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U N R E D A C T E D

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

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

Plaintiffs,)

VS.)

NICOLAS CARRANZA,)

Defendant.)

NO. 03-2932-MI /P

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
NOVEMBER 18, 2005
VOLUME XIII

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A P P E A R A N C E S

Appearing on behalf of the Plaintiffs:

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

1 FRIDAY MORNING & AFTERNOON

2 NOVEMBER 18, 2005

3 The jury trial in this case resumed on this,
4 Friday, November 18, 2005, at 9:00 o'clock a.m., when and
5 where evidence was introduced and proceedings were had as
6 follows:

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10 THE COURT: I think you have two things. I
11 think you have a supplemental instruction already. Has
12 that been handed to you?

13 THE CLERK: Yes, Your Honor.

14 THE COURT: That is supplemental instruction
15 number three, partial verdicts. And then you have a draft
16 set of papers that just go with the punitive stage if we
17 get to it, which I don't know that we will, but we have to
18 agree on that at about this time if we think there's any
19 real possibility that we might get to it. The
20 supplemental instruction would read, and I will read it
21 out loud because not everybody can see it.

22 I received the following question from the
23 jury: Will not finding a verdict yes or no in one case
24 impact the other cases in any way.

25 The answer to your question is no. Let me

1 explain further. You do not have to return a verdict on
2 all of the verdict forms or all of the questions on the
3 verdict forms. If you have reached unanimous agreement on
4 one or more of the entire verdict forms or on part of the
5 questions on one or more of the verdict forms, you may
6 return a verdict on those questions as to which you have
7 reached unanimous agreement. You do not have to do this,
8 but it is -- but you can do this, if you wish. If you do
9 return a verdict on some -- as to some of the parties or
10 as to some of the questions as to a particular party now,
11 that verdict will be final. You will not be able to
12 change your minds later on about it. Your other option is
13 to wait until the end of your deliberations and return all
14 of the verdicts then. The choice is yours. I'm going to
15 add an S to that. You may now resume your deliberations.
16 Anything else we need to correct? You do have this form.
17 The question that was received, you should have a copy of.
18 Joe, let's go ahead and make that one change in the back.

19 The question, I'll read it out loud was:

20 Judge McCalla -- and this was received at the
21 very end of the day yesterday which you should have gotten
22 a copy of already. The jurors need a response to a very
23 important question. Will not finding a verdict yes or no
24 in one case impact the other cases in any way? Of course,
25 the answer to that is no. I mean they're all essentially

1 separate, and you can find one case and not find the
2 others, it is no problem at all, but I needed to explain a
3 little more about it. I need to tell them it is a final
4 verdict, they can't change it, so forth and like that.

5 Anything else?

6 MR. BROOKE: Your Honor, I believe if we were
7 to just say the answer to your question is no --

8 THE COURT: This is from the standard Sixth
9 Circuit instructions.

10 MR. BROOKE: It seems to be confusing. If you
11 were to just say the answer is no, and each case is a
12 separate case and leave it at that.

13 THE COURT: It is just not a complete answer
14 because what if they said no, and then later on they
15 said -- they brought a verdict form back and they changed
16 their mind, it would be a problem for the court. You have
17 to tell them it is final. I'm not saying that it is the
18 only one way to do it, but I would tend to go with the
19 pattern jury instruction, because it has been designed to
20 avoid a problem. I mean like you say, there's not just
21 one way to do it, but when a bunch of judges tell you it
22 is the best way to do it, you usually do it that way.

23 MR. ESQUIVEL: Your Honor, I believe from the
24 plaintiffs' perspective, the supplemental instruction
25 number three is acceptable, but does the court intend if

1 the jury comes back with a unanimous verdict on certain
2 cases or parts of cases without a unanimous verdict, does
3 the court intend to instruct the jury to go back and
4 deliberate further?

5 THE COURT: That's when you ask them this sort
6 in sequence -- and we're going to give this out to you
7 again. What usually happens in these cases is that you
8 give the partial verdict instruction, the jury goes back.
9 They have been deliberating now since Monday evening,
10 although Monday evening was very brief, and this is
11 Friday, so usually what occurs at that point in time is
12 that they go back, they usually return a partial verdict,
13 not always, and usually pretty quickly because they have
14 resolved those issues, and then they -- and we see where
15 we are. If we have got, you know, everybody decided
16 except one person and maybe everybody decided except one
17 question on one person, then the normal inquiry of the
18 panel is do you believe with further deliberation that the
19 jury would be able to reach a verdict? And I can ask that
20 question of everybody. It sort of depends on how much is
21 not decided. If a lot is not decided, you usually give
22 the modified Allen type charge where you tell them all to
23 consider whether you are in the majority or in the
24 minority, you ought to seriously reconsider your position.
25 You give a deadlock jury modified Allen charge. If you

1 have got one question that is not resolved, you usually
2 make the inquiry, and that's something I can't -- you
3 know, I can't know about in advance. You just have to
4 wait and see what the result is. This is happening in
5 cases where we have multiple counts in a criminal case,
6 and for practical purposes, it made a little difference if
7 they addressed the remaining question, so I went directly
8 to the will further deliberation assist you in reaching a
9 verdict, but it doesn't always work that way. If you have
10 got a lot of things that are unresolved, then you give the
11 modified Allen charge. That's what we usually do.

12 Any other questions from anybody else? That is
13 sort of the normal process. Okay. Y'all all look --
14 well, if there is nothing else -- Ms. Blum, what other
15 grammatical corrections do we need to make?

16 MS. BLUM: Well, if you are really asking, I'm
17 sitting here and I'm keep looking over and over again at
18 their question, and I do think that it might be best -- I
19 agree with defendant on this that the answer to the
20 question is no, not finding a verdict in one case does not
21 impact the other cases. Their question is worded a little
22 awkwardly, and so sometimes no -- I still think they might
23 have a question about whether a finding in one case
24 impacts the other case even know I know you're giving them
25 the straightforward answer of how their question was

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1 phrased. I still think it might be best to say the answer
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2 to their question.

3 And the only other -- I didn't know if we were
4 now going to discuss the instruction for the second phase
5 because we really haven't had a chance to review it.

6 THE COURT: That's really so you can start
7 thinking about it. I think we're at that stage where it
8 is going to come up soon or it is never going to come up,
9 and we need to look at the format and see if it looks
10 okay.

11 MS. BLUM: Did you have any thoughts about how
12 you thought we might proceed on the second phase?

13 THE COURT: Yes. Let me finish this. I think
14 your suggestion is a good one, because you will say the
15 answer to your question is no, and there's a comma there.
16 Not finding a no, in quotes, comma -- or the comma is
17 before the closed quote. Not finding a verdict, in
18 parenthesis yes or no, in one case will not impact the
19 other cases in any way. I think that is a good way to put
20 it, because it parallels exactly what they said. So we
21 will -- with that clarification, we will make that change,
22 and then we can send that note back. And while we do
23 that, we will look at the next note.

24 (A note was passed to the court.)

25 THE COURT: We have got a note: Please provide

1 us with seven more jury service questionnaires. And we

2 don't know what the inquiry is because we hadn't give them
3 jury service questionnaires yet. We don't give them until
4 the end, but maybe they found some or something. So that
5 doesn't have anything -- they may indicate they have
6 reached a verdict, I don't know. If you don't mind, Joe,
7 that's an administrative matter, and we will go ask, but
8 don't provide them with the questionnaires yet.

9 I think, Ms. Blum, we're now to that question
10 you asked about what would we do in the event that we do
11 have anybody -- what we did is I went through very
12 quickly -- actually not that quickly, and put together
13 some simple instructions. This is like -- similar to the
14 instructions in every case that we give on punitives if it
15 comes up, and we simply put in language so we can strike
16 language. In other words, if we get one person, let's say
17 that we have it as to Mr. Alvarado -- I will tell you what
18 Joe said, because there were -- there was a folder somehow
19 back there that had some questionnaires in it, which we do
20 as a routine matter, and they said they hadn't filled them
21 out, they just wanted to be ready when they -- so that
22 suggests to me that -- you have as much information as I
23 do, they wanted to be ready in case they needed to fill it
24 out. Have you given them the supplemental instruction?
25 Let's give them that and then --

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1 MR. BROOKE: Do those have your note on there?

2 THE COURT: Nobody showed it to me.
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3 THE CLERK: That is not the one with the
4 change.

5 THE COURT: This looks fine to me and so, Joe,
6 we will go ahead and y'all take a quick look and then we
7 will pass it back.

8 Anything else?

9 MR. ESQUIVEL: On the supplemental
10 instructions, nothing else, that looks fine, Your Honor.

11 THE COURT: All right. Let's go ahead and
12 submit it.

13 All we did was put in strikable language so
14 that as to anybody as to whom we were proceeding, we would
15 be able to leave that in and strike everybody else's
16 language, and we prepared forms for everybody, and we --
17 all I did was take part of the one addition from -- I
18 can't remember if the instruction is in Garcia or which
19 one, and we added in the criteria in making your decision,
20 you must consider the instruction that I have already
21 given you, and also the following -- and we added one
22 criteria to the standard Tennessee instruction, and we are
23 striking the reference to the Tennessee civil instructions
24 because I know it is not a Tennessee question, but it is
25 probably as good a list as any to use, and one was the

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1 reprehensibility of the defendant's conduct which I took
2 from the previous case. The other factors were all

3 factors. I did modify one of the burden shifting punitive
4 instructions that had been given in another case because I
5 didn't think that was appropriate and simply said that
6 they could consider the defendant's net worth, financial
7 condition. I think the burden at all times rests on the
8 plaintiffs, so I did not include that from some other
9 instructions that we used in other cases. I just would
10 like everybody to look at these so that we are prepared,
11 and if anybody has any suggestions, that's fine. And I
12 did notice that perhaps there were some suggestion, if you
13 are ready with those, now I will listen to them.
14 Otherwise, we will simply wait, we may never need these.
15 I do not know if we will. Anybody who wants to make a
16 suggestion, we will try to deal with that at this time.

17 MS. BLUM: Your Honor, if you could give us a
18 couple of minutes to confer.

19 THE COURT: Absolutely. The Federal Bar
20 seminar is actually starting right now, and this is what
21 we anticipated, that's the reason I didn't put myself on
22 the program was I was afraid I would be in and out during
23 the day over here, and I had invited anybody from any
24 office who wanted to spend some time over there so you
25 didn't have to sit around. I will take a break, and I'm

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1 going to walk over there in just a couple of minutes, I
2 have got my phone with me, I can come back in five to ten
3 minutes, and they will call me immediately.

4 Mr. Fargarson, if you need to go -- I understand you need
5 to go, and is Mr. Brooke authorized to handle any
6 additional matters?

7 MR. FARGARSON: Yes.

8 THE COURT: All right. Mr. Brooke, then we
9 will retain you, and thank you very much for everything in
10 the case. We may see you before it is concluded.

11 All right, Joe.

12 THE CLERK: All rise. This honorable court
13 stands in recess.

14 (Recess taken at 8:55 a.m.)

15 (At 11:20 a.m., the following proceedings were
16 had:)

17 THE COURT: We have a note from the jury, and
18 there is one ambiguity in the note, and we probably need
19 to ask Mr. Warren to have them clarify the second line.
20 I'm going to read you the first line of the note and not
21 the second line because it has some issues. Judge
22 McCalla, we, the jury -- we, the jurors, have reached
23 verdicts on four of the five cases. Now, by inference,
24 that would suggest that they have not reached a verdict on
25 the fifth case, but their second line is ambiguous, I do

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1 not know if they have not reached a verdict or if they
2 have a particular kind of verdict and, you know, they're
3 not allowed to tell us the verdict until we have them all

4 here and have the verdict forms, so while I think I should
5 not show you the -- I can show you the sentence, but it is
6 ambiguous. Does anyone have any objection to having
7 Mr. Warren simply step back and ask them to please clarify
8 the second sentence that it is -- we're unclear as to
9 whether they are indicating that they are unable to reach
10 a verdict in the fourth matter, which, of course -- the
11 fifth matter which they can tell us, but they cannot tell
12 us the outcome if they have reached a verdict, they can't
13 tell us if it is yes or no or anything like that. It is
14 an ambiguous sentence. I'm concerned that it might cause
15 confusion if we don't ask them to clarify it.

16 Mr. Esquivel, any problem in asking for a
17 clarification? You can see it is one of these things that
18 we don't know what it means.

19 MR. ESQUIVEL: The plaintiffs have no
20 objection.

21 MR. BROOKE: Your Honor, I would prefer to at
22 least be able to see the sentence.

23 THE COURT: Why don't you come to side bar, and
24 I don't think -- we don't want to alarm anybody by what is
25 probably an error in writing, but I'm not sure.

