

PANEL DISCUSSION: THE ENRIQUE “KIKI” CAMARENA MURDER AND ITS AFTERMATH*

*Hon. Gary Feess, Hon. Robert C. Bonner, Paul Hoffman &
Manny Medrano†*

I. INTRODUCTION

JUDGE FEESS: Good Morning. My name is Gary Feess. I am a retired United States district judge for the Central District of California, and I will be moderating this panel today. This panel is going to discuss the prosecutions that arose from the kidnap, torture, and murder of Drug Enforcement Administration (DEA) Special Agent Enrique Camarena in Mexico. Our panelists are going to be Professor Arthur F. McEvoy,¹ Robert Bonner, Manny Medrano, and Paul Hoffman.

The Honorable Robert C. Bonner, whom I believe is most pertinent to today's proceedings, served as the United States Attorney for the Central District of California from 1984 to 1989. It was during that period that the U.S. Attorney's Office investigated and prosecuted some of the participants in the kidnap, torture, and murder of Enrique Camarena in Guadalajara, Mexico. In 1989, he was appointed to the United States District Court for the Central District of California where he served relatively briefly until President George H. W. Bush plucked him from the bench and appointed him as the Administrator of the DEA.

* What follows is an edited and annotated transcript of the live remarks made by selected panelists on March 18, 2016 during the Southwestern Journal of International Law's symposium, “The U.S. District Court for the Central District of California, 1966-2016: International Context.”

† Judge Gary A. Feess, U.S. District Court, Central District of California. Introductions and short biographies for the included panelists appear in Judge Feess's introductory remarks.

1. Professor McEvoy's remarks have been omitted from the symposium transcript. His article, *The Martyrdom and Avenging of Enrique Camarena-Salazar: A Review of Caselaw and Scholarship After Thirty Years*, appears later in this issue.

Since then, he has served as Commissioner of the U.S. Customs Service, First Commissioner of U.S. Customs and Border Protection, a partner in Gibson, Dunn, and Crutcher, and a senior principal in the Sentinel HS Group, a homeland security consulting firm based in Washington, D.C. Judge Bonner received his undergraduate degree from the University of Maryland and his law degree from Georgetown University Law Center.

Manny Medrano is a graduate of Harvard Law School, which I guess means that he is the only panelist qualified to be on the Supreme Court, and a founding partner of Medrano and Carlton, a white collar litigation boutique in Pasadena. He served as a federal prosecutor in the United States Attorney's Office for the Central District of California for ten years. He was a lead prosecutor in the trials of defendants who were implicated in the Camarena murder. For his work, he was awarded the Department of Justice (DOJ) Director's Award for Superior Performance.

Since his departure from the U.S. Attorney's Office, he worked as a broadcast journalist and is an Emmy award winner in that capacity. He has served as an adjunct professor law of University of Southern California, Pepperdine, Loyola, and Southwestern Law Schools.

Paul Hoffman is a graduate of New York University School of Law and a partner at the firm of Schonbrun, DeSimone, Seplow, Harris and Hoffman. He represented Humberto Alvarez-Machain, one of the Camarena defendants in two different appearances before the United States Supreme Court. His legal career has included volunteer work at the American Civil Liberties Union (ACLU),² and a stint as the full-time legal director of the ACLU of Southern California. He has served two four-year terms on Amnesty International's nine-person international executive committee, and as chair and member of the Board of Amnesty International USA. He is presently the chair of the board of Innocence Matters, a local innocence project. Mr. Hoffman taught at Southwestern Law School early in his career and has since taught as an adjunct professor at the University of California Los Angeles, University of California Irvine, George Washington University, Loyola, and Stanford.

We are going to proceed this way. Judge Bonner will talk about the institution of the proceedings and details relating to that. Mr.

2. The American Civil Liberties Union is a non-profit organization that works "to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country." *About the ACLU*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/about-aclu> (last visited Sept. 3, 2016).

Medrano will address questions and facts relating to the actual trials themselves, and then Mr. Hoffman will deal with the aftermath. Judge Bonner.

II. PANEL DISCUSSION

JUDGE BONNER: Thank you, Judge Feess. I am delighted to be here. I might note that since we are here to discuss the fifty-year history of the Central District of California, I actually began my legal career fifty years ago in the Central District of California as a law clerk to then-Judge Albert Lee Stevens, Jr. A few months after I became a law clerk, Judge Manny Real was appointed to the Court. I would like to note that Judge Real is the longest-serving active federal judge in the history of our nation. It is true and I know that because I just Googled it.

I will begin by providing you with a little bit of the background of the Camarena murder case. Right after DEA Agent Camarena was kidnapped off the streets of Guadalajara in February of 1985 by active duty Jalisco State Police in broad daylight (within two blocks of the U.S. Consulate), he was taken to a house at 881 Lope de Vega in Guadalajara where he was interrogated, tortured, and eventually murdered after about two days.

The DEA investigation of that case started right away because the first question was: "Where's our agent?" DEA and its then-Administrator who I succeeded, Jack Lawn, went to Mexico, demanding that the Mexican federal government find our Agent. We knew he had been kidnapped, but we did not know whether he had been murdered or was still alive. Suffice it to say that the government of Mexico, and I am probably understating this, basically stiffed the DEA. No information was provided to us about our agent's whereabouts. Nothing.

Jack Lawn went to the then-Commissioner of the United States Customs Service, Willy Von Raab, and asked, "Can you do anything to help here because I can't get any cooperation from the government of Mexico?" Von Raab said, "Well, I can do this. I can shut down the border with Mexico," and that is exactly what he did. For days nobody could come across from Mexico into the United States. That got the attention of the President of Mexico and the federal government of Mexico, I can assure you. And for reasons that later became clear, the Mexican government was able to tell the Guadalajara cartel: "You've got to produce the bodies here. You've murdered these people. You got to produce their bodies."

