

Appendix D

Implementation Plan - Jury Reform in Colorado Report dated March 12, 1989

CRIMINAL JURY ORIENTATION, EXAMINATION AND SELECTION PROCEDURES

(From C.J.I.-Crim 1:02 and C.J.I.(3d) - Civ. 1:1):

Ladies and Gentlemen:

Before we begin this case, I would like to tell you about what will be happening here. I want you to understand the purpose of the trial.

The case we are about to try is a criminal case. The prosecution is brought in the name of the People of the State of Colorado. The prosecution in this trial is represented by

_____ who is an attorney from the District Attorney's office. I will sometimes refer to the District Attorney as "the prosecution" or "the People."

The "defendant" or "accused" is _____. S/He is being represented by _____. (Alternate: The defendant, has decided to represent himself/herself and not use the services of an attorney. [The individual seated beside the defendant is a court-appointed advisory attorney. The defendant may consult with this individual during the course of these proceedings.] It is his/her right to do this. His/her decision has no bearing on whether s/he is guilty or not guilty and it should have no effect on your consideration of the case.)

The charge against the defendant is contained in what is called an [information] [indictment] [complaint]. An [information] [indictment] [complaint] simply describes the charge made by the prosecution against the defendant. It is not evidence of anything. The [information] [indictment] [complaint] in this case reads as follows:

(Here read information, indictment or complaint and I) any accepted statement of facts and defenses, if applicable or, II) "The attorneys for either side may now make a brief statement to you regarding the facts of the case. These statements are not evidence, but are merely offered to provide basic background matters to assist in selecting the jury.")

By pleading “not guilty” to the [information] [indictment] [complaint] the defendant says that s/he did not commit the crime. The defendant is presumed to be innocent. Therefore, the prosecution has the burden of proving the [charge(s)] [counts(s)] beyond a reasonable doubt. Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves. The jury will decide whether the prosecution has proven, beyond a reasonable doubt, that the defendant has done the things that are contained in the [information] [indictment] [complaint].

[The evidence in this case may raise the issue(s), of _____, therefore the following legal principles and definitions may be matters for your consideration: (Here list applicable principles (i.e.: complicity, self defense, etc.) and/or definitions (i.e.,: serious bodily injury)].

_____ jurors and _____ alternates will be chosen. They will consider all of the evidence produced during the trial. It will be the sole responsibility of the jurors chosen to try this case to determine the facts from all of the evidence received during the trial. This will require your close attention, absolute honesty, impartiality and sound judgment.

[Omit if jury is to be sequestered]. It will not be necessary to keep jurors together at noon or at night during the trial. If you are selected as a juror, you will be permitted to go home at night and leave the courthouse during the noon recess.

Jurors and potential jurors must not discuss the case among themselves or with anyone else until instructed further by the Court. You must not read, view or listen to any reports about the case in the press, or on radio, television or any other media. You should also not form or express any opinion about the outcome of this matter until the Court instructs you to begin your deliberations.

From C.J.I. Crim 1:02 and C.J.I.(3d) - Civ. 1:2):

I want to explain briefly to you the method we will use in selecting a jury in this case.

_____ members of the panel will be called into the jury box. After the first _____ members of the panel are in the jury box, each of you, regardless of whether you have been called forward to sit in the jury box, will take your oath that you will truthfully answer all questions as to whether you can serve as a juror in this case.

After the oath is administered, the Court and each attorney may ask you questions concerning your ability to be fair and impartial jurors. You should answer fully all questions asked by the attorneys or by me. Even though you may not be called forward initially into the jury box, please listen closely to all that is said because you may be asked to sit in the jury box before jury selection is completed.

At this time I will read a list of grounds that may disqualify you as a juror. Please raise your hand, if any of these grounds apply to you.

1. Are you related to the defendant(s) or any of these attorneys?
2. Do you have a relationship of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent or are you a member of the household, or a partner in business with, or surety on any bond or obligation with or for the defendant?
3. Are you now or have you been a party in a civil lawsuit involving the defendant or complained against or been accused by the defendant in a criminal prosecution?
4. Have you been a Grand Juror, juror, or a witness at a former trial or proceeding arising out of the same factual situation involving the defendant?
5. Were you a witness to any matter related to the crime or its prosecution?

6. Do you have a personal or financial interest in the outcome of this case? By interest, I mean a financial or other personal interest apart from any interest you might have as a member or citizen of a city, county or state.
7. Do you have feelings for or against the defendant or the prosecution?
8. Are you an attorney or a compensated employee of a public law enforcement agency?

You should also mention any statutory or other reason you believe may disqualify you from being a juror in this case. [NOTE TO THE COURT: JURORS SHOULD HAVE BEEN PRE-SCREENED BY THE JURY COMMISSIONER FOR STATUTORY GROUNDS FOR DISQUALIFICATION. IF THIS HAS NOT BEEN DONE, THE COURT SHOULD READ THE FOLLOWING. SEE C.R.C. 13-71-109.]

