

INDEX
CIVIL CHARGE BOOK
[Jury Instructions]

03-2932
Chavez v. Carranza

1. General Instructions
 - a. Duty to Decide Without Bias, Prejudice, Sympathy
 - b. Burden of Proof and Consideration of the Evidence
 - c. Weighing the Evidence
 1. Witness Credibility
 2. Witness Impeachment
 3. Expert Witnesses
 4. Deposition Testimony
 5. Statements of Counsel
 6. Totality of the Evidence
 7. Direct and Circumstantial Evidence
2. Stipulated Facts
3. General Instructions on the Applicable Law
 - a. Extrajudicial Killing
 1. Color of State Law
 - b. Crimes Against Humanity
 - c. Law of Command Responsibility
 1. Superior-Subordinate Relationship
 2. Actual or Constructive Knowledge
 3. Failure to Prevent or Punish
 - d. Do Not Consider Others
 - e. Inferring Required Mental State
 - f. Political Views are Irrelevant
4. Damages
 - a. Compensatory Damages
 1. Pain and Suffering
 - b. Punitive Damages
5. Deliberation and Verdict
 - a. Instructions/Verdict Form/Selection of Foreperson
 - b. Verdict Must Be Unanimous/Duty to Discuss With Each Other
 - c. Verdict Forms

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,)
)
v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Ladies and gentleman of the jury, we have now come to the point in the case when it is my duty to instruct you in the law that applies to the case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all of the others.

Burden of Proof and
Consideration of the Evidence

I will instruct about where the law places the burden of making out and supporting the facts necessary to prove the legal theories in the case.

When, as in this case, the defendant denies the material allegations of the plaintiffs' claims, the law places upon the plaintiffs the burden of supporting and making out their claims upon every essential element of that particular claim by the greater weight or preponderance of the evidence.

Preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. Preponderance simply means the greater weight of the evidence. In order to prevail, the balance of the scales must be tipped in favor of the party who carries the burden of proof - in this case the plaintiffs. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

You must consider all the evidence pertaining to every issue, regardless of who presented it.

Weighing the Evidence

Witness Credibility

You, members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was open and forthcoming.

You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other

time that is inconsistent with what the witness said while
testifying.

Witness Impeachment

If a witness is shown to have knowingly testified falsely concerning any material matter, you have a right to distrust the witness's testimony in other particulars and you may reject all the testimony of that witness or give it the credibility you think it deserves. An act or omission is done "knowingly" if it is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Insignificant discrepancies do not affect a witness's testimony, but important discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

Expert Witnesses

You have heard testimony from Ambassador Robert White, Professor Jose Luis Garcia, Professor Terry Lynn Karl, and Attorney Jose Antonio Araujo, each of whom was permitted to testify as an expert in this case. An expert is allowed to express his or her opinion on those matters about which the expert has special knowledge, training, or expertise. Expert testimony is presented to you on the theory that someone who is experienced or knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing each expert's testimony, you may consider the expert's qualifications, his or her opinions, his or her reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept a witness's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Deposition Testimony

Some of the testimony before you is in the form of deposition answers which have been received in evidence or played in open court through a video deposition. A deposition is simply a procedure where the attorneys for one side may question a witness or an adversary party under oath before a court stenographer prior to trial, and the testimony is preserved in writing and/or videotape. This is part of the pretrial discovery, and each side is entitled to take depositions. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness given at trial.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends

on the weight, credit and value of the total evidence on either side of the issue, and of this you, as jurors, are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then you, the jury, must find against the plaintiff, upon whom the burden of proof has been cast in accordance with these instructions.

Statements of Counsel and the Court

You must not consider as evidence any statements of counsel made during the trial. If, however, counsel for the parties have ~~stipulated to any fact, or any fact has been admitted by counsel,~~ you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

Totality of the Evidence

The jury may consider all evidence admitted in the case.

Testimony and documents which the court allowed into evidence

~~over a hearsay objection may be considered by you as evidence, on~~

the same basis as all other evidence, for the purpose for which

it was admitted. This, of course, is all for you, the jury to

decide.

Direct and Circumstantial Evidence

There are two kinds of evidence - direct and circumstantial.

