

**CIVIL**  
**JURY TRIAL CHECKLIST**

- \_\_\_\_\_ 1. Bailiff opens Court (after everyone is in place).
- \_\_\_\_\_ 2. Call the case: “Will the Clerk, please call the case?”

\_\_\_\_\_ versus \_\_\_\_\_

\_\_\_\_\_’  
The \_\_\_\_\_ County Circuit Court,  
Case No. \_\_\_\_\_

- \_\_\_\_\_ 3. Introduce self and Court personnel. Make a brief statement of the nature and type of case.

“Ladies and Gentlemen You have been summoned here as prospective jurors in a civil case. This is a case involving a (vehicle collision, etc.) and the events allegedly occurred on or about (date) \_\_\_\_\_ at or near (location)\_\_\_\_\_.”

- \_\_\_\_\_ 4. Introduce parties and attorneys or ask attorneys to do so.

- \_\_\_\_\_ 5. The Clerk will call individual jurors to the jury box.  
Seat remaining jurors in front of box and in benches.  
ADMINISTER OATH after all potential jurors have been

called and seated. (ALTERNATE METHOD:  
Clerk will \_\_\_\_\_ have already seated jurors before  
judge comes in.)

“Ladies and Gentlemen, please stand and  
raise your right hand:

**“DO YOU SWEAR OR AFFIRM THAT YOU  
WILL ANSWER TRUTHFULLY ALL QUESTIONS**

TOUCHING UPON YOUR COMPETENCY TO  
SERVE AS A JUROR IN THIS CASE, SO HELP  
YOU GOD?

- \_\_\_\_\_ 6. Is the Rule Requested ? If so, explain the Rule.
- \_\_\_\_\_ 7. ADMONITIONS. If the court takes a recess before completion of voir dire, the jurors should be given the Admonitions (attached as Appendix One).
- \_\_\_\_\_ 8. Prepare seating chart: (juror name, occupation, community). Assign jurors a number.
- \_\_\_\_\_ 10. Instruct the Jury Before Voir Dire: (TPI Civil 1.01)

You will be asked questions by the attorneys. Although some of the questions may seem to be personal, they are intended to find out if you have any knowledge of this particular case, if you have an opinion that you cannot put aside or if you have had any experience in life that might cause you to identify yourself with one party or another. Jurors must be as free as humanly possible from bias, prejudice, or sympathy and must not be influenced by preconceived ideas about the facts or the law. The parties are entitled to jurors who approach this case with open minds until a verdict is reached.

Each party has a right to request that a certain number of prospective jurors be excused. If you are excused you should not consider it a reflection on you in any way, because a lawyer who challenges you today might want you to serve on a different type of case tomorrow. The attorneys are simply engaging in

a process of “educated” guessing as to whether or not you will be favorable to his/her side of the case or the other side of the case; so, do not take it personally if you are challenged. If you are challenged and therefore excused, you will need to call back \_\_\_\_\_ after \_\_\_\_\_ p.m.

\_\_\_\_ 11. (a) BEFORE LAWYERS BEGIN VOIR DIRE INSTRUCT JURY:

Ladies and Gentlemen, before the attorneys begin asking you questions, I am going to give you the law as to the burden of proof in a civil case. A party who has the burden of proof on a claim must prove that claim by a preponderance of the evidence. I will charge you again with this instruction at the end of the trial.

The term “preponderance of the evidence” means the amount of evidence that causes you to conclude that a claim is probably true. To prove a claim by a preponderance of the evidence, a party must convince you that the claim is more likely true than not true.

If the evidence on a particular claim is equally balanced, that claim has not been proven by a preponderance of the evidence and the party having the burden of proving that claim has failed.

You must consider all the evidence on each claim.

(Consider giving the “balance scale” definition.)

(b) SEE NEXT PAGE FOR “Judge’s Voir Dire Questions”

### **Judge's Questions for Voir Dire**

1. Occupation (Place of work, type of work, how long). Also occupation of spouse, if married.
2. Have you served on a jury before (civil or criminal)?
3. Have you (or your family) ever been a party to a lawsuit? (If so, a few details: type of lawsuit, Plaintiff or Defendant, personal injuries involved (if so, give details), was case tried or settled before trial, satisfied with outcome?)
4. Have you (or a family member) ever been involved with any incident that resulted in personal injuries (including job injuries)? (If so, give details of personal injury: what part of body, medical treatment received, do you or they still suffer from effects of the injury?)
5. Will you apply the law given to you by the Judge at the end of the trial, whether you agree with that law or not?

(Other questions to consider for Voir Dire:)

1. Community in \_\_\_\_\_ County
2. Do you have any type of major medical, health, work, family, financial, emotional or philosophical difficulty that would cause you to be unable to serve as a juror in a trial expected to last three weeks?
3. Does your job bring you in contact with lawsuits or other legal matters?
4. Does your job bring you in contact with engineers or technical support personnel?
5. Have you or has any member of your family ever made a claim for workers' compensation benefits?
6. Have you or has any member of your family ever made a claim against someone for personal injury, even though no lawsuit was brought?
7. Have you or has any member of your family ever worked for a company that has been sued and you were involved?
8. Have you ever appeared as a witness or an expert in a civil case?
9. Have you ever served on a grand jury?
11. Do you have any difficulty in reading, hearing or understanding English that might interfere with your serving as a juror?

12. Is there anything else about you that you feel might affect your ability to decide this case fairly and impartially and only on the basis of the evidence and testimony you hear in this case?

\_\_\_ 12. ALLOW PLAINTIFF'S ATTORNEY TO VOIR DIRE.

\_\_\_ 13. ALLOW DEFENDANT'S ATTORNEY TO VOIR DIRE.

\_\_\_ 14. PEREMPTORY CHALLENGES ARE SUBMITTED BY  
ATTORNEYS. (Four (4) challenges per party,  
no more than eight (8) per side.)  
(Check for Batson or Woodson considerations.)

(a) Clarify with attorneys which jurors are being considered (each round).

(b) Check each name off challenge sheet.

(c) Keep count number of challenges per side.

(d) Advise each excused juror when to call back.

\_\_\_ 15. SEAT THE PERSONS SELECTED TO SERVE IN THE JURY SECTION. (DO NOT YET EXCUSE REST OF VENIRE.)

\_\_\_ 16. "LADIES AND GENTLEMEN OF THE JURY, IN JUST A FEW MOMENTS WE WILL TAKE A BREAK, BUT BEFORE WE DO, I WILL CHARGE YOU WITH CERTAIN ADMONITIONS THAT YOU ARE ORDERED TO FOLLOW THROUGHOUT THIS TRIAL"; ADMONITIONS. (See "Appendix No. One")

\_\_\_ 17. SWEAR JURY. OATH:

"LADIES & GENTLEMEN, PLEASE STAND AND RAISE YOUR RIGHT HAND"

“DO YOU SOLEMNLY SWEAR OR AFFIRM THAT IN THIS CASE NOW FOR TRIAL YOU WILL WELL AND TRULY TRY THE ISSUES JOINED AND A TRUE VERDICT RENDER ACCORDING TO THE LAW AND THE EVIDENCE, SO HELP YOU GOD?”

“PLEASE BE SEATED.”

\_\_\_\_ 18. AFTER VOIR DIRE AND BEFORE TRIAL GIVE JURY PRELIMINARY INSTRUCTIONS:

You have now been sworn as jurors in this case. Before we begin the trial, I will explain about trial procedures, what your duties will be, and how you must conduct yourselves during the trial.

After I have given you this information, the attorneys will make their opening statements. The opening statements will be brief outlines of what the attorneys expect the evidence to be.

After the opening statements, you will hear the evidence. The evidence generally consists of the testimony of witnesses and the trial exhibits. The plaintiff will present evidence first and then the defendant will be allowed to present evidence. Normally, the plaintiff will present all of the plaintiff's evidence before the other party presents any evidence, although we sometimes change this procedure to accommodate a witness.

The witnesses will testify in response to questions from the attorneys. Witnesses are first asked questions by the attorney who calls the witness to testify and the other attorney is allowed to cross-examine the witness. The attorneys questions are not evidence. Only the witnesses answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. You should consider a question only as it gives meaning to a witness's answer.

Evidence may be presented by deposition. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. You are to consider deposition testimony as if the witness appeared in court.

During the trial, each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not

guess what the witness might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

Any arguments by the lawyers about objections or motions are usually required to be made outside the jury's hearing. One of my duties as presiding judge is to make sure that any information that the jury hears is legally admissible information under the rules of evidence and procedure. I may exclude information because it is not legally admissible under Tennessee law. You cannot consider excluded information in deciding this case. Any rulings I make will be based on the law. You must not infer from any of my rulings, or from anything that I say, that I hold any view or opinion for or against any party in this lawsuit.

After you have heard all of the evidence and I have instructed you on the law, the attorneys will make their closing arguments. In the closing arguments the attorneys will point out to you what they believe the evidence has shown, what inferences they suggest you should draw from the evidence, and what decisions they contend you should reach as your verdict. The plaintiff will argue first, then the defendant, and then the plaintiff is allowed to close by responding to the defendant's argument.

Unless I instruct you otherwise, statements made by the attorneys are not evidence. Those statements are made only to help you understand the evidence in this case. You should ignore any statement that is not supported by the evidence.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law. Your duty is to decide what the facts are and to apply the law that I give you to those facts. You are the sole and exclusive judges of the facts.

As the sole judges of the facts, you must decide which of the witnesses' testimony you will accept, what weight to attach to it, and what inferences you will draw from it. You are not required to accept all of the evidence as true or accurate. In deciding what evidence to accept, you must evaluate each witnesses' testimony and decide the weight you will give to that testimony. You must decide which witnesses you believe and how important you think their testimony is. You are free to believe all, none, or part of any person's testimony.

You should use your common sense and your everyday experience in deciding which testimony you believe. There are no written rules to use in deciding whether you believe a witness, but it may help you to ask yourself the following questions:

1. Was the witness able to see or hear or be aware of the things that the witness testified about?
2. How well was the witness able to recall and describe those things?
3. How long was the witness watching or listening?
4. Was the witness distracted in any way during the event?
5. Did the witness have a good memory?
6. How did the witness look and act while testifying?
7. Did the witness make an honest effort to tell the truth, or evade questions?
8. Did the witness have any interest in the outcome of the case?
9. Did the witness have any motive, bias, or prejudice that would influence the witness's testimony?
10. How reasonable was the witness' testimony when you consider all of the evidence in the case?
11. Was the testimony contradicted by what the witness had said or done at another time, by the testimony of other witnesses, or by other evidence?

[Substantive instructions before trial begins.]

\_\_\_\_ 19. OPENING STATEMENTS.

Plaintiff's counsel:	Begin
_____	am/pm
	End
_____	am/pm
 Defendant's counsel:	 Begin
_____	am/pm
	End
_____	am/pm

\_\_\_\_ 20. NOTEPADS.

- (a) Pass out notepads and pencils.
- (b) Give the charge on **JUROR'S NOTES**. (See "Appendix Number Two.")

- (c) Give the charge on **JURORS ASKING QUESTIONS**. (See “Appendix Number Three.”)

\_\_\_\_21. TESTIMONY. Plaintiff calls the first witness.

**Be sure each witness is sworn!**

Direct Examination, Cross-Exam, Re-Direct,  
Re-Cross

“Call your next witness.”

\_\_\_\_22. WHEN THE PLAINTIFF RESTS:

(Ask counsel: “Are there any motions at this time?” If so, tell the jury:)

“Members of the jury, we have a matter we need to take up outside your presence. Take a short break in the jury room. Remember the admonitions the court gave you earlier.”

\_\_\_\_23. WHILE JURY IS OUT, DISCUSS THE FOLLOWING:

- (a) Length of defense proof (number of witnesses).
- (b) Can any jury instructions be agreed on now?

Note: If defense has no witnesses, or very few, agree on jury instruction, NOW – to avoid jury in-and-out.

\_\_\_\_24. JURY BROUGHT BACK IN.

\_\_\_\_25. DEFENDANT PRESENTS CASE.

Direct Examination, Cross-Exam, Re-Direct,

Re-Cross

\_\_\_\_26. DOES THE PLAINTIFF WISH TO PRESENT REBUTTAL WITNESSES?

(If yes, “call first witness”.)

\_\_\_\_27. DEFENDANT’S SURREBUTTAL. (if Plaintiff presents rebuttal.)

\_\_\_\_28. AFTER ALL PROOF IS CONCLUDED.

Take break if jury charges not already agreed upon.  
Remind Jury of the Admonitions.

\_\_\_\_29. JURY CHARGE CONFERENCE.

While Jury is on break meet with counsel outside of presence of Jury. Prepare Jury instructions. Put discussion on the record. “We have reviewed the proposed charges and all attorneys agree to its content except: (Note, any objections and rulings on the record.) “Counsel is that correct?”

\_\_\_\_29 (a) PUNITIVE DAMAGES (if applicable). Charge content. Bifurcation of damages. Judge’s Finding of Facts. U. S. Supreme Court case of Campbell vs. State Farm, 538 U.S. 408 (2003).

\_\_\_\_30. BRING THE JURY BACK IN. COURT CHARGES THE JURY.

\_\_\_\_31. “COUNSEL, ARE THERE ANY ADDITIONAL CHARGES REQUESTED?”

\_\_\_\_32. CLOSING ARGUMENTS.

“We are now ready to proceed with closing arguments.”

Time Limits? Record beginning and ending times.  
Enforce time limitations, if any.

Plaintiff

Defendant

Plaintiff—Rebuttal argument

\_\_\_\_33. \*\* DRAW NAMES OF ALTERNATE  
JUROR(S) OUT OF BOX \*\*

the  
in  
Excuse alternates, tell them not to go with  
jury into deliberation room. “Remain here  
your seats, I will give you further instructions  
after the jury leaves to begin deliberations.”

\_\_\_\_34. SWEAR COURT OFFICER/BAILIFF. OATH:

“Please state your name for the record.  
Do you solemnly swear or affirm that you will:

1. Take charge of this jury, and
2. Keep them separate and apart from all others, and
3. Not allow them to communicate with any other people, and
4. Bring them back at the appointed time, so help you God?”

\_\_\_\_35. INSTRUCTIONS TO THE BAILIFF:

- WHERE DOORS ARE TO BE LOCKED.
- SIT AT THE DOOR (ONLY ONE ENTRANCE).
- BREAKS AND PROVISIONS FOR SMOKERS.
- IF JURORS HAVE QUESTIONS, SEND NOTE BY BAILIFF.
- JURORS SHALL NOT ASK COURT OFFICER/BAILIFF ANY QUESTIONS ABOUT THE TRIAL OR PROCEEDINGS.
- TELL THE COURT OFFICER NOT TO DISCUSS ANYTHING REGARDING THE CASE OR PROCEEDINGS WITH THE JURORS.

\_\_\_\_ 36. INSTRUCT THE JURY:

“If a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room, and give the question to my court officer. Again, do not discuss the case with the officer.”

“I will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and I cannot answer questions about evidence.”

\_\_\_\_ 37. “LADIES AND GENTLEMEN, YOU MAY NOW RETIRE TO DELIBERATE.”

Record Time-Out \_\_\_\_\_ a.m. / p.m.

\_\_\_\_38. JURY SENDS WORD THEY HAVE A VERDICT.

Record time \_\_\_\_\_ a.m.  
/ p.m.

Round up attorneys, parties, court reporter and clerk.

\_\_\_\_39. GO ON RECORD BEFORE JURY COMES IN:

1. “Let the record reflect the Plaintiff(s) and the  
Defendant(s) are present in the courtroom  
along with their attorneys.”

2. “Do you waive polling of the jury individually?”  
“If so, would an individual show of hands suffice?”

\_\_\_\_40. “BRING IN THE JURY.”

\_\_\_\_41. COURT RECEIVES THE VERDICT:

“Ladies and gentlemen, would you please  
identify the presiding juror.”

“Have you reached a verdict in this  
case?”

“What is your verdict?”

“Do each of you agree that is your  
verdict;  
if so, please raise your right hand.”

“Let the record reflect that each  
member of

the jury has raised their hand and  
there are no dissenting votes”

\_\_\_\_ 42. HAVE JURY PASS VERDICT FORM TO THE COURT.

Verify with attorneys the content of the verdict form,  
and mark it as the next numbered exhibit.

\_\_\_\_ 43. PUNITIVE DAMAGE ISSUES. Bifurcated trial TPI  
14.55 and 14.56

\_\_\_\_ 44. GIVE THE POST TRIAL INSTRUCTION TO JURY.  
(See “Appendix Number Four.”)

\_\_\_\_ 45. DISMISS THE JURY.

“THANK YOU. THE SYSTEM WORKS  
BECAUSE OF CITIZENS LIKE YOU.  
THANKS ON BEHALF OF COURT,  
ATTORNEYS AND COURT PERSONNEL.”

AFTER JURY FILES OUT

\_\_\_\_ 46. IF THE CASE IS A COMPARATIVE FAULT CASE,  
CALCULATE THE AMOUNT OF DAMAGES AND TO  
WHOM.

\_\_\_\_ 47. ASK WHO WILL DRAW THE ORDER.

\_\_\_\_ 48. “THE CIRCUIT COURT OF \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, IS HEREBY  
ADJOURNED UNTIL \_\_\_\_\_  
\_\_\_\_\_.”

ADMONITIONS

There are also several rules concerning your conduct during the trial, including any recesses or adjournments that you must obey.

First, do not conduct your own private investigation into this case, although you might be tempted to do so. For example, do not visit the scene of the incident, read any textbooks or articles concerning any issue in this case, or consult any other source of information, including internet sources, such as, Facebook, Myspace, Twitter, Google or others. If you were to do that, you would be getting information that is not evidence. You must decide this case only on the evidence that you see and hear in this courtroom and on the law I give you. If you get any information about this case other than the evidence presented in the courtroom you must report it immediately to the Court officer, but do not tell anyone else about it, including the other jurors.

Second, do not discuss the case with anyone during the trial, including your fellow jurors or family members or friends. You must keep an open mind until you have heard all the evidence, my final instructions about the law and the attorneys' closing arguments. Any discussions about the case before the end of the case would be improper and a violation of your oath as a juror.

Third, do not let any other person discuss this case in your presence. If anyone tries to do so, end the conversation and report it immediately to the Court officer, but do not tell anyone else, including the other jurors.

Fourth, do not speak to any of the attorneys, parties or witnesses in this case, even to say good morning. They are also instructed not to talk to you. In no other way can all the parties feel assured of your absolute impartiality.

Fifth, do not use a computer, cellular phone, or any other electronic device with communication capabilities

during  
the trial  
or  
deliberat  
ions.  
These  
devices  
may be  
used  
during

breaks or  
recesses,  
but can  
not be  
used at  
any time  
during  
the trial  
to obtain  
or  
disclose  
informat  
ion  
about  
any  
issues  
related  
to this  
trial.

**Appendix Number Two**

TPI 3rd Civil 1.03— Use of Juror Notes

(Give before trial starts as a part of Preliminary Instructions.)

You are permitted to take notes during the trial. You may take notes only of verbal testimony from witnesses, including witnesses presented by deposition or videotape. You may not take notes during the opening statements or

closing arguments or take notes of objections made to the evidence. You may not take notes during breaks or recesses. Notes may be made only in open court while witnesses are testifying.

Your notes should not contain personal reactions or comments, but rather should be limited to a brief, factual summary of testimony you think is important. Please do not let your note-taking distract you and cause you to miss what the witness said or how the witness said it. Remember that some testimony may not appear to be important to you at the time. That same testimony, however, may become important later in the trial.

Your notes are not evidence. You should not view your notes as authoritative records or consider them as a transcript of the testimony. Your notes may be incomplete or contain errors and are not an exact account of what was said by a witness.

Number Three

Juror Questioning of Witness During Trial

(May be given during Preliminary Instructions or before first witness is sworn)

I will allow you to ask questions of the witnesses who testify in this case. After the lawyers have finished questioning a witness you may ask the witness a question by putting your question in writing on a blank piece of paper. Please fold the paper, then hand it to the bailiff who will give it to me. Please do not put your name on the question.

I will review the question and allow the attorneys to do so. You may ask any question that you feel is necessary or appropriate, but please don't be offended if I do not ask your question or if I vary the wording of the question before I ask the witness the question. One of my functions as presiding judge is to make sure that all evidence admitted is legally admissible under the rules of evidence and procedure under Tennessee law. If I do not ask all or only a part of a question, or if I change the wording of a question, you must not draw any inference from my decision. Do not hold my decision against any party in this case.

You are not encouraged to ask large numbers of questions. The attorneys have the primary responsibility for asking questions. Keep in mind that the attorneys know the case better than either you or I do, and each of them will be attempting to place before you all the evidence you will need to assist you in reaching a proper verdict. Remember that you are not advocates for either party, but you are the judges of the facts.

You must direct your questions to the witness, not to the lawyers or the judge. Your questions should be to clarify evidence, not to explore theories of your own, or to attempt to discredit a witness.

You are only allowed to ask questions of a witness while that witness is on the witness stand. Once a witness leaves the witness stand you will not be allowed to ask that witness any further questions.

POST - TRIAL INSTRUCTIONS TO JURY

Now that you have concluded your service on this case, I thank you for your patience and conscientious attention to your duty as jurors. You have not only fulfilled your civic duty, but you have also made a personal contribution to the ideal of equal justice for all people.

