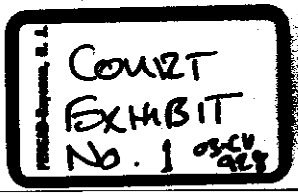
M.M. Farrakhan (Plaintiff)

v.

J. Burge,
M.L. Bradt,
C. Gunnerson, and
R. Hewit
(Defendants)

No. 03-CV-928

JURY INSTRUCTIONS



INTRODUCTION

Members of the jury, now that you have heard the evidence and the arguments, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law. Rather, you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

The parties have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by the parties and that stated by the Court in these instructions, you are, of course, to be governed by the Court's instructions.

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. Rather, it is yours. You must perform that function without bias or prejudice as to any party. The law does not permit you to be governed by sympathy,

prejudice or public opinion. All parties expect that you will, carefully and impartially, consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Statements and arguments of the parties are not evidence in the case. If, however, the parties stipulate, or agree, to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as proven.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded. If a party asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The party's statements are not evidence.

The case has been terminated as to defendant Wither. You should not concern

yourself with the disposition as to him but should consider the issues between the plaintiff and the remaining defendants in accordance with these instructions and the evidence in the case.

In this case, neither the State of New York nor the New York State Department of Correctional Services are defendants. This is a suit against four individual defendants. Although there are four defendants in this action, it does not follow, from that fact alone, that if one is liable, the others are also liable. Each defendant is entitled to a fair consideration of his own defense. A defendant is not to be prejudiced by the fact, if it should become a fact, that you find against another defendant. Unless otherwise stated, all instructions given you govern the case as to each defendant.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law. All persons are to be dealt with as equals in a court of justice.

BURDEN AND STANDARD OF PROOF

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his or her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, as to any defendant, you should find for that defendant.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief, that what is sought to be proven, is more likely true than not true. This rule does not, of course, require proof to any absolute certainty. Proof to an absolute certainty is seldom possible in any case. In determining whether any fact in issue has been proven by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

EVIDENCE

There are, generally speaking, two types of evidence from which you may properly find the truth as to the facts of the case. One is direct evidence -- such as the testimony of any eye witness. The other is indirect, or circumstantial, evidence -- the proof of a chain of circumstances pointing to the existence, or nonexistence, of certain facts. By way of example, assume that the cookie jar in a kitchen has been raided and you must determine who took the cookies. The brother says that he saw his sister take the cookies. That is direct evidence, and you must determine to what extent, if any, the brother's statement is worthy of belief. You also learn that cookie crumbs lead from the cookie jar to the sister's room. This is indirect or circumstantial evidence, and you must determine whether you can conclude from the fact of the cookie crumbs that the sister took the cookies.

As a general rule, the law makes no distinction between direct or circumstantial evidence. The law simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

You are to consider only the evidence in the case. But, in your consideration of the

evidence, you are not 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 the 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 by the evidence in the case.

WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight that their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witnesses' intelligence, motive, state

of mind, and demeanor, or manner while on the stand. Consider the witnesses' ability to observe the matters as to which he or she has testified. Consider whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case. Consider the manner in which the witness might be affected by the verdict. Consider the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident may see or hear it differently. An innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail. Also consider whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you think it deserves. You may accept or reject the testimony of any

witness in whole or in part.

A witness may be discredited, or impeached, in different ways. These include:

1. By contradictory evidence; or

2. By evidence that at some other time, the witness has said or done something, or has failed to say or do something, which is inconsistent with the witnesses' present testimony.

If you believe any witness has been impeached, and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at the trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

SECTION 1983

A. Essential Elements

The plaintiff has brought this lawsuit alleging a violation of his federal civil rights. The federal law that provides a remedy for individuals who have been deprived of constitutional rights is known as section 1983 of Title 42 of the United States Code and states in part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any state ..., subjects or causes to be subjected, any citizen of the United States ... 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 ... for redress.

I shall instruct you in detail regarding the elements of the plaintiff's claim under section 1983. However, at this point, bear in mind, as I have indicated before, that the plaintiff has the burden of proving each and every element of the claim by a preponderance of the evidence as against the defendants.

To establish a claim under section 1983, the plaintiff must prove each of the following:

1. That the conduct complained of was committed by a person or persons acting under color of state law;

2. That this conduct deprived the plaintiff of rights secured by the Constitution and laws of the United States; and

3. That this conduct was a proximate cause of the injuries and consequent damages sustained by the plaintiff.

Because of the nature of this action, and because of the evidence that has been presented, I instruct you that if you find the conduct was in fact committed by any defendant, it was committed under the color of state law. Therefore, you need not decide the first element. Nonetheless, you must decide whether plaintiff has proven the other two elements of the claim.

In considering the second element of the plaintiff's claim that the plaintiff was deprived of a federal right, the plaintiff must establish by a preponderance of the evidence

that the defendant under consideration committed the acts alleged, that those acts resulted in a loss of a federal right, and that in performing those acts the defendant under consideration acted with deliberate indifference.

B. Failure to Protect

Prison officials have a duty to protect inmates from violence at the hands of other prisoners. In this case, the plaintiff claims that the defendants violated the Eighth Amendment to the United States Constitution by showing deliberate indifference to a substantial risk of serious harm to the plaintiff. Specifically, the plaintiff] claims that on August 14, 2002, the defendants failed to protect him from an asault by other inmates at the Auburn Correctional Facility.

