**Appendix One:**

**Integrated Instruction and Verdict Form –**

**Section 1983 Claim –**

**Excessive Force (Stop, Arrest, or other “Seizure”)**

**Instructions**

Section 1983

[Plaintiff] is suing under Section 1983, a civil rights law passed by Congress that provides a remedy to persons who have been deprived of their federal [constitutional] [statutory] rights under color of state law.

Elements of Claim

[Plaintiff] must prove both of the following elements by a preponderance of the evidence:

First: [Defendant] acted under color of state law.

Second: While acting under color of state law, [defendant] deprived [plaintiff] of a federal [constitutional right] [statutory right].

I will now give you more details on action under color of state law, after which I will tell you the elements [plaintiff] must prove to establish the violation of [his/her] federal [constitutional right] [statutory right].

Action Under Color of State Law

The first element of [plaintiff]’s claim is that [defendant] acted under color of state law. This means that [plaintiff] must show that [defendant] was using power that [he/she] possessed by virtue of state law.

A person can act under color of state law even if the act violates state law. The question is whether the person was clothed with the authority of the state, by which I mean using or misusing the authority of the state.

By “state law,” I mean any statute, ordinance, regulation, custom or usage of any state. And when I use the term “state,” I am including any political subdivisions of the state, such as a county or municipality, and also any state, county or municipal agencies.

*[Insert appropriate instruction on action under color of state law. See Instructions 4.4.1 through 4.4.3.]*

Deprivation of a Federal Right

[I have already instructed you on the first element of [plaintiff]’s claim, which requires [plaintiff] to prove that [defendant] acted under color of state law.]

The second element of [plaintiff]’s claim is that [defendant] deprived [him/her] of a federal [constitutional right] [statutory right].

The Fourth Amendment to the United States Constitution protects persons from being subjected to excessive force while being [arrested] [stopped by police]. In other words, a law enforcement official may only use the amount of force necessary under the circumstances to [make the arrest] [conduct the stop]. Every person has the constitutional right not to be subjected to excessive force while being [arrested] [stopped by police], even if the [arrest] [stop] is otherwise proper.

In this case, [plaintiff] claims that [defendant] used excessive force when [he/she] [arrested] [stopped] [plaintiff]. In order to establish that [defendant] used excessive force, [plaintiff] must prove both of the following by a preponderance of the evidence:

First: [Defendant] intentionally committed certain acts.

Second: Those acts violated [plaintiff]’s Fourth Amendment right not to be subjected to excessive force.

In determining whether [defendant]’s acts constituted excessive force, you must ask whether the amount of force [defendant] used was the amount which a reasonable officer would have used in [making the arrest] [conducting the stop] under similar circumstances. You should consider all the relevant facts and circumstances (leading up to the time of the [arrest] [stop]) that [defendant] reasonably believed to be true at the time of the [arrest] [stop]. You should consider those facts and circumstances in order to assess whether there was a need for the application of force, and the relationship between that need for force, if any, and the amount of force applied. The circumstances relevant to this assessment can include *[list any of the following factors, and any other factors, warranted by the evidence]*:

! the severity of the crime at issue;

! whether [plaintiff] posed an immediate threat to the safety of [defendant] or others;

! the possibility that [plaintiff] was armed;

! the possibility that other persons subject to the police action were violent or dangerous;

! whether [plaintiff] was actively resisting arrest or attempting to evade arrest by flight;

! the duration of [defendant]’s action;

! the number of persons with whom [defendant] had to contend; and

! whether the physical force applied was of such an extent as to lead to unnecessary injury.

The reasonableness of [defendant]’s acts must be judged from the perspective of a reasonable officer on the scene. The law permits the officer to use only that degree of force necessary to [make the arrest] [conduct the stop]. However, not every push or shove by a police officer, even if it may later seem unnecessary in the peace and quiet of this courtroom, constitutes excessive force. The concept of reasonableness makes allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are sometimes tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

As I told you earlier, [plaintiff] must prove that [defendant] intended to commit the acts in question; but apart from that requirement, [defendant]’s actual motivation is irrelevant. If the force [defendant] used was unreasonable, it does not matter whether [defendant] had good motivations. And an officer’s improper motive will not establish excessive force if the force used was objectively reasonable.

