

## **Criminal Jury Instructions – Opening and Closing Instructions**

### **Comment period expired March 5, 2018**

The following are proposed Model Utah Criminal Jury Instructions addressing opening and closing instructions:

Opening and Closing Jury Instructions

[\*\*CR105. Role of Judge, Jury, and Lawyers \[Opening\]\*\*](#)

[\*\*CR109B. Further Admonition About Electronic Devices \[Opening\]\*\*](#)

[\*\*CR202. Juror Duties \[Closing\]\*\*](#)

[\*\*CR206A. Items Not Admitted into Evidence \[Closing\]\*\*](#)

[\*\*CR216. Jury Deliberations \[Closing\]\*\*](#)

[\*\*CR217A. Jury Questions During Deliberations \[Closing\]\*\*](#)

#### **CR105 Role of Judge, Jury and Lawyers [Opening].**

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. You are the exclusive judges of all questions of fact. 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.

#### **CR109B Further admonition about electronic devices [Opening].**

Jurors have caused serious problems during trials by using electronic devices – such as phones, tablets, or computers – to research issues or share information about a case. You may be tempted to use these devices to investigate the case or to share your thoughts about the trial with others. Don't. While you are serving as a juror, you must not use electronic devices for these purposes, just as you must not read or listen to any sources outside the courtroom about the case or talk to others about it.

You violate your oath as a juror if you conduct your own investigation or if you communicate about this trial with others, and you may face serious personal 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 electronic devices 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” or a dictionary to look up terms 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. If improper activities are discovered, they will be brought to my attention, and the entire case might have to be retried at substantial cost.~~

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

### **CR202 Juror Duties [Closing].**

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. You are the exclusive judges of all questions of fact.

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.]

### **CR206A. Items Not Admitted into Evidence [Closing]**

Transcripts, police reports, or other written, audio, or visual materials may have been referenced during the trial but not admitted as exhibits. It is common during deliberations for jurors to ask to review these materials or to have transcripts of what witnesses said during trial. These materials, other than what may have been admitted as exhibits, may not be requested as part of your deliberations.

### **CR216 Jury Deliberations [Closing]**

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).

75 Am. Jur.2d Trial §§ 1647, 1753, 1781.

*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).

For questions on jury unanimity:

- Mental state for murder and aggravated murder, see *State v. Nelson*, 2015 UT 62, 355 P.3d 1031; *State v. Russell*, 733 P.2d 162 (Utah 1987)
- Aggravating factors for aggravated murder, *State v. Tillman*, 750 P.2d 546 (Utah 1987); *State v. Hummel*, 2017 UT 19, 393 P.3d 314
- Other questions on jury unanimity, see *State v. Hummel*, 393 P.3d 314 (Utah 2017)

## CR217A. Jury Questions During Deliberations [Closing]

These instructions should contain all the information you need to decide this case based upon the evidence. However, if you have a question or need clarification during deliberations, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question as appropriate.

**2 thoughts on “Criminal Jury Instructions – Opening and Closing Instructions – Comment period expired March 5, 2018”**

1. **Clay Stucki**

[February 1, 2018 at 7:37 pm](#)

Excellent instructions, Thank you for your work on these.

2. **Tony Graf**

[February 5, 2018 at 5:28 pm](#)

I appreciate the suggested changes to the criminal jury instructions.

Two suggestions. The first relates to CR105, Role of Judge, Jury and Lawyers.

The proposed instructions state, “You are the exclusive judges of all questions of fact.” Though exclusive is an accurate word to describe juror duties, perhaps the word “ultimate” or “final” could be substituted as ultimate has a similar meaning. The reason is that the word “exclusive” may be misunderstood by the jury.

In the alternative, the word “exclusive” could be removed which would result in “You are the judges of all questions of fact [in this trial].”

The second suggestion relates to CR109B, “Further Admonition About Electronic Devices.”

The rule talks about investigations and the use of devices. However, it may be appropriate to include the following phrase to prevent physical investigations of the case during the trial. It is borrowed from Judicial Council of California Criminal Jury Instructions 2006, #106 – Jurors Asking Questions.

[http://www.courts.ca.gov/partners/documents/calcrim\\_2017\\_edition.pdf](http://www.courts.ca.gov/partners/documents/calcrim_2017_edition.pdf)

“Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.” Given Salt Lake County is small geographically, jurors may be tempted to drive by or visit the scene of a crime.

If this language is adopted, it may be appropriate to retitle the section “Do not Investigate” in place of “Further Admonition About Electronic Devices” as the change would expand the instruction to more than just electronic devices.