

14-101. Explanation of trial procedure.¹

Introduction of staff

I am Judge _____ (*name of trial judge*). My bailiff, who will escort you and assist in communicating with the court, is _____. My administrative assistant is _____. If you need anything during the trial [the bailiff] [or] the administrative assistant would be happy to help. The court [reporter] [monitor] is _____. The court [reporter] [monitor] makes a record of everything said in court.²

This is a criminal case commenced by the state against the defendant _____ (*name of defendant*). The defendant is charged with _____ (*common name of crime*) [in Count 1] [and _____ (*common name of crime*) in Count 2, etc.] of _____. [Each count is a separate crime.] The defendant is presumed to be innocent. The state has the burden to prove beyond a reasonable doubt that the defendant is guilty. What I will say now is an introduction to the trial of this case.

Introduction to preliminary instructions

As the trial begins, I have some instructions for you. These instructions, along with those previously given, are preliminary only and may be changed during or at the end of the trial. All of you must pay attention to the evidence. After you have heard all of the evidence I will read the final instructions of law to you. You will also receive a written copy of all instructions. You must follow the final instructions in deciding the case.²

Scheduling during trial

This trial is expected to last [until _____] [_____ days]. The usual hours of trial will be from _____ (a.m.) to _____ (p.m.) with lunch and occasional rest breaks. Unless a different starting time is announced, please report to the jury room by _____ (a.m.). Please do not come back into the courtroom until you are called by the bailiff.²

Note taking permitted

You are allowed, but not required, to take notes during trial. Note paper will be provided for this purpose. Notes should not take the place of your independent memory of the evidence. When taking notes, please remember the importance of paying close attention to the trial. Listening and watching witnesses during their testimony will help you assess their appearance, behavior, memory and whatever else bears on their credibility. At each recess you must either leave your notes on your chair or take them with you to the jury room. At the end of the day, the bailiff will store your notes and return them to you when the trial resumes. When deliberations commence you will take your notes with you to the jury room. Ordinarily at the end of the case the notes will be collected and destroyed.³

Order of trial

A criminal trial generally begins with the lawyers telling you what they expect the evidence to show. These statements and other statements made by the lawyers during the course of the trial can be of considerable assistance to you in understanding the evidence as it is presented at trial. Statements of the lawyers, however, are not themselves evidence. The evidence will be the testimony of witnesses, exhibits and any facts agreed to by the parties. After you have heard all the evidence, I will give you final instructions on the law. The lawyers will argue the case, and then you will retire to the jury room to arrive at a verdict.

It is my duty to decide what evidence you may consider. Your job is to find and determine the facts in this case, which you must do solely upon the evidence received in court.

It is the duty of a lawyer to object to questions, testimony or exhibits the lawyer believes may

not be proper, and you must not hold such objection against the objecting party. I will sustain objections if the question or evidence sought is improper for you to consider. If I sustain an objection to evidence, you must not consider such evidence nor may you consider any evidence I have told you to disregard. By itself, a question is not evidence. You must not speculate about what would be the answer to a question that I rule cannot be answered.

It is for you to decide whether the witnesses know what they are talking about and whether they are being truthful. You may give the testimony of any witness whatever weight you believe it merits. You may take into account, among other things, the witness's ability and opportunities to observe, memory, manner or any bias or prejudice that the witness may have and the reasonableness of the testimony considered in light of all of the evidence of the case.

No ruling, gesture or comment I make during the course of the trial should influence your decision in this case. At times I may ask questions of witnesses. If I do, such questions do not in any way indicate my opinion about the facts or indicate the weight I feel you should give to the testimony of the witness.

Questions by jurors

Ordinarily, the attorneys will develop all pertinent evidence. It is the exception rather than the rule that an individual juror will have an unanswered question after all of the evidence is presented. However, if you feel an important question has not been asked or answered, write it down on a piece of your note paper and give it to the bailiff before the witness leaves the stand. I will decide whether or when your question will be asked. Rules of evidence or other considerations apply to questions you submit and may prevent the question from being asked. If the question is not asked, please do not give it any further consideration, do not discuss it with the other jurors and please do not hold it against either side that you did not get an answer.