What matters is whether [defendant]’s acts were objectively reasonable in light of the facts and circumstances confronting the defendant.

*[Liability in Connection with the Actions of Another]*

*[If the case involves a claim that a defendant is liable for the actions of another, insert appropriate instruction here. See Instruction 4.6.1 (supervisory liability); Instruction 4.6.2 (liability for failure to intervene); Instructions 4.6.3 through 4.6.8 (municipal liability).]*

Damages

*[Insert appropriate instructions on damages here. See Instructions 4.8.1 through 4.8.3.]*

Instructions Concerning Verdict Form

A verdict form has been prepared for your convenience. I will review this form with you now, and afterwards you will take it with you to the jury room.

[Form of verdict read]

In order for you as a jury to answer a question, each juror must agree to the answer. In other words, your answers to each question must be unanimous. Your foreperson will write the unanimous answer of the jury in the space provided after each question, and will date and sign the form of verdict when completed.

Nothing said in the verdict form is meant to suggest what your verdict should be. You alone have the responsibility for deciding the verdict.

**Verdict Form**

We, the jury, unanimously find the following by a preponderance of the evidence:

(1) Did [defendant] act under color of state law?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

IF YOU ANSWERED "YES'' TO PART 1, PROCEED TO PART 2. OTHERWISE, PLEASE STOP.

(2) Did [defendant] intentionally commit an act, under color of state law, that violated [plaintiff]’s Fourth Amendment right not to be subjected to excessive force?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

IF YOU ANSWERED "YES'' TO PART 2, PROCEED TO PART 3. OTHERWISE, PLEASE STOP.

(3) Did [defendant]’s act, described in Part (2) above, cause injury to [plaintiff]?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

IF YOU ANSWERED "YES'' TO PART 3, PROCEED TO PART (4)(A), AND SKIP PART (4)(B).

IF YOU ANSWERED "NO'' TO PART 3, SKIP PART 4(A) AND PROCEED TO PART 4(B).

(4)(A) Please state the amount that will fairly compensate [plaintiff] for any injury [he/she] actually sustained as a result of [defendant]’s conduct.

Answer: $ \_\_\_\_\_\_\_\_\_\_

(Fill in Dollar Figure)

(4)(B) Because we answered “No” to Part 3, [plaintiff] is awarded nominal damages in the amount of $ 1.00.

AFTER ANSWERING PART 4, PROCEED TO PART 5.

(5)(A) Did [defendant] act maliciously or wantonly in violating [plaintiff]’s rights?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

IF YOU ANSWERED “YES” TO PART (5)(A), PROCEED TO PART (5)(B). OTHERWISE, PLEASE STOP.

(5)(B) Do you award punitive damages against [defendant]?

Answer: Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, in what amount?

Answer: $ \_\_\_\_\_\_\_\_\_\_

(Fill in Dollar Figure)

SO SAY WE ALL, this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20[ ].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson

**Appendix Two: Instructions Covered in Other Sets**

As noted previously, the Committee chose the topics for its substantive instructions (concerning Section 1983 claims and employment-related claims) because those topics frequently arise in cases litigated within the Third Circuit. The index that follows lists model instructions from other sources that cover other topics. At the end of this Appendix is a statistical summary showing the frequency with which various types of claims result in completed jury trials in district courts within the Third Circuit.

