

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

**TERRY GENE BOLLEA professionally
known as HULK HOGAN,**

Plaintiff,

Case No. 12012447CI-011

vs.

**GAWKER MEDIA, LLC aka GAWKER
MEDIA; NICK DENTON; A.J.
DAULERIO,**

Defendants.

_____ /

JURY INSTRUCTIONS

Trial: March 7, 2016 – March 18, 2016

Presiding Judge:

**Pamela A.M. Campbell
Circuit Judge**

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INSTRUCTION # 1

DESCRIPTION OF THE CASE

Welcome. [I] [The clerk] will now administer your oath:

Do you solemnly swear or affirm that you will answer truthfully all questions asked of you as prospective jurors [so help you God]?

Now that you have been sworn, I'd like to give you an idea about what we are here to do.

This is a civil trial. A civil trial is different from a criminal case, where a defendant is charged by the state prosecutor with committing a crime. The subject of a civil trial is a disagreement between people or companies, where the claims of one or more of these parties have been brought to court to be resolved. It is called "a trial of a lawsuit."

Plaintiff, Terry Bollea, professionally known as Hulk Hogan, alleges in this case that the defendants, Gawker Media, LLC, Nick Denton and A.J. Daulerio, posted on their website Gawker.com, and refused to remove for six months, a secretly recorded video that included uncensored images and audio of Mr. Bollea naked and engaged in consensual sexual activity in a private bedroom. Mr. Bollea alleges that this video was secretly recorded without his knowledge or consent, and that he did not give his consent to defendants to post the contents of the secretly recorded video on

their website. Mr. Bollea alleges that over 7 million people accessed the video on the Internet after it was posted.

Mr. Bollea asserts claims against defendants for invasion of privacy, violation of his right of publicity, intentional infliction of emotional distress, and violation of Florida's Security of Communications Act. Mr. Bollea seeks compensatory damages and punitive damages.

Defendants deny Mr. Bollea's claims. They also contend that their post was protected by the First Amendment because it related to matters of legitimate public concern. Defendants contend that they published the excerpts from the video and accompanying audio from those excerpts with a good faith belief that the posting was lawful and protected by the First Amendment. They further claim that their publication was not made for a commercial or advertising purpose. And, Defendants maintain that Mr. Bollea did not experience emotional distress because of their conduct and that he is not entitled to monetary damages.

As you may recall from your Jury Questionnaire, the principal witnesses who will or may testify in this case are:

1. Terry Gene Bollea
2. David Houston
3. Elizabeth Rosenthal Traub
4. Mike Foley

5. Jeff Anderson
6. Shanti Shunn
7. Bubba Clem
8. Heather Cole
9. Nick Denton
10. A.J. Daulerio
11. Scott Kidder
12. Emma Carmichael
13. Andrew Gorenstein
14. Michael Kuntz
15. Erin Pettigrew
16. Tom Plunkett
17. John Cook
18. Richard Peirce
19. Jules Wortman
20. Tony Burton
21. Peter Horan
22. David Rice
23. Kevin Blatt
24. James Donohue
25. Brett Goldenberg

INSTRUCTION # 2

QUALIFICATIONS INSTRUCTION

Many of you have cell phones, computers, and other electronic devices. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about using your cell phones, electronic devices and computers. You must not use any device to search the Internet or to find out anything related to any cases in the courthouse.

Between now and when you have been discharged from jury duty by the judge, you must not provide or receive any information about your jury service to anyone, including friends, co-workers, and family members. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

In this age of electronic communication, I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including e-mail and text messages, about your jury service. You must not disclose your

thoughts about your jury service or ask for advice on how to decide any case.

After you are called to the courtroom, the judge will give you specific instructions about these matters. A judge will tell you when you are released from this instruction. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

INSTRUCTION # 3

INTRODUCTION OF PARTICIPANTS AND THEIR ROLES

Who are the people here and what do they do?

Judge/Court: I am the Judge. You may hear people occasionally refer to me as “The Court.” That is the formal name for my role. My job is to maintain order and decide how to apply the rules of the law to the trial. I will also explain various rules to you that you will need to know in order to do your job as the jury. It is my job to remain neutral on the issues of this lawsuit.

Parties: A party who files a lawsuit is called the Plaintiff. A party that is sued is called the Defendant.

Attorneys: The attorneys have the job of representing their clients. That means they speak for their client here at the trial. They have taken oaths as attorneys to do their best and to follow the rules for their profession.

Plaintiff’s Counsel: The attorneys on this side of the courtroom, Charles Harder, Kenneth Turkel, and Shane Vogt, represent Plaintiff Terry Bollea, who filed the lawsuit here at the courthouse. Their job is to present their client’s side of things to you. They and their client will be referred to most of the time as “the plaintiff.” Mr. Bollea’s attorney, David Houston, will also be seated at

Plaintiff's table. However, Mr. Houston is a witness in this case, so he is not representing Mr. Bollea in this trial.

Defendant's Counsel: The attorneys on this side of the courtroom represent Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio, the ones who have been sued. Mr. Sullivan, please introduce yourself and those seated at your table. Their job is to present their clients' side of things to you. They and their clients will usually be referred to here as "the defendants."

Court Clerk: This person sitting in front of me, (name), is the court clerk. [He] [She] is here to assist me with some of the mechanics of the trial process, including the numbering and collection of the exhibits that are introduced in the course of the trial.

Court Reporter: The person sitting at the stenographic machine, (name), is the court reporter. [His] [Her] job is to keep an accurate legal record of everything we say and do during this trial.

