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CLERK OF COURT
EASTERN DISTRICT OF CALIF

BY: 
DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9	J. DOE,)	CIV-F-03-6249 OWW LJO
)	
10	Plaintiff,)	ORDER RE: PLAINTIFF'S
)	SUPPLEMENTAL REQUEST FOR
11	v.)	ADMISSION INTO EVIDENCE OF
)	EXHIBITS 98, 99, AND 158
12	ALVARO RAFAEL SARAVIA; and DOES)	
	1-10, inclusive,)	
13)	
	Defendants.)	
14)	
)	

17 On September 3, 2004, the Court took "judicial notice of the
18 existence" of the following exhibits: (1) The Commission on the
19 Truth for El Salvador, U.S. Doc. No. S/25500 (April 1, 1993) (the
20 "Truth Commission Report") (Exhibit 98); (2) Monsenor Oscar
21 Arnulfo Romero y Galdamez v. El Salvador, Case 11.481, Report No.
22 37/00 (Inter-American Commission on Human Rights) (the "IACHR
23 Decision") (Exhibit 99); and (3) "Barrier to Reform: A Profile of
24 El Salvador's Military Leaders," A Report to the Arms Control and
25 Foreign Policy Caucus, Sponsored by Rep. Howard L. Berman (D-
26 Cal.), Chairman; Sen. Mark O. Hatfield (R-Ore), Chairman, 100th
27 Congress; Rep. George Miller (D-Cal), Chairman, Central America
28 Task Force; Prepared by the Staff of the Arms Control and Foreign

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1 Policy Caucus, May 21, 1990 ("the Caucus Report") (Exhibit 158).
2 Hr'g Tr. 9/03/04, 96:22-24. The Court found that the exhibits
3 tendered "are in fact true and authentic copies of the reports
4 prepared by those agencies." Hr'g Tr. 9/03/04, 96:22-24.

5 At that time, the Court also requested additional
6 foundational statements n support of plaintiff's request that the
7 Court admit into evidence those exhibits pursuant to Fed. R. Ev.
8 803(8), including information about (a) the author(s) of these
9 exhibits; (b) the authority under which they were prepared; and
10 (c) a description of the methodology for the preparation of each
11 of them, such that the accuracy and reliability of their contents
12 is assured. Plaintiff hereby provides the Court with the
13 requested foundational statements regarding each of the exhibits.
14 Plaintiff respectfully submits that each exhibit meets the
15 requirements of Fed. R. Evid. 803(8) and therefore should be
16 admitted into evidence for the truth of the facts and conclusions
17 set out therein. See *Beech Aircraft Corp. v. Rainey*, 488 U.S.
18 153, 170 (1988) (facts and conclusions that satisfy the Rules
19 trustworthiness requirement are admissible under Rule 803(8));
20 accord *Espinoza v. I.N.S.*, 45 F.3d 308, 309 (9th Cir. 1995); see
21 also *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 143 (2nd Cir.
22 2000) ("factual finding" include "not only what happened, but how
23 it happened, why it happened, and who caused it to happen"); *Hill*
24 *v. Marshall*, 962 F.2d 1209, 1212 (6th Cir. 1992) (report prepared
25 for State legislative committee admissible); *U.S. v. Oates*, 560
26 F.2d 45, 67 (2nd Cr. 1977) (records of factual findings based on
27 investigative reports admissible in civil actions).

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1 1. The Truth Commission Report (Exhibit 98).

2 a. Authorship.

3 The Commissioners responsible for the Truth Commission
4 Report were Belisario Betancur, former President of Colombia,
5 Reinaldo Figueroda Planchart, former Minister of Foreign Affairs
6 of Venezuela, and Thomas Buergenthal, Professor of Law at George
7 Washington University Law School. The Commissioners were
8 assisted by a group of advisors and a staff of consultants and
9 researchers. See Exh. 98 at 193-200; see also Hr'g Tr. 09/03/04
10 (Roht-Arriaza), 121:3-23.

11 b. Authority for Preparation of the Report.

