

Sample Remarks Advising the Jury Concerning the Death Penalty

Sample 1

Ladies and Gentlemen, I indicated to you the possible length of this case. There are several other concepts I want to discuss with you. I am sure some questions have crossed your mind throughout the course of this jury seating procedure. We are not going to discuss these issues any further today. However, I want to bring these matters to your attention.

Ladies and Gentlemen, this case may involve your consideration of the death penalty. This is sometimes referred to as the issue of capital punishment. I want you to be aware of this fact because this is an issue that may or may not come up in this case. You should be aware of this possibility.

The imposition of the death penalty may be one of the several penalties you may be required to consider in this case. Remember the defendant is at all times presumed innocent and, therefore, you should not consider this discussion to in anyway imply that the defendant is guilty of any criminal offense. I simply want you to be aware of the potential possibilities for the case. The law provides very specific requirements for your consideration. Your oath as a juror requires that you follow the law as I provide it to you.

Your views on the death penalty will not be discussed today. It is inappropriate for us to do so and, by law, we cannot do so today.

For that reason, your views on the death penalty as well as the pretrial publicity questionnaire that you filled out today, including anything that might be somewhat personal on the questionnaires, will be done in a second round of jury seating.

Let me explain the procedure that we are going to follow. We refer to this procedure as "small group questioning." Hopefully this explanation will help some of you who have scheduling concerns.

In comparison to times gone by, our system of jury selection has been streamlined. No longer do we bring you all back here everyday where you would endlessly wait for your turn into the courtroom. Rather, we are going to bring you back in groups, about eight (8) of you at a time. When your group is called in, you will be here for approximately two hours. You will not return to the courthouse relative to this case until, and unless, you are called for final questioning.

We are going to pass timetables out to each of you. We will start tomorrow afternoon with the small group juror questioning. As I previously mentioned, we will have approximately eight (8) of you in the courtroom at a time. You will come before the court in your numerical order. Please dress comfortably.

You may bring magazines or books with you, but please no local newspapers. While you wait to be called, you will all be downstairs in the Jury Room where it is much more comfortable and where you can get a snack, sodas, or whatever.

We will bring each group to the courtroom. During the small group questioning, we are going to ask you questions about your views concerning the death penalty. We are also going to ask you questions about any pretrial publicity regarding this case that you might have been exposed to or any facts that you might know about this case.

We might ask questions of you from your individual questionnaires. We save these questions for this time because we thought they are more appropriately discussed with you in a small group, or even individually. We will take up anything else that may apply to you individually as a potential juror.

Once we get enough prospective jurors to where we think we can possibly seat a jury, we are going to bring probably about fifty (50) of you back for some final questioning. The law requires we follow this very formal procedure so that we can insure a fair and impartial jury. I apologize for the inconvenience to all of you, but I am sure you understand the importance of what we are doing.

When we get the large group of jurors together again, we will have a minimal amount of additional questioning. We will be certain that nothing major has occurred in anybody's life, for instance, a death in the family just occurred-something along those lines. From there, we will pick approximately

seventeen (17) jurors that will actually sit. That is twelve (12) that will be the regular jurors and five (5) alternate jurors.

We will then proceed with the trial. This type of a case may, or may not, proceed in two (2) parts. Let me explain to you what I mean.

First, we have the trial phase. The trial phase is where you hear evidence to determine whether the State proves the defendant guilty of a crime by proof beyond a reasonable doubt. At the end of this trial phase you render a verdict of either guilty or not guilty on the crimes that have been charged in the case.

Depending on your verdict at the trial phase, there could be a second phase. That second phase is many times referred to as the sentencing phase. At this sentencing phase, you would consider the potential penalties that would be appropriate for you to render as a sentencing verdict in this particular case. If we reach the second phase, it is really somewhat like a second trial using the same jury that decided the trial phase. You will receive very specific instruction on the law you must follow. I will give you these instructions and you must be willing to follow the law as I give it to you.

All of this will take a fair amount of time. The vast majority of this case will be involved in just getting the jury picked because we have to go through this several step process.

Let me discuss another issue with you. Many of you may have heard of the term "being sequestered." "Sequestered" means we are going to keep you here and you stay in a hotel room. Some of you may be wondering if you are going to be sequestered in this case. The answer is both "yes" and "no." You will only be sequestered if you are chosen as a juror in this case.

The jurors in this case will not, I repeat, will not be sequestered while the trial is proceeding. You will go about your normal business at the end of the day. You will go home to your family. However, you cannot talk to your family, friends, coworkers, or anybody about this case. You will have certain other orders also such as not reading or listening to anything about the case. I will give you a list of orders to follow. You cannot talk to anybody about what goes on in the courtroom until the case is over. You need to tell your family, friends, and coworkers that you cannot discuss the case in any way until the case is totally over and I release you from this order. If you violate this order, you could be found in contempt of court.