You may have questions about the confidentiality of the proceedings. Because the case is over, you are free to discuss the case with any person you choose. However, you do not have to talk to anyone about the case if you do not want to. If you tell someone you do not wish to talk about it and they continue to bother you, let the court know, for we can protect your privacy. If you do decide to discuss the case with anyone, I would suggest you treat it with a degree of solemnity, so that whatever you say, you would be willing to say in the presence of your fellow jurors or under oath here in open court in the presence of all the parties. Also, if you do decide to discuss the case, please respect the privacy of the views of your fellow jurors. Your fellow jurors fully and freely stated their opinions in deliberations with the understanding they were being expressed in confidence.

Again, I thank you for your willingness to give of your time away from your accustomed pursuits and faithfully discharge your duty as jurors. You are now excused.

## JURY TRIAL OUTLINE

### I. Pre-Trial Practice

#### A. T.R.C.P. 16 and T.R. Crim. P. 17.1- Pre-Trial Procedure; Formulating Issues

In any action, the court (in its discretion) may direct the attorneys for the parties to appear for a conference to consider:

1. Simplification of issues.
2. Necessity or desirability of amendments to pleadings.
3. Possibility of obtaining admissions of fact and/or documents that will avoid unnecessary proof.
4. Limitation of the number of expert witnesses.
5. Such other matters as may expedite the proceedings.
  - (a) Pre-trial orders (particularly helpful in complex cases)
  - (b) Pre-marking exhibits

T.R.C.P. 16.01 requires the court to consider jurors' time when deciding content of scheduling order and managing the trial.

#### B. Chambers Pre-Trial conference on morning of trial to consider:

2. Motions in Limine (encourage lawyers to file early if evidentiary or other issues):
  - (c) Co-conspirator testimony
  - (d) Admissibility of prior convictions
  - (e) Admissibility of photographs
- (d) Admissibility of other evidence
2. Marking and filing exhibits by stipulation.
3. Estimate of trial time.

4. Problems relating to attendance of witnesses, unusual questions of law, or trial procedure.
5. Consider T.R.C.P. 42.02 (providing for separate trials) and determine if the court, for convenience or to avoid prejudice, should order a separate trial of any one or more claims, cross claims, counterclaims, 3<sup>rd</sup> party claims, or issues on which a jury trial has been waived by all parties. See T.R. Crim. P. 14
6. Instructions and verdict forms:
  - (f) Submission of special requests by counsel
  - (g) Determine issues and probable instructions
  - (h) Preparation of jury verdict forms and special interrogatories

## II. Empanelling the Jury

- I. Orientation of Jury Venire (this portion of the outline assumes that the jury panel is reporting for the first time and has not previously received general orientation).
  3. It is essential to proper performance of jurors' duties that they be informed of their responsibilities and general rules of procedure before the trial begins. General juror orientation is accomplished in several different ways. Judge may make an oral statement to the persons summoned for jury service, distribute printed handbooks, or both. Videotapes are also available for this purpose. Until jurors understand their proper function and how this function is to be performed, court proceedings can have little significance to the jurors.
  4. Issue a jury badge to each juror empanelled.
  5. Common instructions to a new jury panel:
    - (i) How and why they were selected
    - (j) Importance of jury service
    - (k) Court procedures
    - (l) Jury conduct both in and out of the courtroom
- B. Qualifications for and exemptions from jury service (TCA 22-1-101, *et seq.*)

## III. Opening of Court and Call of Case

### C. Sequence of events:

6. Bailiff sees that court personnel, attorneys, and jurors are in place and ready for opening of court.
7. Bailiff accompanies judge and clerk into courtroom and formally opens court.
8. Parties may tape record proceedings (TCA 20-9-104).
9. Clerk calls case and twelve jurors\* into the jury box (assuming that orientation has already been conducted and jurors have been found qualified).
10. Introduction of court personnel by judge.
11. Introduction of attorneys and parties.
12. Swear in the jury: "Do you swear or affirm you will answer truthfully all questions touching on your competency to serve as a juror in this case?"
13. Prepare seating chart and ascertain jury number, name occupation (if they work outside of the home), and community in which they live.
14. Make a brief statement as to the nature and type of action to be tried from the allegations of fact, pointing out to the jury that :
  - (m) What the judge says is not evidence.
  - (n) What the lawyers say is not evidence except for matters stipulated or agreed to by the attorneys.
  - (o) All evidence will come from the witness stand except for matters agreed to or stipulated by the attorneys.
10. Purpose of the voir dire examination.

In **Smith v. State**, 327 S.W.2d 354, the court stated:

" A voir dire examination is for the purpose of advising counsel of the juror's qualification, interest, or bias, as a matter of fact, presupposing his statutory competence, that is age, residency, etc. The subjacent purpose is to enable the exercise of one's peremptory challenges. In this process, it has been held, and it seems fairly so, that proper fields of inquiry include the juror's occupation, habits, acquaintanceships, associations, and other factors, including his or her experiences, which will indicate his freedom from bias."

Juror's should be:

- (p) Unbiased
- (q) Open minded
- (r) Free from any pre-formed opinion as to guilt or innocence

11. Preliminary voir dire examination by the court.

(s) Inquire as to whether or not any of the prospective jurors:

- (20) know any party or representative of a party
- (21) any of the attorneys involved in the case
- (22) know anything at all about the case or the matter giving rise to the action

(b) Jurors should be asked whether any of them knows of any reason why they should not serve as a juror on the case.

(c) Jurors should be advised that if they serve in the case, each will act as a judge and collectively they will be the sole and exclusive judges of the facts, the weight of the testimony and the credibility of the witnesses; that as jurors they will be required to take an oath "to well and truly try the issues when joined and to render a true and just verdict according to the law and evidence." The prospective jurors should then be asked whether there is anyone that feels they could not take such an oath which, in simple terms, means that if called to do so they will render a fair and impartial verdict based solely upon the evidence presented from the witness stand and the law that the court will charge as being applicable to the facts as the jury determines the facts to be.

(d) The judge should prepare the jurors for examination by attorneys and the possibility of being challenged peremptorily. [See Civil Court Jury Trial Checklist]

12. Voir dire by attorneys as to examination and challenge of jurors gives an absolute right of parties to examine prospective jurors. T.R.C.P. Rule

47.01 also allows the judge to permit attorneys to introduce themselves and make brief, non-argumentative remarks at or near beginning of jury selection to inform jurors of general nature of case.

(t) Improper areas of voir dire include:

- (23) Questions previously asked by the court or opposing counsel, and answered.
  - (24) Questions touching upon anticipated jury instructions.
  - (25) Questions touching upon verdict to be returned when those questions are based upon hypothetical facts or stipulation. Commitments or pledges from prospective jurors are improper. **Chambers v. Bradley County**, 384 S.W.2d 43 (1964); **Solomon v. State**, 489 S.W.2d 547 (1972).
  - (26) Questions that are in substance arguments of the case.
  - (27) Questions concerning liability insurance. However, see **Lovin v. Stanley**, 493 S.W.2d 725 (1973) "in good hands" case; and **Burnett v. Nelms**, 559 S.W.2d 784, 785 (1977).
  - (28) Understanding of propositions of law. See **Nease v. State**, 592 S.W.2d 327, 330-31 (1979).
- (b) Exercise of peremptory challenges or cause challenges and method used. Procedure to be followed with replacement of prospective jurors.\* Excusing other prospective jurors.\*
- (c) Empaneling of alternate jurors if deemed advisable (see T.R.C.P. 47.02; TR Crim. P. 24(e)\*)
- (d) \*Alternate jury selection procedure.
- (1) Entire jury panel is numbered consecutively and all questioned. Judge questions jurors first.
  - (2) Plaintiff's attorney allowed to question entire panel only once. Defendant's attorney allowed to question entire panel only once.
  - (3) Cause challenges must be made as soon as possible or they are waived.
  - (4) After attorneys have consulted with their clients, judge allows attorneys to submit peremptory challenges anonymously. (Either in open court or in chambers).
  - (5) Peremptory challenged submitted for first 12 jurors. (Unless alternates)
  - (6) Judge strikes names of challenged jurors and like number of new jurors added to total 12.
  - (7) Both sides look at that group of 12 jurors. Back strikes are allowed.
  - (8) Process continues until jury is accepted or parties run out of challenges.

(e) Alternate juror selection under T.R.C.P. Rule 47.02:

- (1) Alternate jurors are not identified as such. Alternates are chosen the same as first 12 jurors.
- (2) Each party gets one additional peremptory challenge per alternate. However, if more than one plaintiff or defendant per side, no additional challenges for alternates allowed for that side. (T.C.A. 22-3-105 limits peremptory challenges to 8 per side.)
- (3) Alternate(s) is (are) not identified until just before the jury begins deliberations. Alternate(s) is (are) deselected by lot. The names are drawn at random.

13. Clerk swears jury and alternates. Juror oaths:

[Civil] Do you solemnly swear or affirm that you will well and truly try the issues joined in this cause and a true verdict render according to the law and the evidence, so help you God?

[Criminal] Do you solemnly swear or affirm to well and truly try the issues that traverse herein, joined between the State of Tennessee and the Defendant (\_\_\_\_), upon a true bill of indictment charging him/her with the offense of (\_\_\_\_), a true deliverance make and a true verdict render, according to the law and evidence, so help you God?

[Bailiff's Oath in cases with sequestered juries] Do you solemnly swear of affirm that you will take charge of this jury, keep them separate and apart from all persons, not allow them to communicate in any manner with anyone, nor anyone with them, and as it concerns the matter on trial nor with you, nor you with them, and that you will deliver them safely into court, so help you God?

See TCA Sections 40-18-115, 40-18-116 and 8-18-112.

14. Instruction as to exclusionary rules of witnesses, if rule requested. See **Sparks v. State**, 563 S.W.2d 564, 569-70 (1978) and TCA 24-1-204.

15. Jury instructions after voir dire and before trial (TPI Civil 1.02). T.R.C.P. 51.03.1 and T.R.Crim.P 30(d)(1) require trial judges to provide basic instructions on the applicable law at the beginning of trial after the jury is sworn in. The preliminary instructions should include information about trial procedures and juror conduct during

trial, as well as information about:

- (a) Note taking by jurors: Jurors are allowed to take note during the trial. T.R.C.P. 43A.02 and T.R.Crim.P. 24.1(b).

Judge

should instruct jury that note taking should not detract the from giving full attention to the evidence and that the notes

are to aid the particular juror taking them and are not to be used as authority during deliberations. **Watkins v. State**, 393 S.W.2d 141, 146-47 (1965).

- (b) Juror notebooks. T.R.C.P. 43A. Jurors may be provided with a Juror Notebook that may contain notepaper, a copy of Court's preliminary instructions, a glossary of terms in appropriate cases, copies of all documentary trial exhibits and a copy of Court's final instructions. T.R.C.P. 43A.02. If used, attorneys should be advised to make sufficient copies of exhibits with holes punched in left-hand margin to allow for placement in 3-ring binder Juror Notebooks.

- (c) Juror Questions, T.R.C.P. 43A.03 and T.R.Crim.P.24.1( c) Jurors are instructed during Court's preliminary instructions that they are permitted to ask the witnesses questions, under specific guidelines:

- (1) Questions must be in writing and not signed by juror submitting the question.
- (2) Judge reviews all juror questions and consults with attorneys.
- (3) Judge decides whether to ask none, part, or all of any question, or whether to rephrase question.
- (4) Judge may ask the juror's question or allow attorney to ask the question to the witness.
- (5) Although not specifically mentioned in the Rules, each side may be allowed to ask follow-up questions to witness based on responses given by witness to juror questions.
- (6) Juror questions must be retained for the record.

- (d) Instructions on substantive law. Judge should consider giving basic substantive instructions, such as negligence, causation duty of drivers, etc, depending on the kind of case being tried.

16. Opening statements. Limited to what each party reasonably expects to prove. The judge can state, "counsel at this time may either read their pleadings or make opening statements as they see fit." Then in view of the statutory oath which the jurors take to "truly try the issues to be joined", counsel should be asked at the conclusion of the opening statements if they join issue. (See TCA 20-9-301, 302; and **Harris v. Baptist Memorial Hospital**, 574 S.W.2d 730 (1978).
17. Attorney commentary. T.R.C.P. Rule 44A and T.R.Crim.P. 29.2 provide that Court may permit counsel to address the jury to assist jurors in understanding context of evidence that will be presented. Both plaintiff's and defendant's attorney are allowed to make a brief statement that should not be argumentative and not a statement about credibility of witness.
18. Plaintiff's proof is presented. Each witness should be sworn before testifying.
19. The defendant should be afforded an opportunity to make a motion for directed verdict at the close of the plaintiff's proof. The judge should bear in mind the admonitions concerning directing a verdict at the end of plaintiff's proof. (See **Sadler v. Draper**, 326 S.W.2d 148 (1959); and **Vaughn v. Shelton**, 514 S.W.2d 870 (1974).
20. The Defendant's proof is presented. If the plaintiff is afforded the opportunity to present rebuttal proof, then the Defendant is afforded the opportunity to present surrebuttal proof.
21. Sequence of Expert Witnesses. T.R.C.P. 43.03 and T.R.Crim.P. 26.3 permit the trial judge, with the consent of all parties, to alter the order and presentation of expert testimony "to increase the likelihood that jurors will be able to comprehend and evaluate expert testimony." This can be accomplished by scheduling experts back-to-back or by having the Plaintiff's experts testify at the end of plaintiff's proof and the Defendant's experts testify at the beginning of defendant's proof.
22. TCA 20-9-303. Demonstrative evidence permitted in argument:  
  
In a civil suit, counsel for either party shall be permitted to use a blackboard, models, pictures, plats or similar devices, whether introduced as a trial exhibit or not, in connection with argument to the jury for the purpose of illustrating contentions with respect to the issues to be decided by the jury; provided

that counsel shall not, in writing, present any argument that could not be properly be made orally. Also proper in criminal cases (See **State v. Wiseman**, 643 S.W.2d 354, 365 (1982).

23. TCA 20-9-304. Monetary value of pain and suffering permitted in argument.

In a civil suit for personal injuries, counsel shall be allowed to argue the worth or monetary value of pain and suffering to the jury; provided, however, that such argument shall conform to the evidence or reasonable deduction from the evidence in said case. **Exception: medical malpractice.**

24. TCA 20-9-401. Dismissal against some defendants. See also T.R.C.P. 41.

#### IV. The Charge

"Instructing the jury is one of the most important functions of the trial judge. To be effective, instructions must not only state correctly and understandably the law pertaining to the case; they must also be arranged logically. Enunciation should be clear, and the manner of delivery should be conversational."

"The genius of the jury system is that juries are composed of laymen from various walks of life who, by bringing to bear upon the questions to be solved a variety of viewpoints and experiences that will help them reach an acceptable verdict. Today, many deprecate the jury system as a method of determining legal controversies, claiming that it is too uncertain, time consuming and expensive. It behooves those who would preserve the tradition of trial by jury to use every available means to improve its efficiency and effectiveness. Good jury instructions will contribute much to that end." *State Trial Judge's Book, Second Edition*, National Conference of State Trial Judges, 1969.

- A. T.R.C.P. 51.01, and T.R. Crim. P. 30, Requests for instructions:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury either before or after closing arguments are completed. The

court may, in its discretion, entertain requests for instructions at any time before the jury retires to consider its verdict.

B. Preparation of Instructions

1. Sources:

- (b) Tennessee Pattern Jury Instructions Civil and Criminal (TPI)
- (c) Federal and other states. See Devitt and Blackmar, *Federal Jury Practice and Instruction*, Douthwaste, *Jury Instructions on Damages in Tort Actions*; *California Jury Instructions*; *Missouri Approved Jury Instructions*.
- (d) Obtain copies of charge books from experienced judges whom you respect for their legal knowledge.
- (e) Constantly upgrade your personal charge book by preparing new and/or additional charges from your reading of advance sheets.

2. From the pleadings and the pre-trial conference, determine the issues, theories of legal liability and defenses.

3. Basic parts of a charge

- (f) Cautionary instructions: Duties of the judge and jury
- (g) Credibility of witnesses, absent witnesses, expert witnesses circumstantial evidence, etc.
- (h) Evidence
- (i) Claims of the parties
- (j) Burden of proof
- (k) Explanation of substantive law (examples listed below)
  - (1) Comparative fault
  - (2) Duty of driver
  - (3) Medical malpractice
  - (4) Vicarious responsibility
  - (5) Legal cause
  - (6) Damages
- (g) Instruction as to unanimous verdict (must be verbatim and included in main charge if given). See TPI Civil 15.17 (8<sup>th</sup> Ed.)
- (h) Review of jury verdict form
- (i) Ask if there are any special requests
- (j) Submit the case to the jury
- (k) Have alternate(s) step aside

4. Charge to jury in writing, T.R.C.P. Rule 51.04, TCA 20-9-501.  
Required in felony criminal cases (TR Crim. P. 30(c)).
5. Closing instructions may be given before or after attorneys' closing arguments. T.R.C.P. Rule 51.03(2) and T.R.Crim.P 30(d)(2)..
6. Communication with jury during and after deliberations:
  - (a) If the jury indicates desire for further instruction, or has questions, such should be handled in open court on the record and in the presence of counsel for all of the parties.
  - (b) Jury questions during deliberations:
    - (29) Case decisions indicate that appellate courts disapprove of the answering of juror notes after the jury has begun deliberations. The judge should not do so if the instructions given were complete, since an additional instruction may confuse the jury or unfairly emphasize a certain point of law. ***Edwards v. State***, 540 S.W.2d 641, 649-50 (1976). Nevertheless, the court does have authority to give supplemental instructions in response to a question from the jury. **If supplemental instructions are given it is important to caution the jury that it cannot give undue emphasis to the supplemental instruction.**
    - (30) The proper method for fielding questions propounded by the jury during deliberations is to recall the jury, counsel, the parties and the court reporter back into open court and to take the matter up on the record. ***State v. Mays***, 677 S.W.2d 476 (1984). The jury should be admonished not to place undue emphasis on the supplemental instructions and to consider them in conjunction with the entire charge. ***Leach v. State***, 552 S.W.2d 407, 408 (1977).
  - (c) If deadlock seems apparent, recharge (TPI Civil 15.17 (8<sup>th</sup> Ed.) from ***Kersey v. State***, 525 S.W.2d 139 (1975). The judge must not make any inquiry other than if they think they might reach a verdict given more time.
  - (d) Viewing exhibits, rehearing testimony, reviewing videos after retiring to deliberate/ indictments:
- (31) Civil Cases: Judge may either send exhibits back with jury automatically or wait until jury asks for exhibits.

(32) Criminal Cases: The jury shall take to the jury room all exhibits and writings which have been received in evidence, except depositions, for their examination during deliberations, unless the court for good cause determines that an exhibit should not be taken back to the jury room.

7. Receiving the verdict.

- (a) Before the jury returns to the courtroom, the judge states: "let the record show that counsel for all parties are present. Do you waive the poll of the jury?"
- (b) When the jury returns, the judge inquires, "Ladies and gentlemen of the jury, have you reached a verdict?" The judge may read the jury's verdict or have the presiding juror read the verdict.
- (c) If a jury verdict form is used, have it marked as the next trial exhibit.
- (d) Judge may do an informal poll of the jury. "Do all of you agree that this is your verdict? If so, raise your right hand. Let the record show that all hands are raised and that there is no dissenting vote."
- (e) If any party requests that the jury be polled, the court directs the clerk to poll the jury by asking each juror: Mr./Mrs./Ms.\_\_\_\_\_, is this your verdict? Or the court may poll the jury. (See TCA 20-9-508 and annotations thereto).

8. Dismissal of the jury: Expression of appreciation for service.

V. Special Problems

- E. Crying party or witness. Take recess until composure regained.
- F. Counsel arguing with each other. Use "approach the bench" for cooling off period or "please address your remarks to the court."
- G. Counsel makes a speech with each objection. "Please do not make a speech. State the legal ground for your objection and nothing more."

- H. Counsel attempting to curry favor with jury and/or singling out one juror by name, etc., **Scarborough v. City of Lewisburg**, 504 S.W.2d 377 (1973).
- I. If judge did not hear evidence objected to, "Please restate your question."
- J. Evidence later reveals a prior erroneous ruling by judge on motion in limine or otherwise. Do not be afraid to reverse yourself. Handle in chambers on record or in open court as appropriate.
- K. Jury "out" Hearings:
  - 15. Freely allow offers of proof where relevant even though court has ruled it inadmissible. (See **State v. Womack**, 591 S.W.2d 437 (1979).
  - 16. Consider for determining qualifications of some experts. **McDaniel v. CSX Transportation Inc.**, 955 S.W.2d 257 (1997). **Brown v. Crown Equipment Co.**, 181 S.W.3d 268 (Tenn.2005).
  - 17. Gory or gruesome photographs. See **State v. Banks**, 564 S.W.2d 947 (1978), adopts Rules 401 and 403 of the FRE and applies to both criminal and civil cases. "The real basis for admission of any photograph into evidence is to assist the jury in finding the true facts and to decide the issues involved." **Strickland Transportation Co. v. Douglas**, 264 S.W.2d 233. Under **Banks** the probative value of the picture must outweigh its prejudicial effect.
  - 18. Convictions or bad acts. See **State v. Morgan**, 541 S.W.2d 385 (1976), applicable to both civil and criminal cases. It adopts FRE 608 and 609. Rule on prior to trial. See **State v. Martin**, 642 S.W.2d 720 (1982).
  - 19. The disruptive witness.
  - 20. The combative attorney who baits judge to elicit sympathy from jury.
  - 21. The attorney who uses rapid fire incompetent questions.
- H. The sleepy juror. Take stretch breaks.
- I. Note taking by jurors. See TPI Civil 1.03 and 2.03, (8<sup>th</sup> Ed.)

