

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Jun 13 9 22 AM '91

91-11612WD
Civil Action No.

DIANNA ORTIZ,
Plaintiff,
v.
HECTOR GRAMAJO,
Defendant.

COMPLAINT FOR TORTURE, CRUEL,
INHUMAN OR DEGRADING
TREATMENT, ARBITRARY DETENTION
WITHOUT TRIAL, ASSAULT AND
BATTERY, FALSE IMPRISONMENT,
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS, AND
DEFAMATION

JURY TRIAL DEMAND

PRELIMINARY STATEMENT

1. This is an action by Sister Dianna Ortiz, O.S.U., a U.S. nun who belongs to the Ursuline Order, for compensatory and punitive damages for personal injuries suffered when she was kidnapped, tortured, raped, burned, and otherwise brutally abused in Guatemala by military and security personnel under the direction and control of defendant Hector Gramajo. Defendant Gramajo, a retired general of the Republic of Guatemala, currently living in the Commonwealth of Massachusetts, ordered, implemented and directed a program for the systematic violation of human rights, including the human rights of plaintiff. Sister Ortiz also seeks compensation for defamation for defendant's false and repeated statements that her abduction and torture were the result of a love affair.

2. Defendant Hector Gramajo was Minister of Defense of Guatemala from 1987 until his retirement after May, 1990. In that

capacity, he ordered, implemented and directed a program of eliminating and intimidating independent social, political and religious activities and potential opponents of the government, using tactics which included selective murders, disappearances, widespread torture and arbitrary detention without trial. Defendant Gramajo's actions resulted in the murder, disappearances, torture, cruel, inhuman or degrading treatment, arbitrary arrest and/or detention without trial of thousands of civilians, including plaintiff.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction under 28 U.S.C. §1331, diversity jurisdiction under §1332(a)(2), and pendent and ancillary jurisdiction. The amount in controversy, exclusive of interest and costs, exceeds \$50,000. Plaintiff is a citizen of the United States and a resident of Kentucky. Defendant is a citizen of Guatemala. Plaintiff's causes of action arise under, among others, the following laws, agreements, resolutions and treaties:

- a) Customary International Law;
- b) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- c) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- d) International Covenant on Civil and Political Rights,

G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

e) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984);

f) Charter of the Organization of American States, 2 U.S.T. 2394, T.I.A.S. 2361, 119 U.N.T.S. 3, as amended, Protocol of Buenos Aires of 1967, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. 324 (1970);

g) American Convention on Human Rights (Pact of San Jose, Costa Rica), O.A.S.T.S. No. 36, at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23, doc. 21, rev. 2 (English 1978);

h) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);

i) Organization of American States Inter-American Convention to Prevent and Punish Torture, O.A.S.T.S. No. 67, O.A.S. Doc. OEA/Ser. P, AG/doc. 023/85 rev. 1, at 46-54 (English 1986), 25 International Legal Materials 519 (1986).

j) American Declaration of Rights and Duties of Man, O.A.S. Res. xxx, OAS Off. Rec. OEA/Ser. L/V/II 23, doc. 21, rev. 6 (English 1979);

k) United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N.Doc. A/CONF/611, ANNEX I, ESC Res.

663(c), 24 U.N. ESCOR Supp. (No. 1), at 11, U.N. Doc. E/3048 (1957), amended, E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No. 1), at 35, U.N. Doc. E/5988 (1977);

l) Common Law of the United States of America;

m) 18 U.S.C. §2331

n) Laws of the Commonwealth of Massachusetts, including but not limited to common law principles of false imprisonment, assault and battery, intentional infliction of emotional distress and respondeat superior; and

o) Laws of the Republic of Guatemala.

4. The United States District Court for the District of Massachusetts is the proper venue of this action pursuant to 28 U.S.C. § 1391.

PARTIES

5. Defendant Hector Gramajo is a Guatemalan citizen. From 1987 through May 1990 Gramajo was the Minister of Defense of Guatemala. During that period he ordered, implemented and directed a program of eliminating and intimidating independent social, political and religious activities and potential opponents of the government through the summary execution, disappearance, torture, cruel, inhuman or degrading treatment and/or arbitrary arrest and detention without trial of thousands of civilians in Guatemala, including plaintiff. Defendant Gramajo retired from the Guatemalan military after May of 1990. He came to the United States on or

about September 1990 and currently resides within the jurisdiction of the United States District Court for Massachusetts.

