

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SHANNON M. PETERS,

Plaintiff,

vs.

MICHELLE RISDAL, LEE  
BLANCHARD, JONATHAN  
HATFIELD, and CARLOS LUCERO,

Defendants.

No. C 12-4070-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## **No. 1 — INTRODUCTION**

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiff Shannon M. Peters against defendants Michelle Risdal, Lee Blanchard, Jonathan Hatfield, and Carlos Lucero. The defendants are all officers at the Woodbury County Jail, so I will call them the “Defendant Officers.” Peters claims that, during an incident at the Woodbury County Jail on May 27, 2012, the Defendant Officers violated her constitutional rights to be free from the use of “excessive force” by law enforcement officers and to be free from “retaliation” by law enforcement officers for exercising free speech rights. She seeks money damages for the alleged violations of her constitutional rights. The Defendant Officers deny her claims.

You have been chosen and sworn as jurors to try the issues of fact related to Ms. Peters’s claims. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

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 stations in life. Individuals—whether private individuals or public officials, like law enforcement officers—stand equal before the law, and each is entitled to the same fair consideration.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Ms. Peters has proved her claims. First, however, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

## No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
  - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
  - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

### No. 3 — DEFINITION OF EVIDENCE

Evidence is

- Testimony
  - Testimony may be either “live” or “by deposition”
  - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
  - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
  - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
  - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court
- Exhibits admitted into evidence
  - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
  - Stipulations are agreements between the parties
  - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved

Evidence is *not*

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

## No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is

- an expert
- a law enforcement officer

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## No. 5 — EXCESSIVE FORCE

Ms. Peters's first claim is that the Defendant Officers used "excessive force" during the incident on May 27, 2012. The Defendant Officers deny this claim.

You must consider Ms. Peters's "excessive force" claim against each Defendant Officer separately. To win on her "excessive force" claim, Ms. Peters must prove *all* of the following elements by the greater weight of the evidence:

***One, one or more Defendant Officers "hit" Ms. Peters's head against a hard surface while restraining her and removing her clothes.***

For this element to be proved,

- one or more defendants must have "hit" Ms. Peters head against hard surfaces to restrain her or to remove her clothes
- the "hitting" of Ms. Peters head against hard surfaces cannot be just an unpredictable and accidental result of the methods used to restrain Ms. Peters or to remove her clothes

***Two, the head "hitting" was excessive.***

The head "hitting" was "excessive," if it was not reasonably necessary to restrain Peters or to remove her clothes in the circumstances confronting the Defendant Officers. In deciding whether the head "hitting" was "reasonably necessary," you must consider the following factors:

- the need for the use of force, and the amount of force necessary, to restrain Ms. Peters or to remove her clothes
- the extent of the injury inflicted
  - keep in mind that the same amount of force may cause more or less injury to different people or in different circumstances
- whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used that much force under similar circumstances
- whether the decision about how much force to use was made in tense, uncertain, or rapidly changing circumstances
- Ms. Peters's conduct at the time of the incident, including
  - whether she was physically resisting restraint or the removal of her clothes
    - even if you find that she was physically resisting, the force used must still be reasonable, applying all of the other factors
  - whether she posed an immediate threat to the safety of herself, the Defendant Officers, or others

No one factor determines whether or not the force used was reasonably necessary. You must consider whether

the force used was reasonably necessary in light of all of the factors.

On the other hand, you must *not* consider the Defendant Officers' state of mind, intention, or motivation. This is so, because the good will of the officers will not make unreasonable acts constitutional, nor will their ill will turn a reasonable use of force into unconstitutional "excessive force."

***Three, Ms. Peters was injured by the use of excessive force.***

*If* Ms. Peters has proved *all* of these elements by the greater weight of the evidence as to one or more of the Defendant Officers, *then* she is entitled to damages in some amount on her "excessive force" claim.

## No. 6 — FREE SPEECH RETALIATION

Ms. Peters's second claim is that the Defendant Officers used "excessive force," by "hitting" her head against hard surfaces, in retaliation for exercising her free speech rights. The Defendant Officers deny this claim.

You must consider Ms. Peters's "free speech retaliation" claim against each Defendant Officer separately. To win on her "free speech retaliation" claim, Ms. Peters must prove all of the following elements by the greater weight of the evidence:

***One, on May 27, 2012, during her booking, Ms. Peters complained about her arrest and the order to remove her clothes.***

***Two, one or more Defendant Officers used "excessive force" by "hitting" Ms. Peters's head against hard surfaces.***

Ms. Peters must prove that one or more Defendant Officers used "excessive force" by "hitting" her head against hard surfaces, as explained in Instruction No. 5. Therefore, Ms. Peters cannot win on this claim unless she first wins on her "excessive force" claim.

***Three, Ms. Peters's complaints about her arrest and/or the order to remove her clothes were the determining factor for the use of "excessive force" against her.***

Ms. Peters's complaints about her arrest and/or the order to remove her clothes were "the determining factor" for the Defendant Officers' use of "excessive force" against her,

- if the Defendant Officers would not have used “excessive force” against her if she had not made such complaints
- but her complaints need not be the only reason for the Defendant Officers’ use of “excessive force”

In other words, Ms. Peters must show that one or more Defendant Officers intended to and did retaliate against her because of her complaints about her arrest and/or the order to remove her clothes by using “excessive force” against her, even if there were other reasons for using force against her.

***Four, Ms. Peters was injured by the retaliation.***

*If* Ms. Peters has proved *all* of these elements by the greater weight of the evidence against one or more Defendant Officers, *then* she is entitled to damages in some amount on her “free speech retaliation” claim.

## **No. 7 — DAMAGES IN GENERAL**

It is my duty to instruct you about the measure of damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for Ms. Peters on one or more of her claims, you must determine her damages.

- “Damages” are the amount of money that will reasonably and fairly compensate Ms. Peters for any injury that you find she suffered from the unconstitutional conduct of one or more Defendant Officers

- It is for you to determine what damages, if any, have been proved
- Any damages award must be based upon evidence and not upon speculation, guesswork, or conjecture.

## No. 8 — COMPENSATORY DAMAGES

Ms. Peters seeks compensatory damages for “past physical pain and suffering,” “past mental pain and suffering or emotional distress,” and “future mental pain and suffering or emotional distress.”

- **“Past physical pain and suffering** may include, but is not limited to:
  - Unpleasant feelings
  - bodily distress or uneasiness
  - bodily suffering, sensations, or discomfortfrom the time of the incident until the time of your verdict
- **“Past mental pain and suffering or emotional distress”** may include, but is not limited to:
  - mental anguish
  - loss of enjoyment of lifefrom the time of the incident until the time of your verdict
- **“Future mental pain and suffering or emotional distress”** includes “mental pain and suffering or emotional distress” that Ms. Peters is reasonably certain to experience from the date of your verdict into the future
- **Factors for determining the amount of damages for physical or mental pain and suffering** include, but are not limited to:
  - the nature and extent of the injury

- whether the injury is temporary or permanent
- whether the injury results in partial or total disability
- whether the injury aggravated any pre-existing condition
  - If Ms. Peters had a pre-existing condition, she is only entitled to recover the damages caused by the aggravation of the condition by the Defendant Officers' unconstitutional action, not for any condition that existed before the incident that was not caused by one or more Defendant Officers' unconstitutional actions

You will not be asked to make separate awards of “compensatory damages” against each Defendant Officer that you find liable, because each of those Defendant Officers is responsible for the entire amount of any compensatory damages.

