

CRIMINAL JURY TRIAL JUDGE'S MANUAL

**A Step-By-Step Guide
From the Beginning of Trial
Through the Return of Verdict**

State of Minnesota

v.

Case # _____

Date: _____

The Honorable _____

CRIMINAL JURY TRIAL JUDGE'S MANUAL

By

Hon. Alan F. Pendleton
Tenth Judicial District Court Judge

Manuscript Research, Review and Editing By:

Kevin Toskey, William Ross, Jay Ward

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Hon. Alan F. Pendleton, Anoka County Courthouse, 325 East Main Street
Anoka, Minnesota 55303, Telephone: (763) 422-7309, E-Mail: Alan.Pendleton@Courts.state.mn.us

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- Update 10-13 Battered Woman Syndrome**
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**ALL PAST AND PRESENT JUDICIAL TRAINING UPDATES CAN BE FOUND AT
www.PendletonUpdates.com**

I. PRE-TRIAL CHECKLIST

BEFORE TRIAL – IN CHAMBERS

NOTE: Attorneys for both sides should be prepared to discuss the following in chambers before trial. All rulings and decisions will be subsequently placed on the record outside the hearing of the jury but in the presence of the Defendant. The Court may distribute copies of the following checklist to the attorneys prior to commencement of trial.

1. SCHEDULING:

- a) **Anticipated Length of Trial;**
- b) **Time Conflicts (Attorneys and Witnesses).**

2. WITNESS LISTS:

- a) **Court Needs Master List to Read to Jurors;**
- b) **Need for Interpreter (Defendant and/or Witness);**
 - 1) CrimJig 2.05; Under oath, qualifications, equipment, logistics;
 - 2) See Bench Card from Mn Court Interpreter Program for issues to address.
Minnesota Judicial Center, 651-297-5300; <http://www.mnCourts.gov/?page=446>

3. SEQUESTRATION (WITNESS AND JURY); EXCLUDING PERSONS:

- a) **Make Record of Request to Sequester Witnesses or Jurors.**
R.Crim.Pro.26.03 Subd 8 (Witnesses); 26.03 Subd 5 (Jurors); MRE 615;
 - 1) Sequestration is at Court's Discretion and in criminal cases should rarely be denied. *State v. Garden*, 125 N.W.2d 591, 601 (Minn.1963).
 - 2) Attorneys have the responsibility to notify and monitor their own witnesses;
 - 3) **VIOLATIONS:** Statements made in violation of a sequestration order must be made in an attempt to influence the testimony of other witnesses or actually influence the testimony of other witnesses before the Court need consider the violation as grounds for a new trial. *State v. Johnson*, 324 N.W.2d 199, 201 (Minn. 1982);

- b) **New Rule: Sequestration of Jurors During Deliberation:** Court no longer needs Defendant's consent. Sequestration is at discretion of the Court. Rule 26.03 subd 5(1).
- c) **If Deliberating Jury is NOT Sequestered: Conduct Voir Dire After Each Separation**
State v. Sanders, 376 N.W.2d 196 (Minn.1985) Best Practice:
1. Did anyone try to contact you over the weekend to discuss this case?
 2. Did any of you talk to each other over the weekend about this case?
 3. Did you speak with anyone else about this case?
 4. Did anyone do any research about the case or any issues raised in it?
 5. Did anyone drive past or visit any of the locations mentioned in this case?
- d) **Excluding Disruptive Individual or Young Child from Portion of Trial:**
- 1) **Disruptive Individual:** *Waller v. Georgia*, 467 US 39 (1984). Four part test for exclusion of individual from a portion of a criminal trial: (1) closure must advance an overriding interest that is likely to be prejudiced; (2) closure must be no broader than necessary to protect that interest; (3) that trial court must consider reasonable alternatives to closure; and (4) court must make findings adequate to support the closure. *State v. Infante*, 2012 WL 4052396, spectator making unfavorable gestures during the wife's testimony.
 - 2) **Young Child:** Barring a child from the courtroom falls within the authority of the trial court "to exclude children when the subject matter is deemed unsuitable for children. The court's overriding concern to protect the child justified the narrowly tailored eviction of the child." *State v. Infante*, 2012 WL 4052396, (Minn.App.2012).
See also M.S. 546.37 (exclude child if issues are of a 'scandalous or obscene nature).
- e) **Courtroom Closure:** Constitution guarantees the right to a public trial. A courtroom closure can be "so trivial" that it does not implicate the right to a public trial. A proper record must be made. See Rule of Crim. Pro. 26.03 subd 6; *State v. Trautman*, A12-0929 (Minn.App.2013) courtroom closed while Court individually questioned jurors regarding exposure to potentially prejudicial material during trial – Affirmed. See also Rule of Crim. Pro. 26.03, subd 10 "Questioning Jurors About Exposure to Prejudicial Material."
- f) **Case Agent Exception: Minn. R. Evid. 615 (comments):** Investigators, agents or experts essential to advising counsel during trial may be present. But see *State v. Koskela*, 536 N.W.2d 625 (Minn.1995) Sup Ct has expressed concern over this practice.
As a general rule, only parties and their attorneys are allowed to sit at counsel table.

4. JURY INSTRUCTIONS – PRELIMINARY DISCUSSIONS:

a) **CrimJig 1.01A or B, Delete Phrase: the Defendant “may have been arrested”** in cases where Defendant was never arrested. (See top of page 21).

b) **Anticipated Cautionary Instructions: See Training Update 11-2: 15 Most Common Cautionary Instructions.**

- 1) Cautionary Instructions are a significant factor in determining whether there should be a mistrial. *State v. Robinson*, 604 N.W.2d 355, 361 (Minn. 2000).
- 2) Generally if Defendant fails to request, cannot raise issue on appeal, *Id.* HOWEVER, failure to instruct could result in plain error and create an appeal issue.
- 3) Better practice is for trial court to sua sponte give a cautionary instruction. *See State v. Roman Nose*, 667 N.W.2d 386 (Minn. 2003).

c) **Accomplice Testimony Instruction**

- 1) Accomplice instruction (CrimJig 3.18) **MUST** be given in any case where a witness against the Defendant might reasonably be considered an accomplice because the credibility of an accomplice is inherently untrustworthy. May be reversible error to fail to instruct on accomplice testimony; *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004).
- 2) The instruction must be given regardless of whether the Defendant requests it.

d) **Anticipated “Lesser-Included Offense” Instruction (CrimJig 3.20)**

- 1) May be reversible error to fail to instruct on a lesser-included offense;
- 2) Three-Part Analysis: *State v. Dahlin*, 695 N.W.2d 588 (Minn 2005);
 - a) Lesser offense is included in charged offense;
 - b) Rationale basis to acquit on charged offense;
 - c) Rationale basis to convict on lesser offense.
- 3) Defendant must request it or it is waived, except for homicide;
- 4) Court cannot make credibility determinations or weigh the evidence. Must view evidence in light most favorable to party requesting the lesser offense.

e) **Courtroom Closure During Closing Argument or Jury Instructions:**

Does not violate Defendant’s right to a public trial if: Spectators must be “welcome to stay”; No spectators “cleared” from courtroom; Public, press and Defendant’s family remain; Charge to jury is small portion of case. *State v. Pitts*, 2012 WL 3640990 (Minn.App.2012); and *State v. Brown*, 815 N.W.2d 609 (Minn. 2012); See Rule of Crim. Pro. 26.03 subd 6.

5. CHARGES AND ARRAIGNMENT:

- a) **Confirm Charges and Verify Statutory Citations – Any Amendments;**
- b) **Confirm Defendant Previously Arraigned and Pled “Not Guilty”.**

6. STIPULATIONS AND/OR ADMISSIONS:

- a) **Testimonial** – Stipulated facts agreed to by both parties to be read to the jury, perhaps to avoid the necessity of calling a certain witness;
- b) **Evidentiary** – See **Training Update 11-5: Failure to Obtain Defendant’s Personal Waiver When Stipulating to Element of Offense.** When Defendant stipulates to prior conviction being used for enhancement purposes. *Old Chief v. U.S.* 519 U.S. 172 (1997).
- c) **Foundation** - Chain of Custody or Authenticity Issues, etc.

7. JEOPARDY ATTACHES ONCE JURY SWORN – DEADLOCKED JURY

- a) **Trial Will Go Forward Even if Defendant is Late or Fails to Appear.**

Mn.R.Crim.Pro. 26.03 subd 1 (2); Three-step process the court must follow:

- 1) The court must make “sufficient inquiry into the circumstances of Defendant’s disappearance to justify a finding whether the absence was voluntary”;
- 2) The court is to “make a preliminary finding of voluntariness”;
- 3) The Defendant afforded “an adequate opportunity to explain his absence when he is returned to custody and before sentence is imposed.”

Note: Upon finding that Defendant’s absence was voluntary and not justified court may find Defendant has waived his right to be present at trial and allow the trial to go forward in Defendant’s absence. *State v. Finnegan*, 784 N.W.2d 243, 250-51 (Minn. 2010).

- b) **Mistrial – Deadlocked Jury:** If Defendant consents to a mistrial he waives any claim to double jeopardy. If Defendant objects to a mistrial then double jeopardy attaches unless “manifest injustice” requires the trial to be terminated. Best practice is for Defendant to personally make that decision. “The declaration of a mistrial due to a manifest necessity from a deadlocked jury is entitled to substantial deference on appeal”. Manifest necessity is “an objective necessity apparent not only to the district court but to any reviewing court”. The Court should consider less extreme alternatives than a mistrial (i.e. fewer than 12 jurors, accepting a partial verdict, additional instructions). *State v. Hunter* 815 N.W.2d 518 (Minn.App.2012).

