BRIG V. PORT AUTHORITY, 12 CIV 5371 (RPP)
6/28/13 - FINAL

JURY CHARGE 9:55

MEMBERS OF THE JURY. WE HAVE NOW REACHED THAT POINT IN THE TRIAL WHERE YOU ENTER INTO YOUR FINAL FUNCTION AS JURORS, WHICH, I'M SURE YOU ALL APPRECIATE, IS AN IMPORTANT DUTY OF CITIZENSHIP IN THIS COUNTRY.

GENERAL AND SYMPATHY

I APPRECIATE THE FACT THAT YOU HAVE ALL GIVEN VERY CAREFUL ATTENTION TO THE EVIDENCE DURING THE TRIAL AND I'M SURE YOU WILL APPROACH YOUR DELIBERATIONS IN THAT SAME FINE SPIRIT YOU HAVE SO FAR DISPLAYED AND THAT YOU WILL ACT WITH FAIRNESS AND IMPARTIALITY AND REACH A JUST VERDICT.

IN REACHING YOUR VERDICT, YOU ARE NOT TO BE AFFECTED BY SYMPATHY FOR ANY OF THE PARTIES OR BY WHAT THE PARTIES OR THE LAWYERS OR ANYONE ELSE MAY FEEL, OR WHETHER YOUR VERDICT WILL PLEASE OR DISPLEASE ANYONE, OR WHETHER IT IS POPULAR OR UNPOPULAR. NEITHER SHOULD YOU BE AFFECTED BY ANY CONSIDERATION OTHER THAN THE EVIDENCE THAT HAS BEEN PRESENTED TO YOU IN THIS COURTROOM. THE FACT THAT PLAINTIFFS ARE INDIVIDUALS AND DEFENDANT IS THE PORT AUTHORITY TRANS HUDSON IN NO RESPECT MAY ENTER INTO YOUR JUDGMENT. IF YOU LET SYMPATHY OR PREJUDICE INTERFERE WITH YOUR CLEAR THINKING, THERE IS A RISK THAT YOU WILL NOT ARRIVE AT A JUST VERDICT.

FUNCTION OF JUDGE AND JURY

AS I TOLD YOU AT THE BEGINNING OF THE TRIAL, IN OUR COURT SYSTEM, THE FUNCTION OF THE JUDGE AND THE FUNCTION OF THE JURY ARE SEPARATE. YOUR ROLE IS TO DECIDE AND PASS UPON THE FACT ISSUES IN THE CASE. YOU ARE THE SOLE JUDGES OF THE FACTS. THAT IS SO IMPORTANT, YOU MAY HEAR ME REPEAT IT MORE THAN ONCE. YOU SHOULD DETERMINE THE FACTS FROM WHAT YOU CONSIDER TO BE THE BELIEVABLE OR CREDIBLE EVIDENCE. YOU DETERMINE THE WEIGHT AND SIGNIFICANCE OF THE EVIDENCE—BOTH THE TESTIMONY AND THE EXHIBITS. YOU DECIDE THE CREDIBILITY AND TRUTHFULNESS OF THE WITNESSES. YOU DRAW WHATEVER REASONABLE INFERENCES MAY BE DRAWN FROM THE FACTS AS YOU FIND THEM. AND YOU HAVE THE JOB OF RESOLVING SUCH CONFLICTS AS THERE MAY BE IN THE EVIDENCE.

MY JOB IS TO ENSURE THAT THE TRIAL PROCEEDS EFFICIENTLY AND FAIRLY; TO RULE BASED ON THE LAW AS TO THE ADMISSIBILITY OF EVIDENCE; AND TO INSTRUCT YOU AS TO THE APPLICABLE LAW. YOUR DUTY IS TO ACCEPT MY INSTRUCTIONS AS TO THE LAW AND APPLY THOSE INSTRUCTIONS TO THE FACTS AS YOU FIND THEM TO BE. ON THAT BASIS YOU WILL DECIDE THE CASE.

Regardless of any opinion

YOU ARE NOT TO TREAT ANY SINGLE INSTRUCTION WHICH I MAY GIVE YOU STANDING ALONE AS STATING THE LAW. RATHER, YOU MUST CONSIDER ALL MY INSTRUCTIONS TAKEN AS A WHOLE. THEN, AFTER LISTENING TO WHAT I TELL YOU ABOUT THE LAW, YOU WILL APPLY YOUR COMMON SENSE AND DETERMINE WHAT YOU THINK THE EVIDENCE SHOWS AND HOW YOU THINK

THIS CASE SHOULD BE DECIDED.

WITH RESPECT TO ANY FACTUAL MATTERS, YOUR RECOLLECTION AND YOUR RECOLLECTION ALONE GOVERNS. ANYTHING THAT COUNSEL FOR EITHER THE PLAINTIFFS OR THE DEFENDANT MAY HAVE SAID WITH RESPECT TO MATTERS IN EVIDENCE, WHETHER WHILE QUESTIONING WITNESSES OR IN ARGUMENT, IS NOT TO BE SUBSTITUTED FOR YOUR OWN RECOLLECTION OR EVALUATION OF THE EVIDENCE. SO, TOO, ANYTHING THAT I MAY HAVE SAID DURING THE TRIAL OR MAY SAY DURING THESE INSTRUCTIONS AS TO ANY FACTUAL MATTER IS NOT TO BE SUBSTITUTED FOR YOUR OWN RECOLLECTION OR JUDGMENT.

DURING THE TRIAL, I HAVE BEEN CALLED UPON TO MAKE RULINGS ON VARIOUS QUESTIONS. THERE MAY HAVE BEEN OBJECTIONS, OR MOTIONS MAY HAVE BEEN MADE TO STRIKE ANSWERS. THESE ARE MATTERS OF LAW, AND YOU SHOULD NOT CONSIDER THEM.

IF AT ANY TIME I INSTRUCTED YOU TO DISREGARD ANYTHING THAT WAS SAID, YOU MUST FOLLOW THAT INSTRUCTION. IF AT ANY TIME I INSTRUCTED YOU THAT THE PARTIES STIPULATED ~~THAT~~ to A FACT ~~WAS~~ as TRUE, YOU MUST ~~ACCEPT THAT FACT AS TRUE~~ follow that instruction. THE FACT THAT, AT TIMES, I MAY HAVE ASKED QUESTIONS OF WITNESSES DOES NOT INDICATE ANY FEELING OF MINE ABOUT THE FACTS ONE WAY OR THE OTHER. MY COMMENTS WERE INTENDED ~~ONLY~~ TO CLARIFY THE ISSUE AT HAND; IT WILL BE YOUR JUDGMENT OF THE EVIDENCE THAT EXCLUSIVELY GOVERNS.

