

1 THE COURT: All right. Ladies and Gentlemen, at
2 this time it's my duty to explain to you the law that
3 applies in this case, and as I have previously told
4 you, it's your duty to apply the law as I explain it to
5 the facts as you determine the facts to be.

6 So you're the judges of the facts in the case, I
7 am the judge of the law, and if we both do our
8 respective jobs, then hopefully you'll return a verdict
9 that is fair and just and based on the evidence that's
10 been presented.

11 And I should mention that, in considering my
12 explanation of the law, it's important that you
13 consider it as a whole. In other words, don't pick out
14 one or two points and focus on them to the exclusion of
15 everything else.

16 You need to consider my entire explanation of
17 the law to you. Now, as you know, this is a suit
18 brought by Oliver Lyons against several correctional
19 officers, Robert Dennett, Albenzio DiMezza, Avelino
20 Duarte and Nicholas Violante.

21 And since Mr. Lyons is the party who brought
22 this suit, he's sometimes referred to as the Plaintiff.
23 So if I use the term Plaintiff at any time, I'm talking
24 about Mr. Lyons.

25 And since the officers are the individuals against

1 whom a suit has been brought, they may sometimes be
2 referred to as the Defendants. So if I use the term
3 Defendants, I'm talking about those officers.

4 As you probably know by now, Mr. Lyons claims
5 that the Defendant officers violated his Constitutional
6 right to be free from cruel and unusual punishment
7 while in prison because Mr. Lyons alleges that they
8 used excessive force against him on five different
9 occasions.

10 More specifically, he claims that excessive
11 force was used against him on November 3rd of 2001 by
12 Officer Dennett who Mr. Lyons claims entered his cell
13 and twisted his leg; on December 30, 2002, by Officer
14 DiMezza who Mr. Lyons claims entered his cell and
15 repeatedly kicked him; on June 11, 2003, by Officer
16 Violante who Mr. Lyons claims entered his cell and
17 punched him in the face; on February 26, 2004, by
18 Officers Duarte and Violante who Mr. Lyons claims
19 assaulted him while extracting him from his cell; and
20 later that day by Officer DiMezza who Mr. Lyons claims
21 banged his head while transporting Mr. Lyons to the
22 hospital; and finally, on February 27, 2004, by Officer
23 DiMezza who Mr. Lyons claims assaulted him in his cell
24 while transporting him to the hospital.

25 Now, since Mr. Lyons is the one who's making

1 these claims, the law imposes on him the burden or the
2 obligation to prove these claims. It's not up to the
3 Defendants to come in here and prove that they didn't
4 do these things or that they're not liable, but rather,
5 it's up to Mr. Lyons to prove that they are liable,
6 that they did inflict cruel and unusual punishment on
7 him.

8 And Mr. Lyons has to prove these things by
9 what's called a fair preponderance of the evidence, and
10 I'll explain to you in a little while exactly what that
11 means, what it means to prove something by a fair
12 preponderance of the evidence.

13 But before I get to that, I first want to go
14 over with you the things that Mr. Lyons must prove in
15 order to prevail on his claim.

16 Mr. Lyons' claims are based on a Federal statute
17 known as the Civil Rights Act, or Section 1983 of
18 Title 42 of the United States Code. And that statute
19 allows a person to bring a lawsuit for an alleged
20 violation of his rights under the United States
21 Constitution. And I'll read to you the relevant
22 portion of the statute, and I'll explain to you a
23 little further what Mr. Lyons is required to prove.

24 The statute says, "Every person who, undercolor
25 of any statute of any state, subjects or causes to be

1 subjected any citizen of the United States to the
2 deprivation of any rights, privileges or immunities
3 secured by the Constitution shall be liable to the
4 party injured."

5 Now, in order to prevail on a claim for damages
6 under Section 1983, which is what Mr. Lyons has
7 asserted, Mr. Lyons must prove three things, or what
8 the law sometimes refers to as elements.

9 First, he has to prove that these Defendants
10 violated some Constitutional right of his. Secondly,
11 he has to prove that, in doing so, they acted under
12 color of state law. And third, he has to prove that he
13 suffered some injury or loss or damages as a proximate
14 result of the violation.

15 Now, in this case, since Mr. Lyons' claims are
16 based on what the officers allegedly did while they
17 were acting in their capacities as prison guards,
18 employees of the Department of Corrections, you may
19 consider that they were acting under color of state
20 law.