8. DEFENDANT'S RIGHT NOT TO TESTIFY - PROPER RECORD:

a) Decision to Testify or Not Testify Should Be on the Record and Should Come Expressly From the Defendant, Not Defense Counsel, However:

An on the record colloquy with Defendant who does not testify is NOT legally required. If no record is made, the presumption is that waiver was voluntary and intelligent – but in a post-conviction proceeding Defendant can rebut that presumption. *State v. Walen*, 563 N.W.2d 742, 751 (Minn. 1997).

RECOMMENDATION: Putting the waiver on record will save court and defense a lot of time at any post-conviction proceeding.

b) Don't Give CrimJig 3.17 Unless Defendant (Not Defense Counsel) Personally Requests The Instruction. Make A Clear Record. *State v. Thompson*, 430 N.W.2d 151, 153 (Minn. 1988).

9. DISCOVERY ISSUES:

Both Parties in Compliance and Nothing Pending. See Mn.Rule.Crim.Pro. 9.01 And 9.02.

10. AFFIRMATIVE DEFENSES:

a) Is Defendant Raising Any Defense Other Than Not Guilty? (e.g. Alibi, Self-Defense, Mental Illness, Entrapment, Intoxication, etc.) Rule 9.02 Subd 1(5)(6)(7);

b) Make a Clear Record. Especially In Misdemeanor Cases Since Rule 9.01 & 9.02 Apply Only To Gross Misdemeanor And Felony Cases;

c) Burden of Initial Production v. Burden of Proof.

Clarify Various Burdens of Proof. For Example: For entrapment, once defense is raised, Defendant has initial burden of proving by a preponderance of the evidence inducement by government agents to commit the crime charged, whereupon the burden rests on the state to prove beyond a reasonable doubt predisposition by Defendant to commit the offense. CrimJig 7.02 (see comment).

11. WITNESS INCRIMINATION ISSUES AND IMMUNITY:

a) Need For 5th Amendment Advisory;

For example: Potential uncharged co-Defendant; recanting domestic abuse victim; accomplice; etc. Give advisory and consider appointing counsel to advise witness.

b) Have Witness Orally Waive and Sign Written Waiver of 5th Amendment;

c) Granting of Prosecutorial Immunity;

1) A device whereby prosecutor may give up the right to prosecute an individual in exchange for the right to compel that individual to testify against others.

- i. Derivative Use immunity: only protects witness from prosecution based on witness's own testimony or any evidence derived from the testimony. Witness can still be prosecuted for crime described in the testimony, so long as that prosecution is based on independent evidence).
- ii. Transactional immunity: Complete protection from future prosecution for crimes related to the witness' testimony. *Kastiger v. U.S.*, 406 U.S. 441 (1972); *State v. Gault*, 551 N.W.2d 719 (Minn.App.1996).

2) COMMON MISUNDERSTANDING: That the prosecution grants immunity to a witness, but only the Court can grant immunity. M.S. 609.09, Subd. 1.

d) If State Threatens Prosecution of Defense Witness (Alibi, etc.) 2-part test:

- 1) State must establish a reasonable and substantial belief testimony will be false;
- 2) Did State preclude witness's free and voluntary choice to testify by exerting undue distress on witness? *State v. Graham*, 764 N.W.2d 340 (Minn. 2009).

12. SECURITY/CUSTODY ISSUES (IF DEFENDANT IN CUSTODY):

a) Defendant Must Not Be in Jail Clothing. Minn. R. Crim. P. 26.03, subd. 2(b).

b) Defendant - No Restraints Without Public Hearing and Proper Findings;

Restraints must not be used "unless the trial Judge has found (on the record outside the presence of the jury) such restraint reasonably necessary to maintain order or security. Minn. R. Crim. P. 26.03, subd.2(c). The nonexclusive list of (9) factors to be considered:

- 1) the seriousness of the charge;
- 2) the Defendant's temperament and character;
- 3) the Defendant's age, physical attributes;
- 4) the Defendant's past record;
- 5) the Defendant's prior escapes or attempted escapes;
- 6) threats made by the Defendant to cause a disturbance;
- 7) the size and mood of the audience;
- 8) the nature and security of the courtroom; and,
- 9) any less restrictive available alternatives.

See Judicial Training Update 13-5 “Ordering Defendants to Wear Restraints During Trial”; Judges Bench Book 1102.05; *State v. Jones*, 678 N.W.2d 1, 22 (Minn.2004).

Warning – Example of Insufficient Findings: the serious nature of the charges (murder), the presumptive sentence of life in prison, and a finding that this was the least restrictive means available were not sufficient findings to support use of restraints. *Id.*

c) Cautionary Instruction (If Restraints Visible): Minn. R. Crim. P. 26.03, subd. 2(d). “The Restraints Must Not Be Considered In Reaching The Verdict.”

d) Use of Metal Detector, Wand, etc.

e) Encourage Attorneys to Report Potential Security Issues to The Court or Bailiff (agitated Defendant or victim’s volatile family members, etc).

13. USE OF WEAPONS/HAZARDOUS EXHIBITS DURING TRIAL:

a) Does Your Case Involve Weapons or Hazardous Exhibits? If Yes, Review Your “Weapons/Hazardous Exhibits In The Courtroom Policy.” See Prof. Simon’s Online Bench Book for a sample Firearm Policy. (See page 19 for webpage site).

b) Must Notify Bailiff Before Bringing Weapon/Hazardous Exhibits Into Courtroom; Discuss the logistics of getting weapons into the courtroom, how to present and display them, how to check them for safety, the standard cautionary instruction, ESTABLISH GENERAL EXPECTATIONS.

14. OPENING STATEMENT, CLOSING ARGUMENT, LOCKING COURT

a) Defense Attorney: Give Opening After The State or Reserve it;

b) Signs Not to Enter During Opening and Closing?

c) Locking Courtroom During Closing Argument or Jury Instructions:

Does not violate Defendant’s right to a public trial if: Spectators must be “welcome to stay”; No spectators “cleared” from courtroom; Public, press and Defendant’s family remain; Charge to jury is small portion of case. *State v. Pitts*, 2012 WL 3640990; and *State v. Brown*, 815 N.W.2d 609 (Minn. 2012); See Rule of Crim. Pro. 26.03 subd 6.

15. EXHIBITS:

- a) **Premark Exhibits (State 1 To _____; Defense _____ To _____);**
- b) **Have Attorneys Provide Exhibit Lists to Court and Opposing Counsel;**
Have all exhibits been examined by opposing counsel?
- c) **Stipulations and/or Objections Regarding Foundation;**
 - 1) Foundation Objection – be prepared to state where foundation is lacking;
 - 2) Requests to voir dire witness to lay foundation for objection;
 - i. Enforcement: Court will intervene sua sponte if attorney exceeds scope;
 - 3) Illustrative exhibits: mark and offer, but they do not go back to deliberation room;
- d) **Use of Technology During Trial (PowerPoint, DVD, Audio Playback, etc);**
Procedure for publishing exhibits to jury – if allowed by court.
- e) **Location During Trial and After Admission (Offer, Receive, Give to Court);**
 - 1) After use, put exhibit away; once received, exhibit belongs to the court clerk.
 - 2) The attorney who offers the exhibit has the responsibility of giving it to the court clerk immediately after the attorney is done using it.

16. COMPETENCY OF CHILD WITNESSES – SAMPLE QUESTIONS:

Examination May be in Chambers; On the Record; Defendant has Right to be Present; *Kentucky v. Stincer*, 482 U.S. 730 (1987); MS 595.02, subd. 4; *State v. Thompson*, 430 N.W.2d 151, 152-53 (Minn. 1988); MS 26.03, subd. 1.

- a) Name, How old are you? When is your birthday; What do you remember about it?
- b) Do you go to school; what school; what grade; teacher's name; favorite class?
- c) Can you read; What do you read; What type of shows do you watch on TV?
- d) Watch TV shows with Judges and lawyers; know what Judges and lawyers do?
- e) Ever see people in those shows raise their hands and promise to tell the truth?
- f) Know what it means to tell the truth; Explain (e.g. I am a boy/girl – truth or lie)?
- g) Know what it means to tell a lie; Explain (e.g. You are a boy/girl – truth or lie)?
- h) Have you ever told a lie before; Did you get into trouble?
- i) What happens if you tell a lie at home, at school, to policeman, in court?
- j) Do you think it is ever ok to lie? Purpose of oath to tell the truth?
- k) If I ask you to tell the truth will you do that?
- l) With your promise to tell the truth, that means not to hide anything, understand?
- m) You have to tell everything you remember when asked a question, understand?
- n) **NOTE:** make a record of the child's conduct, not just what is said.

17. PROSECUTORIAL MISCONDUCT:

- a) **See Training Update 10-14:** Attorney Handout on “Prosecutorial Misconduct”; Discuss Guidelines and Potential Problem Areas;
- b) **Supreme Court Quote:** “Reducing the incidence of prosecutorial misconduct is a shared obligation of prosecutors, who need to be aware of and comply with prescribed standards of conduct; defense counsel, who should seek corrective action by the trial court when misconduct occurs; and trial Courts that, we have stated, have a duty to intervene and caution the prosecutor, even in the absence of objection, in appropriate circumstances.” *State v. Ramey*, 721 N.W.2d 294, 303 (Minn.2006).

