

## MODEL CRIMINAL JURY SELECTION—PANEL VOIR DIRE

### Introduction

Good morning. Welcome to the [*County*] Superior Court. I am Judge [*name*]. Thank you for being here today. We will be choosing [*number*] of you to serve as jurors in a criminal trial. Before we start the process of selecting jurors, I would like to introduce our other court staff:

- Our courtroom clerk is [*name*].
- Our court officers are [*names*].
- *< if relevant >* Our court monitor, [*name*], is responsible for running our electronic recording system and making sure we have a record of everything that happens in the courtroom.

Our Clerk will now call the defendant to be tried and swear in our prospective jurors. *< Clerk places defendant at the bar, swears venire >*

### Overview

For many of you, this may be your first jury service. Please relax; I will explain the process we are going to follow.

This is a criminal case prosecuted by an Assistant District Attorney who represents the Commonwealth of Massachusetts, which is our state government. In this trial the terms “the prosecution,” “the Commonwealth,” and “the government” all mean the same thing.

The prosecution has charged the defendant, DFT, with committing several crimes. DFT has pleaded **not guilty** to those charges.

In a moment I will tell you a little about the case and explain the schedule for the trial. You will meet DFT and the attorneys. I will also explain some of the legal rules that will apply in this case.

The lawyers and I will then ask you all some questions, because we need to make sure that we choose jurors who will approach this case with an open mind and who have no reason to favor one side or another.

I will first ask some questions of all of you as a group. Then I will speak with each of you separately and ask you a few more questions, and the lawyers will follow up by speaking with you in smaller groups.

Please listen carefully to each question and give us your honest answer. There are no right or wrong answers. Our goal is to choose jurors who will be fair to both sides in deciding this case, will follow and apply the legal rules that I explain to the jury, and will decide the case based only the evidence and those legal rules.

## Case Information

### (a) Brief Description of the Case

As I mentioned, this is a trial of a criminal case. The prosecution alleges that *<brief summary of allegations>*.

DFT has been charged with committing *<list charges>*.

DFT denies these allegations and has pleaded **not guilty** to all of these charges. At the end of the trial, the jury will decide whether the prosecution has proved these charges beyond a reasonable doubt.

### (b) Counsel

I will now ask the lawyers to introduce themselves and tell you whom they represent.

For Commonwealth:

For Defendant[s]:

*<let counsel introduce defendant>*

### (c) Trial Schedule and Length

Today is <date>. We plan to start the trial itself <this afternoon / other date>. The parties estimate that it will take \_\_ days to try this case and present all of the evidence. The jury will then meet to discuss and consider the evidence and issues in the case, which we call deliberation, and to reach a decision, which we call a verdict. There is no set time for a jury to decide a case; it is up to the jury to take the time it needs.

During the trial, while evidence is being presented our schedule will be <explain>. Once the jurors have heard all the evidence and start to meet privately to discuss the case, they will keep working until they reach a verdict or until 4:00 p.m., whichever comes first. If the jury has not reached a verdict by 4:00 p.m. or so, the jurors will return to court the next day and continue their deliberations.

### Legal Principles

Before we begin choosing jurors, I will briefly explain some important legal rules that the jury must follow. At the end of the trial I will give you more detailed instructions on the legal rules that apply in this case.

#### (a) Presumption of Innocence / Proof Beyond a Reasonable Doubt

Every person who is accused of a crime is presumed to be innocent of that crime. DFT is presumed innocent of the charge[s] in this case. That means the jury must consider DFT to be innocent at the beginning of the trial, and must still consider him to be innocent at the end **unless** the prosecution proves **beyond a reasonable doubt**—through evidence presented during the trial—that DFT committed the crime[s] charged.

The facts that the Commonwealth charged DFT with certain crimes and that he is now standing trial are not evidence and are not relevant to whether DFT is guilty or not.

DFT does not have to do anything to convince you he is innocent. He does not have to explain anything to the jury. DFT does not have to testify, call or

question witnesses, or provide any evidence at all—because you must presume he is innocent.