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1 (The following proceedings had at side-bar
2 bench.)

3 THE COURT: Logically, as you can see, the next
4 sentence would make sense if it said we have no verdict on

5 one case, that is we have failed to reach a verdict, which
6 would be consistent with the first sentence, but by
7 putting the letter A in, we don't know if they're telling
8 us what the verdict is. They shouldn't tell us what the
9 verdict is through a note. I think it is a miswriting,
10 but I don't have any way to know, and I don't want to read
11 that out loud in front of the parties. I think it would
12 be upsetting, and unnecessarily stressful.

13 MR. ESQUIVEL: Thank you very much for taking
14 that into consideration.

15 THE COURT: May I ask Mr. Warren to ask, one,
16 if they have a specific verdict, they need to strike the
17 sentence. If they have simply no verdict, we need to
18 strike through the erroneously included letter? Is it
19 okay to let him do that?

20 MR. BROOKE: Just say that?

21 THE COURT: Right, I mean -- I don't care who
22 does it, but I technically couldn't do it.

23 MS. BLUM: We have no objection at all.

24 THE COURT: Otherwise, it would be very
25 stressful. I think it might be better if you write it for

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1 him and let him read it. That way nothing lost in the
2 transmission communication.

3 MS. BLUM: That's fine.

4 MR. ESQUIVEL: That's fine.

5 THE COURT: Okay. Please clarify the meaning
6 of the second sentence. You cannot tell us in a note what
7 a particular verdict is. Does the second sentence mean
8 you have not reached a verdict as to one case? And that
9 will clarify the answer.

10 MS. BLUM: You just want them orally to tell
11 him?

12 THE COURT: I think they can write down their
13 answer and give it to him. I think that Mr. Brooke's
14 comment is a good one, and they may need to see their
15 note. Now, this will have to be received. I will keep
16 this.

17 THE CLERK: I will give them a copy of that.

18 THE COURT: You can give them this one, that's
19 fine.

20 All right. Thanks very much. We will wait a
21 second.

22 (The following proceedings were had in open
23 court.)

24 (A note was passed to the court.)

25 THE COURT: The notes says: We, the jury, have

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1 reached on four of the five cases. We have not reached a
2 verdict on one of the cases. Signed by Juani ta
3 Richardson, the presiding juror.

4 Ladies and gentlemen, the normal procedure is
5 to allow the jury to return a verdict as to those cases or

6 questions as to which they have reached unanimous
7 agreement. I will then ask each juror do you believe that
8 with additional deliberations you would be able to resolve
9 the remaining matter. Now, I will probably confer with
10 you after I receive the verdict before I begin any
11 questioning. I will certainly give us all that
12 opportunity, because we -- I can't anticipate every
13 possibility, but is that the way in which -- is there any
14 objection from the plaintiffs in proceeding in that way,
15 allowing the jury to return -- I don't think we have -- we
16 certainly have a choice, but I think in consideration of
17 the amount of time the jury has deliberated, we probably
18 should allow them to return a partial verdict. We could
19 always say no, but I think we probably should. What is
20 the thought of Mr. Esquivel?

21 MR. ESQUIVEL: We agree with that, Your Honor,
22 that the jury should return its partial verdict on four of
23 the five cases.

24 THE COURT: And Mr. Brooke?

25 MR. FARGARSON: That's fine.

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1 THE COURT: All right. Well, we will ask the
2 panel to come in, and Ms. Richardson will need to bring
3 the verdict folder with the verdict forms to the podium
4 and I will look at them and then I will have her read out
5 loud those as to which verdict has been reached. And then

6 I will hold out the one, of course, that has not been
7 reached, and that is how we will proceed. I will tell
8 everybody now -- I ask everybody, please, it is a
9 difficult case, and I don't have any idea what the
10 verdicts will be, and it is very important for everybody
11 to just remain very quiet, whatever the result is. It is
12 just a -- it is a case where it is important we maintain
13 decorum.

14 You may bring the panel in.

15 COURT SECURITY OFFICER: Yes, Your Honor.

16 (Jury in at 11:40 a.m.)

17 THE COURT: You may be seated.

18 Ms. Richardson, I'm going to ask a question
19 first, and I'm going to read the note, and then -- if
20 everybody would like to be seated. I have received a note
21 with clarification. I'm going to read the clarifying note
22 to everybody. It says we, the jurors, have reached
23 verdicts on four of the five cases. We have not reached a
24 verdict on one of the cases. It is signed by
25 Ms. Richardson, the presiding juror in the case.

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1 Ms. Richardson, I understand from what the jury
2 is telling me that you would like to return a partial
3 verdict, a verdict on those matters as to which you have
4 reached unanimous agreement, and that that will be the
5 final jury verdict on those matters, and is that correct?

6 JUROR RICHARDSON: That is correct.

7 THE COURT: I'm going to make sure because it
8 has to be everybody, so I know -- Mr. Russell, is that
9 what you wish to do?
10 JUROR RUSSELL: Yes, Your Honor.
11 THE COURT: Ms. Fields, is that what you wish
12 to do?
13 JUROR FIELDS: Yes, Your Honor.
14 THE COURT: Ms. Rooks, is that what you wish to
15 do?
16 JUROR ROOKS: Yes, Your Honor.
17 THE COURT: And Mr. Francis, is that what you
18 wish to do?
19 JUROR FRANCIS: Yes, Your Honor.
20 THE COURT: Ms. Ragsdale, is that what you wish
21 to do?
22 JUROR RAGSDALE: Yes.
23 THE COURT: Ms. Foran, is that what you wish to
24 do?
25 JUROR RICHARDSON: Yes, Your Honor.

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1 THE COURT: Mr. Roby, is that what you wish to
2 do?
3 JUROR ROBY: Yes, Your Honor.
4 THE COURT: And Ms. Minor?
5 JUROR MINOR: Yes, Your Honor.
6 THE COURT: All right. Then I'm going to ask

7 you to hand the folder to me, and I'm going to -- I'm just
8 going to look to see that they're dated and signed and
9 filled out, I'm not going to read them. I will then hand
10 them back.

11 I'm going to reorder them slightly so that
12 they're in order as to the ones that have a verdict
13 entered, and I'm going to hand them back.

14 Ms. Richardson, would you start with verdict
15 form one and read the verdict? And read -- I'm sorry,
16 would you read question one and the jury's answer and so
17 forth?

18 JUROR RICHARDSON: We, the jury -- this is
19 Plaintiff Cecilia Santos?

20 We, the jury, present the following answers to
21 the questions submitted by the court.

22 1. Do you find that Nicolas Carranza is liable
23 under the law of command responsibility for the torture of
24 Plaintiff Cecilia Santos.

25 We said yes.

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1 THE COURT: All right. As to question two,
2 what was your verdict?

3 JUROR RICHARDSON: As to question two, what is
4 the total amount of compensatory damages that should be
5 awarded to the Plaintiff Cecilia Santos for her torture?

6 We said \$500,000.

7 THE COURT: As to question three?
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8 JUROR RICHARDSON: As to question three, do you
9 find that Nicolas Carranza's conduct was intentional,
10 malicious, wanton or reckless?

11 We, the jury, said yes.

12 THE COURT: As to the verdict form number two?

13 JUROR RICHARDSON: Verdict form number two,
14 Plaintiff Jose Francisco Calderon.

15 We, the jury, present the following answers to
16 the questions submitted by the court:

17 1. Do you find that Nicolas Carranza is liable
18 under the law of command responsibility for the
19 extrajudicial killing of Plaintiff Jose Francisco
20 Calderon's father, Paco Calderon?

21 We, the jury, said yes.

22 THE COURT: As to two?

23 JUROR RICHARDSON: As to question number two,
24 do you find that Nicolas Carranza is liable under the law
25 of command responsibility for the torture of Plaintiff

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1 Jose Francisco Calderon?

2 We, the jury, said yes.

3 THE COURT: As to question three?

4 JUROR RICHARDSON: As to three question, what
5 is the total amount of compensatory damages that should be
6 awarded to Plaintiff Jose Francisco Calderon?

7 We, the jury, said \$500,000.

8 THE COURT: As to question four?
9 JUROR RICHARDSON: As to question four, do you
10 find that Nicolas Carranza's conduct was intentional,
11 malicious, wanton or reckless?
12 We, the jury, said yes.
13 THE COURT: As to verdict form number four?
14 JUROR RICHARDSON: Verdict form number four,
15 Plaintiff Erlinda Franco, we, the jury, present the
16 following answers to the questions submitted by the court:
17 1. Do you find that Nicolas Carranza is liable
18 under the law of command responsibility for the
19 extrajudicial killing of Plaintiff Erlinda Franco's
20 husband, Manuel Franco?
21 We, the jury, said yes.
22 THE COURT: As to question two?
23 JUROR RICHARDSON: Question two: Did you find
24 that Nicolas Carranza is liable to Plaintiff Erlinda
25 Franco under the law of command responsibility for crimes

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1 against humani ty?
2 We, the jury, said yes.
3 THE COURT: As to question three?
4 JUROR RICHARDSON: As to question three, what
5 is the total amount of compensatory damages that should be
6 awarded to Plaintiff Erlinda Franco?
7 We, the jury said, \$500,000.
8 THE COURT: As to question four?

9 JUROR RICHARDSON: As to question four, do you
10 find that Nicolas Carranza's conduct was intentional,
11 malicious, wanton or reckless?

12 We, the jury, said yes.

13 THE COURT: As to verdict form number five?

14 JUROR RICHARDSON: As to verdict form number
15 five, Plaintiff Daniel Alvarado.

16 We, the jury, present the following answers to
17 the questions submitted by the court:

18 1. Do you find that Nicolas Carranza is liable
19 under the law of command responsibility for the torture of
20 Plaintiff Daniel Alvarado?

21 We, the jury, said yes.

22 THE COURT: As to question two?

23 JUROR RICHARDSON: Question two: Do you find
24 that Nicolas Carranza is liable to Plaintiff Daniel
25 Alvarado under the law of command responsibility for

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1 crimes against humanity?

2 The answer the jury said is yes.

3 THE COURT: As to question three?

4 JUROR RICHARDSON: Question three: What is the
5 total amount of compensatory damages that should be
6 awarded to Plaintiff Daniel Alvarado?

7 We, the jury, said \$500,000.

8 THE COURT: As to question four?

9 JUROR RICHARDSON: Question four: Do you find
10 that Nicolas Carranza's conduct was intentional,
11 malicious, wanton or reckless?

12 We, the jury, said yes.

13 THE COURT: Would you hand those forms to
14 Mr. Warren at this time, and then I'm going to
15 independently look at the form number three one more time.

16 Ms. Richardson, thank you very much. I'm going
17 to let you return to your seat, and I have another set of
18 questions.

19 JUROR RICHARDSON: Thank you.

20 THE COURT: Let me start with Mr. Russell,
21 because as to the four verdict forms that have been read,
22 I'm going to ask a question of each of you. Mr. Russell,
23 you have heard the reading of the four verdict forms that
24 have been delivered in the court. Is each of those
25 verdicts your verdict?

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1 JUROR RUSSELL: Yes, sir.

2 THE COURT: Ms. Fields, is each of those
3 verdicts your verdict?

4 JUROR FIELDS: Yes, Your Honor.

5 THE COURT: Ms. Rooks, is each of those
6 verdicts your verdict?

7 JUROR ROOKS: Yes, Your Honor.

8 THE COURT: Mr. Francis, is each of those
9 verdicts your verdict?

10 JUROR FRANCIS: Yes, Your Honor.
11 THE COURT: Ms. Ragsdale, is each of those
12 verdicts your verdict?
13 JUROR RAGSDALE: Yes, Your Honor.
14 THE COURT: Ms. Foran, is each of those
15 verdicts your verdict?
16 JUROR FORAN: Yes, Your Honor.
17 THE COURT: And, Ms. Richardson, is each of
18 those verdicts your verdict?
19 JUROR RICHARDSON: Yes, sir.
20 THE COURT: Mr. Roby, is each of those verdicts
21 your verdict?
22 JUROR ROBY: Yes, Your Honor.
23 THE COURT: And, Ms. Minor, is each of those
24 verdicts your verdict?
25 JUROR MINOR: Yes, sir.

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1 THE COURT: Now, let me speak very briefly to
2 the attorneys at side bar, and then I have another
3 question to ask you.

4 (The following proceedings had at side-bar
5 bench.)

6 THE COURT: This form simply has a note on it
7 that says no verdict, and there are no notations as to
8 Ms. Chavez at all.

