

Criminal Jury – Preliminary Instructions

A. Introduction

Ladies and gentlemen of the jury, will you please rise and raise your right hands to be sworn.

[Oath administered by clerk of court.]

Please be seated. Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

We operate on the following schedule:

- We try cases Monday through Thursday.
- We start at 9:00 a.m. in the morning, and we adjourn at about 5:00 p.m. in the afternoon.
- We take a lunch break from about 12:00 p.m. to about 1:30 p.m.
- We take a coffee break mid-morning and mid-afternoon.
- All of these times are **approximate**. If it would break the flow of testimony for us to recess at a particular time, we will either delay or accelerate our recess in order to preserve the continuity of testimony.
- The clerk's office will provide coffee and donuts in the jury room each morning. They will also provide bottled water in the refrigerator in the jury room. I recommend that you not drink the water from the tap or the drinking fountains in the building as it has an unpleasant taste.
- I recommend that you dress in layers including sweaters or jackets, because the temperature of the courtroom can vary drastically and without warning.
- There is also a microwave in the jury room for your use and a telephone. However, the telephone will be removed during jury deliberations. There is also a telephone for use by the public in the district clerk's office on the 5th floor.

Your point of contact will be my case manager, Ruth. Her telephone number is listed on your handout.

B. Duty of the Jury

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not. Perform these duties fairly. Do not let bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

C. Evidence

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are **not evidence** and must not be considered by you. I will list them for you now.

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence.

You should not be influenced by the objection or by the court's ruling on it.

- * if the objection is **sustained**, ignore the question.
- * if the objection is **overruled**, treat the answer like any other.
- * if you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen, heard or read outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence - direct and circumstantial.

- direct evidence is direct proof of a fact, such as 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, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

D. Rules for Criminal Cases

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, the defendant **is presumed innocent until proven guilty**. The indictment against the defendant brought by the government **is only an accusation**. Nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the **burden of proof is on the government until the very end of the case.** The defendant has no burden to prove his or her innocence, or to present any evidence, or to testify. Since the defendant has the right to remain silent, the law prohibits you in arriving at your verdict by considering that the defendant may not have testified.

Third, the government must prove the defendant's guilt **beyond a reasonable doubt.** I will give you further instructions on this point later, but bear in mind that in this respect a criminal case is different from a civil case.

E. Summary of Applicable Law

In this case, the defendant(s) is (are) charged with

[Insert Counts Here]

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense(s) that the government must prove to make its case.

[Insert Summary Here.]

F. Conduct of the Jury

Now, a few words about your conduct as jurors.

During the course of the trial, do not speak with any witness, or with the defendant, or with any of the lawyers in the case. Please do not talk with them about any subject at all. You may be unaware of the identity of everyone connected with the case. Therefore, in order to avoid even the appearance of impropriety, do not engage in any conversation with anyone in or about the courtroom or courthouse. It is best that you remain in the jury room during breaks in the trial and do not linger

in the hall. In addition, during the course of the trial, do not talk about the trial with anyone else-not your family, not your friends, not the people with whom you work. Also, do not discuss this case among your- selves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. Otherwise, without realizing it, you may start forming opinions before the trial is over. It is important that you wait until all the evidence is received and you have heard my instructions on rules of law before you deliberate among yourselves.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in this case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the Internet, websites, or blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

I know that many of you use cell phones, the Internet, and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case through any means, including your cell phone, through e-mail, Blackberry, iPhone, Android, text messaging, or on Snapchat or Twitter, or through any blog or website, including Facebook, Google+, Reddit, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions. A juror who violates these restrictions

jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

If you wish, you may take notes, but if you do, please leave them in the jury room when you leave at night. And remember they are for your personal use. If you do take notes, be careful not to get so involved in note taking that you become distracted and miss part of the testimony. Your notes are to be used only as aids to your memory, and if your memory should later be different from your notes, you should rely on your memory and not on your notes. If you do not take notes, rely on your own independent memory of the testimony. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony.

You have been given a pamphlet with some written instructions which are a statement of your duties and responsibilities as jurors. You are to follow all of the instructions contained in that pamphlet just as you are to follow the oral instructions which I am now giving you. I suggest that you read this pamphlet on your lunch break today or this evening at home.

If you have any problems during the course of the trial, please let the case manager know. Should you be delayed arriving at the courtroom in the morning for any reason whatsoever, you must give the court a call.

If at any time you cannot hear, please signal me by putting your hand to your ear or otherwise letting me know immediately so that I can correct that problem for you.

When you return from each break, you are to go to the jury room next to the courtroom. One of the staff will come to get you at the end of each break when the trial is ready to continue.

There is no smoking permitted in the building, the courtroom or the jury deliberation room. If you desire to smoke, you will be free to do so outside of the courthouse during your breaks.

G. Course of the Trial

I will now give you a roadmap to help you follow what will happen over the entire course of this trial. First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it is admitted. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor arguments.

The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case, the defendant may, if he wishes, present witnesses whom the government may cross-examine. If the defendant decides to present evidence, the government may introduce rebuttal evidence.

After all the evidence is in, the court will instruct you on the law and then the attorneys will present their closing arguments to summarize and interpret the evidence for you. After that, you will retire to deliberate on your verdict.

Ladies and gentlemen of the jury, I hope that you will enjoy your jury service with us. We are going to try this case as quickly as possible, consistent with justice.

The trial will now begin.