



MANAGING A JURY TRIAL IN THE JUSTICE/MUNICIPAL COURT

A PRACTICAL GUIDE

Settling Instructions to Verdict

SETTLING JURY INSTRUCTIONS



COURT STOCK INSTRUCTIONS

- **Standard Instructions**

- Disseminate the Court's Stock Instructions Early
- Prior to trial, hold a hearing to review the Stock's, hear objections and allow proposed instructions from Counsel
- Set of Stock Instructions Included in the Materials for your use

- **Mandatory Instructions**

- **Reasonable Doubt** – The instruction on reasonable doubt is the **ONLY** instruction you can use.
- **Presumption of Innocence**
- **Defendant's Right Not to Testify**
 - Mandatory if requested
- **Elements of the Charge**
- **Limiting Instruction on Prior Bad Acts (Also @ Time of Testimony)**

Special and Attorney Requested Instructions

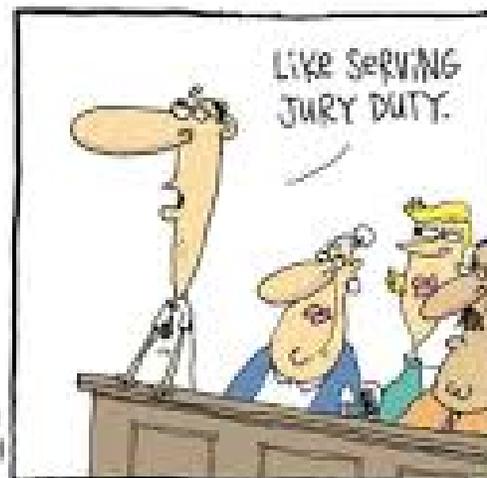
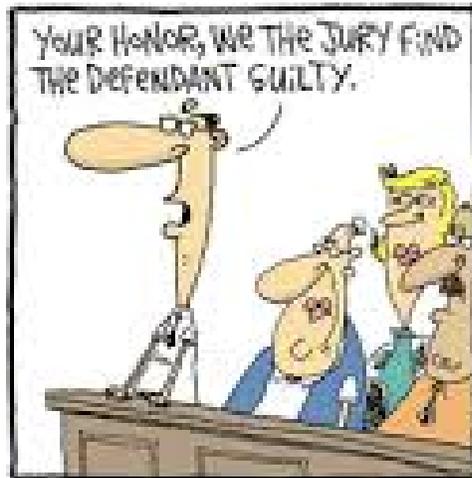
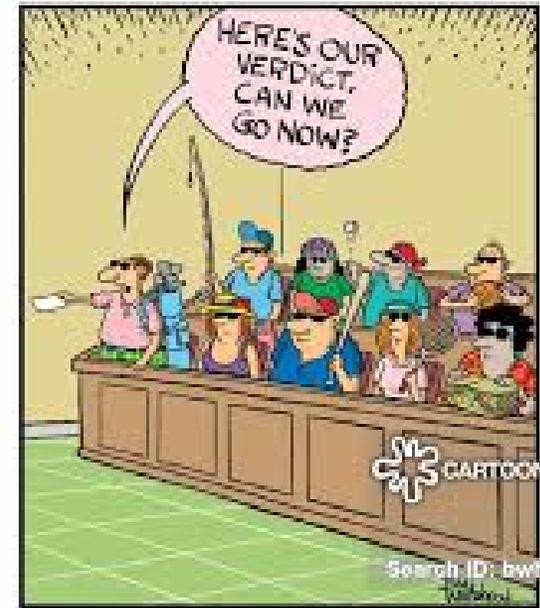
- **Self Defense Instruction**
- **Expert Witness Instruction**
- **Limiting Instructions**
 - Res Gestae
 - Character Evidence
 - Prior Convictions
- **Defendant's Theory Instruction**
 - Any Evidence however slight
 - Easy way to get reversed
- **Process:**
- **Require Counsel to Submit Proposed Instructions Early**
 - With Some Leeway
 - In Proper Format
 - With Citation to Caselaw
 - Don't trust that they are correct.
- **Determine as many objections as possible at the Pre-Trial**

PROCESS OF SETTling

- NEVER IN FRONT OF JURY
- WORK SESSION:
 - Once each side rests, you will need to break to settle the final jury instructions.
 - You can have the “Work Session” off the record.
 - Defendant has the right to be present if requested.
 - Preliminarily hear and decide any objections to the proposed instructions
 - Number the Instructions in the Order they are to be given.
 - Go over Verdict Forms/Objections
- On the Record – In Chambers or Open Court:
 - Any objections to Court’s Proposed Instructions? Both Sides
 - Rulings on the Objections and Basis
 - Submit any additional instructions? Both Sides – These will be the ones rejected in the work session.
 - Ruling and Basis
 - Mark the Instruction as a Court Exhibit “Proposed by: _____, NOT GIVEN” and sign it. Make it a part of the record.
 - Verdict Forms: Any objection to the proposed forms of verdict?



