

Judge Avern Cohn: Preliminary Jury Instructions - Civil

Members of the Jury: You have now been sworn as the jury to try this case. By your verdict, you will decide the disputed issues of fact. As the judge, I will decide questions of law that may arise during the trial. Before you retire to deliberate at the close of this case, I will instruct you on the rules of law that you must follow and apply in deciding upon your verdict.

1. Give careful attention to the testimony and evidence which is presented during the trial. However, do not form or express any opinion about the case until you have heard ALL of the evidence AND have had the benefit of the closing arguments of the lawyers and my instructions on the applicable law.

The evidence, from which you will decide the facts, consists of the testimony of witnesses, documents and other things that are received into evidence as exhibits, and all facts which are admitted or stipulated by the parties.

Certain things are not evidence and cannot be considered by you:

Statements, arguments and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe that the evidence which is being offered is improper under the rules of evidence. Do not be influenced by an objection or by my ruling on the objection. If an objection is sustained, ignore the question. If it is overruled, treat the answer like any other response. If I tell you that an item of evidence is being received for a limited purpose only, follow my instruction.
3. Any testimony that you have been instructed to disregard is not evidence and must be considered in your deliberation on your verdict.
4. Any thing you may see or hear outside this courtroom is not evidence and must be disregarded. You must decide the case solely on the evidence presented here in this courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of one fact from which you may infer or conclude that another fact exists. I will give you further instructions on these as well as other matters at the end of the case. However, keep in mind that you may consider both kinds of evidence.

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

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you are not limited to the statement of the witnesses. In other words, you are not limited solely to what you see and hear from the witnesses. You are permitted to draw such reasonable inferences from facts which you feel are justified in the light of your own experience.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for this purpose at the end of the case. However, nothing that I say or do, or do not say or do not do, and nothing in my facial expressions or the inflections in my voice during the course of the trial should influence your verdict. Remember, although I am the judge of law, you are the judges of the facts.

You must not discuss the case with anyone, including your family, neighbors, friends, business associates and fellow jurors at any time during this trial. You must not permit anyone to attempt to discuss it with you or in your presence. If anyone persists in talking with you about the case despite your request not to do so, report this to me by note as soon as possible. However, do not discuss such a matter with any of your fellow jurors. Furthermore, in order to avoid the appearance of impropriety, you must not have any conversation with the parties, the lawyers, the witnesses or anyone else whom you may come to recognize as having some connection with this case, in or out of the courtroom, during your service as a juror. Do not talk with anyone who is associated with this case- not even to pass the time of day. In no other way can all of the parties be assured of the impartiality that they are entitled to from you as jurors.

You must also avoid reading any newspaper headline catches your eye, do not read the article. You must also refrain from listening to, or observing, any news program on television or radio which mentions this case. Media accounts may be inaccurate and may contain matters which are not proper evidence for your consideration. You must base your verdict solely on what is presented in the courtroom.

Do not conduct any research or undertake any investigation of the case on your own. Finally, do not form any opinion until all of the evidence has been presented. Keep an open mind until you start your deliberations at the end of the case.

The reason for these cautions, of course, is because it is your duty to decide this case solely on the basis of the testimony and evidence that is presented during the trial without consideration of any other matters.

During the trial, it may be necessary for me to talk with the lawyers from time to time out

of your hearing concerning questions of law or procedure that requires consideration by me alone. On occasion, you may be excused from the courtroom while I discuss these matters

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with the lawyers. I will try to limit such interruptions as much as possible. However, remember the importance of the issues in dispute at all times. Therefore, I ask you to be patient, even though the case may seem to move very slowly.

The case will proceed in the following order:

First, the Plaintiff will be given an opportunity to make an opening statement. The Defendant will be given an opportunity to make an opening statement after the Plaintiff's opening statement, or the Defendant may defer making an opening statement until the conclusion of the Plaintiff's case. Neither party is required to make an opening statement. An opening statement is not evidence. It is simply designed to provide you with an introduction to the evidence which the party intends to introduce.

Second, the Plaintiff will introduce evidence in support of his/her/its claims. At the conclusion of the Plaintiff's case, the defendant will introduce evidence in support of his/her/its defense.

Third, the parties will be given an opportunity to make closing arguments to you. These arguments are designed to provide you with the position of the parties on the basis of the evidence. What is said during the closing argument, just as what is said during the opening statement, is not evidence. The Plaintiff has the right to open and close the argument.

Fourth, I will instruct you on the law which you are to apply in reaching your verdict.

After the evidence has been completed and the arguments and the instructions have been given to you, you will be asked to go to the jury room to deliberate on your verdict. You will be asked to determine the facts from all of the testimony that you will have heard, and any other evidence that is admitted. You are the sole and exclusive judges of the facts. Neither I nor anyone else may invade your province. On the other hand, and with equal emphasis, you are bound to accept the rules of law that I give you, whether you agree with them or not.

It may become necessary for me to warn a party, a witness or an attorney who says or does something which is not in keeping with the rules of evidence. If this happens, do not draw any inference against the side to whom a warning may be addressed.

(Jurors may take notes during the course of the trial, since there may be some complicated issues in which the notes may be helpful. You are not obliged to take any

notes. If you do take notes, please keep them in confidence until you retire to deliberate, and then remember it is not your notes which are evidence but your recollection of the testimony and exhibits.)

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You will have the exhibits with you in jury room during your deliberations.

Finally, if you have any personal problems during the trial, they should be brought to my attention in writing. You may give a note to a member of my staff, who will give it to me. I will respond as quickly as possible if a response is required.