

1.01 Preliminary Cautionary Instructions

[1] Now that the evidence has concluded, I will instruct you as to the law and your duties.

[2] The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. [Each party, whether a [(i.e., corporation, partnership, etc.)] or an individual, should receive your same fair consideration.] My rulings, remarks or instructions do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

[5] You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

[6] You should not do any independent investigation or research on any subject 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.

[7] For example, you must not use the Internet, [including Google,] [Wikipedia,] [[(insert current examples)]], or any other sources that you might use every day, 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 parties, witnesses, lawyers, and judge.

[8] During the course of the trial, do not discuss this case with anyone--not even your own families or friends, and also not even among yourselves--until at the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[9] 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.

[10] You cannot use any electronic devices or services to communicate about this case,

and this includes [cell-phones,] [smart-phones,] [lap-tops,] [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.

[11] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I [will provide] [have provided] to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

[12] Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

[13] Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not receive a written transcript of the testimony when you retire to the jury room.

[14] An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

Instruction, Notes on Use and Comment revised January 2011.

Notes on Use

Some trial judges give cautionary instructions at the beginning of the trial; some give them at the close of the trial before the deliberations; and some give them throughout the trial. Although the trial judge has discretion as to when to give cautionary instructions, the committee suggests that cautionary instructions 1.01 [3]-[14] should be given at the beginning of the trial, 1.01 [1]-[14] should be given at the end of trial, and that the instructions reminding jurors to refrain from doing outside research (1.01 [6] and [7]), from discussing the case with anyone (1.01 [8] and [9]), and from using electronic devices in connection with their duties as jurors (1.01 [10]) should be repeated throughout the trial.

For any of the cautionary instructions that refer to particular forms of technology, such as 1.01 [7], [9] and [10], judges should feel free to add new examples as they become available.

The numbers in the brackets preceding each paragraph refer to the Comments and Notes on Use following the instruction and should not be included when the instruction is given. The instruction, with brackets removed, should be given as a single instruction.

[1] Comment

This instruction incorporates former IPI 3.01.

[2] Comment

This instruction tells the jury that the source of the law it will apply to the case is the court's

instructions. The instruction cautions the jury against capriciously selecting one of several statements of the law and using it in their deliberations out of context with the whole charge. *Henderson v. Shives*, 10 Ill.App.2d 475, 488; 135 N.E.2d 186, 192 (2d Dist. 1956).

[3] Comment

In conjunction with paragraph [1], the last sentence of paragraph [3] incorporates former IPI 3.01 and adds to the existing language of IPI 1.01.

Since the remarks and rulings of the trial judge may erroneously be interpreted by the jury as comments on the evidence, this instruction is proper. An instruction using similar language was approved in *North Chicago St. R. Co. v. Kaspers*, 186 Ill. 246, 250, 57 N.E. 849, 851 (1900).

The primary function of the jury is to apply the law to the facts of the case. *Guidani v. Cumerlato*, 59 Ill.App.2d 13, 36-37, 207 N.E.2d 1, 12 (5th Dist. 1965); *Rikard v. Dover Elevator Co.*, 126 Ill.App.3d 438, 440, 81 Ill.Dec. 686, 687, 467 N.E.2d 386, 387 (5th Dist. 1984). Informing jurors that they are to find the facts from the evidence, and then to apply the law to those facts, has been held to be a very good statement of the law. *Eckels v. Hawkinson*, 138 Ill.App. 627, 633-34 (1st Dist.1908).

Verdicts should not be influenced by sympathy or prejudice. See *Garbell v. Fields*, 36 Ill.App.2d 399, 403-404, 184 N.E.2d 750, 752 (1st Dist.1962)), where this instruction was approved. The prohibition against sympathy or prejudice is equally applicable to both parties. Moreover, it is sufficient to caution the jury once against allowing sympathy and prejudice to enter into their consideration of the case. The practice of repeatedly warning the jury against sympathy or prejudice in connection with each facet of the case is not favored. A simple statement on the subject of sympathy, such as the one contained in this instruction, was suggested in *Keller v. Menconi*, 7 Ill.App.2d 250, 256, 129 N.E.2d 341, 344 (1st Dist.1955). As to the caution against deciding a case on the basis of speculation, see *Koris v. Norfolk & West. Rwy. Co.*, 30 Ill.App.3d 1055, 1060; 333 N.E.2d 217, 221 (1st Dist.1975).

