

## TRIAL 9.14(C):

### *Todd Wearl v. Dan Kinger*

#### **Instructions for the Person Playing the Role of George Otta**

Thank you for agreeing to play the role of George Otta 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 white 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 2 at <https://bcove.video/2ybDADW>. **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 2, repeat this process to watch the video from Camera 7 at <https://bcove.video/2yfpYrh>.
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 (you 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 red shirt is "Todd Wearl" 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 white tee shirt with a blue logo on the day in question, please wear a white shirt and a blue 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. Todd Wearl, who wore a red tee shirt that day, will wear a

red shirt (or a white shirt and a red 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 three 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:

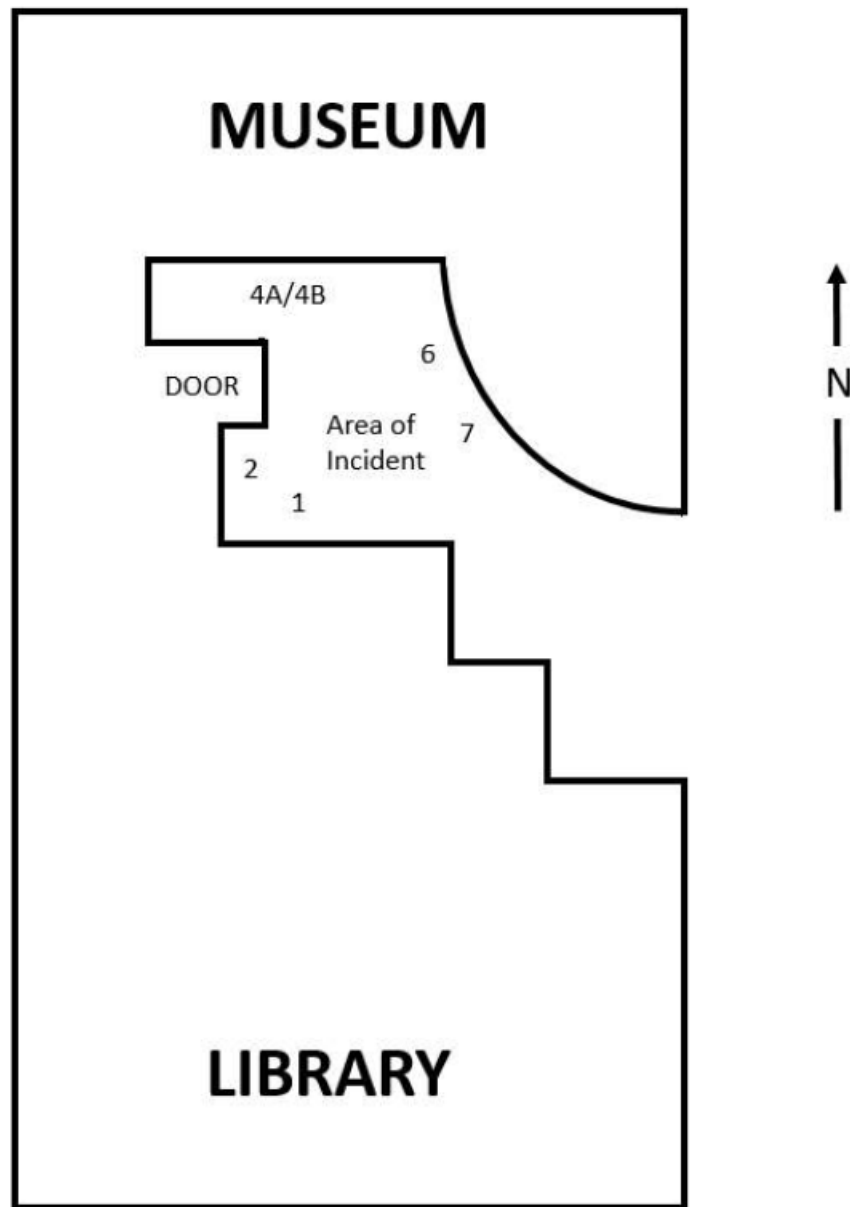
1. In playing the role of George Otta, you can basically be yourself, except as noted in these instructions. "George Otta" is you. He has whatever job you had at that time, whatever interests you have, whatever reason to be at the Library/Museum that day that you would have, etc.
2. The first possible exception to the "George Otta is you" rule is this: If you know the people who are playing the roles of Todd Wearl 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 a reason why you would be at the Library/Museum that morning. Also, think of why you were leaving at about 10:00 a.m., i.e., what you were going to do next. Then think of someone you would be calling on your cell phone at that time. [As you will see in the videos, you were using your cell phone to call someone as you exited the Library/Museum building.] You want to have all of this in mind before you watch the video clips showing what happened, and before you talk to any of the attorneys about what happened that day.
4. You are the person wearing the white tee shirt in the video. That means, of course, that you said the things that the man in the white tee shirt said, and you did the things that the man in the white tee shirt did. While watching the video clips, try to assume the perspective of this person.
5. Please assume that, after the events depicted in the video,

