

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DOE I, DOE II, IVY HE, DOE III,	)	C-11-02449 EJD
DOE IV, DOE V, DOE VI, ROE VII,	)	
CHARLES LEE, ROW VIII, DOE IX,	)	SAN JOSE, CALIFORNIA
LIU GUIFU, WANG WEIYU, AND	)	
THOSE INDIVIDUALS SIMILARLY	)	MARCH 21, 2014
SITUATED,	)	
	)	PAGES 1-85
PLAINTIFFS,	)	
	)	
VS.	)	
	)	
CISCO SYSTEMS, INC., JOHN	)	
CHAMBERS, FREDY CHEUNG, AND	)	
DOES 1-100,	)	
	)	
DEFENDANTS.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS:	HUMAN RIGHTS LAW FOUNDATION
	BY: TERRI MARSH
	1615 L STREET NW, SUITE 1100
	WASHINGTON, D.C. 20036

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER:	LEE-ANNE SHORTRIDGE, CSR, CRR
	CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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

APPEARANCES (CONTINUED)

FOR THE PLAINTIFFS: SCHWARCZ, RIMBERG, BOYD & RADER  
BY: KATHRYN LEE CRAWFORD-BOYD  
6319 SAN VINCENTE BOULEVARD, SUITE 360  
LOS ANGELES, CALIFORNIA 90048

ALSO PRESENT: KEN SUN

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART & SULLIVAN  
BY: KATHLEEN M. SULLIVAN  
555 TWIN DOLPHIN DRIVE, 5TH FLOOR  
REDWOOD CITY, CALIFORNIA 94065

ALSO PRESENT: GREG FARANO

1 SAN JOSE, CALIFORNIA

MARCH 21, 2014

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

3 (COURT CONVENED AT 9:10 A.M.)

4 THE CLERK: CALLING CASE NUMBER 11-2449, DOE, ET AL,  
5 VERSUS CISCO SYSTEMS, ON FOR MOTION TO DISMISS THE SECOND  
6 AMENDED COMPLAINT.

7 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

8 MS. SULLIVAN: GOOD MORNING, YOUR HONOR.

9 KATHLEEN SULLIVAN FROM QUINN, EMANUEL HERE ON BEHALF OF CISCO.

10 AND WITH ME TODAY IS GREG FARANO, IN-HOUSE COUNSEL AT CISCO.

11 THE COURT: THANK YOU. GOOD MORNING.

12 MS. SULLIVAN: GOOD MORNING.

13 MS. MARSH: GOOD MORNING, YOUR HONOR. TERRI MARSH,  
14 I'M WITH THE HUMAN RIGHTS LAW FOUNDATION ON BEHALF OF  
15 PLAINTIFFS. AND --

16 MS. BOYD: LEE CRAWFORD BOYD, ALSO ON BEHALF OF  
17 PLAINTIFFS.

18 MR. SUN: KEN SUN, ALSO ON BEHALF OF PLAINTIFFS.

19 THE COURT: THANK YOU. GOOD MORNING, EVERYONE, AND  
20 THANK YOU FOR YOUR PATIENCE AND THANK YOU FOR BRINGING THIS  
21 INTERESTING CASE BEFORE US THIS MORNING.

22 THIS IS CISCO'S MOTION TO DISMISS THE MATTER, 12(B)(6) AND  
23 12(B)(1) I THINK ARE THE STATED GROUNDS, AND WHAT I'D LIKE TO  
24 OFFER YOU IS AN OPPORTUNITY TO, IF YOU WISH, TO MAKE A BRIEF  
25 OPENING STATEMENT, BOTH SIDES, IF THERE'S ANYTHING YOU WANT TO

1 PRESENT BY VIRTUE OF AN OPENING STATEMENT, BRIEF OPENING  
2 STATEMENT OR REMARKS.

3 I SHOULD TELL YOU THAT BECAUSE YOU'RE THE MOVING PARTY,  
4 YOU'LL HAVE THE LAST WORD AT THE END OF THE DAY.

5 BUT IF EITHER SIDE WOULD LIKE TO MAKE SOME BRIEF OPENING  
6 COMMENTS, I'M HAPPY TO RECEIVE THOSE.

7 YOU'RE THE MOVING PARTY, MS. SULLIVAN.

8 MS. SULLIVAN: GOOD MORNING, YOUR HONOR. AS THE  
9 MOVING PARTY, CISCO AND MR. CHAMBERS AND MR. CHEUNG WOULD BE  
10 GRATEFUL FOR THE OPPORTUNITY TO GO FIRST.

11 THE COURT: SURE. GO RIGHT AHEAD. IF YOU COULD COME  
12 FORWARD. THANK YOU.

13 MS. SULLIVAN: YES. GOOD MORNING, YOUR HONOR, AND  
14 MAY IT PLEASE THE COURT.

15 OUR MOTION FOR DISMISSAL HAS NUMEROUS INDEPENDENT GROUNDS.  
16 IN OTHER WORDS, WE THINK YOU SHOULD DISMISS THE ENTIRE  
17 COMPLAINT WITH PREJUDICE ON NUMEROUS GROUNDS, BUT I'D LIKE TO  
18 HIGHLIGHT WHAT I THINK ARE THE SIMPLEST WAYS TO GET THERE.

19 FIRST, THIS IS A CASE THAT ALLEGES HUMAN RIGHTS VIOLATIONS  
20 BY CHINESE GOVERNMENT ACTORS IN CHINA AGAINST CHINESE NATIONALS  
21 IN CHINESE PRISONS, DETENTION CENTERS, AND LABOR CAMPS IN  
22 CHINA.

23 SO THE FIRST KEY POINT I'D LIKE TO MAKE, YOUR HONOR, IS  
24 THIS IS THE ESSENCE OF AN ALLEGATION OF EXTRATERRITORIAL HUMAN  
25 RIGHTS VIOLATIONS, AND THE SUPREME COURT DEFINITELY RULED IN

1 THE KIOBEL DECISION LAST TERM THAT THE ALIEN TORT STATUTE  
2 SHOULD NO LONGER BE USED TO TRY TO GO AFTER CORPORATIONS THAT  
3 DO BUSINESS ABROAD FOR EXTRATERRITORIAL CONDUCT, AND THAT'S  
4 REALLY NOT IN DISPUTE.

5 SO WHAT PLAINTIFFS HAVE DONE IN THEIR SECOND AMENDED  
6 COMPLAINT IS TO TRY TO CONJURE SOME CONDUCT IN CALIFORNIA, IN  
7 SAN JOSE, OUT OF CISCO HEADQUARTERS THAT THEY THINK CONSTITUTES  
8 THE HUMAN RIGHTS VIOLATION.

9 BUT WITH RESPECT, YOUR HONOR, WE THINK THAT THERE IS  
10 NOTHING IN THE COMPLAINT THAT ALLEGES A HUMAN RIGHTS VIOLATION  
11 IN VIOLATION OF INTERNATIONAL LAW PLAUSIBLY IN SAN JOSE,  
12 CALIFORNIA.

13 AND THE KEY TO THAT, YOUR HONOR, IS THAT NO MATTER HOW  
14 MANY VERY LENGTHY AND ARTICULATE PARAGRAPHS YOU FIND IN THIS  
15 COMPLAINT ABOUT THE SUPPOSED SAN JOSE CONDUCT, THE ALLEGED  
16 SAN JOSE CONDUCT -- ALL OF WHICH, OF COURSE, WE DISPUTE  
17 FACTUALLY -- BUT EVEN IF YOU TAKE IT AS TRUE, YOUR HONOR,  
18 THERE'S A FUNDAMENTAL DISCONNECT BETWEEN THE CALIFORNIA CONDUCT  
19 THAT'S ALLEGED AND THE INTERNATIONAL LAW VIOLATIONS THAT ARE  
20 ALLEGED.

21 NOW, IF YOU GO BACK TO THE ACTUAL COUNTS OF THE COMPLAINT,  
22 THE REQUESTS FOR RELIEF, THEY'RE ALL ABOUT INTERNATIONAL LAW  
23 VIOLATIONS IN CHINA, TORTURE, CRIMES AGAINST HUMANITY, CRUEL,  
24 INHUMAN, AND DEGRADING TREATMENT, ARBITRARY DETENTION.

25 THE INTERNATIONAL LAW VIOLATIONS ARE INDISPUTABLY ALL IN

1 CHINA AT THE HANDS OF CHINESE ACTORS.

2 AND, YOUR HONOR, CISCO HAS NO DESIRE TO MINIMIZE THE  
3 HARDSHIPS ALLEGED TO HAVE OCCURRED TO THESE PLAINTIFFS OR THE  
4 HEINOUSNESS OF THE ACTS.

5 WHAT WE ARE SAYING IS IT HAS NOTHING TO DO WITH CISCO AND  
6 NOTHING TO DO WITH CALIFORNIA.

7 AND LET ME TRY TO SIMPLIFY OUR LENGTHY BRIEFING, YOUR  
8 HONOR. YOU'VE BEEN VERY PATIENT WITH BOTH SIDES IN THE  
9 BRIEFING.

10 THE KEY ABOUT THE ALLEGATIONS IN THE COMPLAINT IS THAT THE  
11 CALIFORNIA ACTIVITY HAS NOTHING TO DO WITH TORTURE, DETENTION,  
12 ARREST, OR ACTIVITIES IN VIOLATION OF CHINESE LAW OVER IN  
13 CHINA.

14 IT'S ABOUT DESIGN. THE ALLEGATIONS ARE ALL ABOUT DESIGN,  
15 HIGH LEVEL DESIGN, HIGH LEVEL MARKETING, HIGH LEVEL SYSTEMS  
16 CONSTRUCTION.

17 AND THE FUNDAMENTAL DISCONNECT IS NO MATTER HOW MANY  
18 PARAGRAPHS THERE ARE IN THE COMPLAINT ABOUT DESIGN AND  
19 CUSTOMIZED DESIGN -- AND OF COURSE WHEN YOU'RE CREATING  
20 NETWORKS, AS CISCO HAS ALL OVER THE GLOBE, OF COURSE YOU  
21 CUSTOMIZE IT FOR YOUR CUSTOMERS. IF YOU'RE SELLING TO THE  
22 SAN JOSE POLICE, THEY MAY NEED A DIFFERENT NETWORK THAN THE  
23 FBI, WHO MAY NEED A DIFFERENT NETWORK THAN PEOPLE WHO CONNECT  
24 TO INTERPOL. OF COURSE YOU CUSTOMIZE FOR YOUR PURCHASER, EVEN  
25 IF THEY'RE PUBLIC SECURITY OFFICIALS.

1           BUT ALL OF THAT ALLEGATION ABOUT CUSTOMIZATION DOESN'T GET  
2 YOU TO THE INTERNATIONAL LAW VIOLATIONS. THERE IS A  
3 FUNDAMENTAL DISCONNECT AT THE CORE OF THIS COMPLAINT BETWEEN,  
4 ON THE ONE HAND, ALLEGATIONS ABOUT SAN JOSE ACTIVITY,  
5 MARKETING, DESIGNING, CUSTOMIZATION ON THE ONE HAND, AND  
6 TORTURE, DETENTION, CRUEL AND INHUMAN AND DEGRADING TREATMENT  
7 OVER SOMEWHERE IN UNIDENTIFIED CHINESE PRISONS AND LABOR CAMPS  
8 BY UNIDENTIFIED CHINESE ACTORS.

9           THE COURT: AND THOSE TWO EVENTS WOULD REMAIN  
10 DISCONNECTED, THERE'S NO FACTS THAT YOU CAN THINK OF, NOT IN  
11 OUR CASE BUT PERHAPS OTHERS, THAT WOULD ALLOW A NEXUS SUCH THAT  
12 THEY COULD BE CONNECTED?

13           MS. SULLIVAN: IN THESE ALLEGATIONS, YOUR HONOR, THEY  
14 ARE ABSOLUTELY NOT CONNECTED. YOU GET TO A DISCONNECT. YOU  
15 GET TO A DISCONNECT UNDER THE FEDERAL CLAIMS AND THE STATE  
16 CLAIMS BECAUSE, OF COURSE, YOU NEED CAUSATION FOR CALIFORNIA  
17 TORTS HERE.

18           AND THERE'S NO CAUSATION BETWEEN A SYSTEM THAT WOULD HELP  
19 CHINESE OFFICIALS -- AND I'LL USE THE WORDS FROM THE COMPLAINT.  
20 THE RELEVANT VERBS GO LIKE THIS: THE PLAINTIFFS ALLEGE THAT  
21 THE SYSTEM, THE GOLDEN SHIELD -- AND BY THE WAY, YOUR HONOR, I  
22 JUST WANT TO BE SO CLEAR: THE GOLDEN SHIELD, AS PLAINTIFFS  
23 ADMIT IN PARAGRAPH 2 OF THE COMPLAINT, IS A GENERAL CRIME  
24 CONTROL TECHNOLOGY.

25           PARAGRAPH 2 OF THE COMPLAINT, THE GOLDEN SHIELD APPARATUS

1 IS NOT AN ORDINARY CRIME CONTROL APPARATUS, AS PLAINTIFFS  
2 ALLEGE, BUT IT DOES PERFORM SOME STANDARD CRIME CONTROL FOR  
3 POLICE OFFICERS.

4 CISCO'S MARKETING TO PUBLIC SECURITY ACTORS IN CHINA FOR  
5 APPREHENSION OF CRIMINALS.

6 FALUN GONG IS OUTLAWED IN CHINA.

7 WE IN THE UNITED STATES CAN'T COMPREHEND THE KIND OF  
8 RESTRICTIONS ON FREEDOM OF SPEECH AND FREEDOM OF RELIGION THAT  
9 OPERATE, BUT IT'S A SOVEREIGN PREROGATIVE OF ANOTHER NATION  
10 THAT HAS DIFFERENT CRIMINAL LAW, AND WE'VE PROVIDED YOU  
11 UNREBUTTED EXPERT TESTIMONY THAT THAT IS CHINESE LAW.

12 BUT, YOUR HONOR, THIS CASE GOES LIKE THIS: HAVING  
13 ADMITTED THAT THIS IS A GENERAL CRIME CONTROL APPARATUS, THE  
14 PLAINTIFFS ALLEGE THAT IT WAS USED TO IDENTIFY, LOCATE, LOG,  
15 PROFILE, TRACK, MONITOR, INVESTIGATE, SURVEIL.

16 OKAY. SO FAR WE'RE IN NETWORK WORLD. WE'RE IN  
17 INFORMATION SYSTEMS. THAT'S WHAT INFORMATION SYSTEMS DO. THEY  
18 ENABLE THE TRANSFER OF INFORMATION FROM THE SQUAD CAR TO THE  
19 STATION TO THE CAPTAIN TO THE PROSECUTOR. THAT'S WHAT NETWORKS  
20 ENABLE. IT'S COMMUNICATION AND SURVEILLANCE AND KNOWLEDGE.

21 BUT THE DISCONNECT COMES WHEN PLAINTIFFS THEN SAY, AND  
22 THIS HELPED LEAD TO APPREHEND -- THE CHINESE OFFICIALS WERE  
23 THEN ABLE TO APPREHEND, DETAIN, INTERROGATE, AND TORTURE.

24 THERE'S NOTHING ABOUT THE ALLEGATIONS IN THE COMPLAINT  
25 THAT CREATE A FACTUALLY PLAUSIBLE BASIS TO SUPPOSE THAT THE



1 NETWORK CONSTRUCTION IS -- HAS A CAUSAL NEXUS TO THE TORTURE,  
2 DETENTION, AND ALLEGED HEINOUS ACTIVITIES.

3 THAT'S THE CORE OF OUR ARGUMENT, THE ABSOLUTE CORE, CAUSAL  
4 NEXUS.

5 THE COURT: YOUR CLIENT CREATED THIS DATABASE,  
6 WHATEVER IT IS THAT MAKES IT, AND IT'S A GENERIC -- AS YOU SAY,  
7 IT'S A GENERIC TOOL THAT'S SPECIFICALLY DESIGNED FOR LAW  
8 ENFORCEMENT PURPOSES AND IT IS WHAT IT IS, AND IT'S A  
9 STANDALONE, AND WHATEVER SOMEBODY ELSE DOES WITH IT, THAT'S NOT  
10 CISCO'S BUSINESS AND IT SHOULDN'T BE THE COURT'S BUSINESS.

11 MS. SULLIVAN: THAT'S EXACTLY RIGHT, YOUR HONOR. WE  
12 BELIEVE EVERY WORD OF WHAT YOU JUST SAID.

13 NOW, I ANTICIPATE THAT THE PLAINTIFFS WILL SAY, OH, NO,  
14 NO, IT WASN'T GENERIC, IT WAS CUSTOMIZED.

15 THE COURT: I WAS GOING TO ASK YOU ABOUT THAT.

16 MS. SULLIVAN: BUT, YOUR HONOR, EVEN IF IT'S  
17 CUSTOMIZED -- LET'S SAY IT HAS TO BE CUSTOMIZED. IT HAS TO BE  
18 IN MANDARIN, OR IT HAS TO BE FOR POLICE APPLICATIONS AS OPPOSED  
19 TO UNIVERSITY APPLICATIONS. IF YOU'RE SELLING IT TO THE  
20 POLICE, IT HAS TO BE CUSTOMIZED FOR WHAT THEIR ACTIVITY IS.

21 THE COURT: AND I THINK WHAT YOUR COLLEAGUES OPPOSITE  
22 WOULD SUGGEST IS THEY CUSTOMIZED IT SO THAT, WITH KNOWLEDGE AND  
23 SCIENTER, IF YOU WILL, KNOWLEDGE CERTAINLY THAT THE CHINESE  
24 GOVERNMENT WAS USING IT TO DO THESE THINGS THAT YOU TALKED  
25 ABOUT EARLIER, THE TORTURE, THE APPREHENSION, AND THAT CISCO

1 CONTINUED IN THEIR, IN THEIR BUSINESS CONVERSATIONS WITH THE  
2 CHINESE GOVERNMENT TO REFINE, IMPROVE, ENHANCE THE ABILITIES OF  
3 THIS GOLDEN SHIELD PRODUCT TO SEEK OUT AND DO ALL THESE  
4 TERRIBLE THINGS TO THESE PEOPLE.

5 MS. SULLIVAN: SO, YOUR HONOR --

6 THE COURT: DOES THAT MEAN ANYTHING?

7 MS. SULLIVAN: YOU'RE RIGHT THAT THAT'S WHAT THEY  
8 ARGUE. I WANT TO STOP TOWARD THE END OF YOUR QUESTION AND SAY  
9 THE "IN ORDER TO" CLAUSE DOESN'T FOLLOW.

10 ANYTHING YOU DO TO CUSTOMIZE CHINESE LAW ENFORCEMENT  
11 OFFICIALS' ABILITY TO DETECT AND APPREHEND PEOPLE WHO VIOLATE  
12 THEIR CHINESE CRIMINAL LAWS, ALL RIGHT, BURGLARS, THIEVES,  
13 PEOPLE WHO COMMIT CRIMES, INCLUDING CRIMES SUCH AS  
14 PARTICIPATING IN A, AN ORGANIZATION THAT CHINESE CRIMINAL LAW  
15 OUTLAWS, YOU'RE CUSTOMIZING FOR THAT SET OF NORMAL LAW  
16 ENFORCEMENT ACTIVITIES.

17 AND CISCO'S ENTITLED TO BELIEVE THAT WHEN IT'S SELLING TO  
18 LAW ENFORCEMENT AGENCIES, THEY WILL FOLLOW CHINESE LAW, WHICH  
19 BANS TORTURE. WE HAVE THE UNREBUTTED EXPERT DECLARATION OF  
20 JOHN CHU, PLAINTIFFS DIDN'T CHOOSE TO PUT IN ANY EXPERT  
21 TESTIMONY, THAT TORTURE IS ILLEGAL IN CHINA.

22 WE'RE ENTITLED TO THINK -- WHEN WE'RE SELLING TO CHINESE  
23 LAW ENFORCEMENT OFFICIALS FOR LAWFUL LAW ENFORCEMENT PURPOSES,  
24 THERE'S NO REASON TO SUPPOSE THAT OUR TECHNOLOGY IS GOING TO BE  
25 USED FOR THE HEINOUS ACTIVITIES THAT ARE ALLEGED HERE. SO

1 THAT'S THE DISCONNECT.

2 THE COURT: IF IT'S DISCOVERED THAT THAT'S WHAT'S  
3 HAPPENING, DOES THAT CHANGE THINGS?

4 MS. SULLIVAN: NOT -- YOUR HONOR, WITH RESPECT, NO.  
5 TO SELL FOR -- IF WE'RE SELLING FOR THE LAWFUL PURPOSE OF LAW  
6 ENFORCEMENT AND CHINA IMPRISONS -- IT'S A VERY LARGE COUNTRY.  
7 ITS PRISON POPULATION IS TENS OF MILLIONS IN COMPARISON TO THE,  
8 YOU KNOW, THE THOUSANDS OF ALLEGED CLASS MEMBERS HERE.

9 SO IF THERE'S A USEFUL, LAWFUL, INNOCENT PURPOSE FOR THIS  
10 TECHNOLOGY, THE FACT THAT YOU MAY LEARN THAT CHINESE OFFICIALS  
11 ARE ENGAGED IN WHAT WE THINK ARE HEINOUS ACTIVITIES, THAT  
12 KNOWLEDGE ALONE DOES NOT CREATE AIDING AND ABETTING THE CHINESE  
13 GOVERNMENT HERE. IT DOESN'T CREATE AIDING AND ABETTING THE  
14 CHINESE GOVERNMENT HERE.

15 NOW, WE'RE GOING TO HAVE A DEBATE HERE ABOUT WHAT'S  
16 REQUIRED FOR AIDING AND ABETTING.

17 WE THINK THE PROPER MENS REA STANDARD IS PURPOSE. THAT'S  
18 WHAT THE SECOND CIRCUIT AND THE NINTH CIRCUIT HAVE HELD --  
19 SORRY -- THE SECOND CIRCUIT AND THE FOURTH CIRCUIT HAVE HELD.

20 OF COURSE THE NINTH CIRCUIT JUST WEIGHED IN DIFFERENTLY IN  
21 DOE V. NESTLE, AND THAT'S EN BANC.

22 THE COURT: WE'LL SEE WHAT HAPPENS.

23 MS. SULLIVAN: WE'LL SEE WHAT HAPPENS.

24 AND SO, YOUR HONOR, WE THINK IF THERE'S ANY UNCERTAINTY  
25 ABOUT WHAT THE MENS REA STANDARD IS IN THIS CASE, THE PROPER

1 COURSE WOULD BE TO WAIT AND SEE WHAT HAPPENS IN DOE V. NESTLE.

2 BUT EVEN IF THE STANDARD IS KNOWLEDGE, YOUR HONOR, JUST  
3 BECAUSE THERE ARE NEWSPAPER ARTICLES OUT THERE, THAT'S NOT  
4 ENOUGH TO ALLEGE CISCO COMMITTED THESE TERRIBLE HUMAN RIGHTS  
5 VIOLATIONS.

6 YOU WOULD HAVE TO KNOW SPECIFICALLY, WHEN YOU SELL A  
7 LAWFUL CRIME CONTROL TECHNOLOGY, THAT SOME ACTOR, IN VIOLATION  
8 OF CHINESE LAW, IN SOME PRISON IS GOING TO TORTURE THE PEOPLE  
9 WHO HAVE BEEN APPREHENDED.

10 THE COURT: AT SOME POINT -- PARDON ME FOR  
11 INTERRUPTING. AT SOME POINT DOES THAT BECOME COMMON KNOWLEDGE  
12 IF WE READ IT, WE HEAR IT ON THE NEWS, WE READ ABOUT IT, AND I  
13 THINK THE PLAINTIFFS HAVE ALLEGED IN THEIR PLEADINGS THAT THIS  
14 IS ONGOING AND IT SHOULD BE AT LEAST -- CISCO SHOULD KNOW THIS,  
15 IT'S COMMON KNOWLEDGE THAT THIS OCCURS, ET CETERA, THAT TYPE OF  
16 ARGUMENT.

17 THEY FURTHER SEEM TO ARGUE THAT OVER THE COURSE OF THEIR  
18 BUSINESS RELATIONSHIP WITH THE CHINESE GOVERNMENT, AS I SAID  
19 EARLIER, THEY -- AND I'M NOT SURE ABOUT THE SPECIFICITY OF THIS  
20 AND I'D LIKE TO ASK YOU, AND I'LL CERTAINLY ASK THEM ABOUT IT,  
21 ARE THEY SPECIFIC ENOUGH PURSUANT TO THE AZIZ AND TALISMAN  
22 CASES FOR THAT SPECIFICITY IN AIDING AND ABETTING?