A jury should be informed that a corporation is to be treated no differently from an individual. *Chicago Union Traction Co. v. Goulding*, 228 Ill. 164, 165, 81 N.E. 833, 833 (1907).

[4] Comment

This instruction states the familiar principle that once evidence is admitted, it is in the case for all purposes and every party is entitled to the benefit of the evidence whether produced by him or his adversary. *Morris v. Cent. W. Cas. Co.*, 351 Ill. 40, 47, 183 N.E. 595, 598 (1932); *Dudanas v. Plate*, 44 Ill.App.3d 901, 909, 3 Ill.Dec. 486, 492, 358 N.E.2d 1171, 1178 (1st Dist.1976); *Dessen v. Jones*, 194 Ill.App.3d 869, 873, 141 Ill.Dec. 595, 597, 551 N.E.2d 782, 784 (4th Dist.1990); *Wagner v. Zboncak*, 111 Ill.App.3d 268, 272, 66 Ill.Dec. 922, 925, 443 N.E.2d 1085, 1088 (2d Dist.1982).

Because jurors have been told it is their duty to determine the facts from evidence produced in open court, it is also proper to inform them that they may rely on their experiences and observations. *Steinberg v. N. Ill. Tel. Co.*, 260 Ill.App. 538, 543 (2d Dist.1931); *Kerns v. Engelke*, 54 Ill.App.3d 323, 331, 369 N.E.2d 1284, 1290, 12 Ill.Dec. 270, 276 (5th Dist.1977), *aff'd in part and rev'd in part on other grounds*, 76 Ill.2d 154, 390 N.E.2d 859, 28 Ill.Dec. 500 (1979); *Baird v. Chi. B & Q R.R. Co.*, 63 Ill.2d 463, 473, 349 N.E.2d 413, 418 (1976); *Klen v. Asahi Pool, Inc.*, 268 Ill.App.3d 1031, 1044, 643 N.E.2d 1360, 1369, 205 Ill.Dec. 753, 762 (1st Dist.1994).

[5] Comment

The comprehensive instruction in former IPI 2.01, discussing factors to consider in judging the credibility of witnesses, was approved in *Lundquist v. Chi. Rys. Co.*, 305 Ill. 106, 112-13, 137 N.E. 92, 94

(1922); *People v. Goodrich*, 251 Ill. 558, 566, 96 N.E. 542 545-46 (1911). Use of the instruction was found to save a verdict from impeachment in *Waller v. Bagga*, 219 Ill.App.3d 542, 547-48, 579 N.E.2d 1073, 1076, 162 Ill.Dec. 259, 262 (1st Dist.1991). Use of the instruction in *Sobotta v. Carlson*, 65 Ill.App.3d 752, 754, 382 N.E.2d 855, 857, 22 Ill.Dec. 465, 467 (3d Dist.1978), helped sustain a verdict in which the jury rejected uncontradicted testimony of a witness the jury had apparently found not credible.

When there has been evidence of prior inconsistent statements by a witness or witnesses, an instruction concerning impeachment by such statements should be given. *Sommese v. Maling Bros. Inc.*, 36 Ill.2d 263, 269, 222 N.E.2d 468, 471 (1966); see also *Dep't of Conservation v. Strassheim*, 92 Ill.App.3d 689, 692-95, 415 N.E.2d 1346, 1348-49, 1352, 48 Ill.Dec. 62, 64-65, 68 (2d Dist.1981); *Hall v. Nw. Univ. Med. Clinics*, 152 Ill.App.3d 716, 504 N.E.2d 781, 786, 105 Ill.Dec. 496, 501 (1st Dist.1987). This instruction does not use personal pronouns and thereby avoids the error identified in *Wolf v. Chicago*, 78 Ill.App.2d 337, 341, 223 N.E.2d 231, 233 (1st Dist.1966).

