

1 04-356T Bjerke vs. City of warwick

2 THE COURT: Please be seated, ladies and  
3 gentlemen.

4 At this time, as you know, it's my duty to  
5 explain to you the principles of law that apply in this  
6 case, and it's your duty to apply those principles to  
7 the facts as you determine the facts to be. When you  
8 consider my explanation of the law, it's important that  
9 you consider it in its entirety. In other words, don't  
10 pick out one or two points and consider them out of  
11 context. You've got to consider everything I'm about  
12 to tell you as a whole in order to fairly and  
13 accurately apply the law to the facts as you determine  
14 the facts to be.

15 As you know, this is a suit by Robert J. Bjerke  
16 against the City of warwick. And since Mr. Bjerke is  
17 the party who is bringing the suit, he is the  
18 plaintiff. And if I use the term "plaintiff", I'm  
19 talking about Mr. Bjerke. And the suit is brought  
20 against the City of warwick and so, therefore, the City  
21 of warwick is the defendant in the case. So if I use  
22 the term "defendant", I'm referring to the City of  
23 warwick.

24 A city is a municipal corporation, and it has a  
25 legal existence as a municipal corporation, but,

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1 obviously, the City of warwick can't do anything. It

2 only functions through its employees and its agents;  
3 and it's responsible for the things that it's employees  
4 or agents do at least in the course of their  
5 employment, and I'll explain that a little more as I  
6 get further into my explanation of the law to you.

7 But in this case, Mr. Bjerke claims that the  
8 City of warwick is liable to him because the warwick  
9 police officers negligently failed to take reasonable  
10 steps in assisting to expedite his release from the ACI  
11 after the Florida authorities had notified the warwick  
12 police that they, the Florida authorities, were  
13 withdrawing the warrant that had been issued for  
14 Mr. Bjerke's arrest. And since Mr. Bjerke is the one  
15 who is making this claim, the law imposes on him the  
16 responsibility or burden of proving it. It's not up to  
17 the city to come in and disprove the things that  
18 Mr. Bjerke is claiming. It's up to Mr. Bjerke to prove  
19 those claims; and he has to prove his claim by what's  
20 called a fair preponderance of the evidence, and I will  
21 explain to you a little later exactly what is meant by  
22 proving something by a fair preponderance of the  
23 evidence.

24 But first, I want to focus on the things that  
25 Mr. Bjerke has to prove in order to prevail on his

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1 claim. In order to prevail on his negligence claim,  
2 which is what his claim is, Mr. Bjerke has to prove  
3 three things or what the law refers to as three  
4 elements. The first thing he has to prove is that the  
5 defendant, the City of warwick, or its police officers

6 was negligent.

7 The second thing he has to prove is that that  
8 negligence proximately caused the loss or injury that  
9 he is claiming and for which he is seeking  
10 compensation.

11 And the third thing he has to prove is exactly  
12 what it is that that injury or loss is.

13 And as I indicated, since the police officers  
14 are employees of the City of Warwick and they were  
15 acting within the scope of their employment in dealing  
16 with Mr. Bjerke's situation, the city would be  
17 responsible for any negligence that may exist on the  
18 part of the police officers in causing Mr. Bjerke to be  
19 detained for an unreasonable period of time after the  
20 Florida authorities notified Warwick that the warrant  
21 for Mr. Bjerke's arrest was being withdrawn.

22 Now, in this case, once the Warwick Police --  
23 well, let me back up a moment. The first question is  
24 whether the Warwick police officers were negligent.  
25 Negligence is the failure to use reasonable care under

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1 circumstances where there is a legal duty to use  
2 reasonable care or an obligation to do so. Reasonable  
3 care is that degree of care that a reasonably prudent  
4 or reasonably careful person would have exercised under  
5 the particular circumstances or under similar  
6 circumstances. And therefore, what constitutes  
7 reasonable care, obviously, depends on what the  
8 circumstances were. In order to determine whether a  
9 person used reasonable care under the circumstances,

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you have to look at the circumstances.

