

ALTERNATE PRELIMINARY INSTRUCTION TO JURY BEFORE TRIAL

Members of the jury, I assume that this is your first jury service.

Allow me to make a few observations which you may find helpful in understanding what you are about to participate in.

***Discussing the case.* Please do not discuss the case with anyone during the course of the trial, either in or out of court. The human mind being what it is, if you were to discuss the case even among yourselves, you would be engaged in a decision making process. We ask that you maintain an open mind. The case is not over until you have heard from all of the witnesses, the arguments of the lawyers and my charge as to the law. Only then is it proper for you to discuss the case during the course of your deliberations.**

***Objections.* During the course of the trial, the attorneys may object to some questions or answers. In raising objections they are performing their duty to represent their respective clients. In making my rulings on those objections, I am performing *my* function. You should draw no inference for either of the parties, either favorable or unfavorable, as a result of any ruling that I may make.**

Questions and statements by judge and counsel.

In the course of the trial I may ask a question of a witness. Usually I would do so only to eliminate some confusion. I consider it reasonable for me to infer that if I am confused, one or more of you may also be. You are to draw no inference for either side, favorable or unfavorable, because of any question which I may put to a witness, and you are not to place any emphasis on the fact that the judge, and not one of the attorneys, asked the question. What I say in the course of the trial, and what the attorneys say in their opening and closing statements, is not evidence in this case. Questions to witnesses, no matter how artfully phrased, are not evidence. Only the answers which you receive from witnesses who are testifying under oath are evidence, along with any exhibits which I tell you are in evidence.

Presumption of innocence.

In any criminal case, the defendant is presumed to be innocent unless he or she is proven guilty beyond a reasonable doubt.

Offense(s) charged.

The defendant is charged with the crime(s) of:

_____ . **The essential elements of the crime(s) are:** _____ .

Burden of proof.

The Commonwealth has the burden to prove the existence of each of those essential elements beyond a reasonable doubt.

During the trial the attorneys, in questioning witnesses, may dwell upon incidental matters, such as weather conditions, or the color of a motor vehicle. The Commonwealth is *not* obliged to prove such unessential matters beyond a reasonable doubt, although you may consider a witness's answers even about unessential matters when you determine that witness's credibility.

***Conclusion.* At the conclusion of the trial I shall charge you further on the law to be applied in this case. Please give the proceedings your full attention so that you will have a complete understanding of the evidence and reach a true and just verdict.**