

# **FYI**

**Anita B. Brody, J.**

## **Fourteenth Amendment Protection Against Excessive Force for Pre-trial Detainees - Jury Instruction**

The Fourteenth Amendment of the United States Constitution protects people who have been detained, but have not been convicted of a crime, from being subjected to excessive force that amounts to punishment. In determining whether the force (if any) used by [the defendant(s)] was excessive, the general rule is that you must determine if this force amounted to an unnecessary and wanton infliction of punishment, as opposed to an amount of force reasonably related to maintaining security in the prison. In other words, you must determine if any force used by [the defendant(s)] was gratuitous and intended to punish [the plaintiff], or if this force was justified and rationally needed to manage the detention facility.

If you find that the force used was reasonably related to a legitimate governmental objective, it does not, without more, amount to punishment. Conversely, if the force was not reasonably related to a legitimate goal - if it was arbitrary or purposeless - you may infer that the purpose of the force was

punishment that may not constitutionally be inflicted upon [the plaintiff].

Retribution and deterrence are not legitimate nonpunitive governmental objectives but maintenance of security and order at detention facilities is.

If, however, you find that force was used in the context of a prison disturbance, you must then decide whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the purpose of causing harm. A “prison disturbance” occurs when the safety of both inmates and prison officials is threatened, and it can be a lesser disruption than a riot. In the context of a prison disturbance, it is not enough to show that, in hindsight, the amount of force seems unreasonable; [the plaintiff] must show that [the defendant(s)] used force maliciously, for the purpose of causing harm. When I use the word “maliciously,” I mean intentionally injuring another, without just cause or reason, and doing so with excessive cruelty or a delight in cruelty.

In deciding whether [the plaintiff] has proven his claim of excessive force, you should consider (1) whether [the defendant(s)] used force against [the plaintiff], (2) whether there was a need for the application of force, and (3) the relationship between that need for force, if any, and the amount of force applied. In considering whether there was a need for force, you should consider all the relevant facts and circumstances that [the defendant(s)] reasonably believed to be true at the time of the encounter. Such circumstances can include whether [the

defendant(s)] reasonably perceived a threat to the safety of staff or inmates, and if so, the extent of that threat. In addition, you should consider whether [the defendant(s)] made any efforts to temper the severity of the force they used. You should also consider whether [the plaintiff] was physically injured and the extent of [the plaintiff's] injuries. Although the extent of any injuries to [the plaintiff] may help you assess whether a use of force was legitimate, a malicious and sadistic use of force violates the Fourteenth Amendment even if it produces no significant physical injury.

A correctional officer may be found liable for violating a detainee's Fourteenth Amendment right if the officer realized or should have realized that his colleagues were using excessive force and could have prevented harm to a detainee but did not. If you find that a correctional officer used excessive force against [the plaintiff], you may find [the defendant(s)] liable for that violation if [the defendant(s)] had a reasonable opportunity to intervene and failed to intervene.