Shortly thereafter—about a week or two after the kidnapping—the cartel members of the Guadalajara cartel dug up the bodies. They were in a shallow grave about three feet deep in Primavera Park in Guadalajara. They dug up the bodies that had been wrapped in plastic shrouds. I say *bodies* because there were two bodies: the cartel also murdered a Mexican citizen named Zavala, the pilot for DEA Agent Camarena. They dug them up, drove them sixty-five miles south of Guadalajara to Zacatecas to a place called the Bravo Ranch, and dumped the bodies there. They blamed the kidnapping on the Bravo family, who were totally innocent, but of course to do that they murdered all five members of the Bravo family. Then, they said, “Well, we found the bodies. It must have been the Bravo family that killed your Agent. There he is.” That is how we discovered the bodies. That is how we learned that Agent Camarena was dead.

By the way, there was some soil on the plastic shrouds. The Federal Bureau of Investigation (FBI) Forensics team, which was working with the DEA, identified soil samples that indicated that the bodies had never been buried at the Bravo Ranch. They had been buried at Primavera Park in Guadalajara. After the cartel members dug up the bodies and after they were forensically identified, ultimately the investigation revealed where the torture and the interrogation had taken place.

A few months later, Joyce Karlin and Jimmy Gurulé, two Assistant U.S. Attorneys (AUSAs) who worked for me during my time as the United States Attorney for the Central District of California showed up to my office and said, “Look, the DEA would like us to assist in the investigation of the kidnapping and murder of Agent Camarena. They’d like us to convene a grand jury and see what we can do to help them.” Of course, that was a no-brainer for me. So I said, “Yes, we will do that and we’ll staff as many AUSAs as we need to effectively investigate this case, and we will see if we can prosecute the people responsible for the murder of a federal agent.”

We are here today to discuss this case because, in my view, it is probably the most significant criminal prosecution ever mounted in the history of the Central District of California, and it certainly was the most significant prosecution that I was involved in when I was the U.S. Attorney for the Central District. A DEA agent had been kidnapped and murdered in Mexico, and it was clear, I think, to everybody—certainly to the DEA and to the Justice Department—that the government of Mexico was both incapable and unwilling to bring to justice those responsible for Agent Camarena’s murder in Mexico.

By the way, this was not too well known to the Mexicans, certainly not to the cartel members, but the murder of a federal official, a DEA agent, is a federal crime, a crime against the laws of the United States, no matter where in the world that crime is committed.³ If just an ordinary American citizen gets murdered abroad, that is not a federal crime. You would need to depend solely upon the host government to do justice. If the murder is of a federal agent or official, then it is a federally prosecutable crime. For the law students here, Title 18 of the United States Code, Section 1114 is the federal crime, and Section 1117 makes conspiracy to commit murder of a federal agent or officer a federal crime.⁴

I believe that there are three reasons why the Camarena case⁵ is significant. First of all, it was essential for the U.S. Government and the Department of Justice not to just thoroughly investigate this case, but to also indict everyone that we could determine was responsible for conspiracy to willfully and knowingly participate in the kidnapping or murder of Camarena.⁶ It was important that we bring this prosecution and bring to trial all those that we could get into our custody.

The reason was not only to do justice for Kiki Camarena and the Camarena family. Of course, that was part of it, but it was more to it than that. Our prosecution was intended to send a message to criminal organizations that operated in Mexico, Columbia, and elsewhere in the world that you cannot just kidnap and murder a U.S. federal agent with impunity; something is going to happen to you even if your government does not take action. Our prosecution did much, in my opinion, to protect the lives of DEA agents, FBI agents, and other federal agents who serve our country overseas.

As the evidence developed through the grand jury and the DEA's investigation (dubbed Operation Leyenda), we were able to indict twenty-two defendants for conspiracy to kidnap and murder Agent Camarena.⁷ Of those, we were able to get jurisdiction over thirteen, and twelve out of the thirteen were convicted by juries in the Central District of California.⁸ The thirteenth, by the way, was Dr.

3. 18 U.S.C. § 1114 (2012).

4. 18 U.S.C. § 1117 (2012).

5. *E.g.*, United States v. Alvarez-Machain, 504 U.S. 655 (1992); United States v. Verdugo-Urquidez, 494 U.S. 259 (1990).

6. 18 U.S.C. § 1201(c) (2006).

7. United States v. Caro-Quintero, 745 F. Supp. 599, 602 (C.D. Cal. 1990); *e.g.*, Sixth Superseding Indictment at 7-28, United States v. Caro-Quintero, (CR 87-422(F)-ER) (C.D. Cal. 1989).

8. *See, e.g.*, United States v. Matta-Ballesteros, 71 F.3d 754, 760 (9th Cir. 1995) (affirming the appellant's conviction for his participation in the murder of Agent Camarena); United States

Alvarez-Machain, who was granted a Rule 29 motion,⁹ or a judgment of acquittal, by U.S. District Judge Ed Rafeedie at the close of the government's case.¹⁰

By the way, I will just say that I know, and Manny probably knows this as well, that the jury would have convicted Dr. Machain in a nanosecond based upon the evidence presented to them. Some other defendants were tried with Machain and convicted, and in talking to the jurors after the case ended, they were surprised that they were not allowed to decide the Machain case, and that they would have found him guilty if given the chance. I have great respect for Judge Rafeedie, although he was also the judge who earlier had said that there was a violation of the U.S.-Mexico Extradition Treaty¹¹ and initially dismissed the case against Machain. That decision was reversed by the Supreme Court.¹² In sum, deterring further attacks on U.S. agents serving abroad is one reason the case was important.

