

May 29, 2009

I, Thomas M. Davies, Jr. declare:

1. Attached to this Declaration as Attachment A is a true and correct copy of my curriculum vitae.

2. I am a Professor Emeritus of Latin American History, Director Emeritus of the Center for Latin American Studies, and former Chair of Latin American Studies at San Diego State University in San Diego, California. I was at San Diego State (SDSU) for 33 years (1968-2001), and was Director of the Center for 22 years (1979-2001). For more than 40 years, I have devoted my academic studies, teaching, field work, and scholarly research to politics in Latin American countries, with a particular emphasis on Central and South America, Mexico and the Mexico-U.S. border region.

3. I have also held several national-level posts including six (6) years on the Institutional Grant Board of the National Security Education Program in the U.S. Department of Defense, seven (7) years on the Fellowship Board of the Inter-American Foundation, five (5) years as Executive Secretary of the Conference on Latin American History (CLAH) of the American Historical Association, and eight (8) years as the Executive Secretary-Treasurer of the Consortium of Latin American Studies Programs (CLASP). I am also a Past President of both the Pacific Coast Council on Latin American Studies (PCCLAS) and the Rocky Mountain Council on Latin American Studies (RMCLAS).

4. Although my BA, MA and Ph.D. degrees are in history, I have vast experience with and expertise in multi-disciplinary and inter-disciplinary studies of Latin America. As noted above, I was Director of the Center for Latin American Studies at SDSU for 22 years and as such had to learn our faculty's disciplines well enough to be able to make recommendations to the Dean and the Provost on tenure and promotion. Also, I developed an entirely new, multi-disciplinary, inter-disciplinary curriculum.

Moreover, I served long periods on both the Inter-American Foundation Grants Board (1986-1992) and the Institutional Grants

Board of the National Security Education Program in the Department of Defense (1995-2001). Both of those positions required solid expertise in language and area studies. I would never have been appointed to those boards if I did not have a national reputation in multi-disciplinary, inter-disciplinary Latin American Studies.

Over the years, I was asked by 15 university presidents in the United States to prepare formal, outside reviews/evaluations of their programs in Latin American Studies and Language. In each case, I reported directly to the President and Provost of each campus.

In addition, for 22 years, I attended at least one meeting a year in Washington, D.C. at the U.S. Department of Education, concerning the Title VI, National Resource Centers for Latin American Studies Programs. Three times I was asked to chair that meeting. Title VI funded the Center for Latin American Studies at San Diego State University 1976-2003 for a total of over \$4,000,000.00.

Finally, The William and Flora Hewlett Foundation awarded me and Professor Brian Loveman (1997-2002) over \$765,000.00 for collaborative, **interdisciplinary** research on Chile with Chilean scholars, universities and research centers.

5. As part of my research for my first book, Indian Integration in Peru: A Half Century of Experience, 1900-1945 (Winner of the 1973 Hubert Herring Award for the best book on Latin America), I traveled extensively throughout Peru for about two (2) years (by train, car, bus, truck, and on foot) and I know the country as few others do (including the vast majority of Peruvians). I have also traveled extensively in Bolivia, Ecuador, Central America, and, of course, Mexico and the U.S.-Mexico border region. As a direct result of those travels, I learned Hispanic culture and how that culture affects the daily decision-making of people, something very few foreigners are able to accomplish.

6. In addition to my extensive travel, residence and research in Latin America, I read on a daily/weekly/monthly, basis over six (6) magazines and journals from Central America and South America, seven (7) United States newspapers, and more than ten (10) United States and British publications on Colombia and Latin America. These include: NACLA Report on the Americas, The Journal of Inter-American Studies and World Affairs, Guatemala: Bulletin of Guatemala Human Rights Commission/USA, Mesoamerica, Washington Office on Latin America, all the publications by EPICA (Ecumenical Program on Central America and the Caribbean) the U.S. Department of State Human Rights Reports

on Latin American nations, particularly Mexico, Central America and the Andean Republics of Colombia, Peru, Ecuador and Bolivia for the past ten years, CIA World Factbook 2009 (updated April 23, 2009), CIA Regional Reports on the Caribbean, Central America and South America, and other Country Reports, Amnesty International Reports and Updates on Colombia and Latin America, World Watch and Americas Watch publications on Colombia and Latin America, World Refugee Survey 2008 and Refugee Reports of the Immigration and Refugee Services of America, the web pages of all the Latin American Military and Police Forces by Country, and the Latin American Data Base.

7. I am equally conversant with the literature and available materials on LGBT (lesbian/gay/bisexual/transsexual) themes in Latin America. In addition to the above named international human rights organizations I read on a daily/weekly/monthly basis two LGBT magazines, The Advocate and Out, and monitor a number of internet sites, including the International Gay and Lesbian Human Rights Commission, Immigration Equality, the International Lesbian and Gay Association, Immigration Equality (formerly the Lesbian and Gay Refugee Advocacy Project), the Gay Men's Health Crisis, PlanetOut.com, Gay.com, GayToday.com, PinkNews.co.uk and the many sites of LGBT and AIDS support groups in the various Latin American nations, including many in Colombia such as *Colombia Diversa* and *Solidaridad Comunitaria* (Community Solidarity) which are found throughout the nation. Please see also my "Selected and Annotated Bibliography" which is appended to this declaration.

8. Finally, I have installed "Google Alerts" on my computer for Colombia and other Latin American countries and receive, on a daily basis, dozens of e-mails a day, each containing up to 60 individual news articles, i.e., all the articles posted on the internet each day. These include almost every article published in the world from the English-speaking press on Colombia and the other Latin American countries, as well everything on Colombia posted on the internet each day. I also have a "Google Alert" for "Colombia Homosexual."

9. I also taught a course on Modernization and Urbanization in Latin America and a course on Guerrilla Warfare in the Western Hemisphere, with an emphasis on Central and South America. I am often called upon to offer expert opinion on radio and television (including the Voice of America) and have spoken extensively in the greater San Diego community on Mexico, the U.S.-Mexico Border area, Central and South America, as well as U.S.-Latin American relations.

10. I am recognized, both nationally and internationally, as one of the foremost experts on terrorism and guerrilla warfare in Central and South America. Since 1992, I have been asked to serve as an expert witness in over 340 political asylum cases (28 on Colombia) in San Diego, Los Angeles, San Francisco, Sacramento and El Centro, California; Portland and Eugene, Oregon; Seattle and Tacoma, Washington; Eloy, Arizona; Dallas and Harlingen, Texas; Omaha, Nebraska; Chicago, Illinois; Miami, St. Petersburg, Orlando and Jacksonville, Florida; Arlington, Virginia; Baltimore, Maryland; New York and Ithaca, New York; and Boston, Massachusetts. The respondents were from Colombia, Venezuela, Ecuador, Peru, Bolivia, Chile, Argentina, Uruguay, Paraguay, Brazil, Panama, Nicaragua, El Salvador, Honduras, Guatemala, Mexico, Haiti and the Dominican Republic. In all but one case (in Dallas, Texas), I was recognized as an expert on Latin America by Judges of the Executive Office of Immigration Review. In that one case I testified by telephone, and it was not until months later that I was told by the attorney for the government, who represented the government in a separate case in which I served as an expert witness, that I was not recognized as an expert by Judge Sims. Unfortunately, I was never able to reach the attorney with whom I worked to confirm that Judge Sims failed to recognize me as an expert. Interestingly, in a later case before Judge Sims, I was recognized as an expert.

11. Within the fields of Central and South American and Latin American Studies, I have concentrated particularly on the role of the military and guerrilla movements in several Latin American countries. Exhibit A details the books, articles, translations of Latin American military documents, papers and lectures I have prepared or presented on this topic. I would point particularly to the two books I have written with Professor Brian Loveman: The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997; and Che Guevara on Guerrilla Warfare. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997.

The first edition of Che Guevara on Guerrilla Warfare won The Hubert Herring Prize for the best book published in the United States on Latin America in 1985).

Rowan Littlefield recently awarded Professor Loveman and me a contract for the fourth edition of Che Guevara on Guerrilla Warfare.

Che Guevara on Guerrilla Warfare contains extensive treatment of Colombia.

12. I also authored an internationally-recognized comprehensive, annotated bibliography of the military in the Andean Republics: "The Military in Bolivia, Ecuador, and Peru," in Errol D. Jones and David LaFrance, eds., Latin American Military History: An Annotated Bibliography. New York: Garland Publishing, Inc, 1992, pp. 277-341.

13. In addition, I am a recognized authority on Latin American culture, including Latin American views of sexuality, both heterosexual and homosexual. As noted above, since 1992, I have been asked to serve as an expert witness in over 340 political asylum cases and, while many of those cases dealt with death threats from the military or the guerrillas of a given nation, I have also testified as an expert witness on behalf of 197 homosexual and transgender males and females, all from Latin America, 10 from Colombia.

14. My testimony concerning the treatment of Mexican gay males was discussed prominently by the United States Court of Appeals for the Ninth Circuit in the case of Hernández-Montiel v. INS F.3d 1084 (9th Cir. 2000). See below.

Subsequently, the 9th Circuit Court of Appeals reaffirmed the above decision in *Reyes-Reyes v. Ashcroft*, 384 F.3d 1163, 1172 (9th Cir. 2004). I served as the expert witness for the appeal of this case to the 9th Circuit Court of Appeals. I also served as the expert witness on the remanded case.

Hernández-Montiel was again reaffirmed in *Boer-Sedano v. Alberto R. Gonzalez*, 418 F.3d 1082 (9th Cir.2005). I was consulted several times as this case moved through the court system.

Subsequently, both Hernández-Montiel and Reyes-Reyes were again affirmed in the case of Mr. Jorge Soto Vega (*Vega v. Gonzalez* C.A. 9, 2006). I served as the expert witness in the second hearing of this case which the 9th Circuit Court of Appeals remanded back the Immigration Judge.

15. Finally, I am very conversant with Mr. Andrew Reding's extensive work on homosexuality in Colombia, Venezuela, Peru, Ecuador, Central America, Mexico and the rest of Latin America. Indeed, I was asked to review a draft of Mr. Reding's as yet unpublished "Conditions for Gay, Lesbian, Bisexual, and Transgendered Persons in Latin America and the Caribbean." That work was then published in December 2003 as Sexual Orientation and Human Rights in the Americas by the World Policy Institute at New School University. In fact, I spoke by telephone with Mr.

Reding for over an hour in early June, 2003 and he has cited me in the final version.

16. For almost twenty-seven years, I was married to a Peruvian national, Eloísa Carmela Monzón Abate de Davies, who died of cancer fifteen years ago. As a result of that marriage, I became part of a very large, extended Peruvian family which contained several homosexuals (none of them "out" to the family because they were/are terrified of the family's reaction). Everyone in the family knows, however, about the incident of one of my aunts-in-law (a lesbian) who was literally driven out of the country by the family. She currently lives in Guayaquil, Ecuador with her partner. Over the past thirty-five years, I have also developed friendships with dozens of male and female homosexuals and transgenders in Peru, Ecuador, Bolivia, Brazil, Argentina, El Salvador, Central American nations, Mexico, and along the U.S.-Mexico border.

17. Moreover, as a result of my marriage, I developed unusually broad and deep personal and professional friendships with military and paramilitary police officials, not just from Peru, but also from a number of South American countries. My Peruvian father-in-law, Gen. José Monzón Linares, was a Lieutenant General (Three-Stars) in and former *Director General* (Commander-in-Chief) of the *Guardia Civil del Perú* (Civil Guard of Peru, the nation's paramilitary police force). General Monzón's brother, Guillermo Monzón Linares was the *Inspector General* (Inspector General) of the *Policía de Investigaciones Peruana* (Peruvian Investigative Police, Peru's FBI). General Monzón Linares' friends were almost all military personnel from Peru and neighboring republics. I thus had an incredible opportunity to know, interact with and develop close interpersonal relationships with dozens of military and police personnel. My more than thirty years living on the U.S.-Mexico border has enabled me to know and interact with dozens of Mexican and Central American military and police personnel, as well. The fact that I was the son-in-law of a Peruvian general, of course, helped me a great deal.

18. All these officers taught me their own particular versions of military lore and ideology, ideologies which were always identical in two areas: the preservation of *La Patria* (The Fatherland) through the maintenance of internal order, and the need to "cleanse" *La Patria* continuously by riding it of traitors and sexual deviates (two groups they believe to be identical).

The truth is that the Peruvian *Guardia Civil*, as well as officers from the Colombia paramilitary police organization, *Policía Nacional* (National Police), DAS (Department of

Administrative Security (*Departamento Administrativo de Seguridad*), and the Prosecutor General's Corps of Technical Investigators (CTI) are often even more vehement in their attacks so as not to appear less patriotic than the regular military. The point of this is that the police and military forces of Colombia, Venezuela, Ecuador Mexico, Central America and South America, etc. are imbued with virulent homophobia from their very first day of service.

19. After my arrival in San Diego in 1968, I had 50-60 openly gay and lesbian students and many others who came to me confidentially to discuss their sexual orientation and related issues that they faced in their lives (as have my Peruvian family members and most of my homosexual and transgender friends in Latin America). Over fifty percent of those students were Hispanics who were terrified to tell any of their family members or friends. Several have since died of AIDS, and each of their deaths was, for me, akin to losing my own child. Moreover, between 1979-2001, I had four gay or lesbian Graduate Assistants in the Center for Latin American Studies with whom I worked very closely.

20. Moreover, my step-daughter (I remarried after my Peruvian wife's death) is lesbian and very active in gay and lesbian rights and causes. I have worked with her on several occasions and I am now working with various LGBT groups here in Albuquerque, New Mexico.

21. For the past thirteen (13) years, I have conducted extensive research on gender and sexuality in Latin America, particularly on LGBT (lesbian/gay/bi-sexual/transsexual) themes. I undertook this research in order to teach the courses listed below and to prepare affidavits for the above mentioned 197 homosexual and transgender males and females for use in Immigration Court.

22. I developed three courses which contained extensive treatments of sexuality, family and religion:

- A. Modernization and Urbanization in Latin America, a 500-level course which at SDSU means senior undergraduates and graduate students.
- B. A Graduate Seminar on "The Andean Peoples and Their Cultures: Collision and Syncretism" which dealt with Iberian, pre-Columbian, colonial, mestizo, and Afro-Andean cultures, as well as the development of national culture after independence.

- C. A Graduate Seminar on "Traditional and Syncretic Religion and Medicine in Latin America. The religions covered included indigenous, Roman Catholic, Folk Catholic, Yoruba-based African (Condomblé in Brazil, Santería in the Caribbean and New York, and Vodun in Haiti) and Pentecostal Evangelical Protestantism. Included were in-depth analysis of traditional medicine, medieval Spanish medicine (*casera*), folk medicine and magic, and so-called "modern" medicine. Deeply interwoven into all of these are attitudes on sexuality, homosexuality, family and gender roles and discrimination.

23. Finally, I have participated in several panels regarding LGBT themes at national and regional meetings of Latin American Studies professional organizations.

I gave a paper entitled "Human Rights, Amnesty, and INS Cases: Political Asylum and Sexual Orientation-Based Asylum," at the Human Rights Awareness Conference at San Diego State University, April 15-18, 2002.

I also gave a paper entitled "Torture and Murder of the Latin American LGBT Community: Political Asylum in the United States?" at the SALALM 52 Conference, April 27-May 1, 2007, held in Albuquerque, New Mexico. SALALM (Seminar on the Acquisition of Latin American Library Materials) is the international, professional organization of Latin Americanist librarians in the United States, Latin America and Europe.

24. The definitions of homosexuality in Anglo-America and Latin America are very different. In Anglo-America, little attention is paid to the "role" of the two sexual partners. Although there are often references to "effeminate" and "swishy" males or "masculine" and "bull dyke" females, Anglo-Americans do not really recognize an appreciable difference, i.e., both of the partners are homosexual and are thus treated equally.

25. In Latin America, on the other hand, a sharp distinction is drawn between the two, each according to his/her supposed role in the relationship, i.e., either the male or the female role. It is assumed that each homosexual partnership has a clearly defined male and an equally clear female. Indeed, this fact is of transcendental importance for male homosexuals, for it literally determines whether one or the other is partially acceptable or totally unacceptable in Latin American society as a whole.

26. Culturally speaking, Latin Americans are Spaniards and Spaniards are much more Moorish than they are European. In fact, I have always taught that Spain belongs to Eastern Mediterranean-North African culture far more than to Western European and must be studied and treated differently.

27. From 711-1492, the Moors occupied the Iberian Peninsula (now Spain and Portugal), transferring to the Iberian population not only their architecture, building skills, etc., but their views of sexuality as well. In Moslem culture (and therefore Spanish and Latin American culture), a male is not considered to be homosexual if he is performing the role of the male, i.e., he inserts his penis into the other. Before marriage, it is considered to be quite normal and even after marriage, it is barely denigrated. For example, Mohammed Daud, a resident of Kandahar, Afghanistan, is unmarried and has sex only with men and boys. But he does not consider himself to be homosexual, at least not in the Western sense. 'I like boys, but I like girls better. It's just that we can't see the women to see if they are beautiful. But we can see the boys'" (quoted in a brilliant article, "Kandahar's Lightly Veiled Homosexual Habits," by Maura Reynolds, *Los Angeles Times*, April 3, 2002. p. 5).

28. For a Mexican viewpoint on this same subject, one need only turn to Octavio Paz, one of the greatest thinkers and writers in Latin American history and recipient of the 1990 Nobel Prize for Literature. In his world renowned *El laberinto de la soledad* (The Labyrinth of Solitude), Paz wrote: "It is likewise significant that masculine homosexuality is regarded with a certain indulgence insofar as the active agent is concerned. The passive agent is an abject, degraded being. This ambiguous conception is made very clear in the word games or battles--full of obscene allusions and double meanings--that are so popular in Mexico City. Each of the speakers tries to humiliate his adversary with verbal traps and ingenious linguistic combinations, and the loser is the person who cannot think of a comeback, who has to swallow his opponent's jibes. These jibes are full of aggressive sexual allusions; the loser is possessed, is violated, by the winner, and the spectators laugh and sneer at him. Masculine homosexuality is tolerated, then, on condition that it consists in violating a passive agent. As with heterosexual relationships, the important thing is not to open oneself up and at the same time to break open one's opponent" (The Labyrinth of Solitude). Translated by Lysander Kemp (New York: Grove Press, Inc., 1985), pp. 39-40.

29. In his groundbreaking book, Life is Hard: Machismo, Danger, and the Intimacy of Power in Nicaragua (Berkeley: University of California Press, 1992) Roger N. Lancaster explains

the passive/active in more explicitly sexual terms. "There is clearly stigma in Nicaraguan homosexual practice, but it is not a stigma of the sort that clings equally to both partners. Only the anal-passive *cochón* is stigmatized. His partner, the active hombre-hombre, is not stigmatized at all; moreover, no clear category exists in the popular language to classify him. ... Indeed, a man can gain status among his peers as a vigorous *machista* by sleeping with *cochones* in much the same manner that one gains prestige by sleeping with many women. I once heard a Nicaraguan youth of nineteen boast to his younger friends: 'I am very sexually experienced, I have had a lot of women, especially when I was in the army, over on the Atlantic coast. I have done everything. I have even done it with *cochones*.' No one in the group thought this a damning confession, and all present were impressed with their friend's sexual experience and prowess. This sort of sexual boasting is not unusual in male drinking talk" (p. 241).

30. Indeed, I have known many Latin American males, who consider themselves to be very manly (*muy macho*) even though they engage in both heterosexual and homosexual relations. Please see my "Selected and Annotated Bibliography" on these subjects which is attached to this Declaration.

31. The view and treatment of the "female" partner (the receptor) could not be more diametrically opposed to that of the "male." The "fem" is despised as the "lowest of the low" and strenuous, even violent persecution of "fems" is not only accepted, it is praised in Latin American society. At the family level, male "fems" are perceived as constituting a threat to the *machismo* of all the males in the family, not to mention a health hazard (homosexuality is very often viewed as "contagious" in Colombia, a disease which must be cured or it will destroy the society).

For a similar view that homosexuality can be "induced" see Marlon I. Morales, "Submitting or Resisting: Exploring the Popular Central American Belief That Homosexuality Can Be Induced," available on the Internet at: eocities.com/WestHollywood/2874/anthrol34.html.

32. In her brilliant book, How Sex Changed: A History of Transsexuality in the United States (Cambridge: Harvard University Press, 2002), Joanne Meyerowitz cogently describes the evolving definition of the term "sex" and how it came to be defined by the end of the twentieth century.

"By the end of the century the earlier understanding of sex had given way to three categories of inquiry and analysis:

'biological sex' referred to chromosomes, genes, genitals, hormones, and other physical markers, some of which could be modified and some of which could not; 'gender' represented masculinity, femininity, and the behaviors commonly associated with them; and 'sexuality' connoted the erotic, now sorted into a range of urges, fantasies, and behaviors. Once seen as outgrowths of a primary sex division, 'gender' and 'sexuality' no longer seemed to spring directly from the biological categories of female and male. In fact some scholars envisioned sex, gender, and sexuality as constructed categories constantly defined and redefined in social, cultural, and intellectual processes and performances. They thus directly rejected the older belief in a universal, unchanging biological sex that dictated both the behavior of women and men and their sexual desires" (pp. 3-4).

In Colombia, however, the older belief in absolute gender roles is still firmly entrenched.

33. It should be noted here that there exists a vast array of vocabulary in Spanish to describe and denigrate LGBT peoples. Some words, such as *maricón* (queer), are used universally throughout the Spanish-speaking world. Others are country and/or region specific. Moreover, as with all slang, new terms come into and go out of usage with blinding speed. Whatever, the word, however, the message is the same, one of hatred and fear. Please see Stephen O. Murray and Wayne R. Dynes, "Hispanic Homosexuals: A Spanish Lexicon," in Stephen O. Murray, Latin American Male Homosexualities (Albuquerque: University of New Mexico Press, 1995), pp. 180-192. See also Andrew Reding, Sexual Orientation and Human Rights in the Americas (New York: World Policy Institute, 2003), particularly pp. 91-93.

34. I do not know Mr. XXXX, but I have been asked by his attorney to assist with this case. After reviewing the facts of his case and reading his affidavit with care, I agreed to provide expert testimony regarding the risks that he faces as a gay male in Colombia.

35. The danger to Mr. XXXX is due to the fact that he is a gay male who, if removed to Colombia, would live in a nation where *machismo* is the driving cultural norm and where gay males are viewed as an abomination, a threat to everything that is sacred in Colombia culture.

36. As noted above, male homosexuals are perceived as a threat to the *machismo* of all the males in the family. Indeed, male relatives of the homosexual are, very often, subjected to

withering criticism and ridicule from males outside the family who cast aspersions on and even express doubt about the father's own sexuality. This helps to explain why fathers often beat their gay sons because it is widely believed that one can "beat the gayness out of a child."

37. Growing up in Colombia, Mr. XXXX did not realize he was gay.

"While growing up in Colombia, I didn't realize I was gay because the only openly gay people were hairdressers and male prostitutes. I wasn't either one of these, so I didn't think I was gay."

38. Mr. XXXX's family was also extremely homophobic.

"I was raised in a strict, traditional Catholic family who looked down on these groups of people as do most people in Colombia. Homosexuals are considered freaks and morally corrupt people."

39. The best study of behavioral indicators of homosexuality in young children is: Frederick L. Whitham, "The Prehomosexual Male Chile in Three Societies: The United States, Guatemala, Brazil," Archives of Sexual Behavior, Vol. 9, No. 2 (April, 1980), pp. 87-99. See also: Frederick L. Whitham and Robin M. Mathy, Male Homosexuality in Four Societies: Brazil, Guatemala, The Philippines, and the United States. New York: Prager, 1986.

40. Like millions of gay men before him, Mr. XXXX dated a young woman and eventually married her and had two children.

"I met my first spouse Claudia when I was 19 years old and she was 14. We dated for five years when she became pregnant with our first son Juan Camilo. We got married because we were both Catholic and it was disgraceful to have a child outside of marriage."

41. It was not until Mr. XXXX went to Miami in 1997 that he began to sense that he was gay. This is not an uncommon occurrence for many gay and lesbian people who, as they mature, begin to experience sexual confusion and come to realize that they are in fact homosexual, not heterosexual.

"Once I came to Miami and worked on South Beach, I met many gay people who were very kind and normal just like me. They were

open with their sexuality and did not feel ashamed of who they were."

"I found myself wanting to spend more time with my gay male friends and less time with my wife. Eventually I had sex with another man, but I still didn't consider myself gay. I was very scared and confused over what had happened, but I still loved my family very much."

42. A few months after separating from his wife, Mr. XXXX met Brad. They have been together since that time and they are now legally married in California.

"I met my current husband Brad six months after my separation from Claudia. We have been together for the past nine years. Our relationship started out as friends but over time I developed romantic feelings for him and eventually fell in love."

"On October 17, 2008, Brad and I were married in Los Angeles, CA."

43. Returning to Colombia is simply not an option for Mr. XXXX and his partner. As noted, Colombia is one of the two most homophobic countries in Latin America. Mr. XXXX is legally married to his longtime partner, Dr. Bradley D. McAuliff. There is no way that Mr. XXXX and Dr. McAuliff could live together in Colombia. Indeed, there is no way that they could even be seen in public holding hands or showing affection for each other. The repercussions for both would be disastrous.

44. Mr. XXXX' own statement on the dangers of returning is extremely accurate.

"I believe I will be killed if I return to Colombia. Being openly gay, especially as a man, is a death sentence in Colombia."

"The Latin culture is extremely Catholic, paternalistic, and homophobic. Gay men are outcast from society and tormented both mentally and physically everyday. Violence against gays is not discouraged, and when it occurs, police look the other way, and these crimes go unpunished."

45. Moreover, as explained below, there is no way that Mr. XXXX would be able to obtain any employment in Colombia better than that of the lowest-paid common laborer. International and Colombian companies simply will not hire homosexuals, out of both homophobia and fear that they will lose many if not most of their

clients/customers. Small business owners and shopkeepers would be even more afraid of the consequences of hiring a homosexual. As Mr. XXXX notes:

"Even though I have a college degree and have worked successfully here in the United States for many years, I will not be able to get a decent job because no one wants the stigma of a gay male employee, especially when he is married to another man."

46. In addition, Mr. XXXX and his partner will find it almost impossible to obtain housing. Owners of apartments and houses will simply not rent to homosexuals, particularly to a homosexual couple. Should they find a place to rent or buy, their neighbors will make it almost impossible for them to live their lives, even to the extent of attacking them physically or killing them.

"I will also have difficulty finding a place to live. My family will not take me in and no landlord will want a gay man living in his place. I will be forced to deny my sexuality that has taken me so many years to accept."

47. Clearly Mr. XXXX and his partner would not be welcome to stay with Mr. XXXX's family.

"My family is ashamed of me too and has turned their back on me because I have brought dishonor to our family name."

"Even though Colombia is a large country, families keep in close contact every day even when they live in different cities. Already, news of my divorce and homosexuality has spread to my family in Bogota, Santa Marta, and Barranquilla."

48. Finally, Mr. XXXX and his partner would be in extreme danger from the family of Mr. XXXX's former wife Claudia, most particularly her brothers. From their perspective, Mr. XXXX has committed the ultimate sin against their sister: he left her for a man, thereby sullyng her and her entire family.

"I have a cousin who moved to Miami and she has warned me not to go back because Claudia's brothers said they will punish me for what I have done to Claudia and their family."

49. At this point it is extremely important to point out that recognition of a person's homosexuality by other members of the society is not an absolute. The physical appearance of homosexual men and women varies greatly, i.e., some homosexuals appear to be more or less homosexual than others, but the process

of recognition is much more complex than just physical appearance and includes culture and living patterns. A word commonly used in the gay and lesbian community is "gaydar," a play on the word radar, i.e., the ability to recognize a homosexual person.

Mr. XXXX, for example, exhibits overt feminine mannerisms and is "recognized" at first glance. Moreover, he has other personality characteristics which will mark him as homosexual in Colombia. He is very sensitive and quiet.

In addition, people in Colombia will quickly pick up on what Mr. XXXX is NOT. He is not aggressive or *macho* (exaggerated manliness). He does not engage in sexist behavior or tell homophobic jokes. He is not a womanizer, does not frequent male drinking establishments and certainly does not engage in bragging about his sexual conquests in male-only situations, where "sexual strutting" is both usual and expected.

50. The simple truth is that Colombians and other Latin Americans are constantly "on the lookout" for any signs or mannerisms that might mark a male or female as being homosexual. I am constantly amazed when in super markets or other stores in the United States that no one picks up on the fact that a couple is obviously lesbian or gay. In Colombia and Latin America, on the other hand, someone's perceived gayness is a normal part of conversation in both familial and social occasions. Mr. XXXX's feminine mannerisms, together with his other traits, will result in his being "recognized" as homosexual almost immediately in Colombia.

51. In addition, the male homosexual is a threat to all the females of the family because the female is always responsible for the maintenance of family values, family morals and the image of the family in the outside world.

It is here that the Roman Catholic Church's dogma on the role of females and family is particularly visible. The ideal female in Christianity is, of course, the Virgin Mary, Mother of God, who is idealized and revered in Colombia and Latin America to a much greater degree than anywhere else in the world. In Spanish, devout "femininity," i.e., devotion to Mary, is called *marianismo* which is the direct opposite of *machismo*.

This is nowhere better seen than with Pope John Paul II's canonization of Juan Diego Cuauhtlahtatzin on July 31, 2002. Juan Diego is the Chichimeca Indian to whom the Virgin of Guadalupe appeared in 1531. She is the most revered Virgin in Mexico and Latin America, worshiped as the ultimate, perfect female, the model for every female in the nation.

52. A homosexual represents a total rejection of this cultural/religious norm, thereby constituting a direct, frontal attack on the Virgin Mary, the Virgin of Guadalupe and all that is sacred and holy in the Roman Catholic Faith.

Indeed, in recent years, the dangers for LGBT peoples emanating from one of the principal players in Colombian culture and society, i.e., the Roman Catholic Church, have increased enormously. The Catholic Church in Colombia has long been the most conservative and reactionary in Latin America. That conservatism, and the concomitant homophobia, were battle-hardened during the almost century-long religious civil war between the Liberal and Conservative political parties (see below) and the subsequent 40-year long guerrilla war which has devastated the country since the early 1960s.

Indeed, the Church's attack on homosexuality has increased exponentially in the past decade, not only in Colombia, but in all of Latin America and the world as well.

For the pronouncements of Pope John Paul II and Joseph Cardinal Ratzinger (now Pope Benedict XVI), please see my "Homosexuality and the Roman Catholic Church" which is appended to this affidavit.

53. The best Colombian example is that of Cardinal Alfonso López Trujillo who rose from parish priest to be the Archbishop of Medellín, Colombia, and a Cardinal before being called to Rome and named President of the Pontifical Council for the Family, the Vatican's Chief Official on Family Issues. Cardinal López Trujillo was a very outspoken opponent of homosexuality, the use of condoms and same-sex marriage.

In 2003, he stated: "The AIDS virus is roughly 450 times smaller than the spermatozoon. The spermatozoon can easily pass through the 'net' that is formed by the condom" (BBC News, October 9, 2003).

Two years later, commenting on the approval of civil unions in Spain, Cardinal López Trujillo said: "What has been done in Spain, and additionally with a very reduced majority, is the destruction of the family brick by brick" (*El Mundo*, April, 2005).

54. In 2005 and 2006, Cardinal López Trujillo again condemned both civil unions and same-sex marriage.

"As can often be heard, a spurious argument is made for a so-called free political choice, which would have the primacy over evangelical principals and also over the reference to right

reasoning. Juridical positivism would be a sufficient explanation. The ambiguous positions of legislators are quite well known on divorce and de facto couples, which at least implicitly would constitute an alternative to marriage, even though these unions are simply a 'juridical fiction' and 'the circulation of false money.' This is even worse when dealing with 'couples' of the same sex, something unknown in the cultural histories of people and in law, even if they are presented as 'marriage.'"

"Can we allow access to Eucharistic communion to those who deny human and Christian principles and values? The responsibility of politicians and legislators is great. A so-called personal option cannot be separated from the socio-political duty. This is not a 'private' problem: acceptance of the Gospel, the Magisterium and right reasoning is need!" (Intervention of H.E. Cardinal Alfonso López Trujillo at the XI Ordinary General Assembly of the Synod of Bishops, Vatican City, October 7, 2005).

"Couples made up of homosexuals claim similar rights to those reserved to husband and wife; they even claim the right to adoption. Women who live a lesbian union claim similar rights, demanding laws which give them access to ... fertilization or embryo implantation. Moreover, it is claimed that the help of the law to form these unusual couples goes hand in hand with the help to divorce and repudiate" (57-page document released in June of 2006 by the Pontifical Council for the Family).

55. An additional Latin American example of the Roman Catholic Church's stand on homosexuality is that of Cardinal Javier Lozano Barragán, a prominent member of the Mexican Church hierarchy who, in October, 2004, denounced a Spanish proposal to legalize same-sex marriages, saying it would be like considering cats or cockroaches part of a family. "They even give cockroaches the rank of family now because they live under the same roof. If there's a cat, a dog, two lesbians and everything living there, it's a family" (*The Los Angeles Times*, October 13, 2004. See also "El Cardenal Mexicano Censura Bodas de 'gays,'" *La Voz del Norte*, 14 de octubre-20 de octubre del 2004).

56. Another Latin American example came in 2008, when Bishop Rubén Oscar Frassia of Avellanda, Argentina expressed dismay that many consider gay unions to be equivalent to traditional marriage: "In no way are they the same, because they do not conform to natural law, which is not dependent upon the whims of the movement and of life."

"What do you want me to say? I really don't understand it, I don't understand. I can see why but I can't justify it. And

they want to put it on the same level, they want to make it equal."

"We must be very clear. If we sow wind, we will reap storms. If we take God out of our families, our society, our laws, our personal things or out of nature itself, let's not be surprised at the damage that we ourselves might provoke" (Catholic News Agency, March 17, 2008).

57. Yet another Latin American example came in 2004, in an article which Observatori de Les Llibertats Sexuals posted on its web site entitled "Iglesias de México y Nicaragua Quieren Ahogar Derechos de Trans y Homosexuales (The Churches of Mexico and Nicaragua Want to Smother the Rights of Transsexuals and Homosexuals).

"The Conference of the Mexican Episcopate (CEM) claimed that the Secretary of Health's announced publicity campaign against homophobia is really an effort to characterize homosexuality as "natural" and to "legitimize" the right to follow that sexual preference. The CEM severely criticized the campaign which is to begin this month and reminded everyone what had happened with the "morning after pill," a topic which the Catholic Church has neither forgotten nor accepted.

After presenting the collegial body's document in a press conference called to establish the stance of the Church on that theme, **the president of the Pastoral Commission For the Family, Rodrigo Aguilar Martínez, characterized homosexuality as "a grave disorder" that "has been scientifically proven to be curable."**

"Archbishop Aguilar further stated that one can not accept the idea that some people have a disposition toward a loving heterosexual relationship, while others have the right to a loving homosexual relationship, in the same way persons who are left or right-handed or have a different skin color should be accepted."

"The bishops urged the Secretariat of Health to suspend or modify the tenets of the proposed campaign so that they would truly promote activities which favor the family, marriage and life." Both the translation and the emphasis is mine.

58. In addition, the Roman Catholic Church in Colombia has stepped up its attacks on homosexuality through both its own pronouncements and its public support of and adherence to a recent publication in Peru. At the request of the Cardinal of Lima, Archbishop Juan Luis Cipriani Thorne, the Pontifical Catholic University of Peru (*La Pontífica Universidad Católica del Perú*) published (2002) a pamphlet entitled *Identidad Sexual:*

¿Es Posible Escoger? ("Sexual Identity: Is It Possible to Choose?) which describes homosexuality as a curable illness: "There are innumerable psychological studies from the past 40 years that describe childhood problems that form part of the history of persons with homosexual inclinations: distorted maternal and paternal role models; peer group problems in childhood; sexual abuse in childhood, among others. ... Like any other behavioral problem, homosexuality can be reversed" (Centro de Asesoría Pastoral Universitaria de la Pontífica Universidad Católica del Perú, 2002).

Then, in a May 31, 2005, interview with Fides news service Cardinal Cipriani Thorne, said: "We are presented with a new sort of feminism which fails to recognize maternity as God's most valuable gift to women and upholds homosexuality as a sexual option rather than the disordered inclination which it is" (Catholic World News web site).

The concept that homosexuality is "curable" is common in Colombia. Please see my short description of "Homosexuality and Psychiatry" which is appended to this declaration.

59. In 2009, Latin American Prelates reaffirmed their positions on homosexuality and same-sex marriage. At the Sixth World Meeting of Families which was held in Mexico City January 14-18, 2009, Cardinal Norberto Rivera Carrera of Mexico City stated: "The Church--we teach respect for marriage between a man and a woman because that is the foundation of the family" (David Agren, "Church Leaders Reaffirm Traditional Family at Meeting in Mexico," *Catholic News Service*, January 16, 2009).

60. Then in late January, 2009, the Archbishop of Puebla, Rosendo Huesca Pacheco announced that all applicants for the city's seminaries would be tested for HIV and rejected if the test should come back positive. "'They undergo tests, including HIV, so that someone who is sick can't get in through the cracks,' he said, 'We pay attention to this, we are not asleep, but sometimes things get past us, but if you are sick we do not accept you.'"

"He also reiterated that gay men were banned and said that those who wished to become priests would have to undergo a series of 'psychological' tests as well to make sure they were fit for priesthood" (Andrés Duque, "Mexico: Puebla Archbishop Bans HIV Positive Men From Priesthood," www.blabbeando.blogspot.com, January 31, 2009).

On February 3, 2009, after an outcry from Mexican human rights advocates, Archbishop Huesca Pacheco said the Church would not test all candidates for the priesthood for HIV because the

Church could not afford it. Instead, he "'invited' those interested in joining the priesthood to get a general medical check-up before joining the church" (Andrés Duque, "Update: Puebla Archdiocese Drops Plan to Test Priesthood Hopefuls for HIV," www.blabbeando.blogspot.com, February 5, 2009).

61. The Vatican itself also maintained a very anti-homosexual stance throughout 2006, 2007, 2008 and into 2009. For example, in March, 2007, in an interview with the Zenit News Agency, Father Jean-Baptiste Edart, a leading Biblical scholar with the John Paul II Institute in Rome, cited texts from both the Old and New Testaments and stated that homosexual acts between members of either sex were considered "extremely grave, directly offending the divine Law. This teaching is perfectly consistent with Judaism of that time."

Father Edart went on to list three passages from the Old Testament where to "lie with a male as with a woman" was called "an abomination, wickedness, and wanton crime," and three passages from the New Testament that listed homosexuality and sodomy alongside fornication, adultery, idolatry, and other crimes which were referred to as "degrading passions" (www.lifesite.net, March 19, 2007).

62. Finally, in his 2008 "End of the Year" address to the Curia (the Vatican's central administration and the governing body of the entire Roman Catholic Church together with the Pope), Pope Benedict XVI stated that the need to save mankind from a destructive blurring of gender roles is as important as saving the rainforests.

Pope Benedict XVI said that humanity needed to listen to the "language of the creation" to understand the intended roles of man and woman and behavior beyond traditional heterosexual relations was a "destruction of God's work."

"The Church should also protect man from the destruction of himself. A sort of ecology of man is needed. The tropical forests do deserve our protection. But man, as a creature, does not deserve any less."

"What is needed is something like a 'human ecology,' understood in the right sense. It's not simply an outdated metaphysics if the Church speaks of the nature of the human person as man and woman, and ask that this order be respected."

The Pope went on to warn that gender theory blurred the distinction between male and female and thus could lead to the "self-destruction" of the human race.

Just two months earlier, a high Vatican official described homosexuality as "a deviation, an irregularity, a wound" (Nick Allen, "Pope Says Humanity Needs 'Saving' From Homosexuality," www.telegraph.co.uk, December 23, 2008).

There was world-wide coverage of the Pope's remarks. Some of the most important are: "Pope Wants Humanity 'Saved' From Homosexuality," ABC News, December 23, 2008; "Pope Attacks Blurring of Gender," BBC NEWS, December 23, 2008; Tom Kington and Riazat Butt, "Pope Angers Campaigners With Speech Seen as Attack on Homosexuality," The Guardian, December 24, 2008; "Pope Benedict on Homosexuality," TIMESONLINE, December 23, 2008; and "Pope Benedict's Latest Outburst 'Justifies' Homophobic Bullying and Attacks," www.pinknews.co.uk, December 23, 2008.

63. Every religion and every denomination has the right to establish its own doctrines and dogma in matters of faith. What religions do not have the right to do is deny basic human and civil rights to those individuals who do not agree with or do not accept those doctrines or that dogma. The Roman Catholic Church has walked that extremely delicate line on homosexuality for decades, but it has NOT crossed the line.

The problem for this case, however, is that the official Vatican position provides the military and police of Colombia seeming religious support, indeed Divine sanction, for their homophobic attacks on LGBT peoples in their country. They have always claimed that they are doing what they are doing to protect and save *La Patria* and Western Christian Civilization. Now they can, and do claim to be doing God's work as they carry out their mission of cleansing *La Patria* of all that is evil and corrupt in order to "save *La Patria* and its children."

64. These are exactly the type of secular and religious attitudes and reactions I have heard and seen in Mexico since I first attended the National Autonomous University of Mexico (UNAM) in 1961. In fact, I have heard such reactions in every Latin American country I have visited over the past 48 years.

65. As a consequence of these beliefs, families have been known to kill homosexual relatives rather than risk provoking hatred and attack on the family from other members of the community.

66. Since the concept of *machismo* is so critical to an understanding of Mr. XXXX's treatment by his family, the police and other members of Colombian society, an explanation or

definition is needed here. Please see my brief discussion of *machismo* which is appended to this declaration.

67. Since 1996 I have read well over 300 affidavits by LGBT peoples from Latin America who are seeking political asylum based on their sexual orientation. Mr. XXXX's life experiences of trying to cope with his homosexuality, while extremely tragic, is consistent with everything I have read or heard about homosexuality in Colombia.

68. The religious norms and attitudes described above also permeated the core beliefs of the nation's principal political parties. Founded in 1848 and 1849 respectfully, the *Partido Liberal* (Liberal Party) of Colombia and the *Partido Conservador* (Conservative Party) are the two oldest, continuously-functioning political parties in Latin America. In the beginning, both were composed of different groups of elites who agreed on the basic socio-economic rules of the game, i.e., absolutely no agrarian reform, mobilization of the rural peasantry, or meaningful political participation by anyone outside of the elite.

69. In the late nineteenth century, the two parties were sharply divided along religious lines. The Conservatives wanted the Roman Catholic Church to be the supreme institution in the nation, while the Liberals were imbued with modernizing and secularizing ideas and perceived the Church to be an obstacle to the changes they hoped to bring about. Each party organized armies to oppose the other and both used religious propaganda to win adherents among the lower classes: the Christ-centered Church of the Middle Ages or the blasphemous anti-Christ, the Reformation and the French Revolution.

70. This religious fervency has continued to be important up to the present, but in real political terms, what is really important is that entire extended families for generations have belonged to either the Liberal or the Conservative parties. One's political affiliation was determined before birth; your parents/family belonged to one party or the other and you inherited that affiliation. One married within the party, chose friends, business associates, and, most importantly *compadres* within the party structure. It was the most defining element in one's life.

71. Thus, membership in either the Liberal or Conservative Parties was and is an incredibly powerful combination of

political and religious belief structures, all bound together with the trappings of a Latin American extended family structure.

72. As a consequence of these religious and political beliefs, families have been known to kill homosexual relatives rather than risk the opprobrium which will be called down upon them should their relative's sexual orientation be exposed.

73. The simple truth is that regardless of whether he tries to hide it, most Colombians will likely perceive Mr. XXXX as an effeminate, gay male, particularly since he is married to another man.

Therefore, there is no escape for Mr. XXXX. The simple yet horrific fact is that Mr. XXXX faces aggravated opposition from every conceivable direction: his religion, the government, the state security forces, the three guerrilla organizations (FARC-Revolutionary Armed Forces of Colombia; ELN-National Liberation Army; and EPL-People's Liberation Army), the right-wing paramilitaries grouped under the United Self-Defense Forces of Colombia (AUC), neighbors and civilians in the street. His situation could not be more precarious. Moreover, he will suffer this abuse in every corner of the country if he is forced to return to Colombia (see below).

74. Unfortunately, as noted above, the danger to male homosexuals is not confined to the above-named groups. In Colombia, Mexico, Honduras, Panama, Ecuador, Peru, Chile and Argentina for example, it is common for the police, without provocation, to detain gay males and transvestites, beat them up, rape them, insert batons or other foreign objects in the anus, force them to perform oral sex and otherwise abuse them physically, always accompanied, of course, by verbal and psychological abuse. As a result of these beatings/rapes, many gay males and transsexuals have died in those countries, but the perpetrators are almost never prosecuted because such abuse is tacitly accepted and often encouraged.

75. It should be noted here that the Colombian government and police treat crimes which result in the abuse, injury or death of homosexuals as "common crimes," committed by "common criminals," never as hate crimes against homosexuals. This is particularly true, of course, when the police themselves are the perpetrators. These matters will simply be "dropped" and there will never be an official investigation, as there would be if homosexuals were not the target.

76. Proof of Colombian police abuse and physical attacks on homosexuals lies in Mr. XXXX's description of what it is like to be gay in Colombia.

"Colombia is a terribly very violent country. The guerrillas and drug cartels have taken over large areas of the country. They fight with police and paramilitaries every day and there are constant bomb threats, kidnappings, and people being murdered."

"I witnessed the death on a close friend who was shot in the throat at close range and my oldest son was held at gunpoint by a group of guerrillas who robbed my family while we were visiting Claudia's relatives in Barranquilla."

"I believe I will be killed if I return to Colombia. Being openly gay, especially as a man, is a death sentence in Colombia."

"The Latin culture is extremely Catholic, paternalistic, and homophobic. Gay men are outcast from society and tormented both mentally and physically everyday. Violence against gays is not discouraged, and when it occurs, police look the other way, and these crimes go unpunished."

77. In the United States, of course, one can seek protection from the local police. In Colombia, however, the police are an integral part not only of the state apparatus of repression, but are also heavily infiltrated by both the AUC and the guerrillas. In short, the police are a large part of the problem.

