

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. OLIVER W. WANGER

J. DOE,)	No. CIV-F-03-6249 OWW
)	
Plaintiff,)	Plaintiff's Application for
)	Judgment by Default
vs.)	
)	
ALVARO RAFAEL SARAIVIA; and)	
DOES 1-10, inclusive,)	
)	
Defendants.)	
)	

Fresno, California

Wednesday, August 25, 2004

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 Wednesday, August 25, 2004 Fresno, California

2 9:00 a.m.

3 THE COURT: Good morning. We are going to go back on
4 the record in Doe versus Saravia.

5 Mr. Van Aelstyn, you may proceed.

6 MR. Van AELSTYN: Thank you, your Honor. We would
7 like to continue with the videotaped deposition testimony of
8 Ambassador Robert White.

9 THE COURT: Yes, you may.

10 AMBASSADOR ROBERT WHITE,

11 called as a witness on behalf of the Plaintiff by way of
12 videotaped deposition presented testimony to the Court.)

13 (Discussion was had off the record regarding
14 coordinating the deposition exhibits with the default hearing
15 exhibits.)

16 MR. Van AELSTYN: Your Honor, that concludes the
17 videotaped testimony of Ambassador Robert White.

18 Based upon his testimony, I would like to move into
19 evidence several of the documents that he discussed and
20 identified during his videotaped deposition.

21 I suggest addressing them in different groupings, as
22 they were similar kinds of documents that he authenticated and
23 identified.

24 The first -- there are two groups. The first are
25 those declassified State Department documents that he

1 identified. And they are Trial Exhibit Number 119, which was
2 the working group memo that he spoke about before he went to
3 El Salvador as Ambassador. And then several cables from El
4 Salvador when he was U.S. Ambassador there, and they are Trial
5 Exhibit Numbers 120, 121, 122, 127, 124 and 132.

6 THE COURT: Now, these documents are communiqués from
7 the Ambassador of the United States to the country of El
8 Salvador. Are they being offered as official records? Are
9 they being offered for the truth of the contents? They
10 certainly reflect the witness' state of mind relative to
11 action that was or was not being taken.

12 I think almost all of it is post assassination. I
13 don't remember any of them. He talks about his
14 pre-assassination knowledge and meeting with the Archbishop.

15 But the documents reflect, and I assume the purpose
16 that they are being offered is twofold: One purpose would be
17 to show the unavailability of legal remedies that existed from
18 the time of the assassination to sometime as yet unestablished
19 in the future.

20 And then the second purpose would be to try to assign
21 responsibility through either the Ambassador's opinions or the
22 opinions of others that the Ambassador has collected, all of
23 which are double and triple hearsay or more.

24 And so I need for you to tell me specifically under
25 what theories of the law of evidence you believe and for what

1 purposes the documents are admissible.

2 MR. Van AELSTYN: Yes, your Honor. First, I would
3 like to make one clarification. Two of the documents, the
4 declassified State Department documents were
5 pre-assassination. And they were Exhibit Numbers 119, which
6 was the working group memo that he worked on before going to
7 El Salvador, and 132, which was the cable from Ambassador
8 White to the Secretary of State, dated March 19, 1980, which
9 contains his assessment of the situation prior to the
10 assassination of Romero.

11 And I'm sorry, I omitted one additional document,
12 which was Exhibit Number 128, which was the English
13 translation of the Saravia diary.

14 To address the evidentiary basis for moving them into
15 evidence, first of all, with regard to the purpose for moving
16 them into evidence, the purpose for which we seek to use them
17 is indeed twofold. And you did identify them.

18 One is to show the lack of legal recourse in El
19 Salvador, and two, is to provide evidence of the
20 responsibility for the crime itself, some of which is a little
21 more direct than others. Some speaks more to the context in
22 which these events took place and makes them understandable on
23 the events that did take place and for which we seek to hold
24 the defendant responsible.

25 THE COURT: It seems to me that the first ground,

1 lack of legal recourse, that the evaluation by the Ambassador,
2 the working group, would be expressions of the states of minds
3 of policy makers charged with reporting on the circumstances
4 that then existed, and would be admissible for the fact that
5 all of that material was discussed and gathered, not
6 necessarily for its truth and for the underlying hearsay
7 opinions that are on top of the Ambassador's opinion.

8 Certainly, and this gets into very complex law,
9 whether, in his deposition he is an authorized witness on
10 behalf of the United States to express a government opinion
11 about conditions is something that has not been addressed by
12 any submission that the plaintiff has made.

13 And I believe that the fact that the reports were
14 being made and the comments were communicated is evidence of
15 itself that may be then corroborated by other evidence that
16 you have, but without the further foundation, I don't believe
17 there is a legally supported basis for the submission of the
18 underlying opinions, if you will, or other data for its truth
19 because of the multiple layers of hearsay.

20 MR. Van AELSTYN: I understand, your Honor. Let me
21 address first the authentication and admissibility of the
22 documents, if I may, and then address the issue of the levels
23 of hearsay and the degree of reliability of the information
24 contained in these documents and what they can be relied upon
25 for.

1 First, with regard to authentication, these are -- we
2 believe that these are exceptions -- that these are
3 admissible -- strike that.

4 These are authenticated documents under the Federal
5 Rules of Evidence, sections number 901(7) and 901(8) in that
6 they are both public record documents. They are all
7 maintained in the business of the Department of State, both at
8 the Embassy and at Washington D.C. Therefore, they are
9 purported public records and they were, as Professor Karl will
10 testify later to the process of their declassification, we
11 will hear more about that process, but we do know that they
12 were maintained by the Department of State and, as such,
13 constitute public records under the Federal Rules of Evidence
14 901(7).

15 In addition, they also do qualify for authentication
16 under the ancient document doctrine of Federal Rules of
17 Evidence section 901(8), in parens, sub 8.

18 They were, again, as Professor Karl will testify,
19 released in 1993, I believe it was the exact year, shortly
20 after the Truth Commission Report was issued. They were
21 released by a special initiative taken in Washington D.C. to
22 declassify a number of documents relating to El Salvador.

23 These were released as part of that process. They
24 have now been identified and authenticated additionally by
25 Ambassador White, who had personal knowledge of those

1 documents at the time they were prepared.

2 In addition, we believe that they are admissible --

3 THE COURT: All right. Let me just ask one more
4 question. And that is, that as to the subsection 8, Rule of
5 Evidence, 901, Ancient Document Or Data Compilation, the law
6 specifically provides:

7 "Evidence that a document or data compilation in any
8 form is in such condition as to create no suspicion
9 concerning its authenticity or was in a place where,
10 if authentic, it would likely be, and has been in
11 existence 20 years or more at the time it is
12 offered."

13 I'm satisfied that those specific requirements are
14 met. And that at least the two exhibits you refer to are
15 authentic in the sense that you don't need and you are not
16 offering a certified copy of these documents, which would be a
17 separate ground for authentication.

18 So I will find as a matter of law that the documents
19 are authentic. So now we move to the issue of admissibility.

20 MR. Van AELSTYN: Thank you, your Honor. With regard
21 to admissibility, we believe that they are admissible, again,
22 under both the ancient document doctrine, which is set forth
23 in Federal Rules of Evidence 803(16) and again, the public
24 record doctrine set forth in the Federal Rules of Evidence
25 section 803(8).

1 Again, these are documents that have been in
2 existence for 20 years or more and, as we have just
3 established, their authenticity has been established;
4 therefore, under the ancient document doctrine, they are
5 admissible, we contend. I think it's pretty clear, and under
6 the public record doctrine of 803(8), they are documents that
7 have been maintained in the normal course of business by the
8 United States Department of State.

9 Finally, they are records of regularly conducted
10 activity by the Department of State, which further qualifies
11 them for admission under Federal Rules of Evidence rule 803(6)
12 in that they are --

13 THE COURT: Unfortunately, the foundation sometimes
14 known colloquially as the "business records exception" wasn't
15 laid. In other words, he's not the custodian. He didn't
16 testify those records were made at or near the time that they
17 were recorded, that they were maintained reliably in the
18 course of the business of the State Department, and although
19 we might be able to infer that, that foundation simply isn't
20 there. So I think we are going to have to focus on the public
21 record and report exception and the ancient document
22 exception.

23 MR. Van AELSTYN: All right, your Honor. Yes, he did
24 authenticate them as to their promulgation and did testify
25 that they were part of his normal course of communications

1 with Washington, but with regard to the maintenance of the
2 records, you are right, he did not.

3 THE COURT: Which subsection 6 requires, but I think
4 you have shown sufficient, and I will find under the Public
5 Records and Reports, that records, reports, statements or data
6 compilations in any form of public offices or agencies setting
7 forth the activities of the office or agency or matters
8 observed pursuant to duty imposed by law as to which matters
9 there was a duty to report excluding in criminal cases matters
10 observed by police officers or in civil actions and
11 proceedings and against the government, and that subsection
12 doesn't apply.

13 So I will find that the only applicable section is
14 803(8) (A), that these are authentic records, statements or
15 reports by the United States Embassy for the country of El
16 Salvador and that they were generated at the time in a
17 reliable way, so as we can find that these are true records
18 and, therefore, admissible under subsection (8) (A) only.
19 That's the only exception that that rule of evidence meets.

20 And under the ancient document exception, statements
21 in a document in existence 20 years or more, the authenticity
22 of which is established, is also satisfied.

23 So that we can be clear, that gets the report into
24 evidence. To the extent that there are opinions of others,
25 that there is other information for which there are yet other

1 rules of evidence that apply, I don't express any opinion now,
2 because you have to go line by line, quite frankly, through
3 the report, but for the purpose that you are offering it, you
4 can tie that up when we get to the application of evidence to
5 the legal requirements later in the case.

6 MR. Van AELSTYN: Yes, your Honor, thank you. That
7 is precisely what we will do. We will provide testimony
8 interpreting, as you note, the levels of hearsay set forth
9 that is contained in the information contained in these
10 documents. We believe that there are ways in which to
11 interpret that information in order to ascertain facts from
12 the collection of documents.

13 Just to be clear, then, as to which documents the
14 Court has found admissible on these grounds that we have just
15 been discussing, does this then cover all of those which I
16 identified at the beginning or shall I run down the list
17 again?

18 THE COURT: I think that we need to refer
19 specifically to each one. I intended the Ambassador's
20 communiqués to be covered by this, and that was, to my
21 understanding, 119, 132 -- and was 128 also a communiqué?

22 MR. Van AELSTYN: No, your Honor, 128 was the English
23 translation of the diary.

24 THE COURT: That's an entirely separate matter, so
25 119 and 132.

1 MR. Van AELSTYN: Actually, if I may clarify for one
2 moment, 119 was the working group memo prepared prior to going
3 to El Salvador. That was a Department of State internal
4 memorandum.

5 THE COURT: It would still be a report of a public
6 agency, regularly conducted, and it's more than 20 years old.

7 MR. Van AELSTYN: Yes, your Honor.

8 THE COURT: I'm satisfied that that's satisfied.

9 What are 120, 121 and 122?

10 MR. Van AELSTYN: Each of these is a cable from
11 Ambassador White to Washington.

12 THE COURT: 120 through 124, all of those will be
13 admitted. They are in evidence.

14 MR. Van AELSTYN: Your Honor, I believe, just for
15 accuracy, Exhibit 123 was the original Saravia diary.

16 THE COURT: Then 123 and 128 need to be handled
17 together separate. So it's 120 through 122, 124 are received
18 in evidence.

19 MR. Van AELSTYN: Thank you, your Honor. If I may,
20 just to make sure we are on the same page, 119, which is the
21 working group memo.

22 THE COURT: Yes.

23 MR. Van AELSTYN: And 120, 121, 122, 124.

24 THE COURT: Yes, all of those are in evidence.

25 (Plaintiff's Exhibit 119, 120, 121, 122, 124 were

1 received.)

2 MR. Van AELSTYN: Thank you, your Honor. And also
3 127 and 132, which also are cables.

4 THE COURT: Those are received in evidence under the
5 same rules of evidence.

6 (Plaintiff's Exhibits 127 and 132 were received.)

7 MR. Van AELSTYN: Thank you, your Honor. The three,
8 then, that we have left that Ambassador White discussed during
9 his deposition that have not been admitted into evidence at
10 this time, are Exhibit Numbers 123, which is the original
11 Saravia diary.

12 THE COURT: In Spanish?

13 MR. Van AELSTYN: In Spanish. Exhibit number 128,
14 which is the English translation of that diary. And 125,
15 which was the report of the Salvadoran official who
16 conducted -- who reported on the May 7, 1980 raid on the San
17 Luis Finca.

18 THE COURT: Now, let's take these separately. Before
19 deciding the admissibility of the diary, the English
20 translation, as I understand it, was accomplished by embassy
21 staff.

22 MR. Van AELSTYN: That is what Ambassador White
23 testified.

24 THE COURT: We don't have anybody here to contest the
25 accuracy and the integrity of the translation. And I don't

1 speak or read Spanish, so I can't do it, and I don't think
2 that it would be productive to engage the Court's interpreter
3 to do that, if you represent to the Court that the Spanish
4 language has been independently, the translation of it,
5 independently checked and verified for accuracy.

6 MR. Van AELSTYN: I can make that representation,
7 your Honor.

8 THE COURT: All right. Then if 123 is admissible, we
9 will admit 128 as an accurate and fair translation of 123.

10 (Plaintiff's Exhibit 128 was received.)

11 THE COURT: As to 125, the report, what I understand,
12 if I'm correct, this came from a military officer to the
13 Embassy, the Ambassador.

14 MR. Van AELSTYN: No, your Honor. It was a document
15 prepared by a Salvadoran military officer reporting on the
16 action taken on May 7, 1980, by elements of the Salvadoran
17 military, which Roberto D'Aubuisson, Alvaro Saravia and others
18 were arrested.

19 THE COURT: But did not this not somehow become
20 transmitted to the Ambassador's office?

21 MR. Van AELSTYN: Yes, your Honor, it did.

22 THE COURT: I don't know whether it was from Colonel
23 Majano or had come from some other officer.

24 MR. Van AELSTYN: I had understood Ambassador White
25 to testify it came from Colonel Majano.

1 THE COURT: All right. Then it is a report not
2 prepared by the -- it is not a public report or record of the
3 United States. But it is a document that was received by the
4 Embassy in the capacity of its official conduct of its
5 statutory mission in El Salvador, and I will let you
6 provide -- it occurs that, in terms of reliability and
7 authenticity, there could or could not be motives for an
8 accurate report of the arrest to be made.