EVIDENCE

THE EVIDENCE IN THIS CASE CONSISTS OF THE SWORN TESTIMONY OF ALL THE WITNESSES, NO MATTER WHICH SIDE CALLED THEM, AS WELL AS ALL THE EXHIBITS ADMITTED INTO EVIDENCE. IF IN THE COURSE OF MY DISCUSSIONS WITH YOU TODAY, I MAKE REFERENCE TO ANY FACT MATTER OR ANY TESTIMONY WHICH DOES NOT AGREE WITH HOW YOU REMEMBER IT—I WILL TRY NOT TO DO THAT, BUT IF I DO—YOU ARE TO DISREGARD THAT BECAUSE HOW YOU REMEMBER THE TESTIMONY IS WHAT MUST CONTROL AND NOT ANYTHING SAID BY ME OR BY THE LAWYERS IN THEIR OPENING STATEMENTS OR IN THEIR CLOSING ARGUMENTS OR DURING THE TRIAL.

NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH YOU MAY UTILIZE IN DECIDING THIS CASE. ONE TYPE IS CALLED DIRECT EVIDENCE. DIRECT EVIDENCE IS A WITNESS'S TESTIMONY OF WHAT HE OR SHE OBSERVED OR HEARD. IN OTHER WORDS, WHEN A WITNESS TESTIFIES ABOUT WHAT IS KNOWN TO HIM OR TO HER ABOUT WHAT HE OR SHE HAS SEEN, FELT, TOUCHED, OR HEARD—THAT IS CALLED DIRECT EVIDENCE.

FACTS MAY ALSO BE PROVEN BY A SECOND TYPE OF EVIDENCE CALLED CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE TENDS TO PROVE ONE FACT BY PROOF OF OTHER FACTS. I WILL NOW GIVE YOU AN EXAMPLE OF CIRCUMSTANTIAL EVIDENCE.

ASSUME THAT WHEN YOU CAME INTO THE COURTHOUSE THIS MORNING THE SUN WAS SHINING AND IT WAS A NICE DAY. ASSUME THAT THE COURTROOM BLINDS ARE DRAWN AND THAT YOU CANNOT LOOK OUTSIDE. AS

YOU ARE SITTING HERE, SOMEONE WALKS IN WITH AN UMBRELLA WHICH IS DRIPPING WET. SOMEBODY ELSE THEN WALKS IN WITH A RAINCOAT WHICH ALSO IS DRIPPING WET. NOW, YOU CANNOT LOOK OUTSIDE OF THE COURTROOM AND YOU CANNOT SEE WHETHER IT IS RAINING. SO YOU HAVE NO DIRECT EVIDENCE OF THAT FACT. BUT ON THE COMBINATION OF FACTS WHICH I HAVE ASKED YOU TO ASSUME, IT WOULD BE REASONABLE AND LOGICAL FOR YOU TO CONCLUDE THAT BETWEEN THE TIME YOU ARRIVED AT THE COURTHOUSE AND THE TIME THESE PEOPLE WALKED IN, IT HAD STARTED TO RAIN.

THAT IS ALL THERE IS TO CIRCUMSTANTIAL EVIDENCE. YOU INFER, ON THE BASIS OF REASON AND EXPERIENCE AND COMMON SENSE FROM AN ESTABLISHED FACT, THE EXISTENCE OR THE NONEXISTENCE OF SOME OTHER FACT.

DURING THE TRIAL YOU MAY ALSO HAVE HEARD THE ATTORNEYS USE THE TERM "INFERENCE," AND DURING THEIR CLOSING ARGUMENTS, YOU MAY ALSO HAVE HEARD THE ATTORNEYS ASK YOU TO "INFER" THE EXISTENCE OF SOME FACT FROM OTHER ESTABLISHED FACTS. AN INFERENCE IS NOT A SUSPICION OR GUESS. IT IS A REASONABLE, LOGICAL DECISION BASED ON YOUR OWN EXPERIENCE AND COMMON SENSE TO CONCLUDE THAT A DISPUTED FACT EXISTS. THERE ARE TIMES WHEN DIFFERENT INFERENCES MAY BE DRAWN FROM FACTS THAT HAVE BEEN ESTABLISHED. THE PLAINTIFFS OR PATH MAY HAVE ALSO ASKED YOU TO DRAW DIFFERENT INFERENCES FROM THE SAME FACTS. IT IS FOR YOU AND YOU ALONE TO DECIDE WHAT REASONABLE

INFERENCES YOU WILL DRAW.

ALL EVIDENCE IS IMPORTANT, AND YOU WILL, OF COURSE, CONSIDER ALL EVIDENCE IN MAKING YOUR DECISION. KEEP IN MIND THAT QUESTIONS ARE NOT EVIDENCE. ONLY ANSWERS ARE EVIDENCE. QUESTIONS ARE USEFUL ONLY TO THE EXTENT THAT THEY PERMIT YOU TO UNDERSTAND THE MEANING AND SIGNIFICANCE OF THE ANSWERS. THE DOCUMENTS OR EXHIBITS RECEIVED IN EVIDENCE ARE ALSO EVIDENCE. ANY EVIDENCE AS TO WHICH AN OBJECTION WAS SUSTAINED AND ANY ~~ANSWER~~ question OR ARGUMENT WHICH I ORDERED TO BE STRICKEN, MUST BE DISREGARDED BY YOU IN ITS ENTIRETY BECAUSE I HAVE RULED THAT AS A MATTER OF LAW IT IS NOT PROPER EVIDENCE IN THIS CASE.

