

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.

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.

### **Parties are entitled to equal consideration**

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.

## **The Evidence**

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

## **Deposition Testimony**

During the trial, certain testimony was presented to you by the reading of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in Court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

### **What is not evidence**

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

First, testimony that I struck from the record, or that I told you to disregard, is 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.

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.

### **Definition of “direct” and “circumstantial” evidence**

Some of you may have heard the phrases “direct” 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. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

## **Common sense - Inferences**

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.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

You have heard witnesses 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.

## **Burden of Proof**

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 as to any particular defendant, then you should find for that defendant as to that claim.

## **Impeachment of Witness**

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’s 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.

### **Attorney Interviewing Witness**

It is proper for an attorney to interview any witness for the purpose of learning what testimony the witness will give.

### **Note Taking**

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

You must give separate consideration to each claim and each party. In doing so, you must analyze what the evidence in the case shows with respect to each claim and party, leaving out of consideration any evidence admitted solely in regard to some other party. Each party is entitled to have the case decided on the evidence and the law applicable to that party.

In this case, Plaintiff John Wawryniuk, as Administrator of the Estate of Mark Wawryniuk, deceased, has asserted claims both under federal law and the statutory law of Illinois. Each of these claims must be considered by you separately.

First, that one or more of Defendants Miguel Reyes, Victoria Maluchnik and/or Jacqueline Price used excessive force against Mark Wawryniuk, and therefore deprived him of his constitutional right to be free from unreasonable force.

Second, that one or more of Defendants Miguel Reyes, Victoria Maluchnik and/or Jacqueline Price's use of force against Mark Wawryniuk constituted a battery of Mark Wawryniuk.

The Defendants deny all these claims.

In order to prevail on these claims, Plaintiff John Wawryniuk, as Administrator of the Estate of Mark Wawryniuk, deceased, must prove, by a preponderance of the evidence, both that each Defendant's conduct was excessive force or a battery against Mark Wawryniuk, as the case may be, and that the Defendant's acts were the proximate cause of injuries and damages sustained by the deceased. I shall now discuss each of these claims in turn.

## **Proximate Cause**

When I use the expression "proximate cause," I mean that 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.

In this case, Plaintiff claims that each Defendant used excessive force against him. To succeed in this claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Defendant used unreasonable force against Plaintiff; and
2. Because of Defendant's unreasonable force, Plaintiff was harmed.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence as to a Defendant, then you should find for Plaintiff as to that Defendant, and go on to consider the question of damages as to that Defendant.

If, on the other hand, you find that Plaintiff did not prove any one of these things by a preponderance of the evidence as to a Defendant, then you should find for that Defendant, and you will not consider the question of damages as to that Defendant.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. With respect to a claim of excessive force, the standard that applies is reasonableness under the circumstances existing at the moment. Under the circumstances refers only to those circumstances known and information available to the officer at the time of his or her action.

The reasonableness inquiry in an excessive force case is an objective one: the question is whether the officer's actions are reasonable in light of the facts and circumstances confronting him without regard to the officer's own state of mind, good or bad intentions, or motivation.

Plaintiff's second claim is that defendants are liable for battery. Under Illinois law, a battery is defined as the unauthorized touching of another person. Not all unauthorized contacts are batteries. Instead, the contact must be of a harmful or offensive nature.

Plaintiff has the burden of proving the following propositions as to the battery claim:

First, that each defendant intended by his or her acts to cause a harmful or offensive touching of Mark Wawryniuk's body without legal justification;

Second, that each defendant actually caused a harmful or offensive touching of Mark Wawryniuk's body; and

Third, the harmful touching was a proximate cause of Mark Wawryniuk's death.

If you find from your consideration of all the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find for plaintiff.

On the other hand, if you find from your consideration of all the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then your verdict should be for that defendant.

## **Legal Justification**

Defendants claim that they were justified in using force against Mark Wawryniuk. A person is justified in the use of force when and to the extent that he or she reasonably believes that such conduct is necessary to defend himself or herself or another against the imminent use of unlawful force.

In order to find a defendant liable, you must find that he and/or she was personally involved in the conduct complained of by the plaintiff as expressly defined in these instructions. You may not hold a defendant liable for the acts or omissions of his or her fellow employees or any other persons.

If the Plaintiff has proven any of his claims against the Defendants by a preponderance of the evidence, you must determine the damages to which the Plaintiff is entitled. 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. It is your task first to decide whether the Defendants are liable. I am instructing you on damages only so that you will have guidance in the event you decide that the Defendants are liable and that the Plaintiff is entitled to recover money from the Defendants.

