

1 04-435T SSJ vs. Icoa, Inc.

2 THE COURT: Ladies and gentlemen, it's my  
3 responsibility to explain to you the principles of the  
4 law that apply in this case, and it's your duty to  
5 apply those principles as I explain them to you.  
6 Considering what I'm about to tell you, it's important  
7 that you consider my explanation of the law in its  
8 entirety. Don't focus on one or two points and forget  
9 about the rest. In order to apply the law fairly and  
10 accurately, you should consider my explanation in its  
11 entirety.

12 Now, as you know, this case was brought by SSJ  
13 Enterprises, LLC, which has been referred to as SSJ,  
14 and Street Search, LLC, which has been called Street  
15 Search, against ICOA, Inc., which everybody has been  
16 calling ICOA. And because SSJ and Street Search were  
17 the parties that brought the suit, they're referred to  
18 as the plaintiffs. So if I use the term "plaintiff",  
19 I'm talking about plaintiffs. I'm talking about SSJ  
20 and Street Search. And since ICOA was the one against  
21 whom suit was brought, they're called the defendant.  
22 And if I use the term "defendant", I'm talking about  
23 ICOA.

24 Both the plaintiffs and the defendant are  
25 corporations. A corporation is a legal entity.

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1 There's no -- it's not a tangible thing. A corporation

2 can't walk and talk. A corporation can function only  
3 through its officers and its employees and its agents.

4 So a corporation is chargeable with whatever its  
5 authorized officers, employees or agents do, and it's  
6 also chargeable with any knowledge that they may have,  
7 any information that's imparted to them.

8 So when I make reference to the acts of any of  
9 these parties, I'm talking about the acts of their  
10 officers, agents or employees who are authorized to act  
11 on their behalf.

12 Now, SSJ and Street Search brought this suit  
13 against ICOA for a breach of contract. And basically,  
14 they allege that, first of all, there was a contract  
15 between them and ICOA, a written contract that is in  
16 evidence as Exhibit 8, and you'll have that with you in  
17 the jury room to examine. They also allege that they  
18 performed their obligations under this contract, but  
19 that ICOA did not, principally that they did not issue  
20 shares of stock that the plaintiffs claim ICOA was  
21 obliged to issue to them in accordance with the terms  
22 of this contract. And the plaintiffs also say as a  
23 result of this breach on the part of ICOA, they, the  
24 plaintiffs, have suffered some economic loss here.

25 ICOA, of course, disputes these things. ICOA

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1 says, basically, that there was no valid contract  
2 between the parties, that that document in evidence as  
3 Exhibit A is not a contract, it was a preliminary  
4 agreement. And they also argue that their position is  
5 that, in any event, the plaintiffs did not perform

6 their obligations pursuant to the terms of that  
7 agreement.

8 Now, since the plaintiffs are the ones who are  
9 making the claim, the breach of contract claim, the law  
10 imposes on the plaintiffs the burden of proving that  
11 claim. It's not up to the defendant to come in here  
12 and prove that it didn't breach the contract, but,  
13 rather, it's up to the plaintiffs to prove that there  
14 was a contract and that the defendants breached it.  
15 And the plaintiffs have to prove that by what's called  
16 a fair preponderance of the evidence. And I'll explain  
17 what that means a little bit later on.

18 But before I do that, I want to first talk about  
19 exactly what it is that the plaintiffs have to prove in  
20 order to prevail on their breach of contract claim.

21 First, as I said, the plaintiffs have to prove  
22 that there was a valid contract between them and ICOA.

23 Second, they have to prove that they performed  
24 their obligations under the contract, that the  
25 plaintiffs performed the plaintiffs' obligations under

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1 the contract.

2 Third, they have to prove that ICOA did not  
3 perform its obligations under the contract. In other  
4 words, ICOA breached the contract.

5 And fourth, the plaintiffs have to prove that,  
6 as a result of that breach, that they, the plaintiffs,  
7 sustained some economic loss or damage.

