is a private prosecutor in El Salvador.

23 THE COURT: Yes, and that's been discussed.

24 THE WITNESS: So what would have happened is the



25 private prosecutor would have tried to go forward. The Public

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1 Prosecutor would have said, "We are not going forward." Any  
2 number of grounds. They would have variously said --

3 THE COURT: Right, and I have, I think a very good --

4 THE WITNESS: And they would have said, et cetera, et  
5 cetera --

6 THE COURT: I have a very good understanding of all  
7 the public and private grounds for prosecution in El Salvador.

8 All right, when you return to your seat, if you could  
9 look for those dates, it would be very helpful to me.

10 THE WITNESS: I will. And I apologize for not having  
11 them.

12 THE COURT: Not at all. There is a lot of material.  
13 Thank you very much. Do you have anything further, Mr. Cohen?

14 MR. COHEN: Nothing further, thank you.

15 THE COURT: You may step down.

16 MR. COHEN: I have a very minor housekeeping matter.  
17 All of the translations of foreign law are certified, and  
18 indeed they are, but it appears as if the certifications were  
19 improperly inserted at the back of tab L, which should have  
20 gone with each code section that was translated, rather than  
21 with the declaration that appears at tab L.

22 THE COURT: All right. Thank you very much. I will  
23 look just to confirm that they are there and I can find them.  
24 Yes, there is a declaration of Carlos Rafael Urquilla, of Leah  
25 Hershberger, and that, I think, -- or she has three

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1 certifications.

2 MR. COHEN: That's correct. And those  
3 certifications --

4 THE COURT: There is four total.

5 MR. COHEN: Those relate to the amnesty law and the  
6 other sections of Salvadoran code that we provided.

7 THE COURT: All right.

8 MR. COHEN: Thank you, your Honor.

9 MR. Van AELSTYN: Your Honor, plaintiff has concluded  
10 its presentation of its case. I do have a closing statement  
11 that I would like to make, but I believe will take about 20  
12 minutes or so. Would this be the right time to take the  
13 afternoon break?

14 THE COURT: I think the reporter would appreciate  
15 that. And one thing that I would like to do is to have you  
16 address under the elements, this is in the extraordinary  
17 circumstances element, if you will, of equitable tolling, I  
18 don't think that we have ever suggested, at least the  
19 plaintiff hasn't suggested, that your ground is that the  
20 defendant prevented the case from being filed. This is not  
21 where the defendant takes steps, whether it's by coercion or  
22 some other means to keep the case from being filed.

23 MR. Van AELSTYN: Not directly, your Honor.

24 THE COURT: And so it is the extraordinary  
25 circumstances exception that we are focused on. And the Court

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1 has the understanding that there can be a denial of physical  
2 access to the courts, such as a condition of war exists, or  
3 martial law exists and the courts aren't open or functioning,

4 and the Seattle Audubon Society case addresses that. It's a  
5 Ninth Circuit case.

6 And there seems to be in the Suarez-Mason case the  
7 suggestion that courts are nominally open, in other words,  
8 their doors are open for business, but there is no justice, if  
9 you will, being dispensed because the courts for, as has been  
10 testified to here and has been suggested, either for political  
11 reasons, for reasons related to coercion and duress, other  
12 conditions, do not dispense justice.

13 The understanding, again, that the Court has, is that  
14 the effectiveness of a remedy in the courts is determined by  
15 an evaluation of the totality of the circumstances, and that  
16 case dealt with the country of Argentina and the conditions  
17 that existed in Argentina at the time.

18 And I don't think that there is a final decision in  
19 that case on, for instance, a military reign of terror where  
20 the denial of access results from, essentially, either the  
21 claimant being intimidated -- here we have had testimony that  
22 judicial officers, lawyers, and nonindependent government  
23 prosecutors would be unwilling, unable or otherwise simply not  
24 under any circumstance in a position to present the case to  
25 the court.

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1 The question then is for tolling purposes, when does  
2 it end? When does the tolling period end? What is the  
3 availability of the extraordinary circumstance where -- and I  
4 want you to address, please -- if the United States courts are  
5 here and the doors are open throughout the entire 24-year  
6 period or 23-year period, what is the ramification of that  
7 fact as applied to the unique circumstances of this case. And

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8 I think that for extraordinary circumstances, we can't just  
9 limit ourselves to the analysis of the Salvadoran justice  
10 system.

11 So if you would, please, address that --

12 MR. Van AELSTYN: All right, your Honor.

13 THE COURT: -- in your closing remarks.

14 All right, with that said, let's take the afternoon  
15 recess. We will stand in recess until 3:40.

16 MR. Van AELSTYN: 3:40. Thank you, your Honor.

17 THE COURT: 3:40.

18 (Recess)

19 THE COURT: Back on the record in the case of Doe  
20 versus Saravia.

21 Mr. Van Aelstyn?

22 MR. Van AELSTYN: Thank you, your Honor. First, I  
23 would like to address a couple of things that were left  
24 unaddressed at the end of our previous session.

25 First, Professor Roht-Arriaza provided the two

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1 decisions that you were looking for. I can provide them to  
2 you now if you like.

3 THE COURT: Yes.

4 MR. Van AELSTYN: The first was dated May 20, 1993,  
5 entitled "1993 Political Question Resolution of the Petition  
6 for Inconstitutionality, the Constitutional Chamber of the  
7 Supreme Court, Numbers 10-93 and 11-93." That was the first  
8 decision.

9 The second dates from September 26, 2000, and it is  
10 entitled, "The 2000 Resolution of September 26, 2000, Number

11 24-97/21-98, Constitutional Chamber of the Supreme Court," and  
12 that concerned the fundamental rights investigation if a judge  
13 approved it.

14 I have to strike that last part. I'm not sure.  
15 Think that was a note from the Professor.

16 THE COURT: All right. Is the Professor still here?

17 MR. Van AELSTYN: She just stepped out.

18 THE COURT: When she returns, if she returns, we will  
19 ask her which decision is which.

20 MR. Van AELSTYN: All right. Now, I would like to  
21 address the equitable tolling issue that your Honor --

22 Oh, here she is. Why don't we address this now?

23 THE COURT: Professor, we have two dates of  
24 decisions, and I wanted to ask you, the May 20th, 1993  
25 decision, what issue did that resolve?

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1 THE WITNESS: That was the question of the facial  
2 constitutionality of the amnesty law. That was the decision  
3 that, as we discussed, the court finds that it has no ability  
4 even to entertain the question because it's a nonjusticiable  
5 and political question. That's the 1993 decision.

6 The 2000 decision is also a subsequent challenge,  
7 facial challenge to the constitutionality of the amnesty law,  
8 raising the question of El Salvador's international law  
9 obligations.

10 And this is, of course, as we discussed post this  
11 series of discussions from the Inter-American Commission  
12 saying the amnesty law is unlawful. So that's why they  
13 revisit the question. And there, what they do is they  
14 backtrack slightly, and they say, we can consider this as part

15 of our constitutional function. But, they say, it is, on its  
16 face, constitutional. It can be interpreted in order to be a  
17 valid constitutional exercise so long as a judge can find that  
18 the amnesty does not apply in certain cases involving  
19 fundamental rights violations if those violations are raised  
20 by the prosecutor.

21 And then, as I say, there are a series of subsequent  
22 informal decisions, which, unfortunately, I don't have cites  
23 to, because they are not written down, by the prosecutor, not  
24 by any court, saying the cases involved in post -- I'm sorry,  
25 pre-1992 are not fundamental rights violations, they are

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1 simply common crimes, so this small exception does not apply.

2 THE COURT: All right. Thank you very much.

3 THE WITNESS: Thank you, your Honor.

4 MR. Van AELSTYN: If I may, your Honor, I will  
5 address the equitable tolling issue that you raised.

6 THE COURT: Yes, and I didn't give you the cites, but  
7 one of the cases that addressed this is the In re World War II  
8 Era Japanese Forced Labor litigation found at 164 Fed.2d 1160,  
9 1181-82. It's a Northern District of California, 2001 case.

10 The court found the Korean and Chinese plaintiffs do  
11 not assert reasons why their claims could not have been  
12 brought under the ATPA within ten years of the war's end.  
13 Their reference to the Japanese government's alleged  
14 suppression of similar claims brought by Korean forced  
15 laborers in Japan shortly after the war does not explain why  
16 the same claims could not have been alleged in a United States  
17 court.

18                   And then the second case is Doe versus Unocal Corp.  
19 That's 963 Fed.Supp 880 at 897. It's a Central District of  
20 California case, 1997. There was -- this was a motion to  
21 dismiss. This did not result in a dispositive ruling. Leave  
22 to amend was granted to show that although there was no  
23 functioning judiciary in Burma at the time the human rights  
24 violations were alleged to have occurred, the plaintiffs did  
25 not specifically allege they could not have brought their

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1 claims in the United States. And so leave to amend was  
2 granted to let them show what facts there were why they could  
3 not have brought their claims in the United States from the  
4 time that the rights were alleged to have been violated until  
5 the time the complaint was filed.

6                   So I think that fairly frames the issue.

7                   MR. Van AELSTYN: I appreciate that, your Honor. I  
8 am not intimately familiar with the facts of each of those  
9 cases that you have cited, in particular, the Korean War case,  
10 and I appreciate your quotation from it.