23 ARE THEY SPECIFIC ENOUGH TO WHERE, IN THEIR PLEADINGS, IN  
24 THEIR COMPLAINT WHERE THEY SAY THIS BUSINESS RELATIONSHIP  
25 CONTINUED, IT MATURED, THE PRODUCT MATURED, IT CAME REFINED

1 SUCH THAT I GUESS THEY COULD USE IT IN A MOBILE APPLICATION OR  
2 SOMETHING LIKE THAT.

3 IS THAT -- IT SEEMS TO INFER THAT THERE IS AN INCREASED  
4 KNOWLEDGE OF THE USE OF THE PRODUCT, GOLDEN SHIELD, BY THE  
5 CHINESE GOVERNMENT AND THAT CISCO NATURALLY KNEW ABOUT IT  
6 BECAUSE THEY KNEW OF THE CHINESE GOVERNMENT'S NEEDS,  
7 REQUIREMENTS, AND REQUESTS. AND SO THEY, LIKE ANY GOOD  
8 MARKETER, WOULD MAKE THEIR PRODUCT TO SIT.

9 SO ISN'T THAT ENOUGH?

10 MS. SULLIVAN: NO, YOUR HONOR.

11 THE COURT: NO?

12 MS. SULLIVAN: I -- I INVITE YOU TO READ THE  
13 COMPLAINT WITH THE CARE THAT WE'VE OBVIOUSLY READ IT OVER AND  
14 OVER AGAIN, AND YOU WILL FIND, EVEN READING THE COMPLAINT IN  
15 THE LIGHT MOST FAVORABLE TO THE ALLEGATIONS, THERE IS NOTHING  
16 SPECIFIC IN HERE ABOUT CISCO OR ITS EXECUTIVES' KNOWLEDGE THAT  
17 ITS TECHNOLOGY WAS GOING TO SUBSTANTIALLY ASSIST TORTURE.

18 THERE IS A CONCLUSORY, A SET OF CONCLUSORY ALLEGATIONS  
19 THAT SOMEHOW SAN JOSE ACTIVITY WAS DONE WITH PURPOSE AND  
20 KNOWLEDGE TO BRING ABOUT TORTURE AND PERSECUTION.

21 THERE IS NOT A SINGLE FACTUAL ALLEGATION TO SUPPORT THAT,  
22 SO YOU GET TO IQBAL/TWOMBLY DISMISSAL IF YOU GET THAT FAR.

23 WE THINK YOU CAN STOP EARLIER AND JUST SAY THAT THIS IS  
24 ALL EXTRATERRITORIAL, THE CALIFORNIA CONDUCT ISN'T ENOUGH.

25 BUT EVEN IF YOU FOCUS ON THE CALIFORNIA CONDUCT, IT

1 DOESN'T SATISFY THE REQUIREMENT OF SPECIFIC FACTUAL SUPPORT FOR  
2 THE CONCLUSORY ALLEGATIONS ABOUT TORTURE.

3 BUT A SECOND ANSWER, YOUR HONOR, OF COURSE THEY ALLEGE  
4 THAT THERE WERE GENERAL NEWSPAPER ARTICLES. THAT'S NOT  
5 SPECIFIC ENOUGH FOR KNOWLEDGE. IT'S NOT -- IT'S CERTAINLY NOT  
6 SPECIFIC ENOUGH FOR PURPOSE.

7 BUT, YOUR HONOR, OUR FALLBACK ARGUMENT, AND THIS IS THE  
8 ONE THAT JUDGE MESSITTE EMBRACED IN ANOTHER ACTION IN THE  
9 DISTRICT OF MARYLAND BROUGHT BY CHINESE DISSIDENTS AGAINST  
10 CISCO --

11 THE COURT: THE DAOBIN CASE.

12 MS. SULLIVAN: SORRY? THE DAOBIN CASE, EXACTLY, YOUR  
13 HONOR, AND YOU'RE FAMILIAR WITH THAT. WE SENT IT TO YOU AS  
14 SUPPLEMENTAL AUTHORITY. IT'S 2014 WEST LAW 769095 DECIDED LAST  
15 MONTH IN THE DISTRICT OF MARYLAND.

16 AND THERE, YOUR HONOR, VERY -- JUDGE MESSITTE WRESTLED  
17 WITH A SIMILAR QUESTION TO WHAT YOUR HONOR IS WRESTLING WITH  
18 HERE, AND HE SAID SUPPOSE CISCO DID KNOW ABOUT THESE  
19 ALLEGATIONS ABOUT THE CHINESE GOVERNMENT. THERE'S A POLITICAL  
20 QUESTION PROBLEM, AND AN ACT OF STATE PROBLEM, WITH A FEDERAL  
21 DISTRICT COURT DECIDING THAT CISCO IS GOING TO BE LIABLE IN A  
22 PRIVATE RIGHT OF ACTION TO PLAINTIFFS FOR SELLING PRODUCTS AND  
23 SERVICES THAT WERE LAWFUL UNDER U.S. EXPORT REGULATIONS.

24 AND IT'S VERY INTERESTING, YOUR HONOR, IN THE BRIEFING,  
25 PLAINTIFFS HAVE CONCEDED THAT CISCO'S EXPORTS ARE NOT IN

1 VIOLATION OF U.S. EXPORT REGULATIONS. JUDGE MESSITTE IN HIS  
2 OPINION DISCUSSES THOSE REGULATIONS AT LENGTH.

3 AND YOUR HONOR, IT'S NOT JUST THAT THOSE REGULATIONS ARE  
4 SILENT AND DON'T ADDRESS THE ISSUE. WE HAD A CRISIS IN THIS  
5 NATION ABOUT HOW TO APPROACH CHINA IN LIGHT OF ITS HUMAN RIGHTS  
6 POLICIES AFTER TIANANMEN SQUARE, AND CONGRESS ADOPTED AND THE  
7 CONGRESS DEPARTMENT EXECUTED VERY SPECIFIC APPROACHES TO HOW WE  
8 CAN SELL THINGS TO CHINA, AND THOSE EXPORT REGULATIONS SAY SOME  
9 PRODUCTS CAN'T BE SHIPPED, BATONS, BRASS KNUCKLES, HANDCUFFS,  
10 THINGS THAT COULD GO TO CERTAIN KINDS OF VIOLENT PURPOSES.

11 BUT SOFTWARE, AND TECHNOLOGY ESPECIALLY, EXPRESSLY WERE  
12 NOT REACHED BY THOSE EXPORT CONTROLS, AND THEY'RE SUBJECT TO  
13 BEING RECONSIDERED, BUT SO LONG AS THE POLITICAL BRANCHS HAVE  
14 MADE A CONSIDERED JUDGMENT THAT WHAT CISCO IS EXPORTING TO  
15 CHINA -- WHICH WE BELIEVE IS ABSOLUTELY, AS YOUR HONOR SAID  
16 BEFORE, A GENERIC, USEFUL PRODUCT, THE SAME AS CISCO SHIPS TO  
17 ALL THE COUNTRIES AROUND THE GLOBE AND CUSTOMIZES TO ITS  
18 CUSTOMERS IN THE SAME WAYS AROUND THE GLOBE -- YOU, WITH  
19 RESPECT, AS A FEDERAL JUDGE ARE NOT WELL POSITIONED TO SAY THAT  
20 SOMETHING IS A HUMAN RIGHTS VIOLATION THAT'S EXPRESSLY  
21 PERMITTED BY THE POLITICAL BRANCHES.

22 THERE'S A POLITICAL QUESTION PROBLEM OF THE THREE BRANCHES  
23 SPEAKING WITH A DIFFERENT VOICE. IF YOU -- IT'S NECESSARILY  
24 SHOWING SOME QUESTION ABOUT WHAT THE POLITICAL BRANCHES HAVE  
25 DECIDED, AND I HAVE TO SAY, JUDGE MESSITTE IN HIS DECISION, AS

1 YOU KNOW, ALSO SAID THERE'S AN ACT OF STATE PROBLEM.

2 REMEMBER HERE, NOBODY HERE IS SAYING CISCO COMMITTED ANY  
3 OF THESE VIOLATIONS. PLAINTIFFS HAVE NEVER GONE SO FAR AS TO  
4 SAY CISCO IS COMMITTING TORTURE IN CHINESE PRISONS, AND THAT  
5 WOULD BE ABSURD, AS WELL AS OFFENSIVE, AND THEY DON'T ALLEGE  
6 IT.

7 BUT WHAT THEY DO ALLEGE IS THAT CISCO WAS AIDING AND  
8 ABETTING THE CHINESE GOVERNMENT.

9 YOU CAN'T HAVE AIDING AND ABETTING THE CHINESE GOVERNMENT  
10 WITHOUT DECIDING THAT THE CHINESE GOVERNMENT WAS ENGAGED IN  
11 HUMAN RIGHTS VIOLATIONS, AND THAT'S WHERE THE ACT OF STATE  
12 PROBLEM COMES IN. YOU HAVE TO BE JUDGING WHAT THE CHINESE  
13 GOVERNMENT IS DOING IN ORDER TO SAY THAT WE WERE AIDING AND  
14 ABETTING IT.

15 THE COURT: AND THAT'S WHAT THE GOOD MARYLAND JUDGE  
16 DID.

17 MS. SULLIVAN: THAT'S WHAT HE DID, YOUR HONOR. HE  
18 GAVE THREE ALTERNATIVE GROUNDS. HE SAID, FIRST, THERE'S A  
19 POLITICAL QUESTION PROBLEM. GIVEN THE EXPORT REGULATIONS AND  
20 CISCO'S LAWFULNESS UNDER THOSE REGULATIONS, HE CANNOT  
21 INTERFERE.

22 HE SAID, SECOND, ACTS OF STATE, HE'D HAVE TO JUDGE THE  
23 ACTIONS OF CHINESE GOVERNMENT.

24 AND HE SAID, THIRD, THERE IS NO ALLEGATION, NO PLAUSIBLE  
25 ALLEGATION OF A PURPOSE ON CISCO OR ITS EXECUTIVES' PART TO AID



1 AND ABET TORTURE AND DETENTION.

2 SO HE ALSO REACHED THE DISCONNECT QUESTION YOU AND I WERE  
3 TALKING ABOUT EARLIER, AND IF I MIGHT, I JUST WANT TO READ YOU  
4 HIS KEY SENTENCE ON THAT WHERE HE SAYS "NO FACTS PLED IN THAT  
5 COMPLAINT CONNECT CISCO'S LEGITIMATE BUSINESS ACTIONS TO THE  
6 GOLDEN SHIELD; THENCE, TO THE COMMUNIST PARTIES' ALLEGED  
7 DETENTION, PERSECUTION, AND TORTURE OF PLAINTIFFS."

8 IT'S THE "THENCE," THAT'S WHERE THAT LEAP IS, THAT  
9 INEXTRICABLE LEAP IN THIS COMPLAINT IS TO GO FROM INFORMATION  
10 SYSTEMS TO TORTURE, AND THERE'S NOT A SINGLE PLAUSIBLE FACT IN  
11 HERE THAT'S ALLEGED TO SUGGEST THAT THAT LEAP CAN BE CROSSED.

12 HE SAID IT A SECOND WAY. HE SAID "PLAINTIFFS ALLEGE THAT  
13 THIS TECHNOLOGY WAS SOMEHOW CUSTOMIZED FOR COMMUNIST OFFICIALS  
14 FOR USE IN NEFARIOUS WAYS. BUT IN THAT COMPLAINT, THEY HAVE  
15 SIMPLY FAILED TO INDICATE WITH ANY LOGIC WHAT IT MEANS TO  
16 CUSTOMIZE TECHNOLOGY THAT WOULD PERMIT THE SORT OF HUMAN RIGHTS  
17 VIOLATIONS ALLEGED HERE, SUCH AS TORTURE."

18 HOW ARE YOU CUSTOMIZING A TECHNOLOGY TO BRING ABOUT  
19 TORTURE?

20 SO HE HAD THREE ALTERNATIVE GROUNDS, YOUR HONOR. WITH  
21 RESPECT, WE THINK THEY ALL APPLY HERE.

22 THE ONLY DIFFERENCE IS THE PURPOSE STANDARD IS SETTLED IN  
23 THE FOURTH CIRCUIT.

24 BUT THE LEAP THAT I'M DESCRIBING IS A LEAP WHETHER THE  
25 STANDARD IS PURPOSE OR KNOWLEDGE BECAUSE IT'S A LEAP ABOUT

1 CAUSATION, WHICH IS A SEPARATE ELEMENT FOR ANY TORT.

2 THE COURT: SO I HAVE -- I HAVE A QUESTION ABOUT -- I  
3 READ THOSE QUOTES FROM THE OPINION, FROM THE ORDER AS WELL, AND  
4 I THOUGHT THOSE ARE IN SECTION, I THINK IT'S IN SECTION 11 OF  
5 HIS OPINION, AND I THOUGHT, WELL, ARE THE PLEADINGS HERE ANY  
6 DIFFERENT THAN THE PLEADINGS IN THE MARYLAND CASE?

7 BECAUSE HE DOES SEEM TO INDICATE THAT -- HE DOES TALK  
8 ABOUT HIS CASE FAILED TO MEET THAT AZIZ/TALISMAN STANDARD OF  
9 PLAUSIBILITY.

10 MS. SULLIVAN: THAT'S RIGHT, YOUR HONOR.

11 THE COURT: AND I GUESS MY QUESTION IS, IS THIS CASE  
12 PLED DIFFERENTLY SUCH THAT IT COULD?

13 MS. SULLIVAN: YOUR HONOR, IT IS PLED DIFFERENTLY,  
14 BUT THE DIFFERENCES ARE NOT MATERIAL AND SHOULD NOT LEAD TO A  
15 DIFFERENT OUTCOME HERE.

16 PLAINTIFFS HERE HAVE ADDED A GREAT MANY MORE PARAGRAPHS OF  
17 TECHNICAL DETAIL ABOUT WHAT CUSTOMIZATION MEANS. WELL, IT  
18 MEANS YOU HAVE DATABASES, IT MEANS YOU HAVE ELECTRONIC ALERTS,  
19 AND IT MEANS YOU CAN FIND ELECTRONIC SIGNATURES.

20 BUT NONE OF THAT MATTERS, YOUR HONOR, BECAUSE ALL OF THAT  
21 EXTRA DETAIL ABOUT CUSTOMIZATION HERE IS ALL ON ONE SIDE OF THE  
22 BIG LEAP. IT'S ALL ON THE INFORMATION SIDE.

23 IT CAN'T, NO MATTER HOW LONG IT GETS, GET YOU OVER TO THE  
24 TORTURE SIDE. THERE'S NOTHING IN HERE THAT SUGGESTS THAT  
25 THIS --

1           NOW, YOUR HONOR, LET'S CONTRAST IT WITH A SIMPLE CASE. IF  
2           THERE WERE A COMPANY OPERATING ON U.S. SOIL TO MAKE TORTURE  
3           IMPLEMENTS, AND THAT WAS ITS ONLY BUSINESS, AND IT ONLY  
4           EXPORTED THEM, AND THE ONLY USE OF THOSE PRODUCTS WAS THE  
5           NON-INNOCENT PURPOSE OF BEING USED FOR THE TORTURE OF PEOPLE  
6           ABROAD IN VIOLATION OF HUMAN RIGHTS, THAT WOULD BE AN ENTIRELY  
7           DIFFERENT CASE.

8           BUT -- BECAUSE THAT WOULD BE ABOUT CUSTOMIZING SOMETHING  
9           FOR TORTURE.

10          THAT IS NOT THIS CASE. THE CUSTOMIZATION ALLEGED HERE IS  
11          ALL ABOUT CUSTOMIZING FOR INFORMATION SOPHISTICATION.

12          AND OF COURSE IT'S THE SAME -- OF COURSE THERE'S  
13          INFORMATION SOPHISTICATION HERE. YOU HAVE TO DETECT HACKERS.  
14          YOU HAVE TO DETECT VIRUSES. YOU HAVE TO ENABLE THE SECURITY  
15          APPARATUS OF THE STATE -- WHETHER IN CHINA OR UNDER AMERICAN  
16          LAW, WE HAVE A GREAT DEAL OF SOPHISTICATED DEVICES AND SOFTWARE  
17          FOR ENABLING GOVERNMENT ACCESS TO PRIVATELY CONVEYED  
18          INFORMATION.

19          CUSTOMIZING INFORMATION TECHNOLOGY AND NETWORKING  
20          CAPABILITY, NO MATTER HOW MANY PARAGRAPHS YOU HAVE ABOUT IT,  
21          DOESN'T GET YOU TO CUSTOMIZING FOR TORTURE.

22          THAT'S THE SIMPLE POINT I'M TRYING TO MAKE, YOUR HONOR.  
23          IF YOU AGREE WITH US ON THAT, ALL THE COUNTS FALL BECAUSE THE  
24          STATE LAW COUNTS FALL FOR LACK OF AIDING AND ABETTING  
25          PLAUSIBILITY AS WELL.

1 SO, YOUR HONOR, I FOCUS ON THOSE. WE THINK YOU CAN  
2 DISMISS THE ECPA CLAIMS VERY EASILY BECAUSE THERE'S NO  
3 EXTRATERRITORIAL APPLICATION OF THE ELECTRONIC COMMUNICATIONS  
4 PRIVACY ACT, AND BECAUSE THERE'S NO PRIVATE RIGHT OF ACTION  
5 UNDER THE MANUFACTURING CLAUSE THAT THE PLAINTIFFS ASSERT.

6 I'LL LEAVE IT TO THE BRIEFS ON THAT, BUT YOU CAN EASILY  
7 DISMISS THE ECPA CLAIMS.

8 WE THINK YOU CAN ALSO EASILY DISMISS THE STATE UCL CLAIMS,  
9 UNFAIR COMPETITION LAW CLAIMS, BECAUSE THERE'S NO COMPETITOR OR  
10 CONSUMER HERE BEFORE YOU. THERE'S THIS ATTENUATED ALLEGATION  
11 OF LOST INCOME TO THE PLAINTIFFS, BUT IT'S NOT COVERED BY  
12 CALIFORNIA LAW, SO WE THINK YOU CAN GET RID OF THOSE CLAIMS  
13 VERY EASILY.

14 WE THINK YOU CAN GET RID OF THE CLAIMS AGAINST THE  
15 INDIVIDUAL EXECUTIVES BECAUSE THOSE ARE SO THIN AS TO BE JUST  
16 ABOUT HIGH LEVEL SUPERVISION, DIRECTION, MEETINGS WITH FOREIGN  
17 OFFICIALS. THERE'S NO "THERE" THERE, AND SO WE THINK YOU CAN  
18 DISMISS ALL OF THOSE EASILY.

19 BUT AT THE CORE, THOSE ATS ALLEGATIONS, THOSE TVPA  
20 ALLEGATIONS, AND THOSE STATE LAW TORT ALLEGATIONS, WE THINK THE  
21 TWO KEY PRINCIPLES ARE NO PLAUSIBLE ALLEGATION OF AIDING AND  
22 ABETTING TORTURE AND CRIMES AGAINST HUMANITY, AND NO --  
23 SORRY -- CAUSAL DISCONNECT.

24 AND EVEN IF YOU THOUGHT THERE WERE PLAUSIBILITY TO IT, YOU  
25 SHOULDN'T GO THERE BECAUSE THE POLITICAL QUESTION DOCTRINE AND

1 THE ACT OF STATE DOCTRINE COUNSEL THAT THE COURTS SHOULD NOT,  
2 A, STAND UP TO THE POLITICAL BRANCHES WHEN THEY HAVE EXPRESSLY  
3 LICENSED AN ACTIVITY IN THE EXPORT REGIME; AND SECOND,  
4 SHOULDN'T BE JUDGING THE SOVEREIGN ACTS OF THE PEOPLE'S  
5 REPUBLIC OF CHINA.

6 YOUR HONOR, THERE ARE A NUMBER OF OTHER DETAILED ARGUMENTS  
7 I CAN GIVE YOU, BUT PERHAPS I SHOULD LET THE OTHER SIDE SPEAK  
8 FOR A WHILE BECAUSE I'VE BEEN UP FOR QUITE SOME TIME.

9 THE COURT: NO, IT'S QUITE ALL RIGHT, BUT I DO WANT  
10 TO ASK YOU SOME QUESTIONS ABOUT THE KIOBEL CASE. YOU HAVE SOME  
11 FAMILIARITY WITH THAT CASE.

12 MS. SULLIVAN: I CERTAINLY DO, YOUR HONOR. I HAD  
13 THE -- THE SUPREME COURT MADE ME ARGUE IT TWICE.

14 THE COURT: YES. AND I'M CURIOUS ABOUT YOUR THOUGHTS  
15 ABOUT JUSTICE KENNEDY'S OPINION, AS WELL AS JUSTICE BREYER'S  
16 AND HIS COLLEAGUES' CONCURRING OPINIONS.

17 IT ALMOST SEEMED LIKE -- WHEN I READ THAT, IT ALMOST  
18 SEEMED LIKE -- PARDON ME FOR BEING INDELICATE -- BUT AFTER  
19 READING THAT, I THOUGHT, WELL, IS JUSTICE BREYER'S FOOT IN THE  
20 DOOR?

21 MS. SULLIVAN: WELL, YOUR HONOR, WE KNOW THAT THAT  
22 PHRASE, "KEEPING THE DOOR AJAR," WHICH JUSTICE SOUTER USED IN  
23 SOSA, IS WHERE WE'VE BEEN AT WITH THE ATS FOR A LONG TIME.

24 SO I THINK THE DOOR WAS CLOSED ALMOST SHUT ON  
25 EXTRATERRITORIAL ATS CLAIMS. I THINK ALL THAT THE KENNEDY

1 CONCURRENCE AND THE BREYER CONCURRENCE AND THE JUDGMENT DO IS  
2 SUGGEST THERE MAY BE SOME CASE, MAYBE LIKE THE FLORIDA CASE  
3 ITSELF IN WHICH WE BEGAN THE ATS REVIVAL BACK IN THE '80S WHERE  
4 SOMEONE WHO'S BEEN TORTURED ABROAD BY A FOREIGN OFFICIAL HAS TO  
5 RUN INTO THAT PERSON ON THE STREET HERE IN THE UNITED STATES.  
6 MAYBE THERE SHOULD BE AN ATS SUIT IN THAT CASE SO YOU DON'T  
7 GIVE SAFE HARBOR TO A TORTURER WHO'S FLED TO THE UNITED STATES.  
8 THAT WOULD BE MORE LIKE THE IDEA OF THE U.S. NOT SIDING WITH  
9 INTERNATIONAL LAW VIOLATIONS.

10 I THINK -- AND THAT WAS SOMETHING THAT CAME UP AT THE ORAL  
11 ARGUMENT, THE QUESTION OF WHETHER THERE MIGHT BE AN EXCEPTION  
12 FOR WHETHER -- YOU KNOW, YOU CAN GO AFTER EXTRATERRITORIAL  
13 CONDUCT IF NOW THE PERPETRATOR IS IN THE U.S. SEEKING SAFE  
14 HARBOR.

15 SO I THINK THAT MAY BE ONE OF THE THINGS, THE CONCERNS  
16 THEY HAD IN MIND.

17 BUT THERE'S NOTHING TO SUGGEST THAT JUSTICE KENNEDY, WHO  
18 JOINED FULLY IN THE MAJORITY OPINION, PROVIDED A COURT FOR IT.  
19 THIS IS NOT A PLURALITY OPINION. IT WAS AN OPINION OF THIS  
20 COURT SAYING THE PRESUMPTION AGAINST EXTRATERRITORIALITY IS  
21 VERY STRONG, EVEN FOR THE ATS, AND ITS MERE CORPORATE PRESENCE  
22 IS NOT ENOUGH.

