UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AMARE SELTON, Plaintiff, v. TROY MITCHELL; E. RIZZO; M. WOODARD; B. SMITH, Defendants.	Civil Action Case No. 9:04-CV-0989 (LEK/RFT)

PLAINTIFF'S REQUEST TO CHARGE

HANCOCK & ESTABROOK, LLP

By: s/ Christopher G. Todd
Christopher G. Todd, Esq.
Bar Roll No. 512654
Thomas C. Cambier, Esq.
Bar Roll No. 513780
Trial Attorneys for Plaintiff
1500 Tower I - P.O. Box 4976
Syracuse, New York 13221-4976
Telephone: (315) 471-3151

INTRODUCTION [1]

Now that you have heard all the evidence and the arguments of counsel, it is my duty to instruct you on the law applicable to this case.

You have two duties as a jury. Your first duty is to decide the facts of this case on the basis of the admitted evidence. This is your job, and yours alone. Once you have determined the facts, your second duty is to follow the law as I state it, and apply the law to the facts. You are not to consider one instruction alone as stating the law, but you are to consider the instructions as a whole. You must follow these instructions even if you do not agree with them.

You should not concern yourself with the wisdom of any rule of law. You are bound to accept and apply the law as I give it to you, whether or not you agree with it. In deciding the facts of this case, you must not be swayed by feelings of bias, prejudice or sympathy toward any party. Both parties and the public expect you to carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a decision regardless of the consequences.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather yours.

EVIDENCE [2]

As stated earlier, your duty is to determine the facts based on the evidence I have admitted. The term "evidence" includes the sworn testimony of witnesses and exhibits marked in the record. Arguments and statements of lawyers, questions to witnesses, and evidence

---

1 AUTHORITY: adapted from O'Malley, Grenig and Lee, FEDERAL JURY PRACTICE AND INSTRUCTIONS § 103.01 (5th ed. 2000); Devitt, Blackmar, Wolff and O'Malley, FEDERAL CIVIL JURY PRACTICE INSTRUCTIONS § 71.01 (1987 and 2000 Supp.).

2 AUTHORITY: adapted from O'Malley, Grenig and Lee, FEDERAL JURY PRACTICE AND INSTRUCTIONS §§ 103.30, 104.05 (5th ed. 2000) and Devitt, Blackmar, Wolff & O'Malley, FEDERAL CIVIL JURY PRACTICE INSTRUCTIONS, § 71.08 (1987 and 1999 Supp.)

excluded by my rulings are not evidence. When, however, the attorneys on both sides stipulated or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

The court may take judicial notice of certain facts or events. When the court declares it will take judicial notice of some fact or event, the jury must, unless otherwise instructed, accept the court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed.

In addition, during the trial, I sustained objections to questions and either prevented a witness from answering or ordered an answer stricken from the record. You may not draw inferences from unanswered questions and you may not consider any responses stricken from the record.

The function of lawyers is to call to your attention facts that are most helpful to their side of the case. What the lawyers say, however, is not binding on you, and in the final analysis, your own recollection and interpretation of the evidence controls your decision.

You must not infer from anything I have said during this trial that I hold any views for or against any party in this lawsuit; in any event, any opinion I might have is irrelevant to your decision.

While you should consider only the admitted evidence, you may draw inferences from the testimony and exhibits which are justified in light of common experience. The law recognizes two types of evidence -- direct and circumstantial. Direct evidence is the testimony of one who asserts personal knowledge, such as an eyewitness. Circumstantial or indirect evidence is proof of a chain of events which points to the existence or nonexistence of certain facts. As an example, <u>direct evidence</u> that it is raining is testimony from a witness who says "I was outside a minute ago and saw that it was raining." <u>Circumstantial evidence</u> that it is raining is the observation of someone entering the room with a wet umbrella.

The law does not distinguish between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You may rely on either type of evidence in reaching your decision.