- you noticed that the police officer put handcuffs on the person you now know to be Todd Wearl. After talking briefly with the police officer, Where you described what occurred (and probably told the officer that some soda might have been spilled on you), you went to the hospital. You did not notice what happened to anyone after the officer handcuffed Wearl and put him into his squad car.
6. In your opinion, the hotheadedness of the person you now know to be Todd Wearl was the cause of this whole incident. You will freely admit that you were making a cell phone call, so you were not completely paying attention to where you were walking, and you slightly bumped the guy. Your mistake, but what's the big deal? The guy blew this completely out of proportion, and you ended up getting hurt.
  7. When you fell, you reflexively put out your left hand to cushion your fall. Immediately, you could feel pain in your left wrist. You drove (or walked) to the emergency room. Your health insurance paid for the emergency room visit, other than a \$40 co-payment that came out of your pocket, but you were the one in pain. The doctor told you that you might have fractured your left wrist, but that wrist fractures are hard to diagnose because there are so many little bones in the wrist, so fractures and sprains are basically treated the same way. The doctor put a splint on your thumb (which you removed yourself a few days later). The doctor also gave you a prescription for a pain medication, but said you could switch to Ibuprofen when you wanted to. You never filled the prescription for the pain medication, because you have heard that lots of folks get addicted to prescription pain medications and you did not want to take that chance. So you just used over the counter Ibuprofen from the start.
  8. The Ibuprofen helped reduce the pain a little bit, but it did not take it completely away. Your left wrist was swollen and painful for about three weeks. The first week it was really bad. You took the entire week (i.e., until Friday) off of work. [Please assume you were in whatever job you held at the time. If you did not have one then, use whatever job you had most recently before then.] You went back to work the next Monday, even though your wrist was still sore, because it was not as painful as it was the previous week. After about three weeks, you quit taking Ibuprofen. You never did go back to the doctor, because you knew there really wasn't anything doctors could do for you. You just needed time.

9. It turned out that you were right. In time, the swelling and pain eventually went away. But it was really bad for about a week, pretty bad for about a month, and occasionally at least a little bit bad after that. All because you had the misfortune of running into that hothead in the red shirt.
10. 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.
11. The student attorney who asked you to volunteer (or someone else) might show you copies of the police reports and/or medical records from the hospital you visited. Your recollection of events is pretty similar to Officer Kinger's recollection, as noted in the police report. The medical records will also seem to be pretty consistent with your recollection. What you can understand in them, anyway. Lots of the stuff in the medical records is "Greek" to you. [NOTE: If you have any recollection, based on watching the video, that is inconsistent with what is stated in the police report or the medical records, you should testify to your recollection. In a general sense, though, these documents will seem pretty accurate to you if you are asked to review them.]
12. 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.
13. 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.
14. 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.”

15. 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.]