EXCHANGES BETWEEN ATTORNEYS AND COURT

MEMBERS OF THE JURY, THIS TRIAL IS—AS IS ANY TRIAL—A SEARCH FOR JUSTICE. IT IS A FACT-FINDING OPERATION. IT IS NOT A CONTEST BETWEEN THE ATTORNEYS OR BETWEEN ANY ATTORNEY OR PARTY AND ANY WITNESS. SO PLEASE PUT OUT OF YOUR MIND ANY EXCHANGES THAT MAY HAVE OCCURRED DURING THE TRIAL BETWEEN THE ATTORNEYS OR BETWEEN ANY ATTORNEY OR PARTY AND THE COURT.

I WANT TO MAKE IT CLEAR TO YOU THAT IT IS NOT MY FUNCTION OR MY INTENTION TO FAVOR ONE SIDE OR THE OTHER OR TO CRITICIZE ANYBODY IN ANY WAY WHATSOEVER OR TO INDICATE TO YOU, JURORS, THAT I HAVE AN OPINION AS TO THE TRUTHFULNESS OF ANY WITNESS OR AS TO THE MERITS OF THE CASE. THAT'S YOUR FUNCTION, YOURS ALONE, AND I LEAVE IT ENTIRELY WITH YOU, THE JURY. AGAIN, THE DECISION OR VERDICT IN THIS CASE IS

YOURS, NOT MINE, SO PLEASE DON'T REACH ANY CONCLUSION THAT I MAY HAVE SOME ATTITUDE OR THAT I MAY HAVE SOME VIEWPOINT ON THE CASE. I PURPOSELY DO NOT.

CREDIBILITY OF WITNESSES

A WORD ABOUT THE CREDIBILITY OF WITNESSES. IN JURY TRIALS WE RELY ON YOU, THE JURORS, TO JUDGE THE CREDIBILITY AND TRUTHFULNESS OF EACH WITNESS AND WE ALSO RELY ON YOU TO DETERMINE THE WEIGHT THAT A WITNESS'S TESTIMONY DESERVES. YOU SHOULD SCRUTINIZE THE TESTIMONY THAT A WITNESS GIVES IN EVERY MATTER TO DETERMINE IF A WITNESS'S TESTIMONY IS WORTHY OF BELIEF. HERE, AGAIN, YOU ARE EXPECTED TO USE YOUR COMMON SENSE AS JURORS. YOU MAY CONSIDER THE INTELLIGENCE OF A WITNESS, THE MOTIVE OF ANY WITNESS, AND THE DEMEANOR OF A WITNESS, THAT IS TO SAY, THE MANNER IN WHICH HE OR SHE GIVES TESTIMONY ON THE STAND. YOU MAY ALSO CONSIDER THE OPPORTUNITY THAT A WITNESS HAD TO OBSERVE THE FACTS UPON WHICH HE OR SHE BASED HIS OR HER TESTIMONY, AS WELL AS THE PLAUSIBILITY, PROBABILITY, OR IMPROBABILITY OF THAT WITNESS'S TESTIMONY IN THE LIGHT OF ALL THE OTHER FACTS IN THE CASE. YOU CAN ALSO CONSIDER ANY RELATIONSHIP THAT THE WITNESS MAY HAVE WITH EITHER SIDE OF THE CASE OR THE MANNER IN WHICH ANY WITNESS MAY BE AFFECTED BY, OR INTERESTED IN, THE VERDICT.

THERE IS NO MAGIC FORMULA TO EVALUATE THE TRUTHFULNESS OF WITNESSES. IN YOUR EVERYDAY AFFAIRS, EACH OF YOU DETERMINES FOR

YOURSELF THE RELIABILITY OF STATEMENTS MADE TO YOU BY OTHER PEOPLE AND THOSE SAME TESTS THAT YOU USE IN YOUR EVERYDAY LIFE SHOULD BE APPLIED IN YOUR JURY DELIBERATIONS. YOU USE YOUR COMMON SENSE; YOU RELY ON YOUR HUMAN EXPERIENCE.

IF YOU FIND THAT A PARTICULAR WITNESS HAS TESTIFIED FALSELY IN ANY ONE MATERIAL PART OF HIS OR HER TESTIMONY, YOU MAY LOOK WITH DISTRUST UPON THE OTHER EVIDENCE GIVEN BY THAT WITNESS. AND IF YOU FIND ANY WITNESS TESTIFIED IN A MANNER THAT IS WILLFULLY AND INTENTIONALLY FALSE, YOU MAY DISREGARD ALL OF THE TESTIMONY GIVEN BY THAT WITNESS OR YOU MAY ACCEPT THAT PART YOU DO BELIEVE AND DISREGARD THAT PART YOU BELIEVE IS FALSE.

PRIOR INCONSISTENT STATEMENTS

A WITNESS MAY BE DISCREDITED OR "IMPEACHED" BY CONTRADICTORY EVIDENCE, THAT IS, BY A SHOWING THAT HE OR SHE TESTIFIED FALSELY CONCERNING A MATERIAL MATTER, OR BY EVIDENCE THAT AT SOME OTHER TIME THE WITNESS HAS SAID OR DONE SOMETHING, OR HAS FAILED TO SAY OR DO SOMETHING, WHICH IS INCONSISTENT WITH THAT WITNESS'S PRESENT TESTIMONY. IT IS FOR YOU TO DETERMINE WHETHER A PRIOR STATEMENT WAS INCONSISTENT AND WHETHER ANY SUCH INCONSISTENCY IS SIGNIFICANT OR INCONSEQUENTIAL. FURTHERMORE, IF YOU BELIEVE THAT ANY WITNESS HAS BEEN SO IMPEACHED, THEN IT IS YOUR EXCLUSIVE PROVINCE TO GIVE THE TESTIMONY OF THAT WITNESS SUCH CREDIBILITY OR WEIGHT, IF ANY, AS YOU MAY THINK IT DESERVES.

NOW IN THIS CASE MR. BRIG AND MR. BUCHALA ARE INTERESTED WITNESSES. OTHER WITNESSES MAY HAVE AN INTEREST IN THE OUTCOME OF THE CASE, ALTHOUGH THEY MAY HAVE A LESS DIRECT PERSONAL INTEREST. YOU MAY CONSIDER A WITNESS'S DEGREE OF INTEREST OR LACK OF INTEREST IN THE OUTCOME OF THIS CASE, WHEN EVALUATING HIS OR HER TESTIMONY. A WITNESS WHO IS INTERESTED IS NOT NECESSARILY UNWORTHY OF BELIEF. THE INTEREST OF A WITNESS, HOWEVER, IS A FACTOR OR POSSIBLE MOTIVE YOU MAY CONSIDER IN DETERMINING THE WEIGHT AND CREDIBILITY TO BE GIVEN TO HIS OR HER TESTIMONY.