9 The fact of the arrests is probably a matter that
10 would be, if the information were provided, judicially
11 noticeable, if it was sufficiently publicized within the
12 country of El Salvador at the time.

13 And I'm willing to consider the document for the fact
14 of the arrests and that that action was taken, but beyond
15 that, I think we would have to have other exceptions under the
16 law of evidence to permit anything else to be received for its
17 truth.

18 MR. Van AELSTYN: Understood, your Honor. That's the
19 sole basis upon which we are offering it.

20 THE COURT: All right. Well, then I will receive
21 Exhibit 125 for the limited purpose to show that the fact of
22 arrests by the Salvador junta were made of D'Aubuisson,
23 Saravia and other of their colleagues on or about the 9th of
24 May of 1980.

25 MR. Van AELSTYN: 7th of May.

1 THE COURT: 7th of May of 1980.

2 MR. Van AELSTYN: All right, that brings us to the
3 last document.

4 THE COURT: The Saravia diary.

5 MR. Van AELSTYN: And I wanted to point out one
6 additional fact about this. Well, first, the Saravia diary
7 that has been identified as Trial Exhibit Number 123 is the
8 one which was obtained from the United States Department of
9 State, and it's actually available on the State's web site,
10 and that is the version that Ambassador White reviewed and
11 testified about during his deposition.

12 Another copy of the Saravia diary has been submitted.
13 Declaration -- the declaration by Todd Greentree, which is in
14 the binder, the witness list binder under tab 27, is a
15 declaration authenticating a version of the diary, which Todd
16 Greentree, who at the time was a staff member of the United
17 States Embassy in El Salvador, testifies that he obtained this
18 copy of the Saravia diary at that time. I won't summarize the
19 declaration further, except to point out that there are two
20 versions of the diary.

21 And Professor Karl, this afternoon, will testify a
22 bit about the version of the diary that Todd Greentree --

23 THE COURT: Maybe we ought to reserve the ruling then
24 until that testimony is received and I have a chance to read
25 the Greentree declaration.

1 MR. Van AELSTYN: I appreciate that, your Honor. I
2 just wanted to flag the issue, that there are two different
3 bases.

4 THE COURT: Yes.

5 MR. Van AELSTYN: The basis for Exhibit Number 123 is
6 that it has been maintained by the United States Department of
7 State, and Ambassador White did identify it as such.

8 And we believe that it is admissible on the same
9 grounds as 125, which is to say, it is a document obtained by
10 the United States Embassy in the course of its business, not
11 generated by the United States Embassy, but obtained by the
12 United States Embassy as part of its business and then
13 maintained by it in its public records.

14 THE COURT: And what I am concerned about is this.
15 The exact circumstances in which it came into the possession
16 of the agency, from whom it was delivered, what the, quite
17 frankly, the position, status, the motive of the person
18 delivering it, whether or not that would have any effect on
19 its authenticity, and its reliability, because, in other
20 words, I'm not being frivolous when I suggest this, but:
21 Saravia is my enemy. He killed a member of my family in El
22 Salvador. And I then write out a diary in Spanish and I cause
23 that, through some channel, to be delivered to the U.S.
24 Embassy with the hope that some action will be taken against
25 Saravia.

1 So if we are offering this as an admission of
2 Saravia, we have got a major problem with foundation. Because
3 you have got to link it to Saravia. The handwriting would
4 have to be identified. A witness would have to say, "I took
5 the," if you will, "diary from his person or immediate
6 presence. I was a member of the search team." The normal
7 means of identification. As in any criminal case, to try to,
8 if you are going to use it as an admission against penal or
9 civil interest, you have got to have -- the fact it's in the
10 hands of the United States Embassy doesn't authenticate that
11 it's Saravia's.

12 MR. Van AELSTYN: Understood, your Honor. I will
13 represent at this time that there is a wealth of evidence
14 concerning how that document was obtained during the action on
15 May 7, 1980, at the San Luis Finca, at which Saravia and
16 others were arrested by the junta and it was found at that
17 time in their possession, less than two months after the
18 assassination of Archbishop Romero.

19 THE COURT: How is it that there are two versions?

20 MR. Van AELSTYN: Let me be clear. They are not
21 different in substance. They are different photocopies. The
22 only substantive difference, and it's not substantive, is the
23 organization of the pages. You may have noticed, and I will
24 point, the one issue that is of most relevance, the Operation
25 Piña page that Ambassador White discussed.

1 In the copy of the diary maintained by the Department
2 of State, that page has been inserted, in effect, into the
3 diary. Because you will notice it's not on the same -- it's
4 not a calendar page, it doesn't have the date on it. It's a
5 separate piece of paper that's been inserted into the middle
6 of it.

7 Todd Greentree testifies that those separate pages
8 were with the diary, but not inserted into the diary. It was
9 a short stack of documents, in effect, that were gathered
10 together.

11 That's the only difference between these copies, is
12 where the page has been placed in the stack of documents.

13 THE COURT: And so from that, the most evident
14 inference that is drawn is that the plan, if you will, or the
15 Piña page is separate from the diary and not a part of the
16 diary.

17 MR. Van AELSTYN: Not a part of the diary --

18 THE COURT: Not an integrated page.

19 MR. Van AELSTYN: It is there, but as with many
20 people, there are slips of paper in the diary and the
21 understanding of Todd Greentree and others is that they were
22 collected at one time.

23 THE COURT: Does Mr. Greentree say the source of the
24 diary?

25 MR. Van AELSTYN: Yes. Again, that it came from --

1 I'm working from memory here -- that it came from the same
2 source as Ambassador White, that is, it was Colonel Majano. I
3 need to see the declaration of it.

4 THE COURT: And here is something you need to think
5 about. At that time, we don't have Colonel Majano. We don't
6 know for certain, other than what Ambassador White attributes,
7 the operation of the Colonel's mind, because he is not stating
8 that necessarily, which is double hearsay, this is what he was
9 told, but this is his thinking. It was his view that the
10 Colonel's purpose in turning this over was to effectuate some
11 form of cooperation or assistance from the United States with
12 regard to the broader picture.

13 And if there is a different purpose for which it is
14 delivered, then we need to identify that and the source of
15 that knowledge.

16 MR. Van AELSTYN: All right, your Honor. We will
17 address that question further.

18 THE COURT: I think that it still requires
19 foundation. And so you may address it.

20 MR. Van AELSTYN: All right, your Honor. I am not
21 prepared to do so at this time.

22 THE COURT: Understood, and I'm giving you the time
23 to do that.

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

25 THE COURT: All right. Are you ready for the next

1 witness?

2 MR. Van AELSTYN: Yes, your Honor, we are, and my
3 colleague, Matthew Eisenbrandt will be examining the next
4 witness.

5 MR. EISENBRANDT: Your Honor, does it make sense to
6 take the morning break at this time before we begin with that
7 witness?

8 THE COURT: We can do that. I did want to tell the
9 parties that due to a prior commitment established long before
10 this hearing was set, I have to speak at the noon hour, and so
11 we are going to have to recess at about 11:45 today and we
12 will get back as close to 1:30 as is humanly possible. I have
13 got to go out to north Fresno to speak. But I'm sorry, it was
14 scheduled long in advance, months ago, before this hearing.

15 And so if you want to take the morning recess now, we
16 can. We will stand in recess until 10:45.

17 MR. EISENBRANDT: If I may, our translator apparently
18 is only available through this morning and is not available
19 this afternoon. She also has another commitment this
20 afternoon.

21 THE COURT: All right. Then let's start the
22 testimony now. We will take a shorter break and see if we can
23 get through it.

24 MR. EISENBRANDT: Very well, your Honor. Plaintiff
25 calls Atilio Ramirez Amaya.

1 ATILIO RAMIREZ AMAYA,
2 called as a witness on behalf of the Plaintiff, having been
3 first duly sworn, testified through the Certified Court
4 Interpreter as follows:

5 THE CLERK: Thank you. Please state your name for
6 the record.

7 THE WITNESS: Atilio Ramirez Amaya.

8 THE CLERK: Thank you.

9 THE COURT: You may proceed.

10 DIRECT EXAMINATION

11 BY MR. EISENBRANDT:

12 Q. Judge Ramirez, can you please tell us your current
13 occupation?

14 A. Attorney and notary.

15 Q. Can you please give us a very brief background of your
16 education?

17 A. Well, I graduated from the University of Santiago de
18 Compostela in Spain. Also graduated as an attorney from the
19 University of El Salvador. Also graduated from the University
20 of Nicaragua in Managua. And I also have a Master's degree in
21 Penal Code procedures from the Institute of -- in the country
22 of Mexico.

23 Q. Can you please give us a brief description of the jobs you
24 held immediately after the university, graduating from the
25 university. Sorry. Perhaps even a list.

1 A. A justice of the peace in San Salvador. A judge for
2 juveniles in San Salvador. Fourth judge of penal cases or
3 criminal cases. And the magistrate at the superior court in
4 El Salvador in charge of criminal cases.

5 Q. Judge Ramirez Amaya, in terms of what you just mentioned,
6 a criminal judge for the Fourth Court. When did you begin as
7 a judge for the Fourth Court?

8 A. I began as Fourth Judge in criminal court in 1979.

9 Q. And when did you leave that position?

10 A. I left that position on March 27, 1980.

11 Q. Why did you leave that position?

12 A. Because I suffered from an attempt, attempt against my
13 life at my own home.

14 Q. What case were you investigating -- excuse me.

15 What were you working on at the time of that attempt?

16 A. It had been three or four days since the murder or the
17 assassination of Monseñor Arnulfo Romero, and I had been
18 dedicating my work to that case.

19 Q. After the attempt on March 27th, what did you do in
20 response to that attempt?

21 A. I left the country and I was out of the country for almost
22 ten years.

23 Q. I would like to talk about your role as a judge at that
24 time. You said you were investigating a case. In a normal
25 criminal investigation at that time, who were the key people

1 involved in that investigation?

2 A. At that time, the jurisdiction for a violent murder was
3 for a judge in charge of criminal cases.

4 Q. Were the police involved in investigating?

5 A. Yes. The police in that chain would be the first to be in
6 charge of the investigation.

7 Q. In 1980, were there prosecuting attorneys involved in
8 investigating?

9 A. We call them -- well, prosecutors. But at that time, they
10 did not have the size of role in the investigation.

11 Q. Just to make clear, you stated before that one of the
12 people involved was the criminal judge. Was that judge
13 involved from the very beginning?

14 A. Yes, in some cases, it is. Others, first that's in charge
15 is the justice of the peace, and they do the first part, which
16 is the identification of the body. And then 12 days later,
17 it's sent over to the criminal court judge.

18 Q. In what kind of situation would the criminal court judge
19 investigate during those first 12 days rather than the justice
20 of the peace?

21 A. At that time, a criminal court judge would be involved in
22 high profile cases, such as, for example, the death of a
23 president or a minister or someone of high profile, such as
24 Monseñor Romero.

25 Q. So that is why you were involved in the case instead of a

1 justice of the peace?

2 A. Yes. Although, I should add that there was another judge
3 also in the beginning investigating and then I came and took
4 over the case.

5 Q. In what city was Monseñor Romero killed?

6 A. In San Salvador.

7 Q. And what police force operated in San Salvador?

8 A. Yes, the only agency in charge of investigating crime was
9 the National Police.

10 Q. Is that a local force, police force, or a national force?

11 A. The National Police works at a national level, and they
12 are right under the Defense Department and the Armed Forces.

13 Q. Can you please describe in a normal criminal
14 investigation, briefly describe what happens, starting from
15 the moment a body is found.

16 THE COURT: This is as of March of 1980.

17 THE WITNESS: At that time, the first people to
18 arrive were the National Police. Then the police would
19 notify, in case of a death, they would notify the forensic
20 clinic of the courts.

21 BY MR. EISENBRANDT:

22 Q. When would the criminal judge arrive?

23 A. A criminal judge arrives when he is notified that there is
24 a body. But at that time, he has to wait to be notified, and
25 it's either him that's notified or the justice of the peace.

1 Q. Am I correct that you have been both a justice of the
2 peace and a criminal judge?

3 A. Yes.

4 Q. In the case that you have described normally, when a
5 justice of the peace is involved, when would the justice of
6 the peace arrive?

7 A. Not until he's notified by the police.

8 Q. In a normal investigation, who would take fingerprints?

9 A. The police does.

10 Q. Who would take photos of the crime scene?

11 A. The police does.

12 Q. Who would take down names of witnesses?

13 A. The police.

14 Q. Could the police remove evidence from the scene on their
15 own?

16 A. No. They are taken by the judge and the judge gives them
17 to the police.

18 Q. Just to be clear, normally, after the police inform the
19 judge, the judge would arrive at the crime scene?

20 A. Yes.

21 THE COURT: Let me ask. As to the legal system in
22 March of 1980 in San Salvador, what was the legal procedure by
23 which a criminal accusation would be made against a suspect?

24 THE WITNESS: The legal procedure is one of judicial
25 notice, or it was at that time.

1 THE COURT: What official, what public official makes
2 the decision to institute a judicial prosecution against a
3 criminal suspect?

4 THE WITNESS: At that time, the criminal judge.

5 THE COURT: What person or agency then is responsible
6 to prosecute the criminal case against the accused?

7 THE WITNESS: At that time, then the prosecution
8 would come into play.

9 THE COURT: Is there any decision maker, beside the
10 criminal judge, who makes the decision to institute the
11 criminal case against the accused?

12 THE WITNESS: Well, the police are the ones who
13 notify, and it could be the prosecutor who would then
14 prosecute the case, or it could be a citizen who came forth
15 with the accusation.

16 THE COURT: And my specific question is: The
17 decision to institute a formal case, to bring a case to the
18 court to then impose criminal responsibility against the
19 accused, is that decision only the judge's decision, or is
20 there some other agency or judge?

21 THE WITNESS: Well, at that time there was another
22 figure known as a private accuser.

23 THE COURT: Was that private accuser employed by the
24 government?

25 THE WITNESS: He might not be.

1 THE COURT: Did the private accuser have the power to
2 tell the judge, the criminal judge, to commence a criminal
3 case?

