

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MARIA ENCARNACION, in her
Capacity as Administratrix d.b.n. of the
Estate of Joseline Cuc, LUIS DELEON,
Father of Joseline Cuc, and ANA M. CUC,
Mother of Joseline Cuc,
Plaintiffs,

v.

C.A. No. 06-502ML

CITY OF PROVIDENCE, et al.
Defendants

JURY INSTRUCTIONS

TABLE OF CONTENTS

1. PROVINCE OF THE COURT AND JURY.....1

2. EVIDENCE IN THE CASE2

3. PREPONDERANCE OF THE EVIDENCE3

4. “IF YOU FIND”4

5. EVIDENCE—DIRECT, INDIRECT OR CIRCUMSTANTIAL.....5

6. INFERENCES DEFINED5

7. CREDIBILITY OF WITNESSES—DISCREPANCIES IN TESTIMONY6

8. OPINION EVIDENCE—EXPERT WITNESS.....7

9. NATURE OF PLAINTIFFS’ CLAIMS9

10. NEGLIGENCE—DEFINED9

11. PROXIMATE CAUSE.....10

12. RESPONDEAT SUPERIOR12

13. SUPERINTENDENT-PRINCIPAL LIABILITY.....13

14. VIOLATION OF ADMINISTRATIVE RULES AND REGULATIONS.....13

15. SPECIAL RELATIONSHIPS – DUTY TO ACT FOR THE PROTECTION OF
OTHERS.....14

16. LOST CHANCE OF SURVIVAL – ESSENTIALS FOR RECOVERY – DEATH.....15

17. LIABILITY OF EACH DEFENDANT TO BE SEPARATELY CONSIDERED.....16

18. DAMAGES.....17

19. WRONGFUL DEATH DAMAGES – PAIN AND SUFFERING.....18

20. WRONGFUL DEATH DAMAGES – MEDICAL AND FUNERAL EXPENSES20

21. LOSS OF SOCIETY AND COMPANIONSHIP - DAMAGES20

22. DAMAGES—NOMINAL22

23. DAMAGES – NOT PUNITIVE.....22

24. LOST CHANCE OF SURVIVAL – DAMAGES – DEATH22

25. DELIBERATIONS—GENERAL CONSIDERATIONS.....24

26. VERDICT—UNANIMITY & DUTY TO DELIBERATE.....25

27. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS
.....26

PART I

1. PROVINCE OF THE COURT AND JURY

Members of the Jury, now that you have heard all the evidence and the arguments of counsel, it becomes my duty to give you instructions as to the law that applies to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are, of course, to be governed by the Court's instructions.

Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; but rather that is your function.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties

expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

2. EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated. Remember that the statements, questions, and arguments of counsel are not evidence in this case.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. It is the duty of the Court, during the course of trial, to pass upon the admissibility of proffered evidence, that is, to decide whether or not you should consider proffered evidence. Such evidence as the Court admits is properly before you for your consideration; such evidence as the Court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Papers, documents, and other objects admitted into evidence by the Court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

The fact that this Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of the Court or the statements of counsel concerning the admissibility of such evidence.

Nor should you permit objections by counsel to the admission of evidence, or the rulings of the Court on those objections, to create any bias or prejudice in your minds with respect to counsel or the party he or she represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he or she freely may make objection to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

3. PREPONDERANCE OF THE EVIDENCE

The burden is on the Plaintiffs in a civil action, such as this, to prove every essential element of their claims by a preponderance of the evidence. If the proof should fail to establish any essential element of the Plaintiffs' claims by a preponderance of the evidence in this case, you should find for the Defendants. The Defendants do not have any obligation to disprove that which the Plaintiffs assert or claim.

To “establish by a preponderance of the evidence” means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty. Proof to an absolute or near certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

4. “IF YOU FIND”

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

5. EVIDENCE—DIRECT, INDIRECT OR CIRCUMSTANTIAL

You will recall that there are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

6. INFERENCES DEFINED

You are to consider only the evidence in the case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in this case.