## **No. 9 — NOMINAL DAMAGES**

“Nominal damages” are awarded to vindicate a party’s constitutional rights, when the violation of those rights has not caused injury that can be valued in monetary terms. If you find for Ms. Peters on one or more of her claims, but you find that she has failed to prove “compensatory damages,” as defined in Instruction No. 8 on that claim, then you must award her “nominal damages” on that claim. In other words, do not award “nominal damages” on a claim, if you award any “compensatory damages” on that claim. “Nominal damages” may not exceed one dollar.

## No. 10 — PUNITIVE DAMAGES

If you find for Ms. Peters on one or more of her claims, you may, but are not required to, award punitive damages. Punitive damages are awarded to punish defendants for engaging in the misconduct at issue and to deter defendants and others from engaging in such misconduct in the future.

Punitive damages are not intended to compensate for injury. You should consider Ms. Peters to be made whole for her injuries by the “compensatory damages,” if any, that you may award under Instruction No. 8. Consequently, you should only award punitive damages, if additional damages are appropriate to punish the Defendant Officers found liable on a claim and to discourage them and others from like conduct in the future.

To get punitive damages, Ms. Peters must prove the following by the greater weight of the evidence:

***One, punitive damages should be awarded.***

You may award punitive damages even if you award Ms. Peters only nominal, and not compensatory, damages.

However, you may award punitive damages only if one or more the Defendant Officers acted

- with malice, which is an evil motive or intent

or

- with reckless indifference to Ms. Peters’s constitutional right in question, that is, either her right to be free from the use of

“excessive force,” or her right to be free from “free speech retaliation”

In deciding whether to award punitive damages on a particular claim, you should also consider whether one or more of the Defendant Officers’ conduct was reprehensible. To decide whether conduct was “reprehensible,” you may consider the following:

- whether the harm suffered by Ms. Peters was physical or economic or both;
- whether there was violence, intentional malice, or reckless disregard for human health or safety;
- whether the conduct of one or more Defendant Officers that harmed Ms. Peters also caused harm or posed a risk of harm to others;
- whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed Ms. Peters

***Two, the amount of any punitive damages.***

You must use reason in setting the amount of any punitive damages. You should consider the following:

- how much harm the Defendant Officers’ conduct caused Ms. Peters
- what amount of punitive damages would bear a reasonable relationship to the harm caused to Ms. Peters
- what amount of punitive damages, in addition to other damages already awarded, is needed, considering the Defendant Officers’ financial condition, to punish the

Defendant Officers found liable and to deter those Defendant Officers and others from similar wrongful conduct in the future

On the other hand, you must not consider the following:

- bias, prejudice, or sympathy toward any party
- punishment of the Defendant Officers found liable for harm to anyone other than Ms. Peters

If Ms. Peters has proved both of her claims, you may, but do not have to, award punitive damages on both claims.

- You may award punitive damages on both claims in the same or different amounts
- You may award punitive damages on one claim, but not the other
- Punitive damages on one claim cannot be included in punitive damages on the other claim
- You may award the same amount of punitive damages against each Defendant Officer found liable, different amounts against each Defendant Officer found liable, or some punitive damages against some Defendant Officers found liable and none against others

## No. 11 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
  - An opening statement is not evidence
  - It is simply a summary of what the lawyer expects the evidence to be
- Ms. Peters will present evidence and call witnesses and the lawyer for the Defendant Officers may cross-examine them
- The Defendant Officers may present evidence and call witnesses, and the lawyer for Ms. Peters may cross-examine those witnesses
- The parties will make their closing arguments
  - Closing arguments summarize and interpret the evidence for you
  - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on Ms. Peters’s claims in a Verdict Form, a copy of which is attached to these Instructions
  - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

## No. 12 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 13 — BENCH CONFERENCES**

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
  - to decide how certain evidence is to be treated
  - to avoid confusion and error, and
  - to save your valuable time
- We will do our best to keep such conferences short and infrequent

## No. 14 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## No. 15 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

## No. 16 — DELIBERATIONS

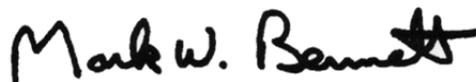
In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
  - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict
- Remember that you are not advocates, but judges—judges of the facts
  - Your sole interest is to seek the truth from the evidence in the case.

- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), signed by one or more jurors
  - I will respond as soon as possible, either in writing or orally in open court
  - Remember that you should not tell anyone—including me—how your votes stand numerically
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
  - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
  - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 16th day of December, 2013.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SHANNON M. PETERS,

Plaintiff,

vs.

MICHELLE RISDAL, LEE  
BLANCHARD, JONATHAN  
HATFIELD, and CARLOS LUCERO,

Defendants.

No. C 12-4070-MWB

**VERDICT FORM**

On Ms. Peters’s claims of constitutional violations, we, the Jury, find as follows:

<b>I. “EXCESSIVE FORCE”</b>					
<b>Step 1:</b> Verdict	<p>On Ms. Peters’s “excessive force” claim, as explained in Instruction No. 5, in whose favor do you find? <i>(If you find in favor of the Defendant Officers on this claim, then do not answer any further questions in the Verdict Form. Instead, notify the Court Security Officer (CSO) that you have reached a verdict. On the other hand, if you find in favor of Ms. Peters, go on to consider the additional steps in <b>Part I</b> and also enter your verdict on Ms. Peters’ “free speech retaliation” claim in <b>Part II</b>.)</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; text-align: center;">___ Ms. Peters</td> <td style="width: 50%; border: none; text-align: center;">___ The Defendant Officers</td> </tr> </table>	___ Ms. Peters	___ The Defendant Officers		
___ Ms. Peters	___ The Defendant Officers				
<b>Step 2:</b> Defendant Officers Found Liable	<p>On Ms. Peters’s “excessive force” claim, as explained in Instruction No. 5, which one or more of the Defendant Officers do you find used “excessive force”?</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;">___ Officer Michelle Risdal</td> </tr> <tr> <td style="border: none;">___ Sergeant Lee Blanchard</td> </tr> <tr> <td style="border: none;">___ Officer Johnathan Hatfield</td> </tr> <tr> <td style="border: none;">___ Officer Carlos Lucero</td> </tr> </table>	___ Officer Michelle Risdal	___ Sergeant Lee Blanchard	___ Officer Johnathan Hatfield	___ Officer Carlos Lucero
___ Officer Michelle Risdal					
___ Sergeant Lee Blanchard					
___ Officer Johnathan Hatfield					
___ Officer Carlos Lucero					