YOU MAY, IF YOU DEEM IT PROPER UNDER ALL THE CIRCUMSTANCES, DISBELIEVE THE TESTIMONY OF AN INTERESTED WITNESS EVEN THOUGH IT IS NOT OTHERWISE IMPEACHED OR CONTRADICTED, BUT YOU ARE NOT REQUIRED TO DO SO. YOU MAY ACCEPT ALL OR PART OF SUCH TESTIMONY AS YOU DEEM RELIABLE.

IN SHORT, IT IS FOR YOU TO DETERMINE FROM YOUR OBSERVATIONS, AND USING YOUR COMMON SENSE AND EXPERIENCE AND ALL THE OTHER FACTORS PREVIOUSLY MENTIONED IN THESE INSTRUCTIONS ABOUT DETERMINING THE TRUTHFULNESS OF WITNESSES, WHETHER THE POSSIBLE INTEREST OF ANY WITNESS IS SUCH THAT HE OR SHE IS LIKELY—INTENTIONALLY OR UNINTENTIONALLY—TO DISTORT THE TESTIMONY.

USE OF DEPOSITION IN CROSS EXAMINATION

NOW, AT TIMES DURING THE TRIAL, THE ATTORNEYS READ TO CERTAIN WITNESSES ANSWERS ~~THAT~~ THEY HAD GIVEN PREVIOUSLY AT DEPOSITIONS IN

ORDER TO ATTEMPT TO DEMONSTRATE A CONFLICT BETWEEN THAT WITNESS'S TRIAL TESTIMONY AND HIS OR HER EARLIER TESTIMONY. WHEN EARLIER TESTIMONY IS USED IN THIS FASHION, IT IS INTENDED TO DISCREDIT THE WITNESS'S TESTIMONY AT TRIAL BY SHOWING THAT THE WITNESS TESTIFIED DIFFERENTLY OR INCONSISTENTLY ON A PRIOR OCCASION. YOU CAN CONSIDER SUCH EARLIER TESTIMONY AS BEARING ON THE CREDIBILITY OF THE WITNESS. OF COURSE, YOU SHOULD ALSO CONSIDER THE EXPLANATION, IF ANY, GIVEN FOR ANY REAL OR APPARENT INCONSISTENCY.

BURDEN OF PROOF—PREPONDERANCE OF THE EVIDENCE

MEMBERS OF THE JURY, THIS IS A CIVIL CASE. HERE, EACH PLAINTIFF HAS THE BURDEN TO PROVE EACH ELEMENT OF HIS CLAIM FOR A VIOLATION OF THE FEDERAL RAIL SAFETY ACT, AND THEREFORE MUST ESTABLISH EACH ELEMENT BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE. WHEN A PLAINTIFF HAS THE BURDEN OF PROOF ON A PARTICULAR ISSUE IN A CIVIL CASE, THE CONTENTION OF THAT PLAINTIFF MUST BE ESTABLISHED BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE.

CREDIBLE EVIDENCE MEANS THE TESTIMONY OR EXHIBITS THAT YOU FIND WORTHY TO BE BELIEVED. A PREPONDERANCE MEANS A GREATER PART OF IT. THAT DOESN'T MEAN THE GREATER NUMBER OF WITNESSES OR THE GREATER AMOUNT OF TIME EITHER SIDE EMPLOYED IN THE TRIAL. THE PHRASE REFERS TO THE QUALITY OF THE EVIDENCE, ITS WEIGHT OR SIGNIFICANCE, AND THE EFFECT IT HAS ON YOUR MINDS.

THE LAW REQUIRES THAT, IN ORDER FOR A PLAINTIFF TO PREVAIL ON AN

ISSUE FOR WHICH IT HAS THE BURDEN OF PROOF, THE EVIDENCE SUPPORTING THAT PLAINTIFF'S CLAIM MUST APPEAL TO YOU AS MORE NEARLY REPRESENTING WHAT TOOK PLACE THAN THE EVIDENCE OPPOSED TO THAT CONTENTION. IF IT DOES NOT, OR IF THE EVIDENCE WEIGHS SO EVENLY THAT YOU ARE UNABLE TO SAY, YOU MUST RESOLVE THE QUESTION AGAINST THE PLAINTIFF AND IN FAVOR OF THE DEFENDANT.

WE OFTEN SAY THAT EVIDENCE IS TO BE WEIGHED ON SCALES, AND IF YOU FIND THAT THE EVIDENCE ON ANY ISSUE IS BALANCED EQUALLY IN FAVOR OF A PLAINTIFF AND A DEFENDANT, THAT IS TO SAY, IF THE SCALES ARE EVENLY BALANCED, THEN THE PLAINTIFF WOULD NOT HAVE SUSTAINED HIS BURDEN OF PROOF ON THAT ISSUE AND THE CASE MUST BE DECIDED IN FAVOR OF THE DEFENDANT ON THAT ISSUE.

BUT IF THE SCALES TILT, HOWEVER SLIGHTLY, IN FAVOR OF THE PLAINTIFF WITH THE BURDEN OF PROOF, THAT WOULD CONSTITUTE A PREPONDERANCE OF THE CREDIBLE EVIDENCE AND THE LEGAL BURDEN OF PROOF WOULD BE SATISFIED.

NOW, I KNOW THAT SOME OF YOU MAY HAVE SERVED IN CRIMINAL CASES AS JURORS OR MAY HAVE WATCHED STAGE PLAYS AND TELEVISION SHOWS DEALING WITH SUCH CASES. YOU HAVE LIKELY HEARD THE EXPRESSION "PROOF BEYOND A REASONABLE DOUBT." MEMBERS OF THE JURY, THAT STANDARD DOES NOT APPLY IN A CIVIL CASE. THAT IS THE STANDARD WHICH THIS COUNTRY REQUIRES BEFORE ANYONE CAN BE FOUND GUILTY OF A CRIME AND LOSE HIS OR HER LIBERTY. PUT OUT OF YOUR MIND ANY

DISCUSSION YOU HAVE HEARD ABOUT PROOF BEYOND A REASONABLE DOUBT. AGAIN, A PLAINTIFF'S PROOF ON EACH OF THE ISSUES FOR WHICH HE HAS THE BURDEN OF PROOF MUST APPEAR TO YOUR SATISFACTION TO BE BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE.