**Instructions for Use in Other Federal Circuits**

* 1st Circuit (Criminal) (2017) (available online at <http://www.med.uscourts.gov/pdf/crpjilinks.pdf>); (Civil) (No longer updated, most recently updated 2012) (available online at <http://www.med.uscourts.gov/pattern-jury-instructions>) (1998 version available on WestlawNext, in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database)
  + Civil (not updated after 2012) includes Employment Discrimination (available at <http://www.med.uscourts.gov/pdf/empl_discr_pi.pdf>); Cases of Excessive Force (available at <http://www.med.uscourts.gov/pdf/excessiveforce.pdf>); Maritime Employee Personal Injury Law (available at <http://www.med.uscourts.gov/pdf/maritime_employee_pi.pdf>); and Railroad Employee Personal Injury (<http://www.med.uscourts.gov/pdf/railroad_employee_pi.pdf>).
  + *See also* the Civil Jury Notebooks’ Glossary, Preliminary Jury Instructions, and Suggestions for Jury Deliberations (available at <http://www.med.uscourts.gov/civil-jury-notebooks>); Judge Hornby's Draft Criminal Instructions (available at <http://www.med.uscourts.gov/pdf/DBH_Draft_Criminal_Instructions.pdf>); Judge Hornby’s Draft Civil Instructions (available at <http://www.med.uscourts.gov/pdf/DBH_Draft_Civil_Instructions.pdf>); and other Courtroom Practices material (available at <http://www.med.uscourts.gov/nodeblock/courtroom-practices>).
* 5th Circuit (Civil and Criminal) (Civil 2014 with revisions through 2016, Criminal 2015 with 2016 addendum) (available online at <http://www.lb5.uscourts.gov/juryinstructions/>, and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 6th Circuit (Criminal) (Updated 2017) (available online at <http://www.ca6.uscourts.gov/internet/crim_jury_insts.htm>, and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 7th Circuit (Civil and Criminal) (2017 Civil, 2013 Criminal) (available online at <http://www.ca7.uscourts.gov/pattern-jury-instructions/pattern-jury.htm> ), and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 8th Circuit (Civil and Criminal (including Model Death Penalty Instructions)) (2017) (available online at <http://www.juryinstructions.ca8.uscourts.gov/index.htm>, and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 9th Circuit (Civil) (2017) (available online at <http://www3.ce9.uscourts.gov/jury-instructions/model-civil>); (Criminal) (2010, subsequently updated online) (available online at <http://www3.ce9.uscourts.gov/jury-instructions/model-criminal>); (available on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 10th Circuit (Criminal) (2011, updated 2018) (available online at <http://www.ca10.uscourts.gov/clerk/downloads/criminal-pattern-jury-instructions>, and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).
* 11th Circuit (Civil and Criminal) (Civil 2013, updated 2017; Criminal 2016, updated 2017) (available online at <http://www.ca11.uscourts.gov/pattern-jury-instructions>, and on WestlawNext in the [Federal Jury Practice & Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?transitionType=Default&contextData=(sc.Default)) database).

**Instructions from States within the Third Circuit**

* Delaware Superior Court Civil Pattern Jury Instructions (2006) (available online at <https://courts.delaware.gov/superior/pattern/>, and on WestlawNext as [Delaware Pattern Civil Jury Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/DelawareSecondarySources/DelawarePatternCivilJuryInstructions?originationContext=AutoComplete&contextData=(sc.Default)&transitionType=CategoryPageItem)).

Delaware Superior Court Criminal Pattern Jury Instructions (updated 2016) (available online at https://courts.delaware.gov/superior/pattern/pattern\_criminal.aspx).

* New Jersey Model Civil Jury Charges (available online at <https://www.judiciary.state.nj.us/attorneys/civilcharges.html>, and on WestlawNext as [New Jersey Civil Jury Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/NewJerseySecondarySources/NewJerseyCivilJuryInstructions?originationContext=AutoComplete&contextData=(sc.Default)&transitionType=CategoryPageItem)).

New Jersey Criminal Model Charges (available online at <https://www.judiciary.state.nj.us/attorneys/criminalcharges.html>, and on WestlawNext as [New Jersey Criminal Jury Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/NewJerseySecondarySources/NewJerseyCriminalJuryInstructions?transitionType=Default&contextData=(sc.Default))).

* Pennsylvania Suggested Standard Civil and Criminal Jury Instructions (available on WestlawNext in the [Pennsylvania Secondary Sources](https://a.next.westlaw.com/Browse/Home/SecondarySources/PennsylvaniaSecondarySources/PennsylvaniaSuggestedStandardCivilJuryInstructions?guid=If4077e90286411e498db8b09b4f043e0&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)) database).