CREDIBILITY OF WITNESSES [3]

The law does not require you to accept all of the evidence that has been admitted even though it is competent. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each witness and determine the degree or weight that you choose to give to that testimony. The testimony of the witness may fail to conform to the facts as they occurred because the witness intentionally told a falsehood, because the witness did not accurately see or hear that about which he/she testified, because the witness' recollection of the events was faulty, or because the witness did not express himself or herself clearly in giving the testimony. There is no magic formula by which you may evaluate testimony. You bring with you into this Courtroom all of the experience and background of your lives. In your everyday affairs, you determine for yourselves the reliability or unreliability of statements made to you by others.

In general, you may consider the interest or lack of interest of any witness in the outcome of this case, the bias or prejudice of a witness, if there is any, the age and appearance of the witness; the manner in which the witness gave his/her testimony on the stand; the opportunity that the witness had to observe the facts about which he/she testified; and the probability or improbability of the witness' testimony when viewed in light of all the evidence in the case, in determining the weight, if any, that you will assign to that witness' testimony.

If it appears that there is a discrepancy in the evidence, you must determine whether the apparent discrepancy can be reconciled by fitting the two stories together. If, however, that is not possible, you must determine which of the two conflicting versions you will accept. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not

[3] AUTHORITY: adapted from Sand, Siffert, Reiss and Batterman, MODERN FEDERAL JURY INSTRUCTIONS ¶ 76-3 (2002);

limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proven, such reasonable inferences as seem justified in light of your experience. Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established in the case.

By the process which I have just described to you, you, as the sole judges of the facts, must determine which witnesses you will believe, what portions of their testimony you will accept, and what weight you will assign to their testimony.

DEPOSITION USE AS EVIDENCE [4]

During the trial of this case, certain testimony has been presented to you by way of a deposition consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand, may be presented in writing under oath or on a video recording (played on a television set). Such testimony is entitled to the same consideration and is to be judged as to credibility and weighed and otherwise considered by the jury insofar as possible in the same way as if the witness had been present and had testified from the witness stand.

ROLE OF ATTORNEYS

I should also discuss the role of the attorneys. We operate under an adversary system in which we hope that the truth will emerge through the competing presentation of adverse parties. It is the role of the attorneys to press as hard as they can for their respective positions. In fulfilling that rule, they have not only the right, but the obligation to make objections to the introduction of evidence they feel is improper. While the interruption caused by these objections may be irritating, the attorneys are not to be faulted, because they have a duty to make objections if they feel they are appropriate.

---

[4] AUTHORITY: adapted from Devitt, Blackmar, Wolff & O'Malley, FEDERAL JURY PRACTICE INSTRUCTIONS, §73.02

The application of the rules of evidence is not always clear, and lawyers often disagree. It has been my job as the judge to resolve these disputes. It is important for you to realize, however, that my rulings on evidentiary matters have nothing to do with the ultimate merits of the case and are not to be considered as points scored for one side or the other.

Similarly, one cannot help becoming involved with the personalities and styles of the attorneys, but it is important for you as jurors to recognize that this is not a contest among attorneys but an attempt to rationally resolve a serious controversy among the parties and solely on the basis of the evidence. Accordingly, statements by the attorneys and characterizations by them of the evidence are not controlling. Insofar as you find them helpful, take advantage of them, but it is your memory and your evaluation of the evidence in the case that counts.

BURDEN OF PROOF

When a party has the burden of proof on a particular issue it means that, he must establish by a preponderance of the credible evidence that their claims, and the elements that comprise those claims are true. The credible evidence means the testimony or exhibits that you find worthy of belief. A preponderance means the greater part of the evidence. The phrase refers to the quality of the evidence.

In this case, the Plaintiff seeks to recover damages under 42 U.S.C. § 1983 for alleged violations his Eighth Amendment Constitutional rights. The Plaintiff has the burden of proving by a fair preponderance of the evidence the elements which I will describe to you. For the Plaintiff to prevail, you must find the evidence that supports his claim is the more likely version of what occurred. If, however, you find the evidence supporting Defendants' case more persuasive, or if you are unable to find a preponderance of evidence on either side, then you must resolve the question in favor of the Defendants. You may only find in favor of the Plaintiff if the evidence supporting his claim outweighs the evidence opposing it.

