

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:13-cv-1426

JOAN JARA, in her individual	:	
capacity and in her capacity	:	
as the personal representative	:	
of the Estate of Victor Jara,	:	
et al.	:	
	:	Orlando, Florida
Plaintiffs	:	June 22, 2016
	:	8:05 a.m.
v.	:	
	:	
PEDRO PABLO BARRIENTOS NUNEZ	:	
	:	
Defendant	:	
.....	:	

TRANSCRIPT OF JURY TRIAL, VOLUME VIII
BEFORE THE HONORABLE ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

Court Reporter: Amie R. First, RDR, CRR, CRC, CPE
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by mechanical stenography.

Transcript produced by Computer-Aided Transcription.

1 APPEARANCES:

2

3 For the Plaintiffs: Mark D. Beckett

4 Richard S. Dellinger

5 L. Kathleen Roberts

6 Daniel McLaughlin

7 Christian Urrutia

8 Amy Belsher

9

10 For the Defendant: Sean W. Landers

11 Luis F. Calderon

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3 THE COURT: Good morning. Back on the record in
4 Jara versus Barrientos Nunez, 6:13-civil-1426.

5 Counsel are present for the charge conference.
6 The parties are absent.

7 Did you all have an opportunity to go through the
8 Court's instruction last evening?

9 MR. BECKETT: Yes, Your Honor.

10 MR. CALDERON: Yes, Your Honor.

11 THE COURT: My clerk passed out to you a revision
12 to Instruction Number 15, command responsibility. I didn't
13 catch it last evening before it went out, but the draft
14 that I gave you had included a change that I think was
15 unwarranted to the one you submitted, which has now been
16 restored to the one that you all provided, including the
17 language with respect to an officer not being able to
18 escape liability by claiming he was acting under orders
19 from a higher authority. But we'll get to that to see if
20 there's any concern about that when we get to it.

21 What I'd like to do is just go through the
22 instructions one by one. And if there's no objection to
23 the instruction, you can simply state that there is no
24 objection. And we'll keep going through the package until
25 we get to those where there's a concern. And then we can

1 talk about the verdict form.

2 And lest I forget, but we may run out of time this
3 morning, I've got a change of plea proceeding at 8:30.

4 But I'd like to, Mr. Calderon, have -- when
5 Mr. Barrientos arrives, I'd like to have a proffer on this
6 question that we left the evening with last night about his
7 conversations with the quasi lawyer.

8 MR. CALDERON: Yes, Judge.

9 THE COURT: Because when we left last evening, it
10 was my understanding that you were offering this testimony
11 to show its effect on Mr. Barrientos. So your position was
12 it was not hearsay.

13 And I preliminarily indicated that I was inclined
14 to agree with that. But I'm concerned because of the
15 language issues and the interpretation about what
16 Mr. Barrientos may -- I don't know what the substance of
17 those conversations was. So I'm concerned about them.

18 So I'd like to get a proffer so that I know what
19 is coming and I can make a judgment for myself as to
20 whether it is actually being offered; as opposed to showing
21 its effect on Mr. Barrientos, if it's actually being
22 offered to show why he did what he did, which is the matter
23 asserted, I guess.

24 So, in other words, in my mind, there's a
25 difference between Mr. Barrientos saying what he did as

1 opposed to using the nonavailable declarant to offer some
2 legal excuse or rationale.

3 MR. CALDERON: I'll proffer the questions,
4 Your Honor, and then we can --

5 THE COURT: Once we know what the substance of the
6 testimony is, I can give you a more informed ruling.

7 MR. CALDERON: Sure.

8 THE COURT: All right. Let's turn to the
9 instructions.

10 Does the plaintiff have any objection to the
11 Court's Instruction Number 1, the pattern introductory
12 instruction?

13 MR. BECKETT: No, Your Honor.

14 THE COURT: Defense?

15 MR. CALDERON: No objection, Your Honor.

16 THE COURT: The Court's Instruction Number 2, on
17 the duty to follow instructions, any objection from the
18 plaintiff?

19 MR. BECKETT: No objection, Judge.

20 THE COURT: From the defense?

21 MR. CALDERON: No objection, Your Honor.

22 THE COURT: Court's Instruction Number 3, on the
23 consideration of direct and circumstantial evidence, any
24 objection from the plaintiff?

25 MR. BECKETT: No objection, Judge.

1 THE COURT: From the defense?

2 MR. CALDERON: No objection, Your Honor.

3 THE COURT: You can stay in your seat,
4 Mr. Beckett. Thank you. You'll get tired of getting up
5 and down for these.

6 Court's Instruction Number 4, credibility of the
7 witnesses, any objection from the plaintiff?

8 MR. BECKETT: No objection, Judge.

9 THE COURT: From the defense?

10 MR. CALDERON: No objection, Your Honor.

11 THE COURT: Court's Instruction Number 5,
12 impeachment of witnesses, any objection from the plaintiff?

13 MR. BECKETT: No, Your Honor.

14 THE COURT: From the defense?

15 MR. CALDERON: No objection, Your Honor.

16 THE COURT: Court's Instruction Number 6, basic
17 instruction related to expert witnesses?

18 MR. BECKETT: No objection, Your Honor.

19 THE COURT: From the defense?

20 MR. CALDERON: No objection, Your Honor.

21 THE COURT: Court's Instruction Number 7, your
22 stipulations, any objection from the plaintiff?

23 MR. BECKETT: No, sir. No objections.

24 THE COURT: Any objection from the defense?

25 MR. CALDERON: No objection, Your Honor.

1 THE COURT: Court's Instruction Number 8, the
2 summary of the claims, any objection from the plaintiff?

3 MR. BECKETT: No, Judge.

4 THE COURT: From the defense?

5 MR. CALDERON: No objection, Your Honor.

6 THE COURT: Court's Instruction Number 9, the
7 basic instruction on preponderance of the evidence, any
8 objection from the plaintiff?

9 MR. BECKETT: No objection, Your Honor.

10 THE COURT: From the defense?

11 MR. CALDERON: No objection, Your Honor.

12 THE COURT: Court's Instruction Number 10,
13 extrajudicial killing, any objection from the plaintiff?

14 MR. BECKETT: No objection, Judge.

15 THE COURT: Any objection from the defense?

16 MR. CALDERON: No objection, Your Honor.

17 THE COURT: Court's Instruction Number 11 on
18 torture, any objection from the plaintiff?

19 MR. BECKETT: No objection, Your Honor.

20 THE COURT: From the defense?

21 MR. CALDERON: No objection, Your Honor.

22 THE COURT: Court's Instruction Number 12, the
23 explanation of the theories of liability, any objection
24 from the plaintiff?

25 MR. BECKETT: No objection, Judge.

1 THE COURT: Any objection from the defense?

2 MR. CALDERON: No objection, Your Honor.

3 THE COURT: Court's Instruction Number 13,
4 definition of aiding and abetting, any objection from the
5 plaintiff?

6 MR. BECKETT: No objection, Judge.

7 THE COURT: From the defense?

8 MR. CALDERON: No objection, Your Honor.

9 THE COURT: Court's 14, definition of conspiracy,
10 any objection from the plaintiff?

11 MR. BECKETT: No objection, Your Honor.

12 THE COURT: From the defense?

13 MR. CALDERON: No objection, Your Honor.

14 THE COURT: Court's Instruction Number 15, as
15 revised, on command responsibility, any objection from the
16 plaintiff?

17 MR. BECKETT: No objection, Your Honor.

18 THE COURT: Any objection from the defense?

19 MR. CALDERON: Judge, I think this was the one
20 where the last line was amended this morning?

21 THE COURT: It is.

22 MR. CALDERON: So subject to that correction, we'd
23 have no objection.

24 THE COURT: Yes. I said as revised, I think.

25 MR. CALDERON: Oh, I'm sorry. I didn't catch

1 that, Your Honor. No objection.

2 THE COURT: It will include that last line.

3 Court's Instruction Number 16, definition of joint
4 criminal enterprise, any objection from the plaintiff?

5 MR. BECKETT: Judge, we have a small typo on the
6 second line of this instruction. Right now it reads, you
7 must find the plaintiffs proved beyond the preponderance of
8 the evidence.

9 I believe beyond should be replaced by "by."

10 THE COURT: All right.

11 MR. BECKETT: Other than that, no objection.

12 THE COURT: Do you have any objection to that
13 modification, Mr. Calderon?

14 MR. CALDERON: No, Your Honor. That was brought
15 to my attention earlier.

16 THE COURT: Okay. All right. I'll change beyond
17 to by. And note no objection from the plaintiff or the
18 defense.

19 Court's Instruction Number 17, definition of
20 compensatory damages, any objection from the plaintiff?

21 MR. BECKETT: No objection, Your Honor.

22 THE COURT: From the defense?

23 MR. CALDERON: No objection, Your Honor.

24 THE COURT: Court's Instruction Number 18,
25 definition of punitive damages, any objection from the

1 plaintiff?

2 MR. BECKETT: No objection, Your Honor.

3 THE COURT: From the defense?

4 MR. CALDERON: No objection, Your Honor.

5 THE COURT: Court's Instruction Number 19, duty to
6 deliberate, any objection from the plaintiff?

7 MR. BECKETT: No objection, Judge.

8 THE COURT: From the defense?

9 MR. CALDERON: No objection, Your Honor.

10 THE COURT: Court's Instruction Number 20 on the
11 use of electronic aids, any objection from the plaintiff?

12 MR. BECKETT: No objection, Judge.

13 THE COURT: From the defense?

14 MR. CALDERON: No objection, Your Honor.

15 THE COURT: Court's Instruction Number 21, on the
16 election of a foreperson, any objection from the plaintiff?

17 MR. BECKETT: No objection, Your Honor.

18 THE COURT: From the defense?

19 MR. CALDERON: No objection, Your Honor.

20 THE COURT: Does the plaintiff have any
21 instructions that are not included in the Court's package
22 that you'd like to make argument for inclusion?

23 MR. BECKETT: No, Your Honor.

24 THE COURT: Does the defense have any instructions
25 that are not included in the Court's package that you would

1 like to argue for inclusion?

2 MR. CALDERON: No, Your Honor.

3 THE COURT: All right. Great. So I'll get my
4 clerk to put those in final form.

5 And it's my practice to have two sets of the
6 instructions go back with the jury at the time of their
7 deliberations. They'll be stripped of all headers and all
8 authorities so that what they will get will be a booklet
9 that's in script form with no information at all.

10 I'll also make a copy of the index that I prepared
11 that you all had last evening. And that will be made a
12 part of the record in the event it becomes necessary for
13 the Court of Appeals to understand my rationale for giving
14 or declining to give any instructions or any modifications
15 that were made. Okay?

16 Now, let's talk about the verdict form. I
17 mentioned to you -- this is corrected.

18 I mentioned to you last evening I had some
19 concerns about the verdict form. I don't know if you all
20 had a chance to talk about it amongst yourselves or whether
21 you have an agreed verdict form that you'd like to put
22 forward. I'm open to that if you do.

23 As I mentioned to you last evening, my concern was
24 I, at least in my own research, have not found a lot of --
25 I haven't found much case law that's instructive on this

1 question about the individualized elements of recovery
2 under the Torture Victim Protection Act.

3 I did take a look at the instructions that were
4 given in the Southern District case that was recently
5 affirmed by the Eleventh Circuit. And I noticed that the
6 verdict form there was fairly similar to the one that you
7 all had submitted with the claimants lumped together.

8 I don't know whether that was ever argued or
9 whether it even ever came up at the time that case was
10 tried.

11 But were any of you all involved in that case?

12 MS. ROBERTS: No, Your Honor.

13 THE COURT: No?

14 MS. ROBERTS: Which case is it, Your Honor?

15 THE COURT: I don't remember the name of it.

16 MS. ROBERTS: I'm sorry. My organization was
17 involved. I wasn't personally involved.

18 THE COURT: But in any event, before I create a
19 problem where there's not one, let me ask, Mr. Beckett,
20 what about the verdict form? Have you all had a chance to
21 talk about the verdict form? Or do you have one that you'd
22 like me to consider?

23 MR. BECKETT: We've discussed it, Judge. And
24 we've discussed it with our colleague here. I think our
25 position is this verdict form should work.

1 It does ensure that only the Estate of Victor Jara
2 has the claim for torture, and then it does break out the
3 claims to some degree for extrajudicial killing.

4 It's true that the family members, I think, are
5 grouped. But to us, I think it's difficult -- it would be
6 difficult for the jury to assess damages to each individual
7 family member, surviving family member.

8 So our position is we think the form is fine, but
9 we will defer to the Court.

10 And the Court suggested another approach. The
11 other approach being, I think, breaking out each surviving
12 family member. We have no objection to that.

13 THE COURT: Is there general agreement?

14 And let me get in front of me the one that you all
15 are agreeing -- or the one that you're talking about,
16 Mr. Beckett, so I make sure I've got the right iteration.

17 MR. BECKETT: Judge, I'm afraid I have a digital
18 version. May I hand this up?

19 THE COURT: Sure.

20 I had marked one up and made changes to it so many
21 times, I can't remember which one is the original I started
22 out with.

23 This is the one that you all submitted as part of
24 your joint pretrial submission?

25 MR. BECKETT: Correct, Your Honor.

1 THE COURT: Have you had any change of heart on
2 that, Mr. Calderon, in terms of your view of whether
3 it's --

4 MR. CALDERON: No, Judge. I think I referred to
5 the same case that the Court is talking about, the 2015
6 case out of the Southern District.

7 There was discussion with regards to torture only
8 being available to the Estate, which I think this verdict
9 form reflects.

10 And then the question that the Court suggested was
11 whether or not to divide each individual surviving member
12 of the family on the verdict form in distinct groups.

13 I don't -- I agree that it would be difficult for
14 the jury to assess that. But I would leave it in the
15 Court's discretion. I don't, however, have any objection
16 to them being grouped together.

17 MR. BECKETT: I think we're in accord, Judge, if I
18 can just say the plaintiffs' agree with Your Honor's view
19 of the law which you expressed yesterday. We think this
20 complies with that.

21 The only question is the one that we've identified
22 as to whether each surviving family member should be broken
23 out in a separate line.

24 THE COURT: All right. Well, far be it for me to
25 interfere in your agreed version. If you all are agreed on

1 this version, then I'm prepared to give it. I don't think
2 there's anything incorrect about it.

3 I think the only question is the one that I raised
4 about whether or not it's more appropriate to individualize
5 the recovery of compensatory damages amongst the family
6 members.

7 And since you don't have a strong view on that,
8 Mr. Beckett, and it's my understanding you don't object to
9 the consolidation of those claims -- and that seems to be
10 Mr. Calderon's preference -- then I will go with the one
11 that you submitted jointly. And we'll use that verdict
12 form.

13 MR. BECKETT: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 So is there anything else that we need to take up
16 while we have a few minutes?

17 MR. BECKETT: There may be. Can I just consult my
18 colleague for one moment?

19 THE COURT: Surely.

20 MR. BECKETT: Judge, there is one other issue. It
21 appears that the defendant is being asked questions of a
22 very limited nature. And under normal circumstances,
23 perhaps that would be appropriate.

24 Yet in this case, we had testimony from at least
25 three additional witnesses and a lot of new additional

1 information has come through those witnesses.

2 And based on that and the defendant's neutrality
3 to the case, I would like to ask the Court for permission
4 to ask limited questions about some of the additional
5 information, especially the nature of alibi defense
6 testimony, that has come in through the proceedings in the
7 last couple of days.

8 I'm mindful of the Court's concern about time.
9 And we've already committed to ensuring that this cross
10 will be no more than an hour. And I would be very hopeful
11 that it would be less than that.

12 If that is not the Court's view, then we would
13 reserve the right to call Mr. Barrientos as a rebuttal
14 witness at the close of the defendant's case.

15 THE COURT: All right. Well, I'm going to, as I
16 mentioned to you last evening, I am going to restrict the
17 cross-examination to the scope of the direct examination.

18 Whether or not Mr. Barrientos has testimony that
19 is, in fact, rebuttal, you certainly have a right to recall
20 him. I'll reserve the right to determine for myself
21 whether I think the questions are, in fact, rebuttal of
22 anything that came out during the defense case.

23 So we're going to proceed in that fashion. You
24 certainly have a right to put on a rebuttal case. I'm not
25 going to preclude you from doing that. But it also has to

1 be rebuttal, not things that I thought of that I wished I
2 had asked earlier.

3 MR. BECKETT: Understood, Your Honor.

4 THE COURT: All right.

5 Anything else, Mr. Calderon, from your point of
6 view?

7 MR. CALDERON: Judge, just in response to that,
8 the witnesses that testified here to date were disclosed at
9 the appropriate time.

10 Opposing counsel had the opportunity to depose
11 those witnesses, chose not to. So this information really
12 isn't new. It's just that they were never deposed.

13 THE COURT: I think I understand -- I think I
14 understand the lay of the land. Mr. Beckett's position is
15 that the trial testimony of some of these witnesses raises
16 issues that they'd like to reexplore with Mr. Barrientos,
17 at least to some extent.

18 Your argument is that they had every opportunity
19 to do that. They knew what was coming. They could have
20 done it. They could have called Mr. Barrientos live if
21 they wanted to in their case in chief. They didn't do
22 that.

23 Obviously, those are strategic decisions that the
24 lawyers make that I certainly don't second guess.

25 But you have a right to put him on in rebuttal, as

1 I said already. And if it is, in fact, rebuttal, then
2 you'll be permitted to ask him questions about it.

3 If it's, again, in the category of things that
4 could have been explored earlier that are not really in
5 rebuttal that came in on the defense case, then I'd likely
6 sustain an objection.

7 MR. CALDERON: Understood, Judge.

8 MR. BECKETT: Understood, Judge.

9 THE COURT: Okay. If I could ask you all to
10 vacate the front row of seats, then I've got a change of
11 plea that I need to take up here in just a moment. I'll
12 give you all a chance to get relocated. And I'll come back
13 for my criminal proceeding.

14 MR. BECKETT: Judge, I'm sorry. A colleague of
15 mine -- one more issue. It will be short.

16 First of all, I want to make sure the Court has no
17 issue with counsel arguing or including the text of the
18 instructions, limited text in closing argument.

19 THE COURT: I don't -- I'm going to give the
20 instructions first. That's my --

21 MR. BECKETT: Understood.

22 THE COURT: -- general practice. So those
23 instructions will have already been delivered. So you can
24 use text of the instructions as part of your presentation.

25 MR. BECKETT: Thank you.

1 THE COURT: Obviously, as long as it's exactly as
2 I have given them.

3 MR. BECKETT: Second -- the second question,
4 Judge, is that my colleague here, Mr. Calderon, opened on a
5 view of the law which was that any gaps in the evidence had
6 to be filled by the plaintiffs.

7 We don't think that that is in accord with the
8 law, nor is it in accord with the instructions that counsel
9 and the Court have just agreed upon.

10 And I would not want to object to my friend's
11 closing argument. But if that comes up, I reserve the
12 right to do that. And I'm just calling that out now.

13 I don't think that's an accurate statement of the
14 law. I don't think it's consistent with Your Honor's
15 instructions. In fact, I think it's patently inconsistent
16 with your instructions.

17 And I will alert the jury to that. And if it's
18 required that I make an objection, I am reserving the right
19 to do that.

20 THE COURT: And you always have a right to object
21 if you think an improper closing argument is taking place.
22 And we all know the perils of that. But, you know, I'll
23 leave that to your discretion. It's hard for me to
24 anticipate what the argument is going to be.

25 If you think the argument is improper, just as if

1 Mr. Calderon thinks the argument is improper, it's not only
2 appropriate, it's the responsibility of the lawyer to raise
3 an objection.

4 MR. BECKETT: Thank you, Judge.

5 THE COURT: You're welcome.

6 All right. I'll be back in just a few minutes to
7 take up the change of plea.

8 (Recess at 8:23 a.m. to 9:23 a.m.)

9 THE COURT: We're back on the record in Jara
10 versus Barrientos Nunez, 6:13-civil-1426.

11 The Court notes all counsel and parties are
12 present, and Mr. Barrientos is back in the witness stand.

13 While our jury is away, Mr. Calderon, we had left
14 last evening with the question of what type of advice did
15 you receive?

16 I'd like for you to pursue that line of
17 questioning in the form of a proffer while our jury is
18 away. And I'll give you a definitive ruling on the defense
19 objection to exclude that testimony on the grounds of
20 hearsay.

21 MR. CALDERON: Okay. And so the Court, the
22 question -- and does the Court want me to proffer the
23 answer as well or just the question?

24 THE COURT: Just ask the witness the question, and
25 we'll see what he says.

1 BY MR. CALDERON:

2 Q Mr. Barrientos, what type of advice did you receive
3 from Mr. Armesto?

4 A Well, when I visited Mr. Armesto, he advised me to
5 first get ahold of all of the documents so I could find out
6 what I was being accused of, what I was being accused of in
7 Chile.

8 Q And what kind of advice would you have categorized
9 that as?

10 A Well, he would represent himself as an attorney at the
11 beginning because he would even say my colleagues would say
12 this and my colleagues would say that.

13 Q Did he give you legal advice with respect to this
14 case?

15 A Well, when I got served at home in the month of
16 September, I contacted this gentleman so he could serve to
17 help me as my legal counsel. Because I looked for other
18 attorneys, and they didn't want to defend me.

19 And then he told me that the notification had gone
20 there from the Court saying that the case had been
21 transferred from Titusville to Orlando.

22 Q Now, was -- did you follow his advice with respect to
23 this case?

24 A Well, yes. Because first he told me, well, you know,
25 the things that, the way you were served at your house,

1 that's outside. It's out of everything. Wait until you
2 get served again.

3 And that was the advice that I thought in mind, the
4 way that I saw things, I perceived it as legal advice.

5 Q Were the actions that you took, were the actions that
6 you took based solely on his advice?

7 A Yes.

8 Q With respect to service, were the actions you took
9 based solely on his advice?

10 A Exactly, yes.

11 Q Did he give you any advice with regards to, any legal
12 advice with regards to your assets?

13 A Yes. He told me I should put everything in a trust.

14 Q What items or what assets were put into that trust?

15 A I placed my house in there.

16 Q How much is your house worth?

17 MR. BECKETT: Objection. I know this is a
18 proffer, but I would object on separate grounds.

19 THE COURT: Okay. That objection would be
20 sustained.

21 BY MR. CALDERON:

22 Q Okay. And besides your house, any other assets?

23 A My house was the most important. Because I had a
24 car -- I actually have two cars. No. At that time, it was
25 only one car.

1 THE COURT: I'm going to stop you there,
2 Mr. Barrientos.

3 Mr. Calderon, I think I've heard enough. I'll
4 give you an opportunity to make your record fully if you,
5 if there's more that you want to put on. It didn't go
6 exactly where I thought it was going.

7 But I'm not persuaded -- I'm open to be persuaded,
8 but I'm not immediately appreciating the significance or
9 the relevance of the testimony as it relates to the service
10 of process issue.

11 So that's question number one that I have.

12 With respect to the actions that Mr. Barrientos
13 took with respect to his assets, I would permit him to
14 testify as to whether or not he met with the lawyer; did he
15 receive advice from the lawyer; based on the lawyer's
16 advice, did he take action; what action did he take. But
17 I'm not going to permit him to testify as to what
18 specifically the lawyer told him.

19 So that would be -- so the hearsay objection is
20 going to be at least sustained in part. I'm not going to
21 permit this witness to relate specifically what he was
22 advised by the lawyer.

23 But I will permit him to testify that he met with
24 the lawyer; he got advice from the lawyer; and that in
25 response to the advice he took certain action, whatever

1 that is, with relation to his assets.

2 I don't know if you intended to go, if you
3 intended for the witness to respond with respect to the
4 service of process issues or if it was really, if it was
5 nonresponsive to your question.

6 But if you do intend to try to establish that in
7 the presence of the jury, maybe there's no objection to it.
8 But in the interest of time, I don't understand its
9 relevance. Help me with that.

10 MR. CALDERON: Okay. Your Honor, that was one of
11 the things. So the way that I see the case -- and I think
12 it's of significant value with respect to this witness'
13 credibility -- is whether there is some efforts to
14 basically avoid the suit because he believes that he's
15 liable prior to the suit even going forward.

16 And, therefore, that any efforts to evade service
17 or transfer assets was basically an admission of liability,
18 basically him preemptively assuming that he would be found
19 liable.

20 And, therefore, we want to explain to the jury why
21 that action was taken, that it was based purely on the
22 advice of this individual who's not a lawyer and
23 essentially would be moot based on information he learned
24 later, that this was basically a scam to get money from him
25 and all the advice was wrong.

