

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence , and stipulations.

A stipulation is an agreement between both sides that a person would have given certain testimony.

Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

You have heard evidence that certain witnesses have been convicted of crimes. You may consider this evidence only in deciding whether those witnesses' testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

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 in this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

The Plaintiff alleges that on February 25, 1996, the Defendant violated his Eighth Amendment right to be free from cruel and unusual punishment by failing to evacuate him from his cell during a fire in the 3-G wing of I-House at the Stateville Correctional Center.

The Defendant denies that a fire occurred in I-House on February 25, 1996 and denies that he failed to evacuate the Plaintiff from his cell during a fire or that any of the Plaintiff's rights were violated.

The Defendant is being sued as an individual. Neither the Illinois Department of Corrections nor the State of Illinois are parties to this lawsuit.

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

In order to prove his claim that he was subjected to cruel and unusual punishment, the Plaintiff must prove the following propositions by a preponderance of the evidence:

First: The Defendant was deliberately indifferent to a substantial risk of serious harm to the Plaintiff; and

Second: As a direct result, the Plaintiff was damaged.

If you find from your consideration of all the evidence that both of these propositions have been proved by a preponderance of the evidence, then your verdict must be for the Plaintiff.

If, on the other hand, you find from your consideration of all the evidence that either of these propositions has not been proved by a preponderance of the evidence, then your verdict must be for the Defendant.

To establish that the Defendant was deliberately indifferent as that term is used in these instructions, the Plaintiff must prove that the Defendant was aware of facts from which he could conclude that a substantial risk of serious harm to the Plaintiff existed; that the Defendant actually drew that conclusion; and that the Defendant failed to take reasonable measures in response to the risk.

The Defendant's knowledge and awareness of a substantial risk of serious harm can be established from the very fact that the risk was obvious.

In order to find the Defendant liable, you must find that he was personally involved in the conduct complained of by the Plaintiff. You may not hold the Defendant liable for the acts or omissions of his fellow employees.

If you decide for the Defendant on the question of liability, you will have no occasion to consider the question of damages.

If you find that the Plaintiff has proved the elements of his claim against the Defendant, then you must go on to consider the amount of money damages that should be awarded. There are two types of damages for you to consider in this case: actual damages and punitive damages.

First, as to actual damages, you should award the amount that you find to be justified by a preponderance of the evidence as full, just, and reasonable compensation for all of the Plaintiff's damages – no more and no less. Damages must not be based on speculation.

On the other hand, actual damages are not limited to loss of time or money. Actual damages include both the mental and physical aspects of injury, both tangible and intangible. Actual damages are an attempt to compensate the Plaintiff, that is, to make him whole, or as he was before his injuries.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence, and no others:

- a. Any bodily injury sustained by the Plaintiff. Such injury need not be severe to be compensable; the injury need only be more than negligible.
- b. Any pain and suffering, disability, and mental anguish experienced in the past by the Plaintiff.
- c. Any pain and suffering, disability, and mental anguish that the Plaintiff is reasonably certain to suffer in the future.

No evidence of the value of such intangible things as mental or physical pain and suffering has been or need be introduced. In that respect, it is not value that you are trying to determine, but an amount that will fairly compensate the Plaintiff for damages he has suffered. In considering the above elements of damage, you may take into account the nature, extent, and duration of the injury. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any such award should be reasonable, fair, and just in light of the evidence.

You are not to award damages for any injury or condition that the Plaintiff may have suffered, or may not be suffering, unless it has been established by a preponderance of the evidence that such injury or condition was proximately caused by the acts of the Defendant. When I use the term “proximate cause,” I mean a cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

If you find that the Plaintiff is entitled to a verdict in accordance with these instructions, but do not find that he has sustained any actual damages, then you may return a verdict in his favor assessing actual damages in some nominal amount, such as one dollar.

The award of a nominal amount of actual damages would not preclude your awarding punitive damages in such amount as you deem appropriate, if you find that an award of punitive damages is justified.

In addition to actual damages, you may also make a separate and additional award of punitive damages. Punitive damages are assessed for two purposes: first, to punish the Defendant for his conduct; and second, to serve as an example or warning that will deter others from engaging in such conduct in the future.

The law does not require you to assess punitive damages; that decision is left to your discretion. But if you do decide to award punitive damages, you must use sound reason and calm discretion in reaching that decision and in deciding the amount. These decisions must never be guided by bias, sympathy, or prejudice toward any party.

If you decide to assess punitive damages, you should assess such damages as you believe are necessary to fulfill the purposes of punitive damages. In other words, you should consider how much the Defendant should be punished for his conduct, and how much one amount or another will deter the Defendant and others like him from engaging in such conduct in the future.

You should not interpret the fact that I have given instructions about the Plaintiff's damages as an indication in any way that I believe that the Plaintiff should, or should not, win this case.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Read the forms of verdict.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions or your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

VERDICT FORM A

We, the jury, find in favor of the Plaintiff, Jeff Musgrove, and against the Defendant,
Clarence Wright.

We award compensatory damages in the following amount: \$ _____

We award punitive damages in the following amount: \$ _____

Foreperson

Juror

VERDICT FORM B

We, the jury, find in favor of the Defendant, Clarence Wright, and against the Plaintiff, Jeff Musgrove.

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror