

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

PETER I. DIAMONDSTONE,
Plaintiff

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v.

File No. 1:95-CV-101

CHRISTOPHER A. MACALUSO,
Defendant

CHARGE TO THE JURY

GENERAL INSTRUCTIONS

General Introduction - Province of the Court and Jury

MEMBERS OF THE JURY:

The plaintiff, Peter Diamondstone, claims he was injured when the defendant, Christopher Macaluso, violated his constitutional rights and committed a series of torts against him. The defendant denies that he committed any tort against the plaintiff or violated the constitutional rights of the plaintiff.

Now that you have heard the evidence and arguments, it becomes my duty to give you the instructions of the Court as to the law applicable 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 as you find them from the evidence in the 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 the law stated by the Court in these instructions, you are to be governed by the Court's instructions.

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 yours.

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 of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

All Persons Equal Before the Law

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

Evidence in the Case

Statements and arguments of counsel are not evidence in the case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Questions Not Evidence

If a lawyer has asked a witness a question which contains an assertion of fact, you may not consider the lawyer's assertion as evidence of that fact. The lawyer's statements are not evidence.

Evidence - Direct, Indirect, or Circumstantial

There are, generally speaking, two types of evidence from which a jury 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 the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Inferences Defined

You are to consider only the evidence in the case. But in your consideration of the evidence 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 the light of your experience.

Inferences are deductions or conclusions which reason and common sense suggest are probably true, based on the facts which have been established by the evidence in the case.

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, 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 tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while on the stand. Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness 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 bias or prejudice; 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.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not give you cause 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.

Credibility of Witnesses - Inconsistent Statements

The testimony of a witness may be discredited, or as we sometimes say, "impeached," by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial, unless the witness has adopted, admitted or ratified the prior statement during the witness' testimony in this trial. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you think it deserves.

An act or omission is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Verdict - Unanimous - Duty to Deliberate

The verdict must represent the considered judgment of each juror. To return a verdict, it is necessary that each juror agree. 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 individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if 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 the other jurors, or for the mere purpose of returning a verdict.

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

INSTRUCTIONS OF LAW

It is now my duty to give you instructions concerning the law that applies to this case. It is your duty as jurors to follow the law as stated in these instructions. You must then apply these rules of law to the facts you find from the evidence.

It is the sole power of the jury to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any question of fact.

Other Court Decision

In this case you have heard about decisions made by other courts. I now instruct you that you are to base your decisions only on the law as decided by this Court.

In 1987, a district court in Vermont held that the plaintiff had the right to refuse to show proof of insurance when such proof was requested by a law enforcement officer.

In adjudicating some of the traffic tickets at issue in this case, Traffic Bureau Hearing Officer Michael Pratt made two decisions. Hearing Officer Pratt held that the defendant may not stop a vehicle on suspicion that the driver is driving without insurance, if the only grounds for that suspicion is the driver's refusal to show proof of insurance on previous occasions.

This Court has disagreed with Hearing Officer Pratt, generally because of changes made by the Vermont legislature since 1987 which made traffic offenses such as failure to provide proof of insurance to a requesting law enforcement officer a civil rather than criminal matter. For the purposes of this case, you must accept the ruling of this Court. In essence, that ruling is the defendant did have probable cause to stop the plaintiff on suspicion he did not have automobile insurance, even where the defendant's

suspicion was based only on the plaintiff's previous refusal to show proof of insurance.

By telling you that you must accept this Court's ruling, I do not mean to imply that you must find for the plaintiff or the defendant on any of the claims in this case.

Fifth Amendment

You have heard the parties mention the Fifth Amendment. The Fifth Amendment says no party shall be compelled in a criminal case to be a witness against himself or herself. It is only applicable to criminal matters and not to civil offenses.

Burden of Proof and Preponderance of the Evidence

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his or her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the defendant as to that claim.

As to certain affirmative defenses which I will discuss later in these instructions, however, the burden of establishing the essential facts is on the defendant. If the proof should fail to establish any essential element of a defendant's affirmative defense by a preponderance of the evidence in the case, the jury should find for the plaintiff as to that 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 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, since proof to an absolute certainty is seldom possible in any case.

Stated another way, to establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true. A preponderance of the

evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a fact, claim or affirmative defense has been proven by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

The Claims

The plaintiff charges the defendant with a number of distinct claims each of which you must consider. I will discuss each claim in turn, and the law which you should apply when considering that claim.

