

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JANE DOE, et al.      :
:                    :   CA No. 00-674
:   Plaintiff,       :
:                   :
:   v.               :
:                   :
JOHNY LUMINTANG      :   DAY 3
:                   :
:   Defendant.      :
:                   :
- - - - -X

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Washington, D.C.
March 29, 2001
9:55 a.m.

Transcript of Trial
Before the Honorable
Alan Kay
United States District Court Magistrate

APPEARANCES:

For the Plaintiff: ANTHONY DiCAPRIO, ESQ.
 JUDITH CHOMSKY, ESQ.
 JENNIFER GREEN, ESQ.
 STEVE SCHNEEBAUM, ESQ.

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Ian Thomas	20	--	--	--
Estella Abosch	28, 66	--	--	--

WITNESSES FOR THE

DEFENDANT

None.

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1 P R O C E E D I N G S

2 THE CLERK: All rise. This Honorable
3 Court is now in session. Please be seated and come
4 to order.

5 Civil Action 2000-674, Jane Doe et al. v.
6 Johnny Lumintang. Anthony DiCaprio, Judith Chomsky,
7 Jennifer Green, Steve Schneebaum representing the
8 plaintiffs. The defendant is not present and there
9 is no representation by counsel.

10 THE COURT: Good morning.

11 Mr. DiCaprio.

12 MR. DiCAPRIO: Yes, Your Honor.

13 When we broke last evening, there was a
14 question of whether or not John 2 would continue
15 testifying, and he will not be testifying. So Ms.
16 Chomsky will be calling our next witness.

17 THE COURT: Very well. Thank you.

18 MS. CHOMSKY: I call Arnold Kohen.

19 ARNOLD KOHEN, PLAINTIFFS' WITNESS, SWORN

20 THE CLERK: Thank you. You may be seated.

21 DIRECT EXAMINATION

22 BY MS. CHOMSKY:

23 Q Mr. Kohen, would you give your name and
24 address for the record?

25 A Yes. Arnold Kohen, 7324 Baltimore Avenue,

1 Takoma Park, Maryland.

2 Q Mr. Kohen, I am showing you what has been
3 marked for identification as Exhibit 33. Would you
4 identify this, please?

5 A Yes. That's a copy of--a small copy of my
6 curriculum vitae.

7 Q What is your profession?

8 A I am an author and I also work as a
9 consultant for a non-profit organization called the
10 Humanitarian Project, which conducts human rights
11 and humanitarian efforts on East Timor and other
12 international issues.

13 Q Have you written on the issue of East
14 Timor?

15 A I have over the past more than 20 years.

16 Q Would you identify specifically the books
17 that you've written that deal with the issue of
18 East Timor?

19 A Yes. I co-authored a book in 1979 called
20 An Act of Genocide which was on East Timor, and
21 then in 1999 I published a book called From the
22 Place of the Dead: The Biography of Bishop Belo of
23 East Timor. A new edition, revised edition, is
24 coming out momentarily.

25 Q And would you state briefly who Bishop

1 Belo is?

2 A Bishop Belo is the bishop of the Catholic
3 Diocese of Dili, the capital of East Timor, and he
4 received the Nobel Peace Prize--co-received the
5 Nobel Peace Prize in 1996.

6 Q Have you travelled to East Timor on any
7 occasion?

8 A I have on five separate occasions.

9 Q What were the purpose of these visits?

10 A The purpose of the visits were to gather
11 current information from witnesses on human rights
12 and humanitarian conditions in East Timor.

13 Q And were these the basis for your
14 publications?

15 A Yes, they were. I gathered--in several of
16 the visits, I gathered information that went into
17 this biography. I also travelled most recently to
18 East Timor last week with a group from Yale
19 University to which I was an expert advisor.

20 MS. CHOMSKY: Your Honor, I would like to
21 move Exhibit 33 into evidence.

22 THE COURT: Very well.

23 MS. CHOMSKY: And I ask--

24 THE COURT: Go ahead.

25 MS. CHOMSKY: --ask that you qualify Mr.

1 Kohen as an expert witness.

2 THE COURT: On what, Ms. Chomsky?

3 MS. CHOMSKY: On human rights violations
4 in East Timor.

5 THE COURT: I am not sure as to qualifying
6 Mr. Kohen as an expert on human rights. I
7 certainly have before me evidence of his visits to
8 East Timor and his awareness of the conditions in
9 East Timor. I will certainly qualify him as
10 someone who is perhaps knowledgeable with respect
11 to the conditions or human rights conditions or
12 lack of conditions in East Timor. I'm sort of
13 hesitant to qualify him as an expert. I don't know
14 how one defines an expert on human rights in East
15 Timor. But I will accept his testimony as someone
16 who has visited there, traveled extensively, and is
17 knowledgeable of the human rights.

18 I will admit Exhibit 33, Plaintiff's
19 Exhibit 33 for identification into evidence.

20 [Plaintiffs' Exhibit No.
21 33 was received in
22 evidence.]

23 MS. CHOMSKY: Thank you, Your Honor.

24 THE COURT: Now, after I have heard his
25 testimony, I may revisit that issue.

1 MS. CHOMSKY: Thank you, Your Honor.

2 BY MS. CHOMSKY:

3 Q I would like to bring your attention to a
4 trip that you made in 1999, in March, I believe; is
5 that correct?

6 A Yes.

7 Q What was the purpose of your trip in March
8 of 1999?

9 A Well, specifically in March of 1999, there
10 had been extensive reports in the outside world of
11 military-orchestrated violence, and I wanted to
12 travel extensively in East Timor and find out to
13 what extent this was true.

14 Q Did you conduct interviews?

15 A I conducted interviews throughout the
16 territory, about 100 interviews with clergy, with
17 legal groups, and with ordinary people.

18 Q And in what language did you conduct these
19 interviews?

20 A Well, they were conducted in various
21 languages. I speak Portuguese. I was with
22 somebody else who speaks Portuguese. I travelled
23 throughout the territory with Bishop Belo, who
24 translated from the Tetum dialect into English, and
25 some interviews were done in Bahasa, Indonesia, by

1 Bishop Belo translated into English, and some
2 interviews indeed were held in English by people
3 who speak that language.

4 Q Would you describe generally the results
5 of what you learned from those interviews?

6 A Well, the general results of those
7 interviews is that there was indeed a
8 military-orchestrated campaign of violence and
9 intimidation of people throughout East Timor. We
10 travelled from the eastern part through the western
11 part and were with a variety of witnesses of
12 different persuasions, and the conclusion was
13 inescapable at the end of that visit that such a
14 campaign of violence and intimidation was being
15 orchestrated by the Indonesian military.

16 Q Can you give examples of specific
17 interviews that led you to that conclusion?

18 A There was a stop at a town called
19 Manatuto, which is about 30 miles from the capital
20 of Dili, which Bishop Belo and myself stopped at a
21 Catholic mission and spoke to a nun named Sister
22 Erminia.

23 Sister Erminia was asked by the Bishop,

24 "Well, what is going on here?"

25 And Sister Erminia said, "Well, my

1 religious order forbids me normally to be involved
2 in politics." The way that she put it was "Santa
3 Mandalena says that I shouldn't be involved in
4 politics; however, what I could say is that there
5 has been terrible intimidation here and violence by
6 the military at night, and it's a very worrying
7 situation."

8 I might add that Sister Erminia was killed
9 in September of 1999 in a case that is currently
10 being adjudicated in East Timor. But that
11 particular experience was the beginning of this.
12 This was a Catholic nun who is very much
13 apolitical, not involved with any parties, indeed
14 somebody who really kept her distance, and the only
15 reason she was speaking so frankly is because she
16 was in the presence of her bishop, who she also
17 knew since he was a young man.

18 Q Were there any other specific interviews
19 that you would like to recount?

20 A Yes. In the town of Aileu, there's a
21 group of American Catholic--

22 THE COURT: Unfortunately, the reporter--

23 THE WITNESS: Sorry.

24 THE COURT: --is not familiar with all the
25 names of the--

1 THE WITNESS: Right.

2 THE COURT: --towns and villages.

3 THE WITNESS: I could spell these out.

4 THE COURT: If you would be good enough to
5 spell them out.

6 THE WITNESS: Right. Manatuto is spelled
7 M-a-n-a-t-u-t-o, I believe. If there's a slight
8 correction, I'll do that for the record.

9 The town of Aileu where the American
10 Catholic sisters are is spelled A-i-l-e-u, which is
11 a town a couple of hours outside the capital.

12 These Catholic sisters from New York, I
13 might add, New York and Chicago, had been in East
14 Timor then for about nine years speaking local
15 languages, and the interviews with them were
16 particular illuminating. They felt that--I mean,
17 the question that they asked at the end was, "Are
18 we facing a bloodbath?" This is, again, March
19 1999. They said that there had been so much
20 intimidation, so many threats by the Indonesian
21 military, and their fear was that if these threats
22 were made good, that there would indeed be a
23 bloodbath.

24 BY MS. CHOMSKY:

25 Q I would like to bring your attention to an

1 incident involving the Irish Foreign Minister--

2 A That's right.

3 Q --that was recounted to you.

4 A Yes. The--

5 THE COURT: Before we move on to that, Ms.
6 Chomsky, would it be possible to elicit from Mr.
7 Kohen the nature of the threats that led the
8 sisters to believe there was going to be a
9 bloodbath? I mean, having him say that they felt
10 there were threats that would lead to a bloodbath,
11 it sort of--

12 MS. CHOMSKY: Certainly.

13 THE WITNESS: Yes.

14 THE COURT: You jump to the last page of
15 the story.

16 THE WITNESS: Yes.

17 BY MS. CHOMSKY:

18 Q Would you elaborate, please?

19 A Certainly. What the sisters said
20 specifically was that local men were being pressed
21 into service of the Indonesian military to act as
22 militias, and they were being pressed into service
23 to commit violence against their fellow citizens,
24 and--basically on pain of death. And I think that
25 the feeling of the sisters was that if this type of

1 activity continued through a referendum, that it
2 would lead to a general conflagration.

3 If you need more specific information, I
4 could go further.

5 Q Would you tell us about the specific
6 incident with the Irish Minister?

7 A Yes. In the middle of April, the foreign
8 minister of Ireland at the time, David Andrews, was
9 visiting the capital of East Timor, Dili. That
10 very day, he--there was an attack by the Indonesian
11 military on the house of East Timor's most
12 prominent family, the Carrascalao family. I will
13 spell that. That's C-a-r-r-a-s-c-a-l-a-o. This
14 family consisted of the former Indonesian appointed
15 governor of East Timor, Mario; his older brother,
16 Manuel, who was a local legislator and businessman.

17 And this family had supported the
18 Indonesian presence in East Timor until a short
19 time before 1999, and then when it was indicated
20 that there might be the possibility of a
21 referendum, the family openly said that the people
22 should be given the right to choose.

23 I visited the home of this family in March
24 of 1999 and was taken around by the stepson of
25 Manuel, who was an 18-year-old boy.

1 What happened is we came--and this has
2 direct relevance to what happened with the Irish
3 Foreign Minister--we were taken into the house and
4 the boy, whose name is Manoelito,
5 M-a-n-o-e-l-i-t-o, Manoelito was extremely nervous
6 when he let us into the iron gate of the house.
7 The father of the house, Manuel, was extremely
8 nervous as he served coffee. He was almost
9 shaking, saying that they had been repeatedly
10 threatened.

11 There were about 100 to 125 refugees from
12 outlying areas that were living on the property.
13 They had a huge backyard. Again, this is the most
14 prominent family and they had a lot of room within
15 their house.

16 At the time, there was no way to know
17 specifically whether they were--they were being
18 paranoid or whatever. These were the first days
19 that we were in East Timor.

20 Now, skip ahead to the middle of April,
21 which was really less than--more or less three
22 weeks after we visited the house. There was an
23 orchestrated effort in the center of Dili by
24 military people observed by people--Irish people
25 travelling with Foreign Minister Andrews. They

1 were actually on the block of the Carrascalao house
2 as a military attack began.

3 Foreign Minister Andrews was elsewhere in
4 Dili; he was meeting with the military commander at
5 the time, who I believe was Tono Suratman. If you
6 need that name spelled out, I can do that.

7 Q Would you spell it, please?

8 A Yes. Tono is T-o-n-o, and the last name
9 is S-u-r-a-t-m-a-n.

10 Q Did you--

11 A Sorry.

12 Q Did you interview members of the Irish
13 delegation?

14 A I did extensively interview members of the
15 Irish delegation, both at that time--not only did I
16 interview them, I was in contact with them by cell
17 phone while they were in Dili with Foreign Minister
18 Andrews, and I reiterated these interviews
19 recently.

20 Q Would you tell us what they reported
21 observing at that time?

22 A One of the people, whose name is Shawn
23 Steele, S-t-e-e-l-e, was outside the Carrascalao
24 house as this attack was taking place. He saw, he
25 said, military people going inside in a very

1 disciplined way, breaking into the house, shooting
2 taking place. The young boy, Manoelito was,
3 according to doctors there, ripped apart. About
4 twelve refugees who were there were killed. Mr.
5 Shawn Steele stayed on the scene until he was
6 finally told by people that he said were military
7 in plainclothes to get out of there or he would be
8 killed, but he said that he was right there on the
9 scene, saw military people in cars doing nothing to
10 stop this event.

11 Foreign Minister Andrews was with, as I
12 mentioned, Commander Suratman at the time. The
13 father of the house, Manuel, when he saw that an
14 attack might be beginning--that is, before the
15 house was attacked--went over to the military
16 headquarters and, according to the people with
17 Foreign Minister Andrews, begged the military
18 commander to do something to help them. The
19 military commander said he could do nothing.