4 THE WITNESS: Yes.

5 THE COURT: Let's take the morning recess at this
6 time. We are going to stand in recess until five minutes
7 after 11:00.

8 (Recess)

9 THE CLERK: Court is back in session.

10 THE COURT: Back on the record in Doe versus Saravia.
11 You may proceed.

12 MR. EISENBRANDT: Thank you, your Honor.

13 BY MR. EISENBRANDT:

14 Q. Judge Ramirez Amaya, you mentioned earlier a private
15 accusation. In your experience, did anybody bring private
16 accusations in 1980?

17 A. No. Since 1980, up until, perhaps, 1994, there wasn't
18 much of private accusation.

19 Q. And why not?

20 A. For fear of being killed. That would be the accuser
21 fearing.

22 Q. In the case of Archbishop Romero, who initiated that case?

23 A. Basically, I did. Although there was a justice of the
24 peace, I went and took over from the beginning. I took the
25 book where they did the recognition of the body and I started

- 1 knowing this case from the beginning.
- 2 Q. In 1980, in murder cases, were autopsies performed?
- 3 A. Yes. In all of the cases of violent death.
- 4 Q. Who would order the autopsy?
- 5 A. The judge would.
- 6 Q. Were the National Police involved in autopsies?
- 7 A. The National Police would secure the surroundings around
- 8 the court building because the autopsy was performed at the
- 9 forensic clinic inside the court building.
- 10 Q. Once there was a list of witnesses established, who would
- 11 question them?
- 12 A. The judge.
- 13 Q. In a murder case, who ran tests of the murder weapon?
- 14 A. The police.
- 15 Q. So in a normal investigation, would the National Police
- 16 and the judge work closely together?
- 17 A. Yes. Yes, very close.
- 18 Q. And was it your personal experience as a judge that you
- 19 worked closely with the National Police on investigations?
- 20 A. Yes.
- 21 Q. Where were you on the evening of March 24th, 1980?
- 22 A. I was at the National University.
- 23 Q. And how did you find out about the assassination of
- 24 Monseñor Romero?
- 25 A. Well, around 6:30 that evening, agents from the different

1 security systems, like the National Police and the Guards,
2 they went by and they were shooting into the university.

3 Q. I'm sorry, when you say "security forces," were the
4 National Police part of the security forces?

5 A. Yes.

6 Q. And why were they shooting?

7 A. They would do this, this shooting would normally be done
8 when there was some sort of student manifestation of some
9 sort, and that's how I found out about Monseñor.

10 Q. How specifically did you find out?

11 A. Okay. After the shooting, when everybody hit the floor
12 and was there for about ten minutes, after about ten minutes,
13 people went onto the streets or with fear, of course, and as I
14 was going to my vehicle, I heard people screaming, "Someone
15 has wounded Monseñor. It appears that someone has killed
16 Monseñor." On the radio.

17 Q. When you say "Monseñor," which Monseñor is that?

18 A. Monseñor Oscar Arnulfo Romero.

19 Q. Where did you go in your vehicle?

20 A. I headed towards the forensic clinic and about that time
21 the administrator of the courts told me that Monseñor was not
22 at the clinic, but he was at the Policlínica, and there was a
23 justice of the peace on his way there.

24 Q. Why did you yourself go?

25 A. I went because I was obligated by the law to go, because

1 Monseñor was a person who had a high ranking and, as judge of
2 the criminal cases, I have to go.

3 Q. So who was in charge as the judge? Were you in charge or
4 was the justice of the peace in charge?

5 A. I was, because I took it away from -- well, they hadn't
6 begun the autopsy, and so I took over the case and the
7 investigation.

8 Q. When did you arrive at the Policlínica?

9 A. More or less, it would have been around 7:00 p.m. when I
10 arrived at the Policlínica.

11 Q. I should clarify. What is the Policlínica?

12 A. Policlínica is a hospital in El Salvador.

13 Q. Can you please look at Exhibit 42 in the binder in front
14 of you. It should be tabbed.

15 A. Yes.

16 Q. What does this picture show?

17 A. Well, this picture depicts the body of Monseñor Romero, a
18 forensic doctor, Florentin Melendez. He is from the
19 judicial --

20 Q. Socorro Jurídico is just the name of the establishment?

21 THE INTERPRETER: Yes.

22 THE WITNESS: He was the attorney for the Archbishop.

23 BY MR. EISENBRANDT:

24 Q. Is this photo an accurate representation of what you saw
25 at the Policlínica?

1 A. Yes, this is the first thing that I saw as I entered the
2 room at the Policlínica.

3 MR. EISENBRANDT: Your Honor, move to admit Exhibit
4 42 in evidence.

5 THE COURT: Exhibit 42 is received in evidence.

6 (Plaintiff's Exhibit 42 was received.)

7 BY MR. EISENBRANDT:

8 Q. Can you please describe the scene at the Policlínica when
9 you arrived.

10 A. When I entered the room, this room was about, smaller than
11 this room, maybe half the size of this room. And surrounding
12 the gurney where Monseñor's body was, there were about almost
13 a hundred people.

14 Q. Were there any police at the Policlínica?

15 A. No.

16 Q. Should they have been there?

17 A. Yes. They should have been there due to security reasons,
18 and that's why, when I arrived, I called my secretary and I
19 asked him to call the police and ask for backup, because there
20 was so much people that we weren't able to work.

21 Q. Was an autopsy performed?

22 A. Yes, but before this, I should say that I had to make
23 everybody leave the room. There were so many people in the
24 room, just people from the town and nuns and relatives and one
25 of his brothers and another sister who was a nun, and just a

1 lot of people.

2 Q. Okay. Can you briefly describe the autopsy, please.

3 A. Yes. As soon as all this group of people left, then there
4 was only the forensic doctor, the main doctor, who was
5 Mr. Cuellar Ortiz, and another doctor by the name of Pedro
6 Chavarria along with two others. Then x-rays were taken. But
7 at first, they couldn't detect where the bullet was, and so
8 two or three more x-rays had to be taken. Then they found
9 three fragments, bullet fragments, inside the thorax.

10 After that, the doctors, in my presence, then
11 proceeded to cut the cartilage in the sternum area to open the
12 thorax of Monseñor. Once they opened the thorax, the blood
13 was gushing, but it was in clots. It was coagulated.

14 Then they couldn't find the bullet, so the doctors,
15 of course, utilizing gloves, they had to remove all these
16 blood clots from the body. And what they did was they pressed
17 on -- until they dissolved the blood clots one by one, and
18 until there was no blood clot left in the thorax. That's when
19 the three fragments of bullets were found.

20 After this, I once again asked my secretary regarding
21 the police so they could help us secure the evidence in bags,
22 and I was told that the police had not arrived, that there was
23 no police.

24 Q. Can I direct to you Exhibit 113, which should be in one of
25 the large binders. Do you recognize that document?

1 A. Yes, my signature is on it.

2 Q. Okay. What is that document?

3 A. This is the -- basically, it's the recognition or
4 acknowledgment of the body and autopsy of Monseñor.

5 Q. What did the doctors say was the cause of death?

6 A. A hemorrhage caused by the fragments cutting the aorta.
7 And the -- one of the veins, the vena cava.

8 THE INTERPRETER: I'm not familiar with the term.

9 BY MR. EISENBRANDT:

10 Q. Did you sign this document at the time of the autopsy?

11 A. Yes, I signed it in the book, and this document is a
12 transcription taken from that book.

13 MR. EISENBRANDT: Your Honor, I would move to
14 introduce Exhibit 113 into evidence.

15 THE COURT: Exhibit 113 will be received in evidence.

16 (Plaintiff's Exhibit 113 was received.)

17 THE COURT: Let me ask, are the signatures of
18 Dr. Chavarria and -- I can't tell, Victor Manuel Pérez Angel,
19 was that a witness or was that another physician?

20 THE WITNESS: Dr. Chavarria signed as the physician.
21 Not all of the physicians signed, but Dr. Chavarria signed for
22 all of them. And Victor Manuel Pérez Angel was my secretary.

23 THE COURT: Thank you. Was your secretary present
24 during the autopsy?

25 THE WITNESS: Yes. As judicial secretary, he was

1 present.

2 THE COURT: What is the title that appears below your
3 name?

4 THE WITNESS: Fourth Criminal Court Judge.

5 THE COURT: You may proceed.

6 BY MR. EISENBRANDT:

7 Q. What time did the autopsy finish?

8 A. The autopsy lasted over three hours, almost four hours.

9 Q. Where did you go next?

10 A. After that, I again spoke to my secretary to call the
11 police so that the police could take us or accompany us,
12 rather, to the scene of the crime that would be the Divine
13 Providence Church, where Monseñor was shot. And after that,
14 since the police didn't come, I, in my own private vehicle, on
15 my own vehicle, I took the secretary, just the secretary and
16 myself. We went to the church.

17 When we exited the vehicle, we also saw Florentin
18 Melendez and Roberto Cuellar, who were attorneys for the
19 Archbishop.

20 Q. And what did you do at the church?

21 A. It is a small church, more or less the size of this room.
22 And we went throughout the church looking for the bullet
23 capsule. We took measurements so we could know from what
24 range or distance the shot could have been fired. We went
25 throughout the church thoroughly trying to find any type of

1 evidence and we found no evidence.

2 Q. Was -- I'm sorry.

3 A. Well, and then a little before midnight, I took the
4 secretary back to the courts, because the secretary lived
5 far -- well, not real far, but he lived in another town by the
6 name of Soyapango. This is about five kilometers outside San
7 Salvador. And I really did this at his pleading. He asked me
8 to do this because at that time, and especially because of the
9 death, going all the way to Soyapango was basically putting
10 your life in danger of death.

11 You could see in street corners these small tanks
12 that were used by the army and also the police with automatic
13 weapons. And you could see not a single person out on the
14 street, not a single vehicle.

15 Q. Did you have any evidence with you at that time?

16 A. Yes. Since the police was not there, I took the bullet
17 fragments with me and also the x-rays, and I took them to my
18 house.

19 Q. Can I direct you to Exhibit 115. What is that document?

20 A. Yes. This document is a newspaper article or
21 announcement, rather. This was a Mass that the Monseñor was
22 going to give for the restful peace, Sara, S-A-R-A, Meardi de
23 Pinto.

24 Q. Did you see this document in the newspaper?

25 A. Yes, I did see it, but I saw it the following day, after

1 the death of Monseñor.

2 MR. EISENBRANDT: Your Honor, I would move to
3 introduce Exhibit 115 in evidence.

4 THE COURT: For what purpose?

5 MR. EISENBRANDT: For the purpose of notice of the
6 Mass, simply that it appeared in the newspaper, not for the
7 veracity of the contents of the document.

8 THE COURT: Was the newspaper announcement, do you
9 know who originated the printed words that are in the
10 newspaper? Was it the Church that sent it out, if you know?

11 THE WITNESS: Yes, it was Jorge Pinto, the son of
12 Mrs. Pinto.

13 THE COURT: All right. The exhibit which is 115 is
14 received in evidence for the limited purpose of this was
15 announcing the Mass that was to be conducted by Archbishop
16 Romero on the 24th of March.

17 (Plaintiff's Exhibit 115 was received.)

18 BY MR. EISENBRANDT:

19 Q. The next day after the assassination, what did you do?

20 A. I arrived at my job at the Fourth Court of Criminal cases,
21 and I began to order. I ordered the files and the book of
22 acknowledgment, so that we could transcribe it.

23 I would also like to add that the court was extremely
24 busy. We had over 3,000 criminal cases, trials pending. And
25 we had to take care of the most urgent things, such as

1 Monseñor's death and other urgent matters.

2 Q. Did you speak with anyone at the National Police?

3 A. Yes, I told my secretary to call the police so we could
4 get together on how we were going to coordinate the
5 investigation, but the secretary -- and the secretary told me
6 that what the police wanted was for me to send the evidence.

7 Q. And did you send the evidence?

8 A. No, I did not send it. No, I didn't send them, and I
9 spoke to the technician at the police laboratory, who was
10 upset because I was not sending the evidence. He asked me if
11 I didn't trust the police. And I told him that, indeed, I did
12 not trust the police. And I told them that if they wanted to
13 conduct any examination as to what caliber the bullet was,
14 that they had to bring over the microscopes and the scales and
15 whatever else they needed to do their expert analysis.

16 THE COURT: All right. At this time, we are going to
17 be required to take the noon recess. Now, I understand that
18 the interpreter is not available after this time; is that
19 correct?

20 THE INTERPRETER: Your Honor, I could be back for an
21 hour, from 1:30 to 2:30, so I will leave it up to counsel to
22 decide if that is sufficient.

23 MR. EISENBRANDT: With the help of the Court's clerk,
24 we had obtained somebody to help, so --

25 THE COURT: Right. Our court interpreter is here.

1 THE CLERK: She is raising her hand, though.

2 THE COURT: Could you inform us as to what our
3 logistics are?

4 INTERPRETER VIRGINIA DICONO: Your Honor, I tried
5 calling Anna Watrous to see if she is available at 1:15 to
6 prepare for the witness and continue at 1:30. She has not
7 called me back. I'm going upstairs to my office right now and
8 I can be in touch with counsel.

9 THE COURT: All right, if you would, please.

10 MR. EISENBRANDT: Or if the current interpreter is
11 available for a half an hour, I don't have too many more
12 questions for the witness, I think we could finish within a
13 half an hour. It's whatever would be the most convenient for
14 the Court.

15 INTERPRETER VIRGINIA DICONO: And I don't think it
16 would be a problem to cancel Anna. She is doing something for
17 me at 3:00 o'clock.

18 THE COURT: As I said, I do not have exact predictive
19 ability about when the proceedings are going to end out there.
20 I'm going to be back here as soon as I can. I will make it as
21 close to 1:30 as is humanly possible. It could be a few
22 minutes after that, though. We will stand in recess now.

23 (The lunch recess was taken.)

24

25

1 AFTERNOON SESSION

2 1:55 p.m.

3 THE COURT: You may proceed.

4 BY MR. EISENBRANDT:

5 Q. Judge Ramirez Amaya, you testified earlier that there was
6 an attempt on your life on March 27th, 1980. Before that
7 time, were you ever threatened?