Colorado law sets forth certain qualifications for jury service. I am going to read to you the part of the law that deals with juror qualifications. Please raise your hand if any of these applies to you:

- a. You are not a citizen of the United States, eighteen years old and a resident of the County;
- b. You are unable to read, speak, and understand the English language;
- c. You are incapable, by reason of physical or mental disability, of rendering satisfactory jury service.

or

- d. Does not have the right to vote by reason of a criminal conviction.

[Give panel time to respond and question regarding any affirmative response or other response that requires investigation.]

By law a jury consists of ____ persons [plus ____ alternate(s)]. Each side may excuse up to [the number of peremptory challenges conferred] of you without stating a reason. You should 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 a 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.

JUROR'S OATH

I will ask you to raise your right hands and take an oath:

OATH ON JURY EXAMINATION [From C. J. I. (3 d) - Civ. 1: 17]:

“Do you and each of you solemnly swear or 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.”

FILL OUT JURY SEATING CHART.

JUDGE'S JURY EXAMINATION

At this time I will ask you certain questions to determine your qualifications to sit as impartial jurors. The attorneys will be allowed to ask you additional questions. If a particular question applies to you, please raise your hand.

First, I would like to point out that this trial could take at least ____ days. Is there anyone who feels that he or she cannot give their full attention to this case for this period of time?

The attorneys and I may be asking some questions of a personal nature about you and your background and about various matters involved in the case. If any of you has a response that might prejudice or taint any other member of the jury panel or that you would prefer not to discuss publicly, please let me know so that we can discuss the matter out of the presence of the other panel members. For example, I will be reading a list of witnesses. You may know one of the witnesses and when I ask you, you may say that you couldn't believe or disbelieve a word that person said. Rather than making such a statement publicly, please raise your hand and advise me and we will talk about it out of the presence of the other members of the panel.

All members of the panel should listen attentively to the questions of the others. If you would answer any of the questions substantially different 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.

1. Are your personal and business affairs in such condition as will permit you to give your full attention to this case until it is completed?
2. Have you read or heard anything about this case?
3. Are you acquainted with the defendants or any of the attorneys?
4. [Read names of probable witnesses and ask if jurors are acquainted with any of them.]
5. Have you had previous jury service? Civil or criminal?
6. Have you had classes in law of any kind?
7. Have you, or any member of your family, to your knowledge, ever been involved in a court case as a plaintiff, petitioner, respondent, defendant or witness?
8. Have you, any members of your family, or any close acquaintance ever been a law enforcement officer?
9. Is there anything about the nature of this case which would, in and of itself, influence any of you in arriving at a verdict?
10. Have you ever been involved in a situation of the type I have explained is involved in this case?
11. Do you have any difficulty hearing or seeing what is going on in the courtroom?
12. Do any panel members know each other? What is the nature of your acquaintance?
13. If you are selected to sit as a juror in this case, will you be able and willing to render a verdict solely on the evidence presented at trial and the law as I give it to you in my instructions, disregarding any other ideas, notions or beliefs about the law you may have encountered?

14. Is there 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 and impartial in deciding this case?
15. Have you had a response to a question which is so personal or sensitive that you felt uncomfortable in expressing it in front of the panel members? If so, we will discuss the matter out of the presence of the other panel members.

Will you all please look at the poster board on the easel in front of you. To expedite our information process, I'm asking each of you to read and answer--starting with juror No. 1. Please give the information requested.

[HERE ARE THE QUESTIONS THAT SHOULD BE PLACED ON A STANDARD SIZE POSTER BOARD 28" X 44", AND PLACED IN FRONT OF THE JURY]:

1. Name and age.
2. Employment? If retired, former employment.
3. Education--what level? Any degree? If so, in what?
4. Marital status?
5. Spouse's employment? If retired, former employment.
6. Children? Ages and occupation.
7. Parent's occupation?
8. How long in the State and County?
9. Interests, clubs and hobbies?
10. What do you like to read, listen to on radio and watch on television?

FOLLOW-UP QUESTIONS OF THE ENTIRE PANEL:

1. From the responses of the other jurors, does anything come to your mind that any of you feel you ought to mention?

2. Is there anything more about any of you that you feel we ought to know?
3. Will each of you follow the Court's instructions as to the law?
4. Can each of you be fair and impartial to both sides?

PROSECUTING ATTORNEY JURY EXAMINATION:

[To Prosecutor] You may inquire. [After questioning, ask if the prosecutor passes the jury for cause.]

DEFENDANT ATTORNEY JURY EXAMINATION:

[To Defendant(s) Attorney] You may inquire. [After questioning, ask if the Defendant(s)' attorney passes the jury for cause.]

PEREMPTORY CHALLENGES:

[Prosecuting Attorney] You may exercise your first peremptory challenge.

[Defendant(s) Attorney] You may exercise your first peremptory challenge.

Etc., until there are no more challenges.

JUROR'S OATH:

Ladies and gentlemen you have been selected as the jurors (and alternates) to try the case of People v. _____. I will ask you to raise your right hands and take the oath of jurors:

“You do solemnly swear or affirm under penalty of perjury that you and each of you will well and truly try the matter before the Court and render a true verdict, according to the evidence and the law.”