Direct evidence is testimony by a witness about what that witness

~~personally saw or heard or did. Circumstantial evidence is~~

indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

II. STIPULATED FACTS

Stipulated Facts

Before the trial of this case, the parties agreed to the ~~truth of certain facts in this action. As a result of this~~ agreement, the plaintiffs and the defendant entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

The following facts have been stipulated by the parties:

1. From October 1979 to January 1981, Nicolas Carranza was the Subsecretary of Defense and Public Security in El Salvador and a member of the Salvadoran High Command.
2. While serving as Subsecretary of Defense, Mr. Carranza did not initiate an investigation to determine whether any members of the Salvadoran military were responsible for human rights abuses.
3. While serving as Subsecretary of Defense, Mr. Carranza did not discipline or punish any members of the Salvadoran military for human rights abuses.
4. While serving as Subsecretary of Defense, Mr. Carranza did not prosecute under military law or refer to

civilian courts any members of the Salvadoran military for incidents of torture or extrajudicial killing.

5. From 1979 to 1984, the Salvadoran Constitution and the laws of El Salvador, including international agreements

~~to which El Salvador was a party, prohibited members of~~
the Salvadoran military from committing torture and extrajudicial killing.

6. From May 1983 to May 1984, Mr. Carranza served as Director of the Treasury Police of El Salvador.
7. While serving as Director of the Treasury Police, Mr. Carranza had the legal authority and practical ability to exert control over subordinate members of the Treasury Police.
8. While serving as Director of the Treasury Police, Mr. Carranza had the authority to discipline any subordinate who was responsible for committing a crime or violating military rules of conduct.
9. While serving as Director of the Treasury Police, Mr. Carranza did not prosecute under military law or refer to civilian courts any members of the Treasury Police for incidents of torture or extrajudicial killing.
10. The claims of the Plaintiff Ana Patricia Chavez are the result of an event that occurred on July 26, 1980.
11. Plaintiff Ana Patricia Chavez has resided in Van Nuys, California, for twenty-four (24) years prior to her

deposition taken on December 7, 2004. She is a permanent resident of the United States.

12. The claims of the Plaintiff José Francisco Calderon are the result of an event that allegedly occurred on

~~September 11, 1980.~~

13. Plaintiff José Francisco Calderon has resided in San Francisco, California, since February of 1981 and has been a citizen of the United States since 1996.

14. The claims of the Plaintiff Erlinda Franco are the result of an event that allegedly occurred on November 27, 1980.

15. Plaintiff Erlinda Franco is the only Plaintiff who now resides in El Salvador.

16. The claims of the Plaintiff Daniel Alvarado are the result of events that allegedly occurred in August 1983.

17. Plaintiff Daniel Alvarado has now resided in Sweden since April of 1986.

18. The claims of the Plaintiff Cecilia Santos are the result of events that allegedly occurred in September - October, 1980.

19. Plaintiff Cecilia Santos moved to New York from El Salvador in June of 1983 and has been in New York for twenty (20) years.

20. The Defendant, Nicolas Carranza, has been a resident of the United States since 1985.

21. The Defendant, Nicolas Carranza, has been a naturalized citizen of the United States since 1991.

~~22. The Defendant, Nicolas Carranza, has not concealed his~~
identity or location since 1985 and has lived at the same residence since 1985.

23. Ana Patricia Chavez does not know the names of the individuals who committed the alleged acts claimed by her.

24. Cecilia Santos does not know the names of the individuals who committed the alleged acts complained of by her.

25. José Francisco Calderon does not know the names of the individuals who committed the alleged acts claimed by him.

26. Erlinda Franco does not know the names of the individuals allegedly responsible for the alleged acts complained of by her.

27. When Ana Patricia Chavez refers to her husband and to being married in El Salvador, she is referring to a common law marriage which was common in El Salvador at the time. It was customary for a person to refer to her husband even if they had not been officially

married, which they were not. Ms. Chavez is not bringing a claim for the death of Omar Reyes.

Court Rulings

It is a common practice for the Court to make certain
rulings before the trial. You must follow these rulings in your
deliberations.

III. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

Although we have had one trial, this case is actually a combination of five separate cases. Each plaintiff is pursuing ~~an individual claim for monetary damages grounded on the~~ allegation that the plaintiff was the victim of unlawful acts and that the defendant is responsible for these actions under the law of command responsibility. Federal law permits claims of this nature to be brought in this Court.

