Agenda
Advisory Committee on
Model Civil Jury Instructions

March 12, 2018
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Welcome, announcements, and approval of minutes	Tab 1	Judge Andrew Stone, Chair
Subcommittees and subject area timelines	Tab 2	Judge Andrew Stone
Discussion regarding uniformity	Tab 3	Judge Andrew Stone, Judge James Blanch, Keisa Williams, Nancy Sylvester, committee
Defamation Instruction 1609	Tab 4	All
Other business		Judge Andrew Stone

Committee Web Page

Published Instructions

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 p.m. unless otherwise stated.

April 9, 2018
May 14, 2018
June 11, 2018
September 10, 2018
October 15, 2018
November 19, 2018
December 10, 2018

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
February 12, 2018
4:00 p.m.

Present: Honorable Andrew H. Stone (chair), Marianna Di Paolo, Joel Ferre, Tracy H. Fowler, Honorable Keith A. Kelly, Ruth A. Shapiro, Lauren A. Shurman, Paul M. Simmons, Peter W. Summerill, Nancy Sylvester. Also present: David C. Reymann, chair of the Injurious Falsehood subcommittee

Excused: Patricia C. Kuendig, Christopher M. Von Maack

1. *Minutes.* On motion of Ms. Shapiro, seconded by Mr. Fowler, the committee approved the minutes of the January 8, 2018 meeting.

2. *Schedule.* Judge Stone noted that the committee will continue its review of the Civil Rights instructions in March. He further noted that the model criminal instructions have been released, and there are some differences between them and the model civil instructions that have been approved. The committee thought it would be a good idea to have the standard instructions in both sets match. Judge Stone will discuss the matter with Judge Blanch, the chair of the model criminal instructions committee.

3. *Injurious Falsehood Instructions.* The Committee continued its review of the Injurious Falsehood instructions.

a. *CV1905, Definition: False Statement.* Judge Stone thought that the committee may not have given sufficient consideration to Dr. Di Paolo's concern with the use of "literally" in CV1905 (namely, that it has lost its meaning). Ms. Shapiro suggested "actually" as a replacement. Mr. Reymann suggested that "absolutely, totally, or literally" could be replaced with "completely." After further discussion, Mr. Simmons moved to leave the instruction as it was approved at the last meeting. Ms. Shapiro seconded the motion, which passed without opposition.

b. *CV1907: Definition: Malice, Committee Note.* On motion of Ms. Shapiro, seconded by Mr. Simmons, the committee voted to approve the committee note.

c. *CV1908, Economic Damages.* Mr. Reymann explained that economic (or "special") damages are the only damages available for injurious falsehood and are an element of the claim. Legal expenses for removing a cloud on title are recoverable, but whether they are recoverable in other contexts is unclear.

Dr. Di Paolo joined the meeting.

Ms. Shurman suggested bracketing the examples of economic damages in the third sentence or saying "[Name of plaintiff] claims economic damages in the form of [describe]" and moving the examples to the committee note. Dr. Di Paolo questioned the use of "mere" in the last sentence. She thought some jurors would understand it to mean a little reduction. Some committee members thought that the last sentence should be bracketed since it would not apply in every case. The committee revised the instruction to read:

> [Name of plaintiff] must prove that the alleged injurious statements directly caused [him/her/it] economic damages. Economic damages are specific monetary losses.
>
> In this case, [name of plaintiff] alleges economic damages of [list the specific monetary losses claimed]. [A reduction in estimated value of property that [name of plaintiff] continues to own does not constitute a specific monetary loss.]

The former third sentence, giving examples of economic damages, was moved to the second sentence of the committee note. The committee approved the instruction as revised.

d. *CV1909, Non-actionable Statements.* Mr. Reymann noted that this instruction is a curative instruction that tracks the equivalent defamation instruction, CV1609. He noted that the references stand for the proposition that some statements are not actionable, not necessarily that such an instruction is necessary or proper. Judge Stone thought that the instruction may be misunderstood to mean that the jury cannot consider the statements at all in determining liability and noted that a statement that cannot be an injurious falsehood in and of itself may still be evidence that another statement that is actionable was made with malice, for example. Mr. Fowler thought the use of "may have" was confusing since, by the time the jury receives the instruction, it will have heard the evidence, and the court will have determined its admissibility. Mr. Reymann pointed out that the court will not necessarily have made a conscious decision to let the evidence in. It may have come in without objection, for example. Ms. Shapiro thought that the instruction could do more harm than good by reinforcing the non-actionable statement. Mr. Reymann said that as a defense attorney he would want the instruction because it could cure the misconception that the jury can find for the plaintiff based on any statement it finds injurious. He noted that the court does not have to use the instruction. Mr. Summerill thought the instruction was unnecessary in light of CV127, Limited Purpose Evidence. Mr. Reymann thought that the two instructions address different issues. CV127 addresses admissibility but says nothing about whether

or not the statement can be the basis for liability. He thought that saying that some evidence is received for a limited purpose, in the abstract, does not adequately address the issue and does not address a statement that may not have been expressly admitted for a limited purpose. The committee revised the instruction to read:

> During trial, you may have heard evidence of certain statements made by [name of defendant] that I have determined are not injurious falsehoods. Specifically, you may have heard evidence of the following statements: [Insert specific non-actionable statements.]
>
> Even though you heard evidence of these statements, you are instructed that these statements are not injurious falsehoods, but you may consider them for other purposes.

Judge Kelly joined the meeting.

Ms. Shurman suggested saying in the committee note that the court may want to specify the other purpose for which the evidence was admitted, but Judge Stone thought that it was best left for argument. Telling the jury, for example, that it may consider the statement as evidence of malice may imply that the defendant acted with malice. On motion of Ms. Shurman, seconded by Ms. Shapiro, the committee approved the instruction as revised, with Mr. Summerill dissenting. Mr. Reymann will revise CV1609 to conform to CV1909 as much as possible. The revised instruction will be circulated by e-mail for the committee's approval.

e. *CV1606, Definition: Opinion.* Mr. Reymann and Ms. Sylvester revised CV1606 to conform to the changes in CV1906. On motion of Ms. Shapiro, seconded by Mr. Simmons, the committee approved revised CV1606.

f. *CV1901, Injurious Falsehood--Introductory Notes to Practitioners.* The committee changed the last sentence of the second to last paragraph to say that "the parties may wish to use CV1909 (Non-actionable Statements)," rather than cross-referencing CV1609. At Judge Kelly's suggestion, the parenthetical following the citation to *Rehn v. Christensen* in the last paragraph was changed to read "(analyzing statutory and common law claims)." On motion of Mr. Simmons, seconded by Ms. Shapiro, the committee approved CV1901 as revised.

The committee thanked Mr. Reymann for all of his work on the defamation and injurious falsehood instructions and excused him.

