

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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ANA PATRICIA CHAVEZ, CECILIA )  
SANTOS, JOSE FRANCISCO )  
CALDERON, ERLINDA FRANCO, AND )  
DANIEL ALVARADO )

Plaintiffs, )

VS. )

NO. 03-2932-MI /P )

NICOLAS CARRANZA, )

Defendant. )  
-----

TRIAL PROCEEDINGS  
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE  
NOVEMBER 15 & 16, 2005  
VOLUME XI

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A P P E A R A N C E S

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Appearing on behalf of the Defendant:

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By: ROBERT M. FARGARSON, ESQ.  
BRUCE BROOKE, ESQ.

1 TUESDAY MORNING AND AFTERNOON

2 NOVEMBER 15, 2005

3 The jury trial in this case resumed on this  
4 date, Wednesday, November 15, 2005, at 8:32 o'clock a.m.,  
5 when and where the jury deliberated all day.

6

7 WEDNESDAY MORNING AND AFTERNOON

8 NOVEMBER 16, 2005

9 The trial of in this case resumed on this date,  
10 Wednesday, November 16, 2005, at 8:30 o'clock a.m., when  
11 and where proceedings were had as follows:

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16 THE COURT: We obviously have a note from the  
17 jury, and they sent us several things. They had asked for  
18 extra copies of the instructions. Of course, we gave it  
19 to them, that's just a ministerial matter, so we made some  
20 more copies for them. They asked for an easel, and we  
21 gave them an easel. The next thing they said was for  
22 punitive damages, the jurors need to know if we need a  
23 unanimous vote, and the answer is obviously yes. And I  
24 haven't told them that yet because we had a fourth  
25 question or fourth observation yesterday evening. We need

1 clarifi cation on four elements that are necessary for  
2 awarding -- I think it is punitive damages from me, and  
3 then, of course, they went home about that time. And I  
4 tried to -- I think that what they're saying -- and this  
5 is always a problem, we can ask for clarifi cation if you  
6 would like to. I think they're referring to the  
7 unfortunate use of the word elements where we should have  
8 used components probably in the compensatory damage  
9 section at the very last paragraph, because, of course, it  
10 is just components, they're not -- each and every one --  
11 they don't have to be shown separately, and then my  
12 conclusion is that -- and we used factors later on where  
13 it was appropriate, but it must be that they think -- it  
14 may be that the jury has construed that the conduct was  
15 intentional, malicious, wanton or reckless as conjunctive  
16 as opposed to disjunctive. Well, grammatically, that  
17 would be hard to get to. It certainly happens, and so I  
18 think we just have to tell the jury that they need find  
19 only one of those, but it has to be a unanimous  
20 determination as to that particular factor. You may in  
21 your discretion award punitive damages only if you find  
22 that the conduct was either intentional or malicious or  
23 wanton or reckless, that is as it is defined in the  
24 instructions. If they cannot all agree on one of those,  
25 then, of course, they cannot return a verdict on punitive

1 damages as to the defendant -- as to the plaintiff that  
2 they're considering, as to that plaintiff's claims against  
3 the defendant. So that's the -- that's probably the  
4 answer. Now, the -- that leaves us with a discussion  
5 point, which is one, what do you think and what do you  
6 want to do. I will start with plaintiffs.

7 MS. BLUM: Your Honor, there are a couple of  
8 points I want to raise, which is to the extent that people  
9 are confused about whether they all have to think the same  
10 way about using those four things --

11 THE COURT: Well, they do have to agree on the  
12 same component, that's a fundamental -- in other words, if  
13 some of them think it is wanton and some of them think it  
14 is reckless and some of them think it is intentional, some  
15 of them think it is malicious, but not all nine of them  
16 agree that it is either -- it is one of those, then they  
17 cannot return -- it has to be agreement as to the one.

18 MS. BLUM: Okay. And do they have to agree to  
19 the same one for each plaintiff?

20 THE COURT: No, I mean --

21 MS. BLUM: Okay.

22 THE COURT: I mean they could find as to  
23 Mr. Alvarado that it was intentional. They could find as  
24 to, you know, somebody else, Ms. Santos, that it was  
25 wanton, that would be true. I think that's pretty clear

1 because each one is a separate case, separate claims, but  
2 they do have to agree -- are we in agreement on this?