I. Civil Rights Claims

In his first claim, the plaintiff claims the defendant violated his civil rights, and brings his claims under civil rights law. Specifically, the plaintiff claims that the defendant used excessive force during an arrest and violated his right to free expression by preventing him from attending a peace vigil.

The plaintiff has the burden of proving each and every element of his civil rights claims by a preponderance of the evidence. If you find that any one of the elements of plaintiff's claims have not been proven by a preponderance of the evidence, you must return a verdict for the defendant.

To establish a claim under civil rights law, plaintiff must establish, by a preponderance of the evidence, each of the following elements:

First, that the conduct complained of was committed by a person acting under color of state law;

Second, that this conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States; and

Third, that the defendant's acts were the proximate cause of the injuries and consequent damages sustained by the plaintiff.

I shall now further explain each of the plaintiff's civil rights claims, and each of the elements I have discussed under each claim.

A. Plaintiff's Excessive Force Claim

The plaintiff claims that on December 22, 1992, the defendant used excessive force while arresting the plaintiff. To find for the plaintiff, you must find he has proven to you all of the following elements:

1. First Element: Under Color of State Law

For the purposes of this case, you are instructed to take as fact that the defendant was acting under color of state law when he arrested the plaintiff.

2. Second Element: Violation of a Federal Right

The second element of plaintiff's claim is that the defendant deprived him of a right secured by the Constitution or laws of the United States. For the plaintiff to establish the second element, he must show the following by a preponderance of the evidence: first, the defendant committed the acts alleged by the plaintiff; second, those acts caused the plaintiff to suffer the loss of a federal right; and third, in performing the acts alleged, the defendant acted intentionally or recklessly.

The Fourth Amendment to the United States Constitution protects persons from being subjected to excessive force while being arrested. In other words, you are instructed that every person has the right not to be subjected to unreasonable or

excessive force while being dealt with by a law enforcement officer, even though the action is otherwise made in accordance with due process of law. That said, an officer has the right to use such force as is necessary under the circumstances to make a lawful arrest.

In this case, the plaintiff claims the defendant used excessive and unreasonable force during the December 22, 1992 arrest. Plaintiff claims that he was subjected to excessive force by the defendant in effecting his arrest. In making a lawful arrest, a law enforcement officer has the right to use such force as is necessary under the circumstances to effect the arrest. Whether or not the force used in making an arrest was unreasonable is a question to be determined by you in light of all of the evidence received in the case. You must determine the degree of force that a reasonable and prudent officer would have applied in effecting the arrest under the circumstances shown from the evidence received in this case.

3. Third Element: Proximate Cause

The third element which plaintiff must prove is that the defendant's acts were a proximate cause of the injuries sustained by the plaintiff. Proximate cause means that there must be sufficient causal connection between the act or omission of a defendant and any injury or damage sustained by the plaintiff. An act or omission is proximately caused if it

was a substantial factor in bringing about or actually causing injury, that is, if the injury or damage was a reasonably foreseeable consequence of the defendant's act or omission. If an injury was a direct result or a reasonably probable consequence of a defendant's act or omission, it was proximately caused by such act or omission. In other words, if a defendant's act or omission had such an effect in causing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause.

B. Plaintiff's First Amendment Claim

The plaintiff claims that on June 5 and 17, 1992, the defendant stopped the plaintiff's car and prevented or deterred the plaintiff from attending a peace vigil held in Brattleboro, Vermont. The plaintiff is asking you to find the defendant liable for violating the plaintiff's First Amendment right to freedom of expression under 42 U.S.C. § 1983. To find for the plaintiff, you must find all four elements of a civil rights claim exist.

1. First Element: Acting Under Color of State Law

As before, you must take as fact that during the June 5 and 17, 1992 stops at issue here, the defendant was acting under color of state law.

2. Second Element: Violation of a Federal Right

The plaintiff alleges that the defendant deprived him of his right to freedom of speech under the First Amendment to the Constitution of the United States. In order to prove his allegation against the defendant, the plaintiff must establish the following two elements: first, that the plaintiff's participation in the peace vigil was protected by the Free Speech Clause of the first amendment; and second, that plaintiff's participation in the peace vigil was a substantial or motivating factor in the defendant's decision to take action against the plaintiff.

The first part of whether the plaintiff's speech is protected by the First Amendment is a question of law. I instruct you as a matter of law that the Free Speech Clause of the First Amendment protects the plaintiff's right to engage in non-violent peace vigils outside federal buildings. Therefore, you are to assume that the first part of the test is met.

