

FUNCTION OF THE JUDGE

Members of the jury, you are about to begin your final duty, which is to decide the fact issues in this case. Before you do that, I will instruct you on the law.

It was obvious to me throughout the trial that you faithfully discharged your duty to listen carefully to all the evidence and to observe each of the witnesses. I now ask you to give me that same close attention, as I instruct you on the law.

My function as the judge in this case has been to see that this trial was conducted fairly, orderly and efficiently. It was also my responsibility to rule on what you may consider as evidence, and to instruct you on the law which applies to this case.

It is your duty as jurors to accept the law as I state it to you. You should consider all my instructions as a whole. You may not ignore any instruction, or give special attention to any one instruction. You must follow the law as I give it to you whether you agree with it or not.

Georgia v. Brailsford, 3 U.S. (3 Dall.) 1, 4 (1794) (Jay, C.J.) (judge determines law, while jury decides facts); *Commonwealth v. Wilson*, 381 Mass. 90, 118-119, 407 N.E.2d 1229, 1247 (1980) (judge must be the trial's "directing and controlling mind"); *Pfeiffer v. Salas*, 360 Mass. 93, 99-101, 271 N.E.2d 750, 754-755 (1971) (judge must instruct in language understandable to jurors from all walks of life); *Commonwealth v. Sneed*, 376 Mass. 867, 870, 383 N.E.2d 843, 845 (1978) (judge must instruct on

applicable law, and may state evidence and discuss possible inferences neutrally); *Commonwealth v. Brady*, 357 Mass. 213, 214-215, 257 N.E.2d 465, 466 (1970) (questions of law are for judge); *Commonwealth v. Carson*, 349 Mass. 430, 435, 208 N.E.2d 792, 795 (1965) (judge must state applicable law correctly); *Commonwealth v. Davis*, 271 Mass. 99, 100-101, 170 N.E. 924, 925 (1930) (sentencing is judge's responsibility alone); *Commonwealth v. Anthes*, 5 Gray 185, 208-209, 221, 236 (1855) (jury must follow law as stated by judge); *Commonwealth v. Porter*, 10 Metc. 263, 286-287 (1845) (judge must superintend trial, rule on evidence and instruct on law); *Commonwealth v. Knapp*, 10 Pick. 477, 495 (1830) (questions of admissibility of evidence are for judge); *Commonwealth v. Carney*, 31 Mass. App. Ct. 250, 254, 576 N.E.2d 691, 694 (1991) (approving charge not to use judge's questions or statements to determine how judge feels case should be decided, since judge has no right to interfere with jury's duty to find the facts and determine where the truth lies); *Commonwealth v. Kane*, 19 Mass. App. Ct. 129, 138, 472 N.E.2d 1343, 1349 (1985) (judge may give jury a neutral precis of the evidence). See also *Commonwealth v. Murray*, 396 Mass. 702, 705-710, 488 N.E.2d 415, 417-420 (1986).

SUPPLEMENTAL INSTRUCTIONS

1. Jury must follow law. You must take the law as I give it to you.

You should not be concerned about the wisdom of any rule of law that I give you. Whatever your private opinions about what the law is or ought to be, it is your duty to base your verdict on the law as I define it to you.

2. Where some issues require longer explanation. If I devote a bit more

time to discussing any particular charge or part of the charge, you are not to infer anything from the length of my discussion. Some matters may take longer to explain, but that is not a guide to their relative importance and not an indication that I have an opinion on any issue in this case.