

1.00.
FUNCTION OF COURT, JURY, AND COUNSEL

The instructions in this chapter describe the functions of the court, the jury, and counsel. In the usual case all of the numbered paragraphs in Instructions 1.01, 1.02, and 1.03 will be given. Instruction 1.04 will be given only when a corporation is a defendant.

The Committee recommends that these be the first instructions read to the jury.

The numbers in the brackets preceding each paragraph should not be included when the instruction is given. Alternative language designed to meet the circumstances of each case is either bracketed or enclosed in parentheses.

1.01

The Functions Of The Court And The Jury

[1] Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

[2] The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word “he” in these instructions, I mean a male or a female.]

[3] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[4] You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberation. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

[5] Neither sympathy nor prejudice should influence you. You should not be biased in favor or against any person because of that person’s race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[6] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[7] [Any evidence that was received for a limited purpose should not be considered by you for any other purpose.]

[8] You should disregard testimony [and exhibits] which the court has refused or stricken.

[9] The evidence which you should consider consists only of the testimony of the witnesses [and (the exhibits) (and) (stipulations) (and) (judicially noticed facts)] which the court has received. [You may, but are not required to, accept as conclusive any fact judicially noticed.]

[10] You should consider all the evidence in the light of your own observations and experience in life.

[11] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[12] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases also can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[13] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[14] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

[15] Faithful performance by you of your duties as jurors is vital to the administration of justice.

Committee Note

The Committee has added the bracketed material in paragraph [2], and paragraph [9] to be used when applicable.

The Committee has substituted the word “ethnicity” for the word “color” and added “age”, “disability” and “socioeconomic status” to the second sentence of paragraph [5].

The Committee has added brackets to paragraph [7] because limiting instructions are not given in every case. Use paragraph [7] only when a limiting instruction has been given.

The Committee had added “stipulations” and “judicially notice facts” in paragraph [9] as types of evidence a jury should consider during the course of its deliberations. In Illinois Rule of Evidence 201(g), the Illinois Supreme Court stated, “In a criminal case, the court shall inform the jury that it may, but is not required to, accept as conclusive any fact judicially noticed”. The second sentence in Paragraph [9] has been added so that this Instruction complies with Rule 201(g).

The Committee has made amendments and added new language to incorporate Instruction 1.01B on implicit bias in paragraphs [5], [11], [12] and [13], and renumbered previous paragraphs [11] and [12] as [14] and [15]. The Committee recommends that the language in paragraphs [5], [11], [12] and [13] be given in all cases.

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

1.01A

Preliminary Cautionary Instructions Before Opening Statements

[1] Members of the jury, the trial is about to commence, and I now will instruct you as to the law regarding some of your duties during trial and deliberations.

[2] You should not do any independent investigation or research on any subject or person relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[3] For example, you must not use the Internet, including [(Google) (Wikipedia) (insert current examples)], or any other sources that you might otherwise use, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the defendant, witnesses, lawyers, and judge.

[4] During the course of the trial, do not communicate with, provide information personally, in writing, or electronically to anyone about this case — not even your own families or friends, courtroom personnel, and also not even among yourselves until instructed otherwise.

[5] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [(blogs) (chat rooms) or (insert current examples)], or any social networking websites, such as [(Twitter) (Facebook) or (insert current examples)], or any other means.

[6] You cannot use any electronic devices or services to communicate about this case, including [(cellphones) (smartphones) (laptops) (the Internet) (insert current examples)] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[7] Lawyers, parties, and witnesses are not permitted to speak with you about any subject, even if unrelated to this case, until after the case is over and you are discharged from your duties as jurors.

Committee Note

Read this Instruction prior to opening statements. Submit this Instruction in writing along with the other instructions at the end of the trial.

The Committee strongly encourages judges to remind the jurors before breaks and at the beginning and end of each day of trial that they are prohibited from researching the case on the Internet (including, but not limited to, an admonition that the jurors are not to view any location relevant to the trial by electronic means or visiting the site in person) and prohibited from

communicating about the case by any means, including, but not limited to, social media. A judge should mention various types of social media if the judge concludes that it is warranted.

The Committee has added new language and bracketed material to paragraph [3], added paragraphs [5] and [6], and renumbered former paragraph [5] as paragraph [7], to emphasize the types of Internet activity and electronic communications that are prohibited.

A jury or juror may not conduct experiments or view extraneous information not offered into evidence that will have the effect of putting them in possession of evidence not offered at trial. *People v. Holmes*, 69 Ill.3d 507 (1978); *People v. White*, 365 Ill. 499, 514, 6 N.E.2d 1015 (1937).

“[P]rivate communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *People v. Hopley*, 182 Ill.2d 404, 459 (1998) quoting *Mattox v. United States*, 146 U.S. 140, 150 (1898).

Use appropriate bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

1.01B Implicit Bias

[1] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[2] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[3] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[4] You must not be biased in favor of or against any person because of his or her race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[5] Your verdict must be based solely on the evidence presented.

Committee Note

This Instruction should be read prior to jury selection and prior to opening statements.