9 Now, we have received more than one inquiry

10 regarding either the transcript or materials as to
11 Ms. Chavez, and I don't know that there's any other
12 alternative but to ask at this time the question that I
13 posed earlier, which is do you believe that with further
14 deliberations you would be able to reach a verdict as to
15 Ms. Chavez's claim. Any other thoughts in that regard
16 from plaintiffs?

17 MR. ESQUIVEL: No, Your Honor.

18 THE COURT: Any other thoughts from defense?

19 MR. BROOKE: No.

20 THE COURT: We will proceed.

21 (The following proceedings were had in open
22 court.)

23 THE COURT: I need to ask each of you another
24 question, and that is do you think that with additional
25 deliberation you would be able to reach a verdict as to

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1862

1 the claims of Ana Patricia Chavez. Mr. Russell?

2 JUROR RUSSELL: No, Your Honor.

3 THE COURT: Do you think that with additional
4 deliberation, you would be able to reach a verdict as to
5 Ms. Chavez?

6 JUROR RUSSELL: No, Your Honor.

7 THE COURT: Ms. Fields?

8 JUROR FIELDS: No, Your Honor.

9 THE COURT: Ms. Rooks?

10 JUROR ROOKS: No, Your Honor.

11 THE COURT: Mr. Francis?
12 JUROR FRANCIS: Yes, sir.
13 THE COURT: Ms. Ragsdale?
14 JUROR RAGSDALE: No.
15 THE COURT: Ms. Foran?
16 JUROR FORAN: No, Your Honor.
17 THE COURT: Ms. Richardson?
18 JUROR: No, Your Honor.
19 THE COURT: Mr. Roby?
20 JUROR ROBY: No, Your Honor.
21 THE COURT: Ms. Minor?
22 JUROR MINOR: No, Your Honor.
23 THE COURT: Well, I do need to speak with
24 counsel again at side bar.
25 (The following proceedings had at side-bar

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1863

1 bench.)
2 THE COURT: I can ask another question. I can
3 ask Mr. Francis, having heard the response of your fellow
4 jurors, do you still think that with additional
5 deliberation the jury would be able to reach a verdict. I
6 can't really do any more. But sometimes a person doesn't
7 know what the other jurors will say, and having heard what
8 others say, it may affect his view, but this is a
9 difficult area because the law favors the disposition of
10 the case by this panel as to everybody as to the issues

11 that have been presented. The other alternative is to
12 send them back and let them talk some more as to
13 Ms. Chavez's claims. I'm seeking --

14 MS. BLUM: What would you normally do when you
15 have a split in the responses from the jury about the
16 disposition?

17 THE COURT: I have never had a split. I have
18 had plenty of cases in which we have had that question
19 asked.

20 MS. BLUM: He looks pretty dead set that that
21 they could talk more because I just saw them glance at
22 each other, and he's shaking his head yes.

23 THE COURT: Well, the dilemma is that we have
24 another stage of the case to go through. We have some
25 time constraints, and they have been in deliberations

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1864

1 three and a half solid days, and this is substantial
2 deliberation.

3 MS. BLUM: I know, yes.

4 THE COURT: Let me --

5 MR. BROOKE: I believe, Your Honor, it would be
6 inappropriate to address a question to one juror, that
7 that --

8 THE COURT: It might --

9 MR. BROOKE: -- might put pressure on him.

10 THE COURT: No, no, that is exactly the
11 concern, that is always a concern.

12 MR. BROOKE: I think the only thing, Your
13 Honor, that is appropriate to say --

14 THE COURT: Well, both of have you an option
15 here that no one has raised, which is that any of you can
16 move for a mistrial.

17 MR. BROOKE: Which I will move for a mistrial.

18 THE COURT: No one has done that at this time,
19 and the reason would be that they have had a prolonged
20 deliberation, that they have asked for multiple -- they
21 have asked for a lot of information as to Ms. Chavez,
22 although we didn't include a transcript, and clearly that
23 seems to be the focus of the discussion based on the
24 record that we have, and it appears that there is just no
25 possibility of a verdict.

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1 MR. BROOKE: I would ask for a mistrial, Your
2 Honor, based on the fact that the gentleman has indicated
3 publicly in front of all the parties, witnesses, courtroom
4 that he's the odd man out, and so that if he fails to go
5 back and reach a consensus, he would have to yield his
6 position.

7 THE COURT: The other alternative is for me to
8 give the modified Allen charge.

9 MR. BROOKE: Which I think again would do the
10 same thing. He right now has put himself out there as the
11 one man, and for him to do anything but yield, I think is

12 probably --

13 THE COURT: It doesn't necessarily mean that
14 he's the one in the position, he could be the one who
15 thinks that Ms. Chavez should prevail, he should -- there
16 could be three -- it could be divided any way. He could
17 be a person who thinks he will ultimately be persuasive in
18 his argument.

19 MS. BLUM: I don't think it is reflective of
20 people's ultimate positions on the issue.

21 THE COURT: I don't know that it is. I have no
22 idea about that. But the question is do we ask them to
23 deliberate any more in the Chavez matter. You have moved
24 for a mistrial on the basis that they have been
25 deliberating on this for a long time.

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1866

1 MR. BROOKE: Yes.

2 THE COURT: Well, motion, any opposition?

3 MR. BROOKE: The effect would be as to a
4 mistrial as to Ms. Chavez's claim.

5 THE COURT: Then we would go to the punitive
6 stage of the others. I think you have to talk with her.

7 MS. BLUM: With her obviously.

8 THE COURT: I think you ought to talk with her.

9 I'm going to ask the jury to return at -- since
10 there was some question that they might be able to resolve
11 it, to at least discuss the possibility of this case being
12 resolved.

13 THE CLERK: There is one juror who is crying
14 right now, Your Honor.

15 THE COURT: Thank goodness, I don't have my
16 glasses on, I wouldn't have a clue as to who. Ms. Foran.
17 It has been a hard case. This is not an easy case for
18 anybody. Let me let them go back and we will let y'all
19 discuss things. I'm going to let them go to lunch, I
20 think that's a better idea.

21 (The following proceedings were had in open
22 court.)

23 THE COURT: Well, what I need to do is on a --
24 I think I need to let everybody take their lunch break
25 early. I understand lunch is ready for you upstairs, and

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1 they have to discuss a couple of things among themselves.
2 There will be some additional information to be submitted
3 to you when you come back from lunch, and why don't you --
4 I mean do you want to take -- you have been taking an hour
5 for lunch. Why don't you definitely do that, and then we
6 will be in a position to respond to your -- to where we
7 are. We will tell you exactly what we need to do. So
8 thank y'all very much. Remember the case is not resolved,
9 there are some other issues to be resolved. You cannot
10 discuss anything among yourselves. Of course, you're not
11 in deliberations, you're just going to be in lunch, you
12 won't be in deliberations, and we will ask you to be back

13 in the jury room at 1:00 o'clock or 5 after, whatever
14 suits you, y'all have been working hard, and then we will
15 be in a position to address you when you're back. So have
16 a pleasant lunch, and we will see you shortly after 1:00,
17 at which time we should be able to discuss our next step
18 in this matter. Thank you very much.

19 (Jury out at 12:00 p.m.)

20 THE COURT: I'm going to let you be seated and
21 I'm going to take a break in a moment too, because I know
22 you need to have a conversation. And what we were
23 going -- what we're going to do is as to the additional
24 materials that were submitted to you, we will prepare
25 those for four plaintiffs, and I will ask you to be ready

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1868

1 to proceed with that portion of the case at 1:15 or so.
2 Now, I'm not saying we're going to proceed at 1:15, we
3 have got to resolve this other issue first. We either
4 have to have a determination that there should be a
5 mistrial in that matter or I have to give them a
6 supplemental instruction or I have to simply determine
7 that that would all be futile, and I think there's
8 certainly some evidence that might support that. And
9 that -- as I said, we would have to have a mistrial, so
10 that is going to be our approach. Questions before I take
11 lunch?

12 MS. BLUM: The only question was that I had
13 some changes on the jury instructions that you circulated

14 to us on --

15 THE COURT: Oh, absolutely. We do need --

16 MS. BLUM: You want to take those up now?

17 THE COURT: Yes. Let me find my set. Yes, I
18 have it in front of me. And we will change that where it
19 says jury instruction, that will be changed to
20 supplemental jury instruction number four, in all
21 likelihood, since we have had three already, so they're
22 easy to follow and put in order.

23 All right. Yes, ma'am.

24 MS. BLUM: Your Honor, in the supplemental
25 punitive damages instruction, there's no reference back to

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1 the punitive damage instruction that they have already
2 reviewed for purposes of making the determination as to
3 whether the defendant should be subject to punitive
4 damages. And if it is permissible, we would highly
5 recommend inserting into this punitive damage instruction
6 the general punitive damage language that relates to the
7 purposes of punitive damages, which is in the current
8 punitive damages instruction that they have so far
9 reviewed, begins the fourth line, punitive damages are
10 designed to punish a defendant for his wrongful conduct
11 and to deter him and others from committing similar
12 misconducts in the future. In the context of the
13 international law violations, punitive damages may be

14 awarded to punish heinous conduct and to demonstrate that
15 human rights abuses will not be tolerated.

16 THE COURT: Why don't we -- right, why don't we
17 not refer them back, they will have these instructions.
18 Let's make it clear, I thought it was clear earlier.

19 MS. BLUM: I thought it would be clearer to put
20 it in the instruction, but if you would like, it is fine
21 to refer them back to the punitive damages instruction and
22 the general instructions. I would have suggested
23 inserting it right after the opening paragraph you have
24 decided, et cetera, et cetera, then you would insert a new
25 paragraph that starts with punitive damages are designed

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1870

1 to et cetera, and then go on to the considerations for the
2 decision.

3 THE COURT: All right. Any other changes? I
4 mean this is the insert of the punitive -- portion of the
5 punitive damage instruction, so it is only one place, and
6 that's not a bad idea, but I thought I would refer back,
7 but let's see, anything else in the text?

8 MS. BLUM: In terms of the list of relevant
9 considerations, on number three, one of the factors is for
10 the relationship of the parties, I'm concerned that that
11 terminology may confuse them given that this is a command
12 responsibility case. We have various questions about that
13 that have come up in jury instructions about the whole
14 question of sort of the direct connection between the

15 defendant and the plaintiff.

16 THE COURT: I don't think that relationship --
17 this is out of a standard thing in which it could have
18 been that there was a dominant person and a submissive
19 person, so it doesn't really have to do with this type of
20 claim particularly. Punitive come up in all kinds of
21 cases, and this is a generic list. I don't have any
22 problem with removing that, it just doesn't have much --

23 MR. BROOKE: Your Honor, we don't believe that
24 would be appropriate in the consideration when they have
25 to think about intentional, reckless and all that type of

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1871

1 thing. There has to be some causal close linkage in a
2 relationship, we submit, is very appropriate.

3 THE COURT: It doesn't have to be a causal
4 relationship, and that is what Professor Blum is concerned
5 about is it might suggest that there needed to be a causal
6 relationship. Relationship, I think, often may mean if
7 there is a -- well, if there is a sexual harassment case,
8 it is particularly applicable because you end up with
9 these individuals in powerful positions dealing with
10 someone's position who has no power within a corporate or
11 causal structure, and that's not the only way it can be
12 construed, but that's certainly one of the ways it is
13 used, and this doesn't really translate very well here.

14 MS. BLUM: That was my concern, Your Honor.

15 THE COURT: The relationship of the parties, I
16 think, it is prone to some confusion. Anything else?

17 MR. BROOKE: I just want to note our objection
18 to striking the word relationship.

19 THE COURT: Certainly.

20 MS. BLUM: Your Honor, the other thing is
21 number six, seven, eight and nine, the plaintiffs do not
22 intend --

23 THE COURT: If you don't put any proof on, I
24 will take them out.

25 MS. BLUM: We do not intend to put any proof

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1872

1 on.

2 THE COURT: Okay. I mean that's not a problem.
3 I didn't know if you were going to -- if I knew what
4 people were going to do in advance, I wouldn't -- I would
5 be in a another business.

6 MS. BLUM: And lastly, there was, I think, in
7 the instruction that we had suggested, proposed
8 instructions that we had suggested to Your Honor, there is
9 an additional factor to that list which had been used in
10 other Alien Tort Claims Act cases given the purposes of
11 punitive damages, particularly in a command case, which
12 is -- the language was an amount reasonably necessary to
13 deter others from engaging in similar conduct in the
14 future. So it is simply putting into it the factors that
15 they should consider setting an amount that relates to the

16 purposes of punitive damages. I have written out the
17 language if you would like to read it.