Bailiff: The person over there, (name), is the bailiff. [His] [Her] job is to maintain order and security in the courtroom. The bailiff is also my representative to the jury. Anything you need or any problems that come up for you during the course of the trial should be brought to [him] [her]. However, the bailiff cannot answer any of your questions about the case. Only I can do that.

Jury: Last, but not least, is the jury, which we will begin to select in a few moments from among all of you. The jury's job will be to decide what the facts are and what the facts mean. Jurors should be as neutral as possible at this point and have no fixed opinion about the lawsuit.

In order to have a fair and lawful trial, there are rules that all jurors must follow. A basic rule is that jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress that this rule means you must not use electronic devices or computers to communicate about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages to or from anyone about this case or your jury service.

You must not do any research or look up words, names, or anything else that may have anything to do with this case. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any

other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

Many of you may have cell phones, tablets, laptops or other electronic devices with you here in the courtroom.

All cell phones, computers, tablets or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.

What are the reasons for these rules? These rules are imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. If you investigate, research, or make inquiries on your own outside of the courtroom, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Any juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine or both.

All of your communications with courtroom personnel, or me, will be part of the record of these proceedings. That means those

communications shall either be made in open court with the court reporter present or, if they are in writing, the writing will be filed with the court clerk. I have instructed the courtroom personnel that any communications you have with them outside of my presence must be reported to me, and I will tell the parties [and their attorneys] about any communication from you that I believe may be of interest to the parties [and their attorneys].

However, you may communicate directly with courtroom personnel about matters concerning your comfort and safety, such as [juror parking] [location of break areas] [how and when to assemble for duty] [dress] [what personal items can be brought into the courthouse or jury room] [list any other types of routine ex parte communications permitted].

If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the bailiff.

INSTRUCTION # 4

EXPLANATION OF THE VOIR DIRE PROCESS

Voir Dire:

The last thing I want to do, before we begin to select the jury, is to explain to you how the selection process works.

Questions/Challenges: This is the part of the case where the parties and their lawyers have the opportunity to get to know a little bit about you, in order to help them come to their own conclusions about your ability to be fair and impartial, so they can decide who they think should be the jurors in this case.

How we go about that is as follows: First, I'll ask some general questions of you. Then, each of the lawyers will have more specific questions that they will ask of you. After they have asked all of their questions, I will meet with them and they will tell me their choices for jurors. Each side can ask that I exclude a person from serving on a jury if they can give me a reason to believe that he or she might be unable to be fair and impartial. That is what is called a challenge for cause. The lawyers also have a certain number of what are called peremptory challenges, by which they may exclude a person from the jury without giving a reason. By this process of elimination, the remaining persons are selected as the jury. It may

take more than one conference among the parties, their attorneys, and me before the final selections are made.

Purpose of Questioning: The questions that you will be asked during this process are not intended to embarrass you or unnecessarily pry into your personal affairs, but it is important that the parties and their attorneys know enough about you to make this important decision. If a question is asked that you would prefer not to answer in front of the whole courtroom, just let me know and you can come up here and give your answer just in front of the attorneys and me. If you have a question of either the attorneys or me, don't hesitate to let me know.

Response to Questioning: There are no right or wrong answers to the questions that will be asked of you. The only thing that I ask is that you answer the questions as frankly and as honestly and as completely as you can. You [will take] [have taken] an oath to answer all questions truthfully and completely and you must do so. Remaining silent when you have information you should disclose is a violation of that oath as well. If a juror violates this oath, it not only may result in having to try the case all over again but also can result in civil and criminal penalties against a juror personally. So, again, it is very important that you be as honest and complete with your answers as you possibly can. If you don't understand the

question, please raise your hand and ask for an explanation or clarification.

In sum, this is a process to assist the parties and their attorneys to select a fair and impartial jury. All of the questions they ask you are for this purpose. If, for any reason, you do not think you can be a fair and impartial juror, you must tell us.

INSTRUCTION # 5

OATH OF JUROR & INTRODUCTION

Administer Oath: Do you solemnly swear or affirm that you will well and truly try this case between the plaintiff and defendants, and a true verdict render according to the law and evidence [so help you God]?

You have now taken an oath to serve as jurors in this trial. Before we begin, I am going to provide you with an overview of the claims and defenses at issues in this case and let you know what you can expect as the trial proceeds.

It is my intention to give you an overview of the rules of law associated with the claims and defenses in this case, but it might be that I will not know for sure all of the law that will apply in this case until all of the evidence is presented. However, I can anticipate most of the law and will give you an overview of it at the beginning of the trial so that you will better understand what to be looking for while the evidence is presented. If I later decide that different or additional law applies to the case, I will tell you. In any event, at the end of the evidence I will give you the final instructions on which you must base your verdict, including specific instructions governing the elements of each claim and defense. At that time,

you will have a complete written set of the instructions so you do not have to memorize what I am about to tell you.

INSTRUCTION # 6

OVERVIEW OF CLAIMS AND DEFENSES

I will now discuss each of the specific claims and defenses, and define some of the terms you will use in deciding this case.

Plaintiff has asserted five claims against Defendants. Each of these is a separate and independent claim which you will decide in this case. These claims are as follows:

Plaintiff's first claim is for invasion of privacy based upon the publication of private facts. That claim consists of the publication of truthful private information that a reasonable person would find highly offensive, and that does not relate to a matter of legitimate public concern.