6. Plaintiff Sister Dianna Ortis, 32, is a citizen of the United States and a resident of Kentucky. She is a nun of the Ursuline Order of Mt. St. Joseph. From 1987 through 1989 she worked in a parish in Guatemala teaching the Bible and reading skills to children. On November 2, 1989 in Antigua, Guatemala she was forcibly detained by military and security personnel and taken to a secret detention center where she was brutally tortured over a period of approximately 24 hours. She was stripped, interrogated, burned numerous times with a lit cigarette, raped repeatedly, subjected to other forms of sexual abuse and detained in a pit filled with dead bodies and live rats. Her torture, cruel, inhuman or degrading treatment, arbitrary detention and other violations of law occurred pursuant to a program ordered, implemented and directed by defendant Gramajo and was carried out by military and security personnel under his direction and control.

STATEMENT OF FACTS

7. Defendant Gramajo was the Minister of Defense of Guatemala from 1987 until his retirement after May, 1990. During that period he ordered, implemented and directed a program of eliminating and intimidating independent social, political and religious activities and potential opponents of the government through the summary execution, disappearance, torture, cruel, inhuman or degrading

treatment and/or arbitrary arrest without trial of thousands of civilians in Guatemala, including plaintiff. Military and security personnel under his direction and control, and pursuant to a policy and practice ordered, implemented and directed by defendant Gramajo, employed murder and torture to carry out this program.

8. The program was implemented through G-2, the army intelligence service under the direction and control of defendant Gramajo, which in his words, watches and investigates "all those who are in opposition to the state within a very broad range," "Guatemalans as well as foreigners," paying particular attention to "the behavior and attitude that have been displayed by persons who have been classified as 'opponents of the state.'"

9. Those classified as "opponents" by defendant Gramajo included human rights groups (described as "terrorist" by Army television under his supervision and control), peasants who sought exhumation of massacre victims buried in clandestine graves (described by defendant as "subversives"), and Guatemalans and foreigners such as plaintiff who were active in the Catholic church.

10. These religious people were subjected to intimidation, murder and torture in accord with the officially stated and published army position which defines as "subversive" "religious activists -- both from the catholic as well as protestant churches [who] preach... to peasants" among "sectors of the Indian population."

11. Pursuant to defendant's program, the religious, including pastors, nuns, deacons, catechists, and refugees who had sought sanctuary under their protection, were subject to murder, disappearance, abduction, machine-gun attacks, threats and interrogation about their political and personal beliefs.

12. The program involved the use of clandestine interrogation centers described by the Minister of Interior as "illegal places of detention." Torture was used systematically and was conducted by personnel acting pursuant to defendant Gramajo's program and under his authority and command.

13. Plaintiff Sister Dianna Ortiz went to Guatemala in September 1987. She worked in San Miguel Acatan in the province of Huehuetenango, with an indigenous community teaching Bible and literacy to kindergarten and teenage children. During her first month in San Miguel Acatan, military personnel came to the village and photographed Sister Dianna Ortiz and other sisters.

14. In January 1989, plaintiff received a threatening letter addressed to "Mother Dianna" and saying something like "Be careful, people want to hurt you." Another note was sent to her the next month, saying something like, "Someone wants to kill you. Don't go around alone. Leave the country." In March, plaintiff received a third letter which said, "It is dangerous for you, leave the country."

15. In July 1989, plaintiff went to study Spanish in Guatemala City. While there she was threatened, on the street

where she was staying, by a man she did not know . He called out her name, grabbed her arm from behind and forced her to walk along with him. He asked her if she was a student or a teacher. She asked why he wanted to know. He said, "We know who you are. You are working in Huehuetenango." He told her to leave the country. She was extremely frightened and shaken by this incident, and after some discussion with her sisters, she left Guatemala for an unscheduled vacation on July 15, 1989.

16. Plaintiff decided to return to Guatemala where she felt her ministry was most valuable. She returned to Guatemala on September 18, 1989.

