

**COURT'S PRELIMINARY INSTRUCTION NO. 1  
GENERAL: NATURE OF CASE; BURDEN OF PROOF;  
DUTY OF JURY; CAUTIONARY**

Ladies and gentlemen of the jury: Here are some initial instructions about this case and your duties as jurors. During the trial, I may give you more instructions. And at the end of the trial, I will give you final instructions. Follow all my instructions.

This civil case involves a prisoner and a former prison guard. Detrick Croston is an inmate in the Arkansas Department of Correction. Roderick Cooksey is a former ADC guard. Croston claims that Cooksey violated his Eighth Amendment right to be free from cruel and unusual punishment. More specifically, Croston alleges that Cooksey sexually assaulted, sexually harassed, and verbally threatened him. Cooksey denies these allegations. You must decide – from the evidence – whether Croston is entitled to a verdict against Cooksey on his Eighth Amendment claims.

Your duty is to decide what the facts are from the evidence. Consider the evidence in the light of your own observations and experiences. Use your common sense. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. But you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you don't believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider several things: the witnesses' intelligence; their opportunity to have seen or heard the things they testify about; their memories; any motives they

may have for testifying a certain way; their demeanor while testifying; whether they said something different at an earlier time; the general reasonableness of their testimony; and the extent to which their testimony is consistent with other evidence that you believe.

A caution about considering a witness's demeanor while testifying. Many folks are nervous just being in court. And there are bold liars and shy truth tellers. Use your common sense and be discerning when judging someone's credibility based on their demeanor on the stand.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, a lapse of memory, or a lie – and that may depend on whether it has to do with an important fact or only a small detail.

## **COURT'S PRELIMINARY INSTRUCTION NO. 2 EVIDENCE: LIMITATIONS**

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, the documents and other things received as exhibits, and any facts that I tell you the parties have agreed are true.

Some things are not evidence. I will list those things for you now:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.

2. Objections are not evidence. Lawyers have a right—and sometimes a duty—to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question

or the exhibit; and you must not try to guess what the information might have been.

3. Testimony and exhibits that I strike from the record or tell you to disregard are not evidence; and you must not consider them.

4. Anything you see or hear about this case outside the courtroom is not evidence; and you must not consider it.

5. I might tell you that you can consider a piece of evidence for one purpose only and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes because you might not have that instruction in writing later in the jury room.

6. Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms because the law makes no distinction

between the weight to be given to direct and circumstantial evidence.

## **COURT'S PRELIMINARY INSTRUCTION NO. 3 BURDEN OF PROOF**

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved if you find that it is more likely true than not true. You decide that by considering all the evidence, and then deciding what evidence is more believable. The greater weight of the evidence is not established by who has the most witnesses or exhibits. You are, instead, looking for the truth in the whole case.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” The standard of “proof beyond a reasonable doubt” applies in criminal cases, but not in this civil case; so put it out of your minds.

**COURT'S PRELIMINARY INSTRUCTION NO. 4  
BENCH CONFERENCES**

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom. Or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

**COURT'S PRELIMINARY INSTRUCTION NO. 5  
NO TRANSCRIPT AVAILABLE/NOTE-TAKING**

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. You must pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. And do not let note-taking distract you from paying close attention to the evidence as it is presented. The Clerk has provided each of you with a pad of paper and a pencil. At each recess, leave your notes face down in your chair. When you leave at night, your notes will be secured and not read by anyone.

## COURT'S PRELIMINARY INSTRUCTION NO. 6 QUESTIONS BY JURORS

When the lawyers have finished questioning a witness, you may propose questions to clarify the testimony. In your questions,

- Don't express any opinion about the testimony;
- Don't argue with a witness; and
- Don't sign your name or juror number.

Submit your questions in writing by passing them to the Court Security Officer. I will review each one with the lawyers. If the question is proper, the lawyers or I will ask it.

Don't put any special weight on the question just because a juror suggested it. Don't put any special weight on the question just because I may be the one asking. And consider the witness's answer just like any other piece of evidence.

You may not get your question answered. For example, I may decide that the question is not proper under the rules of evidence.

And even if the question is proper, you may not get an immediate answer. For example, a later witness or a coming exhibit may provide the answer.