Implicit bias has been the subject of much scholarly attention. See, e.g., Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 *CORNELL L. REV.* 1 (2007); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 *UCLA L. REV.* 1124 (2012); Justin D. Levinson, Mark W. Bennett & Koichi Hioki, *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 *FLA. L. REV.* 63 (2017); Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making: How It Affects Judgment and What Judges Can Do About It*, in *ENHANCING JUSTICE: REDUCING BIAS* (2017). It has also been the focus of attention by organizations dedicated to improving the courts and legal profession, such as the National Center for State Courts and the American Bar Association. See, e.g., Jerry Kang, *Nat’l Ctr. for State Cts., Implicit Bias: A Primer for Courts* (Aug. 2009); Jennifer K. Elek & Paula Hannaford-Agor, *Implicit Bias and the American Juror*, 51 *CT. REV.* 116 (2015); Jennifer K. Elek & Paula Hannaford-Agor, *First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making*, 49 *CT. REV.* 190 (2013); Am. Bar. Ass’n, *Achieving an Impartial Jury (Au) Toolbox*, available at, https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf

The literature on implicit bias explains that everyone has implicit biases. This means that judges and jurors are not immune. Although judges can attend workshops that teach about implicit bias, jurors do not receive any such training. Therefore, it is important for the court to

make jurors aware that everyone is affected by implicit biases. It is particularly important for judges and jurors, who strive to be impartial decision-makers, to be aware of this phenomenon and to try to guard against it for purposes of the trial.

Although Illinois case law does not require an implicit bias instruction, the Illinois Supreme Court has recognized the importance of training judges about implicit bias. See, e.g., Chief Justice Lloyd A. Karmeier, *Another Step Toward Equal Justice: Identifying Implicit Bias*, ILLINOIS COURTS CONNECT, (Feb. 1, 2018), at http://courts.illinois.gov/Media/eNews/2017/112917_chief_message.asp. To that end, the Illinois Supreme Court created the Committee on Equality in 2015. The Committee on Equality has been charged with working with other offices and agencies in Illinois to “coordinate ongoing judicial education around the state to help judges incorporate anti-bias ideas and procedures into judicial decision-making.” Illinois Supreme Court Press Release, *Illinois Supreme Court Announces Findings, Next Steps Following Judicial Decision-Making Study* (Nov. 6, 2017). The press release notes that while implicit biases cannot be eliminated they may be “mitigated by promoting self-awareness.” *Id.*

Some states, such as California, have added an instruction on implicit bias. See JUDICIAL COUNCIL OF CALIFORNIA, *CALIFORNIAN CIVIL JURY INSTRUCTIONS (CACI) 113 (2017) (Bias)*. Federal courts in other states, such as the Western District of Washington, have added a short video addressing the topic. See *Understanding the Effects of Unconscious Bias*, at <http://www.wawd.uscourts.ov/jury/unconscious-bias>, along with instructions. See *id.* Some courthouses in Washington show the video to prospective jurors while they are waiting in the Jury Assembly Room to be assigned to a courtroom. Although empirical studies have not established that awareness—whether through instructions or videos--can eliminate people’s implicit biases, there is general agreement that awareness is the best step forward and does more good than harm. See, e.g., Kang et al., *supra*, at 1184.

1.02

Jury Is Sole Judge Of The Believability Of Witnesses

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, [his age,] his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

[You should judge the testimony of [(a) (the)] defendant[s] in the same manner as you judge the testimony of any other witness.]

Committee Note

Give the bracketed material relating to age only when a very elderly or very young witness has testified.

Give the bracketed material relating to defendant's testimony only when a defendant has testified.

While this instruction contains most of the usual elements of believability, the Committee recognizes that the evidence of a particular case could call for the insertion of additional elements. For example, *see* *People v. Franz*, 54 Ill.App.3d 550, 368 N.E.2d 1091, 11 Ill.Dec. 483 (2d Dist.1977), where the Court held: "An instruction informing the jury that it could consider the evidence that a witness was addicted to drugs at the time of the crime in judging that witness' credibility would have been proper." Cf. *People v. Phillips*, 126 Ill.App.2d 179, 261 N.E.2d 469 (1st Dist.1970). But cf. *People v. Collins*, 51 Ill.App.3d 993, 367 N.E.2d 504, 10 Ill.Dec. 116 (3d Dist.1977).

In addition, the Committee has decided that the weighing of an eyewitness's testimony is deserving of a separate instruction. See Instruction 3.15.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.03 Arguments Of Counsel

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

Committee Note

This is an appropriate reinforcement of the court's earlier admonition that the jury should decide the case only "from the evidence in this case." See Instruction 1.01[3].

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.04
Corporate Defendant

The defendant corporation[s] in this case should be given the same fair treatment you would give to an individual defendant.

Committee Note

Give this instruction only when a defendant is a corporation. Compare IPI-Civil Instruction 1.01[6]. It is best given as a part of Instruction 1.01 immediately following paragraph [5].

Give this instruction only when requested by the defendant.

1.05
Jury Notetaking

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

Committee Note

725 ILCS 5/115-4(n) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §115-4(n)).

The Committee takes no position on whether this instruction should be given. However, it has been held that under the statute a trial judge *must* allow the jurors the right to take notes. *People v. Strong*, 274 Ill.App.3d 130, 653 N.E.2d 938, 210 Ill.Dec. 743 (1st Dist.1995). Therefore, should a judge decide to instruct the jury on this subject, it may be helpful to provide the jury with this instruction both before opening statements as well as at the conclusion of the case.

For an example of the use of this instruction, see Sample Set 27.07.

1.06
Interpreter's Presence During Jury Deliberations

The interpreter will be present during jury deliberations solely for the purpose of aiding communications between the hearing-impaired juror and the other jurors.

The interpreter is not a juror and therefore cannot offer opinions or recollections concerning testimony, evidence, or trial proceedings. Do not ask the interpreter for recollections or opinions concerning any aspect of the trial.

Committee Note

705 ILCS 315/1(a) (West 1999) (formerly Ill.Rev.Stat. ch. 78, §36(a) (1991)).

Section 315/1(a) provides that a hearing-impaired juror “may be accompanied by and communicate with a court appointed interpreter throughout any period during which the jury is sequestered or engaged in deliberations.”

In a case where an interpreter has been assisting a juror, the court may wish to give this instruction to reduce the risk of improper communication between the jury and the interpreter during deliberations.

The Committee takes no position on whether this instruction must be given.