18. MOTIONS IN LIMINE AND OTHER TRIAL EVIDENTIARY ISSUES:

PROSECUTION MOTIONS:

- 1. _____
- 2. _____
- 3. _____

DEFENSE MOTIONS:

- 1. _____
- 2. _____
- 3. _____

a) **IMPEACHMENT - PRIOR CONVICTIONS:** (Minn. R. Evid. 609)

See Judicial Training Update 11-14: Impeachment – Prior Felony Conviction;

- (i) *State v. Jones*, 271 N.W.2d 534 (Minn.1978) 5-Factor Analysis: (1) impeachment value of the prior conviction; (2) date of conviction and Defendant’s subsequent history; (3) similarity of prior conviction with the charged crime; (4) the importance of the Defendant’s testimony; and (5) the centrality of the credibility issue;
- (ii) Use of Unspecified Felonies. See *State. v. Hill*, 801 N.W.2d 646 (Minn.2011);

NOTE: All 5 factors should be addressed on the record.

b) SPREIGL EVIDENCE: (Minn. R. Evid. 404b)

- 1) See Judicial Training Update 12-4: Spreigl Evidence: Five Step Process;
- 2) Spreigl Evidence: Another term for evidence referred to in Minn. R. Evid. 404(b): Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006);

c) HEARSAY: (Minn. R. Evid. 803-804)

- 1) See Minnesota Judicial Training Update 10-8; Admissibility of out-of-court statements under *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004);
- 2) See Judicial Training Update 10-12: Admissibility of out-of-court statements under the Residual Hearsay Exception. (Minn. R. of Evid. 807).

d) AUTHENTICATION ISSUES: Minn. R. Evid. 901-902

e) CHARACTER EVIDENCE: Minn. R. Evid. 404 to 407 & 608

f) EXPERT AND LAY WITNESS OPINIONS: Minn. R. Evid. 7.02, 7.01

g) MINN. R. EVID. 403: Unfairly Prejudicial Analysis:

The Court must 1) assess the probative value of the evidence, then 2) determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. “Unfair prejudice under rule 403 is not merely damaging evidence, but rather evidence that persuades by illegitimate means that gives one party an unfair advantage.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn.2005).

h) OTHER UNUSUAL EVIDENTIARY ISSUES:

19) VOIR DIRE PROCEDURES AND GUIDELINES:

Attorneys should be familiar with the Minnesota Supreme Court Jury Task Force “Final Report” issued on Dec. 20, 2001 including Appendix E of that report, “*Voir Dire: A Trial Judge’s View*,” Hon. Gordon Shumaker. The report and Appendix E can be found online at:

[http://courtnet.Courts.state.mn.us/Documents/100/docs/Jury/Jury_Task_Force_Final_Report_\(12-20-01\).doc](http://courtnet.Courts.state.mn.us/Documents/100/docs/Jury/Jury_Task_Force_Final_Report_(12-20-01).doc)

a) Method of Selection; Number of Jurors and Selection of Alternates;

1. **Rule 26.02 Subd 4(3); 3 options:** preferred method; alternative method; 1st degree murder method; Alternate is generally the last juror selected.
2. **Number of peremptory strikes (State gets 3; Defense gets 5).**
 - i. Life imprisonment cases: Rule 26.02 subd 6: State = 9; Defense = 15.
3. **Multiple Defendants:** (Rule 26.02, subd 6) get a total of 5 unless the Court increases that number and then allows Defendants to exercise them separately or jointly, which has the net result of reducing the number of peremptories per Defendant but increases the number available to the prosecution (if you increase the total defense number you must also increase the prosecution number).

b) Challenge for Cause Procedure, See Judicial Training Update 11-3

1. **Has bias or prejudice been shown?** Rule 26.02, subd 5(1), willing & able to be neutral, open-minded and fair; able to set aside impressions and opinions.
 - i. *State v. Logan*, 535 N.W.2d 320 (Minn. 1995), “Court erred by denying challenge for cause because juror did not swear he could set aside any opinion he might hold and decide the case on the evidence, but only that he would try.”
2. **What procedure should attorneys follow?** State Challenge in open court or approach bench; rehabilitation?

c) Batson Challenge, 3 Step Process; See Judicial Training Update 13-2; Minn. R. Crim. Pro. 26.02 subd 7.

1. **The Batson Rule:** Neither the state nor the Defendant may make peremptory challenges that are racially motivated. Purported racial discrimination in jury selection violates Defendants and juror’s right to equal protection of the laws.
2. **Caution:** If the Court erroneously denies a Defendant’s Batson challenge, Defendant is automatically entitled to a new trial! Although federal law does not require automatic reversal, MN has adopted a more restrictive rule mandating ‘automatic reversal’. *State v. Campbell*, 772 N.W.2d 858 (Minn.App.2009).

d) Use of Jury Questionnaire, Rule 26.02 subd. 2(3).

On request or on court's own initiative may order use of questionnaire as a supplement to Voir Dire. Rule 26.02 subd 2(3); Ct must approve questionnaire; Keep it simple and short; Discuss procedure and preliminary instruction to jury (see page 21 for sample instruction). Use questionnaire for: Pre-Trial Publicity; Juror Privacy Issues; Juror Security or Safety Issues; To Streamline Jury Selection. A copy of the questionnaire should be kept for the record and not discarded after jury selection.

e) Voir Dire Questions to be Asked by Court – See page 23:

1. Court should be pro-active in asking initial questions to the jury panel.
2. Juror Privacy: for sensitive or embarrassing questions, the Court may respect a juror's privacy and exclude the public from Voir Dire. See Minn. R. Crim. P. 26.02 Subd. 4(4)(b) and Rule 26.03 Subd.(6), BUT Defendant must be present unless his presence is waived; follow procedure and make proper record.
3. Review questions the attorneys would like the Court to ask.

f) Voir Dire of Jury After Separation During Deliberations

State v. Sanders, 376 N.W.2d 196, 206-07 (Minn.1985) Best Practice:

1. Did anyone try to contact you over the weekend to discuss this case?
2. Did any of you talk to each other over the weekend about this case?
3. Did you speak with anyone else about this case?
4. Did anyone do any research about the case or any issues raised in it?
5. Did anyone drive past or visit any of the locations mentioned in this case?

g) Task Force Guidelines for Voir Dire: See Judicial Training Update 11-3.

[http://courtnet.Courts.state.mn.us/Documents/100/docs/Jury/Jury_Task_Force_Final_Report_\(12-20-01\).doc](http://courtnet.Courts.state.mn.us/Documents/100/docs/Jury/Jury_Task_Force_Final_Report_(12-20-01).doc)

1. Review Voir Dire Guidelines With Attorneys; Analyze Attorney Questions; Use Attorney Handout of improper Voir Dire Examples in Update 11-3.
2. Review the Judicial Golden Rule! “Attorneys Are Entitled To Receive Information From Potential Jurors; Attorneys Are Not Entitled To Give Information About The Facts or the Law.” How strict the Court applies this rule will depend on the unique facts and circumstances of each case.

h) Time Limits:

- 1. Time Limits During Voir Dire** are authorized by law but should be used carefully. Supreme Court Task Force Final Report, Rec. #14;
- 2. The Jury Task Force Recommends Five (5) Steps for the Court To Follow Before Placing Time Limits on Voir Dire:** 1) Establish Actual Need; 2) Give Several Warnings; 3) Set Reasonable Time Limits; 4) Grant Reasonable Extensions; 5) Avoid Inappropriate Judicial Comments in Presence of Jury.
- 3. Only use in problem cases** where the attorneys involved are abusing the process.
- 4. Limitations in Terms of Time or Content:** Although the trial Court has broad discretion to determine the scope of voir dire, it cannot unreasonably and arbitrarily impose limitations without regard to the time and information reasonably necessary to accomplish the purposes of voir dire. Limitations in terms of time or content must be reasonable in light of the total circumstances of the case. See *State v. Petersen*, 368 N.W.2d 320 (Minn.App.1985) (limiting each attorney to five minutes for examination of each prospective juror was unreasonable – Reversed); *State v. Evans*, 352 N.W.2d 824 (Minn.App.1984) (limitation of one hour and 55 minutes imposed upon criminal defense counsel held unreasonable – Reversed).

i) Exclusion of Public From Voir Dire (i.e. sensitive or embarrassing questions, etc):

1. “When it appears prospective jurors may be asked sensitive or embarrassing questions during voir dire, the court may on its own initiative or on request of either party, advise the prospective jurors that they may request an opportunity to address the Court in camera, with counsel and Defendant present, concerning their desire to exclude the public from voir dire when the sensitive or embarrassing questions are asked.” See Rule of Crim. Pro. 26.02 subd 4(4). The rules that govern an order excluding the public are set out in the above rule.

20) TRIAL GROUND RULES:

- a) **TRIAL SCHEDULE:** Start at 9:00am; lunch noon to 1:30; end at 4:30 or 5:00; one mid-morning and one mid-afternoon break (15 to 20 minutes). Motions and hearings outside presence of jurors at 8:30, 1:00pm or 4:30pm;
- b) **STANDING AND SITTING:** Stand when the jury enters and leaves (and when sworn); Sit for questioning and objections;
- c) **OPENING STATEMENTS:** Defense opening statement – give after State’s opening or reserve until after State rests? Obtain prior Court approval of any exhibits to be used. State the facts to be proved. Do not argue;
- d) **OBJECTIONS:** Do not use speaking objections; State the objection, the legal basis for it and wait for a ruling. No further argument unless requested by the Court. Foundation objection – be prepared to state (if asked) where foundation is lacking;
- e) **QUESTIONING WITNESSES:** Do not testify (but leading questions for preliminary or non-contested facts permissible). Do not instruct witnesses how to answer the question. Do not editorialize or repeat the answers. Do not use first names of adult witnesses;
- f) **APPROACHING WITNESSES:** One request to approach your own witness is sufficient. If witness is hostile, ask each time. Do not loiter by witness;
- g) **CLOSING ARGUMENTS:** Be professional: Remember, the capacity of the mind is limited by the seat’s ability to endure;
- h) **BENCH CONFERENCES - KEEP TO A MINIMUM:** Bench conferences only if necessary (use of white noise); all bench conferences will be recorded real time (if possible) otherwise make a record at the next break. Anticipate and raise potential problems ahead of time (see Motions in Limine section).

