**5.6**

**Civil Rights – 42 U.S.C. § 1983 Claims – Eighth Amendment Claim – Convicted Prisoner Alleging Excessive Force**

In this case, [name of plaintiff] claims that [name of defendant], while acting under color of law, intentionally violated [name of plaintiff]’s Eighth Amendment right as a prisoner to be free from cruel and unusual punishment.

The Constitution guarantees that every person who is convicted of a crime or a criminal offense has the right not to be subjected to cruel and unusual punishment. This includes, of course, the right not to be assaulted or beaten without legal justification while incarcerated.

To succeed on this claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That [name of defendant] intentionally [describe the alleged conduct];

Second: That the force used against [name of plaintiff] by [name of defendant] was excessive;

Third: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries; and

Fourth: That [name of defendant] acted under color of law. [The parties have agreed that [name of defendant] acted under color of law, so you should accept that as a proven fact.]

You must decide whether any force used in this case was excessive based on whether the force, if any, was applied in a good-faith effort to maintain or restore discipline, or instead whether it was applied maliciously or sadistically to cause harm. In making that decision you should consider the amount of force used in relationship to the need presented; the motive of [name of defendant]; the extent of the injury inflicted; and any effort made to temper the severity of the force used. Of course, officers may not maliciously or sadistically use force to cause harm regardless of the significance of the injury to the prisoner. But not every push or shove—even if it later seems unnecessary—is a constitutional violation. Also, an officer always has the right to use the reasonable force that is necessary under the circumstances to maintain order and ensure compliance with jail or prison regulations.

For the third element, [name of defendant]’s conduct caused [name of plaintiff]’s injuries if [name of plaintiff] would not have been injured without [name of defendant]’s conduct, and the injuries were a reasonably foreseeable consequence of [name of defendant]’s conduct.

[For the fourth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when [he/she] acts within the limits of lawful authority. [He/She] also acts under color of law when [he/she] claims to be performing an official duty but [his/her] acts are outside the limits of lawful authority and abusive in manner, or [he/she] acts in a way that misuses [his/her] power and is able to do so only because [he/she] is an official.]

If you find [name of plaintiff] has proved each of the facts [he/she] must prove, you must find for [name of plaintiff] and consider the issue of damages. If you find that [name of plaintiff] has not proved each of these facts, then you must find for [name of defendant].

**NOTE**: Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Pattern Instruction 5.13) for use in actions brought under 42 U.S.C. § 1983. Three types of Model Jury Interrogatory Forms are provided: (A) a simplified Interrogatory Form for use in most civil right actions; (B) an Interrogatory Form for use in actions that do not require application of the Prison Litigation Reform Act, and (C) an Interrogatory Form for use in actions that do require application of the Prison Litigation Reform Act.