18 THE COURT: That's fine, and that is
19 appropriate, and that is often used, so I don't have any
20 problem.

21 MR. BROOKE: Your Honor, we object to that
22 language again.

23 THE COURT: Well, it's similar to the language
24 already in the punitive damage charge which was given
25 which was to deter him and others from committing similar

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1873

1 types of misconduct, which is in the list. It is not
2 something that we haven't given already. You just want it
3 to be included in the list, so it doesn't look like it is
4 excluded somehow?

5 MS. BLUM: Exactly, and that is actually part
6 of the calculation. It is not just sort of a lofty
7 purpose, but, in fact, it is a factor that you should look
8 at when you come up with the factors that are relevant to
9 the calculations.

10 THE COURT: Okay. Well, do you want me to hand
11 me up your notes?

12 MS. BLUM: The thing that I wrote out was my
13 handwritten just saying what I just told you, which I'm
14 happy to give to Mr. Warren.

15 THE COURT: It is an amount to deter?

16 MS. BLUM: Reasonably necessary to deter others
17 from engaging in similar conduct in the future.

18 MR. BROOKE: Your Honor, we object to that,
19 that already is in the other charge that Your Honor has
20 given, and it highlights the deterrence factor.

21 THE COURT: I understand. I'm going to have to
22 overrule that. I think it is a disjunctive and. It is
23 defendant and/or others, isn't that right, from committing
24 similar conduct in the future?

25 MS. BLUM: Absolutely.

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1874

1 THE COURT: All right. I've deleted 6, 7 and
2 8. I have --

3 MS. BLUM: And 9 as well, Your Honor.

4 THE COURT: Well, there's no proof in that
5 area, I would delete it. I don't know if there would be
6 any proof on that or not. Right now, I have no proof in
7 that area. I will delete it, but if something comes up in
8 the proof, I may have to reinsert it. I just don't know
9 the answer on that. I will take it out, because at this
10 point I have no proof, but I mean it would be confusing
11 since there's not any evidence on that point. But these
12 things often come up later, so I don't know the answer.
13 Okay. All right. We will make some changes and run off
14 another set. I do have to walk across the street and
15 participate for a very short period of time in those
16 activities, not very long at all, frankly, and then I will

17 see you all here at 1:00, and we will see what we need to
18 do.

19 MS. BLUM: Thank you, Your Honor.

20 THE CLERK: All rise. This honorable court
21 stands in recess.

22 (Recess taken at 12:15 until 1:00 p.m.)

23 THE COURT: Any other thoughts about how to
24 proceed? I know the plaintiffs have an had an opportunity
25 to wish to oppose the motion of the defendant.

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1 MR. ESQUIVEL: Your Honor, what the plaintiffs
2 would suggest is that the court ask the question that
3 Mr. Brooke suggested to give all the panel members an
4 opportunity to decide whether in light of the other panel
5 member responses they have any different view as to
6 whether they could reach a verdict on Ms. Chavez's claim,
7 and after the jurors are given an opportunity to state
8 their views on that issue, that we then be allowed to
9 confer with the court on the issue of the motion for
10 mistrial.

11 THE COURT: All right.

12 MR. BROOKE: Your Honor, I don't believe that
13 was my suggestion.

14 THE COURT: I hear what you're saying, and I
15 thought the same thing. Your suggestion was that if we
16 ask -- if we ask only Mr. Francis that that would unduly

17 focus on him, and I agree with you. I agree with you.
18 And the counter suggestion is just ask everybody in light
19 of the responses of the other members of the panel, do you
20 believe that with additional deliberation, the jury would
21 be able to reach a verdict as to Ms. Chavez, and I think
22 that's -- as long as we ask everybody, it is probably
23 okay.

24 MR. BROOKE: I think, Your Honor, if we have --
25 if the man has done that publicly, that he's going to feel

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1876

1 compelled to --

2 THE COURT: The other alternative is to bring
3 every juror in singly at the side bar and just ask them.

4 MR. BROOKE: Well, I think that, again, is
5 going to just focus too much pressure after what they have
6 been through in three weeks of this trial.

7 THE COURT: It is one of those things where you
8 let people have an opportunity to relax and reflect a
9 little bit. We probably need to make some inquiry to
10 determine whether or not we have exhausted all of our
11 possibilities. I think that the suggestion by
12 Mr. Esquivel is a reasonable compromise of what we
13 previously discussed, and it would be sort of odd for us
14 not to think that they haven't been talking among
15 themselves about all sorts of things, so I have a feeling
16 that at this stage after this many days of deliberation, I
17 would not think that the effect of the question would be

18 much at all, particularly as opposed to everyone. I'm
19 going to pose that question to everyone and see what they
20 have to say. Have the panel come in.

21 COURT SECURITY OFFICER: Yes, Your Honor.

22 (Jury in at 1:08 p.m.)

23 THE COURT: You may be seated. Ladies and
24 gentlemen, I do need to ask you an additional question,
25 and it is in light of the fact that you have now had an

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1 opportunity to hear -- and I don't really question that
2 perhaps you didn't have that opportunity to contemplate
3 some of these responses before you delivered your verdict,
4 but in light of fact that you have now heard the responses
5 of each of the other panel members to the question that I
6 last asked you, do you, based on those responses, now
7 believe that with additional deliberation the jury might
8 be able to reach a verdict as to Ms. Chavez's claims, and
9 we will start with Mr. Russell, what do you think?

10 JUROR RUSSELL: No, sir.

11 THE COURT: Ms. Fields, what do you think?

12 JUROR FIELDS: Yes.

13 THE COURT: Ms. Rooks, what do you think?

14 JUROR ROOKS: No.

15 THE COURT: Okay. And Mr. Francis?

16 JUROR FRANCIS: Yes.

17 THE COURT: You think yes.

18 And Ms. Ragsdale, what do you think?
19 JUROR RAGSDALE: No.
20 THE COURT: You think no.
21 And Ms. Foran?
22 JUROR FORAN: No.
23 THE COURT: Okay. Ms. Richardson?
24 JUROR RICHARDSON: Yes.
25 THE COURT: Okay. And Mr. Roby?

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1878

1 JUROR ROBY: No.
2 THE COURT: And Ms. Minor?
3 JUROR MINOR: No.
4 THE COURT: Okay. Let me speak briefly with
5 counsel at side bar.
6 (The following proceedings had at side-bar
7 bench.)
8 THE COURT: Basically, I think we have limited
9 options at this point in my view. Any thoughts from the
10 plaintiffs, or from -- the option at this point is to give
11 them the modified Allen charge instruction and just say go
12 back and think about it some more. We really need to do
13 that. That's typically what we would do. I'm going to
14 have to deny the motion for a mistrial at this time and
15 ask them to deliberate some more.
16 Now, sometimes in this process, we do tell them
17 they can still communicate with me, I don't want them to
18 feel like they're held hostages here, and I need to -- I

19 will say, now, you know how to communicate with me, and if
20 after, you know, a reasonable period of time, they are not
21 able to, they will have told us that, but they have some
22 more information in the sense that they -- in the sense
23 that perhaps they can reach a resolution. We should give
24 them that opportunity. That is what the court thinks.
25 Anything else from the plaintiffs?

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1 MS. BLUM: No.

2 THE COURT: Anything else from the defense
3 other than --

4 MR. FARGARSON: What we have done -- just what
5 we have already done. We keep on doing it.

6 THE COURT: That's okay. There is nothing
7 wrong.

8 MR. BROOKE: Is Your Honor going to provide us
9 a copy of the proposed additional instruction?

10 THE COURT: Well, usually, I just read the
11 deadlock jury charge, the 90 -- can you make a copy of it
12 and then we change it a little bit -- I can go back and
13 retype it, it might be better -- well, it is because it
14 changes, you know, this is a civil case and not a criminal
15 case, so it does change a little bit. But they don't have
16 a copy of it. So I will make a copy for you.

17 MR. FARGARSON: Are you going to type it up and
18 just read it?

19 THE COURT: Maybe I ought to type it up and
20 send it back. I feel comfortable doing that. Okay. So
21 I'm going to tell them that I'm going to prepare a
22 supplemental instruction that I will send back to them,
23 and they should receive it in about 10 minutes.

24 MS. BLUM: You're going to allow them to go
25 back in the jury room and you will send it back there?

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1880

1 THE COURT: Right, and we need to -- is Mr.
2 Ruby here? We need the verdict folder, and we can send it
3 on back, and I will tell them I will send then back
4 another instruction very, very shortly. It may be 15
5 minutes. I'm not a very fast typist.

6 MR. ESQUIVEL: Thank you.

7 (The following proceedings were had in open
8 court.)

9 THE COURT: Just as we did before, I'm going to
10 prepare a supplemental instruction, and it will give you
11 some additional guidance in terms of how to proceed. That
12 will be shortly. Also, I'm going to let you go ahead and
13 take the verdict form, which is the one that is
14 unresolved, Mr. Ruby, let you get that folder and retire
15 to resume your deliberations, but you will be getting, as
16 soon as I can type it up, about a three or four paragraph
17 additional instruction. When you get that, of course, I
18 know the practice is to read it out loud so everybody can
19 hear it, and then we will send you some additional copies,

20 if you would like. So we will be glad to do that.

21 Well, ladies and gentlemen, I will allow you to
22 be excused to begin your deliberations. Bear in mind that
23 very shortly, you will receive some deliberations that you
24 will use to help guide you in your deliberations.

25 (Jury out at 1:15 p.m.)

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1 (At 3:50 p.m., the following proceedings were
2 had:)

3 THE COURT: I have a note from the jury. It
4 says:

5 We, the jury, are able to unable to reach a
6 verdict on the case of Ana Patricia Chavez. It is signed
7 by Ms. Richardson. At this point, I will bring the panel
8 back in, I will read the note out loud, and once again, I
9 will ask each do you think with additional deliberation
10 you will be able to reach a verdict. If the answer is no,
11 based on the prior motion of the defense, the court will
12 grant the mistrial. That's how I would proceed. Is this
13 consistent with what everybody understands?

14 MS. BLUM: That sounds fine, Your Honor.

15 MR. BROOKE: Yes, Your Honor.

16 THE COURT: Once I have done that, we would
17 have to be in the position to proceed on the punitive
18 stage. The jury may not understand, although I think
19 everybody here -- all the lawyers have heard me saying

20 that there will be an additional stage. How much
21 additional proof do the plaintiffs expect to present in
22 this matter?

23 MS. BLUM: Your Honor, we don't intend to call
24 any witnesses, but we would like an opportunity for brief
25 argument.

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1882

1 THE COURT: You are allowed a brief amount of
2 reargument in the case. How much time do you think that
3 would take?

4 MS. BLUM: It's about 15 minutes.

5 THE COURT: All right.

6 MS. BLUM: Twenty minutes, at the most.

7 THE COURT: Would the defense present any proof
8 at this stage of the case?

9 MR. FARGARSON: No.

10 THE COURT: Would that amount of limitation on
11 argument be sufficient, can we stay within that limit?

12 MR. FARGARSON: Yes.

13 THE COURT: I do have a panel I'm supposed to
14 be on, we will not worry about that. That's okay. If I'm
15 not there, that will go ahead. The only question is
16 whether we should reserve this until Monday or attempt to
17 proceed this afternoon, and the reason is that it is 4:00
18 o'clock.

19 MS. BLUM: Your Honor, it would be our
20 preference, if we could do it today, and maybe I don't

21 know if they absolutely have to leave at 5:30, if they
22 have a little more time at the end of the day, if they
23 want to.

24 THE COURT: There's a stress issue that you run
25 into, but -- obviously, but let's see what the jury says.

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1883

1 I think at this point we would ask the panel -- we have to
2 be most concerned about being considerate of them.

3 MS. BLUM: Absolutely, absolutely.

4 THE COURT: So I think I would probably ask the
5 panel do you wish to proceed with deliberation today or do
6 you wish to conclude your deliberations on Monday, and
7 they will tell us. I mean if they really are exhausted,
8 they need to tell us they're tired, and I know that's
9 not -- well, that's what we will do.

10 All right. We're ready to bring the panel in.

11 COURT SECURITY OFFICER: Yes, Your Honor.

12 (Jury in at 4:00 p.m.)

13 THE COURT: I have -- you may be seated. Of
14 course, I have received an additional note from
15 Ms. Richardson, and the note reads as follows:

16 We, the jury, are unable to reach a verdict on
17 the Ana Patricia Chavez case. Of course, it is signed by
18 the presiding juror, Ms. Richardson. Now, let me ask,
19 starting with Mr. Russell, Mr. Russell, do you believe
20 with additional deliberation the jury could reach a

21 verdi ct.