Negligence may consist of doing something that a reasonably prudent or careful person would not have done under those circumstances or not doing something that a reasonably prudent or careful person would have done under those circumstances.

So in other words, negligence consists of doing something or failing to do something that a reasonably prudent or careful person who had a duty to do something or not do something would have done under the circumstances.

In this case, once the warwick Police learned that the Florida authorities had withdrawn their hold on Mr. Bjerke and indicated that they no longer were interested in extraditing Mr. Bjerke to Florida, from that point on the warwick Police had a duty to exercise

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1 reasonable care in helping to expedite Mr. Bjerke's  
2 release.

3 The fact that Mr. Bjerke remained at the ACI for  
4 three or four days after Florida declined to extradite  
5 him and released its hold on him, while obviously  
6 unfortunate, does not by itself establish that the  
7 warwick Police were negligent.

8 In determining whether Mr. Bjerke has proven  
9 that the warwick Police were negligent, you have to  
10 consider, among other things, what it is exactly that  
11 the warwick Police could have reasonably done under the  
12 circumstances that would have assisted in Mr. Bjerke  
13 being released sooner, and whether they failed to do

14 those things, whether those things were reasonable and  
15 whether they failed to do them.

16 Now, you need a little bit of background to  
17 understand and consider the circumstances. You  
18 probably have already gathered that an arrest warrant  
19 is a court order directing the police to arrest or  
20 apprehend the individual for whom the warrant was  
21 issued and to hold that person so that that person can  
22 be turned over to the law enforcement authorities that  
23 requested the warrant in the first place.

24 If the officers who arrested the person or the  
25 agency that has control over that person's custody are

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1 notified that the warrant has been withdrawn, they have  
2 a duty to take reasonable steps in assisting to  
3 expedite the release of that person who is being held  
4 on the warrant. If the person has been incarcerated  
5 because a court has ordered that he be held without  
6 bail or he's held in lieu of bail, he's unable to post  
7 the bail that the Court set, that person can't be  
8 released without the Court's approval. If the Court  
9 directed this person to be held, he can't be released  
10 unless the Court authorizes the release. A police  
11 officer or a prosecutor can't simply call the ACI, for  
12 example, and order that a person being held there  
13 pursuant to a court order be released, but they can  
14 request that the Court order that the person be  
15 released.

16 I've told you that in order to prevail on a  
17 negligence claim, which is what this is, in addition to

18 showing that the defendant was negligent, the plaintiff  
19 also has to show that that negligence proximately  
20 caused the injury or loss for which the plaintiff is  
21 seeking to be compensated. An act or an event is said  
22 to be a proximate cause of an injury or a loss if the  
23 act or event in the natural course of events produced  
24 the injury or loss in question.

25 A defendant's conduct cannot be considered to be

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1 the proximate cause of a plaintiff's injury or loss  
2 unless the loss or injury would not have occurred in  
3 the absence of the defendant's actions or inactions.  
4 To put it another way, the plaintiff has to show that  
5 but for the defendant's conduct, the injury or loss  
6 would not have occurred.

7 If a plaintiff's injury or loss would have  
8 occurred regardless of whether or not the defendant did  
9 what the plaintiff claims the defendant should have  
10 done, then the defendant's failure is not a proximate  
11 cause of the plaintiff's injury or loss. In other  
12 words, it has to be a direct causal connection between  
13 what the plaintiff did or didn't do and the loss or  
14 injury that the -- excuse me, what the defendant did or  
15 didn't do and the loss or injury that the plaintiff  
16 claims to have suffered.

17 So in this case, in order to prove the proximate  
18 cause element, Mr. Bjerke must show that had the  
19 Warwick Police done something different that was  
20 reasonable under the circumstances after Florida  
21 released its hold on him, then he would have been

22 released from custody sooner than he was.

23 I'm now going to turn to the question of  
24 damages. I've told you the things that the plaintiff  
25 has to prove in order to prevail on his claim. He has

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1 to show the police officers were negligent, that their  
2 negligence was a proximate cause of Mr. Bjerke  
3 continuing to be held until -- from Friday afternoon or  
4 evening, I guess it was, until Tuesday morning; he has  
5 to show that that was a proximate cause of his being  
6 held; and he has to show that he sustained some damages  
7 as a result.