78. The United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*--AUC) was formed in 1997 as an umbrella paramilitary force specifically to fight the various guerrilla forces operating in Colombia (FARC, ELN, EPL). However, the AUC forces quickly entered the lucrative drug traffic and began to commit as many murders, massacres and general human rights violations as any of the guerrilla forces. The European Union was the first to place the AUC on its list of terrorist organizations. The United States Department of State followed suit in 2001, condemning the AUC for massacres, torture and human rights abuses against the civilian population of Colombia.

Besides engaging in drug trafficking, the AUC also carried out kidnappings for profit and collected forced donations from both foreign-based and Colombian-owned corporations. For example, in March 2007, the U.S.-owned Chiquita fruit company admitted that it had paid the AUC over \$1.7 million dollars from

1997 to 2004. Chiquita was also involved in smuggling thousands of AK-47 assault rifles and millions of rounds of ammunition to the AUC on its fruit ships. Chiquita subsequently accepted a plea bargain with the U.S. Department of Justice and paid a fine of \$25 million.

The AUC also demanded war taxes (*vacuna*) from local inhabitants of certain regions and infiltrated the Colombian government system from local officials to the national-level Executive, Legislative and Judicial branches.

79. Beginning in 2003, the Colombian government and the AUC entered into negotiations designed to lead to the demobilization of all AUC forces. By the end of 2006, the government claimed that approximately 17,000 of the 20,000 AUC forces had surrendered their weapons and demobilized.

For its part, the Colombian government introduced the so-called Justice and Reparation Bill which would have created a legal framework for the demobilization of the AUC forces. Subsequently, the bill was withdrawn in the face of scathing criticism from Colombian human rights organizations and international groups such as Amnesty International and Human Rights Watch.

"The Bill, which failed to respect the right of victims to truth, justice and reparation, could have guaranteed impunity for human rights violators. The government objected to a new draft presented by Congress members which addressed some of these concerns and said it would present a new draft in 2005. Most paramilitaries who reportedly demobilized benefitted from Decree 128, which may have granted de facto amnesties to human rights abusers. Its continued application raised doubts about the government's commitment to confronting impunity" (Amnesty International, 2005 Report-Colombia).

80. Despite claims and counter claims regarding demobilization of the AUC, by 2007, it was clear that the so-called demobilization was a farce.

"The Organization of American States Mission to Support the Peace Process in Colombia published a report in August. This stated that some demobilized paramilitaries had regrouped as criminal gangs, that others had failed to demobilize, and that new paramilitary groups had emerged. Paramilitaries continued to commit human rights violations in areas where they had supposedly demobilized. More than 3,000 killings and enforced disappearances of civilians were attributed to paramilitary groups since they declared a 'cease-fire' in 2002" (Amnesty International, 2007 Report-Colombia).

81. For its part, Human Rights Watch in its World Report, 2007, stated:

"The Colombian government claimed in 2006 that it had successfully completed the demobilization of more than 30,000 supposed paramilitaries, but serious questions remain as to the effectiveness of the demobilization process in dismantling paramilitaries' complex criminal and financial structures, and ensuring truth, justice, and reparation."

"Paramilitary commanders have not taken significant steps to give up their massive illegally acquired wealth, return stolen land, or show that they have ceased their lucrative criminal activities. Disturbing indications of their persistent influence in 2006 included: reports of paramilitary infiltration of the Intelligence Service; increasing threats against academics, union leaders, human rights defenders, and journalists; and the formation of new paramilitary groups, as reported by the Organization of American States' (OAS) Mission to Support the Peace Process."

"New paramilitary abuses, including killings and forced disappearances, continued to be reported throughout the year. In October, the Attorney General's office revealed that a confiscated computer owned by an associate of the paramilitary leader known as 'jorge 40' had turned up evidence of over 500 assassinations committed in just one Colombian state between 2003 and 2005. The computer also pointed to continuing plans by the paramilitaries' Northern Block to expand their political power and territorial control" (Human Rights Watch, World Report, 2007-Americas).

82. In its World Report, 2008, Human Rights Watch noted the following about the AUC:

"The Colombian government continues to claim that, thanks to its demobilization program, paramilitaries no longer exist."

"Both the Organization of American States and the Office of the UN High Commissioner for Human Rights in Colombia reported in 2007 that mid-level paramilitary commanders continue to engage in criminal activity and recruitment of new troops."

"The Inter-American Commission on Human Rights noted in a 2007 report that while over 30,000 individuals may have gone through demobilization ceremonies, some may not have been paramilitaries at all, but persons who played the role to access government stipends."

"Thanks to a 2006 ruling by Colombia's Constitutional Court, paramilitary commanders and others who have applied for reduced

sentences under Law 975 of 2005 (known as the "Justice and Peace Law") are legally required to confess and turn over illegally acquired assets. However, confessions moved slowly in 2007, in part due to a lack of sufficient prosecutors and investigators assigned to the unit of the attorney general's office charged with interrogating the commanders."

"Several paramilitary leaders are temporarily in prison, but government officials have publicly stated that they will eventually be allowed to serve their reduced sentences on "agricultural colonies" or farms."

"Dozens of Congressmen from President Uribe's coalition, including the president's own cousin, Senator Mario Uribe, came under investigation by the Supreme Court in 2007 for their alleged collaboration with paramilitaries responsible for widespread atrocities. At this writing, 17 congressmen were under arrest. One of them is the brother of former Foreign Minister Maria Consuelo Araújo, who resigned as a result."

"President Uribe's former intelligence chief from 2002 to 2005, Jorge Noguera, is also under investigation for links to paramilitaries."

"The government has provided funding to the court and spoken of the need for full investigations. However, President Uribe has repeatedly lashed out against the court, accusing it of suffering from an "ideological bias" and personally calling one Supreme Court justice to inquire about ongoing investigations."

In April 2007 President Uribe announced a proposal to release from prison all politicians who are convicted of colluding with paramilitaries. After it became evident that the proposal would be an obstacle to ratification of the US-Colombia Free Trade Agreement, he tabled it" (Human Rights Watch, World Report, 2008-Americas).

83. The paramilitaries are even more homophobic than either the state security forces or the guerrillas. Andrew Reding, a leading researcher and frequent contributor to publications of the Resource Information Center of U.S. Citizenship and Immigration Services, recently wrote:

"The paramilitaries espouse policies of 'social cleansing' that target undesirables such as beggars and homosexuals. They have attacked gay men in Cúcuta and Bucaramanga. In the oil port of Barrancabermeja on the Magdalena river, they have issued a manual that prescribes proper behavior for city residents. Among other things, the manual calls for banishing homosexuals. But the paramilitaries' actual practice, according to residents, has been to impose the death penalty for anyone who 'is of no use to

society,' including thieves, drug dealers, sex workers and homosexuals" (Andrew Reding, Sexual Orientation and Human Rights in the Americas. New York: World Policy Institute at New School University, 2003, p. 35). Emphasis Mine.

84. There is no doubt that the AUC represents the greatest threat to Mr. XXXX. First of all, the AUC is every bit as vicious as the FARC (which has received most of the attention inside and outside Colombia), but the AUC is far more hostile to gays and lesbians in both their public pronouncements and their actions. As the U.S. Department of State notes:

"The following violations by paramilitaries were reported during the year: political killings and kidnappings; forced disappearances; torture; interference with personal privacy; forced displacement; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights, restrictions on freedom of movement; attacks against human rights workers, journalists, and labor union members; recruitment and employment of child soldiers; and harassment, intimidation, and killings of teachers and union leaders" United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices-Colombia, March 8, 2006, p. 1). Hereafter cited as 2005 Country Report on Colombia.

"Paramilitaries also prevented or limited the delivery of foodstuffs and medicines to towns and regions considered sympathetic to guerrillas, straining local economies and increasing forced displacement" (2005 Country Report on Colombia, p. 12).

85. The Department of State's 2006 view of the AUC is equally damning.

"Illegal armed groups committed the majority of human rights violations. Despite a unilateral cease-fire declared by the AUC in 2002 and a nationwide demobilization, renegade paramilitary members committed the following criminal acts and human rights abuses: political killings and kidnappings; forced disappearances; torture; interference with personal privacy and with the political system; forced displacement; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and employment of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists."

"There continued to be credible reports that some members of the security forces cooperated with illegal paramilitaries in

violation of orders from the president and the military high command. Such collaboration often facilitated unlawful killings and sometimes may have involved direct participation in paramilitary atrocities."

"Impunity for military personnel who collaborated with members of renegade paramilitary groups remained a problem."

"Renegade paramilitary members committed numerous political and unlawful killings, primarily in areas under dispute with guerrillas or lacking a strong government presence" (United States Department of State, Bureau of Democracy, Human Rights, and Labor, 2006 Country Report on Colombia, March 6, 2007, pp. 1, 3). Hereafter cited as 2006 Country Report on Colombia.

86. The Department's 2007 analysis of the AUC is even more critical.

"New illegal groups committed numerous human rights abuses. The last United Self Defense Forces of Colombia (AUC) block demobilized in August 2006, but AUC members who refused to demobilize, AUC members who demobilized but later abandoned the peace process, and other criminal groups remained the object of security force action. (The new illegal groups, which the government also described as new criminal groups, consisted of demobilized paramilitaries who returned to violence, individual paramilitaries who never demobilized, common criminals, and narcotics traffickers primarily involved in criminal activity. These new groups lacked the organization, reach, and military capacity of the former AUC and focused primarily on narcotics trafficking and extortion rather than fighting the FARC or ELN. In these circumstances, it was often difficult to determine responsibility for abuses committed.) The AUC demobilization led to a reduction in killings and other human rights abuses, but paramilitaries who refused to demobilize and new criminal groups continued to commit numerous unlawful acts and related abuses, including: political killings and kidnappings; physical violence; forced displacement; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists."

"Government steps to improve the human rights and security situation showed demonstrable results. Government statistics indicated that during the year there were decreases in massacres (34 percent) and kidnappings (29 percent). The Justice and Peace Law process helped clarify more than 3,000 crimes and led to the exhumation of 1,196 remains in 1,009 mass graves. The Supreme Court and prosecutor general's investigations of links between

politicians and paramilitary groups implicated 52 congressman, 11 governors, and 19 mayors, a number of whom were in jail at year's end."

"Paramilitary members who refused to demobilize and new illegal group members committed numerous political and unlawful killings, primarily in areas under dispute with guerrillas or lacking a strong government presence.

"The Jesuit-founded Center for Popular Research and Education (CINEP), a local human rights nongovernmental organization (NGO), claimed there were at least 238 political and unlawful killings, committed by all actors, during the first six months of the year, 77 more than reported in the same period in 2006. Some NGOs, such as CINEP, considered the new illegal groups to be a continuation of the paramilitary groups and attributed reports of human rights violations committed by these groups directly to the government. They also included killings by these groups in their definition of 'unlawful killings.'"

"The government's Presidential Program for Human Rights reported that, during the first seven months of the year, 65 persons died in 15 massacres (defined by the government as killings of four or more persons) perpetrated by illegal armed groups, a 44 percent decrease from the same period in 2006."

"Some members of government security forces, including enlisted personnel, noncommissioned officers, and senior officials, in violation of orders from and president and the military high command, collaborated with or tolerated the activities of new illegal groups or paramilitary members who refused to demobilize. Such collaboration often facilitated unlawful killings and may have involved direct participation in paramilitary atrocities."

"Some reports suggested that tacit nonaggression pacts between local military officers and paramilitaries who refused to demobilize or new illegal groups existed in certain regions, such as eastern Antioquia, Choco, Meta, and Narino departments and indicated that members of the security forces assisted, or sought the assistance of, criminal groups. Impunity for these military personnel remained a problem."

"While civilian courts made some progress on cases against military personnel, impunity for military personnel who collaborated with paramilitary members who refused to demobilize and new illegal groups remained a problem."

"The Inter-American Court of Human Rights, on May 11 and July 4, issued rulings in two cases related to military collusion with paramilitaries. The government agreed to comply with the rulings in both cases."

"In conformity with the law, military or civilian authorities investigated killings committed by security forces. Civilian courts tried a number of military personnel accused of human rights violations. Investigations of past killings proceeded, albeit slowly. There were significant convictions in high-profile cases against military personnel, including convictions in the cases of Santo Domingo (1998), the La Gabarra massacre (1999), and Arauca (2004)."

"Both governmental and nongovernmental actors used landmines. Preliminary reports indicated that landmines, used primarily by the FARC and ELN, caused 187 deaths and 687 injuries during the year (see section 1.g.). The government expressed its commitment to removing the remaining 29 government-controlled minefields, as the security situation permits."

CINEP reported that demobilized paramilitaries were responsible for at least 28 cases of torture as of June. For example, CINEP stated that on April 12, demobilized AUC paramilitaries allegedly tortured and killed Uriel Henao, a farmer in La Dorado, Caldas."

"On September 15, the Supreme Court overturned two prior acquittals to convict Major Luis Fernando Campuzano for allowing AUC members unfettered access to La Gabarra, Norte de Santander, which led to the killing of 27 persons in 1999. He was sentenced to 40 years in prison."

"After the last AUC block demobilized in August 2006, the government confronted militarily any groups that did not demobilize as well as new criminal groups. The government reported that during the year it demobilized 155 individual paramilitary members who had previously refused to demobilize, bringing the total number of paramilitaries demobilized to approximately 34,000 since the process began in 2003. The Organization of American States (OAS) continued to verify all stages of demobilization and reincorporation of former combatants into society. The OAS verification mission's 10th report noted "emerging situations of possible rearmament and the appearance of armed groups claiming to be the 'new generation of paramilitaries,'" who in some cases "were recruiting former paramilitary combatants." The OAS estimated that there were approximately 20 new illegal or criminal groups (with 3,000 members) operating in the country" (United States Department of State, Bureau of Democracy, Human Rights, and Labor, 2007 Country Report on Colombia, March 11, 2008, pp. 1-2, 4, 5. Hereafter cited as 2007 Country Report on Colombia).

87. The Colombian government made no gains against the AUC in 2008.

"New illegal groups also committed numerous human rights abuses. The last United Self Defense Forces of Colombia (AUC) block demobilized in 2006, but AUC members who refused to demobilize, AUC members who demobilized but later abandoned the peace process, and other new illegal groups remained targets of security force action. (The new illegal groups consisted of demobilized paramilitaries who returned to violence, individual paramilitaries who never demobilized, common criminals, and narcotics traffickers primarily involved in criminal activity. These new groups lacked the organization, reach, and military capacity of the former AUC and focused primarily on narcotics trafficking and extortion rather than fighting the FARC or ELN. In these circumstances, it was often difficult to determine responsibility for abuses committed."

"The AUC demobilization led to a reduction in killings and other human rights abuses, but paramilitaries who refused to demobilize and new illegal groups continued to commit numerous unlawful acts and related abuses, including: political killings and kidnappings; physical violence; forced displacement; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists."

"Government statistics indicated that during the year killings decreased 6.2 percent and kidnappings decreased 14.3 percent compared with the same period in 2007. Through December the JPL process helped clarify over 20,000 crimes and led to the exhumation of 1,788 remains in 1,441 common graves, while the Supreme Court and prosecutor general's investigations of links between politicians and paramilitary groups implicated 70 representatives, 15 governors, and 31 mayors, many of whom were in jail at year's end."

"Paramilitary members who refused to demobilize and new illegal group members committed numerous political and unlawful killings, primarily in areas under dispute with guerrillas or without a strong government presence."

"The Jesuit-founded Center for Popular Research and Education (CINEP), a local human rights nongovernmental organization (NGO), claimed there were at least 220 political and unlawful killings, committed by all actors, during the first six months of the year, 18 more than reported in the same period in 2007. Some NGOs, such as CINEP, considered the new illegal groups to be a continuation of the paramilitary groups and attributed reports of human rights violations committed by these groups directly to the government. They also included killings by these groups in their definition of 'unlawful killings.'"

"The Ministry of Defense reported that 169 persons died in 37 massacres (defined by the government as killings of four or more persons), a 32 percent increase from 2007."

"Some members of government security forces, including enlisted personnel, noncommissioned officers, and senior officials, in violation of orders from the president and the military high command, collaborated with or tolerated the activities of new illegal groups or paramilitary members who refused to demobilize. Such collaboration often facilitated unlawful killings and may have involved direct participation in paramilitary atrocities."

"Some reports suggested that in certain regions, such as eastern Antioquia, Choco, Meta, and Narino departments, there were corrupt dealings between local military officers and new illegal groups or paramilitaries who refused to demobilize. Although impunity for these military personnel remained a problem, the Ministry of Defense carried out investigations and handed over culpable parties to civilian authorities in several high-profile cases during the year."

"After the last AUC block demobilized in 2006, the government confronted militarily any groups that did not demobilize as well as new illegal groups. There were no further paramilitary demobilizations beyond approximately 34,000 that collectively demobilized after the process began in 2003. The Organization of American States (OAS) continued to verify all stages of demobilization and reincorporation of former combatants into society. The OAS estimated that there were approximately 23 new illegal groups operating in the country."

"Paramilitary members who refused to demobilize and new illegal groups killed journalists, local politicians, human rights activists, indigenous leaders, labor leaders, and others who threatened to interfere with their criminal activities, showed leftist sympathies, or were suspected of collaboration with the FARC. They also reportedly committed massacres and "social cleansing" killings of prostitutes, homosexuals, drug users, vagrants, and gang members in city neighborhoods they controlled. New illegal groups, according to CINEP, were responsible for the deaths of 148 civilians from January through June, a 13.5 percent increase from 128 deaths reported during the same period in 2007" (2008 Country Report on Colombia, pp. 1-2, 6, 7).

88. The homophobic attitudes espoused by the AUC are no where better seen than in official and unofficial views of Acquired Immune Deficient Syndrome (AIDS), or *Síndrome de Inmunidad Deficiente Adquirida* (SIDA) as it is known in Latin America. Latin Americans will rarely admit that AIDS even exists

in their country, but if they do they will describe the disease as an abomination, caused by the Devil or an angry God who has cursed a person or a family. That the blame for AIDS always falls upon the "fem" in the homosexual encounter is an even more powerful rationale for persecuting "fems" and cleansing *La Patria* and/or the family of all AIDS. The fact remains, however, that HIV+ or AIDS patients are lumped together into one horrific group whose existence is a threat to every individual, every family, yes, even to the nation (*La Patria*) itself. According to this way of thinking, therefore, abuse of these people is deemed to be deserved.

89. Ms. Mirta Roses Periago, Director of the Pan American Health Organization noted: "Important gains in child health and life expectancy in the continent are being swept back by AIDS, destroying the efforts and investments of past decades. The poor get infected, and those infected become poor and isolated by stigma and sickness, rejected from schools and jobs" (quoted in Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, pp. 1-2).

90. In this same incredibly important report, Peter Aggleton, Richard Parker and Mirima Maluwa stated: "HIV/AIDS plays to some deep-seated fears and anxieties----fear of germs and disease, fear of death, and anxieties about sex. There are major similarities between HIV/AIDS-related stigma and discrimination and some of the negative social reactions triggered by diseases such as leprosy, tuberculosis and cancer."

"But the stigma and discrimination that HIV/AIDS has given rise to is much more than this. All over the world, and especially in Latin America and the Caribbean, it has systematically played to, and reinforced, existing prejudices and anxieties about homo- and bisexuality, about prostitution and sex work, and about injecting drugs." Please see Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, p. 3.

91. This becomes an even more dangerous situation when one looks at the increasing prevalence of HIV/AIDS in Colombia. In 2001, the rate was 0.4 percent of adults aged 15-49, two-thirds the rate in the United States. By the end of 2001, UNAIDS estimated there were 140,000 persons living with HIV/AIDS out of a total population of 42.8 million (United Nations Development Programme, Human Development Report 2002. New York: Oxford University Press, 2002, p. 171).

92. By 2006, those already disturbing data had worsened horribly. According to the UNAIDS, 2006 Report on the Global AIDS Epidemic, the HIV prevalence rate in Colombia had increased to as much as 2.5%, **(over four times that of the United States)** with as many as 320,000 persons infected with the virus.

This horrific increase and spread of the disease have increased homophobia exponentially, with the result that the state security forces and mobs in the street have become much more dangerous to the gay male population, and therefore to Mr. XXXX. Although Mr. XXXX is not HIV+, he exhibits homosexual mannerisms which is the same for Colombians, i.e., all homosexuals are HIV+ (which is false) and all persons infected with HIV+ are homosexual (which is likewise false). Simply stated, there is no way for Mr. XXXX to alter his feminine mannerisms. He is what he is and he is therefore in grave danger.

93. Tragically, this also means that the vast majority of health delivery personnel (doctors, nurses, dentists) in Colombia and Latin America simply refuse to treat individuals who are HIV+ (or perceived to be infected) for fear of contracting the disease. Those who do treat HIV+ patients and homosexuals very often do so only grudgingly and are extremely unsympathetic to them.

94. There is no doubt that male "fems" and other homosexuals are members of a particular social group and that Mr. XXXX is in danger due to that membership. As The Honorable A. Wallace Tashima, Judge, United States Court of Appeals for the Ninth Circuit wrote in *Geovanni Hernández-Montiel v. Immigration and Naturalization Service*: "Geovanni's female sexual identity must be fundamental, or he would have changed years ago. ... Geovanni should not be required to change his sexual orientation or identity. ... Because we conclude that Geovanni should not be required to change his sexual orientation or identity, we need not address whether Geovanni could change them. Geovanni's credible and uncontradicted testimony about the inherent and immutable nature of his sexual identity compels the conclusion that Geovanni was a member of the particular social group of gay men in Mexico with female sexual identities."

95. In that same case, the Honorable Melvin Brunetti, Judge, United States Court of Appeals for the Ninth Circuit, in a concurring opinion stated: "The evidence presented by Professor Davies supports the legal conclusion that in Mexico, gay men who have female sexual identities constitute a particular social group for asylum purposes. Hernández-Montiel's uncontradicted testimony regarding his physical and mental state is sufficient

to establish that he is a member of this particular social group. Professor Davies testified that gay men with female sexual identities are persecuted in Mexico. Hernández-Montiel's testimony before the Immigration Judge that he suffered persecution on account of his membership in this social group was found credible by both the Immigration Judge and the Board of Immigration Appeals. Hernández-Montiel is therefore entitled to asylum and withholding of deportation based on his well-founded fear of persecution should he be returned to Mexico."

96. The situation in Colombia is actually much worse than in Mexico since the Hernández-Montiel case was heard. As I will show below, Mr. XXXX's life is in much greater danger in Colombia than in any other country in Latin America, with perhaps two exceptions, El Salvador and Guatemala. Indeed, it is my expert opinion, which I will detail below, that Mr. XXXX is an extremely high profile target and would be in grave danger of being killed if he were to return to Colombia.

97. The first threat to Mr. XXXX's life, of course, comes from the fact that he is a homosexual who is to be deported back to his native country of Colombia.

98. Indeed, given the climate in Colombia and the role the authorities play in denying basic human and civil rights, it is my considered opinion that Mr. XXXX might be detained at the airport and could even be sent to prison. At best, there would be a form of preventive detention with the same end result: Mr. XXXX either going directly to jail or being tortured or killed "while trying to escape," or some such scenario. His chances of avoiding the authorities and detention are nil. Moreover, once incarcerated, the general prison population will immediately target Mr. XXXX for massive abuse and most probably death. As outlined below, neither the government nor the police can or will do anything to help Mr. XXXX.