17. On October 13 she received a letter that said something like, "Eliminate Dianna, assassinate, decapitate, rape" and other similar things. It also said she should leave the country. On October 17, 1989, she received another letter. It said something like, "It is dangerous for you here, the army knows you are here. Leave the country." She decided that she would be safer at the Belen Retreat Center in Antigua, Guatemala, a house run by the Guatemala Sisters for Missionaries. It is a walled compound, an enclave by itself. She went there on Saturday, October 21.

18. On November 2, 1989 Sister Ortiz was alone in the garden of the Retreat Center for about ten minutes reading the Bible. A man put his hand on her shoulder. When she turned to look at him she realized he was the same man who had threatened her in Guatemala City four months earlier. There was another man with

him and the first man insisted that she accompany them. She was terrified and tried to pull away, but he showed her a gun and said he would hurt her friends if she did not go with them. She was eventually placed into a police car and blindfolded. The police driver said to the men, (in Spanish) "I see that your trip was successful." She was taken into a building that seemed like a warehouse. She could hear the screams of a woman in a great deal of pain and the moans of a man.

19. She was brought into a very cold room and made to sit in a chair. The policeman and the other man who had taken her from the garden removed some of her clothes and started to put their hands all over her. Then the man from Guatemala City said, "We will get to that later, we have to take care of business first."

20. They told her that they were going to explain the rules of the game. They said they were going to ask her some questions. If she gave an answer they liked they would let her smoke; if they did not like the answer, they would burn her with a cigarette. When she said the rules were unjust, they burned her.

21. Then they began asking her questions. They asked her name, age, where she lived, what work she was involved in, and if she knew any subversives. Every time she answered they burned her with a cigarette. They burned her over 100 times. She was crying and screaming with pain. They laughed when she told them she was a U.S. citizen.

22. They showed her some photographs. The first was of her

in the plaza of San Miguel Acatan during the festival. She recognized the purple dress she was wearing. She remembered that the army was patrolling the town during the festival. The next photo was also of herself. It was taken in the village of Yalaj in February of 1988; the army was also patrolling that area when she was there. The next photo was also of her, taken in July 1989 at a demonstration of teachers in Guatemala City. It was a few days after this photo was taken that she was stopped and harassed by the same man who abducted her. They showed her a picture of herself with the group she was studying with at Antigua taken just a couple of days before she was abducted. She was blindfolded again. One man hit her in the face so hard she fell to the floor. She still has scars on the left side of her face from the beating he gave her. They took off the rest of her clothes covering her chest and began to abuse her sexually, in horrible ways. She was raped numerous times. They poured wine on her and used and sexually abused her body. At some point during this she lost consciousness.

23. When she came to, her wrists had been tied to something overhead. She was in a courtyard. A policeman asked her again about the people in the photographs and again he raped her. Some people were removing a large block that was on the ground. There was a pit underneath and there was a horrible smell. Suddenly she was lowered into the pit. It was filled with dead bodies. She tried not to walk on the bodies. Rats fell on her from above. She

passed out again. She woke up somewhere on the ground. Rats were all over her. Her captors continued to sexually abuse her.

24. She was taken back into a room and questioned again. They forced her to the ground and began to rape her again. Then someone came in and said "Idiots, she is a North American. Let her alone. It's already on the news on television." He forced them out of the room, removed her blindfold and helped her to dress. He led her out and drove her to Guatemala City, where she jumped from the car and eventually went to the Maryknoll Center and then to the home of the Papal Nuncio. Within 48 hours of her escape, under the protection of Monsignor Oriano Quilici, she left Guatemala for the United States.

25. Sister Ortiz remains emotionally devastated by her abuse. She cannot talk about it without crying. She is still under the care of a therapist and is recovering, but has a long way to go. She can not easily tell her story.

26. After returning from Guatemala, she was examined by a doctor who found over 100 cigarette burns on her body.

Defamation

27. Shortly after the above acts against plaintiff, defendant Gramajo publicly stated that plaintiff had staged her abduction and torture to cover up her involvement in a love tryst and a lover's argument. He stated that the burns on her back did not exist. This statement was widely publicized in Guatemala and the United States.