Plaintiff's second claim is for invasion of privacy based on intrusion upon seclusion. That claim consists of the wrongful intrusion through physical or electronic means into a place in which Plaintiff had a reasonable expectation of privacy in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

Plaintiff's third claim is for invasion of privacy based on misappropriation of the right of publicity. That claim consists of the unauthorized use of Plaintiff's name or likeness for a commercial or advertising purpose.

Plaintiff's fourth claim is for intentional infliction of emotional distress. That claim consists of extreme and outrageous conduct by a defendant that causes severe emotional distress and was engaged in either with an intent to cause severe emotional distress or a reckless disregard of the high probability that it would cause severe emotional distress. Extreme and outrageous conduct is behavior which, under the circumstances, goes well beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community. Emotional Distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

Plaintiff's fifth claim is for violation of Florida's Security of Communications Act. That claim consists of the disclosure of oral communications in which Plaintiff had a reasonable expectation of privacy by one who knows or has reason to know that the communications were recorded without Plaintiff's knowledge or consent.

Defendants deny Plaintiff's claims. Defendants contend that the video, in the context of the accompanying report and commentary, was protected by the First Amendment because it related to a matter of public concern. They also deny specific parts of Plaintiff's claims. For example, the Defendants deny that they intruded physically or electronically into a private place. They also

deny that they used Plaintiff's name or likeness for a commercial or advertising purpose. They further maintain that Plaintiff did not, in fact, suffer severe emotional distress as a result of their conduct. And they contend that they posted the video containing Plaintiff's oral communications on Gawker.com in good faith reliance on a good faith determination that their conduct was lawful.

INSTRUCTION # 7

LEGITIMATE PUBLIC CONCERN

The issue of “legitimate public concern” or “newsworthiness” is an element of Plaintiff’s claim for publication of private facts, as well as a First Amendment defense raised by Defendants to each of Plaintiff’s claims. I will now define legitimate public concern.

The right of privacy and the right of freedom of the press are both fundamental rights, which must be balanced. The right to privacy can be outweighed if a publication relates to matters of legitimate public concern.

A matter of public concern is one that can be fairly considered as relating to any matter of political, social, or other concern to the community or that is subject to general interest and concern to the public. The mere fact that a publication contains arguably inappropriate content does not remove it from the realm of legitimate public interest.

In weighing this issue, you should take into account the content, context and form of the material at the time of publication to determine whether it relates to a matter of public concern. The line between the right to privacy and the freedom of the press is drawn where the publication ceases to be the giving of information to which the public is entitled, and becomes a morbid and

sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he or she had no concern.

INSTRUCTION # 8

GREATER WEIGHT OF THE EVIDENCE

The parties must prove their respective claims and defenses by the greater weight of the evidence. “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

INSTRUCTION # 9

EXPLANATION OF THE TRIAL PROCEDURE

Now that you have heard an overview of the claims and defenses, I want to let you know what you can expect as the trial proceeds.

Opening Statements: In a few moments, the attorneys will each have a chance to make what are called opening statements. In an opening statement, an attorney is allowed to give you his or her views about what the evidence will be in the trial and what you are likely to see and hear in the testimony.

Evidentiary Phase: After the attorneys' opening statements the plaintiffs will bring their witnesses and evidence to you.

Evidence: Evidence is the information that the law allows you to see or hear in deciding this case. Evidence includes the testimony of the witnesses, documents, and anything else that I instruct you to consider.

Witnesses: A witness is a person who takes an oath to tell the truth and then answers attorneys' questions for the jury. The answering of attorneys' questions by witnesses is called "giving testimony." Testimony means statements that are made when someone has sworn an oath to tell the truth.

The plaintiff's lawyer will normally ask a witness the questions first. That is called direct examination. Then the defense lawyer may ask the same witness additional questions about whatever the witness has testified to. That is called cross-examination. Certain documents or other evidence may also be shown to you during direct or cross-examination. After the plaintiff's witnesses have testified, the defendant will have the opportunity to put witnesses on the stand and go through the same process. Then the plaintiff's lawyer gets to do cross-examination. The process is designed to be fair to both sides.

It is important that you remember that testimony comes from witnesses. The attorneys do not give testimony and they are not themselves witnesses.

Objections: Sometimes the attorneys will disagree about the rules for trial procedure when a question is asked of a witness. When that happens, one of the lawyers may make what is called an "objection." The rules for a trial can be complicated, and there are many reasons for attorneys to object. You should simply wait for me to decide how to proceed. If I say that an objection is "sustained," that means the witness may not answer the question. If I say that the objection is "overruled," that means the witness may answer the question.

When there is an objection and I make a decision, you must not assume from that decision that I have any particular opinion other than that the rules for conducting a trial are being correctly followed. If I say a question may not be asked or answered, you must not try to guess what the answer would have been. That is against the rules, too.

Side Bar Conferences: Sometimes I will need to speak to the attorneys about legal elements of the case that are not appropriate for the jury to hear. The attorneys and I will try to have as few of these conferences as possible while you are giving us your valuable time in the courtroom. But, if we do have to have such a conference during testimony, we will try to hold the conference at the side of my desk so that we do not have to take a break and ask you to leave the courtroom.

Recesses: Breaks in an ongoing trial are usually called “recesses.” During a recess you still have your duties as a juror and must follow the rules, even while having coffee, at lunch, or at home.

Instructions Before Closing Arguments: After all the evidence has been presented to you, I will instruct you in the law that you must follow. It is important that you remember these instructions to assist you in evaluating the final attorney presentations, which

come next, and, later, during your deliberations, to help you correctly sort through the evidence to reach your decision.