4. *Committee Membership.* Judge Stone announced that Ms. Kuendig is dealing with the sudden loss of her mother and has resigned from the committee, leaving a vacancy that needs to be filled.

5. *Next meeting.* The next meeting is Monday, March 12, 2018, at 4:00 p.m.

The meeting adjourned at 5:45 p.m.

Tab 2

Priority	Subject	Sub-C in place?	Sub-C Members	Projected Starting Month	Projected Finalizing Month	Comments Back?	
1	Civil Rights: Set 1	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	September-16	September 2017 (wrap up 1/2, then send for comment)	Projected: April 2018 Meeting	
2	Economic Interference	Yes	Frazier, Ryan (D) (Chair); Shelton, Ricky (D); Stevenson, David (P); Simmons, Paul (P); Kuendig, Patricia (P)	October-17	December-17	Projected: June 2018 Meeting	
3	Injurious Falsehood	Yes	Dryer, Randy; Hoole, Greg; Hoole, Roger; Hunt, Jeff; Reymann, David (Chair); Stevens, Greg	December-17	February-18		March meeting: Discussion on uniformity
4	Assault/False Arrest	Yes	Rice, Mitch (chair); Carter, Alyson; Wright, Andrew (D); Cutt, David (P)	April-18	June-18		
5	Trespass and Nuisance	Yes (more members needed)	Hancock, Cameron; Figueira, Joshua (researcher); Abbott, Nelson (P); Steve Combe (D)	September-18	November-18		
6	Insurance	Yes	Johnson, Gary (chair); Pritchett, Bruce; Ryan Schriever, Dan Bertch, Andrew Wright, Rick Vazquez; Stewart Harman (D); Ryan Marsh (D)	November-18	January-19		
7	Unjust Enrichment	No (instructions from David Reymann)	David Reymann	February-19	February-19		
8	Abuse of Process	No (instructions from David Reymann)	David Reymann	March-19	March-19		
9	Directors and Officers Liability	Yes	Call, Monica;Von Maack, Christopher (chair); Larsen, Kristine; Talbot, Cory; Love, Perrin; Buck, Adam	April-19	June-19		
10	Wills/Probate	No	Barneck, Matthew (chair); Petersen, Rich; Tippet, Rust; Sabin, Cameron	September-19	November-19		
11	Civil Rights: Set 2	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	December-19	February-20		
12	Sales Contracts and Secured Transactions	Yes	Cox, Matt (chair); Boley, Matthew; Maudsley, Ade	March-20	May-20		

Tab 3

CV101 General admonitions.

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. It's natural to want to investigate a case, but you may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device.

You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, MySpace, LinkedIn, or any other social media.

You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the clerk or the bailiff, and they will notify me.

Also, do not talk with the lawyers, parties or witnesses about anything, not even to pass the time of day.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn’t know about it. That’s why it is so important that you base your verdict only on information you receive in this courtroom.

Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well. Notify the bailiff or the clerk, who will notify me.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

References

CACI 100

MUJI 1st Instruction

1.1; 2.4.

Committee Notes

News articles have highlighted the problem of jurors conducting their own internet research or engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may therefore wish to emphasize the importance of the traditional admonitions in the context of electronic research or communications.

Amended Dates:

9/2011.

CV101A General admonitions. (self-represented litigant version)

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. It's natural to want to investigate a case, but you may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device. You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, MySpace, LinkedIn, or any other social media. You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the clerk or the bailiff, and they will notify me.

[Name of plaintiff] [name of defendant] is representing him/herself.

[Name of defendant] [name of plaintiff] is represented by _____.

[Name of plaintiff], [name of defendant], attorneys for the [plaintiff][defense] and witnesses are not allowed to speak with you during the case. When you see [plaintiff's] [defendant's] attorneys at a recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly – they are simply following the law.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn't know about it. That's why it is so important that you base your verdict only on information you receive in this courtroom. Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well. Notify the bailiff or the clerk, who will notify me.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

References
MUJI CV 101.
Preliminary Jury Instructions for use with self-represented litigants, U.S. District Court, Eastern District of California.

Committee Notes
News articles have highlighted the problem of jurors conducting their own internet research or engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may therefore wish to emphasize the importance of the traditional admonitions in the context of electronic research or communications.

Amended Dates:
12/2013

CV101B Further admonition about electronic devices.
Removed 9/2011. Incorporated into CV 101.

CV102 Role of the judge, jury and lawyers.
You and I and the lawyers play important but different roles in the trial.

I supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also explain the meaning of the law.

You must follow that law and decide what the facts are. The facts generally relate to who, what, when, where, why, how or how much. The facts must be supported by the evidence.

The lawyers present the evidence and try to persuade you to decide the case in favor of his or her client.

Television and the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

MUJI 1st Instruction
1.5; 2.2; 2.5; 2.6.

Amended Dates:
9/2011.

CV102A Role of the judge, jury, parties, lawyers. (self-represented litigant version)

You and I and [name of plaintiff] [name of defendant] and the lawyers play important but different roles in the trial.

I supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also explain the meaning of the law.

You must follow that law and decide what the facts are. The facts generally relate to who, what, when, where, why, how or how much. The facts must be supported by the evidence.

The lawyers present the evidence and try to persuade you to decide the case in favor of his or her client.

It is the self-represented [plaintiff] [defendant] and [plaintiff] [defense] counsel's duty to object when the other side offers testimony or other evidence that the self-represented [plaintiff] [defendant] or [plaintiff][defense] counsel believes is not admissible. You should not be unfair or prejudiced against the self-represented [plaintiff] [defendant], [plaintiff] [defense] counsel, or [plaintiff] [defendant] because the self-represented [plaintiff] [defendant] or [plaintiff] [defense] counsel has made objections. Television and the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

References
MUJI CV 102.
Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of California.

Amended Dates:
12/2013

CV103 Nature of the case.
In this case [Name of plaintiff] seeks [describe claim].

[Name of defendant] [denies liability, etc.].

[Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party complaint/etc.,] seeking [describe claim].

MUJI 1st Instruction
1.1.

Amended Dates:
9/2011.

CV104 Order of trial.
The trial will proceed as follows:

(1) The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show.

(2) [Name of plaintiff] will offer evidence first, followed by [name of defendant]. I may allow the parties to later offer more evidence.

(3) Throughout the trial and after the evidence has been fully presented, I will instruct you on the law. You must follow the law as I explain it to you, even if you do not agree with it.

(4) The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) The final step is for you to go to the jury room and discuss the evidence and the instructions among yourselves until you reach a verdict.

MUJI 1st Instruction
1.2.

Amended Dates:
9/2011.

CV105 Sequence of instructions not significant.
The order in which I give the instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction, and neither should you.

MUJI 1st Instruction
2.1.

Amended Dates:
9/2011.

CV106 Jurors must follow the instructions.
Removed 9/2011. Incorporated into CV 102.

