

QUESTIONS TO WITNESSES FROM JURORS

At the end of each witness's testimony in this case, we are going to give you as jurors the opportunity to suggest any questions that you would like us to pose to that witness. The court officer will make some paper available to you, and if you have such a question, you should write it down. Please don't discuss your questions among yourselves, but write down any questions that you as an individual juror may have for the witness. And please write your juror number on your questions, in case I need to ask you to clarify them.

After the attorneys have questioned each witness, I will ask the court officer to collect any written questions that you have and pass them to me. I will then confer privately with the attorneys and determine whether the question is permitted by our rules of evidence. If it is, I will then pose that question to the witness.

Now there are a few things you must keep in mind about such questions. First of all, you should limit your questions to important matters, or something in a witness's testimony that you think requires clarification, so that we don't get bogged down or distracted from the

central issues.

You also have to understand in advance that I may have to alter or refuse a question if it does not comply with our rules of evidence. As I have explained, those rules are not intended to keep information from you, but to make sure that all the information you are given is presented in a manner that you can fairly evaluate its worth. If I change, or I decline to ask, a question that you have suggested, you must not be offended or hold that against either of the parties.

Finally, you must not give the answers to your own questions any disproportionate weight. You will have to consider *all* the evidence to arrive at a true verdict.

“[T]he practice of allowing jurors to question witnesses has the potential for introducing prejudice, delay, and error into the trial, and should be utilized infrequently and with great caution.” *Commonwealth v. Urena*, 417 Mass. 692, 701 (1994). When a judge allows such questioning, “the judge must inform the parties and give them an opportunity to be heard in opposition or to suggest the procedure to be followed.” *Id.* at 702. Before jurors are permitted to ask questions, and again in the final instructions, the judge should inform jurors: (1) that they will be given the opportunity to pose questions; (2) that such questions should be written down and passed to the judge; (3) that such questions should be limited to important matters; (4) that the judge may have to alter or refuse questions that do not comply with the rules of evidence; (5) that if a particular question is refused or altered, the juror who posed the question must not be offended or hold that against either party; and (6) that jurors must not give answers to their own questions a disproportionate weight. *Id.* The judge and the attorneys should discuss the questions, and any objections made and ruled on, outside the hearing of the jury, before they are posed. *Id.* To avoid delay, the judge might have all jurors submit their questions at one time, at the conclusion of a witness’s examination. *Id.* at 703. The parties should be given the opportunity for further examination after juror questions have been answered. *Id.* See also *Commonwealth v. Britto*, 433 Mass. 596, 613-614 (2001).