22 JUROR RUSSELL: No, si r, Your Honor.

23 THE COURT: Ms. Fi elds, what do you think?

24 JUROR FIELDS: No, si r.

25 THE COURT: Ms. Rooks?

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1 JUROR ROOKS: No, Your Honor.

2 THE COURT: Mr. Franci s?

3 MR. FRANCI S: No, Your Honor.

4 THE COURT: Ms. Ragsdal e?

5 JUROR RAGSDALE: No.

6 THE COURT: Ms. Foran?

7 JUROR FORAN: No, Your Honor.

8 THE COURT: Ms. Ri chardson?

9 JUROR RI CHARDSON: No, si r.

10 THE COURT: Mr. Roby?

11 JUROR ROBY: No, Your Honor.

12 THE COURT: And Ms. Mi nor?

13 JUROR MI NOR: No, si r.

14 THE COURT: As we previ ously di scussed then as

15 to the matter of Ana Patri ci a Chavez versus Ni col as

16 Carranza, the court wi ll decl are a mi stri al .

17 Now, I et me advi se you as to the next stage

18 because I thi nk you al l have been li steni ng carefu lly and

19 are aware there i s one other thi ng that we have to do i n

20 thi s case, and that i s that I have to gi ve you some

21 addi ti onal suppl emental i nstru ctions, and the parti es have

22 an opportunity to present a brief additional argument on
23 the question of the amount of punitive damages, if any,
24 that you, the jury, determine should be awarded in each --
25 as to each of these four individuals as to which you have

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1885

1 indicated a yes to the last question on the verdict form.
2 The parties have indicated to me, and I will now turn to
3 them and ask them in order do you wish to -- that they do
4 not intend on putting additional proof on. Sometimes
5 additional proof is received, but let me ask counsel for
6 the plaintiff, does the plaintiff -- do the plaintiffs
7 intend to present additional proof in this matter?

8 MS. BLUM: No, we do not, Your Honor.

9 THE COURT: And counsel for the defense, does
10 the defendant wish to present additional proof?

11 MR. FARGARSON: No, Your Honor.

12 THE COURT: Does the plaintiff wish to make a
13 final argument? And we agreed upon a time limit in this
14 matter.

15 MS. BLUM: Yes, we would, Your Honor.

16 THE COURT: Ms. Blum, will you be making that
17 argument?

18 MS. BLUM: Yes, I will be.

19 THE COURT: Let me ask, will the defense be
20 making a final argument on this point? And,
21 Mr. Fargarson, will you be making that argument?

22

MR. FARGARSON: Yes.

23

THE COURT: Now, ladies and gentlemen, there's one thing that is obviously important before we go to this next stage, my -- we do have enough time to complete the

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1886

1 arguments, they have agreed that they will be no more than
2 approximately 15 minutes per side, and the additional
3 instructions will take relatively a few minutes. However,
4 the first consideration always is, as you would expect,
5 with the jury, if the jury is so tired that you simply
6 feel that you should go home today and we should conclude
7 this matter on Monday, that is a better way to proceed.
8 It is never a good thing to proceed if people feel that
9 they really do need to stop for the day. But I know you
10 have not had a chance to discuss that among yourselves.
11 It is an administrative question. Does the jury want to
12 caucus on that or do you want -- or do you have a
13 preference? Let me let you be excused to caucus on that
14 question and then advise me.

15

(Jury out at 4:05 p.m.)

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THE COURT: You may be seated. Of course, I'm going to stay here for a moment because I want to be sure that all of you have the supplemental instruction. It has --

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MS. BLUM: Yes, we do, and the plaintiffs have no objection.

THE COURT: I think we have basically approved
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23 everything. Make sure the defense has had a chance to
24 look at it and -- these final instructions are understood
25 to be the ones we will be using.

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1887

1 MR. FARGARSON: It doesn't look like to me like
2 there is any proof at all in the record on 5 and 6.

3 THE COURT: There may not be. That is one
4 reason I asked this.

5 MS. BLUM: Your Honor, 5 is related to the
6 gravamen of the case, so I think it is 6 that we're
7 talking about.

8 THE COURT: It is 6, and I think that I noted
9 there that if the proof was presented, we would -- not
10 presented that we would strike it, and we agree that we
11 would take that out, so I think we will need to renumber
12 that.

13 MR. BROOKE: So 6 --

14 THE COURT: 6 is deleted. And I believe with
15 the deletion of 6, then the instruction will be consistent
16 with what we previously discussed.

17 (A note from the jury was passed to the
18 court.)

19 THE COURT: We, the jury, have decided to
20 continue today with the case. So we will have the panel
21 come back in and hopefully we will have everything ready
22 in sequence.

23

(Jury in at 4:10 p.m.)

24

THE COURT: All right. You may be seated. The

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final -- this folder, I'm going to receive which is not

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1888

1 marked, and -- so this resolves the matter in that portion
2 of the case.

3 Ms. Blum, are you ready to proceed with final
4 arguments on the question regarding punitive damages?

5 MS. BLUM: I am, Your Honor.

6 THE COURT: You may proceed.

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1889

1 MS. BLUM: And I just wanted to indicate that
2 we have a couple of slides that we would like to show the
3 jury.

4 Thank so much for your verdict. I know this
5 has been a long and difficult process for you, but your
6 verdict shows that you have rejected Colonel Carranza's
7 decades long attempts to deny his own responsibility for
8 the repression that occurred under his command. You have
9 rejected his attempt to shift the blame on to others and
10 you have placed the responsibility where it truly belongs,
11 in the hands of Colonel Carranza, and you have recognized
12 that these people should finally be given justice and
13 compensated for their losses. So thank you very much for
14 that.

15 This trial has been about memory, it has been
16 about history, it has been about accountability, it has
17 been about memory because you have listened to people
18 whose lives have been seared by memories which can never
19 be forgotten. The defendant would have you think that
20 this all happened a long time ago and should be forgotten,
21 but for each of these men and women, it is not so long
22 ago. It is a memory which they never forget. The memory
23 of what happened to them, of what they lost is a memory

24 with them every day of their lives. It is about history
25 because this court has created the opportunity to tell

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1890

1 what really happened in El Salvador. The truth of the
2 lives of each of these five individuals, the truth of the
3 country in which they were raised, in which they were
4 tortured and which they lost their parents and husbands.
5 This courtroom became a place where they would no longer
6 be robbed of their history, the way they were robbed of
7 their youth and the lives of their loved ones. It is
8 about accountability because you have determined who bears
9 a large part of the responsibility for what happened in El
10 Salvador in 1980 and between '83 and '84.

11 We are at the final phase of this trial, and I
12 want to emphasize to you how important your decision
13 making is during this last phase. You have indicated on
14 your verdict forms that you're finding that punitive
15 damages should be appraised against Colonel Carranza, so I
16 do want to talk to you a little bit about some of the
17 things to think about, to bear in mind while you make this
18 decision.

19 Punitive damages have two purposes. The first
20 purpose is to punish the defendant for the injuries to the
21 plaintiffs in this lawsuit. The second purpose is to
22 deter others from engaging in similar conduct in the
23 future. The law gives you, the jury, this way to send a
24 signal to Colonel Carranza, to El Salvador and to the

25 world that a military commander must not fail in the

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1891

1 sacred duty to protect civilians, to send a signal that
2 violations of human dignity are intolerable.

3 The law allows you to consider a certain number
4 of factors in making this assessment which you will see on
5 the forms which you are given. They are the
6 reprehensibility of the defendant's conduct, the
7 objectionable nature of the defendant's wrongdoing, the
8 impact of the defendant's conduct on the plaintiff or
9 plaintiffs, the duration of the defendant's misconduct and
10 whether the defendant attempted to conceal the conduct,
11 and finally the amount reasonably necessary to deter
12 others from engaging in similar conduct in the future.

13 You are free to choose to make the same award
14 in each case or to make different awards in each case.
15 This is for you, the jury, to decide.

16 As your verdict has indicated, you have
17 recognized that crimes against humanity occurred in El
18 Salvador under Colonel Carranza's watch. The term crimes
19 against humanity was coined to express the outrage of the
20 whole world at the crimes of World War II. It is a
21 recognition that there are acts which are so offensive
22 that they are crimes against all human kind. They're
23 crimes against everyone of us. You have recognized that
24 Colonel Carranza was at the pentacle of command of a

25 military that engaged in abuses so offensive that they

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1892

1 have been termed crimes against all humanity.

2 The evidence of Colonel Carranza's repeated
3 objectionable and reprehensible misconduct is
4 overwhelming. In a country one-fifth the size of
5 Tennessee, over 10,000 people were murdered in 1980 alone,
6 most of them by security forces under Colonel Carranza's
7 command. As vice-minister of defense, Colonel Carranza
8 was one of the key leaders who institutionalized the state
9 terror. From his position of command, Colonel Carranza
10 allowed for murder, torture, disappearances, abductions,
11 arbitrary detentions. From his position of command,
12 Colonel Carranza allowed crimes against humanity, such as
13 the ones that you found in this case and the appalling
14 massacres at the Sumpul River, a combined military
15 operation which killed at least 300 fleeing civilians, and
16 at the National University where unarmed students were
17 shot and killed. From his position of command, Colonel
18 Carranza allowed the targeting of political leaders,
19 unionists, teachers, including the teachers union, ANDES,
20 peasant organizers, students, nuns, priests, human rights
21 workers. From his position of command, Colonel Carranza
22 allowed the military to attack the largest peaceful civil
23 rights demonstration in El Salvador's history. From his
24 position of command, Colonel Carranza permitted death
25 squads to operate from the intelligence and operation

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1893

1 sections of every branch of the military and security
2 forces. Is this not the very definition of reprehensible
3 and repeated misconduct? From his position of command,
4 Colonel Carranza was continually beseeched to end the
5 repression. The civilian members of the junta asked him.
6 The cabinet asked him. The young reformists military
7 officers asked him. The FDR asked him. Every single
8 U. S. ambassador asked him, and perhaps most memorably on
9 the day before he was murdered, Arch Bishop Romero said I
10 beg you, I beseech you in the name of God stop the
11 repression. And how did Colonel Carranza respond?
12 Instead of stopping this repression from his position of
13 command, Colonel Carranza attempted to conceal the
14 military's role by engaging in a pattern of denials that
15 continue to this day. He deflected responsibility. He
16 said things were only allegations of torture. He said
17 there was no firm evidence of the security forces being
18 involved in abuses. A man who had been working in
19 intelligence since the mid 1960s said he didn't know these
20 abuses were occurring. A man who spent his whole career
21 in military operations and who was in charge of forced
22 deployment and the security forces said he couldn't stop
23 the abuses from occurring.

24 U. S. Ambassador Robert White told you that
25 Colonel Carranza was a soldier's soldier, probably the

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CLOSING ARGUMENT BY MS. BLUM ON PUNITIVE DAMAGES

1894

1 most influential member of the military. He was the man
2 looked up to for leadership. He would have been more
3 effective, said U. S. Ambassador Robert White, than any
4 other person in the military in trying to stop the
5 repression. Colonel Carranza testified that he could not
6 have, even if he wanted to, even if he had wanted to, this
7 is not believable. Colonel Carranza told you that he felt
8 ashamed of taking money from the CIA, but why does he feel
9 no shame about all of this? The conduct of the defendant
10 in this case was reprehensible, it was shameful and it was
11 dangerous, and it was reckless. This is the basis for
12 punitive damages.

13 Another criteria for the assessment of punitive
14 damages is the impact of the defendant's conduct on the
15 plaintiffs. I know from your decision that you understand
16 and appreciate what these four people have withstood, and
17 I would just like to add a few words here to that
18 discussion. There are moments in one's life when one's
19 whole world changes. The first time a person holds their
20 own child or when two people meet and fall in love, the
21 pride of receiving a college degree or landing that first
22 job. These are markers in one's life, but for these four
23 people, their lives were changed forever in an instant.
24 These are the markers in their lives, moments that for
25 them can never be forgotten.

1 For Paco Calderon, he carries in his heart the
2 loss of his father everyday. For Erlinda Franco, she
3 carries the loss of her husband and a father to her
4 children who could never be replaced.

5 For Cecilia Santos, she carries the memory of
6 acid burning her flesh, the sound of keys jangled by her
7 jailer.

8 For Daniel Alvarado, the permanent pain in his
9 limbs reminds him every day of his torture, permanent
10 memories in his mind haunt his nights. Is this not
11 irreparable harm for which punitive damages must be
12 assessed against the defendant?

