

10.1. FORM DUTIES OF JURY INSTRUCTION (ALL CASES)

INSTRUCTION NO. ____

MEMBERS OF THE JURY:

Now that you have heard the evidence (and the argument), it becomes my duty to further instruct you concerning the law governing this case in addition to the introductory instructions. It is your duty as jurors to follow the law as I state it to you. You will then apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

You are not to be concerned with the wisdom of any rule of law stated by me. It would be a violation of the oath which you have sworn as jurors to base your verdict on anything other than the law as presented in these instructions and the facts as you find them. Counsel may properly refer to some of the governing rules of law in their arguments. If, however, there is any difference between the law as stated by counsel and that stated by me in these instructions, you are governed by my instructions.

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine what witnesses and what evidence to believe. You resolve conflicts in the testimony. 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 is. It is not my function to determine the facts; it is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. The court and the parties expect that you will carefully and impartially consider all of evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

10.2. FORM JURY COMMUNICATION INSTRUCTION (ALL CASES)

INSTRUCTION NO. ____

I do not invite communications from you, but if it becomes necessary during your deliberations to communicate with the court, you may send a note by the court security officer, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case other than in writing, or orally here in open court. Upon receipt of a note from you, I will need to convene a meeting with counsel to discuss your question or request. It may well take considerable time and effort to respond.

You will note from the oath about to be taken by the court security officer that he or she, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. Let me know immediately if anyone attempts any such communication.

Bear in mind also that you are never to reveal to any person--not even to the court--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

10.3. FORM CREDIBILITY OF WITNESSES INSTRUCTION (ALL CASES)

INSTRUCTION NO. _____

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory, and opportunities for observation; the reasonableness or unreasonableness of their testimony; the consistency or lack of consistency in their testimony; their motives; their intelligence; their ability to observe the matters about which they have testified; whether their testimony has been contradicted or supported by other evidence; their bias, prejudice, or interests, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

Based on these considerations, you may believe all, part, or none of the testimony of a witness and you may give the testimony such weight, if any, as you think it deserves.

10.4. FORM RESOLUTION OF FACTUAL ISSUES INSTRUCTION (ALL CASES)

INSTRUCTION NO. _____

You should not resolve factual issues in the case solely by adding up the number of witnesses who testify on each side of a certain issue. If you believe the testimony of a single witness who testifies about a disputed event, such testimony is enough for you to resolve the factual dispute in accordance with this single witness's version of the event, even though a number of witnesses may have testified to the contrary.

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence; the test, rather, is which witness or witnesses, and which evidence, appeals to your minds as being most accurate, believable, and otherwise trustworthy.

10.5. FORM IMPEACHMENT INSTRUCTION (ALL CASES)

INSTRUCTION NO. ____

A witness may be discredited or impeached by contradictory evidence, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject part or all of the testimony of that witness or give it such weight as you may think it deserves.

10.6. FORM EXPERT OPINION INSTRUCTION (ALL CASES)

INSTRUCTION NO. ____

Normally the law does not permit witnesses to testify as to their opinions or conclusions about the issues of the trial. An exception to this rule is a person who qualifies as an expert witness. A qualified expert witness has special knowledge, skill, training, education, or experience in some area and may give his or her opinion on matters in that area as well as the reasons for that opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it and give it such weight as you think it deserves, considering the witness's education and experience, soundness of reasons given for the opinion, the acceptability of the methods used, and all other evidence in the case.

**10.7. FORM PRESUMPTION OF INNOCENCE,
BURDEN OF PROOF, REASONABLE DOUBT AND PUNISHMENT (CRIMINAL)**

INSTRUCTION NO. ____

You must presume defendant to be innocent of the crime charged. The law permits nothing but legal evidence presented before the jury in this court to be considered in support of the charge against the defendant. The presumption of innocence alone, therefore, is sufficient to acquit the defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to defendant for the law never imposes upon defendant the burden of calling any witnesses or producing any evidence. The defendant is not even obligated to cross-examine the witnesses for the government.

The government does not have to prove guilt beyond all possible doubt. The test is one of reasonable doubt. Reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to act upon it in the most important of his or her own affairs.

Unless the government proves, beyond a reasonable doubt, that defendant has committed each and every element of the offense charged against him/her/it you must find him/her/it not guilty. If you view the evidence as reasonably permitting either of two conclusions--one of not guilty, the other of guilt--you must, of course, adopt the conclusion of not guilty.

The punishment provided by law for the offense charged is a matter to be decided exclusively by the court and should never be considered by you in any way in arriving at an impartial verdict.