20 Q Do you have any other examples of the
21 basis for your conclusion that there was an
22 orchestrated and systematic intimidation going on?

23 A Well, I named a few examples. There were
24 others. There's another bishop in East Timor in
25 the town of Baucau, which is spelled B-a-u-c-a-u.

1 His name is Basilio, B-a-s-i-l-i-o, then in between
2 small d-o, then his last name is spelled
3 N-a-s-c-i-m-e-n-t-o.

4 We visited with him as well, he's a
5 separate person, and he said that in his area,
6 there was a terrible campaign, orchestrated
7 campaign of intimidation and violence.

8 We also went to a Catholic mission school
9 near there called Fatunaca, spelled
10 F-a-t-u-n-a-c-a, that is funded largely by USAID.
11 It's a training school of Bishop Belo's religious
12 order. At that place, several priests told us that
13 there was an orchestrated campaign of violence
14 going on throughout the area.

15 There were numerous other instances during
16 this period of time, but one in particular is worth
17 recounting. Jesuit priests in the capital of Dili,
18 two of whom at the time were prison chaplains--I
19 mean, this was their job for many years; they have
20 lived in East Timor--they were foreign missionaries
21 and they had lived in East Timor for between 25 and
22 30 years. We went to the house of one of them who
23 visited prisons almost on a daily basis, and he
24 said that there were murders taking place, he
25 showed us photographs of murders that were taking

1 place during that time.

2 Q Inside the prison?

3 A No, not inside the prison; in the region
4 where he lived in Dili, which was called LaHanae,
5 which is spelled L-a-H-a-n-a-e. And again, his
6 information was extremely detailed, sober, and it
7 accorded with other accounts that we were receiving
8 in other parts of the territory.

9 THE COURT: These murders, Mr. Kohen, were
10 carried out by whom? Did he say?

11 THE WITNESS: According to the priests
12 that we spoke with, these murders were being
13 carried out by the Indonesian military.

14 THE COURT: The Indonesian military--

15 THE WITNESS: The Indonesian military.

16 THE COURT: --as opposed to the East
17 Timorean --

18 THE WITNESS: By the Indonesian military.

19 THE COURT: All right.

20 THE WITNESS: The Marinal sisters--this is
21 an order based in New York, in Ossining, New
22 York--what they said, and very, very emphatically,
23 was that there was really no such thing, so to
24 speak, as big militias, that the military was
25 behind them every single step of the way. And this

1 is something that Bishop Belo emphasized again and
2 again.

3 Q In April of 1999, did you have occasion to
4 write about what you had observed in East Timor?

5 A I did.

6 Q I am showing you what has been marked for
7 identification as Exhibit 34. I would ask you to
8 read into the record on the right-hand column of
9 the first page the first full paragraph.

10 A Yes. "In late January this year, the new
11 Indonesian president, B.J. Habibie, announced that
12 the people of East Timor would have a free choice
13 on their future with the options of autonomy or
14 full independence. But elements of the Indonesian
15 army took steps to oppose the new policy.
16 Recruitment for paramilitary forces, an amalgam of
17 the small minority of Timor Timoreans favoring
18 Indonesian rule, criminal elements, and other
19 hirings, some of them forced to enlist against
20 their will, increased, with monthly salaries and
21 rice allotments serving as powerful incentives in a
22 country where survival under military rule is a
23 harsh challenge. In some places, too, Indonesian
24 irregulars and plainclothes soldiers play an
25 important role in the paramilitaries. So despite

1 the newfound hope brought about by the prospect of
2 independence, the situation grew still more tense
3 as the Indonesian military mounted a
4 well-orchestrated campaign to create conditions in
5 which it would be impossible for the promised vote
6 to be held."

7 MS. CHOMSKY: I have no further questions.

8 THE COURT: All right.

9 However, the vote was indeed held, was it
10 not, Mr. Kohen?

11 THE WITNESS: The vote was indeed held.

12 MS. CHOMSKY: You may step down.

13 THE WITNESS: Thank you.

14 [Witness excused.]

15 MS. CHOMSKY: I would like to call Ian
16 Thomas.

17 THE COURT: Would you like to admit this
18 article into evidence, Ms. Chomsky?

19 MS. CHOMSKY: I would like to move this
20 into evidence.

21 THE COURT: Very well. The Court will
22 accept into evidence Plaintiff's Exhibit 34.

23 [Plaintiffs' Exhibit No.

24 34 was received in
25 evidence.]

1 IAN THOMAS, PLAINTIFFS' WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. CHOMSKY:

4 Q Mr. Thomas, would you repeat your name and
5 give your address for the record?

6 A My name is Ian Thomas, and I live at 3168
7 17th Street, Northwest, Washington, D.C.

8 Q Would you please tell us your profession.

9 A I am a cartographer and a remote-sensing
10 specialist. I have wide experience with different
11 satellite images. I worked at the United States
12 Geological Survey for the Biological Resources
13 Division, and I am currently working as a
14 cartographer and remote-sensing specialist at the
15 World Wildlife Fund.

16 Q Would you explain what a remote-sensing
17 specialist is?

18 A I use a variety of satellite images to
19 look at the planet and to study different changes
20 in the environment and to monitor different events,
21 such as floods and fires, and different things like
22 that.

23 MS. CHOMSKY: Your Honor, I would like to
24 offer Mr. Thomas' testimony to interpret a series
25 of images of East Timor in September of 1999.

1 THE COURT: The Court will accept Mr.
2 Thomas as an expert in cartography and remote
3 sensing of satellite images.

4 BY MS. CHOMSKY:

5 Q I am going to show you a group of exhibits
6 from Exhibit 35 to 43, and I will be asking you to
7 go through them with me.

8 MS. CHOMSKY: Your Honor, if I may, I
9 would like to stand next to the witness because I
10 have only two copies.

11 THE COURT: All right.

12 MS. CHOMSKY: Thank you.

13 BY MS. CHOMSKY:

14 Q Mr. Thomas, looking first at Exhibit 35,
15 can you explain to the Court what each of these
16 images on the three pages are.

17 A On Exhibit 35, the first image is a
18 picture of Dili that was taken I believe on
19 September 9th, and it shows large areas of Dili on
20 fire with black smoke plumes coming out of the city
21 blocks that are on fire, and you can see the
22 different--the street layout of Dili there. It's a
23 picture of the whole city.

24 The image underneath is a zoom outwards
25 showing a wider area surrounding Dili. The center

1 of the picture has Dili in the center and you can
2 see a very small smoke plume still.

3 Should I go--

4 Q Yes.

5 A Okay. And then on the next page is
6 another page of the same scene.

7 Should I just keep on going?

8 Q Yes.

9 A Okay. And the last picture--

10 THE COURT: What are you looking at now,
11 Mr. Thomas? Number 3 or--

12 MS. CHOMSKY: It would be page 3 of
13 Exhibit 35.

14 THE COURT: Well, there are two images on
15 page 1, is there not? Then there's a third image
16 on the second page.

17 MS. CHOMSKY: Yes.

18 THE WITNESS: Yes.

19 THE COURT: And Mr. Thomas is looking at
20 which one?

21 THE WITNESS: These are all similar
22 pictures. The first Exhibit 35 is--it's all taken
23 from an image which I obtained from
24 American--Austrian Center for Remote Sensing. I
25 obtained this image and I provided it to the State

1 Department for information that they were
2 collecting on what was happening.

3 THE COURT: So I can have the image that
4 Mr. Thomas is talking about, the first page where
5 the exhibit number is on is page 2 of 3; is that
6 correct?

7 THE WITNESS: Yes, that's correct.

8 THE COURT: All right. That's where there
9 are two images.

10 THE WITNESS: Yes, that's correct.

11 THE COURT: Page 1 of 3 is one image.

12 THE WITNESS: Yes.

13 THE COURT: All right. And that--is that
14 Dili again?

15 THE WITNESS: All three of those images
16 are actually the same photograph taken at the same
17 time. The first image on--I guess it's labelled
18 page 2 is the highest zoom magnification, so you
19 can see more clearly the town of Dili and the fires
20 and the smoke coming out of them.

21 THE COURT: I see. So number--the image
22 on page 1 is the same as the top image on page--

23 THE WITNESS: Yes.

24 THE COURT: --2?

25 THE WITNESS: Yes. They're all the same

1 image.

2 BY MS. CHOMSKY:

3 Q Is it correct that all of the pictures on
4 page 35 are the same image; it's just different
5 magnification--

6 A That is correct.

7 Q --of the same image?

8 A Yes, that's correct. It shows the extent
9 of the fires across the whole town of Dili.

10 Q Now, bringing your attention to Exhibit
11 36, could you explain what Exhibit 36 is?

12 A When--the first indication from satellite
13 that there was something happening in East Timor
14 was actually noticed by the Austrian Weather
15 Service, an Austrian research establishment called
16 CSIRO, which I'm not sure what the acronym is, and
17 they noticed in a weather satellite that was--the
18 satellite had a sensor on board which was tuned to
19 look at forest fires and monitor forest fires, and
20 all of a sudden, on September the 6th, they started
21 noticing abnormal fires appear in East Timor,
22 which--and since then, they've done a lot more work
23 on the satellite data that they collected and this
24 is the result of the work where they prepared a
25 time sequence of maps showing how the fires--where

1 the fires were and how intense they were and what
2 kind of area was covered by each fire.

3 The satellite was a European satellite
4 called ERS1, it had a thermal sensor on board, and
5 it's very good at picking up and monitoring fires.
6 So the images, when--when you look at the sequences
7 of images, you can see that the fires occur in
8 groups and clusters, and there's a sequence of
9 dates which goes from September 6th, September 9th,
10 September 12th, 15th, 25th and 28th of September.

11 Exhibit 37 are the magnified versions of
12 the small maps shown on Exhibit 36.

13 Q That would be Exhibits 37 to 42 are
14 magnifications--are enlargements of the time
15 sequence that's on Exhibit 36?

16 A Correct. And when you see these small
17 dots on the map, you can--by going back to the
18 other satellite imagery that's available, the
19 higher resolution LANSAT imagery which is shown in
20 Exhibit 35, the small dot on Dili in Exhibit 37
21 that was taken between September the 6th and
22 September the 9th--in reality, when you looked at
23 it from space using a better satellite, it looked
24 like what you can see in Exhibit 35. And the same
25 goes for most of the other dots on the map.

1 The actual size of the fire is shown on
2 the map, the area in hectares, which is the
3 equivalent area if it was a forest fire. They have
4 a computer model that can tell how big a forest
5 fire is from the intensity of the flame.

6 When you look at where the fires are
7 located, they are located--they match exactly the
8 locations of towns and villages and settlements in
9 Timor.

10 Q And when you say dots, you're referring to
11 the red dots?

12 A Yes, that's correct.

13 Q And there are a group of numbers down on
14 the right-hand side of each of the maps from 37 to
15 42.

16 A Yes. The satellite, because it is very
17 sensitive to fire and heat, can measure the
18 temperature of the fire, and from that mathematical
19 modelling, they can get the area or equivalent area
20 of a forest fire from a satellite.

21 Q And just for the record, I would like you
22 to make clear what year it is that these maps were
23 taken.

24 A These are all in 1999, and they're from
25 September the 6th to September the 28th.

1 Q Are these consistent with natural fires?

2 A These are not natural fires. The
3 satellite would also pick up natural fires, but
4 these are not natural fires, these are--because of
5 the way they are clustered in towns and because of
6 their size and their temperature, these are not
7 natural fires.

8 Q And just for the sake of completeness, I
9 would like you to explain what Exhibit 43 is.

10 A This is the image that the Australian
11 Weather Service first noticed that there was
12 something very unusual going on in East Timor and
13 with extensive fires occurring that weren't
14 natural, and it's a--then they began to look much
15 more closely at the satellite imagery.

16 Q And that is how they gathered the exhibits
17 from 35 to 42?

18 A Correct.

19 MS. CHOMSKY: I have no further questions.

20 THE COURT: All right.

21 MS. CHOMSKY: Thank you. You may step
22 down.

23 [Witness excused.]

24 MS. CHOMSKY: I would like to offer into
25 evidence Exhibits 35 to 42.

1 THE COURT: Thirty-five through 42?

2 MS. CHOMSKY: Yes.

3 THE COURT: You are not introducing 43?

4 MS. CHOMSKY: I'm sorry, Your Honor.

5 Forty-three.

6 THE COURT: All right. Exhibits 35

7 through 43 will be admitted into evidence.

8 [Plaintiffs' Exhibits No.

9 35 through 43 were

10 received in evidence.]

11 MS. CHOMSKY: Thank you, Your Honor.

12 MR. SCHNEEBAUM: Good morning, Your Honor.

13 THE COURT: Good morning, Mr. Schneebaum.

14 Does that conclude the evidence or

15 testimony?

16 MR. SCHNEEBAUM: No. There is one more

17 witness.