8 A contract is a legally binding agreement  
9 between two or more parties that requires each party to

10 either do something or refrain from doing something.  
11 It doesn't have to be in any particular form. It  
12 doesn't even have to be in writing. A contract can be  
13 verbal or written, or it can consist of both  
14 discussions and written documents. And the contract  
15 doesn't have to be contained in a single document. It  
16 can be contained in a series of documents. A series of  
17 documents can make up a single contract.

18 The important thing to remember is whether a  
19 contract exists is determined by looking at the intent  
20 of the parties as evidenced by their acts, what they  
21 said and what they did, and the surrounding  
22 circumstances. It's not what the parties may secretly  
23 intend that governs, but, rather, it's what they  
24 manifest to one another by their actions and their  
25 words.

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1 So what you're trying to determine here in  
2 establishing whether a contract exists, and for that  
3 matter what the terms of the contract are, is what was  
4 the intent of the parties as manifested to one another  
5 by their acts and words.

6 In order for a contract to exist, the terms of  
7 the alleged contract must be specific enough to enable  
8 the parties to clearly understand what their  
9 obligations are and what the obligations of the other  
10 party are. You can't have a contract unless there are  
11 terms that establish what the nature of each party's  
12 obligations are.

13 In order for a contract to exist, both parties

14 must manifest their agreement to all of the essential  
15 terms, and they must further manifest an intent to be  
16 bound by that agreement. There can't be a contract or  
17 an agreement that only one party agrees or accepts the  
18 terms or agrees to be bound. You have to have a  
19 meeting of the minds, so to speak, in which both  
20 parties agree or at least manifest their agreement to  
21 one another as to all of the essential terms of the  
22 contract.

23 A contract ordinarily is formed when one party  
24 makes an offer to the other party to enter into a  
25 contract and the other party accepts that offer. By

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1 "offer", I simply mean the proposal for the other party  
2 to consider. An offer is a proposal by one party to  
3 the other for that party to consider. In order to  
4 constitute an offer, the proposal must be sufficiently  
5 specific and detailed so that, if it is accepted, the  
6 contract will be formed. There will have to be terms.  
7 The offer has to contain sufficient terms so the other  
8 party says, all right, I agree, you have enough there  
9 to constitute a contract, and to tell what each party's  
10 responsibilities and obligations are.

11 In order for the contract to be formed, as I  
12 said, the offer must be accepted by the other party.  
13 Acceptance has to be clearly communicated so that it is  
14 readily understood by the other party that this offer  
15 has been accepted. And in addition, the acceptance has  
16 to be absolute and unequivocal. In other words, it  
17 can't contain any conditions or qualifications. If the

18 acceptance or purported acceptance does contain  
19 conditions or qualifications that adds terms that are  
20 different from the terms that were contained in the  
21 offer, then it's not an acceptance but rather it's  
22 considered to be a counteroffer, and then you go  
23 through the process again. If the counteroffer is  
24 accepted, then you may have a contract. But unless  
25 there's acceptance of the counteroffer, there's no

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1 contract. In other words, when a party responds to an  
2 offer by seeking a change in terms or conditions or  
3 making its agreement contingent upon some conditions or  
4 satisfaction of additional conditions, the response is  
5 deemed to be a counteroffer, not an acceptance.

6 In order for a contract to exist, each party  
7 also must give something of value in exchange for the  
8 obligations undertaken by the other party. The law  
9 refers to that "something of value" as consideration.  
10 Consideration can consist of, obviously, money. It  
11 could consist of a promise to do something or refrain  
12 from doing something in exchange for the other party's  
13 performance of its obligations.

14 In this case, you don't have to worry about the  
15 issue of consideration because a promise by each party  
16 to do something in exchange for the other party's  
17 promise would be consideration for the promise. And  
18 here it's alleged here that the alleged contract is  
19 based on mutual promises that were made by the other  
20 parties. So consideration really isn't an issue in  
21 this case.

22           Now, I told you that the plaintiff has to prove  
23 that there was a contract; and secondly, that the  
24 defendant breached that contract. A breach of contract  
25 is an unjustified failure to comply with a material

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1 term of the contract.

2           So if one of the parties to the contract  
3 unjustifiably fails to adhere to a material term of the  
4 contract, then that party is said to have breached the  
5 contract.