13 I want to pose to you a few additional
14 questions about the case of Daniel Alvarado that I hope
15 you will think about as you make your assessment of
16 punitive damages. Is it conceivable that Colonel
17 Carranza, the director of the treasury police, did not
18 know that torture cells existed in the treasury police
19 headquarters? Daniel Alvarado testified that he was in
20 the treasury police headquarters torture area and saw
21 dozens of other people lying on a filthy bathroom floor.
22 Is it conceivable that Colonel Carranza, the director of
23 the treasury police, did not know that Daniel Alvarado
24 would be tortured when he chose Ricardo Pozo, a known
25 human rights abuser, to be in charge of his interrogation?

1 Colonel Carranza acknowledged that the treasury police had
2 a long record of brutality. Colonel Carranza admitted
3 that torture occurred in the treasury police. Could he
4 really not have known that Daniel Alvarado would be
5 tortured until he confessed to a crime he did not commit?
6 Was Colonel Carranza really not aware of the harm being
7 done to Daniel Alvarado? Were Colonel Carranza's actions
8 not reprehensible? Is it conceivable that Colonel
9 Carranza did not know that Daniel Alvarado was, in fact,
10 tortured after seeing him at the press conference? You
11 saw the videotape excerpt, you saw Daniel Alvarado's
12 bandaged hand, you saw the look in his eyes, you saw his
13 startled reaction to the microphone being placed in his
14 face. Is it believable that Colonel Carranza did not
15 know, and are his actions not repeated misconduct in
16 regards to this plaintiff and reprehensible? And after
17 all of this, Colonel Carranza dares to call Daniel
18 Alvarado a liar in his deposition and blames Daniel
19 Alvarado for not reporting his torture to the very person
20 responsible for it? Is this not the very essence of
21 repeated and reprehensible misconduct? People like the
22 plaintiffs were falsely branded subversives, terrorists in
23 their own country. Meanwhile Colonel Carranza was able to
24 retire honorably to the United States life, live out his
25 life in freedom with his full military pension. In

1 reality, the honor belongs to these people, these brave
2 people who have the courage to tell you of their lives and
3 to speak for the thousands of other victims who cannot
4 speak for themselves. When you award punitive damages,
5 think of honoring them.

6 Finally, I want to remind you of the testimony
7 of Professor Terry Karl. She told you about the green
8 light for terror. Rather, than deterring the murdering of
9 teachers, priests and political leaders, Colonel Carranza
10 gave a green light for murder like that of Manuel Franco.
11 By not putting a stop to military led death squads,
12 Colonel Carranza gave a green light to the type of murder
13 that took the life of Paco Calderon. By not acting when
14 there was overwhelming evidence of torture, Colonel
15 Carranza gave a green light to the torturers who tortured
16 Cecilia Santos and Daniel Alvarado. By not curbing these
17 abuses, Colonel Carranza helped create a system of total
18 impunity, the ability to carry out atrocious acts without
19 any fear of legal consequence. Now, we ask you to send a
20 very different signal. By the amount of damages you award
21 in this case, we are asking you to send a message to all
22 those who abuse power, to all those who think they are
23 above the law, to declare loudly, clearly, that torture is
24 not permissible, extrajudicial killing is not permissible,
25 massacres are not permissible, killing teachers are not

1 permissi ble. Commanders have a duty, a sacred duty, an
2 affirmative duty to protect civilians. You can send a
3 signal, a new signal, a powerful signal which will help to
4 stop, to deter, to prevent military commanders no matter
5 where they are from abusing the dignity of human beings
6 from here, from this courtroom in Memphis, Tennessee.
7 Thank you.

8 MR. BROOKE: May we approach, Your Honor?

9 THE COURT: You may.

10 (The following proceedings had at side-bar
11 bench.)

12 MR. BROOKE: Your Honor, for the record, I want
13 to note defendant's objections to several things that
14 counsel stated during this argument. One is that she
15 attempted to use compensatory damage arguments for
16 punitive damages. Secondly, she talked about the
17 punishment arising from crimes for World War II
18 atrocities, which the defendant attempted to bring into
19 evidence with Colonel Garcia, being from Argentina, that
20 very issue, and the court disallowed that evidence.
21 Thirdly, there is no evidence that I'm aware of in this
22 case that Colonel Carranza selected Mr. Pozo to be in
23 charge of interrogations of the treasury police.

24 Next is I don't believe there's any evidence in
25 this case that Mr. Alvarado appeared with a bandage on his

1 hand in the photographs or that the videotape of
2 Alvarado's confession was presented to this jury. And
3 last -- another one is that the statement by counsel of
4 thousands of other victims or a thousand other victims,
5 that they likewise should be effectively demonstrated to
6 be compensated through the rendering of this verdict. And
7 for those reasons, we submit that the argument was
8 improper, and I want to note those for the record.

9 MS. BLUM: Your Honor, may I be heard?

10 THE COURT: Sure.

11 MS. BLUM: Although I can't actually remember
12 all of them that quickly, if you would just refresh my
13 recollection about taking them in turn.

14 THE COURT: Sure. Compensatory damages.

15 MS. BLUM: Compensatory damages. Yes, there
16 is -- in the instruction, in the list of factors, one of
17 them is the harm to the plaintiff by the defendant's
18 conduct. I mean it, in fact, mirrors to some extent, but
19 I mean I spent very little time discussing it, but it is,
20 in fact, one of the relevant factors.

21 In terms of World War II, all I did was explain
22 was the definition of crimes against humanity. That is,
23 in fact, the origin of the term. I wasn't trying to hold
24 him responsible for that, but I was just trying to give
25 them a context for the meaning of the word.

1 The third point being -- oh, about Pozo, I
2 didn't say he appointed Pozo, I said that he had Pozo be
3 in charge of the interrogation of Daniel Alvarado. We had
4 Daniel Alvarado's testimony which clearly the jury
5 accepted as credible, that Pozo came into his torture cell
6 on a number of occasions and indicated that he was in
7 charge of the investigation. And let's see --

8 THE COURT: Many victims, thousands of victims.

9 MS. BLUM: Well, I merely said that these
10 people came in speaking not on just their behalf, but on
11 behalf of thousands of victims. I think it is certainly
12 relevant in terms of the purposes of punitive damages to
13 raise. You know, there has been a lot of evidence in this
14 case about victims other than just these four people,
15 which was necessary to put on in the context of the case
16 about command responsibility and about crimes against
17 humanity. And I merely used it as a rhetorical device to
18 acknowledge that, and I think it is quite important to our
19 clients that they feel that they are here not just for
20 themselves. I was not trying to say that punitive damages
21 should be assessed against him on behalf of thousands of
22 other people.

23 And finally --

24 THE COURT: I think that's basically it.

25 MS. BLUM: There was one more point.

1 THE COURT: The tape playing.

2 MS. BLUM: Oh, the tape. I did not refer to
3 the videotape of the confession, I referred to the
4 videotape which the jury had seen from the NBC news clips
5 which shows Daniel Alvarado at the press conference.

6 THE COURT: Right.

7 MS. BLUM: And at the beginning, I stated you
8 saw the press conference.

9 The bandaged hand was from the photo that you
10 all put in evidence in which his hand is down and it is
11 covered by something. And that is where that
12 particular --

13 MR. EISENBRANDT: And he testified to the wound
14 on his hand.

15 MS. BLUM: Right.

16 THE COURT: Well, I will give, of course, the
17 final instructions, and I think that they will adequately
18 indicate to the jury those factors that they can consider.
19 The argument certainly is not out of bounds, and it is
20 reasonably based on the record in the case. So I'm going
21 to overrule the objection, and we will proceed.

22 We do want to make sure we have the microphone.

23 (The following proceedings were had in open
24 court.)

25

1 MR. FARGARSON: Well, members of the jury, this
2 will be the last time for certain that I will have the
3 opportunity to state anything to you. And let me say
4 this, of course. You have spent a lot of time
5 deliberating on this case. You have been attentive, you
6 have been patient, and I know you have been considerate to
7 everyone, and while I'm disappointed with the verdict,
8 obviously, that has been rendered in the case, I want to
9 tell you I'm not going to fault you in any way, because I
10 know that you have probably did the very best that you
11 felt you could do under all the circumstances; and I say
12 once more that as far as I'm concerned y'all have been one
13 of the most attentive jurors that I have ever had the
14 pleasure of trying a case for, even though I'm
15 disappointed with what you did.

16 Let me say this on this issue of punitive
17 damages. The facts of the case still apply to this, not
18 additional facts, and I would like to point out to you one
19 thing, as Ms. Blum talked about Mr. Carranza was
20 responsible for death squads, Mr. Carranza was responsible
21 for all these people getting killed, 10,000 people, he was
22 responsible for everything. Let me remind you of one
23 thing, and you have the Truth Commission Report back there
24 with you that you could look at, and I read part of it to
25 you, and they read part of it to you, and Ms. Karl read

1 part of it. In that Truth Commission Report, there was a
2 serious effort by the individual that was the
3 commissioners of the Truth Commission to find out the
4 names of people that were directly responsible for serious
5 atrocities, and nowhere in that report is Nicolas
6 Carranza's name, and I hope you'll remember that, and
7 you'll take that into consideration because, while that
8 was still made a number of years after the facts of the
9 case, it was made in 1992, it still was much more closer
10 in proximity in time than we are in this courtroom today.

11 Now, Ms. Blum has talked about the impact on
12 the plaintiffs of the conduct of Mr. Carranza, but ladies
13 and gentlemen, you all have awarded damages based on what
14 happened to these plaintiffs, the injury that they already
15 have suffered, and the testimony that you had heard, and
16 damages have been awarded for that. You have compensated
17 them for what happened to them as a result of what you
18 found him to be responsible of. And this stage of the
19 proceeding is to punish the defendant or to punish someone
20 else who might be involved in some situation like this.

21 Now, one element that was not read to you, and
22 I will just read all of them. First of all, the
23 reprehensibility of the defendant's conduct, now, that's a
24 big word. And from the standpoint that I would say to
25 you, maybe you could say or contend that Mr. Carranza was

1 negligent, that he didn't perform his duty as efficiently
2 or as seriously as he should, but reprehensibility is a
3 big word, it just means, I guess, you school teachers and
4 those of you that know -- who are word crafters better
5 than I am will understand that that word is something
6 much, much greater than negligence and just disregarding
7 your duty. It is a word that describes just a callous
8 indifference, just turn your shoulders, just turn your
9 head and don't pay any attention to it, just ignore all
10 the consequences that are going on, and I believe that
11 that is a clear definition of what reprehensibility means.
12 The other thing is the defendant's net worth and financial
13 condition. Now, you didn't hear the plaintiff attorney
14 say anything about that, but let me tell you, you have
15 heard proof that Mr. Carranza is retired. That's the
16 ability, the financial ability that really he has. He's a
17 retired individual. He's not a rich person. He lives
18 down in the Hickory Hill area.

19 MS. BLUM: Objection, Your Honor.

20 MR. FARGARSON: And that's something --

21 THE COURT: Well, that is a little piece of
22 information that is beyond the record in the case, and I
23 will sustain the objection to the particular location in
24 which the defendant lives.

25 MR. FARGARSON: You mean to that area?

1 THE COURT: Yes.

2 MR. FARGARSON: Well, you heard the address
3 that he lived, you heard that he has been in the same
4 house, and you can take into consideration that in
5 evaluating this issue of punitive damages.

6 As a matter of fact, members of the jury,
7 \$500,000 in and of itself is penal in nature. It has
8 severe financial consequences.

9 Now, I'm not saying you can't award punitive
10 damages, but all I'm saying is that in a case like this,
11 \$500,000 for each of these four plaintiffs is penalty in
12 its very nature. It has financial consequences and
13 monetary consequences.

14 And then the other one is the objectionable
15 nature of the defendant's wrongdoing, the impact of the
16 defendant's conduct on the plaintiff. Well, again, part
17 of that, the impact on the plaintiff, you have awarded
18 damages for compensation, you have provided compensation
19 for the impact that this conduct had on the plaintiffs in
20 this particular case, and that was included in the
21 \$500,000.

22 Four, the defendant's awareness of the amount
23 of harm being caused and the defendant's motivation in
24 causing the harm, whatever that you hear, that he had some
25 motivation in causing the harm. This issue has to be

1 tried on evidence just like everything else. And what
2 evidence have you heard that he has some motivation in
3 causing this harm that affected these individuals?

4 And then, finally, the duration of the
5 defendant's misconduct, and whether the defendant
6 attempted to conceal the conduct. Have you heard any
7 proof of his concealing the conduct? Have you heard any
8 evidence that he tried to hide anything or cover anything
9 up?

10 You've heard the issue of whether or not he
11 investigated, but you haven't heard any evidence at all
12 that he tried to conceal anything or cover anything up by
13 his own acts or by his own actions.