8 A. Yes.

9 Q. Can you please explain how you were threatened.

10 A. Yes, on the 24th, that's when Monseñor was killed.
11 Killed. On the 25th, Colonel Majano appeared on television.
12 He is from the Juntade, the Gobierno, government,
13 Revolucionario, revolutionary.

14 MR. EISENBRANDT: We could probably translate the
15 "Revolutionary Governing junta."

16 THE INTERPRETER: Fine.

17 THE WITNESS: Like I said, Colonel Majano appeared at
18 a television conference saying that the assassins of Monseñor
19 Romero would be found immediately by the Interpol, and that as
20 soon as they had the names, which would be immediately, they
21 would then send those names to the Fourth Criminal Judge,
22 which was myself, for their immediate capture.

23 Almost instantly, or moments after this conference,
24 which would have been around 12 noon, I received the first
25 phone call at home, and this was the first threat.

1 BY MR. EISENBRANDT:

2 Q. How many phone calls did you receive?

3 A. Well, I received -- or that is, three to four phone calls
4 were received at my home. The ones that I did not answer were
5 answered by my daughter. This would have been on Tuesday and
6 Wednesday, the 25th and the 26th of March.

7 In the phone call received by my daughter, the voice
8 would ask her what her favorite color was, and she was told
9 that that was the color they would paint the coffin that they
10 would have me in.

11 Q. Let's talk about March 27th. Can you please describe what
12 happened that night.

13 A. Yes. At that time, I had a habit of going out in the
14 evenings between 6:00 and 10:00 p.m., and since the death of
15 Monseñor, I hadn't gone out until this date, the 27th, and I
16 will relate to you what happened next.

17 That night, that evening, it was about 10:15 p.m.,
18 when someone knocked at the door, asking for me, saying that a
19 friend was looking for me. And they gave the name of this
20 friend.

21 I got up and I told my domestic employee that to be
22 careful, to open the door with caution. And I was carrying a
23 12 caliber shotgun with me.

24 And this was out of fear, because I had been
25 threatened. And in San Salvador, it was a time of incredible

1 tension, at least all the people that I was somehow involved
2 with or coworkers, they were all in fear.

3 And every day, as soon as the sun went down, I would
4 have this fever, I would get this fever. That night, my
5 employee opened the door and two young men walked in. When
6 the -- when they entered, I had the shotgun in my hands, and I
7 peeked -- I opened the door of my bedroom and I peeked to see
8 if I recognized them and I did not recognize them, so I told
9 them to sit down. They did not see the shotgun that I had,
10 but when I saw them, one that was -- a briefcase that they
11 were carrying, they pulled out of it a -- an automatic weapon.

12 And when I saw the -- their weapon, then at that
13 time, I pulled out the shotgun, and I was about to fire at
14 them, but my domestic employee, she ran towards me, because
15 she saw the automatic gun that they had, so she, instead of
16 throwing herself on the floor, she ran towards me.

17 And at that moment is when the -- one of the men that
18 was inside fired the weapon and he was trying to fire at me,
19 but since my employee had ran towards me, instead of the
20 bullets hitting me, they hit her in the back and in the
21 buttocks area and she fell towards me. She fell to the
22 ground. I wasn't able to break her fall.

23 And at that time, then the men took off. They just
24 broke -- they hit the door hard and they left, and then they
25 just sprayed the house with bullets and then there was a

1 separate spraying, which later I found out was done to the
2 tires of my vehicle.

3 All this happened within five seconds, perhaps.

4 Then I felt as though they were walking on the roof
5 of the house, and at that time, I started firing the weapon
6 out the windows, because I thought that they would -- they
7 were trying to get into the house. About 15 days earlier,
8 they had killed the Attorney General and also a mayor of the
9 city of San Miguel. And Mario Zamora was the Attorney General
10 of the country, and that's how the men had gotten into his
11 house.

12 And at this time I was just yelling at my wife. I
13 was telling her, "Josefina, they are going to kill us, just
14 like they did with Mario Zamora," and at that time I gave her
15 a pistol and I asked her to start firing out the windows.

16 And we had our daughter, who was between 12 and 14 at
17 the time, and I threw a mattress over her and I was just
18 crawling, crawling through my house, listening for the noises
19 so I could fire in that direction of the noises.

20 Then the footsteps ceased, they stopped, and then
21 there was this death silence until ten minutes later, when the
22 phone rang again.

23 And the voice said to me, "Doctor, this is Eliseo
24 Soto (phonetic) from the National Police." He was an
25 inspector with the National Police.

1 Q. Did he say he was from the National Police?

2 A. I knew that he was an inspector with the National Police.

3 I knew him.

4 Q. How did you know he was an inspector with the National
5 Police?

6 A. Because I knew him from childhood when my mother took him
7 in because he did not have parents, and my mother took him in
8 and helped him and she also helped him get the job at the
9 police.

10 Q. What did Eliseo Soto say?

11 A. He said to me, "Doctor, you are alive," but he was
12 surprised to know that I was alive.

13 And I answered to him, "Yes, I am happy to be alive."

14 And he said, "Don't worry. Perhaps they were just
15 trying to scare you."

16 And then I had spoken to my parents and some friends,
17 and about half an hour later, both my parents and also my
18 friends arrived at the house.

19 I opened the door, and I was greeted by some of my
20 neighbors and also by the night's watchman.

21 And the night watchman, he kind of tried to get into
22 the house, but I stopped him. I showed him the shotgun and I
23 told him, "No, you are not getting inside my house."

24 And he said to me that the police were deaf because
25 the entrance to my neighborhood, I live in a neighborhood

1 that's enclosed, you can only come in through one street. He
2 said that there were two police vehicles just outside the --
3 on the street while all this was happening, while they were
4 trying to kill me. Those police officers were just outside on
5 the street.

6 Q. Were those officers in marked cars, marked as police cars?

7 A. Yes, I was told by the night watchman that they were
8 marked patrol units and that they hadn't even moved when they
9 heard all the firing that was going on.

10 There was another one of my neighbors, since she was
11 with her boyfriend, her boyfriend happened to be one of my
12 students at the university.

13 And he asked me for permission to come into my house,
14 and he said to me that what he was about to tell me, he would
15 never repeat and he would never be a witness in any case. And
16 he told me that there were three, during the attempt against
17 my life, there were three persons; two that entered my house,
18 and one that stayed in the driver to the getaway car, and he
19 said the man that was at the wheel in the car was from the
20 National Police.

21 And he said, "You know, Doctor, you know that I work
22 with the police and I know the other police officers."

23 Q. And did you know -- did you personally know that man to
24 work for the police?

25 A. Yes. Then I said to my wife, I said, "We have to leave

1 the country. Otherwise, we are going to get killed, and it's
2 the police."

3 Q. Did anyone from the police ever arrive to investigate the
4 attempt?

5 A. No, my attempt was never investigated by any judge or any
6 police.

7 Q. So what happened to the employee, whatever happened to
8 her?

9 A. This happened on the 27th, which was a Thursday. So on
10 the 28th, the Friday, I went to work at the court. And in the
11 afternoon, I went to visit her at the hospital. And they had
12 not admitted her into the hospital. She was just on --
13 somewhere on the floor in the hallway, just as we had left
14 her.

15 And one of the physicians or an intern or, I don't
16 know, but he was one of the doctors there, said that they were
17 going to just do something to her, treat her in some way, but
18 because she was a fat woman, that they weren't going to try to
19 extract the bullets. They were just going to leave them in
20 there. And they were going to release her the following day.
21 I had already had a ticket purchased for Saturday to go to
22 Venezuela, to Caracas, Venezuela to a criminology conference.

23 But I couldn't go to the airport because the police
24 had all the airports and other exits to the city secured, and
25 I was afraid to go to the airport because I figured at

1 immigration they would -- they could detain me and take me and
2 kill me.

3 So what I decided was to leave the city through the
4 Gulf of Fonseca on a boat, a big boat, with a friend who took
5 me.

6 Q. To what country did you go?

7 A. I we want to Nicaragua because I could not go through
8 Honduras because people from El Salvador could not go into
9 Honduras. So I had to go through the Gulf of Fonseca directly
10 into Nicaragua.

11 Q. And how many years passed until you returned to El
12 Salvador?

13 A. (The witness became emotional.) Almost ten years. Almost
14 ten years.

15 Q. Just a few more questions, Judge Ramirez, and we will be
16 finished.

17 A. I am fine.

18 Q. I just want to return to the moment before that, when you
19 were investigating the assassination of Monseñor Romero.
20 Earlier, we discussed the normal procedures for investigating
21 a case.

22 Would you consider the investigation of Monseñor's
23 murder to be normal?

24 A. No. No.

25 Q. In the case of Monseñor Romero, did the National Police

1 arrive first at the scene, as they normally would do?

2 A. No, they did not arrive.

3 Q. In the case of Monseñor Romero, did the National Police
4 take fingerprints at the crime scene, like they would normally
5 do?

6 A. No, they did not take fingerprints.

7 Q. In the case of Monseñor, did the National Police take down
8 names of witnesses, as they would normally do?

9 A. No, they did not take names of witnesses.

10 Q. In the case of Monseñor, were the National Police involved
11 in security at the autopsy, as they would normally be?

12 A. No. No. No, they did none of these things.

13 Q. And did the National Police investigate the attempted
14 murder against you, as they would normally do?

15 A. No. They did not, and what happened was that the night of
16 the attempt, this group of police detectives did arrive, and I
17 knew that they were police detectives. And they said that
18 they just wanted to know what was happening.

19 And they said, "Don't you worry. These that came
20 here, they are just amateurs. They are just learning. If we
21 had come in within less than five minutes, we would have done
22 everything." That was the only thing regarding my attempt
23 that was investigated.

24 MR. EISENBRANDT: Thank you, your Honor. I have no
25 further questions of this witness.

1 THE COURT: All right. Let me ask you, do you have
2 any knowledge of the civil law in El Salvador, as of 1980?

3 THE WITNESS: Yes, sir.

4 THE COURT: In 1980, was there a claim known as
5 "wrongful death" or a case that could be stated for wrongful
6 death under the civil law?

7 THE WITNESS: No. No. No, it was necessary to have
8 a criminal conviction in order to proceed with a civil action.

9 THE COURT: That was a prerequisite, a criminal
10 conviction first, before a civil action could be initiated?

11 THE WITNESS: Yes, sir.

12 THE COURT: Was the procedure to initiate the civil
13 action in a civil court? Were there civil courts that were
14 not criminal courts at that time in El Salvador?

15 THE WITNESS: Yes, there were.

16 THE COURT: At the time of the attempt on your life,
17 around the 27th of March of 1980, were the civil courts in
18 operation? Were they functioning?

19 THE WITNESS: Yes, sir.

20 THE COURT: When you returned to El Salvador, in
21 approximately 1990, would that be the time?

22 THE WITNESS: Yes, at the end of '89, 1990.

23 THE COURT: Right. At that time, what was the
24 condition of the court system? And by that, I mean both the
25 criminal and the civil courts. Were they functioning?

1 THE WITNESS: Yes, sir.

2 THE COURT: And relative to the government, when you
3 returned, had the government of El Salvador changed?

4 THE WITNESS: Yes. The government had changed, but
5 the situation of war, that remained.

6 THE COURT: And how was it that you were able to
7 safely reenter your country?

8 THE WITNESS: The Congress elected me Magistrate to
9 the Supreme Court, and that's how I was able to reenter.

10 THE COURT: And how long did you then continue to
11 serve as Magistrate to the Supreme Court?

12 THE WITNESS: Five years.

13 THE COURT: Was there a time when the condition of
14 war ceased? This is in El Salvador.

15 THE WITNESS: Yes. It ceased in 1992. But the
16 government -- the governing bodies were still the same.

17 THE COURT: At any time that you returned, after
18 1990, was there ever a condition, and I'm going to use the
19 term "martial law", if you recognize it, I will ask you
20 foundationally, first, do you recognize the term in El
21 Salvadoran law of "martial law"?

22 THE WITNESS: Yes.

23 THE COURT: Where civil authority is suspended and
24 the government, either the military or some other paramilitary
25 force exercises the hegemony over the population?

1 THE WITNESS: Yes.

2 THE COURT: Did that type of martial law ever pertain
3 after 1990?

4 THE WITNESS: Well, there was an Executive power, or
5 someone, an Executive, but it was the military who was
6 governing the country up until 1992.

7 THE COURT: You have said that even though there was
8 a cessation of hostilities, that the military remained in
9 power?

10 THE WITNESS: There was a civil government, but the
11 people that were managing the government and, they were the
12 military up until 1992. The people that were managing and
13 directing the country were the military.

14 THE COURT: Who, under El Salvadoran law, may
15 maintain a cause for wrongful death? What persons?

16 THE WITNESS: At the time of Monseñor Romero's death,
17 it could be done by the State District Attorney or by private
18 parties hiring private counsel.

19 MR. EISENBRANDT: Your Honor, if it would help to
20 clarify the issue on your Honor's questions, as we have not
21 qualified Judge Ramirez as an expert, we would be happy to, in
22 addition to the declaration that we submitted from the
23 Salvadoran judge, to provide further information on that
24 issue, since we have not presented Judge Ramirez Amaya as an
25 expert in this area.

1 THE COURT: I'm familiar with that, and I'm only
2 inquiring because the issue is presented, and it appears, if
3 he was appointed Magistrate to the Supreme Court and is a
4 professor of law and also has the experience that he has in
5 understanding the civil system, it seemed to me that he could
6 provide, as a live witness, help to the Court.

7 And so I'm enlisting from his background and
8 experience that which he knows, and I recognize full well that
9 he is not designated as an expert, but you want any judgment
10 to be meaningful and to stand for something, and for that, I
11 think the evidence should be evidence that is as accurate and
12 that is as honest as it can be.

13 MR. EISENBRANDT: Certainly. Merely offering if your
14 Honor would like a further brief on that, we are happy to
15 provide.

16 THE COURT: Thank you. I'm going to ask Judge Amaya,
17 does the El Salvadoran law, from 1980 to the present, for the
18 civil claim for a wrongful death, does it identify the persons
19 who may maintain such an action for the death of another, such
20 as family members?

21 THE WITNESS: They are included as heirs.

22 THE COURT: Can you tell me what persons under the
23 law may maintain an action for wrongful death of another from
24 1980 to the present?

