PRELIMINARY INSTRUCTIONS

PRELIMINARY INSTRUCTION NO. 1

Introduction

MEMBERS OF THE JURY:

You have been selected and sworn as the jury to try the case of *Cynthia Stella, and the Estate of Heather Miller vs. Davis County, Sheriff Todd Richardson, Marvin Anderson, and James Ondricek*. I will give you some instructions now and some later. You are required to consider and follow all of my instructions. Keep an open mind throughout the trial. At the end of the trial, you will discuss the evidence and reach a verdict. You have each taken an oath to "well and truly try the issues in the case now on trial" and render "a true verdict according to the evidence and instructions" that I will give you. The oath is your promise to do your duty as a member of the jury. Be alert. Pay attention. Follow my instructions.

I will give you some preliminary instructions to guide you in your participation in the trial. First, I will explain the nature of the case. Then, I will explain what your duties are as jurors and how the trial will proceed. Once both parties have presented their evidence, I will give you more detailed instructions on what is required to prove each claim and how you should proceed to reach a verdict.

PRELIMINARY INSTRUCTION NO. 2

Plaintiff and Defendant

This is a civil case. The parties who are bringing a lawsuit are called "plaintiffs," while the parties being sued are called "defendants." The plaintiffs in this case are Cynthia Stella, and the Estate of Heather Miller. I will sometimes refer to them collectively as Stella and Miller. The defendants in this case are Davis County, Todd Richardson, Marvin Anderson, and James Ondricek. I will sometimes refer to them collectively as the Davis County Defendants. You will decide whether Davis County Defendants are liable to Stella and Miller.

"Person" means an individual, corporation, organization, or other legal entity. The fact that one of the plaintiffs is a natural person and one of the defendants is a municipality should not play any part in your deliberations. You must decide this case as if it were between individuals.

PRELIMINARY INSTRUCTION NO. 3

Statement of the Case

To help you understand what you will see and hear, I will now briefly explain the background of the case. During their Opening Statements, the attorneys for the parties will provide you with a more detailed explanation of their respective positions.

This case is about an incident that occurred at the Davis County Jail in 2016. Around 6:00 p.m. Heather Miller fell from a top bunk at the jail and landed on the concrete floor. The fall caused Miller to rupture her spleen. A jail nurse, Nurse Anderson, responded to the scene. Nurse Anderson examined Miller but did not take her vital signs. Nurse Anderson concluded that Miller was suffering from drug withdrawal. He transferred Miller by wheelchair to another unit where she could have a bottom bunk. Officials left Miller on the bottom bunk, but when they returned she was lying on the floor. Non-medical officers performed wellness checks around 6:30 p.m. and 7:30 p.m. Miller remained on the floor.

At 8:20 p.m., Deputy Lloyd observed blood on Miller's chin and called medical. Nurse Layton told Deputy Lloyd not to worry about Miller. Deputy Lloyd called a female officer, Sergeant Wall, to check on Miller. Sergeant Wall observed that Miller was unable to stand up and kept rolling around and moaning. Sergeant Wall called medical, who told her to bring Miller to them. When Miller arrived at medical, Nurse Anderson told Sergeant Wall to call an ambulance based on her appearance. The ambulance arrived at 8:50 p.m. and left for the hospital at 9:03 p.m. Miller went into cardiac arrest while on the way to the hospital. The medical examiner reported that Miller died from blunt force trauma to her side, resulting in internal bleeding from her ruptured spleen.

Heather Miller's estate and her mother, Stella Davis, brought this suit against four defendants, Davis County, Sheriff Richardson, Nurse Ondricek, and Nurse Anderson. Davis County is the municipality that operates the jail where the events took place and employs the other three defendants. Sheriff Richardson was the Sheriff in charge of the jail. Nurse Ondricek supervised the jail's nursing staff. And, as you have already heard, Nurse Anderson is the nurse who responded to Miller's fall.

Stella and Miller claim that Nurse Anderson violated Miller's federal constitutional rights by failing to provide proper medical care. Stella and Miller also claim that Davis County violated Miller's federal constitutional rights by failing to adequately train its jail nurses. Lastly, Stella and Miller claim that all of the Davis County Defendants caused Miller to suffer unnecessary rigor in confinement in violation of the Utah Constitution.

PRELIMINARY INSTRUCTION NO. 4

Role of Judge, Jury, and Lawyers

All of us—judge, jury, and lawyers—are officers of the court and have different roles during the trial:

As the judge, I will supervise the trial, decide legal issues, and instruct you on the law.

As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.

The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

Things that you see on television and in the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy, and civility.

PRELIMINARY INSTRUCTION NO. 5

Sequence of Instructions Not Significant

The order in which I give the instructions has no significance. You must consider the instructions in their entirety and you should give all of them equal weight. I do not intend to emphasize any particular instruction, and neither should you.

PRELIMINARY INSTRUCTION NO. 6

Bias

You must come to the case without bias. You must not decide this case for or against anyone because you feel sorry for anyone or angry at anyone. You must decide this case based on the facts and the law, without regard to sympathy, passion, or prejudice.

PRELIMINARY INSTRUCTION NO. 7

Multiple Parties

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

Although there are two plaintiffs, that does not mean that they are equally entitled to recover or that either of them is entitled to recover. Each defendant is entitled to a fair consideration of its defenses against each plaintiff, just as each plaintiff is entitled to a fair consideration of its claims against each defendant.

Although there are four defendants, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of its defenses against each of Stella and Miller's claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other Davis County Defendants are liable.

PRELIMINARY INSTRUCTION NO. 8

Evidence

As jurors you will decide whether the defendants are liable to the plaintiffs. You must base your decision only on the evidence. Evidence usually consists of the testimony and exhibits presented at trial. Testimony is what witnesses say under oath. Exhibits are things like documents, photographs, or other physical objects. What the lawyers say is not evidence. For example, their opening statements and closing arguments are not evidence.