The second reason is this: There were rumors going back to the 1980s of official corruption within the Mexican government, but the Camarena investigation and prosecutions established with compelling evidence that there was pervasive corruption at all levels of government. At the very highest levels of the Mexican government,¹³ and the lowest (the Jalisco State Police) were all working for the cartel.¹⁴

I will not go into the corruption chapter and verse except to say this: The Camarena indictment included charges against the head of the Mexican Federal Judicial Police, Manuel Ibarra.¹⁵ It indicted other major high-level players as well, including two *comandantes* (commanders): one of the Mexican federal police and one of the Federal Security Directorate (DFS), an intelligence agency for the Mexican government.¹⁶ There was evidence presented that the governor of Jalisco at that time was a participant in the discussions of kidnapping

v. Felix-Gutierrez, 940 F.2d 1200, 1203 (9th Cir. 1991) (affirming the appellant's conviction of assisting the kidnapping and murder of Agent Camarena); United States v. Vasquez-Velasco, 15 F.3d 833, 837, 848 (9th Cir. 1994) (affirming the appellant's conviction of committing violent crimes in aid of a racketeering enterprise).

9. FED. R. CRIM. P. 29.

10. United States v. Caro-Quintero, 745 F. Supp. 599, 601 (C.D. Cal. 1990).

11. Extradition Treaty, May 4, 1978, U.S.-Mex., T.I.A.S. No. 9656.

12. United States v. Caro-Quintero, 745 F. Supp. 599, 601 (C.D. Cal. 1990), *aff'd sub nom.* United States v. Alvarez-Machain, 946 F.2d 1466 (9th Cir. 1991), *rev'd*, 504 U.S. 655 (1992).

13. Those indicted in the Camarena murder case included Mexican Federal Judicial Police Officers, an officer of the Directorate of Federal Security in Mexico, and a Jalisco State Police Officer. Sixth Superseding Indictment, *supra* note 7, at 5-6.

14. *Id.*

15. *Id.* at 4.

16. *Id.*

Agent Camarena.¹⁷ There was evidence that implicated the ministerial level of the Mexican government, *Gobernación*, which is basically the ministry of the interior.¹⁸ This case was important because it exposed not just the corruption, but also the symbiotic relationship that existed between organized crime, major drug trafficking organizations, and the Mexican government.

The third reason I believe this case is important is because it is the only case I know of that has resulted in three separate Supreme Court decisions: the two *Machain* cases¹⁹ and the *Verdugo* case.²⁰ Those are, from a legal point of view, very significant cases.

I don't know whether this story has ever been told, but the importance of this case might have been lost because there was a pretty good chance that it would not have happened. Why was that? Because if you are the United States Attorney, in most federal criminal cases, you decide whether they are going to the grand jury for indictment. But in this case, there was a separate, parallel investigation being done by the U.S. Department of Justice's Criminal Division. They had convened a grand jury down in San Diego and had determined that they did not think they could successfully prosecute the case.²¹ We had all the same evidence they did, but we looked at the evidence differently. Jimmy Gurulé, Manny Medrano, John Carlton, and I believed that there was enough evidence to get convictions here, and that we should be able to go on with this case.

Incredibly, the head of the Criminal Division at the time, Bill Weld, said, "No. We're not approving an indictment." I said, "Well, look, we're going to take this to a higher level, Bill. We're going to the Associate Attorney General," who at the time was Steve Trott. Jimmy Gurulé and I went back to Washington and gave a three-hour presentation. It was Jimmy Gurulé, the lead AUSA on the case for my office, who led the presentation and explained why we can prosecute and get convictions in this case and why the DOJ should not block our indictment of the case. Steve Trott, bless his heart, had a lot of faith in the AUSAs of the Central District because he was my predecessor as U.S.

17. Jim Newton, *Camarena's Abduction and Torture Described*, L.A. TIMES, Dec. 10, 1992, at B1.

18. *See id.* at B4.

19. United States v. Alvarez-Machain, 504 U.S. 655 (1992); Sosa v. Alvarez-Machain, 542 U.S. 692 (2004).

20. United States v. Verdugo-Urquidez, 494 U.S. 259 (1990).

21. *See* Ronald J. Ostrow, *U.S. Grand Jury Quietly Investigates Killing of Drug Agent in Mexico*, L.A. TIMES (Feb. 1, 1986), http://articles.latimes.com/1986-02-01/news/mn-2931_1_u-s-grand-jury.

Attorney. He agreed and gave us the green light, and we went forward with the indictments. I am still astonished that we had to go back to Washington, D.C. to get authorization from the Justice Department to indict this case. It was so important and so significant not only to us but also to U.S. law enforcement worldwide. Thank you.

JUDGE FEESS: Manny, why don't you tell us about the trials?

MANNY MEDRANO: My law partner is John Carlton and it is with great regret he could not join me here today. He is a great human being. He was my co-prosecutor and we were the two lead prosecutors on the Camarena murder case back in the day.

Let me first start by telling you that this case is very, very personal for me, but not for a reason that you would normally expect. You see, over seventy years ago my grandfather, Pasqual Andujo, my mother's dad, was a cop in a small town in Chihuahua. He was an aberration on the small police force because he was not a corrupt officer. He did not take *la mordida*, the bite. He did not accept bribes.

On September 12, 1945, my grandfather, Pasqual Andujo, was out for a walk when a murder suspect that he had been pursuing confronted my grandfather and shot him, killing my grandfather. This happened in a very small town, so in no time word reached his twelve-year-old daughter, Elisa, who was able to rush to his side as he lay mortally wounded bleeding to death on the sidewalk in this small town in Chihuahua. He died, with his last breath cradled in the arms of my mother, Elisa.

Now I share that with you because when I had the privilege of being approached by my bosses at the U.S. Attorney Office to take over and start running the Camarena case along with John Carlton. I jumped at it because this was a case that cried for and demanded justice. This was a case that required anyone involved in it to put in their all because so much was at stake. This horrific event took place on February 7, 1985. Enrique Camarena walks out of the DEA office, which is a very nice, touristy area in Guadalajara, where the American Consulate was located; an area that you and I back then would not hesitate to go and visit.

