

FINAL INSTRUCTIONS

Members of the jury, the preliminary instructions I gave you at the beginning of the trial remain in effect. I now am going to read the final jury instructions. It is your duty to follow all of the instructions. You must not single out some instructions and ignore others because all are important.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room.

Final Instruction No. 1

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow the Court's instructions, even if you disagree with them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Final Instruction No. 2

The evidence in this case consists of the testimony of the witnesses, the exhibits admitted into evidence, and stipulations.

Final Instruction No. 3

Certain things are not to be considered as evidence. I will list them for you.

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Final Instruction No. 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life. In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Final Instruction No. 5

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact or a series of facts that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Final Instruction No. 6

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Final Instruction No. 7

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Final Instruction No. 8

You have heard evidence that John W. Perotti has been convicted of a crime. You may consider this evidence only in deciding whether John W. Perotti's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

Final Instruction No. 9

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

Final Instruction No. 10

Defendants are being sued as individuals. Neither the Federal Correctional Complex, Bureau of Prisons nor the United States of America is a party to this lawsuit.

Final Instruction No. 11

You must give separate consideration to each party in this case. Although there are two Defendants, it does not follow that if one is liable, that the other is also liable.

Final Instruction No. 12

To prevail on his claim against any Defendant, the Plaintiff must prove by a preponderance of the evidence that the Defendant was personally involved in the conduct that Plaintiff complains about. You may not hold any Defendant liable for what other employees did or did not do.

Final Instruction No. 13

You have heard evidence about whether the Defendants' conduct complied with various Bureau of Prisons policies and procedures. You may consider this evidence in your deliberations. But remember that the issue is whether Defendants retaliated against Plaintiff for exercising his First Amendment rights, not whether any of the Defendants complied with certain policies and procedures.

Final Instruction No. 14

In this case, Plaintiff claims that Defendant Diane Quinones retaliated against him for filing grievances through the prison's administrative remedies system.

To succeed on this claim, Plaintiff must prove several things by a preponderance of the evidence:

1. Plaintiff filed grievances through the prison's administrative remedies system;
2. Defendant Diane Quinones intentionally refused to pay Plaintiff for or fired him from the position of law library law clerk;
3. Plaintiff's filing of grievances through the prison's administrative remedies system, was a reason, alone or with other reasons, that Defendant Diane Quinones relied on when she refused to pay Plaintiff for or fired him from the position of law library law clerk, or that moved Defendant Diane Quinones toward her decision to refuse to pay or fire plaintiff from his position as law library law clerk.
4. Plaintiff was harmed by the loss of pay or termination of his job as law library law clerk.

If you find that Plaintiff has proved by a preponderance of the evidence each of the things required of him then you must find for Plaintiff. However, if you find that Plaintiff did not prove by a preponderance of the evidence each of the things required of him then you must find for Defendant Diane Quinones.

Final Instruction No. 15

In this case, Plaintiff claims that Defendant Billie Kelsheimer retaliated against him for filing grievances through the prison's administrative remedies system.

To succeed on this claim, Plaintiff must prove several things by a preponderance of the evidence:

1. Plaintiff filed grievances through the prison's administrative remedies system;
2. Defendant Billie Kelsheimer intentionally refused to pay Plaintiff for or fired him from the position of law library law clerk;
3. Plaintiff's filing of grievances through the prison's administrative remedies system, was a reason, alone or with other reasons, that Defendant Billie Kelsheimer relied on when she refused to pay Plaintiff for or fired him from the position of law library law clerk, or that moved Defendant Billie Kelsheimer toward her decision to refuse to pay or fire plaintiff from his position as law library law clerk.
4. Plaintiff was harmed by the loss of pay or termination of his job as law library law clerk.

If you find that Plaintiff has proved by a preponderance of the evidence each of the things required of him then you must find for Plaintiff. However, if you find that Plaintiff did not prove by a preponderance of the evidence each of the things required of him then you must find for Defendant Billie Kelsheimer.

Final Instruction No. 16

If you decide for Defendants on the question of liability, then you should not consider the question of damages.

Final Instruction No. 17

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find he sustained as a direct result of Defendants' termination of or refusal to pay for Plaintiff's employment as a law library clerk.

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork.

You should consider the following type of compensatory damages, and no others:

The wages or earning capacity that Plaintiff has lost. Plaintiff is not entitled to such damages beyond October 2, 2008.

Under the law, Plaintiff cannot receive damages for any mental or emotional injury. Therefore, your damages award should not reflect any amount for mental or emotional injuries.

If you find in favor of Plaintiff but find that the Plaintiff has failed to prove compensatory damages, you must return a verdict for Plaintiff in the amount of one dollar (\$1.00).

Final Instruction No. 18

If you find for Plaintiff, you may, but are not required to, assess punitive damages against any appropriate Defendant. The purposes of punitive damages are to punish a defendant for her conduct and to serve as an example or warning to such Defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against any Defendant. You may assess punitive damages only if you find that a Defendant's conduct was malicious or in reckless disregard of Plaintiff's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Plaintiff. Conduct is in reckless disregard of Plaintiff's rights if, under the circumstances, it reflects complete indifference to Plaintiff's safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party.

In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of a Defendant's conduct;
- the impact of a Defendant's conduct on Plaintiff;
- the relationship between Plaintiff and a Defendant;
- the likelihood that a Defendant would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

Final Instruction No. 19

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against a particular party, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Final Instruction No. 20

From now until you are discharged, you must remain together in a group, and in the charge of the bailiffs. During your deliberations, you are not to talk with anyone other than your fellow jurors. You may not use any electronic device or medium, including telephones, cell phones, the internet, email, text messaging, Twitter, Facebook, or instant messaging to communicate with anyone about this case or to conduct any research about this case, until I accept your verdict in open court.

If you need anything (other than food or refreshments or other accommodations), the only proper way to communicate with the Court is in writing, signed by the presiding juror, or if he or she is unwilling to do so, by some other juror, and given to the bailiff. Most often the Court cannot answer your questions except by re-reading the jury instructions, so you may find an answer to any question you have in the instructions.

Final Instruction No. 21

Upon retiring to the jury room, select one of your members as your presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you.

Take the form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in the verdict form and date it.

When you wish to return your verdict, notify the bailiff.