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JURY TRIALS HANDBOOK
FOR
INDIAN COURT CLERKS



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ACQUISITIONS

Preface

This Jury Trial Handbook has been prepared for use by Indian Court Clerks in the American Indian Court Judges and Clerks training program. It is the second in a series of handbooks, the first being Secretarial Guidelines. The Handbook will be useful for lectures, discussions and role-playing sequences during the training sessions sponsored by the National American Indian Court Judges and Clerks Associations. In addition, the Handbook will provide a valuable reference work for Indian Court Clerks and Judges as they discharge their duties within the American Indian Court system in the years to come.

This publication was prepared by the Staff of the National American Indian Court Judges Association and Officers and Committee members of the National American Indian Court Clerks Association.

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TABLE OF CONTENTS

	<u>Page</u>
Conduct of Jury Trials.....	1
Proposed Introductory Remarks to a Jury Panel.....	5
Proposed Explanation to Jury Panel of Voir Dire.....	7
Proposed Introductory Instruction to Jurors Before Criminal Trial...	9
Proposed Instructions on Juror's Conduct During Trial-Admonition...	12
Proposed Objections--Rulings on Evidence.....	16
Proposed Voir Dire Questions.....	17
Proposed Admonition at Recess.....	20
Proposed Mandatory Instruction Upon Discharge.....	21
Oaths.....	22

THE CONDUCT OF JURY TRIALS

Jury Definition

A number of persons selected and impanelled according to tribal code and sworn to decide matters of fact and declare the truth after the evidence has been presented to them in a trial.

Right to Jury Trial

The right to a trial by jury is guaranteed by the Federal Constitution and upheld in many tribal codes. The tribal code will state who may petition for jury trial and in what instances.

Jury Membership

In most tribal courts, juries consist of six members. Criteria for jury membership is usually tribal membership, legal age, and acceptable intelligence.

Establishing a Juror List

The clerk should obtain a list of all tribal members from the tribal office or the Bureau of Indian Affairs. From that list, a questionnaire will be sent to prospective persons to determine their eligibility as jurors.

The questionnaire should be easily understandable and easy to read. Power to enforce punishment for failure to return the questionnaire should be given to the Judge by the tribal council. (See sample)

From the returned questionnaires, the clerk selects eligible persons, usually at random, to serve on the jury panel for a specific length of time (thirty to sixty days or in accordance with the tribal code). This panel of approximately eighteen is "on call" for all jury cases within the specified time period. At the end of the period, a new jury panel is selected and the old panel excused. Questionnaires should be sent out each year to keep the list of prospective jurors current.

Payment of Juror Fee

The clerk should request and be authorized as an officer of the Court to issue payment of a juror fee. This fee should be outlined in the tribal law and order codes and disbursed by the clerk to eligible jurors.

Impanelling the Jury

For each jury trial, the entire panel must assemble. Adequate notice of the trial (by mail) is the responsibility of the clerk. Should a jury panel member not be present, the clerk should notify the Judge for appropriate action.

The panel is questioned to determine the existence of any prejudices or biases which would prevent a fair trial. A potential juror may be excused if he indicates an inability to render an impartial verdict.

Jurors are selected after questioning by the Judge, plaintiff, and defendant. Those not selected are excused from this particular trial.

Checklist for Jury Trial

In many instances, it may be useful for the clerk to use a checklist in the conduct of jury trials.

Jury Instructions

In the appendix to this volume are some suggested instructions and oaths which may prove useful in your court. It is anticipated that this material will be adapted to your courtroom needs and information supplemented or deleted as necessary.

Accepting a Verdict

Upon return from deliberations, the jury is asked if a verdict has been reached. If one has, the verdict is handed to the foreman of the jury, to the Judge, and then to the clerk who reads the signed form. The clerk asks, "Is

this your verdict, Ladies and Gentlemen?"
To this, the jury should respond together,
"Yes".

Unable to Reach a Verdict

Should the jury be unable to reach a verdict and a mistrial be declared, a date for retrial is requested of the Judge. The clerk then assumes the responsibility of calendaring the date and insuring all parties to the case are notified.

Final Actions of the Clerk

The clerk should be prepared to complete any of the following items as required.

- A. Accept fines.
- B. Apply cash bail to payment of fine.
- C. Issue Deposit Refund Order if there is no fine and cash bail is on deposit at time of judgment.
- D. Prepare any necessary commitment if defendant is remanded to custody.
- E. Prepare any necessary release if defendant is ordered discharged.
- F. Report bond status.

PROPOSED INTRODUCTORY REMARKS TO A JURY PANEL

Ladies and Gentlemen:

What I will now say is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law which I will give to you at the close of the evidence and before you retire to consider your verdict.