21 So the issues for you to decide here are whether
22 Mr. Lyons has proven, first of all, that these officers
23 violated his Constitutional rights by inflicting cruel
24 and unusual punishment on him and, if so, whether he
25 has suffered some injury or damages or loss as a

1 proximate result of those violations.

2 Now, the Constitutional right that Mr. Lyons
3 claims that the officers violated here, as I've said,
4 is his right under the Eighth Amendment to the United
5 States Constitution to be free from cruel and unusual
6 punishment while in prison.

7 And you should keep in mind that in a prison
8 setting, sometimes it is necessary for correctional
9 officers to use physical force in order to maintain
10 discipline or order in the prison. Prisons can
11 sometimes be a difficult environment, and sometimes
12 force is necessary, a necessary part of doing the job
13 of a correctional officer.

14 And sometimes the use of force can result in the
15 injury to the prisoner or to the correctional officers.
16 When force is used, sometimes people get injured.

17 So an officer is not liable for violating a
18 prisoner's Eighth Amendment rights when the officer
19 uses force in a good faith effort to maintain order or
20 restore discipline even if the prisoner may happen to
21 be injured in the process.

22 In order for a prisoner to establish that he was
23 subjected to cruel and unusual punishment by a
24 correctional officer, the prisoner must show that the
25 officer unnecessarily and wantonly inflicted pain on

1 him maliciously or sadistically by applying force in
2 order to harm the prisoner, that the officer had a bad
3 purpose in using the force, he wasn't trying to restore
4 order or maintain discipline but, rather, he was trying
5 to injure the prisoner in some way.

6 To act maliciously, you probably have a pretty
7 good idea what that means, but I don't want to leave
8 this up in the air, so I'll tell you that, in the eyes
9 of the law, in order to act maliciously, it means to
10 intentionally commit a wrongful act without just cause
11 or excuse for the purpose of inflicting injury or pain
12 on another, in this case, on a prisoner, or Mr. Lyons,
13 under circumstances that show an evil motive or a bad
14 purpose. To act sadistically means to take pleasure in
15 committing acts of extreme or excessive cruelty.

16 In deciding whether Mr. Lyons has proven that
17 these officers unnecessarily and wantonly inflicted
18 pain on him by sadistically or maliciously applying
19 force in order to harm him, there are a number of
20 factors that you ought to consider.

21 One is what force, if any, the Defendants used
22 on Mr. Lyons. Another is whether there was a need for
23 the application of force under the particular
24 circumstances that confronted the officers at the time.
25 And a third factor is the relationship between the need

1 for the force and the degree or level of the force that
2 was used. In other words, are they proportioned? The
3 greater the need and the more emergent the
4 circumstances, the greater level of force might be
5 required and vice versa.

6 In considering whether there was a need for the
7 force, you must consider all of the relevant facts and
8 circumstances that confronted the officers at the time
9 they acted. In other words, you don't go back with
10 20/20 hindsight, but rather, you sort of put yourself
11 in the shoes of the officers at the time the force was
12 used to determine whether, under those circumstances,
13 based on what they knew at the time, whether there was
14 a need to use force, and then of course whether the
15 degree of force used was appropriate or whether it was
16 malicious and sadistic and used for the purpose of
17 injuring or causing pain to Mr. Lyons.

18 The extent of any injuries that Mr. Lyons may
19 have sustained may help you to assess the level of the
20 force used, but malicious or excessive use of force
21 violates the Eighth Amendment even if it produces no
22 significant physical injuries. In other words, if the
23 officers acted maliciously with intent to inflict pain
24 on Mr. Lyons and not in a good faith effort to restore
25 discipline, then they could be liable for inflicting

1 the pain even if there was no physical manifestation of
2 the injury. And vice versa, as I've already indicated,
3 the fact that Mr. Lyons or the possibility that
4 Mr. Lyons may have sustained some physical injury
5 doesn't mean that the officers inflicted cruel and
6 unusual punishment.

7 You have to look at the circumstances and the
8 purpose for which the officers were acting. That's
9 pretty much what Mr. Lyons has to prove in order to
10 establish that these officers violated his
11 Constitutional rights under the Eighth Amendment.