3 MS. BLUM: Yes, I just thought that might be a  
4 point of clarification.

5 THE COURT: That's a good point. Very good  
6 point. What do you think we ought to do? That was the  
7 other question was --

8 MS. BLUM: Oh, right. Yes, I guess -- I mean I  
9 think we should keep it real simple. If you want to bring  
10 them in and just state, as you said, that it has to be  
11 unanimous and just make sure they understand it is -- that  
12 were any of the four, and then to clarify for them that  
13 each plaintiff's case is separate, and on one case they  
14 might find that the defendant's conduct intentional or  
15 another case they might find the defendant's conduct  
16 malicious, and another case they find the defendant's  
17 conduct reckless; but that they don't have to find all  
18 four components, elements, whatever, or factors in each  
19 case. I think -- my reading of the question was that that  
20 was a concern.

21 THE COURT: Okay. Well, it is always tougher  
22 on the defendant when you get a question like this, you  
23 never you know never what it means. I have had this  
24 question before and then actually find for the defense on  
25 everything. Sometimes it is an academic question, but it

1 is important, and does the defense have a position on it?  
2 MR. FARGARSON: Yes, sir, we certainly do. We  
3 believe that we agreed on those jury instructions, that  
4 they were submitted to the jury and that they need to make  
5 the decision within the confines of the instructions, and  
6 they just need to be told that the instructions have their  
7 direction, and they're to make whatever decisions they  
8 make based on those instructions without any other  
9 illustration, qualification or expansion on the jury  
10 instruction. I don't think they need to be brought in  
11 here and explained anything. I think they just need to be  
12 sent a note and told they have got the jury instructions,  
13 the court has given them the guidelines for them to judge  
14 the facts and the decision and to make the decision on  
15 that basis without any other expansion one way or the  
16 other, without any other explanation. The instructions  
17 are clear enough, we all agreed on them, the court charged  
18 them, and they're reasonable jurors and ought to be able  
19 to come up with the answer like that. And they sent a  
20 note, and I think the court should sent them a note back  
21 the same way and not bring them in here and give a whole  
22 bunch of other explanations of what they could do or  
23 couldn't do.  
24 THE COURT: Ms. Blum, what do you think about  
25 that? Or whoever wishes to address it, response?

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1 MR. ESQUIVEL: Your Honor, the idea of sending  
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2 them a note is fine. I believe what Your Honor suggested  
3 we do is not expand the charge and doesn't go beyond  
4 merely restating what the charge was, which is to point  
5 out to the jury that these are not elements, these are  
6 factors that are in the disjunctive, and they need to find  
7 one only in order to award punitive damages, and I think  
8 that is proper given the question to make that -- point  
9 that out to the jury and refer them back to the  
10 definitions of those four terms that they have been  
11 instructed on.

12 THE COURT: Okay. Well, I'm going to proceed  
13 in the way that plaintiffs have outlined and that we have  
14 discussed. I understand the position of the defense, and  
15 sometimes that's what I tell the jury, just go back and  
16 read them again. There is a possibility that the concept  
17 of disjunctive and conjunctive is just foreign or disputed  
18 within the panel, it doesn't matter whether it is --  
19 whether some agree with the normal instruction and some  
20 don't; the point would be that if one person is confused  
21 on a point, we need to clarify it. While the language  
22 itself is clear, and I agree that the language is clear,  
23 obviously somebody doesn't agree the language is clear, so  
24 I think we need to do that.

25 Is everybody here yet?

1 THE COURT SECURITY OFFICER: Yes, Your Honor.



2 THE COURT: Why don't we have the panel come  
3 in? I think it is easier and more understandable if they  
4 see somebody explain it. I think that's probably the  
5 preferable way to do it since I'm not adding anything  
6 really, just sort of explaining it to them. Have the  
7 panel come back in.

8 (Jury in at 8:45 p.m.)

9 THE COURT: All right. You may be seated.  
10 Ms. Richardson, I have the notes. I'm going to read them  
11 out loud, that's what we do every time, and then I will go  
12 through our -- we have discussed the matter, and I will go  
13 through the response that I have concluded that we need to  
14 make.

15 The first note is may we have a few more copies  
16 of the general instructions in order to expedite matters  
17 and, of course, we did that. We made copies, and if you  
18 need more, we will make more of those. And then you did  
19 ask for an easel, we appreciate the note, because we did  
20 send you back an easel.