The case which we are about to try is a criminal case as distinguished from a civil case. It is a case commenced by the (Tribe), which may sometimes be referred to as the "People" or the "Prosecuted" against (Defendant's Name), who may be referred to as the "Defendant" or the "Accused". The case is based upon information (or an indictment), which reads as follows.

(Here read information or indictment)

You should distinctly understand that the information (indictment) is merely a charge and that it is not in sense evidence of the allegations it contains.

The defendant has pleaded "Not Guilty" to the information (indictment). The prosecution, therefore, has the burden of proving the charge(s) (or count(s)) beyond a reasonable doubt. The purpose of this trial is to determine whether the prosecution will meet this burden. The jury will make this determination.

(Insert number) members will constitute the jury in this case. They will consider all of the evidence produced during the trial and reach a decision with the help of certain instructions from the Court as to the law applicable to this case.

It will be the sole responsibility of the jurors chosen to try the case to determine the facts from all the evidence produced during the trial.

Notes on Use: The instruction is premised upon a theory of giving a rather complete explanation to an entire jury panel prior to voir dire and speaking more specifically and more briefly to the particular jury which is sworn to try the case. See Parnell, address to panel at calendar opening, 44 FRD 268 (1968).

PROPOSED EXPLANATION TO JURY PANEL OF VOIR DIRE

(Insert Number) members of the panel will be called to the jury box. Upon being called into the jury box, you will take an oath that you will truthfully answer all questions as to whether or not you can serve as a juror in this case. Your answers should be direct and complete as to all questions that may be asked by the Court or counsel.

All members of the panel should listen attentively to the questions of the others. If you would answer any of the questions substantially differently than the person being questioned, you should bring this to the Court's attention at the time you are questioned individually. This will help expedite the questioning of prospective jurors.

Each side may excuse up to (Number) of the members without stating a reason. Therefore, do not be embarrassed or consider it any reflection upon you if you are one of those excused. By using this method of selecting a jury, both sides can participate more freely in the selection of the jury and try to obtain a jury that is as fair and impartial as possible. This procedure is a part of our American system of justice and is fair to both sides.

Notes on Use: In connection with the examination of jurors on voir dire, it is common procedure for the trial judge to introduce the participants in the lawsuit--parties, attorneys, and witnesses. At this point, it is advisable for the trial judge to address general questions to all of the members of the jury panel with reference to their acquaintance with the parties, their knowledge of the facts involved in the case, and other questions susceptible to general inquiry.

PROPOSED INTRODUCTORY INSTRUCTION TO JURORS
BEFORE CRIMINAL TRIAL

All of you have heard my earlier remarks to the jury panel. Now that you have been accepted by counsel and sworn as the jury to try this case, I have some additional introductory remarks concerning the procedure to be followed in this trial.

We will have what we call opening statements by counsel. These opening statements are not evidence and are not arguments. They are made to give you some idea as to what the case is about. The prosecuting attorney may make an opening statement to the jury concerning the evidence to be produced in support of the charge. The defense may make a statement concerning the evidence to be produced or may reserve the right to do so until completion of the evidence offered by the prosecution's case.

The prosecuting attorney must offer evidence in support of the charge(s) in the information (indictment).

The defense may offer evidence on behalf of the defendant but is not obliged to do so. The burden is always on the prosecution to prove every element of the offense charged beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of calling any witness or introducing any evidence.

The prosecuting attorney may, if he chooses, offer evidence in rebuttal of the defense evidence.

At the conclusion of the evidence, I will instruct you in writing concerning the law which is applicable to the case. I will read those instructions to you, and you will be allowed to take them with you to the jury room during your deliberations.

The prosecuting attorney may then deliver a summation of the evidence to you and base an argument for conviction on the evidence and the law as given in the instructions.

The defense may then deliver a summation of the evidence to you and base an argument for an acquittal or other verdict on the evidence and the law as given in the instructions.

The prosecuting attorney may then reply to the argument made by the defense.

You, the jury, must then retire to deliberate upon a verdict.

Your purpose as jurors is to find and determine the facts. Under our system of criminal justice, you are the sole judge of the facts. It is especially important that you perform your duty of determining the facts diligently and conscientiously.

You are to determine the facts from the testimony you hear and the other evidence introduced in court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence.

The law as given by this Court constitutes the only law for your guidance, and it is your duty to accept and follow it even though you may disagree with it. It is your duty to apply the rules of law as given in the instructions to the facts as you find them from the evidence in the case so to arrive at a verdict.