12 I'm going to now turn to the question of
13 damages. I told you that Mr. Lyons, in addition to
14 showing that these officers inflicted cruel and unusual
15 punishment on him, he must show what damages, if any,
16 he is entitled to as a result.

17 And I should emphasize that, in discussing
18 damages with you, I don't mean in any way to suggest
19 that you should or should not find these officers
20 liable. I am discussing damages with you only so that,
21 if you determine that Mr. Lyons has proven that these
22 officers violated his Constitutional rights, then you
23 will have some guidance as to what measures the law
24 provides for an award of damages. So you reach damages
25 only if you determine that the officers violated

1 Mr. Lyons' Constitutional rights.

2 If you determine that there were no
3 Constitutional violations, that they did not inflict
4 cruel and unusual punishment on him, you don't need to
5 worry about damages, you don't get to the question of
6 damages.

7 Now, if you do find the Defendants or any of
8 them liable, keep in mind that damages, like any other
9 part of a Plaintiff's case, have to be proven, and they
10 have to be proven also by a fair preponderance of the
11 evidence. In other words, you can't base an award of
12 damages on guesses or speculation or things that aren't
13 in evidence.

14 You've got to base your award of damages on the
15 evidence that's been presented and what, in your
16 judgment, may constitute fair and adequate compensation
17 for any injuries or losses that Mr. Lyons proves he has
18 suffered as a result of the alleged Constitutional
19 violations by the Defendants.

20 In this case, there are two kinds of damages
21 that you might consider, again, if you reach the
22 question of damages. The first is what's called
23 compensatory damages, and as the term implies,
24 compensatory damages are designed to compensate an
25 individual for an actual loss or injury that the

1 individual sustains.

2 And the measure of compensatory damages is the
3 amount of money that would fairly and adequately
4 compensate the Plaintiff for whatever damages the
5 evidence shows he suffered as a result of the alleged
6 Constitutional violations.

7 Now, in this case, the damages that Mr. Lyons is
8 claiming are physical injuries and pain and suffering,
9 that's pretty hard to measure precisely. If there are
10 medical bills, you can simply look at the numbers on
11 the medical bills. If there are lost wages, you can
12 calculate that with a fair degree of mathematical
13 precision.

14 But when you're talking about things like
15 physical injuries and pain and suffering, sort of
16 intangible kinds of damages, you have to base your
17 decision on your best judgment as to what you think is
18 fair and adequate compensation based on the magnitude
19 of the injuries and so forth.

20 All right. I've told you that-- the second type
21 of damages that Mr. Lyons is seeking here or claiming
22 are what are called punitive damages. And punitive
23 damages, as again the term implies, are intended to
24 punish a Defendant for wrongful conduct, for some very
25 bad thing that a Defendant may have done.

1 Punitive damages can only be awarded if you find
2 that the Defendants, first of all, acted maliciously
3 and with intent to injure or harm Mr. Lyons; that is to
4 say, they had an evil motive or intention to do harm to
5 him. And if you do find that, that has been
6 established, then it's your discretion to determine
7 what amount should be awarded for punitive damages.

8 And again, there are factors that you would
9 consider if you reach the question of punitive damages.
10 One is what amount is necessary to punish the-- to be
11 adequate punishment to the Defendants, to deter them
12 from doing such things in the future and to deter
13 others from doing so.

14 And as I say, another is their financial ability
15 to pay damages. If you were to find that General
16 Motors did something that warranted punitive damages,
17 it would take a lot more punitive damages to punish
18 General Motors than it would if you found that some
19 individual employee who didn't have a lot of assets did
20 something wrong. It wouldn't take as much of an award
21 to accomplish the same purpose.

22 Now, I've told you that Mr. Lyons, as the
23 Plaintiff here, the one making these claims, has to
24 prove that any damages, at least any compensatory
25 damages that he is claiming, were proximately caused by

1 the Constitutional violations that he's claiming.

2 And the term proximate cause basically means
3 that the Constitutional violations resulted in the
4 damages, that there was a direct link between the
5 violation and the damages, or to put it another way,
6 but for what the Defendants did, the Plaintiff would
7 not have sustained the injuries that he's claiming.

8 Now, I've told you what it is that the Plaintiff
9 has to prove here, and I have told you what damages are
10 being sought and what rules govern any award of
11 damages. The next question is-- and I've also told you
12 the Plaintiff has to prove his case by a fair
13 preponderance of the evidence.