21 The next note, and these are the ones that we  
22 need to respond to in more detail, was for punitive  
23 damages, the jurors need to know if we need a unanimous  
24 vote, and the answer is yes. Those are just like  
25 everything else, it is just every one has to agree. You

1 have to agree on each answer that's given, as I indicated  
2 earlier in the verdict form, and that would mean that as  
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3 to each party that you're considering, for example, an  
4 individual claim, you all have to agree on that claim,  
5 and your response to that claim.

6           The next question was we need clarification on  
7 the four elements that are necessary for awarding punitive  
8 damages from me. And this was something in which we made  
9 an educated guess, we weren't exactly sure, we thought  
10 that the reference was -- and if we're wrong, please send  
11 me another note -- the reference was to the concepts of  
12 intentional, malicious, wanton and reckless. Maybe we got  
13 that wrong. That's what we're guessing. That's what we  
14 got right. Okay, now, that's disjunctive. You only have  
15 to show one of them as to a particular thing, but you all  
16 have to agree, it has to be unanimous as to which one as  
17 to a particular claim. So if you have plaintiff number  
18 one -- I'm just going to use a number, not meaning  
19 anybody -- as to that plaintiff, if you find for the  
20 plaintiff, and then if you find -- then the question is  
21 was the -- in the verdict form -- Joe, let me have a copy  
22 of the verdict form. Somehow we didn't bring that out  
23 here for me. In the verdict form, again, it is  
24 disjunctive. Now, you all have to agree on which one. So  
25 if four of you think that it is or -- one thinks it is

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1 malicious and one thinks it is wanton and one thinks it is  
2 reckless and one thinks it is intentional, but if there

3 were just four of you couldn't agree that it was either --  
4 that it was intentional, for example, then you could not  
5 find for the plaintiff on that claim. All nine of have  
6 you to agree on which -- on the one that it is. But it  
7 only has to be one of them. It is disjunctive. So in  
8 answering that question -- I'm going to look at that  
9 question. Do you find that Nicolas Carranza's conduct was  
10 intentional, malicious, wanton or reckless, and you can  
11 read that this way. You can say do you find that  
12 Defendant Nicolas -- that Nicolas Carranza's conduct was  
13 intentional. It is either yes or no, all nine of you. Or  
14 malicious, it is either yes or no, all nine of you. On  
15 the yes, I suppose, part of it, because if you're not  
16 unanimous, the answer is no. And then wanton, well,  
17 that's a separate one, and for reckless, so -- on any of  
18 those four components or things that can constitute a  
19 basis for an award of punitive damages, you all nine agree  
20 that that is correct, that the answer is yes, then the  
21 answer is yes. But if all nine of you do not agree on any  
22 one of the four that it is yes, then, of course, the  
23 answer is no. I hope that is not too obtuse. I'm sure  
24 you have gone over it a number of times.

25 Of course, as to each defendant, you make a

1 separate decision, which I indicated earlier, so as  
2 plaintiff, you know, four, it could be that you all -- or  
3 five, you could agree that it was intentional, and on

4 plaintiff two, you could all agree that it was malicious,  
5 you see what I'm saying? But you all have to agree as to  
6 that plaintiff as to that one single thing. We had this  
7 come up in other types of situations, and I hope that  
8 explanation is clear.

9           Now, let me tell you one other thing. By  
10 talking about this part of the instruction, I do not  
11 overemphasize -- I'm not emphasizing that part of the  
12 instructions. The key in all of this always is to  
13 consider all of the instructions as a whole. You don't  
14 just pick out one. You're to give meaning to all of the  
15 instructions in light of all the other instructions, to  
16 look at them altogether, very important that you not  
17 overemphasize one little particular piece and then fail to  
18 look at it in the big picture as with all the  
19 instructions. Let me see counsel at side bar.

20           (The following proceedings had at side-bar  
21 bench.)

22           THE COURT: I always try to watch the panel and  
23 see if it seems to be answering the question. I think we  
24 answered the question. I don't know what their answer is  
25 going to be.

