

explain to you what is meant by the term "motivating factor" shortly.) To make this determination, you must consider all of the evidence in light of the explanations of the law that I am about to provide in these instructions.

Role of the Court, the Jury and Counsel

Now that you have listened carefully to the testimony that has been presented to you, you must consider and decide the fact issues of this case. You are the sole and exclusive judge of the facts. You weigh the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them. Shortly, I will define "evidence" for you and tell you how to weigh it, including how to evaluate the credibility or, to put it another way, the believability of the witnesses.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions I am about to give you, just as it would be a violation of your sworn duty as judges of the

facts to base a verdict upon anything but the evidence in the case.

Nothing I say in these instructions should 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. That is your function.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should evaluate the evidence deliberately and without the slightest trace of sympathy, bias or prejudice for or against any party. All parties expect that you will carefully consider all of evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Corporations and Corporate Liability

UVM, as a public corporation, is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice. Of course, when a corporation is involved in a case, it may act only through natural persons such as its officers, agents, or employees. Thus, you should consider the acts or omissions of the employees of UVM to be the acts or omissions of UVM itself.

Evidence in the Case

As I have said earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. Statements and arguments of counsel are not evidence. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation and regard that fact as proved.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. But it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

The evidence includes any stipulated facts, the sworn testimony of the witnesses, and the exhibits admitted in the record. Any evidence as to which an objection was sustained and any evidence that I ordered stricken from the record must be entirely disregarded.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw

from the facts which have been established by the testimony and evidence in the case.

Direct and Circumstantial Evidence

The law recognizes two types of evidence: direct and circumstantial. Direct evidence is provided when, for example, people testify to what they saw or heard themselves; that is, something which they have knowledge of by virtue of their senses. Circumstantial evidence consists of proof of facts and circumstances from which in terms of common experience, one may reasonably infer the ultimate fact sought to be established.

Such evidence, if believed, is of no less value than direct evidence. As a general rule, the law makes no distinction between direct and 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.

Witness Credibility

You, as jurors, are the sole judges of the credibility of the witnesses and the importance of their testimony. It is your job to decide how believable each witness was in his or her testimony. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by 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 may help you decide the truth and the importance of each witness's testimony. Consider each witness's knowledge, motive and 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; any interest he or she may have in the outcome of the case, or any bias for or against any party; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

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 people naturally tend to forget some things or remember other things inaccurately. 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 should 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. The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; but which witness, and which evidence, appeals to your minds as being most accurate, and otherwise trustworthy.

Burden of Proof

Because this is a civil case, the burden of proof is by "a preponderance of the evidence." To prove something by a preponderance of the evidence means to prove that something is more likely true than not true. A preponderance of the evidence means the greater weight, or logic, or persuasive force of the evidence. It does not mean the greater number of witnesses or documents. It is a matter of quality, not quantity.

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

Dr. Honadle's Civil Rights Claim

Dr. Honadle has brought a claim under a federal civil rights law which provides a remedy for individuals who have been deprived of a constitutional right. Here, the constitutional right that Dr. Honadle alleges UVM violated is her right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution. Specifically, Dr. Honadle alleges that UVM violated that right by hiring another candidate, Catherine Halbrendt, as Chair of the Department of Community Development and Applied Economics ("CDAE"), in part, not because Dr. Halbrendt was better qualified than Dr. Honadle, but because Dr. Halbrendt is Asian-American whereas Dr. Honadle is white.

You, the jury, will now be asked to decide whether Dr. Honadle has proven by a preponderance of the evidence that race was a motivating factor in UVM's decision to hire Dr. Halbrendt instead of Dr. Honadle as Chair of CDAE. In order for race to have been a "motivating factor" in this case, it must have been

a consideration that moved UVM toward its ultimate hiring decision. It does not mean that race was the only, or even the primary, reason for UVM's decision to hire Dr. Halbrendt -- simply that it was one factor that influenced UVM's ultimate decision.

If you conclude that race was a motivating factor in UVM's decision to hire Dr. Halbrendt instead of Dr. Honadle, you must then consider whether UVM has shown, by a preponderance of the evidence, that it would have hired Dr. Halbrendt over Dr. Honadle absent any such consideration of race. That is, you must decide whether, if Drs. Halbrendt and Honadle had been of the same race, UVM would have made the same decision. UVM, rather than Dr. Honadle, bears the burden of proof on this issue. Therefore, if you find that race was a motivating factor in UVM's hiring decision, UVM then has the burden to show, by a preponderance of the evidence, that it would have come to the same decision regardless of race.

Nominal Damages

"Nominal damages" are awarded as recognition that a plaintiff's rights have been violated. Generally, they are awarded when the only injury that a plaintiff suffered was the deprivation of constitutional rights, without any resulting physical, emotional, or financial damages. They may not,

however, be awarded for more than a token sum. If Dr. Honadle prevails, the Court will award nominal damages.

Verdict Based Upon Evidence

Your verdict in this case must be based solely upon the evidence presented at the trial of this case, whether testimonial or documentary, and legitimate inferences to be drawn therefrom. Your verdict may not be based upon sympathy for a party, prejudice, passion, public opinion, speculation or conjecture.

Unanimous Verdict

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. That is, your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with other jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and to change your opinion if you become convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely

because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- the judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Closing Instructions

I have selected Charles Barrows to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A copy of this charge will go with you into the jury room for your use.

Communications with the Court

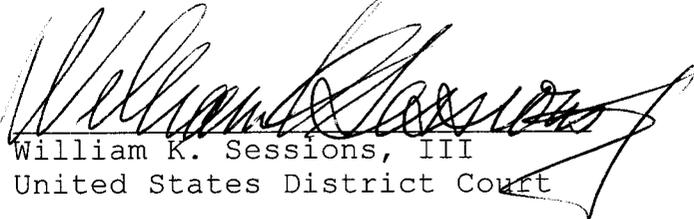
If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Courtroom Security Officer, signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open Court.

You will note that all other persons are also forbidden to communicate in any way or manner with any member of the jury on

any subject touching the merits of the case.

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

Dated at Burlington, Vermont this 22 day of January, 2001.



William K. Sessions, III
United States District Court