28. He stated these allegations to a delegation of religious representatives in November 1989 and to Americas Watch in January 1990. These comments were disseminated in the Americas Watch Report, "Messengers of Death, Human Rights in Guatemala, November 1988 - February 1990." Defendant Gramajo repeated that plaintiff invented her story to cover up for what he claimed to be her involvement in a love tryst and that her facial injuries resulted from a lover's quarrel. He stated that the wounds on her back did not exist.

29. On July 17, 1990 in testimony before the Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Relations of the House of Representatives defendant was asked whether plaintiff abducted herself and said: "I said that before because of the information I had, I believe it was so." The question was repeated and defendant again answered, "Yes."

30. On April 11, 1991 at a debate held at Brown University in Providence, Rhode Island before approximately 75 people and filmed by national television and recorded by a national radio network defendant Gramajo repeated that the abduction and torture of plaintiff were the result of a love affair. He said, "I don't have the evidence, but all the indication is that it's a love affair, I said--I didn't say which nature of love affair--I said it was a love affair."

31. On June 6, 1991 on the nationally broadcast T.V. program, "Prime Time Live" defendant Gramajo repeated that the abduction and

torture of plaintiff were the result of a love affair.

32. None of the statements or insinuations about the plaintiff as set forth in paragraphs 27 to 31 are true. Defendant made all these statements willfully, wantonly, maliciously and outrageously.

33. All of the statements and insinuations about the plaintiff, as set forth in paragraphs 27 to 31 of this Complaint, are false and defamatory of plaintiff because, inter alia, they state, imply or suggest that the plaintiff has been dishonest, that the plaintiff was having a love affair in violation of her vows as a nun, and that the plaintiff was not competently carrying out her profession as a nun.

34. As a direct and proximate cause of the activities of defendant in defaming plaintiff, said statements and insinuations about plaintiff have been communicated to members of the public in the United States and the defamatory sense of the statements and insinuations has been understood by the persons to whom they were communicated.

35. As a direct and proximate result of defendant's tortious conduct, plaintiff has been exposed to contempt and suspicion of the public at large.

General Allegations

36. The acts described herein were inflicted under color of law and under color of official authority, and were inflicted deliberately and intentionally.

37. The acts and injuries to plaintiff were part of a pattern and practice of systematic human rights violations ordered, implemented and directed by defendant Gramajo and were carried out by military personnel acting under his direction and control.

FIRST CLAIM FOR RELIEF

(Torture)

38. Plaintiff Sister Dianna Ortiz realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

39. The acts described herein placed plaintiff in great fear for her life and caused her to suffer severe physical and mental pain and suffering.

40. The acts described herein were inflicted deliberately and intentionally for purposes which included, among others, obtaining information or a confession, punishing the victim, or intimidating the victim or a third person.

41. The acts described herein constitute torture in violation of customary international law, the common law of the United States, the statutes and common law of Massachusetts, the laws of Guatemala, and international treaties, agreements, conventions and resolutions described in paragraph 3 herein.

42. As a result of the torture described above, plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$1,000,000.

43. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least \$1,000,000.

SECOND CLAIM FOR RELIEF

(Cruel, Inhuman, or Degrading Treatment)

44. Plaintiff Sister Dianna Ortiz realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

45. The acts described herein had the intent and the effect of grossly humiliating and debasing the plaintiff, forcing her to act against her will and conscience, inciting fear and anguish, and breaking her physical or moral resistance, in violation of customary international law, the common law of the United States, the statutes and common law of Massachusetts, the laws of the Republic of Guatemala, and the international treaties, agreements, conventions and resolutions described in paragraph 3 herein.

46. As an intended result of defendant's acts, plaintiff was placed in great fear of her life, and was forced to suffer severe physical and psychological abuse and agony. As a result of the cruel, inhuman or degrading treatment described above, plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$1,000,000.

47. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award

of punitive damages in the amount of at least \$1,000,000.

THIRD CLAIM FOR RELIEF

(Arbitrary Detention)

48. Plaintiff Sister Dianna Ortiz realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

49. Defendant's arbitrary detention of plaintiff was illegal and unjust. Defendant detained plaintiff without a warrant, probable cause, articulable suspicion or notice of charges and failed to bring her to trial.