Let me now review each of the claims before you:

1. Cecilia Santos brings a claim against Mr. Carranza for torture. Before the trial, the Court ruled that the treatment of Cecilia Santos constituted torture under the applicable legal definition. Thus, as to Cecilia Santos, you will only have to decide if the defendant is responsible under the law of command responsibility for her torture.
2. Jose Francisco Calderon brings a claim against Mr. Carranza for torture. Before the trial, the Court ruled that the treatment of Jose Francisco Calderon, that is, being forced to witness the death of his father, constituted torture under the applicable legal

definition. Jose Francisco Calderon also brings a claim against Mr. Carranza for the extrajudicial killing of his father. Before trial, the Court ruled that the killing of Jose Francisco Calderon's father

~~constituted an extrajudicial killing under the~~ applicable legal definition. Thus, as to Jose Francisco Calderon, you will only have to decide if the defendant is responsible under the law of command responsibility for his torture and for the extrajudicial killing of his father.

3. Ana Patricia Chavez brings a claim against Mr. Carranza for the extrajudicial killing of her mother and her father. The Court did not make a determination before trial about this claim. Thus, as to Ana Patricia Chavez, you will have to decide if the killing of her mother and father constituted an extrajudicial killing under the definition I will give you as part of these instructions and if the defendant is responsible under the law of command responsibility for those killings.
4. Erlinda Franco brings a claim against Mr. Carranza for the extrajudicial killing of her husband. Before trial, the Court ruled that the killing of Manuel Franco constituted an extrajudicial killing under the

applicable legal definition. Thus, as to Erlinda Franco, you will have to decide if the defendant is responsible under the law of command responsibility for the extrajudicial killing of her husband. You also

will have to decide if the extrajudicial killing of her husband was a crime against humanity, under the definition I will give you as part of these instructions, and if the defendant is responsible under the law of command responsibility.

5. Daniel Alvarado brings a claim against Mr. Carranza for torture. Before the trial, the Court ruled that the treatment of Daniel Alvarado constituted torture under the applicable legal definition. Thus, as to Daniel Alvarado, you will have to decide if the defendant is responsible under the law of command responsibility for his torture. You will also have to decide if his torture was a crime against humanity, under the definition I will give you as part of these instructions, and if the defendant is responsible under the law of command responsibility.

Although these claims have been presented together, each is separate from the others, and each plaintiff and the defendant are entitled to have you separately consider each claim as it

affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.

Extrajudicial Killing

On Plaintiff Ana Patricia Chavez's claim for extrajudicial killing, plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

1. A person or persons deliberately killed Plaintiff Ana Patricia Chavez's parents, Humberto Chavez and Guillermina Chavez.
2. The person or persons killed the victim while acting under the actual or apparent authority, or color of law, of El Salvador; and
3. The killing was not previously authorized by a judgment of a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Under Color of Law

Acts are done "under color of law" when a person acts or purports to act in the performance of official duties. Action

~~"under color of law" means action that is clothed with the~~ authority of the government, including actions that abuse, misuse or overstep the actor's legal authority. Acts done "under color of law" also include those acts that demonstrate a substantial degree of cooperation between a private person and the government.

Crimes Against Humanity

On their claims for crimes against humanity, Erlinda Franco and Daniel Alvarado have the burden of proving each of the following elements by a preponderance of the evidence:

1. A person or persons committed any of the following acts: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial or religious grounds, enforced disappearance of persons, apartheid, or other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health;
2. The person or persons committed the act as part of a widespread or systematic attack directed against a civilian population; and
3. The person or persons knew or, based on the circumstances, should have known that the act was part of a widespread or systematic attack.

The term "widespread" refers to the large-scale nature of the attack and the number of targeted persons. The term "systematic" refers to the organized nature of the acts of violence and the unlikelihood that they occurred randomly.

Although this claim refers to "crimes against humanity," the plaintiffs' burden of proof remains a preponderance of the evidence and not the higher burden of proof required in criminal cases.

Law of Command Responsibility

The plaintiffs seek to hold the defendant responsible under the law of command responsibility. The law of command responsibility makes a military commander liable for the acts of his subordinates, even if the commander did not order those acts.