<p><b>Step 3:</b> Compensatory Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim in Step 1, what amount, if any, do you award for each of the following items of damages, as compensatory damages are explained in Instruction No. 8?</i></p>	
	<p>Past physical pain and suffering:</p>	<p>\$ _____</p>
	<p>Past mental pain and suffering or emotional distress:</p>	<p>\$ _____</p>
	<p>Future mental pain and suffering or emotional distress:</p>	<p>\$ _____</p>
	<p><b>Total Compensatory Damages</b></p>	<p>\$ _____</p>
<p><b>Step 4:</b> Nominal Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim in Step 1, but you find that she has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages” not exceeding \$1.00, as explained in Instruction No. 9. (Do not award “nominal damages” if you award any “compensatory damages” on this claim.)</i></p>	
	<p>Nominal damages:</p>	<p>\$ _____</p>
<p><b>Step 5:</b> Punitive Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim, what amount, if any, do you award for “punitive damages,” as such damages are explained in Instruction No. 10, against each Defendant Officer found liable for “excessive force” in Step 2? (Do not award punitive damages against any Defendant Officers that you did not find liable in Step 2.)</i></p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Michelle Risdal</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Sergeant Lee Blanchard</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Jonathan Hatfield</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Carlos Lucero</p>	

<b>II. “FREE SPEECH RETALIATION”</b>	
<b>Step 1: Verdict</b>	On Ms. Peters’s “free speech retaliation” claim, as explained in Instruction No. 6, in whose favor do you find? <i>(If you find in favor of the Defendant Officers on this claim, then do not answer any further questions in the Verdict Form. Instead, notify the Court Security Officer (CSO) that you have reached a verdict. On the other hand, if you find in favor of Ms. Peters on this claim, go on to consider the remaining steps in this part of the Verdict Form.)</i>
	<input type="checkbox"/> Ms. Peters <input type="checkbox"/> The Defendant Officers
<b>Step 2: Defendant Officers Found Liable</b>	On Ms. Peters’s “free speech retaliation” claim, as explained in Instruction No. 6, which one or more of the Defendant Officers do you find liable for “free speech retaliation”?
	<input type="checkbox"/> Officer Michelle Risdal
	<input type="checkbox"/> Sergeant Lee Blanchard
	<input type="checkbox"/> Officer Johnathan Hatfield
	<input type="checkbox"/> Officer Carlos Lucero
<b>Step 3: Compensatory Damages</b>	<i>If you found in favor of Ms. Peters on her “free speech retaliation” claim in Step 1, what additional amount, if any, do you award for each of the following items of damages, over and about the amounts awarded in Step 3 of Part I for compensatory damages for “excessive force,” as compensatory damages are explained in Instruction No. 8?</i>
	<i>Additional past physical pain and suffering:</i> \$ _____
	<i>Additional past mental pain and suffering or emotional distress:</i> \$ _____
	<i>Additional future mental pain and suffering or emotional distress:</i> \$ _____
	<b>Total Additional Compensatory Damages</b> \$ _____

<p><b>Step 4:</b> Nominal Damages</p>	<p><i>If you found in favor of Ms. Peters on her “free speech retaliation” claim in Step 1, but you find that she has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages” not exceeding \$1.00, as explained in Instruction No. 9. (Do not award “nominal damages” if you award any “compensatory damages” on this claim.)</i></p>	
	Nominal damages:	\$ _____
<p><b>Step 5:</b> Punitive Damages</p>	<p><i>If you found in favor of Ms. Peters on her “free speech retaliation” claim, what <b>additional</b> amount, if any, do you award for “punitive damages,” <b>over and about the amounts awarded in Step 5 of Part I for punitive damages for “excessive force,”</b> as punitive damages are explained in Instruction No. 10, against each Defendant Officer found liable for “free speech retaliation” in <b>Step 2</b>? (Do not award punitive damages against any Defendant Officers that you did not find liable in Step 2.)</i></p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Michelle Risdal</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Sergeant Lee Blanchard</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Jonathan Hatfield</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Carlos Lucero</p>	

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

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Juror

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Juror

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Juror

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Juror

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SHANNON M. PETERS,

Plaintiff,

vs.

MICHELLE RISDAL, LEE  
BLANCAHRD, JONATHAN  
HATFIELD, and CARLOS LUCERO,

Defendants.

No. C 12-4070-MWB

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY**

(12/15/13 FINAL “ANNOTATED”  
VERSION)

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**VERDICT FORM**

## No. 17 — INTRODUCTION<sup>1</sup>

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiff Shannon M. Peters against defendants Michelle Risdal, Lee Blanchard, Jonathan Hatfield, and Carlos Lucero. The defendants are all officers at the Woodbury County Jail, so I will call them the “Defendant Officers.” Peters claims that, during an incident at the Woodbury County Jail on May 27, 2012, the Defendant Officers violated her constitutional rights to be free from the use of “excessive force” by law enforcement officers and to be free from “retaliation” by law enforcement officers for exercising free speech rights. She seeks money damages for the alleged violations of her constitutional rights. The Defendant Officers deny her claims.<sup>2</sup>

You have been chosen and sworn as jurors to try the issues of fact related to Ms. Peters’s claims. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your

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<sup>1</sup> Judge Bennett’s current “plain language” stock Jury Instructions. *Compare* 8th Cir. Model 1.01 (2012); Joint Proposed Preliminary Jury Instruction No. 1.

<sup>2</sup> *See* Judge Bennett’s Proposed Statement Of The Case; *and compare* Joint Statement Of The Case.

individual evaluation of that evidence, your reason and common sense, and these Instructions.<sup>3</sup> Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

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 stations in life. Individuals—whether private individuals or public officials, like law enforcement officers—stand equal before the law, and each is entitled to the same fair consideration.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Ms. Peters has proved her claims. First, however, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

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<sup>3</sup> Judge Bennett’s stock first instruction on “implicit bias.” *Compare* 8th Cir. Model 1.01 (2012) (unnumbered ¶¶ 4 and 7); 9th Cir. Model 1.1B, unnumbered ¶ 3.

## No. 18 — BURDEN OF PROOF<sup>4</sup>

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence.”<sup>5</sup> This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
  - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
  - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

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<sup>4</sup> Judge Bennett’s “plain language” stock Jury Instructions. *Compare* 8th Cir. Model 3.04 (2012); Joint Proposed Jury Instruction No. 4.

<sup>5</sup> Because I have indicated that “the greater weight of the evidence” standard applies “[u]nless I tell you otherwise,” this instruction leaves open the possibility that certain matters may have a different burden of proof.

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

## No. 19 — DEFINITION OF EVIDENCE<sup>6</sup>

Evidence is

- Testimony
  - Testimony may be either “live” or “by deposition”
  - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
  - Consider “deposition” testimony as if it had been given in court<sup>7</sup>
- Answers to interrogatories
  - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
  - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court<sup>8</sup>
- Exhibits admitted into evidence
  - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations

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<sup>6</sup> Judge Bennett’s “plain language” Jury Instructions. *Compare* 8th Cir. Model 1.02 (2012); Joint Proposed Jury Instruction No. 5.

