

TRIAL 9.14(C):

Todd Wearl v. Dan Kinger

Instructions for the Person Playing the Role of Todd Wearl

Thank you for agreeing to play the role of Todd Wearl in our upcoming trial. Without volunteers like you, we could not conduct these trials and give the law students a realistic courtroom experience. We are very grateful for your participation.

Please read **ALL** of these instructions before viewing the videotape.

General Instructions for All Participant Witnesses

There were three participants in the incident that gave rise to this lawsuit. You are playing the role of one of these three participants. Instructions applicable only to you appear below. This first section of the instructions outlines general rules that apply to all three participants in the events that led to this trial.

Each person playing the role of one of the three participants in the events in question will watch two video clips of the incident. You will only be allowed to watch each of these videos **once**. Then you will testify based upon your recollection of what you saw and heard.

Once you watch the two videos, we will pretend that the videos cease to exist. You are NOT allowed to watch either video again. The student attorneys are NOT allowed to watch or even attempt to locate a copy of any video.

Because you will be allowed to watch each of the two videos only once, it is important to put yourself in the correct frame of mind before you watch the videos. Remember that you are the person in the red tee shirt in the video. Try to watch the video from that person's perspective. You saw what he saw. You said what he said. You did what he did.

There are a few additional general instructions you should follow in watching the video clips. It is important for you to follow all of these instructions:

1. Please read ALL of this packet of instructions before

viewing the videos.

2. Before watching the video clips, be sure your computer is fully functioning, with the sound “on” at a reasonable level that you can hear. In other words, make sure the “mute” is NOT activated on your computer. You will want to watch and listen during your sole viewing of the two video clips.
3. You will probably see cameras in the background. Please ignore these cameras. When you testify, pretend that you did not see them. [Thus, if a student attorney asks you if you saw anyone who was filming the incident, say “No.”]
4. When you are sure you are ready for your only viewing of this video (with sound fully functioning on your computer), click on Camera 7 at <https://bcove.video/2yfpYrh>. **It is very important for you to use the correct camera angle!**
5. After you click on this camera angle, you will see and hear the short video depicting the incident that forms the basis of this lawsuit.
6. After you watch the video from Camera 7, repeat this process to watch the video from Camera 6 at <https://bcove.video/2Caus5l>.
7. After your viewing of the two videos (one time per video only), please do not revisit this website.
8. You might see people other than the other two persons involved in the incident in the background. As with cameras, please ignore persons other than the three of interest. [Thus, if a student attorney asks you if you saw anybody who might have seen the incident, please say something like, “There might have been people watching, but I really did not notice anyone.”]

Here are some basic facts about the events depicted in the video clips you are going to watch:

1. These events took place in the city where you live, which we will call “University.”
2. The events took place outside the door to the Library/Museum building.
3. The north half of the building is the Museum portion. The south

half is the Library portion. The door from which two of the three participants in the incident (the guy in the white tee shirt and, later, the police officer) exited is about half way between the Museum portion and the Library portion.

4. The diagram included with your instructions shows the outline of the Library/Museum Building. The outline is accurate.
5. These events took place at about 10:00 a.m. on August 14, [-1], meaning August 14 of the year before this one. [In other words, if you are reading these instructions in 2016, the events took place on August 14 of 2015.]

Here are some instructions that apply to your testimony in the case:

1. At the trial where you will testify, volunteers will play the roles of the other two participants in the incident in the video clips. Obviously, the three people playing these roles at trial are NOT the people in the video.
2. You should assume that you had never met or seen the other two participants before the date of these events.
3. Since the initial encounter, you have come to learn that (a) the man in the white shirt is "George Otta" and (b) the police officer is Officer Dan Kinger.
4. This is NOT a case where identity is disputed. You and the other two volunteers who will be playing the roles of participants will admit that you are the persons seen in the videos. The student attorneys will not be allowed to question you regarding identifying characteristics of the three participants (such as hair color, eye color, height, weight, etc.).
5. To help you identify the three key participants at the trial, we will ask you and the other two participants to dress as follows at trial:
 - a. Because you wore a red tee shirt that day, please wear a red shirt (or a white shirt and a red tie) at trial. [If this presents problems, please tell the student attorney who asked you to volunteer to serve as a witness. If you cannot resolve any problems, the student attorney can contact the instructor.]

- b. George Otta, who wore a white tee shirt with a blue logo on the day in question, will wear a white shirt and a blue tie at trial.
- c. Officer Kinger will wear something to trial that identifies himself as a police officer.

Before the trial starts, you should meet briefly with the student attorneys. They will point out the persons who will be playing the roles of the other two participants, so you should have no trouble identifying any of them during the trial if you are asked to do so.