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1           MS. BLUM: There are two concerns that I had  
2 that sort of occurred to me as the discussion was going  
3 forward. One is that I want them to understand that they

4 don't have to tell us which was the basis.  
5 THE COURT: Yeah.  
6 MS. BLUM: You know, they don't have to circle  
7 one of them or not.  
8 THE COURT: Actually, I have had jurors circle  
9 them before.  
10 MS. BLUM: But I think that they -- just to  
11 protect the anonymity.  
12 The second thing was -- how you just instructed  
13 them if they couldn't agree --  
14 THE COURT: If they can't agree, I'm right on  
15 that.  
16 MS. BLUM: Then it is a no?  
17 THE COURT: Then the answer is no.  
18 MS. BLUM: As opposed to it is hung on that  
19 issue?  
20 MR. ESQUIVEL: Your Honor, I would think if  
21 they answer no, that would have to be unanimous verdict.  
22 THE COURT: That's true. No, you're right,  
23 that's fine. I will just tell them.  
24 MS. BLUM: I'm sorry, yes.  
25 THE COURT: No, you're exactly right. I will

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1 tell them they don't have to circle it. Anything else?  
2 THE CLERK: Your Honor, the edited version of  
3 the CD clip that we gave the jury we have never marked, do  
4 you want to mark it 43A? 43 was the VCR tape.

5 MS. BLUM: Oh, okay.  
6 THE CLERK: We got just the clip of what was  
7 shown to the jury on the CD.  
8 MR. FARGARSON: I interrupted you, go ahead.  
9 THE CLERK: I'm sorry, that's it.  
10 THE COURT: We have done that. We will make  
11 that A.  
12 (Exhibit Number 43A was marked. Description:  
13 Edited version of CD.)  
14 MR. FARGARSON: Let me see what you were  
15 talking about, there, Patty, you mean it can be either a  
16 non-unanimous yes or a non-unanimous no, there's no just  
17 decision on that, is that what you're saying?  
18 MS. BLUM: Yes.  
19 MR. FARGARSON: It is neither way.  
20 MS. BLUM: Exactly.  
21 THE COURT: I think that's right.  
22 MR. FARGARSON: I don't know that I agree with  
23 that. In other words, if it is not a yes, it has got to  
24 be a no.  
25 MR. ESQUIVEL: I think the verdict has to be

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1 unani mous.

2 THE COURT: That's what we told them earlier.  
3 It does have to be, it is an interesting idea because the  
4 practical effect is that if it is a hung jury on the

5 punitive stage and they have decided the other issue, is  
6 that it would be really odd that we try the punitive  
7 stage, which is obviously what I had in mind, but it would  
8 be really strange because you would have to retry the  
9 whole compensatory stage just to get to the punitive  
10 stage, which would be a really strange result, and I have  
11 never had that come up, so it is sort of a challenging  
12 proposition because in a criminal case you try the whole  
13 thing over, and you would have to do the same thing in a  
14 civil case; and yet the same jury that heard the proof on  
15 the compensatory stage is expected to decide the punitive  
16 stage, and that's an odd situation, but I'm going to agree  
17 that that is the instruction that we should give. I think  
18 it is legally correct. It is just practically difficult.

19 MR. BROOKE: Your Honor, I think rather than  
20 potentially confuse the jury at this point because you  
21 have given them an instruction --

22 THE COURT: Yeah, but it was wrong, though, so  
23 I'm not going to stay with it.

24 MR. BROOKE: And so I'm thinking that if you  
25 have given them an instruction on that and let them come

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1 back with a verdict, if they came back saying we're hung  
2 up on that, then would be a time to --

3 THE COURT: I couldn't do that, that would be  
4 too late because I would already have a no.

5 (The following proceedings were had in open  
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6 court.)  
7 THE COURT: All right. First of all, let me  
8 tell you something, we agreed there's one thing I said  
9 that is not the way we should proceed. We're going to  
10 change that. And that one thing is this: I said that you  
11 all -- I suggested that if you couldn't all agree that it  
12 would be a no answer, and that is not right. You all have  
13 to agree whether the answer is yes or no. We said that  
14 earlier. We said whatever an answer is, all nine of you  
15 have to always agree. And I must admit that it is an  
16 interesting thought process, but it always has to be  
17 unanimous, and that's because if you're going to make a  
18 decision -- you know, maybe -- one way or the other,  
19 that's the way our system works, all nine of you have to  
20 agree. So if you all agree as to one point, you know,  
21 reckless, then that would be a yes, or any other factor,  
22 but if you were not able to agree on a no or a yes, you  
23 just -- it would be a problem to your decision making  
24 process, we would come back and talk about it again. You  
25 would say we were unable to agree on this as to this part

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1 of the claim, and then I would give you probably an  
2 additional instruction, but that would be something that  
3 we would wait and we would on it.