8 So I'm going to talk about damages now. I  
9 should emphasize in discussing damages I don't mean to  
10 imply in any way I'm suggesting that you should find  
11 the defendants liable or not liable. That's up to you  
12 to decide. I'm simply discussing damages with you so  
13 that if you determine that the defendants were  
14 negligent and their negligence was a proximate cause of  
15 some injury or loss suffered by Mr. Bjerke, you'll know  
16 what the legal principles are in determining how much  
17 Mr. Bjerke ought to be awarded in the way of damages.  
18 You don't get to the question of damages unless you  
19 find that the city is liable; but if you do find the  
20 city is liable, then you can consider damages. And  
21 like any other part of the plaintiff's case, damages  
22 have to be proven. You can't guess as to what you  
23 think the damages were. You have to base your decision  
24 on the evidence that has been presented and on your  
25 sound judgment as to what constitutes fair compensation

1 for any loss that the evidence shows that Mr. Bjerke  
2 sustained.

3 what Mr. Bjerke is seeking in the case is what's  
4 called compensatory damages. As that term implies,  
5 compensatory damages is an amount of money that is  
6 designed to compensate the plaintiff for whatever  
7 injury or loss he may have sustained as a result of the  
8 defendant's conduct. And compensatory damages, in this  
9 case, the kinds of damages that the plaintiff is  
10 claiming are several. Basically, two different types  
11 of damages.

12 First of all, the plaintiff is claiming damages  
13 for what would generically be called bodily injuries  
14 and pain and suffering that he experienced as a result  
15 of his continued incarceration. You remember there was  
16 some testimony by Mr. Bjerke that he had a bad back and  
17 that being in prison aggravated his back condition, and  
18 as I say, if you find that the defendants were liable  
19 or negligent and liable for his continued incarceration  
20 at the ACI after being notified the Florida warrant was  
21 withdrawn, you can award Mr. Bjerke damages for the  
22 aggravation or the pain that he experienced as a result  
23 of the prison conditions aggravating or making more  
24 painful the back injury that he had previously  
25 sustained.

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1 Now, it's difficult to measure things like pain  
2 and suffering in terms of dollars and cents, but,



3 again, you can't speculate or guess. You have to base  
4 your decision as to what the evidence shows was the  
5 nature, extent and duration of any pain and suffering  
6 experienced by Mr. Bjerke after the Florida warrant was  
7 withdrawn and what would constitute fair and just  
8 compensation in money terms for that pain and  
9 suffering.

10 Mr. Bjerke also is seeking compensatory damages  
11 for emotional distress or mental anguish that he  
12 sustained as a result of being incarcerated at the ACI.  
13 And a plaintiff who is the victim of some wrongful  
14 conduct or negligence on the part of the defendant is  
15 entitled to recover for any emotional distress or  
16 mental anguish that he experiences as a result of that  
17 negligence.

18 Once again, like pain and suffering, it's very  
19 difficult to translate emotional distress or mental  
20 anguish into dollars and cents. But once again, that's  
21 what you would have to do, and you'd have to base it on  
22 what the evidence shows was the nature, extent and  
23 duration of any mental anguish or pain or emotional  
24 distress that Mr. Bjerke sustained.

25 I told you what it is that the plaintiff has to

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1 prove, what Mr. Bjerke has to prove now in order to  
2 prevail on his claim. He has to prove negligence. He  
3 has to prove proximate cause, and he has to prove the  
4 damages. And I also told you that he has to prove  
5 these things by what I referred to as a fair  
6 preponderance of the evidence. Basically, what that

7 means is he has to prove these things by the greater  
8 weight of the evidence or he has to prove these things  
9 are more probably so than not so. Some of you may know  
10 either from personal experience or from watching  
11 television or movies that in a criminal case the  
12 prosecutor has to prove a defendant guilty beyond a  
13 reasonable doubt.