Instead, the Commonwealth has to prove the charge[s] against DFT beyond a reasonable doubt. If you serve on this jury, at the end of the trial you may not find DFT **guilty** of any crime unless the prosecution convinces you beyond a reasonable doubt that DFT committed that crime. If you are left with a reasonable doubt of DFT's guilt on a particular charge then your verdict must be **not guilty** on that charge.

**(b) Elements of the Charges:** *<include if needed for jury selection>*

### **Cautions During Jury Selection and Trial**

There are a few important rules you must follow during our jury selection process and until your jury service is over.

It is important that you keep an open mind about this case. Do not discuss this case or the questions we ask during our jury selection process with any of the other potential jurors or with anyone else. Do not send any electronic communications or posts, and do not look things up or do any kind of research, about the jury selection we are doing now, or about the case or people involved in the case.

If you are chosen to serve on the jury, you may tell people that you are serving on a jury and give them the trial schedule, and how long your jury service is likely to last—but you must not tell them anything else about the case until the trial is over and the jury has reached a verdict.

### **The Jury Selection Process**

When the lawyers or I ask you questions, we are not trying to pry or make you uncomfortable. Instead, we ask these questions to determine whether you are able to serve as a fair juror, whether you have any reason to favor one side or the other, and whether you are confident you can decide the case based only on the evidence that will be presented during the trial and the legal instructions I will give.

If we do not choose you to serve on the jury, please do not be offended. Sometimes a person who would be a fair juror in one case might have difficulty being fair in another case. For example, a potential juror who knows someone involved in the case, or has had a personal experience that is very similar to issues raised in the case, might have difficulty being completely fair to both sides.

Please keep these thoughts in mind when you answer the questions that the lawyers and I ask you.

## Questions

### (a) Questions to Entire Venire<sup>1</sup>

Let's turn to the first round of questions, which I am going to ask you all as a group. Please listen to each question carefully. If your answer is "Yes," raise your hand with your juror card facing forward so that the number is showing. Keep your hand raised until the court officer reads your juror number out loud; you may then put your hand back down.

1. Are you related to or do you know DFT or any member of his family?
2. Are you related to or do you know me, any of the lawyers in this case, or anyone who works with them?
3. I am now going to read a list of other people you may hear from or about at trial. Some of these people may testify during trial; others might just get mentioned in passing. We need to find out whether you know or have heard of any of these people:

*< insert or read list of names that may come up during trial, including alleged victim, all potential witnesses, and other names that may be mentioned at trial—include city/town of residence, professional affiliation, or both, as appropriate >*

Do you know, or have you heard of, any of the people whose names I just read to you?

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<sup>1</sup> Cf. G.L. c. 234A, § 67A; Mass. R. Crim. P. 20(b)(1).

4. *< if relevant >* Have you ever worked for, or had any other relationship with, *< hospital—other entity >*?
5. Is there any way the outcome of this case might cause you to gain or lose something, or affect you in some other way?
6. Have you formed or expressed any opinion about this case?
7. Have you seen, heard, or read, or do you know anything about this case other than what I just told you?
8. Is there anything else that, in fairness, we should know about your ability to be a juror in this case?

*< Add group questions suggested by the parties as appropriate. >*

#### **(b) Individual Voir Dire**

*< Explain method of individual voir dire, e.g. sending venire to another courtroom and bringing in one juror at a time, or at side bar >*

When you [return and join us] [come up to the side bar], I will have a few more questions for you.

*< if others can hear individual dire >* If you feel that to answer a question you would have to reveal private information, just say “that’s private.” Then I will decide whether we should ask you that question with the lawyers present but out of the hearing of everyone else.

Once I finish my questions, I will let you know whether you should sit in the jury box and wait to speak some more with the lawyers, or you have instead been excused from this trial. If you are excused, [you have completed your jury service and may leave] [must return to the jury pool]. Either way, thank you for being here today and participating in this process.

#### **Questions for each prospective juror:**

9. Do you have any trouble speaking or understanding English?
10. Do you have any scheduling problem or personal situation that would make it a serious hardship for you to serve on this jury on the schedule I described?