MUJI 1st Instruction
1.5.

CV107 Jurors may not decide based on sympathy, passion and prejudice.
You must decide this case based on the facts and the law, without regard to sympathy, passion or prejudice. You must not decide for or against anyone because you feel sorry for or angry at anyone.

MUJI 1st Instruction
2.3.

Amended Dates:
9/2011

CV108 Note-taking.
You may take notes during the trial and have those notes with you when you discuss the case. If you take notes, do not over do it, and do not let your note-taking distract you from following the evidence. Your notes are not evidence, and you should use them only as a tool to aid your personal memory. [I will secure your notes in the jury room during breaks and have them destroyed at the end of the trial.]

References
URCP 47(n).

MUJI 1st Instruction
1.6.

Committee Notes
The judge may instruct the jurors on what to do with their notes at the end of each day and at the end of the trial.

Amended Dates:
9/2011.

CV110 Rules applicable to recesses.
Removed 9/2011. Incorporated into CV 101.

MUJI 1st Instruction
1.8; 1.7

CV111A Definition of "person."
"Person" means an individual, corporation, organization, or other legal entity.

Amended Dates:
9/2011.

CV111B All persons equal before the law.
The fact that one party is a natural person and another party is a [corporation/partnership/other legal entity] should not play any part in your deliberations. You must decide this case as if it were between individuals.

MUJI 1st Instruction
2.8.

Amended Dates:
9/2011.

CV112 Multiple parties.
There are multiple parties in this case, and each party is entitled to have its claims or defenses considered on their own merits. You must evaluate the evidence fairly and separately as to each plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

Amended Dates:
9/2011.

CV113 Multiple plaintiffs.
Although there are _____ plaintiffs, that does not mean that they are equally entitled to recover or that any of them is entitled to recover. [Name of defendant] is entitled to a fair consideration of [his] defense against each plaintiff, just as each plaintiff is entitled to a fair consideration of [his] claim against [name of defendant].

MUJI 1st Instruction
2.21.

Amended Dates:
9/2011.

CV114 Multiple defendants.
Although there are _____ defendants, that does not mean that they are equally liable or that any of them is liable. Each defendant is entitled to a fair consideration of [his] defense against each of [name of plaintiff]'s claims. If you conclude that one defendant is liable, that does not necessarily mean that one or more of the other defendants are liable.

MUJI 1st Instruction
2.22.

Amended Dates:
9/2011.

CV115 Settling parties.
[Name of persons] have reached a settlement agreement.

There are many reasons why persons settle their dispute. A settlement does not mean that anyone has conceded anything. Although [name of settling person] is not a party, you must still decide whether any of the persons, including [name of settling person], were at fault.

You must not consider the settlement as a reflection of the strengths or weaknesses of any person’s position. You may consider the settlement in deciding how believable a witness is.

References
Slusher v. Ospital, 777 P.2d 437 (Utah 1989).
Paulos v. Covenant Transp., Inc., 2004 UT App 35 (Utah App. 2004).
Child v. Gonda, 972 P.2d 425 (Utah App. 1998).
URE 408.

MUJI 1st Instruction
2.24.

Committee Notes
The judge and the parties must decide whether the fact of settlement and to what extent the terms of the settlement will be revealed to the jury in accordance with the principles set forth in Slusher v. Ospital, 777 P.2d 437 (Utah 1989).

Substitute other legal concepts if “fault” is not relevant. For example, in commercial disputes.

Amended Dates:
9/2011.

CV116 Discontinuance as to some defendants.
[Name of defendant] is no longer involved in this case because [explain reasons]. But you must still decide whether fault should be allocated to [name of defendant] as if [he] were still a party.

MUJI 1st Instruction

2.23.

Committee Notes
This instruction should be given at the time the party is dismissed. The court should explain the reasons why the defendants have been dismissed to the extent possible. If allocation of fault to the dismissed party is not appropriate under applicable law the final sentence should not be given.

CV117 Preponderance of the evidence.
You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence.

When I tell you that a party has the burden of proof or that a party must prove something by a "preponderance of the evidence," I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses nor the amount of testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the party has therefore failed to meet its burden of proof to establish that fact.

[Now] [At the close of the trial] I will instruct you in more detail about the specific elements that must be proved.

References
Johns v. Shulsen, 717 P.2d 1336 (Utah 1986).
Morris v. Farmers Home Mut. Ins. Co., 500 P.2d 505 (Utah 1972).
Alvarado v. Tucker, 268 P.2d 986 (Utah 1954).
Hansen v. Hansen, 958 P.2d 931 (Utah App. 1998)

MUJI 1st Instruction
2.16; 2.18.

Amended Dates:
9/2011

CV118 Clear and convincing evidence.
Some facts in this case must be proved by a higher level of proof called "clear and convincing evidence." When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence, to the point that there remains no serious or substantial doubt as to the truth of the fact.

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

I will tell you specifically which of the facts must be proved by clear and convincing evidence.

References
Essential Botanical Farms, LC v. Kay, 2011 UT 71.
Jardine v. Archibald, 279 P.2d 454 (Utah 1955).
Greener v. Greener, 212 P.2d 194 (Utah 1949).
See also, Kirchgestner v. Denver & R.G.W.R. Co., 233 P.2d 699 (Utah 1951).

MUJI 1st Instruction
2.19.

Committee Notes
In giving the instruction on clear and convincing evidence, the judge should specify which elements must be held to this higher standard. This might be done in an instruction and/or as part of the verdict form. If the judge gives the clear and convincing evidence instruction at the start of the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.) the judge should instruct the jury that those matters are no longer part of the case.

Amended Dates:
9/2011.

CV119 Evidence.
"Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a witness or documents or objects or photographs or certain qualified opinions or any combination of these things.

You must entirely disregard any evidence for which I sustain an objection and any evidence that I order to be struck.

Anything you may have seen or heard outside the courtroom is not evidence and you must entirely disregard it.

The lawyers might stipulate—or agree—to a fact or I might take judicial notice of a fact. Otherwise, what I say and what the lawyers say usually are not evidence.

You are to consider only the evidence in the case, but you are not expected to abandon your common sense. You are permitted to interpret the evidence in light of your experience.

MUJI 1st Instruction
1.3; 2.4.

Amended Dates:
9/2011.

CV119A Evidence. (self-represented litigant version)

"Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a witness or documents or objects or photographs or certain qualified opinions or any combination of these things.

You must entirely disregard any evidence for which I sustain an objection and any evidence that I order to be struck.

Anything you may have seen or heard outside the courtroom is not evidence and you must entirely disregard it.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by pro se [plaintiff] [defendant] and [plaintiff] [defense] counsel are not evidence. Pro se [plaintiff] [defendant] when acting as counsel and [plaintiff] [defense] counsel are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way they have stated them, your memory of them controls. However, pro se [plaintiff] [defendant]'s statements as a witness are evidence.