**Instructions from Other Sources**

* American Bar Association (ABA):
  + Model Jury Instructions: Business Torts Litigation (2005)
  + Model Jury Instructions in Civil Antitrust Cases (2016)
  + Model Jury Instructions in Criminal Antitrust Cases (2009)
  + Model Jury Instructions: Copyright, Trademark and Trade Dress Litigation (2008)
  + Model Jury Instructions: Patent Litigation (2005)
  + Model Jury Instructions: Employment Litigation (2005)
  + Model Jury Instructions: Securities Litigation (1996)
  + Model Jury Instructions for Surety Cases (2000)
  + Model Jury Instructions for Fidelity Cases (2003)
  + Model Jury Instructions: Construction Litigation (2015)
* American Intellectual Property Law Association, Model Patent Jury Instructions (2017) (available online at <http://www.aipla.org/learningcenter/library/books/other-pubs/Pages/default.aspx>)
* Michael Avery, David Rudovsky, Karen M. Blum, & Jennifer Laurin, Police Misconduct: Law and Litigation (2017-2018 ed.) (available on WestlawNext as [Police Misconduct: Law & Litigation](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/CivilRightsTextsTreatises/PoliceMisconductLawLitigation?guid=Id185a9e09ea511d88c969aa668d07089&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))).
* Federal Circuit Bar Association, Model Patent Jury Instructions (updated 2016) (available online at <https://fedcirbar.org/IntegralSource/Model-Patent-Jury-Instructions>).
* Kevin F. O'Malley, Jay E. Grenig, & William C. Lee, Federal Jury Practice and Instructions (6th ed., updated through 2018) (available on WestlawNext as [Federal Jury Practice and Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/LitigationTextsTreatises/FederalJuryPracticeInstructions?originationContext=AutoComplete&contextData=(sc.Default)&transitionType=CategoryPageItem)).
* Hon. Leonard B. Sand, John S. Siffert, Walter P. Loughlin, Steven A. Reiss, Steve Allen, Hon. Jed S. Rakoff, & David M. Epstein, Modern Federal Jury Instructions–Civil (1984, updated through 2018) (available on Lexis Advance as [Modern Federal Jury Instructions - Civil](https://advance.lexis.com/api/permalink/58a99254-0958-4efa-87ef-d0fe23d35bd8/?context=1000516)).
* Hon. Leonard B. Sand, John S. Siffert, Walter P. Loughlin, Steven A. Reiss, Steve Allen, & Hon. Jed S. Rakoff, Modern Federal Jury Instructions—Criminal (1984, updated through 2018) (available on Lexis Advance as [Modern Federal Jury Instructions - Criminal](https://advance.lexis.com/api/permalink/74c80cc5-ee02-44f8-9967-e252ece46fbb/?context=1000516)).
* Martin A. Schwartz & George C. Pratt, 4 Section 1983 Litigation: Jury Instructions (2d ed., updated 2018) (available on WestlawNext as [Section 1983 Litigation Jury Instructions](https://a.next.westlaw.com/Browse/Home/SecondarySources/TextsTreatises/CivilRightsTextsTreatises/Section1983LitigationJuryInstructions?originationContext=AutoComplete&contextData=(sc.Default)&transitionType=CategoryPageItem)).

Both Lexis Advance and WestlawNext have databases of jury instructions. In Lexis Advance, filter by Category 🡪 Jury Instructions. In WestlawNext, select [Trial Court Documents – Jury Instruction Filings](https://a.next.westlaw.com/Browse/Home/TrialCourtDocuments/TrialCourtDocumentsJuryInstructionFilings?originationContext=AutoComplete&contextData=(sc.Default)&transitionType=CategoryPageItem).