18 THE COURT: Oh. Very well.

19 MR. SCHNEEBAUM: And we call to the stand

20 Estella Abosch.

21 ESTELLA ABOSCH, PLAINTIFFS' WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. SCHNEEBAUM:

24 Q Good morning, Ms. Abosch.

25 A Good morning.

1 Q Would you state your name and business
2 address for the record, please?

3 A Estella Abosch, 3405 Janellen Drive,
4 Baltimore, Maryland.

5 THE COURT: Would you be kind enough to
6 spell your last name, Ms. Abosch?

7 THE WITNESS: Yes. A-b-o-s-c-h.

8 THE COURT: O-s-c-h?

9 THE WITNESS: Uh-huh.

10 THE COURT: All right. Thank you.

11 BY MR. SCHNEEBAUM:

12 Q What is your profession?

13 A I am a social worker.

14 Q Can you describe, please, briefly, your
15 education.

16 A I have a degree in--equivalent of a
17 master's in psychology from the University of
18 Buenos Aires, Argentina, from the year 1963. I
19 also have a professorship in psychology and I have
20 a master's in social work from University of
21 Maryland from 1986.

22 Q Are you in private practice?

23 A Yes, I am.

24 Q How long have you been in private
25 practice?

1 A Since 1963, initially for ten years in
2 Buenos Aires, Argentina. I came to the United
3 States in 1973. I was in the practice of
4 psychotherapy in a mental health center until 1971
5 when I started a part-time private practice. And
6 after I graduated from social work school in 1986,
7 I became fully private practice.

8 Q Do you have any particular fields of
9 concentration within the area of social work and
10 psychology?

11 A In my office, in general, I have a general
12 practice of psychotherapy where I work with adults,
13 adolescents, and couples. I have through time
14 worked with people who had been subjects of trauma,
15 not necessarily from the point of view of torture,
16 but also from individual trauma. My expertise is
17 in long-term psychotherapy, and I have through the
18 years seen many of these cases.

19 I also have worked for two-and-a-half
20 years at the Shepard Pratt Hospital, and I was part
21 of the associative disorder units where we
22 evaluated and treated patients with major
23 disassociative disorders and multiple
24 personalities.

25 Q Have you had any experience in particular

1 in the area of providing psychotherapy to people
2 who were victims of torture?

3 A Only lately. I joined in January of the
4 year 2000 an agency in Baltimore, I joined as a
5 volunteer. It's called Advocates for Survival of
6 Torture and Trauma, and we provide evaluations for
7 people who have been subjected to torture in their
8 home countries and we provide psychotherapy as
9 needed.

10 Q Have you yourself provided expert
11 testimony in the field of the psychological effects
12 of torture?

13 A Because of this new position, I have done
14 that only once, and it's a case that has met
15 already twice in immigration court in Baltimore,
16 and it's still--the final decision is pending. I
17 have three more cases coming up in April.

18 Q Ms. Abosch, have you had an opportunity to
19 spend some time with the three plaintiffs who are
20 here in the courtroom, Jane Doe, John Doe 2 and
21 John Doe 3?

22 A Yes, I have.

23 Q And have you made--have you gone through
24 the process of establishing an evaluation of them?

25 A Yes, I did.

1 Q Okay. Before I ask you about that, let me
2 ask you, if I may, to identify your curriculum
3 vitae.

4 MR. SCHNEEBAUM: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, you may.

7 THE WITNESS: Thank you.

8 I would like to add also that I am an
9 active member of Amnesty International, and as
10 such, I am currently the coordinator of the Torture
11 Campaign that Amnesty is having worldwide.

12 THE COURT: And Ms. Abosch spoke with,
13 what, Jane Doe 1?

14 MR. SCHNEEBAUM: Jane Doe 1, John Doe 2,
15 and John Doe 3, the three plaintiffs who are here
16 in the courtroom.

17 THE COURT: I see.

18 THE WITNESS: This is my curriculum.

19 BY MR. SCHNEEBAUM:

20 Q The document in front of you that has--

21 A Uh-huh.

22 Q --been marked for identification as
23 Exhibit 30?

24 A Yes, sir.

25 Q And is that your current resume?

1 A Yes.

2 Q Is it accurate?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q Okay.

7 MR. SCHNEEBAUM: Your Honor, I would move
8 the admission into evidence of the document marked
9 Exhibit 30 for identification.

10 THE COURT: Very well. The Court will
11 accept into evidence Plaintiffs' Exhibit 30 for
12 identification.

13 [Plaintiffs' Exhibit No.
14 30 was received in
15 evidence.]

16 MR. SCHNEEBAUM: And I would further
17 proffer Ms. Abosch's testimony as that of an expert
18 in the area of the psychological effects of torture
19 and other forms of abuse.

20 THE COURT: The Court will accept Ms.
21 Abosch as an expert in the field of psychotherapy
22 and trauma, including torture.

23 MR. SCHNEEBAUM: Thank you, Your Honor.

24 BY MR. SCHNEEBAUM:

25 Q Now, Ms. Abosch, the way I propose to

1 proceed is I'm going to ask you questions about
2 each of the three plaintiffs whom you evaluated,
3 and with each of them, I am going to finish by
4 asking three questions, and I want to flag these
5 now so that you're aware of them and the Court is
6 aware of them.

7 I am going to ask you as to each of these
8 people whether the experiences that they have
9 reported to you are consistent with the
10 psychological profile that you were able to
11 determine; I will ask you to tell us what, in your
12 opinion, is the effect or has been the effect of
13 the abuse that they suffered on them; and then
14 finally, I will ask with respect to each of them
15 for your prognosis or what does the future hold for
16 them.

17 Q Let's start, if we may, with Jane Doe 1.
18 When did you meet with Jane Doe 1?

19 A You want the precise date? I met two days
20 after their arrival to the United States, which was
21 about two weeks ago. They arrived on a Saturday
22 and I met on a Monday.

23 Q How much time did you spend with Jane Doe?

24 A I met with her three times for a total of
25 about five hours and a half.

1 Q Now, in the conversation that you had with
2 Jane Doe, what language was used?

3 A She spoke in a combination of Indonesian
4 and Tetum, and so we communicated with an
5 interpreter, Paula --Paula--who had travelled with
6 the three--these three people from Indonesia.

7 Q Ms. Abosch, your native language is what?

8 A Spanish.

9 Q And do you understand any Portuguese?

10 A Yes. I recognized some isolated words as
11 they were giving an account of what was going on
12 with them.

13 Q So were you able to understand some of
14 what they were saying even in the Tetum--

15 A Isolated words, yes.

16 Q Okay.

17 A And the names were familiar because they
18 are Spanish names.

19 Q Sure. Did Ms. Jane Doe tell you about the
20 effect on her? Did she tell you about the events
21 surrounding the loss of her home in East Timor?

22 A Yes.

23 Q Did she talk to you about the loss of her
24 son, the death of her son in East Timor?

25 A Yes, she did.

1 Q Can you tell the Court, please, in your
2 opinion, how did the destruction of her home and
3 community affect Jane Doe?

4 A It had a devastating effect. It had a
5 devastating effect.

6 Q Could you elaborate on that?

7 A You know, what she experienced was part of
8 a process that affected not only her, but her whole
9 community and her country; yet each individual had
10 individual ways in which they react to trauma. And
11 when the trauma is--when the losses are directed to
12 property, they--I think we call them destruction,
13 and when they are addressed or directed to people,
14 we call them atrocities. And I think that Jane Doe
15 experienced both of them. She experienced the
16 sense of impotence at seeing her home destructed
17 with all her belongings and possessions.

18 The Court may have heard that this was not
19 the first time that this happened--she had already
20 lost a home about in '75 when the Indonesian
21 invasion of East Timor. She had recently gotten
22 married, and her house was burned down at that
23 time, too. So this was not the first time.

24 Ms. Jane Doe had a chance or was offered a
25 chance that not everybody was offered to flee East

1 Timor when these events were going to occur. An
2 Indonesian police who was a neighbor alerted her to
3 leave with her family or else--because of her
4 involvement in political activities and the
5 independence process, they were all going to get
6 killed--at which time she fled to West Timor in a
7 car with some members of her family. This started
8 a tremendously long ordeal.

9 Do you want me to go into
10 the details?

11 They first arrived to a refugee camp that
12 was overcrowded with no facilities, there was no
13 room for them, there was no water, there was no
14 medical attention, there was no access to food,
15 there was no roof, and they had to sleep in the
16 open air all night while they were hearing shots
17 all around them, a tremendous fear for safety to
18 cover, and the following day, they left by car and
19 they travelled to a different location.

20 Eventually, they were able to go by ferry
21 to an island that she called Flores Island, and she
22 indicated that because the people in the island
23 were of Catholic background, they were welcome
24 there and offered protection.

25 While she and her family were in the

1 island--let me backtrack.

2 Before Jane Doe and her family left East
3 Timor, her youngest son, who had been very actively
4 involved in fighting for the independence and the
5 only child that was so intensively politically
6 involved, came and said he was going to flee
7 because it was evident--that was by the end of
8 August 1999--that the family and everybody was
9 under extreme danger. There was word that after
10 the referendum, the Indonesian army was not going
11 to stay passive and see them come to this decision
12 calmly without intervention.

13 Jane Doe had a particular effect on the
14 son who was the youngest. She told me that he had
15 been given at birth her name and her husband's name
16 because he was supposed to be the one that was
17 going to take care of she and her husband in their
18 old age, and the son insisted on leaving because he
19 feared for his own integrity and he feared that he
20 could get killed.

21 An argument ensued between the two of
22 them. She was pleading for him to stay, hoping
23 that eventually they could flee all together and
24 find safety somewhere as a family. The son was
25 very insisting in feeling that he had to go. He

1 said that he was not going to sit there at home
2 waiting for everybody or somebody to come and kill
3 them.

4 She also said that maybe he didn't care
5 for the family and she was very anguished and
6 feared that if he left, she was not going to see
7 him ever again.

8 At the time, he requested for some money,
9 which he had asked before, and she gave him, I
10 understand, 20,000 rupees. That is like the
11 equivalent of two dollars, so he couldn't go too
12 far. But soon after that she had to flee, and
13 after this she never saw her son again. She
14 learned of his death when she was in the island of
15 Flores so far away in West Timor.

16 Immediately the family sold their car,
17 flew to West Timor. She wanted to return home as
18 soon as possible, but there was no way to come
19 back, and there was no transportation, and she had
20 to wait until a ship from the U.N. had enough
21 people to set off and go to East Timor. On arrival
22 to East Timor, she found that her house had been
23 burned down.

24 Q How is Jane Doe coping today with the
25 death of her son?

1 A She impressed me as a very strong person,
2 but yet despite her strength, she has been
3 tremendously devastated by her loss. Actually, she
4 had said very clearly that she doesn't mind the
5 fact that she lost her property because that can be
6 rebuilt or recovered, but nothing will return her
7 son alive to her.

8 She also felt guilty and she blames
9 herself for not having done enough to save him, and
10 feels that nothing will ever give her peace after
11 this happened.

12 Q Did she report to you any physical
13 symptoms of her current situation?

14 A Yes.

15 Q What were they?

16 A She reported symptoms of post-traumatic
17 stress disorder, and she report the symptoms of
18 major depression. Some are in some minor
19 remission, they are not fully-blown, but there is a
20 suspicion that they were at the time when all of
21 this happened, and I think some have become more
22 intense during these court events.

23 We have--we know by experience that
24 symptoms of post-traumatic stress disorder come and
25 go in intensity. Sometimes they may not be present

1 at all and they may develop 20 years later as a
2 consequence of triggers. She has shown them all.
3 She also has symptoms of something that doesn't
4 seem to be in the DSM-3, but I would like to
5 comment on this, and this is complicated
6 bereavement.

7 When we lose a family member or when we
8 lose somebody, we have a chance to go to the
9 cemetery to see them, to say goodbye to them, to
10 get together with our family, and that starts a
11 process of mourning that under normal conditions
12 usually takes about a year. She has not been
13 afforded any of the chance to do that. She was far
14 away, she couldn't extend any assistance to her
15 son, who was assisted by her mother-in-law. And so
16 to cope with this and where the loss is going to
17 take an extremely long time because the conditions
18 were not there.

19 Q How does Jane Doe do with normal life
20 functions, like eating and sleeping and working?

21 A She's very slowed down. She shows
22 symptoms of hyper-arousal; that's the one
23 that--where people cannot sleep or cannot fall
24 asleep or cannot stay asleep. She has recurring
25 nightmares where she feels that they are all going

1 to get killed and she thinks and--she has intrusive
2 thoughts about what happened to her son and his
3 death and the circumstances of his death.

4 She copes many times with avoidance by
5 getting involved in her daily tasks, activities, so
6 as not to think about what had happened. She has
7 tremendous amounts on herself because she has to
8 care for her home and her other children. Two of
9 them are with her.

10 Her husband, who very much supported her
11 son's activities and was very sympathetic, has been
12 also destroyed by these events, so she has to cope
13 with a family situation, be the strong one.

14 Q Ms. Abosch, is the symptomatology
15 presented by Jane Doe 1 consistent with the reports
16 of the events that befell her, including the loss
17 of her home, the loss of her community and the
18 death of her son?

19 A Fully consistent.

20 Q Do you have an opinion on whether the
21 reports given to you by Jane Doe 1 are true?

22 A Yes, I do.

23 Q What is that?

24 A I think they are true. All in her--the
25 manner, all in the way she communicated, the effect

1 was very appropriate to the content of what she was
2 saying. She kept eye contact even when we were
3 working through an interpreter, she acknowledged
4 that she understood my questions, she responded
5 always very straightforward. Always her demeanor
6 was that of a person that has suffered these
7 events.

8 Q What do you think is the prognosis for
9 Jane Doe?

10 A Ideally, if she were able to have the help
11 that she needs to put her life together, her health
12 together, to process what has happened to her, to
13 be able to have the assistance of psychotherapy--I
14 need to add that after our first meeting and I
15 asked her how she had felt, because she had talked
16 and cried very much about what had happened, she
17 said she felt much better, and I thought that
18 that's a good sign that she could benefit from
19 psychotherapy because she is insightful and she can
20 communicate her feelings.