(2) Questions and objections by pro se [plaintiff] [defendant] and [plaintiff] [defense] counsel are not evidence.

The lawyers might stipulate -- or agree -- to a fact or I might take judicial notice of a fact. Otherwise, what I say and what the lawyers say usually is not evidence.

You are to consider only the evidence in this case, but you are not expected to abandon your common sense. You are permitted to interpret the evidence in light of your experience.

References
CV 119.
Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of California.

Amended Dates:
November 2013.

CV120 Direct and circumstantial evidence.
A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of facts that allow someone to reasonably infer the truth of the facts to be proved. For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

MUJI 1st Instruction
2.17.

Amended Dates:
9/2011.

CV121 Believability of witnesses.
Testimony in this case will be given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

(1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?

(2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?

(3) Demeanor. Is there anything about the witness’s appearance, conduct or actions that causes you to give more or less weight to the testimony?

(4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?

(5) Knowledge. Did the witness have a good opportunity to know what [he] is testifying about?

(6) Memory. Does the witness's memory appear to be reliable?

(7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

MUJI 1st Instruction
2.9.

CV122 Inconsistent statements.
You may believe that a witness, on another occasion, made a statement inconsistent with that witness's testimony given here. That doesn't mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

MUJI 1st Instruction
2.10.

CV123 Effect of willfully false testimony.
If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

References
Gittens v. Lundberg, 3 Utah 2d 392, 284 P.2d 1115 (1955).

MUJI 1st Instruction
2.11.

CV124 Stipulated facts.
A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The parties have stipulated to the following facts:

[Here read stipulated facts.]

Since the parties have agreed on these facts, you must accept them as true for purposes of this case.

MUJI 1st Instruction
1.3; 1.4

Committee Notes
This instruction should be given at the time a stipulated fact is entered into the record.

CV125 Judicial notice.
I have taken judicial notice of [state the fact] for purposes of this trial. This means that you must accept the fact as true.

MUJI 1st Instruction
1.3.

Committee Notes
This instruction should be given at the time the court takes judicial notice of a fact.

CV126 Depositions.
A deposition is the sworn testimony of a witness that was given previously, outside of court, with the lawyer for each party present and entitled to ask questions. Testimony provided in a deposition is evidence and may be read to you in court or may be seen on a video monitor. You should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

MUJI 1st Instruction
2.12.

Amended Dates:
9/2011.

CV127 Limited purpose evidence.
Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose.

MUJI 1st Instruction
1.3.

Amended Dates:
9/2011.

CV128 Objections and rulings on evidence and procedure.
From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if a lawyer objects and I sustain the objection, you should disregard the question and any answer.

During the trial I may have to confer with the lawyers out of your hearing about questions of law or procedure. Sometimes you may be excused from the courtroom for that same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to decide. Please be patient even though the case may seem to go slowly.

MUJI 1st Instruction
2.5.

CV129 Statement of opinion.
Under limited circumstances, I will allow a witness to express an opinion. Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

You may choose to rely on the opinion, but you are not required to do so.

If you find that a witness, in forming an opinion, has relied on a fact that has not been proved, or has been disproved, you may consider that in determining the value of the witness's opinion.

References
Lyon v Bryan, 2011 UT App 256 (jury entitled to disregard even unrebutted expert testimony).

MUJI 1st Instruction
2.13; 2.14.

Committee Notes
This instruction may be given if an expert or another witness is permitted to express an opinion on a matter that the jury is capable of deciding with or without expert testimony. This instruction should not be given if the jury is required to rely on expert testimony to establish the standard of care or some other fact. See, for example, Instruction CV 326. Expert testimony required..

If the jury is required to rely on expert testimony for some decisions and is allowed to decide other facts with or without expert testimony, the court's instructions should distinguish for the jury which matters the jury must decide based only on expert testimony and which matters they may decide by giving the expert testimony the weight they think it deserves.

Amended Dates:
September, 2011; November 13, 2012.

CV130A Charts and summaries as evidence.
Charts and summaries that are received as evidence will be with you in the jury room when you deliberate, and you should consider the information contained in them as you would any other evidence.

MUJI 1st Instruction
2.15.

Committee Notes
Use this instruction if the charts and summaries used at trial are introduced as evidence under URE 1006.

Amended Dates:
9/2011.

CV130B Charts and summaries of evidence.

Certain charts and summaries will be shown to you to help explain the evidence. However, these charts and summaries are not themselves evidence, and you will not have them in the jury room when you deliberate. You may consider them to the extent that they correctly reflect the evidence.

MUJI 1st Instruction
2.15.

Committee Notes
Use this instruction if the charts and summaries used at trial are used only as demonstrative aids.

Amended Dates:
9/2011.

CV131 Spoliation.
I have determined that [name of party] intentionally concealed, destroyed, altered, or failed to preserve [describe evidence]. You may assume that the evidence would have been unfavorable to [name of party].

References
Hills v. United Parcel Service, Inc., 2010 UT 39, 232 P.3d 1049.
Daynight, LLC v. Mobilight, Inc., 2011 UT App 28, 248 P.3d 1010.
Burns v. Cannondale Bicycle Co., 876 P.2d 415 (Utah Ct. App. 1994).
URCP 37(g).

Committee Notes
Utah appellate courts have not recognized a cause of action for first-party spoliation (a claim against a party to the underlying action – or the party's attorney – who spoliates evidence necessary or relevant to the plaintiff's claims against that party), or a cause of action for third-party spoliation (a stranger to the underlying action or a party not alleged to have committed the underlying tort as to which the loss or destroyed evidence is related). Hills v. United Parcel Serv., Inc., 2010 UT 39, 232 P.3d 1049; Burns v. Cannondale Bicycle Co., 876 P.2d 415 (Utah Ct. App. 1994). Rule 37(g), however, expressly provides authority to trial courts to address spoliation of evidence by a litigant, including instructing the jury regarding an adverse inference. See, URCP 37(b)(2)(F).l

In Daynight, LLC v. Mobilight, Inc., 2011 UT App. 28, 248 P.3d 1010, the Utah Court of Appeals observed that "spoliation under Rule 37(g), meaning the destruction and permanent deprivation of evidence, is on a qualitatively different level than a simple discovery abuse under Rule 37(b)(2) which typically pertains only to a delay in the production of evidence. . . . [R]ule 37(g) of the Utah Rules of Civil Procedure does not require a finding of 'willfulness, bad faith, fault or persistent dilatory tactics' or the violation of court orders before a court may sanction a party." Id. at ¶ 2.

