

brought about by moving. Pain must be conscious pain, that is, something that Ms. Sepe was aware of. The law does not allow a jury to award damages for pain to a person while that person was 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, and the knowledge that the pain and treatment for it will continue. If you find that Ms. Sepe has proven that in addition to physical pain, she has also experienced fright, anguish, nervousness, grief, anxiety, worry, humiliation, embarrassment, shock or terror, she is entitled to recover for this mental suffering.

An award for pain and suffering must be fair and reasonable. It must be grounded in the evidence and not based upon speculation or conjecture. Nor may you 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 Ms. Sepe endured as a result of her injuries.

There is no particular formula by which to compute damages for pain and suffering. There are no objective guidelines by which you can measure the money equivalent of this injury; the only real measuring stick, if it can be so described, is your collective and enlightened conscience. You alone are the sole judges of what, if anything, should be awarded for pain and suffering.

### **III. FINAL PROCEDURAL INSTRUCTIONS**

Ladies and Gentleman, 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.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, or computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your conviction simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open to conviction with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your conviction. Each vote of each juror is as

important as the vote of any other juror, and you need not give up your sincerely held conviction simply because a majority holds to the contrary.

I am designating juror # \_\_, \_\_\_\_\_, as the Foreperson of this jury. \_\_\_\_\_, it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.