PRELIMINARY INSTRUCTION NO. 9

Preponderance of the Evidence

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence. This is a lower burden of proof than "beyond a reasonable doubt."

When I tell you that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true. Another way of saying this is proof by the greater weight of evidence, however slight.

The preponderance of the evidence is not determined simply by counting the number of witnesses or the amount of the testimony. Rather, it is determined by evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

When answering questions asked on the Special Verdict form that apply the preponderance of the evidence standard, if you find that the party's claim or defense is more likely true than not true, you should answer that question with a "Yes." If, however, the evidence appears to be equally balanced or in favor of the other party's position, then you must answer that question with a "No."

If the evidence should fail to establish any essential element of a party's claim or defense by a preponderance of the evidence, then you should find for the other party as to that claim or defense.

PRELIMINARY INSTRUCTION NO. 10

Types of Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Statements and arguments of the lawyers are not evidence in the case. But when the parties on both sides agree as to the existence of a fact, you must accept that fact as true.

Unless you are otherwise instructed, anything you may have seen or heard outside of the courtroom is not evidence, and must be entirely disregarded.

PRELIMINARY INSTRUCTION NO. 11

Limited Purpose Evidence

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose.

PRELIMINARY INSTRUCTION NO. 12

Judge's Questions

During the course of the trial, I might ask a witness a question. Do not assume that I hold any opinion on the matters to which my question may have related. You as jurors may consider whatever evidence you deem relevant.

PRELIMINARY INSTRUCTION NO. 13

Credibility of Witnesses

You are to determine which witnesses to believe, what parts of their testimony you believe, and what weight or value to give that testimony. In making these determinations, you may consider some or all of the following:

(1) the demeanor and deportment of the witness;

(2) the witness' interest in the result of the trial;

(3) any tendency to favor or disfavor one side or the other;

(4) the probability or improbability of events having occurred the way the witness describes the events;

(5) whether the witness was actually able to see or hear or otherwise perceive the things described;

(6) whether the witness can now accurately recall the things the witness observed;

(7) whether the witness is able to describe what he or she observed accurately and in a form that you can understand;

(8) whether the witness made earlier statements or expressions that are consistent or inconsistent with what is now being said; or

(9) whether or not the witness speaks the truth.

Whatever tests you use, the value of a witness' testimony is for you to determine.

PRELIMINARY INSTRUCTION NO. 14

Bench Conferences

From time to time during the trial, it may become necessary for me to talk with the lawyers out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant a request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion on the case or of what your verdict should be.

PRELIMINARY INSTRUCTION NO. 15

Juror's Memory Controls

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult. I urge you to pay close attention to the testimony as it is given.

PRELIMINARY INSTRUCTION NO. 16

Jury Notes

If you wish, you may take notes to help you remember what a witness said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking prevent you from hearing other answers by the witnesses. When you leave at night you must leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. If you take notes, remember that they are not evidence and may be incomplete. Do not be overly influenced by your notes. Rely on your own memory and the collective memory of the members of the jury.

PRELIMINARY INSTRUCTION NO. 17

Objections

Rules govern what evidence may be presented to you. On the basis of these rules, the lawyers may object to proposed evidence. If they do, I will rule in one of two ways. If I sustain the objection, the proposed evidence will not be allowed. If I overrule the objection, the evidence will be allowed.

When I sustain an objection to a question, ignore the question and do not guess what the answer would have been. Sometimes I might order that evidence be stricken from the record and that you disregard or ignore the evidence. When I do so, you must not consider that evidence.

Do not evaluate the evidence on the basis of whether objections are made. Do not allow yourselves to be to be influenced by my rulings. If I receive evidence after it is objected to by one of the lawyers, that only means that you may consider that evidence. What weight or value you place upon it is still for you to determine.

You must not disfavor lawyers who make a legal objection to evidence because that is their job.

PRELIMINARY INSTRUCTION NO. 18

Order of Trial

I will now explain how the trial will unfold. The lawyers will make opening statements. An opening statement gives an overview of the case from one point of view, and summarizes what the lawyer thinks the evidence will show. You will then hear Stella and Miller's evidence. Evidence is usually presented by calling and questioning witnesses. What they say is called testimony. A witness is questioned first by the lawyer who called that witness. This is called direct examination. After direct examination, the opposing lawyer may then question the witness. This is called cross-examination.

Consider all testimony, whether from direct or cross-examination, regardless of who calls the witness. After Stella and Miller have presented all their evidence, the Davis County Defendants will present their respective evidence. The parties may later offer more evidence, called rebuttal evidence, after hearing the witnesses and seeing the exhibits.

After both sides have presented all of their evidence, I will give you final instructions on the law that you must follow in reaching a verdict. You will then hear closing arguments from the lawyers. Plaintiffs Stella and Miller will speak first, followed by the Davis County Defendants. Stella and Miller will then have the final opportunity to address you because they have the burden of proof. Finally, you will deliberate in the jury room where you will discuss the case and reach a verdict. Keep an open mind until then.

PRELIMINARY INSTRUCTION NO. 19

Rules Applicable to Recesses

From time to time I will call a recess, which means a break. The recess may last for a few minutes or longer. During recesses, do not talk about this case with anyone—not family, not friends, not even each other. Until the trial is over, do not mingle or talk with the lawyers, parties, witnesses, or anyone else connected with the case. Court clerks or bailiffs can answer general questions, such as the length of breaks or the location of restrooms. But they cannot comment about the case or anyone involved. The goal is to avoid the impression that anyone is trying to influence you improperly. If people involved in the case seem to ignore you outside of court, they are just following this instruction.

Until the trial is over, do not read or listen to any news reports about this case. Do not do any research or visit any locations related to this case. If you inadvertently hear or see news stories about the case, or if you observe anything that seems to violate this instruction, report it immediately to a clerk or bailiff.