11                   Here, it is our position that plaintiff was unable to  
12 bring a case in the United States as well until the time that  
13 plaintiff did so, due to fear of reprisal in El Salvador.

14                   Now, when we say "fear of reprisal," that goes not  
15 only to plaintiff, because we are not disclosing where  
16 plaintiff resides, but to the building of the case.

17                   You have heard from a number of witnesses who  
18 traveled here from El Salvador. In addition, of course,  
19 counsel has conducted an investigation to try to build the  
20 case, which -- which entails investigating and interviewing  
21 numerous persons in addition to those who actually were

22 willing to come and testify.

23           It's a lengthy and it's a major process to undertake  
24 the building of a case of this nature. The fears of reprisal  
25 were significant for anyone involved in this kind of a case in

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1 El Salvador.

2           Professor Karl testified to known death squad  
3 activities operating out of the government as late as 1997.  
4 The Black Hand -- or Black Shadow, I think it was, referred to  
5 in her testimony.

6           So there was known death squad threats all the way up  
7 through 1997. I think we can fairly say that there has been a  
8 progression of increasing possibility from that, time, a  
9 decrease in fear, and yet it is also the case that the fear of  
10 reprisal continues to this day, as the showing has been made  
11 to not identify the witness, for example.

12           So the fear of reprisal still continues to this day.  
13 There has been some easing of that. And, true, that fear of  
14 reprisal does not exist as much in the United States, although  
15 Professor Karl has provided testimony with regard to death  
16 squad activities in the United States as well, but primarily,  
17 has to do with fear of reprisal within El Salvador, not just  
18 to the plaintiff, but to the building of the case.

19           And, in conclusion, the last point I would like to  
20 make in regards to this is within El Salvador, this is not a  
21 run-of-the-mill case. As we know, there were thousands and  
22 thousands of victims of death squads and other human rights  
23 abuses within El Salvador.

24           This case concerns Archbishop Romero. And



25 fundamentally, most importantly, perhaps in terms of the fear

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1 of reprisal, indicates Roberto D'Aubuisson, who has been, as  
2 been testified to, the patron saint, in effect, of the ruling  
3 party in El Salvador.

4 To bring a case that implicates the father of the  
5 ruling party of El Salvador is a dangerous thing to do. And  
6 the fear of reprisal that struck the plaintiff and others that  
7 could possibly bring this case have prevented the bringing of  
8 the case, certainly until the time that the statute of  
9 limitations would begin to run and would encompass the date of  
10 the filing of this action.

11 THE COURT: Let me ask this. It has been testified  
12 to that no Salvadoran lawyer would take this case and that the  
13 chance of the case having any success in the Salvadoran  
14 courts, even today, is minimal to nonexistent.

15 when did your firm start its work on this case? when  
16 were you first contacted?

17 MR. Van AELSTYN: Well, first contacted, the case was  
18 first made available to my firm to be able to represent  
19 plaintiff in this matter shortly before the matter was filed  
20 in September of 2003. And when I say "shortly," I mean a  
21 matter of weeks.

22 THE COURT: The purpose of my inquiry is that if  
23 there is a factual showing that there were no legal  
24 representatives with the ability to bring a case of this  
25 complexity and magnitude within a court, and there was -- the

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1 cases discuss ignorance of your rights isn't an excuse under  
2 tolling, because tolling is equitable, and the law presumes  
3 that those who seek its remedies also must know its  
4 requirements. And so that's a fundamental principle of the  
5 application of statute of limitations jurisprudence.

6 So I would let you offer to prove in the time, and I  
7 will tell you that it appears to me, certainly, that through  
8 the passage of the amnesty law, which was 1992, to the --

9 MR. Van AELSTYN: I beg your pardon, your Honor, it  
10 was 1993.

11 THE COURT: 1993. I think the peace accord was 1992.

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

13 THE COURT: Peace accord is what I intended to say.

14 -- to the enactment of the amnesty statute, and then  
15 the declaration in approximately April, as I remember it, of  
16 1993, of the Salvadoran Supreme Court, that it could not make  
17 any determination as to the legality, and it would leave  
18 intact the amnesty law as of that point, it does not appear  
19 that there is any remedy available in a court in El Salvador.

20 There are two additional decisions, one well within  
21 the statute that I don't think we even need to discuss in  
22 2000, but then there is a May of 1993 decision, a May 20th,  
23 where the court entertains the facial challenge and, in  
24 essence, I'm going to use the vernacular and simply state the  
25 conclusion, does not find that the amnesty law suffers any

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1 kind of a disability that would prevent its application.

2 And so we also know from the evidence that in the  
3 1996 to 1997 time frame that the Public Prosecutor sought the

4 extradition in connection with an investigation of the  
5 defendant.

6 MR. Van AELSTYN: Your Honor, actually, it was 1987,  
7 '88.

8 THE COURT: That was '87 and '88?

9 MR. Van AELSTYN: Yes.

10 THE COURT: And we have the finding at that time of  
11 the Supreme Court of El Salvador that the evidence was not  
12 sufficient to justify the proceeding, and, in effect, negated  
13 the criminal case. I don't know if "dismissal" is the term  
14 that's used in El Salvador, but the extradition request was  
15 withdrawn.

16 And there is evidence that the court was involved, at  
17 least inferentially, with accepting what was fabricated or  
18 falsified evidence that was submitted by D'Aubuisson that  
19 included facts that were either known to be false or should  
20 have been known to be false, and as a result, the continuing  
21 lack of confidence in the Salvadoran judicial system could be  
22 maintained.

23 I think that if you have nothing further to offer,  
24 then you can go on with your presentation, if that's all on  
25 equitable tolling.

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1 MR. Van AELSTYN: It is, your Honor. If I could add  
2 one small point, though.

3 THE COURT: Yes.

4 MR. Van AELSTYN: I think we need to be careful --  
5 and I know I need to do this -- to make a distinction between  
6 exhaustion requirements and tolling requirements.

7 The exhaustion requirements, we believe, were met,  
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8 and I will take the date that you identified, the first of the  
9 two constitutional court decisions of May 20, 1993, as being  
10 very clear at that point in time that the amnesty law was  
11 going to apply, and at that point, there was going to be no  
12 further opportunity within the courts of El Salvador.

13 And remember, just over a month prior to that, March  
14 31, 1993, the Saravia case was formally closed due to the  
15 application of the amnesty law.

16 And then the 2000 decision, again, further confirmed  
17 that there was not going to be any legal recourse within  
18 El Salvador.

19 That is distinct from the tolling issue, the  
20 equitable tolling issue, which relies upon, as your Honor  
21 noted, the extraordinary circumstances exception, and that is  
22 based upon the fear of reprisals, which is independent of  
23 the -- of legal redress within the judicial system of  
24 El Salvador.

25 That fear of reprisal, and those conditions that gave

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1 rise to the fear of reprisal continued to a high degree  
2 through 1997, in accordance with Professor Karl's testimony  
3 about the Black Hand [sic] Death Squad operating out of the  
4 government, and continues to a lesser extent still to this  
5 day, as has been shown in the various papers filed under seal  
6 with regard to the fears that are still felt to this day by  
7 the plaintiff.

8 THE COURT: And the position I'm in is you are not  
9 making it easy for me. The plaintiff could have stated that  
10 and didn't. And so I have got to -- in other words, the

11 plaintiff could have simply stated, "I was in fear. I was  
12 intimidated, and I did not determine that I would proceed  
13 until a date," and I would have had that direct evidence.

14 And what I'm having to do here is I'm having to draw  
15 the inferences and to make those factual findings. You  
16 understand what the issue is.

17 MR. Van AELSTYN: I understand, your Honor.

18 THE COURT: All right.

19 MR. Van AELSTYN: Okay.

20 El Salvador in the late 1970s was a country on the  
21 brink of civil war. The military dictatorship that had ruled  
22 with an iron hand, in an arrangement with the landowners, a  
23 small oligarchy known as the "14 families" was coming under  
24 increasing pressure for land reform. The repression was  
25 heavy. Human rights abuses abounded.

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1 Many in the church, the Roman Catholic Church were  
2 turning to Liberation Theology and standing with the poor.  
3 Following the assassination of Rutilio Grande on March 12,  
4 1977, just weeks after he had been elevated to the  
5 Archbishopry, Monseñor Romero began to do so as well. His  
6 very public defense of the poor and his denouncement of human  
7 rights abuses by all sides in his weekly homilies, which were  
8 heard by two-thirds of the country and across the America,  
9 soon earned him the name, the "Voice of the Voiceless." On  
10 March 24, 1980, he was assassinated.

11 No one has been tried, much less convicted, for this  
12 crime, one of the worst of the Americas.

13 THE COURT: Let me interrupt you, if I could.

14 MR. Van AELSTYN: Yes.

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15 THE COURT: Can you state to me his age on March the  
16 24th, 1980?

17 MR. Van AELSTYN: He was 64, your Honor.

18 THE COURT: Thank you very much.

19 MR. Van AELSTYN: And he did not have issue and his  
20 parents were already deceased.

21 Today we seek justice that has long been denied, and  
22 we are entitled to it.

23 Plaintiff has standing, as we have shown. And this  
24 Court has personal jurisdiction over the defendant, Alvaro  
25 Rafael Saravia. It is the same Alvaro Saravia as what was

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1 known as Roberto D'Aubuisson's Chief of Security and was  
2 detained in Miami pursuant to an extradition request in late  
3 1997.

