Welcome everyone. My name is Greg Hicks. I’m a faculty member here at the school of law, and on behalf of the law faculty and staff and of Dean Kelly Testy it’s my great pleasure to welcome you all to the law school for this afternoon’s lecture in the Gates Public Service Law Speaker Series. This series is meant to present extraordinary lawyers, committed to serving the public good, and to work for the achievement of justice by the legal system. We also seek speakers who through the examples of their work and the power of their thought give us all a sense of the possible and of the necessary and the work of doing justice.

This is a project that really lies at the heart of the law school’s mission. It expresses our best hopes and also our professional calling. We could not be more proud or more honored than to have Judge Baltasar Garzón Real here as this afternoon’s speaker in the Gates series and we are most grateful that he has come. His record as a champion of right is compelling and his innovations in using the concept of universal jurisdiction as a tool to address crimes against humanity are both instructive and very powerful.

We are students here at the law school of human rights and the work of accountability and reconciliation. Judge Garzón’s presence here among us is important to that work and it will tie our school yet more securely to the international community of human rights. This is a very important event for us and for our mission and again we are just very glad that this is occurring.

And again it’s just grand to have you all here. We want our School of Law to not just be something for lawyers but to really be in service to the public good and to have you all here is a truly splendid thing. And finally just a quick word of thanks to all the people who have worked to make this off smoothly. Michelle Storms of the Gates Public Interest Law program and all the people who work closely with her. So thank you one and all members of the Law School staff and of the university community for having made this such a success. And now I’d like to call to the podium to introduce our featured speaker Judge Garzón Real. Tony.

Tony Geist:

Thank you Greg. Good evening, as Greg said my name is Tony Geist and the chair of the division of Spanish and Portuguese here at the University of
Washington. I’m thrilled to see such a huge turnout for Judge Garzón. He’s an extraordinary person. It will be an extraordinary evening. Before we go any further let me ask you to please to turn off your cell phones now and you can take pictures but please no flash so shut-off the flash on your cameras. Judge Garzón will be taking questions after his talk in fact he intends to shorten his talk because what he really likes is the give and take of the dialogue from the audience. And we’ll be taking questions in two forms.

There are note cards with pencils at all the desks. You can write a question and helpers in the room will pick those up, give them to me and then I can present them to the judge or we’ll also take questions from the floor after the talk as well. So it’s on behalf of the College of Arts and Sciences I’m very pleased to welcome you all here tonight. As Greg did I’d like to thank our sponsors who include many departments and programs at the University of Washington. Most particularly the Department of History with its Hanower Fund which has really made this evening possible. We’re also very honored to be partnering with the School of Law and with the Gates Public Service Law program.

We are very committed to reaching out across the campus to breaking down the divisions between our different areas of expertise that have much more in common then we frequently recognize. Tonight’s lecture is part of a linked film and lecture series called “Lives, History, Memory: the Spanish Civil War 70 years after”. I believe there are fliers outside that you can pick up on the way out which will list the other events as well. And I’d like to particularly thank my colleagues Gladys Young, Susan Glen, Mark Jenkins, Lisa Jackson Chabeta, and Michelle Storms from the School of Law specifically Gates Public Service Law program for their hard work and vision without which this event would not be taking place tonight.

Baltasar Garzón is one of the six investigating judges for Spain’s national court. His function is to investigate the cases that are signed to him by the court, gathering evidence, and evaluating whether the case should be brought to trial. He does not actually try the cases himself. Garzón rose to prominence as an international figure with his indictment of the leaders of the former Chilean military junta including particularly dictator Augusto Pinochet on charges of genocide, terrorism, and torture during the 1973 to 1990 dictatorship in that country. Garzón has also played a key role in indicting suspected Basque terrorists and has brought suit for corruption against the Partido Popular the PP one of Spain’s two main political parties.

In 2008 he brought charges against the Franco regime for crimes against humanity and the following year in 2009 ordered the exhumation of mass graves from Spain’s bloody civil war of 1936 to 1939. It is estimated that roughly 115,000 bodies victims of that war lie in unmarked graves to this day in Spain. When Franco died in 1975 after nearly four decades of iron-fisted rule Spain made a bloodless transition from dictatorship to democracy. One of the things that made that transition possible was what is known as the Pact of Silence which took juridical form in the 1977 Law of Amnesty which forgave all crimes committed under the dictatorship.