PRELIMINARY INSTRUCTION NO. 20

Further Admonition About Electronic Devices

Jurors have caused serious problems during trials by using computer and electronic communication technology. You may be tempted to use these devices to investigate the case or to share your thoughts about the trial with others. However, you must not use any of these electronic devices while you are serving as a juror.

You violate your oath as a juror if you conduct your own investigations or communicate about this trial with others, and you may face serious consequences if you do. Let me be clear: do not "Google" the parties, witnesses, issues, or counsel; do not "Tweet" or text about the trial; do not use your phone to gather or send information on the case; do not post updates about the trial on Facebook or other social media pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court, and not on other sources of information.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

PRELIMINARY INSTRUCTION NO. 21

Investigations by State and Municipal Agencies

When a person dies while in custody, it very common for an independent agency to investigate the death. In this case, you will hear evidence that the Utah Attorney General's Office, the Weber County Sheriff's Office and the Utah State Medical Examiner's Office all investigated the conduct associated with Miller's death. Both the fact that those investigations occurred and the results of those investigations are irrelevant to the issue of whether Miller's civil rights were violated by any of the Defendants. The jury—and not the Utah Attorney General's Office, the Weber County Sheriff's Office, or the Utah State Medical Examiner's Office—is tasked with determining whether Miller's civil rights were violated.

Evidence gathered from these investigations, however, such as interviews and documents, is proper evidence unless I indicate otherwise. You must consider the evidence and determine what weight to give the evidence independently—do not consider the fact that those investigations occurred or the results of the investigations in determining whether Defendants violated Miller's civil rights.

Authority:

U.C.A.§§ 26-4-7 and 26-4-10; *Goffstein v. State Farm*, 764 F.2d 522 (8th Cir. 1985).

FINAL

INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Closing Roadmap

MEMBERS OF THE JURY:

You now have all of the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. Plaintiffs Stella and Miller will go first, then the Davis County Defendants. Because Stella and Miller have the burden of proof, they may give a rebuttal.

Finally, you will go to the jury room to discuss and decide the case.

FINAL INSTRUCTION NO. 2

Juror Duties

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I give you in these instructions, apply it to the facts, and decide if Plaintiffs Stella and Miller have met the burden of proof on their claims.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during trial, and these instructions. All of the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

FINAL INSTRUCTION NO. 3

No Bias or Prejudice Against Any Party

You have been chosen as jurors in this case to try the issues of fact presented by the allegations of the parties. It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You are to perform this duty without bias or prejudice as to any party. You must not be influenced by any personal likes or dislikes, opinions, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case. The Davis County Defendants and Plaintiffs Stella and Miller expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

FINAL INSTRUCTION NO. 4

Multiple Parties

There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

Although there are multiple plaintiffs, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. Each defendant is entitled to a fair consideration of its defenses against each plaintiff, just as each plaintiff is entitled to a fair consideration of its claims against each defendant.

Although there are multiple defendants, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of its defenses against each of the plaintiffs' claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

FINAL INSTRUCTION NO. 5

Source of Law

You are to look to these instructions as the sole source of the law that applies in this case. Some evidence may have included references to statutes or other statements of the law. In the event of any inconsistency between such statements and these instructions, these instructions control.

FINAL INSTRUCTION NO. 6

Closing Arguments

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

FINAL INSTRUCTION NO. 7

Legal Rulings

During the trial, I have made certain legal rulings. I made those rulings based on the law, and not because I favor one side or the other. However, if I sustained an objection, if I did not accept evidence offered by one side or the other, or if I ordered that certain testimony be stricken, then you must not consider those things in reaching your verdict.

FINAL INSTRUCTION NO. 8

Judicial Neutrality

As the judge, I am neutral. If I have said or done anything that makes it appear that I have an opinion about the merits of the parties' claims or defenses, that was not my intention. Do not interpret anything I have said or done as indicating that I have any particular view of the evidence or of the decision you should reach. Also, nothing in these instructions or the verdict form that I will give you is meant to suggest what your verdict should be.

FINAL INSTRUCTION NO. 9

Objections by Counsel

The lawyers have a duty to raise appropriate objections. You must not disfavor a lawyer who makes a legal objection to evidence.

You are the sole judges of the credibility of all witnesses. It is your job to determine what weight and effect to give all evidence. You should not try to guess my opinion on the importance of any evidence because of my rulings on objections.

If I sustained an objection to a question, you must disregard the question entirely. You may not draw any inferences from the wording of the question or speculate as to what the answer might have been. Likewise, you may not consider anything that I ordered you to disregard. The same rule applies to any exhibits I did not permit you to see. You may not speculate about what the exhibit might have shown.

FINAL INSTRUCTION NO. 10

Preponderance of the Evidence

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence. This is a lower burden of proof than "beyond a reasonable doubt."

When I tell you that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true. Another way of saying this is proof by the greater weight of evidence, however slight.

The preponderance of the evidence is not determined simply by counting the number of witnesses or the amount of the testimony. Rather, it is determined by evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

When answering questions asked on the Special Verdict form that apply the preponderance of the evidence standard, if you find that the party's claim or defense is more likely true than not true, you should answer that question with a "Yes." If, however, the evidence appears to be equally balanced or in favor of the other party's position, then you must answer that question with a "No."

If the evidence should fail to establish any essential element of a party's claim or defense by a preponderance of the evidence, then you should find for the other party as to that claim or defense.

FINAL INSTRUCTION NO. 11

Evidence—Closing

You must base your decision only on the evidence that you saw and heard here in court. Evidence includes what the witnesses said while they were testifying under oath and any exhibits admitted into evidence.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence. In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

FINAL INSTRUCTION NO. 12

"Evidence" Defined

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have presented them; and all facts which may have been admitted or stipulated.

Statements and arguments of counsel are not evidence in this case. But when the parties stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

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

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason and common sense would lead you to draw from facts that are established by the evidence in the case. In the absence of such facts, you may not draw an inference.