14 And then finally, members of the jury, you have
15 heard the effect that it might have on others. Well, I
16 think this will have some effect on military personnel, it
17 sure would me. I'm glad now I was only a sergeant in the
18 Marine Corps and not an officer in the Marine Corps, if
19 this is what you get for being a commanding officer. But
20 the deterring of others, you know, the big issue in this
21 case, and one of the big issues in this case has been that
22 this was a military dictatorship and it lasted for years
23 and years and years. Now, it is no longer a military
24 dictatorship. El Salvador operates as a democracy. So as
25 far as El Salvador occurred where these acts took place,

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CLOSING ARGUMENT BY MR. FARGARSON ON PUNITIVE
DAMAGES

1907

1 there is no one down there to deter after 25 years, and so
Page 69

2 the plaintiffs say, well, deter the whole world, send a
3 message to the whole world. Let the people in Africa and
4 these third world countries know what is going to happen
5 to them if they violate their responsibility under command
6 responsibility. Well, that is a noble idea, but I don't
7 think many of the armies in third world countries or
8 anywhere else may get the message. I'm not telling you
9 they won't, I'm not telling you they won't pay any
10 attention to it, but I'm just saying that the location of
11 those, the status of the military in this country and the
12 conditions in this country are far different from what
13 goes on now.

14 Members of the jury, finally, as I say, and I
15 told you I would be brief, or I hope I told you I would be
16 brief, and I am going to be brief, you have awarded a
17 significant amount of damages for someone in Mr.
18 Carranza's station in life, and I say again, yes, you can
19 award punitive damages, but the amount that you have
20 awarded is already penal in nature to Mr. Carranza.

21 Thank you very much for your attention.

22 THE COURT: The plaintiff is allowed a very
23 brief rebuttal argument, but you may waive it if you wish.

24 MS. BLUM: We waive it. Thank you.

25

1 THE COURT: Ladies and gentlemen of the jury,

2 we now come to the second phase of the case when it is my
3 duty to instruct you in the law that applies to punitive
4 damages. Again, you must follow the law as I state it to
5 you.

6 In the first phase of this trial, you found the
7 Defendant Nicolas Carranza liable to the Plaintiff Cecilia
8 Santos and awarded her compensatory damages. You found
9 the Defendant Nicolas Carranza liable to the Plaintiff
10 Jose Francisco Calderon and awarded him compensatory
11 damages. You found the Defendant Nicolas Carranza liable
12 to the Plaintiff Erlinda Franco and awarded her
13 compensatory damages, and you found the Defendant Nicolas
14 Carranza liable to the Plaintiff Daniel Alvarado and
15 awarded him compensatory damages.

16 You, the jury, also agreed that Defendant
17 Cecilia Santos -- excuse me that Plaintiff Cecilia Santos,
18 Plaintiff Jose Francisco Calderon, Plaintiff Erlinda
19 Franco and Plaintiff Daniel Alvarado had shown by a
20 preponderance of the evidence that the defendant's actions
21 were intentional, malicious, wanton or reckless as
22 evidenced by your answer of yes to the last question of
23 each of the verdict forms.

24 As we discussed earlier, as jurors, it is your
25 exclusive duty to decide all questions of fact submitted

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 to you, and for that purpose, to determine the effect and
2 value of the evidence. You must not be influenced by

3 sympathy, bias, prejudice or passion; and you're not to
4 single out any particular part of the instructions and
5 ignore the rest. But you're to consider all of the
6 instructions as a whole and regard each in the light of
7 all the others.

8 These instructions are in addition to the
9 instructions that you have already received. You have
10 decided that the Plaintiff Cecilia Santos and the
11 Plaintiff Jose Francisco Calderon, Plaintiff Erlinda
12 Franco and the Plaintiff Daniel Alvarado are entitled to
13 punitive damages. You must now decide the amount of those
14 damages.

15 Again, the plaintiff has the burden of proving
16 by a preponderance of the evidence the amount of punitive
17 damages, if any, that you should award.

18 In making your decision, you must consider the
19 instructions that I have already given you and also the
20 following: The reprehensibility of the defendant's
21 conduct; the defendant's net worth and financial
22 condition; the objectionable nature of the defendant's
23 wrongdoing; and the impact of the defendant's conduct on
24 the plaintiff that you're considering; the defendant's
25 awareness of the amount of harm being caused and the

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 defendant's motivation in causing that harm; the duration
2 of the defendant's misconduct and whether the defendant

3 attempted to conceal the conduct; an amount reasonably
4 necessary to deter the defendant and/or others from
5 committing similar misconduct in the future; and any other
6 circumstances shown by the evidence that bears on
7 determining the proper amount of punitive damages.

8 You have already awarded the plaintiff
9 compensatory damages for the purpose of making the
10 plaintiff whole. The purpose of the award of punitive
11 damages is to punish the wrongdoer and to deter conduct by
12 the defendant or others.

13 In this case, you will receive four additional
14 verdict forms. Those four additional verdict forms all
15 read essentially the same and read as follows:

16 The first one happens -- and they're in no
17 order -- happens to be the one as to Cecilia Santos.

18 We, the jury, find that Plaintiff Cecilia
19 Santos has proven by a preponderance of the evidence that
20 she should be awarded punitive damages against the
21 defendant, Nicolas Carranza, in the amount of blank. And
22 you may insert any number there that you determine is
23 appropriate, any number from zero to any number that you
24 determine is an appropriate number under these
25 instructions.

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 The same language appears in the -- in a form
2 for Jose Francisco Calderon, the same language appears in
3 the verdict form for the Plaintiff Erlinda Franco, and the

4 same language in a verdict form for Plaintiff Daniel
5 Alvarado.

6 At the end of the case earlier, I told you that
7 at this point, you would take the verdict forms and go to
8 the jury room and resume your deliberations. Those
9 instructions that I gave you at the end of the case in
10 chief apply in this case also regarding any messages that
11 you might need to send to me and, of course, how you would
12 communicate with the court.

13 Let me see counsel very briefly at side bar,
14 and then, of course, we will send these matters to you for
15 your consideration.

16 (The following proceedings had at side-bar
17 bench.)

18 THE COURT: I ad libbed just a little because
19 it is very important that the jury always know that they
20 can return zero. That may sound funny, but it is very
21 important that I tell them that, and I can -- I think that
22 was sufficient, because it is a very short instruction,
23 but really that's all. And I'm not saying they should,
24 I'm just saying that you have to tell them that they're
25 not required to return any dollar amount. Their finding,

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 it may be regarded as sufficient to punish, that was the
2 argument that was made by counsel, but it is also a sound
3 legal argument, so that's the reason I made that clear.

4 And then anything -- any objections to the
5 court's instructions, and may I send them back as they are
6 drafted?

7 MS. BLUM: No objection.

8 MR. EISENBRANDT: No objections.

9 MR. BROOKE: Only the general objection as to
10 punitive damages, Your Honor --

11 THE COURT: Right, the general objection that
12 we let it go at all to the panel.

13 MR. FARGARSON: Right.

14 THE COURT: That's what we will do.

15 (The following proceedings were had in open
16 court.)

17 THE COURT: I have handed to Mr. Ruby the
18 folder, and clipped to the front is that very short set of
19 additional instructions, and I'm assuming that you still
20 have the full sets of instructions before. We can make
21 some additional copies. These are quite short, but we
22 would need to run off some. Would you like us to run off
23 a couple of extra copies? I will ask Mr. Warren to run
24 off a couple of extra ones and send it back.

25 Let me suggest that -- you will need to tell me

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 if you want to take a break for the evening, and it is
2 generally our policy not to have you stay late unless you
3 ask to stay late. I will assume that you will want to
4 stay until 5:30 or a quarter of 6:00, but after that, I

5 would assume that you would normally go home for the
6 weekend. If you do choose to go home for the weekend, and
7 that is fine, do not be the least bit concerned about
8 that, then you must be very careful, since I may not see
9 you again and you would probably tell Mr. Ruby you're
10 going home, you must be very careful to avoid anything
11 that might be -- and I don't know that there will be, but
12 I'm required to tell you anything that might be in any
13 news media at all about the case, you simply must be very
14 careful. And it may be that someone again may ask you
15 about the case, and you must tell them I simply cannot
16 talk about the case, period. Please do not talk to
17 anybody about the case. If you have a problem and
18 somebody is very persistent, of course, some people just
19 don't know, then you will need to report it to someone.
20 And you will, of course, not be able to talk about the
21 initial verdicts at all until the entire case is
22 concluded, so you would not be able to talk with anybody.
23 I wanted to tell you that, because if you decide you want
24 to take that break, we're going to respect your -- you're
25 judges of the facts and we're going to respect the

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JURY INSTRUCTIONS BY THE COURT ON PUNITIVE DAMAGES

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1 schedule that you adopt in that regard. It may be that if
2 you do come back on Monday, I may excuse some of the
3 counsel in the case or parties because they may need to go
4 to another matter. It would not indicate -- and I'm not

5 saying they're even going to, they may all be here, but I
6 will tell you that, I may consider doing that. And it
7 does not indicate that anyone means any disrespect or
8 regards this of any less importance in any regard, but I
9 have to tell you that because it is approaching the
10 holidays and other things, and they may -- I will allow
11 them to do that. I do not want you to give that any
12 significance at all if that does occur.

13 Ladies and gentlemen, we're going to excuse you
14 and if -- I will be hearing something from you by, say, a
15 quarter of 6:00 in terms of your intentions in of how you
16 wish to proceed. Thanks very much.

17 (Jury out at 4:50 p.m.)

18 THE COURT: Let me speak to counsel at side bar
19 so we can cover the schedules.

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

22 THE COURT: I realize that at some point in a
23 law firm you have got to have somebody go back to the
24 office, and I wanted them to understand that if you
25 decide, one of the two of you needs to be there, that that

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1 will be okay, and so I have done that. And I have done
2 the same thing for y'all, because I realize that it is
3 expensive proposition for you to stay available
4 throughout. I know everybody wants to be here, I mean I
5 know all of you want to be here.

6 MR. FARGARSON: We both have depositions out of
7 town on Monday.

8 THE COURT: But I do know it is difficult. I
9 do know it is difficult, and I don't want to -- now, at
10 the same time, I'm not going -- if they really ask to stay
11 here late, I will think about it. There is significant
12 problems in letting an entire jury -- and I'm not saying
13 they're tired, they have had more rest than we have in
14 some respects, because I think we have a different kind of
15 stress and other things to do, but if they ask to stay
16 extremely late, I simply wouldn't -- I know we had a jury
17 one time that asked to stay until 11:00, and, you know,
18 when they stayed until 11:00, I just thought whatever they
19 decided probably wasn't right, it was just too late, it
20 was just too late. If somebody asks to stay somewhat
21 later, we can do that, but you have all had an experience
22 like that, and I just -- that experience one -- doing that
23 once, it was a mistake -- I didn't do it, one of my
24 colleagues did it, we all agreed it was a mistake. Jurors
25 are not judges on the bench, and they can't stay that late

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1 and not just get exhausted, so that's what we will do. It
2 is possible that I won't see some of you guys again, this
3 could be it.

4 MS. BLUM: I don't think we're going anywhere.

5 MR. BROOKE: I wanted to raise one issue, Your

6 Honor, I don't want to delay the jury, and that is the
7 local rules requires permission in order to talk to the
8 panel, and I wanted to broach that subject with Your
9 Honor.

10 THE COURT: Where there is a hung jury on any
11 issue, the rule has an exception, and I appreciate you
12 bringing that up. And certainly on the exception, you can
13 talk -- all of you can talk with the jury once they're
14 discharged about the Chavez matter, although I think the
15 court understands the issue they probably got to, because
16 the court got to it too, but you can all do that, and it
17 is highly beneficial usually to talk to the panel, so I
18 would let you do that.

19 MR. BROOKE: With that exception, I can
20 anticipate that it would be so natural to get into the
21 other four, and can we have an agreement --

22 THE COURT: You can't ask any question about
23 the -- that would undermine the jury. The conversation
24 can't be a basis for subsequent motion to set aside the
25 verdict.

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1917

1 MR. FARGARSON: Or affidavits.

2 THE COURT: Or affidavits, or the solicitation
3 of affidavits, because that's the reason we have the rule
4 and, frankly, the jury, this jury has been very deliberate
5 and that would be a problem. You're right, they might ask
6 you something that might come up about something else.

7 Usually they want to tell the lawyers they did a good job,
8 that is usually their statement, so I mean they may want
9 to make some comments to you.