11. Will you approach this case with an open mind and be fair to both sides?

< *follow up on "Yes" answers to group questions, then continue.*>

12. (a) Do you understand that:

- you must presume the defendant is innocent;
- the defendant does not have to testify or do anything to show that he is innocent; and
- if the prosecution does not prove a charge beyond a reasonable doubt, then you must find the defendant is **not guilty** on that charge? < *wait for answer*>

(b) Will you follow those rules?

13. < *if defense requests*><sup>2</sup> The defendant and the alleged victim are of different racial or ethnic groups. Would that make it hard for you to be fair and keep an open mind in this case?

14. < *if defense requests*><sup>3</sup> The defendant may be of a different racial or ethnic group from you. Would that make it hard for you to be fair and keep an open mind in this case?

15. < *if defense requests*><sup>4</sup> DFT [and some of the witnesses] [speaks some English but] will be using an interpreter. Would that make it hard for you to be fair in this case?

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<sup>2</sup> In cases involving murder, sexual offenses against children, or rape, and also where the defendant and alleged victim are of different racial or ethnic backgrounds, a question on racial or ethnic bias is mandatory upon defense request. See *Commonwealth v. Colon*, 482 Mass. 162, 182 (2019); *Commonwealth v. Ramirez*, 407 Mass. 553 (1990). In other cases, such a question is advisable on defense request. See *Commonwealth v. Robertson*, 480 Mass. 383, 390 (2018); *Commonwealth v. McCowen*, 458 Mass. 461, 493 n. 23 (2010). It is up to the defendant whether to risk "activat[ing] latent bias." *Commonwealth v. Prunty*, 462 Mass. 295, 314–315 (2012).

<sup>3</sup> See prior footnote.

<sup>4</sup> The Supreme Judicial Court has encouraged voir dire inquiry into language bias upon defense request. "[W]here a defendant is entitled to the services of a translator because of an inability to speak English, the judge will, on request, ordinarily pose a question to the venire regarding language-related bias." *Commonwealth v. Espinal*, 482 Mass. 190, 191, 201 n.17 (2019) (recognizing that it is up to defendant whether to risk "activat[ing] latent ... bias").

16. Do you know of any bias or prejudice that would make it hard for you to be fair in this case?<sup>5</sup>

<Add individual questions suggested by the parties as appropriate.>

**(c) Panel Voir Dire Precharge**

Now that we have 14 potential jurors in the jury box, the lawyers will have a chance to ask some more questions. The lawyers might ask a question to the entire group, and ask you to answer by raising your hands. Or they might ask questions to one of you at a time, identifying you by number.

If you feel that to answer a question you would have to reveal something you do not want to discuss in front of everyone else, just say “that’s private.” Then I will decide whether we should ask you that question with the lawyers present but out of the hearing of everyone else.

The potential jurors in the back of the room should listen to what is happening, because we will repeat the process until we select all of our jurors. It’s likely you will be called forward and participate in the same kind of process you are about to see.

Once the lawyers finish asking questions to the first group of potential jurors, I will speak briefly with the lawyers. As you learned in the orientation video this morning, the parties have the right to ask that some jurors be excused. Our clerk will then let you know whether you have been selected to serve on the jury, or excused from this trial. As I said, if you are excused, please do not be offended. There are many reasons why a particular person may not be an appropriate juror in a given case. If you are excused, [you have completed your jury service and may leave] [must return to the jury

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<sup>5</sup> A juror’s opinion that the criminal justice system is unfair to African-American men is not automatically disqualifying; a juror is qualified if the juror can fairly evaluate the evidence and apply the law. Though jurors must be able to set aside any bias or opinion about the case, they cannot be required to set aside or disregard their life experiences and resulting beliefs or world view. See *Commonwealth v. Williams*, 481 Mass. 443, 446-449 (2019).



pool]. Either way, I again thank you for being here today and being willing to serve on this jury.

I remind each attorney that, if you are speaking to a specific juror, you must state the juror's seat number for the record either before or after the juror speaks. To make sure we are all on the same page, could the clerk please read the juror number of each juror in each seat?

With that, we are ready to go. Attorney <Name>, you have \_\_\_ minutes.

***Strikes for Cause – Finding Juror Is Indifferent – Peremptory Strikes – Seating Juror – Swear in Jury***