You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.

FINAL INSTRUCTION NO. 13

Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified that he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony, someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

FINAL INSTRUCTION NO. 14

Limited Purpose Evidence

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose.

FINAL INSTRUCTION NO. 15

Witness Credibility

In deciding this case, you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- Personal interest: Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?
- Bias: Do you believe the accuracy of the testimony was affected by any bias or prejudice?
- Demeanor: Is there anything about the witness's appearance, conduct or actions that causes you to give more or less weight to the testimony?
- Consistency: How does the testimony tend to support or not support other believable evidence that is offered in the case?
- Knowledge: Did the witness have a good opportunity to know what the witness is testifying about?
- Memory: Does the witness's memory appear to be reliable?
- Reasonableness: Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. In deciding whether or not to believe a witness, you may also consider anything else you think is important. You may not consider, however, a witness's religious beliefs in evaluating his or her credibility.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

After making your own judgment, you will give the testimony of each witness any weight you think it deserves.

FINAL INSTRUCTION NO. 16

Inconsistent Statements

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that the witness previously said or did something, or failed to say or do something, that is inconsistent with the testimony the witness gave at this trial.

If a prior statement was made under oath, you may consider it as evidence of the truth of the matter contained in that prior statement. Otherwise, earlier statements of a witness are not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and whether they affect the credibility of that witness. If you believe that a witness has been discredited, you may give the testimony of that witness whatever weight you think it deserves.

FINAL INSTRUCTION NO. 17

Deposition Testimony

A deposition is sworn testimony of a witness that was given previously, outside of court, with a lawyer for each party present and entitled to ask questions. Such testimony is evidence and you should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

FINAL INSTRUCTION NO. 18

Statement of Opinion

Under limited circumstances, I allowed one or more witnesses to express an opinion. Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

FINAL INSTRUCTION NO. 19

Habit—Routine Practice

You may consider evidence of the habit of a person or of the routine of a business or organization in determining whether the conduct of a person or organization on a particular occasion was in conformity with the habit or routine practice.

FINAL INSTRUCTION NO. 20

Recollection of Jurors Controls

If any reference by the court or by the attorneys to matters of evidence is inconsistent with your own recollection, it is your recollection that matters.

FINAL INSTRUCTION NO. 21

Introduction to Substantive Law

Now that I have explained the procedures and general instructions, I will explain the specific laws for each of the claims at issue in this case.

FINAL INSTRUCTION NO. 22

Status of Citizen/Governmental Entity

As you know this action was brought by a private citizen and the estate of a private citizen against Anderson, Ondricek, Richardson, and Davis County. Although Davis County is a legal entity and the other parties are individuals and the estate of an individual, you should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar station in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

Authority:

Section 1983 Litigation Jury Instructions § 3.04[B], Instruction 3.04.3.

FINAL INSTRUCTION NO. 23

"Cause" Defined

Later instructions refer to the concept of causation. As used in the law, the word "cause" has a special meaning, and you must use this meaning whenever you apply the word. "Cause" means that:

(1) The person's act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and

(2) The person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature. There may be more than one cause of the same harm.

FINAL INSTRUCTION NO. 24

Stella and Miller's Claims

Plaintiffs assert three claims against the Davis County Defendants, which are summarized as follows:

1. Miller's estate's first claim is asserted against Anderson and arises under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. Miller's estate alleges that Anderson was deliberately indifferent to Miller's serious medical needs. *(This claim is discussed in more detail in Final Instruction Nos. 26-30.)*
2. Miller's estate's second claim is asserted against Davis County and arises under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. Miller's estate alleges Davis County ignored a substantial risk of harm to Miller. *(This claim is discussed in more detail in Final Instruction Nos. 31-37.)*
3. Plaintiffs' third claim is asserted against Davis County, Richardson, Anderson, and Ondricek, and arises under Article 1, Section 9 of the Utah Constitution. Plaintiffs allege Davis County Defendants subjected Miller to unnecessary rigor in her confinement. *(This claim is discussed in more detail in Final Instruction Nos. 38-41.)*

It is Stella and Miller's burden of proof to establish their claims. I will now explain the elements they must prove for you to find the Defendants liable on each of the respective claims.

FINAL INSTRUCTION NO. 25

Relationship Between Federal and State Constitutional Claims

Miller's estate alleges a violation of both her state and federal constitutional rights. Claims one and two allege violations of her federal constitutional rights. Claim three alleges a violation of her state constitutional rights. These rights are independent.

Federal law does not allow plaintiffs to create a federal case out of every violation of internal policy or state law. But a violation of internal policy or state law can serve as circumstantial evidence of a federal claim.

Therefore, you can find a violation of (1) neither Miller's state nor federal constitutional rights, (2) either Miller's state or federal constitutional rights, or (3) both Miller's state and federal constitutional rights.

FINAL INSTRUCTION NO. 26

Claim One: Pre-Trial Detainees

The government has an obligation to provide medical care to those whom it is punishing by detention, including pretrial detainees (persons who have been charged with a crime but not convicted).

FINAL INSTRUCTION NO. 27

Claim One: Elements of Denial of Adequate Medical Care Claim

Miller's estate has brought a claim against Anderson, asserting that Anderson was deliberately indifferent to Miller's serious medical needs. Deliberate indifference includes both an objective and subjective component. The objective component is covered by prong 1 below, and the subjective component is covered by prongs 2 and 3 below. Therefore, to succeed on its claim that Anderson acted with deliberate indifference, Miller's estate must prove each of the three following elements by a preponderance of the evidence:

1. *Miller had a serious medical need.* See Final Instruction No. 28 for more details about this element.
2. *Anderson was aware that Miller faced a substantial risk of serious harm* or *strongly suspected facts showing a strong likelihood that Miller faced a substantial risk of serious harm but failed to confirm whether those facts were true.* See Final Instruction No. 29 for more details about this element.
3. *Knowing that Miller faced a substantial risk of harm, Anderson disregarded that risk by failing to take reasonable measures to address it.* See Final Instruction No. 30 for more details about this element.

