GENERAL CAUTIONARY INSTRUCTIONS

INTRODUCTION

The instructions in the 1.00 through the 3.00 series are "cautionary" instructions. In 1999 these instructions were redrafted. The redrafted instructions combined, reordered, and condensed the instructions that previously appeared in these sections. The substance of the instructions is the same, except where noted.

The instructions in the 1.00 series are intended to be given before opening statements, along with any substantive instructions the Court deems appropriate. The instructions in the 2.00 series are intended for use during trial. The instructions in the 3.00 series are intended for use after closing arguments. The Court may also repeat instructions from the 1.00 and 2.00 series after closing arguments. Supreme Court Rule 239(d) should be consulted with regard to the time instructions are given.

Giving cautionary instructions is within the sound discretion of the trial court. *Birmingham Fire Ins. Co. v. Pulver*, 126 Ill. 329, 339; 18 N.E. 804, 808 (1888); *Martin v. Kralis Poultry Co.*, 12 Ill.App.3d 453, 464; 297 N.E.2d 610, 618 (5th Dist.1973); *Beiermann v. Edwards*, 193 Ill.App.3d 968, 981; 550 N.E.2d 587, 597; 140 Ill.Dec. 702, 712 (2d Dist.1990); *DeYoung v. Alpha Const. Co.*, 186 Ill.App.3d 758, 771; 542 N.E.2d 859, 867; 134 Ill.Dec. 513, 521 (1st Dist.1989); *Clay v. Brodsky*, 148 Ill.App.3d 63, 72; 499 N.E.2d 68, 74; 101 Ill.Dec. 701, 707 (4th Dist.1986); *Tuttle v. Fruehauf Div. of Fruehauf Corp*., 122 Ill.App.3d 835, 844; 462 N.E.2d 645, 653; 78 Ill.Dec. 526, 534 (1st Dist.1984). A trial court's refusal to give a certain instruction is not reversible error unless the complaining party has in some way been prejudiced by the court's denial. *Chloupek v. Jordan*, 49 Ill.App.3d 809, 816; 364 N.E.2d 650, 655; 7 Ill.Dec. 489, 494 (1st Dist.1977).

1.01 Preliminary Cautionary Instructions

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

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

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

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

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

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

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

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

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

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

and this includes [cell-phones,] [smart-phones,] [lap-tops,] [the Internet,] [[(insert current examples)]] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

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

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

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

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

[15] During this trial, you may be permitted to ask questions of [certain] witnesses, but you must follow the procedures that I describe:

If you have a question for a witness and you believe the answer would be helpful to you in understanding the case, then after the lawyers have completed their questions, but before that witness is excused, I will give you a chance to submit your question in writing.

I will have you write your question on a piece of paper and hand it to the bailiff. [*The court may now describe specific procedures to be used. See Comment for examples.*] You should not write your name or juror number with the question. Also, you should not discuss your questions with your fellow jurors at this time.

You may submit one or more questions or no question at all. It is up to you. Please keep in mind, though, that you should only ask a question if you think it is important to your ability to decide the issues in this case fairly. You should be sure you are asking a question and not making a comment. You should not use your questions to argue with a witness or to express opinions about a witness's testimony. Your role is to be an impartial fact-finder. The purpose of your question should be to clarify testimony that you have not understood or that has failed to address a factual question that you believe is important.

After the bailiff has collected the pieces of paper and given them to me, I will decide whether the law allows the question to be asked of the witness. Not all questions can be asked or asked using the wording that was submitted. The rules of evidence might not permit me to ask your question. You shall not concern yourself with the reason for the exclusion or modification

of any question submitted. If I cannot ask your question or if I rephrase it, please do not be offended and do not let it affect your judgment of the evidence or the witness in any way.

If the question is allowed, I will ask the question of the witness and the attorneys may then ask some follow-up questions. Please do not speak directly to me, the lawyers, or the witnesses.

Instruction, Notes on Use and Comment revised January 2011; [15]Instruction and Notes on Use on 1.01 [15] approved June 1, 2012;[15]Comment approved June 21, 2012.

Notes on Use

Some trial judges give cautionary instructions at the beginning of the trial; some give them at the close of the trial before the deliberations; and some give them throughout the trial. Although the trial judge has discretion as to when to give cautionary instructions, the committee suggests that cautionary instructions 1.01 [3]-~~[14]~~[15] should be given at the beginning of the trial, 1.01 [1]-[14] should be given at the end of trial, and that the instructions reminding jurors to refrain from doing outside research [1.01 [6] and [7]), from discussing the case with anyone (1.01 [8] and [9]), and from using electronic devices in connection with their duties as jurors (1.01 [10]) should be repeated throughout the trial.

