

PAUL P. LINDSEY )  
)  
Plaintiff, )  
)  
v. ) No. 05 C 638  
)  
RADIOSHACK CORP. ) Magistrate Judge Morton Denlow  
an Illinois registered corporation )  
)  
Defendants. )  
)

## FUNCTIONS OF THE COURT AND THE JURY

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

Perform these duties fairly and impartially. Do not allow sympathy to influence you.

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.

## NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

### **NO INFERENCE FROM JUDGE'S COMMENTS TO LAWYER**

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

### **ALL LITIGANTS EQUAL BEFORE THE LAW**

In this case, the defendant, RadioShack, is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

### **EVIDENCE**

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

### **WHAT IS NOT EVIDENCE**

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits 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, Internet or television reports 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 or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

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

### **NOTE-TAKING**

Any notes 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 your notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

### **CONSIDERATION OF ALL EVIDENCE REGARDLESS OF WHO PRODUCED IT**

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

### **WEIGHING THE EVIDENCE**

You should use common sense in weighing the evidence and consider the evidence

in light of your own observations in life.

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

### **DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE**

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

### **TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)**

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give

to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- 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 witness's intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

### **PRIOR INCONSISTENT STATEMENTS OR ACTS**

You may consider statements given before trial by a witness while under oath, or by a party whether or not while under oath, as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, you should consider whether

it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

### **LAWYER INTERVIEWING WITNESS**

It is proper for a lawyer to meet with any witness in preparation for trial.

### **NUMBER OF WITNESSES**

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.

### **ABSENCE OF EVIDENCE**

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

### **CLAIMS AND DEFENSES**

Plaintiff Lindsey claims that Defendant RadioShack terminated his employment on June 26, 2004, because of his age, in violation of the Age Discrimination in Employment Act. RadioShack denies that Plaintiff Lindsey was terminated because of his age.

RadioShack alleges that Plaintiff Lindsey was terminated because of his job performance.

### **AGE DISCRIMINATION IN EMPLOYMENT ACT**

The Age Discrimination in Employment Act states that it is unlawful for an employer to discharge any individual because of such individual's age when that individual is at least 40 years of age.

### **BURDEN OF PROOF ON THE ISSUES**

Plaintiff Lindsey claims that he was terminated by Defendant RadioShack because of his age. To succeed on this claim, Plaintiff Lindsey must prove by a preponderance of the evidence that he was terminated by Defendant RadioShack because of his age. To determine that Plaintiff Lindsey was terminated because of his age, you must decide that Defendant RadioShack would not have terminated Plaintiff Lindsey had he been younger but everything else had been the same.

If you find that Plaintiff Lindsey has proved this by a preponderance of the evidence, then you must find for Plaintiff Lindsey. However, if you find that Plaintiff Lindsey did not prove this by a preponderance of the evidence, then you must find for Defendant RadioShack.

### **MEANING OF BURDEN OF PROOF**

When I say that a party has the burden of proof on any proposition, or use the expression “if you find,” or “if you decide,” I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

### **REASONABLENESS OF DEFENDANT'S ACTION**

In deciding Plaintiff Lindsey's claim, you should not concern yourselves with whether Defendant RadioShack's actions were wise, reasonable, or fair. Rather, your concern is only whether Plaintiff Lindsey has proved that Defendant RadioShack terminated him because of age. There has been some evidence concerning whether RadioShack managers complied with certain procedural steps that may have been set out in RadioShack's policies in connection with the termination of Mr. Lindsey's employment. Whether RadioShack may or may not have followed certain procedural steps in this regard is not a factor to be considered in Plaintiff Lindsey's age discrimination claim.

### **WILLFULNESS**

If you find for Plaintiff Lindsey, you must then decide whether Defendant RadioShack willfully violated the Age Discrimination in Employment Act. To show this, Plaintiff Lindsey must prove by a preponderance of the evidence that Defendant RadioShack knew that it was violating the Age Discrimination in Employment Act, or was indifferent to whether its actions violated the Age Discrimination in Employment Act, and not simply that Defendant RadioShack was aware that it was engaging in age discrimination.

### **DO NOT CONSIDER DAMAGES**

You are not to consider the question of damages in this case. If you find for Plaintiff Lindsey on the issue of liability, the Court will determine the appropriate measure of damages.

### **VERDICT-UNANIMOUS-DUTY TO DELIBERATE**



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, whether for or against the parties, 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.

### **SELECTION OF A FOREPERSON**

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

You are free to deliberate in any way you decide or select whomever you like as a foreperson. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be foreperson, you may want to consider

the role that the foreperson usually plays. The foreperson serving as the chairperson during the deliberations should ensure a complete discussion by all jurors who desire to speak before any vote. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The foreperson should help facilitate the discussion and make sure everyone has a chance to say what they want to say.

### **VERDICT FORMS–JURY’S RESPONSIBILITY**

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form and return it to the Court. Your verdict must be signed by each of you.

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 the Court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

### **CONDUCTING THE DELIBERATIONS**

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I encourage you at all times to keep an open mind if you ever disagree or come to different conclusions on facts from any of your fellow jurors. Thinking about the other jurors’ points

of view may help you understand their positions better or give you a better way to explain why you think your position is correct.

### **COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Court security officer, signed by your foreperson or by one or more of the members of the jury, but you should understand that you, as the jury, must decide the facts. 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.

You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

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

### VERDICT FORM

1. Does the jury unanimously find that Plaintiff Paul Lindsey has proved by a preponderance of the evidence that he was discharged by Defendant RadioShack Corporation because of his age in violation of the Age Discrimination in Employment Act? (Circle one)

Yes

No

*If the answer to Question 1 is "Yes", proceed to answer Question 2. If the answer to Question 1 is "No," do not answer Question 2. Sign the Verdict Form at the bottom and inform the Court's security officer that you have completed your deliberations.*

2. Does the jury unanimously find that Plaintiff Paul Lindsey has proved by a preponderance of the evidence that his discharge by Defendant RadioShack Corporation was a willful violation of the Age Discrimination in Employment Act? (Circle one)

Yes

No

*Sign the Verdict Form and inform the Court's security officer that you have completed your deliberations.*

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(Foreperson)

Date:

