

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

JAY S. SPILO, )  
 ) Civil No. 4-99-cv-30010  
Plaintiff, )  
 )  
vs. ) INSTRUCTIONS TO THE JURY  
 )  
TRANS WORLD AIRLINES, INC., )  
 )  
Defendant. )

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING  
INSTRUCTIONS:

This case arises out of events which occurred at the defendant's departure gate at the Des Moines International Airport on March 22, 1998. Plaintiff Jay Spilo was arrested and subsequently prosecuted for a charge of disorderly conduct. This charge was dismissed for reasons you heard in the evidence. Plaintiff Spilo alleges that the arrest and subsequent prosecution was a result of false statements made to the police and county attorney by defendant's employees. Defendant denies these allegations.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

**INSTRUCTION NO. \_\_\_\_\_**

Members of the jury, the instructions I gave at the beginning of the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

You must follow the instructions now given you

regardless of your opinion of what the law ought to be. You  
need not be concerned with the wisdom of any rule of law.

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

**INSTRUCTION NO. \_\_\_\_\_**

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition;
2. Exhibits received by the Court.
3. Stipulations which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

**INSTRUCTION NO. \_\_\_\_\_**

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

**INSTRUCTION NO. \_\_\_\_\_**

Certain testimony has been received into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

**INSTRUCTION NO. \_\_\_\_\_**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved.

The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

**INSTRUCTION NO. \_\_\_\_\_**

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage, and when the damage would not have happened except for the conduct.

"Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

**INSTRUCTION NO. \_\_\_\_\_**

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

**INSTRUCTION NO. \_\_\_\_\_**

A corporation is liable for the wrongful acts of its employees if the acts are done in the scope of employment. For an act to be within the scope of an employee's employment, the act must be necessary to accomplish the purpose of the employment, and it must be intended to accomplish that purpose.

**INSTRUCTION NO. \_\_\_\_\_**

Plaintiff Jay Spilo asserts two claims against defendant: (1) false arrest and (2) malicious prosecution. You will decide the malicious prosecution claim only if you first find for defendant TWA on the false arrest claim.

INSTRUCTION NO. \_\_\_\_\_

Plaintiff's first claim is that defendants caused him to be falsely arrested. "False arrest" is the unlawful restraint of an individual's personal liberty or freedom of movement.

The plaintiff must prove all of the following propositions:

1. The plaintiff was detained or restrained against his will.
2. The detention or restraint was done by the defendant.
3. The detention or restraint was a proximate cause of plaintiff's damage.
4. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, then he is entitled to damages in some amount.

**INSTRUCTION NO. \_\_\_\_\_**

"Arrest" means taking a person into custody. It includes restraint or detention of the person or his submission to custody.

A person who does not personally make an arrest may be found to have detained or restrained another if the person convinces a police officer to make the arrest. A person is not responsible for an arrest when the decision to make the arrest is left to the uncontrolled choice of the police officer.

When a person gives information to a police officer he believes to be true and the person receiving the information freely chooses to make an arrest based upon that information, the informer and his or her employer is not liable for false arrest even though the information proves to be false and his or her belief was one that a reasonable person would not believe.

You may conclude a person detained or restrained another if that person either gave information to a police officer which he knew to be false in order to convince a police officer to arrest the other person, or influenced a police officer by direction, request or pressure of any kind so that person's conduct was the determining factor in the decision by the police officer to make the arrest.

INSTRUCTION NO. \_\_\_\_\_

"Malicious prosecution" means causing an unsuccessful criminal proceeding with malice and without probable cause. In order for plaintiff to recover on his claim of malicious prosecution, he must prove all of the following propositions:

1. The plaintiff was prosecuted in a criminal proceeding for disorderly conduct.
2. The defendant caused that prosecution.
3. The prosecution ended favorably for the plaintiff.
4. The defendant acted without probable cause.
5. The defendant acted with malice.
6. The prosecution was a proximate cause of plaintiff's damage.
7. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

**INSTRUCTION NO. \_\_\_\_\_**

If you find the defendant's act was intentional and without probable cause or excuse, then you may conclude the act was done with "malice." "Malice" may also be established by proof that the main reason for doing the act was ill-will, hatred or other wrongful purpose.