During your deliberations, you will be sequestered. This means that, when you are deliberating at the end of the trial, you will be sequestered, if need be overnight.

We will make all the arrangements. You will go to a nice hotel. You will have good food and we will cover all your expenses. You will be sequestered until a verdict is rendered. Exactly how long that will be will depend on the length of time it takes to reach a verdict.

Depending on the verdict, we then may move to a second phase, which would be the sentencing phase. You would not be sequestered during that phase, but when you deliberate on that phase, again, you would be sequestered during the deliberation only. To sum it, you will only be sequestered during your deliberations-both during the trial phase and, if there is one, during the sentencing phase.

I just want you to be aware of this fact. I am not permitted to answer any questions about this now but, I want you to know everything, so that you can start to at least think ahead and plan ahead. Do not worry about the specific times right now, we will give advanced notice so that you may plan ahead. I will explain all of these matters in more detail as we move forward.

Those of you that have specific problems with sitting as a juror in this case, we are going to talk to you about those issues a little bit more during the small group questioning.

It will take about ten (10) minutes for the staff to finalize and copy the reporting timetables. We are going to provide you with a short questionnaire to complete. This questionnaire will ask questions regarding your views on the death penalty. We will collect them today. Let me say one other thing to you. If at any point in time you do not understand whether you are supposed to come in, or have questions, please call the Jury Commission. The Jury Commission's phone numbers are on the timetable.

If you do not come or you come late, you throw everybody off. Not only is it not fair to all the parties that are involved, it is not fair to your fellow jurors. Further, if you do not appear, you will be ordered before the court for a contempt hearing.

Let me now return to a few other issues . . .

Sample 2

As prospective jurors in this case, you have been through the initial jury seating process. You have been brought before the court today for specific inquiry with respect to your qualifications as potential jurors in this case. As I told you previously, you would be brought before the court for an inquiry that would bear upon your views and beliefs about the death penalty, also called capital punishment. The death penalty or capital punishment means sentencing an individual to be put to death.

The defendant in this case is presumed innocent at all times but we must discuss these issues. I have previously indicated that there is a possibility in this case, if guilt of the defendant is established beyond a reasonable doubt, that the death penalty could, under certain circumstances, be imposed. Because of this possibility, it is proper that the court and counsel ask you certain questions regarding your views on the death penalty. It is important for you to remember, however, that these questions have absolutely no relationship as to whether or not the defendant is guilty of the crime to which he is charged. The defendant is presumed innocent at all times. You are not to consider these questions in any way implying that the defendant is guilty of the crime charged. The fact that questions are going to be asked of you with respect to your attitude regarding the death penalty should not be taken as any indication whatsoever that anyone in this courtroom, the lawyers, the court, or anyone else believes at this stage of the proceedings, that the defendant is guilty. You should not presume that these questions mean that a finding of guilt should or will be made in this case. These questions are asked solely because the law requires that a separate inquiry be made with respect to your attitudes regarding the death penalty.

Please remember in my earlier remarks to you I indicated that, because this case has a potential for the death penalty, it could possibly proceed in two phases. The first phase is the trial phase where there would be a determination made as to whether the defendant was guilty or not guilty of the various crimes that have been charged. If the state proves the defendant's guilt beyond a reasonable doubt and a conviction results, there is a possibility that there will be a separate phase, which I previously referred to as a sentencing phase. If there is a sentencing phase, the jury will be called upon to make a decision regarding sentencing. One of the possible sentences would be the death penalty. Any sentence considered by you should be done so as if it will be followed and as though it will be carried out and as if it were absolute.

Because your verdict could lead to imposition of the death penalty, your attitude, beliefs, and views regarding the death penalty are proper subjects of inquiry by the court and the lawyers in this case. The fact that you may have reservations about or conscientious or religious objections to the death penalty, does not automatically disqualify you as a juror in this case. The fact that you may be in favor of the death penalty in certain cases does not automatically disqualify you as a juror. The key question is whether you can put aside your personal beliefs and philosophy and, in light of your sworn duty as a juror, follow the law considering the potential penalty of death, if appropriate, under the law. It is up to each one of you to search your conscience to determine whether you can follow the law as I give it to you and render a verdict as the evidence and the law may warrant. There are no right or wrong answers on the issue of the death penalty. We only want your honest views and answers.

It is also required that the court discuss with you any knowledge that you may have concerning the facts of this particular case or regarding any pretrial publicity or knowledge that you may have gathered concerning the facts of this particular case.

We appreciate your willingness to do your civic duty as a juror. There are no right or wrong answers, just honest answers. The court is here to see that justice is served. Your honest answers will help to insure a fair and impartial jury. We will now proceed.

[If state law permits, consider a procedural discussion of a capital case.]