Closing Arguments: The attorneys will then have the opportunity to make their final presentations to you, which are called closing arguments.

Final Instructions: After you have heard the closing arguments, I will instruct you further in the law as well as explain to you the procedures you must follow to decide the case.

Deliberations: After you hear the final jury instructions, you will go to the jury room and discuss and decide the questions I have put on your verdict form. [You will have a copy of the jury instructions to use during your discussions.] The discussions you have and the decisions you make are usually called “jury deliberations.” Your deliberations are absolutely private and neither I nor anyone else will be with you in the jury room.

Verdict: When you have finished answering the questions, you will give the verdict form to the bailiff, and we will all return to the courtroom where your verdict will be read. When that is completed, you will be released from your assignment as a juror.

What are the rules?

Finally, before we begin the trial, I want to give you just a brief explanation of rules you must follow as the case proceeds.

Keeping an Open Mind: You must pay close attention to the testimony and other evidence as it comes into the trial. However, you must avoid forming any final opinion or telling anyone else your views on the case until you begin your deliberations. This rule requires you to keep an open mind until you have heard all of the evidence and is designed to prevent you from influencing how your fellow jurors think until they have heard all of the evidence and had an opportunity to form their own opinions. The time and place for coming to your final opinions and speaking about them with your fellow jurors is during deliberations in the jury room, after all of the evidence has been presented, closing arguments have been made, and I have instructed you on the law. It is important that you hear all of the facts and that you hear the law and how to apply it before you start deciding anything.

Consider Only the Evidence: It is the things you hear and see in this courtroom that matter in this trial. The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and the lawyers. Doing anything else is wrong and is against the law. That means that you must not do any work or investigation of your own about the case. You must not obtain on your own any information about the case or about anyone involved in the case,

from any source whatsoever. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. You must not visit places mentioned in the trial or use the internet to look at maps or pictures to see any place discussed during trial.

Do not provide any information about this case to anyone, including friends or family members. Do not let anyone, including the closest family members, make comments to you or ask questions about the trial. Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. So, do not let even the closest family members make comments to you or ask questions about the trial. In this age of electronic communication, I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones, tablets, computers or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury service. Do not discuss this case or ask for advice by any means at

all, including posting information on an Internet website, chat room or blog.

No Mid-Trial Discussions: When we are in a recess, do not discuss anything about the trial or the case with each other or with anyone else. If attorneys approach you, don't speak with them. The law says they are to avoid contact with you. If an attorney will not look at you or speak to you, do not be offended or form a conclusion about that behavior. The attorney is not supposed to interact with jurors outside of the courtroom and is only following the rules. The attorney is not being impolite. If an attorney or anyone else does try to speak with you or says something about the case in your presence, please inform the bailiff immediately.

Only the Jury Decides: Only you get to deliberate and answer the verdict questions at the end of the trial. I will not intrude into your deliberations at all. I am required to be neutral. You should not assume that I prefer one decision over another. You should not try to guess what my opinion is about any part of the case. It would be wrong for you to conclude that anything I say or do means that I am for one side or another in the trial. Discussing and deciding the facts is your job alone.

Use of Cell Phones and Electronic Devices in the Courtroom and Jury Room:

All cell phones or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. After each recess, please double check to make sure your device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If there are breaks in the deliberations, I may allow you to communicate with your family or friends, but do not communicate about the case or your deliberations. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone number will be provided to you.

INSTRUCTION # 10

NOTE-TAKING BY JURORS

If you would like to take notes during the trial, you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you individually.

You will be provided with a note pad and a pen for use if you wish to take notes. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the bailiff will take possession of your notes and will return them to you when we reconvene. After you have completed your deliberations, the bailiff will deliver your notes to me. They will be destroyed. No one will ever read your notes.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Your notes should be used only as aids to your memory.

Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than each juror's memory of the evidence.

INSTRUCTION # 11

JUROR QUESTIONS

Questions for the court or courtroom personnel:

During the trial, you may have a question about these proceedings. If so, please write it down and hand it to the bailiff, who will then hand it to me. I will review your question with the parties and their attorneys before responding.

Questions for witnesses:

You also may have a question you think should be asked of a witness. If so, there is a way for you to request that I ask the witness a question. After all the attorneys have completed their questioning of the witness, you should raise your hand if you have a question. I will then give you sufficient time to write the question on a piece of paper, fold it, and give it to the bailiff, who will pass it to me. Do not put your name on the question, show it to anyone or discuss it with anyone.

I will then review the question with the attorneys. Under our law, only certain evidence may be considered by a jury in determining a verdict. You are bound by the same rules of evidence that control the attorneys' questions. If I decide that the question may not be asked under our rules of evidence, I will tell you. Otherwise, I will direct the question to the witness. The attorneys

may then ask follow-up questions if they wish. If there are additional questions from jurors, we will follow the same procedure again.

By providing this procedure, I do not mean to suggest that you must or should submit written questions for witnesses. In most cases, the lawyers will have asked the necessary questions.

INSTRUCTION # 12

DEPOSITION TESTIMONY, INTERROGATORIES, STIPULATED TESTIMONY, STIPULATIONS, AND ADMISSIONS

Deposition or prior testimony:

Members of the jury, the sworn testimony of (name), given before trial, will now be presented. You are to consider and weigh this testimony as you would any other evidence in the case.

Interrogatories:

Members of the jury, answers to interrogatories will now be read to you. Interrogatories are written questions that have been presented before trial by one party to another. They are answered under oath. You are to consider and weigh these questions and answers as you would any other evidence in the case.

