

BEFORE A VIEW

Members of the jury, you are about to visit a place about which you will be hearing testimony during this trial. In court terminology, we call this a “view.”

The purpose of the view is to help you better to understand the evidence which you will hear during the trial, and to help you appreciate the location and its surroundings. The view that you will take is a part of this case. The observations that you make while on the view may be used and considered in your deliberations in reaching a verdict.

The place that you will view is _____ *[where]* _____. The attorneys and I will accompany you or meet you there. The attorneys may point out to you the arrangement of the scene and items there which they want you to take notice of, but otherwise they may not discuss anything in regard to this case.

While you are on the view, you are not to make any notes or sketches. You are not to conduct any independent investigation while we are there or at any other time during the trial. You are not to return to the scene, or ask anyone else to do so, until this case is

over.

What you *are* to do on the view may best be summarized in two words that you are all very familiar with: STOP and LOOK. Your responsibility is to see the place, observe it carefully, and remember what you see.

During your trip to and from the place that you will view, you are not to discuss the case or anything about it among yourselves or with anyone, and you are not to permit anyone to talk with *you* about the case.

You will be under the supervision of the court officers at all times, and you will remain together until you are returned to court, unless the court officers direct you otherwise.

Under no circumstances should any of you, during the course of your service as jurors in this case, take any unauthorized view of any location which was mentioned by any of the witnesses or the attorneys in this case.

The clerk will now administer the oath to the court officers who will accompany you on the view. I invite your careful attention to the oath because it covers their responsibilities in supervising you and

the attorneys while on the view.

Information acquired at a view is not evidence in a strict sense, but may be used by the jury in reaching a verdict. *Commonwealth v. Jefferson*, 36 Mass. App. Ct. 684, 688 (1994).

SWEARING THE COURT OFFICERS

A traditional formulary for swearing court officers before a jury view is as follows.

Clerk: You (each) solemnly swear or affirm that you will take charge of this jury and conduct them to view the premises as ordered by the Court; that you will not permit the parties to enter into debate in the hearing of the jury, nor any person to speak to them, except Attorney _____ on behalf of the plaintiff and Attorney _____ on behalf of the defendant, and they only to point out such places or things as they may deem necessary; and that you will keep the jury together until you have brought them back into court unless the Court otherwise orders; so help you God.

NOTES:

1. **Taking a view.** Under G.L. c. 234A, § 69A, “The court may, upon motion, allow the jury in a civil case to view the premises or place in question or any property, matter or thing relative to the case if the party making the motion advances an amount sufficient to defray the expenses of the jury and the officers who attend them in taking the view, which shall be taxed as costs, if the party who advanced them prevails.” Procedures relevant to taking a view are laid out in Mass. G. Evid. § 1109. In a civil case, the costs of the view shall be paid by the party who makes the motion or in accordance with an agreement among the parties. See *id.* “Whether to take a view is a matter within the discretion of the trial judge, and a view may be taken on the judge’s own motion.” *Talmo v. Zoning Board of Appeals of Framingham*, 93 Mass. App. t. 626, 629 n. 5 (2018). While “not technically evidence”, see *Berlandi v. Commonwealth*, 314 Mass. 424, 451 (1943), a view “inevitably has the effect of evidence, and information properly acquired upon a view may properly be treated as evidence in the case.” *Sargent v. Traverse Bldg. Trust*, 267 Mass. 490, 495 (1929).

2. **Unauthorized view.** The party moving for a mistrial based on an unauthorized view

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has the initial burden of demonstrating that the jury was exposed to an extraneous influence. Then the burden shifts to the nonmoving party to demonstrate that there is no reasonable likelihood that the party was prejudiced by what occurred. *Markee v. Biasetti*, 410 Mass. 785, 788-789 (1991) (new trial required where several jurors took unauthorized view of scene and defendants could not demonstrate that there was no reasonable likelihood that plaintiffs were prejudiced). See also *Commonwealth v. Cuffie*, 414 Mass. 632, 636-637 (1993).