

Appendix A: Trial Notebook Sample Contents

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Example | Opening Statement

May it please the Court, and you, Ladies and Gentlemen of the Jury:

Our defense is that the witnesses for the State who have attempted to identify Anthony Zirille are mistaken. This man, Anthony Zirille, was nowhere near the scene of this hold-up when it occurred. As a matter of fact, he was more than 35 miles away. Like many a mystery, this one is a case of mistaken identity.

Anthony Zirille is a hard-working young man from Niles. He lives with his mother and younger sister while he works two jobs to try to save money for college. He wants to become the first member of his family to attend college. All that is threatened now, because he finds himself accused of a robbery. But

accusations are not evidence, and the judge will instruct you that the state must prove his guilt beyond a reasonable doubt with evidence.

What will the evidence show? It will show that the crime was committed by two men who arrived and fled in a sport utility vehicle. Anthony Zirille owns no S.U.V.

It will show that the hold-up men were armed. Anthony Zirille owns no gun, and no gun was ever found that can be connected to him. It will show that the crime happened way down here [pointing to location on a map] south of the city on Western Avenue, about midnight. At midnight, Mr. Zirille was at his second job at a tavern and restaurant on Deerfield Road in the town of Niles [pointing to location on a map]. That is about 30 miles northwest of the scene of the crime. Anthony Zirille's working hours at the restaurant were from 6 p.m. to midnight. The testimony of the restaurant owner and two other witnesses who were patrons of the place will be that on the night in question, March 13, Anthony worked steadily from 6 o'clock in the afternoon until midnight. At midnight, when the robbery was taking place, Mr. Zirille was walking to the parking lot toward his car. He drove home. He lives here [pointing to map] with his widowed mother and sister at Orleans Street, on what is known as the near north side, about 7 miles away from where this hold-up occurred. Mr. Zirille arrived home about 12:30. His mother was sitting up for him and will testify he arrived home at that time. His sister, who was 14 years old, was asleep. She is not allowed to stay up that late, so she did not see him until the next day at noon, when she got home from school.

Anthony Zirille will take the stand, and face you and the prosecutor, and tell his story. He knows nothing of this hold-up and will swear to you that he had nothing to do with it. He has been brought up and has always lived on the near north side. He had no business and no friends or acquaintances on the south side, and has never had occasion to be and never has been in the neighborhood of 115th Street and Western Avenue where this hold-up occurred. The witnesses who claim they can identify him based on a fleeting glimpse of a robber in the dark of night are mistaken. Based on this evidence I shall ask and expect you to return a verdict of not guilty.

Example | Jury Selection Questions (Voir Dire)

1. Does anyone have a medical reason or personal hardship that would make it difficult to serve as a juror in this case?
2. Does anyone have difficulty reading, hearing, or understanding the English language?
3. Does anyone know or has anyone dealt with the plaintiffs, the defendants, or their attorneys? If yes, please identify the person you know or have dealt with, the nature of your relationship, and whether that relationship would hinder or affect your ability to give a fair trial to all of the parties in this case.
4. Does anyone know, or has anyone had any business dealings with, any of the witnesses who have just been identified by counsel? If yes, please identify the person you know or have dealt with, the nature of your relationship, and whether that relationship would hinder or affect your ability to give a fair trial to all of the parties in this case.
5. Now that I have discussed the different burdens of proof in criminal and civil cases, does everyone understand those different burdens?
6. Has anyone here previously served as a juror either in a criminal or civil case? If yes, has your previous experience as a juror affected your ability to be fair to all sides in the case?
7. Has anyone here served as either a state or federal grand juror? If yes, has your previous experience as a grand juror affected your ability to be fair to all sides in the case?
8. In the eyes of the law, all parties, whether individuals or corporations, are to be treated alike. All parties are entitled to the same honest, fair and impartial treatment. If selected to serve as a juror in this case, would everyone accept and apply this principle of law?