14 So the next question is: How do you go about--
15 what does it mean to prove something by a fair
16 preponderance of the evidence?

17 Well, to prove something by a fair preponderance
18 of the evidence essentially means to prove it by the
19 greater weight of the evidence, or to put it another
20 way, to prove that what it is one is claiming is more
21 probably so than not so.

22 And the best way that I know of to illustrate
23 what's meant by proving something by a fair
24 preponderance of the evidence is to ask you to envision
25 in your mind the scales of justice. I'm sure you've

1 all seen the statues of Lady Justice, the blind-folded
2 lady who's holding the scale out in front of her with
3 the two counterbalance in her arms. That's the kind of
4 scale I'm talking about.

5 In order to determine whether Mr. Lyons has
6 proven any of the things that I've told you he must
7 prove by a fair preponderance of the evidence, what you
8 should do is take all of the evidence that has been
9 presented to you that supports his position on that
10 particular point or element and put them all on his
11 side of the scale.

12 And then take all the bits of evidence that have
13 been presented that contradict him or that tend to cut
14 the other way, put all those bits of evidence on the
15 Defendants' side of the scale, and then see what's
16 happened to the scale.

17 If, after you go through that exercise, you
18 determine that the scale tips in Mr. Lyons' favor, no
19 matter how slightly it tips, if it tips in his favor,
20 he has proven that particular point by a fair
21 preponderance of the evidence because the evidence in
22 his favor outweighs the contrary evidence.

23 On the other hand, after you go through that
24 exercise, if you determine that the scale tips the
25 other way, it tips in favor of the Defendants, or that

1 the scale is evenly balanced, it doesn't tip one way or
2 the other, then Mr. Lyons has failed to prove that
3 particular point or element by a fair preponderance of
4 the evidence because the evidence in his favor does not
5 outweigh the contrary evidence. So that is what is
6 meant by proving something by a fair preponderance of
7 the evidence.

8 Now, the next question is: How do you go about
9 determining whether Mr. Lyons has proven these things
10 that he must prove by a fair preponderance of the
11 evidence?

12 Well, as I told you before, you must base that
13 decision on the evidence that has been properly
14 presented to you during the course of the trial; that
15 is to say, those things that have been admitted into
16 evidence.

17 And the evidence, as I told you at the beginning
18 of the case, consists of the statements of the
19 witnesses who testified on the stand under oath,
20 subject to cross-examination, and the contents of the
21 exhibits that have been admitted into evidence and will
22 go with you into the jury room.

23 And again, I remind you, because in this case there
24 have been many references to statements made that were
25 not evidence in the course of addressing you or asking

1 questions or objecting, there have been statements made
2 that are not based on any evidence that was presented
3 to you, and you need to disregard those statements
4 because, as I've mentioned before, the test of-- one
5 thing that you need to have in order to evaluate the
6 evidence is you need to hear the testimony under oath
7 and you need to hear it or have the opposing side be
8 given an opportunity to cross-examine who's ever making
9 the statements as to whether or not these statements
10 are accurate.

11 So you need to separate what the witnesses said
12 from the stand, what's in the exhibits that have been
13 admitted into evidence from any other comments that may
14 have been made during the course of the trial.

15 Now, in assessing the testimony of the
16 witnesses, your task basically is to determine how much
17 weight to give to each witness' testimony on that scale
18 that I was talking about. And in making that
19 determination, there are, again, a number of factors
20 that you should consider.

21 One is the witness' opportunity, or lack of
22 opportunity, to have accurately observed the facts
23 about which the witness testified.

24 Was the witness, in your view, in a good
25 position to have accurately seen, heard or otherwise

1 obtained the information that the witness presented to
2 you, or did it appear to you that the witness really
3 wasn't in a very good position to know what happened or
4 to know the facts about which the witness testified?

5 A second factor is the reliability or
6 unreliability of the witness' memory. Some of these
7 events happened some time ago, and even if the witness
8 was in a good position to have accurately observed what
9 happened, you need to ask yourself whether the witness'
10 memory of what that witness may have seen is reliable,
11 and that's a factor to consider as well.