23 JUSTICE KENNEDY JOINED IN THAT IMPORTANT PHRASE FROM  
24 KIOBEL. MERE CORPORATE PRESENCE IS NOT ENOUGH.

25 I WOULD SUBMIT TO YOUR HONOR THAT WHAT MY LEARNED

1           ADVERSARIES ARE DOING IN THIS CASE ARE TRYING TO TAKE MERE  
2           CORPORATE PRESENCE AND THE FACT THAT AN AMERICAN COMPANY SITS  
3           HERE IN THE VALLEY CREATING A TECHNOLOGY THAT HAS HELPED  
4           REVOLUTIONIZE COMMUNICATION AROUND THE WORLD AND SAYING THAT  
5           CORPORATE PRESENCE HERE IS ENOUGH TO VIOLATE -- TO CONNECT YOU  
6           TO HEINOUS ACTIVITY BY CHINESE ACTORS OFF IN CHINA THAT THERE'S  
7           NO ALLEGATION ANYBODY AT CISCO KNEW ABOUT SPECIFICALLY.

8           AND YOUR HONOR, I SUBMIT THAT IF THIS CASE CAN GO FORWARD,  
9           THEN WHY COULDN'T EVERY HIGH-TECH COMPANY IN THE VALLEY THAT  
10          SELLS EQUIPMENT IN CHINA -- WHICH IS A VERY IMPORTANT MARKET  
11          FOR THE UNITED STATES, REGULATED BY THE COMMERCE DEPARTMENT FOR  
12          HUMAN RIGHTS CONCERNS -- WHY COULDN'T EVERY COMPANY IN THE  
13          VALLEY THAT SELLS COMPUTERS, CHIPS, ANY NUMBER OF USEFUL  
14          PRODUCTS, CUSTOMIZED FOR MANDARIN, CUSTOMIZED FOR FIELD OF USE,  
15          BE SUBJECT TO THESE SAME KIND OF SUITS?

16          KIOBEL WAS ABOUT CLOSING THE DOOR TO THESE SUITS AGAINST  
17          CORPORATIONS.

18          AND I UNDERSTAND THE FRUSTRATION OF COMMITTED HUMAN RIGHTS  
19          ACTIVISTS. THEY SEE FOREIGN GOVERNMENTS WHO THEY THINK ARE  
20          ENGAGED IN HUMAN RIGHTS VIOLATIONS.

21          YOU CAN'T GO AFTER THE GOVERNMENT BECAUSE THEY HAVE  
22          SOVEREIGN IMMUNITY. SO THEY TRY TO FOCUS THE ATTENTION ON THE  
23          PROBLEM BY SUING COMPANIES THAT DO BUSINESS ABROAD.

24          BUT HERE, JUST LIKE IN EVERY OTHER POST-KIOBEL CASE -- AND  
25          IF YOU WANT TO JUST LOOK AT THE TEA LEAVES, THERE'S BEEN A

1 THEORY OF THE CASE THAT'S POST-KIOBEL THAT READ IT THE WAY I'M  
2 SUGGESTING YOU SHOULD READ IT, YOUR HONOR, WHICH IS MERE  
3 CORPORATE PRESENCE ISN'T ENOUGH.

4 ALL OF THE FOREIGN-CUBE CASES, OF COURSE, HAVE BEEN  
5 DISMISSED, ALL OF THE FOREIGN DEFENDANT CASES. AND I KNOW MY  
6 ADVERSARY WILL SAY, OH, WELL, THIS IS A U.S. COMPANY.

7 BUT WE'VE CITED TO YOUR HONOR A NUMBER OF U.S. COMPANY  
8 CASES THAT HAVE ALSO BEEN DISMISSED FOR EXTRATERRITORIAL  
9 CONDUCT REASONS POST-KIOBEL. THE DRUMMOND CASE,  
10 D-R-U-M-M-O-N-D, THE DAOUD CASE, D-A-O-U-D CASE, AND THE CACI  
11 CASE, C-A-C-I. THESE ARE ALL DISTRICT COURT CASES THAT WE'VE  
12 CITED TO YOUR HONOR, I WON'T BELABOR THEM, THEY'RE IN OUR  
13 BRIEFS, BUT U.S. CORPORATIONS SUED FOR ATS HAVE, POST-KIOBEL,  
14 BEEN DISMISSED IN ALL OF THE CASES THAT HAVE CONSIDERED IT.

15 THERE ARE FEW EXCEPTIONS, YOUR HONOR, WHICH I'M SURE MY  
16 COLLEAGUES MAY DISCUSS AND I'LL BE HAPPY TO REBUT THEM.

17 BUT IF A U.S. COMPANY IS ALLEGED TO HAVE DONE SOMETHING  
18 ABROAD, WHAT KIOBEL TEACHES US IS THAT WHAT MATTERS IS NOT THE  
19 NATIONALITY OF THE COMPANY, WHETHER IT'S U.S. OR FOREIGN, BUT  
20 THE LOCATION OF THE TORT.

21 AND THIS IS AN ALLEGATION, A SET OF ALLEGATIONS THAT'S ALL  
22 ABOUT A CHINESE LOCATION FOR THE TORT.

23 SO, YOUR HONOR, WITH RESPECT, I THINK THAT IF  
24 JUSTICE BREYER AND JUSTICE KENNEDY LEFT A FOOT IN THE DOOR, IT  
25 WAS NOT FOR THIS KIND OF CASE. IT WAS PERHAPS FOR A SAFE



1 HARBOR TO A MURDER CASE.

2 THEY DIDN'T REACH THAT. RESPECTFULLY, THE TVPA COVERS  
3 THAT. YOU DON'T NEED TO HAVE A FLORIDA ATS CASE AGAIN BECAUSE  
4 THE TVPA COVERS A SUIT BY AN INDIVIDUAL AGAINST AN INDIVIDUAL  
5 WHO HAS COMMITTED TORTURE.

6 AND BY THE WAY, YOUR HONOR, ON MY LIST OF EASY DISMISSALS  
7 HERE, I WOULD ADD THE TVPA AIDING AND ABETTING CLAIMS AGAINST  
8 THE CISCO EXECUTIVES. IT'S OFFENSIVE, FRANKLY, TO ALLEGE THAT  
9 THE CEO OF CISCO IS ENGAGED IN AIDING AND ABETTING TORTURE.

10 BUT PUTTING ASIDE JUST THE BASE LEVEL OFFENSE THERE, YOU  
11 CAN'T HAVE AIDING AND ABETTING UNDER THE TVPA. THE NINTH  
12 CIRCUIT HAS SPOKEN ON THAT IN THE BOWOTO CASE, B-O-W-O-T-O, AND  
13 THAT'S JUST SETTLED IN THE CIRCUIT, UNLIKE SOME OTHER THINGS  
14 THAT ARE STILL AT ISSUE.

15 SO, YOUR HONOR, THE DOOR MAY BE OPENED. I'M NOT QUITE  
16 SURE TO WHAT.

17 BUT THE ONE THING I KNOW IT'S CLOSED TO IS THIS CASE, AND  
18 WITH RESPECT, WE BELIEVE YOUR HONOR SHOULD DISMISS IT IN ITS  
19 ENTIRETY.

20 THE COURT: WELL, THAT WAS A QUESTION I HAD ABOUT  
21 KIOBEL -- IS THAT HOW IT'S PRONOUNCED?

22 MS. SULLIVAN: WE THINK IT'S KIOBEL, YOUR HONOR, BUT  
23 IT'S PRONOUNCED MANY DIFFERENT WAYS.

24 THE COURT: KIOBEL. IT SEEMS LIKE, POST-KIOBEL, DOES  
25 THAT JUST COMPLETELY ELIMINATE THE ATS? WHAT USE IS THE ATS

1 NOW? IS IT JUST -- WHEN WAS IT, 1789, IS THAT THE GENESIS?

2 MS. SULLIVAN: IT WAS, YOUR HONOR, AND IT'S NEVER  
3 BEEN AMENDED.

4 SO, YOUR HONOR, OF COURSE THE ATS IS STILL AVAILABLE FOR  
5 INTERNATIONAL LAW VIOLATIONS ON U.S. SOIL, AND THAT'S WHY  
6 CONGRESS ENACTED IT. YOU KNOW THE HISTORY. IT WAS ABOUT  
7 MAKING SURE THAT IF A FRENCH AMBASSADOR IS ASSAULTED BY ANOTHER  
8 FRENCHMAN ON THE STREETS OF PHILADELPHIA, HE COULD GO TO  
9 FEDERAL COURT, RATHER THAN TO STATE COURT, BECAUSE IT WAS  
10 IMPORTANT FOR THE U.S. TO AVOID A WAR WITH FRANCE BY PROVIDING  
11 A FEDERAL FORM OF REDRESS AGAINST THIS VIOLATION OF  
12 INTERNATIONAL LAW.

13 SO INTERNATIONAL LAW VIOLATIONS THAT ACTUALLY TAKE PLACE  
14 ON U.S. SOIL COULD STILL BE ACTIONABLE.

15 AND SECOND, YOUR HONOR, TO THE EXTENT PIRACY IS STILL ONE  
16 OF THE ORIGINALLY CONTEMPLATED ACTIVITIES, THAT'S SOMETHING  
17 THAT WOULD PROVIDE ATS REDRESS. OF COURSE THERE'S A LOT OF  
18 OTHER WAYS, INCLUDING INTERNATIONAL CRIMINAL JURISDICTION, TO  
19 GO AFTER PIRACY.

20 SO THAT'S A --

21 THE COURT: I THINK THAT'S SOMETHING JUSTICE BREYER  
22 SUGGESTED. HE SAID, WHO ARE TODAY'S PIRATES?

23 MS. SULLIVAN: WELL, EXACTLY. BUT PIRATES --  
24 AMERICAN SOIL AND THE HIGH SEAS ARE ONE THING.

25 THE CORE POINT ABOUT KIOBEL IS ONCE YOU GO INSIDE THE

1 SOVEREIGN TERRITORY OF ANOTHER NATION, THAT'S NOT WHERE THE ATS  
2 SHOULD GO WITH A PRIVATE RIGHT OF ACTION.

3 WHEN CONGRESS WANTS TO EXTEND JURISDICTION TO CONDUCT  
4 INSIDE A FOREIGN NATION, IT TELLS US SO. IT TOLD US SO IN THE  
5 TVPA. THE TORTURE VICTIM PROTECTION ACT CAN APPLY TO  
6 EXTRATERRITORIAL CONDUCT. THERE ARE ALSO ANTITERRORISM  
7 PROVISIONS, ANTI-TRAFFICKING PROVISIONS OF OUR LAW THAT  
8 EXPRESSLY REACH INTO A FOREIGN COUNTRY.

9 BUT THE POINT OF THOSE STATUTES IS CONGRESS HAS MADE THAT  
10 DECISION AND THE PRESIDENT HAS SIGNED IT. AND IT'S NOT A, A  
11 FEDERAL COURT EXERCISING THE SOLEMN AUTHORITY OF THE FEDERAL  
12 JUDICIARY TO CREATE FEDERAL COMMON LAW THAT'S DOING IT. IT'S  
13 THE POLITICAL BRANCHES.

14 SO THAT'S -- I WOULD SUGGEST THAT THE HISTORY SINCE THE  
15 FRAMING IS THAT WHEN CONGRESS WANTS TO EXTEND INTERNATIONAL LAW  
16 PROTECTIONS TO CONDUCT IN A FOREIGN COUNTRY, IT TELLS US SO.  
17 TVPA, ANTI-TERRORISM ACT, ANTI-TRAFFICKING ACT.

18 BUT IT'S NEVER SAID THAT THE ATS EXTENDS ABROAD.

19 SO THE WAY I READ THE END OF THE COURT'S OPINION IN KIOBEL  
20 WHEN IT SAID YOU'D HAVE TO SHOW THAT SOMETHING TOUCHES AND  
21 CONCERNS THE UNITED STATES --

22 THE COURT: THAT WAS MY NEXT QUESTION. I WANTED YOU  
23 TO TALK ABOUT TOUCHING AND CONCERNING.

24 MS. SULLIVAN: TOUCHING AND CONCERNING, EXACTLY, YOUR  
25 HONOR.

1 WELL, I BELIEVE THAT THE PROPER READING OF THAT PHRASE IS  
2 THAT ONLY CONGRESS CAN OVERCOME THE PRESUMPTION. IF CONGRESS  
3 WANTS TO AMEND THE ATS AND SAY, WE'RE NOW CREATING A PRIVATE  
4 RIGHT OF ACTION SO THAT HUMAN RIGHTS ACTIVISTS CAN SUE IN U.S.  
5 COURTS FOR CHINESE CONDUCT, CONGRESS CAN OVERCOME THAT.

6 WHAT I THINK WAS LEFT OPEN WAS THAT MAYBE THERE COULD BE  
7 SOME DOMESTIC HUMAN RIGHTS VIOLATIONS THAT STILL VIOLATE THE  
8 ATS.

9 SO WE HAD OUR AMBASSADOR IN PHILADELPHIA. THAT'S A  
10 DOMESTIC INTERNATIONAL LAW VIOLATION.

11 WE NOW HAVE A MUCH BROADER NOTION OF INTERNATIONAL LAW  
12 VIOLATIONS POST-NUREMBURG. WE NOW HAVE THE NOTION THAT HUMAN  
13 RIGHTS PROTECTED POST-NUREMBERG ARE PART OF INTERNATIONAL LAW.

14 AND SO LET'S ACCEPT INTERNATIONAL LAW GOT BIGGER. IF  
15 SOMEONE IS VIOLATING INTERNATIONAL RIGHTS IN THE UNITED STATES,  
16 MAYBE THAT'S COVERED.

17 WHAT I'M ARGUING TO YOUR HONOR IS THAT THE DOMESTIC  
18 ALLEGATIONS IN THIS COMPLAINT FALL SO FAR SHORT OF AN  
19 INTERNATIONAL LAW VIOLATION -- FIRST OF ALL, I DON'T EVEN THINK  
20 THE AIDING AND ABETTING IS COVERED BY THE ATS. THAT'S A DEBATE  
21 THAT HASN'T BEEN FINALLY SETTLED. IT'S BEEN ACCEPTED BY SOME  
22 CIRCUITS THAT YOU CAN HAVE AN AIDING AND ABETTING CAUSE OF  
23 ACTION.

24 BUT WE KNOW FROM CENTRAL BANK THAT'S CITED IN OUR BRIEFS  
25 THAT THE SUPREME COURT THINKS THAT WE SHOULDN'T ATTRIBUTE TO

1 CONGRESS THE INTENT TO CREATE PRIVATE CAUSES OF ACTION UNLESS  
2 IT'S EXPLICIT. NO PRIVATE RIGHTS OF ACTION FOR SECURITIES  
3 FRAUD, AIDING AND ABETTING, AND SO FORTH.

4 BUT EVEN ACCEPTING THAT YOU CAN HAVE AIDING AND ABETTING  
5 LIABILITY, IT'S JUST NOT PLED HERE, YOUR HONOR. IT'S NOT EVEN  
6 CLOSE.

7 SO THAT'S REALLY THE ARGUMENT. YOU CAN STILL HAVE AT'S  
8 APPLYING TO HOME GROWN INTERNATIONAL LAW VIOLATIONS. MY HYPO  
9 BEFORE, WHICH IS A DISTANT -- WHICH SO FAR FROM THIS CASE --  
10 BUT IF YOU WERE RUNNING AN INTERNATIONAL TORTURE OPERATION FROM  
11 U.S. SOIL, MAYBE YOU COVER THAT.

12 BUT, YOUR HONOR --

13 THE COURT: WOULD THAT TOUCH AND CONCERN?

14 MS. SULLIVAN: I DON'T CONCEDE THAT IT WOULD, BECAUSE  
15 I THINK YOU'D HAVE TO HEAR IT FROM CONGRESS.

16 THE COURT: I SEE.

17 MS. SULLIVAN: BUT I DO THINK IF THERE'S ANY CATEGORY  
18 THAT COULD POSSIBLY STILL BE LEFT OPEN PERTAINING TO FOREIGN  
19 ACTIVITY, IT WOULD HAVE TO BE THAT THE, THE TORT FEASORS ARE IN  
20 THE UNITED STATES.

21 AND CISCO --

22 THE COURT: THE TORT FEASORS MEANING?

23 MS. SULLIVAN: THE TORTURERS.

24 THE COURT: I SEE. NOT THE PRODUCERS OF THE  
25 IMPLEMENTS OF TORTURE?

1 MS. SULLIVAN: I DON'T WANT TO CONCEDE THAT THAT,  
2 THAT THAT COULD BE RIGHT.

3 BUT AT LEAST YOU COULD -- IF YOU WANTED TO SAY THAT THIS  
4 IS NOT -- THIS IS NOT THAT CASE. IF YOU WANT TO SAY THERE  
5 MIGHT BE A CASE SOME DAY -- AND THE UGANDA CASE FROM  
6 MASSACHUSETTS IS A LITTLE BIT LIKE THAT. THE SUPREME --  
7 JUDGE PONSOR LEFT OPEN THE IDEA THAT THERE MIGHT BE A SUIT  
8 AGAINST A GUY WHO'S RUNNING, OUT OF SPRINGFIELD, MASSACHUSETTS,  
9 A LET'S TORTURE GAY PEOPLE IN UGANDA OPERATION. THAT'S ALL HE  
10 DOES. HE'S RUNNING WHAT THE JUDGE CALLED HOMOPHOBIA CENTRAL  
11 OUT OF WEST SPRINGFIELD IN ORDER TO GO AFTER GAY PEOPLE AND GAY  
12 ACTIVISTS --

13 THE COURT: THAT'S THE SEXUAL MINORITIES --

14 MS. SULLIVAN: THE SEXUAL MINORITIES CASE, EXACTLY,  
15 YOUR HONOR.

16 WE'LL SEE WHAT THE FIRST CIRCUIT THINKS OF THAT CASE. AS  
17 I UNDERSTAND IT, THERE WAS A PETITION FOR INTERLOCUTORY REVIEW  
18 THAT WAS DENIED IN THAT CASE AND A PETITION FOR MANDAMUS THAT  
19 MAY BE PENDING. SO WE DON'T KNOW IF THE FIRST CIRCUIT WILL  
20 AGREE WITH HIM.

21 BUT YOUR HONOR, AT LEAST THERE THE ALLEGATIONS ARE THAT A  
22 PERSON IS DOING SOMETHING THAT'S DIRECTED AT TORTURE AND  
23 NOTHING BUT TORTURE.

24 IF YOU HOLD THAT CREATING NETWORKING EQUIPMENT AND  
25 SERVICES, THE SAME ROUTERS AND THE SWITCHES THAT ARE ENABLING

1 EVERYBODY IN THIS COURTROOM TO CONNECT ACROSS THE INTERNET  
2 TODAY, IF YOU HOLD THAT THAT TECHNOLOGY, BECAUSE IT'S  
3 CUSTOMIZED FOR POLICE USE, IS SOMEHOW SPECIFICALLY DIRECTED AT  
4 TORTURE, LIKE THE SEXUAL MINORITIES CASE, I SUBMIT THERE'S THE  
5 DANGER THAT IT WOULD TAKE THE VALLEY DOWN WITH IT.

6 THAT IS -- THESE TECHNOLOGIES HAVE REVOLUTIONIZED THE  
7 WORLD FOR GOOD, WE WOULD SAY, IN ENABLING PEOPLE TO CONNECT AND  
8 HUMAN RIGHTS ACTIVISTS TO CONNECT AND PEOPLE TO HAVE FREEDOM  
9 THROUGH COMMUNICATION.

10 BUT YOU CAN'T EQUATE WHAT IS PLEADED IN THIS COMPLAINT  
11 WITH WHAT CISCO DID, YOU CAN'T EVEN REMOTELY COMPARE IT TO  
12 ACTIVITIES THAT ARE DIRECTED AT HUMAN RIGHTS VIOLATIONS, AND  
13 THAT I THINK IS THE KEY, YOUR HONOR.

14 AND THAT GIVES YOU SEVERAL DIFFERENT WAYS TO GO: SAY THAT  
15 THE DOMESTIC CONDUCT IS NOT SUFFICIENTLY SPECIFIC TO REALLY BE  
16 IN THE UNITED STATES.

17 SECOND, THE DOMESTIC CONDUCT IS NOT SPECIFIC ENOUGH TO  
18 MAKE OUT AIDING AND ABETTING BECAUSE IT DOESN'T SHOW KNOWLEDGE  
19 OF SPECIAL ACTIVITIES, GENERAL NEWS ARTICLES ARE NOT ENOUGH,  
20 AND THERE'S A CAUSAL DISCONNECT BETWEEN CUSTOMIZING FOR  
21 INFORMATION AND CUSTOMIZING FOR TORTURE.

22 THIRD, EVEN IF YOU HAVE DOUBTS ON THOSE TWO PRINCIPLES,  
23 DISMISS FOR LACK OF JURISDICTION ON POLITICAL QUESTION AND ACT  
24 OF STATE GROUNDS.

25 AND WE THINK ANY OR ALL OF THOSE GIVE YOU MORE THAN

1 SUFFICIENT BASIS TO DISMISS IN THE ENTIRETY, AND ONCE THE  
2 FEDERAL CLAIMS GO, WE WOULD RESPECT ACTUALLY SUGGEST THAT YOU  
3 NOT RETAIN SUPPLEMENTAL JURISDICTION OVER THE STATE CLAIMS  
4 WHICH WE THINK ARE INDEPENDENTLY VOID FOR A HOST OF REASONS,  
5 INCLUDING THEY'RE ALL TIME BARRED, AND PLAINTIFFS HAVE CONCEDED  
6 THAT THEY ARE OUTSIDE THE STATUTE OF LIMITATIONS. THEY JUST  
7 ASK YOU FOR EQUITABLE TOLLING.

8 UNDER CALIFORNIA LAW, THAT'S STATUTORY. THEY HAVEN'T PLED  
9 THE STATUTORY BASIS.

10 UNDER FEDERAL LAW, WE DON'T THINK THERE'S ANY BASIS FOR  
11 TOLLING BECAUSE PLAINTIFFS SAY, WELL, THEY COULDN'T HAVE SUED  
12 EARLIER BECAUSE THEY WERE AFRAID OF RETRIBUTION. BUT THEY'RE  
13 STILL AFRAID OF RETRIBUTION. THEY'VE MOSTLY SUED NOT IN THEIR  
14 OWN NAMES, SUED ANONYMOUSLY. SO THAT'S NOT A BASIS FOR  
15 EQUITABLE TOLLING.

16 SO, YOUR HONOR, THE FEDERAL CLAIMS SHOULD GO, THE STATE  
17 CLAIMS SHOULD GO AS WELL FOR NUMEROUS INDEPENDENT REASONS, AND  
18 WE THINK AT THE END OF THE DAY, IT'S VERY IMPORTANT FOR THIS  
19 COURT, SITTING HERE IN THE VALLEY WHERE MANY TECHNOLOGIES ARE  
20 MADE FOR USEFUL PURPOSES, BUT SOLD TO GOVERNMENTS AROUND THE  
21 WORLD, INCLUDING ONES THAT THE U.S. SAYS WE MAY LAWFULLY SELL  
22 TO, EVEN IF WE HAVE DOUBTS ABOUT THEIR HUMAN RIGHTS RECORD, IT  
23 WOULD CREATE A KIND OF INVITATION TO BRING MORE SUITS LIKE  
24 THIS, WHICH WE DON'T THINK ARE AN APPROPRIATE WAY TO GO ABOUT  
25 THE NOBLE GOAL OF HUMAN RIGHTS PROTECTION.



1 THE COURT: THANK YOU VERY MUCH.

2 MS. SULLIVAN: THANK YOU, YOUR HONOR.

3 THE COURT: MS. MARSH?

4 MS. MARSH: GOOD MORNING, YOUR HONOR. TERRI MARSH ON  
5 BEHALF OF PLAINTIFFS.

6 I'M GOING TO BE HANDLING EVERYTHING EXCEPT THE POLITICAL  
7 QUESTION AND THE STATE CLAIMS. THAT WILL BE HANDLED BY  
8 MS. BOYD.

9 THE COURT: THAT'S FINE.

10 MS. MARSH: THANK YOU, YOUR HONOR.

11 I'D LIKE TO JUST BEGIN BY GOING BACK TO MAY 2008. I WAS  
12 AT A CONGRESSIONAL HEARING -- I WAS AT A CONGRESSIONAL HEARING,  
13 SENATOR DURBIN WAS THERE, AND THEY WERE ASKING QUESTIONS OF  
14 CISCO AND SOME OF THE OTHER TECH COMPANIES, AND THE MAIN  
15 QUESTION WAS, "ARE YOU SENDING OPPRESSIVE TECHNOLOGY TO CHINA?"