If you find that one or more of the defendants are liable to plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole – that is, to compensate the plaintiff for the damages that the plaintiff has suffered.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by one or more of the defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant(s). You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered or that the plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You should only consider the following element of damages, to the extent you find it proved by a preponderance of the evidence: decedent Mark Wawryniuk's next of kin's loss of society.

You must not award compensatory damages more than once for the same injury. For example, if the plaintiff prevails on two claims and establishes a dollar amount for his injuries, you must not award him any additional compensatory damages on each claim. The plaintiff is only entitled to be made whole once, and may not recover more than he has lost. Of course, if different injuries are attributed to separate claims, then you must compensate the plaintiff fully for all of his injuries.

You may impose damages on a claim solely upon the defendant or defendants that you find are liable on that claim. Although there are three defendants in this case, it does not necessarily follow that if one is liable, all or any of the others also are liable. Each defendant is entitled to fair, separate and individual consideration of his case without regard to your decision as to the other defendants. If you find that only one defendant is responsible for a particular injury, then you must award damages for that injury only against that defendant.

You may find that more than one defendant is liable for a particular injury. If so, the plaintiff is not required to establish how much of the injury was caused by each particular defendant whom you find liable. Thus, if you conclude that the defendants you find liable acted jointly, then you may treat them jointly for purposes of calculating damages. If you decide that two or more of the defendants are jointly liable on a particular claim, then you may simply determine the overall amount of damages for which they are liable, without determining individual percentages of liability.

If you decide for the plaintiff on the question of liability, you must then fix the amount of money that will reasonably and fairly compensate the estate of Mark Wawryniuk for the pecuniary loss proved by the evidence to have resulted to Mark Wawryniuk's family from the death of the decedent, Mark Wawryniuk. Pecuniary loss consists of loss of society.

Where a decedent leaves immediate family members as heirs, the law recognizes a presumption that the immediate family members have sustained some substantial loss by reason of the death. The weight to be given this presumption is for you to decide from the evidence in this case.

In determining loss, you may consider what the evidence shows about the following attributes of Mark Wawryniuk:

1. His age
2. His sex
3. His health
4. His physical and mental characteristics
5. His habits
6. The relationship between Mark Wawryniuk and his immediate family members.

With respect to Plaintiff's claims for wrongful death based on battery and excessive force, the plaintiff John Wawryniuk, brings this action in a representative capacity by reason of his being administrator of the estate of Mark Wawryniuk, deceased. He represents himself, his mother, Lucyna Wawryniuk, mother of Mark Wawryniuk, his brother Ted Wawryniuk and his sister Theresa Fronczak, the next of kin of the deceased Mark Wawryniuk, and the estate of the deceased Mark Wawryniuk. John Wawryniuk, Lucyna Wawryniuk, Ted Wawryniuk and Theresa Fronczak are the real parties in interest in this lawsuit, and in that sense are the real plaintiffs whose damages you are to determine if you decide for the administrator of the estate of Mark Wawryniuk on Plaintiff's claims for wrongful death based on battery and excessive force.

When I use the term “society” in these instructions, I mean the mutual benefits that each family member receives from the other’s continued existence, including love, affection, care, attention, companionship, comfort, guidance and protection.

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.

### **Communication with Court**

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.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JOHN WAWRYNIUK, as Administrator	)	
of the Estate of MARK WAWRYNIUK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 03 C 4291
	)	
OFFICER MALUCHNIK, OFFICER REYES,	)	
and OFFICER PRICE	)	
	)	
Defendants.	)	

**VERDICT FORM A**

1. As to plaintiff's use of excessive force claim, we, the jury, find for plaintiff John Wawryniuk, as Administrator of the Estate of Mark Wawryniuk, and against the defendant police officers:

Miguel Reyes	Yes _____	No _____
Victoria Maluchnik	Yes _____	No _____
Jacqueline Price	Yes _____	No _____

2. As to plaintiff's wrongful death based on battery claim, we, the jury, find for plaintiff John Wawryniuk, as Administrator of the Estate of Mark Wawryniuk, and against the defendant police officers:

Miguel Reyes	Yes _____	No _____
Victoria Maluchnik	Yes _____	No _____
Jacqueline Price	Yes _____	No _____

If you answered "Yes" to any of these questions, please answer question "3."

3. We assess damages in the sum of \$ \_\_\_\_\_.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JOHN WAWRYNIUK, as Administrator )  
of the Estate of MARK WAWRYNIUK, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
OFFICER MALUCHNIK, OFFICER REYES, )  
and OFFICER PRICE )  
 )  
Defendants. )

No. 03 C 4291

**VERDICT FORM B**

We, the jury, find for all defendants and against plaintiff John Wawryniuk as Administrator of the Estate of Mark Wawryniuk.

_____	_____
Foreperson	
_____	_____
_____	_____
_____	_____

Dated: \_\_\_\_\_