[6] Comment

While the criminal precedents relating to publicity have their origins in the Sixth Amendment, see *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991); *U.S. v. Thomas*, 463 F.2d 1061, 1063-64 (7th Cir. 1972), parallel protection under the Seventh Amendment may be available to civil litigants. See *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 570 (1st Cir. 1989) (implying that trial publicity can lead to a mistrial if it interferes with “the Seventh Amendment right to a civil trial by an impartial jury”); see generally *Haley v. Blue Ridge Transfer Co.*, 802 F.2d 1532, 1535 (4th Cir. 1986), citing *McCoy v. Goldston*, 652 F.2d 654, 656 (6th Cir. 1981) (“The right to an impartial jury in civil cases is inherent in the Seventh Amendment’s preservation of a ‘right to trial by jury’ and the Fifth Amendment’s guarantee that ‘no person shall be denied life, liberty or property without due process of law.’”).

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. White*, 365 Ill. 499, 514, 6 N.E.2d 1015, 1022 (1937); *Gertz v. Bass*, 59 Ill.App.2d 180, 183, 208 N.E.2d 113, 115 (1st Dist. 1965). However, not every instance in which extraneous or unauthorized information reaches the jury results in error so prejudicial so as to require reversal. *People v. Holmes*, 69 Ill.2d 507, 519, 372 N.E.2d 656, 661, 14 Ill.Dec. 460, 465 (1978). The losing party need not prove actual prejudice from the juror’s use of extraneous information, but only that the unauthorized information related directly to an issue in the case and may have improperly influenced the verdict. *Id.* The prevailing party then has the burden to demonstrate that no injury or prejudice resulted. *Id.* Because the actual effect of the extraneous information on the minds of the jury cannot be proved, the standard to be applied is whether the conduct involved such a probability that prejudice would result that it is to be deemed inherently lacking in due process. *People v. Holmes*, 69 Ill.2d 507, 514, 372 N.E.2d 656, 659, 14 Ill.Dec. 460, 465-66 (1978).

Improper experimentation or improper extraneous information obtained or accessed by jurors that resulted in a new trial includes: jury members attempting to perfectly trace signatures, where an almanac relating to a specific issue in the case was referenced by a juror and then discussed with the other jurors, where a bailiff gave jurors a copy of Webster's Dictionary that they requested in order to look up definitions of key elements in a case, where a juror visited the intersection where the accident in question had occurred, diagrammed the intersection and then brought the diagram back to the jury room to discuss with the other juror members, and where jurors went to a shoe store to inspect the various heels of shoes for the purpose of ascertaining trade design in a case where defendant’s foot prints were at issue. *People v. White*, 365 Ill. 499, 514, 6 N.E.2d 1015, 1022 (1937); *Haight v. Aldridge Elec. Co.*, 215 Ill.App.3d 353, 368, 575 N.E.2d 243, 253, 159 Ill.Dec. 14, 17 (2d Dist. 1991); *Gertz v. Bass*, 59 Ill.App.2d 180, 182, 208 N.E.2d 113, 115 (1st Dist. 1965); *People v. Holmes*, 69 Ill.2d 507, 510, 372 N.E.2d 656, 657, 14 Ill.Dec. 460, 461 (1978).

[7] Comment

A growing number of states now have jury instructions that specifically inform jurors that they cannot use the Internet to conduct research about the trial or the people involved in the trial. If the instruction is not specific, jurors might mistakenly believe that they are permitted to conduct online research, as they would in their jobs or their private lives. *See* Tricia R. Deleon & Janelle S. Forteza, *Is Your Jury Panel Googling During the Trial?*, *Advocate*, Fall 2010, at 36, 38 (recognizing that one solution to stop jurors from using the Internet to do research about the trial is for judges to give more specific jury instructions).

[8] Comment

The practice of instructing jurors not to discuss the case until deliberation is widespread. *See, e.g.*, *Cautionary and General Opening Remarks to Jury--Civil*.

