

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, 625 N.E.2d 2, 5 (1994). See generally *Jury Trial Manual for Criminal Offenses Tried in the District Court* § 2.33.

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 Assistant District Attorney _____ on behalf of the Commonwealth 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. **Defendant's presence.** The defendant is not entitled to be present at a view, and may be barred from boarding the jurors' bus if he or she appears without the judge's permission. *Commonwealth v. Gagliardi*, 29 Mass. App. Ct. 225, 237, 559 N.E.2d 1234, 1243 (1990).

2. **Unauthorized view.** If it is reported that an unauthorized view may have taken place, the juror should be interviewed in the presence of counsel to determine if the unauthorized view has in fact taken place, the extent of

the juror's activity at the scene, and whether the juror has shared such information with other jurors. *Commonwealth v. Cuffie*, 414 Mass. 632, 609 N.E.2d 437 (1993); *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").