To hold a military commander liable under the law of command responsibility, the plaintiffs must prove the following elements by a preponderance of the evidence:

1. A superior-subordinate relationship existed between the defendant and the person or persons who committed torture, extrajudicial killing, and/or crimes against humanity;
2. The defendant knew, or should have known, in light of the circumstances at the time, that his subordinates had committed, were committing, or were about to commit torture, extrajudicial killing and/or crimes against humanity; and
3. The defendant failed to take all necessary and reasonable measures to prevent these abuses, or failed to punish the subordinates after the commission of

torture, extrajudicial killing and/or crimes against
humanity.

Superior-Subordinate Relationship

The first element of command responsibility is the existence of a superior-subordinate relationship between the defendant and the person or persons who committed the abuses involved in this case. To establish this element, the plaintiffs must prove, by a preponderance of the evidence, that the defendant had "effective control" over the person or persons who committed torture, extrajudicial killing, and/or crimes against humanity.

The "effective control" requirement is satisfied if the defendant had the legal authority and practical ability to exert control over his subordinates. The defendant cannot escape liability, however, where his own action or inaction caused or significantly contributed to a lack of effective control over his subordinates. Even if a defendant lacked legal authority, he nonetheless possessed "effective control" if he had the practical ability to exert control over his subordinates.

Actual or Constructive Knowledge

The second element of command responsibility is the actual or constructive knowledge by the defendant of abuses committed by his subordinates. The plaintiffs may prove this element, by a preponderance of the evidence, in one of two ways. First, the plaintiffs may prove that the defendant actually knew that subordinates had committed, were committing, or were about to commit torture, extrajudicial killing, and/or crimes against humanity. Alternatively, the plaintiffs may prove that, in light of the circumstances at the time, the defendant should have known that subordinates had committed, were committing, or were about to commit torture, extrajudicial killing, and/or crimes against humanity.

With respect to this element, the plaintiffs do not have to prove that the defendant knew or should have known about the abuses against the specific victims in this case. Rather, the knowledge element would be satisfied if the plaintiffs prove that the defendant knew, or should have known, that his subordinates had committed, were committing, or were about to commit torture, extrajudicial killing, and/or crimes against humanity. The defendant should have known that such abuses were being committed if subordinates were engaged in a pattern, practice, or policy of

committing torture, extrajudicial killing, and/or crimes against
humanity.

Failure to Prevent or Punish

The plaintiffs may establish the third element by proving, by a preponderance of the evidence, that the defendant failed to take all necessary and reasonable measures to prevent torture, extrajudicial killing, and/or crimes against humanity, or failed to punish his subordinates after the commission of such abuses. Failure to punish may be established by proof that the defendant failed to properly investigate reliable allegations of torture, extrajudicial killing, and/or crimes against humanity committed by subordinates or failed to submit these matters to appropriate authorities for investigation and prosecution.

Do Not Consider Others

You are here to determine the liability of this defendant as to each claim asserted from the evidence. You are not called upon to return a verdict as to the liability of any other person or persons. Nor are you to consider the liability that such other persons may or may not have, or whether such persons have been, will be or should be charged with liability in this or any other court. You must determine whether or not the evidence in the case convinces you, by a preponderance of the evidence, of this defendant's liability without regard to any belief you may have about the liability of any other person or persons.

Inferring Required Mental State

I want to explain something about proving a person's state of mind, as it is relevant to the instructions I have given you.

Ordinarily, there is no way that a person's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a person's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the person said, what he did, how he acted, and any other facts or circumstances in evidence that show what was in the person's mind.

You may also consider the natural and probable results of any acts that the person knowingly did or failed to do, and whether it is reasonable to conclude that the person intended those results. This, of course, is all for you to decide.

Political Views are Irrelevant

In your deliberations, you should not give any regard to the political views, beliefs or affiliations of any of the parties,

or any other person about whom you have heard testimony, as a basis to excuse torture, extrajudicial killing, or crimes against humanity. Every person - no matter what his or her political views, beliefs or affiliations - has the right to be free from torture, extrajudicial killing, and crimes against humanity.

IV. DAMAGES

It is my duty to instruct you as to the proper measure of damages to be applied in this case if you find that the ~~plaintiffs have proved each of the elements of their claims. By~~ instructing you regarding damages, I am not indicating, one way or the other, that I have any opinion regarding whether or not damages should be awarded in this case.