IN THIS CASE, EACH PLAINTIFF HAS THE BURDEN OF PROVING ALL OF THE ELEMENTS OF HIS CLAIM BY A PREPONDERANCE OF THE EVIDENCE. IF YOU FIND THAT ANY ONE ELEMENT HAS NOT BEEN PROVEN BY A PREPONDERANCE OF THE EVIDENCE, YOU MUST RETURN A VERDICT FOR PATH.

PLAINTIFFS' CLAIMS

IN THIS ACTION, PLAINTIFFS, MR. BRIG AND MR. BUCHALA, EACH ALLEGE THAT PATH VIOLATED A FEDERAL STATUTE CALLED THE FEDERAL RAIL SAFETY ACT ("FRSA"). THE PURPOSE OF THE FRSA "IS TO PROMOTE SAFETY IN EVERY AREA OF RAILROAD OPERATIONS AND REDUCE RAILROAD-RELATED ACCIDENTS AND INCIDENTS." IN 2007, CONGRESS AMENDED THE FRSA TO INCLUDE MEASURES THAT WERE INTENDED TO ENSURE THAT RAILROAD EMPLOYEES COULD REPORT THEIR SAFETY CONCERNS WITHOUT FEAR OF CAUSING ANY ADVERSE OR DISCRIMINATORY ACTIONS BY THE RAILROAD CARRIER THAT EMPLOYED THEM.

AS AMENDED, THE FRSA STATES THAT IT IS ILLEGAL FOR A RAILROAD CARRIER TO "DISCHARGE, DEMOTE, SUSPEND, REPRIMAND, OR IN ANY OTHER WAY DISCRIMINATE AGAINST AN EMPLOYEE . . . [FOR] PROVID[ING] INFORMATION, [FOR] DIRECTLY CAUS[ING] INFORMATION TO BE PROVIDED, OR [FOR] OTHERWISE DIRECTLY ASSIST[ING] IN ANY INVESTIGATION REGARDING

ANY CONDUCT WHICH THE EMPLOYEE REASONABLY BELIEVE[D] CONSTITUTE[D] A VIOLATION OF ANY FEDERAL LAW, RULE, OR REGULATION RELATING TO RAILROAD SAFETY." AN EMPLOYEE'S ACTIONS ARE A PROTECTED ACTIVITY UNDER THIS PROVISION IF THE EMPLOYEE PROVIDES SUCH INFORMATION OR ASSISTANCE TO A SUPERVISOR OR TO ANOTHER PERSON WHO HAS THE AUTHORITY TO INVESTIGATE, DISCOVER, OR TERMINATE THE ALLEGED MISCONDUCT.

THE FRSA ALSO STATES THAT IT IS ILLEGAL FOR A RAILROAD CARRIER TO TAKE ANY ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION AGAINST AN EMPLOYEE FOR "REPORTING, IN GOOD FAITH, A HAZARDOUS SAFETY OR SECURITY CONDITION." THUS, AN EMPLOYEE'S REPORTING OF A HAZARDOUS SAFETY CONDITION IS ANOTHER TYPE OF ACTIVITY PROTECTED BY THE STATUTE.

IN THIS CASE, PLAINTIFFS CLAIM THAT THEY ENGAGED IN THE TWO TYPES OF PROTECTED ACTIVITY THAT I JUST DESCRIBED TO YOU BY REPORTING THAT THEY WERE ALMOST HIT BY A WORK TRAIN W/O HEADLIGHTS ON MARCH 24, 2010, AND THAT, AFTER THEY REPORTED THIS INCIDENT, PATH VIOLATED THE FRSA BY CHARGING THEM WITH COMPANY SAFETY RULE VIOLATIONS AND BY DENYING THEM PROMOTION OPPORTUNITIES. TO PREVAIL ON THIS CLAIM, EACH PLAINTIFF MUST SEPARATELY PROVE FOUR ESSENTIAL ELEMENTS BY A PREPONDERANCE OF THE EVIDENCE:

1. THAT THE ACTIONS HE UNDERTOOK IN RELATION TO THE MARCH 24, 2010 INCIDENT CONSTITUTED A PROTECTED ACTIVITY UNDER THE FRSA;

2. THAT PATH WAS AWARE THAT HE HAD PARTICIPATED IN A PROTECTED ACTIVITY IN CONNECTION WITH THE MARCH 24, 2010 INCIDENT;

3. THAT HE WAS SUBJECTED TO AN ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION BY PATH, NAMELY, THAT HE WAS CHARGED WITH COMPANY SAFETY RULE VIOLATIONS OR DENIED PROMOTION OPPORTUNITIES; AND

4. THAT HIS PARTICIPATION IN A PROTECTED ACTIVITY WAS A CONTRIBUTING FACTOR TO A Decision to take an ~~THE~~ ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION TAKEN AGAINST HIM.

NOW, LET US CONSIDER EACH OF THE ELEMENTS THAT EACH PLAINTIFF MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE.

WITH RESPECT TO THE FIRST ELEMENT, EACH PLAINTIFF MUST ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT, IN CONNECTION WITH THE INCIDENT ON MARCH 24, 2010, HE PARTICIPATED IN AN ACTIVITY PROTECTED BY THE FRSA. AN EMPLOYEE PARTICIPATES IN AN ACTIVITY PROTECTED BY THE FRSA IF HE REASONABLY BELIEVES THAT A VIOLATION OF A FEDERAL LAW, RULE, OR REGULATION RELATING TO RAILROAD SAFETY HAS OCCURRED, AND IF HE THEN PROVIDES INFORMATION ABOUT THIS VIOLATION TO A SUPERVISOR OR ANOTHER PERSON WITH AUTHORITY TO INVESTIGATE THE VIOLATION, OR IF HE OTHERWISE DIRECTLY ASSISTS IN THE INVESTIGATION OF THE VIOLATION. ALTERNATIVELY, AN EMPLOYEE PARTICIPATES IN A PROTECTED ACTIVITY IF HE REPORTS, IN GOOD FAITH, A HAZARDOUS SAFETY OR SECURITY CONDITION.