25 THE WITNESS: The mother, the father, the sons or

1 daughters and siblings, brothers.

2 THE COURT: Siblings, all right. Thank you. And do
3 you have any basis -- if you have no basis to answer the
4 question, I'm going to ask you, I don't want you to answer it.
5 Is it your understanding and experience with El Salvadoran law
6 that without a judgment imposing criminal responsibility on
7 some person for the death of the Archbishop Romero, that no
8 civil action for wrongful death could be maintained in El
9 Salvador from 1980 to the present?

10 THE WITNESS: Yes.

11 THE COURT: So up until today, there is no legal
12 basis on which any person within the class that the law
13 defines as being eligible to maintain an action for wrongful
14 death could bring such a case, because there is no conviction;
15 is that true?

16 (The question was read back.)

17 THE WITNESS: This is true.

18 THE COURT: Again, I don't want you to guess or
19 speculate about this. But do you have any information or
20 understanding why no case, no criminal case, has been brought
21 in El Salvador from 1980 to present to fix the criminal
22 responsibility for the death of Archbishop Romero?

23 THE WITNESS: Yes, and these are political reasons.
24 The founder of the ARENA party, Roberto D'Aubuisson, he
25 founded this ARENA Party, and he was aided by a lot of people

1 that have paraded through here, Negro Sagrera and some other
2 people mentioned by Ambassador White, those persons were the
3 founders of the ARENA Party, along with D'Aubuisson. And
4 since 1988, up and to the present time, this ARENA party and
5 that group has been in power. So, therefore, whomever would
6 like to initiate the case of Monseñor Romero through the
7 District Attorney's office, the District Attorney's office,
8 won't touch it.

9 And if any private attorney would like to initiate it
10 as a private action, they would have to accuse all those
11 people that are in power. And, of course, this will not be
12 done by attorneys.

13 THE COURT: Do I infer from your answer that there is
14 fear of reprisal by any attorney who would maintain a private
15 action to try to assign criminal responsibility for the
16 assassination of Archbishop Romero?

17 THE WITNESS: Yes, sir.

18 THE COURT: Would the reprisal, to your knowledge and
19 understanding, be from the government or would it be
20 paramilitary or some other extrajudicial force?

21 THE WITNESS: It would come from the ARENA Party, who
22 is in command of the government.

23 THE COURT: Is your present place of practice of law
24 in San Salvador, in the country of El Salvador?

25 THE WITNESS: I am a Professor of Criminal Law, and I

1 am -- also I'm an attorney for the indigent and for those lost
2 causes.

3 THE COURT: Since 1988 to the present, what
4 authority, if there is one, controls the District Attorney in
5 whatever jurisdiction the District Attorney operates, who
6 would be able to bring the criminal case for the assassination
7 of Archbishop Romero?

8 THE WITNESS: You are asking who is in charge of --

9 THE COURT: Who has the authority over the District
10 Attorney, over the public prosecutor?

11 THE WITNESS: Apparently, or in appearance, nobody
12 does. But we all know that it is the President of the
13 Republic.

14 THE COURT: To understand the basis for your answer,
15 the American law seeks what is called a "foundation" for your
16 answer. Are the public prosecutors appointed by the ruling
17 party?

18 THE WITNESS: At that time, yes, when the case of
19 Monseñor Romero. Now it is done by Congress.

20 THE COURT: Based on your knowledge, since 1988, and
21 your experience as a professor of law and as a lawyer and a
22 judge, a Magistrate Judge for the Supreme Court, is the
23 Congress independent in the sense that it can appoint a
24 prosecutor who will answer only to the cause of justice, not
25 to a partisan interest? The word we use is "independent."

1 THE WITNESS: In theory, this could happen, this
2 could be done, but in practice, it is not.

3 THE COURT: All right. And my last question. Is
4 there any fact or group of facts that you could point to that
5 would show the lack of independence in fact, not theory, in
6 reality, of the public prosecutor who would bring the case?

7 THE WITNESS: The law does not provide for the
8 appointment of a prosecutor in this matter.

9 THE COURT: All right. And my question was slightly
10 different, and I will ask it again. Are there any examples or
11 anything that would be authoritative we could look to to prove
12 the lack of independence of the public prosecutor?

13 THE WITNESS: Yes. And this is something that's very
14 negative, because never has a District Attorney prosecuted any
15 member of the ARENA Party, any secretary of any department,
16 anybody that is in power.

17 THE COURT: Does that complete his answer?

18 THE WITNESS: And no Secretary of State.

19 THE COURT: All right.

20 MR. EISENBRANDT: Your Honor, may I ask one follow up
21 question?

22 THE COURT: Yes, of course.

23 BY MR. EISENBRANDT:

24 Q. Judge Ramirez Amaya, is there any law in El Salvador that
25 provides amnesty against criminal prosecutions --

1 THE INTERPRETER: Provides amnesty for?

2 BY MR. EISENBRANDT:

3 Q. -- for criminal prosecutions of human rights abuses?

4 I can rephrase the question to simplify it. Is there
5 any amnesty law in power now in El Salvador?

6 A. Yes. There was a law, an amnesty law since 1992 for those
7 persons that commit the crimes during war time.

8 Q. And is it your understanding that this law covers the
9 assassination of Archbishop Romero?

10 A. No, I don't believe they are covered by it.

11 Q. Does this law block criminal prosecutions, prevent
12 criminal prosecutions?

13 A. Yes, but this law was mainly enacted to avoid military
14 people being prosecuted. But there are some cases that are
15 against humanity and some other grave cases, such as the one
16 of Monseñor, that are not covered by this amnesty law.

17 THE COURT: Do you have knowledge whether or not
18 suspects believed to be responsible for the assassination of
19 Archbishop Romero have been granted amnesty?

20 THE WITNESS: Yes. Yes.

21 THE COURT: And to your understanding, the
22 perpetrators have been given amnesty by the El Salvadoran
23 government?

24 THE WITNESS: Not directly for that case, but they
25 have not been prosecuted. They have not been brought to

1 justice. And they have committed other crimes and on those
2 other crimes, they have been given amnesty.

3 THE COURT: Thank you very much. That's all I have.

4 MR. EISENBRANDT: I'm finished as well. Thank you,
5 your Honor.

6 THE COURT: Mr. van Aelstyn?

7 MR. Van AELSTYN: Yes, your Honor. There has been
8 some question raised as to the accuracy of some of the
9 interpretation.

10 THE COURT: Understood.

11 MR. Van AELSTYN: And I wonder if -- I'm sorry, the
12 court interpreter here --

13 THE COURT: Yes, she is here.

14 MR. Van AELSTYN: Could you provide some assistance?

15 INTERPRETER VIRGINIA DICONO: I'm wondering if
16 perhaps interpreter fatigue is sitting in.

17 THE COURT: Normally we switch interpreters about
18 every 20 minutes, and so our interpreter has been going a long
19 time here.

20 INTERPRETER VIRGINIA DICONO: I will be happy to
21 assist, besides I believe she had to leave at 2:30.

22 MR. Van AELSTYN: I guess we are done.

23 THE COURT: Well, we have the interpreter. We are
24 happy to resolve any uncertainty. We should have as accurate
25 a record as possible.

1 MR. Van AELSTYN: I appreciate that. Could you give
2 us just one moment to speak and we will want some followup
3 questions.

4 (Pause in the proceedings.)

5 MR. Van AELSTYN: Perhaps this would be a good time
6 for the afternoon break.

7 THE COURT: Do you want to take until 3:30?

8 MR. Van AELSTYN: Sure. Or 3:25.

9 THE COURT: We will be going to probably 4:45 at
10 least.

11 MR. Van AELSTYN: Let's say 3:30 and we will go to
12 4:45.

13 INTERPRETER VIRGINIA DICONO: Your Honor, I have to
14 leave at 4:00 o'clock.

15 MR. Van AELSTYN: We won't go beyond 4:00 with this
16 witness.

17 INTERPRETER VIRGINIA DICONO: Thank you.

18 (Recess)

19 THE COURT: Back on the record in Doe versus Saravia.

20 MR. Van AELSTYN: Thank you, your Honor, for giving
21 us time to deal with the interpretation issue. We have
22 decided not to call Judge Ramirez Amaya back to the stand.

23 We are ready to proceed to our next witness.

24 THE COURT: You may.

25 MR. Van AELSTYN: Thank you, your Honor. Plaintiff

1 calls Professor Terry Lynn Karl.

2 TERRY LYNN KARL,

3 called as a witness on behalf of the Plaintiff, having been
4 first duly sworn, testified as follows:

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

6 THE WITNESS: Terry Lynn Karl, Terry with a Y and
7 Karl with a K.

8 THE COURT: Two Rs or one?

9 THE WITNESS: One.

10 THE COURT: You may proceed.

11 MR. Van AELSTYN: Thank you, your Honor. We will be
12 seeking to qualify Professor Karl as an expert. Towards that
13 end, we have a copy of her CV, which we would like to offer as
14 our next exhibit in order, which I believe is number 221.

15 THE COURT: We will mark 221 for identification.

16 (Plaintiff's Exhibit 221 was marked for
17 identification.)

18 MR. Van AELSTYN: I do have additional copies, if
19 necessary.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 BY MR. Van AELSTYN:

23 Q. Professor Karl, I have given you a copy of your CV, which
24 has been marked for identification purposes as Exhibit 221. I
25 will ask you several questions relating to your CV.

1 What is your current employment position?

2 A. I am the Gildred Professor of Latin American Studies,
3 Professor of Political Science and a Senior Fellow at the
4 Institute of International Studies at Stanford University.
5 Those are my formal titles.

6 Q. Professor Karl, what I would like to do, your CV is
7 multiple pages here, 25, I believe. We are not going to run
8 through the entirety of it.

9 If I -- I would like to just cover the most pertinent
10 points.

11 If you could, please, first tell us about your
12 academic credentials, the degrees that you hold.

13 A. Yes. I hold a B.A., an M.A., a Ph.D. with Distinction
14 from Stanford University.

15 Q. In what field is the Ph.D.?

16 A. It's in Political Science with an expertise in Latin
17 America.

18 Q. Let's run through now the academic positions that you have
19 held. And why don't we work back in time from your current
20 position as the Gildred Professor of Latin American Studies.

21 Before we do that, could you please tell me what is
22 the Gildred Professor of Latin American Studies?

23 A. The Gildred Professorship is an endowed professorship at
24 Stanford. It is Stanford's highest academic honor for
25 expertise in Latin America.

1 Q. If you could proceed back through the previous academic
2 positions that you have held. Why don't we go back to your
3 first position as a Full Associate Professor after you
4 received your Ph.D.

5 THE COURT: Excuse me, if you could, before that.
6 Would you define, for our record, Latin America?

7 THE WITNESS: Latin America, in our -- my area of
8 expertise, and the way it is used, incorporates Central
9 America, South America and the Caribbean.

10 THE COURT: Thank you.

11 THE WITNESS: And it is primarily the
12 Spanish-speaking countries.

13 THE COURT: All right. Sorry for the interruption.

14 MR. Van AELSTYN: No problem. Thank you.

15 THE WITNESS: Excuse me, Spanish and Portuguese
16 speaking countries.

17 MR. Van AELSTYN: We won't mention French Guiana.

18 THE WITNESS: I was a little more worried about
19 Brazil.

20 BY MR. Van AELSTYN:

21 Q. Prior to the Gildred Professorship, the next position is
22 the William R. and Gretchen Kimball University Fellow in
23 undergraduate position. Why don't you run through this. You
24 have a better understanding than we do.

25 A. That's an endowed fellowship that was given to the ten

1 best teachers at Stanford, or what the University deemed to be
2 the ten best teachers at Stanford.

3 Q. All right. Are there different levels of professorship,
4 associate, full, or anything like that?

5 A. Yes, at every university there is assistant professor,
6 which was what I was at Harvard University.

7 Q. When was that?

8 A. It's on the vita. It was 1981 to 1985.

9 Q. Why don't we move forward from there?

10 A. Yeah. I then moved to Stanford University and I was
11 promoted to the Associate Professor of that -- the difference
12 is that that means that you have tenure and are a permanent
13 position in the University.

14 Once you get to the tenured level, you -- there are
15 different levels after that. Full professor is the highest
16 level in a number of universities. There are other research
17 universities that have endowed chairs, and that is the highest
18 possible place you can get. That's what the Gildred Professor
19 is. So an endowed chair and a tenured full professor at
20 Stanford.

21 Q. You began as an assistant professor at Harvard, you moved
22 to Stanford, and became as an --

23 THE REPORTER: I'm sorry. That went by me way too
24 fast. I apologize.

25 BY MR. Van AELSTYN:

1 Q. You began as an Assistant Professor at Harvard University,
2 and then became an Associate Professor at Stanford University,
3 and then were elevated to a Full Professor at Stanford
4 University, and finally, you were elevated to the Gildred
5 Professor of Latin American Studies, an endowed chair at
6 Stanford University?

7 A. That's right. There is a position I have also held at
8 Stanford, which is that I was the Director of Latin American
9 Studies at Stanford for 12 years.

10 Q. In all of these positions that you have held in academia,
11 has there been a concentration on Latin American Studies?

12 A. Absolutely. It's my main area of expertise.

13 Q. In addition to your positions, you have conducted -- let
14 me turn to page 2, and under the heading of Research
15 Experience, you mention a number of dates and areas of the
16 world.

17 Is this field research that you have conducted?

18 A. This is field research I have conducted, that's right.

19 Q. Because of its relevance to this case, I will overlook --
20 we won't go into your field experience in other areas.

21 Could you please summarize for us the field research
22 that you have conducted in El Salvador, in particular, but you
23 have it here in Central America, listing 1981 through 2001?

24 A. 1981 through 2001 -- every one of those trips includes El
25 Salvador, by the way, but I just put Central America, because

1 sometimes I would go to Guatemala or Costa Rica or somewhere
2 else, but every one of those trips was a research trip in El
3 Salvador, which was my country of interest in Central America.
4 It's always been my primary country and interest. It's the
5 country I have written on the most, and those are my research
6 trips.

7 I have other trips to Central America -- excuse me,
8 to El Salvador that are not listed on this vita, because they
9 were not necessarily in my capacity as an academic, but as a
10 pro bono human rights investigator or something like that.