16 AND THE ANSWER WAS, "NO. WE SELL THE SAME EQUIPMENT  
17 EVERYWHERE. IT'S ALL GENERIC."

18 AND IT WAS AT THE END OF THAT HEARING THAT I WAS  
19 APPROACHED, AS A LAWYER, AND ASKED IF I WOULD LOOK INTO THE  
20 CASE TO SEE IF THERE WAS ANYTHING THAT I COULD DO WITH IT  
21 LEGALLY.

22 AND I DIDN'T FILE THE CASE UNTIL MAY 2011 BECAUSE, QUITE  
23 HONESTLY, I WASN'T GOING TO FILE A CASE IF THERE WAS NO CASE TO  
24 FILE.

25 AND IN THE BEGINNING, I DIDN'T EVEN KNOW WHAT A ROUTER

1 WAS. I MEAN, HONESTLY, THEY'D SAY, "IT'S ON YOUR DESK," AND  
2 I'M LIKE "THE MODEM? THE ROUTER?" I WAS VERY CONFUSED.

3 AND THE POINT IS THAT THE -- WELL, THAT THE CASE WOULD NOT  
4 HAVE BEEN FILED IF I DIDN'T THINK THERE WAS REASON TO FILE IT.

5 BUT ALSO, THAT THE CASE HAS A FOCUS, I MEAN, A CLEAR  
6 FOCUS, AND THE FOCUS IS THE SUBSET OF THE GOLDEN SHIELD, WHICH  
7 ARE THE INTEGRATED, CUSTOMIZED ANTI-FALUN GONG SYSTEMS THAT ARE  
8 DEVOTED EXCLUSIVELY AND TOTALLY TO THE TORTURE AND PERSECUTION  
9 OF FALUN GONG.

10 SO IF YOU LOOK AT PARAGRAPH 5 -- AND MAYBE I DIDN'T  
11 EXPRESS IT CLEARLY ENOUGH -- BUT IN PARAGRAPH 5 OF THE  
12 COMPLAINT, I SAID THAT THE GOLDEN SHIELD COMPRISES THE  
13 ANTI-FALUN GONG SYSTEM, WHICH I CALLED AN ORWELLIAN SYSTEM OF  
14 CONTROL, AN ORWELLIAN SYSTEM, OR A GARGANTUAN SYSTEM, TARGETED  
15 AGAINST FALUN GONG.

16 AND THE REST OF THE COMPLAINT -- IT'S KIND OF LIKE IF YOU  
17 THINK OF A SPOTLIGHT, SO YOU HAVE THIS BIG APPARATUS, THE  
18 GOLDEN SHIELD, AND IT DOES A LOT OF THINGS. IT HAS TRACKING,  
19 IT HAS IMMIGRATION, IT'S A BIG APPARATUS. OKAY.

20 SO I DIDN'T FOCUS ON THE WHOLE APPARATUS. I FOCUSED ONLY  
21 ON THE SUBSET, THE ANTI-FALUN GONG SYSTEMS. AND SO THE  
22 COMPLAINT LOOKS AT THOSE SYSTEMS. IT LOOKS AT THE HISTORY OF  
23 THE CAMPAIGN, WHICH IS THIS DOUZHENG PERSECUTORY CAMPAIGN  
24 AGAINST FALUN GONG IN CHINA, AND I'VE TRIED TO PUT THAT IN  
25 CONTEXT OF WHAT IS GOING ON IN CHINA SINCE THE BEGINNING OF THE

1 CHINESE COMMUNIST PARTY SHOWING THAT IT'S A POLITICAL CAMPAIGN,  
2 IT'S NOT A LEGAL CAMPAIGN, THE LAW IS NOT QUITE CONNECTED TO  
3 IT, AND THAT'S PARAGRAPHS 27 TO 47.

4 AND THEN I LOOK AT -- OR WE LOOK AT HOW THE DESIGNS AND  
5 HOW THE IMPLEMENTATION AND THE VERIFICATION AND THE  
6 OPTIMIZATION AND THE TRAINING AND CUSTOMER SUPPORT ADDRESS THE  
7 SPECIFIC ANTI-FALUN GONG SYSTEMS AND THE HARMS ALLEGED.

8 SO, FOR EXAMPLE, WE HAVE HIGH LEVEL DESIGNS, AND WE'D BE  
9 HAPPY TO SHOW THEM TO YOU. I MEAN, WE REALIZE WE'RE NOT THERE  
10 AT THIS POINT, BUT WE WOULD BE HAPPY TO SHOW THEM TO YOU, TO  
11 HAVE A HEARING ABOUT THAT ISSUE.

12 WE HAVE HIGH LEVEL DESIGNS THAT ILLUSTRATE HOW TO  
13 IDEOLOGICALLY CONVERT, THROUGH MENTAL TORTURE, FALUN GONG.

14 FOR EXAMPLE, IN ONE DESIGN YOU HAVE AN INTERNET  
15 SURVEILLANCE SYSTEM, WHICH IS LIKE THE EYES AND EARS OF THE  
16 GOLDEN SHIELD, IT GATHERS INFORMATION, AND THE PURPOSE OF THAT  
17 SYSTEM, ACCORDING TO A CISCO SLIDE, IS TO DOUZHENG FALUN GONG,  
18 WHICH MEANS -- DOUZHENG MEANS TO PERSECUTE, TORTURE.

19 THE COURT: DO YOU HAVE THE SPELLING OF THAT TERM FOR  
20 OUR REPORTER?

21 MS. MARSH: I'LL GIVE YOU THE ENGLISH VERSION. IT'S  
22 DOUZHENG. IT'S D-O-U-Z-H-E-N-G.

23 THE COURT: THANK YOU.

24 MS. MARSH: AND SO THE INTERNET SURVEILLANCE SYSTEM  
25 THAT'S THE EYES AND EARS OF THE -- THAT GATHERS AND COLLECTS

1 INFORMATION HAS ITS PURPOSE TO DOUZHENG FALUN GONG, AND OTHER  
2 HOSTILE ELEMENTS, IN CHINA WHICH PROBABLY INCLUDE UYGHURS AND  
3 TIBETANS, AND THAT SYSTEM IS CONNECTED TO AN INFORMATION  
4 PLATFORM, WHICH I'VE BEEN CALLING A DYNAMIC INFORMATION  
5 MANAGEMENT SYSTEM. IT HAS FALUN GONG DATABASES IN IT. IT HAS  
6 PROFILED THE INFORMATION IN THE DATABASES ABOUT FALUN GONG, AND  
7 THAT INFORMATION THAT'S STORED THERE IS THEN CONNECTED TO THE  
8 PLACES WHERE THE CHINESE SECURITY ARE SITUATED, SUCH AS  
9 OFFICE 610 -- IT'S PAINFUL FOR ME TO TALK ABOUT THIS -- IT'S  
10 OFFICE 610 BUREAU SITE WHERE THEY TORTURE FALUN GONG, AND ONE  
11 OF THE 610 OFFICERS IS GOING TO BE A WITNESS IN THIS CASE.

12 SO THE SECURITY AT THESE SITES, ONE IS 610, IT'S CONNECTED  
13 TO THE 610 SITE.

14 IT'S ALSO CONNECTED TO POLICE PSYCHIATRIC HOSPITALS, SO  
15 YOU THINK ABOUT WHAT EXACTLY THAT IS, AND OTHER SUCH PLACES.

16 AND THAT IS CONNECTED TO THE INFORMATION. SO YOU HAVE THE  
17 INTERNET SURVEILLANCE SYSTEM, WHICH IS THERE TO DOUZHENG  
18 FALUN GONG, TO PERSECUTE AND TORTURE, CONNECTED IN THE SAME  
19 SLIDE TO THE INFORMATION SYSTEM THAT HAS ALL THE INFORMATION  
20 ABOUT FALUN GONG, WHICH IS CONNECTED TO THE SITES OF TORTURE.

21 SO IF SOMEBODY AT THE 610 SITE HAS A PRACTITIONER THERE  
22 AND WANTS THAT PRACTITIONER TO STOP PRACTICING FALUN GONG AND  
23 TO SAY, "I RENOUNCE THE RELIGION," AND TO HELP THEM CATCH OTHER  
24 PEOPLE, AND MAYBE EVEN ON TELEVISION SAY ABOUT WHAT THE  
25 RELIGION IS, IF HE WANTS TO DO THAT, HE HAS A DATABASE AND YOU

1 CAN GO INTO THAT DATABASE AND YOU CAN LOOK AND GET INFORMATION  
2 ABOUT THIS PERSON, LIKE DOES HE HAVE AN ELDERLY PARENT WHO'S ON  
3 DIALYSIS? DOES HE HAVE A YOUNG BABY? DOES HE HAVE A SON WHO'S  
4 IN SCHOOL? WAS HE ARRESTED BEFORE, MAYBE HIS SPINE WAS BROKEN,  
5 CAN WE THREATEN TO BEAT HIS SPINE?

6 THAT INFORMATION IS IN THERE, IN THAT SYSTEM SO THAT THE  
7 POLICE CAN IDEALOGICALLY CONVERT FALUN GONG THROUGH MENTAL  
8 TORTURE. THAT'S WHAT WE HAVE IN THE SLIDES THAT'S VERY DIRECT.

9 NOW, IN ADDITION TO THAT, THERE ARE THESE FUNCTIONS, LIKE  
10 THE IDENTIFICATION SYSTEM, WHICH WE HAVE LOTS OF SLIDES ON, AND  
11 SO WE HAVE ALL SORTS OF CONNECTIONS BETWEEN CISCO SOFTWARE AND  
12 FALUN GONG INFORMATION CENTERS AND IDENTIFICATION CENTERS.

13 SO THAT THE -- SO WE HAVE SYSTEMS THAT ARE ANTI-FALUN GONG  
14 THAT ALLOW FALUN GONG TO BE IDENTIFIED, THAT ALLOW FALUN GONG  
15 TO BE APPREHENDED, WHICH IS WHAT CISCO'S ATTORNEY IS REFERRING  
16 TO.

17 THERE ARE OTHER SYSTEMS, LIKE THE IDENTIFICATION SYSTEM,  
18 WHICH IS HUGE, AND THE APPREHENSION SYSTEM, AND THEN THE  
19 IDEALOGICAL CONVERSION SYSTEM THROUGH MENTAL TORTURE WHICH I  
20 JUST DESCRIBED.

21 BUT THOSE SYSTEMS ARE INDISPENSABLE TO THE PHYSICAL  
22 TORTURE, THE DISAPPEARANCE, AND THE EXTRAJUDICIAL KILLING THAT  
23 HAPPENS BECAUSE YOU'VE GOT TO PUT THEM SOMEWHERE.

24 AND THAT'S WHAT I WAS DESCRIBING IN THE BEGINNING OF THE  
25 COMPLAINT WHEN I TALKED ABOUT THE DOUZHENG PERSECUTORY

1 CAMPAIGNS, BECAUSE WHAT THE PARTY HAS BEEN DOING SINCE THE VERY  
2 BEGINNING IS TARGETING GROUPS, WHETHER IT'S THE LANDLORDS OR  
3 IT'S THE INTELLECTUAL LEFT, THEY EVEN HAD A CAMPAIGN AGAINST  
4 JUDGES AND LAWYERS, THEY TARGET GROUPS, AND WHEN THEY TARGET A  
5 GROUP, THEY USE THAT WORD, DOUZHENG, THAT GROUP THEN BECOMES,  
6 LIKE, EVERYBODY STAYS AWAY FROM THE GROUP, AND THOSE PEOPLE ARE  
7 ISOLATED, THEY'RE PARADED THROUGH THE STREETS IN VERY  
8 HUMILIATING WAYS, THEY'RE PUT ON STAGES IN VERY HUMILIATING  
9 WAYS, AND THEY'RE PUT IN PLACES WHICH NOW BECOME DETENTION  
10 CENTERS LATER IN TIME WHERE THEY ARE TOLD THAT THEY HAVE TO  
11 PUBLICLY SAY, "BEING A LANDLORD IS A BAD THING, I RENOUNCE IT.  
12 I'M A BAD PERSON." OR "BEING A MEMBER OF THE TIBETAN RELIGION  
13 IS A BAD THING AND I RENOUNCE IT."

14 THERE'S EVEN A QUOTE IN AN ARTICLE THAT SOMEBODY  
15 INTERVIEWED A TIBETAN AND HE SAID, "OH, YEAH, THE MINUTE THEY  
16 GET ME, I JUST START CONFESSING BECAUSE I DON'T WANT TO GO  
17 THROUGH IT. I JUST CONFESS. IT'S SCARY."

18 SO WHAT'S GOING ON WITH FALUN GONG IS PART OF SOMETHING  
19 THAT'S BEEN GOING ON IN CHINA FOR A VERY LONG TIME, BUT IT'S  
20 NOW HIGH TECH.

21 AND THE CASE ISN'T ABOUT ORDINARY ROUTINE POLICE  
22 OPERATIONS. I'M SURE THERE'S ORDINARY CRIME IN CHINA. I DON'T  
23 DOUBT THAT. IT'S EVERYWHERE.

24 BUT THAT'S JUST NOT IN THE COMPLAINT AND THAT'S NOT WHAT  
25 WE'RE TALKING ABOUT.

1 AND IT'S NOT ABOUT ROUTINE COMMERCIAL ACTIVITIES.

2 AND AS FAR AS THE MENS REA, I JUST WANTED TO SAY SOMETHING  
3 ABOUT THAT, BECAUSE CISCO'S DESIGNS FACILITATE ALL OF THE  
4 THINGS THAT I JUST SAID, AND SO THEY ARE INTENDING THOSE ACTS.  
5 I MEAN, THOSE ARE THE ACTS THEY INTEND. THEY INTEND TO MAKE  
6 THE DESIGN AND THE DESIGN DOES FACILITATE IDEALOGICAL  
7 CONVERSION.

8 THE COURT: THAT WAS A QUESTION I HAD FOR  
9 MS. SULLIVAN ABOUT THE MENS REA, AS YOU SUGGEST.

10 MS. MARSH: YES.

11 THE COURT: AND WHAT -- WHAT IS IT, IN YOUR  
12 COMPLAINT, THAT SHOULD CONVINC ME, FOR PURPOSES OF THIS  
13 MOTION, THAT THE MENS REA HAS BEEN USED SUFFICIENTLY TO PROVE  
14 THAT?

15 MS. MARSH: YEAH, RIGHT. WELL, WELL WITHOUT  
16 REVIEWING THE STANDARD, THE STANDARD IN THE NINTH CIRCUIT IS  
17 EITHER KNOWLEDGE OR SECONDARY PURPOSE AT THIS POINT. IT COULD  
18 CHANGE.

19 SO FOR KNOWLEDGE -- I JUST HAVE A LIST -- PARAGRAPHS 166,  
20 174, AND 178 DISCUSS THE CISCO SHAREHOLDERS WHO'VE RAISED THESE  
21 CONCERNS AT SHAREHOLDER MEETINGS IN 2002, 2003, 2005 TO 2008  
22 AND 2010. SO THEY'VE HEARD THAT.

23 THERE ARE NUMEROUS CISCO INTERNAL FILES AND MARKETING  
24 MATERIALS THAT WE HAVE THAT MENTION THE ANTI-FALUN GONG  
25 APPARATUS AND THE DOUZHENG CAMPAIGN, AND THAT'S PARAGRAPHS 59

1 TO 62, 64 TO 68, AND 175.

2 CISCO'S DIRECTOR OF CORPORATE AFFAIRS, TERRY ALBERSTEIN,  
3 ADDRESSED THE ISSUE IN A CONVERSATION WITH REBECCA MACKINNON,  
4 WHICH IS IN A BLOG -- WELL, NO. THAT CONVERSATION I THINK --  
5 I'M NOT SURE IF THIS WAS IN A BLOG OR IF IT WAS IN THE TAIPEI  
6 TIMES, BUT THERE WAS THIS CONVERSATION BACK AND FORTH IN WHICH  
7 HE WAS ASKED, "ARE YOU -- ARE THESE IMPLEMENTS FACILITATING  
8 TORTURE?" AND HE'S SAYING NO.

9 SO HE'S BEING ASKED, SO HE KNOWS THAT IT'S A QUESTION TO  
10 THINK ABOUT.

11 ETHAN GUTMANN PUBLISHED A BOOK IN 2004 IN WHICH HE  
12 BASICALLY DEMONSTRATED -- HE WAS IN CHINA, HE WENT TO THE  
13 SHANGHAI TRADE SHOW, HE WORKED WITH THE TECH COMPANIES, HE'S  
14 VERY KNOWLEDGEABLE, AND HE SPOKE TO ONE OF CISCO'S ENGINEERS AT  
15 THE TECH -- AT THE SHANGHAI TRADE SHOW AT THE CISCO BOOTH AND  
16 THE PERSON WAS SAYING TO HIM, "YOU KNOW, BY THE WAY, THIS CAN  
17 DO A LOT MORE THAN U.S. CRIME CONTROL. WE CAN EVEN ACCESS  
18 THEIR WEBSITE, WE CAN FIGURE OUT IF THEY'VE BEEN ONLINE, WE CAN  
19 DO ALL THIS STUFF."

20 NOW, THIS IS 2014, SO IT'S -- YOU KNOW, THIS IS  
21 COMMONPLACE TO US.

22 BUT BACK IN 1999, 2000, 2001, 2002, WE DIDN'T HAVE ALL  
23 THIS HIGH TECH EQUIPMENT. IT WAS NOVEL. IT WAS NEW.

24 AND EVERYBODY, ACCORDING TO ETHAN GUTMANN, WHO WERE VYING  
25 FOR THE CONTRACT, FOR THE GOLDEN SHIELD CONTRACT IN CHINA WERE



1 ASKED, CAN IT STOP FALUN GONG? NOT, CAN IT SAVE ME MONEY?

2 AND ACCORDING TO ETHAN GUTMANN, WHO'S ALSO ONE OF OUR  
3 WITNESSES, EVERYONE IN THE SECURITY TECH BUSINESS IN CHINA KNEW  
4 THAT THE GOLDEN SHIELD WAS TO FACILITATE TORTURE AGAINST  
5 FALUN GONG AND THEY CERTAINLY KNEW THAT FALUN GONG WERE BEING  
6 TORTURED.

7 THE COURT: SO THAT WAS IN CHINA. BUT CAN YOU -- CAN  
8 YOU POINT TO SOMETHING IN THE COMPLAINT THAT SUGGESTS THAT  
9 CISCO --

10 MS. MARSH: WELL, THE SHAREHOLDERS ARE IN THE U.S.,  
11 SO THE SHAREHOLDERS IN SAN JOSE ARE IN THE U.S., SAN JOSE, AND  
12 SO THERE ARE AT LEAST SIX SHAREHOLDER REQUESTS FOR  
13 INVESTIGATION AND THEY KEPT SAYING, "NO, WE'RE NOT DOING THIS.  
14 NO, WE'RE NOT DOING THIS."

15 SO WE HAVEN'T -- WELL, LET ME SKIP TO --

16 THE COURT: I'M SORRY. CISCO DENIED THIS PURSUANT TO  
17 QUESTIONS BY SHAREHOLDERS?

18 MS. MARSH: RIGHT. CISCO HAS BEEN DENYING THIS EVER  
19 SINCE IT'S BEEN RAISED. CISCO BASICALLY IS, IS DISAGREEING  
20 WITH THE ALLEGATIONS IN OUR COMPLAINT.

21 IT'S MUCH CLOSER TO THE DAOBIN CASE ACTUALLY, THE  
22 COMPLAINT THAT THEY'RE ANSWERING. THEY'RE NOT REALLY, TO ME,  
23 RESPONDING TO OUR COMPLAINT VERY MUCH AT ALL.

24 SO TERRY ALBERSTEIN IS IN SAN JOSE. CISCO SHAREHOLDERS  
25 ARE IN SAN JOSE. CONGRESSIONAL HEARINGS WERE HELD IN 2006 AND

1 2008. THAT WAS IN THE UNITED STATES.

2 CISCO WAS PUT ON NOTICE, THROUGH ALL THESE BLOG ARTICLES  
3 THAT ARE VERY, VERY PROMINENT IN THE UNITED STATES -- I MEAN,  
4 THERE'S THE BERKMAN SCHOOL AT HARVARD AND THERE'S A GENTLEMAN  
5 THERE WHO'S AN EXPERT AND HE'S BEEN -- HE'S BEEN TALKING ABOUT  
6 IT A LOT. HE QINGLIAN HAS, GREG WALTON, AND ONE OF THE  
7 INTERNAL FILES THAT WE HAVE ACTUALLY MENTIONED GREG WALTON'S  
8 BOOKS, SO THEY WERE CLEARLY READING IT AND CLEARLY INTERESTED  
9 IN WHAT OTHER PEOPLE WERE SAYING.

10 THEY ALSO HAD -- THEY ALSO HAD THE KNOWLEDGE OF WHAT THE  
11 SLIDES WERE DOING. I MEAN, THEY KNEW THAT THERE WERE  
12 FALUN GONG DATABASES AND THERE WERE THESE PLACES THAT LOOKED  
13 LIKE TORTURE SITES AND THERE'S THE INTERNET SURVEILLANCE  
14 SYSTEM, AND SO WHAT'S THAT? I MEAN, WHAT IS THAT FOR?

15 THEY'RE ALSO USING THE LANGUAGE OF THE PARTY IN A LOT OF  
16 THEIR MARKETING MATERIALS CALLING FALUN GONG A THREAT. THERE'S  
17 AN ENTIRE POWERPOINT THAT'S DEVOTED TO THREATS WHICH ARE  
18 SUPPOSEDLY VIRUSES, EXCEPT THE ENTIRE POWERPOINT IS ABOUT  
19 FALUN GONG. WELL, NOT THE WHOLE THING, BUT QUITE A FEW SLIDES  
20 ARE ABOUT FALUN GONG.

21 THE COURT: SO IS THIS YOUR BEST ARGUMENT AS TO  
22 SUPPORTING --

23 MS. MARSH: THE KNOWLEDGE?

24 THE COURT: -- THE AIDING --

25 MS. MARSH: WELL, NO, NO, NO, NO, NO, NO, NO. NOT AT

1 ALL, NO. I MEAN, THAT WAS JUST KNOWLEDGE. I THINK KNOWLEDGE  
2 IS A NO BRAINER. NO.

3 I MEAN, I THINK -- WHAT I WAS TRYING TO SORT OF DO IS SAY,  
4 OKAY, SO THIS IS WHAT THEY DID. THEY FURTHERED THE IDEOLOGICAL  
5 CONVERSION THROUGH TORTURE DIRECTLY, THROUGH MENTAL TORTURE  
6 DIRECTLY, AND THEN WHAT THEY DID -- THE OTHER SYSTEMS, THE  
7 IDENTIFICATION AND OTHER SYSTEMS WERE INDISPENSABLE TO THE  
8 OTHER CRIMES.

9 THEY KNEW WHAT THEY WERE DOING. SO THEY DID THIS KNOWING  
10 WHAT THEY WERE DOING.

11 SO THEN MY NEXT POINT IS, IS THAT THEY'RE INTENTIONALLY  
12 DOING WHAT THEY'RE DOING. I MEAN, THE ACTS, LIKE I'M WALKING  
13 TO THAT TABLE, I'M INTENTIONALLY WALKING, THEY'RE INTENTIONALLY  
14 CREATING THESE DESIGNS AND THEY'RE DOING IT AWARE OF THE LIKELY  
15 CONSEQUENCES AND THAT, TO ME, IS SECONDARY PURPOSE.

16 I MEAN, IF YOU SORT OF LOOK AT -- AND I HAVE MORE TO SHOW  
17 THAT, A LOT MORE. THE -- I DIDN'T BRING THAT UP. THERE'S --  
18 THE STANDARD IS IN OUR BRIEFS, IN OUR FILINGS, THAT IF YOU LOOK  
19 AT THIS COURT, THIS COURT HAS, HAS OPTED FOR KNOWLEDGE.

20 IF YOU LOOK AT -- I'M PUTTING NESTLE ASIDE FOR A MINUTE.  
21 IF YOU LOOK AT CUSTOMARY INTERNATIONAL LAW SOURCES, IT ALSO  
22 SEEMS TO PREFER KNOWLEDGE.

23 BUT WHEN A COURT DOES MENTION PURPOSE, LIKE SAREI MENTIONS  
24 PURPOSE IN THE VACATED DECISION, WHAT THEY'RE DESCRIBING, AS  
25 FAR AS I CAN TELL, IS SECONDARY PURPOSE. IT'S NOT MALICE.