Don't feel slighted or disappointed if your question isn't asked or answered immediately. Remember, you are not advocates for either side; you are impartial judges of the facts.

**COURT'S PRELIMINARY INSTRUCTION NO. 7**  
**CONDUCT OF THE JURY**

Finally, to make sure this trial is fair to both parties, you must follow these rules:

*First*, don't talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the trial when you go to the jury room to deliberate and decide on your verdict. Don't share your notes until deliberations begin.

*Second*, don't talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone does try to talk to you about the case during the trial, please report it to me immediately.

*Fourth*, during the trial, don't talk with or speak to any of the parties, lawyers, or witnesses in this case – not even to pass the time of day. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is simply to pass the time of day – that may raise a suspicion about your fairness. If any lawyer, party, or witness doesn't speak to you when you pass in the hall, ride the elevator, or the like, understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on; and they are just following the rules.

*Fifth*, don't read any news stories, articles, or blogs about the case or about anyone involved with it. Don't listen to any radio or television reports about the case or about anyone involved with it.

*Sixth*, don't do any research – on the Internet, in a library, in newspapers, or otherwise – and don't investigate this case on your

own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Don't look up any information about this case, the law, or the people involved – including the parties, the witnesses, the lawyers, or me.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other places, your verdict might be influence by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth; and the accuracy of their testimony is tested through cross-examination. Both parties are entitled to a fair trial and an impartial jury; and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the

parties a fair trial. You will deny them justice under law. You have taken an oath to follow the rules; and you must do so.

*Seventh*, remember, cell phones are not permitted in the courthouse or in the jury room.

*Eighth*, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

*Ninth*, remember that you are not to be influenced in any degree by any personal feelings or sympathy or prejudice for or against any of the parties or the lawyers in the case. Each party is entitled to the same fair and impartial consideration at your hands.

*Tenth*, no statement, remark, or ruling that I make, or question that I might ask of a witness, during the trial is intended to indicate what I think about the facts of the case. You, as the jurors, are the sole judges of the facts of the case. You and you alone will have to

decide on the believability and credibility of the witnesses and the weight and value of the evidence.

**COURT'S PRELIMINARY INSTRUCTION NO. 8  
EXPANDED INSTRUCTION RE: JURY PROHIBITION ON  
ELECTRONIC COMMUNICATIONS/RESEARCH**

During the trial – while you are in the courthouse, at lunch, on breaks, and after you leave for the day – do not provide any information to anyone by any means about this case. For example, do not talk face-to-face with anyone about this case. And do not use any electronic device or media – such as the telephone, a cell phone, a smart phone, Blackberry, iPad, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, YouTube, or Twitter – to communicate to anyone any information about this case until I accept your verdict.

**Ask each juror: Juror No. –, on your oath, do you promise not to post anything about your jury service on any social media website such as Facebook, Twitter, Instagram, or the like during the trial? On your oath, do you promise not to use the Internet to**

**look up anything about the case, the matters discussed, the lawyers, Croston, Cooksey, me, or the law?**

Remember, you have taken an oath to follow the rules, and you must do so. If you do not, the case might have to be retried, and you could be held in contempt of court and possibly punished.

**COURT'S PRELIMINARY INSTRUCTION NO. 9**  
**OUTLINE OF TRIAL**

The trial will proceed in the following manner:

First, Mr. Croston's lawyer will make an opening statement.

Next, Mr. Cooksey's lawyer will make an opening statement. An opening statement is not evidence or argument. It is simply a summary of what the lawyer expects you will see and hear during the trial.

After opening statements, Mr. Croston's lawyers will present evidence by calling witnesses, and Mr. Cooksey's lawyer will cross-examine those witnesses. After Mr. Croston's case, Mr. Cooksey's lawyer may present evidence by calling witnesses, and Mr. Croston's lawyer will cross-examine those witnesses.

Finally, Mr. Croston may offer rebuttal evidence.

After you have seen and heard all of the evidence from both sides, I will give you some instructions on the law. Then, the

lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence.

After the closing arguments, I will give you some final instructions. Then you'll go to the jury room to deliberate and decide on your verdicts.