<sup>7</sup> *Compare* 8th Cir. Model 2.12 (2012).

<sup>8</sup> *Compare* Iowa Civil Jury Instruction No. 100.6.

- Stipulations are agreements between the parties
- If the parties stipulate that certain facts are true, then you must treat those facts as having been proved<sup>9</sup>

Evidence is *not*

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window

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<sup>9</sup> Compare 8th Cir. Model 2.03 (2012). Unless stipulations are expressly identified with reference to particular elements of claims or defenses, the parties are responsible for entering stipulations into evidence.

- You should consider both kinds of evidence, because the law makes no distinction between their weight<sup>10</sup>

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used<sup>11</sup>

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.<sup>12</sup>

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<sup>10</sup> See 8th Cir. Civil Model 1.02 (modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

<sup>11</sup> Compare 8th Cir. Model 2.08B (2012).

<sup>12</sup> See 9th Cir. Model 1.9 (modified), *and compare* 8th Cir. Model 1.02 (2012) (last unnumbered paragraph).

## No. 20 — TESTIMONY OF WITNESSES<sup>13</sup>

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

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<sup>13</sup> Judge Bennett's "stock" Jury Instructions. *Compare* 8th Cir. Models 1.01 (2012) (unnumbered ¶ 6); *id.* 3.03; *and* Joint Proposed Jury Instruction No. 6. For some time, I have not given separate instructions on "testimony" and "credibility."

You should not give any more or less weight to a witness's testimony just because the witness is

- an expert
- a law enforcement officer<sup>14</sup>

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

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<sup>14</sup> Compare 9th Cir. Model 2.11 and Joint Proposed Jury Instruction No. 6 concerning expert and lay opinions.

## No. 21 — EXCESSIVE FORCE<sup>15</sup>

Ms. Peters's first claim is that the Defendant Officers used "excessive force" during the incident on May 27, 2012. The Defendant Officers deny this claim.

You must consider Ms. Peters's "excessive force" claim against each Defendant Officer separately. To win on her "excessive force" claim, Ms. Peters must prove *all* of the following elements by the greater weight of the evidence:

***One, one or more Defendant Officers "hit" Ms. Peters's head against a hard surface while restraining her and removing her clothes.***<sup>16</sup>

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<sup>15</sup> Compare 8th Cir. Model 4.10 (Excessive Use of Force – Arrest Or Other Seizure Of Person – Before Confinement – Fourth Amendment); 8th Cir. Model 4.20 (Excessive Use Of Force – Pretrial Detainees – Fifth And Fourteenth Amendments); Plaintiff's Proposed Jury Instructions No. 2; Defendant's Proposed Jury Instruction No. 2. The parties base their differing Proposed Jury Instructions on this claim on my instruction in *Shannon v. Koehler*, No. C08-4039-MWB, which, in turn, was based on 8th Cir. Model 4.10. Shannon's claim was based on the alleged use of excessive force during his arrest, but the present claim is based on alleged use of excessive force during booking. As I explained in the summary judgment ruling, "Fourth Amendment 'reasonableness' standards are applicable to Peters's claim in Count I [where she was a pretrial detainee], rather than other 'due process' or 'punishment' standards, even if the applicability of a Fourth Amendment 'reasonableness' standard is via the Fourteenth Amendment." *Peters v. Woodbury Cnty., Iowa*, \_\_\_ F. Supp. 2d \_\_\_, \_\_\_, 2013 WL 5775027, \*22 (N.D. Iowa Oct. 25, 2013). I do not believe that there is any genuine dispute that the Defendant Officers were acting "under color of law," so I have not included the fourth element of the Models. Peters has requested substitution of "hit" or "hitting" for "bashed" or "bashing," which I think is reasonable.

<sup>16</sup> As 8th Cir. Model 4.10 and 8th Cir. Model 4.20 suggest, the specific conduct alleged to constitute "excessive force" should be identified in this element. In my

For this element to be proved,

- one or more defendants must have “hit” Ms. Peters head against hard surfaces to restrain her or to remove her clothes
- the “hitting” of Ms. Peters head against hard surfaces cannot be just an unpredictable and accidental result of the methods used to restrain Ms. Peters or to remove her clothes<sup>17</sup>

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summary judgment ruling, I have determined, as a matter of law, that Peters’s constitutional rights were *not* violated by the following: (1) the requirement that Peters remove her clothes and put on a jail uniform, *Peters*, \_\_\_ F. Supp. 2d at \_\_\_, 2013 WL 5775027 at \*34-\*36 (finding sufficient “need for the particular [intrusion],” *i.e.*, the need to remove Peters’s street clothes, as a matter of law); (2) the removal of Peters’s clothes in front of male or female officers, *id.* at \*36; and (3) the use of force to restrain Peters and to remove her clothes, when she refused to undress, *id.* at \*50-\*52. I also held that the only remaining questions on the “excessive force” claim were whether the Defendant Officers “bashed” Peters head against hard surfaces, and, if so, whether “bashing” her head was an unconstitutional use of “excessive force.” *Id.* at \*55 (summarizing the questions decided as a matter of law and those remaining for the jurors to decide on Peters’s “excessive force” claim). Thus, the alleged head “hitting” is the appropriate description of the conduct at issue in this claim. The parties and the jurors must accept these determinations, even if they disagree with them.

<sup>17</sup> See *Peters*, \_\_\_ F. Supp. 2d at \_\_\_, 2013 WL 5775027 at \*53-\*55 (explaining that “unpredictable and fortuitous consequences of an officer’s use of force” do not impose liability for “excessive force” (citing *Chambers v. Pennycock*, 641 F.3d 898, 906(8th Cir. 2011)); see also MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1995), 460 (identifying “accidental” as a synonym for “fortuitous”).

***Two, the head “hitting” was excessive.***<sup>18</sup>

The head “hitting” was “excessive,” if it was not reasonably necessary to restrain Peters or to remove her clothes in the circumstances confronting the Defendant Officers.<sup>19</sup> In deciding whether the head “hitting” was “reasonably necessary,” you must consider the following factors:

- the need for the use of force, and the amount of force necessary, to restrain Ms. Peters or to remove her clothes
- the extent of the injury inflicted
  - keep in mind that the same amount of force may cause more or less injury to different people or in different circumstances<sup>20</sup>

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<sup>18</sup> Contrary to Plaintiff’s Proposed Jury Instruction No. 2 and 8th Cir. Models 4.10 and 4.20, I think this element should only be stated as whether the specific force in question was “excessive,” because what determines whether or not it was “excessive” is whether or not it was “reasonably necessary.” I reject the Defendant Officers’ statement of the second element of the claim, in their Proposed Jury Instruction No. 2, as whether or not Peters was resisting, because whether she was resisting is only a factor in the analysis of whether the force used was “reasonably necessary,” and mere resistance does not justify any amount of force in response, but only proportionate force. It surprises me that neither of the parties offered all of the factors relevant to the determination of whether the force used was “excessive,” as set out in *Shannon* and the 8th Cir. Models, with proper modification for the circumstances of this case.