Compensatory Damages

If you find in favor of any or all of the plaintiffs and against the defendant, then you must determine an amount that is fair compensation for the damages suffered by the plaintiff or plaintiffs. Compensatory damages seek to make the party whole - that is, to compensate the plaintiff for the damage suffered as a result of the defendant's wrongful conduct. The damages, if any, that you award, must be full and fair compensation, no more and no less.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require the plaintiffs to prove their losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

In particular, you may award compensatory damages for pain and suffering and mental and emotional distress. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation to be awarded

for these elements of damages. Any award you make must be fair in light of the evidence presented at trial.

Pain and Suffering

You should consider the following in determining the amount of compensatory damages, to the extent you find them proved by a preponderance of the evidence:

- Emotional pain and suffering;
- Mental anguish;
- Physical Disfigurement
- Physical Pain

In evaluating these items, you may consider the following factors:

- physical torture; including methods used or abuses suffered;
- mental abuse, including fright and anguish;
- length of time torture endured;
- length of detention;
- victim's age or other limiting physical or emotional characteristics

In making an award for such damages, you must use your best judgment and establish an amount of damages that is fair and reasonable in light of the evidence before you.

Punitive Damages

In addition to compensatory damages, you have the discretion to award punitive damages. Unlike compensatory damages, which are imposed to reimburse a plaintiff for his or her injuries, punitive damages are designed to punish a defendant for his wrongful conduct and to deter him and others from committing similar misconduct in the future. In the context of international law violations, punitive damages may be awarded to punish heinous conduct and to demonstrate that human rights abuses will not be tolerated. You may, in your discretion, award punitive damages in this case only if you find that the defendant's conduct was intentional, malicious, wanton, or reckless.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act or to cause the result.

A person acts maliciously when the person is motivated by ill will, hatred, or personal spite.

A person's conduct is wanton if the person acts unreasonably or maliciously, risking harm while being utterly indifferent to the consequences.

A person acts recklessly when the person is aware of, but consciously disregards a substantial or unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under the circumstances.

If you decide to award punitive damages, you will not assess an amount of punitive damages at this time. You will, however, report your findings to the Court.

If you, the jury, find that the conduct of the defendant, as determined under these instructions, was intentional, malicious, wanton, or reckless, then indicate so in your response to the last question on the verdict form you are considering, but do not indicate the amount of punitive damages you would award. That question will be reserved until the parties have a final opportunity to present some additional evidence on the question.

Of course, if you find that the actions of the defendant were not intentional, malicious, wanton, or reckless, then you should so indicate in your response to the last question on the verdict form you are considering, and that will be your final verdict in this case as to that plaintiff.

IV. DELIBERATION AND VERDICT

Verdict Form

Finally, ladies and gentlemen of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room five verdict forms which reflect your findings. The verdict forms read as follows:

[Read Verdict Forms]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign each of the verdict forms.

Each verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree to that verdict. That is, each of your verdicts must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for yourself, but do so only after an

impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case that have been marked and admitted as evidence in the case. The exhibits will be there for your review and consideration though you may not have previously seen all of them. You may take a break before you begin deliberating but do not begin to deliberate and do not discuss the case at any time unless all nine of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after consulting with

counsel either in writing or by having you return to the courtroom so that I can address you orally. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

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,)
)
v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

VERDICT FORM NO. 1 - PLAINTIFF CECILIA SANTOS

We, the jury, present the following answers to the questions submitted by the Court:

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

_____ "YES" _____ "NO"

If your answer to Question No. 1 is "No," stop here, the presiding juror should sign the verdict form and you should not go any further. If your answer to Question No. 1 is "Yes," then you should proceed to the following question.

2. What is the total amount of compensatory damages that should be awarded to Plaintiff Cecilia Santos for her torture?

\$ _____

3. Do you find that Nicolas Carranza's conduct was intentional, malicious, wanton, or reckless?

_____ "YES" _____ "NO"

PRESIDING JUROR

DATE

IN THE UNITED STATES DISTRICT COURT
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v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

VERDICT FORM NO. 2 - PLAINTIFF JOSE FRANCISCO CALDERON

We, the jury, present the following answers to the questions submitted by the Court:

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

_____ "YES" _____ "NO"

2. Do you find that Nicolas Carranza is liable under the law of command responsibility for the torture of Plaintiff Jose Francisco Calderon?