When Judge Garzón last year ordered the unearthing of the mass graves he reasoned that crimes against humanity took precedence over a national amnesty law. The
extreme right in Spain soon brought suit against Garzón challenging his authority and demanding [0:07:50] that he be removed from office. Less than 10 days ago the Spanish Supreme Court rejected his appeal that the case be dismissed and he may soon [0:08:00] be on trial. In a recent column in Spain’s leading daily “El Pais” Julian Cassanova stated that the suit against Garzón [0:08:10] is the greatest threat to Spanish democracy since Franco’s death nearly 30 years ago.

We are especially honored that Judge Garzón has come to Seattle [0:08:20] under these circumstances. I’m particularly proud of this visit for Judge Garzón is one of the people I most admire. His passionate and relentless [0:08:30] pursuit of justice and human rights, his conviction that amnesty must never mean amnesia, is an inspiration for people throughout the world. Please [0:08:40] join me in welcoming Judge Baltasar Garzón. [0:08:50] [0:09:00] [0:09:10]

Judge Garzón:

Good afternoon. I’ll try and speak slowly so the [0:09:20] translator won’t have too much trouble with me. I’d like to thank the School of Law and Anthony Geist [0:09:30] for the invitation that I was given a long time ago now to be here this afternoon with all of you [0:09:40] in my first time here in Seattle. This afternoon we’re going to reflect [0:09:50] a bit on some questions that may seem to some, probably not to the ones present here, [0:10:00] but to many that they aren’t relevant questions. That they aren’t questions [0:10:10] that take us to the actuality of the urgent global economic crisis.

[0:10:20] But I think that to talk about human rights, to talk of impunity, still in the [0:10:30] 21st century is something current, necessary, and something [0:10:40] that hits our democratic consciences. When it’s about [0:10:50] tackling the most horrible crimes that have been committed in the world and that are still committed. [0:11:00] Crimes against humanity, crimes of genocide, war crimes. [0:11:10] Something curious happens, something that calls attention and it’s that there is a large part of the [0:11:20] global society, a large part of leaders that justify these type of crimes. [0:11:30] It seems a contradiction that being the gravest crimes they are the ones treated [0:11:40] with the most complacency.

And the ones that are always set with the [0:11:50] most impunity through pardon laws, amnesty laws, reprieves, [0:12:00] etc. And for that it’s enough to look back [0:12:10] and to see how from Chile to Mexico, [0:12:20] from South Africa to Spain, from Spain to China, [0:12:30] passing through other countries in certain moments of their recent history [0:12:40] this same phenomenon has occurred. We’ve faced a decision [0:12:50] that’s sometimes difficult to opt to forget or for [0:13:00] the demand of penal responsibility. Central to the question [0:13:10] for me there is something fundamental that is forgotten a lot of times, and it’s [0:13:20] the issue of the victims.

If the 20th century has been characterized by anything [0:13:30] apart from being the most violent century in humanity, although I don’t know if this one is going to exceed it, has been because [0:13:40] a universal concept has formed of the victim. Since the [0:13:50] Nuremberg trials of 1945 and as a consequence of the [0:14:00] tradition that from the beginning of the century was forming itself in international humanitarian law [0:14:10] until today that it has acquired that universal conscience that because of the level [0:14:20] of the crimes the victims weren’t just immediate, the dead, [0:14:30] the disappeared, their families, the tortured, but any person in any part of the world. [0:14:40] So if the crime is committed in Spain or the United States or in any other
place [0:14:50] the victims are the direct ones but also the French, or the ones from Colombia, or from Uganda [0:15:00] as an example.

This is important to understand the following concept that has been also fundamental [0:15:10] in the last years in the last decade of the 20th century, and it’s been the formation [0:15:20] of the concept of universal penal justice, or universal jurisdiction. [0:15:30] So those crimes that by their nature of being horrendous crimes, crimes [0:15:40] against humanity, independent of the place where they have been committed, and the nationality of the victims [0:15:50] there’s an obligation on the part of all the democratic states of prosecuting [0:16:00] those crimes to the point of where if it’s not done, any other country, [0:16:10] any other judicial system should do it.