1 THE COURT: Okay. Well, same ruling. I'm not
2 going to permit him to testify specifically what the lawyer
3 told him.

4 But I will permit him to testify that he met a
5 lawyer, or he met someone who held themselves out as a
6 lawyer or who he believed to be a lawyer, that that
7 individual gave him some information or advice. And he can
8 testify as to what he did in response to that.

9 But I want to make sure that you advise the
10 witness while the jury is outside the courtroom that he's
11 not going to be permitted to testify as to what the lawyer
12 told him, no specifics about the conversation he had with
13 the lawyer, just what he did in response to that advice.

14 MR. CALDERON: And, Your Honor, if I can just add
15 that these are specific, these are in response to specific
16 designations from Mr. Barrientos' depositions that were played.

17 They actually played the portions of the
18 deposition where he refers to writing on the envelope,
19 return to sender. And he actually said that it was this
20 individual that told him to do that.

21 So we're just giving some more context to other
22 advice that he was given by this individual.

23 THE COURT: Okay. I'm going to stand on my
24 ruling.

25 MR. CALDERON: Absolutely, Judge.

1 THE COURT: Are you ready to proceed, Mr. Beckett?

2 MR. BECKETT: Yes, sir.

3 THE COURT: Ready to proceed, Mr. Calderon?

4 MR. CALDERON: Judge, if I could just have a
5 moment to speak with the witness?

6 THE COURT: Yes, surely.

7 Miss Silva, would you bring our jury back, please,
8 ma'am.

9 MR. CALDERON: As requested by the Court, I've
10 explained to the witness that he's not to discuss what he
11 was actually told by the individual, Mr. Armesto.

12 THE COURT: Thank you, Mr. Calderon.

13 (Jury entered the courtroom at 9:34 a.m.)

14 THE COURT: Welcome back, ladies and gentleman. I
15 hope you had a pleasant evening.

16 Thank you for being back on time promptly. I
17 apologize for the delay. I think I mentioned to you I had
18 a criminal proceeding I had to take care of this morning.

19 And that, ironically, also required an
20 interpreter. And the interpreter got caught up in the
21 traffic, and so we started off a little bit behind the
22 eight ball. But I think we're doing all right on time.

23 Let me ask you first, were all of you able to
24 follow my instructions not to discuss the case amongst
25 yourselves or with anyone else?

1 JURY: Yes.

2 THE COURT: Thank you.

3 When we adjourned last evening, we were in the
4 midst of the direct examination of Mr. Barrientos. We're
5 going to pick up with that this morning.

6 Mr. Calderon, you may inquire.

7 MR. CALDERON: Thank you, Your Honor.

8 **CONTINUED DIRECT EXAMINATION**

9 BY MR. CALDERON:

10 Q Good morning, Mr. Barrientos.

11 A Good morning.

12 Q Mr. Barrientos, when we left off yesterday, we had
13 talked about an individual that you had met with in regards
14 to this case, a Mr. Armesto?

15 A That's correct.

16 Q Now, Mr. Armesto, did he give you any type of advice?

17 A Yes.

18 MR. BECKETT: Objection to the question.

19 THE COURT: Objection is overruled.

20 BY MR. CALDERON:

21 Q What type of advice did he give you?

22 A About my case.

23 Q And when you say your case, are you referring to this
24 case?

25 THE INTERPRETER: Correction by the interpreter.

1 About my house.

2 BY MR. CALDERON:

3 Q Okay. Did he give you advice on anything else?

4 A That they had to serve me again at home.

5 Q Was that in reference to this case?

6 A Exactly.

7 MR. BECKETT: Your Honor, I'm going to object on
8 grounds of relevance with respect to questions about
9 service of process.

10 THE COURT: Objection is overruled.

11 BY MR. CALDERON:

12 Q Did you follow this advice?

13 A Yes, I did follow it. All of it.

14 Q Did you take any actions based on this advice?

15 A Yes, I took action based on the advice that he gave
16 me.

17 Q With respect to the issue of service, what actions did
18 you take based on that advice?

19 A I placed my house in a trust.

20 Q Okay. Now, I'm asking you with respect to the
21 service, with respect to paperwork in regards to this case.

22 A He told me that --

23 MR. BECKETT: Objection. Grounds of hearsay.

24 THE COURT: Sustained.

25 BY MR. CALDERON:

1 Q Without telling me what he said, tell me what you did.

2 A Okay. What I did is all documents that arrived to my
3 P.O. Box, I would just send it back to the sender.

4 Q Was that based on the advice that Mr. Armesto gave
5 you?

6 MR. BECKETT: Objection. Leading question.

7 THE COURT: I'm going to allow it. Objection
8 overruled.

9 THE WITNESS: Exactly.

10 BY MR. CALDERON:

11 Q With respect to your house, what actions did you take
12 based on Mr. Armesto's advice?

13 A I put my house in a family trust.

14 Q In order to do that, did you take any other action?

15 A No.

16 Q Did you make a will?

17 A Oh, yes. I did create a will. And created a -- it
18 was actually three documents. Another one was like last
19 something -- I can't remember what it was, but it was, in
20 fact, three documents that he had me do.

21 Q And why did you believe that that was necessary?

22 A I thought it was necessary in order to protect my
23 interests.

24 Q And why did you think that?

25 MR. BECKETT: Judge, may we approach on a question

1 regarding an issue I'd like to raise?

2 THE COURT: Okay.

3 (Discussion at sidebar on the record.)

4 MR. BECKETT: Judge, I'm worried about the
5 faithfulness of this translation. The witness just said in
6 Spanish that the person to whom he's referring made him do
7 something. And that didn't come across at all. And that's
8 an important part of the testimony that he's giving here
9 today that's being missed.

10 So we're not getting a faithful translation on
11 these points. And I'm a little concerned about that.

12 MR. CALDERON: What was the English translation?

13 MR. URRUTIA: It wasn't that at all.

14 (Speaking Spanish.)

15 The translator didn't say anything to that effect
16 whatsoever.

17 MR. CALDERON: What did the translator say? Can
18 we read back what he said, please?

19 THE COURT: The question was, and why did you
20 believe that was necessary?

21 The answer was, I thought it was necessary in
22 order to protect my interests.

23 MR. BECKETT: Was it the question above that one?

24 MR. CALDERON: I think it was the one before that
25 with reference to the three documents. Is that what you're

1 referring to?

2 THE COURT: Bear in mind, this is realtime.

3 MR. URRUTIA: It was the question before the one
4 that was just presented, his answer. And then his answer,
5 he said he made me do, and whatever the series of actions
6 that he listed, the three documents or something like that.

7 THE COURT: He said -- the question was, did you
8 make a will?

9 He said, yes, I did.

10 MR. BECKETT: That's the one.

11 THE COURT: It was actually three documents.

12 MR. URRUTIA: That's the one, yes.

13 THE COURT: He says, I can't remember what it was.
14 But it was, in fact, three documents.

15 MR. URRUTIA: He said he made me. He went into
16 the three documents.

17 MR. CALDERON: If the Court and counsel is okay, I
18 can ask him. It will be a leading question, but I can ask
19 him with reference to those three documents, did he make
20 you execute those documents?

21 MR. BECKETT: Yeah, I think we could use that as a
22 curative.

23 THE COURT: Okay. Thank you.

24 (End of discussion at sidebar.)

25 THE COURT: All right. Mr. Calderon, you may

1 inquire.

2 MR. CALDERON: Thank you, Your Honor.

3 BY MR. CALDERON:

4 Q Mr. Barrientos, earlier you stated that you executed
5 three documents.

6 Did Mr. Armesto make you execute those three
7 documents?

8 A Of course he did.

9 Q Were you forced to?

10 A No.

11 Q Was there any pressure on his part with respect to
12 filling out those documents?

13 A I think so, because he told me they were going to take
14 everything away from me.

15 Q And did you --

16 MR. BECKETT: Move to strike that last answer as
17 nonresponsive, Judge.

18 THE COURT: Motion is granted.

19 The jury will disregard the witness' last
20 response.

21 MR. CALDERON: Okay. And I'll rephrase.

22 BY MR. CALDERON:

23 Q So did you feel -- without saying what he told you,
24 did you feel like he was pressuring you to fill out those
25 documents?

1 MR. BECKETT: Objection. Leading question, Judge.

2 THE COURT: Sustained.

3 BY MR. CALDERON:

4 Q With respect to those three documents, were you
5 pressured to fill them out?

6 A Well, I did feel pressure because I was afraid that I
7 would lose my house, which is the only thing that I have.

8 Q Did Mr. Armesto charge you for --

9 MR. BECKETT: Judge, I'm going to object to the
10 last question and answer as in violation of the motion in
11 limine in this case.

12 I don't want to give the grounds before the jury,
13 but I'm happy to do that.

14 THE COURT: Why don't you come to sidebar so I can
15 follow you.

16 (Discussion at sidebar on the record.)

17 MR. BECKETT: Judge, the motion in limine in this
18 case specifically states the parties cannot comment on the
19 economic resources of either of the parties.

20 And this gentleman was just asked why he was
21 fearful. Perhaps it was a nonresponsive answer, but he
22 said "that's all I have," indicating his relative
23 impecunity, which is directly violating the order.

24 THE COURT: All right. How do you want me to deal
25 with it? Do you want a limiting instruction?

1 MR. BECKETT: Yes, just --

2 THE COURT: Do you want me to advise the jury that
3 the wealth of the parties is not a factor, or do you want
4 me to leave it alone?

5 MR. BECKETT: I'd like you to give a limiting
6 instruction, Judge.

7 THE COURT: Mr. Calderon?

8 MR. CALDERON: I have no objection to that.

9 THE COURT: Okay. Thank you.

10 (End of discussion at sidebar.)

11 THE COURT: Let me see the lawyers back at sidebar
12 for just a moment.

13 (Discussion at sidebar on the record.)

14 THE COURT: As I pushed away to begin to give the
15 limiting instruction, it dawned on me there's a claim for
16 punitive damages in this case. So I'm not sure that the
17 instruction is entirely appropriate.

18 You've not offered any evidence as to the
19 financial resources of the defendant. So I'm assuming that
20 you're not going to ask for punitive damages based on his
21 ability to pay them. Punishment, financially.

22 But I just don't want us going down that road if,
23 in fact, we're creating a problem where none existed
24 before.

25 In other words, if I instruct the jury that they

1 are not to consider the financial resources of the parties,
2 that -- I guess you all have stipulated to that. There is
3 a column for punitive damages.

4 So is that of any concern to you?

5 MR. BECKETT: Yes, it is, Judge. What I would
6 propose is that we just strike the last answer and the jury
7 be asked -- well, let's let it go.

8 THE COURT: You want to withdraw your objection?

9 MR. BECKETT: I want to withdraw it.

10 THE COURT: Thanks.

11 (End of discussion at sidebar.)

12 THE COURT: All right. Sorry, ladies and
13 gentleman. We're set now, I think, for at least another
14 few minutes.

15 You may inquire, Mr. Calderon.

16 MR. CALDERON: Thank you, Your Honor.

17 BY MR. CALDERON:

18 Q And did you pay Mr. Armesto for his services?

19 A Yes.

20 Q And how much did he charge you?

21 A \$1800.

22 Q Did you later find out that the actions you took
23 weren't necessary?

24 A Yes, of course. They were not necessary because --
25 because in a civil case, whether I lose or win, they cannot

1 take my house away from me.

2 MR. BECKETT: Objection as to the defendant's
3 explanation of the law, Judge.

4 Move to strike the answer.

5 THE COURT: Well, ladies and gentleman, what the
6 defendant understands to be the law may or may not be
7 correct. But what he believed to be the law is what the
8 testimony is. So consider it in that limited context and
9 that context only.

10 You may inquire.

11 BY MR. CALDERON:

12 Q And upon learning this, how did that make you feel?

13 A Tricked.

14 Q I'm sorry?

15 A Tricked. That he had fooled me.

16 Q Tricked. Okay.

17 Mr. Barrientos, in September of 1973, how many
18 lieutenants were assigned -- or how many lieutenants -- how
19 many soldiers at the rank of lieutenant in Santiago?

20 MR. BECKETT: Objection, Judge. This was asked
21 and answered during direct testimony.

22 THE COURT: I'm going to permit it.

23 The objection is overruled.

24 THE WITNESS: About a thousand. And then a
25 thousand under-lieutenants. And then about 5,000 soldiers.

1 BY MR. CALDERON:

2 Q Now, Mr. Barrientos --

3 MR. CALDERON: If I could have one minute,
4 Your Honor?

5 THE COURT: Yes.

6 MR. CALDERON: Nothing further, Your Honor.

7 THE COURT: Cross-examination?

8 **CROSS EXAMINATION**

9 BY MR. BECKETT:

10 Q Good morning, Mr. Barrientos.

11 A Good morning, sir.

12 Q Mr. Barrientos, isn't it true that once you learned
13 that you were the subject of an investigation in Chile, you
14 took steps immediately to protect your assets?

15 A Immediately, so long as I was being investigated in
16 Chile.

17 Q Let me ask the question a different way.

18 In 2012, you became aware that you were the subject of
19 an investigation in Chile, correct?

20 A Because of this case here.

21 Q No. Mr. Barrientos, in 2012, you learned that you
22 were the subject of a criminal investigation in Chile as a
23 result of an interview you had with the FBI, correct?

24 A Exactly, yes.

25 Q So it was on the basis of that criminal investigation

1 that you then took steps to protect your assets, correct?

2 A No.

3 Q Okay. Do you recall giving a deposition in this case,
4 the case in which we're engaged today, on November 10,
5 2015, here in Orlando?

6 A Excuse me. Two thousand?

7 Q '15.

8 A Yes.

9 Q And you recall that you took an oath to tell the truth
10 in connection with your testimony during that deposition?

11 A Yes. Exactly.

12 Q And you were represented by counsel during that
13 deposition, correct?

14 A Exactly.

15 Q I'm going to show you a transcript from that
16 deposition.

17 THE COURT: Is the transcript in English,
18 Mr. Beckett?

19 MR. BECKETT: Fortunately, Judge, it is.

20 THE COURT: Well, just read us the question and
21 answer, and tell us the page and line, and ask the witness
22 if he made that statement.

23 MR. BECKETT: Very good.

24 BY MR. BECKETT:

25 Q This is on page 293 to 294.

1 "Question." This is line 21 on page 293.

2 "Okay. So once you learn that you were the subject of
3 an investigation in Chile" --

4 THE COURT: You're going to need to slow up a
5 little bit, both for the court reporter and for Mr. Icaza.

6 MR. BECKETT: My apologies to both.

7 BY MR. BECKETT:

8 Q -- "into the death of Victor Jara --"

9 And I'm going to skip over an interplay with the
10 interpreter.

11 MR. CALDERON: I'm going to object, Your Honor,
12 under the rule of completeness. The interpretation is
13 material to the response.

14 THE COURT: All right. Read it all, please,
15 Mr. Beckett.

16 BY MR. BECKETT:

17 Q "The Interpreter: Once you learned that you were --
18 could you -- I'm sorry. A suspect. Okay. I couldn't
19 remember.

20 "Mr. Beckett: A suspect.

21 "Question: You immediately took steps to protect your
22 assets, correct?"

23 I'm going to move to the witness' answer over the
24 objections.

25 "Answer: Yes."

1 A Correct.

2 Q You told us a moment ago you took steps to protect
3 your assets because of this case, correct?

4 A Yes.

5 Q But in this deposition on November 19 -- or
6 November 10, 2015, you told us the reason you took these
7 steps was because of an investigation in Chile, correct?

8 A Exactly.

9 Q In fact, in 2012, you had not been served with any
10 papers in connection with this proceeding, this proceeding
11 here in this court, correct?

12 A That is correct.

13 Q So the reason you were protecting your assets at that
14 time in 2012 had absolutely nothing to do with the
15 proceeding in which we're engaged today, correct?

16 A That is correct.

17 Q So what you said a moment ago to your lawyer,
18 Mr. Calderon, was not accurate, correct?

19 A About what?

20 Q What you said to Mr. Calderon about the fact that you
21 went to protect your assets because of this case was false,
22 correct?

23 A (Speaking.)

24 Q Can you answer that question yes or no? What you told
25 Mr. Calderon a moment ago about protecting your assets was

1 false, correct?

2 A I was protecting my assets.

3 Q I'll ask one more time. What you told Mr. Calderon a
4 moment ago about the reason for protecting your assets and
5 that it had something to do with this case here in this
6 courtroom was false, correct?

7 MR. CALDERON: Your Honor, I'm going to object as
8 to a compound question. I think the witness is confused.

9 THE COURT: Objection is overruled.

10 BY MR. BECKETT:

11 Q Yes or no, sir?

12 MR. CALDERON: Your Honor, can we approach?

13 THE COURT: No.

14 MR. CALDERON: With respect to the translation --

15 THE COURT: Do you have an issue with the
16 translation?

17 MR. CALDERON: Yes, Judge. The question was case,
18 and the interpreter said trial.

19 THE COURT: All right. Let's ask the question
20 again.

21 Mr. Icaza, please be faithful to a verbatim
22 translation as best you're able.

23 Let me pose the question. The question is --
24 well, go ahead, Mr. Beckett. You ask the question.

25 BY MR. BECKETT:

1 Q What you told Mr. Calderon earlier today about the
2 reason for protecting your assets was false, correct?

3 A Correct.

4 Q When you went to protect your assets, you did so
5 voluntarily, correct?

6 A Of course, yes.

7 Q No one forced you to go find an attorney or another
8 advisor to assist you in protecting your assets, correct?

9 A That is correct.

10 Q You took those steps because you were concerned that
11 you had become the subject of a criminal investigation into
12 the death of Victor Jara in Chile, correct?

13 A Of course, yes. That is the case.

14 Q You've talked a lot about a man named Eladio, correct?

15 A He was the one who gave me all of the support.

16 Q You knew when you went to speak to Mr. Eladio that he
17 was not a lawyer, correct?

18 A He represented himself as my colleague's attorney.

19 But later on, I found out and I realized that he was not an
20 attorney.

21 Q And after you went -- when did you find out that he
22 was not an attorney, sir?

23 A After he drew up the documents.

24 Q No. I have a question for you.

25 After you learned that Mr. Eladio was not a lawyer,

1 you continued to take advice from him, correct?

2 A Yes, that is correct.

3 Q So at that point, it didn't matter to you that he
4 wasn't a lawyer. You still wanted his advice, correct?

5 A Yes, that's correct.

6 MR. BECKETT: Judge, may I just have one minute
7 please?

8 THE COURT: Yes.

9 MR. BECKETT: No further questions, Judge.

10 THE COURT: Any redirect, Mr. Calderon?

11 MR. CALDERON: Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MR. CALDERON:

14 Q When you discussed the case, what are you referring
15 to?

16 MR. BECKETT: Objection, Judge. Nonspecific
17 question. Calls for a vague answer.

18 We don't have any reference points.

19 THE COURT: Objection is overruled.

20 THE WITNESS: Well, that's the case. The case
21 where I'm being accused of the death of Victor Jara.

22 BY MR. CALDERON:

23 Q Is the FBI investigation part of that case?

24 MR. BECKETT: Objection. Leading question.

25 THE COURT: Sustained.

1 BY MR. CALDERON:

2 Q What specific parts of this process since 2012 do you
3 consider part of this case?

4 A Well, from the moment I got served at my house and all
5 documents had gone to my house.

6 Now, what happened with the FBI, it was a petition, an
7 international petition from the Government of Chile for me.

8 Q In response to your, to the prior question by
9 Mr. Beckett, did you consider the FBI part, the FBI
10 investigation part of that?

11 A No. It was an international petition, a request,
12 international petition but was not about the case. In
13 fact, as a matter of fact, I was served. This is, I think,
14 in the year 2012.

15 And from what I understand, this case has the date of
16 2013.

17 Q When did you take any action to, when did you first
18 take any action regarding your assets?

19 A When I was served for the first time in the month of
20 September.

21 Q Of what year?

22 A I'm not sure. I think it's the year 2013.

23 Q When did you first meet Eladio Armesto?

24 A I met him after I was served.

25 Q What year was that?

1 A Well, when this case started. I'm not sure. 2013.

2 Yes, 2013.

3 MR. CALDERON: No further questions.

4 THE COURT: Thank you, Mr. Barrientos. You can
5 step down.

6 Call your next witness.

7 MR. CALDERON: Your Honor, at this time the
8 defense would rest.

9 THE COURT: Does the plaintiff have any rebuttal
10 evidence?

11 MR. BECKETT: Judge, may we have a minute?

12 THE COURT: Yes, you may.

13 MR. BECKETT: Thank you.

14 THE COURT: All right. Ladies and gentleman,
15 we've concluded the defense portion of the presentation of
16 the evidence.

17 I've inquired of the plaintiff as to whether or
18 not they have any evidence that they consider to be
19 rebuttal evidence. They're going to confer and let me
20 know. And so we'll just stand by.

21 MR. BECKETT: Thank you.

22 Judge, we do have a short rebuttal.

23 THE COURT: All right.

24 MR. BECKETT: I'd like to call to the stand Pedro
25 Pablo Barrientos.

1 THE COURT: All right. Mr. Barrientos, would you
2 come back to the witness stand, please, sir.

3 Mr. de la Mora, would you remind Mr. Barrientos
4 he's still under oath, please.

5 Oh, I'm sorry. We're going to use Mr. Icaza.
6 Mr. Icaza, would you just remind Mr. Barrientos he's still
7 under oath, please.

8 THE WITNESS: Yes, correct.

9 THE COURT: You may inquire.

10 MR. BECKETT: I would ask for permission, Judge,
11 to publish for the witness and for the jury Joint Exhibit
12 Number 62.

13 THE COURT: You may proceed.

14 MR. BECKETT: Thank you.

15 **DIRECT EXAMINATION**

16 BY MR. BECKETT:

17 Q Mr. Barrientos, you have on your screen a document
18 that is in evidence as Joint Exhibit Number 62.

19 We're displaying the whole document, so you can take a
20 look at it.

21 A Yes. There's a document.

22 Q There's no question pending. I just want to make sure
23 that you've had a chance to look at the document.

24 Do you recognize this document?

25 A Yes.

1 Q Okay. And this exhibit actually -- this is a
2 quitclaim deed, correct?

3 A Yes.

4 Q And this is one of the documents that you were
5 referring to in your direct examination of Mr. Calderon on
6 the defendant's case, correct?

7 A Yes.

8 Q And this is one of the documents that you executed in
9 connection with this case?

10 A Yes, that is correct.

11 Q And the purpose of this document was to assist you in
12 protecting your assets, correct?

13 A That is correct.

14 Q If you look at the date recited in this document, in
15 the first line, it says that this quitclaim deed was
16 executed on the 25th of April, 2012, correct?

17 A That was not correct.

18 Q April 24th, 2012, was the date of your FBI
19 interview, your interview with the FBI, correct?

20 A That is correct.

21 Q So then if we look at the bottom of this document, the
22 second page, it recites again, "Witness my hand and
23 official seal in the county and state last aforesaid this
24 25th day of April, 2012."

25 Correct? Do you see that?

1 So that also says that this was executed the day after
2 your interview with the FBI in 2012?

3 A My signature is not there, but the date is incorrect.

4 Q We'll come to that, sir. We'll come to that.

5 Let's go back to page 1 of this document.

6 And when we look at the bottom of the document, your
7 signature does appear there. That's your signature,
8 correct?

9 A Yes, it is correct.

10 Q And there's the signature of Maria Yolanda Figueroa.
11 And she was your ex-wife at the time, correct?

12 A She is my ex-wife, yes.

13 Q And let me take you to -- let's go to page 2 of this
14 document, please. Page 3 of this document.

15 This is the Barrientos family trust document, correct?

16 A That is correct.

17 Q And this is another document that you wanted to put
18 together to protect your assets, correct?

19 A Yes, that's correct.

20 Q Let's go to the next page, please, the next page.
21 Please go up.

22 Go to the first page again. I missed something. I
23 apologize. No, the first page of the trust document. I'm
24 referring to page 3. This is the Bates stamp page 3 of
25 Joint Exhibit 62.

1 And at the top of that document, you'll see the title,
2 the Barrientos family trust irrevocable declaration of
3 trust agreement.

4 Do you see that language?

5 A That is correct. But the date is not. The date is
6 not correct.

7 Q The date, again, is April 25th, correct?

8 A That is correct.

9 Q Okay. And then let's page down. Page down to --
10 again, again, please. And now we're on JTX-26 and
11 generated page 9.