Special Instructions for You

In addition to the general instructions that apply to all of the volunteers playing witness roles, the following special instructions apply to you:

1. In playing the role of Todd Wearl, you can basically be yourself, except as noted in these instructions. "Todd Wearl" is you. He has whatever job you had at that time, whatever interests you have, whatever reason to be at the Library/Museum that day that you would have, etc.
2. The first possible exception to the "Todd Wearl is you" rule is this: If you know the people who are playing the roles of George Otta and Officer Dan Kinger in this trial, pretend that you do not. For purposes of this trial, you did not recognize either of them before the incident in the courtyard of the Library/Museum building.
3. Think of some reason why you would be going to the library or the museum on August 14, [-1]. Just before 10:00 a.m., you purchased a large soda from a nearby establishment somewhere east of the Library/Museum building. [You can decide which establishment, based upon whether you would be most likely to buy a soda at a fast food restaurant, a convenience store, a bagel shop, or some other business.] You intended to drink it as you walked toward (and probably into) the library or the museum. So think of a reason that you would be walking into (or, at least, toward) the library or the museum that day.
4. Whatever the reason is that you were walking toward the library or the museum that morning, please have this reason firmly in mind before you watch the video, and before you talk to any of the attorneys in the case about what you observed.

The attorneys will almost certainly ask you why you were outside the building that morning. Just have some reason in mind, and stick with that reason throughout the proceedings.

5. Of course, you never quite made it into the building, because you ended up in the incident in question, then you got arrested by that overreacting cop, Officer Kinger. But you had planned to go into the building for some reason.
6. You are the person wearing the red tee shirt in the video. That means, of course, that you said the things that the man in the red tee shirt said, and you did the things that the man in the red tee shirt did. While watching the video clips, try to assume the perspective of this person.
7. In your opinion, this whole thing could have been avoided if that guy in the white shirt would have just apologized after he ran into you and the soda spilled all over your shirt. You would have just dropped it if he had said he was sorry, but he was a hothead. He ran into you. And now everybody is trying to blame you for all of this? That seems really ridiculous to you. You did not do anything wrong. Why isn't Otta in trouble?
8. While you were in the midst of the altercation with Otta, somebody else said something to you. You could hear and feel someone getting closer to you, but you did not look at this person, because you were focused on Otta. When you moved your arm toward this person, you frankly had no idea who it was. It was only later that you realized that this person was a police officer. You are pretty sure that he did not verbally identify himself as a police officer at any point. The first time you realized he was a police officer was when you looked at him (after moving your arm in his general direction) and saw that he was dressed in a police uniform.
9. The cop pepper spraying was a total overreaction by him. Here you are, trying to deal with this punk who runs into you and does not even apologize, and then you have to deal with a cop who grabs for the pepper spray for no reason? Why is everybody blaming you for this, when all the problems were caused by the punk and the cop? And why didn't the cop arrest the punk for running into you? Isn't that "assault"? He gets to assault you, and you get arrested when you defend yourself? That makes no sense to you.
10. After you were sprayed, the cop cuffed you and took you to a

police car. After you got sprayed, your eyes really stung. For a while, you could not see, and you thought you had gone permanently blind. You screamed for the cop to help you with your eyes, but he did not even take you to the emergency room.

He said something about you having to pay thousands of dollars if you went to the emergency room. [You are not sure if you have insurance to cover an ambulance trip. You would certainly not want to pay thousands of dollars for doctors. But the cop caused his injuries, by spraying you when he had no basis for doing so. Shouldn't the cop or the police department pay for the medical bills that they caused?]

11. It was at least 45 minutes, and maybe more like an hour or more, before they finally let you wash out your eyes at the police station and you could see again. You wear contact lenses. Since this incident, you saw something on television about how people with contacts sometimes suffer more when pepper sprayed, because sometimes some of the pepper gets lodged underneath the contacts. Maybe that is what happened to you. You are not sure. What you are sure of is that, until that stuff got washed out, you seriously thought that you might be blind for life.
12. In fact, the day after this incident (August 15, [-1]), your eyes were still hurting, so you decided you had better see your eye doctor, Dr. Pat Stevens. [Dr. Stevens has written a letter to your original attorney outlining his/her treatment of your eye problems. Please ask your attorney for a copy of this letter, because you do not remember the exact details of your visits to Dr. Stevens. After you review the letter, you will have a better recollection of those visits.]
13. Your bottom line is that, while you might wish you had been a bit calmer, you did not do anything wrong here. First some guy rams into you, spilling soda all over you. Then some cop is shooting pepper spray in your face. You were just walking along, soda in hand, minding your own business. This is NOT your fault.
14. After the events depicted in the video (i.e. after the officer subdued you with the pepper spray), the police officer arrested you, using handcuffs. Eventually the officer led you to a police car. You could not really see where you were going, because the spray pretty much blinded you. It sure seemed like the cop was taking his sweet time to get you to the station. You suspect that he rather enjoyed seeing you in pain. He certainly did not do anything to rush to get you out

of pain. Finally, you got into a police car and, after that, to the station. At the police station, you were finally allowed to wash out your eyes and take out your contact lenses.