21 If she had the chance to afford or have
22 access to individual psychotherapy for a length of
23 time that I cannot determine, she could improve.

24 However, the consequences of traumatic events is
25 very hard to predict and it's very possible that

1 many of these symptoms will stay with her for the
2 rest of her life.

3 Q Thank you.

4 Let us move now to discuss John Doe 2.

5 Now, I realize that when you interviewed these
6 people, you were not calling them by those names.

7 A Yes.

8 Q So John Doe 2 is the witness and the
9 plaintiff whose foot was amputated, just so we're
10 clear on who we're talking about.

11 A Uh-huh.

12 Q When did you meet with John Doe 2?

13 A Also two days after his arrival to the
14 United States.

15 Q Was the situation of your meeting similar
16 to that with Jane Doe?

17 A I met with everybody that day. They all
18 came with the interpreter and they seemed to be one
19 piece. They were all together, they came and went
20 together. Every time that I saw them, they were
21 together.

22 Q How much time would you say you've spent
23 with John Doe 2?

24 A I met with him twice, maybe four hours and
25 a half to five hours, and I had occasionally talked

1 with him as I saw him later on.

2 Q John Doe 2 presumably told you about the
3 day in which he incurred--he had the injury that
4 led to the amputation--

5 A Yes.

6 Q --of his foot?

7 A Yes. He told me--

8 Q What did he tell you about that day?

9 A He was very descriptive. I asked John Doe
10 if he could give me in full detail an account of
11 had happened, and considering the difficulty of
12 working with a translator, John Doe was sitting on
13 the edge of the chair, he was then uncomfortable,
14 many times changing his position because he cannot
15 hold a position for a long time due to the pain in
16 his amputated leg, but yet he responded to all my
17 questions.

18 He indicated how after a house was burned
19 down near the house where he lived, he decided to
20 flee a town. The ordeal was very long. He went
21 from one place to another where he was not finding
22 the safety that he was expecting to get because
23 they were surrounded by Indonesian soldiers and by
24 militia.

25 Eventually, he got to some place where he

1 found a group of people that were also in hiding.
2 He stayed with them for a while until they run out
3 of food. So he decided to go down to town--they
4 were on top of a hill near Dili--and to search for
5 food.

6 There was no food to be found anywhere,
7 but he, in an abandoned house, came across some
8 cookies, which he put in his bag. In the process
9 of going back to his place, three Indonesian
10 soldiers interfere--intercepted him and they asked
11 him where was he going and what was he carrying.

12 I want to indicate that at that point and
13 as he was telling these events, he did them almost
14 like in a verbatim dialogue, and when he talked
15 about the soldiers, he did like this, and when he
16 talked about himself, he looked up, which gave me
17 the impression or the dramatization of how he was
18 feeling when he was on the ground and, you know,
19 you can see that he's a very small man, and so the
20 encounter with the soldiers must have been
21 terrifying to him, although it would be to anybody
22 if they were armed and he wasn't.

23 He said that they asked him where he was
24 going and he said where he was going. They asked
25 him what was he doing; he said he had gone for

1 food. They requested that he show where he carried
2 the food. He had the bag, he opened his bag and he
3 showed the cookies. They asked him what else he
4 had there. He had a wallet. They requested the
5 wallet and they searched what was inside the
6 wallet, and he had his documents, his driver's
7 license and some money that he--the soldiers or the
8 one asking the questions pocketed his money and his
9 documents. And he was--asked--in the wallet they
10 found a receipt of a contribution he had done to a
11 pro-independence group. They asked him if he
12 belonged to the group and if he was a fighter, and
13 he said no, that that had been just a contribution.

14 In this--during this process and as this
15 was going on, the soldier that was inquiring was
16 becoming intensively and more aggressively and he
17 was beaten with his boot with him on the side of
18 his chest, on his leg, and on his face and he fell
19 on the ground.

20 At that time, some shots were heard and
21 they were trying to find out where the shots were
22 coming on. The area--they were coming from above.
23 Another soldier maybe with higher command,
24 position, came at the time, requested to know what
25 was going on. The soldier who had been

1 interrogating him described what was going on.

2 Because of the shooting, they decided
3 to--that man asked for what was going on and left,
4 and because of the shooting, it seemed that they
5 were going to let him go at the time, but they
6 decided to take him down with them to the
7 headquarters where there were other soldiers
8 present, and the same one who had hit him before
9 hit him across his face with a rifle, I believe.

10 He stumbled, stumbled and fell down a
11 hill, at which time, I think, fearing for his life,
12 he stood up and started to run. As he started to
13 do so, he was shot and he fell and he noticed he
14 had been shot in his foot. He couldn't stand up,
15 the pain was overwhelming, but he continued--first
16 I should say nobody came to assist him about what
17 was going on. He continued to crawl down until he
18 got some assistance.

19 He arrived to his house. There were some
20 men there, and the first thing he said, he asked
21 them to kill him with a machete because he thought
22 he was not going to survive.

23 Q Was he then taken for medical attention?

24 A No, he was not taken for medical
25 attention. A tremendous ordeal developed at this

1 time. He went from the hands of some people to the
2 hands of other, everybody trying to get him closer
3 to medical attention. The first stop, this man in
4 this house took him on a motorbike somewhere into
5 the woods where a doctor was in hiding, too, and he
6 provided the first immediate services--shall say
7 clean the wound and wrapping it--and he said he
8 didn't have anything else he could do for him and
9 suggested he was taken to a hospital.

10 However, as he was taken to the hospital,
11 it was clear that in Dili, there were shootings,
12 the situation was very unsafe. It took several
13 weeks until John Doe had access to medical
14 attention. In the process, he started to develop a
15 very high fever, the wound started to hurt badly.
16 When he unwrapped it to look, there were worms
17 sitting on the wound. He had the assistance of
18 some friends to clean the wound. It was wrapped in
19 tobacco leaves.

20 And when they finally arrived to the
21 hospital, there was nobody in the hospital that
22 could assist him and they had to wait several days
23 until assistance was done, at which time he was
24 told that his foot had to be amputated.

25 Q And that operation was then done?

1 associated with post-traumatic stress syndrome and
2 with major depression, chronic--and I mean by
3 chronic that the symptoms, you know, that usually
4 improve in about two weeks, when somebody has a
5 major depression episode, they have not improved,
6 and they are as intense now as they were at the
7 beginning--he also used to drink a little in the
8 past, but he has taken to drinking a lot. Many
9 times, he stays drunk. And despite the fact that
10 he has friends that come and visit him and seem to
11 care a lot for him, he many times withdraws, and I
12 assume or can really say that the alcohol has taken
13 the place of the antidepressive medication that he
14 has not been able to afford and it's a way to
15 assuage his pain.

16 Q Again, other than the obvious physical
17 problems that he has, can you describe John Doe 2's
18 abilities with respect to normal life
19 functions--eating, sleeping?

20 A He doesn't sleep well, he doesn't--when he
21 falls asleep he cannot stay asleep. He many times
22 wakes up in terror. He has recurring nightmares.
23 He has--in the nightmares many times he sees the
24 face of the soldier who assaulted him and
25 humiliated him and beat him up and hurt him, and

1 this is very distressing for him.

2 He has lost a lot of weight. His
3 activities of daily life are very reduced. He
4 occasionally does some haircuts for some friends
5 who come and request a haircut. Other than that,
6 he's at home most of the time and he doesn't do
7 anything, and that's what he says, that he doesn't
8 do anything with himself, he doesn't have any hope
9 for the future.

10 The first question he asked when I asked
11 him if he wanted to know anything from me, he said,
12 "Can I possibly have a foot and can you help me to
13 get a foot?" He feels like an incomplete man. He
14 feels like he's not anymore a man. His self-esteem
15 and his confidence are nil.

16 Q Ms. Abosch, let me ask you again the
17 underlying question: Is the symptomalogy presented
18 by John Doe 2 consistent with the history that he
19 reported to you?

20 A Yes. Fully consistent.

21 Q Do you have an opinion on whether the
22 stories that he has told you about how he came to
23 be in the situation that he's in are true?

24 A I believe them to be true. Everything in
25 his behavior attested to that.

1 Q And I think you've probably told us about
2 his--about your prognosis for him. Have you, or is
3 there anything you want to add?

4 A No, I didn't tell you, I think, but I
5 will. I am very worried about John Doe. I think
6 he's very much at risk just because of how little
7 he has going for him, the limited chances to get
8 medical treatment that he very badly needs, to get
9 the psychological treatment that he very badly
10 needs. He also is in need of medication that could
11 decrease some of the symptoms of hyper-arousal that
12 he has been experiencing and relentlessly.

13 He needs probably medication for his
14 depression. I am not sure. I know that he could
15 use psychotherapy, but in a supportive way, and I'm
16 not sure for how long he would be able to stay. He
17 also needs treatment for his alcoholism and
18 probably that will be the first thing to be
19 addressed if we want any of the other problems to
20 improve.

21 Q Let's move on now--

22 THE COURT: You think a prothesis would be
23 of help to him also?

24 THE WITNESS: I think it would. We have
25 been trying to get medical attention for him here,

1 and I have gotten at this time a physician from
2 Hopkins University that will evaluate him.
3 However, the team has the opinion that it may be
4 better to find a place maybe in Australia where he
5 could go on regular basis because after the
6 prosthesis is fit, he needs to be trained, he needs
7 to learn how to walk, and who is he going to, you
8 know, go to for attention. But I believe a
9 prosthesis would tremendously help in restoring his
10 self-esteem and his sense of well-being.

11 BY MR. SCHNEEBAUM:

12 Q Do you know how John Doe 2 survives
13 economically?

14 A With the help of his cousin with whom he
15 lives. He has no source of income. He's
16 living--he feels actually that he's a burden for
17 his family, but they have been apparently very kind
18 in letting him stay with them.

19 Q How does John Doe 2 describe himself? How
20 does he describe his current situation?

21 A He describes himself as a bird without a
22 wing. That's how he described the feeling that he
23 had after he had lost his foot because he cannot
24 fly.

25 Q Okay. Let's move now to John Doe 3. John

1 Doe 3 is the male plaintiff who isn't John Doe 2.

2 A Yes.

3 Q Okay. You met with him on the same
4 occasions in which you met Jane and John 2; is that
5 correct?

6 A He was the last person that I met, but I
7 met with him on two occasions.

8 Q Was all of your interaction with John Doe
9 3 also through an interpreter?

10 A No. In the first occasion, it was through
11 an interpreter because John Doe 3 has some
12 knowledge of English, more than what he thinks he
13 has. I thought he was fairly good.

14 The first time, I would ask my questions
15 and he would respond in his language to the
16 interpreter, but he didn't seem to need a
17 translator, a translation of my questions most of
18 the times.

19 The second time, I held an interview with
20 him in English without an interpreter because we
21 didn't have an interpreter available and I felt
22 that it went very well and we communicated well.

23 Q Did John Doe 3 tell you about the loss of
24 his brother?

25 A Yes, he did.

1 Q What did he tell you?

2 A He told me the information in bits and
3 pieces. I noticed with him, like with the other
4 people present in this court, of course that this
5 evaluation had to be done on a very short time, and
6 so it's very hard in a first evaluation with
7 somebody you never met and they never met you to
8 get the full story.

9 Also because due to post-traumatic stress,
10 many times things that you remember one moment you
11 may forget the next, so the information comes
12 slowly. But I will account for the whole
13 information as I got it from both interviews that I
14 had with him.

15 He said that he learned from his parents
16 when he went to visit that his brother had
17 disappeared. The situation under which the brother
18 had disappeared was that the whole family had been
19 threatened because they were involved in political
20 activities, especially him and his brother.

21 The father, with some of the brothers, had
22 run away from the home after securing the mother in
23 another place a few days before. At the time when
24 they run away, something happened that they
25 separated and they were going in different

1 directions, at which time his brother was caught by
2 the military.

3 Of course, the first that he knew was that
4 his brother had disappeared and that they didn't
5 have any news of what happened to him, and only
6 about six months later, the family received a
7 letter from the perpetrator or one of the
8 perpetrators indicating exactly where the body of
9 his brother could be found and the circumstances of
10 his death.

11 John Doe only gave me very limited details
12 about that and basically the geographical--that
13 they had gotten the geographical location, at which
14 time he and his father went to the U.N. police to
15 let them know about this information and, with U.N.
16 soldiers and a number of family members, friends
17 and neighbors, they set by foot to the place where
18 the body of his brother was supposed to be found.

19 Q And did they find it?

20 A They found--yes, they found very little of
21 his brother's body. As you all know, they found
22 some of his clothes, I think, gathered, scattered
23 around it. Because of a wallet, I believe, that
24 contained pictures, they were able to identify that
25 that belonged to his brother.

1 From what I understand, his brother had
2 been severely tortured, dismembered, and eventually
3 burned. The only parts of the body that were found
4 were a part of the leg, of I think his right leg,
5 no foot, no--you know, part of his back, the tip of
6 some fingers, and that's about all I heard.

7 He cried very painfully as he was talking
8 about this, and I imagine that the sight of this
9 must have been overwhelming, as it would be for
10 anybody.

11 Q How is John Doe 3 coping with the events
12 surrounding the loss of his brother today?

13 A On appearance, he's coping well because I
14 think that, differently from the other people, he
15 has very good defenses. You know, he has a job,
16 he's working in human rights, he had started to do
17 this before and now he has even more of a
18 motivation to do this. However, despite his
19 tremendous devotion, commitment and involvement, he
20 also suffers from symptoms of intense
21 post-traumatic stress disorder and of depression.

