

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M.M. FARRAKHAN,

Plaintiff,

Civil Action No.
03-CV-0928
(NAM/DRH)

-vs-

REQUEST TO CHARGE

J. BURGE, SUPERINTENDENT; M. L. BRADT,
DEPUTY COMMISSIONER OF SECURITY; C.
GUMMERSON, CAPTAIN; M. WITHER, SGT.; R.
HEWIT, CORRECTIONS OFFICER,

Defendant.

Plaintiff, M. M. Farrakhan, in the above-named action, respectfully requests that the Court charge the jury with respect to the issues of liability and damages as follows:

**DEFENDANTS' FAILURE TO PREVENT HARM TO PLAINTIFF
UNDER THE EIGHTH AMENDMENT**

A. Nature of the Action

The Eighth Amendment of the United States Constitution provides that every person convicted of a crime has the right not to be subjected to cruel and unusual punishments. Plaintiff Farrakhan was an inmate at Auburn Correctional Facility at time this claim arose. Plaintiff Farrakhan claims that defendant prison officials denied his Eighth Amendment rights by failing to protect him from a foreseeable assault by other inmates within the Auburn Correctional Facility, where plaintiff Farrakhan's life was threatened by an inmate associated with a gang, and the defendants were aware of such threat.

Defendant prison officials deny that they deprived plaintiff Farrakhan of his rights under the Eighth Amendment.

Federal Jury Practice and Instructions, WEST Group, § 166.01

B. Failure to Protect From Attack

Your verdict must be for the plaintiff if all of the following elements have been proved by the preponderance of the evidence:

First, that one or more inmates attacked the plaintiff; and

Second, defendants were aware of the substantial risk of such an attack; and

Third, defendants, with deliberate indifference to plaintiff's need to be protected from such an attack, failed to protect plaintiff; and

Fourth, as a direct result, plaintiff was damaged.

If any of the above elements have not been proven by the preponderance of the evidence, then your verdict must be for the defendant.

Federal Jury Practice and Instructions, WEST Group § 166.20; citing Manual of Model Civil Jury Instructions for the District Courts of the Eighth Circuit, Instruction No. 4.32 (1999); 42 U.S.C. § 1983; *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970 (1994); *Hayes v. New York City of New York, Corrections*, 84 F.3d 614 (2d Cir. 1996).

C. Definition of Deliberate Indifference

Deliberate indifference is established if there is actual knowledge of a substantial risk of harm to plaintiff Farrakhan by his fellow inmates, and if defendant prison officials disregarded that risk by intentionally refusing or by failing to take reasonable measures to deal with the problem.

Adapted from **Federal Jury Practice and Instructions**, WEST Group § 166.30; *Murray v. Michael*, 2005 WL 2204985 (N.D.N.Y) at 12; citing *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994).

D. Causation

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage to plaintiff Farrakhan, and that his injury was either a direct result or a reasonably probable consequence of the act or omission.

Plaintiff Farrakhan has the burden of proving each and every element of his claim by a preponderance of the evidence. If you find that plaintiff Farrakhan has proved each and every element of his claim by a preponderance of the evidence, you must return a verdict in his favor.

Defendant prison officials have the burden of proving each and every element of their affirmative defenses by a preponderance of the evidence. If you find that defendant prison officials have not proved each and every element of each and every one of their affirmative defenses by a preponderance of the evidence, you must disregard those defenses.

Federal Jury Practice and Instructions, WEST Group § 166.50

E. Damages

If you find in favor of plaintiff Farrakhan, then you must award him such sum as you find from the preponderance of the evidence will fairly and justly compensate plaintiff Farrakhan for any damages you find plaintiff sustained. You should consider the following elements for damages, noting that the remaining life expectancy of plaintiff Farrakhan is estimated to be 30.9 years:

1. The physical pain and the mental suffering plaintiff Farrakhan has experienced and is reasonably expected to experience in the future;
2. The nature and extent of the injury;
3. Whether the injury is temporary or permanent; and

4. Whether any resulting disability is partial or total.

Adapted from **Federal Jury Practice and Instructions**, WEST Group § 166.60; 42 U.S.C. § 1997e(e); New York Pattern Jury Instructions - Civil Division 2 Note1 Life Expectancy Tables A.

F. Failure to Produce Evidence

If you find that defendants destroyed evidence that relates in an important way to the question of liability, and that no reasonable explanation for such destruction has been offered, you may, although you are not required to, infer that the destruction of such evidence had a fraudulent purpose and that if produced the evidence would have been against defendant's interest. Moreover, such destruction casts doubt upon defendants' position and may be considered against them as such. If you find that the destruction of evidence was without a reasonable explanation, that does not, however, in and of itself, mean that the plaintiff is entitled to win. You may give the fact of such destruction the weight you think proper under all the circumstances; you may consider it decisive with respect to plaintiff's claim, you may ignore it altogether, or you may give it weight between those extremes as you determine appropriate.

Adapted from **New York Pattern Jury Instructions**, Civil § 1:77.1.