99. In addition to the AUC, the guerrillas in Colombia (FARC, ELN, EPL) also hold extreme views on homosexuality and sexuality in general. Like most radical revolutionary parties (Mao Tse-tung and Maoism in China, Pol Pot and the Khmer Rouge in Cambodia, Leon Trotsky and Trotskyism in Russia and elsewhere in the western world), the guerrilla leaders were/are rabidly puritanical in all matters sexual because they view strong sexual urges as a threat to their complete control over their followers. Moreover, they are virulently homophobic and emphasize an extreme version of *machismo*. Like their mortal enemies in the AUC and the Colombian military and police forces, the guerrillas seek to eliminate all "sexual deviates."

100. Thus, as noted above, Colombian security forces, the various guerrilla groups and the paramilitaries all have extremely strong motives for "exterminating" Mr. XXXX; I can not conceive of a worse situation for him.

101. The plain truth is that Colombia is one of the three most homophobic nations in Latin America, El Salvador and Guatemala being the others. The best and most succinct analysis of homophobia in Colombia is that of Rubén Ardila, Ph.D.:

"Our society, based on the Judeo-Christian faith, has a very negative attitude towards homosexuality. Homosexuality is viewed as a violation, an illness, or a deviation from the norm that threatens normal behaviors and society. This homophobic view has permeated Colombian society throughout its history, although there have been different levels of acceptance, depending on the individual's level of education, rural-versus-urban setting, age, and their affiliation with the Catholic Church. There is a deeply rooted belief that homosexuals are a threat to society, good upbringing, and family values. Similarly, homosexuality is thought to be related to child sexual abuse, AIDS, substance abuse, delinquency, and other serious social problems."

"Homosexuals are discriminated against in education, in the workplace, in housing, in the mass media, and generally in daily living. This homophobia has its origins in the Latin American cultures, which practice *machismo*, emphasize the importance of the family unit, and are highly influenced by the Catholic Church" (Rubén Ardila, "Homoerotic, Homosexual, and Bisexual Behaviors," in: José Manuel González, Rubén Ardila, Pedro Guerrero, Gloria Penagos and Bernardo Useche, "Colombia" (pp. 210-226) in: Robert T. Francoeur and Raymond J. Noonan, eds., The Continuum Complete International Encyclopedia of Sexuality. Updated, With More Countries. New York: Continuum, 2004 (p. 217).

102. For an absolutely horrifying account of attacks on and the "social cleansing" of homosexuals up to 1996 see Juan Pablo Ordoñez and Richard Elliott, "Cleaning Up The Streets"-- Human Rights Violations in Colombia and Honduras. Brussels, Belgium: International Lesbian and Gay Association, 1996. The fact is that since that was written the situation has not improved to any measurable degree. On the contrary, as the violence has increased in the country so has violence against gays and lesbians.

103. For example, in early 2001, Alvaro Miguel Rivera, a gay activist in Villavicencio near the capital Bogotá began receiving threatening phone calls, as well as being followed by

unknown individuals. He filed a complaint with the police, but was told "to wait until something happens before taking action" (International Gay and Lesbian Human Rights Commission, Resumen del año 2001 en américa latina y el caribe. San Francisco: IGLHRC, 2002). Hereafter cited as Resumen del año 2001.

In May, 2001, security personnel at the University of Antioquía in Medellín began to harass anyone who was or appeared to be gay. The campaign peaked with the severe beating of a gay student activist, Robinson Sánchez (Resumen del año 2001).

On March 1, 2002, an unknown person or persons threw a grenade at the home of Manuel Velandia Mora, who was running as an openly gay candidate in the upcoming parliamentary elections. The home was severely damaged, but Velandia Mora was unhurt. Following the attack Velandia Mora received numerous death threats in anonymous phone calls to his home and to his organization, *Solidaridad Comunitaria* (Community Solidarity), a gay rights organization. He asked the Attorney General for police protection, but the police stayed only two days and then left (see International Gay and Lesbian Human Rights Commission, "Openly Gay Political Candidate Attacked," March 2002).

104. On March 23, 2006, Darlyn Acevedo Ramírez, was murdered in the city of Santiago de Calí, Colombia. That murder was just one of the 13 unsolved murders of trans women that had occurred in Colombia in the period 2004-2006.

"Besides these terrible crimes, the physical, psychological and ethical mistreatment suffered by trans women in Santiago de Calí is a serious and continuous problem, and a daily violation of the human and constitutional rights of this community" (Action Alert: Colombia--Demand Investigation Into Murders of Trans Women," *International Gay and Lesbian Human Rights Commission*, April 18, 2008).

105. In February, 2008, in Manizales, two lesbian high-school students were expelled from the Leonardo Da Vinci High school by the Principal Magola Franco Pérez. Ms. Franco Pérez threatened to resign if the young women were ever allowed to return (which she did not) and organized students to demonstrate against them ("Colombia: 1st Day Back in Class for High School Lesbians Who Were Booted Out," April 29, 2008, www.blabbeando.blogspot.com).

For a very moving interview of one of the young women, Jenny Viviana Rendón, see "Colombia: Student Who Was Kicked Out of High School for Being a Lesbian Speaks Up Against Discrimination," June 4, 2008, www.blabbeando.blogspot.com.

106. Also in February, 2008, one of Colombia's leading LGBT activists was murdered, clearly because of his sexual orientation and LGBT activism.

"On February 16, 2008, unknown assailants killed Fredys Pineda in Apartadó, a city in northwestern Colombia. Pineda was a consultant on enforced displacement for the Ombudsman's Office. In the past, Pineda worked for the rights of LGBT people and in HIV/AIDS prevention in Cordoba, a state in northern Colombia" ("Colombia: Protest the Murder of LGBT Human Rights Defender," *International Gay and Lesbian Human Rights Commission*, March 18, 2009).

107. By the end of 2008, the human rights situation for LGBT peoples in Colombia had declined so sharply that even the United States Department of State took notice of it for the first time in its 2008 Country Report on Colombia.

"According to CINEP, extrajudicial killings attributed to the government were a combination of false reports of guerrillas killed in combat and "social cleansing" (including vagrants, homosexuals, and other "undesirables")" p. 6).

"Paramilitary members who refused to demobilize and new illegal groups killed journalists, local politicians, human rights activists, indigenous leaders, labor leaders, and others who threatened to interfere with their criminal activities, showed leftist sympathies, or were suspected of collaboration with the FARC. They also reportedly committed massacres and "social cleansing" killings of prostitutes, homosexuals, drug users, vagrants, and gang members in city neighborhoods they controlled. New illegal groups, according to CINEP, were responsible for the deaths of 148 civilians from January through June, a 13.5 percent increase from 128 deaths reported during the same period in 2007."

"Colombia Diversa, an NGO focused on violence and discrimination due to sexual orientation, reported at least 41 killings during the year due to prejudice regarding sexual orientation. The Constitutional Court recognized the right of same-sex couples to pension benefits and gave greater economic rights to same-sex couples. **In spite of the court rulings, Colombia Diversa reported at least three cases of pension benefits being withheld from same-sex partners. Colombia Diversa also reported cases of police abuse against persons due to their sexual orientation, with the majority of complaints coming from transgender individuals. The group also claimed that violence in prisons against persons due to their sexual orientation remained a problem**" (2008 Country Report on Colombia, pp. 6, 14).
Emphasis Mine.

108. Even more indicative of the violence facing homosexuals and those who would defend them came in October, 2008, when Norberto Salamanca, the *Notario* of District 76 in Bogotá was assassinated. Mr. Salamanca, who had officiated at nearly 100 same-sex civil unions, was returning to his home when two men on a motorcycle opened fire on him ("*Sicarios Mataron Al Notario 76 de Bogotá, Defensor de las Uniones Gay*," *Canal Caracol y Efe*, October 11, 2008).

109. In December, 2008, the gravity of human rights violations was presented starkly by Mario Osava in an in-depth article.

"'We are not interested in hiding our sexual preference,' and in this country 'killing is easier' than in others said Diana Navarro, the head of Corporación Opción."

"The lesbian, gay, bisexual and transgender (LGBT) community in Colombia faces state and social discrimination, as is common nearly everywhere in the world. But in their case it is aggravated by the conflicts between several armed groups which are all homophobic."

"Homosexuals are particularly victimised by 'social cleansing,' a Colombian tradition of eliminating undesirables, and as 'false positives'--people killed by the armed forces to present as guerrillas killed in combat, said Navarro, who did not complete her university law course and is now studying participative social processes." Emphasis Mine.

"In 2006 and 2007, 67 Colombians were murdered because of their sexual orientation, according to Colombia Diversa, a non-governmental organisation (NGO) for LGBT rights. But this is a very partial figure, the result of 'a first effort' that was limited to the big cities, the NGO's lawyer Mauricio Noguera told IPS."

"This is obviously an underestimate, because LGBT individuals are not specifically identified as such on any official documents, said Navarro. In addition, fear of reprisals prevents people from coming forward and filing complaints, Noguera said."

"The armed conflict in Colombia 'did not originate prejudice, but it exacerbates it and brings about more serious consequences,' the lawyer said."

"In the areas under their control, illegal armed groups like the far-right paramilitaries or the left-wing guerrillas impose 'normal' behaviour according to their beliefs, driving out

prostitutes, drug addicts and homosexuals with threats that include murder if they resist, he said." Emphasis Mine.

"Another of Navarro's forceful views is that Catholicism is at the root of the violence against sexual minorities. The strong influence the Catholic Church retains in Colombia, and its conservative hierarchy, do heighten pressures against LGBT people, other activists agree."

"Coming to terms openly with one's homosexuality in Colombia is a 'heroic' act, said Carlos Gaviria, president of the PDA, speaking at the Seminar on Human Rights, Sexual Diversity and State Policies." Emphasis Mine

"A society can only be democratic if it is 'plural' and allows people to be 'authentic,' that is, that everyone can publicly present their true identity, including their sexual identity, said Gaviria. But this is not the case in Colombia, which is still a democracy 'under construction,' added the politician, who was runner-up in the 2006 presidential elections" (Mario Osava, "Rights-Colombia: Where Homophobia Totes a Gun," *Inter Press Service News Agency*, December 2, 2008).

110. Events in 2009 certainly support the above stated concerns.

"On March 6, 2009, unknown men killed the human rights defender Álvaro Miguel Rivera in the City of Cali, Colombia. Álvaro was the representative of a lesbian, gay, bisexual, transgender and intersex (LGBTI) organization, Tinku. He was also a member of Planeta Paz, a national peace network, and of the Polo Rosa, the LGBTI section of a left wing political party. Álvaro was far and foremost a committed activist who worked for the rights of the LGBTI community and people living with HIV. In the past, threats against his life had already made Álvaro flee Villavicencio, a city in Eastern Colombia." Emphasis Mine.

"In a March 12, 2009, news release, the Inter-American Commission on Human Rights (IACHR) 'condemned the murder of Álvaro Miguel Rivera Linares' and stated concern 'about the situation of insecurity faced by those who defend the rights of the LGBT community in Colombia, especially in the city of Cali.' Álvaro himself documented such violence in Cali for Colombia Diversa's 2007 human rights report and, until his death, continued to speak out against the killings of gay men in the city" ("Colombia: Protest the Murder of LGBT Human Rights Defender," *International Gay and Lesbian Human Rights Commission*, March 18, 2009). Emphasis Mine.

111. As noted above, Mr. XXXX's homosexuality makes him a particularly high profile target. Both the military and the police, as well as the three guerrilla organizations (FARC, ELN, EPL) and the right-wing paramilitary forces (AUC) firmly believe that they are "cleansing" the body politic, and therefore *La Patria*, of all that is dirty, undesirable, and dangerous to the morality of *La Patria* and its children. If Mr. XXXX is deported by the United States, he will shortly be targeted by the police and other groups because of his obviously "feminine" mannerisms.

112. Finally, Mr. XXXX's own family will also assume that he is HIV positive and will, therefore, shun him as "unclean," as a disease-carrying, despicable, homosexual monster. They may not touch him; they may not allow him into their homes; they may attack him verbally, as a *sidoso* or one who is infected with AIDS and they may attack him physically. Indeed, it is even conceivable that Mr. XXXX's own family may be responsible for his death. His presence constitutes a terrible stain on the family *apellido* or last name, something which has been the most important thing to an Hispanic family since the days of the *Reconquista* (711-1492) in Spain. I have personally seen families react to the news that one of theirs is homosexual and/or infected with HIV/AIDS and it is a terrible, heart-wrenching sight indeed.

113. Nevertheless, all of the horrors committed against LGBT peoples described above were seemingly "solved" in January, 2009. In that month, the Constitutional Court of Colombia granted some civil rights to LGBT couples and the international LGBT websites and blogs announced that Colombia had recognized same-sex marriage, something which is simply not true.

114. To understand what has really occurred it is necessary to go back to February, 2007. In that month, the Constitutional Court held that homosexual couples who had been together for two years or more should enjoy the same property and inheritance rights as heterosexual couples ("*Overtaking in Colombia*," *Peace Reporter*, February 19, 2007). That decision was never enforced (see below).

115. Then in June, 2007, the lower house of the Colombian Congress passed a law which granted couples who were in long-term relationships (five years or more) the same rights to health insurance, inheritance and social security benefits enjoyed by heterosexual couples. President Uribe had apparently indicated that he would sign the bill.

When the bill went to the Colombian Senate, however, it was rejected when Senator Manuel Virguez Piraquive, a member of an Evangelical Colombian church, demanded a floor vote. At that point, other conservative senators broke ranks with President Uribe's party and voted against it. Many supporters simply left the floor rather than making their vote public ("Colombian Senators Scuttle Rights Bill," www.planetout.com, June 20, 2007).

116. Then, in October, 2007, the Constitutional Court handed down another decision which granted homosexual couples the same rights of inheritance and health and social security benefits. There was no mention of civil unions or gay marriage.

Moreover, gay rights activist Virgilio Barco warned: "'The only way for us to enact this last provision will be through another appeal to the Constitutional Court. Congress had the opportunity to do it but a small group of senators sabotaged the bill at the last minute'" ("Colombian Court Rules in Favour of Equal Rights For Gay Couples," (www.pinknews.co.uk, October 6, 2007).

Others pointed to the tremendous discrimination faced by LGBT peoples in Colombia. "The war-torn country of 45 million people is heavily Roman Catholic, and many armed militias involve themselves in 'social cleansing,' targeting LGBT people."

"The police have also been accused on numerous occasions for abuse of authority and mistreatment of gay people."

"Social fears around HIV and AIDS and the perceived moral influence of gays and lesbians on children allow paramilitary and guerrilla forces to target LGBT people as part of their desire to control territory."

"Gays and lesbians in cities are also targeted by gangs who routinely rob and blackmail them and attack gay venues" (www.pinknews.co.uk, October 6, 2007).

117. The Constitutional Court acted again in April, 2008, ruling that long-term same-sex couples (together five years or longer) had a right to the same pension and health benefits as heterosexual couples. "The court acknowledges that to exclude same-sex partners would violate the principle of non-discrimination and human dignity as the expression of personal autonomy, protected by international law" (Human Rights Watch, "Colombia: Court Extends Benefits to Same-Sex Couples," April 18, 2008).

118. Once again, however, the Constitutional Court's decision was not enforced, leading to yet another decision on January 26, 2009.

"The Jan. 26 ruling granted an estimated 300,000 LGBT couples full inheritance rights and the right to Colombian nationality for a foreigner in a same-sex union with a Colombian in this country. It also states that members of same-sex couples cannot be forced to testify against their partners."

"And in the military, if one of the members of a same-sex couple belongs to the armed forces, his or her partner will enjoy all the special benefits that up to now were only limited to heterosexual couples."

"In addition, in a civil-war-torn country like Colombia, the Court extended to same-sex couples the right to reparations when one of the partners suffers from armed conflict-related crimes like murder, torture, sexual abuse, or forced displacement or disappearance."

"Marcela Sánchez [a lesbian activist who heads *Colombia Diversa*] and Manuel Velandia [a Colombia LGBT activist] both commented that activists would not give up the fight to conquer the only two rights not achieved so far--the right to marry and to adopt. But they also said that for now, their struggle would focus on consolidating the new gains, which do not magically eliminate the homophobia and discrimination suffered by members of the LGBT community in this South American country" (Helda XXXX, "Colombia: Equal Rights For Same-Sex Partners," *Inter Press Service News Agency*, March 2, 2009). See also: Colombia Diversa, "Colombia's Constitutional Court Rules for Equality," January 28, 2009; Steven D. Schwinn, "Colombia Constitutional Court, Same-Sex Marriage and Intersex Children: Saturday Evening Review," *Constitutional Law Prof Blog*, January 31, 2009. The full text of the Constitutional Court's ruling can be found on the Colombia Diversa website: www.colombiadiversa.org.

119. Despite all of these decisions, the Constitutional Court itself has stated that implementation of its decision depends upon the Colombian Congress voting changes to the nation's Civil Code, Criminal Code and Military Code. For its part, the Congress has steadfastly refused to pass same-sex legislation, let alone make such changes in the three codes.

120. This raises the question of the real power of the Constitutional Court. The United States Department of State has been very clear on this in its Country Reports on Colombia. Indeed, the exact same sentence appears in the last five reports (2004, 2005, 2006, 2007, 2008):

"The Supreme Court, the Council of State, the Constitutional Court, and the CSJ are co-equal supreme judicial bodies that sometimes issued conflicting rulings and frequently disagreed about jurisdictional responsibilities" 2008 Country Report on Colombia, p. 4).

Moreover, the Constitutional Court lacks the power to enforce its decisions, i.e., it has no control over the Colombian security forces and can not order the police or military to do anything.

121. A comparable situation came in the Constitutional Court's 2004 decision which held that the living conditions of the Internally Displaced Persons in Colombia were inhumane and unconstitutional and ordered the government to rectify the situation.

Two years later, however, Manuel José Cepeda-Espinosa, one of the nine judges on the Constitutional Court wrote that this simply was not happening.

"In 2004 Colombia's highest court declared that the inhumane living conditions of the country's IDPs were 'unconstitutional' and ordered the authorities to take action. Colombia has, arguably, the world's most progressive IDP legislation but can the state guarantee IDPs their constitutional rights?"

"The Colombian government has recently filed a new report, as required by the Court, indicating how it plans to address these ten critical areas. The Court has had to opt between imposing sanctions - fines or imprisonment of negligent officials - or continuing to order gradual advances towards fulfillment of IDPs' rights. The Court has chosen the latter course and has made substantial progress. Organisations of displaced persons themselves have requested the Court to continue this approach. However, there are those who draw attention to the fact that almost three years have passed since T-025 [the reference number of the decision] was handed down. Some have asked the Court to declare public officials in contempt of court. Not only is its credibility at stake but so too are the prospects of Colombia's IDPs finally achieving their constitutional rights" (Manuel José Cepeda-Espinosa, "How Far May Colombia's Constitutional Court Go to Protect IDP Rights?" Forced Migration Review, University of Oxford, December 5, 2006, pp. 1, 3).

122. Amnesty International, Human Rights Watch and the United States Department of State have also condemned the conditions of the IDPs. In its 2008 Country Report on Colombia, the State Department noted the following:

"The internal armed conflict, especially in remote areas, was the major cause of internal displacement. International organizations and civil society identified various factors driving continuing displacement including confrontations between security forces, terrorists, and new illegal groups, greater competition among illegal armed groups for resources, and threats and violence from new illegal groups. Most IDPs were rural peasants displaced to cities. Estimates of the numbers of IDPs varied. Accion Social, the government's internal welfare and foreign coordination agency, registered 325,162 newly displaced persons at year's end, a number expected to rise as regional reporting was incorporated into its database."

"The government has registered a total of 2.8 million IDPs since 1995, while CODHES estimated that as many as 4.3 million persons have been displaced since 1985. The government registered new IDPs whose applications for recognition had been accepted, while CODHES estimated new displacements based on information from the media, civil society, and field work."

"Despite several government initiatives to enhance IDP access to services and knowledge of their rights and notable improvements in meeting the social and economic needs of IDPs, many IDPs continued to live in unhygienic conditions with limited access to health care, education, or employment. Several international organizations and domestic nonprofit groups, such as the International Organization for Migration (IOM), the ICRC, and the Colombian Red Cross worked with the government to provide emergency relief and long-term assistance to displaced populations" (2008 Country Report on Colombia, 9-10).

123. Simply stated, the Constitutional Court has no real power of enforcement and implementation of its decisions on LGBT rights will have to wait until the Colombian Congress decides to act. That will most likely not occur in Mr. XXXX's lifetime.

124. In addition, the overall human rights situation in Colombia has continued to deteriorate badly over the past four years. Indeed, it is my expert opinion, which I will detail below, that Mr. XXXX is an extremely high profile target and would be in grave danger of being killed by multiple actors should he be forced to return to Colombia.

125. The 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008 Country Reports on Colombia are eight of the worst U.S. Department of State human rights reports I have ever read on Latin America, with the 2005, 2006, 2007 and 2008 reports even

worse than the previous four. Indeed, they rival those of Guatemala and El Salvador in the 1980s.

126. Massive, ubiquitous violence in Colombia is not only a major contributor to the nation's economic and social chaos, it also contributes to the pervasive climate of terror in which Mr. XXXX lived and which informs the entire society. Even a casual perusal of Colombian history over the past century reveals a pattern of violent upheaval.

127. Beginning with a bloody war for independence, Colombians have demonstrated an incredible penchant for butchering each other. The War of the Thousand Days (1899-1902) left more than 100,000 people dead and began the "fratricidal war" that has since characterized Colombian politics.

128. In 1948, there began what Colombians term *La Violencia* (The Violence, 1948-1966). When it ended there were between 195,000-200,000 people dead in a totally devastated nation. But it was not a "normal" war. Rather than two armies fighting each other, *La Violence* was marked by incredible savagery on the part of both civilians and military alike. An entirely new vocabulary emerged to describe particular forms of torture and execution. One was the *Corte de Franela* (the Flannel Cut) in which the skin was torn down from the shoulders to the belly, giving the appearance of a red, flannel shirt.

129. The period of *La Violencia* was followed by 36 years of guerrilla warfare. Tens of thousands have been killed and more die each day. In May, 2009, Colombians are still slaughtering each other. Indeed, Colombia is arguably one of the most dangerous nations in the world and certainly the most dangerous nation in the Western Hemisphere.

130. That Colombia is near political and economic collapse is supported by several facts and factors. First, well over 90,000 Colombians have been murdered in the past ten years and over two and one half million more have been forced from their homes and villages.

131. Second, Colombia is now the world's leading producer of both cocaine and marijuana and the second or third leading producer of heroin in the world. The infamous drug cartels of Cali and Medellín have been replaced by hundreds of smaller operations which are now linked to the major guerrilla units in the nation.

132. Third, unlike the rest of Latin America, Colombia has made no gains whatsoever in its fight against the various guerrilla armies which have been operating in the nation since the early 1960s. Indeed, the three most important (FARC, ELN, EPL) now control between 40-50% of the total national territory (see Loveman and Davies, Che Guevara on Guerrilla Warfare, pp. 233-267).