- J. During trial explain to the jury what a deposition is.
- K. Exhibits to the jury room (See p. 11 of this outline)
- L. Thirteenth juror and suggestions of remittiturs or additurs. See TCA 20-10-101, et seq., **Foster v. Amcon International, Inc.**, 621 S.W.2d 142 (1981) as to suggestions for remittiturs or additurs. As to function of trial judge as thirteenth juror, see **James E. Strates Shows, Inc. v. Jakobik**, 554 S.W.2d 613 (1977).
- M. Split trials. Bifurcation of liability from damages diminishes the likelihood of a settlement. **Breault v. Friedli**, 610 S.W.2d 134 (1980). Case also deals with punitive damages and proving a Defendant's financial worth.
- N. Punitive damages. Bifurcation of punitive damages. See TPI 14.55 and 14.56. See also **Hodges v. S.C. Toof**, 833 S.W.2d 896 (Tenn.1992); **Campbell v. State Farm**, 538 U.S. 408 (2003); **BMW of North America**, 517 U.S. 599 (1996); **Flax v. Daimler Chrysler Corp.**, 272 S.W.3d 521 (Tenn.2008); and **Mohr v. Daimler Chrysler Corp.**, 2008 WL 4613584 (Tenn.Ct.App. 2008), concerning the assessment of punitive damages.
- O. Jury demand and subsequent waiver by counsel for all parties requires trial judge to try case without jury. **State v. Williams**, 575 S.W.2d 503 (1978).
- P. Jury demand by one party cannot be waived by that party without consent of opposite party or all parties. **Caudill v. Mrs. Grissom's Salads, Inc.**, 541 S.W.2d 101 (1976).

## FORM OF PROPOSED PRETRIAL ORDER

A pretrial conference was held on \_\_\_\_\_ before Robert L. Childers, Judge. Present were: \_\_\_\_\_.

### **STATUS OF PLEADINGS**

(Amendments, etc.)

### **SETTLEMENT POSSIBILITIES**

(Mediation scheduled or completed, discussions ongoing, etc.)

### **STATUS OF DISCOVERY**

List any discovery that needs to be completed or that is outstanding.

### **EXHIBITS**

Parties are required to pre-mark all proposed trial exhibits prior to trial. If parties meet jointly before trial, exhibits will be marked sequentially. If parties do not meet jointly, plaintiff's exhibits will be marked "P1," etc., and defendant's exhibits will be marked "D1," etc. The parties are required to exchange their lists of exhibits at least five (5) days before trial and submit a copy to the Court. The pre-marking and listing of exhibits does not preclude objections to authenticity or admissibility of the exhibits, but the parties are encouraged to stipulate to authenticity and/or admissibility.

### **EXPERT WITNESSES**

Parties are required to exchange a list of their expert witnesses at least fifteen (15) days before trial; divide into *will call* and *may call*.

### **STIPULATIONS**

Parties are encouraged to stipulate to as much as possible, but all stipulations must be reduced to writing.

### **CONTENTIONS OF PLAINTIFF**

(Factual and legal; succinct and complete).

### **CONTENTIONS OF DEFENDANT**

(Factual and legal: succinct and complete).

### **CONTESTED ISSUES OF FACT**

August, 2014

## **CONTESTED ISSUES OF LAW**

Parties shall submit all contested issues of law to the Court in a pre-trial brief five (5) days before the trial date.

## **ANTICIPATED ISSUES OF LAW**

## **ANTICIPATED OBJECTIONS OR DISPUTES REGARDING EVIDENTIARY MATTERS**

Parties are required to file all motions in limine at least two (3) weeks before the trial and present any arguments to the Court before the day of trial.

## **TRIAL PROCEDURE**

Length of trial: Be prepared to discuss the number of fact witnesses and expert witnesses and the estimated time of direct and cross examination of each.

Scheduling: Any possible witness problems or scheduling problems for attorneys.

Jurors/additonal jurors: Number of jurors/alternates needed.

Jury selection procedure: Jurors will first be questioned by the Court and then by the attorney for each party. The entire panel will be questioned by Court and attorneys only once.

Timing of jury instructions: The Court will give the substantive instructions to the jury before closing arguments. The attorneys will make their closing argument and the Court will then give 4-5 minutes of administrative instructions before sending the jury for deliberations.

Juror notebooks: The jurors will be given a 3-ring binder notebook for use during the trial. Included in the juror notebook will be a copy of the Court's Preliminary Instructions (including some substantive instructions on the law), blank note paper for juror note-taking, and a copy of the Court's final instructions. Jurors will each also be given a copy of all documentary trial exhibits. Parties are required to make sufficient copies of documentary trial exhibits and punch three holes on left margin of paper to allow jurors to place exhibit in juror notebooks.

Juror questions: The Court will allow jurors to ask questions of the witnesses after the attorneys have finished their questioning. Juror questions must be in writing.

## **PRETRIAL BRIEFS**

August, 2014

To be submitted to Court five (5) days before trial date.

**PROPOSED JURY INSTRUCTIONS**

To be submitted to Court five (5) days before trial date.

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Robert L. Childers, Judge

Approved as to Form:

\_\_\_\_\_

Attorney for Plaintiff

\_\_\_\_\_

Attorney for Defendant

August, 2014

## **MATTERS TO BE DISCUSSED AT PRE-TRIAL CONFERENCE WITH JUDGE ROBERT L. CHILDERS**

The following matters will be discussed at the pre-trial conference.

### **STATUS OF PLEADINGS**

Are pleadings in order?  
Any amendments to be filed?  
If so, scheduling order for completion.

### **SETTLEMENT POSSIBILITIES**

All damage evidence exchanged?  
Serious negotiations had?  
Mediation or other ADR attempted?  
Possibility of settlement without trial?

### **STATUS OF DISCOVERY**

Completed? If not, scheduling order for completion.

### **PRE-MARKING PROPOSED EXHIBITS**

Stipulate authenticity of exhibits?  
Reserve objections to disputed exhibits.

### **PRE-TRIAL MOTIONS**

Motions *in Limine*, etc?  
Evidentiary issues?

### **EXPERT WITNESSES**

Exchange names and qualifications of experts.  
Any witness problems (availability at certain time, out of town, etc)?

### **STIPULATIONS**

Amount or elements of damages?  
Factual matters?  
Designation of parts or all of depositions, interrogatories, admissions, etc?

### **CONTENTIONS OF PLAINTIFF**

Brief statement or outline of case, factual and legal; succinct and complete.

August, 2014

## **CONTENTIONS OF DEFENDANT**

Brief statement or outline of case, factual and legal.

## **CONTESTED ISSUES OF FACT**

Formulation and statement of contested factual issues.

## **CONTESTED ISSUES OF LAW or ANTICIPATED ISSUES OF LAW**

Formulation and statement of contested legal issues.

## **ANTICIPATED OBJECTIONS OR DISPUTES REGARDING EVIDENTIARY MATTERS**

Motions *in Limine*, etc.  
Scheduling order for filing motions.

## **TRIAL PROCEDURE**

Estimated length of trial? Number of expert and lay witnesses and estimated time for direct and cross examination.  
Any scheduling problems for attorneys?  
Estimated number of prospective jurors/additional jurors needed?  
Jury selection procedure.  
Use of juror notebooks. (Parties are required to make sufficient copies of documentary trial exhibits and punch holes on left margin of paper to allow jurors to place exhibit in juror 3-ring binder notebooks).  
Juror questions, procedure.  
Timing of jury instructions.  
Length of closing argument?

## **TRIAL MEMORANDUM**

Time for filing.

## **PROPOSED JURY INSTRUCTIONS**

Time for filing.

# EVERYTHING YOU EVER WANTED TO KNOW ABOUT CIVIL AND CRIMINAL JURY TRIALS

Tab 1 - Criminal Jury Trial Checklist

Tab 2 - Civil Jury Trial Checklist

Tab 3 - Jury Trial Outline

Tab 4 - Proposed Pretrial Order

Tab 5 - Crafting Jury Instructions (Power Point)

Presented by:

Circuit Judge Robert L. Childers  
Criminal Court Judge Chris Craft  
Circuit Judge John J. Maddux, Jr.

Tennessee Judicial Academy  
Thursday, August 21, 2014

**CRIMINAL**  
**JURY TRIAL CHECKLIST**

- \_\_\_\_\_ 1. Bailiff opens Court (after everyone is in place).
- \_\_\_\_\_ 2. Call the case: “Will the Clerk please call the case?”  
“State of Tennessee versus \_\_\_\_\_.”  
The \_\_\_\_\_ County Criminal Court, Case  
No. \_\_\_\_\_.”
- \_\_\_\_\_ 3. The Clerk/Bailiff/Deputy will call individual jurors to the  
jury box. Seat remaining jurors in front of box and in the  
court benches.  
When all potential jurors have been called and  
seated, ADMINISTER OATH.

“Ladies and Gentlemen, please stand and  
raise your right hand:

YOU  
SERVE  
GOD?”

“DO YOU SWEAR OR AFFIRM THAT  
WILL ANSWER TRUTHFULLY ALL QUESTIONS  
TOUCHING UPON YOUR COMPETENCY TO  
AS A JUROR IN THIS CASE, SO HELP YOU

- \_\_\_\_\_ 4. Introduce self and Court personnel. Introduce  
attorneys and defendant (or ask the attorneys to).

Optional in presence of jury: “Is the Rule Requested ?”  
If so, explain the Rule and ask witnesses to step out.

- \_\_\_\_\_ 5. “You have been summoned here as prospective  
jurors in a criminal case styled: “Case of  
State of Tennessee  
vs. \_\_\_\_\_  
wherein the defendant is charged with

\_\_\_\_\_.”

\_\_\_\_\_ 6. ADMONITIONS. The jurors should now be charged with the Admonitions found in the back of this document as “Appendix Number One.” During each recess or break for lunch or the day, the jurors should be reminded of these admonitions, “All right. We’re going to take a break/recess for lunch/adjourn for the day. During this break, don’t discuss the case among yourselves or with anyone else and we’ll see you back here in \_\_\_\_\_minutes/at \_\_\_\_\_ o’clock.”

\_\_\_\_\_ 7. Prepare jury seating chart (name, occupation, community). Assign each juror a number.

\_\_\_\_\_ 8. After seating chart is completed, make a brief statement of the nature and type of action:

“Ladies and Gentlemen, as previously stated, the defendant, \_\_\_\_\_, is charged in this case with \_\_\_\_\_, etc. This is a criminal case and the events alleged to have occurred on (date) \_\_\_\_\_ at (location)\_\_\_\_\_.”

(BEFORE VOIR DIRE)

\_\_\_\_\_ 9. “Ladies and Gentlemen you will be asked questions by the attorneys. Although some of the questions may seem to be personal, they are intended to find out if you have any knowledge of this particular case, if you have an opinion that you cannot put aside or if you have had any experience in life that might cause you to identify yourself with one party or another. Jurors must be as free as humanly possible from bias,

prejudice, or sympathy and must not be influenced by preconceived ideas about the facts or the law. The parties are entitled to jurors who approach this case with open minds until a verdict is reached.

Each party has a right to request that a certain number of prospective jurors be excused. If you are excused you should not consider it a reflection on you in any way, because a lawyer who challenges you today might want you to serve on a different type of case tomorrow. The attorneys are simply engaging in a process of “educated” guessing as to whether or not you will be favorable to his/her side of the case or the other side of the case; so, do not take it personally if you are challenged. If you are challenged and therefore excused, you will need to call back \_\_\_\_\_

\_\_\_\_\_ after  
\_\_\_\_\_ p.m.

\_\_\_\_ 10. CHARGE: BEYOND A REASONABLE DOUBT

“Ladies and Gentlemen, before the attorneys begin asking you questions, I am going to charge you (give you the law) as to the State’s burden of proof which is beyond a reasonable doubt. I will charge you again with this instruction at the end of the trial:

Reasonable doubt is that doubt created by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily upon the certainty of guilt. Absolute certainty of guilty is not demanded by the law to convict of any criminal charge, but moral certainty is required, and this certainty is

required as to every element of proof needed to constitute the offense.”

(Consider giving lay charge – head on pillow)

- \_\_\_\_ 11. “State, \_\_\_\_\_, you may now voir dire the jury panel.”
- \_\_\_\_ 12. “Defense, \_\_\_\_\_, you may now voir dire the jury panel.”
- \_\_\_\_ 13. CHALLENGES ARE SUBMITTED BY ATTORNEYS.  
Keep track of the race and gender of the jurors excused by each side, in case there are any Batson objections by either the state or defense. If there are potential Batson problems do not allow any of the jurors to leave the courtroom until those problems are resolved.
- (a) Clarify with attorneys which jurors are being considered (each round). i.e., “All right. Exercise your challenges as to the 12 jurors in the box [14 jurors in the top two rows] at this time.”
  - (b) Check each name off challenge sheet or jury chart, moving other jurors into those seats.
  - (c) Keep a running total of the challenges used by each side.
  - (d) Advise each excused juror when to call back/when to return/where to go for further instructions and thank them. “Thank you for your participation.”

\_\_\_\_ 14. AFTER CHALLENGES ARE COMPLETED: Once a round is completed with no challenges exercised, inform the jury they are the ones chosen to try the case. Send them back to the jury room after the alternates, if any, are also chosen. After they have left, thank the rest of the venire and instruct them as to their future duties.

\_\_\_\_ 15. SWEAR JURY: “LADIES & GENTLEMEN, PLEASE STAND AND RAISE YOUR RIGHT HANDS.”

Choose either one of the following Jury Oaths:

1. “DO YOU SOLEMNLY SWEAR OR AFFIRM THAT IN THIS CASE NOW FOR TRIAL YOU WILL WELL AND TRULY TRY THE ISSUES JOINED AND A TRUE VERDICT RENDER ACCORDING TO THE LAW AND THE EVIDENCE, SO HELP YOU GOD?”

OR

2. “DO YOU SOLEMNLY SWEAR OR AFFIRM TO WELL AND TRULY TRY THE ISSUES THAT TRAVERSE HEREIN, JOINED BETWEEN THE STATE OF TENNESSEE AND THE DEFENDANT,  
\_\_\_\_\_, UPON A TRUE BILL OF INDICTMENT CHARGING HIM/HER WITH THE OFFENSE[S] OF \_\_\_\_\_  
\_\_\_\_\_, A TRUE DELIVERANCE MAKE, AND A TRUE VERDICT RENDER, ACCORDING TO THE LAW AND EVIDENCE, SO HELP YOU GOD?”

“PLEASE BE SEATED.”

If the jury is to be sequestered, as soon as the jury is sworn, administer the following oath to the court officers who will be with the jury:

“DO YOU SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL TAKE CHARGE OF THIS JURY, KEEP THEM SEPARATE AND APART FROM ALL PERSONS, NOT ALLOW THEM TO COMMUNICATE IN ANY MANNER WITH ANYONE, NOR ANYONE WITH THEM, AND AS IT CONCERNS THE MATTER ON TRIAL NOR WITH YOU, NOR YOU WITH THEM, AND THAT YOU WILL DELIVER THEM SAFELY INTO COURT, SO HELP YOU GOD?”

\_\_\_\_ 16. AFTER THE JURY IS SWORN, BUT BEFORE THE INDICTMENT IS READ:

Give the jury some basic instructions on procedures and law consistent with T.P.I. – Crim. 1.00, “Preliminary jury instructions.”

**PRELIMINARY JURY INSTRUCTIONS**

Before we begin the trial, I would like to tell you a little bit about what will happen during the course of the proceedings. I want to describe basically how the trial will be conducted and what the attorneys, jurors, and judge will be doing over the course of the trial. At the end of the trial, I will give you more detailed instructions on how you are to go about reaching your decision, but now I simply want to explain how the trial will proceed.

The/Each defendant has been charged by the State of Tennessee with a violation of state law. The document containing the charge(s) is referred to as an indictment. An indictment is the formal accusation charging a defendant with a crime and is not evidence of anything.

The defendant(s) is/are charged with \_\_\_\_\_ . The crime(s) is/are defined as \_\_\_\_\_  
\_\_\_\_\_.

### OPTIONAL

**The essential elements of the offense(s) are:** \_\_\_\_\_  
\_\_\_\_\_.

The/Each defendant has pled not guilty to the charge(s). He/She is presumed innocent and may not be found guilty by you unless, after hearing all of the evidence, attorneys' arguments, and instructions of law, the 12 jurors seated in this case unanimously find that the State has proven its case beyond a reasonable doubt.

The first step in the trial will be the attorneys' opening statements. The State will tell you about the evidence it intends to present so that you will have an idea what the State's case is about. This opening statement is not evidence. Its only purpose is to help you understand what the evidence will be and what the State will attempt to prove. After the State's opening statement, an attorney for the defendant(s) may make an opening statement if he or she should so choose. Again, statements of attorneys are not evidence.

Next will be the State's case-in-chief, in which the State will present its evidence. The evidence in the case will most likely consist of physical exhibits, documents, and the testimony of witnesses. The witnesses will testify by answering questions asked by the attorneys.

After the State completes its case-in-chief, the defense will be given an opportunity to present evidence through witnesses and exhibits. A defendant is not required to put on any evidence or to testify. The burden is always on the State to convince you that the defendant is guilty beyond a reasonable doubt. If the defense does present proof, the State may then put on what is known as "rebuttal" proof. After the State's rebuttal, the defense may put on further proof.

After you have heard all of the evidence, the State and the defense may present final arguments. I previously told you that opening statements by the attorneys are not evidence. Likewise, closing arguments are not evidence. In closing arguments, the parties will attempt to summarize their cases and help you understand the evidence that was presented.

The final part of the trial occurs when I instruct you about the rules of law that you are to use in reaching your verdict. After you hear my instructions, I will [select and excuse] [excuse] the alternate juror(s), and the final 12 jurors will leave the courtroom together as a group. You will then begin your deliberations to make a decision in the case. Your deliberations will be secret, and you will not be required to explain your verdict to anyone.

Now that I have described in outline form the trial itself, let me explain the functions that you and I will perform during the trial. I will decide which rules of law apply to the case. My decisions will be reflected in my responses to questions and objections the attorneys raise during the trial as well as in my final jury instructions. It is your job to determine what the facts are from the evidence. You must then apply the law in my instructions to the facts, and from that application you will arrive at a verdict.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the entire case. Keep in mind that the defendant is presumed to be innocent of the charge(s) against him/her. Thus, a defendant is not required to prove his/her innocence, to have his/her attorney make any statements or arguments, or to produce any evidence.

You, as jurors, must decide whether the State has proven beyond a reasonable doubt that the defendant [each of the defendants] has committed the crime(s) charged in the indictment. **(OPTIONAL: You must consider the evidence in each Count and each defendant separately.)** You must base that decision only on the evidence in the case and my instructions about the law. An important part of your job will be making judgments about the testimony of the witnesses who testify.

You should decide whether you believe what each person says and the importance of his or her testimony.

In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a memory of the events he or she testified about? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly?

Did a witness' testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of each witness' testimony.

In making up your mind and reaching a verdict, do not base any decisions on the fact that there were more witnesses on one side than on the other. Likewise, do not reach a conclusion on a particular point just because more witnesses testified for one side on that point. Your job is to think about the testimony of each witness you heard and decide the facts.

Some of you have probably heard the terms "circumstantial evidence" and "direct evidence." These are the two basic types of evidence that exist in law. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case. Keep in mind that you may consider both kinds of evidence, which are considered to be of equal value in the law.

The Court will not provide you with a transcript of the testimony at the end of the trial. Therefore, you must listen very carefully to the testimony. Each of you will be allowed to take notes during the trial for your own use during your deliberations. You are not required to take notes. Independent memory can be as accurate as written notes. You will be provided with paper and a pen if you decide to take notes.

During the course of the trial, you should not talk with any witness, defendant, or attorney involved in this case. Please do not talk with them about any subject whatsoever. You may see them

in the hallway, on an elevator, or at some other location. If you do, perhaps the best standing rule is not to say anything.

You also should not discuss this case among yourselves until I instruct you on the law and you start deliberating at the end of the case. It is important that you wait until all of the evidence is received and you have heard all of my instructions on the rules of law before you deliberate among yourselves.

During the course of the trial, you will receive all of the evidence you may properly consider to decide the case. Because of this, you should not attempt to do any research on your own or gather any information on your own that you think might be helpful. Do not engage in any outside reading, visit any places mentioned in the case, or try to learn about the case outside of this courtroom in any other manner.

I do not know if there will be any media reports in the newspapers, on TV, or on the radio about this particular case. If there are, you are not permitted to read, watch, or listen to those reports. You, as jurors, must base your decision solely on the evidence you hear in the courtroom.