And that concept of universal [0:16:20] penal justice is fundamental because it is the last refuge [0:16:30] for the fight against impunity. In the international arena you also know [0:16:40] that in that very important last decade of the 20th century for the first time [0:16:50] international criminal courts were formed to judge genocidal crimes [0:17:00] and crimes against humanity in the ex-Yugoslavia, and Bosnia, and Rwanda. [0:17:10] And special courts like in Sierra Leone or like in Cambodia to prosecute [0:17:20] the genocide of the Khmer Rouge of Pol Pot, or Indonesia, or East Timor. [0:17:30] And also maybe the most important act the [0:17:40] approval of the Rome Statute that created [0:17:50] International Criminal Court.

This is the system broadly speaking of [0:18:00] international justice, international criminal justice. In the beginning universal justice is [0:18:10] there for everything that doesn’t fit in that system of international criminal justice for those [0:18:20] countries that haven’t ratified the statute. For those acts that are before [0:18:30] 2002 which is when the said statute came into effect. [0:18:40] And for all those that bring us here together. [0:18:50] In every country like I said before the question of investigation, [0:19:00] prosecuting, sanctioning, and penalizing this type of crimes [0:19:10] has had clearly defined phases. In the first place, the [0:19:20] self-protection of the regime that produces them, dictatorships [0:19:30] during, and immediately after committing these acts and finishing its period [0:19:40] has dictated systematically certain norms for its protection afterward [0:19:50] so that the advent of a democratic regime doesn’t look back. [0:20:00]

They’ve established norms for pardon, official oblivion imposed, [0:20:10] they’ve undertaken to erase the people’s collective and individual memory. [0:20:20] They’ve even prosecuted those that have tried to clarify [0:20:30] what they’ve done or to investigate those acts. I could put my own personal example, [0:20:40] probably later in the debate this might come out. Because I was investigating those crimes [0:20:50] I’m being investigated. For saying that the Spanish amnesty law shouldn’t apply [0:21:00] to crimes against humanity I’m being investigated. For saying [0:21:10] that the crimes committed during the Spanish Civil War and the years after of [0:21:20] Franquismo, illegal detentions, the forced disappearance of people to this day [0:21:30] I’m being investigated. But I’m not even original enough to be the only one. [0:21:40]

Unfortunately if I were the only one I’d draw a lot of attention, exotic, like my country, [0:21:50] and that be it. But no there have been other cases. I remember a case of a [0:22:00] colleague in Peru in 1995. A valiant judge who tried to not apply [0:22:10] the amnesty laws of self-amnesty by Fujimori and she was prosecuted, investigated, [0:22:20] expelled, and she even had to leave her country for her own safety. [22:30]
Later on March 14th, 2001 the Inter-American Court of Human Rights declared null the amnesty laws in Peru. In the Barrios Altos case and La Cantuta two massacres done by the Colina group and aided by the dictator Fujimori who after fleeing and having been turned in through extradition has been judged and convicted for these acts.

That’s one case of the many that there are. Judge friends of mine from Guatemala who’ve dared recently to make those investigations and break the cloak of impunity that the dictator Ríos Montt who is still protected parliamentary immunity. They’ve also been persecuted although today those barriers have also eased, and that the possibility that the genocide of 200,000 citizens of Mayan ethnicity can mainly be seen as objects of investigation and sanction, and later I will make a reference on the importance that international action can have in helping investigations in other countries.

In Chile the Judge Guzman Tapia who investigated Augusto Pinochet simultaneously with the investigation we were doing in Spain also was prosecuted for not applying the amnesty laws and he was even close to being tried and his professional career was shortened. In Argentina there were prosecutors like that also like my good friend Hugo Marc Cañón prosecutor from Bahía Blanca that didn’t apply the pardon laws, and to the pardoned that Carlos Menem in 1989 approved and they were also prosecuted and many others. Finally on July 14th, 2005 the Argentine Supreme Court annulled the Obedience Laws and finally the Impunity Laws. Today there are more than 600 open cases against military and civilians and some religious people as the authors of crimes against humanity.

So we see that in one regard that in an immediate way the impunity laws are taken on or are allowed and with the passing of time they are studied again and in many cases annulled. Why? Why does this happen? It’s understandable that immediately after an authoritarian period of a dictatorship and with the change to a democratic system the line is very weak. The institutions, the strength of the institutions is very fragile and it probably has the justification of not applying those norms immediately because a regression can result. That’s what happened in Argentina.