50. Defendant's acts constitute arbitrary detention in violation of customary international law, the common law of the United States, the statutes and common law of Massachusetts, the laws of the Republic of Guatemala and the international treaties, agreements, conventions and resolutions described in paragraph 3 herein.

51. As a result of defendant's acts, plaintiff was placed in great fear for her life, was deprived of her freedom, was forced to experience severe physical and psychological abuse and agony, and suffered great mental anguish. As a result of her arbitrary detention, plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$500,000.

52. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of

punitive damages in the amount of at least \$500,000 for plaintiff.

FOURTH CLAIM FOR RELIEF

(Assault and Battery)

53. Plaintiff Sister Dianna Ortiz realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

54. Defendant's torture of plaintiff constitutes assault and battery, actionable under the laws of Massachusetts, the laws of the United States and the laws of the Republic of Guatemala.

55. As a result of defendant's acts, plaintiff was placed in great fear for her life and suffered severe physical and psychological abuse and agony. As a result of the assault and battery described above, plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$1,000,000.

56. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least \$1,000,000.

FIFTH CLAIM FOR RELIEF

(False Imprisonment)

57. Plaintiff Sister Dianna Ortiz realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

58. Defendant's wrongful restraint, confinement and detention of plaintiff against her will and without lawful privilege or

reasonable cause, constituted kidnapping and false imprisonment, actionable under the laws of Massachusetts and constituted false imprisonment under the laws of the United States and the laws of the Republic of Guatemala.

59. As a result of defendant's actions, plaintiff was placed in great fear for her life, was deprived of her freedom, and was forced to suffer severe physical and psychological abuse and agony. As a result of her false imprisonment described above plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$500,000.

60. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least \$500,000.

SIXTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

61. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

62. Defendant's torture, arbitrary detention and other acts of cruel, inhuman or degrading treatment constituted outrageous conduct in violation of all normal standards of decency and were without privilege or justification.

63. Defendant's outrageous conduct was intentional and malicious and done for the purposes of causing plaintiff to suffer

humiliation, mental anguish and extreme emotional and physical distress.

64. Defendant's outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of Massachusetts, the United States and the Republic of Guatemala.

65. As a result of defendant's acts, plaintiff was placed in great fear for her life, was deprived of her freedom, was forced to suffer severe physical and psychological abuse and agony. As a result of the intentional infliction of emotional distress described above, plaintiff has been damaged in an amount to be proven at trial but which is in excess of \$500,000.

66. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in the amount of at least \$500,000.

SEVENTH CLAIM FOR RELIEF

67. Plaintiff realleges and incorporates by reference the allegation set forth in paragraphs 1 through 37 as if fully set forth herein.

68. As a result of defendant's acts, plaintiff was defamed and has been damaged in an amount to be proven at trial but which is in excess of \$1,000,000.

69. Defendant's acts were willful, intentional, wanton, malicious and oppressive and should be punished by an award of

punitive damages in the amount of at least \$1,000,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against the defendant as follows:

- a) For compensatory damages according to proof;
- b) For punitive and exemplary damages according to proof;
- c) For reasonable attorneys' fees and costs of suit, according to proof; and
- d) For such other and further relief as the court may deem just and proper.

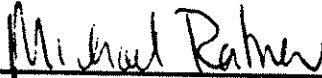
A jury trial is demanded on all issues.

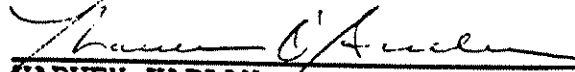
Dated: June 13, 1991
New York, New York

PAUL SOREFF
Alison, Soreff & Garber, P.S.C.
1326 South 3rd Street
Louisville, KY 40208
(502) 637-1422

SUSAN SHAWN ROBERTS
3611 Lowell St., NW
Washington, D.C. 20016
(202) 363-0901

Respectfully submitted,


MICHAEL RATNER
BETH STEPHENS
MARY GUNDRUM
JOSE LUIS MORIN
Center for Constitutional
Rights
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6464


HARVEY KAPLAN
MAUREEN O'SULLIVAN
JEREMIAH FRIEDMAN
Kaplan, O'Sullivan & Friedman
114 State Street, Suite 300
Boston, MA 02109
(617) 523-3049