15. If your lawyers show you a copy of the Police Report, you should not necessarily agree with everything in the report. Although much of the report might be consistent with your memory of the events in question, there might be items where your recollection is different than what is written in the Police Report. If so, you should testify based upon your recollection, not based upon what is in the Police Report.
16. After you watch the videos, the student attorney who asked you to volunteer to serve as a witness might ask you questions about what you observed. You should answer the attorney's questions to the best of your ability, based upon your viewing of the videotape.
17. The student attorneys who are opposing the student attorney who asked you to volunteer might try to speak to you about the events that you observed. Please ask the student attorney who asked you to volunteer what s/he would like you to do if the opposing attorneys ask you to voluntarily talk to them about the case.
18. The student attorneys who are opposing the student attorney who asked you to volunteer may wish to schedule your deposition. The attorney who asked you to volunteer should work with you and the other attorneys to schedule a mutually agreeable time for your deposition. Please cooperate in the scheduling of this deposition. At a deposition, a witness swears (or affirms) to tell the truth, as at trial. The attorneys ask questions at a deposition and those questions and your answers are recorded and later transcribed in written form.
19. These events happened in the city where you live. We will be calling that city "University." But do your best to convert your living circumstances to that city. For example, if you live on the second floor of an apartment building, please testify, if asked, that you "live on the second floor of an apartment building here in University."
20. You should assume that the town where you live, "University," has a Library/Museum complex in the downtown area. The diagram in these instructions accurately depicts the (somewhat unusually shaped) exterior of the building.

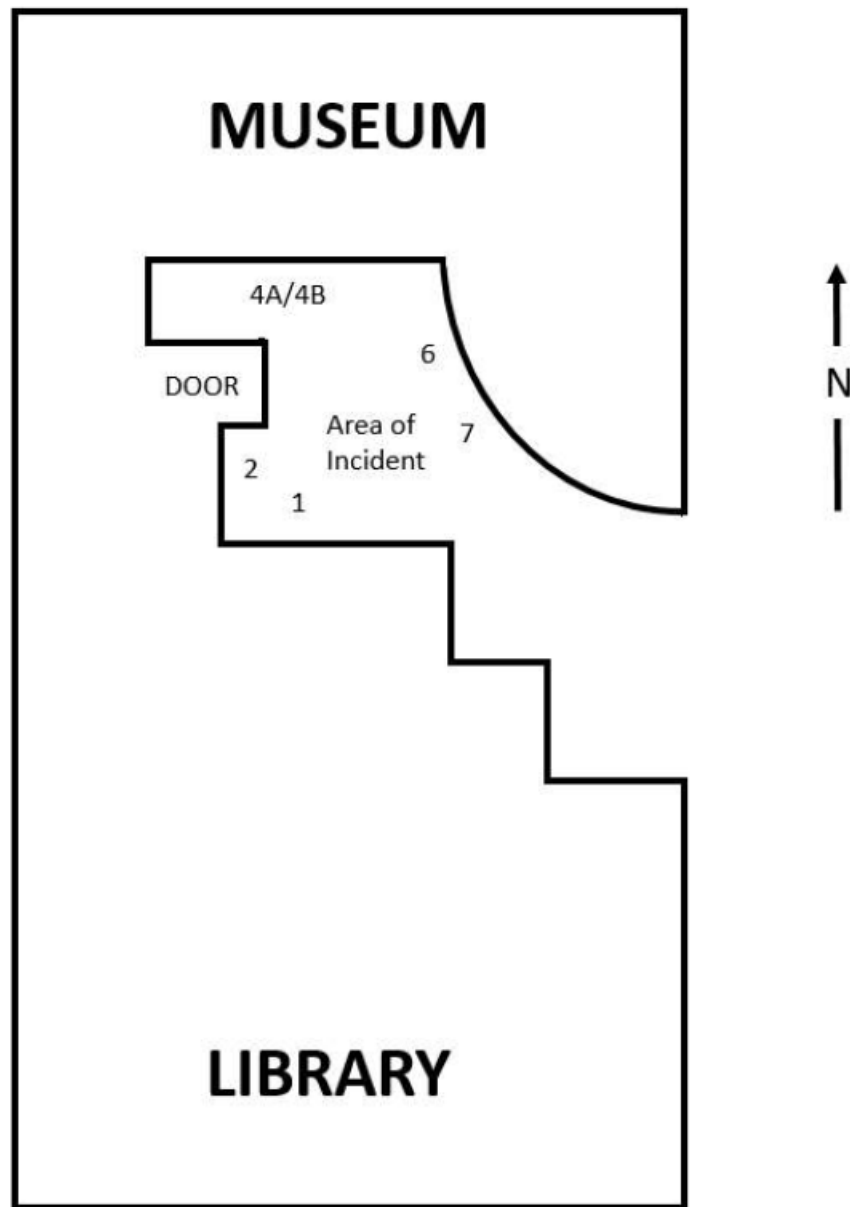


DIAGRAM OF LIBRARY/MUSEUM BUILDING

[Note: Some of the numbers show the approximate locations of witnesses.]