Stipulated testimony:

Members of the jury, the parties have agreed that if (name of witness) were called as a witness, [he] [she] would testify (read or describe the testimony). You are to consider and weigh this testimony as you would any other evidence in the case.

Stipulations:

Members of the jury, the parties have agreed to certain facts. You must accept these facts as true. (Read the agreed facts).

Admissions:

1. Applicable to all parties:

Members of the jury, (identify the party or parties that have admitted the facts) [has] [have] admitted certain facts. You must accept these facts as true. (Read the admissions).

2. Applicable to fewer than all parties:

Members of the jury, (identify the party or parties that have admitted the facts) [has] [have] admitted certain facts. You must accept these facts as true in deciding the issues between (identify the affected parties), but these facts should not be used in deciding the issues between (identify the unaffected parties). (Read the admissions).

INSTRUCTION # 13

**INSTRUCTION WHEN FIRST ITEM OF DOCUMENTARY,
PHOTOGRAPHIC, OR PHYSICAL EVIDENCE IS ADMITTED**

The (describe item of evidence) has now been received in evidence. Witnesses may testify about or refer to this or any other item of evidence during the remainder of the trial. This and all other items received in evidence will be available to you for examination during your deliberations at the end of the trial.

INSTRUCTION # 14

**INSTRUCTION WHEN EVIDENCE IS
FIRST PUBLISHED TO JURORS**

The (describe item of evidence) has been received in evidence. It is being shown to you now to help you understand the testimony of this witness and other witnesses in the case, as well as the evidence as a whole. You may examine (describe item of evidence) briefly now. It will also be available to you for examination during your deliberations at the end of the trial.

INSTRUCTION # 15

INSTRUCTION REGARDING VISUAL OR DEMONSTRATIVE AIDS

Generally:

This witness will be using (identify demonstrative or visual aid(s)) to assist in explaining or illustrating [his] [her] testimony. The testimony of the witness is evidence; however, [this] [these] (identify demonstrative or visual aid(s)) [is] [are] not to be considered as evidence in the case unless received in evidence, and should not be used as a substitute for evidence. Only items received in evidence will be available to you for consideration during your deliberations.

Specially created visual or demonstrative aids based on disputed assumptions:

This witness will be using (identify demonstrative aid(s)) to assist in explaining or illustrating [his] [her] testimony. [This] [These] item[s] [has] [have] been prepared to assist this witness in explaining [his] [her] testimony. [It] [They] may be based on assumptions which you are free to accept or reject. The testimony of the witness is evidence; however, [this] [these] (identify demonstrative or visual aid(s)) [is] [are] not to be considered as evidence in the case unless received in evidence, and should not be

used as a substitute for evidence. Only items received in evidence will be available to you for consideration during your deliberations.

INSTRUCTION # 16

EVIDENCE ADMITTED FOR A LIMITED PURPOSE

The (describe item of evidence) has now been received into evidence. It has been admitted only [for the purpose of (describe purpose)] [as to (name party)]. You may consider it only [for that purpose] [as it might affect (name party)]. You may not consider that evidence [for any other purpose] [as to [any other party] [(name other party(s))].

INSTRUCTION # 17

INSTRUCTION BEFORE RECESS

We are about to take [our first] [a] recess. Remember that all of the rules I have given you apply even when you are outside the courtroom, such as at recess.

Remember the basic rule: Do not talk to anyone, including your fellow jurors, friends, family or co-workers about anything having to do with this trial, except to speak to court staff. This means no e-mailing, text messaging, tweeting, blogging, or any other form of communication. You cannot do any research about the case or look up any information about the case. Remember to observe during our recess the other rules I gave you. If you become aware of any violation of any of these rules at all, notify court personnel of the violation.

After each recess, please double check to make sure [that your cell phone or other electronic device is turned off completely] [that you do not bring your cell phone or other electronic device into the courtroom or jury room].

INSTRUCTION # 18

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. You will recall at the beginning of the case I told you that if, at the end of the case I decided that different law applies, I would tell you so. These instructions are (slightly) different from what I gave you at the beginning and it is these rules of law that you must now follow. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

INSTRUCTION # 19

BURDEN OF PROOF

The plaintiff must prove his claims for invasion of privacy based on publication of private facts, invasion of privacy by intrusion upon seclusion, invasion of privacy by misappropriation of the right of publicity, intentional infliction of emotional distress, and violation of Florida's Security of Communications Act by the greater weight of the evidence. If plaintiff proves his claims, then you will decide whether defendants proved by the greater weight of the evidence their affirmative defenses. If plaintiff proves any or all of his claims, and defendants do not prove their defenses, you will then consider the issue of damages. I will now define some of the terms you will use in deciding this case.

INSTRUCTION # 20

GREATER WEIGHT OF THE EVIDENCE

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

INSTRUCTION # 21

FINAL OVERVIEW OF CLAIMS AND DEFENSES

I will now discuss each of the specific claims and defenses, and define some of the terms you will use in deciding this case.

Plaintiff has asserted five claims against Defendants. Each of these is a separate and independent claim which you will decide in this case. These claims are as follows:

Plaintiff's first claim is for invasion of privacy based upon the publication of private facts. That claim consists of the publication of truthful private information that a reasonable person would find highly offensive, and that does not relate to a matter of legitimate public concern.