12 The Truth Commission was appointed by the United Nations to
13 investigate specific events in El Salvador pursuant to the peace
14 treaties signed by the parties to the civil war in El Salvador.
15 In addition, both parties agreed to be bound by the Commission's
16 findings and recommendations. On April 27, 1991, the parties to
17 the civil war, the government of El Salvador and the opposition
18 represented by the FMLN, signed the "Mexico Agreements" under the
19 auspices of the United Nations and the governments of Colombia,
20 Mexico, Spain and Venezuela. Pursuant to the Mexico Agreements,
21 the parties agreed to the establishment by the United Nations of
22 the Truth Commission and the issuance of a report on the Truth
23 Commission's investigation. The parties also authorized the
24 Truth Commission to make general and specific recommendations
25 about its findings, to which the parties agreed to be bound. The
26 parties then agreed to implement the portions of the Mexico
27 Agreements that related to Truth Commission when they signed the
28 El Salvador Peace Accords at Chapultapec, Mexico on January 16,

1 1992. See Exh. 98 at 189-192; see also Hr'g Tr. 09/03/04 (Roht-
2 Arriaza), 120:14-121:2.

3 c. Methodology for Creation of the Report

4 The Truth Commission's investigation was conducted by
5 investigators of significant skill and experience, including
6 lawyers, forensic and social scientists, and experts in the
7 culture and history of El Salvador.¹

8 Although it was not meant to substitute for a judicial
9 proceeding, the Truth Commission's findings, which were fully
10 documented in the Truth Commission Report, were based on evidence
11 gathered from those possessing first-hand knowledge, which then
12 was verified and corroborated by secondary sources of established
13 veracity. As the Truth Commission explained:

14 The Commission decided not to arrive at any
15 specific finding on cases or situations, or any aspect
16 thereof, in which there was less than "sufficient"
evidence to support such a finding.

17 In order to guarantee the reliability of the
18 evidence it gathered, the Commission insisted on
19 verifying, substantiating, and reviewing all statements
20 as to facts, checking them against a large number of
21 sources whose veracity had already been established.
22 It was decided that no single source or witness would
23 be considered sufficiently reliable to establish the
24 trust on any issue of fact needed for the Commission to
25 arrive at a finding. It was also decided that
26 secondary sources, for instance, reports from national
27 or international governmental or private bodies and
28 assertions by people without first-hand knowledge of
the facts they reported, did not on their own
constitute a sufficient basis for arriving at findings.
However, these secondary sources were used, along with

25
26 ¹ The research team included law professors, economists,
27 human rights experts, foreign affairs experts, social
28 anthropologists, forensic doctors, international law experts,
public administrators, researchers, criminologists and history
professors. Exh. 98 at 195-200.

1 circumstantial evidence, to verify findings based on
2 primary sources.

3 Exh. 98 at 24; see also Hr'g Tr. 09/03/04 (Roht-Arriaza), 121:24-
4 125:8, 125:21-126:1.

5 Moreover, the Truth Commission's investigation was timely,
6 as it was conducted in the immediate aftermath of the war.

7 The foregoing evidence is sufficient to establish the
8 reliability of and foundation for the Truth Commission Report
9 (Exhibit 98), which is admitted into evidence pursuant to Fed. R.
10 Evid. 803(8).

11 2. The IACHR Decision (Exhibit 99)

12 a. Authorship

13 The IACHR Commissioners responsible for the IACHR Decision
14 in the case concerning the assassination of Archbishop Oscar
15 Romero were Helio Bicudo, Chairman; Claudio Grossman, First Vice
16 Chairman; Juan Mendez, Second Vice Chairman; Marta Altolaguirre,
17 Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo,
18 Commissioners. See IACHR Decision at 720. The IACHR
19 Commissioners are elected by the General Assembly of the
20 Organization of American States (the "OAS"). American Convention
21 on Human Rights, signed by the OAS on November 22, 1969, entered
22 into force July 28, 1978, (the "American Convention"), Article
23 36(1); see also Hr'g Tr. 09/03/04 (Roht-Arriaza), 137:23-25;
24 138:9-12. The IACHR Commission is assisted in its work by a
25 specialized unit in the Secretariat of the OAS. American
26 Convention, Article 40; Hr'g Tr. 09/03/04 (Roht-Arriaza), 138:13-
27 14.