1 IT'S NOT LIKE, "OH, I DON'T LIKE FALUN GONG, SO I REALLY WANT  
2 TO GET THEM." IT'S JUST, "OH, WE CAN MAKE A LOT OF MONEY. I  
3 CAN MAKE A LOT OF MONEY DOING THIS."

4 IT'S SECONDARY PURPOSE. SO THE PURPOSE IS TO MAKE MONEY,  
5 AND IN ORDER TO MAKE MONEY, WE HAVE TO MEET WHAT THEY WANT,  
6 WHICH IS TO DOUZHENG FALUN GONG. SO IT'S SECONDARY PURPOSE.

7 AND WE HAVE, IN THE COMPLAINT, WE HAVE PLANNING FROM THE  
8 VERY BEGINNING, PLANS CALLING FOR THE FACILITATION OF  
9 EXTRALEGAL ABUSES, PARAGRAPHS 65 AND 70 HAVE TO DO WITH  
10 PLANNING, MARKETING, THAT THEY ACTIVELY SOLICITED THE BUSINESS.

11 ACCORDING TO THE 610 OFFICERS WORKING WITH US, THERE WERE  
12 BROCHURES AT A BEIJING TRADE SHOW IN WHICH THEY SAID THEY COULD  
13 DOUZHENG FALUN GONG. AND I DON'T HAVE THE BROCHURE, SO THAT'S  
14 WHY I'M DESCRIBING IT.

15 BUT MARKETING IN ORDER TO MEET CHINESE SECURITY OBJECTIVES  
16 TO DOUZHENG FALUN GONG, THAT'S 58 TO 61, 62 TO 65, 58 TO 60 --  
17 SORRY, I'M REPEATING -- 64, 60 TO 62, 66 TO 67, 188, 59, 185.  
18 THAT'S MARKETING.

19 DESIGNS, HOW THEY -- THEY SPECIFICALLY CUSTOMIZED THE  
20 DESIGNS TO FACILITATE THE MENTAL TORTURE IS 80 TO 86, AND HOW  
21 THEY CUSTOMIZED THROUGH THE OTHER PHASES, WHICH IS THE  
22 IMPLEMENTATION AND TESTING, THE VERIFICATION, THE TRAINING AND  
23 SO ON, THAT'S PARAGRAPHS 97 TO 101 IN THE COMPLAINT.

24 PARAGRAPH 98I AND J TALKS ABOUT THE DYNAMIC INFORMATION  
25 SYSTEM AND WHAT IT DOES AND HOW IT FACILITATES THE

1 TRANSFORMATION PROCESS.

2 THERE'S A LOT MORE HERE. I THINK I SHOULD STOP. BUT  
3 THERE'S A LOT OF PARAGRAPHS THAT DEAL WITH THAT.

4 AND I THINK THAT IF THE STANDARD WERE TO CHANGE TO  
5 SPECIFIC INTENT, THEN I WOULD ASK FOR LEAVE TO FILE SOMETHING  
6 BECAUSE WE DEFINITELY -- WE HAVE SOME INFORMATION AND WE CAN  
7 CERTAINLY GET MORE INFORMATION ON THAT.

8 SO AS FAR AS MENS REA GOES, I DO THINK THAT WE MEET THE  
9 NESTLE STANDARD, THE STANDARD THAT THIS COURT HAS ADOPTED, THE  
10 STANDARD UNDER CUSTOMARY AND INTERNATIONAL LAW, AND EVEN THE  
11 ROME STATUTE, WHICH IS I DON'T THINK CUSTOMARY, INTERNATIONAL,  
12 OR STANDARD, TO ME BASED ON ARTICLES BY DOUG CASSELL AND OTHERS  
13 SEEMS TO BE SECONDARY PURPOSE, WHICH IS THAT YOU INTEND THE ACT  
14 FULLY AWARE OF THE LIKELY CONSEQUENCES.

15 SO JUST -- DO YOU WANT ME TO GO ON OR DID YOU WANT TO ASK  
16 ME QUESTIONS? I CAN GO ON FOREVER.

17 THE COURT: NO, NO. WE DON'T HAVE THAT MUCH TIME.

18 BUT I'LL GIVE YOU AS MUCH TIME AS YOU NEED.

19 MS. MARSH: OH REALLY? OH, THANK YOU.

20 THE COURT: BUT I DO -- WERE YOU GOING TO SPEAK TO  
21 THESE OTHER ISSUES, THE KIOBEL ISSUES?

22 MS. MARSH: YES, EXACTLY.

23 THE COURT: OKAY, SURE.

24 MS. MARSH: SO I WAS GOING TO START WITH THE ACT OF  
25 STATE AND I WAS JUST GOING TO SAY A COUPLE THINGS ABOUT THAT

1 AND THEN GO TO KIOBEL.

2 OKAY. BASICALLY UNDER THE ACT OF STATE, UNDER THE  
3 SIDERMAN S-I-D-E-R-M-A-N DE BLAKE V. -- AND I DON'T HAVE THE  
4 REST OF THE CITE HERE, SORRY, I'M SURE IT'S EASILY -- YEAH.

5 SO UNDER THAT, UNDER THAT NINTH CIRCUIT CASE, JUS COGENS  
6 NORMS ARE EXEMPT FROM THE ACTS OF STATE AND MANY, IF NOT MOST,  
7 OF THE ATS CLAIMS ARE JUS COGENS NORMS, TORTURE, AND SO ON.

8 ALSO, ULTRA VIRES ACTS, SUCH AS -- ULTRA VIRES IS U-L-T --  
9 SORRY -- ACTS SUCH AS TORTURE ARE CONTRARY TO THE LAW AND  
10 POLICY OF CHINA, AS CHINA HAS MADE CLEAR IN ITS SUBMISSIONS TO  
11 THIS COURT IN THE DOE VS. QUI CASE, "WE DON'T TORTURE ANYBODY,  
12 IT'S NOT OUR POLICY TO TORTURE ANYBODY, WE'RE NOT INVOLVED IN  
13 TORTURE."

14 AND SO ACCORDING TO THE MARCUS CASES, THE NINTH CIRCUIT  
15 LINE OF MARCUS CASES, THEN THOSE ARE NOT ACTS OF A FOREIGN  
16 SOVEREIGN. THEY'RE ULTRA VIRES AND THEY'RE AGAINST POLICY AND  
17 LAW OF THE CHINESE STATE.

18 CISCO HAS THE BURDEN, I WOULD SAY, WHEN THE ACT OF STATE  
19 IS NOT MET, THE TEST ARTICULATED IN BOWOTO, WHICH IS THAT THERE  
20 HAS TO BE A LOW LEVEL OFFICIAL ACTING PURSUANT TO AN ORDER TO  
21 TORTURE, AND THAT ORDER HAS TO ORIGINATE FROM SOMEBODY TO BIND  
22 THE STATE. AND THEY HAVEN'T SUGGESTED WHO ISSUED THAT ORDER,  
23 WHERE THAT ORDER IS, AND THAT'S BECAUSE THERE IS NO ORDER.

24 AND THAT'S BOWOTO, 2007 WEST LAW 2349345 AT 4.

25 THERE'S ALSO THE FACT THAT -- AND THIS IS IN THE COMPLAINT

1 IN PARAGRAPHS 27 TO 47 -- THE FACT THAT THE PARTY IS NOT THE  
2 STATE, AND THAT'S A REALLY IMPORTANT POINT BECAUSE IT'S THE  
3 CHINESE COMMUNIST PARTY THAT RUNS THE DOUZHENG CAMPAIGNS IN  
4 CHINA. I MEAN, THAT'S SORT OF LIKE THEIR JOB, AND THAT WAY THE  
5 STATE HAS A LITTLE BIT CLEANER HANDS, ALTHOUGH THERE ARE SOME  
6 STATE OFFICIALS WHO DO ULTRA VIRES PARTICIPATE, WITHOUT A  
7 DOUBT, THERE'S NO QUESTION.

8 BUT IT'S THE CHINESE COMMUNIST PARTY THAT RUNS THE  
9 CAMPAIGN, AND THE CHINESE COMMUNIST PARTY IS NOT THE STATE. I  
10 HAVE AN EXPERT AFFIDAVIT IN ANOTHER CASE BY ANDREW NATHAN TO  
11 THAT EFFECT, THAT THE TWO ARE ORGANIZATIONALLY AND FUNCTIONALLY  
12 DISTINCT AND THAT WHEN THE UNITED STATES DEALS WITH CHINA, THEY  
13 DON'T DEAL WITH THE PARTIES AND THEY DON'T DEAL WITH THE  
14 INDIVIDUALS BECAUSE OF THEIR PARTY STATUS. THEY DEAL WITH THEM  
15 BASED ON THEIR ROLE IN THE GOVERNMENT.

16 AND THEY'RE JUST DIFFERENT -- THE CONSTITUTION TALKS ABOUT  
17 THE CHINESE COMMUNIST PARTY AS ONE OF THE POLITICAL PARTIES,  
18 AND IT'S OBLIGED TO FOLLOW THE CONSTITUTION, WHICH IT CLEARLY  
19 DOESN'T DO.

20 THE COURT: AND THAT DISTINCTION IS RELEVANT TO YOUR  
21 LAWSUIT AND THIS MOTION BECAUSE?

22 MS. MARSH: WHAT I'M SAYING IS THAT THE ACT OF STATE  
23 DEFENSE DOESN'T APPLY, FIRST BECAUSE OF THE JUS COGENS NORM, SO  
24 THAT TAKES IT OUT; SECONDLY, BECAUSE THE ACTS ARE ULTRA VIRES,  
25 AND YOU HAVE THE MARCUS CASES; AND THEN THE BOWOTO TEST IS NOT

1 MET.

2 AND THEN THE PARTY IS NOT THE STATE AND THE PARTY IS  
3 RUNNING THE PERSECUTION, AND THAT'S WHY WE'RE FOCUSING ON A  
4 SLICE OF CHINA, WHICH HAS TO DO WITH THE ANTI-FALUN GONG GOLDEN  
5 SHIELD SYSTEMS, AND IT HAS TO DO WITH THE PARTY'S PERSECUTORY  
6 CAMPAIGNS AGAINST FALUN GONG, IN THIS CASE, ALTHOUGH THEY DO  
7 THE SAME THING TO TIBETANS AND UYGHURS AND MANY OTHERS,  
8 LAWYERS, SOME OF MY FRIENDS ACTUALLY.

9 IN ADDITION TO THAT, THE THREE, THE THREE FACTOR BIGGER  
10 TEST IS NOT IMPLICATED HERE BECAUSE THE CLAIMS MEET THE SOSA  
11 NORMS, WHICH ARE INTERNATIONAL, BINDING NORMS, AND IN FACT, THE  
12 CLAIMS MEET THE JUS COGENS NORMS, WHICH ARE EVEN HIGHER, SO  
13 THEY MEET THE BINDING INTERNATIONAL NORM TEST.

14 THEY DON'T UPSET FOREIGN POLICY GOALS OF POLITICAL  
15 BRANCHES BECAUSE BOTH THE EXECUTIVE AND LEGISLATIVE HAVE  
16 CONDEMNED OPENLY THE HUMAN RIGHTS USES AGAINST FALUN GONG, AND  
17 ALSO RESTRICTIONS ON INTERNET FREEDOM.

18 THE REPORTER: CAN YOU USE THE MICROPHONE, PLEASE?

19 MS. MARSH: OH, YEAH. YEAH, THAT CHANGES IT.

20 THE HARD LINE PARTY MEMBERS ALSO WHO STARTED THE CAMPAIGN,  
21 AND THAT'S BO XILAI AND ZHOU YONGKANG, AND QUITE A FEW OTHERS,  
22 ARE NOW BEING ARRESTED, JAILED. BO XILAI IS IN JAIL FOR  
23 CORRUPTION. ZHOU YONGKANG IS UNDER HOUSE ARREST AND AWAITING  
24 SANCTIONS.

25 AND WHAT'S HAPPENED IS THE, THE -- IT'S KIND OF LIKE A



1 SPLIT IN THE GOVERNMENT, SO WHAT'S HAPPENING IS THAT THE HARD  
2 LINERS ARE LOSING CONTROL AND THE HARD LINERS ARE THE ONES  
3 WHO'VE BEEN PROMULGATING THESE CAMPAIGNS AGAINST DISSIDENTS,  
4 AND NOT JUST FALUN GONG, ACTUALLY, AND THEY'RE HARD LINE PARTY  
5 MEMBERS.

6 SO I WOULDN'T SAY THAT THE GOVERNMENT IS NO LONGER IN  
7 EXISTENCE. I WOULD SAY THAT THE POLICY IS GRADUALLY BEING  
8 EASED, AND MANY FALUN GONG WERE RELEASED FROM -- WELL, THEY  
9 CLOSED DOWN THE RTL SYSTEM, THAT'S THE RE-EDUCATION THROUGH  
10 LABOR SYSTEM, SO MANY FALUN GONG HAVE BEEN RELEASED.

11 AND I WOULD JUST ADD ON THAT NOTE THAT I DIDN'T INCLUDE  
12 ANYBODY UNDER THE ARBITRARY ARREST AND DETENTION CLAIM WHO WENT  
13 THROUGH THE CRIMINAL JUSTICE SYSTEM. I AVOIDED THAT JUST TO  
14 MAKE THE CASE EASIER. WE HAVE TO LOOK AT THE CRIMINAL JUSTICE  
15 SYSTEM AND FIGURE OUT IF THEY SHOULD HAVE ARRESTED THEM, OR  
16 SHOULDN'T THEY? DOES THIS LAW MEAN THIS? DOESN'T IT? THERE'S  
17 CHINESE LAWYERS WHO SAY THERE'S NO LAW BANNING FALUN GONG,  
18 THERE ARE OTHERS WHO SAY THERE ARE, AND SO WHY EVEN LOOK AT IT?

19 SO I LEFT THEM OUT.

20 NONE OF THE PEOPLE WHO ENTERED THE CRIMINAL JUSTICE SYSTEM  
21 ARE COMPLAINING ABOUT ARBITRARY ARREST AND DETENTION OR FORCED  
22 LABOR.

23 THE ONLY PEOPLE COMPLAINING OF THAT ARE THE FEW PLAINTIFFS  
24 THAT WENT THROUGH THE RE-EDUCATION THROUGH LABOR SYSTEM, WHICH  
25 MEANS YOU GET A NOTICE IN THE MAIL, APPEAR, AND THEN YOU APPEAR

1 AND THERE'S A COUPLE PEOPLE AND THEY TELL YOU WHERE TO GO.

2 THAT'S IT. IT'S NOT LIKE, YOU KNOW, YOU HAVE A LAWYER AND  
3 A JUDGE AND SO ON AND SO FORTH.

4 SO JUST TO GO BACK TO THE ACT OF STATE THOUGH. SO IT'S  
5 NOT THAT THE GOVERNMENT IS NO LONGER IN EXISTENCE, BUT THE  
6 POLICY AND THE PEOPLE BEHIND IT ARE VANISHING, WHICH I THINK IS  
7 A GOOD THING.

8 AND THEN ALSO TORTURE IS NOT IN THE PUBLIC INTEREST, WHICH  
9 I THINK IS PART OF THE NINTH CIRCUIT TEST.

10 DID YOU WANT TO ASK ME QUESTIONS ABOUT THAT?

11 THE COURT: NO. I DO WANT TO HEAR ABOUT THE --

12 MS. MARSH: KIOBEL?

13 THE COURT: YES.

14 MS. MARSH: YES, OKAY. I'M SORRY THAT THE EXPERTS  
15 COULDN'T BE HERE TODAY. THE -- WHO WROTE THE SUBMISSION,  
16 BECAUSE CERTAINLY THEY KNOW A LOT MORE ABOUT WHAT VATTEL WAS  
17 SAYING AND THE EARLY FOUNDING FATHERS WERE SAYING THAN I DO,  
18 BUT LET ME DO THE BEST I CAN WITH KIOBEL.

19 THE KIOBEL HOLDING WAS NARROW, VERY NARROW AS FAR AS I CAN  
20 SEE. IT APPLIED TO THE CONTEXT OF A FOREIGN-CUBED CASE,  
21 FOREIGN DEFENDANTS, FOREIGN ACTS, TOTALLY FOREIGN ACTS, FOREIGN  
22 PLAINTIFFS.

23 CISCO IS IN THE COURT'S BACKYARD, AND I KNOW THAT BECAUSE  
24 I FLEW IN AND I HAD TO DRIVE HERE YESTERDAY AND THERE WAS CISCO  
25 RIGHT THERE. CISCO IS HERE. THIS CASE IS ANYTHING BUT KIOBEL.

1           AND KIOBEL SET OUT A TEST TO APPLY TO THE FACTS OF AN ATS  
2 CLAIM ARISING OUT OF OSTENSIBLY EXTRATERRITORIAL ACTS, AND THAT  
3 TEST, WHICH IS THE TOUCH AND CONCERN TEST, IS NOT THE  
4 PRESUMPTION.

5           SO THERE'S A PRESUMPTION, AND THE MORRISON CASE GAVE --  
6 PROVIDED THE PRINCIPLES THAT GAVE RISE TO THE PRESUMPTION,  
7 WITHOUT A DOUBT. SO MORRISON GAVE RISE TO THE PRINCIPLES  
8 UNDERLYING THE PRESUMPTION, BUT THE PRESUMPTION IS NOT ITS  
9 DISPLACEMENT, AND THERE IS A TOUCH AND CONCERN TEST, AND I'VE  
10 READ THE CASE AGAIN AND AGAIN, I DON'T KNOW HOW YOU CAN SORT OF  
11 READ THAT TEST AS REQUIRING CONGRESSIONAL ACTION.

12           NOW, THERE'S -- AT THIS POINT, THERE'S NO HARD AND FAST  
13 RULE. I MEAN, IT'S EARLY.

14           BUT I THINK THAT THERE ARE SOME INSTANCES FOR PRECEDENCE  
15 AND GUIDEPOSTS, AND I THINK SMUG IS VERY HELPFUL, AND THE  
16 DEFENDANT IN SMUG OBVIOUSLY DID -- YOU KNOW, WAS INVOLVED IN  
17 THESE, THE SUPPRESSION OF THE LBGT COMMUNITY, BUT HE WAS ALSO A  
18 PASTOR AND A FAMILY LOVING PASTOR AND HE WOULD CHARACTERIZE  
19 HIMSELF AS DUAL PURPOSE, IF YOU WANT TO LOOK AT IT THAT WAY, "I  
20 AM A PASTOR AND I RUN A CONGREGATION AND I HELP PEOPLE REACH  
21 OUT TO JESUS" AND SO ON AND SO FORTH, AND PERHAPS EVEN  
22 LEGITIMATELY. I DON'T KNOW.

23           THE COURT: THIS IS THE SEXUAL MINORITIES UGANDA CASE  
24 YOU'RE SPEAKING OF?

25           MS. MARSH: EXACTLY. EXACTLY.

1 SO SIMILARLY, CISCO HAS HELPED WITH THE CRIME CONTROL  
2 SYSTEM. MAYBE THAT'S GOOD.

3 BUT THEY'VE ALSO FACILITATED THE ANTI-FALUN GONG SYSTEM  
4 THAT FACILITATES AND ENABLES AND PERSECUTES --

5 THE COURT: SO WHAT IS THE -- WHAT'S YOUR STRONGEST  
6 CASE FOR THE TOUCH AND CONCERN?

7 MS. MARSH: WELL, I THINK THAT THE SMUG CASE IS  
8 PROBABLY RIGHT NOW THE STRONGEST CASE AS A PRECEDENT CASE.

9 I THINK THERE WILL BE MORE CASES COMING. I THINK  
10 EVERYBODY IS -- YOU KNOW, WHAT'S HAPPENING IS PEOPLE ARE  
11 AMENDING COMPLAINTS. IN FACT, WE'RE AMENDING A COMPLAINT IN  
12 ANOTHER CASE THAT IS MOVING ALONG PRETTY FAVORABLY RIGHT NOW.

13 I THINK A GUIDEPOST CASE COULD BE THE BULOVA V. STEELE  
14 CASE, BUT I THINK THAT'S A CASE WHERE THE COURT FOCUSES MORE ON  
15 WHERE THE ESSENTIAL STEPS OCCURRED LEADING TO THE INJURY RATHER  
16 THAN WHERE THE LOCUS OF THE INJURY WAS.

17 HOWEVER, I THINK IN THIS CASE YOU ALSO HAVE -- THE  
18 ESSENTIAL STEPS ARE -- I MEAN, IT -- BUT FOR SAN JOSE'S HIGH  
19 LEVEL DESIGNS AND OVERSIGHT IMPLEMENTATION, THIS COULDN'T HAVE  
20 HAPPENED.

21 THE COURT: SO ARE YOU SAYING THAT THE BRAIN TRUST,  
22 THE INGENUITY --

23 MS. MARSH: IT'S ABSOLUTELY IN SAN JOSE.

24 THE COURT: THAT'S ENOUGH? THAT'S SUFFICIENT?

25 MS. MARSH: NO. I'M SAYING THAT THAT MAKES IT

1 SIMILAR TO THE BULOVA, BUT I'M NOT FINISHED BECAUSE THAT'S NOT  
2 SUFFICIENT.

3 SO THE BRAIN IS IN SAN JOSE WITHOUT A DOUBT, AND THAT'S  
4 WHY CHINA HAD TO HAVE ALL THESE TRADE SHOWS AND REACH OUT TO  
5 THE WEST.

6 BUT SOME INJURY IN THIS CASE ALSO OCCURRED IN THE U.S.

7 CISCO TOOK -- THERE WERE A LOT OF U.S. COMPANIES THAT WERE  
8 COMPETING FOR THE MARKET, THE SECURITY MARKET IN CHINA, AND  
9 CISCO BASICALLY WON THE CONTRACTS BECAUSE THEY WERE WILLING, IN  
10 MY OPINION, TO FACILITATE WHAT CHINA WANTED, WHICH IS THE  
11 DOUZHENG OF FALUN GONG.

12 AND THE APPARATUS THAT THEY DESIGNED HAS DATABASES THAT  
13 INCLUDE U.S. FALUN GONG, AND THERE'S THOUSANDS OF PEOPLE WHO  
14 PRACTICE FALUN GONG IN THIS COUNTRY AND ALL -- AND PEOPLE WOULD  
15 BE SURPRISED -- PEOPLE DON'T USUALLY WALK UP TO YOU IN THE  
16 STREET AND SAY, "HEY, I PRACTICE JUDAISM." "OH, NO, I'M A  
17 BAPTIST." YOU KNOW, YOU KIND OF LEAVE THAT ALONE.

18 THERE'S QUITE A FEW PEOPLE IN THIS COUNTRY WHO PRACTICE  
19 FALUN GONG WHO SIMPLY CAN'T GO TO CHINA, CAN'T DO BUSINESS IN  
20 CHINA, AND LIVE HERE KNOWING THAT THEY'RE IN THAT DATABASE.

21 I THINK THAT THE, THE TESTS THAT ARE PROVIDED BY THE  
22 DEFENDANT, TO ME, ARE NOT MERITORIOUS BECAUSE THE FOCUS TEST,  
23 WHICH COMES FROM MORRISON, WHICH I DON'T THINK IS RELEVANT TO  
24 THE TOUCH AND CONCERN TEST -- I MEAN, YOU COULD USE IT, BUT  
25 IT'S NOT -- IT DOESN'T HAVE TO BE USED. IT'S NOT NECESSARY.

1            THAT TEST IS ONLY MENTIONED BY ALITO'S TWO-PERSON  
2 CONCURRENCE. NO ONE ELSE TALKED ABOUT THE FOCUS TEST.

3            AND THEN THERE'S THIS OTHER TEST, THAT IT'S THE THEORY  
4 THAT THE COMPANY MUST BE BUILT EXCLUSIVELY FOR TORTURE. IN  
5 SOME WAYS WE MEET THAT TEST BECAUSE IF WE JUST LOOK AT THE  
6 ANTI-FALUN GONG SYSTEM, THAT WAS DEVELOPED EXCLUSIVELY TO  
7 TORTURE AND PERSECUTE FALUN GONG.

8            HOWEVER, ANY COMPANY UNDER THAT TEST COULD BECOME TORTURE  
9 INCORPORATED, ANY COMPANY, AND THEN THEY COULD OPERATE A  
10 DAYCARE CENTER FOR CHILDREN, AND SO THEN THEY'RE DUAL PURPOSE.