133. Moreover, Colombia ranks at the top of the world in terms of numbers of federal and state judges and prosecutors who are murdered each year, further justification for its reputation as **the most dangerous country in the Western Hemisphere and one of the most dangerous in the world.**

134. In its 2006 Country Report on Colombia, the United States Department of State noted that:

"While the law provides for an independent judiciary, the judicial system was overburdened, inefficient, and hindered by the suborning and intimidation of judges, prosecutors, and witnesses. In these circumstances, impunity remained a serious problem. The Supreme Council of the Judiciary (CSJ) reported that the civilian judicial system suffered from a significant backlog of cases, which led to large numbers of pretrial detainees." Emphasis Mine.

"Judicial authorities frequently were subjected to threats and acts of violence. According to the National Association of Judicial Branch Employees and the Corporate Fund of Solidarity with Colombian Judges, eight judicial branch employees were killed and 31 received threats against their lives. One employee was kidnapped, one 'disappeared,' and five left the country in self-imposed exile because of death threats. Some judges and prosecutors assigned to small towns worked out of departmental capitals because of security concerns. Witnesses were even more vulnerable to intimidation, and many refused to testify." Emphasis Mine.

"January press reports indicated that Alvaro Lopez Giraldo, the prosecutor for the Fourth Specialized Court of Huila, Tolima, and Caqueta departments, fled the country after receiving death threats from the FARC. Lopez Giraldo was in charge of investigations that led to the capture of 1,050 FARC members associated with the Teofilo Forero Mobile Column."

"In May the media reported that the ELN kidnapped prosecutor Javier Enrique Gaviria in Narino Department while he was traveling on a boat near Tumaco. Military forces rescued Gaviria in June" (United States Department of State, Bureau of Democracy, Human Rights, and Labor, 2006 Country Report on Colombia, March

6, 2007, p. 6). Hereafter cited as 2006 Country Report on Colombia.

135. The state of the judiciary declined even further in 2007.

"While the law provides for an independent judiciary, much of the judicial system was overburdened, inefficient, and hindered by subornation and intimidation of judges, prosecutors, and witnesses. In these circumstances, impunity remained a serious problem. The Supreme Judicial Council (CSJ) reported that the civilian judicial system suffered from a significant backlog of cases, which led to large numbers of pretrial detainees."

"Judicial authorities frequently were subjected to threats and acts of violence. According to the National Association of Judicial Branch Employees and the Corporate Fund of Solidarity with Colombian Judges, no judicial branch employees were killed, but 63 received threats against their lives. Unlike the previous year, no employee was kidnapped, "disappeared," or obliged to leave the country in self-imposed exile because of death threats. Unlike in previous years, judges and prosecutors assigned to small towns did not need to work out of departmental capitals due to security concerns. Although the Prosecutor General's Office ran a witness protection program for witnesses in criminal cases, witnesses who did not enroll in the program remained vulnerable to intimidation, and many refused to testify."

"The civilian justice system is composed of four functional jurisdictions: civil, administrative, constitutional, and special. The civil jurisdiction is the largest and handles all criminal, civil, labor, agrarian, and domestic cases involving nonmilitary personnel. The Supreme Court of Justice is the highest court within the civil jurisdiction and serves as its final court of appeal."

"The Constitutional Court is the sole judicial authority on the constitutionality of laws, presidential decrees, and constitutional reforms. The Constitutional Court also may issue advisory opinions on the constitutionality of bills not yet signed into law and acts within its discretion to review the decisions of lower courts on "tutelas," or writs of protection of fundamental rights, which can be filed before any judge of any court at any stage of the judicial process by any citizen."

"The special jurisdiction of the civilian justice system consists of the justices of the peace program and the indigenous jurisdiction. The CSJ is responsible for the administration and discipline of the civilian justice system."

"The Supreme Court, the Council of State, the Constitutional Court, and the CSJ are coequal supreme judicial bodies that sometimes issued conflicting rulings and frequently disagreed about jurisdictional responsibilities" (2007 Country Report on Colombia, p. 3).

136. The judicial system did not improve in 2008.

"While the law provides for an independent judiciary, much of the judicial system was overburdened, inefficient, and hindered by subornation and intimidation of judges, prosecutors, and witnesses. In these circumstances, impunity remained a serious problem, although the government took action to address these issues. The CSJ reported that the civilian judicial system suffered from a significant backlog of cases, which led to large numbers of pretrial detainees. Implementation of the new criminal accusatory system reduced the time for resolving new criminal cases by over 75 percent, with conviction rates of approximately 60 percent under the new system, compared with 3 percent under the old system. However, a large backlog of old-system cases remained." Emphasis Mine.

"Judicial authorities were subjected to threats and acts of violence. According to the National Association of Judicial Branch Employees and the Corporate Fund of Solidarity with Colombian Judges, 91 judicial employees solicited varying forms of protection from the Office of Protection in the Prosecutor General's Office for reasons including threats during the year. Although the Prosecutor General's Office ran a witness protection program for witnesses in criminal cases, witnesses who did not enter the program remained vulnerable to intimidation, and many refused to testify." Emphasis Mine.

"The civilian justice system is composed of four functional jurisdictions: ordinary, administrative, constitutional, and special. The ordinary jurisdiction is the largest and handles all criminal, civil, labor, agrarian, and domestic cases involving nonmilitary personnel. The Supreme Court is the highest court within the civil jurisdiction and serves as its final court of appeal."

"The Constitutional Court is the sole judicial authority on the constitutionality of laws, presidential decrees, and constitutional reforms. The court also may issue advisory opinions on the constitutionality of bills not yet signed into law and acts within its discretion to review the decisions of lower courts on "tutelas," or writs of protection of fundamental rights, which can be filed before any judge of any court at any stage of the judicial process, by any citizen."

"The special jurisdiction of the civilian justice system consists of the justices of the peace program and the indigenous jurisdiction. The CSJ is responsible for the administration and discipline of the civilian justice system."

"The Supreme Court, the Council of State, the Constitutional Court, and the CSJ are co-equal supreme judicial bodies that sometimes issued conflicting rulings and frequently disagreed about jurisdictional responsibilities" (2008 Country Report on Colombia, pp. 3-4).

137. Compounding this situation even further is the depth and persuasiveness of corruption. United States governmental estimates place the total value of Colombia's illicit drug traffic at well over \$450 billion (\$450 Thousand Million) per year. With that amount of money, one can buy entire police forces, militaries, judicial systems, and government agencies. There is absolutely no doubt that Colombia is the most corrupted polity in the Western Hemisphere and one of the most corrupted on Earth. Drug lords have bought, outright, police and military officers and entire units, judges, prosecutors, government officials at all levels, and have also infiltrated and taken control of the guerrilla movements, the paramilitaries and the various political parties.

138. The United States Department of State put it this way:

"The country suffered from endemic corruption and graft in both public and private sectors. Drug-trafficking revenues exacerbated corruption by enabling trafficking organizations to suborn government officials." Emphasis Mine.

"The government actively prosecuted cases of governmental corruption. For instance, in October authorities sentenced Rafael Enrique Garcia, former director of the DAS computer department, to 18 years' imprisonment for tampering with a database and erasing criminal records pertaining to drug traffickers wanted for extradition."

"The Justice and Peace Law exposed corruption and paramilitary ties within the government and security forces. President Uribe publicly urged the Supreme Court to pursue all leads and punish officials found guilty. The president increased funding for the Supreme Court, which investigates members of Congress and senior government officials, to allow it to have its own investigative unit. President Uribe stated that the accusations related to the conduct of individuals, not institutions, and Congress continued to function normally."

"On November 9, the Supreme Court ordered the arrest of three congressmen-senators Alvaro Garcia and Jairo Merlano and representative Erik Morris-charged with aggravated conspiracy to commit criminal activity based on allegations of ties with paramilitary groups. In early December the Supreme Court questioned eight senators, three representatives, and the governor of Magdalena on similar allegations. Since the Supreme Court only has power to investigate acting government officials, in mid-November the Prosecutor General's Office opened investigations into former office holders and businessmen and ordered them to appear for questioning. Among those summoned were former DAS director Jorge Noguera, former Sucre governor Salvador Arana, former Sucre assembly deputy Angel Daniel Villarreal, businessman Jose Joaquin Garcia, cattle rancher Miguel Nule, and engineering contractor Octavio Otero. In addition, in September the Prosecutor General's Office arrested four deputies in Sucre Department for ties with paramilitary groups." Emphasis Mine.

"The Inspector General's Office barred a number of former officials from public office for up to 13 years for engaging in corrupt practices. Those barred included the former governor of Atlantico, Luis Daniel Vargas Sanchez; the former governor of Boyaca, Miguel Angel Bermudez Escobar; and the former president of the Social Security Instituto, Guillermo Fino Serrano" (2006 Country Report on Colombia, pp. 17-18).

139. Corruption remained pervasive in 2007.

"The law provides criminal penalties for official corruption, and the government actively prosecuted cases of governmental corruption; **however, officials sometimes engaged in corrupt practices with impunity. The World Bank's worldwide governance indicators reflected that government corruption was a problem. Drug-trafficking revenues exacerbated corruption.**" Emphasis Mine.

"The Justice and Peace Law process continued to expose corruption and paramilitary ties within the government and security forces, and President Uribe urged the Supreme Court to punish public officials found guilty. The president continued funding for the Supreme Court's investigative unit, which investigates members of Congress and senior government officials."

"Investigations by the Supreme Court and Prosecutor General's Office of links between politicians and paramilitary groups implicated 52 congressmen, 11 governors, and 19 mayors; 18 congressmen, 14 mayors, and two governors were in jail at year's end. On December 19, Erik Morris became the first sitting congressman convicted of paramilitary ties; he was sentenced to

six years' imprisonment and fined \$480,000 (960 million pesos) (2007 Country Report on Colombia, p. 10)."

140. The was certainly no improvement in the problem of corruption in 2008.

"The law provides criminal penalties for official corruption, and the government actively prosecuted cases of governmental corruption; **however, officials sometimes engaged in corrupt practices with impunity. The World Bank's worldwide governance indicators reflected that government corruption was a problem. Drug trafficking revenues exacerbated corruption.**"
Emphasis Mine.

"The JPL process continued to expose corruption and paramilitary ties within the government and security forces, and President Uribe urged the Supreme Court to punish public officials found guilty. The president continued funding for the Supreme Court's investigative unit, which investigated members of Congress and senior government officials."

"On September 8, CNP General Antonio Gomez Mendez was dismissed as a result of alleged ties to narcotics traffickers and former paramilitary leaders."

"Investigations by the Supreme Court and the Prosecutor General's Office of links between politicians and paramilitary groups implicated 70 congressmen, 15 governors, and 31 mayors. By the end of December, 33 congressmen, 22 mayors, and eight governors were in jail."

"Representative Alfonso Antonio Campo Escobar of Magdalena, who resigned in June 2007, was convicted and sentenced to 10 years in prison and fined 1.72 million pesos (\$700) for collaboration with paramilitary groups. Campo accepted a five-year sentence in exchange for a guilty plea to election crimes and aggravated delinquency" (2008 Country Report on Colombia, pp. 10-11).

141. The guerrillas, for their part, have entered the lucrative drug trade and are challenging all parties for control in certain key areas. To operate efficiently, the guerrillas and the paramilitaries have to enjoy complete impunity within the areas they control.

142. The truth is that political conditions reached such dangerous proportions that in mid-2000, then President Bill Clinton announced a \$1.6 billion aid package which included over \$1.3 billion for anti-drug and counterinsurgency assistance, a

request which the administration of George W. Bush supported and which the Congress approved in spring, 2001, as a part of the Foreign Assistance package. This aid is being sent despite the proven fact that the Colombian police, military forces and their paramilitary allies are responsible for some of the worst human rights violations in the hemisphere (see below). Even before this aid package, Colombia was the third largest recipient of United States security aid, behind only Israel and Egypt, and yet the nation not only failed to improve its situation, but has actually lost substantial ground over the past three years.

143. In fact, conditions so deteriorated that President George W. Bush announced in February, 2002, that the U.S. would substantially increase military aid and provide additional U.S. troops in order to avoid a complete collapse of the government.

144. Another important factor which will have a tremendous impact on the future of both Colombia and Mr. XXXX is that peace negotiations between the government of President Andrés Pastrana Arango (elected in 1998) and the guerrillas (principally the ELN and the FARC) broke down completely the first week of August, 2001. President Pastrana Arango had come into office promising to end the guerrilla war, a war which took a particularly ugly turn in August, 1996. In that year, the FARC attacked the Las Delicias military base, killing 26 soldiers and capturing and holding hostage more than 60 officers and enlisted men for ten months. The government finally granted the FARC a large segment of the Department of Caquetá.

145. In early 2002, the Colombian military re-occupied the huge "reserve" which President Pastrana gave to the FARC in 1998 as an incentive to peace.

146. In retaliation, the FARC stepped up its operations all over the country. On March 3, 2002, FARC kidnaped, tortured, and killed a Senator (Martha Catalina Daniels), and, then, on March 17, murdered Archbishop Isaias Duarte Cancino, an act which stunned even Colombians who are so hardened to violence. The near absolute impunity which the guerrillas enjoy is unparalleled in Latin American history.

147. Current internal conditions make it extraordinarily dangerous for Mr. XXXX. With the resumption of war, the guerrillas are in a death struggle with both the paramilitary armies and the security forces (military and police). Not one of the three dares to show any weakness or mercy, particularly the AUC which has to carry out its threats.

This violence is on the rise all across the country with the paramilitaries, the guerrillas and the government all pitted against each other. Caught in the midst of this strife is Mr. XXXX.

148. Indicative of this newly intensified struggle is that at the end of June, 2002, the FARC mounted an attack on all locally-elected politicians. Specifically, the FARC ordered all the mayors in the critical Department of Antioquía (whose capital city, Medellín, is Colombia's second largest city) to resign or be assassinated. Moreover, their families were threatened with death. The FARC also sent similar letters to an additional 110 mayors and hundreds of municipal workers. Led by Orlando Giraldo, mayor of Guatapé, 22 mayors tendered their resignations the very next day, as did several hundred municipal officials, while other mayors fled to Bogotá. Over the next few days, President Pastrana sent the Colombian military to fortify dozens of towns.

149. The warning was extremely well coordinated and supported by the fact that 14 mayors had already been murdered by FARC since mid-2001. The communique sent to Mayor Adalberto Vargas, mayor of the eastern town of Paz de Ariporo began with typical, Latin American courtesy: "Respected Sir, We send you a cordial and revolutionary greeting, wishing you success in your daily work." It went on to condemn and blame United States imperialism and Colombian governmental corruption for hunger, illiteracy, illness, violence and a lack of housing in the country. Finally, the communique concluded with the warning that if Vargas did not resign by today (June 22, 2002) "the FARC will not be responsible for the consequences of what might occur." For his part Mayor Vargas said: "We want the government to solve this. We feel abandoned" (see Andrew Selsky, "Colombia Will Give Protection to Mayors," San Diego Union-Tribune, June 26, 2002).

150. Although some officials withdrew their resignations in a highly orchestrated, governmental "show," the fact remains that almost a thousand mayors and thousands of municipal employees did not. FARC still controls hundreds of towns and municipalities and the Colombian government is all but powerless to regain power. The letter to Mayor Nestor León Ramírez of San Vicente del Caguan stated: "For the good of your health, you must leave the city. If you do not, you will become a military target" (T. Christian Miller, "Rebels Push Colombia Toward Anarchy," Los Angeles Times, June 29, 2002).

151. In the nearby town of Puerto Rico, the situation had indeed deteriorated to the point of total anarchy: "**The cinder-**

block Town Hall in Puerto Rico is mostly empty these days. The mayor is gone. He quit this month, reading his resignation aloud in the town square after receiving a death threat. The City Council fled too. There are no judges or prosecutors. The bridges around town have been blown up. The power substation lies in rubble. The phone exchange is damaged. The roads are under the control of the guerrillas. There has been no electricity, water or phone service for months. There isn't even a town ambulance" T. Christian Miller, "Rebels Push Colombia Toward Anarchy," Los Angeles Times, June 29, 2002). Emphasis Mine.

152. The FARC's threats to government officials continued during 2006 and 2007. For example, on October 23, 2006, eleven councilors in the municipality of Teorama in Norte de Santander Province resigned after receiving death threats. Clearly, the Colombian government is no closer to establishing internal order than it was decades ago. See *The Miami Herald*, October 24, 2006.

153. The Department of State also took note of these threats in both its 2006 and 2007 Country Reports on Colombia.

"Both renegade paramilitary groups and the FARC threatened and killed government officials. According to the National Federation of Councils (FENACON), 23 council members were killed during the year, compared with 26 during 2005. FENACON attributed 60 percent of attacks on council members to the FARC." Emphasis Mine.

"Scores of local officials throughout the country resigned because of threats from the FARC. In October the press reported that 60 public officials, including seven mayors, tendered their resignations in Norte de Santander Department after receiving death threats from FARC. Also in October senators from POLO [Polo Democratico Alternativo] denounced an 'extermination and intimidation' plan by paramilitary groups against the party in Valle de Cauca Department. A Ministry of Interior and Justice program provided protection to 155 mayors, two former mayors, and 1,914 council members during the year" (2006 Country Report on Colombia, p. 17). Emphasis Mine.

154. Threats increased in 2007.

"New illegal groups, paramilitaries that refused to demobilize, and the FARC threatened and killed government officials (see section 1.g.). According to the National Federation of Councils (FENACON), 16 council members were killed during the year, compared with 23 in 2006. FENACON attributed 50

percent of attacks on council members to the FARC." Emphasis Mine.

"Scores of local officials throughout the country resigned because of threats from the FARC. A Ministry of Interior and Justice program provided protection to 330 mayors, one former mayor, and 1,945 council members during the year" (2007 Country Report on Colombia, pp. 9-10).

155. Threats and murders of officials continued throughout 2008.

"In 2006 independent candidate Alvaro Uribe won a second term as president in elections that were considered generally free and fair, despite a concerted campaign by the FARC and AUC to disrupt or manipulate the outcome. The OAS electoral observation mission stated that the elections took place 'in an atmosphere of freedom, transparency, and normalcy.'"

"In October 2007 there were local elections for governors, mayors, and department and town councils; according to the OAS electoral mission chief, the elections proceeded smoothly. Although 25 candidates were killed in the preelection period, this number was significantly lower than in previous years."

"New illegal groups, paramilitaries that refused to demobilize, and the FARC threatened and killed government officials (see section 1.g.). According to the Presidential Program on Human Rights, three municipal council members were killed during the year, compared with 16 in 2007." Emphasis Mine.

"Some local officials throughout the country resigned because of threats from the FARC. A Ministry of Interior and Justice program provided protection to 295 mayors, 60 former mayors, and 2,370 council members during the first nine months of the year" (2008 Country Report on Colombia, p. 10). Emphasis Mine.

156. The fact that Mr. XXXX will be forced to leave from the United States to Colombia is also of tremendous importance. First of all, the Colombian authorities will know that he is being deported and therefore so will the guerrillas and the AUC. Second, the United States has become the most serious external threat to the continued success of the guerrillas. In addition to the huge amounts of military aid being sent, the United States Southern Command is heavily engaged in training Colombian military forces and the United States has greatly enhanced the military's intelligence-gathering capabilities. There are also hundreds of United States troops (including several Special

Forces units) engaged in operations inside Colombia. With the election of Alvaro Uribe most scholars and analysts agreed that the U.S. would likely increase its already substantial military aid: "President George W. Bush is so keen on him [Uribe] that he might even throw in some U.S. troops" (Gwynne Dyer, *The San Diego Union-Tribune*, June 16, 2002).

157. Indeed, in December, 2002, U.S. Secretary of State Colin Powell visited Colombia and announced that the United States would again increase military aid to the country to assist in its war against leftist guerrillas, rightist paramilitary groups, and narcotics traffickers. Powell asserted that the increased aid (\$500 million dollars) was part of the Bush administration's campaign against terrorism and would be used for drug eradication, support for military and police forces and renewal of support for Colombian narcotics interception flights that rely on intelligence from U.S. spy planes. "We are firmly committed to President Uribe and his new national security strategy. We are going to work with our Congress to provide additional funding for Colombia" (*The San Diego Union-Tribune*, December 5, 2002). In fact, dozens of U.S. Army Green Berets were dispatched to Colombia in January 2003 (*The San Diego Union-Tribune*, January 17, 2003).

158. All of this U.S. aid represents a potentially serious challenge to almost every group in Colombia: the drug traffickers, the guerrillas, corrupt officials and compromised military and police officers. In fact, it is not just a challenge, it is an open death threat to their very existence.

159. But the anger against Mr. XXXX is not confined to those groups alone. Just a little over a month after Secretary Powell's visit, the United States announced that it was suspending all aid to an elite Colombian Air Force unit for failing to investigate the bombing four years before which killed eighteen (18) civilians, including seven (7) children. The Colombian Air Force commander-in-chief reacted angrily and lashed out saying the United States was really to blame (see *The Los Angeles Times*, January 14-16, 2003).

Thus, the United States had now alienated a critical element of the Colombian armed forces. Unfortunately, all four parties of Colombia's civil war genuinely hate the United States: the Armed Forces and other security forces, the paramilitaries, the drug traffickers, and the guerrillas. That hatred (Yankee phobia) substantially increases the danger for Mr. XXXX because all four groups will view Mr. XXXX's deportation to Colombia with suspicion.

In an obvious attempt to placate the United States, the Colombian government accepted the decision of the Tribunal of Arauca which "ordered the Government to pay approximately \$870,000 (2 billion pesos) to the families of 17 persons killed in the Air Force bombing of the village of Santo Domingo, Arauca Department, in December 1998. The civilian criminal trial of the helicopter pilot, co-pilot, and navigator continued at year's end" (2004 Country Report on Colombia, p. 11).

160. The situation deteriorated so badly in 2005 that on March 26, 2006, the U.S. government announced for the first time that it would be willing to send U.S. combat troops to defeat the FARC. Given the United States' massive commitment in Iraq and Afghanistan, this clearly represents not only an incredible alteration in U.S. policy, but an admission of how powerful the FARC has become. See: Garry Leech, "U.S. Willing to Deploy Combat Troops to Colombia," *Colombia.Journal.Online*, March 27, 2006.

161. In its 2006 Country Report on Colombia, the United States Department of State took note of the massive human rights violations committed by the guerrillas.

"The FARC and the ELN committed the following human rights violations: political killings; killings of off-duty members of the public security forces and local officials; kidnappings and forced disappearances; massive forced displacements; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment of child soldiers; attacks against human rights activists; harassment, intimidation, and killings of teachers and trade unionists." Emphasis Mine.

"Guerrillas, particularly the FARC, committed unlawful killings. Guerrillas killed teachers, journalists, religious leaders, union members, human rights activists, candidates for public office, elected officials and other politicians, alleged paramilitary collaborators, and members of the government security forces." Emphasis Mine.

"Renegade paramilitaries, the FARC, and the ELN continued the practice of kidnapping. There were numerous reports that guerrillas killed kidnapping victims."

"The government permitted independent monitoring of prison conditions by local and international human rights groups, and such monitoring occurred during the year. The FARC and ELN continued to deny the International Committee of the Red Cross (ICRC) access to police and military hostages."

"Renegade paramilitaries and guerrillas, particularly the FARC and the ELN, continued to take hostages for ransom. The FARC and ELN also kidnapped politicians, prominent citizens, and members of the security forces to use as pawns in a prisoner exchange."