At two o'clock he was kidnapped in broad daylight by corrupt cops and bodyguards for the cartel. He was taken to the palatial home on the outskirts of Guadalajara and put in a small room in the back of the house, a room that had walls that were about a foot thick to better muffle the screams. Agent Camarena was tortured by the cartel for

about thirty-six hours and ultimately murdered. The death blow was (and this is what we told the jury, but to this day we are still not sure) delivered by a piece of steel rebar or a tire iron, which they used to drive through the top of his skull into his brain and then took it out, killing Agent Camarena.

Kiki Camarena left behind a wife and three boys. The oldest, Kiki Junior, just to share parenthetically, he is now a San Diego Superior Court Judge, just elevated to the bench very recently. We are all very proud of Kiki Camarena. About two dozen people were indicted. We caught a bunch and convicted virtually everybody except for Dr. Humberto Alvarez-Machain, who was granted a Rule 29 acquittal by Judge Rafeedie.²²

Let me just tell you a couple of things that stood out for me when I reflected on this case before I joined you this morning. This whole thing is like an out-of-body experience because it was a while ago, and when you reflect on it, think about it, and read about it, you go, "Dang, I was part of that team." It is a very strange, strange feeling. But nevertheless, I have been very blessed with my career. I have done a bunch of different things, including broadcast journalism, but hands-down what I am most proud of was the stint as an AUSA and the privilege of working on this investigation.

If you have ever been in law enforcement and you are working up a dope case or a murder case in a foreign jurisdiction, what is paramount and critical is the development of confidential informants (C.I.s). No one was better at that than Kiki Camarena. No one was better at that than the team of DEA agents that we had working for us to try to pull together this investigation. No one was better at developing C.I.s. That ultimately led to the demise of Camarena because he was so extraordinary in developing these C.I.s who provided the information which then led to massive seizures of marijuana and cocaine, resulting in over a billion dollars loss of the cartel's important product. That is a lot of dough, a lot of value. They did not take that lightly.

The drug cartel based out of Guadalajara—which at the time was the leading and most profoundly violent cartel in the world—gathered, conspired, and then pulled the trigger on the plan: the unbelievably brazen act of kidnapping an American federal agent off the streets in broad daylight in Guadalajara. Something of that magnitude had never been considered by the “bad guys” before and now it had

22. Criminal Minutes, United States v. Caro-Quintero, No. CR 87-422(C)-ER (C.D. Cal. Dec. 14, 1992).

transpired. Rob Bonner has already shared the difficulties of trying to get this investigation off the ground, which was like pulling teeth because the Mexican government, God bless it, was pretty corrupt back in the day at the time of this investigation.

Once they finally allowed us into the torture chamber at the home where Camarena was being held captive and tortured, they had already gotten in and painted all the walls, cleaned up and vacuumed. It was by the grace of God and an extraordinary FBI forensic team that our guys were able to go in and find hair samples, carpet fibers, fabric, and bed sheets, which we later provided to the trier of fact and established that Kiki Camarena had been held captive and tortured at that particular residence.²³

Without informants, this case would never have gotten off the ground. I have to acknowledge our lead agent, Hector Berrellez, who is now retired. I often tell people that if a guy like Hector Berrellez had been a law partner at Gibson Dunn, he would have been the top rain-maker because he had the most extraordinary people skills to be able to go out in the field, develop the confidence of a target confidential informant, bring them on board, and get them to say, "Yes, I'll come and testify before the federal grand jury in L.A., and I'll even go to the witness security program." That is hard to do.

These events took place back when we all used pagers. If your pager went off at 3:00 a.m. in your apartment in West L.A., which is where I lived, that was never good news. We lost about a dozen informants who were found and murdered by the cartel.

The collateral damage was through the roof in this case. I already mentioned a number of informants that were taken out by the cartel, but many other innocent lives were taken as well. A few people know, but I know Rob will remember, that we actually convicted a cartel member who was also tied into the Camarena case for the murder of two American tourists in Guadalajara, one week before Camarena was kidnapped and murdered. Alberto Radelat, a dental medical student who wanted to study in Guadalajara; and John Walker, a former Marine Vietnam veterinarian who walked with a limp because he stepped on a land mine in Vietnam in the service of his country.²⁴ Both these guys, God bless them, walked into a restaurant, "La Langosta," in Guadalajara where one of the drug leaders, Rafael Caro

23. Brief of Appellant at 9–10, United States v. Matta-Ballesteros, 71 F.3d 754 (9th Cir. 1995) (No. 99-50054).

24. United States v. Vasquez-Velasco, 15 F.3d 833, 833 (9th Cir. 1994).

Quintero, was holding a meeting with his team.²⁵ They mistook the two Americans for DEA agents and took them to the kitchen where they murdered both tourists after torturing them for three hours.²⁶ Collateral damage abounded in this case, and it was a very, very difficult prosecution.

Let me close by sharing three final points: Number one, and I am not here to suck up to Rob Bonner, but I think the world of him. We (myself and John Carlton) would not have been able to do that case and devote our energies and time without his support. We had death threats and twenty-four-hour U.S. Marshal protection for quite a while. We carried firearms. It was a very difficult period in our lives, but without the backing of Rob Bonner, who literally had our back in dealing with the DOJ, the politics, and the news media, this case would never have happened. John Carlton, myself, and the entire DEA team are very, very grateful to Rob Bonner.

Point number two, I speak a lot about this case to different groups. I have always called Camarena the “Jesus of DEA,” and I will tell you why: it is because he died so that other federal law enforcement officers can serve abroad proudly in service of you, me, and our country, and can continue to do their jobs in hot spots, such as Cali, Guadalajara, and Mexico City. Bad guys will not go after them because they know if you touch a hair on the head of one of our agents, we will come after you with everything we have.