9. Does anyone know of any reason he or she may be prejudiced for or against the plaintiffs or defendants because of the nature of the case, or otherwise?
10. Is anyone here a lawyer, married to a lawyer, or in a substantial relationship with a lawyer? Has anyone here studied law or worked in a law office? Notwithstanding what you feel the law is or should be on a particular subject, will you apply the law as I give it to you at the end of this case?
11. Does anyone here, because of the nature of your employment, feel that you may not be able to judge this case impartially?
12. Have you read in the newspapers, read on the internet, seen on television, or heard on the radio anything about this case, or do you have any knowledge of the facts or events of this case?
13. If you are selected as a juror, do you pledge that you will base your decision on the facts as presented in this trial and not on any past experience or prior opinions you might have about the subject matter of this case?
14. Have you or a close family member sued or been sued by someone? If so, what was the nature of the lawsuit? Does that experience affect your ability to be fair to all parties in deciding this case?
15. Have you or a close family member ever testified in a lawsuit? Does this experience affect your ability to be fair to all parties in deciding this case?
16. You may be called upon in this case to decide liability and/or award money damages. Do any of you have any religious, philosophical, or other belief that prevents you from acting as an impartial juror in this case?

17. Is there anyone who, if selected to serve as a juror, has any qualms about attempting to come to a verdict at the end of the case?
18. Have any of you, any member of your family, or any very close personal friend ever engaged in investigating or otherwise acting upon claims for damages?
19. Do you know of any reason that you cannot sit in this case with complete fairness and impartiality and decide the case based only on the evidence presented in court and the law as given at the conclusion of the trial?
20. Each potential juror is asked to state:
 - a. his or her full name and area of residence;
 - b. how long he or she has been a resident of the State of _____;
 - c. his or her occupation;
 - d. if retired, what his or her occupation was before retirement;
 - e. marital status (single, married, etc.);
 - f. if married, spouse's name and occupation;
 - g. respective ages and occupations of any children; and
 - h. if a relative (other than a spouse or a child), friend, or roommate lives in the same household, that person's occupation.

Example | Closing Argument (Plaintiff)

Ladies and Gentlemen of the jury, this case boils down to something very simple- deception. The evidence established that Terry, through the pseudonyms *FatalLove* and *earthQuake*, knowingly and willingly harassed Jasmine Chandler. Harold Stevens, a seasoned expert on cybercrimes testified that there is an abundance of evidence linking Terry to the screen name *FatalLove*.

Terry had the intimate knowledge of what makes Jasmine go crazy and he used that knowledge to make her so paranoid, so afraid of death that her grades fell precipitously in her final quarter of high school, which resulted in her losing the Gates scholarship. His motive for doing so was clear: he needed the money which was only given to the valedictorian to pay for college. Terry knew that he needed to go to extremes to win the award and he was willing to do so- there was nothing that was too extreme or to excessive for him. The current law states that in order to prove that a crime is *cyber stalking*, it must show that:

- 1) The plaintiff received at least two electronic communications. We have established that during the week of March 6 through March 10, there were 6 instances in which the plaintiff received threats via the chat room, email, and *MySpace* page.
- 2) The defendant was responsible for transferring these messages. We have linked Terry Williams to the screen name *FatalLove*. *FatalLove* had the *exact* same interests as Terry, and they even shared the same password for different usernames. On March 9th, *earthQuake* refers to a comment that *FatalLove* made about water bottles from March 6th, but *earthQuake*, who was Terry, never entered that chat room. Harold Stevens, a seasoned expert on cybercrimes, testified before you that *earthQuake* and *FatalLove* were definitely the same person.

- 3) The electronic communications harassed the plaintiff. There is clear evidence showing that the incidents in the chat room harassed Jasmine Chandler. First of all, when she went to the police offices to talk to Harold, she was crying too much to talk to. Furthermore, her grades went from A's in every single quarter in high school to D's .
- 4) The defendant knowingly harassed the plaintiff. Terry Williams repeatedly harassed Jasmine Chandler with his screen names *FatalLove* and *earthQuake* during the week of march 6 to march 10. He also went through the trouble of making a new email address and a *MySpace* page for the sole purpose of threatening and scaring Jasmine Chandler.
- 5) That there was no lawful justification for the communications. Clearly, there was no reason to threaten Jasmine like Terry did. His excuse is that his messages were in the context of a history discussion, but Terry was the only one who was talking about it online. He wasn't just talking about the material and the life of Jack the Ripper, he wanted to *practice* it on Jasmine. Also, the *MySpace* page was made for the sole purpose of threatening Jasmine.
- 6) And finally that the plaintiff, as any reasonable person would, was in fear of bodily harm. First of all, multiple people in the chat rooms told Terry that he was going too far. As all thumbs said on march 9, "*earthQuake*, you're about crossing the line there with all that torture talk." Her doctor wrote that she has a fear of bodily harm and, on multiple occasions, had panic attacks from her fear of dying and losing control.

