

## **PROPOSED OREGON UNCONSCIOUS BIAS JURY INSTRUCTION**

(These instructions are based on the Ninth Circuit Model Instructions. Unlike the Ninth Circuit model, however, the instructions do not tell the jury to avoid unconscious bias (a hard task!) but instead to make an effort to be aware of the effect of unconscious bias, and to mitigate that effect. The model refers to some of the tools a jury can use (slow down; evaluate carefully).

### **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. Do not allow personal likes or dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or gender, sexual orientation, profession, occupation, celebrity, economic circumstances, or position in life or in the community. Finally, you should make an effort to be aware of your unconscious biases and what effect those may have on your decision-making.

You may recall during jury selection, [the attorneys/I] asked the panel if any of you had ever heard the term "unconscious bias." That term is one used by social scientists to describe the reality that everyone[, including me,]<sup>1</sup> has feelings, assumptions, perceptions, fears, and stereotypes, that is, "unconscious biases," that we may not be aware of. These hidden thoughts can affect what we see and hear, how we remember what we see and hear, how we interact with others, and how we make important decisions.

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<sup>1</sup> The court can omit reference to "including me."

### 3.1 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law. Do not allow personal likes or dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or gender, sexual orientation, profession, occupation, celebrity, economic circumstances, or position in life or in the community. You will recall that you took an oath promising to do so at the beginning of the case. Finally, you should make an effort to be aware of your unconscious biases and what effect those may have on your decision-making.

You may recall at the beginning of this trial during jury selection, [the attorneys/I] asked the panel if any of you had ever heard the term "unconscious bias." That term is one used by social scientists to describe the reality that everyone[, including me,]<sup>2</sup> has feelings, assumptions, perceptions, fears, and stereotypes, that is, "unconscious biases," that we may not be aware of. These hidden thoughts can affect what we see and hear, how we remember what we see and hear, how we interact with others, and how we make important decisions. Because you are making very important decisions in this case, you should evaluate the evidence carefully and resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

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<sup>2</sup> The court can omit reference to "including me."