DECORUM. The Court will require full compliance with the General Rules of Practice for the District Courts. See Title I, Rule 2. Court Decorum, Conduct of Judges and Lawyers.

**21) PROFESSOR STEVE SIMON'S
JUDICIAL WIKIPEDIA**

**JUDGES ONLINE
BENCH BOOK**

http://www.mnbenchbook.org/index.php?title=Main_Page

II. START OF TRIAL AND VOIR DIRE

1. INTRODUCTION OF CASE

NOTE: Once counsel, parties and prospective jurors are present, the Judge should start the proceedings by stating:

- a) Counsel, are you ready to proceed?
- b) The name of this case is State of Minnesota v. _____
- c) The Court administrator will now swear the entire jury panel.
 - i) *[To the jury panel]* Please stand and raise your right hands.
(Court Administrator administers Oath):
Jurors First Oath: "You do swear that you will truthfully answer all questions about your qualifications to serve as a juror, so help you God?"

2. INSTRUCTIONS TO THE JURY PANEL BEFORE EMPANELMENT

Judge has a choice of two standard preliminary instructions to read:

- a) Option one is CrimJig 1.01A, the "Short Version"
- b) Option two is CrimJig 1.01B, the "Extended Version" (displayed below)

CRIMJIG 1.01B (EXTENDED VERSION)

[Sections in brackets have been added by the author]

[Good Morning, ladies and gentlemen.] You have been summoned to the District Court of _____ County today for the purpose of selecting a jury to try a criminal case. My name is Judge _____.

It is important that you be able to see what is happening here and to be able to hear the questions being asked. If any of you have difficulty hearing or understanding, please let me know now so that we can make arrangements to help you. Does anyone have difficulty hearing or seeing and need any assistance? Does anyone have any trouble understanding what I am saying? *[use hearing impaired devices or real time.]*

This is a criminal case. [The City/County Attorney for _____ County / _____ County Grand Jury] has filed a (complaint/indictment) with this court which alleges that on or about the _____ day of _____, 20____, while in the City of _____, County of _____, the Defendant, _____, committed the offense(s) of:] *(The complaint or indictment may be read or summarized at the court's discretion.)*

READ CHARGE OR CHARGING PORTION OF COMPLAINT

Count 1 _____
Count 2 _____ etc.

The mere fact that the Defendant (may have been arrested) (has been charged by (indictment) (complaint)) (or) (has been brought before the court by the ordinary process of the law) should not be viewed by you as evidence of or in any suggesting the Defendant's guilt.

To this complaint (indictment) the Defendant, _____, has pled not guilty. This plea denies the charges and places upon the State of Minnesota the burden of proving the Defendant's guilt beyond a reasonable doubt.

The State is represented by _____. Please rise.

The Defendant is represented by _____. Please rise.

Would the Defendant please rise?

Some general rules of law apply in a criminal case. I will give you those rules now. In the questioning that will take places in a few minutes, you may be asked whether you will accept and follow those rules of law, and you should have these instructions in mind when you answer those questions.

The Defendant is presumed innocent. In order for you to find the Defendant guilty, the State must prove guilt. The Defendant does not have to call witnesses, introduce evidence, ask questions, or otherwise prove (his) (her) innocence. The presumption of innocence remains with the Defendant unless and until the Defendant has been proven guilty beyond a reasonable doubt by evidence admitted in this trial.

To ensure both the Defendant and the State receive a fair trial by an impartial jury, it will be necessary for me and for the counsel for each party to ask you certain questions that you must answer under oath. Please do not take offense at any question you are asked. Your contribution to this important and serious matter is best assured by your honest answers to those questions. Some of you who are called to be questioned will be excused from serving on the jury. If you are excused, it does not mean that anyone doubts that you are a fair person.

OPTIONAL - IF JUROR QUESTIONNAIRE IS TO BE USED ADD THE FOLLOWING:

In order to minimize any embarrassment or invasion of privacy that may result from the necessary questions, we are going to begin the questioning by asking you to fill out a written questionnaire. In just a moment, you will be escorted back to the jury assembly room where the bailiff/clerk will pass out a _____ page questionnaire to each of you. Please fill this form out completely; remembering that you are answering these questions under the oath you took at the beginning of this hearing. If you find any of the questions sensitive or embarrassing you may ask to meet with the judge, attorneys and defendant privately concerning your desire that certain answers not be public. After you have completed and signed the form, please give it to the bailiff who will bring all the forms to the court for review by the attorneys and me. Bailiff (or court clerk) will now escort you back to the jury room.

We will now begin the juror selection process.

When your name is called, please come forward and take your seat as directed. If your name is mispronounced, we apologize and ask that you state the correct pronunciation as you come forward.

COURT ADMINISTRATOR DRAWS NAMES

Felony: 21 = (12 + 1 alternate) + (3 & 5 peremptory challenges)

Misd and Gross Misd: 15 = (6 + 1 alternate) + (3 & 5 peremptory challenges)

Note: Life imprisonment cases: rule 26.02 subd 6; State = 9; Defense = 15

[Ladies and gentlemen,] your contribution to the important and serious matter at hand is best assured by your full and free answers to the questions asked during the jury selection process. It is critical that your answers be honest and truthful.

I will ask you questions about your qualifications to sit as jurors in this case. When I am done, the attorneys will ask additional questions. I hope that you will not take offense at any question you may be asked. Some of you will be excused from serving on this jury. If you are excused, it does not mean that anyone doubts that you are a fair person.

Those of you not yet called are asked to listen closely to all the proceedings until a jury is finally empanelled. This is because you might be called upon to replace a potential juror who has been excused. It will save time if we do not have to repeat all the questions and you are prepared to offer your answers.

[The goal of this process is to select people who will be fair, neutral and open-minded jurors. "Fair" means that you will make an absolute commitment to decide this case only on what you see and hear in this courtroom and on the law as I give it to you at the end of the case. "Neutral" means that, until it comes time for your verdict, you will not favor or disfavor one side or the other. And "open-minded" means that you will not make a decision about the outcome of the case until you have heard all of the evidence, my instructions on the law, and the lawyers' final arguments, and until you have discussed the case with your fellow jurors during your deliberations. It is only then that you have all the ingredients to reach a fair and just verdict.]

If your answer to any of the questions is "yes," please raise your hand. If you would have difficulty responding to a particular question or if your answer to any question by me or the attorneys would be personal or sensitive or have an adverse effect upon another juror, please let me know before answering and you can answer outside the presence of the other jurors.

In answering questions, be as candid and truthful as possible. We are not trying to pry unnecessarily into your personal lives. We are merely seeking information to select a fair and impartial jury. We all have attitudes, beliefs, and life experiences that may be important.

QUESTIONS BY THE COURT

Judge should consider providing a copy of this section to the attorneys prior to trial.

- 1) Would anyone have difficulty accepting or following the rules of law that:
 - a. The Defendant is presumed to be innocent.
 - b. The state has the burden of proof.
 - c. The state must prove (the) (each) charge beyond a reasonable doubt. [I will define the concept of “reasonable doubt” later but please understand it is the highest burden of proof imposed by our system of justice].
 - d. The Defendant does not have to prove (his) (her) innocence.
 - e. [The Defendant does not have to take the witness stand and he does not have to call any witnesses or present any evidence.]
 - f. [The charges I have read are not evidence, and they create no inference of guilt.]
 - g. [The jury must be unanimous in its verdict.]

- 2) [**Witness List:**] I am now going to read you a list of people who may be called to testify as witnesses in this case or whose names might be otherwise referred to. There are _____ names. Please let me know by raising your hand whether you know any of these people or are related to them. We may then ask you further questions about your knowledge or relationship. The names are: [**COURT READS LIST**]

- 3) Do any of you know any of the parties I have introduced, including the prosecuting attorney, the Defendant, the defense attorney, or any of the names I have just read to you?

- 4) Do any of you know any of the other jurors who are here today?

- 5) Are any of you presently involved in any matter where the (County) (City) Attorney's office is also involved? Have any of you been so involved in the past? Do any of you have an ongoing relationship with that office?

- 6) Have any of you heard or read anything regarding the alleged incident that is the subject matter of this trial? Are you familiar with the location of the (alleged) incident(s)?

- 7) This trial is expected to last _____ days/weeks/months. Normally, the trial will begin at _____ in the morning and continue until _____. We will then recess for lunch and reconvene the trial at _____. We will recess for the day at _____. There will be a _____ minute mid-morning and mid-afternoon break.

- 8) Does anyone:
 - a. Have any physical problem that would prevent or make difficult service as a juror here today?
 - b. Have a pressing personal or business concern that would make it hard to give this case your full attention?
 - c. [How many of you are smokers? There is no smoking in the deliberation room; however, in the event any of you should desire to smoke, arrangements may be made with the bailiffs for smoking breaks. Does that create a problem for anyone?]

- 9) I will now ask some questions concerning you, your family, and anyone close to you. [I use the word “family” in a rather broad sense to include mother, father, spouse, children, brothers or sisters, in-laws, and

any relative with whom you have regular contact.] I remind you that if you would prefer to answer a particular question out of the presence of the other jurors, let me know by raising your hand.