4 He has the same name, the same birth date, February  
5 16, 1946, and the same background as a Captain in the  
6 Salvadoran Air Force. And the Modesto Saravia's Social  
7 Security Number was issued in Florida around the time that  
8 D'Aubuisson's Saravia was arrived there.

9 Substitute service was achieved in accordance with  
10 the requirements of California law.

11 Saravia defaulted. He was aware of this lawsuit, and  
12 chose not to respond to it. Instead, he has gone underground.  
13 The clerk of the Court issued a default on April 13, 2004.  
14 The entry of default establishes the allegations of the  
15 complaint.

16 In addition to those established allegations, the  
17 evidence that has been presented in this courtroom establishes

18 plaintiff's claim for extrajudicial killing and crimes against  
19 humanity.

20 Two respected international commissions have reviewed  
21 much of the same evidence, although not all of it, and have  
22 reached similar conclusions. The 1993 United Nations Truth  
23 Commission, and the Inter-American Commission on Human Rights  
24 Decision of 2000.

25 Additional evidence was presented here. Amado Garay

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1 testified. Your Honor is the first judge since Judge Zamora  
2 in November of 1987, to hear testimony from Amado Garay.

3 And unlike Judge José Francisco Guerrero and the  
4 other judges on the Salvadoran Supreme Court who issued their  
5 ruling in December of 1988 negating Judge Zamora's extradition  
6 request, you had the opportunity to look into the eyes of  
7 Amado Garay and to assess his credibility.

8 I submit that his testimony was credible. He  
9 received no payment or other benefit for his testimony in this  
10 courtroom.

11 Tellingly, he let slip several unconscious details  
12 that confirmed his deep involvement in the death squad  
13 activities. He admitted to driving the killers for at least  
14 15 death squad jobs. He referred to Colonel D'Aubuisson as  
15 "Colonel," not "Major." And he referred to Alvaro Saravia as  
16 "Captain."

17 He testified that he held D'Aubuisson's gun during  
18 the San Luis Finca while D'Aubuisson was inside the meeting,  
19 thus evidencing a high degree of trust that Roberto  
20 D'Aubuisson placed in Amado Garay.

21 Perhaps most telling of all was his response to the  
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22 question of did he know who was killed that evening of March  
23 24, 1980. His immediate response was "Monseñor," the name by  
24 which Monseñor Romero was known ubiquitously in El Salvador,  
25 but he could not remember the man's name, revealing both the

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1 ubiquity of his name, Monseñor, as he was known, and a  
2 callousness with which the death squads operated.

3 Garay's testimony, combined with the other evidence  
4 that has been presented, makes clear Saravia's role in the  
5 murder. Saravia was in charge of the operation and was  
6 involved in paying the fees of the assassin. Saravia  
7 instructed Garay, his personal driver, to drive him to a  
8 staging home.

9 Saravia emerged from that house with a tall man with  
10 a beard. Saravia told Garay to drive this man to an  
11 undisclosed location: "Go where he tells you to take him."

12 Garay testified that he overheard Saravia say to the  
13 tall bearded man, "It's better to shoot in the head because  
14 maybe he will have a bulletproof vest. You have to be sure he  
15 gets killed."

16 Saravia informed Garay that they would be provided  
17 with protection as the vehicle would be driving behind them to  
18 provide the security, consistent with what we know about death  
19 squad operations from Professor Karl.

20 Saravia directed Garay to get into a red Volkswagen  
21 in order to drive the tall bearded man. The man had a long  
22 rifle with a telescopic lens, consistent, as well, with the  
23 Operation Piña document.

24 When Garay and the shooter returned to the house with



25 the Marañon trees, they were greeted by Saravia, who informed

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1 the shooter, according to Garay, that he had successfully  
2 assassinated Archbishop Romero, as he had heard the news on  
3 the radio.

4 Garay then accompanied Saravia, Nelson Morales, and  
5 Nelson Garcia back to Saravia's house in the Jeep Cherokee  
6 that they customarily used.

7 Several days later, Saravia reported to D'Aubuisson  
8 "Mission completed" after Garay had driven him to a house that  
9 he described in some detail.

10 According to other evidence that had been presented,  
11 Saravia also delivered a sum of money which earlier had been  
12 provided to him to pay the assassin or the assassin's agent.

13 There is a wealth of other consistent and confirming  
14 evidence in addition to that of the testimony of Amado Garay.  
15 First, Ambassador White testified to meeting Alvaro Saravia  
16 with Roberto D'Aubuisson. And he identified Saravia as,  
17 quote, "one of the principal lieutenants of D'Aubuisson,"  
18 unquote.

19 In addition, there were those many papers seized  
20 during the San Luis Finca raid of May 7, 1980, just a month  
21 and a half after the Romero killing.

22 Most importantly, the Operation Piña document was  
23 judged by all who had viewed it in positions to know,  
24 including Ambassador White's testimony of having provided it  
25 to several different professionals in the U.S. Embassy to

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1 assess it. And according to Professor Karl's testimony,  
2 several members of the ruling junta at that time, reviewed it  
3 and all were of the conclusion that this reflected a plan to  
4 assassinate Monseñor Romero.

5 And the writing in the lower portion was identified  
6 by Professor Karl, who spent a good deal of time with Roberto  
7 D'Aubuisson as the handwriting of Roberto D'Aubuisson. The  
8 top handwriting is that of his paymaster, Alvaro Saravia.

9 It's also noteworthy that Saravia and D'Aubuisson  
10 were segregated from the other 22 men that were arrested that  
11 day at the San Luis Finca. The two of them were taken to the  
12 Treasury Police. The minor characters, Amado Garay and  
13 company, were taken elsewhere.

14 Just five days later, everything changed. Instead of  
15 the moderate forces within the junta putting down a coup,  
16 which the Secretary of State, Edward Muskie, at the time,  
17 concluded was a coup attempt, five days later, Gutierrez and  
18 the hardliners had come to power and Majano was effectively  
19 out, and he was forced to flee the country just months later.

20 In addition, numerous declassified United States  
21 Government cables showed that Saravia continued to work  
22 closely with Roberto D'Aubuisson. Many of those cables refer  
23 to D'Aubuisson as the architect of Monseñor Romero's murder.

24 The document that we discussed earlier today, dated  
25 April 23, 1981, Exhibit 225, mentions Saravia with

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1 D'Aubuisson.

2 Similarly, documents dating from the May 1990  
3 interview with Saravia by U.S. government representatives

4 describes Saravia as working with D'Aubuisson's security unit  
5 in the Legislative Assembly in the early 1980s; 1983, 1984.

6 And then there is the matter of his extradition  
7 request after the Public Prosecutor, Jose Francisco Guerrero,  
8 in 1985, had blocked one investigation. A new investigative  
9 commission was established in 1986, which led, ultimately, to  
10 the discovery of Amado Garay and his testimony in November of  
11 1987, which gave rise to Judge Zamora's extradition request.

12 That effort was put to an end in December of 1988,  
13 when now Judge Jose Francisco Guerrero, Chief Judge of the  
14 Salvadoran Supreme Court, issued a decision that found Amado's  
15 Garay's testimony patently uncredible because it was seven  
16 years old.

17 It does not cite any Salvadoran law in support of  
18 that proposition and, indeed, there is evidence that there is  
19 no salvadoran law that would support the notion that  
20 testimony, because it is seven years old, is per se,  
21 incredible. And indeed, it is noteworthy that none of those  
22 judges on the Supreme Court had ever assessed his credibility  
23 themselves.

24 Finally, we have the documents from May 14, 1990,  
25 concerning Mr. Saravia's effort to regularize his immigration

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1 status and negotiating concerning his knowledge of the Romero  
2 killing.

3 In addition to Saravia's clear involvement in the  
4 killing of Archbishop Romero, there is a wealth of evidence  
5 that makes clear that D'Aubuisson and Saravia acted with the  
6 apparent authority and under the color of law of the  
7 government of El Salvador.

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8 First, we have the professional testimony of  
9 Ambassador White. He was quite unequivocal in that regard and  
10 he was there at the time.

11 We have the expert testimony of Professor Karl, who  
12 has made a study of this matter that is quite exhaustive, and  
13 there is the wealth of declassified U.S. government documents  
14 that are all consistent on this point.

15 As Professor Karl pointed out, the U.S. government  
16 does not customarily release and declassify documents that  
17 name names without there being full confidence that those  
18 statements are accurate.

19 The death squads operated with the financial and  
20 logistical support of the Salvadoran Armed Forces, and in  
21 particular, that death squad that conducted the assassination  
22 of Archbishop Romero did so.

23 Just one example, there is a 1984 CIA document that  
24 was prepared for Vice-president Bush's meeting, or shortly  
25 thereafter, that is quite up front about D'Aubuisson's

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1 involvement in right-wing terrorist activities and his  
2 involvement, close involvement with the assassination of  
3 Archbishop Romero and his close involvement with the Security  
4 Forces and Armed Forces of El Salvador.

