

1.1 Duty of Jury

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial, I will give you more detailed [written] instructions that will control your deliberations.

When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you.

Perform these duties fairly and impartially. You should not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases[,] [including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias can affect how we evaluate information and make decisions.]

Comment

See generally Jury Instructions Committee of the Ninth Circuit, *A Manual on Jury Trial Procedures* § 3.3 (2013).

The Supreme Court emphasized the importance of jury instructions as a bulwark against bias in *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 871 (2017). Accordingly, the Committee has incorporated stronger language regarding the jury's duty to act fairly and impartially into this instruction, Instruction 1.7 (Credibility of Witnesses), Instruction 6.1 (Duties of Jury to Find Facts and Follow Law), and Instruction 6.19 (Duty to Deliberate).

The United States District Court for the Western District of Washington has prepared a ten-minute video about unconscious bias that can be shown to jurors. *See* . In addition, the United States District Court for the Northern District of California has prepared a shortened version of that video to show to potential jurors before jury selection. *See* .

The second paragraph of this instruction informs the jury that it is the duty of the jury to apply the law as the judge gives it to them, whether they agree with it or not. This type

of caution against jury nullification is permissible. *United States v. Lynch*, 903 F.3d 1061,

1079 (9th Cir. 2018). “[N]ullification is, by definition, a violation of the juror’s oath to apply the law as instructed by the court.” *Id.* (quoting *United States v. Thomas*, 116 F.3d 606, 614 (2d Cir. 1997)). “While jurors have the power to nullify a verdict, they have no right to do so.” *Lynch*, 903 F.3d at 1080 (quoting *Merced v. McGrath*, 426 F.3d 1076, 1079 (9th Cir. 2005)). An anti-nullification instruction will be improper if it states or implies that nullification would place jurors at risk of legal sanction or otherwise be invalid. *Lynch*, 903 F.3d at 1080 (holding that district court’s admonition that nullification was violation of jury’s duty to follow law did not deprive jurors of ability to nullify); *United States v. Kleinman*, 880 F.3d 1020, 1031-32 (9th Cir. 2017) (holding instruction erroneous but harmless that told jury “[t]here is no such thing as a valid jury nullification” and that “[y]ou would violate your oath and the law if you willfully brought a verdict contrary to the law given to you in this case”).

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