11 Q. Well, let's leave out those for the moment.

12 Could you please summarize the kinds of research that
13 you conducted during these research trips in El Salvador,
14 beginning in 1981, and just summarize. There is quite a few,
15 obviously.

16 A. All of these trips are -- include research that I do for
17 material that I write. So all of this includes field
18 research, looking for documentation, lots and lots of
19 interviewing. Gathering materials, reading through archives,
20 gathering -- I may be the only person who has ever read the
21 archives of some of the Salvadoran newspapers, for example.

22 The -- so all of those are things that I do for my
23 own research.

24 In addition, I have worked for a number of -- for the
25 U.S. government and for a number -- and for the United

1 Nations, in particular --

2 Q. Professor Karl, I'm sorry to interrupt you. Those appear
3 in your CV, and I do intend to ask you about those.

4 I would like to focus upon the kinds of research you
5 do, just the academic research that you do for the moment.

6 A. Sure, sure.

7 Q. So you read archives of periodicals in El Salvador. Do
8 you interview people?

9 A. Most of my work in El Salvador is constant interviewing,
10 because almost everything else I can photocopy and take with
11 me.

12 So the time I spend in El Salvador is talking to
13 people, and it's the most important work. It's actually the
14 work I value the most of the work I have done the most. I
15 interview everybody in El Salvador that will talk to me and I
16 follow around people who won't talk to me until they agree to.

17 I have interviewed extensively all political parties.
18 I have interviewed extensively within the military and the
19 police. I have interviewed extensively inside the governing
20 party now, the ARENA Party.

21 I have traveled with various presidential candidates
22 on their presidential campaigns. That includes former
23 President Duarte and it includes Roberto D'Aubuisson, who
24 figures prominently in this case.

25 Q. You have interviewed Roberto D'Aubuisson?

1 A. Yes.

2 Q. On more than one occasion?

3 A. Yes.

4 Q. We also heard the name earlier today of Colonel Majano.

5 Is that somebody you have interviewed?

6 A. Absolutely.

7 Q. Go on.

8 THE COURT: I take it that you speak Spanish?

9 THE WITNESS: I speak Spanish, yes.

10 I interviewed all sides of -- this is a very
11 conflictual country, which is probably very clear right now.

12 I have interviewed all sides, including all factions
13 of the Left, various factions of the Christian Democratic
14 Party and other political parties. Various factions in the
15 Right, the military, and I think I have interviewed people in
16 every branch of the military and the police.

17 I have done extensive investigations of patterns and
18 practices of repression. I have done extensive investigations
19 of death squads and how they function. I have interviewed
20 people who are in death squads and have talked to me about the
21 actions that they have carried out.

22 I have interviewed, when there was a civil war going
23 on, I interviewed also inside the guerilla zones.

24 I think I have talked to a lot of people in El
25 Salvador.

1 BY MR. Van AELSTYN:

2 Q. Professor Karl, I think there is one question on probably
3 everybody's mind, which is -- and this is a little off the
4 topic, but how have you done this? It sounds like a very
5 conflicted area.

6 A. Very, very carefully. I do not research in El Salvador
7 any more. It is an extremely -- it was, and in some cases
8 continues to be, an extremely dangerous place to do research.

9 It was an extremely difficult place to find out
10 information for anyone. From Bob -- Ambassador White. Every
11 single ambassador, every single researcher.

12 It is the country, in the years that we are looking
13 at, where more journalists died than in the entire war in Viet
14 Nam. More foreign journalists died in El Salvador in the '80
15 to '83 period, than journalists who died in the entire war in
16 Viet Nam.

17 It is a place where information is extremely
18 difficult to gather and, therefore, there is a very high
19 premium on that information.

20 Q. If I could draw your attention to page 16 of your CV,
21 there are listed there some positions. Let me start with one
22 near the bottom. The Latin American Policy Group for U.S.
23 Representative Michael Barnes, Chairman of the House Committee
24 on Inter-American Affairs, 1983 to 1985.

25 Could you please tell us about that.

1 A. Excuse me, could I add one thing to my last answer?

2 Q. Sure.

3 A. When things are dangerous in El Salvador, you almost
4 always get a warning of some sort. And there are gaps in my
5 travels to El Salvador, and that is because it was my personal
6 judgment, based on my room being searched or being followed,
7 or something that made me think it was too dangerous, to leave
8 the country and get out.

9 And so as a foreigner, you have a great deal more
10 protection in that country than a Salvadoran would. But it is
11 extremely dangerous. And I think that all of us, the very few
12 of us who actually carried out extensive research there, knew
13 that we had to go in and out and leave relatively quickly. It
14 was not a safe place.

15 Q. I'm sorry, I may have misunderstood you. Warning signs,
16 such as your room being searched and stuff, was that here in
17 the United States or in El Salvador?

18 A. El Salvador.

19 Q. Can you give us an example of the time in which you acted
20 on something which you interpreted as a warning?

21 A. Yes. I came back to my room one day in a hotel, this was
22 in 1983, during a state of siege, and it was very clear that
23 somebody had been in my room. And I packed up and left the
24 country.

25 Q. That's pretty clear. So if I could draw your attention

1 then to page 16 and ask you to discuss a couple of these
2 items. I mentioned, first, the house subcommittee on
3 Inter-American affairs, 1983 to 1985. What was that?

4 A. Michael Barnes was the Head of the House Subcommittee.
5 This was the Committee that was most involved in U.S. policy
6 towards Central America.

7 And at this time, U.S. policy in Central America was
8 an extremely controversial issue. I worked with him. I was
9 at Harvard at the time, and we do a lot more work with
10 Congress when you are on the East Coast, and I investigated a
11 number of things for that Committee.

12 One of the things, for example, I and others
13 investigated, was the use of U.S. aid. There was a great deal
14 of money pouring into El Salvador from the United States, and
15 there was trouble accounting for what was happening to that
16 money. And --

17 Q. What do you mean, trouble accounting for it?

18 A. Well, for example, there were not very good accounts.
19 There was over a million dollars a day entering El Salvador.
20 It is a very small country that had no history of being used
21 to those kind of revenues. And when it came to the Congress
22 asking for accounts of where that money was going, it was
23 clear that no one seemed to know where very significant
24 amounts of money were going.

25 I became part of an investigation that documented

1 what were called "ghost brigades." Ghost brigades were
2 brigades that were made up by military officers. They would
3 make up a brigade of a whole group of people, say a hundred
4 soldiers, that simply didn't exist. They would collect
5 salaries for that brigade, and it would enter a salary, but in
6 fact there was no brigade.

7 Another time I investigated U.S. food aid. We gave a
8 great deal of food aid in El Salvador that was to be
9 distributed among poor, and it was marked specifically "not
10 for sale." So I documented its sale in markets throughout El
11 Salvador by members of the military or their families.

12 MR. Van AELSTYN: Your Honor, as a footnote, Michael
13 Barnes has submitted a declaration in this matter.

14 THE COURT: Thank you.

15 BY MR. Van AELSTYN:

16 Q. Moving up two entries, we have an entry, "Report and
17 Recommendation on Congressional Delegation to El Salvador,"
18 sponsored by Congressman Edward Roybal, in January of 1987.

19 What was that?

20 A. I led a number of -- I led or participated in, I should
21 say. I shouldn't say "led," they were always led formally by
22 a Congressman, but I went along as the knowledgeable person
23 about El Salvador.

24 And there are so many of them.

25 This was, again, the issue of Central America being

1 extremely controversial, there were elections that were
2 scheduled for 1988. This was a very difficult time in El
3 Salvador, and it was a time in which the U.S. was pressuring
4 very hard to permit opposition candidates to return who had
5 been in the opposition to the government, to return and to be
6 able to campaign for the 1989 elections.

7 Q. Leaders of opposition that had fled El Salvador?

8 A. That had fled El Salvador. They were returning.

9 And in this particular period, if I recall correctly,
10 between '87 and '88, there was a great effort to see whether
11 opposition leaders could return and actually campaign. They
12 could certainly -- at least some of them could go back to El
13 Salvador without being afraid of being killed if they were
14 high enough level and high enough profile. So they were left
15 alone.

16 The question was would they actually be able to
17 campaign in the election.

18 So there were a lot of questions about whether the
19 elections that were being held in El Salvador in this period
20 had any real guarantees for opposition candidates to be able
21 to participate.

22 And I was investigating a number of those things and
23 there were a number of Congressional delegations. I don't
24 believe they are all listed on my CV.

25 Q. You mentioned work as an investigator for Congressional

1 delegations. Have you served as an adviser for -- in any
2 other capacity to any other branches of the United States
3 Government concerning El Salvador?

4 A. Well, I would say as an adviser, but not as a -- with a
5 formal title of "adviser." In other words, governments, U.S.
6 government, different branches of the U.S. government contact
7 me with a great deal of regularity to give opinions or write
8 something for them based on some issue.

9 So, for example, I am particularly interested in
10 issues of military -- of the organization of the military, as
11 was the U.S. military at the time.

12 So I did some extensive work with certain military
13 academic studies. This is important, because these are
14 academic studies carried out by the military war college,
15 carried out by Westpoint academics, or else carried out by
16 somebody who was appointed to look at the Salvador situation.

17 There was a great deal of worry about the nature of
18 the Salvadoran army and armed forces, so there was a number of
19 military studies of the army at this time, and I helped out in
20 some of those, provided information and wrote memos, et
21 cetera.

22 I also, I think probably the two most important ones,
23 one was by General Frederick Woerner, who was the head of the
24 U.S. Southern Command at the time. And there is something
25 called the "Woerner Report."

1 What they would do is they would send out lots of
2 feelers to people who were working on this area, and they
3 would say, "Give us your opinion of what's going on here, or
4 read this draft for us and tell us if you think it's right or
5 it's not right."

6 So there is a -- an academic give and take in these
7 things.

8 Q. So you did provide some comments on the Woerner Report
9 that you referenced before that was completed?

10 A. No, not before it was completed, no. But I talked to
11 General Woerner about it a number of times.

12 Q. That was my next question. You have interacted with
13 military academics, you mentioned.

14 Have you ever had any interaction in an advisory or
15 other capacity with the actual officers themselves, with the
16 U.S. military?

17 A. I would say there is two types of interactions I had. I
18 did extensive interviewing in what's called the "Mil Group" of
19 the U.S. Embassy. That's the military group of the U.S.
20 Embassy. This was a very big group in the Embassy. It was
21 actually supposed to be limited by law to 56 advisers,
22 although there were all types of other people with other
23 titles.

24 So there was a big military -- U.S. military
25 component inside El Salvador, and I certainly did lots and

1 lots of interviews there.

2 But the issue of Central America became very
3 controversial inside the U.S. military as well. And the U.S.
4 military sets up -- they do this every year. They set up
5 certain debates on controversial issues where they want to
6 discuss an issue. Central America was of great, great concern
7 at this time.

8 And so I believe it was five or six years in a row, I
9 debated then Secretary of State for Latin American Affairs,
10 Elliot Abrams, in front of members of the Joint Chiefs of
11 Staff and the -- and different branches of the U.S. military.

12 Q. Would the Joint Chiefs of Staff ask questions during the
13 debate?

14 A. The format of this is actually not public. I don't feel
15 very comfortable.

16 Q. I'm sorry. All right.

17 And turning back one page of your CV to page 15,
18 there is an entry, fourth from the bottom, Appointment to the
19 U.S. Mission of the United Nations -- I'm sorry, that's not
20 one I had in mind.

21 Back to page 16, there is an entry about the middle
22 of the page. Chair, Pre-Talks to End the Civil War in El
23 Salvador, Washington D.C., 1989, and consultant to --

24 THE REPORTER: I'm sorry. I can't write as fast you
25 are reading, I have to confess.

1 BY MR. Van AELSTYN:

2 Q. You see it on the page now, Professor Karl. Can you tell
3 us what this was. It appears to be a United Nations position
4 concerning the peace talks in El Salvador in 1989. Can you
5 tell us about that?

6 A. Yeah. Before -- I have to do a little history here, just
7 to --

8 The actual civil war in El Salvador we date to after
9 the murder of -- or at least I date and many others date to
10 after the murder of Archbishop Romero. So the civil war
11 really begins, depending on which date you want to use, the
12 end of 1980 or the beginning of 1981.

13 It goes officially until 1992, when there is a UN
14 negotiated peace agreement that officially ends the war in El
15 Salvador.

16 Q. When was that?

17 A. That was in January of 1992. What happened is that in
18 November 1989, six Jesuit priests were murdered in El
19 Salvador, and the murder of those priests created an enormous
20 foreign policy crisis inside the United States with a lot of
21 pressure to end all military aid coming from inside both
22 political parties of the United States.

23 And it created tremendous pressure on both the right
24 and the left for various reasons to actually begin to
25 negotiate an end of the war.

1 So in 1989, right after the murder of those priests,
2 there were a number of secret meetings, which I'm not able to
3 give details about, to -- that we called "talks about talks."
4 And those are the talks about starting what becomes the formal
5 UN peace agreement.

6 So there are lots of informal talks first, the "talks
7 about talks," that lead to the negotiations that start in
8 1990. The negotiations for the peace agreement go from 1990
9 to 1992. The peace agreement is signed in 1992.

10 The implementation of the peace agreement, just to
11 have these clear, because it becomes actually very important,
12 the implementation of the peace agreement is supposed to
13 happen between 1992 and the elections of 1994 in El Salvador.
14 That's supposed to be the end, the last element of a
15 negotiated settlement.

16 In that period of time then -- so there is a formal
17 agreement in '92 and a formal cease-fire, which is before
18 that. A formal agreement in '92.

19 There is an investigation of crimes and something
20 called the "United Nations Truth Commission" which comes out
21 in 1993.

22 As soon as that comes out, it is tremendously
23 controversial, and the governing party, which is the ARENA
24 Party, and which controls the Congress, passes what we call a
25 "self amnesty." I believe Judge Amaya was talking about the

1 amnesty law. That is actually in 1993.

2 The end of the peace agreement implementation is from
3 1994, and it ends with the 1994 elections.

4 Q. All right. That actually brings me to another entry on
5 your CV on page 15. You served as an observer in those
6 elections of 1994; is that correct?