Taking the example again of the Ibero-American country. When in 1985 and after realizing an exemplary exercise of how after immediately after the ending of the dictatorship in December, 1983 they prosecuted and put on trial the principal individuals responsible for the Argentinean military juntas and they were convicted. But in 1985 the president of the Republic of Argentina had to acknowledge the need to allow the approval and sign Laws of Obedience of Life and period. And he affirmed that he did it using a figure very close to reality when Raul Alfonsin said, ‘I do it with a gun pointed at my stomach.’ It’s been 30 years and the crimes are being investigated.

Today there’s a second moment and it’s that in the transition there tends to be a mix of a transitional justice that develops and there’s an extenuating penal response or an alternative search for penal justice. That’s the principal case for the named truth commissions, memory commissions, reconciliation commissions, etc. But there’s an error when it’s about
substituting the response of the penal justice for these type of commissions. There’s a very important resolution in the Inter-American Human Rights Commission of December 22nd, 1999. In the case of the massacre of the Jesuits in El Salvador. Spanish Jesuits and Salvadorians. The Inter-American Human Rights Commission establishes that in no case do the truth commissions, the reparation commissions exclude the actions by the justice, but it warns it, and makes it necessary.

The correct interpretation except for the case of South Africa that also had judicial responses in many cases, is the confluence of the non-judicial reparation system and the judicial reparation and the penal justice. There are more current examples: Colombia, there is the called Law of Justice and Peace of June, 2005. It’s a very controversial law. At the moment it has helped for the demobilization of 36,000 paramilitaries and members of the FARC at about 24,000 and 11,000 each approximately respectively. This law establishes some penal sanctions, the maximum is eight years of prison, and it establishes an obligation to tell the truth. Of confessing the massacres and if that confession is incorrect or its proven incomplete the benefit of less years in jail is lost, and the regular system is applied that carries with it sentences of up to 60 years in jail.

But as you can see in the transitional justice systems there is a response, more or less large balance between the penal response and the reparation response. But what happens in other systems that includes the Spanish system is that transitional justice didn’t exist. There was a political transition from the dictatorship to the democracy, and there was a norm of an amnesty law in 1977 before the democratic constitution that established the impossibility of prosecuting the crimes of political intentions. Watch out here because it’s what we say in my land the crux of the matter. Here is the real point of inflection. What is understood by crimes of political intention?

Any crime committed before or during the era of the dictatorship, or those crimes that the opposition of the regime was judged pursued and persecuted for political reasons or opinion, of assembly, of association or including more or less violent opposition to the regime? Independent of how you respond to this question we should turn to when it’s about crimes against humanity, or crimes that can be considered crimes against humanity, not only to local legislation, but also international legislation. The one that by application of constitutional precepts in Spain it’s the Article 96 of the Constitution, and also in the Republican Constitution of 1932 they were the Articles 7 and 65 established the obligation of the treaties that Spain belongs to and the obligation of the application of those norms especially when they refer to crimes against international humanitarian law.

Crimes of genocide, war crimes, crimes against peace, crimes against humanity. And what do the treaties tell us? The treaties over the history of the 20th century and since the Martens Clause of 1899 which in Spain was ratified in 1900 in the Hague Conventions later reiterated in the Conventions of 1907. That were used to establish the ability to persecute the crimes of the Armenian genocide in 1915. That were completed with the Treaty of Versailles in 1919. That continued with the Sevres Treaty of 1921.
the Declaration of Paris of 1928. That passed on to the laws established at the [0:38:10] Nuremberg Trials and Tokyo. Laws that established that [0:38:20] the scope of the application of the jurisdiction of the trial extended [0:38:30] back until January 30th, 1933.

Someone could say [0:38:40] they’re applying retroactively and that’s impossible in penal rights. What the Nuremberg Trial [0:38:50] in principle no crime without the international axis was the one who governed [0:39:00] in other words no crime is possible if it isn’t established within the international legislation. And that international legislation [0:39:10] that had been forming since 1899 until that moment is precisely [0:39:20] what gave the Nuremberg Trial coverage to dictate its principles, its seven principles of Nuremberg [0:39:30] in which all the subsequent international legislation had been forming [0:39:40] along the same line. So if we analyze the dates we have [0:39:50] that Spain ratifies in 1900 and enters this bloc of countries that are affirming this international legislation. [0:40:00] We get to the constitution of 1932 where the validity is established [0:40:10] and the preferred application of the international treaties.