12 Is that your signature there, sir, at the top of this
13 page?

14 A That is correct.

15 Q And we then see your name about halfway down the page.
16 And we see the date of 25th April 2012, correct?

17 A Yes, that is correct.

18 Q Now, you've told us that the date of April 25th,
19 2012, which was one day after your FBI interview, is not
20 correct.

21 And that's because when you executed these documents,
22 you were attempting to backdate them; is that correct?

23 A I was not trying to backdate that document. I was
24 tricked. He would say, sign here, sign here, sign over
25 here. And I trusted that person.

1 Me, for the depositions, when I submitted these
2 documents to you, I realized that the date was not correct.

3 Maybe if the gentleman -- maybe this gentleman had
4 written down the 24th. That would not have been
5 correct either because that was the date I was providing an
6 interview or a statement to the FBI.

7 And under -- and at that moment, I felt confident that
8 there was no case for this trial.

9 Q Sir, I think that's a long response that may not have
10 been responsive to my question.

11 The date, April 25th, 2012, was the actual date,
12 because what you did is that you immediately went to
13 Mr. Eladio after your interview and urgently took steps to
14 protect your assets, correct?

15 A (Speaking.)

16 Q Is that correct, sir? Yes or no?

17 A That is correct. In the document --

18 Q I'm asking you is that correct, yes or no?

19 A It is correct.

20 Q I think you may have misunderstood my question, so I
21 want to be clear.

22 Isn't it true that on April 25th, the day after
23 your FBI interview, you urgently ran to Mr. Eladio and
24 asked him to help you protect your assets. And that's when
25 you signed this document that we've been looking at in

1 JTX-26?

2 Correct? Correct, yes or no?

3 A Correct.

4 Q So what you told us a moment ago when you said that
5 this was the false date, not a true date, was wrong.

6 Correct?

7 That was wrong, correct? Yes or no?

8 A Yes.

9 Q Thank you.

10 THE COURT: Mr. Beckett, you referred to the
11 Exhibit as JTX-26. It's actually JTX-62.

12 MR. BECKETT: I'm sorry. I was inverting the
13 numbers. A little bit of dyslexia.

14 JTX-62. Thank you.

15 BY MR. BECKETT:

16 Q Now, you've told Mr. Calderon in the defendant's case
17 earlier today that you met Mr. Eladio in 2013, correct?

18 A That is correct.

19 Q But you really met him 2012, correct?

20 No, I'm sorry.

21 You really met him in 2012, yes or no?

22 A Yes.

23 Q So when you told Mr. Calderon that the first time you
24 met Mr. Eladio was in 2013, that was wrong, correct?

25 A That is correct.

1 MR. BECKETT: No further questions.

2 THE COURT: Cross-examination?

3 MR. CALDERON: Thank you, Judge.

4 **CROSS EXAMINATION**

5 BY MR. CALDERON:

6 Q Mr. Barrientos, do you remember meeting with the FBI?

7 A Yes.

8 Q Do you recall what you did the next day?

9 A The next day I was moving to -- I was moving to
10 another house because I had just bought a new house.

11 Q And during that day, did you meet with Eladio Armesto?

12 A That's what I'm trying to explain. No.

13 Q Please explain.

14 MR. BECKETT: Object to the question. That calls
15 for a narrative response.

16 THE COURT: Sustained.

17 BY MR. CALDERON:

18 Q Could you explain -- could you explain why it's not
19 possible that you met with Eladio the day after your FBI
20 interview?

21 A Yes.

22 Q Could you please explain why?

23 A This was the year 2012. And in 2013, I was served
24 with documents from the attorneys from the Jara family.

25 And that is when I looked for the help from Eladio.

1 But at that time, in 2012, I didn't know Eladio,
2 because there was no case, there was not a case against me.

3 It was -- it was only statements or a -- that was
4 only -- I don't remember what the name is. It was an
5 answer of some questions that were asked by the Government
6 in Chile regarding the case of Victor Jara in Chile. It
7 was not a case here.

8 Q So if you did not meet with Eladio Armesto on
9 April 25th, is the date on this document correct?

10 MR. BECKETT: Please translate the question and
11 the answer.

12 THE WITNESS: Exactly.

13 BY MR. CALDERON:

14 Q Mr. Barrientos, please wait for the interpreter to
15 interpret the question before you respond. Okay?

16 Mr. Barrientos, if you did not meet with Eladio on the
17 25th of April, 2012, is the date on the documents
18 correct?

19 MR. BECKETT: Objection. Asked and answered.

20 THE COURT: Objection is overruled.

21 THE WITNESS: That is what I was explaining to
22 the attorney of the Jara family, that the date -- if he
23 presents a document on the 24th, that I took the
24 document to the courts regarding the house as I presented
25 it to Eladio, after I got back from Miami, I went to the

1 court in DeLand to present documents regarding my home to
2 be included in the court -- to be registered in the court.
3 That's what Eladio told me to do.

4 Before that --

5 BY MR. CALDERON:

6 Q Now -- go ahead.

7 MR. BECKETT: Objection to responsiveness.
8 Hearsay.

9 THE COURT: This is not responsive to the question
10 that was asked.

11 So I'm going to instruct the jury to disregard the
12 witness' response to the last question.

13 Let's get a new question and see if we can get
14 back on track, Mr. Calderon.

15 MR. CALDERON: Thank you, Your Honor.

16 BY MR. CALDERON:

17 Q Mr. Barrientos, did you record -- or I apologize.

18 Is the date on this document, April 25th, 2012,
19 the date -- is that date, correct? Is that the date you
20 met with Eladio Armesto?

21 MR. BECKETT: Asked and answered, Judge.

22 THE COURT: I'll permit it one more time.

23 Objection is overruled.

24 THE WITNESS: Can I hear the question again?

25 BY MR. CALDERON:

1 Q This document has the date of April 25th, 2012.

2 Is that date correct as to when you signed this document?

3 A No.

4 Q Did you record this document or file it with the
5 court?

6 A I took it next year, September 2013.

7 Q So if you were concerned -- if it were filed -- or if
8 this document were executed on April 25th of 2012,
9 given the circumstances, would you have waited one full
10 year to record this document?

11 A No.

12 Q Did you file this document immediately after it was
13 executed?

14 A Yes.

15 Q Did you notice at any point in time prior to filing
16 this document that the date was incorrect?

17 A No, I didn't notice.

18 MR. CALDERON: No further questions.

19 THE COURT: Redirect, Mr. Beckett?

20 MR. BECKETT: Thank you, Judge.

21 **REDIRECT EXAMINATION**

22 BY MR. BECKETT:

23 Q Mr. Barrientos, it's your testimony based on questions
24 from Mr. Calderon that you filed this document in September
25 of 2013, correct?

1 A That is the document that you have and that I gave to
2 you during the deposition.

3 Q Okay. It's your testimony that you signed the
4 document in or about September 2013, correct?

5 A In September, yes.

6 Q And you're sure about that? You signed this document
7 in September of 2013? That's your testimony, right?

8 A Yes. Even though the document says that it was a year
9 before.

10 Q And you signed this in September of 2013, just to be
11 clear, correct?

12 MR. CALDERON: Objection, Your Honor. Asked and
13 answered.

14 THE COURT: Overruled.

15 THE WITNESS: Yes. That's correct.

16 MR. BECKETT: Judge, I'd like to publish one more
17 time JTX-62, Joint Exhibit 62.

18 THE COURT: You may proceed.

19 MR. BECKETT: Thank you.

20 THE COURT: We need to put some batteries in the
21 microphone.

22 Thank you, Mr. Carter.

23 All right. You may proceed to publish Joint
24 Exhibit Number 62.

25 And you may inquire.

1 MR. BECKETT: Thank you.

2 BY MR. BECKETT:

3 Q Okay. I'm showing you now on your screen the document
4 we've previously discussed, Joint Exhibit 62. And this is
5 the document you say was signed in September of 2013.

6 I'm referring you to the second page of that document.
7 And specifically the fact that -- well, this stamp right
8 here. You know a notary stamps documents, right?

9 A Yes.

10 Q And this is a notary stamp, correct?

11 A Yes.

12 Q And this notary's stamp says that the notary's
13 commission expires in April of 2013, correct?

14 A Yes, correct.

15 Q Sir, does this refresh your recollection as to when
16 this document was actually signed?

17 A My memory, but that document was signed the next year,
18 in September.

19 MR. BECKETT: Thanks very much.

20 No further questions, Judge.

21 THE COURT: Thank you. You can step down,
22 Mr. Barrientos.

23 Any further evidence?

24 MR. BECKETT: No, sir.

25 THE COURT: All right. Ladies and gentleman,

1 we've reached that portion of the case where the evidence
2 is all in. I need to get the courtroom rearranged a little
3 bit. I'm going to let you all take your morning break
4 while we do that.

5 When you come back from your break, I'm going to
6 give you your instructions on the law first. After which
7 the lawyers will be given an opportunity to make their
8 closing arguments to you.

9 We are, if we have not already, we're going to
10 give you some menus and let you order in some lunch.

11 And has that already happened?

12 THE DEPUTY CLERK: Yes, sir.

13 THE COURT: Great. As usual, my very efficient
14 staff is way ahead of me.

15 We're going to do that while the proceedings are
16 ongoing. And so when you come back, I'll give you your
17 instructions on the law. And we'll go directly into the
18 lawyers' closing arguments.

19 I'll likely give you an opportunity to take a
20 quick break and stretch in between them, just so that you
21 can, you know, stay as fresh as possible.

22 When you come back, you can put your notepads
23 away. It won't be necessary for you to take notes of my
24 instructions because I'm going to give you written copies
25 of them to take back with you. And I'd like to have your

1 undivided attention.

2 So I know some of you have been very dutiful about
3 your notetaking, but if you can do me the favor of just
4 giving me your undivided attention when you come back,
5 we'll proceed with your instructions, the closing
6 arguments, and then you all will be allowed to retire and
7 begin your deliberations.

8 We'll be in recess then until 10:45.

9 (Jury exited the courtroom at 10:31 a.m.)

10 THE COURT: Mr. Beckett, you and your team might
11 want to reposition the podium so that it's facing the
12 jurors and get that done during the break.

13 MR. BECKETT: Judge, just one question. Would it
14 be possible for the plaintiffs, if they so desire, to
15 reserve part of their opening as a rebuttal?

16 THE COURT: Yes, sir. Just let Miss Flick know.

17 Some lawyers don't like to be interrupted so I
18 like to be respectful of that. But if you want her to
19 interrupt you and remind you or tell you at some point you
20 have X minutes left, she'll be glad to do that. Just let
21 her know. If you want to be advised, tell her and she'll
22 do it.

23 MR. BECKETT: Thank you.

24 Judge, what I had in mind is that we might be able
25 to reserve ten minutes of our time for a statement after my

1 colleague's statement.

2 THE COURT: So you want to be notified at
3 50 minutes?

4 MR. BECKETT: Yes.

5 But just to be clear, this would be like a
6 rebuttal statement, a statement in rebuttal following the
7 closing by the defense.

8 THE COURT: Well, you have -- you are entitled to
9 make opening and then rejoinder remarks.

10 MR. BECKETT: Okay. Thank you.

11 THE COURT: And if you want to reserve ten minutes
12 for your rejoinder remarks, I'll be happy to let Miss Flick
13 give you a notification that 50 minutes have expired and
14 you have 10 minutes remaining for your rejoinder.

15 MR. BECKETT: Thank you.

16 THE COURT: You're welcome.

17 I do want to make sure, while I have you all here,
18 I want to make sure that the lawyers look at the exhibits
19 carefully and make sure that what is in evidence is what is
20 supposed to be in evidence.

21 I know we had some exhibits that were altered in
22 some respect, redacted. But I'm going to count on the
23 lawyers to let Miss Flick know before those exhibits go
24 back that everything is in order.

25 Once you tell her that everything is in order,

1 then it will be on you. Okay? So I don't want it to be on
2 my clerk.

3 MR. BECKETT: Understood, Judge.

4 THE COURT: Or my courtroom deputy, I should say.
5 See you at 10:45.

6 (Recess at 10:33 a.m. to 10:47 a.m.)

7 THE COURT: We're back on the record in Jara
8 versus Barrientos Nunez, 6:13-civil-1426.

9 The counsel are back, but the parties are absent.
10 Are they en route back, Mr. Beckett?

11 MR. BECKETT: Yes. We just went to fetch them.

12 THE COURT: Okay. Are you ready to proceed?

13 MR. DELLINGER: I just want to point out for the
14 record, Your Honor, that pursuant to your instructions with
15 regard to the exhibits, we reviewed them during the break.
16 There's some audio files.

17 As I understand, the jury does have the ability to
18 listen or review those files back in chambers. Those are
19 part of the exhibits.

20 We've also jointly agreed to remove Exhibit
21 Number -- Joint Exhibit Number 108. And that has been
22 removed from the joint exhibit book.

23 THE COURT: Okay. Is that correct, Mr. Calderon?

24 MR. CALDERON: That's correct, Your Honor.

25 THE COURT: Are you satisfied with the state of

1 the exhibits?

2 MR. CALDERON: I am, Your Honor.

3 THE COURT: And you're satisfied, Mr. Dellinger
4 and Mr. Beckett?

5 MR. DELLINGER: Yes, Your Honor.

6 THE COURT: Thank you. Let's bring our jury back,
7 please, Mr. Carter.

8 COURT SECURITY OFFICER: Yes, sir.

9 THE COURT: The projector is not going to be
10 available unless you're going to reposition it because
11 you're going to be standing right in front of the
12 projection.

13 MR. BECKETT: Yes, Judge. We tested it on the
14 screen this morning.

15 Just give me ten minutes. Tell me at 45. That
16 would be great.

17 (Jury entered the courtroom at 10:49 a.m.)

18 THE COURT: All right. Welcome back, ladies and
19 gentleman. Thank you for your attention to the proceedings
20 through the last week and up to this point this week.

21 **JURY CHARGE**

22 It is now my responsibility to instruct you on the
23 rules of law that you must use in deciding this case. And
24 when I finish, you'll go to the jury room and begin your
25 discussions, which we sometimes refer to as your

1 deliberations.

2 Your decision, as I mentioned to you previously,
3 must be based only on the evidence presented here. You
4 must not be influenced in any way by either sympathy for or
5 prejudice against anyone.

6 You must follow the law as I explain it, even if
7 you do not agree with the law. And you must follow all of
8 my instructions as a whole. You must not single out or
9 disregard any of the instructions on the law.

10 As I said before, you must consider only the
11 evidence that I have admitted in the case. Evidence
12 includes the testimony of witnesses and the exhibits
13 admitted. But anything the lawyers say is not evidence and
14 is not binding on you.

15 You should not assume from anything I have said
16 that I have any opinion about any factual issue in this
17 case. Except for my instructions to you on the law, you
18 should disregard anything I may have said during the trial
19 in arriving at your own decision about the facts. Your own
20 recollection and interpretation of the evidence is what
21 matters.

22 In considering the evidence, you may use reasoning
23 and common sense to make deductions and reach conclusions.
24 You should not be concerned about whether the evidence is
25 direct or circumstantial.

1 Direct evidence is the testimony of a person who
2 asserts that he or she has actual knowledge of a fact, such
3 as an eyewitness.

4 Circumstantial evidence is proof of a chain of
5 facts and circumstances that tend to prove or disprove a
6 fact.

7 There is no legal difference in the weight that
8 you may give to either direct or circumstantial evidence.

9 Now, when I say that you must consider all the
10 evidence, I do not mean that you must accept all of the
11 evidence as true or accurate. You should decide whether
12 you believe what each witness had to say and how important
13 that testimony was. In making that decision, you may
14 believe or disbelieve any witness, in whole or in part.

15 The number of witnesses testifying concerning a
16 particular point does not necessarily matter.

17 To decide whether you believe any witness, I
18 suggest that you ask yourself a few questions:

19 Did the witness impress you as one who was telling
20 the truth?

21 Did the witness have any particular reason not to
22 tell the truth?

23 Did the witness have a personal interest in the
24 outcome of the case?

25 Did the witness seem to have a good memory?

1 Did the witness have the opportunity and ability
2 to accurately observe the things he or she testified about?

3 Did the witness appear to understand the questions
4 clearly and answer them directly?

5 Did the witness' testimony differ from other
6 testimony or other evidence?

7 You should also ask yourself whether there was
8 evidence that a witness testified falsely about an
9 important fact. And ask whether there was evidence that at
10 some other time a witness said or did something, or did not
11 say or do something, that was different from the testimony
12 the witness gave during this trial.

13 But keep in mind that a simple mistake does not
14 mean a witness was not telling the truth as he or she
15 remembers it. People naturally tend to forget some things
16 or remember them inaccurately.

17 So if a witness misstated something, you must
18 decide whether it was because of an innocent lapse in
19 memory or an intentional deception. The significance of
20 your decision may depend on whether the misstatement is
21 about an important fact or about an unimportant detail.

22 Now, when scientific, technical, or other
23 specialized knowledge might be helpful, a person who has
24 special training or experience in that field is allowed to
25 state an opinion about the matter.

1 But that does not mean that you must accept the
2 witness' opinion. As with any other witness' testimony,
3 you must decide for yourself whether to rely upon the
4 opinion.

5 Sometimes the parties have agreed that certain
6 facts are true. These agreements are called stipulations.
7 You must treat these facts as proved for this case.

8 The parties have stipulated to the following
9 facts:

10 1: In September 1973, defendant was a soldier in
11 the Chilean Army.

12 2: In September 1973, defendant was a lieutenant
13 at the Tejas Verdes School of Engineers.

14 3: In September 1973, the Tejas Verdes School of
15 Engineers was based in San Antonio, Chile.

16 4: In 1973, the Tejas Verdes Regiment contained a
17 battalion known as the Bronze Battalion.

18 5: The Bronze Battalion was commanded by Major
19 Alejandro Rodriguez Faine.

20 6: Within the Bronze Battalion were three combat
21 companies.

22 7: One of these companies was Second Combat
23 Company of the Tejas Verdes School of Engineers, Second
24 Company.

25 8: The Second Company was commanded by Captain

1 Luis German Montero Valenzuela.

2 9: After Captain Luis German Montero Valenzuela,
3 Lieutenant Pedro Pablo Barrientos Nunez, the defendant, was
4 the most senior officer in the Second Company.

5 10: As the second-highest officer in the Second
6 Company, defendant could issue orders to all individuals in
7 the Second Company, save for Captain Luis German Montero
8 Valenzuela.

9 11: The Second Company was composed of three
10 sections respectively: The First Section, Second Section,
11 and Third Section.

12 12: The First Section of the Second Company was
13 commanded by Lieutenant Pedro Pablo Barrientos Nunez, the
14 defendant.

15 13: The Second Section of the Second Company was
16 commanded by Sub-Lieutenant Rodriguez Rodrigo Fuschloger,
17 who was of a rank junior to defendant.

18 14: The Third Section of the Second Company was
19 commanded by Sub-Lieutenant Fernando Del Valle, who was of
20 a rank junior to defendant.

21 15: In September 1973, Manuel Rolando Mella San
22 Martin was a sergeant in the First Section of the Second
23 Company.

24 16: In September 1973, Victor Antilao was a
25 corporal in the First Section of the Second Company.

1 17: In September 1973, Nelso Artemio Barraza
2 Morales was a corporal in the First Section of the Second
3 Company.

4 18: In September 1973, Emilio Enrique Kifafi
5 Duran was a conscript soldier in the Second Company.

6 19: In September 1973, Ruben Vargas Matta was a
7 conscript soldier in the Second Company.

8 20: In September 1973, Francisco del Carmen
9 Quiroz Quiroz was a conscript soldier in the Second
10 Company.

11 21: In September 1973, Hector Manuel Hinojosa
12 Retamal was a conscript soldier in the Second Company.

13 22: In September 1973, Jose Benito Garcia Mella
14 was a conscript soldier in the Second Company.

15 23: In September 1973, Gustavo Baez Duarte was a
16 conscript soldier in the Second Company.

17 24: In September 1973, Mario Arturo Gonzalez
18 Riquelme was a conscript soldier in the Second Company.

19 25: In September 1973, Victor Rosendo Pontigo
20 Araya was a conscript soldier in the Second Company.

21 26: In September 1973, Manuel Isidoro Chaura
22 Pavez was a conscript soldier in the Second Company.

23 27: In September 1973, Carlos Daniel Rivero
24 Valenzuela was a conscript soldier in the Second Company.

25 28: In September 1973, defendant could issue

1 orders to all sergeants of the Second Company.

2 29: In September 1973, defendant could issue
3 orders to all corporals of the Second Company.

4 30: In September 1973, defendant could issue
5 orders to all conscripts of the Second Company.

6 31: In September 1973, defendant could issue
7 orders to all officers in the Second Combat Company, except
8 for Captain Luis German Montero.

9 32: In September 1973, defendant was the highest
10 ranking officer in the Second Combat Company directly below
11 Captain Luis German Montero.

12 33: A Luger is a type of pistol.

13 34: In September 1973, defendant's side weapon
14 was a Luger.

15 35: In September 1973, defendant also had an
16 Army-issued SIG rifle.

17 36: Mauser was a manufacturer of Luger.

18 37: On September 11, 1973, General Augusto
19 Pinochet led a military coup d'etat in the Republic of
20 Chile, the coup.

21 38: The coup overthrew the democratically elected
22 government of Salvador Allende.

23 39: On September 11, the defendant traveled from
24 San Antonio to Santiago.

25 40: On September 11, the Bronze Battalion of the

1 Tejas Verdes traveled to Santiago.

2 41: On September 11, defendant traveled to
3 Santiago with members of the Bronze Battalion of the Tejas
4 Verdes.

5 42: Between September 11 and September 17, the
6 Bronze Battalion from the Tejas Verdes School of Engineers
7 was in Santiago.

8 43: Between September 11 and September 17, the
9 Bronze Battalion from the Tejas Verdes School of Engineers
10 participated in the coup.

11 44: Defendant participated in the coup.

12 45: The Bronze Battalion participated in the
13 coup.

14 46: The Second Company arrived at 1724 Avenue
15 Almirante Blanco Encalada, Santiago, Chile, Arsenales de
16 Guerra, on the morning of September 11, 1973.

17 47: Defendant arrived at Arsenales de Guerra on
18 the morning of September 11, 1973.

19 48: At Arsenales de Guerra, defendant supervised
20 the distribution of armbands to other soldiers designed to
21 identify them as supporters of the coup.

22 49: On the morning of September 11, 1973,
23 defendant went with soldiers from the Second Company to
24 lead military patrols in and around the Presidential
25 Palace, or La Moneda, in Santiago.

1 50: On the morning of September 11, 1973,
2 defendant gave orders to soldiers in the First Section of
3 the Second Company.

4 51: During the coup and after the military junta
5 took power, perceived and actual political opponents of the
6 junta were detained, interrogated, tortured, and killed by
7 the Chilean Armed Forces.

8 52: Between September 11 and September 17, 1973,
9 defendant reported directly to Major Alejandro Rodriguez
10 Faine.

11 53: Between September 11 and September 17, 1973,
12 defendant traveled to the Ministry of Defense.

13 54: Between September 11 and September 17, 1973,
14 defendant received orders from members of the Chilean Armed
15 Forces at the Ministry of Defense.

16 55: Between September 11 and September 17, 1973,
17 defendant delivered reports to members of the Chilean Armed
18 Forces at the Ministry of Defense.

19 56: In 1973, Chile Stadium was a well-known
20 complex in Santiago, Chile.

21 57: After 1973, Chile Stadium continued to be a
22 well-known complex in Santiago, Chile.

23 58: From September 11, 1973, to approximately
24 September 17, 1973, members of the Chilean Armed Forces
25 brought perceived and actual political opponents of the

1 newly installed military dictatorship to detention centers
2 throughout Chile.

3 59: From September 11, 1973, to approximately
4 September 17, 1973, members of the Chilean Armed Forces
5 detained perceived and actual political opponents of the
6 newly installed military dictatorship.

7 60: From September 11, 1973, to approximately
8 September 17, 1973, members of the Chilean Armed Forces
9 brought individuals with leftist political ideologies to
10 Chile Stadium.

11 61: From September 11, 1973, to approximately
12 September 17, 1973, members of the Chilean Armed Forces
13 detained individuals with leftist political ideologies at
14 Chile Stadium.

15 62: On September 11, 1973, members of the Second
16 Company of Tejas Verdes were assigned to Chile Stadium.