The second part of the plaintiff's claim is that his protected expression, his participation in the peace vigil, was a substantial or motivating factor in the defendant's decision to take action against him.

The defendant may have taken action for no reason whatsoever. If so, then the plaintiff's participation in the peace vigil was not a substantial or motivating factor in the defendant's decision.

The defendant may have taken action for only one reason. If that single reason was that the plaintiff was participating in or leading the peace vigil, then you must find that the plaintiff's protected speech was a substantial or motivating factor in the defendant's decision.

The defendant may also have taken action for many different reasons. If so, then you must determine whether one

of those reasons was that the plaintiff was participating in the peace vigil. If it was one of those reasons, then you must determine whether it played a substantial part in the decision to take action against the plaintiff. If it did play a substantial part, then you must find that the plaintiff's protected speech was a substantial or motivating factor in the defendant's decision.

3. Third Element: State of Mind

I remind you that to establish a civil rights claim, the plaintiff must show that the defendant acted intentionally or recklessly. To find for the plaintiff, you must find that the defendant either intentionally and knowingly prevented or deterred the plaintiff from attending the peace vigil, or that the defendant recklessly and with conscious disregard of the probable consequences, prevented the plaintiff from exercising his right to free expression.

4. Fourth Element: Proximate Cause

As noted before, the third element which plaintiff must prove is that the defendant's acts were a proximate cause of the injuries sustained by the plaintiff. Thus, the plaintiff must show that any injury he suffered when the defendant prevented or deterred him from reaching the peace vigil were the reasonably probable consequence of the defendant's actions.

II. Tort Claims

The plaintiff alleges the defendant committed several torts against the plaintiff's person. Specifically, the plaintiff alleges assault, battery, false arrest, false imprisonment, malicious prosecution and defamation. I will instruct you about each of these claims in turn. You must consider each claim separately.

A. Assault

The plaintiff claims the actions of the defendant constitute assault. An assault occurs when a person is put in imminent apprehension of an offensive or harmful physical contact.

To find the defendant liable to the plaintiff for an assault, you must find, first, that the defendant made an intentional and unlawful threat to commit injury on the plaintiff; second, that the defendant had an apparent ability to commit injury to the plaintiff; and third, that the defendant made a display of force that put the plaintiff in apprehension of immediate bodily injury.

A police officer making an arrest is privileged to commit an assault provided that the force threatened is reasonably necessary for the officer to make the arrest, as long as the arrest is lawful. An officer is therefore, liable for injury or damages from the threat of force only when the force threatened is disproportionate to the situation as the officer viewed it and which the police officer knows is disproportionate in light of the circumstances. Thus, for the plaintiff to recover damages from the defendant, you must find that the defendant intentionally threatened force in excess of what was reasonably necessary to effect a lawful arrest.

B. Battery

The plaintiff also claims the defendant committed battery. Battery is the unlawful or unwarranted use of force upon the physical person of another.

As with assault, a police officer who commits battery may be protected if he or she uses force reasonably to effect a lawful arrest. Therefore, you must find the defendant liable for battery to the plaintiff if you find the defendant intended to inflict, and did inflict, a harmful and unwarranted contact upon the plaintiff without the plaintiff's consent, in excess of the appropriate and reasonable force that officer would use to effect a legal arrest.

C. False Arrest

The plaintiff claims that, by arresting him and charging him with disorderly conduct, the defendant committed a false arrest. False arrest is the unlawful seizing and detaining or apprehension of a person restrained for the purpose of taking him into legal custody. An arrest is made by actual restraint of the person or by his submission to the custody of the other.

To find the defendant falsely arrested the plaintiff, you must find two things: first, that the defendant attempted to arrest the plaintiff under authority of law.

Second, you must find that the defendant had no reasonable belief that the person placed under arrest had committed, or was committing, a crime. The defendant arrested the plaintiff for disorderly conduct. Therefore, to find for the plaintiff you must find that the defendant acted without reasonable belief that Mr. Diamondstone was actually committing disorderly conduct.

In Vermont, a person commits disorderly conduct when, with the intent to cause public inconvenience, annoyance or recklessly creating a risk thereof, 1) engages in fighting or in violent, tumultuous or threatening behavior; 2) makes unreasonable noise; 3) in a public place uses abusive or

obscene language; 4) without lawful authority, disturbs any lawful assembly or meeting of persons; or 5) obstructs vehicular or pedestrian traffic.