Likewise, the Defendants bear the burden of proof on its affirmative defense of qualified immunity. The same rules I just described apply to the Defendants' burden of proof on their affirmative defense. I will talk more about the respective burdens of proof in this particular case a little later on.

Civil Actions Under 42 U.S.C. § 1983 [5]

The law to be applied in this case is the Federal Civil Rights Law which provides a remedy for individuals who have been deprived of their constitutional rights under color of state law. Section 1983 of Title 42 of the United States Code states:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 creates a form of liability in favor of persons who have been deprived of rights, privileges and immunities secured to them by the United States Constitution and federal statutes. Before Section 1983 was enacted in 1871, people so injured were not able to sue state officials or persons acting under color of state law for money damages in federal court. In enacting the statute, Congress intended to create a remedy as broad as the protection provided by the Fourteenth Amendment and federal laws. Section 1983 was enacted to give people a federal remedy enforceable in federal court because it was feared that adequate protection of federal rights might not be available in state courts.

[5] AUTHORITY: Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS ‘‘ 87-65 – 66. (citing United States Supreme Court: Lugar v. Edmondson Oil Co., 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982) ; Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); Mitchum v. Foster, 407 U.S. 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972) ; Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961).

Burden of Proof under Section 1983 [6]

I shall shortly instruct you on the elements of Plaintiff's Section 1983 claim, and on the elements of the Defendants' qualified immunity defense.

The Plaintiff has the burden of proving each and every element of his Section 1983 claim by a preponderance of the evidence. If you find that any one of the elements of Plaintiff's Section 1983 claim has not been proven by a preponderance of the evidence, you must return a verdict for the Defendants.

The Defendants have the burden of proving each element of their affirmative defense. I shall shortly instruct you on the elements of this defense. If you find that any one of the elements of Defendants' defense has not been proven by a preponderance of the evidence, you must disregard the defense.

Elements of a Section 1983 Claim for Excessive Use of Force [7]

Inmates are protected from cruel and unusual punishment under the Eighth Amendment of the United States Constitution. Plaintiff Garcia claims that the Defendant Correctional Officers, by using excessive and unnecessary force against him violated his Eighth Amendment constitutional rights. According to the Plaintiff, he was repeatedly struck with a nightstick, slapped, kicked, stomped and punched while he was restrained in handcuffs and leg irons on December 18, 1996.

In order to prove a violation under the Eighth Amendment, the Plaintiff must show the Defendant Corrections Officers unnecessarily and wantonly inflicted pain on the Plaintiff. Whether a use of force against a prison inmate is unnecessary or wanton depends on whether

---

[6] AUTHORITY: Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, 87-67 (citing Gomez v. Toledo, 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 (1980)).

[7] AUTHORITY: O'Malley, *et al.*, FEDERAL JURY PRACTICE AND INSTRUCTIONS, 5th ed., ' 166.23 (citing United States Supreme Court: *Hudson v. McMillian*, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992)).

force was applied in a good faith effort to maintain order or restore discipline, or whether it was done maliciously or sadistically to cause harm.

In order to prove a violation under the Eighth Amendment, the Plaintiff must prove all of the following elements by a preponderance of the evidence:

First: That the Defendant prison officials were acting under color of the law of the state of New York.

Second: That the Defendant prison officials used force against the Plaintiff maliciously and sadistically, for the very purpose of causing the Plaintiff harm; and

Third: That the Plaintiff suffered some harm as a result of the use of force by the Defendants.

If the plaintiff shall fail to prove any one of these elements, you must find for the Defendants. I shall now examine each of the three elements in greater detail.

First Element--Action Under Color of State Law [8]

The first element of the Plaintiff's claim is that the Defendants acted under color of state law. The phrase ''under color of state law'' is a shorthand reference to the words of Section 1983, which includes within its scope action taken under color of any statute, ordinance, regulation, custom or usage, of any state (or territory or the District of Columbia). The term ''state'' encompasses any political subdivision of a state, such as a county or city, and also any state agencies or a county or city agency.