**INSTRUCTION NO. \_\_\_\_\_**

A person who does not personally file criminal charges may cause them to be started in one of two ways: (1) by convincing a third person, either a private person or a public prosecutor, to file the charge; or (2) by convincing a public official to file them.

A person does not cause a prosecution when the decision to file charges is left to the uncontrolled choice of another person.

When a person gives information to a prosecutor or official he believes to be true and the person receiving the information freely chooses to file charges based upon that information, the informer and his or her employer is not liable even though the information proves to be false and his or her belief was one that a reasonable person would not believe.

You may conclude a person caused the prosecution if that person caused the filing of charges by either giving information which he knew to be false to a prosecutor or public official or influenced the prosecutor or public official by direction, request or pressure of any kind so that person's conduct was the determining factor in the decision to file the charges.

**INSTRUCTION NO. \_\_\_\_\_**

Probable cause means having a reasonable ground. Probable cause exists where the party causing the arrest or prosecution knew enough about the facts and circumstances and had reasonable trustworthy information, including what someone else told him or her, so that a reasonable person would believe that the plaintiff was guilty of the crime charged.

Probable cause does not require absolute certainty or proof beyond a reasonable doubt. It is to be determined by the factual and practical considerations of everyday life on which reasonable and careful persons, not legal experts, act.

INSTRUCTION NO. \_\_\_\_\_

The dismissal of the charge constitutes a favorable ending to the prosecution.

**INSTRUCTION NO. \_\_\_\_\_**

If you find plaintiff is entitled to recover damages under any of his theories of recovery, it is your duty to determine the amount. You shall consider the following items:

1. The reasonable value of costs and expenses plaintiff incurred as a direct result of defendant's actions.

2. Mental pain and suffering. Mental pain and suffering may include, but is not limited to, mental anguish or humiliation.

The amount you assess for mental pain and suffering cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendants as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

**INSTRUCTION NO. \_\_\_\_\_**

In addition to the damages mentioned in other instructions, punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of defendant's conduct;
2. The amount of punitive damages which will punish and discourage like conduct by defendant in view of its financial condition;
3. The plaintiff's actual damages.

INSTRUCTION NO. \_\_\_\_\_

Defendant Trans World Airlines is liable for punitive damages by reason of the acts of its employees if one of the following occurred:

1. Defendant authorized the act and the way it was done; or

2. An employee was employed in a managerial capacity and was acting in the scope of employment; or

3. Defendant ratified or approved the act.

**INSTRUCTION NO. \_\_\_\_\_**

Conduct is willful and wanton when a person intentionally does an act of unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

**INSTRUCTION NO. \_\_\_\_\_**

Evidence is clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

**INSTRUCTION NO. \_\_\_\_\_**

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

**INSTRUCTION NO. \_\_\_\_\_**

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth and do justice.

**INSTRUCTION NO. \_\_\_\_\_**

The verdict must represent the considered judgment of each juror agreeing to it.

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. An inconclusive trial is always undesirable. 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 erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

**INSTRUCTION NO. \_\_\_\_\_**

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the interrogatories in accordance with the directions contained therein, inform the jury officer outside the room. If you return a unanimous verdict, that is, a verdict to which you all agree, you will have the verdict form signed only by one of your number whom you will have selected as your foreperson and return with it into court.

After deliberating for six hours from the time this case is submitted to you, excluding meals or recesses outside the jury room, then it is necessary that only six of you agree upon the verdict. In that case the verdict must be signed by the six jurors who agree on the verdict. If your foreperson is a dissenting juror, he or she should not sign the verdict. When you have agreed upon and appropriately signed your verdict, you will return with it into court.

This case is submitted to you at \_\_\_\_\_ .m. at which time your deliberations are deemed to commence.

Dated this \_\_\_\_\_ day of April, 2000.

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ROSS A. WALTERS  
CHIEF UNITED STATES MAGISTRATE JUDGE