We continue [0:40:20] with the alleged crimes that in the current definition would qualify as crimes against humanity [0:40:30] so they are committed in the context of those crimes that were already defined in [0:40:40] the international legislation as crimes against humanity. Denomination that appears for the first time in the Nuremberg Trial [0:40:50] and that continues as continual or permanent crimes [0:41:00] until today. And later I will say why it’s that way, or why I think it’s that way, [0:41:10] Following that evolution of international legislation there are some fundamental norms [0:41:20] that all of you that are interested in this subject know. The Pact of Civil and Political Rights of December, 1966. [0:41:30] The declaration against torture of ’74, or ’75 I think. [0:41:40]


Because of all these norms and [0:42:40] because of the analysis of them the crimes in which from the power or organizations protected [0:42:50] by the authoritarian or democratic power just the same, that are committed against citizens [0:43:00] in the forms of massive killings, extrajudicial executions, [0:43:10] summary executions, torture, illegal detentions, enforced disappearances [0:43:20] of people, when they’re realized in a systematic way against certain sectors [0:43:30] of the population or with a general character, and of course genocide when this is the case these type of crimes [0:43:40] according to the norms that I have previously cited, and to not make too heavy the discussion I avoid [0:43:50] the articles, can’t have ever the characteristic of political crime or political intention. [0:44:00]

And also they are excluded from any norm of amnesty or [0:44:10] general pardon. That is the base that supports all of these [0:44:20] resolutions that I’ve cited that are complemented infinitely more with [0:44:30] judgments from the Human Rights Inter-American Court and I’ve mentioned the one of Barrio Altos [0:44:40], the international crime court for the ex-Yugoslavia, the Frunhidla case of 1998 [0:44:50] is the most
paradigmatic but not the only one, the European court of Human Rights [0:45:00], and an infinite amount of judgments. Almost all of them referring to Turkey about [0:45:10] the disappearance of persons, but also with respect to other countries. Judgments from the special court [0:45:20] of Sierra Leone already mentioned. And like that successively.

The cases Papon for example [0:45:30] vs. France, Stutler vs. Germany, a series of judgments that like I say were very [0:45:40] broad where systematically it’s established that first [0:45:50] an impartial investigation has to intervene and it has to be independent of the judicial authority of the judge [0:46:00] so that a possible amnesty can be established or forgiveness. [0:46:10] In Spain for example after the Spanish Constitution the general pardons and amnesty [0:46:20] are prohibited constitutionally. Why did I say that [0:46:30] crimes committed in 1936, ’37, and successive years can [0:46:40] still be valid in 2010? Many people can say look [0:46:50] although this happened this way none of the responsible are alive, [0:47:00] therefore if none of the responsible are alive it can’t be investigated. [0:47:10]

The response is varied but it’s subject to legal debate. [0:47:20] Any criminal investigation has as its objective to determine the crime, [0:47:30] the investigation of the possibly responsible, and reparation to the victims. [0:47:40] An absolutely positivist stance says what I had previously affirmed that if the responsible are not alive it can’t be investigated. [0:47:50] A stance more in accordance with the international rules of comprehensive protection [0:48:00] for the victims, in accordance with the principles of the United Nations of the fight [0:48:10] against impunity, and the protection of the victims of April, 2005 that impose [0:48:20] or establish the right of the victims to an effective recourse to an impartial investigation and a [0:48:30] comprehensive reparation in which is included the penal response [0:48:40] and indicate that possibly those criminal acts have to be investigated.

That’s on one aspect, [0:48:50] on another they are crimes with a permanent character, continual. What does this mean? [0:49:00] It means, and all the international jurisprudence agrees that when it’s about crimes [0:49:10] of forced disappearance of persons, of illegal detentions without knowing about them again [0:49:20] what has happened to the victim, it can’t be permitted to fall into the presumption of failure, [0:49:30] to the victims, or to the relatives, instead it’s an obligation of the state [0:49:40] and those that were responsible of the disappearance who are obligated [0:49:50] to investigate, establish, and discover where those people or their bodies are, [0:50:00] and to guarantee their recovery.

Not only to [0:50:10] guarantee the rights of the victims, but also because it constitutes essential evidence for the [0:50:20] criminal investigation. Because until that moment doesn’t arrive the crime continues to be committed. [0:50:30] And that’s another one of the arguments for which along with the ones previously mentioned about amnesty laws [0:50:40] that doesn’t fit as a political crime when it’s against humanity if it keeps on being committed [0:50:50] after the amnesty law is in effect since it is [0:51:00] in effect it isn’t applicable. The crime gets renewed, it keeps getting committed, and since [0:51:10] the norm is in effect it is also prosecutable.