Plaintiff's second claim is for invasion of privacy based on intrusion upon seclusion. That claim consists of the wrongful intrusion through physical or electronic means into a place in which Plaintiff had a reasonable expectation of privacy in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

Plaintiff's third claim is for invasion of privacy based on misappropriation of the right of publicity. That claim consists of the unauthorized use of Plaintiff's name or likeness for a commercial or advertising purpose.

Plaintiff's fourth claim is for intentional infliction of emotional distress. That claim consists of extreme and outrageous conduct by a defendant that causes severe emotional distress and was engaged in either with an intent to cause severe emotional distress or a reckless disregard of the high probability that it would cause severe emotional distress. Extreme and outrageous conduct is behavior which, under the circumstances, goes well beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community. Emotional Distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

Plaintiff's fifth claim is for violation of Florida's Security of Communications Act. That claim consists of the disclosure of oral communications in which Plaintiff had a reasonable expectation of privacy by one who knows or has reason to know that the communications were recorded without Plaintiff's knowledge or consent.

Defendants deny Plaintiff's claims. Defendants contend that the video, in the context of the accompanying report and commentary, was protected by the First Amendment because it related to a matter of public concern. They also deny specific parts of Plaintiff's claims. For example, the Defendants deny that they intruded physically or electronically into a private place. They also

deny that they used Plaintiff's name or likeness for a commercial or advertising purpose. They further maintain that Plaintiff did not, in fact, suffer severe emotional distress as a result of their conduct. And they contend that they posted the video containing Plaintiff's oral communications on Gawker.com in good faith reliance on a good faith determination that their conduct was lawful.

INSTRUCTION # 22

PUBLICATION OF PRIVATE FACTS

The issues for you to decide on Plaintiff's claim for invasion of privacy for publication of private facts are:

- (1) Whether Defendants publicly disclosed private facts concerning Plaintiff by posting the video that is the subject matter of this lawsuit (defined herein as the "**VIDEO**") on Gawker.com; and, if so,
- (2) Whether posting the **VIDEO** on the website Gawker.com was highly offensive to a person of ordinary sensibilities; and, if so,
- (3) Whether the **VIDEO** was not related to a matter of legitimate public concern.

INSTRUCTION # 23

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

The issues for you to decide on Plaintiff's claim for invasion of privacy based on intrusion are:

- (1) Whether the Defendants, in posting the **VIDEO**, wrongfully intruded into a place where plaintiff had a reasonable expectation of privacy; and, if so,
- (2) Whether posting the **VIDEO** would outrage or cause mental suffering, shame, humiliation or hurt feelings to a person of ordinary sensibilities.

INSTRUCTION # 24

INVASION OF PRIVACY BASED ON RIGHT OF PUBLICITY

The issues for you to decide on Plaintiff's claim for invasion of privacy based on common law right of publicity are:

- (1) Whether Defendants, in posting the **VIDEO** on Gawker.com, used Plaintiff's name or likeness for a commercial or advertising purpose; and, if so,
- (2) Whether Plaintiff gave his consent to Defendants to use his image or likeness.

I will now define some of these terms for you. Using another's name or image for a commercial or advertising purpose means using the name or image to directly promote a product or service other than the publication in which the name or image is used. In other words, to find that the Defendants used Plaintiff's name or likeness for a commercial or advertising purpose, you must find that his name or likeness was used to promote something other than the Defendants' own publication.

INSTRUCTION # 25

ISSUES ON INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The issues for you to decide on Plaintiff's claim for intentional infliction of emotional distress are:

- (1) Whether the Defendants engaged in extreme and outrageous conduct in posting the **VIDEO** on Gawker.com; and, if so,
- (2) Whether the Defendants acted either with the intent to cause Plaintiff severe emotional distress, or acted with reckless disregard of the high probability of causing Plaintiff severe emotional distress; and, if so,
- (3) Whether Plaintiff in fact suffered severe emotional distress; and, if so
- (4) Whether that extreme and outrageous conduct was a legal cause of severe emotional distress.

I will now define some of these terms for you now:

Extreme and outrageous conduct is behavior, which, under the circumstances, goes well beyond all possible bounds of decency and is regarded as shocking, atrocious, and utterly intolerable in a civilized community.

Emotional distress is severe when it is of such intensity or duration that no ordinary person should be expected to endure it.

Legal cause generally:

Extreme and outrageous conduct is a legal cause of severe and emotional distress if it directly and in natural and continuous sequence produces or contributes substantially to producing such severe emotional distress, so that it can reasonably be said that, but for the extreme and outrageous conduct, the severe emotional distress would not have occurred.

Concurring cause:

In order to be regarded as a legal cause of severe emotional distress, extreme and outrageous conduct need not be the only cause. Extreme and outrageous conduct may be a legal cause of severe emotional distress even though it operates in combination with some other cause if the extreme and outrageous conduct contributes substantially to producing such severe emotional distress.

INSTRUCTION # 26

VIOLATION OF FLORIDA SECURITY OF COMMUNICATIONS ACT

The issues for you to decide on Plaintiff's claim for violation of Florida's Security of Communications Act are:

- (1) Whether the "oral communications" of Plaintiff contained on the **VIDEO** were recorded without his knowledge or consent; and, if so,
- (2) Whether Plaintiff had a reasonable expectation that his oral communications were not being recorded; and, if so,
- (3) Whether Defendants knew or had reason to know that those oral communications were recorded without his knowledge or consent; and, if so,
- (4) Whether the Defendants intentionally disclosed or used those oral communications; and, if so,
- (5) Whether Plaintiff suffered actual damages as a result of defendants' disclosure or use of the oral communications.