22 He has had difficultly sleeping and
23 staying asleep, he has recurring nightmares, he has
24 waken up in the middle of the night crying and in
25 terror, many times said the nightmares are somebody

1 is going to come and kill the whole family, maybe
2 the same people that killed his brother.

3 He has been unmotivated to go back to
4 work. Many times when this--at the beginning when
5 this happened, he felt that he should just give up
6 on everything he had been doing. He has been
7 persecuted by the police and harassed before this
8 happened with his brother and after, and because of
9 his commitment--let me add the fact that, if I
10 understand well, when John Doe 3 started his
11 involvement with human rights, which was in 1992,
12 he was the first one to do that, followed
13 immediately by his brother. So in some ways, we
14 can think that he encouraged his brother and help
15 him to become involved, too.

16 I also understand that John Doe 3 and his
17 brother looked very much alike and that they could
18 be even confused with each other, and people
19 sometimes have confused them with each other. So I
20 wonder if John Doe feels that he could have been
21 the one that the military was looking for and
22 instead his brother was the one who was killed, and
23 I think he has a tremendous survivor's guilt, and
24 that could put him at tremendous risk because he
25 put himself in inordinate danger to continue with

1 his activities, and he could be a target, too, I
2 wouldn't be surprised.

3 Q Did John Doe 3 present to you as an
4 educated man, a man--

5 A Yes, he did.

6 Q --of articulateness?

7 A Yes. John Doe 3 is very proud of his
8 education, of the fact that his brother had an
9 education. Actually, he said that his brother had
10 just finished his education, he had been away from
11 home for about six or seven years, and this
12 happened just almost immediately after the time of
13 his returning back home, which made the situation
14 even more painful for everybody.

15 He has great pride in his being educated
16 at the university because he comes from a very--a
17 poor family that he described as a simple family
18 but a very supportive and caring family. I
19 understand that his father doesn't read or write,
20 so to see him being able to achieve this level of
21 education is a great achievement for him.

22 Q Is what you saw of John Doe 3 consistent
23 with the history that John Doe 3 has reported to
24 you?

25 A Yes, it is.

1 Q Do you have an opinion as to whether what
2 John Doe 3 told you happened to him in fact
3 happened to him?

4 A I believe him.

5 Q You do believe him?

6 A Yes.

7 Q What would you say is the prognosis for
8 John Doe 3?

9 A First, the question is, you know,
10 how--what his people in East Timor's reaction about
11 this sort of psychotherapy and what's their
12 experience with psychotherapy. I don't think it's
13 part of their regular life and I understand that
14 they usually talk about their problems with family
15 and friends and their priest.

16 He feels that he has support from his
17 friends and that he can rely on them. At the same
18 time, he has told me that his trust for people has
19 been severely undercut, that he many times
20 cannot--is very careful what he says, who he says
21 it to because he doesn't know where the danger can
22 be. And I suspect that no matter how supportive his
23 environment is, I don't know that this will be
24 enough to restore him fully to the place where he
25 needs to be to continue with his life projects and

1 to be successful.

2 He already had given up part of these
3 projects because he wanted to have a career in
4 politics, and due to all that, he has learned he
5 found that an impossible thing to do at this time.

6 Q Is John Doe 3, in your opinion, especially
7 susceptible to being traumatized again by something
8 that might happen in the future?

9 A Yes, he is, because due to his current
10 work with people who have been subjected to torture
11 and trauma in his country, in his human rights
12 position, he's constantly receiving denounces from
13 people who have experienced these losses of all
14 type, and when they account or they tell him the
15 accounts of having experienced losses that
16 approximate the one he had experienced himself,
17 which are very common and usual, he found himself
18 disassociating, not being able to hear what's going
19 on, isolating himself, and that's kind of--I want
20 to explain to the Court that disassociating is a
21 way of signing out; you know, I'm here with you and
22 I'm not, and I look at you as if I was listening,
23 but I am somewhere else. And it's a protective
24 device, it's a defense mechanism that we use to
25 protect us from being overwhelmed by trauma. Many

1 other times, he cries with the people that
2 he--whose stories he's listening to.

3 But he's the most at risk because of the
4 danger of retraumatization, and when you hear the
5 things over and over again and become
6 retraumatized, the chances of improving at the
7 other levels is almost impossible without the
8 service necessary.

9 Q Let me ask you one final question, Ms.
10 Abosch. You are aware, obviously, that these
11 people have come a very long way to appear in this
12 courtroom and that they have done so at great cost
13 and risk in various ways. You've testified about
14 that.

15 My final question to you is, do you have
16 an opinion on why they have done this, why are they
17 here?

18 A I can tell you why I am here.

19 Q Right. Do you have an opinion on
20 what--what is motivating them? Is it political?

21 A I think it's a combination. I think it's
22 personal, may be political, but I think the
23 political is not the main thing that they are
24 pursuing. When you live in a country, in a
25 situation where all your regular institutions have

1 been attacked, when your place where you live has
2 been destroyed, where the country has been burned
3 down to the ground, where your children have been
4 killed and disappeared, the same with other family
5 members--I should mention that Jane Doe said that
6 all her family is gone and she accounted for about
7 100 people who have disappeared during this
8 process. It seems that there is nothing that will
9 make up for these losses, and sometimes the feeling
10 that they need to have justice done and to see
11 these issues addressed and to have not only people
12 within the country know what happened, but people
13 within the world and extended world know what
14 happened has a tremendous healing effect.

15 Q Thank you very much, Ms. Abosch.

16 MR. SCHNEEBAUM: I have no further
17 questions, Your Honor.

18 THE COURT: Ms. Abosch, with respect to
19 John Doe 3, you seem to be saying that the nature
20 of his current work is exacerbating his problem?

21 THE WITNESS: Yes. Not through a will of
22 his own, but, you know, I suspect that everybody in
23 this court that has been listening to this
24 testimony, and I can ask each one of you if I
25 could, have suffered from nightmares, have gone

1 home thinking about what happened, have had trouble
2 concentrating on your daily activities and have had
3 the faces and expressions of some of these people
4 in your mind because of the devastating effects of
5 the terror and because we live in such a protected
6 place that we don't have access to any of these
7 experiences, and they bring them very much to us in
8 a very real way. I think that this is only by
9 hearing these cases for a few hours. You have to
10 imagine what's--for somebody to be hearing again
11 and again and again these stories being told.
12 There is no way to protect one's mind from that
13 aggression.

14 THE COURT: So he would be better off
15 finding another area of endeavor, you're
16 suggesting?

17 THE WITNESS: No, I don't think so.

18 THE COURT: You don't think so. So you're
19 saying it exacerbates his current problems and the
20 stress--

21 THE WITNESS: I think I am--I think that
22 he has a commitment to this work and that I don't
23 think he should stop doing it. I think he should
24 have--find ways to deal with the information that
25 he gets so it won't have that traumatizing effect.

1 Like we, for example, therapists do when we work
2 with these patients and become traumatized by the
3 information, we talk about it with other
4 professionals, we have psychotherapy ourselves, we
5 have a chance to discuss how it affects us. You
6 know, there are ways to deal with it so it won't
7 overwhelm his system.

8 I think he has a tremendous commitment to
9 this and I don't think that I would recommend that
10 he stops doing it.

11 THE COURT: But on the other hand, if he
12 is unable to get therapy back in East Timor--you're
13 saying he could cope with it if he had treatment,
14 but you're also uncertain as to whether or not
15 treatment would be available.

16 THE WITNESS: Maybe we need to find, and I
17 still don't know, but I think we can find ways to
18 help him to cope and deal. Sometimes if it's not
19 therapy, we may need to devise other ways and make
20 them accessible to him.

21 FURTHER DIRECT EXAMINATION

22 BY MR. SCHNEEBAUM:

23 Q If John Doe 3 were to go back to East
24 Timor and were to abandon his work and go into some
25 other line of work, would that leave him with the

1 underlying psychological impression that the people
2 who wanted to intimidate him and the people who
3 wanted to take away his identity had succeeded?

4 A Yes. I think so.

5 MR. SCHNEEBAUM: I have no further
6 questions. Thank you, Your Honor. Thank you, Ms.
7 Abosch.

8 THE COURT: It sounds like a Catch-22.

9 THE WITNESS: It is a Catch-22.

10 THE COURT: It sounds like a Catch-22.
11 Very well. Thank you.

12 [Witness excused.]

13 MR. SCHNEEBAUM: And that concludes the
14 presentation of evidence on behalf of plaintiffs,
15 Your Honor.

16 MR. DiCAPRIO: Your Honor, if I may, there
17 are some items that we would like to take care of
18 for the record, including the offering or moving
19 into evidence certain exhibits and transcripts; but
20 I would ask the Court's permission to wait until
21 the end of Mr. Schneebaum's close and we can take
22 care of all of the housekeeping that we need to at
23 that time.

24 THE COURT: All right. Good.

25 MR. DiCAPRIO: Thank you, Your Honor.

1 THE COURT: Mr. Schneebaum.

2 MR. SCHNEEBAUM: Your Honor, since the
3 only remaining matters other than the procedural
4 ones just referred to is closing argument, we were
5 thinking perhaps this would be a good time for the
6 morning break.

7 THE COURT: All right.

8 MR. SCHNEEBAUM: We certainly can finish
9 this by lunchtime.

10 THE COURT: Very well. How much time do
11 you need, Mr. Schneebaum? I would like to get
12 things going so we can finish.

13 MR. SCHNEEBAUM: I think an hour ought to
14 do it.

15 THE COURT: No, no, no. I'm thinking in
16 terms of the break. Five, ten minutes?

17 MR. SCHNEEBAUM: Ten minutes, sure.

18 THE COURT: So we'll hold you to ten
19 minutes.

20 MR. SCHNEEBAUM: Thank you.

21 THE CLERK: All rise. This court stands
22 in recess for ten minutes.

23 [Recess.]

24 THE CLERK: All rise. Please be seated.

25 THE COURT: You may proceed, Mr.

1 Schneebaum.

2 MR. SCHNEEBAUM: Thank you, Your Honor.

3 Good morning.

4 THE COURT: Good morning.

5 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS

6 MR. SCHNEEBAUM: May it please the Court,
7 I am Steven Schneebaum of the law firm of Patton
8 Boggs here in Washington. I represent the
9 plaintiffs, John Does 1 through 5 and Jane Doe.

10 Before I begin my closing argument, I
11 wanted to be sure that all of the lawyers who have
12 done the heavy lifting in this case are properly
13 introduced to the Court.

14 You have met, of course, Mr. DiCaprio and
15 Ms. Chomsky, who have questioned witnesses.
16 Jennifer Green of the Center for Constitutional
17 Rights is at counsel table. Brian Hendricks of our
18 law firm, Patton Boggs. Joshua Sondheimer from the
19 Committee for--or Justice and Accountability, which
20 was instrumental in bringing this case, is also
21 here in the courtroom, and we have not yet
22 submitted pro hoc vice application for him. We
23 intend to do that just so the record reflects the
24 contribution that his organization has made to this
25 case.

1 I want to begin, if I may, by setting some
2 legal context for the action that has been tried
3 before this Court over the last three days, a
4 little bit of history of the statute that brought
5 us here, and then I will attempt to sum up the
6 evidence and the law as it applies to the evidence
7 with respect to the questions that the Court must
8 now decide.

9 In 1979, a Paraguayan 17-year-old by the
10 name of Hoylito Filartiga was tortured to death in
11 Paraguay by the chief of police of Asuncion, the
12 capital. He was tortured because of his father's
13 political activities, which were opposed to the
14 then-governing regime in Paraguay, and the murder
15 was a brutal one that attracted a great deal of
16 press attention.

17 Sometime after that, his sister, Dolly
18 Filartiga, happened to be in New York City where
19 she saw on the street Americo Pena, the man who had
20 perpetrated the murder of her brother. A lawsuit
21 was brought by the Filartiga family against Americo
22 Pena under a statute that has been on the books
23 since 1789, the Alien Tort Claims Act codified at
24 28 U.S. Code Section 1350. The statute reads as
25 follows. It says:

1 "The district courts shall have original
2 jurisdictional of any civil action by an alien for
3 a tort only committed in violation of the law of
4 nations or a treaty of the United States."

5 Well, the first two of those criteria were
6 obviously satisfied in the Filartiga case because
7 the plaintiffs were aliens and the action was one
8 in tort, it was for wrongful death.

9 The question before the court in
10 determining whether it had jurisdiction pursuant to
11 this statute was whether the torture of a
12 Paraguayan by a Paraguayan in Paraguay can be
13 described as a violation of the law of nations.

14 The district court before whom the case
15 was brought in the Eastern District of New York
16 dismissed the case in the first instance,
17 contending that it was bound by precedent to the
18 proposition that to be a matter of international
19 law concern, an act must have perpetrator and
20 victim of different nationalities. Judge Nickerson
21 said that he felt constrained to that holding, that
22 he didn't himself agree to it but that he was bound
23 to it, and on that basis he dismissed the case.

24 As is well known, the Second Circuit
25 reversed on appeal in an opinion by Judge Kaufman

1 that in its way is probably the Brown against the
2 Board of Education of international human rights
3 law. Filartiga against Pena stands for two
4 propositions: One, that treatment of citizens of a
5 country by that country may be a matter of
6 legitimate international concern and not just
7 diplomatic but legal concern; and second, Judge
8 Kaufman held that the law under which the case
9 arose was the law of the United States because
10 customary international law and conventional law
11 are parts of the laws of our country. It has
12 always been thus, but never before 1980 in the
13 Second Circuit had the rules of international human
14 rights law been brought into an American courtroom
15 as the rule of decision.