Definitely [0:51:20] with this reflection what is manifested is that all [0:51:30] this issue that is decontextualized and not relevant brings us [0:51:40] to the point that the whole field internationally speaking [0:51:50] agrees that these type of acts these type of crimes can’t be forgotten, [0:52:00] can’t fall under the category of forgotten acts. [0:52:10]
Because while the victims aren’t compensated in their right there exists the obligation to compensate them. But also in the Spanish case one of the objectives of the investigation that was raised weren’t only the fallen victims in the Civil War. I’m not going to pick sides. Victims are victims and in any case it’s the obligation of the state to compensate them.

What happens is some were compensated during 40 years and for others it was impossible for them to have access to that compensation for obvious reasons. But there are acts that are known like the lost children of Franquismo. A number of several thousand of people, of children of a young age that were apparently according to the data and documents separated sometimes by legal methods and other times by illegal methods from mother, family, and all contact from their biological family was interrupted because it was considered that the influence of that family environment was highly harmful to the new ideology of the victorious regime of the Civil War.

Women, mothers, that were imprisoned and that were later executed or that later recovered their liberty in many cases their new born children, or children that were born in prison were given to adoption or separated from their family and in many cases were never able to recover them. Or the reunion after arduous investigations has happened years after. The last one was practically one week ago. People who had a different identity and haven’t reunited with brothers, sisters until many years after. That was another one of the points of the investigation. And also that investigation compels the Council of Europe in its decision of April 2005 where it calls attention to Spain and tells it that it needs to investigate this case.

Also United Nations Committee on Human Rights in its resolution of October 27th, 2008 warns Spain that it should repeal the amnesty law. These cases are of tremendous relevance. Okay, I’m going to conclude this part and then we can enter the discussion, and I’ll respond to whatever questions you may have. To summarize all of this I would say that the universal conscience that has been forming along the last decade of the 20th century and the first of the 21st century has shown the need that the norms that regulate international humanitarian rights and human rights isn’t something outdated, nor is it something that shouldn’t be in the agendas of those that govern, but the complete opposite.

Currently we’re seeing applications of the contrary on a permanent basis. To follow the margins of legality, to impose as the only limit the will of the person governing at that time, without following the norms that prohibit the type of acts like torture in detention centers without subjection to legality, the existence of secret jails, that have a specific article in the United Nations Convention of Enforced Disappearance of Peoples of 2006 that prohibiting this exactly and the circumstances that still, that acts that are still open in so many countries imposing and demanding that the universal victim be the center of attention and protection as the weakest part in these type of acts.

It doesn’t mean taking not even one guarantee from those responsible, the more guarantees the better. As an example I’ll give you the terrorist issue, as you know there are two visions, one is to eliminate rights and to consider this as a combat, or a
war. [0:59:20] Another is to consider terrorism as a criminal act and that it should be
investigated as such a criminal act. [0:59:30] We are in this moment, historically it’s been
a couple of years that these two stances [0:59:40] struggle with each other. I can tell you
that in Spain’s case, and here you’ll permit me [0:59:50] to say something positive, Spain
has many positive things, but in others… [1:00:00] Spain has been fighting terrorism for
40 years and most recently [1:00:10] it also suffered the impact of jihadist terrorism,

Despite this large massacre in which 191 people died [1:00:30] by the bombs placed on
four trains in Madrid and one more [1:00:40] when the seven people possibly directly
involved sacrificed themselves blowing themselves up [1:00:50] in an apartment in a
Madrid locale. Despite this tremendous impact and the [1:01:00] thousand more dead by
terrorist actions [1:01:10] of autonomous organizations the law that authorizes the
[1:01:20] investigation, prosecution, and the judgment of terrorist crimes hasn’t been
modified. And the effectiveness [1:01:30] I assure you is very high. Including [1:01:40]
since 2006 we applied a protocol with even greater control [1:01:50] of detention in
terrorism cases. The detention is filmed, the assistance of a family doctor [1:02:00] is
allowed, at all times until the judge receives the person there is a control. [1:02:10]

