

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence, it is my duty to instruct you about the applicable law. You will have a copy of these instructions with you when you deliberate.

In deciding the issues of fact submitted to you, it is your duty, ladies and gentlemen, to follow these instructions. In doing so, you must take into consideration all of the instructions I have given you and not pick out any particular instruction and disregard another one. You are not to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than what is given in these instructions.

Your duty is to determine the facts from the evidence that has been produced in court. You are to apply the facts as you find them to the law that I am giving you, and neither sympathy nor prejudice should influence you in any way. The law does not permit jurors to be governed by sympathy, prejudice or public opinion. All of the parties in this case and the public expect that you will carefully and impartially consider all of the evidence in the case,

follow the law as stated by me, and reach a just verdict regardless of the consequences.

You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

The parties to this litigation have agreed that certain facts are true and that certain documents are accurate copies of official records. The parties may have read certain stipulated facts or present certain stipulated documents as true. You must treat these facts as true and these documents as accurate copies of the originals.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in this case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in this case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. Also, any statement I may have made regarding the facts should have no bearing on your own factual determinations.

In the final analysis, it is your own recollection and interpretation of the evidence that controls in the case. In addition, just because you wrote it down does not make it so. Your independent recollection always takes preference over notes.

There are _____ defendants in this action. It does not necessarily follow that, if one is liable, then the others are also liable. Each defendant is entitled to a fair consideration of his or her own defense and is not to be prejudiced by the fact, if it should even become a fact, that you find against another defendant.

The first matter of law about which I will instruct you is the applicable burden of proof. The burden of proof is a concept which you must understand to give this case proper consideration, because a verdict cannot be based on speculation, guess or conjecture. In a civil case such as this one, the party asserting the claim, the plaintiff, has the burden of proof of establishing the facts he or she presents or advocates by a preponderance of the evidence.

To establish a claim by a “preponderance of the evidence” means to prove that the claim is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true.

Picture in your minds a scale - the Plaintiff must put forth enough evidence that, when weighed against the evidence put forth by the Defendant, the scale tilts in the Plaintiff's favor. If the evidence weighs more heavily in favor of a Defendant in the case, or even if it weighs equally as between the Plaintiff and a Defendant on any element of the case, then the Plaintiff has not met his burden of proof, and you must return a verdict in favor of the Defendant. You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard of proof and it applies only to criminal cases. It does not apply in civil cases such as this one, so you should put it out of your mind.

The evidence in this case is of two different types. On the one hand, there is direct

evidence, which is testimony by a witness from his own personal knowledge, something he saw or heard himself.

The other type of evidence is circumstantial evidence, which comes from testimony concerning facts which logically point to the existence of other facts also in question. For example, you may wake up in the morning and see that the sidewalks are wet. You did not observe that it rained but the fact that the sidewalks are wet is circumstantial evidence that it did. Both types of evidence are equally admissible and competent. Whether or not circumstantial evidence is proof of other facts in question depends largely on the application of common sense. So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience.

Remember, circumstantial evidence is more than speculation, opinions or beliefs. Unlike speculation, opinions or beliefs, circumstantial evidence is based on facts that logically and reasonably lead to the existence of other facts in question. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more valuable or less valuable than the other.

Now, I have said that you must consider all of the evidence. This does not mean that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or believability of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness, you should consider his relationship to the plaintiff or to the defendant; his interest, if any, in the outcome of the case; his manner of testifying; his opportunity to observe or acquire knowledge concerning the facts about which he testified; his candor, fairness and

intelligence; and the extent to which he has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

In deciding whether to believe a witness, you may specifically note any evidence of hostility or affection which the witness may have toward one of the parties. Likewise, you may consider evidence of any other interest or motive that the witness may have.

A witness may be discredited or impeached by contradictory evidence, by showing he testified falsely concerning a material matter or by evidence that at some other time the witness has said or done something or failed to say or do something which is inconsistent with the witness' present testimony. If you find that a witness has lied to you in any material portion of his or her testimony, you may disregard that witness's testimony in its entirety. I say that you **may** disregard such testimony, not that you must. You should consider whether the untrue part of the testimony was the result of a mistake or inadvertence, or was, instead, willful and stated with a design or intent to deceive.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimonies 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, and whether the discrepancy results from innocent error or intentional falsehood.

Also, in this case, both Plaintiff and Defendants testified before you. In considering their testimony, you are to follow the general instructions I gave you for judging the

credibility of any witness. You should not disbelieve the testimony of the Plaintiff or the Defendant merely because they are parties to this lawsuit. Nor should you believe or disbelieve their testimony merely because they are a prisoner or corrections officer. You may take their interests into account, just as you would the interest of any other witness, along with all other facts and circumstances bearing on credibility, in making up your minds as to what weight their testimony deserves.

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses or just one witness as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. You are not required to accept any testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, because of the inherent improbability of his or her testimony, or because of other reasons sufficient to you, that such testimony is not worthy of belief.

[Depending on the type of case, the following instruction may be given:

[In this case several corrections officers/police officers have testified as witnesses. A correction officer/ police officer who takes the witness stand subjects his testimony to the same examination and tests that any other witness does and you should neither believe nor disbelieve a witness merely because he is a corrections officer. You should recall their demeanor on the stand, their manner of testifying, the substance of the testimony, and weigh and balance it just as you would the testimony of any other witness.]

You have heard testimony containing opinions from expert witnesses. In weighing

this opinion testimony, you may consider the expert's qualifications, the reasons for his opinions, and the reliability of the information supporting those opinions, as well as the factors I have previously mentioned for weighing the testimony of any other witness. The opinion of an expert should receive whatever weight and credit, if any, you think appropriate, given all the other evidence in the case.

