

PROPOSED JURY INSTRUCTIONS ON IMPLICIT BIAS

Criminal Jury Instruction Committee – November 17, 2017

[Additions are underscored and deletions are ~~struck out~~.]

AMCI 101 & 104 can be adopted, or all three.

AMCI 101

RESPECTIVE DUTIES OF JUDGE AND JURY CAUTIONARY INSTRUCTIONS

(a) The faithful performance of your duties as jurors is essential to the administration of justice.

(b) It is my duty as a judge to inform you of the law applicable to this case by instructions, and it is your duty to accept and follow them as a whole, not singling out one instruction to the exclusion of others. You should not consider any rule of law with which you may be familiar unless it is included in my instructions.

(c) It is your duty to determine the facts from the evidence produced in this trial. You are to apply the law as contained in these instructions to the facts and render your verdict upon the evidence and law. Do not do any research on the internet or otherwise; or any investigation about the case or the parties on your own.

(d) You must decide this case solely on the evidence and law before you and must not be influenced by any personal likes or dislikes, stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious or implicit bias, too, can affect how we evaluate information and make decisions. You should not permit sympathy, prejudice, bias, or like or dislike of any party to this action or of any attorney to influence your findings in the case.{*}

(e) ~~(d)~~ In deciding the issues, you should consider the testimony of the witnesses and the exhibits received in evidence. The introduction of evidence in court is governed by law. You should accept without question my rulings as to the admissibility or rejection of evidence, drawing no inferences that by these rulings I have in any manner indicated my views on the merits of the case.

(f) ~~(e)~~ Opening statements, remarks during the trial, and closing arguments of the attorneys are not evidence, but are made only to help you in understanding the evidence and applicable law. Any argument, statements, or remarks of attorneys having no basis in the evidence should be disregarded by you.

(g) ~~(f)~~ I have not intended by anything I have said or done, or by any questions that I may have asked, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness who testified. If anything that I have done or said has seemed to so indicate, you will disregard it.

(h) ~~(g)~~ You cannot use cell phones and other communication devices for any purpose when in the jury room during deliberations.

{* This last sentence was formerly in (c) with “bias” added.}

AMCI 103

JURY – PERSONAL OBSERVATIONS AND EXPERIENCES;
IMPLICIT BIAS

In considering the evidence in this case, you are not required to set aside your common knowledge, but you have a right to consider all the evidence in the light of your own observations and experiences in the affairs of life.

Each of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Witnesses can have the same implicit biases.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of his or her race, gender, ethnicity, national origin, religion, sexual orientation, age, disability, [or] socioeconomic status[, or [insert other impermissible form of bias]].

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party, witness, or lawyer.

[Alternative: The underscored part could be its own instruction: AMCI 103A Implicit Bias]

CREDIBILITY OF WITNESS

You are the sole judges of the weight of the evidence and the credibility of the witnesses. In determining the credibility of any witness and the weight to be given his testimony, you may take into consideration his demeanor while on the witness stand, any prejudice or bias for or against a party, his means of acquiring knowledge concerning any matter to which he testified, any interest he may have in the outcome of the case, the consistency or inconsistency of his testimony, its reasonableness or unreasonableness, and any other fact or circumstances tending to shed light upon the truth or falsity of his testimony.

Sources:

California Civil CACI 113 (2016), page 110 of pdf (attached) (adopted originally 2010)

http://www.courts.ca.gov/partners/documents/CACI_2017_Edition.pdf

Note: there is not yet a comparable California criminal jury instruction on bias. Criminal instructions are in CALCRIM (2017), http://www.courts.ca.gov/partners/documents/calcrim_2017_edition.pdf.

Pennsylvania Suggested Standard Civil Jury Instructions 1.140 (attached) (formerly 1.39 (2003)) is substantially similar and almost verbatim the California instruction, and it is available on Lexis ([link](#)). It was hard to find on a general internet search. There is no Pennsylvania criminal instruction on implicit bias.

N.D.Iowa (Bennett, D.J. (modified)