5 Death squads were incorporated into the military and  
6 included both civilians and military officers working off  
7 duty. And that's consistent with the testimony of Amado  
8 Garay, referring to the so-called civilians Saravia and  
9 D'Aubuisson, again, unconsciously and naturally as "Captain"  
10 and "Colonel."

11 In addition to the abundance of evidence and what has  
12 become common knowledge of the death squad's close involvement  
13 with government forces, there is the fact that the government  
14 of El Salvador repeatedly conspired to cover up the  
15 responsibility for the assassination thereafter. In the  
16 immediate wake of the killing, the National Police, contrary  
17 to standard operating procedure, did not provide security at  
18 the autopsy of Archbishop Romero. There was a large crowd  
19 there. The police did not provide security.

20 Hours after Romero's body had been taken to the  
21 Policlínica hospital, armed soldiers in camouflage uniforms  
22 filled the chapel and surrounding areas. While the area was  
23 militarized, and we have heard Father Cortina on this issue,  
24 they, nonetheless, allowed the nuns and sick people to hold a  
25 witness who had the best witness of what happened, the El

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1 Diario de Hoy photographer, and they allowed a strange man,  
2 Father Cortina, to enter the crime scene and take the  
3 photographer away with the camera and evidence. Clearly,  
4 these officers were not interested in gathering the evidence  
5 or investigating the crime.

6 And then there is testimony of Judge Ramirez Amaya,  
7 who testified to being at the crime scene a few hours later  
8 with the National Police, who, again, contrary to the law and  
9 standard operating procedure, actually refused to assist Judge  
10 Ramirez Amaya in investigating the chapel as a crime scene.

11 Three days later, the National Police attempted to  
12 murder Judge Ramirez Amaya. Ten minutes after the attempted  
13 assassination against him, a National Police inspector called  
14 Ramirez Amaya and expressed surprise that he was still alive

15 and knowledge about the recent attempt.

16 And indeed, marked National Police vehicles were  
17 parked on the street outside of his house and they did not  
18 move, despite what was described as quite a gun fight, because  
19 remember, Judge Ramirez was firing back with his shotgun.  
20 This was not a couple of shots from a silencer. This was a  
21 gun battle. And the police sat in the car, according to a  
22 neighbor who identified that car.

23 All of this confirms a conclusion that the United  
24 Nations Truth Commission reached: "In the 1980s, it was  
25 dangerous to be a judge in El Salvador." And, indeed, the

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1 Truth Commission noted that 28 judges were killed during this  
2 time.

3 Reflecting the government's contempt for Archbishop  
4 Romero and his people in mourning, bombs were thrown from the  
5 National Palace at the funeral and they were thrown from the  
6 National Palace, a restricted government building -- and we  
7 have heard multiple witnesses testify to that -- in the crowd  
8 of approximately 80 to 100,000 people that were gathered there  
9 for the funeral. As many as 40 were killed and 200 injured in  
10 the ensuing chaos.

11 Even after that initial thwarting of any pursuit of  
12 justice, there were repeated steps taken by those in power to  
13 thwart any attempts to obtain justice in this case.

14 In 1985, Jose Francisco Guerrero, D'Aubuisson's  
15 personal lawyer, now in the role of the Public Prosecutor,  
16 submitted the already discredited Pedro Lobo statements to the  
17 court, the Fourth Criminal Court.

18           A few years later, this same man, acting as the Judge  
19 of the Supreme Court, put an end to the one significant effort  
20 to seek justice in this case against Saravia, the extradition  
21 request. That decision of the Salvadoran Supreme Court of  
22 December 1988 does not establish claim preclusion, because  
23 they are different parties. It, similarly, does not establish  
24 issue preclusion, because that decision is simply not entitled  
25 to comity.

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1           Its rather nonsensical analysis with regard to the  
2 credibility of the key witness, Amado Garay, its over reaching  
3 decision, because it did not simply order the withdrawal of  
4 the extradition request, but actually ordered the dismissal of  
5 the case against Saravia entirely and, finally, the strong  
6 indicia of bias, as documented in Ambassador William Walker's  
7 cable of October 1998, Exhibit 96, all conclusively establish  
8 that that decision is not entitled to comity by this Court.

9           In addition, we have testimony from Maria Julia  
10 Hernández and Judge Amaya that no judge was willing to serve  
11 as a private prosecutor in this case, which was an option if  
12 the Public Prosecutor would not take the case. Similarly,  
13 there was no civil remedy in El Salvador absent a criminal  
14 prosecution.

15           And as Professor Roht-Arriaza has testified,  
16 virtually all of these potential prosecutions were rendered  
17 moot by the March 20, 1993 amnesty law, adopted just five days  
18 after the Truth Commission Report was issued and subsequently  
19 upheld by the Salvadoran Supreme Court, as we have already  
20 discussed.

21           Thus, the evidence is clear: Saravia is liable for  
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22 extrajudicial killing under the Torture Victims Protection  
23 Act.

24 That Act establishes: "Liability for an individual  
25 acting under actual or apparent authority, or color

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1 of law, of any foreign nation, subjects an individual  
2 to extrajudicial killing."

3 "Extrajudicial killing" is defined for the purposes  
4 of this Act, the TVPA, as "a deliberate killing not  
5 authorized by a previous judgment announced by a  
6 regularly constituted court."

7 That certainly is the case here.

8 Saravia is also liable for extrajudicial killing  
9 under the ATCA. The United States Supreme Court in the recent  
10 *Sosa v. Alvarez-Machain* case stated, quote:

11 "The TVPA establishes an unambiguous modern basis for  
12 federal claims of torture and extrajudicial killing,"  
13 unquote.

14 Thus, it is quite clear that extrajudicial killing is  
15 actionable as a violation of an international norm that is  
16 sufficiently "specific, universal and obligatory" to give rise  
17 to a claim under the ATCA.

18 In addition to his liability for extrajudicial  
19 killing under both the TVPA and the ATCA, Saravia is liable  
20 for crimes against humanity under the ATCA.

21 As Professor Roht-Arriaza has testified, crimes  
22 against humanity are actionable under the ATCA. They meet the  
23 "specific, universal and obligatory" standard for  
24 international claims to be recognized and actionable under



25 federal common law. At least two United States courts have so

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1 held. Both the Mehinovic court and the Wiwa court have  
2 recognized crimes against humanity as actionable under the  
3 federal common law for which the ATCA provided jurisdiction.

4 Similarly, again, Professor Roht-Arriaza has  
5 discussed, there is a wealth of case law from prospective  
6 foreign tribunals, such as those established for the former  
7 Yugoslavia and Rwanda, all recognizing crimes against humanity  
8 as a violation of specifically universal and obligatory  
9 international standards.

10 Alvaro Saravia's involvement in the assassination of  
11 Archbishop Romero does constitute a crime against humanity.  
12 As we have learned, the Rome Statute is the most recent  
13 codification of crimes against humanity in Article 7 of that  
14 statute.

15 while the U.S. is not a party, and Professor  
16 Roht-Arriaza has explained, the U.S. played a leading role in  
17 the articulation of crimes against humanity in the Rome  
18 Statute, which is, in effect, a codification of preexisting  
19 conventions that date back to the Nuremberg trials, so this is  
20 not a new piece of international law by any means. It is a  
21 well established crime.

22 The four elements of the crime against humanity are:  
23 One, a violation of one of the enumerated acts. And  
24 as she explained, there is, indeed, a long list of acts that  
25 constitute crimes against humanity. Murder is at the top of

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1 the list.

2 That act needs to be committed as part of a  
3 widespread or systematic attack. And she also explained that  
4 it could be in accordance with a plan or policy.

5 Here, too, the evidence is very clear that the  
6 attacks by the military and their death squad associations  
7 were both widespread and systematic. Archbishop Romero  
8 himself documented and denounced before his death these  
9 widespread and systematic attacks upon the poor, the church  
10 and others in El Salvador. And in addition, this widespread  
11 and systematic attack has been documented in numerous  
12 declassified CIA and Department of State documents.

13 The third element is that those attacks be directed  
14 against a civilian population. And, again, unquestionably, in  
15 El Salvador in the late 1970s and the early 1980s, there was a  
16 civilian population under attack by government forces. And in  
17 particular, those associated with the Church and believed to  
18 be associated with, quote unquote, "subversive elements," came  
19 under particular fire by these forces.

20 Finally, the act must be committed with knowledge.  
21 And again, there can be no question of Saravia's knowledge.  
22 In addition to his own statements, as recorded in those 1990  
23 documents, there is the wealth of circumstantial evidence and  
24 the direct evidence of Amado Garay. He carried out the order  
25 issued by Roberto D'Aubuisson. He planned it. He organized

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1 it. He ensured that it was implemented by providing a gun, a  
2 shooter, a car and his own trusted driver.

3 As we have heard from Professor Roht-Arriaza just a

4 little while ago, it is also quite clear from the  
5 international law on this subject that a single act by an  
6 individual, when taken within the context of a widespread or  
7 systematic attack against a civilian population, does indeed  
8 constitute a crime against humanity.