- a. Have you, a member of your family, or anyone close to you ever testified in any court case?
- b. Have you, a member of your family, or anyone close to you ever been accused of a crime (other than a minor non-alcohol related traffic violation, such as parking or traffic tickets)? A DWI is not a minor traffic violation.
- c. [IN NON PHYSICAL OR SEXUAL ASSAULT CASES] Have you, a member of your family, or anyone close to you ever been the victim of or witness to a crime? If yes, who, when, where, type of crime, arrest, disposition, satisfied? [is there anything about that experience that would make it difficult for you to be a fair and impartial juror in this case? (or leave it to the attorneys to follow up on).]

IF PHYSICAL OR SEXUAL ASSAULT IS AN ISSUE IN THE TRIAL

[If your answer to either of the following 2 questions is YES, raise your hand and we will talk with you privately, outside the presence of your fellow jurors.

Note: Another option is to ask the following two questions by use of a written questionnaire so that panel members do not have to raise hands to acknowledge involvement.

- 1) Have you, any member of your family or close friend ever been physically or sexually abused?
- 2) Have you, any member of your family or close friend ever been charged with physical or sexual abuse or been accused of abusing someone?

Note: The following questions can be directed to the entire jury panel:

- 3) Have you ever had a job where you were required to report any signs of physical or sexual abuse of children or young people?
 - a) If Yes, did you ever have to report abuse? Explain.
- 4) Have you or any member of your family or close friend ever worked in a hospital E.R.?
 - b) If Yes, has this person ever mentioned seeing children or young people who were physically or sexually abused?]

IF CASE INVOLVES A DWI OR OTHER ALCOHOL-RELATED OFFENSE

- 1) [Is there anyone among you who totally abstains from consuming alcoholic beverages either for medical or personal reasons?
- 2) Is there anyone among you who has any bias concerning someone who consumes alcoholic beverages? By that I mean a strong feeling against that person for consuming alcohol that you would not be able to put aside in reaching a verdict?]

IF RACE IS OR MAY BE AN ISSUE IN THE TRIAL

- 1) Please tell us the type of contacts you have had with Blacks/Asians/Native Americans/Hispanics
- 2) Do you work with any Blacks/ Natives Americans/ Asians?
 - a) Describe work setting i.e. large factory small office
 - b) If so, do you socialize with them at work? Coffee breaks, lunch?
 - c) Socialize with them outside of work? If so, types of activities?
 - d) Have they been in your home? Have you been in their home?
- 3) Do you have kids? Are they in school?
- 4) Are your kid's friends with any Blacks/Native Americans/ Asians in school?
- 5) Have your kids' minority friends ever been in your house?
- 6) Have your kids ever been in their minority friend's home?
- 7) Do Blacks/ Native Americans/ Asians live in your neighborhood?
- 8) Do you have any contact with them?
 - a) Describe?
 - b) Ever been in their house? They ever been in your house?
 - c) Do your kids have any contact with them? Do their kids have any contact with you?
 - d) Are you friends with them?
 - e) Are their kids & your kids friends?
- 9) Any Blacks/ Native Americans/ Asians in your church?
 - a) If so, describe types of contacts you have with them?
- 10) When you were growing up were there any Blacks/ Native Americans/ Asians in your neighborhood?
 - a) What kind of relationship did you have with them?
 - b) Describe activities you would do with them?
 - c) They ever in your home? You ever in their home?
- 11) Ever date Black/ Native American/ Asian?
 - a) If yes, how did your parents feel about that?
- 12) Your children ever date Black/ Native American/ Asian?
 - a) If yes, how do you feel about that?
 - b) If no, how would you feel about your child dating a Black/ Native American/ Asian?
- 13) Have you or anyone close to you ever been the victim of a crime?
 - a) Do you know the race/ethnicity of the person who committed that crime?
 - b) If yes, is there anything about the race of the person who committed that crime that would make it difficult for you to be a juror in this case?
- 14) Race can have no part in your deliberation and decision on the guilt or innocence of the Defendant. Do you understand and agree with that?
- 15) Is there anything about the race of the Defendant in this case that would make it difficult for you to be a juror in this case?

10. Have you ever served on a jury or a grand jury before?
 - a. When and where?
 - b. What type of case? [remind jurors of difference between civil and criminal burden of proof].
 - c. Did you reach a verdict? (Do not allow attorneys to ask what the verdict was.) [Were you satisfied it was a fair and just verdict?]
11. Are you related to, close to, or acquainted with anyone who works in the field of criminal justice or law enforcement, such as a police officer, attorney, correctional officer, probation officer, Judge, investigator, or similar occupation?
12. Have you ever received law enforcement training, including training in the military?
13. Have you ever had experience as a law enforcement officer?
14. Do you feel that you should automatically accept or reject the testimony of a police officer just because they are a police officer?
15. Is there anything about the nature of the charge(s) in this case which causes you to have some doubt as to whether you could give both sides a fair and impartial trial?
16. Optional: Photos and videos. Because of the nature of the charges you may be asked to view photographs or videos that are of a graphic nature, such as autopsy or crime scene photos or videos; would anyone have difficulty viewing such photos or videos?
17. Do you understand that, if selected as a juror, each of you must decide this case solely on the evidence produced in court and the law as I give it to you, and not on the basis of bias, passion, prejudice, or sympathy?
18. Questions Concerning Mobile Electronic Devices And Internet Research During Trial:
 - a. How many of you own a mobile electronic device such as a Blackberry or iPhone?
 - b. How many of you have access to the Internet at home or elsewhere?
 - c. How many of you regularly access Social Network sites such as My Space, Facebook or Twitter?
 - d. During this trial you will be strictly prohibited from conducting any type of Internet research on the parties, attorneys or issues involved in this case. You will be prohibited from posting information about the trial on Social Network sites such as My Space, Facebook or Twitter. You will also be prohibited from bringing any electronic devices into the jury room during your deliberations.
 - e. If during this trial or deliberations you learn that one of your fellow jurors has violated that prohibition you are obligated to immediately notify the court of the violation.
 - f. Any violation of that prohibition would jeopardize the entire trial; could result in a mistrial and the parties would have to start all over with a new jury.
 - g. Is there anyone here that would not be willing or able to respect and comply with that prohibition?
 - g. Is there anyone that would not be willing or able to report a violation of that prohibition to the court?
19. Do you understand that you must follow the law as I give it to you, even though you think the law is, or should be, different?

20. [Optional. At this point the Court may ask any questions the attorneys have specifically requested the Court to ask, usually those of a sensitive nature that the attorneys would rather not ask.]
21. Members of the jury panel, I now ask each of you to take a moment and search your mind and conscience to see if there is any reason that you cannot be fair and impartial in this case.
22. After giving the matter some thought, are there any of you who, for whatever reason, feel that you cannot be fair and impartial in this case?
23. [Before the attorneys ask their questions, I would like each of you to give a thumbnail sketch of your background: *(use document camera for easy display of questions; or write questions on an easel; or give jurors individual sheets)*.
 - (a) Name;
 - (b) City;
 - (c) Occupation;
 - (d) Educational background;
 - (e) Marital Status;
 - (f) Spouse's occupation, if applicable;
 - (g) Children - age and occupation, if applicable.]

The court has no further questions; I will now turn the questioning over to the attorneys.

QUESTIONS BY THE ATTORNEYS

[DEFENSE ATTORNEY GOES 1ST: MR/MS. _____]

NOTE: After defense attorney finishes questioning, if there are no challenges for cause, he/she should pass the panel for cause.]

[PROSECUTOR GOES 2ND: MR/MS. _____]

NOTE: After Prosecutor finishes questioning, if there are no challenges for cause, he/she should pass the panel for cause.]

[NOTE: CHALLENGES FOR CAUSE; may be oral and must state grounds. The challenge must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before all the jurors constituting the jury are sworn. If the court sustains a challenge for cause, the juror must be excused. If a party objects to the challenge for cause, the court must determine the challenge. Rule of Criminal Procedure 26.02 subd 5.]

AFTER ALL ATTORNEYS HAVE PASSED JURORS FOR CAUSE – GO TO NEXT SECTION BELOW

EXERCISE OF PREEMPTORY STRIKES:

Members of the jury panel, at this point in the proceedings we have determined that you are all qualified to serve as jurors on this case and are not subject to challenge or excuse for cause. [However, our law provides that each party in a case has the right to what our law calls peremptory challenges. A peremptory challenge means that a party may excuse or strike a juror without having to give a reason or explanation. If you notice, there are (21/15) prospective jurors in the jury box. Because only (13/7) of you can be selected to sit on this jury, 8 of you must, by operation of law, be excused. That would leave us with the necessary number of jurors – [12/6 and 1 alternate]. You should understand that this is a process established by law and that any of you who are excused or struck as jurors should not feel slighted or offended. [This process may take a while, so as the attorneys are reviewing their lists, feel free to stand up and stretch, you may also talk among yourselves, as long as you don't discuss anything about this case.]

Clerk hands jury list to defense attorney:

- 1) Defense begins and strikes first; Defense and State alternate strikes.**
- 2) Defense has five peremptory challenges; State has three.**

Bailiff hands list to Judge to check, if correct, Judge hands list to clerk:

Members of the jury panel, the names of those of you who have been selected to sit as jurors in this case will now be read.

[CLERK READS OFF THE NAMES]

Those of you who have not been chosen are excused at this time. Thank you for your time and attention. You may retrieve your belongings and leave the courthouse. The Court Administrator will call you if and when you need to return. Now, please return to the jury assembly room.