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

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

As to 1.01 [15], on April 3, 2012, the Illinois Supreme Court adopted Rule 243, which explicitly authorizes judges to allow jurors to submit written questions to certain or all witnesses in civil jury trials in Illinois. The rule outlines the procedures to be followed, *see* Supreme Court Rule 243, but makes clear that the trial judge has discretion whether to permit questions. *See* Committee Comments to Supreme Court Rule 243.

Although Rule 243 identifies certain procedures for the submission of juror questions to witnesses, it also indicates that trial judges are free to work out the details of the procedures on their own. *See id.* The Comment provides approaches that other judges have tried to ensure that jurors feel comfortable asking questions.

Rule 243 also makes clear that the judge will review the questions outside of the presence of the jury, read each question for the record, and hear objections, if any, from the lawyers. The judge will rule on whether the question can be asked, including any rephrasing of the question. If the question can be asked, then the judge will ask it and instruct the witness to answer only the question asked. The lawyers will have a chance to ask follow-up questions of the witness limited to the scope of the new testimony.

[1] Comment

This instruction incorporates former IPI 3.01.

[2] Comment

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

[3] Comment

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

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

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

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

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

[4] Comment

This instruction states the familiar principle that once evidence is admitted, it is in the case for all purposes and every party is entitled to the benefit of the evidence whether produced by him or his adversary. *Morris v. Cent. W. Cas. Co.*, 351 Ill. 40, 47, 183 N.E. 595, 598 (1932); *Dudanas v. Plate*, 44 Ill.App.3d 901, 909, 3 Ill.Dec. 486, 492, 358 N.E.2d 1171, 1178 (1st

Dist.1976); *Dessen v. Jones*, 194 Ill.App.3d 869, 873, 141 Ill.Dec. 595, 597, 551 N.E.2d 782, 784 (4th Dist.1990); *Wagner v. Zboncak*, 111 Ill.App.3d 268, 272, 66 Ill.Dec. 922, 925, 443 N.E.2d 1085, 1088 (2d Dist.1982).

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

[5] Comment

The comprehensive instruction in former IPI 2.01, discussing factors to consider in judging the credibility of witnesses, was approved in *Lundquist v. Chi. Rys. Co.*, 305 Ill. 106, 112-13, 137 N.E. 92, 94 (1922); *People v. Goodrich*, 251 Ill. 558, 566, 96 N.E. 542 545-46 (1911). Use of the instruction was found to save a verdict from impeachment in *Waller v. Bagga*, 219 Ill.App.3d 542, 547-48, 579 N.E.2d 1073, 1076, 162 Ill.Dec. 259, 262 (1st Dist.1991). Use of the instruction in *Sobotta v. Carlson*, 65 Ill.App.3d 752, 754, 382 N.E.2d 855, 857, 22 Ill.Dec. 465, 467 (3d Dist.1978), helped sustain a verdict in which the jury rejected uncontradicted testimony of a witness the jury had apparently found not credible.

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

[6] Comment

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

A jury or juror may not conduct experiments or view extraneous information not offered into evidence that will have the effect of putting them in possession of evidence not offered at trial. *People v. White*, 365 Ill. 499, 514, 6 N.E.2d 1015, 1022 (1937); *Gertz v. Bass*, 59 Ill.App.2d

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

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

[7] Comment

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

[8] Comment

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

[9] Comment

The U.S. Judicial Conference published a very specific set of Model Jury Instructions prohibiting the use of electronic technology for researching or communicating about a case. The model instructions, designed for U.S. district court judges and available at www.uscourts.gov/newsroom/2010/DIR10-018.pdf, "precisely catalogue" what jurors must refrain from doing with the idea that this approach "'would help jurors better understand and adhere to the scope of the prohibition.'" The Third Branch, *Committee Suggests Guidelines for*

Juror Use of Electronic Communication Technologies, at http://www.uscourts.gov/ttb/2010-04/article05.cfm (quoting Judge Julie A. Robinson's letter of transmittal). Other judges are not only being specific and proactive in their instructions, but also they are "instructing the jurors early and often, including during orientation and *voir dire*." Judge Herbert B. Dixon, Jr., *Guarding Against the Dreaded Cyberspace Mistrial and Other Internet Trial Torpedoes*, Judges J., Winter 2010, at 37, 39.