At times during the trial, an attorney may make an objection to a question that is asked by another attorney or to an answer that a witness gives. This simply means that the attorney is requesting that I make a decision on a particular rule of law. Do not draw any conclusions from the fact that an objection was made or from my ruling on that objection. My rulings only relate to the legal questions that I must determine and should not influence your thinking.

If I sustain an objection to a question, the witness will not be permitted to answer the question. Do not attempt to guess what the answer might have been, had the witness been permitted to give it. Similarly, if I tell you not to consider a particular statement that was made, you should put that statement out of your mind and you may not refer to that statement in your later deliberations.

**INSERT OPTION A**

**You may not ask questions. It is the responsibility of the attorneys to present the evidence. You must decide the case on the evidence presented to you.**

**OR**

**INSERT OPTION B**

**If you have a question about the testimony of a witness, write it down and present it to a court officer at the end of the witness' testimony. The court officer will then present the question to me. After consultation with the attorneys, I will decide whether the question may be asked of the witness.**

**(OPTIONAL)**

**During the course of the trial, I may ask a question or two of a witness. If I do, that does not indicate that I have any opinion about the facts in the case or that I have any opinion with respect to that witness' credibility.**

Finally, during the course of the trial, I may have to interrupt the proceedings to confer with the attorneys about the rules of law that should apply. In some cases, we may have bench conferences in the courtroom outside of your hearing. And in some instances, I may ask you to retire to the jury room while we discuss a matter out of your presence. I will try to avoid as many of these interruptions as possible. We will try to resolve some of these things in the morning before we get started. I ask your patience because these interruptions are necessary points in the trial where we have to resolve legal issues. In the long run, they save time for all of us.

If after your deliberations you find the defendant(s) guilty of any offense, the Court will set the punishment at a separate sentencing hearing. The jury will not be involved in setting the punishment. [Modify for LWOP and Death Penalty.]

This completes my opening comments to you. We will now proceed with the reading of the indictment.

\_\_\_\_ 17. INDICTMENT:

- (a) DA or ADA reads the Indictment
- (b) “How does the defendant plead to the [that] indictment [count]?”

[If more than one indictment or count, you may wish to ask this after each indictment or count is read.]

**MAKE SURE THE PROSECUTOR INCLUDES THE DATE THE INDICTMENT WAS FOUND TO BE A TRUE BILL**

\_\_\_\_ 18. Opening Statements:

1. Does the State wish to make opening statement?
2. Does the Defense wish to make an opening statement?

Limiting time on opening statements may be unconstitutional in a criminal case, unless both sides agree to a time limit, or one side is being repetitive. Neither side is allowed to be persuasive, or to comment on anything other than what they expect the proof to show.

\_\_\_\_ 19. Testimony: “State, you may call your first witness.”

**Be sure each witness is sworn!**

“Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?”

Direct Examination

Cross-Examination

Re-Direct Examination

Re-Cross Examination

[Depending on time of testimony - "Does anyone need a recess?"

"Call your next witness."

- \_\_\_\_20. When the State rests its case in chief, ask the jury to step out . [You must entertain a Motion for Judgment of Acquittal, inquire about a Momon hearing, and allow the Defense to talk with the Defendant and decide whether or not to put on proof. If there will be no proof, you may wish to go over the jury instructions with the attorneys and let them prepare for closing argument before having them rest in front of the jury.]

"Members of the jury, we have a matter we need to take up outside your presence. Take a short break in the jury room. Remember the admonitions the court gave you earlier. Don't discuss the case among yourselves or anyone else, and we'll be back with you in a few minutes."

### **JURY IS OUT**

"Are there any motions at this time?"

- \_\_\_\_21. Defense Motion for Judgment of Acquittal.

Court rules on this motion taking the State's case at it's best light.

\_\_\_\_22. While Jury still out, discuss the following:

(a) Length of defense proof (number of witnesses). Remind defense counsel that a Momon hearing is required immediately prior to the defendant's testimony or the decision to rest without the defendant testifying. If the defense is putting on no proof at all, have the hearing at this time. See Appendix 5 for the requirements of the Momon hearing. Note that the judge should only ask questions if the defense attorney fails to ask the right ones, or does not know what a Momon hearing is. The hearing cannot be waived.

(b) Can any jury instructions be agreed on now?

Note: If defense has no witnesses, or very few, agree on jury instruction, NOW – to avoid jury in-and-out.

\_\_\_\_23. Defense presents case

Direct Examination	(Defense)
Cross Examination	(State)
Re-Direct Examination	(Defense)
Re-Cross Examination	(State)

\_\_\_\_24. Does the State wish to present any **REBUTTAL**?

If yes – call witness.

\_\_\_\_25. Defense Sur-rebuttal (only if State presents rebuttal.)

\_\_\_\_26. AFTER ALL PROOF IS CONCLUDED

The trial judge should excuse the jury again, stating ‘Ladies and Gentlemen, you have now heard all the proof in the case. We are now going to take a short break while I go over your jury instructions with the attorneys and let them have a few minutes to prepare their closing arguments, if any. The State may give a closing argument, and the Defense may give a closing argument. If the Defense gives a closing argument, the State will be allowed to give a final rebuttal argument if it wishes. This is because the State has the burden of proof in this case. During this break, even though you have heard all the proof, do not discuss the case among yourselves or with anyone else. We will be back with you in just a few minutes/at \_\_\_\_\_ o'clock.’

Go over the jury instructions with the attorneys and decide whether the jury will be charged before or after closing argument. By statute, the Defense should file a written motion for any lesser included offenses it wishes charged, and any special instructions by either side should be submitted in writing. You are encouraged to charge the jury prior to argument, and if time permits, it would be helpful to give the jury and/or the attorneys a copy of the jury instructions to follow as the instructions are being read.

\_\_\_\_27. JURY CHARGE/CLOSING ARGUMENT (Time Limits?)

Ladies and Gentlemen of the jury, the Court will now instruct you as follows:

### CHARGE THE JURY.

After the instructions have been read to the jury, ask “Does the State wish to give a closing argument?” After it has been made ask “Does the Defense wish to give a closing argument?” After the Defense argument ask “Does the State wish to give a rebuttal argument?”

The trial judge should remember to ask the jurors, attorneys and other court personnel if anyone needs a break if the charge or arguments are lengthy.

If the judge feels it necessary to set time limitations on closing arguments, the beginning and ending times should be recorded here.

State

Defense

State—final closing

- \_\_\_\_ 28. If there are alternates, ask “Is everyone doing OK?” [If undesignated alternates, draw from box]
- Excuse alternates, tell them not to go with the jury into deliberation room. “Remain here in

your seats, [or, “Have a seat in the back of the courtroom] and I will give you further instructions

after the jury leaves to begin deliberations. If you have any possessions in the jury room the deputy/bailiff/court officer will get them for you once the jury is in place and all the exhibits have been taken to the jury room.”

\_\_\_\_29. SWEAR COURT OFFICER/BAILIFF. OATH:

It is not necessary to swear court officers unless the jury is sequestered. Some judges always do. If the jury is sequestered, the court officer should have been sworn immediately after the jury is sworn. (See # 17, above.)

“Please state your name for the record.

Do you solemnly swear or affirm that you will:

1. Take charge of this jury, and
2. Keep them separate and apart from all others, and
3. Not allow them to communicate with any other people, and
4. Bring them back at the appointed time, so help you God?”

“Ladies and gentlemen of the jury, if a question arises during deliberations and you need further instructions, please print your question on a sheet of paper, knock on the door of the jury room [or , turn on

the jury light], and give the question to my court officer. Again, do not discuss the case with the officer.

We will read your question and I may call you back into the courtroom to try to help you. Please understand that I may only answer questions about the law and cannot answer questions about the facts.”

\_\_\_\_30. INSTRUCTIONS TO THE BAILIFF, IF NEW.

- WHERE DOORS ARE TO BE LOCKED.
  - SIT AT THE DOOR (ONLY ONE ENTRANCE).
  - BREAKS AND PROVISIONS FOR SMOKERS.
- IF JURORS HAVE QUESTIONS, SEND NOTE BY BAILIFF.
- JURORS SHALL NOT ASK COURT OFFICER/BAILIFF ANY QUESTIONS ABOUT THE TRIAL OR PROCEEDINGS.
- TELL THE COURT OFFICER NOT TO DISCUSS ANYTHING REGARDING THE CASE OR PROCEEDINGS WITH THE JURORS.

\_\_\_\_31. “LADIES AND GENTLEMEN, YOU MAY NOW RETIRE TO DELIBERATE.”

Record Time-Out \_\_\_\_\_

\_\_\_\_32. JURY SENT WORD THEY ARE READY.

Record Time-Back In \_\_\_\_\_

Round up attorneys, defendant, court reporter and clerk.

\_\_\_\_33. GO ON RECORD BEFORE JURY COMES IN:

“Bring in the jury.”

\_\_\_\_34. COURT RECEIVES THE VERDICT:

“I hear the jury has reached a verdict. Is this correct?”

First the judge should examine the verdict. If it is in an incorrect form it is better that the judge ask the jury to retire to correct it before it is read. Sometimes more than one form is filled out.

“I’m sorry, but the verdict is not one [contains more than one] of the verdict forms given you in your jury instructions, and so I’m going to have to ask you to continue your deliberations at this time.”

When proper verdicts are returned, the judge should say the following:

1. “May I see the verdict form/court jacket please?”
2. “Ladies and gentlemen, would you please

identify the presiding juror  
[foreperson].”

3. “Have you reached a verdict in this case?”

4. “What is your verdict?” or  
“The verdict reads as follows:  
\_\_\_\_\_.”

5. “Did you agree on a fine?”  
[unnecessary if the fine is already included in  
the verdict form]

6. “Do each of you agree that is  
your verdict?”  
[Optional: “If so, please raise  
your right hand.”]

7. “Let the record reflect that  
each member of  
the jury has raised his or her  
hand and that there are no dissenting votes” or  
ask “Does anyone say this is not your verdict?”

8. If you use verdict forms, verify with attorneys  
the content of forms, and mark them as the next  
numbered exhibit.

\_\_\_\_35. Consider charging the “Post Trial Instructions to Jury”  
found in “Appendix Number Four” of this checklist.

\_\_\_\_36. DISMISS THE JURY.

“THANK YOU. THIS SYSTEM WORKS

BECAUSE OF CITIZENS LIKE YOU.  
THANKS ON BEHALF OF THE COURT,  
ATTORNEYS, COURT PERSONNEL AND THE  
CITIZENS OF THIS COUNTY FOR YOUR  
SERVICE TO THE COMMUNITY.”

\_\_\_\_ 37. IF THE JURY IS HUNG, CONSIDER  
RE-INSTRUCTING AS TO T.P.I. – CRIM. 43.02. IF STILL  
HUNG, YOU MUST QUESTION THE JURY USING THE  
PROCESS DESCRIBED IN TCRP 31(d)(2) FOR A HUNG  
JURY.

AFTER JURY FILES OUT

\_\_\_\_ 38. “DEFENDANT PLEASE RISE”

“A JURY OF YOUR PEERS HAS FOUND  
YOU (GUILTY OF \_\_\_\_\_),  
(NOT GUILTY OF \_\_\_\_\_),

(Dismiss Defendant if not guilty.)

AND HAVE RETURNED A FINE OF  
\$\_\_\_\_\_.

THIS COURT AGREES WITH AND  
APPROVES  
THE JURY’S VERDICT AS THE 13<sup>TH</sup> JUROR.

\_\_\_\_ 39. DISCUSS BOND AND SENTENCING  
HEARING DATE. (IF A FELONY: ORDER A  
PRE-SENTENCE REPORT.)

\_\_\_\_40. IF A MISDEMEANOR: “DOES ANYONE OBJECT TO SENTENCING THE DEFENDANT NOW?” “DO BOTH SIDES WAIVE A PRE-SENTENCE REPORT?”

\_\_\_\_41. ADJOURN COURT.

ADMONITIONS

There are several rules concerning your conduct during the jury selection process, the trial and during recesses that you should keep in mind.

First, you should not conduct your own private investigation into this case. For example, do not visit the scene of an alleged incident, try to read any textbooks or articles concerning any issue in this case, or consult any other source of information.

If you were to do that, you would be getting information that is not evidence in this case. You must decide this case only on the evidence and law presented to you during the trial. Any juror who receives any information about this case other than that presented at trial must notify the court immediately.

Second, you cannot discuss the case either among yourselves or with anyone else during the trial. You must keep an open mind until you have heard all the evidence, my final instructions and the attorneys' closing arguments. Any discussions before you retire to deliberate would be premature and improper.

Third, you cannot allow any other person to discuss the case with you or in your presence. If anyone does attempt to do so, report this fact to the Court immediately without discussing the incident with any of the other jurors.

Fourth, do not try to speak to any of the attorneys, parties or witnesses in this case, even for the limited purpose of saying good morning. They are also instructed not to talk to you and must report any contact with you. In no other way can all the parties feel assured of your absolute impartiality.

**Juror Questioning of Witness During Trial**

Ladies and Gentlemen of the jury, during this trial you will hear testimony from various witnesses. If after the witness has completed testifying you would like to ask the witness a question, you may do so under the following conditions.

You should write the questions on a blank piece of paper, fold the paper, then hand it to the bailiff who will give it to me.

The bailiff will provide you with paper and a pen if you have none.

Your question should be anonymous. Please do not sign it or in any way indicate that it is your question. I will decide whether to ask the witness all or part of your question.

For reasons that you need not be concerned with, I may decide not to ask a witness a juror's question or ask only part of the question. Please don't be offended or even bothered if this happens. It may have nothing to do with the quality of the question. The law is quite complex and contains many technical rules that the lawyers and I must follow. Sometimes one of your questions may deal with topics or be phrased in a way that the law does not allow to be part of a trial. Or perhaps the question deals with a topic that will be covered later in the proceeding.

Accordingly, if I do not ask all or part of your question, or if I change the wording of the question, please do not draw any inference from this decision which may be based on legal principles I must follow or on facts that are not part of this trial.

Do not hold my decision against any party in this case.

POST TRIAL INSTRUCTIONS TO JURY

Now that you have concluded your service on this case, I thank you for your patience and conscientious attention to your duty as jurors. You have not only fulfilled your civic duty, but you have also made a personal contribution to the ideal of equal justice for all people.

You may have questions about the confidentiality of the proceedings. Because the case is over, you are free to discuss the case with any person you choose. However, you do not have to talk to anyone about the case if you do not want to. If you tell someone you do not wish to talk about it and they continue to bother you, let the court know, for we can protect your privacy. If you do decide to discuss the case with anyone, I would suggest you treat it with a degree of solemnity, so that whatever you say, you would be willing to say in the presence of your fellow jurors or under oath here in open court in the presence of all the parties.

Also, if you do decide to discuss the case, please respect the privacy of the views of your fellow jurors. Your fellow jurors fully and freely stated their opinions in deliberations with the understanding they were being expressed in confidence.

Again, I thank you for your willingness to give of your time away from your accustomed pursuits and faithfully discharge your duty as jurors. You are now excused.

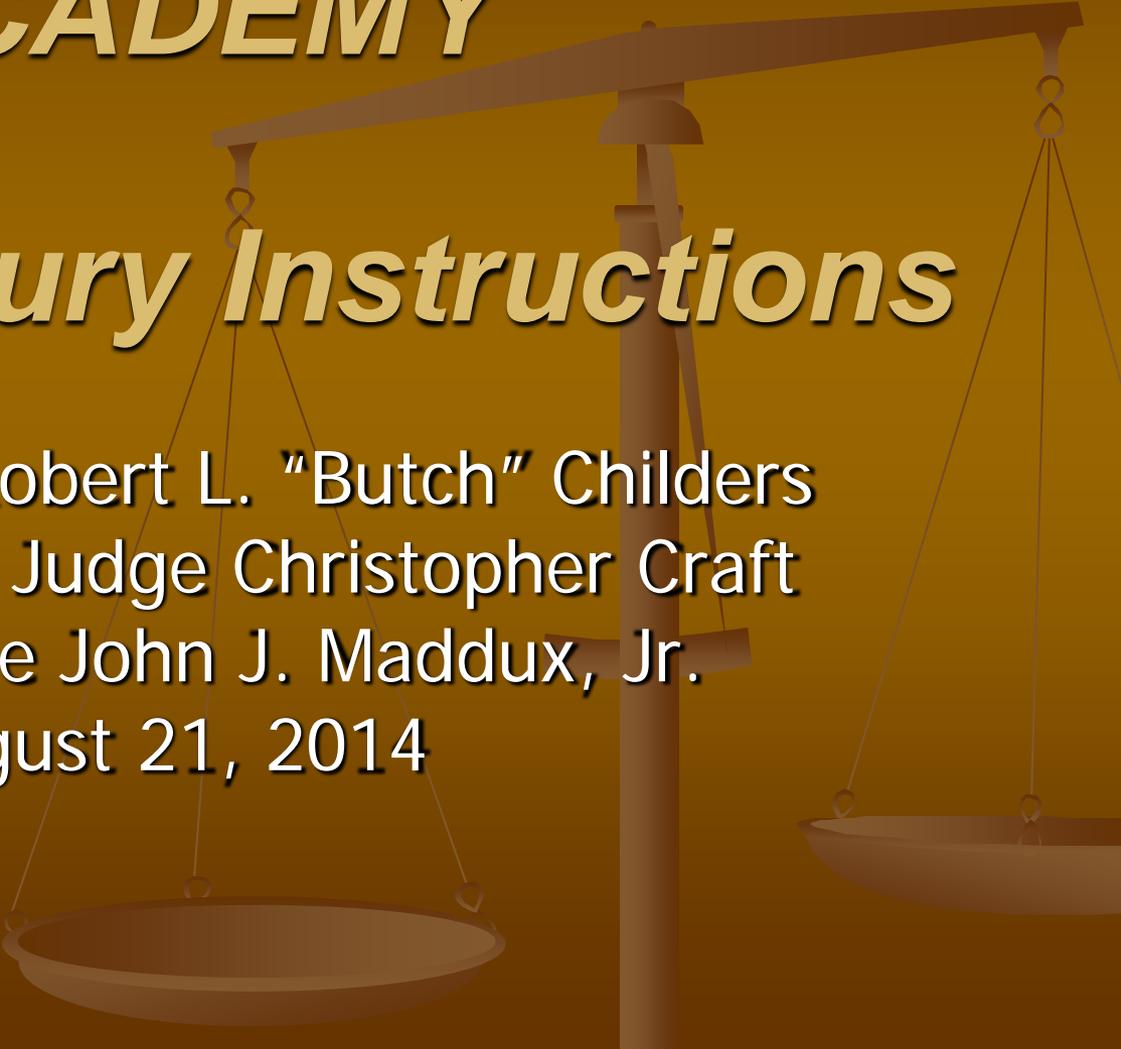
(Momon v. State, 18 S.W.3d 152 (Tenn. 1999))

“At any time before conclusion of the proof, defense counsel shall request a hearing, out of the presence of the jury, to inquire of the defendant whether the defendant has made a knowing, voluntary, and intelligent waiver of the right to testify. This hearing shall be placed on the record and shall be in the presence of the trial judge. Defense counsel is not required to engage in any particular litany, but counsel must show at a minimum that the defendant knows and understands that:

- (1) the defendant has the right not to testify, and if the defendant does not testify, then the jury (or court) may not draw any inferences from the defendant’s failure to testify;
- (2) the defendant has the right to testify and that if the defendant wishes to exercise that right, no one can prevent the defendant from testifying.;
- (3) the defendant has consulted with his or her counsel in making the decision whether or not to testify; that the defendant has been advised of the advantages and disadvantages of testifying; and that the defendant has voluntarily and personally waived the right to testify.”

Defense counsel is generally in the best position to voir dire the defendant concerning a waiver of the right to testify, and the hearing outlined above will avoid any possible perceived pitfalls of mandating direct questioning by the trial court itself. Since the right to testify is the mirror image of the right to remain silent, there is an inherent risk that a trial judge participating in the questioning may cast an unflattering light on the right not to testify. See Commonwealth v. Hennessey, 502 N.E. 2d 943, 947 (Mass. App. Ct. 1987). Under normal circumstances, therefore, the trial judge should play no role in this procedure, unless the judge believes there is evidence that the defendant is not making a valid waiver of the right to testify. In such a case, the trial judge is obliged to question the defendant directly to the extent necessary to ensure a valid waiver.”

# *TENNESSEE JUDICIAL ACADEMY*



## *Crafting Jury Instructions*

Circuit Judge Robert L. "Butch" Childers

Criminal Court Judge Christopher Craft

Circuit Judge John J. Maddux, Jr.