9 That is the case here, and it is certainly the case  
10 that the attack on Archbishop Romero precisely because of who  
11 he was and the prominence of his position within El Salvador  
12 at that time, the one critical bridge between the different  
13 and increasingly polarized elements of that society, that  
14 individual act, perhaps more than any other, is emblematic of  
15 a crime against humanity. For in attacking Romero, they did  
16 indeed attack the whole El Salvadoran society.

17 So what are the damages for such a crime? Monseñor  
18 Romero was the bridge between the increasingly polarized  
19 elements of that society on the brink of civil war. As you  
20 heard from both Ambassador White and Professor Karl, it did  
21 not have to go that way. It was still possible to pull the  
22 country back from the brink of war.

23 But the far right wanted war. The hardliners refused  
24 to make any concessions. Even the most minimal land reform  
25 was anathema to them. To them, the moderate middle was more

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1 dangerous than the tiny and fractured armed left. And so they  
2 attacked that middle violently and systematically. Without  
3 question, the killing of Archbishop Romero was a catalyst to  
4 war.

5 And what damage that war caused. As Professor Karl  
6 has testified, more than 75,000 civilians were killed, many in  
7 the most horrendous ways in the first years following the

8 assassination of Romero. While over a thousand were killed in  
9 1979, in 1980 the killing went off the charts, with more than  
10 11,000 killed. And in 1981, the orgy of blood-letting  
11 intensified further, with more than 16,000 civilians killed.  
12 And so many of those were those who worked with the poor, the  
13 catechists, the priests, the nuns, the union activists,  
14 doctors, day care workers, like Esther Chavez.

15 The Truth Commission concluded that the military and  
16 death squads, same ones that killed Romero, were responsible  
17 for almost 85 percent of these deaths. And in addition to  
18 those that died, more than a million, roughly one-fifth of the  
19 population, was forced into exile and another 600,000  
20 internally displaced.

21 As Professor Karl described, the economic and  
22 infrastructure costs on of this war on this small country were  
23 staggering. In truth, it has been a lost generation of  
24 development.

25 And yet, of course, the numbers cannot capture or

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1 express the many forms of suffering caused by the killing of  
2 Archbishop Romero.

3 As we discussed in our -- in detail in our filing  
4 yesterday, the case law in this area provides for six factors  
5 for evaluating damages in these kinds of cases. I will  
6 address them in order. Well, a little bit out of order. I  
7 will address each of the six.

8 First, the brutality of the act. The killing of  
9 Archbishop Romero was not brutal in a bloody way, as so many  
10 other atrocities in El Salvador were. A sniper's bullet is

11 almost benign compared with the tales of torture and  
12 mutilation that emanated from that stricken land. Yet  
13 Archbishop Romero's killing was exceptionally brutal due to  
14 the powerful symbolism of the deed. The priest was killed  
15 while celebrating Mass, the intentional profaning of that  
16 sacred space, an attack upon a faith shared so deeply by so  
17 many in that country. That was immediately understood by all.  
18 And that was the point.

19           Second, the egregiousness of the defendant's conduct.  
20 Saravia organized the killing. It was intentional and part of  
21 the systemic plan. It was widespread. This was not the act  
22 of a reluctant soldier following orders and certainly was no  
23 crime of passion. We heard Garay testify that Saravia had  
24 declared the priests were their worst enemies. And remember,  
25 these were men that referred to themselves as military

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1 officers. It was Captain Saravia referring to the priests as  
2 their worst enemy. No, this was an intentional act of terror  
3 and part of a widespread and systematic effort to terrorize  
4 the civilian population.

5           The third factor is the unavailability of criminal  
6 remedy. As we have heard repeatedly from numerous witnesses,  
7 Judge Ramirez Amaya, Maria Julia Hernández and Professor  
8 Roht-Arriaza and Professor Karl, there has been no hope for  
9 justice in this case in El Salvador.

10           The killers amnestied themselves just five days after  
11 the Truth Commission Report was released. The ruling party  
12 was founded by Roberto D'Aubuisson.

13           While there are still a few fighting the good fight  
14 in El Salvador, doing what they can, persons such as Judge

15 Ramirez Amaya, they are a few, and their options are very  
16 limited, particularly in a case like this, as emblematic as it  
17 is.

18 Fourth factor for assessing damages is the extent to  
19 which it can deter others from committing similar acts. As we  
20 have said at the outset, this case is part of a growing  
21 movement toward accountability in the Americas.

22 while we were in this hearing, just last week,  
23 Chile's highest court that ruled that Augusto Pinochet can  
24 stand trial. Professor Roht-Arriaza testified to some of the  
25 related procedures.

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1 The ATCA cases for civil damages represent our  
2 nation's contribution to this international effort to end  
3 impunity. This case can send a message that human rights  
4 abusers are not welcome in this country. As officers of the  
5 court, and as instruments of the judicial system here, we have  
6 a responsibility to send such a message.

7 Fifth factor is the international condemnation of the  
8 act. There is no question but this case, the killing of  
9 Romero was greeted by the world with shock and horror.

10 In addition to the headlines from the times, dozens  
11 of declarations have been submitted in this case testifying to  
12 the impact that this killing had. Three Nobel Peace Prize  
13 laureates from the Americas, as some examples, provided  
14 declarations: Adolfo Perez Esquivel, who experienced  
15 Argentina's Dirty War, submitted such a declaration condemning  
16 this act. Rigoberto Menchu, who described a similar level of  
17 persecution of the Church in her neighboring Guatemala,

18 submitted a similar declaration condemning this act.  
19 President Oscar Arias of Costa Rica, who worked for peace in  
20 that period during the 1980s, submitted a declaration  
21 condemning this act.

22 And here in the United States, we have heard from two  
23 members of Congress, Michael Barnes of Maryland, and George  
24 Miller of California, as well as numerous leaders and lay  
25 people from the religious communities, all condemning this

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1 act.

2 And from Europe, we have heard from priests and  
3 academics and we have learned of Romero's place along the ten  
4 modern martyrs that grace the entrance to Westminster Abbey in  
5 London.

6 And just yesterday we heard from one more voice and  
7 one more continent. Archbishop Desmond Tutu of South Africa,  
8 who also was awarded the Nobel Peace Prize in 1984 for his  
9 nonviolent opposition to the Apartheid regime, submitted a  
10 declaration and I would like to read a few paragraphs from it  
11 as I touch on this.

12 Archbishop Tutu wrote:

13 "I never had the privilege of meeting Archbishop Oscar  
14 Romero, but I certainly knew of him and his efforts  
15 to speak out against the human rights abuses  
16 committed by the then government of El Salvador.

17 "I felt we were partners together in similar  
18 situations, speaking the word of God to encourage our  
19 people who were battered, beaten and oppressed by  
20 governments whose role should have been to nurture,  
21 protect and uplift their citizens.

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22 "In 1980, when Oscar Romero was assassinated, I was  
23 General Secretary of the South African Council of  
24 Churches. It was a great shock to us, even though we  
25 knew that many of his clergy had been attacked,

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1 killed, or been disappeared. We never believed that  
2 a man with such passion and compassion would be  
3 attacked and shot.  
4 "His assassination in public with his people was  
5 reminiscent of the assassination of another great  
6 man, Mahatma Gandhi. Such a brutal act demonstrated  
7 the arrogance of the perpetrators, their total  
8 disrespect for life and confidence in their impunity.  
9 "This confidence stands on the support they enjoyed  
10 from a foreign nation, the most powerful in the  
11 world. It is this collaboration that allowed those  
12 in power in El Salvador to ignore their people and  
13 seek their own political ends. Such powerful  
14 alliances served the interests of the few and have  
15 led to the misery and suffering of millions in many  
16 developing countries. Tragically, El Salvador has  
17 been such a victim.  
18 "Oscar Romero was a true martyr. He died for his  
19 faith and for what that says about caring, sharing,  
20 love and freedom. He is a role model and an example  
21 of what it means to live out one's faith at whatever  
22 cost. He is one of those great men to be remembered  
23 and revered for his defense of human rights and  
24 belief that this is a moral universe. Evil and



25 oppression do not have the last word. They will be

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1 overcome by their glorious opposites, love and  
2 freedom. This case is evidence that this is so.  
3 "The purpose is not retribution, but to seek the  
4 truth, and to restore the moral balance. This case  
5 is a message to those who would hold on to power and  
6 profit and who turned the military might of their  
7 country on their own people to crush them. The voice  
8 of people cannot be silenced forever. Righteousness  
9 will prevail. It is the truth that will ultimately  
10 make us free."

11 The last factor when assessing damages is that of  
12 providing redress. To the plaintiff, to the country, and to  
13 the world.

14 The plaintiff's declaration has expressed how much  
15 Archbishop Romero's family has suffered, and we have heard  
16 testimony from many others. And here today with us are many  
17 who, like Francisco Acosta, seek healing through the  
18 achievement of justice and the proclamation of truth.

19 And yet there are others for whom we today seek  
20 redress. On the quiet leafy grounds of a park in San  
21 Salvador, there is a memorial, a simple stone wall. It is  
22 shortly after 6:00 p.m., a warm evening. The noise of the  
23 bustling city is muted.

24 Before the wall, there is a campesina, a peasant  
25 woman, Maria. She is searching the wall for the engraved

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1 names of her loved ones. Her son, who is disappeared. Her  
2 niece, who was found dead along the road, her thumbs tied  
3 behind her back. Her cousin, who fled to the U.S. only to die  
4 crossing the Arizona desert.