6           Now, a material term means an important term or,  
7 to put it another way, a term that if not complied with  
8 will deprive the other party to the benefit to which  
9 it's reasonably entitled under the contract.

10           So in determining whether there has been a  
11 breach of a contract, if you find a contract exists, in  
12 determining whether the defendant breached the  
13 contract, you should consider, first of all, whether  
14 the party accused of the breach, in this case ICOA,  
15 failed to comply with a material term of the contract;  
16 and if so, whether that failure was justified.

17           In this case, if you decide that there was no  
18 contract between the plaintiffs and ICOA, you don't  
19 need to decide whether there was a breach of that  
20 contract, nor do you have to decide whether the  
21 plaintiffs themselves performed their obligations under  
22 the contract. You don't get to those questions unless  
23 you first find that there was a contract.

24           On the other hand, if you find there was a  
25 contract, you do need to ask those questions. You need

1 to ask yourselves did the plaintiffs carry out their  
2 end of the bargain, did they comply or did they  
3 discharge their obligations under the contract; and if  
4 they did, did ICOA carry out its obligations under the  
5 contract, or did it fail to do so or breach the  
6 contract.

7 Before you can determine whether either party  
8 breached a contract, assuming you find that a contract  
9 exists, you first have to determine what the terms of  
10 the contract were. And once again, that involves  
11 determining what the parties to the contract intended.

12 If the language of the contract -- if you have a  
13 written contract, as we do here, alleged contract, I  
14 should say, you have a document that's the alleged  
15 contract, and the language is plain and unambiguous,  
16 then that language is controlling as to the parties'  
17 intentions. All you need to do is read the document  
18 and then that tells you what the terms of the contract  
19 are.

20 And in doing that, you again have to be careful  
21 to look at the document as a whole. Don't pick out one  
22 little point in the document and focus on that. You  
23 have to read the terms of the document in the context  
24 of the entire document.

25 Now, if the language of a written contract is

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1 ambiguous, then you need to look to surrounding  
2 circumstances as an aid in determining what the  
Page 8

3 language means. And those circumstances may include  
4 such things as who prepared the document, the events  
5 that led up to the execution of the document including  
6 the discussions that the parties may have had, if they  
7 shed light on what they meant by any ambiguous terms,  
8 and anything that the parties may have done later that  
9 may indicate what they intended at the time the alleged  
10 contract was entered into. What they did later only  
11 has relevance to the extent it tells you what they  
12 meant when they entered the contract.

13 I mentioned one of the things was who prepared  
14 the document. Generally, when the language of a  
15 document is ambiguous and it can be reasonably  
16 interpreted in more than one way, the interpretation  
17 that is most favorable to the party that did not  
18 prepare the document is the preferred interpretation.  
19 And the reason for that is that if it was the other  
20 party that prepared the document and had the  
21 opportunity to pick the words and, therefore, if  
22 there's any reasonable ambiguity in the words, you are  
23 to give the other party the benefit of the doubt on  
24 that ambiguity.

25 I'm now going to turn to the question of

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1 damages. I told you the things that the plaintiffs  
2 have to prove in order to establish that there was a  
3 contract and that there was a breach by the defendants.  
4 The plaintiffs also have to prove that, as a result of  
5 the breach, they sustained some damages. That's what  
6 they want you to award them. They want you to award

7 them damages for the alleged breach.

8 I want to make it clear that in discussing  
9 damages with you I don't mean in any way to imply that  
10 I think you should or should not find the defendant  
11 liable for breach of contract. I'm discussing damages  
12 with you only so that if you find that the plaintiff  
13 has proven its claim for breach of contract that you  
14 will know what principles apply in determining the  
15 amount that you award in the form of damages.

16 You only get to the question of damages if you  
17 find that there was a breach of contract proven by the  
18 plaintiffs. Damages, like any other element of the  
19 plaintiffs case, have to be proven. The plaintiff has  
20 the responsibility of proving the damages that it  
21 sustained, again, by a fair preponderance of the  
22 evidence.