Note that in reaching your verdict, you may not rely on the fact that the plaintiff was not ultimately convicted of the offense for which he was arrested. Rather, you must decide whether, based upon the information available to the officer at the time, he could reasonably have concluded that the plaintiff was in fact committing a crime when arrested.

D. False Imprisonment

The plaintiff claims that, by taking him to, and detaining him in, the Brattleboro State Police barracks, the defendant committed the tort of false imprisonment. False imprisonment is the unlawful restraint by one person of the physical liberty of another. The restraint necessary to create liability for false imprisonment may be imposed either by actual force or by the implied threat of force.

To find the defendant liable for false imprisonment, you must find that he totally restrained the plaintiff against his will, and that such restraint was unlawful. Thus, you must find that the defendant unreasonably concluded the plaintiff was committing a crime, and unreasonably restrained the plaintiff to prevent him from committing that crime.

E. Malicious Prosecution

The plaintiff claims that, by citing him for disorderly conduct and referring the case to the Windham County State's Attorney for prosecution, the defendant committed the tort of malicious prosecution. To find the defendant liable for malicious prosecution, you must find: 1) that the defendant instigated a criminal proceeding against the plaintiff; 2) that the plaintiff was not convicted of the violation with which he was charged; 3) that the defendant commenced the proceeding against the plaintiff without probable cause; 4) that the defendant acted with malice, and 5) that the plaintiff incurred damages as a proximate result of the defendant's initiation of the prosecution. I will explain each element of this test in turn.

As to the first element, you must decide if the defendant instigated a criminal proceeding against the plaintiff.

The second element is already set as a fact: you must accept as true that the plaintiff was never convicted of the crime with which he was charged.

The third element of the test requires you to find the defendant did not have probable cause to arrest and prosecute the plaintiff. "Probable cause" means a knowledge of facts strong enough to allow a reasonable person to believe he or

she has lawful cause to cite another person. In deciding whether the defendant had probable cause, you should not consider the State's Attorney's decision refusing to prosecute the case.

The fourth element requires you to find that the defendant acted with malice when he attempted to prosecute the plaintiff. You may find that the defendant acted with malice if you find the defendant acted with an improper or wrongful motive.

If you find that the defendant lacked probable cause to cite the plaintiff, you may find from that fact alone that he acted with malice toward the plaintiff, although you are not obliged to infer malice from lack of probable cause.

Nevertheless, if you find defendant lacked probable cause to cite the plaintiff and that defendant has failed by a preponderance of the evidence to show that he cited the plaintiff in good faith and without malice, you must find that defendant cited the plaintiff with malice.

Finally, the fifth element requires you to find that the plaintiff incurred damages as a proximate result of the defendant's initiation of prosecution. Thus, you must find that the defendant's decision and actions in pursuing the

prosecution of the plaintiff caused the plaintiff actual
damages.

F. Defamation

Finally, the plaintiff claims the defendant defamed him by issuing a press release which implied that the plaintiff was intoxicated during the December 22, 1992 arrest. To find the defendant liable for defamation, you must find: 1) that the defendant made false and defamatory statements concerning the plaintiff; 2) that the defendant was grossly negligent in making the statement or made the statement knowing it was false; 3) that the defendant made the statement to a third person; 4) that the defendant was not privileged to make such a publication; and 5) that the plaintiff sustained actual harm from the publication.

For the purposes of this case, you must decide whether the defendant made a false statement concerning the plaintiff, whether he knew it to be false, or was grossly negligent in making the statement, and whether the plaintiff sustained any actual harm because of the false statement's publication. If you decide the statements made in the press release are factual, and not false, you must find for the defendant.

If you decide the statements made in the press release are false, you must decide whether the defendant made those statements knowing them to be untrue at the time he made them, or was grossly negligent in making those statements. If you

find the defendant made the statements believing they were true, you must find for the defendant.

Gross negligence is the failure to exercise even a slight degree of care and indifference to the duty owed the plaintiff. There must be something more than an error of judgment.

Finally, if you find the defendant knowingly made false statements in the press release, you must also find that the plaintiff suffered actual harm from the statements.

Effect of Instruction as to Damages

The fact that I will instruct you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

Verdict Forms - Jury's Responsibility

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

Conclusion

To return a verdict, all jurors must agree to the verdict. In other words, your verdict must be unanimous.

Upon retiring to the jury room your foreperson will preside over your deliberations and be your spokesperson here in court.