<sup>19</sup> Compare 8th Cir. Models 4.10 and 4.20, element two.

<sup>20</sup> See *Peters*, \_\_\_ F. Supp. 2d at \_\_\_, 2013 WL 5775027 at \*53-\*54 (“The degree of injury should not be dispositive, because the nature of the force applied cannot be correlated perfectly with the type of injury inflicted. Some plaintiffs will be thicker-skinned than others, and the same application of force will have different effects

- whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used that much force under similar circumstances
- whether the decision about how much force to use was made in tense, uncertain, or rapidly changing circumstances
- Ms. Peters’s conduct at the time of the incident, including
  - whether she was physically resisting restraint or the removal of her clothes
    - even if you find that she was physically resisting, the force used must still be reasonable, applying all of the other factors
  - whether she posed an immediate threat to the safety of herself, the Defendant Officers, or others

No one factor determines whether or not the force used was reasonably necessary. You must consider whether the force used was reasonably necessary in light of all of the factors.

On the other hand, you must *not* consider the Defendant Officers’ state of mind, intention, or

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on different people. A greater than de minimis injury requirement under the Fourth Amendment would mean that the same quantum of force, in the same circumstances, could be unconstitutional when applied to a citizen with a latent weakness and constitutional when applied to a hardier person.’” (quoting *Chambers*, 641 F.3d at 906)).

motivation.<sup>21</sup> This is so, because the good will of the officers will not make unreasonable acts constitutional, nor will their ill will turn a reasonable use of force into unconstitutional “excessive force.”<sup>22</sup>

***Three, Ms. Peters was injured by the use of excessive force.***<sup>23</sup>

*If* Ms. Peters has proved *all* of these elements by the greater weight of the evidence as to one or more of the Defendant Officers, *then* she is entitled to damages in some amount on her “excessive force” claim.

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<sup>21</sup> See 8th Cir. Models 4.10 and 4.20 (antepenultimate paragraph) and note 12 to each model. I believe that it is appropriate to include this instruction, even if there is no evidence of any Defendant Officers’ ill will toward Peters, to distinguish the lack of relevance of the Defendant Officers’ mental state to the “excessive force” claim, and the requirement of proof of a retaliatory animus on the part of the Defendant Officers on the “retaliation” claim. See Memorandum Opinion And Order Regarding The Parties’ Motions In Limine (docket no. 84), 38.

<sup>22</sup> *Peters*, \_\_\_ F. Supp. 2d at \_\_\_, 2013 WL 5775027 at \*43-44 (“[A] pure heart will not make unreasonable acts constitutional, nor will malice turn a reasonable use of force into a violation of the Fourth Amendment.” (quoting *Wilson v. Spain*, 209 F.3d 713, 716 (8th Cir. 2000), in turn citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

<sup>23</sup> I find that the “direct result” causation language used in 8th Cir. Model 4.10 and 4.20 is unlikely to be helpful to the jury. I think that “injured by the use of excessive force” conveys the concept of causation more clearly to the jurors.

## No. 22 — FREE SPEECH RETALIATION<sup>24</sup>

Ms. Peters’s second claim is that the Defendant Officers used “excessive force,” by “hitting” her head against hard surfaces, in retaliation for exercising her free speech rights. The Defendant Officers deny this claim.

You must consider Ms. Peters’s “free speech retaliation” claim against each Defendant Officer separately. To win on her “free speech retaliation” claim, Ms. Peters must prove all of the following elements by the greater weight of the evidence:

***One, on May 27, 2012, during her booking, Ms. Peters complained about her arrest and the order to remove her clothes.***

***Two, one or more Defendant Officers used “excessive force” by “hitting” Ms. Peters’s head against hard surfaces.***

Ms. Peters must prove that one or more Defendant Officers used “excessive force” by “hitting” her head against hard surfaces, as explained in Instruction No. 5. Therefore, Ms. Peters cannot win on this claim unless she first wins on her “excessive force” claim.

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<sup>24</sup> There is no 8th Cir. Model on a prisoner’s or detainee’s First Amendment retaliation claim. The nearest fit is 8th Cir. Model 5.71 for an employee’s claim of First Amendment retaliation pursuant to 42 U.S.C. § 1983. I find 8th Cir. Model 5.71 deficient, or at least confusing, however, because it does not lay out as separate elements that the plaintiff engaged in speech (or conduct) protected by the First Amendment; the defendants took adverse action against the plaintiff; and that there is a causal connection between the plaintiff’s protected speech and the defendants’ adverse action. Again, I do not believe that there is any genuine dispute that the Defendant Officers were acting “under color of law,” so I have not included such an element.

**Three, Ms. Peters’s complaints about her arrest and/or the order to remove her clothes were the determining factor for the use of “excessive force” against her.<sup>25</sup>**

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<sup>25</sup> 8th Cir. Model 5.71 is cast in terms of whether the plaintiff’s protected activity was “a motivating factor” or “played a part” in the adverse conduct by the defendant and states that the definition of “a motivating factor” in 8th Cir. Model 5.96 should be used. In the first version of this instruction sent to you with just the “excessive force” instruction (12/11/13 VERSION), I noted that the Eighth Circuit Court of Appeals has explained,

To successfully argue [free speech] retaliatory [action by prison officials] in violation of his constitutional rights pursuant to § 1983, [a prisoner] “must prove that a desire to retaliate was the actual motivating factor behind the transfer.” *Goff v. Burton*, 91 F.3d [1188,] 1191 [(8th Cir. 1996)]. In other words, [a prisoner] must prove that but for his protected First Amendment activity, he would not have been [subjected to adverse action]. *Id.*

*Rouse v. Benson*, 193 F.3d 936, 940 (8th Cir. 1999). Therefore, I used “the actual motivating factor” standard in that version, rather than “a motivating factor,” as in the model. In the 12/12/13 full version of the jury instructions, however, I used “a motivating factor,” as stated in 8th Cir. Model 5.71, because I had my doubts that *Rouse* stated the correct causation standard.

