




Note Taking Background

In connection with the proposed rule on note taking, I enclose the current instruction in PJC 100.11, an excerpt from a Court of Criminal Appeals case, and a 1P97 draft from the Court Rules Committee

Current instruction in PJC 100.11

During trial, if taking notes will help focus your attention on the evidence, you may take notes. If taking notes will distract your attention from the evidence, you should not take notes. Any notes you take are for your own personal use, and you may not share them with other jurors. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of another juror.

PRICE V. STATE, 887 S.W. 2D 949 (TEX. CRIM. APP. 1994) PERMITTING JUROR NOTE-TAKING

[1]  [2]  [3]  While we recognize the concerns expressed in *Cheek* and *Ledet* and the states that still prohibit juror **note-taking**, we believe the time has come to allow the trial judges of this State the discretion to permit juror **note-taking**.^{FN10} We are confident the inherent risks of **note-taking** can be avoided if the trial judge **takes** the following steps. *First*, determine if juror **note-taking** would be beneficial in light of the factual and legal issues to be presented at the trial. *Jumpp*, 619 A.2d at 609. If the trial is to be relatively short and simple, the need for **note-taking** will be slight. On the other hand, if a long and complex trial is anticipated, **note-taking** could be extremely beneficial. *Second*, the trial judge should inform the parties, *prior to voir dire*, if the jurors will be permitted to **take notes**. If **note-taking** is to be allowed, the parties should be permitted to question the venire as to their ability to read, write or **take notes**. *Triplett*, 421 S.E.2d at 519-520 (W.Va.1992).

FN10. We **note** that trial judges who do *not* permit juror **note-taking** will eliminate review of the matter on appeal and probably save many hours of trial and appellate court time. *Third*, the trial judge should admonish the jury, at the time it is impaneled, on **note-taking**.^{FN11} *MacLean*, 578 F.2d at 66; *DiLuca*, 448 N.Y.S.2d at 735. Having reviewed the jury instructions used by many jurisdictions, we believe the following admonition, or one substantially similar, should be given:

FN11. During oral argument, the State argued that comprehensive jury instructions will alleviate many of the risks associated with jury note-taking.
Ladies and Gentlemen of the Jury:

Because of the potential usefulness of taking notes, you may take notes during the presentation of evidence in this case. However, you may not take notes during the arguments of the lawyers, or when the jury charge is read to you.

Moreover, to ensure a completely fair and impartial trial, I will instruct you to observe the following limitations:

1. Note taking is permitted, but not required. Each of you may take notes. However, no one is required to take notes.

2. Take notes sparingly. Do not try to summarize all of the testimony. Notes are for the purpose of refreshing memory. They are particularly helpful when dealing with measurements, times, distances, identities, and relationships.

*955 3. Be brief. Overindulgence in note taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in passing on his or her credibility. Note taking must not distract you from that task. If you wish to make a note, you need not sacrifice the opportunity to make important observations. You may make your note after having made the observation itself. Keep in mind that when you ultimately make a decision in a case you will rely principally upon your eyes, your ears, and your mind, not upon your fingers.

4. Do not take your notes away from court. At the end of each day, please place your notes in the envelope which has been provided to you. A court officer will be directed to take the envelopes to a safe place and return them at the beginning of the next session on this case, unopened.

5. Your notes are for your own private use only. It is improper for you to share your notes with any other juror during any phase of the trial other than jury deliberations. You may, however, discuss the contents of your notes during your deliberations.

See generally, Litigation Management Manual, Exhibit B (Federal Judicial Center 1992).

Fourth, the trial judge should provide the following instruction, or one substantially similar, in the jury charge at each phase of the trial:

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

See generally, MacLean, 578 F.2d at 67; DiLuca, 448 N.Y.S.2d at 735; and, Tex.Code Crim.Proc.Ann. art. 36.28.

We believe that by complying with these four cautionary steps, Texas juries will be able to obtain the benefits of note-taking while avoiding the inherent risks.

This is from a proposal sent to the Supreme Court in 1997 from the Court Rules Committee:

II. Exact wording of proposed Rule (the proposed new wording has been underlined):

Rule 226a. ADMONITORY INSTRUCTIONS TO JURY PANEL AND JURY

Preamble - Unchanged.

I. - Unchanged.

II. - Unchanged through paragraph 9 under "Written Instructions".

. . .

10. Do not seek information contained in law books, dictionaries, public or private records or elsewhere, which is not admitted in evidence.

(The court may, in its discretion, allow the jurors to take notes during the trial for the purpose of refreshing their memories during their deliberations. The court shall see that suitable materials are provided for this purpose, shall retain custody and ensure confidentiality of the notes during the trial and shall collect and destroy the notes after the jurors render their verdict. If the court allows the jury to take notes, it shall read the following instructions to the jury:)

11. You will be allowed to take notes during the trial and, after the arguments of counsel, take them into the jury room for the purpose of refreshing your memories during your deliberations. You must, however, follow these instructions:

a. The notes are not considered evidence.

b. The notes should not be considered any more accurate than the memory of a juror not making notes.

c. Your note taking should not interfere with your ability to pay attention to the evidence.

d. You have been provided materials to use in taking notes. Do not remove the notes from the courtroom at any time during the trial or from the jury room during your deliberations. During any morning and afternoon breaks, you may leave your notes on your chairs. At the noon break and at the end of the day, please hand your notes to the bailiff for safekeeping. No one will look at your notes during the breaks. At the end of the trial, leave your notes with the bailiff and they will be destroyed.

. . . the remainder of paragraph II is unchanged.

III.

That the following written and oral instructions, with such modifications as the circumstances of the particular case may require, shall be given by the court to the jury as part of the charge:

Written Instructions

Ladies and Gentlemen of the Jury:

This case is submitted to you . . . (remainder of the rule down through the form for the jury to sign is unchanged).

Oral Instructions

(If the court allowed the jury to take notes during the trial, after the final arguments of counsel and before the jury retires to deliberate, the following instructions shall be given by the court to the jury:)

You may take your notes to the jury room but remember to follow the instructions I gave you before, including the following:

- a. The notes are not considered evidence.
- b. The notes should not be considered any more accurate than the memory of a juror not making notes.

IV. - Unchanged.

III. Brief statement of reasons for requested change and advantages to be served by the proposed new rule:

The purpose of the proposed rule is allow jury note-taking during the trial, and to allow the juror notes in the jury room during deliberations.

