

SUGGESTED PERSONAL BENCH BOOK ITEMS

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REMARKS TO VENIRE BEFORE SELECTION OF JURY IN CRIMINAL CASES

I address myself now to all of you who have been selected and sworn to serve as jurors at this session of Superior Court in _____ County.

The District Attorney has now called for trial the case(s) entitled "The State of North Carolina versus _____ (name of defendant)_____.

I inform you that the defendant(s) in this case is(are) _____.

With the defendant(s) is (are) his (her) (their) attorney(s), _____.

At the other table is the (Assistant) District Attorney, _____, the lawyer for the State of North Carolina.

The defendant(s) has/have been charged with _____.

The offense is alleged to have occurred on or about _____.

The alleged victim of the offense is _____.

The defendant(s) has/have entered a plea of not guilty (and has/have given notice of the affirmative defense of _____).

After a jury has been selected and impaneled in this case, you will hear the evidence. The evidence is presented according to certain rules of law. The judge enforces those rules and determines what evidence may be admitted.

After all of the evidence has been presented and after you have listened to the arguments of counsel, I will instruct you as to all of the law that you are to apply to the evidence in this case. It is your duty to apply the law as I will give it to you, and not as you think the law is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied in each such case.

At this point you are not expected to know the law. Counsel should not question you about the law except to ask whether you will accept and follow the law as given by the court.

I now want to tell you a few preliminary things about the law in a criminal case.

The defendant(s) has/have entered a plea of "not guilty." Under our system of justice, a defendant who pleads "not guilty" is not required to prove his (her) innocence but is presumed to be innocent. This presumption remains with a defendant throughout the trial until the jury selected to hear the case is convinced, from the facts and the law, beyond a

reasonable doubt of the guilt of the defendant.

The burden of proof is on the State to prove to you that the defendant(s) is/are guilty beyond a reasonable doubt.

[A reasonable doubt is not a vain or fanciful doubt. It is a doubt based on reason and common sense arising out of some or all of the evidence that has been presented, or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.]

[There is no burden or duty of any kind on the defendant. The mere fact that the defendant has been charged with a crime is no evidence of guilt. A charge is merely the mechanical or administrative way by which any person is brought to a trial.]

If the State proves guilt beyond a reasonable doubt, then the function of this jury by its verdict is to say "guilty." If the State fails to prove guilt, or you have a reasonable doubt, then, of course, you must say "not guilty."

(At this point the court may wish to initiate questioning of the jurors concerning their fitness and competency to serve.)

Now, ladies and gentlemen, the (Assistant) District Attorney and counsel for the defendant(s) will have the opportunity to ask you certain questions. I would ask them that whenever possible questions be asked to the group collectively and that they be discreet and reasonable in their questions.

STANDARD REMARKS TO JURORS IN CRIMINAL CASES: IV. REMARKS TO JURORS AFTER JURY IMPANELED

Ladies and Gentlemen, you have been selected and impaneled to serve as jurors in the case of the State of North Carolina versus ___(name of defendant)_____.

At this time I want to explain to you the manner in which we will proceed as we attempt together to find the truth in this case. First, the lawyers will have an opportunity to make opening statements. The purpose of an opening statement is narrow and limited. It is an outline of what the attorney believes the competent and admissible evidence will be. An opening statement is not evidence and must not be considered by you as evidence. [The evidence will come in the form of the testimony of the witnesses, admissions of the parties, stipulations of counsel, or any physical exhibits that may be offered by the parties.]

The court sets a time limit of _____ minutes to each side.

Following opening statements, evidence will be offered. Witnesses will be placed under oath and questioned by the lawyers. It may be that documents and other tangible exhibits will be offered and received as evidence. If an exhibit is given to you to examine, you should examine it carefully, individually, and without comment.

It is the right of the lawyers to object when testimony or other evidence is offered that the lawyer believes is not admissible. When the court sustains an objection to a question, the jurors must disregard the question and the answer if one has been given, and draw no inference from the question or answer or speculate as to what the witness would have said if permitted to answer. When the court overrules an objection to any evidence, you must not give such evidence any more weight than if the objection had not been made.

If the court grants a motion to strike all or part of the answer of a witness to a question, you must disregard and not consider the evidence that has been stricken.

During the course of the trial, it may be that questions of law will arise that need to be considered by the court out of the presence of the jury. When this happens, I may ask you to go to the jury room for a few minutes. You should not worry or speculate about what takes place in the courtroom during your absence -- we will merely be considering questions of law that have to be heard out of the presence of the jury. All of the competent evidence in the case will be presented while you are present in the courtroom.

