I. INTRODUCTION

Now that you have heard all the evidence and the arguments of counsel, it is my duty to instruct you on the law applicable to this case.

Your duty as jurors is to determine the facts of this case on the basis of the admitted evidence. Once you have determined the facts, you must follow the law as I am now instructing you and apply that law to the facts as you find them. In doing so, you are not allowed to select some instructions and reject others, rather you are required to consider all the instructions together as stating the law. In that regard, you should not concern yourself with the wisdom of any rule of law. You are bound to accept and apply the law as I give it to you, whether or not you agree with it.

In deciding the facts of this case, you must not be swayed by feelings of bias, prejudice or sympathy towards either party. The plaintiff and the defendant, as well as the general public, expect you carefully and impartially to consider all the evidence in this case, follow the law as the Court states it, and reach a decision regardless of the consequences.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case or what that opinion may be. It is not my function to determine the facts, that is your function.

II. ROLE OF ATTORNEYS

Our courts operate under an adversary system in which we hope that the truth will emerge through the competing presentations of adverse parties. The function of the

attorneys is to call your attention to those facts that are most helpful to their side of the case. It is their role to press as hard as they can for their respective positions.

In that regard, one can easily become involved with the personalities and styles of the attorneys, but it is important for you as jurors to recognize that this is not a contest between attorneys. You are to decide this case solely on the basis of the evidence. Remember, the attorneys' statements and characterizations of the evidence are not evidence. Insofar as you find their opening and/or closing arguments helpful, take advantage of them; but it is your memory and your evaluation of the evidence in the case that count.

III. OBJECTIONS

In fulfilling their role, attorneys have the obligation to make objections to the introduction of evidence they feel is improper. The application of the rules of evidence is not always clear, and attorneys often disagree. It has been my job as the judge to resolve these disputes. It is important for you to realize, however, that my rulings on evidentiary matters have nothing to do with the ultimate merits of the case and are not to be considered as points scored for one side or the other.

In addition, you must not infer from anything I have said during this trial that I hold any views for or against either the plaintiff or the defendant. In any event, any opinion I might have is irrelevant. You are the judges of the facts.

IV. EVIDENCE

As I stated earlier, your duty is to determine the facts based on the evidence I have

admitted. The term "evidence" includes the sworn testimony of witnesses and exhibits that I have received during trial. In addition, on occasion, I sustained objections to questions and either prevented a witness from answering or ordered an answer stricken from the record. You may not draw inferences from unanswered questions, and you may not consider any responses which I ordered stricken from the record.

A. Direct and Circumstantial Evidence

Although you should consider only the admitted evidence, you may draw inferences from the testimony and exhibits which are justified in light of common sense and experience. The law recognizes two types of evidence – direct and circumstantial. Direct evidence is the testimony of one who asserts personal knowledge, such as an eyewitness. Circumstantial or indirect evidence is proof of a chain of events which points to the existence or nonexistence of certain facts.

The law does not distinguish between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You may rely on either type of evidence in reaching your decision.

B. All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in this case.

V. EVALUATION OF THE EVIDENCE

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his testimony. You are the sole judges of the credibility of each witness and of the importance of his testimony.

In evaluating a witness' testimony, you should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should consider any bias or hostility the witness may have shown for or against any party, as well as the interest the witness may have in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he testified, the accuracy of the witness' memory, his candor or lack of candor, the reasonableness and probability of the witness' testimony, the testimony's consistency or lack of consistency, and its corroboration or lack of corroboration with other credible testimony.

You have heard the testimony of Corrections Officers. The fact that a witness is employed as a Corrections Officer does not mean that his testimony is deserving of any more or less consideration, or should be given any greater or lesser weight, than that of any other witness from whom you heard testimony.

You may consider the testimony of a Corrections Officer just as you would the testimony of any other witness.

VI. BURDEN OF PROOF

When a party has the burden of proof on a particular issue that means that,

considering all the evidence in the case, that party's contention on that issue must be established by a fair preponderance of the credible evidence. The credible evidence means the testimony or exhibits that you find worthy to be believed. A preponderance means the greater part of it. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, its weight, and the effect that it has on your minds. The law requires that, in order for a party to prevail on an issue on which he has the burden of proof, the evidence that supports his claim on that issue must appeal to you as more nearly representing what took place than the evidence opposed to his claim. If it does not, or if it weighs so evenly that you are unable to say that there is a preponderance on either side, you must resolve the question against the party who has the burden of proof and in favor of the opposing party.