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1 b. Authority for Preparation of the Decision

2 El Salvador acceded to the American Convention on June 23,
3 1978. As a result of its accession, El Salvador became subject
4 to the IACHR Commission's individual complaint mechanism by which
5 persons, groups of persons or non-governmental organizations may
6 file petitions alleging violations of the provisions of the
7 American Convention. American Convention, Article 44. The
8 petition initiating the investigation into the assassination of
9 Archbishop Oscar Romero was filed with the IACHR Commission
10 pursuant to the individual complaint mechanism procedures set
11 forth in the American Convention. American Convention, Articles
12 41(f), 44-51; IACHR Decision at 671, ¶ 1.

13 c. Methodology for the Creation of the Decision

14 The IACHR Commission formally opened the Romero case on May
15 15, 1995. IACHR Decision at 672, ¶ 5. Thereafter, the IACHR
16 Commission engaged in a series of communications with the state
17 of El Salvador in which the IACHR Commission sought El Salvador's
18 response to the allegations in the complaint. IACHR Decision at
19 672, ¶¶ 5-8; 715-717, ¶¶ 152-156; and 718-720, ¶¶ 160-163. These
20 communications followed standard procedures of the IACHR
21 Commission, as set forth in the American Convention, Articles 48-
22 51. In this particular case, the IACHR Commission gave El
23 Salvador four opportunities to respond to the petition. IACHR
24 Decision at 672, ¶ 5. Close to three years later, El Salvador
25 replied to the IACHR Commission by asking ti to "archive" the
26 case because of the passage in El Salvador of the General Amnesty
27 Law. IACHR Decision at 672, ¶ 7, 675-676, ¶ 20.

28 The IACHR Commission conducted an investigation of the case

1 that included a review of the following: the previous findings of
2 the IACHR Commission in its periodic reports on El Salvador (see,
3 e.g., IACHR Decision at 678, n.12; 681, n.25; and 688, n.63); the
4 findings of the Truth Commission (see, e.g., IACHR Decision at
5 678-682, ¶¶ 31-41; 686-687, ¶¶ 53-54; 687-688, ¶¶ 57-58, 61; and
6 notes therein); documents relevant to the petition, including
7 Archbishop Romero's diary and the Salvadoran judicial file on the
8 assassination investigation (see, e.g., IACHR Decision at 683-
9 686, ¶¶ 44-52; 695-696, ¶¶ 87-91, 697-699, 94-98 and notes
10 therein); and interviews of witnesses (see, e.g., IACHR Decision
11 at 683, nn.28 (interview with Fr. Rafael Urrutia), 29 (interviews
12 with Fr. Rafael Urrutia and Robert Cuellar), 30 (interview with
13 Monsignor Ricardo Urioste), and 33 (interview with Judge Atilio
14 Ramirez Amaya); and 701, n.105 (witness statement of Roberto
15 Antonio Martinez, brother of disappeared eyewitness to the
16 assassination)).

17 When the IACHR Commission "deems it necessary . . . to
18 advance its consideration of the case, [it] may convene the
19 parties for a hearing." Rules of Procedure of the Inter-American
20 Commission on Human Rights ("IACHR Rules"), Article 38(3); see
21 generally IACHR Rules, Chapter VI (Hearings before the
22 Commission). The IACHR Commission held a hearing in this matter
23 during its 104th session. After the hearing, the IACHR
24 Commission voted on and adopted its report in this case, Report
25 No. 138/99, pursuant to the American Convention, Article 50 and
26 IACHR Rules, Article 43. As mandated by the American Convention,
27 Article 51(2), on March 13, 2000, the IACHR Commission forwarded
28 its decision to the petitioners and to the state of El Salvador.