WITH RESPECT TO THE SECOND ELEMENT, EACH PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT PATH KNEW THAT HE PARTICIPATED IN A PROTECTED ACTIVITY IN CONNECTION WITH THE MARCH 24,

2010 INCIDENT.

WITH RESPECT TO THE THIRD ELEMENT, EACH PLAINTIFF MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT PATH CHARGED HIM WITH COMPANY RULE VIOLATIONS, DENIED HIM PROMOTION OPPORTUNITIES, OR OTHERWISE TOOK AN ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION AGAINST HIM. UNDER THE STATUTE, AN ADVERSE EMPLOYMENT ACTION INCLUDES DISCHARGING, DEMOTING, SUSPENDING, REPRIMANDING, OR IN ANY OTHER WAY DISCRIMINATING AGAINST AN EMPLOYEE. MORE GENERALLY, AN ADVERSE EMPLOYMENT ACTION CAN BE THOUGHT OF AS ANY ACTION THAT A REASONABLE EMPLOYEE WOULD FIND TO BE "MATERIALLY ADVERSE" OR REASONABLY LIKELY TO RESULT IN NEGATIVE CHANGES TO THE TERMS AND CONDITIONS OF HIS EMPLOYMENT.

WITH RESPECT TO THE FOURTH AND FINAL ELEMENT, EACH PLAINTIFF HAS TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS PARTICIPATION IN THE PROTECTED ACTIVITY CONTRIBUTED TO THE DECISION BY PATH TO CHARGE HIM WITH COMPANY RULE VIOLATIONS, DENY HIM PROMOTION OPPORTUNITIES, OR TAKE SOME OTHER ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION AGAINST HIM. A CONTRIBUTING FACTOR IS ANY FACTOR, WHICH ALONE OR IN COMBINATION WITH OTHER FACTORS, CONTRIBUTES TO AN ADVERSE EMPLOYMENT DECISION. IN PROVING THAT PARTICIPATION IN A PROTECTED ACTIVITY CONTRIBUTED TO AN ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION, A PLAINTIFF NEED NOT PROVE THAT HIS PARTICIPATION IN THE PROTECTED ACTIVITY WAS A

MOTIVATING FACTOR IN THE ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION.

MULTIPLE PLAINTIFFS

I HAVE JUST INSTRUCTED YOU AS TO THE LEGAL ELEMENTS OF AN FRSA CLAIM, I WISH TO NOW INSTRUCT YOU THAT YOU MUST CONSIDER EACH PLAINTIFF'S FRSA CLAIM SEPARATELY. IN REACHING YOUR VERDICT, BEAR IN MIND THAT LIABILITY IS INDIVIDUAL. YOUR VERDICT MUST BE BASED SOLELY UPON THE EVIDENCE, OR LACK OF EVIDENCE, ABOUT EACH PLAINTIFF IN RELATION TO PATH. YOUR VERDICT AS TO ONE PLAINTIFF ON A CLAIM SHOULD NOT CONTROL YOUR DECISION AS TO ANY OTHER PLAINTIFF.

DEFENSE TO FRSA LIABILITY

NOW, IF YOU FIND THAT ANY PLAINTIFF HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT PATH TOOK AN ADVERSE OR DISCRIMINATORY EMPLOYMENT ACTION AGAINST HIM, IN WHOLE OR IN PART, BECAUSE HE PARTICIPATED IN A PROTECTED ACTIVITY IN CONNECTION WITH THE MARCH 24, 2010 INCIDENT, THE BURDEN IN THIS CASE WILL SHIFT TO PATH TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE MADE THE SAME EMPLOYMENT DECISIONS IRRESPECTIVE OF WHETHER A PLAINTIFF ENGAGED IN SOME PROTECTED ACTIVITY. "CLEAR AND CONVINCING EVIDENCE" IS A HIGHER BURDEN OF PROOF THAN A PREPONDERANCE OF THE EVIDENCE, WHICH I HAVE ALREADY DEFINED FOR YOU. CLEAR AND CONVINCING EVIDENCE IS EVIDENCE THAT IS HIGHLY PROBABLE OR REASONABLY CERTAIN.

IF YOU FIND THAT PATH HAS PROVEN THAT IT WAS HIGHLY PROBABLE OR REASONABLY CERTAIN THAT IT WOULD HAVE MADE THE SAME EMPLOYMENT DECISIONS WITH REGARD TO ANY PLAINTIFF, THEN YOU MUST FIND THAT PATH IS NOT LIABLE UNDER THE FRSA AS TO THAT PLAINTIFF'S CLAIM AND ENTER A VERDICT FOR PATH. HOWEVER, IF YOU DETERMINE THAT A PLAINTIFF HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE EACH OF THE FOUR ELEMENTS OF HIS FRSA CLAIM AND IF YOU ALSO FIND THAT PATH DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE MADE THE SAME EMPLOYMENT DECISIONS IRRESPECTIVE OF ANY PLAINTIFF'S PROTECTED ACTIVITY, THEN YOU MUST FIND FOR THAT PLAINTIFF ON HIS CLAIM AND CONSIDER AWARDING HIM DAMAGES.

DAMAGES

THE FRSA STATES THAT AN EMPLOYEE PREVAILING IN AN ACTION BROUGHT UNDER THE STATUTE SHALL BE ENTITLED TO ALL RELIEF "NECESSARY TO MAKE THE EMPLOYEE WHOLE." THE FACT THAT I AM CHARGING YOU ON THE ISSUE OF DAMAGES DOES NOT MEAN THAT EITHER MR. BRIG OR MR. BUCHALA IS ENTITLED TO DAMAGES—THAT IS FOR YOU TO DECIDE. RATHER, I AM INSTRUCTING YOU ON THIS SUBJECT ONLY SO THAT YOU WILL HAVE that GUIDANCE SHOULD YOU DECIDE THAT A PLAINTIFF IS ENTITLED TO RECOVERY.

