

IN RE MARCOS HUMAN RIGHTS LITIGATION

FINAL JURY INSTRUCTIONS

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case. These instructions will be in three parts: first, the instructions on general rules that define and control the jury's duties; second, the instructions that state the rules of law you must apply, i.e., what the plaintiff must prove to make the case; and third, some rules for your deliberations. A copy of these instructions will be available for you in the jury room to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And **you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy.** That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return -- that is a matter entirely for you to decide.

DUTY OF JUDGE AND JURY

It is the duty of this Court to decide issues of law and the duty of you jurors to decide issues of fact. This case involves international law. The United States has adopted the international law at issue here, and I have determined as a matter of law that it is proper for this case to be decided here. Therefore, you should not question why you are deciding issues of fact in this case.

BIFURCATION

This is a civil case, not a criminal case. That is, the issues are whether Defendant is financially liable to the Plaintiffs, and, if so, in what amount. A civil case consists of two principal stages, liability and damages. Usually evidence of liability and damages is presented together. However, I have decided to separate the liability portion of the trial from the damage portion. Thus, the evidence you have heard during this first stage will pertain only to liability. Only if liability is found by you will the case proceed to a damage phase.

EVIDENCE

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; (2) the exhibits which have been received into evidence; and (3) any facts to which all the lawyers have agreed or stipulated.

SEPARATE VERDICTS

Although there are 34 plaintiffs in this consolidated litigation, the case of each is separate from and independent of the others. One of the cases, the Hilao case, is a Class Action brought by nine individual plaintiffs on behalf of a class of persons allegedly the victims or heirs of victims of tortures, summary executions and disappearances. The plaintiffs in the Sison/Piopongco and Ortigas and Clemente cases allege an additional claim for prolonged arbitrary detention.

Some of the plaintiffs and Class members were not abused themselves but are heirs of victims allegedly abused who are deceased or have disappeared. For purposes of simplification I will refer to all victims as plaintiffs.

The instructions govern the cases of all plaintiffs and the Class unless otherwise stated. You will determine the liability of the defendant to each plaintiff and the Class separately, the same as if you were trying different lawsuits.

To find liability as to the class members - it is not necessary that each class member testify. the class members are represented by the named plaintiffs in the Hilao case e.g.

Each of those named plaintiffs has testified either in person or by the video taped depositions that have been shown to you.

USE OF DEPOSITIONS AS EVIDENCE

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath or on a video recording played on a television set. Such testimony is entitled to the same consideration, and is to be ~~judged as to credibility~~, and weighed, and otherwise considered by you, in so far as possible, in the same way as if the witness had been present, and had testified from the witness stand.

BURDEN OF PROOF

The **burden is on the Plaintiffs** in these civil actions to prove every essential element of their claims by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that **the claim is more likely so than not so.**

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the proof should fail to establish any essential element of Plaintiffs' claim by a preponderance of the evidence, the jury should find for the Defendant as to that claim.

AUTHENTICITY OF DOCUMENTS

Some documents have been placed into evidence bearing the purported handwriting or signature of Ferdinand Marcos and others. The genuineness of such documents may be proven by direct or circumstantial evidence including non-expert witnesses who acquired familiarity with the handwriting and signature for reasons other than this litigation. Genuineness of the documents can also be proven by comparison with authenticated handwriting or signature specimens or other circumstantial evidence such as where the document came from, its appearance and contents.

UNDER COLOR OF LAW

Torture, summary execution, disappearance or arbitrary detention committed by a person under color of law violates international law, United States law and Philippine law and renders that person liable to the victim. The phrase "under color of law" means that the person allegedly responsible, here Ferdinand Marcos, used his government position as President of the Philippines and Commander-in-Chief of the military, paramilitary and intelligence forces to act beyond the bounds of his lawful authority. In order for Marco's alleged unlawful acts to have been done "under color of law," the unlawful acts must have been done while Marcos was purporting or pretending to act in the performance of his official duties. That is to say, the unlawful acts must consist of an abuse or misuse of power which is possessed by Marcos only because he was a government official.

Color of law as used in these instructions means action purported to be taken by an official of a government under any law of that country.

LIABILITY FOR TORTURE, SUMMARY EXECUTION AND DISAPPEARANCE

You may find the defendant Estate liable to plaintiffs if you find, by a preponderance of the evidence, that Ferdinand Marcos acting under color of law either (1) directed, ordered, conspired with or aided Philippine military, paramilitary and/or intelligence forces to torture, summarily execute or cause the disappearance of plaintiffs and the class or (2) had knowledge that Philippine military, paramilitary and/or intelligence forces tortured, summarily executed, caused the disappearance of, or arbitrary detention plaintiffs and the class, and having the power failed to take effective measures to prevent the practices.

TORTURE

Torture under international law and as used in these instructions, means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as (1) obtaining from that individual or a third person information or a confession, (2) punishing that individual for an act that the individual or a third person has committed or is suspected of having committed, (3) intimidating or coercing that individual or a third person, (4) or for any reason based on discrimination of any kind.