The standard announced by the Daynight court differs from that employed by the United States Court of Appeals for the Tenth Circuit. Spoliation sanctions are proper in federal court when (1) a party has a duty to preserve evidence because it knew, or should have known the litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence. If the aggrieved party seeks an adverse inference to remedy the spoliation, it must also prove bad faith. Mere negligence in losing or destroying records is not enough because it does not support an inference of consciousness of a weak case. Without a showing of bad faith, a district court may only impose lesser sanctions. Turner v. Public Serv. Co., 563 F.3d 1136, 1149 (10th Cir. 2009). In addition, it is appropriate for a federal trial court to consider "the degree of culpability of the party who lost or destroyed the evidence." North v. Ford Motor Co., 505 F. Supp. 2d 1113, 1116 (D.Utah 2007).

The discussion by the Utah Court of Appeals in Daynight appears to indicate that even the negligent destruction of evidence will be sufficient to trigger a spoliation instruction without a finding of willfulness or bad faith.

Amended Dates:
9/2011.

CV135 Out-of-state or out-of-town experts.
You may not discount the opinions of [name of expert] merely because of where [he] lives or practices.

References
Swan v. Lamb, 584 P.2d 814, 819 (Utah 1978).

MUJI 1st Instruction
6.30

Committee Notes
The committee was not unanimous in its approval of this instruction. Use it with caution.

CV136 Conflicting testimony of experts.
In resolving any conflict that may exist in the testimony of [names of experts], you may compare and weigh the opinion of one against that of another. In doing this, you may consider the qualifications and credibility of each, as well as the reasons for each opinion and the facts on which the opinions are based.

MUJI 1st Instruction
6.31

CV137 Selection of jury foreperson and deliberation.

When you go into the jury room, your first task is to select a foreperson. The foreperson will preside over your deliberations and sign the verdict form when it's completed. The foreperson should not dominate the discussions. The foreperson's opinions should be given the same weight as the opinions of the other jurors.

After you select the foreperson you must discuss with one another—that is deliberate—with a view to reaching an agreement. Your attitude and conduct during discussions are very important.

As you begin your discussions, it is not helpful to say that your mind is already made up. Do not announce that you are determined to vote a certain way or that your mind cannot be changed. Each of you must decide the case for yourself, but only after discussing the case with your fellow jurors.

Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not surrender your honest convictions just to end the deliberations or to agree with other jurors.

Amended Dates:
9/2011.

CV138 Do not speculate or resort to chance.

When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

If you decide that a party is entitled to recover damages, you must then agree upon the amount of money to award that party. Each of you should state your own independent judgment on what the amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree in advance to average the estimates.

References
Day v. Panos, 676 P.2d 403 (Utah 1984).

CV139 Agreement on special verdict.

I am going to give you a form called the Special Verdict that contains several questions and instructions. You must answer the questions based upon the instructions and the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors must agree on the answer to each question, but they do not have to be the same six jurors on each question.

As soon as six or more of you agree on the answer to all of the required questions, the foreperson should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the completed Special Verdict with you.

Amended Dates:
9/2011.

CV140 Discussing the case after the trial.

Ladies and gentlemen of the jury, this trial is finished. Thank you for your service. The American system of justice relies on your time and your sound judgment, and you have been generous with both. You serve justice by your fair and impartial decision. I hope you found the experience rewarding.

You may now talk about this case with anyone you like. You might be contacted by the press or by the lawyers. You do not have to talk with them - or with anyone else, but you may. The choice is yours. I turn now to the lawyers to instruct them to honor your wishes if you say you do not want to talk about the case.

If you do talk about the case, please respect the privacy of the other jurors. The confidences they may have shared with you during deliberations are not yours to share with others.

Again, thank you for your service.

CV141 No record of testimony.

At the end of trial, you must make your decision based on what you recall of the testimony. You will not have a transcript or recording of the witnesses' testimony. I urge you to pay close attention to the testimony as it is given.

Amended Dates:
Added 9/2011.

CV99 Introducing a self-represented litigant to the jury.

In this case, [name of plaintiff] [name of defendant] is representing [himself] [herself]. The fact that one party is represented by counsel and another party is not should not play any part in your deliberations. Parties have a right to represent themselves, and you must apply the law without regard to the litigant's status as a self-represented party. You should neither favor nor penalize a litigant because that litigant is self-represented.

References

Allen v. Friel, 2008 UT 56, 194 P.3d 903.
State v. Winfield, 2006 UT 4, 128 P.3d 1171.
Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983).

Committee Notes

A self-represented litigant "will be held to the same standard of knowledge and practice as any qualified member of the bar." Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983). See also State v. Winfield, 2006 UT 4, 128 P.3d, 1171; Allen v. Friel, 2008 UT 56, 194 P.3d 903. However, "because of his lack of technical knowledge of law and procedure [a self-represented litigant] should be accorded every consideration that may reasonably be indulged." Id. at 1213.

Amended Dates:

December 2013.

CR0 Criminal Introduction

The Advisory Committee on the Model Utah Criminal Jury Instructions has drafted instructions with the following principles in mind:

1. Plain Language - While the committee recognizes the reticence of practitioners and judges to depart from statutory language, the Committee has been charged with using plain language drafting principles so that statements of the law will be clear to non-lawyers. Therefore, the Committee has attempted to draft instructions using simple structure and words of ordinary meaning.

2. Template - Where possible, the Committee has used the pattern elements instruction found in CR 301 as a template for other instructions. This instruction shifts the language away from that used in older instructions to more appropriately maintain the presumption of innocence. The Committee strongly encourages practitioners and judges to apply this pattern in drafting elements instructions for other crimes.

3. Brackets and Parentheses - Brackets [ ] are placed around an element or language that is optional, or when more than one language option is available, e.g. [him][her]. Parentheses ( ) are used when information must be entered, e.g. (DEFENDANT'S NAME).

4. Use of Initials - The Committee has drafted the instructions so that only a victim's initials are used when the victim is a minor. If the victim is an adult, the Committee recommends that the victim's name be used unless the court makes a specific finding that use of the victim's name is inappropriate in a particular case.

5. Relevant Law - Jury instructions are current as of the date amended. Practitioners should check the date the offense occurred and review the law to determine what it was at the time of the offense.

Where available, the Committee urges practitioners to use jury instructions from the Second Edition of the Model Utah Jury Instructions to the exclusion of other instructions. When an approved instruction is not available, practitioners should focus on substance, as well as format, in drafting proposed instructions.

Opening Instructions.

CR101 Introduction

(Ladies and Gentlemen) (Members of the Jury), you have been selected and sworn as the jury in this case. The defendant is accused of committing one or more crimes. You will decide if the defendant is guilty or not guilty. I will give you some instructions now and some later. You are required to consider and follow all my instructions. Keep an open mind throughout the trial. At the end of the trial you will discuss the evidence and reach a verdict. You took an oath to "well and truly try the issues pending between the parties" and to "render a true and just verdict." The oath is your promise to do your duty as a member of the jury. Be alert. Pay attention. Follow my instructions.