7. CREDIBILITY OF WITNESSES—DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, the manner in which the witness testified, the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he or she may have made on some prior occasion.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the

effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

8. OPINION EVIDENCE—EXPERT WITNESS

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists as to those persons whom we refer to as “expert witnesses.” These are witnesses who, by education and experience, have become expert in some art, science, profession, or calling, and thus may state their opinions as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves, whether it was based on personal observations or on

hypothetical questions. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

In this case, Dr. Janice Selekman, Dr. Robert Maron, Nadine Schwab, and Dr. David Markenson were presented as expert witnesses.

PART II

9. NATURE OF PLAINTIFFS' CLAIMS

The Plaintiffs in this case are Maria Encarnacion on behalf of the estate of Joseline Cuc, Ana Cuc, and Luis DeLeon. Ana Cuc and Luis DeLeon are Joseline Cuc's mother and father. The law allows them to bring this suit on their own behalf, as I shall instruct you later. Maria Encarnacion was appointed by the Probate Court of the City of Providence as the personal representative of Joseline Cuc. The law allows Maria Encarnacion to bring this lawsuit on behalf of Joseline Cuc's estate. The Plaintiffs allege that the Defendants, individually and/or by and through their agents, servants or employees, were negligent in that they did not have in place an individualized emergency plan for Joseline Cuc and/or that they did not comply with the Providence Schools Emergency Plan policy on violent students. They further allege that, because of the Defendants' omissions, Joseline Cuc died on May 20, 2005, when she had a cardiac event. The Defendants deny the Plaintiffs' allegations.

10. NEGLIGENCE—DEFINED

A plaintiff alleging negligence must prove, by a preponderance of the evidence, three essential elements:

- (1) That the Defendant owed a duty of care to the Plaintiff;

(2) That the Defendant breached the duty owed to the Plaintiff; and

(3) That the Defendant's breach of duty owed to the Plaintiff was a proximate cause of the Plaintiffs' injury.

Negligence involves a lack of reasonable care that ordinarily should be exercised under the same or similar circumstances. We often call it ordinary care. Ordinary care is the care that a reasonably careful person would use under the circumstances that you find existed in this case.

Ordinary care is not an absolute term. It is a relative term. The degree of care required may vary with the circumstances. The greater the risk of harm posed by the circumstances, the higher degree of care is necessary to constitute ordinary care. So, in deciding whether ordinary care was exercised by a person in a given situation, that person's conduct must be viewed in light of all the circumstances as shown by the evidence. As the apparent risk of harm or injury increases, so too, must the degree of care to be exercised in order to constitute ordinary care.

The law does not say what a reasonably careful person would ordinarily do or would not do under the circumstances as shown by the evidence in this case. This is for you, the jury, to decide.

11. PROXIMATE CAUSE

In addition to proving that a Defendant or one of a Defendant's agents, servants or employees breached the duty of care, Plaintiffs must also prove by a preponderance of the evidence that the breach was a proximate cause of the injury or harm sustained. Thus, in this case, Plaintiffs must prove that Joseline Cuc's death was proximately caused by the negligent conduct alleged.

Proximate cause means a cause that in a natural, continuous and unbroken sequence produces an event or injury and without which the event or injury would not have occurred. The proximate cause of an event or injury is a substantial, primary or moving cause without which the event or injury would not have happened. Causes that are merely incidental are not proximate causes. Unless a Defendant's negligence is a proximate cause of some harm caused to the Plaintiff then the Defendant cannot be held responsible to the Plaintiff for negligence.

A cause that is a proximate cause may be the sole or only cause of an event or injury. Or, it may be one of two or more or even several causes of an event or injury some of which are a proximate cause and some of which are not. A cause is a proximate cause even if it comes together with or unites with some other cause and produces the event or injury. The test is whether the particular cause at issue is a substantial cause or whether it is merely incidental.

If you find that one or more of the Defendants were negligent, you must then consider whether the negligence was a proximate cause of Joseline Cuc's death.

12. RESPONDEAT SUPERIOR

An employer, like the City of Providence, is liable for the acts of an employee when the employee is acting within the scope of his or her duties or employment. An employer is not liable for an employee's actions if the actions were committed outside the scope of the employee's duties, even if the employee intended to benefit the employer.