**Instructions That Pertain to Federal Claims and Are Not Covered in**

**Third Circuit Models**

* Admiralty
  + 1st Cir. – Maritime Employee Personal Injury
  + 5th Cir. – (Civil) 4.1 - 4.11
  + 8th Cir. – (Civil) 17.00-17.90
  + 9th Cir. – (Civil) 7.1 - 7.12
  + 11th Cir. –(Civil) Chapter 8
  + O’Malley et al. – Chapter 156
  + Sand et al. – Chapter 90
* Antitrust
  + 5th Cir. – (Civil) 6 (Comment points to other sources)
  + 9th Cir. – (Civil) 14 (Comment points to other sources)
  + ABA, Model Jury Instructions in Civil Antitrust Cases
  + ABA, Model Jury Instructions in Criminal Antitrust Cases
  + O’Malley et al. – Chapter 150
  + Sand et al. – Chapters 79 - 81
* Bankruptcy
  + O’Malley et al. – Chapter 164
* Civil Rights – Education Discrimination
  + O’Malley et al. – Chapter 177
* Civil Rights – First Amendment – Libel
  + O’Malley et al. – Chapter 124
  + Sand et al. – Chapter 91
* Civil Rights – Housing Discrimination
  + O’Malley et al. – Chapter 169
  + Sand et al. – 87.02
* Civil Rights – Section 1983 Claims
  + Conditions of Confinement
    1. 5th Cir. – (Civil) 10.9 – 10.10
    2. 7th Cir. – (Civil) 7.15
    3. 9th Cir. – (Civil) 9.27 & 9.30
    4. 11th Cir. – (Civil) 5.5
    5. O’Malley et al. – 166.22
    6. Schwartz & Pratt – 11.02
  + Denial of Access to Courts
    1. 7th Cir. – (Civil) 8.01 - 8.03
    2. 11th Cir. – (Civil) 5.1
    3. O’Malley et al. – 166.24
  + Law Enforcement – Other Violations
    1. Excessive Bail
       - Schwartz & Pratt – 9.04
    2. Failure to Produce Exculpatory Evidence
       - Avery et al. – 12.29 - 12.30
       - Schwartz & Pratt – 9.01
    3. Manufactured, Coerced, or False Evidence
       - Avery et al. – 12.25 - 12.28
       - Schwartz & Pratt – 9.02
  + Plaintiff’s Status
    1. Schwartz & Pratt – 3.04
  + Prisoner – Disciplinary Sanctions
    1. Schwartz & Pratt – 11.04
  + Prisoner – Retaliation
    1. 7th Cir. – (Civil) 6.03
    2. 11th Cir. – (Civil) 5.1
  + Procedural Due Process
    1. O’Malley et al. – 168.80 - 168.151
    2. Schwartz & Pratt – 6.01
  + Regulatory Takings
    1. Schwartz & Pratt – 6.03
  + Substantive Due Process
    1. Schwartz & Pratt – 6.02
  + Unreasonable Search
    1. 9th Cir. – (Civil) 9.12 - 9.17, 9.22
    2. Avery et al. – 12.15 - 12.19
    3. O’Malley et al. – 165.22
    4. Sand et al. – 87.03 (87-74B)
* Civil Rights – Section 1985 Conspiracy Claims
  + O’Malley et al. – Chapter 167
  + Sand et al. – 87.04
* Damages
  + 5th Cir. – (Civil) 10.12, 15.1 - 15.7
  + 9th Cir. – (Civil) 5.1 - 5.6
  + Sand et al. – Chapter 77
  + Schwartz & Pratt – Chapter 18
* Defenses
  + Miscellaneous