For a conversation to qualify as an "**oral communication**," the plaintiff must have an actual subjective expectation of privacy, and society must be prepared to recognize the expectation as reasonable under the circumstances. Where both elements are present, the statute has been violated whether the intercepted

communication is private in nature or not. A significant factor in determining the reasonableness of the expectation of privacy is the location in which the conversation occurs.

INSTRUCTION # 27

BURDEN OF PROOF

If the greater weight of the evidence does not support Plaintiff's claims, your verdict should be for Defendants.

However, if the greater weight of the evidence supports Plaintiff's claims, then you shall consider the defenses raised by Defendants. If the greater weight of the evidence supports the defenses, your verdict should be for Defendants. However, if the greater weight of the evidence does not support the defenses, your verdict will be for Plaintiff and you will consider the issue of damages.

INSTRUCTION # 28

LEGITIMATE PUBLIC CONCERN

The issue of “legitimate public concern” or “newsworthiness” is an element of Plaintiff’s claim for publication of private facts, as well as a First Amendment defense raised by Defendants to each of Plaintiff’s claims. I will now define legitimate public concern.

The right of privacy and the right of freedom of the press are both fundamental rights, which must be balanced. The right to privacy can be outweighed if a publication relates to matters of legitimate public concern.

A matter of public concern is one that can be fairly considered as relating to any matter of political, social, or other concern to the community or that is subject to general interest and concern to the public. The mere fact that a publication contains arguably inappropriate content does not remove it from the realm of legitimate public interest.

In weighing this issue, you should take into account the content, context and form of the material at the time of publication to determine whether it relates to a matter of public concern. The line between the right to privacy and the freedom of the press is drawn where the publication ceases to be the giving of information to which the public is entitled, and becomes a morbid and

sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he or she had no concern.

INSTRUCTION # 29

GOOD FAITH DEFENSE

Defendants have asserted a “good faith” defense which applies only to Plaintiff’s claim under Florida’s Security of Communications Act. If you find that the Defendants relied in good faith on a good faith determination that their conduct in disclosing the oral communications of Plaintiff contained on the **Video** was lawful, then they have a complete defense to this claim.

INSTRUCTION # 30

DAMAGES: INTRODUCTION

If your verdict is for defendants, you will not consider the matter of damages. But if the greater weight of the evidence supports any of plaintiff's claims, you should determine and write on the verdict form, in dollars, the total amount of loss, injury, or damage which the greater weight of the evidence shows will fairly and adequately compensate plaintiff for his loss, injury, or damage.

INSTRUCTION # 31

DAMAGES

If you find for Plaintiff, you shall consider the following elements of damage sought by Plaintiff:

1. On the claims for invasion of privacy by publication of private facts, intrusion upon seclusion, intentional infliction of emotional distress, and violation of the Florida Security Communications Act, you may award an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Plaintiff for the emotional distress he experienced as a consequence of the publication of the Video. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any award should be fair and just in light of the evidence. This is the only damage you can award for these claims.

If you find for Plaintiff on his claim for publication of private facts and/or intrusion upon seclusion, but find that no such damages have been proved, you may award nominal damages. Nominal damages are damages of an inconsequential amount which are awarded to vindicate a right where a wrong is established but no damage is proved.

2. On the claim for misappropriation of the right of publicity, you may award an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Plaintiff for any economic damages relating to the publication of the

Video. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any award should be fair and just in light of the evidence.

INSTRUCTION # 32

LIABILITY OF MULTIPLE TORTFEASORS

If you find for plaintiff against more than one of the defendants, you should assess plaintiff's damages in a single amount against the defendants whom you find to be liable to plaintiff.

INSTRUCTION # 33

MULTIPLE CLAIMS, NUMEROUS PARTIES, CONSOLIDATED CASES

In your deliberations, you will consider and decide five distinct claims. They include 1) Publication of Private Facts; 2) Intrusion Upon Seclusion; 3) Misappropriation of the Right of Publicity; 4) Intentional Infliction of Emotional Distress; and 5) violation of the Florida Security of Communications Act. Although these claims have been tried together, each is separate from the others, and each party is entitled to have you separately consider each claim as it affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.

INSTRUCTION # 34

PUNITIVE DAMAGES — BIFURCATED PROCEDURE

First stage of bifurcated punitive damages procedure:

There is an additional claim in this case that you must decide. If you find for the Plaintiff and against one of more Defendants, you must decide whether, in addition to compensatory damages, punitive damages are warranted as punishment to one or more of the defendants and as a deterrent to others.

The trial of the punitive damages issue is divided into two parts. In this first part, you will decide whether the conduct of the Defendants is such that punitive damages are warranted. If you decide that punitive damages are warranted, we will proceed to the second part of that issue during which the parties may present additional evidence and argument on the issue of punitive damages. I will then give you additional instructions, after which you will decide whether, in your discretion, punitive damages will be assessed and, if so, the amount.

Punitive damages for acts of an individual defendant:

Plaintiff claims that punitive damages should be awarded against defendants for intentionally or recklessly posting the **Video** on Gawker.com. Punitive damages are warranted against defendants if you find by clear and convincing evidence that they

were guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against one or all of defendants. If clear and convincing evidence does not show such conduct by defendants, punitive damages are not warranted. Your determination to award punitive damages to Plaintiff must be based on actual harm suffered by him. You may not punish Defendants for harm suffered by anyone else. When determining the amount, if any, of punitive damages to be awarded, you may not impose punitive damages to punish a defendant for harms caused to others whose cases are not before you.