References

Utah R. Crim. P. 18(h).
Utah R. Crim. P. 19(a).
Utah Code Ann. § 77-17-10(1).

CR102 Information, Plea and Burden of Proof.

The prosecution has filed a document—called an "Information"—that contains the charges against the defendant. The Information is not evidence of anything. It is only a method of accusing a defendant of a crime. The Information will now be read.

(Read Information)

The defendant has entered a plea of not guilty and denies committing the crime(s). Every crime has component parts called "elements." The prosecution must prove each element beyond a reasonable doubt. Until then, you must presume that the defendant is not guilty. The defendant does not have to prove anything. (He) (She) does not have to testify, call witnesses, or present evidence.

References

Utah R. Crim. P. 4(b).
Utah Code Ann. § 76-1-501(1).
State v. Spillers, 2007 UT 13, ¶19, 152 P.3d 315.
State v. Lopez, 1999 UT 24, ¶13, 980 P.2d 191.
State v. Torres, 619 P.2d 694, 695 (Utah 1980).

CR103 Proof Beyond a Reasonable Doubt.

The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the prosecution's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find (him) (her) guilty. If, on the other hand, you think there is a real possibility that (he) (she) is not guilty, you must give (him) (her) the benefit of the doubt and find (him) (her) not guilty.

References

In re Winship, 397 U.S. 358, 362 (1970).
State v. Reyes, 2005 UT 33, ¶37, 116 P.3d 305.
State v. Cruz, 2005 UT 45, ¶¶19-22, 122 P.3d 543.
State v. Austin, 2007 UT 55, 165 P.3d 1191.

Committee Notes

As an alternative to using the *Reyes* instruction, in *State v. Cruz*, 2005 UT 45, 122 P.3d 543 (argued the same day as *Reyes*) the Utah Supreme Court concluded that an alternative formulation of the reasonable doubt instruction, taken as a whole, adequately conveyed to the jury the concept of reasonable doubt, provided a clear and accurate definition of the concept, and correctly stated the prosecution's burden. Accordingly, the courts and counsel may appropriately use either the *Reyes* instruction or the collective reasonable doubt instructions used in *Cruz*.

CR104 Presumption of Innocence.

Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crime(s) charged. This presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

References

Utah Code Ann. § 76-1-501(1).
Estelle v. Williams, 425 U.S. 501, 503 (1976).
Coffin v. United States, 156 U.S. 432, 453 (1895).
State v. Mitchell, 824 P.2d 469, 473 (Utah Ct. App. 1991).

CR105 Role of Judge, Jury and Lawyers.

All of us, judge, jury and lawyers, are officers of the court and have different roles during the trial:

- As the judge I will supervise the trial, decide legal issues, and instruct you on the law.
- As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.
- The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

References

Utah Code Ann. § 77-17-10(1).
Utah Code Ann. § 78A-2-201.
State v. Sisneros, 631 P.2d 856, 859 (Utah 1981).
State v. Gleason, 40 P.2d 222, 226 (Utah 1935).
75 Am. Jur.2d Trial §§ 714, 719, 817.

CR106 Evidence.

As jurors you will decide whether the defendant is guilty or not guilty. You must base your decision only on the evidence. Evidence usually consists of the testimony and exhibits presented at trial. Testimony is what witnesses say under oath. Exhibits are things like documents, photographs, or other physical objects. The fact that the defendant has been accused of a crime and brought to trial is not evidence. What the lawyers say is not evidence. For example, their opening statements and closing arguments are not evidence.

References

Utah R. Evid. 401.
Utah R. Evid. 603.
State v. Hall, 186 P.2d 970, 972 (Utah 1947).
29 Am. Jur.2d Evidence § 1.

CR107 Objections.

Rules govern what evidence may be presented to you. On the basis of these rules, the lawyers may object to proposed evidence. If they do, I will rule in one of two ways. If I sustain the objection, the proposed evidence will not be allowed. If I overrule the objection, the evidence will be allowed.

Do not evaluate the evidence on the basis of whether objections are made.

References

Utah R. Evid. 103.
75 Am. Jur.2d Trial § 395.

CR108 Order of the Trial.

I will now explain how the trial will unfold. The prosecution will give its opening statement. An opening statement gives an overview of the case from one point of view, and summarizes what that lawyer thinks the evidence will show. Defense counsel may choose to make an opening statement right after the prosecutor, or wait until after all of the prosecution's evidence has been presented, or not make one at all. You will then hear the prosecution's evidence. Evidence is usually presented by calling and questioning witnesses. What they say is called testimony. A witness is questioned first by the lawyer who called that witness and then by the opposing lawyer.

[**For judges who permit juror questions, add:** After the lawyers finish with their questions you will have the opportunity to submit questions. In a moment I will explain how to do this.]

Consider all testimony, whether from direct or cross-examination, regardless of who calls the witness. After the prosecution has presented all its evidence, the defendant may present evidence, though the defendant has no duty to do so. If the defendant does present evidence the prosecution may then present additional evidence. After both sides have presented all their evidence, I will give you final instructions on the law you must follow in reaching a verdict. You will then hear closing arguments from the lawyers. The prosecutor will speak first, followed by the defense counsel. Then the prosecutor speaks last, because the government has the burden of proof. Finally, you will deliberate in the jury room. You may take your notes with you. You will discuss the case and reach a verdict.

References

Utah R. Crim. P. 17(g), (i).

CR109 Conduct of Jurors.

From time to time I will call a recess. It may be for a few minutes or longer. During recesses, do not talk about this case with anyone—not family, not friends, not even each other. Until the trial is over, do not mingle or talk with the lawyers, parties,

witnesses or anyone else connected with the case. Court clerks or bailiffs can answer general questions, such as the length of breaks or the location of restrooms. But they cannot comment about the case or anyone involved. The goal is to avoid the impression that anyone is trying to influence you improperly. If people involved in the case seem to ignore you outside of court, they are just following this instruction.

Until the trial is over, do not read or listen to any news reports about this case. If you observe anything that seems to violate this instruction, report it immediately to a clerk or bailiff.

References
Utah R. Crim. P. 17(k).

CR109A Rules applicable to recesses.

From time to time I will call a recess. It may be for a few minutes or longer. During recesses, do not talk about this case with anyone—not family, not friends, not even each other. Until the trial is over, do not mingle or talk with the lawyers, parties, witnesses or anyone else connected with the case. Court clerks or bailiffs can answer general questions, such as the length of breaks or the location of restrooms. But they cannot comment about the case or anyone involved. The goal is to avoid the impression that anyone is trying to influence you improperly. If people involved in the case seem to ignore you outside of court, they are just following this instruction.

Until the trial is over, do not read or listen to any news reports about this case. Do not do any research or visit any locations related to this case. If you observe anything that seems to violate this instruction, report it immediately to a clerk or bailiff.

CR109B Further admonition about electronic devices.