    1. O’Malley et al. – 107.01 - 107.04
* Eminent Domain
  + 5th Cir. – (Civil) 13.3
  + O’Malley et al. – Chapter 154
* Evidence
  + Admissions in Pleadings
    1. O’Malley et al. – 101.46
  + Credibility of Witnesses
    1. 1st Cir. (Criminal) – 1.06, 3.06
    2. 5th Cir. (Criminal) – 1.08
    3. 6th Cir. (Criminal) – 1.07
    4. 7th Cir. (Criminal) – 3.01
    5. 8th Cir. – (Civil) 3.4; (Criminal) 1.05
    6. 9th Cir. – (Civil) 1.14; (Criminal) 1.7 & 3.9
    7. 10th Cir. (Criminal) – 1.08
    8. O’Malley et al. – 15:01 - 15:15 (criminal cases); 105:01 - 105:12 (civil cases)
  + Cross-Examination of Character Witness
    1. 7th Cir. – (Civil) 2.10
    2. 8th Cir. – (Civil) 2.07
    3. O’Malley et al. – 11:15 (criminal cases)
    4. Sand et al. – 5.06 (5-16)
  + Demonstrative Evidence
    1. 5th Cir. – (Civil) 2.8
    2. 7th Cir. – (Civil) 1.24; (Criminal) 3.17
    3. 8th Cir. – (Civil) 2.11; (Criminal) 4.11
    4. 9th Cir. – (Civil) 2.14; (Criminal) 4.16
  + Fingerprints
    1. O’Malley et al. – 14.12 & 104.51
  + Habit or Routine Practice Evidence
    1. Sand et al. – 74.03
  + Handwriting
    1. O’Malley et al. – 104.52
  + Impeachment by Inconsistent Statements
    1. 1st Cir. (Criminal) – 2.03
    2. 5th Cir. – (Civil) 2.11
    3. 6th Cir. (Criminal) – 7.04
    4. 7th Cir. – (Civil) 1.14; (Criminal) 3.03 & 3.04
    5. 10th Cir. (Criminal) – 1.10
    6. 11th Cir. – (Civil) 3.5.1; (Criminal) 6.1 - 6.6
    7. O’Malley et al. – 15.06 & 105.04
  + Inferences and Presumptions
    1. 1st Cir. – (Criminal) 3.04
    2. 8th Cir. (Criminal) – 4.13
    3. O’Malley et al. – 104.20 - 104.28
    4. Sand et al. – Chapters 6 & 75
  + Oral Statements or Admissions
    1. O’Malley et al. – 104.53
  + Pleadings
    1. O’Malley et al. – 103.32
    2. Sand et al. – 78-2
  + Requests for Admission
    1. Sand et al. – 74.08
  + Similar Acts
    1. 1st Cir. – (Criminal) – 2.06
    2. 5th Cir. – (Civil) 2.10; (Criminal) 1.30
    3. 8th Cir. – (Criminal) 2.8, 2.08A, 2.9
    4. 10th Cir. (Criminal) – 1.30
    5. 11th Cir. (Criminal) – Special Instructions 4.1 & 4.2; Trial Instructions 1.1 & 1.2
    6. Sand et al. – 5.10; 74.03 (74-7 - 74-8.1)
  + Statements by Patient to Doctor
    1. Sand et al. – 74.05 (74-10)
  + Stipulations
    1. 1st Cir. - (Criminal) 2.01
    2. 5th Cir. - (Civil) 2.2 & 2.3
    3. 7th Cir. – (Civil) 2.04 & 2.05
    4. 8th Cir. – (Civil) 2.02 & 2.03; (Criminal) 2.02 & 2.03
    5. 9th Cir. – (Civil) 2.1 & 2.2; (Criminal) 2.3 & 2.4
    6. 11th Cir. – (Civil) 2.1
    7. O’Malley et al. – Chapter 102
    8. O’Malley et al. – 101.47
    9. Sand et al. – 74.02 (74-4)