23 In this case, the damages claim is a fairly  
24 simple claim. What the plaintiffs are seeking here are  
25 what are called compensatory damages. They're seeking

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1 compensation for the loss they claim to have sustained  
2 as a result of the defendants alleged breach of  
3 contract. And the measure of damages to which the  
4 plaintiffs would be entitled in this case is the  
5 present value of any shares that you find that ICOA may  
6 have been required to issue to the plaintiffs under the  
7 terms of the services agreement or what the plaintiffs  
8 claim is the contract between the parties. And the  
9 parties here agree that the present value of ICOA  
10 shares is three cents per share.

11           So in calculating the damages, it's simply a  
12 process of determining how many shares you find that  
13 ICOA was required to issue to the plaintiffs, and then  
14 multiplying that by three cents per share.

15           You may recall that there's been some evidence  
16 in the case that besides the issuance of shares, a  
17 service agreement also entitled the plaintiffs to  
18 receive warrants to purchase additional shares. You  
19 shouldn't consider the warrants in calculating damages  
20 because the price that the plaintiffs would have been  
21 required to pay to exercise those warrants, in other  
22 words, to purchase the shares was well above what the  
23 fair value of the shares is. And so, obviously, it  
24 wouldn't make any sense for the plaintiffs to exercise  
25 those warrants.

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1           So what you're focusing on are the shares of  
2 stock that the -- or any shares of stock that you find  
3 that ICOA was required to issue to the plaintiffs.

4           Now, I've told you all the things that the  
5 plaintiffs have to prove here in order to prevail on  
6 their claim. I also told you that the plaintiffs have  
7 to prove these things by a fair preponderance of the  
8 evidence. Now, what does that mean? Well, it means,  
9 basically, that they have to prove these things by a  
10 greater weight of the evidence or they have to prove  
11 that the things they're claiming are more probably so  
12 than not so. And the best way that I know to  
13 illustrate what is meant by proving something by a fair  
14 preponderance of the evidence is to ask you to

15 visualize the old-fashion hypothecary scale. The  
16 Scales of Justice would be an example. You've seen the  
17 caricature of Lady Justice, the blindfolded lady who's  
18 holding the scales in front of her with the two  
19 counterbalances in her arms. That's the kind of scale  
20 I'm talking about.

21 In order to determine the plaintiffs have proved  
22 any of the things they're required to prove by a fair  
23 preponderance of the evidence, what you have to do is  
24 take all of the evidence that's been presented that  
25 supports the plaintiff's position on that particular

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1 point, whether it's testimony of witnesses or what you  
2 find in the exhibits, take all the evidence that  
3 supports the plaintiff's position and you put all those  
4 bits of evidence on the plaintiff's side of the scale.  
5 Then you take all of the bits of evidence that have  
6 been presented that supports the defendant's position  
7 on that particular point, and you put all of those bits  
8 of evidence on the defendant's side of the scale. Then  
9 you should ask yourself what's happened to the scale  
10 now. If you determine that after you go through that  
11 process the scale tips in favor of the plaintiffs, no  
12 matter how slightly it tips, if it tips in favor of the  
13 plaintiffs, the plaintiffs have proven that point by a  
14 fair preponderance of the evidence. Why? Because the  
15 evidence in favor of the plaintiff on that point  
16 outweighs the contrary evidence.

17 On the other hand, if after you go through that  
18 process you determine that the scale tips the other

19 way, tips in favor of the defendant, or that the scale  
20 is equally balanced, doesn't tip one way or the other,  
21 then the plaintiffs have failed to prove that point to  
22 you by a fair preponderance of the evidence, again,  
23 because in this case, the evidence that supports the  
24 plaintiffs does not outweigh the contrary evidence.

25 So that's what I mean by proving something by a

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1 fair preponderance of the evidence.

2 Now, how do you determine whether the plaintiffs  
3 have proven the things that they're required to prove  
4 by a fair preponderance of the evidence? well, you  
5 have to look, first of all, at the evidence. And the  
6 evidence came from two sources, the testimony of the  
7 witnesses, and the contents of the exhibits that will  
8 go with you into the jury room, at least those that  
9 have been admitted into evidence.

10 with respect to the testimony of the witnesses,  
11 your principal task is to determine how much weight the  
12 testimony of each witness is entitled to on that scale.