17 63: On September 12, 1973, members of the Second
18 Company of Tejas Verdes were assigned to Chile Stadium.

19 64: On September 13, 1973, members of the Second
20 Company of Tejas Verdes were assigned to Chile Stadium.

21 65: On September 14, 1973, members of the Second
22 Company of Tejas Verdes were assigned to Chile Stadium.

23 66: On September 15 of 1973, members of the
24 Second Company of Tejas Verdes were assigned to Chile
25 Stadium.

1 67: On September 16, 1973, members of the Second
2 Company of Tejas Verdes were assigned to Chile Stadium.

3 68: On September 17, 1973, members of the Second
4 Company of Tejas Verdes were assigned to Chile Stadium.

5 69: Members of the Second Company guarded
6 detainees at Chile Stadium.

7 70: Members of the Second Company guarded Victor
8 Jara at Chile Stadium.

9 71: Victor Jara was shot in the head, and by
10 multiple additional gunshot wounds to his body, which
11 caused his death.

12 In this case, Plaintiff Joan Jara, in her capacity
13 as the personal representative of the Estate of Victor
14 Jara, claims that the defendant is liable for the torture
15 of Victor Jara.

16 Additionally, Plaintiff Joan Jara, in her
17 individual capacity and in her capacity as the personal
18 representative of the Estate of Victor Jara, as well as
19 Plaintiffs Amanda Jara Turner and Manuela Bunster, in their
20 individual capacities, claim that the defendant is liable
21 for the extrajudicial killing of Victor Jara.

22 The defendant denies those claims.

23 In this case, it is the responsibility of
24 plaintiffs to prove every essential part of their claims by
25 a preponderance of the evidence. This is sometimes called

1 the burden of proof or the burden of persuasion.

2 A preponderance of the evidence simply means an
3 amount of evidence that is enough to persuade you that the
4 plaintiffs' claim is more likely true than not true.

5 If the proof fails to establish any essential part
6 of a claim or contention by a preponderance of the
7 evidence, you should find against the plaintiffs.

8 When one or more claim is involved, you should
9 consider each claim separately.

10 In deciding whether any claim has been proved by a
11 preponderance of the evidence, you may consider the
12 testimony of all of the witnesses, regardless of who may
13 have called them, and all of the exhibits received in
14 evidence, regardless of who may have produced them.

15 If the proof fails to establish any essential part
16 of the plaintiffs' claims by a preponderance of the
17 evidence, you should find for the defendant as to that
18 claim.

19 Plaintiffs claim that defendant committed the
20 extrajudicial killing of Victor Jara.

21 The term extrajudicial killing means a deliberate
22 killing not authorized by a previous judgment pronounced by
23 a regularly constituted court affording all of the judicial
24 guarantees which are recognized as indispensable by
25 civilized people.

1 It does not include any such killing that, under
2 international law, is lawfully carried out under the
3 authority of a foreign nation.

4 To succeed on their claim for extrajudicial
5 killing, plaintiffs must prove by a preponderance of the
6 evidence that:

7 1. Defendant deliberately killed Victor Jara.

8 2. Defendant killed Victor Jara while acting
9 under the actual or apparent authority or color of law of
10 the Republic of Chile.

11 And 3. The killing was not previously authorized
12 by a judgment of a regularly constituted court affording
13 all the judicial guarantees which are recognized as
14 indispensable by civilized peoples.

15 I will provide some definitions to you to aid you
16 in your deliberations.

17 Acting under color of law means that a person is
18 acting or purporting to act in the performance of his
19 official duties. It means that the action is clothed with
20 the authority of the government. A person can act under
21 color of law even when his actions overstep or constitute
22 an abuse of the actor's legal authority.

23 A regularly constituted court is an independent
24 and impartial court established and organized in accordance
25 with the laws and procedures already in force in a country.

1 And it excludes all special tribunals. That is, courts or
2 tribunals created for a specific event.

3 The phrase judicial guarantees recognized as
4 indispensable by civilized people incorporates at least the
5 barest of those trial protections that have been recognized
6 by customary international law, including:

7 1. The right to a fair hearing, free from torture
8 of the accused and bribery of witnesses.

9 2. The right to a lawyer to represent the accused
10 without restrictions or undue pressure, and the right to
11 freely communicate with one's lawyer.

12 3. The right of access to evidence in the
13 possession of the prosecution that could potentially assist
14 the accused.

15 And 4. The right to have a conviction and
16 sentence reviewed by appeal to a higher court or tribunal.

17 As I previously mentioned, plaintiffs may prove
18 their claims by direct or circumstantial evidence.
19 Therefore, it is possible that plaintiffs prove
20 extrajudicial killing through the use of evidence that is
21 entirely circumstantial or through a combination of direct
22 and circumstantial evidence.

23 Plaintiff Joan Jara, in her capacity as the
24 representative of Victor Jara's Estate, alleges that
25 defendant tortured Victor Jara.

1 To prevail on this claim, Plaintiff Joan Jara must
2 prove by a preponderance of the evidence that:

3 1. Defendant intentionally subjected Victor Jara
4 to severe pain or suffering, whether physical or mental.

5 2. Defendant inflicted severe pain or suffering
6 on Victor Jara while acting under the actual or apparent
7 authority or color of law of the Republic of Chile.

8 3. Victor Jara was in the custody or physical
9 control of the defendant.

10 And 4. The severe pain or suffering was inflicted
11 for such purposes as obtaining from Victor Jara or a third
12 person information or a confession, punishing Victor Jara
13 for an act he or a third person committed or is suspected
14 of having committed, intimidating or coercing Victor Jara
15 or a third person, or for any reason based on
16 discrimination of any kind.

17 Torture can be either physical, mental, or both.

18 Severe physical pain or suffering may include, but
19 is not limited to, any of the following: Shooting,
20 suffocating, kicking, beating, use of electrical shock, or
21 any form of mutilation.

22 To constitute torture, mental pain or suffering
23 must be prolonged and must be caused by or result from the
24 intentional infliction or threatened infliction of severe
25 physical pain or suffering or the threat of imminent death.

1 You may refer to the previous instruction for the
2 definition of color of law.

3 Torture, like extrajudicial killing, can be proved
4 through either direct or circumstantial evidence, or
5 through a combination of both.

6 You may find defendant liable for the torture or
7 extrajudicial killing of Victor Jara under any of several
8 alternative theories of liability.

9 Thus, even if the plaintiffs have not shown by a
10 preponderance of the evidence that defendant personally
11 tortured or committed the extrajudicial killing of Victor
12 Jara, you may still find that he is nevertheless
13 responsible for the torture and/or extrajudicial killing of
14 Victor Jara under one or more of the following additional
15 theories of liability:

16 1. Aiding and abetting.

17 2. Conspiracy.

18 3. Command responsibility.

19 And/or 4. Joint criminal enterprise.

20 Each of these is a separate theory of liability.

21 You must consider them individually. You only need to find
22 in plaintiffs' favor on one of these five theories to hold
23 defendant liable with respect to each of plaintiffs'
24 claims.

25 If you find that plaintiffs have not carried their

1 burden of proof on any one theory of liability, that
2 finding does not affect your finding on any other theory of
3 liability.

4 For the defendant to be liable under a theory of
5 aiding and abetting, you must find that the plaintiffs
6 proved by a preponderance of the evidence as to each claim
7 that:

8 1. One or more of the wrongful acts that comprise
9 the claim -- that is, the torture and/or extrajudicial
10 killing of Victor Jara -- were committed.

11 2. That the defendant gave substantial assistance
12 to the person or persons who committed or caused one or
13 more of the wrongful acts that comprise the claim.

14 And 3. That the defendant knew that his actions
15 would assist in the wrongful activity at the time he
16 provided the substantial assistance.

17 Under an aiding and abetting theory of liability,
18 it is not necessary that the defendant knew specifically
19 which wrongful acts were being committed by the
20 perpetrators, so long as they were a natural and
21 foreseeable result of the activity that the defendant
22 helped to undertake.

23 For the defendant to be liable under a theory of
24 conspiracy, you must find that plaintiffs proved by a
25 preponderance of the evidence as to each claim that:

1 1. Two or more persons agreed to commit a
2 wrongful act.

3 2. Knowing of at least one of the unlawful goals
4 of the agreement and attending -- and intending to help
5 accomplish it, the defendant joined the agreement.

6 And 3. The torture or extrajudicial killing of
7 Victor Jara was committed in furtherance of the agreement
8 by someone who was a member of the agreement.

9 For a conspiracy to have existed, it is not
10 necessary that the conspirators made a formal agreement or
11 that they agreed to every detail of the conspiracy.

12 Proof of a tacit, as opposed to explicit,
13 understanding is sufficient to show agreement.

14 The existence of an agreement may be established
15 by circumstantial evidence. The very nature of conspiracy
16 frequently requires that the existence of an agreement be
17 proved by inferences from the conduct of the alleged
18 participants or from circumstantial evidence of a scheme.

19 Among other things, this may include the nature of
20 the acts done, the relationship between the
21 co-conspirators, the interests of the alleged
22 co-conspirators, and the relationship between the
23 co-conspirators and the actions.

24 For example, the proximity in time and place of
25 the acts and the duration of the actors' joint activity.

1 The exact limits of the scope of the plan need not
2 be known to each conspirator, nor is it necessary that the
3 identity of everyone involved in the conspiracy be known to
4 all of them.

5 Plaintiffs must only show that the conspirators
6 shared the same general conspiratorial objective, even if
7 their motives for desiring the conspiratorial objective are
8 not necessarily identical.

9 Knowledge and participation in the plan may also
10 be shown by circumstantial evidence.

11 A defendant can be found liable even if his
12 participation in the scheme is slight by comparison to the
13 actions of other co-conspirators.

14 Once the conspiracy has been formed, all of its
15 members are liable for injuries caused by wrongful acts
16 pursuant to or in furtherance of the conspiracy and all
17 acts that were the natural and foreseeable consequence of
18 the conspiracy.

19 A conspirator need not participate actively in or
20 benefit from the wrongful act in order to be found liable.
21 He need not even have planned or known about the injurious
22 action, so long as the purpose of the wrongful act was to
23 advance the overall objective of the conspiracy.

24 For the defendant to be liable under a theory of
25 command responsibility, you must find that the plaintiffs

1 proved by a preponderance of the evidence as to each claim
2 that:

3 1. A superior-subordinate relationship existed
4 between the defendant and the person or persons who
5 committed the torture and extrajudicial killing of Victor
6 Jara.

7 2. That the defendant knew or, in light of the
8 circumstances at the time, should have known that his
9 subordinates had committed, were committing, or were about
10 to commit unlawful acts, such as the torture and
11 extrajudicial killing of Victor Jara.

12 And 3. That the defendant failed to take all
13 necessary and reasonable measures to prevent or stop the
14 unlawful acts, such as torture and extrajudicial killing,
15 or failed to investigate or punish his subordinates for the
16 unlawful acts that they committed.

17 To establish a superior-subordinate relationship,
18 plaintiffs must prove by a preponderance of the evidence
19 that the defendant had effective control over the person or
20 persons who committed the torture and extrajudicial killing
21 of Victor Jara.

22 The effective control requirement is satisfied if
23 the defendant had the legal authority or practical ability
24 to exert control over such person or persons.

25 The defendant cannot escape liability where his

1 own action or inaction caused or significantly contributed
2 to a lack of effective control over his subordinates.

3 Even if the defendant lacked legal authority, he
4 nonetheless possessed effective control if he had the
5 practical ability to exert control over his subordinates.

6 Plaintiffs do not have to prove that the defendant
7 knew or should have known about the torture and/or
8 extrajudicial killing of Victor Jara specifically.

9 Rather, the knowledge requirement is satisfied if
10 the plaintiffs prove by a preponderance of the evidence
11 that the defendant knew or should have known that his
12 subordinates had committed, were committing, or were about
13 to commit torture and/or extrajudicial killing.

14 The defendant should have known that torture
15 and/or extrajudicial killing were being committed if his
16 subordinates were engaged in a pattern, practice, or policy
17 of committing torture and/or extrajudicial killing.

18 To establish the third element, plaintiffs must
19 prove that the defendant failed to take all necessary and
20 reasonable measures to prevent acts of torture and/or
21 extrajudicial killing, or failed to punish his subordinates
22 after the commission of acts of torture and/or
23 extrajudicial killing.

24 Failure to punish may be established by proof that
25 the defendant failed to properly investigate reliable

1 allegations of torture and/or extrajudicial killing
2 committed by his subordinates or failed to submit these
3 matters to appropriate authorities for investigation and
4 prosecution.

5 Under the law of command responsibility, an
6 officer cannot escape liability by claiming that he was
7 acting under orders from a higher authority.

8 For the defendant to be liable under a theory of
9 joint criminal enterprise, you must find that the
10 plaintiffs proved by a preponderance of the evidence, as to
11 each claim, that the defendant was involved in a joint
12 criminal enterprise that resulted in the torture and/or
13 extrajudicial killing of Victor Jara.

14 Although I have used the term joint criminal
15 enterprise, remember that you are not being called on to
16 decide a criminal case. As with the other claims,
17 plaintiffs' burden of proof is a preponderance of the
18 evidence, and not the higher burden of proof required in
19 criminal cases.

20 A joint criminal enterprise is a common plan or
21 purpose between two or more people to commit a wrongful
22 act. If the defendant is found to participate in a joint
23 criminal enterprise, then he is liable as a co-perpetrator
24 of wrongful acts that result from that enterprise.

25 To establish a joint criminal enterprise, the

1 plaintiffs must prove the following elements by a
2 preponderance of the evidence:

3 1. The existence of a common plan or purpose to
4 commit any wrongful act.

5 2. That the defendant committed an act that
6 either directly or indirectly contributed to the execution
7 of this common plan or purpose.

8 3. That the defendant committed this act with the
9 intention to participate in and further the common plan or
10 purpose.

11 And 4. That wrongful acts committed in the
12 execution of this plan resulted in the torture and/or
13 extrajudicial killing of Victor Jara.

14 The defendant can be held liable for acts
15 committed by a member of the joint criminal enterprise that
16 were not agreed upon in the common plan as long as:

17 1. The act was a natural and foreseeable
18 consequence of the enterprise.

19 2. The defendant was aware that the wrongful
20 conduct was a possible consequence of the joint criminal
21 enterprise.

22 And 3. Even with that awareness, the defendant
23 continued to participate in the enterprise.

24 A common plan or purpose need not be expressed but
25 can be inferred from the circumstances, such as the fact

1 that several people acted in unison.

2 Plaintiffs do not need to prove that the plan was
3 prearranged. Instead, plaintiffs can show that the plan
4 materialized spontaneously and without prior preparation.

5 Plaintiffs also do not need to prove that
6 defendant personally committed or personally participated
7 in any of the wrongful acts or that the defendant was
8 physically present during the commission of the wrongful
9 acts.

10 If you find in favor of any or all plaintiffs and
11 against the defendant, then you must determine an amount
12 that is fair compensation for the damages suffered by the
13 plaintiff or plaintiffs.

14 Compensatory damages seek to make the party whole.
15 That is, to compensate the plaintiffs for the damage
16 suffered as a result of the defendant's wrongful conduct.
17 The damages, if any, that you award must be full and fair
18 compensation, no more and no less.

19 If you decide to award compensatory damages, you
20 should be guided by dispassionate common sense. Computing
21 damages may be difficult, but you must not let that
22 difficulty lead you to engage in arbitrary guesswork.

23 On the other hand, the law does not require
24 plaintiffs to prove their losses with mathematical
25 precision but only with as much definiteness and accuracy

1 as the circumstances permit.

2 Compensatory damages are the measure of the loss
3 or injury sustained by the injured plaintiff and may
4 embrace shame, mortification, humiliation, indignity to the
5 feelings and the like. And they require no proof.

6 In particular, you may award compensatory damages
7 for pain and suffering and mental and emotional distress.
8 No evidence of the monetary value of such intangible things
9 as pain and suffering has been or need be introduced into
10 evidence.

11 There is no exact standard for fixing the
12 compensation to be awarded for these elements of damage.
13 Any award you make must be fair in light of the evidence
14 presented at trial.

15 You should consider the following elements in
16 determining the amount of compensatory damages to the
17 extent you find them proved by a preponderance of the
18 evidence:

19 1. Plaintiffs' physical and emotional pain,
20 suffering, and mental anguish.

21 And 2. Plaintiffs' physical and mental injury.

22 In addition to compensatory damages, you have the
23 discretion to award punitive damages. Unlike compensatory
24 damages, which are imposed to reimburse plaintiffs for
25 their injuries, punitive damages are designed to make an

1 example of the defendant's conduct so that others will not
2 engage in similar practices.

3 You may award punitive damages to plaintiffs if
4 they have proven that defendant's conduct was wanton and
5 reckless, not merely unreasonable.

6 An act is wanton and reckless if it is done in
7 such a manner and under such circumstances as to reflect
8 utter disregard for the potential consequences of the act
9 on the safety and rights of others.

10 The purpose of punitive damages is to punish a
11 defendant for shocking conduct in order to deter him and
12 others from committing similar acts in the future.

13 Punitive damages are intended to protect the
14 community and to express the jury's indignation at a
15 defendant's misconduct.

16 The award of punitive damages is within your
17 discretion. You are not required to award them. Punitive
18 damages are appropriate only for especially shocking and
19 offensive misconduct.

20 If you decide to award punitive damages, you must
21 use sound reason in setting the amount. It must not
22 reflect bias, prejudice, or sympathy toward any party.

23 But the amount can be as large as you believe is
24 necessary to fulfill the purpose of punitive damages.

25 There is no exact standard for fixing the amount of

1 punitive damages. Any award you make should be fair in
2 light of the evidence.

3 Should you award punitive damages to plaintiffs,
4 in fixing the amount, you must consider what is reasonably
5 required to accomplish the goals of punishing the defendant
6 and deterring others from committing similar acts.

7 You should also consider the degree of
8 reprehensibility of the defendant's conduct toward the
9 plaintiffs and the relationship between the harm suffered
10 by the plaintiffs and the amount of punitive damages you
11 are considering.

12 In sum, in computing punitive damages, you should
13 award the amount you find appropriate to punish the
14 defendant for the injuries to plaintiffs in this lawsuit
15 and to set an example to others that will deter them from
16 engaging in similar conduct.

17 Finally, you may consider the financial resources
18 of the defendant in fixing an amount of punitive damages.
19 However, I instruct you that the burden is on the defendant
20 to show that his financial circumstances warrant the
21 limitation of any award.

22 Of course, the fact that I have given you
23 instructions concerning the issue of the plaintiffs'
24 damages should not be interpreted in any way as an
25 indication that I believe the plaintiffs should or should

1 not prevail in this case.

2 Your verdict must be unanimous. In other words,
3 you must all agree. Your deliberations are secret. You
4 will never have to explain your verdict to anyone.

5 Each of you must decide the case for yourself but
6 only after fully considering the evidence with the other
7 jurors. So you must discuss the case with one another and
8 try to reach an agreement.

9 While you are discussing the case, do not hesitate
10 to reexamine your own opinion and change your mind if you
11 become convinced that you are wrong.

12 But do not give up your honest beliefs just
13 because others think differently or because you simply want
14 to get the case over with.

15 Remember that in a very real way, you are judges,
16 judges of the facts. Your only interest is to seek the
17 truth.

18 Now, when we come back after the closing
19 arguments, I'm going to give you some additional
20 instructions reminding you about avoiding any electronic
21 communications, things of that sort.

22 I don't know, of course, how long your
23 deliberations will take or whether or not you'll require
24 breaks during your deliberations. We'll cross those
25 bridges as we come to them.

1 For now, I want you to maybe stand and stretch for
2 a minute.

3 I'm going to turn it over to the lawyers. I'm
4 going to remind you that what the lawyers say is not
5 evidence. I don't believe that either of these lawyers
6 would intentionally mislead you in any way.

7 Their closing arguments are designed for them to
8 help review the evidence with you and explain to you at
9 least their view of what the evidence was and how it
10 relates to the issues that you're being called upon to
11 decide.

12 Should the lawyers recall evidence in a way that
13 differs or is inconsistent with the way, from the way you
14 recall the evidence, of course, you should rely upon your
15 own recollection of the evidence and not what the lawyer
16 says that it was or indicates they believe that it was.
17 Obviously, it's your recollection and memory that controls.

18 So why don't you stand and stretch for just a
19 minute, and I'll ask you that you give Mr. Beckett your
20 attention.

21 Under our procedure, because the plaintiff has the
22 burden of proof, Mr. Beckett has an opportunity to address
23 you initially. Afterwards, we'll hear from, I think --
24 Mr. Calderon, will you be making the argument for the
25 defense?

1 MR. CALDERON: Yes, Your Honor.

2 THE COURT: Mr. Calderon will have an opportunity
3 to address you, and then Mr. Beckett has reserved a small
4 portion of his time for what we call rebuttal to respond to
5 the arguments of Mr. Calderon.

6 Mr. Beckett, you may proceed.

7 Ladies and gentlemen, if you want to stretch for a
8 minute, feel free. Do you feel like you can sit for
9 another 45 or 50 minutes or so, or do you want to take a
10 break?

11 JURY: I'm fine.

12 THE COURT: Okay.

13 Mr. Beckett, you may proceed.

14 **CLOSING ARGUMENT BY THE PLAINTIFF**

15 MR. BECKETT: Thank you, Judge.

16 Good morning, ladies and gentlemen. I have a
17 chance now to chat with you a bit about the case in this
18 procedure we've all been involved with here for the last
19 eight days.

20 And I want to start that by talking a little bit
21 about the Jaras. Of course, you've met the Jaras by now.
22 And they're here in the courtroom, as they have been every
23 day, sitting back in the second row there before you. But
24 I want to show you the Jaras in a picture from another
25 time.

1 And I'm going to display JTX-29. This is a joint
2 exhibit on the screen.

3 This is a picture that we're told was taken in
4 1972 or '73, before the events of September 11th and
5 following days that we've spent so much time talking about
6 during our time together here.

7 Amanda was nine. Manuela was about 13. And, of
8 course, Joan was there. And there's Victor with his
9 guitar.

10 And this picture, in a way, encapsulates the
11 Jaras. They were a tight family unit, a lot of love in the
12 home, close; and Victor with his artistry and his music
13 wrapping around them like his love.

14 Now, you already know that the evidence in this
15 case shows that -- and I don't think there's any dispute
16 about this part of it -- that Victor's life came to an end
17 on September 15th after being brutally tortured when he
18 was killed with multiple bullet shots to the body.

19 Of course, the family didn't know that
20 immediately. They spent anxious days waiting for news
21 about what had happened with Victor. Of course, the
22 children didn't understand, but Joan did. She knew the
23 risks. She knew the danger he was in. She had known that
24 he was taken to Chile Stadium.

25 And you've heard a lot about Chile Stadium. And

1 I'm going to tell you a little more about it and remind you
2 of some of the things you've heard.

3 So they're waiting there in this apartment. And I
4 want to show you now an exhibit that's JTX-56 of the home
5 they had in Santiago.

6 And you heard the testimony from Hector Herrera, a
7 gentle soul, who came upon Victor's body when he was
8 working in the morgue and took it upon him to conduct this
9 terrible but necessary task of going to tell Joan what had
10 happened.

11 And you remember Hector comes to the door, rings
12 the bell, and a head pops out. It's Joan. He says she has
13 a worried look on her face.

14 Imagine how Joan felt. Victor was missing. She
15 was anxious. Days had gone by. No news from the junta or
16 anyone else about what had happened to Victor.

17 A strange man appears at your door. It doesn't
18 look like good news. So he came up, he gave her the news.

19 You remember the story of little Amanda running up
20 to him at the time, with a picture of her father saying, do
21 you know him? Do you know my father?

22 Making the task all that much more difficult for
23 Hector and increasing the pain for Joan.

24 In any event, as Joan has testified, at that point
25 her first life ended. Those were her words. That's what

1 she told you. The life that she and Victor had planned,
2 the life they wanted was gone. And in its place was a life
3 of mourning, of fleeing, of sorrowful remembrance, and of
4 searching.

5 Now, I'm not going to tell you that the Jaras'
6 lives were over at that point. They weren't. They're here
7 today, strong Chilean people. They've shown grace and
8 dignity here before you.

9 But their lives were changed. They were changed
10 in a way that would never be the same and in a way they
11 didn't plan.

12 Ladies and gentleman of the jury, I'm going to
13 submit to you that the evidence in this case shows
14 decisively that the defendant, Pedro Pablo Barrientos
15 Nunez, is responsible, legally responsible for the torture
16 and extrajudicial killing of Victor Jara.