[10] Comment

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

[11] Comment

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

[12] Comment

There have been numerous examples in other states of jurors who conducted online research and the result was a mistrial and the need for a new trial. For example, in one case in South Dakota, a juror had used Google before voir dire to see if the defendant seatbelt manufacturer had been sued for the alleged defect in the past. *See Russo v. Takata Corp*., 2009 S.D. 83, 774 N.W.2d 441, 2009 S.D. LEXIS 155. The juror informed several other jurors during deliberations that he had conducted a Google search and had not found any prior lawsuits against the defendant. The jury found for defendant on plaintiff's claim. Plaintiff filed a motion for a new trial based on alleged juror misconduct. The trial court granted the motion, and it was affirmed on appeal. In a case from Maryland, a murder conviction was overturned because jurors had consulted Wikipedia for explanations of certain scientific terms. *See* Dixon, *supra*, at 37-38.

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

[13] Comment

In current trial practice, jurors occasionally request transcripts of the testimony during their deliberations and are disappointed to learn their requests may not be honored. Absent special circumstances, within the court's discretion, transcripts are not provided to jurors. In

order to facilitate responsible fact-finding, the committee recommends that the jury be instructed that they will not receive a transcript at the outset of the trial.

[14] Comment

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

[15] Comment

This instruction is based on Illinois Supreme Court Rule 243, which was adopted on April 3, 2012, and is effective as of July 1, 2012. Prior to this rule, there was no rule in Illinois that explicitly permitted or prohibited jurors from submitting written questions to witnesses. Early cases in Illinois held that juror questions were permissible. *See Chi. Hansom Cab Co. v. Havelick*, 22 N.E. 797, 797 (Ill. 1889); *Chi., Milwaukee & St. Paul R.R. Co. v. Krueger*, 23 Ill. App. 639, 643, 1887 Ill. App. LEXIS 74 (1st Dist. 1887). More recently, some judges in Illinois believed that courts had inherent power to permit such questions, *see* Hon. Warren D. Wolfson, *An Experiment in Juror Interrogation of Witnesses*, CBA REC., Feb. 1987, at 13, 14, but others were awaiting a rule. Accordingly, the Illinois Supreme Court adopted a rule that makes clear that judges can permit jurors to submit written questions to certain or all witnesses.

In doing so, Illinois joins a number of other states and federal courts that permit this practice. S*ee, e.g.*, Gregory E. Mize & Paula Hannaford-Agor, *Jury Trial Innovations Across America: How We Are Teaching and Learning from Each Other*, 1 J. COURT INNOVATION 189, 214 (2008) (noting that many states permit juror questions); Eugene A. Lucci, *The Case for Allowing Jurors to Submit Written Questions*, 89 JUDICATURE 16, 16 (2005) ("At least 30 states and the District of Columbia permit jurors to question witnesses. . . . Every federal circuit that has addressed the issue of juror questioning of witnesses agrees that it is a practice that should be left entirely within the court's discretion."); Bruce Pfaff, John L. Stalmack & Nancy S. Marder, *The Right to Submit Questions to Witnesses*, CBA REC., May 2009, at 36, 39 (providing a survey of state court decisions and federal courts of appeals decisions indicating jurisdictions that permit juror questions). As the Rules Committee recognized, *see* Committee Comments to Supreme Court Rule 243, courts in other jurisdictions have moved in this direction because jurors benefit from the opportunity to ask questions, and lawyers and judges who actually have experience with juror questions typically support the practice. Most importantly, juror questions help jurors to understand what they see and hear during the trial. They provide jurors with an opportunity to clarify testimony that might have caused them confusion, to stay engaged throughout the trial, and to enter the jury room having understood the trial and prepared to deliberate. *See generally* Nancy S. Marder, *Answering Jurors' Questions: Next Steps in Illinois*, 41 LOY. U. CHI. L.J. 727, 742-47 (2010).

Rule 243 provides the broad contours of the procedures for juror questions to witnesses. After a witness has completed his or her testimony, but before the witness is excused, the judge

who permits juror questions will have jurors submit their questions in writing. The judge will then review the questions and hear objections from the lawyers. The judge will ask those juror questions that can be asked of the witness and will permit the lawyers to ask follow-up questions of the witness. Juror questions, at least according to those judges who permit the practice, do not add very much time to the trial. *See*, *e.g.*, Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not to Ask, That is the Question,"* 78 CHI.-KENT L. REV. 1099, 1112-13 (2003). In addition, they leave jurors feeling grateful for the opportunity to ask questions, even if they do not always ask very many questions. *See* Marder, *supra*, at 740 n.63. As the Rules Committee Comments make clear, judges are free to work out the details of the procedures on their own and to determine what works best for them in their courtroom.