14 This isn't a criminal case. This is a civil  
15 case. And in a civil case, the plaintiff's burden is  
16 to prove the things that he claims by a fair  
17 preponderance of the evidence or by a greater weight of  
18 the evidence. The best way that I know to illustrate  
19 what's meant by proving something by a fair  
20 preponderance of the evidence is to ask you to envision  
21 in your mind the scale, the caricature of Lady Justice,  
22 the blindfolded lady who is holding a scale in front of  
23 her. That's one of those old-fashioned scales. They  
24 call it a hypothecary scale. It has two  
25 counterbalancing arms. And if you want to weigh an

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1 object on that scale, you put the object that you want  
2 to weigh on one side and you put premeasured weights on  
3 the other side until the scale comes into balance, and  
4 then you add up the premeasured weights and that tells  
5 you how much the object you're weighing weighs. That's  
6 the kind of scale I'm talking about.

7 So if you take each of the things that  
8 Mr. Bjerke is required to prove, in order to determine  
9 whether he's proven those things by a fair  
10 preponderance of the evidence, think of that scale and

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11 think of all the evidence that you have heard or that  
12 you see in the exhibits that will go with you in the  
13 jury room. Get all those bits of evidence that favor  
14 Mr. Bjerke on that point, that tend to support his  
15 position on that point and put all of those bits of  
16 evidence on Mr. Bjerke's side of the scale. And then  
17 go through the same process and ferret out all of the  
18 bits of evidence that tend to contradict that or favor  
19 the defendant. And you put all of those bits of  
20 evidence on that point on the defendant's side of the  
21 scale. And after you have done that, if the scale tips  
22 in favor of Mr. Bjerke, then he has proven that  
23 particular point by a fair preponderance of the  
24 evidence, because the evidence in his favor on that  
25 point outweighs the contrary evidence.

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1 If, on the other hand, after you go through that  
2 exercise you conclude that the scale tips the other  
3 way, tips in favor of the defendant or the scale is  
4 perfectly balanced, doesn't tip one way or the other,  
5 then Mr. Bjerke has failed to prove that point to you  
6 by a fair preponderance of the evidence because the  
7 evidence in his favor does not outweigh the contrary  
8 evidence. So that's what I mean by proving something  
9 by a fair preponderance of the evidence.

10 Now that you know what it is that the plaintiff  
11 has to prove and what the test is for determining  
12 whether he has met his burden of proof, the next  
13 question is how do you go about deciding whether  
14 Mr. Bjerke has proven these things by a fair

15 preponderance of the evidence. Well, as I told you  
16 earlier, you have to base that decision solely on the  
17 evidence that's been presented during the course of the  
18 trial, and that evidence came from the witnesses who  
19 testified and from the exhibits that you'll have with  
20 you in the jury room.

21 With respect to the witnesses, your principal  
22 task here is to determine how much weight the testimony  
23 of each witness deserves on that scale. In other  
24 words, how credible is the witness's testimony. And in  
25 making that decision, there are a number of factors

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1 that you can and should consider. One of the factors  
2 is the opportunity or lack of opportunity that the  
3 witness had to have observed the facts or know the  
4 facts about which the witness testified. In other  
5 words, was the witness in a good position to have  
6 accurately seen, heard or otherwise perceived the  
7 things that the witness told you. Another factor to  
8 consider is the reliability or the unreliability of the  
9 witness's memory. These events happened some time ago.  
10 Different people have different memories. Some people  
11 have very good memories; some people not so good. And  
12 although a witness may have been in a good position to  
13 know the facts about which a witness testified, the  
14 witness's memory may not be very good. If you find  
15 that the witness didn't have a clear and accurate  
16 recollection of what it is that the witness learned,  
17 you can take that into account. You can discount the  
18 witness's testimony if you find that's the case.

19 Another factor is the witness's appearance on  
20 the stand. One reason that we require witnesses to  
21 come in and testify in person rather than have somebody  
22 tell you what somebody you may never have seen told  
23 them is that it's important, the law feels, for you to  
24 have an opportunity to observe the witness when the  
25 witness testifies because from your observations you

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1 can draw some conclusions about the witness's  
2 credibility, whether this is a person who appears to be  
3 telling the unvarnished truth or whether this is  
4 someone who looks like they may be shading things one  
5 way or another.