11            SO TO ME, TO REQUIRE THAT A COMPANY BE SET UP JUST TO DO  
12 SOMETHING EVIL, AND IF IT DOES ANYTHING ELSE, IT CAN DO  
13 WHATEVER IT WANTS WITH IMMUNITY, I DON'T THINK THAT'S A HELPFUL  
14 TEST.

15            I DON'T KNOW IF YOU WANT ME TO KEEP GOING OR IF YOU HAVE  
16 QUESTIONS OR --

17            THE COURT: NO, NO.

18            MS. MARSH: OKAY. SO I CAN TALK ABOUT -- I CAN TALK  
19 ABOUT FREDY CHEUNG, HE'S ONE OF THE INDIVIDUAL DEFENDANTS.

20            THE COURT: WELL --

21            MS. MARSH: OH, DID YOU WANT ME TO -- I'M SORRY.

22            THE COURT: I HAD THAT QUESTION ABOUT THE TOUCH AND  
23 CONCERN.

24            MS. MARSH: OKAY.

25            THE COURT: MAYBE YOU COULD TALK TO ME A LITTLE BIT

1 ABOUT THE DAOBIN CASE --

2 MS. MARSH: OKAY.

3 THE COURT: -- AND THE POLITICAL QUESTION ISSUE.

4 MS. MARSH: WELL, SO THAT'S -- SO MS. --

5 THE COURT: YOUR COLLEAGUE IS GOING TO TALK ABOUT  
6 THAT?

7 MS. MARSH: WHAT I CAN SAY ABOUT THE DAOBIN CASE IS  
8 BASICALLY THEY ASKED ME, BEFORE I FILED THIS CASE, IF I WOULD  
9 INCLUDE THEIR PLAINTIFFS IN THIS CASE, SO I REVIEWED THEIR CASE  
10 AND I REVIEWED WHAT THEY HAD AND I REVIEWED THE EVIDENCE AND I  
11 DECLINED BECAUSE THEY'RE TOO DIFFERENT. THEY'RE JUST APPLES  
12 AND ORANGES, TOTALLY DIFFERENT. THERE'S NO ANTI-FALUN GONG  
13 SYSTEM THAT WE KNOW ABOUT FOR THE DISSIDENTS. THERE MAY BE  
14 ONE. I MEAN, YOU KNOW, I DON'T KNOW. BUT WE DON'T HAVE  
15 EVIDENCE FOR THAT AT ALL.

16 SO OUR ENTIRE CASE IS ABOUT THE ANTI-FALUN GONG SYSTEMS  
17 THAT SUPPRESS FALUN GONG. I DON'T HAVE THAT FOR THAT CASE, SO  
18 I JUST COULDN'T POSSIBLY HAVE INCLUDED THAT IN THIS CASE.

19 THEY -- SO WHAT HAPPENED WAS THAT -- AGAIN, I'M VERY  
20 INVOLVED IN THE, WITH OTHER DISSIDENT GROUPS IN CHINA AND I  
21 THINK THAT WHAT THEY'RE DOING WITH THE JOURNALISTS AND THE  
22 LAWYERS AND TIBETANS AND UYGHURS IS WRONG.

23 IT'S JUST THAT THE INFORMATION THAT I HAVE AND THE  
24 POWERPOINTS THAT WE HAVE, LIKE, 39 OF THESE -- WE HAVE A LOT OF  
25 INFORMATION -- ARE ALL ABOUT THIS FALUN GONG SYSTEM.

1 SO WHAT HAPPENED IS WE FILED OUR CASE IN MAY AND THEN THEY  
2 FILED THEIR CASE I THINK A MONTH OR TWO LATER AND THEY KIND OF  
3 COPIED OUR COMPLAINT PRETTY MUCH.

4 AND THEN THE CASES STARTED TO MOVE IN THE REVERSE, BECAUSE  
5 AFTER KIOBEL, THEIR CASE WENT FIRST. SO THEY DIDN'T HAVE OUR  
6 AMENDED COMPLAINT TO RELY ON, SO THEY AMENDED WITH MUCH LESS.

7 AND THERE, THERE JUST -- I DON'T SEE EVIDENCE IN THEIR  
8 COMPLAINT AS TO HOW THE TECHNOLOGY FACILITATES DIRECTLY  
9 IDEOLOGICAL CONVERSION THROUGH MENTAL TORTURE OR IS  
10 INDISPENSABLE TO THE PHYSICAL TORTURE AND THE EXILE. I JUST  
11 DON'T SEE THAT IN THAT COMPLAINT. I DON'T THINK IT'S THERE.

12 AND AS I SAID, THEY'RE MISSING THIS APPARATUS.

13 THEY ALSO DO NOT REALLY UNDERSTAND, AS FAR AS I CAN TELL,  
14 THE RELATIONSHIP BETWEEN THE PARTY AND THE STATE.

15 THE COURT: OKAY. THEY DON'T TOUCH ON THAT, AS YOU  
16 DID?

17 MS. MARSH: NOT AT ALL.

18 THE COURT: OKAY.

19 MS. MARSH: SO AGAIN, IT'S JUST TWO DIFFERENT CASES.

20 AND IN FACT, JOHN BELLINGER OF LAWFARE SAID THE FALUN GONG CASE  
21 WAS DISMISSED. HE SAID THE MARYLAND CASE, YOU KNOW, FILED BY  
22 FALUN GONG WAS DISMISSED, AND I STARTED GETTING PHONE CALLS,  
23 YOU KNOW, FROM CHINA, FROM EVERYWHERE, "WHY DIDN'T YOU TELL US  
24 YOUR CASE WAS DISMISSED?"

25 SO I THINK THERE'S BEEN CERTAINLY A LOT OF CONFUSION AS TO



1 WHICH CASE IS WHICH.

2 BUT THAT CASE IS NOT ABOUT FALUN GONG. IT'S JOURNALISTS  
3 AND POLITICAL DISSIDENTS.

4 THE COURT: OKAY.

5 MS. MARSH: SO THE CASES ARE JUST VERY, VERY  
6 DIFFERENT AND THE ALLEGATIONS ARE DIFFERENT, AND WHETHER OR NOT  
7 THEY MEET TWOMBLY, I THINK THERE'S SOME REAL SERIOUS  
8 IQBAL/TWOMBLY PROBLEMS IN THE OTHER CASE.

9 THE COURT: YOUR COLLEAGUE OPPOSITE SUGGESTS THE SAME  
10 IN THIS CASE.

11 MS. MARSH: RIGHT. I DON'T AGREE WITH THAT AT ALL.  
12 I THINK THAT WE HAVE -- OKAY. SO WE HAVE 90 -- I THINK WE  
13 HAVE, LIKE, 90 PAGES AND A LOT OF ALLEGATIONS AND EVERY SINGLE  
14 ALLEGATION WE HAVE ANNOTATED.

15 SO WE HAVE -- AND THIS IS DR. KEN SUN OVER THERE WHO'S  
16 DONE THAT FOR US. HE READS CHINESE AND HE UNDERSTANDS  
17 TECHNOLOGY BETTER THAN I EVER WILL.

18 SO HE'S ANNOTATED THE ENTIRE COMPLAINT, AND I THINK IT'S A  
19 THOUSAND PAGES, THE ANNOTATIONS, BECAUSE I WANTED HIM TO PRINT  
20 IT FOR ME.

21 AND THAT'S WHY I SAID THAT, YOU KNOW, WE WOULD BE HAPPY TO  
22 SHOW YOU SOME OF THE POWERPOINTS. WE WOULD BE HAPPY TO HAVE A  
23 HEARING ON IT.

24 BUT OBVIOUSLY WE COULDN'T INTRODUCE THAT EVIDENCE, SO WE  
25 SAID AS MUCH AS WE COULD WITHOUT SAYING, YOU KNOW, THIS

1 POWERPOINT, THIS PARAGRAPH, BLAH, BLAH, BLAH. I MEAN, THAT'S  
2 JUST --

3 THE COURT: OKAY.

4 MS. MARSH: YEAH.

5 THE COURT: YOU KNOW, I'D LIKE TO HEAR ABOUT THE  
6 POLITICAL QUESTION. I'M CURIOUS ABOUT THAT.

7 MS. MARSH: SO WOULD YOU LIKE MS. BOYD --

8 THE COURT: SURE. THANK YOU. THANK YOU FOR YOUR  
9 ASSISTANCE.

10 MS. MARSH: THANK YOU.

11 MS. BOYD: GOOD MORNING, YOUR HONOR.

12 THE COURT: GOOD MORNING.

13 MS. BOYD: LEE BOYD, ALSO CO-COUNSEL. I'M  
14 REPRESENTING THE PLAINTIFFS.

15 I DID WANT TO ADDRESS THE POLITICAL QUESTION DOCTRINE, BUT  
16 I THINK IT'S IMPORTANT TO HIGHLIGHT, AS A BACKDROP TO THAT,  
17 THAT MS. MARSH HAS -- SOME OF THE POINTS I THINK SHE MADE TO  
18 SET THE RECORD STRAIGHT.

19 THIS -- THIS -- THESE ALLEGATIONS ARE NOT THE DAOBIN  
20 ALLEGATIONS. THEY DEAL WITH, AS THE COMPLAINT SETS OUT, A  
21 SPECIFIC ANTI-FALUN GONG SUBSET OF THE GOLDEN SHIELD THAT --  
22 WHOSE SOLE PURPOSE WAS TO ENABLE, AS THE ONLY MEANS TO DO SO,  
23 ENABLE THE AUTHORITIES, THE PUBLIC SECURITY AND THE CCP, TO  
24 FALSELY IMPRISON AND TORTURE THE FALUN GONG, TO ERADICATE THEM.  
25 DOUZHENG, I'M NOT A CHINESE EXPERT, BUT ANOTHER WAY SAID IN

1 CHINESE.

2 AND THIS ALLEGATION -- THIS COMPLAINT IS NOT THE COMPLAINT  
3 THAT HAS BEEN TOUTED BY MS. SULLIVAN AND CISCO SYSTEMS. THIS  
4 COMPLAINT IS NOT ABOUT GENERIC ROUTERS BEING SIGNED OFF ON BY  
5 COMMERCE DEPARTMENT.

6 IN FACT, I WOULD JUST POINT OUT THAT WHILE CISCO DOESN'T  
7 EVEN ATTEMPT TO ARGUE THAT THE FIRST BAKER V. CARR SULLIVAN --  
8 BAKER V. CARR TEST HAS BEEN IMPLICATED, THAT THESE CLAIMS ARE  
9 NOT, AS A MATTER OF CONSTITUTIONAL TEST, ASSIGNED TO THE  
10 POLITICAL BRANCHES.

11 WHAT THEY HAVE IMPLICATED, WITHOUT STATING, IS THAT  
12 SOMEHOW THE EXECUTIVE OF COMMERCE DEPARTMENT HAS SIGNED OFF ON  
13 THESE HIGH LEVEL DESIGNS, AND I THINK THE COMPLAINT, WHILE IT'S  
14 MANY, MANY PAGES LONG WITH A LOT OF TECHNICAL DETAIL, COMES  
15 DOWN TO THE HIGH LEVEL DESIGNS, WHICH I HAD THE OPPORTUNITY TO  
16 SEE LAST NIGHT, AND IT'S BONE CHILLING. THE DESIGNS, WHICH I  
17 DON'T UNDERSTAND TECHNOLOGY, BUT I CAN UNDERSTAND A FLOW CHART,  
18 STATE THE PURPOSE OF THIS DESIGN IS TO FACILITATE  
19 ANTI-FALUN GONG ERADICATION. THEY STATE THAT.

20 NOW, THOSE DESIGNS WERE DEVELOPED NOT IN CHINA, BUT BY  
21 CISCO SYSTEMS.

22 AND HOW DO I KNOW THAT? BECAUSE WHEN I LOOK ON THE  
23 POWERPOINT DESIGNS THAT ARE DATED 2005, IT SAYS CISCO, INC. IT  
24 DOESN'T SAY CISCO CHINA. IT SAYS CISCO, INC.

25 SO THOSE ARE THE EVIDENCE BEHIND THESE ALLEGATIONS, SO IT

1 MEETS PLAUSIBILITY WITHOUT ACTUALLY PUTTING OUR CASE FORWARD IN  
2 A SUMMARY JUDGMENT MOTION. IT MEETS THE PLAUSIBILITY OF  
3 IQBAL/TWOMBLY.

4 AND BY THE WAY, IN THE MOTION TO DISMISS, THAT WASN'T EVEN  
5 MENTIONED. THAT CAME UP IN THE REPLY.

6 I DON'T THINK THERE'S ANY SERIOUS QUESTION THAT THE  
7 PLAUSIBLE CONNECTION -- AND I UNDERSTAND THE JUDGE, YOUR HONOR  
8 TO HAVE BEEN CONCERNED ABOUT THE NEXUS.

9 HERE'S THE NEXUS. THE NEXUS IS THAT CISCO SYSTEMS, WITH  
10 ITS POWER HOUSE AND ITS BRAIN CENTER HERE IN SAN JOSE, IN YOUR  
11 BACK YARD, WAS ASKED TO DEVELOP SOME WAY TO ERADICATE  
12 FALUN GONG.

13 NOW, INTERESTINGLY, FALUN GONG IS THE CHURCH OR THE  
14 RELIGION OR THE PRACTICE -- AND I DON'T WANT TO STEP OUT OF  
15 LINE IN UNDERSTANDING THAT RELIGION -- BUT IT IS A TYPE OF  
16 RELIGIOUS FREEDOM OF EXPRESSION. IT IS AN INTERNET-BASED  
17 RELIGION.

18 WITHOUT TECHNOLOGY, THERE IS NO WAY TO FIND THESE PEOPLE.  
19 OH, I SUPPOSE THERE COULD BE A, MAYBE, AS IN THE STASI EAST  
20 GERMANY, SOME NEIGHBORS THAT RAT OUT THEIR FALUN GONG  
21 NEIGHBORS.

22 BUT THE WAY TO ERADICATE THE RELIGION IS NOT ON A  
23 PIECE-BY-PIECE SORT OF EAST GERMANY WAY OF RATTING OUT  
24 SYMPATHIZERS TO THE LEFT. IT'S THROUGH THE INTERNET, THROUGH  
25 THIS SYSTEM WHICH IS SO VAST AND ITS -- WHILE ITS SOLE PURPOSE

1 MAY HAVE SOME LEGITIMATE, AND NO DOUBT DOES, CRIME CONTROL  
2 GENERIC, MS. SULLIVAN HAS NEVER STATED, NO ONE AT CISCO HAS  
3 EVER STATED THAT COMMERCE SIGNED OFF ON THESE DESIGNS WHICH  
4 WERE UPLOADED OR SENT IN SOME WAY OR EXPORTED TO CHINA.

5 SO YOUR HONOR DOESN'T HAVE TO, IN REVIEWING THESE CLAIMS,  
6 STEP ON THE TOES OF A COMMERCE, DEPARTMENT OF COMMERCE DECISION  
7 BECAUSE THIS GOVERNMENT HAS SPOKEN IN ONE VOICE UNDOUBTEDLY  
8 THAT TECHNOLOGY COMPANIES ARE NOT TO FACILITATE THE HUMAN  
9 RIGHTS ABUSES ANYWHERE IN THIS WORLD, IN CHINA, AND WE HAVE  
10 AMPLE EVIDENCE OF THAT BEFORE CONGRESS IN THE SENATOR DURBIN  
11 HEARINGS, THAT THE CONCERN OF CONGRESS HERE WAS THAT THESE  
12 TECHNOLOGIES NOT BE USED TO FACILITATE HUMAN RIGHTS ABUSES,  
13 INTERNATIONAL LAW NORMS.

14 IT'S IRRELEVANT THAT CHINESE LAW MAKES FALUN GONG ILLEGAL.  
15 I DON'T KNOW IF IT DOES, AND I WOULD SUBMIT THAT WE HAVE NOT IN  
16 ANY WAY PREJUDICED OUR ABILITY TO BRING IN, IF IT BECOMES  
17 RELEVANT, CHINESE LAW THROUGH 44.1. THAT'S NOT REQUIRED TO BE  
18 PUT FORTH IN PLEADINGS.

19 BUT IN THE EVENT THAT THAT BECOMES RELEVANT, YOUR HONOR,  
20 TO CHOICE OF LAW QUESTIONS AND STATE LAW, THIS CASE HAS BEEN  
21 ABOUT THE VIOLATION OF INTERNATIONAL LAW NORMS, AND IT HAS BEEN  
22 ABOUT THE AIDING AND ABETTING BY SAN JOSE HERE AS THE BRAIN  
23 TRUST THAT -- WITHOUT WHICH THESE MEMBERS OF THIS CHURCH AND  
24 THIS RELIGION COULD NOT BE ROUNDED UP, COULD NOT BE TORTURED  
25 AND BASICALLY ERADICATED AS SOME TYPE OF ETHNO GENOCIDE

1 CAMPAIGN, AND THAT IS WHAT THIS COMPLAINT HAS ALLEGED.

2 THE NEXUS HAS BEEN SHOWN AND COULD BE PROVEN WITH THE  
3 ACTUAL DOCUMENTS FROM CISCO SYSTEMS THAT SAYS CISCO HERE, AND  
4 YOU SEE FALUN GONG CENTERS ALL AROUND CHINA, AND YOU SEE HOW  
5 THEY'RE CONNECTED THROUGH TECHNOLOGY.

6 AND DR. KEN SUN, PHYSICS AND TECHNOLOGY EXPERT, ALSO  
7 RECENT GRADUATE OF YALE LAW SCHOOL SO NOW A LAWYER, CAN  
8 DECONSTRUCT WHAT'S BEEN -- WHAT THESE SYSTEMS SHOW, AND THOSE  
9 WERE WHAT THIS COMPLAINT ALLEGES WERE UPLOADED OR EXPORTED IN  
10 SOME WAY, AND NO DEPARTMENT OF COMMERCE, NO CONGRESS HAS  
11 BLESSED THAT EXPORT AND IT HASN'T BEEN STATED THAT THEY HAVE  
12 DONE.

13 THE COURT: SO --

14 MS. BOYD: SO THERE IS NO CONFLICT BETWEEN THE  
15 JUDICIARY RULING ON WHAT THIS COMPANY, U.S. COMPANY HAS DONE TO  
16 FACILITATE CRIMES AGAINST HUMANITY, FORCED LABOR, OR STATE LAW  
17 ASSAULT AND BATTERY.

18 THE COURT: ARE YOU SUGGESTING THAT CISCO'S DONE THIS  
19 SURREPTITIOUSLY WITHOUT THE GOVERNMENT'S KNOWLEDGE?

20 MS. BOYD: I'M NOT SURE THAT -- THEY HAVE NEVER  
21 STATED THAT THE ACTUAL DESIGNS ARE SUBJECT TO ANY COMMERCE, SO  
22 I CAN'T SAY FOR SURE THAT THEY WOULD HAVE BEEN REQUIRED TO  
23 LICENSE THESE DESIGNS, THE DESIGNS.

24 WE'RE NOT TALKING ROUTERS AND SWITCHES. WE'RE TALKING  
25 ABOUT THE CUSTOMIZED DESIGN OF THE TECHNOLOGY, WHICH IS AT SUCH

1 A HIGH LEVEL, I COULD NOT BEGIN TO ARTICULATE WHAT THE DESIGN  
2 DID.

3 BUT IT WAS ONE OF A KIND AND IT WAS MARKETED --

4 THE COURT: SO ASSUMING -- LET ME JUST ASSUME FOR A  
5 MOMENT THAT YOU'RE ACCURATE, THAT CISCO DESIGNED A SYSTEM THAT  
6 WAS TO FERRET OUT -- TO REACH A CERTAIN GROUP OF INDIVIDUALS  
7 FOR BAD PURPOSES, ILLEGAL PURPOSES, AND THAT THERE WAS TORTURE  
8 INVOLVED AND ALL THESE OTHER THINGS, AND CISCO KNEW ABOUT THAT  
9 BECAUSE OF THEIR CONTINUED BUSINESS RELATIONSHIP WITH THE  
10 PURCHASER IN CHINA AND THEY REFINED THE PRODUCT AND THEY  
11 RECEIVED PROMPTS, "WE NEED TO DO BETTER, YOU NEED TO IMPROVE  
12 THIS, THIS VERSION OF 2.0 AND 2.3" AND ALL OF THAT.

13 SO ASSUMING THAT'S ALL TRUE, WHAT DOES THAT MEAN FOR YOUR  
14 CASE?

15 MS. BOYD: IF THAT'S ALL TRUE, THEN YOU CAN  
16 ADJUDICATE THE CLAIMS. THOSE -- THAT'S A FACTUAL LAW QUESTION,  
17 WHICH IS THAT IF INDEED CISCO KNEW WHAT THEY WERE DOING AND  
18 THEY BORE OUT JUST ON THE PIECE OF PAPER, THE SLIDES THAT I'VE  
19 SEEN, OR THE POWERPOINT SLIDES, THEY BEAR OUT THAT THEY USE  
20 ANTI-FALUN GONG, THEY USE TERMS LIKE DOUZHENG ON THE CISCO  
21 POWERPOINT, THAT THESE ENGINEERS HERE WITH ADVANCED -- I  
22 BELIEVE IT'S THE ADVANCED SYSTEMS TEAM WERE GIVEN A COMMISSION,  
23 WHICH IS TO COME UP WITH SOMETHING THAT WOULD SATISFY THE  
24 OBJECTIVES OF THE CCP, WHICH WERE TO ERADICATE FALUN GONG, COME  
25 UP WITH SOMETHING THAT CAN FIND THESE PEOPLE ON THE INTERNET,

1 CAN FIND OUT INFORMATION ABOUT THEM TO ASSIST IN THE MENTAL  
2 TORTURE, AS MS. MARSH SAID, TO ASSIST IN NEVER -- IN CONVERTING  
3 THEM BACK TO WHATEVER CHINA WISHED THEM TO THINK.

4 AND SO THAT MEANS YOU CAN ADJUDICATE THESE CLAIMS.

5 WHAT IS NOT BEFORE THIS COURT IS WHETHER OR NOT THESE WERE  
6 LICENSED, BECAUSE THEY'VE NEVER SAID THAT THEY WERE, THESE  
7 DESIGNS.

8 WHAT THEY'VE SAID WAS "WE EXPORTED ROUTERS AND SWITCHES."

9 BUT THAT'S NOT WHAT THIS CASE IS ABOUT, GENERIC ROUTERS  
10 AND SWITCHES. AND THAT'S WHAT THE DAOBIN JUDGE FOCUSSED ON.  
11 THERE'S GENERIC PRODUCTS THAT ARE SUBJECT TO EXPORT  
12 REGULATIONS.

13 BUT YOUR HONOR, I WOULD LIKE TO CITE ONCE AGAIN AND POINT  
14 OUT THE CASES, SUCH AS NORTHROP AND KOOHI THAT SAID -- IN THIS  
15 NINTH CIRCUIT THAT SAID MERELY BECAUSE A CLAIM INVOLVES  
16 PRODUCTS THAT ARE REGULATED -- AND, YOUR HONOR, THIS HAPPENS  
17 EVERY DAY IN THIS COURT, WE HAVE A REGULATED EXPORT MARKET FOR  
18 AUTOMOBILES, FOR EXAMPLE -- THAT DOES NOT IMMUNIZE A DEFENDANT,  
19 MERELY BECAUSE THEIR PRODUCTS ARE REGULATED, FROM TORT  
20 INTERNATIONAL LAW AND CONTRACT CLAIMS AND LIABILITY, BECAUSE  
21 THE REGULATIONS ARE, IN THE CASE OF INTERNATIONAL LAW  
22 VIOLATIONS UNDER THE CHARMING BETSY PRINCIPLE, WE ARE TO ASSUME  
23 AND PRESUME THAT THEY'RE RECONCILED WITH INTERNATIONAL LAW  
24 NORMS, THAT IT IS EXPECTED THAT WHILE THEY ARE REGULATED  
25 INDUSTRY AND THEY CAN EXPORT THEIR PRODUCTS, THAT THEY WILL



1 STILL BE LIABLE FOR HARM CAUSED BY THOSE PRODUCTS, BY DEFECTS  
2 IN THOSE PRODUCTS, FOR EXAMPLE, THE AUTO INDUSTRY, FOR  
3 CUSTOMIZATION IN THIS CASE OF THEIR PRODUCTS TO FACILITATE  
4 TORTURE AND ASSAULT AND BATTERY.