The last point is this. I love Judge Rafeedie; he is a great human being and a terrific judge, and I have always respectfully disagreed with him on the Rule 29 issue because as Rob Bonner just shared with you previously, I was there. I tried the case. I put on the case in chief along with my co-prosecutor, John Carlton, and there was an abundance of evidence to convict had that case gone to the jury. But this is our system. I respect Judge Rafeedie, and that was the result with that case.

It is a pleasure to be here with you today. Thank you.

PAUL HOFFMAN: Obviously, I am outnumbered here, but that is not an unusual position for me to be in. Given what Judge Bonner and Manny just talked about, I just want to start by saying that personally, I thought that an aggressive law enforcement action in this case was obviously appropriate—the killing of a DEA agent is serious business. There is no issue about that.

25. *Id.* at 838.

26. *Id.*

Why did I get involved on the other side of the Alvarez-Machain case?²⁷ At the time I was the legal director of the ACLU, and from our standpoint, we saw the kidnapping of Dr. Alvarez-Machain as a violation of the rule of law, a violation of basic international law principles, and a violation of the U.S.-Mexico Extradition Treaty. It was a question of “Are you going to adhere to the rule of law in conducting this investigation and in pursuing it or not?” The ACLU’s mission, of course, on both in civil liberties and to some degree in the international human rights world, is to try to obtain that kind of adherence to principle, even in the toughest cases, such as the one discussed today.

Obviously, you have now heard why it is the toughest case. You now know why there were a lot of convictions. You know the passion involved, from the beginning of the case to the end. There was also passion in the Mexican population, for example. There was outrage in Mexico over the kidnapping. Not so much over the investigation, generally, but over the kidnapping of Dr. Alvarez-Machain.

The press talked a little bit about these cases, and I will say a little bit more about them. I was trying to think about what to say about the legacy of these cases. You heard the first one was *U.S. v. Alvarez-Machain*, where Judge Rafeedie enforced the U.S.-Mexico Extradition Treaty.²⁸ And in a sense, from our standpoint, enforced international law because one of the basic international law principles is that one country cannot exercise law enforcement jurisdiction in the territory of another country without its consent.²⁹ That is just what international law is. Every extradition treaty is based on that background principle.

However, I think that the decision in *U.S. v. Alvarez-Machain* just cannot be sustained on any basis of reasonable international law. But sometimes the United States has a very ambivalent attitude towards international law. The judiciary has an ambivalent attitude towards international law and that is kind of what we were up against in that.

From a legacy standpoint, one of the things I reflect on is, had we won, whether it would have mitigated, what I would view as, the excesses of the war on terror? I would like to think that there would have been less extraordinary rendition and there would have been

27. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

28. *United States v. Caro-Quintero*, 745 F. Supp. 599, 614 (C.D. Cal. 1990), *aff’d sub nom. United States v. Alvarez-Machain*, 946 F.2d 1466 (9th Cir. 1991), *rev’d*, 504 U.S. 655 (1992).

29. RESTatement (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES ch. 1, subch. A, intro. note (AM. LAW INST. 1987).

more attention to international law in that context. But it was a different context and it might have played out exactly the same. But sometimes I also wonder whether if the Supreme Court had made a strong statement about international law in *U.S. v. Alvarez-Machain*, whether that would have mitigated at least some of those, what I view as, international law violations that our country committed in the furtherance of the war on terror.

The other case, which I think in a lot of ways leaves more of a legacy, is *Sosa v. Alvarez-Machain*.³⁰ You had both Judge Rafeedie and Judge Wilson finding that the kidnapping violated international law.³¹ You had many Ninth Circuit judges finding that the kidnapping violated international law. There are some differences about the rationale, but basically, all the rulings in the Ninth Circuit were in favor of Dr. Alvarez-Machain on these issues,³² notwithstanding the passion and the context in which it unfolded. We had a little bit more difficulty when we went upstairs.

In *Sosa v. Alvarez-Machain*, again, I view it another missed opportunity in a lot of ways. That case was mostly about the enforcement of the Alien Tort Statute (ATS),³³ which in short was part of the Judiciary Act of 1789.³⁴ It gives aliens the right to bring cases for torts committed in violation of the law of nations.³⁵ When Judge Rafeedie acquitted Dr. Alvarez-Machain, it was our view that this was an opportunity to try and obtain accountability under the Alien Tort Statute for those involved in the kidnapping of Dr. Alvarez-Machain. Not just in that case, but in a broader context. The hope was that we would be able to use the Alien Tort Statute in a broader way to enforce international human rights in U.S. courts.

Now I would also just note parenthetically that we were following in the lead of what Judge Real had done in the *Marcos* case.³⁶ The Marcos case had been tried in the early 1990s, and reached a final judgment in 1995.³⁷ We were bringing this case in the same spirit as those other cases, because those of us that were bringing cases against people like Marcos were being criticized for not bringing international law cases against U.S. defendants for their violations of international

30. 542 U.S. 692 (2004).

31. *Alvarez-Machain v. Sosa*, 266 F.3d 1045, 1050 (9th Cir. 2001).

32. *Id.* at 1049.

33. 28 U.S.C. § 1330 (1948); see *Sosa*, 542 U.S. 692.

34. Judiciary Act of 1789, ch. 20, § 9, Stat. 73, 77 (1789).

35. 28 U.S.C. § 1330.

36. *In re Estate of Marcos Human Rights Litig.*, 910 F. Supp. 1460 (D.C. Haw. 1995).

37. *Id.*

law; that there was some kind of double standard in the work that we did.