You are instructed that where an employee harms someone by negligence in the course of performing a duty which he or she was hired to perform, the employer is liable for the employee's negligent method of performing the duty delegated to him or her, even though the employee's act was unauthorized or forbidden. In such circumstances, the negligent act arises out of and is in the course of employment, unless it is so independent of the reasonable scope of employment as to be the act of the employee alone.

You cannot find the City of Providence liable, unless you first find Dinah Larbi, Diane Martin, and/or Melody Johnson liable.

13. SUPERINTENDENT-PRINCIPAL LIABILITY

A school superintendent and a school principal are liable for failing to exercise due care in the supervision of school department employees to protect students against harm that is reasonably foreseeable. A failure to exercise due care may arise from failure to disseminate school system policy, as well as from failure to supervise school department employee compliance with school system policy. If you find that Defendant Johnson and/or Defendant Larbi was negligent in failing to disseminate school department policy, including policy required by state regulation, or failing to supervise school department employees' compliance with school department policy, including policy required by state regulation, you may find that those failure(s) constitute evidence of negligence. If you further find that this evidence of negligence was a proximate cause of Joseline Cuc's death, then your verdict should be for Plaintiffs.

14. VIOLATION OF ADMINISTRATIVE RULES AND REGULATIONS

I have admitted in evidence sections of the Rhode Island Health Department Rules and Regulations for School Health Programs, as well as sections of the Providence Schools Emergency Plan. You are to apply the Rules and Regulations and the Providence Schools Emergency Plan as they have reference to the facts as you find them. In the event you find that the Rules and Regulations and/or the Providence Schools Emergency Plan were violated by one

or more of the Defendants, you may take such violation as evidence of negligence, that is, a lack of due care for the well-being of Joseline Cuc, to be considered along with all other evidence.

15. SPECIAL RELATIONSHIPS – DUTY TO ACT FOR THE PROTECTION OF OTHERS

Generally, the fact that a person realizes or should realize that action is necessary for the aid or protection of another does not in itself impose a duty to act. There are, however, special circumstances in which a person will have a duty of affirmative action for the aid or protection of another.

In this case, the parties had a special relationship. Joseline Cuc was a middle school student who was required by law to attend school. The City of Providence, through its employees, had custody and control of Joseline while she attended school. Under the circumstances of this case, Defendants owed a duty to Joseline Cuc to protect her against unreasonable risk of harm arising from Defendants' own conduct or the conduct of fellow students. Defendants were required to exercise ordinary care in discharging that duty and in acting toward Joseline Cuc's safety. In other words, Defendants were required to exercise that degree of care that a reasonably prudent person would exercise under the same or similar circumstances. However, the greater the risk of harm presented by the circumstances, the higher the degree of care necessary to constitute ordinary care.

The law does not say what a reasonably careful person would ordinarily do or would not do under the circumstances as shown by the evidence in this case. This is for you, the jury, to decide.

16. LOST CHANCE OF SURVIVAL – ESSENTIALS FOR RECOVERY – DEATH

If you find that Plaintiffs have proved that Joseline Cuc's death was proximately caused by Defendants' negligence, you should not consider Plaintiffs' alternative claim for lost chance of survival. If you find that Plaintiffs have failed to prove that Joseline's death was proximately caused by Defendants' negligence, then you must consider Plaintiffs' alternative claim for lost chance of survival.

The Plaintiffs claim that the Defendants caused Joseline Cuc to lose a chance of survival.

The Plaintiff must prove all of the following propositions:

- 1) The Defendants were negligent in one or more of the following ways:
 - a. Failing to prepare and implement an emergency care plan;
 - b. Failing to disseminate and supervise compliance with school policy to prepare and implement an emergency care plan for students like Joseline;
 - c. Failing to comply with school policy regarding fighting in school;

d. Failing to disseminate and supervise compliance with school policy regarding fighting in school.

- 2) The negligence proximately caused a loss of a chance of survival.
- 3) The negligence proximately caused Plaintiffs' damages.

If the Plaintiffs have failed to prove any of these propositions, the Plaintiffs are not entitled to damages. If Plaintiffs have proved all three of these propositions, Plaintiffs are entitled to damages in some amount.