[9] Comment

The U.S. Judicial Conference published a very specific set of Model Jury Instructions prohibiting the use of electronic technology for researching or communicating about a case. The model instructions, designed for U.S. district court judges and available at www.uscourts.gov/newsroom/2010/DIR10-018.pdf, “precisely catalogue” what jurors must refrain from doing with the idea that this approach “would help jurors better understand and adhere to the scope of the prohibition.” The Third Branch, *Committee Suggests Guidelines for Juror Use of Electronic Communication Technologies*, at <http://www.uscourts.gov/ttb/2010-04/article05.cfm> (quoting Judge Julie A. Robinson’s letter of transmittal). Other judges are not only being specific and proactive in their instructions, but also they are “instructing the jurors early and often, including during orientation and *voir dire*.” Judge Herbert B. Dixon, Jr., *Guarding Against the Dreaded Cyberspace Mistrial and Other Internet Trial Torpedoes*, *Judges J.*, Winter 2010, at 37, 39.

[10] Comment

The use of Web search engines, wireless handheld devices, and Internet-connected multimedia smart-phones by jurors in any given case has the potential to cause a mistrial. It is critical to the administration of justice that these electronic devices not play any role in the decision making process of jurors. For a recent case in which the jury foreperson used a smart-phone to look up definitions of “prudent” and “prudence,” see *Jose Tapenes v. State*, 43 So.3d 159, 2010 Fla.App.LEXIS 13390 (Sept. 8, 2010).

[11] Comment

Courts need to explain to jurors why it is so important that they decide the case based on the evidence admitted in court and not on information gleaned outside the courtroom. Jurors are more likely to follow the court’s admonition if they understand the reasons for it. *See, e.g.*, Susan MacPherson & Beth Bonora, *The Wired Juror, Unplugged*, *Trial*, Nov. 2010, at 40, 42 (“Social science research on persuasion has demonstrated that compliance can be measurably increased by simply adding the word ‘because’ and some type of explanation.”).

[12] Comment

There have been numerous examples in other states of jurors who conducted online research and the result was a mistrial and the need for a new trial. For example, in one case in South Dakota, a juror had used Google before *voir dire* to see if the defendant seatbelt manufacturer had been sued for the alleged defect in the past. *See Russo v. Takata Corp.*, 2009 S.D. 83, 774 N.W.2d 441, 2009 S.D. LEXIS

155. The juror informed several other jurors during deliberations that he had conducted a Google search and had not found any prior lawsuits against the defendant. The jury found for defendant on plaintiff's claim. Plaintiff filed a motion for a new trial based on alleged juror misconduct. The trial court granted the motion, and it was affirmed on appeal. In a case from Maryland, a murder conviction was overturned because jurors had consulted Wikipedia for explanations of certain scientific terms. *See Dixon, supra*, at 37-38.

When jurors have shared their views online about an on-going trial, they have been removed from the jury and personally penalized. For example, one juror who offered her view on Facebook that the defendant was guilty even though the trial had not ended, was removed from the jury, fined, and required to write an essay. *See Ed White, Judge Punishes Michigan Juror for Facebook Post*, Associated Press, Sept. 2, 2010.

[13] Comment

In current trial practice, jurors occasionally request transcripts of the testimony during their deliberations and are disappointed to learn their requests may not be honored. Absent special circumstances, within the court's discretion, transcripts are not provided to jurors. In order to facilitate responsible fact-finding, the committee recommends that the jury be instructed that they will not receive a transcript at the outset of the trial.

[14] Comment

Occasionally lawyers argue matters that are within their personal knowledge but are not of record, or, in the heat of forensic attack, will make statements not based on the evidence. Ordinarily this is objected to and request is made to instruct the jury to disregard the statement, but it is impossible or impractical to object to every such statement. It is therefore proper to inform the jury that arguments and statements of counsel not based on the evidence should be disregarded. *Rapacki v. Pabst*, 80 Ill.App.3d 517, 522, 400 N.E.2d 81, 85, 35 Ill.Dec. 944, 948 (1st Dist. 1910); *Randall v. Naum*, 102 Ill.App.3d 758, 760-61, 430 N.E.2d 323, 325, 58 Ill.Dec. 381, 383 (1st Dist. 1981).