1 The IACHR Commission set a one-month deadline for compliance with
2 its recommendations. IACHR Decision at 718-719, ¶ 160.

3 Thereafter, the IACHR Commission concluded that the state of El
4 Salvador had not complied with the recommendations of the IACHR
5 Commission. IACHR Decision at 719, ¶¶ 161-162. Therefore, the
6 IACHR Commission, pursuant to the American Convention, Article
7 51(3) and IACHR Rules, Article 45, determined that it was
8 appropriate to publish its conclusions and recommendations. *Id.*;
9 see also Hr'g Tr. 09/03/04 (Roht-Arriaza), 138:21-23. The IACHR
10 Commission included its decision in this case in the publicly
11 disseminated 2000 IACHR's Annual Report to the General Assembly
12 of the OAS. IACHR Rules, Article 45(3).

13 The foregoing is sufficient evidence of reliability to
14 establish the basis for admission to evidence of the IACHR
15 Decision (Exhibit 99) pursuant to Fed. Rule Evid. 803(8).

16 3. The Arms Control and Foreign Policy Caucus Report
17 (Exhibit 158)

18 a. Authorship

19 The Caucus Report was prepared by the Arms Control and
20 Foreign Policy Caucus. Exh. 158 at 34.

21 b. Authority for Preparation of the Report

22 Plaintiffs assert on information and belief that the Arms
23 Control and Foreign Policy Caucus was founded in the 1960s by a
24 bipartisan group of members of both houses of the United States
25 Congress. An association of Members of Congress pooled their
26 separate staff budgets to form a joint staff to advise them on
27 foreign policy.

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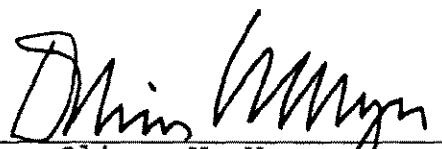
1 c. Methodology for the Creation of the Report

2 The Caucus staff conducted "extensive interviews" with
3 Salvadoran and U.S. personnel and people close to the Salvadoran
4 military. Exh. 158 at 2. The staff reviewed U.S. government
5 records; reports of human rights groups; the extensive archives
6 of Tutela Legal, the Human Rights Office of the Catholic
7 Archdiocese of San Salvador; and the records of Salvadoran
8 military officers' assignments, obtained from the records of both
9 the Salvadoran government and the U.S. Department of Defense.
10 Exh. 158 at 35-39.

11 The evidence is sufficient to establish that the Caucus
12 Report (Exhibit 158) was informational and prepared as an
13 accurate and reliable report to inform legislative decisions in
14 the United States and is admitted into evidence pursuant to Fed.
15 Rule Evid. 803(8).

16
17 SO ORDERED.

18
19 DATED: November 16, 2004.

20
21 
22 Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

23 j doe re exhibits
24
25
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27
28

United States District Court
for the
Eastern District of California
November 19, 2004

* * CERTIFICATE OF SERVICE * *

1:03-cv-06249

Doe

v.

Saravia

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 19, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

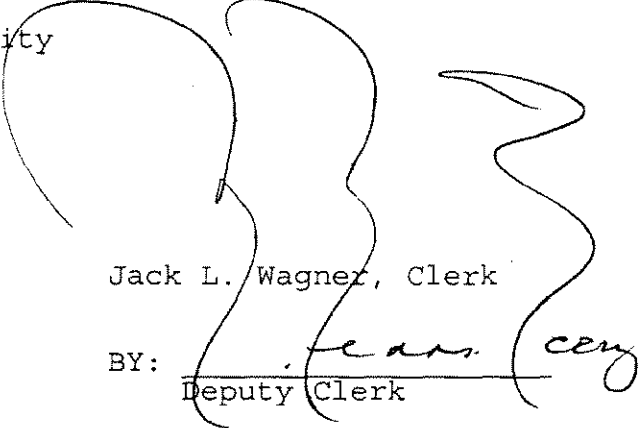
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BY:  Deputy Clerk