If you find that Miller's estate has proven each of these things by a preponderance of the evidence, then you must decide for Miller on this claim, and go on to consider the question of damages for this claim. If, on the other hand, you find that Miller's estate has failed to prove any one of these elements by a preponderance of the evidence, then you must decide for Anderson on this claim and you will not consider the question of damages for this claim.

If you go on to consider damages, you must also consider whether Miller's estate has proven that, as a result of Anderson's deliberate indifference to the serious risk to Miller's health and safety, Miller was harmed. If you answer that question in the affirmative, you may go on to consider compensatory damages (*See Final Instruction No. 44 for more details about compensatory damages)*. If you answer that question in the negative, you must award nominal damages (*See Final Instruction No. 51 for more details about nominal damages)*.

Authority:

Seventh Circuit Pattern Jury Instructions § 7.17
Serious medical need: *Clark v. Colbert*, 895 F.3d 1258, 1267 (10th Cir. 2018); *Redmond v. Crowther*, 882 F.3d 927 (10th Cir. 2018)
Delay: *Oxendine v. Kaplan,* 241 F.3d 1272, 1276 (10th Cir. 2001).
Knowledge or constructive knowledge: *Tafoya v. Salazar*, 516 F.3d 912, 196 (10th Cir. 2008); *Mata v. Saiz,* 427 F.3d 745, 751 (10th Cir. 2005); *Farmer v. Brennan,* 511 U.S. 825, 8372 (1994); *Est. of Burgazex rel. Zommer v. Bd. of Cnty. Comm'rs*, 30 F.4th 1181, 1186 (10th Cir. 2022)
Disregard: *Parker v. Gosmanova*, 335 F. App'x 791, 794 (10th Cir. 2009)

FINAL INSTRUCTION NO. 28

Claim One: Serious Medical Need

A serious medical need is a condition that a doctor would find to require treatment or something so obvious that even someone who is not a doctor would recognize requires treatment. A delay in medical care is only sufficiently serious if the plaintiff can show the delay resulted in substantial harm.

FINAL INSTRUCTION NO. 29

Claim One: Knowledge

Plaintiffs must prove either that Anderson was actually aware of facts from which he could draw an inference that Miller faced a substantial risk of serious harm and that he drew that inference *or* that there is enough circumstantial evidence to support an inference that Anderson failed to verify or confirm a risk that he strongly suspected to exist. This does not require that Anderson knew or strongly suspected that Miller was suffering from a ruptured spleen in particular, but rather that Anderson knew of or strongly suspected an excessive risk to Miller's health and safety.

You may conclude that a prison official subjectively knew of the substantial risk of harm by circumstantial evidence or from the very fact that the risk was obvious. In other words, if a risk is so obvious that a reasonable person would realize it, you may infer that Anderson did in fact realize it.

In deciding the matter of Anderson's state of mind, you may only consider information that Anderson was actually aware of at the time he provided treatment to Miller. You should not consider information that was known only to other prison officials, medical personnel, inmates, or third parties.

FINAL INSTRUCTION NO. 30

Claim One: Disregard

You need not find an express intent to harm or that Anderson acted or failed to act believing that harm would actually befall Miller. Rather, it is enough that Anderson acted or failed to act despite his knowledge of a substantial risk of serious harm. But mere negligence or inadvertence does not qualify.

Delay in providing medical care can be evidence of this prong, but only if Miller can show that the delay resulted in substantial harm. Substantial harm includes lifelong handicap, permanent loss, or considerable pain.

You may also infer conscious disregard when a prison medical official responds to an obvious risk with treatment that is patently unreasonable.

FINAL INSTRUCTION NO. 31

Claim Two: Municipal Liability against Davis County

Claim two pertains to whether Davis County is liable to Miller's estate for ignoring a substantial risk of harm to Miller. Davis County is not responsible for any violation of Miller's constitutional rights by Anderson simply because it employed Anderson.

To establish municipal liability against Davis County, Miller's estate must show:

(1) An underlying constitutional violation *(discussed in Final Instruction No. 32)*;

(2) At the time of the underlying constitutional violation, Davis County had a municipal policy or custom *(discussed in Final Instruction Nos. 33-36)*;

(3) There was a direct causal link between the policy or custom and the deprivation of Miller's constitutional rights *(discussed in Final Instruction No. 37)*.

Miller's estate must prove all three of these elements to prevail on claim two.

Authority:

Jensen v. West Jordan City, 968 F.3d 1187, 1204 (10th Cir. 2020); *Waller v. City & Cnty. of Denver*, 932 F.3d 1277 (10th Cir. 2019)

FINAL INSTRUCTION NO. 32

Claim Two: Underlying Constitutional Violation

If you find that Anderson violated Miller's constitutional rights, then Plaintiffs have established the first element of claim two.

If you find that no Davis County employee violated Miller's constitutional rights, then Plaintiffs cannot establish the first element of claim two and you must find that Davis County did not commit a constitutional violation.

