

## **101. Cautionary Admonitions: Jury Conduct (Before, During, or After Jury Is Selected)**

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**I will now explain some basic rules of law and procedure. These rules ensure that both sides receive a fair trial.**

**During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. Do not share information about the case in writing, by email, by telephone, on the Internet, or by any other means of communication. You must not talk about these things with the other jurors either, until you begin deliberating.**

**As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.**

**You must not allow anything that happens outside of the courtroom to affect your decision [unless I tell you otherwise]. During the trial, do not read, listen to, or watch any news report or commentary about the case from any source.**

**Do not do any research on your own or as a group regarding this case. Do not use a dictionary(/or) the Internet(/)[, or \_\_\_\_\_<insert other relevant means of communication>]. Do not investigate the facts or law. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.**

**[If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom and during jury deliberations. An electronic device includes any data storage device. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you without delay.]**

**During the trial, do not speak to a defendant, witness, lawyer, or anyone associated with them. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you**

about the case, you must end the conversation.

When the trial has ended and you have been released as jurors, you may discuss the case with anyone. [But under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.]

If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff.

Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

Do not let bias, sympathy, prejudice, or public opinion influence your decision.

You must reach your verdict without any consideration of punishment.

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*New January 2006; Revised June 2007, April 2008, December 2008, April 2010, October 2010*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to instruct the jurors on how they must conduct themselves during trial. (Pen. Code, § 1122.) See also California Rules of Court Rule 2.1035.

**Do not** instruct a jury in the penalty phase of a capital case that they cannot consider sympathy. (*People v. Easley* (1982) 34 Cal.3d 858, 875–880 [196 Cal.Rptr. 309, 671 P.2d 813].) Instead of this instruction, CALCRIM 761 is the proper introductory instruction for the penalty phase of a capital case.

If there will be a jury view, give the bracketed phrase “unless I tell you otherwise” in the fourth paragraph. (Pen. Code, § 1119.)

## AUTHORITY

- Statutory Admonitions. Pen. Code, § 1122.

- Avoid Discussing the Case. *People v. Pierce* (1979) 24 Cal.3d 199 [155 Cal.Rptr. 657, 595 P.2d 91]; *In re Hitchings* (1993) 6 Cal.4th 97 [24 Cal.Rptr.2d 74, 860 P.2d 466]; *In re Carpenter* (1995) 9 Cal.4th 634, 646–658 [38 Cal.Rptr.2d 665, 889 P.2d 985].
- Avoid News Reports. *People v. Holloway* (1990) 50 Cal.3d 1098, 1108–1111 [269 Cal.Rptr. 530, 790 P.2d 1327], disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830 [38 Cal.Rptr.2d. 394, 889 P.2d 588].
- Judge’s Conduct as Indication of Verdict. *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- No Bias, Sympathy, or Prejudice. *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- No Independent Research. *People v. Karis* (1988) 46 Cal.3d 612, 642 [250 Cal.Rptr. 659, 758 P.2d 1189]; *People v. Castro* (1986) 184 Cal.App.3d 849, 853 [229 Cal.Rptr. 280]; *People v. Sutter* (1982) 134 Cal.App.3d 806, 820 [184 Cal.Rptr. 829].
- This Instruction Upheld. *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1182–1183 [67 Cal.Rptr.3d 871].

### ***Secondary Sources***

5 Witkin & Epstein, *California Criminal Law* (3d ed. 2000), Criminal Trial § 643.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 81, *Jury Selection and Opening Statement*, § 81.06[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[1], [4] (Matthew Bender).

## **RELATED ISSUES**

### ***Admonition Not to Discuss Case With Anyone***

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court’s admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror during deliberations . . . may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses,

spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(*Id.* at p. 306, fn. 11.)

The court may, at its discretion, add the suggested language to the second paragraph of this instruction.

***Jury Misconduct***

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

## 102. Note-Taking

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**You have been given notebooks and may take notes during the trial. Do not remove them from the courtroom. You may take your notes into the jury room during deliberations. I do not mean to discourage you from taking notes, but here are some points to consider if you take notes:**

- 1. Note-taking may tend to distract you. It may affect your ability to listen carefully to all the testimony and to watch the witnesses as they testify;**

**AND**

- 2. The notes are for your own individual use to help you remember what happened during the trial. Please keep in mind that your notes may be inaccurate or incomplete.**

**At the end of the trial, your notes will be (collected and destroyed/collected and retained by the court but not as a part of the case record/\_\_\_\_\_ <specify other disposition>).**

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*New January 2006; Revised June 2007, April 2008*

### **BENCH NOTES**

#### ***Instructional Duty***

The court has a **sua sponte** duty to instruct the members of the jury that they may take notes. California Rules of Court, Rule 2.1031.

The court may specify its preferred disposition of the notes after trial. No statute or rule of court requires any particular disposition.

#### **AUTHORITY**

- Resolving Jurors' Questions. Pen. Code, § 1137.
- Jurors' Use of Notes. California Rules of Court, Rule 2.1031
- This Instruction Upheld. *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1183 [67 Cal.Rptr.3d 871].

#### ***Secondary Sources***

6 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Judgment, § 18.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85,

**CALCRIM No. 102**

**PRETRIAL**

*Submission to Jury and Verdict*, § 85.05[2] (Matthew Bender).

## 103. Reasonable Doubt

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**I will now explain the presumption of innocence and the People's burden of proof. The defendant[s] (has/have) pleaded not guilty to the charge[s]. The fact that a criminal charge has been filed against the defendant[s] is not evidence that the charge is true. You must not be biased against the defendant[s] just because (he/she/they) (has/have) been arrested, charged with a crime, or brought to trial.**

**A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].**

**Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.**

**In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant[s] guilty beyond a reasonable doubt, (he/she/they) (is/are) entitled to an acquittal and you must find (him/her/them) not guilty.**

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*New January 2006; Revised June 2007*

### **BENCH NOTES**

#### ***Instructional Duty***

The court has a **sua sponte** duty to instruct on the presumption of innocence and the state's burden of proof before deliberations. (*People v. Vann* (1974) 12 Cal.3d 220, 225–227 [115 Cal.Rptr. 352, 524 P.2d 824]; *People v. Soldavini* (1941) 45 Cal.App.2d 460, 463 [114 P.2d 415]; *People v. Phillips* (1997) 59 Cal.App.4th 952, 956–958 [69 Cal.Rptr.2d 532].) This instruction is included in this section for the convenience of judges who wish to instruct on this point during voir dire or before testimony begins.

If the court will be instructing that the prosecution must prove something by