And with that what we’ve been able to obtain on one part that the torture complaints have
practically [1:02:20] disappeared, and that the effectiveness of the police and judicial
actions have increased. [1:02:30] And I assure you when I initiated, we initiated some
colleagues and I this new phase [1:02:40] some media weren’t favorable to us said
[1:02:50] that we were going to destroy the fight against terrorism, and it hasn’t been that
way, it’s been the complete opposite. Also, the rights [1:03:00] from my point of view
are elementary to face terror and any other sphere [1:03:10] that I’ve spoken to you about
this afternoon and that forms part of that community, in that global village that I like
[1:03:20] to call universal but of human rights. Thank you. [1:03:30] [1:03:40]

Tony Geist:

Judge Garzón would be happy to take questions [1:03:50] from the floor and I don’t
know if there are any written down. [1:04:00] [1:04:10] I’ll read in Spanish will you
translate? How many cases [1:04:20] of the mothers who had children in the prisons were
by rape on the part of the military during Franquismo? [1:04:30]

Judge Garzón:

There isn’t an investigation that has been developed in that aspect. There were some
cases, there were some studies [1:04:40] done, but I have to say, that because the
investigation was paralyzed [1:04:50] by the decision of the court to this day there isn’t
any investigation. The case is pending [1:05:00] on the decision of the Supreme Court if
the judgments or the corresponding judicial organs should do it, [1:05:10] and there is
also a case that is being raised to the Constitutional Court and the European Court of
Human Rights, but [1:05:20] my response is that there aren’t statistics that there are cases
recorded by documents through declarations [1:05:30] of women during that period and
various book but there isn’t an established statistic.

In reality there isn’t a statistic of anything [1:05:40] because the first official retelling of
victims that we can say has been done was the one made in the investigation [1:05:50]
that I was doing during the limited time that that took place and [1:06:00] the designated
experts calculated in between 136,00 and 152,00 victims of Franquismo. It’s what there is, there isn’t anything deeper.

**Female Audience**

Member #1: It’s an honor to have you here. Thank you. I’m going to ask this question in English. Tony maybe you can translate. What do we say to our children, to our teenagers, why does the work you’re doing, but why does any of this really matter for them? These are events that happened 70 years ago. Why should they care, why should this be important in their lives in our modernity? If you’re talking to a teenager now how would you answer that?

**Judge Garzón:**

One day when this investigation was ongoing in Spain and it was known the magnitude of such, my youngest daughter that was 19 at the time, now she’s 20. No she was 18 it was in 2008. 18 and who obviously didn’t follow the debates of Spanish justice asked me, ‘Father why has this caused such a stir with this story if at its core it is about where the grandparents, the parents are buried?’ and I think we should all agree with that. I don’t understand why they oppose, why they criticize that the remains be searched for. To me I don’t care, this was related to a headline ‘This Judge wants to open all the graves of Spain’ and so she said I don’t care about seeing open graves because with that the loved ones return to being with their own and they have a place to remember them. That was a response that caught my attention because it indicated that the youth that haven’t even lived the dictatorship, but have been born in democracy still worry about the issue. And it’s all the more stronger in Argentina for example, the phenomenon has occurred that the grandchildren, the associations of grandchildren of the disappeared are the most belligerent. It has happened along with the distancing from the victim, of mothers, Plaza de Mayo for example, grandmothers from Plaza de Mayo, now it’s the grandchildren, they are the most belligerent that there be justice, in demanding responsibility. Maybe it has to do with the fact that we all have a right to know what has happened to our loved ones.

To measure the pain, and measure the memory is very difficult. It’s something individual and to erase it officially is a historic error that has always failed. You cannot impose oblivion by decree. Because if wounds aren’t properly cleaned they reappear again and again. The question is how to solve the problem. Because before there was a lack of those responsible, but to this day in Spain there are still those responsible who are alive. What happened was that the investigation was stopped but there are those alive. And Spain for example is now investigating three responsible from the German SS for genocide or crimes against humanity with respect to Spanish Republicans killed and tortured in Mauthausen in 1944. Of those three people at least two are in the United States and they are 93 and 96-years-old. And they are or will demand extradition. In Italy not long ago in the case of Alfonso Mardentinas there have been convictions and he is serving his sentence who is 95-years-old. And in Germany recently also. So what is the relevance situation of these cases? The relevance is that it never stops being relevant. They are crimes that don’t expire. They are crimes that will always be there
attacking humanity. [1:12:10] Ask generations of Armenians for example if they’ve forgotten the Armenian genocide? [1:12:20] That which Turkey wants to deny so much. Or ask the thousands of Tibetans [1:12:30] if because the genocide happened in 1959 but there are still people without liberty since then [1:12:40] in Chinese prisons.