[COURT WAITS FOR EXCUSED JURORS TO LEAVE.]

Members of the jury panel, you have been selected to serve on this jury. As I indicated earlier, normally the trial will begin promptly at ___ a.m. in the morning and continue until ____. We will then recess for lunch and reconvene the trial at _____p.m. We will recess for the day at _____. There will be a _____ minute mid-morning and mid-afternoon break.

[NOTE: This is usually a good place to break for the day. The following long form instruction (CrimJig 2.08) should be read before sending the jurors home. For the balance of the trial I suggest you read the short form version before breaks and recesses – see below.]

CRIMJIG 2.08

CAUTIONARY INSTRUCTION AT FIRST RECESS OR ADJOURNEMENT FOR THE DAY AND DURING DELIBERATIONS IF NOT SEQUESTERED

We will now (recess for ___ minutes) (adjourn for the day). I want to remind you of the instructions I gave you earlier regarding your conduct as jurors. Please these in mind each time we recess and when we adjourn for the day. While I will try to repeat the instructions to help you remember, I may not always do so. This does not mean they do not apply.

Do not let outsiders influence you. Do not discuss this case with other jury members during the trial.

You will have plenty of time to do this at the end of the trial, once you have all the evidence and I have sent you to the jury room with my instructions and the verdict forms.

Do not talk to anyone involved in this case; the Defendant, the lawyers, or the witnesses.

If anyone tries to discuss this case with you outside the courtroom, report this to me.

When you go home during the trial, do not talk to your family, friends, or others about the case. You may tell them you are a juror on a criminal case and that is all that you should tell them. Do not report your experiences as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any "chat rooms" where this case may be discussed.

Do not read or listen to news reports about the case.

Do not do your own investigation. Do not ask people about this case. Do not visit any of the locations mentioned in the trial. Do not research anything about the case, including the issues, evidence, parties, witnesses, location, or the law, through any form of written, print, electronic or Internet media...

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom.

If you do not follow these instructions, you may jeopardize the trial. This may require the whole trial to be redone and we will have to start over.

OPTION 2 – SHORT VERSION

CAUTIONARY INSTRUCTION BEFORE LUNCH AND BEFORE EVERY RECESS

Please remember, while court is in recess you must not talk to anyone who is involved in this case nor shall you discuss the case among yourself. During the recess you may see the attorneys, parties, witnesses or me in the hallways or outside. Don't take offense if we don't stop to say hello or talk with you. Everyone involved in this case has been ordered to have no contact or communication with any member of the Jury. Any violation of that order could jeopardize this trial. This prohibition shall continue until a verdict has been returned.

ADMINISTRATION OF OATH TO SELECTED JURORS

Note: As a practical matter, jury should not be sworn immediately following empanelment if the trial is not to commence until the following day. This allows the court the freedom to add a panel member if something unforeseen should arise with an empanelled juror after empanelment but before trial commences.

[Ladies and gentlemen, the right to a jury trial dates back over 700 years when it first began in England. The duty and obligations you are about to accept are very solemn ones. Out of respect for the oath you are about to take, you and everyone in the courtroom will rise while you are sworn in.]

CLERK SWEARS THE PANEL

You each do swear that you will be attentive during this trial and follow the instructions of the Judge so that you may reach a fair and just verdict; that you will not discuss this case with anyone until submitted to you for deliberation and will keep your verdict secret until it is delivered to the Court, so help you god.

AFFIRMATIONS: If any person objects to the above oath on religious grounds the court should replace the standard oath with the affirmation set out in M.S. 358.08.

NOTE: See M.S. 358.07 for a list of oaths in various cases.

OPTIONAL: Have Jurors Reposition Themselves; Remember Your Seats;

OPTIONAL: REMINDER (JEOPARDY): OUTSIDE PRESENCE OF JURY:

Jeopardy attaches after the jury is sworn. The court may advise Defendant, on the record but outside the presence of the jury, that if Defendant absents himself from trial or if Defendant is late to trial, the trial may start and continue without him. See Pre-Trial Checklist #7, page 8.

III. INSTRUCTION TO JURY BEFORE TRIAL BEGINS

Judge Has A Choice Of Two Standard Preliminary Instructions To Read:

- A. Option one is CrimJig 1.02A the “Original Version”
- B. Option two is CrimJig 1.02B the “Plain Language Version”

Both versions are set out below:

OPTION ONE: CRIMJIG 1.02A INSTRUCTION TO THE JURY BEFORE TRIAL BEGINS (ORIGINAL VERSION)

It is important that you, members of the jury, be able to hear and see everything that takes place during the trial. If you have any difficulty hearing or understanding what a witness is saying, or if a witness or an attorney should block your view, raise your hand immediately so that we can correct the problem.

This trial is about to begin. During the trial you are going to hear the testimony of several witnesses. You will have to make judgments about the credibility and weight of their testimony. Be patient, and listen carefully to the testimony of all the witnesses. Keep it all in mind until you have heard all the evidence. As you listen to the witnesses, you should take note of such matters as the witnesses' interest or lack of interest in the outcome of the case; ability and opportunity to know, remember, and tell the facts; their experience, frankness, and sincerity, or the lack thereof; the reasonableness or unreasonableness of their testimony in light of all the other evidence; and any other factors that bear on the question of believability and credibility. In the last analysis, you should rely on your own experience, judgment, and common sense.

You may take notes during the trial, but you should not feel required to do so. The most important thing is to give full attention to the testimony as you hear it.

You should keep an open mind about all the evidence until the end of the trial, until you have heard the final arguments of the attorneys, and until I have instructed you in the law. Evidence is what the witnesses say and any exhibits submitted to you. What the attorneys say is not evidence. However, you should listen attentively to any statements the attorneys make. Those statements are made so that you can better understand the testimony.

During the trial, an objection may be made to some evidence, and I may sustain or overrule the objection and direct that a question not be asked or answered. You should not speculate about what the possible answer would have been. If I instruct you during the trial to disregard some statement that a witness has made, then you must disregard it.

There are things you should not do during this trial. You are not investigators. You are not to go out to do any looking, and you are not to ask people about this matter. Above all, you must not talk to anyone who is involved, the lawyers, or the witnesses. Do not do your own investigation. Do not ask people about this case. Do not visit any of the locations mentioned in the trial. Do not research anything about the case, including the issues, evidence, parties, witnesses, location, or the law,

through any form of written, print, electronic or Internet media.

You should not discuss the case among yourselves. At the end of the trial, you will have as much time as you need to discuss it, but that is at the end and not during the trial.

When you go home during the trial, your family and friends will be curious as to what you are doing. You may tell them you are sitting as a juror in a criminal case, and that is all you should tell them.

You do not have to stay away from people and refuse to speak to them. Do whatever you wish, but do not talk about this case, and do not talk at all to anyone involved in it. Do not read about this case in the newspapers or listen to news about it on radio or television. Do not e-mail, blog, tweet, text or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any “chat rooms” where this case may be discussed.

Make a mental note of the seat in which you are now sitting, and please keep that seat throughout this trial.

OPTION TWO: CRIMJIG 1.02B INSTRUCTIONS TO THE JURY BEFORE TRIAL BEGINS (PLAIN LANGUAGE)
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Members of the jury:

This trial is about to begin. You have now been sworn in.

It is important that you, members of the jury, be able to hear and see everything that takes place during the trial. If you have any difficulty hearing or understanding what a witness is saying, or if a witness or an attorney should block your view, raise your hand immediately so that we can correct the problem.

Here are some basic rules about your job as a juror.

Your job will be to find what the facts are in this case by considering the evidence.

As Judge, I will apply the rules of evidence and tell you what you can and cannot consider as evidence.

What is evidence

1. Evidence is what witnesses say on the stand. This is called "testimony".
2. Evidence can be items like photographs and documents. These items are called “exhibits”.
3. Evidence can be facts that the parties agree on. This agreement is called a “stipulation”.

What is not evidence

The following is not evidence:

1. Nothing the attorneys say during the trial, including opening statements and closing arguments, is evidence. However, listen to any statements the attorneys make. Those statements are made to help you better understand the evidence.
2. The attorneys' questions are not evidence. The witnesses' answers are.
3. Objections are not evidence. Attorneys may object if they think a question or answer is against the rules:
 - a. I will sustain the objection if I think it is against the rules, and you should ignore this question or answer.
 - b. If I overrule the objection, the question or answer is evidence like the rest of the witness's testimony.
4. You cannot consider anything you hear or learn about this case outside this courtroom.

You must follow the instructions on what you can consider as evidence.

Taking notes

You may take notes during the trial. You do not have to take notes.

Do not let your note taking distract you. The most important thing is to listen to the testimony as you hear it.

Your notes must stay in the courtroom during the trial.

You may take them into the jury room during deliberations.

Use your notes as an aid to your memory and not as a substitute for your memory. Fit the notes in with your total recollection of the facts.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

Deciding the facts

Wait until you have heard all the evidence before you make up your mind.

Your best guide is your own good judgment, experience and common sense.

You must decide what testimony to believe and how much weight to give it.

In deciding this, you may consider the following:

1. Will a witness gain or lose if this case is decided a certain way?
2. What is the witness's relationship to the parties?
3. How did a witness learn the facts? How did he or she know, remember, and tell the facts?
4. What was his or her manner?
5. What was his or her age and experience?
6. Did the witness seem honest and sincere?
7. Was the witness frank and direct?
8. Is the testimony reasonable compared with other evidence?
9. Are there any other factors that bear on believability and weight?