* + Stipulations at pretrial conference
    1. O’Malley et al. – 101.47
  + View of Location Permitted
    1. O’Malley et al. – 11.07; 102.26
* General Instructions
  + Common Counsel
    1. Sand et al. – 71-8
  + Judge’s Comments on Evidence
    1. O’Malley et al. – 102.73
  + Judge’s Questions to Witnesses
    1. O’Malley et al. – 11.05, 101.30, 102.72
  + Missing Witness
    1. 1st Cir. (Criminal) – 2.12
    2. 5th Cir. – (Civil) 2.9
    3. 7th Cir. – (Civil) 1.19
    4. 8th Cir. – (Criminal) 4.16
    5. 9th Cir. – (Criminal) 4.13
    6. O’Malley et al. – 104.25
  + No Transcript Available to the Jury
    1. 8th Cir. – (Civil) 1.6; (Criminal) 1.6A
    2. 9th Cir. – (Civil) 1.17; (Criminal) 1.9
  + Previous Trial
    1. 1st Cir. (Criminal) – 1.03
    2. 8th Cir. – (Civil) 2.06; (Criminal) 2.20
    3. 9th Cir. – (Criminal) 2.15
    4. Federal Judicial Center Pattern Criminal Jury Instruction 14
    5. O’Malley et al. – 102.42
    6. Sand et al. 71.01 (71-11)
  + Publicity During Trial
    1. O’Malley et al. – 11.08, 101.21, 102.12
  + Reprimand of Counsel for Misconduct
    1. Sand et al. – 71.01 (71-7)
  + Sequestration
    1. O’Malley et al. – 10.09, 101.14
    2. Sand et al. – 9.06
  + Sympathy
    1. Sand et al. – 71.01 (71-10)
  + Tests and Experiments
    1. 9th Cir. – (Civil) 2.9
  + Verdict
    1. 1st Cir. – (Criminal) 6.01 - 6.06
    2. 6th Cir. – (Criminal) 8.03
    3. 7th Cir. – (Civil) 1.32; (Criminal) 7.01 – 7.03
    4. 8th Cir. – (Civil) 3.6; (Criminal) 3.12
    5. 9th Cir. – (Civil) 3.5; (Criminal) 7.5
    6. 11th Cir. – (Criminal) Basic Instruction 12
    7. O’Malley et al. – Chapter 106
  + Withdrawal of Claim
    1. 7th Cir. – (Civil) 2.13
    2. 8th Cir. – (Civil) 2.13 & 3.5
    3. O’Malley et al. – 102.60
* Intellectual Property
  + Copyright
    1. 7th Cir. – (Civil) Chapter 12
    2. 9th Cir. – (Civil) Chapter 17
    3. 11th Cir. – (Civil) Chapter 9
    4. O’Malley et al. – Chapter 160
    5. Sand et al. – Chapter 86B
  + Patent
    1. 7th Circuit – (Civil) Chapter 11
    2. American Intellectual Property Law Association, Model Patent Jury Instructions
    3. ABA, Model Jury Instructions: Patent Litigation
    4. Federal Circuit Bar Association, Model Patent Jury Instructions
    5. O’Malley et al.: Chapter 158
    6. Sand et al.: Chapters 81 & 86
  + Trademark
    1. 7th Cir. – (Civil) Chapter 13
    2. 9th Cir. – (Civil) Chapter 15
    3. 11th Cir. – (Civil) Chapter 10
    4. O’Malley et al. – Chapter 159
    5. Sand et al. – Chapter 86A
* Labor & Employment
  + Employee’s Claims Against Employer and Union
    1. 9th Cir. – (Civil) 13.1 & 13.2
    2. 11th Cir. – (Civil) 4.17
    3. O’Malley et al. – 157.80 - 157.140
  + Employer’s Claim against Union
    1. O’Malley et al. – 157.01 - 157.71
  + Fair Labor Standards Act
    1. 5th Cir. – (Civil) 11.24
    2. 8th Cir. – (Civil) Chapter 16
    3. 11th Cir. – (Civil) 4.14
    4. O’Malley et al. – Chapter 175
    5. Sand et al. – Chapter 85
* Miscellaneous Statutory Actions
  + Automobile Dealers Day-in-Court Act
    1. 5th Cir. – (Civil) 13.1
    2. O’Malley et al. – Chapter 151
    3. Sand et al. – 93.02
  + Emergency Medical Treatment And Active Labor Act
    1. O’Malley et al. – Chapter 176
  + Fair Credit Reporting Act
    1. O’Malley et al. – Chapter 153
  + False Claims Act
    1. O’Malley et al. – Chapter 178
  + Interstate Land Sales Full Disclosure Act
    1. 5th Cir. – (Civil) 13.4
  + Odometer Fraud