17 I want to move to that part of the case, and then
18 I'll come back to the Jaras at the end.

19 Let me start a little bit by talking about the
20 proof. One thing that I think you should bear in mind, and
21 the judge has already gone through this with you, is that
22 in this case, you have a lot of agreed facts. Quite a
23 number, in fact. Those are the stipulations the judge read
24 to you.

25 You, of course, will read them and make of them

1 what you will. But these are the facts that have been
2 agreed by the lawyers in this case.

3 The critical stipulations that I would submit to
4 you you should consider are these. And I put them sort of
5 in one paragraph.

6 Victor Jara was a detainee at Chile Stadium from
7 September 11th through the 15th. And there he was
8 guarded by members of the Second Combat Company of Tejas
9 Verdes, in which defendant was the second-highest ranking
10 officer. And that Victor Jara was ultimately killed by
11 over 40 bullet wounds, including to the head.

12 Other facts are not really in heavy contention
13 here, I submit to you: The fact that Victor was in Chile
14 Stadium, indeed, from September 12th through September
15 15th; the fact that he was tortured there repeatedly
16 during that time period; and the fact that he was killed in
17 an extrajudicial killing on September 15th.

18 The judge has already told you about the burden of
19 proof. I'm not going to dwell on that, except to say he
20 has made it clear that this is not a criminal case. The
21 burden of proof here is not beyond a reasonable doubt. So
22 you can relieve yourselves of any burden you might have
23 felt in connection with the level of proof. It's a
24 preponderance of the evidence. The judge has told you what
25 that is.

1 Now I want to move to talking a little bit about
2 the events from September 12th to the 15th.

3 You've heard testimony and evidence during the
4 course of our time here together that in September of 1973
5 the Chilean military targeted its own people.

6 Professor Stern told you that the military took
7 the view that the real enemy was an internal enemy, people
8 within the country, citizens of Chile, who the military
9 junta deemed to be a threat.

10 Why were they a threat? Because they had
11 different political views, different beliefs, and they
12 believed in a change to the system, among other things.

13 This included young people at universities. And
14 you heard testimony about the military going to the State
15 Technical University where Victor had gone that day to play
16 for the President when he was to give this important
17 speech, this speech where he was to submit to the nation
18 that he would step down if the people voted that. But he
19 never gave that speech because he died that day after the
20 bombing of La Moneda.

21 The regime turned on its own children. It turned
22 on its own children in a very real way. And the initial
23 focus of a lot of that repression, a lot of the force, the
24 intimidation, the fear that was used against the people of
25 Chile who the state had determined had views that were

1 undesirable, was in Chile Stadium.

2 In Chile Stadium, among other things, there was a
3 conspiracy from September 12th through 15th to
4 detain, interrogate, torture, and kill people for their
5 political involvement, their desire for social change,
6 their politics, their music, their beliefs.

7 Now, I know you've heard a lot about Chile
8 Stadium. And I know the details aren't pleasant. But this
9 is the evidence, and it has to be faced.

10 You'll recall the various things that witnesses
11 told you about what happened there. You'll recall that
12 there was a gauntlet, a line of soldiers who prisoners had
13 to walk through as they entered the stadium where they were
14 kicked and beaten.

15 And you'll recall specifically that Victor was
16 pulled aside because he was recognized, and that he was
17 pistol-whipped and kicked.

18 You recall stories that seem unbelievable because
19 of their monstrosity. Naked professors, who a moment ago
20 or a day ago were grading papers, teaching classes, being
21 hit with nunchakus, with martial arts weapons.

22 A boy, 12 to 15 years old, obviously disoriented,
23 looking for a way to get out, half-crazed with fear, shot
24 by a soldier.

25 Tortured by hanging, by electric shocks. Bodies

1 piled so they could be seen by the other prisoners, to
2 intimidate them and create fear. Mass executions.

3 You heard one witness talk about 40 people who
4 were shot as they were running for the subway. Perhaps
5 they believed for a brief moment that they had a chance of
6 freedom. And they were shot in the back by the military.

7 A man whose head was smashed in with a rifle butt.

8 The things that are so terrible that you heard
9 testimony that one man climbed to the very top of the
10 stadium and threw himself off rather than endure the
11 horrors of that place.

12 And you heard that the terror for others was
13 increased by the screams of pain that resonated through the
14 stadium.

15 You heard about bodies tortured so badly that they
16 looked like zebras.

17 You heard a story about a conscript who was
18 ordered to kill someone; and when he couldn't do it, the
19 officer took the gun out of his hand and said, here's how
20 you kill, and shot a civilian in the head.

21 Bloody floors. Bodies carried to trucks. Bodies
22 stacked. This is the horror that was created at Chile
23 Stadium.

24 And it wasn't like it was just in one part of the
25 stadium. You've heard testimony that these sorts of abuses

1 occurred all throughout the stadium. In the hallways, in
2 the balconies, in the galleries, downstairs, underground,
3 torture, fear, intimidation, and extrajudicial killing were
4 being practiced.

5 Now, I want to take you to some evidence that you
6 heard last week. I think you recall that you saw a number
7 of videotapes. And I know they were long at times. We
8 tried to shorten them for you as much as we could and still
9 retain the important evidence.

10 And I want to stress the fact that when these
11 depositions were taken in Chile, that counsel for Defendant
12 Barrientos was present and was able to make any objections,
13 ask any questions they thought appropriate, and to allow
14 you to see any parts of those tapes that they wanted you to
15 see.

16 We should be clear about that. The judge has
17 instructed you that this is as if it were in-court
18 testimony.

19 I'd like to show you some slides to bring to your
20 remembrance some of the conscripts, because I don't think
21 we've talked about their testimony recently.

22 You'll remember that you heard the testimony of
23 Mr. Navarrete Barra. This is a photograph of him taken
24 from the deposition videotape.

25 Mr. Navarrete testified that Mr. Barrientos

1 repeatedly talked and bragged about shooting and killing
2 Victor Jara in Chile Stadium. And he testified
3 specifically that these statements were made both when
4 Mr. Barrientos appeared to be intoxicated and when he was
5 sober.

6 He said that Mr. Barrientos boasted by showing the
7 pistol, waving it, and saying, this is the gun I used to
8 kill Victor Jara.

9 And he was there with Lieutenant Smith, another
10 gentleman.

11 Mr. Navarrete, I submit to you, has no motive to
12 lie. Indeed, many of these conscripts testified, despite
13 their fear and concerns about the possible risk to them.
14 And they gave truthful testimony, I submit to you.

15 The judge said that you have to assess the
16 credibility of every witness. These witnesses came forward
17 to talk about a time that was difficult for them. I'm not
18 saying it was anywhere near as difficult as the suffering
19 that's been visited upon the Jaras. But they were, by and
20 large, young men at the time who were doing their
21 compulsory military service. And that has to be borne in
22 mind.

23 You also heard testimony from Mr. Barraza Morales.
24 He said that Mr. Barrientos accompanied the troops to Chile
25 Stadium, that Mr. Barrientos individually placed guards at

1 Chile Stadium around the stadium, in the stadium, outside
2 the stadium, to protect it. And he's described as being in
3 command of the guards.

4 Barrientos also -- I'm sorry. Mr. Barraza also
5 testified that Mr. Barrientos arrived minutes after that
6 civilian, that boy was shot. Why is that significant?
7 Because it took Mr. Barrientos only minutes to get there.

8 What does that tell us? That Mr. Barrientos was
9 there. He could arrive on the scene. He could restore
10 order and do what he thought was necessary, had been
11 ordered to do at that time. He was there.

12 You also heard from Garcia Mella, another
13 conscript. He said that Barrientos would meet with heads
14 of the stadium, downstairs in Chile Stadium. And I think
15 it's more than a fair inference for you to conclude that
16 his description of heads of the stadium means the people
17 running the stadium. The officers, those in charge.

18 He said that Barrientos always had a briefcase.
19 And you heard a lot about that briefcase. And we'll talk a
20 little more about that later.

21 I also want to bring to mind the fact that you
22 heard from Conscript Chaura, Chaura Pavez. He told you
23 that Barrientos signed the book that reported events that
24 occurred at Chile Stadium that was taken to the military
25 school.

1 He also told you that he cleaned the blood off the
2 floor underneath a chair where, in his words, people were
3 punished.

4 You also heard from Conscript Gonzalez Riquelme.
5 He said he saw Barrientos at Chile Stadium several times.
6 He said that Barrientos met with and spoke to other
7 officers at Chile Stadium, including in the hallways on the
8 lower level, and that Barrientos was present when the
9 detainees arrived at Chile Stadium on September 12th.

10 Now, let's just pause there for a moment. You've
11 already heard, and you know from the evidence about what
12 was visited upon the civilians when they entered the
13 stadium.

14 And what Gonzalez Riquelme says is that Barrientos
15 was there. At the very least, he observed the treatment
16 that was given to the civilians as they entered the
17 stadium.

18 September 12th is also the day, the evidence
19 shows, I would submit to you, that Victor Jara arrived at
20 the stadium, and he himself went through the gauntlet and
21 then was pulled out, as I've described before.

22 You also heard testimony from Conscript Rivero
23 Valenzuela. Mr. Rivero said that Barrientos gave orders at
24 Chile Stadium and could give orders to all in the Second
25 Company. He said that there were screams of pain from the

1 underground that wafted up into the stadium and could be
2 heard there.

3 Importantly, and I think this is something to bear
4 in mind, and I'll come back to it, he saw Quiroz at Chile
5 Stadium. You heard from Mr. Quiroz just yesterday.
6 Mr. Quiroz, who was the bodyguard of Mr. Barrientos.

7 Mr. Rivero said he was at Chile Stadium. If the
8 bodyguard was at Chile Stadium, then so was the lieutenant.
9 If Quiroz was there, then so was Barrientos.

10 Now, Mr. Rivero Valenzuela, it wasn't like he knew
11 why these questions were necessarily being asked, not that
12 he knew what was significant and what wasn't. He told what
13 he saw.

14 And then we had testimony from Mr. Vargas Matta.
15 Mr. Vargas Matta was not at Chile Stadium. He was at Padre
16 Hurtado. You heard a lot about Padre Hurtado, this small
17 town or way station almost between San Antonio and
18 Santiago, not that far at all from Santiago, where some of
19 the troops from the First Section of the Second Company
20 were stationed.

21 He said that he heard about the atrocities at
22 Chile Stadium when the soldiers returned. Soldiers talk.
23 They talk among themselves. They knew who to talk to and
24 who not to talk to. They didn't talk to the press. They
25 didn't talk to civilians. They talk among themselves. And

1 people knew what happened there. How could the soldiers
2 not talk about what had happened there, what they had seen,
3 the impact that it had had on them?

4 The conscripts weren't necessarily the ones
5 pulling the trigger and torturing, but they were there.
6 How do you not talk about that? How do others not know
7 about it?

8 Importantly, Mr. Vargas Matta said he never saw
9 Quiroz, the bodyguard we talked about a moment ago, at
10 Padre Hurtado. He was never there.

11 And yet Mr. Quiroz tells you, I was always there
12 during the period of September 12th through September
13 15, because Barrientos took me there and then visited
14 occasionally.

15 And then you heard from Mr. Baez Duarte. Mr. Baez
16 told you that Barrientos is giving daily orders at Chile
17 Stadium. That Barrientos observed detainee interrogation.
18 That Mr. Duarte, Mr. Baez Duarte, saw torture occur. He
19 saw it. And he saw dead bodies bruised like zebras. He
20 told you that he loaded bodies onto refrigerated trucks.

21 Professor Stern told you that Lieutenant Colonel
22 Contreras, back at San Antonio, at Tejas Verdes
23 headquarters, just before the coup requisitioned a number
24 of refrigerated trucks from the fish merchants in that
25 town. And here we have Baez telling you how he loaded

1 those trucks with bodies.

2 He also says that he saw Barrientos with Hinojosa
3 and Quiroz at Chile Stadium. Again, another sighting of
4 Quiroz. Quiroz, again, is Barrientos' bodyguard. Hinojosa
5 is also a bodyguard for Barrientos.

6 These are people who say they were never in Chile
7 Stadium. In fact, one of them says he was never within
8 two kilometers of Chile Stadium.

9 I want to focus now, having gone through a brief
10 summary of those witnesses, on what the evidence tells us
11 about actions taken by Barrientos at Chile Stadium.

12 And these are highlights. This is not all the
13 evidence. Nor did I give you all the evidence that related
14 to each of the conscripts that you saw the deposition
15 testimony.

16 So let's just list these. I'm not going to spend
17 a lot of time, besides a few of them.

18 Mr. Barrientos set up the stadium guards. We just
19 talked about that a moment ago.

20 He inspected the stadium guards. He inspected the
21 guards. In other words, he went around to make sure the
22 guards were doing their jobs, that they were properly
23 attired, that they were positioned where they were supposed
24 to be. He's responsible for that. He commanded the
25 stadium guards. He was speaking with Manriquez Bravo.

1 And you heard testimony, direct, sober, clear
2 testimony from Erica, Erica Osorio. And what she told you
3 was that Manriquez Bravo, this huge figure to the detainees
4 who made these bombastic intimidating announcements that
5 were intended to strike fear in the hearts of the civilians
6 there, was at the microphone when a man that she has
7 identified as Barrientos, a man whose picture she picked
8 out of a lineup, of a photo array, is there speaking as
9 Barrientos walks up.

10 And what he's saying is, he's telling the
11 civilians there, for every soldier that dies, ten of you
12 will fall.

13 Barrientos is feet away from him when this
14 statement is made. He walks up to him. And Erica tells
15 you that they talk, except that it's Barrientos doing the
16 talking. For four or five minutes Barrientos is talking.

17 And Manriquez Bravo, the supposed head of the
18 stadium, the major in charge of the stadium is listening,
19 he's listening, he's listening.

20 And Barrientos turns and walks away. And as he's
21 walking away, over the loudspeakers in sounds that everyone
22 can hear as they resonate through the stadium, Manriquez
23 Bravo says, now I know what I'm going to do with you.

24 And you remember that Erica said that at that
25 point she knew she was going to die. And the other people

1 sitting around her had the same reaction and started
2 crying. They are going to die.

3 He made that statement after a conversation with
4 this man, with the defendant.

5 Returning back to the actions, Mr. Barrientos was
6 present during detainee interrogations. He was signing and
7 carrying a book with orders, and he was carrying a
8 briefcase. A number of witnesses have said that. One
9 witness called it a James Bond briefcase. I'm not sure
10 what that means, but it's a briefcase.

11 He's in charge of the stadium, as I said a moment
12 ago. He was present at the entrance when the gauntlet
13 punishment was administered. He was seen speaking with
14 other officers. He was seen speaking with detainees.

15 The testimony that you heard, when he was
16 speaking, he was speaking with his arms akimbo, like this.

17 What does that tell you? Someone speaking with
18 arms on hips is asserting authority, asserting command,
19 asserting domination over the person that he's talking to.

20 So let's look at this in terms of numbers. The
21 evidence that you have seen shows you, I submit to you,
22 that there were over 20 sightings of Barrientos within a
23 four-day period -- September 12th, September 13th,
24 September 14th, September 15th -- by these people
25 who are listed out here. At least 20 sightings. Some of

1 them give estimates and ranges. We're being conservative
2 here when we say that, 20 sightings in 4 days.

3 If you would just do the average -- and I'm not
4 saying that would be fully representative. But if you were
5 to do it as a rough approximation, that would be five
6 sightings a day, five sightings a day.

7 Now, these are men who have their own tasks to do
8 in this horrible place. They're guarding. They're moving
9 bodies. They're doing whatever tasks one does in such a
10 place.

11 My point here is not to focus on the task but
12 merely to indicate that they're not looking at everything
13 else that's going on. They don't have time to observe
14 everything. They're working. They're doing what they've
15 been ordered to do. And yet, even with that, they have
16 seen Barrientos, on average, five times a day.

17 And I submit to you that the evidence from these
18 conscripts who have no motive to lie demonstrates that
19 Barrientos was present. Moreover, it demonstrates that he
20 was an active participant in the conspiracy.

21 Now, let's talk a little bit about knowledge.
22 Barrientos has knowledge for a variety of reasons. His
23 actions alone, his activities demonstrate he has knowledge
24 of what is happening there.

25 He hears the screams of pain. He must have

1 because they were resonating in the facility. Piles of
2 bodies are in the facility.

3 The pervasive nature of what happened in every
4 part of the stadium would mean that even a casual
5 interloper, someone who had just walked by the stadium or
6 walked through it -- God forbid why that would happen. But
7 if it did, that person would very quickly pick up on what
8 was going on repeatedly.

9 And he's not just present. He's not merely
10 present. He's ordering, commanding, observing,
11 participating in what's going on at the stadium.

12 There's a stipulation, as I mentioned earlier,
13 that the Second Company of Tejas Verdes guarded detainees
14 and guarded Victor Jara. And as you heard in the
15 stipulations, Lieutenant Barrientos is the second-highest
16 officer in the Second Company. Barrientos had authority.

17 We'll talk a little more about that. Professor
18 Stern told you he was a trusted officer, that the head of
19 Tejas Verdes would not send someone into this place without
20 trust, without being trusted.

21 And we've talked about the level of his command.
22 All this was done for a discriminatory reason. There was
23 discriminatory intent, specifically with respect to Victor,
24 but also with respect to others in the stadium for their
25 beliefs.

1 Victor was targeted for his music. Erica Osorio
2 told the story when the soldiers picked him up. They said
3 you are the singer of the people.

4 He said, excuse me for saying this shit. Boris
5 says he is beaten on the way in. And he's beaten in the
6 stadium.

7 And the soldier, the officer says to him after
8 crushing his wrists and injuring his hands, stepping on his
9 hands and his arms says, quote, Now, you son of a bitch,
10 you will never be able to play the guitar.

11 Monica Gonzalez told you that the New Song, in her
12 view, was an art form of joy, without weapons and no sense
13 of death.

14 But whatever it was to the regime, it was
15 targeted. And that's one of the reasons that Victor was
16 discriminated against.

17 You also heard now Navarrete testify that Smith
18 and Barrientos said that they had killed a communist and
19 they didn't want communists in Chile.

20 As I said to you earlier in the opening, Victor
21 was a communist at that time. He was a communist, and
22 that's another reason he was targeted.

23 I'm going to talk to you now briefly about the
24 legal basis for responsibility. The Judge has mentioned
25 these to you. We start importantly, most importantly

1 perhaps, with direct liability.

2 You have the testimony of Mr. Navarrete who says,
3 as I told you earlier and as you heard clearly, that
4 Mr. Barrientos stated and bragged that he had killed Victor
5 Jara by shooting him in the head.

6 He also told you that Smith and Barrientos beat
7 and tortured a conscript for no other reason than the fact
8 that he was singing a Victor Jara song, which shows
9 something about the motivation and the feelings about the
10 defendant toward the singer, toward Victor.

11 Conspiracy is another theory. The Judge has
12 already instructed you on this. And maybe we can go
13 forward to the next slide.

14 This is a photograph in evidence of Chile Stadium.
15 And please continue.

16 There is a conspiracy, as I said before, at Chile
17 Stadium, an agreement of the people there, among the people
18 there to torture and commit extrajudicial killing of
19 detainees for no other reason than their beliefs and their
20 politics.

21 Barrientos was part of that conspiracy. And yes,
22 there were other groups there. It wasn't just the Second
23 Company of Tejas Verdes, although there were 65 men from
24 Tejas Verdes at the stadium, the evidence will show you.

25 But there were also people from the Air Force, the

1 Navy, government officials. The defense has made much of
2 this. But we acknowledge that's the case.

3 There were people from the armed division. All of
4 these people were conspiring together at the stadium to
5 conduct this conspiracy, to advance this conspiracy of
6 torture and killing. It's both a conspiracy and a joint
7 criminal enterprise.

8 Now, as the Judge has told you, there needs to be
9 no formal agreement to show a conspiracy. And, in fact, we
10 know from common sense that in many cases there would be no
11 such agreement. You don't have to write it up and then
12 have it notarized.

13 There can be a tacit agreement as well as
14 explicit. That means there can be an agreement that's
15 informal that can be signaled and reached in other ways.

16 And I think that's just a matter of common sense,
17 as I'm sure you appreciate.

18 Let's go back to the theories. Another theory,
19 I've talked about conspiracy. Joint criminal enterprise is
20 very similar to it. It's a little different. But the
21 Judge has instructed you, and you'll appreciate that.

22 Another theory is aiding and abetting. For aiding
23 and abetting, among other things, torture and killing must
24 -- extrajudicial killing must have been committed.

25 The defendant must have given substantial

1 assistance to persons committing those acts and the
2 defendant would have to know his acts were contributing to
3 the wrongful conduct.

4 He doesn't need to know which act was wrongful so
5 long as it was the natural and foreseeable consequence of
6 those acts.

7 Let me propose this to you. Setting up and
8 commanding a guard in a concentration camp is substantial
9 assistance.

10 One of the key features of a concentration camp --
11 I know it's obvious, but we should think about it -- is
12 that you have to keep people in the concentration camp if
13 you're going to torture and kill them because people don't
14 want to be tortured and killed. They want to run away.

15 So restraining them, using force to keep them
16 inside, in the torture facility, is substantial assistance
17 that's being rendered, just that alone.

18 Now, I'm not saying that that's the only basis on
19 which you could find Barrientos liable. Far from it. Nor
20 am I saying that his command in setting up of the guard is
21 the only relevant factor. Far from it. There are many
22 other actions that we've gone through.

23 But if we just were to focus on that one thing,
24 that, in and of itself, I submit to you, ladies and
25 gentlemen, would be sufficient to find Mr. Barrientos

1 liable for aiding and abetting, torture and extrajudicial
2 killing at the stadium.

3 Now, we heard from Mr. Barrientos in various
4 forms. You saw a videotape from him at the start of this
5 trial and who was on the stand yesterday and today.

6 So we can forward to that slide.

7 What do we know from what he's told us? Well,
8 let's look at it because you have to assess the credibility
9 of the witnesses, including Mr. Barrientos.

10 He told the FBI in 2012 when two FBI agents came
11 to visit him that during the relevant times from
12 September 12th to 15th, he was always in a lot next
13 to the Ministry of Defense in Santiago and he never moved.
14 And during that entire time, he was there with 180 other
15 men at all times. That was his testimony.

16 And then he was deposed in November of 2015 after,
17 as you heard, his ex-wife, who he's very close with, took a
18 declaration from Mr. Hinojosa.

19 And then during his deposition, he said he has no
20 real independent knowledge of what happened at that time.
21 But he heard from Mr. Hinojosa, and he learned from
22 Mr. Hinojosa that Hinojosa had been his bodyguard and
23 Hinojosa filled him in on everything that happened at the
24 time and how he was never at Chile Stadium. How
25 convenient.

1 Another interesting thing about that is
2 Mr. Hinojosa was on the stand yesterday and told you he
3 never spoke to Mr. Barrientos in the last several years.
4 He hasn't spoken to him for years.

5 Yet Mr. Barrientos says that he spoke to him by
6 the phone in 2015. Indeed, how would he have obtained all
7 this information? He said he spoke to him. Hinojosa took
8 the scales off his eyes. He figured out where he had been.

9 Is this believable testimony, ladies and
10 gentlemen?

11 He says he was never at Chile Stadium. He said he
12 never heard of Chile Stadium until 2009, 35 years after the
13 event.

14 And you heard from Mr. Quiroz that he was in a
15 boxing match where Tejas Verdes was in the national
16 championship. And Mr. Quiroz, reporting to the First
17 Section, directly to Lieutenant Barrientos. Congratulated
18 Mr. Quiroz when he came back.

19 And yet, Mr. Barrientos tells you today he never
20 heard of the place, never heard of it.

21 Why would someone say something like that? Such
22 an extravagant statement after being schooled in Santiago.
23 All of this testimony about never in downtown Santiago. He
24 and his ex-wife, they were never there, although he was
25 schooled there. Never heard of Chile Stadium. Why does

1 someone do that?

2 Never heard of Victor Jara before 2009. That's
3 what Barrientos says. That's what his ex-wife says,
4 although she says she was a fan of all of the folkloric
5 music on both the left and the right of the spectrum.

6 Victor Jara, no, no, no, I never heard of Victor
7 Jara until many years later.

8 Ladies and gentlemen, why are people taking such
9 lengths to distance themselves from Victor Jara and from
10 Chile Stadium?