As to the procedure for where and how jurors write down their questions, different judges have taken different approaches. The Wyoming instruction suggests that judges instruct jurors as follows: "I will ask the bailiff to collect a piece of paper from each of you. If you have no question, please write 'no question' on the paper before folding it and giving it to the bailiff. If you have a question, write it down on the paper, fold it, and give it to the bailiff. The reason I will ask each of you to submit a piece of paper, even if you have no question, is to protect the privacy of jurors who may wish to ask a question without being identified in open court as the source of that question." CIV. JURY INSTRUCTIONS COMM., WYO. STATE BAR, 2011 WYOMING CIVIL PATTERN JURY INSTRUCTIONS 1.02G, at 9 (2011). This approach has several advantages: It protects the privacy of jurors, ensures that jurors will not feel inhibited about submitting questions, and prevents lawyers from knowing which juror submitted a question.

Another approach, adopted by the Seventh Circuit, is to have the judge ask jurors to raise their hand if they have a question after the witness has finished testifying, and then the clerk will give them a piece of paper to write down their question. *See* COMM. ON PATTERN CIV. INSTRUCTIONS OF THE SEVENTH CIRCUIT, FEDERAL CIVIL JURY INSTRUCTIONS OF THE SEVENTH CIRCUIT 343-44 (2005 rev.) ("If you feel the answer to your question would be helpful in understanding this case, you should raise your hand after the lawyers have completed their examinations but before the witness is excused. I will have you write your question and hand it to the clerk."). One disadvantage of this approach is that those in the courtroom can see which juror has a question. Another disadvantage is that jurors might be reluctant to raise their hand. Yet, judges who tried this approach (or a variation, such as having jurors write down their questions and give them to the clerk during a recess) found it worked well for them during the Seventh Circuit's pilot program testing this and several other practices. *See*, *e.g.*, Rachel M. Zahorsky, *Legal Rebels: Remaking the Profession – James Holderman: Jury Duties*, A.B.A. J., Nov. 9, 2009, http://www.legalrebels.com/profiles/james_holderman_jury_duties.

Judge Warren Wolfson, who permitted jurors to ask questions in his courtroom in the Law Division of the Circuit Court of Cook County if both sides agreed to the practice, had the jurors go into the jury room after the lawyers were done questioning the witness but before the witness stepped down. He gave the jurors several minutes to write down their questions and submit them to the bailiff. An advantage of this procedure is that jurors are able to write down their questions outside of the presence of the lawyers and others in the courtroom. A disadvantage is that it could take a little more time than if the jurors remain in the courtroom. However, Judge Wolfson found that this practice worked well for him. *See* Wolfson, *supra*, at 14. The Supreme Court's Rule 243 allows judges to develop procedures for permitting juror questions that work well in their courtrooms.

1.02 Pre-Trial Judicial Determination In Favor of Plaintiff

The Court has found the defendant[s] [(insert name of defendant(s))], [is] [was] [were][negligent] [liable] [other finding], so that is not an issue you will need to decide. [The remaining defendants are not to be prejudiced by the fact that the (negligence) (liability) (other finding) of [(name of defendant(s) above)] is no longer at issue.]

Notes on Use

This instruction should be used when a defendant has been defaulted or summary judgment on an issue has been granted in favor of plaintiff. In the first sentence, the term "liable" should be used only when the court has found as a matter of law that all of the elements of the cause of action have been proved and the only issue remaining is damages. The second sentence should be used when there are two or more defendants. See *Wanner v. Keenan,* 22 Ill.App.3d 930, 936-937, 317 N.E.2d 114, 119-120 (2d Dist.1974).

1.03A Admitted Fault Only

The defendant, [(insert name)], has admitted [he] [she] [it] [was negligent] [produced an unreasonably dangerous product] [other fault admission]. There are other issues you will need to decide in this case.

1.03B Admitted Fault and Causation

The defendant, [(insert name)], has admitted [he] [she] [it] [was negligent] [produced an unreasonably dangerous product] [other fault admission]. The defendant [(insert name)] has also admitted that [his] [her] [its] [negligence] [unreasonably dangerous product] [other fault conduct] was a proximate cause of [injuries] [damages] to the plaintiff. There are other issues you will need to decide in this case.

Notes on Use

Permission to publish these granted in 2003.

The committee believes that one of these instructions should be given at the outset of the case as part of the cautionary and general series. These two instructions replace the former 1.03 which dealt with "admitted liability." That concept can mean different things to different people. 1.03A should be used where the defendant admits fault only, and disputes proximate cause and damages. 1.03B should be used where the defendant admits his fault caused damages, and the only issue is the amount of damages to be awarded.