Authority:

Quintana v. Santa Fe Cty. Bd. of Commissioners, 973 F.3d 1022, 1033 (10th Cir. 2020); *Olsen v. Layton Hills Mall,* 312 F.3d 1304, 1315 (10th Cir. 2002); *Hinton v. City of Elwood,* 997 F.2d 774, 782 (10th Cir. 1993); *Crowson v. Washington Cnty*, 983 F.3d 1166, 1191 (10th Cir. 2020)

FINAL INSTRUCTION NO. 33

Claim Two: Policy or Custom Generally

A municipal policy or custom may take the form of any of the following:

(1) A formal regulation or policy statement;

(2) An informal custom amounting to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law;

(3) The decisions of employees with final policymaking authority. *(This form of municipal policy or custom is discussed in more detail in Final Instruction No. 36.)*;

(4) The ratification by such final policymakers of the decisions—and the basis for them—by subordinates to whom authority was delegated subject to these policymakers' review and approval; or

(5) The failure to adequately train or supervise employees, if that failure results from deliberate indifference to the injuries that may be caused by such failure to adequately train or supervise. *(This form of municipal policy or custom is discussed in more detail in Final Instruction No. 34.)*

Authority:

Bryson v. Okla. City, 627 F.3d 784, 788 (10th Cir. 2010); Schneider v. City of Grand Junction Police Dep't, 717 F.3d 760, 770 (10th Cir. 2013)

FINAL INSTRUCTION NO. 34

Claim Two: Policy or Custom—Failure to Train

As instructed above, a municipal policy or custom can also include the failure to adequately train or supervise employees, so long as the failure results from deliberate indifference to the injuries that may be caused. *(Deliberate Indifference is defined in the following instruction.)*

Authority:

Bryson v. Okla. City, 627 F.3d 784, 788 (10th Cir. 2010); *Barney v. Pulsipher*, 143 F.3d 1299, 1307-08 (10th Cir. 1998)

FINAL INSTRUCTION NO. 35

Claim Two: Deliberate Indifference

The deliberate indifference standard is satisfied when the municipality has actual or constructive notice that its action or failure to act is substantially certain to result in a constitutional violation, and it consciously or deliberately chooses to disregard the risk of harm.

In most instances, notice can be established by proving the existence of a pattern of unconstitutional behavior. In a narrow range of circumstances, however, deliberate indifference may be found absent a pattern of unconstitutional behavior if a violation of federal rights is a highly predictable or plainly obvious consequence of a municipality's action or inaction, such as when a municipality fails to train an employee in specific skills needed to handle recurring situations, thus presenting an obvious potential for constitutional violations. In other words, deliberate indifference exists where the risk was so obvious that the official should have known about and/or recognized the risk.

Deliberate indifference to serious medical needs may be shown by proving there are such gross deficiencies in staffing, facilities, equipment, or procedures that the inmate is effectively denied access to adequate medical care.

Authority:

Barney v. Pulsipher, 143 F.3d 1299, 1307 (10th Cir. 1998); *Garcia v. Salt Lake County*, 768 F.2d 303 (10th Cir. 1985)

FINAL INSTRUCTION NO. 36

Claim Two: Policy or Custom—Final Policymaking Authority

As noted above, a municipal policy or custom also includes the decisions or actions of employees with final policymaking authority.

In order establish the second prong under this theory, Miller's estate must prove by a preponderance of the evidence that (1) Richardson's actions deprived Miller of her right to adequate medical care under the United States Constitution; (2) Richardson had final policymaking authority from Davis County concerning these acts; and (3) when Richardson engaged in these acts, he was acting as a final policymaker for Davis County.

The court has already found that Richardson had final policymaking authority from Davis County concerning policies and procedures in Davis County jails. Accordingly, you may consider element (2) established.

Authority:

Civil Model Jury Instructions (Ninth Circuit), 9.6; Utah Code § 17-22-5(1); Utah Code § 17-22-2(1)(g); *Milligan-Hitt v. Bd. of Trs.*, 523 F.3d 1219 (10th Cir. 2008).

FINAL INSTRUCTION NO. 37

Claim Two: Direct Causal Link

To establish the third element of claim two, the challenged policy or custom must be closely related to the violation of the plaintiff's constitutionally protected right. This requirement is satisfied if the plaintiff shows that the municipality or the final policymaking authority was the moving force behind the injury alleged.

Authority:

Schneider v. Grand Junction Pol. Dep't, 717 F.3d 760, 770 (10th Cir. 2013)

FINAL INSTRUCTION NO. 38

Claim Three: Unnecessary Rigor Provision of the Utah State Constitution

The Utah Constitution provides that "[p]ersons arrested or imprisoned shall not be treated with unnecessary rigor." The purpose of this provision, according to the drafters of the Utah constitution, was to "protect persons in jail if they shall be treated inhumanely." The provision is targeted at eliminating "unreasonably harsh, strict, or severe treatment" in prison such as "being unnecessarily exposed to an increased risk of serious harm."

Plaintiffs allege that Anderson, Ondricek, Richardson, and Davis County all violated Miller's state constitutional rights under the unnecessary rigor provision through their actions and/or inactions in providing medical care following her fall.

Authority:

State v. Houston, 2015 UT 40, ¶ 50, 353 P.3d 55, 72, *as amended* (Mar. 13, 2015); *Dexter v. Bosko*, 184 P.3d 592, 596 (Utah 2008).

FINAL INSTRUCTION NO. 39

Claim Three: Elements of a State Constitutional Violation

To prevail on their state constitutional claim, Plaintiffs must show

(1) that Miller suffered a flagrant violation of her state constitutional rights under the unnecessary rigor provision. *(This element is discussed in more detail in Final Instruction Nos. 40-41.)*;

(2) that existing remedies do not redress Plaintiffs' injuries; and

(3) that equitable relief, such as an injunction, was and is wholly inadequate to protect Miller's rights or redress her injuries. Here, there is no equitable relief, such as an injunction, that will protect Miller's rights or redress her injuries because she is deceased. Accordingly, this element is deemed established.

Authority:

Kuchcinski v. Box Elder Cty., 450 P.3d 1056, 1062 (2019); *Finlinson v. Millard Cty.,* 455 F. Supp. 3d 1232, 1239 (D. Utah 2020).

FINAL INSTRUCTION NO. 40

Claim Three: Flagrant Violation by an Individual Official

For a state constitutional violation to be flagrant, Anderson, Richardson, or Ondricek must have violated Miller's clearly established state constitutional rights of which a reasonable person would have known.