5 Maria's fingers trace the stone's depressions, and  
6 she does not find their names. There are over 23,000 names  
7 engraved on that wall. There were many thousands more whose  
8 names are not known, who are remembered only by those who  
9 loved them and survived.

10 Maria's gnarled old fingers seek out the name of  
11 another loved one, whose name is there, "Monseñor." And once  
12 again, he is the "Voice of the Voiceless, the Name for Those  
13 with No Name."

14 There is a practice in Latin American countries of  
15 pronouncing the presence of the departed: "Monseñor Romero:  
16 Presenté." Monseñor Romero is present among us. He has been,  
17 as he predicted, resurrected in the people of El Salvador.  
18 His legacy is indeed great.

19 But what is that legacy? In addition to being a  
20 beacon of hope, a model of courage, faith and dignity and  
21 dedication to human rights, as Archbishop Tutu and so many  
22 others have attested, his is the paradigmatic case of  
23 impunity. As such, he symbolizes what in Spanish is known as  
24 "El Dolor," the sadness and pain, the grief and despair of  
25 that campesina woman and so many like her.

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1 By achieving justice here today, we can help to  
2 ensure the resurrection of the living Romero, the one who  
3 stood bravely, yet humbly, in defense of human rights, who

4 spoke truth to power out of a deep and abiding love for the  
5 dignity of all human beings. And such an act of justice might  
6 itself be one of redemption, of resurrection.

7 Let us act then to achieve justice. For Monseñor  
8 Romero and all those for whom he still gives a voice.

9 Monseñor Romero: Presenté.

10 Thank you, your Honor.

11 THE COURT: Before you sit down.

12 MR. Van AELSTYN: Yes.

13 THE COURT: You have not suggested a figure nor have  
14 you addressed the subject of punitive damages, which you seek.  
15 And the most current jurisprudence of the Supreme Court and  
16 the Ninth Circuit, I think the last case that addresses the  
17 issue on the Supreme Court level is State Farm Mutual  
18 Automobile Insurance Company versus Campbell, 538 U.S. 408.

19 And to summarize that, in a case where compensatory  
20 damages are awarded, the measure, if any, of punitive damages,  
21 where, if we use the standard of American law, which is  
22 malice, fraud, oppression and intentional disregard of the  
23 known rights of others, the Supreme Court now talks in terms  
24 of multiple single digit multiples, and talks in terms of  
25 looking to precedential and related kinds of remedial law that

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1 would talk about penalties.

2 Because the concept of exemplary damages is not only  
3 to punish, but it is to set the example to those who would act  
4 in similar ways or adopt the means of malice, fraud,  
5 oppression or intentional disregard of rights.

6 But, nonetheless, is that a doubling, a tripling, a  
7 quadrupling? There is a limit, and it's not defined. And as

8 I say, you have not stated any amount relative to your claim  
9 for damage on behalf of your client, and I give you the  
10 opportunity to do so now.

11 MR. Van AELSTYN: Thank you, your Honor. I  
12 appreciate the opportunity, but we will decline to give a  
13 figure. We do not feel qualified to put a monetary figure on  
14 the kind of damages that we have described in this case, and  
15 which the evidence shows is beyond measure.

16 I apologize, your Honor, but I believe that --

17 THE COURT: There is no apology necessary. For those  
18 who are not learned in the law and are present, the sole  
19 remedy that the law provides for a loss, where life is taken  
20 without cause, is money. The law calls the remedy "damages,"  
21 and it attempts to quantify the unquantifiable.

22 And you don't offer a figure. It will be my duty,  
23 depending upon the outcome of the case, to then fix the  
24 amount. Thank you very much, Mr. Van Aelstyn.

25 Is the matter now submitted for decision?

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1 MR. Van AELSTYN: Yes, your Honor.

2 THE COURT: All right, I'm going to provide a partial  
3 oral statement of decision. I'm going to follow this with  
4 written findings of fact and conclusions of law.

5 We have, through no fault of anyone, reached a time  
6 of the day where we have a limit on time because of,  
7 unfortunately, the availability of the court staff.

8 And so I will say what the law requires to be said  
9 and the findings that are necessary and will be integral to  
10 the supporting, both factually and legally, of the decision in

11 the case, and then the amplification of all of the reasons and  
12 the identification of all of the evidence will be contained in  
13 the written findings because, for the reason that I have just  
14 stated, we are not going to have the time that would be  
15 appropriate and necessary to fully cover the issues.

16 There are two concerns in approaching a case that  
17 involves issues that go beyond the law. And in some ways, the  
18 law is inadequate, and it does not have a voice to recognize  
19 the kinds of concerns that have been presented through the  
20 testimony of witnesses who actually lived and experienced and  
21 know what this case concerns.

22 The case is discrete. The case addresses and seeks a  
23 specific remedy under defined statutory law. It is a wrongful  
24 death action brought by a plaintiff who, the Court has made a  
25 finding for reasons that are factually justified but will not

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1 be stated in public, because of the concerns that are  
2 expressed in other findings, the plaintiff in this case brings  
3 an action for the wrongful death of Alvaro -- I'm sorry, for  
4 the wrongful death of Archbishop Romero against Alvaro Rafael  
5 Saravia.

6 The Alien Tort Claims Act of the United States and  
7 the supplementation of that Act by the Torture Victim  
8 Protection Act of 1991 provide for cases of extrajudicial  
9 killing a civil action, which can result, if the required  
10 elements are proved, in a recovery of damages to a person who  
11 may be a claimant in an action for wrongful death. It being  
12 acknowledged that we are not concerned with a case where an  
13 individual's legal representative is presenting the claim.

14 The case law, the House Judiciary Committee Report on  
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15 the Torture Victim Protection Act, as well as the Alien Tort  
16 Claims Act have recognized, and I think it relatively  
17 indisputable that any person who may be a claimant in an  
18 action for wrongful death may bring suit.

19 And there are at least three sources of law that can  
20 be relied upon for the definition of the eligibility of that  
21 person. The Court may look to state law. The Court may look  
22 to federal law. And the -- although there are justices just  
23 as there is a split on the Supreme Court about whether federal  
24 common law can be, if you will, expanded and defined beyond  
25 statute.

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1 And then under choice of law analysis, the law of the  
2 origin of the cause giving rise to the wrongful death, in this  
3 case, the law of El Salvador, would be another source of the  
4 right of the plaintiff to maintain this case.

5 There is, the Court finds, no relative disagreement  
6 in the case law that, based on the relationship of the  
7 plaintiff to the decedent, that whether under state law,  
8 federal law of the United States, or the law of El Salvador,  
9 the individual who maintains this action stands in such a  
10 relationship to the decedent that the standing would be  
11 recognized under any interpretation, and the Xuncaxv,  
12 X-U-N-C-A-X-V, versus Gramajo case, G-R-A-M-A-J-O, 886  
13 Fed.Supp 162, and the Estate of Cabello, C-A-B-E-L-L-O, versus  
14 Fernandez-Larios, 152 Fed.Supp 2d 1345, provide very adequate  
15 discussion of the legal right of the plaintiff to maintain  
16 this case.

17 The elements, if you will, that must be satisfied,

18 once we determine that a plaintiff in this case has standing,  
19 which I find as a matter of fact and law has been satisfied,  
20 then the requirements of the statutes must be met.

21 And here there is a -- an alternative remedy that is  
22 sought under two statutory provisions. Under the Alien Tort  
23 Claims Act, as has just been stated, a remedy exists for  
24 extrajudicial killing. And under the Torture Victim  
25 Protection Act, both a remedy for extrajudicial killing or for

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1 crimes against humanity is provided.

2 The discussion of the technical requirements of the  
3 law the Court will defer at this time in the interest of time,  
4 although I intend to make those findings.

5 An extrajudicial killing, to paraphrase, is the  
6 taking of a human life without the due process of law, where  
7 there has been no finding by a competent authority after  
8 notice and opportunity to be heard and using a duly  
9 constituted and lawful procedure to determine that there is a  
10 justification for the taking of life, the cold blooded  
11 assassination of the Archbishop of a nation could not be a  
12 better example of an extrajudicial killing.

13 The crimes against humanity requirements are defined.  
14 We heard most recently from Professor Roht-Arriaza. And,  
15 again, I'm going to not go through the elements, but to find  
16 that in this case, the facts support the determination that  
17 the second alternative ground is met.

18 Once the statute that provides the cause of action,  
19 which is the legal term for the claim as just defined, is  
20 potentially applicable, then the facts must be analyzed and a  
21 determination made whether the extrajudicial killing was

22 accomplished by the defendant in this case specifically, and  
23 that that was the cause of damage.

24 Those are the tort elements under the Alien Tort  
25 Claims Act. And in the extrajudicial killing and crimes

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1 against humanity, there must be the additional evidence that  
2 the pattern and policy of a governmental entity or a regularly  
3 constituted force that was accomplished under color of law  
4 resulted in the commission of a crime, and murder is one of  
5 the historically recognized types of acts that fits the  
6 definition of a crime against humanity.