Lost chance of survival means a reduction in the chance to survive the underlying condition because Joseline failed to receive earlier medical attention and treatment. To satisfy the second element, the Plaintiffs must prove that a Defendant's negligence proximately caused a loss of a chance to avoid the ultimate harm Joseline suffered. To prove a loss of a chance of survival, Plaintiffs must show, by a preponderance of the evidence, that there is a causal connection between the Defendant's negligence and the loss of a chance to survive the harm.

17. LIABILITY OF EACH DEFENDANT TO BE SEPARATELY CONSIDERED

I want to emphasize here that throughout your deliberations you must consider Plaintiffs' claims against each defendant separately. Each Defendant is not necessarily liable to any of the Plaintiffs. You cannot lump the Defendants together; Plaintiffs must prove each element of their

claim, by a preponderance of the evidence, against each Defendant before you can find liability as to that Defendant. Therefore, you must make a finding with regard to each Defendant.

18. DAMAGES

I will now turn to the question of damages. In so doing, this Court does not intend to indicate that it is of the opinion that any Defendant is liable. You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award, if any, in the event that you find that a Defendant is liable. You need consider the question of damages only if you find for the Plaintiffs as against any one of the Defendants. If you find that none of the Defendants are liable, you will not consider the question of damages.

However, because I cannot tell you how you are going to decide this case, it is necessary for me to instruct on how to arrive at the amount of damages in the event that you find for the Plaintiffs.

As I mentioned earlier, the Plaintiffs allege that by reason of their claimed injuries, proximately resulting from the incident involved in this case, they have sustained damages. These allegations are not evidence. Because damages are an element of the Plaintiffs' case, they too must be proven by a fair preponderance of the evidence. You may not speculate in awarding damages.

If you find in favor of the Plaintiffs, then you should award Plaintiffs such sum as you believe will fairly and justly compensate them for any damages you believe that they sustained, and are reasonably certain to sustain in the future, as a direct result of Joseline Cuc's death.

Damages must be reasonable. If you should find that Plaintiffs are entitled to a verdict, you may award them only such damages as will reasonably compensate them for such injury and damage as you find, from a preponderance of the evidence in this case, that they have sustained as a proximate result of Joseline Cuc's death.

19. WRONGFUL DEATH DAMAGES - PAIN AND SUFFERING

The estate of Joseline Cuc is entitled to be compensated for the conscious pain and suffering that Joseline endured as a result of the defendant's negligence.

I will define pain and suffering for you. Pain means physical pain, the kind resulting from a physical impact or injury. It includes what we ordinarily think of as physical pain as well as discomfort and restriction of bodily motion that is caused by the pain or discomfort brought about by moving. Pain must be conscious pain, that is, something that Joseline would be aware of. The law does not allow a jury to award damages for pain to a person while that person is unconscious.

Suffering, on the other hand, can be equated with what we sometimes call the mental anguish that arises from physical pain or injury to the body. Suffering means recognizing the pain, the danger resulting from the pain, the knowledge that the pain and treatment for it will continue. If you find that Plaintiff Encarnacion, on behalf of Joseline's estate, has proven that in addition to physical pain, Joseline also experienced fright, anguish, nervousness, grief, anxiety, worry, humiliation, embarrassment, shock or terror, Joseline's estate is entitled to recover for this mental suffering.

In awarding any damages to Joseline Cuc's estate for conscious pain and suffering, you must be fair and reasonable. An award of damages must be grounded in the evidence and not based upon speculation or conjecture. You may not arbitrarily pick some amount. Your award for pain and suffering should be based on the evidence that has been presented to show just how much pain and suffering Joseline endured as a result her injuries.

If you determine that Joseline Cuc's estate is entitled to be compensated for the pain and suffering Joseline endured as a result of Defendants' negligence, you may award damages.

There is no particular formula by which to compute damages for a Plaintiff's pain and suffering.

There are no objective guidelines by which you can measure the money equivalent of this element of injury; the only real measuring stick, if it can be so described, is your collective and enlightened conscience.

20. WRONGFUL DEATH DAMAGES – MEDICAL AND FUNERAL EXPENSES

As to any Defendant you find liable for Joseline Cuc's death, Plaintiff Encarnacion, on behalf of Joseline Cuc's estate, is entitled to recover reasonable and necessary medical, funeral and burial expenses incurred for Joseline.