And so, we saw this as an opportunity because the entire world viewed these events as an international law violation. I wish I had known in 1993 what I was getting myself in for; this was a fourteen-year process—we went from 1990 to 2004 altogether. When we got to the Supreme Court in *Sosa*, this was the first case that had been decided by the Court on the Alien Tort Statute, so it was breaking completely new ground.³⁸ I think everybody realized that this case was going to determine whether the Alien Tort Statute could be used to enforce international law in U.S. courts at all, whether it could be expanded, and whether it could be narrowed. We had against us the Administration at the time wanting to wipe out the Alien Tort Statute and limit it to something that was a historical artifact.

So from the standpoint of the Alien Tort Statute, the *Sosa* decision was somewhere in the middle. Justice Souter's opinion was something that basically said, "No, the Alien Tort Statute was not a historical artifact; the founders actually intended to enforce international law."³⁹ Exactly what they intended to enforce and how we would do it in the twentieth and twenty-first centuries was a little bit up for grabs. And so they used cautionary language that identified all the different factors about whether you would enforce claims or not, and they left it to future decision to really figure out how that would work.⁴⁰ The Court specifically cited, for example, to the *Marcos* case as saying that it offered a way that they agreed was appropriate for the Alien Tort Statute, and that you could go after people for torture and summary execution and disappearances.⁴¹ You go beyond that to maybe some more peripheral norms like the one they found in this case.⁴²

One of the things that is always odd when doing a Supreme Court case, and I have done enough of them to know this, is that by the time they write about your case, it does not really look like your case anymore. All through this case we were talking about the fact that he was abducted from Mexico, the trans-border aspects of this. And so, when I read the opinion, it sounded to me like the Court found the trans-border aspect irrelevant, and that it reduced this case to somebody

38. See *Sosa*, 542 U.S. at 712-38.

39. *Id.* at 724.

40. *Id.* at 732-33.

41. *Id.* at 732.

42. See *id.*

being arrested by someone that the plaintiffs claim does not have legal authority—like somebody in Boston who was arresting somebody in New Hampshire, or something like that. I do not remember talking about New Hampshire and Connecticut. We are talking about taking some guy from Mexico. And so, you looked at that and you thought, “Wow, did I do that bad a job of explaining what this was about?”

Now the other missed opportunity is that in 2004, when we were doing this case, the argument that the presumption against extraterritoriality applied to the Alien Tort Statute was viewed as a laughable argument. The Justice Department filed a brief that said that the Supreme Court did not even bother mentioning it; no one bothered mentioning it.⁴³ And unfortunately, in 2013, my latest foray upstairs, in the *Kiobel* case,⁴⁴ the Court has applied the presumption against extraterritoriality to the ATS.⁴⁵ But, the *Sosa* case is still the main case in the Alien Tort Statute world, and so, from a legacy standpoint, it has been cited about a thousand times at last count, it might be 2,000.⁴⁶ The literature on the ATS part of *Sosa* is enormous, probably more articles than there are cases.⁴⁷

JUDGE FEESS: If you wondered, from your Supreme Court experience, if the case that came down was the case that you argued, now you know what it is like to be a District Court judge in the Ninth Circuit.

III. QUESTIONS & ANSWERS

JUDGE FEESS: I have a question that I would like to put first to Rob and Manny because I want to quibble a little bit with one of your premises, or at least as things have developed in more recent times, and that is the notion of deterrence, which I think probably was successful for some period of time. I would raise the *Zapata* case,⁴⁸ which is now the subject of civil litigation in the Southern District of Texas under the Anti-Terrorism Act,⁴⁹ brought by victims of violence in

43. Reply Brief for Petitioner at 9, *United States v. Alvarez-Machain*, 504 U.S. 653 (1992) (No. 03-485), 2004 WL 577655, at *9.

44. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013).

45. *Id.* at 1669.

46. As of August 30, 2016, a search on the Westlaw database shows that *Sosa v. Alvarez-Machain* has been cited by 855 cases with regard to the Alien Tort Statute. *See, e.g.*, *Teva Pharmaceuticals USA Inc. v. Sandoz, Inc.*, 135 S. Ct. 831 (2015); *Kiobel*, 133 S. Ct.

47. As of August 30, 2016, there are 2,160 secondary sources on Westlaw that have cited *Sosa*, 542 U.S. 692.

48. Complaint, *Zapata v. HSBC Holdings PLC* (No. 1:16-cv-30) (S.D. Tex. Feb. 9, 2016).

49. Anti-Terrorism Act, 18 U.S.C. § 2331 (1992).

Mexico, including Immigration and Customs Enforcement (ICE) agents, Jaime Zapata and Victor Avila. Zapata was killed and Avila was severely injured while driving a consulate car.⁵⁰ I wonder whether or not the deterrent objective has withstood the test of time.

JUDGE BONNER: Well, that is a good point and Agent Zapata was an ICE agent who was murdered in Mexico by people who were associated with one of the cartels.⁵¹ I think it was Los Zetas.⁵² This happened about four or five years ago. It is not that long ago.

First of all, Agents Zapata and Avila were driving a black Bronco along the highway in Mexico. It was a U.S. government vehicle, but it is not entirely clear from my examination of the facts that they actually knew these were U.S. federal agents. I think the cartel members were actually after the Bronco just to steal it, but I cannot state for certain. But, if you are asking about deterrence, I do not think they were targeting Agent Zapata, as had been the case with Agent Camarena, and I think it was a fluky situation.

Secondly, I agree with you: deterrence flowing from a prosecution can last only so long, and I would say it can last for a generation and now we are passed that generation. The Mexican cartels—in particular, the Zetas, La Familia Michoacana, and so forth—are extraordinarily violent, evil people that are engaged in killing. So far, other than Zapata, however, there have been no other killings of U.S. agents in Mexico since Agent Camarena in 1985. I do not know how long it will last, but I do think for at least a couple of decades. The fact that we were willing to do a really extraordinary investigation and bring indictments, with the persistence of the DEA and the DEA Administrator Mr. Lawn was very important to this happening. The investigation of the Camarena kidnap-murder and the subsequent prosecutions sent a message that reverberated in Mexico.