Torture also includes mental pain or suffering from prolonged mental harm caused by or resulting from:

(1) The intentional infliction or threatened infliction of severe physical pain or suffering;

(2) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(3) The threat of imminent death; or

(4) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

SUMMARY EXECUTION

Summary execution, under international law and as used in these instructions, means a deliberate killing not authorized by a previous lawful judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

DISAPPEARANCE

An official disappearance under international law and as used in these instructions means an abduction by a state official or officials or by persons acting under Ferdinand Marcos' approval or authority combined with a refusal by the state to acknowledge such abduction and detention or disclose the detainee's fate.

PROOF OF ORDERING OR DIRECTING
TORTURE, SUMMARY EXECUTION AND DISAPPEARANCE

Proof that Ferdinand Marcos directed or ordered torture, summary execution and disappearance may be either direct or circumstantial. Circumstantial evidence may consist of proof of a policy, pattern or practice that these abuses regularly occurred to persons who were arrested or detained pursuant to a presidential arrest order signed by Ferdinand Marcos or his designee.

Direct evidence is direct proof of a fact such as testimony of an eyewitness or the contents of documents.

Circumstantial evidence is proof of a chain of facts from which you can find that another fact exists or that an act has been done even though it has not been proved directly.

In law there is no difference. Both may considered by you with equal weight in your determination of the facts of this case.

KNOWLEDGE

The means of knowledge are ordinarily the equivalent in law to knowledge. So, if it appears from the evidence in the case that Ferdinand Marcos had information about torture, summary execution and disappearances which would lead a reasonably prudent person in his position and with his resources as President and Commander-in-Chief to make inquiry through which he would surely learn certain facts, then he may be found to have had actual knowledge of those facts, the same as if he made such inquiry and had actually learned such facts.

That is to say, the law will charge a person with notice and knowledge of whatever he would have learned, upon making such inquiry as it would have been reasonable with this information available to expect him to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. Since we cannot look into the operation of a human mind to find what a person knows or does not know you may rely on circumstantial evidence of what a person says or what the person does or does not do in light of all the surrounding circumstances to determine a person's knowledge of what is going on about that person in the actions taken.

MARTIAL LAW

During the trial you have heard various witnesses refer to martial law. The Philippine Constitution authorized the President to declare martial law under certain emergency conditions. Ferdinand Marcos declared martial law on September 22, 1972 and martial law continued, in whole or in part, until February 1986. The validity of martial law is not at issue in this case.

Martial law, as it existed in the Philippines, consisted of the suspension of certain government institutions and civil liberties. During martial law Ferdinand Marcos exercised ultimate control and authority, and his orders and decrees had the force of law and had to be obeyed.

NEXUS BETWEEN WRONG AND INJURY

To determine that the Estate of the late President Marcos is liable to any plaintiff for the wrong alleged by plaintiff, you must determine whether the injury alleged by a plaintiff has been shown by a preponderance of the evidence to have been caused by reason of a person being taken into custody by an order of Ferdinand Marcos or under his authority.

DUTY TO DELIBERATE

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

PRESUMPTION OF DEATH

Under Philippine law a person is presumed to be dead if that person has not been seen or heard from for a period of seven years.

INTENTIONALLY - DEFINED

An act is done intentionally if it is done knowingly, that is, if it is done voluntarily and deliberately, and not because of mistake, accident or other innocent reason.

CONSIDERATION OF THE EVIDENCE

You must consider only the evidence in this case. However, you may draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. You may **make deductions** and **reach conclusions** that **reason** and **common sense** lead you to make from the testimony and evidence.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

RACE, RELIGION OR NATIONAL ORIGIN

Your verdict must be based solely upon the evidence developed at this trial, or the lack of evidence.

It would be improper for you to consider any personal feelings you may have about one of the parties' race, religion or national origin.

It would be equally improper for you to allow any feelings you might have about the nature of the claim against the defendant to influence you in any way.

The parties in this case are entitled to a trial free from prejudice. Our judicial system is based upon your willingness to reach your verdict through a fair and impartial consideration of the evidence.

Your verdicts must be based solely on the evidence and on the law as I have given it to you in these instructions.

However nothing that I have said during the trial that was not meant to instruct you on the law, no question of mine or ruling on any evidence, no admonition to the lawyers is to suggest in any way what verdicts you must return.

The verdicts on liability in this phase of this case are solely your responsibility and should not be governed by any outside influence.

If you need to communicate with me about any question you may have you may send a note through the clerk.

Never attempt to communicate with me except by a signed written note.

Remember that you are not to disclose to me or to any person how you stand numerically or otherwise until you have reached unanimous verdicts.

Prolonged arbitrary detention as used in these instructions and the provisions of international law means detention of a person in an official detention facility or in any other place, without any notice of charges and failure to bring to trial that person within a reasonable time.

In considering what constitutes a reasonable time, you may consider all the circumstances existing in the Philippines at the time of the detention.

POLITICAL VIEWS ARE IRRELEVANT

In your deliberations, you should not give any regard to whether the Plaintiffs in this case may have opposed the Philippine government or what their political views may have been.

Every person -- even if they are in custody because they have been accused of violating the law -- has the right to be free from being tortured by the government or military officials. And every person -- no matter what their political persuasion -- has the right to be free from being tortured, summarily executed or "disappeared" or prolonged arbitrary detention by officials.