[8] AUTHORITY: Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, Form 87-69, (citing *American Mfrs. Mut. Ins. Co. v. Sullivan*, -- U.S. --, 119 S. Ct. 977, 143 L. Ed. 2d 130 (1999); *Adickes v. S.H. Kress Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961) (and others) and ' Form 87-70 (citing *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981); *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961)).

Action under color of state law means action that is made possible only because the actor is clothed with the authority of the State. It is not presently in dispute that the Defendants' actions were taken in their capacity as State officials. Therefore, I instruct you that, since the Defendant Correctional Officers were officials of the State of New York at the time of the acts in question, they were acting under color of state law. In other words, the first statutory requirement is satisfied.

Second Element – Generally [9]

The second element is to be evaluated by a subjective analysis of the Defendant Corrections Officers and their state of mind at the time of the incident. In deciding whether this element has been proved, you must give prison officials wide ranging deference to the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and to maintain internal security in the prison.

Some of the things you may want to consider in determining whether the Defendant Corrections Officers unecessarily and wantonly inflicted pain on the Plaintiff include:

1. The extent of injury suffered;
2. The need for the application of force;
3. The relationship between the need and the amount of force used;
4. The threat reasonably perceived by the Defendants at the time the force was used;

and

5. Any efforts made to temper the severity of a forceful response.

Third Element - Use of Force [10]

In order to prevail on an excessive use of force claim a Plaintiff must show that the alleged use of force is objectively sufficiently serious or harmful enough to be actionable. This objective component is "context specific turning upon contemporary standards of decency." An excessive force claim may be established even if the victim does not suffer serious or significant

[9] AUTHORITY: O'Malley, *et al.*, FEDERAL JURY PRACTICE AND INSTRUCTIONS, 5th ed., §166.23 (citing United States Supreme Court: *Hudson v. McMillian*, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992)).

[10] *See Nunez v. Goord*, 172 F. Supp. 2d 417, 432 (S.D.N.Y. 2001).

injury if it can be demonstrated that the amount of force used is more than *de minimus* or otherwise involves force repugnant to the conscience of mankind.

Qualified Immunity [11]

Even if you find that the Defendants did violate Plaintiff's constitutional rights, however, the Defendants still may not be liable to the Plaintiff. This is so because the Defendants may be entitled to what is called a qualified immunity. If you find that they are entitled to such an immunity, you may not find them liable.

The Defendants will be entitled to a qualified immunity if, at the time force was used, they neither knew nor should have known that their actions were contrary to federal law. The simple fact that the Defendants acted in good faith is not enough to bring them within the protection of this qualified immunity. Nor is the fact that the Defendants were unaware of the federal law. The Defendants are entitled to a qualified immunity only if they did not know what they did was in violation of federal law and if a competent public official could not have been expected at the time to know that the conduct was in violation of federal law.

In deciding what a competent official would have known about the legality of Defendants' conduct, you may consider the nature of Defendants' official duties, the character of their official position, the information which was known to Defendants or not known to them, and the events which confronted them. You must ask yourself what a reasonable official in Defendants' situation would have believed about the legality of Defendants' conduct. You should not, however, consider what the Defendants' subjective intent was, even if you believe it was to harm the Plaintiff. You may also use your common sense. If you find that a reasonable official in Defendants' situation would believe their conduct to be lawful, then this element will

[11] Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, Form 87-86 (citing *Richardson v. McKnight*, 521 U.S. 399, 117 S. Ct. 2100, 138 L. Ed. 2d 540 (1997) ; *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) ; *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986); *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *LaBounty v. Coughlin*, 137 F.3d 68 (2d Cir. 1998) ; *Velardi v. Walsh*, 40 F.3d 569 (2d Cir. 1994) ; *P.C. v. McLaughlin*, 913 F.2d 1033 (2d Cir. 1990) ; *Gittens v. LeFevre*, 891 F.2d 38 (2d Cir. 1989) (and other cases) .

be satisfied. The Defendants have the burden of proving that they neither knew nor should have known that their actions violated federal law. If the Defendants convince you by a preponderance of the evidence that they neither knew nor should have known that their actions violated federal law, then you must return a verdict for the Defendants, even though you may have previously found that the Defendants in fact violated the Plaintiff's rights under color of state law.