And I will say this about the rendition of Dr. Machain as well. I prefer to call that not so much as a “kidnapping” of Machain, but rather a unilateral extraterritorial extradition. It may well have been considered kidnapping in violation Mexican law,⁵³ no doubt about that. But the legal question for the U.S. courts was whether bringing somebody to the United States under those circumstances deprived the U.S. courts of jurisdiction because the extradition treaty was vio-

50. See Complaint, *supra* note 48, at 37–38.

51. See *id.* at 37, 38.

52. *Id.* at 37.

53. See *Sosa v. Alvarez-Machain*, 542 U.S. 692, 754 (2004).

lated.⁵⁴ In that respect, let me just say this, so everybody knows (and I know Mr. Hoffman knows this) that there had never been a single extradition under the 1907 U.S.-Mexico Extradition Treaty of a Mexican citizen to the United States in the history of that treaty as of 1990.⁵⁵ So it was clear that we were not going to obtain custody of any of the indicted defendants via the extradition process.

Now, there have been some formal extraditions of Mexican nationals since then, but there had not been a single one to that point of time, and almost all “extraditions,” before that were informal extraditions. The Mexican government, through a police agency, would produce somebody at the bridge or push them through the fence. That is what happened in the *Verdugo* case.⁵⁶ The Mexican government never protested Rene Verdugo’s informal extradition, although Verdugo was not formally extradited. He was literally brought to us at the border and handed over to us.⁵⁷

Although I digressed a little bit from your question, I think the Camarena prosecution has had a lot of deterrence, but eventually people forget and drug cartels, and organized criminals forget too. I just hope that we do not have to repeat the exercise.

MANNY MEDRANO: I have a quick thought on deterrence: I completely agree with Rob Bonner that a generation has passed and perhaps the deterrent value is not as profound or significant as before, but let me tell you what would be a greater deterrence.

First, a little background fact. One of the bad guys that the Mexican government never gave us, and ultimately convicted by a Mexican court,⁵⁸ was Rafael Caro Quintero, a top drug cartel leader for the Guadalajara cartel back then. I think he served twenty-eight years of a forty-year term for drug trafficking (not for the murder of Camarena). He was then, not too recently, released under the radar by a low-level judge, which I would say, was done under cover of darkness because he is gone now and a fugitive from justice again.⁵⁹ The Mexican Su-

54. United States v. Alvarez-Machain, 504 U.S. 655, 658 (1992).

55. *See id.* at 659.

56. United States v. Verdugo-Urquidez, 939 F.2d 1341 (9th Cir. 1991), *vacated*, 505 U.S. 1201 (1992).

57. *See id.* at 1343.

58. See Associated Press, *Mexico Supreme Court Overturns Drug Lord Release*, USA TODAY (Nov. 6, 2013 7:34 PM), <http://www.usatoday.com/story/news/world/2013/11/06/mexico-supreme-court-drug-lord/3459127/>.

59. *Id.*

preme Court then says, “Oh, that was a mistake, maybe we can correct it now. Let’s find him.”⁶⁰

Look, you want the best deterrent in the world for these bad guys that are doing what they are doing with abandon? Tell Mexico, “Give us the bad guys, we’ll prosecute them in the United States court. A bad guy, a drug dealer, has no greater fear in life than facing the American Bar of Justice, because you cannot corrupt it; you can’t pay a bribe to the judge to walk out the door. You’re going to be convicted and you’re going to do hard time in a federal maximum security facility in the United States.” So, my thought is if you want continued deterrence, let’s have more bilateral cooperation with the Mexican government. Give us these guys; give them to us. We have indicted them. Let us do our job.

AUDIENCE MEMBER: If, as Judge Bonner said, the jury would have convicted one of the defendants who was granted the Rule 29 motion in a nanosecond, could you give some insight on why the motion was granted? Secondly, the five members of the Bravo family were murdered. Do you have information on who murdered them? Were they Mexican government murderers who tried to ostensibly create this image that the Bravo family was involved in the killing of Agent Camarena?

JUDGE BONNER: I cannot remember the specifics involving the Bravo family, but maybe Manny does. From what I recall, the Bravo family killings may have been carried out by cartel members, but it could have also been the Jalisco State Police who worked for the cartel. But I am not sure we ever found out. We just knew that the Guadalajara cartel—Caro Quintero, Ernesto Fonseca, Felix Gallardo, and so forth—ran and directed it. But I do not really recall who specifically murdered the Bravo family.

In regards to the Rule 29 motion, you almost always get into trouble speculating why judges make a certain ruling. I would think that Judge Rafeedie—who I have always admired—looked at the evidence himself. This case had a long history. He had dismissed it once, it had gone up to the Supreme Court, and it came back down. But I think he genuinely thought that the evidence did not meet the Rule 29 standard. I knew Judge Rafeedie. He was a straight-arrow kind of guy and that was his conclusion. We had twelve jurors who would have said, “No, we thought the evidence was sufficient.” But look, a

60. *Id.*

federal judge has the prerogative to take a case from the jury in certain situations. There is a standard that they apply: whether they think a reasonable jury could reasonably convict on the evidence presented, and I think that is how he decided that a Rule 29 was appropriate. I will always think that he genuinely believed that the evidence was insufficient to permit the jury to decide. I will particularly think that because Judge Rafeedie is not here to defend himself if I said something else.

MANNY MEDRANO: I have a little bit of a different take. First of all, our evidence suggested that it was corrupt Mexican cops that took out the Bravo family and tried to tie it up to suggest that the Bravo family was responsible for Camarena's kidnapping and murder. Of course, they had nothing to do with it. They were truly innocent victims.