11 I think it speaks for itself. But you will
12 ponder. You will make your own decision.

13 And then we know, we heard testimony again today
14 that he transferred assets. Let's just talk briefly about
15 his testimony today.

16 His testimony was not testimony about a lot that
17 was really important in this case. He didn't come to you
18 today and try to explain the questions that may have arisen
19 out of his deposition. He didn't come in here and try to
20 explain the very different stories you heard from the two
21 bodyguards.

22 Recall one bodyguard said that he has always at
23 Padre Hurtado.

24 MR. CALDERON: Objection, Your Honor. This
25 violates the motion in limine that was called previously.

1 THE COURT: Objection is overruled.

2 MR. BECKETT: One bodyguard was at Padre Hurtado.
3 He was there. He said he saw Barrientos. Barrientos took
4 him there, and then he saw him occasionally.

5 What does Barrientos say? I was never there.

6 The other bodyguard Hinojosa says, I was with him
7 at all times. I was with Barrientos at all times. And we
8 never went to Padre Hurtado.

9 So which one is telling the truth?

10 They can't even submit an alibi witness to you
11 that has a consistent story.

12 Then you heard from Maria Teresa. I have a lot of
13 things I could say about Maria Teresa Castro, but the one
14 thing I'll refer you to is the Baez declaration.

15 When she was asked about how it was that she
16 obtained this declaration from an illiterate man and she
17 then asserted and told you, Well, there was handwriting on
18 the declaration that demonstrates that he knew how to read
19 and write.

20 And then we together looked at that declaration.
21 And we found no such handwriting, nor is there any document
22 in evidence -- and you can look through the evidence;
23 you'll have it to look through -- that contains such a
24 writing.

25 I'll stop there with her. I want to turn back to

1 the Jaras.

2 But before that, I just want to remind you that
3 your job is not to figure out every detail of everything
4 that happened at Chile Stadium. Your job is not to
5 determine whether there should have been a coup or whether
6 it was okay to be a communist in Chile or whether the
7 Christian Democrats had the right policy.

8 This isn't an inquest. You're not writing a
9 thesis. You're here to determine solely whether the
10 evidence demonstrates that this person on trial, defendant,
11 is liable for the torture and extrajudicial killing of
12 Victor Jara.

13 And you'll hear a lot of talk from defense about
14 so-called inconsistencies that are not material or that
15 aren't inconsistencies at all. And I'll have a chance to
16 talk to you a little more about that at the end.

17 Now, let me return to the Jaras.

18 I want to be very frank with you. This part of
19 the discussion is not easy for me because it's difficult in
20 a sense that I don't want to present to you that a life is
21 something that can be reduced to dollars or that pain and
22 suffering can be compensated by money. I mean, everyone
23 knows that's not the case. And I don't want to, and I will
24 not, reduce Victor's life to that.

25 But this is our system. This is the way our

1 system works. We provide compensation to make the amends
2 we can make. That's the system we're in. We have to do
3 the best we can in that system.

4 So let's talk about the damages here. And I do
5 this, ladies and gentlemen, not to be shocking but to help
6 guide you, I hope, in this process.

7 Let's talk about the Estate of Victor Jara. The
8 Estate of Victor Jara is bringing this action as well.
9 Joan, his wife, his ex-wife -- his wife is the
10 representative.

11 Think about this man. This remarkable man, how
12 immensely popular he was in Chile. And you've heard
13 testimony about that. He was the forefront of a popular
14 musical movement. Think of what he could have done if he
15 continued his life.

16 Think what he could have been as an artist and as
17 a reformer. Think of him and his family as they grew
18 older, remembering the picture we saw, what it would have
19 been like. What it would have been like to see the
20 children grow up, to see them come into their own, that's a
21 blessing to be able to see that. He wasn't able to see
22 that.

23 He had a meaningful life however you look at it.
24 You may not agree with his views. You may not like his
25 music. But he had a meaningful life, and that life would

1 have grown only more meaningful over time.

2 Think of the horrific suffering he went through.
3 By all accounts, he bore that suffering with great dignity.
4 But that does not diminish the suffering. It was suffering
5 nonetheless.

6 He endured beatings. He was kicked. He was hit
7 with rifle butts. His hands were injured badly,
8 deliberately, so that he couldn't play the guitar. His
9 hands that were so important to him, like an artist's
10 hands, they were the target of the rage of the soldiers and
11 the rage of the regime. And then, of course, he was shot
12 so many times.

13 You'll remember the descriptions of his body.
14 You'll remember how Joan saw the hands in a strange
15 setting, strange position. The blood all over him, the
16 dirt.

17 You remember Hector Herrera explaining the
18 terrible wounds, the perforation, as he put it, on the
19 body, the large wound on the side. And imagine the
20 suffering he would have had to have gone through to endure
21 that kind of thing.

22 Let me turn to Joan. Think about Joan when she
23 heard about the news. We've talked about that already.
24 Think about her going to the morgue where she could not cry
25 for fear of raising interest by the authorities who might

1 then -- might then realize who she was.

2 Think of her finding the body, walking through the
3 morgue filled with bodies. Getting to the second floor.
4 Having to go through all those bodies to finally find
5 Victor's body.

6 And then seeing the body, one eye bloodied and
7 bruised. The hands, as I said, at a strange angle. A
8 terrible wound. Pants down around his feet. Dirty.
9 Obviously had been treated like nothing.

10 And then remember that she cried silently and used
11 her tears to try in some way to clean the body.

12 And then remember that hasty burial, not a
13 funeral, where some gravedigger went over and found an old
14 wreath from another tomb and threw it up. She, with two
15 friends and Hector, and they went away.

16 THE DEPUTY CLERK: Fifteen minutes.

17 THE COURT: Thank you.

18 MR. BECKETT: Joan never remarried. She was very
19 much in love with Victor. You'll remember the passage from
20 her book that was read. Very tender love story about how,
21 when they first met, Joan being unsure about whether Victor
22 really loved her for who she was, but then the story of how
23 two people recognized each other and built a life, built a
24 relationship.

25 Imagine what her life would have been like, even

1 if Victor had died, if the people responsible for it had
2 come forward and taken responsibility. She would have had
3 closure. She, of course, would have been affected, but it
4 would have been very different.

5 Because of the defendant's refusal to come forward
6 for over four decades, she has been on a quest. Her life
7 has been about this. It has become focused, in part, on
8 this in a way that it wouldn't have been had there been
9 accountability in an early stage.

10 And, finally, let's turn to the children. You saw
11 a video clip from Joan in 1974 and she predicted about the
12 effect this would have, the death of Victor on Amanda and
13 Manuela. She said Mandy will grow up with this inside her.
14 Manuela will never be the same.

15 And then we heard from them, eloquent women, who
16 talked about their loss. Amanda talking about the loss of
17 her remarkable father, losing his guidance, his love, his
18 presence in her life.

19 You heard her say if there is anything that she
20 could do it would be to forgive her father for going to the
21 university that day. That's the kind of feeling a child
22 has, right, when the parent goes.

23 And she was never able to get over that, or not
24 for a long time, because she didn't have closure. Always a
25 conflict within her about her relationship with her father

1 because of the way things ended, the terrible death.

2 Manuela talked about his guidance, his love, his
3 presence as well. He was not there for life events.

4 Talked about children. And Manuela, of course, said what
5 is missing is justice. What is missing is accountability.

6 You heard a lot of talk from the defendant about
7 the American way, the American dream, when this case
8 opened.

9 Well, let me tell you something. The American
10 dream, the American way, comes not just with benefits but
11 with rights and responsibilities. And one of those duties
12 is that you take responsibility for your action, for your
13 actions. And if you've done something wrong, you come
14 forward and you admit it and you do what you can to make
15 amends.

16 And that didn't happen here. Barrientos has
17 persistently refused to take any responsibility for his
18 involvement.

19 We also have a procedure in our system for when
20 that happens. If someone fails to take responsibility, we
21 have the courts. The courts then force people to take
22 responsibility when the evidence and the law demonstrates
23 that they've done something that has injured someone else.

24 And that's where we are today. He hasn't made
25 amends. And it's now your job, based on the evidence and

1 the law in this case as the judge has instructed you, to do
2 that.

3 My clients' case is now in your hands. And my
4 clients are looking for justice. I'm asking you to give a
5 judgment to the Estate of Victor Jara, to Joan Jara, to
6 Amanda Jara Turner, and Manuela Bunster, against defendant
7 Pedro Pablo Barrientos for the torture and extrajudicial
8 killing of Victor Jara.

9 Ladies and gentlemen, I submit to you that the
10 evidence is more than sufficient to establish this
11 liability and that the Jaras deserve justice, they deserve
12 compensation.

13 I will have a few minutes at the end after
14 Mr. Calderon addresses you to raise some additional points.

15 Thank you for your time and attention.

16 THE COURT: Thank you, Mr. Beckett.

17 Ladies and gentlemen, why don't we take a
18 ten-minute break and give you all a chance to use the
19 facilities, get a little bit of water. And we'll come back
20 and we'll hear from Mr. Calderon.

21 So we'll be in recess for ten minutes. I guess
22 that will take us to about 12:35.

23 (Jury exited the courtroom at 12:22 p.m.)

24 THE COURT: We'll be in recess until 12:35.

25 (Recess at 12:22 p.m. to 12:36 p.m.)

1 THE COURT: Back on the record in Jara versus
2 Barrientos Nunez, 6:13-civil-1426.

3 Counsel and parties are present.

4 Are you ready to proceed, Mr. Calderon?

5 MR. CALDERON: I am, Your Honor.

6 THE COURT: Let's bring our jury back, please.
7 Mr. Carter.

8 MR. CALDERON: Your Honor, may I approach the
9 lectern?

10 THE COURT: Yes, sir.

11 (Jury entered the courtroom at 12:37 p.m.)

12 THE COURT: Welcome back, ladies and gentleman.
13 If you'd now give Mr. Calderon your attention, we'll hear
14 from him.

15 Mr. Calderon, you may proceed.

16 MR. CALDERON: Thank you, Your Honor.

17 **CLOSING ARGUMENT BY THE DEFENSE**

18 MR. CALDERON: Good afternoon, ladies and
19 gentlemen, gentleman.

20 You've been selected for this jury because the
21 attorneys felt you could be fair and impartial. We also
22 believed that you're an intelligent jury, that you could
23 decipher the facts, make determinations of credibility, and
24 make judgments on the facts that you believe to be true.

25 And I know that you've made your best efforts to

1 try and keep up with all the information that's been thrown
2 at you, and I applaud you on your efforts.

3 And I know that the minute you get your grasp on
4 the players involved, other names are randomly thrown out.
5 So I'm going to try to do my best to summarize the key
6 issues and the key facts that defense believes is
7 important.

8 But, ultimately, you will decide what facts are
9 important and what witnesses to rely on and what testimony
10 you believe is relevant to making this decision.

11 Now, we've heard a lot of talk about the politics
12 of the era, what was going on in Chile. But I think I
13 would be remiss if I didn't remind you -- and I'm sure you
14 guys already know -- that Augusto Pinochet is not on trial
15 in this courtroom. The Chilean Army is not on trial in
16 this courtroom. The Tejas Verdes are not on trial in this
17 courtroom. Only Pedro Pablo Barrientos Nunez is on trial
18 in this courtroom.

19 Now, I don't think it has escaped you certain
20 references that have been made with regards to Nazis and
21 World War II and the term concentration camp, the phrase
22 Hitler saw.

23 I want to remind you that this case is not decided
24 on feelings you may have about Nazis or World War II or
25 anything of that sort.

1 The fact that Mr. Barrientos had a Luger only
2 means that Mr. Barrientos has a Luger. If that is the
3 pistol that's described by a witness, that's what it is.
4 There's been nothing to suggest anything beyond that.

5 What happened in Chile Stadium was an atrocity, an
6 atrocity. I think we're all in agreement on that. People
7 were tortured. People were murdered, including Victor
8 Jara. We're all in agreement on that.

9 But what ultimately you have to decide is not
10 whether that was wrong or that was right but as to whether
11 Mr. Barrientos was involved or is responsible for the death
12 and torture of Victor Jara, only Victor Jara, not anyone
13 else in the stadium, not anyone at another stadium, only
14 Victor Jara.

15 I'm going to ask you to focus on the facts, only
16 on the facts. Counsel has talked about the effects on the
17 family, the suffering, and that plays an important part if
18 and only if you find that Mr. Barrientos is liable. That's
19 the only time that that comes into play.

20 So let's focus on the facts.

21 During this testimony, you heard from several
22 witnesses. And at some point, you're going to review that
23 testimony and your notes and your memory. But you're going
24 to have to eventually, as I told you when we began the
25 case, is you're going to have to separate fantasy from

1 fact. And you're going to have to separate what makes
2 sense and what doesn't.

3 Now, this is what is clear. And I want to narrow
4 the scope of what we're dealing with here. Now, we know
5 that Victor Jara was detained on September 12th, and we
6 know that he died on September 15th. And that we got
7 from the testimony of Denis Boris Navia Perez.

8 And Mr. Navia Perez was the witness who came here,
9 who was a free lawyer and -- I say this to jog your memory.
10 But he was one of the witnesses who testified before you,
11 so you got to see him. And he was the one who actually had
12 a poem that he said he obtained from Victor Jara.

13 Now, I ask you to be cynical with the evidence
14 here on all sides. And I ask you to pay attention to what
15 you believe passes the test or the smell test, so to speak,
16 as to what could have happened and what couldn't have. So
17 we have here a witness who gives an account with regards to
18 that.

19 The other thing we know is that the Second Company
20 of Tejas Verdes was, in fact, assigned to guard the Chile
21 Stadium. We know that. That's been testified to time and
22 time again.

23 The evidence also showed that only the Second and
24 Third Sections were the ones that were assigned to this
25 stadium. They were the ones who were assigned.

1 And I want to quickly just sketch for you so you
2 have a visual idea of the chain of command with regards to
3 that regiment and the sections.

4 Okay. Now, I want to remind you that you received
5 testimony from Maria Teresa Castro Barrientos regarding
6 what happened or what the ongoings were in Tejas Verdes. I
7 want to remind you that Tejas Verdes was not only a
8 regiment, but it was also an officer training school.

9 So when Professor Stern -- Professor Stern refers
10 to the embryonic stage of Tejas Verdes, I want to remind
11 you that this was an officer school. We had staff military
12 that was there. Staff officers who were there.

13 And I submit to you that that would be the
14 equivalent of saying that the people, the officers who
15 guard the outside of the C.I.A. building are somehow
16 involved in the covert operations.

17 But let me just put down the order of command.

18 So at the very top, we have Contreras. And you
19 heard Professor Stern testify as to who he was and who he
20 later became. And we'll talk a little bit about that in
21 just a minute.

22 But he's kind of, you know, the mastermind of what
23 eventually became the DINA or the intelligence gathering,
24 D-I-N-A.

25 Now, below Contreras, I think for us what's

1 relevant is the commander of the battalion. And that was
2 Major Faine or Faine.

3 I apologize. Now we can see it. All right.

4 Now, below Major Faine, he had the command of
5 three different companies. But the one that we're
6 concerned with -- this is the First Company and the Second
7 Company and the Third Company. But the one that we're
8 concerned with is the Second. And the person in charge of
9 that was Captain Montero.

10 And Captain Montero had command of three sections
11 within his company. The First Section was Barrientos. The
12 Second Section was Rodriguez Fuschloger. There is another
13 Rodriguez, so I'm going to refer to him as Fuschloger.
14 And, finally, Lieutenant Del Valle.

15 And you heard testimony, and you heard testimony
16 regarding those individuals, where they were stationed.
17 And I'm going to go through that.

18 So what's clear is that the Second and Third
19 Sections were assigned to Chile Stadium. Those sections
20 were under command by people other than Barrientos.

21 And I want to give you a little perspective.
22 Mr. Barrientos was 24 years old in 1973, in September of
23 1973. And he led the division or about -- he was in charge
24 of about 30 soldiers who were conscripts, about 4 officers.
25 Of all of them, he was the oldest one.

1 So we're talking about conscripts doing their
2 military service. They were about 17, 18 years old. So
3 it's boys being led by someone who is barely a man.

4 So they're told that they are required to go to
5 Santiago for a mission. And that mission, in their minds,
6 has been -- is not quite clear. But I think it's
7 reasonable to assume that people knew that something was
8 going to happen here.

9 And you heard Miss Castro Barrientos saying
10 something was going to happen. The situation had gotten to
11 that point. So I think it's safe to, even though they
12 didn't actually know and weren't sure that something was
13 happening with regards to the government.

14 But I also want to explain that there was a lot of
15 propaganda within the military. And you heard talk about
16 communism.

17 MR. BECKETT: Objection, Judge. Not in evidence.

18 THE COURT: Ladies and gentlemen, as I mentioned
19 to you, you rely upon your own recollection of the
20 evidence. If what the lawyers say is not consistent with
21 your memory, then you rely upon your memory.

22 You may proceed, Mr. Calderon.

23 MR. CALDERON: And you heard witnesses testify
24 with regards to who they believed was taking over the
25 country, that there were communists, that there were

1 snipers, that they were basically taking over the city.

2 But when they got there, what they saw was that they were
3 taking on friendly fire.

4 So the information that they were given, they were
5 kind of led to believe one thing; but when they arrived in
6 Santiago, it was something different. But that just shows
7 you the level of influence when you're in the bubble, when
8 you're in the military bubble, that what a commander says
9 you take to be as true.

10 So these conscripts basically made claims with
11 regards to Mr. Barrientos' presence there. And I just want
12 to point out some of the more interesting parts.

13 And, you know, opposing counsel wants to say that
14 these are not material. But I think it's just an insight
15 as to whether or not you can trust these witnesses.

16 Ultimately, the decision is going to be up to you
17 whether they could have seen and heard the things that they
18 claim to have or known the things they claim to have.

19 So we'll start there.

20 First, I'd like to start with Mr. Vargas Matta.
21 Mr. Matta confirms that the First Section was in Padre
22 Hurtado, which is not in Santiago. It's outside of
23 Santiago. Okay? He confirms that he was a conscript and
24 engaged in basic training.

25 Unlike what Professor Stern testified to, he was

1 not part of this embryotic stage. He did not receive any
2 training regarding torture or interrogation techniques. He
3 got basic training, basic instruction. And he claims that
4 Contreras gave him orders.

5 Remember the chain of command. It was testified
6 to that orders came from the top to the bottom. But they
7 weren't given directly. The orders followed the chain of
8 command.

9 So Commander Faine would have made an order. He
10 would have given it to Captain Montero. Captain Montero
11 would have given it to his three lieutenants for each
12 section who then would have given it to their sergeants who
13 then would have given it to the corporals who would have
14 instructed their particular squadrons.

15 Okay? Vertical chain of command.

16 But Mr. Vargas Matta claims that Contreras, the
17 head guy of Tejas Verdes, gave him a specific instruction.
18 He also claims that he was given 200 rounds of ammunition.

19 It seems like a small detail, but it just goes to
20 show you the level of exaggeration that these conscripts
21 give because they want to be on the side of what they
22 believe is a cause or because they themselves could be
23 subject to prosecution or harassment by the investigative
24 police.

25 You heard Quiroz. You heard Hinojosa. They both

1 talked about their experience with the investigative police
2 recently.

3 Now, he also says 200 rounds of ammunition. So
4 think about how many chargers you would have to have. We
5 talked about that with Quiroz, the weight of those
6 chargers, and that nobody else was even given that amount
7 of chargers.

8 But then he even adds to that claim and says that
9 Mr. Barrientos showed up dressed like Pancho Villa, that he
10 had bullets strapped across his chest when he showed up at
11 Padre Hurtado.

12 Is that reasonable? Does that make sense?

13 Next, we have Mr. Valenzuela. Now, Mr. Valenzuela
14 was in the Third Section. So he was actually at Chile
15 Stadium. He said that only Corporal Barraza gave him
16 orders.

17 Again, this is more in alignment with what the
18 chain of command was. A corporal would have given a
19 conscript orders.

20 He said that only the Second and Third Sections
21 were assigned to Chile Stadium. But then he claims that
22 Barrientos was there.

23 But that doesn't make sense, because if only the
24 Third and Second Sections were there, their commanders
25 would have been with them. Rodriguez Fuschloger and

1 Lieutenant Del Valle would have been with their sections.
2 They would have been in command of their sections. And
3 they would have been instructing those.

4 But beyond that, it was testified that Manriquez,
5 who we haven't talked about, who's not part of Tejas Verdes
6 at that point, had command of Chile Stadium. It was his
7 facility or, as plaintiffs like to refer to it, his
8 concentration camp.

9 Now, he -- now, Valenzuela -- and we've heard
10 testimony that Manriquez was the man in charge. You heard
11 that from Denis Boris Navia who was there. That's
12 ingrained in his memory.

13 But Valenzuela says, no, no, no. Barrientos was
14 in charge. But he can't remember where or when he saw him.
15 And that was Valenzuela.

16 Next, we have Mr. Gonzalez Riquelme. Mr. Riquelme
17 was in the Second Section, and he was at Chile Stadium,
18 again, consistent with what we have known about where the
19 sections were assigned.

20 And he claimed that all the officers had Lugers.
21 And he claims that he was given instructions as well by
22 Contreras. Again, that doesn't align with the chain of
23 command.

24 But he also just happens to slip in that
25 Barrientos and Del Valle and Fuschloger, they were all

1 there. And claims that the defendant spoke to an armored
2 division that he has no command over. He also claims that
3 the people were placed in stress positions.

4 And when the -- we never heard Mr. Boris Navia
5 Perez ever say that. He gives no specific dates. And, in
6 fact, unlike, unlike some of the others, he actually claims
7 that he would guard along with Baez Duarte the detainees.

8 So, again, you have someone who's directly
9 involved in what Mr. Barrientos is being accused of here
10 today, his involvement.

11 Next, we have Mr. Chaura Pavez. And he was a
12 member of the Third Section at Chile Stadium. Now, he said
13 that he received orders from Rivero and Garcia. He said
14 that he was placed on guard, but he says that he was placed
15 there by other individuals that he does not recall. He
16 agrees that the Second and Third Sections were the ones
17 that were assigned to Chile Stadium.

18 But here's where it kind of loses touch with
19 reality. When he describes the bodies, that they were
20 covered in white clothes. That doesn't really make sense.
21 They wouldn't have taken the time, given what was going on
22 there, to change every single person's clothing to have
23 white clothes. So we know that that's not quite accurate
24 and it starts to blur.

25 But then again he just happens to slip in there

1 that he was about 38 feet from -- or 38 meters from
2 Barrientos. But remembers seeing him. But doesn't really
3 remember the lieutenant that he himself escorted three
4 times. He doesn't remember who that was. But he remembers
5 just kind of seeing Barrientos. Again, somebody who was
6 there, somebody who was involved, and just happens to slip
7 Barrientos' name in.

8 Next, we have Mr. Barraza Morales. And I'm going
9 to correct this. Because Mr. Barraza was not a conscript.
10 He was a corporal. And Mr. Barraza gave orders in the
11 Stadium of Chile. And that was according to another
12 witness Mella.

13 Now, he says many things about Mr. Barrientos but
14 one of which is with respect to the guard. That everyone
15 -- that Mr. Barrientos placed each guard there individually
16 and then conducted inspections.

17 Conducted inspections. So you have a lieutenant
18 basically doing his job, telling each individual soldier
19 where they needed to be positioned.

20 And at the same time, the plaintiffs want you to
21 believe that he was also meeting with the most important
22 people in the regiment. So he must be the greatest
23 micromanager of all time in 1973.

24 But Barraza really is one of the ones who directly
25 may have ordered some of this torture, some of these

1 beatings, some of these kicks.

2 MR. BECKETT: Objection. That's frank
3 speculation, Judge. That's not in the evidence.

4 THE COURT: All right. Again, ladies and
5 gentlemen, I'm going to resolve the objection by reminding
6 you of your responsibility to rely upon your own
7 recollection of the evidence.

8 If what the lawyers say is not consistent with
9 the -- your recollection of the evidence or suggests pieces
10 of evidence that you do not recall, obviously, you rely
11 upon your own recollection of the evidence.

12 You can proceed, Mr. Calderon.

13 MR. CALDERON: Thank you, Your Honor.

14 And Mr. Barraza was one of the ones in charge of
15 the squadrons that were there detaining the people at Chile
16 Stadium. And we know that these detainees were beaten,
17 they were kicked, they were hit with rifle butts.
18 Plaintiffs described that. Mr. Barraza was giving orders.