In drafting the issues and burden instructions, the parties will need to distinguish between cases where fault is admitted and those where fault and causation is admitted. *Lawler v. MacDuff*, 335 Ill.App.3d 144, 779 N.E.2d 311, 268 Ill.Dec. 697 (2d Dist. 2002), is a cautionary case for jury instructions in admitted liability cases.

1.05 Deadlocked Jury

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

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. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine 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.

You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Notes on Use

This instruction should not be given as part of the original series but only if, after reasonable deliberation, the jury reports an inability to agree or fails to return a verdict. In giving this instruction, the following procedure should be employed:

1. Before the trial judge attempts to ascertain whether the jury is deadlocked, counsel and the reporter should be present. At that time, the court should, on the record, state the facts concerning any communication from the jury on the record or, if there has been no communication, the length of time the jury has been deliberating and inform counsel that he proposes to give the instruction, giving them an opportunity to object if they so desire.

2. In the presence of counsel and the reporter, the jury should be returned to the box, and the court, after cautioning them not to reveal the numerical division in the voting or which side has the preponderance, should ask the foreman if they are able to reach a verdict. If they are not, he should then give this instruction and return them to the jury room to deliberate further.

It has not yet been determined whether this instruction should be given in writing. See generally 735 ILCS 5/2-1107 (1994).

Comment

The language of this instruction is mandated by *People v. Prim*, 53 Ill.2d 62, 289 N.E.2d 601 (1972), *cert. denied*, 412 U.S. 918, 93 S.Ct. 2731, 37 L.Ed.2d 144 (1973). *See also People v. Cowan*, 105 Ill.2d 324, 473 N.E.2d 1307, 85 Ill.Dec. 502 (1985); *People v. Robertson*, 92 Ill.App.3d 806, 416 N.E.2d 323, 48 Ill.Dec. 292 (1st Dist. 1981); *Trauscht v. Gunkel*, 58 Ill.App.3d 509, 374 N.E.2d 843, 16 Ill.Dec. 68 (1st Dist.1978).

1.06 Deadlocked Jury (Follow Up To 1.05)

In a large proportion of cases absolute certainty cannot be expected nor does the law require it.

If you fail to agree on a verdict the case must be retried. Any future jury must be selected in the same manner as you were chosen. There is no reason to believe that the case would ever be submitted to another jury more competent to decide it, or that the case can be tried any better or more exhaustively than it has been here, or that more or clearer evidence could be produced on behalf of any party.

You should now retire and reconsider the evidence in light of the court's instructions.

Instruction, Notes and Comment created October 2008.

Notes on Use

This instruction may be given in the trial court's discretion only after the jury has received the *IPI 1.05* instruction and remains deadlocked. If given, the Committee recommends the procedure set forth in Notes on Use for *IPI 1.05*.

Comment

This instruction states in more modern language the "*Allen* charge" approved in *Allen v. U.S.*, 164 U.S. 492, 501-502 (1896), the use of which was discussed in *People v. Iverson*, 9 Ill. App.3d 706, 709 (2nd Dist. 1973). This simple, neutral, and not coercive instruction is consistent with the opinion in *Preston v. Simmons, et al*., 321 Ill.App.3d 789, 747 N.E.2d 1059, 254 Ill. Dec. 647 (1st Dist. 2001).

Comment revised November 2008

1.07 Interpreter for a Hearing-Impaired Juror

One of the jurors in this case is hearing impaired and has the right to be accompanied by a court-appointed interpreter during the trial and deliberations. When addressing the hearing-impaired juror, you should speak directly to the juror, and not to the interpreter. Although the interpreter is not a juror, and you may not discuss the case with the interpreter, [he] [she] will keep strictly confidential all matters discussed during deliberations. If you have reason to believe that the interpreter is doing more than interpreting, let me know immediately by writing a note and giving it to the [clerk] [bailiff] [deputy].

Notes on Use

This instruction should be given whenever there is a hearing-impaired juror on the jury who is using a court-appointed interpreter. It should be given at the start of the trial because the hearing-impaired juror can be assisted by a court-appointed interpreter throughout the trial and deliberations.

Comment

Illinois Code of Civil Procedure, 735 ILCS 5/8-1402, provides for a hearing-impaired juror to be accompanied by a court-appointed interpreter throughout the trial and deliberations. This instruction explains this right to the jury and clarifies the role of the interpreter. Although the Jury Secrecy Act, 705 ILCS 315/1, indicates that only jurors can be present during deliberations, it provides an exception for an interpreter for a hearing-impaired juror.

Instruction, Notes on Use and Comment approved March 2017.