In order to establish his claim for violation of the Eighth Amendment, the plaintiff must prove each of the following three things by a preponderance of the evidence:

FIRST: There was a substantial risk of serious harm to the plaintiff — namely, a substantial risk that the plaintiff would be attacked by other inmates.

SECOND: the defendant under consideration was deliberately indifferent to that risk.

THIRD: The plaintiff would have suffered less harm if the defendant under consideration had not been deliberately indifferent.

As to the second of these three requirements, to show deliberate indifference, the plaintiff must show that the defendant under consideration knew of a substantial risk that the plaintiff would be attacked, and that the defendant under consideration disregarded that risk by failing to take reasonable measures to deal with it. The plaintiff must show that the defendant under consideration actually knew of the risk. However, the plaintiff need not prove that the defendant under consideration knew precisely which inmate would attack the plaintiff, so long as the plaintiff shows that the defendant under consideration knew that there was an obvious, substantial risk to the plaintiff's safety.

A defendant may take, or fail to take, such action either personally or in his capacity as a supervisor of others. As a supervisor, a defendant under consideration

may have failed to protect the plaintiff, for example, if he was grossly negligent in managing subordinates who committed the violation.

If a prison official knew of facts that he strongly suspected to be true, and those facts indicated a substantial risk of serious harm to an inmate, the official cannot escape liability merely because he refused to take the opportunity to confirm those facts. However, you must keep in mind that mere carelessness or negligence is not enough to make an official liable. It is not enough for the plaintiff to show that a reasonable person would have known, or that the defendant under consideration should have known, of the risk to the plaintiff. The plaintiff must show that the defendant under consideration actually knew of the risk.

If the plaintiff] proves that there was a risk of serious harm to him and that the risk was obvious, you are entitled to infer from the obviousness of the risk that the defendant under consideration knew of the risk. However, the defendants claim that even if there was an obvious risk, they were each unaware of that risk. If you find that the defendant under consideration was unaware of the risk, then you must find that he

was not deliberately indifferent.

C. Proximate Cause

As to the third element, an injury or damage is proximately caused by an act, whenever it appears from the evidence in the case that the act played a substantial part in bringing about, or actually causing, the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act.

DAMAGES

If you find in favor of the plaintiff, then you should award the plaintiff such an amount of money as you believe will fairly and justly compensate for any damages you believe the plaintiff sustained as a result of the injuries and damages established by the evidence.

The fact that I am instructing you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your

verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

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

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 any defendant you have found to be liable here. That is, you may not simply award actual damages for any injury suffered by the plaintiff -- you must award actual damages only for those injuries that are a direct result of actions by any defendant found to be liable and that are a direct result of conduct by such defendant.

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.

I have said that you may award damages only for those injuries which you find the plaintiff has proven by a preponderance of evidence to have been the direct result of conduct by any defendant here. You must distinguish between, on the one hand, the existence of a violation of the plaintiff's rights and, on the other hand, the existence of injuries naturally resulting from that violation. Thus, even if you find that any defendant deprived the plaintiff of his rights here, you must ask whether the plaintiff has proven by a preponderance of evidence that the deprivation caused the damages claimed to have been suffered.

If you find that the plaintiff was injured as a natural consequence of conduct by any defendant here, you must determine whether the plaintiff could thereafter have done something to lessen the harm that he suffered. The burden is on a defendant to prove, by a preponderance of evidence, that the plaintiff could have lessened the harm that was done to him, and that he failed to do so. If a defendant convinces you that the plaintiff could have reduced the harm done to him, but failed to do so, the plaintiff is

entitled only to damages sufficient to compensate for the injury that the plaintiff would have suffered if he had taken appropriate action to reduce the harm done to him.

Punitive Damages

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 other 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 a defendant were done maliciously or wantonly. An act or failure to act is maliciously done if it is prompted by ill will or spite towards 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 a defendant acted maliciously or wantonly with regard to the plaintiff's rights.

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

If you find by a preponderance of the evidence that a defendant acted with malicious intent to violate the plaintiff's federal rights, or unlawfully injure him, or if you find that a defendant 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 your discretion, to punish a defendant for outrageous conduct or to deter him, and others like him, from performing similar conduct in the future. Thus, in deciding whether to award punitive damages, you should consider whether a defendant 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 a defendant from again performing any wrongful acts he 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 a defendant may have committed.

VERDICT

The verdict must represent the considered judgment of each juror. In order to

return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case 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.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a marshal signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing or orally here in open court.

If, in the course of your deliberations, your recollection of any part of the testimony should fail, or if you should find yourselves in doubt concerning my instructions, it is your privilege to return to the courtroom to have the testimony or instructions read to you. I am compelled to remind you, though, that this trial has lasted only a few days and the testimony and instructions should still be fresh in your minds. Therefore, before requesting to have testimony reread or to be re-instructed on any point of law, please draw upon your own recollections, both individually and collectively, before doing so.

You will note from the oath about to be taken by the marshal that they too, as

well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person -- not even the Court -- how the jury stands, numerically or otherwise, on the questions before you, unless after you have reached a unanimous verdict.

Upon retiring to the jury room, you will select one of your numbers to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court. A form of special verdict has been prepared for your convenience. You will take this form to the jury room.

The special verdict reads as follows:

[READ SPECIAL VERDICT FORM]

The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided under

each question.

Upon reaching your unanimous verdict, the foreperson will date and sign the verdict form and you will then return with it to the courtroom.