5 AND THAT IS NOT BEFORE THIS COURT. THERE HAS BEEN NO  
6 EVIDENCE, MERELY INTIMATIONS, THAT SOMEHOW COMMERCE HAS BLESSED  
7 THE HIGH LEVEL DESIGNS THAT ARE ALLEGED HERE.

8 AND YOUR HONOR, WE'RE NOT HERE TO PROVE THOSE, ALTHOUGH I  
9 THINK JUST BY SEEING THE SLIDES, I WAS -- MY BLOOD WAS CHILLED.  
10 BUT WE COULD PROVE THEM.

11 WHAT THE COMPLAINT HAS ALLEGED, THOUGH, SHOULD PASS MUSTER  
12 THAT WE HAVE ALLEGED SPECIFIC AIDING AND ABETTING. WHETHER  
13 IT'S UNDER MS. SULLIVAN'S OWN TEST, WHICH HAS NOT BEEN ADOPTED,  
14 WHICH IS THE SOLE PURPOSE OF THE U.S. CONDUCT, FOR EXAMPLE, THE  
15 PASTOR WHOSE SOLE PURPOSE WAS TO ERADICATE LGBT PRACTICES IN  
16 UGANDA, WE EVEN MEET THAT TEST.

17 BUT THAT'S THE WRONG TEST. THE TOUCH AND CONCERN TEST IS  
18 WE HAVE A U.S. COMPANY, CALIFORNIA HAS EVERY RIGHT TO REGULATE  
19 THAT COMPANY, AND CALIFORNIA HAS EVERY RIGHT TO APPLY ITS TORT  
20 LAW TO THE COMPANY.

21 AND I WILL GET TO THE STATE LAW CLAIMS.

22 INTERNATIONAL LAW APPLIES TO THAT COMPANY, AND THEY HAVE  
23 TO ABIDE BY ALL OF THOSE INTERSTITIAL LAWS, EVEN IF THEY'RE  
24 REGULATED, EVEN IF THEY PASS REGULATION.

25 AND I ASSUME THAT AUTOMOBILES PASS REGULATIONS, BUT THEY

1 ARE STILL HELD TO TORT VIOLATIONS CAUSED BY THOSE AUTOMOBILES,  
2 WHICH IS JUST AN ANALOGY THAT -- AND NORTHROP SAYS THAT.

3 AND, QUITE FRANKLY, CORRIE SAYS THAT. CORRIE VERSUS  
4 CATERPILLAR IS A GREAT CASE BECAUSE IT'S SO DISTINGUISHABLE,  
5 AND THEY RELY ON IT. CISCO DOES RELY ON IT QUITE A BIT.

6 IN THAT CASE, THE UNITED STATES GOVERNMENT FUNDED THE  
7 BULLDOZERS. THEY FUNDED THE BULLDOZERS. THEY MADE THE  
8 DECISION, "WE'RE SENDING THESE TO IDF AND TO THE ISRAELI  
9 GOVERNMENT. THAT IS OUR DECISION." AND THE ENTIRE CLAIMS WERE  
10 BASED ON WHETHER THOSE BULLDOZERS SHOULD HAVE BEEN SOLD, THE  
11 FUNDING PROGRAM.

12 THAT'S NOT OUR CASE. OUR CASE IS NOT THAT THE U.S.  
13 GOVERNMENT SIGNED OFF ON THESE DESIGNS. WE HAVE NO EVIDENCE  
14 THAT THE U.S. GOVERNMENT FUNDED OR SIGNED OFF ON THESE  
15 ANTI-FALUN GONG DESIGNS. WE HAVE NO EVIDENCE OF THAT.

16 IT'S BEEN INTIMATED THAT SOMEHOW THEY'VE PASSED MUSTER,  
17 BUT THAT'S NOT BEFORE THIS COURT. THERE'S NO EVIDENCE OF THAT.

18 AND THE EVIDENCE THAT YOU CAN TAKE JUDICIAL NOTICE OF ARE  
19 THE COUNTLESS ONE VOICE OF THE EXECUTIVE AND CONGRESS SAYING  
20 THAT TECHNOLOGY COMPANIES ARE TO NOT BE EXPORTING ANYTHING THAT  
21 FACILITATES REPRESSION.

22 IN FACT, THE OPPOSITE. SENATOR AND FORMER SECRETARY OF  
23 STATE CLINTON HAS STATED THE TECHNOLOGY SHOULD BE USED TO AID  
24 IN THE FREEDOM OF EXPRESSION AND RELIGIOUS FREEDOM.

25 THERE'S NO EVIDENCE AT ALL.

1 SO THE BAKER TEST HERE THAT IS IMPLICATED IS NOT THAT  
2 SOMEHOW THESE CLAIMS ARE, HAVE BEEN TEXTUALLY COMMITTED, FOR  
3 EXAMPLE, FOREIGN AFFAIRS HAVE BEEN TEXTUALLY COMMITTED TO THE  
4 POLITICAL BRANCHES. THAT'S NOT WHERE WE ARE.

5 BUT SOMEHOW THAT THESE CLAIMS ARE GOING TO STEP ON THE  
6 TOES, THAT YOUR HONOR, IN ADJUDICATING THEM, IS GOING TO COME  
7 OUT WITH A DIFFERENT PRONOUNCEMENT THAN WHAT HAS BEEN BLESSED  
8 BY COMMERCE, THAT'S NOT BEFORE THIS COURT. IT'S BEEN  
9 INTIMATED, BUT NEVER STATED.

10 AND I WOULD -- I WOULD CHALLENGE RIGHT NOW THAT IF THESE  
11 DESIGNS THAT WE HAVE IN OUR POSSESSION HAVE SOMEHOW PASSED  
12 THROUGH COMMERCE AND BEEN BLESSED AS A PERMIT, THEN THEY NEED  
13 TO SAY SO.

14 BUT THEY NEVER HAVE AND THEY NEVER WILL BECAUSE IT NEVER  
15 HAPPENED AND THAT'S NOT BEFORE THE COURT IN ADJUDICATING THE  
16 CLAIMS.

17 SO THE NEXUS IS HERE AND HAS BEEN, HAS BEEN WELL  
18 ESTABLISHED BY -- YOU KNOW, AND MS. SULLIVAN MENTIONS THE  
19 TECHNICAL DETAIL.

20 WELL, THAT'S CRITICAL HERE. THE TECHNICAL DETAIL IN OUR  
21 COMPLAINT AS OPPOSED TO DAOBIN IS CRITICAL BECAUSE THE  
22 TECHNICAL DETAIL IS THE NEXUS. WITHOUT THAT TECHNICAL DETAIL  
23 THAT CAME OUT OF SAN JOSE, OR CAME OUT OF CISCO HERE IN THIS  
24 TOWN, WITHOUT IT, THE FALUN GONG WOULD BE PRACTICING PEACEFULLY  
25 ON THE INTERNET. THAT'S WHAT'S BEEN ALLEGED.

1           AND THEY'RE NOT.  THEY'RE BEING ROUNDED UP AND THEY'RE  
2           BEING TORTURED.

3           AND THE FACT THAT CISCO NETWORKED TORTURE CENTERS, WITH  
4           KNOWLEDGE -- AND THAT'S ALLEGED -- WITH KNOWLEDGE OF WHERE THEY  
5           WERE GOING, BECAUSE YOU CAN SEE THE TORTURE CENTERS ON THE  
6           DESIGN, YOU CAN SEE THEM, THEY'RE ACTUALLY STATED --

7           THE COURT:  LET ME ASK YOU, DO YOU FEEL THAT  
8           YOU'RE -- YOU HAVE PLED SUFFICIENTLY FOR IQBAL/TWOMBLY  
9           PURPOSES?  YOU HAVE THOSE SPECIFICS?

10          I THINK THAT THE GOOD JUDGE FROM MARYLAND TALKS ABOUT WHY  
11          HIS CASE DID NOT SPEAK TO IT -- AND THIS AGAIN GOES TO AIDING  
12          AND ABETTING I SUPPOSE -- BUT DO YOU THINK YOU HAVE, YOUR  
13          PLEADING HAVE CITED WITH SPECIFICITY SUFFICIENTLY TO GET BY  
14          IQBAL AND TWOMBLY AS TO THOSE ISSUES?

15          MS. BOYD:  YES, YOUR HONOR, I DO, AND THAT'S WHY I  
16          SAID THE TECHNICAL DETAIL IS SO CRITICAL.  THAT WAS NOT PRESENT  
17          IN THE DAOBIN CASE, BUT IT IS HERE.

18          AND I'LL JUST GO TO MY NOTES ON NEXUS AND THE TECHNICAL  
19          DETAIL, WHICH IS IMPORTANT FOR, FOR REACHING PLAUSIBILITY,  
20          WHICH IS ONE OF THE FIRST THINGS THAT MS. SULLIVAN MENTIONED,  
21          THE PLAUSIBILITY OF THIS HAPPENING IS -- HAS BEEN WELL PLED  
22          HERE.

23          NOW, IF IT HAS BEEN INARTFULLY PLED, I WOULD RESPECTFULLY  
24          REQUEST TO ATTACH A DESIGN AS AN EXHIBIT TO THE COMPLAINT,  
25          WHICH PERHAPS MAYBE WE SHOULD HAVE DONE, SO THAT YOU CAN SEE

1 FOR YOURSELF, EVEN WITHOUT TECHNICAL EXPERTISE, WE CAN SEE THAT  
2 THIS WAS -- THIS WAS WRITTEN UP BY CISCO, AND I'M LOOKING AT --  
3 I REALLY FOCUS ON PARAGRAPHS 80 TO 86. THIS WAS A FIRST OF A  
4 KIND RECOMMENDED -- FIRST OF A KIND TECHNOLOGY THAT SAN JOSE  
5 CISCO RECOMMENDED IN RESPONSE TO THE OBJECTIVES GIVEN TO THEM  
6 BY THE CHINESE AUTHORITIES, SPECIFICALLY, TO BRING ABOUT HARMS  
7 ALLEGED IN THIS ACT, INCLUDING INFORMATION CENTERS FEATURING  
8 CONFIDENTIAL FALUN GONG DATABASES WITH SECURE CONNECTIONS TO  
9 THE EXTRALEGAL OFFICE 610.

10 I'M GOING TO CITE PARAGRAPHS 80 TO 86, 97 TO 101 FOR THE  
11 LAW CLERKS SITTING OVER IN THE JURY BOX TO GO BACK AND LOOK AT  
12 THAT.

13 YES, YOUR HONOR, THAT MEETS THE STANDARD.

14 AND IF THAT'S NOT ENOUGH, WE'LL ATTACH AN EXHIBIT TO A  
15 FOURTH AMENDED COMPLAINT WHICH COULD BE DONE.

16 BUT WE'RE NOT HERE FOR THAT BECAUSE THESE ARE PLEADING  
17 STANDARDS.

18 AND YOUR HONOR, HAVING SORT OF EXHAUSTED WHAT I WANTED TO  
19 SAY ON, ON THE POLITICAL QUESTION DOCTRINE, I DO WANT TO HAVE A  
20 FEW MORE MINUTES TO TOUCH ON STATE LAW MATTERS AND THE ECPA  
21 FEDERAL CLAIM BECAUSE I THINK THEY'RE IMPORTANT HERE AND  
22 MS. SULLIVAN DID TOUCH ON THOSE.

23 BUT IF THERE'S ANY OTHER QUESTIONS ABOUT THE POLITICAL  
24 QUESTION?

25 OUR POINT HERE IS THAT THE ARTICLE III JURISDICTION OF

1 THIS COURT IS NOT, EVEN BY CISCO, OVER THESE CLAIMS IS NOT  
2 CHALLENGED.

3 THE COURT: OKAY.

4 MS. BOYD: AND TO THE QUESTION OF WHETHER THERE WILL  
5 BE MULTIFARIOUS PRONOUNCEMENTS, THERE'S NO EVIDENCE IN THIS  
6 RECORD OR IN THIS PLEADING THAT THERE WOULD BE.

7 AND WHETHER OR NOT THERE WOULD BE AN EMBARRASSMENT, I DO  
8 THINK IT'S IMPORTANT TO NOTE THAT IN THESE VERY HIGHLY  
9 POLITICIZED CASES, NOT POLITICAL QUESTIONS, BUT POLITICIZED  
10 CASES, OUR GOVERNMENT HAS NEVER BEEN SHY ABOUT SENDING OVER A  
11 STATEMENT OF INTEREST OR MAKING THEIR VIEWS KNOWN.

12 THAT HAS NOT BEEN DONE IN THIS CASE, AND I HAVE NO DOUBT  
13 THAT THEY'RE WELL AWARE OF WHAT'S GOING ON AS MS. SULLIVAN HAS,  
14 AND CISCO HAS, QUITE A FEW TIES TO WASHINGTON OF THEIR OWN.

15 SO THERE HAS BEEN NO STATEMENT OF INTEREST GIVING YOUR  
16 HONOR ANY INDICATION THAT THIS WOULD BE SOME SORT OF  
17 EMBARRASSMENT OR THAT THERE WOULD BE SOME RETICENCE ON THE PART  
18 OF THE STATE DEPARTMENT OR COMMERCE OR CONGRESS FOR THE COURT  
19 TO ADJUDICATE THE CLAIMS WHICH ARE WELL WITHIN ARTICLE III  
20 JURISDICTION, AND DIVERSITY JURISDICTION YOUR HONOR, BECAUSE ON  
21 THE FACE OF THE COMPLAINT, WE CAN CLAIM DIVERSITY JURISDICTION  
22 WOULD EXIST, AS WELL AS FEDERAL QUESTION UNDER THE ATS, WHICH I  
23 BELIEVE MS. MARSH HAS COVERED.

24 AND WHILE THERE MAY BE QUESTIONS OF THE STANDARD BEFORE  
25 THE NINTH CIRCUIT IN THE NESTLE CASE, I WOULD SUBMIT THAT EVEN

1 UNDER THE MOST RIGOROUS STANDARD THAT KIOBEL HAS LEFT OPEN --  
2 AND THE DOOR IS OPEN, AND MS. SULLIVAN WOULD SAY IT'S NOT, BUT  
3 WOULDN'T SAY IT'S BEEN CLOSED COMPLETELY BECAUSE SHE HADN'T  
4 STATED THAT IN PUBLIC AND SHE HADN'T STATED THAT HERE -- AND IN  
5 FACT, CISCO HAS NOT EVEN STATED THAT SMUG WAS WRONGLY DECIDED.

6 BUT WITHIN WHAT IS LEFT OVER, WE EVEN MEET THE STRICTEST  
7 STANDARDS IN THIS CASE.

8 SO THIS IS THE CASE TO WALK THROUGH THAT DOOR THAT'S BEEN  
9 LEFT AJAR. THIS IS THE CASE. CISCO IS HERE, NOT ABROAD. THE  
10 DESIGNS WERE HERE, NOT ABROAD.

11 THE FACT THAT IT WAS AN AIDER AND ABETTOR OF LIABILITY,  
12 WAS, ONE, DONE WITH NOT ONLY KNOWLEDGE OF WHAT WAS GOING ON,  
13 BUT SPECIFIC INTENT, AND I WOULD PROVE THAT BY SHOWING YOU THE  
14 SLIDES. WHEN YOU USE THE WORDS "FALUN GONG" AND "DOUZHENG" IN  
15 THOSE SLIDES, THAT'S SPECIFIC INTENT.

16 THEY KNEW EXACTLY WHAT THEY WERE DOING, AND THEY INTENDED  
17 IT, BECAUSE IF THEY HADN'T INTENDED IT, CCP WOULD HAVE NO  
18 BUSINESS WITH CISCO. THEY WOULD HAVE GONE ELSEWHERE. THAT'S  
19 WHAT THEIR PURPOSE WAS AND CISCO KNEW THAT.

20 SO THAT BEING SAID, JUST TO, TO GO OVER THE STATE LAW  
21 CLAIMS, ASSAULT AND BATTERY, FALSE IMPRISONMENT, YOUR HONOR, I  
22 WOULD WANT TO FOCUS ON THOSE.

23 THESE ARE NOT THE SAME STANDARD. EVEN IF THIS COURT WERE  
24 TO FIND THAT THE KIOBEL STANDARD HAS NOT BEEN MET, THAT IS NOT  
25 THE STANDARD FOR CALIFORNIA, AND WE'RE IN CALIFORNIA HERE ON

1 STATE LAW CLAIMS.

2 THE STANDARD FOR EXTRATERRITORIALITY IS FAR LOOSER IN  
3 CALIFORNIA AND REALLY LOOKS TO THE CONTACTS WITH CALIFORNIA,  
4 AND THOSE CONTACTS HAVE BEEN WELL ESTABLISHED IN THIS  
5 COMPLAINT.

6 AND SO THE KNOWLEDGE STANDARD, WHILE IT MAY BE IN QUESTION  
7 THAT THE NINTH CIRCUIT AND FEDERAL, UNDER ATS IS NOT UNDER  
8 STATE LAW, IS NOT CHALLENGED, THAT THEY KNEW WHAT THEY WERE  
9 DOING AND THAT THEY AIDED, THAT THEY GAVE SUBSTANTIAL  
10 ASSISTANCE FROM CALIFORNIA.

11 AGAIN, THIS IS NOT A CASE WHERE HUMAN RIGHTS ACTIVISTS ARE  
12 FRUSTRATED WITH WHAT GOES ON IN CHINA. UNDOUBTEDLY WE ARE. I  
13 THINK THE COUNTRY AND EVEN THE PRESIDENT HIMSELF IS FRUSTRATED.

14 THIS IS A CASE ABOUT BEING FRUSTRATED WITH THE ACTIONS OF  
15 CISCO HERE IN CALIFORNIA. THIS IS A CASE ABOUT WHAT THEY HAVE  
16 DONE THROUGH THEIR HIGH-TECH, CUTTING EDGE TECHNOLOGY TO  
17 ERADICATE AND TO PARTICIPATE IN THE ERADICATION OF FALUN GONG  
18 IN CHINA.

19 THIS IS -- IF THERE WAS EVER A HOME GROWN CASE, AS  
20 MS. SULLIVAN STATED, IT'S THIS ONE. WE ARE LITERALLY IN  
21 CISCO'S BACKYARD.

22 IF THAT TAKES THE VALLEY DOWN, QUOTE UNQUOTE, IN THE  
23 PARADE OF HORRIBLES THAT MS. SULLIVAN MENTIONED, THEN WE WOULD  
24 BE VERY SHOCKED TO KNOW THAT ALL THE TECHNOLOGY COMPANIES HAVE  
25 PARTICIPATED IN THESE KINDS OF DESIGNS, HAVE EXPORTED OR



1 UPLOADED OR PITCHED, AS YOU WOULD HAVE IT, THESE KIND OF  
2 TORTURE FACILITATING DESIGNS WITH THE UNDERSTANDING THAT THEY  
3 HAD ONE PURPOSE ONLY, NO GENERIC PURPOSE, NO COTTITIAN, DAILY,  
4 INTERNET SURVEILLANCE PURPOSE FOR LAW ENFORCEMENT, BUT FOR ONE  
5 PURPOSE, AS THEY SAY IN THEIR OWN SLIDES, TO ERADICATE THE  
6 FALUN GONG, IN PARTICULAR WHO PRACTICE THEIR PEACEFUL RELIGION  
7 ON THE INTERNET WHERE CISCO SYSTEMS LIVES IN THE WORLD OF  
8 TECHNOLOGY.

9 AS FAR AS THE ECPA CLAIM, WE DO -- WE DO BELIEVE THERE'S  
10 A -- THERE IS A FEDERAL CLAIM HERE THAT ARISES UNDER THE ECPA.

11 THE NINTH CIRCUIT HASN'T RULED ON THE PRIVATE RIGHT OF  
12 ACTION.

13 BUT YOUR HONOR, I WOULD -- I WOULD GO BACK TO THE STATUTE  
14 ITSELF, AND IN THE CENTRAL DISTRICT OF CALIFORNIA WHERE I HAIL  
15 FROM, THAT COURT HAS FOUND, JUDGE PREGERSON ACTUALLY, HAS FOUND  
16 THAT THE 2520 RECOVERY OF CIVIL DAMAGES SECTION OF THE ECPA  
17 STATES ANY PERSON, INTO THE -- IN VIOLATION OF THIS CHAPTER --  
18 AND THE CHAPTER THEN IS SET FORTH AT 18 U.S.C. 2510, AND WE  
19 HAVE ALLEGED THAT THIS CHAPTER HAS BEEN, HAS BEEN VIOLATED BY  
20 THE SELLING -- AND CISCO TRIES TO SAY IN THEIR REPLY WE DIDN'T  
21 ALLEGE THAT IT WAS SOLD. WELL, CISCO OPERATES FOR PROFIT AND  
22 WE MENTIONED THE WORD SELLING I DON'T KNOW HOW MANY TIMES, BUT  
23 THESE PRODUCTS ARE SOLD, AND SO THEY FIT WELL WITHIN THE 2512  
24 SECTION OF THE ECPA.

25 IF THERE'S A VIOLATION OF THIS CHAPTER IN SELLING THAT

1 TECHNOLOGY FOR KNOWING -- KNOWING, AND THAT'S THE STANDARD -- A  
2 REASON TO KNOW THAT THE DESIGN OF THE DEVICE RENDERED IT  
3 PRIMARILY USEFUL FOR THE PURPOSE OF SURREPTITIOUS INTERCEPTION  
4 OF WIRE, THEN THERE IS A CIVIL DAMAGES PRIVATE RIGHT OF ACTION.

5 THE SUGGESTION IN THE THIRD PRONG OF THE ECPA TEST THAT  
6 THIS WAS SOMEHOW ORDINARY COURSE OF BUSINESS ACTIVITY, THESE  
7 DESIGNS, I WOULD INVITE YOUR HONOR TO TAKE A LOOK AT THOSE  
8 SLIDES.

9 THERE IS NO -- THERE IS NO PEDESTRIAN PURPOSE AS EVIDENCED  
10 BY WHAT CISCO CAME UP WITH IN THEIR EXPERTISE, THE BEST IN THE  
11 WORLD, TO GET THAT CONTRACT AND MAKE MONEY.

12 THE COURT: THANK YOU, MS. BOYD.

13 MS. BOYD: THANK YOU.

14 THE COURT: YOU'RE WELCOME.

15 MS. SULLIVAN.

16 MS. SULLIVAN: MAY I BE HEARD, YOUR HONOR?

17 THE COURT: YES.

18 MS. SULLIVAN: IS THE COURT REPORTER DOING OKAY? NO  
19 NEED FOR A BREAK?

20 THE REPORTER: I'M GOOD. THANK YOU.

21 MS. SULLIVAN: KATHLEEN SULLIVAN FOR THE CISCO  
22 DEFENDANTS, YOUR HONOR.

23 I'D LIKE TO BEGIN BY REMINDING US, AS YOUR HONOR SAID AT  
24 THE OUTSET, WE'RE HERE ON A MOTION TO DISMISS A COMPLAINT.

25 I'VE JUST HEARD NEARLY AN HOUR OF TESTIMONY FROM MY

1 LEARNED COLLEAGUES, MS. MARSH AND MS. BOYD, AS TO WHAT THEY'D  
2 SEEN AND CERTAIN EXPERTS AND CERTAIN POWERPOINTS.

3 I'VE CHECKED THE COMPLAINT. THERE'S ONLY THREE ALLUSIONS  
4 TO A POWERPOINT, NONE OF WHICH -- NONE OF THOSE ALLEGATIONS  
5 CONCERNING ANY POWERPOINT CONTAINED ANY OF THE THINGS YOU'VE  
6 JUST HEARD TESTIMONY ABOUT AND THAT'S COMPLETELY IMPROPER IN  
7 CONNECTION WITH A MOTION TO DISMISS.

8 SO I'M TRYING TO FOCUS MY REMARKS ON THE FEW ASPECTS OF  
9 THE PRESENTATION YOU JUST HEARD THAT AREN'T AN ATTEMPT TO  
10 INTRODUCE IMPROPER TESTIMONY ABOUT EVIDENCE THAT'S OBVIOUSLY  
11 NOT BEFORE THE COURT ON A MOTION TO DISMISS.

12 SO LET ME BEGIN BY STARTING WITH THE MOST IMPORTANT POINT,  
13 WHICH IS DO THE PLEADINGS, WHICH ARE OUR FOCUS, SAY ANYTHING,  
14 MUCH LESS ANYTHING PLAUSIBLE, ABOUT WHAT MS. MARSH AND MS. BOYD  
15 TALKED ABOUT TODAY, CISCO'S SUPPOSED INTENT TO ERADICATE  
16 FALUN GONG.