"The country's 42-year-long internal armed conflict, involving government forces, a right-wing paramilitary movement, and two leftist insurgent groups, continued although the paramilitary demobilization was concluded during the year. The conflict and the narcotics trafficking that both fueled and prospered from it were the central causes of multiple violations of human rights."

"In many areas of the country, the 12,000-member FARC and the 2,000-member ELN worked together to attack government forces or demobilized paramilitary members; in other areas, especially in Arauca Department, they fought each other. There were an estimated 1,990 guerrilla desertions during the year."

"FARC and ELN guerrillas committed unlawful killings, kidnapped civilians and military personnel, displaced citizens, and recruited child soldiers. They killed journalists, religious leaders, candidates for public office, local elected officials and politicians, alleged paramilitary collaborators, and members of government security forces. The Presidential Program for Human Rights reported that during the year the FARC killed at least 40 persons in seven massacres, although another 143 persons were killed in massacres in which the perpetrators remained unidentified.

"There were several FARC massacres of public security forces. The Presidential Program for Human Rights reported that between January and October, the FARC had killed 391 members of the public security forces and the ELN killed 24.

"The FARC also killed persons it suspected of collaborating with government authorities or paramilitary groups. For example, in July the press reported that FARC members killed 10 agricultural workers whom they suspected of working for paramilitaries in Arquia Limon, Choco."

"According to the government's Tracking, Monitoring, and Evaluation System, 368 demobilized paramilitaries were killed during the year. Unknown gunmen killed the following former AUC members:

"According to the Presidential Program for Human Rights, guerrillas committed 646 terrorist acts during the year, compared with 611 in 2005. For example, in February suspected FARC members detonated explosives on a horse-drawn cart outside a police station in Cali, Valle de Cauca Department, killing two

civilians and injuring five pedestrians. In April suspected FARC members planted explosives on two public buses in Bogota; the explosions killed three children and injured 17 others. The FARC and ELN continued to commit numerous kidnappings. Fondelibertad reported that during the year guerrillas were responsible for 119 kidnappings (48 percent of those in which a perpetrator was identified); the FARC kidnapped 75 persons; and the ELN 44 persons."

"Guerrillas failed to respect the injured and medical personnel. Both the FARC and the ELN frequently executed injured prisoners, threatened and harassed doctors and nurses, and killed enemy combatants receiving medical care. In January FARC members stopped an ambulance near Santa Elena, Putumayo Department, stole medicine and equipment, and set the vehicle ablaze." Emphasis Mine.

"In October the FARC attacked an ambulance near Florencia, Cauca Department, and killed the driver. The ambulance was transporting two officials from the San Pablo Hospital in Narino Department."

"In October the IACHR [Inter-American Commission on Human Rights] Special Rapporteur on the Rights of Women reported that 'violence against women is employed as a strategy of war by the actors of the armed conflict' and that they employ different forms of psychological, and sexual violence to 'wound the enemy' by dehumanizing the victim, injuring her family circle and/or spreading terror in her community'" (2006 Country Report on Colombia, pp. 11-13).

162. Unfortunately for the Colombian people, the FARC grew even stronger and more active in 2007.

"The FARC and ELN committed the following human rights abuses: political killings; killings of off-duty members of the public security forces and local officials; kidnappings and forced disappearances; massive forced displacements; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment of child soldiers; attacks against human rights activists; and harassment, intimidation, and killings of teachers and trade unionists." Emphasis Mine.

"Guerrillas, notably the FARC and ELN, committed unlawful killings."

"FARC and ELN guerrillas killed journalists, religious leaders, candidates for public office, local elected officials and politicians, alleged paramilitary collaborators, and members of government security forces. In many areas of the country, the

9,500-member FARC and the 2,000-member ELN worked together to attack government forces or demobilized paramilitary members; in other areas, especially in Arauca, Valle, Cauca, and Narino departments, they fought each other. Various courts indicted members of the FARC secretariat in absentia on charges ranging from kidnapping and terrorism to aggravated homicide. The entire FARC secretariat was convicted in November in absentia for the 1998 massacre in Billar, Caqueta." Emphasis Mine.

"The Presidential Program for Human Rights reported that during the year the FARC killed at least 17 persons in three massacres, while another 111 persons were killed in massacres in which the perpetrators remained unidentified. There were several FARC massacres of public security forces. The Presidential Program for Human Rights reported that between January and October, the FARC had killed 65 members of the public security forces and the ELN had killed four."

"The FARC also killed persons it suspected of collaborating with government authorities or paramilitary groups. According to the government's tracking system, the FARC killed 130 demobilized paramilitaries during the year."

Abductions

"New illegal groups, paramilitaries that refused to demobilize, and FARC and ELN terrorists continued to take hostages for ransom. The FARC and ELN also kidnapped politicians, prominent citizens, and members of the security forces to use as pawns in a prisoner exchange. The National Indigenous Organization (ONIC) stated that through July the FARC kidnapped 12 indigenous persons." Emphasis Mine.

"New illegal groups often abducted persons suspected of collaboration with guerrillas, almost all of whom were presumed dead."

"The FARC and ELN continued to commit numerous kidnappings. Fondelibertad reported that during the year guerrillas kidnapped 149 persons (38 percent of those in which a perpetrator was identified), the FARC 121 persons, and the ELN 28 persons."

Child Soldiers

"Guerrillas used children as soldiers. The Ministry of Defense estimated that 4,620 FARC members and 1,330 ELN members were minors and that most guerrilla fighters had joined the guerilla ranks as children. Human Rights Watch reported that there were approximately 11,000 child soldiers, stating the percentage of those in the FARC and the ELN had increased relative to those who may have joined new criminal groups." Emphasis Mine.

Other Conflict-Related Abuses

"Guerrillas failed to respect injured and medical personnel. Both the FARC and the ELN frequently executed injured prisoners, threatened and harassed doctors and nurses, and killed enemy combatants receiving medical care. On February 28, members of the Tulio Varon Front of the FARC in Venadillo, Tolima, attacked a marked Red Cross ambulance, injuring a nurse, Maribel Sanabria." Emphasis Mine.

"New illegal groups also prevented or limited the delivery of food and medicines to towns and regions considered sympathetic to guerrillas, straining local economies and increasing forced displacement."

"New illegal groups and FARC and ELN guerrillas harassed, threatened, and sometimes killed religious leaders and activists, although often for political rather than religious reasons (see section 1.g.). The Presidential Program for Human Rights reported that illegal armed groups, especially the FARC, made numerous threats against priests and other religious workers" (2007 Country Report on Colombia, pp. 1, 6-8).

163. The FARC and ELN continued to attack and kill citizens during 2008.

"The FARC and ELN committed the following human rights abuses: political killings; killings of off-duty members of the public security forces and local officials; kidnappings and forced disappearances; massive forced displacements; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment of child soldiers; attacks against human rights activists; and harassment, intimidation, and killings of teachers and trade unionists." Emphasis Mine.

"FARC and ELN guerrillas killed journalists, religious leaders, candidates for public office, local elected officials and politicians, alleged paramilitary collaborators, and members of government security forces. In many areas of the country, the 8,000- to 9,000-member FARC and the 2,000-member ELN worked together to attack government forces or demobilized paramilitary members; in other areas, especially in Arauca, Valle, Cauca, and Narino departments, they fought each other." Emphasis Mine

"The Presidential Program for Human Rights reported that during the first nine months of the year, the FARC killed at least 250 persons, while another 84 persons were killed in massacres in which the perpetrators remained unidentified. The Presidential Program for Human Rights reported that between

January and September, the FARC killed 286 members of the public security forces and the ELN killed 44.

MEDICAL/INJURED KILLINGS

"Guerrillas failed to respect injured and medical personnel. Both the FARC and the ELN frequently executed injured prisoners, threatened and harassed doctors and nurses, and killed enemy combatants receiving medical care." Emphasis Mine.

"On April 16, members of the FARC in Yarumal, Antioquia, attacked a military ambulance and killed the two injured soldiers inside."

"On July 18, in Tibu, Norte de Santander, FARC members intercepted an ambulance with an injured civilian and killed the driver; the civilian died of his original injury due to lack of medical assistance."

"On December 7, in San Vicente de Caguan, Caqueta, FARC members attacked a medical mission, killing eight, including two civilian medical workers from the Colombian Family Welfare Institute."

"New illegal groups also prevented or limited the delivery of food and medicines to towns and regions considered sympathetic to guerrillas, straining local economies and increasing forced displacement" (2008 Country Report on Colombia, pp. 1, 7,8).

164. As noted above, the United States response to this escalation of violence has been to vastly increase military aid. Colombia, the largest recipient of United States aid after Israel and Egypt, has received by far the most assistance--both military and economic--in the region for the last several years and the sheer volume of aid as a proportion of all aid going to Latin America dominates the region as a whole. A breakdown of this assistance is very revealing. In 2003, Colombia received \$605 million for military aid compared to only \$137 million in economic and social aid. For 2004, the Bush Administration has request \$553 million in military aid, yet only \$136 million for economic and social aid.

165. A report issued by three foreign policy groups in Washington, D.C., stated that "over half of all U.S. military and security aid and trainings in Latin America is attributed to counter-narcotics work by security agencies. But it stresses that this distinction is increasingly unimportant as the U.S. blurs the line, especially in Colombia, between counter-insurgency and counter-narcotics. Indeed, most of the training for counter-narcotics programs are directly applicable to

counter-insurgency work as well" (Jim Lobe, "Sharp Increase in U.S. Military Aid to Latin America," *OneWorld*, September 23, 2003). The report goes on to note that: "Pentagon control not only effectively reduces the amount of information the administration is required to produce but also transfers jurisdiction for their oversight to Congressional committees that are less attuned to foreign policy priorities, human rights, and civilian control over militaries. It also reduces the State Department's leverage."

166. Sadly, for the Colombian people and for the future of Mr. XXXX, United States aid to the nation is just as skewed to the military as it has been since 2002. A breakdown of this assistance is very revealing. Indeed, both the total dollar amount of economic aid, as well as the percentage of economic aid to military support has remained approximately the same as can be seen in the following tables.

UNITED STATES AID TO COLOMBIA

	<u>02</u>	<u>03</u>	<u>04</u>	<u>05</u>	<u>06</u>	<u>07</u>
Military	400.7	624	555.6	642.5	590.9	623.6
Economic	115.5	136.7	134.5	134.7	132.2	132.3

ECONOMIC/MILITARY AID AS PERCENTAGE OF TOTAL

	<u>02</u>	<u>03</u>	<u>04</u>	<u>05</u>	<u>06</u>	<u>07</u>
Military	71%	78%	76%	79%	78%	79%
Economic	29%	22%	24%	21%	22%	21%

AVERAGE ECONOMIC/MILITARY PERCENTAGES, 2002-2007

MILITARY-----77%

ECONOMIC-----23%

Center for International Policy, "Colombia Program' U.S. Aid to Colombia Since 1997: Summary Tables.
ciponline.org/colombia/aidtable.htm

167. As is clear from the above, the torture and murder of Mr. XXXX will not be random acts, but rather conscious efforts at terrorizing further an already terrorized population, thereby maintaining an even application of force and a climate of fear. After all, if the guerrillas wantonly murder children, patients in hospitals and ambulances, and torture horribly prisoners of war, why would they not do the same to Mr. XXXX, a gay male? The answer, of course, is that they will indeed torture and murder him.

168. Since the outbreak of the Iraq war, however, the United States' ability to furnish the military aid required has been vastly diminished. In fact, the United States military is so woefully short of ammunition that live-fire exercises have been curtailed at many U.S. military bases. The simple truth is that the United States munitions industry can not keep pace with the demands in Iraq and Afghanistan, let alone provide the munitions needed by the Colombian Armed Forces.

That severe ammunition shortage became absolutely critical toward the end of 2005. Writing in the *The Independent/UK*, Andrew Buncombe noted that: **"US forces have fired so many bullets in Iraq and Afghanistan--an estimated 250,000 for every insurgent killed--that American ammunition-makers cannot keep up with demand. As a result the US is having to import supplies from Israel. A government report says that US forces are now using 1.8 billion rounds of small-arm ammunition a year.** The total has more than doubled in five years, largely as a result of the wars in Afghanistan and Iraq, as well as changes in military doctrine" ("US Forced to Import Bullets From Israel as Troops Use 250,000 for Every Rebel Killed," *The Independent/UK*, September 25, 2005). Emphasis Mine.

In keeping with the drastic shift in its policy and military strategy in Colombia, i.e., increase military aid and even send U.S. troops, the United States Embassy in Bogotá announced in February, 2006, that help was on the way.

"The U.S. Embassy in Bogota currently is looking to arrange a swift shipment of millions of machine-gun bullets and tracers to Colombia, revealing an urgent need to bolster the lethality of Colombian military and national police forces."

"The Embassy late last week began soliciting U.S.-based ammunition vendors for cost estimates on the delivery of 4 million 5.56 bullets with body-tearing 'penetrators.' The

shipment of these 62-grain, high-energy projectiles-known as full-metal jacket boat-tail bullets-will be accompanied by an additional 3 million tracer bullets for use in M-249 machine guns" (Stephen Peacock, "Massive, Rush Shipment of Ammo Soon en Route to Colombia," *Narco News Bulletin*, February 13, 2006. Emphasis Mine.

169. Since neither the AUC nor the FARC depend upon U.S. arms and munitions, the Colombian Army finds itself in a particularly delicate position, leading to widespread charges that the Bush Administration has reduced its opposition to the AUC believing that AUC forces are necessary to fight the guerrillas. There is a growing literature on the AUC, the attempts to bring it under the fold of the Colombian Government, and change in United States policy.

See for example see: Ruth Morris, "Colombia's Peace Process Grinds to a Halt," *The Los Angeles Times*, April 2, 2004; Juan Forero, "Colombia Paramilitary Chief Gains Power," *The New York Times International*, April 25, 2004; Ruth Morris, "Peace in Colombia Up in Air as Militia Leader Vanishes," *The Los Angeles Times*, April 28, 2004; Ruth Morris, "Colombia, Militias Start Peace Bid," *The Los Angeles Times*, July 2, 2004; "Colombia/Venezuela: Paramilitaries Spark Turmoil," NACLA Report on the Americas, Vol. 38, No. 1 (July-August, 2004), pp. 44-45; "U.S./Colombia: Demobilizing the AUC?" NACLA Report on the Americas, Vol. 38, No. 2 (September-October, 2004), pp. 42-44.

170. Amnesty International was extremely critical of the human rights situation in Colombia in its 2006 Report.

"Although the number of killings and kidnappings in some parts of the country fell, serious human rights abuses committed by all parties to the conflict remained at critical levels. Of particular concern were reports of extrajudicial executions carried out by the security forces, killings of civilians by armed opposition groups and paramilitaries, and the forced displacement of civilian communities. Paramilitaries who had supposedly demobilized under the terms of a controversial law ratified in July continued to commit human rights violations, **while armed opposition groups continued to commit serious and widespread breaches of international humanitarian law. Individuals who may have been responsible for war crimes and crimes against humanity were not brought to justice.**" Emphasis Mine.

"The FARC and ELN continued to commit serious and repeated breaches of international humanitarian law, including hostage-taking and civilian killings."

"On 15 August, the ELN killed two priests and two other civilians on the Teorema-Convención highway in Norte de Santander Department" (Amnesty International, 2006 Report). Emphasis Mine.

171. Amnesty International viewed the 2007 human rights situation in Colombia as worsening.

"Serious human rights abuses remained at high levels, especially in rural areas, despite continued reductions in certain types of violence associated with Colombia's long-running internal armed conflict, in particular kidnappings and killings. All parties to the conflict - the security forces and army-backed paramilitaries as well as guerrilla groups, mainly the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and the smaller National Liberation Army (Ejercito de Liberacion Nacional, ELN) - continued to abuse human rights and breach international humanitarian law. They were responsible for war crimes and crimes against humanity. There was a fall in the number of people newly displaced by the conflict, but the large number of displaced people remained a concern. There were further attacks on trade unionists and human rights defenders, mainly by paramilitary groups. Extrajudicial executions by members of the security forces, and selective killings of civilians and kidnappings by guerrilla forces continued to be reported".

By the end of the year, the government reported that more than 30,000 paramilitaries had laid down their arms in a controversial government-sponsored demobilization process. In July, the Constitutional Court ruled that key parts of the Justice and Peace Law - designed to regulate the demobilization process and criticized by human rights organizations - were unconstitutional. In September, the government issued a decree to implement the Justice and Peace Law. Although it had been amended in the light of some of the criticisms levelled by the Court, concerns remained that the Law would exacerbate impunity and deny victims their right to truth, justice and reparation. Despite the supposed demobilization, there was strong evidence that paramilitary groups continued to operate and to commit human rights violations with the acquiescence of or in collusion with the security forces. In November, three legislators were arrested for their alleged links to paramilitaries. Several other legislators and political figures were also reportedly under investigation by the Supreme Court of Justice at the end of the year."

'The Organization of American States Mission to Support the Peace Process in Colombia published a report in August. This stated that some demobilized paramilitaries had regrouped as criminal gangs, that others had failed to demobilize, and that new paramilitary groups had emerged. Paramilitaries continued to

commit human rights violations in areas where they had supposedly demobilized. More than 3,000 killings and enforced disappearances of civilians were attributed to paramilitary groups since they declared a "ceasefire" in 2002.'

Scandals involving links between paramilitaries and high-ranking members of state institutions threatened to further undermine confidence in the rule of law.

In November, the Office of the Procurator General accused the former director of the Civilian Intelligence Department (Departamento de Administracion de Seguridad, DAS) of having links with paramilitary groups. The allegations stemmed from claims, published in the media in April by another DAS official, that the DAS had provided a list of 24 trade union leaders to the paramilitary group Bloque Norte. Several individuals named on the list were killed, others were threatened, while some were reportedly the subject of arbitrary judicial proceedings.

On 9 November, the Supreme Court of Justice ordered the arrest of three congressmen from Sucre Department, Alvaro Garcia Romero, Jairo Merlano and Erik Morris Taboada, for their alleged links to paramilitary groups and, in the case of Alvaro Garcia Romero, for allegedly ordering the massacre by paramilitaries of some 15 peasant farmers in Macayepo, Bolivar Department in 2000. Later in the month the Supreme Court ordered that a further six congressmen answer charges over their alleged links to paramilitary groups.

Press reports in November suggested that the Office of the Attorney General was reviewing more than 100 cases of alleged collusion between paramilitaries and state officials, including political figures, members of the public and judicial administration, and the security forces. In November, the Office of the Procurator General also announced the creation of a special unit to investigate alleged links between public employees and paramilitaries.

Paramilitary groups continued to commit human rights violations in collusion with, or with the acquiescence of, members of the security forces.

On 4 February, community leader Alirio Sepulveda Jaimes was killed close to a police station in Saravena Municipality, Arauca Department. The gunman, thought to be a paramilitary, was reportedly linked to the local army battalion. Alirio Sepulveda was one of around 40 social and human rights activists detained by the authorities in Saravena in 2002."

"Impunity remained a serious problem, and the military justice system continued to deal with human rights cases involving military personnel despite the 1997 ruling of the

Constitutional Court that such cases must be investigated by the civilian justice system. However, some cases were transferred to the civilian justice system. Among them was the killing by soldiers of 10 members of the judicial police (the DIJIN), together with a police informer and a civilian, in Jamundi, Valle del Cauca Department, on 22 May. The Office of the Attorney General charged 15 members of the army for their alleged role in the killings, which were reported to have been carried out at the behest of drug traffickers with links to paramilitary groups. Judicial investigators involved in the case were reportedly threatened" (Amnesty International, 2007 Report).

172. Clearly Amnesty International viewed Colombia with even greater concern in 2008.

"The continuing conflict between army-backed paramilitaries, guerrilla groups and the security forces resulted in serious human rights abuses, especially in some regions and in rural areas. All parties to the 40-year-old conflict committed violations of international humanitarian law (IHL), including war crimes and crimes against humanity. However, fewer civilians were killed than in recent years. People continued to be kidnapped, with guerrilla groups responsible for most conflict-related cases, but there were fewer reported cases than in previous years. The killing in June of 11 hostages held by the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) provoked widespread condemnation and renewed calls for the FARC to release all its hostages. Attacks on human rights defenders and civil society activists continued; most were blamed on paramilitary groups." Emphasis Mine.

"Fewer people were killed by paramilitary groups than in previous years. However, reports of killings of civilians by the security forces rose. Paramilitary groups remained active in many parts of the country despite the fact that they had supposedly been demobilized. The number of people forced to flee their homes by the conflict also rose. The FARC were blamed for many of the killings of candidates in the run-up to October's local elections."

"At least 280 people were reported to have been extrajudicially executed by members of the security forces in the 12-month period ending in June 2007. The victims, mostly peasant farmers, were often presented by the military as "guerrillas killed in combat". Most of the killings were referred to the military justice system, which usually closed such cases without any serious attempt to hold those responsible accountable." Emphasis Mine.

"The government claimed that more than 31,000 combatants had been demobilized and that paramilitaries were no longer active. They attributed the continued violence to drug-trafficking criminal gangs. **While some paramilitary groups did evolve into drugs-related criminal gangs, and some violence was linked to disputes between such groups, there was strong evidence that traditional paramilitary groups continued to operate in many parts of the country with new names, including the "Black Eagles" and the "New Generation Organization". There were continued reports of collusion between paramilitaries and the security forces.**" Emphasis Mine.

"**More than 40 legislators were under investigation by the Supreme Court for their alleged links to paramilitaries; almost half of them were in detention at the end of the year. In December, one of these, Erik Morris, was sentenced to six years in prison. Hundreds of other state officials, including governors, mayors, and members of the security forces, were being investigated by the Offices of the Attorney General and Procurator General.** In November, Jorge Noguera, the former director of the civilian security agency, the Department of Administrative Security, was disqualified from public office for 18 years by the Office of the Procurator General for his links to paramilitaries. Several Supreme Court judges investigating the scandal, and their families, were reportedly threatened." Emphasis Mine.

"**The FARC and the National Liberation Army (Ejército de Liberación Nacional, ELN) continued to commit human rights abuses and serious and repeated violations of international humanitarian law, including killings of civilians and hostage-taking. More than 210 killings of civilians were attributed to guerrilla groups in the 12-month period ending in June 2007"** (Amnesty International, 2008 Report). Emphasis Mine.

173. In its 2006 Country Report on Colombia, the U.S. Department of State certainly did take note of the seriousness of the human rights situation in Colombia.

"Although serious problems remained, the government's respect for human rights continued to improve, which was particularly evident in actions undertaken by the government's security forces and in demobilization negotiations with the AUC [United Self Defense Forces of Colombia]. **The following society problems and governmental human rights abuses were reported during the year: unlawful and extrajudicial killings; forced disappearances; insubordinate military collaboration with criminal groups; torture and mistreatment of detainees; overcrowded and insecure prisons; arbitrary arrest; high number of pretrial detainees some of whom were held with convicted prisoners; impunity; an inefficient judiciary subject to**

intimidation; harassment and intimidation of journalists; unhygienic conditions at settlements for displaced persons, with limited access to health care, education, or employment; corruption; harassment of human rights groups; violence against women, including rape; child abuse and child prostitution; trafficking in women and children for the purpose of sexual exploitation; societal discrimination against women, indigenous persons, and minorities; and illegal child labor" (2006 Country Report on Colombia, p. 1). Emphasis Mine.