It's really easy to see why Terry Williams would commit such a sick crime. For starters, he was completely fascinated by crime. He did a special report for his English class about Jack the Ripper and talked about him frequently in the Lincoln High School chat rooms. In his testimony to police, he wrote that he had dreams of working in law enforcement. What a perfect opportunity for him to test his skills and win the scholarship in one fell swoop. We also see that he enjoys terrorizing Jasmine. Back in 7th grade, he made her cry by pouring water on her and saying that it was poisonous. These atrocious crimes did not strike Terry as being wrong, he just considered them funny and laughed them off. Jasmine didn't think it was so funny, and neither should you.

Example | Jury Instructions

Role of Judge/Role of Jury

Ladies and gentlemen of the jury, you have listened to the evidence and to the arguments of counsel, and it is now time to listen to me as I charge you on the law that applies to this dispute. You as the jury and I as the judge have two separate functions. It is your function to find what the facts are in this case; with respect to the facts, you and you alone are charged with that responsibility. My function is to instruct you as to the law to be applied to the facts that you find in order to decide this case. With respect to the law, what I say to you is binding upon you and you must follow my instructions.

I do not have any preference as to the outcome of this case. I have not meant to convey by facial expression or tone of voice or in any other way at any time during the trial any preference or inclination as to how you should decide the facts, and you should not make any such interpretations. If, in my instructions to you, I refer to one party more than the other, or do anything that in your mind suggests a preference for one side or the other, it is not done on purpose. My task has been to apply the rules of evidence and to instruct you as to the law. It is for you alone to decide on the outcome of this case.

Duty to Follow the Law

It is your duty to follow my instructions and conscientiously apply the law as I give it to you to the facts as you find them in order to arrive at your ultimate verdict. If you should have a different idea of what the law is or even what you feel it ought to be, you must disregard your own notions and apply the law as I give it to you. The parties are counting on having their claims decided according to particular legal standards that are the same for everyone, and those are the standards I will give you and that you must follow. If what counsel said about the law differs from what I tell you, you will dismiss from your minds what they may have said to you. You must decide this case based only on the law that I furnish to you and on the basis of all of the law as I give it to you regardless of the order of my instructions. You must not single out any particular instruction or give it more or less emphasis than any other, but rather must apply all of my instructions on the law that apply to the facts as you find them.

Duty to Decide on the Evidence

You are to determine what the facts are by careful consideration of all the evidence presented and based solely upon the evidence, giving to each part of the evidence the weight you consider it deserves in reaching your ultimate conclusion. When I say evidence, I include the following:

- testimony by witnesses in court, including what you may have observed in any demonstrations they presented during their testimony;
- testimony by witnesses by way of the reading of transcripts or the showing of videotapes;
- exhibits that have been received into evidence as full exhibits, including any pictures or documents that are full exhibits;
- facts that the parties have stipulated to;
- facts admitted as true in pleadings;
- facts admitted in response to requests to admit.
- The testimonial evidence includes both what was said on direct examination and what was said on cross examination, without regard to which party called the witness.

There are a number of things that may have been seen or heard during the trial which are not evidence and which you cannot rely on as evidence in deciding whether a party has proven a claim or a defense. For example,

- the statements made by lawyers, including statements made both in their opening statements and in their closing arguments are not evidence;
- a question is not evidence; it is the answer, not the question or the assumption made in the question, that is evidence;
- the fact that a party has filed a claim or a defense in the court is not evidence that proves the claim or the defense is true;
- testimony or exhibits that were offered but refused or stricken by me or that I told you to disregard must not be relied upon as evidence in resolving the case;
- testimony or exhibits that I told you were to be used only for a particular purpose are not evidence for any other issue;
- exhibits marked for identification that were not received in evidence as full exhibits are not evidence.

Your duty is to decide the case based on what has been admitted into evidence in this courtroom only, and not on any information about the issues that was not presented into evidence in this courtroom.