When you have reached a unanimous verdict, your foreperson should sign and date the verdict form.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing, signed by the foreperson, and pass the note to the Marshal. He will then bring the message to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I may address your question orally. I caution you, with regard to any message or question you might send, that you should never specify where you are in your deliberations or your numerical division, if any, at the time.

Compensatory Damages

If you return a verdict for the plaintiff, on one or more of his civil rights claims or state tort law, then you must consider the issue of actual damages.

I. Civil Rights Claims

If you return a verdict for the plaintiff on his civil rights claims, then you must award him such sum of money as you believe will fairly and justly compensate him for any injury you believe he actually sustained as a direct consequence of the conduct of the defendant.

You shall award actual damages only for those injuries which you find that the plaintiff has proven by a preponderance of the evidence, and which are the direct result of conduct by the defendant in violation of his civil rights. That is, you may not award actual damages for any injury suffered by the plaintiff - you must award actual damages only for those injuries that are a direct result of conduct by the defendant which violated plaintiff's federal rights under color of law.

Actual damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial.

A. Nominal Damages

If you find, after considering all the evidence presented, that the defendant violated the plaintiff's rights, but that the plaintiff suffered no injury as a result of this violation, you may award the plaintiff "nominal damages." "Nominal damages" are awarded as recognition that the plaintiff's rights have been violated. You would award nominal damages if you conclude that the only injury the plaintiff suffered was the deprivation of his constitutional rights, without any resulting physical, emotional or financial damage.

You may also award nominal damages if, upon finding that some injury resulted from a given unlawful act, you find that you are unable to compute monetary damages except by engaging in pure speculation and guessing.

You may not award both nominal and compensatory damages to a plaintiff; either he was measurably injured, in which case you must award compensatory damages, or else he was not, in which case you may award nominal damages.

Nominal damages may not be awarded for more than a token sum. For example, if you choose to award nominal damages, you may award the plaintiff one dollar in damages.

II. Tort Claims

If you find for the plaintiff on any of his individual tort claims, you must consider awarding the plaintiff actual damages.

The purpose of damages in this instance is to compensate a plaintiff fully and adequately for all injuries and losses caused by a defendant's unlawful conduct. In other words, the purpose of awarding damages is to place the injured person in the position he occupied immediately before the injury occurred, as nearly as can be done with an award of money damages.

The plaintiff must prove, by a preponderance of the evidence, the amount of damages to which he is entitled. You may include only the damages the plaintiff has proven by a preponderance of the evidence. You may not award speculative damages or damages based on sympathy.

A. Assault

If you find the defendant has assaulted the plaintiff, you may award the plaintiff all damages proximately caused by the defendant's acts. These damages include medical expenses, lost income, bodily injury, pain and suffering, emotional distress and mental anguish.

B. Battery

If you find the defendant has committed a battery upon the plaintiff, you may award the plaintiff all damages proximately caused by the defendant's act. These damages may include medical expense, lost income, bodily injury, pain and suffering, emotional distress and mental anguish.

C. False Arrest

If you find the defendant falsely arrested the plaintiff, you may then award him damages to compensate him for the defendant's conduct. You should consider any facts and circumstances of the arrest which increased its hardship to the plaintiff. You may take into consideration any mental pain and suffering, fright, nervousness, indignity, humiliation, embarrassment, and insult which the plaintiff endured.

D. False Imprisonment

If you find the defendant falsely imprisoned the plaintiff, then you may award him damages to compensate him for the defendant's conduct. You should consider any facts and circumstances of the arrest or imprisonment which increased its hardship to the plaintiff. You may take into consideration any mental pain and suffering, fright, nervousness, indignity, humiliation, embarrassment, and insult which he endured.

E. Malicious Prosecution

If you find the defendant liable for malicious prosecution of the plaintiff, you must award the plaintiff what he had to pay to defend against the citation issued by the defendant. You may also award him enough money to compensate him for any other loss he suffered on account of the citation and for undue vexation or annoyance.

F. Defamation

If you find the defendant is liable for defamation, you may award the plaintiff damages to compensate him for any injury to the plaintiff's reputation, injury to the plaintiff's business or income, humiliation, embarrassment, and mental anguish in both the plaintiff's personal and professional life.

Election of Foreperson

I will select _____ to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

A form of special verdict has been prepared for your convenience. You will take this form to the jury room.

You will note that each of these interrogatories or questions call for a "Yes" or "No" answer. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question, and will date and sign the special verdict form, when completed.