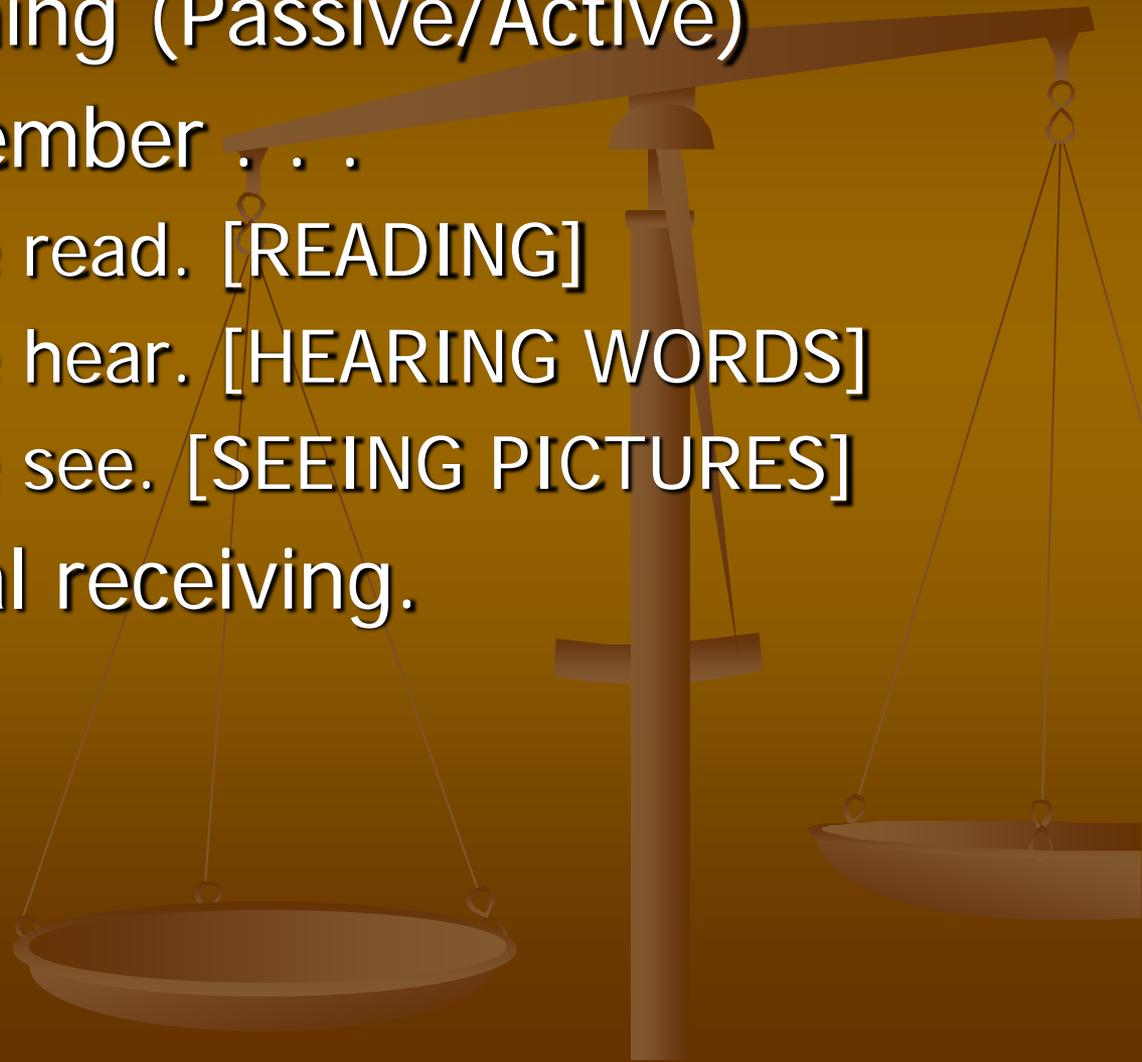
August 21, 2014

# History of Pattern Jury Instructions

- TPI Civil 1<sup>st</sup> edition 1978, 2d ed. 1988
- 3d ed. 1997 (*McIntyre v. Balentine comparative fault*), *comprehensive changes*
  - Clarify, simplify, gender neutral, plain English
- Beginning 2004, new softbound edition each year. [2004 was 4<sup>th</sup> ed., 2008 is 8<sup>th</sup> ed., etc . . .]
- Citation to "T.P.I. Civil No. \_\_\_\_\_ (\_\_\_\_ Edition)"

# Juror Comprehension

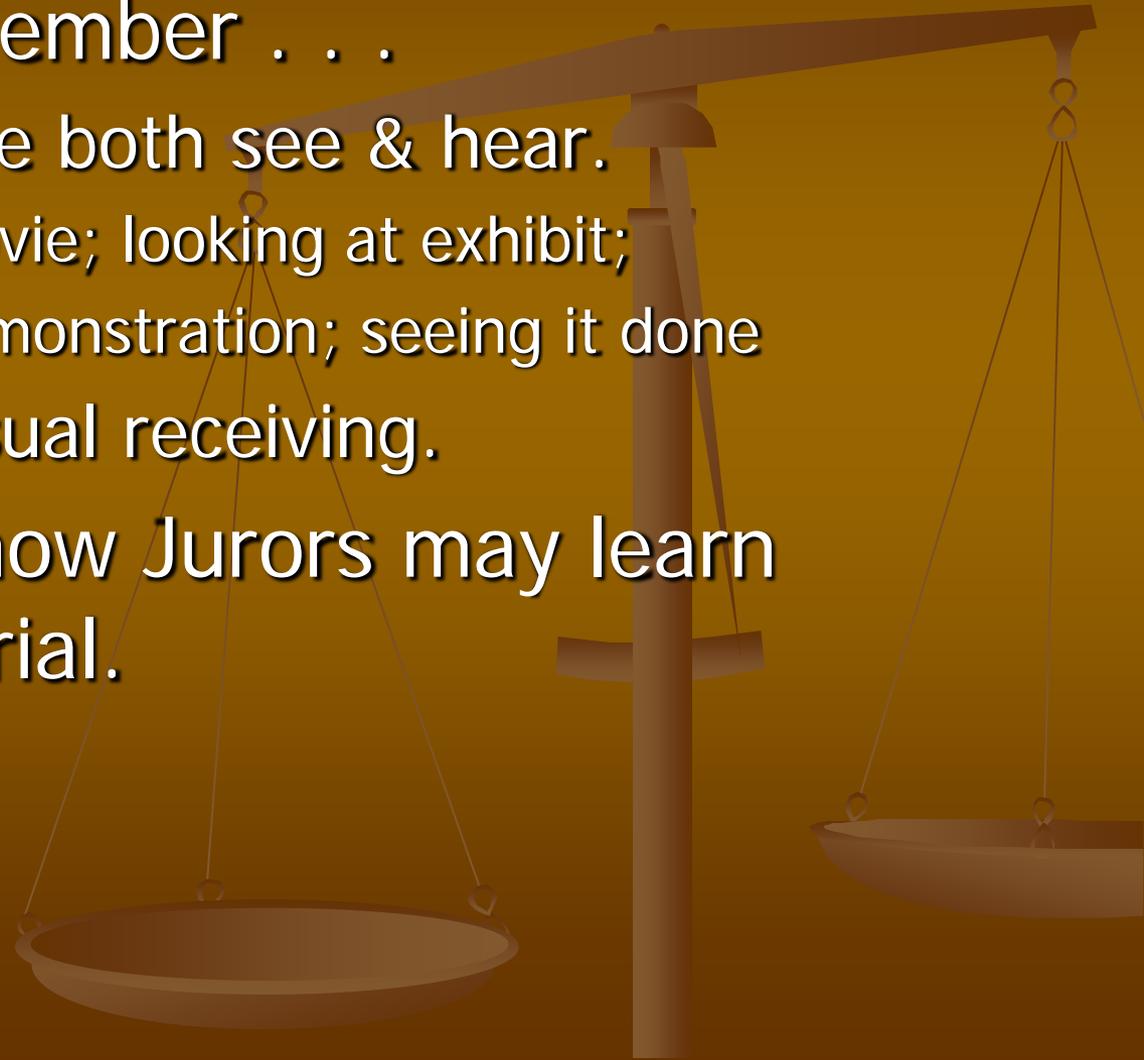
- Methods of learning (Passive/Active)
- We tend to remember . . .
  - 10% of what we read. [READING]
  - 20% of what we hear. [HEARING WORDS]
  - 30% of what we see. [SEEING PICTURES]
- All Passive Verbal receiving.



# Methods of Learning [Passive]

- We tend to remember . . .
  - 50% of what we both see & hear.
    - Watching a movie; looking at exhibit;
    - Watching a demonstration; seeing it done

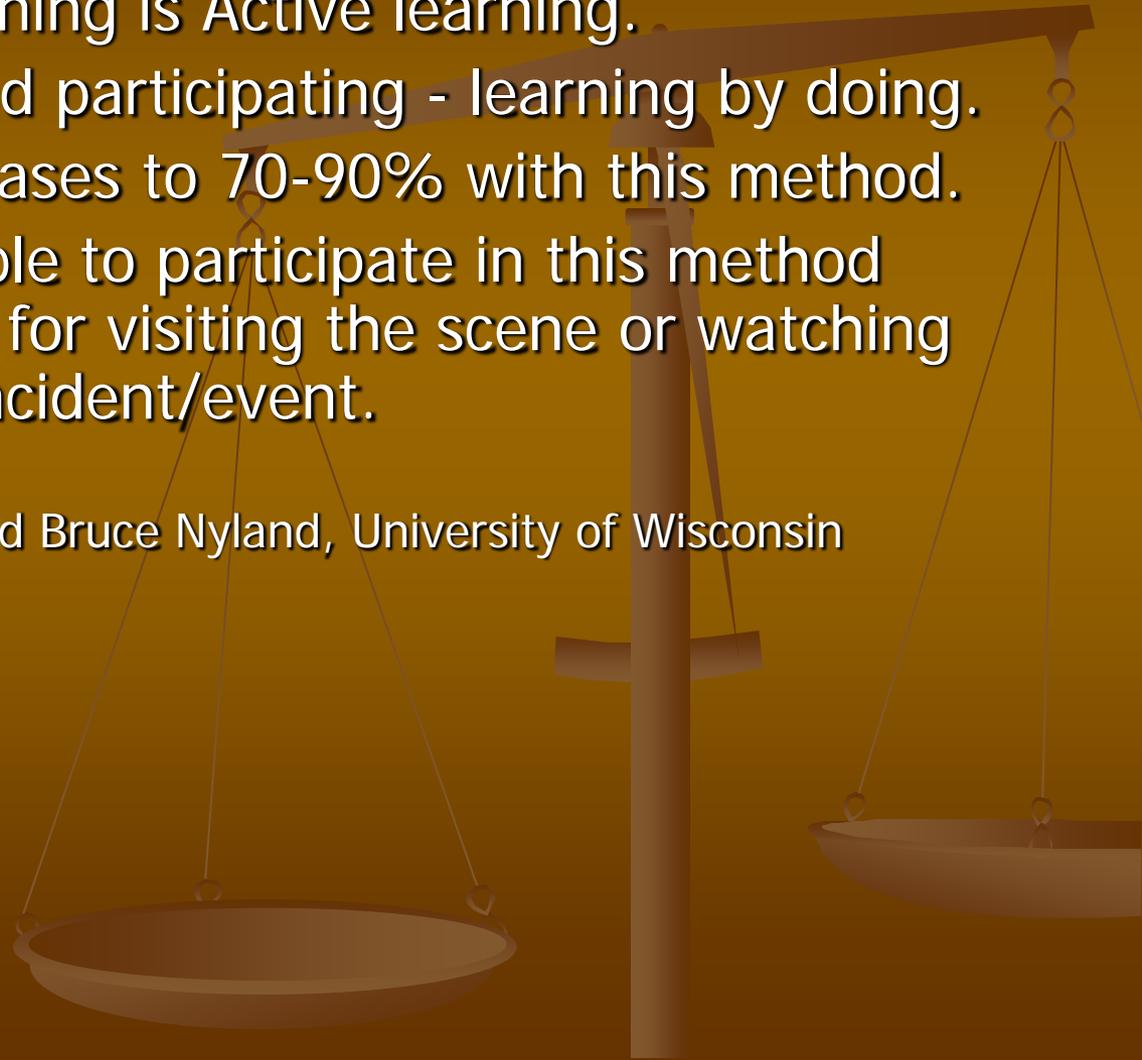
This is Passive Visual receiving.
- All of above is how Jurors may learn information in trial.



# Methods of Learning [Active]

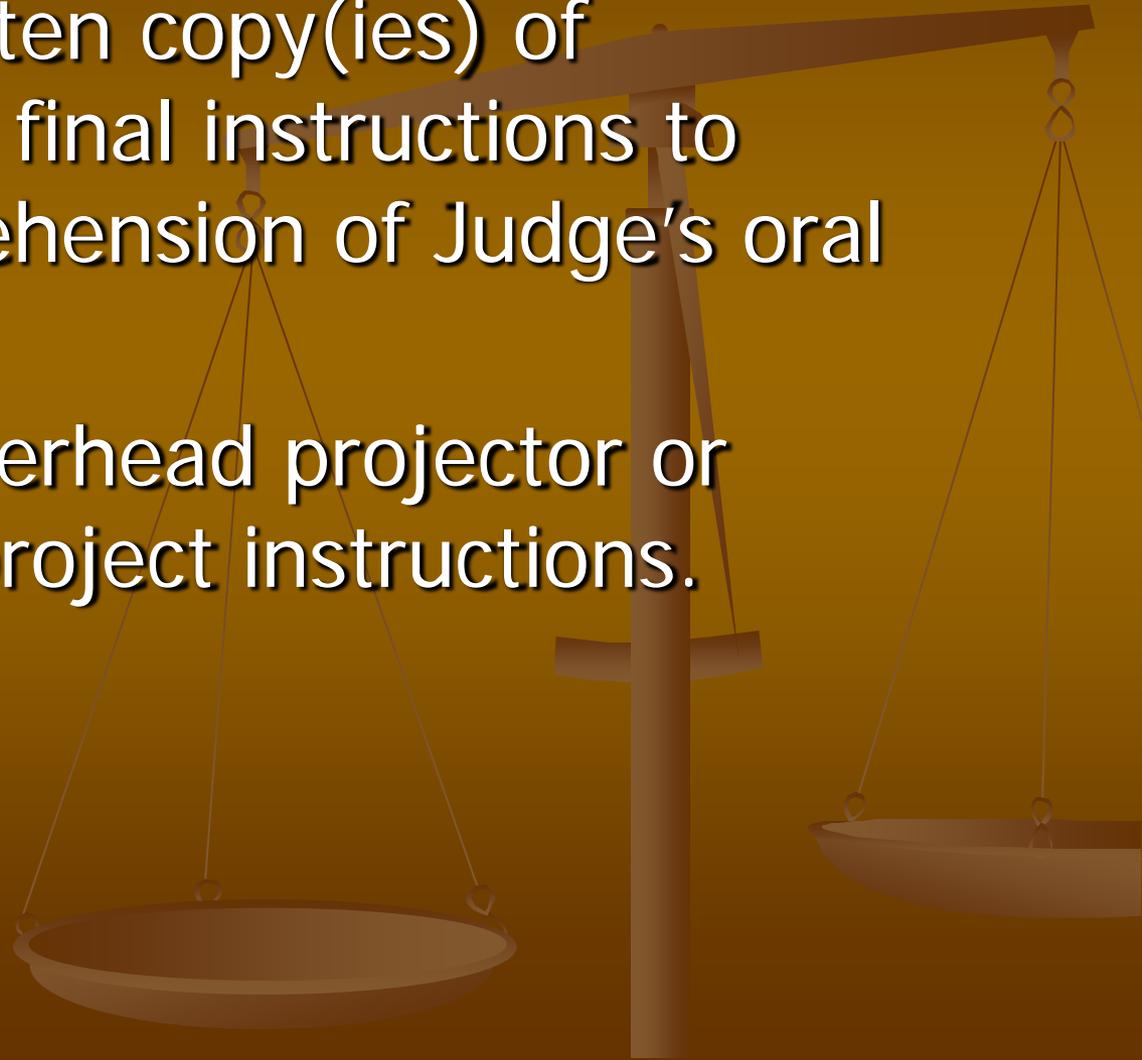
- Other method of learning is Active learning.
- Involves receiving and participating - learning by doing.
- Comprehension increases to 70-90% with this method.
- Jurors generally unable to participate in this method during a trial, except for visiting the scene or watching video simulation of incident/event.

Source: Edgar Dale and Bruce Nyland, University of Wisconsin

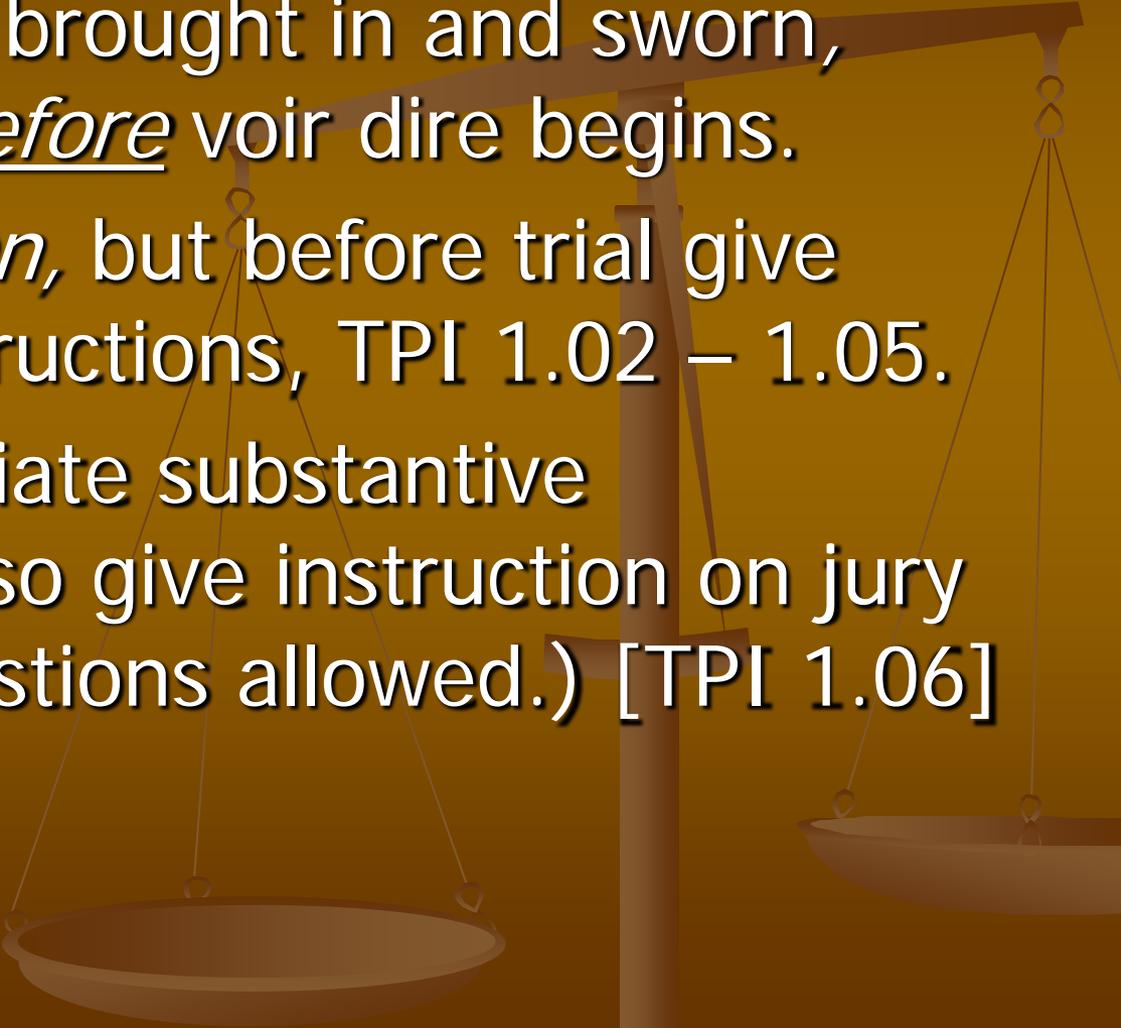


# The Point?

- Give Jurors written copy(ies) of preliminary and final instructions to improve comprehension of Judge's oral instructions.
- Can also use overhead projector or PowerPoint to project instructions.