Duty of the jury

You must decide the facts. You and only you can decide the facts. Do not take anything I say or do as a sign of what the verdict should be.

Once the facts are decided, you must follow the law. You must follow the law even if you don't agree with it.

How to act as a jury member

Now a few words about your conduct as jurors:

Do not let outsiders influence you.

Do not discuss this case with other jury members during the trial.

You will have plenty of time to do this at the end of the trial, once you have all the evidence, and I have sent you to the jury room with my instructions and the verdict forms.

Do not talk to anyone involved in this case, the Defendant, the lawyers, or the witnesses.

If anyone tries to discuss this case with you outside the courtroom, report this to me.

When you go home during the trial, do not talk to your family, friends, or others about the case. You may tell them you are a juror on a criminal case and that is all that you should tell them. Do not report your experiences as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any "chat rooms" where this case may be discussed.

Do not read or listen to news reports about the case.

Do not do your own investigation. Do not ask people about this case. Do not visit any of the locations mentioned in the trial. Do not research anything about the case, including the issues, evidence, parties, witnesses, location, or the law, through any form of written, print, electronic or Internet media.

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom.

If you do not follow these instructions, you may jeopardize the trial. This may require the whole trial to be redone and we will have to start over.

[Please keep the same chair throughout the trial. When reporting for jury duty in the morning and returning to the courthouse after lunch, report directly to the jury room. Do not linger in the hallways. Use the restrooms in the jury room rather than the public restrooms.]

**OPTIONAL: ADD ADDITIONAL INSTRUCTIONS HERE:
Minn.R.Crim.Pro. 26.03, Subd 4**

Preliminary instructions may include the:

- a) Burden of proof;
- b) Presumption of innocence;
- c) Necessity of proof beyond a reasonable doubt;
- d) Factors the jury may consider in weighing testimony or determining credibility of witnesses; rules applicable to opinion evidence; elements of the offense; other rules of law essential to the proper understanding of the evidence.
- e) Rules applicable to opinion evidence;
- f) Elements of the offense; other rules of law essential to the proper understanding of the evidence.

NOTE: The preliminary instructions must be disclosed to the parties before they are given, and any party may object to specific instructions or propose other instructions.

[In addition to CrimJig 1.02A or B, I suggest the Judge always give additional instructions on “PRESUMPTION OF INNOCENCE”, “PROOF BEYOND A REASONABLE DOUBT”, “DISREGARDING EVIDENCE” and if your case involves a firearm or weapon you should always give the CrimJig 2.06 instruction: See below:]

CRIM 3.02 - PRESUMPTION OF INNOCENCE

The Defendant is presumed innocent of the charge made against him, and that presumption remains with the Defendant unless and until the Defendant has been proved guilty beyond a reasonable doubt. That Defendant is on trial and has been brought before the court by the ordinary processes of the law should not be considered by you as in any way suggesting guilt. The burden of proving guilt is on the state. The Defendant does not have to prove his innocence.

CRIM 3.03 - PROOF BEYOND A REASONABLE DOUBT

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

[NON JIG - DISREGARD INSTRUCTION:]

[It might happen during the trial that I instruct you to disregard something a witness has said. Such an instruction would be based on the rules of evidence that govern all jury trials. You might wonder how you can disregard something you have already heard. One way you can do that, is at the end of the trial, you make a list of all the evidence that you may consider in deciding the case. Nothing that I have instructed you to disregard should appear on that list. In that way, you will not use or consider that item in reaching your verdict.]

OPTIONAL – IF YOUR CASE INVOLVES A FIREARM: CRIMJIG 2.06 (WEAPON) (FIREARM) AS EVIDENCE IN THE COURTROOM

At some point in this trial a (weapon) (firearm) will be brought into the courtroom and offered as evidence. Any (weapon) (firearm) will be secured in a way to ensure it can be safely handled.

You should know that:

1. The firearm has been examined and will come into the courtroom unloaded and secured with a device that will be visible to you and the court.
2. The firearm securing device will be such that it will physically impossible to operate the firing mechanism of the firearm or put a bullet into the firearm.
3. The firearm securing device will be locked and the key will be maintained by court staff.

[ADDITIONAL INSTRUCTIONS HERE]

OPTIONAL: There Are Several Final Comments I Would Like To Make:

1. Remember, you must keep an open mind about all the evidence until the end of the trial, until you have heard the final arguments of the attorneys, and until I have instructed you as to the law which you should apply. At the end of the trial I will provide to each of you a copy of the final jury instructions so you can read along with me as I instruct you.
2. Notepads and pencils will be provided. However, when court is not in session, your notepads must be left on your chair.
3. Court Schedule: Court hours will normally be from 9:00 am until noon and from 1:30 until 4:30 or 5:00 pm. During the trial we will finish our courtroom day no later than 5:00 pm. We will ordinarily take one 15 to 20 minute recess during the morning and another during the afternoon. If you need a break at any other time, please raise your hand and ask for a short recess.
 - a. Your mid-morning and mid-afternoon breaks will be spent in the jury deliberation room. However, each morning and after the lunch break when you report back to court you will meet in the main jury assembly room and from there the bailiffs will escort you back to court. I do that because most mornings at 8:30 a.m. and at 1:00 p.m. I am handling other court matters or the attorneys and I are here in court working on various legal matters.
4. You may have water, milk, coffee or soft drinks in the jury box if you wish. Please don't bring any red-colored drinks into the courtroom because spills can stain the carpet.

5. Note passing by the Judge – From time to time you may see me pass a note to the clerk or the bailiff or they may pass a note to me. I will try to keep that to a minimum so as not to disrupt the proceedings. However, that is the only way for me to communicate with my staff and them with me during the proceedings. You should not guess or draw any inference one way or another should you see that occur. Chances are it has nothing to do with this trial.
6. From time to time it will be necessary for me to discuss legal matters with the attorneys outside the hearing of the jury. Please be patient with us and do not speculate as to the nature of the matters that we are discussing. (Demonstrate the white noise feature)
7. Delays – If it becomes necessary for me to take a longer than normal recess I will do my best to keep you informed of the delay.
8. The bailiffs are seated to your _____ . During the trial if you have questions or requests, or if you need to speak with the court, communicate your request to the bailiff.
9. Would any one prefer to sit closer to the witness stand to accommodate any hearing difficulties? Finally, please make a mental note of where you are seated. That will be your seat for the remainder of the trial.

IV. EXPLAIN TRIAL PROCEDURE & OPENING STATEMENTS

TRIAL PROCEDURE (OPTIONAL)

Before we start I would like to outline the procedure that will be used to present the case to you in this trial.

- 1) After I finish this final instruction, the attorneys will be given an opportunity to present opening statements in which they outline the facts that they hope to prove and acquaint you with the issues in the case.
- 2) After the opening statements, the State will then proceed with its case by calling witnesses who will tell what they know and by introducing physical evidence or exhibits. Each witness who testifies during the State's case will be asked questions, first by the prosecutor and then by the Defendant's attorney, if he/she wishes.
- 3) When the state has completed its case, the Defendant will also have an opportunity to call witnesses and present evidence. Of course, the Defendant is presumed innocent and does not have to prove anything. Therefore, he/she has no burden or obligation to present evidence. If the Defendant does choose to present evidence, the same procedure will be followed as was used in the State's Case.
- 4) When all the evidence has been presented, the lawyers will present final arguments in which they summarize and argue their respective positions. After I provide you with additional instructions on the law, you will retire to the jury room to begin your deliberations.

IMMEDIATELY BEFORE OPENING STATEMENTS

[Members of the jury panel, each of the attorneys is now given an opportunity to make an opening statement to you. Sometimes we hear them called “opening arguments,” but they are not arguments and they are not intended to persuade you to decide the case one way or another. Nor are they evidence, which will come primarily through the testimony of witnesses. The opening statement is an outline of what the lawyers expect the evidence will be. The primary purpose is to give you a preview of the case so that you can follow the evidence more easily.]

[OPTIONAL: If requested by defense counsel “The Defendant's attorney may choose to make his/her opening statement at the completion of the State's case”.]

1. PROSECUTION OPENING STATEMENT:

State goes 1st, Mr/Ms. _____

2. DEFENSE OPENING STATEMENT:

Defense goes 2nd, Mr/Ms. _____

V. ORDER OF TRIAL & CAUTIONARY INSTRUCTIONS:

- 1. State's Case In Chief – The State Rests;**
 - a) Defense Motion for Directed Verdict (if raised). See Update 11-1: Motion For Judgment Of Acquittal – Ten Basic Facts. Minn. R. Crim. P. 26.03 subd. 18(1)(a) & (2).
- 2. Defense Case In Chief (if any) – The Defense Rests;**
 - a) Did Defendant testify? Make record of Defendant's decision before they rest.
 - b) Defense Motion for Directed Verdict (if raised). See Update 11-1: Motion For Judgment Of Acquittal – Ten Basic Facts. Minn. R. Crim. P. 26.03 subd. 18(1)(a) & (2).
- 3. State's Rebuttal Case (if any) – The State re-rests;**
 - a) Defense Motion for Directed Verdict (if raised). See Update 11-1.
- 4. Defense Sur-Rebuttal Cases (if any) – The Defense re-rests;**
 - a) Defense Motion for Directed Verdict (if raised). See Update 11-1.
- 5. State's Closing Argument;**
 - a) Prosecutorial Misconduct - See Update 10-14.
- 6. Defense Closing Argument;**
- 7. State's Rebuttal Closing Argument;** Minn. R. Crim. P. 26.03, Subd 12 (j).
- 8. Defense Rebuttal Closing Argument;** only if requested and proper showing made. Mn.Rule.Crim.Pro. 26.03, Subd 12 (k).
- 9. Motions Concerning Closing Arguments, Jury Instructions, etc.**
 - a) After Closing Arguments: See Minn. R. Crim. P. 26.03 Subd. 12(l) "Outside the jury's presence, the court must allow parties to object to the other party's argument and request curative instructions. The parties may also object and seek curative instructions before or during argument."
- 10. Final Jury Instructions;**
 - a) Make record of Defendant's approval concerning final jury instructions.
 - b) Make record of Defendant's decision on CrimJig 3.17 (Defendant's right not to testify; give only if Defendant asks and makes a clear record).
- 11. Jury Deliberations;**
 - a) Make record of court's decision concerning sequestration of jurors; Rule 26.03 Subd 5.
- 12. Return of Verdict.**

CAUTIONARY INSTRUCTIONS: See Judicial Training Update 11-2 for a list of the fifteen (15) most common cautionary instructions used during jury trials.