7 A. That's right. That's right.

8 Q. And that was in an official capacity?

9 A. That was in an official capacity, yes. It was part of
10 a -- of actually both a U.S. and a UN delegation.

11 And I had two roles. One was to -- what I thought
12 was going to be my role was to look at the actual electoral
13 council, how it functioned, the rules of the elections, but it
14 ended up that there was serious questions about the conduct
15 and safety of those elections in key areas, and I ended up
16 having to investigate places where there had been high threats
17 of violence during those elections.

18 Q. Professor Karl, I would like to turn now to your
19 publications, and they fill numerous pages. So I will leave
20 it for the Court to review at another time, but are there any
21 concerning El Salvador, any of your publications concerning El
22 Salvador that you believe might be particularly relevant to
23 this proceeding?

24 A. Well, there is a whole list of them, and not to take a lot
25 of time, I would just say I would highlight two. One is the

1 article I did for Foreign Affairs on the El Salvadoran peace
2 agreements. I think that is still considered -- it was the
3 first article and it is still considered the main one. It is
4 used every year in teaching the U.S. military at Westpoint and
5 at other places. So that's probably one of the more important
6 ones.

7 Q. That was written about the peace agreement?

8 A. It was written about the peace agreement, but it sums up a
9 lot of my knowledge prior to the peace agreement as well.

10 And I think the second -- I don't want to point to
11 one or the other, but there is a whole body of writings of
12 mine that have to do precisely with the period of time that we
13 are talking about and the move towards civil war, the
14 development of the civil war, the development of repressive
15 apparatus inside El Salvador.

16 There is -- there are other things that I'm -- so
17 there is a whole body of writing about that. I had some
18 extraordinary access in El Salvador to -- I would say probably
19 the main figures of the time, partly from serendipity.

20 In the civilian opposition in El Salvador, many of
21 them were living in Venezuela when I was, so that is how I
22 actually became interested in El Salvador, when I met Jose
23 Napoleon Duarte, who became the President of El Salvador in
24 the elections of 1984.

25 So I had -- I knew a lot of people who were living

1 outside El Salvador and then came back to play a big role.

2 I also had unusual access for other reasons to
3 Roberto D'Aubuisson and to a network that he worked with. And
4 so that was, for me, an extraordinary research opportunity, I
5 should put it that way. And my writings are about that.

6 Q. All right. I would like to turn lastly to the area of
7 awards. And again, here too, you have a large number listed
8 on your CV.

9 One leaps out at me and is of interest. On page 3 of
10 your CV, there is the Order of Rio Branco. What is that?

11 A. That's Brazil's highest award to non-Brazilians. And it
12 was -- it is for service for Brazil or Latin America, and it
13 was given to me by the President of Brazil.

14 MR. Van AELSTYN: Your Honor, I would seek to qualify
15 Professor Karl as an expert. We are prepared, as well, to
16 discuss the basis for her opinion in this matter, but I think
17 we have sufficiently qualified her as an expert on Latin
18 American affairs, and in particular, El Salvador, at this
19 time. But if you would like me to do it as to the basis for
20 her opinion in this matter.

21 THE COURT: It will relate in part to what the
22 opinions are that are going to be offered. It certainly is
23 apparent from Dr. Karl's CV and her testimony that she is
24 highly experienced and learned in the study of, through
25 personal observation, of the political and military histories

1 of El Salvador, spanning from 1983 to the present.

2 But I don't know what you are going to ask her by way
3 of opinion. And so I could certainly find that she is
4 qualified in those areas as an expert and could offer opinions
5 on such matters, but until I hear the questions, we will have
6 to take it question by question.

7 MR. Van AELSTYN: All right, your Honor.

8 THE WITNESS: Could I ask a question? 1983? I mean
9 I started work in El Salvador earlier than that.

10 THE COURT: Did I hear '83?

11 THE WITNESS: I started working in El Salvador before
12 that. My first trip in was in 1981. And my knowledge of El
13 Salvador, I actually started working on El Salvador in 1978.

14 THE COURT: How extensive was your work from '78
15 through 1980 on El Salvador?

16 THE WITNESS: I think it was -- I did not go to El
17 Salvador in that period of time. I actually didn't believe it
18 was very safe, but I had extensive conversations with
19 Salvadorans in other countries at that time.

20 BY MR. Van AELSTYN:

21 Q. I see from your CV that you were working as a research
22 associate in Caracas, Venezuela -- you were a research
23 associate at the -- well, it's in Spanish. A university in
24 Venezuela in Caracas from 1977 to 1979.

25 I believe you testified that you met a number of

1 Salvadorans that were in exile there at that time. Is that
2 when you began your research interest on El Salvador?

3 A. Yes. And I was living in Caracas. And Caracas had, at
4 that time, not that Venezuela had, at that time, a Christian
5 Democratic Party, very important Christian Democratic Party
6 and a very important Social Democratic party.

7 Those two parties had extensive contacts with the
8 Christian Democratic Party of El Salvador, and with an
9 affiliated Social Democratic Party in El Salvador, which meant
10 there was a constant flow of people from El Salvador to
11 Venezuela because of their very close relationships.

12 Now, the other thing that's important is that some of
13 those people were actually in exile and actually lived in
14 Venezuela. So they came partly because of their contacts with
15 the Venezuelans, but they also came because some of El
16 Salvador's leading figures, particularly Duarte, were actually
17 living in exile in Venezuela at that time.

18 So it was a real center of the Democratic opposition
19 to military rule in El Salvador. So I didn't have to go very
20 far.

21 Q. All right.

22 Your Honor, we will be seeking to qualify Professor
23 Karl as an expert in a number of related areas. Maybe if I
24 could identify those in that line now, and then we will turn
25 to the bases for her opinions in this matter for which we

1 believe she is qualified.

2 THE COURT: You may.

3 MR. Van AELSTYN: In broad outline, the areas in
4 which we seek to have Professor Karl qualified as an expert
5 are the political nature of El Salvador during the relevant
6 periods here, broadly speaking. I think we have already
7 established that to some degree.

8 In particular, the patterns and practices of the
9 Salvadoran military, and also Salvadoran death squads, how
10 they worked, who their targets were, what their ideology was,
11 et cetera.

12 So the government, politics, military, death squads;
13 and then, finally, with regard to the facts of this case, we
14 are seeking her expert opinion with regard to the evidence
15 that implicates the defendant in this matter based upon her
16 expertise reviewing the kinds of evidence that are before this
17 Court; and lastly, the nature of the damages that have been
18 caused by the assassination of Archbishop Romero, which,
19 again, is based upon her expertise in political affairs,
20 military, and, in particular, the understanding of the death
21 squads.

22 THE COURT: As to the second area of opinion, you
23 have described that as implication of the defendant in this
24 matter by evidence.

25 And the Court's understanding is that an expert may

1 opine in the areas of expertise, but not on legal conclusions.
2 And legal conclusions include drawing inferences from fact to
3 reach conclusions as to, for instance, criminal responsibility
4 for assassination, committing the crime of murder. Others
5 come to mind.

6 And so I don't know yet. In other words, a witness
7 can discuss what is observed, what is known, what, if we use
8 pattern and practice as a term, what social mores, customs,
9 what military practices are at any given time, but then to
10 draw, if you will, the inferences that normally the trier of
11 fact does, the decision maker, that is something an expert
12 cannot do.

13 For instance, an expert can't get on the witness
14 stand, to use the most local example, and say, "By driving his
15 car through the intersection and hitting the plaintiff's car,
16 the defendant is liable for this action," and therefore,
17 responsible for damages. That's a legal conclusion.

18 MR. Van AELSTYN: Actually, your Honor. I apologize
19 if I was not sufficiently clear on that. We certainly respect
20 here that the Professor is not the trier of fact and will not
21 be drawing legal conclusions.

22 Nonetheless, it's a related issue, and the related
23 issue is, given the nature of her field of expertise in El
24 Salvador, in particular, it becomes necessary, in her academic
25 work to draw conclusions with regard to who is killing whom.

1 It is the nature of the work, unfortunately, that is
2 at issue in El Salvador at that time. Those are not legal
3 conclusions, but they are conclusions that she reaches as an
4 academic in her work reviewing the kinds of evidence that the
5 Court is reviewing as well.

6 So these are related conclusions. They are not legal
7 conclusions. We are not offering her as an expert with regard
8 to legal liability of the defendant. Rather, we are offering
9 her expertise as one who is accustomed in her expertise to
10 reviewing the kinds of information that we have in this case
11 as well, and drawing conclusions, again, from an academic
12 standpoint.

13 THE COURT: All right. I think, as we have said
14 earlier in this testimony, that, we are going to have to take
15 question by question, and I will tell you where, if there is
16 an issue, there is an issue.

17 MR. Van AELSTYN: All right, your Honor. Why don't
18 we just keep that on hold for the moment. You can make your
19 determination issue by issue as we go forward.

20 THE COURT: Thank you. You may proceed.

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

22 BY MR. Van AELSTYN:

23 Q. Professor Karl, I would like to go through the various
24 kinds of information that you have reviewed in preparation for
25 your role as an expert in this matter.

1 First, have you reviewed the materials that have been
2 submitted as exhibits in this case?

3 A. Yes, I have.

4 Q. Have you reviewed, as well, the declarations that have
5 been submitted in this case?

6 A. Yes, I have.

7 Q. Have you reviewed any periodicals?

8 A. Yes, I have, extensively. And including periodicals from
9 El Salvador that were covering the period of time of the
10 assassination.

11 Q. What kinds of periodicals?

12 A. There are a number of -- well, there were at that time
13 more newspapers than there are now. There is a newspaper
14 which is a -- considered an extremely conservative source in
15 El Salvador, as newspapers have different editorial policies,
16 El Diario de Hoy, it's called. And that is a newspaper which
17 was published during this entire period and is closely
18 affiliated with the ARENA Party. I reviewed that one.

19 There are other periodicals that existed at the time
20 and do not exist now that I have in my personal collections
21 that cover these.

22 I reviewed the journals and updates of the
23 Archdiocese of El Salvador.

24 I have reviewed the homilies of Archbishop Romero
25 which acted, for my purposes, not as a religious statement,

1 but as an information bulletin. He was considered one of the
2 most important sources for what was actually happening, who
3 was dying, where they were dying, how many people were dying,
4 et cetera. So I have reviewed those.

5 I have reviewed something called the Central American
6 NewsPak, which was published extensively over the time. I
7 have reviewed -- what was called the Latin American Weekly
8 Report that was published at that time and it now comes out
9 under a different name, but I reviewed it over that period of
10 time.

11 I reviewed the -- there is an excellent, and
12 particularly in this particular period of time from the UCA,
13 which is the University, the Catholic university of El
14 Salvador, they published something called ECA, E-C-A, and a
15 series of publications that I have copies of and I have also
16 placed in the Stanford Library, and I have reviewed them
17 during this entire time, and they are also excellent sources
18 of information.

19 I might be forgetting something, but, that is the
20 kind of material I reviewed.

21 Q. But before I go on, I'm already getting tired listening to
22 you, Professor Karl. Did you have any help in reviewing all
23 of this?

24 A. Yes, I did. Yes, I did. I always have help in reviewing
25 materials now. That that's one of the benefits of finally

1 getting to this stage, instead of having to do it all
2 yourself. But yes, I did. I had an assistant who helped me
3 extremely -- actually, in this -- not just in this period of
4 time but I have, over time, several assistants where I say,
5 Please find me every newspaper article that mentions "Majano"
6 or "Romero" or "D'Aubuisson" or whatever. So I have people
7 helping me collect that.

8 Q. Is that customary in your field of research?

9 A. Yes, absolutely. Absolutely. Otherwise, we would never
10 be able to do anything else.

11 Q. How about news footage, video footage?

12 A. I have seen video footage, I have heard audio footage. I
13 have had access to audio testimonies. I have reviewed both
14 confidential and public documents of the United Nations Truth
15 Commission. There is an extremely large volume of material
16 produced for the Truth Commission.

17 I have been given access to documents that are not
18 yet public from both inside the U.S. government, but also from
19 other sources that have not yet become public. And have been
20 able to review some of those.

21 I have reviewed the hearings of the U.S. Congress and
22 all the attendant documentation that goes along with that.
23 When there are hearings, you often submit all kinds of
24 ancillary materials, and I reviewed those.

25 I have listened to recorded death squad confessions

1 that I did not personally conduct.

2 I have, and others have, reviewed a lot of the
3 documentary film footage of the time, including news paper,
4 magazine reports. This was a big news story in the United
5 States, so there is quite a bit of documentation from ABC,
6 Newsweek, et cetera, et cetera.

7 Q. Professor Karl, I have put up Exhibit Number 193, which is
8 a collage of headlines from around the world. Is this an
9 example of the kind of periodicals and newspaper articles you
10 reviewed?

11 A. Yes, my assistant and I gathered those headlines.

12 Q. You mentioned earlier that you no longer travel to El
13 Salvador for your research work. Have you, however, conducted
14 any interviews specifically for this case?

15 A. Yes, I have. I have reinterviewed a number of people that
16 I have talked to earlier that know me well, so that I don't
17 have to travel down there, but can actually call and say,
18 "This is what I have that you said to me in 1986. Can you
19 confirm it to me or do you think something different today?"

20 I have done a number of reinterviewing and I have
21 also done some traveling to interview people.

22 Q. Could you just give us a few examples of those. I'm sure
23 some of those will come up with regard to specific issues, but
24 perhaps you can give us some example in general.

25 A. Yes. I have reinterviewed people who were formally

1 members of the Christian Democratic Party, which is pretty
2 much destroyed in this process, so it is not as active a
3 political party as it was before, in the process of the war,
4 excuse me.

5 I have reinterviewed some military officers,
6 including Colonel Majano, who is very -- who was the --

7 Q. Who was he? His name came up earlier today.

8 A. I'm going to, hopefully, talk about him a little bit
9 later. But he, in October 1979, there is a coup in El
10 Salvador by reformist military officers led by Colonel Majano.
11 That coup is the first coup in El Salvador history that
12 reformist military officers had actually been prominent in the
13 government. So it is a major watershed in the history of El
14 Salvador.

15 And it is actually the key event, I believe, for
16 understanding the unfolding that follows and that results in
17 the murder of Archbishop Romero.

18 Q. We won't go to that at the moment, but could you just tell
19 us where Colonel Majano is today? Is he in El Salvador?

