

Note: The following is an instruction defining EVIDENCE for the jury in the court's Voir Dire, Preliminary Instructions, and Final Instructions. These instructions are also set forth in the respective Model Instructions.

Voir Dire

When you judge the facts, you are to consider only the evidence. The evidence in the case includes:

testimony of the witnesses,
exhibits which are received in evidence, [and]
[any stipulation by the parties.

(A stipulation is information the parties agree to present to the jury as evidence, without calling a witness to testify.)]

Preliminary Instructions

[I remind you that] the indictment is not evidence; it is simply a document that contains an accusation. The defendant has pled not guilty to (that/ those) accusation(s), and the trial is for you to hear the evidence and decide whether the defendant is guilty or not guilty.

[I remind you also that] evidence is the testimony of witnesses, the stipulations, if any, agreed to by the parties, and documents or other physical objects received in evidence.

1. Testimony is of course the most common form of evidence and comes from the questioning of the witnesses by the lawyers, and perhaps by the court, [but not by the jury].

A question by itself is not evidence. It is the question with the answer that is the evidence. For example, sometimes a question will assume something to be true. You are not, however, to conclude that an assumption in a question is true unless the answer, in your judgment, confirms that it is true. So, you must consider the question with the witness's answer, and decide whether you find the answer believable and

accurate-because, again, it is the question with the answer that is the evidence.

2. Next, evidence may come in the form of a stipulation. A stipulation is information which both parties agree to present to the jury, as evidence, without calling a witness to testify to the information.

3. Last, evidence may come in the form of physical objects, such as: documents, photographs, clothing, or charts.

Final Instructions

When you judge the facts, you are to consider only the evidence. The evidence in the case includes:

the testimony of the witnesses,

the exhibits that were received in evidence, [and]

[the stipulation(s) by the parties.

(A stipulation is information the parties agree to present to the jury as evidence, without calling a witness to testify.)]

Testimony which was stricken from the record or to which an objection was sustained must be disregarded by you.

Exhibits that were received in evidence are available, upon your request, for your inspection and consideration.

Exhibits that were just seen during the trial, or marked for identification but not received in evidence, are not evidence, and are thus not available for your inspection and consideration.

But testimony based on exhibits that were not received in evidence may be considered by you. It is just that the exhibit itself is not available for your inspection and consideration.