17 AND THEY DO NOT, YOUR HONOR. YOU HEARD THAT WORD  
18 "ERADICATE" SIX OR SEVEN TIMES FROM THEM, AND THROUGH THE  
19 MIRACLE OF TECHNOLOGY, NO DOUBT USING CISCO ROUTERS AND  
20 SWITCHES, WE CHECKED THE COMPLAINT, AND THE WORD "ERADICATE"  
21 APPEARS EXACTLY ONCE IN THE COMPLAINT, AND IT'S ATTRIBUTED TO A  
22 CHINESE COMMUNIST PARTY OFFICIAL.

23 THERE'S NOT A WORD IN THE COMPLAINT ABOUT CISCO OR ITS  
24 EXECUTIVES HAVING KNOWLEDGE, MUCH LESS INTENT, ABOUT THE  
25 ERADICATION OF ANYONE.

1           AND THE REASON FOR THAT IS IT WOULD BE ABSURD. NO ONE  
2           DOING BUSINESS AT CISCO COULD HAVE AN INTENT TO AID AND ABET  
3           THE ERADICATION OF ANYONE. IT'S OFFENSIVE, BUT IT'S NOT  
4           ALLEGED.

5           WHAT IS ALLEGED IN THE COMPLAINT, YOUR HONOR, IS THAT  
6           THERE WAS A CUSTOMIZATION OF INFORMATION TECHNOLOGY. TO BE  
7           SPECIFIC, WHAT CISCO SELLS IS NOT -- IT'S EQUIPMENT, IT'S  
8           ROUTERS, IT'S SWITCHES, IT'S HARDWARE. IT'S PHYSICAL ASPECTS  
9           THAT MAKE THE INTERNET POSSIBLE.

10          NOW, I WANT TO BE VERY CLEAR, YOUR HONOR. CISCO ADAMANTLY  
11          DENIES THAT WE CUSTOMIZED -- TO BE CLEAR, WE AGREE WITH THE  
12          JUDGE IN THE DAOBIN COMPLAINT THAT WHAT WE SELL ARE GENERIC  
13          PRODUCTS THAT ARE NOT CUSTOMIZED.

14          BUT I'M SAYING EVEN IF YOU TAKE THEIR CUSTOMIZATION  
15          ALLEGATIONS AS TRUE, THEY ARE ALLEGATIONS ABOUT CUSTOMIZING  
16          INFORMATION VEHICLES, THE VEHICLES FOR THE EXCHANGE OF  
17          INFORMATION, NOT ALLEGATIONS ABOUT CUSTOMIZING ANYTHING FOR  
18          TORTURE, MUCH LESS ERADICATION.

19          NOW, JUST TO TAKE A SIMPLE EXAMPLE, YOUR HONOR, EVEN IF  
20          ONE SUPPOSED THAT YOU CUSTOMIZED AMERICAN LAW ENFORCEMENT  
21          TECHNOLOGY TO APPREHEND MEMBERS OF ORGANIZED CRIME, IT WOULDN'T  
22          MEAN THAT BY SO CUSTOMIZING THE APPREHENSION TECHNOLOGY, YOU  
23          WERE SEEKING TO HAVE PEOPLE KILLED IN PRISON. IT DOESN'T  
24          FOLLOW.

25          THERE'S A DISCONNECT BETWEEN THE ALLEGATIONS HERE THAT ARE

1 ABOUT TORTURE, FORCED LABOR, AND DETENTION IN CHINESE PRISONS  
2 THAT IS ALLEGED TO BE DONE BY CHINESE ACTORS AND ANYTHING TO DO  
3 WITH THE ALLEGED CUSTOMIZATION HERE.

4 SO I WANT TO BE CLEAR. WE DENY THAT ANYTHING'S  
5 CUSTOMIZED. IT'S ALL GENERIC. CISCO SELLS THE SAME PRODUCT  
6 AROUND THE GLOBE TO A GLOBAL STANDARD.

7 WE WOULD PROVE THAT IF WE HAD TO, BUT WE SHOULDN'T HAVE TO  
8 BECAUSE THIS COMPLAINT MUST BE DISMISSED. THERE ARE NO  
9 ALLEGATIONS HERE WITH A CAUSAL NEXUS TO THE CONDUCT.

10 SECOND, YOUR HONOR, FOLLOWING ON THAT POINT, IF I MAY,  
11 YOUR HONOR ASKED, WHAT'S THE KIOBEL TEST? AND WE HAD AN  
12 ARGUMENT ABOUT WHETHER THE DOOR IS AJAR OR CLOSED.

13 TO BE CLEAR, YOUR HONOR, I DO THINK THE PROPER READING OF  
14 KIOBEL IS THE DOOR IS CLOSED TO SUITS ALLEGING INTERNATIONAL  
15 HUMAN RIGHTS VIOLATIONS ABROAD.

16 AND I THINK THE REASON IS I THINK THAT THE LOCUS OF THE  
17 CONDUCT TEST IS CLEAR FROM THE OPINION OF THE COURT IN KIOBEL.

18 IT'S NOT JUST THE JUSTICE ALITO CONCURRENCE THAT TALKS  
19 ABOUT THE IMPORTANCE OF THE LOCUS OF THE CONDUCT. IT'S THE  
20 DECISION ITSELF.

21 AND I WOULD RESPECTFULLY REFER YOUR HONOR TO THE SECOND  
22 CIRCUIT DECISION IN BALINTULO WHERE JUDGE CABRANES WROTE FOR  
23 THE COURT THAT HIS READING OF KIOBEL FINDS THAT THE MAJORITY  
24 FRAMED THE QUESTION IN TERMS OF THE LOCUS OF THE CONDUCT,  
25 WITHIN THE FOREIGN SOVEREIGN, NO FEWER THAN THREE TIMES IN THE

1 QUESTIONS AND, AS HE SAYS, THE COURT REPEATED THE SAME  
2 LANGUAGE, FOCUSSED SOLELY ON THE LOCATION OF THE RELEVANT  
3 CONDUCT OR VIOLATION AT LEAST EIGHT MORE TIMES IN OTHER PARTS  
4 OF ITS OPINION.

5 SO IT'S THE MAJORITY ITSELF, NOT JUSTICE ALITO'S  
6 CONCURRENCE, THAT SAYS LET'S LOOK TO WHERE THE INTERNATIONAL  
7 LAW VIOLATION TOOK PLACE, AND HERE THAT WAS CHINA, CHINA,  
8 CHINA.

9 SO, YOUR HONOR, YOU HAVE BALINTULO.

10 BUT YOU ASKED, WELL, WHAT COULD TOUCH AND CONCERN THE  
11 UNITED STATES.

12 AND MS. MARSH, TO MY AMAZEMENT, RAISED THE BULOVA CASE,  
13 WHICH IS LONG PRE-MORRISON. MORRISON, OF COURSE, IS A CASE  
14 THAT SAYS IF THE STOCK IS TRADED ON THE AUSTRALIAN EXCHANGE AND  
15 WE'RE TALKING ABOUT SECURITIES FRAUD, WHERE THE INTERESTS OF  
16 THE STATUTE IS SECURITIES FRAUD, CONGRESS'S INTEREST IS IN THE  
17 SECURITIES FRAUD.

18 IT DOESN'T MATTER THAT ALL KINDS OF FRAUDULENT CONDUCT  
19 HAPPENED IN FLORIDA. THE CONDUCT THAT THE STATUTE IS CONCERNED  
20 WITH HAPPENED ABROAD.

21 NOW, HERE, EVEN IF YOU FILL IN THE ATS WITH LOTS OF  
22 FEDERAL COMMON LAW AND INTERNATIONAL LAW -- BY THE WAY, WE  
23 DON'T THINK YOU CAN HERE BECAUSE -- WHICH I'LL JUST GET TO IN A  
24 MINUTE WHY YOU CAN'T FILL THIS IN WITH INTERNATIONAL LAW -- BUT  
25 JUST THE CONDUCT THAT THE ATS HAS FOCUSSED ON IS THE

1 INTERNATIONAL LAW VIOLATION. THAT'S IN CHINA.

2 AFTER MORRISON, THE CONDUCT IN CHINA DOESN'T TOUCH AND  
3 CONCERN WHAT'S IN THE UNITED STATES, AND WHAT IS ALLEGED IN THE  
4 UNITED STATES HAS NOTHING TO DO WITH TORTURE.

5 YOU CAN LAWFULLY CREATE A SYSTEM THAT ENABLES THE POLICE,  
6 JUST LIKE YOU CAN IMAGINE AMERICAN POLICE, LAWFULLY USING  
7 INTERNET TECHNOLOGY TO EXCHANGE INFORMATION ABOUT CRIMINAL  
8 RECORDS AND ABOUT WHAT THE PRISONER IN YOUR CUSTODY MIGHT HAVE  
9 DONE.

10 THAT'S ALL COMPLETELY CONSISTENT WITH LAWFUL CONDUCT, AND  
11 THAT'S WHAT'S ALLEGED IN THE CALIFORNIA ACTIVITY.

12 SO I'VE TRIED TO COVER MENS REA. I'VE TRIED TO COVER  
13 TOUCH AND CONCERN.

14 YOUR HONOR, IF I COULD TURN NEXT TO POLITICAL QUESTION?

15 NOW, POLITICAL QUESTION, MY COLLEAGUES SPENT A LOT OF TIME  
16 SAYING THE UNITED STATES GOVERNMENT DID NOT SPECIFICALLY REVIEW  
17 AND APPROVE THESE DESIGNS.

18 NOW, FIRST OF ALL, WE DON'T SELL DESIGNS. WE SELL  
19 PRODUCTS, ROUTERS AND SWITCHES. WE DON'T SELL THE DESIGNS.

20 BUT THAT'S NOT THE TEST FOR A POLITICAL QUESTION.

21 NORTHROP DOESN'T HOLD THAT. THERE'S NO POLITICAL QUESTION  
22 DOCTRINE IN THE NINTH CIRCUIT FOR REGULATED INDUSTRY. THERE'S  
23 NO REASON TO THINK POLITICAL QUESTION ISN'T THE SAME IN THE  
24 NINTH CIRCUIT AS IT IS IN THE FOURTH.

25 AND THE TEST IS NOT WHETHER THE GOVERNMENT DIRECTED THE

1 CONDUCT, BUT WHETHER THERE WOULD BE A CONFLICT BETWEEN A  
2 JUDICIAL RULING AND A POLICY OF THE UNITED STATES.

3 AND THE CURRENT POLICY OF THE UNITED STATES, WITH RESPECT  
4 TO EXPORTS TO CHINA, AS REFLECTED IN THE TIANANMEN SQUARE ACT,  
5 THE MOST FAVORED NATIONS STATUTE THAT FOLLOWED, WE NOW HAVE A  
6 SERIES OF ADMINISTRATIONS BLESSING TRADE WITH CHINA,  
7 NOTWITHSTANDING KNOWLEDGE AND CONCERN ABOUT HUMAN RIGHTS  
8 ABUSES.

9 THE U.S. POLICY UNDER THOSE TWO ACTS, PLUS THE COMMERCE  
10 CLAUSE REGULATIONS, IS TO ALLOW ALL SHIPMENTS TO CHINA THAT  
11 AREN'T PROSCRIBED.

12 AND YOUR HONOR, HERE I'D RESPECTFULLY REFER YOU TO THE  
13 DAOBIN DECISION, D-A-O-B-I-N, IN WHICH JUDGE MESSITTE REVIEWS  
14 THOSE STATUTES. HE DOES SO AT THE SECTION OF HIS OPINION  
15 CONCERNING POLITICAL QUESTION, AND IT'S CLEAR THAT THE  
16 UNITED STATES' POLITICAL BRANCHES HAVE BLESSED ALL TRADE WITH  
17 CHINA THAT'S NOT FORBIDDEN. IT'S CARVED THINGS OUT OF THE  
18 DEFAULT IN WHICH TRADE IS ALLOWED.

19 SO I DON'T THINK THE U.S. BLESSING THE CONDUCT IS THE  
20 REQUIRED TEST.

21 CONFLICT WITH FOREIGN POLICY WOULD EXIST EVEN IF THAT --  
22 IF THERE WERE NO BLESSING.

23 BUT THERE IS A BLESSING HERE BECAUSE THE DEFAULT IS TRADE  
24 IS ALLOWED UNTIL IT'S FORBIDDEN.

25 THAT'S ON POLITICAL QUESTION, YOUR HONOR.



1           AND FINALLY LET ME JUST SAY A FEW WORDS ABOUT THE NORMS AT  
2           STAKE, ALL RIGHT? IF WE GO BACK TO WHERE MS. MARSH SAID, WELL,  
3           WE'VE PLEADED ALL OUR SOSA NORMS, IN OTHER WORDS, THE ATS  
4           VIOLATIONS HERE SUPPOSEDLY ARE UNDER INTERNATIONAL LAW  
5           RESPECTING THREE MAIN CATEGORIES, RIGHT, CRUEL, INHUMAN AND  
6           DEGRADING TREATMENT, FORCED LABOR, AND CRIMES AGAINST HUMANITY.

7           NOW, CRUEL AND INHUMAN AND DEGRADING TREATMENT CLAIMS ARE  
8           NOT ACTIONABLE UNDER THE ATS. THEY'RE NOT SPECIFIC ENOUGH.  
9           THE ONLY APPELLATE COURT TO EVER RULE ON THIS IS ALDANA, AND  
10          THAT'S AN ELEVENTH CIRCUIT DECISION IN 2005 CITED IN OUR  
11          BRIEFS.

12          CRUEL, INHUMAN AND DEGRADING TREATMENT SIMPLY IS NOT  
13          ACTIONABLE UNDER SOSA IF YOU GET THAT FAR.

14          SECOND, FORCED LABOR. WELL, THE 13TH AMENDMENT PERMITS  
15          FORCED LABOR WHILE YOU'RE IN PRISON. SO DOES INTERNATIONAL  
16          LAW.

17          AND SOSA SAID THAT YOU'RE NOT GOING TO TURN EVERY  
18          DETENTION BY EVERY COUNTRY THAT YOU SAY WAS AGAINST DUE PROCESS  
19          INTO AN INTERNATIONAL LAW VIOLATION. SO THAT'S OUT, TOO.

20          CRIMES AGAINST HUMANITY IS THE ONE THAT MIGHT BE LEFT,  
21          EXCEPT THEY HAVEN'T ALLEGED THAT EITHER, BECAUSE CRIMES AGAINST  
22          HUMANITY IS A CHARGE THAT REQUIRES A SYSTEMATIC, WORLD  
23          WIDESPREAD ATTACK ON AN ENTIRE CIVILIAN POPULATION.

24          THAT'S NOT ALLEGED HERE.

25          YOUR HONOR, I WANT TO GET FINALLY TO SOMETHING VERY

1           IMPORTANT THAT YOU HEARD MS. MARSH SAY, SORT OF ECHOED BY  
2           MS. BOYD, BUT MS. MARSH SPENT QUITE A BIT OF TIME TELLING YOU  
3           THIS CASE ISN'T ABOUT THE CHINESE GOVERNMENT. PAY NO ATTENTION  
4           TO THE ACT OF STATE DOCTRINE, SHE SAYS, BECAUSE THAT APPLIES TO  
5           THE GOVERNMENT AND WE'RE JUST ALLEGING THAT THE PARTY, THE  
6           COMMUNIST, CHINESE COMMUNIST PARTY, A PRIVATE ACTOR, DID ALL  
7           THESE BAD THINGS.

8                   WELL, I SUBMIT THAT'S NOT TRUE. THE CASE IS ABOUT THE  
9           CONDUCT OF THE CHINESE GOVERNMENT AS A SOVEREIGN IN OUTLAWING  
10          FALUN GONG, NOT FOR THE PURPOSE OF ERADICATION OR TORTURE, BUT  
11          FOR THE PURPOSE OF JUST LAWFUL PENAL MEANS.

12                   SO WE SHOULD WIN ON ACT OF STATE.

13                   BUT IF YOU BELIEVE MS. MARSH AND YOU SAY, OH, IT'S NOT THE  
14          CHINESE GOVERNMENT, IT'S JUST THE PARTY, THEN YOU STILL HAVE TO  
15          DISMISS BECAUSE ALL THEIR ATS CLAIMS GO AWAY AND THEIR TVPA  
16          CLAIMS GO AWAY.

17                   AND WHY IS THAT, YOUR HONOR? THEY ALL REQUIRE STATE  
18          ACTION. TVPA EXPRESSLY -- TORTURE VICTIM PROTECTION ACT  
19          EXPRESSLY REQUIRES THAT THE ACTIVITY ALLEGED BE UNDER COLOR OF  
20          STATE LAW.

21                   AND AS YOUR HONOR WELL KNOWS, THE ATS CLAIMS HAVE ALL BEEN  
22          INTERPRETED KIND OF THE SAME WAY AS 1983 CLAIMS. THERE HAS TO  
23          BE ACTION UNDER COLOR OF STATE LAW. THERE HAS TO BE STATE  
24          ACTION.

25                   SO YOU CAN PICK EITHER OUR ANSWER, WHICH IS YOU'RE BARRED

1 FROM JUDGING THE OFFICIAL CONDUCT OF THE PEOPLE'S REPUBLIC OF  
2 CHINA OUT OF THE ACT OF STATE DOCTRINE, OR IF YOU SAY, WELL,  
3 I'M NOT BARRED BY ACT OF STATE BECAUSE IT WAS THE PARTY, YOU'RE  
4 STILL REQUIRED TO DISMISS BECAUSE THEN THE STATE ACTION GOES  
5 AWAY AND THERE'S NO MORE AT'S CLAIM THAT'S LEFT HERE, WITH THE  
6 EXCEPTION OF CRIMES AGAINST HUMANITY, THAT DOESN'T REQUIRE  
7 STATE ACTION, BUT THEY HAVEN'T PLED IT.

8 THIS IS NOT -- THE VERY SUGGESTION THAT THIS IS A CASE  
9 ABOUT A WIDESPREAD ATTACK ON A CIVILIAN POPULATION THROUGH  
10 SWITCHES AND ROUTERS IS OFFENSIVE AND ABSURD.

11 SO, YOUR HONOR, I THINK THAT, JUST TO GO BACK TO THE  
12 BEGINNING, I THINK YOU WERE CORRECT IN YOUR QUESTIONS TO FOCUS  
13 US ON THE CORE OF THE CASE, WHICH IS, HAS THIS COMPLAINT  
14 ADEQUATELY PLEADED -- AND WE'RE IN THE WORLD OF THE COMPLAINT,  
15 NOT THE WORLD OF ALL THESE -- THERE WAS SO MUCH TANTALIZING  
16 HINTS OF POSSIBLE EVIDENCE FLOATING AROUND MY COLLEAGUES'  
17 PRESENTATION THAT IT WAS, IT WAS AS IF WE WERE IN A PREVIEW TO  
18 SOMETHING THAT -- MY QUESTION IS, WHY WASN'T IT IN THE  
19 COMPLAINT?

20 ALMOST NOTHING YOU HEARD ABOUT THE SUPPOSED EVIDENCE IS  
21 ALLEGED IN THE COMPLAINT, AND WHERE YOU FIND IT -- AND YOU'RE  
22 NOT GOING TO FIND ANY ALLEGATIONS ABOUT CISCO BEING LINKED TO  
23 ERADICATION OR TORTURE. YOU'LL FIND CISCO LINKED TO  
24 CUSTOMIZATION OF TECHNOLOGY FOR INFORMATION EXCHANGE.

25 IN THEIR COMPLAINT, IF YOU FOCUS ON THE COMPLAINT,

1 ANYTHING THAT'S SAID ABOUT CALIFORNIA IS EITHER, A, GENERIC,  
2 IT'S ABOUT SUPERVISION, MANAGEMENT, RATIFICATION, CONTROL,  
3 BRAIN, NERVE CENTER; OR IT'S CONCLUSORY.

4 IF YOU FIND ANYTHING IN PARAGRAPHS -- MS. BOYD'S REFERRED  
5 YOU AND THE LAW CLERKS TO PARAGRAPHS 80 TO 86 AND 97 TO 101.

6 I'VE BEEN THROUGH THEM WITH A FINE TOOTH COMB AND THERE'S  
7 NO FACTS THERE WHATSOEVER TO SATISFY IQBAL/TWOMBLY TO GET YOU  
8 TO MENS REA OF KNOWLEDGE, MUCH LESS PURPOSE TO CONNECT YOU OVER  
9 TO THE TORTURE.

10 SO THE KEY TO THE CASE, YOUR HONOR, THE KEY TO THE CASE IS  
11 THE BIG DISCONNECT THAT RUNS DOWN THE MIDDLE OF EVERY SINGLE  
12 CLAIM HERE, BETWEEN THE SUPPOSED CONDUCT OF CISCO WITH RESPECT  
13 TO CREATING THE VERY TECHNOLOGY I SUBMIT THAT ENABLES  
14 FALUN GONG TO OPERATE -- WE'VE BEEN TOLD THEY'RE AN INTERNET  
15 RELIGION, COULDN'T EXIST WITHOUT CISCO'S PRODUCTS, CISCO'S  
16 PRODUCTS ARE HELPING PEOPLE ALL THROUGHOUT CHINA ENGAGE IN ALL  
17 KINDS OF USES OVER THE INTERNET -- AND ENABLING THE POLICE TO  
18 DO THEIR LAWFUL FUNCTION, JUST LIKE WE MIGHT ENABLE THE POLICE  
19 TO DO THEIR LAWFUL FUNCTIONS THROUGH TECHNOLOGY HERE.

20 THERE IS NOTHING IN THIS COMPLAINT THAT GETS YOU ACROSS  
21 THE LEAP TO MENS REA OR ACT OR CAUSATION WITH RESPECT TO THE  
22 ACTIVITIES IN CHINESE PRISONS THAT YOU WOULD NEED TO TO SUSTAIN  
23 THE COMPLAINT.

24 SO, YOUR HONOR, YOU'VE BEEN VERY PATIENT WITH US, YOU'VE  
25 LISTENED TO A LOT OF WORDS TODAY, BUT IF I COULD JUST CLOSE BY

1 SAYING THIS INCENDIARY AND INFLAMMATORY RHETORIC IS VERY  
2 DIFFICULT TO LISTEN TO FOR SOMEONE REPRESENTING A COMPANY THAT  
3 IS ALL ABOUT THE GOOD THAT INFORMATION CAN DO.

4 BUT IF YOU READ THE COMPLAINT ITSELF, THERE'S NO "THERE"  
5 THERE. IT'S ALL ABOUT CHINA.

6 TO THE EXTENT IT'S ABOUT CALIFORNIA, THERE'S INSUFFICIENT  
7 ALLEGATIONS UNDER IQBAL AND TWOMBLY TO GET YOU ANYWHERE CLOSE  
8 TO THE STANDARD, EVEN IF THE CIRCUIT APPROVES THE ADOBE/NESTLE  
9 PANEL OPINION.

10 WE RESPECTFULLY SUBMIT YOU DISMISS EITHER FOR FAILURE TO  
11 STATE A CLAIM OR, YOUR HONOR, ON POLITICAL QUESTION AND ACT OF  
12 STATE GROUNDS.

13 IF YOU DISAGREE WITH US ON ACT OF STATE, DISMISS BECAUSE  
14 THERE'S NO STATE ACTION.

15 I'M SORRY, YOUR HONOR, I'VE BEEN TALKING A GREAT DEAL AT  
16 YOU. WERE THERE ANY FURTHER QUESTIONS FOR CISCO?

17 THE COURT: I HAVE NONE. THANK YOU VERY MUCH.

18 MS. SULLIVAN: THANK YOU, YOUR HONOR.

19 THE COURT: LET ME THANK BOTH SIDES FOR YOUR HELP.

20 THIS WAS VERY HELPFUL AND I APPRECIATE YOUR PLEADINGS. THEY'RE  
21 VERY THOROUGH AND COMPLETE AND, AGAIN, THEY WERE HELPFUL.

22 THE MATTER IS UNDER SUBMISSION. THANK YOU VERY MUCH.

23 MS. MARSH: THANK YOU, YOUR HONOR.

24 MS. SULLIVAN: THANK YOU, YOUR HONOR.

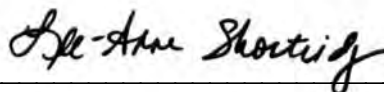
25 (THE PROCEEDINGS WERE CONCLUDED AT 11:04 A.M.)

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

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: APRIL 2, 2014