It's my right to make comments to you on the evidence, but where I do that, such comments are merely to suggest to you what point of law or what controversy I am speaking about. If I refer to certain facts or certain evidence in the case, do not assume that I mean to emphasize those facts or that evidence and do not limit your consideration to the things that I may have mentioned. Likewise, you should attach no importance to it if I should mention one party more than the other. If I should overlook any evidence in the case, you'll supply it from your own recollection; if I incorrectly state anything about the evidence in relation to what you remember, you should apply your own recollection and correct my error. In the same way, what any of the lawyers may have said in their respective summaries to you as to the facts or evidence in the case should have weight with you only if their recollection agrees with your own; otherwise, it's your own recollection of the facts and evidence which should have weight in your deliberations.

Comparative Negligence - General

In this case, the defendant has filed a special defense alleging that the plaintiff's injuries were legally caused by the plaintiff's own negligence. The defendant must prove the elements of this special defense by a preponderance of the evidence. Specifically, the defendant must prove that the plaintiff was negligent in one or more of the ways specified in the special defense and that such negligence was a legal cause of any of plaintiff's injuries.

Proximate Cause - Definition

Negligence is a proximate cause of an injury if it was a substantial factor in bringing the injury about.

Limiting Instructions on Evidence

You will recall that I have ruled that some testimony and evidence have been allowed for a limited purpose only. Any testimony or evidence which I identified as being received for a limited purpose, you will consider only as it

relates to the limited issue for which it was allowed, and you shall not consider such testimony and evidence in finding any other facts as to any other issue.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as 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. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Use of Medical Records

In this case, some of the medical evidence has been presented by doctors who testified, and some has been presented in the form of written reports by doctors who treated the plaintiff. There is a statute that provides that such written reports may be used in court. That statute was enacted so that persons claiming injury would not have to take doctors away from their medical duties in order to testify in court. Since the use of reports rather than testimony in court is permitted by this statute, you should not draw any unfavorable inference from the plaintiff's use of reports rather than live testimony of some medical practitioners.

Use of Deposition

While most of the witnesses whose testimony has been presented to you were here to testify in person, the testimony of one witness, <name of witness>, was presented to you by (having a transcript read to you / the showing of a videotape) of questions asked and answers given by that witness under oath at an earlier time. Testimony that is presented in this manner may be accepted or rejected by you in the same way as the testimony of witnesses who have been physically present in court.

Credibility of Witnesses

The credibility of witnesses and the weight to be given to their testimony are matters for you as jurors to determine. However, there are some principles that you should keep in mind. No fact is, of course, to be determined merely by the number of witnesses who testify for or against it; it is the quality and not the quantity of testimony that controls. In weighing the testimony of each

witness you should consider the witness's appearance on the stand and whether the witness has an interest of whatever sort in the outcome of the trial. You should consider a witness's opportunity and ability to observe facts correctly and to remember them truly and accurately, and you should test the evidence each witness gives you by your own knowledge of human nature and the motives that influence and control human actions. You may consider the reasonableness of what the witness says and the consistency or inconsistency of (his/her) testimony. You may consider (his/her) testimony in relation to facts that you find to have been otherwise proven. You may believe all of what a witness tells you, some of what a witness tells you, or none of what a particular witness tells you. You need not believe any particular number of witnesses and you may reject uncontradicted testimony if you find it reasonable to do so. In short, you are to apply the same considerations and use the same sound judgment and common sense that you use for questions of truth and veracity in your daily life.

Expert Witnesses

We have had in this case the testimony of expert witnesses. Expert witnesses, such as engineers or doctors, are people who, because of their training, education, and experience, have knowledge beyond that of the ordinary person. Because of that expertise in whatever field they happen to be in, expert witnesses are allowed to give their opinions. Ordinarily, a witness cannot give an opinion about anything, but rather is limited to testimony as to the facts in that witness's personal knowledge. The experts in this case have given opinions. However, the fact that these witnesses may qualify as experts does not mean that you have to accept their opinions. You can accept their opinions or reject them.

In making your decision whether to believe an expert's opinion, you should consider the expert's education, training and experience in the particular field; the information available to the expert, including the facts the expert had and the documents or other physical evidence available to the expert; the expert's opportunity and ability to examine those things; the expert's ability to recollect the activity and facts that form the basis for the opinion; and the expert's ability to tell you accurately about the facts, activity and the basis for the opinion.

You should ask yourselves about the methods employed by the expert and the reliability of the result. You should further consider whether the opinions stated by the expert have a rational and reasonable basis in the evidence. Based on all of those things, together with your general observation and assessment of the witness, it is then up to you to decide whether or not to accept the opinion. You may believe all, some or none of the testimony of an expert witness. In other words, an expert's testimony is subject to your review like that of any other witness.