After review of applicable case law, I have now come full circle to the conclusion that the applicable causation standard, at least in prisoner “free speech retaliation” cases, is “but for” causation. See *Beaulieu v. Ludeman*, 690 F.3d 1017, 1025 (8th Cir. 2012) (applying the “but for” causation standard from prisoner free speech retaliation claims, from *Goff, infra*, to the claims of civilly committed sex offenders); *Baribeau v. City of Minneapolis*, 596 F.3d 465, 481 (8th Cir. 2010) (holding that, although retaliation need not have been the sole motive for adverse action of arresting the plaintiffs, “the plaintiffs must show that the retaliatory motive was a ‘but-for’ cause of the arrest—i.e., that the plaintiffs were ‘singled out’ because of their exercise of constitutional rights”); *Kind v. Frank*, 329 F.3d 979, 981 (8th Cir. 2003) (finding retaliation was not a “but for” cause of an inmate’s transfer where the record demonstrated that the inmate was disciplined and transferred due to pattern of

Ms. Peters’s complaints about her arrest and/or the order to remove her clothes were “the determining factor” for the Defendant Officers’ use of “excessive force” against her,

- if the Defendant Officers would not have used “excessive force” against her if she had not made such complaints
- but her complaints need not be the only reason for the Defendant Officers’ use of “excessive force”<sup>26</sup>

In other words, Ms. Peters must show that one or more Defendant Officers intended to and did retaliate against her because of her complaints about her arrest and/or the order to remove her clothes by using “excessive

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misbehavior); *Rouse v. Benson*, 193 F.3d 936, 940 (8th Cir. 1999) (“[A prisoner] must prove that but for his protected First Amendment activity, he would not have been transferred.”); *Goff v. Burton*, 7 F.3d 734, 738 (8th Cir. 1993) (“Under our cases discussed above, the burden is on the prisoner to prove that but for an unconstitutional, retaliatory motive the transfer would have not occurred.”). Even so, I do not find “the actual motivating factor” or “but for” causation to be terribly helpful to the jurors. Therefore, I have used “the determining factor” as better explaining “but for” causation.

Furthermore, I conclude that this “heavier” burden of proof on causation for the plaintiff in the first instance means that the burden-shifting analysis, allowing the defendant to attempt to prove that it would have made the “same decision” in the absence of protected conduct, is inapplicable. *See Goff*, 7 F.3d at 737-38.

<sup>26</sup> *See, e.g.*, 8th Cir. Model 5.62 (Title VII retaliation), modified to avoid the phrase “but for.”

force” against her, even if there were other reasons for using force against her.<sup>27</sup>

***Four, Ms. Peters was injured by the retaliation.***<sup>28</sup>

*If* Ms. Peters has proved *all* of these elements by the greater weight of the evidence against one or more Defendant Officers, *then* she is entitled to damages in some amount on her “free speech retaliation” claim.<sup>29</sup>

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<sup>27</sup> As I noted in my Memorandum Opinion And Order Regarding The Parties’ Motions In Limine (docket no. 84), 38, the plaintiff must show “a causal connection between the retaliatory animus and the injury.” (Quotation marks and citations omitted).

<sup>28</sup> I believe that, as in an “excessive force” case, the plaintiff must prove that the retaliatory action caused injury to prove a “free speech retaliation” claim, again because there must be a causal connection between the retaliatory animus and the injury.

<sup>29</sup> I have removed any consideration of a “same decision” defense, for the reason explained at the end of note 26, *see Goff*, 7 F.3d at 737-38, even though I noted in previous versions of the jury instructions that the Third Circuit Court of Appeals has expressly recognized it, *see, e.g., Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003); *Rauser v. Horn*, 241 F.3d 330, 334 (3d Cir. 2001).

## No. 23 — DAMAGES IN GENERAL<sup>30</sup>

It is my duty to instruct you about the measure of damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for Ms. Peters on one or more of her claims, you must determine her damages.

- “Damages” are the amount of money that will reasonably and fairly compensate Ms. Peters for any injury that you find she suffered from the unconstitutional conduct of one or more Defendant Officers
  - It is for you to determine what damages, if any, have been proved
  - Any damages award must be based upon evidence and not upon speculation, guesswork, or conjecture.

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<sup>30</sup> Judge Bennett’s stock instruction for damages on claims of violation of civil rights, modified for this case. *Compare* 8th Cir. Model 4.50A (2012); and Joint Proposed Jury Instruction No. 7 (separate plaintiff’s and defendants’ versions). I believe that it is more appropriate to use an instruction based on the current version of 8th Cir. Model 4.50A (2012) than one based on the comparable instruction in *Rattray*.

## No. 24 — COMPENSATORY DAMAGES<sup>31</sup>

Ms. Peters seeks compensatory damages for “past physical pain and suffering,” “past mental pain and suffering or emotional distress,” and “future mental pain and suffering or emotional distress.”

- **“Past physical pain and suffering** may include, but is not limited to:
  - Unpleasant feelings
  - bodily distress or uneasiness
  - bodily suffering, sensations, or discomfortfrom the time of the incident until the time of your verdict
- **“Past mental pain and suffering or emotional distress”** may include, but is not limited to:
  - mental anguish
  - loss of enjoyment of life<sup>32</sup>from the time of the incident until the time of your verdict
- **“Future mental pain and suffering or emotional distress”** includes “mental pain and suffering or emotional distress” that

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<sup>31</sup> Compare 8th Cir. Model 4.50A; and Joint Proposed Jury Instruction No. 8 (separate plaintiff’s and defendants’ versions). It appears that the parties’ dispute is primarily over whether or not to instruct on *mental* pain and suffering (past and future). At this point, I am not prepared to eliminate mental pain and suffering (past or future) from the jurors’ consideration.

<sup>32</sup> See Iowa Civil Jury Instruction No. 200.12.

Ms. Peters is reasonably certain to experience from the date of your verdict into the future

- **Factors for determining the amount of damages for physical or mental pain and suffering** include, but are not limited to:
  - the nature and extent of the injury
  - whether the injury is temporary or permanent
  - whether the injury results in partial or total disability
  - whether the injury aggravated any pre-existing condition
    - If Ms. Peters had a pre-existing condition, she is only entitled to recover the damages caused by the aggravation of the condition by the Defendant Officers' unconstitutional action, not for any condition that existed before the incident that was not caused by one or more Defendant Officers' unconstitutional actions<sup>33</sup>

You will not be asked to make separate awards of “compensatory damages” against each Defendant Officer that you find liable, because each of those Defendant Officers is responsible for the entire amount of any compensatory damages.<sup>34</sup>

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<sup>33</sup> See Iowa Civil Jury Instruction No. 200.32.

<sup>34</sup> This sentence explains, in lay terms, “joint and several liability” for “compensatory damages” of the Defendant Officers found liable.

## No. 25 — NOMINAL DAMAGES<sup>35</sup>

“Nominal damages” are awarded to vindicate a party’s constitutional rights, when the violation of those rights has not caused injury that can be valued in monetary terms.<sup>36</sup> If you find for Ms. Peters on one or more of her claims, but you find that she has failed to prove “compensatory damages,” as defined in Instruction No. 8 on that claim, then you must award her “nominal damages” on that claim. In other words, do not award “nominal damages” on a claim, if you award any “compensatory damages” on that claim. “Nominal damages” may not exceed one dollar.

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<sup>35</sup> Judge Bennett’s stock instruction. *Compare* 8th Cir. Model 4.50B (modified); Joint Proposed Jury Instruction No. 9. The third sentence is added to make clear that nominal damages are only an alternative to, not in addition to, compensatory damages. The fourth sentence is modified to make clear that nominal damages cannot exceed one dollar. *See* 9th Cir. Model 5.6.