In order to prove a flagrant violation of Plaintiffs' state constitutional rights under the unnecessary rigor provision by Anderson, Richardson, or Ondricek, Stella and Miller must prove by a preponderance of the evidence that (1) the nature of the individual's act presented an obvious and known serious risk of harm to Miller; and (2) knowing of that risk, the individual acted without other reasonable justification.

Authority:

Jensen ex rel. Jensen v. Cunningham, 250 P.3d 465, 482 (Utah 2011); *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cty. Sch. Dist.,* 16 P.3d 533, 538 (Utah 2000); *Dexter v. Bosko,* 184 P.3d 592, 598 (Utah 2008); *Finlinson v. Millard Cty.*, 455 F. Supp. 3d 1232, 1239 (D. Utah 2020); *Mata v. Saiz,* 427 F.3d 745, 751 (10th Cir. 2005)

FINAL INSTRUCTION NO. 41

Claim Three: Flagrant Violation by Davis County

To show that Davis County committed a flagrant violation of Plaintiffs' state constitutional rights under the unnecessary rigor provision, Plaintiffs must show (1) the existence (or lack thereof) of a municipal policy, practice, or custom, (2) that this policy, practice, or custom (or lack thereof) evidences a deliberate indifference to Miller's state constitutional rights, and (3) that this policy, practice, or custom (or lack thereof) was closely related to her ultimate injury.

Authority:

Kuchcinski v. Box Elder Cty., 450 P.3d 1056, 1067 (Utah 2019).

FINAL INSTRUCTION NO. 42

Introduction to Damages

I will now instruct you regarding damages for the Plaintiffs' claims. My instructions are given as a guide for calculating a plaintiff's damages if you find that a plaintiff is entitled to them. But if you decide that a plaintiff is not entitled to recover damages, then you must disregard these instructions.

If you decide that the defendant's fault caused injury to a plaintiff, you must decide how much money will fairly and adequately compensate that plaintiff for that injury. There are two kinds of damages applicable to Plaintiffs' claims: economic and non-economic.

FINAL INSTRUCTION NO. 43

Proof of Damages

To be entitled to damages, a plaintiff must prove two things:

First, that damages occurred. There must be a reasonable probability, not just speculation, that the plaintiff suffered damages from the defendant's fault.

Second, the amount of damages. The level of evidence required to prove the amount of damages is not as high as what is required to prove the occurrence of damages. But there must still be evidence—not just speculation—that gives a reasonable estimate of the amount of damages. The law does not require mathematical certainty.

If a plaintiff has proved that he or she has been damaged and has established a reasonable estimate of those damages, a defendant may not escape liability because of some uncertainty in the amount of damages.

FINAL INSTRUCTION NO. 44

Compensatory Damages

If you find in favor of Plaintiffs on one or more of Plaintiffs' claims, then you must determine the amount of money that will fairly compensate each Plaintiff for any injury they sustained as a direct result of Defendants' actions.

Compensatory damages are not restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure. Economic and non-economic damages are explained more fully in the following instructions.

FINAL INSTRUCTION NO. 45

Double Recovery Prohibited

Plaintiffs seek compensatory damages from Anderson and Davis County under more than one claim. However, each item of damages may be awarded only once, regardless of the number of claims alleged.

Authority:

Clappier v. Flynn, 605 F.2d 519, 530 (10th Cir.1979)

FINAL INSTRUCTION NO. 46

Economic Damages

Economic damages are the amount of money that will fairly and adequately compensate each plaintiff for measurable losses of money or property caused by the defendant's fault. Economic damages may include the wages that Miller has lost and the present value of the wages that Miller is reasonably certain to lose in the future because of her inability to work.

Economic damages are only recoverable for loss in an amount that the evidence proves with reasonable certainty, although the actual amount of damages need not be proved with precision. Any alleged damages that are only remote, possible or a matter of guesswork are not recoverable.

FINAL INSTRUCTION NO. 47

Net Accumulations

Miller is claiming a loss of assets consisting of the income that Miller would have received over the course of her working life, otherwise known as "Net Accumulations." Net accumulations are the part of the decedent's net income after taxes, including pension benefits, which the decedent, after paying the decedent's personal expenses and support for the decedent's survivors, would have left as part of the decedent's estate if the decedent had lived a normal life expectancy.

FINAL INSTRUCTION NO. 48

Present Value

If you decide that Plaintiffs are entitled to damages for future economic losses, then the amount of those damages must be reduced to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not have suffered the economic losses until some time in the future. Money received today would be invested and earn a return or yield.

To reduce an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, will provide Plaintiffs with the amount of money needed to compensate Plaintiffs for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.

Authority:

MUJI CV2021

FINAL INSTRUCTION NO. 49

Non-Economic Damages Defined

Non-economic damages are the amount of money that will fairly and adequately compensate each plaintiff for losses other than economic losses.

Non-economic damages are not capable of being exactly measured, and there is no fixed rule, standard, or formula for them. Non-economic damages must still be determined even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of non-economic damages.

You may calculate non-economic damages for the loss of such things as love, companionship, society, comfort, pleasure, advice, care, protection, and affection that a plaintiff has sustained and will sustain in the future. You may also include the extent to which a Plaintiff has been limited in enjoyment of life or the extent to which a Plaintiff has been prevented from pursuing her ordinary affairs—such as activities of daily living, occupation of choice, or social leisure activities.

Authority:

MUJI CV 2004; *Smith v. Ingersoll-Rand Co.,* 214 F.3d 1235, 1244-45 (10th Cir. 2000).

FINAL INSTRUCTION NO. 50

Life Expectancy

Heather Miller died after 28.73 years. According to a table of mortality, her remaining life expectancy was an additional 53.93 years. This figure is not conclusive, but rather the average life expectancy of persons who have reached that age. This figure may be considered by you in connection with other evidence relating to the probable life expectancy of Miller, including evidence of her occupation, health, habits and other activities, bearing in mind that some persons live longer and some shorter than the average.