7 And here, there is more than substantial evidence to  
8 prove by a preponderance, which is the legal standard that  
9 applies in this case. The "preponderance of the evidence"  
10 means evidence that more likely proves, when considered  
11 against opposing evidence, that the fact to be proved is true.  
12 It can be visualized as the tipping of the scales; if the  
13 scales of justice are equal, if the evidence is sufficient to  
14 make the scales tip in favor of the proponent's claim, then  
15 the evidence is said to preponderate.

16 And here the evidence shows that there was a  
17 consistent and unabating regime that was in control of the  
18 country of El Salvador long before the 70s, but for our  
19 purposes, what is relevant is from the late 70s, and that  
20 although this regime had different leaders at different times  
21 and may have taken different political forms, was,  
22 essentially, although it might not be defined as a  
23 dictatorship that was focused on a central identified  
24 authority, it functioned as a militarily-controlled government



25 that engaged in systematic and continuous violations of human

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1 rights that were effectuated for the purposes of perpetuating  
2 the concentration of land and wealth in an oligarchy that  
3 served to perpetuate the control and the dominance of the  
4 military over society for the repressive purposes of stifling  
5 speech, of preventing the normal exercise of civil liberties,  
6 and from preventing the people of El Salvador from realizing  
7 the hopes and dreams that most members of humanity in an  
8 ordered and civilized society premised on liberty and the rule  
9 of law enjoy.

10 Those rights were not enjoyed because of a repressive  
11 regime which utilized actively and continuously the means and  
12 methods of murder, torture, kidnapping, and other physical and  
13 psychological weapons to create a state of fear, intimidation,  
14 coercion, and repression.

15 And it was the position and the role of the decedent  
16 in this case, Archbishop Romero, in, as the evidence has  
17 established, being a voice that stood for independence and  
18 that would not be intimidated nor silenced in the light of  
19 what he knew was a threat to his very existence. He predicted  
20 his own death. He knew he would be killed and he was killed  
21 by the forces that had proved continuously that they were  
22 ready, willing, able and continued to engage in that conduct.

23 The question then turns to recognizing that the  
24 extrajudicial killing and the crime against humanity, which  
25 the extrajudicial killing also satisfies the requirements of,

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1 whether the responsibility for that can be linked to the  
2 defendant in this case.

3           There is one defendant. Roberto D'Aubuisson's estate  
4 is not before us. None of the others who were in the  
5 military, perhaps the acting president, others or the  
6 president-in-fact at the time, are not here.

7           And that brings us to another legal issue. That is,  
8 to maintain the claim, not only must there be standing, not  
9 only must the elements of the statute, the legal elements,  
10 which I have gone over, be satisfied, but there is a time  
11 requirement.

12           And statute of limitations is most recently,  
13 according to the Ninth Circuit, taken from the Torture Victim  
14 Protection Act, it is a ten-year statute of limitations. And  
15 the statute of limitations runs ordinarily from the time of  
16 the act that is known to give rise to the claim. And here, of  
17 course, nothing could have been more public and more known to  
18 the world than the assassination of the Archbishop of the  
19 nation of El Salvador. And so why is the case brought 23  
20 years later?

21           And at the same time, another issue has to be faced.  
22 And that is, even though he isn't here, we haven't seen him,  
23 we haven't heard him, but under the law of the United States,  
24 no person can be sued and relief cannot be given by a court  
25 without due process of law being afforded to the person

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1 against whom the remedy is sought.

2           Of course, we have here the ultimate juxtaposition of  
3 the means and the methods by which the regime in El Salvador

4 operated, the antithesis of due process, where summary  
5 executions and the summary dispensation of the remedies that  
6 they imposed upon the populous were effectuated. But here in  
7 this court, even the worst of the worst are entitled to due  
8 process of law and all the protections that the Constitution  
9 of our nation affords, and so should it be.

10 The Court finds that in this case the defendant,  
11 Alvaro Rafael Saravia, is in fact properly before the Court  
12 for the following reasons.

13 The Federal Rules of Civil Procedure and Rule 4  
14 provide that the means of effectuation of service of the  
15 summons and complaint, the means by which personal  
16 jurisdiction is obtained over a party defendant, can be  
17 effectuated by means provided under state law.

18 The state law provides for substituted service to be  
19 effectuated by leaving the summons and complaint at the  
20 residence of or a place where communications, such as mail,  
21 are received by a person.

22 The evidence here establishes, through the process  
23 server's declaration, a Miss Kaufman, that direct contact was  
24 made with a Ms. Olssen, who identified Mr. Saravia, the  
25 Saravia whom she received mail for, who had lived there, who

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1 apparently she persuaded, according to the process server she  
2 told, to move from Miami, Florida to Modesto.

3 We know that when, in the 1980s, the -- it was in the  
4 1983 to 1985 time frame, when the defendant left El Salvador,  
5 he first moved with his family to Miami, Florida. Apparently,  
6 he is no longer united with his family, but lived, the  
7 evidence establishes by a preponderance, in Modesto.

8 He authorized Ms. Olssen to receive communications  
9 for him, and, therefore, the service on her of the summons and  
10 complaint and the mailing within 30 days of the summons and  
11 complaint, as prescribed by the law of the State of  
12 California, is proof, in accordance with the requirements of  
13 Federal Rule of Civil Procedure 4, that satisfies us that it  
14 is the same name, the same Social Security number, a former  
15 Captain in the Salvadoran Air Force. It is an individual who  
16 is the same as was subject to extradition proceedings in 1986  
17 and '87 in Miami, where he was incarcerated for a period of  
18 time while the extradition proceedings were in progress.

19 Therefore, the Court is satisfied that the right  
20 Alvaro Rafael Saravia is before this case. And specifically  
21 on December 16th of 2003, Ms. Olssen, who received the summons  
22 and complaint told the process server that she knew  
23 Mr. Saravia had a wife, a daughter and a son in Miami. That  
24 he rarely talked with his children. That she knew that  
25 Mr. Saravia had been in the Air Force in El Salvador, and that

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1 he had arrived in Modesto in 1990.

2 That Ms. Olssen had met Mr. Saravia in Miami,  
3 Florida, that she had been introduced to Mr. Saravia by her  
4 brother, Julio Viltoro (phonetic), and that she had told  
5 Mr. Saravia about the kind of city Modesto was and that  
6 motivated him to move to Modesto, California.

7 So the Court is satisfied that there is substantial  
8 evidence to find the summons and complaint has been served in  
9 accordance with the requirements of law and that the personal  
10 and subject matter jurisdiction both exist in this case to

11 justify a determination of the merits of the claims.

12           The next issue is the timeliness of the case under  
13 the tolling statute. And as we discussed before the recess,  
14 it must be shown that extraordinary circumstances exist where  
15 you know you have legal rights and you know you must pursue  
16 those legal rights, extraordinary circumstances such as the  
17 unavailability due to war or some other extraordinary concern  
18 that would prevent your access to a court.

19           And here, the plaintiff relies on the evidence that  
20 the court finds has established by a preponderance that the  
21 Salvadoran justice system, such as it was, and I intend no  
22 disrespect to the Nation of El Salvador, I am only commenting  
23 on the evidence as it was presented and will make factual  
24 findings, not any political statement.

25           That is one of the subjects that we discussed with

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1 Professor Roht-Arriaza, that under our separation of powers,  
2 courts don't make political decisions, courts don't enforce  
3 laws, they interpret laws.

4           And here, the evidence establishes by a preponderance  
5 that due to the climate of repression, reprisal, coercion and  
6 intimidation, the active operation of life-threatening  
7 activities by the organized military that acted for the  
8 government, which included, but is not limited to, the  
9 National Police and the Security Police -- we didn't hear  
10 about too many repressive actions by the Treasury Police, but  
11 those two we certainly did, the National Police and the  
12 Security Police.

13           we also have substantial evidence that in the  
14 investigation of the murder of the Archbishop, that those

15 police forces actively and intentionally abdicated their  
16 functions of investigating and of pursuing the identification  
17 of the perpetrator or perpetrators responsible for the  
18 assassination; that they, in effect, by their actions and some  
19 words communicated to Judge Amaya of the Fourth Criminal Court  
20 of El Salvador, who was the investigating judge under  
21 Salvadoran law and was attempting to discharge his legal  
22 responsibilities, to gather evidence, to proceed with the  
23 autopsy, to prepare the case with -- it should have been with  
24 the assistance of the Security Police and the National Police  
25 for presentation to the Public Prosecutor, he was thwarted and

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1 obstructed by both the inaction and the nonapplication to  
2 purpose by the Security Police and the National Police, who  
3 essentially, took no actions to conduct what would be a  
4 normally constituted investigation.

5           As Judge Ramirez Amaya described, there was no  
6 securing of the crime scene, there was no gathering of  
7 evidence, there was no interviewing of witnesses, there was no  
8 perpetuation of evidence through photographing. There was no  
9 attempt to preserve the integrity of the crime scene and any  
10 evidence gathered.

11           And, in fact, when he was called and asked to bring  
12 the evidence to the National Police, Judge Ramirez Amaya said  
13 because of the fact that he was not only afraid for himself  
14 but because authorities were not doing their jobs, he refused  
15 to turn over what evidence he had which consisted of the three  
16 bullet fragments that had been recovered from the body of the  
17 Archbishop.