Compensatory Damages [12]

Just because I am instructing you on how to award damages does not mean that I have any opinion on whether or not the Defendants should be held liable. If you return a verdict for the Plaintiff, then you must consider the issue of actual damages.

If you return a verdict for the Plaintiff, then you must award him such sum of money as you believe will fairly and justly compensate him for any injury you believe he actually sustained as a direct consequence of the conduct of the Defendants.

You shall award actual damages only for those injuries which you find that Plaintiff has proven by a preponderance of the evidence. Moreover, you shall award actual damages only for those injuries which you find Plaintiff has proven by a preponderance of evidence to have been the direct result of conduct by the Defendants in violation of Section 1983 and the Eighth Amendment. That is, you may not simply award actual damages for any injury suffered by Plaintiff – you must award actual damages only for those injuries that are a direct result of actions by the Defendants and that are a direct result of conduct by Defendants which violated Plaintiff's federal rights under color of law.

Actual damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial, and only on that evidence.

---

[12] Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, Form 87-87 (citing *Memphis Community School District v. Stachura*, 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986) ; *Gibeau v. Nellis*, 18F.3d 107 (2nd Cir. 1994) (and other cases))

Nominal Damages [13]

If you return a verdict for the Plaintiff, but find that Plaintiff has failed to prove by a preponderance of the evidence that he suffered any actual damages, then you must return an award of damages in some nominal or token amount not to exceed the sum of One Dollar.

Nominal damages must be awarded when the Plaintiff has been deprived of a constitutional right by the Defendants, but has suffered no actual damage as a natural consequence of that deprivation. The mere fact that a constitutional deprivation occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation. Therefore, if you find that Plaintiff has suffered no injury as a result of the Defendants' conduct other than the fact of a constitutional deprivation, you must award nominal damages not to exceed One Dollar.

Exemplary or Punitive Damages [14]

If you award the Plaintiff actual damages, then you may also make him a separate and additional award of exemplary or punitive damages. You may also make an award of punitive damages even though you find that Plaintiff has failed to establish actual damages. Punitive damages are awarded, in the discretion of the jury, to punish a defendant for extreme or outrageous conduct, or to deter or prevent a defendant and others like him from committing such conduct in the future.

You may award the Plaintiff punitive damages if you find that the acts or omissions of the Defendants were done maliciously or wantonly. An act or failure to act is maliciously done

---

[13] Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, Form 87-88 (citing *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978); *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2nd Cir. 1995), *cert. denied*, -- U.S. --, 116 S. Ct. 2546, 135 L. Ed. 2d 1067 (1996) (and other cases)

[14] Matthew Bender, MODERN FEDERAL JURY INSTRUCTIONS, Form 87-92 (citing *Memphis Community School District v. Stachura*, 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986) ; *Smith v. Wade*, 461 U.S. 30, 103 S. Ct. 1625, 75 L. Ed. 2d 632 (1983 ; *City of Newport v. Fact Concerts, Inc*., 453 U.S. 247, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981) ; *Carlson v. Green*, 446 U.S. 14, 100 S. Ct. 1468, 64 L. Ed. 2d 15 (1980) (and other cases)

if it is prompted by ill will or spite toward the injured person. An act or failure to act is wanton if done in a reckless or callous disregard of, or indifference to, the rights of the injured person. The Plaintiff has the burden of proving, by a preponderance of the evidence, that Defendants acted maliciously or wantonly with regard to the Plaintiff's rights.