16 Now, since then, the courts have refined
17 the notions of Filartiga, but the principles remain
18 the same. The international law of human rights
19 confers legal rights on humans, and those legal
20 rights are enforceable. They may be enforced in
21 courts of law where jurisdiction may be obtained
22 over both the subject matter and the person of the
23 defendant.

24 Now, these rules of international human
25 rights that will be applied by courts are not some

1 idiosyncratic aspiration, they're not some hope for
2 a better world, they're not something Utopian; they
3 are real rules established by mechanisms well
4 entrenched in international law and procedure as
5 ways of determining the content of international
6 law; and where a violator may be found within the
7 jurisdiction of the court, then that person may be
8 served with process, may be called to the bar of
9 justice, may be required to answer for the
10 allegations of the complaint, and, if they are
11 proved, may be required to pay damages.

12 Filartiga has in a sense taken a place, an
13 important place in a very significant legal
14 movement in the late 20th Century that goes way
15 beyond courtrooms. It is the movement of
16 international law toward individual accountability.

17 Individuals now at the beginning of our
18 century may be said to have both rights and
19 obligations in international law. Individuals are
20 now properly said to be subjects of international
21 law, they have what we used to call international
22 legal personality. They may bear obligations, they
23 are entitled to rights. And nations, countries,
24 armies, do not violate human rights; people violate
25 human rights; and the people who commit those acts

1 of violation may be held personally accountable.

2 That's new. It's new in the sense that it
3 was the judgment at Neuremberg, it was the judgment
4 in Yamashita, it was the judgment in other cases in
5 which acts of war have entailed individual
6 responsibility, but never before Filartiga had it
7 been held that human rights norms and human rights
8 violations also entail such responsibility.

9 So the third criterion of the Filartiga,
10 the 1350 trilogy, was met: tort case, alien
11 plaintiff, violation of international law.

12 In 1992, Congress codified the result of
13 Filartiga by enacting a statute that has come to be
14 called the Torture Victim Protection Act, and that
15 statute suggests that an individual who subjects
16 someone to torture in a foreign country may be
17 liable to that person for damages in a case
18 properly filed before a district court of the
19 United States. That statute is reported or is
20 codified as a note to Section 1350, Title 28, but
21 it is--and it is seen as a following from the
22 obligations imposed in 1350.

23 Now, what happened in Filartiga itself is
24 instructive because in many ways, this case that
25 the Court has just heard bears some important

1 resemblances to Filartiga even in some details.

2 One point is the defendant defaulted in
3 Filartiga. In fact, the defendant who had been
4 detained by the Immigration & Naturalization
5 Service and was held at the Brooklyn Navy Yard in
6 New York began to beg to be deported rather than
7 have to stand trial in this civil case. He was
8 ultimately deported and because he then defaulted,
9 a damages hearing was held before a United States
10 magistrate judge in Brooklyn.

11 At that damages hearing, the plaintiffs,
12 the father and sister of the boy who had been
13 killed, asked for substantial moral damages, a
14 concept imported from Paraguayan law, and
15 substantial punitive damages. And Judge
16 Nickerson--I'm sorry--the magistrate judge who
17 heard the case essentially denied those pleas. He
18 held that the law to be applied was local law, that
19 Paraguayan law did not recognize punitive damages,
20 and that therefore a small amount of compensatory
21 damages would be sufficient.

22 An appeal was taken to Judge Nickerson,
23 and in that appeal, Judge Nickerson held that that
24 view of what international law means is much too
25 crabbed, much too restricted, and not nearly

1 contemporary in light of developments elsewhere in
2 the field of international law.

3 Judge Nickerson, in what may be most
4 important sentence of the opinion, said that
5 plainly international law does not consist of mere
6 benevolent yearnings never to be given effect.
7 International law, he held, is law, and if it is
8 law, it should be assigned the role to which we
9 assign others of the laws, including the role of
10 being able to show the displeasure, to show the
11 abhorrence of a court to conduct of which a
12 defendant may be guilty. Indeed, Judge Nickerson
13 held that an important aspect of his role in the
14 case was to give effect to the manifest objectives
15 of the international prohibition against torture.

16 Since that time--and the magistrate was
17 reversed and \$5 million in punitive damages were
18 given to each of the plaintiffs.

19 Since that time, there have been various
20 other invocations of Section 1350 in human-rights
21 related cases in which plaintiffs have been able to
22 achieve judgments. In the case reported under the
23 name Hilao against former President Marcos of the
24 Philippines, in cases brought against perpetrators
25 of the Dirty War in Argentina, in cases recently

1 before the Southern District of New York in which
2 Ms. Green and Ms. Chomsky had significant roles
3 against the president of the so-called Serbian
4 Republican in Bosnia, in a case against the
5 Guatemalan Defense Minister in the District Court
6 of Massachusetts, in a case in Florida concerning
7 the former military leaders of Haiti, in each of
8 those cases, an American court has found itself
9 satisfied that the three criteria of Section 1350
10 are met by the presence of a human rights violation
11 and by the physical presence in the courtroom or in
12 the court's jurisdiction of the defendant.

13 THE COURT: Let me ask you a question, Mr.
14 Schneebaum.

15 MR. SCHNEEBBAUM: Please.

16 THE COURT: You're suggesting that local
17 law or U.S. law or the law of nations, if you will,
18 would be applicable to achieve a goal. The goal in
19 any tort case, as you suggested, is reflected in a
20 money damage award. In ascertaining a money damage
21 award, do you look to local law where the value of
22 money is going to be different, perhaps, than in
23 the United States, or in some other country? So
24 where does one go--let's assume you looked to local
25 law where there was a moral component, a punitive

1 damage component, but in terms of an award, do you
2 look to the country which has the highest value on
3 human life?

4 MR. SCHNEEBAUM: Your Honor--

5 THE COURT: How does one achieve or arrive
6 at a standard in terms of damages?

7 MR. SCHNEEBAUM: Your Honor, I would
8 answer that question, if I may, in two parts, first
9 by saying that the law that applies in determining
10 the measure of illegality of these acts is
11 international law. It is the law of nations. And
12 that was the holding of Judge Nickerson and it was
13 the holding recently of the Second Circuit in the
14 Cottage case.

15 Now, the question that Your Honor asks as
16 to how you do the math, how you do the calculation,
17 I would respectfully submit that what is to be
18 applied here by way of punitive damages is an award
19 that sends an important signal not just to Johnny
20 Lumintang, not just to other military officers in
21 Indonesia, but to anyone who might feel that he or
22 she can get away with this kind of conduct.

23 Now, in a moment when I sum up the facts,
24 I will attempt to persuade the Court that Major
25 General--Lieutenant General now--Lumintang was

1 instrumental in the acts that we complain of here,
2 that he had a decisionmaking role, an important
3 role, a role that attracts moral evaluation and
4 that does not pass that test.

5 THE COURT: Send a message to the
6 perpetrators?

7 MR. SCHNEEBAUM: Send a message to the
8 perpetrators, absolutely, of these acts, but also
9 perpetrators of similar acts in other places.

10 Punitive damages, after all, we submit, do
11 not merely tell Ford Motor Company that they should
12 redesign the Pinto; they tell all motor companies
13 about the value of protecting the lives of
14 passengers who might ride in the cars that are
15 being manufactured.

16 THE COURT: I wish I could share your
17 optimism, Mr. Schneebaum, in terms of sending the
18 message. It seems to me the recorded history of
19 man in certainly the last century would lead one to
20 be less than optimistic that messages are received.
21 Millions of people were killed in the last 70 or 80
22 years. We have the situation where people are
23 currently on trial in the Hague and we find today
24 people are being killed. So senseless killing that
25 has befallen man for many, many years doesn't lead

1 to any learning curve, as I see it.

2 MR. SCHNEEBAUM: Well, Your Honor--

3 THE COURT: That's a personal observation.

4 MR. SCHNEEBAUM: Sure. No, I--

5 THE COURT: That does not detract from
6 what you're saying, but I am--it would perhaps be
7 more comforting to think that someone would learn,
8 but as I recall, the first world war was the war to
9 end wars, and--

10 MR. SCHNEEBAUM: Yes.

11 THE COURT: --there have been many wars
12 since, and they're still going on around the world.

13 MR. SCHNEEBAUM: And certainly those
14 concerns are appropriate ones, and I would not
15 stand before this Court, nor I think would any
16 rational person stand before the Court and suggest
17 that the award that this court makes against Johnny
18 Lumintang will end human rights abuses even on East
19 Timor, much less in Indonesia, much less on the
20 planet Earth. There isn't any substantial
21 likelihood of that.

22 But there is a chance, there is a chance
23 that this message that goes out from this courtroom
24 tells people like Johnny Lumintang in the first
25 instance do not do these things, but in the second,

1 if you do them, there is one pleasure in life that
2 you will not have, one benefit you will not get,
3 and that is the pleasure and benefit of visiting
4 the United States, because if you come here and if
5 your victims find you here, they have remedies that
6 can be invoked. And with any luck and with the
7 work of people like the advocates at this table,
8 other countries may develop their own laws that
9 ultimately make the violator of human rights the
10 enemy of all mankind that the scholars write about,
11 the person who has no home, who can go nowhere
12 because wherever he goes, he is subject to
13 prosecution.

14 It is for that reason perhaps, at least in
15 part, that since the fall of Jean Claude Duvalier
16 or Idi Amin and others, they have not roamed the
17 earth, they have not come to Washington, they have
18 not been found here, and the reason, I submit, is
19 at least in part because they know that this
20 statute and the weaponry that it provides is
21 available for those people whose rights they
22 abused. Would that there were more places like
23 this, but there is this place, and we ask Your
24 Honor to send that message.

25 Now, it is not necessary, we submit, for

1 us to demonstrate to the Court that this defendant
2 violated the rights of these plaintiffs with his
3 own hands. Command responsibility has been held
4 consistent with liability under Section 1350 since
5 the very early days as the nature of the successful
6 cases itself demonstrates.

7 It is not suggested that Ferdinand Marcos
8 himself operated torture chambers or that Gramajo
9 in Guatemala or Caradich, for that matter, in
10 Serbia himself was responsible for rapes and
11 murders and atrocities. But command responsibility
12 is sufficient, and the courts have said so in each
13 of the cases to which I have now referred. The
14 courts have described the criteria for command
15 responsibility for example this way in the case of
16 Hilao against Marcos: If Marcos had knowledge that
17 the military caused the torture or arbitrary
18 detention of the plaintiffs and failed to use his
19 power to attempt to prevent it, then the jury was
20 entitled to find the Marcos estate liable.

21 THE COURT: Are there any cases that
22 address people who are not the Marcos' case where
23 he was the commander-in-chief, if you will, and
24 certainly the president of the country?

25 Here we have a situation where, I guess,

1 in the hierarchy of the army, you had a person who
2 was number three, as I heard from the witness
3 stand.

4 MR. SCHNEEBAUM: Yes.

5 THE COURT: Are there cases that address
6 lesser individuals, and how far down do you go? Of
7 course, this issue came up in Neuremberg.

8 MR. SCHNEEBAUM: Yes. Of course.

9 THE COURT: How far down does one go to
10 ascribe culpability?

11 MR. SCHNEEBAUM: Actually, Your Honor, the
12 Marcos cases are the anomaly, they are the
13 odd-man-out. In all of the other cases, the
14 defendant was someone lower than the
15 commander-in-chief, and indeed the reason for that
16 is that the developments in Section 1350, both the
17 Alien Tort Claims Act and the Torture Victim
18 Protection Act, do not undermine traditional
19 notions of either sovereign immunity or
20 head-of-state immunity.

21 Head-of-state immunity was not a defense
22 in the Marcos case because the government of the
23 Philippines specifically abjured it. Otherwise, it
24 would have been.

25 So the answer to Your Honor's question is,

1 somewhere in the chain of command. Now, where in
2 the chain of command? Well, it's not necessarily
3 an easy question, but in the chain of command at a
4 point at which someone has decisionmaking
5 authority.

6 It could be argued, I suppose, everyone
7 has decisionmaking authority. The lowliest private
8 has the authority to decide whether to pull the
9 trigger or burn down the house. There is no case
10 yet reported against the lowliest private; everyone
11 who has been a defendant in this case has been
12 somewhere--except Marcos--has been somewhere
13 between the next level down from the head of state
14 and the actual operating officer on the ground,
15 Gramajo, the Minister of Defense of Guatemala, for
16 example, or Pena himself in the Filartiga case, who
17 was the chief of police of a city.

18 There must be, of course, sufficient
19 authority with which the person is acting to give
20 his acts connection to the state, they must be in
21 some sense state acts, and yet there cannot be so
22 much connection to the state that they are actually
23 perpetrated as a part of official policy of the
24 state. We submit that there is no evidence that it
25 was the policy, announced defendant policy of the

1 Indonesia Government to commit these atrocities in
2 East Timor. To the contrary, the Indonesia
3 Government, as we'll see, has taken every effort to
4 cover up what it did.

5 So the answer, then, is wherever the line
6 is to be drawn, Johnny Lumintang fits within those
7 borders.

8 THE COURT: It ended where, as far as
9 you're concerned? It ended with--did it end with
10 the chief of staff? You say it's not--it was not
11 the policy of the government of Indonesia.