"Members of the jury, have you reached a verdict?"



Process to Verdict

- **Instruct the Jury on the Law**
 - Yes, you have to read each instruction.
- **Closing Arguments**
- **Final Instructions to Jury**
- **Swear in Bailiff and other officers to take charge of the jury.**
 - Duties – Only means of communication to the outside world.
- **Deliberations**
 - Jury Questions – Foreperson Only
 - Allen Charge – Watch Out
 - Mistrial – Deadlock
 - “Court may not supplement the Evidence”
- **Return of Verdict**
 - Bailiff, Court, & Clerk
 - Poling Jury
- **Discharge Jury**
 - Thank and tell them they’ll get paid!

OFFICER IN CHARGE OF THE JURY

- **Separation or custody of jury before submission.** The jurors sworn to try a criminal action may, at any time before the submission of the case to the jury, in the discretion of the court, be permitted to separate, depart for home overnight or be kept in charge of a proper officer.
- **Upon commencing deliberation, the jurors shall be kept in charge of a proper officer,** unless at the discretion of the court they are permitted to depart for home overnight.
- **When the jurors are kept together, the officer in charge shall keep the jurors in some private and convenient place and separate from other persons.**



NRS 175.391

- **The officer shall not permit any communication to be made to them, or make any personally, unless by order of the court, except to ask them if they have agreed upon their verdict.**
- **The officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.**
- **The officer shall return them into court when they have reached their verdict or when ordered by the court.**



BAILIFF FUNCTIONS

- Take care of the judge
- Take care of the jury
- Take care of the courtroom
- Get witnesses
- Keep jury separate and protected
- Monitor defendant
- Make sure everything is ready before the jury is brought into the courtroom
- Pay careful attention if the defendant is in custody – jury is not allowed to know that



JUROR COMMUNICATIONS

- Juror comes into the court room and whispers to the bailiff “how come the defendant is not in shackles.”
- Bailiff said I can’t answer that question and don’t worry.
- Bailiff told the court
- Defense asked to question the juror
- Prosecutor objected
- Court did not question juror



COURT SHOULD HAVE QUESTIONED JUROR

- A criminal defendant is entitled to appear before the jury clad as an innocent person, and generally it is error to allow the jury to see a defendant shackled. More broadly, under the Sixth Amendment—applicable to the states through the Fourteenth Amendment—and principles of due process, a defendant has the right to an impartial jury. **To ensure that this right was not violated, the district court should have allowed an inquiry to establish whether the juror was biased.** This error alone was not reversible but contributes to the cumulative error in this case.

Daniel v. State, 119 Nev. 498, 517, 78 P.3d 890, 903 (2003)



JURY AND JUROR QUESTIONS

- The defendant claimed the bailiff had improper interaction with the jury
- Foreman told the bailiff they had a note and the bailiff saw the note which asked the difference between first and second degree murder
- He did not take possession of it nor alerted the parties or the judge
- Bailiff said the judge was out of the jurisdiction and to read the instructions
- Defendant found out and moved for a mistrial/ new trial



IMPROPER INTERACTION

- The bailiff's ex parte communication with the jury violated NRS 175.391 and NRS 175.451 and was error. On being told the jury had a note for the judge, the bailiff should not have engaged with the jury further.
- A bailiff's ex parte communication with deliberating jurors beyond what NRS 175.391 permits is a species of jury misconduct.
- The “official character of the bailiff—as an officer of the court as well as of the State—beyond question carries great weight with a jury.” Thus, courts give a bailiff's statements to a jury especially close scrutiny in terms of accuracy and potential for coercion when challenged as improper.
- **The bailiff's exchange with the jury concerning its note, while improper, nonetheless did not carry a reasonable probability or likelihood of having influenced its verdict.**

Lamb v. State, 127 Nev. 26, 45, 251 P.3d 700, 712–13 (2011)



LESSONS FROM THE CASES

- Tell the judge everything
- Keep an eye on the jury
- Watch for improper communication with or among the jury



DON'T WORRY, IT'S OVER

- **Sentencing**

- Set Date or Do it Now – Your Choice

- **Talk to Jurors**

- Now that they have reached Verdict, you can talk to the jurors – Caution: Do not talk about why they made a decision. Talk to them about how the Court can better serve them in the future – any process questions, etc.

- **Appeal**

- Jury Trials have a much higher chance of being appealed than do bench trials.
- Abuse of Discretion
- Harmless Error
- Plain Error
- The Key to it ALL
- **MAKE A RECORD, MAKE A RECORD, MAKE A RECORD**

QUESTIONS?