19 Now we'll go to Mr. Mella. He was in the Second
20 Section. Again, he says he was at Chile Stadium. He says
21 Barraza was his section head.

22 And then we kind of disconnect with reality. They
23 talk about this briefcase. And then he also states that
24 when people were beaten, that Montero and Fuschloger were
25 there.

1 Now, we know from the evidence that Montero wasn't
2 even in Chile Stadium. He was in Padre Hurtado, taking
3 command of the First Section. So there's another
4 inconsistency.

5 Now, Mr. Mella, as he described in his testimony,
6 wasn't the best soldier. He actually got in trouble for
7 firing at his own troops. So, again, we see this
8 hypervigilance on the part of the soldiers.

9 Now, finally, that brings us to Mr. Baez Duarte.
10 Mr. Baez Duarte -- now, Mr. Baez Duarte gave a statement.
11 And you heard how that statement was taken, how it was read
12 back to him, how it was reviewed by him, and how he was
13 later questioned in a deposition.

14 And all that testimony changed. All that
15 testimony changed. Now he's seen him there. Now, he
16 claims that Mr. Barrientos had a machine gun, that he had a
17 briefcase. He never actually saw him give them orders.
18 But now he has that he saw him six or seven times. We went
19 from zero to six or seven.

20 And he claims he can't read. Didn't tell the
21 notary that. Didn't say it at any prior testimony he gave.

22 And he was asked to testify. And if you recall,
23 none of these individuals came forward until after the
24 details regarding Victor Jara's death were made public.
25 None of them came forward until that information was made

1 public.

2 Here in the United States, it's not uncommon for
3 when a murder takes place that there are certain details
4 that are kept confidential, so that if somebody comes
5 forward with information, that can be verified to check the
6 veracity of that information.

7 That didn't happen here. Any kook, crazy person,
8 anybody who was a member of the military at that point
9 could come in, give some detailed account of some
10 information that he had implicating Mr. Barrientos.

11 And all he can do is just try to point to the
12 inconsistency that was shown that that person couldn't have
13 seen or witnessed the things that they claim that they had.

14 Which brings me to Mr. Navarrete. Mr. Navarrete
15 claims, and we would submit you're going to have to
16 evaluate his testimony, but claims that Mr. Barrientos
17 confessed to actually killing Victor Jara years later.

18 That he was drunk in an officer's club with
19 Lieutenant Smith Gumucio, and not only would they do it --
20 originally he said they would say it when they get drunk.
21 But then that merged into, well, now he even does it when
22 he's sober.

23 Let's talk about that. You heard from Maria
24 Teresa Castro Barrientos in very good detail where they
25 lived or what casino, essentially officer's club they

1 belonged to.

2 And in 1978, you heard that Smith, Lieutenant
3 Smith Gumucio wasn't even in Tejas Verdes, that he was in
4 Santiago at paratrooper school. So he wasn't even there.

5 So Navarrete says that they were there together
6 24/7. How was that possible? In '78, they weren't
7 together. In '79, they wouldn't together because
8 Barrientos was transferred to Huamachuco. You don't have
9 to remember that name. You just have to know it wasn't
10 Tejas Verdes. It wasn't there.

11 And again, he claimed he would see the both of
12 them every day.

13 And then in 1980, Mr. Barrientos was transferred
14 to a different region altogether, so he was nowhere near
15 Tejas Verdes.

16 So when did this happen? Ask yourselves, when did
17 this happen? There was no confession. There wasn't. He
18 knew just enough about how Victor Jara had died to be able
19 to implicate Mr. Barrientos. That's the bottom line.

20 Now, I want to discuss some of the other witnesses
21 that were here. Now, again, and maybe this is unfair, but
22 I would think that two witnesses who were in Chile Stadium
23 would have probably experienced the same things.

24 And I know that Mr. Navia Perez was there because
25 he had the poem. I don't know if Miss Erica del Transito

1 was there -- or Miss Erica del Osorio was there because
2 Mr. Navia Perez didn't see her there.

3 And she also testified to things that were
4 different. She said that she saw Victor Jara in a
5 neighboring court.

6 Mr. Navia Perez says that he was detained in a
7 hallway for most of the time and he was beaten. And that
8 he was taken to the galleries where he was sitting with him
9 when he scribbled down the poem.

10 Never laid down on the court, as Miss Transito
11 would have you believe.

12 And then the interesting thing is that she's asked
13 to identify somebody. She's asked to identify somebody
14 that she saw for about four to five minutes, 43 years later
15 in 2016, and she says, yes, that's him.

16 And that's Joint Exhibit Number 6.

17 And she says, yeah, that's him. I know that's
18 him.

19 She also includes this thing about nunchakus.
20 Nobody else said that. Not even the conscripts who were
21 there.

22 Now, interestingly enough -- and this is Joint
23 Exhibit Number 7 -- she also says that she saw an
24 individual and is familiar with an individual named Dimter.

25 Now, Mr. Dimter and Mr. Barrientos were in the

1 same company. And here's their photographs. Here you see
2 Mr. Barrientos. This was taken in 1980. And here you have
3 Mr. Dimter. And this was taken -- it looks like 1970 or
4 somewhere between 1970 and 1972.

5 Now, she says, Miss Erica del Transito Osorio says
6 that she knew who Dimter was. She says, well, I may not be
7 able to recognize him because of when the photo was taken.
8 But we know that this was taken around this period of time.

9 And, interestingly enough, when you look at the
10 lineup, where she's asked if she recognizes anyone, guess
11 who once again is right below Mr. Barrientos. She claims
12 she had been asked to identify people before, and Dimter
13 was one of them.

14 So, again, you see the inconsistencies. And you
15 see what is -- what can only be described as somebody just
16 wanting to implicate Mr. Barrientos.

17 Now, when you heard from Mr. Navia Perez, I asked
18 him, do you recall any of the officers who spoke to
19 Mr. Manriquez when you were there?

20 Do you know what his response was? Impossible.
21 Impossible.

22 There's all this discussion with regards to this
23 briefcase, what weapons he has. So let's try to put this
24 all together and put this into perspective.

25 So he's got his knife. He's got his pistol. He's

1 got his rifle. A submachine gun. A strap full of bullets.
2 Grenades in his pocket. A briefcase. A helmet. Does that
3 make sense? I mean, somebody is lying here.

4 Now, we provided some witnesses to try to
5 counteract, so you can have a real account of people who
6 actually would know the things that they're talking about.
7 But I just wanted to put that into perspective.

8 Now, Mr. Herrera, he kind of sets the timeline for
9 us, because he says, listen, you know, the morning of the
10 16th, I went there. The bodies were there. I
11 identified Victor Jara.

12 He has no reason -- he works for the city. He
13 documented it. He got the death certificate. That's all
14 clear.

15 But when we talk about kind of the ongoings and
16 who has -- who can give command and who can order people
17 around, you have to understand -- and the testimony that
18 was given said that a commander of one section would not
19 give commands to people of another section. He would go to
20 an officer of equal rank and explain to them what the
21 orders were so that they could do their job.

22 Okay. Now, there's an understanding that this was
23 1973. There's a coup. There's going to be some
24 flexibility there. But, you know, Manriquez, he stepped
25 up, he took over the Chile Stadium, so everybody answered

1 to him.

2 So with respect to section, the only difference
3 would have really been that in lieu of Rodriguez Faine or
4 Contreras, that it was Manriquez. You heard that
5 testimony.

6 Now, Professor Stern testified. He testified
7 about the ongoings back in 1973. And he relied on sources
8 and archives.

9 We're relying on people who were there. We're
10 relying on people who served and understood the chain of
11 command and actually underwent the training. That's who
12 we're relying on. Not secondhand.

13 Now, it's interesting that when the plaintiffs
14 asked him questions -- and, again, an expert should be
15 subjective. They shouldn't take any sides. They should
16 just evaluate the information. The answers should not be
17 any different, regardless of who's asking the questions.

18 But it seemed that Mr. Stern, Professor Stern, can
19 answer the plaintiffs' questions pretty easily, but somehow
20 every time I asked him a question he had a problem with the
21 premise of the question. So you're going to have to
22 evaluate whether you can trust the expert's testimony.

23 By his own admission, didn't really focus my
24 studies on Chile Stadium. I was really interested in what
25 was going on in general. There were some things that

1 overlapped.

2 Our other expert that we heard from was Monica
3 Gonzalez. I think she fails the test with regards to
4 subjectivity and --

5 MR. BECKETT: Judge, objection as to counsel's
6 personal views that have been made repeatedly.

7 THE COURT: Ladies and gentlemen, the lawyer's
8 view of the believability or the credibility of any witness
9 is for the lawyers. It's not for you.

10 You rely upon your own assessment of the
11 believability, the credibility, and the weight to be given
12 to any witness' testimony.

13 You can proceed, Mr. Calderon.

14 MR. CALDERON: And as I said, you were chosen
15 because we trust you to make these determinations on your
16 own.

17 But Miss Gonzalez failed the subjectivity test on
18 all fronts, fails the ability to give an answer that she's
19 -- to a question that she's actually asked and constantly
20 felt the need to just prove a point.

21 When the music was played, she was singing along.
22 That's not an expert. That's a fan. That's an aficionado
23 of Mr. Jara. So you should take her testimony in that
24 light as well. But, again, you make that determination.

25 Now, our witnesses, you heard from Mr. Hinojosa

1 who gave a pretty detailed account of everywhere that they
2 went, the places they visited, the dates. And he also
3 talked about his prior testimony. And that kind of became
4 the subject of debate.

5 I ask you to pay attention to, did he actually see
6 the things that he claimed to have seen? Did he give a
7 sufficient account?

8 It's not the most redeeming quality for somebody
9 to admit that they were given an order to go find a priest
10 and would readily admit that. That's not something that
11 anybody would be proud of.

12 But he was honest about where he had been. And he
13 said that they never went to the Estadio Chile.

14 Now, did he ever leave his side? We explained
15 that. We explained that yes. But is it reasonable that
16 Mr. Barrientos would have gone to the stadium of Chile
17 without him? No. They were bodyguards for Major Rodriguez
18 Faine.

19 Now, Faine had taken Barrientos aside and said,
20 you, Mr. Hinojosa, and Mr. Mahan are going to be my
21 bodyguards. Okay? Mr. Quiroz was never Mr. Barrientos'
22 bodyguard. He was an escort. Okay?

23 And in that regard, Major Rodriguez Faine sent
24 Captain Montero to Padre Hurtado in order to assume
25 Barrientos' responsibility so that Barrientos could stay

1 right there with him, shuttling him back and forth
2 throughout the city, ultimately being sent to do a patrol
3 after the events at Estadio Chile had taken place.

4 So he had a specific task that he was given. And
5 you remember what those were. Storming -- or clearing
6 buildings. Clearing a newspaper building. Clearing a
7 theater. Going here throughout the city. But he never
8 went to the Chile Stadium.

9 One of the other things -- and I failed to mention
10 this with regards to Erica del Transito. You heard that
11 all of these witnesses said that there were orders that
12 these individuals would not wear rank.

13 And, again, we talked about the snipers. It makes
14 sense that they would have been ordered not to wear their
15 rank so that they couldn't be singled out by these snipers
16 that they believed were there. And instead, had armbands
17 and neckerchiefs to identify themselves being with the
18 cause.

19 And if they didn't, if they refused, you heard
20 what would happen. They would be shot. They would be at
21 the end.

22 Now, with respect to Hinojosa, he also gave a
23 statement to Maria Teresa. And in that statement, he
24 describes the process in which the statement was taken.

25 His wife was present. It was read to him. He

1 read it again. And then at the end, that that document was
2 notarized.

3 And we heard what a notary was. And it's not just
4 somebody with a stamp. It's actually somebody who's a
5 lawyer with experience who's actually been declared in that
6 position by a court. So this isn't just someone who is
7 just stamping something.

8 You heard the questions that the notary would ask
9 of the witnesses before they signed. And you heard Quiroz
10 give that same account, as well as Maria Teresa, as to how
11 these documents were given.

12 But Mr. Baez claims, well, no, no, no, I couldn't
13 read. Or try to weasel his way out. Why? I submit to you
14 -- you heard from both Quiroz and Hinojosa, the pressure
15 that was put on them by the investigative police.

16 Now, the final point I want to make is with
17 regards to intelligence gathering in 1973. Now, we heard
18 about D-I-N-E, DINE. We heard about SIM, S-I-M. These
19 were intelligence-gathering organizations.

20 Mr. Barrientos was a staff lieutenant at Tejas
21 Verdes. There's a big difference there.

22 You can review the evidence, and you can review
23 the testimony. But I submit to you that the people who
24 were targeted during that time, those names were known.

25 And they were known by intelligence gathering,

1 whoever it was, whether it was a SIM or DINE, because there
2 were officers from other regiments, branches of military
3 that were at that stadium.

4 And you heard that from everyone that there were
5 other regiments, there are other people there, and that
6 they were the ones who were doing the torture.

7 You heard the description of the blue pants and
8 the Air Force and the civilians, civilians. So now we're
9 not even talking about military personnel. We're talking
10 about civilians who were not detainees coming in and out of
11 Chile Stadium.

12 These were covert missions. This was suppression
13 of information on a scale that we can't even imagine.

14 But Mr. Barrientos was not involved. He was not
15 in Stadium Chile. And yet to this day, we see the
16 influence, the fear that there is of the investigative
17 police. It's outlived Pinochet. And it's outlived the
18 totalitarian state of the '70s. And it still exists today.

19 You see the pressure that's put for these
20 individuals to try to change their testimony; if not, they
21 are detained to the point that they are afraid to speak
22 their minds. They are afraid to go against prior
23 statements.

24 Maybe it's not my place to talk about this. But
25 Victor Jara died without judicial process. Victor Jara

1 never got to be brought before a jury of his peers to see
2 if he committed any crime.

3 It would be a travesty, a travesty if Victor Jara,
4 if his memory before this jury was somehow decided outside
5 of the law. We need to follow the law. The law is
6 important. We are a nation of laws.

7 And I'm asking you to follow the law when you go
8 back there to make your decision. It does no service to
9 Victor Jara's memory if the law is not followed here.

10 And what the law requires is that the plaintiffs
11 provide proof.

12 Mr. Barrientos isn't required to say anything.
13 He's not required to testify in any regards. He's standing
14 here. He's denied the allegations. He's trying to prove
15 that he's not responsible. He's called witnesses. He has
16 nothing more to say. And he's admitted his recollection
17 isn't that great. That's why he relied on people who
18 actually knew what happened.

19 But as plaintiffs stated correctly, he had no
20 independent knowledge. Everything he -- this was 43 years
21 ago. And you want him to remember every place he went?
22 For these soldiers, especially Hinojosa, it was one year of
23 service. For him, it was a career.

24 Now, I want to bring your attention to this
25 discussion regarding him moving his assets and whatnot.

1 Let me just direct your attention to the screen.

2 I want you to focus on something real quick.
3 Right there at the top upper right corner is the date that
4 the instrument was recorded. Right there, 9/16/2013,
5 1:32 p.m.

6 MR. BECKETT: Objection. Counsel is testifying,
7 Judge. This is not in evidence. There was no question
8 asked of any witness about this.

9 THE COURT: Let me see the lawyers quickly at
10 sidebar.

11 (Discussion at sidebar on the record.)

12 THE COURT: Is this not part of Exhibit 62?

13 MR. BECKETT: It is. But there's no evidence
14 about what this means. There's just testimony that this
15 means -- does this mean it was filed? No one asked a
16 question about that.

17 THE COURT: Where are you going with that?

18 MR. CALDERON: Just a fact it's recorded a year
19 later, as he testified.

20 MR. BECKETT: He could have asked about it. He
21 wasn't.

22 THE COURT: How do you discern that from a stamp?

23 MR. CALDERON: Oh, it's right here at the top.
24 Yeah, there's a stamp at the top that indicates the date in
25 2013.

1 THE COURT: Okay. I'm going to overrule your
2 objection.

3 MR. BECKETT: Thank you.

4 (End of discussion at sidebar.)

5 THE COURT: Sorry for the interruption, ladies and
6 gentlemen.

7 The objection is overruled.

8 You can proceed, Mr. Calderon.

9 MR. CALDERON: Thank you, Your Honor.

10 And I'll bring your attention, he's testified
11 today in court that he executed this document in September
12 of 2013.

13 The date here is September 16th of 2013.

14 You also heard about Mr. Armesto, a scam artist.
15 I mean, he took Mr. Barrientos' money, made him do
16 unnecessary paperwork. Do you really put it past him to
17 postdate a stamp?

18 I'm going to draw your attention to when his
19 notary commission expires. If he would have recorded it as
20 indicated on the actual date, he knows that his commission
21 would have expired. It's right there.

22 Do you really put it past him to backdate that
23 document?

24 No. He's a scam artist.

25 But somehow the plaintiffs want you to rely on

1 that as some indication that Mr. Barrientos knew that he
2 did this and so he's trying to moving his assets around.
3 That's not the case. He got bad advice from a bad person.
4 And that should not be held against him.

5 Now -- and there was other bad advice with regards
6 to envelopes that were written on and sent back. Bad
7 advice.

8 So what we have to focus on now are the elements
9 with respect to the decision you're going to have to make.
10 And there were five different theories on liability on how
11 it could be shown.

12 I think -- and it will be up to you to decide as
13 to whether or not the plaintiffs have established that he
14 was directly involved.

15 There's been no evidence of that. The little that
16 there was was from Navarrete. And I think we've
17 established that that's really not credible. That's not
18 possible.

19 With respect to the conspiracy, there's been no
20 testimony. Who did he conspire with? Who precisely? Who
21 did he speak to? What did he say?

22 Circumstantial evidence is a chain. It's not -- a
23 chain is interconnected links. It's not links in the abyss
24 that requires you to put them together. Those chains have
25 to lead somewhere.

1 And whether they are connected to other pieces of
2 direct evidence or not, it is not your job to make
3 assumptions to be able to complete those chains.

4 Now, with regards to the aiding and abetting,
5 Mr. Barrientos never put any of those guards at the
6 stadium. He never brought any orders. He didn't have any
7 James Bond briefcase or dress like Pancho Villa. He didn't
8 do any of those things.

9 There's been much made about his interviews with
10 the FBI in 2012. He answered those questions honestly. He
11 never advocated. He was an officer in the military. And
12 he served in the military. He never advocated. Never
13 protested in his mind. He answered the question honestly.

14 He never went to Estadio Chile. Of that he was
15 certain. He never equivocated on that. He said, I don't
16 know where else I went.

17 And you can review the deposition.

18 I'm not sure. I don't have any recollection of
19 where I may have gone, but I know I wasn't there.

20 And Hinojosa backs up his story.

21 Now, finally, this is the toughest part. Command
22 responsibility. It's a difficult concept to grasp.

23 But there's certain elements within there that
24 need to be established. And the simple fact that at
25 24 years old he had the ability or was given the power to

1 give commands to any conscript doesn't mean that the
2 practical ability or the actual ability or the effective
3 ability of his control was that he could do that for any
4 conscript.

5 This was limited -- and you heard the testimony --
6 to conscripts in his section. If he had an issue with a
7 conscript, he would take it up with their commanding
8 officer, their section commander, their squadron leader,
9 their, the lieutenant who was at equal level, or even go up
10 a chain of command.

11 But he couldn't go beyond that. He couldn't go
12 past Montero or Faine. He would have to go to Montero.
13 Montero would go to Faine, unless Faine had addressed them
14 directly. That's how discipline was distributed. That's
15 how orders were distributed.

16 And you heard testimony about this briefcase and
17 these papers and all of this stuff. There wasn't time to
18 write down a formal order. There wasn't time to run around
19 with papers or -- information was communicated verbally.
20 Orders were passed via different soldiers who were on
21 patrol who would meet up with other soldiers.

22 That's how information was passed. That's how
23 people knew how to arrange their armbands, how to wear
24 them -- and that was testified to earlier -- to know that
25 you were up to date on what the, you know, password was, so

1 to speak, because information needed to move quickly.

2 There wasn't time for that.

3 Now, Major Faine was an important person in this
4 military regiment. And, again, Mr. Barrientos was only in
5 charge of, I guess, shuttling him between Arsenales de
6 Guerra, Ministry of Defense, and a couple of other places.

7 And I submit to you that the next part of the
8 equation is whether he had knowledge of what was going on.

9 Now, between the days of the 11th of September
10 and the 15th of September, he didn't know. When you
11 review the questions of what conscripts actually knew, the
12 soldiers at Chile Stadium were still there. How would word
13 have gotten all the way to Padre Hurtado about what the
14 conscripts were doing there?

15 This was much later. And, again, that's where the
16 conflation comes into play where memories get mixed
17 together and specific dates get lost. It's been 43 years,
18 43 years, almost 43 years.

19 These things happen. You have to ask yourself in
20 light of all of this evidence that's been presented, number
21 one, is it trustworthy? Number two, does it lead me to
22 believe by a preponderance of the evidence -- and that's,
23 that's their burden. That's for them to prove.

24 Did Mr. Barrientos have involvement in the death
25 and torture of Victor Jara and only Victor Jara, no one

1 else, no one else?

2 And under any of those theories that you're going
3 to review today, I submit to you that he did not.

4 Mr. Barrientos did not help, conspire, aid, abet,
5 nor did he have command responsibility over those who did
6 beat, torture, and kill Mr. Jara.

7 Mr. Jara was an icon. You heard -- just because
8 they live in this military bubble, his wife did. He did.
9 The conscripts were really young. You know, it's not -- it
10 goes without saying that may have been music that was
11 prohibited even for them to hear.

12 But the point is that he's this great iconic
13 figure. And is it reasonable to believe that they are
14 going to leave someone of that stature, of that importance
15 in the hands of a lowly lieutenant when there's a thousand
16 in Santiago? No. That's going to be much higher in the
17 chain. That's going to be a decision made way above his
18 pay grade.

19 Don't leave common sense out the door.

20 When you sit down and you deliberate about this
21 case, ask yourselves one simple question: Am I making this
22 decision based on facts, or am I making it based on
23 emotion?

24 If it's based on the facts, you'll find that
25 Mr. Barrientos is not liable.

1 Thank you.

2 THE COURT: Thank you, Mr. Calderon.

3 Mr. Beckett?

4 **CLOSING ARGUMENT BY THE PLAINTIFF**

5 MR. BECKETT: Ladies and gentlemen, this is my
6 rough approximation of what Mr. Calderon just put on the
7 screen.

8 We do have a command here in this case, but that's
9 one of five theories. I talked to you earlier about other
10 theories and about a conspiracy at Chile Stadium to detain,
11 interrogate, torture, and commit the extrajudicial killing
12 of civilians, which included Victor Jara.

13 I'm going to show you, if you remember -- we're
14 going to have it up. I don't have time to wait for the
15 technology.

16 But we are -- I'll show you right here, our
17 conspiracy theory is a circle. It's not a flowchart.
18 Everybody at the stadium was involved -- or I'm not going
19 to say everybody was involved. But this was a conspiracy
20 at the stadium.

21 It was among the Army, the Air Force, the Navy,
22 yes, and civilians as well. Why should that be surprising?

23 You've heard testimony that these people were
24 here. Chain of command is not relevant to a conspiracy.

25 A conspiracy requires only that you find that

1 there was an agreement to commit one of these unlawful acts
2 and that these unlawful acts resulted.

3 The person that is involved in the conspiracy
4 doesn't have to be a major player. The Judge told you
5 earlier the role can be slight. The evidence in this case
6 shows that the role that Barrientos played was far more
7 than slight. He was a major actor, a significant player in
8 the overall conspiracy.

9 You don't need to identify all the other people in
10 the conspiracy.

11 But it's clear that Barrientos was interacting,
12 engaging with, working closely with, and coordinating with
13 officers and other soldiers, other people in the stadium
14 that were all committed to this common objective.

15 We also talked to you about a joint criminal
16 enterprise, which you'll see when you read the
17 instructions, is like a conspiracy with some different
18 elements and aiding and abetting where the defendant lends
19 substantial assistance to what's going on.

20 Mr. Calderon has failed to engage with the central
21 or some of the central fundamental issues in this case.

22 Mr. Barrientos gave dramatically different
23 accounts of his whereabouts on the relevant days.

24 The point of the FBI interview is not that he was
25 asked about his naturalization status or what he said in a

1 certain form or whether he advocated overthrow of a
2 government.

3 He was asked -- and you have this in evidence --
4 he was asked where was he around that time? Where was he
5 around the dates that we're focusing on, September 12th to
6 15th?

7 And what he told the FBI -- he didn't tell the
8 FBI, oh, I can't remember. I don't really have any
9 independent recollection. That only came in 2015.