When the evidence is completed, the lawyers will make their final statements or arguments. The final arguments of the attorneys are not evidence, but are given to assist you in evaluating the evidence.

Finally, just before you retire to consider your verdict, I will give you further instructions on the law that applies to this particular case. At that time, I will declare and explain to you the law arising on the evidence. Then you will be taken to the jury room to deliberate upon your verdict.

While you serve as a juror in this case, you must obey the following rules:

First, you must not talk about the case among yourselves. The only place this case may be talked about is in the jury room and then only after you begin your deliberations.

Second, you must not talk about this case with anyone else (including members of your families) or allow anyone else to talk with you or say anything in your presence about this case. If anyone communicates or attempts to communicate with you or in your presence about this case, you must notify me of that fact immediately.

Third, while you sit as a juror in this case, you are not to form an opinion about the guilt or innocence of the defendant, nor are you to express to anyone any opinion about the case until I tell you to begin your deliberations.

Fourth, you must not talk or communicate in any way with any of the parties in this case, any of the lawyers, or any of the witnesses. This rule applies inside as well as outside the courtroom, and it prohibits any type of conversation, whether about the evidence in this case, or about the weather, or just to pass the time of day.

Fifth, you must not read about this case in the newspaper, or listen to radio broadcasts or watch television reports about this trial. Newspaper, radio, and television accounts may be inaccurate, or they may contain references to matters which are not proper for your consideration. Your verdict must be based exclusively on what is brought out in this courtroom.

Sixth, you must not visit the scene of place that is the subject matter of this trial or make any independent inquiry or investigation about this matter.

Each of you must obey each of these rules to the letter. Unless you do so, there is no way the State or the defendant can be assured of absolute fairness and impartiality. It is your duty, both while the trial is in progress, or while it is in recess, or while you are in the jury room, to see that you remain a fair and impartial trier of the facts. If you violate these rules, you violate an order of the court and this is contempt of court and could subject you to punishment as provided by law.

We are now ready for the opening statements of counsel.

N.C.P.I.--Civil 100.70 Taking of Notes by Jurors.1
Replacement May 2004

NOTE WELL: While the Rules of Civil Procedure have no statutory analogue to G.S. §15A-1228, which permits jurors in a criminal case to make notes and take them into the jury room (except where the judge on his own motion or the motion of a party rules otherwise in his discretion), note-taking in civil cases has been left, as a matter of practice, to the sound discretion of the trial judge.

[*If Denied:* In my discretion, members of the jury, you will not be allowed to take notes in this case.]

[*If Allowed:* In my discretion, you will be allowed to take notes in this case.

When you begin your deliberations, you may use your notes to help refresh your memory as to what was said in court. I caution you, however, not to give your notes or the notes of any of the other jurors undue significance in your deliberations. All of the evidence is important. Do not let note-taking distract you. Listen at all times intently to the testimony.

Any notes taken by you are not to be considered evidence in this case. Your notes are only to assist your memory and are not entitled to any greater weight than the individual recollections of other jurors.]

FOOTNOTES

FOOTNOTE 1 Absent a statute permitting or prohibiting note-taking by jurors, the majority of federal circuits have held that the decision lies in the discretion of the trial judge. That the decision should lie within the trial judge's discretion is supported by the fact that neither arguments for or against this issue are so dispositive and outweighing that note-taking should or should not be allowed as a matter of law. Those arguments favoring note-taking are that it is, "when done properly, . . . a valuable method of refreshing memory. In addition, note-taking may help focus jurors' concentration on the proceedings and help prevent their attention from wandering." *United States v. Maclean*, 578 F.2d 64, 66 (3rd Cir. 1978). Arguments against note-taking contend that too much significance will be placed on all matters "arbitrarily" excluded from the notes by the note-taker. Similarly, the few note-takers might dominate jury deliberations and even falsify testimony deliberately. Additionally, by busying themselves with note-taking, some believe that these jurors will miss important testimony. Finally, some simply believe that the "average" juror cannot take notes well and will therefore take notes of inconsequential and irrelevant matters while excluding the substantial issues of the case. *Id.*

STANDARD REMARKS TO JURORS IN CRIMINAL CASES: V. REMARKS TO JURORS BEFORE CHARGE CONFERENCE

Members of the jury, all of the evidence has now been presented. It will soon be your duty to decide from the evidence what the facts are and to apply the law that I am about to give you to the facts in arriving at your verdict in this case.