6 Another factor is the probability or  
7 improbability of the witness's testimony. Just because  
8 a witness testifies to something and nobody directly  
9 contradicts the witness's statements doesn't mean that  
10 you have to accept the witness's testimony at face  
11 value. If what the witness says is inherently  
12 incredible or highly unlikely, you don't have to accept  
13 the testimony. You can disregard that testimony.

14 And the final factor to consider is whether the  
15 witness has anything to gain or lose from the outcome  
16 of this case. In other words, whether the witness has  
17 a stake in your decision. Now, of course, that doesn't  
18 mean that just because a witness may have something to  
19 gain or lose by the outcome of the case that you should  
20 automatically disregard or discount the witness's  
21 testimony because by their very nature these incidents  
22 that lead to lawsuits involve people who are parties in

23 the case and, therefore, have something to gain or lose  
24 by the outcome; but it is a factor that you can  
25 consider in making your decision, particularly when

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1 some witnesses have something to gain or lose and other  
2 witnesses may be totally disinterested or impartial  
3 witnesses.

4 Another thing to keep in mind is you've heard  
5 testimony from several police officers, and you ought  
6 to look at their testimony in the same way that you  
7 would look at the testimony of any other witness. In  
8 other words, you shouldn't give more weight to the  
9 testimony of a witness who happens to be a police  
10 officer just because that person is a police officer  
11 than you would to the testimony of a witness who isn't  
12 a police officer. You ought to look at the individual  
13 who is testifying and evaluate that person's  
14 credibility as an individual and not based on what  
15 position that person may hold.

16 Keep in mind, too, that in evaluating the  
17 credibility of a witness, you can consider whether on  
18 some previous occasion the witness made statements that  
19 were different from the statements that the witness  
20 made during the course of the trial.

21 And again, that doesn't mean that simply because  
22 on a previous occasion a witness may have said  
23 something different from what the witness testified to  
24 that you ought to disbelieve or even discount the  
25 witness's testimony, because it depends on how material

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1 the point was and what you may think the reason for the  
2 discrepancy is.

3 People often will say things slightly different  
4 on different occasions. In fact, you get a little  
5 suspicious when somebody says the same thing in exactly  
6 the same words on multiple occasions, but it's up to  
7 you to decide whether you think that it was shown  
8 during the trial that any witness said something on a  
9 previous occasion that was materially different from  
10 what the witness testified to; and if so, what effect,  
11 if any, that ought to have in determining what weight  
12 that witness's testimony deserves on that scale.

13 Keep in mind, too, in determining the way the  
14 scale tips it isn't the number of witnesses who  
15 testified on either side of an issue that governs but,  
16 rather, it's the quality of the testimony. So just  
17 because you have two or three witnesses who testify as  
18 to one side of a point and only one witness testifies  
19 to the contrary, that doesn't necessarily mean that the  
20 scale tips in favor of the two or three witnesses.

21 If you find that the single witness is more  
22 credible than the two or three witnesses, you may find  
23 that the scale tips the other way.

24 I told you that you'll have the exhibits with  
25 you in the jury room. Keep in mind that the exhibits,

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1 like the testimony of the witnesses, are just tools to  
2 be used by you in determining the facts of the case.

3 Just because something is in as an exhibit doesn't mean  
4 you have to automatically accept everything in that  
5 exhibit. You should look at the exhibits like the  
6 testimony of the witnesses in the context of all of the  
7 evidence that's been presented during the course of the  
8 trial and evaluate it based on your common sense.

9 Now, I've told you that you're the judges of the  
10 facts in this case. The Court, it's not my job to  
11 decide what the facts are. That's your job. And if  
12 during the course of this trial I have done or said  
13 anything that you think suggests an opinion on my part  
14 as to what the facts are, I can tell you, first of all,  
15 that I think you're mistaken. I certainly haven't  
16 intended to imply any opinion on my part of the facts.  
17 Even if I had, you shouldn't be concerned with what you  
18 think my opinion of the facts are. You should decide  
19 this case based on what you find the facts to be.