10 What he told the FBI in 2012 is that at all times
11 I was with 180 other soldiers in Santiago at the Ministry
12 of Defense.

13 Three years later in a deposition, he now says he
14 has no independent recollection of what happened. So he
15 has to adopt the memory of someone else, Hinojosa, who was
16 put before you as an alibi witness.

17 Mr. Barrientos came in here today and yesterday,
18 and what did he testify about? Did he try to address that
19 fundamental issue? He avoided it. He testified about
20 minor things, things that do not bear on the central issues
21 in this case.

22 Why didn't he give you an explanation for these
23 radically inconsistent statements that he's given to you?
24 Because he can't explain them. And you have a right to
25 take that into consideration.

1 The defense has put before you two entirely
2 inconsistent alibis, Hinojosa and Quiroz. One says that he
3 was at Padre Hurtado and rarely saw Mr. Barrientos. The
4 other says that he was with Barrientos at all times.

5 Both can't be true. And yet both represented to
6 you, as they were alibi witnesses. How can this be?

7 If Mr. Barrientos had taken the stand and was
8 willing to talk about what transpired here, we could have
9 asked him those questions about Hinojosa and Quiroz.

10 He didn't. They're evading it. All they want to
11 do is create confusion.

12 MR. CALDERON: Objection, Your Honor. Violates
13 the motion in limine.

14 THE COURT: Objection is overruled.

15 MR. BECKETT: There's been no addressing of this.
16 You heard Mr. Calderon get up and say, Well, the problem is
17 that Barrientos, he just doesn't have any independent
18 recollection.

19 Well, has he lost his memory? Do we have any
20 medical evidence in this case that would remotely suggest
21 that? His memory in 2009 or 2012 seemed fine when he
22 talked to the FBI.

23 Let's talk a little more about his so-called alibi
24 witnesses. Mr. Hinojosa gave a statement in 1989, and he
25 told the police that he did not know where Mr. Barrientos

1 was.

2 I'm going to repeat that. He didn't know where
3 Mr. Barrientos was. But he heard that he might be at Chile
4 Stadium.

5 Then he has a conversation with Maria Teresa
6 Castro Barrientos. And suddenly he has an entirely
7 different story.

8 Moreover, not only does he have a different story,
9 he has a phone call, which he lies about on the stand, with
10 Barrientos. And Barrientos adopts his whole story.

11 How can someone come into a U.S. Court and take
12 that kind of position? How does that even past the muster
13 of common sense? It is an offense to come in and to make
14 that kind of ridiculous statement.

15 If you're accountable, stand up. If you made a
16 mistake in the past, come in and account for it. If
17 there's something in your case that doesn't make sense,
18 allow the lawyers to ask you about it. But he didn't do
19 that because he's a coward.

20 MR. CALDERON: Your Honor, I'm going to object to
21 the characterization, denigration of witnesses.

22 THE COURT: Objection sustained.

23 The jury will disregard counsel's last comment.

24 You can proceed, Mr. Beckett.

25 MR. BECKETT: Now he presents to you Maria Teresa

1 Castro Barrientos. Okay. The only evidence that is
2 presented to you in response to the videograph -- the
3 videotape testimony of Mr. Navarrete is Mrs. Barrientos who
4 says that Smith can't possibly be there.

5 You therefore have to take her at her word,
6 because there's no other evidence that says that that's the
7 case.

8 Is she someone you can rely upon?

9 Earlier I talked about the whole situation with
10 Baez. I'm not going to repeat this. But I will tell you
11 something else that happened, which is that Mrs. Barrientos
12 came in here, her first day of testimony, and told you that
13 she had not been physically close to Lieutenant Smith since
14 when? 1974.

15 And the very next day she came in here and
16 admitted on the stand that she had had at least three
17 meetings with this gentleman in 2015.

18 You know what that is. I don't have to
19 characterize that for you. This is not a person on which
20 you can rely. And yet she is the linchpin for this case.
21 She is the linchpin by which they are attempting to attack
22 Baez and they are attempting to attack Navarrete.

23 We heard a lot of so-called inconsistencies. I
24 said you would hear about these.

25 The inconsistency where one witness supposedly saw

1 bodies dressed in white, that's not the evidence. If you
2 have an issue about that, go back and look at it. The
3 bodies were white because someone said that there was
4 powder down where the people were being executed. It's not
5 that the bodies were wrapped up.

6 Something about uniforms. We've heard, you know,
7 that uniforms, well, sometimes they had insignias and
8 sometimes they don't.

9 Mr. Quiroz admitted on the stand in
10 cross-examination that, yeah, sure, these insignias, they
11 come on and off. You can take them on and you take them
12 off. When you don't want to be seen as an officer, they're
13 off. When you go into a command center and you're with
14 higher ranking people, obviously they go on.

15 These are not inconsistencies. These are things
16 that have already been explained.

17 Moreover, we're in a situation where 5- or 6,000
18 people are being held in a detention center and there's a
19 lot of different activities going on. A lot of different
20 things. Of course, not everything is going to be uniform.
21 Not everything is going to happen under a set of rules, a
22 clear set of rules. People are doing different things, but
23 it's all part of the overall conspiracy.

24 You heard that -- there's been evidence or
25 so-called evidence put before you that suggested that

1 Mr. Barrientos never changed his clothes.

2 And Maria Teresa Castro Barrientos said she saw
3 him on the 15th and the 16th, and he hadn't changed
4 his clothes in five days.

5 But Hinojosa, his bodyguard, who is with him all
6 the time says, oh, no, we showered. I showered. I didn't
7 shower with him because he showered at the officers'
8 shower.

9 It's another glaring inconsistency. What does
10 that tell you about their case? The conscripts gave
11 reliable testimony when they came in here. If they were
12 going to tell a story about Barrientos, because they
13 thought somehow that was the thing to do, they would have
14 embroidered a lot more, exaggerated a lot more.

15 Their stories were restrained. Their stories were
16 what they saw him doing as they were conducting their jobs.
17 They speak for themselves. And I submit to you that they
18 are credible accounts of what happened and they have not
19 been damaged by the defense.

20 Now, I want to say one more thing about Hinojosa.
21 There's been a lot of talk about pressure. Mr. Hinojosa
22 said that he gave his earlier statement. Do you know what
23 he said the pressure was?

24 The pressure was he had to go to a police station
25 and that he thought he might have to tell the truth.

1 That's the way he described it. He didn't say he was
2 abused. He didn't say he was hurt. He didn't say he was
3 yelled at. That's all, he had to give a statement.

4 I want to turn now to the question of the Jaras
5 again. And I think what is before you is a question about
6 how you measure this, what's the metric you use, how do you
7 compensate. And I've said before that that's a difficult
8 thing to do.

9 But if you look at the long absence the family has
10 suffered without their father and husband, over 40 years,
11 how do you measure the loss of a year of a father or a
12 spouse? How do you measure that?

13 Is it hundreds of thousands? Is it millions,
14 millions over a long period of time? Think about that kind
15 of pain, that kind of suffering.

16 Think about Victor Jara, who we all acknowledge,
17 oddly, is an important figure still in Chile. And he would
18 have been an even more important and impactful person had
19 his life not been stolen away from him in this brutal and
20 malicious way. Think about that.

21 And with respect to punitive damages, which you
22 have instructions on, send a message that this kind of
23 thing can't happen again, this conduct cannot be tolerated.

24 The judge told you wanton and reckless was the
25 standard. This is beyond that. This is deliberate,

1 intentional killing for a purpose, for intimidation
2 pursuant to a plan, pursuant to a conspiracy, and it needs
3 to be addressed.

4 THE COURT: Thank you, Mr. Beckett. Your time has
5 expired.

6 MR. BECKETT: Thank you.

7 THE COURT: All right. Ladies and gentleman, I
8 have just a few final instructions for you before I send
9 you back to begin your deliberations.

10 I know that you're probably getting tired of this
11 reminder, but it's important that you remember that during
12 your deliberations you must not communicate with or provide
13 any information to anyone by any means about this case.

14 You may not use any electronic device or media,
15 such as a telephone, cell phone, smartphone, iPhone,
16 BlackBerry, or computer, the internet, any internet
17 service, or any text or instant messaging service.

18 That includes any chatroom, blog, or website.
19 There's Facebook, Myspace, LinkedIn, YouTube, Twitter,
20 maybe something that got created while we were in here.

21 Regardless, you're not to consider or use any of
22 those to communicate with anyone any information about this
23 case or to conduct any research about the case until I
24 accept your verdict.

25 In other words, you cannot talk to anyone on the

1 phone or correspond with anyone, or electronically
2 communicate with anyone about this case. You can only
3 discuss this case in the jury room with your fellow jurors
4 during your deliberations.

5 And I would expect you to inform me should you
6 become aware of any other jurors' violation of these
7 instructions.

8 Now, the reason that you may not use electronic
9 means to investigate or communicate about the case is
10 because it's important that you decide this case based
11 solely on evidence that's presented here in the courtroom.

12 Information that is contained on the internet or
13 available through social media might be wrong, incomplete,
14 or inaccurate.

15 You and only you are permitted to discuss the case
16 with your fellow jurors during deliberations because they
17 have seen and heard the same evidence that you have.

18 In our judicial system, it is important that you
19 not be influenced by anything or anyone outside of the
20 courtroom. Otherwise, your decision could be based on
21 information that is known only by you and not your fellow
22 jurors or the parties in the case. This would unfairly and
23 adversely impact the judicial process.

24 Now, when you go to the jury room, you're to
25 choose one of your members to act as your foreperson. The

1 foreperson will direct your deliberations and speak for you
2 in court.

3 There's a verdict form that I'm going to send back
4 with you along with the jury instructions. I'm going to go
5 over it with you now.

6 The verdict form is a two-page document. It's
7 actually front and back, I think. So actually three pages.

8 It has the style of the case. That's the case.
9 The case number. It's in what we call interrogatory form,
10 meaning it asks you questions.

11 And it says, we, the jury, return the following
12 verdict:

13 One, claims brought by Plaintiff Joan Jara, as
14 representative of the Victor Jara Estate, against Defendant
15 Barrientos.

16 Question 1: Does the jury find that Defendant
17 Barrientos is liable for the torture of Victor Jara?

18 A place for you to answer yes or no.

19 If you answered yes to Question 1, Section 1
20 above, what is the total amount of damages that you
21 determine is appropriate to compensate the Estate of Victor
22 Jara?

23 And there's a line that says, compensatory
24 damages, a dollar sign, and a line.

25 Next question, or next instruction, if you

1 answered yes to Question 1, Section 1 above, what, if any,
2 is the total amount of punitive damages that you determine
3 is appropriate to assess against Defendant Barrientos?

4 And then there's a line that says punitive
5 damages, dollar sign, and a line.

6 Section 2.

7 Claims brought by Plaintiff Joan Jara, as
8 representative of Victor Jara's Estate, and by Plaintiffs
9 Joan Jara, Amanda Jara Turner, and Manuela Bunster, in
10 their individual capacities against Defendant Barrientos.

11 And the first question under Section 2 is:

12 Does the jury find that Defendant Barrientos is
13 liable for the extrajudicial killing of decedent, Victor
14 Jara?

15 And then a place for you to indicate your verdict,
16 yes or no, followed by an instruction.

17 If you answered yes to Question 1, Section 2
18 above, what is the total amount of damages that you
19 determine is appropriate to compensate the Estate of Victor
20 Jara?

21 And then there's a line for compensatory damages,
22 dollar sign, and a line.

23 Followed by instruction: If you answered yes to
24 Question 1, Section 2 above, what is the total amount of
25 damages that you determine is appropriate to compensate

1 Plaintiffs Joan Jara, Amanda Jara Turner, and Manuela
2 Bunster, in their individual capacities?

3 And then a line for compensatory damages, a dollar
4 sign, and a blank line.

5 If you answered yes to Question 1, Section 2
6 above, what, if any, is the total amount of punitive
7 damages that you determine is appropriate to assess against
8 Defendant Barrientos?

9 And then punitive damages, a colon, dollar sign,
10 followed by a line.

11 So say we all, this blank day of June.

12 And a place for your foreperson to sign the
13 verdict form.

14 Now, when you go back to the jury room, take the
15 verdict form with you. It will be delivered by my
16 courtroom deputy.

17 When you have all agreed on a verdict, your
18 foreperson should fill in the form, sign it and date it.
19 And then you'll return it to the courtroom.

20 Should you wish to communicate with me at any
21 time, please write down your message or question, and give
22 it to the court security officer.

23 The court security officer will bring it to me.
24 And I will respond as promptly as possible, either in
25 writing or by talking to you in the courtroom.

1 Please understand that if you send out a question
2 or a query to me, that I'll need to gather all of the
3 parties and find the lawyers, bring them in, review with
4 them the question, and send back an appropriate response.
5 So I ask you to be as patient as possible.

6 Now, I tell you this not to discourage you from
7 asking me questions, but just because I want to share with
8 you the benefit of my experience, which is most of the
9 time, not all, but most of the time, questions from jurors
10 can be answered by directing them back to the instructions.

11 You'll have the written instructions with you.

12 Again, not all of the time, but almost all of the
13 time, my response to a question from the jury is, please
14 refer to the instructions.

15 So just use that as a first step.

16 Again, not to discourage you in any way, but I
17 want to make sure that you understand if it becomes
18 necessary for you to send me a question, do not indicate in
19 your question anything about the votes, who's in what
20 position, and anything with respect to the content of your
21 deliberations.

22 That information should stay with you in the jury
23 room, should not be shared with me or with anybody else in
24 your note or in your question.

25 Understood?

1 JURY: Yes, sir.

2 THE COURT: All right. Thank you all for your
3 attention to all of the proceedings. You may now retire to
4 begin your deliberations and I'm sure unite with your
5 long-awaited lunch.

6 (Jury exited the courtroom at 1:47 p.m. to
7 commence deliberations.)

8 THE COURT: Does either counsel for the plaintiff
9 or counsel for the defense have any objection to the
10 Court's instructions to the jury as delivered?

11 MR. BECKETT: No, Your Honor.

12 MR. CALDERON: No objection, Your Honor.

13 THE COURT: We'll be in recess, then, pending
14 further word from the jury.

15 (Recess at 1:48 p.m. to 2:19 p.m.)

16 THE COURT: We're back on the record in Jara
17 versus Barrientos Nunez, 6:13-civil-1426.

18 The Court notes that counsel are present. The
19 parties are absent.

20 We have a question from one of our jurors which is
21 personal in nature. Apparently, one of our jurors has an
22 autistic child that is used to hearing from her during the
23 day. She's concerned that not hearing from him will cause
24 her to have worries.

25 The question, I'll read it to you says:

1 "I would like to request, if possible, the
2 opportunity to reach out to my son briefly. He is autistic
3 and has very high anxiety. He is used to me reaching out
4 to him about the same time every day. I worry when he
5 doesn't hear from me he is going to start worrying himself
6 into a bad state. I can use any phone.

7 "Thank you. Juror Number 16," which I think is
8 Ann Marie Wetherington.

9 I've proposed this response:

10 "Mrs. Flick will bring you a phone. She will need
11 to monitor the call. No deliberations are to take place
12 while you are on the call. Deliberations may resume only
13 upon your return. I hope this is helpful."

14 My signature and today's date and time.

15 Do you have any objection to that response?

16 MR. BECKETT: Not at all, Judge.

17 THE COURT: Mr. Calderon?

18 MR. CALDERON: No, Your Honor.

19 THE COURT: All right. Let me just remind the
20 lawyers while you're here, I expect you to have someone
21 present within five minutes.

22 MR. BECKETT: Yes, Judge.

23 THE COURT: So I don't care who it is. But
24 whoever it is, is going to speak for both of you. So if
25 you don't have somebody here within five minutes, I'm going

1 to fine you. All right? Because I've had this question
2 for a long time. I can appreciate the fact that you all
3 didn't anticipate the question.

4 But my experience is it happens all the time. And
5 time is of the essence. I want to make sure that I don't
6 spend 30 minutes waiting for you all to regather. All
7 right?

8 So just be on notice. I expect somebody to be
9 able to respond within five minutes.

10 MR. BECKETT: Understood, Judge. We were just
11 outside, but it took more than five minutes to come in.

12 THE COURT: It took a lot more than five minutes.
13 I've been waiting for you for over 20.

14 MR. BECKETT: We were here for about ten minutes,
15 Judge. I understand. We will be prompt. And I will stay
16 in the building.

17 THE COURT: Okay. Thank you.

18 Miss Flick, will you -- do you understand that?
19 Miss Wetherington, ask her to step out into the anteroom,
20 monitor her call, meaning stand by her. Make sure nothing
21 about the case is discussed.

22 And make sure I get that note back. And make it a
23 part of the record.

24 THE DEPUTY CLERK: Yes, sir.

25 THE COURT: We'll be in recess pending further

1 word.

2 MR. BECKETT: Thank you, Judge.

3 (Recess at 2:21 p.m. to 5:06 p.m.)

4 THE COURT: Back on the record in Jara versus
5 Barrientos Nunez, 6:13-civil-1426.

6 I had a question from the jurors with regard to
7 time. They were -- their question is: "Do we finish at
8 5:00 or continue past 5:00?"

9 They can continue to deliberate, but I am inclined
10 to bring them back in and explain the schedule to them. I
11 want to make sure that they know that there's no time
12 pressure on them whatsoever. They can take as much time as
13 they need in order to deliberate and resolve the case.

14 But I am going to explain to them that I'm going
15 to ask them to, after they adjourn this evening, to come
16 back on Monday morning to resume their deliberations.

17 I am not, as I know the lawyers know, available on
18 Thursday and Friday.

19 I am not inclined to have another district judge
20 take the verdict or to have them to continue to deliberate
21 in my absence because I won't be available to answer
22 questions.

23 It's an eight-day trial in which the lawyers,
24 litigants, the parties have got a lot of time and resources
25 invested.

1 And I think under the circumstances -- if it were
2 a shorter case and less complicated, perhaps I would be
3 inclined to let another judge take the verdict. Or if I
4 were going to be available so that I could respond to
5 questions, even though I'm not sure I would be comfortable
6 doing that in absentia.

7 Either of those options is unpalatable for me
8 because of the length of time to interrupt their
9 deliberations.

10 But coming back on Monday is the lesser of the two
11 evils in my judgment, so that's what I plan to do.

12 MR. BECKETT: Judge, is it your intent to allow
13 the jury to let them stay past 5:00 tonight?

14 THE COURT: I'm going to let them stay for a
15 while. Our landlord will turn off the air conditioning at
16 6:00. So I'm going to let them know that.

17 And then I'll ask them what they want to do. If
18 they want to continue to work for a while longer this
19 evening, I'll allow them to do that.

20 If they prefer to stop for the evening and go
21 home, you know, we did promise them they could be out by
22 5:00. They may have made some personal commitments not
23 realizing their deliberations were going to continue.

24 So I'm going to bring them back in and address
25 them in open court. And I'll get some sense from them as

1 to what they want to do in terms of continuing to work or
2 not.

3 Mr. Carter, let's bring the jury in, please.

4 I'm going to have this note marked as the Court's
5 next numbered exhibit.

6 (Jury entered the courtroom at 5:10 p.m.)

7 THE COURT: Welcome back, ladies and Mr. Codner.

8 I have your question. So I thought it would be
9 easier for me to bring you back in here and tell you what
10 your options are.

11 You can certainly work a little bit longer tonight
12 if you would like to. I recognize some of you may have
13 obligations that you committed to in view of the fact that
14 I promised you you would be out by 5:00, so I'm not
15 forgetful about that.

16 You can work a little bit longer tonight. Our
17 landlord, as I mentioned to the lawyers, the GSA will turn
18 off the air conditioning at 6:00. It gets a little
19 uncomfortable after that. So I wouldn't recommend that you
20 work much past 6:00.

21 So what I would need to ask you to do is,
22 unfortunately, I am not available in that I am not here
23 tomorrow and Friday. I think I may have mentioned that
24 during the jury selection process.

25 So what I would ask you to do, first of all, I

1 want you to be assured that you may take all the time that
2 you need. There is no urgency. There's no pressure on you
3 to complete your task within a given time period. You take
4 all of the time that is required in order to resolve the
5 case.

6 But I will need you, once you decide that you are
7 going to adjourn for this evening, if you do not complete
8 your work this evening, then I'm going to need you to come
9 back Monday morning at 9:00 to resume your deliberations.

10 Here's the caveat. That's a long period of time
11 for you all to be apart. It's important that you
12 understand that my instructions, not that they haven't
13 always been important, but it's really important over that
14 long period of time that you avoid exposing yourself to
15 anything that might give you any information other than the
16 evidence in the case and my instructions on the law.

17 So you have to be very diligent about avoiding the
18 media, avoiding the paper, avoiding the television. I
19 don't know what kind of coverage there is out there. It
20 would not surprise me if there is some. So you would need
21 to stay off the internet.

22 Do all of you appreciate my concern about four
23 days and following my instructions?

24 JURY: Yes.

25 THE COURT: Okay. So if you all would like to go

1 home for the evening now, you can do that. If you would
2 like to work a little bit longer, you can do that as well.

3 If you want to go back and talk about it for a
4 few minutes and let me know what you'd like to do, you can
5 do that also.

6 So why don't I let you, you all go back and
7 confer. And then I'll just have Mr. Carter stand by and
8 let him know once you've decided whether you want to work a
9 little bit longer tonight or whether you'd rather go home
10 and come back fresh on Monday morning.

11 (Jury exited the courtroom at 5:12 p.m.)

12 THE COURT: We'll just be at ease until we hear
13 back from them.

14 (Jury entered the courtroom at 5:14 p.m.)

15 THE COURT: All right. Ladies and Mr. Codner,
16 have you all conferred and reached a decision about what
17 you'd like to do in terms of the schedule?

18 JURY: Yes.

19 THE COURT: What's your preference?

20 JURY: Come back on Monday.

21 THE COURT: Come back on Monday. Okay.

22 Ladies and gentlemen, thank you for your attention
23 and your diligence with respect to your responsibilities.
24 I'm very much appreciative. And I know the parties and the
25 litigants are as well.

1 I'm going to remind you, back on the record, that
2 you're to continue to follow my admonition and instruction
3 not to discuss the case amongst yourselves or with anyone
4 else and to avoid any exposure to any media coverage or any
5 other sources that might provide information.

6 Be particularly careful about staying off of the
7 internet or any electronic sources. Avoid any type of
8 social media or any discussion of the case on social media.

9 I'm going to ask you at your return on Monday
10 whether or not you've been able to follow my instructions
11 in that regard.

12 So I'm going to excuse you with my thanks and ask
13 you that you be back ready to resume your responsibilities
14 at 9:00 in the morning.

15 The only further admonition I would give you is,
16 remember, I think I told you at the outset of the case, the
17 jury can only function when you all are all together. So
18 your deliberations must cease when you separate and cannot
19 resume until you come together again.

20 All right?

21 JURY: Yes.

22 THE COURT: All right. Have a pleasant weekend.
23 I'm sure you have personal things to catch up on. It's a
24 long weekend at least for you in terms of your court work.
25 But I'm sure you have other responsibilities. So whatever

1 they are, I hope they are pleasant.

2 And we'll see you back here on Monday morning at
3 9:00.

4 (Jury exited the courtroom at 5:16 p.m.)

5 THE COURT: All right. We'll be in recess until
6 9:00 Monday morning.

7 Hopefully, there's some flights out of Orlando to
8 New York and other parts of the world where you all need to
9 get. And I know you did not anticipate having this
10 interruption. I was concerned about it from the get-go.

11 But I think our jurors, they strike me as being
12 diligent and responsible; and I'm confident that they will
13 abide by my instructions. And hopefully we'll have no
14 issues.

15 And we'll resume the deliberations on Monday
16 morning at 9:00.

17 You all have a pleasant time away from me. I'm
18 sure you have lots of other things to do. I'll see you
19 back here Monday morning at 9:00.

20 (Proceedings adjourned at 5:17 p.m. until
21 Monday, June 27, 2016, at 9:00 a.m.)

22 *****

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s\Amie R. First, RDR, CRR, CRC, CPE

INDEX

DEFENDANT WITNESSES

D I R E C T C R O S S R E D I R E C T R E C R O S S

PEDRO PABLO BARRIENTOS NUNEZ	27	37	43
PEDRO PABLO BARRIENTOS NUNEZ	46	52	55

Jury Charge	62
Closing Argument Plaintiff	92
Closing Argument Defense	126
Closing Argument Plaintiff	160