Burden of Proof - Claims

The party making a claim has the burden of proof with respect to that claim. Thus, the plaintiff has the burden of proving each essential element of the cause of action upon which the plaintiff relies. I will review those elements with you in a moment. The defendant does not have to present evidence to disprove the plaintiff's claim

Duty to Deliberate

Each of you has taken an oath to return a true verdict according to the evidence. No one must be false to that oath, but you have a duty not only as individuals but also collectively to express your views to the other jurors and to listen to theirs. That is the strength of the jury system. Each of you takes with you into the jury deliberation room your individual experience and wisdom. Your task is to pool that experience and wisdom in considering the evidence. You do that by giving your views and listening to the views of others. There must necessarily be discussion and give and take within the scope of your oath. That is the way in which agreement is reached.

Procedures for Reporting Verdict

When you have reached a verdict, knock on the door and the marshal will alert me. When you are told to enter the courtroom, the foreperson should sit in the first seat in the first row. When the jury is asked if it has reached a verdict, the foreperson should respond. The marshal will then hand the verdict to me and the verdict will be read twice to you. You will each be asked to respond whether it is your verdict, as a check that the verdict is, in fact, unanimous.

You should not at that point expect me to make any comment about your verdict. It has been my task to rule on issues of evidence and to instruct you on the law. It is your task to decide the case, and I will leave that strictly up to

you and make no comment on what you decide. It is, of course, merely the division of duties, and not any lack of appreciation of your efforts, that keeps me from commenting on your decision.

Process for Jury's Deliberations

At this time, ladies and gentlemen, I will explain the verdict form[s] to you and then you will be escorted to the jury deliberation room. You should not begin your deliberations until the exhibits and the verdict form[s] are delivered to you by the clerk. This will occur after the lawyers have had an opportunity to check that all the exhibits are present and to tell me if they think that any different or additional instructions to you are necessary. I will recall you to the courtroom if I conclude that further instructions are needed.

When the exhibits are delivered to you, your first task will be to elect a foreperson who will serve as your clerk. After you have received the exhibits and then elected the foreperson, you will begin deliberating. If you have questions during your deliberations, the foreperson should write the jury's question on a sheet of paper, sign and date it, and knock on the door. The marshal will then bring the question to me, and I will respond in open court. It may take a few minutes to assemble the staff before you are brought to the courtroom to hear the response. Please try to make any questions very precise. We cannot engage in an informal dialogue, and I will respond only to the question on the paper. If you need to have any testimony or any part of my instructions (played / read back), follow the same procedure: on a sheet of paper specify what it is that you want to hear as precisely as you can. For example, if you know that you want to hear only the direct examination or only the cross examination of a particular witness, specify that. Otherwise, we will have to repeat the whole testimony.

We will now go over the verdict form[s]. <Pass out verdict forms to each juror and explain the circumstances for the use of each form.>

Your verdict must be unanimous. You must all agree on the verdict.

No one will hurry you. If you are not able to reach a verdict today, you will resume your deliberations tomorrow. You may have as much time as you need to reach a verdict.

Example | Verdict Form for Plaintiff

We, the jury, find the issues in favor of the plaintiff PAUL PLAINTIFF as follows:

SECTION ONE: FINDINGS OF FAIR, JUST AND REASONABLE DAMAGES

Economic Damages: 1a. \$ _____

Noneconomic Damages: 1b. \$ _____

TOTAL 1c. \$ _____

SECTION TWO: PERCENTAGE OF NEGLIGENCE

Percentage attributable to the defendant DORA DEFENDANT 2a. _____%

Percentage attributable to AR, if any 2b. _____%

Percentage attributable to plaintiff PAUL PLAINTIFF if any 2c. _____%

(If more than 50%, use "Verdict for Defendant" Form

Total Negligence of Liable Parties 2d. _____%

SECTION THREE: ALLOCATION AND AWARD OF DAMAGES

Percentage of damages awarded to plaintiff PAUL PLAINTIFF:

(Multiply line 1c by the percentage on line 2a and write the answer on Line 3.)

3. \$ _____

The above findings and allocations constitute our award of damages to the plaintiff PAUL PLAINTIFF against the defendant DORA DEFENDANT.

Date

Jury Foreperson