12 A third factor is the witness' appearance on the
13 stand. And one reason that we generally require that
14 witnesses come in here personally to say what it is
15 that they know or saw or claim to have seen, rather
16 than have somebody tell you what that witness may have
17 told them, is that, if we allowed people to tell you
18 things that witnesses you've never seen told them, it
19 would deprive you of the opportunity to size up that
20 witness.

21 You get a chance, when the witness testifies
22 personally, to size that person up, and you can make
23 some judgments as you observe them as to how much
24 weight that witness' testimony deserves on that scale
25 that I referred to. And it also deprives the opposing

1 side of the opportunity to cross-examine the witness
2 and maybe test that witness, the accuracy of the
3 witness' testimony.

4 So your observations of a witness is certainly
5 an important factor to consider in determining how much
6 weight to give to that witness' testimony.

7 Another factor is the probability or
8 improbability of what the witness said. Just because a
9 witness said something and nobody directly contradicted
10 the witness doesn't mean that you have to accept that
11 witness' testimony at face value. If what the witness
12 said seems to you to be highly implausible or
13 improbable or even impossible, you don't have to accept
14 that testimony at face value. You can discount that
15 testimony or disregard it. If you think the witness
16 was mistaken or was exaggerating or was lying, you
17 don't have to accept that witness' testimony.

18 And a final factor is whether the witness had
19 anything to gain or lose from the outcome of this case.
20 Now, that doesn't mean of course that simply because a
21 witness may have some interest in the outcome that you
22 should automatically disregard the witness' testimony
23 or even discount it because in most disputes the
24 witnesses usually directly include the parties in the
25 case, and they have an interest.

1 But you can certainly consider that as a factor
2 to take into account, particularly if you have one
3 side-- one witness who has an interest in the outcome
4 who has a version of the facts that are different from
5 another witness who may be disinterested. You can
6 consider the witness' interest in the outcome as a
7 factor to take into consideration.

8 You've heard testimony that Mr. Lyons has been
9 convicted of various crimes, and you know that he's in
10 prison. In weighing the credibility of a witness, it
11 certainly is proper to consider the fact that the
12 witness has previously been convicted of a crime or in
13 this case, multiple crimes, and you shouldn't
14 automatically disregard or discount a witness'
15 testimony simply because the witness may have
16 previously been convicted of a crime. But you
17 certainly are entitled to consider that to whatever
18 extent you think is appropriate in determining how much
19 weight that witness' testimony deserves on that scale.

20 And that's the only purpose for which you can
21 consider the evidence. The fact that Mr. Lyons has
22 previously been convicted of various offenses may or
23 may not reflect on his credibility, but you shouldn't
24 consider it as evidence of anything else. It's not
25 evidence as to whether he was or was not assaulted, as

1 he claims, in this case. It is evidence, or it may be
2 considered by you as evidence bearing on his
3 credibility to the extent you think it's appropriate.

4 Keep in mind too that, in determining which way
5 that scale tips, you-- it isn't the number of witnesses
6 that counts, but rather it's the quality of the
7 testimony, it's how much weight that testimony
8 deserves. So you can have one or two witnesses who
9 testify on one side of a point, three or four witnesses
10 on the other. That doesn't necessarily mean that the
11 scale tips in favor of the version of the three or four
12 witnesses. It's the quality of the testimony that you
13 should be concerned with.

14 You'll have the exhibits that have been admitted
15 into evidence in the jury room with you. Just because
16 something has been admitted as an exhibit doesn't mean
17 you have to accept everything in it at face value any
18 more than you have to accept the testimony of a witness
19 at face value.

20 You should look at the exhibits in light of all
21 of the evidence that's been presented, just as you look
22 at the testimony of the witnesses.

23 Now, I've told you that, in reaching your
24 decision, you may consider only the evidence that is
25 properly before you, but that doesn't mean that you are

1 strictly limited to the testimony of the witnesses and
2 the contents of the exhibits. You're not required to
3 check your common sense at the door when you come in to
4 serve as jurors, and you may draw inferences or
5 conclusions from the evidence that's been presented.

6 Now, the process-- any fact that must be proven
7 in a case, or can be proven in a case, can be proven in
8 one of two ways: It can be proven by direct evidence;
9 that is to say, by the testimony of an individual who
10 claims to have actually seen the event or seen whatever
11 the fact is, or it can be proven by circumstantial
12 evidence. Proving something by circumstantial evidence
13 means to prove two or more facts from the direct
14 evidence from which the existence or nonexistence of
15 another fact or facts may reasonably be inferred. And
16 let me give you an example that I think more clearly
17 illustrates what I mean.