Jurors have caused serious problems during trials by using computer and electronic communication technology. You may be tempted to use these devices to investigate the case, or to share your thoughts about the trial with others. However, you must not use any of these electronic devices while you are serving as a juror.

You violate your oath as a juror if you conduct your own investigations or communicate about this trial with others, and you may face serious consequences if you do. Let me be clear: do not "Google" the parties, witnesses, issues, or counsel; do not "Tweet" or text about the trial; do not use Blackberries or iPhones to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as"Google Maps" can result in a mistrial.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court, and not on other sources of information.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

CR110 Note-taking.
Feel free to take notes during the trial to help you remember the evidence, but do not let note-taking distract you. Your notes are not evidence and may be incomplete.

References
Utah R. Crim. P. 17(l).

CR111 Juror Questions. [Optional for judges who permit questions.]
During the trial you may ask questions of the witnesses. However, to make sure the questions are legally appropriate, we will use the following procedure: After the lawyers have finished questioning each witness, I will ask if you have any questions. If you do, please do not ask the question out loud. Write it down and hand it to a bailiff. The bailiff will hand me your question. I will review it with the lawyers to make sure it is legally permissible. If the question is appropriate, it will be addressed. If not, I will tell you.

References
Utah R. Crim. P. 17(i).

Closing Instructions.

CR201 Closing Roadmap.

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. The prosecutor will go first, then the defense. Because the prosecution has the burden of proof, the prosecutor may give a rebuttal.

Finally, you will go to the jury room to discuss and decide the case.

References

Utah R. Crim. P. 17(g).

CR202 Juror Duties.

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I give you in the instructions, apply it to the facts, and decide if the prosecution has proved the defendant guilty beyond a reasonable doubt.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. [You must also not let yourselves be influenced by public opinion.]

References

Utah R. Crim. P. 18(h).
Utah Code Ann. § 77-1-6.
Holland v. United States, 348 U.S. 121, 141 (1954).
United States v. Rith, 164 F.3d 1323, 1338 (10th Cir. 1999).
State v. Sisneros, 631 P.2d 856, 859 (Utah 1981).
State v. Gleason, 40 P.2d 222, 226 (Utah 1935).
75 Am. Jur.2d Trial §§ 719, 817.

CR203 Closing Arguments.

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

References

Utah Code Ann. § 77-17-10(1).
State v. Hall, 186 P.2d 970, 972 (Utah 1947).

CR204 Legal Rulings.

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However,

- if I sustained an objection,
- if I did not accept evidence offered by one side or the other, or
- if I ordered that certain testimony be stricken,

then you must not consider those things in reaching your verdict.

References

Utah Code Ann. § 77-17-10(1).

CR205 Judicial Neutrality.

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

References

State v. Beck, 2006 UT App 177, ¶11, 136 P.3d 1288.
State v. Mellen, 583 P.2d 46, 48 (Utah 1978).
State v. Gleason, 40 P.2d 222, 227 (Utah 1935).
Utah Code of Judicial Conduct, Canon 3.
75 Am. Jur.2d Trial § 272.

CR206 Evidence-Closing.

You must base your decision only on the evidence that you saw and heard here in court.

Evidence includes:

- what the witnesses said while they were testifying under oath; and
- any exhibits admitted into evidence.

Nothing else is evidence. The lawyers statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence.

In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

References

Utah R. Evid. 201.
Utah R. Evid. 401.
Utah R. Evid. 603.
Utah R. Crim. P. 18(l).
State v. Sisneros, 631 P.2d 856, 859 (Utah 1981).
State v. Hall, 186 P.2d 970, 972 (Utah 1947).
29 Am. Jur.2d Evidence § 1.

Committee Notes

If the lawyers have stipulated to certain facts, or if the court took "judicial notice" of certain facts, then one or both of the following bullet points should be added to the above list of what is evidence:

- any facts to which the parties have stipulated, that is to say, facts to which they have agreed;
- any facts of which I took as "judicial notice" and told you to accept as true.

CR207 Witness Credibility.

In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- Does the witness have something to gain or lose from this case?
- Does the witness have any connection to the people involved in this case?
- Does the witness have any reason to lie or slant the testimony?
- Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- How believable was the witness's testimony in light of other evidence presented at trial?
- How believable was the witness's testimony in light of human experience?
- Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

References

Utah Code Ann. § 78B-1-128.
United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000).
Toma v. Utah Power & Light Co., 365 P.2d 788, 792-793 (Utah 1961).

State v. Shockley, 80 P. 865, 879 (1905).
75 Am. Jur.2d Trial § 819.

CR208 Presumption of Innocence-Closing.

Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crime(s) charged. This presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

References

Utah Code Ann. § 76-1-501(1).
Estelle v. Williams, 425 U.S. 501, 503 (1976).
Coffin v. United States, 156 U.S. 432, 453 (1895).
State v. Mitchell, 824 P.2d 469, 473 (Utah Ct. App. 1991).

CR209 Reasonable Doubt-Closing.

[As I instructed you before] Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If the evidence leaves you firmly convinced that the defendant is guilty of the crime charged, you must find the defendant "guilty." On the other hand, if there is a real possibility that (he) (she) is not guilty, you must give the defendant the benefit of the doubt and return a verdict of "not guilty."

References

In re Winship, 397 U.S. 358, 362 (1970).
State v. Reyes, 2005 UT 33, ¶37, 116 P.3d 305.
State v. Cruz, 2005 UT 45, ¶¶19-22, 122 P.3d 543.
State v. Austin, 2007 UT 55, 165 P.3d 1191.

Committee Notes

This is an abbreviated version of the reasonable doubt instruction approved in *State v. Reyes*, 2005 UT 33, 116 P.3d 305. The only difference is that it lacks the reference to the standard used in civil trials. This instruction may be used as a closing instruction if the full *Reyes* instruction was given as part of the preliminary instructions (as the Committee recommends). If that instruction was not given earlier, then the full *Reyes* instruction should be given at closing.

As an alternative to using the *Reyes* instruction, in *State v. Cruz*, 2005 UT 45, 122 P.3d 543 (argued the same day as *Reyes*) the Utah Supreme Court concluded that an alternative formulation of the reasonable doubt instruction, taken as a whole, adequately conveyed to the jury the concept of reasonable doubt, provided a clear and accurate definition of the concept, and correctly stated the prosecution's burden. Accordingly, the courts and counsel may appropriately use either the *Reyes* instruction or the collective reasonable doubt instructions used in *Cruz*.

CR210 Direct/Circumstantial Evidence.

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

Before you can find the defendant guilty of any charge, there must be enough evidence—direct, circumstantial, or some of both—to convince you of the defendant's guilt beyond a reasonable doubt. It is up to you to decide.

References

29 Am. Jur.2d Evidence § 4.
29 Am. Jur.2d Evidence § 1468.

CR211A Defendant Testifying.