Prior to the arguments of the lawyers and the final instructions of the court on the law that will follow the lawyers' speeches, I am required to confer with the lawyers about the law involved in this case. For this purpose, you will now be excused to the jury room for approximately _____ minutes after which we will proceed with the conclusion of this case. Do not yet allow your minds to be made up in this case because you have not yet heard the arguments of the lawyers or instructions of the court. Again, I caution you not to dismiss the case with each other or anyone else or permit anyone to discuss it in your presence or speak to anyone involved in the case while I confer with the lawyers.

STANDARD REMARKS TO JURORS IN CRIMINAL CASES: VI. REMARKS TO JURORS BEFORE FINAL ARGUMENTS OF COUNSEL

Ladies and gentlemen, all of the evidence has been presented. It is now time for the final arguments of the lawyers. At the conclusion of these arguments, I will instruct you on the law in this case and then you will be taken to the jury room to begin your deliberations.

The final arguments of the lawyers are not evidence, but are given to assist you in evaluating the evidence. The lawyers are permitted in their final statements to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict.

It is improper for a lawyer in a final argument to become abusive, to inject personal experiences, to express a personal belief as to the guilt or innocence of the defendant, or to make arguments on the basis of matters outside the record, except for matters concerning which the court may take judicial notice. A lawyer may, however, on the basis of the lawyer's analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

If, in the course of making a final argument, a lawyer attempts to restate a portion of the evidence and your recollection of the evidence differs from that of the lawyer, you are -- in recalling and remembering the evidence -- to be guided exclusively by your own recollection of the evidence.

N.C.P.I.--Crim. 101.40 FAILURE OF JURY TO REACH A VERDICT.<1>
Replacement April 2004

Your foreman informs me that you have so far been unable to agree upon a verdict. The Court wants to emphasize the fact that it is your duty to do whatever you can to reach a verdict. You should reason the matter over together as reasonable men and women and to reconcile your differences, if you can, without the surrender of conscientious convictions. But no juror should surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict. I will let you resume your deliberations and see if you can reach a verdict.

NOTE WELL: Under G.S. 15A-1235(c) the judge at this time may also repeat the next to last paragraph of N.C.P.I.--Crim. 101.35, as it was given just before the jury retired. S. v. Lamb, 44 N.C. App. 251 (1979).

FOOTNOTES

FOOTNOTE 1 If the jury is unable to reach a verdict on one count and asks if it should consider a submitted lesser included offense, consider a "reasonable efforts" instruction as approved and set forth in *State v. Mays*, 158 N.C. App. 563, 582 S.E.2d 360 (2003). Note that the court in *State v. Mays* held that giving an "acquit first" instruction was error.

Qualifications of Prospective Jurors (G.S. 9-3)

1. Citizens of the State and residents of the county.
2. Have not served as juror during the preceding 2 years.
3. Are 18 years of age or older.
4. Are physically and mentally competent.
5. Can hear and understand the English language.
6. Have not convicted of a felony or pled guilty or no contest to a felony without having had citizenship restored.
7. Have not been adjudged non compos mentis.

GROUNDNS FOR CHALLENGE FOR CAUSE

1. Does not have the qualifications required by G.S. 9-3.
2. Is incapable by reason of mental or physical infirmity of rendering jury service.
3. Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
4. Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
5. Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
6. Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
7. Is presently charged with a felony.
8. As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.
9. For any other cause is unable to render a fair and impartial verdict.

SEE ALSO

G.S. 9-15 In civil cases if any juror has a suit pending and at issue in the court in which he is serving, he may be challenged for cause, and he shall be withdrawn from the trial panel, and may be withdrawn from the venire in the discretion of the presiding judge.

G.S. 9-19 **Peremptory challenges in civil cases** The clerk, before a jury is empanelled to try the issues in any civil suit, shall read over the names of the prospective jurors in the presence and hearing of the parties or their counsel; and the parties, or their counsel for them, may challenge peremptorily **eight (8)** jurors without showing any cause therefore, and the challenges shall be allowed by the court.

G.S. 15A-1217 Number of peremptory challenges.

(a) Capital cases.

(1) Each defendant is allowed 14 challenges.

(2) The State is allowed 14 challenges for each defendant.

(b) Noncapital cases.

(1) Each defendant is allowed six challenges.

(2) The State is allowed six challenges for each defendant.

(c) Each party is entitled to one peremptory challenge for each alternate juror in addition to any unused challenges. (1977, c. 711, s. 1.)