21. LOSS OF SOCIETY AND COMPANIONSHIP - DAMAGES

As you know, Ana Cuc and Luis DeLeon are two of the Plaintiffs. They each have made a claim for loss of Joseline Cuc's society and companionship. The law permits a parent to make a claim against an individual who has been negligent and whose negligence has been the proximate cause of injuries to a minor child. If the injury sustained by the injured minor proximately caused the parent to suffer a loss of society and companionship of the injured minor, then the parent suffering that loss is entitled to be compensated.

If you find that Joseline Cuc was injured as a proximate cause of the Defendants' negligence, then you must consider the claim of Plaintiffs Ana Cuc and Louis DeLeon for loss of society and companionship. This claim of Ana Cuc and Luis DeLeon is a separate and distinct claim that belongs to them alone. It is not part of the claim by Joseline Cuc's estate. You may not consider their claims unless you first find a Defendant liable for Joseline Cuc's injury.

In arriving at the amount of damages, if any, which you will award for loss of society and companionship, you should consider what is fair compensation for the loss of the ordinary services and society, comfort, and companionship, both physical and emotional, that children provide to their parents. This type of loss is difficult to measure in terms of money. Consider the evidence as it relates to the nature and extent of the Plaintiffs Ana Cuc's and Luis DeLeon's loss of society and companionship, if any, and make your award based on your consideration of that evidence.

Your award must derive from the evidence which has been introduced to show just how much Ana Cuc and Luis DeLeon have lost in terms of society, companionship and comfort from Joseline and how much they will continue to lose in the future. You may consider all of the circumstances as shown by the evidence, including the nature of the relationship between them prior to Joseline's death.

For these damages to be calculated, Plaintiffs must provide evidence of the loss of society and companionship that they have experienced as a result of Joseline's death. The following factors may be considered: the remaining period of minority and likely intimate association with her family, had Joseline lived; and the cohesiveness of her family unit.

22. DAMAGES – NOMINAL

If you find that a particular Plaintiff is entitled to a verdict in accordance with my instructions but do not find that the particular Plaintiff has sustained any actual damages, then you may return a verdict for that particular Plaintiff in some nominal sum such as \$1.00.

23. DAMAGES—NOT PUNITIVE

If you should find that the Plaintiffs are entitled to damages, in fixing the amount of your award, you may not include in, or add to an otherwise just award, any sum for the purpose of punishing the defendants, or to serve as an example or warning for others. Nor may you include in your award any sum for court costs or attorney's fees.

24. LOST CHANCE OF SURVIVAL – DAMAGES – DEATH

If you find that Plaintiffs have proved that Joseline Cuc's death was proximately caused by Defendants' negligence, you should not consider damages for lost chance of survival. If you find that Plaintiffs have failed to prove that Joseline Cuc's death was proximately caused by Defendants' negligence, and you find for Plaintiffs on the claim for lost chance of survival in accordance with Instruction Number 16, then you must determine the value of the harm suffered by Plaintiffs and determine the percentage of lost chance to avoid that harm which Defendants

caused. I will use your answers to the special interrogatories in the verdict form to calculate the appropriate amount of damages recoverable by Plaintiffs.

To determine the percentage of lost chance to avoid the harm caused by the Defendants, you must determine the difference between Joseline's chance of avoiding the harm in the absence of any negligence on the part of the Defendants and Joseline's chance of avoiding the harm following any negligence on the part of the Defendants which you have found.

PART III

25. DELIBERATIONS—GENERAL CONSIDERATIONS

Ladies and Gentlemen, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, it goes without saying that prejudice, sympathy or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in the light of such experience and observations.

26. VERDICT—UNANIMITY & DUTY TO DELIBERATE

Now, it is required in order for you to return a verdict that your decision be the unanimous decision of all seven. You cannot return a verdict, either for the plaintiff or for the defendant, unless and until you are in unanimous agreement as to what your verdict shall be.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide this for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

27. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If in the course of your deliberations you should deem it necessary to be further instructed or assisted by the Court in any way, I would ask that you reduce such requests or questions as you may have to writing through your foreperson. The foreperson may then hand such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written request to me and I will have you brought into the courtroom and will attempt to fulfill your request or answer the question as the case may be. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

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