

Jury Verdict Finally Vindicates the Family of Detainee Francisco Castaneda

By Conal Doyle, Beverly Hills, CA

On November 10, 2010, a Los Angeles jury returned a \$ 1.735 million verdict against the State of California, holding the State liable for the wrongful death of Francisco Castaneda. Mr. Castaneda was a former State and Federal prisoner, who had his penis amputated and died because the State (and federal officials) denied him a simple biopsy to rule out penile cancer.

This verdict was the culmination of almost four years of fighting on behalf of Mr. Castaneda, and his daughter, seventeen year old Vanessa Castaneda. The significance of this case, in part, is evidenced by the fact that it has been reported in the media worldwide, including a segment on the CBS news magazine 60 Minutes. The case has brought me to the halls of Congress, to watch Mr. Castaneda testify about immigration detainee health care, and to the United States Supreme Court, where I argued *Hui v. Castaneda*, 130 S.Ct. 1845 (2010), a case

to wear when he appeared before Congress. As I paid my last respects to my client, I promised myself that his death would not pass unavenged.

It was February 23, 2008, a week after Mr. Castaneda had died a slow and painful death from metastatic penile cancer. He was thirty-six years old. On that night, I made a pledge to his daughter Vanessa that I would do whatever it took to ensure that his death was not forgotten.

This verdict fulfilled that promise.

Factual Background:

Francisco Castaneda was brought to the United States by his mother when he was ten years old, in an attempt to escape the civil war in El Salvador. His mother died when he was twenty years old, leaving him alone in the United States with his sister, two brothers, and new born daughter. He never obtained legal status in the United States and was convicted of drug possession in 2004. Mr.



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he was diagnosed with metastatic penile cancer and his penis was amputated on Valentines Day, 2007. By this time, his cancer had spread, and he died a slow and painful death over the next year, ultimately succumbing on February 16, 2008.

Procedural Background:

Originally, my law firm and Public Justice brought suit in federal court against the State of California, the United States, and State and Federal officials. The State of California raised Eleventh Amendment immunity, meaning that Plaintiffs had to dismiss the State from the federal case and re-file in state court. Shortly after suit was filed, Mr. Castaneda died, and his sole heir, Vanessa Castaneda, was substituted as a plaintiff. Both the state and federal cases have been progressing on parallel paths for the past three years.¹

The State case went to trial on October 25, 2010, and the jury returned its verdict on November 10, 2010.

The companion federal case has traveled a more circuitous route. At the inception of the case, the district court entered an order denying a motion to dismiss the individual federal officials, characterizing their conduct as "beyond cruel and unusual." The federal officials appealed arguing that they had absolute immunity from suit. After the Ninth Circuit affirmed the district court's denial of immunity, the Supreme Court granted certiorari, and reversed, extending immunity to the individual physicians. The Supreme Court remanded the case for trial against the United States under the FTCA. *Hui v. Castaneda*, 130 S.Ct. 1845 (2010).

In the federal case, the United States is a defendant (FTCA trial) as are two State officials, who have been sued under 42 U.S.C. § 1983. They are the same actors that formed the basis for the State verdict. If Plaintiffs prevail on those claims, they will also be entitled to seek pre-death pain and suffering for Mr. Castaneda under the federal survival rule, and attorneys fees under 42 U.S.C. § 1988.

There will likely be two more trials: (1) an FTCA bench trial against the United States; and (2) a federal jury trial in the same action against the State actors, sued under §1983.

State Jury Trial:

In the recent state court trial, the sole defendant was the State of California and the sole cause of action was "violation of California Government Code Section 845.6," which allows a government entity to be sued when it

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that determined whether Public Health Service doctors can be sued for violating the constitution.

But perhaps the most meaningful journey I took was to a small and simple church in southeast Los Angeles shortly after this case began. The church was unadorned with the trappings of wealth or sophistication. Like most churches, it had hard wooden pews split by a center aisle that leads to the altar. On this cold February night, the center aisle led to a casket. And as I walked down the aisle, I peered into the casket and caught a glimpse of a blue suit and red tie, clothes I had given Mr. Castaneda

Castaneda was detained in State of California custody from December 5, 2005 until March 27, 2006 for the drug conviction and then transferred to federal immigration custody on March 28, 2006 until his release from federal custody on February 5, 2007. During his time in both State and Federal custody, medical providers documented a growing penile lesion that they suspected was cancerous. Prison doctors submitted multiple requests for a urology consult and biopsy for Mr. Castaneda, but these requests were denied for the more than fourteen months he was in State and Federal Custody. Shortly after his release from federal custody,

knows or has reason to know that a prisoner is in need of immediate medical care and fails to summon such care. The California medical malpractice caps (MICRA) do not apply to this statutory cause of action. So the verdict is 100% collectible.

The last offer before trial was \$10,000, and the Plaintiffs' last (and only) demand was \$1,800,000. At trial, Plaintiffs asked the jury to award \$1,500,000 in non-economic damages, and \$235,557 in past medical bills. The jury returned a verdict for precisely what was requested after deliberating for less than four hours, with no comparative fault. The trial lasted two weeks.