18           The Court finds that there was an actual murder  
19 attempt on the life of Judge Ramirez Amaya, that his  
20 housekeeper was shot in front of him. Those bullets were  
21 intended for him, but struck her in the back.

22           That it was told by people he recognized -- I'm not  
23 going to take the hearsay declaration of the person on the  
24 street about the Security Forces cars that were out there  
25 because he didn't see them, but I will find that the evidence

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1 clearly establishes that a National Police person, who the  
2 judge's mother had helped get his initial position, told him  
3 that, "If they wanted to kill you, they would have killed  
4 you." And that, in effect, the inference that can be drawn  
5 from that is this is a warning.

6           However, the judge, with justification, knew his life  
7 was in danger and then left El Salvador for ten years. He was  
8 prevented from performing his judicial function.

9           And then I'm not going to go through step by step all  
10 that happens in the attempts to pursue the investigation. But  
11 the evidence supports strongly the findings that there was no  
12 good faith or legitimate endeavor by the Salvadoran government  
13 to pursue an honest and an investigation conducted with  
14 integrity that would seek the identification of the  
15 perpetrators.

16           Rather, the evidence shows that the government,  
17 including the court system, especially the Supreme Court and  
18 Judge Guerrero, did everything in their power to abdicate  
19 their judicial function, to ignore, to distort. They  
20 fabricated evidence. They produced a false witness who was  
21 offered, according to his statement, \$50,000 to, in effect,

22 accept responsibility for the assassination himself, although  
23 he was incarcerated at the time, which made impracticable his  
24 participation in the event and puts the lie to the attempted  
25 prevarication that apparently was being accomplished through

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1 the Public Prosecutor then, who later became the Presiding  
2 Judge of the Supreme Court of El Salvador, who found, based on  
3 evidence that was given by an eyewitness to the assassination  
4 and a coconspirator to the assassination, unreliable  
5 testimony, because it was, according to him, aged, seven years  
6 in age.

7           And, again, experts in the law of El Salvador have  
8 testified that there is no such, specifically Judge Amaya,  
9 that there is no such principle of El Salvadoran law that the  
10 time that passes -- of course, a memory can fade, other events  
11 can intervene, but given the nature of the circumstances and  
12 events of this assassination, the Court finds that that  
13 finding is unjustified either in fact or in law, and that that  
14 proceeding and the determination of the alleged unreliability  
15 of the witness Garay by that court is entitled to no weight  
16 because parties in this case and that case are different.

17           The court and tribunal in that case did not have the  
18 witness before it. It did not use any traditional or well  
19 recognized principles for the assessment of credibility,  
20 including motive, including opportunity, including the  
21 determination of whether compensation was offered, whether  
22 other benefits, whether any bias, whether allegiances, whether  
23 protection, whether other consideration was offered to the  
24 witness as would affect his testimony.



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1 evidence to support by a preponderance a finding that the  
2 defendant properly before this Court, Alvaro Rafael Saravia,  
3 is in fact responsible in law and fact for the wrongful death  
4 of Archbishop Romero.

5 The evidence establishes that Garay was a former  
6 military personnel. I don't remember him stating his rank,  
7 but he was not a commissioned officer. He was a personal  
8 driver for the defendant in this case.

9 The Court did have the opportunity to observe, to  
10 evaluate and to weigh the testimony of Garay. The Court had  
11 the opportunity to question Garay directly, and did question  
12 him directly, and finds that he hasn't testified just in this  
13 court.

14 He has given testimony or at least statements on  
15 three other occasions. That there is no material  
16 inconsistency in those statements; that independent  
17 corroboration and information in the form of Department of  
18 State, United States Department of State departments -- I  
19 should say documents and records, and statements made by  
20 Saravia himself link Garay to not only Saravia, but to death  
21 squad activities.

22 where, in this case, the witness testified, Garay,  
23 that he had driven on approximately 15 occasions where  
24 assassinations were carried out; that he was present initially  
25 at the home of Saravia, that there then ensued a direction to

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1 him whereby he was introduced to an individual, a bearded man  
2 who was tall, who he was told he would drive for.

3 He was provided a car, a red Volkswagen. He was  
4 directed -- at the time the introduction was through the  
5 defendant Saravia -- and the witness has testified that he  
6 drove the car, that he drove to a location which he  
7 recognized.

8 He recognized the Chapel of the Hospital of Divine  
9 Providence where Archbishop Romero was engaged in the service  
10 of the Holy Mass, and that he was told to lean down in the  
11 car. This is the driver Garay. That he heard an explosion.  
12 And that on the way to the church chapel, that he had been  
13 told by the shooter that the shooter was going to kill -- his  
14 assignment was to kill a priest.

15 And that they then drove back slowly, which again,  
16 shows the likelihood of the involvement of the government.  
17 There was no urgency, no fear of apprehension, no concern  
18 about police authorities intercepting them.

19 They returned and, within four days, in the presence  
20 of Garay, the defendant in this case, Saravia, reported to  
21 Major or Colonel, whichever he was, D'Aubuisson that the  
22 mission had been accomplished. Money was exchanged. And the  
23 Court makes a finding by preponderance that Saravia was the  
24 paymaster. I think it's colones, but I'm not sure of that  
25 pronunciation, for the medium of exchange in El Salvador, but

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1 it was a thousand of them, whatever they are, it was about 200  
2 U.S. dollars that was paid to the assassin.

3 And the Court finds that that evidence and the

4 documents support a finding that to be liable for the wrongful  
5 killing of another being, you don't have to pull the trigger,  
6 you don't have to be present, that you can plan, you can  
7 facilitate, you can aid, abet. And here the obtaining of a  
8 trusted and a reliable and competent driver, the payment of  
9 the assassin, the reporting to the mastermind, D'Aubuisson,  
10 all are what the law calls "overt acts," where two or more  
11 persons agree to engage in conduct which is unlawful.

12 The law recognizes that as conspiracy for which there  
13 is vicarious liability. vicarious liability, meaning that you  
14 are as responsible for the act, even though you don't commit  
15 it yourself, even if you are not present, even if you don't  
16 see it, you are jointly and severally as accountable and  
17 responsible as the person who pulls the trigger.

18 And here the defendant Saravia, I find, has been  
19 proved by a preponderance of the evidence to be a  
20 coconspirator, an aider and abettor, to be vicariously and  
21 actually liable in law and fact for the murder of the  
22 Archbishop, and that his conduct is the cause in law of the  
23 death, the wrongful extrajudicial killing and crime against  
24 humanity that the assassination of the Archbishop was.

25 Once the defendant has been found to have breached

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1 the duty to society not to kill people, once he has been found  
2 to be the active cause of the death which was wrongful, then  
3 the law turns to the inquiry: was there damage?

4 And in this case, the damage is multi-faceted and it  
5 is of a magnitude that is hardly describable. And as I have  
6 said already, the law can provide only dollars. It cannot  
7 restore. It can't build monuments, it can't hold services.

8 It can only say to the defendant: You are liable for what you  
9 have done, and for that, you must pay. And the only thing  
10 that we can in a civil court require that the defendant pay is  
11 money.

12 The law has a different way of valuing the life. It  
13 is true that the perpetrator takes the victim as the  
14 perpetrator finds the victim.

15 And here the evidence, in the form of the  
16 confidential affidavit of the plaintiff, shows that there was  
17 a close and a meaningful and a significant relationship of a  
18 lifetime between the plaintiff and the decedent who has been  
19 wrongfully killed. That deprivation is not only that are  
20 emotional, that are intangible, that are compensable in the  
21 sense that stature and advancement in life was affected, not  
22 to mention the mental state of having someone, and I can't say  
23 any more publicly, I will provide it in my written findings, a  
24 portion of which will be under seal, but here, the loss was  
25 substantial.

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1 The law looks not just to the accomplishments and the  
2 achievements, and I'm not going to take the time to make those  
3 findings because every witness and counsel have eloquently  
4 stated better than I can state the value of the Archbishop of  
5 El Salvador, Señor Romero, what he meant to his country and to  
6 the world.

7 And so here the compensation that is awarded cannot  
8 measure that. You can't account for such an individual. And  
9 what his contribution to society and to the cause of human  
10 rights was or is and continues to be.

11           Rather, we can only use the most traditional means  
12 that the law recognizes based on his life expectancy, based on  
13 his station in life.

14           And in this case, the Court finds that the  
15 appropriate measure of damages is the sum to compensate the  
16 plaintiff for the loss of the decedent \$2,500,000 because  
17 there is a moral element, and to punish and to set an example,  
18 trebling damages, it seems to me, is most appropriate here,  
19 the sum of \$7,500,000 in punitive damages is awarded to the  
20 plaintiff.

21           That completes my statement of decision. Is there  
22 anything further? My oral statement, but not my written  
23 statement.

24           MR. Van AELSTYN: No, your Honor. We have nothing  
25 further, thank you.

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1           THE COURT: All right. We will stand in recess.  
2           (The proceedings were concluded at 5:30 p.m.)  
3           (The audience in the courtroom was heard to shout  
4 three times: Monseñor Romero: Presenté.)

5  
6           I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
7 certify the foregoing transcript as true and correct.

8 DATED:

PEGGY J. CRAWFORD

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9-3-04 Trial Transcript

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