    1. 5th Cir. – (Civil) 13.2
    2. 8th Cir. – (Civil) Chapter 19
    3. Sand et al. – Chapter 93
  + Petroleum Marketing Practices Act
    1. O’Malley et al. – Chapter 152
* Party Status
  + All Persons Equal Before the Law
    1. 7th Cir. – (Civil) 1.03
    2. O’Malley et al. – 103.11 & 103.12
  + Corporation as Party
    1. 5th Cir. – (Civil) 2.16
    2. 7th Cir. – (Civil) 1.03
    3. 9th Cir. – (Civil) 4.1
    4. 11th Cir. – (Civil) 3.2.2
    5. Sand et al. – 72.01 (72-1)
    6. O’Malley et al. – 103.12
  + Government as Party
    1. 11th Cir. – (Civil) 3.2.3
  + Multiple Parties
    1. 5th Cir. – (Criminal) 1.22 – 1.23
    2. 6th Cir. - (Criminal) 2.01B-D
    3. 7th Cir. – (Civil) 1.25; (Criminal) 4.07
    4. 8th Cir – (Civil) 2.08; (Criminal) 3.07 – 3.08
    5. 9th Cir. – (Civil) 1.8; (Criminal) 3.12 – 3.13
    6. 10th Cir. – (Criminal) 1.21 - 1.22
    7. 11th Cir. – (Criminal) 10.3 – 10.4
    8. O’Malley et al. – 102.41, 103.10, 103.13, 103.14, 106.03
* Railroad Employees
  + Federal Employers’ Liability Act
    1. 1st Cir. – Railroad Employee Personal Injury 1.1
    2. 5th Cir. – (Civil) 5.1
    3. 7th Cir. – (Civil) 9.01 – 9.05
    4. 8th Cir. – (Civil) 15.00 – 15.81
    5. 9th Cir. – 6.1 - 6.7
    6. O’Malley et al. – Chapter 155A
    7. Sand et al. – Chapter 89
  + Federal Safety Appliance Act
    1. 1st Cir. – Railroad Employee Personal Injury 2.1
    2. 5th Cir. – 5.2
    3. 7th Cir. – (Civil) 9.07
    4. 8th Cir. – (Civil) 15.42
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  + 11th Cir. – (Civil) Chapter 7
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  + Sand et al. – Chapters 52, 84
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  + 9th Cir. – (Civil) 18.1 - 18.11
  + 11th Cir. – (Civil) Chapter 6
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* Tax Refunds
  + 5th Cir. – (Civil) Chapter 12
  + O’Malley et al. – Chapter 163
* Vicarious Liability
  + 9th Cir. – (Civil) Chapter 4
  + O’Malley et al. – Chapter 108

**Statistical Summary**

As a rough method of estimating the relative frequency of different types of claims in jury trials within the Third Circuit, the following data may be useful. These data were obtained by searching the database now maintained at <http://legal1.cit.cornell.edu:8090/fed_ct.htm>; the database contains data “gathered by the Administrative Office of the United States Courts,

assembled by the Federal Judicial Center, and disseminated by the Inter-university Consortium for Political and Social Research,” *see id.* The search included “all” case categories, with any of three bases of jurisdiction (“US defendant,” “US plaintiff,” or “federal question”). (The search’s limitation on bases of jurisdiction was intended to eliminate diversity cases, which presumably would typically involve state-law claims.) The search was limited to completed jury trials, within the Third Circuit, that terminated during the years 1996 - 2000. (For a discussion of the year variable, see <http://legal1.cit.cornell.edu:8090/year.htm>.) The case categories were defined by reference to the category selected on the Civil Cover Sheet (the current version of which is available online at <http://www.uscourts.gov/forms/civil-forms/civil-cover-sheet>). *See* Fifth ICPSR Edition (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 1993), available online at <http://legal1.cit.cornell.edu:8090/codebook.htm>.

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