According to a table of mortality, Cynthia Stella's remaining life expectancy is an additional XX years. This figure is similarly not conclusive, but rather the average life expectancy of persons who have reached Stella's age.

If you consider damages for loss of consortium between Miller and Stella, you should consider loss of consortium only for the time period that you determine that Stella and Miller would both have been alive, absent the events in this case. You should not consider damages for loss of consortium for any time for which you determine that only one plaintiff would have been alive.

FINAL INSTRUCTION NO. 51

Nominal Damages

Nominal damages are awarded when a Plaintiff has been deprived by a defendant of a constitutional right but has suffered no actual damage as a natural consequence of that deprivation. This is because merely suffering constitutional deprivation is an injury that must be recognized.

Therefore, if you return a verdict for a Plaintiff on a particular claim, but find that the Plaintiff has failed to prove damages by a preponderance of the evidence, then you must return an award of nominal damages of one dollar on the particular claim.

Authority:

Section 1983 Litigation Jury Instructions § 18.01[B], Instruction 18.01.19 – Nominal Damages.

FINAL INSTRUCTION NO. 52

Collateral Source Payments

You shall award damages in an amount that fully compensates each plaintiff. Do not speculate on or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict, I will make whatever adjustments may be appropriate.

FINAL INSTRUCTION NO. 53

Arguments of Counsel Not Evidence of Damages

You may consider the arguments of the lawyers to assist you in deciding the amount of any damages, but their arguments are not evidence.

FINAL INSTRUCTION NO. 54

Punitive Damages—Introduction

In addition to compensatory damages, Plaintiffs also seek to recover punitive damages against Anderson, Richardson, and Ondricek. Punitive damages are intended to punish a wrongdoer for extraordinary misconduct and to discourage others from similar conduct. They are not intended to compensate Plaintiffs for their loss.

Punitive damages are not awarded for mere inadvertence, mistakes, errors of judgment and the like, which constitute ordinary negligence.

Rather, punitive damages are available only to punish a defendant for conduct that was (a) willful and malicious or (b) manifested a knowing and reckless indifference to and a knowing disregard of a plaintiff's rights.

Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring a plaintiff. "Knowing and reckless indifference" means that (a) the defendant knew that such conduct would, in a high degree of probability, result in substantial harm to a plaintiff and (b) the conduct must be highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger or harm would be apparent to a reasonable person.

Authority:

MUJI 2d, CV2026.

FINAL INSTRUCTION NO. 55

Clear and Convincing Evidence

Punitive damages in this case must be proved by a higher level of proof called "clear and convincing evidence." Clear and convincing means that the party must persuade you, by the evidence, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

FINAL INSTRUCTION NO. 56

Punitive Damages—Purpose and Considerations

If you find that an individual defendant's conduct was willful or malicious or manifested a knowing and reckless disregard or a plaintiff's rights, you may, but are not required to, assess punitive damages against that defendant. Punitive damages are not available against municipalities, such as Davis County. Punitive damages serve to punish a defendant for his or her conduct and to serve as an example or warning to the defendant and others not to engage in similar conduct in the future. When considering whether to use punitive damages to punish a defendant, you should only punish that defendant for harming a plaintiff, and not for harming people other than Plaintiffs.

Whether to award a plaintiff punitive damages and the amount of those damages are within your sound discretion. If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. The amount should not be arbitrary. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

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

Authority:

Seventh Circuit Pattern Jury Instructions § 7.28

FINAL INSTRUCTION NO. 57

Special Verdict Form

I am going to give you a form called the Special Verdict that contains questions for you to answer. You must answer the questions based upon these instructions and the evidence you have seen and heard during this trial. Please bear in mind that each question on the form is important.

POST-ARGUMENT

INSTRUCTIONS

POST-ARGUMENT INSTRUCTION NO. 1

Jury Deliberations—Overview

You have now heard all of the evidence and the arguments of counsel. In a moment you will be escorted to the jury room and each of you will be provided with a copy of the instructions that I have given you. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson who will preside over your deliberations and be your spokesperson here in the courtroom. I suggest that you should then review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law as stated in the instructions.

Once you have reviewed the instructions, you may also wish to review the Special Verdict form to understand the questions you will need to answer. I would also suggest that before you begin discussing the issues presented to you for resolution, you may find it helpful for each of you to write down your own views about the case. This may help you to clarify your own thinking about the issues.

You should then begin to deliberate. When you have reached unanimous agreement as to your verdict, you will have the foreperson fill it the Special Verdict form, date and sign the form, and then return your verdict to the courtroom.

Your deliberations will be confidential. You will not be required to explain your verdict to anyone.

POST-ARGUMENT INSTRUCTION NO. 2

Commencement of Deliberations

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

POST-ARGUMENT INSTRUCTION NO. 3

Jury Deliberations

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous. This means each of you must agree on the answer to each question on the Special Verdict form.

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. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is wrong. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, for the mere purpose of returning a verdict.

Remember at all times, 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.

POST-ARGUMENT INSTRUCTION NO. 4

Do Not Speculate or Resort to Chance

When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

POST-ARGUMENT INSTRUCTION NO. 5

Communications with the Court During Deliberations

If it becomes necessary during your deliberations to communicate with the court, you may send a note through a court security officer, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with the court by any means other than a signed writing; and the court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the court security officer will take that he, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person—not even to the court—how the jury stands numerically or otherwise until you have reached a unanimous verdict.

POST-ARGUMENT INSTRUCTION NO. 6

Schedule for Deliberations

During your deliberations, you are able as a group to set your own schedule for deliberations. I would suggest that you not feel pressured to continue your deliberations if you feel so exhausted or stressed that you may risk compromising your conviction simply to finish your deliberations. A good night's rest and time for reflection may be helpful to resolve doubts you may have. You may, however, deliberate as late as you wish or recess at an appropriate time set by yourselves. You may set your own schedule for lunch and dinner breaks.

I do ask, however, that you notify the court by a note when you plan to recess for the evening.