Notes on Use: The instruction is intended to follow in order from the oath of jurors and to immediately precede the admonition instruction.

PROPOSED INSTRUCTIONS ON JUROR'S CONDUCT
DURING TRIAL-ADMONITION

It is now my duty to instruct you as to your conduct during the trial. I must give you certain admonitions--certain warnings--that will remain with you throughout this entire trial.

The first one is that you are not to discuss this case among yourselves while the evidence is being presented to you. The first time you will be allowed to discuss this case among yourselves is after you have heard all of the evidence, the instructions of the Court, the arguments of counsel, and have retired to the jury room and selected a foreman. Then, and then only, should you begin to discuss and deliberate this case.

The reason for the rule that you are not to discuss this case while the evidence is being presented to you is that you might commit yourself one way or the other before you have had an opportunity to hear all of the evidence. The Court asks you not to discuss the case until you have heard all of the evidence, the Court's instructions, and the arguments of counsel.

The second warning is that you are not to discuss this case with anyone else--any third party--until your verdict is delivered and you have been relieved of your duties as a juror. The reason for this rule is that oftentimes these third parties, be they husband, wife, friend, or relative, have their own ideas as to how this case should be decided.

Discussion of these ideas could possibly influence you; and to prevent the possibility of that happening, you are not to discuss the case with anyone else.

Third, should any other juror, or anyone else, attempt to discuss this case with you, immediately notify me personally.

Fourth, you are not to read or listen to any accounts or discussions of the case reported by newspapers or other publications or by television or radio.

Fifth, you are not to visit or view the premises or place where the offense or offenses charged were allegedly committed or any other premises or place involved in the case, except under direction of the Court.

As you can see from these admonitions, you are not to be investigators in this case. The way this case will proceed is that there will be testimony and possibly certain exhibits introduced into evidence. You, the jury, have the awesome power to accept everything as being true, to accept only part of it as true, or to reject all of it. And that, the evidence, in addition to the Court's instructions, is what you are to base your verdict upon.

Counsel will be allowed to speak in this case, and you should listen to them to see what comments they have about the evidence; but neither their comments nor their statements are evidence.

During recess and adjournments of this Court, you are going to be free to separate, free at lunch, and free to go home at the end of the day. Of course, during those recesses, you are not to discuss anything about this case with each other, or with any of the parties or their attorneys. As for people connected with the case are concerned, it is best not to talk to them at all, not even to say "Hello" or to ask for the time of day. You will find that attorneys, at least, will generally avoid talking to you, not out of any unfriendliness but to avoid problems.

(The following is an alternative paragraph for sequestration of jurors)

(I have concluded that you should not be permitted to separate during the recesses of this Court but rather should remain together. I realize that this will be a hardship on you. The bailiff will be able to assist you in any way you desire. Please do not communicate with any person by letter, telephone, or other means without first advising the bailiff.)

Now, across the room, we have a bailiff, (Name), and he is here to take care of your needs and wants during the course of this trial. If you have a particular problem, telephone calls, or anything of that sort, take it up with (Name). If you happen to have any problems with this trial, first mention it to (Name), and he will then notify me. I will discuss it with the attorneys and we will decide what we can do about it.

With that, I have completed my admonitions to you.

PROPOSED OBJECTIONS--RULINGS ON EVIDENCE

Counsel may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence which he believes may not properly be offered, and you should not be prejudiced in any way against a lawyer who makes objections or the party he represents. At times, I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard.

Notes on Use: This instruction should be given immediately following the opening statements.

PROPOSED VOIR DIRE QUESTIONS

These questions are for the entire panel, anticipating negative answers. Each juror in the box is requested to raise his/her hand if the answer to any question is YES. That juror is then questioned individually and excused or not as appears proper.

1. Are your personal and business affairs in such condition as will permit you to give your full attention to this case for the next several days?
2. Have you read or heard anything about this case?
3. (Request defendants to rise and identify them) Are you acquainted with any of the defendants?
4. (If defendant is a corporation) Are you an officer, director, stockholder, or employee of (Corporation) ?
5. (Request counsel rise and introduce them) Are you acquainted with any of the attorneys participating in this trial or with any members of their staff or members of the defense attorney's firm?
6. (Read names of probable witnesses) Are you acquainted with any of them?
7. Have you had previous jury service? Civil or criminal?