_____ "YES" _____ "NO"

If your answer to both Question No. 1 and Question No. 2 is "No," stop here, the presiding juror should sign the verdict form and you should not go any further. If your answer to Question

No. 1 and/or Question No. 2 is "Yes," then you should proceed to the following question.

3. What is the total amount of compensatory damages that should be awarded to Plaintiff Jose Francisco Calderon?

\$ _____

4. Do you find that Nicolas Carranza's conduct was intentional, malicious, wanton, or reckless?

_____ "YES" _____ "NO"

PRESIDING JUROR

DATE

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FOR THE WESTERN DISTRICT OF TENNESSEE
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v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

VERDICT FORM NO. 3 - PLAINTIFF ANA PATRICIA CHAVEZ

We, the jury, present the following answers to the questions submitted by the Court:

1. Do you find that Nicolas Carranza is liable under the law of command responsibility for the extrajudicial killings of Plaintiff Ana Patricia Chavez's parents, Humberto and Guillermina Chavez?

_____ "YES" _____ "NO"

If your answer to Question No. 1 is "No," stop here, the presiding juror should sign the verdict form and you should not go any further. If your answer to Question No. 1 is "Yes," then you should proceed to the following question.

2. What is the total amount of compensatory damages that should be awarded to Plaintiff Ana Patricia Chavez?

\$ _____

3. Do you find that Nicolas Carranza's conduct was intentional, malicious, wanton, or reckless?

_____ "YES" _____ "NO"

PRESIDING JUROR

DATE

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,)
)
v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

VERDICT FORM NO. 4 - PLAINTIFF ERLINDA FRANCO

We, the jury, present the following answers to the questions submitted by the Court:

1. Do you find that Nicolas Carranza is liable under the law of command responsibility for the extrajudicial killing of Plaintiff Erlinda Franco's husband, Manuel Franco?

_____ "YES" _____ "NO"

2. Do you find that Nicolas Carranza is liable to Plaintiff Erlinda Franco under the law of command responsibility for crimes against humanity?

_____ "YES" _____ "NO"

If your answer to both Question No. 1 and Question No. 2 is "No," stop here, the presiding juror should sign the verdict form and you should not go any further. If your answer to Question No. 1 and/or Question No. 2 is "Yes," then you should proceed to

the following question.

3. What is the total amount of compensatory damages that should be awarded to Plaintiff Erlinda Franco?

\$ _____

4. Do you find that Nicolas Carranza's conduct was intentional, malicious, wanton, or reckless?

_____ "YES" _____ "NO"

PRESIDING JUROR

DATE

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,)
)
v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

VERDICT FORM NO. 5 - PLAINTIFF DANIEL ALVARADO

We, the jury, present the following answers to the questions submitted by the Court:

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

_____ "YES" _____ "NO"

2. Do you find that Nicolas Carranza is liable to Plaintiff Daniel Alvarado under the law of command responsibility for crimes against humanity?

_____ "YES" _____ "NO"

If your answer to both Question No. 1 and Question No. 2 is "No," stop here, the presiding juror should sign the verdict form and you should not go any further. If your answer to Question No. 1 and/or Question No. 2 is "Yes," then you should proceed to

the following question.

3. What is the total amount of compensatory damages that should be awarded to Plaintiff Daniel Alvarado?

\$ _____

4. Do you find that Nicolas Carranza's conduct was intentional, malicious, wanton, or reckless?

_____ "YES" _____ "NO"

PRESIDING JUROR

DATE

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

CECILIA SANTOS, JOSE)	
FRANCISCO CALDERON,)	
ERLINDA FRANCO, and)	
DANIEL ALVARADO,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2932
)	
NICOLAS CARRANZA,)	
)	
Defendant.)	

Supplemental Jury Instruction #5: Punitive Damages

Ladies and gentlemen of the jury, we have now come to the second phase of the case when it is my duty to instruct you in the law as it applies to punitive damages. Again, you must follow the law as I state it to you.