174. Almost unbelievably, human rights in Colombia were even more precarious in 2007.

"Although serious problems remained, the government's respect for human rights continued to improve, which was particularly evident by progress in implementing the Justice and Peace Law. The following societal problems and governmental human rights abuses were reported during the year: unlawful and extrajudicial killings; forced disappearances; insubordinate military collaboration with new illegal groups and paramilitaries who refused to demobilize; torture and mistreatment of detainees; overcrowded and insecure prisons; arbitrary arrest; high number of pretrial detainees, some of whom were held with convicted prisoners; impunity; an inefficient judiciary subject to intimidation; harassment and intimidation of journalists; unhygienic conditions at settlements for displaced persons, with limited access to health care, education, or employment; corruption; harassment of human rights groups; violence against women, including rape; child abuse and child prostitution; trafficking in women and children for the purpose of sexual exploitation; societal discrimination against women, indigenous persons, and minorities; and illegal child labor" (2007 Country Report on Colombia, p. 1).

175. 2008 saw no improvement in human rights in Colombia.

"Although problems remained, the government's respect for human rights continued to improve, which was particularly evidenced by progress in implementing the Justice and Peace Law (JPL). **The following societal problems and governmental human rights abuses were reported during the year: unlawful and extrajudicial killings; forced disappearances; insubordinate military collaboration with new illegal groups and paramilitaries who refused to demobilize; torture and mistreatment of detainees; overcrowded and insecure prisons; arbitrary arrest; a high number of pretrial detainees, some of whom were held with convicted prisoners; impunity; an inefficient judiciary subject to intimidation; harassment and intimidation of journalists; unhygienic conditions at settlements for displaced persons, with limited access to health care, education, or employment;**

corruption; harassment of human rights groups; violence against women, including rape; child abuse and child prostitution; trafficking in women and children for the purpose of sexual exploitation; societal discrimination against women, indigenous persons, and minorities; and illegal child labor" (2008 Country Report on Colombia, p. 1). Emphasis Mine.

176. Unfortunately for Colombia and for Mr. XXXX, there is little prospect for the level of economic growth which is necessary to undercut guerrilla strength and help to alleviate guerrilla pressure on the Colombian government. On the contrary, in 2006, the Department of State noted:

"The government establishes a uniform minimum wage every January that serves as a benchmark for wage bargaining. The monthly minimum wage, which is set by tripartite negotiations among representatives of business, organized labor, and the government, was approximately \$187 (433,700 pesos), a 6.3 percent increase from the previous year. **The national minimum wage did not provide a decent standard of living for a worker and family. Approximately 59 percent of the workforce was employed in the informal sector, which is not covered by the minimum wage"** (2006 Country Report on Colombia, p. 25). Emphasis Mine.

There is no better proof of this than in a report published in May, 2006, by the Economics Department at the University of the Andes. The study showed that 500,000 children (12 percent of the minor population) suffer from chronic malnutrition. "The central Colombian province of Boyaca and the southeast province of Narino have the highest malnutrition rates, with 20 percent of their minors malnourished. In Bogota, the capital city, the malnutrition rate runs at 15 percent. The study said that between 1995 and 2000, height-related malnutrition fell from 30 percent to 12 percent. But in the last five years, malnutrition has been on the rise again" ("Over 500,000 Children Suffer From Malnutrition in Colombia," *Mathaba. Net News*, May 1, 2006).

177. Increasing violence in 2007 impacted the economic situation in 2007.

"The government establishes a uniform minimum wage every January that serves as a benchmark for wage bargaining. The monthly minimum wage, which is negotiated among representatives of business, organized labor, and the government, was approximately \$205 (433,700 pesos), a 6.3 percent increase from the previous year. If the negotiation process fails to reach agreement, the government can set the minimum wage unilaterally. The national minimum wage did not provide sufficient income to purchase the basic market basket of goods for a family of four.

Furthermore, it was difficult to enforce the minimum wage in the informal sector."

"The law provides comprehensive protection for workers' occupational safety and health, which the MSP enforced through periodic inspections. However, a scarcity of government inspectors, poor public safety awareness, and inadequate attention by unions resulted in a high level of industrial accidents and unhealthy working conditions. Workers in the informal sector sometimes suffered physical or sexual abuse. The law provides workers with the right to remove themselves from a hazardous work situation without jeopardizing continued employment, and the government enforced this right. Nonunion workers, particularly those in the agricultural and in some parts of the flower sector, claimed they often continued working in hazardous conditions because they feared losing their jobs if they criticized abuses. However, the flower growers' association recently implemented voluntary principles on environmental and worker safety and reduced use of pesticides by more than 60 percent" (2007 Country Report on Colombia, p. 15).

178. The Colombian economy actually declined in 2008.

"The government establishes a uniform minimum wage every January that serves as a benchmark for wage bargaining. The monthly minimum wage, which is negotiated by a committee of representatives of business, organized labor, and the government, was approximately 433,700 pesos (\$176), a 6.3 percent increase from the previous year. If the negotiation process fails to reach agreement, as occurred during the year for the fifth time in the last eight years, the president can set the minimum wage unilaterally. **The national minimum wage did not provide sufficient income to purchase the basic market basket of goods for a family of four. Furthermore, it was difficult to enforce the minimum wage in the informal sector.**" Emphasis Mine.

"The law provides comprehensive protection for workers' occupational safety and health, which the MSP enforced through periodic inspections. **However, a scarcity of government inspectors, poor public safety awareness, and inadequate attention by unions resulted in a high level of industrial accidents and unhealthy working conditions. Workers in the informal sector sometimes suffered physical or sexual abuse.** The law provides workers with the right to remove themselves from a hazardous work situation without jeopardizing continued employment, and the government enforced this right. Nonunion workers, particularly those in the agricultural and in some parts of the flower sector, reportedly worked under hazardous conditions because they feared losing their jobs if they criticized abuses. However, the flower growers' association implemented voluntary principles on environmental and worker

safety and reduced the use of pesticides by more than 60 percent" (2008 Country Report on Colombia, pp. 16-17). Emphasis Mine.

179. In its 2009 The World Factbook (updated on April 23, 2009), the United States Central Intelligence Agency presents startling figures on the Colombian economy. 50 percent of the population is below the poverty line; the lowest 10 percent of the population receive less than 8 percent of the total income while the top 10 percent receive 35 percent.

For its part, Colombia's National Council for Economic and Social Policy (CONPES) stated that more than 68 percent of Colombia's rural population is poor, and of those, 27.5 percent live in abject poverty. Moreover, 42.3 percent of urban dwellers live in poverty and 10.2 percent of those live in complete poverty ("Colombia, Half of Population is Poor," *Agencia Informativa Prensa Latina*, October 16, 2006).

180. Mr. XXXX's economic situation is far graver because the vast majority of Colombian and foreign-owned companies simply will not hire a homosexual. If an employee is discovered later to homosexual, he/she will be summarily fired.

181. Mr. XXXX's own statement on his economic future is not only cogent, it is extremely accurate.

"Even though I have a college degree and have worked successfully here in the United States for many years, I will not be able to get a decent job because no one wants the stigma of a gay male employee, especially when he is married to another man."

182. Colombia's atrocious human rights record was worsened considerably by continuing reports of torture by state security forces.

"Although the law prohibits such practices, there were reports that the police, military, and prison guards sometimes mistreated and tortured detainees. Members of the military and police accused of torture were tried in civilian rather than military courts. CINEP asserted that, as of June, government security forces were involved in 40 incidents of torture, a 50 percent increase compared with the first six months of 2005. CINEP also reported that during the first six months of the year there were 32 victims of torture by the armed forces. On January 25, a group of soldiers allegedly tortured army conscripts at a training center in Tolima. The Prosecutor General's Office investigated five officers, nine noncommissioned officers, and one soldier in the case and placed six of them in preventive

detention. They were all under indictment" (2006 Country Report on Colombia, p. 4).

183. Colombian citizens continued to be tortured in 2007.

"Although the law prohibits such practices, there were reports that the police, military, and prison guards sometimes mistreated and tortured detainees. Members of the military and police accused of torture were tried in civilian rather than military courts. CINEP asserted that, as of June, government security forces were involved in 74 incidents of torture, a 46 percent increase compared with the first six months of 2006. CINEP also reported that, during the first six months of the year, there were 66 victims of torture by the armed forces. On June 27, authorities detained three army officers for involvement in the torture of 27 soldiers in Tolima" (2007 Country Report on Colombia, p. 2).

184. Colombian security forces continued to torture people throughout 2008.

"Although the law prohibits such practices, there were reports that the police, military, and prison guards sometimes mistreated and tortured detainees. Members of the military and police accused of torture were tried in civilian rather than military courts. CINEP asserted that, during the first six months of the year, government security forces were involved in 74 incidents of torture, a 46 percent increase compared with the first six months of 2007. CINEP also reported that, during the first six months of the year, there were 66 victims of torture by the armed forces" (2008 Country Report on Colombia, p. 2).

185. Clearly indicative of widespread disregard for human rights in Colombia is the state of the nation's prisons.

"With the exception of new facilities, prison conditions were poor, particularly for prisoners without significant outside support. The National Prison Institute (INPEC) runs the country's 139 national prisons and is responsible for inspecting municipal jails. Although part of the ministry of Interior and Justice, INPEC has an independent budget and administrative decentralization." Emphasis Mine.

"Many of INPEC's 14,000 prison guards and administrative staff were poorly trained, and overcrowding, lack of security, corruption, and an insufficient budget continued to be serious problems. As of July more than 62,000 prisoners were held in space designed to accommodate fewer than 52,000, an overcrowding rate of nearly 18 percent, an improvement compared with nearly 40

percent overcrowding in 2005. In five institutions the number of prisoners was more than twice the designed capacity, and in Itagui's penitentiary, more than 5,000 prisoners lived in a space designed for 2,000. The Committee in Solidarity with Political Prisoners (CSPP) noted a continued decrease in corruption resulting from improved training, increase supervision, and more accountability for prison guards." Emphasis Mine.

"Budget problems affected prisons in many ways. At Combita Prison lack of money to pay sanitation fees led to water rationing. An October report by the Inspector General's Office on Combita Prison found violations of health standards, such as lack of potable water and a proliferation of insects and rodents. During the year INPEC spent approximately two dollars (4,990 pesos) per day on each inmate for food. Private sources continued to supplement many prisoners' food. CSPP reported that there were up to 1,200 patients per doctor in some institutions." Emphasis Mine.

"INPEC reported that from January 1 to August 31, there were nine violent deaths among inmates that were related to fighting and riots. From January to August, there were 11 riots at various institutions, which were sparked principally by inmates' internal fights; demands regarding working rights, food, and health care; and rebellion against prison discipline. The Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. There was no information available on prosecutions."

"Pretrial detainees were held with convicted prisoners."

"The government permitted independent monitoring of prison conditions by local and international human rights groups, and such monitoring occurred during the year. The FARC and ELN continued to deny the International Committee of the Red Cross (ICRC) access to police and military hostages (2006 Country Report on Colombia, p. 4)..

186. The condition of the nation's prisons was even worse in 2007.

"With the exception of new facilities, prison conditions were poor, particularly for prisoners without significant outside support. The National Prison Institute (INPEC) runs the country's 141 national prisons and is responsible for inspecting municipal jails."

"Overcrowding, lack of security, corruption, and an insufficient budget remained serious problems in the prison system. As of September, more than 62,600 prisoners were held in

facilities designed to hold fewer than 52,600; overcrowding rates exceeded 66 percent in 11 installations. Many of INPEC's 8,881 prison guards and administrative staff were poorly trained; The NGO Committee in Solidarity with Political Prisoners (CSPP) noted a continued decrease in corruption in the prison system resulting from improved training, increased supervision, and more accountability for prison guards."

"Constrained budgets adversely affected prison conditions. An October report by the Inspector General's Office on Combata Prison found violations of health standards, such as a lack of potable water and a proliferation of insects and rodents. INPEC spent \$2.23 dollars (4,459 pesos) per day on each inmate for food. Private sources continued to supplement food rations of many prisoners. CSPP reported that there were 315 patients per doctor in the prisons."

"INPEC reported that, from January 1 to July 31, there were seven violent deaths among inmates related to fighting and riots. From January to July, there were 11 riots at various penal institutions. The Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. According to the Supreme Judicial Council, there were no judgments for excessive force made against prison guards during the year."

"Pretrial detainees were held with convicted prisoners. Minors were not held with adults; however, minor children of female prisoners were able to stay with their mothers in some cases."

"The government permitted independent monitoring of prison conditions by local and international human rights groups, and such monitoring occurred during the year. The FARC and ELN continued to deny the International Committee of the Red Cross (ICRC) access to police and military hostages" (2007 Country Report on Colombia, p. 2).

187. There was absolutely no improvement in the nation's prisons in 2008.

"With the exception of new facilities, **prison conditions were poor, particularly for prisoners without significant outside support.** The National Prison Institute (INPEC) runs the country's 139 national prisons and is responsible for inspecting municipal jails." Emphasis Mine.

"**Overcrowding, lack of security, corruption, and an insufficient budget remained serious problems in the prison system. As of year's end, more than 69,000 prisoners were held in facilities designed to hold fewer than 50,000; overcrowding rates**

exceeded 27 percent in 139 installations. Many of INPEC's 13,000 prison guards and administrative staff were poorly trained. The NGO Committee in Solidarity with Political Prisoners noted that improved training, increased supervision, and more accountability for prison guards has helped, but expressed fear that greater privatization of the prisons system may lead to further corruption." Emphasis Mine.

"Constrained budgets adversely affected prison conditions. INPEC spent 4,941 pesos (\$2.00) per day on each inmate for food. Private sources continued to supplement food rations of many prisoners." Emphasis Mine.

"INPEC reported that during the year there were 40 violent deaths among inmates related to fighting and riots. From January to September 30, there were 14 riots at various penal institutions. The Prosecutor General's Office continued to investigate allegations that some prison guards routinely used excessive force and treated inmates brutally. According to the Superior Judicial Council (CSJ), there were four judgments for excessive force made against prison guards during the year."

"Pretrial detainees were held with convicted prisoners. Minors were not held with adults; however, minor children of female prisoners were able to stay with their mothers in some cases.

"The government permitted independent monitoring of prison conditions by local and international human rights groups, and such monitoring occurred during the year. The FARC and ELN continued to deny the International Committee of the Red Cross (ICRC) access to police and military hostages" (2008 Country Report on Colombia, pp. 2-3).

188. These incredible levels of violence show no signs of abating. On the contrary, it is exceedingly clear, after forty years of conflict, that none of the groups involved in this war--left-wing insurgent groups, right-wing paramilitary organizations, and the government's security forces--has the capability to win the war militarily. At the same time, it is extremely difficult to rein in the shocking levels of political violence, threats to regional stability, and increased drug production and trafficking as long as the war continues. Simply stated, Mr. XXXX will be yet one more victim of the senseless killing if he is deported back to Colombia.

189. Moreover, President Uribe's prestige and popularity recently suffered a serious blow, something he can not afford in his struggle against the AUC and the guerrillas. In 2007-2008, the FARC scored one of the greatest propaganda coups in its

nearly 50-year history by entering into negotiations to release the 45 hostages it had held since 2002.

In April, 2002, the FARC kidnapped 12 Deputies from the Department of Valle del Cauca. Others were captured subsequently, including Ingrid Betancourt, a French-Colombian politician who was running for president, her running mate Clara Rojas, 14 army officers, 20 policemen and three U.S. military contractors. Then FARC began to issue periodic videos to prove that the hostages were still alive. FARC demanded that the Uribe government free all the captured guerrillas they held (400-500) and release them overseas. FARC also asked the government to demilitarize an area of approximately 44,000 square miles (115,000 square kilometers) in the Departments of Putumayo and Caquetá.

190. Over the next five years, the FARC and the government offered several proposals and the governments of France, Spain and Switzerland also became involved, in large part due to Ms. Betancourt, but none of these proposals/plans, however, came to fruition despite constant negotiations between the FARC and the Europeans. Then on June 28, 2007, the FARC announced that eleven of the original 12 hostages had been killed in a crossfire.

President Uribe charged that the FARC had "executed" the hostages, adding that the Colombian security forces could not have been involved since they had no idea where the hostages were located. The truth was that the President had ordered the military to find the hostages and free them.

The European negotiators, led by newly inaugurated French president Nicolas Sarkozy, immediately protested to both the FARC and President Uribe and began to apply intense international pressure. President Uribe responded by appointing opposition Senator Piedad Córdoba Márquez to work with the Europeans and Venezuelan President Hugo Chávez who had announced on September 1, 2007, that he had agreed to meet FARC representatives to the end of releasing the hostages.

191. Over the next six months there was a blitzkrieg of offers and counter offers from the FARC, President Uribe, the French and even U.S. President George W. Bush who announced that the United States was willing to negotiate the release of the three military contractors. All of this was orchestrated by President Chávez, a consummate military populist who clearly delighted in being on the world stage and on the front pages of the international press. Chávez had face-to-face meetings with FARC leaders, gave extensive interviews to the international press, postured on Venezuelan television, even called one of Colombia's top military commanders in November and tried to

negotiate directly with him, an egregious violation of diplomatic protocol which President Uribe vehemently denounced. Chávez then began a war of words with President Uribe and called him a peon, a liar, a coward, a mafia boss, and a lackey of George Bush.

Then on January 10, 2008, the FARC released two female hostages (Clara Rojas and Consuelo González) to Venezuelan government representatives in a mission coordinated by the International Red Cross, but it held onto to its most famous captives, including Ingrid Betancourt. Then in late February, 2008, the FARC released four more hostages to Venezuelan authorities: former Senator Luis Eladio Pérez, former Congresswoman Gloria Polanco, former Rep. Orlando Beltrán, and former Senator Jorge Eduardo Géchem.

192. President Chávez basked in his new found fame and international praise, even though the elation of the moment was tempered by the FARC's announcement that it would not free another hostage until President Uribe met all of their demands, including the release of hundreds of FARC prisoners and the creation of a huge militarized zone in southern Colombia, demands which President Uribe has rejected out of hand.

Still, the FARC had vastly improved its international image and its fight against the Colombian government (and the United States) was legitimized with President Chávez's announcement granting the FARC the status of a "combatant," as opposed to that of "terrorist." President Uribe also lost not only a tremendous amount of popularity, but also a great deal of political clout in the western world.

Finally, President Chávez had clearly bested his two most outspoken opponents, Presidents Uribe and Bush, and enhanced his self-proclaimed role as Liberator of the Andes.

There is veritable plethora of literature on the hostages and the attempts to free them, far too voluminous to mention in this affidavit. Indeed, there are hundreds of thousands of "hits" on the search engine Google, a good place to begin for articles in the world press, including those in *The New York Times*, *The Los Angeles Times*, *The Miami Herald*, etc.

193. Then on March 1, 2008, President Uribe sent the Colombian Army across the Ecuadorian border and attacked a FARC base, killing the number two FARC leader, Luis Edgar Devia Silva, (aka Raúl Reyes) and 17 other FARC soldiers. The raid touched off a firestorm of criticism of President Uribe and greatly enhanced the claim of the FARC to be a "combatant" force, rather than a "terrorist" group.

194. President Rafael Correa of Ecuador recalled his ambassador to Colombia and said that the incursion was "the worst aggression Ecuador has suffered on the part of Colombia." He went on to state that "They were bombed and massacred while they slept, using pinpoint technology that found them at night, in the jungle, for sure with the collaboration of foreign powers" (Juan Forero, "Chávez Sends Troops, Tanks to Venezuela's Border With Colombia," *The Washington Post*, March 3, 2008).

President Chávez of Venezuelan moved to take advantage of the situation by closing the Venezuelan Embassy in Bogotá and stating on national television: "Move 10 battalions to the Colombian frontier immediately, tank battalions, military aviation. We are not going to permit the North American empire, which is the ruler, to allow his lapdog, President Uribe and the Colombian oligarchy, to divide or weaken us. We will not permit it" (Juan Forero, "Chávez Sends Troops, Tanks to Venezuela's Border With Colombia," *The Washington Post*, March 3, 2008).

195. President Correa also moved troops to the border with Colombia and asked the Organization of American States to intervene and condemn the Colombian incursion. Nicaragua promptly broke relations with Colombia and Chilean president Michelle Bachelet issued a statement stating: "A situation of this nature without a doubt merits an explanation. The most important thing today is that we can avoid an escalation of this conflict" (Pablo Bachelet, "OAS to Discuss Ecuador-Colombia Border Dispute," *The Miami Herald*, March 3, 2008).

196. For his part, President Bush firmly backed President Uribe and his actions: "I told the president that America fully supports Colombia's democracy and we firmly oppose any acts of aggression that could destabilize the region. I told Uribe that America will continue to stand with Colombia as it confronts violence and terror and fights drug traffickers" (Pablo Bachelet, "OAS to Discuss Ecuador-Colombia Border Dispute," *The Miami Herald*, March 3, 2008).

197. After two days of deliberations, the OAS approved a resolution which stated that Colombia had violated Ecuador's "territorial integrity," but the organization fell short of actually condemning Colombia. Nevertheless, Myles Frechette, a retired Foreign Service officer who served as U.S. Ambassador to Colombia, noted repairing relations in the area would be a challenge: "Uribe has got to go down there, meet with Correa, calm him down, and he's going to have Chávez fuming at the border. Uribe is in a pickle, in the sense that diplomatically he's got to get himself out of this corner that he's got himself

in" (Juan Forero, "Chávez Sends Troops, Tanks to Venezuela's Border With Colombia," *The Washington Post*, March 3, 2008).

198. The crisis gradually calmed down, but not before President Uribe had lost additional prestige in the region and the FARC had enhanced its international reputation even further.

199. Finally, the AUC suffered another blow to their pride and prestige in May, 2008, when 13 of their commanders (including Black Eagle strongman Carlos Mario Jiménez, aka "Macaco") were extradited by the Uribe government to stand trial in the United States. Prior to those extraditions, the Colombian government had always touted the effectiveness of its special tribunals which were designed to try commanders for crimes committed in the nation's long, fratricidal conflicts. Now, those same commanders were being treated like common drug traffickers. See: Juan Porero, "Colombia Sends 13 Paramilitary Leaders to U.S.," *The Washington Post*, May 14, 2008; Tyler Bridges, "Colombian Paramilitary Warlords Extradited," *The Miami Herald*, May 13, 2008; and Simon Romero, "Colombia Extradites 14 Paramilitary Leaders," *The New York Times*, May 14, 2008.

200. The importance for this case of all the above is that the AUC must try somehow to enhance their own prestige and power. After all the AUC and the FARC recruit among the same pool of people and right now the FARC has the upper hand. Thus, the AUC must take drastic measures to climb back into the struggle. Therefore, there is an even greater urgency for them to reestablish their network of terror which, in this case, means carrying out all the threats they have made in the past, including those to Mr. XXXX. To allow him (and others whom they have threatened) to live after so many threats would only serve to diminish their reputation even further.

201. Given this scenario of life in Colombia, it would be absolutely impossible for Mr. XXXX to receive any type of protection from state security forces. If they wantonly torture, murder and illegally detain their citizens, otherwise violate basic human rights of women, children, indigenous people, racial and ethnic minorities, homosexuals and the disabled, how could anyone expect them to respect Mr. XXXX's human rights? The answer is that they will not and they will harass and very likely kill Mr. XXXX very soon after his arrival in Colombia.