On the Rule 29 issue, many of you may know this, but double jeopardy attaches when you lose that Rule 29 motion when you are a federal prosecutor. You have no appellate review.⁶¹ That is all she wrote, all right? This is just Manny's personal opinion because I was there. I tried the damn case and put on our case in chief for the trier of fact. Let me just say that I love Judge Rafeedie. If we had to try that case over again, I would go back to Judge Rafeedie in a heartbeat because he was very fair with us. But I am of the belief that in his core, he had great difficulty with the concept of renditions and kidnappings. It just did not sit well with him. Ultimately, I think that was the engine driving the machine for his ultimate decision. How do I know? That is just my speculation and belief for what it is worth.

AUDIENCE MEMBER: I do not want to be misunderstood, so you should know that I was with the State Department when all this happened. I have close friends in the consulate in Guadalajara who were friends with Kiki. On the other hand, I would like to hear your opinion specifically about whether these decisions have now formed the basis for a lot of what we have done in the last several years, which today can be referred to as informal rendition. Granted, there was huge passion that was at stake with the Kiki case, but do you see what you did as part of a trend from where we are now and how we seem to just almost laugh at international law?

61. CHARLES A. WRIGHT & PETER HENNING, FEDERAL PRACTICE AND PROCEDURE: FEDERAL RULES OF CRIMINAL PROCEDURE 2A §469, at 384-85 (4th ed. 2009).

JUDGE BONNER: By the way, I am certainly not prescient so I was not thinking at all about 9/11 or renditions. Those aspects are interesting. Although there is a level of passion that surrounds the Camarena case, I would never suggest that the ends justify the means. That troubles me, and so how do you reconcile a unilateral rendition with the rule of law? But the reality is, if you want to talk about passion, one of the extraordinary renditions—I do not know whether the Pakistani government was consulted or concurred in it—was that of Khalid Sheikh Mohammed.⁶² He was the master mind of the 9/11 attack and he was taken to one of the Central Intelligence Agency (CIA) places, I believe, and so forth. He was water boarded.⁶³ If that is torture under the law, it is torture. I do not know; I am an agnostic on that issue.

Leaving aside the issue of torture, was unilateral rendition a bad thing? That is a profound question in the sense that, as Paul Hoffman suggested, had the *Machain* Supreme Court decision gone the other way, then maybe it would have undermined the legal basis for later, post 9/11 renditions. Is it Professor Yoo who is up at Berkeley now? Maybe he would not have been able to write the memo when he was at the DOJ's Office of Legal Counsel that justified the renditions of 9/11 conspirators.⁶⁴ I do not know. In fact, that would be a wonderful discussion for about an hour program just to discuss the consequences, good, bad, or indifferent, of the Supreme Court decisions that flowed from the Camarena prosecutions.

Here is the thing: if you look at all difficult prosecutions, the important ones, you are likely to find law favorable to the government. I will just talk about the Ninth Circuit from *Carbo v. United States*⁶⁵ to the *Tokyo Rose* case⁶⁶—they went up to the Ninth Circuit. They were hard cases because we wanted the conviction to be affirmed. And so

62. Khalid Sheikh Mohammed was a co-conspirator in the 9/11 attacks. After the attack, he was held at a CIA site by extraordinary rendition where he was water boarded along with other interrogation techniques. See Victor Hansen, *Use and Misuse of Evidence Obtained During Extraordinary Renditions: How Do We Avoid Diluting Fundamental Protections?*, 35 NOVA L. REV. 281, 283, 292 (2010).

63. *Id.* at 283.

64. See Memorandum from John Yoo and Robert J. Delahunty to William J. Haynes II, Gen. Counsel, Dep't of Def., in THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB 38-79 (Karen J. Greenberg & Joshua L. Dratel eds., 2005).

65. *Carbo v. United States*, 314 F.2d 718 (9th Cir. 1963) (rejecting the Appellant's argument regarding hearsay instructions and affirming the district court's decision that the jury did not have to make an independent finding that there was a conspiracy).

66. *Iva Ikuko Toguri D'Aquino v. United States*, 192 F.2d 338 (9th Cir. 1951) (holding that the defendant guilty of treason for aiding and comforting enemies of the United States through her radio broadcasts between 1943 and 1945).

almost all the favorable government law comes out of these kinds of hard cases. I saw Ken Starr argue the *Machain* case and did a wonderful job. On the narrow issue presented in *Machain*, I think the Supreme Court made the right ruling and I am going to leave to others to speculate on the long-term effect of the *Machain* case. I am sure, Paul, you probably think it has been a disaster, right, in terms of let's say, CIA renditions of international terrorists?

PAUL HOFFMAN: I think what it did in effect is that it undermined the fabric of international law. Certainly around the world it was viewed as the Supreme Court disregarding basic international law principles in the heat of the moment.⁶⁷ If I could just say one other thing, one other context of this, which I have always found interesting and probably important in the way *Sosa v. Alvarez-Machain* was decided, is that the panel decision affirming Judge Wilson's judgment that this violated international law came down on the morning of September 11, 2001. I remember getting a call from Henry Weinstein, a L.A. Times reporter, who I guess had not been watching the television, when he called and said, "You've won!" while I am sitting there, just witnessing the first tower going down.

I think that it transformed this case from one that had to do with the kidnapping of a Mexican doctor, albeit in that fashion and context, to a case with a much different context. It became a war on terror case. I think that part of the caution that the Supreme Court probably exhibited in *Sosa v. Alvarez-Machain* was because of this additional context we were living in the immediate aftermath of that attack.

JUDGE FEESS: Thank you, Paul. I want to thank the panelists for two things: one for the content of what they have said; and two, for demonstrating that notwithstanding whatever goes on in the political world, intelligent people with strongly held opposing views can speak to each other in civility.

67. See, e.g., Hernan de J. Ruiz-Bravo, *Monstrous Decision: Kidnapping Is Legal*, 20 HASTINGS CONST. L.Q. 833, 835-37 (1993).