Case Themes:

The State challenged liability, causation and damages and attempted to apportion blame to multiple other parties. On liability, Plaintiffs argued that the State gambled with Mr. Castaneda's life, by not providing him a simple biopsy to rule out cancer. We invoked the differential diagnosis theme "when in doubt, rule it out." Additionally, we argued that this rule applies to all medical providers, whether they work in a nursing home, in a managed care system, or as a pediatrician. Obviously, we wanted to focus on situations that common jurors could relate to, other than a penal medical system. The State never explained why they didn't provide Mr. Castaneda a biopsy, but never admitted any fault, which angered many of the jurors.

On causation, the State's urologist argued that Mr. Castaneda had incurable metastatic penile cancer when he entered State custody, and therefore the State could not have helped him. This theory was dismantled on cross-examination, as the State's expert admitted that the jury would have to "discard the views of all the medical providers" who examined Mr. Castaneda over a 14 month period in order to accept his theory of the case. The cross-examination of this expert was a key moment in the trial as the defense was based almost entirely on his testimony. After the trial, jurors indicated that no one on the jury found the expert credible, and rejected his theory of the case entirely.

On damages, the defense focused on the fact that Mr. Castaneda had a very limited relationship with his daughter (the sole heir) prior to being released from custody and being diagnosed with terminal penile

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cancer. The defense suggested that Mr. Castaneda would not have meaningfully participated in a future relationship with his daughter and that the damages were therefore insignificant. This was a challenging issue for the Plaintiffs because it was true that the decedent did not have much of a relationship with his daughter until the last year of his life. He never attended a birthday or holiday during her youth, did not provide her financial support, lived in a different State for most of her youth, and never lived with her after she was three months old.

We addressed this issue directly in opening statement, candidly admitting that the decedent and heir did not enjoy a close relationship until the last year of Mr. Castaneda's life, after he had been released from custody and diagnosed with terminal penile cancer. Plaintiffs also brought this out on direct examination of the damages witnesses, which made the cross-examination ineffective and over-aggressive. The testimony of Vanessa Castaneda, the heir, was a significant moment in the case as she came across as very likeable, intelligent, and honest. She is already a single mother, but still graduated early from high school, and is enrolled in college, where she is an A student.

Plaintiffs theme was that Mr. Castaneda was seeking redemption for the mistakes of his past, and that he had become close with his daughter during the last year of his life. Plaintiffs emphasized that wrongful death damages are for future losses, not pre-death loss. Defendant argued that there was no guarantee that Mr. Castaneda would have ever meaningfully participated in a relationship with his daughter in the future because he had not really done so in the past. In closing, we argued that the only reason the jury would not know whether Mr. Castaneda would have turned his life around is because the State destroyed the evidence: by killing him.

Plaintiffs were fortunate to have poignant videotaped deposition testimony from a federal physician's assistant who treated Mr. Castaneda while he was in federal custody. The witness obviously liked Mr. Castaneda and testified that Castaneda wanted a second chance at life, wanted to do things differently with his daughter when he got out of custody, wanted to go into the medical field, go back and get an education, etc.

During closing argument, Plaintiffs played the videotaped deposition of the physician's assistant, and then we echoed the words of poet John Greenleaf Whittier: "of all sad words of tongue or pen, the saddest are these: what might have been." This poem turned into the theme "what might have been," and the jury was obviously emotionally moved by it. This theme allowed Plaintiffs to focus on the future rather than the mistakes of Mr. Castaneda's past in a memorable way.

In asking for non-economic damages, we focused on the efforts that a civilized society makes to preserve human life. As an example, we referenced the recent Chilean miner rescue, where countries from all over the world sent resources, at tremendous expense, to help save lives. In closing, we told the jury that "one can judge the degree of civilization in a society by entering its prisons." We coupled this theme by explaining that this was a very important case, and that these jurors were chosen to represent the community view on the standard of civilization in Los Angeles County in 2010. We argued that only a full and fair verdict would tell the world that what happened to Mr. Castaneda was unacceptable in our modern society.

After the trial, jurors expressed outrage at the way the case was defended, the attacks on Mr. Castaneda, and the attempts to belittle the loss suffered by Ms. Castaneda.

Final Thoughts:

In many ways, this case symbolizes the reason why many of us attended law school and chose to become trial lawyers. It has been a catalyst for change in the immigration detainee health system, and has brought individual justice to an aggrieved and deserving family. Without the civil justice system, the atrocity suffered by the Castaneda family would have been swept under the rug by our government and Mr. Castaneda's plight would have been forgotten forever. With the help of top public interest law firms like Public Justice, we all have an opportunity and obligation to take on challenging cases that will make a difference in our communities and beyond.

Conal Doyle is lead counsel for the Castaneda family, along with co-counsel Adele Kimmel and Amy Radon from Public Justice, P.C., and Thomas M. Dempsey.

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