13 And in making that determination, there are a  
14 number of things that you ought to consider. One is  
15 the witness's opportunity or lack of opportunity to  
16 have accurately perceived the facts that the witness  
17 related to you. In other words, was the witness in a  
18 good position to have accurately seen, heard or  
19 otherwise learned the things that the witness said.

20 A second consideration is the reliability or  
21 unreliability of the witness's memory. The witness may  
22 have been in a good position to have seen or heard

23 these things, but you also need to ask yourself does  
24 the witness accurately recall what it is that the  
25 witness may have seen or heard or should the witness's

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1 testimony be discounted because maybe the witness's  
2 memory isn't that good.

3 The third factor is the witness's appearance on  
4 the stand. One reason that we generally require  
5 witnesses to come in and testify in person rather than  
6 having somebody tell you what somebody outside of the  
7 courtroom that you may never have seen told them is  
8 that having the witness appear here personally gives  
9 you a chance to size that person up. From your  
10 observations, you can draw some conclusions about how  
11 much weight that witness's testimony deserves.

12 Another factor is whether the witness has any  
13 stake in the outcome of the case. In other words, does  
14 the witness have something to gain or lose by your  
15 decision. Does the witness have an interest in the  
16 case that might affect the witness's testimony.

17 Now, of course, that doesn't mean that simply  
18 because the witness may have a stake in the outcome  
19 that you ought to automatically disregard or discount  
20 the witness's testimony, because by the very nature of  
21 things, when you have a lawsuit, it's really the people  
22 who are the plaintiffs and the defendants who were  
23 there and they are the witnesses. So that's  
24 understandable. But it's a factor you can take into  
25 account, particularly if there's a disinterested

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1 witness rather than a witness who has a stake in the  
2 outcome, that becomes maybe an important factor.

3           Keep in mind in determining the way that scale  
4 tips, it isn't the number of the witnesses who testify  
5 on any particular side of an issue that governs, but,  
6 rather, it's the quality of the testimony or the weight  
7 of the witness's testimony. So you can have one  
8 witness who testifies on one side of the point, two or  
9 three witnesses may testify to the contrary. That  
10 doesn't necessarily mean that the scale tips in favor  
11 of the two or three witnesses.

12           If you find that the one witness was a very  
13 credible, reliable witness, two or three witnesses were  
14 maybe not so credible or reliable for whatever reason,  
15 you may accept the testimony of the single witness over  
16 the testimony of the two or three witnesses.

17           Now, I've told you you will have the exhibits  
18 with you in the jury room, and you can look through  
19 those to your heart's content. Keep in mind that  
20 exhibits, like the testimony of witnesses, are simply  
21 bits of evidence in the case. You don't have to accept  
22 everything that's in the exhibit at face value. You  
23 ought to look at the exhibits in the context of all the  
24 evidence that's been presented and give the exhibits  
25 whatever weight you think they deserve after looking at

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1 them in that way.

2           I told you that you must base your decision

3 solely on the evidence that's been presented during the  
4 trial, but that doesn't mean that you are strictly  
5 limited to the testimony of the witnesses and the  
6 contents of the exhibits. You may draw inferences from  
7 the testimony of the witnesses and what you find in the  
8 exhibits.

9           Let me put it another way. There are two ways  
10 of proving any fact that needs to be proven in a case.  
11 One way is to prove it by direct evidence, the  
12 testimony of someone who claims to have personally  
13 observed whatever it is that the fact may be, or by  
14 presenting an exhibit, that may be the thing itself or  
15 show what it is the party is trying to prove. That's  
16 proof by direct evidence.

17           But you can also prove things by circumstantial  
18 evidence. What that means is proving two facts from  
19 which the existence or non-existence of a third fact  
20 may be reasonably inferred, and either method of proof  
21 is acceptable.