8. Have you or has any member of your immediate family, to your knowledge, ever been the victim of a crime or participated in a criminal case, as a complainant or as a witness for the prosecution?
9. Have you or any member of your immediate family, to your knowledge, ever participated in a criminal case as a defendant or witness for the defense?
10. Have you or any of your immediate family or close friends ever served as a law enforcement or investigative officer?
11. Is there anything in the nature of the offense charged which would--in and of itself--influence you in arriving at your verdict?
12. If you were the one charged with the responsibility for prosecuting this case, or if you were any of the defendants on trial here today charged with the same offenses or their counsel, do you know of any reason why you would not be content to have your case tried by someone in your frame of mind?
13. If you are selected to sit on this case, will you be unable or unwilling to render a verdict solely on the evidence presented at the trial and the law as I give it to you in my instructions, disregarding any other ideas?

14. Do you know of any reason--whether I have asked the question or not--why, if you are selected as a juror, you could not or would not be fair to the defendants and to the prosecution?

If any juror is excused, the one who replaces him should be asked the following questions.

1. Did you hear and pay close attention to the questions asked by the Court?
2. Would you have answered YES to any of those questions? If yes, to which question or questions?

Individual Voir Dire Questions

1. Name.
2. Address.
3. How long on reservation.
4. Present occupation, name of employer.
5. Former occupations, if retired.
6. If married, employment of spouse.
7. Do you drive a car?

PROPOSED ADMONITION AT RECESS

We will now have a short recess (recess for the day) and the bailiff will escort you to the jury room. Remember the admonitions the Court previously gave to you not to discuss this case. You are again cautioned not to discuss this case among yourselves nor with anyone else (not to read, view, nor listen to any reports in the press, radio, television), nor form nor express any opinion on the case until it is finally submitted to you.

Notes on Use: This instruction is meant to be given at a short recess when the jury will temporarily be sequestered in the jury room, i.e., when offers of proof are made. Insert bracketed material for recess at the end of the day when jury will be allowed to return to their homes.

PROPOSED MANDATORY INSTRUCTION UPON DISCHARGE

You have now completed your duties as jurors in this case and are discharged with the thanks of the Court. The question may arise whether you may now discuss this case with the lawyers, defendants, or other persons. For your guidance, the Court instructs you that whether you talk to anyone is entirely your own decision. It is proper for others to discuss the case with you, and you may talk with them but you need not. If you talk to them, you may tell them as much or as little about your deliberations or the facts that influenced your decision as you like. If any person persists in discussing the case over your objection, or becomes critical of your service either before or after any discussion has begun, please report it to me.

Notes on Use: The giving of this discharge instruction may be mandatory.

OATHS

Proposed Oath on Voir Dire

You do and each of you solemnly swear (affirm) under penalty of perjury to answer truthfully the questions asked by the Court or counsel concerning your service as a juror in this case.

Proposed Oath of Jurors

You do solemnly swear (affirm) under penalty of perjury that you and each of you will well and truly try the matter at issue between the _____ (Tribe) and _____ (Name), the defendant, and render a true verdict, according to the evidence.

Proposed Oath to Witnesses

You do solemnly swear (affirm) under penalty of perjury that the testimony (or evidence) you will give before this Court shall be the truth, the whole truth, and nothing but the truth.

Proposed Oath for Bailiff on Care for Jury During Recesses

You (and each of you) do solemnly swear (affirm) under penalty of law that at this and all other recesses during this trial, you will, to the utmost of your ability, keep this jury together; that you will not permit any person to speak to them and you will not speak to them yourself (yourselves) in relation to this trial, and return with them at the order of the Court.

Proposed Oath for Bailiff in Charge of Jury on Inspection

You do solemnly swear (affirm) under penalty of law that you will take this jury in charge and cause them to be taken to the location (scene) involved in this case for their inspection; that you will not permit any person to speak to them or speak to them yourself in relation to the matters on issue in this trial and upon their completing such inspection, you will return them into Court.

Proposed Oath for Interpreter

You do solemnly swear (affirm) under penalty of perjury that you will well and truly translate from the English language into the _____ language the oaths that are administered and the questions asked the witness(es) in this case, and will well and truly translate from the _____ language into the English language the answers thereto, to the utmost of your ability.

Proposed Oath of Office-Foreman-Grand Jury

You, _____ (Name) _____, as Foreman of this inquest, do solemnly swear (affirm) under penalty of perjury that you will diligently inquire into, and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge, touching the present service; you will present no person through malice, hatred, or ill will, and that you will leave no one unpresented through fear, favor, or affection, or for any fee or reward or the hope or promise therefore; that you will keep secret your own counsel and that of your fellows touching the present service; and that in all your presentments, you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.

Proposed Oath of Grand Jurors

You and each of you do solemnly swear (affirm) under penalty of perjury that you will well and truly keep and observe the oath that _____ (Name) _____, your Foreman, has just taken before you.

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END