In deciding whether to accept or rely upon the opinion of an expert, you may consider any bias the expert may have, including any bias that may arise from evidence that he has been or will be paid for reviewing the case and testifying or from evidence that the expert testifies regularly, if he does, and makes a portion of his income from testifying in court.

LAW OF THE CASE

This will vary with each case and proposed instructions are to be submitted by counsel.

DAMAGES

Specific proposed damages instructions should also be submitted by counsel.

I am now going to instruct you on damages. Just because I am instructing you on how to award damages does not mean that I have any opinion on whether or not Defendants should be held liable.

If you find in your deliberations that none of the defendants is liable to the Plaintiff, then you need not even consider the question of damages.

If you find and Defendant liable, then you must consider the issue of compensatory damages

Compensatory damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial, and only on that evidence. Plaintiff has the burden of proving compensatory damages by a preponderance of the evidence.

Plaintiff claims the following items of damages:

- Physical harm to _____ during and after the events at issue, including ill health, physical pain and discomfort. In assessing such harm, you should consider the nature and extent of the injury.
- Emotional and mental harm to _____ during and after the events at issue, including fear, humiliation, and mental anguish, and any such emotional and mental harm that plaintiff is reasonably certain to experience in the future.

Damages that have not been proven by a preponderance of the evidence may not be awarded. If you return a verdict for the Plaintiff but find that he has failed to prove by a preponderance of the evidence that he suffered any physical injury, then instead of awarding compensatory damages, you must return an award of nominal damages of one dollar. Nominal damages must be awarded if you find that the Defendant(s) violated the constitutional rights of the deceased, but that he suffered no physical injury as a consequence of that action.

The burden is on the Plaintiff to prove by a preponderance of the evidence that he has suffered actual damages. Damages that have not been proven by a preponderance of the evidence may not be awarded. If you return a verdict for the Plaintiff but find that he

has failed to prove by a preponderance of the evidence that he suffered any physical injury, then instead of awarding compensatory damages, you must return an award of nominal damages of one dollar. Nominal damages must be awarded if you find that the Defendant(s) violated the constitutional rights of the deceased, but that he suffered no physical injury as a consequence of that action.

The third type of damages that you may consider in this action are known as “punitive damages.” Punitive damages are an award of money to the Plaintiff, which has as its purpose to punish a defendant for extraordinary misconduct and to deter a defendant from repeating such conduct and in addition to serve as a warning to others and to prevent others from committing such conduct. If you find that a Defendant is liable for violating the Plaintiff’s rights, then you may, but you do not have to, award punitive damages.

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 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. 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.

If you find by a preponderance of the evidence that the 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.

You must also determine whether the Defendant's conduct is of the sort that calls for deterrence and punishment. If you find that the Plaintiff has proven by a preponderance of the evidence that the Defendant's conduct was of the sort that calls for deterrence and punishment, then you may decide to award punitive damages. Punitive damages may be awarded even if the violation results only in nominal damages. In determining the amount of those punitive damages, you should take into consideration the purpose of punitive damages as well as all of the circumstances surrounding the particular occurrence, including the nature of the wrongdoing (*e.g.*, whether the offense was violent or non-violent and whether the offense posed a risk to health or safety), the extent of the harm inflicted, the intent of the Defendant, the wealth or lack of wealth of the Defendant, and the harm that could result if the wrongdoing is not deterred in the future. Punitive damages must be considered with respect to each Defendant individually and be based upon the Defendant's individual actions. You may not award punitive damages without an award of either nominal or compensatory damages.

[Depending on the type of case, the following instruction may be given:

You are further instructed that if the Plaintiff wins on his claim, he may be entitled to an award of attorney's fees and costs over and above what you award as damages. It is my duty to decide the award of attorney's fees and costs after the trial. Therefore, attorney's fees and costs should play no part in your calculation of any damages.]

Throughout your deliberations, you may discuss with each other the evidence and the law that has been presented in this case, but you must not communicate with anyone else by

any means about the case. You also cannot learn from outside sources about the case, the matters in the case, the legal issues in the case, or individuals or other entities involved in the case. This means you may not use any electronic device or media (such as a phone, computer, or tablet), the internet, any text or instant messaging service, or any social media apps (such as Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, and Snapchat) to research or communicate about what you've seen and heard in this courtroom. These restrictions continue during deliberations because it is essential, under our Constitution, that you decide this case based solely on the evidence and law presented in this courtroom. Information you find on the internet or through social media might be incomplete, misleading, or inaccurate. And, as I noted in my instructions at the start of the trial, even using your smartphones, tablets, and computers - and the news and social media apps on those devices - may inadvertently expose you to certain notices, such as pop-ups or advertisements, that could influence your consideration of the matters you've heard about in this courtroom. You are permitted to discuss the case with only your fellow jurors during deliberations because they have seen and heard the same evidence and instructions on the law that you have, and it is important that you decide this case solely on the evidence presented during the trial, without undue influence by anything or anyone outside of the courtroom. For this reason, I expect you to inform me at the earliest opportunity, should you learn about or share any information about this case outside of this courtroom or the jury room, or learn that another juror has done so. If you break any of these rules, I may need to order an entirely new trial before another jury that would cost the parties and the court system a lot of time and money, as well as cause embarrassment to you.

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

a verdict, it is necessary that each juror agree to that verdict. In other words, 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. Each of you must decide the case for yourself, but only after an impartial consideration of all 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 the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience.

[EXPLAIN VERDICT FORM]

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

If during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreperson, and pass the note to the clerk who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