18 If you imagine on some cold winter night before
19 you go to bed, you look at the window and the ground is
20 bare. The next morning you wake up, there's a foot of
21 snow on the ground. If someone asks you whether it
22 snowed last night, your answer would probably be yes,
23 certainly a reasonable answer.

24 If you had to come into court to prove that it
25 snowed last night, how would you go about doing it?

1 Well, you might be able to find someone that you know
2 who was awake when the snowflakes were falling. You
3 could have that person testify as a witness that they
4 actually saw the snowflakes fall. That would be proof
5 by direct evidence, the direct observation of a witness
6 who claims to have seen the snowflakes fall.

7 If you couldn't find anybody who was awake then,
8 you could testify from your direct observation as to
9 two facts, before you went to bed the ground was bare,
10 when you woke up in the morning there was a foot of
11 snow on the ground. That's proving those two facts by
12 the direct evidence. And from those two facts, it is a
13 very reasonable inference to draw that it snowed last
14 night, and that would be an example of proving it by
15 circumstantial evidence.

16 Now, a word of caution. There's a big
17 difference between proof by circumstantial evidence and
18 guessing or speculating. And the difference is that,
19 in order to prove something by circumstantial evidence,
20 the inference to be drawn must be based on facts that
21 are established by the direct evidence. And the second
22 difference is that the inference to be drawn in proving
23 something by circumstantial evidence must be a
24 reasonable inference based on the facts.

25 So in my example, if someone asks you if it was

1 going to snow next Friday night, it would not be
2 reasonable to infer from the fact that it snowed last
3 night that, therefore, it was going to snow next Friday
4 night. So keep those distinctions in mind when it
5 comes to circumstantial evidence.

6 I have told you it's up to you to decide the
7 facts in this case. That's not my role. And you
8 shouldn't be guessing as to what you think I may think
9 about the facts in the case or whatever opinions you
10 think I might have about the facts. It's your job and
11 your job alone to determine the facts in the case.

12 At various times during this trial, I've had
13 occasion and found it necessary to speak to various
14 individuals, sometimes maybe a little bit more harshly
15 than I normally would, but that shouldn't be a factor
16 in your decision at all. I don't-- I have certainly
17 not intended to convey to you any impressions or any
18 feelings or any biases toward one party or the other.

19 When I speak to someone, it's because I want to
20 maintain an orderly trial and I want to keep things on
21 track for you, so you shouldn't consider that at all in
22 making your decision.

23 There have been occasions during the trial when
24 both sides have objected to evidence, to arguments, to
25 a lot of other things. That shouldn't be a factor in

1 your decision either. Each side has a right to object
2 to evidence that they think is not properly admitted or
3 admissible, and you shouldn't hold it against them
4 because they objected, nor should you discount any
5 evidence that was admitted over their objection simply
6 because they objected. If I admitted the evidence, you
7 can consider it for whatever value you think it has,
8 and you shouldn't let your judgment be affected in any
9 way by the fact that somebody objected to it.

10 I hope that it goes without saying that neither
11 bias in favor of any person or group or cause or
12 prejudice against any person or group or cause or
13 sympathy should play any role whatsoever in your
14 deliberations.

15 Your job, plain and simple, is to look at the
16 evidence objectively, to determine from the evidence
17 what happened or didn't happen and to apply to the
18 facts as you determine them the law as I have just
19 explained it to you. That's all that either side in
20 this case has a right to expect from you.

21 All right. I'm going to ask the parties to
22 briefly approach the sidebar and give them a chance to
23 tell me if they think I have forgotten to tell you
24 something I should have told you or they believe I have
25 misstated anything I did tell you. Approach the

1 sidebar, please, Mr. Grant and Mr. Lyons.

2 (Discussion at sidebar)

3 THE COURT: All right. Mr. Lyons, do you have
4 any objections to the charge?

5 MR. LYONS: Excellent, Judge.

6 THE COURT: Mr. Grant?

7 MR. GRANT: Satisfactory to the Defendants.

8 THE COURT: Have you each received a copy of the
9 verdict form?

10 MR. GRANT: Yes, we did.

11 THE COURT: Is the verdict form satisfactory?

12 MR. LYONS: Yes.

13 MR. GRANT: Yes, it is.

14 MR. LYONS: Thank you, Your Honor.

15 (End of discussion at sidebar)

16 THE COURT: All right. Ladies and Gentlemen, in
17 order for you to reach a verdict in this case, you must
18 all agree as to what the verdict should be. You can't
19 return a verdict in favor of either the Plaintiff or
20 any of the Defendants unless you all agree or unless
21 you're unanimous.