<sup>36</sup> *See City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986).

## No. 26 — PUNITIVE DAMAGES<sup>37</sup>

If you find for Ms. Peters on one or more of her claims, you may, but are not required to, award punitive damages. Punitive damages are awarded to punish defendants for engaging in the misconduct at issue and to deter defendants and others from engaging in such misconduct in the future.

Punitive damages are not intended to compensate for injury. You should consider Ms. Peters to be made whole for her injuries by the “compensatory damages,” if any, that you may award under Instruction No. 8. Consequently, you should only award punitive damages, if additional damages are appropriate to punish the Defendant Officers found liable on a claim and to discourage them and others from like conduct in the future.

To get punitive damages, Ms. Peters must prove the following by the greater weight of the evidence:

***One, punitive damages should be awarded.***

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<sup>37</sup> See 8th Cir. Model 4.50C; Plaintiff’s Proposed Jury Instruction No. 10. The Defendant Officers object to any instruction on punitive damages, on the ground that Peters will not be able to establish an entitlement to such damages, but prefer my punitive damages instruction from *Shannon* to Peters’s proffered instruction, which is essentially the model. Peters’s punitive damages instruction and her Proposed Verdict form provide the first indications that Peters seeks separate compensatory and punitive damages awards against each of the Defendant Officers. The Defendant Officers’ Proposed Verdict Form, on the other hand, indicates only a single award of each type of damages, if any, against the defendants, rather than individual awards against each defendant. I believe that the Defendant Officers’ approach makes better sense as to compensatory damages, because of joint and several liability for a single injury, but I am unaware of any authority for joint and several liability for punitive damages. Rather, punitive damages must be awarded, if at all, against individual wrongdoers based on their own wrongful conduct.

You may award punitive damages even if you award Ms. Peters only nominal, and not compensatory, damages.

However, you may award punitive damages only if one or more the Defendant Officers acted

- with malice, which is an evil motive or intent<sup>38</sup>

or

- with reckless indifference to Ms. Peters’s constitutional right in question, that is, either her right to be free from the use of “excessive force,” or her right to be free from “free speech retaliation”<sup>39</sup>

In deciding whether to award punitive damages on a particular claim, you should also consider whether one or more of the Defendant Officers’ conduct was reprehensible. To decide whether conduct was “reprehensible,” you may consider the following:

- whether the harm suffered by Ms. Peters was physical or economic or both;

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<sup>38</sup> *Schaub v. VonWald*, 638 F.3d 905, 923 (8th Cir. 2011); *Quigley v. Winter*, 598 F.3d 938, 952-53 (8th Cir. 2010); *see also* 8th Cir. Model 4.50C (citing *Canny v. Dr. Pepper/Seven-Up Bottling Group, Inc.*, 439 F.3d 894, 903 (8th Cir. 2006), as “discussing the meaning of ‘malice’ and ‘reckless indifference,’” in turn quoting *Kolstad v. America Dental Ass’n*, 527 U.S. 526, 535 (1999) (“The terms ‘malice’ and ‘reckless’ ultimately focus on the actor’s state of mind,” and “ ‘malice’ or ‘reckless indifference’ pertain to the employer’s knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination.”)).

<sup>39</sup> *Id.*; *Quigley*, 598 F.3d at 952-53.

- whether there was violence, intentional malice, or reckless disregard for human health or safety;
- whether the conduct of one or more Defendant Officers that harmed Ms. Peters also caused harm or posed a risk of harm to others;
- whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed Ms. Peters

***Two, the amount of any punitive damages.***

You must use reason in setting the amount of any punitive damages. You should consider the following:

- how much harm the Defendant Officers' conduct caused Ms. Peters
- what amount of punitive damages would bear a reasonable relationship to the harm caused to Ms. Peters
- what amount of punitive damages, in addition to other damages already awarded, is needed, considering the Defendant Officers' financial condition, to punish the Defendant Officers found liable and to deter those Defendant Officers and others from similar wrongful conduct in the future

On the other hand, you must not consider the following:

- bias, prejudice, or sympathy toward any party
- punishment of the Defendant Officers found liable for harm to anyone other than Ms. Peters

If Ms. Peters has proved both of her claims, you may, but do not have to, award punitive damages on both claims.

- You may award punitive damages on both claims in the same or different amounts
- You may award punitive damages on one claim, but not the other
- Punitive damages on one claim cannot be included in punitive damages on the other claim
- You may award the same amount of punitive damages against each Defendant Officer found liable, different amounts against each Defendant Officer found liable, or some punitive damages against some Defendant Officers found liable and none against others

## No. 27 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
  - An opening statement is not evidence
  - It is simply a summary of what the lawyer expects the evidence to be
- Ms. Peters will present evidence and call witnesses and the lawyer for the Defendant Officers may cross-examine them
- The Defendant Officers may present evidence and call witnesses, and the lawyer for Ms. Peters may cross-examine those witnesses
- The parties will make their closing arguments
  - Closing arguments summarize and interpret the evidence for you
  - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on Ms. Peters’s claims in a Verdict Form, a copy of which is attached to these Instructions
  - A Verdict Form is simply a written notice of your decision

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<sup>40</sup> Judge Bennett’s “stock” Jury Instructions. *Compare* 8th Cir. Model 1.06; Joint Proposed Jury Instruction No. 11.

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

## No. 28 — OBJECTIONS<sup>41</sup>

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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<sup>41</sup> Judge Bennett’s “stock” Jury Instructions. *Compare* 8th Cir. Model 1.02, numbered ¶ 3; Joint Proposed Jury Instruction No. 12.

## No. 29 — BENCH CONFERENCES<sup>42</sup>

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
  - to decide how certain evidence is to be treated
  - to avoid confusion and error, and
  - to save your valuable time
- We will do our best to keep such conferences short and infrequent

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<sup>42</sup> Judge Bennett’s “stock” Jury Instructions. *Compare* 8th Cir. Model 1.03; Joint Proposed Jury Instruction No. 13.

### No. 30 — NOTE-TAKING<sup>43</sup>

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

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<sup>43</sup> Judge Bennett's "stock" Jury Instructions. *Compare* 8th Cir. Model 1.05; Joint Proposed Jury Instruction No. 14.

## No. 31 — CONDUCT OF JURORS DURING TRIAL<sup>44</sup>

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no

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<sup>44</sup> Judge Bennett’s “stock” Jury Instructions. *Compare* 8th Cir. Model 1.05; Joint Proposed Jury Instruction No. 15.

reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone

involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

## No. 32 — DELIBERATIONS<sup>45</sup>

In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
  - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict
- Remember that you are not advocates, but judges—judges of the facts

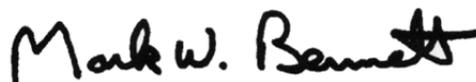
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<sup>45</sup> Judge Bennett’s “stock” Jury Instructions. *Compare* 8th Cir. Model 3.06 & 3.07; Joint Proposed Jury Instruction No. 16.