12 MR. SCHNEEBAUM: Well, what I mean by that
13 is that the government clearly intended--the
14 government of Indonesia clearly intended to win the
15 referendum, the so-called popular consultation. It
16 was plainly in their interest to do that, and they
17 attempted to do that.

18 It is hard to imagine and we'll never know
19 whether the president of the country did what Henry
20 II did with respect to Thomas a'Becket and said,
21 "Rid me of this problem." It is unlikely that that
22 happened, and if it did, unlikely we'll ever know
23 about it. In fact, it's fairly certain we will
24 never know about it.

25 But since the government of Indonesia has

1 not come into this courtroom and taken a chair at
2 this defense table and said to Your Honor, "Judge,
3 it is not permissible for you to investigate the
4 acts of our state, the acts of our
5 government"--that is an affirmative defense. Johny
6 Lumintang certainly has not raised it. The
7 government of Indonesia has not raised it on his
8 behalf.

9 Now, in this case, of course, while there
10 are interesting questions concerning liability, I
11 might have led off by saying that our defendant
12 isn't here, our defendant has defaulted, and
13 questions of liability, therefore, are established.

14 THE COURT: No, there's no question, I
15 agree with you on that, that the ruling of Judge
16 Kessler has removed the issue of liability; but you
17 made the point that it was not--you're not
18 suggesting it was the policy of the government of
19 Indonesia and I don't know if that's necessarily
20 accurate.

21 But now, from the standpoint of this
22 court, I do not have the concern of the liability
23 issue. That has been determined by the default
24 judgment.

25 MR. SCHNEEBAUM: Well, again it is

1 difficult to draw the line. I don't suggest any
2 simple formula for doing so. But the courts have
3 begun to wrestle with this and the reported
4 decisions do show that.

5 In Shokash, for example, the case out of
6 the District of Massachusetts, we have this
7 language: A higher official need not have
8 personally performed or ordered the abuses in order
9 to be held liable. Under international law,
10 responsibility for torture, summary execution or
11 disappearances extends beyond the person or persons
12 who actually committed those acts. Anyone with
13 higher authority who authorized, tolerated, or
14 knowingly ignored those acts is liable for them.

15 So Judge Woodlock's suggestion is that we
16 look at those criteria, and I submit that if we
17 look at those criteria in this case, it will be
18 found that Johnny Lumintang probably authorized,
19 certainly tolerated, and certainly knowingly
20 ignored the abuse of these plaintiffs in East
21 Timor. So again, wherever the line is, we submit
22 that this defendant adequately falls within the
23 area covered by Section 1350.

24 THE COURT: Within the law of torts, are
25 you suggesting that if someone falls within that

1 chain of responsibility, that the joint and several
2 liability concept would apply?

3 MR. SCHNEEBAUM: Your Honor, if there were
4 multiple defendants in the courtroom, it might be
5 well be that joint and several liability concepts
6 would have to be brought in, along, I suppose, with
7 vicarious liability concepts and the principle that
8 who acts as an agent for a principal also acts on
9 his own behalf.

10 But in this case, we are spared that
11 concern because our only defendant is the
12 second--the deputy to the army chief of staff. We
13 have to assume that President Habibie, when he was
14 sitting, was immune from jurisdiction of the court
15 even if he were to have come here. We have to
16 assume that he would still be clothed with
17 head-of-state immunity by the government of
18 Indonesia, which would have that right. So we are
19 talking here about someone who is very close to the
20 top.

21 The history of General Lumintang, the
22 history of the dispute in East Timor are recited in
23 the chronology that was put before the Court by
24 Professor Tanter, and I certainly won't tax the
25 Court with reciting it here, but a couple of points

1 are worth making very quickly.

2 One is that the pattern of abuses by
3 Indonesia in East Timor is an old pattern; it goes
4 back at least to 1975 when, as Professor Tanter
5 testified, 25 percent of the population of the
6 province was either killed or expelled.

7 It is also worth recalling that the
8 incorporation or they keep using the word
9 integration of East Timor into Indonesia is not
10 recognized in international law. International law
11 does not consider East Timor to be a part of
12 Indonesia. West Timor yes, but not East Timor.
13 And therefore, the popular vote in 1999 that was
14 meant again to integrate Timor into Indonesia was a
15 vote that, had it won, would have created a
16 situation that did not then exist.

17 The increased pressure brought by the army
18 and through the army the militias in 1999 led, as
19 we've heard, to increasing, dramatically increasing
20 human rights violations and a dramatically
21 increased reaction from the rest of the world.

22 The announcement of the popular referendum
23 which eventually took place on August 30th, if
24 anything, in the short-run exacerbated the problem
25 by encouraging a military attitude that, as we

1 heard, designed, planned, campaigned, through
2 terror, through intimidation, through kidnappings,
3 through disappearances, through murders, through
4 burnings, through rapes, through all of the
5 violations of human rights that we heard about so
6 eloquently from the witness stand in this trial;
7 and the report of the United Nations Commission,
8 which is Exhibit 10, certainly speaks more
9 eloquently than any of us could do. I just would
10 cite the Court to a couple of particular references
11 in it.

12 The Commission on Human Rights in
13 paragraph 3 noted that all persons who committed or
14 authorized violations of human rights or
15 international humanitarian law were individually
16 responsible and accountable for those violations,
17 and that the international community will exert
18 every effort to ensure that those responsible are
19 brought to justice.

20 Then in the paragraphs beginning with
21 paragraph 123, the Commission, the International
22 Commission recites the kinds of violations of human
23 rights of which it found compelling evidence on the
24 ground, patterns of human rights violations,
25 intimidation, terror--and I'm just reading now the

1 chapter headings--killings, massacres, gender
2 violence, assaults on international staff and
3 journalists, destruction of property. The
4 destruction of property, they said the damage to
5 public and private property ranges from 60 to 80
6 percent in the whole country. The widespread and
7 systematic nature of the destruction indicates that
8 it was planned and coordinated. Displacement of
9 people, thousands of people moved to West Timor,
10 and the people in camps, as we heard, subjected to
11 intimidation and terror. The destruction of
12 evidence of the violations themselves.

13 The Commission prominently noted in the
14 paragraphs following 135 of Exhibit 10 the evidence
15 showed that militia groups were responsible for
16 this intimidation and terror, and there is evidence
17 that the policy of engaging militias was
18 implemented by the Kopassus command of the
19 Indonesian army and other intelligence agencies of
20 the Indonesian army. The policy manifested
21 itself in the form of active recruitment, funding,
22 arming, guidance, provision of logistics, to
23 support these efforts in the militias in
24 intimidation and terror attacks.

25 The intimidation, terror, destruction of

1 property, displacement, and evacuation of people
2 would not have been possible, the Commission found,
3 without the active involvement of the Indonesian
4 army and the knowledge and approval of the top
5 military command. The top military command we
6 respectfully submit includes the deputy to the army
7 chief of staff, Lieutenant General Johny Lumintang.

8 That is what we saw, and the evidence
9 amply supports it, not only the individual evidence
10 produced by these plaintiffs to which I'll return
11 in a moment, but the evidence presented by experts
12 showing a pattern across the country that leads to
13 one inevitable conclusion, and that is this was not
14 any kind of haphazard riot by men who happened to
15 be in uniform, this was not a breakdown in
16 discipline, this was the exercise of discipline.
17 This was army soldiers following commands, not
18 ignoring commands.

19 That's critical because this is not a case
20 in which Lumintang or anyone else is accused simply
21 of not getting his guys under control; this is what
22 they were doing, this is the level of destruction
23 that we saw in the photographs of the hotel in Dili
24 and the level of destruction that we saw this
25 morning in the satellite photographs taken showing

1 fires that the expert witness testified, Mr. Thomas
2 testified could not have been natural ones.

3 So that is what the evidence shows, and we
4 know that Major General Lumintang, deputy chief of
5 staff of the army, was the author--or at least his
6 name was on it--of the instruction manual that told
7 soldiers to go out through intimidation and terror,
8 through isolation, through kidnapping, through
9 expulsion from villages, through forced
10 expatriations, to attempt to achieve dominance over
11 the people of East Timor in the event, as the
12 telegram said, in the event of a negative outcome
13 of the vote. In other words, if we don't get our
14 way through the popular vote, we have other ways of
15 making you talk, and those other ways are what we
16 heard about from these plaintiffs.

17 What did these plaintiffs testify? Well,
18 this was, of course, very difficult for everyone in
19 this courtroom to listen to. Ms. Abosch was
20 absolutely right this morning to say that at least
21 those of us on this side of the room have, I
22 suspect, all taken home what we've heard in court
23 over the last couple of days.

24 We heard Jane Doe testify about the loss
25 of her son, the loss of her house not once but

1 twice, the loss of her community, the loss of her
2 joy in life.

3 We heard of John Doe 1, who was killed by
4 the Indonesian army and, Your Honor, the evidence
5 for that will be in the transcript of the
6 deposition of Mr. Junior, which we were not able to
7 get the transcript this morning but we have it and
8 we'll submit it to the Court.

9 It will demonstrate that John Doe 1 was
10 killed by the Army in the field. He was unarmed,
11 he was victimized, and not only did he lose his
12 life, but his mother lost her son and his mother
13 lost much more than a son.

14 John Doe 2 lost his foot, but with it his
15 identity; lost his ability to operate in the world.
16 He is a bird without a wing.

17 John Doe 3 lost his brother; also, in the
18 horrible way that he described, was taken to the
19 place where his brother's dismembered burned body
20 could be found so that the terror would not stop
21 with the dead John 5; that terror would be felt
22 also by the very much alive John 3 and his father,
23 whom we saw by videotape, John 4.

24 John 3 also bears the knowledge, and we
25 heard evidence of this, that there is at least a

1 substantial possibility that his brother was killed
2 by men who were looking for him. That's a hard
3 thing to live with, and John 3 will be living with
4 that for the rest of his life.

5 All of the testimony of the plaintiffs was
6 difficult, I suspect, for all of us to hear, but I
7 would submit my own--the moment that I found most
8 difficult came when Jane Doe was on the stand and
9 she said that--she recounted the conversation in
10 which she was attempting to persuade her son not to
11 go out in the bush, not to risk his life, but to
12 stay close to home. She tried to give him a couple
13 of dollars so he couldn't get very far away from
14 home, but he did go out, and it was obvious by that
15 time, it was obvious to Jane Doe, it was obvious to
16 her husband, it was obvious to her children what
17 was about to happen. There was going to be a
18 bloodbath in East Timor, and they knew that. They
19 knew that the results of the referendum were going
20 to have repudiated Indonesian rule and they knew,
21 therefore, that there was going to be retaliation
22 at an unimaginable level. And Jane Doe said to her
23 son, "Don't go out in the bush, stay here, stay
24 with the family." And then she testified that she
25 said to him, "We can all die together."

1 That, Your Honor, is the measure of the
2 terror that was inflicted on these plaintiffs, and
3 that measure should, we submit, be reflected in the
4 judgment of the Court.

5 Let me make clear a couple of things that
6 this case is not about. This case is not about
7 legitimate policy differences or political
8 differences concerning the future of East Timor.
9 This is not a matter of attempting to raise to the
10 level of international law a simple domestic
11 dispute or even a complex domestic dispute. It is
12 not a matter of attempting to further a political
13 goal such as the independence of East Timor at the
14 expense of an equally valid political goal, which
15 would be integration of East Timor into Indonesia.
16 We don't ask the Court to have views on that
17 subject, and although plaintiffs themselves have
18 those views, their counsel do not, and they form no
19 part of this case.

20 There is no civil war in East Timor.
21 There is no altercation between equals that
22 requires the taking of sides. What there has been
23 in East Timor is massacres, there have been
24 violations of human rights.

25 We are here, then, here in an American

1 courtroom in Washington, D.C., 14,000 miles from
2 East Timor, we are here because the United States
3 of America has a statutory provision for bringing
4 before the Court violations of the laws of the
5 United States including international law,
6 customary and conventional.

7 International law is part of our law and
8 the United States has been both politically
9 committed to its development and instrumental in
10 its formation. The United States has also been the
11 leader in developing the concept of individual
12 rights and in providing fora for those rights to be
13 recognized. That's what this case is about. It is
14 about individual responsibility, it is about making
15 individuals who violate human rights accountable,
16 and if, if as a result of this case and other
17 cases, if people with power, if people with guns,
18 if people with the right of command learn that
19 there may just be somebody watching them, before
20 you burn that house, before you rape that prisoner,
21 before you kill that prisoner of war, think, the
22 rest of the world may be watching and you some day
23 may be held individually accountable on Earth--not
24 talking religion now--on Earth before a court,
25 before a judge, with the power to indicate the

1 degree of abhorrence with which the civilized world
2 regards this kind of behavior.

3 For all of those reasons, Your Honor, the
4 question of what damages to award goes back to the
5 basic point with which I began. The question of
6 responsibility. Johny Lumintang was instrumental
7 in the campaign of terror in East Timor. He did
8 nothing to stop it, he gave instructions that it be
9 carried out, and as a result of that campaign of
10 terror, and as a result of Johny Lumintang and
11 others, these plaintiffs and others suffered
12 irreparable losses.

13 We respectfully submit, Your Honor, that
14 the judgment of this court should reaffirm the
15 Filartiga line of cases. It should show the
16 measure of the Court's view of the acts that have
17 been perpetrated against these people. It should
18 reiterate and repeat to the world the values that
19 we hold with respect to human rights, and if it
20 also has the effect of deterring this defendant or
21 other Indonesian defendants or others elsewhere
22 from perpetrating these acts, it is all to the
23 good.