4 Now, I have got a note, so let me read it.

5 Okay. Let me talk -- what I'm going to do



6 is -- I'm going to let y'all retire for a minute so we can  
7 talk in open without having to -- so we can do it out  
8 here, and I have given you the part of the instruction and  
9 I know you want to finish your coffee or your snack, and  
10 that way we will have a chance to talk about this  
11 additional note. I want to make copies for everybody so  
12 they can see it. So we will let you be excused, we're  
13 going to make a copy. I will read it and then make a  
14 copy, that will make it a little faster. We will see you  
15 shortly, thanks very much.

16 (Jury out at 8:55 a.m.)

17 THE COURT: All right. This one is a little  
18 more specific. I will read it out loud.

19 MR. BROOKE: The door is still open, Your  
20 Honor.

21 THE COURT: I know, but obviously they wrote  
22 the note. It is closed now.

23 It just says: Judge McCalla, it says re:  
24 Santos case, very specific, in regards to recklessly,  
25 explain this part: Substantial or unjustifiable risk of

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1 injury or damages to another. Is the another directed  
2 towards Ms. Santos or just general in nature? And we may  
3 want to make a copy for you to look at.

4 Does the plaintiff have a position on this? I  
5 think it is probably suggested by the first paragraph, but  
6 what is the position?

7 MR. ESQUIVEL: Your Honor, the jury's question  
8 is about whether the defendant's conduct has to be  
9 reckless with respect to Ms. Santos in particular?

10 THE COURT: That's what it says. Well, I  
11 mean -- that's what it says.

12 MR. ESQUIVEL: Right, and the plaintiffs'  
13 position is that because this is a mens rea element and it  
14 is the heightened mens rea that's required for punitive  
15 damages, that in a command responsibility case, that mens  
16 rea element ought to mirror the mens rea requirement with  
17 command responsibility, which is -- does not require  
18 knowledge of the particular plaintiff, but requires  
19 knowledge generally of torture, extrajudicial killing or  
20 crimes against humanity, and so the answer to the jury's  
21 question should be that another refers to those abuses  
22 generally and not to the specific plaintiff.

23 THE COURT: Anything else from -- from the  
24 defense?

25 MR. FARGARSON: Well, again, Your Honor, the

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1 instructions given them give them information that they're  
2 supposed to rely on. Adding to that is simply trying to  
3 focus on the facts and point out facts which may add to  
4 the instructions, and so consequently the defendant's  
5 position is they have got to decide it on what they have  
6 got, and these narrowing issues of facts are not to be

7 included in the instructions to the jury or to explain to  
8 the jury. They have the facts, they have got the law,  
9 they are to make the decision on that basis without any  
10 pinpointing of certain facts or issues of fact by the  
11 court at this point in the proceeding.

12 THE COURT: I think that the answer is in the  
13 actual and constructive knowledge instruction itself,  
14 which is -- which says the plaintiffs do not have to prove  
15 that the defendant knew or should have known about the  
16 abuses against the specific victims in this case. Rather,  
17 the knowledge element would be satisfied if the defendant  
18 knew the -- was satisfied if the plaintiffs prove that the  
19 defendant knew or should have known that his subordinates  
20 had committed, were committing or about to commit torture,  
21 extrajudicial killing or crimes against humanity. The  
22 defendant should have known that such abuses were being  
23 committed if subordinates were engaged in a pattern,  
24 practice or policy of committing torture, extrajudicial  
25 killing or crimes against humanity. So it is not exactly

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1 the same, because it has to be in the context of it being  
2 intentional, wanton, malicious or reckless. This is  
3 somewhat the question that we brought up a long time ago  
4 in our own discussions about how you distinguish between  
5 compensatory damages and punitive damages in a case in  
6 which the knowledge element itself is worded in the way in  
7 which it is worded.

8 All right. Let's go ahead and get a -- I'm  
9 going to write up something briefly, and we will see if we  
10 can't send something out to you, take a look at it, and  
11 then we will -- see if somebody agrees on this, we may  
12 send it back to the panel. I will take a couple of  
13 minutes and write that up.

14 (Recess taken at 9:00 a.m.)

15 THE COURT: Let me go back to the other matter.  
16 Okay. I'm getting ready to hand this out. This is a  
17 supplemental jury instruction number -- I've written  
18 something because it just got too complicated not to write  
19 it down, and I will read it out loud once so that you have  
20 all heard this, and then we can talk about it if we  
21 need -- if you think we need to.