“Intentional misconduct” means that a defendant had actual knowledge of the wrongfulness of the conduct and there was a high probability of injury or damage to plaintiff and, despite that knowledge, defendant intentionally pursued that course of conduct, resulting in injury or damage.

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive. As I have already instructed you, “greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Direct liability for acts of managing agent, primary owner, or certain others:

Plaintiff claims that punitive damages should be awarded against Gawker Media, LLC for the acts of Nick Denton and A.J. Daulerio. Punitive damages are warranted against Gawker Media, LLC if you find by clear and convincing evidence that Nick Denton or A.J. Daulerio were personally guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against Gawker Media, LLC. If clear and convincing evidence does not show such conduct by Nick Denton or A.J. Daulerio, punitive damages are not warranted against Gawker Media, LLC.

Vicarious liability for acts of employee:

Plaintiff claims that punitive damages should be awarded against A.J. Daulerio and Gawker Media, LLC for A.J. Daulerio's conduct. Punitive damages are warranted against A.J. Daulerio if you find by clear and convincing evidence that A.J. Daulerio was personally guilty of intentional misconduct which was a substantial cause of loss, injury or damage to plaintiff. Under those circumstances you may, in your discretion, award punitive damages against A.J. Daulerio. If clear and convincing evidence does not

show such conduct by A.J. Daulerio, punitive damages are not warranted against either A.J. Daulerio or Gawker Media, LLC.

If you find that punitive damages are warranted against A.J. Daulerio you may also, in your discretion, award punitive damages against Gawker Media, LLC if you find from clear and convincing evidence that:

(A). Gawker Media, LLC actively and knowingly participated in such conduct of A.J. Daulerio; or

(B). the officers, directors or managers of Gawker Media, LLC knowingly condoned, ratified, or consented to such conduct of A.J. Daulerio; or

(C). Gawker Media, LLC engaged in conduct that constituted gross negligence and that contributed to the loss, damage or injury to plaintiff.

If clear and convincing evidence does not show such conduct by Gawker Media, LLC punitive damages are not warranted against Gawker Media, LLC.

Second stage of bifurcated punitive damage procedure:

Opening instruction, second stage:

Members of the jury, I am now going to tell you about the rules of law that apply to determining whether punitive damages should be assessed and, if so, in what amount. When I finish with

these instructions, the parties will present additional evidence. You should consider this additional evidence along with the evidence already presented, and you should decide any disputed factual issues by the greater weight of the evidence. “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Punitive damages — determination of amount:

You are to decide the amount of punitive damages, if any, to be assessed as punishment against defendants and as a deterrent to others. This amount would be in addition to the compensatory damages you have previously awarded. In making this determination, you should consider the following:

(A). the nature, extent and degree of misconduct and the related circumstances, including the following:

i. whether the wrongful conduct was motivated solely by unreasonable financial gain;

ii. whether the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by defendants;

iii. whether, at the time of the loss, injury or damage to plaintiff, the defendants had a specific intent to harm plaintiff and the conduct of defendants did in fact harm plaintiff, and

(B). the financial resources of defendants; and

You may in your discretion decline to assess punitive damages. You may assess punitive damages against one defendant and not the other[s] or against more than one defendant. Punitive damages may be assessed against different defendants in different amounts.

Closing instruction, second stage:

Members of the jury, you have now heard and received all of the evidence on the issue of punitive damages. Your verdict on the issues raised by the punitive damages claim of plaintiff against defendants must be based on the evidence that has been received during the trial of the first phase of this case and on the evidence that has been received in these proceedings and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice or sympathy for or against any party.

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you.

You will be given a form of verdict, which I shall now read to you:

When you have agreed on your verdict, the foreman or forewoman, acting for the jury, should date and sign the verdict. You may now retire to consider your verdict.

INSTRUCTION # 35

WEIGHING THE EVIDENCE

In deciding this case, it is your duty as jurors [to decide the issues, and only those issues, that I submit for your determination] [to answer certain questions I ask you to answer on a special form, called a verdict form]. You must come to an agreement about [your verdict] [what your answers will be. Your agreed-upon answers to my questions are called your jury verdict].

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence [and] all facts that were admitted or agreed to by the parties [, and any fact of which the court has taken judicial notice (explain as necessary)].

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

INSTRUCTION # 36

BELIEVABILITY OF WITNESSES

General considerations:

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Expert witnesses:

[You have heard opinion testimony [on certain technical subjects] from [a person] [persons] referred to as [an] expert witness[es].] [Some of the testimony before you was in the form of opinions about certain technical subjects.]

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given

by the witness for the opinion expressed, and all the other evidence in the case.

INSTRUCTION # 37

CONCLUDING INSTRUCTION (BEFORE FINAL ARGUMENT)

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

INSTRUCTION # 38

CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. [Before you do so, I have a few last instructions for you.]

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. Do not visit or view the scene of any event involved in this case or look at maps or pictures on the Internet. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or

electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case.

If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to

influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the

case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

[I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: (read form of verdict)]

[You will be given (state number) forms of verdict, which I shall now read to you: (read form of verdict(s))]

[If you find for plaintiff, your verdict will be in the following form: (read form of verdict)]

[If you find for (defendant(s)), your verdict will be in the following form: (read form of verdict)]

Your verdict[s] must be unanimous, that is, your verdict must be agreed to by each of you. When you have [agreed on your verdict[s]] [finished filling out the form[s]], your foreperson must

write the date and sign it at the bottom and return the verdict[s] to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict[s].