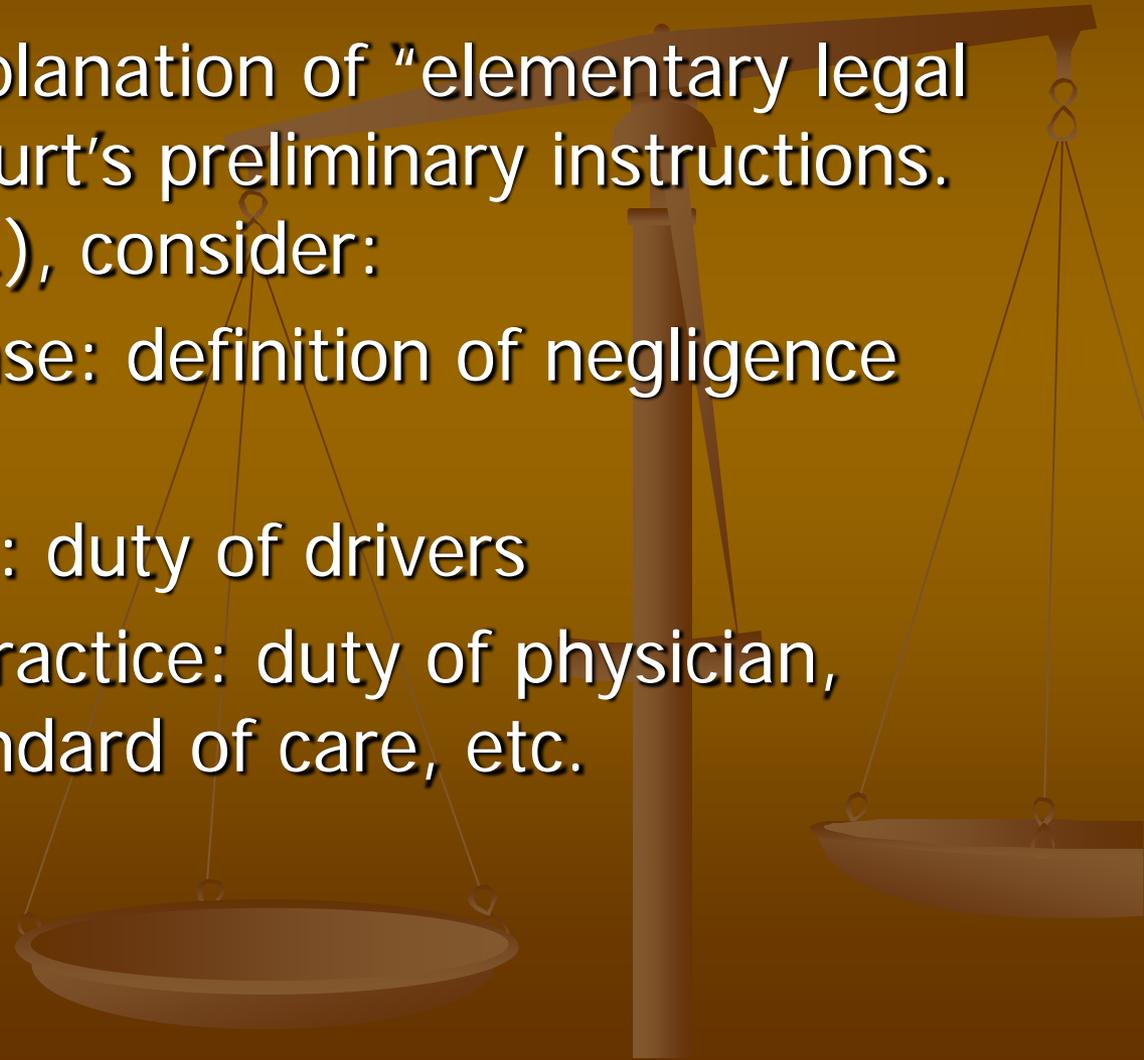


# Preliminary Jury Charge

- After jury panel brought in and sworn, give TPI 1.01 before voir dire begins.
  - After jury chosen, but before trial give Preliminary Instructions, TPI 1.02 – 1.05.
  - Include appropriate substantive instructions. (Also give instruction on jury questions if questions allowed.) [TPI 1.06]
- 

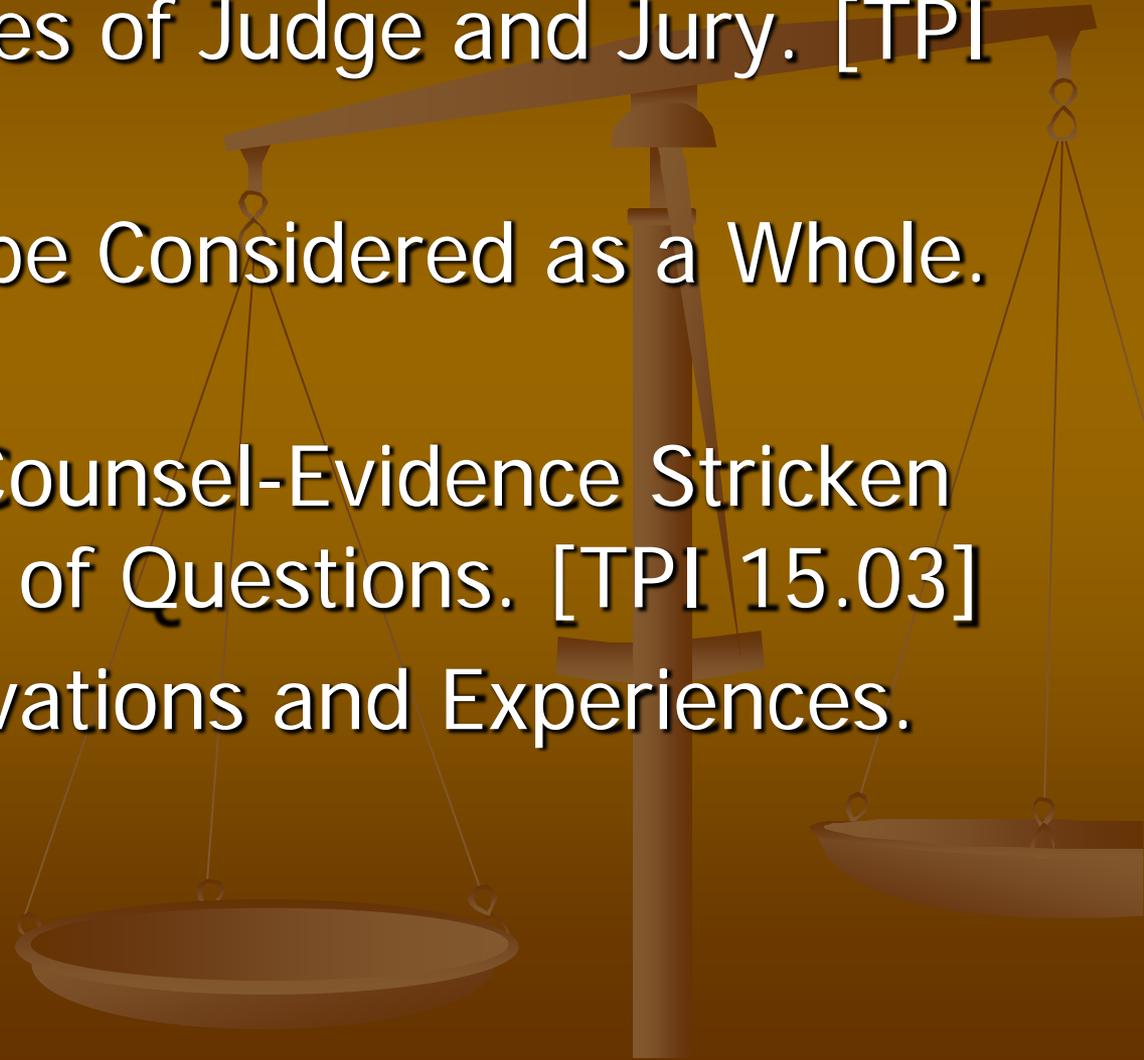
# T.R.C.P. 51.03 : Substantive Preliminary Instructions

- Must include explanation of "elementary legal principles" in Court's preliminary instructions. T.R.C.P. 51.03(1), consider:
  - In negligence case: definition of negligence and causation.
  - In auto accident: duty of drivers
  - In medical malpractice: duty of physician, determining standard of care, etc.



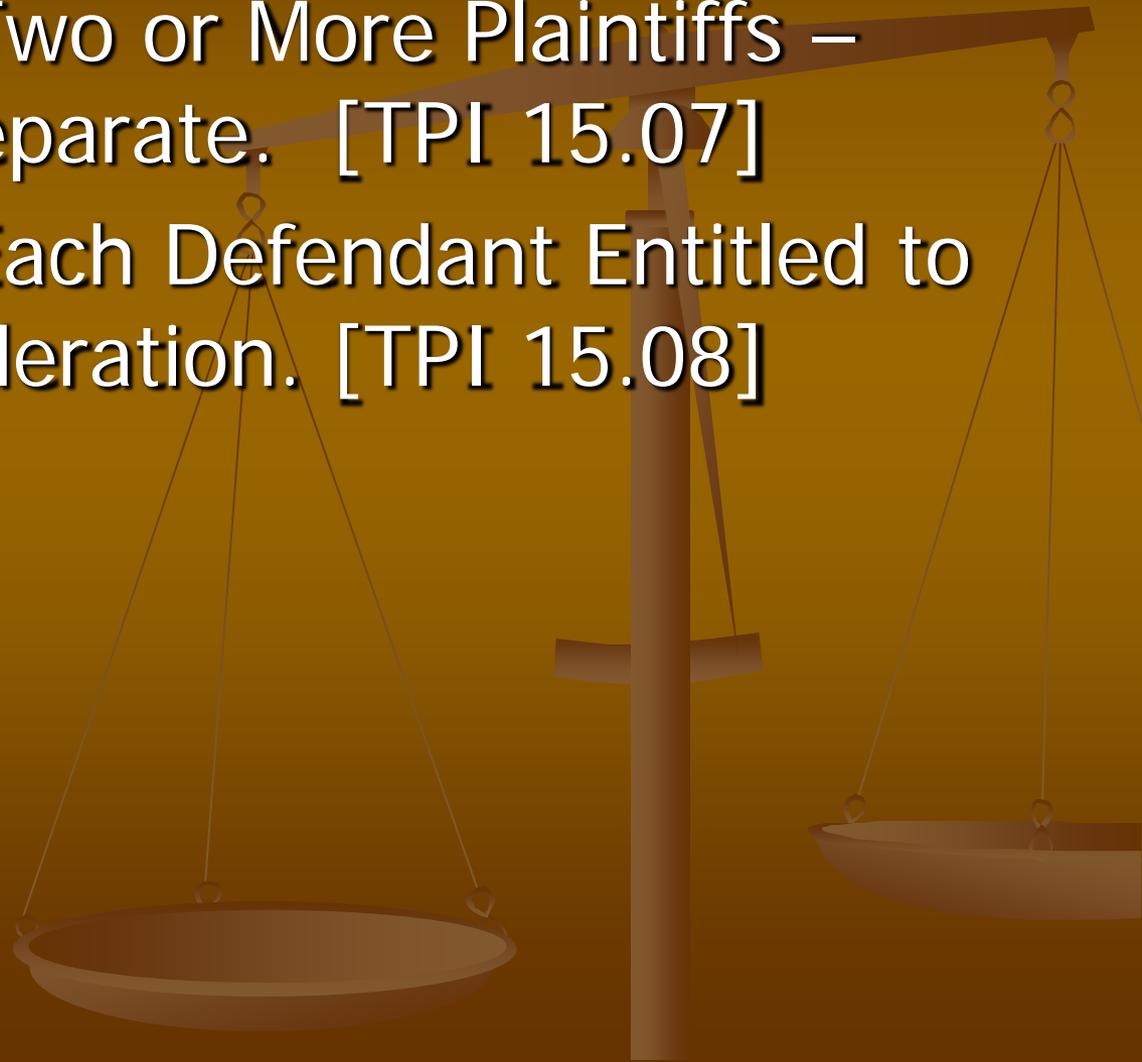
# Organization of Final Charge – (1) Beginning

- Respective Duties of Judge and Jury. [TPI 15.01]
- Instructions to be Considered as a Whole. [TPI 15.02]
- Statements of Counsel-Evidence Stricken Out-Insinuation of Questions. [TPI 15.03]
- Ordinary Observations and Experiences. [TPI 15.04]



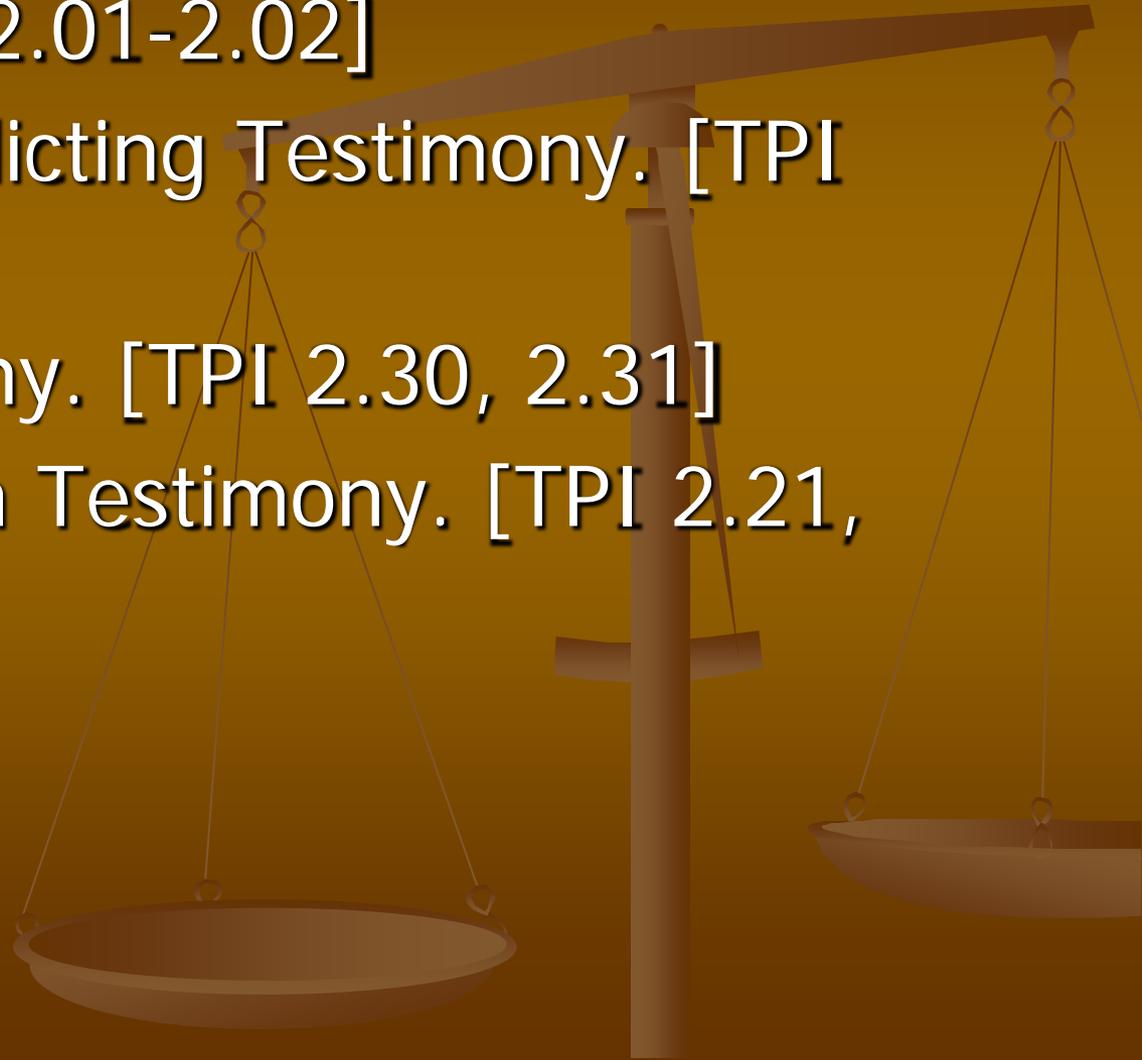
# Final Charge – (1) Beginning (cont.)

- (If applicable) Two or More Plaintiffs – Case of Each Separate. [TPI 15.07]
- (If applicable) Each Defendant Entitled to Separate Consideration. [TPI 15.08]



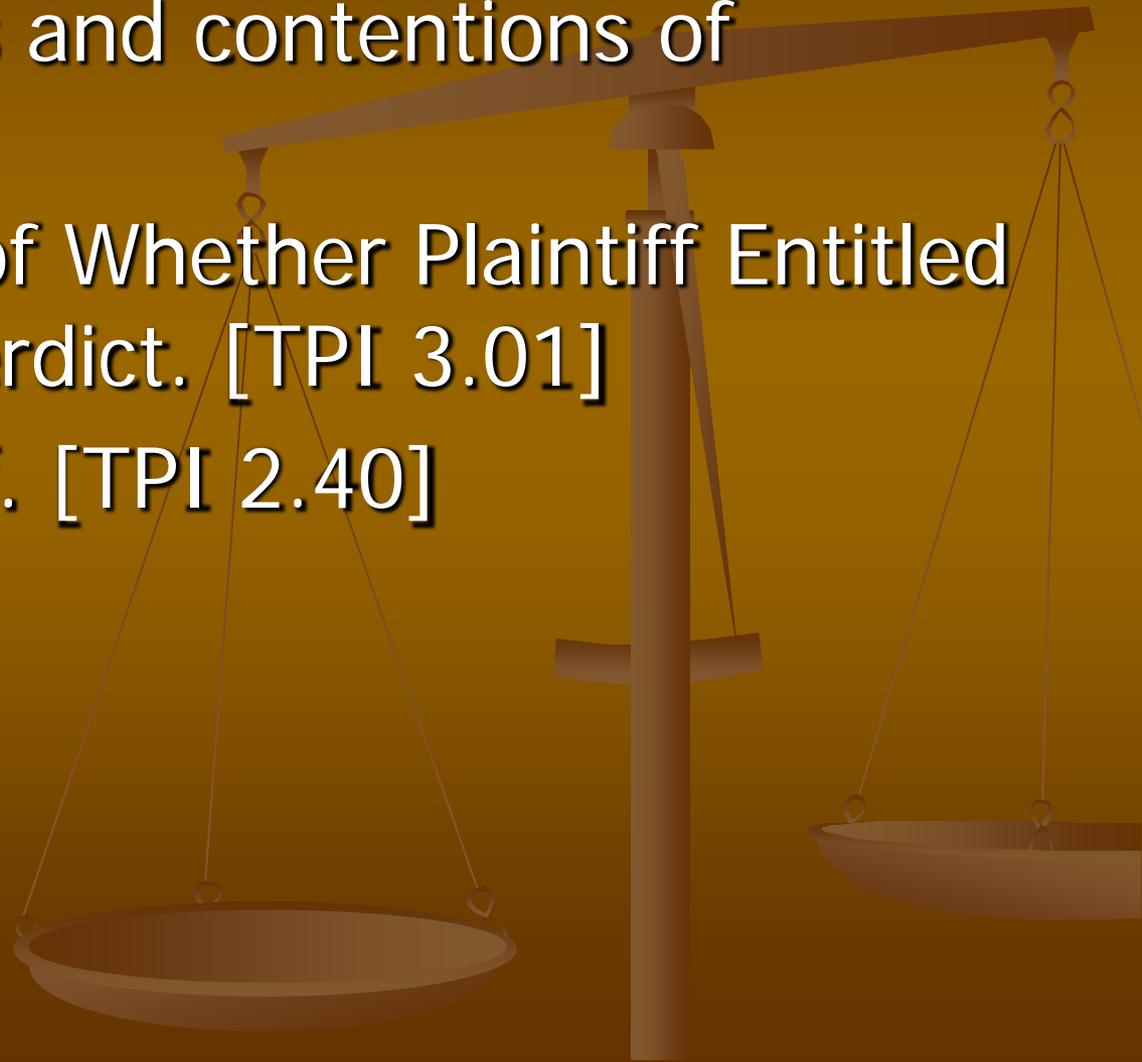
# Organization – (2) General Rules

- Evidence. [TPI 2.01-2.02]
- Witnesses/Conflicting Testimony. [TPI 2.03,2.20]
- Expert Testimony. [TPI 2.30, 2.31]
- Discrepancies in Testimony. [TPI 2.21, 2.22]



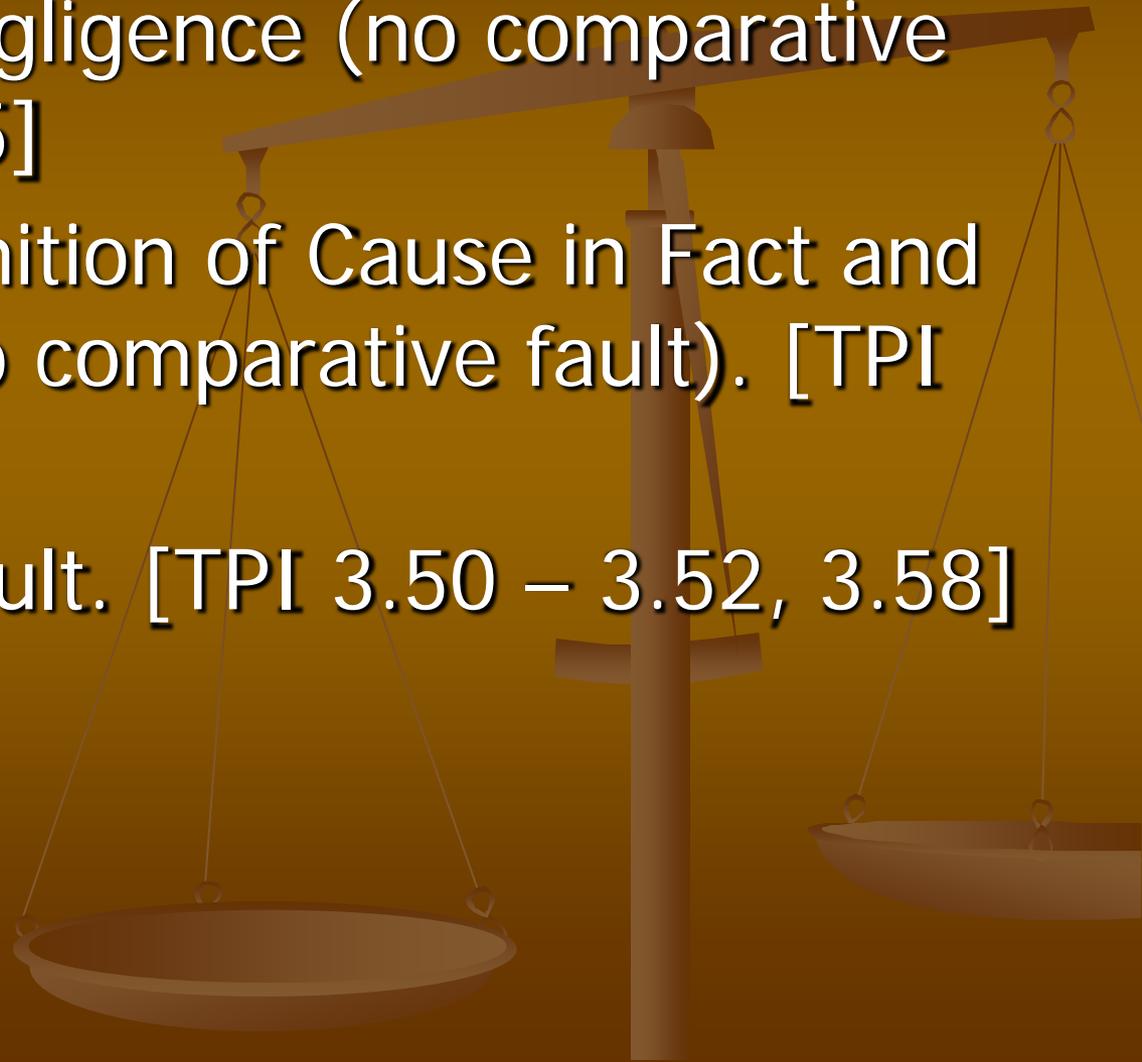
# Organization – (2) Theories & Contentions of Parties