COMPENSATORY DAMAGES

NOW IF YOU FIND THAT PATH IS LIABLE TO A PLAINTIFF, I INSTRUCT YOU THAT YOU MAY AWARD THAT PLAINTIFF A SUM OF MONEY WHICH YOU

BELIEVE JUSTLY AND FAIRLY COMPENSATES HIM FOR ANY INJURY THAT WAS ACTUALLY CAUSED BY PATH. TO RECEIVE COMPENSATORY DAMAGES, EACH PLAINTIFF MUST PROVE THAT: (1) PATH VIOLATED THE FRSA STATUTE WHICH WE HAVE BEEN DISCUSSING AND (2) PATH'S VIOLATION OF THE STATUTE CAUSED HIM ACTUAL COMPENSABLE INJURY. SAID ANOTHER WAY, DAMAGES MAY ONLY BE AWARDED FOR THOSE INJURIES THAT YOU FIND A PLAINTIFF TO HAVE PROVEN BY A PREPONDERANCE OF THE EVIDENCE TO BE THE DIRECT RESULT OF PATH'S VIOLATION OF THE FRSA.

UNDER THE FRSA, DAMAGES ~~SHALL~~ MAY BE AWARDED FOR ANY LOST WAGES OR BACKPAY, AND FOR ANY SPECIAL DAMAGES SUSTAINED BY A PLAINTIFF AS A RESULT OF ANY CONDUCT BY PATH THAT YOU HAVE FOUND TO BE DISCRIMINATORY. COMPENSATORY DAMAGES CAN ALSO COVER ANY MENTAL ANGUISH OR EMOTIONAL SUFFERING THAT YOU FIND A PREVAILING PLAINTIFF TO HAVE SUFFERED AS A RESULT OF ANY CONDUCT BY PATH THAT YOU HAVE FOUND TO BE DISCRIMINATORY. KEEP IN MIND THAT, IN ORDER TO RECOVER DAMAGES FOR MENTAL ANGUISH OR EMOTIONAL SUFFERING, A PLAINTIFF MUST PRESENT CREDIBLE EVIDENCE WITH RESPECT TO HIS ANGUISH AND SUFFERING, AND ALSO PRESENT CORROBORATION—EITHER BY COMPETENT MEDICAL PROOF OR BY TESTIMONY—THAT THE CONDUCT BY PATH WHICH YOU FIND TO HAVE VIOLATED THE FRSA ACTUALLY CAUSED PLAINTIFF'S MENTAL ANGUISH OR EMOTIONAL SUFFERING. COMPENSATORY DAMAGES MUST NOT BE BASED ON SPECULATION OR SYMPATHY. THEY MUST BE REASONABLE AND BASED ON THE EVIDENCE PRESENTED AT TRIAL.

PUNITIVE DAMAGES

THE FRSA ALSO PERMITS, BUT DOES NOT REQUIRE, A JURY TO AWARD PUNITIVE DAMAGES TO A PLAINTIFF. PUNITIVE DAMAGES ARE INTENDED TO PUNISH A DEFENDANT FOR WRONGFUL CONDUCT AND TO SET AN EXAMPLE IN ORDER TO DETER OTHERS FROM COMMITTING SIMILAR ACTS IN THE FUTURE. PUNITIVE DAMAGES ARE ALSO INTENDED TO BE AN EXPRESSION OF A JURY'S INDIGNATION ABOUT A DEFENDANT'S MISCONDUCT WHERE THE MISCONDUCT IS FOUND TO BE PARTICULARLY OFFENSIVE OR SHOCKING.

IN THIS CASE, YOU MAY AWARD PUNITIVE DAMAGES, IF YOU DECIDE THAT ANY PLAINTIFF HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT PATH, OR ANY OF ITS AGENTS, ACTED WITH CALLOUS INDIFFERENCE TO, OR IN RECKLESS DISREGARD OF, HIS RIGHT TO REPORT A HAZARDOUS SAFETY CONDITION, OR HIS RIGHT TO PARTICIPATE IN AN INVESTIGATION REGARDING ANY CONDUCT WHICH THE EMPLOYEE REASONABLY BELIEVED CONSTITUTED A VIOLATION OF ANY FEDERAL LAW, RULE, OR REGULATION RELATING TO RAILROAD SAFETY.

INTERROGATORIES

NOW, TO AID YOU IN YOUR DELIBERATIONS, AND SO THAT A PROPER RECORD CAN BE MADE OF YOUR CONCLUSIONS AND FINDINGS, THE COURT HAS PREPARED SOME SPECIAL INTERROGATORIES, AND IN A MOMENT I AM GOING TO READ THEM TO YOU. THEY ARE SELF-EXPLANATORY. IF YOU FILL THEM OUT AND ANSWER THEM IN ACCORDANCE WITH THE INSTRUCTIONS ON THE LAW THAT I HAVE GIVEN YOU AND BASE YOUR DECISIONS ON WHAT YOU FIND

THE EVIDENCE IN THIS CASE TO SHOW, THEN THAT WILL LEAD YOU TO YOUR GENERAL VERDICT IN THIS CASE.

I AM ASKING THAT ONLY ONE COPY OF THE INTERROGATORIES BE MARKED, SIGNED BY THE FOREMAN, AND FILED WITH THE COURT, BUT EACH OF YOU WILL HAVE A COPY TO USE DURING YOUR DISCUSSIONS. THE ONE THAT IS MARKED ORIGINAL SHOULD BE THE ONE THAT YOU SIGN. WHEN YOU HAVE UNANIMOUSLY AGREED ON EACH ANSWER TO EACH QUESTION, THEN THE FOREPERSON SHOULD FILL IT IN AND SIGN IT, AND TELL THE MARSHAL THAT YOU HAVE REACHED A VERDICT. YOU WILL THEN BE ASKED TO COME BACK INTO OPEN COURT AND THE CLERK WILL ASK WHETHER EACH ONE OF THOSE ANSWERS ARE YOUR UNANIMOUS VERDICT.

I WOULD LIKE MY DEPUTY, MR. MONTEAGUDO, AT THIS TIME TO PLEASE HAND EACH JUROR A COPY SO THAT YOU CAN FOLLOW ALONG WITH ME WHILE I READ EACH INTERROGATORY.

10:35

[SPECIAL INTERROGATORY FORM DISTRIBUTED AND READ]

10:43

I WANT TO SAY A FEW MORE WORDS ABOUT YOUR DELIBERATIONS.