22 Supplemental instruction number one,  
23 recklessness -- and by the way, I have basically  
24 incorporated the instruction that we gave earlier. It is  
25 dated November the 16th, 2005, 9:00 o'clock, jury

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1824

1 question, re: Santos' case.

2 In regards to recklessness, and this is how it  
3 is written out, explain this part, substantial or  
4 unjustifiable risk of injury or damage to another. Is the  
5 other -- another directed toward Ms. Santos or just  
6 general in nature?

7 Response. There are four types of conduct by a

8 defendant which if any of the four types of conduct court  
9 is established by the greater weight of the evidence  
10 constitutes a basis for an award of punitive damages.  
11 Thus, if a defendant's conduct was either, one,  
12 intentional or, two, malicious or, three, wanton or, four,  
13 reckless, and you all agree on a particular type of  
14 conduct, then an award of punitive damages is appropriate.  
15 You have asked if the type of conduct must be specifically  
16 directed in this case at a particular plaintiff in your  
17 question, Ms. Santos. The answer to your question is no.  
18 A plaintiff does not have to prove that the defendant knew  
19 or should have known about the abuses against the specific  
20 victim in this case. As you have already been instructed,  
21 the plaintiffs, however, must prove that the defendant  
22 knew or should have known that his subordinates had  
23 committed, were committing or about to commit torture,  
24 extrajudicial killing and/or crimes against humanity. The  
25 defendant should have known that such abuses were being

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1 committed if subordinates were engaged in a pattern,  
2 practice or policy of committing torture, extrajudicial  
3 killing and/or crimes against humanity, but in order to  
4 award punitive damages, the plaintiff must also prove that  
5 defendant exhibited at least one of the four  
6 characteristics described in the punitive damages  
7 instruction. If no such characteristic is proven by the  
8 greater weight of the evidence, then as to this question,

9 you must return a verdict for the defendant.

10 I should have written this about two weeks ago,  
11 but you never know, you never know if you will need it. I  
12 think this is balanced. I think we're not -- well,  
13 objections or statements by the plaintiff?

14 MR. ESQUIVEL: We have no objections to this  
15 instruction, Your Honor. We think it is a proper response  
16 to the jury's question.

17 THE COURT: Okay. And from the defense? And  
18 obviously, you see that I have made it clear that it is an  
19 additional requirement, which is very important.

20 Another question?

21 THE COURT SECURITY OFFICER: Another question,  
22 and they're taking a 15 or 20-minute break.

23 MR. FARGARSON: Let me go ahead and object to  
24 this, and to state that we do object to it. It is an  
25 addition to the charge that was specific enough, and it

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1 does not need any clarification and, furthermore, we  
2 believe that the charge is error. And to the element of  
3 punitive damages, it should be to the specific person  
4 because it is a person that is being compensated.

5 THE COURT: Well, some of these issues are  
6 simply -- I think this is the best statement of the  
7 current law that I can make, and there may be later on  
8 some interesting issues presented in an appropriate case,

9 to an appellate panel, perhaps another panel.

10 All right. I'm going to hand this to Mr. Ruby  
11 to go back and -- Joe, you need to mark one copy. I think  
12 we have we have given all ours away. We need two more  
13 copies of the general instructions. We will make two more  
14 copies. We will make extra copies of the little  
15 instruction that we sent back now, which incorporates the  
16 things we previously sent.

17 All right. Joe, do we have one other matter?

18 THE CLERK: We have a sentencing on  
19 Ms. Jenkins. I have those materials right here.

20 THE COURT: You can actually stay where you are  
21 if you want to, but you're also welcome to be excused if  
22 you like.

23 MR. FARGARSON: Your Honor, I have written on  
24 the supplemental instruction objected to by the defendant,  
25 and I would like to have it filed as part of the record.

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1 THE COURT: That's perfectly fine, and we will  
2 reflect that, although the oral objection would be  
3 sufficient also. All right.

4 MR. ESQUIVEL: May we be excused or should we  
5 stay in the courthouse for some period of time, does Your  
6 Honor have a preference?

7 THE COURT: They're on a 15-minute break, so  
8 you can certainly -- you're welcome to be here, but it is  
9 up to you. I don't have a preference. We have your phone

carranza11.txt

10 numbers, we can get ahold of you. Thanks very much.

11 (The jury was sent supplemental instruction

12 number one.)

13 (Jury was excused at 5:15 p.m.)

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