22           Let me just caution you or let me, first of all,  
23 try to explain to you what I mean by proving something  
24 by circumstantial evidence by, again, giving you an  
25 example I think graphically illustrates it probably

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1 better than I can say it in words. This is a very apt  
2 example, given the weather forecast they're giving us  
3 for later this afternoon. Suppose some winter night  
4 before you go to bed you look out the window and the  
5 ground is bare. The next morning you wake up, and  
6 there's a foot of snow on the ground. If someone asks

7 you whether it snowed last night, I'm sure your answer  
8 would be yes. It's a perfectly reasonable answer. If  
9 you had to come into court and prove that it snowed  
10 last night, how would you go about doing it? well, you  
11 would find someone who was awake when the snowflakes  
12 fell, who could testify they actually saw the  
13 snowflakes falling. That would be an example of  
14 proving it by direct evidence, the direct observation  
15 of someone who claims to have seen the snowflakes  
16 actually falling.

17 If you couldn't find somebody who was awake when  
18 the snowflakes were falling, you could testify yourself  
19 as to two facts. One, before you went to bed, the  
20 ground was bare. Two, when you woke up, there was a  
21 foot of snow on the ground. You've proven those two  
22 facts through direct evidence, your direct observations  
23 of what the ground looked like when you went to bed and  
24 when you got up. And from those two facts, it would be  
25 perfectly reasonable to infer that it snowed last

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1 night. That would be an example of proving it by  
2 circumstantial evidence.

3 Now, a word of caution here. There's a big  
4 difference between proving something by circumstantial  
5 evidence and guessing or speculating.

6 So in my example of what the difference is that  
7 in order to prove something by circumstantial evidence,  
8 there are two requirements. First of all, the  
9 inference to be drawn must be based on facts that have  
10 been established by the direct evidence; and secondly,

11 the inference must be a reasonable inference.

12 So in my example, if someone asked you if it's  
13 going to snow next Thursday night, it would not be  
14 reasonable to infer that it was going to snow next  
15 Thursday night just because it snowed tonight.

16 Now, during the trial, there have been a few  
17 occasions, not many, when the lawyers have objected to  
18 questions asked by the other lawyer or exhibits offered  
19 by the other lawyer, and I want to make sure that you  
20 understand that a lawyer has a right, even an  
21 obligation, to object when that lawyer thinks that  
22 evidence that's being offered is improper. And you  
23 shouldn't hold it against the lawyer or, more  
24 importantly, the lawyer's client because the lawyer may  
25 have objected to evidence that was being offered, nor

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1 should you discount the evidence simply because  
2 somebody objected to it.

3 If I overruled the objection and allowed the  
4 evidence in, forget about the fact that it was objected  
5 to. You then consider that evidence for whatever value  
6 you think it has without regard to whether or not  
7 somebody objected to it.

8 I've told you that it's up to you, and you  
9 alone, to determine the facts in the case. I play no  
10 role in deciding facts. And if during the course of  
11 the trial I have said or done anything that has caused  
12 you to believe that I was indicating an opinion as to  
13 what the facts are or not, I can tell you right now  
14 that I certainly did not intend to indicate any such

15 opinion, and you shouldn't be concerned about what you  
16 may think my opinion may be. It's your job to decide  
17 the facts.

18 I hope that it goes without saying that neither  
19 bias in favor of any person or group or cause, or  
20 prejudice against any person or group or cause, or  
21 sympathy should play any role at all in your decision.  
22 You have two jobs to do. One is to look objectively  
23 and impartially at the evidence that's been presented  
24 and determine from that evidence what the facts are,  
25 and the second is to apply to those facts the law as I

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1 have attempted to explain it to you.

2 I'm going to ask the lawyers to approach the  
3 side bar briefly to give them a chance to tell me if  
4 they think that I have forgotten to tell you something  
5 that I should have told you, or misstated anything I  
6 did tell you.

7 (Side bar conference.)

8 THE COURT: Does the plaintiff have any  
9 objection to the charge?

10 MR. WALKER: Not at all. It's a good charge.

11 MR. MULHEARN: No objection.

12 THE COURT: I don't know if you've been given  
13 the proposed verdict form. We'll see that you get  
14 that.

15 MR. MULHEARN: Thank you.

16 (End of side-bar conference.)

17 THE COURT: Ladies and gentlemen, in order to  
18 reach a verdict in this case, all eight of you must

19 agree as to what that verdict should be. You can't  
20 return a verdict in favor of either the plaintiff or  
21 the defendant unless you are unanimous.