20 A. I prefer not to answer that. He is not in El Salvador.

21 Q. Do you know approximately when he left El Salvador?

22 A. I'm not sure I remember the date. But I believe it's
23 19 -- I don't remember if it's 1980 or 1981. It's 1980. I
24 actually don't remember if it's 1980 or 1981, but I know he
25 left as a result of death threats to him and a bombing -- an

1 attempted bombing, a bomb that was placed in his car, as well
2 as written and other threats.

3 Q. I take it by asking not to identify where he lives today,
4 that you believe that he still has security concerns?

5 A. That's right.

6 Q. Any other interviews that are of note?

7 THE COURT: Well, let me ask this. When you say
8 security concerns, what is the origin of the concern? In
9 other words, the subject?

10 THE WITNESS: Why is he worried?

11 THE COURT: Yes.

12 THE WITNESS: If you review -- we haven't talked
13 about the declassified documents yet, but if you review U.S.
14 declassified documents over this period of time and you also
15 listen to the -- if you also do the kind of interviewing I
16 have done, there is, particularly among military or former
17 military officers of the Right, there is a tremendous amount
18 of animus towards Colonel Majano.

19 They believe that he started a process in which the
20 military would no longer rule the country. The military was
21 the government. It was a military authoritarian government,
22 and the military had ruled El Salvador in all of its modern
23 history, really, but very openly since there was a modern
24 military of 1932 on. It had been "the" government.

25 And the most of the military officers wanted to

1 remain the government and wanted to stay. Colonel Majano was
2 part of a reformist faction of the military that believed that
3 the military should not be in the government, that there
4 should be a Democratic system, and that eventually there
5 should be civilian rule.

6 In the October 1979 coup, which was a coup of
7 military officers against other military officers, the next
8 thing he did was he invited civilians into the government who
9 were civilians that -- primarily Christian Democrats -- that
10 were considered by hardline military officers the chief
11 enemies of the country.

12 He also was in favor and started a process of land
13 reform, which was probably the central most controversial
14 thing you could do in El Salvador, and I will explain that
15 later, but if there is anyone that hard line military officers
16 hate, and particularly people who are involved in both the
17 formal military apparatus, but also the death squad apparatus,
18 which means they take off their uniforms and then act without
19 the insignias of whatever part of the services they are in,
20 they have a tremendous amount of animus towards Colonel
21 Majano.

22 They think that the problems that El Salvador went
23 through and the fact that the military no longer is the ruler
24 of the country and there is now a civilian political party,
25 although one aligned very much with this former military

1 apparatus, began with this coup. And so they are very --
2 there is a great deal of animus against him.

3 And one of the things that strikes me over and over
4 again, and you can see it in the declassified documents,
5 although it's not part of the evidence of this, but you do
6 see, over and over again, in some of the reports that went to
7 Robert White or went to any of the other U.S. ambassadors, "We
8 say we have a source, the source says," and you can read, the
9 source will give them all kinds of things, and at the end,
10 they say, "I would kill Colonel Majano if I could find him."
11 You see that kind of feeling. And I think he had several
12 attempts against his life, and he left.

13 BY MR. Van AELSTYN:

14 Q. You mentioned several times the declassified documents.
15 Are these documents that have come to be declassified in the
16 normal course of business over time by the U.S. government or
17 something else?

18 A. No. There is a period of time in which generally
19 classified documents become public over a certain period of
20 time. These have -- this period of time has been advanced in
21 the case of El Salvador.

22 Q. Was there a particular effort to do that?

23 A. Yes. There were several efforts to do that. One was an
24 effort by what is called the National Security Archives, using
25 the Freedom of Information Act, and challenging the secrecy of

1 certain declassified documents and requesting that they be
2 declassified.

3 Q. The National Security Archives is --

4 A. It's a private organization that tries to make public --
5 it's an organization that believes in transparency in the
6 government and tries to make public classified documents,
7 particularly in areas where there has been some controversy in
8 the past, and it particularly concentrates on those foreign
9 policy issues. So there was a Freedom of Information effort
10 by the National Security Archives.

11 There was also another set of pressures which became
12 very important on the U.S. government, particularly on the
13 Clinton Administration at the time, and that was in the period
14 of time I have described between the signing of the peace
15 agreements in 1992 and the ending of the implementation of the
16 peace agreements in 1994.

17 In both the Office of the Secretary General of the
18 United Nations and in the U.S. government, which was very
19 strongly in favor of this peace agreement by the time it
20 finally came about, there was a great deal of concern that --
21 the peace agreements required that part of the military and
22 security forces be dismantled.

23 I should just add, your Honor, that in El Salvador,
24 the armed forces, security forces and the police are all under
25 the same command, so they are not separate, as they are in the

1 United States. They are separate services, but they are all
2 in the same officer corps, and the police are considered part
3 of the armed forces, on so when I say "the armed forces," I'm
4 including the police. That's just to clarify this.

5 There was a great deal of concern at the time that
6 because the Salvadoran peace agreements required the
7 dismantling of the Treasury Police and the National Police and
8 it required the construction of a new police force, the
9 reasoning behind that was that these were so thoroughly
10 repressive and corrupt that they could not be saved, they had
11 to be completely dismantled, there was a great deal of fear
12 that the death squad apparatus that operated out of both of
13 these forces, the National Police and the Treasury Police,
14 would continue to operate. In other words, that you could
15 dismantle the formal institutions, but you would not find a
16 way to dismantle the death squads. And that is the same
17 policemen taking off their uniforms and acting as a death
18 squad.

19 And that meant that it became very important to try
20 to figure out how to dismantle the death squads as well as the
21 formal military apparatus.

22 Q. And that concern of the United Nations and the U.S.
23 government led to --

24 A. The U.S. government. And they were ordered to do that,
25 since death squads are very secret by their nature, it was

1 important to have as much information as possible about
2 everything everybody knew about death squads, so that pressure
3 could be put in the appropriate places after the signing of
4 peace agreements to make sure that these squads couldn't
5 continue to operate in the ways they had. That was the hope.
6 It was not entirely realized.

7 But because of that, the Clinton Administration
8 declassified an enormous amount of documents. I believe that
9 I think over the years, I probably read somewhere between 8-
10 and 10,000 of them. That --

11 Q. So you reviewed some of the documents that were released
12 as part of this --

13 A. Yes, absolutely.

14 Q. -- project?

15 A. I would say more than some. I would say the majority.

16 Q. Have you reviewed any of them for this case?

17 A. Yes, I have.

18 Q. And can you describe in any further detail the way in
19 which these documents are declassified and are available today
20 to researchers such as yourself?

21 A. Yes. When the U.S. government decides to declassify
22 something, it may decide that the material in it is still too
23 politically explosive or too -- or perhaps not -- they are not
24 certain enough of the information in it, and so when there are
25 names in a politically, either politically sensitive case or

1 in a case where -- well, I would say politically sensitive is
2 really the most important thing, you will see that these names
3 are redacted out. In other words, they are -- you will see a
4 black line in the documentation.

5 In virtually all -- well, all the declassified
6 documents that use -- have extensive use of names and are also
7 politically sensitive, you will see them, the names blacked
8 out, although a lot of the content will be there.

9 Q. Where are these documents maintained?

10 A. They are maintained in two places. In the Library of
11 Congress and in the National Security Archives, which you can
12 access through the Internet. So they are very easy to get
13 now.

14 Q. They are easy to get. And do you have ways in your
15 professional expertise to ascertain the validity of a document
16 that appears to be one of these declassified documents?

17 A. Yes.

18 Q. And have you assured yourself that the documents you have
19 reviewed for this case did indeed come as a part of that
20 declassification project?

21 A. Yes. Yes.

22 Q. The last basis for your opinion, you mentioned before the
23 United Nations Truth Commission and documentation relating to
24 its report dated March 15, 1993.

25 Could you please identify that, the kinds of

1 documents -- the kinds of materials that related to the Truth
2 Commission that you have reviewed and relied upon in forming
3 your opinions in this case.

4 A. United Nations, as part of the peace agreements, there was
5 a decision to try to get at the truth of what were estimated
6 at 75,000 civilian murders, which Archbishop Romero is one, in
7 El Salvador. And as a -- the hope was at the time that trying
8 to get to some of the truth would in fact lead to some
9 investigations. In other words, there was no understanding
10 when this process started that there would be an amnesty the
11 day after the report was released.

12 So the idea was to investigate as much as possible
13 and to bring as much documentation as possible together to --
14 and in the time period that was allowed, it was not possible
15 to investigate all of the murders of all of the civilians who
16 died in El Salvador, but certain murders were -- a number of
17 murders were investigated, either because they were so
18 important in the history of this story or because specific
19 complaints were brought forward by families who did not feel
20 comfortable bringing them in front of any Salvadoran court.

21 There was a process set up -- there were two
22 processes set up that are important in this. One was the
23 Truth Commission, which included three leading jurists, one of
24 them from the United States.

25 And there was also a separate process which actually

1 fed into the Truth Commission that was the process of
2 investigating the human rights abuses of officers inside El
3 Salvador for the purposes of deciding which officers had to be
4 purged from the Salvadoran military as part of the peace
5 agreement.

6 And some of that information about the human rights
7 records of various military officers in El Salvador also was
8 fed into the Truth Commission process.

9 The Truth Commission investigated a whole range of
10 crimes under the auspices of the United Nations, and
11 eventually published a report, which is available on line, and
12 it's available, it's very easy to access to that report.

13 MR. Van AELSTYN: For your information, your Honor,
14 it has been submitted into evidence as Exhibit Number 98, and
15 we will turn to it a little bit later.

16 BY MR. Van AELSTYN:

17 Q. But Professor Karl, two questions. First goes to your
18 qualification and the next to the basis for your opinion.

19 With regard to qualification, did you, yourself, play
20 any role in the Truth Commission or related investigations?

21 A. I played no role in the Truth Commission except to give
22 them access to material that I had, which they used.

23 Subsequently, because the issue of the death squads
24 became so important in the process of the implementation of
25 the peace agreement, there was a joint commission formed to

1 investigate the death squads themselves and a whole series of
2 investigations on death squads.

3 Q. Joint commission?

4 A. There was a UN Commission that followed the Truth
5 Commission Report to try to get at the questions of who
6 exactly were in death squads still, who was paying for death
7 squads, how were they organized, how could you, essentially,
8 the concern was that somehow the head of this had to be cut
9 off, because Salvadorans couldn't ever really feel safe until
10 this informal apparatus was ended.

11 So there was a UN effort to try to do that. Most of
12 that material, I believe, is not public.

13 Q. And you had some role in that?

14 A. Yes, I did.

15 Q. All right. And turning then, lastly, to the basis for
16 your opinion in this case, do you draw upon any of the United
17 Nations Truth Commission or this Joint Commission material in
18 forming your opinion in this case?

19 A. I drew on the Truth Commission Report, and I think, more
20 importantly, I drew on material that is not public and has not
21 been published from the UN investigation of death squads and
22 the associated interviews that came from that, from that
23 particular investigation, including interviews of Alvaro
24 Saravia.

25 MR. Van AELSTYN: Your Honor, I believe we have

1 finished this section of the examination of Professor Karl
2 concerning her qualifications and the bases for her opinions.

3 BY MR. Van AELSTYN:

4 Q. Unless Professor Karl, is there anything we have missed,
5 let me ask you that question, with regard to, not your
6 qualifications, but the basis -- bases for your opinions in
7 this case that we have not mentioned?

8 A. Well, actually, I guess, yes. Even though El Salvador is
9 a separate country from Central America, the interaction
10 between Central American countries is extremely close. And,
11 in particular, in this time of interaction, for a variety of
12 reasons from all different sources, was constant.

13 So I have also reviewed declassified documents from
14 Guatemala.

15 Q. Declassified documents from the U.S. government or the
16 Guatemalan government?

17 A. U.S. government declassified documents from Guatemala,
18 which have reference to, I believe, this case. I have
19 reviewed documents and newspapers, articles, reports,
20 interviews from people who were non-Salvadoran, but who were
21 deeply involved in the Salvadoran process at the time, meaning
22 they were either trying to bring about peace, such as a Nobel
23 Prize winner, Oscar Arias. I have done expensive interviewing
24 and work with people in Costa Rica, Nicaragua and Guatemala,
25 and all of that feeds into my knowledge of El Salvador.

1 I have also investigated a network in an organization
2 which I think is very important to this story, which is called
3 the World Anti-Communist League, and reviewed their meetings,
4 their -- the extent that they have publications of their
5 meetings, and their attendance, their resolutions that they
6 pass.

7 They also formed in 1972 a Latin America branch,
8 which is called the Confederation of Latin American
9 Anti-Communists. And they also have documents, records,
10 resolutions, et cetera, and I have reviewed those.

11 Those were important because Roberto D'Aubuisson was
12 one of the Salvadoran representatives to the World
13 Anti-Communist League. There were many other representatives,
14 but one in particular that is important to this story is José
15 Francisco Guerrero, who was the President of the Salvadoran
16 Supreme Court.

17 MR. Van AELSTYN: Thank you. Your Honor, Professor
18 Karl mentioned Oscar Arias. I would note too that he has
19 submitted a declaration in this matter.

20 BY MR. Van AELSTYN:

21 Q. Is there anything else, Professor Karl, that we should
22 touch on by way of materials that you have reviewed in
23 arriving at your opinions in this case?

24 A. Did I say -- oh, yes. There is a, from both the
25 Archdiocese, I think I said this, of El Salvador, but in the

1 records of the investigations of death squads that are not
2 public, there are copies of death squad threats and large
3 dossiers of who is getting threatened and paper, anyway, where
4 you can trace the threat, and I reviewed those as well.

5 Q. One last category I forgot to mention, I should have at
6 the outset. Have you been present during the course of this
7 proceeding?

8 A. Yes, I have.

9 Q. You have heard the testimony of the witnesses thus far?

10 A. Yes, I have.

11 MR. Van AELSTYN: Your Honor, I see it is almost 4:45
12 and we are done with this phase of Professor Karl's testimony.
13 I would suggest this might be a convenient time to break for
14 the day.

15 THE COURT: All right. We will take the evening
16 recess at this time. We will stand in recess until 9:00 a.m.
17 tomorrow morning.

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

19 THE COURT: Good night.

20 (The proceedings were adjourned at 4:45 p.m.)

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