

SEPARATION OF THE JURY

Until this case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it is submitted to you, you may discuss it only in the jury room with your fellow jurors.

It is important that you keep an open mind and not decide any issue in the case until the entire case has been submitted to you along with my instructions as to the law.

Such an instruction should be given on any separation of the jury before the case is submitted for the jury's consideration. *Commonwealth v. Benjamin*, 369 Mass. 770, 772, 343 N.E.2d 402, 404 (1976). See *Commonwealth v. White*, 147 Mass. 76, 80, 16 N.E. 707, 711 (1888); *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 2.62.

NOTES:

1. **Caution against unauthorized views by jurors.** If there is any likelihood that jurors may undertake an unauthorized view of the crime scene, the judge should explicitly caution against this. *Commonwealth v. Jones*, 15 Mass. App. Ct. 692, 695, 448 N.E.2d 400, 402 (1983). See *Commonwealth v. Philyaw*, 55 Mass. App. Ct. 730, 735-740, 774 N.E.2d 659, 664-667 (2002) (unauthorized view by one or more jurors is an extraneous influence "of a very serious nature").

2. **Caution against unauthorized research by jurors.** The judge may also wish to caution jurors not to conduct their own research or investigations (including Internet or dictionary searches). See *Commonwealth v. Guisti*, 449 Mass. 1018, 867 N.E.2d 740 (2007) (juror soliciting comments by email); *Commonwealth v. Olavarria*, 71 Mass. App. Ct. 612, 885 N.E.2d 139 (2008) (juror looking up definition of "reasonable doubt" and "moral certainty" in law dictionary); *Commonwealth v. Rodriguez*, 63 Mass. App. Ct. 660, 678 n.11, 828 N.E.2d 556, 568 n.11 (2005) (juror searching Internet for statute; these days, in warning against conducting their own research, judges "are well advised" to refer specifically to Internet searches); *Commonwealth v. DiRenzo*, 52 Mass. App. Ct. 907, 754 N.E.2d 1071 (2001) (allegation that jurors consulted a dictionary contrary to judge's instructions); *Commonwealth v. McCaster*, 46 Mass. App. Ct. 752, 710 N.E.2d 605 (1999) (juror searching Internet for chemical composition of cocaine). See also *United States v. Kupau*, 781 F.2d 740, 744-745 (9th Cir.), cert. denied, 479 U.S. 823 (1986) (judge should not give deliberating jury a dictionary at their request, even under cautionary instructions, since the parties are entitled to know what words the jury wishes defined).

3. **Deliberating jury must be given time to reassemble.** Once the case has been submitted to the jury, whenever the judge permits the jurors to separate (including separation for lunch), Mass. R. Crim. P. 20(e)(2) requires that the jury be given a definite time to reassemble in the courtroom before retiring for further deliberations. *Commonwealth v. Hearn*, 31 Mass. App. Ct. 707, 712-713, 583 N.E.2d 279, 283 (1991); *Commonwealth v. Ford*, 20 Mass. App. Ct. 575, 579, 481 N.E.2d 534, 536-537 (1985).

4. **Morning roll call of deliberating jury.** Once the case has been submitted to the jury, a morning roll call may be implicitly required by Mass. R. Crim. P. 20(e)(3) if the jurors separate overnight. Whether or not a roll call is taken, it is preferable that the defendant be present whenever the jurors come into the courtroom, unless the defendant has waived his right to be present. *Commonwealth v. Davila*, 17 Mass. App. Ct. 511, 459 N.E.2d 1248 (1984).