

NOTETAKING BY JURORS

Any jurors who wish to do so may take notes during the course of this trial. Some jurors may feel that notes are helpful, particularly if the case involves any complicated issues. Of course, you are not required to take notes, and some of you may feel that taking notes may be a distraction and interfere with hearing and evaluating all the evidence.

If you do take notes, I suggest you take them sparingly and keep them brief. Don't try to summarize *all* of the testimony. Notes can help you remember specific testimony, like measurements, or times or distances, or help you to keep straight the names or relationships of people in the case.

But remember — you must decide whether and how much you believe the witnesses, and an important part of that is your observation of each person's appearance on the witness stand. Don't let note taking distract you from those important observations. Most of your work in this trial must be done with your eyes, your ears and your mind, not with your fingers.

When you get to the jury room, remember that your notes are only an aid to your memory, and not a substitute for what you actually remember.

Don't use your notes to try to persuade your fellow jurors; your notes are not official transcripts. Whether you take notes or not, you must rely on your own memory in the jury room. Don't be influenced by the notes of other jurors.

If you do take notes, please keep them private and don't show them to anyone but your fellow jurors. In order to help preserve the confidentiality of your deliberations, after you have reached a verdict I will direct the court officers to collect and destroy any notes that have been made in this case.

This instruction is recommended when notetaking is permitted by the judge. See *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 2.23. It is adapted from E.J. Devitt and C.B. Blackmar, *Federal Jury Practice and Instructions* § 10.06 (Supp. 1980), which was recommended in *Commonwealth v. Wilborne*, 382 Mass. 241, 253, 415 N.E.2d 192, 200 (1981), and *Commonwealth v. St. Germain*, 381 Mass. 256, 267 n.21, 408 N.E.2d 1358, 1367 n.21 (1980). Superior Court Rule 8A requires that jurors' notes be destroyed upon the recording of the verdict. It appears that this rule governs District Court jury sessions. See G.L. c. 218, § 27A(e) ("Trials by juries of six persons shall proceed in accordance with the provisions of law applicable to trials by jury in the superior court . . ."); *Commonwealth v. Johnson*, 417 Mass. 498, 505 n.7, 631 N.E.2d 1002, 1007 n.7 (1994) (Superior Court Rule 6 on peremptory challenges "is the method of jury selection to be used by trial courts in the Commonwealth").

The judge has discretion to restrict notetaking to the portion of the jury instructions dealing with the elements of the offenses. *Commonwealth v. Dykens*, 438 Mass. 827, 830-835, 784 N.E.2d 1107, 1112-1115 (2003).