VI. FINAL JURY INSTRUCTIONS & CLOSING ARGUMENTS

1) FINAL INSTRUCTIONS - PRIOR TO CLOSING ARGUMENTS:

INSERT FINAL INSTRUCTIONS HERE: Your final set of jury instructions must be drafted to fit the circumstances of your case. The majority of your final instructions will consist of standard CrimJig instructions located in the “Minnesota Practice Series; Jury Instruction Guides - Criminal”

- i) Print your final instructions as a standalone document so you can distribute copies to jurors to read along with you.
- ii) Always allow one master copy (just one copy) back in the deliberation room for use by the jurors during their deliberations.
- iii) Mark the original as a court exhibit for filing in the court file.

2) START OF CLOSING ARGUMENTS & FINAL COMMENTS TO JURY

a) COURT’S COMMENTS BEFORE ATTORNEY FINAL ARGUMENTS.

[We will now have the final arguments by both attorneys. After the final arguments have been completed, the Court will give you some guidelines and rules for your deliberations. As you listen to the arguments, bear in mind the following:

During their final arguments, the attorneys may aim to do several things. First, they will discuss with you what they feel are the true facts or what the evidence discloses about the true facts. Second, they may draw inferences or suggest conclusions or arguments based on those facts. Third, they may discuss their understanding of the applicable law.

You should listen carefully to them as they have given considerable thought to this case. Their final arguments are intended to aid you in understanding the case; in remembering the evidence; in applying the law; and, ultimately, in reaching your final verdict.]

b) ATTORNEY FINAL ARGUMENTS:

Now, counsel for the State and for the Defendant will present their final arguments:

i) PROSECUTION CLOSING ARGUMENT:

State goes 1st, Mr/Ms. _____, you may proceed.

ii) DEFENSE CLOSING ARGUMENT:

Defense goes 2nd, Mr/Ms. _____, you may proceed.

iii) PROSECUTION REBUTTAL ARGUMENT (if the prosecutor elects to give one):

Mr/Ms. _____, you may proceed.

c) AFTER FINAL ARGUMENTS GIVE THE FOLLOWING INSTRUCTION

CRIMJIG 3.04

**Duties of Jurors: Selection of Fore Person; Unanimous Verdict; Deliberation; Return of Verdict
Advising of Additional Issues**

[Now that closing arguments are completed, I will give you some final instructions.]

When you return to the jury room to discuss this case you must select a jury member to be foreperson. That person will lead your deliberations.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

[If, at any time during deliberation the jury is separated -- such as for a cigarette break -- deliberation shall cease until all members of the jury are once again present. Once again, deliberation shall take place only when the full jury is present in the jury room.]

[During your deliberations you are not to communicate with members of your family or with other persons, except the bailiff(s) or jury attendant. To them, and them alone, you may make known your wants and desires. After you have retired for your deliberations, if you desire information on any point of law in the case, you may ask the bailiff to bring you back into Court. In addition, you may take your notes with you to the jury room.]

The foreperson must date and sign the verdict form when you have finished your deliberations and reached a verdict.

When you agree on a verdict, notify the (bailiff) (jury attendant).

You will return to the courtroom where your verdict will be received and read out loud in your presence.

[Ladies and gentlemen, in considering this case, remember that you are not partisans or advocates, but that you are Judges of the facts. The final test of the quality of your service will lie in the verdict that you return to the Court, and not in the opinions any of you may have as you retire from this case. Have it in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict. To that end the Court will remind you that in your deliberations in the jury room, there can be no triumph except the determination and the declaration of the truth.]

NOTE: BLAKELY PROCEEDING: The following instruction should be given only when there is a possibility of a bifurcated Blakely proceeding, as provided in CRIMJIG 8.01, in order to alert the jury that they may have further duties after returning the verdict.

[After you return your verdict, there may be additional issues for you to address and decide. I will instruct you further at that time.]

THIS CONCLUDES THE COURT'S FINAL INSTRUCTION

VII. EXCUSE ALTERNATE(S) AND START OF DELIBERATIONS

ALTERNATE JUROR(S): Mr/Ms _____,

you are the alternate juror(s). You are now excused. You may gather your things and leave. I thank you for your service and your patience, and I hope you understand that you have contributed to the trial of this case even though you will not deliberate. Please check with the jury clerk before you leave. Court Administration will notify you if you are needed again. Thank you for your service.

WAIT FOR THE ALTERNATE(S) TO LEAVE

- 1) Counsel, do you wish to call the Court's attention to any errors, omissions or corrections in the instructions?
- 2) The Clerk will now swear the bailiffs. *(in some counties the Judge administers the oath).*
- 3) Counsel, if you wish, you may examine the exhibits and other items the jury will be taking into the deliberation room.
- 4) The Court Administrator and the Bailiff will ensure that only proper exhibits are taken to the deliberation room.
- 5) Counsel, I am also requesting that you provide the Court with the telephone numbers where the Court Administrator can reach you during the jury's deliberations.
- 6) The Court Administrator will note the time the case is submitted to the jury.
- 7) The jury may retire. Good luck.

NOTE: Mark a copy of the jury instructions and verdict forms for court file.

VIII. END OF TRIAL: REVIEW OF ADMITTED EXHIBITS

At the conclusion of the trial, outside the presence of the jury and before the exhibits are delivered to the jury room, the attorneys should review and compare the list of offered and admitted evidence and on the record jointly agree on such list. The attorneys should then physically examine the collection of all admitted physical evidence to assure that collection contains only admitted evidence. The attorneys should agree on the record that the collection of admitted physical evidence can then be given to the jury.

WARNING: FAILURE TO FOLLOW PROPER PROCEDURE WHICH RESULTS IN THE JURY BEING GIVEN EXCLUDED AND PREJUDICIAL EVIDENCE WILL RESULT IN A MISTRIAL.

U.S. v. Lee, 575 F.3rd 155 (3rd Cir., 2009).

1. REVIEW EXHIBITS OUTSIDE PRESENCE OF JURY AND ON THE RECORD.
2. JUDGE, CLERK AND ATTORNEYS REVIEW LISTS OF ADMITTED EVIDENCE.
 - a. All lists should correspond
3. PHYSICALLY COMPARE ACTUAL ADMITTED EVIDENCE TO AGREED UPON LIST OF ADMITTED EVIDENCE.
4. ATTORNEYS PHYSICALLY REVIEW ADMITTED EVIDENCE.
5. ATTORNEYS AGREE ON RECORD THAT:
 - a. physical collection of admitted evidence contains all admitted evidence
 - b. physical collection of evidence does not contain any evidence not admitted
6. ATTORNEYS AGREE ON RECORD THAT AGREED UPON PHYSICAL COLLECTION OF ADMITTED EVIDENCE CAN BE GIVEN TO JURY.
7. ADMITTED EVIDENCE TAKEN TO JURY ROOM BY BAILIFF.

NOTE: 2 RECENT CASES:

- a) *U.S. v. Lee*, 573 F.3rd 155 (3rd Cir., 2009) document admitted for contents on front of document. No one examined the back. The back of the document contained significantly incriminating information. Document had not been reviewed by attorneys at end of trial before submission to jury. MISTRIAL.
- a) *State v. Chaney*, 2008 WL 2651437 (Minn.App.2008) police report containing incriminating information that was never admitted into evidence was inadvertently sent into jury room during jury deliberation. Reversed and remanded for new trial. See also *State v. Cox*, 322 N.W.2d 555 (Minn. 1982 (applying a four-factor test)).

IX. RETURN OF VERDICT

- 1) **Members of the Jury, Have You Selected a Foreperson?**
- 2) **Have You Reached a Verdict? (*Jury Foreperson Answers*)**
- 3) **Please Hand the Verdict to the Bailiff.**
 - a) Jury Foreperson hands verdict to bailiff;
 - b) Bailiff hands verdict to Court;
 - c) Once Court determines that verdict(s) are not inconsistent, Court hands verdict(s) to Court Administrator;
 - d) Court Administrator reads verdict(s) into the record.
- 4) **Polling the Jury (Minn. R. Crim. P. 26.03 subd 20(5)):**
 - a) Either party may request that the jury be polled.
 - b) The Court **MUST** poll the jury on request.
 - c) The Court may poll the jury on its own initiative.

Best Practice – the Court should always poll the jury even if neither party requests.

- Enter the verdict(s) into the record, order a PSI and criminal history worksheet, address conditions of release and schedule a return date for sentencing.
- Court thanks the jury for their service.
- Optional: Clear the courtroom (except for bailiff, court reporter, law clerk and court clerk) and spend a few minutes talking with and thanking the jurors (off the record).

END