Conduct of jurors

There are a number of important rules governing your conduct as jurors during the trial. You must decide the case solely upon the evidence received in court. You must not consider anything you may have read or heard about the case outside the courtroom. During the trial and your deliberations, you must avoid news accounts of the trial, whether they be on radio, television, the internet or in a newspaper or other written publication. You must not visit the scene of the incident on your own. You cannot make experiments with reference to the case.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in this case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Do not try to find out information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I know that many of you use cell phones, the internet, and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone or any other device that can access the internet through email, text

messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, such as _____ (*insert current examples of social networking sites, such as Facebook, My Space, LinkedIn, or YouTube*).

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, computer, or any other device that can access the internet; the internet, any internet service, or any text or instant messaging service; or any internet chat room, or by way of any other social networking websites, such as _____ (*insert current examples of social networking sites, such as Facebook, My Space, LinkedIn, YouTube, or Twitter*), to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Until you retire to deliberate the case, you must not discuss this case or the evidence with anyone, even with each other, because you have not heard all the evidence, you have not been instructed on the law, and you have not heard the final arguments of the lawyers. If an exhibit is admitted in evidence, you should examine it yourself and not talk about it with other jurors until you retire to deliberate. It is important that you keep an open mind and not decide any part of the case until the entire case has been completed and submitted to you. Your special responsibility as jurors demands that throughout this trial you exercise your judgment impartially and without regard to any sympathy, bias or prejudice.

To minimize the risk of accidentally overhearing something that is not evidence in this case, please continue to wear the jurors' badges while in and around the courthouse. If someone happens to discuss the case in your presence, report that fact at once to a member of the staff.

Although it is natural to visit with people you meet, please do not talk with any of the attorneys, parties, witnesses or spectators either in or out of the courtroom. If you meet in the hallways or elevators, there is nothing wrong with saying a "good morning" or "good afternoon," but your conversation should end there. If the attorneys, parties and witnesses do not greet you outside of court, or avoid riding in the same elevator with you, they are not being rude. They are just carefully observing this rule.

[Exclusion of witnesses

Witnesses, other than the parties, representatives of the state and expert witnesses will wait outside the courtroom until they are called to testify. Witnesses may not talk to other witnesses while waiting to testify. The lawyers are responsible for monitoring their own witnesses to assure that they do not enter the courtroom.]⁴

The prosecuting attorney may now make an opening statement. The defendant's attorney may make an opening statement or may wait until later in the trial to do so.

What is said in the opening statement is not evidence. The opening statement is simply the lawyer's opportunity to tell you what the lawyer expects the evidence to show.

USE NOTE

1. For use after the jury is sworn and before opening statements. This instruction does not go to the jury room.
2. This section serves as a suggested guideline to the judge.
3. The court must instruct the bailiff to pick up the notes at the conclusion of all jury

deliberations. Absent a showing of good cause, the court shall destroy all notes at the conclusion of all jury deliberations. The court must instruct court personnel not to read juror notes.

4. This paragraph is given if the rule was invoked in the presence of the jury. *See* Rule 11-615 NMRA of the Rules of Evidence for witnesses who may be excluded for the courtroom. [As amended, effective January 1, 1994; July 1, 1998; August 1, 2001; January 20, 2005; as amended by Supreme Court Order No. 11-8300-005, effective March 25, 2011.]

Committee Commentary. — Absent a requirement that instructions must be given prior to the introduction of evidence, the court has discretion to refuse to give any instructions until the traditional point in the trial. *State v. Wesson*, 83 N.M. 480, 493 P.2d 965 (Ct. App. 1972). *See* Rules of Criminal Procedure, Rule 5-607 NMRA - Order of trial. The adoption of these instructions and the amendment to Rule 5-607 NMRA of the Rules of Criminal Procedure provides the mandatory requirement for some instructions at the start of the trial.

The adoption of preliminary instructions in New Mexico Uniform Jury Instructions-Civil provides the New Mexico precedent for these instructions. Giving the jury a legal and procedural framework prior to the presentation of the evidence has been suggested by various experts on criminal jury trials. *See, e.g.*, Prettyman, *Jury Instructions - First or Last?*, 46 A.B.A.J. 1066 (1960); *cf.* American Bar Association, *Standards Relating to Trial by Jury*, §§ 3.1 and 4.6(d) (1968).

UJI 14-101 NMRA was amended in 1982 to include a general instruction to the jurors relating to the avoidance of news accounts of the trial during its progress. *See State v. Perea*, 95 N.M. 777, 626 P.2d 851 (Ct. App.), *cert. denied*, 96 N.M. 17, 627 P.2d 412 (1981). [As amended by Supreme Court Order No. 11-8300-005, effective March 25, 2011.]