24 We therefore respectfully ask Your Honor
25 to indicate through a large award of both

1 compensatory and punitive damages the adherence of
2 this court to the line of cases suggesting that
3 international human rights law is law, that
4 international human rights are legal rights, and
5 that they may be enforced against defendants who
6 come within the jurisdiction of this or other
7 courts of this country.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Schneebaum.

10 Mr. Schneebaum, the housekeeping matters
11 that you indicated--Mr. DiCaprio is going to be
12 assigned that responsibility. Very well.

13 Mr. DiCaprio.

14 MR. DiCAPRIO: Yes, Your Honor, please.

15 I would first like to move into evidence
16 exhibits that have been identified but not received
17 by the Court. The first is Exhibit Number 4, which
18 was Professor Tanter's CV that was identified on
19 March 27.

20 THE COURT: Plaintiffs' Exhibit 4 for
21 identification will be received into evidence.

22 [Plaintiffs' Exhibit No.
23 4 was received in
24 evidence.]

25 MR. DiCAPRIO: Thank you, Your Honor.

1 The next is Exhibit Number 8, which was
2 also identified by Professor Tanter, which was the
3 National Command Structure.

4 THE COURT: The chart of the Indonesian
5 chain of command?

6 MR. DiCAPRIO: Yes, sir.

7 THE COURT: Very well. Plaintiffs'
8 Exhibit 8 will be received into evidence.

9 [Plaintiffs' Exhibit No.
10 8 was received in
11 evidence.]

12 THE COURT: With respect to Exhibit 7, Mr.
13 DiCaprio, there was an A and B. Are they all--is
14 that all within Exhibit 7 or is Exhibit 7 separate
15 or discrete from 7A and 7B?

16 MR. DiCAPRIO: I have to ask Ms. Chomsky,
17 Your Honor. I didn't see the exhibits as they went
18 in.

19 THE COURT: All right. Well, maybe I'll
20 check.

21 [Discussion off the record.]

22 THE COURT: Yes. Exhibit 7 is a document
23 in Indonesian which--or I assume it's Indonesian.

24 MS. CHOMSKY: Yes. Your Honor--

25 THE COURT: Obviously will not be of great

1 help, but the chart itself--the two charts are the
2 last two pages as I recall.

3 MS. CHOMSKY: We're only moving Exhibit 7A
4 and B.

5 THE COURT: Very well. Thank you.

6 [Plaintiffs' Exhibit Nos.
7 7A and B were received
8 in evidence.]

9 MR. DiCAPRIO: Your Honor, I would also
10 ask that the Court--I would like to first identify
11 other exhibits that we would like to move into
12 evidence.

13 The first is Exhibit 17, which is the
14 declaration of the translator. Her name is
15 Catarina Maria and she was the translator for the
16 testimony of one of the witnesses, Sertorio Junior,
17 who we are going to be offering by transcript--

18 THE COURT: Has that been referenced
19 before, Mr. DiCaprio?

20 MR. DiCAPRIO: No, Your Honor, it hasn't.

21 THE COURT: I see. So this is a new
22 exhibit.

23 MR. DiCAPRIO: Exactly.

24 THE COURT: Very well.

25 THE CLERK: That's Exhibit 17, is that

1 correct?

2 MR. DiCAPRIO: Yes.

3 THE COURT: Again, a declaration of?

4 MR. DiCAPRIO: Catarina Maria.

5 THE COURT: All right.

6 MR. DiCAPRIO: She was the translator to
7 the testimony of--regarding John Doe 1's death.

8 THE COURT: All right. Plaintiffs'
9 Exhibit 17 will be accepted into evidence.

10 [Plaintiffs' Exhibit No.
11 17 was marked for
12 identification and
13 received in evidence.]

14 MR. DiCAPRIO: The next exhibit, Your
15 Honor, is the declaration of the individual who
16 administered the oath, Jovito Rego de Jesus, that's
17 J-o-v-i-t-o R-e-g-o, small d-e and that's capital
18 J-e-s-u-s.

19 THE COURT: That's exhibit number?

20 MR. DiCAPRIO: Eighteen.

21 THE COURT: Eighteen. Very well. That
22 will be admitted into evidence.

23 [Plaintiffs' Exhibit No.
24 18 was received in
25 evidence.]

1 MR. DiCAPRIO: And finally, with regard to
2 Exhibit 31, Your Honor, not previously identified,
3 this is the declaration of the individual who
4 actually filmed the depositions in East Timor, the
5 videographer.

6 THE COURT: And this was the deposition
7 that we did not view?

8 MR. DiCAPRIO: Actually, Judge, it's all
9 of the depositions which will include the one we
10 did not view.

11 THE COURT: I see. So this is a
12 declaration of the videographer--

13 MR. DiCAPRIO: Yes. There was only one--

14 THE COURT: --attesting to the
15 authenticity of the videotapes?

16 MR. DiCAPRIO: Exactly, Your Honor. And
17 his name is Jose, J-o-s-e, Antonio, A-n-t-o-n-i-o,
18 Belo, B-e-l-o.

19 THE COURT: All right. Plaintiffs'
20 Exhibit 31 will be accepted into evidence.

21 [Plaintiffs' Exhibit No.
22 31 was marked for
23 identification and
24 received in evidence.]

25 MR. DiCAPRIO: Next, Your Honor, and I'll

1 try to go through this quickly, as we have
2 mentioned a number of times today, we intend to
3 produce the transcript of Mr. Junior's testimony,
4 and hopefully that will be submitted very shortly
5 to the Court. Along with that, we--

6 THE COURT: Was that video identified as
7 an exhibit,--

8 MR. DiCAPRIO: It was not, Your Honor.

9 THE COURT: --Mr. DiCaprio?

10 MR. DiCAPRIO: No.

11 THE COURT: All right. So you're not
12 going to introduce the videotape itself, but a
13 transcript of that tape; is that correct?

14 MR. DiCAPRIO: Yes, Your Honor.

15 THE COURT: And that will be--well, can we
16 give that a number so we can then--and then I'll
17 give you time to submit that to the Court?

18 MR. DiCAPRIO: Thank you, Judge.

19 Certainly, Your Honor, we would be
20 also--should the Court desire, we would be happy to
21 provide the video to the Court if that becomes
22 necessary.

23 THE COURT: All right. Well, I can
24 request that of you if I need it.

25 What number shall we give the video--the

1 transcript yet to be submitted?

2 THE CLERK: Forty-four hasn't been used.

3 THE COURT: All right. The transcript of
4 the video deposition of Mr. Junior, Mr. DiCaprio,
5 we'll identify as Plaintiffs' Exhibit 44.

6 MR. DiCAPRIO: Thank you, Your Honor.

7 THE COURT: And that will--how much time
8 do you need to make that available to the Court?
9 I'm not rushing you, I just want to get some idea.

10 MR. DiCAPRIO: Mr. Schneebaum's
11 office--I'm sure that that can be accomplished
12 within a week.

13 THE COURT: A week to ten days?

14 MR. DiCAPRIO: Yes, Judge.

15 THE COURT: Very well. Because I
16 understand that you're going to be supplementing
17 the findings of fact; is that correct?

18 MR. DiCAPRIO: That's correct, Your Honor.

19 THE CLERK: Your Honor, that was video
20 deposition of--you said Mr.--

21 THE COURT: Of Mr. Junior, I think.

22 Is that correct, Mr. DiCaprio?

23 MR. DiCAPRIO: That is correct, Your
24 Honor, yes.

25 THE COURT: All right. Plaintiffs'

1 Exhibit 44 will be received into evidence and
2 Plaintiffs have ten days within which to submit the
3 copy of the transcript to the Court.

4 [Plaintiffs' Exhibit No.
5 44 was received in
6 evidence.]

7 MR. DiCAPRIO: Also, Your Honor, if I may,
8 I would ask that the Court also hold the record
9 open for Exhibit, if I may suggest, 45, which is
10 the swearing of the translator for the testimony of
11 John Doe 4. This translator is different than the
12 translator for Mr. Junior. So we would like--

13 THE COURT: The declaration?

14 MR. DiCAPRIO: No, this would be the
15 transcript. I qualified her on the record and this
16 is Alice Carrascalao. She was the translator for
17 John Doe 4. And we will provide the Court with a
18 transcript of that if the Court permits.

19 THE COURT: Oh, that's the transcript.
20 Very well.

21 MR. DiCAPRIO: Yes.

22 THE COURT: And finally, Your Honor--

23 THE COURT: So Exhibit 45 will be the
24 transcript or the declaration of the translator.
25 Is it going to be an actual transcript of the

1 video?

2 MR. DiCAPRIO: Yes, Your Honor.

3 THE COURT: Very well. Very well.

4 Plaintiffs' Exhibit Number 45, which will be a
5 transcript of the video deposition of John Doe 4,
6 will be received into evidence.

7 [Plaintiffs' Exhibit No.
8 45 was received in
9 evidence.]

10 MR. DiCAPRIO: Your Honor, if I may, I
11 believe 45 is the translator's transcript and then
12 46 I would ask the Court to allow that to be the
13 transcript of the video deposition of John Doe 4.

14 THE COURT: I see. I understand the
15 difference.

16 MR. DiCAPRIO: And I would ask that the
17 Court--I would move the entry of all--of Exhibit
18 44, 45 and 46 into evidence.

19 THE COURT: Very well. Exhibits 45, 44
20 and 46 will be admitted into--received into
21 evidence.

22 [Plaintiffs' Exhibit No.
23 46 was received in
24 evidence.]

25 MR. DiCAPRIO: Your Honor, next I would

1 like to inquire of the Court. There obviously has
2 been references to individuals during the course of
3 this proceeding, particularly in a number of
4 exhibits, and we would like to either redact or
5 seal, depending on what the Court's desire is,
6 certain documents that relate specifically to the
7 plaintiffs. I can recite a number of those now, or
8 I can certainly put that in the--

9 THE COURT: I think it would be
10 preferable, Mr. DiCaprio, if you could submit a
11 request or a motion to the Court identifying
12 specifically what it is that you seek to have
13 placed under seal so that there is no dispute as to
14 what it is that the clerk's office should cull out
15 from the record and place under seal so then no
16 mistakes are made. And if you would submit a
17 proposed order clearly identifying what it is to
18 remain under seal, then whoever reviews it in the
19 clerk's office will know precisely what it is.

20 MR. DiCAPRIO: Thank you, Your Honor.

21 And finally, Your Honor, I know the Court
22 has a number of questions which we would like to
23 specifically address by way of a post-trial
24 memorandum of law, including the issue of punitive
25 damages, command responsibility, the fact that

1 there are no other procedures by which these
2 plaintiffs can proceed in their home of East Timor,
3 and we may also mention the relationship between
4 this defendant and others who were in or about the
5 same level of his chain of command, and we would
6 ask the Court's permission to be able to supplement
7 the record by that.

8 THE COURT: Very well. All right. And
9 again, I don't want to burden you with revisiting
10 the issue of liability as such. Clearly default
11 judgment or entry of default judgment brings with
12 it the acceptance, if you will, of the allegations
13 of a complaint and so the liability issue.
14 However, punitive damages as a concept, as a
15 general concept, has to have some relationship, it
16 seems to me, with responsibility of the individual.

17 So to the extent that there is some
18 spillover in that you have one individual here and,
19 as Mr. Schneebaum so graphically pointed out, the
20 U.N. report spreads the responsibility among
21 several individuals as opposed to the more
22 amorphous government, so to the extent that you
23 wish to discuss that or would like to elaborate on
24 that theory, certainly that would be helpful to the
25 Court.

1 MR. DiCAPRIO: Thank you, Your Honor.

2 Yes, that's precisely what--

3 THE COURT: Very well.

4 MR. DiCAPRIO: --I intended.

5 THE COURT: And again, I am not putting
6 any restraints on time. How much time do you
7 think--I mean, if you need three or four weeks,
8 that's fine, too.

9 MR. DiCAPRIO: If the Court would permit
10 that, that would be--

11 THE COURT: Sure. All right.

12 MR. DiCAPRIO: --very much appreciated.
13 May we say, Your Honor, four weeks?

14 THE COURT: All right. So you're
15 suggesting, what, the 30th of April or--

16 MR. DiCAPRIO: That's fine, Your Honor.

17 THE COURT: Okay. And if you need
18 additional time, that will be agreeable to the
19 Court.

20 MR. DiCAPRIO: Thank you very much, Your
21 Honor.

22 And finally--may I just have a moment
23 please, Your Honor?

24 THE COURT: Go ahead.
25 [Pause.]

1 MR. DiCAPRIO: Finally, the plaintiffs,
2 certainly all of the attorneys involved in the
3 case, those named and unnamed, are truly
4 appreciative of the Court's and the Court
5 personnel's forbearance in this case. The evidence
6 has not been pleasant, and we very much appreciate
7 both the demeanor of the Court and personnel and
8 the time that has been taken to hear our matter.

9 Thank you, Your Honor.

10 THE COURT: Thank you, Mr. DiCaprio. I am
11 sure it has been an ordeal for--certainly for all
12 involved. And I would like to thank you for being
13 a half a day early on your time estimate.

14 MR. DiCAPRIO: Our pleasure, Your Honor.
15 Thank you.

16 THE COURT: All set. Good. Thank you.
17 We'll adjourn now.

18 MR. DiCAPRIO: Thank you, Judge.

19 THE CLERK: All rise. This Court stands
20 adjourned.

21 [Whereupon, at 12:33 p.m., the trial
22 adjourned.]

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