202. If not death, then torture and vicious physical abuse without any degree of safety, is the most likely fate for Mr. XXXX. Moreover, if Mr. XXXX is forced to return to Colombia from

the United States, his arrival will be well known to all relevant government agencies. His name will be on the flight manifest and if he should enter by land, he will be logged in and his whereabouts known immediately.

203. Regarding the general question of whether or not the respondent could simply move to another region of the country, thereby evading the vigilance of their enemies, my response is an unequivocal and unqualified "NO."

204. Colombia, like all other Latin American republics has elaborate systems of identification documents which must be carried on one's person at all times. Although the exact terminology might vary from country to country, they all use the following: military ID (for males), electoral identification, and tax identification. All of these must contain current address information under penalty of arrest and incarceration. Colombian citizens may be and are stopped by security forces, AT WILL, and they had better have up-to-date documents (which Mr. XXXX does not) or they will be immediately detained. Thus, Mr. XXXX's whereabouts will always be known.

205. In sum, then, Mr. XXXX clearly will be in extreme danger if he were forced to return to Colombia. It is my considered, professional opinion that both the Colombian security forces, as well as the Colombian guerrillas and paramilitaries (particularly the FARC and the AUC), not only possess the desire to eliminate all persons they might deem to be undesirable (read homosexual), they have the power necessary to find and eliminate Mr. XXXX with a high degree of efficiency.

I declare the foregoing facts to be true and correct and this declaration is made by me under penalty of perjury under the laws of the State of California.

Thomas M. Davies, Jr.
Professor Emeritus of Latin American History
Director Emeritus, Center for Latin American Studies
Former Chair, Latin American Studies

Date

SELECTED AND ANNOTATED BIBLIOGRAPHY

For a brilliant collection of scholarly essays on homosexuality in Iberia (Spain and Portugal), see Josiah Blackmore and Gregory S. Hutcheson, eds., Queer Iberia: Sexualities, Cultures, and Crossings From the Middle Ages to the Renaissance. Durham: Duke University Press, 1999.

For three outstanding and unusually perceptive analyses of the premodern period in the Mediterranean/North African cultural world, see John Boswell: The Royal Treasure: Muslim Communities Under the Crown of Aragon in the Fourteenth Century. New Haven: Yale University Press, 1977; Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe From the Beginning of the Christian Era to the Fourteenth Century. Chicago: University of Chicago Press, 1980; Same-Sex Unions in Premodern Europe. New York: Random House, 1994.

For comprehensive analyses of the transference of Iberian sexuality and sexual culture to Latin America, see Emilie L. Bergmann and Paul Julian Smith, eds., ¿Entiendes? Queer Readings, Hispanic Writings. Durham: Duke University Press, 1995; Richard C. Trexler, Sex and Conquest: Gendered Violence, Political Order, and the European Conquest of the Americas. Ithaca: Cornell University Press, 1995; and Federico Garza Carvajal, Butterflies Will Burn: Prosecuting Sodomites in Early Modern Spain and Mexico. Austin: University of Texas Press, 2003; and Pete Sigal, ed., Infamous Desire: Male Homosexuality in Colonial Latin America. Chicago: University of Chicago Press, 2003.

The best historiography of gay and lesbian themes is Martin Nesvig, "The Complicated Terrain of Latin American Homosexuality," Hispanic American Historical Review, Vol. 81, Nos. 3-4 (August-November, 2001), Special Issue: Gender and Sexuality in Latin America, pp. 689-729. See also Daniel Balderston and Donna J. Guy, "Bibliography of Gender and Sexuality Studies on Latin America," in Daniel Balderston and Donna J. Guy, eds., Sex and Sexuality in Latin America. New York: New York University Press, 1997, pp. 259-277.

Jacobo Schifter, Ph.D., Regional Director of ILPES (the Latin American Health and Prevention Institute) has made major contributions to our knowledge of LGBT issues, particularly as they relate to gay males. Most of his research deals with Central America, but the findings and conclusions are equally applicable to the rest of Spanish America. See his six books, all published by The Haworth Press, Inc. in New York: From Toads to Queens: Transvestism in a Latin American Setting (1999); Lila's House: Male Prostitution in Latin America (1998); Latino Truck Driver Trade: Sex and HIV in Central America (2001); Macho Love: Sex Behind Bars in Central America (1999); Public Sex in a

Latin Society (2000); and The Sexual Construction of Latino Youth: Implications for the Spread of HIV/AIDS (2000).

Of vital importance for this case is Stephen O. Murray's sensitive and incisive Latin American Male Homosexualities. Albuquerque: University of New Mexico Press, 1995. It is particularly valuable for Murray's analyses of the gendered roles of the male (*activo* or active) and the female (*pasivo* or passive). Also of transcendental importance is Roger N. Lancaster, Life Is Hard: Machismo, Danger, and the Intimacy of Power in Nicaragua. Berkeley: University of California Press, 1992. Lancaster shows that there is a certain class of passive homosexuals in Nicaragua, known as *cochones*, who affirm rather than contest *machismo* (see particularly Chapter XVIII: "Subject Honor, Object Shame").

Particularly helpful on the broad subject of Hispanic *machismo* (the culture of manliness), see Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Doubleday, 1996; Matthew C. Gutmann, The Meanings of Macho: Being a Man in Mexico City. Berkeley: University of California Press, 1996; and Alfredo Mirandé, Hombres y Machos: Masculinity and Latino Culture. Boulder: Westview Press, 1997.

The two best encyclopedias are: Robert R. Francoeur, The International Encyclopedia of Sexuality, 4 vols. (New York: Continuum, 1997); and Bonnie Zimmerman and George Haggerty, eds., The Encyclopedia of Lesbian and Gay Histories and Cultures, 2 vols. (New York: Garland, 2000).

On the extraordinarily important subject of behavioral indicators of homosexuality in childhood, see Frederick L. Whitam, "The Prehomosexual Male Chile in Three Societies: The United States, Guatemala, Brazil," Archives of Sexual Behavior, Vol. 9, No. 2 (April, 1980), pp. 87-99. See also: Frederick L. Whitam and Robin M. Mathy, Male Homosexuality in Four Societies: Brazil, Guatemala, The Phillipines, and the United States. New York: Prager, 1986.

Additional works of interest are:

IBERIA

Alas, Leopoldo, De la acera de enfrente: Todo lo que se debe saber de los gays y nadie se ha atrevido a contar. Madrid: Ediciones Temas de Hoy, 1994.

Aliaga, Juan Vicente y José Miguel G. Cortés, Identidad y diferencia: Sobre la cultura gay en España. Barcelona: Editorial Gay y Lesbiana, 1997.

Burger, Glenn & Stephen F. Kruger, eds., Queering the Middle Ages. Minneapolis: University of Minnesota Press, 2001.

Buxán Bran, Xosé M., Comp., Conciencia de un singular deseo: Estudios lesbianos y gays en el estado español. Barcelona, España, Editorial Laetes, 1997.

Fernández-Alemany, Manuel, Mariquitas y marimachos: Guía completa de la homosexualidad. Madrid: Nuer, 1999.

LATIN AMERICA

Abelove, Henry; Michele Aina Barale; and David M. Halperin, eds., The Lesbian and Gay Studies Reader. New York: Routledge, 1993.

Balderston, Daniel and Donna J. Guy, eds., Sex and Sexuality in Latin America. New York: New York University Press, 1997.

Bleys, Rudi, Images of Ambiente: Homotextuality and Latin American Art, 1810-Today. London: Continuum, 2000.

Bossio, Enrique, "Interview With a Gay Activist," in Orin Starn, Carlos Iván Degregori and Robin Kirk, eds., The Peru Reader: History, Culture, Politics. Durham: Duke University Press, 1995, pp. 477-481.

Carrier, Joseph M., De Los Otros: Intimacy and Homosexuality Among Mexican Men. New York: Columbia University Press, 1995.

CEPAL-ECLAC, Women and Development Unit, The Challenge of Gender Equity and Human Rights on the Threshold of the Twenty-First Century. Santiago, Chile: Naciones Unidas, CEPAL-ELCLAC, 2000.

Chant, Sylvia H., Gender in Latin America. New Brunswick: Rutgers University Press, 2003.

Chávez-Silverman, Susana, and Librada Hernández, eds., Reading and Writing the Ambiente: Queer Sexualities in Latino, Latin American, and Spanish Culture. Madison: University of Wisconsin Press, 2000.

Craske, Nikki, and Maxine Molyneux, eds., Gender and Politics of Rights and Democracy in Latin America. Houndmills, Basingstoke, Hampshire: Palgrave, 2002.

Díaz, Rafael M. Latino Gay Men and HIV: Culture, Sexuality and Risk Behavior. New York: Routledge, 1998.

Dore, Elizabeth & Maxine Molyneux, eds., Hidden Histories of Gender and the State in Latin America. Durham: Duke University Press, 2000.

Drescher, Jack and Kenneth J. Zucker, eds., Ex-Gay Research: Analyzing the Spitzer Study and Its Relation to Science, Religion, Politics, and Culture. New York: Harrington Park Press, 2006.

Ellis, Robert Richmond, They Dream Not of Angels but of Men: Homoeroticism, Gender, and Race in Latin American Autobiography. Gainesville: University Press of Florida, 2002.

Foster, David William, Cultural Diversity in Latin American Literature. Albuquerque: University of New Mexico Press, 1994.

Foster, David William, Gay and Lesbian Themes in Latin American Writing. Austin: University of Texas Press, 1991.

Foster, David Willim and Roberto Reis, eds., Bodies and Biases: Sexualities in Hispanic Cultures and Literatures. Minneapolis: University of Minnesota Press, 1994.

Frasca, Tim, AIDS in Latin America. New York: Palgrave Macmillan, 2005.

García Abreu, Anabela, Isabel Noguera and Karen Cowgill, HIV/AIDS in Latin American Countries: The Challenges Ahead. Washington, D.C.: The International Bank for Reconstruction and Development/The World Bank, 2003.

Girman, Chris, Mucho Macho: Seduction, Desire, and the Homoerotic Lives of Latin Men. New York: The Haworth Press, Inc., 2004.

Gutiérrez, Ramón A., When Jesus Came, The Corn Mothers Went Away: Marriage, Sexuality and Power in New Mexico, 1500-1846. Stanford: Stanford University Press, 1991.

Gutmann, Matthew C., ed., Changing Men and Masculinities in Latin America. Durham: Duke University Press, 2003.

Kulick, Don, Travestí: Sex, Gender and Culture Among Brazilian Transgendered Prostitutes. Chicago: The University of Chicago Press, 1998.

Leiner, Marvin, Sexual Politics in Cuba: Machismo, Homosexuality and AIDS. Boulder: Westview Press, 1994.

Lewin, Ellen and William Leap, eds., Out in the Field: Reflections of Lesbian and Gay Anthropologists. Urbana: University of Illinois Press, 1995.

Leyland, Winston, ed., My Deep Dark Pain is Love: A Collection of Latin American Fiction. San Francisco: Gay Sunshine Press, 1983.

Leyland, Winston ed., Now the Volcano: An Anthology of Latin American Gay Literature. San Francisco: Gay Sunshine Press, 1979.

Lumsden, Ian, Machos, Maricones and Gays: Cuba and Homosexuality. Philadelphia: Temple University Press, 1996.

Manrique, Jaime (with Jesse Dorris), Bésame Mucho: New Gay Latino Fiction. New York: Painted Leaf Press, 1999.

Quiroga, José, Tropics of Desire: Interventions From Queer Latino America. New York: New York University Press, 2000.

Satinover, Jeffrey, Homosexuality and the Politics of Truth. Grand MI: Hamewith Books, 1996.

Sifuentes-Jáuregui, Ben, Transvestism, Masculinity, and Latin American Literature: Genders Share Flesh. New York: Palgrave, 2002.

Sigal, Pete, ed., Infamous Desire: Male Homosexuality in Colonial Latin America. Chicago: University of Chicago Press, 2003.

Whitham, Frederick L. and Robin M. Mathy, Male Homosexuality in Four Societies: Brazil, Guatemala, The Phillipines, and the United States. New York: Prager, 1986.

LESBIAN

Anzaldúa, Gloria, Borderlands/La Frontera: The New Mestiza. San Francisco: Spinsters/Aunt Lute Press, 1987.

Anzaldúa, Gloria, ed., Making Face, Making Soul/Haciendo Caras: Creative and Critical Perspectives by Women of Color. San Francisco: Aunt Lute Press, 1990.

Espín, Oliva M., Latina Realities: Essays on Healing, Migration and Sexuality. Boulder: Westview Press, 1997. See particularly Chapter 6: "Cultural and Historical Influences on Sexuality in Hispanic/Latin Women: Implications for Psychotherapy;" and Chapter 7: "Issues of Identity in the Psychology of Latina Lesbians."

Fernández Olmos, Margarite and Lizabeth Paravisini-Gebert, eds., Pleasure in the World: Erotic Writing by Latin American Women. Fredonia, New York: White Pine Press, 1993.

Kampwirth, Karen, Women & Guerrilla Movements: Nicaragua, El Salvador, Chiapas, Cuba. University Park, Penn.: Pennsylvania State University Press, 2002.

Martínez, Elena M., Lesbian Voices From Latin America: Breaking Ground. New York: Garland, 1995.

Mogrovejo, Norma, Un amor que se atrevió a decir su nombre: La lucha de las lesbianas y su relación con los movimientos homosexual y feminista en América Latina. México, D.F.: CDAHL, 2000.

Montoya, Rosario; Lessie Jo Frazier, and Janise Hurtig, eds., Gender's Place: Feminist Anthropologies of Latin America. New York: Palgrave Macmillan, 2002.

Ramos, Juanita, ed., Compañeras: Latina Lesbians. New York: Routledge, 1994.

Trujillo, Carla, ed., Chicana Lesbians: The Girls Our Mothers Warned Us About. Berkeley: Third Woman Press, 1991.

THE MEANING OF MACHO

Some years ago, the great Chicano writer and thinker, Rudolfo Anaya, wrote: "The word *macho* has one of the shortest definitions in the Spanish language dictionary, and yet the cult of macho behavior (machismo or the macho image) is as ambiguous and misunderstood as any aspect of Hispanic/Latino culture. To be macho is to be male, that's simple, but when the term is applied to Hispanic male behavior, then the particulars of the role are defined according to the particular culture. From Spain to Latin America, from Mexico to the Chicanos in the USA, one gets a slightly different definition of the macho image at every turn" (see Rudolfo Anaya, "'I'm the King:' The Macho Image," in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 59).

In Anglo-American culture (i.e., The United States), *machismo* is usually defined simply as male domination of females, or as Omar S. Castañeda noted, "reduced to self-aggrandizing male bravado that flirts with physical harm to be sexual, like some rutting for the right to pass on genes" (see Omar S. Castañeda, "Guatemalan Macho Oratory" in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 37).

In the end, the complexity of the word *macho* derives from the fact that it can be used in both a negative and a positive manner. In a brilliant book on the subject, Alfredo Mirandé offers two very contradictory lists of descriptors:

Bravado	Brave
Cowardly	Courageous
Irresponsible	Responsible
Disrespectful	Respectful
Selfish	Altruistic
Pretentious	Humble
Loud	Soft-Spoken
Abusive	Protective
Headstrong/Bullish	Intransigent
Conformist	Individualistic
Dishonorable	Honorable

Hombres y Machos: Masculinity and Latino Culture. Boulder: Westview Press, 1997, p. 78.

Stated simply, "historical" *machismo* is actually male dominance of other males in all aspects of life: bravery, fighting, drinking, gambling, domination of females, etc. This concept, however, is changing in the "cradle" of *machismo*—the nation of Mexico. See Matthew C. Gutmann, The Meaning of Macho: Being a

Man in Mexico City. Berkeley: University of California Press, 1996. Still, as is often the reality in matters of ideology, the "taught" have lagged behind the "teacher."

Moreover, of tremendous importance for this case is the warped definition of *machismo*, often held by police and the military in Latin America, which holds that harassment, abuse, assault, even rape of homosexual males somehow makes a man even more *macho*. One must remember that these attacks also serve as "reassertions" of the absolute and unmitigated control over all people sought by security forces in Latin America. See Brian Loveman and Thomas M. Davies, Jr., The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997;

Use of *machismo* by Latino gangs in the United States is very similar, but even more exaggerated. Perhaps Rudolfo Anaya said it best: "As more Chicano families become single-parent families, the traditional role of the father and the extended-family males will not be as influential in shaping the behavior of boys. The boys are being conditioned instead by the behavior they see on TV, in movies and music videos. Boys loose in the hood are being shaped by the gang instead of the father. *La Ganga* shapes behavior, provides initiation, belonging, *la vida loca*, cruising, drinking, drugs, and guns" (see Rudolfo Anaya, "'I'm the King:' The Macho Image," in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 64).

HOMOSEXUALITY AND PSYCHIATRY

Latin American parents/families (like their counterparts in most of the world) have often sought to "cure" their gay/lesbian relatives by sending them to psychologists/psychiatrists for medical "treatment." Beginning in the 1930s, homosexuality was formally defined as a mental disorder, a type of psychopathic personality disorder. In 1952, in its first *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the American Psychiatric Association (APA) "included a category called sexual deviation as a subtype of sociopathic personality disturbance. Homosexuality was mentioned as one example of the sexual deviations. In the second edition (*DSM-II*), published in 1968, the reference to homosexuality continued to be included under the heading for personality disorders, a type of sociopathic personality disorder, and specifically as one of the sexual deviations."

Then, "the APA reviewed the findings from more recent research on gay men and lesbians. Following a period of intense political engagement and of considerable scientific evaluation, the Board of Trustees of the APA voted in December 1973 to remove homosexuality from its list of mental disorders. ... Remnants of the diagnosis of homosexuality as a type of disease were finally removed from the official list of diagnoses in 1986, and currently sexual orientation is not a consideration in defining mental health or illness in American psychiatry."

"Hostility toward homosexuality persisted among some psychiatrists after the nomenclature change and is maintained today by groups of psychiatrists and other mental health professionals who continue to advocate an illness model of homosexuality and offer treatment for it. These professionals do not represent the official view of American psychiatry regarding homosexuality and gay men and lesbians" (see Terry S. Stein, M.D., "Psychiatry and Homosexuality," in Bonnie Zimmerman and George E. Haggerty, The Encyclopedia of Lesbian and Gay Histories and Cultures, Volume II, George E. Haggerty, ed., Gay Histories and Cultures: An Encyclopedia, New York: Garland Publishing Inc., 2000, pp. 713-715). See also Dr. Stein's articles "Psychological and Psychoanalytic Perspectives on Homosexuality," and "Psychotherapy" in ibid, pp. 715-718.

Psychiatrists, psychologists and other health professionals in Latin America, however, continue to view homosexuality as a "treatable, curable illness," and families continue to seek medical treatment for their families and friends. I personally know of members of my extended family in Peru who have been sent to psychiatrists to "be cured." Moreover, my Mexican-American

son-in-law's mother wanted to send her younger son to a psychiatrist for that same reason.

HOMOSEXUALITY AND THE ROMAN CATHOLIC CHURCH

There exists a voluminous literature on the Roman Catholic Church and homosexuality, but one must begin with Joseph Cardinal Ratzinger's two Letters to the Bishops of the Catholic Church. Cardinal Ratzinger, then Prefect of the Congregation for the Doctrine of the Faith and now Pope Benedict XVI, issued the first on October 1, 1986. Entitled "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" it is the document most often cited by people on both sides of the controversy: "Explicit treatment of the problem was given in this Congregation's 'Declaration on Certain Questions Concerning Sexual Ethics' of December 29, 1975. That document stressed the duty of trying to understand the homosexual condition and noted that culpability for homosexual acts should only be judged with prudence. At the same time the Congregation took note of the distinction commonly drawn between the homosexual condition or tendency and individual homosexual actions. **They were described as deprived of their essential and indispensable finality, as being 'intrinsically disordered,' and able in no case to be approved of.**

In the discussion which followed the Declaration, however, an overly benign interpretation was given to the homosexual condition itself, some going so far as to call it neutral, or even good. **Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.**

Therefore special concern and pastoral attention should be directed toward those who have this condition, lest they be led to believe that the living out of this orientation in homosexual activity is a morally acceptable option. It is not." Emphasis Mine.

Appended to the Letter is the following statement: "During an audience granted to the undersigned Prefect, His Holiness, Pope John Paul II, approved this Letter, adopted in an Ordinary session of the Congregation for the Doctrine of the Faith, and ordered it to be published."

The second Letter is entitled "Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the Church and in the World," was published on May 31, 2004, and stated the Question as follows:

"Recent years have seen new approaches to women's issues. A first tendency is to emphasize strongly conditions of subordination in order to give rise to antagonism: women, in

order to be themselves, must make themselves the adversaries of men." ...

"A second tendency emerges in the wake of the first. In order to avoid the domination of one sex or the other, their differences tend to be denied, viewed as mere effects of historical and cultural conditioning. In this perspective, physical difference, termed sex, is minimized, while the purely cultural element, termed gender, is emphasized to the maximum and held to be primary. The obscuring of the difference or duality of the sexes has enormous consequences on a variety of levels. **This theory of the human person, intended to promote prospects for equality of women through liberation from biological determinism, has in reality inspired ideologies which, for example, call into question the family, in its natural two-parent structure of mother and father, and make homosexuality and heterosexuality virtually equivalent, in a new model of polymorphous sexuality.** Emphasis Mine.

Appended to the Letter is the following statement: "The Sovereign Pontiff John Paul II, in the Audience granted to the undersigned Cardinal Prefect, approved the present Letter, adopted in the Ordinary Session of this Congregation, and ordered its publication."

Pope John Paul II was a strident foe of homosexuality as indicated by his approval of the Cardinal Ratzinger's two Letters and this statement in his last book, published just before his death in April, 2005: "Nor are other grave violations of God's law lacking. I am thinking, for example, of the strong pressure from the European Parliament to recognize homosexual unions as an alternative type of family, with the right to adopt children. **It is legitimate and even necessary to ask whether this is not the work of another ideology of evil, more subtle and hidden, perhaps, intent upon exploiting human rights themselves against man and against the family**" (Pope John Paul II, Memory and Identity: Conversations at the Dawn of a Millennium. New York: Rizzoli International Publications, Inc., 2005, p. 11).

As had been widely predicted, Pope Benedict XVI pledged to follow the strict line of Pope John II and defend traditional Catholic teachings from "fashionable" ideas that threaten to destroy the faith. "In his first sermon at St. John's in Lateran, his Cathedral as the Bishop of Rome, the former Cardinal Joseph Ratzinger confirmed expectations that he would maintain Pope John Paul's conservative stance on issue like homosexuality and abortion."

"A pope's duty, he said 'is to ensure the word (of God) remains present in its greatness and resounds in its purity so that it is not shattered by constant changes in fashion.'"

"A pope must constantly bind himself and the Church to the obedience of the word of God in the face of all the attempts to adapt it or water it down,' he told the packed congregation. 'That's what Father John Paul II did when faced by all such attempts which were seemingly benevolent towards man.'" See Robin Pomeroy, "Pope Pledges to Defend Faith Against Fashion," Reuters, May 7, 2005.