The defendant testified at trial. Another instruction mentions some things for you to think about in weighing testimony. Consider those same things in weighing the defendant's testimony. Don't reject the defendant's testimony merely because he or she is accused of a crime.

References

Utah Const. Art. I, § 12.
Utah Code Ann. § 77-1-6(1)(c).

CR211B Defendant Not Testifying.

A person accused of a crime may choose whether or not to testify. In this case the defendant chose not to testify. Do not hold that choice against the defendant. Do not try to guess why the defendant chose not to testify. Do not consider it in your deliberations. Decide the case only on the basis of the evidence. The defendant does not have to prove that he or she is not guilty. The prosecution must prove the defendant's guilt beyond a reasonable doubt.

References

Utah Const. Art. I, § 12.
Utah Code Ann. § 77-1-6(2)(c).
Carter v. Kentucky, 450 U.S. 288, 297-301 (1981).

CR212 Offense Requires Conduct and Mental State.

A person cannot be found guilty of a criminal offense unless that person's conduct is prohibited by law, AND at the time the conduct occurred, the defendant demonstrated a particular mental state specified by law.

"Conduct" can mean both an "act" or the failure to act when the law requires a person to act. An "act" is a voluntary movement of the body and it can include speech.

As to the "mental state" requirement, the prosecution must prove that at the time the defendant acted (or failed to act), (he) (she) did so with a particular mental state. For each offense, the law defines what kind of mental state the defendant had to have, if any. For some crimes the defendant must have acted "intentionally" or "knowingly." For other crimes it is enough that the defendant acted "recklessly," with "criminal negligence," or with some other specified mental state.

Later I will instruct you on the specific conduct and mental state that the prosecution must prove before the defendant can be found guilty of the crime(s) charged.

References

Utah Code Ann. § 76-1-501.
Utah Code Ann. § 76-2-101.
Utah Code Ann. § 76-2-102.

Committee Notes

If a party requests that the concept presented in Utah Code Ann. § 76-2-101 be given as part of the instructions, this instruction is offered for consideration by the court.

CR213 Inferring the Required Mental State.

The law requires that the prosecutor prove beyond a reasonable doubt that the defendant acted with a particular mental state.

Ordinarily, there is no way that a defendant's mental state can be proved directly, because no one can tell what another person is thinking.

A defendant's mental state can be proved indirectly from the surrounding facts and circumstances. This includes things like what the defendant said, what the defendant did, and any other evidence that shows what was in the defendant's mind.

References

Utah Code Ann. § 76-1-501(1).
State v. James, 819 P.2d 781, 789 (Utah 1991).
State v. Murphy, 617 P.2d 399, 402 (Utah 1980).
State v. Hopkins, 359 P.2d 486, 487 (Utah 1961).
29 Am. Jur.2d Evidence § 556.

CR214 Motive.

A defendant's "mental state" is not the same as "motive." Motive is why a person does something. Motive is not an element of the crime(s) charged in this case. As a result, the prosecutor does not have to prove why the defendant acted (or failed to act).

However, a motive or lack of motive may help you determine if the defendant did what (he) (she) is charged with doing. It may also help you determine what (his) (her) mental state was at the time.

References

United States v. Santistevan, 39 F.3d 250, 255 n.7 (10th Cir. 1994).
United States v. Buford, 30 P. 433, 434 (Utah 1892).

Committee Notes

There are a few offenses where motive is an element. See e.g., Utah Code Ann. §§ 76-2-202(1)(g), Aggravated Murder; 76-5-302, Aggravated Kidnaping; or 76-8-508.3, Retaliation Against a Witness, Victim or Informant. In those cases do not give this instruction.

CR215 Do Not Consider Punishment.

In making your decision, do not consider what punishment could result from a verdict of guilty. Your duty is to decide if the defendant is guilty beyond a reasonable doubt. Punishment is not relevant to whether the defendant is guilty or not guilty.

References
State v. Cude, 784 P.2d 1197, 1202-03 (Utah 1989).
75B Am. Jur.2d Trial § 1660.

CR216 Jury Deliberations.
In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.

References
Utah Const. Art. I, § 10.
Utah R. Crim. P. 21(b).
Utah R. Civ. P. 59(a)(2).
Burroughs v. United States, 365 F.2d 431, 434 (10th Cir. 1966).
State v. Lactod, 761 P.2d 23, 30-31 (Utah Ct. App. 1988).
75 Am. Jur.2d Trial §§ 1647, 1753, 1781.

CR217 Foreperson Selection and Duties.
Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

For each offense, the verdict form will have two blanks—one for "guilty" and the other for "not guilty." The foreperson will fill in the appropriate blank to reflect the jury's unanimous decision. In filling out the form, the foreperson needs to make sure that only one blank is marked for each charge.

CR218 Deadlocked Juries.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty to consult with one another and to deliberate. Your goal should be to reach an agreement if you can do so without surrendering your individual judgment. Each of you must decide the case for yourself, but do so only after impartially considering the evidence with your fellow jurors. Do not hesitate to reexamine your own views and change your position if you are convinced it is mistaken. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or just to return a verdict.

You are judges -- judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

CR219 Special Verdict Form.
If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed (NAME OF RELEVANT OFFENSE), you must complete the special verdict form. Check the box on the form for each factor that you as the jury unanimously find the prosecution has proven beyond a reasonable doubt. Do not check the box for any factor the prosecution has failed to prove beyond a reasonable doubt.

Even if you do not check any boxes, the foreperson must sign the special verdict form.

Tab 4

CV1609 Non-actionable Statements.

During trial, you may have heard evidence about certain statements made by [name of defendant] that I have determined are not defamation. Specifically, you may have heard evidence of the following statements~~may be considered insulting or damaging to [name of plaintiff]. Just because you heard evidence of those statements does not necessarily mean that those statements can legally be the basis of a defamation claim. I may have admitted evidence of those statements for some purpose other than proof of defamation. I have determined that certain statements cannot be the basis of a defamation claim. Even though you heard evidence of them, you are instructed that the following statements cannot be the basis of [name of plaintiff]'s defamation claim~~: [insert specific non-actionable statements].

Even though you heard evidence of them, you are instructed that those statements are not defamation, but you may consider them for other purposes.

References
Jacob v. Bezzant, 2009 UT 37, 212 P.3d 535
O'Connor v. Burningham, 2007 UT 58, 165 P.3d 1214

MUJI 1st Instruction
No analogue

Committee Notes
This instruction recognizes that even where the court makes a determination that certain statements are non-actionable defamation as a matter of law, those statements may still be presented to jury for some other purpose or may have been presented prior to the court's legal determination. For that reason, and to effectuate the court's gatekeeping function in defamation cases, this instruction is designed to cure any prejudicial implication that non-actionable but otherwise admitted statements can support a defamation claim.

Tab 5