20 During the trial, there have been occasions when  
21 the attorneys have objected to evidence, and I think I  
22 told you at the outset that if that happened, I would  
23 rule on the objection. If the evidence was admitted,  
24 you shouldn't consider whether or not it was objected  
25 to by an attorney. You should look at the evidence and

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1 give it whatever value you think it has without regard  
2 to whether or not an attorney objected to it.

3 I would add at this time that you shouldn't  
4 penalize the attorney or, more importantly, the  
5 attorney's client because the attorney may have  
6 objected. An attorney has a right, and even a



7 responsibility, to object to evidence that the attorney  
8 believes is not properly before you, so you shouldn't  
9 hold it against the attorney or the attorney's clients  
10 that the attorney objected at some point during the  
11 trial.

12 I hope it goes without saying that neither bias  
13 in favor of any particular group or cause, nor  
14 prejudice against any particular group or cause, or  
15 sympathy should play any role in your decision in this  
16 case. Your sole task here is to evaluate the evidence  
17 objectively to determine from that evidence what the  
18 facts are and to apply those facts to the law as I have  
19 explained it to you. That's all that either side in  
20 this case is entitled to and that's what you should do.

21 Now, I'm going to ask the lawyers to approach  
22 the side bar to give them an opportunity to tell me  
23 whether they think I have forgotten to tell you  
24 something I should have told you or misstated anything  
25 that I did tell you. So if you'll excuse us.

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1 Counsel, approach to side bar.

2 (Side-bar conference.)

3 THE COURT: Plaintiff have any objection to the  
4 charge?

5 MR. O'KEEFE: I think it was right down the  
6 middle, your Honor, but I would ask you at page 17 of  
7 the instructions I proposed, I asked your Honor to  
8 quote the Rhode Island General Laws 12-10-1, which says  
9 the district court shall be open at all times for the  
10 transaction of criminal business. I believe that was

11 an issue in the arguments, whether a judge would be  
12 available without a courtroom being open or available.  
13 I would ask for that. Other than that request, I have  
14 no objections nor requests for additional instructions.

15 MR. DeSISTO: I have no objections to your  
16 instructions, your Honor.

17 THE COURT: What do you have to say about  
18 Mr. O'Keefe's request?

19 MR. DeSISTO: I think that should have been  
20 admitted in evidence. I don't think it's proper for  
21 the Court to instruct.

22 THE COURT: I think it's what the law says. The  
23 only reservation I have about that is it requires more  
24 explanation than simply saying the district court is  
25 open at all times for the conduct of criminal business.

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1 I think that would be misleading to simply tell the  
2 jury that without further explanation. And we -- I  
3 think Mr. DeSisto is correct in the sense that in order  
4 to properly understand what that means in this context,  
5 we would need some additional evidence. I don't think  
6 I can really instruct the jury on the additional things  
7 that would be required to not mislead them. So I'm not  
8 going to give that instruction. Your exception is  
9 noted.

10 MR. O'KEEFE: I appreciate it, your Honor.

11 THE COURT: Have you both had a chance to review  
12 the exhibits?

13 MR. O'KEEFE: Yes, your Honor.

14 MR. DeSISTO: Yes, they're fine.

15 THE COURT: Are they all in order?

16 MR. O'KEEFE: They're fine.

17 MR. DeSISTO: It's your practice -- you haven't  
18 mentioned a unanimous verdict yet, but I know you do.

19 THE COURT: Yes.

20 (End of side bar conference.)

21 THE COURT: Ladies and gentlemen, in order to  
22 return a verdict in this case, all eight of you must  
23 agree as to what that verdict should be. You can't  
24 return a verdict for either the plaintiff or the  
25 defendant unless you are unanimous.