10.8. FORM EFFECT OF DEFENDANT'S FAILURE TO TESTIFY (CRIMINAL)

INSTRUCTION NO. ____

The defendant in a criminal case has the absolute right under our Constitution not to testify. The fact that defendant did not testify must not be discussed or considered by you in any way when deliberating your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution to not testify. I remind you that the law never imposes upon a defendant the burden or duty of calling any witnesses or producing any evidence.

10.9. FORM MEASURE OF DAMAGES INSTRUCTION (CIVIL)

INSTRUCTION NO. _____

I will now instruct you on the proper measure of damages, if any, to be recovered by plaintiff(s) should you find in his/her/its/their favor on one or more of his/her/its/their claims.

The fact that I will instruct you on the proper measure of damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict in this case. These instructions are given only for your guidance, in the event that you should find in favor of plaintiff(s) on the question of liability in accordance with the other instructions. If you should find for defendant(s), you should disregard these instructions on damages.

10.10. FORM DETERMINATION OF DAMAGES INSTRUCTION (CIVIL)

INSTRUCTION NO. _____

In determining the amount of any damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guess work. On the other hand, the law does not require that the plaintiff(s) prove the amount of his/her/its/their losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

10.11. FORM UNANIMOUS VERDICT INSTRUCTION (ALL CASES)

INSTRUCTION NO. _____

The verdict must be unanimous and represent the considered judgment of each juror. To return a verdict, it is necessary that each juror agrees.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

10.12. FORM FOREPERSON AND VERDICT INSTRUCTION (CIVIL)

INSTRUCTION NO. ____

Upon retiring to the jury room, you shall select one of your number to act as your foreperson. The foreperson will preside over your deliberations and be your spokesperson here in court. Verdict forms have been prepared for your convenience to take to the jury room.

You will note that the forms include a number of interrogatories or questions which call for a "yes" or "no" answer. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided for each response. As you will note from the wording of the questions, it may not be necessary to consider or answer every question.

When you have completed the verdict form, the foreperson will sign and date the form, which should be brought to the courtroom when you return.

10.13. FORM FOREPERSON AND VERDICT INSTRUCTION (CRIMINAL)

INSTRUCTION NO. ____

Upon retiring to the jury room, you shall select one of your number to act as your foreperson. The foreperson will preside over your deliberations and be your spokesperson here in court. A verdict form has been prepared for your convenience. Your foreperson will write the unanimous answer of the jury in the space provided. When you have completed the verdict form, the foreperson will sign and date the form, which should be brought to the courtroom when you return.

10.14. FORM ALLEN INSTRUCTION (CRIMINAL)

INSTRUCTION NO. _____

Members of the Jury, I ask that you continue your deliberations in an effort to agree on a verdict and dispose of this case, and I have a few additional comments I would like for you to consider as you do so.

First, this is an important case. The trial has been expensive in time, effort, and money to both the defense and the prosecution. If you should fail to agree on a verdict, the case is left open and may be tried again. Obviously another trial would only serve to increase the cost to both sides, and there is no reason to believe that the case could be tried again by either side better or more exhaustively than it has been tried before you. Any future jury must be selected in the same manner and from the same source as you were chosen, and there is no reason to believe that the case would go to jurors more conscientious, more impartial or more competent than you, or that more or clearer evidence could be produced.

If a substantial majority of your number are for a conviction, each dissenting juror ought to consider whether a doubt in his or her mind is a reasonable one, since it appears to make no effective impression on the minds of the others. On the other hand, if a majority or even a lessor number of you are for acquittal, the other jurors ought seriously to ask themselves again and most thoughtfully, whether they do not have a reasonable doubt, the correctness of a judgment which is not shared by several of their fellow jurors, and whether they should distrust the weight and sufficiency of the evidence which failed to convince several of their fellow jurors beyond a reasonable doubt.

Remember at all times that no juror is expected to yield a conscientious conviction he or she may have as to the weight or effect of the evidence, but remember also that after full

deliberation and consideration of the evidence in the case, it is your duty to agree on a verdict if you can do so without surrendering your conscientious conviction.

You must also remember if evidence in the case fails to establish guilt beyond a reasonable doubt, the accused should have your unanimous verdict of not guilty.

U.S. v. Butler, 904 F.2d 1482 (10th Cir. 1990)

U.S. v. Rodriguez-Mejia, No. 93-2182 (10th Cir. April 1, 1994)

U.S. v. Reed, 61 F.3d 803 (10th Cir. 1995)