- Explain theories and contentions of parties.
- Determination of Whether Plaintiff Entitled to Recover a Verdict. [TPI 3.01]
- Burden of Proof. [TPI 2.40]

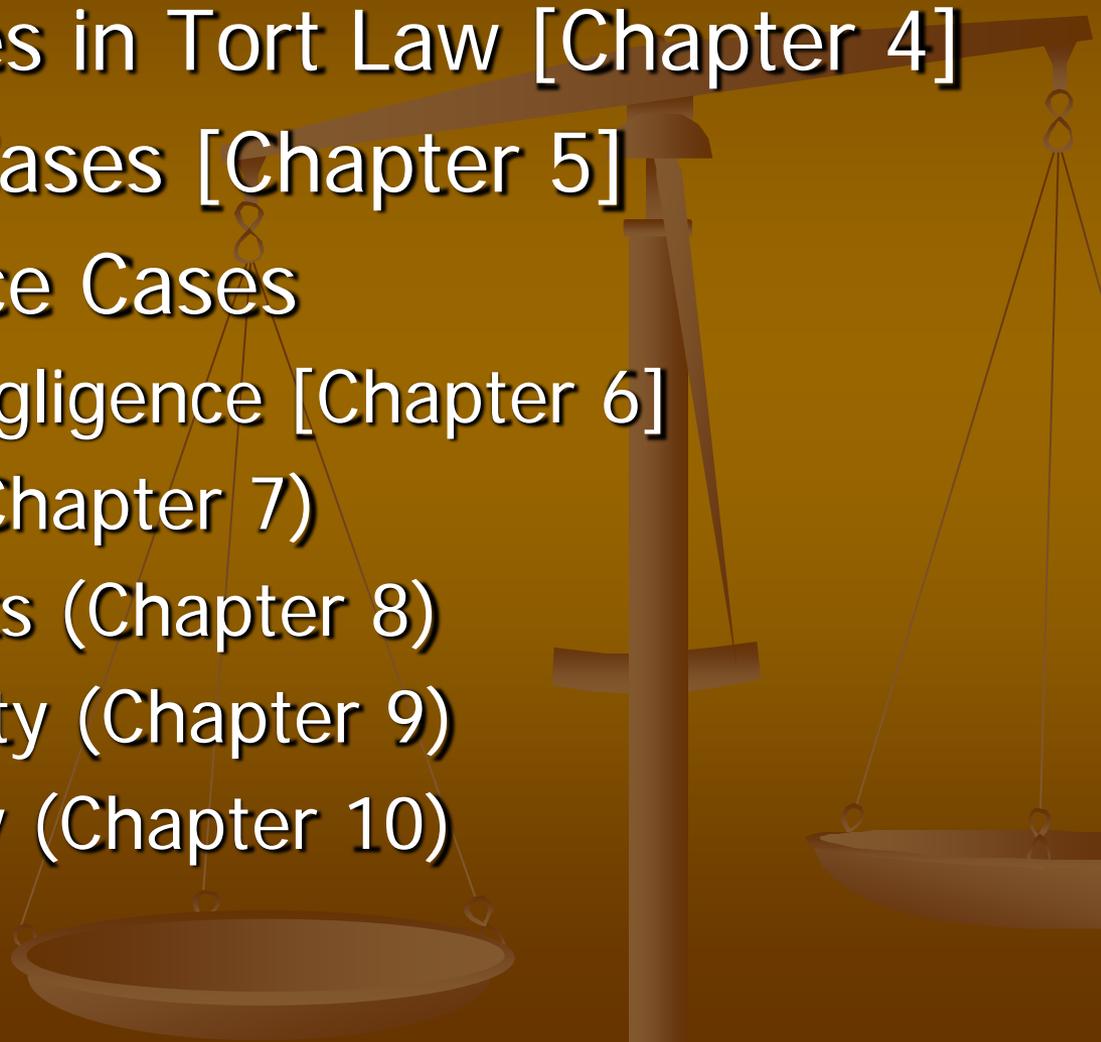


# Organization – (3) Negligence, Fault & Legal Cause

- Definition of Negligence (no comparative fault). [TPI 3.05]
- Causation: definition of Cause in Fact and Legal Cause (no comparative fault). [TPI 3.20]
- Comparative Fault. [TPI 3.50 – 3.52, 3.58]

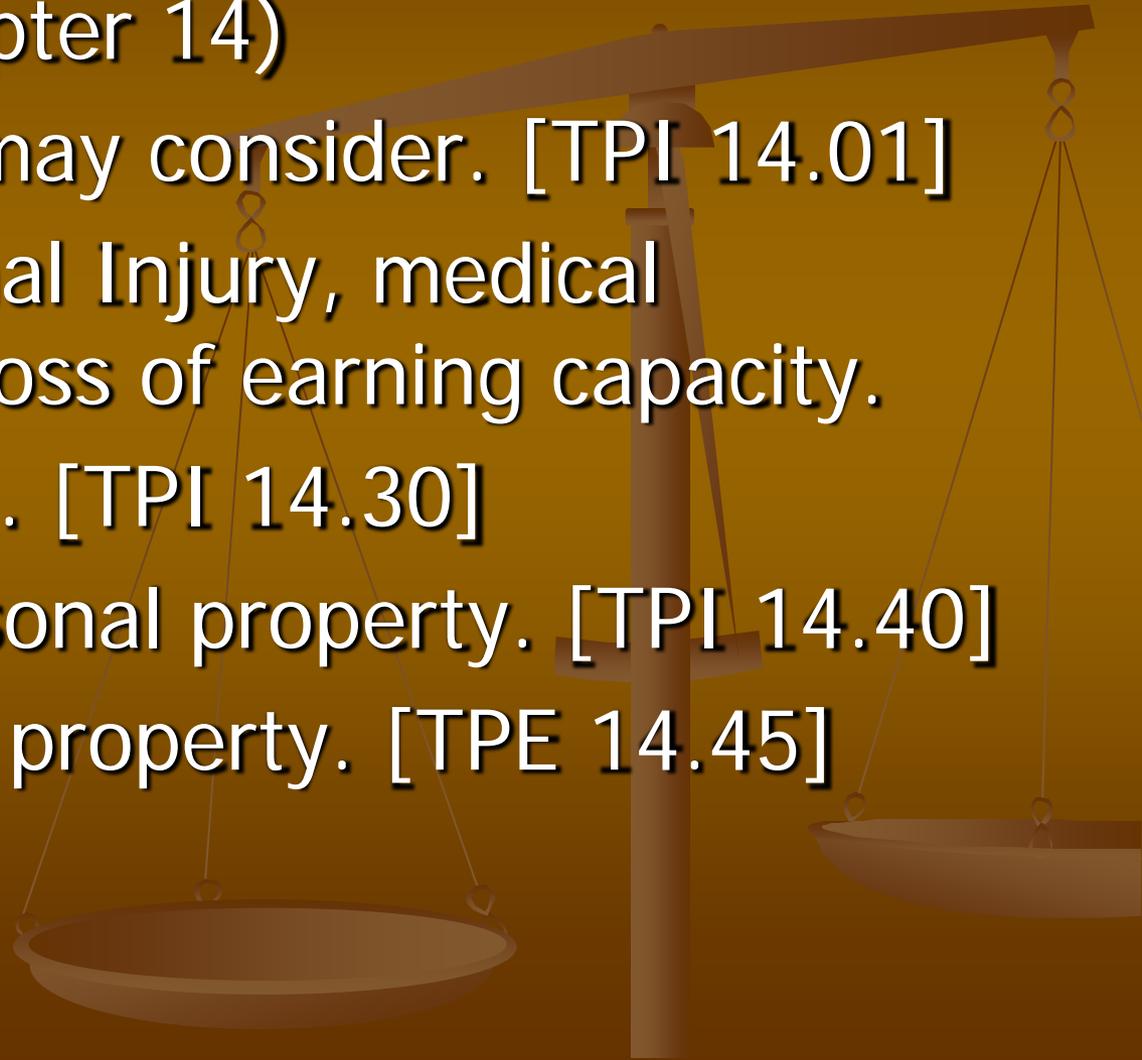


# Organization – (4)Types of Cases

- Special Doctrines in Tort Law [Chapter 4]
  - Auto Accident Cases [Chapter 5]
  - Other Negligence Cases
    - Professional Negligence [Chapter 6]
    - Libel/Slander (Chapter 7)
    - Intentional Torts (Chapter 8)
    - Premises Liability (Chapter 9)
    - Product Liability (Chapter 10)
- 

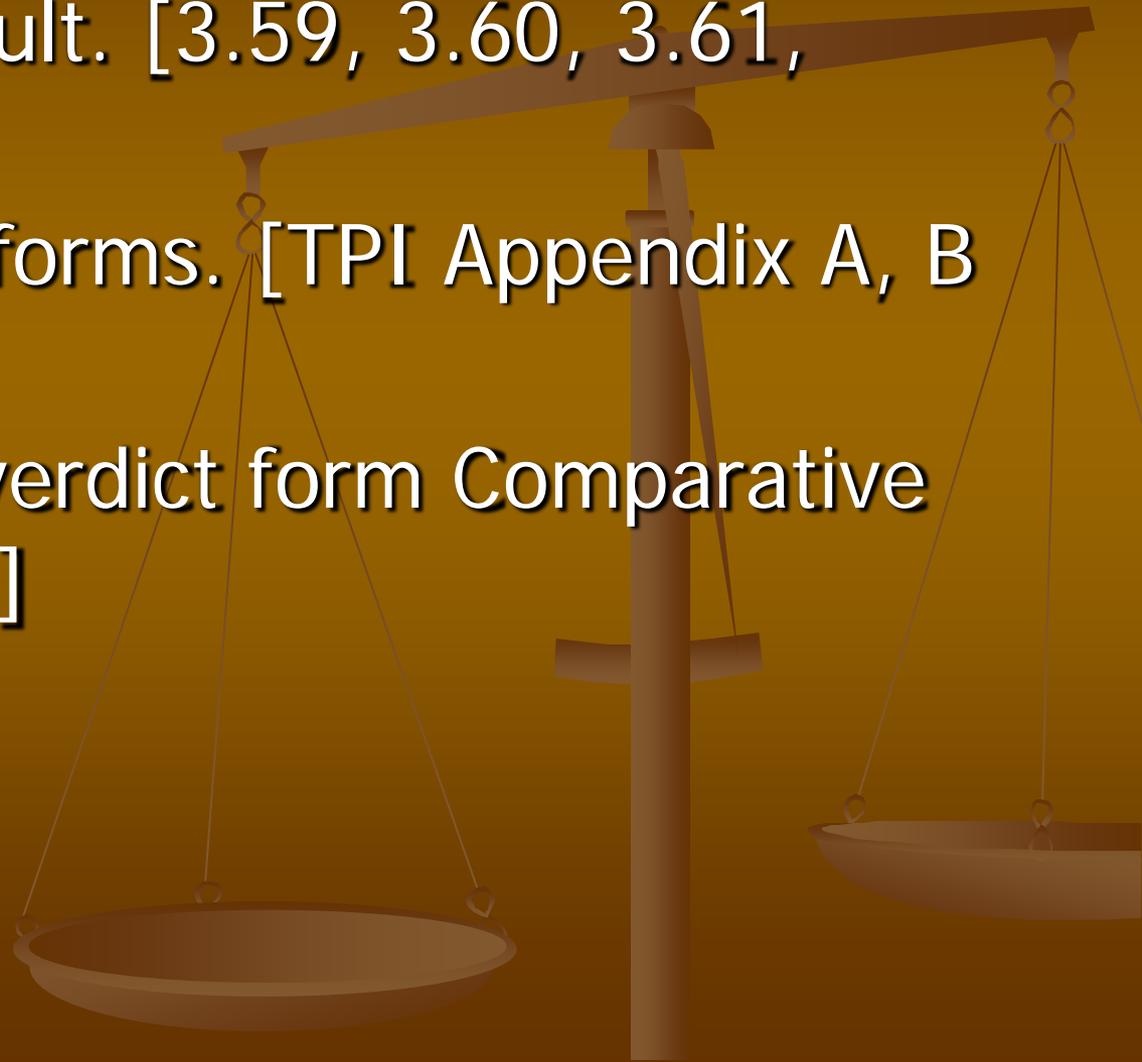
# Organization – (5) Damages

- Damages. (Chapter 14)
- Damages Jury may consider. [TPI 14.01]
- Includes Personal Injury, medical expenses, and loss of earning capacity.
- Wrongful Death. [TPI 14.30]
- Damage to personal property. [TPI 14.40]
- Damage to real property. [TPE 14.45]

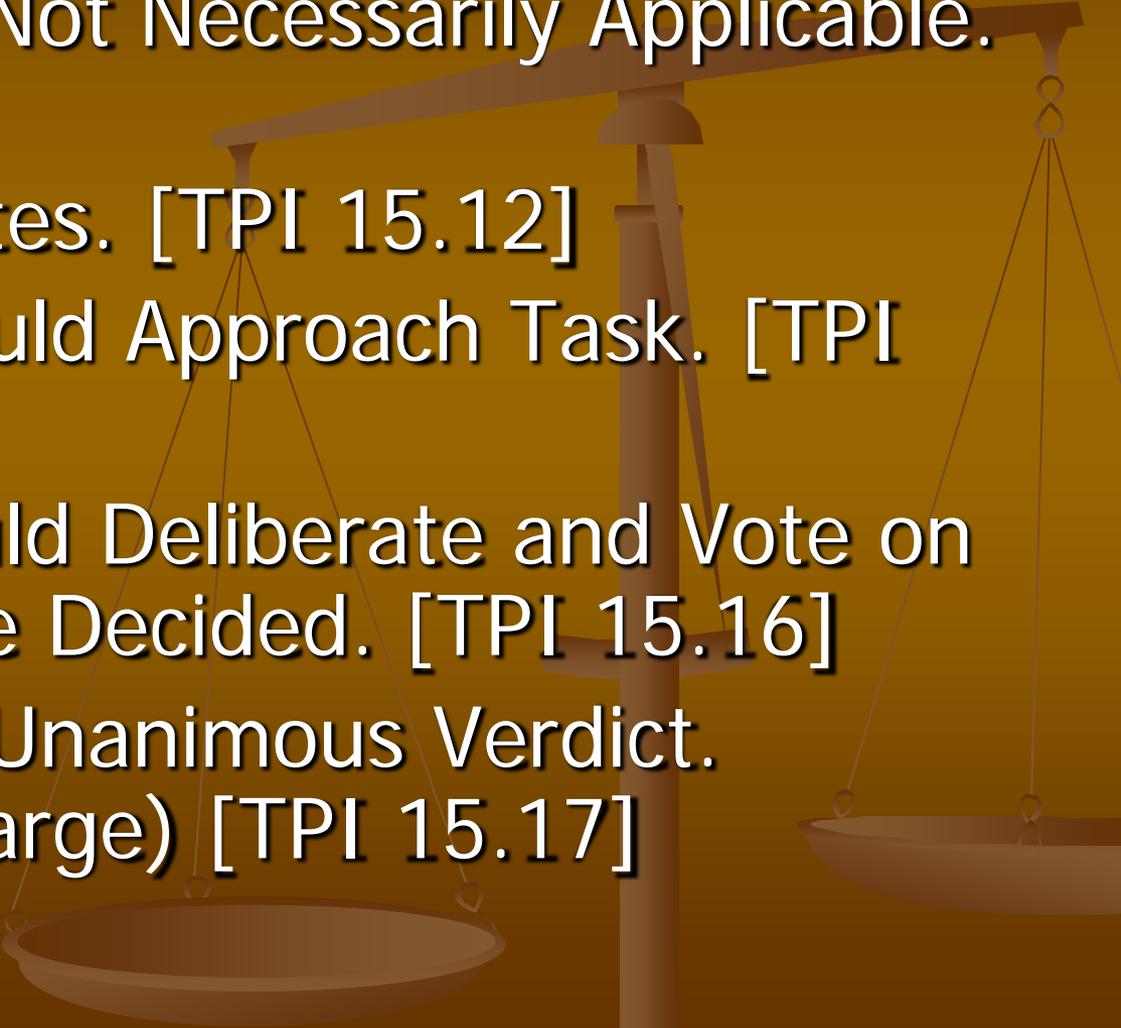


# Organization – (6) Verdict Form

- Comparative Fault. [3.59, 3.60, 3.61, 3.62, & 3.63]
- Sample verdict forms. [TPI Appendix A, B & , D]
- Explanation of verdict form Comparative Fault. [TPI 3.58]

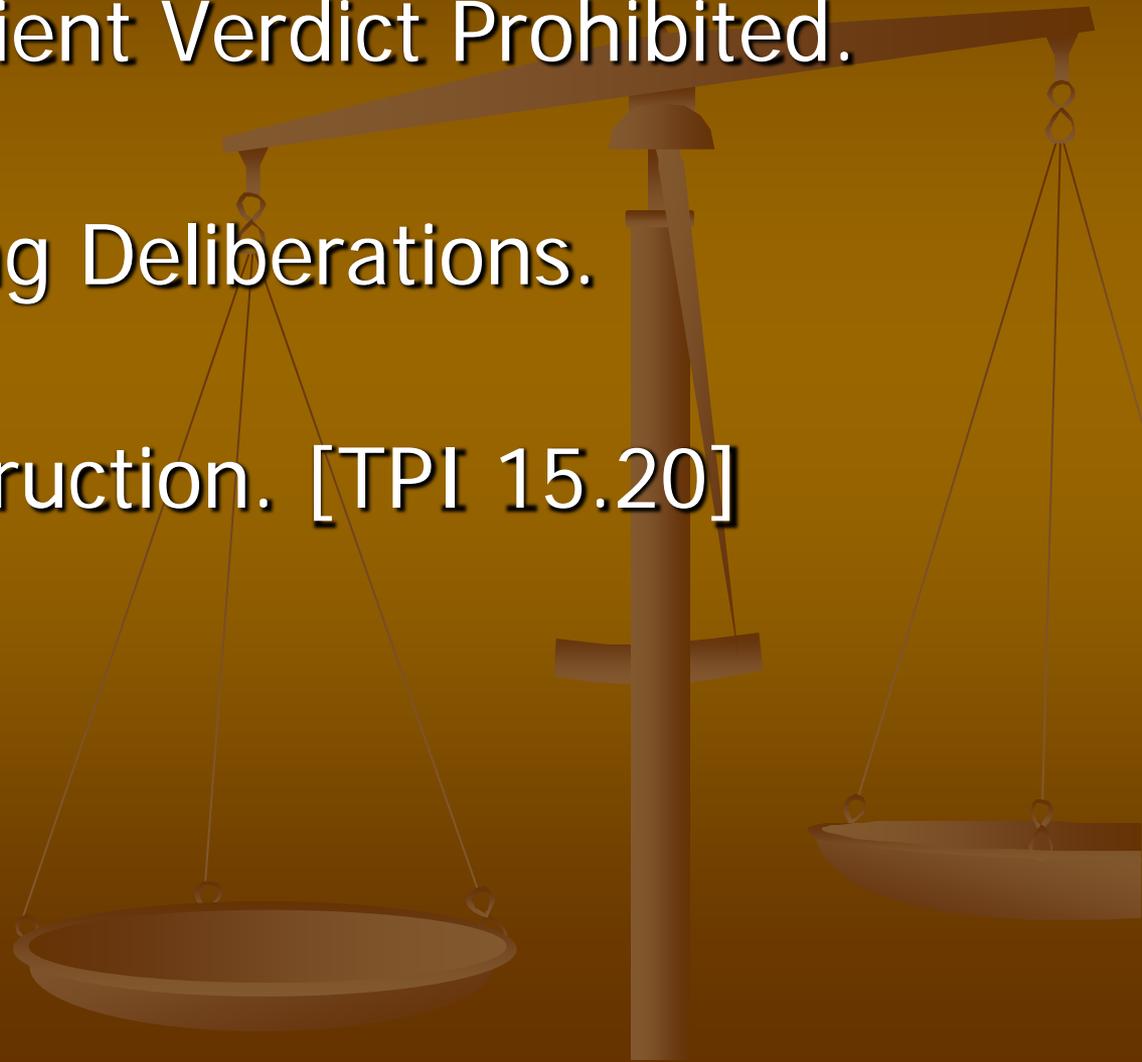


# Organization – (7) Concluding Instructions

- All Instructions Not Necessarily Applicable. [TPI 15.11]
  - Use of Juror Notes. [TPI 15.12]
  - How Jurors Should Approach Task. [TPI 15.15]
  - Each Juror Should Deliberate and Vote on Each Issue to be Decided. [TPI 15.16]
  - Instructions on Unanimous Verdict. (“Dynamite” Charge) [TPI 15.17]
- 