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1 what that means is when you go into the jury  
2 room, there are a couple of things you have to keep in  
3 mind. One is that you should each approach the  
4 deliberations with an open mind, listen to what your  
5 fellow jurors have to say. And if you initially  
6 disagreed with them but after listening with an open  
7 mind you become convinced that they're correct and  
8 you're incorrect, you should be humble enough to change  
9 your mind if you believe that's the right thing to do.

10 On the other hand, you should also remember that  
11 you each have an independent responsibility to vote for  
12 the verdict that you believe is the correct verdict  
13 based on the evidence as you understand it and the law  
14 as I've explained it to you, and you should have the  
15 courage to stick to your convictions if some or even  
16 all of the other jurors disagree as long as you've  
17 listened with an open mind to what they have to say.

18 Now, I know those two things may seem a little

19 bit in conflict, and I suppose they are, but my  
20 experience has been that in the vast majority of cases  
21 jurors are able to reach unanimous verdicts without  
22 doing violence to either of those principles, and I'm  
23 confident you will, too. But if you can't, then we'll  
24 cross that bridge when we get to it. Just remember to  
25 keep both those points in mind.

23

1 when you get into the jury room, the first thing  
2 you should do is select a foreman or forelady, and that  
3 person will have three responsibility, really. One is  
4 to moderate the discussions, to see that they're  
5 conducted in a fair and orderly manner and that  
6 everyone who wants a chance to speak has a fair  
7 opportunity to do so.

8 The second responsibility is to complete and  
9 sign the verdict form that will go with you into the  
10 jury room. It's a very simple form. It just asks  
11 whether you find for the plaintiff or for the  
12 defendant; and if for the plaintiff, how much you are  
13 awarding in damages.

14 So after the jury has reached a unanimous  
15 decision, it will be the foreman or forelady's job to  
16 complete that form, sign it, and bring it back into the  
17 courtroom, and the clerk will take it from you at the  
18 proper time.

19 Your third responsibility would be to act as the  
20 spokesman or spokeswoman for the jury. By that I mean,  
21 if it's necessary for the jury to communicate with me  
22 for any reason, communications should be through the

23 foreman or the forelady. It should be in the form of a  
24 brief, written statement or question or whatever it is  
25 you want to communicate to me. Make it as brief and to

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1 the point as possible. Hand it to the security officer  
2 who will be outside of your door. He'll deliver it to  
3 me. I'll discuss it with the attorneys, and I'll  
4 respond as quickly as I can, if I can properly respond  
5 to the question. There are some things I cannot  
6 properly do to help you. I've told you that you're the  
7 judges of the facts in the case, and I can't help you  
8 in deciding what the facts are. You have to do that  
9 yourself. But if there's anything else that I can help  
10 you with, just let me know and I'll try my best to help  
11 you. I don't mean to suggest that I think you're going  
12 to need any help in anything, but you never know; and  
13 if you do need me to help you, don't hesitate to ask.

14 As far as your hours are concerned, we should  
15 have lunch -- has lunch been ordered for the jury? I  
16 don't know whether lunch will be here when you get back  
17 into the jury room or not, but it's up to you whether  
18 you want to deliberate during lunch or take a break.  
19 That's up to you.

20 As far as your hours are concerned, they're  
21 pretty much whatever you want them to be. If you  
22 haven't reached a verdict by our usual adjournment  
23 time, 4:30, then it's up to you whether you want to  
24 either stay late and deliberate further or whether you  
25 prefer to come back tomorrow and resume your

25

1 deliberations. I'll have somebody check with you a  
2 little later in the afternoon, but if you want to stay  
3 late, please let us know as early as possible because  
4 we have to make arrangements to keep people who would  
5 otherwise go home, keep them here while you're here.

6 I can't think of anything else I should tell  
7 you.

8 Counsel, is there anything else for the jury  
9 before the jury is sent out?

10 MR. O'KEEFE: Nothing for the plaintiff, your  
11 Honor. Thank you.

12 THE COURT: All right. The security officer  
13 will come forward. The clerk will administer the oath.

14 (Marshal sworn.)

15 THE COURT: All right. Ladies and gentlemen,  
16 this case is now in your hands. You may return to the  
17 jury room and begin your deliberations.

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