Ask them if they think that that genocide is relevant that [1:12:50] the Chinese authorities deny, and deny and also almost obligate the representative of Tibet [1:13:00] to leave through the back door in the White House for example. At being received and it’s also a success that he be received but they’ve quickly [1:13:10] called the North American ambassador to talk to him for that reception or interview. [1:13:20] It’s impossible to control the pain and the memory and how it renews generation after generation [1:13:30] because there hasn’t been a response. That’s the key.

When I started the Argentinean case on [1:13:40] March 28th, 1996 I’ll never forget when three women one younger, and two older with their [1:13:50] white handkerchiefs wrapped on their heads they were grandmothers and mothers from Plaza de Mayo and they came to see me at my office [1:14:00] and I received them and they thanked me and I told them that they didn’t have to thank me it was my obligation, and they said no we’re thanking you for receiving us [1:14:10] and that for the first time we are being paid attention to for our demand of justice. Maybe that’s the [1:14:20] response, later it can be conviction or absolution. The important thing is that there be a response [1:14:30] from there the same when the body is recovered or the loved one you begin to reconstruct life. [1:14:40] [1:14:50]

**Female Audience**

Member #2: Mr. Garzón I wanted to ask you about the recent decision by the Department of Justice regarding you and Bibee and [1:15:00] the officials in the Bush administration finding professional misconduct rather than [1:15:10] prosecuting for war crimes and crimes against humanity. They claimed powers on behalf of the president in a time of war. [1:15:20] I personally would like to say that I want the people of Spain and the world community how hard we worked in Washington to impeach [1:15:30] Bush and Cheney and Bibee who now sits in the 9th Circuit Court of Appeals here in Seattle and I wanted to ask you now that the Department [1:15:40] of Justice has handed down this decision just saying that there was oversight problems, or professional misconduct instead of criminal misconduct what happens now? [1:15:50] And I want to thank you in advance for all of your work prosecuting the Bush officials. [1:16:00] [1:16:10] [1:16:20]

**Judge Garzón:**

I’m giving the translator some time to rest. [1:16:30] I’m going to respond but I’m going to respond in some aspects generically out of necessity [1:16:40] because I’m currently moving forward an investigation over possible tortures in Guantanamo. [1:16:50] Also, the Spanish Law, and here in Seattle prohibits me from speaking [1:17:00] on the cases I’m working on when they are in process. What [1:17:10] happened in Guantanamo and the norms or instructions [1:17:20] or directions given in order to pressure individuals without their liberty [1:17:30] or investigative techniques that have been attempted to been justified as such [1:17:40] and according to the Convention against torture, mistreatment, inhumane treatment, or degrading [1:17:50] they are clearly punishable within that agreement.
If a country has the convention ratified it should prosecute those type of crimes and if they aren’t prosecuted there can be a country that does it because the Convention demands it as such. The principle that or you judge or you hand over. If there is a person who these acts are attributed to there’s an obligation that they be judged. The case that you asked me about I don’t know it very well. I’ve read in the press that there’s been an exculpation of two lawyers and that an assistant to the attorney general has decided that the conduct was reprehensible but not punishable criminally. Well it’s an interpretation that would have to be looked at to see what have been the causes and the reasons for that conclusion to be reached that I think in the report from a month before were different.

If they perceived responsibility and one month later they haven’t. Well I think that if it’s been accredited that these people had participation in the elaboration or development of those practices then in the frame of the Convention there’d be responsibility. It’s something that needs to be investigated here and if it isn’t it could be somewhere else as long as that country recognizes and has ratified the Convention against Torture. And that’s applicable to secret prisons or other prisons like Bagram or others similar in Afghanistan, or Iraq, or another place in the world where they could exist.

**Tony Geist:**

We’re going to take one last question which I’m going to read from one of the cards that was handed in then we’ll invite you to continue the conversation on a more informal level at the reception that’s to follow in room 115 just down the hall. The question is to what point does the responsibility lie on the elements of Franco’s regime that have integrated in the new democratic legitimacy during the transition?

**Judge Garzón:**

That question if you permit me I’m going to decline to answer. Not because I don’t have a response but because I shouldn’t do it keeping in mind that the case is still open. And so I can’t talk about it.

[End of Audio]

[Duration 1:21:52]