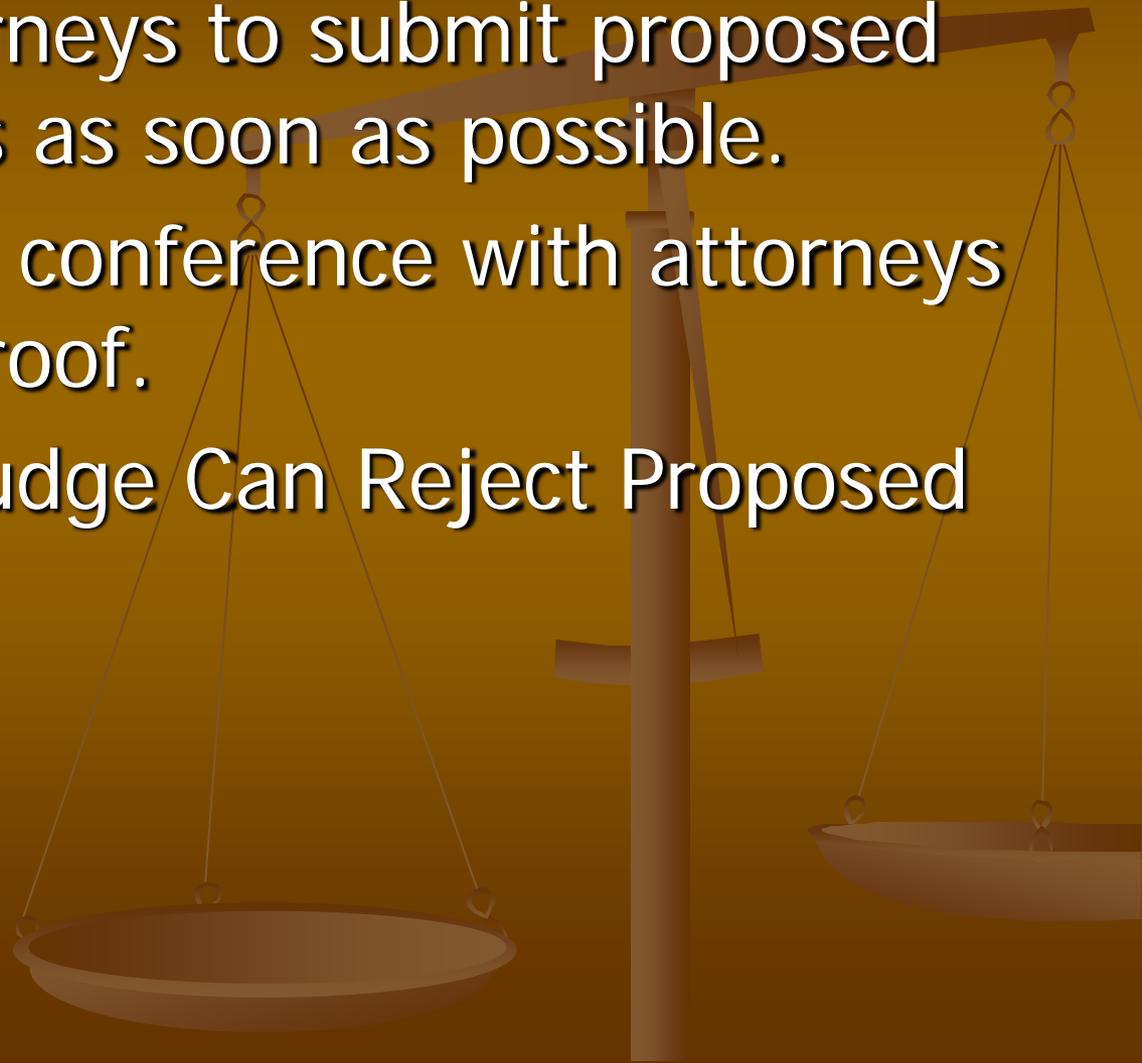
# Organization – (7) Concluding Instructions (cont.)

- Chance or Quotient Verdict Prohibited. [TPI 15.18]
- Questions During Deliberations. [TPI 15.19]
- Concluding Instruction. [TPI 15.20]



# Charge Conference

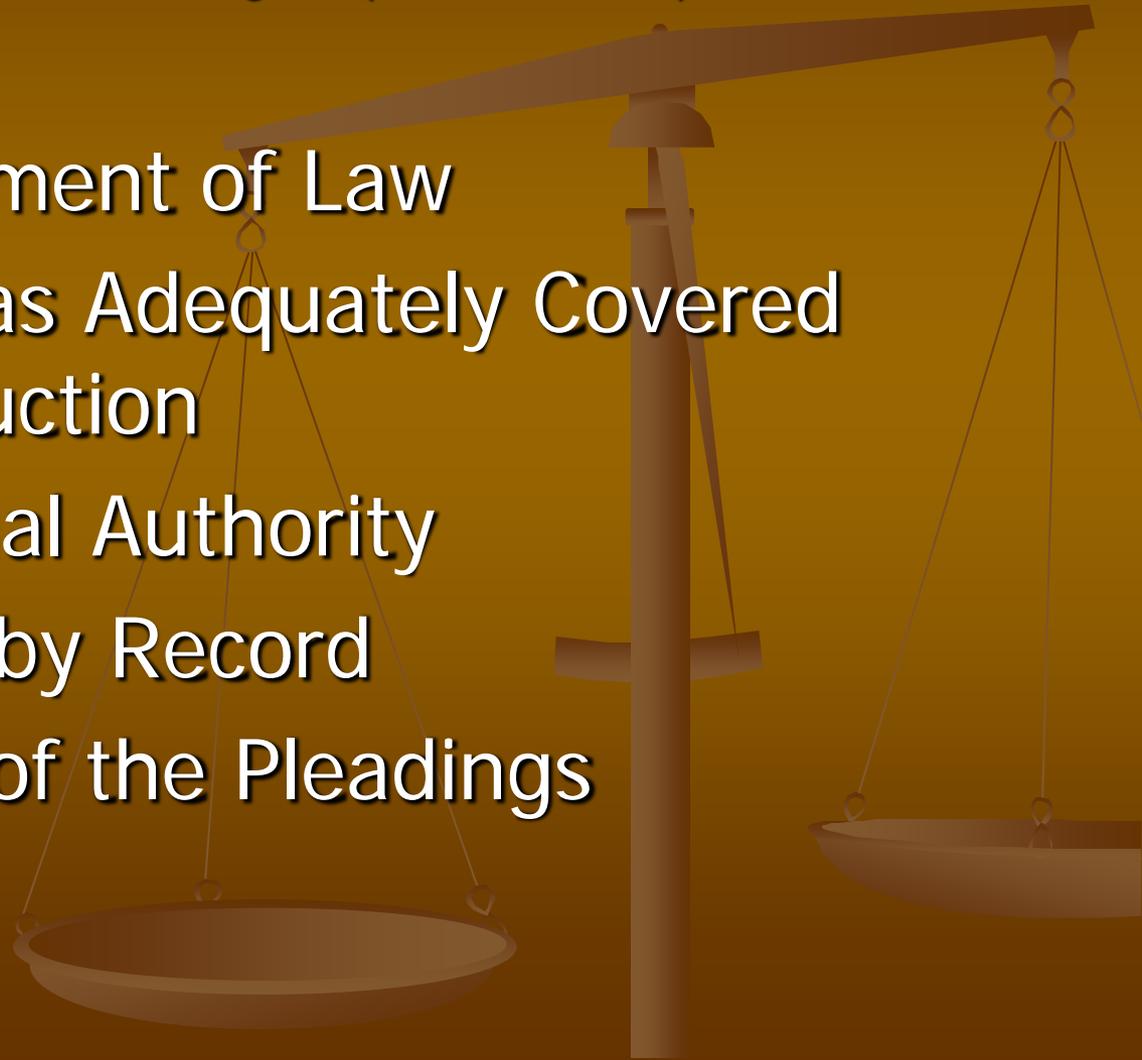
- Encourage attorneys to submit proposed jury instructions as soon as possible.
- Conduct charge conference with attorneys at close of all proof.
- Reasons Trial Judge Can Reject Proposed Instructions



# Reasons Trial Judge Can Reject Proposed Jury Instructions

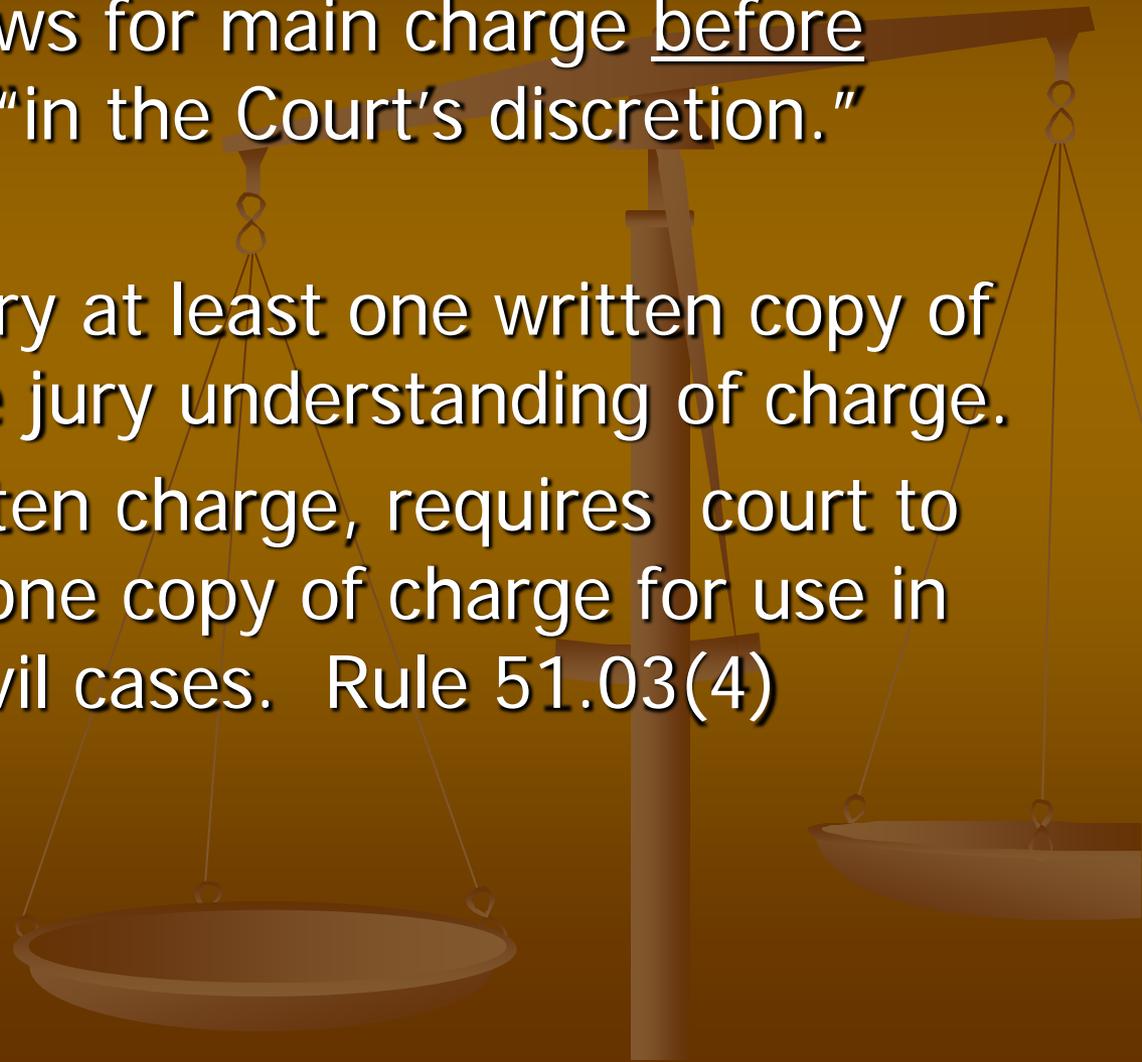
4 Nancy Fraas MacLean, et al., TN Practice Series  
Rules of Civil Procedure § 51 (3d ed., 2006).

- Incorrect Statement of Law
- Main Charge Has Adequately Covered Proposed Instruction
- Insufficient Legal Authority
- Not Supported by Record
- Outside Scope of the Pleadings



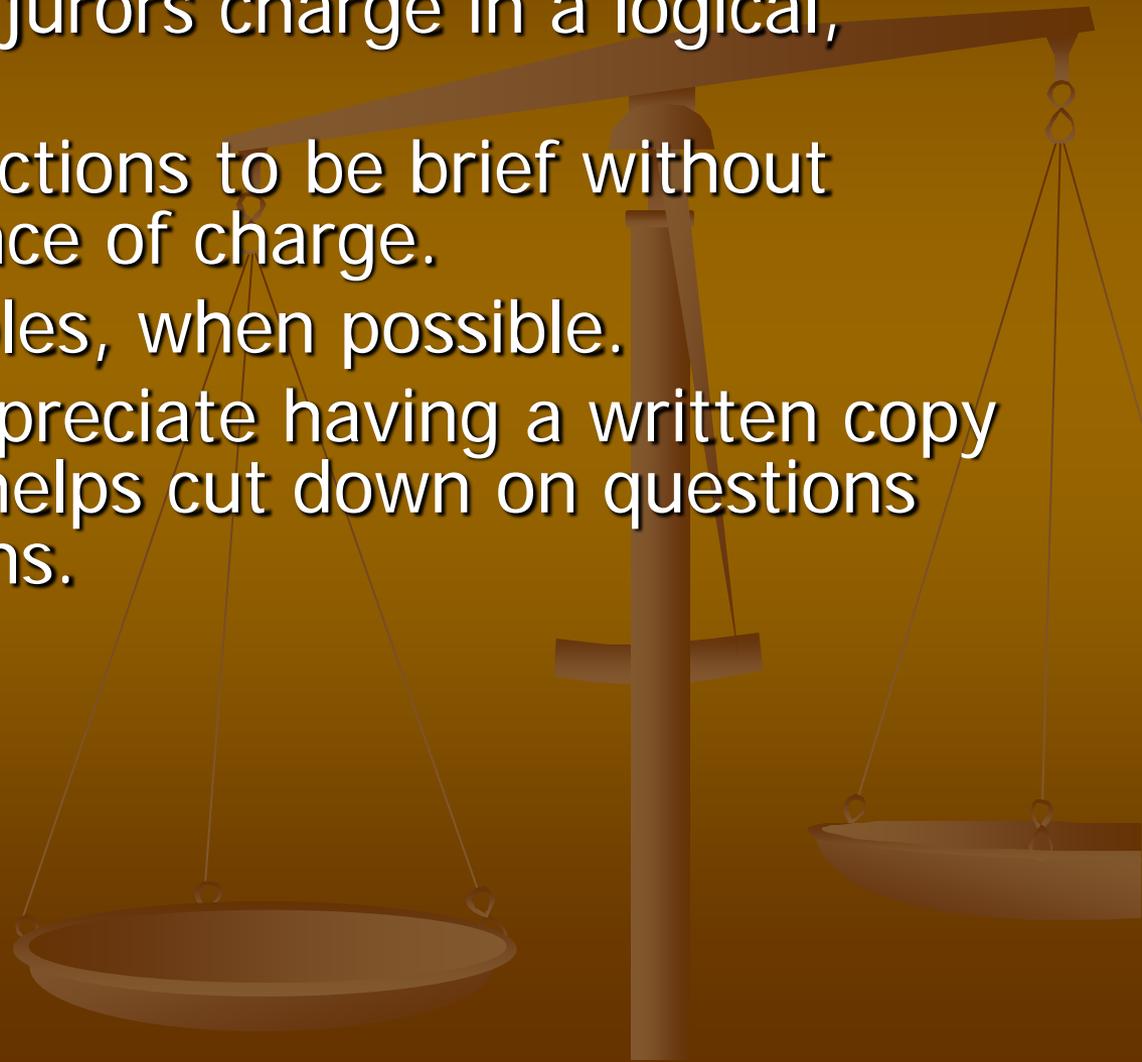
# Written Charge for Jury

- Rule 51.03(2) allows for main charge before closing argument "in the Court's discretion."  
T.R.C.P. 51.03(2)
- Consider giving jury at least one written copy of charge to improve jury understanding of charge.
- If court gives written charge, requires court to give jury at least one copy of charge for use in deliberations in civil cases. Rule 51.03(4)



# Conclusion

- Important to give jurors charge in a logical, cohesive order.
- Try to tailor instructions to be brief without sacrificing substance of charge.
- Try to give examples, when possible.
- Jurors seem to appreciate having a written copy of charge, and it helps cut down on questions during deliberations.



**PROPOSED NEW RULES FOR THE TRIAL OF AN EMINENT DOMAIN CASE  
IN THE THIRTEENTH JUDICIAL DISTRICT  
Circuit Judge John Maddux**

**1.01 Applicability**

These rules are applicable in all eminent domain (land condemnation) cases in the Thirteenth Judicial District of Tennessee. Whenever the Court determines that justice requires it, the Court may suspend any of these rules.

**1.02 Thirty (30) days prior to trial**

- I. At least thirty (30) days prior to the trial of an eminent domain case, all attorneys of record and parties representing themselves shall meet face-to-face or shall hold a telephone conference for the purpose of stipulating the following information concerning the subject property:
  1. the date of taking;
  2. the size of the subject property;
  3. the size of the land taken;
  4. the size of the remainder of the land, if any;
  5. the size, duration and method of evaluation of all easements, if any;
  6. whether incidental damages are an issue; and
  7. whether incidental benefits are an issue.
  
- II. No proof concerning comparable sales shall be admitted into evidence unless thirty (30) days prior to trial the party offering such evidence shall have submitted in writing to opposing party the following information:
  1. the name and address of each witness to be called on the subject of comparable sales;
  2. the name and address of the grantor and grantee;
  3. the date of sale or contract;
  4. the size and price per acre or square foot;
  5. an identifying description of the comparable sale tract or parcel including identification number(s) from tax assessor records.
  
- III. All maps and plats prepared by the condemning authority for use in an eminent domain case shall be submitted to opposing counsel no later than thirty (30) days prior to the date of trial. Opposing counsel shall have twenty (20) days thereafter to object to said map or plat. Failure to object shall result in said map or plat being deemed to be correct in all respects.

**1.03 Immediately prior to trial**

- I. Counsel shall meet immediately prior to trial for a period of time adequate to accomplish the following:
1. all photographs proposed to be admitted into evidence will be submitted to opposing counsel;
  2. objections to photographs will be presented to the Court and will be ruled upon before opening statements;
  3. all trial exhibits will be submitted by counsel to the court reporter who will label each exhibit with a pre-marked gummed label containing the style of the case, the date and a blank space for an exhibit number to be assigned during the trial.

**1.04 During trial**

- I. Evidence of value will be presented in the following format:
1. "Do you have an opinion as to the fair cash market value of the entire property, including all improvements, considering a willing buyer and a willing seller, neither of whom are under a compulsion to buy or sell, both having a full knowledge of the market as it existed on (date of take)?"
  2. "What is that opinion?"
  3. "Under the same assumptions, do you have an opinion as to the value of the land taken?"
  4. "What is that opinion?"
  5. "Under the same assumptions, do you have an opinion as to the fair cash market value of the property remaining including all improvements?"
  6. "What is that opinion?"
  7. "Did you find any incidental damages? If so, in what amount?"
  8. ["Did you find any incidental benefits? If so, in what amount?"]
- II. Evidence concerning comparable sales is subject to the following:
1. generally, the date of the sale or the contract should be no earlier than three (3) years prior to the date of taking, nor should it be later than six (6) months after the date of taking (subject to the Tennessee Rules of Evidence, T.R.E. 401 and 403 in particular);

2. exceptions to paragraph 1 above shall be heard upon motions at least thirty (30) days prior to trial;
3. generally, each witness is limited to testifying in regard to only three (3) comparable sales;
4. comparable sales will be referred to by using the name of the grantor and the grantee (i. e. - "Smith to Jones").

III. Proof will be entered in the following sequence:

1. the condemning authority's engineer or witness familiar with the project will describe the map or plat of the project;
2. the landowner will go forward with proof of value and damages;
3. the condemning authority will put on its proof as to value, incidental damages [and incidental benefits].

IV. Final arguments will be presented as in any civil case with the landowner being treated as the plaintiff.