22 when you go into the jury room, you need to keep  
23 in mind two important points that may seem to be in  
24 conflict with each other. The first is that you are to  
25 approach the deliberations with an open mind, and you

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1 ought to listen with an open mind to what your fellow  
2 jurors have to say. And if you initially disagreed  
3 with them but after listening to them with an open mind  
4 you decide that they were right and you were wrong, you  
5 should be humble enough to change your opinion.

6 On the other hand, you also have to recognize  
7 that each of you has an independent responsibility to  
8 vote for the verdict that you think is the correct  
9 verdict based on your understanding of the evidence and  
10 the law as I have explained it to you and you must have  
11 the courage to stick to your convictions if, after  
12 listening with an open mind to the other jurors, you  
13 remain convinced that you're correct and they're  
14 incorrect, even if you are the only one.

15 Now, I know that sounds like there's a conflict  
16 there and I guess there is, but my experience over the  
17 years has been that jurors almost always are able to  
18 reach a unanimous verdict without violating each of  
19 those principles, and I'm confident that you will be  
20 able to do that also. But if you can't, we'll cross  
21 that bridge when we get to it.

22 when you get into the jury room, the first thing

23 you should do is select a foreman or forelady whose  
24 responsibilities will be, number one, to act as the  
25 moderator of your deliberations, to make sure they are

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1 conducted in an orderly way and that anyone who wants a  
2 chance to speak has a fair opportunity to do so. The  
3 foreman or forelady also has the responsibility of  
4 completing the verdict form. Very simple form. Simple  
5 check a box and sign it when the jury has reached a  
6 unanimous decision and bring it back into the courtroom  
7 where the clerk at that time will take it from you.

8           And your third duty, which you may or may not  
9 have to exercise, is if it's necessary for the jury to  
10 communicate with me for any reason, the communication  
11 should be in the form of a brief note from the foreman  
12 or the forelady stating what your question or problem  
13 is, give that to the security officer who will be  
14 outside your door. He'll give it to me. I'll discuss  
15 it with the lawyers, and I'll try to respond as quickly  
16 as I can and as helpfully as I properly can. Now, I  
17 emphasize the word "properly" because there are some  
18 things that I could not do to help you. As I told you,  
19 you are the finders of fact in the case, and I can't  
20 help you in determining what the facts are. That's  
21 something you have to do yourselves. But if there's  
22 anything else that I can help you with, I certainly  
23 will do my best to try. I will ask that you be patient  
24 if you do have a question. And by the way, I don't  
25 expect that you will have questions. You don't have to

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1 come up with a question. It's not usual jurors have  
2 questions. But if you do have a question or a problem,  
3 I just want you to know that I will try to help you  
4 with it.

5 You need to be patient because I have some other  
6 things scheduled in this courtroom today so I may not  
7 be able to get back to you immediately, but I will get  
8 back to you as quickly as I can.

9 I believe lunch has been ordered for you. I  
10 will ask the clerk to check back with you -- well, the  
11 other thing I should mention is there's no time limit  
12 on your deliberations. Your schedule from here on out  
13 is pretty much whatever you want it to be. You can  
14 take as long or as little time as you think is  
15 necessary to fairly decide the case.

16 If you reach the end of today and you want to go  
17 home and you haven't reached a verdict and you want to  
18 come back tomorrow, you can do that. Or if you prefer,  
19 you can stay late if you'd rather do that. But if you  
20 do wish to stay late, we'd like to have a little  
21 advanced notice because we're going to have to make  
22 some staffing arrangements if we keep the courthouse  
23 open beyond the usual closing hours.

24 I'll ask the clerk to check back with you first  
25 of all early in the afternoon, because, as you may now,

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1 there's some forecast for snow starting around mid- to  
2 late afternoon. And if any of you are nervous about  
3 that, you have the option of saying you want to go home

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4 today and come back tomorrow. I'll have the clerk  
5 check with you around early or mid-afternoon to find  
6 out.

7 Is there anything else, Counsel, the jury needs  
8 to be told?

9 MR. WALKER: Nothing your Honor.

10 MR. MULHEARN: No, your Honor.

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