BEFORE OPENING STATEMENT - (FROM C.J.I. CRIM 1:0):

Before we begin the trial, I would like to tell you about the procedures we will be following. I want to describe how the trial will be conducted and explain what we will be doing.

The first step in the trial will be the opening statements. Either attorney may make an opening statement if the attorney chooses to do so. Opening statements are not evidence. Their purpose is only to help you understand what the evidence will be.

Next the prosecution will offer evidence. Evidence consists of the sworn testimony of the witnesses, the exhibits received in evidence, and stipulated, admitted, or judicially noticed facts.

After the prosecution's evidence, the defendant may present evidence in his or her own behalf, but is not required to do so. I want to remind you that the defendant is presumed to be innocent. The prosecution must prove the guilt of the defendant beyond a reasonable doubt. The defendant does not have to prove his innocence or call any witnesses or introduce any evidence.

You may have to decide what testimony to believe. You should carefully consider all of the testimony given and the circumstances under which each witness has testified. Consider each witness, knowledge, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' means of knowledge, ability to observe, and strength of memory. Consider also any relationship each witness may have to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence which affects the credibility of the witness' testimony. You may believe all of the testimony of a witness, or part of it, or none of it.

At the conclusion of the evidence I will tell you the rules of law which you are to use in reaching your verdict. I will read those rules of law to you and you will be allowed to take them with you to the jury room during your deliberations.

After you have heard all the evidence and the instructions, the prosecution and the defense may make their closing arguments. Like opening statements, closing arguments are not evidence. The prosecuting attorney will have the opportunity to reply to the closing argument made by the defense.

You will then go to the jury room to deliberate on a verdict. Your purpose as jurors is to decide what the facts are, and your decision must be based solely upon the evidence and the law I will give you in my instructions.

At times during the trial, the attorneys may make objections. This simply means that the attorney is requesting that I make a decision on a particular rule of law. It is the duty of an attorney to object to evidence which he or she believes may not properly be offered. Do not draw any conclusions from the objections or from my rulings on the objections. If I sustain an objection to a question, the witness may not answer it. As jurors, you must draw no inference from the question or speculate as to what the witness would have said if permitted to answer. At other times I may instruct you not to consider a particular statement that was made. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard. Such evidence is to be treated as if you had never seen or heard it.

It is my job to decide what rules of law apply to the case. You must follow all of the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or do not understand the reasons for some of the rules, you must follow them. You will then apply these rules to the facts which you have determined from the evidence. In this way you will determine whether the prosecution has proven the guilt of the defendant beyond a reasonable doubt.

During the trial I may need to talk with the attorneys out of your hearing about questions of law. Sometimes you may be asked to leave the courtroom while I discuss such matters with the attorneys. We will try to limit these interruptions as much as possible. Do not infer from any ruling or from anything I say during this trial that I hold any views either for or against any party to this case.

OPENING STATEMENTS OF COUNSEL

TRIAL

CRIMINAL JURY INSTRUCTIONS

1:05 JUROR NOTE-TAKING

You have received (writing materials) (notebooks). You may use these (materials) (notebooks) to take notes during the trial. However, you are not required to do so.

If you take notes, you should not allow the note-taking to detract from your close attention to the testimony and conduct of each witness and all other evidence received during the trial.

Take notes sparingly. Do not try to summarize all testimony. (For example, notes can be particularly helpful when dealing with measurements, times, distance, identities and relationships.)

Whether you take notes or not, you should rely on your memory as much as possible and not upon your notes or the notes of other jurors. Any notes you take are to refresh your own individual memory.

These (materials) (notebooks) may only be used in the courtroom or jury room. You may take these (materials) (notebooks) from the courtroom to the jury room and from the jury room to the courtroom. However, these (materials) (notebooks) may not be taken anywhere else.

Please write your name (on your materials) (in your notebook). No one else will read your notes. At the end of the case, these notes will be returned to the Court and destroyed.

1:06 JUROR NOTEBOOKS

To help you understand this trial, you have been provided with notebooks which contain information about this case. Please write your name in these notebooks. These notebooks may only be used in the courtroom or jury room. You may take these notebooks from the courtroom to the jury room and from the jury room to the court room. However, they may not be taken anywhere else. Any notes you made during the trial will be destroyed after they have been returned to the Court.

1:07 HIGHLIGHTED EXHIBITS

The attorneys have highlighted certain parts of some exhibits. However, it is for you to determine the significance of the highlighted parts.

1:08 QUESTIONS DURING DELIBERATIONS

Once you begin your deliberations, if you have a question about the evidence in this case or about the instructions or verdict forms that you have been given, your Foreperson should write the question on a piece of paper, sign it and give it to the bailiff who will bring it to me.

I may then confer with the attorneys as to the appropriate way to answer your question. However, there may be some questions that, under the law, I am not permitted to answer. If it is improper for me to answer the question, I will tell you that. Please do not try to guess about what the answer to your question might be or why I am not able to answer a particular question.

Old 1:05 become 1:09 et. seq.