An intent to injure exists when the Defendants have a conscious desire to violate federal rights of which he is aware, or when the Defendants have a conscious desire to injure Plaintiff in a manner he knows to be unlawful. A conscious desire to perform the physical acts that caused Plaintiff's injury, or to fail to undertake certain acts, does not by itself establish that Defendants have a conscious desire to violate rights or injure Plaintiff unlawfully.

If you find by a preponderance of the evidence that the Defendants acted with malicious intent to violate the Plaintiff's federal rights or unlawfully injure him, or if you find that Defendants acted with a callous or reckless disregard of the Plaintiff's rights, then you may award punitive damages. An award of punitive damages, however, is discretionary; that is, if you find that the legal requirements for punitive damages are satisfied, then you may decide to award punitive damages, or you may decide not to award them.

In making this decision, you should consider the underlying purpose of punitive damages. Punitive damages are awarded in the jury's discretion to punish Defendants for outrageous conduct or to deter them and others like them from performing similar conduct in the future. Thus, in deciding whether to award punitive damages, you should consider whether Defendants may be adequately punished by an award of actual damages only, or whether the conduct is so extreme and outrageous that actual damages are inadequate to punish the wrongful conduct. You should also consider whether actual damages standing alone are likely to deter or prevent these Defendants from again performing any wrongful acts they may have performed, or whether punitive damages are necessary to provide deterrence. Finally, you should consider whether punitive damages are likely to deter or prevent other persons from performing wrongful acts similar to those Defendants may have committed.

If you decide to award punitive damages, these same purposes should be considered by you in determining the appropriate sum of money to be awarded as punitive damages. That is, in fixing the sum to be awarded, you should consider the degree to which Defendants should be punished for their wrongful conduct, and the degree to which an award of one sum or another will deter Defendants or persons like them from committing wrongful acts in the future.

The extent to which a particular sum of money will adequately punish Defendants, and the extent to which a particular sum will adequately deter or prevent future misconduct, may depend upon the financial resources of the Defendants against which damages are awarded. Therefore, if you find that punitive damages should be awarded against the Defendants, you may consider the financial resources of the Defendants in fixing the amount of such damages.

CONCLUSION

I have now outlined the rules of law applicable to this case and the processes by which you should weigh the evidence and determine the facts. In a few minutes, you will retire to the jury room for your deliberations.

Your first order of business in the jury room will be to elect a foreperson. The foreperson's responsibility is to ensure that deliberations proceed in an orderly manner. This DOES NOT mean that the foreperson's vote is entitled to any greater weight than the vote of any other juror. Your job as jurors is to reach a fair conclusion from the law and evidence. When you are in the jury room, listen to each other, and discuss the evidence and issues. It is the duty of each of you, as jurors, to consult with each other. You must deliberate with a view to reaching an agreement, but only if you can do so without violating your individual judgment and conscience. Remember in your deliberations that the dispute between the parties is for them no passing matter. The parties and the Court are relying on you to give full and conscientious consideration to the issues and the evidence before you.

If, in the course of your deliberations, your recollection of any part of the testimony should fail, or if you should find yourself in doubt concerning my instructions, it is your privilege to return to the courtroom to have the testimony or instructions read to you.

Should you desire to communicate with the Court during your deliberations, please put your message or question in writing. The foreperson should sign the note and pass it to the marshall who will bring it to my attention. I will then respond, either in writing or orally, by having you returned to the Courtroom. I caution you, however, that in your communications with the Court, you should never state your numerical division.

Once you have reached a unanimous verdict and the verdict form has been completed, please inform the marshall that a verdict has been reached. Your verdict on each claim for relief must be unanimous, and it must also represent the considered judgment of each juror.

During your deliberations, do not hesitate to re-examine your views and change your mind. Do not, however, surrender your honest convictions because of the opinion of a fellow juror or for the purpose of returning a verdict. Remember, you are not partisans. You duty is to seek the truth from the evidence presented to you.

Once you have reached a unanimous verdict, your foreperson should fill in the verdict form, date and sign it, and inform the marshall that a verdict has been reached.

Verdict forms have been prepared for you. You should review them after retiring to the jury room.