- Your sole interest is to seek the truth from the evidence in the case.
- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), signed by one or more jurors
  - I will respond as soon as possible, either in writing or orally in open court
  - Remember that you should not tell anyone—including me—how your votes stand numerically
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
  - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
  - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 16th day of December, 2013.



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MARK W. BENNETT

U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

SHANNON M. PETERS,

Plaintiff,

vs.

MICHELLE RISDAL, LEE  
BLANCAHRD, JONATHAN  
HATFIELD, and CARLOS LUCERO,

Defendants.

No. C 12-4070-MWB

**COURT’S PROPOSED  
VERDICT FORM  
(12/15/13 FINAL VERSION)**

On Ms. Peters’s claims of constitutional violations, we, the Jury, find as follows:

<b>I. “EXCESSIVE FORCE”</b>					
<b>Step 1:</b> Verdict	<p>On Ms. Peters’s “excessive force” claim, as explained in Instruction No. 5, in whose favor do you find? <i>(If you find in favor of the Defendant Officers on this claim, then do not answer any further questions in the Verdict Form. Instead, notify the Court Security Officer (CSO) that you have reached a verdict. On the other hand, if you find in favor of Ms. Peters, go on to consider the additional steps in <b>Part I</b> and also enter your verdict on Ms. Peters’ “free speech retaliation” claim in <b>Part II</b>.)</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; text-align: center;">___ Ms. Peters</td> <td style="width: 50%; border: none; text-align: center;">___ The Defendant Officers</td> </tr> </table>	___ Ms. Peters	___ The Defendant Officers		
___ Ms. Peters	___ The Defendant Officers				
<b>Step 2:</b> Defendant Officers Found Liable	<p>On Ms. Peters’s “excessive force” claim, as explained in Instruction No. 5, which one or more of the Defendant Officers do you find used “excessive force”?</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;">___ Officer Michelle Risdal</td> </tr> <tr> <td style="border: none;">___ Sergeant Lee Blanchard</td> </tr> <tr> <td style="border: none;">___ Officer Johnathan Hatfield</td> </tr> <tr> <td style="border: none;">___ Officer Carlos Lucero</td> </tr> </table>	___ Officer Michelle Risdal	___ Sergeant Lee Blanchard	___ Officer Johnathan Hatfield	___ Officer Carlos Lucero
___ Officer Michelle Risdal					
___ Sergeant Lee Blanchard					
___ Officer Johnathan Hatfield					
___ Officer Carlos Lucero					

<p><b>Step 3:</b> Compensatory Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim in Step 1, what amount, if any, do you award for each of the following items of damages, as compensatory damages are explained in Instruction No. 8?</i></p>	
	<p>Past physical pain and suffering:</p>	<p>\$ _____</p>
	<p>Past mental pain and suffering or emotional distress:</p>	<p>\$ _____</p>
	<p>Future mental pain and suffering or emotional distress:</p>	<p>\$ _____</p>
	<p><b>Total Compensatory Damages</b></p>	<p>\$ _____</p>
<p><b>Step 4:</b> Nominal Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim in Step 1, but you find that she has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages” not exceeding \$1.00, as explained in Instruction No. 9. (Do not award “nominal damages” if you award any “compensatory damages” on this claim.)</i></p>	
	<p>Nominal damages:</p>	<p>\$ _____</p>
<p><b>Step 5:</b> Punitive Damages</p>	<p><i>If you found in favor of Ms. Peters on her “excessive force” claim, what amount, if any, do you award for “punitive damages,” as such damages are explained in Instruction No. 10, against each Defendant Officer found liable for “excessive force” in Step 2? (Do not award punitive damages against any Defendant Officers that you did not find liable in Step 2.)</i></p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Michelle Risdal</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Sergeant Lee Blanchard</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Jonathan Hatfield</p>	
	<p>\$ _____ for punitive damages for “excessive force” against Officer Carlos Lucero</p>	

<b>II. “FREE SPEECH RETALIATION”</b>	
<b>Step 1: Verdict</b>	On Ms. Peters’s “free speech retaliation” claim, as explained in Instruction No. 6, in whose favor do you find? <i>(If you find in favor of the Defendant Officers on this claim, then do not answer any further questions in the Verdict Form. Instead, notify the Court Security Officer (CSO) that you have reached a verdict. On the other hand, if you find in favor of Ms. Peters on this claim, go on to consider the remaining steps in this part of the Verdict Form.)</i>
	<input type="checkbox"/> Ms. Peters <span style="margin-left: 150px;"><input type="checkbox"/> The Defendant Officers</span>
<b>Step 2: Defendant Officers Found Liable</b>	On Ms. Peters’s “free speech retaliation” claim, as explained in Instruction No. 6, which one or more of the Defendant Officers do you find liable for “free speech retaliation”?
	<input type="checkbox"/> Officer Michelle Risdal
	<input type="checkbox"/> Sergeant Lee Blanchard
	<input type="checkbox"/> Officer Johnathan Hatfield
	<input type="checkbox"/> Officer Carlos Lucero
<b>Step 3: Compensatory Damages</b>	<i>If you found in favor of Ms. Peters on her “free speech retaliation” claim in Step 1, what <b>additional</b> amount, if any, do you award for each of the following items of damages, <b>over and about the amounts awarded in Step 3 of Part I for compensatory damages for “excessive force,”</b> as compensatory damages are explained in Instruction No. 8?</i>
	<i>Additional past physical pain and suffering:</i> \$ _____
	<i>Additional past mental pain and suffering or emotional distress:</i> \$ _____
	<i>Additional future mental pain and suffering or emotional distress:</i> \$ _____
	<b>Total Additional Compensatory Damages</b> \$ _____

<p><b>Step 4:</b> Nominal Damages</p>	<p><i>If you found in favor of Ms. Peters on her “free speech retaliation” claim in Step 1, but you find that she has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages” not exceeding \$1.00, as explained in Instruction No. 9. (Do not award “nominal damages” if you award any “compensatory damages” on this claim.)</i></p>	
	Nominal damages:	\$ _____
<p><b>Step 5:</b> Punitive Damages</p>	<p><i>If you found in favor of Ms. Peters on her “free speech retaliation” claim, what <b>additional</b> amount, if any, do you award for “punitive damages,” <b>over and about the amounts awarded in Step 5 of Part I for punitive damages for “excessive force,”</b> as punitive damages are explained in Instruction No. 10, against each Defendant Officer found liable for “free speech retaliation” in <b>Step 2</b>? (Do not award punitive damages against any Defendant Officers that you did not find liable in Step 2.)</i></p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Michelle Risdal</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Sergeant Lee Blanchard</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Jonathan Hatfield</p>	
	<p>\$ _____ for <i>additional</i> punitive damages for “free speech retaliation” against Officer Carlos Lucero</p>	

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

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Juror

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Juror

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Juror

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Juror