CONCLUDING INSTRUCTIONS

NOW, LADIES AND GENTLEMEN, YOU ARE ABOUT TO GO INTO THE JURY ROOM AND BEGIN YOUR DELIBERATIONS. IT IS YOUR DUTY, EACH OF YOU, TO CONSIDER THE FACTS OF THIS CASE FAIRLY AND IMPARTIALLY. EACH JUROR IS ENTITLED TO HIS OR HER OWN OPINION AND YOU ARE REQUIRED TO EXCHANGE YOUR OPINION OR VIEWS WITH ONE ANOTHER. THAT IS THE PURPOSE OF JURY DELIBERATION, TO TALK ABOUT THE CASE WITH EACH OTHER AND TO REASON

IT OUT AND DISCUSS THE EVIDENCE FAIRLY AND POLITELY. TAKE YOUR TIME. LISTEN TO THE VIEWS OF OTHERS AND STATE YOUR VIEWS.

THE VERDICT, WHEN YOU REACH IT, REPRESENTS THE DECISION OF EACH JUROR FOR HIMSELF OR HERSELF. IF ANY ONE OF YOU HAS A POINT OF VIEW WHICH DOES NOT AGREE WITH THE REST, YOU ARE NOT TO GIVE IT UP SIMPLY BECAUSE YOU'VE BEEN OUTNUMBERED OR OUTWEIGHED OR OUTTALKED BY THE OTHER JURORS. A VERDICT MUST BE UNANIMOUS, AND NO ONE IS TO GIVE UP HIS OR HER VIEWS OF THE CASE.

ON THE OTHER HAND, IF, AFTER DISCUSSION, YOU FIND THAT THE VIEW OF THE OTHER JURORS APPEALS TO YOU AS ~~BEING~~ MORE LIKELY TO BE CORRECT THAN YOUR OWN, IN OTHER WORDS, IF THEY REALLY CONVINCE YOU, THEN YOU SHOULD HAVE NO HESITANCY TO CHANGE YOUR MIND AND TO AGREE WITH THE OTHERS, IF YOU DO IN FACT AGREE. BUT THE VERDICT MUST BE UNANIMOUS. EACH OF YOU HAS TO APPLY YOUR CONSCIENTIOUS EFFORTS TO REACH A UNANIMOUS DECISION. THERE IS NO SHORTCUT, NO COMPROMISING, NO SPLITTING THE DIFFERENCE. THE JURY VERDICT YOU ARE GOING TO BRING BACK TO ME MUST REPRESENT THE VERDICT OF EVERYBODY ON THE JURY AFTER FULL DISCUSSION.

IN ORDER TO ASSIST YOU IN YOUR DELIBERATIONS YOU MAY ASK FOR ANY TESTIMONY TO BE READ BACK TO YOU AND FOR ANY OF THE EXHIBITS IN EVIDENCE TO EXAMINE IN THE JURY ROOM. YOU MAY KEEP THESE EXHIBITS WITH YOU. IT IS ENTIRELY UP TO YOU WHETHER YOU WANT ANY OR ALL OF THESE EXHIBITS TO DECIDE THE CASE. I WILL ALSO SEND YOU A COPY OF THIS

JURY CHARGE FOR YOUR USE DURING YOUR DELIBERATIONS. BUT PLEASE REMEMBER YOU ARE NOT TO CONSIDER ANY SINGLE INSTRUCTION STANDING ALONE AS STATING THE LAW; RATHER YOU MUST CONSIDER ALL THE INSTRUCTION AS TAKEN AS A WHOLE.

I WILL SAY THAT IF YOU ASK FOR TESTIMONY TO BE READ BACK TO YOU, YOU SHOULD TRY TO SPECIFY AS WELL AS YOU CAN WHAT AREA YOU ARE INTERESTED IN AND, IF POSSIBLE, THE TIME WHEN THE TESTIMONY WAS GIVEN. IT IS OUR PRACTICE FOR THE COURT REPORTER TO GO BACK THROUGH THE TRANSCRIPT AND LOCATE THOSE PAGES AND IT WILL SAVE SOME TIME IF YOU CAN SPECIFY.

IF THERE IS ANYTHING ABOUT MY INSTRUCTIONS WHICH IS NOT CLEAR, OR IF YOU DON'T REMEMBER OR IF YOU DON'T UNDERSTAND SOMETHING I MAY HAVE SAID, OR IF YOU WANT ME TO SAY IT OVER AGAIN TO YOU, SEND ME A NOTE AND I'LL TRY TO DO THE BEST I CAN TO COMPLY. I GENERALLY NAME JUROR #1 AS THE FOREPERSON, BUT SOMETIMES JUROR #1 DOES NOT WANT TO ACT AS FOREPERSON SO YOU MAY ELECT ANOTHER JUROR TO PRESIDE OVER YOUR DELIBERATIONS.

BEAR IN MIND THAT, UNTIL YOU HAVE REACHED A UNANIMOUS VERDICT AND I HAVE ACCEPTED THAT VERDICT, YOU ARE NOT TO REVEAL TO THE COURT, OR TO ANY OTHER PERSON, HOW YOU—THE JURY—STAND, NUMERICALLY OR OTHERWISE, ON THE QUESTIONS BEFORE YOU. IN ADDITION, UNTIL YOUR VERDICT HAS BEEN ACCEPTED, YOU MAY NOT USE ANY ELECTRONIC DEVICE, SUCH AS A CELL PHONE, OR ANY MEDIA, SUCH AS THE INTERNET, OR ANY WEBSITE, SUCH AS FACEBOOK OR TWITTER, TO

COMMUNICATE ANY INFORMATION ABOUT THIS CASE OR TO CONDUCT ANY RESEARCH ABOUT THIS CASE.

NOW, MEMBERS OF THE JURY, I WILL ASK THAT YOU REMAIN SEATED WHERE YOU ARE, WHILE I BRIEFLY CONFER WITH COUNSEL IN THE ROBING ROOM TO SEE IF I HAVE INADVERTENTLY OMITTED ANY PORTION OF THE INSTRUCTIONS ON THE LAW WHICH I SHOULD HAVE GIVEN TO YOU.

[SWEAR THE MARSHALS]

THE JURORS MAY RETIRE TO THE JURY ROOM TO BEGIN YOUR DELIBERATIONS.

[END]