22 And when you go into the jury room, there are
23 two things you need to keep in mind. One is that you
24 should be prepared to listen with an open mind to what
25 the other jurors have to say if initially they may

1 disagree with you, and you should be humble enough to
2 change your opinion if, after listening to what they
3 have to say, you become convinced that they were
4 correct and you were incorrect, you have to be big
5 enough to acknowledge that.

6 On the other hand, you also should keep in mind
7 that you each have an independent responsibility to
8 vote for the verdict that you believe is the correct
9 verdict based on the evidence and the law as I've
10 explained it. And you need to have the courage to
11 stick to your convictions if, after listening with an
12 open mind, you still think that you're correct and the
13 other jurors are incorrect.

14 Now, that's sometimes-- I know that sounds like
15 it's in conflict. I suppose it is, but my experience
16 over the years has been that jurors, in the vast
17 majority of cases, can return unanimous verdicts
18 without violating either of those two principles, and
19 I'm confident you will be able to do that also. But if
20 you can't, we'll cross that bridge when we get to it.

21 You'll have a tape-recording of my charge with
22 you in the jury room. You can play it back. I know it
23 was throwing a lot at you all at once. You can play
24 that back if it's helpful to you. You'll have a
25 verdict form, which I think is fairly simple to

1 complete. I've broken it down into each of the
2 incidents that have been talked about, and basically
3 you are simply asked to determine, as to each incident,
4 whether you find for the Plaintiff or whether you find
5 for the Defendant or Defendants who are named in that--
6 in connection with that incident.

7 As far as-- the first thing you should do when
8 you get into the jury room is select a foreman or
9 forelady, and that person will have the responsibility
10 of, number one, seeing that the deliberations are
11 conducted in an orderly manner and that anyone who
12 wants an opportunity to speak has a fair opportunity to
13 do so.

14 The foreman or forelady also will have the
15 responsibility of completing and signing the verdict
16 form when you reach a unanimous verdict. Just check
17 the appropriate box or boxes, fill in whatever blanks
18 apply, sign it and bring it back here in the courtroom.
19 The Clerk will then take it from you and will read it
20 aloud.

21 If it's in necessary for you to communicate with
22 me for any reason, the communication should be in the
23 form of a brief note from the foreman or forelady. And
24 I don't mean to suggest that I think you will need to
25 communicate with me, but if you do, if there's anything

1 I can do to help you, I certainly will do my best to
2 try if I can properly do so. And I emphasize the word
3 "properly" because there are some things I cannot
4 properly to do to help you. As I've told you, it's up
5 to you to decide the facts in the case, and I can't
6 help you in deciding the facts. But if there's
7 anything else that I can help you with, I'll certainly
8 try.

9 So just put it in the form of a brief note, give
10 it to the Security Officer who will be outside your
11 door, he will give it me, and I'll discuss it with the
12 parties and we'll try to respond as helpfully and as
13 swiftly as we can.

14 As far as your schedule is concerned, it's
15 pretty much whatever you want to make it. I believe
16 lunch is probably waiting for you when you get into the
17 jury room.

18 If you haven't reached a verdict by our usual
19 adjournment time at 4:30, it's up to you as to whether
20 you would like to stay late or whether you would prefer
21 to come back tomorrow to resume your deliberations.

22 I'll probably have the Clerk check with you
23 around midafternoon only for planning purposes because,
24 if you do want to stay late, then I need to make some
25 arrangements for staffing the building.

1 Anything else before the jury is sent out?

2 MR. GRANT: Nothing, Your Honor.

3 MR. LYONS: No, Your Honor. Thank you.

4 THE COURT: All right. Will the Security

5 Officer come forward, then, and the Clerk will

6 administer the oath.

7 (The Court Security Officer Was Sworn)

8 THE COURT: All right. Ladies and Gentlemen,

9 this case is now in your hands. You may return to the

10 jury room and begin your deliberations.

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