In the first phase of this trial you found the defendant, Nicolas Carranza, liable to Plaintiff Cecilia Santos and awarded her compensatory damages; you found the defendant, Nicolas Carranza, liable to Plaintiff Jose Francisco Calderon and awarded him compensatory damages; you found the defendant, Nicolas Carranza, liable to Plaintiff Erlinda Franco and awarded her compensatory damages; and you found the defendant, Nicolas Carranza, liable to Plaintiff Daniel Alvarado and awarded him

compensatory damages. You, the jury, also agreed that Plaintiff Cecilia Santos, Plaintiff Jose Francisco Calderon, Plaintiff Erlinda Franco, and Plaintiff Daniel Alvarado had shown by a preponderance of the evidence that the defendant's actions were intentional, malicious, wanton or reckless as evidenced by your answer of "Yes" to the last question on each of the Verdict Forms.

As we discussed earlier, as jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

These instructions are in addition to the instructions that you have already received.

Punitive Damages

You have decided that Plaintiff Cecilia Santos, Plaintiff Jose Francisco Calderon, Plaintiff Erlinda Franco, and Plaintiff Daniel Alvarado are entitled to punitive damages. You must now decide the amount of those damages. Again, the plaintiff has the burden of proving by a preponderance of the evidence the amount of punitive damages that you should award.

In making your decision you must consider the instructions that I have already given you and also the following:

1. The reprehensibility of the defendant's conduct;
2. The defendant's net worth and financial condition;
3. The objectionable nature of the defendant's wrongdoing, and the impact of the defendant's conduct on the plaintiff;
4. The defendant's awareness of the amount of harm being caused and the defendant's motivation in causing the harm;
5. The duration of the defendant's misconduct and whether the defendant attempted to conceal the conduct;
6. [If proof presented] Whether, once the misconduct became known to the defendant, the defendant tried

to remedy the situation or offered a prompt and fair settlement for the actual harm caused;

7. An amount reasonably necessary to deter defendant and/or others from committing similar misconduct in the future; and
8. Any other circumstances shown by the evidence that bears on determining the proper amount of the punitive award.

You have already awarded the plaintiff compensatory damages for the purpose of making the plaintiff whole. The purpose of an award for punitive damages is to punish the wrongdoer and to deter misconduct by the defendant or others.

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

CECILIA SANTOS, JOSE)	
FRANCISCO CALDERON,)	
ERLINDA FRANCO, and)	
DANIEL ALVARADO,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2932
)	
NICOLAS CARRANZA,)	
)	
Defendant.)	

PUNITIVE DAMAGES VERDICT FORM
PLAINTIFF CECILIA SANTOS

We the jury, find that Plaintiff Cecilia Santos has proven, by a preponderance of the evidence, that she should be awarded punitive damages against defendant Nicholas Carranza in the amount of \$ _____.

PRESIDING JUROR

DATE

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

CECILIA SANTOS, JOSE)	
FRANCISCO CALDERON,)	
ERLINDA FRANCO, and)	
DANIEL ALVARADO,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2932
)	
NICOLAS CARRANZA,)	
)	
Defendant.)	

PUNITIVE DAMAGES VERDICT FORM
PLAINTIFF JOSE FRANCISCO CALDERON

We the jury, find that Plaintiff Jose Francisco Calderon has proven, by a preponderance of the evidence, that he should be awarded punitive damages against defendant Nicholas Carranza in the amount of \$_____.

PRESIDING JUROR

DATE

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

CECILIA SANTOS, JOSE)
FRANCISCO CALDERON,)
ERLINDA FRANCO, and)
DANIEL ALVARADO,)
)
Plaintiffs,)
)
v.) No. 03-2932
)
NICOLAS CARRANZA,)
)
Defendant.)

PUNITIVE DAMAGES VERDICT FORM
PLAINTIFF ERLINDA FRANCO

We the jury, find that Plaintiff Erlinda Franco has proven,
by a preponderance of the evidence, that she should be awarded
punitive damages against defendant Nicholas Carranza in the
amount of \$ _____.

PRESIDING JUROR

DATE

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

CECILIA SANTOS, JOSE)	
FRANCISCO CALDERON,)	
ERLINDA FRANCO, and)	
DANIEL ALVARADO,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2932
)	
NICOLAS CARRANZA,)	
)	
Defendant.)	

PUNITIVE DAMAGES VERDICT FORM
PLAINTIFF DANIEL ALVARADO

We the jury, find that Plaintiff Daniel Alvarado has proven,
by a preponderance of the evidence, that he should be awarded
punitive damages against defendant Nicholas Carranza in the
amount of \$ _____.

PRESIDING JUROR

DATE