10 MR. BROOKE: Would Your Honor be making a
11 general statement to the jury that in this case, if, in
12 fact, you're subsequently contacted by counsel to ask
13 questions about your decision --

14 THE COURT: The verdict itself?

15 MR. BROOKE: -- that you can talk to them if
16 you want, but you don't have to talk to them, something
17 like --

18 THE COURT: You usually have to get permission
19 to ask -- if you're going to ask about the verdict, that
20 is something that might attack the verdict, then you get
21 permission of the court. If you want to ask about what
22 are your thought processes in this case, because you have
23 got to evaluate, both sides do, how you want to proceed,
24 perfectly fine, and you can ask them about, you know, what
25 was effective or ineffective about trial technique because

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1 that doesn't have anything to do with the verdict, that
2 has to do with things you might want to do differently or
3 things you might learn or things they found were helpful,
4 things they found were not helpful. But we do a jury
5 questionnaire. Joe, make sure they do our questionnaire,
6 and our questionnaire pretty consistently shows that what

7 juries focus on -- and we will get the questionnaire on
8 this one, we will actually not show you the questionnaire
9 because that's confidential, but we put them in a data
10 base and we produce a report which tells the lawyers what
11 they said without identifying the case. And we have had a
12 good bit of information that tends to actually show that
13 jurors are very focused on the facts, they're focused on
14 the evidence and they tend to -- in this world, they tend
15 to not be, I know we think they are, but they tend to not
16 be usually terribly influenced by the arguments and the
17 evidence. It is the evidence that -- now, the
18 presentation of the evidence is critical and how you do
19 that may be important.

20 MR. BROOKE: How do we determine the
21 information in the data base that Your Honor is able to
22 so --

23 THE COURT: We make a presentation a couple of
24 times during the year. It will come up to -- we will
25 probably make a presentation in Memphis, so the lawyers,

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1 they won't know which case, that would be -- sometimes
2 they say, you know, well, you know, we didn't like so and
3 so as a lawyer. I'm sitting here -- and the reason they
4 didn't care for the lawyer was they didn't care for his
5 client's case, and that doesn't have much to do with it,
6 so we don't let -- we feel it would be too personal and
7 not -- that wouldn't be helpful. Most of the time, it is

8 complimentary of counsel, frankly.

9 MR. BROOKE: If we're talking about the Chavez
10 case with a juror, would it be appropriate that we also
11 say what was the most effective piece of evidence?

12 THE COURT: Absolutely, and we ask that in our
13 questionnaire. We ask that in our questionnaire, and it
14 has been fascinating to find that out. It has just
15 been -- I don't think that your colleague will learn
16 anything, but you might. I think that --

17 MR. FARGARSON: I need to. I obviously need to
18 learn something.

19 THE COURT: I think Mr. Fargarson already knows
20 because he has been around a long time, but I think for
21 most of us, it is highly educational. Okay.

22 MR. FARGARSON: I'm still learning. I learn
23 something every trial.

24 THE COURT: I think we all do. This is the
25 first time -- this is the first time I ever had the yes, I

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1 think we can do it with deliberation and the first time I
2 have ever heard of anybody having the answer change on the
3 second question. To me, that was a totally new
4 experience. Okay. I will be back at a quarter till.

5 THE CLERK: You want me to wait until they come
6 back with the verdict before I give them this?

7 THE COURT: Absolutely. You're more optimistic

8 than I am.

9 MR. EISENBRANDT: If we can get that verdict
10 in --

11 THE CLERK: I just know they're ready to go.

12 THE COURT: The minute that they tell us they
13 have one, we will do it.

14 THE CLERK: All rise. This honorable court
15 stands in recess.

16 (Recess taken at 4:40 p.m.)

17 (At 5:35 p.m., the following proceedings were
18 had:)

19 THE COURT: I have a note from the jury, and
20 the note says, Judge McCalla we, the jurors, have
21 completed the verdict forms for the plaintiffs, and it is
22 signed by the presiding juror.

23 The procedure is to bring the panel in, to have
24 Ms. Richardson come to the podium once again. And once
25 again, I'm going to ask everybody, because I do not know

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1 what it is going to say, and -- it is just inappropriate
2 to express either happiness or disappointment. The jurors
3 have done the best they can, I feel confident, and that's
4 all we can ask. All right. You can bring the panel in.

5 COURT SECURITY OFFICER: Yes, Your Honor.

6 (Jury in at 5:38 p.m.)

7 THE COURT: You may be seated, and we will
8 follow the same procedure as before. I will ask

9 Ms. Richardson to hand the folder to Mr. Warren, he will
10 then hand it to me, and I do have to look at the form,
11 simply to make sure that they're complete.

12 (Verdict forms were handed to the judge and
13 then handed back to Juror Richardson.)

14 THE COURT: The verdict forms are completed,
15 and I will ask if Ms. Richardson will read the first form.

16 JUROR RICHARDSON: The first folder, punitive
17 damages verdict form, Plaintiff Daniel Alvarado.

18 We, the jury, find that Plaintiff Daniel
19 Alvarado has proven by a preponderance of the evidence
20 that he should be awarded punitive damages against
21 Defendant Nicolas Carranza in the amount of one million
22 dollars.

23 THE COURT: Would you read the second form,
24 please?

25 JUROR RICHARDSON: We, the jury, find that

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1 Plaintiff Erlinda Franco has proved by a preponderance of
2 the evidence that she should be awarded punitive damages
3 against Defendant Nicolas Carranza in the amount of one
4 million dollars.

5 THE COURT: And the third form, please?

6 JUROR RICHARDSON: We, the jury, find that
7 Plaintiff Jose Francisco Calderon has proven by a
8 preponderance of the evidence that he should be awarded

9 puni tive damages agai nst Defenda nt Ni col as Carranza in the
10 amount of one mi lli on doll ars.

11 THE COURT: And the fourth form?

12 JUROR RI CHARDSON: Puni tive damages verdi ct
13 form, Pl ai nti ff Ceci lia Santos.

14 We, the jury, find that Pl ai nti ff Ceci lia
15 Santos has proven by a preponderance of the evidence that
16 she shoul d be awarded puni tive damages agai nst Defenda nt
17 Ni col as Carranza in the amount of one mi lli on doll ars.

18 THE COURT: Well, Ms. Ri chardson, if you woul d
19 hand up the fol der and forms.

20 And Ms. Ri chardson, is thi s your verdi ct?

21 JUROR RI CHARDSON: Thi s my verdi ct.

22 THE COURT: We wi ll let you return that.

23 Thanks very much.

24 JUROR RI CHARDSON: Thank you, Your Honor.

25 THE COURT: Thank you.

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1 Mr. Russel l, let me start wi th you, are these
2 your verdi cts?

3 JUROR RUSSELL: Yes, si r.

4 THE COURT: And, Ms. Fi el ds, are these your
5 verdi cts?

6 JUROR FI ELDS: Yes, Your Honor.

7 THE COURT: Ms. Rooks, are these your verdi cts?

8 JUROR ROOKS: Yes, Your Honor.

9 THE COURT: Mr. Franci s, are these your
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10 verdicts?

11 JUROR FRANCIS: Yes.

12 THE COURT: Ms. Ragsdale, are these your

13 verdicts?

14 JUROR RAGSDALE: Yes, sir.

15 THE COURT: Ms. Foran, are these your verdicts?

16 JUROR FORAN: Yes, Your Honor.

17 THE COURT: Mr. Roby, are these your verdicts?

18 JUROR ROBY: Yes, Your Honor.

19 THE COURT: Ms. Minor, are these your verdicts?

20 JUROR MINOR: Yes, sir.

21 THE COURT: All right. Let me speak very
22 briefly with counsel at side bar. We also are going to
23 hand you your questionnaires, but these are simply an
24 administrative matter.

25 (The following proceedings had at side-bar

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1 bench.)

2 THE COURT: Anything else from plaintiffs?

3 MR. ESQUIVEL: No, Your Honor.

4 THE COURT: Anything else from the defense?

5 MR. FARGARSON: No.

6 THE COURT: All right. The procedure then is
7 for me to discharge the jury. I will tell them that they
8 can speak with you, which is -- I'm going to go over that
9 again because of the mistrial, I'm going to tell them that

10 is often helpful. I will thank them. I thank every jury.
11 And it is really very short, and that is about it. It
12 will take a couple of minutes. So I think that's what we
13 need to do next.

14 MS. BLUM: Thank you.

15 MR. FARGARSON: Thank you, Your Honor.

16 MR. ESQUIVEL: Thank you, Your Honor.

17 (The following proceedings were had in open
18 court.)

19 THE COURT: Ladies and gentlemen, first of all,
20 on behalf of every one involved in the case, I do want to
21 thank you for serving as the jury in this case. All cases
22 are important. Every case is important because it
23 involves individuals and has a real impact on them. I
24 think you can probably perceive that you have had the
25 privilege of serving on a case that is somewhat different

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1 than any of the cases that we have, and it is an
2 experience that very few people get. I hope it is one
3 that has been revealing and comforting to you in some
4 respect regarding our judicial system and the way the law
5 works in the United States.

6 To each of you, it has been a long three weeks,
7 and it is a lot of time, so I do want you to feel that
8 everybody here in this room respect -- irrespective of
9 whose side, I think, genuinely appreciates the fact that
10 you have been a very, very considerate, thoughtful,

11 deliberate jury. In every case, that's so important, and
12 I think that you have exemplified that type of
13 responsibility, and we appreciate it, all of us do.

14 Now, I need to tell you a couple of things.
15 First of all, in a moment, I'm going to discharge you, and
16 when I discharge you, you can talk with anybody that you
17 want to in the world about this case. And there may be
18 some people who do want to talk to you about it. Remember
19 that you, as a jury, have spoken through the verdict.
20 That's the voice of all nine of you, and that does
21 represent a conclusion that you have reached in the legal
22 process. But people may be curious about various aspects
23 of this case, or for that matter, any case, and you're
24 entitled to tell them whatever you want. In that regard,
25 of course, you're not required to tell anybody anything,

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1 and that's your choice. There's -- the lawyers are
2 interested in talking to you to some degree in this case
3 because there was an unresolved matter, the matter as to
4 Ms. Chavez. Sometimes it is very helpful to counsel for
5 both sides to be able to learn from you some of your
6 perceptions in connection with a case, a portion of the
7 case as to which there has been a mistrial. If you would
8 like to talk to them in that regard, they're going to
9 remain in the courtroom after you go to the jury room,
10 since it is your choice as to whether you speak to them,

11 and you can come back in here. They're not going to chase
12 you down the hall or anything, that's not appropriate,
13 they wouldn't do that. But if you're willing to talk with
14 them and you want to, Mr. Ruby will simply let you come
15 back in here and you can have your seat or speak to them
16 out there, and it will be beneficial to them, it will be
17 helpful. So if you want to speak to them in that regard,
18 that is allowed.

19 There's a rule, they can talk to you and ask
20 you about the unresolved case, and you can comment to them
21 about aspects of the total case as you like, but they're
22 not going to attempt to undermine your verdict in any way.
23 They understand that that is inappropriate, and if there
24 is any question about the verdict, they would come back
25 and get permission of the court to ask those types of

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1 questions, but they know how to handle this, and I'm sure
2 there will be no problem at all.

3 We have also given you a jury questionnaire,
4 you have just gotten that. It is actually extremely
5 helpful to everybody if you have time to fill that out.
6 You probably want to go home right now. I don't blame
7 you. If you don't mind taking a few minutes to look at
8 that, it would be very educational. The lawyers will wait
9 here and have a chance to speak with you, and they're not
10 going to run off. They will be here, so if you want to
11 take five or ten minutes to fill that out, it will help my

12 staff, and it will also be a useful educational tool for
13 many attorneys. We don't show them the results in a
14 particular trial, but your comments and your observations
15 do help counsel in many cases understand what's important
16 and what is not important in the jury process.

17 Well, I think that is everything that we need
18 to cover. I do personally appreciate your serving on the
19 panel. And ladies and gentlemen, you are discharged as
20 the jury in this case. Mr. Ruby is going to take you back
21 to the jury room and show you those questionnaires, and
22 then counsel will be here to talk with you at the latter
23 part of the day, and Mr. Ruby will be also here to make
24 sure that you have you are given an escort to your
25 automobiles. Thank you very much.

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1 THE CLERK: All rise. This honorable court
2 stands in recess -- stands adjourned.

3 (Recess at taken 5:50 p.m.)

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C E R T I F I C A T E

I, Brenda Parker, do hereby certify that the foregoing 1929 pages, are unredacted, and to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes of the on October 31, November 1-18, 2005, in the matter of:

Ana Patricia Chavez, et al.

vs.

carranza13.txt

Ni col as Carranza

Dated thi s 14th day of February, 2006.

S/BRENDA PARKER
Offi ci al Court Reporter
Uni ted States Di strict Court
Western Di strict of Tennessee

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